IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2727 OF 2018

Mahendarsingh Digvijaysingh Mukne]
Ruler of ex-State of Jawahar,]
Jai Vilas Palace, At Post Jawahar,]
District Palghar (Maharashtra)] .. **Petitioner**

Versus

1. The State of Maharashtra,]
   Through the Department of Revenue & Forest,]
2. The Collector,]
   District Palghar]
3. The Additional Collector,]
   Jawahar]
4. Marzban Jehangirji Patel,]
   R/of Patel Pada, Dist. Palghar] .. **Respondents**

Dr. Abhinav Chandrachud with Ms. Unnati Ghia and Mr. Subodh Kurudkar, Advocates, i/by Kurudkar Associates, for the Petitioner.

Dr. Birendra B. Saraf, Advocate General, with Ms. Neha S. Bhide, Government Pleader, Mr. A.I. Patel, Additional Government Pleader, Mr. Vaibhav Charalwar, 'B' Panel Counsel and Mrs. M.S. Bane, Assistant Government Pleader for Respondent Nos.1 to 3.

Mr. Dharmesh Pandya with Ms. Tejal Pandya, Advocates, i/by Ashwin Pandya & Associates, for Respondent No.4.

CORAM : A.S. CHANDURKAR & RAJESH S. PATIL, JJ

The date on which the arguments were concluded : 25TH APRIL, 2025.

The date on which the Judgment is pronounced : 26th MAY, 2025.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. In this writ petition filed under Article 226 of the Constitution of

India, the petitioner has challenged the validity of Rule 4(1)(a) of the Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non-Tribals) Rules, 1975.

Rule. Rule made returnable forthwith. With consent of learned counsel for the parties the writ petition is taken up for final consideration.

2. It is the case of the petitioner that land bearing Gat Nos.6, 9, 10, 14, 15 and 17, situated at Mouje Ashagad (Asave), Tal. Dahanu, Dist. Palghar, are ancestral lands to which the petitioner has succeeded. The petitioner belongs to "Mahadev Koli" tribe, which is recognized as a "Scheduled Tribe" in the State of Maharashtra. The father of the 4th respondent was inducted as a tenant of the aforesaid lands by the predecessor of the petitioner in the year 1940. According to the petitioner, an application under Section 36A(1)(b) of the Maharashtra Land Revenue Code, 1966 *(for short, "the Code")* came to be moved. In the said proceedings, the petitioner and the 4th respondent arrived at an amicable settlement. Pursuant thereto, the petitioner sought quashing of the proceedings initiated by him with a further permission to transfer the aforesaid lands in favour of the 4th respondent. An application dated 23rd February 2004 in that regard was moved before the Collector. On 1st September 2006, the petitioner was informed that the 4th respondent was a non-tribal and as the land was being purchased for agricultural use, in view of the

provisions of Rule 4(1)(a)(i) of the Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non-Tribals) Rules, 1975 *(for short, "the Rules of 1975"),* permission for transfer could not be granted. Notwithstanding this communication, the petitioner made another application addressed to the Hon'ble Revenue Minister for State reiterating the request made earlier. The petitioner was again informed on 12th July 2010 that in view of the provisions of Rule 4(1)(a)(i) of the Rules of 1975, as the land was being transferred to a non-tribal for agricultural use, such permission could not be granted. The petitioner and the 4th respondent have since continued their efforts to seek permission from the Revenue Authorities. It is in that backdrop that the petitioner has filed this writ petition raising a challenge to the validity of Rule 4(1)(a)(i) of the Rules of 1975 by urging that as it permits transfer by a tribal in favour of a non-tribal only if the land is to be used for non-agricultural purpose.

3. It may be stated that being aggrieved by the order dated 12th July 2010 passed by the Additional Collector, Jawahar, the petitioner had filed a Revision Application before the State Government on 20th June 2014. Since the Revision Application was not being heard, the petitioner and the 4th respondent issued communications dated 3rd May 2016 and 23rd August 2016 to the State Government through its Department of Revenue and Forest seeking consideration of the same. When the present writ petition

was being heard, the petitioner on 1st August 2024 made an application before the Department of Revenue and Forest stating that he desired to withdraw the application dated 16th January 2008 and the Revision Application dated 20th June 2014 with a view to pursue this writ petition. The petitioner also sought leave to withdraw the joint letters dated 3rd May 2016 and 23rd August 2016 as made. It is in this factual backdrop that the learned counsel for the parties have been heard.

