

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16195 OF 2023

1. Shri Navin Popatlal Shah,
Age : 64 years, Occ. : Business
2. Shri Nitin Sundraji Shah
Age : 59 years, Occ. : Business,
Nos. 6 and 7, r/o. 701, Avishkar Tower,
Chandavarkar Cross Lane,
Borivali (W), Mumbai – 400 092. .. Petitioners

Versus

1. The State of Maharashtra
Through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 400 032.
2. The Additional Secretary (Revenue)
Revenue and Forest Department,
Mantralaya, Mumbai-400 032.
3. The Collector, Thane.
4. The Additional Secretary (Revenue)
5. The Additional Collector,
Thane.
6. The Divisional Commissioner,
Konkan Division, Konkan Bhavan,
CBD, Belapur, Navi Mumbai-400 614.
7. Smt. Baby Narottam Panera,
Age : 66 years, Occ.: Agri.,
8. Shri Devendra Narottam Panera,
Age : Adult, Occ. Agri.,
9. Shri Yogendra Narottam Panera,
Age : Adult, Occ. Agri.,
10. Smt. Mohini Narottam Panera,

Age : Adult, Occ. Agri.,

10. Smt. Visha Narottam Panera,
Age : Adult, Occ. : Agri.,
Nos.6 to 10, all R/o. Ghodbunder Gaon,
Taluka and District Thane.

...Respondents

Mr.Y.S. Jahagirdar, Senior Advocate *i/b Mr.Amey Sawant, Advocate for Petitioners.*

Mr.K.B. Dighe, Addl. G.P. *a/w. Ms.Tanaya Goswami, AGP for State-Respondent Nos.1 to 5.*

Mr.Cyrus Ardeshir *a/w. Mr.Suresh Sabrad, Mr.Pratik Sabrad, Mr.Vivek Sharma, Advocate for Respondent Nos.6 to 10.*

**CORAM : B.P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

Reserved on : April 16, 2024.

Pronounced on : April 25, 2024.

JUDGMENT: (Per, Somasekhar Sundaresan, J.) :

1. Rule. By consent of parties, rule is made returnable forthwith, and the Writ Petition is taken up for final hearing and disposal.
2. Whether the State Government has any right to impose a minimum price condition under Section 36A of the *Maharashtra Land Revenue Code, 1966* (“**MLRC**”) when approving acquisition of land by a non-tribal from a tribal, is the prime question we have been presented with, when adjudicating this Writ Petition. We hold in the affirmative.

3. As an alternative, we have been petitioned to declare that the State Government must have regard to the value of the land as of the date of the application under Section 36A and not at the time of the approval. The law on this issue is well settled – the value must bear reference to the time of a valid application complete in all respects. However, in the facts of this case, the value of the land in 2012 has been rendered irrelevant because the Petitioners’ proposal to acquire tribal land was rejected in 2021.

The Parties:

4. The Petitioners, Mr. Navin Popatlal Shah and Mr. Nitin Sundraji Shah (for short, “***the Shahs***”), have approached this Court under Article 226 of the Constitution of India, seeking intervention against the imposition of a minimum price requirement as part of an approval granted by the Respondent No. 1, the State of Maharashtra, for acquisition of land admeasuring 42.7 Ares, bearing Survey No. 30/6 situated at Ghodbundar Village, Thane (“***Subject Tribal Land***”).

5. The Subject Tribal Land is admittedly owned by Respondents No. 6 to 10, namely, Mrs. Baby Narottam Panera, Devendra Narottam Panera, Mr. Yogendra Narottam Panera, Mrs. Mohini Narottam Panera and Mrs Visha Narottam Panera, (for short, “***the Paneras***”), who are also

admittedly, tribals.

6. The Additional Secretary (Revenue) is Respondent No. 2. The Collector is Respondent No. 3 and the Additional Collector is Respondent No. 4, while the Divisional Commissioner, Konkan Division is Respondent No. 5.

7. The State has approved transfer of the Subject Tribal Land from the Paneras to the Shahs, but has imposed a minimum price, based on the Annual Statement of Rates (colloquially, “***Ready Reckoner***”) published under the Maharashtra Stamp Act, 1958, as applicable for the year 2023-24. This has been applied because the approval for transfer under Section 36A was granted in the year 2023.

Section 36A of the MLRC:

8. Before delving into the factual matrix, an overview of the scheme and scope of Section 36A of the MLRC would be instructive. The relevant extracts are set out below:-

36A. (1) Notwithstanding anything contained in sub-section (1) of section 36, no occupancy of a Tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or

otherwise, except on the application of such non-Tribal and except with the previous sanction—

(a) in the case of a lease or mortgage for a period not exceeding 5 years, of the Collector; and

(b) in all other cases, of the Collector with the previous approval of the State Government:

Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no Tribal residing in the village in which the occupancy is situate or within five kilometres thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

Provided further that, in villages in Scheduled Areas of the State of Maharashtra, no such sanction allowing transfer of occupancy from tribal person to non-tribal person shall be accorded by the Collector unless the previous sanction of the Gram Sabha under the jurisdiction of which the tribal transferor resides has been obtained.

Provided also that, in villages in Scheduled Areas of the State of Maharashtra, no sanction for purchase of land by mutual agreement, shall be necessary, if,—

(i) such land is required in respect of implementation of the vital Government projects; and

(ii) the amount of compensation to be paid for such purchase is arrived at in a fair and transparent manner.

