

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 815 OF 2024

Siddarth Properties & Anr

...Petitioners

Versus

State of Maharashtra Revenue & Forest
Department & Ors

...Respondents

Mr. Girish Godbole, Senior Advocate, a/w Saket Mone, Devansh Shah, i/b Vidhi Partners, Advocates for the Petitioners.

Mr. A.I. Patel, Addl.GP, a/w P.N. Diwan, AGP, for Respondent Nos.1 & 2.

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : MARCH 14, 2024

PC :

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The present Petition is filed seeking quashing of the communication dated 25th October, 2023 issued by Respondent No.2 under which the Application for conversion of the Petitioner's land from Occupancy Class-II to Occupancy Class-I is rejected on the ground that the *Maharashtra Land Revenue (Conversion of Occupancy Class-II and*

Leasehold lands into Occupancy Class-I lands) Rules, 2019, (for short “**the Conversion Rules, 2019**”) are not applicable because there is no provision in the *Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961* (for short “***the Agricultural Ceiling Act***”) permitting such conversion.

3. The facts to decide the present controversy are in a very narrow compass. Land bearing Survey No.75, Hissa No.2, admeasuring 26 Acres 25 Gunthas situated at Village Varale, Taluka Maval, District Pune (the “**Larger Land**”) was owned by one Mangalaraje Virdhawal Dhabade through the Court of Wards (i.e., Respondent No.2) as per the provisions of the Bombay Court of Wards Act, 1905.

4. On 11th May, 1976, the Additional Tehsildar and Land Revenue Tribunal, Maval passed an order taking possession of the excess land admeasuring Hectare 5.28.36 Are out of the Larger Land from the Court of Wards under the provisions of the *Agricultural Ceiling Act*. Accordingly, the Larger Land was subdivided and the excess land admeasuring Hectare 5.28.36 Are was allotted Survey No.75 Hissa No.2/2 and the remaining portion admeasuring Hectare 5.46.64 Are was allotted Survey No.75 Hissa No.2/3.

5. On the same date, namely, 11th May, 1976, the additional Tehsildar and Land Revenue Tribunal, Maval, passed another order thereby subdividing the said Survey No.75, Hissa No.2/2 into (i) Survey No.75 Hissa No.2/2A admeasuring Hectare 2.64.18 Are (the “**Suit Land**”), which was allotted and handed over to one Yashwant Shripati Pawar for agricultural purpose; and (ii) Survey No.75 Hissa No.2/2B also admeasuring Hectare 2.64.18 Are which was allotted and handed over to one Baban Jayram Varigar.

6. On 8th January, 2002, Yashwant Shripati Pawar [who was allotted the Suit Land], passed away. Accordingly, his grandson, one Saurabh Subhash Jadhav, became sufficiently entitled to the Suit Land by virtue of the last Will and Testament of the said Yashwant Shripati Pawar. The date of the said Will is 28th September, 2001.

7. Thereafter, on 18th February, 2011 the Divisional Commissioner, Pune Division, Pune, passed an order granting permission to the said Saurabh Subhash Jadhav to sell/transfer the Suit Land to Petitioner No.2 (being a partner of Petitioner No.1) on the following terms and conditions: (i) the land holder shall deposit 75% of the unearned income i.e., Rs.39,75,579/-; (ii) Rs.23,85,050/- shall be

paid towards permission to sell/transfer the Suit Land for non-agricultural purpose [aggregating to a total sum of Rs.63,60,629/-]; and (iii) after sale of the Suit Land, the purchaser shall hold the land on Occupancy Class-II basis on a new tenure and use the same for non-agricultural purpose. Thus, the Suit Land remained as Occupancy Class-II. This amount of Rs.63,60,629/- was deposited by Petitioner No.2 in the Government Treasury on 21st February, 2011.

8. Accordingly, on 1st March, 2011, the Tehsildar, Maval, passed an order directing deletion of the name of the Court of Wards appearing in the other rights column in the record of rights in respect of the Suit Land, and the requisite mutation entry was also carried out. Once all this was done, on 20th April 2011, the said Saurabh Subhash Jadhav and Petitioner No.2 (being a partner of Petitioner No.1) executed a Sale Deed in respect of the Suit Land and the name of Petitioner No.1 was entered in the records of rights.

