



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1238 OF 2015
WITH
CIVIL APPLICATION NO. 14658 OF 2023
IN WP/1238/2015

01. Gokul S/o. Jaysing Shele,
Age : 61 years, Occu. : Agril.,
R/o. Saptshrungi Colony,
Amalner, Tq. Amalner,
Dist. Jalgaon.

At present R/o. Mundadanagar,
New Swami Samarth Kendra,
Amalner, Dist. Jalgaon.

02. Devidas S/o. Jaysing Shele,
Age : 58 years, Occu. : Agril.,
R/o. Laxmi Nagar, Near
Shriram School, Mehrun,
Jalgaon, Tq. & Dist. Jalgaon.

... Petitioners
(Orig. D.H.)

Versus

01. Yuvraj S/o. Devram Pardhi,
Age : 35 years, Occu. : Agril.,
R/o. Pendharpura, Parola,
Tq. Parola, Dist. Jalgaon.

02. Sau Nirmalabai Gopal Pardhi,
Age : 49 years, Occu. : Household,
R/o. Parase Road, Surat,
Tq. & Dist. Surat (Gujrat).

03. Sau Mangalabai Himmat Pardhi,
Age : 46 years, Occu. : Household,
R/o. Patil Gadi, Chopada,
Tq. Chopada, Dist. Jalgaon.

04. Sunandabai Adhar Pardhi,
Age : 43 years, Occu. : Household,
R/o. Pendharpura, Parola,
Tq. Parola, Dist. Jalgaon.

05. Sau Chotibai Sanju Pardhi,
Age : 33 years, Occu. : Household,
R/o. Morane, Tq. & Dist. Dhule (Resp No.1 to 5
Orig. J.D.)

06. The Sub Registrar,
Sub Registrar Office,
Parola, Tq. Parola,
Dist. Jalgaon. ... Respondents

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Mr. Karan Sarosiya h/f. Mr. S. S. Bora, Advocate for petitioners.
Mr. Angad L. Kanade, Advocate for Respondent Nos.1 to 5.
Mr. Moinpasha Shaikh Farid, Advocate for Intervenor in CA/14658/2023.
Mr. N. R. Dayma, AGP for Respondent No. 6 - State.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 04 MARCH 2026
PRONOUNCED ON : 10 MARCH 2026

JUDGMENT :

1. By invoking Article 226 and 227 of the Constitution of India, petitioners are praying to first quash and set aside the order dated 10.12.2014 passed by learned Civil Judge Senior Division, Amalner below Exhibit 49 in Special Darkhast No. 08 of 2011 and to further issue directions in the nature of certiorari to respondent no.6/ Sub Registrar, Parola to get sale deed registered.

2. In short, it is the case of petitioners that, they had initially entered into an agreement of sale with respondents. That, for want of specific performance they had instituted suit and succeeded in securing Decree. That, they applied for Darkhast

bearing No. 08 of 2011. That, meanwhile, respondent no.2 to 5 filed application Exh.32 for raising objection to decree on the ground of it to be by playing fraud. Said application was rejected. That, learned Executing Court had already directed Assistant Superintendent of the Civil Court to get decree in favour of petitioners. That, necessary stamp papers were purchased and tendered before the Sub Registrar, but respondent no.6 Sub Registrar refused to register the sale deed by taking recourse to section 36 and 36A of Maharashtra Land Revenue Code, 1966 (for short, "*MLR Code*").

3. Learned counsel for petitioners would point out that, petitioners are thus a decree holders, whereas respondents are judgment debtor. That, in execution of special Darkhast at the instance of petitioners, sale deed was to be got executed by the office of Sub Registrar. It was their mandatory duty to get registration done, but they failed and instead, raised objection that it is not tenable at their end. In support of such contentions, learned counsel for petitioners seeks reliance on the judgment of this Court (Principal Seat) in Writ Petition No. 1966 of 2012 in the case of *Chairman / Secretary, Deep Apartment CHS Ltd. v. The State of Maharashtra and Ors.*, wherein it is pointed out that, ratio has been decided that Registering Authority cannot refuse to register the document. Thus, according to him, impugned order passed below Exh.49 dated

10.12.2014 by learned C.J.S.D. Amalner be set aside and further directions be issued to the Sub Registrar to get the sale deed registered.