4. Dr. Abhinav Chandrachud, learned counsel appearing for the petitioner in support of the challenge raised to the validity of Rule 4(1)(a) of the Rules of 1975 submitted as under :-

(a) Rule 4(1)(a) of the Rules of 1975 was violative of the provisions of Article 14 of the Constitution of India :-

Basis the statutory scheme of the provisions of Section 36A of the Code along with the Rules of 1975 it was submitted that while sanctioning transfer by a tribal in favour of a non-tribal by the Collector, there was no reason whatsoever to differentiate between a transfer for non-agricultural purpose and one for agricultural purpose. This had no nexus whatsoever with the object that was sought to be achieved while granting sanction for transfer. If the Collector on being satisfied of the need

for granting sanction to a transfer by a tribal in favour of a non-tribal, the fact that after such transfer the non-tribal intended to use such land for agricultural purposes was not relevant at all. The insistence that such sale ought to be only for bonafide non-agricultural purpose did not throw any light for restricting the use of the land after it was transferred. What was relevant were the considerations for grant of sanction and not the purpose for which the transferred land was to be used. The restriction imposed on the purpose of use of the land by a non-tribal resulted in placing unnecessary fetters on the right of a tribal to transfer his occupancy. In absence of any nexus whatsoever behind prohibiting sale by a tribal in favour of a non-tribal who intended to use the land for agricultural purpose, Rule 4(1)(a) of the Rules of 1975 was liable to be struck down. To substantiate this contention, the learned counsel placed reliance on the decisions in *(i) Ramesh Chandra Sharma and Ors. Vs. State of Uttar Pradesh and Ors. 2023 INSC 144 (ii) Deepak Sibal Vs. Punjab University and Anr., 1989 INSC 58 (iii) Lok Prahari Vs. State of Uttar Pradesh and Ors., 2018 INSC 455* and *(iv) Babasaheb Dhondiba Kute Vs.*

Radhu Vithoba Barde, 2019 (1) Bom.C.R. 851.

(b) Rule 4(1)(a)(i) places a fetter on the discretion to be exercised by the Collector while granting sanction :-

In this regard it was urged that under the provisions of Section 36A(2) of the Code, the Collector was required to consider grant of sanction when the occupancy of a tribal was intended to be transferred in favour of a non-tribal. Sanction was required to be granted *"in such circumstances and subject to such conditions as may be prescribed"*. Under Rule 3 of the Rules of 1975, an application for transfer of occupancy under Section 36A and the procedure for disposal of such application was provided. However, under Rule 4(1)(a)(i) of the Rules of 1975, by restricting the scope for grant of sanction by the Collector under Section 36A only when the transfer of the land was for any bonafide non-agricultural purpose, there was a fetter placed on the Collector. In other words, it was urged that though Section 36A(2) of the Code confers a discretion on the Collector to grant sanction, Rule 4(1)(a)(i) of Rules of 1975 restricted the manner in which such discretion has

to be exercised. Such restriction while exercising discretion in the matter of grant of sanction affected the right of a tribal to transfer his occupancy. While there was no such restriction placed on a transfer by a tribal to a non-tribal for agricultural purposes under the Code, such discretion was imposed by Rule 4(1)(a)(i) of the Rules of 1975. The said Rule therefore travelled beyond the parent provision. Referring to the facts of the present case, it was urged that when the petitioner as a tribal voluntarily intended to sell his land to the 4th respondent who was his tenant and the tenant intended to continue to use the land for agricultural purpose, it was only on account of the provisions of Rule 4(1)(a)(i) of the Rules of 1975 that the Collector could not exercise discretion in favour of the petitioner. Reference was made to the decision in *Shri Rama Sugar Industries Ltd. Vs. State of Andhra Pradesh and Ors., 1973 INSC 246* in this regard. It was further urged that any fetters placed on an Authority as to the manner in which discretion conferred is required to be exercised has always been frowned upon by the Courts. Attention in this regard was drawn to the decisions in *U.P. State Road Transport Corporation*

and Anr. Vs. Mohd. Ismail and Ors., 1991 INSC 99 Anahita Pandole Vs. State of Maharashtra and others, (2004) 6 Bom CR 246, Shiva Petro-Synth Specialities Ltd and another Vs. Goa State Pollution Control Board and others, (2021) 4 Bom CR 591 and *Binod Rao Vs. Minocher Rustom Masani, 1976 (78) Bom.L.R. 125.* The learned counsel also referred observations of Starling, J. in *Gell Vs. Taja Noora, (1903) 27 ILR 307 to buttress his contention.*

