

(2009) 06 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No's. 365 and 366 of 2009

Ashok Laxman Attarde and Others

APPELLANT

Vs

Atmaram Bhanu Saindane and Another

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3, 3(4)

Maharashtra Restoration of Lands to Scheduled Tribes Rules, 1975 — Rule 3

Citation : (2009) 6 BomCR 231

Hon'ble Judges : Gavai B.R., J

Bench : Single Bench

Advocate : S.D. Kulkarni, in W.P. Nos. 365 and 366/2009, for the Appellant;
S.R. Barlinge and Vijay B. Patil, in W.P. No. 365/2009 and in W.P. No. 365/2009,
for respondent Nos. 1 to 13 and P.M. Shinde, A.G.P. in W.P. No. 365/2009 and in
W.P. No. 365/2009, for the Respondent

Final Decision : Dismissed

Judgement

Gavai B.R., J.—By way of Writ Petition No. 365/2009, the petitioners have challenged the order dated 3rd December 2008 passed by the learned Member of the Maharashtra Revenue Tribunal, Mumbai, in Appeal TRB No. 197/B/2008, thereby dismissing the appeal filed by the present petitioners and confirming the Order dated 30th May 2008, passed by the Tahsildar, Dharangaon, in Aadivasi Case No. 1/2004.

2. By way of Writ Petition No. 366/2009, . the petitioners have challenged the order dated 3rd December 2008, passed by the learned Member of the Maharashtra Revenue Tribunal, Mumbai, in Appeal TRB No. 198/B/2008, thereby dismissing the appeal filed . by the present petitioners and confirming the order dated 30th May 2008, passed by the Tahsildar, Dharangaon, in Aadivasi Case No. 1/2002.

3. The facts, in nutshell, giving rise to the present petitions are as under:

(i) S/Shri Kautik Narayan, Waman Narayan, Damu Narayan and Bhaidas Narayan Koli, who are predecessors in title of the present respondents Nos. 1 to 13, have transferred land Gut No. 103 (Old Survey No. 35/1/A), admeasuring 90-R to deceased Laxman Gotu Attarde, father of the present petitioners, for a consideration of Rs. 11,500/-. The petitioners' predecessor in title and the petitioner are in possession of the said lands since then.

(ii) The respondent Nos. 1 to 13, through respondent No. 13, filed Adivasi Case No. 1/2002 before the Tahsildar, Dharangaon, for possession of the disputed lands as per the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (For short, hereinafter referred to as "the said Act"). In the other proceedings, the caste claim of the respondent No. 13 herein was being verified by the Competent Authority i.e. Caste Certificate Scrutiny Committee. The Caste Certificate Scrutiny Committee, vide order dated 13th March 2006, has rejected the claim of respondent No. 13 as belonging to "Tokre Koli", Scheduled Tribe. The respondent No. 13, being aggrieved thereby, had approached this Court by way of Writ Petition No. 3081/2006. It is to be noted that the present petitioner No. 1 was impleaded as respondent No. 3 in the said petition. The Division Bench of this Court, vide judgment and order dated 28th July 2006, upheld the claim of the respondent No. 13 herein as belonging to "Tokre Koli", Scheduled Tribe, and directed the Scrutiny Committee to issue validity certificate in favour of respondent No. 13.

(iii) It appears that the said order was challenged by the State Government as well as the present petitioner No. 1 before the Apex Court. Since there was a delay in filing the Special Leave Petition, an application for condonation of delay was also filed. The Apex Court vide orders dated 27th May 2007 and 6th August 2007, found that there was no sufficient explanation for the delay and, therefore, dismissed the Special Leave Petitions filed by the State and the petitioner Ashok, respectively. It appears that having not succeeded before the Apex Court, the present petitioner filed a Review Petition before this Court, being Review Petition Stamp No. 18006/2007. Since the said application was also delayed, a Civil Application, being Civil Application No. 8717/2007 was also filed. This Court vide order dated 24th January 2008, had rejected the said application finding that the petitioner has failed to make out a case.

