

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO.26878 of 2017

Usha Rupabai Parmar .. Petitioner
Versus
The State of Maharashtra & Anr .. Respondents

...

Mr.Akshay Chikhale i/b Kayval Shah for the petitioner.
Mrs.M.P.Thakur, AGP for the State.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S.SONAK, J.**

DATED: 1st NOVEMBER, 2017

P.C.:-

1 Heard learned counsel for the petitioner.

2 The petitioners claim to be the purchasers of certain property situate at 'Poman' consisting of different Survey numbers, is before us seeking a direction to the respondent to consider the application under Section 36 and 36A of the Maharashtra Land Revenue Code filed at the instance of the owners of the properties who belong to *Adivasi* community.

3 Apparently, under Land Revenue Code, a procedure is contemplated how the property belonging to Schedule Tribe has to be dealt with. Without prior permission of the concerned

Tilak

authority under the Act, they cannot sell the property to persons other than the *Adivasi*/Schedule Tribe.

4 In that view of the matter, we fail to understand how and why the purchaser is before this Court and not the seller. On the other hand, we also note that the seller was reluctant to go ahead with the alleged agreement of sale of 2007, and there were two suits against the seller who belong to *Adivasi* community. There seems to be some consent terms in the regular Suit No.330 of 2008 and so also Regular Civil Suit No.110 of 2007 which are part of the record at Exhibit-C and D. The above consent terms seems to be of the years 2009 and 2015.

5 The petitioner also submits that when the respondent authorities called upon the seller of the property to appear before the authority, they fail to appear before the authority.

6 In that view of the matter, we fail to understand how the purchaser of the property can seek the reliefs sought in the writ petition that the court should direct the respondent authorities to issue the permission sought by a reluctant *Adivasi* who did not appear before the authority. Apparently, said seller also is not made a party to the proceedings. Under these circumstances, we are of the opinion that at the instance of the purchaser, an application as contemplated under Section 36 and 36A cannot be entertained. If petitioner is entitled to get such a direction against the seller of the property from a competent Court, he must approach the said competent court for a direction

against the seller to appear before the concerned authority seeking permission.

7 Under these circumstances, we cannot entertain the application filed by the petitioner, and accordingly, petition is rejected.

8 We make it clear that if the seller of the property approaches the concerned authority pursuing the permission sought in the application, none of the observations made by us would come in the way of disposing of such application by the respondent authority.

(M.S.SONAK, J)

(CHIEF JUSTICE)