

(2012) 07 BOM CK 0225

In the Bombay High Court

Case No : Letters Patent Appeal No. 160 of 2002 in Writ Petition No. 349 of 1992

Smt. Vimlabai Mahure and Pralhad Yeshwant Mahure

APPELLANT

Vs

The State of Maharashtra and Bablu Bajirao Kolam. (dead)
Through his legal heir. Smt. Zelabai Yalankar (Kolam)

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Constitution of India, 1950 — Article 31A, 31B

Maharashtra Land Revenue Code, 1966 — Section 36, 36(1), 36(2), 36(2)(2), 72

Citation : (2012) 6 ALLMR 595 : (2013) 1 BomCR 671

Hon'ble Judges : Vasanti A. Naik, J;A.B. Chaudhari, J

Bench : Division Bench

Advocate : R.D. Bhuibhar, for the Appellant; N.S. Khubalkar, counsel for the respondent No. 1 and Mr. Abhay V. Bhide, counsel for the respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J.—This Intra Court Appeal is directed at the instance of the non-tribal transferees against the judgment and order dated 23.08.2002 passed by the learned Single Judge in Writ Petition No. 349/1992.

SUBMISSIONS

In support of the appeal, Mr. Bhuibhar, the learned counsel for the non-tribal transferees, vehemently argued that the proceedings for restoration of land were initiated at the instance of the tribal transferor u/s 36 of the Maharashtra Land Revenue Code, which was subsequently heard and decided by the Competent Authority i.e. Tahsildar. The said lis was between the same parties. That being so, according to the learned counsel for the appellants, the instant proceeding, registered suo motu by Collector under the provisions of Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, is clearly hit by the principles of Res Judicata as the issue was decided between the same parties. It is further contended on behalf of the appellants that the said order

dated 31.05.1976 in the earlier proceedings, u/s 36(2) of the Maharashtra Land Revenue Code had attained finality. The learned counsel for the appellants thus, argued that the learned Single Judge did not advert to this aspect and, therefore, according to him, there is a miscarriage of justice.

2. Per contra, Mr. Khubalkar, the learned Assistant Government Pleader appearing on behalf of the respondent No. 1 and Mr. Bhide, the learned counsel for the respondent No. 2, opposed the appeal and supported the impugned judgment and order made by the learned Single Judge.

3. We have heard the learned counsel for the rival parties. We have gone through the judgment and order made by the learned Single Judge. The question of law that falls for our consideration is framed thus----

Whether the non-obstante clause in Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 would prevail over the non-obstante clause in sub-section 2 of Section 36 of the Maharashtra Land Revenue Code, 1966 ?

CONSIDERATION

4. The Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the Code" for the sake of brevity) is an earlier enactment while the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as "the Restoration Act of 1974" for the sake of brevity) is a subsequent enactment. Sub-Section 2 was substituted for the original by Maharashtra 35 of 1974, so also, proviso to sub-Section 3 was added by the said amendment. Section 36 (1), (2) and (3) with their proviso reads thus -----

36. Occupancy to be transferable and heritable subject to certain restrictions.

(1) An occupancy shall, subject to the provisions contained in Section 72 and to any conditions lawfully annexed to the tenure, and save as otherwise provided by law, be deemed an heritable and transferable property.

(2) : Notwithstanding anything contained in the foregoing sub-section occupancies of persons belonging to the Scheduled Tribes (hereinafter referred to as the "Tribals") (being occupancies wherever situated in the State), shall not be transferred except with the previous sanction of the Collector:

Provided that nothing in this sub-section shall apply to transfer of occupancies made in favour of persons other than the Tribals (hereinafter referred to as the "non-Tribals") on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974.]

(3) Where an occupant belonging to a Scheduled Tribe in contravention of sub-section (2) transfers possession of his occupancy, the transferor or any person who if he survives the occupant without nearer heirs would inherit the holding, may, 1[within thirty years] of such transfer of possession, apply to the Collector to be placed in possession subject so far as to the Collector may, in accordance with the rules made by the State Government in this behalf, determine to his

acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding, 2[and notwithstanding anything contained in any law for the time being in force, the Collector shall] dispose of such application in accordance with the procedure which may be prescribed:

Provided that, where a Tribal in contravention of sub-section (2) of any law for the time being in force has, at any time before the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 transfer possession of his occupancy to a non-Tribal and such occupancy is in the possession of such non-Tribal or his successor-in-interest, and has not been put to any non-agricultural use before such commencement, then, the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on application by the Tribal (or his successor-in-interest) made at any time 4[within thirty years] of such commencement, after making such inquiry as he thinks fit, declare the transfer of the occupancy to be invalid, and direct that the occupancy shall be taken from the possession of such non-Tribal or his successor-in-interest and restored to the Tribal or his successor-in-interest.

A perusal of Section 36 (2) and (3) show that the non-obstante clause puts a restriction on transfer of occupancies held by the Tribal. The said amended provision came into force with effect from 06.07.1974. Needless to say that the said provision was inserted in the Code in order to take care of transfer of occupancies from Tribals to non-Tribals by putting restrictions on such transfers.

5. Earlier, in the instant case, proceedings were initiated at the instance of the respondent No. 2-Tribal transferor before the Tahsildar u/s 36(2) and (3) of the Code. The said proceedings were decided against the respondent No. 2-Tribal by the Tahsildar by an order dated 31.05.1976, which attained finality.

6. It is necessary to deal with the contention canvassed by the learned counsel for the appellants that the order dated 31.05.1976 passed by the Tahsildar in the earlier proceedings u/s 36(2) of the Code.

