

(2002) 08 BOM CK 0105
In the Bombay High Court
Case No : Writ Petition No. 18 of 1992

Nago Nannaware and Another	Vs	APPELLANT
Kanhu Madavi and Others		RESPONDENT

Date of Decision : 17-08-2002

Acts Referred:

Constitution of India, 1950 — Article 342
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3

Citation : (2003) 1 ALLMR 613 : (2003) 2 BomCR 397 : (2003) 1 MhLj 451

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Anjan De and Sharma, for the Appellant; Dangre, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—This petition is directed against an order dated 12-7-1991 passed by the Maharashtra Revenue Tribunal upholding the order of the Tahsildar directing the petitioners to restore the land purchased by them to the respondents 1 to 3. It is not necessary to go into the entire history of the case. The petitioners' father purchased the land from respondents 1 to 3 on 22-7-1964. The land admeasured 0.20 acres of agricultural land situated at mouza Mohali, Tahsil Brahmapuri, now Sindewahi in Chandrapur district.

2. After certain initial proceedings, which resulted in a remand to the Tahsildar on 30-11-1988, the Tahsildar held that the petitioners' claim that they were belonging to Scheduled Tribe was not valid. The Tahsildar held that the petitioners are "Mana" and not "Gond Mana" which is a Scheduled Tribe. He further held that the petitioners had not converted the land to non agricultural use before 6-7-1974 and that they had converted it to non agricultural use in 1982. The Tahsildar determined the cost of the construction at Rs. 20,000/- and directed the restoration of the land to the respondents 1 to 3 who were admittedly a Tribal. The matter was once carried in appeal to the Maharashtra

Revenue Tribunal. There was a remand to the Tahsildar. The Tahsildar again directed restoration of land to the respondents 1 to 3. The petitioners then again earned the matter in Appeal before the Maharashtra Revenue Tribunal. On 12-7-1991 the Maharashtra Revenue Tribunal dismissed the Appeal after hearing the parties. The learned Tribunal held that the petitioners have been rightly held to be "Mana" which is not a Scheduled Tribe. This finding was recorded on the basis of a statement made by the petitioners to the Tahsildar on 24-6-1986 that he is Mana and not Gond Mana. The Tribunal has held that "Mana" is at Sr. No. 18 of the Constitution (Scheduled Tribes) Orders, 1950. The Tribunal observed that it is only "Gond Mana" which is recognized as a Scheduled Tribe. The Tribunal accordingly found that the petitioners do not belong to Scheduled Tribe.

3. The learned counsel for the petitioners submitted that the petitioners are in fact members of Scheduled Tribe. Apart from the submission, nothing has been produced on behalf of the petitioners to lead to the conclusion that they belong to Scheduled Tribe. The Constitution (Scheduled Tribes) Orders 1950 issued under Article 342 of the Constitution of India recognizes the following as Scheduled Tribes in the district of Gadchiroli and Sironcha tahsil of Chanda district. Entry No. 18 reads as follows :

Gond, Rajgond, Arakh, Arrakh, Agaria, Asur, Badi Maria, Bada Maria, Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta, Koilabhuli, Bhar, Bisonhor Maria, Chota Maria, Dandami Maria, Dhuru, Dhurwa, Dhoba, Dhulia, Dorla, Kaiki, Gatta, Gatti, Guita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Khirwar, 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.

4. Mrs. Dangre, learned A.G.P., relied on a decision of Supreme Court in Dina v. Narayan Singh 38 ELR 212. That was a case in regard to the same question that arises in the present case, namely whether a person who claims to be a Mana can be held to be belonging to a Scheduled Tribe when on the evidence it is clear that the community of Mana that he belongs to, has no affinity with the Gonds. The Supreme Court after considering the evidence on record came to the conclusion that though there were Manas who belonged to Gond tribe in certain areas, Dina belongs to Kshatriya Badwaik Mana community and is not a member of Gond tribe. Their Lordships also took into account Dina's own statement that there was no community called Gond Mana and that he was a member of the Mana community which has no sub-caste or sub-division and that he is not a member of any sub-caste or any other community. Having regard to the evidence on record, Their Lordships concluded that the customs, manners, form of worship and dress of the Maratha Mana community are different from those of the Gonds and, therefore, such Manas who had no affinity with the Gonds could not be considered to be covered by Entry 12. At the relevant time Entry 12 read as follows :

