IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.9668 OF 2016

Smt. Suman Namdeo Barde,	]
Age: 72 years, Occu: Agriculturist,	]
Through Power of Attorney Holder	]
Smt. Kelubai M. Barde	]
residing at Shirsane, Taluka	]
Chandwad, District Nashik	].. Petitioner

Versus

1. Shri. Raosaheb Vasantrao Jadhav,	]
Age: Major, Occu: Agriculturist,	]
2. Sou. Varsha Yogesh Jadhav,	]
Age: Major, Occu: Agriculturist,	]
3. Sou. Sunita Santosh Jadhav,	]
Age: Major Occu: Agriculturist,	]
4. Sou. Meena Raosaheb Jadhav,	]
Age: Major, Occu: Agriculturist,	]
All residing at Shirsane, Taluka	]
Chandwad, District Nashik.	]
5. The State of Maharashtra,	]
Through the Tahsildar,	]
Chandwad, District Nashik.	].. Respondents

Mr. Sachin Gite, for the Petitioner.
Mr. R. N. Gite a/w Ms. Divya V. Parab, for the Respondent Nos.1 to 4.
Mr. S. D. Rayrikar, AGP for the Respondent No.5.

CORAM : R.M. SAVANT, J.
DATE : 2nd MAY 2016

ORAL JUDGMENT

1. Rule, considering the challenge raised and the nature of the directions to be issued made returnable forthwith and heard.

2. The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 03.03.2016 passed by the Learned President of the Maharashtra Revenue Tribunal, by which order, the Appeal filed by the Respondents herein being TRI/APL/NSK/138 of 2015 came to be allowed and resultantly, the order dated 14.07.2015 passed by the Tahsildar, Chandwad, in proceeding numbered as Adiwasi Case No.1 of 2015 came to be set aside.

3. It is not necessary to burden this order with unnecessary details having regard to the nature of the final directions to be issued.

The Petitioner herein is a tribal and it is her allegation that a Sale Deed dated 28.12.2007 was got executed from her by the

Respondents in respect of land bearing Gat No.85A/2 admeasuring 1 Hector and 40 Ares. The Petitioner therefore filed an application for restoration of the land under Section 36 and 36A of the Maharashtra Land Revenue Code r/w Section 3 and 4 of the Maharashtra Restoration of Lands belonging to Scheduled Caste and Scheduled Tribes Act, 1974 (for short “the 1974 Act”). In the said application, though below the cause title a reference is made to Section 3 and 4 of the 1974 Act in the body of the application especially in paragraphs 3, 4 and 6 as also in prayer clause (a) there is reference made to Section 36 and 36A of the Maharashtra Land Revenue Code (for short “the MLR Code”). In fact, in paragraphs 3, 4 and 6, the Petitioner has set up her case as to how the Sale Deed dated 28.12.2007 is in violation of Section 36A of the MLR Code. The said application for restoration was numbered as Adivasi Case No.1 of 2015. On behalf of the Respondents a reply came to be filed and the case set up by the Petitioner was sought to be denied. It was contended that the said Sale Deed has been got executed for consideration and it only with a view to get more amount from the Respondents that the application in question for restoration came to be filed by the Petitioner. It seems that the statement of the Petitioner as well as the statement of one Raosaheb Vasantrao Jadhav was recorded by the Police as it seems that an FIR was registered in respect of the alleged permission granted by the Collector

Nashik. The Tahsildar considered the said application and by his order dated 14.07.2015 allowed the said application. The Tahsildar has held that since the land in question has been assumed by the Petitioner under Section 36 and 36A of the MLR Code, the Sale Deed dated 28.12.2007 as also the mutation entry No.2034 is illegal. The Tahsildar further held that the said Sale Deed has been executed without seeking permission under the 1974 Act and therefore the said land was required to be restored back to the Petitioner within seven days of the said order. The Tahsildar in his order has recorded a finding that the said Sale Deed has been got executed by the Respondents on the basis of a bogus 7/12 extract as also on the basis of a permission, which is also bogus.

4. The said order dated 14.07.2015 passed by the Tahsildar Chandwad was taken exception to by way of an Appeal by the Respondents before the Maharashtra Revenue Tribunal being No. TRI/APL/NSK/138 of 2015. The Learned President, Maharashtra Revenue Tribunal after adverting to the cases of the respective parties before him framed the following issue :-

> "Whether the transaction, subject matter of the appeal, application before the court below, is covered under definition clause 2(1)(i) and if not, whether Tahsildar, Chandwad will get jurisdiction to pass the order impugned ?"

