

(2004) 01 BOM CK 0080
In the Bombay High Court
Case No : Writ Petition No. 1352 of 1990

Bapurao Telrandhe

APPELLANT

Vs

Shalik Rambhau Sarate and Others

RESPONDENT

Date of Decision : 07-01-2004

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 36, 36(3)

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 2(1), 4

Citation : (2004) 3 ALLMR 450 : (2004) 4 BomCR 738 : (2004) 3 MhLj 1095

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : Ramesh Darda, for the Appellant; V.Y. Pradhan, for respondent No. (i) to (v) and Kothari, A.G.P. for respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—Rule taken up for final hearing with the consent of the parties.

2. Invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, in this petition the order dated 28-2-1990 passed by the Member, Maharashtra Revenue Tribunal, Nagpur (for short, the Tribunal) confirming the order of the Tahsildar restoring the suit field to the respondent No. 1 and setting aside the order of the Tahsildar by which compensation was determined and remanding the matter back to the Tahsildar for fresh enquiry in relation to value of the improvement made by the petitioner in the suit field and then to pass fresh order to that extent is under challenge.

3. Brief facts so far as relevant for the purpose of this petition are as under :

The deceased Rambhau Durga Sarate is the owner of agricultural land bearing survey No. 2-9/5 admeasuring 3.25 acres and survey No. 2-9/1 area 7.25 acres, total area 10.50 acres. This land was sold by the deceased by virtue of registered sale deed dated 23-4-1974 to the petitioner for a consideration of Rs. 16,000/-. The deceased Rambhau-respondent No. 1 filed application on 13-10-1976 before

the Tahsildar with the contention that he belongs to Gond by caste which is a Scheduled Tribe caste. The land was transferred in favour of the petitioner who is "non-tribal, and therefore, the deceased claimed restoration of the suit field. The Tahsildar held enquiry into the proceedings which was numbered as Revenue Case No. 109/59(13)/82-83 and recorded finding that the deceased was entitled for the restoration of the suit land to him in view of the provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short, the Restoration Act) and consequently held that u/s 4 of the Restoration Act the suit fields, the description of which is mentioned in the order were purchased by the petitioner Bapurao Telrandhe in contravention of the provisions of the above Act and should be restored to the Tribal deceased Rambhau subject to payment of the amount of compensation which is determined therein. The petitioner being aggrieved by that order had carried the appeal before the Tribunal which was registered as Appeal No. 229/B-109/89. The Tribunal allowed the appeal partly and so far as the order of Tahsildar restoring the suit field to deceased respondent No. 1 is concerned, has confirmed the said order but set aside the order of the Tahsildar by which the compensation was determined and remanded the matter back to the Tahsildar for fresh enquiry in respect of determination of the value of the improvement made by the petitioner in the suit field. This order is under challenge in this petition.

4. Mr. Darda, the learned counsel for the petitioner contended that deceased Rambhau had entered into an agreement of sale of the suit land with the petitioner on 7-1-1972 for consideration of Rs. 10,000/- and on receiving an earnest amount of Rs. 1,500/-, the possession of the land was also delivered on the same day. It was agreed upon between the parties that the permission from the competent authority would be obtained for the said transaction, and therefore, application was submitted to the Sub Divisional Officer on 10-4-1974 and thereafter the Sub Divisional Officer granted permission for the said transaction of sale. He further contended that thereafter the sale deed was executed by the deceased Rambhau in favour of the petitioner on 23-4-1974 and the sale deed was duly registered. Mr. Darda further contended that the said permission was granted by the Sub Divisional Officer in view of the provisions of Section 36 of the Maharashtra Land Revenue Code, 1966 (For short, the M.L.R. Code), and therefore, it cannot be said that the transaction of sale was in contravention of the provisions of the Restoration Act. He further contended that the deceased Rambhau did not prove during the enquiry that he belongs to Gond Scheduled Tribe, and therefore, the transaction is not covered by the provisions of the Restoration Act.

5. He further contended that the proceedings were filed before the Sub Divisional Officer and later on the proceedings were transferred on the file of Tahsildar and both the parties had given an undertaking for amicable settlement of the matter and therefore, the proceedings were dropped. He further contended that two conditions are required in view of Section 3(3) of the Restoration Act; (1) that a person is entitled to the restoration of land if he undertakes to cultivate the land

personally, and (2) the land is to be restored on determination of the amount of compensation which is to be paid to the non-tribal transferee. He contended that in such circumstance, the impugned order passed by the Tribunal is not sustainable in law.

6. The respondent Rambhau Sarate died during the pendency of this petition and his legal representatives have been brought on record of this petition.

