

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10990 OF 2019

Suryakant Ravji Shah & Another

... Petitioners

Vs.

Gautam Ramchandra Desai, since
deceased through legal heirs & Others

... Respondents

ATUL
GANESH
KULKARNI

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Mr. Girish Godbole, Senior Advocate with Mr. Drupad Patil, Mr. Satyen Vora, Mr. Ankur Kalal, Ms. Namrata Vashisht, & Ms. Khushboo Chughani i/by Markand Gandhi & Co., for the petitioners.

Mr. Abhay Anturkar with Mr. Harshvardhan Suryavanshi, Mr. Nakul Patwardhan, and Mr. Atharva Date for respondent Nos. 1, 22, 23, 24, 25, & 26.

Mr. S.V. Sadavarte for respondent Nos.3, 4, 13A, 13C, & 13D.

Ms. Kavita N. Solunke, Additional G.P. with Mr. S.L. Babar, AGP for respondent No.21-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 3, 2026.

PRONOUNCED ON : AUGUST 6, 2026

JUDGMENT:

1. Since all these writ petitions involve almost same facts and same legal issues, they are being decided by this common judgment. For easy reference, the facts of Writ Petition No. 10990

of 2019 are taken as the main case and referred to in this judgment.

2. According to the petitioners, the facts leading to these writ petitions are as follows. The suit land was earlier in possession of Dhondu Kesu Mahar, Chorvu Bapu Saravate and Pandu Kondunak Sapkal as Mahar Watan land. On 23 July 1968, an order of re grant of the suit land was passed in favour of these occupants. Later, on 31 October 2006, respondent Nos. 6, 9 and 10 executed one power of attorney, and respondent Nos. 18 and 19 executed another power of attorney, both in favour of respondent No. 5, authorising him to obtain the necessary permissions for transfer of the suit land. Thereafter, on 8 November 2006, respondent Nos. 7, 11 to 14, 16 and 17 also executed a power of attorney in favour of respondent No. 5 for the same purpose. Subsequently, on 15 April 2011, respondent Nos. 6, 9, 10, 18 and 19 issued a public notice cancelling and terminating the powers of attorney dated 31 October 2006 and 8 November 2006.

3. On 9 May 2011, respondent Nos. 6, 9 and 10 executed and registered a Declaration Deed for cancelling the power of attorney. Thereafter, on 27 June 2012, respondent Nos. 6, 9, 10, 18, 19, 20 to 24 entered into a registered Agreement for Sale with the petitioners. Later, on 30 November 2012, respondent No. 5 executed and registered a sale deed in favour of respondent Nos. 1 to 5 by using the earlier powers of attorney. On the basis of that sale deed, Mutation Entry No. 755 was recorded by the Talathi. However, that mutation entry was not certified because the sale deed had been executed without obtaining the required prior

permission.

4. On 28 May 2013, the Collector granted permission to transfer a part of the suit land measuring 3 H 89 R in favour of the petitioners. Thereafter, on 31 May 2013, the original owners executed and registered a sale deed in favour of the petitioners for the said land. On the basis of this sale deed, Mutation Entry No. 757 was recorded. The petitioners filed objections before the Tahsildar against Mutation Entry No. 755. By order dated 28 October 2013, the Tahsildar cancelled Mutation Entry No. 755 by holding that the sale deed dated 30 November 2012 was illegal as it had been executed without obtaining the necessary permission.

5. On the same day, namely 28 October 2013, the Tahsildar also passed an order cancelling Mutation Entry No. 757 on the ground that the original owners had violated the conditions of re grant. Thereafter, on 20 August 2016, the Sub Divisional Officer dismissed RTS Appeal No. 838 of 2014 filed by respondent Nos. 1 to 5 and confirmed cancellation of Mutation Entry No. 755. By the same order, RTS Appeal No. 920 of 2014 filed by the petitioners was allowed, and Mutation Entry No. 757 was directed to be certified.

6. Thereafter, on 29 April 2017, the Collector dismissed RTS Second Appeal No. 868 of 2016 and RTS Second Appeal No. 853 of 2016 filed by respondent Nos. 1 to 5 against the order dated 20 August 2016. Further, on 9 March 2018, the Divisional Commissioner also dismissed Revision Application No. 159 of 2017 arising from Second Appeal No. 868 of 2016 and Revision

Application No. 160 of 2017 arising from Second Appeal No. 853 of 2016 filed by respondent Nos. 1 to 5.

7. On 1 March 2018, the Commissioner dismissed Appeal No. 204 of 2017 filed by respondent Nos. 1 to 5 challenging the permission granted by the Collector on 28 May 2013. Thereafter, on 3 August 2018, the heirs of Nagabai and Vithabai executed a registered Confirmation Deed confirming the Agreement for Sale dated 27 June 2012.

8. On 4 September 2019, the Minister passed three orders allowing Revision Application No. 3418/6148/File No. 120/J/5, Revision Application No. 3418/6138/File No. 119/J/5 and Revision Application No. 3418/6137/File No. 121/J/5. By these orders, the permission granted by the Collector for transfer of the suit land was cancelled and Mutation Entry No. 757 standing in the name of the petitioners was also set aside.

9. Thereafter, on 11 September 2019, corrigenda were issued to correct certain typographical mistakes in the orders dated 4 September 2019. Being aggrieved by those orders, the petitioners have filed the present writ petitions before this Court.

10. Learned counsel Mr. Drupad Patil appearing for the petitioners submitted that before Section 5(3) of the Bombay Inferior Village Watans Abolition Act, 1958 ("the 1958 Act") was amended by Maharashtra Act No. 21 of 2002 with effect from 6 May 2002, it provided as follows:

Section 5 sub section (3):

"The occupancy of the land regranted under sub-section (1)

shall not be transferable 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."

11. Learned counsel submitted that this provision was interpreted by the Division Bench of this Court in the case of *Vitthal Kondhalkar v. State of Maharashtra*, reported in 1979 STPL 2388 Bombay. In that case, the original Watandars had paid 13 times the land revenue assessment for some of the lands, as recorded in paragraph 4 of the judgment. After considering different Watan Abolition Acts and the Government Circulars, the Division Bench held in paragraphs 5 and 6 that the Collector only has to see whether the additional amount equal to 10 times the assessment has been paid. Once that amount is paid, the Collector has to remove the restrictions on transfer as a matter of right. According to the petitioners, the order granting permission is only a formal or ministerial act.

12. Learned counsel submitted that the Division Bench in *Shaikh Lal v. Malhari*, Writ Petition No. 3047 of 1978 decided on 16 December 1983, wrongly understood the earlier judgment in *Vitthal Kondhalkar*. It is pointed out that paragraph 2 of *Shaikh Lal* records that before the transfer neither permission of the Collector had been obtained nor the amount equal to 10 times the land revenue assessment had been paid. According to the petitioners, therefore, the decision in *Shaikh Lal* is contrary to the principle laid down in *Vitthal Kondhalkar*.

13. It is submitted that the learned Single Judge in *Bhagwantrao v. State of Maharashtra* merely followed the judgment in *Shaikh Lal*. Apart from that, the facts of *Bhagwantrao* show that the Inam land had been re granted in favour of the Inamdar after payment of occupancy price. However, the judgment does not clearly state whether the additional amount equal to 10 times the land revenue assessment was paid. It is also pointed out that the judgment mainly proceeds on the basis that proceedings under Section 59 of the Maharashtra Land Revenue Code, 1966 could not have been started.

14. Learned counsel also referred to the Division Bench judgment in *Mohan Sonaji Shilwant (deceased) v. State of Maharashtra & Ors.*, Writ Petition No. 3186 of 2020 decided on 13 April 2022. It is submitted that paragraph 3 of that judgment records that the land was re granted on 18 April 1970. Before execution of the sale deed, an application seeking permission had been made on 12 August 1994. As no decision was taken for about two years and five months, the sale deed came to be executed on 14 January 1997, an application for regularisation was filed and, after Section 5 of the 1958 Act was amended with effect from 6 May 2002, Nazrana of Rs.30,000/- was paid. Even then, on 7 December 2018, the Deputy Collector rejected the application on the ground that the land was Mahar Watan land. According to the petitioners, this judgment also does not clearly state whether the original Watandar had paid three times or thirteen times the land revenue assessment. It is submitted that while the judgment follows *Vitthal Kondhalkar* by observing that only a ministerial act

remained, paragraph 11 also follows *Shaikh Lal*, which, according to the petitioners, has incorrectly understood the ratio laid down in *Vitthal Kondhalkar*.

15. Learned counsel submitted that the judgment in *Ramnath Kondaji Darade v. Hirabai & Ors.*, Writ Petition No. 2922 of 1996, only follows the judgment in *Bhagwantrao v. State of Maharashtra*. Since *Bhagwantrao* followed the decision in *Shaikh Lal*, which according to the petitioners had wrongly applied the law laid down in *Vitthal Kondhalkar*, it is submitted that the same reasoning has been repeated in *Ramnath Kondaji Darade*.

16. Learned counsel submitted that before Section 5(3) of the 1958 Act was substituted with effect from 6 May 2002, there was no classification among different types of inferior village Watans where the original Watandar had paid 13 times the land revenue assessment before the sale. It is pointed out that Section 2(7) defines "inferior village Watan" as an inferior village hereditary office together with the Watan property attached to it. Section 2(6) defines "inferior village hereditary office" to include hereditary village offices below the rank of Revenue Patil, Police Patil or Village Accountant. According to the petitioners, this included not only Mahar Watans but also Watans held by communities such as Ramoshi and Mang. All these Watans were treated alike before 6 May 2002. However, after the amendment of 2002, and as reflected in the Statement of Objects and Reasons of Legislative Assembly Bill No. 8 of 2000, the Legislature intentionally imposed a complete restriction only upon Mahar Watan lands by introducing Section 5(4). Therefore, from 6 May 2002 onwards,

Mahar Watan lands were placed in a category. Once this distinction was made by the Legislature, it is submitted that the earlier principle regarding payment of 10 times the land revenue assessment can no longer remove the restriction on transfer of Mahar Watan lands.

