

(1988) 03 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 1802 of 1986

Rambhau

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-03-1988

Acts Referred:

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 3(1)
Constitution of India, 1950 — Article 14
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3, 9A

Citation : (1988) 4 BomCR 511

Hon'ble Judges : H.W. Dhabe, J

Bench : Single Bench

Advocate : S.R. Deshpande, for the Appellant; V.V. Naik, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—This is a writ petition arising out of the proceedings under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short, "the Restoration Act"). It is not necessary to state the facts in detail for the purpose of the decision in the instant writ petition. Suffice it to say that the learned authorities under the Restoration Act directed restoration of the field Survey No. 4/1 admeasuring 0.75 acres and the field Survey No. 18 admeasuring 1.48 acres, both of village Mohali Tukum, to the respondents 2 to 4, i.e. the tribal transferors, from the petitioner, i.e. the non-tribal transferee.

2. The learned Counsel for the petitioner has first urged before me that before the Maharashtra Revenue Tribunal (for short, "the MRT"), the Deputy Collector, Chandrapur, appeared and represented the State and in that capacity also supported the order passed by the learned trial Court. It is his submission that the petitioner was not allowed to be represented through a lawyer and, therefore, the impugned order of the learned MRT in appeal is vitiated. What he contend is that although there is a prohibition for appearance of the legal

practitioners in section 9-A of the Restoration Act in the proceedings thereunder, if one of the parties is allowed to be represented by a legal practitioner or an officer of the State the action in not allowing the petitioner to be represented by a legal practitioner is discriminatory and is in breach of Article 14 of the Constitution of India. In support of the above contention reliance is placed by him upon the decision of the Supreme Court in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, , which is followed by it in its recent decision in the case of Johnney D'couth Vs. State of Tamil Nadu, . In applying the ratio of the aforesaid decisions it must be borne in mind that they are the cases dealing with the liberty of the individual to whom even otherwise under Article 21 of the Constitution of India there is a fundamental right to be represented by a lawyer. It is only because there is a prohibition under Article 22 for appearance of the legal practitioners before the Advisory Board that such representation is deprived to them. However, the question which still needs to be considered is whether there is any violation of Article 14 of the Constitution of India as urged on behalf of the petitioner in not allowing the petitioner to be represented by an Advocate.

3. In appreciating the said submission, it may be seen that the State is not an interested party in the lis before the authorities under the Restoration Act, because the dispute really is between the tribal transferor and the non tribal transferee from whom the suit land is sought to be restored to the tribal transferor. In these proceedings the State is merely a formal party because there is a power to initiate suo motu proceedings in such matters u/s 3 of the Restoration Act. It is clear from the impugned order of the learned MRT that the petitioner and the respondents 2 to 4 had appeared in person before it. The State which is not a natural person is naturally represented by its officer.

4. The learned Counsel for the petitioner has, however, drawn my attention to para 2 of the impugned order of the learned MRT in which after stating that the appellants and respondents 2 to 4 before it were present in person, it is stated that the respondent No.1 State was represented by the Deputy Collector, Chandrapur. It is thereafter stated in the said para that the arguments were heard and the case records were perused. Basing his submission upon this para it is urged that the Deputy Collector, Chandrapur, has made his submissions supporting the order of the learned trial Court. In my view, simpliciter from para 2 no such inference can be drawn. Merely because the presence on behalf of the State is recorded it would not follow the State had also made its own submission much less supporting the order of the learned trial Court, particularly when both the contesting parties were present before the learned MRT. No other observation from the order of the learned MRT is brought to my notice to show that any submissions were made by the Deputy Collector supporting the order of the learned trial Court before it.

5. Although it is submitted in para 4 of the petition that the petitioner was not allowed to be represented by a lawyer it is not in dispute that no such application

was filed before the learned MRT by the petitioner for being represented through a lawyer much less on the ground that the State was represented by its officer. Since no such application was made before the learned MRT for being represented through a lawyer because the State was represented through an officer who was alleged to have supported the order of the learned trial Court, there was no question of granting any permission to the petitioner for engaging an Advocate and therefore the learned MRT cannot be said to have committed any illegality in this regard. Moreover, the fact that the petitioner did not claim to be represented by any Advocate may also indicate that it is only the parties to the lis, viz. the petitioner and the respondents 2 to 4 who contested the matter before the learned MRT and not the Deputy Collector. Therefore, even assuming that the ratio of the decisions of the Supreme Court in the cases, cited supra, can be made applicable, the petitioner has not laid the foundation or the basis for its application in the instant case. The above contention raised on behalf of the petitioner, therefore, deserves to be rejected.

6. The next contention urged on behalf of the petitioner is that although the sale-deed in the instant case is executed on 4-10-1957 the petitioner was in possession of the suit fields in 1956 itself pursuant to an agreement of sale. This is also a contention which is raised in this petition for the first time. However, the above contention is not at all borne out by the recitals in the sale-deed which is alone relied upon by the petitioner in support of the above contention. It would appear from the sale-deed that the field Survey Nos. 4/1 and 18 were taken on lease by the petitioner on 1956-57 for one year. However, in 1957 the said fields were sold and the recital is that on the date of the sale-deed the petitioner was put in possession of the said fields. It is thus clear that it is by virtue of the aforesaid sale-deed dated 4-10-1957 that the suit fields are transferred to the petitioner and if that is so the said transfer is within the prohibited period specified in the definition of the expression "transfer" given in section 2(1)(i) of the Restoration Act. The learned Counsel for the petitioner has also sought to urge that lease is itself a transfer which is prior to the prohibited period but the said submission has no merit because the said lease has come to an end after one year and from 4-10-1957 the suit fields are claimed not as a lessee but as an owner of the same. It is this title created by the sale-deed dated 4-10-1957 which is within the mischief of section 3 of the Restoration Act. Even otherwise it may be stated that had the petitioner continued as a tenant he would have become the tenant-purchaser u/s 46 or section 49-A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, which status would have then been within the mischief of section 4 of the Restoration Act. Thus in any event the petitioner was bound to restore the suit lands to the tribal transferors in the instant case. The above contention urged in this case, therefore, deserves to be rejected.

