

(1996) 07 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No's. 232 and 233 of 1985

Sheikh Mohammed and Others

APPELLANT

Vs

The Additional Commissioner and Others

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Constitution of India, 1950 — Article 227

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3, 7

Citation : (1997) 4 BomCR 415 : (1997) 2 MhLj 450

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : N.B. Khandare, for the Appellant; S.K. Kadam, AGP for respondent No. 1, S.G. Deshmukh, in W.P. 233/85, S.B. Bhapkar and 4 in W.P. 232/85 and for respondent No. 3 in W.P. 233/85 and G.R. Ghuge, in W.P. 232/85, for the Respondent

Final Decision : Allowed

Judgement

R.G. Deshpande, J.—These two petitions are being dealt with by this common judgment as the point involved is the same. It also relates to the lands belonging to same respondent who had sold the lands to the non-tribals and, then, had applied for restoration of both the lands. For the purpose of clarity, it would be better to narrate the facts of both the cases separately.

2. In Writ Petition No. 232/1985, the petitioner - Sheikh Mohammed Sk. Gulab, is the purchaser of field Survey No. 125/A with an area of 3 acres and 38 gunthas, situated at village Mokadi Tq. Hingoli of which, the original owner happened to be one Gangaram Raghoji Bele, the respondent No. 2. This respondent No. 2 -Gangaram sold the above-said field to one Rama Dudhaji Kharat and Dudhaji Bhagwanrao Kharat, the respondent Nos. 3 and 4 in the present petition. Subsequently, the said respondent Nos. 3 and 4 sold the same field to the present petitioner - Sk. Mohammed s/o Sk. Gulab. The sale-deed between Dudhaji and the petitioner is dated 10-6-1975, whereas the sale deed

between the respondent No. 3 - Dudhaji and respondent No. 2 - Gangaram is dated 29-5-1974.

3. After coming into force of the provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, Gangaram Raghoji Bele, the respondent No. 2 did apply to the Tahsildar under the provisions of the said Act for restoration of field in question to him on the ground that he belonged to Scheduled Tribes and is covered by the provisions of the Act in question. The application was registered as Case No. 75/Adiwasi/84 on the file of learned Tahsildar, Hingoli, who had issued notices to the concerned parties on 15th December 1978, as to why the land should not be restored to Gangaram Raghoji Bele, who claimed to be the tribal and whose name is included in the list of the Scheduled Tribes.

4. As regards Writ Petition No. 233/1985, it relates to land Survey No. 1 of village Lingdari, Tq. Hingoli with an area of 9 acres 29 gunthas. The respondent No. 2 - Gangaram Raghoji Bele, in this petition also, happened to be the original owner of land Survey No. 1 referred to above. This respondent No. 2 - Gangaram sold the land in question to Rama Dudhaji Kharat and Dudhaji Bhagwanrao Kharat, the petitioners herein, on 25-2-1971. The original owner - Gangaram in this matter also, applied to the Tahsildar, Hingoli for restoration of the land in question to him in pursuance of the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as "the Act" for the purpose of brevity).

5. The Tahsildar, Hingoli, in the above-said matters did issue notices to the transferees as to why the field survey in question should not be restored back to respondent No. 2 - Gangaram Raghoji Bele, as he was the person who could be said to be the beneficiary of the provisions of the Act in question. On notices, the parties appeared before the Tahsildar, Hingoli in the proceedings which were registered as Case No. 75/Adiwasi/84 and 78 ADWS/84 i.e., Gangaram v. Rama Dudhaji and others; and in another case, Gangaram v. Rama Dhuhaji and others, in which, Sk. Mohammed Sk. Gulab is also a party-respondent. During the course of proceedings before the Tahsildar, initially Gangaram the applicant did come forward with a case that since he was not in a position to cultivate the lands personally, he did not want the same to be restored. On the basis of this statement, the learned Tahsildar dropped the proceedings which were going on before him by his order dated 7th May 1979 in both the cases.

6. Since the Tahsildar dropped the proceedings, the same was suo motu reviewed by the Additional Commissioner, Aurangabad under the provisions of section 7 of the Act. The learned Additional Commissioner before whom the matter was taken up, the case was registered as TNC/Adiwasi/R/74. The learned Additional Commissioner who dealt with the matter, having found the incorrectness in the order of the Tahsildar, observed that it was not open for the Tahsildar to drop the proceedings and the Tahsildar should have proceeded with the matter under the provisions of section 5-A of the Act. The learned Additional Commissioner, therefore, set aside the order dated 7-5-1979 passed by the

Tahsildar in the above-said cases and remanded the matter back to the Tahsildar, with a direction that the fields in question be restored to Gangaram Raghoji Bele, the respondent No. 2 in both the matters. He further directed that necessary steps in the matters should be taken by the Tahsildar in pursuance of his directions.

