IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5174 OF 2003

Vijay Appasaheb Pisal,	]	
Age: Residing at Bavdhan,	]	
Taluka Wai, District Satara	]	... **Petitioner.**

Versus

1.	Ganpatrao Nilkanth Bhintade	]	
	(Patil) Residing at Bavdhan,	]	
	Taluka Wai, District Satara,	]	
2.	State of Maharashra,	]	
	Mantralaya, Mumbai	]	
3.	Vishwas Nilkanth Bhintade,	]	
	Residing at Bavdhan,	]	
	Taluka Wai, District Satara	]	... **Respondents.**

WITH
CIVIL APPLICATIO NO.215 OF 2004
IN
WRIT PETITION NO.5174 OF 2003

Shri Vishwas Nilkanth Bhintade,	]	
residing at Bavdhan, Taluka Wai,	]	
District Satara	]	... **Applicant**

Versus

1.	Ganpatrao Nilkanth Bhintade	]	
	(Patil) Residing at Bavdhan,	]	
	Taluka Wai, District Satara,	]	
2.	State of Maharashra,	]	
	Mantralaya, Mumbai	]	... **Respondents.**

Mr. Nitin Gaware Patil a/w. Mr.Jagannath S. Pawar, for the Petitioner.
Ms. Savita Prabhune, AGP for the Respondent No.2-State.
Ms. Eesha Jaifalkar i/by Mr.S.R. Page, for the Respondent No.3.

Coram	**:**	**Sharmila U. Deshmukh, J.**
Reserved on	**:**	**July 04, 2024**
Pronounced on	**:**	**July 22, 2024**

JUDGMENT :

1. Rule was issued by this Court on 31st July, 2003.

2. By this Petition, exception is taken to the judgment and order dated 25th June, 2003 passed by the State of Maharashtra through the Minister for Revenue, judgment and order dated 21st June, 1982 passed by the Additional Commissioner, the judgment and order dated 7th April, 1981 passed by the Additional Collector and judgment and order dated 19th June, 1980 passed by the Assistant Collector.

FACTS OF THE CASE:

3. The facts as discerned from the material on record is that the suit property i.e. Survey No.1097 situated at Bavdhan, Taluka Wai was a Inam Class-II land. The suit land was relinquished by the owners Shri M.V. Vaidya and B.V. Vaidya in favour of the Government as per Government R.D.No.585/49-J dated 3rd June, 1949. Mutation Entry No.4493 was effected on 27th September, 1950 in the Record of Rights and the land grant proposal was submitted to the Collector of Satara, who directed the land in question to be sold in auction. The auction sale was cancelled on 3rd December, 1953 and it was decided to grant the land to the permanent tenant in the land on new and impartible tenure on payment of occupancy price.

4. The father of the Respondent No.1 and 3 i.e. Nilkanth Balwantrao Bhintade was the permanent tenant of the said land and he paid the amount of occupancy price on 24th March, 1972. In exercise of the powers under Section 20 read with Section 31 of the Maharashtra Land Revenue Code, 1960 (for short, “MLRC”) and the Rules made under the MLRC, the Tahsildar granted the suit land on new and impartible tenure to the father of the Respondent Nos.1 and 3 on certain terms and conditions. One of the condition of grant of land was that the grantee shall not mortgage, sale or assign or otherwise transfer the land or any portion thereof except with the previous permission of the Collector and upon breach of the conditions the Collector would resume and take possession of the land.

5. Subsequent to the death of the original-grantee i.e. Nilkanth Bhintade in the year 1979, the names of his legal heirs came to be recorded in the revenue records and partition took place between the Respondent Nos.1 and 3 and the subject land came to be partitioned between the Respondent Nos.1 and 3 as 8 anna share each. Mutation

Entry was effected in the revenue records upon the partition and Respondent No.1 was cultivating western half share and Respondent No.3 was cultivating eastern half share of subject land.

6. The Petitioner-herein by a registered sale-deed dated 10th March, 1980 purchased the share of the Respondent No.1 for valuable consideration of Rs.20,000/- and was put in possession of the said land. On 4th April, 1980, the Respondent No.3 filed a complaint with the Assistant Collector that the sale-deed dated 10th March, 1980 is invalid as the same was executed by the Respondent No.1 without seeking prior permission of the Collector. It was further contended that since the Respondent No.3 is the owner of the adjoining land, the land may be re-granted to him. The Assistant Collector without issuing any notice to the Petitioner or Respondent No.1, by order dated 19th June, 1980 held that upon the inquiry with the Sub-Registrar, he became aware that the sale-deed in respect of the said land has been executed which is invalid as the prior permission of the Collector was necessary. The Assistant Collector ordered that the sale-deed is invalid and directed resumption of land.

