
(2024) 05 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 5094 Of 1997, Civil Application No. 1330 Of 2014,
Interim Application (St) No. 13307 Of 2024

Indirabai N. Bivalkar And Others

APPELLANT

Vs

Yadav G. Mhatre And Others

RESPONDENT

Date of Decision : 09-05-2024

Acts Referred:

Maharashtra Tenancy And Agricultural Lands Act, 1948 — Section 2, 26, 32G, 70(b),
76A

Bombay Court Of Wards Act, 1905 — Section 9(1), 13(1)

Citation : (2024) 05 BOM CK 0032

Hon'ble Judges : Gauri Godse, J

Bench : Single Bench

Advocate : Nidhi Dotiya, Shweta Rathod, R.A. Dubey, A.I. Patel, M.P. Thakur,
Y.D. Patil

Final Decision : Disposed Of/Dismissed

Judgement

Gauri Godse, J

1. This petition is filed by the owners of the land to challenge the order passed by the Maharashtra Revenue Tribunal ('MRT') allowing revision application filed by Respondent Nos. 1 to 10 ('respondents') challenging the order passed by the learned Sub Divisional Officer ('SDO') in a suo moto revision initiated under Section 76A of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act'). The respondents are heirs and legal representatives of Ganpat Mhatre, claiming to have tenancy rights in the land owned by the petitioners. Learned SDO by exercising powers under Section 76A of the Tenancy Act, had set aside orders passed under Section 32G to fix the purchase price in favour of the respondents.

FACTS IN BRIEF :

2. Respondents claim tenancy rights in petitioners' land total admeasuring

115-56-00 H-R-P. Respondents had filed Tenancy Case No. 2142 on 2nd May 1989 for declaration of tenancy rights, under section 70(b) of the Tenancy Act, claiming tenancy rights in respect of 30 Acres out of the aforesaid land. According to the respondents, Ganpat Mhatre was the original tenant who expired on 15th October 1958. The application for a declaration of tenancy rights was filed by respondent nos. 1, 3 and 5, claiming tenancy rights being heirs and legal representatives of Ganpat. On 28th November 1991, learned Tahasildar allowed the application, declaring Ganpat Mhatre as a tenant as prayed. The said declaration was challenged by the petitioners before the SDO by filing an Appeal No. 9 of 1992. The said Appeal was allowed on 31st January 1994, and the declaration in favour of Ganpat Mhatre was set aside.

3. Being aggrieved by the said order, respondents filed Revision Application No. 193 of 1994 before the MRT. The MRT had allowed the said revision application on 4th April 1995 and remanded the matter to the SDO for a fresh hearing. After remand, the learned SDO, by order dated 27th May 1996, allowed the appeal and set aside the order dated 28th November 1991, passed in favour of the respondents under Section 70(b).

4. In the meantime, 32G proceedings were initiated by the respondents, and according to the respondents, an order was passed on 29th March 1996 in 32G proceedings bearing Tenancy/SR/No. 2623. The respondents claimed the 32G order fixing purchase price was for the entire land. According to the petitioners, they were served with Form No.6, intimating that the purchase price has been fixed with regard to the whole of the land in favour of the respondents and according to the petitioners they were served with two sets of Form No.6. Form No.6 dated 18th April 1996 [Exhibit-J (colly)] indicated that the purchase price was fixed for an area of 30 Acres out of the entire land, by order dated 18th April 1996 in Tenancy Case No. 2623. Another Form No.6 dated 28th March 1996 [Exhibit-J(colly)] indicated that the purchase price was fixed for the entire land by order dated 12th April 1996 in Tenancy Case No. 2683.

