IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3416 OF 2016

Musakhan Gafurkhan Pathan,
Age- 65 Years, Occu. Agril.,
Chief Promotoer of Aman
Sahakari Gruha Nirman Society,
Nandurbar,
R/o. Abdul Gazi Nagar, Nandurbar,
Taluka and District Nandurbar. ...PETITIONER

VERSUS

1] The State of Maharashtra,
Through the Secretary,
Revenue Department, Mantralaya,
Mumbai.

2] The Hon'ble Minister for Revenue,
Revenue Department, Mantralaya,
Mumbai.

3] The Collector,
Nandrubar, District Nandurbar

4] The Tahsildar,
Nandurbar, Taluka and Dist. Nandurbar.

5] Devidas Khandu Bhil,
Age- 55 years, Occu. Business,
R/o. Patonda, Taluka and District Nandurbar.

6] Krishna Khandu Bhil
Age 52 years, Occu. Agril,
R/o. Patonda, Taluka and District Nandurbar.

7] Lalchand Devchand Bhil,
Age 60 years, Occu. Agril,
R/o. Patonda, Taluka & Dist. Nandurbar. ...RESPONDENTS
[Nos. 5 to 7 Orig. Appellant]

Mr. Amol S. Sawant, Advocate for the Petitioner
Mr. Sharad V. Natu a/w. Mr. Govind Ingole h/f. Mr. Rahul S. Kuwar, Advocate for respondents No. 5 to 7
Mrs. Vaishali Patil Jadhav, AGP for State

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CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 18th FEBRUARY, 2025
PRONOUNCED ON: 11th MARCH, 2025

ORDER :

1. Petitioner is challenging the order passed by Minister for Revenue, Mantralaya, Mumbai in the Appeal No. 31A16/2327/Pra.Kra.49/J-6. The ground of challenge is that respondents No. 5 to 7 had obtained NA permission and pursuant to NA permission as well as sanctioned layout, the land from the layout was sold to the petitioner and others was non agricultural land, therefore, Section 36 and 36A of the Maharashtra Land Revenue Code, 1966 (for short 'MLR Code') are not applicable to the non agricultural lands.

2. On the background of the question which is raised by the petitioner, the details of the transactions and various permission which have been issued in favour of respondents No. 5 to 7 needs to be considered.

One Devidas Khandu Bhil and others were owners of property bearing Survey No. 207, admeasuring 4 Hectors 39 R situated at village Nandurbar, Taluka and District Nandurbar submitted an application on 18.02.1992, seeking permission to convert their land and used it for non agricultural purpose. The permission was granted by the Additional Collector, Dhule, on 18.02.1992. While granting permission, there was rider in the communication that while selling the land to the non tribal person, permission under Section 36A of the MLR Code will have to be secured. Pursuant to the permission granted by Additional Collector, an application was submitted to the Collector, Dhule for grant of NA permission. The Collector, Dhule has granted NA permission vide order dated 29.10.1993, but it did not contain any stipulation or a condition regarding prior permission to be obtained under Section 36A of the MLR Code. Upon obtaining NA permission, respondents have executed sale deeds of 33 plots in favour of petitioner on 30.11.1994. Upon execution of sale deeds, name of petitioner was also mutated in 7/12 extract. When the petitioner was about to start construction on said plots for dwelling house, respondent No. 5 submitted an application to the Collector, Dhule raising objection that since he is a tribal owner of the land, prior permission of the Collector which is necessary under Section 36-A of the MLR Code was not obtained before execution of sale deed. Therefore, he has claimed restoration of lands. On such application, by respondent No. 5, Collector, Dhule passed an order on 02.11.1996, thereby cancelling NA permission of the respondents and directed the Tahsildar that there shall be no further transaction of sale of suit property and it was also directed that suit property shall stand vested in the Government. At the same time, it was ordered that order passed by Additional Collector, Dhule dated 29.10.1993 granting NA permission stands cancelled in view of directions issued by Government in the letter dated 18.10.1996. It is contended by the petitioner that, before passig of the order by the Collector on 02.11.1996 no opportunity of hearing is extended by the Collector to the petitioner, though petitioner has purchased various plots by way of registered sale deeds. The petitioner was not aware about the order dated 02.11.1996 passed by Collector, Dhule, since he was not added as a party to the proceedings before Collector, Dhule.