(c) Rule 4(1)(a) of the Rules of 1975 could be read down in exceptional or deserving cases :-

Without prejudice to the challenge to the validity of Rule 4(1)(a) of the Rules of 1975, it was submitted that while saving the Rule from being struck down, the Court may read down the said Rule so as to permit the Collector to grant sanction for the transfer of a land by a tribal in favour of a non-tribal for agricultural purpose in exceptional or deserving cases. According to the learned counsel, the discretion vested in favour of the Collector under Section 36A(1) and (2) of the Code could be

permitted to be exercised in exceptional or deserving cases to enable transfer of a tribal's land to a non-tribal for agricultural purposes. This would ensure that the Rule could be made workable without being required to be struck down. To buttress this submission, the learned counsel referred to the facts of the present case to indicate that the petitioner's predecessor had inducted the predecessor of the 4th respondent as tenant and now the petitioner intended to sell the said land to the 4th respondent who desired to continue its use for agricultural purpose.

It was thus submitted that Rule 4(1)(a) of the Rules of 1975 ought to be quashed as being violative of the provisions of Article 14 of the Constitution of India and as it restricted the manner in which the Collector ought to exercise discretion while granting sanction under Section 36A(1) and (2) of the Code. In any event, Rule 4(1)(a) of the Rules of 1975 ought to be read down so as to permit the Collector to grant sanction to a tribal to transfer his land to a non-tribal in exceptional, deserving or genuine cases even if the transferee non-tribal intended to use the land for agricultural purposes.

5. Dr. Birendra Saraf, learned Advocate General for the State of Maharashtra in support of the validity of Rule 4(1)(a) of the Rules of 1975 submitted as under :-

(a) Rule 4(1)(a) of the Rules of 1975 was valid and did not violate Article 14 of the Constitution of India :-

In this regard, reference was initially made to the legislative history in the matter of transfer of occupancy by a tribal in favour of a non-tribal. The statutory scheme prior to enactment of Maharashtra Act XXXV of 1974 by which provisions of Section 36 of the Code came to be amended and Section 36A came to be introduced in the Code was referred to. Attention was invited to the Objects and Reasons behind the amendment by Maharashtra Act XXXV of 1974. Referring to the decision in *Raoji Baliram Urkude Vs. State of Maharashtra and Anr., 1985 Mah L.J 843*, it was submitted that the validity of the provisions of Section 36A of the Code had been unsuccessfully challenged. The Act of 1974 and especially Sections 3 and 4 thereof was the subject matter of challenge in *Lingappa Pochanna Appelwar Vs.*

State of Maharashtra and Anr., 1984 INSC 226 before the Supreme Court, that was unsuccessful. On this premise it was urged that there was a definite object behind imposing a restriction on the transfer of an occupancy by a tribal in favour of a non-tribal if the land was intended to be used after such transfer by the non-tribal for agricultural purpose. The intention was to safeguard the interest of tribals. The said restriction had been imposed on the basis of the report of the Committee constituted by the State Government based on ground realities. Permission to sell agricultural land to a non-tribal for agricultural purposes was likely to result in accumulation of agricultural lands by a non-tribal that could result in exploitation of tribals with a further possibility of the tribals tilling the very lands of which they were owners. It was pointed out that there was no bar for a tribal to sell his occupancy to another tribal who could continue the agricultural purpose of utilizing the land thereafter. Further, the restriction on a tribal transferor in transferring his occupancy to a non-tribal for agricultural purpose was uniformly applicable to all tribals without any distinction. It was permissible for the

petitioner as a tribal to transfer his occupancy in favour of another tribal if he intended to continue its agricultural purpose. There being a clear object behind imposing such restriction and which object was to safeguard the interest of tribals, it could not be said that Rule 4(1)(a) of the Rules of 1975 was violative of Article 14 of the Constitution of India. Reliance was placed on the decisions in *(i) Kashibai wd/o. Sanga Pawar and Ors. Vs. State of Maharashtra, 1993 Mh.L.J. 1168; (ii) Murlidhar Dayandeo Kesekar Vs. Vishwanath Pandu Barde and Anr., 1995 INSC 130; (iii) Samatha Vs. State of A.P. and Ors., (1997) 8 SCC 191; and (iv) Atul Projects India Ltd. Vs. Babu Dewoo Farle and Ors., 2011 (6) Mh.L.J. 351* in that regard. It was thus submitted that this challenge as raised by the petitioner was not liable to be accepted.

