IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 1338 OF 2020

1. Gautamsheth Kisan Wadve,
Age 56 years, Occ: Agriculture,

2. Chandrakant Mayaram Pardeshi,
Age 59 years, Occ: Agriculturist,
Both residing at Wadve Complex,
Chakan, Taluka Khjed,
District Pune .. Petitioner

v/s.

1. Kisan Gangaram Kale,
Age Adult, Occ: Agriculturist,

2. Dagdu Sitaram Mengle,
Age Adult, Occ: Agriculturist
Both residing at Thakarwadi,
Rohkal, Taluka Khed,
District Pune.

3. Amol Vasantlal Mutha,
Age 50 years, Occ: Agriculturist,
res. At Raisoni Park,
Bldg. No.3, Flat No.7,
Market Yard, Pune.

4. SDO, Khed,
Rajguru Nagar Division,
having Office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
and having e mail
sdokhed111@gmail.com

5. Maharshtra Industrial Development
Corporation, through its CEO,
having office at

Jog Centre, 1st Floor,
Wakdewadi,
Pune 1

6. The State of Maharashtra ..Respondents

WITH
WRIT PETITION (ST) NO. 3339 of 2020

1. Gautamsheth Kisan Wadve,
Age 56 years, Occ: Agriculture,
residing at Wadve Complex,
Chakan, Taluka Khjed,
District Pune .. Petitioner

v/s.

1. SDO, Khed,
Rajguru Nagar Division,
having Office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
and having e mail
sdokhed111@gmail.com

2. Maharshtra Industrial Development
Corporation, through its CEO,
having office at
Jog Centre, 1st Floor, Wakdewadi,
Pune 1

3. The State of Maharashtra

4. Nana Soma Kale
Age Adult, Occ: Agriculturist
Res. at Ambethan,
Taluka Khed, District Pune ..Respondents

WITH
WRIT PETITION NO. 1445 OF 2020

1. Gautamsheth Kisan Wadve,
Age 56 years, Occ: Agriculture,
Both residing at Wadve Complex,
Chakan, Taluka Khjed,
District Pune .. Petitioner

v/s.

1. Maniram Namdeo Kale,
residing at Wadgaon,
Ghenand Road, Near Vishranwad,
Charoli Khurd, Taluka Khed,
District Pune.

2. SDO, Khed,
Rajguru Nagar Division,
having Office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
and having e mail
sdokhed111@gmail.com

3. Maharshtra Industrial Development
Corporation, through its CEO,
having office at
Jog Centre, 1st Floor,
Wakdewadi,
Pune 1

4. The State of Maharashtra ..Respondents

WITH
WRIT PETITION (ST) NO. 2791 OF 2020

1. Gautamsheth Kisan Wadve,
Age 56 years, Occ: Agriculture,
residing at Wadve Complex,
Chakan, Taluka Khjed,
District Pune .. Petitioner

v/s.

1. SDO, Khed,
Rajguru Nagar Division,
having Office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
and having e mail
sdokhed111@gmail.com

2. Maharshtra Industrial Development
Corporation, through its CEO,
having office at
Jog Centre, 1st Floor,
Wakdewadi, Pune 1

3. The State of Maharashtra

4. Somaji Janku Pardhi
res. at Thakar Vasti,
Ambethan, Taluka Khed,
District Pune. ..Respondents

WITH
WRIT PETITION (ST) NO. 2794 OF 2020

1. Gautamsheth Kisan Wadve,
Age 56 years, Occ: Agriculture,
residing at Wadve Complex,
Chakan, Taluka Khjed,
District Pune. .. Petitioner

v/s.

1. SDO, Khed,
Rajguru Nagar Division,
having Office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
and having e mail
sdokhed111@gmail.com

2. Maharshtra Industrial Development
Corporation, through its CEO,
having office at
Jog Centre, 1st Floor,
Wakdewadi, Pune 1

3. The State of Maharashtra

4. Baban Raoji Thakar (since deceased)
4a. Navnath Baban Thakar
4b. Hausabai Baban Thakar
4c. Sangeeta Baban Thakar
4d. Bharti Somnath Keval
all residing at Kadachi Vadi
Taluka Khed, District Pune. ..Respondents

WITH
WRIT PETITION (ST) NO. 2796 OF 2020

1. Gautamsheth Kisan Wadve,
Age 56 years, Occ: Agriculture,
residing at Wadve Complex,
Chakan, Taluka Khjed,
District Pune. .. Petitioner

v/s.

1. SDO, Khed,
Rajguru Nagar Division,
having Office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
and having e mail
sdokhed111@gmail.com

2. Maharshtra Industrial Development
Corporation, through its CEO,
having office at
Jog Centre, 1st Floor,
Wakdewadi, Pune 1

3. The State of Maharashtra

4. Baban Laxman Pardhi (since deceased)
4a. Shanataram Baban Pardhi
4b. Shivram Baban Pardhi
4c. Hausabai Shivram Khande
4e. Saibai Baban Pardhi
all res. at Vaki Khurd,
Taluka Khed, District Pune. ..Respondents

WITH
WRIT PETITION NO.1973 OF 2020

1. Gautamsheth Kisan Wadve,
Age 56 years, Occ: Agriculture,
residing at Wadve Complex,
Chakan, Taluka Khjed,
District Pune. .. Petitioner

v/s.

1. SDO, Khed,
Rajguru Nagar Division,
having Office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
and having e mail
sdokhed111@gmail.com

2. Maharshtra Industrial Development
Corporation, through its CEO,
having office at
Jog Centre, 1st Floor,
Wakdewadi, Pune 1

3. The State of Maharashtra

4. Dadabhau Yashwant Kale (since deceased)
4a. Ashok Dadabhau Kale
4b. Ramdas Dadabhau Kale
4c. Sandeep Dadabhau Kale
4d. Bhagubai Dadabhau Kale

4e. Borabai Dattatray Jadhav

5. Balaji Yashwant Kale

6. Baydabai Yashwant Kale

7. Sulabai Shivram Pardhi
all res. at Ambethkhan,
Taluka Khed, District Pune. ..Respondents

WITH
WRIT PETITION (ST) NO. 2799 OF 2020

1. Gautamsheth Kisan Wadve,
Age 56 years, Occ: Agriculture,
residing at Wadve Complex,
Chakan, Taluka Khjed,
District Pune. .. Petitioner

v/s.

1. SDO, Khed,
Rajguru Nagar Division,
having Office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
and having e mail
sdokhed111@gmail.com

2. Maharshtra Industrial Development
Corporation, through its CEO,
having office at
Jog Centre, 1st Floor,
Wakdewadi, Pune 1

3. The State of Maharashtra

4. Rakhma Tauji Pardhi (since deceased)
Through legal heirs
4a. Babaji Rakhma Pardhi
4b. Bayjabai Dattu Khande
4c. Bhaghubai Rakhma Pardhi

all res. at Waki Khurd,
Taluka Khed, District Pune. ..Respondents

WITH
WRIT PETITION (ST) NO. 2800 OF 2020

1. Gautamsheth Kisan Wadve,
Age 56 years, Occ: Agriculture,
residing at Wadve Complex,
Chakan, Taluka Khjed,
District Pune. .. Petitioner

v/s.

1. SDO, Khed,
Rajguru Nagar Division,
having Office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
and having e mail
sdokhed111@gmail.com

2. Maharshtra Industrial Development
Corporation, through its CEO,
having office at
Jog Centre, 1st Floor,
Wakdewadi, Pune 1

3. The State of Maharashtra

4. Balu Barku Kale
Age Adult, Occ: Agriculturist
res. at Waki Khurd
Taluka Khed, District Pune.

5. Yamunabai Lakshman Kedari
Age Adult, Occ: Agriculturist
res. at Waki Khurd
Taluka Khed, District Pune. ..Respondents

WITH
WRIT PETITION NO.2798 OF 2020

Gautamsheth Kisan Wadve
Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune. ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1

3. The State of Maharashtra

4. Jaywant Shankar Kale, since deceased
Through his Legal Heirs
4a. Rajaram Jaywant Kale
Age: 43 Yrs., Occ: Agriculture
4b. Lalaji Jaywant Kale, since deceased
Through his legal heirs
4b.(1) Deepak Lalaji Kale
Age: 26 Yrs., Occ.: Agriculture
4b.(2) Sandip Lalaji Kale
Age: 21 Yrs., Occ.: Agriculture
4b.(3) Baydabai Lalaji Kale
Age: 41 Yrs., Occ.: Household
4c. Mangal Sanjay Pardhi
Age: 37 Yrs., Occ.: Household
4d. Hirabai Jaywant Kale
Age: 66 Yrs., Occ.: Household
All R/at Vaki, Budruk,

Tal.: Khed, Dist.: Pune ...Respondents

WITH
WRIT PETITION (ST) NO. 2940 OF 2020

Gautamsheth Kisan Wadve
Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune, ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune .
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1.

3. The State of Maharashtra

4. Tavji Muktaji Thakar
Residing at – Thakar vasti,
Ambethan, Taluka Khed,
District Pune. ….Respondents

WITH
WRIT PETITION (ST) NO.2801 OF 2020

Gautamsheth Kisan Wadve
Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune, ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1.

3. The State of Maharashtra

4. Baban Taytaba Thakar
Residing at – Thakar vasti,
Nanekarwadi, Taluka Khed,
District Pune. ….Respondents

WITH
WRIT PETITION (ST) NO.710 OF 2020

1. Gautamsheth Kisan Wadve
Age 56 years, Occ. Agriculturist

2. Chandrakant Mayaram Pardeshi
Age 59 years, Occ. Agriculturist
Both residing at Wadve Complex,
Chakan, Taluka Khed,
District Pune ….Petitioners

Versus

1. Gangaram Govind Thakar
Age Major, Occ. Agriculturist

2. Rajaram Govind Thakar

Age Major, Occ. Agriculturist
Both residing at Waki, Khurd
Taluka Khed, District Pune

3. SDO, Khed,
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed
District Pune.
And having email
sdokhed111@gmail.com

4. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1

5. The State of Maharashtra ….Respondents

WITH
WRIT PETITION (ST) NO.2795 OF 2020

Gautamsheth Kisan Wadve
Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune. ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune.
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation

Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1.

3. The State of Maharashtra

4. Gopal Namdeo Kale
Residing at – Wadgaon Ghenand Road,
Near Vishrantwad,
Charoli Khurd, Taluka Khed,
District Pune. ….Respondents

WITH
WRIT PETITION (ST) NO.2798 OF 2020

Gautamsheth Kisan Wadve
Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune. ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune.
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1.

3. The State of Maharashtra

4. Nana Tukaram Kale
Since Deceased Through its Legal Heirs
Tanhaji Tukaram Kale

Residing at – Wadgaon Ghenand Road,
Near Vishrantwad,
Charoli Khurd, Taluka Khed,
District Pune. ….Respondents

WITH
WRIT PETITION (ST) NO.2790 OF 2020

Gautamsheth Kisan Wadve
Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune. ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune.
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1.

3. The State of Maharashtra

4. Laxman Taytaba Thakar
Residing at – Thakar vasti,
Ambethan, Taluka Khed,
District Pune. ….Respondents

WITH
WRIT PETITION (ST) NO.4535 OF 2020

Gautamsheth Kisan Wadve

Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune. ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune.
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1

3. The State of Maharashtra

4. Bajaba Tavji Pardhi, since deceased
Through his Legal Heirs
4a. Bapu Bajaba Pardhi
4b. Gopinath Bajaba Pardhi
4c. Kantabai Bajaba Pardhi
4d. Jijabai Kaluram Khande
4e. Gayabai Shivraj Sapre
4f. Mukktabai Bajaba Pardhi
4g. Yogesh Baliram Pardhi
4h. Sunil Baliram Pardhi
4i. Anita Surekh Khandve
4j. Phulabai Baliram Pardhi
All residing at Vaki, Khurd,
Tal.: Khed, Dist: Pune ….Respondents

WITH
WRIT PETITION (ST) NO.4538 OF 2020

Gautamsheth Kisan Wadve

Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune. ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1

3. The State of Maharashtra

4. Bayjabai Amruta Thakar
Age: 54 yrs., Occ.: Household

5. Suresh Amruta Thakar
Age: 20 yrs., Occ.: Household

6. Manisha Shivaji Kadale
Age: 34 yrs., Occ.: Household

7. Tai Amruta Thakar
Age: 29 yrs., Occ.: Household

8. Sunita Amruta Thakar
Age: 23 yrs., Occ.: Household

9. Anita Amruta Thakar
Age: 22 yrs., Occ.: Household
All R/at Thakarwasti, Nanekarwadi,
Tal.: Khed, Dist: Pune ….Respondents

WITH
WRIT PETITION (ST.) NO. 4539 OF 2020

Gautamsheth Kisan Wadve
Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune. ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune.
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1

3. The State of Maharashtra

4. Balwant Krushna @ Kisan Kale
(since deceased through Legal Heirs
4a. Rajaram Balwant Kale
Age: Adult, Occ.: Agriculture
4b. Babulal Balwant Kale
Age: Adult, Occ.: Agriculture
4c. Tai Kisan Kale
Age: Adult, Occ.: Household
4d. Tarabai Balwant Kale
Age: Adult, Occ.: Household

5. Maruti Kisan @ Krushna Kale
Age: Adult, Occ.: Agriculture

6. Dwarkabai Balu Mengale
Age: Adult, Occ.: Household
All residing at Kadachi Wadi,
Tal.: Khed, Dist: Pune ...Respondents

WITH
WRIT PETITION (ST) NO.4540 OF 2020

Gautamsheth Kisan Wadve
Age 56 years, Occ. Agriculturist
Residing at-Wadve Complex,
Chakan, Taluka Khed,
District Pune, ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed,
District Pune
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1

3. The State of Maharashtra

4. Nana Soma Kale
Residing at- Ambethan,
Taluka Khed, District Pune ….Respondents

WITH
WRIT PETITION (ST) NO. 3236 OF 2020

Sachin Gautamsheth Wadve
Age 33 years, Occ. Agriculturist
Residing at Wadve Complex,

Chakan, Taluka Khed,
District Pune. ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed
District Pune
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 1

3. The State of Maharashtra

4. Mayaram Shripati Kale
Age Adult, Occ. Agriculturist

5. Fattu alias Falu Shripati Kale
Age Adult, Occ. Agriculturist

6. Dadu Shripati Kale
Age Adult, Occ. Agriculturist

7. Sababai Jaywant Kale
Age Adult, Occ. Housewife

8. Indubai Bhika Bhalekar
Age Adult, Occ. Housewife

9. Bayjabai Damu Kedari
Age Adult, Occ. Housewife
All Residing at- Thakar Vasti,
Ambethan, Tal. Khed, Pune.

10. Gautamsheth Kisan Wadve

Residing at Wadve Complex,
Chakan, Taluka Khed,
District Pune ….Respondents

WITH
WRIT PETITION (ST.) NO. ASDB-CH-1 OF 2020

Ramindrasingh Surendrasingh Narang
Age 45 years, Occ. Agriculturist
Residing at Rasta Peth,
Cycle Society, Pune 411011 ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed
District Pune
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 411 001

3. Collector, Pune
Having address at Collector Office,
Pune – 411 001.

4. The State of Maharashtra

5. Kisan Rama Shinde
Age : Adult, Occ : Agriculturist,
R/at. Thakar Wasti, Rohkal,
Tal. Khed, Dist. Pune.

6. Sanjay Vishnu Nanekar
Age. 50 yrs, Occ.: Agriculturist,
R/at : Nanekar Wadi, Chakan,

Tal. : Khed, Dist.: Pune

7. Anil Digambar Kad
Age: 45 yrs, Occ.: Agriculturist,
R/at : Waki Budruk, Tal.: Khed,
Dist. Pune.

WITH
WRIT PETITION (ST.) NO. ASDB-CH-2 OF 2020

Ramindrasingh Surendrasingh Narang
Age 45 years, Occ. Agriculturist
Residing at Rasta Peth,
Cycle Society, Pune 411011 ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed
District Pune
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 411 001

3. Collector, Pune
Having address at Collector Office,
Pune – 411 001.

4. The State of Maharashtra

5. Punhaji Umaji Shinde
Age : Adult, Occ.: Agriculturist,
R/at : Thakar Wasti, Rohkal,
Tal.: Khed, Dist. : Pune.

6. Sanjay Vishnu Nanekar
Age : 50 yrs, Occ : Agriculturist,
R/at : Nanekar Wadi, Chakan,
Tal.: Khed, Dist.: Pune.

7. Anil Digambar Kad
Age : 45 yrs, Occ. : Agriculturist,
R/at : Waki Budruk, Tal.: Khed,
Dist. Pune.

WITH
WRIT PETITION (ST.) NO. ASDB-CH-3 OF 2020

Pritamkaur Surendrasingh Narang
Age 72 years, Occ. Housewife &
Agriculturist,
Residing at Rasta Peth,
Cycle Society, Pune 411011 ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed
District Pune
And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 411 001

3. Collector, Pune
Having address at Collector Office,
Pune – 411 001.

4. The State of Maharashtra

5. Babu Raghu Shinde (since

deceased through) :

a) Chandrakant Babu Shinde
Age : Adult, Occ : Agriculturist,

b) Vasant Babu Shinde
Age : Adult, Occ : Agriculturist,

c) Vilas Babu Shinde
Age : Adult, Occ : Agriculturist,

d) Sonabai Babu Shinde
Age : Adult, Occ : Agriculturist,
R/at : Thakar Wasti, Rohkal,
Tal. Khed, Dist. : Pune.

