

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3885 OF 1996

01 Vithal Tanku Kolim
since deceased, through his
legal heirs & representatives:

01-a Smt. Sundarabai Vithal Koli.

01-b Pundlik Vithal Koli.

Both residing at & Post Nanded,
Tq. Amalner, District Jalgaon.

01-c Smt. Janabai Chinda Koli,
residing at Gorgavale,
Tq. Chopada, District Jalgaon.

01-d Smt. Sarabai Santosh Koli,
residing at Ghodgaon,
Tq. Chopada, District Jalgaon.

01-e Smt. Anjanabai Arjun Koli,
residing at Chorgaon,
Tq. Chopda, District Jalgaon.

02 Sahadu Shankar Koli,
since deceased, through L.Rs:

02-a Jaivantabai Kashinath Koli
(Civil Dead)

02-a-1 Rajendra Kashinath Koli,
age: 27 years, Occ: Agril.,
R/o Anjrum, Post: Khalapur,
District Raigad.

02-a-2 Shantabai Motoram Koli,
age: 51 years, Occ: Household,
R/o Nanded, Koliwada,
Tq. Dharangaon,
District Jalgaon.

Petitioners

Versus

01 Laxman Gotu Attarde,
since deceased, through his LRs:

01-A Ashok Laxman Attarde,
age: 52 years, Occ: Service;

01-B Deelip Laxman Attarde,
age: 49 years, Occ: Service;

01-C Vijay s/o Laxman Attarde,
age: 45 years, Occ: Service;

All R/o Ayodhya Nagar,
Near Kalikamata Mandir,
Bhusawwal Road, Jalgaon.

02 The State of Maharashtra,
through Additional Chief Secretary
& Officer on Special Duty (Appeals),
Revenue & Forests Department,
Industrial Assurance Bldg.,
1st floor, J.T.Road,
Churchgate Station,
Bombay 400 020.

03 Additional Commissioner,
Nasik Division, Nasik.

04 Additional Collector,
Jalgaon.

05 Tahsildar, Amalner,
Tq. Amalner, District Jalgaon.

Respondents

Mr.B.R.Warma, advocate for the petitioners
Mr.S.D.Kulkarni, advocate for Respondents No.01-A to 01-C.
Mr.N.T.Bhagat, A.G.P. for Respondents No.2 to 5.

CORAM : ROHIT B. DEO, J.

RESERVED ON : 23rd January, 2020.
PRONOUNCED ON : 03rd February, 2020.

JUDGMENT :

1 The petitioners are assailing the decision dated 26.04.1996 rendered by the Maharashtra Revenue Tribunal ('MRT') in Revenue Appeal No.(A) 03 of 1995, whereby the appeal preferred by the Respondents is allowed and the eviction order dated 06.12.1976, passed by the Tahsildar, Amalner in Misc. Revenue Application No.284 of 1976 is set aside.

2 The land in dispute admeasures 90 ares and is assigned G.No.105 of village Nanded, Tahsil Amalner. By order dated 06.12.1976, which is set aside by the MRT, the Tahsildar, Amalner, in purported exercise of power under Section 59 of the Maharashtra Land Revenue Code, 1966 ('MLR Code') directed that Respondent No.1 be evicted from the said land. The eviction is premised on the finding that the alienation by the Watandar of new tenure in favour of Respondent No.1 is contrary to the provisions of Section 5(3) of the Bombay Inferior Village Watans Abolition Act, 1958 ('1958 Act'), in the absence of permission of the Collector to the alienation.

3 The litigation has a chequered history, and in the interest of clarity, it would be necessary to briefly touch the events and the litigations preceding the judgment of the MRT,

which is impugned herein.

4 Concededly, the disputed land was a koli *inam* land. In view of the 1958 Act, the *inam* was abolished and the disputed land was re-granted to the Watandars on new tenure. Shri Sahadu Shanku Koli, in whose favour the other Watandar Tanku relinquished his share, entered into an agreement to sell dated 10.05.1968 in favour of Respondent No.1. It is discernible from record, that Sahadu Koli assured the Respondent No.1 that the land will be converted to old tenure by depositing in the Treasury the 13 times assessment and *nazarana* to facilitate the execution of the sale deed.

