



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4976 OF 1996

Shaligram S/o Tudaku Patil
Since deceased, through L.Rs.,

1. Smt. Sumanbai W/o Shalik Patil,
Age : 78 years, Occu. HH,
R/o. Mangarool, Tq. Amalner,
Dist. Jalgaon.
2. Janardan S/o Shalikrao Patil,
Age : 51 years, Occu. Agri.,
R/o. Mangarool, Tq. Amalner,
Dist. Jalgaon.
At present – Yashwant Park,
Zopadwadi Road, Sinnar, Dist. Nashik.
3. Surekha W/o Arun Patil,
Age : 55 years, Occu. HH,
R/o. RM-246/10, MIDC, Bajaj Nagar,
Chhatrapati Sambhajanagar.

.. Petitioners

Versus

1. Saifuddin S/o Usufali Bohari,
since deceased through L.Rs.
- A. Manabai W/o Saifuddin Bohari,
Age : 80 years, Occu. HH,
R/o. 403, Molz Palacae, Khatiwala Tank,
Indore – 452014 (MP).
- B. Mustafa Zenith wala Saifuddin Bohari
Age : 58 years, Occu. Business,
R/o. Flat No. 209, Crystal Apt., Masakin
E Safiya, Bijalpur, Indore – 452014 (MP).

- C. Mohammad Zanith Saifuddin Bohari
Age : 55 years, Occu. Business,
R/o. C-4, 303, Treasurer Town,
Bijalpur, Indore – 452014 (MP).
- D. Munira Sabir W/o Zenuddin Sabir
Age : 52 years, Occu. HH,
R/o. Flat No. 303, Amtulla Apt.,
Transport nagar, Khatiwala Tank,
Indore – 452014 (MP).
- E. Alefiya Murabbi W/o Mohammad Murabbi,
Age : 50 years, Occu. HH,
R/o. 81, Opp Garden, Saifinagar,
Khatiwala Tank, Indore – 452014 (MP).
2. The State of Maharashtra
Through Secretary, Revenue Department,
Mantralaya, Mumbai-32. .. Respondents

**WITH
CIVIL APPLICATION NO. 489 OF 1999
IN
WRIT PETITION NO. 4976 OF 1996**

Saifuddin Usufali Bohari,
Adult, Occu. Nil,
R/o. New Plots, At Amalner,
Dist. Jalgaon. .. Applicant

Versus

1. Shaligram Tukadu Patil,
Adult, Occu. Agri.,
R/o. Mangrul, Post. Mangrul,
Tal. Amalner, Dist. Jalgaon.
2. The State of Maharashtra .. Respondents

**WITH
CIVIL REVISION APPLICATION NO. 904 OF 1996**

Shaligram S/o Tudaku Patil
Since deceased, through L.Rs.,

1. Smt. Sumanbai W/o Shalik Patil,
Age : 78 years, Occu. HH,
R/o. Mangarool, Tq. Amalner,
Dist. Jalgaon.
2. Janardan S/o Shalikrao Patil,
Age : 51 years, Occu. Agri.,
R/o. Mangarool, Tq. Amalner,
Dist. Jalgaon.
At present – Yashwant Park,
Zopadwadi Road, Sinnar, Dist. Nashik.
3. Surekha W/o Arun Patil,
Age : 55 years, Occu. HH,
R/o. RM-246/10, MIDC, Bajaj Nagar,
Chhatrapati Sambhajinagar.

.. Applicants

Versus

1. Saifuddin S/o Usufali Bohari,
since deceased through L.Rs.
- A. Manabai W/o Saifuddin Bohari,
Age : 80 years, Occu. HH,
R/o. 403, Molz Palacae, Khatiwala Tank,
Indore – 452014 (MP).
- B. Mustafa Zenith wala Saifuddin Bohari
Age : 58 years, Occu. Business,
R/o. Flat No. 209, Crystal Apt., Masakin
E Safiya, Bijalpur, Indore – 452014 (MP).
- C. Mohammad Zanith Saifuddin Bohari
Age : 55 years, Occu. Business,

R/o. C-4, 303, Treasurer Town,
Bijalpur, Indore – 452014 (MP).

D. Munira Sabir W/o Zenuddin Sabir
Age : 52 years, Occu. HH,
R/o. Flat No. 303, Amtulla Apt.,
Transport nagar, Khatiwala Tank,
Indore – 452014 (MP).