6) Dattaraj Madhukar Wafgaonkar
Age : 55 yrs, Occ. : Agriculturist,
R/at : Bajarpeth, Chakan,
Tal. Khed, Dist. Pune.

7) Anil Digambar Kad
Age : 45 yrs, Occ. : Agriculturist,
R/at : Waki Budruk, Tal. : Khed,
Dist : Pune.

WITH
WRIT PETITION (ST.) NO. ASDB-CH-4 OF 2020

Pritamkaur Surendrasingh Narang
Age 72 years, Occ. Housewife &
Agriculturist,
Residing at Rasta Peth,
Cycle Society, Pune 411011 ….Petitioner

Versus

1. SDO, Khed
Rajguru Nagar Division
Having office at Wada Road,
Rajguru Nagar, Taluka Khed
District Pune

And having email
sdokhed111@gmail.com

2. Maharashtra Industrial
Development Corporation
Through his CEO, having office
Jog Centre, 1st Floor, Wakdewadi
Pune – 411 001

3. Collector, Pune
Having address at Collector Office,
Pune – 411 001.

4. The State of Maharashtra

5. Dadabhau Sitaram Bhangre
Age. : Adult, Occ. : Agriculturist,
R/at : Thakar Wasti, Rohkal,
Tal. Khed, Dist. Pune.

6. Dattaraj Madhukar Wafgaonkar
Age. 55 yrs, Occ. Agriculturist,
R/at : Bajarpeth, Chakan,
Tal. Khed, Dist. Pune.

7. Anil Digambar Kad
Age. 45 yrs, Occ. Agriculturist,
R/at : Waki Budruk, Tal. Khed,
Dist. Pune. .Respondents

Mr. C.M.Korde, Sr. Advocate a/w. Mr. Shriram Kulkarni i/b. Mr.Chaitanya Nikte for the Petitioner in WP/1445/2020.

Mr. Shriram Kulkarni i/b. Mr. Chaitanya Nikte for the Petitioner in WP/ST/1338/2020, WP/ST/3339/2020, WP/ST/2791/2020, WP/1973/2020, WP/ST/2794/2020, WP/ST/2796/2020, WP/2799/2020, WP/2800/2020.

Mr. Surel Shah i/b. Mr. Chaitanya Nikte for the Petitioners in WP/St/2791/2020, WP/ST/2794/2020, WP/ST/2796/2020,

WP/1973/2020, WP/ST/2799/2020, WP/ST/2800/2020 and WP/ST/2795/2020.

Mr. Mayur Khandeparkar i/b. Mr. Chaitanya Nikte for the Petitioners in WP/ST/2798/2020, WP/ST/4539/2020.

Mr. Ajinkya Udane for the Petitioners in WP/ST/3339/2020.

Mr. Sandesh D. Patil with Mr. Pavan S. Patil for Respondent No.1 in WP/ST/1338/2020, for Respondent No.4 in WP/ST/2791/2020, for Respondent Nos.4(a) to 4(d) in WP/ST/2794/2020, for Respondent Nos.4(a) to 4(e) inWP/ST/2796/2020 and WP/1973/2020, for Respondent Nos.4(a) to 4(c) in WP/ST/2799/2020, for Respondent Nos.4 and 5 in WP/ST/2800/2020, for Respondent No.4 in WP/ST/2801/2020, WP/ST/2795/2020, WP/ST/2798/2020, WP/ST/4538/2020 and for the Respondent Nos .4 to 9 in WP/ST/3236/ 2020.

Mr. Pawan S. Patil for the Contesting Respondents in WP/ST/3339/2020 and WP/ST/ 2800/2020, WPST-ASDB-CH-1-2020, WPST-ASDB-CH-2-2020, WPST-ASDB-CH-3-2020, for Respondent No.5 in WPST-ASDB-CH-3-2020 and for Respondent Nos.1 and 2 in WP/ST/710/2020.

Mr. Drupad Patil i/b. Mr. Pawan S. Patil for the Respondent No.1. in WP/1445/2020.

Mr. Surel Shah i/b. Prasad Sarvankar for the Respondent No.3 in WP/ST/1338/2020.

Mr. Ankur Pahade i/b. Jay & Co. for the Respondent-MIDC in WP/ST/1338/2020, WP/ST/3339/2020, WP/1445/2020 and WP/ST/2791/2020.

Mr. S.B.Kalel, AGP for the Respondent Nos.4 and 6 in WP/ST/1338/2020 and WP/ST/2791/2020, WP/ST/ASDB/CH-1-2020, WP/ST/ASDB/CH-2-2020, WP/ST/ASDB/CH-3-2020, WP/ST/ASDB/CH-4-2020.

Mr. R.P.Kadam, AGP for the State in WP/ST/3339/2020, WP/ST/2794/2020 and WP/ST/2796/2020.

Mr. C.D. Mali, AGP for the State in WP/1973/2020, WP/2799/2020 and WP/2800/2020.

Ms.P.N.Diwan, AGP for the Respondent- State in WP/1445/2020, WPST/2798/2020, WPST/2790/2020, WPST/4535/2020, WPST/4538/2020, WPST/4539/2020, WPST/4540/2020, WPST/3236/2020..
Mr. M.M. Pable, AGP for the Respondent-State in WP/2791/2020, WPST/2794/2020, WP/ST/2795/2020 WPST/2796/2020, WP/ST/2940/2020, WPST/2801/2020, and WP/ST/710/2020 .

CORAM : A.A.SAYED &
ANUJA PRABHUDESSAI, JJ.
RESERVED ON : 8th JULY, 2020.
DATED : 29th JULY, 2020.

JUDGMENT (PER ANUJA PRABHUDESSAI, J.) :

1. All these Petitions involve identical issues and are being disposed of by this common Judgment and Order.

2. The Petitioners have questioned the legality and validity of the orders passed by the SDO rejecting their applications for payment of compensation. The Petitioners have also prayed for a writ of mandamus directing the SDO to refer the dispute to the Competent Court and to deposit the compensation in the said Court.

3. The State of Maharashtra proposed to develop the lands situated in villages Rohkal and Ambethan, Taluka Khed, Pune District as Chakan Industrial Area, phase 5. By notification dated

20.09.2003, issued in exercise of powers under Section 1(3) of the Maharashtra Industrial Development Act, 1961, hereinafter referred to as the MID Act, the provisions of Chapter VI of the MID Act were made applicable with effect from 23.03.2005 to the lands as notified and declared to be industrial area. Notification under Section 32(2) of the MID Act was published in the Government Gazette dated 03.05.2007. Notices were also served upon the owners/interested persons to show cause why the proposed lands should not be acquired for industrial purpose. Upon complying with the mandatory procedure of personal hearing, notification dated 08.06.2017 under Section 32(1) of the MID Act came to be published in the Government Gazettes dated 8 to 14 June 2017, thereby vesting the said lands in the government free from all encumbrances on and from the date of such publication. In accordance with agreements between the State Government and the concerned Owners/Occupants, the Sub-Divisional Officer, Khed (SDO) vide Awards dated 16.09.2019 and 27.12.2019 determined compensation of the acquired land @ Rs.1,37,50,000/- per hector.

4. The Petitioners filed Applications/Objections before the SDO and claimed that the Occupants of the subject lands had assigned

the right to receive compensation in their favour and that they have filed Suits for specific performance. The Petitioners also brought to the notice of the SDO that one of the Suits has been disposed of by the Lok Adalat Award, some are decreed on merits and others are pending adjudication. The Petitioners claimed that they are entitled to receive the entire compensation by virtue of the said agreements, Lok Adalat Award and Judgments passed by the Civil Court. The Petitioners therefore prayed that the compensation be paid to them or in the alternative to refer the dispute to the competent Court and to deposit the amount of compensation in the Court.

5. The SDO, upon hearing the respective parties, held that the land belongs to the tribals and the same cannot be transferred in favour of a non-tribal without prior sanction of the Collector and approval of the State Government as contemplated under Section 36A of the Maharashtra Land Revenue Code (MLRC). The learned SDO further held that the jurisdiction of the Civil Court to decide the issue is barred under Section 10 of Maharashtra Restoration of Land to Schedule Tribes Act, 1974 . The learned SDO has further held that transfer of the subject land pending acquisition under the provisions of MIDC was prohibited as per the

mutation entries made in the Revenue Record. The learned SDO held that the provisions of Section 35 of MIDC were not applicable and hence rejected the Applications/Objections filed by the Petitioners and ordered payment of compensation to the Occupants. Being aggrieved by the order of the SDO, the Petitioners have invoked the writ jurisdiction of this Court.

6. The Petitioners claim that they have entered into Agreements for Sale/ Development Agreements with the Occupants of the subject land, who were desirous of selling the land due to financial constraints. The Occupants had also agreed that in the event of the acquisition of the land by the MIDC, the Petitioners would have right to receive the compensation and other acquisition benefits. The Petitioners contend that since the land was allotted under new and restricted tenure, the transfer of the subject land was subject to certain restrictions and sanction from the Competent Authority. The Petitioners claim that despite receipt of substantial consideration, the Occupants did not obtain prior permission and did not take steps to conclude the transfer. Hence, they were compelled to file Suits to enforce the terms and conditions of the agreements and for order of payment of the compensation.

7. The Civil Suit No. 236 of 2016 which relates to the WP/ST/3339/2020, has been disposed of by the Award of Lok Adalat dated 08.07.2017 according to mutually agreed terms of compromise. Whereas, by Judgments and Decrees dated 23.04.2018 the Suits for specific performance relating to Development Agreements in WP/1445/2020, WP/1973/2020, WP/ST/2800/2020, WP/ST/2795/2020, WP/ST/2798/2020, and WP/ST/4535/2020 have been decreed on merits, execution of which has been stayed by the Appellate Court pending hearing of the Appeals. Suits relating to other Petitions are pending adjudication before the Civil Court.

8. The Petitioners claim that they are entitled to receive the entire compensation in view of a specific clause in the Agreements for Sale/ Development Agreements, assigning right to receive compensation, as well as by virtue of the Award/ Judgments and Decrees passed by the Civil Court. The Petitioners claim that the SDO, Khed, was bound by the Award and the Judgments of the Civil Court. He has erred in invoking provisions under Section 10 of the Maharashtra Restoration of Land to Schedule Tribes Act,

1974, and has exceed his jurisdiction by questioning the legality of the judgments of the Civil Court. The Petitioners have also questioned the jurisdiction of the SDO in adjudicating the dispute inter se between the parties. It is contended that the only option available to the SDO was to refer the dispute to the competent Civil Court and to deposit the compensation in the said Court as mandated by Section 36 of the MID Act.

9. The Occupant Kisan Kale, (Respondent No.1 in WP/ST/1338/2020) has filed his affidavit-in-reply wherein he has stated that he was not aware of the Agreement for Sale executed by the Respondent No.3 (POA) in favour of the Petitioner. He has stated that the Respondent No.3 has not paid to them Rs.5,00,000/- being part consideration allegedly received from the Petitioners. He has further stated that the land was purchased by him under the provisions of Section 32(G) of Bombay Tenancy and Agricultural Lands Act, 1948 (BTAL Act) and hence there was restriction on transfer of the land under Section 43 of the BTAL Act. He has further stated that he is an Adivasi belonging to Thakkar community and hence the transfer of occupancy was subject to prior sanction of the Collector and approval of the State

Government in terms of Section 36A of the MLRC. He has stated that the Petitioners are not entitled to claim compensation on the basis of an unregistered and unstamped agreement, which has been executed by the Respondent No.3 as a Power of Attorney, without his knowledge and consent.

10. Sanjay Baburao Teli, SDO, Khed, has filed his affidavit stating that the subject land was purchased by the Occupants in WP/ST/1338/2020 under the provisions of Section 32G of the BTAL Act, and that the transfer of such land is subject to previous sanction of the Collector. The subject land in the other group of matters, was owned by the Government. By Order dated 16.03.1976 the said land was allotted to the Occupants-the landless tribals, under the provisions of Section 20 and 21 of MLRC, on new and restricted tenure. He has stated that the transfer of an occupancy of the said land is subject to previous sanction of the Collector and approval of the State Government under Section 36A of the MLRC. He has stated that the Petitioner has entered into agreements with the Occupants without obtaining prior sanction under Section 36A of the MLRC. He has further stated that the order of the Civil Court is not enforceable in view of the bar under

Section 36(C) of the MLRC. It is stated that referring the dispute to the Civil Court would be against public policy and would deprive the tribals of their legitimate claim.

11. Earlier when the Petitions were posted for orders, Shri Pawan Patil who had represented the Occupant in WP/ST/3339/2020 sought discharge and Shri Ajinkya Udane put in his appearance for the said Occupant. A praecipe came to be filed stating that the parties in WP/ST/3339/2020 have settled the dispute amicably. A copy of the consent terms was placed on record with a prayer to dispose of the Petition as per the consent terms.

12. We have perused the consent terms filed by the parties in WP/ST/3339/2020. In our considered view, the consent terms are opposed to law and public policy, for detail reasons, which are elaborated hereinafter. We therefore declined to put a seal of approval to a compromise between the parties and heard all the Petitions on merits.

13. Submissions on behalf of the Petitioners can be summarized as under:-

(i) Prior sanction under Section 36A of MLRC is required only when occupancy of a tribal is transferred to a non-tribal. It is submitted that the Occupants had not disclosed that they were tribals. Their claim has not been verified by the Caste Scrutiny Committee. Under the circumstances, the learned SDO was not justified in holding that the Occupants are tribals and further that the agreements are not enforceable and /or are void for want of prior sanction under Section 36A of MLRC.

(ii) The Agreement for Sale or assignment of right to receive compensation is not void as the bar under Section 36 of the MLRC and 43 of BTAL is attracted only at the stage of transfer of occupancy or execution of the Deed of Conveyance. Reliance is placed on the decision of the learned Single Judge of this Court in ***Kalandi Baburao Raut & Ors. vs. Dattu Damu Thakare 2008 SCC Online Bom. 553***.

(iii) The respective Occupants have entered into agreements with the Petitioner, by virtue of which they have not only agreed to transfer the subject land but have also assigned right to receive compensation and other benefits arising from the land acquisition. Relying upon the decision of the Delhi High Court in ***Sadhana Gupta & Ors. vs. Shishpal & Anr. (2016) SCC Online Delhi 3810*** and the decision of the Allahabad High Court in ***Soran Singh V/s. Collector, Agra & Ors. MANU/UP/2991/2018***, it is submitted that assignment of the right to receive compensation or enhancement thereof in accordance with the provision of the Land Acquisition Act does not fall under Clause (e) of Section 6 of the Transfer of Property Act, which prohibits transfer of right to sue. It is submitted that compensation payable under the provisions of the Land Acquisition Act is “property" which is transferable under the provisions of the Transfer of Property Act.

(iv) Right to receive compensation is an independent and distinct right. Transfer of such right does not amount to transfer of 'occupancy' within the meaning of Section 2(22) of MLRC as to attract restrictions under Section 36A of MLRC.

(v) Relying upon the decision of this Court in ***Dossibai Nanabhoy Jeejeebhoy vs. P.M.Bharucha 1958 (60) Bom. LR 1208,*** it is contended that the "person interested" in the land under Section 9 of Land Acquisition Act would include a person who claims interest in compensation to be paid on account of acquisition of land. The right to receive compensation is not restricted to those persons who have legal or propriety interest in the land and is available to all those who have right or claim to land even if such right or claim does not amount to legal or proprietary estate or interest in the land.

(vi) The Petitioner in WP/ST/3339/2020 is entitled to receive compensation as per the Award of the Lok Adalat and the Petitioners in WP/1445/2020, WP/1973/2020, WP/ST/2800/2020, WP/ST/2795/2020, WP/ST/2798/2020, and WP/ST/4535/2020 are entitled for compensation as per the Judgments and Decrees of the Civil Court.

(vii) The Award/Decrees have been passed by the Court of competent jurisdiction. Relying on the decision of the Apex Court in ***Balwant Viswamitra & Ors. vs. Yadav Sadashiv Mule (2004) 8 SCC 706*** it is contended that there is distinction between a decree which is void and a decree which is erroneous in law or on facts. It is submitted that an erroneous, illegal or irregular decree is not void and is binding on parties till it is set aside in an Appeal, Revision or other appropriate proceedings.