5 It is irrefutable that on 12.05.1968, Sahadu Koli preferred an application for converting the land into old tenure and paid the 13 times assessment and the *nazarana*. The agreement was registered on 10.01.1971 and the Respondent No.1 was placed in possession of the land. Pursuant to the registration of the agreement, an appropriate mutation entry was recorded. The Watandars – alienators objected to the mutation, which objection was brushed aside and the mutation entry certified.

6 The Watandars – alienators preferred an appeal No.19 of 1973 questioning the mutation entry in favour of the alienee – Respondent No.1 herein, which was dismissed by the Sub Divisional Officer. A further appeal preferred before the Collector, Jalgaon, met a similar fate.

7 It is further discernible from record that the mutation entry in the name of Respondent No.1, which was certified and confirmed in appeal, was recorded in the revenue register as a disputed entry since the Circle Inspector certified the mutation entry with the remark that, “transaction is in violation of 1958 Act”. Pursuant to a report received from the Circle Inspector, the Tahsildar initiated *suo motu* inquiry under Section 59 of the MLR Code, vide Misc. Revenue Application No.284 of 1974. The Tahsildar held that the transaction was illegal since the land was not converted into old tenure and as noted *supra*, directed eviction of Respondent No.1, by an order dated 06.12.1976.

8 Respondent No.1 assailed the order dated 06.12.1976 rendered by the Tahsildar in Misc. Appeal No.284 of 1976, which was dismissed by the Sub Divisional Officer, Amalner, vide order dated 30.09.1977. In the interregnum, since there was no stay to the order of eviction, Respondent No.1 was

evicted on 25.01.1977 and Sahadu Koli was placed in possession.

9 Respondent No.1 then preferred Watan Appeal No.09 of 1977, which was dismissed by the Additional Collector, Jalgaon, vide order dated 22.08.1978. A further appeal was preferred before the Revenue Commissioner, who decided the said appeal No.2311 of 1979 vide order dated 07.12.1979 and was pleased to remand the matter to the Tahsildar for fresh decision.

10 The Tahsildar decided the matter afresh and vide order dated 29.07.1981 confirmed the order dated 06.12.1976. The said order was challenged by the Respondent No.1 in Watan Appeal No.16 of 1981, which was decided by the Sub Divisional Officer vide order dated 30.04.1982 and the matter was again remitted to the Tahsildar, Amalner.

11 The Tahsildar, Amalner, heard the matter for the third time and vide order dated 14.08.1982, held in favour of Respondent No.1 on the issue of breach of provisions of the 1958 Act. The Tahsildar held that the *nazarana*, as a fact, was deposited on 10.05.1968 and the conversion of the land to old tenure was a mere formality and, therefore, the transaction did

not suffer from any illegality and on this premise, directed that the possession be restored to Respondent No.1.

12 The Watandar, who relinquished his share in favour of Sahadu, challenged the order of remand passed by the Sub Divisional Officer, notwithstanding that pursuant to the order of remand, the Tahsildar had already decided the matter vide order dated 14.08.1982. The appeal preferred by Tanku, the Watandar, who relinquished his share in favour of Sahadu, was dismissed by the Additional Collector vide order dated 20.04.1983.

13 Tanku approached the Commissioner, Nasik Division, in Revision Application No.228 of 1984, which was decided on 21.08.1984 and the matter was yet again remanded to the Tahsildar, who vide order dated 03.05.1988, again held in favour of Respondent No.1. The Tahsildar held that the transaction of alienation was legal. The Watandar preferred an appeal to the Sub Divisional Officer, which came to be allowed vide order dated 28.12.1988. The Sub Divisional Officer reasoned that since the watandars are in possession, they ought to be permitted to retain possession. The order of Sub Divisional Officer was unsuccessfully challenged in Appeal No.30 of 1989 which was dismissed by the Additional Collector, Jalgaon, vide

order dated 17.05.1991. The said order was then challenged in Revision No.61 of 1991, which was rejected by the Divisional Commissioner vide order dated 13.10.1992. Being aggrieved, Respondent No.1 preferred further Revision before the Additional Chief Secretary and Officer on Special Duty (Appeals), which was disposed of vide order dated 17.06.1995.

