(2010) 02 BOM CK 0121

Bombay High Court

Case No: Writ Petition No. 2308 of 2009

Shri Vasant Mahadev Tikekar and Others		APPELLANT
	Vs	
State of Maharashtra and Others		RESPONDENT

Date of Decision: Feb. 22, 2010

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 32G, 32N, 43
- Evidence Act, 1872 - Section 114
- Hindu Succession Act, 1956 - Section 15, 8
- Hindu Womens Right to Property Act, 1937 - Section 3
- Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 - Section 2, 2(1), 3, 4, 6

Citation: (2010) 3 ALLMR 862 : (2010) 112 BOMLR 1119

Hon'ble Judges: Roshan Dalvi, J

Bench: Single Bench

Advocate: Milind Sathe, Birendra Saraf, Shamima Taly and Rakesh Misar, instructed by S. Mohomedbhai and Co, for the Appellant; S.N. Bhosale, AGP for Res. No. 1, D.D. Madon and Sanjiv Sawant, for Res. Nos. 3 and 4, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Roshan Dalvi, J.
Rule. Rule is made returnable forthwith.

2. The Petitioners have purchased the lands, inter alia, under Survey No. 239, bearing old Survey No. 144 (Part) admeasuring 5 Acres and 30 Gunthas at village Malad, Taluka Borivali, Mumbai, from one Anandibai, the widow of one Budhiya Bhikhu Gadak. Budhiya was declared as tenant/purchaser of the said lands u/s 32G of the Bombay Tenancy and Agricultural Lands Act (Tenancy Act). Budhiya died on 14.3.1968. A certificate u/s 32N of the Tenancy Act was issued in the name of

Budhiya on 23.8.1969. Mutation Entry No. 1269 came to be made in that respect in the name of Anandibai, his widow on 10.1.1971. Permission for sale u/s 43 of the Tenancy Act was granted to the widow on 25.7.1971. She entered into a conveyance with the Petitioner''s predecessor-in-title for a part of the land of her husband Budhiya, admeasuring 2 Acres 26 Gunthas on 25.5.1971. Mutation Entry No. 1282 in that behalf came to be made on 8.6.1971. Thereafter Anandibai conveyed the balance part of the land admeasuring 3 Acres, 3 Gunthas to the Petitioners'' predecessor-in-title on 5.10.1973. Further Mutation Entry No. 1375 was made on 8.11.1973 upon such conveyance.

3. Budhiya had purchased this land u/s 32G. He was, therefore, the agricultural tenant in respect of the land prior to the purchase. The purchase constituted his self acquired property. It was not a HUF property. His brother Dharma Bhikhu Gadak made a declaration in that behalf. Upon the death of Budhiya, his self acquired property, acquired under the provisions of the Tenancy Act devolved upon his widow by succession u/s 8 of the Hindu Succession Act, 1956. Anandibai claimed to have title upon such succession in respect of the entire of the land as Class-I heir, Budhiya having left no issues.

4. In 1976, the relevant Collector made a suo motu inquiry u/s 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (the Act). In that inquiry, he relied upon a certificate issued by the Additional Chief Metropolitan Magistrate certifying that Anandibai belonged to OBC community. This certificate came to be issued upon her Application, her statement and Affidavit, a certificate of the Special Executive Magistrate, Mumbai, and a certificate from one M.L.A. The Collector is stated to have also considered the declaration made by Dharma with regard to the self acquisition of the property by Budhdiya. The statement of Anandibai was that she was not a tribal but belonged to Bari community which was Other Backward Class (OBC) and not a Scheduled Tribe. In that statement she affirmed the sale of the land by her. The Collector passed his order on 5.3.1978 dropping the proceedings upon concluding that Anandibai did not belong to Adivasi community. The property was, therefore, not taken to have been transferred by a tribal to non-tribal to attract the provisions of the Act. It may be mentioned that at the relevant time the Caste Scrutiny Committee was not in existence for verification of caste certificates, it having been formed much later under the order of the Supreme Court.

5. This decision was essentially based upon the caste certificate. It will have to be seen whether the proceedings contemplated under Sections 3 and 4 of the Act could have been ultimately concluded in 1978 based upon such caste certificate.

