**(2018) 02 BOM CK 0119**

**In the Bombay High Court**

**Case No :** 403 of 1998

Parbhatrao s/o Pundalik Ghire — APPELLANT

Vs

Asaram s/o Parma Rathod & Ors. — RESPONDENT

**Date of Decision :** 06-02-2018

**Acts Referred:**

<a href=5933>Maharashtra Land Revenue Code, 1966</a>, <a href=5933-36-A>Section 36-A</a> -
<a href=6026>Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974</a>, <a href=6026-6>Section 6</a>, <a href=6026-2>Section 2(1)(i)</a> - Appeal. - Definitions.

**Citation :** (2018) 02 BOM CK 0119

**Hon'ble Judges :** Ravindra V. Ghuge

**Bench :** Division Bench

**Advocate :** M.R.Andhale, ?J.S.Gavane, ?S.K.Tambe

**Final Decision :** Dismissed

# Judgement

1. The Petitioner is aggrieved by the order dated 16.09.1997

passed by the Maharashtra Revenue Tribunal, Aurangabad (Respondent

No.5) in the Appeal filed by Respondent No.1 under Section 6 of the

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short

"the Act of 1974") .

2. The prayers put forth by the Petitioner in clauses C, D and E

read as under:-

"C) That, the impugned order passed by the respondent No.5 in Case No.17/ A/1997/ Jalna/ dated 16.09.1997 may be quashed and set aside.

D) That, the respondent No.1 to 5 may kindly be directed or ordered by issuing any nature of writ, that the impugned judgment and order on the basis of Isar

Pawati alleged by the respondent No.1 in respect of land Gat No.45 admeasuring 2 Hector 19 R land may be declared illegal.

E) That, the respondent No.1 to 5 may kindly be directed or ordered that judgment and order passed by the Tahsildar Mantha District Jalna in File No.1993/ Jmb/ ROR/ 1 dated 29.03.1997 may be confirmed."

3. While admitting this petition on 03.11.1998, after hearing all the sides, this Court refused interim relief to the Petitioner.

4. I have considered the strenuous submissions of the learned Advocates for the respective sides.

5. The Petitioner relies upon the judgment of the learned Division Bench of this Court in the matter of Adivasee Sarvangin Vikas Samitee vs. State of Maharashtra and others, 2014 (7) Bom. C.R. 706 : 2013 (5) All M.R. 724. Respondent No.1 relies upon the judgment of the Honourable Supreme Court in the matter of Ram Baran Prasad vs. Ram Mohit Hazra, AIR 1967 SC 744 and the judgment of this Court in the matter of Bapurao s/o Nanu vs. Bapurao s/o Maruti Andha and another, 1992 (1) Mh.L.J. 17 : 1991 (4) Bom. C.R. 72.

6. The Petitioner belongs to "Andh" caste, which is a Scheduled Tribe and has been granted the Certificate of Validity dated 16.08.1994 by the Tribal Research and Training Institute, Maharashtra State, Pune, which was a Committee for scrutiny and verification of tribe claims, Maharashtra State, Nashik, prior to the introduction of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000.

7. The Petitioner approached the Tahasildar under the 1974 Act claiming that Respondent No.1 had illegally shown the land Gat No.45 admeasuring 2 H and 19 R in his name and that he was cultivating it as an owner. The Nayab Tahasildar, by his order dated 05.06.1993, had earlier ordered that the Petitioner shall be shown as being the cultivator of the said land. In the appeal preferred by Respondent No.1, the Sub Divisional

 

Officer, Partur by order dated 30.10.1993 concluded that the Petitioner is an Adivasi and the procedure laid down to decide the controversy needs to be properly followed and hence, the matter was remanded to the Tahasildar. After reconsidering the issue, the Tahasildar, Mantha, by his order dated 29.03.1997, concluded that Respondent No.1 is illegally in possession of the land and the same should be taken away and should be handed over to the Petitioner.

8. Respondent No.1 preferred an appeal to the Maharashtra Revenue Tribunal for challenging the order of the Tahasildar dated

2. 9.03.1997. The Maharashtra Revenue Tribunal noted the contention of the Petitioner was that Respondent No.1 had forcibly taken the possession of the land without any documentary evidence to indicate that he was put in the lawful possession of the land. After occupying and cultivating the land for about 10 years, the Petitioner had approached the Nayab Tahasildar for the first time in 1993. The whole issue turned upon as to whether, the land claimed to be in possession of Respondent No.1, was lawfully transferred by the Petitioner or whether, there was any document to indicate that the land was transferred by the Petitioner (a tribal) to Respondent No.1 (non tribal). The Petitioner claimed that an Isar Pavati was executed by the Petitioner in favour of Respondent No.1 on 25.05.1984 for a total consideration of Rs.25,000/-. Respondent No.1 paid Rs.23,000/- and remaining amount of Rs.2,000/- was to be paid at the time of the execution of the Sale Deed.

