

(1997) 11 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 2875 of 1984

Vithal Ganpat Bhanushali

APPELLANT

Vs

Zipar Sukur Ghute and others

RESPONDENT

Date of Decision : 25-11-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32
Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 — Section 4, 7

Citation : (1998) 3 ALLMR 222 : (1998) 2 BomCR 878

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

Bench : Single Bench

Advocate : C.G. Parulekar, for the Appellant; Malvankar, Addl.G.P., for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The petitioner is the original landlord in respect of the land comprised in S. No. 26/1 measuring 7 acres and 5 gunthas situate at village Utavali, Taluka Jawhar in Thane District. Originally the first and second respondents who are the tribals were the tenants of the land. It appears that by virtue of the proceedings u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 the price was fixed and the respondent No. 1 and 2 failed to pay the installments of the purchase price. Therefore the order passed in favour of the respondents 1 and 2 u/s 32-G became ineffective. Consequently on the initiation of the proceedings u/s 32-P the respondent No. 1 and 2 were evicted and the land came to be in possession of the petitioner. Subsequently in exercise of the powers u/s 4 of the Maharashtra Restoration of the Land to Schedule Tribes Act, 1974, the Sub-Divisional Officer, Dahanu on 22-11-1977 directed to withdraw the possession of the land from the petitioner and directed the same to be restored to the respondents, the petitioner herein. Against that order the respondents took up the matter by way of revision to the Additional Commissioner, Konkan Division who by an order dated 25-9-1978 remanded the case back for proper enquiry and decision according to law. After remand by an order evidenced at Exhibit B the Additional Tahsildar, Jawhar passed an order dated 25-11-1980

whereby the possession of the area of 3 acres and 25 gunthas of S.No. 26/1 was withdrawn from the possession of the petitioner and ordered to be. given back to the respondents. It appears from this order that almost half of the land was allowed to be retained by the petitioner. After this order a revision was taken u/s 7 of the Maharashtra Restoration of Lands to Schedule Tribes Act, 1974 by Shri T.K. Kamble, Additional Commissioner, who set aside the order passed by the Additional Tahsildar and the entire land was ordered to be restored with the respondents on 9th December 1983. It is this order that has been challenged by way of this petition.

2. Going through the pleadings it appears that the petitioner challenged both the aforesaid orders. But the Counsel for petitioner Mr. Parulekar confined the challenge only to the order Exh. A passed by the Additional Commissioner. The Counsel for the petitioner submits that in view of the judgement of the Division Bench of this Court reported in State of Maharashtra v. Khatua Makanji and Company Pvt. Ltd., 1987 M.L.J. 908 any person who came to be in possession of the land by virtue of the order passed u/s 32-P cannot be said to be a transferee of the land belonging to tribal and therefore none of the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 will apply. I find the said decision applies squarely to the facts of this case and in view of this legal position this writ petition is allowed. However, I maintain the order evidenced Exhibit B passed by the Additional Tahsildar, Jawhar.

3. In the result, the petition is allowed in terms of prayer Clause (a) with no orders as to costs. Rule is made absolute as indicated above,

4. Petition allowed.