

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**WRIT PETITION NO.2661 OF 2019**

(BABUSINGH MANIRAM & ANR...VS.. DIVISIONAL COMMISSIONER, AMRAVATI & OTH.)

-----  
Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
-----

Court's or Judge's orders

-----  
Shri A.C.Dharmadhikari, Advocate for Petitioners.  
Ms Tajwar Khan, A.G.P. for Respondent Nos. 1 to 3.  
Shri Rahul Tajne, Advocate for Respondent No.4.  
-----

**CORAM : Z.A.HAQ, J.**

**DATED : JULY 25, 2019.**

Heard.

The petitioner claims that he has become owner of the field bearing Survey No. 302 admeasuring 2.99 hectares by virtue of Will dated 27<sup>th</sup> December 1996 executed in his favour by erstwhile owner Parashram Ragho Ingle. In the proceedings relating to mutation in revenue records, the learned Additional Collector by order dated 17<sup>th</sup> May 2010 recorded that the entry by which name of the petitioner came to be mutated in the revenue records was unsustainable as the transfer of the field in question by tribal (Parashram Ragho Ingle) in favour of the petitioners (non-tribals) was hit by the provisions of Section 36 and Section 36-A of the Maharashtra Land Revenue Code, 1966. Being aggrieved by the order passed by the Additional Collector, the petitioners had filed revision application before the Additional Commissioner under Section 257 of the Maharashtra Land Revenue Code, 1966. This revision application is dismissed by the impugned order.

The contention of the petitioner is that the illegality of the Will executed by Parashram Ingle in favour of the petitioners could not have been examined by the authorities in the proceedings for mutation of entries/ names of the petitioners, in the revenue records. It is further contended that “Will” cannot be said to be a mode of transfer as per the Transfer of Property Act, 1882 and therefore, it will not be hit by the provisions of Section 36 and Section 36-A of the Maharashtra Land Revenue Code, 1966. To support this submission, reliance is placed on the judgment given by this Court in the case of *Sakharam Shrawan Bhise ..vs. Ramesh Dhannu Rathod*, reported in **2018(3) Mh.L.J. 101**.

It is not in dispute that Parashram Ingle was a tribal. Caste Validity Certificate, showing that Parashram Ragho Ingle was tribal, is placed on record. It is not in dispute that the petitioners are non-tribals.

In my view, the contentions of the petitioners does not require any consideration in view of the judgment given by this Court in the case of *Atul Projects India Ltd., Vs. Babu Dewoo Farle*, reported in **2011(5) ALL MR 625**.

Paragraph Nos. 12 to 17 of the said judgment are as follows:

*“12. Section 36A prohibits the transfer of an occupancy of a tribal in favour of non tribal except with the previous sanction of the Collector (where the period of lease or mortgage does not exceed five years) or with the previous sanction of the Collector and the previous approval of the State*

Government (in other cases). The transfer of occupancy may be by way of a sale, gift, exchange, mortgage, lease "or otherwise". The legislature has designedly used broad language so as to incorporate all the five recognised modes by which property may be transferred under the Transfer of Property Act, 1882. Significantly the legislature has expanded the ambit of the modes in which property can be transferred by using the words "or otherwise". The plain object of the legislature was to reach out to all modes by which the occupancy of a tribal may be conveyed to a non tribal. The legislature was conscious of the fact that devious methods may be employed to divest tribals of their occupancy and the modes of transfer which are taken recourse to may not conform to the conventional modes for the transfer of property such as by sale, gift, exchange, mortgage or lease. Whatever be the mode of transfer, if the consequence is to effect a transfer of the occupancy of a tribal to a non tribal, the requirement of prior permission would be attracted. The Collector, even when he grants his sanction is empowered to do so subject to such conditions as may be prescribed. A transfer in violation of the provisions of Sub Section (1) of Section 36A would be invalid and of no legal consequence.

13. While deciding upon a challenge to the constitutional validity of Section 36A, a Division Bench of this Court in **Raoji Baliram Urkude vs. State of Maharashtra & Anr. 1985 Mh.L.J. 843**, held that the provision has been enacted with a view to protecting tribals against invidious discrimination and that the classification which was made by the legislature had a clear nexus to the object sought to be achieved. The Division Bench held as follows:

"Historical truth is that the Tribals belong to weaker sections of society which have been subjected to varied and worst types of exploitation by taking undue advantage of their backwardness, meekness and helplessness. Promoting with special care interest of such sections is one of the major items of our national goals (Article 46 in Part IV). If in this background, the legislature came forward to protect their interest, it is difficult to see how question of invidious discrimination can at all arise. It is a distinct class. Classification has clear nexus with the objects. Section 36, as it originally stood, made certain transactions by a tribal voidable at his instance, provided application was made within two years of such transaction. This provision had received the assent of the President and there can be

*hardly any doubt about it being under the protective umbrella of Articles 31A and 31C. Thus under the old provisions, the purchaser could acquire only a defeasible right which could be defeated by appropriate action within appropriate time. Experience of those who are better equipped to know the prevailing social condition revealed that the protection earlier granted was inadequate. The unfortunate truth about many of our social and beneficial legislations is that the beneficiaries thereunder many times even do not know them. Even if they come to know about their right, they are wholly ill-equipped to exercise those rights. Even if the rights are exercised, it is not always that they are able to keep the fruits of the legislation. Procedural delays, official negligence and apathy come in the way. Not ignoring these realities, in case legislation further intervenes and puts in more stringent restrictions including total conditional ban on future transfers, it is difficult to see how Courts come into picture. It is equally difficult to see how it can be said that such a legislation is wholly unreasonable. The possibility to such bans operating unjustly in case of certain transactions cannot be ruled out. But that is no ground to hold a legislation bad. In any legislation intended to bring about such major social changes on large scale generalization is inevitable; for it is not possible to legislatively contemplate every kind of exceptional situation. If that is attempted and several qualifications and exceptions are introduced, the very legislative object would be defeated. It is a rule of life that every revolutionary cause claims its martyr."*

14. While interpreting the provisions of Section 36A, the Court must bear in mind the salutary public purpose which was sought to be achieved through the enactment. In [Murlidhar Dayandeo Kesekar vs. Vishwanath Pandu Barde & Anr., 1995 Supp. \(2\) SCC 549](#), the Supreme Court while emphasizing the nexus between such a provision and the Directive Principles of State policy held that even if possession is granted in pursuance of an agreement, such possession would be unlawful and would not be protected by Section 53-A of the Transfer of Property Act, 1882. The Supreme Court held as follows:

" It is seen that prior permission for alienation of

the land was a condition precedent. Before permission is given, the competent authority is enjoined, by operation of Article 46 of the Constitution, to enquire whether such alienation is void under law or violates provisions of the Constitution and whether permission could be legitimately given. In that behalf, the competent authority is enjoined to look to the nature of the property, subject-matter of the proposed conveyance and pre-existing rights flowing thereunder and whether such alienations or encumbrances violate provisions of the Constitution or the law. If the answer is in the positive, then without any further enquiry the permission straightaway would be rejected. Even in case the permission is granted, it would be decided on the anvil of the relevant provisions of the Constitution and the law. In this case, the authorities, though had not adverted to the aspect of the matter, broadly refused permission on the ground that the assigned land cannot be permitted to be sold or converted to non-agricultural use. The action refusing permission, therefore, is in consonance with the Constitutional scheme in Part IV of the Directive Principles. The agreement is, therefore, void under Section 23 of the Contract Act as opposed to public policy vide judgment in *Delhi Transport Corpn. vs. D.T.C. Mazdoor Congress* (1991 Supp (1) SCC 600), by one of us Ramaswamy, J. with whom Sawant and Ray, JJ. agreed by separate but concurring judgment and the permission was rightly refused to be given for alienation. The possession is unlawful. Section 53-A of Transfer of Property Act is not attracted. The appellant's possession continues to be unlawful and he is not entitled to any improvement made on the lands. The Collector is directed to resume the lands immediately and assign the same to the legal representatives of first respondent, if found eligible or to any other eligible tribal."

15. A Division Bench of this Court consisting of Hon'ble Smt. Justice Ranjana Desai and Hon'ble Smt. Justice Roshan Dalvi in **Rama Narayan Mali vs. Additional Collector & Ors.** 2008 (2) Bom.C.R. 598; [2008 (2) ALL MR 426] dealt with

a case where the Petitioner as a tribal had acquired land under Section 32 of the Tenancy Act. There was a restriction on transfer of the land under Section 43. The tribal entered into a partnership with a non tribal and became a partner in a firm. The firm carried on the business of a stone crushing unit. The partnership was since dissolved and after dissolution the tribal entered into a tenancy agreement with the same person who was his partner. The benefit of the land therefore accrued to a non tribal either in his capacity as a partner or as a tenant. The Division Bench upheld the contention of the State that the provisions of Section 36A had been breached. The Division Bench observed that Section 36A puts a complete prohibition on the occupancy of a tribal being transferred in favour of any non tribal by way of sale, exchange, mortgage, lease or otherwise. In Section 36A, the Division Bench noted, the legislature has specified all the five modes of transfer provided for in the Transfer of Property Act but it also additionally inserted the words "or otherwise". Entering into a Partnership Deed by bringing in land as the capital of the partnership and the creation of a tenancy was held to be violative of Section 36A and therefore invalid.

16. Now in the present case, the Agreement that was entered into on 1 December 2003 provided that upon execution of the consent terms the Plaintiff would be placed in possession of the property. The Agreement records that the tribals who are parties of the first part had constructed structures on the property. The occupants of the structures would have to vacate the structures and the Plaintiff would bear the cost of rehabilitation. It is in this background, that the Court would have to consider as to whether the Agreement involved a transfer of occupancy right in violation of Section 36A. Section 36A provides that no occupancy of a tribal shall be transferred in favour of a non tribal. Under Section 36A it is not necessary that the land itself should be envisaged to be transferred. Transfer of occupancy is sufficient to meet the prohibition in Section 36A. In contrast, it would be necessary to advert to the provisions of Section 43 of the Tenancy Act under which no land purchased by a tenant under Section 32, 32F, 32I, 32O, 33Cor 43-ID or sold to any person under Section 32Por 64 "shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector". A comparison of Section 43 of the Tenancy Act with Section 36A of the MLRC would reveal the clear distinction in language made by the legislature. Section 43 of the Tenancy Act applies to a transfer of land purchased by a tenant or sold to any person.

Section 36A which is a provision on the other hand which has been especially engrafted to deal with tribal holdings does not refer to the transfer of land but to the transfer of the occupancy of a tribal. While Section 43 of the Tenancy Act confines itself to the five recognised modes of the transfer of property, Section 36A of the MLRC contemplates those modes "or otherwise". While considering the provisions of Section 43, it has been held in judgments of learned Single Judges of this Court that a mere agreement to sell which does not create interest in property would not attract Section 43 and it is only at the stage of the execution of the sale deed when the property is actually transferred that the provision would be attracted. (**Balu Baburao Zarole & Ors. vs. Shaikh Akbar Shaikh Bhikan & Ors. 2001 (3) Bom. C.R. 255 [2001(3) ALL MR 95]**). In taking this view I had followed an earlier judgment of D. K. Deshmukh, J. in a judgment dated 1 October 1997 in Appeal from Order No. 713 of 1977. In another case that has been decided by the Supreme Court the provisions of the J & K Prohibition on Conservation of Land and Alienation of Orchards Act 1975 came up for consideration in **Manzoor Ahmed Magray vs. Gulam Hassan Aram and Ors. AIR 2000 SC 191**. Section 3 of the J & K Act imposes a bar on the alienation of a Orchard except with the previous permission of the Revenue Minister. The Supreme Court emphasized that the prohibition on the transfer of Orchards was not absolute and the question of obtaining previous permission under Section 3(1)(a) would arise at the time of execution of the sale deed on the basis of a decree for a specific performance. The provisions of Section 36A of the MLRC are even more stringent when they are compared with the provisions of Section 43 of the Tenancy Act to which a reference has been made earlier or to those of the J & K Act which fell for determination before the Supreme Court. Section 36A imposes a prohibition on the transfer of occupancy rights from a tribal to a non tribal, without prior permission.

17. Section 2(22) defines an 'occupancy' to mean a portion of land held by an occupant. Section 2(23) defines an 'occupant' to mean a holder in actual possession of unalienated land, other than a tenant or Government lessee provided that where a holder in actual possession is a tenant, the land holder or the superior landlord as the case may be shall be deemed to be an occupant. Section 2(12) defines the expression 'to hold land' to mean to be lawfully in possession of land, whether such possession is actual or not. Possession of land is the essence of occupancy. Section 2(24) defines 'occupation' to mean possession. A prohibition on the transfer of occupancy must

*therefore mean what it says namely that it is a prohibition on the transfer of possession. No possession consequently can be transferred from a tribal to a non tribal without the prior sanction of the Collector or as the case may be the prior sanction of the Collector with the previous approval of the State Government. This interpretation which follows from the plain language of the provisions of the MLRC is also a purposive or socially beneficial interpretation which must be adopted by the Court. The legislation has been enacted with a view to protect tribals against exploitation. Legislative interpretation must facilitate the fulfillment of the objects contained in the Directive Principles of State policy. Any interpretation which would dilute or water down the ambit of Section 36A should therefore not be countenanced. Tribal populations would otherwise be displaced from their traditional habitats by unchecked urbanisation. They are susceptible, to exploitation. The avarice of these who exploit them has to be regulated within the parameters of law. The law has a purposive theme of protecting tribals. They are illiterate, poor and vulnerable. Section 36A is intended to safeguard their interests. Even if two interpretations were to be possible, the Court should adopt that interpretation which protects the interest of the tribals which the legislation is intended to sub serve. However, as noted earlier, the interpretation which has commended itself to this Court is the only possible interpretation which can be arrived at on the basis of the statutory provisions. In the present case no prior permission or approval was taken under Section 36A. Possession itself was sought to be handed over to the Plaintiff. This Court should not prima facie enforce a contract which is founded on a violation of a statutory provision."*

Paragraph Nos.12 to 17 completely answer the points raised by the petitioners. Hence, I see no reason to interfere in the matter.

The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

**JUDGE**