(iv) It appears from the record, that though the proceedings were pending before the respondent No. 14, on the application filed by the respondent No. 13, as a power of attorney holder of rest of the respondents, the present petitioner sought various adjournments. Presumably, the said adjournments were sought since the issue of tribal claim of respondent No. 13 was pending before the Competent Authorities. The Tahsildar finally allowed the application and directed the petitioners to hand over possession of the disputed lands to the respondent Nos. 1 to 13 vide order dated 30th May 2008. Being aggrieved thereby, the petitioners approached the Maharashtra Revenue Tribunal. The learned member of the Maharashtra Revenue Tribunal vide order dated 3rd December 2008 also

dismissed the appeal. Hence, the present petitions.

4. Mr. S.D. Kulkarni, learned Counsel appearing for the petitioners, challenges the impugned orders basically on two grounds:

(1) that, the respondent No. 14 has not followed the principles of natural justice and the procedure prescribed for deciding the application and as such, the impugned orders are violative of principles of natural justice. In this respect, he has placed reliance on the judgment of the Apex Court, in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , and (2) that, it is to be established that the vendor was belonging to Scheduled Tribe on the date of the transfer and that subsequent validity of the caste claim of one of the legal representatives of one of the original vendors, cannot bestow the original vendors with the status of Scheduled Tribe and as such, the transaction would not be hit by the provisions of the said Act. To substantiate this submission, the learned Counsel appearing for the petitioners has placed reliance on the judgment of the learned Single Judge of this Court in the case of *(Chandrabhagabai Dhondiba Gutte and Ors. v. Ladba Narayan Sidarwad) 2006(Supp.) Bom.C.R. 330*.

5. The learned Counsel appearing for the petitioners further submits that the caste claim of each of the claimants has to be determined on the basis of the independent evidence led by such claimant and merely because one of the relatives is held to be Scheduled Tribe, the other relatives cannot be ipso facto said to be belonging to Scheduled Tribe. He has placed reliance on the judgment of Division Bench of this Court, in the case of *(Vandana d/o. Narayan Sonkusare v. State of Maharashtra and Ors.) 1998(4) Bom.C.R. 432*. He has also placed reliance on the judgment of the learned Single Judge of this Court, in the case of *(Kishore S/o. Rambhau Sonkusre v. The Scheduled Tribe Caste Certificate Scrutiny Committee and Anr.) 2000(Supp.) Bom.C.R. 407*.

6. Mr. P.M. Shinde, learned Assistant Government Pleader, appearing for the respondent State, and Mr. S.R. Barlinge and Mr. V.B. Patil, learned Counsel appearing for the respective respondents, have submitted that the Tahsildar has passed the order after giving ample opportunity of hearing to the petitioners. They have submitted that inspite of grant of ample opportunity, the petitioners have failed to prove their case before the authority and as such, no interference is warranted.

7. No doubt, that by now it is settled law, that every action of the State which results into adverse civil consequences, has to be preceded by the principles of natural justice. Even if a statute does not provide for observance of principles of natural justice, the requirement of observance of principles of natural justice is required to be read in the said statute, unless expressly or by necessary implication, the said requirement is excluded.

8. In the present case, the rules framed under the said Act, which are notified as "The Maharashtra Resettlement of Lands to Scheduled Tribes Rules, 1975",

provide the procedure prescribed for conducting the enquiry for restoration of land, under Rule 3 of the said Rules. From the perusal of the record and from the affidavit in reply, it can clearly be seen that the respondent No. 14 has followed the requirements of the Rules. From the record, it is clear that though the application was filed in the year 2002, the matter was adjourned on various dates. The present petitioner had sought as many as 48 dates and accordingly last chance was given to the petitioner to make his submissions on 16th April, 2008. The present petitioner remained absent on 16th April, 2008. From the affidavit of the Tahsildar, it is clear that the peon had called out the name of the present petitioner on various occasions. The present petitioner did not attend the proceedings and as such, the matter was posted for orders. The Tahsildar after taking into consideration the relevant material and finding that the Division Bench of this Court has upheld the claim of respondent No. 13 as belonging to "Tokre Koli", Scheduled Tribe, came to the conclusion that the predecessors in title who had transferred the land to the father of the present petitioner, were tribal and as such, the respondent Nos. 1 to 13 were entitled for restoration of land. The said finding of fact has been affirmed by the Tribunal in its appellate jurisdiction.