14 The Additional Chief Secretary and Officer on Special Duty (Appeals) held that the orders passed by the various Revenue Officers, save and except the order of eviction passed by the Tahsildar, Amalner, were without jurisdiction and set aside the said orders. The said authority reasoned that the order of eviction under Section 59 of the MLR Code could have been challenged only before the MRT under Section 315 of the MLR Code, 1966, and the finding that the revenue proceedings emanating from the order of the Tahsildar are without jurisdiction is premised on the said reasoning.

15 In deference to the finding recorded by the Additional Chief Secretary and Officer on Special Duty (Appeals), Respondent No.1 approached the MRT in Revenue Appeal No.A(a) 3 of 1995 with a prayer for condonation of delay in view of provisions of Section 14 of the Indian Limitation Act, 1963. The

MRT condoned the delay and allowed the appeal on merits, vide judgment dated 26.04.1996, which is impugned herein.

16 REASONS RECORDED BY THE MRT FOR HOLDING THAT NO CASE FOR EVICTING RESPONDENT NO.1 IS MADE OUT:

16.1 The MRT noted certain facts which were either undisputed or were irrefutable. The agreement to sell was registered and the possession was delivered to Respondent No.1 pursuant thereof. Irrefutably, the 13 times assessment of land revenue and the *nazarana* was deposited in the Treasury on 10.05.1968. The Watandar received Rs.8700/- as the purchase price.

16.2 The MRT then noted that the only contentious issue was that no specific permission was obtained under Section 5(3) of the 1958 Act before the alienation.

16.3 The MRT noted the submission of the Watandar that the eviction is correctly ordered since the alienation was illegal in the absence of permission under Section 5(3) of the 1958 Act. The MRT then noted the submission in rebuttal that the permission under Section 5(3) of the 1958 Act was a mere

formality and that in view of the admitted deposit of 13 times assessment and the *nazarana* in the Treasury, the possession of Respondent No.1 cannot be treated as unauthorised, as would invite an action under Section 59 of the MLR Code.

16.4 The MRT referred to the Division Bench decision in **Vithal Kondhalkar Vs. State of Maharashtra & others**, 1981 B.C.R. 32 and in the context of the factual matrix, observed thus:

“The granting of a permission after payment of required 13 times assessment and after making the application for conversion of new tenure into old tenure by the respondent the S.D.O., who has not passed order till 1976 has misused the power under the provisions of Watan Act and failed to act his statutory duty vested upon him eviction of the present appellant is on the technical ground. He suffered because of bona fide choosing of wrong forum and because of not taking care for going to the S.D.O.’s court for grant of permission along with the respondent. There is no evidence on record to show that why the respondent objected the mutation entry for which the litigation started suo motu. There is no evidence on record to show that respondent has acted bonafidely but it appears that the respondent has taken undue

advantage of mere formalities and technicality arose in this dispute. The argument advanced by the Ld. Advocate for the respondents that agreement of sale does not pass any title to the appellant has no scope and merit. Hence rejected.

16.5 The ultimate conclusion drawn by the MRT reads thus:

“In the result, of the above discussion I am of the opinion that the eviction order passed is mere on the technical ground and failure to perform the statutory duty by the S.D.O. while granting permission in spite of depositing of required amount in treasury. The appellant suffered irreparable loss when the possession has been taken out from him on the basis of technicality by passing eviction order against the appellant. The order of the Tahsildar is, therefore, liable to be set aside. The appellant is entitled to record the possession of the land in dispute in order to maintain status-quo as the appellant was in possession of the land in pursuance of part performance of contract.”

17 The learned Counsel for the petitioner-Watandar has urged certain contentions which have no factual foundation nor

were the contentions raised at any stage of the litigation nor are the contentions raised in the memo of the petition. In all fairness to learned Counsel Shri Warma, after the contentions raised in the petition are dealt with, the contentions, which are raised for the first time in the High Court, will be spelt out.

18 Grounds (i) to (ix) in the petition assail the condonation of delay by extending the benefit of the provisions of Section 14 of the Indian Limitation Act, 1963. This contention is not seriously or strenuously urged. That apart, I am satisfied that the discretion exercised by the MRT cannot be interfered with. The discretion is exercised judiciously and the finding that the Respondent No.1 was pursuing the remedies before the wrong forums, *bona fide*, is unexceptionable.