17. Learned counsel submitted that the legislative scheme became even more clear after Legislative Council Bill No. 4 of 2008, which was later enacted as Maharashtra Act No. 19 of 2008. By this amendment, the earlier Section 5(3) was renumbered as Section 5(3)(a), Section 5(3)(b) was added, and three provisos were also inserted. However, Section 5(4), which prohibits transfer of Mahar Watan land, remained unchanged. According to the petitioners, while the Legislature regularised transfers of other inferior village Watans made before 6 May 2002, it intentionally continued the prohibition in respect of Mahar Watan lands.

18. Learned counsel submitted that both the judgments in *Bhagwantrao* and *Ramnath v. Hirabai* referred to the amended provisions of Section 5 even though the transfers involved in those cases had taken place before 6 May 2002. According to the petitioners, since those judgments overlooked the statutory provisions applicable on the actual dates of transfer and also ignored Section 5(4) after the amendment of 2002, both decisions should be treated as per incuriam.

19. It is therefore submitted that after 6 May 2002, the principle laid down in *Vitthal Kondhalkar* cannot be applied to transfers made on or after that date. According to the petitioners, Section

5(4) creates a complete prohibition against transfer of Mahar Watan land without previous permission of the Collector, and the intention of the Legislature in creating a class for Mahar Watan lands must be given full effect.

20. The petitioners relied upon several judgments to support their contention that wherever a statute requires "previous" sanction or permission, such requirement is mandatory. According to them, any transaction completed without such previous permission is invalid and cannot be validated later by granting permission after the event. For this purpose, the petitioners relied upon the following authorities.

21. Learned counsel submitted that in *Life Insurance Corporation of India v. Escorts Ltd.*, (1986) 1 SCC 264, the Constitution Bench of the Supreme Court held that whenever the Legislature intends that permission should be obtained before an act is done, it uses the expression "previous permission". The Court held that where the Legislature has used the words "previous permission" in some provisions but omitted them in others, such distinction cannot be ignored while interpreting the statute. Reliance was placed upon paragraph 63 of the judgment. On the basis of this judgment, the petitioners submitted that the same principle applies to Section 5 of the 1958 Act. Wherever the Legislature intended that transfer should take place only after obtaining sanction, it deliberately used the expression "previous sanction". According to the petitioners, since there is no provision permitting regularisation of transfer of Mahar Watan land after 6 May 2002, the Court must give effect to that legislative intention.

22. Learned counsel also relied upon the decision in *Asha John Divianathan v. Vikram Malhotra*, (2021) 19 SCC 629, wherein the Supreme Court held that the requirement of obtaining "previous" permission under Section 31 of the Foreign Exchange Regulation Act, 1973 is mandatory. The Court held that any transaction completed without such permission is prohibited by law, opposed to public policy and unenforceable, and that permission cannot be granted afterwards. Reliance was placed upon paragraphs 26, 32, 34, 36 and 49 of the judgment.

23. Learned counsel relied upon the judgment of this Court in *Central Hindu Military Social Education Society v. Joint Charity Commissioner*, Writ Petition No. 6743 of 2007 with Writ Petition No. 5861 of 2008 decided by this Court on 22 October 2008, wherein it was held that the sanction required under Section 36(1) of the Bombay Public Trusts Act, 1950 must be obtained before the transaction and that the Charity Commissioner has no power to grant sanction afterwards. Reliance was placed upon paragraphs 29 and 30 of that judgment.

24. Reliance was also placed upon the judgment in *Saraswati Shamrao Dhere v. Khutub Babu Malani & Ors.*, Writ Petition No. 1484 of 1992 decided by this Court on 5 February 2015, wherein this Court held that the requirement of obtaining previous sanction under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 is mandatory. It was held that such requirement cannot be diluted by granting permission after the transfer, and that a transfer made in breach of the provision is invalid and liable for action under Section 84C. Reliance was placed upon paragraphs

12 to 15 and 25 of the judgment.

25. Learned counsel also relied upon the judgment of the Supreme Court in *Vinodchanda Sakarlal Kapadia v. State of Gujarat*, (2020) 18 SCC 144, wherein it was held that Section 43 of the Bombay Tenancy and Agricultural Lands Act is intended to protect the rights of weaker and disadvantaged sections by ensuring that the land continues with such persons. According to the Supreme Court, the restriction against transfer without previous sanction must be understood in the light of that legislative object.

26. On the basis of these judgments, learned counsel submitted that wherever the statute requires "previous" sanction or permission, such requirement is mandatory and cannot be treated as optional. The deliberate use of the word "previous" by the Legislature cannot be ignored. Therefore, any transaction made without such previous permission is invalid and unenforceable. It is also submitted that after insertion of Section 5(4) with effect from 6 May 2002, the law imposes a complete prohibition on transfer of Mahar Watan land without obtaining previous sanction of the Collector.

27. Learned counsel submitted that in *Vitthal Kondhalkar*, the Division Bench interpreted the unamended Section 5(3) of the 1958 Act and held that once the amount determined by the State Government under that provision had been paid, the Collector was bound to grant permission for transfer.

28. It is submitted that by the amendment made in 2002, the earlier Section 5(3) was replaced by the present Section 5(3)(a), thereby removing the restrictions on transfer of Watan lands covered by the Act. The amendment also introduced the second proviso for regularising earlier transfers made for non-agricultural purposes. Learned counsel submitted that by the amendment made in 2008, Section 5(3)(b) was inserted for regularising earlier transfers made for agricultural purposes. According to the petitioners, these amendments show that Section 5(3) was changed with the object of regularising past transfers and removing the requirement of previous permission for future transfers relating to other Watan lands.

29. However, learned counsel pointed out that while making these amendments, the Legislature separately protected Mahar Watan occupancy by introducing Section 5(4) through the amendment of 2002. Therefore, according to the petitioners, the principle laid down in *Vitthal Kondhalkar* cannot be applied to Mahar Watan lands. Learned counsel finally submitted that after 6 May 2002, the ratio of *Vitthal Kondhalkar* cannot govern transfers made on or after that date. According to the petitioners, Section 5(4) imposes a complete prohibition upon transfer of Mahar Watan land without previous sanction of the Collector, and the Court must give full effect to the Legislature's intention of treating Mahar Watan lands as a category.

30. Learned counsel Mr. Abhay Anturkar appearing for respondent Nos. 1, 22, 23, 24, 25 and 26 invited attention to the relevant provisions of the Maharashtra Inferior Village Watans

Abolition Act, 1959 and made the following submissions. Learned counsel submitted that the Maharashtra Inferior Village Watans Abolition Act, 1959 was enacted to abolish inferior village Watans in certain parts of the State of Bombay. Section 5 of the Act deals with re grant of Watan lands to the Watandars. Under Section 5(1), land resumed by the Government under Section 4 is required to be re granted to the Watandar after payment of an occupancy price equal to three times the full land assessment. After such payment, the Watandar is treated as an occupant under the Maharashtra Land Revenue Code, 1966. It is submitted that before its amendment by Maharashtra Act No. 21 of 2002, Section 5(3) provided that such re granted land could not be transferred or partitioned without previous sanction of the Collector and payment of the amount determined by the State Government.

31. Learned counsel pointed out that by Maharashtra Act No. 21 of 2002, Section 5(4) was introduced. This provision states that Mahar Watan land re granted under Section 5(1) cannot be transferred or partitioned without previous sanction of the Collector and payment of the amount fixed by the State Government. It is submitted that the language of the old Section 5(3) and the present Section 5(4) is practically the same. According to the respondents, both provisions require previous permission of the Collector before transfer. The only difference is that after the amendment, this restriction applies only to Mahar Watan lands. Therefore, the amendment has only reduced the category of lands covered by the provision, but it has not changed the basic requirement of obtaining previous sanction. On this basis,

learned counsel submitted that the interpretation given by this Court while construing the old Section 5(3) applies to Section 5(4), because both provisions contain the same legal requirement. The only change is the class of lands to which the provision applies.

32. Learned counsel submitted that transfer of Mahar Watan land between persons belonging to the Mahar community does not require previous sanction of the Collector. In this regard, reliance was placed upon the Government Circular dated 3 March 1976. According to the respondents, the object of the Circular was to restore ex inferior village service Watan lands which had wrongly gone into the hands of persons belonging to non-backward classes. It is submitted that the scheme was introduced as a measure of social justice to bring such lands back to members of backward communities.

33. Learned counsel also relied upon the Government Memorandum dated 7 September 1977. It is submitted that this Memorandum clarified that the restoration scheme was mainly intended for cases where Watan lands had been transferred to persons belonging to non-backward classes. The Government also clarified that where transfers had taken place between ex inferior village Watandars themselves, there was no question of initiating suo motu restoration proceedings. According to the respondents, this clearly shows that the object of the scheme was to prevent transfer of such lands outside the backward community and not to disturb genuine transfers among members of the same community.

34. Learned counsel submitted that the same intention was repeated in the Government Circulars dated 8 September 1977 and 8 July 1978. These Circulars emphasised that the object of the scheme was to secure social justice by restoring lands which had gone into the hands of non-backward class persons. According to the respondents, the purpose was to protect members of Scheduled Castes and other backward communities, and not to invalidate transfers made between persons belonging to those very communities. It is therefore submitted that transfers among members of the protected class do not defeat the object of the scheme.

