

(1984) 11 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No's. 1542 of 1977, 829, 833 and 834 of 1978 and 1488 of 1979

Raoji and

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 22-11-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 15(4), 19(1), 19(5), 31
Maharashtra Land Revenue Code, 1966 — Section 36A

Citation : AIR 1986 Bom 262 : (1985) 2 BomCR 563

Hon'ble Judges : V.A. Mohta, J; M.M. Qazi, J

Bench : Division Bench

Advocate : S.A. Jaiswal, R.N.R.R., S.R. Deshpande, P.S. and M.B. Badiye, S.P. Patey, Asstt. Govt. Pleader, for the Appellant; B.P. Jaiswal, A.A. Desai, V.V. Naik, Asstt. Govt Pleader and W.M. Sambre, Govt. Pleader, for the Respondent

Judgement

Mohta, J.—Constitutionality of S. 36A of the Maharashtra Land Revenue Code, 1966 (The Code) is questioned in this batch of petitions.

2. The petitioners are all "non-Tribal" who have purchased occupancies from "the Tribals" - a term within the meaning of explanation to sub-sec. (4) of S. 36 of the Code as amended by Act No. XXXV of 1974 (The Act) which was brought into force with effect from 6th July 1974. All the transfers are subsequent to that date and are indisputably in violation of S. 36A. The transactions are declared invalid on merits after enquiry. Though feeble attempt was made to challenge these orders there is nothing on record to justify interference under Art. 226. What really survives is multi headed attack on S. 36A under Art. 14, 15(4), old Articles 19(1)(f) and 31 and new Art. 300A of the Constitution.

3. Section 36 before its amendment by the Act had put a restriction of transfer of occupancies belonging to certain declared Tribals in favour of non-Tribal. Previous sanction by Collector was a must and in its absence and transaction became voidable at the instance of a tribal who was given a right to apply within 2 years

for restoration of land. Additional and more stringent restrictions were considered urgently necessary. Governor of the State promulgated the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Ordinance 1974 on 6th July 1974 and to convert the said ordinance into an Act a bill was introduced in the State Legislature setting out the following as its Objects and Reasons :

"It was noticed that in a number of cases, particularly from Dhulia, Thana and certain other districts, lands previously held by persons belonging to Scheduled Tribes had gone into the hands of non-Tribal. In many of these case, the transfers were found to have been made in contravention of the provisions of the Maharashtra Land Revenue Code, 1966 or of the Tenancy Laws in force in the State. It has, therefore, become necessary to provide for restoration of these lands to the original Tribal land-holders.

In orders to prevent such transfers of land to non-Tribal it was also considered necessary to put more restrictions on the transfer of land from a Tribal to a non-Tribal holder, to provide that lands of Tribals shall not be auctioned but taken under the management of Collector and to extend the period of limitation in the case of Tribals for applications to set aside auction sales immovable property. For this purpose it was necessary to carry out suitable amendment to the Maharashtra Land Revenue Code. 1966.

It was also proposed to provide that no non-Tribal person should have the right to purchase under any of the Tenancy Laws in force in the State, any and belonging to a Tribal which may be duly leased to such non-Tribal under the Maharashtra Land Revenue Code. 1966."

The above bill was passed and this gave birth to the Act. It altered S. 36, gave expanded meaning to the term "Scheduled Tribe" as found in the explanation to S. 36(4) and added few provisions including S. 36A totally prohibiting certain transfers of occupancy of a tribal in favour of a non-tribal except with previous sanction of Collector and/or Collector with previous approval of the State Government (to be granted only in certain circumstances) and that too on an application by a non-tribal. Transfer in contravention of S. 36A(1) is made null and voids, can be declared as such by the Collector suo motu or on application by a tribal. Upon such declaration the occupancy vests in the State Government and the vested property shall be disposed of in such manner as it may direct. Section 36A(60) further provides that before disposal, a tribal-transferor is to be noticed requiring him to state within 90 days whether he is willing to purchase for a prescribed consideration provided (i) he undertakes to cultivate the land personally and (ii) his total holding does not exceed an "economic holding" within the meaning assigned to the said term in the explanation.