3. Though, the petitioner was not aware of such order one other owner of plot from the very layout namely Vijay Punjabi objected the order passed by Collector, Dhule before Maharashtra Revenue Tribunal, and the Tribunal after hearing the objector has passed order on 26.02.2013 thereby order passed

by Collector has been quashed and set aside. The Tribunal remitted the case back to the Collector directing to conduct *de novo* inquiry in respect of violation of Section 36A of the MLR Code. It is contended by the petitioner that even though the matter was remanded back to the Collector, Nandurbar for conducting *de novo* inquiry, no notice was issued to the petitioner, though he was purchaser of part of the suit property. A notice in prescribed form was issued only to Shri. Vijay Punjabi, who was the objector before the Tribunal. After hearing the parties, Additional Collector has passed order on 02.11.2015, thereby confirming the order dated 02.11.1996 passed by Additional Collector, Nandurbar wherein directions were issued for vesting of the property in the Government and order of cancellation of NA permission.

4. Learned advocate Shri. Amol Sawant, appearing for the petitioner submits that all along he was kept in dark about the proceedings in respect of suit land by the authorities. In the meanwhile, he learnt that respondents No. 5 to 7 had preferred an appeal before the Minster for Revenue seeking direction to transfer the occupancy right of the suit property in their favour by accepting purchase price. On getting knowledge about the

appeal preferred before Minister for Revenue, petitioner also filed appeal before Minister for Revenue with a prayer to quash the judgment and order passed by Additional Collector on 02.11.2015. The Minister for Revenue has decided the appeal filed by petitioner as well as respondents No. 5 to 7 by a common order dated 10.03.2016. The order passed by Minister for Revenue dated 10.03.2016 is impugned in the present petition.

5. In the common order passed in both the Appeals, the Minister for Revenue has observed that order of vesting of the land in Government amounts to infringing right of tribal persons and prayer made by petitioner has been rejected on the ground that orders passed in respect of transfer being contrary to Section 36A of the MLR Code are perfectly in consonance with the provisions of MLR Code. Referring to Sub Section 6 and 7 of Section 36A of MLR Code, Minister for Revenue has observed that, it was necessary to give opportunity of hearing to respondents No. 5 to 7 who are tribal, before passing an order of vesting of land in the Government. Since, respondents No. 5 to 7 have filed application requesting to grant permission to purchase the said land, it would be appropriate to grant such permission in

view of Sub Section 7 of Section 36A of MLR Code. As a result, appeal of respondents No. 5 to 7 has been allowed and permission to purchase the land in Survey No. 207 to the extent of 4.41 Hectare. It was further directed to take steps in accordance with Rule 7 of the Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non-Tribals) Rules, 1975 (for short 'Rules of 1975').

6. It is the contention of the petitioner that when the application for permission was made by respondent No. 5 to 7, the District Collector, Dhule had granted permission under Section 36(2) of the MLR Code to make an application to the competent authority seeking NA permission under Section 44 of the MLR Code and a condition was also incorporated in the communication dated 18.02.1996 that when NA permission is granted, prior permission under Section 36(2) of MLR Code will be obtained before transferring non agricultural land in favour of non tribal. Though such condition was contained in the communication issued by District Collector, Dhule, while granting permission on 29.10.1993, no such condition containing any restrictions on transfer to non tribal without seeking prior permission under Section 36(2) of MLR Code has been

incorporated in the NA permission dated 29.10.1993. It is his contention that even in the accompanying *Sanad* there was no condition whereby transfer by tribal to non tribal has been restricted.

7. It is the contention of learned advocate for the petitioner that after the land was converted from agricultural to non agricultural use the applicability of Section 36 and 36A of MLR Code has ceased to have any effect on the transfer of land by tribal person. According to him, the restriction for transfer by tribal to non tribal is limited to the extent of agricultural lands only. The restrictions are not applicable to the non agricultural lands. The land in question was already a non agricultural land and even layout has been sanctioned at the instance of respondents No. 5 to 7 who are tribals. Only after conversion of land to non agricultural use, there is transfer by respondents No. 5 to 7 by way of registered sale deed in favour of the petitioner. Therefore, the restriction as provided under Section 36 and 36A is not applicable to the petitioner.

