

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 135 OF 2020

Maruti S/o. Bhau Kshirsagar
Deceased Through L.R.'s,

- 1 Tukaram Maruti Kshirsagar,
Age : 52 years, Occu : Agri,
R/o : Gumatacha Phad, Washi,
Tq. Washi, Dist. Osmanabad
- 2 Avida W/o Maruti Kshirsagar,
Age : 65 years, Occu : Agri. And Household,
R/o : Gumatacha Phad, Washi,
Tq. Washi, Dist. Osmanabad

.... **Petitioners**

Versus

- 1 The State of Maharashtra
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32
- 2 The District Collector,
Osmanabad, Dist. Osmanabad
- 3 The Additional Collector,
Osmanabad, Dist. Osmanabad
- 4 The Deputy Collector,
(General Administration)
Osmanabad, Dist. Osmanabad
- 5 The Competent Authority &
Sub Divisional Officer,
(Land Acquisition), Kallam,
Tq. Kallam, Dist. Osmanabad
- 6 Bharat S/o Sitaram Chede
Age : 50 years, Occu : Agril,

R/o : Samta Nagar.
Collage Road, Washi,
Tq. Washi, Dist. Osmanabad

.... Respondents

Advocates for Petitioner : Mr. D. M. Mane & Mr. A. N. Nagargoje
Advocate for Respondent No. 5 : Ms. Sudha Chintamani h/f Mr. S. S. Deve
Advocate for Respondent No. 6 : Senior Advocate Mr. P. R. Katneshwarkar i/b. Mr. V. S. Undre
AGP for Respondents-State : Ms. M. L. Sangit

WITH

WRIT PETITION NO. 11870 OF 2021

Suresh Rama Shinde
Age : 52 years, Occu : Agril,
R/o : Washi, at present
Residing at Pune,
Through G.P.A. Holder namely;
Akash 24 years, Ocu. Agril. & Business,
R/o. Golegaon, Tq. Washi, Dist. Osmanabad

.... Petitioner

Versus

- 1 The State of Maharashtra
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32
- 2 The District Collector,
Osmanabad, Dist. Osmanabad
- 3 The Additional Collector,
Osmanabad, Dist. Osmanabad
- 4 The Deputy Collector (Gen. Adm.)

Osmanabad, Dist. Osmanabad

- 5 Deputy Collector (Land Reforms),
Osmanabad, District Osmanabad
- 6 The Tahsildar, Washi,
Tq. Washi, Dist. Osmanabad
- 7 The Competent Authority /
Sub Divisional Officer,
(Land Acquisition), Kallam,
Tq. Kallam, Dist. Osmanabad
8. Maruti S/o. Bhau Kshirsagar
Deceased Through L.R.'s,
- 8-A Tukaram Maruti Kshirsagar,
Age : 52 years, Occu : Agri,
- 8-B Avida W/o Maruti Kshirsagar,
Age : 62 years, Occu : Agri
Both R/o : Gumatacha Phad, Washi,
Tq. Washi, Dist. Osmanabad
- 9 Tejashree W/o Vinod Shelake
Age : 32 years, Occu. Household,
R/o : Samata Nagar, College Road, Washi,
Tq. Washi, Dist. Osmanabad
At present R/o : Shivshambhu Nagar,
Galli No.04, Sy. No. 36,
Katraj-Kondwa Road, Pune-46
- 10 Bharat S/o Sitaram Chede
Age : 51 years, Occu : Business,
R/o : Samta Nagar, College Road, Washi,
Tq. Washi, Dist. Osmanabad

.... Respondents

Advocate for Petitioner : Mr. Nitin S. Kadam

Advocate for Respondent No. 7 : Mr. R. B. Bhosale

Advocate for Respondents No. 9 and 10 : Senior Advocate Mr. P. R.
Katneshwarkar i/b. Mr. V. S. Undre

AGP for Respondents-State : Ms. M. L. Sangit

WITH

WRIT PETITION NO. 14999 OF 2019

Maruti S/o. Bhau Kshirsagar
Deceased Through L.R.'s,

- 1 Tukaram Maruti Kshirsagar,
 Age : 52 years, Occu : Agri,
 R/o : Gumatacha Phad, Washi,
 Tq. Washi, Dist. Osmanabad
- 2 Avida W/o Maruti Kshirsagar,
 Age : 65 years, Occu : Agri. And Household,
 R/o : Gumatacha Phad, Washi,
 Tq. Washi, Dist. Osmanabad

.... **Petitioners**

Versus

- 1 The State of Maharashtra
 Through its Secretary,
 Revenue & Forest Department,
 Mantralaya, Mumbai-32
- 2 The District Collector,
 Osmanabad, Dist. Osmanabad
- 3 The Additional Collector,
 Osmanabad, Dist. Osmanabad
- 4 The Deputy Collector (Gen. Adm.)
 Osmanabad, Dist. Osmanabad
- 5 The Tahsildar, Washi,
 Tq. Washi, Dist. Osmanabad
- 6 The Circle Officer (Mandal Adhikari),
 Washi Sajja, Washi,
 Tq. Washi, District Osmanabad

- 7 The Talathi,
Washi Sajja, Washi,
Tq. Washi, Dist. Osmanabad
8. Tejashree W/o Vinod Shelake
Age : 30 years, Occu. Household,
R/o : Samata Nagar, College Road, Washi,
Tq. Washi, Dist. Osmanabad
At present R/o : Shivshambhu Nagar,
Galli No.04, Sy. No. 36,
Katraj Kondwa Road, Pune-46

.... Respondents

Advocates for Petitioner : Mr. D. M. Mane & Mr. A.N. Nagargoje
Advocate for Respondent No. 8 : Senior Advocate Mr. P. R.
Katneshwarkar i/b. Mr. V. S. Undre
AGP for Respondents-State : Ms. M. L. Sangit

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 04 FEBRUARY, 2025

PRONOUNCED ON : 05 MARCH, 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.
2. Three writ petitions filed by the respective parties is heard and decided together by way of common order since the subject matter of the writ petitions is a land which is under restriction under the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961.