4. Section 36A is produced below for immediate reference:

"36A.(1) Notwithstanding anything contained in sub-section (1) of S. 36, no occupancy of a Tribal shall after the commencement of the Maharashtra Land Revenue Code and tenancy Laws (Amendment) Act, 1974, (Mah, XXXV of 1974),

be transferred in favour of any non-Tribal by way of sale (including sales in execution of a decree of a Civil Court or on award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction -

(a) in the case of a lease or mortgage for a period not exceeding 5 year, of the Collector, and

(b) in all other cases, of the Collector with the previous approval of the State Government :

Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no Tribal residing in the village in which the occupancy is situate or within five Kilometers thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

(2) The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed.

(3) On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force, or any decree or order of any Court or award or order of any Tribunal or authority, either suo motu or on application made by the Tribal in that behalf, restore possession of the occupancy to the Tribal.

(4) Where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act 1974 (Mah. XXXV of 1974), it is noticed that any occupancy has been transferred in contravention of sub-sec. (1), the Collector shall either suo motu or on an application of any person interested in such occupancy, made within three years from the date of the transfer of occupancy hold an inquiry in the prescribed manner and decided the matter.

(5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-sec. (1), he shall declare the transfer to be invalid, and thereupon, the occupancy together with the standing crop thereon if any, shall vest in the State Government free of all encumbrances and shall be disposed of in such manner as the State Government may, from time to time, direct.

(6) Where an occupancy vested in the State Government under sub-sec. (5) is to be disposed of, the Collector shall give notice in writing to the Tribal Transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such Tribal-transferor agrees to purchase the occupancy, then the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the to tall and held by such Tribal transferor, whether as owner or tenant does not as far as possible exceed an economic holding.

Explanation - For the purpose of this section, the expression "economic holding"

means 6.48 hectares (16 acres) of jirayat land, or 3.24 hectares (8 acres) of seasonally irrigated land, or paddy or rice land, or 1.62 hectares (4 acres) of perennially irrigated land, and where the land held by any person consists of two or more kinds of land, the economic holding shall be determined on the basis of one hectare of perennially irrigated land being equal to 2 hectares of seasonally irrigated land or paddy or rice land or 4 hectares of jirayat land."

5. The basic question is whether the petitioners have any right whatsoever to the properties in question. Our answer is in the negative for the following reasons. The petitioners have purchased the property with full knowledge of the prohibition on transfer and the consequences of entering into such transaction. The transactions are null and void as a result neither law nor equity can be in their favour. Under the circumstances, the petitioners in fact can be disposed of on this short ground. However, we do not propose to short circuit the petition only on that ground.

6. Few more relevant positions may be noticed before considering the validity of various contentions raised before us. Whereas the Code has received the assent of the President of India, the Act has not. Arts. 19(1)(f) and 31 existed in the Constitution when the Act was brought into force. The Constitution (forty-fourth Amendment) Act 1978 which deleted these Articles and introduced Art. 300A was brought into force with effect from 20th June 1979. In view of the fact that the Act is not assented by the President it cannot receive immunity granted by Art. 31A or 31C. It also cannot attract Art. 300A as the said Article was not in existence when the Act was brought into force. In *Manoel Francisco Agreiros Da Conceicao Fernandes and etc. Vs. Collector of Daman and Others*, it is held that Art. 300A does not have retrospective effect. The relevant date in the matter is the date when the provision is brought into force and not the date of transaction.

7. Is S. 36A violative of Art. 14 is the question we take up for consideration now. This challenge can succeed only in case either the provision is wholly unreasonable or it makes invidious discrimination between different sections of Society without any nexus with the object of the legislation. Historical truth is that the Tribals belong to weaker sections of society which have been subjected to varied and worst types of exploitation by taking undue advantage of their backwardness, weakness and helplessness. Promoting with special care interest of such sections is one of the major items of our national goals (Article 46 in Part IV). If in this background, the legislature came forward to protect their interest, it is difficult to see how question of invidious discrimination can at all arise. It is a distinct class. Classification has clear nexus with the object. Section 36, as it originally stood, made certain transactions by a tribal voidable at his instance, provided application was made within two years of such transaction. This provision had received the assent of the President and there can be hardly any doubt about it being under the protective umbrella of Articles 31A and 31C. Thus under the old provisions, the purchaser could acquire only a defensible right which could be defeated by appropriate action within appropriate time.