6. It is contended by Mr. Madon on behalf of Respondent Nos. 3 and 4 that this inquiry was suo motu initiated only after the two Deeds of Conveyance were executed and the property was shown to be transferred to the Petitioners. Upon such transfer, it had to be seen whether the lands were transferred by a tribal. The

statement of Anandibai has been given after the conveyance on 4.8.1976. It shows the community to which she belonged, the work which she did and the fact that she was not a tribal. The caste certificate issued by the Additional Chief Metropolitan Magistrate, Bandra, Mumbai relies, inter alia, upon that statement and her Application and the Affidavit which would be similar. It also relies upon the certificate of the Special Executive Magistrate. In those years, this certificate was imperative. The issue of the certificate by the Special Executive Magistrate would necessitate a presumption as to the correctness of the facts mentioned therein u/s 114(e) and (f) of the Indian Evidence Act. It could be relied upon by the Additional Chief Metropolitan Magistrate to issue the certificate of her caste. In the absence of any other procedure contemplated by law or required by law, such a certificate would be taken as evidence to prove the claim mentioned therein unless it is rebutted. The parties seeking to rebut it would have the onus to disprove what is mentioned in the certificate. None came forward at the relevant time to rebut the certificate. The Collector, who initiated the inquiry relied upon that certificate. Anandibai was, of course, absent when the order was passed. She has thereafter not filed any Appeal or Revision from that order which she was entitled to file under Sections 6 and 7 of the Act, respectively. The proceedings initiated u/s 3 of the Act were ultimately concluded by the order of the Collector dated 5.3.1978. The order became final. It would have to be seen whether this finality is upon the beneficiary of the legislation being given the opportunity to avail the legal rights thereunder. In short, it would have to be seen whether this procedure was enough to settle her rights or whether any further inquiry made under the Act can be made later and if made. What procedure would be required to be followed given that it was once completed.

7. On 21.10.1984, Anandibai died after having sold and conveyed the lands under the aforesaid conveyances. On 31.3.1989, Dharma died leaving behind, inter alia, Respondent Nos. 3 and 4 as well as one Shivram Gadak, Chandrakant Gadak and Kamala Gadak.

8. On 1.1.1991, the Act came to be amended by the Amendment Act, 1990. Whereas in the Act the period for making the Application for restoration of the lands of any tribal by such tribal or any suo motu inquiry by the Collector was 3 years, the Amendment Act granted period of 30 years subject to Section 7 of the Amendment Act of 1990 relating to initiation of proceedings for restoration of lands to the tribal transferor. Section 7 of the Amendment Act, 1990 runs thus:

7. Initiation of proceedings for restoration of lands to tribal transferor. For the removal of doubt it is hereby declared that, notwithstanding anything contained in any law for the time being in force, or any judgment or decree or order of any Court, Tribunal or authority, where the Collector had not initiated suo mot u proceeding s or a tribal transferor had not made any application during the period specified in Section 36 or 36A of the said Code, or Section 3 or 4 of the principal Act, as they

stood prior to amendments made by this Act, for restoration of land under the provisions aforesaid, it shall be competent for the Collector to suo motu initiate any proceedings, or for the tribal transferor to make an application, under the provisions of the said Code or the principal Act, as amended by this Act, for restoration of land to the tribal transferors.

9. Consequently, for those lands where no suo motu inquiry was made or where no tribal had made an application u/s 3 or 4 of the Act, such inquiry or application could be made even though the 3-year-period from the commencement of the Act had expired but within 30-year-period from the commencement of the Act. The Amendment Act, therefore, essentially increased the period of limitation. It, however, put a rider for initiation of proceedings. The rider stands to reason. If an inquiry was already made within limitation period as prescribed earlier, there would be no need, requirement or necessity to make inquiry again. Such inquiry would even otherwise be barred by the doctrine of res judicata in general law.

