

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

**WRIT PETITION NO. 8788 OF 2015
WITH
CIVIL APPLICATION NO. 12472 OF 2015
IN WRIT PETITION NO. 8788 OF 2015**

1. Rajendra s/o Sambhaji Bagul
Age : 36 years, Occ : Nil,
R/o Birewadi, Tq. Sangamner,
Dist. Ahmednagar.
 2. Sanjay s/o Sambhaji Bagul
Age : 34 years, Occ : Nil,
R/o Birewadi, Tq. Sangamner,
Dist. Ahmednagar.
- ... Petitioners

Versus

1. The Divisional Commissioner,
Nashik Division, Nashik.
2. The Collector, Ahmednagar,
Tq. & Dist. Ahmednagar.
3. The Sub-Divisional Officer,
Sangamner Division, Sangamner,
Dist. Ahmednagar.
4. The Tahsildar, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.
5. The Hon'ble Minister
for Revenue and Forest Department,
Government of Maharashtra,
Mantralaya, Mumbai.
6. U-Tech Sugar Ltd.,
2055 Anant Residency,
Sadashiv Peth, Tilak Road
Pune – 411 030.
R/o F-901, Tarzer Park,
Arneshwar, Pune-09
Through its authorized signatory

Ravindra s/o Purushottam Birole
Age : 47 years, Occ : Chief Managing Director,
U-Tech Sugar Ltd., 2055
R/o. F-901, Tarzer Park,
Arneshwar, Pune-09.

... Respondents

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Mr. R. N. Dhorde, Senior Advocate i/by Mr. V. R. Dhorde, Advocate
for the Petitioners.

Mr. P. K. Lakhotia, AGP for Respondent Nos. 1 to 5.

Mr. S. B. Ghatol Patil, Advocate for Respondent No. 6.

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**WITH
CIVIL APPLICATION NO. 13019 OF 2015
IN WRIT PETITION NO. 8788 OF 2015**

VILAS S/O YASHWANT BAGUL AND ANOTHER
VERSUS
THE DIVISIONAL COMMISSIONER, NASHIK DIVISION, NASHIK
AND OTHERS

.....

Mr. V. D. Sapkal, Advocate for the Applicants.

Mr. P. K. Lakhotia, AGP for Respondent Nos. 1 to 5.

Mr. S. B. Ghatol Patil, Advocate for Respondent No.6.

Mr. R. N. Dhorde, Senior Advocate i/by Mr. V. R. Dhorde, Advocate
for Respondent Nos. 7 and 8.

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**WITH
CONTEMPT PETITION NO. 573 OF 2015
IN WRIT PETITION NO. 8788 OF 2015**

RAJENDRA S/O SAMBHAJI BAGUL AND ANOTHER
VERSUS
RAVINDRA S/O PURUSHOTTAM BIROLE AND ANOTHER

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Mr. R. N. Dhorde, Senior Advocate i/by Mr. V. R. Dhorde, Advocate
for the Petitioners.

Mr. S. B. Ghatol Patil, Advocate for Respondent No.1.

Mr. P. K. Lakhotia, AGP for Respondent State.

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CORAM : V. K. JADHAV, J.
RESERVED ON : 05.10.2018
PRONOUNCED ON : 20.06.2019

PER COURT:-

1. Being aggrieved by the order dated 13.05.2015 passed by respondent no.5- Hon'ble Minister, Revenue and Forest Department, Government of Maharashtra, in Revision Application No. RTS-3315/932/P.N./149/G-6, the petitioners, who were original respondent nos. 5 and 6 in the aforesaid revision application, preferred this Writ Petition.

2. Brief facts giving rise to the present Writ Petition are as follows:

a. The suit property involved in the present matter is land Gat no. 15 (original survey nos. 7 to 15), situated at village Kauthe Malkapur, Taluka Sangamner, District Ahmednagar and it is Hadola Watan land. Though the matter concerns with the permission to convert the suit property into non-agricultural use, certain facts, as pleaded by both the parties, are required to be mentioned.

b. The State Government has abolished the Watan lands as per the provisions of the Bombay Inferior Village Watans Abolition Act, 1958 (for short, "the Act of 1958"). The petitioners claim to be the heirs and legal representatives of the original watandar Shri Samba

Mohanna Bagul and co-owner of the land Gat no. 15, which is re-granted by the State Government. Thus, the petitioners claim to be the interested parties in land Gat nos. 15/9, 15/10 and 15/17 which is disputed in the present writ petition. The petitioners have already filed Special Civil Suit No. 27 of 2013 in the Court of learned Civil Judge, Senior Division, Sangamner claiming partition in the suit property and challenging the sale deeds executed in favour of Shri Ravindra Birole, Shri Shantanu Birole and Smt. Ashwini Birole in the said civil suit. Petitioners claim that their valuable rights are included in the suit property and hence the petitioners have filed the above mentioned suit for partition by metes and bounds. The said Ravindra Birole and two others filed an application under Section 9-A of the Civil Procedure Code and a separate application under Order 7 Rule 11 of the Civil Procedure Code contending that Special Civil Suit No. 27 of 2013 is not maintainable. Both the applications were heard on merits and the learned Civil Judge, Senior Division, Sangamner, by order dated 24.04.2015 held that the Civil Court has jurisdiction to entertain the said suit so also the issue of limitation is a mixed question of facts and hence the suit itself is maintainable. Against the said order dated 24.04.2015, Shri Ravindra Birole and two others filed Civil Revision Application No. 56 of 2015 before this Court and after hearing both the sides this Court by order dated 27.07.2015 specifically held that the suit filed by the present petitioners along

with others in the Civil Court is very well maintainable. The said suit is still pending before the Civil Judge, Senior Division, Sangamner.

c. According to the petitioners, though the said Mahar Watan land was abolished in the year 1965 by the State Government, thereafter, the State Government has decided to re-grant the lands in favour of the original watandars, who were in actual possession of the said watan properties. According to the petitioners, though there were no re-grant orders, some of the watandars illegally sold portion of Gat no. 15 and tried to effect mutation entry nos. 850 and 851. It is the case of the petitioners that even prior to the re-grant of land gat no. 15 to the original owners, it appears from the record that Arjun Bagul, Thaka Bagul, Dhana Bagul, Govind Laxman Bagul, so also Yesu Arjuna Bagul and Laxman Muka Bagul illegally sold part of land gat no. 15 (old survey no.8) on 22.09.1966 prior to re-grant of which mutation entry nos. 850 and 851 were taken. However, the said mutation entries came to be rejected by the concerned Tahsildar on the ground that the land itself was not re-granted. However, according to the petitioners, one Mr. Ravindra Birole claims that the re-grant order was passed in favour of Yesu Arjuna, Thaka Bagul alongwith 10 others by re-grant order no.137 of 1969 as Najrana was paid on 01.04.1965. It is tried to be shown by said Ravindra Birole that the mutation entry of the said re-grant order was taken on record

and the mutation entry nos. 928 and 929 came to be sanctioned by the Tahsildar on 11.02.1970. The petitioners further claim that said Ravindra Birole and his family members had purchased land from Gat nos.15/9, 15/10 and 15/17 admeasuring 30 R. under registered sale deed Nos.9922/2012, 6477/2012 and 4792/2012 without permission of the competent authority. According to the petitioners, in view of the amended provisions of the Act of 1958, permission to execute sale deeds of Hadola Watan land is necessary. So far as the mutation entries 456, 457 and 458 in respect of some portion of the land Gat no. 15 manipulated by earlier vendor of Mr. Ravindra Birole, namely, Vitthal Laxman Sagar in collusion with the Revenue authorities, one Vijay Jangu Bagul made a complaint to the concerned Sub-Divisional Officer bringing to his notice that even prior to re-grant, the sale deeds came to be executed in respect of the land Gat no. 15 by some persons and though the earlier mutation entries came to be rejected, yet mutation entry nos. 456, 457 and 458 were fraudulently taken. The Sub-Divisional Officer initiated *suo motu* revenue proceedings against the said mutation entry nos. 456, 457 and 458 respectively. Said Ravindra Birole filed Writ Petition No.7513 of 2013 before this Court and this Court granted status quo in the matter which continued from time to time.

d. According to the petitioners, though Ravindra Birole claims to have purchased the land out of land Gat no. 15 for agricultural purposes, later on in the year 2012-13, he has established a company, namely, U-Tech Sugar Limited (respondent no.6 herein). Thereafter, said Ravindra Birole has applied to the Sub-Divisional Officer for granting NA permission for conversion of use of the land for the said sugar industry. Respondent no.6 has applied under Section 44(1) of the Maharashtra Land Revenue Code, 1966 (for short, "the MLR Code") for non-agricultural permission of the land in Gat no. 15/9 ad-measuring 3 H. 95 R, old Gat no. 15/10 ad-measuring 3 H. 55 R., old Gat no. 15/17 ad-measuring 3 H. 98 R, total area ad-measuring 11 H. 48 R. bearing alleged new Gat no. 15/3. After receipt of the said proposal seeking permission for conversion of the use of agricultural land into non-agricultural land in respect of the property as detailed above, the Sub-Divisional Officer, Sangamner has forwarded copy of the said proposal on 08.02.2013 to the Town Planning Department for necessary action and accordingly, the inquiry has begun. The Assistant Director of Town Planning has sanctioned only a part NA layout plan on certain condition by order dated 14.03.2013 and it has been observed in the said sanction order that some area of the said land comes under forest division, where development is not permitted. The said portion of the land was excluded from development plan. Further, said

