THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 2415 OF 2013

Radhakisan Maruri Gholap,
Age: 66 years, Occu. Agriculture,
R/o. Nimblak,
Taluka & District Ahmednagar. ... **PETITIONER**

V E R S U S

1] The State of Maharashtra,
Through Secretary
Department of Revenue and Forest,
Mantralaya, Mumbai-32.

2] The Divisional Commissioner,
Nashik Division, Nashik.

3] The Collector, Ahmednagar,
Dist. Ahmednagar.

4] The Sub Divisional Officer,
Ahmednagar, Dist. Ahmednagar.

5] Circle Officer,
Nalegaon, Ahmednagar,
Dist. Ahmednagar.

6] Suryabhan Sitaram Jadhav,
Age : 40 years, Occu. Agriculture,
R/o. Nimblak,
Taluka & District Ahmednagar. ... **RESPONDENTS**

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Mr. Amol K. Gawali, Advocate for Petitioner.
Mr. P. G. Borade, AGP for Respondent Nos.1 to 5.
Mr. D. R. Jayabhar, Advocate for Respondent No.6.

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CORAM : **P. R. BORA, J.**
DATE : 04th July, 2016.

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. By consent of the learned counsel appearing for the parties, the matter is taken up for final disposal.

2 The question raised in the present petition is "whether the restrictions prescribed under Section 36(2) and Section 36-A of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the MLR Code") on the transfer of land from a tribal to a non-tribal would apply to a testamentary disposition of the property by Will?"

3 The facts, in brief, are as under :

One Sitaram Baburao Jadhav had executed a Will on 27th December, 2001, in favour of the present Petitioner thereby bequeathing the land admeasuring 82.5 Ares out of Gat No.291 situated at Mauje Nimblak, Taluka Nagar, District Ahmednagar. Sitaram Baburao Jadhav expired on 1st August, 2005. After the death of said Sitaram, the property which was bequeathed by said Sitaram by way of Will in favour of the present Petitioner, came to be mutated in the name of present Petitioner vide Mutation Entry No.3126 carried on 30th December, 2006. The Circle Officer, Nalegaon, however, based on the provisions of Sections 36(2) and 36-A of the MLR Code cancelled the said Mutation Entry No.3126. The present Petitioner, therefore, filed R.T.S. Appeal No.30 of 2007 before the Sub Divisional Officer, Ahmednagar challenging the order passed by the Circle Officer on 6th February, 2007. The appeal so filed by the Petitioner was rejected by the Sub Divisional Officer vide order dated 19th May, 2007. The Petitioner thereafter, preferred Second R.T.S. Appeal No.118 of 2007. However, the same was also rejected by the Additional Collector, Ahmednagar. The Petitioner then challenged the orders passed by the Lower Revenue Authorities by filing R.T.S. Revision No.223 of 2009, before the Additional Divisional Commissioner, Nashik Division, Nashik. Vide order passed on 25th February, 2011, the said revision also has been dismissed. Aggrieved by all the above orders, the Petitioner has filed the present petition.

4 Shri Gawali, learned counsel for the Petitioner submits that though the provisions of Section 36(2) and Section 36-A of the MLR Code could not have been made applicable for transfer of

property by a tribal to non-tribal by way of testamentary disposition, the Revenue Authorities by misinterpreting the said provisions, have wrongly rejected the appeal/revision preferred by the Petitioner. The learned counsel submitted that after the death of Sitaram Jadhav, rightly the name of the present Petitioner was mutated vide Mutation Entry No.3126. The learned counsel relying on the judgment delivered by this Court in the case of ***Prabhakar s/o Chinappa Chavan Vs. State of Maharashtra***, reported in, ***[2004(4) Mh.L.J. 886]*** submitted that the orders passed by the Revenue Authorities deserve to be quashed and set aside and Mutation Entry No.3126 deserves to be confirmed.

5 Shri Jayabhar, learned counsel for Respondent No.6 opposed the submissions made on behalf of the Petitioner. The learned counsel submitted that the judgment cited by the learned counsel for the Petitioner was also cited before the Revenue Authorities, however, that has been rightly distinguished by the Revenue Authorities and no interference is, therefore, required in the decisions impugned in the present petition. The learned counsel relied upon the judgment of the Division Bench of this Court in the case of ***Raoji and etc. etc. Vs. State of Maharashtra and others***,

reported in, ***AIR 1986 Bombay 262***, which relates to restriction of the transfer of land by tribal in favour of non-tribal and vesting of land in the State Government.