7. The last contention raised on behalf of the petitioner for the first time in the instant writ petition again is that under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short, "the

Consolidation Act") the suit fields were allotted to the petitioner pursuant to the consolidation proceedings initiated under the said Act and the title is conferred upon the petitioner by a certificate dated 15-6-1983 issued u/s 24(1) of the Consolidation Act. The submission is that a new title is conferred under the Consolidation Act and as per the provisions of section 31 of the said Act no transfer or sub-division of the land allotted under the said Act is permissible. The principle of implied repeal is also relied upon in support of the above submission.

8. In appreciating the above contention raised on behalf of the petitioner it must first be seen that the said contention involves determination of questions of fact and, therefore, cannot properly be allowed to be raised for the first time in the instant writ petition. However, the learned Counsel for the petitioner has relied upon the certificate of ownership issued by the Consolidation Officer on 15-6-1983 and it is his submission that since it is a public document he should be allowed to make his submissions on the basis of the same. In appreciating the said submission it may be seen that the application was filed by the tribal transferor u/s 3 of the Restoration Act on 12-7-1976 on the basis of which the proceedings were initiated by the Deputy Collector on 21-12-1976. It is thus clear that the proceedings under the Restoration Act were initiated much prior to the certificate of ownership issued on 15-6-1983 u/s 21(1) of the Consolidation Act. It was not, therefore, open to the Consolidation Officer to allot the suit fields and issue certificate of ownership under the Consolidation Act till the proceedings under the Restoration Act were complete.

9. It may also be seen that section 3 of the Restoration Act which is a special welfare legislation is enacted for protecting the interests of the tribals by restoring to them their lands which were transferred by them during the period specified in the definition of the expression "Transfer" given in section 2(1)(i) of the said Act. It thus permits restoration of their lands from the non-tribal transferees 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 In view of the above non-obstante clause, section 3 of the Restoration Act would have an overriding effect upon any other law or upon any order passed by any other authority pertaining to the lands in question covered by the said section. Any order passed under the Consolidation Act, therefore, cannot affect the right of the Tribal transferor for restoration of his land under the Restoration Act.

10. It is, however, urged that section 31(1) of the Consolidation Act also contains a non-obstante clause by reason of which no holding allotted under the said Act can be transferred or sub divided without the previous sanction of the Collector. The first distinguishing feature of section 31(1) is that the restriction therein is not absolute because with the sanction of the Collector the transfer and/or the sub-division can be effected if the case is covered by the conditions or circumstances prescribed under the rules. Another distinguishing feature is that section 31(1) does not operate notwithstanding anything contained in any

judgment, decree, or order of any Court, Tribunal or authority like section 3 of the Restoration Act. Moreover, the Restoration Act being a later enactment as compared to the Consolidation Act which came into force in Vidarbha region with effect from 1-4-1959 as per the notification issued by the State Government u/s 1(3) of the said Act, the non-obstante clause in the Restoration Act would operate as against the provisions of the Consolidation Act also. The provisions of the Restoration Act would thus prevail over the provisions of the Consolidation Act and not vice versa even assuming that there is any conflict between the two enactments. In my view, the special rights created in favour of the scheduled tribes under the special enactment, viz., the Restoration Act cannot be allowed to be defeated by the provisions in the Consolidation Act.

11. It may, however, be seen that on a fair reading of section 31(1) it is clear that it does not affect or operate against the transfers made pursuant to the orders of the Competent Courts, Tribunals, authorities for restoration of the agricultural lands. As regards the transfers inhibited by section 31(1)(a), it is pertinent to see that the transfers contemplated therein are by act of parties and the expression "or otherwise" does not extend the scope of the said clause to transfers made under the orders of the Courts, Tribunals or authorities because such transfers which are included in the said clause are restricted to sale in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue. In this regard it is pertinent to see that Clause (b) of section 31(1) of the Consolidation Act expressly inhibits the sub-division whether under a decree or Order of a Civil Court ; or any other Competent Authority, so as to create a fragment. Further, in this regard it may be seen that assuming that Clause (b) of section 31(1) is applicable to the proceedings under the Restoration Act, perusal of the certificate of ownership dated 15.6.1983 would show that no difficulty is created in restoration of the suit fields to the respondents 2 to 4 because the entire land covered by the field survey No. 4/1 and field survey No. 18 allotted to the petitioner, if transferred, does not result in creating a fragment.

12. As regards the application of the principle of implied repeal, it may be seen that it is applicable to the two enactments if they are dealing with the same subject matter which is not the case here. However, even assuming that the principle of implied repeal is applicable what has to be seen is whether the two enactments cover the same field in the sense that both cannot stand together and can be given effect to. If they cover the same field, then according to the principle of implied repeal, it is the later enactment which must prevail. It is clear that the Restoration Act is a later enactment as compared to the Consolidation Act and its provisions must, therefore, prevail over the provisions of the Consolidation Act on the subject matter covered by the said Act. The contention raised by the petitioner in this regard, therefore, also deserves to be rejected.

13. In the result, the instant writ petition fails and is dismissed. However, in the circumstances, there would be no order as to costs.