Experience of those who are better equipped to know the prevailing social condition revealed that the protection earlier granted was inadequate. The unfortunate truth about many of our social and beneficial legislation's is that the beneficiaries thereunder many times even do not know them. Even if they come to know about their right, they are wholly in-equipped to exercise those right. Even if the rights are exercised, it is not always that they are able to reap the fruits of the legislation. Procedural delays, official negligence and apathy comes in the way. Not ignoring these realities, in case legislation further intervenes and puts in more stringent restrictions including total conditional ban on further transfers, it is difficult to see how Courts come into picture. It is equally difficult to see how it can be said that such a legislation is wholly unreasonable. The possibility to such bans operating unjustly in case of certain transactions cannot be ruled out. But that is no ground to hold a legislation bad. In any legislation intended to bring about such major social changes on large scale, generalisation is inevitable; for it is not possible to legislatively contemplate every kind of exceptional situation. If that is attempted and several qualifications and exceptions are introduced, the very legislative object would be defeated. It is a rule of life that every revolutionary cause claims its martyr.

8. Same reasoning will apply to repeat the attack under Art. 19(1)(f). Fundamental right to property was not and is not absolute and it subject to reasonable restrictions in the larger interest of the society under Art. 19(5). The restrictions do not appear to be either arbitrary or excessive beyond what is necessary in the interest of public.

9. Article 31 also cannot come to the help of the petitioners. Undoubtedly, S 36A "deprives" a person of his property. But every deprivation is not tantamount to "acquisition" and that too for a "public purpose", as contemplated under Art, 31(2). Section 6A in the context of the whole scheme does not contemplate compulsory "acquisition" of occupancy in that sense at all. To hold otherwise would amount to equating acquisition with forfeiture. New Webster's Dictionary of the English Language, Deluxe. Encyclopedic Edition, at page 383 gives the following meaning to the term "forfeiture".

"The act of forfeiting, the losing, as of some right, privilege, estate or honour, because of an offense, crime, breach of condition, or other act; that which is forfeited."

No doubt the property vests in the State for a limited purpose but that is because of an illegality committed. The relevant provision is thus penal in nature and can be covered by Art. 31(5)(b)(i). Division Bench of this Court in the case of Kuberdas Hargovindas Modi Vs. State of Bombay and Others, in the context of S. 84C of the Bombay Tenancy and Agricultural Lands Act, 1948, has observed that deprivation of property in exercise either to the police powers or as penalty cannot attract Art. 32. In this connection our attention was invited to the case of Ramanlal Gulabchand Shah Vs. The State of Gujarat and Others, in which the amended part of S. 65 of the self-same Tenancy Act was held to be ultra vires

of Art. 31A(1)(b). The later decision lays down nothing which can, in any way, help the petitioner. Here is a reasonable provisions. Here is a reasonable provision which warns concerned persons from effecting certain transactions in provides for certain penal consequences for committing breach. If despite this, any person chooses to enter into an invalid transaction, the grievance based on Art. 31 or about losing property without receiving market value cannot lie in his mouth.

10. This takes us to Art. 15(4). Twofold submissions are made under this head. the first is that there cannot be a mini classification between backward classes contemplated under Cl. 15(4) for any purpose whatsoever. the point is that even the transactions between Scheduled Tribes as specifically defined under the Code and other Backward Classes contemplated under Cl. 15(4) are declared invalid. It is true that this would be the legal position but we fail to see why this will be constitutionally impermissible. The submission ignores that there are more Backward Classes amongst the Backward Classes. If the legislature in its wisdom chooses to give protection to a more Backward Class of citizens against all including less Backward, we see nothing illegal about it. All will depend upon the scheme and the purpose of the enactment. Our attention was invited to the case of R.S. Boss Vs. K.P. Krishnan Nair and Others, on behalf of the petitioners. that decision considered the rules of admission for the B.H.M.S. course in a Homeo Medical College not run by a backward minority community. For the purposes of admission, the Government classified the socially and educationally backward classes into two categories : (i) Backward minority community and (ii) other backward community. In the absence of sufficient number of candidates belonging to backward minority community the Government directed that a preference be given to candidate of other backward communities. A candidate belonging to other backward community was selected in preference to the candidate belonging to backward minority community, despite the latter securing more marks. It is in this context that the following observations were made :

The reservations permissible under Art. 15(4) is for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Tribes. This article does not permit a discrimination among these classified as socially and educationally backward. The Government is not competent to pick and choose some among those classified as socially and educationally backward for the conferment of benefits of reservation in educational institution or in Government service."