By an order of this Court, all these writ petitions are tagged to be heard. Considering that the subject matter of the three writ petitions is one and the same, all the writ petitions are heard and are being decided by this common judgment.

WRIT PETITION NO. 135 OF 2020

3. Writ Petition No. 135 of 2020 is the petition which requires to be decided as a lead petition since it is filed by the owner of the land who has executed various sale-deeds in favour of respondents in this writ petition and the petitioner in Writ Petition No. 11870 of 2021. Therefore, the Writ Petition No. 135 of 2020 needs to be treated as a lead petition.

4. The Writ Petition No. 135 of 2020 is filed challenging the order dated 24.12.2019 passed by the Additional Collector, Osmanabad in File No. 2017/GA/LR-2/KV-366. A prayer is also made that the Competent Authority & Sub-Divisional Officer, Kallam may be directed to pay the amount of compensation of the acquired portion of land bearing Gat No. 828 situated at village Washi, Tq. Washi, Dist. Osmanabad to the petitioner. In the alternate, prayer is also made for referring the dispute regarding the disbursement of the compensation amount to the competent Court as provided under Section 3-H of the National Highways Act, 1956.

5. The order impugned has been passed by the Additional Collector, Osmanabad thereby declaring that the petitioner has committed breach of conditions of the restrictions imposed on the land Gat No. 828, situated at Washi. It was further directed that respondent No. 6 Bharat Shriram Chede, should be directed to deposit the amount of Rs. 1,70,000/- which is 50% of the market rate of the subject land for the breach of restriction and the rest of the amount of compensation towards the land acquisition was directed to be disbursed to him. The Talathi, Osmanabad, is directed to make permanent entry instead of pencil entry. The order passed by the Additional Collector has been challenged by Shri. Maruti Bhau Kshirsagar who is the original owner of Gat No. 828.

6. For better appreciation of the facts and in order to decide the correctness of the order impugned, it is necessary to appreciate the chain of events leading to the order impugned.

7. Learned Advocate for the petitioner Mr. Nagargoje submitted that Gat No. 828 ad-measuring 1H-66R at village Washi was allotted under The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter "Ceiling on Holdings Act" for short) to the petitioner. Since it was a surplus land allotted under the Ceiling Act, there was restriction on alienation on the said land. The

petitioner was allotted the surplus land vide order dated 01.07.1976, by the Tahsildar, an entry to the effect is taken in the mutation register and the petitioner was handed over the possession of the said land.

8. It is the contention of the petitioner that after obtaining necessary permission from the authorities, he has sold some portion of land to the extent of 80R land to one Smt. Manisha Kele in the year 2008. It is the contention of the petitioner that by playing fraud and misappropriation, one Shri. Suresh Shinde has got executed the sale-deed in respect of his land to the extent of 80R on 15.06.1992, and one Smt. Tejashree Shelke, has also got executed the sale-deed dated 30.07.2012, to the extent of 46R land from the petitioner. Similarly, respondent No. 6 is also alleged to have played fraud on the petitioner and has got executed the sale-deed on 17.04.2012 to the extent of 40R. Thus, according to the petitioner, though he was the holder of land to the extent of 1H-66R and he has executed the sale-deed allegedly due to the fraud played by the respective purchasers to the extent of 80R land by way of sale-deed executed on 15.09.1992 in favour of one Shri. Suresh Rama Shinde and 80R land was further sold to Smt. Manisha Kele after getting appropriate permission for sale of the land in the year 2008.

9. It is also undisputed that on 17.04.2012, the respondent No. 6 has purchased land to the extent of 40R by way of sale-deed and on 30.07.2012, sale-deed to the extent of 46R was executed in favour of one Smt. Tejashree Shelke. Hence, from the averments made in the writ petition, it appears that though the petitioner is allotted land to the extent of 1H-66R, he has sold the land in parts to various persons on various dates by executing the sale-deeds. Except the sale-deed which was executed after due permission of the authority in favour of Smt. Manisha Kele in the year 2008, all other sale-deeds are executed without obtaining the prior permission for sale of land from the Collector who is competent to grant such permission under the Ceiling on Holdings Act.

10. It is the contention of the petitioner that in the year 2016, 21R land from Gat No. 828 was acquired by the Government. A notice under Section 3-H(4) of the National Highways Act, 1956 about acquisition of land in Gat No. 828, to the extent of 2100 Sq.Mtr. was issued to the petitioner wherein the petitioner was entitled to receive the compensation to the extent of Rs. 34,55,974/-.