7. Being dissatisfied with the order dated 28-2-1985 passed by the learned Additional Commissioner, Aurangabad, the present two petitions are filed which, with the consent of the parties, are being disposed of by this common judgment.

8. Shri N.B. Khandare, the learned Advocate for the petitioners in both the matters, vehemently argued that it was not open for the Additional Commissioner to review the matter beyond a period of three years, of his own, as there is an express bar given for such a review u/s 7 of the Act. Shri Khandare had no scope to argue much on this point, particularly when, the learned AGP - Shri Kadam for the respondent No. 1, pointed out specifically that in view of the proviso to section 7, there were the directions issued by the State Government, specifically for reviewing the matter and hence the action of the Additional Commissioner could not be assailed successfully on this count. Shri Kadam, the learned AGP has placed before me the relevant letter issued by the Government vide letter No. Admn/1982/151/CR/L/9 dated 14th December 1982 which refers to Case No. TNC/Adiwasi/CR/72. In view of this specific direction from the Government, the question of three years binding is not of any help to the petitioners and the steps taken by the learned Addl. Commissioner and directions given are required to be held to be absolutely legal and proper.

9. During the course of arguments, the learned Counsel for the petitioners, further, pointed out that at the relevant time i.e. on the day of the sale-deed dated 29-5-1974 in respect of field Survey No. 125/A between respondent No. 3- Dudhaji and respondent No. 2 - Gangaram, the said Gangaram who claims to be of Andh community was not included in the list of persons of Scheduled Tribes. This clearly means that the day on which transaction took place, Gangaram could not be said to be a tribal and naturally the transfer by him in favour of non-tribal i.e. Dudhaji and Rama, was a transaction between a non-tribal and non-tribal only. The learned Counsel further pointed out that identical was the case in respect of field Survey No. 1 which was sold to first Dudhaji and then to Sk. Mohammed Sk. Gulab. As the first transaction was also dated 25-2-1971 on which date Gangaram was not included in the list of Scheduled Tribes which clearly means that this transaction also was in between non-tribals only.

10. It is pertinent to note that in both these matters, there is no representation on behalf of Gangaram and I had no advantage to hear the arguments on his behalf. However from the facts, it is clear that the initial transaction made by Gangaram in respect of both the fields i.e. field Survey No. 125/A and field Survey No. 1, were made much prior to the applicability of the provisions of this Act to Gangaram. The learned Counsel Shri Khandare for the petitioners in both the matters, brought to my notice that the tribe Andh to which Gangaram claims

to belong, was included for the first time in the list of Scheduled Tribes vide Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976. It means that it was for the first time in 1976, Andh is include into the list of Scheduled Tribes.

11. The learned A.G.P. Mr. Kadam made a feeble attempt to show that this ground was nowhere raised in the petitions by the petitioners and according to him, the petitioners should not be allowed to raise the same at this stage. I am not ready to accept this argument. Though the ground is not raised in the main petitions, the learned Counsel for the petitioners was allowed to argue on this point as per se the initial transactions are found to be the transactions between non-tribals only. Exercising the jurisdiction vested in me judiciously, I have allowed the petitioners to raise this point and particularly in view of the Division Bench judgment of our High Court reported in Tukaram Gandewar Vs. Piraji Sidarwar Died through L.R''s., , wherein it is specifically stated that the provisions of the Act are not to be given retrospective effect. Shri Khandare, learned Counsel for the petitioners also referred to a decision in Writ Petition No. 621-A/1982 Shankar v. Baliram, wherein the same point was under consideration. The learned Counsel for the petitioners also brought to my notice a decision given by this Court in Writ Petition No. 807/1986 decided on 1-8-1991 wherein, His Lordship of this Court relying on the judgment of the Division Bench 1989 Mh.L.J. 815 has observed that the benefit of the Act cannot be given to those whose names have been included in the Scheduled Tribes'' list after the date of the transaction. I fully agree with the contentions of the learned Counsel for the petitioners, who has taken much labour to argue on this point and I have no hesitation in coming to the conclusion that the order passed by the Reviewing Authority below deserves to be quashed and set aside, and the same is quashed and set aside. The question of restoration of lands to the original owner Gangaram Raghoji Bele, in both the matters, does not arise. The petitions are therefore, allowed. Rule is made absolute with no order as to costs.