Explanation.—For the purposes of the second proviso, the expression “vital Government project” means project undertaken by the Central or State Government relating to national or state highways, railways or other multi-modal transport projects, electricity transmission lines, Roads, Gas or Water Supply pipelines canals or of similar nature, in respect of which the State Government has, by notification in the Official Gazette, declared its intention or the intention of the Central Government, to undertake such project either on its own behalf or through any statutory authority, an agency owned and controlled by the

Central Government or State Government, or a Government company incorporated under the provisions of the Companies Act, 2013 or any other law relating to companies for the time being in force.

(2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed.

(3) On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force; or any decree or order of any court or award or order of any tribunal, or authority, either suo motu or on application made by the tribal in that behalf, restore possession of the occupancy to the Tribal.

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, it is noticed that any occupancy has been transferred in contravention of sub-section (1) the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu or on an application made by any person interested in such occupancy, or on a resolution of the Gram Sabha in Scheduled Areas within thirty years from the 6th July 2004 hold an inquiry in the prescribed manner and decide the matter.

(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may, from time to time direct.

(6) Where an occupancy vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the Tribal transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such Tribal transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the total land held by such Tribal-transferor, whether as owner or tenant, does not as far as possible

exceed an economic holding.

*Explanation.—For the purpose of this section, the expression
“economic holding” means ******

[Emphasis Supplied]

9. A plain reading of the foregoing would show that tribals are special protectees under Section 36A of the MLRC, which contains a scheme of deep intervention by the legislature to protect the occupancy interests of tribals in land. The salient features of Section 36A may be summarised thus:-

A. The prior sanction of the State is a requirement of Section 36A(1) regardless of what led to the transfer – sale, gift, exchange, mortgage, lease or otherwise. Notably, even the execution of a court decree or award of any tribunal or authority is not spared from the cloak of protection flowing from the previous sanction by the State;

B. It is the non-tribal who has to apply to the Collector for such previous sanction. The need for the non-tribal to apply brings in privity with the State the commitment and affirmation from the non-tribal to buying the land;

- C. A lease or mortgage of less than five years may be directly sanctioned by the Collector. For any other transfer, the prior sanction of the State Government is mandated before the Collector may sanction the transfer;
- D. Even for according such sanction, the provision entails a pre-emptive “right of first refusal” in favour of any tribal residing in the same village or within a five-kilometre radius, who may acquire the land, superseding the non-tribal’s intent to acquire the land;
- E. For transfer of tribal lands in Scheduled Areas, prior sanction of the local Gram Sabha would also be necessary;
- F. The only exception to the need for State sanction for purchase of land in Scheduled Areas by mutual consent, is in cases where the land is required to implement “vital government projects”, where too, the amount of compensation for purchase of such land has to be arrived at in a fair and transparent manner;
- G. Section 36A(2) enables the Collector to provide sanction, subject to such conditions and in such circumstances as may be prescribed;

H. When the sanctioned period of lease or mortgage expires, regardless of any provision of law or court decree or tribunal's award or order, the Collector has the power to restore possession, whether on the tribal's application or of the Collector's own accord;

I. Any transfer of land in violation of Section 36A(1) is capable of being undone until the year 2034. Where a contravention of Section 36A(1) is found, the Collector may declare the transfer invalid, upon which, the land shall vest in the State Government; and

J. The tribal who originally transferred the land would have a right to purchase the land back, provided he undertakes to personally cultivate the land, and pays the prescribed purchase price.

10. It will therefore be seen that the scheme of Section 36A of the MLRC entails legislative protection for tribals, who are presumed by the law to be in a weak bargaining position, and vulnerable to losing their rights over their lands. Therefore, the State's role is that of a protector, which is played by the mechanism of requiring the previous sanction of the State for any transfer of such land.

11. It would be trite to state that the sanction by the State has to meet the requirements of reasonableness and non-arbitrariness. Needless to add, if the State were to be arbitrary in the conditions it imposes, or in the circumstances it purports to consider, the jurisdiction of the constitutional courts to intervene under Article 226 of the Constitution of India may indeed be invoked by any victim of such arbitrariness.

Factual Matrix:

12. The factual matrix discerned from the pleadings of the parties may be summarized thus:-

- A. The Shahs are desirous of acquiring the Subject Tribal Land to build residential housing, and claim to have been interested in the purchase right since 2012, waiting only for an approval from the State;
- B. On 26th May, 2023, the Government of Maharashtra passed an order (“**May 2023 Order**”) approving the Shahs’ purchase of the Subject Tribal Land from the Paneras, with a condition that the value paid for the land must be determined taking into account the:
 - (i) the value indicated in the Ready Reckoner in vogue; and (ii) the

value as per the “slab-wise procedure” (टप्पा पद्धत);

C. Pursuant to the May 2023 Order, the Collector passed an order dated 6th June, 2023 (“**June 2023 Order**”), communicating to the Shahs and to Respondent Nos. 6 to 10 that the value payable by the Shahs to the tribals for purchase of the Subject Tribal Land is a sum of Rs. 10,08,00,300. The June 2023 Order has computed the value taking into account the Ready Reckoner as prevailing for 2023-24, and has directed that the amounts must be paid into the bank accounts of the Paneras to be opened for the purpose;

D. According to the Shahs, the May 2023 Order and the June 2023 Order disposed of an application originally made by the Paneras on 12th March, 2012 (“**2012 Application**”);

E. It is seen from the material brought on record by the Shahs, that the 2012 Application is an application filed, not by the non-tribal purchaser as is required under Section 36A(1) of the MLRC, but by eight persons, of which, only one Mrs. Baby Narottam Panera figures from amongst Respondents No. 6 to 10. Other applicants included people without the Panera surname including one Devaki