35. Referring to the facts of the present case, learned counsel submitted that both the transferor and the transferee belong to the Mahar community, which is a Scheduled Caste. Therefore, at no point of time did the land go into the hands of a person belonging to a non-backward class. According to the respondents, the very basis for initiating restoration proceedings is therefore absent. It is submitted that the requirement of previous permission cannot be interpreted in a manner which defeats the object of the legislation. According to them, if transfers between members of the Scheduled Caste are treated as invalid only because previous permission was not obtained, the beneficial object of the legislation would be frustrated.

36. Learned counsel submitted that this legal position has also been accepted by the learned Minister in the impugned order. According to the respondents, the present proceedings are contrary not only to the language and object of the Government Circulars

and Memorandum but also to the view earlier taken by the competent authority.

37. Learned counsel also pointed out that the original Watandar has never sought restoration of the land. On the contrary, he expressly gave consent to the sale deed executed in favour of the respondents through consent deeds dated 12 February 2013 and 1 September 2017. It is, therefore, submitted that when the original Watandar has no grievance and the transfer is between members of the Mahar community, restoration proceedings are unnecessary and without jurisdiction. According to the respondents, the impugned proceedings are contrary to the object of the legislation and also affect the rights of persons belonging to the very community which the law intends to protect.

38. Learned counsel submitted that the petitioners' contention that the transfer is invalid for want of previous permission cannot be accepted. It is pointed out that the Additional Collector, Pune, by order dated 2 February 2023, granted permission for transfer of the land after considering Section 5(4) of the Maharashtra Inferior Village Watans Abolition Act, the relevant Government Resolutions and Government Circulars. It is submitted that while granting such permission, the Additional Collector considered the history of the land. The authority noted that the property was an ex Inam Class 6 B Mahar Watan land, that the original Watandar had paid the occupancy price, that the land had been re granted on new tenure conditions and that the names of respondent Nos. 23 to 26 had been entered in the revenue records. Thereafter, the authority permitted transfer of the land on payment of the prescribed

Nazarana and subject to the conditions mentioned in the order.

39. Learned counsel, therefore, submitted that once the competent authority accepted the legal position and granted permission after considering all the relevant statutory provisions, Government Resolutions and Government Circulars, the petitioners cannot now contend that the transaction is invalid merely because previous permission had not been obtained.

40. It is submitted that the law does not compel a person to perform an impossible act. Once the competent authority has accepted the validity of the transaction and has granted permission after considering all the relevant provisions, any earlier objection regarding absence of previous permission does not survive.

41. Learned counsel then relied upon various judicial decisions. It is submitted that in *Vithal Kondhalkar*, the Division Bench of this Court examined the true meaning and scope of Section 5(3) of the Bombay Inferior Village Watans Abolition Act, 1958. Learned counsel submitted that the Division Bench observed that the 1958 Act was one of several enactments passed for abolition of different Watans and Inams. Under all such Acts, the Watan or Inam stood abolished on the appointed day, the land vested in the Government and was re granted to the original Watandar or Inamdar upon payment of the prescribed occupancy price. The Division Bench also noted that under these enactments, transfer, or partition of such lands was not permitted without previous permission of the Collector and payment of the amount prescribed by the Government. After considering the statutory provisions and the

Government instructions, the Division Bench held that the Collector is required to verify only whether the additional amount prescribed under the Act has been paid. Once such payment is made, the Collector is bound to relax the restrictions on transfer and grant permission. According to the respondents, the Division Bench treated the grant of permission as a formal act which necessarily follows after payment of the prescribed amount. Learned counsel submitted that the Division Bench also approved the practical approach adopted by the Government while dealing with breaches of Section 5(3). It noticed that many transfers had taken place because purchasers had bought lands at market prices, sometimes without knowledge of the legal restrictions. Therefore, instead of directing automatic forfeiture of such lands, the Government instructed the Collectors to regularise unauthorised transfers of agricultural lands by recovering a specified percentage of the unearned income after giving notice to the parties concerned and after considering the facts of each case.

42. Learned counsel also relied upon the decision in *Sheikh Lal*. It is submitted that in that case the Division Bench considered the effect of transfer of land without previous permission of the Collector or payment of ten times the land revenue assessment. Referring to the earlier judgment in *Vithal Kondhalkar*, the Division Bench held that the sanction contemplated under Section 5(3) could also be granted subsequently. On the basis of these judgments, learned counsel submitted that it is now well settled that the previous sanction contemplated under the old Section 5(3) as well as the present Section 5(4) can also be granted after

the transfer. It is submitted that the decisions in *Vithal Kondhalkar* and *Sheikh Lal* have consistently been followed by this Court in *Bhagwantrao, Kacharu s/o Bhagaji Gaikwad & Ors. v. Smt. Sheela w/o Ramesh Mittal & Ors.*, *Ramnath Kondaji Darade v. Hirabai w/o Maruti Jadhav* and *Mohan Sonaji Shilwant (Deceased) through Legal Representatives and Others v. State of Maharashtra & Ors.*, including matters relating to Mahar Watan lands.

43. Learned counsel lastly submitted that the Division Bench judgment in *Mohan Sonaji Shilwant* was delivered after considering Section 5(4) of the Act as amended by Maharashtra Act No. 21 of 2002. According to the respondents, this decision supports their contention that the legal principles laid down in the earlier judgments continue to apply even after the amendment.

44. Learned counsel for the respondents submitted that Section 5(4) of the Act nowhere states that a sale made without previous permission of the Collector becomes void or invalid. According to the respondents, the sale deed dated 30 November 2012 is therefore not void but, at the highest, only irregular. It is submitted that such an irregularity can be cured by obtaining permission subsequently after payment of ten times the occupancy charges. Reliance is placed upon the decisions in *Vithal Kondhalkar* and *Sheikh Lal* to contend that such transactions are capable of being regularised.

45. Learned counsel submitted that this position becomes clear when Section 5(4) of the Act is compared with Section 36 of the Maharashtra Public Trusts Act, 1950. It is pointed out that Section

36 provides that no sale, exchange, gift, or long term lease of immovable property belonging to a public trust shall be valid without previous sanction of the Charity Commissioner. Thus, according to the respondents, the statute declares such transactions to be invalid if prior sanction is not obtained. It is therefore submitted that a plain reading of Section 36(1) clearly shows that the Legislature has expressly made transactions without previous sanction invalid.

46. Learned counsel also referred to Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948. It is submitted that this provision prohibits transfer of certain lands without previous sanction of the Collector. More importantly, Section 43(2) expressly provides that any transfer made in breach of Section 43(1) shall be invalid.

47. According to the respondents, these provisions show a consistent legislative pattern. Whenever the Legislature intends that previous permission must be compulsory, it provides that any transaction made in breach of such requirement shall be void or invalid. Learned counsel therefore submitted that previous sanction becomes mandatory only where the statute prescribes the consequence of invalidity for non-compliance. Since Section 5(4) does not provide that a transaction without previous sanction becomes void, the requirement regarding the timing of such sanction should be treated as directory and not mandatory. It is submitted that where a statute declares that failure to comply with a requirement will make a transaction void, there can be no doubt that such requirement is mandatory. However, where the statute

does not provide such consequence and instead prescribes some other penalty or consequence, the Court has to examine whether the Legislature intended an absolute prohibition or merely intended some other consequence for breach of the provision.

48. Learned counsel also pointed out another distinction between Section 36 of the Public Trusts Act and Section 43 of the Tenancy Act on one hand and Section 5(4) of the present Act on the other. According to the respondents, under the Public Trusts Act and the Tenancy Act the authority has discretion to impose conditions while granting permission. In contrast, under Section 5(4) of the present Act, the Collector has no such discretionary power.

49. It is submitted that, as observed by the Division Bench in *Vithal Kondhalkar*, the object of Section 5(4) is mainly to enable the State to recover the prescribed Nazarana. According to the respondents, once ten times the assessment amount is paid, the Collector has no discretion left and is bound to grant permission.

50. Learned counsel submitted that Section 5(4) states that Mahar Watan land shall not be transferred without previous sanction of the Collector. However, according to the respondents, while the provision certainly requires sanction of the Collector, the use of the words "previous sanction" does not necessarily mean that such sanction cannot be granted after the transaction.

51. It is submitted that whether a statutory provision is mandatory or directory depends upon the intention of the Legislature and not merely upon the language used. According to

the respondents, the true intention has to be gathered from the object of the Act, the purpose of the provision and the consequences which would follow if one interpretation is preferred over the other. In support of this submission, learned counsel relied upon the decision of the Supreme Court in *Khub Chand v. State of Rajasthan*, AIR 1967 SC 1074, wherein it was held that although the word "shall" is ordinarily mandatory, its meaning depends upon the object of the statute, the context in which it is used and the consequences that would follow from non-compliance.

52. Learned counsel referred to the consequences of not obtaining previous sanction under Section 5(4). It is pointed out that Section 2(x) defines an "unauthorised holder" as a person in possession of Watan land without any legal right or under a transfer which is null and void under the existing Watan law. Reference was also made to the definition of "existing Watan law" contained in Section 2(v). Learned counsel submitted that Section 3 of the Act empowers the Collector to decide whether a person is an unauthorised holder. Such decision can be taken only after giving the affected party an opportunity of being heard and after holding an inquiry. It is also submitted that Section 9 of the Act provides for eviction of an unauthorised holder and re grant of Watan land in certain circumstances. According to this provision, where resumed Watan land is found in possession of an unauthorised holder, the Collector may evict such person. However, if the State Government finds that eviction would cause undue hardship because of investment made in the land or for any

other reason, it may direct the Collector to re grant the land to such person on payment of the prescribed amount and subject to such terms and conditions as may be determined. On this basis, learned counsel submitted that even if action is taken against a subsequent purchaser, the consequence is only eviction of the unauthorised holder. The land does not automatically return to the original Watandar but continues to remain under the statutory control of the State Government. Learned counsel also relied upon the observations of the Division Bench in *Vithal Kondhalkar*, wherein it was observed that breach of Section 5(3) may result in forfeiture of occupancy and, if such right of forfeiture is exercised, the land becomes unalienated Government land. According to the respondents, therefore, even if the sale deed is held to be contrary to Section 5(4), the legal consequence would be resumption of the land by the Government and not restoration of the land in favour of the petitioners.

