

VRJ

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

WRIT PETITION NO.2068 OF 2020

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Fajle Rahim Abdul Latif khan

... Petitioner

V/s.

The Hon'ble Administrator, Silvassa &
Ors.

... Respondents

Mr. Bhavesh Parmar with Mr. Rajesh Sahani with Ms.
Reshma Nair, Mr. Vivek Akshali i/by Mr.

Devmani J. Shukla for the petitioner.

Mr. S. L. Babar, AGP for the State/respondent No.2.

Mr. Surel S. Shah i/by Mr. Mandar Soman for
respondent Nos.3, 5 and 6.

Mr. Karnar Ali Shaikh with Mr. Hiten Venegavkar for
respondent (Administrator).

CORAM : AMIT BORKAR, J.

DATED : JANUARY 17, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The petitioner is challenging order passed by the Appellate Authority under the provisions of Dadra and Nagar Haveli Land Reforms Regulation, 1971. The record indicates that on 13th April 2009 the Collector Silvassa granted permission to sell agricultural land of respondent Nos.3 to 6 in favour of the petitioner.
- 3.** Respondent Nos.3 to 6 herein approached the Collector who

granted permission for setting aside the permission. Though the proceedings are termed as appeal under section 44(3) of the Dadra and Nagar Haveli Land Reforms Regulation, 1971, on perusal of the applicable regulation of 1971, it appears that the Collector has power to review under regulation 240 of the said regulation. In exercise of such power under regulation 240, the Collector cancelled the permission on two grounds (i) the purchaser is not an agriculturist; (ii) condition No.5 of deposit of Rs.1,00,000/- or 25% of sale consideration whichever the less was required to be deposited by the seller in the name of the tribal and Rs.50,000/- for period of five years so that regular income is insured to the tribal land holder.

4. The Collector based on material on record recorded a finding that the purchaser was not an agriculturist and was, therefore, not entitled to purchase the agricultural land. It is also stated that condition No. 5 of the order granting permission require sellers to put an amount of Rs.1,00,000/- or 25% of sale consideration whichever is less and additional amount of Rs.50,000/- in nationalized bank for period of five years in the name of tribal land holder.

5. On the last occasion, the petitioner was called upon to furnish proof of such deposit in furtherance of condition No.5. Learned advocate for the petitioner states that the said fact is undisputed and the petitioner has no proof at present to substantiate the fact that Rs.1,00,000/- or Rs.50,000/- was deposited in the nationalized bank. He states that the sale deed contains a mention of deposit of the amount. He invited my

attention to schedule of a sale deed which contains a receipt. Serial Nos.47 and 48 of the said receipt indicate that F.D. No.6701417 dated 5th May 2009 to the tune of Rs.1,00,000/- and F.D. No.6701418 dated 5th May 2009 was deposited with the Dena Bank. However, the said entries in the sale deed do not indicate that the FDRs' were for the period of five years. It was, therefore, necessary for the petitioner to place before the Collector copies of fixed deposit receipts or at least a certificate from the bank evidencing deposit of such amount for period of five years. In absence of said proof, no fault can be found with the order passed by the Collector recalling the permission granted to the petitioner.

6. Moreover, as regards the petitioner being agriculturist, no evidence was produced either before the Collector or before this Court. The Collector relying on Mamlatdar's report recorded a finding that on the date of grant of permission the petitioner was not an agriculturist.

7. Learned advocate for the petitioner submitted that respondent Nos.3 to 6 had filed appeal under the provisions of section 44(3) of the Dadra and Nagar Haveli Land Reforms Regulation, 1971 for setting aside the order passed under the provisions of the Dadra and Nagar Haveli Land Revenue Administration Regulation, 1971. According to him, the permission was granted under the provisions of the Dadra and Nagar Haveli Land Revenue Administration Regulation, 1971 and, therefore, remedy under the Dadra and Nagar Haveli Land Revenue Administration Regulation, 1971 ought to have been resolved. It is not in dispute that the authority exercising power is same. The

authority who exercised the power of review had otherwise power to recall the order. If the source of power is available with the authority, the impugned order does not suffer from legal infirmity. Hence, existence of power under the provisions of the Dadra and Nagar Haveli Land Revenue Administration Regulation, 1971 furnishes sufficient source of power in favour of the Collector to recall the order.

8. Learned advocate for the petitioner states that the order of grant of permission is passed in the year 2009. However, the appeal was filed in the year 2015.

9. Learned advocate for the petitioner, on instructions of the petitioner who is present in Court, states that the petitioner's father died in the year 2017. The parties being Muslim, are governed by the provisions of the Mohammedan Law. Under the provisions of the Mohammedan Law, the son gets right in the property only after death of his father. Therefore, on the date of grant of permission, the petitioner had no agricultural land on his name. The Collector and the Appellate Authority were, therefore, justified in recalling the order of grant of permission. Hence, no interference is called for.

10. On perusal of the order passed by the Collector, it appears that the order was set aside on the ground of suppression of material fact. Suppression of material fact amounts to practicing fraud on authority. If the order is obtained by practicing fraud on society upon the authority, the period of limitation would start from the date when such fraud is noticed by the respondent Nos.3

to 6. From the date of knowledge, the application has to be filed within three years. Even otherwise also the order obtained by suppression of material fact is nullity and void in law. If the order is void, no period of limitation will apply and, therefore, exercise of power by the authority based on reasons for recalling the order cannot be faulted.

11. The writ petition is dismissed. No costs.

12. Rule stands discharged in above terms.

(AMIT BORKAR, J.)