

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

67 WRIT PETITION NO. 8036 OF 2013

SUPDU KASHINATH THORAT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Brahme Shailesh P.
AGP for Respondents/State: Mr. R.V. Dasalkar
Advocate for Respondents : Mr. S.P. Joshi for R/4.
...

CORAM : S.V. GANGAPURWALA, J.
DATE : 29.08.2017

P.C. :

. The petitioner had filed an application under Section 9 of the Bombay Inferior Village Watan Abolition Act, 1958 read with 59 of the Code to the Tahsildar. The Tahsildar rejected the application of the petitioner for restoration. The petitioner filed an appeal before the Maharashtra Revenue Tribunal, Aurangabad. The appeal came to be dismissed on the ground that the same is not tenable. The petitioner has assailed the said order in the present writ petition.

2. Mr. Brahme, the learned counsel submits that the appeal before the Tribunal is maintainable in respect of the orders as detailed in Schedule J to the Maharashtra Land Revenue Code, 1966. Though, in Schedule J as appearing, it is stated that orders passed under Section 59 except clause 'B' thereof is maintainable. However, the Government has issued notification dated 05.03.1979

clarifying that in Schedule J against entry 1 to Maharashtra Land Revenue Code, 1966 in column 2 for the entry relating to Section 59 except clause 'B' thereof the same is substituted by Section 59-A and B, meaning thereby the Tribunal can also exercise its jurisdiction even if the order is passed under Section 59(B) of the code.

3. The learned A.G.P. submits that affidavit is filed by the Principal Secretary to the Government of Maharashtra stating that the notification has been published in the Official Gazette to the effect that appeals under Section 59-A and B is maintainable before the Maharashtra Revenue Tribunal.

4. Mr. Joshi, the learned counsel submits that the land in question even according to the petitioner is not a tribal land and is covered under the provisions of the Bombay Inferior Village Watan Abolition Act, 1958. The provisions of the said Act have to be invoked and not the Maharashtra Land Revenue Code, 1966. The order is correctly passed by the Tribunal.

5. I have considered the submissions. Even if the land is Maharhadola land, still the eviction of unauthorized holder and re-grant of vatan land is as per Section 9 of the said Act and summary eviction of persons unauthorizedly occupying the land is under the provisions of the Maharashtra Land Revenue Code, 1966 and more particularly under Section 59. Even Section 9 of the Bombay

Inferior Village Watan Abolition Act, 1958 states that the unauthorized holder shall be summarily evicted by the Collector in accordance with the provisions of the code i.e. the Maharashtra Land Revenue Code, 1966.

6. Section 315 of the code prescribes the appellate jurisdiction of the Tribunal. Sub-section 1 and 3 of Section 315 would be relevant:

315. Jurisdiction of Tribunal

(1) Notwithstanding anything contained in Chapter XIII of this Code or any other law for time being in force, but subject to the provisions of this section, in cases arising under the provisions of the enactments specified in the Schedule J,-

(a) an appeal shall lie to the Tribunal from original orders or decisions made or passed by the Collector; and

(b) an application for revision shall lie to the Tribunal from an order or decision made or passed by the Collector in appeal, against an order or decision made or passed by any subordinate officer or authority.

(3) Save as expressly provided in any enactment for the time being in force, the State Government may, by notification in the Official Gazette, direct that the Tribunal shall also have jurisdiction to entertain and decide appeals from and revise decisions and orders, of, such persons, officers and authority in such other cases as the State Government may determine; and for that purpose the State Government may, by notification in the Official Gazette, add to, amend or omit, any of the entries in Schedule J; and thereupon, the Tribunal shall have jurisdiction in such matter, and the jurisdiction of any other person, officer or authority therein shall cease.

7. In Schedule J, as appearing in the code for the appeals

before the Tribunal, the sections under which the order passed are made appellable to the Tribunal have been specified and the order passed under Section 59 except clause 'B' is specified in Schedule J.

8. The affidavit is filed by the Principal Secretary of the State to the effect that in 1979 notification in the Official Gazette has been published stating that appeal to the Tribunal would lie under clause 'A' and clause 'B' of Section 59 of the code. The copy of the notification is also placed on record. However, Schedule J even as appearing in the Government publication does not give effect to the amendment.

9. Sub-section 3 of Section 315 specifically and explicitly provides that the State Government may, by notification in the Official Gazette direct that the Tribunal shall also have jurisdiction to entertain and decide the appeals from and revise decisions and orders of such persons, officers and authority in such other cases as as the State Government may determine; and for that purpose the State Government may, by notification in the Official Gazette add to, amend or omit, any of the entries in the Schedule J; and thereupon the Tribunal shall have jurisdiction in such matters.

10. The Tribunal, it appears had relied on the judgment of the learned Single Judge of this Court in a Case of **Shamshoddin V/s. Govinda** reported in **2013 (1) Mh.L.J. 664**.

11. After perusal of the said judgment, it does not appear that Schedule J of the Maharashtra Land Revenue Code was the subject matter of consideration nor the notification issued in the Official Gazette under Section 315 (3) of the Code.

12. In light of that, I pass the following order:

ORDER

- I) The impugned order is quashed and set aside.
- II) The Tribunal shall re-consider the aspects of maintainability of the appeal before it, considering Schedule J read with the notification of the Government in the Official Gazette dated 05.03.1979.
- III) Parties may appear before the Tribunal on 18.09.2017.
- IV) Writ petition accordingly partly allowed

(S.V. GANGAPURWALA)
JUDGE