11. The petitioner was called upon to hand over the possession of acquired land and accept the compensation by producing proof in support of the possession and ownership of the

land. Upon receiving the said notice, the respondent No. 6 has given his no objection dated 13.05.2016 to the petitioner for receiving the compensation of the land acquired. Pursuant to the no objection, the petitioner has also received the compensation.

12. It is submitted that, the petitioner again received a notice in respect of 4R (4000 Sq.mtr.) of land which was additionally acquired. The notice for payment of compensation was issued to the petitioner as well as respondent No. 6 for the compensation that was quantified to the extent of Rs. 6,13,600/-. On receiving the notice, the petitioner approached the Competent Authority claiming the compensation as owner of the land. However, respondent No. 6 refused to give his consent in favour of the petitioner for 4R land and he himself claimed the compensation contending that he is the owner.

13. It is contended by the petitioner that upon receiving such objection, the Competent Authority, referring to Section 3-H(4) of the National Highways Act, ought to have referred the matter to the Civil Court. However, respondent No. 5 thought it fit to refer it to the District Collector. In response to his communication seeking guidance, the Deputy Collector, Osmanabad vide communication dated 26.08.2018, directed the respondent No. 5 to make the payment of compensation as per the provisions of the Act. Since there was no

clarity in the guidance given by the Deputy Collector, he again referred the matter back to the Collector seeking guidance.

14. Upon referring the matter back to the Collector, the Deputy Collector (Land Reforms), by issuing notice on 15.10.2018, called upon the parties to remain present for hearing on 24.10.2018. It is the contention of the petitioner that on receiving the notice, the petitioner had filed his short say on 16.11.2018 opposing the disbursement of the compensation to respondent No. 6, since he claimed to be the owner. It is his contention that after his appearance on 16.11.2018, he did not receive any notice of hearing. Therefore, on 29.09.2019, he preferred an application before the District Collector requesting him to grant next date for hearing so as to enable him to submit his detailed say. According to him, thereafter, the matter was listed on 08.11.2019. On the said date, he filed his detailed say through Advocate Mr. N. A. Shahane / G. S. Sukale.

15. In the say, it is his contention that the sale-deed in question which is purportedly executed by him in favour of respondent No. 6, is not a sale-deed but it is a mortgage transaction and he had already repaid the loan amount and therefore, the respondent No. 6 has no concern with the land in question. The land in question is of restricted ownership land under the Ceiling on

Holdings Act hence, prior permission before the sale was required to be obtained. Therefore, the sale-deed is not a valid. Hence, the petitioner has prayed for cancellation of sale-deed.

16. On 01.12.2019, the oral arguments were advanced by the parties and thereafter, the matter was closed for orders. Though the petitioner raised the several objections against the disbursement of compensation in favour of respondent No. 6, however by the impugned order dated 24.12.2019, the respondent No. 3 has ordered to pay the compensation of Rs. 6,13,600/- to the respondent No. 6 by deducting an amount 50% of the market price of the land purchased by respondent No. 6.

17. By the same order, the claim of the respondent No. 6 for regularisation has been accepted by respondent No. 3. It is the contention of the petitioner that the order passed by the Additional Collector, Osmanabad in case No. संचिका क्र. २०१७/सा.प्र./भूसुधार-२/कावी-३६६ dated 24.12.2019 is contrary to the provisions of the National Highways Act as well as the Ceiling on Holdings Act.

18. The petitioner has challenged the order passed by the Additional Collector on the following grounds :

1. The order impugned is passed without the jurisdiction.
2. It is contrary to the provisions of The Maharashtra Agricultural Land (Ceiling and Holdings) Act, 196.
3. The order impugned is contrary to the provisions of the National Highways Act.

19. According to the petitioner, after causing appearance, he had filed short say on 16.11.2018 and thereafter, he has filed his detailed say on 08.11.2019 opposing the regularisation of the sale-deed of the respondent No. 6. According to him, he has never engaged the Advocate through whom the disputed say has been purportedly claimed to have been filed by him. Learned Advocate for the petitioner has relied on the *roznama* in support of his contention that he had not engaged the services of the Advocate who had appeared on his behalf and whose appearance has been recorded in the order and only on the basis of say which is claimed to be filed by him on 02.01.2018, the order impugned has been passed by the Additional Collector.

20. Though the petitioner has right to raise various disputed question of fact, however, in order to decide the validity of the order passed by the Collector, it is not necessary to go into the disputed question of facts.

21. Learned Senior Advocate Mr. Katneshwarkar appearing for the respondent No. 6 has contended that the petitioner has executed a registered sale-deed on 07.04.2012 in favour of respondent No. 6. While executing the said sale-deed, he was aware that the land is under the restriction under the Ceiling on Holdings Act. After 2012, the petitioner has never raised any dispute about the validity of the sale-deed or even about the fraud which is alleged to have been played by the respondent No. 6.

22. He has not challenged the sale-deed before any Competent Court within the prescribed period of limitation. According to the learned Senior Advocate, in order to challenge the sale-deed, the period of limitation which is prescribed under Article 59 of the Limitation Act is 3 years. Therefore, the petitioner should have challenged the sale-deed within the period of three years from its execution.