Ramdas Longe, Priyanka Sharad Khushalkar, Manju Govind Kothari, and yet others with the Panera surname, but who do not figure in the list of tribal-sellers found in the May 2023 Order and the June 2023 Order. Four of the applicants who are said to have presented the 2012 Application, including Respondent No. 6, appear to be illiterate – thumb impressions are affixed to the 2012 Application;

F. The 2012 Application simply stated that the applicants' financial position was weak, and they were desirous of selling the Subject Tribal Land to the Shahs for building residential accommodation, for which they sought the State's sanction;

G. The Shahs have pleaded that in 2012, as per the Ready Reckoner, the value of the Subject Tribal Land was about Rs.7 Crores, but based on their inquiries, the market value of such land should not exceed Rs.5 Crores. According to the Shahs, after negotiations, the parties agreed to fix the consideration at Rs.5.25 Crores. Meanwhile, the Shahs have pleaded, Respondent Nos. 6 to 10 had allegedly entered into an agreement with one Mr. Vijay Deshmukh some time on 21st December, 2006, and subsequently on 5th April,

2008, with one M/s. Shree Sai Constructions for sale of the Subject Tribal Land. The Shahs have claimed that they were “require to settle” with the aforesaid persons “after making payment of huge consideration” ;

H. According to the Shahs, the State took an inordinately long time to process the 2012 Application. The Shahs have pleaded that they had to file *Writ Petition No. 5552 of 2019* seeking a direction that the transaction must be approved expeditiously. Writ Petition No. 5552 of 2019 came to be disposed of by a Division Bench of this Court *vide* an order dated 30th April, 2019 directing an expeditious process. The District Collector was to forward his recommendation preferably within two weeks while the Divisional Commissioner was to examine the recommendation and forward the same along with his own recommendation to the State Government, preferably within two months of the receipt of the Collector’s recommendation. The State Government was to thereafter take an appropriate decision, preferably within two months of the receipt of the recommendation from the Divisional Commissioner;

I. On 5th July, 2019, the Tahasildar, Thane forwarded a report with his

recommendation. The said report expressed no objection for the land transfer but valued the land at over Rs.11 crores. Thereafter, the Collector *vide* report dated 13th March, 2020 forwarded a recommendation to the Divisional Commissioner, recommending grant of previous sanction for sale of the Subject Tribal Land and that the proposed value of Rs.11,11,48,100 would be the appropriate value for the purchase by the Shahs from the Paneras;

J. Pursuant to the Report dated 13th March, 2020, the Divisional Commissioner forwarded a further recommendation to the Additional Chief Secretary of the State, communicating that the proposed transaction may be approved, recommending that the value of Rs.11,11,48,100 as contained in the recommendation must be considered while granting the previous sanction under Section 36A of the MLRC;

K. It is a matter of record that on 15th October, 2020, Mr. Devendra Narottam Panera, who is Respondent No.7, had filed an objection to the sanction for alienation of the Subject Tribal Land by the Paneras. He had alleged that thumb impressions of his mother (Respondent No. 6), his siblings and he himself had been taken on

various documents written in English. He accused one Mr. Vijay Deshmukh of having taken his family for a ride to enable transfer of the Subject Tribal Land in favour of the Shahs. He also alleged receipt of threats and intimidation, against which, he had filed police complaints and accused the said Mr. Deshmukh of pocketing money in their names;

L. On 5th November, 2020, a Deputy Secretary, Maharashtra Legislature, wrote to the Additional Chief Secretary, Government of Maharashtra, highlighting that a complaint had been received by the Scheduled Tribe Welfare Committee of the State Legislature, about the proposed transaction in the Subject Tribal Land, which was being sent for a review;

M. On 16th September, 2021, upon a review of the complaint of Mr. Devendra Narottam Panera, the proposal for sale of the Subject Tribal Land to the Shahs came to be rejected (“**2021 Rejection Decision**”);

N. On 21st February, 2022, a letter from Mr. Devendra Narottam Panera was sent to the Revenue Minister of the State Government,

stating that his complaints had been filed due to some misunderstanding, and that the same has been withdrawn;

O. Such withdrawal appears to have set a new round of action in motion, which eventually led to the May 2023 Order, and consequently, the June 2023 Order, which are now under challenge in this Writ Petition; and

P. In the Writ Petition, the Shahs have also claimed that they have already paid a total sum of Rs.3.23 Crores from time to time towards purchase of the Subject Tribal Land. A list of payments is annexed at *Exhibit J* to the Writ Petition. The list includes payments made to 20 persons, including one Mr. Vijay Deshmukh (the same name had figured in the earlier complaint of Respondent No. 7). The condition applicable for the purchase of the Subject Tribal Land is that payments should be made into the bank accounts of the Paneras and no claim must be made against them, to cause any economic loss to the tribals. The Shahs seek a direction that they only need to pay Rs. 2.02 crores (Rs. 5.25 crores, as reduced by Rs. 3.23 crores).

Pleadings and Flow of Events:

13. The Shahs have claimed in their pleadings that the May 2023 Order seeking to impose a pricing condition is not backed by the scope of the State's powers under Section 36A of the MLRC. They also contend that the consequential direction in the June 2023 Order passed by the Collector that the purchase of the land must entail payment of Rs.10,08,00,300 as consideration into the accounts of Paneras, the *adivasi* sellers of the Subject Tribal Land, is based on an order without sound legal footing.

