

(2015) 02 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 1018 of 1990

Hirakant Ramchandra Kothari

APPELLANT

Vs

Yeshodabai Arjun Subhane and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32G, 32M, 74, 76
Constitution of India, 1950 — Article 227
Maharashtra Land Revenue Code, 1966 — Section 36, 36(2)(3)
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 2(1)(i), 2(j), 3, 6

Citation : (2015) 2 ABR 440 : (2015) 2 BomCR 18 : (2015) 2 MhLj 739

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

Bench : Single Bench

Advocate : S.G. Karandikar, for the Appellant

Final Decision : Dismissed

Judgement

M.S. Sonak, J.—By this petition under Article 227 of the Constitution of India, the petitioner challenges order dated 23 March 1989 made by the Tahasildar, Dahanu and the order dated 18 December 1989 made by the Maharashtra Revenue Tribunal (MRT) (impugned orders), under the provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (Restoration Act).

2. The case set out by the petitioner is that prior to the year 1957, one Ramchandra Ganpat Kore was the owner of property surveyed under No. 214, Badapokharan, Dahanu admeasuring about 2 Acres and 23 1/2 Gunthas (said property). As on 1 April 1957, which is the "the Tillers day" in terms of Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act), the petitioner was in possession of portion of the said property admeasuring 1 Acre and 12.8 Gunthas. Despite such position, the name of Arjun Marya Subhane, the predecessor in title of the respondents, came to be recorded as a tenant in the survey records. In the year 1963, proceedings under Section 32G of the Tenancy Act came to be initiated and the purchase price payable by said Arjun, was

determined by the Tahasildar by order dated 21 May 1963. The petitioner was not impleaded as a party to such proceedings. Notwithstanding the same, the petitioner continued in possession and in 1971 or thereabouts, the Tahasildar reported the factum of petitioner's possession to the Special Deputy Collector. The Special Deputy Collector, by communication dated 16 June 1972 ordered the Tahasildar to reexamine the matter, with a view to determine whether the order made on 21 May 1963, in favour of Arjun, constituted a nullity. In pursuance of the same, the Additional Tahasildar initiated fresh proceedings and made an order dated 24 March 1973, recording that in the properties surveyed under Nos. 214 and 215, there were, in all six tenants, including the petitioner and Arjun. Accordingly, by the said order, purchase price was determined as payable by the six tenants, in respect of the specified portions found in their possession. The petitioner was found in possession of portion of said property admeasuring 1 Acre and 12.8 Guntas and accordingly purchase price payable by him, was determined. This was followed by Section 32M Certificate issued in favour of the petitioner, in respect of the portion of the said property, in the petitioner's possession. It is the case of the petitioner that this order dated 24 March 1973 has attained finality for want of challenge by any of the parties thereto, including in particular the said Arjun or his successor.

3. In the year 1978 or thereabouts some issues arose in respect of said property, primarily on the ground that the same had originally been recorded in the name of Arjun M. Subhane who was admittedly a tribal within the meaning assigned to this term under Section 2(j) of the Restoration Act read with the Explanation to Section 36 of the Maharashtra Land Revenue Code, 1966 (Code). Accordingly, such issues were referred to Tahasildar, Dahanu for suitable action under the Restoration Act. Upon the demise of Arjun, his widow (respondent No. 1, against whom this petition has been dismissed as abated vide order dated 15 March 2013) took no steps for restoration under the Restoration Act. However, on 6 October 1988, Arjun's nephew, Ramesh N. Subhane (respondent No. 2) applied for restoration under the Restoration Act, even though respondent No. 1 was very much living at that time. This proceeding came to be numbered as Restoration S.R. 57 of 1988.

4. The Tahasildar, Dahanu, in the aforesaid proceedings, i.e., Restoration S.R. 57 of 1988, by order dated 23 March 1989, as held that the determination of purchase price and consequent transfer of portion of said property, in favour of the petitioner, was in breach of the Restoration Act. In furtherance thereof, the Tahasildar, Dahanu ordered for restoration of the said portion to Arjun's widow, Yeshodabai.

