



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

**WRIT PETITION NO.7263 OF 2014
WITH CIVIL APPLICATION NO.2651 OF 2025**

1. Sandip Aniruddh Jadhav
Age: Major years, Occu. Agri.
2. Sambhaji Aniruddh Jadhav
Age: Major years, Occu. Agri.
Both R/o Morandi Mohalla, Jalna,
Tal. & Dist. Jalna ... Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.
2. The Additional Commissioner (R.O.R.),
Aurangabad.
3. The Additional Collector,
Jalna
4. The Tahsildar,
Tahsil Office, Jalna.
5. Maharashtra Hybrid Seeds
Company Ltd.,
B-4, Industrial Estate, Jalna ... Respondents

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Mr. Mahesh V. Ghatge, Advocate for Petitioners
Mrs. P. V. Diggikar, AGP for Respondents – State
Mr. S. V. Adwant, Advocate for Respondent No.5
Mr. A. B. Kale, Advocate h/f Mr. Yash Pareek, Advocate for Applicant
in CA/2651/2025

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CORAM : MANJUSHA DESHPANDE, J.

**RESERVED ON : 10th MARCH, 2025
PRONOUNCED ON : 28th MARCH, 2025**

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with
the consent of the parties.

2. Petitioner challenges order dated 23/06/2014 passed by the Minister of Revenue, State of Maharashtra, in Revision No. ROR/5300/2014 along with the order dated 21/10/2013 passed by respondent No.2 Additional Commissioner, Aurangabad, in Revision No.ROR/149/2012.

3. Petitioners' father Aniruddha Santaram Jadhav was protected tenant of the land admeasuring 6 Acre 31 Are in Survey No.164, situated at Jalna. Hence, the petitioners are owners and possessors of the said land as protected tenants. In view of the fact that their father was protected tenant, the said land is not capable of being alienated without permission of the Collector as provided under the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short 'the said Act'). In spite of that, Aniruddha Santaram, Prayagbai Santaram, Avantikabai Santaram and Sulochana Santaram have executed sale deed of the land to the extent of 6 Acre 31 Are from Survey No.164 in favour of respondent No.5 Maharashtra Hybrid Seeds Company. The transaction has taken place without obtaining prior permission of the Collector as provided under Section 50-B of the said Act. Pursuant to execution of sale deed Mutation Entry No.2525 was taken in the revenue record in favour of respondent No.5 Company. The Sub-Divisional Officer, Jalna, in exercise of his powers under Section 257 of the Maharashtra Land Revenue Code, 1966 (for short 'MLR Code') issued notices to all the parties

including respondent No.5 Company and after hearing them cancelled Mutation Entry No.2525 vide order dated 21/08/1998, on the ground that no previous sanction is obtained from the Collector as required under Section 50-B of the said Act.

4. Being aggrieved by order dated 21/08/1998, passed by the Sub-Divisional Officer, respondent No.5 Company filed the Review Application. It is contended by learned advocate for respondent No.5, that his Review Application is still pending before the Sub-Divisional Officer. Pursuant to the order dated 21/08/1998 and further orders passed in that regard by the Deputy Collector, Jalna, Mutation Entry No.4408 is recorded thereby deleting name of respondent No.5 Company and recording names of Aniruddha Santaram, Prayagbai Santaram, Avantikabai Santaram and Sulochana Santaram in respect of land to the extent of 6 Acre 31 Are in Survey No.164.

5. Respondent No.5 filed Appeal against Mutation Entry No.4408 before the Sub-Divisional Officer, Jalna, under Section 247 of the MLR Code. Petitioner contends that though respondent No.5 has challenged Mutation Entry No.4408, he has not challenged the order dated 21/08/1998 passed by the Sub-Divisional Officer, Jalna, pursuant to which Mutation Entry No.4408 has been taken. It is contended that in the Appeal filed by respondent No.5, false grounds have been raised. On 08/11/2010 the Sub Divisional Officer

has rejected the Appeal by refusing to interfere with the order on the ground that, order under challenge is passed by the Officer who is equivalent in rank, therefore, it would not be appropriate to interfere with the same. Thereafter, respondent No.5 filed Appeal before the Additional Collector, Jalna, challenging the order dated 08/11/2010, passed by Sub-Divisional Officer. The Additional Collector also rejected the Appeal vide order dated 28/03/2012, observing that pursuant to order dated 21/08/1998 passed by the Sub-Divisional Officer, Mutation Entry No.2525 has been cancelled. However, record does not disclose whether order dated 21/08/1998 has been challenged; and from the Appeal memo it appears that Review application is still pending before the Sub-Divisional Officer. Hence, he has refused to interfere in the order.

