

**BEFORE THE DESIGNATED MEMBER, MAHARASHTRA REVENUE TRIBUNAL, BENCH AT PUNE.**

Presided over by : V.B.Kulkarni, Designated Member

**No.P/XII/4/2011**

Shri.Vijay Sheshmal Porwal,  
R/o.444, Somwar Peth,  
Kumar Sadan, Pune-411 011.

.....Applicant

**VS.**

- 1) Smt.Nababai Murlidhar Bhunde,  
R/o.Sus, Tal.Mulshi, Dist.Pune.
  - 2) Shri.Baburao Dattu Chandere
  - 3) Shri.Bajirao Dattu Chandere
  - 4) Shri.Santosh Subhash Chandere  
No.2 to 4 R/o.Baner, Tal.Haveli, Dist.Pune.
- .....Respondents

**Alongwith No.P/XII/5/2011**

Shri.Vijay Sheshmal Porwal,  
R/o.444, Somwar Peth,  
Kumar Sadan, Pune-411 011.

.....Applicant

**VS.**

Smt.Nababai Murlidhar Bhunde,  
R/o.Sus, Tal.Mulshi, Dist.Pune.

.....Respondent

**Revision Applications U/s 76 of  
the B.T.& A.L.Act,1948.**

Appearance :- Adv. Shri J.P.Dhayதாக for Revision Applicants  
Proceeded ex-parte against Respondents

**DATED:- 5<sup>th</sup> FEBRUARY, 2021**

**COMMON JUDGMENT**

These two revision applications are arising out of common question of facts as well as Law involved in the matter in respect of the same properties and same parties thereto, affecting the judgment & order passed in one revision application against another. Therefore, I have proceeded to decide these two revision applications by common judgment. Facts giving rise to the present *//s* can be summarized as under.

2. Respondent No.1 was the original land-owner of the property who has acquired the interest in the property as the statutory purchaser of the suit land under the provisions of Section-32G r/w Section-32M of B.T.& A.L.Act, 1948 (hereinafter referred "the Act"). She has executed registered agreement of sale without possession of the suit property in favour of the present revision petitioner on 16/3/1992. During the subsistence of contractual obligations between the parties thereto, the respondent No.1 has sold the suit property to one **Madhukar Bhangire**. Therefore, circumstances constrained the applicant to file a suit for specific performance of contract against his vendor and subsequent purchaser bearing Spl.civil suit No.1149/95. The said suit has been decreed by judgment & decree dt.4/10/1996. Being aggrieved by the said decree, the respondent No.1 had preferred civil appeal alongwith 'delay condonation application' No.93/04 u/s 5 of Limitation Act. The said application came to be dismissed by order dt.17/1/2005 by the District Judge, and as such decree for specific performance of contract and possession of the suit property in favour of the present Petitioner reached to its finality. Thereafter, the successful Plaintiff / Petitioner has filed execution petition Spl.Darkhast No.251/2001 and same is pending. Pending the execution petition, decree holder & JD thereto entered into an agreement before the executing court and thereby, order in terms of compromise came to be passed in execution proceedings on 9/11/2009. In terms of said compromise and the terms of decree, by taking the note of statutory compliance, the successful Plaintiff / Petitioner had filed application u/s 43 for grant of permission for the transfer of the suit land in terms of decree. The said proceedings through file No.43/SR/124/09 came to be decided by order dt.16/1/2010 and the permission has been granted in favour of the applicant as per the terms and conditions laid down therein by giving specific limit of three months to get the sale-deed executed. As such time fixed for compliance of the conditions laid down in the permission was fixed till 16/4/2010. However, the parties could not arrive at final settlement. Therefore, circumstances constrained the applicant to move fresh application for extension of time, which came to be rejected on 3/6/2010. Being aggrieved by the said order the aggrieved Petitioner has preferred revision application No.5/2011. Not only that, but, at the instant of respondent No.2 to 4 separate proceedings for permission was under consideration before Dy.Collector for granting permission for the sale of the disputed land. The said applications came to be allowed without offering proper opportunity to the present Petitioner to be heard, and the Dy.Collector pleased to grant permission by order dt.17/6/2010 in favour of respondent No.2 to 4. Being aggrieved by the said order Plaintiffs / decree holder moved the separate revision application No.4/2011.

3. Both the revision applications being affected by 'delay condonation application', the delay caused in preferring respective revision applications came to be allowed by common order and opportunity was given to the parties to be heard on the point of merits involved in the revision applications. Pending the revision applications after the receipt of R&P from tribunal below, despite offering sufficient opportunity to the respondents to be heard, none of them or their advocate remained present on the date of hearing continuously. Therefore, circumstances constrained the Tribunal to proceed with the matter ex-parte.

4. Even today, the respondents & their advocate both remained absent when called. Heard Ld.Adv.Shri.J.P.Dhaytadak for the revision petitioner in both the proceedings. He has forcefully submitted that grant of permission u/s 43 of the Act, particularly in pursuance of the decree passed by the Civil Court, though judicial in nature it was only a ministerial act for the authority constituted under the Act, so as to get the compliance of other statutory provisions made under the Rule and nothing more. For that purpose at the most, payment of Nazrana i.e. amount of 40 times of land revenue to the Government as Nazrana was the only condition precedent.