5. Hence, the petitioners filed a complaint dated 19th June 1996 before the learned SDO. The petitioners contended that two separate orders were prepared for fixing the purchase price based on forged documents, and hence, they requested to initiate a necessary inquiry. Thereafter, the learned SDO initiated suo moto revision under Section 76A. After making necessary inquiry both the orders purportedly passed under Section 32G in favour of the respondents were set aside by the SDO. Since the said order was passed without hearing the respondents, they preferred Revision Application No. 48 of 1997 before the MRT. By the impugned order, MRT allowed the revision application, and the order dated 30th November 1996 passed by the SDO is set aside. By the impugned order, the MRT has restored the ALT's order under Section 32G. Hence, the owners of the land filed the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS :

6. Learned counsel for the petitioners submitted that fraud had been committed by the respondents in collusion with the ALT by creating two separate files to fix the purchase price under Section 32G. After the owners learnt about the two fabricated orders created by the respondents, the necessary complaint was filed before the SDO. The learned SDO, after making an inquiry and finding that tampering was done with the revenue records, initiated a suo moto inquiry under Section 76A. Thus, after holding the necessary inquiry and after scrutinizing the original record, SDO set aside both the orders passed under Section 32G.

7. According to the petitioners, Ganpat Mhatre, who claimed to be the tenant in respect of the aforesaid land, expired sometime in the year 1946. Learned counsel for the petitioners submitted that the respondents sought a declaration of the tenancy rights by relying upon an agreement, which, according to the petitioners, was a forged document, as the document is shown to have been executed by Vinayak, i.e. the son of the original landlord Gangadhar. The document relied upon by the respondents is of 12th June 1950. According to the petitioners, Gangadhar was alive in the year 1950, and hence, there is no question of his son executing the agreement in favour of Ganpat, who expired in the year 1946. In support of the said submission that the said document is forged, learned counsel for the petitioners submitted that by way of rejoinder-affidavit, the petitioners have placed on record a report of a handwriting expert dated 17th April 2005. Learned counsel submitted that the handwriting expert's opinion would support the contention of the petitioners that the document relied upon by the respondents to claim tenancy rights is a forged document.

8. The learned counsel for the petitioners submitted that the said document was never produced in the proceedings initiated by the respondents under Section 70(b). However, the said document was produced for the first time in the proceeding initiated under Section 32G. He thus submitted that there was no occasion for the petitioners to oppose the said document. Hence, by way of precaution, the handwriting expert opinion is produced in this petition to support the contention of the petitioners that the document relied upon by the respondents is a forged document. The document relied upon by the respondents refers to survey numbers of the land. He submitted that a survey of lands was for the first time carried out in the year 1957. Hence, there could not have been any reference to the survey numbers in the document of the year 1950.

9. Learned counsel for the petitioners further submitted that the aforesaid land was given to the Forest Department and to the Collector and Court of Ward, District Raigad, which is evident from the notification dated 21st October 1959. He submitted that the said notification notifies the application of the provisions of Sections 2 and 26 and provisions of Chapters VII to X, XII to XIII of the Indian Forest Act, as set out in the notification. Learned counsel for the petitioners relied upon the notification dated 21st October 1959, which is annexed to the affidavit in rejoinder filed on behalf of the petitioners. Learned counsel for the petitioners further submitted that the said notification contained in the second

schedule an agreement dated 21st January 1959, with the Government of Bombay as it then was, handing over possession and management of the lands. He further submitted that by notification dated 29th October 1960, under Section 9 (1) of the Bombay Court of Wards Act, 1905, the Collector, assumed management of the Estate of Sardar Vinayak Dhondiraj Biwalkar, pursuant to which the Collector and Court of Wards issued notification dated 6th November 1960, under Section 13(1) of the said Bombay Court of Wards Act. Both copies of the said notifications are produced on record by filing an affidavit-in-rejoinder. The affidavit-in-rejoinder further also refers to the notification dated 31st March 1987, notifying that the Superintendence over the property which was given under the resolution dated 29th October 1960 was withdrawn w.e.f 1st April 1987 and the lands were handed over to the petitioners. The said notifications are also annexed to the affidavit-in-rejoinder. Learned counsel for the petitioners thus submitted that in view of the aforesaid, there was no question of creating any tenancy rights in favour of Ganpat as claimed by the respondents. He, therefore, submitted that the application for declaration of tenancy rights under Section 70(b) is rightly rejected.