6. Respondent No.5 Company, thereafter, filed Revision Petition No.149/2012 before the Additional Commissioner, Aurangabad, along with Misc. Application seeking condonation of delay. The Revision came to be allowed vide order dated 21/10/2013, thereby quashing order dated 28/03/2012 passed by the Additional Collector, Jalna and cancelling the Mutation Entry No.4408 and restoring Mutation Entry No.2525. It is held in the order that the case of Revision Applicant should be placed before Competent Authority for post facto sanction to the transfer by sale deed and directions are given to the Deputy Collector (General

Administration), Jalna, to take steps for regularization and payment of Najarana amount. The order passed by Additional Commissioner came to be challenged by the petitioners by filing Appeal before the Minister for Revenue, which has been dismissed vide order dated 23/06/2014, holding that since Revision Applicants have alienated the land in favour of respondent No.5 by way of registered sale deed in the year 1992, their rights stand extinguished, after the transfer and respondent No.5 who has purchased the land for valuable consideration, is eligible for regularization of the sale deed. It is held that, question of regularization of transaction is between respondent No.5 and the Government, therefore, applicants do not have any locus to challenge the order passed by Additional Collector in favour of respondent No.5.

7. On the background of above facts, learned advocate for petitioners submits that respondent No.5 has challenged Mutation Entry No.4408 in the Appeal filed before Additional Collector and has failed to challenge the order passed by Sub-Divisional Officer on 21/08/1998. While challenging Mutation Entry No.4408, respondent No.5 raised patently false grounds. First ground taken by respondent No.5 is that before cancelling Mutation Entry No.2525, no notice was issued to them. Learned advocate for petitioner relies on the observation made by the Sub-Divisional Officer in order dated 21/08/1998, wherein it is clearly mentioned that the Manager of respondent No.5 Company has submitted his written submissions

and after taking into consideration the same, order dated 21/08/1998 has been passed.

8. Other ground raised by respondent No.5 in the Appeal is that when they purchased the land from father of petitioners, they were not aware that the land was under restrictions due to protected tenancy, and the 7/12 extract did not reflect the restriction on the land. It is the contention of petitioners that this stand of respondent No.5 stands falsified from the 7/12 extract annexed at Page Nos.209 to 216 of the paper-book. According to him, 3rd column of Form No.7 from Talathi Office, Jalna, dated 20/01/1997, reflects the name of Satwa Raoji, who is predecessor of petitioners and is shown as a protected tenant. Even the 3rd column of 7/12 extract of the year 1985-86 reflects name of Satwa Raoji as protected tenant and Mutation Entry No.3138 is shown to be deleted.

9. It is urged by learned advocate for petitioners that in all the proceedings filed by respondent No.5 before Sub-Divisional Officer, Jalna, as well as in the Appeal filed before the Additional Collector and Revision filed before Additional Commissioner, Aurangabad, respondent No.5, has not added petitioners as a party, though they were necessary party to the proceedings. By virtue of order passed by Sub-Divisional Officer on 21/08/1998 Mutation Entry No.2525 has been cancelled, as a result names of petitioners

along with Aniruddha Santaram, Prayagbai Santaram, Avantikabai Santaram and Sulochana Santaram have been recorded vide Mutation Entry No.4408. Therefore, in view of challenge to the Mutation Entry No.4408, petitioners were necessary party to the proceedings filed by respondent No.5. Yet without adding them as a party respondent, respondent No.5 has challenged Mutation Entry recorded in their name.

10. It is the contention of petitioners that respondent No.5 has raised patently false grounds in Revision Petition No.149/2012. Respondent No.5 has claimed that while cancelling Mutation Entry No.2525 from the record of rights, the mandatory notice under Section 150 of the MLR Code has not been given to petitioners thereby depriving them of the opportunity to file their say or raise any objection. Since the order cancelling Mutation Entry No.2525 is passed without being heard it is against the principles of natural justice. It is further contended that when the petitioners got knowledge about pendency of Revision Application No.149/2012, they have filed Misc. Application before Additional Commissioner, Aurangabad, seeking directions to the Revision Applicant, to add them as party respondent. However, the application filed by petitioners came to be rejected vide order dated 04/12/2012, holding that he is not interested party as he was not made party in the proceedings filed before subordinate authorities. It is further

contended that Additional Commissioner vide order dated 21/10/2013, has allowed the Revision filed by respondent No.5 by passing a cryptic order, without recording appropriate reasons. Though the Additional Commissioner did not possess powers under the said Act, he has passed the order by usurping powers of authorities under the said Act. Though there was no prayer to restore the Mutation Entry No.2525, the Additional Commissioner has restored the same by cancelling Mutation Entry No.4408 which was taken on 28/03/2005. The Additional Commissioner has travelled beyond his jurisdiction by giving directions to the Deputy Collector (General Administration) to take steps for regularization of sale deed of respondent No.5, by accepting the Najarana amount. Thus, the order suffers from jurisdictional error.

