



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 450 OF 2023
WITH
CIVIL APPLICATION NO. 13191 OF 2024

1. Rahul Raman Muttha;
Age : 42 years, Occ: Business;
R/o: Main Road, Shrirampur,
Dist. Ahmednagar.
2. Nilesh Suresh Oza;
Age : 43 years, Occ: Business;
R/o: Main Road, Shrirampur,
Dist. Ahmednagar.

.. Appellants

Versus

1. Raosaheb Jagannath Chaudhari;
Deceased Through LR's:
 - 1A) Pradip Raosaheb Chaudhari;
Age : Major, Occ: Agri,
 - 1B) Manglbai Raosaheb Chaudhari;
Age : Major, Occ: Agri,
 - 1C) Priti Kishor Pangawane;
Age : Major, Occ: Household;
 - 1D) Dipti Satish Ghule;
Age : Major, Occ: Household;
All are R/o : Jalgaon; Tq. Rahata,
Dist. Ahmednagar.
2. Sumant Gulabrao Chavan;
Age : Major, Occu. Agri,
R/o : Ward No.7, Chajed Complex,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar.
3. Nitin Achyutrao Kharde,

Age : Major, Occ: Household;
R/o : Kolhar Bk. Tq. Rahata,
Dist. Ahmednagar.

.. Respondents

- * **Mr. Deelip L. Khivesara**
Advocate for the Appellants.
- * **Mr. Dhananjay Mane and Mr. Umesh Bodkhe**
Advocate for the Respondent Nos. R/1A to 1D and 3.
- * **Mr. Kishore M. Gadhave**
Advocate for the Respondent No.2.

CORAM : SHAILESH P. BRAHME, J.

Date Of Reserving The Order : 11th June 2025

Date Of Pronouncing The Order : 16th June 2025

FINAL ORDER :

. Heard both sides.

2. Appellants original Plaintiffs are non-suited by the trial Court in Special Civil Suit No.6/2013 vide judgment and decree dated 01.08.2019 which is confirmed by Lower Appellate Court in Regular Civil Appeal No.28/2019 vide judgment and decree dated 21.01.2023. They are challenging concurrent finding of facts in the present appeal.

3. It is a case of the Appellants that Respondent No.3 was the owner of suit land who had agreed to sell it to the Appellants by agreement to sale executed on 09.04.2010. Out of total amount of consideration of Rs.31,00,000/-, Appellants had paid

Rs.4,11,000/-. The suit land was Class-II Inam land. It was agreed between the parties that permission for alienation cum conversion of land from new tenure to old tenure and non-agricultural purpose would be secured at the expenses of Appellants. After converting it into new tenure sale deed was to be executed within one month. A proposal for cancellation of the new tenure was stated to be pending since 19.08.2004 before the Collector.

4. In these premises, Appellants filed suit for specific performance of contract as they were ready and willing to perform their part of contract. The Respondents failed to secure necessary permission from the competent authority.

5. Respondents contested the suit on various grounds. It is contended that Appellants were under obligation to pay the charges of the conversion of the suit land which was not complied with. The competent authority determined *Nazrana* amount vide letter dated 15.05.2010. Due to failure of the Appellants to pay, application seeking permission for conversion of land was rejected on 24.11.2010. It is contended that Appellants are not entitled to the relief due to non-compliance of terms of contract.

6. Appellants examined two witnesses and the Respondents examined three witnesses. The correspondence with the competent authority at Exhibits- 86 to 88 was placed on record.

7. Both the Courts below concurrently held that Appellants were not ready and willing to perform their part of contract. They

failed to pay 75% of the amount of Government valuation of Rs.61,10,500/-. They were aware of the determination of 75% of amount. It was further held that no evidence was produced by the Appellants to show that they were ready to pay balance amount.

8. Learned Counsel Mr. Deelip Khivesara appearing for the Appellants would strenuously submit that there was absolutely no communication from the Respondents to the Appellants, disclosing grant of permission for alienation or conversion of land from new tenure to old tenure. Neither was there any communication calling upon them to pay any charges. Both the Courts below according to him, committed error of jurisdiction in holding that Appellants were not ready and willing to perform their part of contract. It is further urged that what was required for execution of the sale deed was conversion of land from new tenure to old tenure and not the permission for non-agricultural purpose. Two different kinds of permission were necessary and non-agricultural permission by the competent authority would be of no consequences. It is contended that both the Courts below failed to perceive the concept of distinct permission and arrived at erroneous conclusion. It is submitted that in the absence of any permission of the Collector under the provision of Section 28 of Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 which the Respondents were bound to obtain it was not possible to execute sale deed. No fault can be attributed to the Appellants.

9. Learned Counsel for the Appellants would press into service substantial questions of law in terms of 'A to I' enumerated in the

Second Appeal memo in support of his case.

10. Per contra, learned Counsel for the Respondents would submit that there are concurrent findings of facts recorded against the Appellants which are reasonable and plausible. All aspects of the matter was taken into account. My attention is adverted to the cross-examination of PW-1/Rahul to demonstrate that Appellants had no adequate funds to meet the transactions.