53. Learned counsel finally submitted that the petitioners have proceeded on an incorrect understanding of both law and facts. According to the respondents, the scheme of the Maharashtra Inferior Village Watans Abolition Act, the Government Circulars and Memoradums and the binding decisions of this Court in *Vithal Kondhalkar*, *Sheikh Lal* and the subsequent judgments clearly establish that: (i) transfers between members of the Mahar community do not attract restoration proceedings meant for cases where Watan lands have gone into the hands of non-backward class persons; (ii) the requirement of previous sanction under Section 5(4) is only directory regarding the time of obtaining such

sanction and permission can validly be granted later; and (iii) in the absence of any statutory provision declaring such transfers void, a sale made without previous sanction is, at the highest, only irregular and can be regularised after payment of the prescribed occupancy charges. On the basis of these submissions, learned counsel contended that the respondents' sale deed cannot be treated as void and does not create any right in favour of the petitioners to seek restoration of the land. According to the respondents, even if there is any breach of Section 5(4), the only consequence under the Act is resumption of the land by the Government and not restoration in favour of the petitioners. It is therefore submitted that there is no conflict of judicial opinion requiring reference to a Larger Bench and that the order passed by the learned Minister is consistent with the settled legal position and the object of the Act. Consequently, the writ petitions deserve to be dismissed with costs.

54. Learned counsel Mr. Sadavarte appearing for respondent Nos. 3, 4, 13A, 13B and 13C submitted that the respondents had cancelled the power of attorney executed in favour of respondent No. 1. He submitted that the dispute regarding cancellation of the said power of attorney is pending before the competent Civil Court. He therefore submitted that respondent Nos. 3, 4, 13A, 13B and 13C support the case of the petitioners.

55. In view of these rival submissions, following important questions arise for consideration:

- (i) Whether insertion of Section 5(4) by the Amendment Act of 2002 has changed the legal position governing transfer of Mahar Watan lands;
- (ii) Whether the expression "previous sanction" occurring in Section 5(4) makes such sanction an essential condition before transfer so that every transfer made without obtaining such sanction becomes void;
- (iii) Whether the principles laid down in *Vithal Kondhalkar, Sheikh Lal, Bhagwantrao, Narsingh Laxman Bahirwade, and Mohan Sonaji Shilwant* continue to govern transfers of Mahar Watan lands even after insertion of Section 5(4);
- (iv) Whether the principles laid down in *LIC v. Escorts, Asha John Divianathan, Saraswati Shamrao Dhere, and Vinodchandra Kapadia*, while interpreting statutes requiring previous permission, govern interpretation of Section 5(4);
- (v) Depending upon answers to these questions, whether the impugned orders passed by the Learned Minister call for interference while exercising writ jurisdiction.

56. These questions are now required to be examined by considering the legislative history, statutory scheme, judgments relied upon by both sides and the object which the Bombay Inferior Village Watans Abolition Act, 1958, together with its later

amendments, intended to achieve.

REASONS AND ANALYSIS:

Statutory Scheme of Section 5 and Rival Submissions on the Effect of the 2002 Amendment:

57. Since both sides have made submissions on interpretation of Section 5 of the Act, it becomes necessary to see the statutory scheme before considering the rival submissions.

58. The Bombay Inferior Village Watans Abolition Act, 1958 was enacted for abolishing inferior village watans and for regranteeing resumed watan lands to original watandars after payment of occupancy price. Section 5(1) provides for such regrant. After payment of occupancy price equal to three times the full assessment, the watandar becomes an occupant under the Maharashtra Land Revenue Code. Before amendment which came into force on 6 May 2002, Section 5(3) provided that:

"The occupancy in the land regranted under sub-section (1) shall not be transferable 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."

59. Thus, under the old provision, transfer of such land could not be made unless previous sanction of the Collector was obtained and payment of the amount determined by the State Government was made. By Maharashtra Act No. XXI of 2002, the Legislature made important changes in the scheme of the Act. Original sub-section (3) came to be substituted. After this amendment, agricultural transfers of regranted watan lands were

allowed without previous sanction of the Collector. Provision was made for regularisation of earlier transfers and for conversion of tenure after payment of the prescribed amount. Afterwards, Maharashtra Act No. XIX of 2008 introduced provisions for regularisation of earlier agricultural transfers. However, while giving this relaxation in respect of other inferior village watan lands, at the same time the Legislature inserted sub-section (4), which provides:

"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."

60. This is the main provision which now requires interpretation in these writ petitions. Statement of Objects and Reasons of the Amendment Act records that obtaining previous sanction had become a "time consuming process and cumbersome." It records that because of this requirement many illegal transfers were taking place and Government was suffering loss of revenue. Therefore, the Legislature simplified the procedure by removing the requirement of previous sanction for agricultural transfers and made provision for regularisation of earlier transfers. But at the same time, it recorded:

"However, so far as the occupants of the Mahar watan lands are concerned, in order to safeguard the interests of such occupants, Government considers it expedient to continue the existing Government control and supervision over transfer or conversion of occupancy rights of such

occupants."

61. Therefore, while one part of the amendment relaxed the law, another part continued Government control in respect of Mahar Watan lands. By relying upon this legislative history, learned counsel for the petitioners argued that insertion of sub-section (4) shows one change made by the Legislature. According to the petitioners, once the Legislature retained the words "previous sanction" only for Mahar Watan lands, the Court cannot reduce that requirement by accepting post facto permission. It is argued that after 6 May 2002, Mahar Watan lands stand on a footing and earlier judgments interpreting old Section 5(3) cannot apply to the amended provision. On the other side, learned counsel appearing for the contesting respondents submitted that although sub-section (4) retained the same words regarding previous sanction, the Legislature nowhere provided that a transfer made without such sanction would become void. According to them, the amendment only continued Government supervision and did not bring any provision making such transfers invalid. Therefore, according to them, legal consequences are required to be understood in light of the earlier law declared by this Court while interpreting Section 5.

62. Submission made by the petitioners is that after Maharashtra Act No. XXI of 2002 came into force from 6 May 2002, law relating to Mahar Watan lands has changed. According to them, judgments interpreting old Section 5(3) cannot be applied after insertion of Section 5(4). Their case is that Legislature made Mahar Watan lands one class and continued Government control only over those lands. Respondents submit that language used in old Section 5(3)

and present Section 5(4) is same in substance. Therefore principles laid down by the Division Bench in *Vithal Kondhalkar* continue to govern the issue. Hence, both these rival submissions require careful examination.

Effect of the 2002 Amendment and Continued Applicability of Earlier Precedents Interpreting Section 5:

63. Before examining judgments, it becomes necessary to see legislative history. Statement of Objects and Reasons accompanying Maharashtra Act No. XXI of 2002 are important because it explains why amendment was introduced. Legislature noticed that under earlier law obtaining previous sanction of the Collector and payment of prescribed amount had become "time consuming process and cumbersome." Legislature recorded that because of such procedure many agriculturists were making illegal transfers and Government was suffering loss of revenue. Therefore, Legislature decided to simplify the procedure by removing requirement of previous sanction for agricultural transfers, by making provision for conversion of tenure and for regularisation of earlier transfers. But while doing so, Legislature at the same time stated:

"However, so far as the occupants of the Mahar watan lands are concerned, in order to safeguard the interests of such occupants, Government considers it expedient to continue the existing Government control and supervision over transfer or conversion of occupancy rights of such occupants."

64. In my opinion, this part of the Statement of Objects and Reasons indicates that Legislature decided to continue Government supervision in respect of Mahar Watan lands though similar restrictions were removed in case of other inferior village watan lands. Therefore, petitioners are justified to the extent that they submit insertion of Section 5(4) was not without object. It was a legislative decision. Therefore, after 6 May 2002, Mahar Watan lands cannot be placed on same footing as every other inferior village watan land. At the same time, Statement of Objects and Reasons throws light upon another aspect. Amendment was brought because earlier procedure had resulted in large number of unauthorised transfers and consequent loss of Government revenue. Legislature therefore simplified the procedure and at the same time provided machinery for regularisation of earlier transfers. Thus, legislative object was not only to prohibit transfers. It was to regulate such transfers and to secure Government revenue by recovering prescribed amount. This aspect cannot be ignored while interpreting Section 5(4).

65. Petitioners relied upon language used in Section 5(4). According to them, once Legislature retained expression "previous sanction", Court cannot substitute those words by reading them as "subsequent sanction". According to them, word "previous" should receive its ordinary meaning. At the same time, respondents submit that although Legislature retained expression "previous sanction", it did not introduce any provision declaring that transfer made in breach thereof would become void or incapable of regularisation. According to them, if Legislature intended such

consequence, it could have stated so. Therefore, it becomes necessary to examine how this Court interpreted the unamended provision before amendment of the year 2002.

66. Leading judgment on this issue is Division Bench decision in *Vithal Kondhalkar*. Division Bench examined the whole scheme of different Watan Abolition Acts and noticed that all those enactments followed similar pattern. Court observed that after abolition of Watans, lands vested in Government, and they were regranted to ex Watandars on payment of occupancy price. Such regrant initially continued subject to restrictions regarding transfer and partition. Division Bench observed in paragraph 4 that:

"The moment payment of ten times the assessment is made and the Collector passes an order in that behalf, these conditions cease to exist."