5. The petitioner instituted an appeal under Section 6 of the Restoration Act before the MRT against Tahasildar's order dated 23 March 1989. The MRT, by judgment and order dated 18 December 1989, has dismissed the appeal and confirmed the order dated 23 March 1989. Hence, the present petition.

6. Mr. S.G. Karandikar, learned counsel for the petitioner made the following

submissions in support of the petition.

(a) The Application dated 6 October 1988 made by Ramesh N. Subhane under the Restoration Act which led to the making of the impugned orders, was itself not maintainable in view of the following:

(i) The Application was made in the year 1988, when the period prescribed for limitation was only three years from the date of transfer. Accordingly, application was barred by the law of limitation which obtained as on 6 October 1988;

(ii) As Yeshodabai, widow of late Arjun was very much alive on 6 October 1988, Ramesh, who only claims to be nephew of late Arjun, was not a successor of late Arjun and consequently, lacked locus standi; and

(iii) The Application dated 6 October 1988 was barred by res judicata, in view of order dated 31 March 1978 made under Section 36(2)(3) of the Code, which had virtually upheld the determination of the purchase price and consequent transfer, in favour of the petitioner;

(b) The Additional Tahasildar's order dated 24 March 1973 made under the Tenancy Act had attained finality and was therefore, binding upon the parties. Such order made by the Competent Authority could never have been ignored, unless steps were taken by an aggrieved party to set aside the same or to obtain a declaration that the same was null and void. In making the impugned orders, the order dated 24 March 1973 has been ignored. This was impermissible. In this regard, reliance was placed upon the decision of the Supreme Court in case of Pune Municipal Corporation Vs. State of Maharashtra and Others, ;

(c) Finally, the impugned orders are in breach of the provisions of the Restoration Act, inasmuch as in the present case, there was no transfer from Tribal to non-Tribal . At the highest, this was the case of a statutory transfer under the Tenancy Act from the original landlord Ramchandra Kore to the petitioner. To such a transfer, the provisions of the Restoration Act are not attracted. In this regard, reliance was placed upon the decision of this Court in case of Shri Maruti K. Gite vs. Shri. Babu H. Kewari Writ petition No. 2784 of 1985 decided on 22 September 1998.

7. Mr. Amol Mhatre, learned counsel for respondent No. 2, countered the submissions made by Mr. Karnadikar. Mr. Mhatre pointed out that two Authorities had concurrently held that there was a transfer from Arjun to the petitioner and such transfer was in breach of the provisions of the Restoration Act. There is neither any perversity nor jurisdictional error involved and therefore, it was submitted that this Court ought not to interfere in the matter. Mr. Mhatre also pointed out that on the "Tillers day", i.e., 1 April 1957, the said property had vested in Arjun as the deemed purchaser under the Tenancy Act. This position was further fortified by order dated 21 May 1963 made by Tahasildar in favour of Arjun. The material on record indicates that the petitioner, a non-Tribal , paid some installments of the purchase price on behalf of Arjun in lieu of lease rent,

and on the said basis obtained a transfer of the portion of the said property. Such transfer was clearly barred under the provisions of the Restoration Act. Consequently, there is no infirmity whatsoever in the impugned orders.

8. The rival contentions, now fall for my determination.

9. In the present case, there is no dispute whatsoever that Arjun, the predecessor in title of the respondents was a Tribal within the meaning assigned to this term under Section 2(j) of the Restoration Act read with Explanation 36 of the said Code. The definition of the term "Tribal" under Section 2(j) of the Restoration Act, specifically includes his successor in interest. There is also no dispute that the petitioner in the present case, is a non-Tribal.

10. The Section 3 of the Restoration Act provides that where due to transfer, the land of a Tribal transferor is held by a non-Tribal-transferee, or the land acquired in exchange by a Tribal transferor is less in value than the value of the land given in exchange and the land so transferred is in the possession of the non-Tribal-transferee, and has not been put to any nonagricultural use on or before the 6th day of July 1974, then, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any Court, Tribunal or Authority, the Collector either suo moto at any time, or on the application of a Tribal transferor made within thirty years from the commencement of this Act shall, after making such inquiry as he thinks fit, direct, inter alia restoration of such land to the Tribal.

