

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5125 OF 2024

Dharamraj Kashiram Pardhi and Ors .. Petitioners

Versus

Kachru Sakharm Pardhi and Ors. .. Respondents

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- Mr. Prafulla B. Shah a/w. Mr. Kayval Shah, Advocates for Petitioners.
- Mr. Satyajeet Dighe, Advocate for Respondent Nos. 1 to 5.
- Mr. D.S. Deshmukh, AGP for Respondent Nos.6 to 8 - State.
- Mr. S.G. Karandikar, *Amicus Curiae*.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 16, 2026.

P. C.:

1. Heard Mr. Shah, learned Advocate for Petitioner, Mr. Dighe, learned Advocate for Respondent Nos.1 to 5, Mr. Karandikar, learned *Amicus Curiae* appointed by Court and Mr. Deshmukh, learned AGP for State. By consent of parties, Writ Petition is heard finally.

2. The present Petition challenges Order dated 22.03.2018 passed by the Minister of Revenue in RTS-3017/2736 Case No. 203/J-6 confirming Order passed by Additional Commissioner, Nashik Division, Nashik dated 23.02.2017 in RTS Revision Application No. 42 of 2013 which upheld Order dated 30.11.2012 passed by Collector, Nashik in Case No. KAKSHA- 4 / KU.K.-2/KAVI 2760/2012 in RTS proceedings.

3. It is Petitioners' case that they were put in possession of land bearing Gat No. 154 admeasuring 1 Hectar 68 R situated at Village

Sadgaon, District Nashik (for short **“Suit property”**) pursuant to execution of Agreements for Sale dated 13.01.1974 and 31.03.1975 by Respondent Nos.1 to 4. Thereafter, Petitioners filed Regular Civil Suit No. 267 of 1979 with Regular Civil Suit No. 1167 of 1986 before Civil Judge, Senior Division, Nashik seeking specific performance of the Agreements for Sale dated 13.01.1974 and 31.03.1975. By Judgment dated 24.03.1992, the Trial Court held that it is an undisputed fact that predecessor-in-title of Respondents executed two Agreements for Sale dated 13.01.1974 and 31.03.1975 and possession of the Suit property was handed over to Respondents by virtue of these two Agreements for Sale. Pursuant to which the Trial Court decreed the Suit and directed Respondent Nos. 1 to 4 to execute the Sale Deed in favor of Petitioners after obtaining permission from the Competent Authority.

3.1. Being aggrieved, private Respondents challenged the Judgment and Decree dated 24.03.1992 in First Appeal before the District Court, Nashik. First Appeal was dismissed. Judgment of Trial Court dated 24.03.1992 became absolute as it was not challenged any further by the Respondents.

3.2. Petitioners filed Darkhast Application No. 247 of 1992 for execution of Judgment and Decree dated 24.03.1992. Court Commissioner was appointed by Executing Court to obtain permission/sanction from the Competent Authority i.e. the Collector under Section 36A of the

Maharashtra Land Revenue Code, 1966 (for short "**MLRC**"). Court Commissioner applied for permission to the Collector. By Order dated 15.06.2005 Collector rejected permission under Section 36A of MLRC and directed Tahsildar to take necessary action in accordance with provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short "**MRLST Act**").

3.3. Being aggrieved, Petitioners filed Revision Application No. 193 of 2005 before Additional Commissioner, Nashik to challenge Order dated 15.06.2005. By Notice dated 30.08.2005, Tahsildar directed Petitioners to hand over possession of Suit property to the Circle Officer, Girnare.

3.4. Being aggrieved, Petitioners filed Writ Petition No. 6093 of 2005 to challenge Order dated 15.06.2005 and Notice dated 30.08.2005. This Court by Order dated 14.09.2005 granted ad-interim stay to Notice dated 30.08.2005 for a period of 4 weeks. This Court heard Writ Petition No. 6093 of 2025 and passed Order dated 12.06.2007 setting aside Notice dated 30.08.2005 and directed the Additional Commissioner to decide pending Revision Application No. 193 of 2005 in accordance with law. However, Additional Commissioner had by that time already disposed of Revision Application 193 of 2005 on 10.11.2005 i.e. prior to this Court passing Order dated 12.06.2007 and the same was not communicated to Petitioners.

3.5. Respondent Nos. 1 to 4 filed Application bearing No. 491 of 2007 seeking restoration and possession of the suit property before Tahsildar. On 30.10.2007, Tahsildar issued Notice to Petitioners. After hearing Petitioners, Tahsildar passed Order dated 17.03.2008 holding that Respondent Nos. 1 to 4 were entitled to get back possession of the Suit property under Section 36A of MLRC and Petitioners were directed to hand over possession of the Suit property to Respondent Nos. 1 to 4.

3.6. It is Petitioners' case that Order dated 17.03.2008 was passed without hearing them and the same was not even communicated to them. Tahsildar issued Notice pursuant to Order dated 17.03.2008 directing withdrawal of possession of Suit Property from Petitioners on 24.03.2008.