67. Thereafter, Division Bench examined various Government Memorandums and executive instructions issued for implementation of different Watan Abolition Acts. After considering Government Memorandum dated 12 November 1955 and other executive instructions, Division Bench recorded conclusion in paragraph 6 of *Vithal Kondhalkar*. Court observed:

"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, as a matter of formality the order of conversion must be passed."

Court observed:

"the order of relaxation of the two burdensome conditions

must follow as of right the moment additional payment was made."

68. Respondents place reliance upon these observations. According to them, these findings show that after prescribed payment is made, Collector is left with no discretion and grant of permission becomes ministerial in nature. Therefore, according to them, same principle continues even after insertion of Section 5(4). Petitioners submit that these observations were made while interpreting old Section 5(3), when no distinction existed between Mahar Watan lands and other inferior village watan lands. According to them, after insertion of Section 5(4), Legislature altered the statutory scheme by continuing Government supervision only in respect of Mahar Watan lands. Therefore, according to them, *Vithal Kondhalkar* cannot govern transfers made after the year 2002.

69. In my opinion, this submission has some force to the extent that *Vithal Kondhalkar* interpreted statutory provision as it existed prior to 6 May 2002. Division Bench had no occasion to consider newly inserted Section 5(4) or legislative intention behind that amendment. Therefore, observations made therein cannot be extended without examining whether amendment has altered legislative intention. Though Section 5(4) was inserted by amendment, Legislature retained same language regarding "previous sanction" and payment of prescribed amount. Operative words were not altered. Only field of operation came to be confined to Mahar Watan lands. Thus, though area of application became narrower, statutory language remained unchanged.

70. Respondents relied upon Division Bench judgment in *Sheikh Lal*. In that case Court noticed that neither previous sanction nor payment equal to ten times assessment had been made before transfer. Even then, after referring to *Vithal Kondhalkar*, Division Bench held that sanction contemplated by Section 5(3) could be granted subsequently. Court therefore granted opportunity for payment and directed the Collector to grant permission after such payment. According to respondents, *Sheikh Lal* recognises concept of post facto sanction and answers controversy raised in present petitions. According to Petitioners, Division Bench in *Sheikh Lal* misunderstood earlier judgment in *Vithal Kondhalkar*. Their submission is that *Vithal Kondhalkar* nowhere held that previous sanction could be granted after execution of sale deed. According to them, it only recognised statutory duty of the Collector to grant permission where legal requirements stood satisfied. Therefore, according to petitioners, *Sheikh Lal* travelled beyond ratio of *Vithal Kondhalkar*.

71. In my opinion, *Sheikh Lal* continues to be binding Division Bench precedent. It has been followed in several later judgments. Unless it is shown that it has been overruled or declared *per incuriam* by a superior Court, this Court cannot ignore such binding precedent.

72. Learned counsel for the petitioners argued that later Single Judge decisions such as *Bhagwantrao* and *Ramnath Kondaji Darade* merely followed *Sheikh Lal* without examining effect of insertion of Section 5(4). According to them, those judgments therefore cannot conclude controversy arising after 6 May 2002.

Respondents submit that *Bhagwantrao* held in paragraphs 9 and 10 that sanction contemplated under Section 5(3) could be granted subsequently and that a person awaiting such determination cannot be regarded as an unauthorised occupant. In paragraph 9, learned Single Judge reproduced observations from *Sheikh Lal* and noticed that: "the sanction contemplated under section 5(3) of the Act can be granted even subsequently." Thereafter, in paragraph 10, Court held: "the petitioners could not be regarded as persons in unauthorised possession" and observed: "the sanction contemplated under section 5(3) of the Bombay Watans Abolition Act could be granted subsequently."

73. In *Mohan Sonaji Shilwant*, land had been regranted. Application for permission remained pending for considerable period. Sale deed came to be executed and later Najrana was paid pursuant to directions issued by the Tahsildar. Authorities refused regularisation on the ground that land was Mahar Watan land and permission had not been obtained before transfer. Division Bench examined amended statutory provisions including Section 5(4). After referring to *Vithal Kondhalkar* and *Sheikh Lal*, Court observed in paragraph 10 that Collector has statutory duty to grant sanction after payment of prescribed amount. Further, in paragraph 11, relying upon *Sheikh Lal*, Division Bench held:

"the sanction, as contemplated under Section 5(3) of the Abolition Act can be granted even subsequently and therefore the occupant in possession of the land, in contemplation of grant of such sanction under Section 5(3) of the Abolition Act, cannot be regarded as unauthorised possessor."

74. In paragraph 13, Division Bench directed regularisation of the transaction in accordance with Government policy. Therefore, respondents submit that *Mohan Sonaji Shilwant* gives answer to petitioners' submissions because it dealt with Mahar Watan land even after insertion of Section 5(4) and followed earlier Division Bench judgments. According to Petitioners, though *Mohan Sonaji Shilwant* noticed Section 5(4), it did not undertake examination of Statement of Objects and Reasons accompanying Amendment Act of 2002. According to them, Court did not consider later judgments of the Supreme Court interpreting statutes containing expression "previous permission". Therefore, according to them, that judgment cannot be treated as deciding every issue arising in these petitions.

75. This Court finds that both sides have advanced submissions regarding scope of these precedents. It would not be proper to ignore distinction introduced by Amendment Act of 2002 or to overlook judgments of this Court interpreting Section 5. Therefore, true answer can be reached by considering statutory scheme, legislative history and subsequent judgments of the Supreme Court dealing with "previous sanction" and "previous permission" together.

Interpretation of the Expression "Previous Sanction" under Section 5(4) in Light of the Statutory Scheme and Judicial Precedents:

76. Main submission of the petitioners is based upon the words "previous sanction" appearing in Section 5(4). According to them, once Legislature has used the word "previous", this Court cannot

make that requirement weak by accepting any post facto sanction. Their submission is that after insertion of Section 5(4), previous sanction has become one condition which must exist before transfer can become legal. For supporting this submission, learned counsel placed reliance upon judgments of the Supreme Court in *LIC v. Escorts Ltd.*, *Asha John Divianathan*, *Vinodchandra Sakarlal Kapadia* and judgment of this Court in *Saraswati Shamrao Dhere*. Respondents, however, did not accept this position. According to them, all these judgments were delivered under different enactments where Legislature had attached different statutory consequences. Their submission is that the present Act is code and therefore its provisions are required to be interpreted from its own language, object and statutory scheme. Therefore, it becomes necessary to consider these authorities and see statutory background in which those judgments were rendered.

77. In *LIC v. Escorts Ltd.*, Constitution Bench was considering Section 29 of the Foreign Exchange Regulation Act. While examining distinction between expressions "permission" and "previous permission", Constitution Bench observed in paragraph 63 as follows:

"The distinction made by Parliament between permission simpliciter and previous permission in the several provisions of the same Act cannot be ignored or strained to be explained away by us. That is not the way to interpret statutes."

78. Court observed in the same paragraph: "The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act."

79. Petitioners submit that these observations directly are relevant for interpretation of Section 5(4). According to them, once Legislature retained the word "previous", this Court cannot read that provision in such way that permission obtained afterwards becomes enough. Their submission is that if such interpretation is accepted, the word "previous" will lose its meaning.

80. There is no dispute about the principle stated by Constitution Bench. It is settled rule of interpretation that every word used by Legislature should be given its natural meaning. If Legislature qualifies the expression "sanction" by adding the word "previous", Court cannot ignore that qualifying word. At the same time, Constitution Bench did not lay down in paragraph 63 that every statute using the expression "previous permission" must make invalid every transaction entered into without such permission. On the contrary, paragraph 63 indicates that interpretation depends upon statutory scheme and legislative object. Constitution Bench distinguished Section 29 from Section 31 of the same Act because Parliament had used different language in different provisions. Thus, the judgment requires Court to examine statutory scheme before recording any final conclusion.

81. Similar issue again came before the Supreme Court in *Asha John Divianathan* while interpreting Section 31 of the Foreign Exchange Regulation Act. In paragraph 26 of that judgment, Supreme Court held that:

"A contract is void if prohibited by a statute under a penalty, even without declaration that the contract is void, because

such a penalty implies a prohibition."

82. Court observed in the same paragraph that prohibition and negative words are mandatory. Thereafter, in paragraph 28, Supreme Court referred to paragraph 63 of *LIC v. Escorts Ltd.* and explained that Sections 29 and 31 of the Foreign Exchange Regulation Act operated in different statutory fields. Court observed that while ex post facto permission could be recognised under Section 29, such permission was not permissible under Section 31 because Parliament had adopted different statutory scheme for that provision. Supreme Court held in paragraph 32 : "The requirement of taking 'previous' permission of RBI before executing the sale deed or gift deed is the quintessence; and failure to do so must render the transfer unenforceable in law." Court observed: "There is no possibility of ex post facto permission being granted by RBI under Section 31 of the 1973 Act, unlike in the case of Section 29."

83. Learned counsel for the petitioners placed reliance upon these observations. According to them, once Supreme Court has held that previous permission cannot be substituted by later permission, present controversy stands concluded and subsequent sanction cannot validate transfer of Mahar Watan land.

84. This submission requires examination. Even then, ratio of *Asha John Divianathan* cannot be read separately from statutory scheme in which that judgment was delivered. Supreme Court reproduced Sections 47, 50 and 63 in paragraph 21. Thereafter, while discussing paragraphs 26, 28 and paragraph 32, Court held that combined effect of those provisions indicated prohibition

along with penal consequences as well as confiscatory powers. It was after considering that statutory scheme that Supreme Court held that ex post facto permission was not permissible. Thus, conclusion reached in *Asha John Divianathan* did not follow merely because the word "previous" appeared in Section 31. It followed because the statutory scheme disclosed legislative intention that transfer should not become effective unless previous permission had been obtained. Therefore, ratio of that judgment has to be understood in light of statutory provisions examined in paragraphs 21, 26, 28 and 32.

