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

**WRIT PETITION NO.2678 OF 2021
WITH
INTERIM APPLICATION NO. 12753 OF 2025
IN
WRIT PETITION NO.2678 OF 2021**

Vishwanath Sahadu Wakhare & Ors. **...Applicants**

Versus

The State of Maharashtra & Ors. **...Respondents**

Mr. S. G. Karandikar *i/b. Abhijit P. Kulkarni with Mr. Gaurav Shahane, Mr. Abhishek Roy & Sweta Shah for the Applicant.*

Ms. Tanu N. Bhatia, *AGP for Respondent no.1 / State.*

Mr. G. S. Godbole, *Senior Advocate i/b. Ms. Deepashikha Godbole with Mr. Dipak Babade & Mr. Prithviraj Kharat for the Respondent No.2.*

**CORAM : SANDEEP V. MARNE, J.
DATE : 10 DECEMBER 2025.**

ORAL JUDGMENT:

1) The Petitioner challenges the Order dated 11 December 2020, passed by the Hon'ble Minister (Revenue) in Revision RTS No.3413/4578, by which the Hon'ble Minister has allowed the Revision preferred by Respondent Nos. 2/3 and has set aside the Order dated 5 June 2013, passed by the Additional Commissioner, Pune and has confirmed the Order dated 24 June

2011 passed by the Additional Collector. The Hon'ble Minister has directed conduct of enquiry by the Collector, Pune under Section 59(b) of the Maharashtra Land Revenue Code, 1966 (**MLRC**) about sale of land in question without permission of the Competent Authority in view of Circular dated 13 November 1979.

2) Brief facts of the case are stated thus:

The land situated at Village-Nighoje, Taluka-Khed, District-Pune, bearing Old Survey No.158/1, 158/12B, 158/26, 158/29A and New Gat No.321, admeasuring 1-H. 83-R was originally owned by Shri Maruti Hari Sonawane. The land was Mahar Vatan Class VI-B. Shri Maruti Sonawane paid amount 3 times of assessment on 1 February 1963, and the land was re-granted to him under the provisions of the Maharashtra Inferior Village Watans Abolition Act, 1959 (**Watan Abolition Act**) on 'new tenure' on 1 February 1963. Thereafter, Shri Maruti Sonawane paid amount 10 times of the assessment on 8 November 1967 and it is contended that the re-grant was converted to 'old tenure'. Accordingly, Tehsildar, Khed passed Order dated 16 March 1968 re-granting the land on 'old tenure', which meant that the land became transferable without any conditions. Thereafter, Shri Maruti Sonawane sold the land to father of the Petitioners Shri Shahadu Wakhare vide registered Sale Deed dated 22 August 1968. It appears that prior to execution of said Sale Deed, permission of Sub Divisional Officer under the provisions of the Maharashtra Prevention of Fragmentation and

Consolidation of Holdings Act, 1947 (**Fragmentation Act**) was also secured on 13 August 1968. Based on the registered Sale Deed dated 22 August 1968, Mutation Entry No.156 was certified on 24 November 1968 after serving Notice to Shri Maruti Sonawane.

3) However, after 10 years of certification of the Mutation Entry, Maruti Sonawane took a *volte face* and filed Appeal under Section 59(b) of MLRC, seeking return of possession of the sold land. His Application was rejected by the Assistant Collector by Order dated 22 February 1979. It appears that some persons claiming to be tenants thereafter filed an Application under Section 84 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 before Sub-Divisional Officer, Junnar, Pune, which is also dismissed by Order dated 18 March 1970. Thereafter, there was a quietus for a long time during which no proceedings were filed in respect of the land. After death of their father, names of Petitioners were recorded vide Mutation Entry No. 2327.

4) Respondent No. 2 is the daughter of Maruti Sonawane and Respondent No. 3 is the granddaughter. In the year 2010, Respondent No. 2 /3 were advised to file Appeal before Additional Collector challenging Mutation Entry No.156 by initiating proceedings under Section 247 of MLRC. The Additional Collector proceeded to entertain the Appeal which was filed after inordinate delay and proceeded to pass Order dated 24 June 2011 allowing the same and setting aside

Mutation Entry Nos.156 and 2327. Petitioners successfully challenged the Order of the Additional Collector before the Additional Commissioner, Pune, who allowed the appeal preferred by the Petitioner by his Order dated 5 June 2013 and set aside Additional Collector's Order dated 24 June 2011.

