
(1996) 08 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 212 of 1983

Mahadu

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Constitution of India, 1950 — Article 16, 30

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 10A, 3

Citation : (1997) 4 BomCR 117

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

Bench : Single Bench

Advocate : A.G. Godhamgaonkar, for the Appellant; S.K. Kadam, A.G.P. for respondent No. 1, S.M. Kulkarni, S.C. for respondent No. 4 and Lata Bade and Renuka Palve, for the Respondent

Final Decision : Allowed

Judgement

R.G. Deshpande, J.—This writ petition was heard by His Lordship Justice N.P. Chapalgaonker of this Court on 30th July, 1991 and by his order of the same date, His Lordship had directed to send the Caste Certificate No. 77-A-Misc. CR. 68-77, dated 10-10-1977, issued by the Tahsildar, Biloli to the Scrutiny Committee headed by the Director of Tribal Research and Training Institute, Pune for his necessary opinion thereon by issuing necessary certificate with a finding as regards the truthfulness or otherwise of the certificate and with a further necessary direction to specify as to which caste the respondent No. 2 belonged to. It was further directed that the said opinion should be given by the Committee within two months after giving opportunity to the parties of being heard. Liberty was also given to the parties concerned to file appeal if dissatisfied with that decision if it was so provided under the rules to the Additional Commissioner, Tribal Development, Nasik. Thus the matter was made to stand over for six months.

2. In pursuance of the abovesaid direction, the Caste Certificate Scrutiny

Committee, Maharashtra State, Pune (hereinafter referred to as "the Scrutiny Committee") decided the matter as regards the caste of the respondent No. 2 by its order dated 15-4-1993, thereby rejecting the claim of the present respondent No. 2 that he belonged to Mahadeo Koli Scheduled Tribe. The Scrutiny Committee further cancelled the certificate issued by the Executive Magistrate, Biloli vide No. 84-A/Misc. CR.68/77 dated 9-4-1984. The copy of the order of the Scrutiny Committee dated 15-4-1993 is placed on the record of this writ petition.

3. On receipt of the judgment from the Scrutiny Committee, the matter is again placed before this Court for hearing.

4. The facts of the present case are that the present respondent No. 2 - Gangaram Irba was holding field Survey No. 109-B, situated at village Kolhe Borgaon, taluka Biloli, District Nanded, admeasuring 1 acre 8 gunthas as a owner thereof. The respondent No. 2 transferred the said land to one Moglaji s/o Sayanna - the respondent No. 3, by registered sale deed dated 2-11-1970. This respondent No. 3 - Moglaji in turn transferred the said suit land by way of registered sale deed to the present petitioner - Mahadu s/o Jamnaji by registered sale deed dated 5-6-1974. It would be necessary to note at this stage only that Moglaji the respondent No. 3, as also the present petitioner both are non-tribals, whereas the present respondent No. 2 is claiming himself to be a tribal. Under the impression that the respondent No. 2 - Gangaram is a tribal, the respondent No. 2 filed an application dated 13-6-1981 for restoration of the possession of the said suit land Survey No. 109-B in accordance with the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as "the Act" for short). On an application, the Tahsildar suo motu took up the inquiry proceedings u/s 3 of the Act by issuing necessary notices in the prescribed form to all the concerned and after having conducted necessary inquiry, the Additional Tahsildar, Degloor in Case No. 1981-Tribal-2-81, by his order dated 30-3-1982, reached to the conclusion that the respondent No. 2 belonged to Mahadeo Koli caste, who had transferred the land to respondent No. 3 since the transaction was between a tribal and a non-tribal, the present respondent No. 2 was held to be entitled to get possession thereof u/s 3 of the Act. He, therefore, passed the necessary order of restoration of land to the present respondent No. 2 from the present petitioner, who is a transferee from respondent No. 3.

5. The abovesaid decision dated 30-3-1982 of the Additional Tahsildar, Sub-Division, Degloor, was challenged by the present petitioner before the Maharashtra Revenue Tribunal, Aurangabad, by way of an appeal and the learned Member of the Revenue Tribunal upheld the decision of the Additional Tahsildar, by his order dated 17-3-1983. It is this judgment, which is under challenge before this Court in the present petition.

6. Shri Godhamgaonkar, the learned Counsel was heard on behalf of the petitioner. The respondent No. 1 - State is represented through Shri Kadam, the learned Assistant Government Pleader. The respondent No. 2 - Gangaram is

represented by Smt. Lata Bade and Smt. Renuka Palve. The respondent No. 4 is represented by the learned Counsel Shri S.M. Kulkarni. The respondent No. 3, though served, remained absent.

7. Shri Godhamgaonkar, the learned Counsel appearing on behalf of the petitioner vehemently urged that since the decision is given by the Scrutiny Committee dated 15-4-1993, whereby it is held that the petitioner did not belong to Mahadeo Koli caste and hence the transaction between the respondent No. 2 and the respondent No. 3 could not be said to be a transaction between a tribal and a non-tribal. Naturally, the petitioner, who is a purchaser from respondent No. 3 cannot be made to restore the possession of land back to the respondent No. 2. He further submitted that in view of this specific finding the orders passed by the Revenue Authorities below, including that of the Revenue Tribunal deserve to be quashed and set aside. Shri Godhamgaonkar also challenged the order of the Revenue Tribunal on merits. However, he has not argued the point as regards the validity of the provisions of the Act.