10. Mr. Madon argued that since this was a welfare legislation, Section 7 was an enabling section and puts no bar upon the Collector to initiate suo motu inquiry or even upon the tribal to make an application though an earlier inquiry was made. Such construction is required to be tested upon reading the amended legislation as a whole. There is no provision in the Amendment Act enabling either of them to make a further application despite enhancement of the period of limitation. The rider in the form of Section 7 of the Amendment Act is essentially for removal of doubt. It clarifies that when no suo motu proceedings or applications were made earlier u/s 3 or 4 of the Act, as they stood prior to the amendment, it would be competent to make them. The purpose of the application is for restoration of lands to the tribals. The inquiry would be as to whether or not a person is a tribal. Once the person is seen not to be a tribal, there is no question of restoration of land to such person. If the person was seen not to have been a tribal prior to the Amendment Act, the Amendment Act allowed that person to be shown as a tribal even if the land was transferred and no inquiry or application was made within 3 years thereof or within 3 years of the commencement of the principal Act. In the absence of any provision for second inquiry or a further inquiry or a de novo inquiry, such inquiry cannot be read into the provisions of the Act. This stands to reason and has been laid down by precedents of this Court. In the case of Bovabhai Budha Girase v. Jirya Dajya Bhil (deceased) by legal heir Smt. Kausabai and Ors. 1987 Mh LJ 892, it was held that when an application is ultimately dismissed by the Revenue Tribunal u/s 3 of the Act, the Collector cannot thereafter exercise the power suo motu u/s 3. It was further held that the Collector could exercise suo motu power u/s 3 of the Act at any time if the tribal transferor had not made an application for restoration of the land under the Act. In that case the tribal had made an application for restoration of the land sold by him u/s 3 of the Act. The application was allowed. In Appeal the order was set aside as being barred by limitation since it was made beyond the period of 3 years. The direction for restoration of the land was set aside.

The Collector thereafter acting suo motu instituted an inquiry. It was held that once the order was passed u/s 3 and in Appeal therefrom u/s 7, the power of the Collector to act suo motu did not survive. It was observed that the power of the Collector could be tested u/s 7 in Revision or u/s 9 in Appeal to the Maharashtra Revenue Tribunal. It was observed that otherwise there would be no end to uncertainty that the transferor or transferee would face because of the hanging sword in the shape of the Collector''s suo motu power u/s 3. Hence the Collector could exercise that power only if there was no application by the tribal in that behalf.

11. It, therefore, follows as a corollary that if an application is not made by the tribal and the Collector has exercised that power suo motu before the Amendment Act, well within the period of limitation, that inquiry is ultimately over when an order in that regard is passed and has become final. This, however, contemplates an inquiry on merits where the tribal who is the beneficiary of the legislation has had an opportunity to exercise her/his legal rights under the welfare legislation.

12. This judgment has been relied upon in the case of Manohar S/o. Daryaji Bhise and Ors. v. State of Maharashtra and Ors. 2004(2) ALL MR 809 in which case half the lands transferred were resumed and restored to the tribal and the other half could not be restored because of certain Government Resolutions which were passed. Those resolutions were subsequently withdrawn by the Government. Even under those circumstances, suo motu power exercised again by the Collector was held to be without jurisdiction. In paragraph 10 of the judgment, it is observed that because the power could be exercised at any time, it does not mean that it can be exercised repeatedly. Otherwise, it would be without any limits and such interpretation would result in conferral of arbitrary power. It is also observed that the Act does not empower the Collector to reopen any proceeding or to review his order as there is no provision in the Act for review. It is also observed that the first order passed attains finality, if not challenged and hence the subsequent order is without jurisdiction.

13. After the Amendment Act came into force in 1991, the Petitioners'' predecessor-in-title granted development rights and put the developer in possession under registered agreements. Plots have been amalgamated and sub-divided. Several buildings have been constructed on these lands. Sanctions have been obtained. Flats have been sold to flat purchasers. A Co-operative Society has been formed. The construction was almost completed by about the year 2000.

14. In this case, a fresh inquiry was directed by the Sub Divisional Officer (SDO) in a proceeding u/s 2(1) of the Act as the lands were conveyed to a nontribal person. An order came to be passed on 26.11.2001 for making certain inquiries. The order shows names of several tribals including Budhiya and Anandibai as applicants. The order shows that the notice was issued upon the interested persons to show cause as to why the land should not be restored to the tribals. The order made an observation that the legal heirs of the deceased persons (being Budhiya and

Anandibai) had not produced a single document showing that they were heirs and also not produced the caste certificate showing that they were tribals. Consequently, on 26.11.2001, an order came to be passed by the SDO, Mumbai District, directing the Tahsildar, Borivali, to make heirship inquiry as also an inquiry relating to the fact of whether or not they were tribals. It was directed that if the Applicants are legal heirs of the original holders/occupants of the suit land and belonged to scheduled tribes, the possession of the suit land should be handed over to the Applicants. The Applicants were directed to submit documents showing their heirship and produce their caste certificates.

