

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.1443/2021

Ghanshyam V The Additional Commissioner, Amravati Division and others

Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr. H.D. Futane, Adv for petitioner.
 Mr. Anand Deshpande, Adv for resp. no.6.
 Mrs. Barabde, AGP for resp. nos.1 to 5.

CORAM : AVINASH G GHAROTE, J.
DATE : 10-04-2023

The order dated 02-8-2022, records the
 following factual position (paras 2 and 3), as under :

"Heard.

2. A sale deed was executed by the respondent No.6 who is a tribal on 29.04.2013 in respect of immovable property owned by him in favour of the petitioner who is also a tribal. An application for mutation before the SDO/respondent No.3, was filed by the petitioner, on the basis of sale deed dated 29.04.2013. The Talathi, by the mutation entry No. 489 dated 02.05.2015, recorded the name of the petitioner in respect of the land in question. This was challenged by way of an appeal by respondent No. 6 before the SDO, in which by an order dated 30.06.2018, the SDO has dismissed the appeal observing that there was no necessity of any permission under Section 36-A of the Maharashtra Land Revenue Code (for short the "MLR Code"), for the reason, that the transfer was from tribal to tribal, however on an erroneous assumption, that since the transaction related to sale of an immovable property between tribals, he had no

jurisdiction, and therefore, the appeal was dismissed (page 34).

3. A further appeal was carried by the respondent No.6, to the Additional Collector, Washim, who by the order dated 28.08.2019 (page 40), dismissed the appeal. A revision was preferred before the respondent No.1 by the respondent No.6, resulting in, the respondent No.1 passing an order on 02.03.2021, whereby the orders of the learned SDO dated 30.06.2018 and that of the Additional Collector dated 28.08.2019, were set aside and the revision was allowed resulting in the mutation entry No. 489 being cancelled, on the ground, that a prior permission for sale was required even in respect of transfer between a tribal and a tribal, relying upon Section 36(2) of the MLR Code.

*4. ******

*5. ******

*6. ******

*7. ***** "*

2. Though Mr Futane, learned Counsel for the petitioner contends, that the authorities below did not have jurisdiction to pass the impugned order, it is however, material to note that the Revenue Authorities would be entitled to render a finding that the transfer, was contrary to the relevant provisions of the statute and direct consequential actions to follow, in view of which the plea raised by the learned Counsel that there is absence of jurisdiction is rejected.

3. Though, it is an admitted position here, that the transfer dated 29-4-13 was by a tribal in favour of a tribal, it is however necessary to note that the language of Section 36(2) *Maharashtra Land Revenue Code (for short the "MLR Code")*, does not make any distinction in that regard, insofar as it mandates that the occupancy cannot be transferred except with the previous sanction of the Collector. The provisions of Sections 36(3) and 36A all contemplate the transfer to a non tribal by a tribal and therefore are not germane. Sec. 36A of the MLR Code also deals with the transfer by a tribal to a non tribal and therefore is not of any significance in this regard.

4. For the sake of ready reference, Section 36 (1) and (2) of the MLR Code is quoted here as under :

"36. Occupancy to be transferable and heritable subject to certain restrictions.

(1) An occupancy shall, subject to the provisions contained in section 72 and to any conditions lawfully annexed to the tenure, and save as otherwise provided by law, be deemed an heritable and transferable property.

(2) Notwithstanding anything contained in the foregoing sub-section occupancies of persons belonging to the Scheduled Tribes (hereinafter referred to as the 'Tribals') (being occupancies wherever situated in the State), shall not be transferred except with the previous sanction of the Collector."

5. Perusal of the language of Section 36(2) would indicate that it prohibits occupancies of a person belonging to the Scheduled tribe from being transferred, except with the previous sanction of the Collector. Though in the instant case, it is an admitted position that the transfer is from tribal to a tribal, it is equally an admitted position that the transfer did not have previous sanction of the collector. When subsection (2) of section 36 does not specify the status of the purchaser, but merely prohibits transfer without previous sanction of the Collector, the status of the purchaser whether he is a tribal or non tribal, clearly becomes immaterial. This is further substantiated from the proviso to Sec. 36(2) which speaks about non applicability of sec. 36(2) to transfer of the occupancy in favour of the persons other than tribals, meaning thereby that the mandate as contained in Sec. 36(2) of the MLR Code, regarding there being a blanket prohibition upon the transfer of occupancy upon a tribal without the previous sanction of the Collector in that regard stands reiterated.

6. The position in this regard has been considered by the learned Single Judge of this Court in Tulsiram Adku Marape and another vs State of Maharashtra and others, reported in 2011(1) Mh.L.J. 182 (para 8) and Vijay Anandrao Moghe and others vs Additional Collector/Sub-Divisional Officer and others,

reported in 2022 SCC OnLine Bom 835 (Para 16), in view of which, I do not see any reason to interfere in the order impugned in this petition. The petition is dismissed. No costs.

JUDGE

Deshmukh