Ravindra Birole was directed to submit the NOC of the Maharashtra Pollution Control Board.

e. It is further case of the petitioners that thereafter, on 15.04.2013, the Sub-Divisional Officer directed respondent no.4 Tahsildar Sangamner to comply with the order dated 14.03.2013 and even said Ravindra Birole was also informed to comply with the deficiencies as pointed out in the letter/order dated 14.03.2013. Thereafter, respondent no.4 Tahsildar has directed the Circle Officer, Sakur, Taluka Sangamner to ascertain whether there is any complaint in respect of the ownership right of said Ravindra Birole. The Sub-Divisional Officer, Sangamner, by order dated 07.05.2013, rejected the proposal for NA permission as the compliance as directed was not made in time. On 07.08.2013, for the first time, the NOC issued by the Pollution Control Board was produced on record by Ravindra Birole. As against the order dated 07.05.2013 rejecting the proposal of NA permission, said Ravindra Birole had filed Writ Petition No. 7827 of 2013. However, the said Writ Petition was disposed of by this Court with liberty to the said Ravindra Birole to adopt the remedy of appeal. Said Ravindra Birole had filed appeal no. 49 of 2013 before the Divisional Commissioner, Nashik challenging the order dated 07.05.2013 passed by the Sub-Divisional Officer rejecting his proposal seeking NA permission. The present petitioners had filed an

application for intervention in the said appeal and the Additional Commissioner, Nashik allowed the said application. Thereafter, the petitioners had filed a detailed reply bringing to the notice of the Additional Commissioner their valuable rights in respect of the said property. By order dated 27.01.2014, the learned Additional Commissioner has partly allowed the appeal of Mr. Ravindra Birole and remanded the matter to the Sub-Divisional Officer to reconsider and verify the point nos. 1 to 4, as formulated in the order and further directed the Sub-Divisional Officer to verify whether *hissas* and *pot-hissas* as mentioned in the 7/12 extract are in consonance with the *hissas* (shares) as appearing in the measurement map. The learned Additional Commissioner has also directed the Sub-Divisional Officer to decide the matter afresh on its merits.

f. According to the petitioners, on 18.03.2014, said Ravindra Birole alongwith respondent no.6 herein, for the first time have filed Writ Petition No. 2659 of 2014 before this Court challenging the order dated 27.01.2014 instead of filing an appeal. The said Writ Petition No.2659 of 2014 and the earlier Writ Petition No. 7513 of 2013 remained pending for many days. According to the petitioners, after the Assembly elections held in the month October, 2014, when the BJP party came into power, said Ravindra Birole has illegally and malafidely withdrawn the aforesaid Writ Petitions though opposed by

the present petitioners and before that, during pendency of the Writ Petitions, respondent no.6 herein, who was not a party in that capacity before the Commissioner, has illegally and malafidely preferred Revision before respondent no.5 directly. According to the petitioners, the hearing was scheduled before the Minister on 16.04.2015 and the petitioners had appeared before the Hon'ble Minister through an Advocate and sought adjournment and accordingly, next date was given on 23.04.2015. Even though the petitioners have specifically requested for supply of copies of the documents, no documents, annexed to the revision application, were supplied to the petitioners and they were directed to file reply within one week. Thereafter, the Hon'ble Minister without actually hearing the matter on merits, closed the said matter for orders directly. On 13.05.2015, respondent No.5 Hon'ble Minister has passed the impugned order and it was never intimated to the present petitioners as required under law. The Hon'ble Minister by impugned order dated 13.05.2015, has allowed the revision application filed by respondent no.6 herein, set aside the order dated 27.01.2014 passed by the Additional Commissioner and further directed the Sub-Divisional Officer, Sangamner to grant NA permission for industrial use as per the discussion made in the body of the order. The Hon'ble Minister has further stated that the decision given by him is subject to the outcome of the pending civil suit. Hence, this Writ Petition.

3. The learned senior counsel appearing for the petitioners submits that the impugned order dated 13.05.2015, on the face of it, is illegal and arbitrary for the reasons that the same is cryptic and unreasoned order and the same is passed without deciding the contentions raised by the present petitioners. Even though the petitioners have requested for oral hearing, the same came to be denied arbitrarily. Learned senior counsel submits that the contentions raised by the petitioners in their written arguments were not at all considered by respondent no.5/Hon'ble Minister. The petitioners were only supplied the copy of the revision application but the documents annexed to the revision application were never supplied to the petitioners. Though it was specifically brought to the notice of the Hon'ble Minister, yet the documents were not supplied. Hence, the impugned order itself is in violation of the principles of natural justice. The learned senior counsel submits that the order of the Additional Commissioner dated 27.01.2014 came to be challenged before the Hon'ble Minister in the Revision filed on 13.03.2015. Though there is delay of more than one year, yet no application seeking condonation of delay came to be filed. The Hon'ble Minister has decided the said revision on merits without condoning the delay. The learned senior counsel submits that respondent no.6 has deliberately not filed the statutory second appeal against the order dated 27.01.2014 passed by the Additional

Commissioner and preferred the revision before the Minister on 13.03.2015. The learned senior counsel submits that it is the part of record that the Hon'ble Minister, within a period of seven days, has heard and allowed the said revision petition. Learned senior counsel submits that the revision itself is not maintainable before respondent no.5/Hon'ble Minister since the matter was remanded by the Commissioner directing the Sub-Divisional Officer to make an inquiry into the matter on certain points as formulated in the order. Thus, the revision before the Hon'ble Minister is premature and the same could not have been entertained. Though the remedy of statutory second appeal is available under the MLR Code, the exercise of revisional powers was totally unwarranted and uncalled for and the same has been done with the sole intention to favour respondent no.6. Learned counsel submits that the so-called sale deeds executed in favour of Ravindra Birole are itself hit by the provisions of the Act of 1958 and hence at any rate, the NA permission could not have been granted as the sale deeds in favour of Ravindra Birole and the U-Tech Sugar Limited are itself *void ab initio*. The Hon'ble Minister has not considered the effect of the amendments of the years 2002 and 2008 in the Act of 1958. There is no provision in the amended Act of 1958 to pay 13 times Najrana to convert new tenure land into old tenure land. Learned senior counsel submits that the petitioners are the co-owners of the land Gat no. 15. So far as the sale deeds executed in

favour of Ravindra Birole are concerned, the persons, who have got no absolute title, have executed the said sale deeds. All the sale deeds are the subject matter of challenge in special civil suit no. 27 of 2013 before the civil court. Learned senior counsel submits that land Gat no. 15 comprises the huge portion of land admeasuring 92.59 H. The said land was allotted to eight families towards the inferior watan which is not partitioned by metes and bounds and the shares of persons are yet not fixed. There is no measurement map prepared by issuing notice to all the land holders and adjacent land holders. Respondent no.6 has sought NA permission of the part of land Gat no. 15 without making any actual measurement. Learned senior counsel submits that there is no deemed NA permission and on a simple application without compliance of any statutory rules, the permission for NA use cannot be granted. Said Ravindra Birole has applied for NA permission on 07.02.2013 wherein the statutory authority has directed him for various compliance by orders dated 14.03.2013, 28.03.2013 and 15.04.2013 respectively. Thus, the submission of the said respondent no.6 about expiry of 90 days and the deemed NA permission is irrelevant and cannot be made applicable to the facts of the present case. The learned senior counsel submits that the suit lands were never transferred to U-Tech Sugar Limited/respondent no.6 under the registered documents. On 07.02.2013, the said Ravindra Birole and Ashwini Birole have applied

for NA permission under Section 44-A of the MLR Code and it nowhere discloses that the said permission is sought for respondent no.6 herein. There is no document for transfer of property from Ravindra Birole and said Ashwini Birole to respondent no.6 herein. Thus, respondent no.6 had never applied for NA use of the suit land. The learned senior counsel submits that there are valid questions raised before the authorities below regarding (a) inquiry of title, (b) compliance of rules and regulations of the Regional Planning, (c) compliance of pollution control, (d) proper measurement plan and location co-related to record of right, (e) verification of the record of T.I.L.R., (f) objection of the original owner with respect to rights under the provisions of the Act of 1958. Learned senior counsel submits that the Additional Commissioner has rightly directed the lower authorities to make a proper inquiry and to pass appropriate order afresh on its own merits.

4. The learned senior counsel for the petitioners, in order to substantiate his contentions, placed reliance on the following cases.

1. **Nagarjuna Construction Company Limited vs. Government of Andhra Pradesh and others**, reported in **(2008) 16 SCC 276**.
2. **U.O.I. and Ors. vs. Jai Prakash Singh and Anr.**, reported in **AIR 2007 SC 1363**.