3.7. Petitioners filed Writ Petition No. 1960 of 2008 challenging Orders dated 10.11.2005 and 17.03.2008 on the ground that no opportunity of hearing was given to Petitioners by the Tahsildar. This Court disposed of the Writ Petition by Order dated 17.07.2008 directing Petitioners to approach the appropriate forum and file Appeal.

3.8. Thereafter, Petitioners filed Appeal No. 209 of 2008 against Order dated 17.03.2008 before Sub Divisional Officer which was dismissed by Order dated 20.04.2011 on the ground of maintainability.

3.9. Being aggrieved by concurrent Orders dated 20.04.2011 passed by Sub Divisional Officer in Appeal No. 209 of 2008 and Order dated 10.11.2005 passed by Commissioner, Nashik in Revision in

Application No. 193 of 2003, Petitioners filed Writ Petition No. 5999 of 2011 before this Court wherein Order dated 01.08.2011 was passed directing parties to maintain status-quo on Suit property. This Court disposed of Writ Petition 5999 of 2011 by Order dated 11.09.2012 and remanded the matter back to the Collector for fresh adjudication.

3.10. The Additional Collector heard the matter and passed Order dated 30.11.2012 rejecting the Application for permission holding that transaction between Petitioners and Respondent No. 1 to 4 was in breach of provisions of Section 36A of MLRC Code and provision of the Restoration Act and directed Petitioners to hand over possession of Suit Property to Respondents within a period of 3 months.

3.11. Petitioners challenged Order dated 30.11.2012 passed by Additional Collector before two different forums (i) Maharashtra Revenue Tribunal (for short “**MRT**”) in Tribal Appeal No. 596/B of 2012 with respect to applicability of MRLST Act, 1974 and (ii) Additional Commissioner in Revision Application No. 42 of 2013 with respect to finding on Section 36A of MLRC.

3.12. MRT passed Order dated 06.12.2013 holding that MRLST Act did not apply to the facts of the present case but it did not express any opinion regarding applicability of Sections 36 and 36A of MLRC. This Order remains unchallenged by Petitioners in so far as the Restoration Act proceedings are concerned and has attained finality.

3.13. Order dated 24.02.2014 was passed by the Divisional Commissioner, Nashik allowing continuation of interim protection during pendency of the said Revision Application.

3.14. Additional Commissioner, Nashik Division heard Revision Application No. 42 of 2013 and by Order dated 23.02.2017 dismissed the same and held that there was no provision under Sections 36 and 36A of MLRC to regularize transfer without permission and held that possession of the Suit Property was transferred without permission of Tahsildar, Nashik. He therefore held that action had to be taken as per MLRST Act.

3.15. Being aggrieved by the Order dated 23.02.2017, Petitioners filed second Revision application on 24.03.2017 before State under the provisions of Sections 247 and 257 of MLRC. It was Petitioners' case that in spite of repeated requests hearing on Stay Application was not granted. Hence, Petitioners filed Writ Petition No. 6450 of 2017 in this Court for interim protection. The said Writ Petition was disposed of by Order dated 01.07.2017 directing Respondent No. 8 to decide the Revision Application No. RTS-3017/2736 filed by Petitioners and interim relief was continued as per Order dated 24.02.2014 passed by Divisional Commissioner, Nashik.

3.16. It is Petitioners case that Respondent No. 8- State failed to decide the Revision Application within the stipulated time as directed and same was kept for hearing on 22.02.2018 and Petitioners filed written arguments within 15 days on 03.03.2018.

3.17. It is Petitioners' case that thereafter State informed that final Order passed by the Minister would be communicated to the parties by post, and accordingly Petitioners awaited such intimation.

3.18. It is Petitioners' case that in the interregnum, Respondent No. 1 to 5 filed Application before Tahsildar, Nashik seeking possession pursuant to Order dated, 30.11.2012 passed by Collector, Nashik, without disclosing the subsequent Orders passed by MRT and this Court.

3.19. It is Petitioners' case that Petitioners informed Tahsildar about pendency of Revision proceedings before the State, Order dated 01.07.2017 passed by this Court and Order dated 06.12.2013 passed by MRT, despite which by Order dated 06.02.2018 Tahsildar allowed the Application filed by Respondent no. 1 to 5 and directed to withdrawal of possession of Suit Property from Petitioners and it to be handed over to Respondents.

3.20. It is Petitioners' case that Order dated 06.02.2018 was never communicated to them and after receiving the said Order on 07.03.2018, Petitioners approached the Tahsildar, Nashik. In spite of representation of entire facts and pendency of cases, Tahsildar issued Notice dated 21.05.2018 and directed withdrawal of possession from Petitioners. In the interregnum, the Revenue Minister passed Order dated 22.03.2018 rejecting Revision Application 42 of 2013.

