

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**16 WRIT PETITION NO.7719 OF 2020
WITH
CA/7827/2020 IN WP/7719/2020**

**ARJUN BHIMRAO MANDVE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Advocate for Petitioner : Mr. V.D. Salunke h/f Mr. B. G. Sagade Patil
GP for Respondent Nos. 1 to 4-State : Mr. D.R. Kale
Advocate for Respondent No. 5 : Mr. Milind Patil (Bidkar).

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CORAM : N. J. JAMADAR , J.

Date :- 30th March, 2021.

ORAL ORDER :

. Heard the learned counsel for the petitioner, the learned Government Pleader for respondent Nos. 1 to 4 and the learned counsel for respondent No. 5.

2. The challenge in this petition is to the judgment and order passed by the Sub Divisional Officer, Aurangabad on 27th October, 2020, whereby, the deed of exchange executed by and between the petitioner and respondent No. 5, on 26th November, 2013, where under, the land of the petitioner bearing Gut No. 54 came to be transferred in favour of respondent No. 5 in exchange of the land bearing Gut No. 135 of respondent No. 5, was declared void in view of the provisions contained in Section 36 and 36A of the Maharashtra Land Revenue Code, 1966.

3. Respondent No. 5 herein, filed an application on 23rd December, 2019 before the Collector, Aurangabad seeking a declaration that the transfer of the agricultural land bearing Gut No. 135, without obtaining the permission of the Collector was in breach of the provisions of Section 36A of the Code, 1966, as respondent No. 5 is a member of 'Bhill', a scheduled tribe, and, thus, the occupancy was non-transferable sans such permission. The Sub Divisional Officer, after an inquiry, was persuaded to allow the application and pass the impugned judgment and order holding, inter-alia, that respondent No. 5 is a member of the scheduled tribe and the transfer of occupancy by virtue of the deed of exchange, having been effected without the permission of the Collector, was illegal and invalid. The Sub Divisional Officer further directed the Tahsildar, Aurangabad, respondent No. 4 herein, to initiate requisite steps to restore the land to the tribal. Being aggrieved, the petitioner has invoked the writ jurisdiction of this Court.

4. Mr. Salunke, learned counsel for the petitioners, mounted a multifold challenge to the impugned order. The jurisdictional competence of the Sub Divisional Officer to decide the application under Section 36 and 36A of the Code, 1966 was questioned. The impugned order was also assailed on the ground of breach of fundamental principles of natural justice as no effective opportunity of hearing was provided to the petitioner. It was further stated that since the impugned order also refers to the provisions of Maharashtra Restoration of Lands to Schedule Tribes Act, 1974, there is no other

alternative efficacious remedy but to invoke the writ jurisdiction of this Court.

5. Mr. Milind Patil, learned counsel for respondent No. 5, on the other hand, pointed out that if the impugned judgment and order is read as a whole it leads to no other inference than that of the same having been passed in exercise of the powers conferred under Section 36 and 36A of the MLR Code, 1966. The reference to the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, is incidental and for the purpose of demonstrating that the exchange of the lands under the registered exchange deed, was not valid. It does not imply that the impugned order is passed under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, for the purpose of its amenability to appeal.

6. In the backdrop of the aforesaid submissions and upon careful perusal of the material on record, especially the impugned judgment and order, I am of the considered opinion that the petitioner ought to be permitted to invoke the statutory remedy provided under the Maharashtra Land Revenue Code, 1966, to assail the legality, propriety and correctness of the impugned order. Once, it becomes clear that the impugned judgment is amenable to an appeal before the statutory authority, it may not be advisable to exercise the extraordinary writ jurisdiction as various factual aspects warrant consideration.

7. In the aforesaid view of the matter, this petition can be disposed of by reserving liberty to the petitioners to prefer an appeal against the impugned judgment and order within a period of four weeks from today. And so as to balance the equities, it is necessary to further direct that the execution and implementation of the impugned order be stayed for the said period of four weeks and, simultaneously, the petitioners be ordered to maintain status-quo in respect of the subject land i.e. Gut No. 135 and not carry out either excavation from or any other development activity over the said land, for the said period.

8. Hence the following order :

ORDER

. The petition stands disposed of with liberty to the petitioners to assail the impugned judgment and order by preferring an appeal before the appellate authority within a period of four weeks from today.

. The execution and operation of the impugned judgment and order, which has been stayed by this Court by order dated 2nd December, 2020 in Civil Application No. 7827 of 2020 in Writ Petition No. 7719 of 2020, shall continue to remain stayed for a period of four weeks from today.

. The petitioners shall maintain status-quo as of today in respect of the suit land, Gut No. 135, and shall not carry out either excavation from or any other development activity over the suit land.

. It is hereby made clear that this Court has not entered into the merits of the petition, except the consideration on the aspect of the availability of an alternative remedy of appeal, and all contentions of all parties are expressly kept open

for consideration.

. The appellate authority is at liberty to decide the appeal on its own merits and in accordance with law and shall not be influenced by any of the observations made here-in-above.

. In the event appeal is filed within the aforesaid period, the appellate authority shall make an endeavour to decide the appeal as expeditiously as possible.

. In view of disposal of the petition, the Civil Application No. 7827 of 2020 does not survive and accordingly stands disposed of.

(N. J. JAMADAR)
JUDGE

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