3. **M/s. Mangalore Ganesh Beedi Works vs. Commissioner of Income Tax, Mysore and another,** reported in **AIR 2005 SC 1308.**
4. **Union of India and Others vs. Sanjay Jethi and Another,** reported in **(2013) 16 SCC 116.**
5. **Rama Narayan Mali vs. Additional Collector, Thane & Ors.,** reported in **2008 (2) All MR 426.**
6. **Vithal Ramchandra Devkhar & Anr. vs. The State of Maharashtra & Ors.,** reported in **2001 (3) All MR 872.**
7. **A. V. Papayya Sastry and Ors. vs. Government of A.P. and Ors.,** reported in **AIR 2007 SC 1546.**
8. **T. Vijendradas & Anr. vs. M. Subramanian & Ors.,** reported in **2008 (1) ALL MR 446 (S.C.).**
9. **Ravi Yashwant Bhoir vs. District Collector, Raigad and Ors.,** reported in **AIR 2012 SC 1339.**
10. **State Bank of Travancore vs. Kingston Computers India Private Limited,** reported in **(2011) 11 SCC 524.**
11. **Chandrika Jha vs. State of Bihar and Others,** reported in **(1984) 2 SCC 41.**
12. **Manohar Joshi vs. State of Maharashtra and others,** reported in **(2012) 3 SCC 619.**

5. Learned AGP for the respondent State and its authorities submits that respondent no.6 had applied before respondent no.3-Sub-Divisional Officer for getting non-agriculture (NA) permission for industrial use of the land Gat nos. 15/9, 15/10, 15/17 (new Gat no. 15/3 ad-measuring 11 H. 48 R.) situated at Kauthe Malkapur, Taluka Sangamner on 07.02.2013. He submits that since respondent no.6 has not complied with the queries mentioned in letter dated 15.04.2013 issued by respondent no.3/Sub-Divisional Officer in given time limit, the said application dated 07.02.2013 came to be rejected by order dated 07.05.2013. The said order came to be challenged by respondent no.6 before the Divisional Commissioner, Nashik in Appeal No. 49 of 2013, which came to be decided by order dated 27.01.2014 and the Divisional Commissioner, Nashik remanded the matter to the Sub-Divisional Officer to conduct an enquiry on the given points. Being aggrieved, respondent no.6 preferred Revision Application No. 932 of 2015 before respondent no.5/Hon'ble Minister. By the impugned order dated 13.05.2015, the Hon'ble Minister allowed the said revision and the order dated 27.01.2014 passed in appeal no. 49 of 2013 by the Divisional Commissioner, Nashik came to be set aside.

6. Learned AGP further submits that in pursuance of the said order dated 13.05.2015 passed by the Hon'ble Minister, in Revision

Application No. 932 of 2015, the Sub-Divisional Officer has issued a letter dated 02.09.2015 to respondent no.6 and thereby directed to deposit 50% amount of Najrana towards the land in dispute and also directed to deposit the measurement fees as per the sanctioned layout plan. Accordingly, respondent no.6 has deposited 50% Najrana amount and also the measurement fees in the State Bank of India.

7. Learned AGP submits that so far as the procedure under Sections 44(1) and 44(2) of the MLR Code is concerned, respondent no.3/Sub-Divisional Officer has issued a letter dated 15.04.2013 to respondent no.6 and called for compliance of the total four queries. In compliance of the mandate of the above said provisions of the MLR Code, the office of the Sub-Divisional Officer and the Tahsildar had conducted a detailed enquiry in respect of the land under N.A. and the Tahsildar forwarded its report to the Sub-Divisional Officer. Learned AGP submits that the office of the Town Planning Department had conducted an enquiry and submitted its recommendations in favour of respondent no.6 on 14.03.2013 and respondent no.6 has complied the queries suggested by the Sub-Divisional Officer. Even though respondent no.6 has submitted some documents belatedly, the same were submitted with the Sub-Divisional Officer and therefore, steps as required under Sections

44(1) and 44(2) of the MLR Code were taken. The further procedure of giving N.A. permission to the land in dispute for the industrial purpose was completed by issuing order dated 22.09.2015 in favour of respondent no.6.

8. The learned AGP further submits that the Sub-Divisional Officer has decided the application of respondent no.6 within 90 days and intimated the concerned parties accordingly. Therefore, the submission of respondent no.6 about deemed permission of N.A. carries no substance. The present petitioners and others have filed Special Civil Suit No. 27 of 213 before the Civil Judge, Senior Division, Sangamner for partition and injunction in respect of the land in dispute. The said suit is pending. The Sub-Divisional Officer has issued order granting N.A. permission to respondent no.6 considering the fact that the civil court had rejected application Exhibit 5 filed by the petitioners in Special Civil Suit No. 27 of 2013 and specifically observed that the petitioners have no concern with the lands Gat nos. 15/9, 15/10 and 15/17 (new Gat no. 15/3 ad-measuring 11 H. 48 R.) purchased by respondent no.6. The learned trial court has also observed that the present petitioners have separate watan property Gat nos. 163/1 to 164, 166 and 10 and as such, prima facie, they are not concern with the suit property. Respondent no. 6 has given an undertaking in the Special Civil Suit

No. 27 of 2013 and as such the final adjudication in the said suit would be binding on respondent no.6. Respondent no.6 has deposited the Najrana and necessary charges and hence, the respondent authority has issued the order granting N.A. permission which would be subject to the outcome of the result in Special Civil Suit No. 27 of 2013 and the present writ petition.

9. Learned AGP further submits that the powers exercised by respondent no.5/Hon'ble Minister are within the parameters of Section 257 of the MLR Code and as such, the Government can modify, annul, reverse or pass such orders as it deems fit. The Hon'ble Minister has exercised the powers under Section 257 of the Maharashtra Land Revenue Code by giving opportunity of hearing to all the parties and there is no error of jurisdiction.

10. Learned AGP submits that the Sub-Divisional Officer issued the order of N.A. on 22.09.2015 and an entry to that effect is also taken on official record on 22.09.2015. However, due to oversight, the date on the order was wrongly mentioned as 23.09.2015. In fact, the Sub-Divisional Officer was assigned with official confidential duties on 23.09.2015 and he had attended the said work at Yerwada Karagrah Mudranalaya, Pune on 23.09.2015 between 10.55 a.m. to 8.35 p.m. The said error in the date of order occurred due to

oversight and no *malafides* can be attributed to it. The office record bears truthfulness of passing of the said order on 22.09.2015.

11. Learned counsel for respondent No.6 submits that the land Gut no. 15, situated at Kauthe Malkapur, Taluka Sangamner, District Ahmednagar, is admeasuring 292 Acres (92.59 Hec). Respondent No.6 is having land is 30 acres = (11.48 Hectors), bearing old Gat Nos. 15/9, 15/10, 15/17 (new Gut No. 15/3), the land under NA. Initially, the said land was Watan Land. Under Section 4 of the Bombay Inferior Village Watans Abolition Act, 1958, the Watan Lands resumed u/s 5 of the said Act were to be re-granted on payment of price equal to 3 times of full assessment of the said land. The said land Gat no. 15 was purchased by the promoters of Respondent No. 6 from Ramchandra Sagar (who had purchased it from Bagul in the year 1966) on 26.06.2012. The land Gat No. 15 was a piece of land which fell under the category of re-granted land. The State Government abolished the said Watan lands in 1955 and decided to re-grant the same to its original owners who were in actual possession of the said Watan properties. The Government by General Order dated 12.11.1955 prescribed payment of ten times of the assessment for Transfer and 3 times for occupancy rights. Therefore, if the amount 13 times is paid, it is obligatory for Collector to release land as the original owners paid occupancy price.

12. Learned counsel for respondent No.6 submits that the issue involved in the present petition relates to Section 44 of MLR Code i.e. conversion of land from agricultural purpose to non-agricultural purpose i.e. industrial purpose. The land was re-granted on payment of Najrana of 10+3 times on 1.4.1965 and 20.7.1965, although formal re-grant order was issued on 1.1.1969. Accordingly, mutation entry Nos. 928 and 929 of re-grant order are recorded. Respondent No.6 has undertaken a project of setting up a new Sugar Factory at village Kauthe Malkapur, Taluka Sangamner, District Ahmednagar by securing requisite permissions and licences. There was time limit of 2 years to set up the sugar factory. Failure to observe the time schedule would have exposed Respondent No.6 to perilous consequences. Learned counsel submits innocuous and unsustainable orders are passed by the SDO and the Commissioner causing serious prejudice to the Respondent No.6 and that too with an oblique motive. Those orders are rightly set aside by the Government and the SDO is directed to issue NA permission in favour of Respondent No.6.

