IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4764 OF 2014
WITH CIVIL APPLICATION NO.9687 OF 2016

1. Manohar s/o. Laxman Somware
Age: 45 years, Occu: Agril.

2. Janabai Sambhaji Somware
Age: 48 years, Occu: Agril.
Both r/o. Ghansawangi,
Tq. Ghansawangi, Dist. Jalna ...Petitioners

Versus

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

2. The Collector,
Jalna.

3. The Tahsildar,
Ghansawangi, Dist. Jalna.

4. Bhimrao Jaywanta Gaikwad
Age: 52 years, Occ: Agril.
R/o. Ramgavhan (Kh.),
Tq. Ghansawangi, Dist. Jalna ...Respondents

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Mr. S.B. Ghatol Patil, Advocate for Petitioners
Mrs. M.L. Sangit, AGP for Respondents/State
Mr. Avinash Khande, Advocate a/w Mr. A. M. Hajare, Advocate for Respondent No.4

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CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 14th FEBRUARY, 2025
PRONOUNCED ON : 21st FEBRUARY, 2025

ORDER :

1. Petitioners are challenging the order dated 16/04/2013, passed by respondent No.3 Tahsildar, Ghansawangi, Dist. Jalna, in

case No.2013/Jama /ROR/CR, thereby directing restoration of land to the extent of 1 H 21 R from Gut No.49 which was purchased by petitioners, in favour of respondent No.4, so also the order dated 02/05/2014, passed by Maharashtra Revenue Tribunal, Aurangabad, in Appeal No.46/B/2013/J, wherein appeal filed by petitioners under Section 315 (Schedule J) of the Maharashtra Land Revenue Code, 1966, is rejected.

2. Respondent No.4 who claims to be belonging to Bhill Scheduled Tribe filed complaint before respondent No.3 Tahsildar on 18/01/2011, contending that he had mortgaged his land with present petitioners, and therefore, he is seeking restoration of his land in view of the Government Resolution, after conducting due inquiry. On 26/12/2011, his children namely Shivaji Bhimrao Gaikwad and Suresh Bhimrao Gaikwad also filed complaint to Tahsildar referring to the circular dated 05/08/2011, issued by the Collector, Jalna, contending that their father and mother have mortgaged the land against the loan, without taking their consent or informing them, on account of which they have become landless and are facing hardships and difficulty for their day to day survival. They requested that the land sold by their father should be restored to them and they are ready to bear the expenses for restoration of land by depositing whatever amount is required as per law.

3. In view of the request communication addressed by

respondent No.4 as well as his sons, inquiry was initiated against petitioners. The Tahsildar forwarded complaint to the District Collector, Jalna, on 23/10/2012, for taking appropriate steps in view of provisions of the Maharashtra Restoration of Lands to Scheduled Tribes, Act, 1974 (for short 'the said Act'). Under the said Act, powers are vested with the Collector for restoration of land which has been sold by the Tribal to Non-Tribal without obtaining necessary permission from the Collector.

4. It is the contention of petitioners that they have received notice from Tahsildar on 22/01/2013, requiring them to remain present in the Tahsil Office on 04/02/2013 with reference to cancellation of Mutation Entry No.345 in Gut No.49. It is the contention of petitioners that the land Gut No.49, admeasuring 14 H 31 R is shown in 7/12 extract as class-1 occupant land and it is not of restricted ownership. They were not aware that respondent No.4 belongs to Scheduled Tribe. Therefore, they had not obtained necessary permission from the Collector. The transaction has taken place on 23/05/2001, for valuable consideration of Rs.97,000/-. Therefore, they cannot be evicted from the land by resorting to provisions under the said Act and Section 36A of the Maharashtra Land Revenue Code.

5. It is further submitted that respondent No.4 has purchased the suit land on 31/03/1990 from Mr. Dagdabai Shankar

Mohite and Arjun Shankar Mohite. Therefore, there is no restriction on sale of such land which is not allotted by the Government, as respondent No.4 himself has purchased the said land, from open market.