23. When the question of disbursement of amount of compensation for the acquisition of land arose and notices were issued to the petitioner, the petitioner and respondents were having cordial relations. The respondent No. 6 had not raised any objection to the disbursement of compensation in favour of the petitioner. In the meanwhile, they got the knowledge about likelihood of

amendment to Section 29 of the Ceiling on Holdings Act, which would benefit the regularisation of sale-deed executed between them on 07.04.2012. Therefore, the petitioner as well as the respondent decided to wait for the amendment. Since they were having cordial relations, they have jointly approached Advocate Shri. S. N. Kawale practicing at Washi who referred them to the other Advocate.

24. The dispute has started when the second notice for disbursement of compensation for 4,000 Sq.Mtr. of land was issued and the name of the present respondent No. 6, has appeared in the notices. On receiving the notice dated 01.04.2016, respondent No. 6 has submitted his claim with supporting documents on 13.05.2016. On going through the documents which were placed on record by the respondent No. 6, the Competent Authority, under the National Highways Act, found that Mutation Entry No. 10552 was recorded with pencil. Therefore, he has a report from Circle Officer about pencil entry.

25. In response to the communication, the Circle Officer has submitted his report on 28.10.2016 wherein it was submitted that the land in question is of restricted ownership and entry to that effect was taken in the 7/12 extract. In spite of the restrictions, in absence of appropriate permission from the Collector, the Sub-Registrar has

registered the sale-deed and the entry regarding the restricted ownership is still maintained in the record. Therefore, the mutation entry is not confirmed. It was also recommended that since the sale-deed has been executed in respect of land which was under restriction, it would be appropriate to impose penalty @ 50% of the market value and after depositing the same with the Government, sale-deed should be regularised.

26. Thereafter, the Competent Authority has forwarded the proposal to the Collector seeking his guidance in view of the pencil entry in the name of respondent No. 6. He even called for opinion from the Additional Collector, Osmanabad by communication dated 06.08.2018.

27. Upon receiving the such communication, the Additional Collector has conducted hearing of the respective parties treating the communication of the SDO and Competent Authority (Land Acquisition), Kallam, as suo-moto proceeding. In the proceeding before the Additional Collector, the parties were heard and the matter was closed for passing of order on 05.05.2019. After taking into consideration the submission of respective parties, the Additional Collector has passed an order on 24.12.2019 declaring that - (1) there

is a contravention of conditions of grant of land; (2) it is further directed that the amount of Rs. 1,70,000/-, which is 50% of the market value of the land, be deducted from the compensation; (3) after deducting the amount, rest of the amount should be disbursed to the respondent No. 6 Bharat Chede; and (4) pencil entry of the Bharat Chede in 7/12 extract should be replaced by permanent entry.

28. The first submission of the learned Senior Advocate Mr. Katneshwarkar appearing for respondent No. 6 is that the petitioner has no locus to challenge the regularisation which is made in his favour. According to him, once the person who executes the sale-deed has parted with property, he has no locus to challenge the regularisation when he has already sold the land and he has not challenged the sale-deeds. Prior to amendment to Section 29 of the Ceiling on Holdings Act, the purchaser did not possess right to get his sale-deed regularised, upon amendment to Section 29 of the Act, there is a right conferred in favour of the purchaser to get the sale-deed regularised by making payment of the market value which is ascertained by the Competent Authority. Upon payment of such amount which is provided in the proviso to Sub-section (3) of Section 29 of the Act, the sale-deed is regularised. According to him, it is between the purchaser and the Collector who is the Competent Authority to regularise the sale-deed.

29. The learned Senior Advocate, referring to the say filed by the petitioner before the District Collector submits that the prayer made in the say filed by the petitioner is not at all maintainable. The petitioner cannot challenge the regularisation of the respondent, if at all the petitioner wants to oppose the execution of sale-deed, the only recourse open to him is to approach the Civil Court. The Additional Collector while passing the order impugned has not over-stepped his powers and there is no jurisdictional error while exercising his powers.

30. According to him, the powers have been conferred under Section 29 of The Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961, under which the Collector can regularise the sale-deeds which are in contravention of the provisions of Ceiling Act. 'Collector' is defined in Section 2(6) of the Ceiling on Holdings Act, the 'Collector' includes the Additional Collector, Assistant Collector, Deputy Collector to exercise the powers or discharge the duties of 'Collector' under the Code and also any other Officer not below the rank of Assistant or Deputy Collector especially empowered by the State Government are empowered to exercise the powers and perform the functions of the Collector by or under the Act. Therefore, the

Additional Collector is competent to pass the order and he has not exceeded his powers while passing the impugned order.

31. Learned Senior Advocate Mr. Katneshwarkar, in response to the contention that, the right of apportionment of the parties are required to be decided by the Civil Court upon the matter being referred by the Competent Authority under Sub-section (3) of Section 3-H of the National Highways Act, submits that Sub-section (3) of Section 3-H of the National Highways Act would be relevant and not Sub-section (4). The Additional Collector has exercised his powers under Sub-section (3) and not under Sub-section (4) of the National Highways Act.

