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

**FIRST APPEAL NO.340 OF 2021
AND
WRIT PETITION NO.5017 OF 2021**

FIRST APPEAL NO.340 OF 2021

Sau.Suman w/o Sudhakar Patil,
aged about 65 years, occupation household,
r/o Tukum, Waghoba Chowk, tahsil
and district Chandrapur. **Appellant.**

:: V E R S U S ::

1. Sau.Tarabai Dadaji Tekam,
aged major, r/o Belsani, post-Shegaon,
tahsil and district Chandrapur.

2. Sau.Girija Yadav Tekam, aged major,
r/o Babupeth, ward No.1, tahsil and
district Chandrapur.

3. Sau.Powra Madhukar Tekam,
aged major, r/o Mohda, post-Velabao,
tahsil-Wani, district Yavatmal.

4. Sau.Goura Maroti Tekam,
aged major, r/o Nandhaon (Surve),
tahsil-Korpana, district Chandrapur.

5. Office of Area General Manager,
Western Coalfields Ltd., Urja Gram
Tadali, Chandrapur. **Respondents.**

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Shri Rohit Joshi, counsel for the Appellant.

Shri L.H.Kothari, Counsel for Respondent Nos.1 to 4.

Shri Rohan Chandurkar, Counsel for Respondent No.5.

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WRIT PETITION NO.5017 OF 2021

1. Sau.Tarabai Dadaji Tekam,

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aged about 40 years, occupation household,
r/o Belsani, tahsil and district Chandrapur.

2. Sau.Giraja Yadao Tekam,
aged about 60 years, occupation : household,
r/o Babupeth, ward No.1, tahsil and district
Chandrapur.

3. Sau.Powara Madhukar Tekam,
aged about 58 years, occupation : household,
r/o Mohahda, Po.Velabai, tahsil Wani,
district Yavatmal.

4. Sau.Goura Maroti Tekam,
aged about 55 years, occupation household,
r/o Nandgaon (Surve), tahsil Korpana,
district Chandrapur. **Petitioners.**

:: V E R S U S ::

1. Sau.Suman w/o Sudhakar Patil,
aged about 65 years, occupation household,
r/o Tukum, Waghoba Chawk, tahsil and district
Nagpur.

2. Sub Divisional Officer Chandrapur,
district Chandrapur. **Respondents.**

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Shri M.B.Turankar, Counsel for Petitioners.

Shri Madhur Deo, Counsel for Respondent No.1.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 04/05/2023

PRONOUNCED ON : 18/07/2023

COMMON JUDGMENT

1. By the first appeal, the appellant has
challenged judgment and order dated 24.3.2021 passed

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by the Special Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter is referred as, "the CBA Act") whereby the Special Tribunal directed respondent No.5 the Western Coalfields Limited (WCL) to pay compensation to respondent Nos.1 to 4 and to provide employment.

2. By the writ petition, the petitioners (respondent Nos.1 to 4 in FA No.340/2021) have challenged order dated 24.8.2021 passed by learned Member of the Maharashtra Revenue Tribunal, Nagpur in Appeal/S.T. RESTO/CHA-9/2020 remanding the matter back to the Sub Divisional Officer, Chandrapur.

3. Brief facts necessary for disposal of the appeal and the petition, are as under:

Soma, Bala, and Sitaram, who are sons of Laxman Kodape, sold 2.20 acres of land bearing survey No.56 situated at village Belsani, tahsil and district Chandrapur to Shri Bhiwa Dawre – the father of the appellant, vide registered sale deed dated 30.8.1973.

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After the death of Bhiwa Dawre, the appellant being his daughter, became an absolute owner of the property and came in exclusive possession of the same. The respondent Nos.1 to 4/petitioners, who are legal heirs of the vendor, who claimed to be persons belonging to the Scheduled Tribe "Gond", filed an application under Section 3 of the Maharashtra Restoration of Lands to the Scheduled Tribes Act, 1974 ("**the Act of 1974**") for restoration of the suit property. The application, by the respondent Nos.1 to 4/petitioners, was filed before the Tahsildar at Chandrapur on 5.1.2011 which was rejected by order dated 17.8.2012 for want of jurisdiction. The respondent nos.1 to 4/petitioners, therefore, preferred a revision under Section 7 of the Act of 1974 before the Additional Commissioner, Nagpur challenging the said rejection order. The Additional Commissioner has allowed the revision by order dated 29.4.2014 partly. The matter was remanded back to the Sub Divisional Officer for adjudication without disturbing finding regarding the jurisdiction. The respondent Nos.1 to 4/petitioners have filed their caste

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certificates and claimed that they belong to Scheduled Tribe namely "Gond" and relied upon the caste validity certificates issued in favour of Vinod Tekam, the son of the respondent No.2.

4. As per contention of the appellant, transferor was not tribal on the date of transfer and as the application is beyond limitation, it deserves to be rejected. The Sub Divisional Officer by order dated 6.3.2020 allowed the application of the respondent Nos.1 to 4/petitioners and directed to restore the land to the respondent Nos.1 to 4/petitioners. The order of the Sub Divisional Officer is challenged by the appellant by preferring a revenue appeal bearing No.Appeal/S.T. RESTO/CHA-9/2020 before the Maharashtra Revenue Tribunal, Nagpur, Bench at Nagpur and the appeal is pending before the said Tribunal.

5. In the meanwhile, the suit property, i.e. survey No.56 admeasuring 2.20 acres, was acquired by the WCL under the provisions of the CBA Act and the possession of the same was taken over in the year 2014. Before the

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acquisition, Notification under Section 7 of the CBA Act was issued on 11.6.2012. The land was vested with the Central Government by virtue of Section 9 Notification on 26.3.2014. As there was a dispute, as to the ownership of the land, the WCL filed a compensation case bearing No.33/2020 before the Special Tribunal for determining the rightful person entitled to receive the compensation. The appellant has claimed the compensation amount in her favour by claiming that she is the owner of survey No.56. The respondent Nos.1 to 4/petitioners filed objection dated 28.10.2020 before the Special Tribunal and prayed for compensation amount in their favour in view of the order of the Sub Divisional Officer. As per contentions of the appellant before the Special Tribunal, the provisions of the Act of 1974 are applicable to agricultural lands only. The land in question was acquired on 26.3.2014 and order of restoration is dated 16.3.2020. The subject land was not agricultural land on the date of order which is caused by the Sub Divisional Officer and,

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therefore, the order of the Sub Divisional Officer is *non est* and nullity in the eyes of law.

