(2015) 03 BOM CK 0398

In the Bombay High Court

Case No : W.P. No. 428 of 2008

Mulchand and Others APPELLANT

Vs

Rambhau and Others RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Constitution of India, 1950 — Article 341, 342
Maharashtra Land Revenue Code, 1966 — Section 36, 36-A
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3, 3(1), 3(1)(i)(ii)

Citation : (2015) 6 ABR 760 : (2015) 5 MhLj 867

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

Bench : Single Bench

Advocate : M.B. Parate, for the Appellant; S.S. Sharma, for the Respondent

Judgement

R.K. Deshpande, J.—The petitioners belong to a tribe "Gond", which is recognized as Scheduled Tribe under Entry No. 18 in the Constitution (Scheduled Tribes) Order, 1950 in relation to the State of Maharashtra, and the respondent Nos. 1 to 5 belong to "Kunbi" caste and they are non-tribals. By an order dated 20-2-1989 passed in Revenue Case No. 282/LND-31/82-83 of Tirora, the Tahsildar, Tirora, directed restoration of lands Khasra No. 77/1, admeasuring 1 acre, and Khasra No. 77/2, admeasuring 1.36 acres to the petitioners, who are tribals, from the respondents/non-tribals. The sale-deeds executed in favour of the respondents on 10-3-1969 and 22-3-1971, were held to be covered by section 3(1)(i)(ii) of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. This order has been set aside by the Maharashtra Revenue Tribunal, Nagpur, by its order dated 31-10-1991 passed in Appeal Nos. 69/B-109/91 and 70/B-109/91, which is the subject-matter of challenge in this petition. By an order dated 29-4-2005 passed by the Sub-Divisional Officer, Gondia, in Revenue Appeal No. 16/RTS 64/2002-03 of Mouza Tirora, the mutation Entry No. 3982 dated 28-4-2003 in the names of the petitioners has been cancelled on the basis of the aforesaid order dated 31-10-1991 passed by the Maharashtra Revenue Tribunal, Nagpur.

Similarly, the Tahsildar, Tirora, passed the consequential order on 30-7-2005 in Revenue Case No. 7/RTS-64/2004-05 of Mouza Tirora, cancelling the mutation entry in the names of the petitioners and restoring the entry in the names of the respondents. The appeals preferred against these orders have been dismissed by the Additional Collector, Gondia, by his order dated 22-5-2007 passed in Revenue Appeal No. RTS-64/Tiroral/05-06. Hence, all these orders are also the subject-matter of challenge in this petition.

2. The facts of the case are that one Hari Doma Mahar, a non-tribal, was the owner of the lands in question, and he sold the said lands to one Hagru by a registered sale-deed dated 19-11-1951. Ganpat Zagduji Surpame, Sampat Zagduji Surpame and Dalpat Zagduji Sarpame, all the three brothers, purchased the lands in question jointly in the year 1955 from the vendor Hagru. Thus, all the three brothers were the joint owners of the lands Khasra No. 77/1, admeasuring 1 acre; and Khasra No. 77/2, admeasuring 1.35 acres. The petitioners are their legal representatives. The land Khasra No. 77/1, admeasuring 1 acre, was sold to Rambhau Gopalrao Ingle, a non-tribal, by a registered sale-deed dated 10-3-1969, whereas the land Khasra No. 77/2, admeasuring 1.36 acre, was sold to one Sindhubai, a non-tribal, by a registered sale-deed dated 22-3-1971. The respondent Nos. 1(1) to 1(7) are the legal representatives of the deceased Rambhau Gopalrao Ingle. It is at the instance of the petitioners, who are tribals, that the order of restoration of lands was passed under section 3(1)(i)(ii) of the Maharashtra Restoration of Lands to Scheduled Tribes Act, by the Tahsildar, Tirora.