(b) <u>The discretion granted to the Collector while considering the grant of sanction to transfer was in furtherance of Section 36A(1) and (2) of the Code</u> :-

It was submitted that since the object behind introducing Section 36A of the Code and conferring jurisdiction on

the Collector to consider grant of sanction in the matter of transfer by a tribal in favour of a non-tribal only for non-agricultural use, it could not be said that the exercise of discretion by the Collector contained any fetters. As long as the transfer in favour of a non-tribal was for non-agricultural purpose, the Collector could always grant such sanction. The challenge as raised by the petitioner was required to be tested in the light of the law laid down by the Supreme Court in *(i) Shayara Bano Vs. Union of India and Ors. 2017 INSC 785; (ii) Shikhar and Anr. Vs. National Board of Examination and Ors., 2022 INSC 390; and (ii) Dental Council of India Vs. Biyani Shikshan Samiti and Anr., 2022 INSC 419.* Considering the object sought to be achieved behind enactment of Section 36A of the Code, it was clear that the Collector had sufficient discretion to exercise while considering an application for grant of sanction. On the basis of individual hardship that was sought to be put-forth by the petitioner, Rule 4(1)(a) of the Rules of 1975 could not be invalidated. In fact, the petitioner had failed to satisfy any of the tests that have been laid down while raising a challenge to a delegated piece of legislation.

The learned Advocate General also placed reliance on the decision in *Pathumma and Ors. Vs. State of Kerala and Ors., 1978 INSC 7*. It was thus urged that even on this count, the challenge raised by the petitioner was not liable to succeed. The decisions sought to be relied upon by the learned counsel for the petitioner were distinguished and it was submitted that the ratio thereof could not be applied to the case in hand.

(c) <u>As the provisions of Rule 4(1)(a) of the Rules of 1975 were valid, there was no question of the same being read down</u> :-

In this regard it was submitted that the Court would read down a provision only to save it from being declared as ultra vires. In the present case, Rule 4(1)(a) of the Rules of 1975 had sufficient nexus with the object that was sought to be achieved behind enacting Section 36A of the Code. Rule 4(1)(a) of the Rules of 1975 merely sought to ensure that the legislative intent behind introducing the said provision was satisfied. While there was no embargo whatsoever on one tribal transferring his occupancy in favour of another tribal, it was only if

the non-tribal transferee intended to use the land for agricultural purpose that such restriction operated. It was thus urged that there was no occasion whatsoever to read down Rule 4(1)(a)(i) of the Rules of 1975, as urged.

Thus on the basis of the aforesaid submissions, it was urged that the challenge raised by the petitioner to the validity of Rule 4(1)(a) of the Rules of 1975 had no merit whatsoever and the writ petition was liable to be dismissed.

6. In rejoinder, it was urged that the justification offered by the State to support the validity of Rule 4(1)(a) of the Rules of 1975 was weak in the facts of the present case and the same did not warrant acceptance. Since the agricultural use of the land was sought to be continued by the transferee, there was no reason whatsoever for the Collector to deny permission for alienation of such land. It was thus submitted that the prayers made in the writ petition were liable to be granted and permission to transfer the petitioner's occupancy in favour of the 4th respondent ought to be granted.

7. We have heard the learned counsel for the parties at length and with

their assistance we have perused the documentary material on record. We have thereafter given thoughtful consideration to the rival contentions of parties.

At the outset, it would be necessary to refer to the relevant statutory provisions that have bearing on the challenge to the validity of Rule 4(1)(a)(i) of the Rules of 1975. Under Section 36(1) of the Code, an occupancy subject to the provisions of Section 72 of the Code and to any conditions lawfully annexed to the tenure is deemed heritable and transferable property. The provisions of Section 36A came to be introduced in the Code pursuant to its amendment by Maharashtra Act XXXV of 1974. Section 36A of the Code reads as under :-

> **36A. Restrictions on transfers of occupancies by Tribals**
>
> (1) Notwithstanding anything contained in sub-section (1) of Section 36, no occupancy of a tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, be transferred in favour of any non-tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or Authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-tribal and except with the previous sanction -
>
> a) in the case of a lease, or mortgage for a

period not exceeding 5 years, of the Collector; and

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

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

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

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

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

(ii) the amount of compensation to be paid for

such purchase is arrived at in a fair and transparent manner.

