



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

Writ Petition (WP) No. 5679 of 2022

Prabhabai Ashok Dhote and another

Versus

The Tahsildar, Kelapur, Dist. Yavatmal and others

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

Court's or Judge's Order

Shri Parvez Mirza, Advocate for the petitioners.

Shri Deepak Thakare, Addl.G.P. for the respondent no.1.

Shri G.N.Shinde, Advocate for the respondent nos. 2 & 3.

CORAM : ANIL S. KILOR, J.

DATED : 3rd OCTOBER, 2023.

Heard.

2. The respondent no.1 -the Tehsildar, Kelapur, District Yavatmal by exercising the power under Section 36(2) of Maharashtra Land Revenue Code, 1966 (in short hereinafter referred as 'MLR Code, 1966'), directed the petitioners to restore the land in question to the respondent nos. 2 and 3 who claimed to be the legal heirs of the original owner vide impugned order dated 25th February, 2022.

3. The Tehsildar, while passing the impugned order dated 25th February, 2022 has held that the original owner belonged to Schedule Tribe and without obtaining the necessary permission the land was purchased by the petitioner. It is therefore directed to

restore the land back to the legal heirs of the original owner.

4. Learned counsel for the petitioners submits that though no validity certificate was submitted before the Teshildar to show that the original owner of the respondent nos. 2 and 3 belonged to Schedule Tribe and further despite the specific objection that no document was filed by the respondent nos. 2 and 3 to establish that they are legal heirs of the original owner, Ramchandra Panku Kanake and Tulsabai Ramchandra Kanake, without deciding the said objections, the order passed by the Teshildar.

5. On the other hand, learned counsel for the respondent nos. 2 and 3 submits that the respondent nos. 2 and 3 possessed the validity certificate of their sons and also they possessed the succession certificate. However, the learned counsel for the respondent nos. 2 and 3 fairly states that the validity certificate and succession certificate were not produced before the Tehsildar.

6. In this matter, admittedly no validity certificate was submitted by the respondent nos. 2 and 3 to establish that they belonged to the Schedule Tribe category.

7. Furthermore, no document was filed by the respondent nos. 2 and 3 before the Tehsildar to show that they are legal heirs of the original owners of the land in dispute.

8. It appears that the respondent nos. 2 and 3 possessed the validity certificate of their sons and also possessed the succession certificate, but both the documents were not filed before the Tehsildar.

9. In the circumstances, I am of the opinion that the matter needs to be remanded back to the Tehsildar to decide the same afresh after considering the validity certificate of the respondent nos. 2 and 3 and the succession certificate. Accordingly, I pass the following order.

- i. Writ petition is partly allowed.
- ii. The order dated 25th February, 2022 passed by the Tehsildar, is hereby quashed and set aside.
- iii. The parties shall appear before the Tehsildar, Kelapur, District Yavatmal on **17th October, 2023** at 11 am.
- iv. The Tehsildar, Kelapur, District Yavatmal shall decide the application within two months from the date of appearance after giving full and complete opportunity to the parties to produce necessary evidence on record.

[ANIL S. KILOR, J.]