10. Learned counsel for the petitioners further submitted that according to the respondents, the order passed by the learned SDO on 27th May 1996 was challenged by them by way of Tenancy Appeal No. 55 of 1996. He submitted that the affidavit-in-reply filed in the petition refers to the filing of said appeal. Affidavit-in-reply also states that a copy of the appeal is annexed to the affidavit. However, no such annexures are filed with the affidavit-in-reply. He, thus, submitted that false contentions are sought to be raised by the respondents that the challenge to the order dated 27th May 1996 passed by the SDO is still pending. Learned counsel for the petitioners thus submitted that the order dated 27th May 1996 passed by the SDO has attained finality, and rejection of the respondent's claim of the tenancy rights stands confirmed. He, thus, submitted that even otherwise, there was no reason to fix the purchase price in favour of the respondents when their application for declaration of tenancy rights is rejected and the rejection stands confirmed.

11. The learned counsel for the petitioners further submitted that the respondents claimed a declaration of tenancy rights only on 30 Acres out of the entire land. However, the copy of the order fixing purchase price in respect of the entire land relied upon by the respondents refers to the entire area. He thus submitted that the fraud committed by the respondents in collusion with the ALT is very evident and hence learned SDO has rightly invoked suo moto powers under Section 76A of the Tenancy Act and by the order dated 30th November 1996 has rightly set aside the orders for fixation of the purchase price as claimed by the respondents.

12. To support the petitioners' contention that two separate documents were fraudulently created for the fixation of purchase price, learned counsel for the petitioners relied upon the affidavit-in-reply filed on behalf of the State

Government. He submitted that according to the affidavit-in-reply on behalf of the State Government, the proceedings under Section 32G were numbered as Tenancy Case No. 2623, and the date of order passed for fixation of the purchase price was 18th April 1996. Thus, according to the affidavit of the State Government, only one tenancy case was registered.

13. The learned counsel for the petitioners submitted that the findings recorded by the MRT were not in accordance with the rival contentions and the facts on record. The learned counsel referred to the respondents' relevant pleadings in the revision memo filed before the MRT. He submitted that paragraphs 9 and 10 of the revision memo indicated that the respondents had made allegations against the concerned ALT for demanding a huge amount for fixation of the purchase price with respect to the entire area. He submitted that the said allegations indicate that the respondents contended that since the respondents did not pay the demanded amount, a forged document was created by the ALT by passing a separate order for fixation of the purchase price only with regard to 30 acres out of the entire land and the case was falsely numbered as Tenancy/SR/No.2683. He, thus, submitted that even as per the averments made by respondents in the revision memo filed before the MRT, it is clear that fraud has been committed by the respondents in collusion with the ALT for preparing the order for fixation of purchase price without following necessary procedures as laid down under Tenancy Act and the Rules framed thereunder.

14. Learned counsel for the petitioners also referred to the impugned order passed by the MRT and submitted that the MRT has not properly appreciated all these factors. He submitted that the reasons recorded by the MRT would indicate that none of the factual contentions with regard to the creation of two orders under Section 32G and the rival contentions with regard to the respondents' claim of tenancy rights through deceased Ganpat has been appreciated by the learned member of the MRT. He submitted that the learned member of the MRT has referred to the rejection of the respondent's application under Section 70(b) for the declaration of tenancy rights.

The impugned order further referred to the respondents' claim that they were protected tenants as they had been cultivating the land since 1st April 1957. In the impugned order, a reference was made with regard to the fixation of the purchase price for 30 acres of land and the claim of the respondents based on the lease document for the entire land. However, after referring to the aforesaid rival contentions, the MRT has recorded findings that respondents are the deemed purchasers of the whole land and not purchasers of only an area of 30 acres. The impugned order further holds that though the appeal is dismissed by the SDO with regard to 30 acres of land, i.e. the claim of the respondents for tenancy rights, the said dismissal would not obstruct the fixation of the purchase price. Thus, MRT erroneously concluded by the impugned order that in view of the claim of respondents with regard to the tenancy rights with respect to the entire land in the opinion of MRT, the learned SDO has wrongly exercised powers

conferred under section 76A of the Tenancy Act.

15. Learned counsel for the petitioners, thus, submitted that the impugned order, after discussing and recording findings on the merits of the respondents' tenancy rights, erroneously concluded that the respondents were entitled to fixation of purchase price under Section 32G. The learned counsel for the petitioners submitted that by impugned order, the SDO's order dated 30th November 1996 is set aside, without recording any valid reasons. The impugned order restores the order passed by the Tahasildar under Section 32G without recording any findings on the two separate orders under Section 32G and without specifying which of the two orders is restored.

