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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3921 OF 1997**

Shri Usman Husen Dhaliat, since
deceased through his legal heirs :

1. Jaibunbi Usman Dhaliat
Age : 72 years Occ : Household
At. Ghosarwadi, Tal. Shirol
Dist. Kolhapur
 2. Atlaf Usman Dhaliat
Age : 46 years Occ : Service
R/at as above
- Petitioners

Versus

1. Ramu Budappa Wadar, since
deceased
through his heirs and legal
representatives
 - (i) Smt. Hansabai Ramu Wadar, since
deceased through
 - (iii) Shalabai Babaso Wada (Wife)
Age : 30 years, R/o. Ghosarwadi
Tal. Shirol, Dist. Kolhapur
 - (iv) Pinky Govinda Wadar (Daughter)
Age : 25 years, R/at. Malwadi
Tal. Radhanagari, Dist. Kolhapur.
- Respondents

Mr. Vikrant Anand Desai h/f. Mr. S. M. Kamble for the Petitioners.

Mr. Prathamesh Gokhale for the Respondents.

CORAM : GAURI GODSE, J.

DATE : 4th APRIL 2024

ORAL JUDGMENT:

1. This petition is filed to challenge an order dated 8th May 1996 passed by the Maharashtra Revenue Tribunal, Pune (MRT) dismissing the revision application filed by the petitioners. The revision application was filed to challenge the order passed by the learned Assistant Collector, Ichalkaranji dismissing the application filed by the petitioner seeking permission under section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 ("Tenancy Act") for the sale of the land. The said application was rejected by the learned Assistant Collector by referring to Rule 25A(1)(f) of the Bombay Tenancy and Agricultural Land Rules 1956 ("Tenancy Rules").

2. The respondent was owner of the land being Gat No. 648 ["suit land"). Respondent agreed to sell the suit land to the deceased petitioner by an agreement dated 6th February 1988 for a total consideration of Rs.35,000/-. Since the respondent had refused to

execute the sale deed after payment of the consideration amount, the deceased petitioner instituted Special Civil Suit No. 268 of 1991 in the Civil Court at Kolhapur for specific performance of the contract in his favour. The said suit was contested by the respondent.

3. By judgment and decree dated 29th October 1993 passed by the learned 5th Joint Civil Judge, Senior Division, Kolhapur the suit filed by the deceased petitioner was decreed directing execution of the sale deed in his favour subject to permission under Section 43 of the Tenancy Act. The operative part of the decree reads as under :

ORDER

“1. The suit is decreed.

2. Plaintiff shall prefer an application U/s. 43 of the Bombay Tenancy & Agricultural Lands Act, to Collector, Kolhapur for grant of necessary permission within 1 months (30 days).

3. The Collector, Kolhapur irrespective of this order is at liberty either to grant the permission or to refuse the same.

4. If plaintiff obtains the order permission, defendant shall execute sale deed of the suit land in

favour of plaintiff or plaintiff will be at liberty to get it executed through court.

5. If permission is refused by Collector plaintiff shall deliver possession of the suit land to defendant forthwith.

6. Parties to bear their respective costs.

Decree to be drawn up accordingly.”

4. Petitioners are heirs and legal representatives of the deceased plaintiff/original purchaser. Learned counsel for the petitioners submitted that according to the said decree, the deceased petitioner made an application dated 15th February 1994 seeking permission under Section 43 of the Tenancy Act. The said application was erroneously dismissed by the learned Assistant Collector by referring to Rule 25A(1)(f) of the said Tenancy Rules. He submits that the said clause (f) of the said rule does not apply to the petitioners' case. He submits that the application was filed according to the decree passed by the Civil Court for the grant of specific performance. Hence application was maintainable and the relevant clause applicable was clause (d) of sub-rule (1) of Rule 25A of the said Tenancy Rules.

5. He submits that clause (f) of sub-rule (1) of Rule 25A deals with the application made when permission is required for selling land on the ground that the applicant has permanently given up the profession of agriculture or he is permanently rendered incapable of cultivating the land personally. He submits that by no stretch of imagination, does the said clause (f) apply to the present case. He further submits that even the learned member of the MRT has erred in rejecting the revision application by giving the same reasons.

