

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 602 OF 2002

Shri Pandharinath Sawaliram Bhagat .. Petitioner
vs.
Shri Laxman Govind Bhagat
deceased through his LRs
Shri Rambhau Govind Bhagat & Ors. .. Respondents

Mr. P. N. Joshi for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 22 April 2016

Date of Pronouncing the Judgment : 02 May 2016

JUDGMENT :-

1] The challenge in this petition is to the judgments and orders dated 24 May 2000 and 7 September 2001 made by the Tahsildar and the Maharashtra Revenue Tribunal (MRT) holding that the transfer of the suit property in favour of the petitioner is illegal and directing the petitioner to restore the suit property to the respondents.

2] The petitioner claims to belong to a Hindu Thakur community which is recognised as a scheduled tribe, in so far as the State of Maharashtra is concerned. It is the case of the petitioner that in terms of the agreement for sale dated 23 April 1990 the

predecessor-in-title of the respondents i.e. Laxman Govind Bhagat, agreed to sell the suit property to the petitioner and further, placed the petitioner in possession of the suit property as well. On 18 May 1992, the petitioner's name was entered as a Kabjedar in the revenue records vide mutation entry no. 184.

3] In the year 1999, the respondents who are the legal representatives of late Laxman Govind Bhagat questioned the mutation entry by instituting an appeal before the Sub Divisional Officer (SDO). The SDO held that since the parties are Adivasis, the transfer is contrary to the provisions contained in the Maharashtra Land Revenue Code 1966 (LRC) and directed the Tahsildar to hold enquiry into the matter. The appeal instituted by the respondents was kept pending in the meantime.

4] The Tahsildar registered Adivasi Case No. 1 of 2000, issued notices to the parties and by order dated 24 May 2000, held that the transfer of the suit property in favour of the petitioner was illegal and directed the petitioner to restore the suit property to the respondents.

5] The petitioner appealed against the Tahsildar's order dated 24 May 2000 to the MRT. The MRT by impugned judgment and order

dated 7 September 2001 has dismissed the appeal holding that the transfer of the suit property in favour of the petitioner was indeed in breach of the provisions contained in section 36(3) of the LRC. Hence, the present petition.

6] Rule was issued in the present petition on 13 March 2002. Interim relief was granted in terms of prayer clause (c). However, it was made clear that the interim relief has been granted only on the basis that the petitioner claims to be in possession of the suit property. The grant of interim relief was not to stand in the way of any other enquiry under the LRC for mutation or changes in survey record.

7] Mr. Joshi, learned counsel for the petitioner has submitted that the provisions contained in section 36 of the LRC do not apply in the present matter, since, both the predecessor-in-title of the respondents as well as the petitioner are members of the scheduled tribe. Mr. Joshi submitted that the provisions contained in section 36(3) of the LRC are attracted only where the transfer of property is from a member of the scheduled tribe to a non tribal.

8] Mr. Joshi further submitted that in the present case there was no transfer of the suit property at all. The predecessor in title of the

respondents had merely agreed to sell the suit property to the petitioner. In the absence of any transfer, Mr. Joshi submitted that the provisions contained in section 36 of the LRC were not at all applicable.

9] Finally, Mr. Joshi submitted that the parties i.e. the petitioner and the predecessor in title of the respondents had already filed an application dated 3 April 1990 before the Collector, Nashik requesting for permission to sell the suit property. The said application, till date has not been disposed of. Mr. Joshi submitted that in case permission is granted by the Collector, then, the transaction will be completely valid and the petitioner will be entitled to have the suit property transferred in his favour. Mr. Joshi submitted that since these aspects are not being considered, the impugned orders warrant interference.

10] The respondents, though served, have not appeared themselves or through any Advocate at the stage of final hearing. Considering that this petition relates to the year 2002, it would not be appropriate to adjourn the same any further.

11] In order to appreciate the contentions raised by Mr. Joshi, at the outset, reference is necessary to the provisions contained in

section 36 of the LRC, which reads thus :

“36. Occupancy to be transferable and heritable subject to certain restrictions.