E. Alefiya Murabbi W/o Mohammad Murabbi,
Age : 50 years, Occu. HH,
R/o. 81, Opp Garden, Saifinagar,
Khatiwala Tank, Indore – 452014 (MP). .. Respondents

Mr. B. R. Warma, Advocate for the Petitioners/Applicants.

Mr. S. P. Shah, Advocate for Respondent No. 1.

Smt. Chaitali Choudhari-Kutti, AGP for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 25th September, 2025.

Date on which judgment pronounced : 14th November, 2025.

JUDGMENT :-

1. Present writ petition and civil revision application both are arising between the same parties and out of the same proceedings. Therefore, they are tagged together by an order of the Administrative Judge, Aurangabad. Both the matters are, therefore, taken up together and are being decided by common judgment.

2. In civil revision application rule was granted. While issuing

rule the order was passed to hear the civil revision application with writ petition.

3. The order under challenge in civil revision application is an order passed by the Joint Civil Judge Junior Division, Amalner below Exh. 32 in Regular Darkhast No. 74/1986 where the original defendant/judgment debtor had filed an application for dropping of the execution proceedings on the ground that the decree holder is not an agriculturist and therefore, though there is decree of specific performance in respect of agricultural land, the said cannot be executed as no agricultural land can be sold to the non agriculturists.

4. The writ petition is filed by the decree holder challenging judgment and order passed by the learned Member, M.R.T. allowing the revision of the judgment debtor whereby challenge is raised to an order passed the learned S.D.O. granting permission to decree holder to purchase agricultural land by invoking provisions under section 63 of the Bombay Tenancy and Agricultural Lands Act 1948 (for short "B.T.A.L. Act") and rule 36 of the Bombay Tenancy and Agricultural Lands Rules, 1956 (for

short “B.T.A.L. Rules”).

5. The facts in short giving rise to the petitions are as below :
6. The original parties are now represented by legal heirs. The parties are thus mentioned as per their original status in the suit. The plaintiff filed a suit bearing R.C.S. No. 55/1979 seeking specific performance of contract dated 28.03.1974 in the Court of learned C.J.J.D., Amalner. The suit property is numbered as 550 admeasuring five acre and one guntha from village Mangrool, Taluka Amalner. The defendant – present petitioner filed a written statement and denied the agreement to sale and that earnest amount was paid. In the suit, the plaintiff admitted that, he runs a stationary shop and does not have any agricultural field. The suit came to be decreed by judgment and order dated 13.12.1982. The defendant filed an appeal bearing R.C.A. No. 31/1983 and challenged the judgment and decree. The appeal came to be dismissed by the learned District Court. For execution of decree regular darkhast came to be filed bearing Regular Darkhast No. 74/1986. In darkhast, an objection came to be filed under section 47 of the Code of Civil Procedure. It is an objection

that as the plaintiff is not an agriculturist, he cannot purchase agricultural land. On realising this difficulty, the plaintiff filed an application seeking permission under section 63 of the B.T.A.L. Act with the Tahsildar. The permission was sought. The learned Tahsildar refused the permission stating that the plaintiff is not an agriculturist. In an appeal, the learned S.D.O. granted permission by order dated 01.06.1995. Against that, the revision came to be filed before the learned M.R.T. The said revision came to be dismissed. That order is under challenge in the writ petition. In civil revision application as already stated, the order rejecting the application is under challenge.

7. There is no challenge to the decree. The decree has attained finality and execution is already filed. The question only remains as to whether decree can be executed by executing the sale deed in respect of agricultural land in favour of a person who is not an agriculturist. The legal obstacle in purchase of the land by non agriculturist is section 63 of the B.T.A.L. Act. Section 63 of the B.T.A.L. Act reads as under :

63. Transfer to non-agriculturists barred

(1) Save as provided in this Act —

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee,

shall be valid in favour of a person who is not an agriculturist ¹ [or who being an agriculturist ² [will after such sale, gift, exchange, lease or mortgage, hold land] ³ [exceeding the ceiling area] determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961] ⁴ [such permission shall not be granted, where land is being sold to a person who is not an agriculturist for agriculture purposes, if the annual income of such person from other sources is Rs. 12,000 or more] or who is not an agricultural labourer;

Provided that the Collector or an officer authorised by the ⁵ [State] Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, on such conditions as may be prescribed.