3. By the impugned order dated 31-10-1991, the Maharashtra Revenue Tribunal has held that the lands in question were sold on 10-3-1969 and 22-3-1971, that is prior to coming into force of the Act No. 108 of 1976 removing area restrictions subsisting under the Constitution (Scheduled Tribes) Order, 1950 then prevailing. The petitioners, though belong to a "Gond" tribe, were not residing in the areas of (1) Melghat tahsil of Amravati district, (2) Gadchiroli and Sironcha tahsils of Chanda district, and (3) Kelapur, Wani and Yeotmal tahsils of Yeotmal district, but they were residing in Bhandara district. Hence, they were not recognized as Scheduled Tribes at the time when the transfers were made. It has been held that the provision of section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act would not, therefore, govern the transfers in question. Before this Court, Shri S.S. Sharma, the learned counsel for the respondents (non-tribals) placed reliance is placed upon the provisions of Act No. 10 of 2003 brought into force with effect from 7-1-2003, which put a comma between the tribes "Gond" and "Rajgond" in Entry No. 18 of the Constitution (Scheduled Tribes) Order, 1950. It is urged that it is for the first time a separate "Gond" tribe is recognized as a Scheduled Tribe with effect from 7-1-2003, and, therefore, the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act would not apply.

4. In view of above, the following two questions fall for determination in this

petition:

"(1) Whether, in the facts and circumstances of this case, the transfer of lands prior to 1976 by the tribal to non-tribal is hit by the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974? and

(2) Whether by putting a punctuation mark comma (,) between "Gond" and "Rajgond" (Gond, Rajgond,...) in Entry No. 18 in the Constitution (Scheduled Tribes) Order, 1950, by an Act No. 10 of 2003, a separate "Gond" tribe is recognized as Scheduled Tribe for the first time with effect from 7-1-2003?"

5. So far as the question No. (1) above is concerned, it is no longer res integra in view of the Division Bench judgment of this Court in the case of Kashibai Pawar and others Vs. State of Maharashtra, . It is the clear verdict given by the Division Bench of this Court that the expression "tribal" wherever it is used in the Restoration Act or in other words upon whom the benefit is sought to be conferred under the said Act would mean a person belonging to a Scheduled Tribe mentioned in Part VII-A of the Schedule to the Scheduled Tribes Order, 1950 but without any area restrictions as contained therein. The Division Bench of this Court has taken into consideration the amendment to the Constitution (Scheduled Tribes) Order, 1950 along with the Amendment Act No. 108 of 1976 and also the provisions of sections 36 and 36-A of the Maharashtra Land Revenue Code, 1966 read with section 3(1) of the Restoration Act. In para 21 of the judgment, it has been clearly held that perusal of section 3(1) of the Restoration Act shows that it contemplates that the non-tribal - transferee is in possession of the land, which is transferred to him during the period from 1-4-1957 to 6-7-1974 by a tribal-transferor, i.e. a person belonging to a Scheduled Tribe, as defined in the Explanation in section 36 of the Code, which means a Scheduled Tribe, without any area restriction, as listed in Part VII-A of the Scheduled to the Scheduled Tribes Order, 1950. In view of this, the question of law at serial No. (1) is answered, holding that the transfers on 10-3-1969 and 22-3-1971 by the petitioner-tribals to the respondent - non-tribals are covered by section 3 of the Restoration Act.

6. In order to consider question No. (2), the legislative and judicial history of "Gond" tribe need to be considered.

7. There is a legislative history behind Entry No. 18 of "Gond" in the Constitution (Scheduled Tribes) Order, 1950. The President issued the Constitution (Scheduled Tribes) Order, 1950 in exercise of the powers conferred by clause (1) of Article 342 of the Constitution of India. By clause 2 of that Order, it was provided that the tribes or the tribal communities, or parts of, or groups within tribes or tribal communities, specified in Parts I to XII of the Schedule to the Order shall, in relation to the State to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof residents in the localities specified in relation to them, respectively, in those Parts of that Schedule. The Order is followed by a Schedule constituting of twelve Parts. Entry No. 12 in the

relevant part of the Schedule to the Order read as "Gond including Madia (Maria) and Mudia (Muria)".