19 Grounds (x) to (xxi), in essence, notwithstanding the slight difference in language and emphasis, question the finding recorded by the MRT that in view of the deposit in the Treasury of the 13 times assessment and *nazarana*, the permission under Section 5(3) was a mere formality and the Respondent No.1 was not in unauthorised possession of the land.

20 I have noted *supra* that the MRT proceeded on the

assumption that certain facts were admitted or were uncontroverted. The learned Counsel for the petitioners - Watandars, Shri Warma fairly did not suggest that the facts culled out by the MRT as undisputed were contentious. The seminal issue, which arises for consideration, in the context of the admitted or irrefutable or uncontroverted facts, would be, whether Respondent No.1 was liable for eviction under Section 59 of the MLR Code. The issue will have to be answered in the context of the uncontroverted facts that the 13 times assessment and the *nazarana* were duly deposited and an application for converting the land into old tenure, as a fact, was preferred by the Watandar, which application lay buried under the heap of bureaucratic red tapism. In my considered view, the answer to the issue involved lies in the reasoning of the Division Bench in **Vithal Kondhalkar Vs. State of Maharashtra & others.**

21 The question of law which fell for consideration in **Vithal Kondhalkar Vs. State of Maharashtra & others** was the correct meaning and interpretation of Section 5(3) of the 1958 Act and the contours of the right of the Collector under Section 59 of the MLR Code, 1966. The relevant statutory provisions read thus:

Section 5(3): *The occupancy of the land regranted under sub-section (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 penal or special order determine.*

Section 59 : Summary eviction of person unauthorisedly occupying land:

Any person unauthorisedly occupying, or wrongfully in possession of any land-

(a) to the use or occupation of which by reason of any of the provisions of this Code he is not entitled or has ceased to be entitled to, or

(b) which is not transferable without the previous permission under sub-section (2) of Section 36 or by virtue of any condition lawfully annexed to the tenure under the provisions of Sections 31, 37 or 44, may be summarily evicted by the Collector.

dated 12.11.1955 whereunder the State Government informed all the Collectors that releasing the land from inalienability and impartibility on payment of the prescribed amount of *nazarana* was almost automatic and that the Collector had no discretion to refuse to release the land if the *nazarana* was paid. The Division Bench then observed thus:

“5 We have no doubt that the Circular is very correct and represents the spirit of all the Abolition Acts pertaining to the regrant, and the conditions on which the tenure is to be permitted to be converted into the old one from the initiation of the new tenure. It may be remembered that this language has been developed for its understanding and the Government has told the Department, through certain circulars which were shown to us, that this language of new and old grant is not available nor can it be found nomenclature which was adopted by the department to understand the operation of the Abolition Act and the nature and type of regrants which were being made initially on certain payment as occupancy price and thereafter on a further payment of Nazarana whereby the impediments of non-transferability and impartibility were sought to be removed from the regrant or the

occupancy of the land.

6 *We are thus satisfied that in administering all the abolition laws, the Collector 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. In other words, the order of relaxation of the two burdensome conditions must follow as of right the moment additional payment was made. So far as the Abolition Act under consideration is concerned, the additional payment contemplated under sub-section (3) of section 5 is ten times the assessment. Once, therefore, it is shown that not only payment of three times the full assessment is made initially but ten times payment has either accompanied the initial payment or has been subsequently made, the Collector must pass an order under sub-section (3) of section 5 relaxing the conditions. We, however, find that in these proceedings themselves in spite of such payments having been made orders have yet to come and in one case for ten years the Collector has not yet passed the requisite order under sub-section (3) of section 5 of the Abolition Act. We will express our views and give appropriate directions in*

that behalf when we dispose of each of the petitions on its merits. However, it appears to us that when payment is made the Collectors are bound to pass orders under sub-section (3) of section 5 of the Abolition Act. If for some reasons the orders have not been passed or have remained to be passed due to sheer lethargy on the part of the Department, the moment the Collector is made aware of this additional payment of Nazarana under sub-section (3) of section 5 of the Abolition Act, it is the first and foremost duty of the Collector to pass such an order and then embark upon and investigation into the complaints, if any, with regard to that occupancy.