16. Learned counsel for the petitioners further submitted that there is no dispute that the order dated 30th November 1996 was passed without hearing the respondents. However, he submitted that in view of the aforesaid peculiar facts and circumstances, no purpose would be served by remitting the matter back to the SDO for re-hearing and re-inquiry with regard to the challenge to the orders passed under Section 32G in favour of the respondents. He submitted that, admittedly, the application for the declaration of tenancy rights of the respondents was rejected. The respondents' claim regarding tenancy rights is thus not accepted by the authorities in the proceedings initiated under Section 70(b). He, therefore, submitted that the MRT, for the first time, could not have recorded the findings declaring tenancy rights of the respondents with regard to the entire area when the application of the respondents was only with regard to 30 acres out of the entire land, which was also rejected and the rejection stood confirmed. He, thus, submitted that the impugned order is beyond the scope and of the revisional powers of MRT and the impugned order therefore deserves to be quashed and set aside and the order passed by the SDO setting aside 32G orders in favour of the respondents requires to be confirmed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS :

17. Learned counsel for the respondents submitted that the 32G proceedings were decided, and the purchase price was fixed in the proceedings being Tenancy Case No. 2623 for the entire land, and the order passed by the ALT on 29th March 1996 was the correct order passed in favour of respondents, after holding necessary inquiry. He further submitted that the subsequent order dated 18th April 1996 for 30 acres out of the entire land shown to have been passed in Tenancy Case No. 2683 is a false document. He submitted that respondents in the revision memo filed before the MRT specifically pleaded about the fraud committed by the ALT in issuing subsequent order with respect to part of the entire area claimed by the respondents.

18. The learned counsel for the respondents reiterated the submissions made on behalf of respondents before the MRT that the deceased Ganpat was a tenant with regard to the entire area, and there was a valid lease document executed by the owner in favour of Ganpat. He submitted that the provisions of Section 76A

mandate the issuance of notice to the parties. Once admittedly, the order dated 30th November 1996 was passed by the SDO without hearing the respondents, MRT was right in setting aside the said order and restoring the order of fixation of purchase price in favour of the respondents. He, therefore, submitted that the order dated 30th November 1996 deserves to be quashed and set aside as there is a breach of the principles of natural justice.

19. With regard to the declaration of tenancy and rights, learned counsel for the respondents states that there is an appeal filed by the respondents, i.e. Tenancy Appeal No. 55 of 1996 before the Collector for challenging the order dated 27th May 1996. However, learned counsel for the respondents is unable to point out the particulars of the said appeal. He does not dispute that the copy of the appeal memo is not produced by the respondents before this Court.

SUBMISSIONS ON BEHALF OF THE LEARNED AGP :

20. Learned AGP submitted that, as per his instructions, Tenancy Appeal No. 55 of 1996, as claimed to have been filed by the respondents, is not part of any record and proceedings. He further submitted that he has no instructions as to whether any such appeal is actually filed.

ANALYSIS :

21. Before dealing with the rival contentions of the parties, it is necessary to record that during the course of the hearing, the learned counsel for the respondents tendered a fresh certified copy issued to the respondents by ALT. According to the respondents, an application was filed before the ALT on 1st March 2023, seeking certified copies of the 70(b) proceedings and 32G proceedings. According to the respondents, a fresh certified copy was issued on 9th March 2023. To support the submissions, an affidavit of respondent no. 10, dated 3rd May 2024, is filed. Learned counsel for the petitioners submitted that after the petition was admitted, the records and proceedings of ALT and Tenancy Appeal No. 9 of 1992 and the record of MRT were in the custody of this Court. He, therefore, submitted that there was no occasion for ALT to issue a fresh certified copy. Learned counsel for the petitioners thus submitted that such issuance of said certified copy at this stage supports the allegations of the petitioners that respondents, in collusion with the tenancy authority, have created forged and fabricated orders. Learned counsel for the petitioners further submitted that a perusal of the certified copies produced by the respondents is at variance with the original document, which is part of the record. The application for certified copies and the two certified copies tendered by the learned advocate for the respondents on 2nd May 2024 were taken on record and were kept in the custody of the Court Shireshtedar.

