

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7860 OF 2018

Girish S. Vasave ... Petitioner.
V/s.
The Collector, Dist. Nashik and ors. ... Respondents.

Mr. R.D. Soni I/b Ram and Company for the Petitioner.
Mr. N.C. Walimbe, AGP for Respondent Nos.1 to 5.

CORAM : A.S. OKA AND M.S. SONAK, JJ.
DATE : 3rd SEPTEMBER 2018.

ORAL JUDGMENT (PER A.S.OKA, J.)

1] Rule. The learned AGP waives service for the respondents. He seeks time. Considering the very narrow controversy involved in this petition, we decline the request for grant of time and take up the petition for final disposal.

2] The petitioner claims that he belongs to Scheduled Tribe. He claims to be the owner of the land more particularly described in paragraph 1 of the petition. He states that he has purchased the subject land after a permission was granted by the Additional Commissioner by order dated 16th July 2014. In November 2014, he applied for grant of permission under Section 36A of the Maharashtra Land Revenue Code, 1966 (for short the "said Code") seeking transfer of his occupancy in respect of the said land by way of sale to a non-tribal. As per clause (b) of sub-section (1) of Section 36A of the said Code, an occupancy of a tribal cannot be transferred in favour of non-tribal by way of sale except on an application

of such non-tribal and except with the previous sanction of the Collector. The Collector is empowered to grant previous sanction only with previous approval of the State Government.

3] It appears that the application for transfer was processed and the Additional Collector, Malegaon, called upon the Talathi, Malegaon to submit a report. Accordingly, on 26th March 2015, a report was submitted by Talathi, Malegaon to the Additional Collector. The Petitioner has annexed to the petition a detailed report dated 15th November 2016 submitted by the Additional Collector, Malegaon to the Divisional Commissioner, Nashik Division. On the basis of the facts recorded in the said report, the Additional Collector recorded that he has no objection for submitting a proposal for grant of prior approval through the Office of the Divisional Commissioner. By a letter dated 8th March 2017, the Assistant Commissioner (Administration) in the Office of Divisional Commissioner submitted a detailed proposal to the Principal Secretary of the Revenue and Forest Department for considering the prayer for grant of prior approval under clause (b) of sub-section (1) of Section 36A of the said Code. The learned AGP does not dispute that the said proposal is pending with the State Government and no decision has been taken thereon.

4] Section 36A of the said Code is enacted for protecting the tribals. Therefore, a provision is made that in case a tribal wants to transfer his occupancy by way of a sale to a non-tribal, he cannot do so without previous sanction of the District Collector and that the District Collector cannot grant a sanction without prior approval of the State Government.

In the affidavit filed by the petitioner in support of the application seeking sanction of the Collector, he has stated that he is unable to cultivate the subject land and he needs money for the payment of amounts borrowed by him.

5] It is not mandatory for the State Government to grant previous approval. It is also not mandatory for the Collector to grant previous sanction. The Collector is also empowered to grant sanction by imposing such conditions as may be prescribed.

6] If an application is made under sub-section (1) of Section 36A of the Code, the same cannot be kept pending for a long time and appropriate decision has to be taken thereon within a reasonable time. The proposal for grant of previous approval is pending with the State Government for last about 1 and ½ years. The said proposal has been submitted after the Talathi, Additional Collector and the Office of the Divisional Commissioner made necessary enquiry. Considering the scheme of Section 36A of the said Code, the application for grant of sanction and consequently the proposal for grant of previous approval cannot be kept pending for such inordinately long time. Keeping the application and the proposal pending for such a long time may attract violation of Article 14 of the Constitution of India.

7] We, therefore, propose to direct the State Government to take appropriate decision within the time bound manner. Accordingly, we pass the following order:-

(a) The State Government will consider the proposal dated 8th March 2017 forwarded by the Office of the Divisional Commissioner (Exhibit-N to the petition) for grant of previous approval under clause (b) of sub-section (1) of Section 36A of the said Code and appropriate decision shall be taken on the said proposal within a period of two months from the date on which this order is uploaded. The decision shall be forthwith communicated to the District Collector of Nashik;

(b) If the State Government grants previous approval, the District Collector or the Additional Collector, as the case may be, shall take appropriate decision on the question of grant of previous sanction under sub-section (1) of Section 36-A of the said Code as expeditiously as possible and in any event within a period of two months from the date on which the previous approval is communicated to the Office of the District collector;

(c) All contentions on merits of the pending application and the pending proposal are kept open;

(d) Rule is made partly absolute on the above terms.

(M. S. SONAK, J.)

(A.S.OKA, J.)