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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2777 OF 2019**

Ranitai Sandip Mohite ... Petitioner
vs.
Sanjay Bhimrao Mohite and Ors ... Respondents

Mr. Prasad Avhad i/b. Mr. Kuldeep U. Nikam, for petitioner.
Mr. Mahindra B. Deshmukh for respondent nos.1 and 2.
Mr. S.L. Babar, AGP for respondent nos. 5 to 7-State.

**CORAM : GAURI GODSE, J.
DATED : 23rd JANUARY, 2024**

P.C. :-

1. This petition takes exception to the order passed by the Additional Commissioner in the revision application filed under section 35 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947(in short '**said Act**'). The said revision application was filed by respondents nos. 1 and 2 for challenging the order passed by the Sub Divisional Officer declaring the transaction in favour of respondent nos. 1 and 2 to be invalid, in view of section 9(1) of the said Act.

2. Learned counsel for the petitioner states that in view of the

sale deed which was executed by respondent no. 3 in favour of the respondent nos. 1 and 2, for part of Gat no. 1585 was in breach of section 9 of the said Act as the same created a fragment which is prohibited under the provisions of the said Act. He submits that the letter dated 18th August 2018, issued by the Assistant Town Planner shows that the disputed land is agricultural and is not part of any scheme. He therefore, submits that the provisions of the said Act are applicable and sale-deed executed in favour of respondent nos. 1 and 2 creating fragment is not permitted under the provisions of the said Act and hence, the order passed by the Sub Divisional Officer rightly declared the said transfer in favour of respondent nos. 1 and 2 to be invalid. He, therefore, submits that the revisional authority has erred in allowing the revision application stating that the provisions of the said Act are not applicable in the present case as the land is not agricultural.

3. Learned counsel for respondent nos. 1 and 2 submitted that the land has been used for non-agricultural purposes since 1985 and is recorded in the City Survey Office as non-agricultural land. He submitted that the sale deed was executed by respondent no.3 in favour of respondent nos. 1 and 2 on 17th June 2014 and the area admeasuring 6R was transferred out of 9 R of Gat no. 1585. He

submits that the revisional authority has rightly referred that the concerned land has been used for non-agricultural purposes since the year 1985 and hence, there was no question of declaring the sale-deed to be invalid by invoking the provisions of the said Act. He submits that letter dated 18th August 2018, issued by the Assistant Town Planner, specifically shows that Town Planning Scheme is implemented on 15th March 1985. He thus, submitted that the provisions of the said Act are not applicable so far as transfer in favour of respondent nos. 1 and 2 is concerned. He further submitted that the objection to the sale deed in favour of respondents nos. 1 and 2 is taken by the petitioner who is the wife of the Vendor and by the daughter of the vendor. He thus, submitted that the objections raised by the petitioner are in collusion with respondent no.3 who has executed sale-deed in favour of the respondent nos. 1 and 2. He submitted that there is no reason to interfere in the impugned order.

4. I have considered the submissions made by both the parties. I have perused the record. On perusal of the order passed by the revisional authority it is seen that the land has a non-agricultural status since 1985 and hence, provisions of the said Act will not apply. It is not disputed that respondent no.3 has executed a sale-

deed on 17th June 2014 in favour of respondent nos. 1 and 2 for transfer of land admeasuring 6 R out of 9 R of Gat no. 1585. A perusal of the order passed by the Sub Divisional Officer declaring the sale deed to be invalid does not record any finding concerning the creation of any fragment as prohibited under the Act. The said order does not record any finding on any agricultural use of the land and the applicability of the provisions of the said Act. The letter dated 18th August 2018, issued by the Assistant Town Planner clearly states that the Town Planning Scheme is implemented on 15th March 1985.

5. Thus, I do not find any illegality or infirmity in the reasons recorded by the revisional authority. I do not find any merit in the petition. Hence, the petition is dismissed.

(GAURI GODSE, J.)