(1989) 02 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 627-A of 1982

Tukaram Gandewar APPELLANT

Vs

Piraji Sidarwar Died through L.R''s. RESPONDENT

Date of Decision : 06-02-1989

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 36A

Citation : (1989) 3 BomCR 156 : (1989) 338 BOMLR 91 : (1989) MhLj 815

Hon'ble Judges : P.V. Nirgudkar, J;B.N. Deshmukh, J

Bench : Division Bench

Advocate : D.N. Patki, for the Appellant; K.H. Dhuldhwaj, for the Respondent

Judgement

B.N. Deshmukh, J.—The petitioner challenges the orders passed against him for restoration of possession of agricultural land bearing Survey No. 56/AA admeasuring 11 acres 37 gunthas of village walki-Buj Taluka Kinwat, in favour of deceased respondent Piraji who is now represented by respondents Nos. 1 to 3.

2. The land originally belonged to one Sakharam Bhumayya Gandewar, a non tribal from whom deceased Piraji purchased under a sale deed dated 24-4-1974. Later on deceased Piraji sold this land to petitioner under a sale deed dated 9-9-1974.

3. The proceedings u/s 36-A were initiated for restoration of possession of this land to deceased respondent Piraji on the ground that the sale is in contravention of provisions of section 36-A of Maharashtra Land Revenue Code.

4. The authorities granted restoration in favour of deceased Piraji on the ground that Piraji is a tribal and occupancy of the tribal is transferred in favour of the petitioner who is non-tribal after provisions of section 36-A of the Maharashtra Land Revenue Code, 1966 brought into force.

5. Shri Patki, learned Counsel appearing for the petitioner challenges the orders of restoration in favour of deceased respondent Piraji on the ground that though

the provisions of section 36-A have been brought into force on 6th of July, 1974, the respondent Piraji was not tribal at the time of execution of sale deed dated 9-9-1974. The Status of being Scheduled Tribe is conferred on the respondent in the year 1977. Therefore, transfer by way of the sale deed dated 9-9-1974 cannot be said to be between tribal and non tribal as on that date respondent Piraji was also a non tribal.

6. Shri Dhuldhwaj, learned Counsel for the respondents, on the contrary contended that while considering provisions of section 36-A the entire scheme has to be considered. He has further argued that having regard to the aims and objects of the statute the interests of tribal are required to be protected and any interpretation given to the section must be construed in that light and not otherwise. According to him, even though the status of Scheduled Tribe is conferred on respondent Piraji in 1977 any sale made, after 6th July, 1974 if found to be between tribal and non tribal is in contravention of provisions of section 36-A and, therefore, the restoration is rightly granted in favour of deceased Piraji.

Section 36-A provides as follows :

"36-A(1). Notwithstanding anything contained in sub-section (1) of section 36, no occupancy of a tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, be transferred in favour of any non-tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or Authority), gift, exchange mortgage, lease or otherwise, except on the application of such non-tribal and except with the previous sanction---

(a) in the case of a lease, lease mortgage for a period not exceeding 5 years, of the Collector

(b) in all other cases, of the Collector with the previous approval of the State Government;

Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no tribal residing in the village in which the occupancy is situate or within five kilometers thereof is prepared to take occupancy from the owner on lease, mortgage or by sale or otherwise.....".

7. The facts which are not in dispute in the present case are that the petitioner is a non-tribal. The respondent deceased Piraji claims that he belongs to Naikada caste which is included as Scheduled Tribe by virtue of amendment to the Scheduled Caste and Scheduled Tribes Order (Amendment) Act, 1976 (i.e. Act No. 108 of 1976). This amendment is brought into force on 27th July, 1977 in so far as it applies to the State of Maharashtra. Section 36-A is introduced in the Maharashtra Land Revenue Code, 1966, on 6-7-1974. The sale deed executed by the deceased Piraji in favour of the petitioner is dated 9-9-1974. The sale is without sanction of the Collector.

8. One more provision in this connection will have to be considered regarding meaning of Scheduled Tribes given in the Maharashtra Land Revenue Code. Explanation added to sub-section (4) of section 36 deals with this aspect and provides that ''Schedule Tribes'' means such a tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Maharashtra under Article 342 of the Constitution of India. So, to determine whether the person belongs to tribal community, the provisions of the order promulgated in this connection will determine as to whether the person is tribal and since what date he can be treated to be a tribal.

9. The provisions of section 36-A, therefore, provide that no such occupancy of a tribal shall be transferred in favour of any non tribal by way of sale, etc. except on the application of such non tribal and except with the previous sanction of the Collector. This section, therefore, provides that no occupancy of the tribal can be transferred by way of sale without permission of the Collector in favour of a non tribal. The restriction is provided for transfer. The status of the parties, therefore, has to be considered at the time or prior to completion of the transfer. The change in status after the transfer, if any, has no relevance and restriction provided u/s 36-A are not at all attracted. The sale may be even after 1974 but the sale must be between tribal and non tribal. The parties must have that status of being tribal at the time of the transfer and not subsequently. That does not seem to be the intention of the Legislature. The Legislature wanted to extend protection to the person who are tribal at the time of transfer. The protection, therefore, cannot be extended to the persons who were not tribals at the time of transfer but the status of belonging to Scheduled Tribe is conferred thereafter. In our opinion, the provisions of section 36-A are not at all attracted in the present case in view of the admitted fact that the status of respondent No. 1 as Scheduled Tribe is conferred on him by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, which came into force on 27th day of July, 1977. The respondent deceased Piraji could claim status of belonging to Scheduled Tribe on or after 27th day of July, 1977 and not before that. The transfer under a sale deed dated 9-9-1974, was therefore not between tribal and non tribal but between non tribals to which provisions of section 36-A cannot apply.

10. The argument of Shri Dhuldhwaj that the provisions of Amendment Act No. 108/1976 includes Naikada Caste in Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, and will have to be given restrospective effect to confer the benefit to the tribal u/s 36-A of the Maharashtra Land Revenue Code. It is not possible to accept this contention because in order to give retrospective effect there must be intention of the Parliament or Legislature expressed in so many words or such intention must be gathered by necessary implication from the language used therein. The wording of the Amendment Act is clear and there is nothing expressed regarding restrospective effect nor it is possible to gather such intention by necessary implication. Reference can be made in this

connection to the decision of Madhya Pradesh High Court in Mangilal and Others Vs. Registered Firm Mittilal-Radheylal Rastogi and Others, where the provisions of this Amendment Act No. 108/1976 were considered and it is held that the Amendment Act is not retrospective in effect.

11. As we are of the opinion that the provisions of section 36-A are not attracted in the present case the deceased Piraji and the present respondents Nos. 1 to 3 who are heirs and legal representatives of Piraji are not entitled for restoration of the land. In view of this we do not feel it necessary to consider the other points raised in the petition

12. In the result, rule made absolute. However, there shall be no order as to costs.