(viii) The Civil Court has recorded categorical findings of facts that the agreements have been validly executed and that the Occupants have not been able to prove fraud. The Occupants have not produced caste certificate in support of their claim of being Adivasis or tribals and have thus failed to prove that the agreements are void or illegal in context of bar under Section 36A of MLRC. The Civil Court was competent to decide a jurisdictional fact and the adjudication on facts in issue was not without jurisdiction.

(ix) It is submitted that the Collector is not competent to enforce the contract or to grant alternative relief hence the bar under Section 36C the MLRC is not applicable. Reliance is placed on ***Shiv Ganesh Co-operative Housing Society vs. Lokhandwala Infrastructure Pvt. Ltd. & Ors. (Appeal (St) No.769 of 2014)***.

(x) The SDO has exceeded his jurisdiction in questioning the legality of the decision of the Civil Court. Reliance is also placed on the decision of the learned Single Judge of this Court in ***Lokhandwala Infrastructure Pvt. Ltd. vs. Dhobighat Compound Rahivasi Seva Sangh & Ors. (Notice of Motion No.1516 of 2011 in Suit No.1108 of 2011).***

(xi) It is submitted that sanction under Section 36A of MLRC or 43 of BTAL was not a prerequisite for filing a Suit for specific performance. The Petitioners can always apply and obtain such sanction as a fallout of the Decree/Judgment, or in execution under Order 21 Rule 35 of the Code of Civil Procedure, at any time prior to execution of the sale deed. That apart, the question whether any sanction is necessary or not is itself pending adjudication before the

Appellate Court.

(xii) Relying upon the judgments of the Apex Court in ***Urmila Devi and Ors. vs. Deity Mandir Shree Chamunda Devi and Ors. (2018) 2 SCC 284*** and ***Jagdish Singh vs. Nathu Singh (1992) 1 SCC 647,*** it is submitted that even if a contract becomes incapable of specific performance due to acquisition of the subject land, Section 21 of Specific Relief Act enables Award of compensation in lieu and substitution of specific performance.

(xiii) There is no reference to the order dated 31.10.2014 in the impugned order. As such the Respondents cannot supplement reasons to support the impugned orders as held by the Apex Court in the case of ***Mahinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405*** and reaffirmed in ***T.P. Senkumar vs. Union of India & Ors. (2017) 6 SCC 801***.

(xiv) Bar under Section 10 of Maharashtra Restoration of Lands to Schedule Tribes Act, 1974 (MRLST) is attracted only in context of issues which could be decided by the Authority under the MRLST Act. Such Authority cannot possibly pass a decree of specific performance. Hence, the jurisdiction of the Civil Court in passing a decree for specific performance is not barred under Section 10 of the MRLST Act.

(xv) The jurisdiction of SDO is circumscribed by Sections 33 to 36 of the MID Act. He cannot sit in appeal over the judgment of a Civil Court. He cannot comment upon the findings rendered by a Civil Court or question validity of the judgment.

(xvi) Mr. Korde and Mr. Kulkarni have submitted that the matter involves several complex legal issues viz. (a) whether the clause relating to transfer of compensation is an independent agreement; (b) whether such transfer requires prior sanction under Section 36A; (c) legal effect of order dated 31.10.2014 whereby possession was restored to the Occupants etc. The SDO was not competent to decide these issues. Hence, it was mandatory for the SDO to make a reference to the civil court. Reliance is placed on the decisions in (i) ***Dr.G.H.Grant Vs. State of Bihar AIR 1966 SC 237; (ii) State of Uttar Pradesh vs. Jogendra Singh (1964) 2 SCR 197; (iii) Kuchilal Rameshwar Ashram Trust evam Anna Kshetra Trust vs. Collector Haridwar & Ors. (2017) SCC 418; (iv) Meher Rusi Dalal vs. Union of India & Ors. (2004) 7 SCC 354;(v) Mohandevi Sohanlal Jhawar vs. Special Land Acquisition Officer 2002 (3) Mh.L.J. 820. (vi) Dnyaneshwar Tarde vs. State of Maharashtra 2002 (2) Mh.L.J. 612; (vii) Special Land Acquisition Officer, Girna Project, Nashik vs. Bhogilal Lalchand 1971 Mh.L.J. 106;***

(viii) Sakhubai @ Shakuntalabai Chopde vs National Thermal Power Corporation 2012 (4) Mh.L.J. 147; (ix) Arulmughu Laxmainarsimha Swami vs. Union of India (1996) 6 SCC 408.

(xvii) Mr. Mayur Khandeparkar submits that Section 34 is not exhaustive. It can be resorted to only by a person aggrieved by the decision of the Collector in determining the amount of compensation.

(xviii) Section 35 is independent of Section 34(1) & (2). The word "may" in Section 35 has to be read as "shall" only when there is a dispute between the parties as regards apportionment of compensation or to whom it is payable and no suit is pending in any court. In cases where suit is already pending there is no reason to make a reference but in such cases, it is mandatory for SDO to deposit the compensation in the Court where such dispute is pending.

(xix) Mr. Surel Shah however contends that recourse to Section 34 can be taken not only by a party aggrieved by determination of compensation but also when there is dispute as to apportionment of compensation or to whom it is payable.

(xx) He submits that the word "may" in Section 35 has to be read as "shall" and it is mandatory for SDO to refer the dispute to the Civil Court and to deposit the compensation before that said Court.

(xxi) He contends that Section 34 and 35 of the MID Act are not pari materia with Section 18 and 30 of the Land Acquisition Act. Hence the law declared by the Hon'ble Apex Court and the High Courts in so far as Section 30 being discretionary is not applicable to Section 35 of the MID Act. What is pari materia has been explained by the Apex Court in the case of ***Bangalore Turf Club Ltd. vs. Regional Director , Employees State Insurance Corporation (2014) 9 SCC 657***.

(xxii) It is also submitted that the Petitioners had pre-existing right and they had raised objections on 30.8.2019 and had claimed right to receive the entire compensation, much prior to the Award. Since the Petitioners had raised a dispute much prior to the Award, the learned SDO was duty bound to hear the Petitioners before finally determining the compensation in terms of Section 33(4) of the MID Act.

(xxiii) He submits that considering the award/ judgments of the Civil Court in favour of the Petitioners and pendency of civil Suits/ Appeals, it was mandatory for the SDO to refer the dispute to the Competent Court and to deposit the compensation before the said

Court.

(xxiv) The Petitioners are persons aggrieved and as abundant caution they had filed applications dated 13.1.2020 for reference under Section 34 of the MID Act. It is stated that once an application had been made satisfying the requirement of Section 34, the SDO had no discretion in the matter and he had to make a reference to the Civil Court to adjudicate the dispute.

14. In response to the submissions, the learned Counsel for the Respondents have submitted as under : -

(i) The Revenue entries record that the transfer of the land was subject to restrictions under Section 36 MLRC and 43 of the BTAL Act. The Petitioners had not obtained sanction under Section 36A MLRC, which imposes prohibition on transfer of occupancy of a tribal in favour of a non-tribal without prior sanction of the Collector and approval of the State Government.

(ii) The transfer of tribal land by virtue of Development Agreement, without prior sanction is void. Reliance is placed on the decision of the Apex Court in ***Rajasthan Housing Board vs. New Pink City Nirman Sahakari Samiti Limited & Another (2015) 7 SCC 601*** and the decision of the Division Bench of this

Court in ***Rama Narayan Mali vs. Addl. Collector Thane (2008) 3 Mh. L.J. 300*** and ***Adivasee Sarvangin Vikas Samitee vs. State of Maharashtra & Ors. 2013(6) Mh. L.J. 557;*** and the decision of the Single Judge of this Court in ***Atul Projects India Ltd. vs. Babu (2011(6) MahL.J. 352.***

(iii) By order dated 31.10.2014, the SDO had already held that the transfer of land from tribal to non-tribal was invalid for want of sanction under Section 36 A the MLRC.

(iv) There is no concluded contract in favour of the Petitioners. Mere Agreement for Sale or Power of Attorney does not convey right, title or interest in favour of the Petitioner. Reliance is placed on ***Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr. (2012) 1 SCC 656***.

(v) The Development Agreements are in contravention of Section 36A, the object of which is to effectuate constitutional policy of economic empowerment of weaker section of the society. The agreement that is against public policy is not enforceable and is void under Section 23 of the Contract Act. Reliance has been placed on the decision of the Apex Court in ***Ratan Chand Hira Chand vs. Askar Nawaz Jung (dead) By Lrs, & Ors. (1991) 3 SCC 67***, ***Murlidhar Dayandeo Kesekar vs. Vishwanath Pandu Barde &***

Anr.1995 Supp. (2) SCC 549 and the decision of the Single Judge of this Court in ***Babasaheb Dhondiba Kute vs. Radhu Vithoba Barde AIR 2019 Bom 49.***

(vi) The agreements are invalid for want of permission under Section 43(i) of BTAL Act. Reliance is placed on the decision of the Division Bench of this Court in ***Himmatrao Ukha Mali & Ors. vs. Popat Devram Patil & Anr. 1998(2) Mh. L.J. 383***.

(vii) The post notification transactions are void and do not create any interest in favour of the Petitioners. Reliance is placed on the decision of the Apex Court in ***Mira Sahani vs. Lft. Governor of Delhi & Ors. (2008) 9 SCC 177***; the decisions of the Division Bench of this Court (Aurangabad Bench) in ***Avdhut Rokdoba Shinde & Ors. vs. State of Maharashtra & Ors. 2013 (5) Mh.l.J. 330; Shaikh Kalim Sk. Mohd. & Anr. vs. State of Mahrashtra & Ors . (W.P. No.10895 of 2017);***

(viii) Section 35 of MID Act is pari materia to Section 30 of the Land Acquisition Act and confers discretion on the SDO to refer the dispute to the Civil Court. Since the transactions are ex-facie void, the SDO was justified in exercising his discretion to reject the objections raised by the Petitioners. Reliance is placed on ***Sharda Devi vs. State of Bihar & Anr. (2003) 3 SCC 128.***

15. We have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The two main issues raised before us are-:

(i) The validity of agreements under which the Occupants of the subject land have assigned right to receive compensation and other benefits of acquisition in favour of the Petitioners.

(ii) The legality of the Order whereby the learned SDO has rejected the Objection/Application of the Petitioners to refer the dispute to the Civil Court and directed payment of compensation to the land owners.

16. The controversy in these Petitions centers mainly around the rights of the tribals who are socially distanced, economically disadvantaged, and geographically isolated. Subsistence existence and illiteracy of this marginalized section make them easy prey to economic and social exploitation. Their ignorance of the subtleties of the intermeddlers and land grabbers make them highly vulnerable to the exploitative and unscrupulous ingenuity of such lobby in severing their deep-rooted connection with land, which is their identity and prime source of existence. Being conscious and

cognizant of the exploitation of the tribals, founding fathers of the Constitution were anxious to preserve and protect this distinctive class from social injustice and all other forms of exploitation. This is evidenced by the special status provided to the tribals through Article 46 and other safe guards embodied in the Constitution for advancement, preservation, and protection of interest and prevention of exploitation of this marginalized class.

17. In implementation of the Directive Principles of the State Policy enshrined in Article 46 of the Constitution, which specially enjoins the State to protect Scheduled Caste and Schedule Tribe from social injustice and other forms of exploitation, appropriate legislative enactments are brought on Statute Books to protect the land and other rights of tribals. It was noticed that despite legislation being in place, the tribals were exploited with impunity and rendered landless. Hence, a Committee was set up to look into the efficacy of the existing provisions. The report submitted by the Committee exposed the stark reality that the protective arm of the law did not prevent the beneficiaries of special legislation from falling prey to unscrupulous ingenuity of the intermeddlers/land grabbers. There was indiscriminate transfer of land from tribals to

non-tribals in contravention of the provisions of the MLRC. Since the existing provisions did not achieve the legislative intent and object, it became imperative to amend Section 36 of MLRC by inserting Section 36A to 36CC and to implement the principles of distributive justice by enacting legislation for restoration of land, which had been transferred from tribals to non-tribals.

18. Section 36A, which is relevant to decide the issue involved in these Petitions reads thus :

> "36A. (1) Notwithstanding anything contained in sub-section (1) of Section 36 no occupancy of a Tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift , exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction-
> (a) in case of a lease or mortgage for a period not exceeding 5 years, of the Collector; and
> (b) in all other cases, of the Collector with the previous approval of the State Government.
>
> (2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as

may be prescribed.

(3) On the expiry of the period of the lease, or as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force, or any decree or order of any court or award or order of any Tribunal or authority, either suo moto or on application made by the Tribal in that behalf, restore possession of the occupancy to the Tribal.

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 it is noticed that any occupancy has been transferred in contravention of sub-section (1), the Collector shall either suo-moto or on an application of any person interested in such occupancy, made within three years from the date of the transfer of occupancy hold an inquiry in the prescribed manner and decide the matter.

(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1) he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may, from time to

time, direct.

(6) Where an occupancy vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the Tribal-transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such Tribal transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the total land held by such Tribal-transferor, whether as owner or tenant, does not as far as possible exceed an economic holding."

19. In Raoji Urkude (supra) the Division Bench of this Court, while upholding the constitutional validity of Section 36A has observed thus:

"*7. …Historical truth is that the Tribals belong to weaker sections of society which have been subjected to varied and worst types of exploitation b taking undue advantage of their backwardness, meekness, and helplessness. Promoting with special care interest of such sections is one of the major items of our national goals (Article 46 in Part IV). If in this background, the legislature came forward to protect their interest, it is* *difficult to see how question of invidious discrimination can at all arise. It is a distinct class. Classification has clear nexus with the objects. Section 36, as it originally stood, made certain transactions by a tribal voidable at his instance, provided application was made within two years of such transaction. This provision has received the assent of the President and there can be hardly any doubt about it being under the protective umbrella of Article 31A and 31C. Thus, under the old provisions, the purchaser could acquire only a defeasible right which could be defeated by appropriate action within appropriate time. Experience of those are better equipped to know the prevailing social condition revealed that the protection earlier granted was inadequate. The unfortunate truth about many of our social and beneficial legislations is that the beneficiaries thereunder many times even do not know them. Even if they come to know about their right, they are wholly ill-equipped to exercise those rights. Even if the rights are exercised, it is not always that they are able to keep the fruits of the legislation. Procedural delays, official negligence and apathy come in the way. Not ignoring these realities, in case legislation further intervenes and puts in more stringent restrictions including total conditional ban on future transfers, it is difficult to see how Courts come into picture. It is equally difficult to see how it can be said that such a legislation is wholly unreasonable. The possibility to* *such bans operating unjustly in case of certain transactions cannot be ruled out. But that is no ground to hold a legislation bad. In any legislation intended to bring about such major social changes on large scale, generalization is inevitable; for it is not possible to legislatively contemplate every kind of exceptional situation. If that is attempted and several qualifications and exceptions are introduced, the very legislative object would be defeated. It is a rule of life that every revolutionary cause claims its martyr."*

20. In Murlidhar Kesekar (supra), the non-tribals had challenged refusal of sanction under Section 36A. While turning down the said challenge, the Apex Court highlighted the object of the provision and held that prior permission under Section 36A is a condition precedent for alienation of the land. The Apex Court has held that even if possession is granted in pursuance of an agreement, such possession would be unlawful and cannot be protected under Section 53A of TP Act. The Apex Court has held as under :

"14. Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and tribes, to fulfill the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting

impregnable walls of separation between the people on grounds of cast, sub-caste, creed, religion, race, language and sex. Equality of opportunity and status thereby would become the bed-rocks for social integration. Economic empowerment thereby is the foundation to make equality of status, dignity of person and equal opportunity a truism. The core of the commitment of the Constitution to the social revolution through rule of law lies in effectuation of the fundamental rights and directive principles as supplementary and complimentary to each other. The Preamble, fundamental rights and directive principles - the trinity arc the conscience of the Constitution. Political democracy has to be stable. Socio-economic democracy must take strong roots and should become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society the Dalits and tribes and to distribute material resources of the community to them for common welfare etc.