3.21. Being aggrieved, Petitioners approached MRT and filed Tribal Appeal No. L-279/2018. On 30.05.2018, MRT granted stay to Order dated 06.02.2018 and issued Notices to Respondents.

3.22. MRT heard the said Appeal on 24.10.2018 and closed the matter for passing Orders on 19.11.2018. Tribunal pronounced operative part of the Order and partly allowed the Appeal No.L-279/2018 and liberty was granted to Petitioners to approach the appropriate forum for permission under Section 36 and 36A of MLRC.

3.23. It is Petitioners' case that Respondent No. 2b was personally present before MRT and tendered copy of Order dated 22.03.2018 passed by the Revenue Minister and informed the Tribunal that Revision Application filed by Petitioners was already dismissed by Revenue Minister. It is Petitioners' case that they requested for copy of Order dated 22.03.2018 and only after receipt of the same they came to know of dismissal of their Revision Application No. RTS-3017/2736.

3.24. Being aggrieved by the aforesaid impugned Orders, dated 30.11.2012, 23.02.2017, 22.03.2018 passed by Additional Collector, Nashik, Additional Commissioner, Nashik division and the Revenue Minister respectively, Petitioners have filed the present Petition to assail them in the aforestated facts.

4. Mr. Shah, learned Advocate for Petitioners would submit that to determine and decide the present Petition, date of taking possession of Suit Property is required to be considered. He would submit that Petitioners executed two separate Agreements for Sale dated 13.01.1974 and 31.03.1975 respectively and took possession of the Suit property admittedly from the Respondents on 13.01.1974.

4.1. He would submit that provisions of Section 36A of MLRC came into force on 01.11.1975 but Petitioners had already taken possession and were in occupation of the Suit Property since 13.01.1974. Hence he would submit that provisions of Section 36A MLRC will not apply to Petitioners' case. He would submit that it is an admitted position that Petitioners and private Respondents are both Tribals and Section 36A of MLRC and the provisions of MRLST Act protect Tribal land from exploitation by non tribals. He would submit that Section 36A of MLRC provides for application for permission to be made by a Non – Tribal person for transfer of land but since Petitioners and Private Respondents are both tribals, Section 36A of MLRC cannot be held as a bar for transfer of the Suit Property between two tribals, which is the present transaction.

4.2. He would submit that even if Section 36A of MLRC applies to the present case, under the provisions of Limitation Act, the period to file application for seeking sanction is 3 years from the date of occupancy. He would submit that Petitioners are admittedly in occupation of the Suit

Property since 13.01.1974, therefore such permission ought to have been taken on or before 13.01.1977. He would submit that there were two amendments to the MLRC in 1991 and 2011 and more specifically to Section 36A, the first of which required the Collector to hold inquiry within the 30 years from the date of transfer of occupancy and the second amendment stated that the 30 year period was to be computed with effect from 06.07.2004. He would submit that in the present facts and circumstances Civil Suit was decreed in favour of Petitioner on 24.03.1992 and application was filed on 15.12.1999, hence Collector ought to have considered the application as per unamended Section 36A of MLRC and since Petitioners had already taken possession of the Suit Property on 13.01.1974, Collector ought to have initiated action on or before 13.01.2004.

4.3. He would submit that Collector rejected the application for sanction for the first time on 15.06.2005 which was beyond the period of 3 years as per the unamended provision or beyond the 30 year stipulation as per the first amendment. He would submit that since the second amendment was notified in 2011 with effect from 06.07.2004, the same cannot apply to the facts in the present case however this amendment has been applied albeit wrongly so.

4.4. He would submit that Revenue authorities failed to follow the *ratio* laid down by the Supreme Court in the case of ***Babasahen Dhondiba***

*Kute Vs. Radhu Vithoba Barde*¹. He would submit that the authorities rejected the application on the ground that prior to execution of Agreements for Sale, Collector's sanction was to be obtained under Section 36A of MLRC. He would submit that it is trite law that sanction is required to be sought / obtained post entering into the Deed of Conveyance and not prior thereto.

4.5. He would submit that the Revenue authorities failed to follow the provisions of the Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non Tribals) Rules 1975 (for short "**the 1975 Rules**"). He would submit that Rule 3 of the 1975 Rules mandate a Public Notice to be published by the Collector in local newspapers and it be affixed on the notice board of the Collector, Sub-Divisional Officer, Tahsildar, Village Panchayat, and Village Chavdi. He would submit that the Collector is to verify if the person so interested to purchase the land is a tribal and further verify if any other tribal within a radius of 5 kilometers of the location of the subject land is interested to purchase the same and that the market value is paid for the said land. He would submit that despite both the parties being tribals, Respondent Authorities did not follow the procedure enumerated in Rule 4 of the 1975 Rules and summarily rejected the Application under Section 36A of MLRC.

