

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3116 OF 1994

Aneba S/o Yesaji Pandhare,
Since deceased, through his
legal representative - son-
Baburao S/o Aneba Pandhare,
Age-34 years, Occu-Agriculture and
Service, R/o Nagzari, Tal.Hingoli,
Dist.Parbhani

PETITIONER

VERSUS

1. Bhiwara s/o Kondu Jadhav,
Age-Major, Occu-Agriculture,
R/o Bhosi, Tq.Hingoli.
Dist.Parbhani,
2. Sadashiv S/o Sakhru Jadhav,
Age-Major, Occu. and Resi. As above,
3. Ikram S/o Guja Jadhav,
Age-Major, Occu, and Resi. as above,

4. The State of Maharashtra

RESPONDENTS

Mr.N.N.Shinde, Advocate for the petitioner.
Mrs.S.S.Raut, AGP for the respondent / State.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/05/2016

ORAL JUDGMENT :

1. This petition was Admitted by order dated 23/09/1994.
Interim relief has not been granted.

2. Despite Court service, the respondents have neither caused an appeared through an Advocate nor have they appeared in person. Petition is of the year 1994 and therefore I have permitted the petitioner to proceed with the matter.

3. The petitioner has challenged the order dated 19/12/1986 delivered by the learned Maharashtra Revenue Tribunal, Camp at Parbhani by which Appeal No.57/1/1986/Parbhani filed by the respondents u/s 6 of The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 has been allowed and the order of the Tahsildar dated 25/02/1986 has been set aside.

4. The issue before this Court is as to whether the Collector can exercise his suo-motu powers when in an earlier round of litigation, the grievance put forth by the petitioner has been considered and turned down.

5. The petitioner had earlier approached the Tahsildar, Hingoli in Case No.79/ADMS/3 which was instituted on 04/05/1979. By the said application, the petitioner sought restoration of possession of land Survey No.29/AA admeasuring 12 acres 20 gunthas situated at

village Nagazari under the 1974 Act. The said land was earlier sold on 17/12/1970 to the respondents. The Tahsildar, Hingoli was approached by the respondents after 9 years. He considered the limitation prescribed in the light of the circular dated 22/10/1974 and concluded that as the application for restoration of possession was not submitted within the limitation of 3 years, the application was time barred and hence rejected by order dated 05/05/1980.

6. The petitioner, therefore, approached the learned M.R.T. by filing case No.165/A/80/Parbhani. By its order dated 05/01/1981, the learned M.R.T. dismissed the appeal on the ground that the same was time barred u/s 3 of the 1974 Act. It is an admitted position that the petitioner has not assailed the order dated 05/05/1980 delivered by the Tahsildar and 05/01/1981 delivered by the learned M.R.T. either before this Court or any other Court having jurisdiction.

7. After 5 years, the Tahsildar Hingoli suo-motu reopened the same File No.79/ADMS/3, which was considered upon by his order dated 05/05/1980, notwithstanding the fact that the said order was not set aside by any superior authority or by the Court. The Tahsildar observed that as the Desk Officer of T.N.C. Commissioner's

Office, Aurangabad vide letter dated 01/08/1985 directed the Tahsildar to register the case as suo-motu u/s 3 of the 1974 Act, he had restarted the hearing of the matter u/s 3 of the Act. He, then, delivered his order dated 25/02/1986 directing that the possession held by the respondents be restored to the petitioner/Tribal.

8. The said order dated 25/02/1986 was challenged by the respondents in Appeal No.57/A/1986/Parbhani u/s 6 of the Act and by judgment dated 19/12/1986, the learned M.R.T. came to a conclusion that once the application was filed voicing the grievance of the petitioner and the same was considered by the Tahsildar as well as the M.R.T., there could not be any suo-motu proceedings. The Tribunal concluded on the basis of the reported judgment of this Court in the matter of Wasudeo Shriram Bhonde and others Vs. Chintaman Waman Purohit, 1983 MH.L.J. 335 that the power of suo-motu hearing in the matter can not be enforced when the matter was already dealt with in an earlier round of litigation and exercise of suo-motu powers was not to water down the earlier proceedings. The appeal was, therefore, allowed.

9. Mr.Shinde, learned Advocate has strenuously submitted that the exercise of suo-motu powers ought not to be interfered with. I am

unable to accede to his submissions since the scope of exercise of suo-motu powers is always in the absence of any of the parties failing to exercise any right vested in them by law. The suo-motu power is to ensure that no person benefits out of the ignorance of any other person.

10. In the instant matter, the petitioner had already set the process of Law in motion by filing their first application on 04/05/1979. Same was dismissed by order dated 05/05/1980. The appeal of the petitioner was dismissed by order dated 05/01/1981. After having exercised its right and having travelled upto the learned M.R.T. in the appeal, the suo-motu powers of the Collector cannot be utilized in such a fashion to undo the result of the earlier round of litigation.

11. In the light of the above, I do not find that the impugned order is perverse or erroneous. This petition, being devoid of merit, is therefore dismissed. Rule is discharged.

12. It is however observed that in the event the petitioner desires to assail the orders dated 05/05/1980 and 05/01/1981 delivered by the Tahsildar, Hingoli and learned M.R.T. Aurangabad respectively, the time spent by the petitioner before the Tahsildar in the subsequent

proceedings from 06/08/1985 till passing of this order shall be considered as a ground for condonation of delay.

13. Pending civil applications, do not survive and hence are disposed of.

(RAVINDRA V. GHUGE, J.)