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(1996) 07 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 1072 of 1985

Gopal Madrewar APPELLANT

Vs

Poshatti Khurd RESPONDENT

Date of Decision : 05-07-1996

Acts Referred:

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

Citation : (1997) 99 BOMLR 295 : (1997) 2 MhLj 296

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.G. Deshpande, J.—The present petition is directed against the order, dated 19.3.1983, passed by the Maharashtra Revenue Tribunal, Aurangabad in Case No. 157/A/1980-Nanded, whereby the learned Member of the Maharashtra Revenue Tribunal dismissed the appeal maintaining the order, dated 15.3.1980, passed by the Additional Tahsildar, Kinwat, in file No. 79-A-Adiwasi-CR-81. The Additional Tahsildar, by his abovementioned order, dated 15.3.1980 directed that the suit land be restored to the tribal transferors i.e. the present respondents by evicting the present petitioner-non-tribal transferee.

2. The facts of the case, in nutshell, are that the Additional Tahsildar, Kinwat, observed that one Poshatti s/o Bhojanna and his brother''s wife Bhojubai w/o Poshetti transferred the suit land bearing Survey No. 165-E, admeasuring 6 gunthas and Survey No. 165-U, admeasuring 6 gunthas, (new Survey No. 669, admeasuring 9 gunthas,) situated at village Apparao Peth, by a registered sale-deed, dated 24.4.1968, in favour of the present petitioner-Gopal s/o Jianna, for a consideration of Rs. 1,000/-. The learned Additional Tahsildar, therefore, started suo-motu proceedings u/s 3 of the Maharashtra Restoration of lands to the Scheduled Tribes Act, 1974, by issuing and serving notices in the prescribed form No. 2 under that section. On conducting the inquiry, the learned Additional Tahsildar, passed the order, dated 15.3.1980, whereby he held that the

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transferors-Poshetti s/o Bhojanna and Bhujabai w/o Poshetti were Mannerwarlu by caste and that the transferors?Poshetti s/o Bhojanna since expired, his sons - Narayan s/o Poshetti and his wife Bhodevi w/o Poshetti and that Bhojabai w/o Poshetti can be said to be the transferors of the suit land and that they were entitled to get possession of the suit land u/s 3 of the Maharashtra Restoration of lands to the Scheduled Tribes Act, 1974. He, therefore, passed the order that the suit land be restored to the tribal transferors after evicting the present petitioner-non-tribal transferee.

3. Revenue Appeal No. 157-A/80-Nanded was filed by the present petitioner before the Maharashtra Revenue Tribunal and the learned Member of the Maharashtra Revenue Tribunal maintained the order, passed by the Additional Tahsildar, Kinwat. Hence the present petition is filed by the transferee-non-tribal challenging the order of the Maharashtra Revenue Tribunal.

4. I have heard the arguments of the learned Counsel Shri D.N. Patki for the petitioner and Shri Kadam, learned Assistant Government Pleader for the State and Respondent No. 4. Respondent Nos. 1 to 3, though served, remained absent, nor are they represented by anyone before this Court.

5. The only point, which needs decision in the present matter is as to whether the transfer made by the respondents in favour of the petitioner could be said to have been hit by the provisions of the Act in question. Admittedly, the transaction of transfer by registered sale-deed of the field in question took place on 24.4.1968. It is not disputed that though the respondents belong to Mannerwarlu caste, the said caste initially was not included in the list of the Scheduled Tribes, and to be precise on the date of the transaction. It is an admitted position now that Mannerwarlu caste has been recognized as Scheduled Tribe in State of Maharashtra by virtue of the provisions of Scheduled Castes and Scheduled Tribes Orders (Amendment) Act 1976, which came into effect on 27th day of July, 1977. Before the said date, Mannerwarlu was not the caste included in the Scheduled Tribes list and till then Andh, Bhil, Gond, Kolam and Pardhan were the only five tribes which were recognized as Scheduled Tribes. The admitted position, therefore, is that on the date of the sale-deed which was effected on 24.4.1968. Mannerwarlu caste was not recognized to be the Scheduled Tribe in the State of Maharashtra.

6. Shri Patki, learned Counsel for the petitioner brought to my notice two decisions of this Court. The first being in the case of Tukaram Laxman Gandewar v. Piraji Dharmaji Sidarwar by LRs. Laxmibai 1989 Mh. L.J. 815, in which it is specifically laid down that if the tribe of a transferor is recognized to be Scheduled Tribe any time after the date of sale-deed, then he is not entitled to the benefit of the provisions of the Maharashtra Restoration of lands to the Scheduled Tribes Act, 1974. The second decision relied on by Shri Patki, the learned Counsel for the petitioner, which is brought to my notice, is an unreported judgment of this Court in Writ Petition No. 807/1986 in the case of Gemsing s/o Ramlal Chavan v. Govindu s/o Vyankanna, decided on 1.8.1991, in

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which the same view is followed relying on the judgment of the Division Bench cited above. In view of this position, the present transfer dated 24.4.1968 is liable to be declared as a transfer not by a tribal but by a non-tribal.

7. From the Judgments of the lower Court, it is seen that unnecessarily lengthy discussion is made as regards the caste of the present petitioner-Gopal so-much-so that it is said that he is son of Dasi-putra. There was no proof a regards his caste i.e. Naikpod and the certificates which he had produced as regards his caste were not considered by the Authorities below and the same are said to be of no help to him. Even assuming for the sake of argument that the petitioner did not belong to Naikpod or that he did not belong to the Scheduled Tribe caste, at the most it could be said that it was a transaction of transfer between non-tribals only and, therefore, the question of the transaction being hit by the provisions of the present Act did not arise. Consequentially, the question as regards restoration of land to the tribal also did not arise.

8. In view of the legal position above and the judgments referred to above of this Court, I have no hesitation to hold that the transaction, dated 24.4.1968 was between non-tribals only, and hence the question of restoration of the land to the respondents does not arise.

9. In the result, the judgment and order, passed by the Maharashtra Revenue Tribunal, Aurangabad, on 19.3.1983, in case No. 157/A/1980-Nanded, which arise out of the judgment and order, dated 15.3.1980, passed by the Additional Tahsildar, Kinwiat, district Nanded, in file No. 79-A-Adiwasi/CR/81, is quashed and set aside. Rule is thus made absolute with no order as to costs.

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