¹ (2024) 4 SCC 310

4.6. He would submit that as per Rule 4 of the 1975 Rules, Collector is required to grant sanction where land is sold in execution of a decree of Civil Court, hence the word “may” ought to be read as “shall” in the facts of the present case.

4.7. He would submit that Revenue Authorities failed to consider the Judgment and Decree dated 24.03.1992 passed by the Civil Court granting specific performance of Agreements for Sale in favour of the Petitioners. He would submit that the Decree dated 24.03.1992 is non-operational and ineffective as sanction was not granted by the Collector. He would submit that Revenue Authorities failed to consider that Petitioners are Tribals in possession of land since the past 51 years and therefore necessary permission and sanction under Section 36A of MLRC ought to have been granted. He would submit that Revenue Authorities failed to consider that Petitioners have spent substantial funds in maintaining the Suit Property. He would submit that private Respondents till date have not filed any application seeking restoration of the land under the 1975 Rules nor under Section 36 and / or 36A of MLRC. He would submit that on the basis of the aforementioned grounds, present Petition deserves to be allowed.

4.8. Mr. Dighe, learned Advocate for private Respondent Nos. 1 to 5 would submit that Petitioners took possession of the Suit Property which was previously owned by a Tribal person by Agreements to Sale dated

31.03.1975, therefore the Suit Property is Tribal Occupancy land. He would submit that since the Suit Property is Tribal Occupancy Land, permission under Section 36(2) and 36A of MLRC was required to be obtained and since admittedly no such permission was obtained at the time of handing over of possession of Suit Property to Petitioners, the land is required to be restored back to the private Respondents.

4.9. He would submit that Petitioners filed Civil Suit No. 267/1979 with Regular Civil Suit No. 1167/1986 for Specific Performance of Agreements dated 13.01.1974 and 31.03.1975 which was decreed on 24.03.1992. He would submit that the Civil Court directed Petitioners to obtain permission from the Competent Authority i.e. Collector under Section 36(2) and 36A of MLRC as the suit land was Tribal occupancy land.

4.10. He would submit that by Order dated 15.06.2005 Collector refused to grant requisite permission and directed Petitioners to hand over the Suit land to Respondent Nos. 1 to 5.

4.11. He would submit that several rounds of litigation ensued which culminated in the Order dated 22.03.2018 passed by MRT declining permission to Petitioners thereby confirming Order dated 23.02.2017 passed by Additional Collector, Nashik directing Petitioners to handover Suit land to private Respondents.

4.12. He would submit that Section 36A must be read with Section 36(2) of MLRC and conjoint reading of these provisions stipulate that Collector's permission is mandatory for transfer of Tribal land irrespective of whether purchaser is a Tribal or non-Tribal. He would submit that this condition of obtaining permission is to be complied with even if transfer of land is between two Tribal persons.

4.13. He would draw my attention to the relevant rules pertaining to Maharashtra Land Revenue Restoration Of Occupancy [Unauthorisedly Transferred By Occupants Belonging To Scheduled Tribes] Rules, 1969 and specifically to Rule No. 2 which stipulates Application for restoration of land if such land is transferred to a Tribal in contravention of Section 36(2).

4.14. He would submit that by any agreement regardless of its terminology wherein occupancy of Tribal land is transferred in contravention of Section 36A of MLRC, such transfer is illegal. He would submit that the term "or otherwise" used in Section 36A of MLRC is of comprehensive nature which includes all agreements wherein the occupancy of Tribal persons is sought to be transferred in favour of non Tribal person.

4.15. He would submit that in the present case possession of Suit Property is transferred by Agreements to Sale dated 13.01.1974 and 31.03.1975 from Private Respondents who are Tribal persons without

obtaining any permission under section 36(2) of MLRC. He would submit that therefore Suit Property is liable to be restored to Respondents since the same is transferred without permission.

4.16. He would submit that prior permission under Section 36 of MLRC is required for transfer even if both parties, namely buyer and seller are both tribal persons. He would submit that the term transfer cannot be read restrictively and would encompass all arrangements and agreements whereby tribal land is sought to be transferred without prior permission irrespective of the parties being tribal or non tribal persons.

4.17. He would submit that as possession of Suit Property was handed over pursuant to the Agreement of 1975 without securing prior permission under Section 36, the act of parting with possession and entering into such an Agreement without prior permission is void and illegal.

4.18. He would submit that there can be no grant of *ex post facto permission* at this stage, since illegality has already occurred and all forums have rightly directed restoration of Suit property to private Respondents by affirming Order dated 30.11.2012 passed by Additional Commissioner, Nashik. Hence he would urge me to dismiss the Petition on the aforementioned grounds.

