

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6098 OF 1999

1. Shri Mohd. Vazir S/o Mohd. Haji

(Deleted as per court order
dtd 06/12/2018)
2. Shri. Mohd. Rafi S/o Mohd. Haji,
Age 34 years, R/o Dharmabad,
Tal. Biloli, Dist. Nanded. = **PETITIONERS**

VERSUS

1. Gangaram S/o Gangaji Kondalwar
(Kanlod)
(since died, his L.R.)
- 1A Shri Rajanna Gangaram Kanlod
(Died through L.R)
- 1A-A. Shri Pawan S/o Rajanna Kanlod
Age-Major, Occ. Nil,
R/o A/p Mangnali, Tq. Biloli,
Dist. Nanded.
2. Ashok S/o Venkatram
(deceased through L.R.)

Gangadhar S/o Venkatram Paldewar,
Age 48 yrs., Occ. Agril.,
Advocate, R/o at post Biloli,
Dist. Nanded.
3. Mohd. Haji Miya

(Abated as per Addl.Registrar's
order dtd. 11/10/02)
4. The State of Maharashtra = **RESPONDENTS**

Mr. AG Godhamgaonkar, Advocate for Petitioners;
Mr KB Jadhavar, AGP for Respondent-State;

Mr.AS Kale, Adv. h/for Mr. SB Talekar, Adv. For
Resp.1-A and 1-B.

CORAM : P.R.BORA, J.

RESERVED ON : 3rd May, 2019

PRONOUNCED ON : 27th August, 2019

JUDGMENT

1. Order dated 26th May, 1993 passed by
Tahsildar, Biloli in File
No.1991/Tribal/Tenancy/KP-329 is challenged by the
petitioners in the present petition.

2. Few facts, which are relevant to decide
the present petition, can be stated thus, -

a. On 3.12.1977, Respondent No.1 sold
the land bearing Gut No.135(Survey No.83/B)
admeasuring 1 hectare and 67 Ares situated at
village Mangnali, Tq. Biloli District Nanded,
to Respondent No.2 by registered sale deed.
After death of Respondent No.2, his brother
Shripati sold the subject land to the
petitioner on 22/31-01-1982.

b. On 16th April, 1983, Additional
Tahsildar, Biloli ordered for restoration of

the land to Respondent No.1 under Section 59 of the Maharashtra Land Revenue Code in case No.83/ADI/CR-32 on an application of Respondent No.1 claiming that he belongs to 'Mannerwarlu', which is a scheduled tribe. In pursuance of the said order, possession of the subject land was delivered to Respondent No.1 by the Circle Inspector on 1.5.1984.

c. The petitioner challenged the order passed by the Additional Tahsildar, Biloli on 16.4.1983 before the Maharashtra Revenue Tribunal (herein after referred to as the Tribunal) and Aurangabad Bench of the Tribunal, set aside the said order, vide its judgment and order dated 9.10.1984.

d. The order passed by the Tribunal was challenged by Gangaram Gangaji Kondalwar, i.e. deceased Respondent No.1, in Writ Petition No. 912/1984 before this court. This Court, vide its judgment and order dated 31st July, 1991, while allowing the writ petition, remanded the matter to the Tahsildar with a direction to

decide it afresh after giving due opportunities to the parties to submit their say and adduce their evidence.

e. Tahsildar, Biloli, after holding an inquiry, held that Respondent No.1 belongs to 'Mannerwarlu' scheduled tribe. Aggrieved by the said decision, the petitioner has filed the present petition.