WRIT PETITION NO. 11870 OF 2021

32. Writ Petition No. 11870 of 2021 is filed by one Suresh Rama Shinde. According to him, the land in Gat No. 828/b/1 to the extent of 80R was sold to him by Shri. Maruti Bhau Kshirsagar by execution of registered sale-deed on 15.06.1992. He was also handed over the possession of the land pursuant to the sale-deed. It is his contention that in the year 2008, Maruti Kshirsagar who is respondent No. 8 in his writ petition, sold 80R land to one Smt. Manisha Kele with the permission of the Competent Authority. Thus,

after execution of two sale-deeds, only 6R residual land remained with the owner. Inspite of that, he has subsequently executed sale-deed to the extent of 40R to respondent No. 9 on 17.04.2012 and 46R land, on 30.07.2012, in favour of respondent No. 10. Since no land was left after execution of sale-deed in favour of the petitioner and Smt. Manisha Kele, the subsequent sale-deeds are invalid since there was no land available for execution of sale-deed. Hence, there is no valid title vested by the subsequent sale-deeds. It is his contention that since the land was affected by the restriction under Section 29 of the Ceiling on Holdings Act, prior permission of the Collector before such transfer is necessary and the transfer without prior permission is void.

33. It is submitted that an amendment to Section 29 of the Ceiling on Holdings Act is made on 15.12.2018, whereby the provision is made to regularise the sale-deeds which were made in contravention of Section 29 of the Act. The transferrer, transferee or any person interested on payment of such amount as specified by the Government are at liberty to get the sale-deed regularised as per the prescribed procedure under the Act.

34. In view of the amendment to Section 29 of the Ceiling on Holdings Act, respondent No. 9 Smt. Tejashree Shelke filed an

application on 25.06.2019 for regularising her sale-deed and entering her name in the mutation register. Though she had not filed the application in the proper format and the Collector being the Competent Authority to grant such permission, the Deputy Collector (General Administration) has granted permission for regularisation, ignoring the report submitted by the respondent No. 6 which clearly suggested that there was no agricultural land standing in the name of Tejashree Shelke, there was no consent of co-owners; there was a violation of provisions of Ceiling on Holdings Act. In spite of the report which contained various objections, the respondent No. 4 has directed to get 50% of *nazrana* amount deposited from Smt. Tejashree Shelke, the order was made subject to condition of approval from the Competent Authority.

35. Accordingly, respondent No. 6 i.e. Tahsildar, Washi, intimated the District Collector about deposit of *nazrana* amount by respondent No. 9 and also submitted the *challan* for further action. The name of respondent No. 9 Smt. Tejashree Shelke was mutated in the revenue record to the extent of 86R and order regularising the sale-deed was issued on 29.07.2019.

36. Being aggrieved by the said order, respondent No. 8

Maruti Kshirsagar approached this Court by filing the Writ Petition No. 11089 of 2019, which came to be disposed of on 16.10.2019 by remanding the matter back to the respondent No. 6 for passing appropriate orders after granting opportunity of being heard to the respective parties.

37. After remand of the matter, respondent No. 4 Deputy Collector (General Administration), Osmanabad has passed an order on 29.11.2019, regularising the sale-deed of respondent No. 9 Smt. Tejashree Shelke, the respondent No. 6 Maruti Kshirasagar who is aggrieved and dissatisfied with the order passed by respondent No. 4 on 29.11.2019, has again filed Writ Petition No. 14999 of 2019, which is tagged along with this group of writ petitions.

38. According to the petitioner, he has prior claim over all other subsequent purchasers. Therefore, even as regards right to receive compensation for the acquisition of disputed land from the National Highway Authority, his claim is prior to everybody else. The petitioner has therefore, challenged even the regularisation of the land in favour of respondent No. 10 Bharat Chede who is respondent No. 6 in Writ Petition No. 135 of 2020.

39. The petitioner herein is also taking exception to the order

dated 24.12.2019 passed by the Additional Collector, Osmanabad thereby order regularising the sale-deed executed in favour of respondent No. 10 and directing the Competent Authority to disburse the amount of compensation after deducting the amount of *nazarana* payable by him towards the regularisation of the sale-deed which was executed in breach of Section 29 of the Ceiling on Holdings Act has been issued.

40. According to the petitioner, impugned order dated 29.11.2019 which is passed in favour of respondent No. 9 Smt. Tejashree Shelke regularising her sale-deed and order dated 24.12.2019, passed in favour of respondent No. 10 Bharat Chede regularising his sale-deed as well as directing the disbursement of amount of compensation in his favour, are challenged by him on the ground of jurisdictional error.

41. Learned Advocate Mr. Kadam submits that the Deputy Collector and the Additional Collector respectively are not empowered to pass the order of regularisation under Section 29 of the Ceiling on Holdings Act. The orders passed by them are without application of mind and against the provisions of law. The orders impugned in the writ petition have not been passed by resorting to due procedure of law. Though the report which was called before

regularising the sale-deed of respondent No. 9 was not favourable, ignoring the same, the order has been passed, which is per se illegal and without jurisdiction. Therefore, he is invoking powers of this Court under Article 227 of the Constitution of India to quash and set aside the order passed by the Deputy Collector dated 29.11.2019 and the Additional Collector dated 24.12.2019.

WRIT PETITION NO. 14999 OF 2019

42. Writ Petition No. 14999 of 2019 has been filed by Shri. Maruti Bhau Kshirsagar through his legal heirs. In this writ petition, the petitioner is challenging the orders passed by Deputy Collector (General Administration), Osmanabad dated 29.11.2019 wherein the sale-deed executed in favour of Smt. Tejashree Shelke has been regularised after giving an opportunity of hearing to the parties as directed by this Court in Writ Petition No. 11089 of 2019.

