
(1996) 08 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 654 of 1985

Bhujaji Ingole and Others	Vs	APPELLANT
The Additional Commissioner and Others		RESPONDENT

Date of Decision : 03-08-1996

Acts Referred:

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

Citation : (1997) 4 BomCR 123 : (1997) 2 MhLj 261

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : K.B. Bhise, for the Appellant; S.K. Kadam, A.G.P. for respondent
Nos. 1, 3 and 4, S.A. Dhengle, for the Respondent

Final Decision : Allowed

Judgement

R.G. Deshpande, J.—The only point, which needs consideration in the present petition, is as to whether the judgment given by the Additional Commissioner, Aurangabad Division, Aurangabad, in Case No. TNC/Tribal-R-109, vide his judgment and order, dated 27-3-1985 directing the petitioner to restore the field Survey No. 42/B of village Sukali, tq. Basmat, District Parbhani, to the respondent No. 2, could be sustained or not in the specific facts and circumstances as are narrated in short below.

2. The petitioners are the legal representatives of original petitioner-Bhujaji Mahadu Ingole. The original petitioner - Bhujaji did purchase the abovesaid survey number from the respondent No. 2 on 17-12-1976 by registered sale-deed and this is an undisputed fact. It is also not disputed that petitioner belonged to scheduled caste, whereas the respondent No. 2 is Andh by caste, which was not a Scheduled Tribe so declared by the Government prior to the said transaction dated 12-12-1976.

3. Andh community is included as scheduled tribe and it was so notified for the first time in the Scheduled Castes and Tribes Order (Amendment) Act, 1976 (Act

No. 108/76) on and from 27th July, 1977 and prior to that the said community was not recognised as a Scheduled Tribe.

4. The respondent No. 2 on 10th November, 1976 applied before the Tahsildar, Basmat, district Parbhani, for restoration of the land on the ground that he was entitled to get the same restored as he belonged to scheduled tribe and the person who had purchased the land was not a Scheduled Tribe. He, therefore, requested the Tahsildar u/s 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, for passing necessary orders. The learned Tahsildar registered this application as Case No. 76-ROR-2-Restoration-24 and disposed of the same by his order, dated 12th April, 1979, directing that the land Survey No. 42/B of village Sukali with an area of 5 acres, which is purchased by the petitioner be restored to the respondent No. 2 as the transaction, according to the Tahsildar, was between a tribal and non-tribal hit by the provisions of the Act. This order of Tahsildar was challenged by the present petitioner before the Maharashtra Revenue Tribunal, Aurangabad vide his Appeal No. 195/A/79/PWS/1476. According to the petitioner, the said appeal was pending. However, in the mean time, the Additional Commissioner, Aurangabad Division, Aurangabad, suo motu took up the matter and issued a notice to the petitioner asking as to why the land could not be recovered from him and restored to the respondent No. 2 since according to the Commissioner the transaction was between a tribal and a non-tribal and since according to the Commissioner, it was hit by the provisions of the Act. The respondent No. 2 was liable for the restoration of the land in question. The petitioner did appear before the Commissioner in pursuance of the notice and the Commissioner, after hearing the parties passed the order, dated 27th of March, 1985, in Case No. TNC/Adiwasi/R/109 holding that the field Survey No. 42/B, so far the area is purchased by the petitioner be restored to the respondent No. 2 on the ground that the respondent No. 2 belonged to Scheduled Tribe.

5. This judgment is challenged before this Court by the petitioner on various grounds including the ground that the order of the Commissioner deserves to be set aside because the transaction was not between a tribal and non-tribal at the relevant time and could it be said that the transaction was between non-tribals. Shri, Bhise, the learned Counsel brought to my notice, the abovesaid Scheduled Tribes and Castes Order (Amendment) Act, 1976, and further pointed out that it is absolutely clear from the record that on the date of transaction i.e. 17-12-1976 Andh community was not included as a scheduled tribe and, therefore, the transaction could not be said to be a transaction between a tribal and non-tribal but it was between non-tribals. Shri Bhise also brought to my notice a judgment reported in Vinayak Pralhadrao Naik and Others Vs. State of Maharashtra and Others, , as also the judgment of this Court in Writ Petition No. 807/86, decided on 8-7-1991 and another decision in Writ Petition No. 621-A/82, decided on 15-12-1992 and contended that it is the decision given by all the Benches that the said Act has no retrospective effect so far as the inclusion of the castes is concerned from a particular date. All the three judgments clearly

state that if on the date of the transaction a particular caste is not included in Scheduled Tribe and if it is included subsequently such a transaction could not be said to have been hit by the provisions of the present Act. I have no hesitation whatsoever in accepting the argument of Shri Bhise.

6. In view of the judgments already given by this Court as also by the Division Bench, cited *supra*, the petition deserves to be allowed.

7. The Civil Application No. 3551/96 filed on 8-7-1996 for bring the legal representatives of the petitioner stands allowed. As also the amendment application, which is filed during the course of arguments by Shri Bhise raising the only question as regards the point that the respondent No. 2 at the relevant time was not Scheduled Tribe on the date of transaction, it being an important point raised by him, and also being a law point having straight bearing on the result of this petition is also allowed. In view of the above, no decision is required on rest of the points raised in the application.

8. In the result, this writ petition is allowed. The order dated 27-3-1985 passed by the learned Commissioner, Aurangabad Division, Aurangabad, is quashed and set aside. Rule is made absolute. However, in the circumstances of the case, no order as to costs.