



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO.1393/2019**

Annapurna Bapurao Kodpae and Ors.Vs.Wasudeo Hanumantu Kodape and Ors.

Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders

Court's or Judge's orders

Mr. N. B. Bargat, Advocate for petitioners.  
Mr. A. A. Shinde, Advocate for respondent No.1.  
Mr. H. D. Futane, A.G.P. for respondent Nos. 3 and 4.

**CORAM : ANIL L. PANSARE, J.**

**DATE : NOVEMBER 29, 2024**

On 28.11.2024, following order was passed:

The question is whether the gift deed, executed by the predecessor of the petitioners in favour of respondent no.1, is hit by Section 57 of the Maharashtra Tenancy And Agricultural Lands (Vidarbha Region) Act, 1958 (for short "Act of 1958").

2] Sub-section (1) of Section 57 of the Act of 1958 provides that no land purchased by a tenant under Section 41 or 46 etc. shall be transferred by sale, gift, exchange, etc. without previous sanction of the Collector. Sub-section (2) of Section 57 provides that any transfer of land in contravention of sub-section (1) shall be invalid.

3] The learned Counsel for the petitioners has invited my attention to the sale-deed executed in favour of the petitioners' predecessor. Recitals in the sale-deed indicate that the agricultural land bearing survey nos. 26/1 and 27/1 situated at Mouza – Mangurla, Taluka – Wani, District – Yavatmal, was in possession of the petitioners' predecessor, namely, Mr. Karu Kanu Kodape, as tenant. The landlord, namely, Jagannath Nimsarkar, sold it to Mr. Karu for Rs.768/-. This transaction/sale deed has been executed in terms of Section 41 read with Section 43 of the Act of 1958.

4] Section 41 of the Act of 1958 provides for right of tenant to purchase land occupied by him in the capacity of tenant. Section 43 provides for determination of purchase price and mode of payment. The tenant has to make an offer within

three months to the landlord stating the price at which he is prepared to purchase the land and if the offer is acceptable to the landlord, the sale can be effected.

5] In the present case, since the sale-deed has been executed within five days of tillers' day, viz., 1/4/1961, it can be said that the transaction has been completed within three months from the date of offer made by the tenant and, therefore, there was no requirement to decide the purchase price by the Tribunal.

6] Thus, the aforesaid transaction/sale-deed has been executed in terms of Section 41 of the Act of 1958. In turn, restriction on transfer of land in terms of Section 57 will be applicable, meaning thereby, the tenant, who has purchased the land, cannot transfer the land by way of gift or otherwise without previous sanction of the Collector.

7] Admittedly, the sanction of the Collector has been not obtained. Accordingly, the Tahsildar, Zari Jamani, vide order dated 25/8/2015, invalidated the gift deed, which the petitioners' predecessor had executed in favour of respondent no.1 for the land bearing survey no. 27/1. This order has been upheld by the Sub-Divisional Officer, Kelapur, vide order dated 15/10/2016. These orders have been set aside by the Maharashtra Revenue Tribunal, Nagpur, vide impugned order dated 31/8/2018, on the ground that the sale-deed is not hit by Section 57 of the Act of 1958 and that the parties herein have not challenged the gift deed before the Civil Court.

8] The learned Counsel for the petitioners submits that the Tahsildar is empowered to decide whether the transfer is valid or not in terms of Section 121 of the Act of 1958. Thus, there was no necessity to approach the Civil Court as opined by the Tribunal. The impugned order is, thus, unsustainable.

9] At this stage, the learned A.G.P and the learned Counsel for respondent no.1 seeks time to have research on the point. Time granted.

10] Stand over tomorrow first on board."

2. A.G.P and the counsel appearing for respondent No.1, though made an attempt to justify the impugned order, could not satisfy the Court that except for approaching Civil Court, there was

no other remedy available to the petitioners. The petitioners, to my mind, have rightly approached the Tahsildar concerned under Section 121 of the Act of 1958. So far as the applicability of Section 57 is concerned, A.G.P. has fairly conceded that the transaction i.e. gift deed under question, will require previous sanction of the Collector.

3. In view of above, the writ petition is allowed in terms of order dated 28.11.2024. It is disposed of accordingly. No order as to costs.

**(Anil L. Pansare, J.)**

Kahale