43. It is the contention of the petitioner that he has been granted surplus land since he was a landless person belonging to community of backward class. The nature of land allotted to him was of restricted ownership and Class II occupancy, therefore, it cannot be sold without prior permission of the Competent Authority under the Ceiling on Holdings Act.

44. However, one Suresh Rama Shinde has got executed the sale-deed in the year 1992 from the petitioner in respect of the suit land to the extent of 80R. In the year 2012, he was in need of money for the medical treatment, therefore, he had taken loan from private money lender Bharat Chede. Though he had returned the loan amount but because of the collateral given to him against the loan, Shri. Bharat Chede had got the sale-deed executed. According to him, except the sale-deed executed in favour of Smt. Manisha Kele which is with the prior permission of the Competent Authority, rest all the three sale-deeds, have been got executed from him, by playing fraud and misrepresentation. Therefore, he has filed the suit challenging those sale-deeds.

45. It is contended that before the impugned order dated 29.11.2019 was passed by the Deputy Collector (General Administration), a report was called by him in the prescribed format, contained various objections. Ignoring those objections, the sale-deeds have been regularised in contravention of provisions of law. It is his contention that he being the transferar of the said sale-deeds, an opportunity of hearing should have been granted to him. However, without giving any notice to the petitioner and other affected persons, the impugned orders have been passed thereby the sale-deed of Shri.

Bharat Chede as well as Smt. Tejashree Shelke have been regularised.

46. It is submitted that Shri. Suresh Shinde who has got the sale-deed executed from him has filed Regular Civil Suit No. 723 of 2019 for declaration of ownership. His daughter Sunita has also filed Regular Civil Suit No. 840 of 2019 against him and other persons seeking declaration that the sale-deeds executed by him are not binding on her.

47. Being aggrieved by the order passed by the respondent No. 4 to regularise the sale-deed dated 30.07.2012 and further directing the Tahsildar to take appropriate steps for entering the name of Smt. Tejashree Sheleke in 7/12 extract, the petitioner has approached this Court. After hearing the petitioner, this Court has passed an order on 18.12.2019 whereby the respondent No. 5 Tahsildar, Washi was directed to adjourn the proposed hearing before him on 20.12.2019 till the next date. The matter was listed from time to time and the interim relief was is directed to be continued by the orders of this Court.

48. The State has also filed an affidavit and has supported the order passed by the respondent No. 4. According to the State

Authorities, the sale-deed has been regularised in view of the Government Resolution dated 15.12.2019. In fact, it is not the Government Resolution but a notification of the amendment to Section 29 of the Ceiling on Holdings Act.

49. On the background as stated herein above, after hearing the respective parties and upon going through the memo of writ petition and relevant documents placed on record, all the parties in the three writ petitions are affected by the two orders dated 24.12.2019 passed by Deputy Collector and order dated 24.11.2019 passed by Additional Collector.

50. Writ Petition No. 135 of 2020 has been filed by the Maruti Bhau Kshirsagar challenging the order dated 24.12.2019 passed in favour of respondent No. 6 regularising the sale-deed dated 17.04.2012 to the extent of 40R land and writ petition No. 14999 of 2019 has been filed by him challenging the legality and validity of the regularisation granted in favour of Smt. Tejashree Vinod Shelke in respect of sale-deed executed on 30.07.2012 vide order dated 29.11.2019 whereas Writ Petition No. 11870 of 2021 has been filed by Shri. Suresh Rama Shinde challenging the order dated 29.11.2019 and 24.12.2019 regularising sale-deed executed in favour of Smt. Tejashree Vinod Shelke and Shri. Bharat Chede respectively.

Therefore, in order to narrow down the controversy, this Court will have to assess the validity and legality of the two orders which are impugned in three writ petitions.

51. The question that needs to be decided is whether the Additional Collector is conferred with the powers to pass an order of regularisation under Section 29 of The Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 and also empowered under the provisions of National Highways Act, 1956 to pass an order of disbursement of compensation by regularising the sale-deed and further directing to adjust the *nazarana* amount by deducting it from the amount of compensation receivable by him.

52. So far as the regularisation of sale-deed executed in breach of condition under the Ceiling on Holdings Act is concerned, admittedly, the land in question has been sold by the petitioner without prior permission of the Collector. The restrictions are imposed under Section 8 of the Ceiling on Holdings Act on transfer of land, if such transfers are made in contravention of the condition imposed. After giving opportunity to show cause, there was a provision of forfeiture of land by the Collector. However, after the amendment to Section 29 of the Ceiling on Holdings Act, the powers

of forfeiture have been relaxed, the proviso to Section 29 provides that no such forfeiture by the Collector for contravention of provisions of Sub-section (1) of Sub-section (2) should be made, if the transfer, transferee or any other person interested in such land makes the payment of an amount of 50% of the market value and upon such payment being made, no further proceedings for violation of the provision of Sub-section (1) or Sub-section (2) shall be initiated.