8. Learned advocate for the petitioner further raises an objection that Collector after receiving complaint from respondents No. 5 to 7, has unilaterally without giving any

opportunity of being heard, and to resist the proposed action by the Collector, has passed an ex-parte order which has caused great prejudice to the petitioner. Even after the order dated 02.11.1996 was passed it was not communicated to the petitioner. Therefore, they could not file appeal or any appropriate proceeding challenging the order. Though, there was an order of remand passed by the Tribunal to conduct *de novo* inquiry in the allegations of breach of Section 36A of MLR Code and Rule 5 of Rules of 1975, while conducting inquiry afresh, Collector, Nandurbar has not issued any notice to the petitioner. When the order was passed by the Additional Collector, Nandurbar on 02.11.2015, refusing to entertain the application filed by Vijay Punjabi, Additional Collector has directed that there is contravention of condition under Section 36A(1) of MLR Code, land in Survey No. 207 to the extent of 4.39 R shall vest with the Government and the order passed by Collector, Dhule on 02.11.1996 was confirmed. The proceedings before the Maharashtra Revenue Tribunal as well as Additional Collector, Nandurbar have been conducted without issuing notice to the petitioner, though he was affected by the orders passed by them.

9. According to learned advocate for the petitioner,

unless there is any contravention of NA permission, there cannot be any unilateral action by Collector to withdraw or cancel NA permission. In the present case, neither in the order granting NA permission nor in the *Sanad* there was any condition, which is claimed to be violated or contravened by the petitioner. He further points out that in the order granting NA permission, respondents No. 5 to 7 have been permitted to sale or transfer land at their own rist.

10. Relying on Sub Section 5 of Section 36A, it is the contention of petitioner that, upon reading Sub Section 5 of Section 36A, only conclusion which can be drawn is that nature of land which is contemplated in the said transfer is agricultural land. Sub Section 5 has given powers to the Collector to decide whether any occupancy is in contravention of Sub Section 1 and if the transfer is declared to be invalid, occupancy together with the standing crops thereon, if any, are to be vested in the State Government free of all encumbrances. Upon careful reading of of Sub Section 5 it will have to be assumed that 'occupancy' which is mentioned in Sub Section 5 is 'agricultural land', since it further provides that, the land shall vest with the Government together with 'standing crops'; Stand Crops can be only be in

context to ‘agricultural fields’ and it cannot be made applicable to lands with NA permission.

11. Similarly, referring to Sub Section 6 of Section 36A, learned advocate for the petitioner submits that notice is required to be given to the tribal person calling upon him if he is interested in repurchasing the said land, if the tribal-transferor agrees to purchase the occupancy, in that case undertaking is required to be given by tribal-transferor that he will cultivate the land personally. Even this condition which is incorporated in Sub Section 6 can be made applicable only if the nature of land is agricultural land. The pre requisites for restoring the land to a tribal on his willingness to purchase occupancy is subject to undertaking to ‘cultivate’ the land personally. ‘Cultivation’ of land obviously carries meaning that it is an agricultural land.

12. Learned advocate for the petitioner further objects the order of vesting of land in the Government on the ground that before passing of any such order directing vesting of land with the Government, an inquiry under MLR Code and Rules of 1975 should be undertaken, under which notice is required to be issued to the interested persons. Neither inquiry is initiated nor notice is issued to the petitioner, therefore, order passed by

Collector suffers from irregularities and it needs to be quashed and set aside.

13. In support of contention that restrictions as provided under Section 36A of the MLR Code are not applicable to the lands which have already been granted NA permission, learned advocate for the petitioner places reliance on the judgment of Hon'ble Supreme Court in the case of ***Lingappa Pochanna Appelwar vs. State of Maharashtra And Another***, (1985) 1 SCC 479, wherein validity of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 was under challenge. Reliance is placed on the observations in para 26 of this judgment, which reads thus;

> *"26.The impugned Act in its true nature and character is a law relating to transfers and alienations of agricultural lands by members of Scheduled Tribes in the State to persons not belonging to Scheduled Tribes. Such a law does not fall within Entries 6 and 7 in List III but is within Entry 18 in List II. We may here set out Entries 6 and 7 in List III:*
>
> > *"6. Transfer of property other than agricultural land; registration of deeds and documents "*
> >
> > *"7. Contracts, including partnership, agency, con tracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural lands."*
>
> *The words 'other than agricultural land' in Entry 6 and the words 'but not including contracts relating to*

agricultural land' in Entry 7 in List III have the effect of delimiting the legislative power of the Union to make a law with respect to transfers and alienations of agricultural lands or with respect to contracts in relation thereto. The power to legislate cannot be denied to the State on the ground that the provisions of Section 3(1) and 4 of the Act incidentally trench upon the existing law, namely, the Transfer of Property Act, 1882 and the Contract Act, 1872 or a law made by Parliament namely the Specific Relief Act, 1963. The power of the State Legislature to make a law with respect to transfer and alienation of agricultural land under Entry 18 in List II carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations. Such a law was clearly within the legislative competence of the State Legislature being relatable to Entry 18 in List II of the Seventh Schedule."