4.19. He would refer to and rely upon the following decisions passed by this Court in support of his above submissions:-

- (i) *Tulshiram Adku Marape Vs. State of Maharashtra*²;
- (ii) *Adivasee Sarvangin Vikas Samitee Vs. State of Maharashtra*³;
- (iii) *Vijay Anandrao Moghe and Others Vs. Additional Collector/Sub-Divisional Officer, Pusad and Others*⁴;
- (iv) *Ghanshyam Vs. The Additional Commissioner*⁵;
- (v) *Ravindra Natthuji Dhobe and Others Vs. Member Maharashtra Revenue Tribunal, Nagpur and*⁶; and
- (vi) *Dattatraya S. Kabadhi Vs. Raghu L. Bhalerao and Ors.*⁷

5. Mr. S.G Karandikar, learned *Amicus Curiae* appointed by this Court through the Legal Aid Department to assist the Court, would submit that there are two issues involved in the present case namely:-

- (i) Whether the Act contemplates taking permission for transfer of occupancy between two Tribals? and;
- (ii) Whether Agreements for Sale coupled with possession is covered by “transfer of occupancy” as contemplated by Section 36(2) and (3)?

² (2011) 1 Mah LJ 182

³ 2013(6) Mh.L.J 557

⁴ (2022) 4 Mah LJ 634

⁵ Writ Petition No. 1443 of 2021

⁶ (2019) 1 Mah LJ 677

⁷ (2003) 1 Mah LJ 174

5.1. He would submit that Section 36(1) exists in the statute book since the inception of MLRC in 1966 and it provides for occupancies to be inheritable and transferable. He would submit that sub-section 2 to Section 36 of MLRC was incorporated in 1974 with effect from 06.07.1974 through Maharashtra Amendment Act 35 of 1974 and this provision makes occupancies transferrable only after taking sanction from the Collector. He would submit that sub-section (2) to Section 36 of MLRC explicitly bars all transfers of occupancies of Tribal persons made and executed without previous sanction of the Collector. It does not distinguish between Tribal or non-Tribal persons. He would submit that proviso to sub-section 2 to Section 36 of MLRC is analogous to Section 36A. He would submit that Section 36(3) of MLRC states that any transfer of occupancy belonging to Tribal person shall be restored to that Tribal person in accordance with provisions of Section 36A of MLRC.

5.2. He would submit that Section 36A of MLRC is prospective in nature therefore it covers all non-tribal purchases and transfers which have taken place after 06.07.1974. He would submit that all transactions between Tribal persons, irrespective of the date on which the transaction took place, require mandatory permission from Collector and in absence of such permission, the transaction would fall under procedure enumerated under the provisions Section 36 of MLRC, hence legislature has explicitly framed rules of procedure to be adhered to in cases of transfer of

occupancy by Tribal persons in contravention of Section 36 (2) and (3). He would submit that conjoint reading of rules and the provisions stipulate that no occupancy of Tribal person can be transferred in favour another Tribal person without prior sanction of the Collector.

5.3. He would submit that Agreements for Sale amounts to transfer of occupancy within the meaning of Sections 36 and 36A of MLRC thus making it mandatory to obtain Collector's permission for transfer. He would submit that in addition to the words sale, gift, exchange, mortgage, and lease, the term "or otherwise" is to be interpreted widely so as to cover all other / various transactions. He would submit that the term "or otherwise" would also refer to Agreements for sale and the Tribal putting the purchaser in possession.

5.4. He would refer to and rely upon the following decisions of this Court in support of his submissions:-

- (i) *Atul Projects India Limited Vs. Babu Deu Fharale*⁸;
- (ii) *Murlidhar Dayandeo Kesekar Vs. Vishwasnath Pandu Barde and Another*⁹; and
- (iii) *Rama Narayan Mali Vs. Additional Collector Thane & Ors*¹⁰

5.5. He would draw attention of Court and refer to and rely upon the decision of the Supreme Court in the case of *Mahendrasingh*

⁸ 2011 (6) Mh.L.J. 351

⁹ 1995 Supp (2) SCC 549

¹⁰ 2008(3) Mh.L.J 300

*Digvijaysingh Mukne Vs. State of Maharashtra*¹¹ wherein the Supreme Court has held that that no permission is required if Tribal wants to sell his land to another Tribal. He would submit that this finding is *obiter dicta* and not a *ratio decidendi* of the Court. He would submit that such *obiter* was observed without considering the provisions of Section 36(2) and (3) of MLRC since the Court was examining the validity of Rule 4(1)(a) of the Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non-Tribals) Rules, 1975.

6. I have heard Mr. Shah learned Advocate for Petitioners, Mr. Dige, learned Advocate for Respondent Nos. 1 to 5 and Mr. Karandikar, learned Amicus Curae appointed by this Court and with their able assistance perused the record of the case. Submissions made by learned Advocates at the bar have received due consideration of the Court.