6. The Special Tribunal decided the compensation application in favour of respondent Nos.1 to 4/petitioners and held that they are entitled to receive the compensation and directed the WCL to provide employment to Vinod Girija and Yadav Tekam in accordance with R&R Policy of 2012 (the said policy of 2012). As per contentions of the appellant, the Special Tribunal exceeded the jurisdiction. The Special Tribunal has decided the title when the Tribunal is established only to determine compensation amount and rightful person who is entitled for compensation. The respondent Nos.1 to 4/petitioners claimed that they belong to "Gond" community which is Scheduled Tribe. However, the Special Tribunal ought to have appreciated that the said tribe was included in the list of Scheduled Tribes in the year 1950 with area restriction. The said area restriction was removed in the year 1976. As such, the respondent Nos.1 to 4/petitioners or their predecessors were not tribal

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as on the date of transfer and accordingly were not eligible for restoration of the land under Section 3 of the Act of 1974. Whereas, the respondent Nos.1 to 4/petitioners contended that their father was owner and possessor of the land bearing survey No.56 which was sold to the father of the appellant which was contrary to the provisions of the Act of 1974. On 17.8.2012, the respondent Nos.1 to 4/petitioners being the Scheduled Tribes, moved an application before the Tahsildar for restoration of the land, but the Tahsildar failed to exercise the jurisdiction and rejected the application. The revision filed by the respondent Nos.1 to 4/petitioners before the Divisional Commissioner was allowed and the matter was remanded back to the sub Divisional Officer. After due enquiry, the Sub Divisional Officer restored the land to the petitioners, which is challenged before the Maharashtra Revenue Tribunal. It is further submitted that during the pendency of this appeal, on 24.8.2021 learned Member of the Maharashtra Revenue Tribunal erroneously quashed the order of the Sub Divisional Officer and remanded the

matter back to the Sub Divisional Officer which is challenged by the respondent Nos.1 to 4/petitioners by this writ petition. As per the contentions of the respondent Nos.1 to 4/petitioners, the Special Tribunal under the CBA Act rightly held that the respondent Nos.1 to 4/petitioners are entitled to receive the compensation and directed the WCL to pay the compensation.

7. Heard learned counsel Shri Rohit Joshi with learned counsel Shri Madhur Deo for Sau.Suman w/o Sudhakar Patil (the appellant in the first appeal and respondent No.1 in the writ petition); learned counsel Shri L.H.Kothari with learned counsel Shri M.B.Turankar (for respondent Nos.1 to 4 in the first appeal and petitioners in the writ petition), and learned counsel Shri Rohan Chandurkar for the Western Coalfields Limited.

8. Learned counsel Shri Rohit Joshi for the appellant in the first appeal and respondent No.1 in the writ petition, submitted the brief note of arguments. The sum and substance of his submission is that the Act of

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1974 grants right on tribal transferor who has transferred his land to a non-tribal between 1.4.1957 to 6.7.1974 to claim restoration of possession of such land. The Act of 1974 also provides for enforcement of right to seek restoration. Thus, the right is created and remedy is provided under The Act of 1974. Section 10 of the Act of 1974 also bars the jurisdiction of the Civil Court. The Act of 1974 has received presidential assent on 28.4.1975 and it has come into force w.e.f.1.11.1975. When the right is created and remedy is provided under the Act of 1974, jurisdiction of authority provided under the Act of 1974 only has to be resorted in order to enforce the right. He further submitted that when two special statutes have non obstante clause, the later will prevail over the former and, therefore, the collector under the Act of 1974 alone has jurisdiction to decide the claim made by respondents. The Special Tribunal has adjudicated the matter without jurisdiction. The Act of 1974 does not provide for automatic restoration of the land transferred by a tribal to a non-tribal. There has to be an order for restoration of

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land. The Act of 1974 does not provide that the transfer made between the relevant period shall be invalid. It merely enables a tribal transferor to seek restoration of possession. The right to claim compensation stood crystallized as on 26.3.2014. As on this date, the appellant was owner of the property and the restoration order was also not passed and, therefore, the compensation ought to have been granted to the appellant. He further submitted that on the date of the transfer of the land, the vendor was not tribal as community "Gond" was included in the list of the Constitution (Scheduled Tribes) Order 1950 with area restrictions. By the amendment, the area restriction was removed and the community "Gond" is included in the list applicable all over the Maharashtra. He submitted that the Act of 1974 applies only to the agricultural lands. As soon as the land is vested with the Central Government on issuance of Notification under Section 9 of the CBA Act, the lands seized to be an agricultural lands. In view of the

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aforesaid, the appellant is entitled to receive the compensation.

9. In support of his contentions, learned counsel Shri Rohit Joshi has placed reliance on the following decisions:

1. Sandeep Ramesh Dakhare vs. Suchita Bala Gore and ors, reported in 2019 DGLS (Bom.) 1799;

2. Shri Waman Dattuji Malekar and ors vs. Vishwanath Karnuji Sontakke (Writ Petition No.2314/2021 decided by this court on 28.9.2021);

3. Sau.Meena Hanumantao Asole and ors vs. State of Mah. And ors (Writ Petition No.760/2018 decided by this court on 11.10.2021);

4. Solidaire India Limited vs. Fair Growth Financial Services Limited, reported in (2001)3 SCC 71 wherein it is held that when both the Acts are Special Acts, in such event it is later Act which must prevail.

5. Raja Ram Kumar Bhargava (dead) by LRs vs. Union of India, reported in AIR 1988 SC 752;

6. Dhurandhar Prasad Singh vs. Jai Prakash University and ors, reported in (2001)6 SCC 534;

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7. Kausalyabai Kisand Dhande vs. Fakira Daula Tadvī since deceased thr.his LRs Sikandar Fakira Tadvī and ors, reported in 2012(5) Mh.L.J. 689;

8. Gondū Ramū Pandit deceased thr.LRs vs. Hasan Nathū Tadvī and ors, reported in 2011(2) Mh.L.J. 720;

9. Punita Roy vs. Dinesh Chaudhary, reported in (2003)8 SCC 204;

10. Pandit Shridhar Lokhande vs. Jamsher Tadvī, thr.his LRs (Writ Petition No.1636/1994 decided on 17.6.2010);

11. Mathew Varghese vs. M.Amrita Kumar and ors, reported in (2014)5 SCC 610, and

12. Baliram s/o Reva Chavhan vs. Gajanan s/o Shekrao Wanjare and ors (Writ Petition No.1701/2019 decided by the Full Bench of the Court on 21.4.20230).

(the relevant judgments would be referred at the appropriate place).