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

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

(3) On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force, or any decree or order

of any court or award or order of any Tribunal or Authority, either suo-moto or on application made by the Tribal in that behalf, restore possession of the occupancy to the tribal.

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

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

(6) Where an occupancy vested in the State Government under sub-section (5) is to be disposed of, the Collector shall give notice in writing to the tribal-transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to

> purchase the land. If such tribal-transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the total land held by such tribal-transferor, whether as owner or tenant, does not as far as possible exceed an economic holding.

8. The constitutionality of Section 36A as being violative of the provisions of Article 14 of the Constitution of India was considered in *Raoji Baliram Urkude (supra)* by this Court. Repelling that challenge, it was held that the historical truth was that tribals belonged to weaker sections of the society and had been subjected to varied types of exploitations by taking undue advantage of their backwardness, meekness and helplessness. In view of the provisions of Article 46 of the Constitution of India, the Legislature had come forward to protect their interest. The classification of tribals as made had a clear nexus with the object of protecting their rights as sought to be achieved. It was held that the legislation could not be termed to be unreasonable and there was no ground to hold it to be bad.

9. In *Lingappa Pochanna Appelwar (supra)*, the constitutional validity of Sections 3 and 4 of the Act of 1974 was questioned. Turning down that challenge by referring to the State policy enshrined in Article 46 of the

Constitution, it was observed that existence of Scheduled Tribes as a distinct class and the preservation of their culture and way of life based upon agriculture which was inextricably linked with ownership of land required preventing an invasion upon their lands. The impugned provisions were in the nature of remedial measures in keeping with the policy of the State for rendering social and economic justice to the weaker sections of the society. Transactions between parties having unequal bargaining power which resulted in transfer of title due to force of circumstances were sought to be re-opened so as to restitute the parties to their original position.

10. In *Murlidhar Dayandeo Kesekar (supra)*, refusal of permission by the Collector under Section 36A of the Code was under challenge. Referring to the historical background behind enactment of Section 36A of the Code, it was held that obtaining prior permission for alienation of land was a condition precedent and before such permission was granted, the Competent Authority was enjoined by the operation of Article 46 of the Constitution to enquire whether such alienation was void under law or violated the provisions of the Constitution and whether permission could be legitimately granted. The Competent Authority was required to look into the nature of the property, subject matter of proposed conveyance and pre-existing rights flowing thereunder as well as consider whether such

alienation or encumbrance would violate provisions of the Constitution or the law.

11. In *Atul Projects India Ltd. (supra)*, a Division Bench of this Court considered the provisions of Section 36A of the Code and observed that the said piece of legislation had been enacted with a view to protect tribals against exploitation and that legislative interpretation must facilitate the fulfillment of the objects contained in the Directive Principles of State Policy. An interpretation that would dilute or water down the ambit of Section 36A therefore ought not to be countenanced. Section 36A was intended to safeguard the interest of tribals and that even if two interpretations were possible, the Court would adopt that interpretation which protected the interest of tribals which the legislation intended to subserve.

12. From the aforesaid decisions, it becomes clear that the constitutional validity of Section 36A of the Code has been upheld by the Supreme Court of India. In view of the provisions of Article 46 of the Constitution of India, it has been held that the said provision intends to safeguard and protect the interest of tribals with a view to prevent their exploitation. The validity of Section 36A of the Code is not under challenge in the present proceedings. Hence the challenge to Rule 4(1)(a)(i) of the Rules of 1975 would have to be considered on the premise that

the parent enactment under which the Rules of 1975 have been framed have been held to be constitutionally valid.

13. To enable the exercise of powers conferred under Section 36A(2) of the Code, the Rules of 1975 have been framed pursuant to the power conferred by Section 328 of the Code. Section 328 to the extent it is relevant for the present purpose is reproduced as under :-

> **"328. Rules**
>
> 1. The State Government may make rules not inconsistent with the provisions of this Code for the purpose of carrying into effect the provisions of this Code.
> 2. In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following matters:-
>
> (xiii) under sub-section (3) of Section 36, the rules in accordance with which the Collector may determine liabilities for arrears of land revenue or any other dues and the procedure in accordance with which he may dispose of applications for being placed in possession of occupancy and under sub-section (4) of that Section, the payment of premium;
>
> (xxvii) under Section 75, the form of register of alienated lands to be kept the rules subject

to which a certified extract from that register may be granted and the fees to be paid therefor.

……..”

