

(2006) 01 BOM CK 0081

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 1664 of 1996

Ramkrishna Daulat Mali and
Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision: Jan. 13, 2006

Acts Referred:

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

Citation: (2006) 4 BomCR 428 : (2006) 3 MhLj 42

Hon'ble Judges: S.P. Kukday, J; A.P. Deshpande, J

Bench: Division Bench

Advocate: Milind Patil, for the Appellant; S.K. Kadam, A.G.P. for respondent Nos. 1 and 4, M.S. Deshmukh and S.V. Varad, for respondent Nos. 3(i) to 3(vii), for the Respondent

Final Decision: Dismissed

Judgement

S.P. Kukday, J.

In this petition, the petitioners are challenging the legality, validity and correctness of the order dated 18-9-1995 passed by the Scheduled Tribe Caste Certificate Scrutiny Committee, MS Nasik (hereinafter referred to as "the Committee"), on the ground that fair opportunity of being heard was denied to them.

2. Briefly stated, relevant facts of the case are that Nawabkhan Jamsherkhan Pathan (since deceased) owned land Survey No. 158 situated at village Dhanora Tq. Chopda Dist Jalgaon, admeasuring 12A 5 G. This land was leased to Daulat Dhana Mali (since deceased). The petitioners are the heirs of deceased Daulat. Deceased Daulat was cultivating the said land under a lease deed executed in or about the year 1945. Deceased Daulat was a tenant of the said land on the tiller's Day i.e. 1-4-1957. He was, thus, declared as deemed purchaser u/s 32M of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act of 1948"). A

certificate was issued in favour of deceased Daulat. In the year 1976 after the enactment of Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to be as the "Act of 1974") Assistant Collector, Amalner started suo motu proceedings against deceased Daulat. In that proceeding, the tenant raised a dispute claiming that deceased Nawabkhan Jamsherkhan was a Muslim-Pathan and not "Tadvi" a tribal and, therefore, lease does not amount to a transfer within the meaning of Section 2(1)(i) of the Act of 1974. It was also contended that in any event the tribal was holding land in excess of the ceiling limit. The Assistant Collector, however, found that deceased Nawabkhan was a "Tribal" and was entitled to restoration of the land (Survey No. 158) situated at village Dhanora.

3. This order of Assistant Collector dated 25-10-1976 was challenged before the Maharashtra Revenue Tribunal (for short "the Tribunal"). The Tribunal upheld the order by its judgment dated 3-1-1977. The said judgment was challenged by the petitioners by filing Writ Petition No. 1378/1991. This Court set aside the orders of the lower authorities, with direction that the issue in respect of tribe claim of Nawabkhan should be referred to the Scrutiny Committee. The Committee was directed to decide the issue after hearing the petitioners and Respondent No. 3 -Nawabkhan, on or before 31-12-1994. In consonance with this direction, reference was made to the Scrutiny Committee. After receiving decision of the Committee, the Tahsildar took up the matter. The petitioners challenged the validity of the order of the Committee, on the ground that the decision was given without hearing them. The objection was not sustained by the Tahsildar. This led to filing of Writ Petition No. 2385/1995. This Writ Petition was disposed of by setting aside the earlier order and giving a direction to the Committee to decide the matter after hearing both the sides, within a period of four weeks. The parties were directed to appear before the Committee on 28-8-1995. In consonance with this direction, after giving an opportunity to the petitioner, the Committee upheld the tribe claim of the Nawabkhan and by order dated 18-9-1995 declared that he belongs to "Tadvi" Scheduled Tribe. In this petition, the petitioners have challenged this order mainly on three grounds namely, (i) the copies of documents filed on behalf of deceased Nawabkhan on record were not given to the petitioners, therefore, they could not meet the case properly; (ii) the documents filed on record showing that Nawabkhan and his relatives are Muslims, are not properly construed and that sufficient time was not given to the petitioners for submitting more documents, and (iii) the order is vitiated due to non-application of mind and on the ground of denial of opportunity of being heard. On these grounds, the petitioners claim that the impugned order, be quashed and set aside.

