

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.8002 OF 2019****ALONG WITH****WRIT PETITION NO.8003 OF 2019****ALONG WITH****WRIT PETITION NO.8004 OF 2019****ALONG WITH****WRIT PETITION NO.8005 OF 2019****ALONG WITH****WRIT PETITION NO.8006 OF 2019****ALONG WITH****WRIT PETITION NO.8007 OF 2019****ALONG WITH****WRIT PETITION NO.8008 OF 2019****ALONG WITH****WRIT PETITION NO.8009 OF 2019****ALONG WITH****WRIT PETITION NO.8010 OF 2019****ALONG WITH****WRIT PETITION NO.8011 OF 2019****ALONG WITH****WRIT PETITION NO.8012 OF 2019****ALONG WITH****WRIT PETITION NO.8013 OF 2019****ALONG WITH****WRIT PETITION NO.8015 OF 2019****ALONG WITH****WRIT PETITION NO.10118 OF 2019****Maganlal Kalubhai Patel****..****Petitioner****Vs.****The State of Maharashtra & Ors.****..****Respondents****AJN**

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Mr. S.M. Sabrad with Ms. Neha R. Parte and Mr. Amey C. Sawant for the Petitioner.

Mr. P.P. Kakade, Government Pleader with Mr. A.I. Patel, Addl. Government Pleader and Mr. Y.S. Khochare, A.G.P. for Respondent Nos.1 to 5 in Writ Petition Nos.8002 of 2019, 8003 of 2019, 8004 of 2019 and 8005 of 2019.

Mr. P.P. Kakade, Government Pleader with Mr. A.I. Patel, Addl. Government Pleader and Mr. M.M. Pabale, A.G.P. for Respondent Nos.1 to 5 in Writ Petition Nos. 8006 of 2019, 8007 of 2019, 8008 of 2019, 8009 of 2019, 8010 of 2019, 8011 of 2019, 8012 of 2019, 8013 of 2019, 8015 of 2019 and 10118 of 2019.

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**CORAM: PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : 14th FEBRUARY, 2020.

P.C:-

1. In the 14 Writ Petitions before us, the Petitioner is one Maganlal Kalubhai Patel, who is aggrieved by imposition of certain conditions by order dated 31st October, 2018 passed by the State Government under Section 36A of the Maharashtra Land Revenue Code, 1966. The Petitioner, who was desirous of purchasing different parcels of land situated in Taluka Khalapur, District Raigad from different owners of the land, all being tribals, was required to follow the mandate of Section 36A of the

Maharashtra Land Revenue Code, 1966. The case of the Petitioner is that the tribals, being in need of money, agreed to sell the land owned by them and it is not in dispute that all the sellers are the “Scheduled Tribes” within the meaning of Article 342 of the Constitution of India.

2. Section 36A of the Maharashtra Land Revenue Code imposes restriction on the transfers of occupancies by the tribals and contemplate that there will be no transfer of land in favour of any non tribal by way of sale except on an application being preferred by the non-tribal and with the previous sanction (a) in case of a lease or mortgage for a period not exceeding five years, of the Collector and (b) in all other cases, of the Collector with the previous approval of the State Government. The proviso appended to the said section imposes a fetter : that no such sanction shall be accorded by the Collector unless he is satisfied that no tribal residing in the village in which the occupancy is situated or within five kilometers thereof, is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

3. Falling in line with the mandate of Section 36A of the Maharashtra Land Revenue Code, the Petitioner moved Applications on different dates seeking necessary permission for effecting the transfer of lands in his favour by the tribal persons.

On distinct dates, the Tahsildar Khalapur forwarded the report to the concerned Collector i.e. the Collector, District Raigad. The Collector in turn forwarded his recommendation to the Divisional Commissioner and, to be noted, in all cases, recommending grant of sanction. On certain discrepancies being pointed out, the Divisional Commissioner sent the matter back to the Collector and, on remand, the Tahsildar Khalapur directed the removal of the discrepancies which was duly complied with and the report being forwarded to the Collector. The relevant file, through the Divisional Commissioner, ultimately reaches the State Government and the State Government by order dated 06th August, 2016 deferred the permission for non-compliance of submission of the project report depicting the genuine non-agricultural use of the land in question. The Petitioner was informed by the Collector about the rejection of his proposal by the State Government.

4. Here commenced the journey of the Petitioner to this court, by filing different Writ Petitions challenging the order of rejection passed by the State Government, in which the Petitioner succeeded. This court while setting aside the impugned order passed by the State Government issued a positive mandate to the Petitioner to submit the project report and plans in the office of the Collector within a period of one month and also issued the mandate to the Collector to take a decision within six weeks and

then adopt the route to forward the same to the State Government through the office of the Divisional Commissioner. By its order, this court also made it imperative for the State Government to take a decision within two months.

5. The Petitioner undertook the route as directed by this court and cured the deficiencies. Once against the report, compliant in accordance with the direction of this court and to the satisfaction of the Collector reaches the State Government. At this juncture, the State Government again hit at some discrepancies and direct the Collector to ensure its compliance. The Petitioner carries out the compliance and the Tahsildar Khalapur resubmits the report to the Collector which is forwarded to the Divisional Commissioner and then it lands up with the State Government. A period of approximately two years is taken for a final decision as contemplated under the Maharashtra Land Revenue Code by the State Government, when the State Government accorded the permission for transferring the land in favour of the Petitioner and the orders are passed in respect of different parcels of land by the State Government on distinct dates.

6. Suffice it to mention that the permission is finally granted for transferring the land in favour of the Petitioner subject to conditions stipulated in the said order.

7. The Petitioner objects to the imposition of Condition Nos.1, 20 and 21 and more seriously the dispute is about Condition No.1. Condition No.1 which is the bone of contention between the parties is the clause relating to fixation of the price of the land. Condition No.1 stipulates that since the land to be purchased is to be put to use for non-agricultural purpose, the valuation of the land should be determined by taking into consideration the Ready Reckoner market value of the said land and by comparing the said valuation with the price of the land agreed at the time of agreement and amongst these two, the value which is higher should be determined as sale consideration. The Petitioner's claim in the Petition is focused on Condition No.1 and the argument advanced is that the sale price has to be determined as on the date of the Application and not on the date on which the permission is granted by the State Government.

As far as the other two conditions are concerned, the learned counsel for the Petitioner fairly states that he is not serious in pressing his challenge to the said conditions.

8. The legal position noted by us is that the date of the Application has to be the one on which the Application properly so-called is filed. It means that the Application which is supported by all necessary documents.

9. In the instant case, the Application would be deemed to be

a proper Application when in September, 2017, the project report and plans were submitted. Thus, the Writ Petition is disposed of modifying the impugned order by directing that price of the land would be as of September, 2017 when it can be said that the application was complete in all respects and the time which the State Government took to decide the same was beyond the control of the Petitioner. The Petitioner should not be put to inconvenience by paying price higher than the market value prevailing.

10. The Petitioner shall pay to the land owner the amount as per the impugned order as modified by us.

11. A word needs to be spoken.

12. The instant Writ Petition shows the innocence of a tribal. The impugned order confers a benefit to flow from a tribal to the Petitioner and the fact that tribal supports the Petitioner itself establishes that the authorities and courts need to be careful while dealing with such matters.

13. No costs.

(SMT. BHARATI DANGRE, J.)

(CHIEF JUSTICE)