13. Learned counsel for respondent No.6 submits that the order dated 07.05.2013 passed by the SDO is without giving an opportunity of hearing to respondent no.6. It is not in consonance with the

provisions of Section 44 (2) (c) r/w Rule 3 r/w Schedule-I r/w Rule 9. There is no proper application of mind. It is a final order and not interim. It states that it could be challenged by filing an appeal. The application for NA permission was rejected on 07.05.2013 on account of non-compliance with the communication dated 15.04.2013 (within 3 weeks thereafter the order dated 07.05.2013 is passed). The communication dated 15.04.2013 by itself does not set out any time limit, nor it states about the consequence of non-compliance. Even this communication is without giving any opportunity of hearing to the respondent. The respondent has duly complied with the order dated 15.04.2013. The postal stamp on the said communication is dated 07.09.2013 which means the intervening period is of four months and the order is ante-dated as 07.05.2013.

14. Learned counsel for respondent No.6 submits that respondent no.6 has produced the N.O.C. dated 06.08.2013 issued by the Maharashtra Pollution Control Board along with the application dated 07.08.2013. As per the letter dated 13.06.2013, the report of the Circle Inspector was produced, stating that there is no discrepancy or objection about the four boundaries. It is a report forming part of the record of Revenue authorities. Therefore, there was no question of presuming the existence of any discrepancies about the sub-divisions recorded in 7/12 extract and the sub-divisions shown in the

measurement map. Along with the application dated 07.08.2013, the respondent had complied with requirement no.3 specified in the letter dated 15.04.2013, whereby the respondent had produced the 7/12 extracts which were called for from the year 1960 to 1992. Although it was unreasonable and unnecessary requirement and it was a matter of revenue record available with the revenue authorities, still it has been complied with. As per letter dated 09.04.2013 and letter dated 04.06.2013, the extract of Gat scheme was furnished by the respondent. Thus, all the documents which were enumerated in letter dated 15.04.2013 were duly furnished and complied with by the respondent.

15. Learned counsel for respondent No.6 submits that the direction to hold inquiry on point Nos. 1 and 2 is bad in law as the adjudication of issue of dispute regarding title is not within the jurisdiction of SDO/ Commissioner in the proceedings initiated under Section 44 of the MLR Code. Special Civil Suit No. 27 of 2013 has already been instituted in the Civil Court to which Revenue authorities are also parties. The SDO is not competent to hold a parallel trial. No prohibitory orders are passed by Civil Court and the application Exh-5 filed by the petitioners in the suit came to be rejected holding that the petitioners have no concern with the land in dispute.

16. Learned counsel for respondent No.6 submits that almost 50 years ago, the predecessors-in-title of intervenors have executed registered sale deed and parted with possession of the property. Corresponding mutations are carried out in the revenue record and it has reached finality. Thereafter, successive transfers are also effected. Now, after inordinate and unreasonable delay, the transactions which were settled before 50 years are sought to be unsettled. The validity of the sale deeds is sought to be questioned. *Ex-facie*, it is also hit by Article 59 of the Limitation Act, which provides the Limitation of three years. Prior to filing of Special Civil Suit No. 27 of 2013, there was yet another suit filed in the year 1967. The issue relating to the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short, "the Ceiling Act") is also *suo-motu* raised by the Commissioner, which is beyond the scope of enquiry under Section 44 of M.L.R. Code. The Commissioner has misdirected himself as to the scope of enquiry and the grounds assigned in his order are contrary to ratio laid down in the case of ***Vinaykumar Kachrual Abad V/s Hon'ble Minister, Revenue & Forest 2002 (1) Mh.L.J. 854.***

17. Learned counsel for respondent No.6 submits that the dispute relating to Inam lands etc., i.e. point Nos. 1 and 2, is the subject matter of Special Civil Suit No. 27 of 2013. Moreover, *ex-facie*, the

said dispute is artificially raised with *malafide* intentions. The land was already converted to old tenure on making payment of 13 times the occupancy price, vide mutation entry Nos. 928 and 929 r/w the order of re-grant. Neither the mutation nor the re-grant order is called in question over a period of 40 years. Moreover, even in the cases where transfers were effected without previous sanction from the Collector, even such transfers are sought to be regularized by the Maharashtra Act No.19 of 2008. The Bombay Inferior Village Watans Abolition Act, 1958 is accordingly amended. Undisputedly, the intervenors (Baguls) are not in possession of the property over a period of last 50 years.

18. Learned counsel for respondent No.6 submits that ground No.3 about the Ceiling Act is also bad in law on account of inherent lack of jurisdiction. The grounds which are stated in the order are irrelevant and not germane to the proceedings under Section 44 of the MLR Code. The grounds which are set out for rejection of Application under Section 44 (2) (c) are – to secure public health, safety and convenience and if such use is contrary to any scheme for the planned development of a village, town or city.

19. Learned counsel for respondent No.6 submits that the ground No.4 is also non-est. On 16.09.2013, the respondent had already

solicited an order permitting the respondent to deposit the amount of 50% Najrana. However, no orders are passed therein. The respondent had always exhibited his readiness and willingness to deposit 50% Najrana. Still, the fault is being attributed to him in this behalf. The use of the property for N.A. purpose is not a specified ground under the Code to reject the application under Section 44 of MLR Code. Rule No.9 of the Maharashtra Land Revenue (Conversion of Use of Land and N.A. Assessment) Rules, 1969, deals with regularization of unauthorized use. Undisputedly, the ground specified in clause (c) of Sub-section (2) of Section 44 is not applicable to the facts of the present case.

20. Learned counsel for respondent No.6 submits that the Hon'ble Minister held that the reasons recorded by the Additional Commissioner while passing the remand order dated 27.01.2014 are not relevant. Respondent No.6 has complied with all the necessary requirements for conversion of agricultural land into non agricultural use and there is no need to conduct re-inquiry as observed in the order of the Commissioner and it will be just and proper to accept an amount of Najrana as an old condition for permitting non-agricultural use of land and for grant N.A. permission in favour of respondent No. 6. Respondent No.5-Hon'ble Minister has set aside the order of Additional Commissioner and allowed the Revision Application by

permitting respondent No.6/Revision applicants to convert the land into non-agricultural use by directing the concerned authorities to issue such orders.

21. Learned counsel for respondent No.6 submits that respondent No. 5 held that there is no breach of condition, the suo motu Revision proceeding initiated by S.D.O. Sangamner are already set aside and the Town Planning Authority has already given its recommendations for non-agricultural use of land. The Maharashtra Pollution Control Board has issued NOC in favour of respondent No.6 on 06.08.2013. The boundaries of answering respondent are confirmed in measurement of shares within boundaries and concerned Phalnibara extract is sanctioned by revenue authorities. There is no injunction by the Civil Court to issue N.A. permission and the answering respondent is ready to deposit 50% market value of the land as Najrana. After considering the factual as well as legal aspects of the matter, Respondent No.5-Minister allowed the Revision Application filed by respondent no.6.

22. Learned counsel for respondent No.6 submits that so far as the scope of inquiry under Section 44 of M.L.R. Code is concerned, as per section 44(2)(c) thereof, N.A. permission can be rejected only on the ground that *"if it is necessary so to do to secure the*

public health, safety and convenience or if such use is contrary to any scheme for the planned development of village, town or city in force under any law for the time being in force". However, in the orders of the S.D.O. and the Commissioner, the above reasons do not appear for refusal of conversion and use of land from agricultural purpose to non-agricultural purpose and as such, the Government has rightly exercised jurisdiction and passed the impugned order.

23. Learned counsel for respondent No.6 submits that, in so far as the maintainability of this writ petition is concerned, the issue relating to the fact that whether the deemed permission to the respondent was granted for conversion of use of land on failure of the Collector to refuse permission within the prescribed period of 90 days as contemplated under Section 44(3) of the MLR Code, essentially has to be decided on the basis of the material placed on record and for the said purpose the petitioners have absolutely no role to play and consequently has no right to challenge the same. The petitioners earlier sought to intervene in writ petition No. 9282 of 2013 filed challenging order passed under Section 54 of The Maharashtra Regional Town Planning Act, 1966 passed by Tahsildar, Sangamner against present Respondent No.6, by filing Civil Application No. 334 of 2014. By order dated 14.10.2014, the Division Bench of this Court rejected the said application of the petitioners observing

therein that the petitioners are not necessary parties for determining the challenge raised in the said petition and also that they have already filed independent proceedings in respect of their grievance, namely in respect of transfer of land in violation of provisions of the Act of 1958.

24. Learned counsel for respondent No.6 submits that, admittedly payment of Najrana (10+3 times) was made by the erstwhile watandars/owners on 01.04.1965 and 20.07.1965. The re-grant order was issued on 01.01.1969 and based on the same, ownership of the land in question was also transferred. The mutation entries for the said purpose were effected on 11.02.1970. Under the provisions of the Act of 1958, it is not permissible to review the order of re-grant or to order any *de-novo* enquiry as to whether any person is a watandar or not. Therefore, in absence of any challenge by the petitioners or anyone to the said re-grant order, the same has attained finality. The petitioners are trying to press the ground of alleged invalidity of the said re-grant order in the present petition, which is not permissible inasmuch as the said re-grant order is not challenged and has attained finality. The sale deeds in respect of the land were executed way back in the year 1966. The consideration in respect of such transactions was paid and the purchasers were placed in possession of the properties. The mutation entries in respect of the said

purchasers were also made thereafter. There is no challenge to these transactions for a period of more than 50 years. The said properties were transferred in favour of the promoters of respondent No.6 sometime in the year 2012-13.