3. Shri AG Godhamgaonkar, learned counsel appearing for the petitioners, submitted that the Tahsildar has grossly erred in holding that the verification of the tribe claim of Gangaram Gangaji Kondalwar i.e. deceased Respondent No.1, can be decided by verifying the record and it was not necessary to call upon the parties to make their submissions on the said issue. The learned counsel further submitted that the Tahsildar did not issue any notice to the petitioner and conducted the inquiry behind the back of the petitioner. The learned counsel further submitted that the Tahsildar could not have decided the tribe of Respondent No.1 under Section 36-A of the

Maharashtra Land Revenue Code, 1966 (hereinafter referred to as the Code). The learned counsel submitted that the scrutiny of the tribe claim of deceased Respondent No.1 could have been done only by the Caste Scrutiny Committee and not by the Tahsildar. The learned counsel further submitted that the decision rendered by the Tahsildar is thus without jurisdiction and hence *non-est*.

4. The learned counsel further submitted that this Court, in a judgment delivered in WP No. 912/1984, had directed the Tahsildar to decide the proceedings initiated on an application of Respondent No.1 under the MLR Code for restoration of the land, after giving opportunities to all the parties to file their say and adduce evidence. But the Tahsildar, Biloli did not understand the import of the order so passed by this Court and without jurisdiction, undertook exercise of caste verification of Respondent No.1 and without any opportunity to the petitioner, recorded a finding that Respondent No.1 belongs to 'Mannerwarlu' tribe.

5. Relying on the judgment of the Hon'ble Apex court in the case of Kumari Madhuri Patil and Anr. Vs. Additional Commissioner, Tribal Development and Ors.- AIR 1995 SC 94(1), the learned counsel submitted that to conduct an inquiry in verification of the tribe claim of Respondent No.1, was within the exclusive jurisdiction of the Caste Scrutiny committee and the Tahsildar could not have held any such inquiry and could not have passed any order, certifying the caste/tribe of Respondent No.1. The learned counsel submitted that since Respondent No.1 was not belonging to scheduled tribe, the subject land was not liable to be restored under Section 36-A of the Code.

6. The learned counsel further submitted that no proceedings for restoration of land could have been entertained under Section 36-A(4) of the MLR Code beyond the period of three years. The learned counsel submitted that the order passed on 16.4.1983 was thus liable to be vitiated on the ground of limitation also.

7. The learned counsel further submitted that in the sale deed executed by Rajanna s/o Gangaram Kandlewar on 10th October, 1995 in favour of one Vinayak s/o Lalu Lalayya registered at the Sub-Registrar's office at Biloli, it is categorically stated that the vendor i.e. Rajanna s/o Gangaram Kandlewar does not belong to 'Adiwasi' or scheduled castes or scheduled tribes. The learned counsel submitted that in view of the averments in the aforesaid sale deed, serious doubts are created about the order passed by Tahsildar Biloli on 26th May, 1993, declaring said Gangaram Gangaji Kandlewar to be belonging to 'Mannerwarlu' which is a scheduled tribe. For all aforesaid reasons, the learned counsel prayed for setting aside the order dated 26th May, 1993 passed by Tahsildar Biloli and consequently to restore back the possession of the subject land, i.e. Gut No. 135 to the present petitioner by dispossessing Respondent No.1.

8. The learned counsel for the respondents supported the order dated 26th May, 1993 passed by Tahsildar Biloli. The learned counsel submitted

that the subject land was rightly ordered to be restored to Respondent No./1 since the same was sold to non-tribal without obtaining prior permission there for. The learned counsel further submitted that the subject land is in possession of the respondent since 1st May, 1984.

9. The learned counsel further submitted that during pendency of the present petition, an application was preferred by the present petitioner to Tahsildar, Dharmabad for mutating the subject land in his name. The learned counsel further submitted that in the said application, it was falsely represented by the present petitioner that the High Court had decided the matter in his favour in WP No. 912/1984. The learned counsel further submitted that the Tahsildar, Dharmabad rejected the said application vide order passed by him on 13.7.2011.