8. The Counsel for the respondent No. 2 - Gangaram, during the course of her arguments, contended that the decision of the Revenue Authorities below was just and proper and the Authorities below were justified in passing the judgment on production of the document i.e. certificate from the Executive Magistrate showing that the petitioner did belong to Mahadeo Koli - a Scheduled Tribe. The learned Counsel further relied on a decision of this Court in Writ Petition No. 753/84, decided by the Division Bench of this Court on 17-10-1985 in the matter of Shankar Gangaram Amberao v. The State of Maharashtra and others. A copy of the said judgment is placed on the record. This Shankar, the petitioner in the abovesaid writ petition is the son of present respondent No. 2 - Gangaram Irba. In that writ petition the question as regards caste claim of the respondent No. 2's son was concerned. The son of present respondent No. 2 - Gangaram i.e. Shankar, after having passed his matriculation examination in the year 1983 had applied for admission to M.B.B.S. Course in Medical College at Aurangabad and Ambajogai. The application was made on the ground that he belonged to Mahadeo Koli Scheduled Tribe. The claim of the said Shankar was referred to the Scrutiny Committee for verification and the Scrutiny Committee had rejected the claim of the said Shankar. The said decision was confirmed in appeal also. It was because of that Shankar was required to approach this Court vide abovesaid Writ Petition No. 753/84. Their Lordships of this Court, who dealt with the matter, after examining the facts of that case and the documents which were produced before the Scrutiny Committee, reached to the conclusion that Shankar did belong to Mahadeo Koli caste and, therefore, he was directed to be given admission in the Medical College. It would be necessary to note at this stage only that along with other documents, which Shankar had produced before the Scrutiny Committee, he had also produced the judgment of the Revenue Tribunal dated 17-3-1983 in the matter of present petitioner - Mahadu s/o Jamnaji v. The State of Maharashtra and others, in which the father of the said writ petitioner - Shankar happened to be the respondent No. 2 i.e. the present respondent No. 2

- Gangaram Irba. On the basis of these documents and precisely in view of the decision given by the Revenue Tribunal dated 17-3-1983, which is already under challenge in this petition, Their Lordships reached to the conclusion holding that Shankar did belong to Mahadeo Koli caste. The learned Counsel for the respondent No. 2, therefore, contended that since the caste of the son itself is decided by the Division Bench of this Court, it would not be open for this Court to hold otherwise and according to the learned Counsel, this Court will have to follow the decision given as it is for finding of the caste of the father - Gangaram.

9. Shri A.G. Godhamgaonkar, the learned Counsel appearing on behalf of the petitioner has contended, and rightly so, that the judgment of the Revenue Tribunal, which was produced before the Scrutiny Committee and which was considered by the Scrutiny Committee and in spite of that the Scrutiny Committee reached to the different conclusion on the basis of the evidence produced before it. Shri Godhamgaonkar further pointed out that the Division Bench of this Court in Writ Petition No. 753/84 to some extent passed its judgment on the decision of the Revenue Tribunal dated 17-3-1983, to which reference was made in that writ petition. It is pertinent to note here that the said Writ Petition No. 753/84 appeared to have been filed on 4-7-1984. The present writ petition is filed on 11-4-1983 itself, wherein the judgment of the Revenue Tribunal is under challenge. It appears that while the writ petition No. 753/84 was heard, this fact of challenge to the decision of the Revenue Tribunal appears to have been not brought to the notice of the Division Bench of this Court, who dealt with that Writ Petition No. 753/84. The question that now would arise is as to whether would it be necessary for this Court to decide the caste of the father - Gangaram on the basis of the caste of the son - Shankar in view of the judgment in Writ Petition No. 753/84 and particularly when from the record it is clear that the pendency of the present writ petition does not appear to have been brought to the notice of the Division Bench while dealing with the said Writ Petition No. 753/84. I am of the opinion that for deciding the present petition this Court cannot rest its judgment totally on the judgment of the Division Bench, as these are the independent proceedings under which the order of the Revenue Tribunal is challenged and in which specifically this Court had already referred the matter for decision by the Scrutiny Committee. One important development in the matter also needs consideration. The abovesaid decision of the Division Bench dated 17-10-1985 in Writ Petition No. 753/84 was challenged by the State of Maharashtra before the Supreme Court of India. The matter in Supreme Court was heard and decided on 17-3-1989, to which there is a reference in the order of the Scrutiny Committee in paragraph 5 thereof at page 38 of the paper book of this petition. The Scrutiny Committee has specifically referred to the order passed by the Supreme Court in SLP No. 11469/86 dated 17-3-1989, which is reproduced below : "Since it is seen that a period of more than three years has elapsed from the date on which respondent No. 1 was ordered to be admitted to the Medical College, we find that it is not a fit case for interference under Article 136 of the Constitution. The SLP is dismissed. We, however, express no final

opinion on the question of law raised in this case." From the abovesaid observations, which are reproduced from the order of the Supreme Court, it is absolutely clear that Their Lordships of the Supreme Court rejected the Leave Petition only on the ground that the period of three years had already lapsed and there could not be any justifiable reason to oust the students, who had been admitted on the basis of that caste and Their Lordships, therefore, declined to interfere finding it not fit under Article 136 of the Constitution of India. However, from the observations above, it is also clear that Their Lordships of the Supreme Court refrained themselves from expressing their view or opinion on the point or on the question of law raised in that case, which could be no other than a question of the caste of said Shankar s/o Gangaram.