4. Respondent No. 3 - heirs of Nawabkhan have filed brief affidavit-in-reply, supporting the order passed by the Scrutiny Committee. According to them, overwhelming documentary evidence is adduced before the Committee to establish Tribe claim. After appreciating the material on record, the Committee has rightly upheld the tribe claim of deceased Nawabkhan. According to the Respondents in

the facts of the present case, this fourth round of litigation amounts to abuse of the process of law. The petition is devoid of merits and, therefore, deserves to be dismissed.

5. Referring to the grounds mentioned in the Petition, learned Counsel for petitioners contend that copies of the documents filed on record in support of the tribe claim, were not made available and, therefore, the petitioners could not effectively meet the case of Nawabkhan. It is further contended that Nawabkhan belong to "Muslim Pathan" community. However, documentary evidence filed on record, in this behalf, has been ignored by the Committee. The order passed by the Committee suffers from the vice of non-application of mind and deserves to be quashed and set aside.

6. Learned Counsel for the petitioners has reiterated the grounds mentioned in the petition. The first contention is that documents filed on record showing the caste of the Respondent No. 3 as "Muslim" are altogether ignored and an opportunity to contest the tribe claim of Respondent No. 3 was not given to the petitioner by providing copies of the documents filed on record. Learned Counsel submits that the principles of natural justice are given a go-bye, inasmuch as the petitioners have not been afforded an opportunity to contest the tribe claim by the Committee. These contentions are devoid of merits. It can be seen from the record produced by the learned Counsel for the Respondent No. 2- Committee that the petitioner appeared before the Committee on 28-8-1995. In his statement recorded on that day the petitioner has admitted that an opportunity of being heard is being given to him. The petitioner has filed some documents showing that son, daughter, brother and other relatives etc. of deceased Nawabkhan are shown as Muslims in the documents produced by them. It is pertinent to bear in mind that the "Muslim" is not a caste but it is a religion. During the course of arguments, learned Counsel contended that the respondent No. 3 belongs to Muslim-Pathan caste. However, such a document is neither filed before the Committee nor before the Court to show that Respondent No. 3 was Pathan. There are "Tadvis" in Muslims and Hindus too. The Respondent No. 3 is a Muslim Tadvis. He was a Police Patil of the village. Therefore, in some of the extracts his surname is shown as "Patil". This aspect is also considered by the Committee. All the documents filed by the respondents are considered by the Committee. In view of the overwhelming documentary evidence on record dating as far back as 1915, so also the enquiry in respect of traits and characteristics of the Tribe, the tribe claim of the Respondent No. 3 was fully established. No infirmity whatsoever can be found with the reasoning of the Committee. The guidelines in the case of [Kumari Madhuri Patila and another Vs. Addl. Commissioner, Tribal Development and others](#), are fully adhered to, by the Committee. The fact that the petitioner No. 1 appeared before the Committee on 28-8-1995, thereafter, he filed documents and finally the notes of arguments filed on 7-9-1995 shows that sufficient opportunity to contest the tribe claim was given to the petitioners.

7. In view of the material on record, the grounds raised by the petitioners cannot be accepted. The petitioner has on earlier two occasions filed petitions, on the ground that opportunity was not given to him to contest the tribe claim and had succeeded in it. This is the third round of litigation. On this occasion, however, the record shows that sufficient opportunity has been given to the petitioners. The concept of natural justice is to ensure that a person should get sufficient opportunity to safeguard his interest and to defend himself. However, he is not entitled to unlimited opportunity. Concept of natural justice must be appreciated in proper perspective. In this behalf reference can be made to the decision of the Apex Court reported in [Mangilal Vs. State of Madhya Pradesh](#), In that case the Apex Court has considered the scope of principles of natural justice and observed in Para No. 10 as follows:

10....Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment [See [Swadeshi Cotton Mills Vs. Union of India \(UOI\)](#),]. Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are : notice of the case to be met, and opportunity to explain.

8. In the present case, sufficient opportunity was given to the petitioners for contesting tribe claim of Respondent No. 3. The petitioners had knowledge of all the documents filed in support of the tribe claim. The facts of this case show that sufficient opportunity was given to the petitioner. The petition, therefore, fails and is accordingly dismissed. Rule discharged. However, in the facts and circumstances of the case, there shall be no order as to costs.