

(1998) 09 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 4540 of 1984

Shri Pandurang Hari Patil

APPELLANT

Vs

Shri Narayan Balu Tandel and others

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 63

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 2(1), 3

Citation : (1998) 4 ALLMR 541 : (1999) 1 BomCR 157 : (1998) 3 MhLj 524

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : S.G. Karandikar, for the Appellant;

Judgement

R.M. Lodha, J.—A short but interesting question that arises in this writ petition is whether a transfer of an agricultural land by tribal whose title in such land was not valid to a non-tribal between the period mentioned u/s 2(1)(f) of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short "Act of 1974") is covered under that section.

2. The facts are few. The disputed land bearing Survey No. 36, Hissa No. 3/2 part admeasuring 1 hectare 06 ars situate at Village Kadiwali originally belonged to one Vishnu Shankar Rodage - the father of respondent Nos. 2 and 3 herein. The respondent No. 1 Narayan Balu Tandel is tribal and he purchased the said land from Shri Vishnu Shankar Rodage by registered sale deed dated 22-4-1963 for a consideration of Rs. 700/-. At the time of the purchase, Narayan Tandel (Tribal) was not agriculturist. Thereafter on 14-6-1965. Narayan Tandel sold the said land to the petitioner who is non-tribal for a consideration of Rs. 995/-. The proceedings under the Act of 1974 was initiated on an application made by Narayan Tandel on the ground that the transfer of the said land was hit by section 2(1)(f) of the Act of 1974. The Additional Tahsildar and Agricultural Lands Tribunal, Wada after hearing the parties by an order dated 11-9-1980 held that the transaction was not covered under the Act of 1974. A revision was preferred

by Narayan Tandel -tribal -before the Additional Commissioner. After hearing the parties the Additional Commissioner vide its order dated 26-7-1984 allowed the revision and set aside the order passed by the Additional Tahsildar and Agricultural Lands Tribunal, Wada and declared the transfer effected by Narayan Tandel in favour of present petitioner bad in law and ordered its restoration to Narayan Tandel.

3. The Additional Tahsildar and A.L.T., Wada as well as the Additional Commissioner have observed that the tribal Narayan Tandel who purchased the suit land from Vishnu Shankar Rodage on 22-4-1963 was not an agriculturist. In the light of this factual background, the legal position may be examined. Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "The Tenancy Act") bars transfer of agricultural land to non-agriculturist. It provides in unequivocal terms that no sale in respect of agricultural land shall be valid in favour of a person who is not an agriculturist. Since the tribal Narayan Tandel was not an agriculturist, purchase of the disputed land by him was not valid. The transaction of sale by Vishnu Shankar Rodage in favour of tribal Narayan Tandel in the year 1963 was, thus invalid being specifically prohibited under law. The transfer in favour of tribal Narayan Tandel in the year 1963 being barred by law was void.

4. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 came into force with effect from 28-5-1975. The Act was enacted to provide for the restoration of certain lands to persons belonging to the scheduled tribes. The Act of 1974 is a piece of beneficial legislation intended for the benefit of the scheduled tribes and protection of their agricultural land and restore the same to them if covered under the Act. Clause (f) of section 2(1) defines "transfer" thus :-

2. (1) In this Act, unless the context requires otherwise, ---

(f) "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 arrear 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 constructed, accordingly;

5. Upon reading of the said definition of transfer it would be seen that transfer

means transfer of agricultural land belonging to a tribal made in favour of non-tribal during the period from 1-4-1957 to 6-7-1974. Section 3 of the Act, of 1974, provides for restoration of transferred land to tribal when the land so transferred is in possession of non-tribal transferee. The expression "land belonging to a tribal" connotes the land which is lawfully owned by the tribal. In other words, by this expression "land belonging to tribal" is meant that a valid title of the said land vests in the tribal. The tribal must be legal title holder of such land. Clause (f) of section 2 (1) relates to transfer of the land legally and validly owned under legal title by the tribal transferred to a non-tribal during the period commencing from 1-4-1957 to 6-7-1974. A tribal can be said to have acquired title over land if he had acquired the same in accordance with law. The expression "belonging to" is equivalent to "legal title" or "lawful vesting". If a tribal has not acquired legal title over the agricultural land and transfers the said land during the period mentioned in section 2(1)(i), such transfer is not covered by the Act of 1974. The agricultural land u/s 2(1)(f) cannot be said to be belonging to tribal to which he has no legal, valid or perfect title. I am fortified in my view by the Division Bench Judgement of this Court in State of Maharashtra and another v. Khatua Makanji and Company Pvt. Ltd., Bombay and others 1987 M.L.J. 908 wherein the Division Bench of this Court with reference to section 2(1) (i) of Restoration of Lands to Scheduled Tribes Act observed thus :-

"Legal title over agricultural lands does not vest in the tenant until all such conditions are satisfied including the payment of purchase price of lands. It is evident that the subject matter of "transfer" in the definition clause is land belonging to a tribal. The use of the expression "belonging to a Tribal" after the expression of "transfer of land", make it abundantly clear that the question of transfer can arise only if the agricultural land belonged to the tribal i.e. the title in the agricultural land vested in the tribal".

As I have already observed above, the tribal Narayan (respondent No. 1 herein), purchased the disputed land by registered sale deed dated 22-4-1963 from Vishnu Shankar Rodage, when he was not an agriculturist. Therefore the transaction of sale in favour of tribal Narayan was not valid and rather barred by law. By such transfer, therefore, no legal title had vested in tribal Narayan nor did he acquire any title since the sale transaction was void. Obviously, therefore, the land in dispute cannot be said to be belonging to tribal since it never vested in him under legal title. The said transfer by tribal respondent No. 1 in favour of petitioner is not covered u/s 2(1)(f) of the Act of 1974 and, therefore, the order of the Additional Commissioner cannot be sustained.

6. However, it needs to be observed that when the tribal respondent No. 1 herein did not acquire any legal title under the sale deed of 22-4-1963, the petitioner who is transferee from tribal also has not acquired any legal land valid title and the disputed land cannot be said to have vested in the petitioner. Mr. Karandikar, the learned Counsel for the petitioner fairly conceded this position that if the petitioner's vendor had no perfect title, the petitioner also has not acquired any

title in the land. Be that as it may, the question involved before me is only to the extent whether the transfer made by tribal respondent No. 1 herein in favour of the petitioner is a transfer covered by the Act of 1974 or not and I have already held that it is not for the reasons stated above.

7. The writ petition is, accordingly, allowed. The order of the Additional Commissioner, Konkan Division, dated 26-7-1984 is quashed and set aside. No costs.

8. Petition allowed.