6. He submits that the learned member of the MRT has erroneously held that in addition to the land in question, the petitioners owned other lands and since it is not the intention of the petitioners to give up the agricultural profession, confirmed the order of the Assistant Collector. Thus, the learned member of MRT erroneously dismissed the revision application on the same ground. Learned counsel for the petitioners submitted that even the learned member of the MRT failed to appreciate the correct provisions of law for deciding the application filed under Section 43 of the Tenancy Act in terms of the decree for specific performance granted by the Civil Court. He therefore submits that the petition be allowed by setting aside both the impugned orders

and granting permission to the petitioners as prayed.

7. Learned counsel for the respondents supports the impugned order on the ground that the provisions of the law are correctly applied by the learned Assistant Collector and has rightly rejected the application. He submits that even in the order of MRT no fault can be found as the correct provisions of law are made applicable. Learned counsel for the respondents however does not dispute that there is a decree for specific performance passed in favour of the petitioners.

8. I have considered the submissions. Perused the record. It is not in dispute that the Civil Court has passed a decree for the specific performance of the contract in favour of the deceased petitioner. The specific performance is granted subject to permission under section 43 of the Tenancy Act. Section 43 of the Tenancy Act provides for the restriction on the transfer of land purchased or sold under the Tenancy Act without the previous sanction of the Collector. The said section further provides for such sanction being granted subject to conditions.

9. Rule 25A of the said Tenancy Rules provides procedure for grant of permission under Section 43 of the said Tenancy Act. Rule 25A deals with the circumstances in which and conditions subject to which

sanction shall be given by the Collector under Section 43 for the transfer of land. Clause(d) of sub-rule (1) of Rule 25A of the said Rules deals with the land being sold in execution of a decree of a civil court. In the present case, the application of the petitioners was according to a decree passed by the Civil Court for the specific performance of the contract. Hence, clause (f) of sub-rule (1) of Rule 25A as referred to by the Assistant Collector for rejecting the application is not applicable. Thus, the learned Assistant Collector has erroneously rejected the application by applying the said clause of Rule 25A.

10. The Learned Assistant Collector completely lost sight of the fact that the application was filed by the petitioners for permission for sale of the land in execution of a decree passed by the Civil Court. A perusal of the reasons recorded by the learned member of the MRT indicates that the rejection of the application is confirmed by the learned member of the MRT on the same grounds given by the Assistant Collector. The learned member of the MRT has failed to appreciate the correct rules applicable to the application filed by the petitioners. The reasons recorded by the MRT stating that the

petitioners have other land in addition to the suit land and since it is not their intention to give up the agricultural profession, the Collector has rightly refused to grant permission is absurd and illegal and amounts to non-application of mind.

11. Learned MRT has confirmed the order of the Collector on an unavailable ground and has failed to appreciate that the application was filed by the petitioners for permission to transfer land being sold in execution of the decree for specific performance passed by the Civil Court. Hence the impugned orders are erroneous and illegal and thus, not sustainable. The application filed by the petitioners is therefore required to be restored to the file of the Assistant Collector for deciding it afresh in accordance with law.

12. Hence for the reasons recorded above, the petition is partly allowed by passing the following order :

- (i) The impugned Judgment and Order dated 8th May 1996 passed by the learned member of the Maharashtra Revenue Tribunal, Pune Camp, Kolhapur in Revision Application No. MRT/KP-3/95 (Tnc.B.3/93) is quashed and set aside.

(ii) The order dated 7th December 1994 passed by the Assistant Collector, Ichalkaranji, in Case No. TNC-SR-90/94 is quashed and set aside.

(iii) Tenancy Application No. SR-90/94 is restored to the file of the Assistant Collector, Ichalkaranji for deciding it afresh in accordance with law.

(iv) The concerned Assistant Collector shall decide the application considering the application as filed for transfer of land in execution of the decree of Civil Court as provided in Clause (d) of Sub Rule (1) of Rule 25A of the Bombay Tenancy and Agricultural Land Rules, 1956 for permission under Section 43 of Maharashtra Tenancy and Agricultural Land Act, 1948.

(v) Writ Petition is partly allowed in the aforesaid terms.

(vi) Since the application is of the year 1994 the hearing of the application is expedited and the Assistant Collector shall give out-of-turn priority for disposal of the application.

[GAURI GODSE J]