5) Respondent Nos. 2/3 preferred Revision before the Hon'ble Minister, who has proceeded to allow the same by impugned Order dated 11 December 2020 by setting aside the Order passed by the Additional Commissioner, Pune and by confirming the Order passed by the Additional Collector, Pune. The Hon'ble Minister has directed an enquiry under Section 59(b) of the MLRC for return of the land to the heirs of Shri Maruti Sonawane (Respondent Nos. 2/3). Aggrieved by the Order dated 11 December 2020, Petitioners have preferred the present Petition. By order dated 19 January 2024, the Petition has been admitted, and the impugned Order of the Hon'ble Minister has been stayed.

6) I have heard Mr. Karandikar, the learned counsel appearing for Petitioners and Mr. Godbole, the learned Senior Advocate appearing for Respondent Nos. 2/3. I have gone through the findings recorded by the Hon'ble Minister in the impugned Order. I have also perused records of the case filed alongwith the Petition.

7) From narration of facts above, it is clear that the land in

question was re-granted under the provisions of Watan Abolition Act to Shri Maruti Sonawane initially on 1 February 1963 on 'new tenure' as he had paid amount 3 times the assessment. Subsequently, Shri Maruti Sonawane paid amount 10 times the assessment on 8 November 1967. The Tahsildar Khed, accordingly passed an Order dated 16 March 1968 re-granting the land on 'old tenure'. This would imply that the land became transferrable without any conditions and permission of Collector or any other Authority was not necessary under the provisions of the Watan Abolition Act before effecting sale of land. Accordingly, the land has been sold to the father of the Petitioner by registered Sale Deed dated 22 August 1968.

8) Having sold the land to the father of the Petitioners by accepting valuable consideration, Shri Maruti Sonawane turned around and filed proceedings under Section 59(b) of the MLRC, seeking return of possession of the land. Those proceedings were decided by Order dated 22 February 1979. The Order reads thus:

“This is an appeal filed by one Maruti Hari Sonawane against the order of the Additional Tahsildar Khed in enquiry in respect of suit land Gat No.321, an IVS Inam Land of Class – VI B of Village Nighoje, Taluka : Khed, District: Pune. The Additional Tahsildar Khed after due enquiry, came to the conclusion that the suit land was already re-granted on old tenure when the sale transaction for the land took place between the Watandar-Appellant and the Respondent-Purchaser – Shri Sahadu Balwant Wakhare. Further, permission for sale was also given by the then Sub-Divisional Officer, Junnar. As such, the Learned Additional Tahsildar came to the conclusion that Section 59B of the Maharashtra Land Revenue Code is not attracted to this case and ordered the application to be filed. It is against this order of the Additional Tahsildar that the

present appeal lies.

The Learned Advocate for the Appellant argued that once the land was re-granted to the Appellant on new tenure, there was no reason for him to get it re-granted on old tenure. Further, he challenged that Gat No.321 the suit land, has not been re-granted on old tenure and as such the sale transaction between the Watandar and the Respondent-Purchaser is attracted by Section 59B of the Land Revenue Code.

On consideration of the matter and on perusal of the record of the case, it is seen that the land was re-granted to the Watandar on new tenure on 1/2/1963 and was subsequently re-granted on Old Tenure on 16/3/1968 and the sale transaction between the parties took place on 21/8/68 and the then Sub-Divisional Officer, Junnar Sub-Division had granted the permission for sale of the suit land on the application to the present Appellant on 13/8/68. As such, it is clear that the suit land was sold out to the Respondent-Purchaser only after it was re-granted on Old Tenure and after securing the permission of the Sub-Divisional Officer, Junnar Sub-Division. Section 59 of the Land Revenue Code is therefore not attracted to this case. In view of the clear documentary evidence, the argument of the Learned Advocate for the Appellant does not merit any consideration. Hence the following order -

ORDER

The appeal is dismissed. The order of the Lower Court is confirmed, parties be informed.”