14. It is submitted that above observations make it clear that the power of State legislature is limited to make law in respect of transfer and alienation of agricultural land under Entry 18 in List II and Entry No. 7 in List III for the effect of delimiting the legislative power of the Union to make a law with respect to transfers and alienation of agricultural lands or with respect to contracts in relation thereto. Therefore, according to learned advocate for the petitioner, State legislature would not have made law for annulment of transfer of such lands by tribals under Entry 18 in List II as the lands having been diverted to agricultural purpose ceased to be agricultural lands. If the State

Legislature made such law it would be effective only when assent of the President is received. Therefore, according to the petitioner it is not within competence of State Legislature to make enactment in respect of non agricultural land.

15. The decision referred supra has been further referred in Writ Petition No. 3806/2017 and 6863/2017 (Ambadas Bapumya Kumre vs. Maliram Sondaram Sharma & Others), decided on 29.09.2022. Relying on the observations made in the case of Lingappa Appelwar (supra), this Court has held that;

> *"Intention of the legislature that restoration of land to be resorted back to the tribal transferor relates only to such lands which are capable of being used for agricultural purposes. It makes it clear that if such lands have already been converted into and used for non-agricultural purposes, the question of restoring non-agricultural land to tribal transferor would not arise."*

16. While deciding the writ petition, learned Judge of this Court has also relied on the order passed by this Court in Writ Petition No. 3793/2001 (Vithal G. Ukey vs. State of Maharashtra and Others) decided on 23.09.2011. In the order it is held that;

> *"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." It is observed that, 'restoration of lands' was referable only to the agricultural land and not to non-agricultural or quarry land."*

17. These two decisions are further referred in the Writ Petition No. 9134/2023 and 9135/2023 (Ravindra Bharku Malche Vs. State of Maharashtra & others). This Court has held that, in view of decision in Ambadas Bapunua Kumre (supra) and Maliram Sharma (supra), Section 36 and 36A of the MLR Code has no operation when lands are not agricultural lands.

18. Learned advocate for the petitioner further relies on Writ Petition No. 3379/2024 (Jayvant Laxman Bagad & Others vs. The Sub Divisional Officer, Sakri & Others), wherein judgment in Lingappa Appelwar (supra), Ambadas Bapunua Kumre (supra) and Vithal Ukey (supra) have been taken into consideration and views taken in the earlier decisions have been reiterated in the judgment by observing that, "*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.* It is therefore held that, *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."

19. By placing reliance on above judgments, learned advocate for the petitioner prays that in view of judicial pronouncements right from the Hon'ble Supreme Court, there can be no other view than what has been held in judicial pronouncements supra, that once NA permission is granted, agricultural land loses its character and therefore, restoration as provided under Section 36 and 36A cannot be made applicable to such lands. He therefore, submits that impugned orders deserve to be quashed and set aside.

20. Per contra, learned advocate Shri. S.V. Natu appearing for respondents No. 5 to 7 submits that order passed by Collector, Dhule, Maharashtra Revenue Tribunal as well as Minister (Revenue) is perfectly legal and valid and there is nothing wrong in the orders passed by the authorities. According to him, though NA permission was granted in their favour there was condition in the permission granted by the Additional Collector, Dhule on 18.02.1992 that if at all tribal proposes to sale the land to non tribal person, the permission under Section 36(2) of MLR Code is required to be taken. Condition No. 5

