



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3379 OF 2024

1. Jayvant Laxman Bagad,
Age: 68 years, Occu.: Agri.,
R/o. Pimpalner, Tq. Sakri, Dist. Dhule.
2. Ashok Gopalsing Batwada,
Age: 38 years, Occu.: Agri.,
R/o. Vaindane, Post Bodgaon,
Tq. Sakri, Dist. Dhule. ..Petitioners

Versus

1. The Sub Divisional Officer,
Sakri, Tq. Sakri, Dist. Dhule.
2. The Tahasildar, Sakri,
Tq. Sakri, Dist. Dhule.
3. The Circle Officer, Sakri,
Tq. Sakri, Dist. Dhule.
4. The Talathi,
Bhadne,
Tq. Sakri, Dist. Dhule. ..Respondents

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Mr. D. S. Bagul, Advocate for Petitioners.
Mr. P. D. Patil, AGP for Respondent Nos.1 to 4.

...
CORAM : S. G. CHAPALGAONKAR, J.

JUDGMENT RESERVED ON :- 10th JUNE 2024
JUDGMENT PRONOUNCED ON :- 21st JUNE 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioners impugn the order dated 11.12.2023 passed by the Sub Divisional Officer, Sakri in RTS Appeal No.49/2023 by which the order passed by the Circle Officer declining to certify the Mutation Entry bearing Nos.7295 and 7296, pertaining land Gut No.603/1 and 603/4.

3. Mr. Bagul, learned Advocate appearing for the petitioners submits that the land bearing Gut No.603 situated at Bhadne, Tq. Sakri is part of Survey No.368, which was owned by Mr. Garbad Fattu Khatik. He transferred the land in favour of Sukriya Babliya Bhil in the year 1931. As per revenue record, the land was Class-I occupancy land of old tenure. Upon death of Sukriya Bhil, the land was recorded in the name of his legal heirs vide Mutation Entry no.1563 dated 28.04.1956. After implementation of consolidation scheme, the Survey No.368 was re-numbered as Gut No.603. In the year 1979, the entire gut was divided in multiple parts i.e. Gut Nos.603/1 to 603/11. The Gut No.603/1 ad-measures 79R, whereas Gut No.603/4 ad-measures 86R. That was allotted in the name of Asaram Sukriya Bhil. The Mutation Entry bearing No.823 was certified for that purpose.

4. In the year 1994, Asaram Sukriya Bhil applied for change of tenure of the land from agricultural to non-agricultural for residential purpose. The learned Sub Divisional Officer, Nandurbar vide his order dated 08.03.1994 permitted the change of tenure of land to non-agricultural residential land. Consequently, the land owner submitted the layout plan, which has been sanctioned by the Town Planner, Dhule vide order dated 21.02.1994. The land owner Asaram Bhil sold the plots in favour of Shri. Kisan Dashrath Kumbhar under registered sale deed dated 24.07.2006. The mutation was certified vide Mutation Entry

No.3616 in the name of purchaser. Thereafter, plot bearing nos.1 to 17 were purchased by Bharat Manikrao Gavit from Shri. Kisan Kumbhar under registered sale deed dated 07.07.2022. His name was mutated vide Mutation Entry No.5868 in the revenue record. The revenue record specifically depicts the occupancy as Class-I. The petitioners purchased the plots from Bharat Gavit under registered sale deed dated 02.12.2022 and applied for recording of mutation entry. The Circle Officer vide an order dated 30.12.2022 refused to certify the mutation entries under pretext that the land pertains to the restricted tenure and appropriate permission from the competent authorities is not obtained before transfer. The petitioners, therefore, preferred RTS Appeal No.49/2023 assailing the order of the Circle Officer before the Sub Divisional Officer, Sakri, who confirmed the order of the Circle Officer giving reason that in view of Sections 36 and 36(A) of the Maharashtra Land Revenue Code, 1966 (for short 'the Code') there is bar to transfer the Tribal Lands and prior permission was not obtained from the State Government before execution of the sale deed. It is further observed that the N.A. permission dated 27.12.2000 specifically incorporates condition that the transfer of the land to non-tribal person can be effected only with prior permission of the Government.

5. Mr. Bagul relying upon the judgment of the Supreme Court of India in case of *Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another*¹ and unreported judgments of this Court in case of *Ambadas Bapumya Kumre Vs. Maliram Sondaram Sharma* dated 29.09.2022 in *Writ Petition No.3806/2017* and *Vitthal G. Uikey Vs. State of Maharashtra and Others* dated 23.09.2011 in *Writ Petition No.3793/2011* etc. submits that Sections 36 and 36(A) of the Code governs transfers

¹ (1985) 1 SCC 479.

and alienation pertaining to agricultural lands by the members of the Scheduled Tribe to Non-Tribal However said provision has no applicability, when land is put to the use for Non-Agricultural purpose.

6. Per contra, Mr. Patil, learned AGP appearing for respondent nos.1 to 4 submits that the present petition takes exception to the orders pertaining to the mutation entries. There is alternate efficacious remedy to file Appeal under the provisions of the Code. Consequently, the Writ Petition may not be entertained. He would further submit that the land was originally held by a Tribal and transferred in favour of the Non-Tribal without prior permission of the State, as mandated under Sections 36 and 36(A) of the Code, The provision do not contemplate distinction for purpose of its applicability, based on classification of the land, or its user either for agricultural or non-agricultural purpose.

