



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13863 OF 2017**

Smt. Flora Ralph Mozes
Through POA Shri. Akhtar Hasan Rizvi
residing at Rizvi House, 1st Floor,
Hill Road, Bandra West, Mumbai 400050

.....Petitioner

Vs.

1. State of Maharashtra, Through its
Secretary
2. Sub Divisional Officer
Mawal-Mulshi Sub Division, Pune
having office at Administrative
Building, 2nd floor, Pune
3. The Tahsildar Mawal, District Pune
Having office at Mawal-Mulshi
Taluka Mulshi, District Pune
(Copies of Respondent Nos. 1 to 3
to be served on Government Pleader)
Writ Cell, High Court (A.S.)

.....Respondents

Mr. Drupad Patil i/b Mr. Mahesh Mishra for the petitioner
Smt. M. S. Bane, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 23rd JANUARY 2024.

ORAL JUDGMENT:

1. Heard. Rule.

2. Rule made returnable forthwith.
3. Learned AGP waives service. By consent, petition is taken up for final disposal.
4. This petition challenges the order dated 16th February 2016 passed by Maharashtra Revenue Tribunal ("MRT") Pune dismissing the petitioner's Revision Application No. 6 of 2015. The Revision Application was filed by the petitioner for challenging the order passed by Sub Divisional Officer ("SDO") dismissing the petitioner's Appeal. The appeal before SDO filed by the petitioner was for challenging the order dated 27th October 1977 passed by Agricultural Lands Tribunal ("ALT") in exercise of powers under section 84C of the Maharashtra Tenancy and Agricultural Lands Act. ("Tenancy Act") By the said order, suit lands stood forfeited to the government on the ground that there was breach of provisions of section 63, as the purchaser of the land was not agriculturist.
5. The petitioner is claiming through the original transferee. The enquiry under section 84C was initiated on the ground that the sale deed dated 31st October 1963 executed by the original owner in favour

of Ralf Mozes was in breach of provisions of section 63 of the Tenancy Act as the transferee was not an agriculturist.

6. Learned counsel for the petitioner submitted that after the sale deed dated 31st October 1963 was executed, the Mutation Entry No. 1207 was effected on 10th January 1964, entering the name of Ralf Mozes as the purchaser of the land. He submitted that notice was not issued to Ralf Mozes at the time of enquiry under section 84C. He submitted that on 28th August 1992, the effect of order under section 84C was given by effecting Mutation Entry No. 1724. Hence the petitioner had preferred the appeal before SDO for challenging the order. However, the appeal was dismissed and dismissal of the appeal is confirmed up to MRT. Hence, this petition.

7. In view of the grievance made on behalf of the petitioner that notice was not served on the transferee i.e. Ralf Mozes, for holding enquiry under section 84C, learned AGP has filed affidavit-in-reply contending that notice was issued to the transferee before holding enquiry and passing the order under section 84C. Affidavit-in-reply filed on behalf of respondent nos. 1 to 3 is taken on record. Learned

AGP has relied upon a Panchanama dated 26th October 1977 in support of the contention that since the transferee was not found in village Waksai, the notice was pasted on the suit land. She submitted that notice was also issued to the transferor and he had acknowledged the same. She thus submitted that appropriate procedure as required for holding enquiry under section 84C was followed and there is no substance in the ground of challenge raised on behalf of the petitioner. She submitted that the order under section 84C was given effect to in the revenue records by way of Mutation Entry No. 1935 dated 27th July 1984. She thus submitted that since the transferee had failed to produce any document to show that he was an agriculturist, enquiry under section 84C was conducted and it was found that the transfer was in breach of provisions of section 63 of the Tenancy Act.

