IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4899 OF 2024

Shri. Govind Goma Gaikar,
Smt. Laxmi Govind Gaikar
(Both Decd.) Through Lrs.)
Shri. Shankar Govind Gaikar & Ors. ....Petitioners
Versus
Shri. Gopal Babu Patil
(Decd.Through Lrs.)
Smt. Rukmini Gopal Patil & Ors. ....Respondents

Mr. Abhay S. Khandeparkar, Senior Advocate *a/w Mr. Rushikesh G. Bhagat i/b. Anilkumar Joshi, for Petitioners.*

Mr. Mahendra Agavekar, *for Respondents.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: JANUARY 30, 2026

ORAL JUDGEMENT:

1. Rule. Rule is made returnable forthwith and by consent of the parties, the Petition is heard finally.

Context and Factual Background:

2. This Petition impugns a Judgement and Order dated January 13, 2020 (***"Impugned Judgement"***) passed by the Learned Maharashtra Revenue Tribunal (***"Learned Tribunal"***), which allowed a Revision

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Application filed by the Respondents, who are the legal heirs of Late Gopal Babu Patil (collectively, ***"Patils"***).

3. The Petitioners, who are legal heirs of Late Govind Goma Gaikar and Late Laxmi Govind Gaikar (collectively, ***"Gaikars"***), contend that the land parcel falling in Survey No.78, admeasuring 0-41-0 H.R.P. in Village Ariwali, Taluka Panvel, District Raigad (***"Subject Land"***) falls within their entitlement, having acquired it first from the Patils and later through a public process run under the Maharashtra Tenancy And Agricultural Lands Act, 1948 (***"MTAL Act"***).

4. The Gaikars contend that the Subject Land originally belonged to one Mr. Patankar, and the Patils, as agricultural tenants, became deemed purchasers of the Subject Land under Section 32G of the MTAL Act. The Patils' ownership was recorded by Mutation Entry No.556 dated November 1, 1971.

5. On May 2, 1977, the Gaikars and the Patils executed an agreement for sale ("***Agreement for Sale***"). Possession of the Subject Land is said to have been handed over by the Patils to the Gaikars. Disputes and differences arose between the parties and the Patils are said to have filed a suit against the Gaikars for a mandatory injunction against interference with the Subject Land. It is stated that the suit came to be dismissed for default on June 10, 1996.

6. Meanwhile, on December 1, 1995, the Gaikars filed a Tenancy Complaint No. 5 of 1995 under Section 84C of the MTAL Act with the Tahsildar, Panvel, claiming that the transfer of the Subject Land had been bad in law by virtue of Sections 27 and 43 of the MTAL Act. By an Order dated April 25, 1997 (***"Section 84C Order"***), the Tahsildar, Panvel allowed the complaint and held that the transfer of the Subject Land by the Patils was illegal in view of Section 43 of the MTAL Act.

7. Therefore, the Tahsildar issued a proclamation of the Subject Land on December 20, 1999 since the land now vested in the State. On the same day, the Gaikars applied for purchase of the Subject Land in response to the proclamation. Pursuant to the response to the proclamation, the Subject Land came to be sold to the Gaikars by order dated February 24, 2000 ("***Allotment Order***").

8. On October 31, 2000, the Patils challenged the Section 84C Order by filing an Appeal under Section 74 of the MTAL Act being Appeal No.17 of 2000. This Appeal came to be dismissed by an order dated December 30, 2000, passed by the Sub-Division Officer on the ground of delay in filing the appeal. Revision Application No.185-B of 2001 under Section 76 of the MTAL Act was filed before the Learned Tribunal by the Patils. The Revision Application came to be allowed by the Learned Tribunal by an order dated October 29, 2009, concluding

that the matter ought to be heard afresh since the dismissal of the Appeal was not by way of a reasoned order.

9. On March 21, 2012, the Appeal against the Section 84C Order, upon remand, was re-heard by the Sub-Division Officer. The Section 84C Order was set aside ("***Remand Order***"). It was held that the unregistered Agreement for Sale did not constitute a sale or a transfer for the provisions of the MTAL Act to have been violated by effecting a prohibited transfer. The upshot of this development is that the Subject Land had not vested back in the State and therefore, the proclamation and the subsequent sale of the Subject Land to the Gaikars stood undermined.

10. Being aggrieved by the Remand Order, the Gaikars filed a Revision Application before the Learned Tribunal, which, by an Order dated October 31, 2015, remanded the matter afresh on the premise that yet again, the order, this time allowing the Appeal, was unreasoned. On remand, the Appeal was heard yet again, and was dismissed, this time, by an order dated May 2, 2016, on the ground of unexplained delay on the part of the Patils in filing the Appeal. This order was challenged again before the Learned Tribunal in Revision Application No.127 of 2016, which was disposed of by an Order dated

July 4, 2017, with a fresh remand by consent, on the ground, yet again, that reasons had not been given.