8. Item 7 in Part IV relating to Bombay in the Constitution (Scheduled Tribes) Order, 1950, as amended by Act No. 63 of 1956, specifies that in (1) Melghat tahsil of Amravati district, (2) Gadchiroli and Sironcha tahsils of Chanda district, and (3) Kalapur, Wani and Yeotmal tahsils of Yeotmal district, 32 tribes or tribal communities shall be deemed Scheduled Tribes. Entry No. 12, as was set out therein, was as under:

"12. Gond, including -- Arakh or Arrakh, Agaria, Asur, Badi Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta or Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru or Dhurwa, Dhoba, Dhulia, Doria, Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar or Khirwara, Kucha Maria, Kuchaki Maria, Madia (Maria), Mana, Mannewar, Mudia (Muria), Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia or Thotya, Wade Maria or Wade Maria."

9. Item 5 in Part VII-A-Maharashtra in Eighth Schedule under the Bombay Reorganization Act, 1960 (Act No. 11 of 1960) brought into force on 25-4-1960 reiterated the aforesaid position prevailing in Entry No. 12 in Item 7 in Part IV.

10. Thereafter the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 (Act No. 108 of 1976) was passed by the Parliament, which came into force on 27th July, 1977. The amendment removed the area restriction contained in the Constitution (Scheduled Tribes) Order prevailing prior to 1976. The entire Schedule to the Order was substituted by a new Schedule consisting of sixteen Parts. Part IX of new Schedule relates to the State of Maharashtra. Entry No. 18 of Part IX of new Schedule, which corresponds to Entry No. 12 in the Constitution (Scheduled Tribes) Order stood prior to amendment, was substituted as under:

"18. Gond Rajgond, Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuti, Bhar, Bisonhorn Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Gaiki, Gatta, Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, Khirwara, Kucha Maria, Kuchaki Maria, Madia, Maria, Mana, Mannewar, Moghya, Mogia, Monghya, Mudia, Muria, Nagarchi, Naikpod, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thatia, Thotya, Wade Maria, Vade Maria."

11. The Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 2002 (Act No. 10 of 2003) received the assent of the President of India on 7-1-2003 and it was published in the gazette of India on 8-1-2003. The Act No. 10 of 2003 is reproduced below:

"1. Short title.--This Act may be called the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002.

2. Definitions.--In this Act, unless the context otherwise requires,--

(a) "Scheduled Castes Order" means the Constitution (Scheduled Castes) Order, 1950, made by the President under Article 341 of the Constitution;

(b) "Scheduled Tribes Orders" means the Constitution (Scheduled Tribes) Order, 1950, the Constitution (Uttar Pradesh) Scheduled Tribes Order, 1967 and the Constitution (Sikkin) Scheduled Tribes Order, 1978, made by the President under Article 342 of the Constitution.

3. Amendment of Scheduled Castes Order.--The Scheduled Castes Order is hereby amended in the manner and to the extent specified in the First Schedule.

4. Amendment of Scheduled Tribes Orders.--The Scheduled Tribes Orders are hereby amended in the manner and to the extent specified in the Second Schedule."

The relevant extract of Part IX - Maharashtra in the Second Schedule therein is reproduced below:

"(i) in Part IX.--Maharashtra, (i) omit Entry 12;

(ii) in Entry 18, for "Gond Rajgond" substitute "Gond, Rajgond";

(iii) omit Entry 45." By this Act No. 10 of 2003, which received the assent of the President of India on 7-1-2003, a punctuation mark comma was put between "Gond" and "Rajgond" in Entry No. 18.

