

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4224 OF 2005

Shridhar Deochand Ingale
Since deceased Through his L.Rs.
Tulshiram Shridhar Ingale
Since deceased through his L.Rs.

- 1-A Hemraj Tulshiram Ingale
Age 50 years, Occ. Agri.
- 1-B. Premraj Tulshiram Ingale
Age 37 years, Occ. Agri.
- 1-C. Vimal Tulshiram Ingale
Age 70 years, Occ. Agri.
(1-A to 1-C all R/o. Nhavi,
Tq. Yawal, District Jalgaon)
- 1-D. Vilas Tulshiram Ingale
Age 45 years, Occ. Agri. & Service
R/o. Nalasopara,
Tq. and District Thane
- 1-E. Shalini Premchand Rane
Age 40 years, occ. Agri. & Household
R/o. Vivara, Tq. Raver,
District Jalgaon
- 1-F. Pushpalata Sudhakar Narkhede
Since deceased through her L.Rs.
- 1-F(i) Nitin Sudhakar Narkhede
Since deceased through his L.Rs.
- 1-F(i)(a) Pradnya Nitin Narkhede
Age 38 years, occ. Service
- 1-F(i)(b) Jay Nitin Narkhede
Age 12 years, Occ. Student
1-F(i)(a) and (b) both R/o. A-601
Olive Apartment, Nalasopara (W)
Tq. Vasai, District Thane
- 1-F(ii) Kamalesh Sudhakar Narkhede

Age 35 years, Occ. Service

- 1-F(iii) Sudhakar Digambar Narkhede
Age 65 years, Occ. Nil
1-F(ii) & (iii) both R/o. 7th floor
Patankar Tower, Nalasopara (W)
Tq. Vasai, District Thane
2. Ramesh Shridhar Ingale
Age 65 years, Occ. Agri.
3. Sau. Vatsalabai Sopan Patil
Age 70 years, Occ. Household
4. Sau. Chamelibai Shridhar Borole
Since deceased through her L.Rs.
- 4-A. Latika Shridhar Borole
Age 55 years, Occ. Household
R/o. Shayog Building, Room No.3,
Pune Road, Old Mumbai Highway,
Kalwa, Thane
- 4-B. Alka Shridhar Borole
Age 53 years, Occ. Household
R/o. Lokmanya Nagar, Pune Road
Old Mumbai Highway, Thane
- 4-C. Mangala Shridhar Borole
Age 51 years, Occ. Household
R/o. Yevale Wada, Khini,
Tq. Bhusawal, District Jalgaon
- 4-D. Arun Shridhar Borole
Age 38 years, Occ. Agri.
R/o. At post Nhavi, Tq. Yawal
District Jalgaon
- 4-E. Shridhar Tukaram Borole
Age 72 years, Occ. Agri.
R/o. At Post Nhavi, Tq. Yawal,
District Jalgaon
5. Sau. Suman Digambar Narkhede
Age 66 years, Occ. Household
R/o. Narkhede Wada, Faizpur
Tq. Yawal, District Jalgaon
6. Sau. Sulochana w/o. Dnyandeo Patil

Since deceased through her L.Rs.

- 6-A. Pankaj Dnyandeo Patil
Age 36 years, Occ. Service
R/o. Rameshwar Park, D-21,
Ghodesar Ahmedabad (Gujarat)
- 6-B. Dr. Santosh Dnyandeo Patil,
Age 33 years, Occ. Service
R/o. near Akashwani City
Tq. and District Jalgaon
- 6-C. Sau. Parvina Sanjay Mahajan
Age 30 years, Occ. Household
R/o. Behind Ramdeo Baba Temple
Khadaka Road, Bhusawal
Tq. Bhusawal, District Jalgaon

...Petitioners

Versus

1. Shetkari Sewa Sangh (Group) Rozoda
Through its Managing Partner
Bhagwan Keshav Fegade
Age 58 years, Occ. Business,
R/o. Rozoda, Tq. Raver
District Jalgaon
2. Sub Divisional Officer, Bhusawal
3. Divisional Commissioner, Nasik
Division, Nashik

...Respondents

(Copy for respondent Nos. 2 and 3 to be
Served on G.P. Office).

.....
Mr. S.P. Brahme h/f Mr. P.N. Kutti and Mrs. C.P. Kutti, advocates for
the petitioners.

Mr. H. D. Deshmukh, advocate for respondent No.1

Mr. A. M. Phule, A.G.P. for respondent Nos. 2 and 3.

