

(1990) 02 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 1596 of 1981

Vithal Raoji Lakhan

APPELLANT

Vs

Vasudeo Raghu Dawane and Another

RESPONDENT

Date of Decision : 20-02-1990

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Land Revenue Code, 1966 — Section 36(3)

Citation : (1990) 2 BomCR 254

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : G.B. Karandikar, for the Appellant; K.N. Kore, for the Respondent

Judgement

H.H. Kantharia, J.

The petitioner is a tribal. The first respondent is a non-tribal.

2. The petitioner was a tenant on 1-4-1957 (i.e. the Tillers day) in respect of the following lands.

Survey No. Area Assessment Rs. Ps. 15/2 Part 1-00 2.42 (Paddy land) 15/2 Part. 3-20 0.39 (Warkas land)

He became the tenant-purchaser of the said lands under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948.

3. The petitioner agreed to sell the suit lands to the first respondent and executed an agreement of sale in that behalf on June 21, 1971. For the said sale he was to obtain necessary permission from the Collector. On receipt of part payment of Rs. 1,000/-, the petitioner put the first respondent in possession of the suit lands and made an application to the Collector for permission to sell the suit lands on February 3, 1974 which application is still pending as stated at the Bar.

4. In the meanwhile, the petitioner made an application on or about October 27,

1975 to the Collector requesting that the suit lands be restored back to him as he was unwilling to sell the same to the first respondent and he was entitled to the restoration as he belonged to Scheduled Tribe. This application for restoration was transferred to the Tahsildar of Jawhar Taluka who after making the necessary enquiries by his order dated December 31, 1975 directed restoration of the suit lands to the petitioner.

5. Being aggrieved, the first respondent filed an appeal before the Maharashtra Revenue Tribunal at Bombay. The Revenue Tribunal, on considering the record produced before it and after affording reasonable opportunity of being heard to the parties, interpreted section 36(3) of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the Revenue Code") and came to the conclusion that there was no sale executed by and between the petitioner and the first respondent and as such there was no transfer of title of the suit lands in favour of the first respondent and it was merely a transfer of possession of the suit lands which would not attract the provisions of section 36(3) of the Revenue Code. In the opinion of the Revenue Tribunal, therefore, the transfer of possession of the suit lands was not illegal, bad or invalid and hence such a transaction would not come within the provisions of sub-section (3) of section 36 of the Revenue Code. The Revenue Tribunal accordingly by its judgement and order dated May 26, 1976 allowed the appeal of the first respondent and quashed and set aside the order of the Tahsildar of Jawhar.

6. Dissatisfied with the order of the Revenue Tribunal, the petitioner-tribal invoked jurisdiction of this Court under Article 227 of the Constitution by filing the instant writ petition.

7. Mr. Karandikar, learned Counsel appearing on behalf of the petitioner-tribal, submitted that the Maharashtra Revenue Tribunal thought that unless there was a transfer of ownership of the suit lands, there could not be returners of the same which, according to him, was wrong because section 36 of the Revenue Code speaks in terms of transfer of possession and not transfer of the title or ownership of the land and as such the impugned order passed by the Maharashtra Revenue Tribunal was incorrect. In reply, Mr. Kore, learned Counsel appearing on behalf of the first respondent, urged that the provisions of section 36(3) of the Revenue Code would not be attracted in this case firstly because the application for restoration had to be made within three years from the date of the alleged dispossession whereas here such an application was made after four years and secondly in case of transfer of the land should be the transfer of title or ownership in the land and not mere transfer of the possession. Mr. Kore also urged that the application for permission to sell is still pending with the Collector and, therefore, the instant application for restoration of the suit lands filed by the petitioner was premature. Mr. Kore then urged that the Maharashtra Revenue Tribunal had passed the impugned order on May 26, 1976 whereas the present petition was filed on May 2, 1980 and as such the same was time-barred.

8. I am afraid, I am not able to persuade myself to agree with the submissions

made by Mr. Kore. In order to appreciate the rival contentions raised at the Bar, it would be convenient to mention here the relevant provisions of section 36 of the Land Revenue code which read as under :

"36. (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, within two years of such transfer of possession, apply to the Collector to be placed in possession subject so far as 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, and 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) or any law for the time being in force has, at any time before the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Emendment) Act, 1974 transferred 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 within three 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."

