

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12026 OF 2016

Shri Bhagwan Balu Katkari and Another. .. Petitioners
Vs
The State of Maharashtra and Others. .. Respondents
—
Shri Suresh M.Sabrad for the Petitioners.
Shri V.P. Malvankar, AGP “A” Panel for the Respondents.
—

CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 24TH JANUARY 2017

P.C.

1. Rule. The learned AGP waives service for the Respondents.
2. Considering the narrow controversy involved, the Writ Petition is forthwith taken up for final disposal.
3. The first Petitioner is a Tribal and is claiming to be the owner of the land more particularly described in Paragraph 3 of the Petition. The second Petitioner is a non-Tribal. As the first Petitioner was intending to sell his land to the second Petitioner, an Application was made to the District Collector in accordance with Sub-section (1) of Section 36A of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”). Sub-section (1) of Section 36A of the said Code

provides that no occupancy of a Tribal shall be transferred in favour of any non-Tribal by way of sale, gift, exchange, mortgage, lease or otherwise except with the previous sanction of the Collector. Clause (b) of Sub-section (1) of Section 36A of the said Code further provides that in case of a sale, the Collector can grant previous sanction only with the previous approval of the State Government.

4. In the facts of the case, the Application made by the Petitioners was recommended by the Additional Collector, Raigad by submitting a proposal to the Divisional Commissioner, Konkar Division. It appears that the Divisional Commissioner by letter dated 7th March 2015 forwarded the proposal to the Principal Secretary of the Revenue Department recommending the case of the Petitioners. By the impugned order dated 6th August 2016, the State Government informed the District Collector, Raigad, about its inability to grant previous approval in accordance with Clause (b) of Sub-section (1) of Section 36A of the said Code.

5. The State Government referred to the Maharashtra Land Revenue (Transfer of Occupancy of Tribals to Non-Tribals) Rules, 1975 (for short "the said Rules"). The State Government came to the conclusion that as per Rule 4 of the said Rules, the transfer can be permitted only for a genuine non-agricultural purpose. It was,

therefore, stated that the Application does not specify the particulars of the proposed non-agricultural use and it only mentions that the land is proposed to be used for the industrial use. It is observed that the Purchaser had not submitted the Project Reports and Plans disclosing the particulars of the non-agricultural use for which the land is intended to be used. It was stated that in absence of the Project Reports and Plans, it is not established that the land will be used for a bonafide and genuine non-agricultural purpose after it is sold to the second Petitioner.

6. The learned counsel appearing for the Petitioners submitted that the impugned order reads into a statute a requirement which is not provided for. He relied upon the order dated 10th March 2015 in Writ Petition No.2512 of 2015 (*Karansingh Sakharam Bill and Another v. The State of Maharashtra and Others*) wherein a Division Bench at Aurangabad has dealt with a similar matter where a proposal for previous sanction was rejected on the same ground. He also invited our attention to the Circular dated 15th September 2010 which provides that in a given case, it is found that by virtue of the proposed sale transaction, if Tribal was likely to be rendered landless, while granting the sanction, a condition should be imposed of the Purchaser making available alternate land to the Tribal and transferring the said land in the name of the Tribal in the revenue record.

7. The learned AGP has placed on record a letter dated 24th November 2016 addressed to him by the Desk Officer of the Revenue and Forest Department. In the said letter, it is stated that prior approval cannot be granted unless documents are placed on record to show the proposed non-agricultural use so that the Authorities are satisfied that the intention is to use the agricultural land for bonafide non-agricultural use. The letter records that a Committee appointed by the State Government has taken a decision that if after the transfer of land, holding of a Tribal is likely to be reduced to less than one Acre in case of Bagayati land and 2.5 Acres in respect of Jirayati land, a sanction under Section 36A of the said Code should be refused.

