



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

Writ Petition (WP) No. 389 of 2022

Vilas S/o Shriram Dange

Versus

Sau. Guakarnabai W/o Ramdas Solanke and another

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

Court's or Judge's Order

Shri M.S.Sharma, Advocate for the petitioners.

Shri H.V.Thakur, Advocate for the respondent no.1.

Ms. M.A.Barabde, AGP for the respondent/State.

CORAM : ANIL S. KILOR, J.

DATED : 10th APRIL, 2024.

Heard.

2. The order passed by the Additional Commissioner, Amravati dated 9th September, 2021 confirming the order passed by the Tehsildar, Khamgaon vide order dated 25th May, 2016 under Section 36 of the Maharashtra Land Revenue Code, 1966 (in short hereinafter referred as 'MLR Code, 1966') and thereby directing to the petitioner to restore the land back to the respondent no.1, is the subject matter of challenge in this writ petition.

3. It is the case of the petitioner that on 6th November, 1998, he purchased the land from the respondent no.1 and after 16 years of purchase of said land, the respondent no.1 moved an application under

Section 36 of MLR Code, 1966 for restoration of the land on the ground that he belongs to Pardhi Schedule Tribe.

4. The Tehsildar vide order dated 25th May, 2016 allowed the application and directed the petitioner to restore the land back to the respondent no.1. The said order of the Tehsildar was confirmed by the Additional Commissioner vide order dated 9th September, 2021. Hence, this petition.

5. On perusal of the record, it is evident that the Naib Tehsildar granted hearing in the matter to the parties and prepared a report and forwarded it to the Tehsildar for approval. Thereupon, the Tehsildar passed the impugned order dated 25th May, 2016 in favour of the respondent no.1 and against the petitioner.

6. Admittedly, the Tehsildar while passing the impugned order did not grant opportunity to the parties namely petitioner and respondent no.1, of being heard but the hearing was conducted by the Naib Tehsildar.

7. In the circumstances, since it is evident on record that no hearing was granted by the Tehsildar before passing the impugned order dated 25th May, 2016 the said order vitiates and consequently order passed by the Additional Commissioner dated 9th September, 2021 also vitiates. Therefore, I am of the opinion that the

only option left to this Court is to remand the matter back to the Tehsildar for compliance of principle of natural justice. In that view of the matter, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The order dated 25th May, 2016 passed by the respondent no.3, Tehsildar, Khamgaon and 9th September, 2021 passed by the respondent no.2 Additional Commissioner, Amravati are hereby quashed and set aside and the matter is remanded back to the Tehsildar, Khamgaon to decide the same after hearing both the parties;
- iii. The parties are directed to appear before the Tehsildar, Khamgaon on **25th April, 2024** at 11 a.m. and thereupon, the Tehsildar, Khamgaon shall decide the matter afresh within two months from the date of appearance of the parties.
- iv. All the points are kept open.

[ANIL S. KILOR, J.]