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21. Economic empowerment to the poor, Dalits and Tribes, is an integral constitutional scheme of socio-economic democracy and a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of *right to live, equality and of status and dignity to the poor, weaker sections, Dalits and Tribes. The State has evolved, by its legislative and executive action, the policy to allot lands to the Dalits and tribes and other weaker sections for their economic empowerment. The government evolved two pronged economic policies to render economic justice to the poor. The Planning Commission evolved policies like DRDL for economic empowerment of the weaker sections of the society; the Dalits and tribes in particular. There should be short term policy for immediate sustenance and long-term policy for stable and permanent economic empowerment. All the State governments also evolved assignment of its lands or the lands acquired under the ceiling laws to them. Appropriate legislative enactments are brought on statute books to prevent alienation of the assigned lands or the property had under the planned schemes, and imposed prohibition there- under of alienation, declaring any conveyance in contravention thereof as void or illegal and inoperative not to bind the State or the assignee. In case the assignee was disqualified or not available, on resumption of such land, the authorities arc enjoined to resume the property and as- sign to heir or other eligible among the Dalits and tribes or weaker sections in terms of the policy. The prohibition is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the*

Preamble of the Constitution. Even in respect of private sales of the lands belonging to tribes, statutes prohibit alienation without prior sanction of the competent authority.

22. It is seen that prior permission for alienation of the land was a condition precedent. Before permission is given, the competent authority is enjoined, by operation of Article 46 of the Constitution, to enquire whether such alienation is void under law or violates provisions of the Constitution and whether permission could be legitimately given. In that behalf, the competent authority is enjoined to look to the nature of the property, subject-matter of the proposed conveyance and pre-existing rights flowing thereunder and whether such alienations or encumbrances violate provisions of the Constitution or the law. If the answer is in the positive, then without any further enquiry the permission straightaway would be rejected. Even in case the permission is granted, it would be decided on the anvil of the relevant provisions of the Constitution and the law. In this case, the authorities, though had not adverted to the aspect of the matter, broadly refused permission on the ground that the assigned land cannot be permitted to be sold or converted to non-agricultural use. The action refusing permission, therefore, is in consonance with the Constitutional scheme in Part IV of the Directive Principles. The agreement is, therefore, void under s.23 of the Contract

Act as opposed to public policy vide judgment in DTC v. DTC Mazdoor Congress, 1990 (suppl.) 1 SCR, 192, by one of us Ramaswamy, J. with whom Sawant and Ray, JJ. agreed by separate but concurring judgment and the permission was rightly refused to be given for alienation. The possession is unlawful Section 53-A of Transfer of Property Act is not attracted. The appellant's possession continues to be unlawful and he is not entitled to any improvement made on the lands. ...”

21. In ***Lingappa Pochanna Appelwar & Ors. vs. State of Maharashtra & Anr. 1985 AIR 389***, while upholding the Constitutional validity of Section 3(1) and 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, the Apex Court has observed that:-

"..Under the scheme of the Constitution, the Scheduled Tribes as a class require special protection against exploitation. The very existence of Scheduled Tribes as a distinctive class and the preservation of their culture and way of life based as it is upon agriculture which is inextricable linked with ownership of land, requires preventing an invasion upon their lands. The impugned Act and similar measures undertaken by different States placing restrictions on transfer of lands by members of

the Scheduled Castes and Tribes are aimed at the State Policy enshrined in Article 46 of the Constitution which enjoins that The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and Tribes and shall protect them from social injustice and all forms of exploitation". One has only to look at the artlessness, the total lack of guill, the ignorance and the innocence, the helplessness, the economic and the educational backwardness of the tribals pitted against the artful, usurious, greedy land grabber and exploiter invading the tribal area from outside to realize the urgency of the need for special protection for the tribals if they are to survive and to enjoy the benefits of belonging to the 'Sovereign, Socialist, Secular, Democratic Republic' which has vowed to secure to its citizen 'justice, social, economic and political''assuring the dignity of the individual'.

22. In Ramanarayan Mali (supra) and Adviasi Sarvangin Vikas Samiti (supra) the Division Bench of this Court has held that the expression “or otherwise” in Section 36A is of comprehensive nature and would include all arrangements by which the occupancy of a tribal is sought to be transferred in favour of a non-tribal irrespective of the nature of the device, whether it is in the form of a

Development Agreement coupled with the Power of Attorney or otherwise. It is held that the provisions of Section 36A are broad enough to reach out to the mischief.

23. In Atul Projects India Ltd (supra) the Learned Single Judge Dr. D.Y. Chandrachud, as his Lordship then was, while emphasizing the intent of legislature in using the word "Otherwise" in Section 36A has held thus :

> "*12. The transfer of occupancy may be by way of a sale, gift, exchange, mortgage, lease "or otherwise". The legislature has designedly used broad language so as to incorporate all the five recognized modes by which property may be transferred under the Transfer of Property Act, 1882. Significantly the legislature has expanded the ambit of the modes in which property can be transferred by using the words "or otherwise". The plain object of the legislature was to reach out to all modes by which the occupancy of a tribal may be conveyed to a non-tribal. The legislature was conscious of the fact that devious methods may be employed to divest tribals of their occupancy and the modes of transfer which are taken recourse to may not conform to the conventional modes for the transfer of property such as by sale, gift, exchange, mortgage or lease.*
>
> *Whatever be the mode of transfer, if the consequence is to effect a transfer of the occupancy of a tribal to a non*

tribal, the requirement of prior permission would be attracted. The Collector, even when he grants his sanction is empowered to do so subject to such conditions as may be prescribed. A transfer in violation of the provisions of Sub Section (1) of Section 36A would be invalid and of no legal consequence."

24. It is thus clear that Section 36A of MLRC which beholds the spirit of constitutional mandate, provides special protection to the tribals against exploitation by prohibiting transfer of an occupancy of a tribal in favour of a non-tribal by any mode or method, without prior sanction of the Collector where the period of lease or mortgage does not exceed five years and in other cases, without previous sanction of the Collector and approval of the State Government. The validity of the agreements executed in favour of the Petitioner as well as the Award and Judgments /Decrees passed by the Civil Court has to be decided keeping in mind the object of the provision under Section 36A of the MLRC and the constitutional policy of economic empowerment of the tribals.

25. The applications for reference have been rejected mainly on the ground that the transactions in favour of the Petitioner are

invalid for want of prior sanction under Section 36A MLRC. The Petitioners have sought to obviate the need to obtain previous sanction by contending that the Occupants had not disclosed that the subject land was a tribal land and further that their caste claim has not been validated by the Caste Scrutiny Committee. It is pertinent to note that taking note of the fact that tribal land was being transferred to non-tribals without prior permission of the Appropriate Authority, and that the tribals were being cheated by the builders and developers, Government Resolutions were issued on 17.03.2012 and 31.05.2012 making it mandatory to make entries within two months in the 7 x 12 extract maintained by the Talathi indicating that the land belongs to a tribal. Since no steps were factually taken in terms of the Government Resolution, the Division Bench of this Court in ASV Samiti, (supra) directed that the Government Resolution dated 31.5.2012 shall be strictly implemented and necessary action be completed in all cases across the 6 Revenue Divisions of the State, not later than 31.08.2013. While declining to issue generalized directions to the State as regards steps to be taken in cases involving transfer of tribal land to non-tribals, the Division Bench observed that it would be ultimately for the Competent Authority under sub Section 5 of Section 36A to determine how the occupancy which has been transferred in contravention of sub Section (1) should be disposed of having regard to the true intent and purpose of Section 36A.

26. Pursuant to these directions, entries have been made in the revenue records indicating that the land is subjected to restrictions under Section 36A of MLRC. Hence even if it were to be accepted that as on the date of the execution of the agreements, the Petitioners were unaware that the land was tribal land and was subjected to restrictions, such constructive knowledge/notice has to be attributed to the Petitioners, who are the land developers, at least from the date of the revenue entry. Under the circumstances, the Petitioners cannot feign ignorance and claim that the subject land was not a tribal land and that it was not obligatory to obtain previous sanction under Section 36A of the Code.

27. The SDO also conducted inquiry, in exercise of powers under sub-Section (4) and (5) of Section 36A, to determine the validity of transactions between tribals and non-tribals. Upon hearing the concerned parties, including the Petitioners, who have based their claim on Development Agreements, the SDO recorded his

satisfaction that the subject land is tribal land and that the Occupants who are tribals have executed Development Agreements in favour of non-tribals without prior sanction under 36A. The SDO held that the Development Agreements are illegal and the transfer in favour of non-tribals is invalid. Hence by Order dated 13.10.2014 the SDO ordered to restore possession of the land to the tribals/Occupants. This order, which has attained finality, clearly indicates that the Petitioners were well aware that the subject land was tribal land. The Petitioners therefore cannot be heard to say that they were not aware that the subject land was tribal land and the transfer of the said land was subject to prior sanction from the Collector and the approval of the State under Section 36A of the MLRC.

28. The Petitioners claim to be "person interested" to receive compensation on the strength of- (i) Agreements for Sale, (ii) Oral Agreements for Sale/Development Agreements, (iii) Award of Lok Adalat and Judgments and Decrees of the Civil Court. Hence these Petitions can be broadly classified into three groups :

(A) The first group of six Petitions, wherein the Petitioners have based their claim on the Agreements for Sale, viz :

(i) WP/ST/1338/2020, (ii) WP/ST/710/2020, (iii) WP/ST/AS/DB/CH/1/2020, (iv) WP/ST/AS/DB/CH/2/2020, (v) WP/ST/AS/DB/CH/3/2020, and (vi) WP/ST/AS/DB/CH/4/2020.

(B) The second group of Petitions, wherein the Petitioners have claimed rights based on Oral Agreements for Sale and Development Agreements:

(i) WP/ST/2790/2020 (ii) WP/ST/2791/2020 (iii) WP/ST/2794/2020 (iv) WP/ST/2796/2020 (v) WP/ST/2798/2020 (vi) WP/ST/2799/2020 (vii) WP/ST/2801/2020 (viii) WP/ST/2940/2020 (ix)WP/ST/3236/2020 (x) WP/ST/4538/2020 (xi) WP/ST/4539/2020 and (xii) WP/ST/4540/2020.

(C) The third group of seven Petitions, wherein the Petitioners have claimed right to receive compensation on the strength of the Lok Adalat Award and Judgments and Decrees of the Civil Court:

(i) WP/ST/3339/2020 (ii) WP/1973/2020, (iii) WP/ST/2800/2020, (iv) WP/ST/2798/2020, (v) WP/ST/2795/2020, (vi) WP/ST/4535/2020, and (vii) WP/1445/2020

29. The six Petitions in the first group of matters, wherein the claim is based on Agreements for Sale, follow a common pattern. These Petitioners contend that the Occupants in the said Petitions were desirous of selling the subject land due to financial constraint. The Occupants in the first two Petitions i.e. WP/ST/1338/2020 and WP/710/2020, had agreed to sell the land situated at Rohkal, Khed Pune to Amol Vasantlal Mutha and Leelachand Bhandari, (R-3 and R-6 in respective Petitions) and executed Power of Attorney in their favour to procure buyers, obtain sanction and do all such acts as may be necessary to fully effectuate the sale deed. The Occupants in the other four Petitions of this group had entered into 'Agreements for Sale' with Sanjay Nanekar and Dattaraj Wafgaonkar, (Respondent No.6 in respective Petitions) for sale of the subject land situated at Ambethan Khed, Pune. These Occupants also executed Power of Attorney in favour of Anil Kad, Respondent no.7 in all four Petitions, conferring similar powers, viz, to procure buyers, obtain sanction, execute sale deed etc. These Agreements for Sale which were personally executed by the Occupants in favour of Respondents No. 3 and 6 in the respective Petitions, were restricted to the sale of the subject land without any clause relating to assignment of right to receive compensation. It is contended that

the sale transactions with these Respondents could not be concluded due to financial constraints. In all the six Petitions, acting on the Power of Attorney, the Power of Attorney Holders entered into agreements with the Petitioners whereunder they not only agreed to sell the subject land but also permitted them to receive the compensation, in the event of acquisition of land by MIDC. The Petitioners are claiming right to receive compensation based on these agreements, which have been executed by the Power of Attorney Holders.

30. Suffice it to say that, a Power of Attorney is creation of an agency whereby the principal authorizes the agent to perform the acts specified therein on his behalf, which acts when performed under such authority as is conferred expressly or by necessary implication will be binding on the principal. The general principles regarding the construction of a Power of Attorney are well settled. In ***Church of Christ Charitable Trust vs. Ponniamman Educational Trust (2012) 8 SCC 706*** the Honourable Apex Court has observed as under:-

> “19) ....*It is settled that a Power of Attorney has to be strictly construed. In order to agree to sell or effect a sale by a power of attorney, the power should also*

expressly authorize the power to agent to execute the sale agreement/sale deed i.e., (a) to present the document before the Registrar; and (b) to admit execution of the document before the Registrar. A perusal of the Power of Attorney, in the present case, only authorizes certain specified acts but not any act authorizing entering into an agreement of sale or to execute sale deed or admit execution before the Registrar. In a recent decision of this Court in Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana & Anr. (2012) 1 SCC 656, the scope of Power of Attorney has been explained in the following words:

20. A Power of Attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee.

21. In State of Rajasthan vs. Basant Nahata, (2005) 12 SCC 77. this Court held: (SCC pp. 90 & 101, paras 13

> *& 52) 13. A grant of Power of Attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of Power of Attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of Power of Attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A Power of Attorney is, as is well known, a document of convenience."*

31. In the instant case, a fair construction of the Power of Attorney would indicate that the Occupants had authorized the Power of Attorney Holders to procure buyers for sale of the subject land, to obtain sanction and to do all other documentation relating to sale of the subject land. The Power of Attorney Holders were not authorized either expressly or impliedly to transfer or assign the right to receive compensation and other acquisition benefits. Hence, the act of the Power of Attorney Holders in assigning the right to receive compensation/ acquisition benefits in favour of the Petitioners is in excess of the authority conferred by the Occupants

under the Power of Attorney. The Agents having exceeded the authority given under the Power of Attorney, such clause would not bind the Principal/Occupants.

32. The Agreements for Sale executed in favour of the Petitioners in WP/ST/1338/2020, and WP/ST/710/2020, are unregistered/ unstamped agreements. Suffice it to say that an immovable property can be transferred or conveyed only by Deed of Conveyance, which is duly stamped and registered as required by law. In Suraj Lamp and Industries (supra) the Apex Court has observed that any Contract of Sale which is not a registered Deed of Conveyance would fall short of the requirements of Section 54 and 55 of the Transfer of Property Act and will not confer any title nor transfer any interest in an immovable property, except to the limited right granted under Section 53A of the TP Act. It has been held that an Agreement for Sale whether with possession or without possession is not a conveyance.

33. In ***Shiv Kumar & Anr. vs Union of India & Ors. (2019) 10 SCC 229*** a three judge bench of the Hon'ble Supreme Court while reiterating these principles has held that immovable property can be legally and lawfully transferred/conveyed only by a registered Deed

of Conveyance. Transactions of the nature of 'GPA sales' or 'SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized as valid mode of transfer of immovable property. The Apex Court has laid down that the Courts will not treat such transactions as completed or concluded contracts or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the Transfer of Property Act. Such transactions cannot be relied upon or made the basis for mutation in Municipal or Revenue Records. It has been made explicit that what has been stated above will not only apply to deeds of conveyance in regard to freehold property but also to transfer a leasehold property.

34. In the instant case, the agreements relied upon by the Petitioners are post notification transactions. These unregistered unstamped agreements, which have not culminated in concluded contracts; neither convey title nor create any interest in the land. Moreover, the subject land having been vested in the Government with issuance of notification under sub-Section (1) of Section 32 the MID Act, the Petitioners cannot seek enforcement of these

agreements. The Petitioners therefore cannot claim any right title or interest in the subject land based on such unstamped, unregistered post notification agreements.

35. The agreements in favour of the Petitioners in the other four Petitions are styled as "Agreement for Sale" and the clause relating to handing over possession of the land has been scored out. It is well settled that it is not the nomenclature but the substance that decides the nature of the transaction under the document. A perusal of the relevant clauses of the agreements indicate that the Petitioners have been authorized to submit layout plan, to get the land surveyed, to obtain necessary permissions and further to develop and sub-divide the land. The Petitioners have also been authorized to sell the developed sub-divided plots to the prospective purchasers and receive the sale proceeds. The totality of the recitals and the tenor of the documents clearly indicate that, though the documents are styled as "Agreement for Sale", the Occupants have indeed assigned development rights coupled with the transfer of possession. This constitutes "transfer of occupancy" within the meaning of Section 2(22) and 2(23) and would stand vitiated for

want of prior sanction under Section 36 A of the MLRC. Hence the ratio laid down in Kalandi Baburao Raut (supra) is not applicable to these four Petitions. The agreements in these four Petitions, which are violative of Section 36A, are null void and consequently not enforceable.