10. In view of what is narrated above, the point which now needs decision in this case is as to whether, could the respondent No. 2 be held as belonging to Mahadeo Koli Scheduled Tribe and whether could he be said to be entitled for restoration of field in question in his favour on the basis thereof. A necessary reference is required to be made to another aspect of the matter that the decision of the Scrutiny Committee dated 15-4-1993 is not challenged by Gangaram the respondent No. 2 any further and it stands as it is totally unchallenged.

11. Now referring back to the original position, that is the order of this Court dated 30th July, 1991, the matter was specifically referred to find out as to whether Gangaram could be said to be entitled to the benefit of the provisions of the Act on the basis of the caste he claimed i.e. Mahadeo Koli Scheduled Tribe. The Scrutiny Committee has specifically by its order dated 15-4-1993 invalidated the claim of the respondent No. 2 - Gangaram, the claim of Gangaram being Mahadeo Koli. The said Scrutiny Committee has also further specifically confirmed the order of the Executive Magistrate, Biloli vide Order No. 84/A. Misc. CR. 68/77 dated 9-4-1984, whereby the Executive Magistrate had cancelled the caste certificate. The said Scrutiny Committee has further specifically ordered for confiscation of the original certificate issued to said Gangaram.

12. When this Court had specifically sought for the expert opinion having referred the matter regarding caste, this Court is now of the opinion that the decision given by the said Scrutiny Committee on 15-4-1993 since is given by considering the relevant facts on the record, including that of the order of the Revenue Tribunal, as also in which the decision of the High Court and the Supreme Court is also taken into consideration, this Court do not find any difficulty in accepting the said opinion and coming to the conclusion that the respondent No. 2 - Gangaram did not belong to Mahadeo Koli and the fact which the petitioner was agitating right from the beginning that Gangaram does not belong to Mahadeo Koli can be said to have been well established. The learned Counsel for the respondent No. 2 - Gangaram attempted to show some discrepancies and defects in the order dated 15-4-1993 pointing out that the evidence is not considered by the Scrutiny Committee properly and with proper

perspective. However, this argument of the learned Counsel has to be rejected out right, as the said judgment of the Scrutiny Committee is in no way under challenge before this Court, nor has the respondent No. 2 challenged the said judgment by way of appropriate steps, particularly when by the order dated 30-7-1991, this Court had given liberty to the parties concerned to challenge the same before appropriate authority. This Court, therefore, refrain itself now from entertaining the challenge to the said decision of the Scrutiny Committee on any count and it is only for this Court to decide as to whether to accept the said decision of the Scrutiny Committee dated 15-4-1993 or not. This Court has gone through the complete order of the Scrutiny Committee and the reasoning given therein by the Members of the Scrutiny Committee. In view of the said decision, the petitioner now having established his case that Gangaram did not belong to Mahadeo Koli and hence he could not be said to be a tribal and naturally he, therefore, could not be said to be entitled to any of the reliefs under the Act. The transaction, therefore, between Gangaram the respondent No. 2 and Moglaji the respondent No. 3 was a transaction between non-tribals only, and in these circumstances, therefore, the question of invoking the provisions of the Act for the benefit of Gangaram the respondent No. 2 does not arise and hence the question of transaction being hit by the provisions of the Act also does not arise.

13. Shri S.M. Kulkarni, the learned Counsel appearing on behalf of the respondent No. 4 pointed out that whether it would be correct to rely on the opinion tendered by the Scrutiny Committee vide its order dated 15-4-1993, particularly in view of the decision reported in Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others, , Tribal Development and others. On this argument, Shri Godhamgaonkar, the learned Counsel appearing on behalf of the petitioner specifically pointed out that when the matter was referred by this Court to the Scrutiny Committee, the inclination of the Court was to have an opinion of the expert and then to consider the same at the time of decision. If the matter is looked from that angle that the expert opinion is sought by the Court itself, there should not be any difficulty for this Court to take the same into consideration while giving the decision in the instant matter. I do find much substance in the argument of Shri Godhamgaonkar and according to this Court, there would not be any difficulty whatsoever in taking into consideration the said decision of the Scrutiny Committee, muchless when it was not challenged by the respondent No. 2 or for that purpose by any of the respondents, in spite there being liberty given for the same.

14. In the result, the petition is allowed. The orders impugned are quashed and set aside. Rule is accordingly made absolute. However, in the circumstances of the case, no order as to costs.