9. A careful analysis of these relevant provisions of law clearly shows that the occupancy of the land such as the suit lands is a transferable property subject to the provisions of section 72 which speaks in terms of land revenue to be the paramount charge on land with which we are not concerned. Sub-section (2) of section 36 shows that the occupancies of the land by persons belonging to the Scheduled Tribes shall not be transferred except with the previous sanction of the

Collector with which also we are not concerned in this matter as that is not the relevant point. The proviso to sub-section (2) of section 3 speaks in terms of transfer of occupancies made in favour of persons other than the tribals with which once again we are not concerned. The important provisions with which we are concerned here are sub-section (3) of section 36 of the Revenue Code and the first proviso thereto. According to this provision of law, transfers of possession of occupancy of the land belonging to the Scheduled Tribe to the non-tribal could be restored back to the tribal within 2 years of such transfer of possession by making an application to the Collector. Mr. Kore, on the basis of this provision, urged that in the instant case, the petitioner had made an application for restoration beyond two years and, therefore, his application was not maintainable. This submission of Mr. Kore is stated only to be rejected because the proviso to sub section (3) of section 36 of the Revenue Code shows that after the said proviso was introduced, as I am told at the Bar, in the month of July, 1974, an application for restoration like the one made by the petitioner here could be made at any time before the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 came into force, as stated earlier. In July, 1974 within three years of such commencement. The application in question was admittedly made on 27-10-1975. In other words, the application of the petitioner for restoration of the suit land was well within time.

10. The main and most important contention of Mr. Kore is that the transfer of the occupancy of the land is not a mere transfer of the possession of the same but of the title or the ownership. I find no substance in the argument of Mr. Kore because a bare perusal of the provisions of sub-section (3) of section 36 of the Revenue code and the first proviso thereto shows that it speaks in terms of transfer of possession only and there is no mention of the transfer of the ownership or the title of the land as has been very correctly submitted by Mr. Karandikar. There is once again no substance in the argument of Mr. Kore that the application for permission to sell the suit land is still pending before the Collector and, therefore, the instant application for restoration would be premature. The argument of Mr. Kore would have been correct if his submission that the transfer of the ownership or the title of the land and not mere possession was accepted but I have not been able to persuade myself to agree with that submission of Mr. Kore.

11. The next emphatic argument of Mr. Kore is that the present writ petition is time-barred and should not be entertained by this Court. As stated earlier, the submission of the learned Counsel is that the impugned order was passed by the Maharashtra Revenue Tribunal on May 26, 1976 whereas the present writ petition was filed on May 2, 1980 i.e. after a period of about four years. The petitioner has given explanation in para 6 of his petition as to why he came to this Court so late. According to him, after the Maharashtra Revenue Tribunal passed the order against him he was not given intimation about it and he thought that like the Tahsildar of Jawhar, the Maharashtra Revenue Tribunal must also have passed order in his favour. Therefore, he took no steps in the matter of challenging the

impugned order which never came to his notice. It was only somewhere in October, 1979 that he started feeling as to what must have happened in the Court of the Maharashtra Revenue Tribunal as he was obstructed by the first respondent while carrying out the agricultural operations that he made enquiries and came to know that the Maharashtra Revenue Tribunal had passed the order against him i.e. the impugned order. He, thereafter, immediately took steps in the matter of getting certified copy of the impugned order and filed her present writ petition. Apart from the explanation of the petitioner, I am not inclined to accept the contention raised by Mr. Kore for the simple reason that the petitioner is an illiterate, poor, scheduled tribe man and merely because he came to this Court late his writ petition cannot be thrown away. It is true that writ petition like the present one has to be filed within a reasonable time although law of limitation does not apply to filing writ petitions. But in the facts and circumstances of a case like the instant one justice cannot be denied to a poor, illiterate, adivasi litigant like the present petitioner. Therefore, the contention of Mr. Kore that this writ petition is barred by law of limitation is without substance and the same is rejected.

12. In this view of the matter, the impugned order passed by the Maharashtra Revenue Tribunal has got to be quashed and set aside. In the result, the writ petition succeeds and the same is allowed. The impugned order dated May 26, 1976 passed by the Maharashtra Revenue Tribunal in Appeal No. REV. TRB. 36 of 1976 is quashed and set aside and the order passed by the Tahsildar of Jawhar in Case No. XXXV-39 on December 31, 1975 is restored.

13. Rule is accordingly made absolute but with no order as to costs.