IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5313 OF 2018

Bandu Tatya Kute and Ors. ...**Petitioners**

VERSUS

Late Baynabai Kandu Kute
Through her legal heirs and Ors. ...**Respondents**

Mr. G. V. Wani h/f Mr. Sachin S. Randive, Advocate for Petitioners.

Mr. K. R. Doke, Advocate for Respondent Nos.1(i), 1(ii), 2, 3, 5(a), 5(b) and 6.

Mr. D. R. Korde, AGP for Respondent-State.

CORAM	:	**KISHORE C. SANT, J.**
RESERVED ON	:	**18th NOVEMBER 2024**
PRONOUNCED ON	:	**30th JANUARY 2025**

ORDER :-

1. Heard the learned Advocate for the parties.

2. The present writ petition is directed against the impugned judgment and order dated 22nd February 2018 passed by the learned Maharashtra Revenue Tribunal, Aurangabad in Appeal No.43/A/2016/Osmanabad, dismissing the Appeal of the present

petitioners. The proceedings has started under Section 50(B) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as “the said Act, 1950”).

3. The petitioners purchased the land survey No.17 from original owners by various sale deeds. Their names are also entered in the revenue record. The properties were allegedly of the joint family property. The Respondents had filed RCS No.346 of 1998 before the Civil Judge, Junior Division, Bhoom for partition and separate possession of land Survey No.17 admeasuring 5-H. 24-R. from village Bhongiri, Tq. Bhoom Dist. Osmanabad. The said Suit was partly decreed deciding the shares of the present Respondents. The petitioners were directed to apply to the learned Collector under Section 50(B) of the said Act, 1950. The petitioners had filed the said application for regularization of the sale-deeds. The petitioners had also filed a Regular Civil Appeal No.341 of 2012 before the learned Principal District Judge, Osmanabad. In an

Appeal, stay was granted to the extent of delivery of possession. The concern of the petitioners is that they are purchasers of some portion of the suit properties and therefore, permission was required under Section 50(B) of the said Act, 1950.

4. The learned Additional Collector, Osmanabad passed an order holding that, the sale-deeds in favour of the petitioners cannot be regularized. In an Appeal under Section 90 of the said Act, 1950, the learned Member (Adm.), Maharashtra Revenue Tribunal, Aurangabad (for short "M.R.T.") confirmed the order of the learned Additional Collector and directed to initiate a proceedings to give the share of one Khandu and Punaji in suit land, in Government as the transaction in violation of Section 50(B) of the said Act, 1950.

5. It is the case of the petitioners that, the Government had issued a Circular dated 11th February 2014 whereby the condition of prior approval of the Collector for sale of the land is relaxed. In view of the said circular, the Collector ought to have granted

permission. The learned Collector has failed to do so. It was for the M.R.T. to allow the appeal of the petitioners.

6. The learned Advocate for the Respondents vehemently opposes the petition. It is submitted that both the authorities have rightly passed the orders. The circular provides that in cases of such sale-deeds, *Najrana* ought to have been paid prior to such sale-deed. In the present case, the sale-deed has taken place prior to issuance of said circular and, therefore, it is not applicable to the present case.

7. From the facts it is seen that, the petitioners had purchased the land without obtaining permission under Section 50(B) of the said Act, 1950. In the suit for partition, the Court had passed a decree stating that the share of plaintiff Nos.3 to 7 i.e. Respondent Nos. 1 to 3 herein shall be subject to the decision of the Collector. It is for this reason, the application was made under Section 50(B) of the said Act, 1950. Before the learned Collector, the question

was as to whether such permission can be granted. Though it is submitted that the circular is wrongly interpreted by the learned Collector, this Court does not find any force in the submission.

8. So far as the submission of learned Advocate for the Respondents that the Civil Court though had partly decreed the Suit, had clearly directed that the decree to the extent of present Suit property shall be subject to decision by the Collector. While considering the question of grant of permission Collector has rightly interpreted the circular, the circular is having retrospective operation. Clause-1 of the circular gives the requisite condition. In the said circular it is clearly mentioned that before the sale-deed, *Najarana* ought to be paid to the Government. The entire case revolves around the interpretation of this circular. Now during the course of argument it is also pointed out that, the appeal preferred by the petitioners against the decree in the Civil Suit came to be dismissed. Even second appeal filed in this Court against the

Appellate Court's Judgment is also dismissed.

9. The learned Advocate for the petitioners has submitted that the Revenue Authority does not have any power to declare the sale-deeds as illegal. This Court finds that this submission is without any merit. Section 50(B) of the said Act, 1950, clearly prohibits the sale-deed, when the land is tenanted, without permission of the Collector. Even the decree in the Civil Suit clearly stipulates that it is subject to a condition to the extent that the present property that the petitioners should obtain the sanction of the Collector under Section 50(B) of the said Act, 1950. It is thus clear that, it was for the Collector to decide the question of validity of the sale-deed. For the reason that it was without permission of the Collector. To that extent the Collector certainly has power as provided under the Act. For these reasons, this Court finds that no case is made out to interfere with the impugned judgment and order. Hence, the following order:-

ORDER

(i) Writ Petition stands dismissed.

(ii) No order as to costs.

[KISHORE C. SANT, J.]

1. At this stage, learned Advocate for the petitioners seeks continuation of interim relief which is already in existence.

2. Request is vehemently opposed by the learned Advocate for Respondents.

3. Since there was interim relief running since 2018, the same shall be continued for a period six weeks from today.

[KISHORE C. SANT, J.]