25. Learned counsel for respondent No.6 submits that the application for conversion of the land to non agriculture was moved before the S.D.O. on 07.02.2013. The said application was forwarded by S.D.O. to the Town Planning Department for its report on 08.02.2013. On 14.03.2013, the Town Planning Department issued recommendation subject to compliance of certain conditions. On 28.03.2013, the Tahsildar submitted its report to S.D.O. making positive recommendation subject to respondent No.6 making payment of 50% of market value. On 15.04.2013 the S.D.O. pointed out alleged four deficiencies and called upon the promoter of respondent No.6 to provide the documents in connection thereto. By its letter dated 07.08.2013, respondent No.6 informed that the said deficiencies are removed and also provided necessary documents. As contemplated under section 44(3) of the MLR Code, upon expiry of the period of 90 days, for want of communication of any decision of rejection, it was to be presumed that the permission applied for is deemed to be granted. Under Section 44(4) of the MLR Code, the person to whom such deemed permission is granted has to inform

the Tahsildar in writing the date on which change of user is commenced, within 30 days from such date.

26. Learned counsel for respondent No.6 submits that respondent No.6 informed the Tahsildar in writing on 20.08.2013 that it has started working on the land considering it as non agriculture land. In response to the said letter, the S.D.O. by its letter dated 23.08.2013 wrote to the Assistant Director of Town Planning for reconsideration, and informed respondent No. 6 that the letter dated 20.08.2013 is being forwarded to the Assistant Director of Town Planning. By letter dated 05.09.2013, the Assistant Director of Town Planning replied to S.D.O. that there is no need to reconsider recommendation dated 14.03.2013. Till these communications, it was never said that the order of rejection of application of respondent No. 6 was passed way back on 07.05.2013. The envelop by which the said order was allegedly sent itself shows that it was received sometime in September, 2013. If the order was passed on 07.05.2013, there was no reason for the officials communicating about the pendency of application of respondent No. 6 till September, 2013, as is clear from the above facts. This shows that the order dated 07.05.2013 was passed ante-dated for an obvious *malafide* reason. The stand taken by respondent No. 3 in its affidavit further fortifies this fact. All these facts clearly show that the order dated 07.05.2013 was ante-dated

order and such an order was not passed within a period of 90 days as required under Section 44(3) of the MLR Code and therefore, it is a case of grant of deemed permission.

27. Learned counsel for respondent No.6 submits that the suit for partition claiming 1/8th share in the entire land was filed by the petitioners herein and few others, in which they have also challenged all the sale deeds executed in respect of the suit property from the year 1966. The petitioners have simply stated that they came to know their rights to get share in the property in July 2013. The transactions in respect of the land of respondent No. 6 are shown at Sr. Nos. 35, 37 and 38. An injunction was sought that till the decision of the suit, no order of converting the land for non agricultural purposes or construction over it be permitted as the same will cause prejudice to the plaintiffs/petitioners herein and it will be difficult for them to get their share in the property. The said temporary injunction application was rejected by the learned Trial Court finding that there is no *prima facie* case, there is a long silence and inaction on the part of the plaintiffs/petitioners and the plaintiffs/petitioners are no way concerned with the property bearing Gat No. 15. Further, it was observed that the defendants to the suit have given an undertaking that if the suit is decreed, they shall handover the possession of the property or pay compensation amount equivalent

to the share of the plaintiffs/petitioners and therefore, they are protected. This order was unsuccessfully challenged by the plaintiffs/petitioners and others before this Honourable Court in Appeal from Order No. 84 of 2015. This Honourable Court observed that *prima-facie*, the findings recorded by the trial court appear to be sound and that this respondent had given an undertaking which is the strongest reason for dismissal of the application, apart from the plaintiffs/petitioners and others having no balance of convenience in their favour.

28. Learned counsel for respondent No.6 submits that by Notification dated 22.12.2014, the Government of Maharashtra has amended Section 42 of the M.L.R. Code by inserting Section 42-A. The sum and substance of the said amendment is that there is no need for obtaining any permission for change of use of land covered by the development plan if the land is held as an occupant-Class I. There cannot be any dispute that the land in question is held as an occupant-Class I by respondent No. 6, as is apparent from the 7/12 extracts filed on record.

29. Learned counsel for respondent No.6 submits that the petitioners are challenging the maintainability of revision mainly on two counts. The first objection raised by the petitioners is that, the revision was filed by Respondent No. 6-company, although the

application for conversion was filed by the promoters-Mrs. and Mr. Birole. In this connection, it will be worthwhile to state that it is not at all disputed that Mrs. and Mr. Birole are the promoters of respondent No. 6 company, namely, U-Tech Sugar Limited. It is the settled law that the benefit of agreements entered into by the promoters can very well be passed on to the company. Even Sub-section (1) of Section 44 of MLR Code, 1966 permits an occupant of alienated land or superior holder of alienated land or a tenant of such land to apply for NA use of land.

30. Learned counsel for respondent No.6 submits that the second objection is raised that second appeal was maintainable in the present matter and bypassing the said statutory remedy, revision is filed without any application for condonation of delay. In this connection, it is necessary to point out that the order under section 44 of the MLR Code has to be passed by the Collector. Even if the order in the present matter is passed by the S.D.O. as a delegate of the Collector, it cannot be said that the said officer was not the Revenue Officer as contemplated under item III of Schedule –E of Section 247 of the M.L.R. Code, and therefore, the appeal against any such order was to be filed before the Divisional Commissioner and further appeal is not provided against the order of Commissioner and only revision is the appropriate remedy under Section 257 of the

M.L.R. Code and the same is availed by respondent no.6. The application for conversion of the land to non agriculture use was moved before the S.D.O. on 07.02.2013. An inquiry was conducted by the Assistant Director of Town Planning and conditional recommendations were issued and said conditions were fulfilled by respondent No. 6 and consequently it was the case of deemed grant, as contemplated under section 44(3) of the MLR Code, upon expiry of the period of 90 days, for want of communication of any decision of rejection. It is the matter of record that in the absolute suspicious manner, respondent No.3 is coming up with the case of passing the order of rejection of application of respondent No.6 which is apparently ante-dated, so as to deprive respondent No.6 from the benefits of deemed permission. Respondent No. 6 therefore challenged the said ante-dated order by filing writ petition before this Court bearing writ petition No. 7827 of 2013.

31. Learned counsel for respondent No.6 submits that on 26.09.2013, this Court directed respondent No.6 to file an appeal, as the remedy of appeal is provided and directed the appellate authority to decide the appeal within two months and consider the public interest involved in the matter. Therefore, there is no dispute that the appeal against the order passed by S.D.O. was filed under section 247 of the MLR Code before the Divisional Commissioner.

32. Learned counsel for respondent No.6 submits that as the appeal was not decided, a contempt petition bearing No. 90 of 2014 was filed before this Court. During the pendency of the said contempt petition, the appellate authority by its order dated 27.01.2014, partly allowed the said appeal. The said contempt petition was disposed of on 24.02.2014. In terms of order passed by the appellate authority, the matter was remanded for reconsideration on 4 points which, needless to state, were beyond the scope of inquiry under Section 44 of the MLR Code. Respondent No. 6 as well as its promoter therefore challenged the said order by filing Writ Petition No. 2659 of 2014 before this Honourable Court. This respondent was meanwhile informed that there is a remedy of revision which should be availed by it. Accordingly, a revision came to be filed before the State Government. This Court, by order dated 15.4.2015 disposed of writ petition No. 2659 of 2014 as withdrawn.

33. Learned counsel for respondent No.6 submits that in the above sequence of events and considering the fact that under section 248 of the M.L.R. Code, appeal lies to the State Government in respect of the original order passed by the Commissioner etc., there was no other remedy available to the respondent except to file revision before the State Government to invoke the powers under Section 257 of the Code. There is no prescribed period of limitation to file

revision under Section 257. The said revision was admittedly filed on 13/17.03.2015 i.e. hardly after a year of passing of the order by the appellate authority and for the said intervening time, the writ petition was pending and therefore there was no impediment in entertaining the said revision.

34. Learned counsel for respondent No.6 submits that the petitioners are coming up with the case that the order was passed by the revisional authority (respondent no.5- Hon'ble Minister) in haste and without giving proper opportunity of hearing. The said claim is absolutely incorrect and improper inasmuch as it is a matter of record that not only the oral arguments were advanced before the revisional authority on 16.04.2015 but written notes of arguments were also filed by the petitioners on 23.04.2015. It can also be gathered from the impugned order that each and every argument of petitioners is reordered and considered. The certified copies applied by petitioners are immediately received by them in a single day.

35. Learned counsel for respondent No.6 submits that, as it appears from the order passed in the revision, respondent No.6 was directed to deposit 50% amount of market value of the land as Najrana being old condition, i.e. an amount of Rs. 23,94,943/- for getting the required permission of non agriculture use, which the

respondent No. 6 has deposited on 02.09.2015 and NA Permission is issued as per order of Government.

