

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3030 OF 2020

Shri. Shahaji Bapuso Pawar And Anr. ...Petitioner
Versus
Shri. Papat Dattatraraya Shinde And Ors. ...Respondents

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Mr. Rahul Kate, i/b Majoj J. Patil, for the Petitioner.

Mr. Y.D. Patil, A.G.P. for the Respondent – State.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 24th JUNE 2024

P.C.:

1. The contention is that the sale by the Respondent No.2 in favour Respondent No.1 dated 2.2.2017 of 0.12 R of land from and out of the entire land bearing Gut No. 3170 admeasuring 0.93 R in Village Manerojuri, Taluka Tasgaon, District Sangli, is hit by the Provisions 5, 7 and 8 of the Prevention of Fragmentation And Consolidation of Holdings Act, 1947 (“Fragmentation Act 1947”), in view of which the impugned order dated 13.12.2017 passed by the Sub Divisional Officer and the Order dated 18.12.2018 by the

Additional Commissioner in Revision stands vitiated. The SDO rejected the application on the ground that a civil dispute was pending between the parties questioning the Sale Deed dated 2.2.2017 at the behest of the Petitioner on account of the Petitioner claiming a right of preemption under Section 22 of the Hindu Succession Act. It is contended that the pendency of the Suit does not deter the authorities under Fragmentation Act of declaring the Sale Deed void if the transfer was found to be over and above what was declared to be a fragment. The Notification regarding the standard area as issued under Section 5 of the Fragmentation Act would be relevant and material for deciding this issue. Pendency of the Suit between the parties on the basis of right of preemption would not act as a deterrent in exercise of the powers under the Fragmentation act.

2. Though Respondent Nos. 1 and 2 are served none appears. The impugned orders do not consider the standard area Notification under Section 5 in order to determine whether a fragment is created and transferred under the Sale Deed dated 2.2.2017, which is the basic requirement for the

exercise of the power under the Fragmentation Act.

3. This being the position the impugned orders are hereby quashed and set aside and the matter is remitted back to the learned Sub Division Officer to decide the application afresh by taking into consideration the Notification under Section 5 of the Fragmentation Act to determine whether the transfer under the Sale Deed dated 02.02.2017 was by creating a fragment.

4. The Petition is allowed in the aforesaid terms. No costs.

5. The pending Interim Application is disposed of accordingly.

(AVINASH G. GHAROTE, J.)