

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No.	W.P. No.3730/2021
Parties Name	M/S Mohbe Infrastructure A Partnership Firm vs. State of M.P and others.
Date of Order	03/03/2021
Judgment delivered by	Justice Vishal Dhagat
Whether approved for reporting	yes
Name of counsels for parties	Petitioners: Shri Sankalp Kochar, Adv. Respondents: Shri Anuj Shrivastava, Panel Advocate.
Law laid down	<p>(i) Land of tribal in notified scheduled area shall not be transferred or transferable by way of sale or otherwise or as consequence of loan transaction to a non-tribal. Collector has no jurisdiction to grant permission in aforesaid case of transfer's referred above.</p> <p>(ii) In non notified areas i.e. rural areas and villages, tribal can transfer his land to a non-tribal after seeking written permission of Collector.</p> <p>(iii) Explanation of Section 165 (6) M.P. Land Revenue Code carves out an exception that word "otherwise" mentioned in said sub Section shall not include lease. This means that in notified scheduled areas or in non-notified rural areas, there is no bar for entering into lease between tribals and non-tribals and permission of Collector for lease is not required.</p> <p>(iv) In scheduled notified areas, non-tribal cannot transfer his non-agricultural land i.e. land for purpose of dwelling house, educational purpose, commercial purpose, industrial purpose (diverted land) by sale or otherwise or as a consequence of loan transaction to non-tribal without written permission of Collector. In simple words, diverted land of non-tribals cannot be transferred to non-tribals without permission of Collector if located in notified scheduled areas.</p>

	<p>(v) Section 165 (6-a) M.P. Land Revenue Code does not carves out an exception for word 'otherwise' for leases which means any land located in notified scheduled areas non-tribal cannot execute a lease in favour of other non-tribal without written permission of Collector.</p> <p>(vi) As per Section 165 (6) and 165 (6-a) of M.P. Land Revenue Code, there is no bar to purchase a land by tribal. A tribal can purchase a land from another tribal and also from a non-tribal and permission of Collector for such transactions are not required.</p> <p>-</p>
Significant paragraph numbers	8, 10, 11 and 12

(ORDER)
(03.03.2021)

Petitioner has filed the present writ petition challenging order dated 25.11.2020 contained in Annexure-P/15.

2. It is submitted by counsel appearing for petitioner that petitioner is a partnership firm which had purchased land bearing Khasra No.102/1 and Khasra No.102/2, admeasuring total 1.475 hectares. Petitioner firm developed Real Estate Project 'Betul Pride' on a part of said land. All requisite permissions were obtained. It is submitted that subsequent purchasers were Scheduled Castes and were granted approval in legal search report of Canara Bank. Respondent No.3 i.e. State Bank of India expressed inability to sanction loan on the project as land which is sought to be mortgaged belongs to purchaser who is from Scheduled Tribe category. Bank expressed that permission of Collector was required under relevant provisions of M.P. Land Revenue Code. When subsequent purchaser approached Collector for getting permission under Section 165(6) of M.P. Land Revenue Code, the same was rejected on the ground that there is ban on transfer including creation of

mortgage. It is submitted that Collector ignored the recommendation of S.D.O. as well as Patwari to grant permission.

3. Perused the order dated 25.11.2020 contained in Annexure-P/15.

4. An application was filed before Collector seeking direction that provision of Section 165 (6) of M.P. Land Revenue Code is not attracted in case of project under RERA and diverted land accordingly bank may not ask for Collector's permission under Section 165 (6) of M.P. Land Revenue Code for mortgaging the land. Counsel for petitioner relied on the judgment dated 02.11.1972 passed by this Court in *M.P. No.535/1971 (Ail Das Vs. Board of Revenue, Madhya Pradesh and others)* and order dated 02.01.2013 passed in **W.P. No.2608/2012 (Kamal Singh Narre Vs. State of M.P. and others)**. Collector has wrongly dismissed the application on the ground that land in question is located in notified scheduled area i.e. Batama, Betul. Notification is issued by State Government on 21.02.1977 by which, Betul Tehsil area was notified to be Scheduled Tribe predominant area. Collector wrongly held that there is complete ban on transfer of land from Scheduled Tribe to a Non-scheduled Tribe person and, therefore, Collector does not have jurisdiction to grant permission and no direction can be given to bank because it is province of bank to decide what documents are required for loan.