Khed

Date :22/2/1979

sd/-

Assistant Collector
Junnar Sub-Division
Khed (Pune)”

9) Perusal of Order dated 22 February 1979 would indicate that the Sub-Divisional Officer / Assistant Collector has decided proceedings under Section 59(b) of the MLRC. The Application preferred by Shri Maruti Sonawane was rejected by specifically observing that the land which was re-granted initially on new tenure on 1 February 1963 was subsequently re-granted on old

tenure on 16 March 1968. May be that the Sub-divisional Officer/Assistant Collector erroneously made a reference to the permission granted by the Sub-divisional Officer under provisions of the Fragmentation Act, which reference was really not necessary while passing Order dated 22 February 1979. Respondent Nos. 2/3 now want to take undue benefit of that reference to contend that the SDO/Asstt. Collector has erred in holding that the land was sold with permission under Watan Abolition Act. However, what is missed by Respondent Nos. 2/3 is that the land was converted to old tenure by Tehsildar's Order dated 16 March 1968 and the fetter on sale of the land was removed.

10) There is no dispute to the position that the Order dated 22 February 1979 attained finality as Shri Maruti Sonawane did not challenge the said Order before higher authorities. He accepted the position that the land was validly sold and did not adopt any proceedings during his lifetime. It however appears that persons claiming to be tenants filed Tenancy Application No. 17 of 1964 before Sub-divisional Officer in which Shri Maruti Sonawane was a Respondent and that the said proceedings also met the fate of dismissal by Order dated 18 March 1970.

11) In the meantime, Mutation Entry No.156 was certified based on registered Sale Deed dated 22 August 1968, executed in favour of father of the Petitioner on 21 November 1968. Forty Two years after certification of Mutation Entry No.156, and after

death of Shri Maruti Sonwane, his daughter Krushnabai and grand-daughter Bebitai were advised to file revision / appeal before Additional Collector under Section 257 of the MLRC challenging Mutation Entry No.156 as well as consequential Mutation Entry No.2327 (heirship enquiry).

12) The Additional Collector committed an egregious error in entertaining the said Appeal filed after period of 42 long years and in setting aside Mutation Entry Nos. 156 and 2327. Under the garb of deciding the revenue entry proceedings he has usurped the powers of Civil Court by nullifying the registered Sale Deed dated 22 August 1968.

13) Faced with the difficulty that the Additional Collector could not have entertained the Appeal filed after 42 long years, Mr. Godbole has attempted to salvage the situation by referring to the amendment incorporated in Section 257 of the MLRC which prescribed upper time limit of 5 years for filing of Revisions for the first time in 2016. He would submit that the Revision in question was filed by Respondent Nos. 2/3 prior to introduction of the said amendment to Section 257 of the MLRC. By amendment to MLRC, following proviso was added to Section 257:

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 Super-

intendent 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, no 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 2[except with the previous permission of the State Government

(underlining added)

14) I am not impressed by this justification sought to be canvassed on behalf of Respondent Nos. 2/3. Even if there was no statutory time limit prescribed for entertainment of Revisions under Section 257 of the MLRC prior to 2016, it did not mean that the Revision could be filed at any time as per the convenience of parties. In absence of statutorily prescribed time limit, the Revision ought to have been filed within a reasonable time. In the present case, the Mutation Entry certified on 21 November 1968 was not questioned by Shri Maruti Sonawane himself till his death. Instead of mounting an indirect challenge to the Sale Deed by questioning the Mutation Entry, he exercised a substantive remedy of securing back possession of the land by initiating proceedings under Section 59(b) of the MLRC. Section 59 of MLRC provides thus:

59. Summary eviction of person unauthorisedly occupying land.— Any person unauthorisedly occupying, or wrongfully in possession of any land:

(a) to the use or occupation of which by reason of any of the provisions of this Code he is not entitled or has ceased to be entitled, or

(b) which is not transferable without the previous permission under sub-section (2) of section 36 or by virtue of any condition lawfully annexed to the tenure under the provisions of section 31, 37 or 44,

may be summarily evicted by the Collector.

15) Maruti Sonawane accordingly filed substantive proceedings under Section 59(b) of MLRC seeking eviction of Petitioners' father from the land he had sold after acceptance of valuable consideration. His Application was adjudicated on merits and rejected vide Order dated 22 March 1979. Thus, the issue of entitlement of Watandar to seek eviction of purchaser on the ground of breach of any tenure condition attained finality and the same could not have been reopened by mounting an indirect challenge to the sale by questioning the correctness of a Mutation Entry. The Revision preferred by Respondent Nos. 2/3 apart from being time barred, was not otherwise maintainable.