6. The Tahsildar, Ghansawangi, by letter dated 05/01/2012 informed the Circle Office, Ghansawangi, to conduct inquiry in respect of complaint against the petitioners. Accordingly the report has been sent to the Tahsildar on 20/01/2012. It is the contention of petitioners that inquiry was carried out *ex-parte* without giving any intimation to them. During the inquiry statement of respondent no.4 has been recorded and a Panchanama was conducted. The report was forwarded along with remarks of the Tahsildar, to the Collector, Jalna. Inquiry report suggested that respondent No.4 who belongs to Scheduled Tribe has sold his land in Gut No.49 to the extent of 1 H 21 R from village Ramgavhan, by registered sale deed No.3461 on 23/05/2001, in favour of Manohar Laxman Somware and Janabai Sambhaji Somware, and consequent Mutation Entry No.345 has been recorded pursuant to the sale deed. A complaint is received that the transaction was not of sale but it was a mortgage and the complainant being Tribal person he is seeking restoration of his land.

7. Relying on the report prepared by Talathi which suggested that the land in question is in possession of present

petitioners, the Tahsildar recommended to the Collector that steps are required to be taken in furtherance of the provisions of the said Act and reference was given to the circular dated 14/07/2009, since the land has been unauthorisedly transferred from Tribal to non-Tribal person.

8. The Collector, Jalna, after receiving report from the Tahsildar has directed the Tahsildar to conduct an inquiry with regard to transfer of land from Tribal to non-Tribal. Accordingly Tahsildar has conducted inquiry proceedings by issuing notices to the respective parties. After recording the statements of respective parties and also taking into consideration the report as well as documents produced by the respective parties, the Tahsildar has passed order on 16/04/2013, holding that the land in question is owned by applicant No.4, who is undoubtedly Tribal and he is claiming restoration of his land. The transfer of land is contrary to the provisions under Section 36A of the Maharashtra Land Revenue Code. Therefore, it was directed that possession of the land be handed over to respondent No.4. It is further observed that, after appeal period is over the possession should be handed over to respondent No.4 and a compliance report to that effect should be submitted to the office.

9. Being aggrieved by the said order, petitioners have preferred Appeal under Section 315 of the Maharashtra Land

Revenue Code, which came to be dismissed by the Maharashtra Revenue Tribunal, Aurangabad.

10. It is the contention of petitioners that they have raised various grounds in the revision filed before MRT in their memo of revision as well as in the written notes of arguments, which are as under:-

(1) The notice received by petitioners was intimation regarding hearing for cancellation of mutation entry. Therefore, they were under the impression that the hearing was in respect of cancellation of mutation entry.

(2) According to them, they have purchased the land for valuable consideration of Rs.97,000/- and the land is class-1 occupant land without any encumbrance on the land. Even respondent No.4 has purchased the suit land and is not an allottee of the land under any Government scheme.

(3) Inquiry which was conducted by Talathi was cursory inquiry and detailed inquiry is contemplated under the said Act. In present case, only statement of respondent No.4 has been recorded along with panchanama and report has been forwarded to Tahsildar, on the basis of which Tahsildar has passed the impugned order. The procedure carried out by revenue authorities is contrary to the provisions under Section 36A of the Maharashtra Land Revenue Code.

(4) Objection is also raised as regards the absence of proof in

support of the claim that respondent No.4 is belonging to Scheduled Tribe category.

11. Learned advocate for petitioners emphasized that Section 36A of the Maharashtra Land Revenue Code contemplates detailed inquiry by the Collector and in present case such inquiry is not conducted by the Collector. Under the garb of inquiry merely statement of respondent No.4 has been recorded and panchnama has been conducted. Therefore, proper procedure as contemplated under Section 36A of conducting detailed inquiry has not been adhered to. Learned advocate for petitioners has placed reliance on Sub-section (5) of Section 36A wherein it is provided that, "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".

12. According to him, the Collector has not taken steps as contemplated in Sub-section (5) and has merely directed return of the possession of land to respondent No.4. It is his contention that during the inquiry respondent No.4 has not produced any proof that he belongs to Scheduled Tribe. Unless there is a proof that person claiming restoration of land belongs to Tribal community,

respondent authorities are not empowered to exercise powers under Section 36A of Maharashtra Land Revenue Code or Section 3 of the said Act. According to him respondent No.4 did not possess any caste validity certificate when the proceedings were taken up before the Tahsildar as well as MRT. Respondent No.4 has subsequently obtained caste validity certificate which is also challenged by petitioners and challenge to the same is pending before this Court. According to him, the very genesis of return of land to Tribal under both the enactments is that the Tribal is deprived of his land due to illegal transfer made without prior permission of the Collector.

