

(1997) 11 BOM CK 0065

Bombay High Court

Case No: Writ Petition No. 2582 of 1984

Madhukar B. Bhanushali

APPELLANT

Vs

The State of Maharashtra and
others

RESPONDENT

Date of Decision: Nov. 20, 1997

Acts Referred:

- Bombay Tenancy and Agricultural Lands Act, 1948 - Section 32
- Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 - Section 2(1), 4

Citation: (1998) 1 ALLMR 576 : (1998) 3 BomCR 14 : (1998) 1 MhLj 558

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

Bench: Single Bench

Advocate: V.A. Gangal, for Arvind Joshi, for the Appellant; S.R. Nargolkar, Assistant Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T.K. Chandrashekhara Das, J.

The petitioner approach this Court with a prayer inter-alia for writ of certiorari quashing the order dated 15th May, 1984 once whereby it has been intimated to the petitioner that the Order No. TNC-Act-XIV-SR-56 dated 23rd October, 1978 passed in the proceedings No. TNC-Act-XIV-SR-56 by the Additional Tahsildar, Jawhar was reviewed. However, the order of review has not been produced by the petitioner. Mr. V.A. Gangal, the learned Counsel for the petitioner, submits that the order passed by the respondent against the petitioner was not served. Therefore, it could not be produced. What is submitted is that by Exh. "B", the application made by the 4th respondent u/s 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 was rejected and this was reviewed by the impugned communication after lapse of about 5 years.

2. The petitioner's case is that he is a purchaser of the property comprising S. No. 85 (1 to 5) admeasuring 21 Acres 2 Gunthas at village Khudel, Tal. Jawhar, District Thane. The Vendor of the property was the original owner under whom the respondent No. 4 was a tenant. The respondent No. 4 admittedly a tribal person. During pendency of the petition respondent No. 4 has died and his heirs and legal representative are impleaded as 4-A to 4-D who are not represented though notices are served upon them.

3. On 2-12-1958, the proceedings u/s 32-G were initiated and considering the respondent No. 4 as deemed purchaser an amount of Rs. 851.70 was fixed as purchase price. The tribal person did not pay that amount and therefore, the purchase became in-effective since 18-12-1963. After that a proceedings u/s 32-P was initiated and possession of the land was restored to the vendor. A mutation entry in the Revenue Record as Entry No. 465 was also made on 13-3-1965 in the name of the petitioner's vendor. The petitioner's vendor effected the aforesaid sale in favour of the petitioner as per sale-deed dated 11-9-1968 for a consideration of Rs. 1,500/- In the meantime, the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 came into force on 6-7-1974. The 4th respondent (expired) made an application on 21-1-1975 presumably u/s 4 of the said Act. The Additional Tahsildar made an enquiry and came to the conclusion that a 32-G proceedings initiated in favour of the respondent No. 4 had become in-effective on 18-12-1963. The respondent No. 4 found to be dis-entitled to restore the land u/s 4 of the Act and accordingly he dismissed the application of the 4th respondent on 23-10-1978. No appeal or revision was filed against this order and the said order became final.

4. For the next 5 years nothing was heard. It appears that after 5 years i.e. on 8-10-1983 a suo motu proceedings have been initiated and notice No. 4711 was issued and consequently an order has been passed on 17-5-1984. Ultimately, by impugned order it was communicated to the petitioner that the order passed on 23-10-1978 has been reviewed and same has been set aside. The order dated 23-1-1978 was set aside as per the decision dated 15-12-1983.

5. The learned Counsel for the petitioner submits that till to-day, the order passed on 15-12-1983 has not been served on the petitioner. At the time of admission of writ petition, this Court granted interim stay on further proceedings pursuant to Exh. "C".

6. The learned Counsel Mr. V.A. Gangal, submits that in view of the decision of the Division Bench of this Court in the case of State of Maharashtra and another v. Khatua Makanji and Company Pvt. Ltd., reported in 1987 MLJ. 908, this Court has held that when the 32-G proceedings were dropped and subsequently the possession of the land came to the landlord, the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 has no application. The Division Bench in this case has applied the simple logic that the 32-G proceedings were dropped on account of the same being ineffective, the right to purchase the tenanted land by virtue of section

32 of the Act will lapse and then it cannot be said that the land was originally belonging to the tenant viz. the tribal person herein. When transaction does not involve a tribal, legally there cannot be any transfer of land to the non-tribal. This simple logic is applied by the Division Bench in that case. Another important point is argued by the learned Counsel for the petitioner, is that any transfer on date of possession of the land under any circumstances will not cover provisions of section 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. He submits that the provisions of the Act applies to those transfers which has been implemented u/s 2(i) of the said Act. To accept the argument of the Counsel, we have to refer to the definition of transfer occurring in section 2(i) of the Act which read as under :

"(i) Transfer" in relation to land means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on the 6th day of July 1974, either ---

(a) by act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made inter-vivo, or

(b) under a decree or order of Court, or

(c) for recovering any amount of land revenue due from such Tribal, or for recovering any other amount due from him as an arrear of land revenue, or otherwise under the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force but does not include a transfer of land falling under the proviso to sub-section (3) of the Code; and the expression. "Tribal-transfer or" and "non-tribal-transferee" shall be construed, accordingly."

7. According to this definition only four classes of transfer of land by tribal will come under the preview of this Act. One is the transfer of land inter vivos by act of parties and the second is the transfer of land under decree of Court. Thirdly, transfer of land for recovering any amount of land revenue from such tribe or fourthly, recovering the amount due or any other amount due from him as an arrears of land revenue. The said section also provides that this transfer in order to come under the ambit of this Act that transfer should be made between 1-4-1957 and 6-7-1974. Therefore, according to the Counsel a transfer of possession of property to the landlord after proceedings of 32-P will not cover under the definition of transfer contained in the Act. Therefore, as occurred in this case, the petitioner purchaser from the landlord being a non-tribal will not be effected by the provisions of the Act. I find considerable force in this argument. When examined the section limited its application only to transfers stated in the definition of transfer in the Act. As pointed out earlier only 4 contingencies are to be taken into account and any transfer of land or change in possession of the land other than the circumstances contemplated u/s 2(1) cannot be treated as a transfer in order to attract the provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. In

other words, if a land-lord came to be in possession of the land after proceedings u/s 32-P cannot be said to be a transferee under the transfer accrued u/s 2(1) of the Act.

8. In view of this, for the reasons stated above, I do not think that the action of the department in passing the order reviewing the order is legal and consequently the impugned order dated 17th May, 1984 is to be set aside and the earlier order passed by the Tahsildar is to be restored.

9. The learned Government Counsel submits that the Division Bench proceeded on the basis that entire ownership of the land is not in the tenant vested by the enactment on the tiller's day as per the decision of Supreme Court 1961 B.L.R. 811 and also 1983 B.O.M L.R. 647, the ownership of the land itself vest to the tenant on tiller's day. For the purpose of this case, I do not think it necessary to go into this controversial area pointed out by the Government Pleader for the purpose of this case.

10. In the result, writ petition is allowed. Rule is made absolute in terms indicated above. There shall be no order as to costs.

11. Petition allowed.