14. The Rules of 1975 came to be published in the Official Gazette on 2nd October 1975. Under Rule 3 thereof, an application for transfer of occupancy as made under Section 36A is required to be considered by the Collector. The Collector has to issue a public notice in Form “A” to the Rules of 1975. The Rule requires publicity being given to the request for transfer of occupancy by a tribal to enable other tribals who are willing to have the occupancy transferred to them on the payment of similar consideration as offered by the non-tribal. This has to be done within a period of one month from the publication of such notice. The Collector has to consider applications, if any, received from tribals who are residing in any village within the radius of five kilometers from the occupancy that is intended to be transferred. Rule 4 of the Rules of 1975 being the subject matter of challenge, the same is reproduced as under :-

“4. Sanction of Collector under Section 36A for transfer -

(1) Under Section 36A, the Collector may subject to the provision of Rule 3, give sanction for -

(a) the sale of the land where it is being sold -

(i) for any bonafide non-agricultural purpose, or

(ii) in execution of a decree of a civil court or for the recovery of arrears of land revenue under the provisions of the Code:

Provided that, no sanction for sale shall be given under sub-clause (ii) of clause (a) of this sub-rule if the Tribal is likely to be rendered landless as a result of the sale;

(b) the lease of the land, where the land is being leased by a lessor who is a minor or widow or a person under any physical or mental disability;

(c) the mortgage of the land, where the land is being mortgaged for purposes of raising a loan for the development of the land;

(d) the exchange of the land where the land is being exchanged -

(i) for land of equal or nearly equal value owned and cultivated personally by a member of the Tribal's family, or

(ii) for land of equal or nearly equal value in the same village owned and cultivated personally by another landowner with a view to forming compact block of his holding or better management thereof :

Provided that, the total land held and cultivated personally by any one

whether as owner or tenant or partly as owner and partly as tenant does not exceed an economic holding as a result of the exchange;

(e) the transfer of the land by way of sale or lease -

(i) if the land is required by an industrial undertaking in connection with any bona fide industrial operations carried on or to be carried on by such undertaking;

(ii) If the land is required for the benefit of any educational or charitable institution;

(iii) If the land is required for the benefit of a co-operative society, or is likely to be rendered landless on account of compulsory acquisition of his land for any public purpose :

Provided that, no sanction for the sale shall be given under clause (f), if the Tribal is likely to be rendered landless as a result of the sale.

Explanation – For the purposes

of the proviso to clause (f), a person shall be deemed to be landless if he is a landless person within the meaning of that expression as defined in clause (17) of Section 2 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

(2) Where sanction is given for lease or mortgage, as the case may be in the circumstances specified in clause (b) or (c) of sub-rule (1), it shall be subject to the condition that the land shall not be put to any non-agricultural use."

15. From the aforesaid statutory provisions, it becomes clear that notwithstanding the fact that an occupancy is deemed to be transferable property under Section 36(1) of the Code, if a tribal intends to transfer such occupancy in favour of a non-tribal through the modes described in sub-clause (1) of Section 36A, the previous sanction of the Collector is mandatory. Under sub-section (2) of Section 36A, the Collector may grant such sanction "in such circumstances and subject to such conditions as may be prescribed". The manner in which sanction has to be granted is indicated in Rules 3 and 4 of the Rules of 1975. Under Rule 4(1)(a)(i), the Collector can grant sanction to the proposed transfer when a tribal intends

to sell his occupancy to a non-tribal "for any bonafide non-agricultural purpose". Thus, in effect, if a tribal occupancy is intended to be transferred to a non-tribal for agricultural purpose, such sanction cannot be granted. It is for this reason that the petitioner herein has questioned this restriction on the transfer of his occupancy in favour of the non-tribal who intends to continue use of the said occupancy for agricultural purposes.

16. Before considering the petitioner's challenge to the validity of Rule 4 (1)(a)(i) of the Rules of 1975, it would be necessary to bear in mind the principles laid down by the Supreme Court in the matter of challenge to a piece of subordinate legislation. In *Shayara Bano* (supra) the Supreme Court has reiterated the principle of law that a subordinate legislation can be challenged on any of the grounds that are available for challenging a plenary legislation. There is no rational distinction between a plenary legislation and subordinate legislation when a ground of challenge under Article 14 of the Constitution of India is raised. If it is shown that a piece of legislation is manifestly arbitrary it can be successfully challenged on that count. At the same time, the presumption of constitutionality also extends to subordinate legislation as held in *P. Krishnamurty* (supra). While considering a challenge to subordinate legislation the Court ought to *inter alia* consider the nature, object and scheme of the parent Act for

which the subordinate legislation has been brought into force. In *B.K. Pavitra* (supra), it has been held that the Executive is aware of the prevailing conditions in society and the Legislature represents the collective will of the people through their legal representations. The Legislature as well as the Executive are the best judges of local conditions, circumstances and special needs of various classes of people. The presumption of constitutionality thus flows in view of the aforesaid.

