

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1479 OF 2016

Smt. Jenabai Budhya Gavit and another .. **Petitioners**

Versus

The State of Maharashtra and others .. **Respondents**

Shri D. S. Bagul, Advocate for the Petitioners.

Shri S. W. Mundhe, A.G.P. for Respondents.

CORAM : **S. V. GANGAPURWALA &**
MANGESH S. PATIL, JJ.

DATE : **28th September, 2017**

PER COURT :

1. The petitioner has been granted permission U/Sec. 36-A of the Maharashtra Land Revenue Code (*hereinafter to be referred as 'M.L.R.C.'*) i.e. for transfer of the land from tribal to non-tribal.

2. The grievance of the petitioner is that, the Nazrana Charges are directed to be paid as on the basis of the valuation as on the date of the order. According to the learned counsel, the same ought to be as on the date of the application. It was the State who had kept the application pending for a long time. Even, the petitioner had to approach this court seeking

directions against the respondent – Authority to decide the said application presented U/Sec. 36-A of the M. L. R. C., because of the delay on their part the petitioner cannot be penalised. The learned counsel relies on the judgment of the Apex Court in a case of **Union of India and another Vs. Mahajan Industries Limited** reported in **(2005) 10 Supreme Court Cases 203.** The learned counsel also relies on the judgment of the Division Bench of this court at Nagpur in a case of **Trimbakrao Mugutrao Deshmukh Vs. State of Maharashtra and another** reported in **2009 (2) Bom. C. R. 467.** The learned counsel also relies on the order of this court dated 7th July, 2016 in Writ Petition No. 2512 of 2015 with connected writ petitions.

3. Mr. Bagul, the learned counsel submits that the petitioners does not press prayer clause “B”.

4. The facts in this case are not much debated. The petitioner had filed an application seeking permission U/Sec. 36-A of the M.L.R.C for transfer of a land from tribal to non-tribal. The said application is filed on 21.1.2013. It is not the case of the respondent that the said application was deficient in any manner. The application was pending with the respondent – authority, the same was not being processed and decided. The petitioners had to approach this court by filing the writ petition seeking directions against the respondent to decide the said application expeditiously. This court under order dated 15th

April, 2014 in Writ Petition No. 3153 of 2014 and connected writ petitions directed the respondent to decide the proposal / application of the petitioner U/Sec. 36-A. Though this court directed the respondent to decide the said application / proposal within 6 months they took 1 ½ year to decide the same. The same was eventually decided on 5th December, 2015, thereby, granting permission for transfer of land from tribal to non-tribal, however, valued it as on the date of the decision.

5. As stated above, the application filed by the petitioner for transfer was complete in all respects, no deficiencies existed in the said application and the delay in deciding the application was absolutely on the part of the respondent – Authority, in spite of the directions of this court to decide it within 6 months they took 1 ½ year to decide the said application even after the order was passed by this court. The petitioner cannot be penalised for the fault of the respondent in deciding the said application.

6. In a case of *Mahajan Industries (supra)* the Apex Court was considering the material date to be considered while imposing the conversion charges for land use. The Apex Court categorically held that the rates would be charged as prevalent on the date of filing of the application.

7. Even, in a case of *Trimbakrao (supra)* the Nagpur Bench of this court held that the application was filed for sale of the land

under the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 in the year – 1994 and the said application was kept pending by the Government for a long time. The Government required the petitioner therein to pay Nazrana as per the Rules of 2001. The Division Bench held that the Nazarana would be paid as per the valuation as on the date of the application.

8. In view of the aforesaid the direction issued to the petitioner under order (**Exhibit-'F'**) to pay Nazrana on the valuation of the property as in 2015 is quashed and set aside. The respondents shall charge Nazarana on the valuation of the property as on the date of the application.

9. The writ petition is disposed of. No costs.

[MANGESH S. PATIL, J.] [S. V. GANGAPURWALA, J.]

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