10. The learned counsel further submitted that the petitioner filed an appeal against the order dated 13.7.2011 passed by Tahsildar, Dharmabad before the Sub Divisional Officer,

Dharmabad. The learned counsel further submitted that the Sub Divisional Officer, Dharmabad has also not caused any interference in the order passed by the Tahsildar. The learned counsel further submitted that the petitioner has suppressed the aforesaid facts from this court and the present petition filed by him deserves to be dismissed on the said ground alone. The learned counsel further submitted that during pendency of the present petition, the successor-in-interest of deceased Gangaram Gangaji Kanlod, viz. Pavan Rajanna Kanlod has got validated his caste by the Scheduled Tribe Certificate Scrutiny Committee and the said Committee had issued a Certificate of validity on 11th August, 2011, certifying that Pavan Rajanna Kanlod belongs to "Mannerwarlu" scheduled tribe. The learned counsel further submitted that in view of the caste validity certificate issued in favour of Pavan Rajanna Kanlod, who is now arrayed as respondent being successor-in-interest of late Gangaram Gangaji Kanlod, there has remained no force in the contention raised on behalf of the petitioner that Gangaram Gangaji Kanlod was not belonging to the scheduled tribe. For all these

reasons, the learned counsel has prayed for dismissal of the writ petition.

11. I have given due consideration to the submissions made by the learned counsel for the respective parties. I have perused the impugned judgment and the other material placed on record.

12. The main grievance raised by the petitioner in the present petition is, that the order dated 26.5.1993 passed the Tahsildar Biloli, which is impugned in the present petition, has been passed without giving any opportunity of hearing to the present petitioner. There appears substance in the objection so raised. It is not in dispute that this court, vide judgment and order dated 31st July, 1991 passed in Writ Petition No. 912/1984, has remitted the matter to the Tahsildar with certain directions. I deem it appropriate to reproduce Para 6 of the said judgment, which contains the said directions, which reads thus, -

"6. In the result, writ petition is allowed. The order passed by learned Addl. Tahsildar, Sub-

Division, Degloor, dated 16th April, 1984, in case No.83/ADI/CR-32 and that of the learned Member of the Maharashtra Revenue Tribunal dated 9th October, 1984 in Tribal Appeal No. 39/A/1984/Nanded, are both set aside. The matter is remitted back to the Addl. Tahsildar, Sub-Division Degloor, and if this post is not there now, then to the Tahsildar whosoever would be dealing with the matters concerning the tribal transfers arising out of Taluka Biloli, with a direction that he would give due opportunity to the parties to submit their say in respect of the claim made under Section 36A of the Maharashtra Land Revenue Code, 1966. The learned Tahsildar shall give due opportunity to parties to adduce evidence as is required and then decide the matter afresh. I am told at the Bar that the possession has already been handed over to the alleged tribal transferor. Needless to say that this possession will continue till the fresh inquiry is completed by the Tahsildar which he would do as expeditiously as possible. Rule is made absolute in the above terms. In the circumstances of the case,

parties to bear their own cost of this petition"

13. It is evident that this court had specifically directed the Tahsildar, whosoever would be dealing with the matter concerning the tribal transfers, arising out of Taluka Biloli to give due opportunity to the parties to submit their say in respect of the claim made under Section 36A of the Maharashtra Land Revenue Code, 1966. It was also directed by this court that the learned Tahsildar shall give due opportunity to the parties to adduce evidence as is required and then decide the matter afresh. Perusal of the order dated 26th May, 1993, reveals that Tahsildar, Biloli has passed the said order without giving any opportunity of hearing to the present petitioner. Such course was wholly impermissible.

