

(1985) 11 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 2386 of 1981

Soma Daradmare and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 10-11-1985

Acts Referred:

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

Citation : (1986) 2 BomCR 109

Hon'ble Judges : B.A. Masodkar, J

Bench : Single Bench

Advocate : N.S. Kherdekar, for the Appellant; V.V. Naik, G.P., for the Respondent

Judgement

B.A. Masodkar, J.—This petition questions the order of restoration of land by the authorities under the Maharashtra Restoration of Land to Scheduled Tribes Act, 1974 (hereinafter referred to as "the Restoration Act").

2. Few facts need be stated to appreciate the singular submission made by the learned Counsel in support of the petition. The present petitioner Soma was admittedly the tenant of 7.05 acres of land which comprised of Survey Nos. 128, 130 and 135 of village Jambhali. Being a tenant governed by the provisions of Bombay Tenancy and Agricultural Lands Act (hereinafter called "Tenancy Law") an order was made in his favour on June 30, 1965, in Revenue Case No. 541/59(13) of 1965-66 of village Jambhali that he has become the statutory purchaser and the said land stood transferred to him. It is not in dispute that pursuant to that order, Soma became the statutory purchaser of that property.

3. Under the provisions of the Restoration Act, proceedings were initiated and by applying provisions of section 4 thereof, the authorities have made an order against the petitioner Soma directing restoration of the property to the tribal-landlord, i.e., respondent No. 2.

4. Upon these facts Mr. Kherdekar submitted that the transfer in his favour being by reason of the statute and further being by reason of the fact that he was the

protected lessee, the Restoration Act would not be applicable and the word "transfer" defined by that Act would not be available for the purpose of exercising jurisdiction so as to restore the land to a tribal. In the submission of the learned Counsel the word "transfer" as is defined by section 2(i) will have to be restricted to non-statutory transfers and is read restrictively for the law of restoration confiscatory in character. The Counsel contends that the statutory transfers are not strictly "transfers" but are in the nature augmenting of rights which were once held in a lesser degree as protected tenures. Surely such an augmentation of estate by reason of the statute would not be a transfer. It would be anomalous, according to the learned Counsel, to hold that under one Act statutorily the property comes to a tenant and he becomes owner thereof and by reason of another the said property is deprived of only because the original landlord happens to be "the tribal", normally was highlighted by the fact that the lease which was statutorily protected was prior to the date mentioned by section 2(i) of the Restoration Act, in that it emanated prior to April 1, 1977. Alternatively it was submitted that if the transfer be void, reversion of the possession should still go to the lessee by reason of the initial protected lease and it could be undone only by taking the proceedings under the relevant Tenancy Law.

5. All this debate raised in this petition in this manner undoubtedly is ingenious one. But care of it is taken by section 4 of the Restoration Act. For the purposes of the present petition, it is not suggested that provision is in any manner unconstitutional. For specific kind of properties which belong to a tribal, a relief is provided by section 4 notwithstanding the fact that the land might have been deemed to have been purchased or acquired under or in accordance with the provisions of the relevant Tenancy Law. Once the acquisition by reason of the statute between the two dates mentioned in section 4 i.e. 1st April, 1957 and 6th July, 1974 is found out, the provisions of section 4 are attracted. The anomalous position pointed out by the learned Counsel would not be available for the simple reason that section 4 is intended to operate even with regard to the statutory purchase by reason of the relevant provisions of the Tenancy Law, once it is shown that by reason of such a law the transfer has been in favour of a non-tribal or the land that belonged to a tribal. Section 4 operates by its own force and annuls such a transfer. That position is expressly enacted by providing a non-obstante clause which is the part of section 4 so as to give overriding effect to section 4, notwithstanding anything contained in any law for the time being in force. That non obstante clause would take in the relevant Tenancy Law and would exclude its operation once the transfer including statutory one is within the period contemplated by section 4 of the Act, i.e. 1st April, 1957 and 6th July, 1974.