11. Being aggrieved by the order passed by Additional Commissioner, Aurangabad, petitioners preferred Appeal/ Revision before the Minister of Revenue, raising specific ground that previous sanction was required to be obtained by respondent No.5 before purchasing the land from father of petitioners as the ownership of their land was of restricted nature. As a result of transfer by sale deed, there is contravention of procedure prescribed under Section 50-B(2) of the said Act. Therefore, the transaction i.e. sale deed executed by father of petitioners was invalid, therefore the order passed by Sub-Divisional Officer was correct and proper, which did

not need any interference. It is also brought to the notice of the Minister that though order was passed on 21/08/1998, respondent No.5 has not taken any steps for a period of 14 years, hence on the ground of delay and latches the order does not deserve to be interfered with. It was brought to the notice of the Minister that though respondent No.5 has challenged the Mutation Entry No.4408, the Additional Commissioner has travelled beyond his powers by granting regularization of the transfer. Order passed by the Additional Commissioner has caused great prejudice to the petitioner, therefore, it was necessary to add them as party respondent to the proceedings. However, respondent No.5 has avoided to add petitioners as party in all the proceedings in hierarchy before the respective authorities.

12. In spite of raising valid grounds, the Minister has refused to interfere with the order passed by the Additional Commissioner by recording erroneous finding that since respondent No.5 has purchased the land by registered sale deed the rights of petitioners stand extinguished. The Minister while rejecting the Appeal/Revision has not taken into consideration that the Additional Commissioner is not authorized to pass an order of regularization under Section 50-B of the said Act.

13. It is contended by learned advocate for petitioners that various case laws in support of his contentions were placed on

record before the Minister. In the judgment of **Saraswati Shamrao Dhere Vs. Khutub Babu Malani**, reported in **2015(2) Mh.L.J. 566**, this Court has taken a view that mandatory provision for obtaining previous sanction cannot be diluted by permitting post facto sanction. In view of this decision of this Court, the order passed by Additional Commissioner as well as the Minister directing Deputy Collector, Land Reforms, to take steps for regularization by granting post facto sanction is not at all sustainable.

14. Learned advocate for petitioners has placed reliance on **Rita Premchand and Another Vs. State of Maharashtra**, reported in **2001 (4) Bom.C.R. 826**, and **Lala Shri Bhagwan Vs. Ram Chand**, reported in **AIR 1965 SC 1767**, in support of his contention that since no opportunity of being heard was granted to petitioners, the order passed by Additional Commissioner deserves to be quashed and set aside and the authority or body dealing with the rights of citizens must follow the principles of natural justice.

15. Learned advocate for petitioners further relies on the judgment of this Court in **Ramkrishna Jogdand Vs. Kondiram Naikwade**, reported in **2001(3) Bom.C.R. 242** and **Dnyanoba Lande Vs. Shrirang Dhurwade**, reported in **1982(2) Bom.C.R. 18**, in support of his contention that protection under Section 53-A of the Transfer of Property Act, cannot be granted in case of sale which is invalid by virtue of Section 50-B(2) of the said Act.

Therefore, according to learned advocate for petitioners, the Additional Commissioner as well as the Minister have over stepped their jurisdiction, while passing the orders impugned, in flagrant violation of the provisions of the said Act, as well as the MLR Code. Hence, it is prayed that the orders passed by Minister as well as Additional Commissioner deserves to be quashed and set aside.

16. Per contra, learned advocate Mr. Adwant appearing for respondent No.5 Company, opposed the prayers made by petitioners on the ground that respondent No.5 Company is bonafide purchaser of the land, for valuable consideration from Aniruddha Santaram, Prayagbai Santaram, Avantikabai Santaram and Sulochana Santaram. The land is purchased for the purpose of conducting research on various seeds, vide registered sale deed No.1909 dated 12/05/1992 to the extent of 6 Acre 31 Guntha land from Survey No.164/1. Since they have purchased the land, they have acquired right, title, interest, ownership and possession over the suit property. After registration of sale deed, the respondent No.5, reported acquisition of its right to the revenue authorities, who after being satisfied with the acquisition of right, title, interest, ownership and possession over a part of the property, have mutated name of respondent No.5 Company in the revenue record by sanctioning Mutation Entry No.2525 on 15/01/1997.

17. It is his contention that, in view of the provisions of

Transfer of Property Act and Sections 53 and 54 of the Contract Act read with provisions of MLR Code, the transaction effected is a complete sale and it cannot be disturbed by the revenue authorities. Pursuant to the application made by respondent No.5, procedure contemplated under Sections 149 and 150 of the MLR Code has been undertaken and thereafter Mutation Entry No.2525 has been recorded.

18. It is contended that the Sub-Divisional Officer, Jalna, in suo moto proceedings under Section 257 of the MLR Code has cancelled Mutation Entry No.2525 vide order dated 21/08/1998. He submits that Section 257 of the MLR Code merely empowers certain revenue officers and survey officers to call for record and proceedings from the subordinate officers and does not contemplate passing of any order. In exercise of powers under Section 257 he can merely examine legality or propriety of any decision of such officer. Therefore, the Sub-Divisional Officer is not empowered to pass any order when any inquiry is undertaken, unless the revenue officer is delegated with powers to pass such orders.