5. The Learned President of the Maharashtra Revenue Tribunal thereafter adverted to the definition of the word "transfer" within the meaning of the 1974 Act and since the word "transfer" only covers the transactions in respect of lands belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st April 1957 and ending on the 6th day of July 1974 and since in the instant case, the Sale Deed is dated 28.12.2007, the Learned President of the Maharashtra Revenue Tribunal held that the same would not amount to a transfer within the meaning of the 1974 Act. The Learned President of the Maharashtra Revenue Tribunal therefore held that to exercise powers under Section 3 of the 1974 Act, the transfer has to be within the meaning of the definition of transfer under Section 2(i) of the 1974 Act. The Learned President of the Maharashtra Revenue Tribunal concluded that the transfer which is the subject matter of the instant proceedings being not covered by the definition of transfer in the 1974 Act, the order passed by the Tahsildar was without jurisdiction and therefore a nullity in the eyes of law and therefore required to be quashed and set aside and accordingly allowed the Appeal and set aside the order dated 14.07.2015 passed by the Tahildar. It is the said order dated 04.03.2016 passed by the Learned President of the Maharashtra Revenue Tribunal which is taken exception to by way of the above Petition.

6. The Learned Counsel appearing on behalf of the Petitioner Mr. Sachin Gite would reiterate the case of the Petitioner before the Tahsildar as well as the Maharashtra Revenue Tribunal. It was the submission of Mr. Sachin Gite that the application filed by the Petitioner was under Section 36 and 36A of the MLR Code r/w 3 and 4 of the 1974 Act. It was the submission of Mr. Sachin Gite that the Learned President of the Maharashtra Revenue Tribunal has misdirected himself by considering the Appeal on the basis that the application was only under Section 3 and 4 of the 1974 Act and thereby has not adjudicated the matter from the standpoint of Section 36 and 36A of the MLR Code.

7. Per contra, the Learned Counsel Mr. R. N. Gite would support the impugned order passed by the Maharashtra Revenue Tribunal. It was the submission of Mr. R. N. Gite that it would be open for the Petitioner to file an application under Section 36 and 36A of the MLR Code before the Tahsildar and that the order passed by the Maharashtra Revenue Tribunal allowing the Appeal and thereby dismissing the application made by the Petitioner cannot be faulted with.

8. Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, in the earlier part of this order, in the application filed by the Petitioner though below the cause

title a reference to Section 3 and 4 of the 1974 Act is made however in the body of the said application there are elaborate pleadings referring to Section 36 and 36A of the MLR Code. A reading of prayer (a) of the application also makes it clear that the Petitioner was seeking the relief by referring to Section 36 and 36A of the said Act as according to the Petitioner in the execution of the said Sale Deed dated 28.12.2007 there was a breach of Section 36A of the MLR Code. The Tahsildar whilst adjudicating the application has also referred to Section 36 and 36A and in fact in the reasoning part has referred to the fact that the said land which was subject matter of the proceedings was covered by Section 36 and 36A of the MLR Code. The Tahsildar has also recorded various findings whilst allowing the said application for restoration filed by the Petitioner. In spite of the said findings recorded and in spite of the fact that the application was one filed under Section 36 and 36A of the MLR Code, the Learned President of the Maharashtra Revenue Tribunal has neither considered the findings of the Tahsildar nor adjudicated the Appeal from the standpoint of Section 36 and 36A of the MLR Code. As indicated above, the Learned President of the Maharashtra Revenue Tribunal has merely on the premise that the transaction having taken place in the year 2007 would not be covered by the definition of “transfer” under Section 2(1)(i) of the 1974 Act has allowed the Appeal and thereby set aside the order passed by the Tahsildar. As a Tribunal considering an Appeal, the Learned President was enjoined to consider the Appeal and adjudicate upon the issues that arose before him as an Appellate Court in terms of the order passed by the Tahsildar. However, the same has not been done. The order passed by the Learned President is therefore vitiated on the said ground. Same is therefore required to be quashed and set aside and is accordingly quashed and set aside. The matter is relegated back to the Maharashtra Revenue Tribunal for a de-novo consideration of the Appeal in terms of the observations made hereinabove. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs.

9. The parties to appear before the Maharashtra Revenue Tribunal on 15.06.2016. The Maharashtra Revenue Tribunal to thereafter decide the Appeal latest by 31.08.2016.

10. Since the Appeal is being remanded back to the Maharashtra Revenue Tribunal, the order which was operating in the Appeal namely stay of the order passed by the Tahsildar dated 14.07.2015 would continue to operate. However, mutation entry which is in the name of the Petitioner as is claimed by the Learned Counsel for the Petitioner, would not be changed pending consideration of the Appeal.

11. Needless to state that the contentions of the parties are kept open for being urged before the Maharashtra Revenue Tribunal.

[R.M. SAVANT, J]