15. It may be mentioned that by the time this order was passed in 2001, the verification of the caste claims had to be done under due procedure set out by the Supreme Court. The order of the Supreme Court as the law in that behalf required the caste certificate, if any, to be verified by the Caste Scrutiny Committee under specified procedure. It was, therefore, for those Applicants to produce their certificates duly verified by the Caste Scrutiny Committee as per the law then prevailing.

16. It may also be mentioned that the Applicants, who claimed to be heirs, were the children of Dharma. Dharma was the brother of Budhiya who died without leaving issues and leaving behind only his widow Anandibai. The Applicants in that application, who are Respondent Nos. 3 and 4 herein and some others not parties to this Petition, claimed heirship as the heirs of Anandibai. She is not stated to have left behind any other heirs. Her estate which devolved by succession would be governed u/s 15 of the Hindu Succession Act as she died intestate. Consequently, the Applicants in that application claimed to be the heirs u/s 15(b) of the Hindu Succession Act. It is for them to prove the heirship by the relevant municipal certificates showing births and deaths to show their lineage.

17. Anandibai was shown to be belonging to be Bari community which was an OBC community. It is settled law that a person derives his status by virtue of her birth and not upon marriage. Mr. Madon rightly conceded that the caste of Budhiya may be different from that of Anandibai, but her caste would not be altered pursuant to the marriage. The caste of the Applicants in that application, who are the children of Dharma, would be the same as that of their father and paternal uncle i.e. Dharma and Budhiya. It may be or may not be the same as that of Anandibai. Respondent Nos. 3 and 4 herein claim to be tribals. By they showing that they were tribals, they would not be able to show ipso facto that Anandibai was a tribal. The order dated 26.11.2001 directs the Tahsildar to inquire into the tribe claim of the Applicants taken to be the heirs of Anandibai and not of Anandibai, the transferor. The order further directs that if the Applicants were the legal heirs of Budhiya, the original holder/occupant (and pursuant to intestate succession of Anandibai after Budhiya''s death as holder and occupant) and if they are belonging to scheduled tribes the possession of land transferred to the Petitioners'' predecessor-intitle should be

handed over to them. That inquiry, even if correctly instituted, is seen to have been erroneously deviated from the required procedure for such inquiry under the Act or the amended Act by the Collector/SDO. All that is to be inquired into or applied for is status of the transferor as the tribal and nothing more. If the transferor is not a tribal, her/his heirs, who claim through the transferor''s husband, even if they are tribals, cannot make a legitimate claim for restoration of the lands transferred by their non-tribal predecessor-in-title. Hence the order directing the Applicants to produce their documents showing their heirship may be legitimate, but the production of the certificate of the scheduled tribe of the Applicants which they are directed to produce is an erroneous order. The only certificate that can be produced, duly verified by the Caste Scrutiny Committee is the certificate of scheduled tribe of none other than Anandibai.

18. The Petitioners'' Constituted Attorney, who was developing the land, requested for a review of that order and to drop/close the proceedings by the SDO on 22.2.2002. He did not apply for correction of the aforesaid error. The SDO passed an order on 1.3.2002, without notice to Anandibai or her heirs dropping the proceedings on the ground that the earlier order dated 5.3.1978 barred those proceedings and the proceedings initiated in 1976 by way of a suo motu inquiry by the then Collector, could not be reopened. He observed that through oversight this issue was decided on 26.11.2001 and he took the application as having been treated to be withdrawn.