53. Section 29 of The Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 is reproduced here which reads thus :

29. Restriction on transfer or division of land granted under section 28.

(1) Without the previous sanction of the Collector, no land granted under section 27 or granted to a joint farming society under section 28, shall be –

(a) transferred, whether by way of sale (including sale in execution of a decree of a civil court or of an award or order of any competent authority) or by way of gift, mortgage, exchange, lease or otherwise; or

(b) divided whether by partition or otherwise, and whether by a decree or order of a civil court or any other competent authority,

such sanction shall not be given otherwise than in such circumstances, and on such conditions [including condition regarding payment of premium or nazarana to the State Government], as may be prescribed :

[Provided that, no such sanction shall be necessary where land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in sub-section (4) of section 36 of the Code for raising a loan for effecting any improvement of such land.]

(2) If sanction is given by the Collector to any transfer or division under sub-section (1) subsequent transfer or division of land shall also be subject to the provisions of sub-section (1).

(3) Any transfer or division of land, and any acquisition thereof, in contravention of sub-section (1) or sub-section (2) shall be invalid; and as a penalty therefor, any right, title and interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector and shall without further assurance vest in the State Government.

[Provided that, after the commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2018, no such land shall be forfeited by the Collector for contravention of the provisions of sub-section (1) or sub-section (2), as the case may be, if the transferor, transferee or any other person interested in such land makes the payment of such amount, as the State Government may, by order published in the Official Gazette, specify :Provided further that, the amount specified by the State Government under the preceding proviso shall not exceed fifty per cent. of the market value of such land ascertained as per the current Annual Statement of Rates published under the provisions of the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995.]

(4) [On payment of the amount referred to in the first proviso to sub-section (3),-

(i) no further proceedings for violation of the provisions of

subsection (1) or sub-section (2) shall be initiated;

(ii) where the proceedings are already initiated before the date of commencement of the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Act, 2018, such proceedings shall abate and the Collector shall make an order to that effect.]

54. Upon perusal of Section 29 of the Ceiling on Holdings Act, it cannot be disputed that the Collector is empowered to regularise the transfers upon payment of market value. In the present case, the order of regularisation has been passed by the Additional Collector. However, in the order passed by the Additional Collector, the directions are issued for making adjustment of the penalty payable from the amount of compensation which is admissible to the respondent No. 6 under the National Highways Act for acquisition of land. The orders regarding the disbursement of compensation to the claimants in respect of the land acquired under the National Highways Act can be passed only by the 'Competent Authority'.

55. The Additional Collector is not conferred with the powers under the National Highway Act, to exercise the power of Competent Authority and issue directions for disbursement of the amount of compensation. In the present case, the SDO and Competent Authority had merely sought guidance, considering that there was an entry

regarding the contravention of restricted ownership in the revenue record. On such guidance being sought, treating the said communication to be suo-moto proceedings at the behest of the Competent Authority and SDO, the Additional Collector has assumed the powers of Competent Authority as well as the Collector and decided the issue of disbursement of compensation and regularisation of transfer of land purchased by the respondent No. 6 in proceedings which have been decided by way of common order. Though the parties were called upon and heard by the Additional Collector, however, while passing the order, the Additional Collector has assumed the powers of Competent Authority under the National Highway Act.

56. Section 3 of the National Highways Act provides the definition of “Competent Authority”, which reads thus :

3. Definitions.- In this Act, unless the context otherwise requires,-

(a) “competent authority” means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions the competent authority for such area as may be specified in the notification;

57. Section 3-H of the National Highways Act which confers

powers of Competent Authority reads thus :

3-H. Deposit and payment of amount.-

(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any,

awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.

58. So far as the order dated 24.12.2019 is concerned, as observed in the foregoing paragraphs, the Additional Collector has passed a common order in the capacity of two different Competent Authorities who are conferred with powers to pass order under two different enactments viz. under The Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961 and The National Highways Act, 1956. The Sub-Divisional Officer and the Competent Authority is the appropriate authority to issue orders for disbursement of compensation under the National Highways Act, 1956 and so far as the regularisation is concerned, the Collector is the Competent Authority to grant such permission by regularising the sale-deed under the Ceiling on Holdings Act.

59. In the order impugned dated 24.12.2019, the Additional Collector has assumed the powers under both the enactments. The Additional Collector has treated the communication of the Sub-Divisional Officer seeking guidance as an application and has proceeded to conduct the hearing and has passed the order which is beyond his jurisdiction. Section 29 of The Maharashtra Agricultural

Land (Ceiling on Holdings) Act, 1961 confers power on the Collector to pass an order regularising the sale-deed which is in contravention of the provisions of the Act, after the market value of the land has been ascertained and the specified amount is deposited by the person claiming regularisation.

60. Alongwith ascertainment of market value, an inquiry is also required to be conducted, for ensuring that there are no other legal impediments in regularisation. The Additional Collector, Osmanabad has not called for any report which contemplates a detailed inquiry and has passed an order thereby directing Shri. Bharat Chede to deposit the 50% of the market value of the land which is determined by the Sub-Registrar, and after deducting the amount of Rs. 1,70,000/- which is quantified towards the market value, rest of the amount of compensation was directed to be disbursed to Bharat Chede.

61. From the impugned order itself, it is evident that the Additional Collector has combined both the proceedings under two different enactments and has directed to grant regularisation as well as compensation to Bharat Chede. Whenever there is a proposal for regularisation, it is required to be proceeded on the basis of inquiry, A format is made available for the inquiry the details are to be filled in

during inquiry and upon receiving the report in the format which contains the details of the land under various heads. The Collector can pass an order based on such report. From the order impugned and the observations made therein, it is evident that no such report was received by the Additional Collector.