11. The matter was heard yet again and by an Order dated September 10, 2018, the delay was condoned and the Appeal was dismissed on merits, confirming that the Section 84C Order was proper and lawful. Eventually, this order was challenged by the Patils before the Learned Tribunal, which passed the Impugned Order dated January 13, 2020, holding that the Agreement for Sale was not an instrument of transfer. Therefore, it follows that the vesting of the Subject Land in the State and the subsequent transfer of the Subject Land to the Gaikars was untenable.

Contentions of the Parties:

12. I have heard at length, Mr. Abhay Khandeparkar, Learned Senior Advocate for the Gaikars, and Mr. Mahendra Agavekar, Learned Advocate on behalf of the Patils. With their assistance, I have examined the record.

13. The key contention on behalf of the Gaikars is that the Patils had been in need of money and had executed an Agreement for Sale on May 2, 1977 with the Gaikars. The Patils are said to have sold the land to the Gaikars, with possession too having been handed over to Gaikars

for a consideration of Rs.6,000/-, of which, Rs.5,800/- was already paid. The Gaikars contend that against execution of the Agreement for Sale, possession of the Subject Land was also transferred to the Gaikars and the possession receipt of the same date would evidence such fact. Therefore, the transfer was completed under Section 53A of the Transfer of Property Act, 1882 (***"TOP Act"***).

14. However, Mr. Khandeparkar would submit, such transfer was contrary to Section 43 of the MTAL Act. Therefore, owing to such conflict, the transfer was invalid. Therefore, the vesting of the Subject Land in the State, free from all encumbrances, was absolute and valid, in terms of Section 84C of the MTAL Act, Mr. Khandeparkar would contend. Therefore, upon such vesting of title to the Subject Land in the State, the issuance of the proclamation and the consequent Allotment Order in compliance with the procedures stipulated under the MTAL Act, has validly vested the Subject Land in the Gaikars, necessitating interference by this Court in exercise of the writ jurisdiction with the untenable Impugned Order that is contrary to the MTAL Act.

15. The Appeal by the Patils questioning the Section 84C Order, had been filed after almost three years, Mr. Khandeparkar would point out. He would submit that without challenging the Allotment Order, it

was wrong to question the title in favour of Gaikars. Finally, Mr. Khandeparkar would contend that the Learned Tribunal exceeded the jurisdiction under Section 76 of the MTAL Act because the Learned Tribunal re-appreciated the evidence on record and took a view different from view of the final fact-finding authority. Merely because another view is possible, it is not appropriate for the Learned Tribunal to substitute the impugned view with its own view.

16. Mr. Agavekar, on behalf of the Respondents would submit that the main issue that falls for consideration is whether there had been a breach of Section 43 of the MTAL Act as alleged by the Gaikars. It is contended by the Gaikars that the Subject Land had been transferred by the grandfather of the Patils, and in the Agreement for Sale, the Patils and the Gaikars have explicitly agreed that permission of the State Government would need to be obtained to effect the transfer. It was explicitly agreed that if the permission were refused, the transaction would be reversed. Indeed, no permission was obtained for the transaction. If the Gaikars were right about the transfer under TOP Act having been completed, it would have been open to the Gaikars to file a suit for specific performance, but the Gaikars never did so.

17. The Patils would contend that Section 43 of the MTAL Act prohibits the sale of property without sanction from the Collector, when

the subject matter of the transfer is land vesting in an agricultural tenant under Section 32G of the MTAL Act. Therefore, the Patils would contend that for the restrictions under Section 43 of the MTAL Act to apply, the jurisdictional fact necessary would be a sale, gift, exchange or mortgage of such land. It was the Gaikars who had initiated action under Section 84C of the MTAL Act on the basis of photocopies of the unregistered Agreement for Sale to allege a breach of Section 43 of the MTAL Act. Indeed, Mr. Agavekar would submit, there had been no transfer in the eyes of the law from the perspective of Section 43 of the MTAL Act. No sale deed had been executed, no agreement had been registered, and the possession receipt cannot be regarded as a transfer. Therefore, the Subject Land could not be considered to be transfer at all for the provisions of Section 43 of the MTAL Act to be attracted.

18. The Patils further contend that the unregistered Agreement for Sale was effected way back in 1977. The proceedings initiated by the Gaikars were self-destructive proceedings, seeking nullification of the very contract on the basis of which they claimed possession and that too was initiated in 1995, about 18 years later. Therefore, they contend no interference is called for in what is a legally sound and valid decision that there had been no transfer for the provisions of Section 43 of the MTAL Act to have at all been attracted.