36. In the second group of Petitions, the Petitioner- Gautamsheth Wadve and his son Sachin Wadve have based their claim on oral Agreements for Sale and Development Agreements allegedly executed in their favour by the Occupants of the respective subject land situated at Ambethan, Khed, Pune. The Petitioners have alleged that sometime in the year 2006, the Occupants had agreed to sell the subject land due to financial constraints and had accordingly entered into oral Agreements for Sale of the subject land. In all these Petitions, the Occupants had executed Power of Attorney in favour of the Petitioner Gautamsheth Wadve, who is also arrayed as Respondent No.10 in the Petition filed by his son Sachin Wadve. Under these Power of Attorney the Occupants had authorized the Petitioner Gautamsheth Wadve to procure purchasers, obtain sanction, and do all the other acts and complete the documentation for execution of sale deed. The Occupants had also authorized said

Gautamsheth Wadve to collect the sale proceeds and compensation, in the event of acquisition of the land, and to tender the same to them.

37. The Occupants have executed Development Agreements in favour of the Petitioner Gautamsheth Wadve whereas the Development Agreement in favour of Sachin Wadve-Petitioner in WP/ST/3236/2020 has been executed by his father Gautamsheth Wadve as a Power of Attorney of the Occupants. Under these Development Agreements the Occupants had assigned development rights of the subject land for consideration of Rs.4,76,000/- and had put the Petitioners in possession of the subject land. The Development Agreements stipulate that the land being of new and restricted tenure, development was to commence after obtaining requisite sanction from the Competent Authority. The Development Agreements also contain a clause that the land is likely to be acquired by MIDC and that the Petitioners were entitled to receive the said compensation.

38. Though the Petitioners have based their claim on oral agreements purportedly executed in the year 2006, reference to such

agreements has been made for the first time in the legal notice issued in the year 2016 and later in the Suits filed in the year 2016-2017. Furthermore, though the Power of Attorney and Development Agreements were preceded by oral agreements, there is no reference to such oral agreements either in the Power of Attorney or in the Development Agreements. On the contrary, a perusal of the Power of Attorney indicates that the Occupants had authorized the Petitioner Gautamsheth Wadve to procure buyers for sale of the subject land, to obtain sanction, to do all other documentation relating to sale of the subject land, to receive the sale consideration and compensation and tender the same to the Occupants. These clauses negate the claim of oral agreements for sale in favour of the Petitioners. Moreover such oral agreements would not clothe the Petitioners with the title or interest in the land. Be that as it may, the fact that the Occupants had subsequently executed Development Agreements in favour of the Petitioners would itself indicate that the initial intention of sale, if any, had culminated in assignment of development rights.

39. Even though the Occupants had executed Power of Attorney in favour of the Petitioner Gautamsheth Wadve authorizing him to

obtain sanction and do all other acts necessary for execution of sale deed, he did not apply for and obtain sanction under 36A. The Development Agreements executed in contravention of Section 36A have been held to be invalid by the Competent Authority under sub-Section (4) & (5) of Section 36 A MLRC. Consequently, the Petitioner cannot claim right or interest in the land or right to receive compensation on the strength of Development Agreements, which are held to be invalid and are void ab initio.

40. The Petitioners have made yet another vain attempt to circumvent the rigors of Section 36A by claiming that assignment of right to receive compensation is an independent and distinct right. It is urged that assignment of right to receive compensation cannot be equated with the "transfer of occupancy". The Petitioners claim that this right, which is not subject to restriction under Section 36A MLRC, is enforceable, albeit they may have no right, title, or interest in the property.

41. It is to be noted that by the agreements in question, the Petitioners agreed to purchase the subject land/acquire development rights for a specific consideration stated in the agreements. Though

the agreements provide that the Petitioners would have right to receive compensation, there is no separate consideration for assignment of such right. A perusal of the relevant terms, conditions, and covenants clearly indicate that that the agreement is indivisible with dominant intent to sell the land/assign development right. To be specific, assignment of development rights and authorization to receive compensation are not separate transactions independent of each other, but are interdependent. This being so, the enforcement of right to receive compensation is dependent on fulfillment or enforcement of the right to purchase the land or acquire development rights. Hence, the agreement to sell/ assignment of development right and assignment of right to receive compensation cannot be construed as separate transactions. Consequently, the clause assigning the right to receive compensation is not severable and hence unenforceable.

42. Be that as it may, even if assignment of the right to receive compensation is considered as an independent and distinct transaction, such assignment would also attract restriction under Section 36A, as compensation payable under the Award is nothing but a monetized value of the land. Hence, transfer of compensation,

which is held to be 'property' transferable under the provisions of Transfer of Property Act, would require prior sanction under Section 36A of MLRC. It therefore follows that assignment of such right without prior permission under Section 36A would be in violation of the constitutional scheme and being opposed to Public Policy would be void under Section 23 of the Contract Act. This interpretation is in consonance with legislative intent and constitutional mandate to protect and safeguard the interest of the tribals. We are therefore unable to accept the contention of the Petitioner that assignment of right to receive compensation is an independent right which does not attract restrictions under Section 36A. In our considered view, endorsing such interpretation will defeat the very purpose and object of the Act and strike at the Constitutional policy of economic empowerment of the weaker section of the society.

43. At this stage, it will be advantageous to refer to the decision of the Apex Court in Rajasthan Housing Board (supra). In the said case, while considering the validity of the transaction, which was in contravention of Section 42 of the Rajasthan Tenancy Act, the Apex Court has held thus:-

26. *In the instant case, the transaction is ab initio void that is right from its inception and is not voidable at the volition by virtue of the specific language used in section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the Khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under Section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India.*

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30. This Court in Amrendra Pratap (supra) has laid down that the expression 'transfer' would include any dealing with the property when the word 'deal with' has not been defined in the statute. Dictionary meaning as the safe guide can be extended to achieve the intended object of the Act. The transaction or the dealing with alienable property to transfer title of an aboriginal tribe and vesting the same in non-tribal was construed as transfer of immovable property. Extending the meaning of the expression 'transfer of immovable property' would include dealing with such property as would have the effect of causing or resulting in transfer of interest in immovable property. When the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society, the court would not hesitate in placing an extended meaning, even a stretched one, on the word, if in doing so the statute would succeed in attaining the object sought to be achieved. When the intendment of the Act is that the property should remain so confined in its operation in relation to tribals that the immovable property to one tribal may come but the title in immovable property is not to come to vest in a non-tribal the intendment is to be taken care by the protective arm of the law and be saved from falling prey to unscrupulous devices, and this Court concluded any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such *property in a tribal and vesting the same in a non-tribal, would be included within the meaning of 'transfer of immovable property'.*

31. It was further submitted on behalf of the Society that though a purchaser after issuance of notification under Section 4(1) of the Land Acquisition Act cannot question the legality of the notification, but, can lay a claim for payment of compensation. Reliance has been placed on U.P.Jal Nigam, Lucknow through its Chairman & Anr. v. Kalra Properties Pvt. Ltd., Lucknow & Ors. [1996 (3) SCC 124]. When we consider the aforesaid dictum, this Court has laid down that after notification under Section 4(1) was published, sale of land is void against the State and M/s. Kalra Properties acquired no right, title or interest in the land and it is a settled law that it cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under Section 6. M/s. Kalra Properties, though acquired no title to the land, at best would be entitled to step into the shoes of the owner and claim compensation. However, in the instant case, it was a transaction which was not only void against the State but also void inter se vendor and vendee.

32. The right to claim compensation cannot be *enforced by the Society on the basis of such transaction as that would defeat the very object of the Act and the constitutional provisions including such castes and tribes under the protective umbrella of the Schedules to Articles 341 and 342, they cannot be deprived of right to obtain the compensation of the land legally held by them and they cannot be made to fall prey to unscrupulous devices of land grabbers. The right to claim compensation is based on right, title or interest in the land, cannot be transferred by virtue of the mandate of Section 42 to a juristic person like the Society. It is the duty of the State to ensure that the benefit reaches to such persons directly and not usurped by intermeddlers as what is intended by the protection of the right to hold property of SC/ST, cannot be taken away by disbursing the compensation to Society. Persons of SC/ST, as the case may be, are the only rightful claimants to disbursal of compensation and such right cannot be tinkered with by void transaction as the purpose of compensation is the re-settlement of Scheduled Castes or tribes.*

xxx.

34. Reliance has been placed on Dossibai Nanabhoy Jeejeebhoy v. P.M. Bharucha [1958 (60) Bom.LR 1208] so as to contend that the 'person interested' in the land under Section 9 of the Land Acquisition Act would include a person who claims interest in compensation to be paid on account of acquisition of land and the

> *interest contemplated under Section 9 is not restricted to legal or proprietary estate or interest in the land but such interest as will sustain a claim to apportionment, is the owner of the land. In our opinion, the decision is of no avail. The instant transaction being void as per section 42 of the Rajasthan Tenancy Act and the property was inalienable to non-SC. Obviously, the logical corollary has to be taken that no right in apportionment to compensation can be claimed by the Society.*

44. Shri Kulkarni, the learned Counsel for the Petitioner has sought to draw a distinction between Section 36A of MLRC and Section 42 of Rajasthan Tenancy Act by contending that Section 42 specifically provides that transfer in contravention of provision will be void. Whereas under Section 36A of MLRC the Collector is required to conduct an inquiry and on being satisfied that occupancy has been transferred in contravention of sub-Section (1), declare such transfer to be invalid.

45. It may be mentioned that sub-Section (1) of Section 36A imposes restriction on the transfer of occupancy without prior sanction of the Collector and approval of the Government. Whereas, sub Sections (4) and (5) of Section 36 of the MLRC

impose statutory duty on the Collector to hold an inquiry either suo-moto or on an application made by any person interested in such occupancy, and decide whether the transfer of occupancy is in contravention of sub-section (1) of Section 36A. When the transfer of occupancy is held to be in contravention of sub-Section (1), the Collector is under a mandate to declare such transfer to be invalid and restore possession of occupancy to the tribal on compliance of requirement under sub-Section (6) of Section 36 of the MLRC. The scheme of sub-Section (4) is predominantly a remedial measure for securing restoration of transfer and not validation of transfer, which is effected in contravention of sub-Section (1) of Section 36 of the MLRC.

46. The statute has imposed restriction on transfer of occupancy with an object of achieving the Constitutional goal of preserving the economic interest of the tribals and immunizing them from social injustice and exploitation. As it has been held by the Apex Court in Murlidhar Kessekar (supra) and Rajasthan Housing Board (supra) any transfer or alienation of the land or occupancy, which is against the statutory restrain and constitutional mandate is opposed to public policy and is void under Section 23 of the Contract Act. The

voidability of the transaction therefore does not depend upon the declaration under sub Section (5) of Section 36A. Such transactions, which are in contravention of provisions under Section 36A are against constitutional policy of economic empowerment of the tribals and being opposed to public policy are void ab-initio. Hence, these Development Agreements which have been otherwise held to be invalid would not enure any right in favour of the Petitioners.

47. As regards the third group of seven Petitions, in WP/ST/3339/2020, the Petitioner Gautamsheth Wadve has based his claim on the Award dated 08.07.2017 passed by the Lok Adalat in Reg. Civil Suit 236/2016. Whereas in the other six Petitions, viz. WP/1973/2020, WP/ST/2800/2020, WP/ST/2798/2020, WP/ST/2795/2020, WP/ST/4535/2020 and WP/1445/2020 the Petitioner claims right to receive compensation on the strength of the Judgments and Decrees dated 23.04.2018 passed by the Civil Court.

48. The Petitioner in all the aforesaid Petitions had instituted Suits for specific performance of Oral Agreements and

Development Agreements. These Suits proceed on the basis that the Occupants had entered into oral agreements with Petitioner for sale of the subject land with further right to receive compensation and other acquisition benefits. The Occupants in the respective Petitions also executed Development Agreements assigning development rights as well as right to receive compensation in favour of the Petitioner. The Petitioner averred that the Occupants had received substantial part of the consideration and the balance amount was to be paid on fulfillment of conditions scribed in the agreements. The Petitioner claimed that taking advantage of order dated 31.10.2014 passed by the SDO, the Respondents-Occupants, on one pretext or the other, avoided fulfilling their part of contract and executing Conveyance Deeds. Hence, he was constrained to file Suits for specific performance inter alia seeking to direct the Occupants to fulfill the terms and conditions of agreements and to execute Conveyance Deeds in his favour and in the event of acquisition, to direct the Occupants to pay the compensation and other acquisition benefits as per the clause in the said Agreements.

49. The dispute between the parties in Regular Civil suit No.236 of 2016, was referred to the Lok Adalat constituted under the

provisions of the Legal Services Authorities Act 1987 (the LSA Act). The contesting parties in the said Suit i.e. the Petitioner and the Occupant in WP/ST/3339/2020 had arrived at a settlement and filed consent terms before the Lok Adalat, which read thus:

> *" According to order 23 Rule 3 of the Civil Procedure Code, 1908 Compromise Deed between Plaintiff & Respondent No.1, is as under:-*
>
> *1. Plaintiff has submitted this suit against Respondent for getting fulfillment of agreement and for Permanent Stay Order.*
>
> *2. Plaintiff & Respondent talk with each other, discussed with each other, outside the Court ad it was decided between them that claim of the Plaintiff is to be accepted by Respondent and Plaintiff has to pay Rs.3,00,000/- to the Respondent as Consideration/ increased consideration and said suit is to be settled by making compromise.*
>
> *3. There is a compromise between Plaintiff & Respondent as under:-*
>
> > *A) Plaintiff accepts and agrees that oral agreement of Sale Purchase executed between Plaintiff & Respondent on 30.11.2006 and accordingly Development Agreements executed on 23.042007 by Respondent in favour of Plaintiff, both agreements are valid and legal. And these agreements will be binding on all the heirs of Respondent.*
> >
> > *B) For sale transaction of suit property, out of total consideration of Rs.4,76,000/- Plaintiff has paid an*

amount of Rs.2,50,000/- to the Respondent from time to time by cheque /cash, as per demands by the Respondent that he has received the said amount.

C) As per the demand of Respondent, Plaintiff has to pay remaining amount of consideration amount plus a sum of Rs.3,00,000/- as increased consideration. Out of the said amount Plaintiff has paid a sum of Rs.10,000/- in cash to the Respondent on 14.06.2017, and today Plaintiff has paid a sum of Rs.1,00,000/- in cash to the Respondent. And an amount of Rs.1,90,000/- (In words Rs. One Lakh Ninety Thousand Only) has been paid by the Plaintiff to the Respondent by cheque no. 049474 dt.17.06.2017, drawn on Bank of India, Chakan branch.

D) Thus Respondent No.1 has received said amount of Rs.3,00,000/- and he is not having any complaint in this respect. Hence Respondent agrees that he will make all the fulfillment and he will execute registered Sale Deed in favor of Plaintiff, after taking required permission from Government. As per this compromise Deed Respondent gives guarantee to the Plaintiff that Respondent himself or any of his heirs will not create any dispute in any Court of Law or to Government, and they will not claim any type of rights in future.

E) Suit property is to be acquired for Maharashtra Industrial Development Corporation. If the said suit property will be acquired by M.I.D.C. Plaintiff will be having right to get full amount of compensation of *acquisition. Respondent herewith accepts and agrees that Plaintiff will be only person to have complete rights to receive full amount of compensation of acquisition.*

F) After order will be passed according to this Compromise deed, Plaintiff himself may be appointed as Court Commissioner to do all the works such as - making all the fulfillments for executing Sale Deed in favor of Plaintiff, getting permission from Government, making all the works required for getting consideration/ returns of amount of acquisition and making all the works for complete implementation of Order as per this compromise deed, so that Plaintiff should not face any problem. OR Plaintiff may be given rights to do all the above works. Respondent is not having any objection for the same and the Respondent accepts and agrees the same.

4. Thus compromises has been done between Plaintiff and Respondent and all the contents of this compromise deed is accepted and agreed by both the parties, and it will be binding on both the parties for ever.

5. Hence it is prayed that-

A) Order may be passed according to the compromise between Plaintiff and Respondent.

B) Plaintiffs may be appointed for executing all the works for the implementation of order which will be passed according to this Compromise Deed."

50. The said suit was disposed of by Award dated 08.07.2017 as per the consent terms filed by the parties. Whereas Civil Suits relating to WP/1973/2020, WP/ST/2800/2020, WP/ST/2798/2020, WP/ST/27952020, WP/ST/4535/2020, and WP/1445/2020 have been decreed by the trial court vide its Judgments and Decrees dated 23.04.2018. The learned Counsel for the Petitioners have vehemently argued that the SDO has exceeded his jurisdiction in deciding the validity of the transactions and or in commenting on legality of the Award and the Judgments passed by the Court of competent jurisdiction. It is submitted that the SDO was not competent to supplement reasons for rejecting the Application/Objections.

51. It is to be noted that Lok Adalats organized under Section 19(1) of the LSA Act do not have adjudicatory or judicial functions. The role of the Lok Adalats, as prescribed by Section 19(5) of the LSA Act is to determine and to arrive at a settlement between the parties to a dispute in respect of (i) any case pending before or (ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized. Section 21(1) provides that every Award of the Lok Adalat is

deemed to be decree of a Civil Court and under Section 21(2) of the LSA Act, the same is final and binding on all the parties.