8. We have perused the provisions of Section 36A of the said Code. Restrictions on transfers of occupancies by Tribals have been imposed under the said Code considering the position of the Tribals in our society. The legislature was aware of the possibility that the Tribals can be easily deceived and that transfer of their lands or occupancies can be obtained even by paying a lesser consideration or for nominal consideration. Therefore, in case of sale of an occupancy by Tribals to non-Tribals, not only the previous sanction of the Collector is required but it is specified that such a previous sanction can be granted by the Collector only with the previous approval of the State Government.

9. Proviso to Section 36A of the said Code provides 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 by way of transfer. Moreover, Sub-section (2) of Section 36A of the said Code makes it clear that the Collector is empowered to impose conditions while granting sanction. The object of Section 36A of the said Code is to ensure that the Tribal is benefited by virtue of transfer of his occupancy.

10. Apart from the proviso to Sub-section (1) of Section 36A of the said Code, the question whether the sanction should be granted by the Collector or previous approval should be granted by the State Government is to be decided considering the factual aspects of each case. It cannot be laid down as an absolute proposition of law that the sanction cannot be granted or approval cannot be granted in every case where a Tribal is likely to be rendered landless by virtue of the proposed transfer. Depending upon the nature of the transaction and the nature of the need pleaded by the Tribal, in a given case, the fact that the Tribal is likely to be rendered landless can be a relevant consideration. Moreover, in a given case, the State Government or the Collector can insist on a Project Report being filed to establish that after the transfer, the land is to be used for bonafide non-agricultural purposes. If on the

basis of the material produced by the Applicant, the Authorities are not satisfied that the land is likely to be used for bonafide non-agricultural use, in such a case, the Authorities can call upon the Purchaser to file a Project Report, Plan, and other documents.

11. In the present case, prior approval has been rejected only on the ground that Project Reports and Plans have not been filed to establish that the intention is to use the land for bonafide non-agricultural use. The Petitioners have filed an affidavit setting out that they have filed Project Report and Plan. To avoid any dispute, we propose to direct the Petitioners to file Project Reports and Plans in the office of the Collector.

12. While setting aside the impugned order, a permission will have to be granted to the Petitioners to file Project Reports and Plans with the Collector so that the Collector can examine the same and submit appropriate recommendations to the Divisional Commissioner, Konkan Division, who in turn, can submit his own recommendations to the State Government on the question of grant of prior approval under Clause (b) of Sub-section (1) of Section 36A of the said Code. If the Collector is not satisfied with the documents, he can always call upon the Petitioners to file additional documents.

13. In the circumstances, we dispose of this Petition by passing the following order:

ORDER :

- (a) The impugned communication dated 6th August 2016 (Exhibit-E to the Petition) is hereby quashed and set aside;
- (b) We direct the Petitioners to produce Project Report and Plans in the office of the District Collector of Raigad District within a period of one month from the date on which this judgment is uploaded;
- (c) It will be open for the Collector to call upon the Petitioners to file additional documents;
- (d) The Collector of Raigad shall examine the said documents, if filed by the Petitioners and shall submit appropriate recommendations to the Divisional Commissioner, Konkan Division, within a period of six weeks from the date on which the documents are filed;

- (e) After examining the proposal submitted by the District Collector, the Divisional Commissioner, Konkan Division shall submit his own recommendations to the State Government within a period of six weeks from the date of receipt of the proposal from the District Collector, Raigad;
- (f) After considering the recommendations of the Collector and the Divisional Commissioner, Konkan Division, the State Government shall take appropriate decision on the question of grant of prior approval under Clause (b) of Sub-section (1) of Section 36A of the Maharashtra Land Revenue Code, 1966 within a period of two months from the date on which the proposal is received from the office of the Divisional Commissioner, Konkan Division;
- (g) The State Government shall communicate its decision to the District Collector, Raigad, who shall pass an order on the Application made by the Petitioners within a period of one month

from the date on which the order of the State Government is communicated to him;

- (h) We make it clear that the Authorities including the State Government shall take decision in the light of the observations made in this judgment;
- (i) The Rule is made partly absolute on above terms;
- (j) All concerned to act upon an authenticated copy of this judgment.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)