"12. Gond, including --

Arakh or Arrakh, Agaria, Asur, Badi Maria or Bada Maria, Bhatola, Bhimma, Bhuta, Koilabhuta or Koilabhuti, Bhar, Bisonborn Maria, Chola Maria, Dandani Maria, Dhuru or Dhurwa, Dhoba, Dhuiia, Dorla Gaiki, Gatta or Gatti, Gaita, Gond Gowari, Hill Maria, Kandra, Kalanga, Khatola, Koitar, Koya, Kirwar or Khirwara, Kucha Maria, Kuchaki Maria, Madia (Maria), Mana, Mannower, Mohya or Mogia or Monghya, Mudia (Muria), Nagarchi, Nagwanshi, Ojha, Raj, Sonjhari Jhareka, Thantia or Thotya, Wade Maria or Vade Maria."

Their Lordships concluded that the Entry 12 indicates that Mana was sub-tribe of Gonds and "a Mana who was a member of the sub-tribe of Gonds alone was entitled to the privileges conferred by the Schedule to the Scheduled Tribes Order."

5. Thereafter Entry 12 was substituted with Entry 18, which is reproduced above. The effect of omission of the word "includes" from Entry 12 came to up for consideration before the Supreme Court in Dadaji alias Dina Vs. Sukhdeobabu and Others, . Their Lordships took the view that the omission of the word "Includes" has made no difference and in conclusion made the following observations :

"We are, therefore, of the view that the "Mana" community included in Entry No. 18 can only be that which has affinity with "Gonds" 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."

"The position has not since changed even though the Schedule to the Order is substituted by a new Schedule. There has only been a rearrangement of the Schedule with slight modification which has no effect on the question at issue in this case."

Ms. Sharma, learned counsel, for the petitioner however relied on a recent decision of the Supreme Court rendered by a Constitution Bench in the case of State of Maharashtra v. Milind and Ors. 2001(1) Mh.L.J. 1 of the judgment, in which conclusions are recorded, reads as follows :

"In the light of what is stated above, the following positions emerge :--1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other

words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda v. Anirudh Patar and Ors.* 1971 (1) SCR 904 and *Dina v. Narayan Singh* 38 ELR 212, did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter."

It is clear from a plain reading of the aforesaid conclusion that Their Lordships were of the view that *Dina's* case 38 ELR 212 (*supra*) was not decided correctly to the extent that it held that an enquiry was permissible and evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to be. In fact, Their Lordships have observed that no enquiry at all is permissible and no evidence can be let in the matter. In view of the fact that the subsequent decision in *Dadaji's* case (*supra*) only considered the effect of omission of the word "includes" the second decision cannot be taken to be good law after the decision of the Constitution Bench in *State of Maharashtra v. Milind and Ors.* (*supra*), though the subsequent decision is not expressly overruled.

6. In fact, in an earlier case the Supreme Court in *Palghat Jilla Thandan Samudhaya Samrakshna Samithi and Another Vs. State of Kerala and Another*, had observed in para 20 as follows:

"20. Learned counsel for the State relied upon the decision *Bhaiya Ram Munda v. Anirudh Patar* referred to in paragraph 15 of the judgment in *Srish Kumar Choudhury* case for the view taken there was that evidence was admissible for the purpose of showing what an entry in the Presidential Order was intended to mean. In paragraphs 8, 9, 10 and 11 of the judgment in *Srish Kumar Choudhury* case the Constitution Bench judgments referred to above are discussed, as also two other judgments taking the same view. Then, in paragraph 14, the judgments of this Court in the case of *Dina v. Narayan Singh* and *Bhaiya Ram Munda v. Anirudh Patar* are referred to and it is stated that both were rendered by the same Bench of two learned Judges. Paragraph 14 goes on to set out the substance of the decision in *Dina* case and paragraph 15 sets out the substance of the decision *Bhaiya Ram* case. In paragraph 16 it is said, "These authorities clearly indicate, therefore, that the entries in the Presidential Order have to be taken as final and the scope of enquiry and admissibility of evidence is confined within the limitations indicated. It is, however, not open to the court to make any addition or subtraction from the Presidential Order". There is, therefore, no doubt

that the Court in *Srish Kumar Choudhury* case accepted and followed, as it was found to do, the Constitution Bench judgments and not the two-Judge judgments in the *Dina* and *Bhaiya Ram Munda* cases."

7. The question is, what is the effect on the present case. The petitioner has been held by the Maharashtra Revenue Tribunal as not belonging to a Scheduled Tribe covered by Entry 18 because of the statement in his evidence that he belongs to caste Mana which is not Gond Mana. This finding is rendered in spite of the Caste Certificate issued to him by the Executive Magistrate Chandrapur that he belongs to Mana which is recognized as Scheduled Tribe. The Maharashtra Revenue Tribunal has concluded that "only Gond Mana is recognized as Scheduled Tribe" under Entry 18. This is clearly erroneous. There is no such tribe referred to in Entry 18 as Gond Mana. What the Tribunal most probably means is : Manas who are Gonds or have an affinity with Gonds. The result is that though the petitioner is a Mana, which is clearly a Scheduled Tribe, he has been denied that status because of his evidence that he is not a Gond Mana. In effect, what has been held is that Mana cannot stand alone to qualify as a Scheduled Tribe. Only Gond Mana can. The entry has not been read as it is. Evidence has been allowed to construe the entry. This is not permissible vide the conclusions in *Milind's* case *supra*. After the decision of Supreme Court in *Milind's* case (*supra*) it is clear that no evidence can be let in for the purpose of construing the entry. If such evidence is excluded there would be no occasion to deny the petitioner his claim that he belongs to Mana which is mentioned in Entry 18 on the ground that he would be entitled to be treated as Mana only if he has affinity with Gond.

8. I, therefore, find that the petitioners belong to a Scheduled Tribe and, therefore, the transaction dated 22-7-1964 under which they purchased 0.20 acres of agricultural land from Kanhu is not liable to be restored under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. In fact, Section 3 of the aforesaid Act renders the land of a tribal-transferor liable to be restored to him only if such lands have been transferred to a non tribal-transferee. Section 3(1) reads as follows :

3. (1) where due to transfer --

(a) the land of a Tribal-transferor is held by a non-Tribal-transferee, or

(b) the land acquired in exchange by a Tribal-Transferor is less in value than the value of the land given in exchange.

and the land so transferred is in possession of the non-Tribal-transferee, and has not been put to any non-agricultural use on or before the 6th day of July 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 made within thirty years from the commencement of this Act shall, after making such inquiry as he thinks fit, direct that --

(i) the lands of the Tribal transferor and non-Tribal transferee so exchange shall be restored to each other; and the Tribal-transferor, or as the case may be, the non-Tribal transferee shall pay the difference in value of improvements as determined under Clause (a) of Sub-section (4), or

(ii) the land transferred otherwise than by exchange be taken from the possession of the non-Tribal transferee, and restored to the tribal transferor, free from all encumbrances, and the Tribal transferor shall pay such transferee and other persons claiming encumbrances the amount determined under Clause (b) of Sub-section (4):

Provided that, where land is transferred by a Tribal transferor in favour of a non-Tribal transferee before the 6th day of July 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so transferred shall be restored to the Tribal transferor.

9. In the result, the writ petition is allowed. The impugned order dated 27-12-1989 passed by the Maharashtra Revenue Tribunal in Tribunal Appeal No. 55/B-109/1987 is quashed and set aside. Rule is made absolute in aforesaid terms. No costs.