

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.2600 of 2018

Anandrao S/O Motiram Waghe And Others

Vs

State of Maharashtra, Through District Collector, Chandrapur And another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P.S. Verma, Advocate for the Petitioner/s
Ms Shamsi Haidar, AGP for the Respondent/State

CORAM : ANIL S. KILOR, J.

DATE : 19.06.2023

1. Heard.
2. The order dated 20.08.2014 passed by the Sub-Divisional Officer, Bramhapuri, declaring that the land in question transferred in the name of the petitioners, is illegal and thereby, forfeiting the land of the tribal, is under challenge.
3. In the present matter, the land in question was owned by the tribal and it was subsequently converted into Non-Agricultural (NA) purpose vide order dated 22.04.1992 passed by the SDO, Bramhapuri. The owner, after laying the layout sold out the plots to the various purchasers, including the petitioners. Subsequently, the SDO initiated a proceeding in pursuance to the order passed in Public Interest Litigation (PIL) No.120 of 2000 in respect of restoration of land to the tribals.
4. Accordingly, the notices were issued to the petitioners and the land owner i.e tribal-transferor. The tribal-transferor in his submission made to the SDO, has categorically pointed out that

after NA permission was obtained by him, he sold out the plots to the various purchasers, including the petitioners, and they do not want the land back.

5. The petitioners appeared before the SDO by making their submissions in writing, pointing out that many of the purchasers, including the petitioners have already constructed their houses on the land in question.

6. In appeal, the Additional Commissioner, Nagpur vide impugned order dated 31.08.2017 declared the transfer of the land in favour of the petitioners as illegal, because no permission was obtained under Section 36A of the Maharashtra Land Revenue Code, 1966 (MLR Code) and accordingly, forfeited the land.

7. A bare perusal of the impugned order leads no element of doubt that the case of the petitioners that, once the land has been converted into NA purpose, the provision of Section 36A of the MLR Code or the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, will not apply to the land in question, was not considered and dealt with by the SDO while passing the impugned order. Since this issue relates to jurisdiction and goes to the root of the matter, the SDO ought to have decided the same before passing order on merit. However, the SDO failed to do so. Hence, the order of Additional Commissioner also vitiates.

8. Accordingly, I am of the opinion that the matter needs to be remanded back to the SDO, Bramhapuri for deciding the said

proceeding afresh, after hearing the petitioners and considering their legal submissions. Accordingly, I pass the following order:

- (i) The writ petition is **partly allowed**.
- (ii) The order dated 20.08.2014 passed by the SDO, Bramhapuri, is hereby quashed and set aside.
- (iii) The order dated 31.08.2017 passed by the Additional Divisional Commissioner, Nagpur, is hereby quashed and set aside.
- (iv) The matter is remanded back to the SDO, Bramhapuri to decide the same afresh, after hearing the petitioners.

[ANIL S. KILOR, J.]