mentioned in the order dated 29.10.1993 issued by Collector, Dhule is continuation of the condition mentioned in the earlier order dated 18.02.1992. Condition No. 5 clearly stipulated that applicant can sale the plots, on the conditions mentioned in the NA permission. It is his contention that condition No. 5 clearly mentions that NA permission would be binding on the applicant. It is his further contention that respondents No. 5 to 7 are illiterate persons and they are not aware about procedural formalities about transfer of land and restrictions imposed on it. The petitioner has fraudulently obtained signatures of respondents No. 5 to 7 on the documents and has got sale deeds executed and now he is claiming that he is owner of the land by way of transfer and for a valuable consideration. After getting knowledge about the transfer of plots, which have been got executed from them by petitioner, respondents have filed complaint and on the complaint an inquiry was conducted. Sub Divisional Officer, Nandrubar has submitted a report on 01.11.1996. On receiving the report, Collector realized that condition No. 2 of the order dated 18.02.1992 has been violated by transferring the land from tribal to non tribal without permission of Government. Therefore, by relying on the Government letter dated 18.10.1996 and directions issued thereunder, Collector, Dhule in exercise of his powers under Section 36(2) of MLR Code, has come to a conclusion that there is breach of conditions of Section 36 and 36 A of the MLR Code. Therefore, land Survey No. 207 to the extent of 4 Hectare 39 R was directed to be vested in the Government and the order dated 18.02.1992 along with order dated 29.10.1993 were rightly declared to have been cancelled. Since the transfer of land was in clear violation of Section 36A of the MLR Code, as no previous permission was taken from the Government, the order passed by District Collector was well within his powers under Section 36(2) of the MLR Code. Though one Vijay Punjabi one of the purchaser from layout of respondents No. 5 to 7 had filed the revision before Maharashtra Revenue Tribunal, Aurangabad, the Tribunal has remanded the matter back to the Collector, who after calling upon the respective parties has passed the order confirming his earlier order. Therefore, order of the Collector declaring that suit land vested with the Government was not interfered with by the Additional Collector, Nandurbar in his order dated 02.11.2015. In his order, he has considered the arguments of respective parties and only after taking into consideration the various challenges raised to the order passed by Collector, the order is confirmed by Additional Collector vide order dated

02.11.2015 which is further confirmed by Minister (Revenue) Maharashtra State in Appeal No. 31A16/2327/Pra.Kra.49/J-6.

21. It is his contention that since the land is vested with the Government, he was deprived of his right of enjoying said land. Because of fraud played by petitioner the condition mentioned in NA order has been breached, resulting in causing prejudice to the respondents due to conduct of petitioner.

22. As a result, the Collector has passed an order of vesting the land in the Government. Respondents are deprived of their rightful claim without any fault on their part. The respondents were not aware about any of the transactions which the petitioner entered into by obtaining their signatures on blank papers. Therefore, they had sought modification of order passed by Collector with a prayer to restore their lands. However, order of Collector, Dhule was not interfered with by Additional Collector, Nandurbar and therefore, respondents have approached the Minister (Revenue) by filing appeal. Appeal of respondents was heard along with appeal filed by the petitioner herein. The Minister (Revenue) after hearing the respective parties and after taking into consideration the case law cited by respondents has allowed the appeal filed by respondents No. 5 to 7 and has granted permission to respondents to purchase land

which is vested in the Government and it is directed that procedure as contemplated under Rule 7 of Rules of 1975 and Additional Collector, Nandurbar was directed to pass appropriate orders for establishing ownership right of respondents vide order dated 10.03.2016.

23. Learned advocate Shri. Natu has vehemently opposed the contention of the petitioner that due to change in use of land from agricultural to non agricultural, the provisions of MLR Code more particularly Section 36A would not be applicable. The MLR Code is applicable to the agricultural lands as well as non agricultural lands. According to him, provisions for grant of non agricultural use itself is contained in Section 44 of the MLR Code. Therefore, there is no substance in the contention of the petitioner that MLR Code is restricted to regulation and use of agricultural lands only. The permission for use of land from one purpose to another itself is provided under Section 44 of MLR Code. Upon going through the language of Section 36 as well as 36A it is apparent that words used are transfer of occupancy of a tribal in favour of non tribal by way of sale, gift, mortgage, lease or otherwise, except on the application of non tribal person with previous sanction of the State Government.

24. Learned advocate for respondents No. 5 to 7 relies

on the Government circular issued by the Revenue and Forest Department dated 02.04.2012 and Government circular dated 26.03.2013. Learned advocate for respondents No. 5 to 7 submits that in the Government Circular dated 26.03.2013 it is specifically observed that, on the basis of general power of attorney the entries in the 7/12 extract or in the record of rights should not be taken in the name of developer or power of attorney holder unless prior permission under Section 36A of the MLR Code is obtained from the Government/Collector. These circulars were required to be issued by the Government taking into consideration the rampant use of power of attorney to snatch land from illiterate tribal people, without following procedure as provided under Section 36 and 36A.