14. The Shahs have asserted that the values ascribed to the Subject Tribal Land in the various recommendations that preceded the May 2023 Order and the June 2023 Order were not to their knowledge at all. They claim that it was only after they were served with the June 2023 Order that they obtained all the reports and recommendations mentioned in their pleadings under the Right to Information Act, 2005 including the purported 2012 Application.

15. However, the 2021 Rejection Decision, which ought to have formed part of the file is not found in the Writ Petition. The Collector and Additional Collector filed an affidavit in reply dated 5th February, 2024

(“***Affidavit in Reply***”), stating that the 2012 Application had come to be rejected on 16th September, 2021, after review of a complaint by Respondent No. 7 objecting to the transfer.

16. An affidavit in rejoinder dated 16th February, 2024 by the Shahs (“***Affidavit in Rejoinder***”), denied knowledge of such rejection. Therefore, an additional affidavit dated 20th February, 2024 (“***Collector’s Additional Affidavit***”) was filed on behalf of the Collector and Additional Collector.

17. In the Affidavit in Rejoinder, the Shahs asserted that the 2021 Rejection Decision was taken *ex parte*, without any notice or adherence to natural justice. In the same breath, the Affidavit in Rejoinder also asserted that the Shahs were aware of the written objection of Respondent No. 7 being withdrawn. Yet, the Shahs have indicated in the Affidavit in Rejoinder that upon withdrawal of the objections by Respondent No. 7, the approval came to be granted in the May 2023 Order, indicating that the re-opening was done by the State of its own accord. The Affidavit in Rejoinder asserted that the 2012 Application was deliberately kept pending for 11 years by the State only with a view to earn higher stamp duty and gain State revenue by getting to use the appreciation in land value tat had occurred in the meantime.

18. The Collector's Additional Affidavit asserts that after Respondent No. 7 withdrew his earlier complaint *vide* letter dated 21st February 2022, the Divisional Commissioner held a hearing on 22nd April, 2022, for which a notice of hearing was sent on 18th April, 2022. At the hearing, the Shahs have indicated that they were aware of the 2021 Rejection Decision and that the earlier complaint and its withdrawal, all arose out of misunderstanding. The Shahs had filed an affidavit dated 19th February, 2022 (this is a date two days after the withdrawal of objections by Respondent No.7) and recorded a statement on 22nd April, 2022, confirming and assuring the State that any price condition imposed by the State would be binding on them. Therefore, the Collector's Additional Affidavit argues, for such representation alone, the Writ Petition deserves to be dismissed.

Tribal Respondents' Affidavits:

19. Respondent No.6, evidently illiterate, has filed an affidavit dated 5th January, 2024 stating that the Shahs are very kind, co-operative and helpful, and that all along, since 2011 they have helped her family a lot, due to which she and her family could survive and prosper. According to the affidavit, the Shahs have helped them construct their residential houses and considering all the financial help received until then, they

have consciously agreed for a consideration of Rs.5.25 Crores and that they have already received a sum of Rs.3.23 Crores. The affidavit states that the Subject Tribal Land is a “landlocked property”, which is why she has agreed to sell the land for a lumpsum amount of Rs.5.25 Crores, which, according to her was the prevailing market rate in 2012.

20. The affidavit of Respondent No.6 seeks to explain that the complaint of Respondent No. 7 (which led to the 2021 Rejection Decision) was a complaint by her son made “due to inadvertence and miscommunication”. She asserted that her family was agreeable to not insist on the market value as of May 2023. The affidavit of Respondent No.6 is affirmed by way of her right hand thumb impression and purports to have been “interpreted, explained and identified” by her unnamed Advocate.

21. Affidavits identical in content, have been filed by each of the other Paneras, including Respondent No. 7. Each of these affidavits are identical in approach, content and structure, and asserts that the contents have been read over and explained “in the language known to me [*them*]”, indicating that none of the Paneras are conversant with English, even if those who have not used thumb impressions, are to be regarded as literate.

Arguments of the Parties:

22. Mr. Y.S. Jahagirdar, Learned Senior Counsel on behalf of the Shahs, structured a three-pronged challenge to the May 2023 Order and the June 2023 Order, viz:-

- A) To begin with, there is no provision in Section 36A of the MLRC enabling the State to stipulate or regulate the price at which the transfer of land from a tribal to a non-tribal must take place. – any such price stipulation, being untenable, deserves to be struck down;
- B) It were to be held that the State may indeed impose a price condition, it should have regard to the Ready Reckoner value of the land in 2012 and not to the value in 2023, the delay in processing being solely attributable to the State; and
- C) While the Writ Petition may have annexed eleven orders and judgements (including those in connection with payment of *nazrana*, conversion charges and such other transaction related fees and charges), in particular, the judgement of a Division Bench of this Court in the case of Tadavi Yasin Supdu & Ors. Vs.

The Additional Collector, Raigad and Ors.¹ (“**Tadavi Yasin**”) is really the relevant one and squarely covers this Writ Petition.

23. Mr. Jahagirdar argued that the application for the sanction of the land transfer had been made way back in March 2012. In disposal of Writ Petition No. 5552 of 2019, the State Government had been directed in April 2019 to decide the matter within four months. However, the eventual decision was taken only on 26th May, 2023. That decision imposed the price stipulation without any backing in Section 36A of the MLRC, leading to the June 2023 Order burdening the Shahs with the upward movement in value of the land over the decade that it took the State to take a decision. Consequently, he would submit that the Writ Petition ought to be allowed in terms of Prayer Clause (b), which reads thus:-

(b) that by an appropriate, writ order or direction this Hon'ble Court be pleased to cancel and/or modify condition no.1 stipulated in their prior approval granted under Section 36A of MLRC vide order dated 26.05.2023 by Respondent No.1 State as well as consequential order dated 06.06.2023, passed by Respondent No.3 Collector while granting permission under Section 36A of MLRC and be pleased to direct Respondent Nos.1 to 3 to incorporate the market value and the agreed amount of consideration of Rs.5.25 crores of the subject land as on the date of application dated 12.03.2012 instead of directing payment of the amount of consideration as per the market value as on the date of the order and on the basis of various judgments and order passed by this Hon'ble Court as well as the Hon'ble Supreme Court.