The amount was so paid by the present Petitioner on 12/1/2010. Therefore, the permission granted which has reached to its finality, further extension of time sought was a pure ministerial administrative act within the judicial discretion, which ought to have been passed by keeping in mind the principles of natural justice. In support of his submissions Ld.Adv.Shri.J.P.Dhayதாக called my attention towards the precedent laid down in case of **D.F.O.South Kheri / Ram Sanehi Singh, AIR 1973-SC-205**.

5. After considering the record & proceedings from tribunal below and after considering the submissions made by Ld.Adv.Shri.J.P.Dhayதாக for the Petitioner, following points arise for my determination. I have recorded my findings with reasons thereon as under:-

<u>Points</u>	<u>Findings</u>
1. Whether the judgment & order passed by authority below, rejecting the extension of time for permission granted is proper, legal & correct one?	Negative
2. Whether the grant of permission of sale u/s 43 in favour of the respondent No.2 to 4 by order dt.17/6/2010 is proper, legal & correct one?	Negative
3. Whether the judgment & orders passed in both the proceedings sustain in eye of Law?, And, if not, to what extent the interference therein is required through this Tribunal and in what form?	Yes. As per final order

### Reasons

**6. Point No.1 to 3:** After perusing the record & proceedings received from tribunal below, it has become evident that the order passed in file No.43/SR/124/2009, dt.16/1/2010 has not only attained its finality, but, same has been obtained in pursuance of compromise recorded in between the decree holder / JD interse, to which the respondent No.1 was the party. In my view, once the compromise has been recorded in Spl.E.P.No.251/2001 utmost interest of the JD in the property as a title holder has comes to an end, and formal act of execution of transfer-deed in terms of decree has remained. In that context extension of period granted as condition by the authority within Rule-25A made under the Act, is discretionary in nature required to be used judiciously, to meet the ends of justice. Not only that, but, authority has to see that the decree of Civil Court should not be nullified due to the refusal of use of judicial discretion. Herein this case, subsequent application has been moved, not by the land-owner, but, it has been moved by the subsequent proposed purchasers and that is against the decree passed in Spl.civil suit No.1149/95, to which the proposed purchasers were not the party. All these acts either made by the respondent No.1 or the respondent No.2 to 4 on another hand are nothing but the efforts made to make the decree in executable, and to render the court orders inoperative. Under these circumstances, I would like to quote here that as per the provisions of Rule-25A made under the Bombay Tenancy & Agricultural Lands Rules,1956, the grant of permission u/s 25A(d) is mandatory one, for which even compliance of payment of Nazrana 40 times of land revenue is also not mandatory. I would like to quote here the relevant provisions of the Rule as ready reference.

**Section-25A-----**

(1)-----

(a)-----

(b)-----

(c)-----

(d) that the land is being sold in execution of a decree of a civil court or for the recovery of arrears of land revenue under the provisions of the Code;

**(2)(a)** Where the sanction for sale of land is given in the circumstances specified in clause (a),(b),(c),(e) or (f) of sub-rule(1), it shall be subject to the condition of the land-owner paying to the State Government a Nazrana equal to 40 times the assessment of the land;

7. Exclusion of clause -25A(1)(d) from the application of sub-sec.2(a) of the said Rule makes it clear that even payment of Nazrana equal to 40 times of assessment of land revenue is not required to be followed in case if permission sought is in pursuance of decree of Civil Court. In the given set of facts, further extension of the time sought by the decree holder / Plaintiff has to be decided judiciously and ought not to have been refused so as to render the decree inexecutable, which is not permissible within the inherent judicial powers with the authority constituted under the Act. In these circumstances the proposition of Law laid down by Hon.Supreme Court in the case relied by Ld.advocate for the Petitioner certainly guides me to hold that, in the given set of facts granting of permission u/s 25A or giving further extension of time is the quasi-judicial act and should have to be done with judicial mind. By following the principle of Law in the above precedent, I hold that herein this case the Plaintiff applicant being successful decree holder for the specific performance of contract which has reached to its finality and that too when same is under execution at the consent of the respondent No.1, subsequent acts of the respondent No.1 either to object the extension of time or to consent for fresh permission is nothing but a collusive and illegal act on the part of respondent No.1. Suffice to say that in the given set of facts, I come to the conclusion that the Ld.authority below has failed to decide the matter at his hand with judicial discretion and that too by keeping in mind the legal effect of the decree under execution. For these reasons suffice to say that the order passed by the Ld.authority below does not sustain in both the proceedings and deserves to be set aside. The cumulative effect thereof shall be rejection of permission granted in favour of the respondent No.2 to 4 and grant of further time for the present revision petitioner in pursuance of the earlier order dt.16/1/2010 in respect of the same property. With these observations, I answer the 'Point No.1&2 in Negative & Point No.3 as per final order' and proceed to pass the following order.

### **ORDER**

Both the revision applications No.P/XII/4/2011 & P/XII/5/2011 are hereby allowed.

The judgment & order passed in file No.क्रा/43/एसआर/102/2010, dt.17/6/2010 granting permission in favour of respondent No.2 to 4 is hereby set aside and cancelled.

The judgment & order passed in file No.क्रा/43/एसआर/124/2009, dt.16/1/2010 rejecting the prayer for extension of period is hereby set aside.

Further time of six months from today is granted to the applicant / decree holder to complete the act of transfer in pursuance of decree under execution in Spl.E.P.No.251/2001.

Remaining conditions laid down in the permission granted earlier shall remain intact and in force.

No order as to costs.