

(2006) 10 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No's. 803 and 850 of 1990

Ulhas Nimba Choudhari and another

APPELLANT

Vs

Burhan Samsa Tadvi deceased Heirs Abbaskhan Tadvi and
others

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 36
Transfer of Property Act, 1882 — Section 51

Citation : (2006) 10 BOM CK 0025

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : V.T. Choudhari in W.P. No. 803 of 1990 and S.A. Kulkarni holding for B.E. Yawalkar in W.P. No. 850 of 1990, for the Appellant; Prasanna Kutti (in W.P. No. 850 of 1990), for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—By this common judgment, I shall dispose of both the writ petitions since the issues involved in them are identical. In both these petitions, main question to be determined is : Whether due to conversion to "Islam" religion, the tribals have lost right to reclaim their agricultural lands u/s 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short "M.R.L.S.T. Act") and hence the restoration of lands as ordered by the Tahsildar and confirmed by impugned order by the Maharashtra Revenue Tribunal (MRT) deserve to be quashed?

2. The petitioners in Writ Petition No. 850 of 1990 have come out with a case that predecessors in title of respondents, late Vajir Khan, Amir Khan and Subhan Khan transferred Survey No. 12/7 in their favour by virtue of sale deed dated 30th November, 1968. After receiving the sale proceeds, those vendors got purchased some other agricultural lands. The transactions of the predecessors in title of the respondents are covered by explanation (ii) of sub-section (1) of

section 3 of the M.R.L.S.T. Act. Thus, it could be regarded as deemed exchange of properties. The land in question (Survey No. 12/7) was originally held by Rahimkhan and his four sons as "Inamdaars" and it was granted to them. They were not "Adivasis" but had changed religion by embracing "Islam" religion. Adivasi Case No. 201 was started before learned Tahsildar, Yawal, for restoration of the said agricultural land in favour of the predecessors in title of the respondents, on the ground that they were tribals and the sale deed was void due to operation of the abovereferred enactment. By his judgment dated 11th November, 1985 the Tahsildar, directed restoration of the possession in favour of the predecessors in title of the respondents, holding that they were Adivasis (tribals). The appeal (Rev. TRB No. 87 of 1985) preferred by the petitioners was dismissed by the MRT. Both the revenue authorities failed to appreciate the important questions of law, particularly regarding deemed exchange of lands and also the fact that the vendors of the petitioners were not tribals but were "Muslims" by religion. The petitioners, therefore, seek to assail the judgments of the MRT and the Tahsildar.

3. In Writ Petition No. 803 of 1990 the petitioners have come out with a case that agricultural land bearing Survey No. 56/2-B admeasuring 1 Hectare, 25 Ares was purchased by them in the year, 1968 from the respondents. They have improved the land in question by spending more than Rs. 50,000/-. After consolidation of the lands now it is converted into Gat No. 160 and hence the identity of the original suit property is not in existence. The respondents are not tribals but are "Muslim Tadavi" or "Muslim Pathan" and hence they cannot claim any right of restoration under the provisions of the M.R.L.S.T. Act. The tribe certificates issued in favour of the respondents are illegal and bad in law. No proper enquiry was conducted while issuing the tribes certificates in their favour. The proceedings were initiated suo motu under relevant provisions of the aforesaid enactment and eventually, restoration of the suit land in favour of the respondents was directed by the Tahsildar, by his order dated 31st October, 1985 which was confirmed in appeal by the MRT. Both the authorities failed to apply their minds to the fact situation of the transaction. Consequently, the impugned judgments are liable to be quashed and hence the petition.

4. There cannot be any duality of opinion that there is considerable delay caused in reaching final stage of hearing of these petitions. The petitions are pending since long and the restoration of possession could not be effected in view of the interim orders passed by this Court. It appears, however, that in the mean while, the hearing of the petitions was stayed since the vires of the sections 3(1) and 4 of the M.R.L.S.T. Act was challenged before the Apex Court. The Apex Court was seized of the matter and the issue about legality of the enactment was pending decision. In case of "Lingappa Pochanna Appealwar vs. State of Maharashtra and another and Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, the Apex Court held that the provisions of the said enactment are legal and valid. The Apex Court held that the adoption of the date April 1, 1957 in the definition of the term "transfer" in section 2(1)(i) as the date for the provisions of sections

