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(1987) 11 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 1397 of 1985

Gyandas Dama Lade (since deceased) by Lrs. — APPELLANT

Vs

State of Maharashtra and Another — RESPONDENT

Date of Decision : 18-11-1987

Acts Referred:
Maharashtra Land Revenue Code, 1966 — Section 13, 258(1)
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 6, 7, 9

Citation : (1989) 2 BomCR 10

Hon'ble Judges : M.S. Deshpande, J

Bench : Single Bench

Advocate : M.B. Badiye, for the Appellant; M.A. Garud, A.G.P., for the respondent No. 1, for the Respondent

Judgement

M.S. Deshpande, J.—This petition by the non-tribal transferee is directed against the order dated 30th June, 1985, passed by the Maharashtra Revenue Tribunal affirming the order passed by the Additional Tahsildar, Sakoli, on 15th October, 1983, reviewing his own earlier order, dated 23rd September, 1980 by which possession of only half of the land was restored to the respondent No. 2 and directed, on review, to restore the entire land of one-acre to the respondent No. 2 who was a tribal as he belonged to the Gond tribe.

2. Though several challenges were raised to the order passed by the Maharashtra Revenue Tribunal, the only point urged by Shri Badiye the learned Counsel for the petitioners, was that once having passed the order, dated 23rd September, 1980, the Additional Tahsildar, Sakoli, could not have reviewed his own order and passed the order dated 15th October, 1983, restoring the whole of the land, which had transferred by the respondent No. 2 to the petitioner by the sale-deed dated 21st April, 1970.

3. It is common ground that in the instant case the Additional Tahsildar was exercising the powers of the Collector and, therefore, he could pass the order u/s 3 of the Maharashtra Restoration of Lands to Schedule Tribes Act, 1974 (the

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Restoration Act'' for short). According to Shri Badiye, the Restoration Act enacts a complete Code for the purposes of filling appeals or revisions and prescribes the forums to which the appeals or revisions would lie, while section 9 thereof brings finality to the decision or order of Collector and decision of Revenue Tribunal Since none of the provisions of the Restoration Act expressly confers right of review on any of the authorities, it was not permissible to Additional Tahsildar to review his own order, dated 23rd September, 1980, granting restoration of only half of the land and, later on 15th October, 1983 and by reviewing the earlier order to restore the whole of the land to the respondent No. 2.

4. In order to appreciate the submissions made by the learned Counsel, it is necessary to consider some material provisions of the Restoration Act. u/s 2(1) (a), "Code" means the Maharashtra Land Revenue Code, 1966, while under Clause (b), ''Collector" includes an Additional Collector, and an Assistant or Deputy Collector exercising the powers or discharging the duties of a Collector under the Code and also any other officer not below the rank of a Tahsildar especially empowered by the State Government to exercise the powers and perform the duties of the Collector under this Act. A little digression is necessary to understand how the Additional Tahsildar came to exercise the powers of Collector in the present case. u/s 13 of the Maharashtra Land Revenue Code, by the amending Act (Maharashtra Act No. 47 of 1981) an explanation was added to the proviso to sub-section (1) of section 13. The amended section 13(1) reads as under :-

"13(1) The revenue officers of and above the rank of a Tahsildar (not being an Additional Commissioner, Assistant Commissioner, Additional Collector or Additional Tahsildar) shall exercise the powers and discharge the duties and functions conferred and imposed on them respectfully under this Code or under any law for the time being in force, and so far is consistent there with, all such other powers, duties and functions of appeal, superintendence and control within their respective jurisdiction, and over the officers subordinate to them as may from time to time be prescribed by the State Government:

Provided that, the Collector may also exercise throughout his district all the powers and discharge all the duties and functions conferred or imposed on the Assistant or Deputy Collector under this Code or under any law for the time being in force and a Tahsildar shall also exercise such powers as may be delegated to him by the Collector under the general or special orders of the State Government.

Explanation.:---In this proviso, the expression "a Tahsildar" shall include, and shall be deemed always to have included, the expression "an Additional Tahsildar".

By section 10 of the Maharashtra Act No. 5 of 1982, it was provided as follows:-

"Validation of delegation of powers of Collector to Additional Tahsildar u/s 13 of Mah. XLI of 1966 and of other proceedings.---Not withstanding anything

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contained in section 13 or in any other provisions of the Land Revenue Code, and not withstanding any judgement, decree or order of any Court or Tribunal the Additional Tahsildar who, during any period or periods before the commencement of this Act, exercised any powers of the Collector under sub-section (3) of section 36 or any other provisions of the said Code, delegated to them by the Collector under the proviso to sub section (1) of the said section 13, shall be deemed to have been validly delegated to them by the Collector during the said periods; and, accordingly, any proceedings conducted, orders passed, sanctions given, certificates issued, declarations made or other action taken by any of the said Additional Tahsildars during the said periods, in the exercise of the powers of the Collector or in the purported exercise of the powers of the Collector, shall be deemed to have been validly and affectively conducted, passed, given issued, made or taken, as the case may be, as if the powers had been duly delegated to them for such purposes, and shall not be called in question in any proceedings before any Court or Tribunal merely on the ground that the powers were not duly delegated to them or that they had no jurisdiction."