Analysis and Findings:

19. At the threshold, the relevant provisions of the MTAL Act ought to be noticed, and are extracted below:

> ***Section 43:***
>
> *43. (1) **No land purchased by a tenant** under section 32, 32F, 2 32I, 32O, 3 33C or 43-ID or sold to any person under section 32P or 64 **shall be transferred by sale, gift, exchange, mortgage, lease or assignment** without the previous sanction of the Collector. Such **sanction shall be given by the Collector in such circumstances, and subject to such conditions, as may be prescribed by the State Government**:*
>
> *Provided that, no such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society registered or deemed to be registered under the ✶ Bombay Co-operative Societies Act, 1925, for raising a loan for effecting any improvement of such land :*
>
> *Provided further that, **no such previous sanction shall be necessary for the sale, gift, exchange, mortgage, lease or assignment of the land in respect of which ten years have elapsed from the date of purchase or sale of land under the sections mentioned in this sub-section**, subject to the conditions that,—*
>
> *(a) **before selling the land, the seller shall pay a nazarana** equal to forty times the assessment of the land revenue **to the Government**;*
>
> *(b) **the purchaser shall be an agriculturist**;*

(c) the purchaser shall not hold the land in excess of the ceiling area permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961; and

(d) the provisions of the Bombay Prevention of Fragmention and Consolidation of Holdings Act, 1947 shall not be violated .

(2) Any transfer of land in contravention of sub-section (1) shall be invalid.

[Emphasis Supplied]

20. It can be seen that Section 43 is a provision that prohibits transfer of land that has vested in an agricultural tenant. The agricultural tenant who was tilling the land, benefits from the provisions of the MTAL Act by becoming the owner of such land by operation of the special provisions that escalate his interests from being a tenant to being the landowner. Such benefits come with strings attached. Not only is such tenant-acquirer of the land not expected to profit from the land by selling it out immediately, it is apparent that such a land acquirer is also expected to be vulnerable to the land being grabbed by others, thereby negating the very objective of getting him to be the owner of the land. Therefore, any transfer of such land requires permission of the State. Without such permission, the transfer is statutorily declared to be invalid.

21. Relevant extracts of Section 84C of the Act would also be noteworthy:-

> ***Section 84C.***
>
> *84C. (1) **Where in respect of the transfer or acquisition of any land** made on or after the commencement of the Amending Act, 1955, **the Mamlatdar** suo motu or **on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act**, the Mamlatdar **shall issue a notice and hold an inquiry as provided for in section 84B and decide whether the transfer or acquisition is or is not invalid**.*
>
> *(2) If after holding such inquiry, **the Mamlatdar comes to a conclusion, that the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or acquisition to be invalid** :*
>
> *Provided that, ******
>
> *(3) **On the declaration made by the Mamlatdar under sub-section (2),**—*
>
> *(a) **the land shall be deemed to vest in the State Government, free from all encumbrances lawfully subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in sub-section (4)**; the encumbrances shall be paid out of the occupancy price in the manner provided in section 32Q for the payment of encumbrances out of the purchase price of the sale of land **but the right of the holder of such encumbrances to proceed against the person liable, for the***

enforcement of his right in any other manner, shall not be affected;

(b) the amount which was received by the transferor as the price of the land shall be deemed to have been forfeited to the State Government and it shall be recoverable as an arrear of land revenue; and

(c) the Mamlatdar shall, in accordance with the provisions of section 63A determine the reasonable price of the land.

(4) After determining the reasonable price, the Mamlatdar shall grant the land on new and impartible tenure and on payments of occupancy price equal to the reasonable price determined under sub-section (3) in the prescribed manner in the following order of priority :—

(i) the tenant in actual possession of the land;

(ii) the persons or bodies in the order given in the priority list :

*Provided that ******

*(5) & (6) ******

[Emphasis Supplied]

22. Section 84C provides the framework of consequences for a breach of, among others, the provisions of Section 43 of the MTAL Act. The Mamlatdar may, either on his own motion or on an application made by a person interested in the land, nullify the acquisition of the land from the agricultural tenant who was made the owner by operation of the Act. Such land would vest in the State and it is for the State to then sell the land. Certain protections are also built in,

depending on size of the land and certain conditions, where even in the case of a violative transfer, the beneficiary of the MTAL Act i.e. the tenant-turned-owner has protections built in. The ingredients of such protection are not relevant for this judgement and to avoid prolixity, they are not elaborately discussed in detail.

23. Against this backdrop, the actions of the Gaikars have to be examined from the standpoint of the extraordinary discretionary writ jurisdiction of this Court.

