
(1996) 08 BOM CK 0010
In the Bombay High Court
Case No : Writ Petition No. 822 of 1985

Shivram and Another	Vs	APPELLANT
Tukaram Age and Another		RESPONDENT

Date of Decision : 12-08-1996

Acts Referred:

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

Citation : (1997) 4 BomCR 291

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

Bench : Single Bench

Advocate : Kishore Sant, for P.V. Mandlik, for the Appellant; S.K. Kadam, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

R.G. Deshpande, J.—The respondent No. 1 Tukaram Raghoji Aage, an "Andh" by Caste, was the original owner of field Survey No. 23 situated at Village Ekamba, Tq. Hadgaon, Dist. Nanded. It appears that the total area of the field in question is 13 acres, however, the same is shown to have been 13 acres and 20 gunthas in the orders of the courts below. This Tukaram Raghoji Aage, the respondent No. 1, sold the above-said field by three different sale-deeds the particulars of which, are as under :-

By sale-deed dated 16-5-1966 Tukaram sold 6 acres of land to one Baliram and Shivram Jairam, who is the petitioner No. 1 before this Court. The second sale-deed executed by Tukaram is dated 13-5-1969 of 4 acres which is sold to Shivram Jairam alone. The third sale-deed is dated 12-12-1969 of 3 acres, which is sold by respondent No. 1 to the petitioner No. 2. It is also necessary to make a passing reference to one additional sale-deed in the matter i.e. sale-deed dated 31-1-1970 which is executed by Baliram in favour of Shivram Jairam, the petitioner No. 1, which also is of 3 acres.

2. An application u/s 3 of the Maharashtra Restoration of Lands to Scheduled

Tribes Act, 1974 (hereinafter referred to as "the Act" for the purpose of brevity) was filed by Tukaram Raghoji, the respondent No. 1 under the impression that he was entitled to have the benefit under the Act. The application of the respondent No. 1 was registered as Application No. 78/ADW/HAD-14 on the file of the Additional Tahsildar, Sub-division Nanded. The learned Addl. Tahsildar who dealt with the matter after due inquiry, by his order dated 14th December 1978, reached to the conclusion that the respondent No. 1 was entitled for getting restored 13 acres and 20 gunthas of land on the ground that the respondent No. 1 belonged to "Andh" community, which is included in the list of Scheduled Tribes maintained by the Government.

3. Being aggrieved by the order of the Additional Tahsildar referred to above, an appeal was preferred by the petitioners before the Maharashtra Revenue Tribunal, which was registered as Appeal No. 54/A/1979-Nanded. The learned Member of the Maharashtra Revenue Tribunal who dealt with the matter, by his judgment and order dated 2nd May 1979, remanded the matter for fresh inquiry, having found that the respondent No. 1 did not prove his case nor a certificate to that effect was produced on the record and further that since according to the Member, M.R.T. no statements were recorded of the parties concerned which resulted in not granting an opportunity of being heard to the petitioner, the M.R.T. thought it fit to remand the matter.

4. On remand, the respondent No. 1 it appears from the record did produce a caste certificate dated 8-11-1979. The learned Addl. Tahsildar after remand, by his order dated 14th April, 1980 held that though the caste certificate is produced however, since the respondent No. 1 had already purchased some other land out of the sale-proceeds of land to Baliram and Shivram, the Addl. Tahsildar observed that Shivram was likely to become landless if the land is restored to Tukaram and, therefore, the learned Addl. Tahsildar held that Tukaram was not entitled for restoration of land from Shivram as that was the only land with Shivram. However, in the case of Vasant, the petitioner No. 2 the Addl. Tahsildar observed that the land of 3 acres purchased by Vasant was liable to be restored to the respondent No. 1 - Tukaram. Thus, it is clear that the order dated 14-4-1980 specifically granted relief to Shivram. However, as regards 3 acres of land of Vasant, the same is ordered to be restored to respondent No. 1 - Tukaram.

5. Since the order dated 14-4-1980 had gone against Vasant, the petitioner No. 2, it was Vasant who preferred an appeal before the Member, Maharashtra Revenue Tribunal, Aurangabad which was registered as Appeal No. 89-A-1980-Nanded which was decided on 7th October, 1981. The learned Member, Maharashtra Revenue Tribunal, remanded the matter, having found that no proper notices were issued and further that the directions which were given by the M.R.T. by its earlier order dated 2-5-1979 were not strictly complied with. Thus, by order dated 7-10-1981, the M.R.T., again, partly allowed the appeal filed by Vasant, the petitioner No. 2 and, again, remanded the matter to the

Additional Tahsildar. It is important to note at this stage that this order dated 7-10-1981 is not challenged by either of the parties before the higher Court/s. This observation is required to be made from the point of view that the appeal was filed only by Vasant and not by Shivram and it was Vasant's appeal which was partly allowed and the matter was remanded back. This particular point has some relevance to the matter as I will be narrating in the subsequent paragraphs at appropriate stage of this judgment.

6. After the second remand by the Maharashtra Revenue Tribunal the matter had, again, come up before the Additional Tahsildar who after due compliance, passed an order on 9-5-1983. The learned Additional Tahsildar, after having considered the evidence on record, reached to the conclusion that the respondent No. 1 was not entitled for restoration of 3 acres of land of Vasant also. In short, it is clear that by order dated 14-4-1980 Shivram was exempted from restoring land to Tukaram and, now, by order dated 9-5-1983, Vasant also could get the relief of not parting with the land under the Act in favour of the respondent No. 1.