7. The Respondent No.1 preferred an Appeal before the Additional Collector being LND. Appeal No.8180 which was dismissed by order dated 7th April, 1981. The Second Appeal was preferred under Section 257 of the MLRC to the Additional Commissioner. By order dated 21st June, 1982, the Additional Commissioner dismissed the Appeal. Revision under Section 257 of the MLRC was preferred before the Hon'ble Minister for Revenue, wherein for the first time, the present Petitioner was made party by the Respondent No.1.

8. On 7th June, 1983, the Petitioner made representation to the Hon'ble Minister for regularisation of the transaction of sale dated 10th March, 1980. It was stated that the Petitioner was not aware about the tenure of the land or that the permission of the concerned Authority is required and expressed his willingness to pay the penalty, if any, for regularising the transaction. By the impugned judgment and order dated 25th June, 2003, the Revision Application was dismissed by the Hon'ble Minister.

SUBMISSIONS:

9. Mr. Gaware Patil, learned counsel appearing for the Petitioner has taken this Court through the various orders passed by the Revenue Authorities and would submit that father of the Respondent Nos.1 and 3 was re-granted the land as he was the permanent tenant. He submits that subsequently partition had taken place which was recorded in the revenue records and there was no objection taken by any of the Revenue Authorities. He submits that thereafter by way of registered sale-deed the Petitioner has purchased the share of the Respondent No.1 which was noted in the record of rights. He submits that despite the registered sale-deed being executed in the year 1980 while passing the order dated 19th June, 1980, the Assistant Collector while ordering the resumption of the land did not give any notice to the present Petitioner. He submits that copy of the said order was marked to the Petitioner which would indicate that the Assistant Collector was aware about the rights acquired by the Petitioner in the said property and as the Petitioner was not heard there is violation of the principles of natural justice. He further submits that even before the Additional Collector and the Additional Commissioner, the Petitioner was not made party and it is for the first time before the Hon'ble Minister that the Petitioner was made party. He submits that the representation was submitted by the Petitioner made on 8th September, 1983 seeking to regularise the transaction by payment of penalty if any and without the said application being decided the Hon'ble Minister has dismissed the Revision thereby upholding the order of resumption of land. He submits that the Petitioner is still in the possession of the land and though the Hon'ble Minister holds that the sale can be regularised and that the concerned Commissioner has recommended the regularisation, the Hon'ble Minister has directed resumption of the land. He submits that the appropriate course would have been to first decide the application for regularisation and then pass the order of resumption. In support, he relies on the decision in the case of

S.L.Kapoor vs. Jagmohan and Ors. [(1980) 4 SCC 379].

10. *Per contra*, Ms. Prabhune, learned AGP would support the order of resumption and would submit that the proceedings were initiated on a complaint filed by the Respondent No.3. She submits that it is an admitted position that there is breach of the condition of the grant and therefore the order of resumption has been rightly passed. She has taken this Court in detail through the order of the Hon'ble Minister and would submit that in the facts of the present case as there is breach of the condition of the grant this Court may not interfere under Article 227 of the Constitution of India.

11. Learned AGP would further point out the case of the Respondent No.1 before the Hon'ble Minister that the property was mortgaged with the Petitioner for a period of 7 years on oral agreement that upon payment of the money, the property would be returned. She would therefore submit that as such it is not a case of sale as is sought to be portrayed by the learned Counsel for the Petitioner.

12. Ms.Jaifalkar, learned counsel appearing for the Respondent No.3 would submit that it is the case of the Respondent No.3 of joint ownership of the land and that the Respondent No.3 was paying the agricultural tax in respect of the suit land. She would further submit that the land which has been sold by the Respondent No.1 would result in creating of fragment and as such the Respondent No.3 had right of preemption over the suit land.

REASONS AND ANALYSIS:

13. There is no dispute about the land being re-granted to the father of the Respondent Nos.1 and 3 on new and impartible tenure on payment of occupancy price and that the Respondent Nos.1 and 3 were in occupation of the land. One of the condition of the grant was that the grantee shall not mortgage, sale or assign or otherwise transfer the land or any portion thereof except with the previous permission of the Collector. It is thus evident that the embargo was on the sale of the land without the prior permission of the Collector and it is not the case that the land could not be alienated at all. It is not disputed that prior permission of the Collector was not obtained however, it is also undisputed that while passing of the order of 19th June, 1980 of resumption of the land by the Assistant Collector, there was no notice of hearing given to the Petitioner. The fact that the Assistant Collector was aware of the purchase of the land by the Petitioner is evident from the contents of the order as well as the fact that the copy of the said order was marked to the Petitioner. However, the order does not reflect that any notice was given to the Petitioner or that he was heard before the order was passed. The proceedings directly affected the rights of the Petitioner in the suit land as by the said order the land which was purchased by the Petitioner stood resumed by the Government and that being so, without granting an opportunity of hearing to the Petitioner the order of resumption could not have been passed. There is thus clear violation of the principles of natural justice. It is also not clear from the said order and there is no record produced by the Government to demonstrate that the copy of the order was in fact served upon the Petitioner as Appeal against the said order has been preferred by the Respondent No.1 before the Additional Collector in which the Petitioner was not a party. The Additional Collector and the Additional Commissioner did not issue any notice to the Petitioner and the record indicates that the Petitioner was not made a party to these proceedings although by that time the Respondent No.1 had alienated his interest by a registered sale-deed in favour of the Petitioner.