7. The facts in the present case are in a very narrow compass. Transferor and transferee in the present case are both Tribals. Parties executed Agreements dated 13.01.1974 and 31.03.1975, exchanged consideration and most importantly exchanged possession of the Suit property. Since the conveyance did not take place, Petitioners were compelled to filed Regular Civil Suit No. 279 of 1969 with Regular Civil Suit No.1167 of 1986 for seeking specific performance of the twin Agreements for Sale. The suit was decreed in favour of Petitioners by the

¹¹ 2025 SCC OnLine Bom 2124

Civil Court on 24.03.1992. First Appeal filed by private Respondents was dismissed by the District Court and private Respondents did not challenge the said dismissal any further in Second Appeal. Thus the decree dated 24.03.1992 became absolute and final. It is in context of execution of this decree that the learned Executing Court appointed Court Commissioner and directed procuring permission from the Collector for transfer of the Suit property since it belonged to a Tribal Transferror. What is critical in these facts is that transfer of Suit property is from one Tribal to another Tribal rather for the past more than 50 years possession of the Suit property is already with the Transferees (Petitioners) who are also Tribals. In such circumstances it is highly debatable whether the provision of Section 36A of the MLRC, 1966 as enacted with effect from 01.11.1975 would apply to the facts of the present case or whether the same would be applicable in law otherwise.

8. On the factual aspect it is an admitted position that Agreements for Sale of Suit property are dated 13.01.1974 and 31.03.1975. That apart, date of taking over possession of Suit property is 13.01.1974, therefore provision of Section 36A for the purpose of applicability has to go back in point of time upto 30 years from the date of the amended provision which was notified in 2011 but made effective from 2004. Thus on considering the above timeline on facts, the bar of Section 36A of MLRC,

1966 *prima facie* cannot apply to Petitioners' case for the purpose of implementing provisions of the MRLST Act.

9. Next, on the issue of applicability of statutory provisions it is *prima facie* seen that the provision of MRLST Act are invoked by private Respondents in 1999 after suffering a decree of specific performance from the Civil Court, thus action of private Respondents to file RTS proceedings and proceedings under the MRLST Act were to frustrate the decree passed by the Civil Court without challenging it further. What is intriguing is the fact that in so far as the present case is concerned, it stands clearly outside the purview of the 1975 Rules. Present case is admittedly a case of transfer by one tribal to another tribal for the purpose of cultivation. The Division Bench of this Court while deciding the constitutional validity of Rule 4(1) (a) of the 1975 Rules in the case of ***Mahendrasingh Digvijaysingh Mukne Vs. State of Maharashtra and Ors. (Supra)*** has clearly distinguished the aforesaid provision and proposition. The learned Division Bench highlighted the clear object behind imposing the restriction of seeking Collector's sanction on a tribal transferee transferring his occupancy to a non tribal for agricultural purposes or otherwise. The Division Bench also highlighted the aspect of discretion exercised by the Collector while considering grant of sanction for such transfer and held that the Collector could always grant such sanction without any fetters. While doing so, the Division Bench referred to upholding the constitutional validity of Section

36A of MLRC, 1966 and held that in view of the provisions of Article 46 of the Constitution of India the said provision intended to safeguard and protect the interest of Tribals with a view to prevent their exploitation. In this judgment the ethos of Collectors' power for considering application for transfer of occupancy is discussed by the Division Bench with specific reference to conduct of inquiry under Rule 3 and sanction of Collector under Rule 4 as prescribed therein though the said provisions would squarely apply to transfer from a Tribal to non Tribal.

10. The Division Bench clearly held that there is no prohibition on the transfer of Tribal occupancy in favour of another Tribal. Though it is argued by the learned Amicus that such disposition by the learned Division Bench be merely considered as obiter, I am in respectful disagreement with this submission. In this regard I therefore invite attention to paragraph Nos. 17, 19, 21 to 24 of the Division Bench Judgment. These paragraphs are reproduced below for immediate reference:

“17. According to the petitioner, permitting transfer of a tribal occupancy to a non-tribal only when the land is intended to be used for non-agricultural purpose and not for agricultural purpose results in an illegal classification. It is urged that there is no rationale behind the prohibition for transfer of occupancy by a tribal in favour of non-tribal when the land is intended to be used for agricultural purpose. There is no nexus whatsoever with the purpose of protecting the interests of tribals that is sought to be achieved.

The historical background that has led to the enactment of the Act of 1974 as well as the introduction of Section 36-A of the Code along with the Rules of 1975 has to be borne in mind. The Revenue and Forest Department of the State Government on 15-3-1971 constituted a committee to undertake a study in the matter of steps to be taken to protect

the rights of tribals. It is after considering the report of the said Committee that the Act of 1974 was enacted followed by introducing Section 36-A in the Code. The basic need for enactment of these statutory provisions was the exploitation of tribals resulting in their lands being taken away by non-tribals. It is for this reason that while permitting a tribal to transfer his occupancy in favour of a non-tribal, the previous sanction of the Collector has been mandated. Such sanction is required to be given by the Collector in the given circumstances and subject to conditions as prescribed.