11. In the Restoration Act as originally enacted, there was a limitation of three years prescribed for action under Section 3, but the same was from the date of commencement of the Restoration Act which was 1 November 1975. However, in the year 1991 this provision was amended and the period of three years was enhanced to 30 years from the date of commencement of the Restoration Act. In view of 1991 amendment, there is no force in the contention of Mr. Karandikar that the application made by Ramesh Subhane (respondent No. 2) on 6 October 1988 was barred by law of limitation. The submission, in any case, proceeded on basis of misconception that the period of limitation so prescribed, operates from the date of transfer. The provisions of Section 3 of the Restoration Act, make it clear that the period of limitation, within which action can be taken under Section 3, operates from the date of commencement of the Restoration Act, which would be 1 November 1975. The MRT, in its impugned order dated 18 December 1989 has recorded that Arjun's brother and Ramesh's father, Narayan Marya Subhane had instituted applications on 16 June 1976 and 28 June 1976 in the matter of restoration of said property. It is in pursuance of these applications that the Tahasildar and ALT directed enquiry under the provisions of the Restoration Act. The application instituted by Ramesh, as the son of Narayan was the sequel to the earlier applications instituted by Narayan. Accordingly, the submission of Mr. Karandikar, as to bar of limitation in maintaining application for restoration dated 6 October 1988, has no force.

12. Similarly, there is no merit in Mr. Karandikar's contentions that Ramesh Subhane (respondent No. 2) had no locus standi to maintain the application for restoration dated 6 October 1988. Perusal of the provisions contained in Section 3 would indicate that the Collector has been conferred powers to exercise suo moto jurisdiction or on the basis of application of a Tribal transferor . Therefore, even if it were to be assumed that Ramesh Subhane was not a Tribal transferor , on the date when the application for restoration dated 6 October 1988 was made, it was open to the Collector to treat the information received as sufficient for the purposes of exercise of suo moto jurisdiction. Thus, it cannot be said that there was any jurisdictional infirmity in entertaining the application dated 6 October 1988 made by Ramesh Subhane.

13. It is to be noted that the impugned order dated 23 March 1989 had not directed the restoration of the possession in favour of Ramesh Subhane. Rather, restoration was directed in favour of Yeshodabai, who was admittedly the successor in interest of late Arjun. Further, upon the demise of Yeshodabai, there is no serious dispute that said Ramesh Subhane becomes the successor in interest of both Arjun and Yeshodabai. This petition has already been dismissed as against Yeshodabai, for failure to bring her heirs, if any, on record. Therefore, it cannot be case of the petitioner at least, that there are any other successor in interest of late Arjun and Yeshodabai. For all these reasons, there is no force in the objection based upon the doctrine of the locus standi.

14. The objection based upon the principle of res judicata is also not well taken. In the first place, there is no clarity with regard to the circumstances in which an order dated 31 March 1978 came to be made. Secondly, the order dated 31 March 1978 itself directed action under the Restoration Act. Thus, a reasonable manner of construing of the order dated 31 March 1978 would be that the authority under the Code declined to go into the issue of transfer from Tribal to non-Tribal and directed the authorities under the Restoration Act to enquire into the same. In such circumstances, there is no question of applicability of the principle of res judicata.

15. As regards Mr. Karandikar's next submission based upon finality to be attached to the Additional Tahasildar's order dated 24 March 1973 under the Tenancy Act. It is to be noted that in the present case, the Tahasildar made an order dated 21 May 1963 under Section 32G of the Tenancy Act determining the purchase price payable by Arjun. This was, inter alia, on the basis that the name of Arjun, predecessor in title of the respondents had been recorded in the survey records prior to and on the Tillers day which is 1 April 1957. To such proceedings, the original landlord, i.e., Ramchandra Ganpat Kore was very much a party.