25. Learned advocate Shri. Natu places reliance on the decision of this Court reported in ***Adivasee Sarvangin Vikas Samitee vs. State of Maharashtra & Ors***., 2014(7) Bom.C.R. 706. In this judgment while dealing in Public Interest Litigation No. 120/2010, decided on 12.06.2013 this Court has taken into consideration the grievance of the petitioner that despite of provisions of Section 36A of MLR Code providing for specific bar to transfer of land from tribal to non tribal without permission of appropriate authorities, builders and developers cheat tribals out

of their rights by executing a development agreement together with power of attorney. Plans are submitted to the Municipal Corporation or local body for sanction and permission is obtained without any verification of whether lands have been transferred to the developer in breach of mandatory provisions of law. The Revenue Officers record the names of the builder in the 7/12 extract. Flats are sold to third party purchasers and as a result of which citizens are induced to invest money in such schemes. Upon affidavit being filed by Government, this Court was requested to issue directions that Government to take necessary steps in those cases involving the transfer of tribal land to non-tribals where the construction is yet to commence or in cases where the construction has commenced, but has not been completed. Observations are made by this court that Section 36A imposes prohibition on the transfer of the occupancy of a tribal in favour of a non-tribal by way of sale, gift, exchange, mortgage, lease "or otherwise". The expression "or otherwise" is of a comprehensive nature and would include all arrangements by which the occupancy of a tribal is sought to be transferred in favour of a non-tribal. Irrespective of the nature of the device, whether it is in the form of a development agreement coupled with the power of attorney or otherwise. The provisions of

Section 36A are broad enough to reach out to the mischief. It is these observations the learned advocate for respondents No. 5 yo 7 is specifically relying on. According to him, irrespective of nature of device, the restriction imposed by Section 36A of the MLR Code are made applicable to the lands which are transferred in violation of conditions imposed upon such transfers. Therefore, there is no substance in the contention of the petitioner that such restrictions are not applicable to the NA land.

26. Learned advocate for respondents further relies on judgment of this Court in the case of ***Atul Projects India Ltd. Vs. Babu Dewoo Farle & Ors.***, 2011(5) ALL MR 625. In this judgment use of word “or otherwise” in Section 36A has been interpreted. This Court has observed that, the transfer of occupancy may be by way of a sale, gift, exchange, mortgage, lease "or otherwise". The legislature has designedly used broad language so as to incorporate all the five recognised modes by which property may be transferred under the Transfer of Property Act, 1882. The legislature has expanded the ambit of the modes in which property can be transferred by using the words "or otherwise". Therefore, whatever be the mode of transfer, if the consequence is to effect a transfer of the occupancy of a tribal to a non tribal,

the requirement of prior permission would be attracted.

27. Hence, according to learned advocate for respondents No. 5 to 7 it is not relevant whether land is agricultural or non agricultural, what is relevant is the order of transfer by which there is a transfer of land from tribal to non tribal. The emphasis is laid down by learned advocate Shri. Natu on the observations of this Court wherein it is held that, a comparison of Section 43 of the Tenancy Act with Section 36A of the MLRC would reveal the clear distinction in language made by the legislature. Section 43 of the Tenancy Act applies to a transfer of land purchased by a tenant or sold to any person. Section 36A which is a provision on the other hand which has been especially engrafted to deal with tribal holdings does not refer to the transfer of land but to the transfer of the occupancy of a tribal.

Considering the above observations, learned advocate Shri. Natu submits that legislature has never intended to restrict Section 36 and 36A only to agricultural lands. Therefore, he submits that in view of decision in Atul Projects India Ltd.(supra) and Adivasee Sarvangin Vikas Samitee (supra), there can be no dispute that Section 36 and 36A are equally applicable in respect of non agricultural lands also. Therefore, according to him, the order passed by Collector, Dhule as well as Minister (Revenue) does not deserve any interference and the writ petition may be dismissed.

28. Learned AGP for State submits that sale transaction in the present writ petition was in contravention of the condition in the NA permission. Therefore, Government directed Collector, Dhule to make an inquiry. During inquiry, it was found that there is contravention of Section 36(2) of MLR Code. Therefore, vide order dated 29.10.1993 the order was passed cancelling the NA permission and it was directed that land shall vests with the Government. Accordingly, Mutation Entry No. 11833 was taken in the 7/12 extract by entering name of Government on the said land. Since prior permission of the Government was not taken as contemplated under Section 36A of MLR Code, Collector, Dhule has rightly quashed and set aside the order dated 18.02.1992 and 29.10.1993 by order dated 02.11.2015. It is further submitted that though respondents have made a prayer in the appeal to consider their case as per Section 36A(6), the prayer was not considered by District Collector. However, Minister (Revenue) has taken into consideration the rights of tribal as provided under Section 36 and 36A and granted prayer of respondents and directed to fix the price under Rule 7 of Rules of

1975.