16) Even if the aspect of delay is to be momentarily ignored, and merits of the case are looked into, it is seen that the Hon'ble Minister has clearly erred in directing an enquiry under Section 59 of the MLRC while entertaining a Revision relating to certification of Mutation Entry. The case does not involve sale of land in breach of tenure conditions. The position of non-requirement of Collector's permission for sale of re-granted Watan land converted to 'old tenure' appears to be no longer *res*

integra and is covered by Judgment of Division bench of this Court in **Vitthal Kondhalker Vs. State of Maharashtra & Ors.**¹ in which it is held in paragraph No.6 as under:

“6. We are thus satisfied that in administering all the abolition laws, the Collectors have to see whether the additional payment as contemplated by the particular Act has been made by the ex-Watandars or ex-Inamdars and the moment that was done, almost as a matter of formality the order of conversion must be passed. In other words, the order of relaxation of the two burdensome conditions must follow as of right the moment additional payment was made. So far as the Abolition Act under consideration is concerned, the additional payment contemplated under sub-section (3) of section 5 is ten times the assessment. **Once, therefore it is shown that not only payment of three times the full assessment is made initially but ten times payment has either accompanied the initial payment or has been subsequently made, the Collector must pass an order under sub-section (3) of section 5 relaxing the conditions. We, however, find that in these proceedings themselves in spite of such payments having been made orders have yet to come and in one case for ten years the Collector has not yet passed the requisite order under sub-section (3) of section 5 of the Abolition Act. We will express our views and give appropriate directions in that behalf when we dispose of each of the petitions on its merits. However, it appears to us that when payment is made the Collectors are bound to pass orders under sub-section (3) of section 5 of the Abolition Act. If for some reasons the orders have not been passed or have remained to be passed due to sheer lethargy on the part of the Department, the moment the Collector is made aware of this additional payment of Nazarana under sub-section (3) of section 5 of the Abolition Act, it is the first and foremost duty of the Collector to pass such an order and then embark upon an investigation into the complaints, if any, with regard to that occupancy.**

(emphasis and underlining added)

17) Perusal of Order passed by the Hon’ble Minister would indicate that he has taken note of re-grant of the land vide Mutation Entry No.3258 dated 22 February 1963. However, the

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Hon'ble Minister has completely ignored the position that subsequently, the land was re-granted on old tenure on 16 March 1968, and the Tehsildar had passed an Order to that effect. More importantly, the Hon'ble Minister has glossed over Order dated 22 February 1979 passed by Sub-divisional Officer/Additional Collector conducting enquiry under Section 59(b) of the MLRC. In that view of the matter directing re-enquiry under Section 59(b) vide impugned Order dated 11 December 2020 would clearly be barred by principles of *res judicata*. Here again, Mr. Godbole attempts to salvage the situation by contending that the land in question is a Mahar Vatan Class VI-B land and that therefore, the same could not have been transferred (whether old tenure or new tenure) without seeking express permission of the Collector. He places reliance on sub-section (4) of Section 5 of the Watan Abolition Act, which reads thus:

5. (1) A Watan land resumed under section 4 shall, in cases not falling under sections 6 and 9 be regranted to the watandar of the watan to which it appertained on payment by or on behalf of the watandar to the State Government of the occupancy price equal to three times the amount of the full assessment of such land within the prescribed period and in the prescribed manner and the watandar shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to pay land revenue to the State Government in accordance with the provisions of the Code and the rules made thereunder; and all the provisions of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land :

Provided that in respect of the watan land which was not assigned under the existing watan law as the remuneration of the inferior village hereditary office, an occupancy price equal to the amount of the full assessment of such land shall be paid by or on behalf of the watandar for the regrant of such land.

(2) If there is failure to pay the occupancy price under sub-section (1) within the prescribed period and in the prescribed manner, the watandar shall be deemed to be unauthorisedly occupying the land and shall be liable to be summarily evicted therefrom by the Collector in accordance with the provisions of the Code.