4. In answer to above, learned counsel for respondent Nos.1 to 5/original defendants in above Special Civil Suit, at the instant petitioners, justify the order of learned Civil Court and also justify the refusal on the part of office of the Sub Registrar to register the sale deed. The sole ground on which they justify the above orders and inaction is that, land being gone into tribal, obtaining the permission of Collector to sell is mandatory by virtue of section 36A of MLR Code. Here, learned Civil Court as well as Sub Registration Authorities noticed non compliance of above provision and rightly refused to comply. Learned counsel for respondents also seeks reliance on the judgment of this Court (Nagpur Bench) in Writ Petition No.1556 of 2022 in the case of ***Vijay Anandrao Moghe and Ors. v. The Additional Collector and Ors.***

5. Thus, here, the short controversy is whether the land with which parties were dealing is firstly 'tribal land' and whether in view of section 36A of MLR Code, prior permission of the Collector is mandatory.

6. After hearing the submissions of both sides, there does

not seem to be much controversy that respondents as well as petitioners are tribal. Though by virtue of Civil Suit decree is in favour of petitioners and they initiated action of Special Darkhast, it appears that vide Exh.49, petitioners themselves, being the decree holders, sought directions from the Civil Judge, Senior Division, Amalner to direct the Sub Registrar, Class I, Parola to register the sale deed. This application seems to be rejected by the learned Civil Court, Senior Division, Amalner by order dated 10.12.2014, and the same is reproduced as under :-

“Read application and say. Heard. Record speaks that such type of application was already filed at Exh.18 and the same has already been rejected. Therefore, this application is not maintainable. It is rejected.”

7. The above order shows that, application Exh.49 was the second attempt by petitioners as previously they have moved application in similar prayers at Exh.18, over which also learned Civil Judge by order dated 08.12.2012 had passed following order :-

“Perused the application. By virtue of provisions laid down in Section 36 of MLR Code, the application being devoid of substance, stood rejected.”

Therefore, above both orders of learned Civil Judge, Senior Division, Amalner, initially on application Exh.18 and

subsequently on application Exh.49 i.e. for seeking directions to Sub Registrar to execute sale deed, have been turned down by invoking section 36 of MLR Code.

8. It would be appropriate to reproduce sections 36 & 36A of MLR Code, which is as under :

36. Occupancy to be transferable and heritable subject to certain restrictions.—

(1) An occupancy shall, subject to the provisions contained in section 72 and to any conditions lawfully annexed to the tenure, and save as otherwise provided by law, be deemed an heritable and transferable property.

(2) Notwithstanding anything contained in the foregoing sub-section occupancies of persons belonging to the Schedule Tribes (hereinafter referred to as the 'Tribals') (being occupancies wherever situated in the State), shall not be transferred except with the previous sanction of the Collector:

Provided that, *nothing in this sub-section shall apply to transfer of occupancies made in favour of persons other than the Tribals (hereinafter referred to as the 'non-Tribals') on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974).]*

(3) Where an occupant belonging to a Schedule Tribe in contravention of sub-section (2) transfers possession of his occupancy, the transferors or any person who if he survives the occupant without nearer heirs would inherit the holdings, may, "[within thirty years from the 6th July 2014], apply to the Collector to be placed in possession subject so far as the Collector may, in accordance with the rules made by the State Government in this behalf, determine to his acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding, "[and, notwithstanding anything contained in any law for the time being in force, the Collector shall] dispose of such application in accordance with procedure which may be prescribed :

***Provided that,** where a Tribal in contravention of sub-section (2) or any law for the time being in force has, at any time before the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974) transferred possession of his occupancy to a non-Tribal and such occupancy is in the possession of such non-Tribal or his successor-in-interest, and has not been put to any non-agricultural use before such commencement, then, the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on application by the Tribal (or his successor-in-interest) made at any time [within thirty years from the 6th July 2004], after making such inquiry as he thinks fit, declare the transfer of the occupancy to be invalid, and direct that the occupancy shall be taken from the possession of such non-Tribal or his successor-in-interest and restored to the Tribal or his successor-in-interest.*

(* * * *)

[Provided further] that where transfer of occupancy of a Tribal has taken place before the commencement of the said Act in favour of a non-Tribal, who was rendered landless by reason of acquisition of his land for a public purpose, only half the land involved in the transfer shall be restored to the Tribal.]