16. The Section 32G of the Tenancy Act provides that on the Tillers day, i.e., 1 April 1957, every tenant shall, subject to other provisions of the said section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon the said day, the land held by him as tenant, if the predicates specified in subclauses (a) and (b)

stand fulfilled. Such vesting is complete on the Tillers" day and the original landlord is divested on rights and title in tenanted property. Section 32G of the Tenancy Act requires the Agricultural Land Tribunal - Tahasildar to determine purchase price in the prescribed manner, which is precisely what the Tahasildar's order dated 21 May 1963 has determined in the present case.

17. As against, the orders made by the Mamlatdar (Tahasildar) and ALT, appeal shall lie to the Collector in cases specified under clauses (a) to (w) of the Section 74 of the Tenancy Act. Further, Section 76 of the Tenancy Act provides for a revision to the Maharashtra Revenue Tribunal against any order of the Collector on the following grounds only:

- (a) the order of the Collector was contrary to law;
- (b) the Collector failed to determine some material issue of law; or
- (c) there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

18. Section 79 of the Tenancy Act provides that every appeal or application for revision under this Act shall be filed within a period of sixty days from the date of the order of the Mamlatdar, Tribunal of Collector, as the case may be. The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908, shall apply to the filing of such appeal or application for revision.

19. The reason for reference to the aforesaid provisions of the Tenancy Act is in order to demonstrate that the order dated 21 May 1963 made by Tahasildar under Section 32G of the Tenancy Act, has, till date, not been set aside either by the Collector, exercising appellate jurisdiction under Section 74 or by the MRT exercising revisional jurisdiction under Section 76 of the Tenancy Act. In such circumstances, it is not understood, under which provisions of law the Dy. Collector directed the Additional Collector to initiate fresh proceedings for determining tenancy in respect of said property. The order dated 24 March 1973, made by the Additional Tahasildar in pursuance of said directions, is by no means clear with regard to fate of Tahasildar's earlier order dated 21 May 1963. There is, however, some vague reference to the price already fixed in the name of Arjun Marya being required to be revised. There is also vague reference to the orders issued previously being cancelled. There is, however, no clear cut statement in the order dated 24 March 1973 regards setting aside of the Tahasildar's order dated 21 May 1963. This obviously could not be, since in the scheme of the Tenancy Act, another Tahasildar, or an Additional Tahasildar would certainly have no powers to either review, revise or set aside the order made by the Tahasildar on 21 May 1963. Therefore, based upon the vague statements in the Additional Tahasildar's order dated 24 March 1973, it cannot be said that the Tahasildar's earlier order dated 21 May 1963 has been thrown overboard by an Additional Tahasildar, vested with neither review, appellate nor revisional jurisdiction in the matter.

20. The provisions of Section 3 of the Restoration Act, to which reference has been made earlier, declare as invalid transfer of land of a Tribal transferor to a non-Tribal-transferee, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any Court, Tribunal or Authority. In the facts and circumstances of the present case, by virtue of the order dated 21 May 1963 made by the Tahasildar under Section 32G of the Tenancy Act, the said property was vested in Arjun, from the Tillers day, i.e., 1 April 1957. The petitioner seeks to rely upon the order dated 24 March 1973, as being the order, which effects or rather recognizes a statutory transferor in his favour. Even if this is assumed as correct, then in the light of the peremptory provisions of Section 3 of the Restoration Act and the non-obstante clause employed therein, there was nothing wrong in the action of the authorities under the Restoration Act, examining the issue of transfer of said property from a Tribal to a non-Tribal, without being impeded by the order dated 24 March 1973 made by the Tahasildar, in the exercise of jurisdiction, which is itself shrouded in doubt. This is not a case where the Authorities under the Restoration Act have ignored an order made by the Competent Authority *intra vires*. In any case, as long as Tahasildar's previous order dated 21 May 1963 stands, there arises no question of the Authorities under the Restoration Act, taking cognizance of subsequent order of the Additional Tahasildar dated 24 March 1973. There is accordingly, no merit in the petitioner's contention that the Additional Tahasildar's order dated 24 March 1973 had attained finality and that the same has been ignored in defiance of the law laid down by the Supreme Court in case of Pune Municipal Corporation (*supra*).