3(1) and 4 of the Act to operate is based on an intelligible or rational classification. The relevant observations are thus:

"The Act adopts April 1, 1957 for nullification of transfers made by tribals to non-tribals under sections 3(1) because that was the "tillers day"

for purposes of the Bombay Tenancy and Agricultural Lands Act, 1948 on the basis of which the non-tribal transferees could apply to the Tenancy Courts for purpose of their holdings on the ground that they were in cultivating possession thereof. There was therefore reasonable nexus for the fixation of such date and the object sought to be achieved and the Act is not violative of Art. 14.

5. The learned Counsel for the petitioners would submit that the respective vendors were "Muslims" by religion and could not be treated as tribals. It was further argued that the tribal status of concerned vendors ought to have been decided as preliminary issue. The tribal certificates of the said vendors ought to be referred to the Scrutiny Committee and then only the enquiry under proceedings of the said enactment could be proceeded with. It is also argued by the learned Counsel for the petitioners that the subsequent developments would show that the tribals are not left without land and have purchased some other lands and hence the transactions could be deemed as exchange of the properties. In the context of Writ Petition No. 1636 of 1990, learned Counsel would submit that the petitioner did not purchase the land from a tribal and he being second purchaser, should have been protected.

6. Learned Counsel Shri Choudhari, appearing for the petitioners, seeks to rely upon observations in case of Punjaji C. Halde Vs. State of Maharashtra and Others, . The matter in the given case was regarding a land mortgaged by the tribal with Bank which was sold in the auction proceedings. The issue involved was as to whether the auction sale was conducted in breach of the provisions contained in section 36 of the Maharashtra Land Revenue Code, 1966. For, there was no sanction obtained u/s 36 thereof and as such the auction sale was challenged. The Single Bench held that the claim of the petitioner regarding his status as a tribal could to be accepted on the basis of a xerox copy of the caste certificate which was not conclusive. Therefore, the learned Single Judge directed that the caste certificate shall be verified by the Scrutiny Committee.

7. In the case in hand the respondents did not produce any xerox copy of the relevant certificates. The certificates issued by the Sub Divisional Officer were legal at the time of when the proceedings were commenced. There was no need to get the certificates verified from the Caste Scrutiny Committee when the enquiries in the present matters were started. The certificates issued by the Executive Magistrates could be then relied upon by the competent authority. The Government Resolution dated 21st March, 1979 would make it clear that a person belonging to scheduled tribes may have any religion. Obviously, the conversion of the vendors of the petitioners from Hindu religion to Muslim religion could not have changed their status as tribals. The Government

Resolution would show that the Taluka Executive Magistrate was authorized to issue the caste/tribe certificate. The caste verification in the above referred case was directed in view of the particular circumstances of the given case and since the petitioner therein (Punjaji Halde) had filed only a xerox copy of the caste certificate.

8. This Court in *Raju Burde Vs. Establishment Officer (III-B), Maharashtra State Electricity Board and Another*, has considered the relevant issue. The Division Bench of this Court has observed :

"A fair and just conjoint reading of section 4 sub-section (2) and the definition of caste certificate and Competent Authority contained in section 2(a) and (b) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of Caste) Certificate Act provides for saving of the caste certificates issued prior to the coming in force of the Act by officers or authorities, then competent to so issue the same and similar would be the case in regard to caste validity certificates issued by the officer, authorities or the committees, then validly constituted."

9. The Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 came into force in the year, 2000 whereas the caste certificates issued in favour of the vendors of the petitioners are much prior in time. There is no need, therefore, to ask them to get verified the caste certificates before the restoration of possession is directed.