(1) An occupancy shall, subject to the provisions contained in section 72 and to any conditions lawfully annexed to the tenure, and save as otherwise provided by law, be deemed an heritable and transferable property.

(2) Notwithstanding anything contained in the foregoing sub-section occupancies of persons belonging to the Scheduled Tribes (hereinafter referred to as the `Tribals') (being occupancies wherever situated in the State) shall, not be transferred except with the previous sanction of the Collector.

Provided that nothing in this sub-section shall apply to transfer of occupancies made in favour of persons other than the Tribals (hereinafter referred to as the `non-Tribals') on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974).

(3) Where an occupant belonging to a Scheduled Tribe in contravention of sub-section (2) transfers possession of his occupancy, the transferor or any person who if he survives the occupant without nearer heirs would inherit the holding, may, (within thirty years from the 6th July 2004), apply to the Collector to be placed in possession subject so far as to the Collector may, in accordance with the rules made by the State Government in this behalf, determine to his acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding, (and, notwithstanding anything contained in any law for the time being in force, the Collector shall) dispose of such application in accordance with the

procedure which may be prescribed.

(Provided that, where a Tribal in contravention of sub-section (2) or any law for the time being in force has, at any time before the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 transferred possession of his occupancy to a non-Tribal and such occupancy is in the possession of such non-Tribal or his successor-in-interest, and has not been put to any non-agricultural use before such commencement, then, the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on application by the Tribal (or his successor-in-interest) made at any time (within thirty years from the 6th July 2004), after making such inquiry as he thinks fit, declare the transfer of the occupancy to be invalid, and direct that the occupancy shall be taken from the possession of such non-Tribal or his successor-in-interest and restored to the Tribal or his successor-in-interest.

(Provided further) that where transfer of occupancy of a Tribal has taken place before the commencement of the said Act in favour of a non-Tribal, who was rendered landless by reason of acquisition of his land for a public purpose, only half the land involved in the transfer shall be restored to the Tribal.

(3A) Where any Tribal (or his successor - in -interest) to whom the possession of the occupancy is directed to be restored under the first proviso to sub-section (3) expresses his unwillingness to accept the same, the Collector shall, after holding such inquiry as he thinks fit, by order in writing, declare that the occupancy together with the standing crops thereon, if any shall effect from the date of the order, without

further assurance, be deemed to have been acquired and vest in the State Government.

(3B) On the vesting of the occupancy under sub-section (3A), the non-Tribal shall, subject to the provisions of sub-section (3C), be entitled to receive from the State Government an amount equal to 48 times the assessment of the land plus the value of improvements, if any, made by the non-Tribal therein to be determined by the Collector in the prescribed manner.

Explanation.- In determining the value of any improvements under this sub-section, the Collector shall have regard to:

- (i) the labour and capital provided or spent on improvements ;*
- (ii) the present condition of the improvements;*
- (iii) the extent to which the improvements are likely to benefit the land during the period of ten years next following the year in which such determination is made;*
- (iv) such other factors as may be prescribed.*

(3C) Where there are persons claiming encumbrances on the land, the Collector shall apportion the amount determined under sub-section (3B) amongst the non-Tribal and the person claiming such encumbrances, in the following manner, that is to say-

- (i) if the total value of encumbrances on the land is less than the amount determined under sub-section (3B), the value of encumbrances shall be paid to the holder thereof in full;*
- (ii) if the total value of encumbrances on the land exceeds the amount determined under sub-section (3B), the amount shall be distributed amongst the holders of encumbrances in*

the order of priority.

Provided that, nothing in this sub-section shall affect the right of holder of any encumbrances to proceed to enforce against the non-Tribal his right in any other manner or under any other law for the time being in force.