52. It can thus be seen that the Lok Adalat determines a reference on the basis of a compromise or settlement between the parties and puts its seal of confirmation by making an Award in terms of the compromise or settlement. There can be no dispute about the legal proposition that the Award passed by a Lok Adalat on the basis of compromise as contemplated under Order 23 Rule 3 CPC is binding on the parties to the dispute. However, this general rule will not prevail when the Award is beyond the scope of compromise as contemplated under Order 23 Rule 3 CPC or is based on void agreement and or is against public policy. Such Award, which is a nullity and non-est in the eye of law, can be challenged in any Court at any time, in appeal, revision, writ or even collateral proceedings.

53. Similarly, a Judgment and Decree passed by the Court of competent jurisdiction is binding on the parties until it is set aside in an Appeal or other appropriate proceedings. In Balwant Viswamitra (supra), whilst drawing a distinction between a illegal or irregular decree and null and void decree, the Hon'ble Supreme Court has

reiterated that a decree of the court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings even if it is erroneous or is suffering from illegality or irregularity of procedure laid down by law. The Apex Court has held that where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such Court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction goes to the root of the matter and strikes at the very authority of the Court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a Court or an authority having no jurisdiction is a nullity. Validity of such decree or order can be challenged at any stage, even in execution or collateral proceedings.

54. In the matters in hand, the Agreements, Award and the Judgments and Decrees which relate to the tribal land are challenged on the ground of nullity. Undisputedly, this Court in exercise of jurisdiction under Article 226 or 227 of the Constitution can always consider the validity of the transaction and ascertain whether the Award is against the basic principles of Order 23 Rule 3 CPC, and whether the Award and judgments are nullity and non est

in the eye of law. Considering the fact that the transactions relate to the tribal land and are challenged on the ground of nullity, it is not only necessary but also obligatory to look into the validity of the Award and Decrees as to prevent enforcement of void transactions, perpetuation of patent illegality and consequent infringement of the beneficial legislation and frustration of the Constitutional objective.

55. The main question, which therefore arises, is whether the Award of the Lok Adalat and the Decrees passed by the Civil Court are null and void. Adverting to the Award passed in Civil Suit 236 of 2016, it is seen that the consent terms filed by the parties on 17.6.2017 do not disclose that the subject land is tribal land. The parties had also not disclosed that by order dated 31.10.2014 the SDO had already held the transfer of occupancy effected in favour of the Petitioner by Development Agreement dated 23.04.2007 to be invalid for want of prior sanction under Section 36A. On the contrary, the consent terms proceed on a false statement that the Development Agreement dated 23.04.2007 is valid and legal. The consent terms also record an undertaking of the Occupant to execute a sale deed in favour of the Petitioner by suppressing the fact that

the notification under Section 32(1) of MID Act was already issued on 8.6.2017 and the land had already vested in favour of the Government. The Award, which is based on a void document and false statement and obtained by fraud, is void and non est in the eye of law.

56. The Petitioner has not ceased his endeavor to lure the very same tribal-Occupant in entering in fresh unreasonable bargain, as can be seen from the consent terms placed on record by Mr Kulkarni, learned Counsel for the Petitioner in WP/ST/3339/2020. He submits that the parties have settled the dispute amicably and have signed the consent terms, which meet the requirement of Order 23 Rule 3 CPC. He fervently pleads that the compromise be recorded and Petition be disposed of as per the terms, which read thus:

CONSENT TERMS

> *1. The present Petition is filed challenging the Order dated 14/02/2020 passed by the Respondent No.1 SDO, below SR No.47/84 of 2019 whereby the Ld SDO was pleased to reject the Application filed by the Petitioners wherein the Petitioners are claiming amount of compensation or reference of the dispute of right to*

receive Compensation in respect of the acquired property to appropriate Civil Court and for such consequential reliefs.

2. All that piece and parcel of land bearing Survey No.812/1/23 admeasuring about 1 Hector 22 R situated at Village Ambethan, Taluka Khed, and within the limits of Sub-Registrar Khed, District Pune which is more particularly described in para 1 of the Plaint of Special Civil Suit bearing No.236 of 2016 filed before Civil Judge, Senior Division, Rajguru Nagar is hereinafter referred to as the "Suit Property", is originally owned by Respondent No.4 and accordingly his name is appearing on the 7/12 Extract of the suit property.

3. The Respondent No.4 decided to sell the suit property in favour of the Petitioner and accordingly entered into an oral agreement for sale dated 30/11/2006. It was specifically agreed by the Oral agreement, that in the event MIDC acquires the suit property, the entire compensation receivable along with other benefits will be received by the Petitioner. The right to receive compensation in respect of the suit property was assigned in favour of the Petitioner.

4. In pursuant of the oral agreement dated 30/11/2006 the Respondent No.4 executed an Irrevocable Power of Attorney dated 18/12/2006 in favour of the Petitioner, *which is duly registered before the Sub-registrar of Assurances at Serial No.8406/2006. As per the said Power of Attorney there was a specific authority given by the Respondent No.4 to the Petitioner to do all such acts as necessary on behalf of the Respondent No.4 including to right to receive compensation along with other benefits in the event the suit property is acquired by MIDC.*

5. Thereafter the Respondent No.4 executed a Development Agreement dated 23/04/2007 in favour of the Petitioner which is duly registered before the Sub-registrar of Assurances at Serial No.3534/2007. It was specifically agreed in the Development Agreement as well as that in the event the suit property is acquired by the MIDC, then only the Petitioner is entitled to receive compensation and other benefits as and when determined.

6. In the meantime for certain breach on the part of Respondent no.4, the Petitioner was constrained to file Regular Civil Suit bearing No.236/2016 before the Civil Court Senior Division Khed, Rajgurunagar, for specific performance of oral Agreement dated 30/11/2006 and Agreement dated 23/04/2007.

7. The Petitioners states that, the above referred Civil Suit was settled between the Petitioner and Respondent no.4 and accordingly Compromise Judgment and Decree dated 08/07/2017 was passed by the Lok Adalat, *Additional District Judge, Khed.*

8. As per the Compromise terms, it was agreed that the Respondent no.4 will receive enhanced consideration and the Petitioner shall be entitled to receive any compensation and other benefits so determined in the event of acquisition.

9. In the meantime the Special land acquisition Officer/Collector No.26 issued notices under section 32(2) of the MIDC Act, 1961 thereby giving personal notices to all the parties and thereafter the State Government by notification dated 8th June 2017 notified various land including the Suit property by publishing the said notification as per the Section 32(1) of the MIDC Act, 1961.

10. The Petitioners by letter dated 30th August, 2019 raised the objection and dispute with the Respondent No.1 thereby intimating the Respondent No.1 that in view of the Agreement dated 30/11/2006 and view of the Compromise decree, the Petitioner himself is entitled to receive compensation and other benefits when the land is acquired for the Respondent MIDC and therefore requested that the entire compensation and other benefits may be paid to the Petitioners and requested the Respondent No.1 SDO that if anyone else demands payment of compensation and other benefits, the same *may be deposited in appropriate court and the said dispute may be referred to appropriate Civil Court and also informed the Respondent No.1 that such dispute can be only decided by the Civil Court.*

11. The Respondent No.1 SDO passed Award bearing No.SR/25/2019 dated 27/12/2019 as per the provisions of the MIDC Act, 1961 and thereby acquired the suit property and determined the compensation and other benefits payable for acquiring the suit property. As per the Award, the Respondent No.1 SDO who is acting as the Land Acquisition Officer has determined the amount of compensation of Rs.1,67,75,000/-(Rupees one crore sixty seven lacs, seventy five thousand only) subject of 10% Nazrana or 15% returnable Land.

12. On receipt of the Application and objection bearing No.47/84 of 2019, dated 30/8/2019 filed by the Petitioners herein, the Respondent No.1 SDO issued notices to the Respondent No.4 and the Petitioner as well calling upon them to submit their contentions in respect to entitlement of the compensation and thereafter heard the Petitioner and Respondent No.4.

13. After hearing both the sides the Respondent No.1 SDO by its Order dated 14/02/2020 below SR No.47/84 of 2019 was pleased to reject the objections filed by the Petitioners and held that the amount of compensation is *payable to Respondent Nos.4.*

14. Being aggrieved and dissatisfied by the impugned Order dated 14/02/2020 passed by the Respondent No.1 SDO, the Petitioner has filed this present Writ Petition challenging the same.

15. Thereafter the said Writ Petition was heard by this Hon'ble Court (Coram: Shri A.A. Sayed and Smt. Anuja Prabhudessai JJ.) from time to time.

16. Thereafter pending the said Writ Petition the Respondent Nos.4 approached the Petitioner to settle the said dispute of right to receive compensation between the parties amicably.

17. Accordingly, the Respondent Nos.4 and the Petitioner collectively agreed upon the terms of settlement and decided that the amount of compensation so determined by the Award bearing No.SR no.25 of 2019 dated 27/12/2019 shall be distributed amongst themselves. It was agreed that the Respondent No.4 will be entitled to an amount of Rs.50,00,000/- (Rs.Fifty Lacs only) subject to deduction of proportionate 10% Nazrana, and where as the Petitioner shall be entitled to the remaining amount of the Compensation, and also the benefit of the returnable land, and accordingly proportionate 10% Nazrana and amount of 15% returnable land, shall be deducted from *the share of the Petitioner.*

18. Accordingly, the Petitioners and the Respondent No.4 have settled the dispute inter-se mutually on the following terms and conditions which are recorded as follows:-

a. The order dated 14/02/2020 below SR No.47/84 of 2019 passed by the Respondent No.1 SDO stands Set-aside and substituted in accordance with the said Consent Terms.

b. The Petitioner and Respondent No.4 agree, declare and state that the Petitioner will be entitled to 1,17,75,000/- (Rupees One Crore seventeen lacs and seventy five thousand only) out of the amount of compensation so determined by the Award bearing No.SR/25/2019 dated 27/12/2019 subject to deduction of 10% Nazrana Amount and entire amount of 15% returnable land.

c. The Petitioners and Respondent No.4 agree, declare and state that the Respondent Nos.4 will be entitled to Rs.50,00,000/- (Rs. Fifty Lacs only) out of the amount of compensation so determined by the Award bearing No.SR/25/2019 dated 27/12/2019 subject to deduction of 10% Nazrana Amount.

d. The Petitioners and Respondent No.4 agree, declare *and state that the Petitioner will be entitled for the 15% returnable land and the cost of the same would be borne by the Petitioner and/or shall be deducted from the amount receivable by the Petitioners.*

e. Accordingly, the Petitioner and the Respondent Nos.4 are entitled to the following amount:-

(i) Amount of Compensation so determined by the Award-(without any deduction) Rs.1,67,75,000/- (Rupees One Crore Sixty Seven Lacs, Seventy Five Thousand only).

(ii) Amount of 10% Nazrana Amount:-16,77,500/- (Rupees Sixteen Lacs Seventy Five Hundred only).

(iii).Amount towards returnable land(15%)-25,16,250/- (Rs Twenty Five Lacs, Two Hundred and Fifty Only)

(iv) Amount of compensation i.e. amount receivable by the Respondent No.4-Rs.50,00,000/-(10% Nazrana)= Rs.45,00,000/- (Rs. Forty Five lacs)

(v) The amount of Compensation i.e. amount receivable to the Petitioners-

a. Rs.1,17,75,000/--10% Nazrana=
Rs. 1,05,97,500/- (Rupees One Crore Fifty Nine Thousand, Seventy Five Hundred only)

b. Further deduction of amount of Returnable *land i.e. 25,16,250/- = 80,81,250 (Rs.Eighty Lacs Eighty One Thousand and Two Hundred and Fifty only)*

f. In view of the above the Respondent nos.4 agree, declare and undertake to withdraw only the amount of i.e. Rs.45,00,000/- only.

g. The Petitioners agree, undertake and declare to withdraw the amount i.e. Rs.80,81,250/- (Rs. Eighty Lacs Eighty One Thousand and Two Hundred and Fifty only).

h. The Respondent No.1 SDO shall disburse the amount of compensation in the above referred term and award/transfer the Returnable land in favour of the Petitioner.

i. The above referred writ petition is disposed accordingly.

j. The parties have liberty to approach this Hon'ble Court in case of any difficulty.

57. It may be noted that the consent terms may constitute an agreement or contract between the parties. However, such settlement can be converted into a judgment only with a seal of approval of the Court, on being satisfied that the compromise is valid and legal. We are satisfied that the terms are neither valid nor legal. As discussed in the foregoing paragraphs, the land belongs to

a tribal. Though the Occupant had executed a Power of Attorney in favour of the Petitioner Gautamsheth Wadve as far back as on 18.12.2006, authorizing him to obtain sanction, do all acts and complete documentation necessary for execution of sale deed, the Petitioner had not applied for sanction. Consequently, no sanction has been accorded and approval granted under Section 36A MLRC. The transfer of occupancy in favour of the Petitioner by virtue of Development Agreement dated 23.04.2007 has been held to be invalid for want of sanction under Section 36A. Resultantly, the Petitioner has absolutely no right, title or interest in the subject land. Despite which in the consent terms filed before the Lok Adalat, the Petitioner had claimed right to receive the entire compensation by paying to the Occupant a sum Rs.3,00,000/- in addition to the consideration of Rs.4,76,000/- stated in the agreement. Whereas in the consent terms filed before this Court, the Occupant, who is the "person interested" has been allured by offering Rs.50,00,000/- as against this the Petitioner who has no semblance of right, is to receive compensation of Rs.1,17,75,000/- and in addition 15% returnable land. This is nothing but a blatant attempt to exploit a tribal and to deprive him not only of compensation but also to render him landless and deprive him of his only source of livelihood. The consent terms are profoundly unjust and against public policy.

58. By these consent terms the Petitioner has tried to nullify the order dated 31.10.2014 and attempted to validate the transfer without obtaining prior sanction of the Collector and approval of the State Government. Suffice it to say that, neither the Court nor the parties can validate transfer, which is violative of the mandate under Section 36A MLRC. Authenticating such process, as adopted by the Petitioner, will render the statutory provision nugatory and deflect the course of justice. Hence, the Petitioner cannot be permitted to receive compensation on the strength of the consent terms which are based on a void agreement, opposed to public policy and a nullity. Hence, we cannot put our imprimatur upon the consent terms, which are not lawful and are against public policy.

59. We are constrained to observe here that Mr.Ajinkya Udane, learned Advocate, who has put in his appearance on behalf of the Occupant only for filing of the consent terms, has not tried to safeguard the interest of his client, who is not familiar with the nuances of law. Though in a different context, the role and duties of

the advocate towards his client is well described by the Apex Court in ***Panduang Dattatraya Kahandekar vs Bar Council of Maharashtra Bombay & Ors. 1984(2) SCC 556*** as under:

> *"For an advocate to act towards his client otherwise than with utmost good faith is unprofessional. When an advocate is entrusted with a brief, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. Counsel's paramount duty is to the client. When a person consults a lawyer for his advice, he relies upon his requisite experience, skill and knowledge as a lawyer and the lawyer is expected to give proper and dispassionate legal advice to the client for the protection of his interests. An advocate stands in a loco parentis towards the litigants and it therefore follows that the client is entitled to receive disinterested, sincere and honest treatment especially where the client approaches the advocate for succour in times of need. The members of the legal profession should stand free from suspicion."*

60. In the instant case, the Advocate representing the Occupant has endorsed the consent terms which permit the Petitioner, who has absolutely no right or interest in the land, to claim a major part of compensation as well as 15% of the land which was to be

returned to the Occupant. While endorsing the consent terms he has ignored the principles in ***Sneh Prabha (Smt.) vs State of UP & Anr. (1996) 7 SCC 426*** that a subsequent purchaser cannot take benefit of land policy and that these rights are conferred only on the owner of the land on the date on which Section 4(1) notification was published. In Shivkumar (supra), a three judge bench of the Hon'ble Supreme Court has held that a person who has purchased the land after section 4 notification under 1894 Act cannot claim rehabilitation or resettlement as per Right to Fair Compensation Act of 2013. The same principles will apply to the acquisition under the MID Act. In the instant case there is no concluded contract in favor of the Petitioner, as to treat him as a subsequent purchaser. Even though the Petitioner has no semblance of right, Ajinkya Udane, the Advocate for the Occupant has approved the consent terms which are detrimental to the interest of his client. He has not acted in the best interest of his client but it appears that Ajinkya Udane, who has apparently been engaged only for the purpose of filing consent terms, has acted in tangent with and as per the dictates of the Petitioner. It is pertinent to remember at all times the words of His Lordship Justice Krishna Iyer -*"Nothing should be done by any member of the legal fraternity which might tend to lessen in any* *degree the confidence of the public in the fidelity, honesty and integrity of the profession."*[V.C.Rangadurai vs D. Gopalan & Ors.1979 SCR (1) 1054].