24. In my opinion, the actions of the Gaikars are problematic on multiple counts. *First*, the Gaikars seek nullification of the very transaction that granted them interest in the Subject Land. They have done this 18 years after such a transaction was executed by their forefather with the Patils' forefather. The prohibitive sanction of nullifying a transaction as a deterrent to the tenant-turned-landlord being deprived of the land was sought to be made an aid in favour of nullifying the very same transaction only to benefit from the nullification by acquiring the same land from the State.

25. *Second*, the Gaikars were resourceful enough to have the proclamation made and the Allotment Order issued in their very favour. When the statute envisages invocation of Section 84C by a person interested in the land, it envisages a beneficiary who has an

interest in the land to seek the statutory protection under Section 43. It is inexplicable that the invocation of Section 84C is made by the party against whose acquisition the provision guards the specially entitled tiller.

26. *Third,* even if the proclamation and the Allotment Order in Gaikars' favour were presumed to be a fortuitous and happy coincidence, one cannot lose sight of the fact that this was a case of a party to a transaction, who has a troubled relationship with the counterparty, seeking to nullify the very transaction by which he purported to become the owner, after which the only beneficiary of the nullification is such displaced owner himself.

27. It is in this backdrop that one must examine whether a case is made out for an exercise of the extraordinary discretion vested in the writ court to come to the aid of the Gaikars. Since it is the Gaikars who have invoked the jurisdiction of Section 43, it is quite fair to assess whether the jurisdictional fact necessary for the drastic consequence of the tiller-turned-owner being displaced from his benefits are in existence. Therefore, it was completely in order for the Impugned Order to have analysed if there had been a transfer of the nature contemplated in Section 43, for the nullification claimed by the very acquirer of the Subject Land to be attracted.

28. Towards this end, it is only fair to consider whether there had been a registered transfer. Indeed, when the statute nullifies a transfer of the Subject Land, it is a very special protection of the Subject Land. Indeed, as a sanction and punishment of a violative transferor, the land would vest in the State if the tiller-turned-owner were to violate the prohibition. For such a provision to be turned on its head in its objective, only to benefit the violative transferee at the expense of the allegedly-violative transferor would be contrary to the very objective and scheme of the MTAL Act.

29. When exercising the writ jurisdiction, the Court cannot be blind to what commercial reality has transpired and who is seeking to benefit at whose expense in the context of the legislative framework in which the issues have arisen. In this case, the beneficiary is the person who admittedly undertook a violative purchase – by having the transfer declared to be violative, he has transposed his ownership from that of a violative owner to a compliant owner, cutting out the allegedly violative transferor alone.

30. When seen in that backdrop, the very Agreement for Sale executed by the respective forefathers of Patils and Gaikars indeed provided for a condition precedent to the effectiveness of the transfer – the permission of the State. In the absence of such permission, the

Agreement for Sale itself became void and the transfer envisaged therein never came about. On the other hand, if an otherwise-valid transfer were to have taken place with no condition of permission being contracted, and it were found out later that Section 43 had been violated, then the provisions of Section 84C could have been pressed into service by the Mamlatdar or by other person interested in the land. However, when the instrument itself entailed a requirement to secure approval under Section 43 as a precondition of transfer, and such approval was not received, then evidently, no transfer could not have validly effected

31. While the delay on the part of the Patils in appealing the Section 84C order is emphasised by the Gaikars, one cannot lose sight of the fact that the Gaikars' interest in the land flows from their forefather who had the foresight to contract the requirement of prior sanction of the State, without which the agreement itself would not validly effect any transfer. The invocation of Section 84C, nearly 18 years after the Agreement for Sale, seeking nullification only to be able to acquire the very same land appears to be a cynical reliance by Gaikars, who are the very acquirers against whom Section 43 is intended to protect the Patils.

32. The view in the Impugned Order, namely, that the Subject Land was not transferred within the meaning of the law, for the drastic effect of forfeiture of the Subject Land to come about, is a reasonable one. There was nothing surreptitious about the Agreement for Sale – it validly recognised that permission of the State would be necessary. Such permission was not taken and no transfer took place.

33. The mere assertion that possession had been taken over alongside the Agreement for Sale is of no value in demonstrating a transfer that would otherwise be valid, but for the compliance with MTAL Act. Compliance with the MTAL Act was an integral requirement for any transfer to come about, and that not having been done, the view expressed in the Impugned Order, namely, that there was no transfer for purposes of Section 43 to warrant the drastic consequence of Section 84C of the Act to operate against the Patils, is a reasonable view that is far from arbitrary.

Conclusion:

34. In my opinion, for the aforesaid reasons, no interference is called for and the Petition is ***dismissed***. Rule is accordingly discharged.

35. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]