62. From the above provision, it is evident that the Additional Collector has committed a jurisdictional error while exercising the powers of Competent Authority under the National Highways Act.

63. Hence, apart from the fact that the order is passed without jurisdiction, it is also passed without adhering to the appropriate procedure. Therefore, on that count also, the order passed by the Additional Collector deserves to be quashed and set aside.

64. Similarly, Writ Petition No. 11840 of 2021 as well as in Writ Petition No. 14999 of 2019, the petitioners have challenged the order dated 29.11.2019 passed by the Deputy Collector (General Administration), Osmanabad. So far as this order is concerned, the order was passed after affording opportunity of hearing to the parties including the petitioner as per the directions issued by this Court in Writ Petition No. 11089 of 2019.

65. Upon perusal of the order dated 29.11.2019, the order refers to the application made by Smt. Tejashree Shelke wherein she has made a request to regularise her sale-deed, since the sale-deed was executed in contravention of restriction imposed under Section 29 of the Ceiling on Holdings Act. In view of the amendment made to Section 29 of the Act, she has filed an application showing her willingness to deposit 50% of the amount of market value as specified by the Government. Upon such application being made, she was informed about the quantified amount and she has deposited the said amount.

66. The objection of the petitioner in Writ Petition No. 14999 of 2019 to the order of regularisation is mainly on the ground that he has never executed a sale-deed which is regularised by the concerned authority. Therefore, he has challenged the order of regularisation.

67. So far as objection by petitioner in Writ Petition No. 11870 of 2021 is concerned, he is a transferee first in the point of time in whose favour the land has been transferred by way of sale-deed, hence, he has a prior claim over all others in whose favour the land has been transferred by way of various sale-deed by the vendor Shri. Maruti Kshirsagar. If the regularisation order dated 29.11.2019

and 24.12.2019 are not quashed, his rights are adversely affected since no land remains to be regularised in his favour. He has also challenged it on the ground that in the report filed by the Tahsildar on 25.07.2019, though various objections were raised to the regularisation in favour of Smt. Tejashree Shelke, an order granting regularisation is passed on 29.11.2019. There are various objections for regularisation of the land which would make the transfer impermissible. There is a substance in the contentions of the petitioner in Writ Petition No. 11870 of 2021.

68. In spite of objections recorded by the land owners to the transfer of land with other objections, the Deputy Collector has passed an order granting regularisation of sale-deed. It also needs to be appreciated that from the order itself, it can be gathered that the Deputy Collector is not empowered to grant such regularisation. In the order itself, the Deputy Collector has observed that the sale-deed No. 753 of 2012 to the extent of 0H-46R, is regularised subject to the approval of the Competent Authority. This itself indicates that the Deputy Collector (General Administration), Osmanabad is not the Competent Authority who is empowered to pass the order.

69. As has been observed here-in-above, the Collector is empowered under Section 29 of the Ceiling on Holdings Act to pass

the order regularising the sale-deeds which are executed in contravention of the restrictions imposed by Section 29 of the Act. Though the learned Senior Advocate Mr. P. R. Katneshwarkar, relying on definition of 'Collector' in Section 2(6) of the Ceiling and Holdings Act submits that 'Collector' includes Additional Collector, and Assistant Collector or Deputy Collector, assuming that the Collector includes Additional Collector, Assistant Collector however, while exercising the powers under the Ceiling on Holding Act, those powers are required to be exercised by Deputy Collector or Assistant Collector (Land Reforms) and not by the Deputy Collector (General Administration). Even otherwise, the order itself is self-speaking which makes the order passed by the Deputy Collector subject to the approval of the Competent Authority.

70. Hence, in view of the fact that the Deputy Collector has not taken into consideration the report which contained various objections to the transfer of land as well as the fact that the petitioner in Writ Petition No. 11870 of 2021, has a prior claim over all others, the order impugned becomes unsustainable.

71. Hence, in view of the conspectus of the matter, the order dated 29.11.2019 passed by the Deputy Collector (General Administration), Osmanabad in File No. 2019/GA/LR-2/KV-322

deserves to be quashed and set aside.

72. Accordingly, both the orders i.e. order dated 24.12.2019 passed by Additional Collector, Osmanabad and order dated 29.11.2019 passed by Deputy Collector (General Administration), Osmanabad, which are challenged in Writ Petition No. 135 of 2020, Writ Petition No. 14999 of 2019 and Writ Petition No. 11840 of 2021 are quashed and set aside by remanding the matter back to the Competent Authority who is empowered to decide the regularisation of sale-deed which is made in contravention of Section 29 of the Ceiling on Holdings Act for passing fresh orders after granting opportunity to all the interested parties in accordance with the provisions of the Maharashtra Agricultural Land (Ceiling on Holdings) Act, 1961

73. Similarly, in view of quashing of order dated 24.12.2019 passed by the Additional Collector, Osmanabad, the Competent Authority shall take appropriate decision for the disbursement of compensation to whoever is found to be legally entitled to receive the same in respect of acquisition of land.

74. With the above directions, all the three writ petitions are disposed of. Rule made absolute in above terms.

[MANJUSHA DESHPANDE, J.]

Omkar Joshi