At the outset, it may be noted that there is no prohibition on the transfer of a tribal occupancy. A tribal is free to transfer his occupancy in favour of another tribal. It is only when a tribal intends to transfer his occupancy to a non-tribal that the previous sanction of the Collector is necessary. This therefore indicates that while a tribal can transfer his occupancy in favour of another tribal at will, the only restriction placed is when a tribal intends to transfer his occupancy by way of sale in favour of a non-tribal. This provision has been found to be constitutionally valid. The restriction placed on grant of sanction to the transfer of occupancy by way of sale in favour of non-tribal only when the transferee intends to use it for non-agricultural purpose is legally justifiable. The object behind the same appears to be to prevent non-tribals from accumulating agricultural lands of tribals which could result in future exploitation of tribals and requiring them to undertake agricultural operations on the very lands of which they were owners. Another aspect as highlighted by the learned Advocate General was that with financial resources being available to non-tribals, modern agricultural activities could be undertaken by non-tribals after purchasing such lands from tribals which would then affect the agricultural income of tribals in the vicinity. In our view, the restriction placed on the Collector while granting sanction to the transfer of occupancy by sale by a tribal in favour of a non-tribal who intends to use it for agricultural purpose is reasonable in nature and does not fall foul of the provisions of Article 14 of the Constitution of India. The object is clear that the agricultural lands of tribals are intended to be protected.

18. xxxxxxx

19. *The principles laid down by the Supreme Court in its decisions in Ramesh Chandra Sharma case [Ramesh Chandra Sharma v. State of U.P., (2024) 5 SCC 217 : 2023 INSC 144] , Deepak Sibal case [Deepak Sibal v. Punjab University, (1989) 2 SCC 145 : 1989 SCC (L&S) 284 : 1989 INSC 58] and Lok Prahari case [Lok Prahari v. State of U.P., (2018) 6 SCC 1 : (2018) 3 SCC (Civ) 389 : (2018) 3 SCC (Cri) 73 : (2018) 2 SCC (L&S) 162 : 2018 INSC 455] cannot be made applicable to the facts of the present case as Rule 4(1)(a)(i) applies equally to all tribals and there is no sub-classification amongst them whatsoever. The only restriction that has been placed is to the*

transfer of an occupancy by a tribal in favour of a non-tribal when the land is intended to be used for agricultural purpose. This restriction as placed is reasonable in nature considering the historical background behind the enactment of these statutory provisions with the avowed object of safeguarding the interest of tribals and their lands.

20. xxxxxx

21. *It is to be borne in mind that Rule 4(1) refers to various contingencies on the basis of which the Collector can grant sanction for transfer under Section 36-A of the Code. Such transfer can be effected in various forms including sale, lease, mortgage, exchange, etc. The manner in which such transfer can be effected have been enumerated. This would indicate that transfer of occupancy by a tribal through various modes is permitted. The only restriction or fetter on the exercise of such discretion by the Collector is to ensure that the contingencies stipulated under Rule 4(1) are satisfied. Within the aforesaid statutory provisions, the Collector has full discretion on the basis of which he may or may not grant sanction under Section 36-A. It therefore cannot be said that the discretion conferred on the Collector while considering the grant of sanction under Section 36-A is restricted in any manner whatsoever. The Collector can exercise his discretion in accordance with law within the statutory framework and there is no restriction placed in that regard. In these facts, the ratio of the decisions in Shri Rama Sugar Industries Ltd. case [Shri Rama Sugar Industries Ltd. v. State of A.P., (1974) 1 SCC 534 : 1974 SCC (Tax) 206 : (1974) 33 STC 277 : 1973 INSC 246] , Mohd. Ismail case [U.P. SRTC v. Mohd. Ismail, (1991) 3 SCC 239 : 1991 SCC (L&S) 893 : (1991) 17 ATC 234 : 1991 INSC 99] , Anahita Pandole case [Anahita Pandole v. State of Maharashtra, 2004 SCC OnLine Bom 402 : (2004) 6 Bom CR 246] and Shiva Petro-Synth Specialities Ltd. case [Shiva Petro-Synth Specialities Ltd. v. Goa State Pollution Control Board, 2021 SCC OnLine Bom 994 : (2021) 4 Bom CR 591] cannot be applied to the present case.*

22. *Under Rule 4(1)(a)(i) of the Rules of 1975, it is permissible for a tribal to transfer his occupancy if the non-tribal transferor intends to use the said land for bona fide non-agricultural purpose. If transfer of an occupancy to a non-tribal who intends to use it for agricultural purpose is not permissible, there would be no occasion whatsoever for the Collector to entertain such application since it would be beyond the purview of Rule 4(1)(a)(i) of the Rules of 1975. The question of exercising discretion would therefore be only within the permissible limits of Rule 4(1)(a)(i) and not de hors the same. Once it is found that the restriction placed on a tribal on the transfer of his occupancy to a non-tribal for agricultural purpose is reasonable in nature, it cannot be said that the discretion to be exercised by the Collector in this regard is restricted. Within the contingencies indicated in Rule 4(1), the*

Collector has the entire discretion and he can consider the request for grant of sanction for transfer under Section 36-A of the Code. We therefore do not find that the ground raised by the petitioner that the discretion conferred on the Collector in the matter of grant of sanction under Section 36-A of the Code being restrictive in nature is bad in law deserves acceptance. The observations of Starling J. in Gell case [Gell v. Taja Noora, (1903) 27 ILR 307] do not further the case of the petitioner.