12. Thus, the legislative history behind Entry No. 18 of "Gond" need to be summarized in brief. The Constitution (Scheduled Tribes) Order, 1950, Entry No. 12 contained a cluster of tribes led by "Gond" tribe, which is followed by punctuation mark comma and the word "including" further followed by the other tribes, like Arakh, Arrakh...(Gond, including Arakh, Arrakh...) etc. Till 1976, the tribes in Entry No. 12 found in (1) Melghat tahsil of Amravati district, (2) Gadchiroli and Sironcha tahsils of Chanda district, and (3) Kelapur, Wani and Yeotmal tahsils of Yeotmal district were only recognized as Scheduled Tribes under the Constitution (Scheduled Tribes) Order, 1950. On 27-7-1977, Act No. 108 of 1976 was brought into force. Entry No. 18 corresponding to earlier Entry No. 12 was substituted. The area restrictions were removed, as a result the tribes in Entry No. 18 all over the State became the recognized Scheduled Tribes, as contemplated under clause 2 of the Constitution (Scheduled Tribes) Order. The punctuation mark comma and the word "including" after the lead tribe "Gond" were omitted and the word "Rajgond" was inserted after "Gond" tribe and it was followed by a punctuation mark comma and the other tribes, such as Arakh, Arrakh, (Gond Rajgond, Arakh, Arrakh,...) etc. There was no punctuation mark comma in between the lead tribe "Gond" followed by Rajgond. Act No. 10 of 2003 puts a punctuation mark comma between "Gond" and "Rajgond", which is again followed by a punctuation mark comma in between the other tribes, such as Arakh, Arrakh, (Gond, Rajgond, Arakh, Arrakh...) etc.

13. Now, judicial history behind Entry "Gond" in the Constitution (Scheduled

Tribes) Order, 1950 needs to be seen as under:

"Item No. 30 in Entry No. 12 in the Constitution (Scheduled Tribes) Order, 1950, as was amended by Act No. 63 of 1956, is "Mana", which fell for consideration of the Apex Court in the case of Dina v. Narayan Singh, reported in 38 ELR 212. This case is popularly known as Dina I. In the said case, the election of the respondent No. 1 was set aside by the High Court on the ground that he was not eligible to contest the election as a candidate belonging to Scheduled Tribe "Mana" community. This decision was maintained by the Apex Court in appeal. It was held that "Mana" community is a sub-tribe of "Gond", which is a main tribe, and "Mana" should have an affinity with "Gond". It was held that when the Parliament included amongst 32 items in Entry No. 12, several tribes or tribal communities, which are recognized as sub-tribes of "Gond", an inference that it was intended to include "Mana", which is a sub-tribe of "Gond" alone and not "Mana" as a community, which is a section of "Marathas" may readily be made. The argument that "Manas" are distinct communities not having affinity with "Gond", was rejected."

14. This Entry No. 18 in the Constitution (Scheduled Tribes) Order, 1950, as amended by Act No. 108 of 1976, fell for consideration of the Apex Court in the case of Dadaji alias Dina Vs. Sukhdeobabu and Others, . It was a case where the election of the respondent was set aside by the High Court on the ground that the respondent was not eligible to contest the election as a candidate belonging to Scheduled Tribe "Mana" community and this decision was maintained by the Apex Court in appeal. The Apex Court noted in Dina II that the amendment of the Entry omitted the word "included" as was seen in the Entry subsisting prior to it. The Court held that if the Schedule to the Order had not undergone any change, there would not have been any room for the argument that the appellant was a person belonging to Scheduled Tribe eligible to contest as a candidate at an election from reserved constituency, as the question was concluded by the judgment in the case of Dina I.

15. In Dina II, after perusing all the Entries made in the Order, the Court held that in certain Entries, only one community is mentioned and in certain others, two or more communities are mentioned. The Court found that it is obvious that certain communities have been grouped together under a single Entry in the light of Article 342 of the Constitution, which requires parts or groups within a tribal community also to be specified in the Order issued thereunder. The Court, therefore, held that it is reasonable to hold that the communities mentioned against any specific Entry are those which have mutual affinity amongst them. The Court rejected the argument that a person belonging to any "Mana" community should be treated as a person belonging to Scheduled Tribe even though it had no affinity with the "Gond" tribe.