(3) (a) On or after the commencement of the Bombay Paragana and Kulkarni Mah. Watans (Abolition), the Bombay Service Inams (Useful to Community) Abolition, the XXI of Bombay Merged Territories Miscellaneous Alienations Abolition, the Bombay Inferior Village Watans Abolition and the Maharashtra Revenue Patels (Abolition of Office) (Amendment) Act, 2000 (hereinafter, in this section, referred to as "the commencement date"), the occupancy of the land regranted under sub-section (1) may be transferred by the occupant for agricultural purpose, and no previous sanction or no objection certificate from the collector or any other authority shall be necessary for such transfer. After such transfer, the land shall be continued to be held by such transferee occupant on new and impartiable tenure (Occupant Class II), in accordance with the provisions of the Code;

3(b) Before the commencement date, if any such occupancy has already, without previous sanction or no objection certificate from the Collector or any other authority, been transferred by the occupant, for agricultural purpose, such transfer may be regularised on the production of registered instruments such as sale deed, gift deed, etc., as a proof thereof, for such transfer. After such regularisation, the occupancy of such land shall be held by such transferee occupant on new and impartiable tenure (Occupant Class II), in accordance with the provisions of the Code:

Provided that, any such occupancy held on new and impartiable tenure (Occupant Class II) may, after the commencement date, be converted into old tenure (Occupant Class I) by the occupant by making payment of fifty per cent. of the amount of current market value of such land to the Government, and after such conversion, such land shall be held by the occupant as Occupant Class I, in accordance with the provisions of the Code :

Provided further that, if on the commencement date, any such occupancy has already, with the prior permission of the Collector or any other competent authority on payment of the appropriate amount as Nazarana, been transferred for non-agricultural use, such transfer of occupancy shall be deemed to have been made under the first proviso and the land shall be deemed to be held by the occupant as an Occupant Class I, in accordance with the provisions of the Code, with effect from the date of such transfer :

Provided also that, if on the commencement date, any such occupancy has already, without prior permission of the Collector or any other competent authority and without payment of the amount equal to fifty per cent. of the current market value of such land, as Nazarana, been transferred for non-agricultural use, such transfer may be regularised on payment of an amount equal to fifty per cent. of the current market value of such land for non-agricultural use as Nazarana, and an amount equal to fifty per cent of such Nazarana as a fine, and on such payment, the occupant shall hold the land as an Occupant Class I, in accordance with the provisions of the Code.

(4) Notwithstanding anything contained in sub-section (3), the occupancy of the Mahar watan land re-granted under sub-section (1), shall not be transferrable or partible by metes and bounds without the previous sanction of the Collector and except on payment of such amount as the State Government may, by general or special order determine.

(emphasis added)

18) However, it appears that sub-section (4) to Section 5 prohibiting sale of Mahar Watan Land has been inserted by way of amendment of the year 2008. The said amendment would obviously not apply to the re-grant made on 16 March 1968 and also to the Sale Deed effected on 22 August 1968.

19) The Hon'ble Minister has thus erred in directing inquiry under Section 59(b) of the MLRC ignoring the position that such inquiry was already conducted at the behest of the Watandar. He has failed to appreciate inordinate delay of 42 long years in challenging the Mutation Entry. He has also failed to appreciate that Respondent Nos. 2/3 were attempting to unsettle the settled issue under Section 59(b) by challenging the Mutation Entry. The findings recorded in the impugned order suffers from the vice of perversity. In my view therefore, the Order passed by the

Hon'ble Minister is indefensible and liable to be set aside.

20) The Petition accordingly succeeds. Order dated 11 December 2020 passed by the Hon'ble Minister is set aside. The Petition is allowed in above terms. Rule is made absolute. There shall be no order as to cost.

21) In view of disposal of the Petition nothing remains in the Interim Application and the same stands disposed of.

(SANDEEP V. MARNE, J.)

22) After the Order is pronounced Mr. Godbole would pray for continuation of the interim arrangement of not disturbing the current revenue entries. The request is opposed by Mr. Karandikar. In the first place, this Court cannot comprehend as to how the names of Respondent Nos. 2/3 would have been recorded since the impugned Order merely directed conduct of enquiry under Section 59(b) of the MLRC. The Order is also stayed by this Court while admitting the Petition on 19 January 2024. Be that as it may, considering the findings recorded in the Judgment about the Additional Collector setting aside the Mutation Entry after 42 long years, I am not inclined to continue any protection in favour of Respondent Nos. 2/3. In fact there cannot be any and there is actually no interim protection running in their favor. The request for continuation of revenue entries is accordingly rejected.

(SANDEEP V. MARNE, J.)