⁶ [Explanation.— For the purpose of this sub-section, the expression “agriculturist” shall include any person and his heirs whose land has been acquired for a public purpose and who as a result of such acquisition has been rendered landless from the date of such acquisition].

⁷ [(1A)
.....

8. This section specifically bars a transfer of an agricultural

land to non agriculturist. There is a proviso that allows non agriculturist to purchase the agricultural land under certain conditions with permission of the revenue authorities. There are also rules namely B.T.A.L. Rules, 1956. Rule 36 provides that land can be purchased by non agriculturist under certain conditions. Rule 36 of the B.T.A.L. Rules reads as under :

36. Conditions on which permission for sale, etc. of land under section 63 may be granted :

(1) The Collector or other officer authorized under the proviso to sub-section (1) of section 63 shall not grant permission for sale, gift, exchange, lease or mortgage of any land in favour of a person who is not either an agriculturist or an agricultural labourer or who, being an agriculturist, cultivates personally land not less than the ceiling area whether as owner or tenant or partly as owner and partly as tenant unless any of the following conditions are satisfied:

- (a) such a person *bona fide* requires the land for a non-agricultural purpose; or
- (b) the land is required for the benefit of an industrial or commercial undertaking or an educational or charitable institution; or
- (c) such land being mortgaged, the mortgagee has obtained from the Collector a certificate that he intends to take the profession of an agriculturist and agrees to cultivate the land personally; or
- (d) the land is required by a Co-operative Society; or
- (e) no agriculturist in the village in which the land is

situated who holds lands less than the ceiling area or no agricultural labourer in such village is prepared to take the land on lease from the owner; or

(f) the land is required for cultivating it personally by a person, who not being an agriculturist, intends to take to the profession of agriculture and whom the Collector after having regard to the order of priority mentioned in clause (c) of sub-section (2) of section 32P, has given a certificate that such person intends to take the profession of agriculture and is capable of cultivating land personally; or

(g) the owner of the land has complied with the provisions of section 64; or

(h) such land is being sold -

(i) in execution of a decree of a Civil Court, or

(ii) for recovering arrears of land revenue or any sums recoverable as arrears of land revenue under the provisions of the Bombay Land Revenue Code, 1879, and

no agricultural labourer or agriculturist holding land less than the ceiling area is prepared to bid at such sale; or

(i) such land is being given in gift whether by way of trust or otherwise, and such gift is made *bona -fide* by the owner in favour of a member of his family.

¹[(2) Where permission is granted on any of the conditions specified in clauses (a), (b), (c) and (f) of sub-rule (1), such permission shall be subject to a further condition that the person in whose favour the sale, gift, exchange, lease or as the case may be, mortgage, of the land is made, shall use the land for the purpose for which the permission has been granted within one year from the date on which he takes possession of the land in accordance with the provisions of

the Act.

(3) Where the Collector or any officer authorized by the State Government in that behalf under the proviso to sub-section (1) of section 63 is satisfied that any such person has, for the reasons beyond his control not been able to use the land for the purpose aforesaid with the period fixed under sub-rule (2), he may, for reasons to be recorded in writing and subject to the provisions of sub-rule (4), permit such person so as to use the land for such further period as he deems fit.

(4) Where by reason of granting further period under sub-rule (3), the aggregate period so allowed exceeds ten years, the Collector or an Officer authorized by the State Government in that behalf under proviso to sub-section (1) of section 63 shall not allow any further period except with the prior approval in writing of the State Government.]

9. The learned advocate Mr. Warma for the petitioners vehemently submits that, presently the authorities considered that permission can be granted to the decree holder under clause (h) of rule 36 of the B.T.A.L. rules providing that a permission can be granted even if the land is to be cultivated personally. He submits that, clause (h) of rule 36 of the B.T.A.L. Rules is directly in conflict with section 63 sub section (1) clause (a) which clearly stipulates that no sale including sale in execution of a decree of a civil court for recovery of arrears of land or for recovery of arrears

of land revenue or for sums recoverable as arrears of land revenue, gift, exchange or lease of any land or interest therein etc. When specific bar is created under section 63 of the B.T.A.L. Act, no rule can override the provision of substantive section. The learned Member, M.R.T. failed to appreciate this fact. He submits that, the writ petition deserves to be allowed by setting aside the order granting permission in favour of decree holder to purchase the land. During the course of argument he invited attention to deposition of the plaintiff in the cross-examination that, he does not have agricultural land and he runs a stationary shop. He further submits that, once it is held that, no sale deed can be executed even in the execution of a decree of the civil court, consequently the order impugned in the civil revision application also deserves to be quashed and set aside by allowing the said revision application.