10. *Per contra*, learned counsel Shri L.H.Kothari for the respondent Nos.1 to 4/petitioners also submitted his written submissions and reiterated that the respondent Nos.1 to 4/petitioners belong to the Scheduled Tribes. The transfer of the land was contrary to the provisions of the Act of 1974. The Sub Divisional Officer has rightly

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considered and restored the land in favour of the respondent Nos.1 to 4/petitioners. He submitted that the respondent Nos.1 to 4/petitioners, being the scheduled tribes, moved an application to the Tahsildar. However, the Tahsildar failed to exercise his jurisdiction. In view of the order passed by the Divisional Commissioner, the Sub Divisional Officer has adjudicated the issue and restored the land in favour of the respondent Nos.1 to 4/petitioners. The Special Tribunal under the CBA Act considered all these aspects and awarded the compensation to the respondent Nos.1 to 4/petitioners and, therefore, no interference is called for in the order passed by the Special Tribunal. He further submitted that the respondent Nos.1 to 4/petitioners have challenged the order of the Maharashtra Revenue Tribunal remanding the matter back by setting aside the order of the Sub Divisional Officer by filing the writ petition. The Maharashtra Revenue Tribunal, without granting an opportunity of hearing, passed the said order and,

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therefore, the order of the Maharashtra Revenue Tribunal deserves to be set aside.

In support of his contentions, he placed reliance on **Ravindra Natthuji Dhobe and ors vs. Member, Maharashtra, Revenue Tribunal, Nagpur** reported in 2019(1) Mh.L.J. 677 and **Kashibai wd/o Sanga Pawar and ors vs. State of Maharashtra**, reported in 1993(2) Mh.L.J. 1168.

On the basis of the said submissions, he submitted that the appeal filed by the appellant is devoid of merits and liable to be dismissed. The order passed by the Maharashtra Revenue Tribunal deserves to be set aside and order passed by the Sub Divisional Officer deserves to be maintained.

11. After hearing both the sides, the undisputed facts are that the father of the respondent Nos.1 to 4/petitioners has executed sale deed of survey No.56 admeasuring 2.20 acres of land in favour of the father of the appellant. The 7/12 extract shows the name of the

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appellant as owner of the possessor. It is also not disputed that the respondent Nos.1 to 4/petitioners have filed application before the Tahsildar for restoration of the land on 5.1.2011. The Tahsildar has passed order on 17.8.2012 holding that he has no jurisdiction. The respondent Nos.1 to 4/petitioners challenged the said order before the Divisional Commissioner and the Divisional Commissioner by order dated 29.4.2014 remanded the matter to the Sub Divisional Officer. The Sub Divisional Officer has allowed the application on 16.3.2020 and restored the land to the respondent Nos.1 to 4/petitioners. It is also not in dispute that the said order was challenged by the appellant before the Maharashtra Revenue Tribunal. In the meanwhile, 1.41HR of land out of survey No.56 was acquired by the WCL. Notification under Section 7 of the CBA Act was issued on 11.6.2012. Whereas, Notification under Section 9 was issued on 26.3.2014. The caste certificate was issued to respondent Nos.1 and 2 on 18.1.2011. The caste validity certificate was issued to Vinod Tekam, the son of the

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respondent No.1, on 5.1.2012. The compensation case was decided on 24.3.2021. Whereas, the appeal preferred by the appellant before the Maharashtra Revenue Tribunal was decided on 24.8.2021.

12. After going through the rival submissions of both the parties questions arises for determination are:

(1) Whether the transfer of land prior to year 1976 by the tribal to non-tribal is hit by the provisions of the Act of 1974?

(2) Whether the Special Tribunal constituted under the CBA Act exceeded its jurisdiction by granting compensation in favour of the respondent Nos.1 to 4/petitioners and directing the WCL to provide employment to the nominee of the respondent No.4.

13. Before answering the point No.1, it is necessary to refer the definitions under the Act of 1974.

Section 2(1)(l) defines non-tribal transferee includes his successor-in-interest; and if he or his successor has, on or after the 15th date of March 1971, transferred land in favour of any person, whether a tribal or non-tribal, includes also such person.

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The definition of tribal is given under Section 2(1)(j) that a person belonging to a Scheduled Tribe within the meanings of the Explanation to Section 36 of the Code, (Maharashtra Land Revenue Code) and includes his successor-in-interest.

The definition of transfer in view of Section 2(i) means in relation to land means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on 6th day of July 1974 either (a) by the act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made inter-vivos; or (b) under a decree or order of a court, or (c) for recovering any amount of land revenue due from such tribal, or for recovering any other amount due from him as an arrear of land revenue, or otherwise under the Maharashtra Cooperative Societies Act, 1960 or any other law for the time being in force but does not include a transfer of land falling under the proviso to sub section (3) of Section 36

of the Code; and the expressions "tribal-transferor" and "non-tribal transferee" shall be constructed accordingly.

Section 3 deals with restoration on transfer of land to tribals in certain case

14. As per the submissions of learned counsel Shri Rohit Joshi for the appellant in the first appeal and respondent No.1 in the writ petition, tribe 'Gond' was included in entry No.18 in the Constitution (Scheduled Tribes) Order 1950 with area restriction and, thereafter, the Scheduled Castes and the Scheduled Tribes Orders (Amendment) Act, 1976 was passed by the Parliament which came in force on 27.7.1977. The amendment removed the area restriction in the year 1976. The sale deed was executed in favour of the father of the appellant on 30.8.1973, i.e. prior to the amendment. Neither the father of the respondent Nos.1 to 4/petitioners nor the respondents No.1 to 4 were tribals on the date of execution of the sale deed. Whereas, as per the contention of learned counsel for the respondent Nos.1 to

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4/petitioners, tribe "Gond" is included in entry No.18 in the Constitution (Scheduled Tribes) Order 1950. The respondent Nos.1 to 4/petitioners are covered under the definition of Scheduled Tribes. Hence, transfer of land to non-tribal is in contravention of Section 3 of the Act of 1974.

15. In order to determine the question involved, it is necessary to see the provisions of the Constitution. There is a legislative history behind entry No.18 of 'Gond' in the Constitution (Scheduled Tribes) Order 1950.

The President issued Constitution (Scheduled Tribes) Order 1950 in exercise of the powers conferred by clause (1) of Article 342 of the Constitution of India.

By clause (2) of that Order, it was provided that the tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in Parts I to XXII of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof

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residents in the localities specified in relation to them, respectively, in those Parts of that Schedule.

The Order is followed by a Schedule constituting of twelve parts. Entry No.12 in the relevant part of the Schedule to the Order reads as "Gond [including Madia (Maria) and Mudia (Muria)]".

Item 7 in Part IV relating to Bombay in the Constitution (Scheduled Tribes) Order, 1950, as amended by Act No.63 of 1956, specifies that in (1) Melghat tahsil of Amravati district, (2) Gadchiroli and Sironcha tahsils of Chanda district, and (3) Kalapur, Wani and Yavatmal tahsils of Yavatmal district, 32 tribes or tribal communities shall be deemed Scheduled Tribes. Entry No. 12, as was set out therein, was as under:

12. 'Gond' including Arakh or Arrakh, Agaria, Asur, Badi Maria or Bada Maria, Bhatola, Bhimma Bhuta, Koilabhuta or Koilabhuti Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru or Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar or Khirwara, Kucha Maria, Kuchaki Maria, Madia (Maria), Mana, Mannewar, Moghya or Mogia or

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Manghya, Mudia (Muria), Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia or Thotya, Wade Maria or Vade Maria.