19. It is further contended that unless the revenue officer is delegated with the powers by way of notification as contemplated under Section 330A, he cannot exercise powers vested with the Collector. Reliance is placed on Section 257(3), which provides that if it appears to the State Government or any officer referred under

Sub-Section (1) or (2) that any decision or order or proceeding should be modified, annulled or reversed, he may pass such order as he may deem fit. Those powers can be exercised upon fulfilment of certain conditions. One such condition is that the State Government or such officer shall not vary or reverse any order affecting any question of right between private persons without giving them notices. It is submitted that respondent No.5 was not issued any notice before passing such order. Since powers as contemplated under Section 330-A were not delegated to the Sub-Divisional Officer, the order passed by him is neither enforceable nor executable as it was *coram non judice*.

20. Learned advocate Mr. Adwant has further placed reliance on the order dated 11/03/2004, passed by Additional Collector, Jalna, under Section 247 of the MLR Code, in the Appeal filed by Jagannath Haribhau Magar challenging the cancellation of Mutation Entry No.854 in Survey No.164 vide order dated 21/08/1998, wherein the Appeal has been partly allowed and the order passed by Sub-Divisional Officer has been quashed and set aside. Both the Entries i.e. Mutation Entry Nos. 2525 and 854 in Survey No.164 have been cancelled in sue moto proceedings by the Sub-Divisional Officer, Jalna, by a common order. It is the very order which is under challenge in this writ petition. The Sub-Divisional Officer has cancelled two entries vide order dated 21/08/1998. Entry

No.854 was in respect of ownership of Jagannath Magar while Entry No.2525 was in respect of ownership of respondent No.5 Company. Since the Appeal filed in respect of Mutation Entry No.854 is partly allowed by the Additional Collector, Jalna, by setting aside the order passed by Sub-Divisional Officer, Jalna, on 21/08/1998, it would squarely cover the subject matter of present writ petition.

21. Mr. Adwant, learned advocate for respondent No.5 further submits that whether property under sale is tenanted property or not, is an issue arising under the said Act, as a result of which it requires to be determined exclusively by the authorities constituted under the said Act and not by any revenue authorities under the MLR Code. The order passed by Sub-Divisional Officer dated 21/08/1998 refers to the order dated 12/01/1998 passed by Collector, Jalna, by which directions were given to review the mutation entries in respect of survey No.164. According to him, the Collector, Jalna, cannot direct Sub-Divisional Officer to pass order under the said Act. Therefore, the order passed by Sub-Divisional Officer dated 21/08/1998, is without jurisdiction since he was not authorised to pass order under the said Act.

22. It is his contention that Collector, Jalna is *persona designata* and his power is not accessible to any other revenue officer subordinate to him either suo moto or by delegation or authorization by the Collector himself. Therefore, the order passed

by Sub-Divisional Officer is not in consonance with the MLR Code.

23. The respondent No.5 has relied on judgment in ***Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others Vs. Director General of Civil Aviation and Others***, reported in ***(2011) 5 SCC 435***, in support of his contention that, the Sub-Divisional Officer did not possess power to pass order though he was directed by the Collector, hence it is a patently illegal order. Learned advocate particularly relied on paragraph No.28 wherein it is observed that *"the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner."*

24. It is submitted that respondent No.5, in fact, has filed a Review of the order passed by Sub-Divisional Officer on 09/11/1998, invoking powers under Section 258 of the MLR Code, which is still pending with the Sub-Divisional Officer, Jalna. It is his contention that though the order came to be passed on 21/08/1998, it was executed by taking Mutation Entry No.4408 on 30/01/2008. Therefore, being aggrieved by the change in the record of rights, respondent No.5 has filed Appeal before Sub-Divisional Officer, Jalna, seeking cancellation of Mutation Entry No.4408. However, Sub-Divisional Officer has refused to interfere with the change on

the ground that the order on the basis of which Mutation Entry No.4408 is recorded is passed by the officer who is equivalent to his rank / designation. Therefore, he did not deem it appropriate to interfere with the said order. Being aggrieved by the order passed by Sub-Divisional Officer, respondent No.5 has filed Appeal before the Additional Collector, Jalna on 09/02/2011, which is also dismissed on 28/03/2012.

25. It is submitted that, both in Appeal as well as Revision filed by respondent No.5, petitioners have not been added as necessary party, since it is the prerogative of plaintiff to add parties to the litigation. It is settled position of law that plaintiff is *dominus litis* and it is his prerogative to add the necessary party to the litigation. Since he did not deem it necessary to add petitioners as party, they are not added as party to the proceedings. Therefore, considering the settled position of law, application filed by petitioners for intervention has been rightly rejected by the Additional Commissioner in Revision filed by respondent No.5. Even after rejection of intervention application, petitioners have filed Review Application of the order which was rejected by the Additional Commissioner on 12/04/2013, and after rejection of Review, the Revision Application No.149/2012 filed by respondent No.5 came to be allowed by the Additional Commissioner, Aurangabad, vide order dated 21/10/2013.

