

(2008) 10 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition No. 2921 of 2006

Trimbakrao Mugutrao Deshmukh

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 36(4), 80

Constitution of India, 1950 — Article 226, 227

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 27, 28, 29, 29(1), 29(2)

Maharashtra Agricultural Lands (Lowering Ceiling on Holdings) (Declaration and Taking Possession of Surplus Land) Amendment Rules, 1975 — Rule 12

Citation : (2009) 2 BomCR 467

Hon'ble Judges : Varale Prasanna B., J;Rohee K.J., J

Bench : Division Bench

Advocate : A.K. Choube, for the Appellant; S.B. Ahirkar, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Rohee K.J., J.—Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner has moved the present writ petition under Articles 226 and 227 of the Constitution of India seeking direction to the respondents to accord permission to the petitioner to sell the land.

3. The petitioner is an Ex-serviceman. He served with the Indian Army from 11.10.1952 to 31.10.1980. He was made honorary Captain by the President of India. As the petitioner was not having his own land, sometime in June/July, 1972, he applied for allotment of land to Sub Divisional Officer, Khamgaon for allotment of land. 3.44 HR land, having land revenue of Rs. 14/- in Gat No. 152 situated at village Vihigaon, Taksil Khamgaon, District Buldana, was allotted to the petitioner.

4. According to the petitioner, he is cultivating the said land continuously. However, because of his old age and as he is suffering from certain ailments like diabetes and back pain, he is unable to cultivate it personally. On 9.1.1994, the petitioner applied to the Government for permission to sell the said land. Since the petitioner did not receive any communication from the Government, he issued several reminders. On 1.10.2003, the petitioner received a communication from the respondents informing him that as per the Rules framed on 19.10.2001, the persons who wanted to sell the land allotted to them, have to deposit fifty per cent of the market value and only on this condition being fulfilled, permission to sell land would be granted. The petitioner brought to the notice of the respondents that the Rules framed on 19.10.2001 would not apply to his case because he had applied for permission to sell his land prior to 19.10.2001. On 4.11.2003, the petitioner issued notice to the Collector, Buldana (respondent No. 2) u/s 80 of the CPC narrating all these facts. Along with the said notice, he sent a demand draft for Rs. 560/- as Nazrana being forty times of the land revenue of Rs. 14/-. The notice was however not complied with. Whenever the petitioner made enquiries with the respondents, no attention was paid to his request. Hence, he filed the present writ petition for directing the respondents to accord permission to sell his land as per the Rules prevailing on the date of his application.

5. Respondent No. 2-Collector, Buldana filed affidavit-in-reply. According to respondent No. 2, the petitioner kept the land barren during some seasons. According to respondent No. 2, the petitioner applied before the Sub-Divisional Officer, Khamgaon on 28.2.1997 for according permission to sell land granted to him. Respondent No. 2 made enquiries into the said application and submitted his proposal to respondent No. 1 on 28.9.2004. It is further contended by respondent No. 2 that after the petitioner made application to Sub-Divisional Officer, Khamgaon on 28.2.1997, the Sub-Divisional Officer submitted his report to respondent No. 2 on 15.1.1998. As there were certain deficiencies in the proposal of the Sub-Divisional Officer, after removal of those discrepancies, the proposal was submitted to the Government on 9.11.1998. By communication dated 24.2.2003, respondent No. 1 intimated respondent No. 2 to take decision. On 17.10.2003, the petitioner again moved an application. Respondent No. 2 again informed respondent No. 1 and by communication dated 25.7.2005, the application of the petitioner was rejected by respondent No. 1.

6. We have heard Shri A.K. Choube, the learned Counsel for the petitioner and Shri S.B. Ahirkar, the learned Assistant Government Pleader for respondents.

7. The only point which is involved in the present petition is whether the Government was justified in refusing permission to the petitioner to sell his land on the ground that there was no provision to give such sanction by accepting Nazrana.

8. In this connection, the provisions of Section 29 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred as "the Act of 1961")

are material. Section 29 reads as under:

29. (1) Without the previous sanction of the Collector, no land granted u/s 27 or granted to a joint farming society u/s 28, shall be-

(a) transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or of an award or order of any Competent Authority) or by way of gift, mortgage, exchange, lease or otherwise; or

(b) divided whether by partition or otherwise, and whether by a decree or order of a Civil Court or any other Competent Authority.

Such sanction shall not be given otherwise than in such circumstances, and on such condition (including condition regarding payment of premium or nazarana to the State Government), as may be prescribed:

(Provided that, no such sanction shall be necessary where land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in Sub-section (4) of Section 36 of the Code for raising a loan for effecting any improvement of such land.)

(2) If sanction is given by the Collector to any transfer or division under Sub-section (1) subsequent transfer or division of land shall also be subject to the provision of Sub-section (1).

(3) Any transfer or division of land, and any acquisition thereof, in contravention of Sub-section (1) or Sub-section (2) shall be invalid; and as a penalty there for, any right, title and interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector and shall without further assurance vest in the State Government.

