

(2018) 09 BOM CK 0036
In the Bombay High Court
Case No : Writ Petition No. 649 Of 2012

Kamlakar Lachayya Olalla

APPELLANT

Vs

State Of Mah. Thr. Its Secty. And 2 Ors

RESPONDENT

Date of Decision : 14-09-2018

Acts Referred:

Scheduled Tribes And Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 — Section 2©, 2(o), 3, 3(1), 4

Citation : (2018) 09 BOM CK 0036

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : V. N. Morande, N.R. Patil

Final Decision : Dismissed

Judgement

B.P. DHARMADHIKARI, J.

1] Heard Advocate Morande for petitioner and Shri N.R. Patil, learned AGP for respondents.

2] Question is whether denial of allotment of land for cultivation to petitioner under the Scheduled Tribes And Other Traditional Forest Dwellers

(Recognition of Forest Rights) Act, 2006 (hereinafter referred to as "2006 Act") is contrary to his rights as a forest dweller or then contrary to

the Constitution of India.

3] Advocate Morande submits that the application made by eligible person travels through three committees which function at different levels. Last

committee has found petitioner not staying at a place where his ancestors were staying and also not at place where piece of land claimed to be under

cultivation is located. He points out that actual place of residence at Sironcha and location of land in adjacent village at Mauza Janampalli (Chek) is

separated just by two kilometers. Inference of not residing as drawn by the committee presided over by Collector is therefore perverse.

4] Learned AGP has invited my attention to object of the Act, the definition contained in Section 2 (o) and also the scheme of Section 3 of 2006 Act.

He submits that not only livelihood has to be on the basis of forest produce or forest land but it has to be so for three generations. The stay of such person in forest therefore may be for three generations.

5] Both learned advocate and learned AGP have relied upon the provisions of 2006 Act.

6] One of the contentions of petitioner is one Ramabai Katterya Durgam residing at Sironcha has been given piece of land in area of Village

Janampalli (Chek) and thus different treatment has been extended to petitioner thereby violating Article 14 of the Constitution of India. Learned AGP has disputed this.

7] Findings recorded by Collector in the impugned order dated 17/09/2010 show that petitioner has encroached upon forest land at Mauza Janampalli

(Chek). He and his ancestor resided at Mauza Tekada, Tahsil Sironcha. The impugned order finds that family is not residing even in village where

forest land is located. Petitioner claims that he is residing at Sironcha which is just two kilometers away from Janampalli. Learned AGP, on the

strength of Google Map, has attempted to urge that distance between Janampalli and Tekada is in excess of 30 kilometers. He claims that as crow

flies, distance may be in excess of 15 kilometers. I need not delve into that controversy. These facts and distances are mentioned because Collector

finds stay of petitioner and his family at Tekada but does not point out the distances between these locations.

8] In this backdrop, when the object of 2006 Act is looked into, its purpose is to recognize and vest forest rights and occupation in forest land in forest

dwelling Scheduled Tribe and other traditional forest dwellers. The Act contemplates such handing over of rights with responsibility for sustainable

use, conservation of bio-diversity and maintenance of ecological balance. It also mentions that forest rights on ancestral lands and their habitat were

not adequately recognized in consolidation of State forest during colonial period. Petitioner does not claim to be a person belonging to any Scheduled

Tribe. He claims to fall under the residual part namely "other traditional forest

dwellerâ?. This phrase is explained in Section 2 (o) to mean any member of community who has for atleast 3 generations prior to 13th day of December, 2005 primarily resided in and who depend on forest or forest land for bonafide livelihood needs. Explanation to this definition clarifies that word â??generationâ? employed means a period comprising of 25 years. Thus this definition in plane simple language mandates the primary residence in forest and also additionally, dependence on forest or forest land for bonafide livelihood needs. Petitioner showing his residence in forest or dependence on forest is not sufficient. It is to be demonstrated that this residence and dependence both are in existence for atleast 3 generations i.e. for period of 75 years prior to 13/12/2005. Petitioner therefore has to plead that his grandfather or great grand father also resided in same forest and primarily earned livelihood because of said forest or then forest land, bonafide.

Petitioner has not pleaded accordingly.

9] Petitioner himself states that his ancestors resided at Tekada and he has come to Sironcha. He is also not claiming stay/residence in forest. At the most on account of cultivation, he may depend upon forest land for livelihood needs but that by itself is not sufficient to cloth him with any right.

Such encroachment also cannot be viewed as bonafide.

10] Provisions of Section 2 (c) define â??forest dwelling Scheduled Tribesâ? to mean the member or community of Schedule Tribes primarily residing in and dependent on forest or forest land for bonafide livelihood needs. It also includes Scheduled Tribe Pastoralist communities. Provisions of Section 3 (1) show that rights mentioned in that Section which secure livelihood or community tenure or both are accepted as forest rights. Under Clause (a), right to hold and live in forest land under individual or common occupation for habitation or for self cultivation for livelihood by a member or members of such community is recognized as a forest right. Under Subsection 3 of Section 4, recognition of vesting of forest rights is subject to condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied the forest before 13/12/2005.

11] Scheme therefore shows emphasis on occupation of forest by a community as whole and then use of forest land for earning livelihood bonafide jointly by community or then for self cultivation by an individual member of such

community. Any individual who is not part or member of such community therefore cannot aspire and seek protection of 2006 Act. Here admittedly, petitioner is not member of any Scheduled Tribe. He claims to be other traditional forest dweller. This definition also obliges him to be a member of a community. Petitioner therefore has to show that his encroachment or use of forest was as a member of some community as part of joint act of that community. There is no such pleading.

12] The contention that a lady by name Ramabai Durgam has been allotted forest land in identical situation now needs to be considered. Allotment letter dated 25/02/2011 clearly shows that the lady belongs to Scheduled Caste (Mahar). She is therefore not a Schedule Tribe. Material on record does not show that she is not residing in forest in which her right is recognized. Effort to compare the case of petitioner with case of said lady is therefore erroneous. Wrong allotment in one case cannot be cited as precedent.

13] In ancient India, normally caste system originated as part of and is associated with society which had some discipline. Tribals never resided as part of such society but were away in seclusion in various pockets in the country. They had their own culture and at times, had no religion also. The 2006 Act recognizes such tribals or other communities who atleast since 3 generations before 13/12/2005 continue to reside in forest i.e. since 75 years prior thereto and earn their livelihood through forest as defined in Section 2 (c) or Section 2 (o) of 2006 Act.

14] From arguments advanced by petitioner, it appears that encroachers not so residing who have brought forest land under cultivation and were not members of any "community" may also be getting benefit of the welfare legislation i.e. 2006 Act. If object and spirit of 2006 Act is kept in mind, it may have relevance only for small community or small number of people. In present facts, the village level committee & Gramsabha have recommended the claim of petitioner for allotment.

15] As it appears that the provisions of the Act are being misused or abused, Registry to register a PIL on the strength of this order. Advocate Omkar Deshpande present in Court is appointed as Amicus to assist the Court in the matter.

16] Learned AGP waives notice for respondents in it.

17] List that PIL for further consideration in presence of appropriate bench as per

roster assignment on 19/09/2018.

18] Subject to this, writ petition is dismissed. Rule discharged. No costs.