9. The Maharashtra Revenue Tribunal allowed the Appeal vide judgment dated 16.09.1997 and set aside the order of the Tahasildar dated 29.03.1997.

10. The issue, therefore, is whether, the handing over of the possession of the suit land by the Petitioner to Respondent No.1 could be termed as being a transfer under Section 2(1)(i) of the 1974 Act and if yes, whether, the transfer made by a tribal to a non-tribal could be set

 

aside under the said Act.

11. The Maharashtra Revenue Tribunal concluded that since the Petitioner belongs to "Andh" caste, the list published by the Government of Maharashtra under Schedule No.UNF/1567/ R dated 05.08.1968 under the Maharashtra Land Revenue Code, 1966, covers the Petitioner as "Andh", would fall under the tribes recognized by the State of Maharashtra. By the Amending Act 108/1976, out of Andh, Bhil, Kollam, Gond, Pardhan and Mannervarlu communities, only Mannervarlu was recognized as a scheduled tribe from 27.07.1977.

12. Notwithstanding the above, the core issue is whether, such transfer would amount to a transfer of land under Section 2(1)(i) of the 1974 Act which defines "transfer". Section 2(1)(i) reads as under:-

"2(1)(i) "transfer" in relation to land means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on the 6th day of July, 1974, either --

(a) by act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made inter-vivos, or

(b) under a decree or order of a court, or

(c) for recovering any amount of land revenue due from such tribal, or for recovering any other amount due from him as an arrear of land revenue, or otherwise under the Maharashtra Cooperative Societies Act, 1960 or any other law for the time being in force but does not include a transfer of land falling under the proviso to sub-section (3) of section 36 of the Code; and the expressions, "Tribal-transferor" and "non Tribal- transferee" shall be constructed, accordingly."

The Issar Pavati is dated 25.05.1984, which is beyond the period set out under Section 2(1)(i).

13. The judgment in the Adivasee Sarvangin Vikas Samitee case (supra) would not apply to the case of the Petitioner as the facts are distinguishable. The effect of Section 36-A of the Maharashtra Land Revenue Code, 1966 and the Maharashtra Restoration of Lands to Scheduled Tribes (Amendment) Act, 2010 was considered and the statement of the learned Advocate General was recorded in paragraph 4,

 

which read as under:-

"4. At the hearing of the Petition, the learned Advocate General appearing on behalf of the State has made a statement before the Court that in those cases where transfers had taken place prior to 6 July 1994, of land belonging to tribals to non-tribals, action would be taken under the Maharashtra Restoration of Lands to Scheduled Tribes Act 1974, particularly under Section 3(1) and Section 3(1A) . Similarly, where the transfer has taken place after 6 July 1994, it has been stated that necessary action would be taken under Section 36A of the Maharashtra Land Revenue Code."

14. Considering the effect of the Government Resolution dated

3. 1.05.2012, the learned Division Bench in Adivasee Sarvangin Vikas

Samitee case (supra), noted in paragraphs 5 to 8 as under:-

"5. Counsel appearing on behalf of the Petitioner has also made a grievance that though a Government Resolution was issued on 31 May 2012 requiring the Revenue Officers to make entries within a period of two months, in the 7/12 extracts maintained by the Talathi indicating that the land belongs to a tribal, no steps have factually been taken in terms of the Government Resolution.

6. We direct that the Government Resolution dated 31 May 2012 shall be strictly implemented and necessary action will be completed in all cases across the six Revenue Divisions of the State no later than 31 August 2013.

7. Counsel appearing on behalf of the Petitioner has also sought directions of this Court to the State Government to take necessary steps in those cases involving the transfer of tribal land to non-tribals where the construction is yet to commence or in cases where the construction has commenced, but has not been completed. Moreover, it was urged that where construction has been completed, the State

Government can take necessary action in exercise of powers conferred by sub-Section (5) of Section 36A for vesting ownership in the co-operative society. We are not inclined to issue any generalized directions since it would be ultimately for the competent authority under sub-section (5) of Section 36A to determine how the occupancy which has been transferred in contravention of sub-section (1) should be disposed of having regard to the true intent and purpose of Section 36A .

