

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.214 OF 2015
WRIT PETITION NO.215 OF 2015
WRIT PETITION NO.216 OF 2015
WRIT PETITION NO.217 OF 2015
WRIT PETITION NO.218 OF 2015
WRIT PETITION NO.219 OF 2015
WRIT PETITION NO.220 OF 2015
WRIT PETITION NO.596 OF 2015
WRIT PETITION NO.597 OF 2015

WP Nos.214, 215 AND 216 OF 2015

Narhari Sitaram Jirval.	..	Petitioner
Vs		
Shri Bhanudas H. Palve & Ors.	..	Respondents
—		

WP NO.217 OF 2015

Ramnath Hiranman Shinde.	..	Petitioner
Vs		
Shri Bhanudas H. Palve & Others.	..	Respondents
—		

WP NO.218 OF 2015

Laxman Suka Khode.	..	Petitioner
Vs		
Shri Bhanudas H. Palve & Others.	..	Respondents
—		

WP No.219 of 2015

Pramod S. Sonawane.	..	Petitioner
Vs		
Shri Bhanudas H. Palve & Ors.	..	Respondents
—		

WP NO.220 OF 2015

Mangalu Sakru Lote & Others. .. Petitioners
Vs
Shri Bhanudas H. Palve & Others. .. Respondents
—

WP NO.596 OF 2015

Shir Manglu Devram Gohire & Others. .. Petitioners
Vs
The State of Maharashtra and Others. .. Respondents
—

WP NO.597 OF 2015

Shri Eknath Trimbak Barde. .. Petitioner
Vs
The State of Maharashtra and Others. .. Respondents
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Shri M.S. Karnik i/by Shri Sandip D. Shinde for the Petitioner in all WP Nos.214 to 220 of 2015.

Shri Sanjay Prabhakar Shinde for the Petitioner in WP Nos.596 and 597 of 2015.

Mrs. M.P. Thakur, AGP for the Respondents in all the Petitions.

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CORAM : A.S. OKA & A.K.MENON, JJ
DATED : 29TH JANUARY 2015

PC.

. These Petitions arise out of the Applications made by the Petitioners for grant of previous sanction for sale of a land held by a tribal to a non-tribal under Sub-section (1) of Section 36A of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”). Section 36A of the said Code reads thus:

“36A. Restrictions on transfers of occupancies by Tribals. Mah. XXXV of 1974.

(1) Notwithstanding anything contained in sub-section (1) of section 36, no occupancy of a Tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act,, 1974, be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction-

(a) in the case of a lease or mortgage for a period not exceeding 5 years, of the Collector; and (b) in all other cases, of the Collector with the previous approval of the State Government.

Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no Tribal residing in the village in which the occupancy is situate or within five kilometers thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

(2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed.

(3) On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force, or any decree or order of any court or award or order of any Tribunal, or authority, either suo motu or on application made by the Tribal in that behalf, restore possession of the occupancy to the Tribal.

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment)Act, 1974, it is noticed that any occupancy has been transferred in contravention or sub-section (1) 1(the Collector shall, notwithstanding anything contained in any law for the time being in

force, either suomotu or on an application made by any person interested in such occupant, within thirty years) from the date of the transfer of occupancy hold an inquiry in the prescribed manner and decide the matter.

(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may, from time to time direct.

(6) Where an occupancy vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the Tribal-transferor requiring him to be state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such Tribal - transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the total land held by such Tribal-transferor, whether as owner or tenant, does not as far as possible exceed an economic holding.

Explanation.- For the purpose of this section, the expression "economic holding" means 6.48 hectares (16 acres) of jirayat land, or 3.24 hectares (8 acres) of seasonally irrigated land, or paddy or rice land, or 1.62 hectares (4 acres) of perennially irrigated land, and where the land held by any person consists of two or more kinds of land, the economic holding shall be determined on the basis of one hectare of perennially irrigated land being equal to 2 hectares of seasonally irrigated land or paddy or rice land or 4 hectares of jirayat land."

2. Therefore, in a case where an Application is made for grant of previous sanction for the proposed transaction of sale or any other

transfer by a tribal to a non-tribal not covered by Clause (a) of Sub-section (1) of Section 36A of the said Code, the Collector can grant sanction only with the previous approval of the State Government.

3. The grievance in these Petitions under Article 226 of the Constitution of India is that though orders were issued by the Hon'ble Minister of State for Revenue long back granting prior approval within the meaning of Clause (b) of Sub-section (1) of Section 36A of the said Code, the Additional Collector did not act upon the said orders and failed to issue previous sanction. Copies of the said orders have been annexed to the Petition.

4. In these Petitions, there is an affidavit filed on behalf of the State Government by Dr.Madhav Vitthal Veer, the Deputy Secretary to Government, Revenue and Forests Department. A statement has been made in Paragraph 7 of the said affidavit which reads thus:

“7. I say and submit that the order dated 04/09/2014 was passed by the then Hon'ble Minister of State for Revenue. Since new Government has been sworn in following general election to the State Assembly, the said orders were brought to the notice of present Hon'ble Minister of Revenue who has directed that the government orders in individual cases be issued. Accordingly, the necessary action in this regard shall be taken by the Revenue Department in the next two weeks.”

5. The learned AGP has placed for perusal of the Court the original file. There is a noting made by the Hon'ble Minister of State for Revenue on the said file. The noting suggests that as per the letter dated 26th September 2014 of the Additional Collector, Nashik, he should be informed to implement the aforesaid orders of the Hon'ble Minister of State for Revenue. The noting made by the Hon'ble Minister today records that in each case, by complying with the Maharashtra Government Rules of Business and Instructions issued thereunder and in particular Rules 12 and 13, administrative orders be issued in terms of the aforesaid orders of the Hon'ble Minister for State of Revenue. It is stated by the Hon'ble Minister for State of Revenue that after such order is issued in each case, approval will be granted to issue final orders. The learned AGP on instructions states that in terms of the said order passed by the Hon'ble Minister today, orders will be issued on the terms and conditions incorporated in the respective orders passed by the Hon'ble Minister for State of Revenue which are annexed to the Petitions.

6. The aforesaid statement is made by the learned AGP on instructions of Dr. Madhav Vitthal Veer, the Deputy Secretary, Department of Revenue and Forests, Mumbai, who is personally present in the Court.

7. In view of the statement and the order passed today by the Hon'ble Minister for State of Revenue, we dispose of the Petitions by passing the following order.

ORDER :

- (a) We direct the State Government to issue orders granting previous approval as assured above in terms of Clause (b) of Sub-section (1) of Section 36A of the Maharashtra Land Revenue Code, 1966 within a period of one month from today;
- (b) On receipt of the said orders, the Collector/Additional Collector, as the case may be, shall decide the Applications made by the Petitioners under Sub-section (1) of Section 36A of the said Code as expeditiously as possible and in any event within a period of one month from the date of receipt of the orders of previous approval issued by the State Government;
- (c) The Petitions are disposed of on above terms.