23 The Division Bench in **Vithal Kondhalkar Vs. State of Maharashtra & others**, then considered the legality of the eviction order under Section 59(b) of the MLR Code. The factual matrix in the bunch of petitions, which the Division Bench decided by the common judgment, was that the petitioners, who suffered the eviction order/s under Section 59(b) of the MLR Code, were either purchasers of land from ex-Watandars after execution of registered sale deed or were intending purchasers or prospective purchasers who had executed an agreement of sale and obtained possession by paying the entire sale

consideration. The assessment and the *nazarana* was duly deposited in some cases and yet the Collector had not passed a specific order of conversion. In the context of the factual matrix, the Division Bench, in **Vithal Kondhalkar Vs. State of Maharashtra & others**, articulates thus:

“10 The position, therefore, that emerges is that an ex-Watandar, who is a grantee of the occupancy right has put all the petitioners in possession in some cases by taking a sale deed while in the others only on the basis of an Agreement of Sale. The Collectors have, in all the orders before us, held that without fulfillment of both the conditions under section 5(3) of the Abolition Act any transaction entered into in respect of the land by the ex-Watandars whereby they have put a stranger like the petitioners in possession of such land, is in breach of the conditions attached to the occupancy. We have specifically pointed out earlier that the principal question to be remembered while reading the provision of section 5 of the Abolition Act is to bear in mind that non-transferability and impartibility have been made conditions of the tenure or conditions of the occupancy and they are to be relieved only after the payment of the amount determined by Government and on an order

being passed by the Collector in that behalf. If, therefore, a transaction has been entered into in breach of these conditions of occupancy or tenure, the occupancy obtained by the petitioners in in breach thereof. Clause (b) of section 59 reproduced above indicates that any person unauthorisedly occupying, or wrongfully in possession of any land which is not transferable without the prior permission under sub-section (2) of section 36 by virtue of any condition lawfully annexed to the tenure under the provisions of sections 31, 37 or 44, might be summarily evicted by the Collector. Section 37 is being pointed out in all these cases as the relevant section under which the petitioners have become the unauthorised occupants, or their possession has become wrongful. No other provision referred to in Clause (b) of section 59 of the Abolition Act has been relied upon. Section 37 of the Code provides as follows:

“An occupant is entitled to the use and occupation of his land in perpetuity conditionally on the payment of the amount due on account of the land revenue for the same, according to the provisions of this Code, or of any rules made under this Code or of any other law for the time being in force, and on the fulfillment of any other terms or conditions lawfully annexed to his

tenure.”

It is nobody’s case that the land revenue as assessed under the Code is not being paid. The occupants are not on the land without payment of the land revenue. What is alleged is that they have occupied these lands in breach of a condition which was lawfully annexed to the tenure. The conditions, as we have noted earlier, was of non-transferability without payment of a certain amount and without the Collector’s prior sanction. It appears on a plain reading of sub-section (3) of section 5 of the Abolition Act that both the conditions must be fulfilled. It is not enough if mere payment of ten times the assessment is made. The Collector’s prior sanction must always be obtained. If payment of ten times the assessment is made, then the Collector is bound to pass the necessary orders as already observed by us. If the Collector fails to do so and is requested by an application but still does not take cognizance of the request, in our view, a mandamus can be issued by this Court directing the Collector to grant the appropriate sanction. It appears to be the statutory duty of the Collector to grant the sanction the moment the requisite payment is made. The circular, which we have referred to earlier, emphasises that position. The point to remember, therefore, is that for the removal

of the disability of non-transferability and impartibility, the payment as well as the Collector's sanction are both the necessary requisites. If any one of them is wanting, the transfer of occupancy would be in breach of a condition annexed to the tenure and would squarely attract the provisions of section 37 of the Code. If such facts are found by the Collector, then he himself would have an obvious right under Clause (b) of section 59 of the Code to summarily evict a person, who is in unauthorised occupation."