10. So far as conversion of the respondents or their predecessors to Muslim religion is concerned, it may be mentioned that the instructions in the Government Resolution dated 21st March, 1979 (Exh. L) would make it clear that the person belonging to scheduled tribes may have any religion. Obviously, the present religion of such a person is not a decisive factor. The crucial question is as to whether the predecessors of the respondents use to follow traits and customs of Adivasis (tribes) irrespective of the change of religion. It is of common knowledge that in the North-South area of Maharashtra, consisting of Dhule and Jalgaon districts, there are Adivasis of various sub-tribes such as "Madavis, Tadavis, Pawaras" so on and so forth. Their mother tongue is as followed by the sub-tribes. In case of *Karbhari alias Joseph Shankar Nikam Vs. Rahibai Anaji Gite and Another*, this Court has held that if a Bhil after conversion to Christianity maintains the tribal ways of life in all matters, he will continue to remain a tribal. It is difficult, therefore, to hold that the predecessors of the respondents could not be regarded as tribals. I am of the opinion that when the competent authorities made due enquiry and certified that they were tribals then it is not necessary to reopen such issue in the instant writ petitions. That may amount to implied review of the caste certificates which have become final and hence I do not think it necessary to undertake such an exercise.

11. The Apex Court in "Harishchandra Hegde vs. State of Karnataka and others ", AIR 2004 SCW 315 held that the provisions of section 51 of the Transfer or Property Act cannot be invoked and the transferee of granted land cannot take any benefit regarding value of improvements carried out. The petitioners cannot claim any advantage on the ground that they have improved the lands during pendency of the enquiry or prior to it. The transfer itself will have to be held as void in view of the provisions of sections 3 and 4 of the M.R.L.S.T. Act. The rights of the respondents arise due to their being members of aboriginal tribe i.e. "Tadvi". By legal fiction they are protected. Their rights cannot be defeated even on the ground that they did not take immediate action. The special enactment is aimed at achieving social justice. The purpose cannot be defeated on the spacious pleas as raised by the petitioners in the instant petitions. One cannot be oblivious of the fact that the special statute provides protective discrimination to the tribals. It is required to be assumed that the tribals had no knowledge of their legal rights and the transfers were outcome of their exploitation or a kind of unconscionable transactions. In case of "Amrendra Pratap Singh vs. Tej Bahadur Prajapati and others", AIR 2004 SCW 4103 the Apex Court held that the provisions of section 65 of the Limitation Act would not apply in respect of the land held by the tribal and non-tribal person cannot perfect title by virtue of adverse possession.

12. A Single Bench of this Court in Sakharam Bhoju Rathod Vs. State of Maharashtra and Others, held that by virtue of amendment to sections 3 and 4 of the Act of 1974 by Maharashtra Act No. 1 of 1991, the limitation for applying for restoration had been increased from 3 years to 30 years, It is further held that from the aims and objects of the amending Act, it was clear that the Legislature had intended to make such a right available to the tribals to make such an application even after the limitation had expired.

13. As regards alleged deemed exchange, there is hardly any reliable evidence to establish that the tribals purchased certain properties out of the sale proceeds derived from the sale transactions of the suit land. Mere production of some sale deeds will not be sufficient to countenance such contention. The plea of exchange under the same transaction can possibly be raised as a defence. The subsequent purchases of land made by a tribal cannot be considered as a valid ground to reject their request for restoration of the property. There is hardly any substance in the contention about the so-called deemed exchange u/s 3 of the M.R.L.S.T. Act. So also the objection raised by learned Counsel for the petitioners that the restoration of fragments would violate the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 is equally fallacious. The restoration of the parcel of the land, which originally was owned by the tribal can be effected even if subsequent consolidation has been effected. The merger of such original land with another fragment can be considered and such a consolidated parcel of land may be restored to the tribal. There appears no difficulty in this behalf. Hence both these contentions raised on behalf of the petitioners are rejected.

14. The rights of the tribals cannot be defeated by the petitioners. The argument of the learned Counsel that the tribal certificates of the respondents may be referred to the Caste Scrutiny Committee is unacceptable. For, such certificates are issued by the competent authorities and at the relevant time, there was no requirement to obtain verification from the concerned Scrutiny Committee. The petitions are old and now it would cause more injustice if the respondents are directed to obtain verification from the Scrutiny Committee and till then the delivery of possession is stayed. The attempt of the petitioners is to dodge the rightful claims of the respondents. Considering all the relevant submissions of the parties and the legal aspects. I have no hesitation in holding that the respondents are entitled for restoration of the possession of the lands in question. The petitions are without substance.

15. In the result, the petitions are dismissed with costs which are quantified at Rs. 10,000/- for each of them. Rule discharged.