61. Now adverting to the validity of the judgments and decrees of the Civil Court, it is seen that the Suits were based on Oral Agreements for Sale and Development Agreements. The Petitioner had pleaded and deposed that the Development Agreements are valid, legal and still in force. That the Development Agreements are valid and in force was apparently a false statement. The trial court has accepted the said statement and has held that the terms and conditions of the agreements are comprehensive and that the time is not essence of contract. The trial court has held that since the land is of new and restricted tenure, there is restriction on sale or transfer of the land without prior permission. The trial court accepted the contention of the Petitioner that the Occupants had avoided obtaining the permission from the competent authority for sale of the subject lands.

62. It is to be noted that the Occupants had claimed that the Development Agreements relate to the tribal lands and were illegal

for want of sanction under Section 36A. The Occupants had also averred and deposed that by order dated 31.10.2014 the SDO had held the transfer to be invalid for want of sanction under Section 36A. The trial Court has not referred to and relied upon the order of the SDO but relying upon the statements of the Occupants that they do not have documentary evidence to prove their caste claim or that they are tribals, held that the agreements were validly executed. The trial Court disbelieved the plea of fraud and exercised discretion to grant specific performance in favour of the Petitioner. Accordingly, the trial Court directed the Occupants to comply with all the terms and conditions of the Agreement dated 30.11.2006 and 23.04.2007 within 45 days and to execute a Sale Deeds in favour of the Petitioner on receipt of the balance consideration. The trial Court has directed that since the Petitioner is in possession of the subject lands on license basis as per the Development Agreements, he should be put in permanent possession of the subject lands. The trial Court has directed the Occupants to pay the entire compensation to the Petitioner, in the event the subject land is already acquired by the MIDC.

63. It is relevant to note that the Trial Court has granted relief of

specific performance with direction to the Occupants to obtain sanction from the Competent Authority to transfer the land allotted under new and restricted tenure. The trial court has dispensed with the requirement of sanction under Section 36A on the ground that the Occupants have failed to prove their caste claim. Needless to say, the findings of the trial Court on the issue of the validity of the Agreements and caste claim of the Occupants, are contrary to the findings recorded by the SDO in order dated 31.10.2014. Furthermore, the trial Court has relied upon a false statement of the Petitioner that the Development Agreements are valid and has granted specific performance of agreements, which are held to be invalid by the Competent Authority in exercise of powers under sub-Section 5 of Section 36A of the MLRC. Suffice it to say that, the jurisdiction of the Civil Court to nullify the order passed by the SDO under sub-Section 4 and 5 of Section 36A or to dispense with sanction under Section 36A is statutorily barred under Section 36C of the MLRC. Moreover, a Decree based on Development Agreements which are ab initio void is a nullity. This is the law propounded by the Apex Court in Rajasthan Housing Board (supra). In view of these reasons, the decision of the Division Bench of this Court in Shivganesh Co-operative Housing Society (supra) which is in the context of Section 42 of the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act,1971, is distinguishable and not applicable to the facts of the case. The Decrees relied upon by the Petitioners, which are wholly without jurisdiction and ab initio void, would not confer any right on the Petitioners.

64. Reliance on the decisions of the Apex Court in Jagdish Singh and Urmila Devi (supra) and of the Division Bench of this Court in Dossibai (supra) and the contention that the Petitioners are entitled to compensation in lieu of specific performance or that they have right to receive compensation even though they have no right, title or interest in the land is totally misplaced. The decisions in Jagdish Singh and Urmila Devi (supra) were in the context of Section 21 of the Specific Relief Act. The Plaintiffs in these cases were held to be entitled for decree of specific performance. However, the contract had become unenforceable due to the acquisition of the suit property during the pendency of the Second Appeal. In this context it was held that when the contract has become unenforceable, for no fault of the Plaintiff, he would be entitled for compensation in lieu and substitution of specific performance of contract.

65. The question in Dossibai (supra) was whether the Claimants who were entitled to claim the benefit of part performance under Section 53A of the TP Act and also to claim specific performance to agreement to lease, were 'person interested' and were entitled to receive compensation. It is in this context the Division Bench of this Court has held thus:

> "*6. …. A "person interested in the land" under Section 9 will, in our judgment, by the definition in Section 3(b), include a person who claims interest in compensation to be paid on account of the acquisition of land, and the interest which is contemplated by Section 9 and the other sections to which we have referred is not restricted to legal or proprietary estate or interest in the land but includes such interest as will sustain a claim to apportionment with the owner of the land. If a person has a right to remain in occupation or has a claim against the land, or some obligation or restriction is imposed upon the ownership of the land, the person in whom the right or claim is vested or who is entitled to the benefit of the obligation or restriction will, in our judgment, be entitled to compensation, even though the right, claim or the benefit may not amount to an interest or estate in the land. If a person has, without having any interest, a right to remain in occupation or possession of land of the ownership of another,*

> *compensation for extinction of that right by compulsory acquisition will be payable to the person having the right of occupation or possession. For instance, a person who has a licence which is irrevocable will be a person interested, even though the licence does not amount to an interest in the land. The owner of a dominant tenement, having an easement over a servient tenement, even though the easement does not amount to an interest in the land, is by the definition declared expressly to be a person interested in land. In our judgment, the right to receive compensation for compulsory acquisition of land is not restricted to those persons who have a legal or proprietary interest or estate in the land and is available to all persons who have a right or claim to land, even if such right or claim does not amount to legal or proprietary estate or interest in the land."*

66. The facts of the aforestated cases are not in alignment with the present matter. In the instant case, the agreements as well as the Award and the Judgments and Decrees on the strength of which the Petitioners have claimed right to receive compensation, do not confer any right, title, or interest in favour of the Petitioner. Moreover the Petitioners have not been able to demonstrate that their right of whatsoever nature has been infringed or affected on

account of acquisition of the subject land. Hence, the Petitioners cannot be considered as persons interested in the land and/or are interested to receive compensation in respect of the said land.

67. The Respondents have also claimed that the Petitioners cannot claim any right based on post notification transactions, which are void. In support of this contention, reliance has been upon the decision of the Apex Court in Meera Sahani (supra), and the decisions of the Division Bench of this Court (Aurangabad Bench) in Avdhut Shinde and Shaikh Kalim Shaikh Mohammad (supra), In Meera Sahni as well as in Avdhut Shinde, the subsequent purchasers had challenged the acquisition proceedings whereas in Shaikh Kalim Shaikh Mohammad (supra) challenge was to the refusal of registration of subsequent sale transaction. The Apex Court as well as this Court has turned down the challenge by the subsequent purchasers on the ground that the post notification transactions are illegal, void transactions, and do not bind the State.

68. It may be mentioned that in Shiv Kumar (supra), the question involved was whether a purchaser of the property after issuance of notification under Section 4 the Land Acquisition Act can invoke

the provision contained in Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. While considering this issue, a three-Judge Bench of the Apex Court, on considering the earlier judgments on the issue, has reiterated that such transactions are void and do not bind the State and that the only right available to the subsequent purchaser is to claim compensation payable to the original owner. The Apex Court has taken note of the fact that after publication of Section 4 notifications, the builders and unscrupulous persons purchase the property at a throw away price. Such transactions are void and confer no right even to claim higher compensation under Section 24 (2) of the Act of 2013.

69. It is thus well settled that the subsequent sale transactions do not bind the State and that the subsequent purchasers cannot challenge the acquisition. In the present Petitions, the Petitioners herein have not challenged the acquisition but have claimed right to receive compensation. The proposition that the subsequent purchasers has right to claim compensation payable to the original owners will not apply in the present case as in the present case the claim is based on agreements for sale, which as stated earlier do not

create any interest in or charge on the property. There being no concluded contract in favour the Petitioners, they cannot be considered as subsequent purchasers. The Development Agreements relied upon in the second group of Petitions are void not only against the State but, as in the case of Rajasthan Housing Board (supra), are void inter-se between the parties. As a result, the Petitioners have no right to claim compensation payable to the original owners/ Occupants on the basis of these transactions. Moreover, these post notification agreements, which are otherwise void, also cannot be specifically enforced in view of publication of notification under Sub- Section (1) of Section 32 and absolute vesting of the land in the State Government, in accordance with sub-Section 4 of Section 32 of the MID.

70. It is also pertinent to note that for a valid and enforceable contract the terms of the contract have to be certain and the parties have to be at consensus ad idem. In Soran Singh (supra) right to receive compensation was transferred after passing of the Award, and in Sadhana Gupta (supra) such right was transferred during the pendency of the reference. In both these cases, the compensation payable to the erstwhile owner was already quantified. Whereas, in

the present case the Petitioners had entered into Agreement for Sale and Development Agreements after publication of notification under Section 1(3) of MID Act. The clause to assign right to receive compensation was inserted knowing fully well that the tribal land was likely to be acquired. As on the date of the execution of the agreements, neither the date of notification under Section 32(1) was finalized nor was the compensation payable to the person interested quantified. It is thus evident that, the right that was transferred viz. the right to receive compensation, was itself ambiguous and indeterminate in nature.

71. As it has been aptly observed by the Calcutta High Court in ***Abdul Khalegue vs. Megaswar Hossain AIR 1967 Cal. 56*** - "*to permit in such a case and in such a context, sale of the mere right to compensation which on the facts of the case itself is indeterminate, and when at the time the sale proclamation was made, no compensation roll had even been prepared, would be to encourage speculation and trafficking in a new species of gambling. Such a right to compensation due to its vagueness may be bought up by a handful of persons throughout the State to promote rampant speculation and the purchasers would not know what actually they*

are buying nor the seller would get the value which has any relation to the reality".

72. We would like to add here that enforcing such agreements will also encourage the intermeddlers and non-tribals, who are always on the prowl to identify lands which are likely to be acquired, to induce the innocent, vulnerable, poverty stricken tribals to part with their only source of livelihood. The matters in hand are illustrations of such dubious and unconscionable transactions and exploitations of the tribals by non-tribals or intermeddlers. The Petitioners, who are Developers, have identified the tribal land which was notified under Section 1(3) of the MID Act and lured and induced the tribals, who were facing financial crunch, to enter into Agreements for Sale, Power of Attorneys and Development Agreements with a clause to assign the right to receive compensation and other benefits of acquisition for grossly inadequate consideration, which as compared to the compensation awarded in the acquisition proceedings is as good as no consideration. These tribals, who have been divested of their land due to the acquisition for ongoing industrial advancement, stare at the prospect of being deprived of the compensation and other

benefits of the acquisition. Enforcing such agreements and the Clause in particular, the very object of which is to economically exploit the tribals, will not only amount to placing premium on the exploitation perpetuated by the land grabbers but will denude the tribals of socio-economic empowerment and dignity of their person.

73. It is also well settled that unequal bargaining power, resulting in unfair and unreasonable contract, is also an invalidating factor. In ***Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly, 1986 (2) SCR 278*** the Apex Court while considering constitutionality of the conditions in statutory rules vis-à-vis its employee to terminate the service of a permanent employee in terms of the rules held thus:

> *"…The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike an unfair and unreasonable contract, or an unfair and*

> *unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the speaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. …"*

74. The above ratio was upheld, per majority, in ***D.T.C. vs. D.T.C. Mazdoor Congress, 1990 (1) Supp. SCR 142.*** Similarly in Lingappa Pochanna Appelwar (supra) the Apex Court has observed that there is always a presumption when there is a transfer between a tribal and a non-tribal that it is an unequal bargain. As regards the weak and

the helpless, the law guards them with a special protective care. The Apex Court has further observed that it is axiomatic that a contract is liable to be set aside due to inequality of bargaining power, if someone without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which grossly inadequate when his bargaining power is previously impaired by reason of his own need or circumstances, or by his own ignorance or infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other.

75. In ***Uddar Gagan Properties vs. Sant Singh (2016) 11 SCC 378*** the builder had purchased the interest of the original land holders after the acquisition process was initiated, and at his instance the State had released the land under Section 48 of the Land Acquisition Act. The decision of the State was questioned by the land owners. The High Court set aside the release order and quashed the acquisition and restored the land to the land owners. In appeal, the Apex Court has referred to and quoted the observations of the High Court wherein compulsions of farmers to sell the land, which is a subject matter of acquisition, have been expressed as under:

" A farmer seldom sells the land save for compelling reasons. Agriculture being their only source of survival, the loss of land is a terrible nightmare for any farmer. The Land Acquisition Collector never assesses the compensation as per actual market value of the land and the only yardstick to be followed is the Collectors rate fixed for the purpose of registration charges. The farmers cannot sell the land in open marked as on issuance of Sec. 4 notification all sale transactions are invariably banned. These moments of fear and anxiety must have prompted the farmer to indulge in the best bargain. For the farmers the offer was like "better you give the wool then the whole sheep" . There was no free trade for the farmers. Their choice was limited: to accept the State compensation at the Collector's rate or a better offer given by State-sponsored private builder. There was inequality of bargaining power. The determination of land value was not at all in the control of farmers. They were groping in the dark. They had no clue that the land will be released. They accepted the unreasonable and unfair unilateral terms and lost their land."

76. In the instant case, the tribals were pitted against unscrupulous land grabbers, who with money and muscle power and with dubious means and methods were in a position to lure or induce this economically and socially weaker class, to enter into

strategically planned conniving transactions. The Petitioner who are Developers by profession were no strangers to the fact that the land was to be acquired. They had entered into these transactions impending acquisition knowing the potential value of the land, whereas the tribals were constrained to enter into unconscionable and unreasonable bargain only due to financial constraints without even knowing the value of the land. Even if the Occupants have entered into similar transactions with other Developers as alleged, it would only lead to an inference that the Socio economic disparity of this disadvantaged section has made them highly vulnerable to exploitative and devious ingenuity of the Developers.

77. The facts of the first group of Petitions highlight the exploitation of the innocent tribals by wily and greedy land grabbers. It is seen that in WP. (St) No.1338 of 2020, by Agreement dated 05.06.2006 the Occupants had agreed to sell the subject land admeasuring 3 Hectare 28 R to Amol Mutha (R-3) for sale consideration of Rs.6,75,000/-. It is stated that an amount of Rs.1,50,000/- was paid to the Occupant/Tribal and the balance amount was to be paid on obtaining requisite sanction and on execution of the sale deed. Being illiterate and ignorant of the

requisite procedural aspect and nitty-gritty of such transaction, these tribals executed a Power of Attorney in favor of the Respondent No.3 authorizing him to procure purchasers, to prepare documentation, obtain sanction/ permission, execute agreement for sale, sale deed, etc in respect of the subject land and to submit the same on their behalf before the Sub-Registrar for registration. The Respondent No.3 did not conclude the transaction, but acting on the said Power of Attorney, he entered into an Agreement for Sale dated 03.09.2016 with the Petitioner whereby he agreed to sell the land and assigned right to receive compensation and other acquisition benefits for sale consideration of Rs.20 lakhs.

78. Similarly in the other four Petitions of the first group, the Occupants had entered into agreement with Sanjay Nanekar and Dattaraj Wafgaonkar Respondent No. 6 in the respective petitions, for sale of the land admeasuring 1 Hector 22 for sale consideration of Rs.4,00,000/- each. The Occupants in these Petitions were paid Rs.1,00,000/- and the balance sale consideration was to be paid on execution of the sale deed. The said agreements did not culminate in sale transactions as a consequence the Occupants were not paid the balance sale consideration. It is seen that in little over two months,

Anil Kad (R-7) as the Power of Attorney of the Occupants and Respondent No. 6 in the respective Petitions as consenting parties, entered into agreements for sale with the Petitioners-Narangs, for sale of the subject lands for sale consideration of Rs.12,20,000/-.

79. The quantum jump in the sale consideration within a span of three months would itself indicate that the price agreed in initial agreements was not the actual value of the land. It is also to be noted that in the second and third group of Petitions the Occupants had assigned development rights in respect of land admeasuring 1 Hectare 22 R for consideration of Rs.4,76,000/. The vast disparity in the price offered in the first group of Petitions and the second and third group of Petitions indicates that the price was not determined by the market force.