Item No.5 in Part VII-A-Maharashtra in 8th Schedule under the States Reorganization Act, 1960 (Act No.11 of 1960) brought into force on 25.4.1960 reiterated the aforesaid position prevailing in entry No.12 in item No.VII in Part IV.

Thereafter, Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) was passed by the Parliament, which came into force on 27th July, 1977. The amendment removed the area restriction contained in the Constitution (Scheduled Tribes) Order prevailing prior to 1976. The entire Schedule to the Order was substituted by a new Schedule consisting of sixteen Parts. Part IX of new Schedule relates to the State of Maharashtra. Entry No. 18 of Part IX of new Schedule, which corresponds to Entry No.12 in the Constitution (Scheduled Tribes) Order stood prior to amendment.

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16. Thus, the Schedule contains details of the Scheduled Tribes with reference to different States. Prior to the amendment, Part IV dealt with Madhya Pradesh where also entry No.12 mentions "Gond" (including Madia (Maria) and Mudia (Muria). Initially, the districts Amravati, Chanda, and Yavatmal were the parts of Madhya Pradesh. The States' Reorganization Act, 1956 was enacted by Parliament to provide for the reorganization of the States of India. By virtue of Section 8 (1)(c), the districts namely Buldana, Akola, Amravati, Yavatmal, Wardha, Nagpur, Bhandara, and Chanda were included in the New Bombay State. Section 41 of the States Reorganization Act provide for modification of the Scheduled Castes and Scheduled Tribes Orders with regard to territorial changes and formation of new States under the provisions of Part II. In exercise of power under Section 41 of the States Reorganization Act, Scheduled Castes and Scheduled Tribes Lists modification under Order 1950 was issued dated 29.10.1956. Although entry No.9 continued as "Gond" or "Rajgond", the same is with regard to certain

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tahsils of district Amravati, Chanda and Yavatmal. The Parliament enacted the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No.108 of 1976) to provide for the inclusion in, and the exclusion from the list of Scheduled Castes and Scheduled Tribes, of certain castes and tribes, for the re-adjustment of representation of Parliamentary and assembly constituencies in so far as such readjustment is necessitated by such inclusion or exclusion

17. Thus, the only amendment which was made with respect to the Schedule Castes pertaining to the Maharashtra in entry No.18 to indicate the care which was taken by the legislature by which in earlier entry No.18 of "Gond" and "Rojgond" substitution was made by which now it is read as "Gond" and "Rajgond". Thus, by the said amendment, area restriction was removed contained in the Constitution.

18. Here, in the present case, the sale deed was executed on 30.8.1973, i.e. prior to the amending the

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Scheduled Castes and the Scheduled Tribes Order (Amendment) Act, 1976. As per the submissions, the vendor was not of Scheduled Tribe on the day of execution of the sale deed due to area restriction. Prior to the amendment, only Gadchiroli and Sironcha Tahsils of Chanda district were included in the Constitution (Scheduled Tribes) Order 1950. The land is situated in Belsani, tahsil and district Chandrapur which was not included in the restricted area. Whereas, as per the respondent Nos.1 to 4/petitioners, they were included in entry No.18 in the Constitution (Scheduled Tribes) Order 1950. Learned counsel Shri L.H.Kothari for the respondent Nos.1 to 4/petitioners placed reliance on the decision in the case of **Kashibai wd/o Sanga Pawar and ors vs. State of Maharashtra** cited *supra* wherein the division bench of this court held that It is, therefore, clear that the expression "Tribal" wherever it is used in the Restoration Act or in other words upon whom the benefit is sought to be conferred under the said Act would mean a person belonging to a Scheduled Tribe mentioned in Part VII-A of

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the Schedule to the Scheduled Tribes Order, 1950 but without any area restrictions as contained therein. There is a conflicting view expressed by the division bench of this court in the case of **Tukaram Laxman Gandewar Vs. Piraji Dharmaji Sidhalwar by LR's Laxmibai and Ors., reported in 1989 MH.L.J. 815.** In the decision, in the said case, which was a prior decision to **Kashibai wd/o Sanga Pawar and ors vs. State of Maharashtra** cited *supra*, held that a transferor would be entitled for restoration of the transferred land under section 36A of the Maharashtra Land Revenue Code, 1966 only if he was a tribal within the meaning of Explanation to Section 36 of the Code on the date of the transaction. This judgment was followed in various judgments by the single judges in several cases. However, in **Kashibai wd/o Sanga Pawar and ors vs. State of Maharashtra** cited *supra*, the other division benche held that irrespective of date on which a tribe is recognized as such and included in the Scheduled Tribe's Order, 1950, such tribal-transferor would be entitled for restoration of the lands transferred by him under the provisions of the

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Restoration Act. It was also held that Section 36A of the Code was prospective. The judgment, however, held that provisions of Section 3(1) of the Restoration Act would apply to past transactions. It was further held that the view taken in *Tukaram Laxman Gandewar* was *per incuriam*. Therefore, the reference was made to the full bench of this court and the question referred to the full bench was **whether the subsequent recognition of the transferor as a tribal after transfer of the land would entitle the transferor to seek restoration of possession of land under Section 3(1) of the Act of 1974 or whether such subsequent recognition would be of no assistance to the tribal transferor in view of judgment in *Tukaram Laxman*?** The full bench of this court had considered the legislative history as well as the relevant provisions of the law. The full bench of this court has also taken into consideration the various decisions rendered by this court and the provisions under Section 3 of the Act of 1974 and the provisions under Section 36 of the Maharashtra Land Revenue Code and while answering the reference, the full

bench of this court has observed that " In order to find out which of the different opinions is in accordance with the legislative intent, thereby helping fulfill the object and purpose of the Restoration Act and hence more appropriate, we would have to examine the scheme of Section 3 of the Restoration Act in the light of the legislative intent disclosed by it, and the applicable principles of law." Accordingly, the full bench observed in paragraph Nos.24, 25, 26, and 27 the legal position which are reproduced hereunder:

24. A careful examination of Section 3 of the Restoration Act would show that entitlement of a Tribal-transferor to seek restoration of the land transferred by him to a non-Tribal-transferee would arise only when the transfer of land has taken place between two living persons, one of whom is a tribal and the other is a non-tribal within the meaning of Section 3 of the Restoration Act. The terms "Transfer", "Non-Tribal" and "Tribal" are assigned specific meanings and their definitions are to be found in Clauses (i), (e)(j) of Section 2(1) of the Restoration Act respectively. "Transfer" has been defined to be a transfer of land belonging to a tribal made in favour of a non-tribal between 1st April, 1957 and 6th July, 1974. The term "Non-Tribal" has been defined as a person who is not a tribal and includes his successor-in-interest. The word "Tribal" has

been defined to be a person belonging to a Scheduled Tribe within the meaning of the Explanation to Section 36 of the Code and includes his successor-in-interest.