¹ Writ Petition No. 12350 of 2022 dated 26th April 2023

24. Mr. Cyrus Ardeshir, Learned Counsel on behalf of the Paneras, the tribals seeking to sell the Subject Tribal Land to the Shahs, supported the Shahs' challenge to the higher price that his clients would be entitled to. He would argue that although his clients would benefit from a higher price under the May 2023 Order and the June 2023 Order, the tribal-sellers were anxious that they would lose out if the purchaser were to abandon the transaction owing to the higher price. Mr. Ardeshir submitted, on instructions, that his clients would be happy to receive the balance sum of the value of Rs. 5.25 crores (after deducting from it, the amount of Rs. 3.23 crores already paid out). He would argue that the consideration of Rs. 5.25 crores is proximate to the Ready Reckoner value prevalent in 2012.

25. Mr. Kedar B. Dighe, the Learned Additional Government Pleader arguing on behalf of the State i.e. Respondents No. 1 to 5, argued that the Shahs had not come to court with clean hands. On the ground of suppression of material facts alone and filing pleadings that the Shahs knew to be false, the Writ Petition deserves to be dismissed, was the submission. Not only had the 2021 Rejection Decision been suppressed in the Writ Petition, but also the Affidavit in Rejoinder brazenly denied

knowledge of the rejection, necessitating the Collector's Additional Affidavit. It is due to the rejection that the Shahs gave a written assurance that they would pay such price as may be stipulated by the State and that they would comply with all the attendant terms and conditions. The Learned AGP took us through the two assurances contained in the Shahs' affidavit dated 19th February, 2022 and their written statement dated 22nd April, 2022. The Learned AGP would argue that far from being entitled to claim equities, the conduct of the Shahs is not equitable.

26. Mr. Dighe would also argue that the indicative value of land contained in the Ready Reckoner is a scientific, reasonable and fair indication of land value. The price discovery in the Ready Reckoner takes into account registered transactions in comparable parcels of land, varying the same even by sub-locality. As such, he would argue that the Ready Reckoner is a reasonable indicator of land value, which the State is empowered to impose under Section 36A(2) of the MLRC as a reasonable condition. Therefore, he would argue, the impugned price condition is not arbitrary.

Analysis and Findings:

27. Before dealing with the application of the law to the facts of the case, it is worthwhile to note that Section 36A was introduced with effect from 6th July, 1974 as a special and detailed self-contained scheme to protect tribal occupancy of land. This provision took over the field from Section 36(2) of the MLRC, which until then, simply provided that land occupied by Scheduled Tribes could not be transferred except with the prior permission of the Collector. Section 36(2) was an exception to the general rule in Section 36(1), which provided that all land occupancy shall, subject to certain conditions, be deemed to be heritable and transferable. From a general blanket provision requiring prior permission (Section 36(2) of the MLRC), the framework changed to a comprehensive framework to deal with the subject of transfer of tribal land under Section 36A.

28. It must be remembered that the stringent provisions of Section 36A of the MLRC protect tribals from being relieved of their land except with the sanction of the State. Not only other laws in force, even court decrees that would lead to a transfer of tribal land, are not spared from the operation of this provision. Where sanction is given for a lease or mortgage, again, regardless of court decrees, the land has to revert to the tribal. Such provisions may make tribal land non-bankable and inhibit

transactions in tribal land, but that is the evident design of the provision – to discourage and inhibit free transfer of tribal land (meant for cultivation by tribals) to non-tribals.

29. Since the previous sanction of the State is mandated, and the sanction may prescribe the conditions on which it is accorded, a writ court must examine whether the conditions imposed are reasonable, proportionate and thereby not arbitrary. If such conditions were arbitrary and violative of Article 14 of the Constitution of India, indeed such conditions would lend themselves to be struck down.

30. With this approach in mind, we have given our anxious consideration to the competing contentions of the parties.

Jurisdiction over minimum price:

31. We have already extracted above and analysed the ingredients of Section 36A of the MLRC. When one has regard to scheme of Section 36A of the MLRC, and the legislative objective of protecting the tribal from unfair bargains among unequals, the objective and effect of the price condition imposed in May 2023 Order and June 2023 Order becomes clear. For a land transfer to be reasonable, the terms of the land transfer

ought to be proportionate and backed by empirical basis. In fact, it is commonsensical and logical as a matter of first principles of commerce and economics, that the best measure of objectively protecting a tribal from being unfairly relieved of his land, would be the price being paid for the land.

32. Section 36A(2) clearly provides for the previous sanction of the Collector being given in such circumstances and subject to such conditions as may be prescribed. The conventional definition of the term “prescribed” which is typically a prescription by rules made under the statute, is not contained in the MLRC. Therefore, the term has to have its ordinary English meaning. The prescription of conditions contemplated under Section 36A(2) is therefore meant to be a prescription by the Collector (and the State). Indeed, such conditions, when imposed, have to be reasonable and proportionate. However, by no stretch can it be argued that the power to impose a condition of a price stipulation is outside the very scope of Section 36A of the MLRC. The only part of Section 36A in which the previous sanction of the State Government is done away with (third proviso to Section 36A(1) of the MLRC), is the transfer of tribal land by mutual consent for implementation of “vital government projects”. In such cases, the necessary condition for exemption from the

previous sanction, is that the compensation (i.e. price) paid for the land should be arrived at in a fair and transparent manner.