19. Respondent Nos. 3 and 4 never challenged this order. Mr. Madon contended that they were not present when the order was passed by the SDO on 1.3.2002 as per the directions passed on 26.11.2001. The order dated 26.11.2001 refers to the Applicants who had filed the application. The order shows the names of Budhiya and Anandibai in the title of the proceedings though the order is stated to be passed under a suo motu inquiry done under the amended Act. Consequently, Respondent Nos. 3 and 4 had no knowledge of the order dated 26.11.2001. It is seen to be passed without notice to those Applicants who claimed to be the heirs of Anandibai. Mr. Madon contended that it is not even served upon those Applicants but is shown to have been sent to Anandibai, who was then deceased. The application makes no mention of Respondent Nos. 3 and 4 herein. The title of the application shows the name of Budhiya and Anandibai. The address is that of one of the survey numbers conveyed to the predecessor-in-title of the Petitioners. It is not known how the order could have been served upon the parties not on record. It is directed to be served upon Budhiya and Anandibai, who are shown as the Applicants in the year 2000 when they had expired much earlier.

20. Respondent Nos. 3 and 4 filed their own application for restoration of the lands under Sections 3 and 4 of the Act on 29.10.2003. That application also came to be dropped on 9.11.2004 by the order of the SDO, Mumbai Suburban District, on the ground that it was barred by the principles of Res Judicata, the applications for the

same inquiry having been decided on 5.3.1978 and 1.3.2002 being the initial orders of the Collector under the Act and the order of the SDO upon suo motu inquiry after the Amendment Act, respectively. Respondent Nos. 3 and 4 filed an Appeal u/s 6 of the Act before the Maharashtra Revenue Tribunal against the order dated 9.11.2004 dropping the proceedings.

21. By a judgment dated 5.8.2008, the Maharashtra Revenue Tribunal has observed that though there were two earlier inquiries made suo motu and two inquiries were instituted at the instance of some interested persons and the Appellants (being Respondent Nos. 3 and 4 herein) who produced the Scheduled Tribe certificates of the Scrutiny Committee showing that they were belonging to Warli community, which is the Scheduled Tribe, though Anandibai was shown as belonging to the Bari community, which is the OBC community, he has observed that no inquiry was made. He has further observed that though in the initial inquiry culminating in the order dated 5.3.1978, the Land Acquisition Officer, who held the inquiry, had jurisdiction, he had only relied upon the bare statement of Anandibai and had not verified her caste or tribe. He had not recorded the statement of Sarpanch and Police Patil and not collected documentary evidence relating to the tribe of Anandibai. He has also observed about the marriage of Anandibai to person from the Warli community and the requirement of an inquiry as to whether Anandiabi belonged to a scheduled tribe since her tribe could not be changed because of her marriage. He relied upon a judgment in the case of Manohar s/o. Daryaji Bhise (supra) holding that if the first order was not challenged and had received finality, further suo motu power could not be exercised. But he observed that in this case since no efforts were made for obtaining independent evidence the observations in that case would not apply. He, therefore, concluded that detailed inquiry relating to caste or tribe of Anandibai was essential and has remanded the matter back to the SDO for inquiry and fresh order based on such inquiry. That order has been impugned in this Writ Petition.

22. He has also directed to ascertain the land covered under Mutation Entry No. 1700 under which the disputed lands are stated to have been transferred to the Petitioners'' predecessor-in-title under the aforesaid two conveyances. The Petitioners claim that Mutation Entry No. 1700 is irrelevant. The Petitioners'' transfers are mentioned under Mutation Entry Nos. 1282 and 1365 as aforesaid. However, all that the order directs is ascertainment whether the lands claimed by the Petitioners are covered by that entry for which the Petitioners would be heard.

23. The orders passed on 5.3.1978, 1.3.2002 and 9.11.2004 are all passed without the requisite inquiry. The first order relied upon the statement and the certificate produced by Anandibai at the relevant time. That was all that could have been seen at that time. Thereafter the Caste Scrutiny Committee has been formed under the order of the Supreme Court, which scrutinizes and verifies the certificates. That exercise has not been undertaken in this case in 1978. The order dated 1.3.2002 is

indeed ex-parte and proceeds on a footing that two deceased persons were the Applicants since it was suo motu inquiry on behalf of various tribals. The heirs of these deceased persons, who have later made claims were not given notice of that inquiry and have not been heard at the time the order was passed after fresh inquiry was directed. The very first time Respondent Nos. 3 and 4 applied under Sections 3 and 4 of the Act is under their Application dated 29.10.2003, being Restoration Application No. 1 of 2004 before the SDO, Bombay Suburban District, Mumbai. Since their application has been dropped, their claim that Anandibai was a tribal and covered by the protection under the Act, has not been inquired into, verified or scrutinised. The impugned order directs just that. Such inquiry, if made, would be made for the first time.