.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment :06.02.2020**

**Date of pronouncing
the Judgment : 27.04.2020**

JUDGMENT :-

1. By way of this writ petition, the petitioners are seeking quashing and setting aside the order passed by the Divisional Commissioner, Nashik dated 24.05.2005 in Tenancy Revision Application No. 61 of 2004 confirming thereby the order passed by the Sub Divisional Officer, Bhusawal, dated 17.08.2004.

2. Brief facts giving rise to the present writ petition are as follows:-

a) Respondent No.1 Shetkari Seva Sangh (group) is dealing in the business of purchasing of Bananas and selling it in the market on commission. According to the petitioners, it is an unregistered partnership firm comprising of two partners viz. Bhagwan Keshav Fegade and Narayan Shankar Bonde. The said partnership firm is closed since 1979. Respondent No.1 Shetkari Seva Sangh (Group) had instituted Special Civil Suit No. 35 of 1977 through its partners on 7.2.1977 for recovery of amount of Rs.13,637.51. According to them, the defendants i.e. present petitioners, had entered into an agreement for supply of Bananas to sell through the plaintiff (group) and plaintiff was described themselves as an association dealing in the business of selling of Bananas. The said suit came to be instituted for recovery of money arising out of the alleged contract

between the defendants and the plaintiffs. Respondent No.1 Shetkari Seva Sangh claimed the amount as balance of advance given to the petitioners after deducting the sale proceeds of the bananas supplied by them during the period from 1974 to 1976. The learned C.J.S.D. Jalgaon has decreed the suit *ex parte* and ordered that the petitioners-defendants to pay a sum of Rs.13,637.51. The said decree has attained the finality. The execution proceedings bearing Special Darkhast No. 8 of 1979 came to be instituted by the decree holder Shetkari Seva Sangh through its partners and in the said execution proceedings, the lands belonging to the petitioners (original defendant No.7) bearing Gat Nos. 708 and 796, situated at village Borkheda, Tq. Yawal, District Jalgaon were sold in the auction in execution of the decree. Thereafter, with permission of the court, the decree holder himself also 'did bid' in the auction and his bid was accepted.

b) The petitioners had challenged the validity of auction sale by filing Misc. Civil Appeal under Order XXI Rules 89 and 90 of the C.P.C. on the ground of irregularity and fraud. According to the petitioners, on 31.12.1993, they had deposited an amount of Rs.30,000/- which was more than the decretal amount. The petitioners had also filed another application under Order XXI Rule 89 of C.P.C. for cancellation of auction sale. Furthermore, application Exh.100 came to be filed in the Special Darkhast for setting aside the same. The respondent No.1 decree holder had also filed an

application Exh.95 for confirmation of sale.

c) Learned Judge of the executing court had rejected application Exh.95 filed by respondent No.1 for confirmation of sale and allowed the application Exh.100 of the petitioners for cancellation of sale by order dated 19.02.1996. Being aggrieved by the same, one of the partners i.e. Bhagwan Keshav Fegade had filed Misc. Civil Appeal No. 27 of 1996 in the district Court, Jalgaon. The IVth Additional District Judge, Jalgaon has allowed the said appeal and confirmed the sale in favour of respondent No.1. The petitioners had challenged the said order passed by the learned IVth Additional District Judge in Misc. Civil Appeal No. 27 of 1996 by filing Civil Revision Application No. 206 of 1998 before this Court, which came to be rejected at admission stage itself on 20.03.1998.

d) The petitioners judgment debtors, thereafter, filed an application on 27.04.1998 raising objection for issuance of sale certificate and warrant of possession on two grounds viz. (a) the respondent Shetkari Seva Sangh claimed to be partnership firm, being unregistered, the suit itself was not maintainable in view of bar under Section 69 of the Indian Partnership Act and (b) the sale certificate cannot be issued in the name of Bhagwan Keshav Fegade, in his individual capacity. Shetkari Seva Sangh is not an agriculturist and no sale, including sale in execution of decree of civil court is valid, as transfer to non-agriculturist is barred by Section 63

of the Maharashtra Tenancy and Agricultural Lands Act 1948 (hereinafter for the sake of brevity referred to as "the Tenancy Act"). Neither the sale certificate can be issued nor the sale can be confirmed. The decree holder filed an application Exh.110 purportedly under Order XXI Rule 94 of C.P.C. for issuance of sale certificate. The petitioners/judgment debtors filed another application on 20.08.1998 raising objection about maintainability of execution proceeding itself on the same ground. The learned Civil Judge, Senior Division, Jalgaon, by order dated 24.09.1998 rejected the application of respondent No.1 decree holder to grant sale certificate on the ground that it is not an agriculturist and auction sale is hit under section 63 of the Tenancy Act. The learned Judge of the executing court, however, granted liberty to the respondent decree holder to move the competent authority for permission.