22. In view of the peculiar facts and circumstances of the case, I am not inclined to examine the veracity of the said documents produced on 2nd May 2024 in these proceedings, but appropriate directions will be issued in the operative part of this judgment.

23. With regard to the rival contentions of the parties, on the claim of the tenancy rights seeking fixation of purchase price, it is necessary to record that the application filed by the respondents under section 70(b) was initially allowed on 28th November 1991. Admittedly, the said application was filed claiming tenancy rights through Ganpat Mhatre. The claim of tenancy admittedly was only for 30 acres out of the entire land. The said declaration was set aside by the SDO on 30th January 1994. Though there was an order of remand passed by the MRT on 4th April 1995, it is not in dispute that after remand necessary inquiry was made and the appeal was again allowed by the SDO on 27th May 1996 and the claim of declaration of tenancy by the respondents was set aside by the SDO. It is not in dispute that, as of date, the said order has attained finality. Though it is sought to be contended by the respondents, the Tenancy Appeal No. 55 of 1996 is filed by the respondents and is pending before the Collector, there is no record indicating that such an appeal is actually filed and is pending. Thus, a perusal of the record indicates that the claim of tenancy rights of the respondents with regard to 30 acres of land stands dismissed.

24. Admittedly, in the proceedings under Section 70(b), no document was produced in support of the tenancy rights. However, in the proceedings under Section 32G, a lease document purportedly executed on 12th June 1950 by Vinayak, i.e. son of the original owner, was produced. Thus, in 32G proceedings, the tenants raised a different stand that Ganpat was a tenant with regard to the entire area. Based on the claim of the respondents regarding the entire area learned Member of the MRT has examined the claim and declared the respondents as tenants with respect to the entire area by completely ignoring the rejection of the tenancy rights of the respondents and the contrary stand taken by the respondents. The learned member of MRT has proceeded to grant a declaration of tenancy with respect to the entire area. The learned member of MRT has entirely ignored the rejection of the declaration sought by the respondents with respect to only 30 acres out of the said entire land. The document claiming tenancy rights for the entire area was admittedly not produced in the proceedings under 70(b), and the same was for the first time relied on in the 32G proceedings. Thus, the findings recorded by the learned member of the MRT in the revision application under Section 76 of the Tenancy Act are clearly beyond the scope and ambit of the revisional powers of the MRT.

25. It is not disputed that the proceedings under Section 76A were decided by the learned SDO without hearing the respondents who claim tenancy rights. However, I find substance in the arguments raised on behalf of the petitioners that no purpose would be served by interfering in the said order only on the ground that the respondents were not heard while passing the said order. I also find substance in the arguments of the learned counsel for the petitioners that once the declaration of the tenancy rights in favour of the respondents was set aside and the said rejection stood confirmed, the respondents are not entitled to fixation of purchase price under Section 32G. Thus, it is not necessary to examine the other grounds raised by the petitioners in the rejoinder affidavit to

support their submissions that Ganpat Mhatre was never a tenant in respect of the lands belonging to the petitioners.

26. I have already held that the findings recorded by the learned member of MRT for the declaration of tenancy rights of the respondents were beyond the scope and ambit of the revisional powers of the learned MRT while dealing with an order under Section 32G. For the declaration of tenancy rights, an inquiry is contemplated under Section 70(b), and the scope of the said inquiry is completely different than the scope of powers under Section 32G for fixation of purchase price. Thus, once the respondents' tenancy claim only for part of the area stands rejected, there is no question of fixation of purchase price under Section 32G as claimed by the respondents for the entire area. Hence, even if the proceedings under Section 76A of the Tenancy Act are remitted to the concerned authority for fresh inquiry, the same would be a futile exercise.