10. The learned advocate Mr. Shah for respondent No. 1 opposes the petition. He submits that, at no point of time this objection was raised by the petitioners. He submits that the petitioners having lost in a civil suit and having executed an agreement to sale cannot take a different stand and oppose the

decree based on the agreement executed by himself. The learned S.D.O. had specifically granted permission under clause (f) of Rule 36 of the B.T.A.L. Rules and not under clause (h) of the B.T.A.L. Rules. The petitioners, in fact, does not have locus standi. No equity is in their favour. The authorities have considered that in 1971 the respondent sold agricultural land and entered into agreement for purchase of agricultural land. He submits that, the only objection raised in 1991 in the execution that the respondent is not an agriculturist. Such ground is never raised in the suit or in the appeal. The learned S.D.O. had called for a detailed report from the learned Tahsildar. The learned Tahsildar in his report had clearly stated that, the case of the decree holder can be considered for grant of permission. His further argument is that, grant of permission under section 63 of the B.T.A.L. Act or under rule 36 of the B.T.A.L. Rules is the matter between the State authorities and the applicant. He invited attention to the report submitted by the learned Tahsildar, Amalner to the learned S.D.O.

11. This Court has heard the parties. The plaintiff had filed an application to learned S.D.O. seeking permission under section 63 of the B.T.A.L. Act. The learned S.D.O. had called a report from

the learned Tahsildar. The learned Tahsildar recorded a statement. In a statement, it is stated that the decree holder is working as a labour on the shop of his brother. Except that, there is no any other income source. The learned Tahsildar thereafter sent a report to learned S.D.O. Thereafter, learned S.D.O. again directed the learned Tahsildar to make an inquiry on the points (i) that the income of the decree holder shall not to be more than Rs. 12000/-, (ii) whose land is to be purchased, (iii) whether land owner is ready to sell the land and (iv) whether decree holder had experience of cultivating the land. After fresh inquiry the learned Tahsildar again sent a report. Notice was also published by the learned Tahsildar and it is thereafter the report was sent that permission can be granted and it is only thereafter the permission is granted. This Court thus finds that, proper inquiry was held and it is on that inquiry and the report of the learned Tahsildar, the learned S.D.O. granted permission to the decree holder to purchase the land. This Court finds that, the revision was therefore filed for quashing of the learned S.D.O's. Permission.

12. The learned advocate Mr. Shah for respondent No. 1 relied upon the judgment of the Gujarat High Court in Special Civil

Application No. 15697/2007 in the case of Manubhai Asharam and another Vs. State of Gujarat and others on the point of locus. In the similar facts, the judgment debtor has raised an objection and challenged the order of Gujarat Revenue Tribunal granting permission to the petitioner therein to purchase the agricultural land in favour of respondent No. 4. It is held in the said application that, only the person interested in challenging such order passed by the Tribunal would be governed as even after declaring such sale invalid. The land would not revert back to the original seller but would vest in the Government. Section 65 of the Contract Act would not be attracted and thus the challenge of the petitioner in that case was negated.

13. In the present case, the facts are not disputed. The question as already stated is only as to whether permission granted in favour of the decree holder to purchase the agricultural land can be said to be legal. As rightly pointed out, the learned S.D.O. granted permission invoking clause (f) and not clause (h). It was not the case of the petitioner that the case is governed by clause (h), but it was his own case that it is governed by clause (f).

14. This Court thus finds that, there is no substance in the present writ petition and civil revision application. The writ petition and civil revision application deserve to be dismissed.

15. In view of the above, rule stands discharged. No order as to costs.

16. In view of disposal of writ petition, nothing survives in Civil Application No. 489/1999. The said civil application also stands disposed of.

(KISHORE C. SANT, J.)

PS.B.