23. *Before parting, we may deal with the submission of the learned Advocate General that Rule 4(1)(a)(i) of the Rules of 1975 having operated since 1975 without any grievance being raised for all these years, the court may not exercise jurisdiction at the behest of the petitioner after about five decades. Rule 4(1)(a)(i) having successfully operated for all these years, it cannot be invalidated on the grounds urged by the petitioner.*

In this regard, we may only refer to the observations of the Supreme Court in Motor General Traders v. State of A.P. [Motor General Traders v. State of A.P., (1984) 1 SCC 222: 1983 INSC 163] which read as under: (SCC p. 239, para 24)

“24. It is argued that since the impugned provision has been in existence for over twenty-three years and its validity has once been upheld by the High Court, this Court should not pronounce upon its validity at this late stage. There are two answers to this proposition.... The second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. ‘Time does not run in favour of legislation.’ If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported. [See W.A. Wynes: Legislative, Executive and Judicial Powers in Australia, 5th Edn., p. 33] ...”

We have accordingly dealt with the challenge raised to the validity of Rule 4(1)(a)(i) on its merits and we do not find any reason to uphold the same. Individual hardship by itself cannot be a ground to hold a provision to be invalid or unworkable especially in the light of the fact that such provision has been enacted keeping in mind the directive principles under Article 46 of the Constitution of India for the larger good and welfare of tribals. In absence of any restriction on a tribal such as the petitioner to transfer his occupancy in favour of any other tribal

who can use it for agricultural purpose or in favour of any other non-tribal if the land is to be used for bona fide non-agricultural purpose, the insistence for transferring the occupancy in favour of a non-tribal transferor to enable its use for agricultural purposes cannot be countenanced. The challenge as raised to the validity of Rule 4(1)(a)(i) of the Rules of 1975 therefore fails.

24. *In absence of any bar for a tribal to transfer his occupancy in favour of another tribal who can continue to use such land for agricultural purpose, such restriction on the transfer in favour of a non-tribal by way of sale if the land is to be used for agricultural purpose does not suffer from the vice of classification. The challenge to Rule 4(1)(a)(i) of the Rules of 1975 on that count cannot be accepted.”*

11. From the above, it is clearly seen that the statutory authorities have completely misdirected themselves solely on the basis that prior sanction of the Collector was not obtained by the private Respondents and / or Petitioners. In this case the Transferee was a tribal and therefore in view of the ratio of the Division Bench judgment quoted hereinabove there can be no fetter on a Tribal to transfer and alienate his land to another Tribal for agricultural purposes.

12. It is seen that in the present case, the Civil Court has given its verdict and passed decree of specific performance in favour of Petitioners and the Decree of the Civil Court has become absolute and final. In a given case for the purpose of seeking permission from Collector, the Collector is enjoined upon to look to the nature of the property, subject matter of the proposed conveyance, pre-existing rights, whether such alienation would violate the provisions of the Constitution of India or the law and whether

the Constitutional policy of economic empowerment under Articles 14, 21, 28, 39 and 46 of the Constitution of India is adhered to.

13. Therefore in my opinion, there is a clear distinction which can be drawn when transfer and alienation of property takes place from a Tribal to a Non Tribal as against transfer and alienation of property from a Tribal to another Tribal. In that view of the matter, I am inclined to accept the submissions made by Mr Shah on the applicability of the provisions of Section 36A of MLRC to the facts and circumstances in the present case while determining the rights of the Petitioners (Tribals) before me. Resultantly the concurrent orders dated 30.11.2012 passed by Additional Collector, Nashik dated 23.02.2017 passed in Revision proceedings by Additional Commissioner, Nashik and dated 23.03.2018 passed in Second Revision by the State are quashed and set aside. As a result private Respondents' Application No.491 of 2007 filed on 30.10.2007 under Section 36A of MLRC stands dismissed.

14. Writ Petition is allowed in the above terms. Permission from Collector in the present facts and circumstances is directed to be given by the Collector for the purpose of transfer of the Suit property on to the names of Petitioners within a period of 4 weeks from today since the land is Tribal land and all parties before me in the subject transaction are Tribals. The permission shall be accorded in favour of the Petitioners on all other legal compliances in accordance with law. Substantive right of private

Respondents is kept expressly open in proceedings that may be legally available to the said Respondents in accordance with law.

15. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

AJAY
TRAMBAK
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Digitally signed
by AJAY
TRAMBAK
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Date: 2026.04.17
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