(3D) The land vested in the State Government under sub-section (3A) shall, subject to any general or special orders of the State Government in that behalf, be granted by the Collector to any other Tribal residing in the village in which the lands is situate or within five kilometers thereof and who is willing to accept the occupancy in accordance with the provisions of this Code and the rules and orders made thereunder and to undertake to cultivate the land personally, so, however, that the total land held by such Tribal, whether as owner or tenant, does not exceed an economic holding within the meaning of sub-section (6) of section 36 A).

(4) Notwithstanding anything contained in sub-section (1) or in any other provisions of this Code, or in any law for the time being in force it shall be lawful for an Occupant - Class II - to mortgage his property in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loan Act, 1883, the Agriculturists Loans Act, 1884, or the Bombay Non-Agriculturists Loans Act, 1928 or in favour of a co-operative society [or the State Bank of India constituted under section 3 of the State Bank of India Act, 1955, or a corresponding new bank within the meaning of clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or the Maharashtra State Financial Corporation established under the relevant law] in consideration of a loan

advanced to him by such co-operative society, [State Bank of India, corresponding new Bank, or as the case may be, Maharashtra State Financial Corporation], and without prejudice to any other remedy open to the State Government, [The co-operative society, the State Bank of India, the corresponding new bank, or as the case may be, the Maharashtra State Financial Corporation) in the event of such occupant making default in payment of such loan in accordance with terms on which such loan is granted, it shall be lawful for the State Government, [the co-operative society, the State Bank of India, the corresponding new Bank, or as the case may be, the Maharashtra State Financial Corporation] to cause the occupancy to be attached and sold and the proceeds to be applied towards the payment of such loan.

The Collector may, [on the application of the co-operative society, the State Bank of India, the corresponding new bank or the Maharashtra State Financial Corporation], and payment of the premium prescribed by the State Government in this behalf, by order in writing reclassify the occupant as Occupant-Class I; and on such reclassification, the occupant shall hold the occupancy of the land without any restriction on transfer under this Code.

Explanation.- For the purposes of this section, "Scheduled Tribes " means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Maharashtra under Article 342 of the Constitution of India [and persons, who belong to the tribes or Tribal communities, or parts of, or groups within tribes or tribal communities specified in part VIIA of the Schedule to the Order [made under] the said Article 342, but

who are not resident in the localities specified in that Order who nevertheless need the protection of this section and section 36A [and it is hereby declared that they do need such protection] shall, for the purposes of those sections be treated in the same manner as members of the Scheduled Tribes.)”

12] Section 36(2) as aforesaid is quite clear, in as much as it provides that the occupancies of persons belonging to the scheduled tribes shall not be transferred except with the previous sanction of the Collector. The proviso to sub section (2) however provides that nothing in this sub section shall apply to transfer of occupancies made in favour of persons other than tribals on or after the commencement of the Maharashtra Land Revenue Code and Tenancy laws (Amendment) Act 1974.

13] Sub section (3) of section 36 of the LRC provides that where an occupant belonging to a scheduled tribe in contravention of sub-section (2) transfers possession of his occupancy, the transferor or any other person who if survived the occupant without nearer heirs would inherit the holding, may, within thirty years from 6 July 2004 apply to the Collector to be placed in possession subject so far as to the Collector may, in accordance with the rules made by the State in this behalf, determine to his acceptance of the liabilities for arrears of land revenue or any other dues which form a charge on the holding and notwithstanding contained in any law for the time

being in force, the Collector shall dispose of such application in accordance with the procedure which may be prescribed.

14] The proviso to sub section (3) of section 36 of the LRC provides that where a tribal in contravention of sub section (2) or any law for the time being in force, as, at any time before the commencement of the 1974 amendment transfer the possession of his occupancy to a non tribal and such occupancy is in possession of such non tribal, or his successor-in-interest, and has not been put in to any non agricultural use before such commencement, then, the Collector shall notwithstanding anything contained in any other law for the time being in force, either *suo motu* at any time or on application by the tribal (or his successor-in-interest) may any time within thirty years from 6 July 2004, after making such enquiry as he thinks fit declare the transfer of occupancy to be invalid and direct that the occupancy shall be taken from the possession of such non tribal or his successor-in-interest and restore to the tribal or his successor-in-interest.