25. As stated by us earlier, the Explanation to Section 36 of the Code has been incorporated in Section 2(1)(j) of the Restoration Act and, therefore, the term "Tribal" would have to be understood only by referring to the expression "Scheduled Tribes" used in the Explanation to section 36 of the Code. The expression "Scheduled Tribes" has been defined in the Explanation to Section 36, as amended up-to-date, as meaning such tribes or tribal communities or their parts or sub-groups within them as are deemed to be Scheduled Tribes in relation to the State of Maharashtra, irrespective of area restrictions. The expression "Scheduled Tribes" is defined in Article 366, entry No.25 to be such tribes or tribal communities etc. as are deemed under Article 342 of the Constitution to be "Scheduled Tribes" for the purposes of the Constitution. The tribes and tribal communities or their parts or sub-groups within them can be deemed to be the Scheduled Tribes only when the President, after due consultation, specifies them to be so by a public notification. This shows that a tribal assumes the character of the Scheduled Tribe only upon his recognition to be so by exercise of powers under Article 342 by the President or to put it differently by operation of law. Till the time President does not act and include his tribe in the specified list of Scheduled Tribes, which is under Order 1950, a tribal would remain a tribal only, and would not be of the "Scheduled Tribe" within the meaning of Article 366, entry No.25 r/w. Article 342 of the

Constitution. Thus, a tribal, for the purpose of Section 3 of the Restoration Act must be a person recognized as of the Scheduled Tribe under Article 342 of the Constitution.

26. The expression "Scheduled Tribe" has been coined in Constitution of India with a view to extend various benefits and provide for protection to certain specified tribes and not to all tribes in general. These specified tribes have been referred to as the "Scheduled Tribes" in various provisions made in Constitution of India. As stated earlier, definition of the words "Scheduled Tribes" is given in Article 366, entry No.25. It means to be such tribes or tribal communities or parts of, or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the Constitution. Article 342(1) empowers the President to specify the tribes or tribal communities or parts thereof or groups within them to be the "Scheduled Tribes" for the purposes of the Constitution. The power of the President under clause (1) of Article 342 to issue an order for specifying the tribes or tribal communities as the Scheduled Tribes is original in nature. It was exercised for the first time when the President made the Constitution (Scheduled Tribes) Order 1950, which was notified on 6th September, 1950. It contains a Schedule giving the list of tribes which are deemed to be the Scheduled Tribes in relation to a particular State or any part thereof specified therein for the purposes of the Constitution. This provision made in the Constitution would make it amply clear that unless a tribe or tribal community or any part thereof or groups within it or them is or are included in the Schedule to the Order issued

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under Clause-1 of Article 342, the same cannot be called to be a Scheduled Tribe. List of such specified tribes notified under Clause (1) of Article 342 came to be amended by Parliament by law so as to add or delete entries thereto or therefrom in exercise of its power under Clause (2) of Article 342. This would show that concept of "Scheduled Tribes" employed in the Constitution is dynamic and is by way of own devise of the Constitution; is a construct of men of wisdom built to achieve the purposes of the Constitution and is subject to change as time changes. One such change was witnessed when the Order 1950 was amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 which came into force w.e.f. 18th September, 1976, whereby so far as the State of Maharashtra was concerned, area restrictions in relation to some specified tribes came to be removed. There is one more feature of the Order, 1950 which strikes most ones mind, and it is that although there existed many tribes or tribal communities in different States in the year 1950, not all of them found any place in the Schedule to the Order, 1950 and that only some of them were included as the Scheduled Tribes, and in many cases it was so with area restrictions as well.

27. The above referred discussion would enable us to emphatically say that there is a distinction between what we generally understand as a "tribe" and what we would comprehend by the expression "Scheduled Tribe". The word "tribe" is an adjective defined in Cambridge Dictionary as "a group of people, often of related families, who live together in the same area and share the same language, culture and history, especially those who do not

live in town or cities". In Merriam Webster Dictionary the word "tribe" is defined as "a social group composed chiefly of numerous families, clans or generations having a shared ancestry and language". Thus, the tribe or tribal community is considered to be a separate group of people having distinctive identity, culture, traditions and practices than the groups of people within the main-stream society. But such separate identity as a tribe or a tribal community would not by itself make it to be the Scheduled Tribe, which is an identity given to a tribe or tribal community by Constitutional Provisions. There is of course some controversy amongst Sociologists about the extent to which tribes in India have succeeded in closing their doors to cultural onslaught of Hinduism, a dominant religion, upon them. The truth, however, is that notwithstanding the powerful impact of major cultures of the society, the tribes in general have retained to a great extent their original culture and traditions, so as to maintain their separate identity. There is also a stream of thought amongst Sociologists who say that the distinction between a tribe and main-stream society though exists, may in fact be artificial, made mostly in Indian Censuses carried out by the British in early part of 20th century. We would briefly refer to this thought which came from Professor Dr. G.S.Ghurey.

19. It is further held by the full bench that the referred discussion would show that not only by virtue of the provisions of Article 366(25) and 342 but, also by virtue of Explanation to Section 36 of the Code, a tribal

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would become eligible to be termed as a person belonging to the "Scheduled Tribe" only when his tribe is included in the Schedule to the Order, 1950 made by the President of India under Article 342 of the Constitution and if his tribe is not included therein, he will only be a tribal simplicitor but not a person belonging to a Scheduled Tribe. The word "Tribal" used in Section 3 of the Restoration Act has been assigned meaning of a person belonging to a Scheduled Tribe as described in Explanation in Section 36 of the Code. Therefore, unless a tribe of a person is included in the Schedule to the Order, 1950, he cannot be called to be a person belonging the Scheduled Tribe and at the most he would be a person of non-Scheduled Tribe. A non-scheduled tribal is not a person who is in contemplation of Section 3 of the Restoration Act for the purpose of getting its benefit and that only means that it is the social status of the tribal as a Scheduled Tribe on the date of the transaction which would determine applicability of the provisions made in Section 3 of the Restoration Act to the transfer of lands envisaged thereunder. If on the date of

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the transaction, he is not a member of a Scheduled Tribe by virtue of his inclusion in the Schedule to the Order, 1950, he would be simply a non-tribal as defined in Section 2(1)(e) of the Restoration Act and then the transfer of land made by him to a non-tribal would be only be a transaction between a non-tribal and a non-tribal, not hit by the mischief of Section 3 of the Restoration Act. The intention of the legislature which can be clearly gauged from plain reading of Section 3 of the Restoration Act is to confer protection and benefits to only those tribals who are Scheduled Tribes within the scheme of Articles 366(25) and 342 of the Constitution and that was the reason why the definition of the term "Tribal" has been linked to the concept of the "Scheduled Tribes" with the aid of Explanation to Section 36 of the Code. There is also a rationale behind it. It is to maintain consistency between constitutional provisions, which grant protection and benefits to only those tribals, who are "Scheduled Tribes" within the meaning of Article 366(25), and the provisions

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of the Restoration Act. This intention of the legislature fulfills the object of the Restoration Act effectively.

