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Bombay Tenancy and Agricultural Lands Act, 1948 and Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947
Administration of section 64 and 8 respectively.

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GOVERNMENT OF BOMBAY
REVENUE DEPARTMENT
RESOLUTION NO: 270/51
Bombay Castle, 6th. October 1954-

Read: Government Endorsement No: 270/51, dated 26th/27th June 1951.

Letter from the Collector of Kanara, No: 9539, dated 30th April 1952.

"In inviting a reference to the provisions of section 64 of the Bombay Tenancy and Agricultural Lands Act, I have to state that a landlord intending to sell his holding is required to apply to the Tribunal for fixation of the reasonable value of the land and after the value is fixed he is required to offer the holding for the price fixed to the persons laid down in the section according to the order of priority. The section is not clear whether the same provisions would apply in the case of a landlord intending to sell his joint interest in a land to another joint holder of the same Survey Number.

To quote a concrete example I may state that there are 3 joint landlords A, B, and C in a Survey Number. If B and C intend to sell their joint interest to A, they cannot do so unless they offer it to D, the protected tenant. I, therefore, consider that a distinction will have to be made between sale of land and sale of share in the land. In the former case section 64 will apply and in the latter it would not as otherwise we come to an absurd position that A cannot buy B and C's shares without offering it to D. Moreover, the transfer of shares from B and C to A will not affect the tenant, for the landlord in such cases is A, B, C as a whole. I may point out that similar distinction has been made in the case of sale of fragments (vide Remembrancer of Legal Affairs' opinion received under Government endorsement, No: Revenue Department, No: 270/51-F of 26th/27th June 1951).

As however, section 64 is not clear on the point, I would solicit authoritative orders in the matter."

Read Government letter No: 270/51-F, dated 15th May 1952 to the Collector of Kanara.

Letter from the Collector of Kanara, No: 9539, dated 11th August 1951.

"Reference your No: 270/51-F, of 15th May 1952.

In continuation of my report number 9539 dated 30th April 1952, I have to quote herebelow a concrete case wherein I am required to pass orders.

Survey Nos: 104, 109, 123, 125/1, 125/2 and 131 of Molkod village are jointly held by 3 persons. Shri V.G. Mahale who is the mulgenidar of all the Survey Numbers is also one of the three joint holders. He intends to purchase the malki right of the other two joint holders and has thus applied for permission.

Extracts of Record of Rights are enclosed. It is seen that the lands are cultivated by persons other than the mulgenidar, who are the protected tenants. The applicant Shri Mahale is reported to be an agriculturist.

Section 64 of the Bombay Tenancy and Agricultural Lands Act requires that a landlord intending to sell his holding is required to apply to the Tribunal for fixation of the reasonable value of the land and after the value is fixed by the Tribunal he has got to dispose of his holding in order of priority mentioned.....

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mentioned therein. But this section does not mention anything about the sale of a part of the joint holding by one joint holder to another. If Section 64 is to be applied to such a case, the other two joint holders cannot sell their share in the joint holding to the third joint holder unless they offer their holding to the protected tenants. Moreover, the transfer of their shares by two joint holders to the third joint holder would not affect the tenants in any way as for them all the 3 joint holders together happen to be made between a sale of a landlord's land and a sale of a share in the land. In the former case Section 64 would apply while in the latter, it would not as otherwise we come to the absurd position that one of the 3 joint holders in a land cannot purchase the joint share of the other two joint holders unless he offers the same to the protected tenant. It may be pointed out that similar distinction has been made out in the case of a sale of fragments (vide Remembrancer of Legal Affairs' opinion received under Government Endorsement, Revenue Department, No:270/51-F, dated 26th/27th June 1951).

As however, section 64 is not clear on the point, I would solicit authoritative orders in the matter."

Government letter No:270/51-F, dated 19th September 1952 to the Collector of Kanara requesting him to ascertain and report whether sale of 2/3rd share in the suit lands to the protected tenant would create fragments and whether notices under section 6(2) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 have been issued.

Letter from the Collector of Kanara, No:3539, dated 2nd January 1953.

"Reference Government Letter, Revenue Department, No:270/51-F dated 19th September 1952.

From enquiries made with the Mamlatdar of Honavar, it has transpired that the sale of 2/3rd right in all the Survey Numbers except Survey Nos:109 and 121 to the protected tenants would create fragment in each of them. Notices under section 6(2) of the Bombay Prevention of Fragmentation and Consolidation of Small Holdings Act have not yet been issued in respect of these lands."

Remembrancer of Legal Affairs' opinion No:19263-A, dated 12th August 1954.

"Section 64(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, is mandatory and the two joint holders cannot sell their two-thirds share in the lands to the third joint holder Shri Mahale when the lands are in possession of the protected tenants. If these two joint holders want to sell their share in the lands, they will have to offer it first to the protected tenants under section 64(1).

It is stated that the sale of two-thirds share in Survey Nos:104,123,125/1 and 125/2 to the protected tenants would create fragments prohibited under section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. That section provides that no lands in any local area shall be transferred or partitioned so as to create a fragment. By sale of two-thirds share in these lands to the protected tenants, no transfer or partition takes place in contravention of section 8 as these protected tenants are already in possession of the whole of these survey numbers although their right in respect of two-thirds share changes i.e. they would be holding as owners and not as tenants; but such change involves no transfer or partition prohibited by Section 8. The view taken by Revenue Department does not therefore appear to be correct."

Unofficial reference from the Settlement Commissioner and Director of Land Records No:LR 1119, dated 26th August 1954.

"Returned with compliments.

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2. The transrers prohibited under Section 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, would be transfers of physical possession. In this case, the Protected Tenant being in physical possession of the land, the purchase made by him does not offend against the provisions of Section 8. I, therefore, concur in the Remembrancer of Legal Affairs' opinion, dated 12th August 1954 (at page 107 of the Revenue Department File)."

RESOLUTION : Government is pleased to accept Remembrancer of Legal Affairs' opinion No:19263-4, dated 12th August 1954 and to direct that copies of the opinion may be forwarded to the officers concerned for information and guidance.

By order and in the name of the Governor of
Bombay,

L.A.DHAMANIGI,
Assistant Secretary to Government.

To,
The SC & DLR.

No:Con/LR-27 of 1954.
Poona, 29th October 1954.

Copy forwarded for information and guidance to-

- (i) the Consolidation Officers(all) w/cs.,
- (ii) the Assistant Consolidation Officers(all).

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For Settlement Commissioner &
Director of Land Records,
Bombay State, Poona.

cdd/-291054.