Reliance has been placed in the above case on the following observations made by the Madras High Court in P. Susila represented by her father and next friend S. Perinpamuthoo Vs. The State of Madras and Another,

"Once a classification has been made for educational purposes, by an order of Government and the order continues to be inforce, we do not see how without expressly modifying that order by a proper decision of the Government, a mere omission of a particular community from the list of backward classes, appended

to the prospectus, can justify elimination of the community from consideration as backward at the selection."

The observation of the Kerla High court cannot be torn out of context. It is not laid down that a legislation cannot make even in appropriate cases a mini classification in between different classes, castes or tribes. referred to in Art. 15(4). In any case, that is not our reading of this article and the constitutional scheme. Indeed, clear ratio laid down by the Madras High Court which is followed in the said decisions is that classification can be changed but only by modifying order.

11. This takes us to the contention that removal of geographical limits form the Presidential Order made under Art. 342 vis-a-vis Scheduled Tribes only for the purpose of Court (Constitution?) is violative of (sic) submission also. Art. 15(4) is not meant merely for the benefit of the Scheduled Tribes referred to in the said Article., It is also meant for several other socially and educationally Backward Classes of citizens. For the limited purpose of a particular legislation if a special definition is made and expanded meaning is given to the terms "Scheduled Tribes", we see nothing illegal about it. It is true that the Presidential Order made under Art. 342 can be amended only by the law of Parliament: but in the present case we are not concerned with that aspect of the matter. Surely, that this enactment has nothing to do with that aspect of the matter. Surely, that this enactment has nothing to do with the Presidential Order. What we are concerned with is a special definition for a special purpose mentioned in the legislation. Though in different context and shade, this aspect of the matter has been aptly considered by this Court in the case of *Moghy Jagobji v. Tahsildar, Nagupur*, 1977 MahLJ 564. We can do no better than to quote the following significant observations:

"It is true that connotation of this expression is sought to be expanded in the Code by Amendment to be expanded in the Code by Amendment Act No. 35 of 1974 by including within its sweep such tribes even if they reside in the areas in which these are not notified to be such Scheduled Tribes under the Presidential Order and this amended explanation is adopted in the definition of the tribal under S. 2(j) of the Act. This amendment of the Code and its adoption in the Act, both aim at achieving the same object, namely of ensuring benefits of the Code and the relevant Tenancy Acts to the Tribals, i.e. Scheduled Tribes without regard to where they happen to reside. This is on the basis of the legislative finding that intended benefits under these enactment"s had not reached this class of citizen. The achievement of this object necessitated (1) the expansion of the connotation of the word Scheduled Tribes beyond what is conceived under Presidential Order, for the purpose of the Code and the Act; (2) amendment of the Code to restore occupancies of the land transferred in breach of legal prohibitions; (3) enforcement of Act to ensure restoration of land duly transferred by them. We are unable to see why the State Legislature can be said to be incompetent to expand the connotation of this expression for the proposes of its own legislation

as long as it does not directly or indirectly deal with or come into conflict with any constitutional provision dealing with the Scheduled Tribes."

Thus, all grounds of attack on S. 36A are devoid of any substance and must fail, S. 36A is entitled to constitutional clearance.

12. All that remains to be disposed of is a small point with relation to sub-secs. (5) and (6) of S. 36A. The scheme of these two sub-sections is that the property vested in the State Government is to be disposed of in such manner as the State Government may from time to time direct. In the first place, there is an obligation to class upon the Tribal transferor to state within 90 days from the receipt of the receipt of the notice whether or not he is willing to purchase the land. If such a tribal agrees to purchase the occupancy, then it has to be granted to him if (i) he pays the prescribed price, (ii) undertakes to cultivate the land personally and (iii) the total land held by such person whether as owner or as tenant does not as far as possible exceed on "economic holding". It is true that the whole property as a rule does not go back to the Tribal-transferor. But in the whole background we see nothing obnoxious about this provision, which also appear to be in larger interest of tribal as a class. That apart, the petitioners cannot be heard on this point as it cannot be their grievance.

13. In the result, the petitions fail and dismissed. The rules are discharged. No order as to costs.

14. Petition dismissed.