33. Likewise, Section 36A(6), which deals with restoration of land to the original transferor-tribal interested in cultivating the land himself, has reference to a purchase price being payable by such tribal. In fact, the subordinate legislation made for purposes of administering Section 36A of the MLRC has references to the element of price for such land restoration. Rule 7 of the *Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non-Tribals) Rules, 1975* (“**MLRC Rules**”) provides that where a tribal elects to personally cultivate the land being restored, the purchase price he would need to pay shall be an amount equal to 48 times the assessment value of the land. It stands to reason that if a tribal has to pay a minimum purchase price at the stage of restoration of the land to him after the non-tribal is divested of the land under sub-section (6), then it would only be logical that the Collector and the State may impose a minimum price condition under sub-section (2) of the very same Section 36A at the stage of the tribal’s land being transferred to a non-tribal in the first instance.

34. Therefore, the concept of price is not at all alien to Section 36A or to the MLRC Rules. If price regulation were to be alien to the scheme and

scope of Section 36A of the MLRC, one would have to wish away the third proviso to Section 36A(1) and Section 36A(6) of the MLRC, and indeed, Rule 7 of the MLRC Rules.

35. Therefore, we have no hesitation in rejecting the first contention, namely, that prescription of a minimum price condition when approving a transfer of land from a tribal to a non-tribal is outside the scope of Section 36A of the MLRC.

Which Ready Reckoner is relevant and effect of Tadavi Yasin:

36. The next contention is an alternate argument – if it is permissible to regulate price, the Ready Reckoner value prevailing in 2012 should be applied, and not the Ready Reckoner value prevailing in 2023, when the approval was granted. A first blush, this proposition did appear attractive and also seemed to be well covered by case law. However, on reflection, it became clear that in the facts of the case, the indicative value of the Ready Reckoner of 2012 has no relevance.

37. To begin with, for the date of application to hold relevance, the non-tribal purchaser ought to have had some vested right to purchase the land at the time of the application. In the facts of this case, to begin with, the 2012 Application was not made by the Shahs although Section 36A(1)

stipulates that it is the non-tribal who has to apply for the sanction. As stated above, the statute requires the non-tribal to apply so that it brings with it the commitment and affirmation from the non-tribal to buy the land and brings privity between such applicant and the State. In the instant case, from the material brought on record by the Shahs, it is apparent that for 2012 to have any relevance, it ought to have been an application by the Shahs that is compliant and complete. In fact, the 2012 Application is not even by or on behalf of the Shahs. It is not even countersigned by the Shahs. There was no commitment to pay any price from the Shahs in 2012 (that commitment would come later in 2022), and therefore, the Shahs could not claim to have any accrued or vested right in 2012.

38. The stringent protection in Section 36A of the MLRC to the tribal's right to the land would show that the sanction by the State is a condition precedent for any transfer of the land. Even a court decree or a tribunal's award cannot be enforced to effect a transfer of tribal land to a non-tribal, without the sanction of the State. Without a compliant application from the purchaser, there would also be no accrued right to the purchaser in the proposed transfer. If no right had accrued to the benefit of the proposed transferee at the time of the application, there is no right that is

eroded by the delay complained against.

39. This has been well summarised in a judgement of a Division Bench of this Court in the case of *Maganlal Kalubhai Patel vs. State of Maharashtra & Ors.*² (***Maganlal Kalubhai***) where it was held that the date of the application has to be the date on which the application, supported by all necessary documents, is filed. ***Maganlal Kalubhai*** was not cited before us, but is referred to by the other Division Bench that rendered judgement in ***Tadavi Yasin***, which was cited and is annexed to the Writ Petition.

40. The 2012 Application is not even signed by all the Paneras, to whom payment for the purchase of land is now directed to be paid under the May 2023 Order and the June 2023 Order. There were eight applicants (four by signature and four by thumb impression) in the 2012 Application. In our opinion, no right accrued to the Shahs in 2012 even in terms of the position articulated in ***Maganlal Kalubhai***, since there was no valid and complete application made then by the Shahs.

41. The matter does not stop here. More importantly, the proposed transaction came to be rejected on 16th September, 2021 by way of the

² 2020 SCC OnLine Bom 3872

2021 Rejection Decision. Therefore, after that date, there is no question of the 2012 Application being relevant. Therefore, the delay, inordinate as it may seem, is of no benefit to the Shahs' prospects in these proceedings. It does not provide any scope for adjusting equities in the context of the scheme and scope of Section 36A of the MLRC and the embedded protections contained in it. It is trite law that when there is a conflict between law and equity, it is the law that has to prevail. Equity can only supplement the law where there is a gap in it, but equity cannot supplant the law³.

42. The so-called 2012 Application does not inspire any confidence that any rights accrued to or vested in the Shahs in 2012, also because, it took the Shahs seven years to file Writ Petition 5552 of 2019, seeking judicial intervention. It was after that petition was disposed of that Respondent No. 7 raised objections and made complaints, and the 2021 Rejection Decision came to be rendered.