6 I have carefully considered the submissions advanced on behalf of the learned counsel appearing for the respective parties. I have also perused the orders impugned in the present petition. As I have noted earlier, the issue to be determined in the present petition is “whether the provisions under Section 36(2) and Section 36-A of the MLR Code would apply to the transfer by way of testamentary disposition?”

7 The restrictions as are prescribed under Section 36(2) and 36-A of the MLR Code, are also there in Section 29 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act (27 of 1961). In the case of **Prabhakar s/o Chinappa Chavan Vs. State of Maharashtra** (supra), a question for determination of the Court was “whether transfers under the Ceiling Act would include testamentary disposition of the property?”. This Court while allowing the said petition has held that the transfers under the Ceiling Act do not include testamentary disposition of the property.

8 While recording a conclusion that the transfers under the Ceiling Act do no include the testamentary disposition of the property in the judgment cited (supra), reliance has been placed on an earlier judgment of this Court in the case of ***Vimalabai Govind Juverkar Vs. State of Maharashtra and others***, reported in, ***1976 Mh.L.J. 858***. In the said case of *Vimalabai*, the husband of the Petitioner during his lifetime had executed a registered Will bequeathing some land to his nephew. On his death, said nephew became owner of the said property and was also in its possession. In spite of that, the Surplus Land Determination Tribunal as well as the Maharashtra Revenue Tribunal, counted the said land in the holding of the petitioner. The petitioner challenged the said orders wherein this Court had held that the land bequeathed by Will could not be counted in the holding of the petitioner. This Court in the aforesaid case of *Vimalabai*, after considering the earlier judgments on the point has held that the transfers, which are by act of parties made *inter vivos* or as a result of a decree or an order of a Court, Tribunal or authority etc. alone are covered by the said term as defined in Explanation to Section 8 of the Ceiling Act. This Court has further held that it will not include the testamentary disposition of the property not made *inter vivos*. Thus,

this Court has taken a view that a testamentary disposition by Will is not covered by the word 'transfer' as per the provisions of section 5 of the Transfer of Property Act. This Court, while dealing with certain provisions of the Ceiling Act has in unequivocal terms held that the transfer under the Ceiling Act would not include the testamentary disposition of the property not made *inter vivos*.

9 The law laid down in the matters of **Vimalabai Govind Juverkar Vs. State of Maharashtra and others** (supra) and **Prabhakar s/o Chinappa Chavan Vs. State of Maharashtra** (supra) would squarely apply to the facts of the present case. As held by this Court in the case of **Vimalabai Govind Juverkar Vs. State of Maharashtra and others** (supra), a testamentary disposition by Will is not covered by the word 'transfer' as per the provisions of section 5 of the Transfer of Property Act. I have, therefore, no hesitation in holding that restrictions prescribed under Section 36(2) and Section 36-A of the MLR Code for transfer of land from a tribal to a non-tribal would not apply to transfers of lands by testamentary disposition.

10 The judgment in the case of **Raoji and etc. etc. Vs. State of Maharashtra and others** (supra) relied upon by the learned

counsel for Respondent No.6 is on altogether different facts and dealing with different situation. It may, therefore, not apply to the facts of the present case. In so far as the issue of obtaining probate by the Petitioner is concerned, as has been submitted by the learned counsel for the Petitioner, it was not necessary for the Petitioner to obtain a probate or letter of administration since the relevant provisions are not applicable in the district of Ahmednagar.

11 For the reasons stated above, the orders passed by the Courts below thereby cancelling Mutation Entry No.3126, cannot be sustained and deserve to be set aside. In the result, the following order –

O R D E R

I. The writ petition is allowed.

II. The order dated 19th May, 2007 passed by the Sub Divisional Officer, Ahmednagar Division, Ahmednagar in R.T.S. Appeal No.30 of 2007, the order dated 29th May, 2009, passed by the Additional Collector, Ahmednagar in Second R.T.S. Appeal No.118 of 2007, and the order dated 25th February, 2011, passed by the Divisional Commissioner, Nashik Division, Nashik in R.T.S. Revision No.223 of 2009, are quashed and set aside; consequently Mutation Entry No.3126 stands restored.

III. Rule is made absolute in above terms.

[P. R. BORA, J.]

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