7. The learned counsel for the respondents contended that the respondent No. 1 filed application for restoration of possession of the suit field under the provisions of the Restoration Act on the grounds that he was originally the owner and by registered sale deed dated 23-4-1974, he transferred the said land in favour of the petitioner and that the transfer of the suit field was during the prohibited period commencing from 1-4-1957 and ending on 6-7-1974 and as such the respondent No. 1 is entitled to the restoration of the land under the provisions of the Restoration Act since there is transfer between the tribal and non-tribal and during the period as contemplated u/s 2(1)(i) of the Restoration Act. The learned counsel further contended that respondent No. 1 belongs to Gond by caste which is a tribal caste, and therefore, the authorities below after making enquiry, rightly ordered restoration of the land and thus the impugned order dated 18-9-1989 passed by the Tahsildar and the order passed by the Tribunal on 28-2-1990 are perfectly legal and valid and no interference into those orders is warranted. In support of these submissions the learned counsel relied on the decision of the Division Bench of this Court in *Kashibai v. State of Maharashtra* 1993 Mh.L.J. 1168.

8. I have given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is not in dispute that deceased respondent No. 1 is the owner of the agricultural land which is the subject matter of the dispute and he had transferred it by way of registered sale deed dated 23-4-1974 in favour of the petitioner. It is also not in dispute that prior to that the respondent No. 1 had entered into an agreement of sale of the suit land for consideration of Rs. 10,000/- and on receiving an earnest amount of Rs. 1,500/-, the possession was delivered to the petitioner.

9. Now it would be relevant to note that the Restoration Act came into force on 1-11-1975. Sub-section (3) of Section 3 of the Restoration Act contemplates as under:

"The Tribal transferor shall, notwithstanding anything contained in any law for the time being in force in the State, be entitled to restoration of land under this section only if he undertakes to cultivate the land personally and to pay such amount to the non-Tribal transferee as the Collector may, under the provisions of Sub-section (4), determine :

Provided that, in the case of a minor, the undertaking may be given by his guardian, and in the case of any other person under disability by his authorised agent".

10. However, Section 2(1)(i) contemplates as under :

"transfer" in relation to land means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on the 6th day of July 1974, either --

(a) by act of parties, whether by way of sale, gift exchange, mortgage or lease or any other disposition made inter-vivos, or

(b) under a decree or order of a court, or

(c) for recovering any amount of land revenue due from such Tribal, or for recovering any other amount due from him as an arrears of land revenue, or otherwise under the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force but does not include a transfer of land falling under the proviso to Sub-section (3) of Section 36 of the Code; and the expressions, "Tribal-transferor" and "non-Tribal transferee" shall be constructed, accordingly".

11. Bare reading of the relevant provisions of the Restoration Act, it would clearly reveal that all transfers by way of any mode as laid down under the provisions of Sub-section (1)(i) of Section 2 of the Restoration Act during the period 1-4-1957 to 6-7-1974 would be covered within the mischief of Section 3(3) of the Restoration Act. The only conditions are to be fulfilled by the tribal transferor; (i) that he undertakes to cultivate the land personally and (ii) He has to pay such amount to the non tribal transferee which has to be determined by the Collector under Sub-section (4) and (iii) and he belongs to tribal caste. In the present case all these conditions appears to have been fulfilled.

12. It is brought on record that the respondent No. 1 had instituted an application claiming restoration of land to him and the authorities held enquiry as per the procedure by issuance of notices dated 19-11-1976 and 18-12-1978 as is required in a prescribed form and held the enquiries. During the enquiry, the respondent No. 1 had given undertaking that he undertakes to cultivate the land personally. However, the authorities also determine the amount of compensation which was payable to the petitioner but finally the Tribunal was not satisfied with the finding of compensation determined by the Tahsildar, and therefore, remanded the matter back to the Tahsildar for determination of the amount of compensation. Be that as it may, it is obvious that the authorities below have followed prescribed procedure and held the enquiry and recorded finding that the respondent No. 1 is entitled for the restoration of the land in view of the provisions of the Restoration Act.

13. It is not disputed that the petitioner and the respondent No. 1 had obtained permission from the competent authority for the transfer and sale of land and the said order was passed by the Sub Divisional Officer on 10-4-1974. It is not in dispute that the permission was obtained as per the provisions of Sub-section (3) of Section 36 of the M.L.R Code. This provision contemplate that; "Where an

occupant belonging to a Scheduled Tribe in contravention of Sub-section (2) transfers possession of his occupancy, the transferor or any person who if he survives the occupant without nearer heirs would inherit the holdings, may, within two years of such transfer of possession, apply to the Collector to be placed in possession subject so far as the Collector may, in accordance with the rules made by the State Government in this behalf, determine to his acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding, and the Collector shall dispose of such application in accordance with the procedure which may be prescribed".

