

(2010) 12 BOM CK 0124
In the Bombay High Court
Case No : Writ Petition No. 789 of 1990

Shri Ulhas Nimba Choudhari and Chandrakumar Nimba
Chaudhari

APPELLANT

Vs

Sardar Khandu Tadvi B/H and Guljar Sardar Tadvi (Died
through L.Rs. Hamid Guljar Tadvi and Others) and Others

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 3, 6

Citation : (2011) 3 ALLMR 206 : (2011) 6 BomCR 812 : (2011) 3 MhLj 296

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

Bench : Single Bench

Advocate : V.T. Choudhari, for the Appellant; S.G. Shinde, Adv for Respective Respondents and D.R. Korde, A.G.P., for the Respondent

Judgement

S.S. Shinde, J.—Heard learned Counsel for respective parties.

2. The brief facts of the case, as disclosed in the petition, are as under:

The suit land situated in survey No. 56/1-C admeasuring 1 Hecter and 20 R assessed at Rs. 5/-and 93 paise, situated at village Sangvi (Bk), Tq. Yawal, district Jalgaon. The said land previously was held by the Respondents as an owners and they have sold their land to the Petitioners herein in the year 1968 for consideration of Rs. 9000/-under a registered sale deed and from the said consideration they have purchased another big peace of land. The Petitioners thereafter improved the suit land by spending more than Rs. 50,000/-and converted the dry land into Bagayat land. Thereafter, a consolidation scheme was made applicable in the said village and the suit land alongwith other lands are consolidated into Gat No. 160 and at present the suit land is no more in existence. The Petitioners are in exclusive possession and control, enjoyment of suit land till today.

It is further case of the Petitioners that the Assistant Collector, suo moto started

a proceeding u/s 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter for the sake of brevity referred to as the "Restoration Act") as the enquiry was pending, the Petitioners obtained stay order from the Hon"ble Supreme court but subsequently in Lingappa's case, the Hon"ble Supreme court has upheld the Constitutional validity of the Restoration Act, which is reported in AIR 1985 Supreme court page 389. Thereafter the Tahsildar of Yawal issued a fresh notice u/s ec. 3 of the Restoration act and started an enquiry u/s ec. 3 of the said Act. The Petitioners have raised various law points. It was specifically submitted by the Petitioners that the Respondents are not tribal as they are "Muslim Tadvi or Muslim Pathan" and hence they are not tribal. It was further submitted that the Respondents are following Muslim religion and their conversion in Muslim Religion is complete, and after conversion to Islam Religion the Respondents have not maintained a tribal way of life on all matters. It was further submitted that the caste certificate issued to the Respondents are illegal and bad in law as they are issued without proper enquiry and issued only on the basis of affidavits filed by the Respondents. It was further submitted that as per the Resolution No. CBC/1680/43669/D-V, Mantralaya, dated 29th October, 1980, issued by the Government of Maharashtra Social Welfare, Cultural Welfare, sports and Tourism Department, a detailed enquiry is contemplated before a Caste Certificate is issued and for that purpose a person claiming benefit under the Restoration Act is required to file an application in the prescribed manner and thereafter detailed enquiry is contemplated in view of the said resolution and thereafter, a caste certificate can be issued in the prescribed form. It is pertinent to note that the said procedure is not followed by the Tahsildar hence, the caste certificate is issued to the Respondent that they are Tribal is illegal, bad in law and hence it should be ignored. The Petitioners further stated that the Government issued another Circular vide No. Vati/DA/482/KA-4 dated 8.9.1982, in which it has been specifically mentioned that the instructions issued in Resolution dated 29.10.1980 should be followed strictly. It has been further mentioned that if there is any ambiguity about the status of any person, then the case may be referred to Social Welfare, Cultural Affairs, Sports and Tourism Department. The further clarification is made by the Government by issuing guidance vide order No. CBB/1684/309/11, dated 24th April, 1985 in which it has been specifically mentioned at serial No. 5(13) that Tadvi who has converted himself into Muslim Religion are not Adiwashis. It is further case of the Petitioners that inspite of all the contentions raised before the Tahsildar, the Tahsildar by order and judgment dated 31.10.1985 held that the Respondents are tribal and ordered to restore the suit land to the Respondents.

Being aggrieved and dissatisfied with the said order, the Petitioners preferred an appeal u/s 6 of the Restoration Act being appeal No. REV.TRV.88 of 1985 before the Maharashtra Revenue Tribunal. The learned Member of the Maharashtra Revenue Tribunal by order dated 27.7.1987 set aside the order passed by the Tahsildar and remanded the matter back to the Tahsildar for fresh enquiry namely for considering the status of the Respondents whether they are tribal or

not.

The Tahsildar, after remand without considering the voluminous evidence and documents produced by the Petitioners to show that the Respondents are not tribal passed an order in cyclostyle forms and held that the Respondents are "Adivashi" and hence the suit land should be restored to the Respondents.