5. It is conceded by Shri Badiye that in view of this amendment, the Additional Tahsildar, who passed the order, dated 23rd September, 1980, must be deemed to have validly passed the order, in the purported exercise of the powers of Collector. u/s 36(2) of the Maharashtra Land Revenue Code, 1966, a restriction was placed on the transfer of land belonging to Scheduled Tribes, in that, such land could not be transferred except with the previous sanction of the Collector. The Restoration Act enlarges the rights of the persons belonging to Scheduled Tribes by enabling them to obtain restoration of certain lands, and sections 3 and 4 thereof deal with substantive provisions regarding restoration which is not necessary hereto extract. Under sub-section (2) of section 2 of the Restoration Act, words and expressions used in that Act but not defined shall have the meanings respectively assigned to them in the Maharashtra Land Revenue Code or as the case may be, in the relevant tenancy law. u/s 6(1) of the Restoration Act, an appeal against any decision or order passed by the Collector may, not withstanding anything contained in the Code, be made to the Maharashtra Revenue Tribunal constituted under the Code, and under sub-section (2) the period of appeal prescribed is sixty days from the date of receipt of the decision or order of the Collector. Under sub-section (3), in deciding an appeal under sub-section (1), the Maharashtra Revenue Tribunal shall exercise all the powers which a Court has, subject to their regulations framed by that Tribunal under the Code and follow the same procedure which a Court follows, in deciding appeals from the decree or order of an original Court under the Code of Civil Procedure, 1908. It is noteworthy that the forum of appeal constituted under the Restoration Act is not the same as that under the Maharashtra Land Revenue Code because instead of an appeal being taken normally to the Commissioner under the Maharashtra Land Revenue Code, the appeal is to be preferred before the Maharashtra Revenue Tribunal. What is important is that reference is made under sub-section (3) of section 6 to the procedure which the Maharashtra Revenue Tribunal shall

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follow without there being any mention to the procedure which the Collector in deciding the matters under the Restoration Act is required to follow. Section 7 refers to the powers of revision which are exercisable by the Commissioner. Section 9 is material, and it says : "Every decision or order passed by the Collector under this Act, subject to an appeal to the Maharashtra Revenue Tribunal u/s 6 and the decision of the Maharashtra Revenue Tribunal in appeal shall be final and conclusive and shall not be questioned in any suit or proceeding in any Court."

6. The submission of Shri Badiye was that once section 9 brings finality to the decision or order passed by the Collector under the Restoration Act, the power to review that decision cannot be inferred and the finality would be subject only to the decision in appeal by the Maharashtra Revenue Tribunal. This contention overlooks the provisions of Chapter XIII of Maharashtra Land Revenue Code, 1966, in the matter of appeals, revisions and review. Section 246 says that the provisions of this Chapter shall not apply to proceedings before the Maharashtra Revenue Tribunal under Chapter XV and this would explain why a reference was sought to be made specifically to the procedure to be followed by the Maharashtra Revenue Tribunal in deciding appeal under sub-section (3) of section 6 of the Restoration Act, and why no provision was specially made with regard to the procedure to be followed by the Collector in deciding the substantive rights conferred by sections 3 and 4 of the Restoration Act, by the Collector. Section 247(1) of the Maharashtra Land Revenue Code may be extracted with advantage:---

"247. (1) In the absence of any express provision of this Code, or of any law for the time being in force to the contrary, an appeal shall lie from any decision or order passed by a revenue or survey officer specified in column 1 of Schedule E under this Code or any other law for the time being in force to the officer specified in column 2 of that Schedule whether or not such decision or order may itself have been passed on appeal from the decision or order of the officer specified in column 1 of the said Schedule:

Provided that, in no case the number of appeals shall exceed two" .

Under Item 3 of Schedule E, appeals from the order passed by Collector or Assistant/Deputy Collector invested with the appellate power of the Collector would lie to the Divisional Commissioner, and as already observed, by section 6 of the Restoration Act, the forum of appeal from an order passed by the Collector under the provisions of the said Act, lies of the Maharashtra Revenue Tribunal. The sections, which follow section 247 in the Maharashtra Land Revenue Code, make elaborate provision with regard to the appeal against review or revision, periods within such appeals must be brought, condonation of delay in filling appeals and powers of the appellate authority as well as stay of execution of orders. Section 258(1) says that the State Government and every revenue or survey officer may either on its or his own motion or on the application of any party interested, review any order passed by itself or himself or any of its or his

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predecessors in office and pass such orders in reference thereto as it or he thinks fit.

7. According to Shri Badiye, the powers of review which is expressly conferred by section 258 of the Maharashtra Land Revenue Code and can be availed of by the Collector in the cases which he may decided under the said Code, would not be available in respect of the orders passed under the Restoration Act. The definition clauses of the Restoration Act make it clear that the Collector or any person exercising powers of the Collector would be included in the expressions, "Collector", as understood by section 7 of the Maharashtra Land Revenue Code, 1966. The Collector does not cease to be a revenue officer while exercising the powers conferred by the Restoration Act, and since there is no provision to the contrary in the Restoration Act, by virtue of the provisions of section 247(1) of the Maharashtra Land Revenue Code, the powers, which have been conferred by Chapter XIII would be available to the Collector, and this would include also the power to review his own orders which would flow from section 258 thereof.

8. My attention was drawn to the observations made in Anoopchand Nathmal Baid v. Maharashtra Revenue Tribunal at Nagpur 1986 (3) Bom.L.R. 15 :1986 Mh.L.J. 520 where, while considering the provision of section 111 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, it was held that the power to review under the provisions of section 322 of the Maharashtra Land Revenue Code, 1966, is not available to the Maharashtra Revenue Tribunal. But that decision was based on a comparison of the provisions of the Maharashtra Land Revenue Code and the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, the latter having made parallel provision on the subject, without providing for a review and the decision there flowed from entirely different considerations. It is, therefore, clear that the source of power to review the order, dated 23rd September, 1980, flowed from section 258 of the Maharashtra Land Revenue Code, 1966 and there was no lack of jurisdiction in the Additional Tahsildar to review his own order. The decision of the Additional Tahsildar therefore, cannot be attached on this ground.

9. No other point was pressed. I see no merit in the writ petition. Rule is discharged, but there will be no order as to costs.

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