43. Thereafter, it was in 2022 that the Shahs for the first time firmly assured the State that they would pay the market price as directed by the

³ *B. Premanand & Others vs. Mohan Koikal & Others – 2011 (4) SCC 266. Following this judgement, more recently, the Hon'ble Supreme Court ruled in Kamala Neti (Dead) Through Legal Representatives vs. Special Land Acquisition Officer – (2023) 3 SCC 528 that a tribal woman would not be entitled to protections under the Hindu Succession Act, 1954 since Section 2(2) of that legislation explicitly ruled out its applicability to Scheduled Tribes.*

State, and that they would abide by all the terms and conditions that may be stipulated by the State. Thereafter, the State sanctioned the transfer by the May 2023 Order and the June 2023 Order, of which only the price condition is being impugned in this Writ Petition.

44. To our mind, the fact pattern also does not inspire confidence in the thesis that the Shahs have suffered. On the contrary, the facts show that the Shahs had an abiding interest in acquiring the Subject Tribal Land and persisted with it for years. Both Mr. Jahagirdar and Mr. Ardeshir have confirmed that the Subject Tribal Land is contiguous to the land owned by the Shahs. The Shahs propose to develop the Subject Tribal Land for a residential housing project. The persistence of interest in the Subject Tribal Land would show that it is a coveted asset and presents a strong value proposition to the Shahs. Land aggregation ahead of implementing any project entails buying multiple parcels of land, thereby making the facts of being “land-locked” pale in relevance.

45. Besides, it is now well recognised in various judgements of this Court that the Ready Reckoner values are themselves only indicative and an outcome of the law of averages. It is well known that it would be rare

for the Ready Reckoner value to be at a premium to the market price⁴. The Ready Reckoner value is a minimum value that would be reasonable to adopt for purposes of fiscal measures such as computation of stamp duty and registration fees. The case at hand is not about the size of the fiscal measures such as stamp duty or transfer premium, which may derive value from the underlying transaction value. The case at hand is about the very consideration for the transfer of land, which necessitates sanction by the State.

46. Even for stamp duty computation on instruments that evidence vested rights, the Ready Reckoner is only an indicative value of the transaction. The actual duty payable may be adjudicated by applying factors that may warrant a deviation to Such duty would typically be “*ad valorem*” (based on the value). In the instant case, the State has indeed adjusted, and that too downwards, the Ready Reckoner value – as seen above, the Ready Reckoner value is over Rs. 11 crores while the price stipulated is about Rs. 10 crores.

47. Therefore, in our opinion, there is nothing unreasonable about imposing a minimum price condition linked to the Ready Reckoner value.

⁴ For instance, see *Super Max International Pvt. Ltd. & Anr. Vs. State of Maharashtra & Anr.* **2009(2) Mh.L.J. --**, Para. 14 and also see Judgment dated 25th August 2022 in Writ Petition (Nagpur Bench) No. 7703 of 2018 (Shri Chandrakant S/o. Lala Motilal Jaiswal & 4 Ors. 1. M/s. Devshakti Dal Mill & 3 Ors.) Para. 15

It is based on the commitment and assurance of the Shahs, that the transaction was processed by the State. Therefore, the Ready Reckoner value as of 2012 has no relevance to the transaction, and it is the current market value that holds relevance.

48. The view of the Division Bench of this court in ***Tadavi Yasin***, on which heavy reliance was placed, is clearly distinguishable. In fact, ***Tadavi Yasin*** relies on ***Maganlal Kalubhai***, which lays down the requirement that the application has to be complete in all respects. In fact, the following prescient observation in ***Maganlal Kalubhai*** is noteworthy:-

12. A word needs to be spoken.

13. The instant Writ Petition shows the innocence of a tribal. The impugned order confers a benefit to flow from a tribal to the Petitioner and the fact that the tribal supports the Petitioner itself establishes that the authorities and courts need to be careful while dealing with such matters.

[Emphasis Supplied]

49. We have been conscious about our need to be careful and have minutely examined the material brought on record. In the case at hand, three distinct differences that make ***Tadavi Yasin*** distinguishable, and one stark similarity that erodes the case of the Shahs, emerge.

50. *First*, the similarity – ***Tadavi Yasin***, actually upholds the power to

impose a price condition, which is under challenge in these proceedings. In ***Tadavi Yasin*** too reliance was placed on the Ready Reckoner. The only variation made by this Court in ***Tadavi Yasin*** is about the time at which the value under the Ready Reckoner was to be considered.

51. Next, the distinguishing features of this case – it is clearly established in the instant case, that on 16th September, 2021, the 2021 Rejection Decision was taken and the purported 2012 Application became irrelevant. The 2012 Application is not even an application by the non-tribal, an essential ingredient of Section 36A(1) of the MLRC. Worse, the document purporting to be the 2012 Application has signatures of persons other than the Paneras. ***Tadavi Yasin*** relied on ***Maganlal Kalubhai***, which makes it clear that there has to be a valid compliant and complete application for the timing of the application to be relevant to value determination.

52. All these facts have, in any case, been rendered moot. In February 2022, and in April 2022, the Shahs gave written assurances on oath that the transaction would be effected at such price that the State may determine. After due consideration of these assurances, in March 2023, the May 2023 Order and June 2023 Order came to be passed, stipulating

that the price should not be lower than the then prevailing market value. We find no reason to hold the price condition imposed by the State to be struck down as arbitrary.

53. Moreover, the 2021 Rejection Decision was not even challenged by the Shahs. The assertion that they were totally unaware of the 2021 Rejection Decision rings hollow in view of the events seen from the material on record – in particular, the assurances held out by the Shahs in 2022 to the State that they would abide by such terms and conditions as the State may fix and pay the price that the State determines with regard to market value. Such assurances were contemporaneous with the withdrawal of complaint by Respondent No.7.