7. Having considered the submissions advanced by the learned Advocates appearing for the respective parties and after going through the relevant documents tendered into service, apparently the land in question was originally owned by one Garbad Fattu Khatik and later on transferred to Sukriya Babliya Bhil in the year 1931. The flow chart of the land as discernible from the various transactions indicates that the land suffered multiple transfers before it reached to the petitioners. In pursuance of the proceeding initiated by Asaram Sukriya Bhil, the Sub Divisional Officer, Nandurbar changed the tenure of the land from agricultural to non-agricultural for residential purpose vide order dated 08.03.1994. The 7/12 extracts indicate the conversion of the land for non-agricultural use and its classification as Class-I. There is

nothing on record to indicate that the land was ever classified as Class-II occupancy.

8. Apparently, the lay out has been sanctioned by the Town Planner, Dhule and Sanad has been issued to the residential plots. It is true that layout contains a clause that since the land belongs to the tribal, it can be sold to non-tribal only with prior permission of the Government. However, such stipulation itself would not decide the applicability of Sections 36 and 36(A) of the Code. The Supreme Court in case of ***Lingappa Pochanna Appelwar*** (supra) precisely dealt with the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 vis-a-vis the provisions of the Code and observed that the enactment of 1974 for restoration of the land to the Scheduled Tribes has been brought in vogue to deal with the transactions relating to the agricultural land effected between the members of the Scheduled Tribe or non-Scheduled Tribe. However, the Act makes distinction between a non-tribal transferee who had diverted the lands obtained under transfer from a tribal during the period from April 1, 1957 to July 6, 1974 and put such lands to non-agricultural purpose. Certainly, it does not deal with the non-agricultural lands.

9. This Court had occasion to consider the aforesaid issue, in case of ***Ambadas Bapumya Kumre*** (supra), wherein after referring to the observations in case of ***Lingappa Pochanna Appelwar*** (supra) it has been observed that non-agricultural land would not fall within the purview of Sections 36 and 36(A) of the Code. Sub-Section (3) of Section 36 and Sub-Section (6) of Section 36A of the Code require a tribal to submit an undertaking that the land shall be used for personal cultivation by the tribal transferor, which is indicative of the intention of the legislature that

restoration of land to the tribal transferor relates only to such lands which are capable of being used for agricultural purpose. However, if the lands have already been converted into and used for non-agricultural purposes, the question of its restoration to tribal transferor would not arise. Similar view has been espoused in case of **Vitthal G. Uikey** (supra), which states as under:

“The Maharashtra Revenue Tribunal, on a consideration of the provisions of Section 36 and 36A of the Maharashtra Land Revenue Code and the provisions of Section 3 of the Maharashtra Restoration of lands to Scheduled Tribes Act, 1974, came to a conclusion that the petitioner could not have filed an application for restoration of the land as the land was admittedly put to the non agricultural use since long and used as a stone quarry. The Maharashtra Revenue Tribunal observed that the provisions of Section 3 of the Act of 1974 clearly suggested that the land could be restored to a tribal only in case he undertakes to cultivate the land personally and this showed that the petitioner could not have applied for restoration under the provisions of the Act of 1974 as the lands were converted to non agricultural use, were used as a stone quarry and were not capable for being used for agricultural purpose. The Tribunal held, and rightly so, that the 'restoration of lands' was referable only to the agricultural land and not to non agricultural or quarry land. Since the permission for conversion of the land for non agricultural use was granted as early as in 1968 and since the land was used for mining and quarry purpose since 1971, the Tribunal held that the petitioner was not entitled for restoration of the land in question and the Tahsildar had committed a mistake in holding that the land in question was liable to be forfeited to the State Government.”

10. The High Court of Karnataka also dealt with the similar issue in case of **Shri Munnaiah S/o Late Lachappa and Ors. Vs. The Deputy Commissioner Bangalore District** in **Writ Petition No.60483 of 2016 (SC-ST)** and observed that once the land is diverted, the requirement of obtaining permission for transfer does not arise as the land on conversion no longer remains granted land. Consequently, Section 95 of the Karnataka Land

Revenue Act, 1964 mandating prior permission of the Government does not arise.

11. If the law espoused in the aforesaid judgment is applied to the facts of the present case, when there is impeccable material demonstrating it to be Class-I land put for non-agricultural unrestricted use, there is no reason to invoke the bar under Sections 36 and 36(A) of the Code. Pertinently, the land in Survey No.368 culminated into Gut No.603 and sub divided in various parts appears to have been undergone multiple transfers and consequential mutation entries have been effected without any obstructions. It is only when the petitioners applied for mutation in their names after purchase of plots out of the lay out under registered sale deed, objection appears to have been raised. Pertinently, no further action for cancellation or revocation of the sale deed has been initiated invoking bar under Sections 36 and 36(A) of the Code. From the reasoning adopted by the Revenue Authorities under the impugned order, there is nothing to infer that the land in question is Class-II occupancy land or the provisions under the Code would attract to govern transactions. In view of the crystallized legal position, making provisions of Sections 36 and 36(A) inapplicable in case of transactions relating to non-agricultural land, the view taken by the respondents-Authorities cannot be countenanced. Consequently, the impugned orders cannot be sustained in law.

12. So far as the objection as regards to the availability of the alternate remedy is concerned, this Court is of the view that the impugned orders are inconsistent with the settled legal position. Relegating the petitioners to alternate remedy would cause unnecessary hardship. Hence, this Court is inclined to entertain

the petition without impeded by availability of the alternate remedy. Resultantly, following order is passed:

ORDER

- a. Writ Petition is allowed in terms of prayer Clause (B).
- b. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/June-2024