14. In view of this legal position, it is clear that though the permission for transfer of the land was obtained from the competent authority as is required under the provisions of Section 36 of the M.L.R. Code, it did not follow that said transaction could be excluded from the operation of the provisions of the Restoration Act. Sub-section (i) of Section 2 of the Restoration Act clearly prohibits transfer of land between the period 1-4-1957 to 6-7-1974, and therefore, the contention of the learned counsel for the petitioner that the transfer is not hit by the provisions of the Restoration Act, cannot be accepted.

15. The learned counsel for the respondent rightly relied on the decision of the Division Bench of this Court in the case of *Kashibai v. State of Maharashtra*, 1993 M.L.J. 1168 wherein it is held that; "Section 3(1) of the Restoration Act operates upon the past transactions between the parties in the sense that it is the land which is transferred by the tribal as defined in the said Act to the non-tribal also defined in the said Act in the past viz. during the period from 1-4-1957 to 6-7-1974, which is sought to be restored to him as provided in Section 3(1) of the Restoration Act. The provisions of Section 36-A are prospective and not retrospective in operation, because sub-section (1) thereof which requires the sanction of the Collector for a transfer between the tribal and the non-tribal, clearly operates as provided therein prospectively from 6-7-1974, the date of commencement of the Act No. 35 of 1974 by which it was introduced in the Code. Thus, for the purpose of Section 36A the tribal whose occupancy is being transferred to the non tribal must hold the status of a tribal on the date when such transfer is sought to be made. Although the opening words of the Explanation in Section 36 of the Code give an impression that it is applicable to Section 36 only, it is clear from the later part of the said Explanation that it is applicable to Section 36 as well as Section 36A of the Code.

Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act confers protection upon the tribal as defined in the Act. It has nothing to do with what status he held when actually the transaction was entered into by him. It could not have been the intention of the Legislature that the person claiming to be a tribal should hold the status of a tribal on the date of the transaction according to the law applicable at that time".

16. In the present case there is evidence to show that the respondent No. 1 belongs to Scheduled Tribe as is observed by the Tribunal in para 4 of the

judgment that; "Another objection was taken by the appellant that respondent No. 1 has not proved his caste. In order to cloth him as a person belonging to Scheduled Tribes, it is seen from the record that the respondent No. 1 filed the caste certificate issued to him by the Executive Magistrate, Nagpur on 18-9-1978. By the said certificate, the Executive Magistrate, certified that Rambhau s/o Durga Sarate belongs to Gond by caste which is recognised as Scheduled Tribes under the Constitution (Scheduled Tribes) Order, 1950. This objection cannot be successfully taken by the appellant. It is seen from the record that a certified copy of an application jointly filed by the appellant and respondent No. 1 before the Sub Divisional Officer, Nagpur on 7-3-1974 for obtaining permission u/s 36 of the Maharashtra Land Revenue Code. It was submitted that applicant No. 1 (i.e. respondent No. 1 in this case) is Gond and belongs to Scheduled Tribe. Since the permission u/s 36 was necessary for transfer of the occupancy by the tribal, therefore they filed the said application. It is thus clear that the appellant was aware about the caste of respondent No. 1 when he filed an application u/s 36 of the Land Revenue Code jointly. It is thus clear that respondent No. 1 belongs to Gond by caste which is recognised as a Scheduled Tribe within the meaning of explanation of Section 34 of the M.L.R. Code". In such circumstances, the contention of the learned counsel for the petitioner that the respondent No. 1 has not proved that he belongs to caste Gond is totally misconceived and liable to be rejected.

17. The next submission of the learned counsel for the petitioner is that to the best of his knowledge all the proceedings were filed by the Sub-Divisional Officer and later on Tahsildar, Nagpur on whose file proceedings were later on transferred as both the parties gave an undertaking for amicable settlement and the said proceedings were dropped. The learned counsel pointed out that this contention has not been controverted by the respondent No. 1 and as such the conditions which are required to be satisfied under the provisions of Sub-section (3) of Section 3 of the Restoration Act have not been established, and therefore, the transaction of transfer, is not hit by the provisions of the Restoration Act. This contention is also not acceptable in view of the fact that no specific ground has been taken in this petition to show that there has been any compromise or amicable settlement between the parties either during the pendency of the proceedings before the Tahsildar for restoration of lands or after that before the Tribunal.

18. On close scrutiny of the material available on record, this Court is not satisfied that there was a failure on the part of the authorities below to exercise jurisdiction which it does not have or the jurisdiction though available is being exercised in a manner not permitted by, law and failure of justice or grave injustice has occasioned thereby. In that view of the matter, it is clear that impugned orders passed by the authorities below appear to be perfectly legal and correct and no case has been made out for interference into the same. The petition stands dismissed. Rule is discharged.