36. Learned counsel for respondent No.6 submits that in so far as the scope of interference is concerned, it is settled law that exercise of writ jurisdiction is discretionary in nature and this Court while exercising the said power cannot convert itself as court of appeal. The said power cannot be exercised unless and until it is shown that jurisdiction exercised by the authorities below is beyond its authority or demonstrates patent perversity, leading to manifest injustice. As it is apparent from the aforesaid facts, the present petition is filed by the party who intends to pressurize respondent No.6 for some obvious *malafide* purposes. The attempt made earlier by the said parties (petitioners) to get such a relief is not only negated by the competent Civil Court but also by this Court. Therefore, in the light of the settled position of law, the present petition is not at all maintainable.

37. Learned counsel for respondent no.6, in order to substantiate his contentions, placed reliance on the following cases :

1. **Vithal Kondhalkar vs. State of Maharashtra & others,**
reported in **1981 Bom.C.R. 32.**

2. **Ramchandra Dagdu Sonavane (Dead) By LRs. and others vs. Vithu Hira Mahar (Dead) By LRs. and others**, reported in **(2009) 10 SCC 273**.
3. **Santoshkumar Shivgonda Patil and Others vs. Balasaheb Tukaram Shevale and Others**, reported in **(2009) 9 SCC 352**.
4. **Madhavdas Damodardas Gujar and others vs. Mahadu Keru Raut**, reported in **1994 (1) Bom.C.R. 509**.
5. **Jai Narain Parasrampuriah (Dead) and others vs. Pushpa Devi Saraf and Ors.**, reported in **(2006) 7 SCC 756**.
6. **UTV Motion Pictures and others vs. Murphy Enterprises**, reported in **2016 (2) Bom.C.R. 628**.
7. **Purushottam Ramlal Shukla vs Gayatri Devi Narayanprasad Pande & Ors.**, reported in **2015 (1) Bom.C.R. 719**.
8. **Celina Coelho Pereira (Ms) and others vs. Ulhas Mahabaleshwar Kholkar and others**, reported in **(2010) 1 SCC 217**.
9. **Shalini Shyam Shetty and another vs. Rajendra Shankar Patil**, reported in **(2010) 8 SCC 329**.
10. **Vinaykumar Kachrulal Abad vs. Honourable Minister, Revenue and Forest Department, Mantralaya, Mumbai and others**, reported in **2002 (1) Mh.L.J. 854**.

11. **Ganesh Ginning and Pressing Company Ltd., Jalna vs. State of Maharashtra and others**, reported in **2005 (4) Mh.L.J. 263**.
12. **N. K. Harchandani vs. State of Maharashtra and another**, reported in **2006 (5) Mh.L.J. 817**.
13. **Ravi Rao Gaikwad and others vs. Rajajinagar Youth Social Welfare Assn. and others**, reported in **(2006) 5 SCC 62**.
14. **Kasturi vs. Iyyamperumal and others**, reported in **(2005) 6 SCC 733**.
15. **M/s. Gammon India Ltd. and others vs. Union of India and others**, reported in **(1974) 1 SCC 596**.
16. **Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra**, reported in **(2013) 4 SCC 465**.
17. **Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board and others**, reported in **(2010) 13 SCC 216**.
18. **Aligarh Muslim University and others vs. Mansoor Ali Khan**, reported in **(2000) 7 SCC 529**.
38. I have carefully considered the submissions made by the learned counsel for the respective parties. With their able assistance,

I have perused the memo of petition, grounds taken therein, annexures thereto and also the affidavit-in-reply.

39. Admittedly, the land gat no. 15 is situated at Kauthe Malkapur, Taluka Sangamner, District Ahmednagar and the land ad-measuring 30 Acres (11.48 Hec.) bearing gat nos. 15/9, 15/10 and 15/17 is the subject matter of the N.A. permission. It is also not disputed that the land gat no. 15 was a Watan land and by application of Section 4 of the Act of 1958, all the inferior village watans were abolished from the appointed date and the lands were resumed by the State Government. In terms of the provisions of Section 5 of the Act of 1958, in the year 1969, by the order of Tahsildar the lands mentioned in the order including land gat no. 15, which were earlier Mahar Jangle Inam Class VI lands held by the original Watandar Yesu Arjuna Bagul, Thaka Dhana Bagul and 10 others, came to be re-granted to Yesu Arjuna Bagul, Thaka Dhana Bagul and 10 other persons on old conditions/new imparted conditions and also on payment of an amount of Najrana as stated in Section 5 of the Act of 1958. On the basis of the said re-grant order of the year 1969, the mutation entry nos. 928 and 929 came to be certified on 11.02.1970 as per the orders of the Tahsildar Sangamner.

40. It is the contention of the petitioners that even though there was no re-grant orders, some of the watandars had illegally sold the portion of land gat no. 15 (survey no. 7 to 15) and an attempt was made to get the mutation entry nos. 850 to 851, respectively, certified from the Revenue authorities. However, the said mutation entries came to be rejected by the Tahsildar. Vishnu Laxman Sagar, Ganpat Laxman Sagar and Vitthal Laxman Sagar had purchased some portion of the land survey nos. 8 and 10 under registered sale deed sr. no.1766/1966, some portion of survey no. 11 under registered sale deed sr. no. 1911/1966 and some portion of survey no.9 under registered sale deed sr. no. 1767 /1966. However, the mutation entries 1049, 1050 and 1051 attempted to be taken on the basis of the said sale deeds of the year 1966 came to be refused. It is the case of the petitioners that despite the said fact, the purchaser Vitthal Laxman Sagar in collusion with the Revenue authorities, succeeded in getting certified the mutation entry nos. 456, 457 and 458 in respect of the sale deeds of the year 1966. Accordingly, their names came to be entered in the Revenue record. It is the case of respondent nos. 6 that the State Government by general order dated 12.11.1955 prescribed payment of 10 times for transfer of the assessment, 3 times for occupancy rights and if 13 times is paid, it is obligatory for the Collector to release the land as the original owner paid the occupancy price. Thus, the issuance of the order was

nothing but a mere formality. The land was re-granted on payment of Najrana on 10+3 times on 01.04.1965 and 20.07.1965 and accordingly, the mutation entry nos. 928 and 929 of the re-grant order came to be recorded.

41. It is the part of record that as per the order passed by the Tahsildar, Sangamner in the month of November 1969, the original Watandars Yesu Arjuna Mahar, Thaka Dhana Bagul and 10 others have paid Najrana of 10+3 times and paid the amount as directed in the orders dated 01.04.1965 and 20.07.1965 in sub-treasury office. Subsection(3) of Section 5 of the Act of 1958 has been re-numbered as clause (a) by the Maha. Act XIX of 2008. In terms of the said provisions of Sub-section (3) which was already in existence, the occupancy of the land re-granted under Sub-section (1) was not to be transferable or partible by metes and bounds without previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine. In terms of the provisions of Section 3 of the Act of 1958, it is the powers of the Collector to decide the questions (a) whether any land is a watan land, (b) whether any person is a watandar and (c) whether any person is an unauthorized holder.

42. Section 44 of the MLR Code, 1966 prescribes the procedure for conversion of the use of land from one purpose to another. In terms of the provisions of Sub-section (1) of Section 44 of the MLR Code, such occupant or superior holder or tenant, with the consent of the tenant, or as the case may be, of the occupant or superior holder, apply to the collector for permission in accordance with the form prescribed. Section 44 (3) of the MLR Code postulates presentation of an application for conversion of use and the Collector has to decide the application within the prescribed period of 90 days. If he fails to do so, deeming clause comes into operation whereby the permission sought for is deemed to have been granted.

43. In view of the above legal position, it is necessary to reproduce herein below the provisions of Sections 2(38) and 44 of the MLR Code.

“Section 2. Definitions:

(1) to (37)

(38) "*superior holder*" except in Chapter XIV means a land-holder entitled to receive rent or land revenue from other land-holders (called "*inferior holders*") whether he is accountable or not for such rent or land revenue, or any part thereof, to the State Government :

Provided that, where land has been granted free of rent or land revenue, subject to the right of resumption in certain specified contingencies by a holder of alienated land

whose name is authorisedly entered as such in the land records, such holder shall, with reference to the grantee, be deemed to be the superior holder of land so granted by him, and the grantee shall, with reference to the grantor, be deemed to be the inferior holder of such land, and for the purposes of Sections 147, 151 and 152 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, shall notwithstanding anything hereinafter contained in the definition of the word "tenant", be deemed to be the tenant of such grantor;

(39) to (43)

(44) "wada land" means an open land in village site used for tethering cattle or storing crops or fodder, manure or other similar things."

44. It is also necessary to reproduce herein below the provisions of Sections 2 (1) (vii) 3, 4, 5 and 9 of the Act of 1958.