13. It is further contended by petitioners that even they belongs to Dhangar community. Though it comes in OBC category in the State of Maharashtra, however, in other States his community comes under Nomadic Tribe. Therefore, the land of person belonging to Other Backward Classes cannot be taken under the guise of restoration of land to the Tribal by resorting to Section 36A of the Maharashtra Land Revenue Code.

14. Reliance is placed by learned advocate for petitioners in case of ***Kaniram Jagannath Lokhande Vs. State of Maharashtra,*** reported in ***1976 (9) CPMH 37***, wherein it is observed that the enactment confers drastic power on the Collector. Citizens are deprived of their right and possession of, the lands purchased by them bonafide by this summary procedure. The only

safeguard against such drastic action lies in ensuring scrupulous adherence to the procedure required to be followed by the collector, so that the affected citizens get sufficient opportunity, to have their say in the matter and, have their defence properly adjudicated, before their title to the property is destroyed and they are finally deprived of the possession of the land.

15. In the judgment relied by the petitioner no details were given to the petitioner regarding the reason for issuance of notice and time on which petitioners were required to appear in the Court. The intention of the said notice was not clear. Therefore, it is observed by the Court that when enactment itself requires that a notice is to be issued in the prescribed form and intimation of certain facts to be given to the addressee in advance by way of safeguard against the danger implicit in such summary procedure, there is no reason why the same have not been complied with and adhered to scrupulously. Since, the petitioners were put to a very short notice and notice was bereft of details, the notices issued were quashed. The decision in the above case is not applicable to the facts of the present case.

16. Learned advocate for respondent No.4 submitted that as per Section 36A, in case of the land belonging to Tribal is purchased by the non-Tribal without permission of the Collector, there is restriction on such transfers. A transfer of land by a Tribal to non-

Tribal by way of gift, exchange, mortgage, lease or otherwise is permissible except with the previous permission of the Collector. If no permission is granted by the Collector, the transaction becomes void and illegal, and if any complaint is made by a Tribal, the land in question is required to be restored to the complainant Tribal. Neither provisions of the said Act, nor Section 36A presupposes that the land should have been allotted by the Government or its nature should be a class-2 occupant. Even if it is a free land which is purchased by a Tribal and classified as occupant class-1 land, restoration under Section 36A is very much applicable to such transfers also.

17. He further submitted that though petitioners are claiming that they were not aware that respondent No.4 belongs to Scheduled Tribe, this contention is falsified by the written statement filed by petitioners before Tahsildar. In their reply, they have categorically stated that respondent No.4 belongs to Bhill community and he has man power and money in abundance, therefore, he is exerting pressure on petitioners. The statement in the reply filed before Tahsildar itself reflects that petitioners were very much aware that respondent No.4 belongs to Bhill community. He has also pointed out the entry in 7/12 extract which shows the name of respondent No.4 as Bhimarao Gaikwad, Bhill. Hence, according to him, even though petitioners are claiming that they

were not aware that respondent No.4 belongs to Bhill community, it is not correct, since 7/12 extract also reflect that respondent No.4 belongs to Bhill community.

18. It is further contended by learned advocate for respondent No.4 that transfer of land from Tribal to non-Tribal is not totally barred. However, it is made subject to prior permission of the Collector. In case of transfer of land from Tribal to non-Tribal the non-Tribal has to make application to the Collector seeking permission for transfer. In present case, it was the duty of petitioners to make application to the Collector to get such permission and thereafter purchase the land. Since the condition of Section 36A has been breached, it was brought to the notice of Collector by respondent No.4 by making complaint and restoration of land was prayed by following due procedure of law.

19. So far as objection of petitioners regarding non-adherence to Section 36A(5) is concerned, learned advocate for respondent No.4 submits that Section 36A(4) provides that, where it is noticed that any occupancy has been transferred in contravention of sub-section (1), the Collector shall, either *suo motu* or on an application made by any person interested in such occupancy or in a resolution of the Gram Sabha in Scheduled Areas, hold an inquiry in the prescribed manner and decide the matter. From reading of Section 36A(4) it is clear that Collector is empowered to conduct

inquiry even *suo motu* or on an application made by any person interested in such occupancy. Therefore, the Collector has conducted the inquiry and accordingly decided the matter.

20. Tahsildar as well as MRT has appreciated Section 36A of the Maharashtra Land Revenue Code. The MRT after careful consideration of the said Act, has passed order, whereby direction given by the Tahsildar for restoration of land by taking possession from present petitioners and handing it over to the complainant respondent No.4 has been confirmed. As regards objection of petitioners that respondent No.4 has not produced any caste validity certificate is concerned, it is submitted by respondent No.4 that it is not necessary to produce caste validity certificate in order to prove caste of complainant. Learned advocate for respondent No.4, therefore, submits that writ petition filed by petitioners deserves to be dismissed.