26. In the Revision filed by respondent No.5 specific grounds are raised by them. The gist of the grounds is as under:-

- (i) At the time of execution of sale deed, in 7/12 extract i.e. in the record of right the agricultural land did not contain entry as Inami Land, therefore, the Collector ought to have considered that respondent No.5 was not at all at fault;
- (ii) The 7/12 extract of the land clearly shows that the land is "Occupant Class-I", which inter alia proves that the land is transferable and not of restricted ownership.

It is also urged that no notice is issued to them before cancelling Mutation Entry No.2525, and the Sub-Divisional Officer has failed to appreciate that application for regularization of sale transaction under Section 50-B of the said Act, filed by respondent No.5, is still pending with the Collector.

27. It is contended that, in view of the prayers made by respondent No.5, and after taking into consideration the record, Additional Commissioner has rightly held that provisions under the Maharashtra Land Revenue Records of Rights and Register (Preparation and Maintenance) Rules 1971, do not seem to have been followed while cancelling Mutation Entry No.2525. The 7/12 extract also reflects that it is Class-I land, relying on which the respondent No.5 has purchased the land by way of registered sale deed. Review filed by respondent No.5 is still pending, and

considering that for some part of the land in Survey No.164 the Deputy Collector of Land Reforms has already granted permission for sale vide order dated 22/08/1984, the order cancelling Mutation Entry No.2525 deserves to be set aside. It is further observed that the transfer / sale deed of the subject land also deserves to be granted post facto sanction, since respondent No.5 is a bonafide purchaser for valuable consideration.

28. Mr. Adwant, learned advocate for respondent No.5 contends that, considering that the application filed under Section 50-B of the said Act is still pending with the authority, the Additional Commissioner has rightly passed the order directing Deputy Collector (General Administration) to take steps for regularization of sale transaction by accepting the Najarana amount and restoring Mutation Entry No.2525. It is further contended that being aggrieved by the order passed by Additional Commissioner, Aurangabad, dated 21/10/2013, petitioners herein have filed Appeal before the Minister under Section 249(2) of the MLR Code, which according to him is not maintainable. It is his contention that since petitioners were not party to the proceedings before all the authorities, they did not possess any right to file Appeal.

29. It is contended that right to Appeal is creature of statute, for which procedure prescribed under the statute is required to be followed. The right of Appeal can be exercised only in

accordance with the prescribed procedure and failure to follow the settled procedure, entails in rejection of Appeal. It is submitted that petitioners did not possess any right to file Appeal before the Minister of Revenue.

30. According to him, while filing Appeal before the Minister it was incumbent upon petitioners to file application seeking leave to file Appeal which is *sine qua non* for filing Appeal. A third party who is affected by a judgment but is not a party to the suit, can prefer an Appeal only with the leave of the Court. In the present case, petitioners have not filed any such application seeking leave to file Appeal. Therefore, the Appeal filed by petitioners before the Minister is without any jurisdiction. In order to support his contention, he places reliance on Sections 96 to 100 of the Code of Civil Procedure. He also relies on the reported judgment in ***My Palace Mutually Aided Cooperative Society Vs. B. Mahesh and Others***, reported in **2022 SCC OnLine 1063**, in support of his contention that Appeal itself was not tenable since no prior leave has been sought by petitioners.

31. Learned advocate for respondent No.5 while concluding his arguments submitted that exercise of powers of this Court under Article 227 of the Constitution of India, are restricted only to the extent of grave dereliction of duty and flagrant abuse of fundamental principles of justice. The powers under Article 227 are

neither original, nor appealable; they are supervisory in nature. Therefore, interference of this Court is limited only to the cases of perversity in the orders of tribunal or Courts, subordinate to it or where there has been a gross and manifest failure of justice or violation of basic principles of natural justice. While invoking powers of this Court under Article 227 petitioners have in fact requested this Court to sit in the Appeal which is not at all permissible under the supervisory jurisdiction of this Court.

32. Learned advocate for respondent No.5, relies on the theory of 'useless formality'. It is his contention that this theory is exception and not a rule. However, in the present case, the order passed by Sub-Divisional Officer, Jalna, is without any legal sanction or authority. If order passed by the Minister is quashed and set aside on the ground that the principles of natural justice are not followed, it would not be appropriate and it would result in revival of the non-est order which in itself is illegal and passed without following any procedure prescribed under law. In this regard, he has relied on the decision in ***Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and Others***, reported in **(2015) 8 SCC 519**, wherein it is observed that,

"40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh

decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing."

33. Relying on the above observation, learned advocate urges that end result and prejudice that would result, will have to be assessed before setting aside an order on the ground of non-adherence to Principles of natural justice. If quashing of the order would result in empty formality, then it would stand covered by the 'useless formality' theory. It is, therefore, contended that since order passed by the Sub-Divisional Officer on 21/08/1998, is without any jurisdiction and without following Principles of natural justice, the order passed by Additional Commissioner, Aurangabad, does not deserve any interference.