29. I have heard the respective advocates for the parties at length, from the arguments advanced by the parties two issues arise for the consideration of this Court;

(i) Whether opportunity of hearing was necessary to be granted to the petitioner before passing the impugned order? If yes, whether such opportunity is granted to the petitioner before passing the impugned order?

(ii) Whether Section 36A of MLR Code is applicable only to the agricultural lands?

30. So far as grant of opportunity of hearing is concerned, on perusal of order passed by Collector dated 02.11.1996, it does not disclose that any notice was issued to the petitioner before cancelling order dated 18.02.1992 and 29.10.1993. In the order passed by Collector it is recorded that though, Non Agricultural permission is granted it was for sale of plots in favour of Tribal only. In spite of that the land owner Devidas Bhil has transferred the land in favour of Chandrakant Hari Dusane, Musakha Abdul Gafarkha Pathan, Vijay Nathu Jadhav and they are not tribals. The plots have been sold to non tribals by agreement to sale for consideration of Rs. 3,50,000/-.

Referring to the report submitted by Sub Divisional Officer, Nandurbar dated 01.11.1996 it is held that tribal person had sold 139 plots, to four proposed housing societies. Upon receiving said report it was held that, transfer of land is in violation of Section 36 and 36A of the MLR Code, since it is transfer in favour of non tribals without obtaining prior permission of the Government. The impugned order dated 02.11.1996 passed by Collector is in exercise of his powers under Section 36A(4) of the MLR Code, which reads thus:

> *"36A. Restrictions on transfers of occupancies by Tribals*
> *(1)----*
> *(2)----*
> *(3)----*
> *(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 moto 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."*

31. The procedure prescribed under Sub Section 4 of Section 36A of MLR Code is provided in Rule 5 of Rules of 1975. The order passed by Collector itself contains names of persons in whose favour land has been transferred, in contravention of condition of obtaining prior sanction of the Government.

Considering that the Collector was aware about the details of persons to whom lands have been transferred, it was necessary in the interest of justice to issue notices, to such interested persons who have purchased the lands. Without issuing notice, order has been passed by Collector, Dhule cancelling NA permission, thereby causing prejudice to the petitioner and other persons who had purchased the said land. Even after remand by the Maharashtra Revenue Tribunal in the Revision filed by one of the persons who has purchase the land i.e. Mr. Vijay Punjabi, though directions were given to conduct fresh inquiry in the allegation of breach of Section 36A as required under Rule 5 of Rules of 1975, the Additional Collector, Nandurbar has not issued notice to petitioner and has issued notice only to the Revision Applicant before the Tribunal. Notice on 01.09.2015 issued in Form B under Rule 5(3) of Rules of 1975 has been placed on record which indicates that copies were issued only to Vijay Punjabi and tribal owner Devidas Bhil. After hearing them, application of Vijay Punjabi was rejected and it was directed that the land in question would vest in the Government, thereby confirming the order passed by Collector, Dhule on 02.11.1996.

32. During the proceedings before Additional Collector, Nandurbar, which were filed by both aggrieved parties i.e. Vijay

Punjabi as well as Devidas Bhil, order passed by Collector dated 02.11.1996 was confirmed by order dated 02.11.2015. Till such time, the present petitioner was not aware about the proceedings and orders cancelling NA permission and directions of vesting of land in the Government. Only after getting knowledge about orders, he, directly approached Minister (Revenue) challenging the orders passed in appeal before Additional Collector, raising a grievance that as per Rule 5 of Rules of 1975 it was necessary to issue notice to the transferee. However, no notice was issued to him either by Collector while passing the impugned order on 02.11.1996 or even while passing of the order dated 02.11.2015 after the remand by Maharashtra Revenue Tribunal. Though, Maharashtra Revenue Tribunal had directed to conduct fresh inquiry, the Collector has not issued any notice to other transferee. Notice was only issued to Revision Applicant who had approached the Tribunal.