85. Petitioners next relied upon judgment of this Court in *Saraswati Shamrao Dhere*. That judgment interpreted Section 43 of the Maharashtra Tenancy and Agricultural Lands Act. Section 43(2) provides:

"Any transfer of land in contravention of sub-section (1) shall be invalid."

86. While interpreting that provision, this Court observed in paragraph 15:

"The provisions makes reference to 'previous sanction'." Court concluded: "The mandatory nature of the requirement contained in section 43(1) cannot be diluted by permitting some post-facto sanction."

87. In my opinion, one distinguishing factor lies in Section 43(2). Unlike Section 5(4) of the present Act, the Tenancy Act declares every transfer made in breach of Section 43(1) to be invalid. That provision appears to have influenced reasoning adopted in *Saraswati Shamrao Dhere*. Therefore, though principle

regarding importance of previous sanction is binding, statutory basis upon which that judgment is based is different from the present enactment.

88. Learned counsel for the petitioners relied upon *Vinodchandra Sakarlal Kapadia*. Supreme Court there examined Section 43 of the Tenancy Act and explained object behind restrictions upon transfer. In paragraph 35, Supreme Court observed:

"The primary concern of those provisions is to see that the legislative scheme of granting protection to persons from disadvantaged categories and conferring the right of purchase upon them..." Court observed: "The prohibition against transfers of holding without the previous sanction of the authorities concerned, is to be seen in that light as furthering the cause of legislation."

89. There can be no dispute with these observations. Even Section 5(4) appears to have been enacted for safeguarding interests of Mahar Watan holders. Therefore, protective object behind amendment cannot be ignored while interpreting present provision. At the same time, *Vinodchandra Sakarlal Kapadia* arose under Section 43 of the Tenancy Act where Legislature had declared transfers made in breach to be invalid. Therefore, that decision proceeded on statutory scheme different from the Bombay Inferior Village Watans Abolition Act and cannot be applied without examining difference in statutory language.

90. Respondents, on the other hand, relied upon *Govindlal Chhaganlal Patel*. In paragraphs 11 to 13, Supreme Court

explained that use of the word "shall" is not conclusive. In paragraph 13, Court observed:

"The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed."

91. The Court observed that legislative intention has to be gathered "not only from the phraseology of the provision, but by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

92. In my opinion, these observations indicate correct approach for deciding present controversy. Mere use of the expression "previous sanction" cannot conclude the issue. At the same time, Court cannot ignore that expression. Intention of Legislature has to be gathered after reading Section 5(4) together with whole statutory scheme, legislative history and consequences likely to follow.

93. Respondents relied upon decision in *Narsingh Laxman Bahirwade*. Learned Single Judge distinguished cases arising under Section 36 of the Bombay Public Trusts Act and held, in paragraph 8, that Division Bench judgment in *Vithal Kondhalkar* is applicable to transfers under the Watan Abolition Act. Court observed that once application had been made and Nazarana had been paid, permission related back because authorities had no discretion to refuse conversion after statutory requirements stood fulfilled. Though *Narsingh Laxman Bahirwade* was decided before amendment of 2002, it indicates consistent view that under the Watan Abolition Act, after statutory requirements were fulfilled,

role of the Collector was different from authorities exercising discretionary powers under other Acts. Therefore, after considering all these authorities together, it becomes clear that both groups of judgments relied upon by respective parties arise under different statutory schemes.

94. Authorities relied upon by the petitioners lay down that wherever Legislature uses expressions like "previous sanction" or "previous permission", Courts should respect that language. Those judgments show that where statutory scheme treats prior permission as condition precedent and provides consequence of invalidity, ex post facto permission cannot cure such transaction. On the other hand, authorities relied upon by the respondents show that under the Bombay Inferior Village Watans Abolition Act, statutory scheme has proceeded on basis that payment of prescribed Nazarana and grant of permission regulate the tenure of the land rather than destroying the transfer.

Whether absence of "previous sanction" under section 5(4) automatically renders the transfer void

95. After considering statutory provisions, legislative history and all judgments relied upon by both sides, it appears that the question before this Court is whether absence of previous sanction under Section 5(4) makes transfer void or whether the Act provides some other legal consequence for such breach.

96. At the outset, one aspect is required to be kept in mind. Section 5(4) uses the words "previous sanction of the Collector." Legislature has inserted this expression only in relation to Mahar

Watan lands. Therefore, this Court cannot interpret the provision in such way that the qualifying word "previous" loses all meaning. To this extent, petitioners are right in submitting that amendment introduced by Maharashtra Act No. XXI of 2002 deserves recognition. At the same time, interpretation of a statute cannot stop by reading only one expression separately from the remaining provisions.

97. As Supreme Court observed in *Govindlal Chhaganlal Patel*, paragraph 13:

"not only from the phraseology of the provision, but by considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

98. Likewise, Constitution Bench in *LIC v. Escorts Ltd.*, paragraph 63, observed:

"The proper way is to give due weight to the use as well as the omission to use the qualifying words in different provisions of the Act."

99. Therefore, expression "previous sanction" cannot be understood by reading those two words alone. It has to be understood after reading scheme of the Bombay Inferior Village Watans Abolition Act and object which Legislature intended to achieve. Section 5(4) nowhere says that transfer made in breach of that provision shall become void. Legislature has prohibited transfer without previous sanction. Even then, Legislature has not declared that every such transfer shall become nullity or non est. In my opinion, legislature has shown in different enactments that

whenever it wanted invalidity to become direct result of breach, it has said so in clear language. Therefore, absence of such declaration in Section 5(4) becomes one relevant circumstance while finding out true legislative intention behind the provision. For example, Section 43(2) of the Maharashtra Tenancy and Agricultural Lands Act provides: "Any transfer of land in contravention of sub-section (1) shall be invalid." It was because of this provision that this Court observed in *Saraswati Shamrao Dhere*, paragraph 15:

"The mandatory nature of the requirement contained in section 43(1) cannot be diluted by permitting some post-facto sanction."

100. Similarly, in *Asha John Divianathan*, Supreme Court did not decide issue merely because expression "previous permission" appeared in the statute. As noticed while discussing paragraphs 21, 26, 28 and 32 of that judgment, Supreme Court examined combined effect of Sections 31, 47, 50 and 63 of the Foreign Exchange Regulation Act and found that statutory prohibition was supported by penal provisions as well as confiscatory powers. Only after examining that statutory scheme, Supreme Court held that ex post facto permission was not permissible.

101. Section 5(4) of the Bombay Inferior Village Watans Abolition Act contains no such declaration. It neither provides that transfer shall be invalid nor states that transaction shall become void only because previous sanction had not been obtained before execution. On the other hand, scheme of the Bombay Inferior Village Watans Abolition Act creates statutory machinery for dealing with

consequences arising from such breach. Under the Act, competent authority has to examine relevant facts and determine legal consequences by following procedure. Therefore, consequences are not left to arise merely because breach has occurred. Thus, scheme of the Act appears to contemplate stated consequences instead of nullity in respect of transfer made in breach of Section 5(4). Legislative scheme indicates that breach of Section 5(4) provides proceedings contemplated under the Act. However, Act leaves determination of those consequences to authorities and machinery created under the statute instead of declaring that every transfer shall be void.

102. In *Vithal Kondhalkar* Division Bench held that both requirements, namely payment of prescribed amount and Collector's sanction, were necessary before conditions attached to the tenure are lifted. Therefore, requirement regarding previous sanction was never regarded as directory. Division Bench examined Government policy together with statutory scheme and held that Collector was required to examine whether statutory requirements had been fulfilled, pass appropriate orders under the Act and proceed according to law. Government Resolution relating to regularisation of agricultural transfers was noticed. Therefore, judgment did not proceed on footing that every transfer made without previous sanction had become void. Therefore, *Vithal Kondhalkar* cannot be understood as laying down that every transfer made without previous sanction becomes nullity.

103. Thereafter, Division Bench in *Sheikh Lal* went one step further. Though neither previous sanction nor prescribed payment

existed before transfer, Court granted opportunity for making payment and directed Collector to grant permission. Petitioners contended *Sheikh Lal* travelled beyond ratio of *Vithal Kondhalkar*. This submission cannot be said to be without substance because *Sheikh Lal* does not contain discussion regarding distinction between breach of condition and validity of transfer. Even then, *Sheikh Lal* continues to remain binding precedent and has been followed in later judgments of this Court.

104. In *Bhagwantrao*, in paragraphs 9 and 10, learned Single Judge held that sanction under Section 5(3) "can be granted even subsequently" and persons awaiting such determination "could not be regarded as persons in unauthorised possession." Likewise, Division Bench in *Mohan Sonaji Shilwant*, after considering amended provisions including Section 5(4), relied upon *Vithal Kondhalkar* and *Sheikh Lal* and directed regularisation of the transaction after payment of prescribed amount according to Government policy. Thus, for several decades, consistent view of the Act has remained that breach of Section 5 gives rise to provided consequences.

105. Petitioners argued that insertion of Section 5(4) has changed legislative intention and earlier authorities no longer govern transfers relating to Mahar Watan lands. This Court is unable to accept that submission. It is true that insertion of Section 5(4) shows legislative intention to continue Government control over transfers relating to Mahar Watan lands. That legislative intention deserves full respect. At the same time, amendment retained the same language regarding previous sanction. Legislature did not

insert any provision declaring that every transfer made without previous sanction shall become void or incapable of regularisation. Had Legislature intended to override interpretation adopted by this Court since *Vithal Kondhalkar*, nothing prevented it from enacting that every such transfer would become void. Statement of Objects and Reasons supports this view. Statement nowhere records that every unauthorised transfer should become nullity. On the contrary, it records that earlier procedure had resulted in illegal transfers and consequent loss of Government revenue. Even while deciding to continue Government supervision over Mahar Watan lands, Legislature nowhere indicated that every breach should render transaction void.