5. Counsel appearing for respondent/State opposed the prayer of petitioner. It is submitted by him that provisions of Section 165(6) of M.P. Land Revenue Code is attracted in the case. As per said provisions, no land situated in notified scheduled area predominantly inhabited by aboriginal tribes be transferred either by way of sale or otherwise in consequence of transaction of loan to a person not belonging to such tribe. It is submitted by

him that there is no error in order passed by Collector. He relied on judgment passed in W.A. No.431/2005 dated 19.01.2016.

6. Heard the counsel for petitioner as well as respondents/State.
7. Case of **Ail Das** and **Kamal Singh Narre (supra)** relied by petitioner are distinguishable. In **Ail Das (supra)** land was located in urban area and in case of **Kamal Singh Narre (supra)** condition imposed to develop colony was under challenge. Collector rightly held said cases are not applicable in present case.
8. It is clear from perusal of Section 165(6) (i) of M.P. Land Revenue Code that transaction of land by Bhumiswami belonging to a Scheduled Tribe which is located in the area notified by the State Government to be a scheduled area inhabited by predominantly aboriginal tribe cannot be transferred to a non-scheduled tribe by way of sale or otherwise or in consequence of loan transaction. No power is given to Collector to grant permission to a Scheduled Tribe to transfer his land to non-tribal person in respect of land located in a notified scheduled area predominantly inhabited by aboriginal tribe. However, in land which are located outside the notified scheduled area, Collector can grant permission to a tribal to transfer his land to a non-tribal.
9. Collector has held that land in question is situated in notified scheduled area, therefore, he has no jurisdiction to grant permission for transfer of land and it was further held that he cannot give any direction to Bank to ask for particular documents for grant of loan, it is within the province of Bank to decide that which document is required by it for granting of loan.

10. Counsel for petitioner submitted that his land is a diverted land, therefore, provision of Section 165 (6) of M.P. Land Revenue Code, 1959 will not be applicable. Section 165 (6) and Section 165 (6-a) of the Code is quoted as under:-

“165. Rights of transfer. - (1) Subject to the other provisions of this section and the provision of Section 168 a bhumiswami may transfer [***] any interest in his land.

(6) Notwithstanding anything contained in sub-section (1) the right of bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe by the State Government by a notification in that behalf, for the whole or part of the area to which this Code applies shall-

(i) in such areas as are predominately inhabited by aboriginal tribes and from such date as the State Government may, by notification, specify, not be transferred nor it shall be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe in the area specified in the notification;

(ii) in areas other than those specified in the notification under clause (i), not to be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to such tribe without the permission of a Revenue Officer not below the rank of Collector, given for reasons to be recorded in writing.

(6-a) Notwithstanding anything contained in sub-section (1), [the right of a bhumiswami other than a bhumiswami belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6), in the land excluding the agricultural land] shall not be transferred or be transferable either by way of sale or otherwise or as a consequence of transaction of loan to a person not belonging to aboriginal tribe without the permission of the Collector given for reasons to be recorded in writing:

Provided that every such transfer effected [after the 9th day of June, 1980 but before the 20th April, 1981] which is not in accordance with the provisions herein contained shall, unless such transfer is ratified by the Collector in accordance with the provisions hereinafter contained, be void and shall be of no effect whatsoever, notwithstanding anything contained in this Code or any other law for the time being in force.”