24 It would also be apposite to notice the observations in paragraphs 14 to 16, which read thus:

14 *"In our view this is not a litigation where the legality of the transaction is in question. That will be a matter between the petitioners and their vendor. So far as the State is concerned, the Collector's duty lies in removing a person in unauthorised possession if the findings warrant such a course. This is the permissible action under section 59 of the code. It may be noted that the present proceedings were started in the year 1977 on the application of the vendor himself, who admittedly received Rs.8000/- on 16th March, 1968 and kept quiet till 1977. The Collector has not only summarily evicted the petitioners*

from the land but has immediately regranted all the lands to respondent No.3 without any condition whatsoever. The Collector's duty under section 59 of the Code is to examine whether a particular party is in unauthorised occupation of the revenue yielding land. Technically, no doubt, even in 1977 no order was passed by the Collector converting the new tenure into an old one even though payment of ten times the assessment was made at least in respect of two lands as early as 1965 and 1966. We have, therefore, pointed out earlier that it is the statutory duty of the Collector to pass orders and that passing of such orders under section 5(3) of the Abolition Act is more or less a formality as the Government Circulars themselves rightly pointed out. Even after the passage of 11-12 years the Collector has failed to carry out his statutory duty of merely passing a formal order of conversion of the new tenure into an old one. Should he, therefore, be permitted to persist in not passing any order under section 5(3) of the Abolition Act and in merely using a technical weapon under section 59 of the Code? In our view such a course would be most unjust, improper and against the spirit of the provisions of the Abolition Act.

15 We have quoted the Government Memoranda in that behalf of

1964 and 1965 which fully endorsed the spirit, behind the above legislation. When, therefore, facts were brought to his notice in this case that at least in respect of two lands payment of 13 times the assessment had been made as long as in 1965 and 1966, he should have first passed the formal orders of conversion to the old tenure, rather than go ahead with the proceedings under section 59 of the Code. In our view such a course is highly unjust.

16 Even though, therefore, technically the order may not be strictly unlawfully being unjust, we quash and set aside the same and direct the Collector to pass the formal order of regrant and conversion from new tenure to the old one in respect of Survey Nos.277/1-A and 277/2-B. Since we are giving this as a general direction to the Revenue Officers, who are entrusted with the enforcement of laws similar to the present Abolition Act, in our view it is only after passing such an order that the Collector may still consider if any action under Section 59 of the Code is called for. Once such an order is passed, the tenure becomes a normal tenure under the Code which is heritable, transferable and partible. If, therefore, this is a transferable tenure then, whether the actual transaction of transfer, which has taken place,

is fully supported by legal provisions or not, the occupation of the land by the transferee is certainly not in breach of any of the conditions attached or annexed to the tenure. If it is otherwise unlawful, it is for the vendor to see what action is to be taken. The intervention of a drastic nature of summary eviction is certainly not called for in circumstances like this. So far as the two lands mentioned above are concerned, we direct the Collector to pass appropriate orders in the light of our discussion made hereinabove and thereafter find out whether action under section 59 of the Code survives at all.

25 While the Division Bench does observe that on a plain reading of sub-section (3) of Section 5 of the 1958 Act, both the conditions i.e. payment of amount and the Collector's prior sanction must be fulfilled, the said observation cannot be read in isolation. Pertinently, the Division Bench holds that the moment the additional payment is made, the order of conversion must be made, as a matter of formality, and the order of relaxation of the two burdensome conditions, which are inalienability and impartibility, must follow as of right.

26 In my considered view, on plain reading of the language of the statutory provisions, it does appear that an

alienation in breach of sub-section (3) of Section 5 of the 1958 Act would be illegal and vulnerable to an action of eviction under Section 59 of the MLR Code. As is articulated by the Division Bench, it is not sufficient to make the deposit of the *nazarana*. The prior sanction of the Collector is also necessary to clothe the transaction with legality. From the legalistic perspective, and on consideration of the plain language of Section 5, it does appear that if either of the conditions envisaged under sub-section (3) of Section 5 is breached, the Collector would have the right to proceed under Section 59 of the MLR Code. However, the right to proceed under Section 59 of the MLR Code is circumscribed, if not fettered, by the articulation of law in **Vithal Kondhalkar Vs. State of Maharashtra & others**, and the directions issued to the Revenue Officers, who are entrusted with the enforcement of laws similar to the 1958 Act.

27 The Division Bench in **Vithal Kondhalkar Vs. State of Maharashtra & others**, issued general directions that it is only after passing the formal order of re-grant and conversion from new tenure to the old tenure, that the Collector may still consider if any action under Section 59 of the MLR Code is called for.