6. The submission of Mr. Kherdekar that once the transfer is annulled by reason of section 4 the lease should receive and the possession should remain with the petitioner would not be available because section 4, of the Restoration Act requires that once such a land is transferred certain statutory results are

required to be worked out including the restoration of possession to a tribal transferrer. It may mean, as was suggested by the learned Counsel, extinction of the initial lease and further annulling the statutory purchase following such a lease, but the statute can create and extinguish such rights and entitlements. Section 4, is one of those provisions which operate notwithstanding anything contained in any other law with regard to the entitlement of the transfer and investment of ownership under it. The provisions do not affect transfers as such but work out results and consequences once the conditions set out are satisfied. It would be impermissible, therefore, to rely on the lease which may have originated prior to 1st April, 1957 and might have continued till the date of statutory transfer under the relevant tenancy law. But once the transfer takes effect between the given period the injunction of the statute so as to annul the transfer and restore the property to a tribal would be operative notwithstanding the earlier lease in favour of the transferee. In such transfers, lease stands merged in higher and as such absolute right of property. Once ownership is conferred, lease comes to an end.

7. Once the statutory purchase is taken, would it be possible to restore the lease only because the Restoration Act enjoins the restoration of property in favour of the tribal ? Question apparently is not free from difficulty. But the statute of the kind like the Restoration Act is intended to operate on conditions including those of such statutory transfers and must be permitted to have its full sway. Juxtaposed with each other, lease and transfer of ownership, undoubtedly are two different species of property, lease being a lesser form of property than a sale or purchase of ownership. In lease there is no doubt a demise or a transfer of a right to enjoy land and as such is a transfer of property : See *Byramjee Jeejeebhoy (P) Ltd. Vs. State of Maharashtra*, while in sale there is an absolute transfer of all rights in property sold. As a result of sale or a proper transfer no rights are left in the transferrer; while as a results of lease what is brought about is a partial transfer, reversionary rights being retained by the transferrer. This being the legal position, lease no doubt is a lesser property than what comes by sale or purchase of property, the latter bringing about the transfer of ownership from one person to another. Only because such a purchase is effected by force of the statute as distinct from inter-vivos the original lesser property could not survive nor would be available for the purpose of revival of reversionary rights. If such a position were to survive the intents of the Restoration Act and particularly of section 4 would be defeated. What must be seen as relevant is the right and entitlement that came by reason of the statutory transfer which would be governed by the Restoration Act. Such a transfer expressly is contemplated, considered and its resultant conditions enacted by section 4. For that provision relevant fact is the transfer and not the original lease which has already merged. Thus, it would not be possible to accept the submission that after applying the provisions of the Restoration Act although the statutory purchase has to be nullified the original lease ipso facto revives so as to protect the possession under such a lease. For all intents and purposes the Restoration Act aims at

restoring the possession of the property which has been the subject matter of transfers as defined by that Act, to the tribal. If such a construction were to be placed as is canvassed, this very purpose would be frustrated. It would be unrealistic in the face of such a law, to ask the tribal after declaring such a transfer void and non est, to pursue the remedies of seeking possessions of the relevant Tenancy Law.

8. Reliance on original lease and its statutory incidents as well entitlements to possess property by reason of such lease, whether protected by statute or not, can hardly be allowed to defeat, by mechanics of revival of such a lease, the new rights and new entitlements that have been enacted by the Restoration Act. It cannot be forgotten that the Act was put on the Statute Book so as to protect the rights of tribal community and to restore their property to them. If such a submission were to prevail, then the restoration would not be possible, for restoration within the meaning of the Restoration Act, includes restoration of possession of the property in favour of specified persons like the tribals. After all, even the protection of the lease and the rights thereunder, was by reason of the statute, so also the augmentation of the rights from the lease to transfer of ownership. The Legislature which conferred these rights surely can enact depending upon the conditions to restore the property to those whom it belongs.

9. This being the only submission, there is no merit in the present petition. Rule discharged. No costs.