e) Being aggrieved by the same, the petitioners has preferred Civil Revision Application No. 235 of 1998 before this Court challenging the order passed below Exh.104 and 110 in Darkhast No. 8 of 1997 in reference to grant of liberty. This Court by judgment and order dated 19.04.2004 dismissed the civil revision application No. 235 of 1998. The petitioners had preferred special Leave petition challenging the order of dismissal of the civil revision application No. 235 of 1998.

f) In the meanwhile, Bhagwan Keshav Fegade had filed an

application on 15.10.1998 on behalf of the respondent decree holder seeking permission to purchase the auctioned land, before the Sub Divisional Officer, Bhusawal, in terms of liberty granted by the executing Court vide order dated 24.09.1998. The Sub Divisional Officer by order dated 17.08.2004 allowed the application filed by respondent decree holder. Being aggrieved by the same, the petitioners herein had preferred revision before the Divisional Commissioner Nashik. The learned Divisional Commissioner by order dated 24.05.2005 in revision application No. 61 of 2004 has confirmed the order passed by the Sub Divisional Officer, Bhusawal dated 17.08.2004. Hence, this writ petition.

3. Learned counsel for the petitioners submits that the order dated 17.08.2004 passed by the Sub Divisional Officer, Bhusawal is against the principles of natural justice. Learned Sub Divisional Officer has passed an exparte order without granting opportunity of being heard to the petitioners. Learned counsel submits that the impugned judgment and order dated 24.05.2005 passed by the revisional authority is also arbitrary and the vital aspects of the matter were overlooked. In the proceeding before the Sub Divisional Officer, the petitioners had filed an application on 10.08.2004 seeking time to file application for transfer of proceedings. The learned Sub Divisional Officer before hearing had decided to grant permission to the respondent decree holder and therefore, by filing application in writing, the petitioners sought time for filing transfer application.

Furthermore, the petitioners had also brought to the notice of learned Sub Divisional Officer that the S.L.P. has been preferred against the order passed by this Court in Civil Revision Application No. 235 of 1998. However, the Sub Divisional Officer had made undue haste in disposing of the matter without following due process of law as well as the principles of natural justice. Learned Sub Divisional Officer has kept the matter on very short dates i.e. after 10.08.2004 on 13.08.2004 and finally decided it on 17.08.2004 so as to deny the opportunity of fair hearing to the petitioners. The approach of learned Sub Divisional Officer was apparently bias, as he asked the petitioners that they should have handed over the possession long back as their S.L.P. was time barred etc. Learned counsel submits that the provisions of Section 63(1) of the Tenancy Act and Rule 36 of the Maharashtra Tenancy and Agricultural Lands Rules 1956 (hereinafter for the sake of brevity referred to as "the Tenancy Rules") contemplate that enquiry by the Collector into the aspect whether a person seeking permission is an agriculturist or non-agriculturist. If, such a person is non-agriculturist then sale is invalid and no permission can be granted. Learned counsel submits that provisions of Section 63(1) (a) of the Tenancy Act contemplates a sale including sale in execution of decree of Civil Court. Rule 36(1) (h) of the Tenancy Rules has to be read in consonance with the provisions of Section 63 (1) (a) of the Tenancy Act. Learned counsel submits that Rule 36(1) (h) of Tenancy Rules is a subordinate legislation and the same cannot be interpreted against the

substantial provision of Section 63(1) (a) of the Tenancy Act to hold that in case of sale arising out of the execution of a decree of civil court, the permission has to be granted notwithstanding the satisfaction of condition of Rule 36(1) of Tenancy Rules or Section 63(1) of the Tenancy Act. Learned counsel submits that Section 63(1) contemplates two conditions viz. (i) the transaction shall not be valid in favour of a person, who is not an agriculturist and (ii) if in case he is agriculturist then his holding and annual income is to be considered. The permission to a person who is an agriculturist can be granted if the parameter of holding/annual income is satisfied. Learned counsel submits that Rule 36 of the Tenancy Rules is an aid or explanation to proviso to Section 63 of the Tenancy Act. Rule 36(1) also prohibits permission in favour of a person, who is not either an agriculturist or agricultural labour. A permission can be granted to a person, who is agriculturist under the circumstances and if the conditions enumerated in clauses (a) to (i) of Rule 36 are satisfied.

4. Learned counsel for the petitioners in the alternate submits that the matter needs to be remanded to the learned Sub Divisional Officer to hear the parties and to determine whether the respondent is agriculturist or not. Learned counsel submits that the concept of natural justice has undergone a great deal of change in the recent years. Learned counsel submits that the quasi-judicial enquires must be held in good faith, without bias and not arbitrarily or unreasonably.

The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously.