34. The learned advocate submits that it also needs to be considered that Review Application filed by respondent No.5 under Section 257 of the MLR Code and the Application filed under Section 50-B of the Tenancy Act, are still pending with the respective authorities. In view of pendency of proceedings, order passed by the Additional Commissioner as well as Minister does not deserve any interference. Hence, the writ petition deserves to be dismissed.

35. After hearing the parties and going through the record following question arise for consideration before this Court:

(I) Whether order passed by Sub-Divisional Officer dated 21/08/1998 is without jurisdiction and without following principles of natural justice?

(II) Whether the petitioners were necessary party to the proceedings filed by respondent No.5 before Additional Collector and Additional Commissioner?

(III) Whether the Additional Commissioner as well as the Minister have exceeded their jurisdiction while passing the order granting regularization of sale deed of respondent No.5?

36. Upon perusal of order dated 21/08/1998 it is evident that the Sub-Divisional Officer has invoked powers under Section 257 of the MLR Code. Section 257 reads thus :-

"257. Power of State Government and of certain revenue and survey officers to call for and examine records and proceedings of subordinate officers:

(1) The State Government and any revenue or survey officer, not inferior in rank to an Assistant or Deputy Collector, or a Superintendent of Land Records, in their respective departments, may call for and examine the record of any inquiry or the proceedings of any subordinate revenue or survey officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

Provided that, on such proceedings under this sub-section or sub-section (2) shall be initiated by any revenue or survey officer after expiry of a period of five years from the date of decision or order of the sub-ordinate officer except with the previous permission of the State Government

(2) A Tahsildar, a Naib-Tahsildar, and a District Inspector of

Land Records may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held.

(3) If in any case, it shall appear to the State Government, or to any officer referred to in sub-section (1) or sub-section (2) that any decision or order or proceedings so called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit;

Provided that, any proceeding brought before any revenue or survey officer shall be disposed of within a period of one year from the date on which such proceeding is filed;

Provided further that, any proceeding pending under this section, before any revenue or survey officer on the date of commencement of the Maharashtra Land Revenue Code (Amendment) Act, 2016, shall be disposed of within a period of one year from the date of such commencement;

Provided also that, where the revisional authority fails to dispose of any such proceeding within the period specified in this sub-section, the State Government alone shall be competent to grant such further extension of time for disposing of any such proceeding as it may deem fit, after recording reasons therefor in writing;

Provided also that, in exceptional circumstances, for reasons to be recorded in writing, the period for disposing of any such proceeding may be extended further by six months by the State Government or an officer not below the rank of Collector designated in this behalf who is superior to the revisional authority;

Provided also that, if the revisional authority fails to dispose of any such proceedings within the period specified in sub-section (3), without sufficient cause, then he shall be liable for disciplinary action in accordance with the concerned disciplinary rules applicable to him;

Provided that, the State Government or such officer shall not vary or reverse any order affecting any question of right between private persons without having given to the parties interested notice to appear and to be heard in support of such order;

Provided further that, an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

(4) (1) Revision of an order issued under sub-section (1) or (2) by any officer referred to therein shall not be permissible; but it shall be lawful for the State Government alone to modify, annual or reverse any such order issued under sub-section (1) or (2)."

37. From perusal of above provisions it is manifest that the State Government and any revenue or survey officer and all the authorities mentioned in Section 257(1) are empowered to call for and examine the record of any subordinate officer for the purpose of satisfying itself about legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer. If the officer of the State Government finds it is necessary he may pass such order, modifying or reversing such decision, for which it is necessary to issue notice to the interested party.

38. Though learned advocate for respondent No.5 Company has raised objection that Sub-Divisional Officer was not empowered to pass an order upon such inquiry. Upon perusal of the order dated 21/08/1998, it is evident that vide order dated 24/12/1997, the Collector had directed to conduct the inspection and submit report in respect of Survey Nos.164/1 and 164/2 and on the basis of that report the Sub-Divisional Officer was directed to pass appropriate orders under Section 257 of the MLR Code. Therefore, vide order dated 12/01/1998, the Sub-Divisional Officer was delegated powers under Section 257 of the MLR Code to pass appropriate orders and accordingly, Sub-Divisional Officer has exercised powers and passed

the order dated 21/08/1998.

39. So far as the contention of respondent No.5 that no opportunity of being heard was given to him before passing of order by the Sub-Divisional Officer is concerned, there is no substance in the allegation, since the Sub-Divisional Officer in his order has recorded that respondent No.5, who is represented by the Manager, has submitted written submissions. Though respondent No.5 has filed review of the said order, for the reasons best known to the authorities concerned, it seems to be still pending. Though vide order dated 21/08/1998 Mutation Entry No.2525 has been cancelled, respondent No.5 has not challenged the cancellation of that entry in the Appeal filed by him before any of the authorities right from Sub-Divisional Officer upto the Additional Commissioner and he has prayed for cancellation of Mutation Entry No.4408, which is taken after cancellation of Mutation Entry No.2525.