106. In my opinion, judgments relied upon by petitioners establish that previous sanction is not formality. It is statutory requirement which parties are expected to satisfy before effecting transfer. At the same time, judgments relied upon by respondents show that under the scheme of the Bombay Inferior Village Watans Abolition Act, breach of that requirement attracts consequences.

107. Accordingly, this Court records following conclusions.

- (i) Section 5(4) requires previous sanction of the Collector before transfer of Mahar Watan land. This statutory requirement is mandatory and parties are expected to comply with it before effecting transfer;
- (ii) Mere absence of previous sanction does not make every transfer void ab initio because the Act nowhere declares such consequence;

(iii) Such transfer remains subject to proceedings contemplated under the Bombay Inferior Village Watans Abolition Act and the Maharashtra Land Revenue Code. Competent authority continues to possess jurisdiction to examine legality of the transaction, determine whether holder answers description of unauthorised holder and pass appropriate orders according to the statutory scheme;

(iv) Consequence of such breach has to be determined under machinery created by the Bombay Inferior Village Watans Abolition Act.

Whether execution of the earlier sale deed concluded the controversy.

108. Learned Minister has recorded finding that respondent Nos.1 to 19 executed one registered sale deed in favour of the applicants and another sale deed came to be executed in favour of respondent Nos.20 and 25. On that basis, learned Minister further held that after sale deed came into existence, executants were left with no right to execute any further sale deed. Therefore, question which now requires consideration is whether such conclusion can stand when the property involved is Mahar Watan land and its transfer is governed by special statutory provisions and not only by ordinary law relating to transfer of property.

109. There is no dispute that under ordinary law, once owner transfers his title in immovable property, he cannot again transfer the same property to somebody else. This principle is well recognised under the Transfer of Property Act. If transfer has

become complete, transferor does not keep any transferable interest which can be given to another purchaser. To that extent, reasoning adopted by the learned Minister cannot be said to be without legal basis under the general law. Still, that may not be enough because present dispute arises under a different statutory scheme. Even then, present dispute cannot be decided only by applying ordinary principles relating to successive transfers under the Transfer of Property Act. It is admitted that subject land is Mahar Watan land regranted under the Bombay Inferior Village Watans Abolition Act, 1958. Such land does not stand on the same footing as ordinary property. Source of ownership comes from the statute and that statute puts restrictions upon transfer. Therefore, before applying general provisions of the Transfer of Property Act, it became necessary to examine whether statutory conditions governing transfer of Mahar Watan land had been complied with. Unless that issue was decided, ordinary principles under the Transfer of Property Act could not settle the controversy.

110. Petitioners have contended that earlier sale deed was executed without obtaining "previous sanction" required under Section 5(4). According to them, this omission affects legality of the transaction and therefore no rights could be claimed merely because that sale deed happened to be earlier in point of time. Contesting respondents submitted that although previous sanction had not been obtained before execution of the sale deed, such defect could be cured and therefore earlier transaction continued to remain effective. Thus, dispute between parties was never only about which sale deed came and which came later. Basic

controversy remained regarding legal effect of the sale deed under the Bombay Inferior Village Watans Abolition Act.

111. Learned Minister appears to have proceeded on the assumption that earlier registered sale deed had become effective and examined second transaction by applying Section 48 of the Transfer of Property Act. In my opinion, such approach puts the inquiry in reverse sequence. As held while deciding earlier questions, Section 5(4) requires "previous sanction" of the Collector. At the same time, after considering *LIC v. Escorts Ltd*, *Govindlal Chhaganlal Patel*, *Saraswati Shamrao Dhere*, *Vinodchandra Sakarlal Kapadia*, *Vithal Kondhalkar*, *Sheikh Lal*, *Bhagwantrao* and *Mohan Sonaji Shilwant*, it cannot be held that mere absence of previous sanction does not make transfer void because the Act nowhere prescribes such consequence. Rights flowing from such transfer continue to remain subject to consequences contemplated under the Bombay Inferior Village Watans Abolition Act. Therefore, neither side could claim complete title merely by relying upon the sequence in which the sale deeds happened to be executed. Those rights remain subject to the statutory scheme. Consequently, finding recorded by the learned Minister that executants had no subsisting right only because earlier registered sale deed had been executed cannot be sustained in the form in which it has been recorded. Such finding ignores statutory restrictions regulating Mahar Watan lands. It also proceeds on the assumption that execution of the registered sale deed concluded the question of title. In my opinion, such assumption does not flow from the statutory scheme of the

Bombay Inferior Village Watans Abolition Act, 1958, particularly after the earlier discussion made regarding legal effect of absence of "previous sanction" under Section 5(4). Therefore, that reasoning cannot be accepted. This Court, therefore, holds that existence of the earlier registered sale deed is one relevant circumstance and it cannot be ignored. Even so, that circumstance was not sufficient to conclude the controversy unless legal effect of that earlier transaction under Section 5(4) of the Bombay Inferior Village Watans Abolition Act was determined. Therefore, finding recorded by the learned Minister cannot be sustained and is liable to be set aside.

Whether Section 48 of the Transfer of Property Act decides the rights of the parties.

112. Second reason given by the learned Minister is based on Section 48 of the Transfer of Property Act, 1882. According to the learned Minister, after registered sale deed was executed, all rights, title and interest in the suit property had gone to the purchasers. Therefore, according to the learned Minister, later purchasers did not get any enforceable right in the property.

113. Section 48 contains one well known rule about two or more transfers made by the same person. It says that where one person creates rights in the same immovable property at different times, rights created earlier will get priority over rights created later. Therefore, this provision speaks about deciding priority between transfers made by the same transferor. Even so, Section 48 proceeds on the basis that earlier transfer is capable of creating

legal and enforceable rights in the property. If source of title is controlled by one special statute which puts restrictions on transfer, then effect of that special statute has to be seen before general rule contained in Section 48 can be applied. Otherwise, real nature of the transaction may remain unnoticed.

114. In the present matter, property is Mahar Watan land regranted under the Bombay Inferior Village Watans Abolition Act, 1958. Right to transfer such land comes from that special enactment. Section 5(4) specifically provides that such occupancy "shall not be transferable... without the previous sanction of the Collector". Therefore, power of the transferor to transfer the land is regulated by the statute. That restriction cannot be ignored while deciding rights of the parties. It is well settled that where special enactment creates rights and at the same time also prescribes the manner in which those rights can be exercised, provisions of that special enactment will prevail over the general law to the extent both cannot operate together. Transfer of Property Act lays down general principles regarding transfer of immovable property. Bombay Inferior Village Watans Abolition Act, 1958 creates one separate statutory scheme only for regranted Watan lands. Therefore, so far as transfer of such lands is concerned, provisions of the special enactment have to receive preference over the general law.

115. Learned Minister has not examined consequences flowing from Section 5(4). Learned Minister applied Section 48 of the Transfer of Property Act as if dispute had arisen only under law relating to transfer of property. Such approach ignores that legality

of the sale deed depended upon the provisions contained in the Bombay Inferior Village Watans Abolition Act, 1958. Unless those provisions were considered, application of the general law became incomplete.

116. As held while deciding the principal controversy, expression "previous sanction" occurring in Section 5(4) is mandatory. At the same time, this Court has also held that the Act nowhere says that transfer made without such sanction becomes void. Instead, the Act creates separate machinery for dealing with consequences of such breach. Therefore, legal position has to be understood after reading the statutory scheme.

117. Once it is held that absence of previous sanction does not make it void, it follows that mere execution of the registered sale deed does not give complete title free from statutory consequences provided under the Act. Both these legal positions have to be read together because both come from the same statutory scheme governing Mahar Watan lands.

118. Judgments relied upon before this Court show that under earlier statutory provisions, requirement regarding sanction was examined by looking at the entire scheme governing regranted Watan lands. Decisions in *Vithal Kondhalkar*, *Sheikh Lal*, *Bhagwantrao* and *Mohan Sonaji Shilwant* examined consequences of such transfers by keeping in view provisions governing Watan lands. Whether those decisions continue to apply in every respect after insertion of Section 5(4) is a different question. Even then, they show that this controversy has been treated as arising under

the special enactment and not merely under Section 48 of the Transfer of Property Act. Therefore, Section 48 remains relevant while deciding priority between two competing transfers. Even so, that stage comes only after the Court determines legal effect of the earlier transaction under the governing special statute. Section 48 cannot be used as a substitute for deciding statutory questions arising under Section 5(4) of the Bombay Inferior Village Watans Abolition Act, 1958.

119. In the present case, learned Minister treated Section 48 as though it decided the dispute without deciding statutory questions arising under the Bombay Inferior Village Watans Abolition Act, 1958. In my opinion, such reasoning cannot be sustained because special provisions required examination before the general law relating to transfer of property could be applied. Therefore, second finding recorded by the learned Minister, namely that Section 48 of the Transfer of Property Act establishes that only the purchasers acquired enforceable rights and the later purchasers acquired none, cannot be upheld in the form in which it has been recorded.

Effect of the rival sale deeds after interpretation of Section 5(4).

120. After holding that learned Minister could not have decided the dispute only by applying Section 48 of the Transfer of Property Act, it now becomes necessary to see what legal effect should follow from both rival sale deeds after considering interpretation of Section 5(4) recorded by this Court. This Court has held that Section 5(4) requires "previous sanction" of the Collector before transfer of Mahar Watan land can take place. Legislature kept this

requirement only for Mahar Watan lands, though similar restrictions relating to other inferior village Watan lands were removed by Amendment Act of 2002. Statement of Objects and Reasons records that "so far as the occupants of the Mahar watan lands are concerned, in order to safeguard the interests of such occupants, Government considers it expedient to continue the existing Government control and supervision over transfer or conversion of occupancy rights of such occupants." Therefore, this legislative intention cannot be ignored while deciding the present controversy. It shows that Legislature wanted Government control to continue in respect of this class of lands.