9. It appears that in the year 2017 the Petitioners have executed a development agreement in favour of one M/s. Saarrthi Ekjyot Realty LLP in respect of the Suit Land. After completion of the construction, the Petitioners and/or the said Saarrthi Ekjyot Realty LLP will be

required to give a conveyance of the buildings so constructed, together with the land underneath, to the housing societies/associations of the flat purchasers/commercial unit purchasers as per the statutory requirements of the *Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963* as well as the *Real Estate (Regulation and Development) Act, 2016*, and the statutory Rules framed thereunder. It is for this purpose that on 26th September, 2023 the Petitioner preferred an Application to Respondent No.2 under the Conversion Rules, 2019 for conversion of the Suit Land from Occupancy Class-II to Occupancy Class-I. This Application of the Petitioners was rejected by Respondent No.2 by the impugned communication holding that the Suit Land, being allotted/granted under the *Agricultural Ceiling Act*, there was no provision in the said Act for conversion of the Suit Land from Occupancy Class-II to Occupancy Class-I. It is being aggrieved by this communication that the present Writ Petition is filed on 5th December, 2023.

10. Mr. Godbole, the learned Senior Counsel appearing on behalf of the Petitioners, submitted that though it is the case of the Petitioners that there is no prohibition in the *Agricultural Ceiling Act* for converting a land allotted under the said Act from Occupancy Class-II to

Occupancy Class-I, the same has now been made explicitly clear by virtue of an amendment to the *Agricultural Ceiling Act* on 19th January, 2024. Mr. Godbole brought to our attention the aforesaid amendment and submitted that now Section 29A has been inserted in the *Agricultural Ceiling Act* under which it is specifically stated that notwithstanding anything contained in Section 29, the Collector may convert lands granted under Section 27 on Occupancy Class-II basis into Occupancy Class-I, subject to (i) the land being held for ten years and (ii) there is no breach of the conditions of the grant; and (iii) if there is a breach of any such conditions, then after regularization of such breach, on payment of such conversion premium and after following such procedure and subject to such other terms and conditions as may be prescribed. Mr. Godbole, therefore, submitted that now by virtue of aforesaid amendment, and which explicitly stipulates that lands granted under Section 27 of the *Agricultural Ceiling Act* can be converted from Class-II Occupancy to Class-I Occupancy, the impugned communication must be set aside and Respondent No.2 be directed to consider the Application of the Petitioner [for conversion] afresh.

11. On the other hand, the learned AGP appearing on behalf of the State, submitted that under the *Agricultural Ceiling Act*, as it stood

prior to its amendment, there was no provision for conversion of lands allotted under Section 27 of the said Act. He, however, fairly submitted that the position in law has now changed by virtue of the amendment carried out on 19th January, 2024. He fairly submitted that now by virtue of Section 29A of the *Agricultural Ceiling Act*, the Collector has the power to convert lands granted under Section 27 on Class-II Occupancy basis into Class-I Occupancy, subject to the terms set out in the said Section. He, therefore, submitted that the Court may pass appropriate orders in that regard.

12. We have heard the learned Counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. As mentioned earlier, what is impugned in the present Petition is the communication dated 25th October 2023 issued by Respondent No.2 rejecting the Application of the Petitioners for conversion of the Suit Land from Occupancy Class-II to Occupancy Class-I. This rejection is on the basis that the said land was allotted to the erstwhile allottee under the provisions of the *Agricultural Ceiling Act*, and therefore, the Conversion Rules, 2019 are not applicable. We are not going into this issue at all because in the facts of the present case and considering the change in law, the same does not arise for our

consideration. The fact of the matter remains that as on today the *Agricultural Ceiling Act* has been amended by inserting Section 29A therein, which reads thus:

29A. Notwithstanding anything contained in section 29, the Collector may convert lands granted under section 27 on Class-II Occupancy into Class-I Occupancy,-

(i) after lapse of ten years from the date of grant of such land; and

(ii) if there is no breach of any of the conditions for grant of such land; or if there is a breach of any of such conditions, then after regularization of such breach,

on payment of such conversion premium and after following such procedure and subject to such other terms and conditions as may be prescribed.”

13. On a plain reading of the Section it is now clear that notwithstanding anything contained in Section 29 of the *Agricultural Ceiling Act*, the Collector may convert a land granted under Section 27 on a Class-II Occupancy basis into Class-I Occupancy. This is obviously subject to the conditions laid in the said Section as well as the premium that would have to be paid. Once this is the amendment, we find that the impugned communication rejecting the Application of the Petitioners, even if justified on the date when it was passed, would have to be set aside [because of Section 29A] and the Application of the Petitioners would have to be considered afresh after taking into account the

amended provisions of the *Agricultural Ceiling Act*.

14. Once this is the case, we set aside the impugned communication and direct Respondent No.2 to decide the Petitioners' Application for conversion of the Suit Land from Occupancy Class-II to Occupancy Class-I as per the amended provisions of the *Agricultural Ceiling Act*. The Application of the Petitioners shall be decided within a period of twelve weeks from today and the decision shall be communicated to the Petitioners immediately thereafter.

15. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

16. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]