40. It is also undisputed fact that the land purchased by respondent No.5 by way of registered sale deed is of restricted ownership and it was sold by the protected tenant without obtaining prior permission of the competent authority as required under Section 50-B of the said Act. Though it is contended by respondent No.5 that they were not aware that the land was of restricted ownership, upon perusal of 7/12 extract it is apparent that the land is owned by Protected Tenant. However, fact remains that the

transfer by way of sale deed which is in contravention of Section 50-B of the said Act, is directed to be regularised by accepting Najrana amount.

41. Section 50-B of the said Act reads thus:

“50B. Restrictions on transfer of land purchased or sold under this Act.

(1) No land purchased by a tenant under Sections 38, 38A, 38E, 38F, 38G, 38H or 46D or 48, or sold to any person under sections 53F, 53G, 53H, or 98C shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector.

Provided that, no such previous sanction shall be necessary for the sale, gift, exchange, mortgage, lease or assignment of the land in respect of which ten years have elapsed from the date of purchase or sale of land under the sections mentioned in the sub-section, subject to the conditions that,

(a) before selling the land, the seller shall pay a nazarana equal to forty times the assessment of the land revenue to the Government;

(b) the purchaser shall be an agriculturist;

(c) the purchaser shall not hold the land in excess of the ceiling area permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961; and

(d) the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 shall not be violated.

(2) Any transfer of the land in contravention of sub-section (1) shall be invalid”

In view of Section 50-B(2) as reproduced hereinabove, the transaction in respect of land of petitioners is hit by Section 50-B(2), making it invalid.

42. While passing order dated 21/10/2013 in Review Application No.149/2012, the Additional Commissioner has recorded

finding contrary to record that, no notice was issued to respondent No.5 before cancelling Mutation Entry No.2525, as can be seen from the contents of order passed by Sub-Divisional Officer on 21/08/1998. The respondent No.5 was very much represented through it's Manager and had submitted written submissions in response to the notice issued.

43. The Additional Commissioner has overstepped his jurisdiction while passing the order relying upon the permission granted to sale of land in Survey No.164 since he is not competent authority under the Hyderabad Tenancy and Agricultural Lands Act, to give directions to the Deputy Collector to take steps for regularization of the sale deed of respondent No.5.

44. Apart from that, Section 50-B of the said Act, does not contemplate any post facto sanction to the transaction which has taken place in contravention of Section 50-B. In fact, upon perusal of Section 50-B it can be gathered that if at all any transaction has taken place without prior permission of the competent authority in respect of tenanted land, such transfer of land is declared to be invalid.

45. Considering that the land in question is purchased by Protected Tenant under Section 38-E, it could not have been transferred without previous permission of the Collector and all such

transactions / transfers which are made in contravention of Section 50-B(2) are invalid by operation of law. Hence, the transfer cannot be legalized by granting post facto sanction, and the order passed by Additional Commissioner is passed by usurpation of powers of competent authority under Section 50-B of the said Act.

46. So far as objection raised by respondent No.5 that petitioners ought to have filed leave to Appeal before filing Appeal before the Minister since they were not party to the proceedings is concerned, the petitioners have challenged the order passed by Additional Commissioner dated 21/10/2013, before this Court in Writ Petition No.9982/2013. During the course of hearing of writ petition, learned advocate appearing for respondent No.5 himself had raised the objection that petitioners have remedy under Section 249(2) of the MLR Code. By recording the objection the writ petition was disposed of by this Court vide order dated 07/01/2014, by granting liberty to petitioners to avail alternate remedy by keeping all the contentions open. It is further directed that the time spent by petitioners in prosecuting the writ petition shall be considered by the Competent Authority and even *status quo* was granted in favour of petitioners for a period of two weeks in order to enable them to file Appropriate proceedings. After passing of order by this Court, petitioners have filed Appeal under Section 249(2) of the MLR Code.

47. The MLR Code is a complete code in itself, therefore,

provisions of Code of Civil Procedure cannot be read into provisions of the MLR Code. Section 249 of the MLR Code reads thus:

“249. Appeal against review or revision.

(1) An order passed in review varying or reversing any order shall be appealable in the like manner as an original decision or order.

(2) An order passed in revision varying or reversing any order shall be appealable as if it were an order passed by the revisional authority in appeal.”

Sub-section (2) of Section 249 provides for challenge to order passed in Revision varying or reversing any order. It does not restrict the rights only to the extent of persons who are party to the proceedings in subordinate Court. Even otherwise, when the order passed by the Additional Commissioner was challenged before this Court, upon objection being raised by respondent No.5 about the availability of alternate remedy under Section 249(2) petitioner has filed Appeal before the Minister. Therefore, considering the scope of Section 249(2) there is no substance in the objection raised by the respondent No.5. The provisions of Maharashtra Land Revenue Code itself do not provide for filing of any such application prior to filing of Appeal.