27. In support of the aforesaid submissions, learned counsel for the petitioners has rightly relied upon the decision of this court in case of Bhima Bhagoji Redekar and Ors Vs. Sarladevi Keshavrao Desai deceased by her heirs Ravindrfa Keshavrao Desai and Ors. 2005(1) Mh.L.J. He submitted that this Court has held that once the proceedings under Section 70(b) of the Tenancy Act have ended against the tenants and it has been declared that the tenants are not tenants in respect of the suit land, it necessarily follows that the question of determination of purchase price of land does not arise. Thus, there is substance in the argument of the learned counsel for the petitioners that in view of the similar facts and circumstances of the present case, the decision of this Court squarely applies to the present case.

28. The learned counsel for the petitioners submitted that it is a well-established principle of law that when an order is obtained by commission of fraud, the principles of natural justice are not required to be complied with for setting aside the same. He submitted that the fact that two separate orders were passed for fixation of purchase price under Section 32G, when the declaration of tenancy rights under Section 70(b) was set aside, the learned SDO has rightly set aside the said orders. Hence, only on the ground of no opportunity of hearing given to the respondents, no fault can be found in the said order. In support of his submissions, learned counsel for the petitioners relied upon the decisions of the Hon'ble Supreme Court in the case of Ganpatbhai Mahijibhai Solanki Vs. State of Gujrat and Ors(2008) 3 SCC 556, Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (2019) 14 SCC 449 , K.D. Sharma Vs. Steel Authority of India and Ors(2008) 12 SCC 481, State of Chhatishgarh and Ors Vs. Dhirjo Kumar Sengar (2009) 13 SCC 600 , The State of Andhra Pradesh and Ors Vs. T. Suryachandra Rao (2005) 6 SCC 149.

29. By complaint dated 19th June 1996, the petitioners made a grievance that ALT prepared two separate orders for fixing the purchase price, based on forged documents. Based on the said complaint, the SDO invoked powers under Section 76A of the Tenancy Act and set aside the orders passed under Section 32G for

fixing the purchase price. The SDO held that in Tenancy Case No. 2683, the purchase price was fixed on 12th April 1996, and in Tenancy Case No. 2623, the earlier order was modified on 18th April 1996. The SDO further held that the order dated 28th November 1991 passed under Section 70(b) of the Tenancy Act in favour of the respondents was set aside and the proceedings were pending before SDO; however, during the pendency of the said proceedings the ALT declared Ganpat Mhatre as tenant and fixed the purchase price. Hence, the SDO set aside the order passed by the ALT fixing the purchase price. The allegation of fraud is based on the allegation that the respondents, by relying on a forged document, created two orders in collusion with the ALT for fixing purchase price. However, the SDO has neither made any inquiry into the allegations of fraud and that the forged document was relied upon by the respondents nor has passed the order on the ground of fraud and fabrication of documents or order. Even MRT has not examined the said allegations of fraud and fabrication of documents or order.

30. It is not in dispute that the said order of SDO is passed without any notice to the respondents. However, it is also not disputed that the declaration of tenancy rights of Ganpat Mhatre under Section 70(b) was set aside by MRT, and the proceedings were pending before SDO when ALT declared Ganpat Mhatre as a tenant and fixed the purchase price in his favour. It is also not in dispute that after remand, SDO set aside the declaration in favour of Ganpat Mhatre, and the same has attained finality. Hence, ALT's order declaring Ganpat Mhatre as a tenant in the proceedings under Section 32G is beyond the scope and ambit of Section 32G and is illegal. However, the learned member of MRT, by the impugned order, set aside the Order dated 30th November 1996 passed by the SDO by completely ignoring the said aspect.

31. In view of the aforesaid peculiar facts and circumstances of the case and the respondents' reliance on the certified copies tendered as recorded hereinabove, and on the allegations of fraud and fabrication, an inquiry is warranted by an appropriate authority. Hence, it would be appropriate that the learned Collector, Raigad, at Alibag makes a necessary inquiry with regard to the respondents' claim of receipt of fresh certified copies when the entire original record and proceedings are in the custody of this Court and also on the allegations of fraud and fabrication. In view of the affidavit dated 3rd May 2024 and for the reasons recorded above, the certified copies and application dated 1st March 2023 tendered in the court on 2nd May 2024, and the affidavit dated 3rd May 2024, along with the original record and proceedings received by this Court, shall be sent to the learned Collector for making necessary inquiry on the allegation of the petitioners that forged document was relied upon by the ALT for deciding 32G proceedings in favour of the respondents, fabrication of documents and orders and also on the veracity of the certified copies and application dated 1st March 2023 tendered in this court on 2nd May 2024, and the affidavit dated 3rd May 2024.