14. The order of the Additional Commissioner observes that the Respondent No.1 had been granted an opportunity to put-forth his say before the Court and that they are not been able to show any ground on which the impugned sale transaction could have been sustained by the Assistant Collector had the Respondent No.1 being given an hearing. The fallacy of the said finding is that the hearing was required to be given also to the Petitioner who had purchased the land and the order of resumption prejudiced his right in the suit property. The Additional Commissioner by considering the defence of the Respondent No.1 has held that the remand will not serve any purpose without noticing that the Petitioner was not made party and unless the opportunity of hearing is given to the Petitioner, the order of resumption could not have been passed.

15. It appears that on 30th April,1983, the Circle Inspector issued a notice to the Petitioner for the purpose of taking possession pursuant to which a representation was made to the Hon'ble Minister by the Petitioner seeking regularisation. It is not demonstrated that there is any adjudication of the said application of regularisation. The Hon'ble Minister without deciding the application for regularisation which would have had considerable impact on the order of resumption proceeded to decide the Revision filed by the Respondent No.1. The Hon'ble Minister held that the suit land was directed to be resumed by the Assistant Collector by order of 19th June, 1980 and as such no purpose will be served in considering the request for regularisation. The Hon'ble Minister lost sight of the fact that despite the order of resumption in the year 1980, the property still continued to be in the possession of the Petitioner. It is not the finding of the Hon'ble Minister that the sale of the land could not be regularised upon payment of penalty and the only reason that why the application for regularisation was disregarded was that considerable time has elapsed.

16. Mr. Gaware Patil has rightly pointed out to an order passed in respect of some other proposal whereby the Additional Commissioner had considered the case of the purchaser therein for regularisation of the sale purchase transaction. Merely because in the present case, there is an order of resumption the same would not preclude the Hon'ble Minister from considering whether the transaction could have been regularised. The Hon'ble Minister has referred to certain government policies and the Maharashtra Land Revenue Manuals to observe that the concerned authority can regularise the said transaction upon payment of certain penalty and in fact the concerned Commissioner has by order of 18th November, 1989 recommended the regularisation of the transaction. That being so, the order does not indicate as to why in the facts of this particular case the said circulars are not being followed and the recommendation of the concerned Commissioner is not being taken into consideration. Despite the said position in the present case, the sale has not been regularised and the land has been directed to be resumed. However, the order does not consider that in fact an application for regularisation was pending since the year 1983 which had not been decided despite recommendation by the Additional Commissioner. The Hon'ble Minister, on the basis that the authorities below had passed an order of resumption, without noticing that neither the principles of natural justice was followed nor the relevant government circulars which permitted the regularisation upon payment of penalty was applied in the present case has dismissed the Revision.

17. It is thus clear that the policy which was applicable for regularisation was arbitrarily not applied in the Petitioner's case without any valid reason. The order of resumption cannot come in the way of the Petitioner's application for regularisation particularly when the Petitioner was not heard and was not aware that the prior permission of the Collector was required before the land could have been purchased. It is not demonstrated from the material on record that there was any noting to that effect in the record of rights which would have put the Petitioner to notice that the said land is of on new and impartible tenure and without the permission of the Collector could not have been sold. It is clear that the Petitioner is bonafide purchaser for value and his rights in immovable property have been affected without offering any opportunity of being heard, which is a clear violation of principles of natural justice.

CONCLUSION:

18. In light of the above, the judgment and order dated 25th June, 2003 passed by the Hon'ble Minister for Revenue, judgment and order dated 21st June, 1982 passed by the Additional Commissioner, the judgment and order dated 7th April, 1981 passed by the Additional Collector and the judgment and order dated 19th June, 1980 passed by the Assistant Collector are hereby quashed and set aside.

19. As the proposal of regularisation of the year 1983 was not considered, let a fresh application be filed by the Petitioner before the concerned Authority seeking regularisation of the transaction of the year 1980 within a period of four weeks from the date of uploading of this order on the official website of this Court.

20. Upon such an application being filed, the concerned Authority to decide the same in accordance with law and after giving an opportunity of hearing to all the concerned parties. The Authorities are at liberty to take appropriate steps consequent to the orders passed on the regularisation Application.

21. Petition succeeds. Rule is made absolute in the above terms.

[Sharmila U. Deshmukh, J.]