28 While the learned Counsel for Respondent No.1, Shri Kulkarni has heavily relied on the decision in **Vithal Kondhalkar Vs. State of Maharashtra & others**, Shri Warma, the learned Counsel for the petitioners-Watandars, has invited my attention to the decision of a learned Single Judge in **Narayan Sonaji Patil (deceased through L.Rs. & others Vs. Gangadhar Trimbak Belpatre & others**, 2011 (4) ALL MR 320. Shri Warma would rely on the following observations in the said decision:

“9 I have given due consideration to the submissions of Counsel appearing for the petitioners and also learned A.G.P. appearing for the State. It is not in dispute that the suit-land was allotted to the father of respondent No.1 Trimbak Supun Belpatre on inalienable and impartible tenure by the Sub-Divisional Officer, Chalisgaon in the year 1963. Therefore, the very allotment was on the basis of inalienable condition. Therefore, contention of the petitioner that respondent No.1 has entered into agreement with him and pursuant to that he is in possession, is illegal. The land is a Government land which was allotted to the father of respondent No.1 and said land cannot be transferred or no agreement of sale should have been executed between the parties. Therefore, if there is any agreement to sell, same is void ab initio and

also possession of the petitioner is also illegal. Though, it is contended by the Counsel for the petitioner that the proceedings initiated by the Collector are suo motu, however, it is required to be noted that it is case of the petitioner that the application was filed by respondent No.1 to the Collector, seeking permission for sale of the said land. Even according to the petitioner, such application was filed on 21.06.1963 and said application is pending with the Collector. In my opinion, once having been said that such application was filed by respondent No.1 with the Collector, seeking permission for sale of the suit-land, in that case it cannot be said that the Collector has initiated suo motu enquiry. If at all respondent No.1 or petitioner was aggrieved for non-disposal of the application of respondent No.1 dated 21.06.1963, seeking permission for sale of said suit-land, in that case it was open for respondent No.1 or the petitioner to challenge inaction of the Collector for not taking decision on application filed by respondent No.1. When the Collector did not act upon said application, necessary inference would follow that the authority is not favourable to the prayers in the said application. Therefore, it was open to the petitioner and also respondent No.1 to challenge said inaction of the Collector, Jalgaon. However, from the documents

placed on record, it appears that no such efforts have been made by the petitioner. That apart, on the admission of the petitioner that application of respondent No.1 was pending with the Collector, it cannot be said that the Collector suo motu initiated enquiry and ordered to forfeit said land."

29 The learned Single Judge, who decided **Narayan Sonaji Patil (deceased through L.Rs.) & others Vs. Gangadhar Trimbak Belpatre & others**, was not considering the conjoint effect of Section 5(3) of the 1958 Act nor the administrative directions issued by the State Government, nor was the attention of the learned Single Judge invited to the Division Bench decision in **Vitthal Kondhalkar Vs. State of Maharashtra & others**.

30 In **Bhagwantrao @ Bhagwan @ Bhagwat s/o Mahadu Munjane (since deceased by L.Rs.) Vs. State of Maharashtra & others**, 2011 (2) ALL MR 335, the learned Single Judge considered the provisions of Section 5(3) of the 1958 Act, in the context of Section 59 of the MLR Code and the enunciation of law in **Vitthal Kondhalkar Vs. State of Maharashtra & others**, and observed thus:

“8 Let it be noted that the occupancy right is not required to be determined by the authority. It is already fixed by the Government under a resolution. The occupant may get declaration of occupancy rights on payment of ten (10) times of the assessment by way of Nazarana. In this context, summary eviction of a person can be ordered only when such a person has absolutely no concern, whatsoever, with the land in question. A person in occupation of the land, whose rights are yet to be determined and who is expecting decision of his rights, cannot be regarded as an unauthorised occupant. The grant of the permission to allow transfer of such land would become a procedural matter after the occupant has complied with the main condition of depositing the Nazarana. The petitioners did not deposit the amount of Nazarana, as required under the Government Resolution dated 11th September, 1968.