Learned counsel for the petitioners, in order to substantiate his submissions, placed reliance on the following cases:-

- i) A.K. Kraipak vs. Union of India, reported in 1970 AIR (SC) 150;
- ii) Canara Bank and others vs. Shri Debasis Das and others, reported in AIR 2003 SC 2041;
- iii) Indian Railway Construction Co. Ltd. vs. Ajay Kumar, reported in 2003 AIR SCW 1301;
- iv) M/s. Amco Batteries Ltd. vs. Collector of Central Excise, reported in 2003 AIR SCW 1314;
- v) Ambadas Khanderao Hagvane and others vs Shaikh Razaq Shaikh Yakub and others, reported in 2009 91) Bom.C.R. 194;
- vi) Vaishali Abhay Mandle and others vs. Sakharam Vithal Mandle and others, reported in 2012 (2) Bom.C.R. 121.

5. Learned counsel for respondent No.1 submits that the respondent No.1 is not a firm and therefore, the question of its registration under the provisions of Partnership Act does not arise. The respondent No.1 is Shetkari Seva Sangh (Group) and its

Wahiwatdar and owners are Bhagwan Keshav Fegade and Narayan Shankar Bonde. The Sangh deals in marketing of agriculture, horticulture produce such as bananas. Learned counsel submits that the decree in favour of respondent No.1 and its execution up to auction sale of the field stood confirmed up to the Apex Court. Thus, all the allegations and contentions made in the writ petition about the status of respondent No.1 are already dealt with and attained the finality. Learned counsel submits that the petitioners never pleaded in the writ petition or in the Special Civil Suit No. 35 of 1977 that the respondent No.1 is not an agriculturist in terms of provisions of section 69 of the Partnership Act. Learned counsel submits that two orders dated 24.5.2005 and 17.8.2004 passed by the Commissioner and Sub Divisional Officer, respectively, cannot be mixed in the civil litigation which has become final and the status of respondent No.1 has remained undisturbed. Learned counsel submits that it cannot be lost sight of that the auction sale is confirmed by the Supreme Court. Learned counsel relied upon the order dated 20.03.1998 passed by this Court in Civil Revision Application No. 206 of 1998, consequential order dated 19.4.2004 passed by this court in Civil Revision Application No. 235 of 1999 and the order dated 07.01.2005 passed by the Hon'ble Supreme court in S.L.P. No. 22623 of 2004.

6. Learned counsel for respondent No.1 submits that in the case of ***Narayan Bhimji Vadangale and another vs. Hukumchand Chunilal Thole and another, reported in 1992 Mh.L.J. 365***, the

Supreme Court has dealt with the issue in treating the firm as inanimate, incapable of personal cultivation of agricultural land is correct or otherwise. The Supreme court in para 4 of the said judgment has observed that no elaboration is necessary to understand the legal composition of a firm. When the contention is raised that the firm is cultivating the land it means that it is the partners of the firm who cultivate the land and in that sense the firm cultivates it personally. The Supreme Court has further observed that the firm may be inanimate but the partners comprising thereof are people in flesh and blood. Learned counsel submits that in the instant case, the Tahsildar has recorded the finding that respondent No.1 through its partner Mr. Bhagwan Keshav Fegade is an agriculturist and the land held by him is below the ceiling limit and so also is receiving less income and thus recommended for grant of permission. Learned counsel submits that in terms of proviso to Section 63(1) of the Tenancy Act, the conditions are laid down in Rule 36 of the Tenancy Rules and as such, the authorities below have rightly granted permission in favour of respondent No.1. Learned counsel submits that even though the execution is of the year 1979, respondent No.1 original decree holder has yet to receive the fruits of the decree. The petitioners under one or the another pretext, are challenging the orders before the various courts and particularly this writ petition is concerned, because of the interim order dated 27.06.2005 while granting Rule the matter is pending till this date. There is no substance in this writ petition and the writ

petition may be dismissed.

Learned counsel for respondent No.1 in order to substantiate his submissions, placed reliance on the following cases:-

- i) Narayan Bhimji Vadangale and another vs. Hukumchand Chunilal Thole and another, reported in 1992 Mh.L.J. 365

7. I have also heard learned A.G.P. for respondent Nos. 2 and 3.

8. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the writ petition, annexures thereto and the reply filed by the respondents.