16. The Court in Dina II also considered the argument on the basis of the difference in the punctuation marks used in Entry No. 12 and in Entry No. 18, and it is held that it is well known that the punctuation marks by themselves do

not control the meaning of a Statute when its meaning is otherwise obvious. It was held that "Mana" community included in Entry No. 18 can only be that which has affinity with "Gond" and any other community which also bears the name "Mana" but does not have any such affinity cannot be deemed to fall within the scope of "Mana" in Entry No. 18.

17. In the decision of the Division Bench of this Court in the case of Mana Adim Jamat Mandal Vs. State of Maharashtra and Others, , the question came up for consideration as to whether the members of the "Mana" community, especially in Vidarbha region, fall under Item 18 of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 and are entitled to be treated as the members of the Scheduled Tribe. This Court found that the decision of the Apex Court in the case of Dina I was expressly overruled by the Constitution Bench decision in State of Maharashtra Vs. Milind and Others, . It also held that the decision in Dina II also stood impliedly overruled in view of the law declared by the Apex Court in Milind''s case. The Court held that it is not permissible for the State Government or the Courts to deny the benefits available to the Scheduled Tribes community to the members belonging to the "Mana" Community. It further held that even if it is assumed that there was a separate community, which is called as "Mana" in Vidarbha region, it has no affinity with "Gond" tribe that community would also fall within the scope of Scheduled Tribes Order by virtue of the Amendment Act, 1976. It held that there is no tribe mentioned in Entry No. 18 as "Gond Manas" and no evidence can be let in to suggest that "Gond Manas" can qualify as Scheduled Tribes under Entry No. 18.

18. The aforesaid decision was carried to the Apex Court, which confirmed it in the decision in the case of State of Maharashtra and Others Vs. Mana Adim Jamat Mandal, . In para 29 of the said decision, the Apex Court held that a quick survey of the Presidential Order of the Entries in the Second Schedule of the Act shows that wherever the Parliament wanted to restrict the scope of an Entry with reference to certain area or with reference to language or to include certain tribes in a group, it has done so expressly. It also noticed that in the Second Schedule, not only there are many Entries mentioning a single community or tribe individually but also quite a few Entries mentioning a group of communities or tribes. Para 30 of the said decision being relevant, is reproduced below:

"30. The common pattern found in most of the group entries is that there is a punctuation mark comma (,) between one Entry and another Entry in the group signifying that each one of them is deemed to be a separate Scheduled Tribe by itself. In the present case, Entry 18 of the Schedule clearly signifies that each of the Tribe mentioned therein deemed to be a separate Tribe by itself and not a sub-Tribe of ''Gond''. ''Gond'' is a Scheduled Tribe, it is not disputed. As already noticed that ''Gond'' including Arakh or Arrakh etc. found in Entry 12 of Amendment Act 63 of 1956 has been done away with the Amendment Act of 1976. In Entry 18 of Second Schedule of Amendment Act of 1976 the word ''including'' was deliberately omitted, which signifies that each one of the Tribe specifying in Entry 18 is deemed to be a separate Tribe by itself. Therefore, "Mana" is not a sub-Tribe of "Gond" but a separate Tribe by itself and is a Scheduled Tribe."

It is thus held that the punctuation mark comma (,) between one Entry and another Entry in the group signifying that each one of them is deemed to be a separate Scheduled Tribe by itself. It is held that Entry No. 18 of the Schedule clearly signifies that each of the Tribe mentioned therein deemed to be a separate Tribe by itself and not a sub-tribe of "Gond". The Court noticed that it is not disputed that "Gond" is a Scheduled Tribe. The Court further held that omission of word "including" in Entry No. 18 was deliberate signifying that each one of the tribe specifying in Entry 18 is deemed to be a separate tribe by itself. It held that "Mana" is not a sub-tribe of "Gond" but separate tribe by itself and is a Scheduled Tribe.

