
(2003) 08 BOM CK 0050
In the Bombay High Court
Case No : Writ Petition No. 143 of 1990

Anjuman-e-Talim-e-Jamhoor	Vs	APPELLANT
Rama Kalu Sonawane and Others		RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Citation : (2004) 1 ALLMR 174 : (2004) 3 BomCR 414

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : R.G. Ketkar, for the Appellant; Y.V. Patil for Respondents 2A, 2B and 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—Both these Writ Petitions can be disposed of together by common Judgment.

2. The property involved in the present Petitions is bearing Survey No. 199/3 admeasuring 0.88 areas and Survey No. 200/2 admeasuring 0.64 areas (in Writ Petition No. 143 of 1990) and Survey No. 199/2 admeasuring 0.91 areas (in Writ Petition No. 1063 of 1990), situated at Village and Taluka Malegaon, District Nasik. The record indicates that these properties were originally held by private Respondents 1 to 6, as inferior Village Watan lands i.e. Bhil Inams. After abolition of Watan, the lands were re-granted to the Respondents on 2nd January, 1963. On account of resumption of land and re-grant in favour of Respondents, they have become absolute owners of the suit lands. The lands were agricultural lands at the relevant time. After the re-grant, the Respondents entered into agreement with the Petitioner on two different dates, first on 11th June, 1964 in respect of Survey No. 199/2 and the second on 6th January, 1968 in respect of Survey Nos. 199/3 and 200/2 respectively. Later on, the authorities initiated suo motu action for restoration of the lands, as both the transactions were covered by the prohibition provided by the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. Accordingly, the authorities initiated proceedings for

restoration of lands to the Respondents, as both the transactions were void, having been entered between 1st April, 1957 and 6th July, 1974. The said proceedings were initiated on the assumption that the Respondents belong to Bhil Community which was a Scheduled Tribe covered by the relevant provisions, for which, the Act of 1974 could be invoked for restoration of lands disposed of by them during the relevant period. The Respondents specifically stated on oath that they belong to Bhil Tribe and that assertion was not controverted and any positive evidence adduced by the Petitioner to challenge that position. Accordingly, the authority proceeded on the premise that the Respondents belong to Schedule Tribe which is Bhil Tribe and having found that the subject transactions were affected by the provisions of the Act of 1974, directed restoration of lands in favour of the Respondents by Judgment and Order dated May 6, 1988. Against the said common decision, the Petitioner along with legal heir and legal representative of deceased Mohammed Hasan Mohammed Hanif i.e. Mohammed Ayyub Mohammed Hasan preferred two separate appeals before the Maharashtra Revenue Tribunal at Mumbai. In the said appeals, essentially two contentions were raised, which are also pressed into service in the present Writ Petitions. The first contention was that Respondents 1 to 6 did not belong to tribal community and unless the competent authority was to adjudicate that issue, no order of restoration of lands in their favour could be passed for invoking provisions of Act of 1974. The second point argued was that the lands were already put to non-agricultural use before 6th July, 1974 and for which reason, by virtue of provisions of Section 4 of the Act of 1974, the lands were extricated from the application and rigours of that Act. Both these contentions have been considered by the Tribunal and negatived by the impugned Judgment and order dated 29th November, 1988. Against that decision, the present Writ Petitions have been filed raising common grounds, which were already pressed into service in appeal preferred before the Tribunal.

3. In so far as the first contention is concerned, to my mind, no fault can be found with the Tribunal for having negatived the same on the ground that the assertion made by the Respondents 1 to 6 on oath that they belong to Bhil Tribe which is classified as Schedule Tribe, remained unchallenged and uncontroverted. For the first time, however, in Appeal preferred before the Tribunal, the Petitioner attempted to challenge the status of Respondents 1 to 6. No positive material has been brought on record in support of the position. To overcome this drawback, Mr. Kethar for Plaintiff contends that the question as to whether the Respondents 1 to 6 belong tribal community or not, could be decided only by the expert committee, namely; the Caste Scrutiny Committee, and that, neither the first authority nor the tribunal in appeal, could have adjudicated that aspect of the matter. Reliance has been placed on the decision of Daulat Dhana Mail (deceased) by legal heirs Vs. The State of Maharashtra and Others, to buttress this submission. To my mind, the said decision has no application to the fact situation of the present case. In that case, it is seen that before the first authority, the specific objection was taken that the Respondent No. 2 in that case

did not belong to tribal community, as he was a Muslim Pathan. In spite of that objection, the authority proceeded to decide the issue and in fact, answered that plea on merits. It is in that context, this Court in Daulat Dhana Mali's case (Supra) observed that such an issue when raised, can be decided only by the Scrutiny Committee. Whereas, in the present case, the testimony of Respondents 1 to 6 that they belong to Bhil Tribe which is classified as Scheduled Tribe has gone unchallenged. Moreover, the record clearly establishes that the suit lands were originally governed by inferior village watan lands i.e. Bhil Inams. After the abolition of Watan, the lands have been re-granted to Respondents 1 to 6 since they were Watandars, which presupposes that they belong to Bhil Tribe. That position cannot be countered merely on the basis of the bare words of the Petitioner. Understood thus, no fault can be found with the view taken by the appellate authority that the objection regarding status of the Respondents 1 to 6 is without any substance. Whereas, it will have to be presumed that the said Respondents belong to Bhil Community, which is classified as Scheduled Tribe in the Constitution of India.

4. That takes me to the second contention that the subject land was put to non-agricultural use prior to 6th July, 1974. This is essentially question of fact. Both the authorities below have, on the basis of the relevant materials on record, found that the lands were transferred in favour of Mohammed Hasan Mohammed Hanif on 15th July, 1964 and 17th January, 1968 by registered Sale Deed. The contemporaneous record reveals that till 1977, the said lands were held by said Shri Mohammed Hasan Mohammed Hanif. There is no entry in the village record that the lands were put to non-agricultural use by the said Shri Mohammed Hasan Mohammed Hanif. To overcome this position, the argument proceeds on the basis that although the lands were purchased in the name of Mohammed Hasan Mohammed Hanif, they were purchased for the benefit of the Petitioner Trust, which is an educational institute, and after the purchase, the Petitioner Trust immediately put the subject lands to non-agricultural use by utilising the same as play ground for the School. However, the authorities below on analysing the materials on record, has found as a fact that the suit lands were not used for non-agricultural use on or before 6th July, 1974. That finding is unexceptionable. It is not open for this Court to interfere with the said finding of fact as returned by the two authorities below, which is founded on materials on record, and even remotely, cannot be suggested to be perverse or untenable or manifestly wrong. If that is so, no fault can be found even with the second issue answered by the Appellate Authority. Accordingly, no fault can be found with the conclusion reached by the Maharashtra Revenue Tribunal in dismissing both the appeals preferred by the Petitioner. No other contention has been raised before this Court.

5. In the circumstances, both the Writ Petitions fail and the same are dismissed. No order as to costs.