

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3471 OF 2026

Kalpana Arjun Chaudhari

..Petitioner

Versus

Kashinath Bistur Kanera & Ors

...Respondents

Mr. Swaraj Jadhav, i/b Sanskruti Yagnik, for the Petitioner.

Mr. Anil Anturkar, Senior Advocate, h/f Chintan Shah, for Respondent
No.1.

Mr. Pritesh Burad, with Nehal Deshmukh, i/b Pritesh Burad
Associates, for Respondent No.2.

Mr. Yatin S Khochare, 'B' Panel Counsel for Respondent Nos. 3 and 4.

CORAM: N. J. JAMADAR, J.

DATE : 23rd MARCH 2026

ORDER:

1. Heard the learned Counsel for the parties.

2. The challenge in this Petition is to an order dated 24th July 2025 passed by the Tahsildar, Thane, under Section 10A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, whereby the land bearing Survey No. 10, Hissa No. 6, situated at Mouje Ovale, Taluka and District Thane, has been ordered to be restored to Respondent No.1 by evicting Respondent No.2 who was held to be in wrongful possession of the said land.

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3. Bistur Raghu Kanera, Bhanu Chandrakant Murkuda and Nand Ananta Tawade, were the original holders of the subject land. Bistur Raghu Kanera, the predecessor-in-title of Respondent No.1, and other holders were the members of Varli Scheduled Tribe. The names of Respondent No.1 and other co-holders had been mutated to the Record of Rights of the subject land. Subsequently, the co-owners have relinquished their right, title and interest in the subject land in favour of the Respondent No.1 under registered instrument dated 5th August 2015. An entry has also been made in the Record of Rights that the occupancy of the Tribals cannot be transferred without the sanction of the Collector under Section 36A of the Maharashtra Land Revenue Code 1966.

4. Respondent No.1 filed an Application before the Tahsildar and Agriculture Lands Tribunal, Thane with the assertions that, sans any instrument, Respondent No.2 has unlawfully occupied the subject land and without sanction of the Collector, Respondent No.2 has been using the subject land for non-agricultural activities.

5. Thus, Respondent No.1 prayed for an order eviction of Respondent No.2 from the subject land and restoration thereof to the Applicant (R1).

6. By the impugned order dated 24th July 2025, the ALT, allowed the Application observing *inter alia* that the Applicant, a Tribal, appeared to be the owner of the subject land, and the Inspection Report revealed

that, Respondent No.2 was in wrongful possession of the subject land and had erected unauthorised construction over the subject land. Thus, the order of eviction of Respondent No.2 from the subject land in the manner provided under Section 242 of the Maharashtra Land Revenue Code was passed.

7. Mr. Swaraj Jadhav, the learned Counsel for the Petitioner, submitted that, in fact, the Petitioner is the owner of the subject land. The husband of the Petitioner, who was also a Tribal, had purchased the subject land under an Agreement for Sale dated 12th October 1994 executed by Bistur Kanera, the father of Respondent No.1, and Bhanu Murkuda and Nanda Tawade, the co-holders. Subsequently, a registered Deed of Confirmation was executed by the predecessor-in-title of Respondent No.2 and the co-holders on 3rd January 1998. Mr. Jadhav further submitted that, Anil Bamb (R2) had categorically informed the ALT that, husband of the Petitioner was the owner of the subject land and, yet, without impleading the Petitioner as a party-Respondent to the said Application an order of eviction and restoration of possession was obtained behind the back of the Petitioner.

8. Thus, the impugned order, having been passed in flagrant violation of fundamental principles of natural justice, and sans jurisdiction, deserves to be quashed and set aside, submitted Mr. Jadhav.

9. Mr. Pritesh Burad, the learned Counsel for Respondent No.2 supported the claim of the Petitioner.

10. In opposition to this, Mr. Anil Anturkar, the learned Senior Advocate, for Respondent No.1 at the outset submitted that since there is a statutory remedy of appeal against the impugned order, this Court may not be justified in entertaining the Petition. Even otherwise, the claim of ownership of Respondent No.1 is manifestly untenable. Admittedly, no registered conveyance was executed in favour of husband of the Petitioner by the original holders. Since the Authorities have found Respondent No.2 had been in wrongful possession of the subject land, the certification of ownership of the Petitioner's husband, by Respondent No.2, is of no avail. If the Petitioner has any claim, interest or title over the subject land, the Petitioner would be required to workout her remedies before the appropriate forums, submitted Mr. Anturkar.

11. Section 6 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, provides for an appeal against any decision or order passed by the Collector, before the Maharashtra Revenue Tribunal. Section 7 of the Act, 1974 empowers the Divisional Commissioner to exercise the powers of revision either suo-moto or in the direction of the State Government. Thus, statutory remedies are available against the impugned order.

12. Undoubtedly, the existence of an alternate remedy does not denude the High Court of its power to issue prerogative writs. However, where the remedies are provided in the vary statute, under which the impugned order is passed, the rule of policy, convenience and discretion warrants that the party must be ordinarily relegated to exhaust the statutory remedy (**Radha Krishan Industries Vs State of Himachal Pradesh and Ors**).¹ It is true availabilty of an alternate remedy is a rule of self-imposed restraint and not a rule of law. Yet, unless an exceptional case warranting interference or invocation of extra-ordinary jurisdiction is made out, the High Court would be slow to entertain a Writ Petition bypassing the statutory remedy.

13. In the case at hand, this Court finds that, at best, the claim of the Petitioner is that the predecessor-in-title of Respondent No.1 and his co-holders had executed an Agreement for Sale. Indisputably, no Deed of Conveyance has been executed. The Deed of Confirmation, even if taken at par, confirms the execution fo an Agreement for Sale. That singularly belies the claim of ownership.

14. Evidently, the impugned order proceeds on the premise that Respondent No.2 was found in wrongful occupation of the subject land and has carried out unauthorised construction over the subject land. It would be contextually relevant to note, in the Petition, the Petitioner has asserted that, though Respondent No.2 is not the real owner of the

¹ (2021) 6 SCC 771.

subject land, yet, Respondent No.2 is in the joint occupation of the subject land with the Petitioner, being the holder of the adjacent property. *Prima facie* this stand indicates that Respondent No.2 was in possession of the subject land.

15. In this backdrop, the submissions premised on violation of principles of natural justice and want of jurisdiction do not merit countenance. No case for exercise of extra-ordinary writ jurisdiction in the face of availability of the statutory remedies of appeal and revision under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, is made out. The controversy is rooted in thickets of facts. Thus, the Petitioner would be required to workout her remedies before the appropriate forums.

16. The Petition, therefore, does not deserve to be entertained.

17. The petition stands dismissed.

[N. J. JAMADAR, J.]