

Varsha

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9488 OF 2024

Sandeep Pundalik Devre and Anr. .. Petitioners
Versus
The State of Maharashtra and Ors. .. Respondents

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- Mr. Bharat Gadhavi with Mansi D., Sarvesh Deshpande, Satyajeet salve and Parth Talekar i/by Bharat Daghavi, for the Petitioners.
 - Mr. Ajinkya Jaibhave, for the Respondent Nos. 3 to 5.
 - Ms. V.s. Nimbalkar, AGP, for the State.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 04, 2025.

P.C.:

1. The present petition challenges and assails order dated 23/04/2024 passed by the Maharashtra Revenue Tribunal dismissing the appeal filed by Petitioners upholding the order dated 25/03/2022 passed by Tahsildar, Deola, *inter alia*, in respect of the declaration of transfer of land bearing Gat No. 31 admeasuring 1H 55R, having Pot Kharaba land of 0H 18R and totaling to 1H 73R situated at village Matane, Tal-Deola, Dist-Nashik as illegal and directing resumption of subject land from Petitioners and same be handed over to the original Tribal transferor after removal of all encumbrances thereon.

2. Judgment and order dated 25/03/2022 is passed by Tahsildar in proceedings initiated under Section 3 of the Maharashtra Restoration of the Scheduled Tribe Act, 1974 (for short the "**said Act**") alleging that private Respondents – purchasers who were non-tribals took undue advantage of the illiteracy of the tribal and thereafter further transferred portions of the land to Petitioners by executing sale deed without obtaining statutory / mandatory permission from the District Collector. Being aggrieved Petitioners filed appeal under Section 6 of the said Act before MRT which by order dated 23/04/2024 dismissed the appeal and upheld the order passed by Tahsildar. Hence the present Petition.

3. Challenge is maintained on the ground of jurisdiction as the principal ground stating that learned Tahsildar, Deola who has passed order dated 25/03/2022 as statutory officer does not have the jurisdiction to pass the order and the authority in law to decide the appeal filed by Petitioners vests only in the Collector.

4. This ground needs to be met with at the threshold. The learned AGP has placed on record Government order dated 20/08/1975 whereby the Government of Maharashtra has delegated power of Collector to the Tahsildar and Additional Tahsildar in the District in respect of dealing with and deciding with applications under Section 36A of the Maharashtra Land Revenue Code, 1966 read with

Act, (XXXV) of 1978.

5. It is seen that under the said Government order which is followed till date, all applications received under Section 36A in the Districts are decided by the Tahsildar/Additional Tahsildar on behalf of the Collector as the statutory authority. Mr. Gadhavi has no submissions to offer on this ground and after taking instructions calls upon the Court to pass appropriate order.

6. In that view of the matter the ground of jurisdiction pleaded by Petitioners is unsustainable in law.

7. The next ground pleaded by Petitioners to challenge the impugned order is that the original proceeding filed by private Respondent Nos. 3 to 5 before the Tahsildar, Deola challenging Mutation Entry Nos. 42 and 43 was hopelessly time barred since it was filed after a lapse of 39 years.

8. According to Petitioners the Petitioner No. 1 is a bonafide purchaser of the subject land admeasuring 18R by virtue of registered sale deed dated 25/01/2022 and proceedings before the statutory authorities have been initiated after a lapse of almost two decades and therefore the statutory authority ought to have rejected the same on the ground of delay and laches.

9. Mr. Ghadhavi would submit that by registered agreement for sale dated 25/01/2022, private Respondent No. 3 had purchased the subject land, whereas Respondent No. 6 by a separate registered agreement of even date dated 25/01/2022 purchased 39 R on the southern side of the subject land. He would submit that both these agreements were registered wherein the Respondents appeared as witnesses to the transaction thereby consenting to the transaction in question. He would therefore submit that application of private Respondents for resumption of said land on the ground that they were Adivasis belonging to Hindu Bhil Tribe and predecessor-in-title of Petitioners had taken advantage of their illiteracy and in collusion with Revenue Officials illegally recorded their names in the Revenue Record without prior permission of the Collector should not be countenanced by this Court.

10. He would submit that Mutation Entry Nos. 42 and 43 stood in the revenue records for almost two decades and therefore attained finality in view of crystallization of rights in favour of the Petitioners. He would submit that save and except the revenue record there is nothing placed on record by private Respondents to show that they were original owners of subject land which was sold to private Respondents and which was purchased by Petitioners. He would submit that apart from the long standing Mutation Entry possession of lands also admittedly exchanged hands which would go to prove that

private Respondents who filed complaint before Tahsildar were not entitled to their land since they had received consideration and this factum was not considered adequately either by Tahsildar or by the Revenue Tribunal. He would submit that order passed by Tahsildar in favour of private Respondents of resumption of the said lands has been demonstrably obtained by suppressing material facts and clear misrepresentation of facts by playing fraud upon the concerned authority. He would submit that when Petitioners purchased the subject lands from their predecessor-in-title who Respondent Nos. 6 and 7 for value and hence have to be regarded as bonafide purchases for value. He would submit that in the present case they had given public notices in the year 2024 in the local newspapers and no objections whatsoever even raised or received from the original owner / tribals / adiwasis in at that time. He would therefore persue the Court to set aside the twin orders passed by Tahsildar and upheld by the Tribunal in the interest of justice and equity.

11. In support of his aforesaid submissions, he would refer to and rely upon the decision of the Supreme Court in the case of ***Ram Chandra Singh Vs. Savitri Devi and Ors.***¹, to contend that if there is any fraud or collusion by any party to a proceeding it would satiate even the most solemn proceedings in any civilized system of jurisprudence. He would submit that in the present case silence of the

¹ (2003) 8 SCC 319

original owners of the subject land over a period of two decades and no steps having been taken by them to challenge the mutation entries in favour of their successor-in-title and subsequently Petitioner by virtue of which the subject land being transferred to their names clearly amounts to suppression and fraudulent conduct on their part which should not be countenanced by the Court under any circumstances.