21. In the case of Pune Municipal Corporation (*supra*), the Supreme Court has held that no order passed by the competent authority can be ignored unless a finding is recorded that it is illegal, void or not in consonance with law. Such principle will not apply to the facts and circumstances of the present case for at least three reasons. In the first place, as has been demonstrated earlier, the Additional Tahasildar's order dated 24 March 1973 cannot be said to have been made by a competent authority under the Tenancy Act. Secondly, the provisions of Section 3 of the Restoration Act make it clear that the transfer of land of a Tribal transferor to non-Tribal-transferee is invalid, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any Court, Tribunal or authority. Thirdly, the impugned orders specifically render a finding that the Additional Tahasildar's order dated 24 March 1973 was a nullity. In the circumstances, it cannot be said that the authorities under Restoration Act, in making the impugned orders have acted in disregard of the principle laid down by the Supreme Court in case of Pune Municipal Corporation (*supra*).

22. Finally, Mr. Karandikar contended that in this case there is no transfer whatsoever from Arjun (Tribal) to the petitioner non-Tribal). This is, the learned counsel contended, a case of statutory transfer under the Tenancy Act from the original landlord Ramchandra Kore to the petitioner. To such a transfer, there is

no question of the Restoration Act being made applicable. In this regard, reliance was placed upon the decision in case of Maruti Gite (supra), where in it is held that on a plain reading of the definition of the term "transfer" as it appears in Section 2(1)(i) of the Restoration Act, it is clear that the subject matter of transfer has to be "land belonging to a tribal". The question of transfer can therefore arise only if the agricultural land belongs to the Tribal, i.e., title in the agricultural land vested in the Tribal.

23. In the present case, as noted earlier, the said property had indeed vested in Arjun (Tribal) on the Tillers day, i.e., 1 April 1957. This position was only reinforced by the order dated 21 May 1963 made by the Tahasildar under Section 32G of the Tenancy Act. It has been the case of the respondents that the said property was taken on lease by the petitioner from Arjun, and in lieu of lease rent, the petitioner paid the installments of purchase price as determined by the order dated 21 May 1963 under Section 32G of the Tenancy Act. The two authorities under the Restoration Act, have concurrently accepted this case of the respondents. The perusal of the order dated 24 March 1973, upon which so much reliance was placed by the petitioner, in the context of some other parties, including those particularly concerning Survey No. 215, records that rent receipts were produced by them. However, the same order dated 24 March 1973, when it comes to the petitioner records that "receipts regarding payment of purchase price" came to be produced. The petitioner has not produced any material to establish that he was the tenant of Ramchandra Kore, at any stage prior to 1 April 1957 or for that matter, even thereafter. Even in the statement of Ramchandra Kore, which is reflected in Section 32G of Tenancy Act proceedings which culminated in making of the order dated 21 May 1963, Ramchandra Kore had merely stated that about 22 to 25 days back Arjun Marya Subhane has been cultivating the disputed land through somebody. This, coupled with the receipts produced by the petitioner of the payment of purchase price, supports the version of the respondents that the petitioner secured a transfer of the said property, by the payment of installment of purchase price, actually payable by Arjun under the order dated 21 May 1963, in lieu of lease rent. All this is sufficient, not to disturb the concurrent findings of fact recorded by two authorities under Restoration Act that there was indeed transfer of the said property from Arjun (Tribal) to the petitioner non-Tribal) in breach of the provisions of Section 3 of the Restoration Act. The decision in case of Maruti Gite (supra), is clearly distinguishable, in as much as in the said case the agricultural land in question had never vested in the Tribal as a tenant thereof.

24. For all the aforesaid reasons, there is no merit in any of the contentions raised by and on behalf of the petitioner. The petition is, accordingly, liable to be dismissed and is so dismissed.

25. Rule is discharged. Interim relief, if any, stands vacated.

26. There shall be no order as to costs.