14. In WP No.912/1984, it was contended on behalf of the present petitioner that the order dated 16.4.1983 passed by Additional Tahsildar, Biloli was passed without discussing the evidence on record and error was committed by him in putting the onus on the transferee to prove that the

transferor was not a tribal. It was also argued on behalf of the present petitioner that no appropriate inquiry was conducted by the said Additional Tahsildar in regard to the claim of the transferor that he belongs to scheduled tribe. It was also contended by the present petitioner that the close scrutiny of the claim made by the transferor that he belongs to scheduled tribe was necessary. It was in the background of such submissions made on behalf of the present petitioner that this court in the judgment delivered in WP No.912/1984 has observed that, "if a person wants to take benefit of a special statute wherein the benefits are restricted to a particular class, it would be open for that person to prove that he belongs to that class". In Para 5, this court had therefore observed that the matter was liable to be remitted to the trial court, i.e. Additional Tahsildar, Sub-Division Degloor or any other Tahsildar to whom jurisdiction is vested in law to decide the similar matter. Making such observations in Para 5 of the judgment, certain directions came to be issued in Para 6 of the said judgment, which I have reproduced herein above.

15. In light of the observations made and the directions given by this court in WP No. 912/1984, if the order passed by Tahsildar, Biloli on 26.5.1993 is perused, there remains no doubt that Tahsildar; Biloli has passed the said order without following the directions given by this court in WP No.912/1984.

16. There also appears substance in the objection raised by the petitioner that Tahsildar was not having any right or authority to verify and/or certify the caste of defendant – Gangaram. In support of the aforesaid contention, Advocate Godhamgaonkar has relied upon the judgment of the Hon'ble Apex court in the case of Kumari Madhuri Patil and Ors Vs. Additional Commissioner, Tribal Development and Ors. - AIR 1995 SC 94(1). Though the matter before the Hon'ble Apex court was in relation to the admissions into educational institutions, the ratio laid down by the Hon'ble Apex court is material. The Hon'ble Apex court in the said decision has laid down certain procedure for issuance of social status certificates, their scrutiny and their approval. As per the said

procedure, the application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer and Deputy Collector or Deputy Commissioner and the Certificate shall be issued by such officer rather than at the officer Taluka or Mandal level. It is further laid down in the said judgment that the verification of the caste must be done by the Scrutiny Committee and not by any other officer. The Hon'ble Apex court has also laid down certain guidelines for constitution of such scrutiny committees. The learned counsel submitted that the caste of Gangaram could have been certified only by the Caste Scrutiny committee and not by the Tahsildar, who himself had issued the caste certificate. In view of the judgment of the Hon'ble Apex court in the case of Ku.Madhuri Patil (cited supra), the objection, as has been raised by the petitioner, has to be sustained.

17. The respondent has filed his affidavit in reply in the present matter and has also filed, along with the said affidavit, certain documents at Exhibit R-1 to Exh.R-6. The petitioner has

admittedly not filed any rejoinder to the affidavit in reply so submitted on behalf of Respondent No.1 viz. Pavan Rajanna Kanlod. In his affidavit in reply, Respondent No.1 has stated about the proceedings initiated by the present petitioner before Tahsildar, Dharmabad and has also filed the order passed in the said matter by Tahsildar, Dharmabad on 13.7.2011. Respondent No.1 has also placed on record a copy of the order passed by Sub Divisional Officer, Dharmabad on 6.6.2014 in an appeal filed by the present petitioner against the order passed by Tahsildar, Dharmabad on 13.7.2011. On perusal of the order passed by Tahsildar Dharmabad on 13.7.2011, it is revealed that the present petitioner had submitted in the application filed by him before Tahsildar, Dharmabad that the High Court has decided the matter in his favour in WP No.912/1984. A copy of the original application is not before this court. In the circumstances, though in absence of any contrary evidence, there seems no reason for disbelieving the fact, as is stated in the order passed by Tahsildar, Dharmabad on 13.7.2011, I do not wish to enter into the said controversy. It is however a fact that the

petitioner himself did not file on record a copy of the said decision or not even disclosed to this court that during pendency of this petition, such application was filed by him before Tahsildar, Dharmabad. In fact, when the petition was pending before this court, no such application could have been filed by the present petitioner.