9. No doubt, that the principles of natural justice are to be followed. However, the same cannot be stretched to such an extent that a party should be permitted to prolong the proceedings and even if he is absent the proceedings should still continue further at the convenience of the party seeking to delay the proceedings. The respondent No. 14, so also, the Appellate Authority have found that since the land belonged to the tribal and it was transferred to non-tribal, the respondent Nos. 1 to 13 were entitled for restoration of the land, in view of provisions of Section 3 of the said Act.

10. In so far as the contention of the petitioner, regarding the authorities not taking into consideration the costs incurred by him for improvement of the land, is concerned, as already held by the Appellate Court, the petitioner has failed to lead evidence in that respect. In any event, the determination of amount payable to the petitioner, under Clause "b" of Sub-section (4) of Section 3 would arise, after the land is restored to the tribal by the petitioner. It is undisputed that the land is still in possession of the petitioner and the possession is not yet handed over to the non-tribal.

11. Now, let us examine the second contention of the petitioner, that merely because the caste claim of respondent No. 13 is validated, ipso facto it cannot be held that the original vendors are also belonging to Scheduled Tribe and, therefore, provisions of the said Act cannot be invoked. Admittedly, the respondent No. 13 is son of one of the original vendors, Kautik, who is real brother of rest of the original vendors. All the four original vendors are sons of deceased Narayan. It is not in dispute that at the relevant time i.e. in the year 1969, there was no requirement of caste claim or tribal claim to be validated by the Caste/Tribe Certificate Scrutiny Committee. The requirement, for the first

time, to get the tribal claim or caste claim to be validated from the Scrutiny Committee was made applicable by a Government Resolution issued in the year 1985.

12. In that view of the matter, I do not find any force in the submission of the learned Counsel appearing for the petitioners, that since the caste claims of the original vendors are not validated, merely because the caste claim of the son of one of the vendors is validated, the provisions of the said Act would not be applicable. The tribal claim of the respondent No. 13, who is grandson of deceased Narayan and son of Kautik, has been held to be valid by this Court by taking into consideration all relevant aspects. It would be an absurdity to hold that though the respondent No. 13 has been held to be belonging to Scheduled Tribe, his father and his father's brothers are not belonging to Scheduled Tribe. In that view of the matter, I do not find any substance in the contention raised in this respect.

13. In so far as the reliance placed by the learned Counsel appearing for the petitioners, on the judgment of Division Bench of this Court, in the case of Vandana d/o. Narayan Sonkusare v. State (*supra*), is concerned, this Court has considered that the claim of the daughter could not be held to be valid merely because the father of the said petitioner was recognized as Scheduled Tribe. It can be seen that in the said case, claim of the father was not validated on merits and as such, it was held that the petitioner was required to establish her claim by adducing the document in support of the claim. In the case of Kishore s/o. Rambhau Sonkusre (*supra*) also, the reliance on the earlier certificates was found to be not relevant since the earlier claims were not decided on merits. In that view of the matter, I do not find that the reliance placed by the learned Counsel appearing for the petitioners, on these judgments, would be of any assistance to the case of the petitioners.

14. For the foregoing reasons, I do not find that any case is made out by the petitioners for interference in exercise of extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. The petitions are devoid of any substance.

15. In the result, the petitions are dismissed.

16. At this stage, Mr. S.D. Kulkarni, learned Counsel appearing for the petitioners, prays for continuation of the status quo, which was granted earlier by this Court, for a period of four weeks. The prayer is opposed by the learned Counsel appearing for the respondents.

17. However, taking into consideration the view that I have taken, I do not find that a case is made out for extension of status quo which was granted earlier. Hence, the said prayer is rejected.