

(1997) 11 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 3639 of 1984

Smt. Nalinibai N. Patil

APPELLANT

Vs

Kamalya R. Dhanwa and others

RESPONDENT

Date of Decision : 26-11-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Constitution of India, 1950 — Article 227
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 4

Citation : (1998) 1 ALLMR 569 : (1998) 3 BomCR 211 : (1998) 1 MhLj 313

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : S.R. Nargolkar, A.G.P., for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The orders passed by the Tahsildar, Palghar in Case No. Adiwasi 1512-63 and the appellate order passed by the Maharashtra Revenue Tribunal at Bombay in REV.TRB. 16 of 1983 dated 24th July, 1984 are challenged in this writ petition. These two orders arise out of an application filed by the respondent u/s 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as the "Restoration Act"). The respondent is an Adiwasi belonging to Malhar Koli community. According to the respondent, the land comprising S.No. 31/2 and S.No. 30 of Tokrale Village, Taluka Palghar District : Thane, belonging to the petitioner's husband as landlord and admittedly the respondent here was a tenant. By virtue of section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948, the respondent were declared to be a deemed purchaser and purchase price was fixed in the year 1961-62 to be paid in installments beginning from 1-1-1962. However, the respondent failed to pay six installments from 1962 to 1967. Therefore, the purchase in favour of the respondent has become ineffective as per the order of the M.R.T. dated 24-7-1984 (or 1964.) Thereafter proceedings u/s 32-P of the Bombay Tenancy and Agricultural Lands Act had been taken and by order dated 19-9-1967 the land was directed to be restored to the petitioner's husband

Nathuram Shantaram Patil, the husband of the petitioner. The Mutation entry has also been affected in the village record. It appears that impugned orders are the result of repeated remands of the matter.

2. The learned Counsel for petitioner submitted that the restoration of possession of land to the petitioner's husband after the proceedings initiated u/s 32-P, cannot be considered as transfer land belonging to a tribal in his favour in order to attract the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, hereinafter called "Restoration Act". According to the learned Counsel once the land is vested in the tenant by virtue of the operation of section 32-G, in the event of the said vesting become ineffective on the contingency mentioned in the Act, the land immediately deemed to have vested in the State and only after the proceedings under 32-P is over, land is restored to the persons mentioned in section 32-P. Therefore, the disposal of the property as contemplated u/s 32-P cannot be treated as a transfer of tribal land. In view of this legal position, Restoration Act has become inapplicable as far as restoration of the land of the petitioner is concerned.

3. The learned Government Advocate however, contested this position. The learned Government Advocate admitted that land belongs to the tribal and that land has been now restored to the petitioner. Therefore, it cannot be said that the land which is held by the petitioner is not the land belonging to the tribal. In view of the legal position explained above, I cannot agree to the contentions of the learned Government Advocate. When the disposal of land by the authorities u/s 32-P cannot be treated as a transfer of tribal land, the premises with which impugned are proceeded cannot be accepted. The orders are held to be passed without any jurisdiction by the authorities.

4. In the result, writ petition is allowed. There will be an order in terms of prayer Clause (c). In the circumstances of the case, there shall be no order as to costs.

5. Petition allowed.