

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10744 OF 2022

Vijay Shankar Kengale & Ors.

..... Petitioners

VERSUS

The State of Maharashtra

..... Respondent

Mr.S.A.Sawant, i/b.Mr.Samir M.Suryawanshi for the Petitioners.

Mr.P.P.Kakade, G.P., a/w. Ms.Kavita N.Solunke, A.G.P. for the State.

CORAM: R. D. DHANUKA AND

M. M. SATHAYE, JJ.

DATE : 5TH DECEMBER, 2022

P.C:-

Rule. Mr.Kakade, learned Government Pleader waives service for the respondent – State. Rule is made returnable forthwith.

2. Heard learned counsel for the petitioners and learned G.P. for the respondent. The petition is filed seeking direction to the respondent to exempt the said property mentioned in prayer clause (b) for the purpose of sell and permit to sell to petitioner nos. 1 to 4 so that the petitioner nos. 5 to 9 shall purchase the said property under the provisions of sections 36 and 36A of the Maharashtra Land Revenue Code, 1966 and Rules made thereunder.

3. Learned G.P. has invited our attention to the proviso to section 36A of the Maharashtra Land Revenue Code, 1966 and submitted that for the purpose of such sell permission to be granted, the Collector has to be satisfied that no tribal residing in the village in which the occupancy is situate or within five kilometers thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

4. Apparently there is no material right now before this Court to conclude about such availability of other tribal in the village. In that view of the matter the petitioners are permitted to withdraw their application dated 27th December, 2021 with liberty to file fresh application along with material as required to be considered by the Collector in terms of the proviso to section 36A of the Maharashtra Land Revenue Code, 1966.

5. Since we are permitting the petitioners to file fresh application, the Authority is directed to decide the said application within four weeks from the date it is made without being influenced by the present impugned order dated 25th January, 2022 and on the basis of the

material that may be produced by the petitioners and in accordance with law.

6. If the application is rejected, the petitioners are at liberty to file appropriate proceedings as permitted in law and if the application filed by the petitioners, as aforesaid, is allowed, then the Authority shall also pass consequential order as the petitioners may be entitled to within two weeks thereafter and the same may be communicated to the petitioners.

7. In view of the above mentioned facts and issues, writ petition is disposed off. No order as to costs.

8. Rule is made absolute in the aforesaid terms. The parties to act on the authenticated copy of this order.

[M. M. SATHAYE, J.]

[R. D. DHANUKA, J.]