20. After due deliberations, the full bench of this court held that Subsequent recognition of a transferor as a Tribal within the meaning of Section 2(1)(j) of the Act of 1974 would not entitle him to seek restoration of the land transferred by him to a non-Tribal-transferee and his subsequent recognition as such is of no assistance to him for the purpose of availing of the benefit of Section 3 of the Restoration Act.

21. In view of the decision by the full bench of this court, unless a person of a tribe is included in the Schedule to the Order 1950, he cannot be called to be a person belonging to the Scheduled Tribe.

22. Admittedly, in the present case, the respondent Nos.1 to 4/petitioners were not residing in a restricted area. The Item 7 in Part IV relating to Bombay in the Constitution (Scheduled Tribes) Order, 1950, as amended by Act No.63 of 1956, specifies that in (1) Melghat tahsil

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of Amravati district, (2) Gadchiroli and Sironcha tahsils of Chanda district, and (3) Kalapur, Wani and Yeotmal tahsils of Yeotmal district, 32 tribes or tribal communities shall be deemed Scheduled Tribes. The respondent Nos.1 to 4/petitioners or their forefathers were not residents of the restricted area as notified above. They got the recognition as Scheduled Tribe after removal of the restriction in view of the amendment in the Scheduled Castes and the Scheduled Tribes Orders (Amendment) Act, 1976 which came into force on 27.7.1977. Thus, on the date of transfer, the respondent Nos.1 to 4/petitioners or their fathers were not tribals and they got a subsequent recognition after the amendment of 1976 and, therefore, their subsequent recognition as such would not help them for availing the benefit of Section 3 of the Act of 1974. Therefore, question No.1 framed for determination is to be answered in the negative as the transfer of the land prior to the year 1976 in favour of the father of the appellant is not hit by the provisions of the Act of 1974.

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23. Now, question is whether the Special Tribunal constituted under the CBA Act exceeded its jurisdiction by granting compensation in favour of the respondent Nos.1 to 4/petitioners. It is admitted position that the WCL had filed an application bearing compensation case No.33/2020 before the Special Tribunal for determining the rightful person entitled to receive the compensation. The respondent Nos.1 to 4/petitioners raised an objection to disburse the compensation in favour of the appellant. It is submitted by learned counsel Shri Rohit Joshi for the appellant in the first appeal and respondent No.1 in the writ petition that the Special Tribunal has exceeded its jurisdiction. In view of Section 14(5) of the CBA Act, the tribunal has only jurisdiction to determine the compensation. The tribunal has no jurisdiction to decide the title. The Special Tribunal in the present case decided the title. It is submitted that Section 14 of the CBA Act contemplates that when there is an agreement, the compensation is payable in accordance with the agreement and wherever the agreement cannot reach, the

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Central Government shall constitute the Tribunal consisting of a person who is or has been or is a qualified to be a judge of the High Court for the purpose of determining the amount. The power to determine the compensation is available to the Tribunal under Section 45 of the Act of 1974. Thus, it is submitted that the direction of the Tribunal to grant compensation to the respondent Nos.1 to 4/petitioners when there is dispute as to title and direction to provide employment is erroneous and liable to be set aside. Whereas, as per the respondent Nos.1 to 4/petitioners, as the Sub Divisional Officer has also determined the issue and restored the land to them, the Special Tribunal has awarded the compensation to the respondent Nos.1 to 4/petitioners. Thus, there is no merit in the appeal and the appeal deserves to be dismissed.

24. Before dealing with the controversial issues, it is necessary to see and reproduce the relevant provisions of Section 14 of the CBA Act.

14.(1) Where the amount of any compensation payable under this Act can be fixed by

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agreement, it shall be paid in accordance with such agreement.

(2) Where no such agreement can be reached, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a judge of a High Court for the purpose of determining the amount.

(3) The Central Government may in any particular case nominate a person having expert knowledge in mining to assist the Tribunal, and where such nomination is made, the person or persons interested may also nominate any other person for the same purpose.

(4) At the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is a fair amount of compensation.

(5) The Tribunal shall after hearing the dispute, make an award determining the amount of compensation which appears to it to be just, and specify the person or persons to whom the compensation shall be paid; and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined in so far as the said provisions or any of them may be applicable.

(6) Where there is a dispute as to the person or persons entitled to compensation and the

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Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit.

(7) Nothing in the Arbitration Act, 1940, shall apply to any proceedings under this section.

(8) The Tribunal, in the proceedings before it, shall have all the powers which a civil court has while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(i) summoning and enforcing the attendance of any person and examining him on oath

(ii) requiring the discovery and production of any document

(iii) reception of evidence on affidavits

(iv) requisitioning any public record from any court or office; and

(v) issuing commissions for examination of witnesses.

25. Perusal of the provision of Section 14(5) shows that the Tribunal shall, after hearing the dispute, make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom the compensation shall be paid and in making the award the Tribunal shall have regard to the

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circumstances of each case and to the foregoing provisions of this Act with respect to manner in which the amount of compensation shall be determined. Thus, the scope of Section 14(5) is only to the extent of determining the amount of compensation and of determining the person who is rightful owner. The language of Section 14(5) of the said Act indicates that in deciding the dispute and making an award the Tribunal has to specify the person or persons to whom the compensation has to be paid and in case there is a dispute as to the same and the Tribunal finds that more than one person is entitled to compensation, it has also to determine the apportionment regarding the amount. The jurisdiction of the Tribunal to determine the amount of compensation or rightful owner nowhere shows that the Tribunal has power and authority to determine the title of the property. Though powers under the Civil Procedure Code have been conferred upon the Tribunal in view of Section 14(8) which are to the extent of collecting evidence and enforcing the attendance of witnesses for the purposes of determining the

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compensation, the said powers do not empower the Tribunal to enter into controversy whereby the dispute raised as to the title of the property could be determined by the Tribunal.

26. This court in the case of **Waman and ors vs. Vishwanath and ors**, decided on 28.9.2021 in Writ Petition Nos.2314 and 3736/2021, relied by learned counsel Shri Rohit Joshi for the appellant in the first appeal and respondent No.1 in the writ petition, dealt with the said issue and while deciding these writ petitions, held that the expression "or the title to receive it" as occurring in Section 17(2) of the said Act of 1957 has to be read in consonance with the empowerment of the Tribunal as contained in Section 14(5) and 14(6) of the said Act of 1957 and cannot be constituted to mean the conferment of a right upon the Tribunal to determine the title to the property. It is further held that it is to be noted that the Act does not constitute a Tribunal as civil court, nor does it make the determination by the Tribunal a decree to be

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binding upon the parties, in case dispute is raised before it.