9. A perusal of the above provision would show that a land granted u/s 27 of the Act of 1961 could be transferred by way of sale with the previous sanction of the Collector. Such sanction could be given on the conditions including the condition regarding payment of premium or Nazarana to the State Government as may be prescribed. In this connection, we will have to consider the provisions of the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) Distribution of Surplus Land and (Amendment) Rules, 1975 (hereinafter referred as "the Amendment Rules of 1975"). Rule 12 of the Amendment Rules of 1975 is most material. It provides as under:

12. Provision for transfer of land In u/s 29:- u/s 29, the Collector may sanction transfer of land in any of the following circumstances, that is to say:

(a) if the land is required by an industrial undertaking in connection with any bona fide industrial operation carried on or to be carried on by such undertaking;

(b) if the land is required for bona fide non-agricultural purpose;

(c) if the land is required for the benefit of any educational or charitable institution;

- (d) if the land is required by a co-operative society;
 - (e) if the land is being exchanged--
 - (i) for land of equal or nearly equal value owned and cultivated personally by member of the holders' family, or
 - (ii) for land of equal or nearly equal value in the same village owned and cultivated personally by a land owned a view to forming compact block of his holding or better management thereof;
- provided that, the total land held and cultivated personally by any of such holders whether as owner or tenant or partly as owner and partly as tenant does not exceeding the ceiling area as a result of die exchange;
- (f) if the land is being leased by a lessor who is a person under disability;
 - (g) if die land is being partitioned among die heirs or survivors of the deceased grantee of die land, and no party after the shares are defined on partition gets land which is a fragment:

Provided that no sanction shall be accorded to any transfer of land falling under Clauses (a), (b), (c) or (d) unless the transferor agrees to the condition to pay to die State Government a Nazarana equal to 40 times die assessment of land.

The proviso of Rule 12 clearly shows that the sanction would be accorded to transfer of land on condition that the transferor pays to State Government Nazarana equal to 40 times the assessment of land.

10. It seems that on 9.01.1994, the petitioner moved an application for permission to sell the land allotted to him. The said application was however sent by the petitioner to the Chief Minister, Bombay, instead of sending it to Collector, Buldana (respondent No. 2). On 9.02.1994, the Desk Officer, Revenue and Forest Department, Mantralaya, Mumbai informed the petitioner that his application dated 9.1.1994 has been forwarded to Collector, Buldana for further action and that the petitioner should contact Collector, Buldana. It seems that thereafter no action was taken by the Collector.

11. In the meantime, on 19.10.2001, the rules were revised and the Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) (Distribution of Surplus Land) and (Amendment) Rules, 2001 came into force. By the amendment, the existing proviso was substituted by following proviso:

Provided that, no sanction shall be accorded to any transfer of land falling under Clauses (a) and (b) unless die transferor agrees to pay to die State Government an amount equal to 75 per cent of the unearned income i.e. 75 per cent of the difference between current market value and the occupancy price at which the land was originally granted to the applicant and in case of transfer of land falling under Clauses (c), (d) and (d-1) 50 per cent of the unearned income.

12. It was only on 03.11.2003 that Collector, Buldana (respondent No. 2) wrote a

letter to the Secretary, Revenue and Forest Department, Mantralaya, Mumbai informing him that the petitioner brought to his notice that permission to sell such land was granted to one Shri Uttamrao Santukrao More by the Government on 3.6.1995 by accepting Nazarana as per the Rules prevailing at that time and such permission should be granted to the petitioner. Collector, Buldana, however, informed that he was not competent to accord such sanction. He, therefore, forwarded the petitioner's application and documents to the State Government. It seems that on the very next day i.e. on 04.11.2003, the petitioner issued notice u/s 80 of the CPC to Collector, Buldana seeking permission to sell his land. Alongwith the said notice, the petitioner also forwarded demand draft of Rs. 560/- towards Nazarana being 40 times the land revenue of Rs. 14/-. It was only on 25.07.2005 that Under Secretary, Revenue and Forest Department, Mantralaya, Mumbai informed the petitioner that as per the prevailing Rules, there is no provision for according sanction by accepting the amount of Nazarana and as such the prayer of the petitioner was rejected.

13. From the above discussion, it would be seen that the application of the petitioner was pending since 9.1.1994. Collector, Buldana (respondent No. 2) did not take any action till 2003. In the meanwhile, the Amendment Rules of 1975 were amended. In fact, under Amendment Rules of 1975, sanction to sell land could have been granted, on payment of Nazarana equal to 40 times the assessment of land. However, nothing was done by Collector, Buldana. Collector, Buldana moved the State Government only in the year 2003 i.e. after the Amendment Rules of 1975 were revised by notification dated 19.10.2001 where under the transferor was required to pay an amount equal to 75 per cent or 50 per cent of the unearned income. This was to the detriment of the petitioner and that too for no fault of the petitioner. Had Collector, Buldana (respondent No. 2) acted promptly in deciding the application of the petitioner of 1994, sanction could have been granted to the petitioner to sell land by accepting Nazarana equal to 40 times the assessment of land which in the present case comes to Rs. 560/-. Collector, Buldana did not take any action for years together on the application of the petitioner. As such the application of the petitioner would be governed by Amendment Rules of 1975 and not by the revised Rules of 2001.

14. In view of these circumstances, the State Government was not at all justified in rejecting the prayer of the petitioner for grant of sanction to sell the land by accepting Nazarana equal to 40 times. The situation is that the State Government should not have refused the prayer of the petitioner and in fact the Collector should have granted sanction to the petitioner to sell the land by directing the petitioner to pay to the State Government Nazarana equal to 40 times the assessment of land. Hence the petition needs to be allowed. We, therefore, pass the following order.

15. The petition is allowed. Respondent No. 2- Collector, Buldana is hereby directed to accord sanction to the petitioner within a period of two weeks from the date of communication of this order to sell his land in question on the

petitioner paying Nazarana of Rs. 560/- to the State Government. Rule is made absolute in aforesaid terms.

At this stage, Shri S.B. Ahirkar, the learned Assistant Government Pleader prays for staying this order for a period of four weeks to enable the State to approach the Apex Court. Prayer is rejected.