80. It is also not in dispute that Amol Mutha, Respondent No.3 in WP/ST/1338/2020 had received a sum of Rs. 5 lakhs as part sale consideration. Mr. Surel Shah, the learned Counsel for Respondent No.3 has not disputed that Respondent No.3 has not paid the said amount to the Respondent Nos.1 and 2 though the same was received by him as their agent. Similarly, in the other four Petitions,

a perusal of the Agreements executed by Respondent No.7- Anil Kad in favour of Petitioners -Narangs indicate that in each of these Petitions, out of total sale consideration of Rs.12,20,000/-, the Petitioners had paid Rs. 6,10,000/- each to Sanjay Nananekar and Dattataraj Wafgaonkar, (the erstwhile purchasers- Respondent No.6 in respective Petitions) and the balance sale consideration of Rs.6,10,000/- has been paid to the Power of Attorney holder-Anil Kad (Respondent No.7). As aforementioned, the erstwhile purchasers had agreed to purchase the subject land for Rs.4,00,000/-. They had paid an amount of Rs. 1,00,000/- to the Occupants. Without concluding the contract and making any further amount to the Occupants, they have received Rs.6,10,000/ each as a consenting party. In these transactions, these proposed erstwhile purchasers, who had absolutely no right to the land have walked away with considerable amount, while the Occupants, who are the actual landholders have been left in the lurch. Furthermore in these six Petitions of the first group as well as in WP/(ST)/3236/ 2020, the Power of Attorney holders have authorized the Petitioners to receive compensation, despite there being no such authority in their own favour. This is nothing but total misuse of Power of Attorney and misappropriation of the amount payable to the Occupants.

81. The Petitioners are claiming right to receive compensation varying between Rs.2,75,00,000/- to Rs.1,67,75,000/- as against a meager amount purportedly paid to the Occupants, which does not exceed Rs.3,00,000/-. It is apparent that the Petitioners, who were aware of restrictions on transfer of occupancy have allured these tribals to assign the right to receive compensation on paying nominal consideration. Compelled by financial constraints and oblivious of their rights or ill equipped to protect their rights, these tribals have fallen prey to the conniving Developers who were looking for windfall gains. This is nothing but intended economic exploitation and undue and unconscionable enrichment. In these transactions, the tribals were nothing but puppets in the hands of the Petitioners. They had no meaningful choice but had to accept unreasonable and unfair unilateral terms determined by the Petitioners. In view of clear socio economic disparity and gross inequality of bargaining power between the contracting parties, it is difficult to accept that the tribals had understood the true nature of the contracts. The Clause relating to the assignment of right to receive compensation is unfair, indefensible, arbitrary and between the parties having highly unequal bargaining power, hence

unenforceable. We are therefore of the considered view that the agreements, based on which the Petitioners are claiming right to receive compensation, are ab-initio void. As a corollary thereof, the Petitioners are not entitled to claim or receive any compensation on the basis of such Agreements.

82. The transactions on the basis of which the Petitioners are claiming right to receive compensation were executed in the year 2006 - 2007. It is to be noted that the Power of Attorney Holders who were authorized to obtain sanction and execute the Sale Deeds had not taken steps to obtain sanction or to challenge the order dated 31.10.2014 and to conclude the contract for a period of about 10 years. The Petitioner Gautamsheth Wadve has sought to enforce these agreements by Suits filed in the year 2016-2017, whereas Narangs-the Petitioners in the four Petitions of the first group have filed the Suits in the year 2018 after publication of notification under Section 32(1) and vesting of the land in favour of the State Government. A perusal of the Award indicates that meeting was held with the landholders/Occupants during the pendency of these Suits and compensation was determined by agreement in accordance with Section 33(2) of the MID Act. None of these

Petitioners had participated in the meeting. They had neither challenged the authority or competency of the Occupants to negotiate nor have they raised any dispute over the quantum of compensation determined by the SDO. The Petitioners therefore cannot be heard to say that the State Government was bound to refer the case to the Collector under sub-Section (3) of Section 33 of the MID Act for determining the amount of compensation as also the persons to whom such compensation was payable.

83. It is pertinent to note that Section 34 of the MID Act, enables a party aggrieved by the decision of the Collector determining the amount of Compensation, to make a written application to the Collector, within sixty days from the date of the decision, to refer the matter to the Authority for determination of the quantum of compensation. In the instant case, the Petitioners have raised the objections even before determination of the amount of compensation. Moreover, they have not challenged the quantum of compensation. The Applications/ Objections, which were filed prior to making of the Award, and which do not challenge the quantum of compensation determined by the SDO cannot be construed as applications for reference under Section 34 of the MID

Act. The objections filed by the Petitioners prior to the Consent Award, claiming right to receive compensation come within the purview of Section 35 of the MID Act, which reads thus:

> *"35. When the amount of compensation has been settled under Section 33, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute for the decision of the Court."*

84. Section 35 of the MID Act, which is pari materia with Section 30 of the Land Acquisition Act, 1894, confers discretion on the SDO to make a reference to the Competent Court. In Sharda Devi (supra)**,** the Apex Court while considering the scope of Section 18 and 30 of the Land Acquisition Act, 1894 has held that-

> "*Under Section 18 the Collector does not have power to withhold a reference. The Collector has no discretion in the matter, whether the dispute has any merit or not is to be left for the determination of the Court. Under Section 30 the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute , the delay in inviting the attention of the Court, and so on - are such illustrative factors which may enter into the*

> *consideration of the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the Court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. In case the Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make a reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit.*"

85. It is not necessary to refer to all the other decisions relied upon by the respective parties in view of this settled dictum. Applying the same principles to the provision under Section 35 of MID Act, it can be said that SDO is not bound to make a reference to the Court. Though the SDO cannot adjudicate upon the dispute, he is not expected to act as a post office to transmit the objections to the Civil Court. The SDO certainly has discretion to consider whether the Petitioners are aggrieved persons. It is only on being prima facie satisfied that the Petitioners are indeed aggrieved persons and that the dispute between the parties needs adjudication, that the SDO is required to refer the dispute to the Competent Court

and deposit the compensation in the said Court.

86. In the instant case, the SDO has refused to exercise the discretion mainly on the ground that the agreements on the basis of which the Petitioners are claiming right to receive compensation were ex facie in contravention of the mandatory provision of Section 36A and void ab-initio. Learned Counsel for the Petitioners have not been able to demonstrate that the Petitioners are persons interested in the subject land or that they have right to receive compensation. Yet their persistence is on a reference under Section 35 and deposit of compensation either before the reference court or before the court wherein the civil suits are pending. Such reference is sought only on the ground that the SDO was not competent to decide the validity of the agreements and comment on the judgment of the Civil Court. We have independently considered the validity of the agreements as well as the Lok Adalat Award and Decrees of the Civil Court and have recorded a finding that the agreements, Award and Decrees of the Civil Court are void. In such circumstances, referring a non-existing dispute to the Civil Court and subjecting the Occupants to a prolonged litigation at huge expense will not only prejudice their interest but will in fact cause

grave injustice to them.

87. In the circumstances, the learned SDO was justified in declining to refer the dispute to the Civil Court and or to deposit the compensation in the said Court. As already observed by us, the Petitioners have no right or interest in the subject land and are not entitled for compensation. The subject land belongs to the Occupants and they are the only rightful claimants to disbursal of compensation. Such right cannot be tinkered with by void transactions. Hence, the SDO was justified in ordering payment of compensation to the Occupants. Under the circumstances and in view of discussion supra, the impugned orders do not warrant any interference in writ jurisdiction. Resultantly, the Writ Petitions are liable to be dismissed.

88. Generally, we would have directed the SDO to deposit the compensation in the individual accounts of the Occupants in any nationalized bank. However considering the vulnerability of the tribals and an attempt made by the Petitioners to overreach the Court by filing consent terms at the stage of order, we apprehend that that these vested interests will deprive the tribals of

compensation rightfully due to them. It is therefore obligatory to ensure that the compensation is neither usurped by the Petitioners nor squandered away the Occupants, for want of fiscal discipline. At this stage, we would like to refer to the decision of the Gujarat High Court in ***Ajarambhai And Muljibhai Anr. vs. United India Insurance Co. Ltd. AIR 1984 Guj 7,*** wherein while dealing with the application for withdrawal of compensation payable under the Motor Vehicle Act, the Division Bench of Gujarat High Court has observed that :

> " *If the whole or substantial part of the compensation money is paid to claimants who have never handled such huge amounts in their lives there is the danger of their frittering away the amount for want of fiscal discipline in their lives. If the amount is squandered away, which in all, probability may happen the socio-economic objective intended to be achieved by the award of compensation will be wholly defeated. We are, therefore, of the opinion that in such cases it is imperative on the Claims Tribunal to protect such claimants, no matter they are adults, by directing the investment of lump sum compensation awarded to them.*
>
> *xxx*
>
> *The Claims Tribunal while investing the said amount in long term fixed deposits will also take care to see*

that the corpus remains intact so that no loan or advance is permitted on- the said fixed deposit to the applicants by the Bank without obtaining its express order in that behalf. The Bank issuing the fixed deposit receipt should endorse on the face of the receipt that no loan or advance should be granted on the strength of that-receipt unless there is an express order of the Tribunal in that behalf. Similar note should be made in the bank records to rule out the possibility of obtaining a loan or advance by taking out a duplicate receipt, On the expiry of the period of 5 years, the Claims Tribunal will consider whether the fixed deposit should be further extended and if so, for what period."

89. In the aforesaid decision, the Gujarat High Court has laid down broad guidelines to be followed by the Claims Tribunals while, disposing of claim applications arising, under the Motor Vehicles Act, 1939, to scotch complaints of misapplication of compensation money. These guidelines have been approved, endorsed and adopted by the Hon'ble Supreme Court in ***Union Carbide Corporation Etc. vs. Union Of India Etc. Etc 1992 AIR 248***, with appropriate modifications. The Apex Court in ***General Manager, Kerala S.R.T.C vs. Susamma Thomas 1994 AIR 1631,*** has directed the Claims Tribunals to follow these guidelines to

safeguard the feed from being frittered away by the beneficiaries owing to ignorance, illiteracy and susceptibility to exploitation.

90. The plight of the Occupants in the present Petitions is no different. They are illiterate, poverty stricken, vulnerable tribals, who are highly susceptible to economic exploitation, rather have already been subjected to economic exploitation. In a systematic ploy, every attempt has been made to circumvent the statutory provisions and to deprive the Occupants of right to receive compensation of the land legally held by them. In view of these peculiar facts, it is necessary to protect these tribals from economic exploitation and usurpation of compensation by the Petitioners or other vested interest. It is also necessary to prevent these tribals from squandering away the compensation due to lack of fiscal discipline. We therefore propose to adopt and follow the same guidelines with appropriate modifications.

91. It is also a matter of great concern that in blatant violation of statutory provisions, the Petitioners in unison with the Power of Attorney Holders and erstwhile purchasers, have attempted to grab the land which was either purchased by the Occupants under the

provisions of Tenancy Act or was allotted to them by the State Government in effectuating the policy of economic empowerment. The facts brought on record prima facie indicate that the Occupants, who are illiterate, poverty-stricken tribals, have succumbed to the wiles of the Petitioner Gautamsheth Wadwe and entered into dubious and unconscionable transaction, wherein they assigned development rights as well as right to receive compensation for nominal consideration. These transactions which are already held to be invalid by the Competent Authority under the MLRC, are unreasonable and prima facie cannot be said to be voluntary or free from undue fraudulent influence.

92. Similarly, the facts of the first group of Petitions prima facie indicate that there was unholy nexus between the Petitioners, Power of Attorney Holders and the erstwhile purchasers, who had connived to grab the tribal land which was likely to be acquired and usurp the compensation payable to the tribals. The innocent unsuspecting tribals falling prey to this well planned scheme entered into 'Agreements for Sale' and simultaneously executed power of attorney authorizing the Power of Attorney Holders to procure buyers and to take all further steps for the execution and

registration of the sale deed. The records reveal that without cancelling the previous Agreements, the Power of Attorney Holders as well as the erstwhile purchasers acting as consenting parties, have entered into fresh transactions with the Petitioners in the first group of Petitions, wherein they have not only agreed to sell the land/assign development rights but also assigned right to receive compensation. Similar is the case in WP/ST/3236/2020, wherein, acting on the Power of Attorney, Gautamsheth Wadve has authorized his son Sachin Wadve to receive the compensation. This is nothing but blatant misuse of the authority given by the Occupants. Furthermore, it is also on record that the Power of Attorney- Amol Mutha and the erstwhile purchasers- Sanjay Nanekar and Dattaraj Wafgaonkar have misappropriated the consideration payable to the Occupants, while it is not clear whether the consideration received by the Power Of Attorney Holders in the other matters of the first group has been tendered to the Occupants.

93. The totality of the facts prima facie substantiates the claim of the Occupants that the transactions are not genuine. In fact, this has been the consistent claim of the Occupants as can be seen from the

defence raised before the trial court. In the written statement filed before the trial Court, copy of which has been placed on record, these Occupants had averred that the Petitioner had obtained Power of Attorney and taken their signatures on certain documents representing that he had good relations with the officials of MIDC and could get the property released from acquisition and that he could procure a purchaser who would offer better price. The Occupants had denied having received any money from the Petitioner. These Occupants had averred that the Petitioner was aware that the Development Agreement could not be registered in view of an entry in the Revenue Record. Hence the Petitioner did not annex the 7/12 extract issued by the Talathi, but managed to register the Development Agreement by annexing the computerized copy of 7/12 extract without a remark about MIDC acquisition. The Occupants have averred that the Petitioner Gautamsheth Wadve and the witnesses Harishchandra Raju Kusalkar and Baban Jaywant Kaldoke are involved in several such fraudulent transactions and are facing criminal trial.

94. The appalling facts divulged in these Petitions and the defence raised before the trial court could just be the tip of the ice

berg. The matter therefore needs thorough investigation to verify the veracity of the allegations made by the Occupants and to unravel the truth. Such exercise is necessary to protect the propriety rights and economic interest of the tribals and to prevent the intermeddlers or land grabbers from exploiting and infringing their rights with impunity. Unless such deterrent action is taken against the perpetrators of crime, the rights of the tribals will continue to be jeopardized thereby defeating the laudable object of the beneficial legislation and frustrating the Constitutional policy of economic empowerment.

95. Under the circumstances and in view of discussion supra, we pass the following order:

i) The Writ Petitions are dismissed.

ii) The SDO is directed to deposit the compensation in respect of each of the Occupants in the District Court, Pune, with details of compensation payable to each of the Occupants.

iii) The Principal District Judge, Pune is directed to invest 95% of the compensation in long-term fixed deposit in any nationalized bank with further renewal from time to time. The balance 5% compensation shall be deposited in the saving account of the respective Occupants.

iv) The Bank shall be intimated not to permit withdrawal of money either pre mature or otherwise and not to advance loan in any form on the fixed deposit without express permission of the Principal District Judge, Pune. The Fixed Deposit Receipt shall carry such an endorsement/note on the face of the document.

v) Monthly Interest accrued on the amount invested in long-term fixed deposit shall be credited in the saving accounts of the respective Occupants.

(vi) The Principal District Judge, Pune may permit withdrawal of lump sum amount required by the Occupants for effecting purchases of any movable or immovable property. The Principal District Judge shall confirm that the amount is actually spent for the purpose and the demand is not a ruse to withdraw money, while ensuring that the Occupants are not deprived of utilizing the compensation for genuine need;

(vii) In all cases, the Occupants have liberty to apply for withdrawal in case of medical treatment, educational expenses, or any other urgent expenses. The Principal District Judge shall consider genuineness of such request and allow withdrawal of such amount as may be necessary for incurring such expenses;

(viii) The Principal District Judge, Pune, shall appoint an advocate from legal aid panel, if required by the Occupant, to provide assistance in seeking withdrawal of money.

ix) The principal District Judge, Pune shall decide the application for withdrawal of money as expeditiously as possible and in any event within four days from the date of the Application.

x) The SDO shall take necessary steps to ensure that 15% returnable land allotted to the Occupants under the Award is not transferred in any manner without prior sanction under the provision of Section 36A of the MLRC.

xi) The SDO shall, within a period of six weeks from the date of receipt of the order, lodge a complaint before the Sr.Inspector of Police, Rajguru Nagar, Khed, District Pune against the Petitioners, the Power of Attorney holders, and erstwhile purchasers for entering into fraudulant transactions, misappropriating the sale consideration and attempting to cheat the Occupants and deprive them of their lawful property rights/compensation.

xii) The Sr. Police Inspector shall investigate the said crime, independently without being influenced by observations made in this judgment.

xiii) The investigating agency shall complete the investigation within a period of six months from the date of the complaint and take further action in accordance with law.

xiv) The Sr. Police Inspector shall submit a report before this Court within a period of two weeks from completion of the investigation.

. Petitions stand disposed of accordingly.

(ANUJA PRABHUDESSAI, J.) **(A.A.SAYED, J.)**

. At this stage, the learned Counsel for the Petitioners seek stay to the operation of the Order for a period of six weeks.

. For the reasons recorded in the Order, we are not inclined to grant a blanket stay. Nevertheless, we direct the Occupants not to withdraw the compensation which will be deposited in their saving account as per para 95 clause (iii), for a period of six weeks. We also direct the SDO not to lodge the FIR for a period of six weeks from the date of this Order.

(ANUJA PRABHUDESSAI, J.) **(A.A.SAYED, J.)**