

(2011) 01 BOM CK 0092
In the Bombay High Court
Case No : Writ Petition No. 957 of 1991

Chandrakant Raghunath Parab, Kunjavihari Krishnaji Parab and Prabhakar Krishnaji Parab APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32M, 7
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 7, 7(2)

Citation : (2011) 4 ALLMR 278 : (2011) 3 BomCR 98 : (2011) 2 MhLj 687

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : G.J. Sabnis, for the Appellant; R.M. Patne, AGP for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—Heard the learned Counsel appearing on behalf of the Petitioners and the learned AGP appearing on behalf of Respondent Nos.1 and 2. None appears on behalf of Respondent No. 3A to 3D though they are served. The Petitioners are aggrieved by the judgment and order passed by the Additional Commissioner, Konkan Division, Mumbai, who by his order 3rd September, 1990 was pleased to set aside the order passed by the Tahsildar dated 29th April, 1981 and further gave a direction that an area of 2 Acres out of Survey No. 77 be restored to the Respondents herein.

2. Brief facts are as under-. The Petitioners are, admittedly, landlord of the entire of land-admeasure 4H, 271/2 Guntha, situated at village Chinchoti, out of Survey No. 77. Respondent No. 3 herein was a tenant in respect of the land admeasuring 2 Acres 51/2 Guntha. The proceedings u/s 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act") was initiated and order was passed in favor of Respondent No. 3, permitting him to purchase the land, admeasuring 2 Acres 51/2 Gunthas out of Survey No. 77.

Pursuant to the said order, Respondent No. 3 paid the purchase price and the certificate u/s 32M of the Act was issued in his favor. This order was challenged by the Petitioners before the Maharashtra Revenue Tribunal who by their order dated 17th September, 1970 was pleased to set aside the order passed by the Tahsildar & ALT and remanded the matter back to the Tahsildar. After the remand, the Tahsildar confirmed the order which was passed earlier in respect of area 2 Acres and 51/2 Gunthas and the proceedings in respect of the balance portion of the land; namely 4 Acres and 34 Gunthas was dropped. After a period of almost 9 years, the Additional Commissioner, Konkan Division suo-moto initiated and revived the said proceedings and by its order dated 3rd September, 1990 set aside the order of the Tahsildar and directed that the area of 2 Acres be handed over to the Respondent No. 3 herein.

3. The learned Counsel appearing on behalf of the Petitioners submitted that, firstly, the impugned order was passed on 3-9-1990 after the lapse of 9 years, though Section 7 of the said Act clearly provides that the Commissioner could revive the proceedings within a period of three years. He, therefore, submitted that said order was liable to be quashed and set aside on this ground alone. Secondly, it is submitted that the land in question did not belong to Respondent No. 3 and the impugned order has been passed under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. He submitted that the land did not belong to tribal since it belong to the Petitioners who were the landlord and therefore, this order should not have been passed; and lastly, he submitted that since the order was passed by the Maharashtra Revenue Tribunal, there is no question of again reviving the said proceedings sou-motu by the Additional Commissioner.

4. In my view, there is much substance in the submissions made by the learned Counsel for the Petitioners. It is an admitted position that - as far as 32-G proceedings are concerned, the order passed by the Agricultural Lands Tribunal (for short ALT) was only to the extent of 2 Acres and 51/2 Guntha land and after remand this order was confirmed by the Tahsildar by his order dated 29-4-1981. Respondent No. 3 had executed the said order and had paid the purchase price accordingly. However ,after the lapse of 9 years, the Additional Commissioner had passed the impugned order. Section 7 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 reads as under-

7. Where no appeal has been filed within the period provided by Sub-section (2) of section, the Commissioner may suo-motu on the direction of the State Government at any time-(a) call for record of any inquiry proceeding of any Collector for the purpose of satisfying himself as to the levy of propriety of any order passed by and as to the regularity of the proceeding of, such Collector, as the case may be, and (b) pass such order thereon as he thinks fit:

Provided that no such record shall be called for after the expiry of three years from the date of such order except in case where directions are issued by the State Government; and no order of the Collector shall be modified, annulled or

reversed unless opportunity has been given to the interested parties to appear and be heard.

5. Section 7 of the aforementioned Act clearly envisages that suo-motu proceedings can be initiated at the most within three years from the date of order, unless directions are issued by the State Government. Admittedly, in the present case, no such directions have been issued by the State Government, and therefore, the Commissioner did not have power to initiate the suo-motu proceedings since the period of three years had expired. On this ground, the said order will have to be quashed and set aside. The order passed by the Tahsildar Vasai dated 29th April, 1981 is restored and the proceedings initiated under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 are dropped. Writ petition is accordingly allowed in terms of prayer Clause (b).