24. It must be borne in mind that the caste certificate initially produced by Anandibai was itself applied for and produced after the conveyances have been entered into. It was, therefore, produced only because the Act came into operation and she was required to be shown as non-tribal to allow the conveyances to remain on record. Anandibai must be taken to have been guided by and under the influence of the Petitioners'' predecessor-in-title. She has not produced an earlier genuine document to show her caste or tribe, the certificate itself having been issued as late as on 4.2.1977 by the Additional Chief Metropolitan Magistrate relying on her statement dated 4.8.1976 made after the conveyance was executed stating that she had sold the property to the predecessor-in-title of the Petitioners. There is, therefore, no independent inquiry as contemplated under the Act for the protection of a tribal against her unequal bargaining power under the transfer of title executed by her. Had there been a proper inquiry and if that was shown, of course, no further applications could have been entertained as held in the above cases. As rightly observed by the Maharashtra Revenue Tribunal since there has been no independent inquiry with regard to Anandibai''s tribe one inquiry on merits for the determination of her status as tribal or non-tribal is required to be commenced and taken to its appropriate conclusion.

25. It may be mentioned that the other children of Dharma filed another application being Application No. 01 of 2005 under Sections 3 and 4 of the Act on 16.3.2005 against the Petitioners herein. That application has also been dropped under the order dated 6.9.2005 taking into account the initial inquiry initiated in 1976 which culminated in the order dated 5.3.1978 and as the SDO had passed the order upon the further suo motu inquiry on 1.3.2003. It was observed that the application was barred by the principles of Res Judicata as Appeal against the orders dated 5.3.1978 and 1.3.2002 were not filed.

26. It need hardly be stated that the Restoration contemplated under the Act is for protection of the rights of tribals who could be cheated or otherwise defrauded is by non-tribal transferees. They or their successors-in-title may apply for restoration of their lands. An application of that nature is expected to be made by all the heirs

claiming rights essentially at one time. Once the determination of the status of a person as a tribal or a non-tribal is made, it would be applicable to all the heirs. Heirs claiming separately for the same right which is for determination of status is an abuse of process and cannot be allowed.

27. Mr. Madon argued that under the definition of ''tribal'' in Section 2(g) of the Act, a tribal is a person belonging to the Scheduled Tribe, including his ''successor-in-interest''. He further argued that Anandibai is the successor-in-interest of Budhiya and hence would be the tribal if Budhiya was a tribal.

28. A ''successor-in-interest'', as defined in Black''s Law Dictionary, Eighth Edition, page 1473, is:

One who follows another in ownership or control of property. A successor in interest retains the same rights as the original owner, with no change in substance.

29. Interest of a person is of varied nature. It is less than title. Title in an immovable property would include interest. ''Interest'', as defined in Black''s Law Dictionary, Eighth Edition, page 828 is a right, privilege, power or immunity.

30. ''Interest'' is explained in Advanced Law Lexicon, Volume 2, 3rd Edition page 2402 as:

A person interested is one having an interest; i.e., a right of property, or in the nature of property, less than title.

The word ''interest'' is the broadest term applicable to claims in or upon real estate, in its ordinary signification among men of all classes. It is broad enough to include any right, title, or estate in or lien upon real estate. One who holds a mortgage upon a piece of land for half its value is commonly and truly said to be interested in it.

That would be an interest of a mortgagee. Similarly a secured creditor may have an interest in the estate of the deceased. A widow would have such interest in a joint family property which her husband had therein u/s 3 of the Hindu Women''s Right to Property Act, 1937. She would have a right to reside in the HUF property pursuant to such interest. This aspect has been explained in the case of Sambudamurthi Mudaliar v. The State of Madras and Anr. AIR 191 SC 2363 thus:

The word ''succession'' in relation to property and rights and interests in property generally implies ''passing of an interest from one person to another'' (vide AIR 1941 72 (Federal Court) .

