
(1997) 10 BOM CK 0051
In the Bombay High Court
Case No : Writ Petition No. 1515 of 1997

Maitab Surkane

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-10-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Maharashtra Land Revenue Code, 1966 — Section 36

Citation : (1999) 101 BOMLR 470 : (1999) 1 MhLj 624

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—The interesting, but short point involved in this petition is whether in the case where a non-tribal had purchased the land from a tribal transferor after 1.4.1957 and thereafter had sold the said land to another tribal before 15.3.1971, would such be fall within the ambit of Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 and consequently is such sale null and void.

2. The petitioner belongs to Bhilla Tribe, which is notified as Scheduled Tribe in the State of Maharashtra. The property is identified as Survey No. 29 of Mouja Jeetapur. The property belonged to one Aakaji Nimbaji Bhilla, who also is a tribal belonging to a notified Scheduled Tribe. He effected partition of the property during his life time by Deed of Partition dated 19.4.1952 between his sons. An application was moved on 14.10.1975 on behalf of Najru A. Bhilla against Kashiram Namdeo Mahale, the Respondent No. 4. It was the case of the tribal that he had sold the land to the Respondent No. 4 in the year 1966 by registered sale deed. The property was identified as field Survey No. 29 which totally admeasured 11 Acres 3 Gunthas, out of which the tribal's share was 7 Acres. Notice was issued in which the present petitioner seems to have been joined as party. It was the case of the present petitioner that he had purchased the land

from the Respondent No. 4 before 15.3.1971. The Additional Commissioner, Amravati Division, held that by virtue of the powers given u/s 7 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, the land is required to be restored as the land was transferred from tribal to non-tribal, and the Tahsildar was directed to initiate appropriate proceedings for restoration of the land to the original tribal. It is this order dated 31.3.1997 which is challenged in this petition.

3. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 was assented to by the President on 28th April, 1975. The Act covers all transfers of land from tribal to non-tribal between 1.4.1957 and ending on 6.7.1974. The Objects and Reasons Clause of the Act reads as under:

It was noticed that in a number of cases lands previously held by persons belonging to Scheduled Tribes have been transferred to non-Tribals as a result of purchases made or deemed to have been made under the Tenancy Laws or as a result of transfers (including exchanges) validly effected after 1st April, 1957 under the provisions of the Maharashtra Land Revenue Code, 1966 or other laws in force in the State. After examining the recommendation of the Committee appointed by Government to examine the difficulties experienced by the Tribal landholders in the administration of certain provisions of the Maharashtra Land Revenue Code and other laws in force in the State it is considered necessary to provide for restoration of the lands which have gone into the hands of non-Tribals to their original Tribal owners. The Bill seeks to achieve this object.

4. In terms of Section 3 of the Act whether the land of a tribal-transferor is held by a non-tribal transferee and has not been put to non-agricultural use on or before 6.7.1974, 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 Suo Motu at any time or on the application of a tribal transferor within 30 years from the commencement of the Act could initiate an enquiry and direct the restoration of the land from the non-tribal transferee to the tribal transferor. The Tribal has been defined u/s 2(j) to mean any person belonging to a Scheduled Tribe within the meaning of the Explanation to Section 36 of the Code, and includes his successor-in-interests. Transfer has been defined u/s 2(i) to mean in relation to land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April, 1947 and ending on the 6th day of July, 1974, either by act of parties, whether by way of sale, gift, etc. The other forms of transfer are also covered. Non-tribal transferee in terms of Section 2(1)(1) includes the successor-in-interest; and if he or his successor has, on or after the 15th day of March, 1971, transferred land in favour of any person, whether a tribal or non-tribal, includes also such person. What is required to be considered is the interpretation of the words "non-tribal transferee". The date, month and year 15.3.1971 has some meaning, as it is on this day that the Government of Maharashtra appointed a Committee to enquire into and report to the State Govt. inter alia how far the provisions of the

Maharashtra Land Revenue Code, 1966 and the relevant tenancy laws have been effective in giving protection to the persons belonging to Scheduled Tribes and to suggest amongst other things, suitable amendment, if any, the existing provisions are found to be inadequate. On behalf of the petitioner what is sought to be contended is that the transfer from the tribal to the non-tribal had taken place between 1.4.1957 and 6.7.1974. It is, however, contended that the transfer from a non-tribal to a tribal had taken place before 15.3.1971 and to that extent Section 3 of the Restoration of Lands Act would not apply.

5. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 came up for consideration before the Apex Court in the case of Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, . The matter reached the Apex Court from the judgment and orders passed by the Division Bench of this Court sitting at Nagpur dated June 21 and 27, 1984. What was in issue was the Constitutional validity of Sections 3(1) and 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. After considering the Scheme of the Act, the Objects and Reasons Clause and other aspects of the matter, the challenges to the Act were negatived. However, what is important from the said judgment are the observations of the Apex Court in para 30 which reads as under:

Equally futile is the argument that the definition of "non-tribal transferee" contained in Section 2(1)(1) offends against Article 14 as it permits an assignee of a non-tribal transferee effected prior to March 15, 1971 to escape the consequence of annulment u/s 3(1) or Section 4 of the Act. The definition of "non-tribal transferee" in Section 2(1)(1) is an inclusive one. The expression "non-tribal transferee" as defined includes his, successors-in-interest; and if he or his successor had, on or after March 15, 1971, transferred land in favour of any person whether a tribal or a non-tribal, includes also such a person. The Legislature appointed March 15, 1971 with a view to give retrospective effect to the provisions of Sections 3(1) and 4 of the Act as that was the date on which the Government constituted the Committee to inquire into and report to the State Government on how far the provisions of the Maharashtra Land Revenue Code, 1966 and the relevant tenancy laws had been effective in giving protection to persons belonging to Scheduled Tribes. But it is not correct to say that the definition of "non-tribal transferee" contained in Section 2(1)(1) permits an assignee of a non-tribal transferee effected prior to that i.e. March 15, 1971 to escape the consequences, of annulment under Sections 3(1) and 4 of the Act. Such a construction of the definition of the expression "non-tribal transferee" u/s 2(1)(1) would run counter to the Scheme of the Act.

The Apex Court from the above observation has clearly observed that it is not correct to say that the definition of "non-tribal transfer" contained in Section 2(1)(1) permits an assignee of a non-tribal transferee effected prior to that date i.e. March 15, 1971 to escape the consequences of annulment under Sections 3(1) and 4 of the Act. Such a construction of the definition of the expression "non-tribal transferee" u/s 2(1)(1) would run counter to the Scheme of the Act.

6. The said Act thereafter again came up for consideration before the Division Bench of this Court in the case of *B.N. Rajput v. Bandu Ana Bhil and Ors.* 1985 M.L.J. 525. In that case the non-tribal had purchased 3 pieces of land in the year 1962-63. The Division Bench of this Court held that the matter is covered by the judgment of the Apex Court in the case of *Lingappa Pochanna (supra)*. However, the Division Bench noted that another Single Judge of the Court in the case of *Marotrao Ganpatrao Kamble v. State of Maharashtra, and Ors.* 1985 M.L.J. 49 : 1988 M.L.R.337, had taken a contrary view which is likely to create some confusion and, therefore, needs to be considered and formally overruled. It was the contention therein that the transfer in favour of the non-tribal was in the year 1962-63 and the mortgage by the non-tribal in favour of a bank was in the year 1968. A lease was created in favour of non-tribal simultaneously with the mortgage. It was contended that mortgage effected in favour of the bank in 1968 i.e. prior to 15.3.1971 the land is excluded from the provisions of Sections 3(1) and (4), in view of the aforesaid definition of the "non-tribal transferee". Relying on the judgment of the Apex Court in the case of *Lingappa Pochanna (supra)* the said argument was rejected.

7. It is thus clear that the Apex Court has clearly held that even to the transactions between anon-tribal transferee and a subsequent transferee even before 15.3.1971. Section 3 would be applicable. What the learned Counsel for the petitioner wants to contend is that such a transaction between the person who is not a notified member of the Scheduled Tribe and a person who belongs to a notified Scheduled Tribe if it is done after 15.3.1971 is excluded. It is well settled interpretation that a Section has to be read as a whole and no exception can be carved out unless it is so expressly provided. In the instant case what is covered is transfer of land from a tribal to a non-tribal and it also includes a tribal. What is important to note is that the Scheme of the Act is not merely to protect the tribals, but the tribals who are the owners of the land. This is the spirit behind the Act. Not only this, the Act protects the exploitation of the tribal by non-tribal, but also exploitation of tribals by tribals themselves. Therefore, the language used is "land of tribal transferor, who is entitled to resumption of land. Under these circumstances no different interpretation can be given to Section 2(1)(1) of the Act than what has been given by the Apex Court in the case of *Lingappa Pochanna (Supra)*.

8. It is also pointed out that the Commissioner u/s 7 could not have suo motu called for the records on the expiry of three years from the date of the order except in cases where directions are issued by the State Government. The Act has been enacted to secure rights to an exploited section of community. It is true that the S.D.O. u/s 3 is entitled to exercise jurisdiction in the first instance. However, the scheme of the act must not be frustrated merely because authority higher than the S.D.O. has exercised jurisdiction. These are acts not of want of jurisdiction but at the highest cases where jurisdiction is exercised without the permission from the State Government. Even here resolution was relied upon bearing No. 1988/PRA-K. 993/L-9/89 dated 15.6.89 conferring such powers on

the Commissioner. In these circumstances there was power in the Commissioner and in fact permission was granted. The said contention is also rejected.

9. In view of the same, there is no merit in the petition, which is accordingly rejected. Rule discharged. There shall be no order as to costs.