9 In Sheikh Lal Vs. Malhari and others, 1984 Mh.L.R. 191, a somewhat similar fact situation was noticed by the Hon’ble Division Bench of this Court. A Division Bench of this Court held that the sanction contemplated under Section 5(3) of the Bombay Watans Abolition Act can be granted even

subsequently and, therefore, the occupant in possession of the land, in contemplation of such grant of sanction under section 5(3) of the Bombay Watans Abolition Act cannot be regarded as an unauthorised possessor. The relevant observations may be usefully quoted as below:

“Shri Patil, the learned Counsel for the petitioner very fairly did not dispute that before transfer neither sanction of the Collector was obtained nor an amount equivalent to 10 times the revenue as fixed by the State Government by an order was paid before the transfer required under section 5(3). However, he invited our attention to two judgments of this Court in (1) Special Civil Application No.2177/78, 2319/78, 3322/78, 3323/78 and 2413/78, Date of Decision : 20-7-1979 in the case of Kondhalkar Vs. The State of Bombay, and (2) Writ Petition No.261/80 Date of Decision : 17th June, 1983 in the case of Anandrao Shankar Vs. Smt. Sindhu, decided at Aurangabad. The view taken is that considering the policy of the State to regrant th watan land to the ex-watandar on payment of

Nazarana the granting of permission by the Collector was formal and it was not the intention of the legislature that a drastic step under Section 59(b) of the Maharashtra Land Revenue Code should be taken in the matter for non-compliance. Reference has been made to various Government circulars to regrant watan land to old tenure on receiving nazarana thereby removing the condition of non-transfer. In other words, it has been held that the sanction contemplated under section 5(3) of the Act can be granted even subsequently. It is apparent that the respondent No.1 had not moved the authorities for restoration of the land which means the respondent No.1 had never any intention to take back the land taking advantage of section 5(3). The petitioner had paid a huge sum of Rs.4,000 and is in possession of the property since 1974."

10 The very inception of action under section 59 of the MLR Code, in the present case, is improper and incorrect. The petitioners cannot be regarded as persons in unauthorised possession. At the most, their

lawful rights were in inchoate position. The petitioners had forwarded the amount of Nazarana by way of challan bearing No.194. It is obvious that their possession was referable to rights which were required to be determined. It need not be reiterated that the sanction contemplated under section 5(3) of the Bombay Watans Abolition Act could be granted subsequently. Instead of granting such sanction, the petitioners were ousted from the land without having regard to the intention of the Legislature. The Act itself aims at removal of the Watandari and simultaneously to give helping hand to the poor cultivators who could claim benefit of section 5(3). In this view of the matter, the impugned judgment and order as rendered by the Deputy Collector, Udgir must go.”

31 Faced with the obstacle posed by the articulation in **Vitthal Kondhalkar Vs. State of Maharashtra & others** and **Bhagwantrao @ Bhagwan @ Bhagwat s/o Mahadu Munjane (since deceased by L.Rs.) Vs. State of Maharashtra & others**, Shri Warma, the learned Counsel for the petitioners, canvassed a submission, which has absolutely no factual foundation and which submission is canvassed for the first time in this petition. Shri Warma would submit that the

action under Section 59 of the MLR Code was, as a fact, initiated since the land belonged to tribal and the transaction is hit by the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short, "the Restoration Act").

32 Shri Warma, pressed in service several decisions *inter alia* the decision of the Hon'ble Apex Court in **Lingappa Pochanna Vs. State of Maharashtra**, AIR 1985 SC 389, in which the Constitutional validity of the Restoration Act is upheld, to buttress the submission that the sale transaction, which is hit by the provisions of the Restoration Act would bring into play the provisions of Section 36 (2) of the MLR Code and as a sequel, the provisions of Section 59 of the MLR Code. I have noted the submission only for rejection. Such a contention is not raised in the petition. Indeed, such a contention is not raised in any proceedings till date. The agreement of sale is registered on 19.01.1971. Till date, the Watandar did not question the sale transaction invoking the provisions of the Restoration Act. It was not even the contention of the Watandar that he is a tribal. It is discernible from the record that the action of summary eviction under Section 59 of the MLR Code was initiated only in view of the endorsement in the revenue record that the sale transaction is contrary to the provisions of the 1958 Act. In this view of the

matter, the submission, that the summary eviction was ordered in view of the provisions of the Restoration Act, is without substance and is rejected.

33 In the light of the discussion *supra*, the petition is without merit and is dismissed. Interim order, if any, stands vacated.

34 The petitioners shall deliver the possession of the land in question to Respondents No.1-A to 1-C within thirty days.

35 Rule is discharged.

**ROHIT B. DEO
JUDGE**

adb