The Restoration Act of 1974 was passed by the State Legislature and it came into force with effect from 01.11.1975. The Restoration Act of 1974 has been placed at Serial Number 156 in the Ninth Schedule of the Constitution of India, thereby providing insulation applicable to the Acts placed in the Ninth Schedule of the Constitution of India from any challenge based on the provisions contained in Part-III of the Constitution of India, so also from any judgment, decree or order of any Court or Tribunal. It is not in dispute that the validity of the Restoration Act has been upheld by the Apex Court.

7. At this juncture, it would be useful to reproduce Article 31B of the Constitution of India.

31B. Validation of certain Acts and Regulations.- Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and

Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any Court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

Then, Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 reads thus-----

3. Restoration or transfer of lands to Tribals in certain cases

(1) Where due to transfer -

(a) the land of a Tribal-transferor is held by a non-Tribal-transferee, or

(b) the land acquired in exchange by a Tribal-transferor is less in value than the value of the land given in exchange, and the land so transferred is in possession of the non-Tribal-transferee, and has not been put to any non-agricultural use on or before the 6th day of July, 1974, then, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree, or order of any Court, Tribunal or authority, the Collector either suo motu at any time, or on the application of a Tribal-transferor made, 1[within thirty years] from the commencement of this Act shall, after making such inquiry as he thinks fit, direct that-

(i) the lands of the Tribal-transferor and non-Tribal transferred so exchanged shall be restored to each other; and the Tribal-transferor, or as the case may be, the non-Tribal-transferee shall pay the difference in value of improvements as determined under clause (a) of sub-section (4), or

(ii) the land transferred otherwise than by exchange be taken from the possession of the non-Tribal-transferee and restored to the Tribal-transferor, free from all encumbrances and the Tribal-transferor shall pay such transferee and other persons claiming encumbrances the amount determined under Clause (b) of sub-section (4):

8. We have already noted that Maharashtra Land Revenue Code is an enactment of the year 1966 and the amended provisions of Section 36(2) of the Code came into force with effect from 06.07.1974, while the Restoration Act, 1974 came into force with effect from 01.11.1975 i.e. later in point of time. The object of the Restoration Act, 1974 is to give protection to the occupancies held by the persons belonging to Scheduled Tribes or putting restrictions on transfer of the occupancies held by the Scheduled Tribes. In other words, the object of the latter Act namely the Restoration Act, 1974 is almost same as that of the amended provisions of Section 36(2) of the Act of 1966. That being so, the Maharashtra Land Revenue Code, 1966 would be a general Statute and the Restoration Act, 1974 would be a special Statute. Both the Acts have been enacted by the same

legislature i.e. the State Legislature in exercise of the legislative powers vested in it. The statutory interpretation which is required to be applied in such a contingency is that the later laws abrogate the earlier laws. The said principle is, however, subject to an exception embodied in the Maxim "Generalia Specialibus Non Derogant" (a general provision does not derogate from a special one). Keeping in mind the above statutory interpretation, we find that the subject namely protection of occupancies of the Scheduled Tribes or prohibition for transfer of the occupancies held by the Scheduled Tribes was already the subject matter of the Code of 1966 (though by amendment, by Maharashtra 35 of 1974). Even then, the State Legislature brought the Restoration Act, 1974 for the selfsame purpose and, therefore, it will have to be presumed that the Legislature wanted that the situation should be dealt with, in addition, by the specific provisions of a special Act namely the Restoration Act, 1974 rather than the general Act namely Maharashtra Land Revenue Code, 1966. We, therefore, hold that the Restoration Act, 1974 is a special statute while the Maharashtra Land Revenue Code, 1966 and the amended provisions of Section 36(2) thereof, is a general statute. In the light of the above legal principle of statutory interpretation, the provisions of special statute must prevail over the provisions of general statute.

Further Section 3 of the Restoration Act, 1974 contains an all-pervading non-obstante clause over any other law which means even the Code of 1966, but the non-obstante clause in sub-Section (2) of Section 36 is limited to sub-Section (1) of Section 36 only. That is another reason why Restoration Act, 1974 will have an overriding effect on the provisions of Section 36(2)(2) of the Code and any order made apart from the reason that it is a special Statute which would prevail over the general Statute.

9. There is one more angle, which supports the reason recorded by us above, namely that the Restoration Act, 1974 has been placed at Serial Number 156 in the Ninth Schedule and Article 31B of the Constitution of India provides for insulation even from the rigours of Part-III of the Constitution of India apart from any judgment, decree or order of any Court or Tribunal. From the non-obstante clause provided u/s 3 of the Restoration Act, 1974, if read in this context of the constitutional provision, the only conclusion that can be drawn is that the Restoration Act of 1974 has a superiority over the Code of 1966 and its amended provisions in relation to the subject in question. The contention raised by the learned counsel for the appellants that the order dated 31.05.1976 passed in the earlier proceedings and the provisions of Section 36 of the Code of 1966 would come in the way of the respondent nos. 1 and 2 or the Collector on the principles of Res Judicata or principles akin to the same and, therefore, the Collector could not have suo motu taken recourse to the Section 3 of the Restoration Act, 1974, therefore, for the above reasons, must fail. Section 3 of the Restoration Act, 1974 clearly mandates that any judgment, decree or order of any Court or Tribunal under any other law is required to be ignored and, therefore, the order dated 31.05.1976 will have to be ignored. The upshot of the above discussion is

that the question framed by us will have to be answered saying that the provisions of the Restoration Act, 1974 shall prevail over the provisions of Section 36 of the Code of 1966. In the result, we make the following order.

ORDER

I) Letters Patent Appeal No. 160/2002 is dismissed. No order as to costs.

II) Interim relief granted by this Court vide order dated 29th of November, 2002 shall operate for a further period of eight weeks only.