7. It appears that the learned Additional Commissioner, Aurangabad in accordance with the powers vested in him u/s 7 of the Act, issued notices of suo-motu revision of the matter, according to Addl. Commissioner he himself having satisfied that the matter needed a review of the order passed by the Addl. Tahsildar, i.e. the order dated 9-5-1983. This suo-motu revision was registered as File No. 1985-TNC-Tribal-R-4 on the file of Additional Commissioner, Aurangabad Division, Aurangabad and the learned Addl. Commissioner who dealt with the matter by his order dated 26th August 1985 ordered that all the 13 acres and 20 gunthas of land which was purchased by Baliram and Vasant by three different sale deeds was liable to be restored to respondent No. 1 - Tukaram. The learned Addl. Commissioner by his order, referred to above, specifically quashed and set aside the order of the Addl. Tahsildar, Nanded which is the order dated 9-5-1983 and to be precise, the order which is passed only against Vasant. In fact, Shivram is in no way concerned with that order as he was already given relief by order dated 14-4-1980. In short, the learned Addl. Commissioner is supposed to have taken the suo-motu proceedings only against the decision dated 9-5-1983 and it is also apparent that it is only that order dated 9-5-1983 which is passed by the Addl. Tahsildar, Sub-division Nanded, which is set aside by the Addl. Commissioner, Aurangabad. The Additional Commissioner, Aurangabad, further sent the matter back to the Tahsildar, Hadgaon for initiating immediate restoration proceedings in favour of tribal-Tukaram i.e. the respondent No. 1 in respect of the land Survey No. 23, specifically pointing out that 4 acre from the eastern portion which was in possession of Shivram and 3 acre from western portion which was in possession of Vasant and an area of 3 acre and 20 gunthas which was sold on 13-5-1966 and was in possession of Shivram Jairam. However, the learned Addl. Commissioner held that the transfer of land by Baliram in favour of Shivram, the petitioner No. 1 by sale deed dated 31-1-1970 could not be restored to Baliram,

for the simple reason that this transfer was prior to 15-2-1971 which could not be covered by the definition as is given of the "non-Tribal transferee." So this transfer could not be held to be a transfer in favour of non-tribal. Thus, the Addl. Commissioner ordered restoration of 10 acres of land to respondent No. 1. It is this judgment and order dated 26-8-1985 of the Addl. Commissioner, which is under challenge in the present petition.

8. Shri Kishor Sant, the learned Counsel appearing on behalf of the petitioners with Shri P.V. Mandlik, Advocate, vehemently argued that since the transactions in question are prior to 1976, being transactions dated 16-5-1965; 13-5-1969 and 12-12-1969, they cannot be said to have been bound by the provisions of section 3 of the Act as the caste "Andh" to which the respondent No. 1 claimed to belong, has been included for the first time in the list of Scheduled Tribes in the year 1976 and, therefore, since section 36 of the M.L.R. Code cannot have the retrospective effect, the question of invoking the provisions of the Act in the instant matter, did not arise. Shri Sant, the learned Counsel for the petitioners, rightly relied, in support of his arguments, on two decision of this Court. The first one which is reported in Tukaram Gandewar Vs. Piraji Sidarwar Died through L.R"s., , wherein Their Lordships of the Division Bench of this Court, have specifically observed that the land belonging to a person who was not a tribal on the day of transaction but subsequently such a person included in the list of persons declared as tribal, such subsequent inclusion does not affect the validity of transfer as effected which at the time was between non-tribals. Their Lordships have, therefore, specifically observed that section 36-A of the M.L.R. Code has no applicability to such a case. This Court has also taken the same view relying on the above-said judgment in the decisions in the matter of Writ Petition Nos. 232 and 233 of 1985 decided on 1st of July 1996, which is the matter directly relating to the caste of "Andh". Taking into consideration, these arguments of the learned Counsel for the petitioners Shri Kishor Sant, I have no hesitation in agreeing with Shri Sant on this point and on this very ground, the petition is liable to be allowed.

9. However Shri Sant, the learned Counsel appearing on behalf of the petitioners, challenged the order of the Addl. Commissioner on certain other important grounds. According to Shri Sant, the Addl. Commissioner while suo-motu reviewing the matter u/s 7 exceeded his jurisdiction in reviewing the matter even in the case of Shivram and particularly inspite of there having been no direction or sanction from the Government to reopen the matter of Shivram which, in fact, stood concluded by the order dated 14-4-1980 of the learned Addl. Tahsildar. Shri Sant very fairly conceded that so far the matter as regards Vasant was concerned, at the most, that would have been reopened and suo-muto review of the same could have been made. However, the Addl. Commissioner, according to Shri Sant, committed a grave error in law in ordering restoration of land of Shivram in favour of respondent No. 1 - Tukaram. It is no doubt true that this argument of Shri Sant has definitely a substance which in ordinary course, dealt with by this Court by pointing out as to the mistake

committed by the learned Addl. Commissioner in directing the restoration of land of Shivram which, could not, by any stretch of imagination, be restored particularly when Shivram is in no way concerned with the order dated 9-5-1983 which is sought to be suo-motu reviewed by the Addl. Commissioner which he had set aside by his judgment and order dated 26-8-1985. However, instead of going into the details in this matter, I do not find it necessary to deal with the same, in view of my observations above. As the petition is to be allowed on the very short ground that the transactions in the present petition were the transactions not between the tribal and the non-tribal but it was between non-tribals only at the relevant point of time and hence the matter cannot be brought into the clutches of the provisions of the Act in question.

10. In the result, the writ petition is allowed. Rule is made absolute. However in the circumstances of the case, no order as to costs.