"2. Definitions:-

(1) (i) to (vi)

(vii) "inferior village watan" means the inferior village hereditary office together with the tenure of watan property, if any, and the rights, privileges and liabilities attached thereto ;

3. Powers of the Collector to decide certain questions and appeal-

(1) If any question arises,

(a) whether any land is watan land,

(b) whether any person is a watandar,

(c) whether any person is an unauthorised holder,

the Collector shall, after giving the party affected an opportunity to be heard and after holding an inquiry, decide the question.

(2) Any person aggrieved by such decision may file an appeal to the State Government within ninety days of such decision.

(3) The decision of the Collector, subject to an appeal under sub-section (2) of the decision of the State Government in appeal under subsection (2) shall be final.

4. Abolition of interior watans together with incident thereof; - Notwithstanding anything in any usage, custom, settlement, grant, agreement, sanad, or in any decree or order of a Court or in the existing watan law, with effect on and from the appointed date-

(1) all inferior village watans shall be and are hereby abolished,

(2) all incidents (including the right to hold office and watan property, the right to levy customary fees or perquisites in money or in kind, and the liability to render service) appertaining to the said watans shall be and are hereby extinguished,

(3) subject to the provisions of sections 5. 6 and 9, all watan land shall be and is hereby resumed and shall be subject to the payment of land revenue under the provisions of the Code and the rules made there under as if it were an unalienated land:

Provided that such resumption shall not affect the validity of any alienation of such watan land made in accordance with the provisions of the existing watan law or the rights of an alienee thereof or any person claiming under or through him.

5. Re-grant of watan lands to holders of watan.- (1) A watan land resumed under section 4 shall, in cases not falling under sections 6 and 9 be re-granted to the watandar of the watan to which it appertained on payment by or on behalf of the watandar to the State Government of the occupancy price equal to three times the amount of the full assessment of such land within the prescribed period and in the prescribed manner and the watandar shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made there under; and all the provisions of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land :

Provided that in respect of the watan land which was not assigned under the existing watan law as the remuneration of the inferior village hereditary office, an occupancy price equal to the amount of the full assessment of such land shall be paid by or on behalf of the watandar for the re-grant of such land.

(2) If there is failure to pay the occupancy price under sub-section (1) within the prescribed period and in the prescribed manner, the watandar shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily evicted therefrom by the Collector in accordance with the provisions of the Code.

(3) [(a)] The occupancy of the land re-granted under subsection (1) shall not be transferable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine.

(b) Before the commencement date, if any such occupancy has already, without previous sanction or no objection certificate from the Collector, or any other authority, been transferred by the occupant, for agricultural purpose, such transfer may be regularized on the production of registered instruments such as sale deed, gift deed, etc. as a proof thereof, for such transfer. After such regularization, the occupancy of such land shall be held by such transferee occupant on new and impartible tenure in accordance with the provisions of the Code.

9: Eviction of unauthorized holder and re-grant of watan land to him in certain circumstances and disposal of land not re-granted. - (1) Where any watan land resumed under section 4 is in the possession of an unauthorised holder, such unauthorised holder shall be summarily evicted therefrom by the Collector in accordance with the provisions of the Code:

Provided that where in the case of any unauthorised holder, the State Government is of opinion that in view of the investment made by such holder in the development of the land or in the non -agricultural use of the land or otherwise, the eviction of such holder from the land will involve undue hardship to him, it may direct the Collector to re-grant the land to such holder on payment of such amount and subject to such terms and conditions as the State Government may determine and the Collector shall re-grant the land to such

holder accordingly.

(2) Watan land which is not granted under sub-section (1) shall be disposed of in accordance with the provisions of the Code and the rules made there under applicable to the disposal of unoccupied unalienated land.”

45. Thus, keeping in mind the above legal provisions, I have carefully gone through the order dated 07.05.2013 passed by the Sub-Divisional Officer, Sangamner. On receipt of the application filed by Ravindra Birole and another on 07.02.2013 under Section 44(1) of the MLR Code, the Sub-Divisional Officer, Sangamner requested the Assistant Director, Town Planning and Valuation Department, Ahmednagar to verify the technical aspect of the layout plan and submit an opinion on the layout plan for grant of N.A. permission as per the application filed by Ravindra Birole and another in respect of the land bearing Gat nos. 15/10, 15/9 and 15/17 admeasuring 11 Hec. 48 R. situated at Kauthe Malkapur, Taluka Sangamner, District Ahmednagar. The Assistant Director, Town Planning, Ahmednagar, by communication dated 14.03.2013, has pointed out various deficiencies as detailed in the said letter, including the deficiency of non-production of N.O.C. of the Maharashtra Pollution Control Board in respect of the proposal and also that the shares shown in the 7x12 extract and in the measurement map does not tally with each other. Thereafter, the Sub-Divisional Officer, Sangamner, by communication

dated 15.04.2013, by referring the report submitted by the Tahsildar, Sangamner dated 20.03.2013 and also by referring clause no.12 of the letter dated 14.03.2013 received from the Assistant Director of Town Planning, Ahmednagar, gave certain directions to the Tahsildar Sangamner, including the direction to verify whether there is any dispute regarding the title of the above property, N.O.C. of the Maharashtra Pollution Control Board and also the non matching of the share shown in the 7x12 extract and in the measurement map. Further, the Sub-Divisional Officer has also directed Ravindra Birole to remove the deficiencies as pointed by the Assistant Director, Town Planning, Ahmednagar. By order dated 07.05.2013, the Sub-Divisional Officer, Sangamner has disposed of the application filed by Ravindra Birole and Ashwini Purushottam Birole for the reasons of non-compliance and non-removal of the objections as raised and pointed out to them. However, on 07.08.2013, said Ravindra Birole has submitted certain documents in the office of Sub-Divisional Officer by giving reference to the communication before disposal of his application seeking permission under Section 44(1) of the MLR Code. By order dated 23.08.2013, the Sub-Divisional Officer, Sangamner has informed Ravindra Birole and Ashwini Purushottam Birole that their application dated 07.08.2013 has been referred to the Assistant Director, Town Planning, Ahmednagar on 14.08.2013 and if the said office recommends the said proposal, then their

proposal would be reconsidered, and accordingly disposed of their application dated 07.08.2013. By any stretch of imagination, it cannot be concluded that on 07.05.2013, the Sub-Divisional Officer has not passed any order and the said order came to be passed along with or after the order dated 23.08.2013. Even thereafter, on 05.09.2013, the Town Planning Department declined to reconsider the earlier positive recommendations dated 14.03.2013.

46. I have carefully gone through the order passed by the Additional Divisional Commissioner, Nashik Division, Nashik. It appears that being aggrieved by the order passed by the Sub-Divisional Officer, Sangamner dated 07.05.2013, the said Ravindra Birole has filed Writ Petition No. 7827 of 2013 and by order dated 26.09.2013, said Ravindra Birole was granted liberty to file an appeal before the Additional Divisional Commissioner with further directions to the appellate authority to dispose of the said appeal within two months considering the public interest. It further appears that the learned Additional Divisional Commissioner, Nashik has considered the rival submissions of both the parties and after hearing the arguments of Ravindra Birole and the third party, formulated the points viz: (i) It was necessary to take a decision after verifying the N.A. proposal and considering the restrictions imposed on Inam Class 6-B land, (ii) the objection as to whether the watandar can sale

the watan land can be decided by filing separate appeal for revision before the competent court. Third party has raised dispute about ownership of the disputed land and Special Civil Suit No. 27 of 2013 is pending before the Civil Court, (3) the applicants have purchased land and as per the provisions of the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961, whether the applicants can purchase the said land, is required to be ascertained and (4) Before grant of N.A. use permission 50% Najrana as per market rate is not paid. The applicant is ready to pay the same. However, applicant has started N.A. use on the said land from 15.08.2013 and a letter to that effect is issued by the applicant vide letter bearing No. U-tech/096/2013-14 dated 20.08.2013 to Sub-Divisional Officer, Sangamner. From this it appears that, condition has been violated. The applicant should have firstly paid 50% Najrana amount and thereafter should have started N.A. use.

47. The learned Additional Divisional Commissioner has also observed that the applicant is constructing a sugar factory on the said land and making investment of a huge amount and therefore, passing any order, the applicants should not be put to loss. The learned Additional Divisional Commissioner thus thought it fit that the aforesaid points are required to be reconsidered by the Sub-Divisional Officer.

48. Thus, considering the entire aspect of the case, as discussed above, I find no fault in the order passed by the Additional Divisional Commissioner, Nashik remanding the matter to the Sub-Divisional Officer, Sangamner to consider point Nos. 1 to 4 as formulated in the said order dated 27.01.2014. It further appears that the Hon'ble Minister has passed the impugned order hastily. Furthermore, the conclusions drawn by the Hon'ble Minister in paragraph no. 30 of the order are not proper, correct and legal. The Hon'ble Minister has, without any discussion, formulated clauses (a) to (f) of para 30 as his conclusions and further, in para 31 of the judgment and order, observed that there is no necessity to remand the matter for fresh inquiry. Even the Hon'ble Minister, without discussing the points formulated by the Additional Commissioner, observed that the company has complied with the conditions for grant of permission for N.A. use.