8. I have considered the submissions and perused the record. It is not in dispute that the sale deed in favour of Ralf Mozes records his address as residing at Tungarli Post Lonavla. The suit land is situated at village Waksai. The Panchnama relied upon learned AGP indicates that attempt to serve the transferee was made at village Waksai and

that it was by substituted service by affixing it on a suit land. It is not in dispute that the suit land is an agricultural open land. Hence, it is difficult to accept that appropriate service is done upon the transferee on the basis of the Panchama, which records that the transferee was not found in the village Waksai and that the notice was pasted on an open land. Perusal of section 84C of the Tenancy Act mandates that for holding enquiry under section 84C, Mamlatdar has to issue notice of holding enquiry as provided for under section 84B. Section 84B of the Tenancy Act requires that Mamlatdar has to issue notice in the prescribed format to the transferor, transferee or the person acquiring such land as the case may be, to show cause why the transfer should not be declared to be invalid. Perusal of the provisions of section 84C and 84B of the Tenancy Act clearly indicates that the transferor and transferee is required to be heard before passing any order under section 84C.

9. It is not disputed that after the sale deed dated 31st October 1963, Mutation Entry No. 1207 was affected on 10th January 1964 for entering the name of the transferee i.e. Ralf Mozes. Perusal of the

record does not indicate that at the time of effecting the Mutation Entry No. 1935 or Mutation Entry No. 1724, notices were issued and served upon the transferee or the petitioner who claims through the transferee. Perusal of the affidavit and the Panchnama relied upon by the learned AGP do not show that proper procedure was followed for service upon the transferee at the time of holding enquiry under section 84C.

10. Affidavit-in-reply filed by Tahsildar Maval Dist. Pune states in paragraph No. 8 that in view of the directions of this court on 9th January 2024, office of Tahsildar is ready to conduct fresh hearing, if the petitioner produces documents before this court showing that the predecessor-in-title of the petitioner was an agriculturist at the time of purchase of the said land. By an order dated 9th January 2024, this court had passed the following order:

“1. Heard.

2. This petition arises out of order passed by the Maharashtra Revenue Tribunal, Pune on 16 February 2016. The said revision application filed by the petitioner is dismissed on the ground of delay. However, the main

*dispute in the matter is with respect to order dated 27 October 1971, annexed at page 36A, which was passed under section 84C of Bombay Tenancy and Agricultural Lands Act, 1948 now Maharashtra Tenancy and Agriculture Lands Act, ("**Tenancy Act**").*

3. Learned counsel for the petitioner states that the said order was passed without giving notice to the predecessor of the petitioner who is purchaser of the land in question. He therefore submits that the petitioner is entitled for hearing before any such order is passed.

4. On perusal of the orders on record, prima facie, I am of the opinion that principle of natural justice are not followed at the time of passing order under section 84C of the Tenancy Act.

5. Learned AGP to take instructions as to whether fresh inquiry under section 84C of the Tenancy Act can be conducted after issuing notice to the petitioner and giving an opportunity of being heard. Learned AGP to take instructions within two weeks from today.

6. Stand over to 23rd January 2024.

7. To be listed under the caption for 'Urgent Admission'"

11. Learned counsel for the petitioner relied upon the document annexed at Exhibit 'H' of the petition in support of his contention that the transferee i.e. Ralf Mozes was an agriculturist. He submitted that if an opportunity is given, the petitioner will produce all the relevant documents in support of the document at Exhibit 'H' to show that the transferee i.e. Ralf Mozes was an agriculturist.

12. Perusal of the orders impugned in the petition do not indicate that the contentions of the petitioner with respect to non-service of the notice on the transferee is examined and it does not indicate that any finding is recorded with respect to proper service upon transferee as required under section 84C of the Tenancy Act.

13. In view of the aforesaid, the petition deserves to be allowed by passing the following order:

ORDER

i) Order dated 16th February 2016, passed by MRT, Pune in No.L/P/XI/6/2015, order dated 31st March 2015, passed by SDO in RTS/Appeal No. 327/2014 and consequently order dated 27th October 1977

passed by ALT in proceedings under section 84C of the Tenancy Act bearing No. SR/19/77 is quashed and set aside.

ii) Proceedings under section 84C of the Tenancy Act, bearing No. SR/19/77 is restored to the file of ALT Maval, District: Pune for deciding it afresh after holding appropriate enquiry and giving an opportunity of hearing to the petitioner.

iii) The petitioner shall appear before ALT, Maval District: Pune on 1st February 2024 at 11 AM and thereafter concerned, ALT shall fix the schedule of hearing.

14. Petition is disposed of in the above terms.

[GAURI GODSE, J.]