8. Before parting with the matter, we may also take note of the legal position at this stage that Section 36A imposes a prohibition on the transfer of the occupancy of a tribal in favour of a non-tribal by way of sale, gift, exchange, mortgage, lease "or otherwise". The expression "or otherwise" is of a comprehensive nature and would include all arrangements by which the occupancy of a tribal is sought to be transferred in favour of a non-tribal. Irrespective of the nature of the device, whether it is in the form of a

 

development agreement coupled with the power of attorney or otherwise. The provisions of Section 36A are broad enough to reach out to the mischief."

(Emphasis supplied).

15. The Honourable Supreme Court, in Ram Baran Prasad case

(supra), concluded that a mere contract for sale of immovable property

does not create any interest in the immovable property.

16. In Bapurao Nanu (supra), this Court relied upon the judgment

of the Honourable Supreme Court in Goli Eswariah vs. Commissioner of

Gift Tax, AIR 1970 SC 1722 and concluded that an agreement of sale (Isar

Pavati) would not amount to a transfer. Relevant observations of this

Court are as under:-

"5. ........ In both these cases, contract is merely an agreement of sale. There is no sale deed, gift deed, deed of exchange or mortgage deed, lease deed or any other disposition made inter vivos. There is only an agreement of sale and it is settled position that the agreement of sale does not create a right in favour of the prospective purchaser. Sale, gift, exchange, mortgage or lease would create a right in the property in favour of the person and would put an end to the right which was there in favour of executant. An agreement of sale cannot be equated with any of these contracts."

"8. ........ The word "disposition" means an assurance of any interest in the property by any instrument whether inter-vivos or by will. Disposition can hardly be considered to be a legal term. In Goli Eswariah v. Commissioner of Gift Tax, AIR 1970 SC 1722, learned Judges of the Supreme Court were pleased to observe- "The word ''disposition'' is not a term of law.

Further it has no precise meaning. Its meaning has to be gathered from the context in which it is used. In the context in which that term is used in section 2(xxiv), it cannot mean to ''dispose of''. Otherwise even if a man abandons or destroys his property, it would become a ''gift'' under the Act. That could not have been the intention of the legislature. In section 2(xxiv), the word ''disposition'' is used along with words "conveyance, assignment, settlement, delivery, payment of other alienation of property". Hence it is clear from the context that the word ''disposition'' therein refers to a bilateral or a multi-lateral act. It does not refer to a unilateral act."

Disposition may mean either abandonment of the property or it may mean the transfer or conveyance of the property. As observed by the learned Judges of the Supreme Court, since the term disposition is not a legal term, it does not carry a specific meaning. It will have to be interpreted in the context in which it is used. The meaning will have to be gathered from the surrounded words by applying the principles of interpretation of statutes. If it appears as a general word following particular words

and reference in the clause is to a particular kind or category, then the meaning of the general word will have to be taken to have been limited by a kind or category indicated by examples given by particular words. If the particular words do not specify to one kind of category, then the rule ejusdem generis will not apply. Sale, gift, exchange, mortgage or lease are special or particular words and all these terms signify demise of interest in the property. Therefore, they can be considered to be belonging to same category. The general term ''disposition'' appearing thereafter will have also to be taken to mean to be referring to contract by which some interest in the property of one person is lost and is created in favour of another. Secondly, we will also have to note that by Clause (i) of section 2(1) legislature has carved out some transfers which have been made subject to the provisions of the Restoration Act. Therefore, any other disposition in sub-clause (a)(i) of section 2(i) would cover only the transfers of interest in the property by one person to another person in whatever form they are. An agreement of sale does not create any such right. ( See Ram Baram Prasad v. Ram Mohit Hazra and others, AIR 1967 SC 744 ) . Therefore, it cannot be said to be a disposition for the purpose of this Act."

"10. Once we hold that the transaction between the respondent and the petitioner is not covered by Clause (i) of section 2(1) of the Restoration Act, it follows that there cannot be a restoration of this land to the respondents-tribals."

(Emphasis supplied)

17. Considering the above, this Writ Petition is devoid of merit

and stands dismissed. Rule is discharged.

18. However, it is made clear that the dismissal of this petition

would not come in way and would not amount to an impediment to the

Petitioner in resorting to a remedy as may be otherwise permissible in law

as well as under the Government Resolution dated 31.05.2012 and the

observations of the learned Division Bench of this Court reproduced above

from the Adivasee Sarvangin Vikas Samitee case (supra).