121. At the same time, this Court has also held that the Act nowhere declares that every transfer made without previous sanction becomes void or non est. Unlike Section 43(2) of the Maharashtra Tenancy and Agricultural Lands Act, 1948, which specifically provides that "Any transfer of land in contravention of sub-section (1) shall be invalid", Section 5(4) contains no such declaration. Likewise, unlike Section 36 of the Maharashtra Public Trusts Act, which provides that no sale "shall be valid" without previous sanction, Section 5(4) does not contain similar words. This omission also becomes one important circumstance while understanding the true intention of the Legislature. Had Legislature intended such consequence, it could have said so.

122. Therefore, legal position coming out from the statutory scheme is that transfer made without previous sanction is against the statutory requirement. Even then, Legislature has chosen to regulate consequences of such breach through machinery created

under the Act instead of declaring every such transfer void. Thus, breach of the provision and consequence of that breach are not made identical by the statute.

123. Once this legal position is accepted, earlier sale deed dated 30 November 2012 cannot be treated either as non-existent in law or as giving absolute and indefeasible title free from statutory restrictions. It stands somewhere in between these two positions. Transaction continues to exist in the eye of law, but at the same time it remains subject to statutory consequences contemplated under the Bombay Inferior Village Watans Abolition Act, 1958.

124. Same reasoning applies to the later sale deed executed in favour of the petitioners. That transaction also cannot prevail only because earlier transaction suffered from absence of previous sanction. If earlier transaction is not void, later purchasers cannot improve their position only because another sale deed came to be executed by the same vendors. Mere execution of the second document cannot remove legal effect of the earlier one.

125. Thus, neither set of purchasers can say that the statute gives them complete title only because one sale deed was executed earlier and the other one later. Rights claimed by both sides continue to remain controlled by the statutory scheme governing Mahar Watan lands.

126. Learned Minister appears to have proceeded on two assumptions at the same time. First, that earlier transaction became fully protected under Section 48 of the Transfer of Property Act. Secondly, that later purchasers acquired absolutely

no legal rights at all. In my opinion, neither of these assumptions flows from the scheme of Section 5(4).

127. If earlier transaction continued to remain subject to statutory control under Section 5(4), learned Minister could not have held that complete title had passed so as to exclude every possible right arising from the later transaction. At the same time, if earlier transaction was not void, petitioners also cannot contend that purchasers acquired absolutely nothing under the earlier sale deed. Therefore, correct legal position appears to lie somewhere between these two extreme stands taken by the rival parties. Learned Minister treated sale deed as transferring complete ownership and second sale deed as creating no enforceable right at all. Such reasoning overlooks the limited nature of transfers governed by Section 5(4) of the Bombay Inferior Village Watans Abolition Act.

128. Record shows that disputes exist regarding cancellation of powers of attorney, execution of rival sale deeds, permissions granted by the Collector, mutation proceedings and conduct of the respective parties. All these matters have direct bearing upon rival rights and equities claimed by both sides. None of these issues could become unnecessary only because Section 48 of the Transfer of Property Act was applied.

129. On overall consideration of the statutory provisions, legislative history, binding precedents and admitted facts available on record, this Court holds that both rival sale deeds are required to be examined by appropriate forum. Neither transaction can be decided only by applying Section 48 of the Transfer of Property

Act. Consequently, findings recorded by the learned Minister regarding title and priority between rival purchasers cannot be sustained and are liable to be set aside.

Whether Revenue Authorities could decide title by applying Section 48 of the Transfer of Property Act.

130. After considering statutory provisions and all judgments discussed, particularly the Division Bench judgment in *Vithal Kondhalkar*, this Court now proceeds to examine one more issue. The question is whether the Collector or appellate revenue authorities could decide ownership rights only on the ground that the sale deed had exhausted every right of the transferor because it was executed earlier. This issue requires examination keeping in view the statutory scheme applicable to Mahar Watan lands and the nature of jurisdiction exercised by the revenue authorities.

131. In the opinion of this Court, answer to this question has to be in the negative. Jurisdiction conferred under the Bombay Inferior Village Watans Abolition Act is confined to matters arising under that special enactment. Authorities exercising powers under that Act are required to examine whether statutory conditions attached to the occupancy have been complied with and what consequences follow under that Act if there is compliance or breach. Merely because dispute regarding title comes before them during such proceedings, it does not enlarge their jurisdiction so as to decide proprietary rights between purchasers.

132. This position becomes clear from the Division Bench judgment in *Vithal Kondhalkar*. While explaining scope of

Collector's powers under Section 5(3), the Division Bench observed:

"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, as a matter of formality the order of conversion must be passed."

133. The Division Bench observed:

"the Collector must pass an order under sub-section (3) of section 5 relaxing the conditions."

134. These observations show that enquiry before the Collector is confined to seeing whether requirements, such as payment of prescribed Nazarana and fulfilment of other statutory conditions, have been complied with. Nothing in these observations indicates that Collector has been given authority to decide ownership claims between purchasers claiming under sale deeds.

135. Another part of *Vithal Kondhalkar* supports this conclusion. In paragraph 17, the Division Bench directed that if payment of ten times assessment was found to have been made:

"the Collector will pass appropriate orders under sub-section (3) of section 5 of the Abolition Act. In the light of our aforesaid discussion and consider whether the action under section 59 of the Code survives at all."

136. Thus, even while examining transfer alleged to be in breach of statutory conditions, Collector was required to pass appropriate orders under Section 5 and consider whether proceedings under Section 59 of the Maharashtra Land Revenue Code survived. The Division Bench nowhere authorised Collector to pronounce upon

proprietary rights arising from sale deeds or to determine civil title between purchasers.

137. In the present matter learned Minister considered analogy of Section 48 of the Transfer of Property Act and held that after execution of the registered sale deed nothing remained with the vendors which could later be transferred in favour of subsequent purchasers. Such reasoning proceeds upon principles governing proprietary rights under the Transfer of Property Act. In the opinion of this Court, this approach travels beyond the enquiry contemplated under the Bombay Inferior Village Watans Abolition Act. the judgment in *Vithal Kondhalkar*, the Division Bench treated powers of the Collector as flowing only from the special enactment. The Court examined whether prescribed payment had been made, whether sanction ought to be granted, whether proceedings under Section 59 survived and whether Government policy regarding regularisation required implementation. At no place did the Division Bench hold that Collector could decide inter se civil rights of purchasers by applying Section 48 of the Transfer of Property Act or by determining proprietary title between them.

138. Whether purchaser acquired better title than subsequent purchaser because of Section 48 of the Transfer of Property Act requires examination of civil questions. Such questions include validity of the sale deed, effect of cancellation of powers of attorney, authority of the executants, whether transferor retained any subsisting interest, rights of bona fide purchasers and priority between rival conveyances. These are questions relating to proprietary title. Neither Section 5 nor proceedings under Section

59 of the Bombay Inferior Village Watans Abolition Act confer jurisdiction upon revenue authorities to adjudicate all such issues. This conclusion receives support from paragraph 10 of *Vithal Kondhalkar*. There the Division Bench observed that after prescribed payment had been made:

"the Collector is bound to pass the necessary orders" The Court observed that if Collector failed to do so: "a mandamus can be issued by this Court directing the Collector to grant the appropriate sanction." These observations again indicate that statutory duty of the Collector is confined to grant of sanction and implementation of requirements under the special enactment. They do not enlarge his jurisdiction so as to determine whether one purchaser has acquired better title than another under transfers of property.

139. Therefore, in my opinion, authorities exercising powers under the Bombay Inferior Village Watans Abolition Act may examine whether Section 5 has been complied with, whether "previous sanction" had been obtained, whether prescribed Nazarana has been paid, whether regularisation is permissible, whether proceedings under Section 59 survive and what statutory consequences should follow. However, they cannot record a finding that because one registered sale deed was executed earlier, executants stood divested of every proprietary right and, therefore, subsequent purchasers acquired no title whatsoever. Such conclusion relates to adjudication of title under the Transfer of Property Act and falls within jurisdiction of the competent civil court.

140. Therefore, finding recorded by the learned Minister that after execution of the earlier registered sale deed all rights, title and interest stood transferred to the purchasers and later purchasers acquired no rights, cannot be sustained in the form in which it has been recorded. Learned Minister was required to examine legality and consequences of the rival transfers within the scheme of Section 5 of the Bombay Inferior Village Watans Abolition Act. Consequently, this finding cannot be sustained and is liable to be set aside.

141. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- (i) The writ petition succeeds;
- (ii) The judgment and order dated 4 September 2019 passed by the Learned Minister in Revision Application Nos.3418/6148/File No.120/J/5, is quashed and set aside;
- (iii) This Court holds that previous sanction contemplated by Section 5(4) of the Bombay Inferior Village Watans Abolition Act, 1958 is mandatory. However, absence of such previous sanction does not render the transfer void. The rights flowing from such transfer remain subject to the statutory consequences provided under the Act;
- (iv) It is clarified that this judgment decides only the legality of the impugned revisional orders passed by the learned Minister and the interpretation of Section 5(4) of the Bombay Inferior Village Watans Abolition Act, 1958. Any independent question relating to civil title, validity of rival

conveyances, cancellation of powers of attorney or other proprietary rights, if pending before a competent civil court, shall be decided and on its own merits, without being influenced by the observations made by the learned Minister in the impugned orders;

(x) Rule is made absolute in the above terms.

(xi) There shall be no order as to costs.

(AMIT BORKAR, J.)