33. Sub Rule 3 of Rule 5 provides that Collector shall cause notices in Form 'B' to be served on the transferor and on the transferee, calling upon them show cause why the transfer should not be declared invalid, and the notice shall specify the date for hearing of the application. On the date fixed for hearing or on any other date to which the hearing may be adjourned the

Collector may examine the parties, and after recording the statements of witness, if any and after making such enquiry as he may consider necessary, shall record a finding whether or not the transfer is made with the previous sanction of the Collector as required by sub-section (1) of Section 36A. Rule 5 of Rules of 1975 is reproduced herein below:

> **"5. Enquiry by Collector under sub-section (4) of Section 36A.**
>
> *(1)The Collector shall, suo-motu or on an application of any person interested in the occupancy transferred in contravention of sub-section (1) of section 36A, hold an inquiry in the manner provided in sub-rules (3) to (5).*
>
> *(2)The application referred to in sub-rule (1) shall contain the following particulars, namely-*
>
> *(i)Name of the applicant;*
>
> *(ii)Survey number, area and assessment of the land;*
>
> *(iii)The same of the village, taluka and district in which the land is situate;*
>
> *(iv)The name of the transferor and transferee;*
>
> *(v)The date of the transfer;*
>
> *(vi)Circumstances in which the transfer was made.*
>
> *(3)After receipt of the application or suo-motu on the basis of the record, if any, available with him, if the Collector thinks that there is reasonable ground for believing that the Collector's sanction was not taken for the transfer (which ground he shall record in writing), the Collector shall cause notices in Form 'B' to be served on the transferor (if he is not the applicant) and on the transferee, calling upon them to show cause why the transfer should not be declared invalid, and the notice shall specify the date for hearing the application.*
>
> *(4)On the date fixed for hearing or on any other date to*

which the hearing may be adjourned the Collector may examine the parties, and after recording the statements of witness, if any and after making such enquiry as he may consider necessary, shall record a finding whether or not the transfer is made with the previous sanction of the Collector as required by sub-section (1) of Section 36A. If the finding is that the transfer is made with the previous sanction of the Collector, the application, if any, shall be rejected. If the finding is that the transfer is made without the previous sanction of the Collector, the Collector shall declare the transfer to be invalid under sub-section (5) of Section 36A.

(5)The decision of the Collector shall be communicated to the parties concerned.

34. Though, Section 36A (4) of the MLR Code contemplates enquiry by Collector, Rule 5 of Rules of 1975 provides the manner in which enquiry is required to be conducted. In the present matter, the procedure as prescribed under 5 of Rules of 1975 has given a go by. Therefore, orders passed by the Collector as well as higher authorities in the hierarchy which are passed without granting opportunity of hearing to the petitioner require interference.

35. While passing the order, the Minister (Revenue) has recorded that Devidas Bhil was not granted any opportunity, therefore, injustice has been caused to the appellant. It is observed that, as provided under Rule 6 and 7 and Section 36A(6), Additional Collector, Nandurbar should have granted opportunity to Devidas Bhil and therefore, it was declared that

after allowing the appellant to deposit the purchase price as per Rule 7 of Rules of 1975, the land shall vests with the owner.

36. The authorities at no point of time have granted opportunity of hearing to the petitioner, which cannot be denied. Though, Rule 5 of Rules of 1975 contemplates opportunity of hearing should be given to the transferee along with transferor, in contravention of the the procedure as provided in Rule 5 the Collector, Dhule and Additional Collector, Nandurbar have passed order on 02.11.1996 and 02.11.2015 respectively. Therefore, the impugned orders cannot be sustained, hence, they are required to be quashed and set aside.

37. So far as other ground about applicability of Section 36 A to the non agricultural lands is concerned, the issue is left open to be agitated in appropriate proceedings since the orders impugned deserve to be quashed and set aside only on the ground of denial of opportunity of hearing as provided under Rule 5 of Rules of 1975.

38. As a result, writ petition is partly allowed.

39. Judgment and order dated 10th March, 2016 passed by Minister for Revenue, Mantralaya, Mumbai in the Appeal No. 31A16/2327/Pra.Kra.49/J-6 and order dated 02.11.2015 passed

by Additional Collector, Nandurbar in Revision Application No. 1/2015 are hereby quashed and set aside.

As a consequence, order dated 02.11.1996 passed by Collector, Dhule is also quashed and set aside by directing the Collector, Dhule to pass necessary and appropriate orders in exercise of his powers under Section 36A of MLR Code by adhering to the procedure prescribed under Rule 5 of Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non-Tribals) Rules, 1975, by giving an opportunity of hearing to all the necessary parties as contemplated under the Rules.

40. With these directions, writ petition is disposed of.

(MANJUSHA DESHPANDE, J.)

btp