

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 20416 OF 2022

IN

WRIT PETITION NO. 2094 OF 2021

Nikhil Radheshyam Agrawal And Anr. ...Applicants/Petitioners

Versus

Smt Anita Shantaram Bhoir And Ors. ...Respondents

Mr. Milind Sathe, Senior Advocate a/w. D.V. Hingrani, Joy Suramal and Pragati Patil for Applicant in IA.

Ms. Gauri Joglekar a/w. Praful Patil and Nikhil Khade i/b. Meraki Legal, for Respondent In IA.

Mr. P.P. Kakade, G.P. a/w. Mr. K.S. Thorat, 'B' Panel Counsel for Respondent Nos.1 to 6/State.

CORAM: NITIN JAMDAR &
M.M. SATHAYE, JJ.

DATE : 4 APRIL 2024

P.C.:

. By this interim application the ad-interim relief granted by this Court is sought to be vacated. The order granting ad-interim relief reads thus:

“ The Petitioners who are agriculturist and staying in tribal area of Taluka Shapur, District Thane have made serious allegations against Respondent Nos. 8 to 14 with regard to the tribal lands purchased by them including the lands belonging to the Petitioners.

2. In view thereof, the Respondents are directed to file their respective Affidavits in Reply on or before 5th July, 2021.

3. Stand over to 8th July, 2021.

4. In the meantime, if any order is passed by Respondent No. 16 – Divisional Commissioner, Konkan Division in favour of Respondent Nos. 8 to 14, the same shall not be implemented until the adjourned date.”

2. The only thing that is stated while granting the ad-interim relief is that the Petitioners have made certain serious allegations and reply has to be filed and the matter was adjourned and it is stated that if any order is passed by the Divisional Commissioner in favour of Respondent Nos. 8 to 14, the same shall not be implemented until the adjourned date. The order that is to be passed is an arbitral proceedings in respect of an Award which is declared on 5 August 2019. We are informed that the arbitral proceedings are concluded and because of the interim order, order is not passed. Since this interim order is passed in favour of the Petitioners, we have examined the matter as to the legal right of the Petitioners.

3. It is the case of the Petitioners' that the Petitioners' were tenants of the lands in question. They had become deemed purchasers and necessary 32M certificates were issued in their favour. Thereafter, they had entered into a sale deed with the private Respondents some time in the year 1995. The land which was purchased by the private Respondents being agricultural land, to be used for Industrial purposes, permission had to be taken from the

concerned authorities under the Maharashtra Tenancy and Agricultural Lands Act 1948 (for short “the Tenancy Act”). The permission was granted on certain conditions, such as resumption of the land if it is not put to bona fide use and non payment of utilization charges.

4. The legal right of the Petitioners is based on the stipulation in Section 63-1A of the Tenancy Act that if the land is not put to use for industrial use within the stipulated period and the conditions are not satisfied then the State Government will resume the land and upon resumption, it can be offered to the original owner. This is the foundation of the Petitioners case. According to the Petitioners there have been breaches on the part of Respondents and notices have also been issued by the State Authorities on 24 February 2018. The Petitioners also seek a direction to the State Authorities to take action for resumption and complains that the State Authorities have not taken any action.

5. First it will have to be established that section 63(1)(A) has been breached for the role of the Petitioners to arise. Reply affidavit is filed by the State. We have looked into the affidavit filed by the Collector as regards the stand of the State Authorities. The affidavit refers to the provision of 63-1A and to a Power of Attorney executed by the Petitioner Nos.1 and 2 and 3 others with Respondent No. 10 on certain conditions. It is therefore the stand taken that in view of this Power of Attorney, under the proviso, the Petitioners will not be

able to get the land back even if its is resumed. Learned AGP asserts there is no breach. Since the State has taken stand that there is no breach of section 63(1)(C), section 84 that the power to take possession does not arise.

6. According to the Petitioners, the Power of Attorney itself is questionable and there are other various other lacunas. However, the power of attorney as of today stands. It is a document which is executed between the Petitioner Nos. 1 and 2 and private Respondents. The validity of the power of attorney cannot be gone into in writ jurisdiction neither such a declaration can be given. The Petitioners raise various disputed questions are such as how the Petitioners were led to execute the power of attorney. These cannot be decided in writ jurisdiction. The Petitioners have not filed any civil suit for a declaration regarding the transactions entered by them.

7. As regards general arguments raised about the conduct of the authorities are concerned, we are not considering a public interest litigation and in this Writ Petition, we are only concerned with the legal right of the Petitioners, if any. As long the Petitioners do not get a declaration regarding the power of attorney or other documents by which they have divested themselves of the title to land and their rights, the ad-interim order granted in this petition cannot continue.

8. We, therefore, vacate the ad-interim order, however, direct, that if any amount is received by the Respondents, the same shall be subject to the outcome of this petition. It is open to the Petitioners to

approach the Civil Court for necessary declarations. If any such declaration is given liberty to the Petitioners to place the same on the record of this Petition and seek necessary orders.

9. Interim application is accordingly disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)