The Petitioners for the second time, against the order of the Tahsildar, preferred an appeal u/s 6 of the Restoration Act before the Maharashtra Revenue Tribunal, Bombay being Appeal No. REV/TREV/19 of 1989 raising various points. However, inspite of having raised various legal points, the learned member of the M.R.T. Dismissed the appeal by his judgment and order dated 19.10.1989. Hence this petition.

3. Learned Counsel for the Petitioners invited my attention to the Exh.A page 15 i.e. judgment and order passed by the Tahsildar, Yawal dated 29.3.1989 and submitted that if title cause of the said case is perused, it is mentioned Gulzar Sardar Tadvı etc. however, in the operative part of the order, it is observed that the applicants in this case are "Adivasi" and hence the property situated at the village Sangvi Bk. T. Yawal bearing S. No. 56/1-c H.R. 1.20 be restored to him/ them forthwith.

According to the counsel for the Petitioners order dated 29.3.1989 passed in Adivashi Case No. 173 by Tahsildar, Yawal is not executable and cannot be implemented since no name of legal heirs and other two persons are mentioned in the title cause of the said case. He further submitted that the caste claim of the Respondents was not referred to the caste scrutiny committee. According to the counsel for the Petitioners, this Court in the cases of Raju Burde Vs. Establishment Officer (III-B), Maharashtra State Electricity Board and Another, , Ulhas Bimba Choudhari and Anr. v. Burhan Samsa Tadvı (deceased heirs) Abbaskhan Burhan Tadvı and Ors. 2007 (1) Mh.L.J. 165 and writ petition No. 1636 of 1994 on 17th June, 2010 (Aurangabad Bench) has taken a view that in such case the authority i.e. Tahsildar should refer the caste claim of the claimants/Adivashi to the caste scrutiny committee for verification/scrutiny. Therefore, learned Counsel for the Petitioners would submit that the Tahsildar should have referred the caste claim of the Respondents for verification to the caste scrutiny committee. Counsel for the Petitioners further submits that since the land in question is no more in existence and since the said has been consolidated and Gat number has been given to the said land. Therefore, the land is not in existence and consolidated and there is no question to further adjudicate the rights of the parties.

4. Counsel for the Respondents submits that the legal heirs of original applicant are already on record and those are also party Respondents to this petition. Therefore, the contention of counsel for the Petitioner that legal heirs of original applicant are not on record is devoid of any merits. Counsel further submits that the authority has properly considered the rival submissions and has arrived at

the correct conclusion and it may not be desirable to refer the caste claim of the Respondents to the caste scrutiny committee. Replying to the another contention of the Petitioner that the land is no more in existence as recorded by the M.R.T. It is submitted that the land is very much in existence and the Gat numbers are given in the consolidation. Therefore, the counsel for the Respondents submits that the writ petition deserves to be dismissed.

5. Upon perusal of the judgment and order of Maharashtra Revenue Tribunal and in view of the authoritative pronouncements of this Court in the cases cited supra, I find considerable substance in the argument advanced by counsel for the Petitioners that Tahsildar should have referred the caste claim of the applicant and his legal heirs, who are Respondents herein to the caste scrutiny committee for verification. This Court, while considering the various judgments on the subject, has taken a view in writ petition No. 1636 of 1994 that the findings recorded by the Authority i.e. the Additional Commissioner, that the Respondents therein are belonging to Tadvī S.T. category cannot be accepted since the said finding was without jurisdiction. Therefore, this Court in that matter has taken view to refer matter to the scrutiny committee for verification and scrutiny of tribe claim of the Respondent therein. Therefore, the contention of the counsel for the Petitioner to the above extent can be accepted.

6. However, the contention of the counsel for the Petitioner that the legal heirs of original applicant were not on record in the application and therefore, only the caste claim of the original applicant viz. Guljar to be referred to the committee is concerned, the same cannot be accepted. For all Respondents, except Respondent No. 7 and 8, it is necessary to refer their caste claim including legal heirs of Shri Guljar Sardar Tadvī for verification/scrutiny.

7. So far as the third contention of the counsel for the Petitioner that since the land is consolidated and now converted into Gat number is concerned, the said contention has been negatived by the authority and the court has held that the land is very much in existence and therefore, such contention cannot be accepted. Therefore, the petition is partly allowed. The petition is, therefore, allowed in terms of prayer clause "B". Rule made absolute to the above extent.

8. The Tahsildar is directed to refer the caste claim of Respondent Nos. 1 to 6 herein to the scrutiny committee within one month from the date of receipt of copy of this order. Thereafter the committee to take final decision within six months from the date of receipt of caste claim. If the decision of the scrutiny committee becomes final in favour of the contesting Respondents, the concerned authorities shall ensure that the possession of the land does not continue with the non tribal Petitioners and the same shall not be delivered even to Respondents unless and until the matter is dealt with appropriately under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

9. With the above observations, writ petition stands disposed of.