The second proviso to Section 17(2) would also necessarily mean the determination regarding the quantum of apportionment in respect of a person who claims to be interested and not otherwise.

This court further held that the bar under Section 26 is not an absolute bar, but a bar limited to the actions taken by the Tribunal under the Act.

27. The position, as regards the power of the Tribunal to determine a title dispute has also been also considered by the single bench of this court in the case of **Sandeep s/o Ramesh Dakhare vs. Mrs.Suchita w/o Bala Gore and ors** cited *supra* and held that it is well settled that a provision ousting the jurisdiction of a civil court must be strictly construed. The jurisdiction of the civil court under section 9 of the Code of Civil Procedure is expansive and takes within its sweep every suit of a civil nature except a suit of which cognizance is either

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expressly or impliedly barred. A provision which purports to bar the jurisdiction of the civil court must be strictly construed. Section 26 of the Act, construed thus, would bar the jurisdiction of the civil court to take cognizance only of those matters which are necessarily to be decided by the authorities or the Tribunal under the Act. It is held that dispute touching the title to the property acquired cannot be finally determined by the Tribunal constituted under section 14 of the Act. The jurisdiction of the civil court to decide the issues of title to the property acquired is not ousted.

28. In the light of the above observations, if the scheme of Section 14 of the CBA Act is taken into consideration, it shows that if the amount of compensation payable is fixed by agreement, it shall be paid in accordance with the agreement and only if such agreement is not reached, the Central Government shall constitute a Tribunal for the purpose of determining the amount. Section 17(1) speaks about the compensation payable under the CBA Act. The reference is with regard to

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the compensation agreed or determined by the Tribunal. It does not mean that conjoint reading of Sections 14 and 17 of the CBA Act empowers the Tribunal to decide the title disputes. The claims to the compensation or dispute touching the apportionment of the compensation may be *prima facie* considered by the Tribunal and the Tribunal can apportion between the persons known or believed to be interested in the land. However, the Tribunal has no right to take a decision on important civil, and property rights which can be decided by the civil court and, therefore, determining of the compensation by deciding the title of the respective claimants is without jurisdiction. Though in view of Section 14(5) of the CBA Act the Tribunal shall, after hearing the dispute, make an award determining the amount of compensation, the powers under the Code of Civil Procedure conferred upon the Tribunal are limited in nature and restrict to collecting of evidence and enforcing the attendance of witnesses.

Thus, in view of Section 14(5) of the CBA Act, hearing the parties means granting audience to the

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claimant and non-applicant. In other words, the parties have to detail and to state what evidence on facts, the parties want to lead to substantiate their claim. The burden lies on both the parties to substantiate their claim by producing documents and leading evidence.

29. The issue regarding jurisdiction of the Tribunal about determining the title, while considering a rightful person to receive the compensation amount, is also dealt by the Orissa High Court in Writ Petition No.8908/2004 decided on 22.12.2015 wherein the point for consideration before the court was that whether the civil court lacks jurisdiction to entertain the suit filed by the petitioners when the subject matter of the suit lies with the exclusive jurisdiction of the Tribunal constituted under the CBA Act. While interpreting Section 14 of the CBA Act, the Orissa High Court also held that on cursory perusal of Section 14 of the Act, it is crystal clear that where the amount of any compensation payable under the can be fixed by agreement, it shall be paid in accordance with such agreement. But, when there is no such agreement, the

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Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a judge of High Court for the purpose of determining the amount. It is further held that, thus the jurisdiction of the Tribunal in view of Section 14 of the CBA Act is limited to determine the amount of compensation and the persons to whom it is payable. The Orissa High Court referred the decision in the case of **Ramesh Gobindram vs. Sugra Humayun Mirza Wakf**, reported in (2010)8 SCC 726 wherein the provisions of the AP Wakf Act 1955 came up for consideration before the Hon'ble Apex Court and the Hon'ble Apex Court held that there is a presumption that the civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. It is further held that the well settled rule is that civil courts have jurisdiction to try all suits of civil nature except those which are expressly or impliedly barred. The Orissa High Court by referring Section 26 of the Act held that it is evident from language that the Tribunal has not been conferred with any jurisdiction to decide the said issues.

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The Tribunal has only jurisdiction to decide the amount of compensation and issues regarding the title, interest are not within the jurisdiction of the Tribunal.

30. Thus, the issue is well settled that the jurisdiction of the Tribunal is limited to determine the amount of compensation and the persons to whom it is payable and as such I have no reason to take a different view than the said view.

31. The another issue raised by the appellant is that the Special Tribunal has no power to issue the directions to provide employment under the said policy of 2012. As observed earlier, there is no dispute that land bearing survey No.56 to the extent of 1.41HR was acquired by the WCL situated at Belsani, tahsil and district Chandrapur vide issuing Notification under Section 7 on 11.6.2012. The land was vested with the Central Government in view of Notification under Section 9 dated 26.3.2014. While deciding the compensation case, the Special Tribunal directed the WCL to provide employment

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to Vinod Girija and Yadav Tekam being nominees in accordance with the said policy of 2012. It is submitted that the Special Tribunal has exceeded its jurisdiction which is illegal. Admittedly, the CBA Act is a offshoot of the old Land Acquisition Act of 1894 in India. The CBA Act was enacted to establish in the economic interest of India greater public control over the coal mining industry and its development by providing for the acquisition by the State of unworked land containing or likely to contain coal deposits or of rights in or over such land, for the extinguishment or modification of such rights accruing by virtue of any agreement, lease, licence or otherwise.

32. There is also no dispute that there was a policy of Coal India Limited 2012 by which in view of clause (2), objectives and general principles of the policy are determined. The purpose of resettlement and rehabilitation policy 2012 is to revise and provide greater flexibility to the basic principles for the settlement and rehabilitation of people affected by coal mining project. In pursuance of the said policy, one of objects is to provide

just and fair compensation to the affected families whose lands have been acquired or proposed to be acquired or are affected by such acquisition and made adequate provisions for loss of livelihood of such affected persons including their rehabilitation and resettlement. The scope of the said policy is that it extends the Coal India Limited and its subsidiaries companies. It defines as affected family as well as family. It also defines the eligibility criteria for economic rehabilitation benefits. In view of clause 8.1 of the Policy of Coal India Limited 2012, all land owners with titles will receive monetary compensation for the land acquired from them. The value of the land is determined on the basis of prevailing legal norms. In respect of tribals cultivating lands under traditional rights, authentication of the lands held under traditional rights by the State Authorities will be necessary. The said policy further states that the land compensation shall be paid as per the provisions of the concerned Act or the State Government notification. Clause (B) of the Policy of Coal India Limited 2012 says that apart from payment of the

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land compensation, employment may be given in the following manner:

(B): Employment provision : Apart from payment of the land compensation, employment may be given in the following manner:

1. The maximum total number of employments that may be provided to the land losers would be limited to the total no. of acres of land acquired divided by two. However, employments will be released in proportion to the land possessed.

