
(1991) 08 BOM CK 0004
In the Bombay High Court
Case No : Wirt Petition No. 3184 of 1989

Puna Arjun Mali and Another

APPELLANT

Vs

Mana Maka Bhil and Others

RESPONDENT

Date of Decision : 23-08-1991

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 36

Citation : (1991) 93 BOMLR 961

Hon'ble Judges : N.P. Chapalgaonker, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.P. Chapalgaonkar, J.—The question raised for consideration of this Court in this petition is whether a deemed purchase or a statutory transfer under the tenancy law is included in the term transfer defined for the purpose of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 by Section 2(1)(i).

2. Petitioners herein were cultivating 4 Hectares and 69 Ares and 24 Ares portion of Survey No. 195 situated at villages Tangaon, Taluka Bhadgaon, District Jalgaon, since 1939. On tillers" day i.e. 1.4.1957, petitioners became deemed purchasers by virtue of the provisions of Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948. Since the original owner was a tribal, proceedings were initiated for the restoration of the land to him under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter called "Restoration Act, for the purpose of brevity). Since the original owner was a tribal, proceedings were initiated under the provisions of the Restoration Act. It was noticed by the revenue authorities that the tenant has partitioned the land without a proper permission. Action u/s 84-C of the Tenancy Act was proposed dropping the original proceedings Under the Restoration Act. However, a reference was made u/s 7 of the Restoration Act by the Collector, Jalgaon, to the Additional Commissioner Bombay Division, Bombay. Learned Additional Commissioner vide his order dated 30th December, 1978 was pleased to set

aside the order of the Sub-Divisional Officer, Chalisgaon, dated 23.2.1976 directing an enquiry u/s 84-C of the Bombay Tenancy Act and dropping the case under the Restoration Act. He was pleased to remand the matter to the lower Court for fresh enquiry u/s 4 of the Restoration Act. After this remand order dated 30th December, 1978, learned Assistant Collector, Chalisgaon Division, Jalgaon was .pleased to hold that the tribal transferor is dead without leaving any heirs and, therefore, the land is ordered to vest in the State Government free from all encumbrances. He was further pleased to direct that the land be disposed of by Tahsildar, Bhadgaon, after following the provisions of Sub-section (3) of Section 5-A of the Restoration Act. This order dated 24th February, 1981 came to be challenged by the present petitioners in an appeal before the Maharashtra Revenue Tribunal at Bombay. Learned member of the Maharashtra Revenue Tribunal was pleased to dismiss the appeal virtually holding that the statutory transfer is also effected by the provisions of the Restoration Act. This order 114 Maharashtra Revenue Tribunal dated 28th June 1982 is subject matter challenge in this writ petition.

3. Shri V.T. Chaudhary, learned Counsel appearing for petitioners, contended that a deemed purchase because of the statutory provisions like Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 would be outside the purview of the provisions of the Restoration Act. According to him, the definition of the term "transfer" given in Section 2(1)(i) of the Restoration Act limits the scope of the term "transfer" for the purposes of the Act. Either they should be inter vivos or should be by the decree or order of the Court or they may be transfers for the recovery of certain amounts like land revenue or sum to be recovered as arrears of land revenue or some recovery under the Maharashtra Co-operative Societies Act, 1960 or under any other law. But it does not include a transfer under Sub-section (3) of Section 36 of the Maharashtra Land Revenue Code, 1966. According to Shri Chaudhary, a statutory transfer under the Tenancy Act is not included in this definition.

4. Shri S.K. Barlota, learned Assistant Government Pleader, appearing for respondent-State, submitted that the statutory transfer is also effected because of the order of the tenancy authorities which are Courts for the purpose of Section 2(1)(i) of the Restoration Act.

5. Section 2(1)(i) of the Restoration Act which defines "transfer" effected by the provisions of the Act is reproduced below; -

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 area of land revenue, or otherwise under the Maharashtra Co-operative 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 construed, accordingly.

6. Though Clause (a) of the definition "transfer" for the purposes of the Restoration Act includes lease, the instant lease was created in the year 1939 and, therefore, is not covered by the definition. The submission advanced by learned Assistant Government Pleader that the statutory transfers under the Tenancy Act are transfer by the order of the Court is not valid. Under the tenancy laws provision like Section 32 of the Bombay Tenancy and Agricultural Land Act, 1948 is made which transfers the ownership, of the land to another person. Because of the provisions of the statute ownership stands transferred or a person is deemed to have purchased the land from an appointed day, no order of the Court or any Act inter vivos is required for the purpose and, therefore, it is not covered by the definition of the transfer for the purposes of the Restoration Act. The legislature appears to have limited the scope of restoration in respect of certain transfers only. Since the benefit of poverty and consequential ignorance of the tribals was taken by the non-tribals and the lands were purchased by non-tribals and when it was also noticed that the dues of land revenue the co-operative society or under any other law could not be repaid by the tribals and therefore their lands were auctioned, the legislature thought fit to nullify certain kinds of transfers by the provisions of the Restoration Act. But since the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 are exceptions to the validity of the transfers which are otherwise lawful, the provisions will have to be construed strictly. This being the position, a deemed purchase under a statute in favour of the petitioner cannot be said to be transfer within the meaning of Section 2(1)(i) of the Restoration Act.

7. Since the tribal transferor was found dead without any heirs, learned Assistant Collector, Chalisgaon Division, Jalgaon, directed the disposal of the land u/s 5-A. Shri Chaudhary further argued that Section 5-A is not applicable to the instant case since Section 5-A would come into play only when the tribal transferor refuses to give undertaking or refuses to take possession or for similar reasons. Since I am holding that the transfer is not covered by the definition of "transfer" under the Restoration Act, it is not necessary to consider this submission of Shri Chaudhary.

8. In the result, petition succeeds, Judgment and order passed by Assistant Collector, Chailsgaon Division, Jalgaon, in Adivasi Case No. B-51, dated 24th February, 1981; and judgment and order passed by learned Member of the Maharashtra Revenue Tribunal, Bombay Camp at Jalgaon, in Case No. Rev. Trb. 70/1981, are both hereby set aside. Rule is made absolute in the above terms.

There shall be no order as to cost of this petition.