Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1369 OF 2026
IN
WRIT PETITION NO.491 OF 2010

Krishna Balu Phulore
Since Deceased Through
Legal Heirs and Legal Representatives … Applicants

In the matter between:

Krishna Balu Phulore … Petitioner

V/s.

Kishorkumar Ratilal Suchak & Anr. … Respondents

WITH
WRIT PETITION NO.491 OF 2010

Krishna Balu Phulore … Petitioner

V/s.

Kishorkumar Ratilal Suchak & Anr. … Respondents

Ms. Dhruti Datar for Petitioners.

Mr. A. A. Alaspurkar, AGP, for the State – Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 25, 2026

P.C.:

INTERIM APPLICATION NO.1369 OF 2026

1. The petition is admitted. It being brought to the notice of this Court that the original petitioner has died during the pendency of the petition, the Interim Application seeking substitution of legal representatives is allowed in terms of prayer clauses (a) to (c).

2. Necessary amendment to be carried out forthwith.

3. The interim application stands disposed of.

WRIT PETITION NO.491 OF 2010

4. The present petition arises from the order dated 21 April 1999 passed by the Sub-Divisional Officer under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948. By that order, the authority rejected the petitioner's request seeking permission to sell agricultural land admeasuring 63 gunthas in favour of Respondent No. 1, namely Kishorkumar Ratilal Suchak. The dispute, therefore, centres around the exercise of statutory power under Section 43, which regulates transfer of tenancy lands and requires prior permission before any lawful transfer can take place. The issue is not merely procedural. The refusal of permission directly affects the petitioner's right to deal with the land and hence calls for close scrutiny of the reasoning adopted by the authority.

5. While passing the said order, the Sub-Divisional Officer recorded that the petitioner had already entered into an agreement to sell the land in favour of third parties, namely Usha Mata and Komal Laxmandas Matta, in respect of 63R. The authority also referred to Special Civil Suit No. 1 of 1976, in which a decree dated 31 July 1978 had been passed. Under that decree, the Executing Court appointed a Court Commissioner to effect sale of the land in favour of the defendants and permitted transfer to the extent of 63R. Based on these circumstances, the authority proceeded to reject the petitioner's application relating to the remaining land admeasuring 14R and further directed forfeiture of that portion. The reasoning indicates that the authority treated prior transactions and the civil court decree as circumstances disentitling the petitioner from seeking further permission. However, the order does not clearly demonstrate how those facts legally justified forfeiture of the balance land under the scheme of the Act.

6. Being dissatisfied with this decision, the petitioner filed Tenancy Revision Application No. 75/B/2001 before the Maharashtra Revenue Tribunal. The Tribunal dismissed the revision on two grounds. First, it held that since 63R had already been sold pursuant to the civil court decree, no land remained with the petitioner, and that by entering into an agreement to sell in favour of Suchak the petitioner had violated Section 43, making forfeiture lawful. Second, the Tribunal observed that even if the Sub-Divisional Officer lacked authority to order forfeiture, the petitioner had not specifically challenged that part of the order and therefore the issue could not be examined in revision. These findings formed the basis of dismissal and have led to the present writ petition. The petitioner challenges both conclusions as contrary to law and to the record.

7. On examining the order dated 21 April 1999, it becomes clear that it is a composite order. The rejection of permission and the direction of forfeiture form part of one composite decision. Once the entire order was carried in revision, the Revisional Authority was required to examine all consequential findings flowing from it. The approach of the Tribunal in treating the forfeiture portion as unchallenged is not borne out from the record. A litigant challenging the whole order cannot be denied adjudication merely because each operative part is not separately worded in the revision prayer.

8. The record further shows that the total landholding measured 80R. Out of this, 63R had already been transferred pursuant to the decree passed in the civil suit, leaving at least 14R as the remaining extent. The petitioner sought permission only in respect of this balance land. The crucial legal question is whether execution of an agreement to sell amounts to a completed transfer attracting the prohibition under Section 43. The legal position is settled that an agreement to sell does not by itself create title or result in transfer of ownership. It only creates a contractual right to obtain a sale in future. Unless a registered sale deed is executed, no transfer in the eye of law takes place. Therefore, the conclusion of the Sub-Divisional Officer that mere execution of an agreement to sell constituted a breach of Section 43 and justified forfeiture cannot be sustained. The finding proceeds on a misunderstanding of the legal effect of such an agreement and thus suffers from a clear error of law.

9. In view of the above discussion, both reasons assigned by the Maharashtra Revenue Tribunal for dismissing the revision application fail on legal scrutiny. The first ground proceeds on an incorrect understanding of what constitutes transfer under Section 43. The second ground rests on an artificial distinction between parts of a composite order, which is unsupported by the record. Once these grounds fall, the impugned orders cannot stand.

10. In the circumstances, the following order is necessary to secure proper adjudication in accordance with law:

(i) The order dated 16 November 2001 passed by the Maharashtra Revenue Tribunal in Revision Application No. 75/B/2001 and the order dated 21 April 1999 passed by the Sub-Divisional Officer are quashed and set aside.

(ii) The proceedings are remanded to the Sub-Divisional Officer, Bhiwandi.

(iii) The Sub-Divisional Officer shall reconsider the petitioner's application under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 afresh, after examining the matter on its own merits and in accordance with law.

11. The writ petition stands disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)