18. It is further revealed that the complete facts are not brought on record by the parties. Perusal of the order dated 6.6.2014 passed by Sub Divisional Officer, Dharmabad, demonstrates that the Sub Divisional Officer Dharmabad has directed the Tahsildar to re-enquire the matter and to take fresh decision thereon. It is thus evident that the Sub Divisional Officer has remitted the matter to Tahsildar, Dharmabad for re-enquiry. Neither the petitioner nor Respondent No.1 have disclosed as to whether such re-enquiry is held by Tahsildar, Dharmabad in view of the order passed by the Sub Divisional Officer, Dharmabad and if yes, what order has been ultimately passed by Tahsildar, Dharmabad.

19. Further, Respondent No.1 - Pavan Rajanna Kanlod, who has been brought on record as legal heir of deceased Gangaram, has filed on record his Caste Validity Certificate issued by the Caste Scrutiny Committee, certifying that he belongs to "Mannerwarlu" caste. The petitioner has not filed any counter affidavit, denying the said fact or disputing the said certificate. The petitioner has also not come out with any such case that the Caste Validity Certificate issued in favour of Pavan Rajanna Kanlod is challenged or disputed by him by filing any appeal or petition in that regard before the appropriate forum. Similarly, in the sale-deed executed by Rajanna Gangaram Kanlod, who has executed the said sale-deed in favour of Vinayak Yemewar on 10th October, 1995, the copy of which is placed on record by the petitioner, it is clearly averred that he does not belong to Aadiwasi or scheduled tribe. Nothing has been explained on behalf of Respondent No.1, who is son of said Rajanna Kanlod in regard to the aforesaid averment.

19. Irrespective of the circumstances, as aforesaid, the fact remains that Tahsildar, Biloli,

has passed the order dated 26th May, 1993 in utter disregard of the directions given by this Court in the order dated 31.7.1991 passed in WP No. 912/1984. Though it has been contended by the learned counsel appearing for Respondent No.1 that, in view of the caste validity certificate issued in favour of Pavan Rajanna, who is successor-in-interest of Gangaram, certifying that he belongs to "Mannerwarlu" scheduled tribe, the core controversy in the present matter whether the original transferor, viz. Gangaram, was belonging to scheduled tribe or not, stands answered and hence, no interference is required in the order dated 26.5.1993 passed by Tahsildar, Biloli, it is difficult to agree with the contention so raised. I reiterate that this Court in the judgment delivered in WP No. 912/1984 had specifically directed the Tahsildar to give due opportunity to the parties to submit their say and adduce evidence as required in respect of the claim under Section 36A of the Maharashtra Land Revenue Code and then decide the matter afresh. An inquiry, under Section 36A of the M.L.R. Code cannot be given a narrow interpretation to mean that its an inquiry

pertaining only to the caste of the transferor. In the circumstances, it appears to me that the only appropriate course in the present petition would be to again remit the matter to Tahsildar, Biloli to decide it afresh by considering the directions issued in WP No.912/1984 decided on 31st July, 1991.

20. In the result, following order is passed,
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ORDER

i. The order dated 26th May, 1993 passed by Tahsildar, Biloli in File No.1991/Tribal/Tenancy/KP-329, is quashed and set aside.

ii. The matter is remitted to Tahsildar, Biloli to decide it afresh in light of the observations made and directions given by this court in WP No. 912/1984 decided on 31st July, 1991.

iii. It is clarified that if now village Mangnali falls within the jurisdiction of newly created tehsil Dharmabad, Tahsildar Dharmabad shall

decide the matter afresh in light of the observations made and directions given by this Court in WP No. 912/1984 decided on 31st July, 1991.

iv. Considering the fact that the dispute between the parties is pending since the year 1983, the Tahsildar shall decide the application before him, as expeditiously as possible and preferably within the period of six months from the date of this order.

v. As was observed by this court in the order dated 31.7.1991 in WP No.912/1984, the possession of the suit land shall remain with Respondent No.1 till the fresh inquiry is completed by the Tahsildar.

vi. Rule is made absolute in the aforesaid terms. Pending civil application, if any, stands disposed of.

(P.R.BORA)
JUDGE