11. Having considered rival submissions of the parties, what emerges is that they are *ad-idem* for execution and the terms of the agreement dated 09.04.2010 at Exhibit-34. The suit land was Class-II new tenure land and the permission of the competent authority was required for its alienation. The expenses for converting the land from new tenure to old tenure and permission for non-agricultural purpose was to be borne by the Appellants. Relying on the correspondence at Exhibits-86 to 88, both the Courts below inferred that Appellants failed to deposit 75% of the charges which was detrimental to their plea of readiness and willingness.

12. I have gone through original record and proceedings. Application at Exhibit-86 submitted on 17.07.2010 was for the permission under Section 44(1) of the Maharashtra Land Revenue Code. Letter dated 15.05.2010 at Exhibit-87 addressed by Tahesildar to the Respondent No.3 was in respect of Government valuation of the suit land and 75% of the amount towards charges for conversion of the land to non-agricultural

purpose. It was bearing signature of the Appellant No.1 which was rightly referred in the judgment of the Lower Appellate Court. The letter dated 24.11.2010 at Exhibit-88 disclosed rejection of the permission to convert the suit land into non-agricultural purpose.

13. After appreciating the correspondence from Exhibit-87 and 88, it was recorded by Courts below that Appellants were aware of payment of the charges, but no payment was made. The cross-examination of PW-1 - Rahul is also rightly appreciated by the Lower Appellate Court. No endeavour was made by him to know as to the status of the proposal submitted soliciting the permission. No explanation is coming-forth as to why the Appellants did not pay 75% of the amount as charges towards conversion of land from agricultural to non-agricultural purpose. The cross-examination of PW-1 - Rahul would indicate that the balance amount was not ready and the inference drawn by Lower Appellate Court cannot be faulted.

14. There is no material on record to show that distinct permissions were solicited for converting land from new tenure to old tenure and for conversion of land to non-agricultural purpose. Appellants were not called upon to pay the expenses in that regard. But that would not absolve the Appellants from paying the charges indicated by letter dated 15.09.2010 at Exhibit-87. It is undisputed that amount determined by the competent authority communicated vide Exhibit-87 was required to be paid by either of the parties. As per agreement Exhibit-34, Appellants were under obligation to bare the said charges. Failure of the said payment is

definitely indicative of the fact that they are not ready or willing to perform their part of contract.

15. My attention is adverted to the permissions required under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 which were never issued in the present matter by the competent authority. However decree for specific performance for contract can be granted subject to the permissions. Appellants did not pay the charges for non-agricultural permission, but they are insisting for permission for conversion of land from new tenure to old tenure. This conduct is against the terms of the contract.

16. A useful reference can be made to the ratio that conditional decree for specific performance for contract is possible to be granted. It is laid down in the matter of **G.T. Girish Vs. Y. Subba Raju (dead) by Legal Representatives and Another**, (2022) 12 SCC 321. Following of the relevant extract :

“75. In other words, in an agreement wherein the vendor agrees to convey property, which is permissible only with the permission of some Authority, the Court can, in appropriate cases, grant relief. We need only notice two recent Judgments which have reiterated the principle, the first of which is reported in *Vishwa Nath Sharma V. Shyam Shanker Goela* and another, which is relied upon, in fact, by the respondents. The decision of this Court, again relied upon by the respondents in *Ferrodous Estates (Pvt.) Limited Vs. Gopiratnam* also reiterates the said view.

76. In *Ferrodous Estates (Pvt.)* (supra), the matter arose under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. The High Court, in the impugned Judgment, had dismissed the Suit for Specific Performance, taking the view that till 1999, when the Tamil Nadu Urban Ceiling Act was repealed, the agreement was not enforceable. That apart, under the agreement of sale, vacant land, in the aggregate, exceeding the ceiling limit of the plaintiff, would have to be conveyed to him, attracting the VETO contained in Section 5(3) read with Section 6 of the State Act. It was this view, which was reversed by this Court, following the Judgments, which we have referred to which relate to conditional decrees. This result was arrived at by this Court, after finding that agreement to sell contemplated transfer of the land only after getting exemption. Clause (4) of the Agreement contemplated that the vendor was to obtain permission from the Competent Authority under the Urban Land Ceiling Act.

77. We need not multiply authorities. All that is necessary to notice and find is that when an agreement to sell is entered into, whereunder to complete the title of the vendor and for a sale to take place and the sale is not absolutely prohibited but a permission or approval from an Authority, is required, then, such a contract is, indeed, enforceable and would not attract the shadow of Section 23 of the Indian Contract Act, 1872.”

. Therefore submission of the Appellants that unless there is a permission, readiness or willingness cannot be inferred which has no merit.

17. Both the Courts below have concurrently held against the Appellants which cannot be faulted. Reliance is placed by the Respondents on the judgment of **Balwant Vithal Kadam Vs. Sunil Baburaoi Kadam**, (2018) 2 SCC 82, to corroborate the principles of concurrent findings of facts. Further reliance is placed on the judgment of **Vijay Kumar and Others Vs. Om Parkash**, (2019) 17 SCC 429, to buttress that relief of specific performance would be discretionary and the balance amount was not ready with Appellants which affects the plea of readiness and willingness. Respondents have rightly relied on above judgments.

18. For the reasons stated above, I do not find that a case is made out by the Appellants to entertain Second Appeal. No substantial questions of law are involved in it. It is liable to be dismissed. Second Appeal is dismissed. There shall be no order as to cost.

19. Civil Application is disposed of.

[**SHAILESH P. BRAHME**]
JUDGE

NAJEEB..