Hence a successor-in-interest is not a successor-in-title. A successor-in-title succeeds upon succession, either testamentary or intestate. It is not disputed that the disputed lands were the self acquired properties of Budhiya acquired by him u/s 32G of the Tenancy Act. Budhiya died intestate. Anandibai succeeded to his estate u/s 8 of the Hindu Succession Act. She, therefore, obtained title in respect of the property and not only an interest which Budhiya had. Her claim upon succession is,

therefore, not a claim as a successor-in-interest.

31. It is, therefore, seen that during the lifetime of Budhiya, Anandibai may also have had interest in the property as his wife. She would have had the right, privilege, power and immunity which Budhiya had qua others. However, upon Budhiya''s death, it being his self acquired property, she became the absolute owner of the disputed lands by succession. She was, therefore, his successor-in-title and not his successor-in-interest.

32. ''Title has been defined in B lack''s Law Dictionary, Eighth Edition, page 1522 as the union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property. Anandibai has all the elements of title ownership, possession as well as custody of the lands. She held that from 1968 when Budhiya died, until 1984 when she died. Her tribal claim, if at all, has to be considered only as a person belonging to the Scheduled Tribe. That tribal claim is not the claim of Budhiya as a tribal, if at all. Even if Budhiya was a tribal, Anandibai, if not a tribal, could not be treated as one since she is not Budhiya''s successor-in-interest but a successor-in-title.

33. The inquiry, that is ordered by the Maharashtra Revenue Tribunal in the impugned order, is, therefore, necessarily and only an inquiry as to whether Anandibai was born as a member of the Scheduled Tribe; no more and none else. It is not the inquiry ordered by the SDO under the order dated 26.11.2001. It does not matter whether Respondent Nos. 3 and 4 or their other brothers and sister who also applied under Restoration Application No. 1 of 2005, are tribals. All that has to be inquired into is whether Anandibai was a tribal. That inquiry has never been done, though directed. That inquiry deserves to be done but once.

34. I have been shown the judgment in the case of Udhav Uttam Patil v. Daga Holkya Bhil since deceased through L.Rs and Ors. 2001 (3) Maharashtra Law Journal 916 by Mr. Madon, showing the purport, import and the protective umbrella of the Act. Though that judgment refers to the interpretation of the limitation period, which has been enhanced from 3 years in the original Act to 30 years in the amended Act, it sets out how the Act is an instrument of distributive justice and is intended for alleviating oppression, redressing bargaining imbalance, cancelling unfair disadvantages. It requires special care and attention to be given to tribals by way of power balancing. Since the Act seeks to reopen transactions between the parties having unequal bargaining power, it necessitates a fair and just inquiry into the status of the tribal to be made undeterred and unrestricted by technical claims of imperfect inquiries having been made earlier. Of course, the inquiry contemplated can be made only once. But that inquiry must be based on merits of the claim as to whether the transferor was a tribal.

35. The impugned order directing the inquiry to be made not only does not suffer from any infirmity or irregularity, it having been under the statutory power

conferred by the Act itself, but lends itself to a fair and just determination of the status of the transferor. The impugned order does not require any interference with regard to the fact of the inquiry being held, but as clarified below.

36. The SDO shall inquire into whether Anandibai was born into a tribal family. The burden of proving such status would be on Respondent Nos. 3 and 4 and their brothers and sister who have made applications for restoration of the land under Application Nos. 1 of 2004 and 1 of 2005 under the Act. That shall be inquired into following the procedure laid down by the Supreme Court for scrutiny of caste claims by the Caste Scrutiny Committee with regard to the family name, traits, customs, occupations of the specific tribe that Respondent Nos. 3 and 4 claim Anandibai belonged to.

37. The parties shall appear before the Collector/SDO within 2 weeks from today. Respondent Nos. 3 and 4 and/or their brothers and sister shall produce the relevant evidence before the SDO within 8 weeks from today. The relevant SDO/Collector shall inquire into and decide the tribal claim of Anandibai within 12 weeks from today.

38. Rule is granted and the Writ Petition is disposed of accordingly.

39. There shall be no order as to costs.

This order is stayed for 4 weeks.