32. However, without going into the allegation of fraud, even otherwise, the two separate orders passed under Section 32G for fixing the purchase price are not sustainable in the eyes of the law. For the reasons recorded above, I have already held that the ALT's order fixing the purchase price and the impugned order by MRT setting aside SDO's Order dated 30th November 1996 and restoring the order under Section 32G are illegal. Hence, it would make no difference if principles of natural justice were followed by giving notice to the respondents. Hence, only on the ground of a breach of principles of natural justice, interference with the SDO's Order dated, 30th November 1996 is unwarranted as the same would amount to restoring the illegality done by ALT.

33. There cannot be any debate on the point that principles of natural justice must be followed, but there are also exceptions. The Apex Court laid down one of the exceptions in the case of *S.L. Kapoor vs. Jagmohan and others*(1980) 4 SCC 379. Hon'ble Supreme Court's observation paragraph 24 reads as under:

The relevant extract of the in the case of *S.L. Kapoor* in "24.In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs.

We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

emphasis applied

34. The aforesaid observation of the Hon'ble Supreme Court in the case of *S.L. Kapoor*, is relied upon by the Hon'ble Supreme Court in the decision of *State of Chhatisgarh* relied upon by the learned counsel for the petitioners. Thus, the legal principles laid down in the aforesaid decision is squarely applicable to the present. Hence, only on the point of breach of principles of natural justice, it is not necessary to interfere in the SDO's order dated 30th November 1996. Since the allegation of fraud is not dealt with in the order of SDO and the impugned order of MRT, I do not find it necessary to discuss the legal principles in the other decisions relied upon by the learned counsel for the petitioners.

35. When the matter was partly heard, an application being Interim Application No. 8668 of 2024, is filed seeking intervention on the ground that the respondents have executed an agreement of Assignment – Cum–Sale–Cum – Development / MOU dated 10th September 1997 in the applicant's favour. Learned counsel for the petitioners disputes the contentions raised in the

application. He submitted that the said application is filed with a malafide intention to delay the decision of the present petition.

36. In view of the objection raised to the said application, the learned counsel for the intervenor/applicant, on instructions, seeks unconditional leave to withdraw the application. Leave granted.

37. Nothing is argued to support the claim in Civil Application No. 1330 of 2014. I do not find any substance in the grounds raised in the said application.

38. For the reasons recorded above, Writ Petition is allowed by passing the following order:

I. Judgment and Order dated 3rd September 1997 passed by the MRT, Mumbai in Revision Application No. 48 of 1997 is quashed and set aside.

II. Revision Application No. 48 of 1997 is dismissed.

III. Order dated 30th November 1996 passed by the learned SDO, Panvel is confirmed

IV. Learned Collector, District Raigad, at Alibag shall conduct necessary inquiry on (a) the allegation of the petitioners that a forged document was relied upon by the ALT for deciding 32G proceedings in favour of the respondents, (b) the allegation that the two separate orders under Section 32G in favour of respondents were fabricated orders, and (c) the veracity of the certified copies and application dated 1st March 2023 tendered in this court on 2nd May 2024, and the contents of the affidavit dated 3rd May 2024.

V. The Collector is at liberty to follow appropriate procedure in accordance with law, including issuing notices to the concerned necessary parties and recording statements as found necessary.

VI. If the Collector finds that any person has committed fraud or is involved in the forgery or fabrication of any order or document, the Collector shall take steps to set the criminal law in motion.

VII. Depending upon the findings rendered by the Collector, the concerned parties shall be at liberty to adopt appropriate proceedings as permissible in law.

VIII. The original record and proceedings received by this Court, original documents tendered on 2nd May 2024 and affidavit dated 3rd May 2024 be forthwith sent to the Collector, Raigad, at Alibag.

IX. Interim Application No. 8668 of 2024 is dismissed as withdrawn.

X. Civil Application No. 1330 of 2014 is dismissed.

39. Writ Petition is disposed of in the above terms.