12. ***PER CONTRA***, Mr. Jaibhave, learned Advocate appearing for the Respondent Nos. 3 to 5, the original owners of the land would argue that under the extant provisions of statute transaction of land transferred by a Tribal to a non-Tribal can only be undertaken after obtaining permission of the Collector as prescribed under sub section 3 of Section 36A of the MLRC Act, 1966. He would draw my attention to the admitted fact that Respondent Nos. 3 to 5 who are tribals / adiwasis transferred the subject land to private Respondents who are admittedly non-Tribal. He would submit that there is no dispute on the issue. He would submit that it is clearly borne out from the agreement placed at Page No. 35 of the Writ Petition and at Page No. 47 while describing the land and background of the parties to those agreements and it is clearly stated that purchaser of the said property is an agriculturist but he is not an Adivasi. He would submit that subsequent transaction between purchasers from private Respondent Nos. 3 to 5 to the Petitioners is also appended to the Petition and on perusal of the

same it is *prima facie* seen that both the parties to that transaction are Non-Tribals and Non-Adivasis. He would submit obtaining permission of the Collector for such transfer from Tribal to Non-Tribal is a *sine qua non* for the transaction to be held valid. He would submit that predecessor-in-title to Petitioners in question clearly took advantage the of illiteracy of the original owners / Tribals and in collusion with the revenue officials illegally recorded their names in the revenue record by virtue of mutation entries.

13. He would submit that predecessor-in-title of Petitioners thereafter illegally sold portion of the subject land to various other purchasers including the Petitioners further. Though Petitioners have contented that proceedings initiated by original owners for cancellation of sale transaction, and resumption of land are barred by limitation and also principle of non-rejoinder of private and necessary parties, the fact of the matter is that the original owners i.e. Tribals have pleaded fraud and collusion. In that view of the matter the case of Petitioners cannot be and has rightly not been accepted by both the statutory authorities below resulting in filing the present petition as fraud vitiates everything.

14. I have heard Mr. Gadhavi, learned Advocate appearing for Petitioners, Mr. Jaibhave learned Advocate appearing on behalf of Respondent Nos. 1 to 3 who are original owners / Tribals and the

learned AGP for the State and with their able assistance perused the entire record of the case.

15. In the present case, it is *prima facie* seen that original transfer of Tribal land is between Respondent Nos. 1 to 3 (Tribals) and Respondent Nos. 5 and 6 (Non-Tribals). The transfer document is placed on record which *prima facie* approves the above fact in the title of the document itself and on reading the same confirms that no permission of the Collector was obtained. There is a reason behind introduction of this particular provision of seeking permission of the Collector before such transfer. It is enacted to ensure that the non-tribal entity which purchases the Tribal land does not undervalue and fleece the owner / Tribal into submission. The said provision is in the form of a necessary check and balance introduced by the statute to protect the right and entitlement of the Tribal who is the owner of such land to receive appropriate monetary consideration for sale of the said land. In the present case admitted position is that the Respondent Nos. 1 to 3 are Adivasis and Tribals. The transfer transaction between them and Respondent Nos. 5 to 7 is admittedly done without obtaining permission from the Collector under Section 36A of MLRC and in that view of the matter the said transaction cannot be held as valid. In that view any further transaction of the same land between Respondent Nos. 5 to 7 and Petitioners or any other purchaser also cannot be sustained as valid in law.

16. In view of the above settled position of law, the order dated 23/04/2024 passed by MRT is a well reasoned and cogent order passed in the facts and circumstances of the present case by taking into account the provisions under Section 36A of the MLRC, 1966 which is squarely applicable to the present case.

17. In both orders which are under challenge, finding is returned that admittedly permission of the Collector, Nashik was not sought neither obtained before execution of the sale deed between the Tribals and Non-Tribal. Therefore in the absence of the statutory permission the transaction of transfer becomes invalid by merely stating that the private respondents who purchased the land from the Tribals and then sold it to the Petitioners was for valuable consideration and therefore they should be deemed as bonafide purchaser for value cannot be a ground for accepting the Petitioners' case.

18. The provisions of Section 36A are explicitly clear as it gives power to the Collector to decide any transfer of occupancy that has been made in contravention of sub section (1) and declare the same to be invalid and thereupon pass consequential orders. Hence if tested in the light of provision 36A of MRLC, 1966 the sale deed dated 25/01/2002 between Respondent Nos. 1 to 3 and Respondent Nos. 5 and 6 is clearly contrary to the provisions of law as admittedly no permission of Collector was obtained for execution of such a sale deed

and the same therefore becomes invalid in law.

19. It is settled position of law that any agreement which is contrary to the provision of law is a nullity and void *ab initio*. Moreover, provision of Section 36A of the MLRC, 1966 clearly have an overriding effect to any general law pleaded by the parties.

20. In view of the above objection and findings the sale deed between the Tribal and non-Tribal *de hors* the permission of the Collector cannot be legally sustained and is required to be cancelled and the land is subject to be reasoned in accordance with law.

21. The aspect of possession pleaded by the non-tribal over a period of time will therefore have to be deemed as illegal in the absence of permission for transfer from the Collector before entering into transaction for purchase of tribal land.

22. Hence, both the twin orders dated 23/04/2024 passed by the MRT Mumbai and order dated 25/03/2022 passed by the learned Tahsildar, Deola deserve to be upheld and no interference is called for therein. Both the orders are upheld and confirmed. Petition fails.

23. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

Varsha