21. Learned advocate for respondent No.4 has placed reliance on the order dated 22/04/2010 passed by this Court at Nagpur Bench in Writ Petition No.1582/1998 *(Smt. Parvatibai w/o Bapuji Jumde Vs. The State of Maharashtra and Others)*, wherein this Court has observed that certificate issued by Executive Magistrate to substantiate that respondent No.4 therein the Tribal belongs to Gond-Scheduled Tribe is sufficient in order to restore the land from non-Tribal to Tribal and in view of that the order of

restoration was upheld by this Court.

22. Respondent No.4 has also relied on the judgment of this Court in Writ Petition No.2174/1991 *(Shri Fakira Shankar Patil Vs. Shri Roopchand Pandit Bhill and Another)*, wherein it is observed that the burden of proof lies on the petitioner to prove that respondent do not belong to Bhill Scheduled Tribe.

23. Learned AGP Ms. M.L. Sangit, has placed reliance on the affidavit filed on behalf of respondent No.3 Tahsildar, Ghansawangi. According to her, the sale deed has been executed by petitioners without adhering to Section 36A of the Maharashtra Land Revenue Code. There is no substance in the allegation of petitioners that respondent No.4 has not filed his caste certificate during the inquiry. In fact, the caste certificate in support of the claim has been filed by respondent No.4 during the inquiry. It is also denied that panchanama and inquiry was conducted behind the back of petitioners. The matter was inquired through concerned circle officer who conducted inquiry by visiting the spot. According to respondent No.3 after conducting inquiry necessary notices were issued to both the parties and after hearing them and perusing the documents, order has been passed by the Tahsildar on valid grounds. Learned AGP further relied on the Government Resolution dated 31/05/2012, wherein restrictions have been imposed on the sale transaction of land of Tribal in favour of non-Tribal person.

24. I have heard the respective parties, grounds of challenge to the inquiry and orders passed by the Tahsildar and the MRT are already referred hereinabove. The contention of petitioners that appropriate procedure has not been followed as provided under Section 36A does not appear to be correct. From the order of Tahsildar it is evident that proceedings before Tahsildar were preceded by an inquiry. So far as inquiry is concerned it is a summary inquiry and no procedure as such has been prescribed under Section 36A of the Maharashtra Land Revenue Code or Section 3 of the said Act. Therefore, there is no substance in the allegation of petitioners that procedure provided under Section 36A has not been followed.

25. Record indicates that statement of respondent No.4 has been recorded wherein he has categorically stated that he has executed sale deed since he was in need of money, he has sold the land in favour petitioners. He has categorically stated in the statement that he belongs to Bhill community, and therefore, he is seeking restoration of his land.

26. Even in the panchanama it has been categorically stated that the land was belonging to respondent No.4, who belongs to Bhill community and it was transferred in favour of petitioners. On the basis of inquiry, the report was forwarded to the Collector by Tahsildar. Tahsildar is delegated with the powers to restore the land

to the Tribal from non-Tribal. After conducting inquiry and giving opportunity of hearing to the parties, Tahsildar has arrived at a conclusion that there is contravention of condition as provided under Section 36A of the Maharashtra Land Revenue Code, since no permission or sanction has been obtained by the non-Tribal before purchasing land of the Tribal. Hence, there is no error in the finding recorded that the transfer of land was without prior permission of Collector, and therefore, attracted Section 36A of the Maharashtra Land Revenue Code, 1966.

27. The other issue that is agitated by petitioners is that respondent No.4 has not produced caste certificate or any validity certificate, which is necessary in order to establish that he belongs to Bhill community which comes under Scheduled Tribe category and the Tahsildar should have referred the caste certificate for verification to the caste verification committee. So far as this contention is concerned, the MRT has categorically observed that caste certificate of respondent No.4 is of the year 1991, and it’s attested copy has been placed on record which supports the stand of respondent No.4 that he belongs to Bhill community. So far as absence of validity of caste certificate is concerned the MRT has observed that certificate is issued in the year 1991, by the Taluka Executive Magistrate who was competent authority in the year 1991 for issuing validity in view of circulars issued by the State of

Maharashtra. The MRT by placing reliance on the judgment of this Court in ***Raju Pundlikrao Burde Vs. Establishment Officer (III-B) Maharashtra State Electricity Board and Another,*** reported in ***2004 (3) Bom.C.R. 460***, has held that the caste certificate of respondent No.4, which is placed on record, is duly attested by Tahsildar itself as it was issued in the year 1991, therefore, it was held that there is no necessity to refer the same to Scrutiny Committee. In view of the observations made in that judgment the MRT has recorded that there is no necessity of validity certificate to be produced in respect of caste certificate issued by the Executive Magistrate which was validated by the appellate authority.