15] Thus, sub section (2) of section 36 at least *prima facie*, bars the transfer of occupancies belonging to the scheduled tribes except with the previous sanction of the Collector. The proviso only renders inapplicable the provisions contained in sub section (2) to transfer of occupancies made in favour of non tribals on or after the

commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act 1974. In the present case, the petitioner has claimed to be a tribal. Therefore, at least *prima facie*, the proviso to sub section (2) of section 36 will not apply to the case of the petitioner. Since proviso will not apply, in terms of sub section (2) of section 36 of the LRC, transfer of occupancy by Laxman Govind Bhagat, the predecessor-in-title of the respondents, ought to have been preceded with the sanction of the Collector. In the present case, admittedly, there is no sanction of the Collector.

16] Notwithstanding the aforesaid position however, this is a fit case to remand the matter to the MRT for fresh decision in the light of the aforesaid observations, primarily because the petitioner contends that there has been no transfer of occupancy in his favour by virtue of the agreement for sale dated 23 April 1990 and that such transfer of occupancy was to take place only if the Collector were to accord sanction as per application dated 3 April 1990 addressed by Laxman Govind Bhagat, seeking permission for sale / transfer. There does not appear to be any consideration on this aspect by the MRT in the impugned judgment and order dated 7 September 2001. Further, it will be appropriate to direct the Collector to verify if the application dated 3 April 1990 purportedly made by Laxman Govind Bhagat is pending consideration and if so, to dispose of the same in accordance with law and with utmost

despatch. Until the consideration of such application, the MRT may not proceed with the appeal No. LRC.TRB.194-A-2001, which is now restored before the MRT. Depending upon the decision of the Collector, the MRT may then proceed to dispose of the appeal. Needless to add that the Collector of Nashik will afford opportunity of hearing to the petitioner as well as the respondents herein, before, any decision is taken on Laxman Govind Bhagat's application dated 3 April 1990.

17] Accordingly, for the aforesaid reasons, the impugned judgment and order dated 7 September 2001 made by the MRT is set aside. Appeal no. LRC.TRB.194-A-2001 is restored to the file of the MRT. The Collector of Nashik is directed to verify whether the application dated 3 April 1990 was indeed made by Laxman Govind Bhagat requesting for permission to sell the suit property and further, whether the same is still pending. If the application is pending, the Collector Nashik is directed to dispose of the same in accordance with law within a period of four months from the date of production of authenticated copy of this order. In case no such application was ever made or that the same is disposed of, the Collector Nashik to make his report to the MRT in appeal no. LRC.TRB.194-A-2001, again within a period of four months from the date of production of authenticated copy of this order. The Collector Nashik to afford opportunity of hearing to all parties before any

decision / report is made in the matter. The Collector Nashik to decide the application dated 3 April 1990, if indeed made or pending in accordance with law and on its own merits and thereafter forward the decision / report to the MRT in appeal no.LRC.TRB.194-A-2001. The MRT to thereafter dispose of the appeal in accordance with law and on its own merits by taking into consideration the decision / report of the Collector of Nashik as also the observations made in this judgment and order.

18] The petitioner claims to be in possession of the suit property. The petitioner shall accordingly maintain *status quo* in relation to the suit property until the final disposal of appeal no. LRC.TRB.194-A-2001 by the MRT. The alleged possession of the petitioner, shall therefore, abide by the final orders that may be made by the MRT in the said appeal. The petitioner is specifically restrained from parting with alleged possession or creating any third party rights in or upon the suit property during the pendency of the appeal before the MRT.

19] Rule is accordingly made absolute to the aforesaid extent only. There shall however be no order as to costs.

20] The parties are directed to appear before the MRT on 14 June 2016 at 11 a.m. and produce authenticated copy of this order.

In case, the respondents herein who are also the respondents in the appeal before the MRT do not appear on the said date, the MRT is requested to issue appropriate notices to them, so that they have an opportunity to appear in the appeal proceedings.

21] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka