

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7863/2017

Vilas S/o Narayanrao Belgamwar,
Aged about 62 years, Occ: Business,
R/o Dhantoli, Nagpur.

PETITIONER

....VERSUS.....

1. State of Maharashtra,
through its Secretary of Revenue and Forest
Department, madam Cama Road, Hutatma
Rajguru Chowk, Mantralaya, Mumbai-400 032.
2. The Collector, Yavatmal.
3. Kalavati Punaji Natkar,
Aged about 87 years, Occupation-Agriculturist,
R/o Kinhi, Tah. and Distt. Yavatmal.
4. Suggu s/o Anand Agaldhare,
aged about 51 years, Occupation-Agriculturist,
R/o Kinhi, Tah. and Distt. Yavatmal.

RESPONDENTS

**WITH
WRIT PETITION NO. 7864/2017**

Vilas S/o Narayanrao Belgamwar,
Aged about 62 years, Occ: Business,
R/o Dhantoli, Nagpur.

PETITIONER

....VERSUS.....

1. State of Maharashtra,
through its Secretary of Revenue and Forest
Department, madam Cama Road, Hutatma
Rajguru Chowk, Mantralaya, Mumbai-400 032.
2. The Collector, Yavatmal.
3. Sudhatai Anantrao Masram,
Aged about 69 years, Occupation-Agriculturist,
R/o Wadgaon, Yavatmal.
4. Devendra Ananta Masram,
aged about 43 years, Occupation-Agriculturist,
R/o Wadgaon, Yavatmal.

RESPONDENTS

WITH
WRIT PETITION NO. 7865/2017

Vilas S/o Narayanrao Belgamwar,
Aged about 62 years, Occ: Business,
R/o Dhantoli, Nagpur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through its Secretary of Revenue and Forest
Department, madam Cama Road, Hutatma
Rajguru Chowk, Mantralaya, Mumbai-400 032.
2. The Collector, Yavatmal.
3. Vasanta s/o Gundaram Masram,
aged about 35 years, Occupation-Agriculturist,
R/o Jabalpur (M.P.).

RESPONDENTS

WITH
WRIT PETITION NO. 7866/2017

Vilas S/o Narayanrao Belgamwar,
Aged about 62 years, Occ: Business,
R/o Dhantoli, Nagpur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through its Secretary of Revenue and Forest
Department, madam Cama Road, Hutatma
Rajguru Chowk, Mantralaya, Mumbai-400 032.
2. The Collector, Yavatmal.
3. Sudhatai Anantrao Masram,
Aged about 69 years, Occupation-Agriculturist,
R/o Wadgaon, Yavatmal.
4. Wasanta s/o Gundaram Masram,
aged about 97 years, Occupation-Agriculturist,
R/o Jabalpur (M.P.).

RESPONDENTS

WITH
WRIT PETITION NO. 7867/2017

Vilas S/o Narayanrao Belgamwar,
Aged about 62 years, Occ: Business,
R/o Dhantoli, Nagpur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through its Secretary of Revenue and Forest
Department, madam Cama Road, Hutatma
Rajguru Chowk, Mantralaya, Mumbai-400 032.
2. The Collector, Yavatmal.
3. Ananda s/o Pandhurang Agaldhare,
aged about 65 years, Occ:Agriculturist,
R/o Kinhi, Tah. and Distt. Yavatmal.

RESPONDENTS

WITH

WRIT PETITION NO. 7868/2017

Samruddhi Buildcons,
having its registered office at Yavatmal,
through its partner Vilas S/o Narayanrao
Belgamwar, R/o Dhantoli, Nagpur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through its Secretary of Revenue and Forest
Department, madam Cama Road, Hutatma
Rajguru Chowk, Mantralaya, Mumbai-400 032.
2. The Collector, Yavatmal.
3. Yadho s/o Laxmanrao Dukre,
aged about 71 years, Occupation-Business,
R/o Kinhi, Tah. and Distt. Yavatmal.

RESPONDENTS

WITH

WRIT PETITION NO. 7869/2017

Samruddhi Buildcons,
having its registered office at Yavatmal,
through its partner Vilas S/o Narayanrao
Belgamwar, R/o Dhantoli, Nagpur.

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
through its Secretary of Revenue and Forest
Department, madam Cama Road, Hutatma
Rajguru Chowk, Mantralaya, Mumbai-400 032.
2. The Collector, Yavatmal.

3. Magho s/o Laxmanrao Dukre,
aged about 80 years, Occupation-Business,
R/o Kinh, Tah. and Distt. Yavatmal.

RESPONDENTS

Shri A.M. Ghare, counsel for petitioner in all the petitions.
Shri K.R. Deshpande, Assistant Government Pleader for respondent nos.1 and 2
in all the petitions.

CORAM : A.S. CHANDURKAR, J.

DATE : 1ST APRIL, 2019.

ORAL JUDGMENT

Since identical orders are challenged in these writ petitions, they are being decided by this common judgment.

2. **RULE.** Heard finally with consent of the learned counsel for the parties. The petitioners are aggrieved by the action of the respondent nos.1 and 2 of recording a mutation entry against the properties purchased by the petitioners so as to indicate that the transactions in question are in breach of provisions of Sections 36 and 36A of the Maharashtra Land Revenue Code, 1966 (for short, 'the Code').

3. For the sake of convenience, facts in Writ Petition No.7869 of 2017 are being referred to. The respondent no.3 who is a tribal had sought permission of the Collector seeking conversion of the lands owned by him for non-agricultural use. Permission under Section 44(1) of the Code came to be granted. Thereafter the said land was divided into various plots forming part of a layout. The petitioners claim to have

purchased some of the plots pursuant to registered sale-deeds. On 11.10.2004, the Divisional Commissioner issued a communication to the Collectors within his jurisdiction informing them that prior permission of the State was necessary when lands belonging to tribals were to be converted for non-agricultural use and thereafter sold. Acting on that communication, the Talathi recorded a remark in the revenue records stating therein that the transaction entered into by the petitioners were hit by the provisions of Sections 36 and 36A of the Code. The said mutation entry has been accepted by the Tahsildar. Hence, these petitions.

4. Shri A.M. Ghare, learned counsel for the petitioners inter alia submitted that the aforesaid remarks in the revenue records have been taken without any grant of opportunity of hearing to the petitioners. Since the petitioners have title to the respective lands, the entry in question affected the transferability of the said property, caused prejudice to them and also affected the civil rights of the petitioners. Hence an opportunity of hearing ought to have been given to the petitioners before making such entries. He referred to various communications issued to the Tahsildar as well as the Collector making a request to remove those mutation entries. It is thus submitted that on this count aforesaid mutation entries deserve to be set aside.

5. Mrs. K.R. Deshpande, learned Assistant Government Pleader for the respondent nos.1 and 2 has relied upon the affidavit in reply filed on behalf of the Collector. The impugned action is sought to be justified on the ground that transfer of occupancy is barred under Sections 36 and 36A of the Code without prior permission of the Competent Authority. Since such permission was not taken earlier, the mutation entries were accordingly made.

6. After hearing learned counsel for the parties, it is seen that the petitioners claim title to the suit properties on the strength of registered sale-deeds. Their names have been mutated in the revenue records. However, acting on the communication dated 11.10.2004 issued by the Divisional Commissioner, the impugned mutation entries have been taken. The nature of the mutation entries is such that it prevents the petitioners from further transferring the lands in question. It affects their civil rights and therefore an opportunity to the petitioners of being heard in the matter ought to have been granted. While according to the petitioners, the transactions entered into by them are pursuant to the permission granted by the Collector under Section 44 of the said Code, according to the revenue authorities transfer of occupancy without prior permission is prohibited. To resolve this aspect of the matter, it is found that an opportunity of hearing ought to have been granted to the

petitioners before making the said entries. As no such hearing was granted to the petitioners, the said mutation entry is liable to be set aside and the following directions are warranted:-

- I. The respondent no.2-Collector shall hear the petitioners in the light of the action proposed to be taken pursuant to the communication dated 11.10.2004 issued by the Divisional Commissioner to the respective Collectors. For said purpose, the petitioners shall appear before the respondent no.2 on 29.04.2019.
- II. The Collector shall hear the petitioners and pass appropriate orders in accordance with law.
- III. The aforesaid mutation entries would be subject to that adjudication by the respondent no.2-Collector.

7. The Writ Petitions are allowed in aforesaid terms and disposed of. No costs.

(A.S. CHANDURKAR, J.)