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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5042 OF 2017

Shri. Bharatsing Sukhlal Pardeshi and Anr. ... Petitioners
V/S
The State Of Maharashtra Through Its Secretay and Ors. ... Respondent

WITH
WRIT PETITION NO. 5038 OF 2017

Machindra Ratan Patil and Anr. ... Petitioners
V/S
The State Of Maharashtra And Ors. ... Respondent

WITH
WRIT PETITION NO. 5040 OF 2017

Shri. Ganesh Yashwant Sarvade and Anr. ... Petitioners
V/S
The State Of Maharashtra And Ors. ... Respondent

WITH
WRIT PETITION NO. 5041 OF 2017

Mahendra Champalal Jain and Anr. ... Petitioners
V/S
The State Of Maharashtra Through its Secretary and Ors. ... Respondents

WITH
WRIT PETITION NO. 7385 OF 2017

Shri. Rajendra Sundar Shetty ... Petitioner
V/S
The State Of Maharashtra Through Its Secretary and Ors. ... Respondents

WITH
WRIT PETITION NO. 13717 OF 2017

Vikram Kishan Verma and Anr.

... Petitioners

V/S

The State Of Maharashtra Through its Secretary and Ors. ... Respondents

Mr. Suresh M. Sabrad a/w Ms. Neha R. Parle for the Petitioners.

Mr. P.G. Sawant AGP for Respondent Nos.1 to 5 - State.

CORAM : A.S.OKA AND M.S. SONAK, JJ.

DATE : 7th SEPTEMBER 2018.

P.C. :

1 Heard the learned counsel appearing for the petitioners. Rule. The learned AGP waives service for the respondents. Forthwith taken up for final disposal.

2 These petitions are filed by the petitioners who are Tribals and Non-Tribals. The Tribals are the holders of lands. Applications were made to the District Collector of Raigad District under sub-section (1) of Section 36A of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”). Applications were made for grant of permission for transfer of occupancy of Tribals in favour of the Non-Tribals by way of sale. Clause (b) of sub-section (1) of Section 36A empowers the Collector to grant previous sanction to such a sale with the previous approval of the State Government.

3 In these petitions under Articles 226 and 227 of the Constitution of India, the challenge is to the decision taken by the State Government of refusing to grant prior approval contemplated by clause (b) of sub-section (1). From the impugned orders, it appears that it was claimed in the applications filed under Section 36A that after the transfer

by way of sale is permitted, the Non-Tribals propose to use the same for non-agricultural purposes. In the impugned order, only one reason is given (except in Writ Petition No.7385 of 2017) for rejecting prayer for grant of previous approval. The reason is that in the application made by the petitioners, the particulars of the proposed non-agricultural use are not set out. It is stated that with a view to examine the object of transfer of land by way of sale, it is necessary to ascertain the exact nature of the proposed non-agricultural use. While rejecting the prayer for grant of previous approval, a liberty has been granted to the petitioners to make a fresh application. In Writ Petition No.7385 of 2017, one additional reason has been recorded. The said reason is that as the land is in the scheduled area, compliance with the requirement of the Government circular dated 6th January 2017 is required to be made and the same has not been made. The learned counsel appearing for the petitioner on instructions of the petitioner in the said writ petition states that the land is not situated in any scheduled area.

4 The learned counsel appearing for the petitioners states that the petitioners will make fresh applications under sub-section (1) of Section 36A and will submit a detailed project report and plans. He states that the petitioner in Writ Petition No.7385 of 2017 will satisfy the Collector by producing necessary material that the land is not within the scheduled area and therefore, the circular dated 6th January 2017 is not applicable. At this stage, the learned counsel appearing for the petitioners submits that instead of filing a fresh application, the petitioners may be permitted to produce the project reports and plans and other relevant documents. He places reliance upon the judgment and order dated 24th

January 2017 passed by a Division Bench of this Court in Writ Petition No.12026 of 2016 (Shri Bhagwan Balu Katkari and Anr. Vs. The State of Maharashtra Ors.). The learned AGP supported the impugned orders and submitted that no interference is called for.

5 We have considered the submissions. The impugned orders/impugned communications itself record that a fresh application could be made by the petitioners to the District Collector. In these petitions, the proposals for grant of previous approval have been rejected on the ground that the petitioners have not come out with the details of the proposed non-agricultural use. Therefore, the applications which are already made can be ordered to be reconsidered subject to the petitioners producing project reports and plans in the office of the District Collector. Apart from submitting the project reports and plans, the petitioner in Writ Petition No.7385 of 2017 is free to submit the documents showing that subject land is not within any scheduled area.

6 According to us, the order dated 24th January 2017 passed by this Court which is referred above deals with the similar situation. Accordingly, we pass the following order :-

ORDER

- (i) The impugned orders/ impugned communications are hereby quashed and set aside;
- (ii) We direct the Petitioners to produce Project Reports 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;

- (iii) It will be open for the Collector to call upon the Petitioners to file additional documents;
- (iv) 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;
- (v) 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;
- (vi) 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 Subsection (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;
- (vii) 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;

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

(M.S. SONAK, J.)

(A.S.OKA, J.)