19. In fact, the judicial pronouncements by the Apex Court in Dina I and Dina II show that a cluster of tribe in Entry No. 18 is led by tribe "Gond" and all other tribes in the said Entry should have an affinity with the main tribe "Gond" so as to be called as recognized Scheduled Tribe. In Dina II, the Court considered the omission of the word "including" appearing in Entry No. 18 and it was held that even when it was possible to give an extended meaning to the expression "Mana", in the presence of word "including", the Court gave a restricted meaning to hold that only "Mana" community having affinity with "Gond" could be considered as Scheduled Tribe. The argument that "Mana" are distinct communities not having affinity with "Gond" was rejected. It was held that the punctuation mark comma between two tribes in old Entry No. 12 and subsequent Entry No. 18 would not control meaning of a Statute and would not make any difference. In Mana Adim Jamat Mandal''s case, decided by this Court and confirmed by the Apex Court, it has clearly been held that the decisions of the Apex Court in Dina I and Dina II have been overruled in the decision of the Constitution Bench of the Apex Court in the State of Maharashtra v. Milind and others, cited supra. In unequivocal terms, the Apex Court has held in Mana Adim Jamat Mandal''s case that the omission of the word "included" in Entry No. 18 and the punctuation mark comma (,) between one Entry and the another Entry in the group of tribes in Entry No. 18 was deliberate signifying that each one of them is deemed to be a separate Scheduled Tribe by itself and not a sub-tribe of main tribe "Gond".

20. The combined effect of legislative and judicial history of "Gond" tribe shows that right from beginning of the Constitution (Scheduled Tribes) Order, 1950, this tribe was recognized as a Scheduled Tribe. Though prior to 1976 only the "Gond" tribe prevailing in the specified areas was recognized as a Scheduled Tribe, upon removal of area restrictions in the year 1976, the "Gond" tribe in Entry No. 18 all over the State became the recognized Scheduled Tribe. In terms of the decision of the Division Bench of this Court in Kashibai''s case, a person belonging to a

"Gond" tribe stands recognized as a Scheduled Tribe right from the first date of coming into force of the Constitution (Scheduled Tribes) Order, 1950. The earlier view of the Apex Court in Dina I and Dina II that the communities mentioned against specified Entry are those which have mutual affinity amongst them and rejecting the argument that the punctuation marks used in Entry No. 12 and Entry No. 18 indicate that there should be no mutual affinity amongst them, has been overruled. The effect of overruling of a decision, particularly one deciding the constitutional issue, is that it operates retrospectively as if the decision overruled was never delivered, unless for other purposes the doctrine of prospective overruling is invoked. The judicial pronouncement of the Apex Court in Mana Adim Jamat Mandal''s case shows that the deletion of the word "including" and the existence of punctuation mark comma between one Entry and another Entry in a group of tribes in Entry No. 18 signifies that each of them is deemed to be a separate Scheduled Tribe by itself and not a sub-tribe of "Gond" operates from the first date of coming into force of the Constitution (Scheduled Tribes) Order in the year 1950.

21. The statements of objects and reasons of Act No. 10 of 2003 being relevant, are reproduced below:

"INDIAN PARLIAMENT ACT No. 10 OF 2003

An Act to provide for the inclusion in the lists of Scheduled Tribes, of certain tribes or tribal communities or parts of or groups within tribes or tribal communities, equivalent names or synonyms of such tribes or communities, removal of area restrictions and bifurcation and clubbing of entries, imposition of area restriction in respect of certain castes in the list of Scheduled Castes, and the exclusion of certain castes and tribes from the list of Scheduled Castes and Scheduled Tribes, in relation to the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Orissa, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:--

Statement of Objects and Reasons.--"According to the provisions of Articles 341 and 342 of the Constitution, the lists of the Scheduled Castes and the Scheduled Tribes were notified during the Years 1950 and 1951 in respect of various States and Union territories respectively. These lists were modified from time to time. A number of requests were received from time to time from the State Government for removing anomalies in the lists by inclusion of certain tribes or tribal communities, equivalent names or synonyms of certain tribes or communities, removal of area restrictions and bifurcation or clubbing of certain entries, etc., imposition of area restrictions in respect of certain castes in the list of Scheduled Castes, and exclusion of certain castes and tribes from the lists of Scheduled Castes and Scheduled Tribes.