(3A) Where any Tribal (or his successor-in-interest) to whom the possession of the occupancy is directed to be restored under the first proviso to sub-section (3) expresses his unwillingness to accept the same, the Collector shall, after holding such inquiry as he thinks fit, by order in writing, declare that the occupancy together with the standing crops therein, if any, shall with effect from the date of the order, without further assurance, be deemed to have been acquired and vest in the State Government.

(3B) On the vesting of the occupancy under sub-section (3A), the non-Tribal shall, subject to the provisions of sub-section (3C), be entitled to receive from the State Government an amount equal to 48 times the assessment of the land plus the value of improvements, if any, made by the non-Tribal therein to be determined by the Collector in the prescribed manner.

Explanation. - In determining the value of any improvements under this sub-section, the Collector shall have regard to-

(i) the labour and capital provided or spent on improvements;

(ii) the present condition of the improvements;

(iii) the extent to which the improvements are likely to benefit the land during the period of ten years next following the year in which such determination is made;

(iv) such other factors as may be prescribed.

(3C) Where there are persons claiming encumbrances on the land, the Collector shall apportion the amount determined under sub-section (3B) amongst the non-Tribal and the person claiming such encumbrances, in the following manner, that is to say-

(i) if the total value of encumbrances on the land is less than the amount determined under sub-section (3B), the value of encumbrances shall be paid to the holder thereof in full;

(ii) if the total value of encumbrances on the land exceeds the amount determined under sub-section (3B), the amount shall be distributed amongst the holders of encumbrances in the order of priority:

Provided that, *nothing in this sub-section shall affect the right of holder of any encumbrance to proceed to enforce against the non-Tribal his right in any other manner or under any other law for the time being in force.*

(3D) The land vested in the State Government under sub-section (3A) shall, subject to any general or special orders of the State Government in that behalf, be granted by the Collector to any other Tribal residing in the village in which the land is situated or within five kilometres thereof and who is willing to accept the occupancy in accordance with the provisions of this Code and the rules and orders made thereunder and to undertake to cultivate the land personally, so, however, that the total land held by such Tribal, whether as owner or tenant, does not exceed an economic holding within the meaning of sub-section (6) of section 36A.

(4) Notwithstanding anything contained in sub-section (1) or in any other provisions of this Code, or in any law for the time being in force it shall be lawful for an Occupant Class II to mortgage his property in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loan Act, 1883 (XIX of 1883), the Agriculturists Loans Act, 1884 (XII of 1884), or the Bombay Non-Agriculturists Loans Act, 1928 (Bom. III of 1928), or in favour of a co-operative society [or the State Bank of India constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955), or a corresponding new bank within the meaning of clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or the Maharashtra State Financial Corporation established under the relevant law] in consideration of a loan advanced to him by such co-operative [society, State Bank of India, corresponding new bank, or as the case may be, Maharashtra State Financial Corporation], and without

prejudice to any other remedy open to the State Government, [the co-operative society, the State Bank of India, the corresponding new bank, or as the case may be, the Maharashtra State Financial Corporation] in the event of such occupant making default in payment of such loan in accordance with terms on which such loan is granted, it shall be lawful for the State Government, 4"[the co-operative society, the State Bank of India, the corresponding new bank, or as the case may be, the Maharashtra State Financial Corporation] to cause the occupancy to be attached and sold and the proceeds to be applied towards the payment of such loan.

The Collector may, 42[on the application of the co-operative society, the State Bank of India, the corresponding new Bank or the Maharashtra State Financial Corporation], and payment of the premium prescribed by the State Government in this behalf, by order in writing re-classify the occupant as Occupant-Class I; and on such re-classification, the occupant shall hold the occupancy of the land without any restriction on transfer under this Code.

Explanation. - For the purpose of this section, "Schedule Tribes" means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the state of Maharashtra under Article 342 of the Constitution of India 43 [and persons, who belong to the tribes or Tribal communities, or parts of, or groups within tribes or tribal communities, specified in part VIIA of the Schedule to the Order 44[made under] the said article 342, but who are not resident in the localities

specified in that Order who nevertheless need the protection of this section and section 36A (and it is hereby declare that they do need such protection) shall, for the purposes of those section be treated in the same manner as members of the Scheduled Tribes.]

