(2010) 11 BOM CK 0086

In the Bombay High Court

Case No : Writ Petition No. 3874 of 1991

Shri Sadashiv Ragho Kolambe and Others — APPELLANT

Vs

Shri Sardar Khandu Tadvi, (since deceased through L.Rs. Guljar Sardar Tadvi and Others), The State of Maharashtra, Scrutiny Committee, Director of Tribal Research and Training Institute and The Member of the Maharashtra Revenue Tribunal — RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

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

Citation : (2011) 1 ALLMR 771 : (2011) 1 BomCR 21

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : V.T. Chaudhari, for the Appellant; R.P. Phatke, Special Counsel for R. 3 in Writ Petition No. 3874 of 1991, R. 6 in Writ Petition Nos. 3875 of 1991, R. 10 in Writ Petition Nos. 3876 and 3877 of 1991, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—These petitions take exception to the judgment and order dated 2nd July, 2991 passed by the Member, Maharashtra Revenue Tribunal, Bombay Camp at Jalgaon in Rev. Trb. Nos. 23, 24, 27 and 28 of 1989.

2. The brief facts of the case are as under:

The suit land bearing Survey No. 44 of village Sangavi originally belonged to the predecessors of the Respondents. The suit land was divided into seven parts allotting one share to the seven persons separately with respect to the part of the land held by them. The cases were decided by the Trial authorities i.e. the Assistant Collector, Jalgaon Division, Jalgaon, by initiating proceedings in the year, 1976. The cases were kept pending for some years till the final decision of the Lingappa Pochanna?s case was pronounced by the Supreme Court. The Tahsildar, Yawal had decided the cases on 31st October, 1985 in favour of the

Respondents. Being aggrieved by the said order, the Appellants - non tribal preferred appeals against the said order before the Maharashtra Revenue Tribunal being Nos. Rev. Trb. 92 of 1985 to Rev. Trb. 97 of 1985 and the appeals were partly allowed and after setting aside the order of the Tahsildar, the matters were remanded for fresh enquiry.

After remand, the Tahsildar issued notice to the parties for the purpose of enquiry. One Guljar Sardar Tadvi and Mohamed Sardar Tadvi produced caste certificates issued by the Special Executive Magistrate, Yawal, District Jalgaon dated 25th October, 1985 and Guljar Sardar Tadvi and five others were represented by him as their General Mukhtyar. After taking into consideration the oral statements of the parties and the papers on record, the Tahsildar decided the matter finally on 29th March, 1989 directing to restore possession of the suit lands to the Respondents.

Being aggrieved, the present petitioners filed appeals before the Maharashtra Revenue Tribunal. By judgment and order dated 2nd July, 1991, the Maharashtra Revenue Tribunal dismissed all the four appeals filed by the petitioners. Hence, these writ petitions.

3. The learned Counsel for the petitioners argued two important points. Firstly, the case certificate which was issued by the Executive Magistrate was not sent for verification to the Caste Scrutiny Committee and secondly, the Respondents had not given undertaking as it is mandatory under Sub-section (3) of Section 3 of the Maharashtra Restoration of lands to Scheduled Tribes Act, 1974 (for short, referred to as "the said Act"). The learned Counsel for the petitioners submitted that unless the caste certificate issued by the Executive Magistrate is verified by the competent committee, the said caste certificate cannot be relied upon. In support of his contention, he placed reliance on the unreported judgment of this Court in case of Pandit Shridhar Lokhande v. Jamsher Sitru Tadvi deceased heirs Mainabai Jamdar Tadvi and Ors. Writ Petition No. 1636 of 1994, dated 17th June, 2010) and also the reported judgments in case of Daulat Dhana Mali since deceased through L.R. Ramkrishan Daulat Mali and Ors. v. State of Maharashtra and Ors. 1994 M.L.J. 1710 and the case of Krushna Wasudeorao Ambekar and Others Vs. State of Maharashtra and Others, . Relying on these judgments, the learned Counsel for the petitioners contended that unless the caste certificates of the Respondents are referred to the Caste Scrutiny Committee and unless the same are verified by the said committee, the caste certificates cannot be treated as an authentic proof of the caste of the Respondents that they belong to tribal community. At the cost of repetition, he further submitted that Section 3(3) of the said Act mandates that before passing of the order, an undertaking should be given by the tribals that they themselves want to cultivate the land and they will pay the amount as would be determined by the Tahsildar. Therefore, learned Counsel for the petitioners submits that these writ petitions deserve to be allowed.

4. I have given due consideration to the submissions advanced by the learned

Counsel for the petitioners. On careful perusal of the judgment and order passed by the Member, Maharashtra Revenue Tribunal and more particularly, para 5 of the said judgment, it appears that the petitioners herein, who were Appellants before the Maharashtra Revenue Tribunal, did file Caste Certificate Appeal No. 422 of 1985 before the Commissioner, Nashik against Ibrahim Namdar Tadvi and others. Some of the Respondents were parties in the said appeal and the said appeal of the non-tribals i.e. present petitioners was dismissed and by the said order, the caste certificates issued by the Executive Magistrate were confirmed. It is not in dispute that the said order has attained finality and no further proceedings have been filed by the petitioners herein to challenge the said order passed by the Commissioner in Appeal No. 422/1985. Therefore, facts of this case stand on different footing than the facts in the case of Pandit Shridhar Lokhande (supra). It appears that in Pandit?s case no Caste Certificate Appeal was filed by the petitioners therein. Therefore, the Court in the facts of that case, allowed the writ petition. However, in the instant case, the proceedings in the Caste Certificate Appeal No. 422 of 1985 attained finality. In short, the caste certificates issued by the Executive Magistrate have been confirmed by the appellate authority. Therefore, the judgment in Pandit?s case relied on by the learned Counsel for the petitioners is of no avail to the petitioners. So far as other judgments in the cases of Daulat Dhana Mali (supra) and Krushna Wasudeorao Ambekar (supra) are concerned, no such appeal was filed by the Petitioners therein challenging the caste certificates. Therefore, taking into consideration the outcome of the caste certificate appeal No. 422 of 1985, the Maharashtra Revenue Tribunal has taken a possible view, which needs no interference.

5. Coming to the arguments of the learned Counsel for the Petitioners that the undertaking was not given by the Respondents - tribals before passing of the order that they themselves would cultivate the lands and they would make payment of the price of the land as would be decided by the Tahsildar, from the judgment of the Maharashtra Revenue Tribunal, it clearly appears that no such argument was advanced by the petitioners and no such findings have been rendered by the Maharashtra Revenue Tribunal. Therefore, in the extraordinary jurisdiction of this Court, this Court should not enter into that aspect since the same was not raised before the Maharashtra Revenue Tribunal.

6. Therefore, taking overall view of the matter, in my opinion, no case is made out to interfere with the judgment and order passed by the Maharashtra Revenue Tribunal. The tribunal, on the basis of the documents and evidence on record, has taken a possible view.

7. In the result, writ petitions are dismissed. Interim relief stands vacated. Rule stands discharged with no order as to costs.