54. A feeble attempt was made by Mr. Jahagirdar to suggest that the May 2023 Order and the June 2023 Order do not assert that the file was reopened on account of such assurances. However, what is more stark is that neither of the two written assurances given by the Shahs contain even a nodding reference to any application having been made by them. The commitments they made to pay the market value did not even caveat that any price reference must be linked to 2012.

55. Conscious that the transaction still presented a strong value

proposition, the Shahs wrote to the Revenue Minister of the State and assured that the cause for complaint by Respondent No. 7 has been addressed. They also provided written assurances that they would pay such market price as determined by the State, abide by terms and conditions stipulated by the State, and ensure that no economic loss is caused to the selling tribals.

56. Whether the State could have re-opened and reviewed a rejected and closed file is itself questionable. However, taking the totality of circumstances into account, and particularly considering the intervening firm assurances provided by the Shahs, the State reviewed the file afresh based on the new circumstances that came about. Upon review of the new assurances, the State has accorded the sanction, imposing a reasonable price condition of taking the Ready Reckoner value as the minimum price.

57. In ***Tadavi Yasin***, the facts do not suggest that any rejection on merits had taken place. Likewise, no new application or new assurance to re-open a rejected proposal is evident. Once the 2021 Rejection Decision is factored in, the argument that the 2012 rates ought to apply, stands completely undermined. Therefore, in our opinion, since the facts of the case at hand stand on a totally different footing, ***Tadavi Yasin*** is of no

assistance to the Shahs in seeking interference with the May 2023 Order, or the June 2023 Order.

58. Now that the fresh assurances and that too directly from the non-tribal purchaser have been factored in, and a price condition is linked to the Ready Reckoner rate, which we have found to be reasonable, the Shahs cannot seek to renege on the assurances solemnly given, and challenge the reasonable price condition imposed, by seeking incorporation of out-dated land values prevailing in 2012.

59. It is also evident that the pleadings in the Writ Petition and the Affidavit in Rejoinder have not been candid. The State has taken pains to show that full and fair representation of facts has been missing. Even when the State filed the Affidavit in Reply pointing out the rejection, the Shahs asserted in the Affidavit in Rejoinder, that they were unaware of the rejection, terming it an *ex parte* decision. If it had been an *ex parte* decision, the Shahs would not have pleaded and assured full compliance with market price stipulations to push for a reconsideration by the State.

60. Finally, we may note with deep respect, that ***Tadavi Yasin*** relies on a number of judgements that dealt with computation of *nazrana* or

premium payable on consideration for land transactions. In such situation, parties had accrued rights. Those judgements do not relate to the fixation of value consideration for a land transfer under Section 36A. However, since on facts, ***Tadavi Yasin*** is clearly distinguishable and is of no assistance to the Shahs, and also because ***Maganlal Kalubhai*** has also been relied on in ***Tadavi Yasin*** and the ratio in that decision (that there has to be a complete and compliant application by the non-tribal for the timing of the application to matter) is not even attracted by the facts in this Writ Petition, this judgement does not require our attention any further.

61. In our opinion, considering the purpose and objective of Section 36A of the MLRC, in every case under consideration, the State must deal with all relevant factors, and refrain from dealing with irrelevant factors, and in the process, deal with contentions and submissions made by the non-tribal applicants and the tribal stakeholders. We see no reason to effect any intervention in exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India.

Conclusions and Directions:

62. In these circumstances, we have no hesitation in ruling that the Writ Petition deserves to be dismissed. The May 2023 Order and June 2023 Order are upheld as being reasonable and proportionate, and commensurate with the legislative intent and object of Section 36A of the MLRC. In the result, we pass the following directions:

- A. This Petition is dismissed. The Rule is accordingly discharged. However, there shall be no order as to costs;
- B. The May 2023 Order and June 2023 Order including the price condition contained therein, are upheld;
- C. In all future cases, the State must make every endeavour to deal with applications as expeditiously as the circumstances of the case permit;
- D. When dealing with protection of stakeholders who are legislatively regarded as being weaker in bargaining strength and consequently, worse-equipped to have symmetrical access to market information and professional advice, the concerned Collectors must also be careful not to be hasty in disposing of applications under Section 36A of the MLRC;

- E. Collectors must ascertain if all stakeholders concerned have been identified and their concerns have been addressed when according sanction under Section 36A of the MLRC;
- F. Finally, when according sanction, Collectors must stipulate a reasonable time-frame within which the transaction must be completed in compliance with the sanctioned transfer. The first proviso to Section 36A(1) of the MLRC contains a statutory pre-emptive right for tribals in the radius of five kilometres to acquire the land instead of the non-tribal. For such right to have a meaningful run, there ought to be a reasonable time-frame for getting satisfied that no other qualified tribal desires to acquire the occupancy. So also, there ought to be a reasonable and finite time-frame within which the non-tribal must complete the sanctioned acquisition, failing which the pre-emptive right of the other tribals in the vicinity must revive again; and
- G. If the Shahs do not complete the transaction as sanctioned by the May 2023 Order and the June 2023 Order, within a period of three months from today, the sanction shall lapse.

H. This judgement must be forwarded to the Principal Secretary, Revenue and Forest Department, Government of Maharashtra for necessary action.

63. This judgment will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

[SOMASEKHAR SUNDARESAN, J.]

[B.P. COLABAWALLA, J.]