(2) For every two acres of land one employment can be considered.

(3) Subsidiaries of CIL may give an option to the land losers having less than two acres of land to club together their land to the extent of two acres and nominate one of the land losers among the groups or their dependent for employment under package deal or employment under descending order system by preparing the list of eligible land oustees in the descending order of land lost subject to the cut off equivalent to the total number of permissible employments or any other method with the approval of the respective board of the subsidiary.

4) The land loser must be a domiciled resident/Mool Niwasi and the certificate

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to this effect shall be issued by the concerned State Authority.

5) the modalities for offering employment shall be such as may be approved by the Board of the Subsidiary companies as per the unique conditions of the subsidiary provided that-

a) The initial employment shall be given with pay of Category 0I pay scale of NCWA, with training period of 6 months.

b) In the seniority list, the seniority of the appointee should be reflected in appropriate manner in order to keep the senior most as senior.

c) The land loser trainees shall be posted as per requirement, including underground duties.

33. Thus, there is no dispute that the Policy of Coal India Limited 2012 was enacted and employment provision was made.

34. The Hon'ble Apex Court in the case of **S.R.Y. Sivaram Prasad Bahadur vs. The Commissioner Of Income Tax, Hyderabad**, reported in (1971)3 SCC 726 interpreted the word "compensation" and observed that "While it is

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true that the terminology used by the legislature in respect of a payment is not conclusive of the true character of that payment, it would be proper to proceed on the basis that the legislature knew what it was saying. The word 'compensation' is a well known expression in law. When the legislature says that all payments made under the Act are in respect of the compensation payable to the former holders, unless there are clear and convincing circumstances to show that one or more items of payment do not form part of the compensation payable, we must hold that those payments are what they are said to be by the statute. We must give the word "compensation" its normal and natural meaning.

35. In the light of the above observations, if Section 14(5) of the CBA Act is perused, it specifically states that the Tribunal shall after hearing the dispute, make an award determining the amount of compensation which appears to it to be just. Thus, limited jurisdiction is given to the Tribunal only to determine the amount of compensation and not more than that. The amount of

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compensation means the entitlement of the persons in respect of the land acquired which consists of the value of the land. The jurisdiction of the Tribunal is only to the extent of determining the amount of compensation and the persons to whom the compensation shall be paid. There is no dispute regarding the entitlement of the lands' owners regarding the employment the Policy of Coal India Limited 2012, the only question is whether the Tribunal has jurisdiction to issue such directions.

36. In the decision in the case **P.Malaichami vs. M. Andi Abalam and ors**, reported in (1973)2 SCC 170 the Hon'ble Apex Court held that justice has got to be done according to law. A Tribunal with limited jurisdiction cannot go beyond the procedure laid down by the statute for its functioning. If it does so, it would be acting without jurisdiction.

37. Thus, perusal of the provisions under the CBA Act, shows that except determining the amount of compensation, that is also just compensation and

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determining the rightful owner to receive the compensation, no other jurisdiction is given to the Tribunal under the CBA Act. The language of Section 14(5) of the CBA Act indicates clearly that while deciding the dispute, the Tribunal has to determine the amount of compensation and specify the person or persons to whom the compensation has to be paid. The specific word "amount" connotes that the Tribunal has to determine the entitlement of just value of the compensation and not the other aspects. Even the Tribunal has no power to enter into the aspect of determining the title of the property.

38. Thus, in view of Section 14(5) of the CBA Act, the tribunal shall make an award determining the award of compensation. Thus, it is crystal clear that the Special Tribunal has exceeded its jurisdiction by granting compensation to the respondent Nos.1 to 4/petitioners when the issue regarding the restoration of the land and the entitlement of the respondent Nos.1 to 4/petitioners for restoration of the land was pending before the Maharashtra Revenue Tribunal. The Special Tribunal ought

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to have considered that unless and until the right of restoration is established by the respondent Nos.1 to 4/petitioners, in view of the provisions of the Act of 1974, they are not entitled for any compensation. However, the Special Tribunal determined the title though the Tribunal has no power and directed to pay compensation and to provide employment which is illegal and beyond the jurisdiction and, therefore, the appeal deserves to be allowed.

39. In the writ petition, the respondent Nos.1 to 4/petitioners challenged the order of the Maharashtra Revenue Tribunal remanding the matter back to the Sub Divisional Officer. The petitioners, i.e. respondent Nos.1 to 4, could not point out any illegality in the said order. By the said order, the Special Tribunal directed the Sub Divisional Officer to consider the issue in the light of the judgment of this court in Writ Petition No.3593/1991 and remanded the matter back. I do not find any illegality in the said order and, therefore, the writ petition is devoid of merits and liable to be dismissed.

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40. In the light of the above discussion, following order is passed:

ORDER

(1) The first appeal is **allowed**.

(2) The judgment and award dated 24.3.2021 passed by the Special Tribunal directing respondent No.5 the Western Coalfields Limited to pay compensation to respondent Nos.1 to 4/petitioners and to provide employment is quashed and set aside.

(3) The writ petition is **dismissed**.

The first appeal and the writ petition stand disposed of.

(URMILA JOSHI-PHALKE, J.)

At this stage:

1. Learned counsel Shri L.H.Kothari, appearing for the respondent Nos.1 to 4 in the first appeal and petitioners in the writ petition, submits that he wishes to

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challenge the judgment and order passed by this court today in appeal before the Honourable Apex Court and, therefore, he prays that effect and operation of this judgment be stayed for a period of six weeks from today.

2. As per the judgment and order impugned in the first appeal, the respondent Nos.1 to 4/petitioners have already been disbursed the amount.

3. On 7.6.2021, this Court (Coram : S.M.Modak, J.) directed the respondent Nos.1 to 4/petitioners to furnish an undertaking that they will return the amount, if directed by this court and if final order in appeal goes against them.

4. However, I grant the prayer made by learned counsel Shri L.H.Kothari appearing for the respondent Nos.1 to 4 in the first appeal and petitioners in the writ petition.

The effect and operation of this judgment is stayed for a period of six weeks from today and the same shall come into operation thereafter automatically.

5. The amount to be deposited by the respondent Nos.1 to 4/petitioners, as per order of this court dated 7.6.2021, will be considered after six weeks.

6. The civil applications, if any, stand disposed of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!