9. In terms of liberty granted by the executing Court to respondent No.1 decree holder to seek permission under Section 63(1) of the Tenancy Act, which order passed by the executing court is confirmed up to the Apex Court, respondent No.1 decree holder had filed an application before the Sub Divisional Officer, Bhusawal under Section 63(1) of the Tenancy Act. On careful perusal of impugned order passed by the learned Sub Divisional Officer dated 17.08.2004, it appears that respondent No.1 decree holder has instituted the suit bearing Special Civil Suit No. 35 of 1977 for recovery of amount of Rs.13,637.51 on 07.02.1977. The said suit

came to be decreed on 27.10.1978. The said decree has attained finality and execution proceeding bearing Special Darkhast No. 8 of 1979 came to be initiated by the decree holder through its partner before the civil Court. It is a matter of record that the decree holder himself after obtaining due permission from the executing Court 'did bid', in the auction sale of the property of the petitioners and his bid was accepted. The petitioners had filed an application for setting aside the auction sale vide Exh.100 and had also deposited an amount of Rs.30,000/- towards decreetal amount. Respondent No.1 had filed an application Exh.95 for confirmation of sale. Learned Judge of the executing Court, who dealt with the matter, however, rejected the application Exh.95 which was an application for confirmation of sale filed by the decree holder and allowed application Exh.100 thereby directing to release the property in favour of the petitioners. This order was passed way back on 19.02.1996. Misc. Civil Appeal No. 27 of 1996 was preferred by the decree holder and the learned Judge of the lower appellate court, who dealt with the matter, reversed the finding of the learned Judge of the trial court and confirmed the sale in favour of the respondent decree holder and at the same time rejected application Exh.100 filed by the petitioners judgment debtors. Being aggrieved by the same, the petitioners herein had preferred civil revision application No. 206 of 1998 and this court by order dated 20.03.1998 rejected the civil revision application at the admission stage only. It is also part of record that thereafter, the petitioners-judgment debtors filed another

application Exh.104 in Special Darkhast No. 8 of 1979 for cancellation of auction sale and not to issue sale certificate. The learned C.J.S.D. on application Exh.104 granted liberty to the respondent decree holder to file an application before the competent authority for getting subsequent permission by order dated 24.09.1998. The said order dated 24.09.1998 passed below Exh.104 in Special Darkhast No. 8 of 1979 came to be challenged by filing Civil Revision Application No. 235 of 1999 by the petitioners. By order dated 19.04.2004 this court (Coram: P. B. Gaikwad, J.) has dismissed the civil revision application No. 235 of 1999 and rejected application Exh.104 and allowed application Exh. 110 filed by the decree holder for issuance of sale certificate subject to the permission of the concerned authority in terms of provisions of Section 63 of the Tenancy Act.

10. In the backdrop of these factual aspects, it was appropriate on the part of Sub Divisional Officer, Bhusawal to dispose of the application seeking permission bearing Kulka/Kavi/486/99 pending since 1999. Learned counsel for the petitioners has vehemently made submission by pointing out the copy of Roznama of the proceeding before the Sub Divisional Officer. According to learned counsel for the petitioners, on 10.08.2004, the petitioners had filed an application for adjournment since learned Sub Divisional Officer, before final hearing of the matter, has expressed himself that respondent decree holder is entitled for the permission. Learned

counsel therefore, submitted that learned Sub Divisional Officer has not followed the principles of natural justice and decided the matter without granting opportunity of being heard to the petitioners.

11. In the case of **A.K. Kraipak vs. Union of India, reported in 1970 AIR (SC) 150**, in para 13 and 20 the Supreme Court has made the following observations:-

“13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of Law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

20. *The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own case (Nemo debet esse iudex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably but in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George vs. The University of Kerala, Civil Appeal No. 890 of 1968, (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given*

case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

12. In the case of **Canara Bank and others vs. Shri Debasis Das and others, reported in AIR 2003 SC 2041**, replied upon by learned counsel for the petitioners, in para 19, the Supreme court has made the following observations:-

"19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

13. In the case of ***Indian Railway Construction Co. Ltd. vs. Ajay Kumar***, reported in 2003 AIR SCW 1301, the Supreme Court in para 13 has made the following observations:-

"13. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Government activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. (See State of U.P. and Ors. v. Renusagar Power Co. and Ors., AIR [1988] SC 1737). At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant

considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories:

(i) failure to exercise a discretion, and

(ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires”.