36A. Restrictions on transfer of occupancies by Tribals. -

(1) Notwithstanding anything contained in sub-section (1) of section 36, no occupancy of a Tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974), be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction -

(a) in the case of a lease or mortgage for a period not exceeding 5 years, of the Collector; and

(b) in all other cases, of the Collector with the previous approval of the State Government:

Provided that, *no such sanction shall be accorded by the Collector unless he is satisfied that no Tribal residing in the village in which the occupancy is situate or within five kilometres thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.*

Provided further , *that in villages in Scheduled*

Areas of the State of Maharashtra, no such sanction allowing transfer of occupancy from tribal person to non-tribal person shall be accorded by the Collector unless the previous sanction of the Gram Sabha under the jurisdiction of which the tribal transferor resides has been obtained.]

Provided also that, in villages in Scheduled Areas of the State of Maharashtra, no sanction for purchase of land by mutual agreement, shall be necessary, if,-

(i) such land is required in respect of implementation of the vital Government projects; and

(ii) the amount of compensation to be paid for such purchase is arrived at in a fair and transparent manner.

Explanation. - For the purposes of the second proviso, the expression "vital Government project" means project undertaken by the Central or State Government relating to national or state highways, railways or other multi-modal transport projects, electricity transmission lines, Roads, Gas or Water Supply pipelines canals or of similar nature, in respect of which the State Government has, by notification in the Official Gazette, declared its intention or the intension of the Central Government, to undertake such project either on its own behalf or through any statutory authority, an agency owned and controlled by the Central Government or State Government, or a Government company incorporated under the provisions of the Companies Act, 2013 (18 of 2013) or any other law relating to companies for the time being in force.]

(2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed.

(3) On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force; or any decree or order of any court or award or order of any tribunal, or authority, either suo motu or on application made by the tribal in that behalf, restore possession of the occupancy to the Tribal.

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974), it is noticed that any occupancy has been transferred in contravention of sub-section (1) 48 [the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu or on the application made by any person interested in such occupancy,] 49 [or on a resolution of the Gram Sabha in Scheduled Areas] [within thirty years form the 6th July 2004] hold an inquiry in the prescribed manner and decide the matter.

(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may, from time to time direct.

(6) Where an occupancy vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the Tribal-transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such Tribal-transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the total land held by such Tribal-transferor, whether as owner or tenant, does not as far as possible exceed an economic holding.

Explanation. - For the purpose of this section, the expression "economic holding" means 6.48 hectares (16 acres) of jirayat land, or 3.24 hectares (8 acres) of seasonally irrigated land, or paddy or rice land, or 1.62 hectares (4 acres) of perennially irrigated land, and where the land held by any person consists of two or more kinds of land, the economic holding shall be determined on the basis of one hectare of perennially irrigated land being equal to 2 hectares of seasonally irrigated land or paddy or rice land or 4 hectares of jirayat land."

9. Therefore, from above provision, it is abundantly clear that, while dealing with land belonging to tribal, prior permission of the Collector is imperative. Here, admittedly, though initially agreement of sale was in favour of petitioners and they also succeeded in securing the decree and further took steps for execution of Darkhast, and in such proceedings, when they pressed above

application, both the learned Civil Judge, Senior Division as well as Office of Registrar, Amalner, were justified in refusing the registration.

10. Learned counsel for petitioners has placed reliance on above referred judgment of this Court, however, in that judgment, “issue was of title” and therefore, this Court had held that Registering Authority cannot refuse to register on the ground of absence of the title. Here, it is not so. Here, there is explicit bar for dealing with land belonging to tribal without prior permission of the Collector. On the contrary, the rulings of this court relied by learned counsel for respondent being identical in facts with present case squarely applies.

11. For above reasons, no case being made out to interfere by way of writ, petition fails and is dismissed in *limine*.

12. In view of dismissal of Writ Petition, Civil Application No. 14658 of 2023 does not survive and is accordingly disposed of.

(ABHAY S. WAGHWASE, J.)