48. The Minister while passing the order impugned has confirmed order dated 21/10/2013, passed by Additional Commissioner by holding that, considering that the transfer has taken place by way of registered sale deed, as a result the right of petitioners stand extinguished. It is further observed that since the

land is of restricted ownership the question of granting post facto sanction is an issue to be decided between respondent No.5 and the Government, therefore, petitioners cannot take objection to the said order.

49. So far as the question whether petitioners were necessary party to the proceedings is concerned, petitioners are definitely necessary party to the proceedings filed by respondent No.5 for the reason that Entry No.4408 has been taken in the name of petitioners and respondent No.5 is challenging the said entry. Therefore, no orders can be passed to the prejudice of the petitioners unless they are heard in respect of cancellation of entry recorded in their favour. Hence, petitioners are necessary party to the proceedings initiated by respondent No.5.

50. Though petitioners have objected to the order passed by Additional Commissioner on the ground that the impugned order is passed without affording any opportunity of hearing to petitioners as well as it is beyond jurisdiction of Additional Commissioner to regularize purchase of respondent No.5, the Minister has not at all taken into consideration the same. Though sale transaction of respondent No.5 is invalid in view of Section 50-B(2) of the said Act and the Additional Commissioner is not competent authority to regularize the same, yet the Minister has refused to interfere with the order passed by Additional Commissioner. The order passed by

the Minister is passed without application of mind as well as without recording any satisfactory reasons. In the view of conspectus of the matter, the orders impugned deserve to be quashed and set aside.

51. Learned advocate for petitioners has rightly relied on the decision in *Saraswati Shamrao Dhere* (supra), wherein it is held that,

"12. The conjoint reading of provisions under Section 43 of the said Act and Rule 25A of the said Rules, makes it clear that the sanction contemplated by the provisions, is indeed 'previous sanction' of the Collector or the competent authority as may be prescribed. Further, it is also clear that the provisions contained in Section 43(1) of the said Act are mandatory and any non-compliance would render the transfer of land invalid.

13.

14.

15. The provisions specifically makes reference to 'previous sanction'. If the objective of said enactment is taken into consideration alongwith phraseology employed by the legislature, then the mandatory nature of the requirement contained in Section 43(1) cannot be diluted by permitting some post-facto sanction for a transfer in breach of Section 43(1) of the said Act. This would render the provisions of Section 43(2) as otiose. Accordingly, there is no merit in the contention that the provisions of Section 43 of the said Act are only directory and that post-facto sanction constitutes substantial compliance. "

Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 is *pari materia* to Section 50-B of the Hyderabad Tenancy and Agricultural Lands Act, 1950. In view of the findings recorded by this Court, it is undisputed position of law that non-compliance of obtaining 'previous sanction' from the Collector or competent authority prescribed would render the transfer of land invalid. Considering the mandatory nature of requirement as

provided under Section 50-B, post facto sanction to transfer, would amount to breach of Section 50-B of the said Act, and sub-Section (2) therein would be rendered as otiose. In view of the above observations post facto sanction is not at all permissible as held by this Court.

52. Though learned advocates for the respective parties have argued on both facts as well as law, this Court is aware about the limitation and powers to be exercised under Article 227 of the Constitution of India. It is well settled that while exercising powers under Article 227 the Courts cannot sit in Appeal over the orders which are under challenge. The impugned order can be interfered only if such order is erroneous on account of non-consideration of evidence, non-adherence to principles of natural justice, and orders passed are without jurisdiction.

53. In present case, the Additional Commissioner has exercised the powers not vested in him by law. Therefore, he has overstepped his jurisdiction by granting post facto permission for sale of the land and further directing the Deputy Collector to take steps for regularization of sale deed.

54. The other ground on which the Courts can interfere with the order is non-adherence to the principles of natural justice, resulting into prejudice to a party. In the present case, though petitioners are a necessary party they were not added as a party,

thereby depriving them opportunity to represent before the concerned authority, resulting in deprivation of their precious rights. Though petitioners had filed application for adding them as party respondent, the same has been rejected by the Additional Commissioner. In view of the above, petitioners have made out a case for causing interference in the order passed by the Additional Commissioner, which is confirmed by the Minister, in exercise of powers under Article 227.

55. In the result, writ petition is allowed. Order dated 23/06/2014 passed by the Minister of Revenue, State of Maharashtra, in Revision No. ROR/5300/2014 and the order dated 21/10/2013 passed by respondent No.2 Additional Commissioner, Aurangabad, in Revision No.ROR/149/2012, are hereby quashed and set aside. Rule is made absolute in the above terms.

56. Accordingly, pending civil application also stands disposed of.

57. At this stage, learned advocate for respondent No.5 makes request that in order to enable him to challenge the impugned order the status quo existing as on date be continued for a period of six weeks. Considering the request made by respondent No.5, the status quo shall be continued for a period of six weeks from today.

(MANJUSHA DESHPANDE, J.)