14. In the instant case, I find no substance in the submissions made on behalf of the petitioners that the learned Sub Divisional Officer has violated the principles of natural justice. Learned counsel for respondent No.1 decree holder has vehemently submitted that all allegations made as against the Sub Divisional Officer are reckless and bias. The petitioners have lost civil litigation up to the Apex Court. Furthermore, after carefully going through the impugned order, it appears that the learned Sub Divisional Officer granted liberty to the petitioners to file transfer application and to obtain stay. However, on 13.8.2004, the petitioners and his counsel remained absent before the Sub Divisional Officer. Even the learned Sub Divisional Officer has mentioned all these facts in the impugned order passed by him. It further appears from the impugned order passed by the learned Sub Divisional officer that on perusal of the

report submitted by the Tahsildar dated 25.11.1999 the learned Sub Divisional Officer has considered yearly income of the applicant Bhagwan Fegade and further also given reference to report submitted by the Tahsildar recommending for grant of permission under Section 63 of the Tenancy Act on the ground that son of the applicant viz. Deelip Bhagwan Fegade is only having agricultural land admeasuring 1 Hectare and 18 R to the extent of his share, 5 Anna and 4 Pai and also considered the holding of applicant Bhagwan Keshav Fegade and his status as an agriculturist. In my considered opinion, the learned Sub Divisional Officer, having regard to the old pendency of the matter acted in a good faith, considered all relevant aspects of the case in terms of provisions of Section 63 of the Tenancy Act r.w. Rule 36 of the Tenancy Rules and decided the application without any bias. Furthermore, within few days, the petitioners had challenged the said order before the Divisional Commissioner, Nashik. It also indicates that the petitioners were keeping watch on the proceeding before the Sub Divisional Officer and as soon as the learned Sub Divisional Officer has decided the matter, obtained the certified copy and challenged the said order before the Divisional Commissioner on the ground of violation of principles of natural justice. In my considered opinion, the petitioners in connection with the present matter, had challenged the various orders before the District Court, before this Court and even before the Apex Court. The petitioners are well conversant with the legal aspects. In the revision preferred by the petitioners, the learned

Divisional Commissioner has given opportunity of being heard to the petitioners and decided the matter on merits in accordance with law. Furthermore, this writ petition, though admitted in the year 2005, taken up for final hearing in this year. The petitioners had/have sufficient opportunity to raise their grounds before the Divisional Commissioner and even before this court. I do not think that the petitioners have made out any case to interfere with the well-reasoned orders passed by the authorities below on purported grounds of violation of principles of natural justice.

15. So far as the provisions of Section 63 of the Tenancy Act r.w. Rule 36 of the Tenancy Rules are concerned, the same read as under:-

“63. Transfers to non-agriculturists barred

(1) Save as provided in this Act-

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of person who is not an agriculturist [or who being an agriculturist will after such sale, gift, exchange, lease or mortgage, hold land exceeding the ceiling area] determined under the Maharashtra Agricultural Lands (Ceiling

on Holdings) Act, 1961 [such permission shall not be granted, where land is being sold to a person who is not an agriculturist for agriculture purposes, if the annual income of such person from other sources is Rs.12,000 or more] or who is not an agricultural labourer;

Provided that the Collector or an officer authorized by the [State] Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, on such conditions as may be prescribed

[Explanation. -For the purpose of this sub-section, the expression "agriculturist" shall include any person and his heirs whose land has been acquired for a public purpose and who as a result of such acquisition has been rendered landless from the date of such acquisition.]

[(1A) Where any condition subject to which permission to transfer was granted is contravened, then the land in respect of which such permission was granted shall be liable to be forfeited in accordance with the provisions of section 84CC.

(1B) Where permission is granted to any transfer of land under sub-section (1) any subsequent transfer of such land shall also be subject to the provisions of sub-section (1).]

(1C) Nothing in sub-section (1) shall apply to the land situated within the limits of a Municipal Corporation or a Municipal Council, or within the jurisdiction of a Special Planning Authority or a New Town Development Authority appointed or constituted under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force, and also to any land allocated to residential, commercial, industrial or any other non-agricultural use in the draft or final Regional plan or Town

Planning Scheme, as the case may be, prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force:

Provided that, any transfer of land in favour of a person who is not an agriculturist for any non-agricultural use such as residential, commercial, industrial or any other non-agricultural use, shall be subject to the condition that such land shall be put to such non-agricultural use within a period of five years from the date of transfer, and due entry of such condition shall be made in the Record of Rights of such land:

Provided further that, in respect of land transferred for any non-agricultural use permissible in the draft or final development plan or Regional plan or Town Planning Scheme, as the case may be, after the expiry of the aforesaid period of five years, an extension of time not exceeding further five years may be granted by the Collector on payment of non-utilization charges at the rate of two per cent of the market value of such land per annum, where such market value shall be calculated as per the Annual Statement of Rates published under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, as applicable on the date of grant of such extension of time.

