
(2004) 10 BOM CK 0128
In the Bombay High Court
Case No : Writ Petition No. 856 of 1992

Manohar @ Walmik Kable

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 1 ALLMR 588 : (2005) 107 BOMLR 193

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By this petition under Articles 226 and 227 of the Constitution of India the petitioner challenges order dated 15.10.1991 passed by Maharashtra Revenue Tribunal, Nagpur (for short "M.R.T.") in appeal under Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 thereby confirming the order dated 28th August, 1991 passed by Tahsildar, Chandrapur ordering restoration of the land in favour of the respondent No. 2 Smt. Manjulabai who is widow of original tribal owner Ragho, The facts in brief are as under:

2. The present petitioner on 17.9.1987 has purchased fields Khasra Nos. 64 and 65 (now Gat No. 9 area 2.35 acres of village Lohara, Tan. and Distt.-Chandrapur) from one Deorao Pandurang Makode, who is respondent No. 3 in the present petition, and he purchased these fields on 18.12.1973 from deceased Ragho for Rs. 1,900/- and sold it for Rs. 7,000/- to the present petitioner.

3. It appears that suo motu proceedings was started for restoration of the land in favour of the tribal and restoration was finally ordered. The said order was challenged before the M.R.T, in appeal and the matter was remanded back. After remand the Tahsildar, Chandrapur has passed impugned order on 28th August, 1991. The Tahsildar has issued notices to the parties to appear before him. It

appears that respondent No. 3 Deorao and Ragho appeared before the Tahsildar on 31.1.1990 and 26.6.1989 and their statements were recorded. They confirmed their earlier statements and adopted same stand. The report of Patwari was also obtained on 27.12.1990. In that report Patwari mentioned that Ragho has expired and survived by widow i.e. present respondent No. 2. He also reported that the above mentioned fields are recorded in the name of Manohar @ Walmik s/o Narayan Kable (present petitioner), resident of Chandrapur. It appears that thereafter in view of the above mentioned order of M.R.T. dated 16th January, 1989 further notices were issued on 14.6.1991 and parties were given full opportunity. But the petitioner as also the respondent No. 3 did not remain present. The respondent No. 2 Smt, Manjulabai alone appeared on 31.7.1991 and she signed statutory proforma No. 3 and also expressed her willingness to cultivate the land personally. She also produced certificates to show that she belongs to Gond (Scheduled Tribe). The Tahsildar therefore, passed order of restoration in her favour. In appeal M.R.T. has considered the validity of this order and on 15.10,1991 found that the order is just and proper. The ground which was argued before M.R.T. was that the deceased Ragho or his wife Manjulabai are not belonging to Scheduled Tribe. The M.R.T. has considered the exercise undertaken by the Tahsildar for this purpose and also written statement filed earlier by Deorao in which Deorao admitted that Ragho belongs to "Gond" Tribe. Next ground of argument before the M.R.T. was that Smt. Manjulabai is not legal representative of deceased Ragho. However, M.R.T. has also found it incorrect in the result M.R.T. dismissed the appeal summarily.

4. The learned Advocate M.N. Ingale appearing for the petitioner argues that today the land is no more an agricultural land. He contends that it is already put to non-agricultural use. He points out certain documents which are annexed to the petition for that purpose. The document at Annexure-A is 7/ 12 extract pertaining to the suit land and in it, it is expressly shown that it pertains to year 1989-90. Mr. Ingale has relied upon the Column No. 13 in which this entire area admeasuring 2.35 acres or 0.92 hectares is shown as the land not available for cultivation. He also invites attention of the Court to Annexure-B which is communication dated 11.9.1975 written by Gram Panchayat, Davai Govindpur to the petitioner. In this communication it is mentioned that the application dated 2.9.1975 submitted by the petitioner has been considered by the Gram Panchayat in its meeting dated 10.9.1975 and copy of resolution has been forwarded to the petitioner as its annexure. Page 18 is again a communication of even date addressed by the Sarpanch of above mentioned Gram Panchayat to the petitioner and in it, it is mentioned that as per application dated 20th August, 1975 of the petitioner the Gram Panchayat has passed resolution on 10.9.1975 and as per that resolution the petitioner can have his factory on the said land. It is mentioned that therefore this no objection certificate is being issued. At the bottom there is a note, "before undertaking construction work plan should be submitted". On the basis of these three documents contention has been advanced that as the land is no longer available for cultivation, it cannot be

restored to respondent No. 2. The learned Counsel for the petitioner has expressly stated that he is pressing only this ground in the petition. He has also read out the provisions of Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. Perusal of the said section shows that the lands which are not put to any non-agricultural use on or before 6th day of July, 1974 can be restored to tribal transferors. Here it is admitted position on record that the land was not put to any non-agricultural purpose before 6th July, 1974. All three documents mentioned above are of 1989-90 or of September, 1975. In such circumstances, the ground being raised at this juncture when restoration is being ordered that the land is put to some non-agricultural purpose cannot be accepted as valid ground to defeat the provisions of the said section. As already stated above on record there is no material to show that the land is actually put to some non-agricultural use. Apart from the fact that, it is apparent on record that it was not put to any non-agricultural use prior to 6th July, 1974.

5. The learned A.G.P., appearing for respondent No. i has invited my attention to paragraph No. 7 of the Return dated 11th August, 1992 placed on record on behalf of the State Government. In the said paragraph apart from pointing out this requirement of putting the land to non-agricultural use prior to 1974 it is further expressly stated that there is no specific order of revenue authority permitting such non-agricultural use. In such circumstances, the argument that the land is put to non-agricultural use cannot be accepted. Hence, I do not see any merits in the petition. As already stated above no other argument has been advanced.

In that view of the matter, the orders passed by the Tahsildar, Chandrapur and Maharashtra Revenue Tribunal, Nagpur do not show any apparent error on the face of the record or any jurisdictional error.

Hence, the writ petition is dismissed. No order as to costs.