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

The historical background that has led to the enactment of the Act of 1974 as well as the introduction of Section 36A of the Code along with the Rules of 1975 has to be borne in mind. The Revenue and Forest Department of the State Government on 15th March 1971 constituted a Committee to undertake a study in the matter of steps to be taken to protect the rights of tribals. It is after considering the report of the said Committee that the Act of 1974 was enacted followed by introducing

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

At the outset, it may be noted that there is no prohibition on the transfer of a tribal occupancy. A tribal is free to transfer his occupancy in favour of another tribal. It is only when a tribal intends to transfer his occupancy to a non-tribal that the previous sanction of the Collector is necessary. This therefore indicates that while a tribal can transfer his occupancy in favour of another tribal at will, the only restriction placed is when a tribal intends to transfer his occupancy by way of sale in favour of a non-tribal. This provision has been found to be constitutionally valid. The restriction placed on grant of sanction to the transfer of occupancy by way of sale in favour of non-tribal only when the transferee intends to use it for non-agricultural purpose is legally justifiable. The object behind the same appears to be to prevent non-tribals from accumulating agricultural lands of tribals which could result in future exploitation of tribals and requiring them to undertake agricultural operations on the very lands of which they were owners. Another aspect as highlighted by the learned

Advocate General was that with financial resources being available to non-tribals, modern agricultural activities could be undertaken by non-tribals after purchasing such lands from tribals which would then affect the agricultural income of tribals in the vicinity. In our view, the restriction placed on the Collector while granting sanction to the transfer of occupancy by sale by a tribal in favour of a non-tribal who intends to use it for agricultural purpose is reasonable in nature and does not fall foul of the provisions of Article 14 of the Constitution of India. The object is clear that the agricultural lands of tribals are intended to be protected.

18. In *Dharam Dutt and Ors. Vs. Union of India and Ors., (2004) 1 SCC 712*, it was held by the Supreme Court in paragraph 56 as under :-

> "56. Article 14 of the Constitution prohibits class legislation and not reasonable classification for the purpose of legislation. The requirements of the validity of legislation by reference to Article 14 of the Constitution are: that the subject-matter of legislation should be a well-defined class founded on an intelligible differential which distinguishes that subject-matter from the others left out, and such differential must have a rational relation with the object sought to be achieved by the legislation. The laying down of intelligible differntial does not, however, mean that the legislative

classification should be scientifically perfect or logically complete."

It is material to note that Rule 4(1)(b) and (c) of the Rules of 1975 do not prohibit a tribal from granting lease or mortgage of land for agricultural purpose. Rule 4(2) specifically provides that if sanction is granted by the Collector to a tribal for leasing or mortgaging his land, the same would be subject to the condition that the land shall not be put to any non-agricultural use.

These provisions therefore make it clear that transfer of occupancy by way of lease or mortgage for agricultural purpose is permissible. In other words, there is no blanket restriction on the transfer of occupancy even when the land is intended to be used for agricultural purpose. A tribal is free to lease out or mortgage his occupancy for agricultural purpose and the only restriction is that when an occupancy is intended to be sold, the transferee has to put the land to bonafide non-agricultural purpose. This would indicate that the restriction on the transfer of occupancy placed by Rule 4(1)(a)(i) is not absolute and that it is subject to reasonable exceptions in the form of lease or mortgage by a tribal to a non-tribal for agricultural use.

19. The principles laid down by the Supreme Court in its decisions in

Ramesh Chandra Sharma, Deepak Sibal and *Lok Prahari* (supra) cannot be made applicable to the facts of the present case as Rule 4(1)(a)(i) applies equally to all tribals and there is no sub-classification amongst them whatsoever. The only restriction that has been placed is to the transfer of an occupancy by a tribal in favour of a non-tribal when the land is intended to be used for agricultural purpose. This restriction as placed is reasonable in nature considering the historical background behind the enactment of these statutory provisions with the avowed object of safeguarding the interest of tribals and their lands.

