

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3579 OF 2024

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Balaram Barku Paghi	]	
Age: 52, Occ.: Agri.,	]	
Mouje Valshind, Taluka Bhiwandi,	]	
District Thane.	]	...Petitioner

Versus

- | | | | |
|----|-------------------------------------|---|----------------|
| 1. | The State of Maharashtra |] | |
| | Through Secretary, |] | |
| | Revenue and Forest Department, |] | |
| | Mantralaya, Mumbai-400 032. |] | |
| 2. | The Collector, Thane. |] | |
| 3. | The Deputy Collector, |] | |
| | Collector Office, Thane. |] | |
| 4. | The Divisional Commissioner, |] | |
| | Konkan Division, Konkan Bhavan, |] | |
| | CBD, Belapur, Navi Mumbai-400 614.] | | |
| 5. | Mumbai Metropolitan Regional |] | |
| | Development Authority, |] | |
| | Having its office at Bandra Kurla |] | |
| | Complex, Bandra (East), |] | |
| | Mumbai-400 051. |] | |
| 6. | Shri Vijendra Shamlal Sharma, |] | |
| | Age Adult, Occ. Business, |] | |
| | Residing at New Devashish Building, |] | |
| | Eastern Express Highway, Thane. |] | ...Respondents |

Mr. Suresh Sabrad a/w. Mr. Amey Sawant, Mr. Pratik Sabrad, Ms. Neha Zanje & Ms. Gracy Saldanha, Advocates for Petitioner.

Mr. S.B. Kalel, Assistant Government Pleader for Respondent Nos. 1 to 4.

Mr. Vikram N. Walawalkar, Advocate for Respondent No. 6.

**CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ.**

DATE : 21ST FEBRUARY 2025

P.C.

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
2. The Petitioner, a tribal, is challenging a communication/ letter dated 03/07/2023 issued by Respondent No.2 refusing to grant permission under Section 36A of the Maharashtra Land Revenue Code, 1966 (“**the Code**”, for short) and a letter dated 03/07/2023 issued by Respondent No.1 to Respondent No.2 intimating that prior approval under Section 36A of the Code cannot be granted. The Petitioner is also seeking a direction to Respondent-authorities to grant such approval for disposing of his land bearing Survey No.46/1/A/2, admeasuring 60 Ares, situated at Mouje Valshind, Taluka Bhiwandi, District Thane.
3. The Petitioner being a Tribal, is seeking permission under Section 36A of the Code to sell his subject land, since he is in need of money for meeting the requirements of his large joint family.
4. Learned counsel for the Petitioner has relied upon the judgment in the case of **Kisan Songya Bangara Vs. State of Maharashtra and Ors.**¹ contending *inter-alia* that the facts of the present case are directly covered by the said judgment. In fact, it is submitted that the present Respondent No.6 (Purchaser non-Tribal) is the same person. Under order dated 22/08/2024, this Court had recorded the reliance placed on the said judgment and the learned Additional Government Pleader was

¹ Bombay High Court W.P.(St) No. 98190 of 2020 Order dt. 20.04.2021

directed to take instructions whether Respondent No.2 has any objection in issuing similar conditional permission in the present case.

5. Learned counsel for Respondent No.6 / Purchaser has also relied on the same judgment. He has invited this Court's attention to the affidavit-in-reply dated 23/03/2024 filed by Respondent No.6, stating therein that he is ready and willingness to purchase the subject land on 'as is where is' basis and he has undertaken to make use of subject land which would be permitted by Respondent No.5 / Planning Authority.

6. The concerned Tahsildar has filed an affidavit-in-reply on behalf of Respondent Nos.1 to 4 on 17/10/2024. Though the judgment relied upon by the Petitioner is referred to in the reply, it is contended that the subject land is reserved for Play Ground and Ground Water Recharge and the impugned decision refusing permission, is justified.

7. We have considered the submissions and perused the record. Perusal of the judgment in the matter of **Kisan Songya Bangara (supra)** shows that the co-ordinate Bench of this Court, in an identical situation has considered the financial need of the Petitioner, a Tribal and after considering the provisions of Section 36A of the Code and intention behind it, has granted permission to sell a tribal land in favour of Respondent No.6. We see no reason to take a different view. The purchaser is same here and even the subject land is from same village.

8. In light thereof, the petition succeeds and we pass the following order.

- (A) The petition is allowed in terms of prayer clause (b). It is clarified that the undertaking of Respondent No.6 that he is purchasing the subject land on 'as is where is' basis and

will use it as permitted by Respondent No.5 / Planning Authority, is accepted.

- (B) The permission to sell the subject land in favour of Respondent No.6 be granted in view of the said undertaking, which shall be included in the permission / sanction letter.

9. Rule is made absolute and the writ petition is disposed of in above terms. No order as to costs.

10. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

(A.S. CHANDURKAR, J.)