There is no force in argument of petitioner that Section 165 (6) of the Code is not applicable on diverted lands. Even in diverted lands which are diverted for other than agricultural purposes i.e. for dwelling houses, educational purpose, commercial purpose, industrial purpose are assessed to

land revenue and it cannot be said that Section 165 (6) of M.P. Land Revenue Code, 1959 is not applicable on such lands. If land in question is located in an urban area, and falls within Municipal limits, then provision of Section 165(6) of Land Revenue Code will not be applicable. Petitioner does not have a case that land of petitioner falls in an urban area which falls within municipal limits but is relying on the fact that diversion has been done, therefore, provision of Section 165 (6) of M.P. Land Revenue Code will not be attracted in his case, is misconceived. Any land whether diverted or non-diverted agricultural land, which is situated in notified area, the transfer of any interest shall be regulated as per provision of Section 165 (6) of M.P. Land Revenue Code. Even on diverted land, provisions of Section 165 (6) of M.P. Land Revenue Code shall be applicable. However, lease which is executed by Tribal in favour of Non-Tribal in notified Scheduled area is not barred. Explanation to Section 165 (6) lays down that expression 'otherwise' shall not include lease. Explanation signifies transfer of land by sale or consequence of loan transaction or otherwise in notified Scheduled area is completely barred but expression 'otherwise' shall not include lease, therefore, lease is permissible in notified Scheduled area. Further as per Section 165 (6-a) of MP Land Revenue Code rights of Bhumiswami who is non-tribal having non-agricultural land (diverted land) in notified Scheduled area shall not be transferred or transferable by sale or otherwise or as a consequence of loan transaction to a non-tribal person without permission of Collector. Thus, interest in diverted land of non-tribal shall not be transferred to non-tribal by way of sale or otherwise or as a consequence of loan transaction without permission of Collector. Proviso to

Section 165 (6-a) of MP Land Revenue Code is not considered as same is not in issue in present case.

11. In view of aforesaid, Section 165(6) and 165 (6-a) of M.P. Land Revenue Code are summed up as under:-

(i) Land of tribal in notified scheduled area shall not be transferred or transferable by way of sale or otherwise or as consequence of loan transaction to a non-tribal. Collector has no jurisdiction to grant permission in aforesaid case of transfer's referred above.

(ii) In non notified areas i.e. rural areas and villages, tribal can transfer his land to a non-tribal after seeking written permission of Collector.

(iii) Explanation of Section 165 (6) M.P. Land Revenue Code carves out an exception that word "otherwise" mentioned in said sub Section shall not include lease. This means that in notified scheduled areas or in non-notified rural areas, there is no bar for entering into lease between tribals and non-tribals and permission of Collector for lease is not required.

(iv) In scheduled notified areas, non-tribal cannot transfer his non-agricultural land i.e. land for purpose of dwelling house, educational purpose, commercial purpose, industrial purpose (diverted land) by sale or otherwise or as a consequence of loan transaction to non-tribal without written permission of Collector. In simple words, diverted land of non-tribals cannot be transferred to non-tribals without permission of Collector if located in notified scheduled areas.

(v) Section 165 (6-a) M.P. Land Revenue Code does not carves out an exception for word 'otherwise' for leases which means any land located in notified scheduled areas non-tribal cannot execute a lease in favour of other non-tribal without written permission of Collector.

(vi) As per Section 165 (6) and 165 (6-a) of M.P. Land Revenue Code, there is no bar to purchase a land by tribal. A tribal can purchase a land from another tribal and also from a non-tribal and permission of Collector for such transactions are not required.

12. In view of aforesaid, diverted land if situated in notified scheduled areas belonging to a non-tribal, then there is requirement of permission of Collector to transfer the land in favour of a non-tribal. However, a land belonging to non-tribal in notified scheduled area can be transferred in favour of a tribal and permission of Collector is not required.
13. In view of same, respondents are directed to act in accordance with aforesaid directions.
14. With aforesaid direction, writ petition filed by the petitioner is **disposed off**.
15. A copy of order be sent to Principal Secretary, Department of Revenue and the Collectors posted in notified scheduled areas.

(VISHAL DHAGAT)

JUDGE