49. Learned counsel for respondent no.6 has placed reliance in the case of **Vithal Kondhalkar vs. State of Maharashtra & others** (supra) wherein, the question as to whether it is obligatory to re-grant the land upon payment of Nazrana has been dealt with by the Division Bench of this Court. The petitioners in the aforesaid case were formerly inferior Watandars before the said Watan was

abolished by the Act of 1958. In para 6 of the judgment, the Division Bench of this Court has observed that in administering all the abolition laws, the Collectors have to see whether the additional payment as contemplated by the particular Act has been made by the ex-Watandars or ex-Inamdars and the moment that was done, almost as a matter of formality, the order of conversion must be passed. The Division Bench has also observed that in spite of such payments having been made, the orders have yet to come and in one case, for ten years the Collector has not yet passed the requisite order under Section 3(5) of the Act of 1958. The Division Bench in the aforesaid case has also dealt with the provisions of Section 59(b) of the MLR Code by referring the Collector's order with regard to the eviction of the petitioners. In the instant case, the Additional Divisional Commissioner, Nashik has remanded the matter on four points and as per it, the Sub-Divisional Officer, Sangamner has been directed to verify the N.A. proposal and further to consider the restrictions imposed on Inam Class 6-B land. Thus, the ratio laid down in the case relied upon by the learned counsel for respondent no.6 cannot be made applicable to the facts and circumstances of the present case.

50. In the case of **Ramchandra Dagdu Sonavane (Dead) By LRs. and others** (supra), relied upon by learned counsel for

respondent no.6, the Hon'ble Supreme Court dealt with the law relating to Watan lands, the scheme of Bombay Hereditary Offices Act, 1874, the scheme of Bombay Inferior Village Watans Abolition Act, 1958, the scheme of Bombay Revenue Jurisdiction Act, 1876 and in para 40 of the judgment, has observed that the scheme of the Bombay Inferior Village Watans Abolition Act, 1958 does not provide for the review of the re-grant order, nor does it provide for a *de novo* enquiry to decide whether any person is a watandar. In the instant case the petitioners have come with a case that without there being any re-grant orders, some of the watandars illegally sold portion of the land gat no. 15 and that earlier mutation entries came to be taken with regard to the same and those mutation entries came to be cancelled subsequently. It is the case of the petitioners that respondent no.6 had purchased the land from gat nos. 15/9, 15/10 and 15/17 under registered sale deed without permission of the competent authority. It is the case of respondent no.6 that land gat no. 15 was a piece of land under the category of re-granted land and the Government, by order dated 12.11.1955, prescribed the payment of 10 times for transfer and 3 times for occupancy rights. The promoters of respondent no.6 had purchased the land gat no. 15 from one Ramchandra Sagar who had purchased it from Bagul in the year 1966. In view of these rival submissions, the Additional Divisional Commissioner had directed the Sub-Divisional Officer to

verify the N.A. proposal and also to consider the restrictions imposed on Inam Class 6-B land.

51. Learned counsel for respondent no.6 has further placed reliance on the cases of **UTV Motion Pictures and others vs. Murphy Enterprises** (supra), **Purushottam Ramlal Shukla vs Gayatridevi Narayanprasad Pande & Ors.** (supra), **Celina Coelho Pereira (Ms) and others vs. Ulhas Mahabaleshwar Kholkar and others** (supra) and **Shalini Shyam Shetty and another vs. Rajendra Shankar Patil** (supra) to submit that the scope of interference in writ jurisdiction is limited. However, in the facts of the present case, a clear case for interference under Article 227 of the Constitution of India has been made out.

52. So far as the scope of inquiry under Section 44 of the Maharashtra Land Revenue Code is concerned, learned counsel for respondent no.6 submits that the objection regarding the ownership etc. are not germane and an aggrieved person can pursue the remedy independently. Learned counsel also submits that the petitioners had no locus to participate in the proceedings and thus, the question of grant of permission can be decided on the basis of the material on record. The scope of the proceedings could not be enlarged. To substantiate these contentions, learned counsel for

respondent no.6 has placed reliance on the cases of **Ganesh Ginning and Pressing Company Ltd., Jalna vs. State of Maharashtra and others** (supra), **N. K. Harchandani vs. State of Maharashtra and another** (supra), **Ravi Rao Gaikwad and others vs. Rajajinagar Youth Social Welfare Assn. and others** (supra), **Kasturi vs. Iyyamperumal and others** (supra) and **M/s. Gammon India Ltd. and others vs. Union of India and others** (supra).

53. In the case of **Ganesh Ginning and Pressing Company Ltd., Jalna vs. State of Maharashtra and others** (supra), the Division Bench of this Court had an occasion to consider the deeming provision for grant of permission for conversion of use of agricultural land into nonagricultural land. The Division Bench of this Court, by considering the provisions of Section 44 Sub-section (3) of the MLR Code, in para 6 of the judgment, has observed that the provision is required to be interpreted by giving effect to the purpose for which it is enacted. It has also been observed that while conducting such an inquiry, undoubtedly, the authority has to get itself satisfied about the fact of ownership of the land of the applicant. However, that will not entitle such authority to decide the issue of title or dispute regarding title to the property between the parties. In the instant case, I do not find that the Additional Divisional Commissioner has directed the Sub-Divisional Officer to decide the issue of title or dispute regarding

the title to the property between the parties. The Additional Divisional Commissioner, Nashik has remanded the matter in a different context on the different points. At the most, it can be inferred from the order passed by the Additional Divisional Commissioner that the Sub-Divisional Officer has been directed to satisfy himself about the ownership of the land of respondent no.6.

54. In the case of **N. K. Harchandani vs. State of Maharashtra and another** (supra), wherein this Court had an occasion to consider the intervention by third party in the matter, it has been observed that such intervention can be permitted only if the intervener's participation is essential for deciding the *lis* before the Court. In the instant case, we need not go into the said issue since in the earlier round litigation, this Court had directed the parties to approach the appellate court and it further appears that respondent no.6 has not seriously disputed the locus of the petitioners in bringing up those proceedings. So far as the cases of **Ravi Rao Gaikwad and others vs. Rajajinagar Youth Social Welfare Assn. and others** (supra), **Kasturi vs. Iyyamperumal and others** (supra) and **M/s. Gammon India Ltd. and others vs. Union of India and others** (supra), the ratio laid down therein cannot be made applicable to the facts and circumstances of the present case.

55. In the case of **Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra** (supra), the Supreme Court had dealt with an issue of intervention and observed that a stranger cannot be permitted to meddle any proceedings, unless he satisfies the authority/Court that he falls within the category of aggrieved persons. The expression “person aggrieved” does not include a person who suffers from a psycho-logical or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized. The petitioners in the instant case claim to be the heirs and legal representatives of the original watandar Samba Mohanna Bagul and thus, they claim to be the interested parties in land gat nos. 15/9, 15/10 and 15/17 which is the subject matter of the litigation. Thus the ratio laid down in the aforesaid case cannot be made applicable to the facts and circumstances of the present case.

56. In the case of **Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board and others** (supra), the Hon'ble Supreme Court has observed that the principles of natural justice cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case and they cannot be put in a straitjacket formula. In para 33 of the judgment, the Supreme Court has observed that there may be cases where on admitted and undisputed

facts, only one conclusion is possible. In such an eventuality, the application of the principles of natural justice would be a futile exercise and an empty formality. In the instant case, however, there are disputed facts and only one conclusion is not possible. It further appears from the order passed by the Hon'ble Minister that the order has been hastily passed without following the principles of natural justice.

57. In view of the above discussion, the Writ Petition deserves to be allowed by setting aside the impugned order passed by the Hon'ble Minister. Let there be a full fledged inquiry as directed by the Additional Commissioner in his remand order. It is open for respondent no.6 to raise all points before the Sub-Divisional Officer after remand. However, it is also important to note here that respondent no.6 had developed the industry on the suit land and possession of respondent no.6 over the suit land should not be disturbed in any manner under the garb of the remand order passed by the Additional Divisional Commissioner. Thus, with these observations, I proceed to pass the following order.

ORDER

- I. The Writ Petition is hereby allowed.
- II. The impugned order dated 13.05.2015 passed by respondent

no.5-The Hon'ble Minister, Revenue and Forest Department, Mantralaya, Mumbai in Case No. RTS-3315/932/P.N./149/G-6 is hereby quashed and set aside with the following directions:

- a. The Sub-Divisional Officer shall decide the matter within a period of six months from the date of appearance of the parties with due regard to the directions given by the Additional Divisional Commissioner, Nashik in the remand order dated 27.01.2014 passed in appeal no. 49 of 2013.
- b. The parties shall appear before the Sub-Divisional Officer, Sangamner on 11.07.2019.
- c. The parties are at liberty to raise all the points available to them before the Sub-Divisional Officer, Sangamner.
- d. The Writ Petition is accordingly disposed of.
- e. In view of disposal of the Writ Petition, nothing survives in the pending Civil Application Nos. 12472 of 2015 and 13019 of 2015 and the Contempt Petition No. 573 of 2015 and the same also stand disposed of.

(V. K. JADHAV, J.)

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