2. The modifications in the lists have been processed. Accordingly, the lists of Scheduled Castes and Scheduled Tribes are proposed to be modified for 20 States in respect of 140 communities after consultation with the State Governments concerned, the Registrar General of India and the National Commission for Scheduled Castes and Scheduled Tribes.

3. The amendments contained in the Scheduled Castes and Scheduled Tribes Orders (Second Amendment) Bill, 2002 broadly fall under the following categories, namely:--

(i) the transfer of communities from the list of Scheduled Castes to that of the list of Scheduled Tribes as they had been wrongly included in the list of Scheduled Castes whereas they belong to Scheduled Tribes category;

(ii) the inclusion of certain tribes or tribal communities or parts thereof or groups within tribes or tribal communities;

(iii) the addition of equivalent names or synonyms in respect of certain tribes in the existing list;

(iv) the exclusion of certain communities from the existing lists;

(v) the bifurcation and clubbing of entries in the existing lists,

based on their ethnic dissimilarity or similarity;

(vi) the removal of area restrictions in respect of certain specific tribes in the existing lists and imposition of area restrictions in respect of certain castes;

(vii) the correction in the spellings of certain tribes in the existing lists; and

(viii) the change of nomenclature of certain tribes in the existing lists."

22. A separate tribe "Rajgond" was inserted in such form in the Constitution (Scheduled Tribes) Order, 1950 by an Act No. 108 of 1976, after the lead tribe "Gond", but while doing so, an anomaly occurred in not following a pattern of putting a comma between two tribes of "Gond" and "Rajgond", which are to be considered as separate tribes in Entry No. 18. The Indian Parliament Act No. 10 of 2003 has been brought into force with effect from 7-1-2003. One of the objects of the said Act, which introduces a comma (,) between "Gond" and "Rajgond" (Gond, Rajgond...) under Entry No. 18 of the Constitution (Scheduled Tribes) Order, 1950, as shown in category (v) in the aforesaid objects and reasons, is to remove an anomaly in the list and to bifurcate the two Entries on their ethnic dissimilarities, clubbed together by mistake. The amendment of putting comma between two tribes "Gond" and "Rajgond" (Gond, Rajgond...) in Entry No. 18 by Act No. 10 of 2003 is, therefore, merely clarificatory or declaratory in nature, and operates from the first date of coming into force of the Constitution (Scheduled Tribes) Order, 1950 and it cannot, therefore, be said that by such amendment, a separate "Gond" tribe is recognized therein for the first time with effect from 7-1-2003. The question of law at serial No. (2) is answered

accordingly.

23. In view of the aforesaid position of law, the petition is allowed. The orders dated 29-4-2005 passed by the Sub-Divisional Officer, Gondia, in Revenue Appeal No. 16/RTS-64/2002-03 of Mouza Tirora; dated 30-7-2005 passed by the Tahsildar, Tirora, in Revenue Case No. 7/RTS-64/2004-05 of Mouza Tirora; dated 22-5-2007 passed by the Additional Collector, Gondia, in Revenue Appeal No. RTS-64/Tiroral/0506; and dated 31-10-1991 passed by the Maharashtra Revenue Tribunal, Nagpur, in Appeals No. 69/B109/91 and 70/B109/91, are hereby quashed and set aside, and the order dated 20-2-1989 passed by the Tahsildar, Tirora, in Revenue Case No. 282/LND-31/82-83 of Tirora is restored along with the condition of furnishing an undertaking to cultivate the lands personally and to pay the amount, as may be determined. Rule is made absolute in above terms. No order as to costs.