Provided also that, if the transferee, including subsequent transferee, if any, fails to put the land to non-agricultural use permissible in the draft or final development plan or Regional plan or Town Planning Scheme, as the case may be, within a period of five years or, where non utilization charges as aforesaid have been paid, within the total period of ten years, then the Collector, shall resume such land after giving one month's notice to the said defaulting transferee, and the land so resumed by the Collector shall vest in the Government free from all encumbrances, and shall first be

offered to the original land holder by way of grant, on the same tenure on which it was initially held by such original land holder before its transfer for such non-agricultural use and at the same price at which it had been transferred by the original land holder for such non-agricultural use;

Provided also that, if the original land holder fails to accept the offer to purchase the said land within a period of ninety days from the date of receipt of such offer from the Collector or having accepted such offer, fails to deposit with the Collector the required amount within a further period of ninety days, such land shall be auctioned for any use consistent with and permissible under the draft or final development plan or Regional plan or Town Planning scheme, as the case may be, and in both the cases, the defaulting transferee shall only be entitled to compensation equal to the price at which such land had been purchased by him and the Collector shall remit such compensation to the defaulting transferee within a period of ninety days from the date of receipt of payment under the said auction;

Provided also that, if a person who is not an agriculturist fails to utilize the said land for the non-agricultural use permissible in the draft or final development plan or Regional plan or Town Planning Scheme, as the case may be, fully or partly, and wants to sell the same subsequently before the expiry of the total specified period of ten years, he may, subject to the payment of non-utilization charges specified in the second proviso, be permitted to the Collector, to do so for any non-agricultural use permissible in the draft or final development plan or Regional plan or Town Planning Scheme, as the case may be, for the remaining period out of the specified period of ten years, from the date of first transfer of the said land for such non-agricultural use, subject to the condition that the transferee shall have to deposit transfer

charges at the rate of twenty five per cent of the market value of such land as per current Annual Statement of Rates]

(2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease of a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan [or a person carrying on any allied pursuit].

(3) Nothing in this section shall apply or be deemed to have applied to mortgage of any land or interest therein effected in favour of a co-operative society as security for the loan advanced by such society [or any transfer declared to be a mortgage by a court under section 24 of the Bombay Agricultural Debtors Relief Act, 1947.]

(4) Nothing in section 63A shall apply to any sale made under sub-section (1)]”

“Rule 36. Conditions on which permission for sale, etc. of land under section 63 may be granted

(1) The Collector or other officer authorized under the proviso to sub-section (1) of Section 63 shall not grant permission for sale, gift, exchange, lease or mortgage of any land in favour of a person who is not either an agriculturist or an agricultural labourer or who, being an agriculturist, cultivates personally land not less than the ceiling area whether as owner or tenant or partly as owner and partly as tenant unless any of the following conditions are satisfied:-

(a) such a person bonafide requires the land for a non-agricultural purpose; or

(b) the land is required for the benefit of an industrial or commercial undertaking or an educational or charitable

institution; or

(c) such land being mortgaged, the mortgagee has obtained from the Collector a certificate that he intends to take the profession of an agriculturist and agrees to cultivate the land personally; or

(d) the land is required by a Co-operative Society; or

(e) no agriculturist in the village in which the land is situated who holds land less than the ceiling area or no agricultural labourer in such village is prepared to take the land on lease from the owner; or

(f) the land is required for cultivating it personally by a person who, not being an agriculturist intends to take to the profession of agriculture and to whom the Collector after having regard to the order of priority mentioned in clause (c) of sub-section (2) of Section 32P, has given a certificate that such person intends to take to the profession of agriculture and is capable of cultivating land personally; or

(g) the owner of the land has complied with the provisions of Section 64; or

(h) such land is being sold-

(i) in execution of a decree of a Civil Court, or

(ii) for recovering arrears of land revenue or any sums recoverable as arrears of land revenue under the provisions of the Bombay Land Revenue Code, 1879, and

No agricultural labourer or agricultural holding land less than the ceiling area is prepared to bid at such sale, or

(i) such land is being given in gift whether by way of trust or otherwise, and such gift is made bona-fide by the owner in favour of a member of his family.

[(2) Where permission is granted on any of the conditions specified in clause (a), (b), (c) and (f) of sub-rule (1) such permission shall be subject to a further condition that the person in whose favour the sale, gift, exchange, lease or as the case may be, mortgage, of the land is made, shall use the land for the purpose for which the permission has been granted within one year from the date on which he takes possession of the land in accordance with the provisions of the Act.

(3) Where the Collector or any officer authorized by the State Government in that behalf under the proviso to sub-section (1) of Section 63 is satisfied that any such person has, for the reasons beyond his control, not been able to use the land for the purpose aforesaid within the period fixed under sub-rule (2), he may for reasons to be recorded in writing and subject to the provisions of sub-rule (4) permit such person so as to use the land for such further period as he deems fit.

(4) Where by reason of granting further period under sub-rule (3), the aggregate period so allowed exceeds ten years, the Collector or an Officer authorized by the State Government in that behalf under proviso to sub-section (1) of section 63 shall not allow any further period except with the prior approval in writing of the State Government.]”