28. Learned advocate for respondent has placed reliance on the judgment of this Court in Writ Petition No.1582/1998 *(Smt. Parvatibai w/o Bapuji Jumde Vs. The State of Maharashtra and Others) dated 22/04/2010,* wherein on the basis of certificate issued by the Executive Magistrate which was placed on record to substantiate that petitioner belongs to Gonda Scheduled Tribe, the land has been restored to her in terms of Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes, Act, 1974, and this Court has observed that orders passed by the authorities cannot be faulted with. The caste certificate was found to be sufficient for restoration of land to the Tribal under the provisions of the said Act.

Even otherwise, learned advocate for respondent No.4 has placed on record caste validity certificate, which has been issued in favour of respondent No.4 on 14/11/2014. Therefore, though the caste validity certificate is issued after the order is passed by the MRT on 02/05/2014, the objection regarding caste certificate and caste validity certificate would not be relevant or decisive for deciding present writ petition considering that respondent No.4 is holding caste validity certificate while the writ petition is heard finally. Hence, the question of referring the matter back to the Tahsildar in order to get the caste certificate verified does not arise. Though learned advocate for petitioner has challenged the caste validity granted in favour of respondent No.4 in separate proceedings, as yet there is no decision in the said proceedings.

29. So far as contention of petitioners that land in question was a clear title without any encumbrance and it was not allotted by the Government and is categorized as class-1 land, therefore it was not necessary to obtain the permission of Collector prior to purchase of said land is concerned, the same is not tenable in view of provisions imposing restriction under Section 36A on the transfer of occupancy of Tribal. Section 36A of the Maharashtra Land Revenue Code reads thus:

> *"36A. Restrictions on transfers of occupancies by Tribals:-*
>
> *(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 situated or within five kilometres thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

(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 moto 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 moto or on an application made by any person interested in such occupancy, [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."*

30. Upon careful reading Section 36A it reveals that not only transfer by way of sale but even the gift, exchange, lease, mortgage or otherwise which is made in contravention of Section36A(1) have to face consequences as laid down in Section 36A (4) and (5). In present case, since complaint is received and after due inquiry it was found that prior permission of Collector was not obtained as contemplated under Section 36A(1)(b). The transaction of petitioners is hit by sub-section (4) and accordingly, the orders came to be passed by the Tahsildar as well as MRT. Upon careful reading of Section 36A as well as Section 3 of the said Act, it is evident that it is responsibility of the non-Tribal transferee to obtain prior permission from the Collector before he purchase or exchange or whatever transaction he resorts to for transfer of land from Tribal person, if the transferee fails to obtain prior permission, it is at his own risk and peril.

31. Provisions under the said Act and Section 36A are the safeguards for illegal transactions which are rampant in the society wherein Tribal persons are the sufferers and are rendered landless after parting with their lands. Hence, in order to avoid unscrupulous transactions, safeguards have been provided under the said Act as well as Section 36A of the Maharashtra Land Revenue Code.

32. In view of the observations made herein above, I do not find that there is any perversity in the findings recorded by the Tahsildar as well as Maharashtra Revenue Tribunal. Summary procedure required to be followed before passing the order has been followed by the Collector. Respondent No.4 possess a caste certificate and therefore, there is no doubt that he belongs to Bhill community which is a Scheduled Tribe. It is established by the inquiry conducted by the Tahsildar that transaction taken place between petitioners and respondent No.4 is hit by Section 36A since no previous permission of Collector was obtained before execution of sale deed. Therefore, the Tahsildar has appropriately passed the order directing restoration of land to respondent No.4, which is upheld by the MRT.

33. Hence, in my opinion, the orders passed by both the authorities do not deserve any interference. The writ petition is, therefore, dismissed.

34. Accordingly, the civil application also stands disposed of.

(MANJUSHA DESHPANDE, J.)