20. It was then urged on behalf of the petitioners that the discretion conferred on the Collector in the matter of grant of sanction for transfer under Section 36A of the Code stands restricted in view of the provisions of Rule 4(1)(a)(i) of the Rules of 1975. In other words, while considering the grant of sanction for transfer, the Collector is prohibited from exercising discretion for permitting transfer of land even if it is to be used by the transferee for bonafide agricultural purpose or of like nature. Notwithstanding the Collector being satisfied that a tribal transferor deserves to be granted permission to transfer his occupancy, discretion cannot be exercised in that regard only for the reason that the non-tribal transferee intends to continue to use the land for agricultural purpose.

21. It is to be borne in mind that Rule 4(1) refers to various

contingencies on the basis of which the Collector can grant sanction for transfer under Section 36A of the Code. Such transfer can be effected in various forms including sale, lease, mortgage, exchange etc. The manner in which such transfer can be effected have been enumerated. This would indicate that transfer of occupancy by a tribal through various modes is permitted. The only restriction or fetter on the exercise of such discretion by the Collector is to ensure that the contingencies stipulated under Rule 4(1) are satisfied. Within the aforesaid statutory provisions, the Collector has full discretion on the basis of which he may or may not grant sanction under Section 36A. It therefore cannot be said that the discretion conferred on the Collector while considering the grant of sanction under Section 36A is restricted in any manner whatsoever. The Collector can exercise his discretion in accordance with law within the statutory framework and there is no restriction placed in that regard. In these facts, the ratio of the decisions in *Shri Rama Sugar Industries Ltd, Mohd Ismail and others, Anahita Pandole and Shiva Petro-Synth Specialities Ltd (supra)* cannot be applied to the present case.

22. Under Rule 4(1)(a)(i) of the Rules of 1975, it is permissible for a tribal to transfer his occupancy if the non-tribal transferor intends to use the said land for bonafide non-agricultural purpose. If transfer of an occupancy to a non-tribal who intends to use it for agricultural purpose is

not permissible, there would be no occasion whatsoever for the Collector to entertain such application since it would be beyond the purview of Rule 4(1)(a)(i) of the Rules of 1975. The question of exercising discretion would therefore be only within the permissible limits of Rule 4(1)(a)(i) and not de hors the same. Once it is found that the restriction placed on a tribal on the transfer of his occupancy to a non-tribal for agricultural purpose is reasonable in nature, it cannot be said that the discretion to be exercised by the Collector in this regard is restricted. Within the contingencies indicated in Rule 4(1), the Collector has the entire discretion and he can consider the request for grant of sanction for transfer under Section 36A of the Code. We therefore do not find that the ground raised by the petitioner that the discretion conferred on the Collector in the matter of grant of sanction under Section 36A of the Code being restrictive in nature is bad in law deserves acceptance. The observations of Starling J in *Gell* (supra) do not further the case of the petitioner.

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

petitioner.

In this regard, we may only refer to the observations of the Supreme Court in *Motor General Traders Vs. State of A. P.,* 1983 INSC 163 which read as under:-

> *"It is argued that since the impugned provision has been in existence for over twenty three years and its validity has once been upheld by the High Court, this Court should not pronounce upon its validity at this late stage. There are two answers to this proposition…….*
>
> *The second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. "Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported"*

We have accordingly dealt with the challenge raised to the validity of Rule 4(1)(a)(i) on its merits and we do not find any reason to uphold the same. Individual hardship by itself cannot be a ground to hold a provision to be invalid or unworkable especially in the light of the fact that such provision has been enacted keeping in mind the Directive Principles

under Article 46 of the Constitution of India for the larger good and welfare of tribals. In absence of any restriction on a tribal such as the petitioner to transfer his occupancy in favour of any other tribal who can use it for agricultural purpose or in favour of any other non-tribal if the land is to be used for bonafide non-agricultural purpose, the insistence for transferring the occupancy in favour of a non-tribal transferor to enable its use for agricultural purposes cannot be countenanced. The challenge as raised to the validity of Rule 4(1)(a)(i) of the Rules of 1975 therefore fails.

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

25. For all these reasons, we do not find any merit whatsoever in the challenge raised to the validity of Rule 4(1)(a)(i) of the Rules of 1975. The writ petition is therefore dismissed. Rule stands discharged with no orders as to costs.

[RAJESH PATIL, J.] **[A.S. CHANDURKAR, J.]**