16. It is thus clear that the transfer of land to non-agriculturist is barred in terms of the provision of section 63(1) of the Tenancy Act and even the sale in execution of decree of the civil court would also be barred in terms of clause (a) of sub-section (1) of Section 63 of

the Tenancy Act. However, in terms of proviso, The Collector or an officer authorized by the State Government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, on such conditions as may be prescribed. Those conditions are prescribed in Rule 36 of the Tenancy Rules. In the instant case, those conditions, particularly condition (h) of sub Rule (1) of Rules 36 of the Tenancy Rules, is satisfied alongwith the condition as prescribed in sub-Rule (1) of Rules 36 of the Tenancy Rules.

17. In the case of ***Narayan Bhimji Vadangale and another vs. Hukumchand Chunilal Thole and another, reported in 1992 Mh.L.J. 365*** in para 4, the Supreme Court has made the following observations:-

“4. Now we are required to examine whether the view taken by the High Court in treating the firm as inanimate, incapable of personal cultivation of agricultural land is correct or otherwise. No elaboration is necessary to understand the legal composition of a firm and its personality which is a name given compendiously to a group of people who comprise its partners, and those people have naturally to be live persons. When we talk of a firm cultivating land we mean to convey that it is the partners of the firm who cultivate the land and in that sense the firm cultivates it personally. The firm may be inanimate but the partners comprising thereof are people in flesh and blood. On this analysis the basis of the judgment of the High Court gets knocked off. Whether the firm is agriculturist or non-agriculturist would depend upon the activities of its partners.

It is worthwhile to mention here that in order to determine as to whether partners of the firm were agriculturists or not the Executing Court ventured to send to the revenue Court for trial an issue to that effect under Section 85-A of the said Act as required by law. The revenue Court returned the finding that both the partners of the firm were agriculturists but as members of a joint family their holding was reckoned as such and was beyond their ceiling limit. Relying on such finding the Executing Court sustained the objection. But it was obvious that under Section 63 of the said Act no person, including a Hindu Joint Family, could purchase area which would go to exceed the ceiling area to which he or it was entitled. It is undisputed that the auction sale has gone to swell the area of the joint family, members of which were the two partners comprising the firm, so as to exceed the ceiling area. This being the position it inevitably follows that the auction sale in favour of the respondents herein has to be declared as void under Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948. The objection is thus sustained, the judgment and order of the High Court is set aside and that of the Executing Court as confirmed by the First Appellate Court restored. In the circumstances of the case there shall be no order as to costs."

18. The Shetkari Seva Sangh (Group) may be an inanimate but the persons comprising therein who runs the said group are people in flesh and blood. It is thus clear that whether the said group is agriculturist or non-agriculturist would depend upon the activities of its partners/owners. In the instant case, the Tahsildar, in terms of the provisions of section 70(a) of the Tenancy Act, has submitted report to the learned Sub Divisional Officer, Bhusawal that the applicant Bhagwan Keshav Fegade is an agriculturist and total holding is less

than the ceiling area and so also income. Even the learned Tahsildar has recommended to grant permission under section 63(1) r.w. Rule 36 of the Tenancy Act and Rules, respectively, to the respondent No.1 decree holder. I find no substance in the submission made on behalf of the learned counsel for the petitioners that the condition as prescribed in Rule 36 of the Tenancy Rules cannot be interpreted against the provisions of Section 63 (1) (a) of the Tenancy Act. In terms of proviso to Section 63(1) the conditions in Rule 36 are prescribed which are not contrary to the provisions of Section 63(1) (a) of the Tenancy Act. As per the requirement of Section 63(1) of the Tenancy Act, r.w. proviso, the conditions are prescribed in Rule 36 and both the authorities below after noticing the due compliance of those conditions granted permission to the respondent decree holder, in accordance with law.

19. In the instant case, though the judgment and decree passed in the Civil Suit has attained the finality in the year 1979, the respondent decree holder yet to receive the fruits of the decree. Thus, considering entire aspects of the case, I find no substance in this writ petition. Hence, I proceed to pass the following order:-

O R D E R

I. Writ petition is hereby dismissed. Rule discharged.

II. Writ petition is accordingly disposed of.

20. At this stage, learned counsel for the petitioners submits that interim relief is granted on 27.06.2005 and the petitioners are in possession of the ancestral property since long. Learned counsel submits that the said interim relief may be continued for eight weeks from today so as to enable the petitioners to approach the Supreme Court. However, considering the nature of litigation and since the respondent is the auction purchaser under execution of the decree and also the decree holder, I am not inclined to extend the interim order. Request refused.

(V. K. JADHAV, J.)

rlj/