

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3763 OF 1995

...

Sitaram S/o Kanoji (Died) L.Rs.:-

1. Maroti S/o Sitaram Gaikwad,
Age. Major, Occ. Agriculture,
R/o. Pangra, Tq. Kallamnuri,
Dist. Parbhani.
2. Limbaji S/o Sitaram Gaikwad,
Age. Major, Occ. Agriculture,
R/o. as above.
3. Uttam S/o Sitaram Gaikwad,
Age. Major, Occ. Agriculture,
R/o. as above.
4. Shivaji S/o Sitaram Gaikwad,
Age. Major, Occ. Agriculture,
R/o. as above.

Versus

1. Ananda S/o Nagoji Bale,
Age. Major, Occ. Labour,
R/o. Village Amdari,
Taluka Kalamnuri, Dist. Parbhani.
2. Sakharam S/o Tukaram Bale,
Age. Major, Occ. Agriculture,
R/o. as above.
3. Kundlik S/o Budhaji Bale,
Age. Major, Occ. Agriculture,
R/o. as above.

4. Babarao S/o Pandoji Bale,
Age. Major, Occ. Agriculture,
R/o. as above,
5. The Additional Tahsildar,
Kallamnuri, Taluka Kallamnuri,
District Parbhani.
6. Maharashtra Revenue Tribunal
Pune/Aurangabad.
7. The State of Maharashtra.

...

Advocate for Petitioner : Shri N.B.Khandare.
AGP for Respondents: Mr A V Deshmukh

...

CORAM : V.K. JADHAV, J.

Dated: January 12, 2018

...

ORAL JUDGMENT :-

1. By way of this writ petition, the petitioners are challenging the order passed by the Additional Tahsildar, Kalamnuri dated 27.3.1992 in case No.1989/Adivasi/3 and confirmed by the learned Member of the Maharashtra Revenue Tribunal by order dated 27.6.1995.

2. Brief facts, giving rise to the present writ petition are as follows :-

a] Respondent nos. 1 to 4 who are the original applicants filed an application before the Additional

aaa/-

Tahsildar Kalamnuri questioning therein validation of transaction in favour of the present petitioners. According to the respondents/original applicants, they are the original owners of land sr. no.153 and 152 to the extent of 3.28 acre and 2.23 acres situated at village Amdari Tq. Kalamnuri. The lands came to be transferred under the registered sale deed dated 20.11.1958 and 11.3.1966 in favour of the petitioners. It has been specifically contended in the said application that the said transactions fall within the definition of transfer under section 2 (1) of the Maharashtra Restoration of the lands to the Scheduled Tribes Act, 1974. (hereinafter referred to as the Act of 1974). According to the applicants, respondents/original applicants though fall in the category of tribal and though belongs to Schedule Tribe Aandh and as such, such a transfer from tribal to non- tribal is hit by the provisions of the Act of 1974 and accordingly they claimed restoration of the said lands in their favour. The learned Additional Tahsildar by impugned order dated 27.3.1992 in terms of the provisions of section 3 of the

Act of 1974 directed that the possession of the land Sy.No.152 and 153 to the extent of 2 acres 23 gunthas and 3 acres 28 gunthas respectively of village Amdari Tq. Kalamnuri to be restored to the tribal transferor no. 1 to 4 by evicting the present petitioners/original respondents (non-tribal transferee). Being aggrieved by the same, present petitioners preferred the appeal before the Maharashtra Revenue Tribunal and by impugned order dated 27.6.1995 learned Member of the Maharashtra Revenue Tribunal has dismissed the appeal. Hence, this writ petition.

3. Learned counsel for the petitioners submits that, it is an admitted position that, respondents/original applicants belongs to Aandh tribal community and the petitioners are the non-tribals. Learned counsel submits that, at the relevant time, said Aandh community was not considered as tribes and as such, the transaction that has been taken place on 20.11.1958 and 11.3.1966 cannot be questioned under the provisions of Act of 1974. Learned counsel submits

that, said Aandh tribe community identified as a Scheduled Tribe for the first time in the Scheduled Caste and Scheduled Tribes Orders Amendment Act, 1976 (Act of 108 of 1976) and prior to that, said Aandh community was not recognized as a Scheduled tribe. Learned counsel submits that, in view of the said transactions that has taken place during the period 1958 to 1966 was not between tribal and non-tribals and as such, provisions of section 3 and section 2 does not apply to the facts of the instant case, however, this aspect has been totally ignored by both the courts below.

4. Learned counsel in order to substantiate his contentions placed his reliance on the following two cases :-

1. Tukaram Laxman Gandewar Vs. Piraji Dharmaji Sidarwar by L.Rs. Laxmibai and others reported in [1989 MHLJ 815].
2. Chandrabhagabai w/o Dhondiba Gutte (died L.Rs.) Godavaribai w/o Laxman Gutte and others Vs. Ladba s/o Narayan Sidarwad and others reported in 2006 (1) Mh.L.J. 485.

5. None present for respondents 1 to 4.

6. I have also heard the learned AGP for the respondent State. Learned AGP submits that, both the authorities below have rightly passed the order in terms of the provisions of Act of 1974. Learned AGP submits that, in terms of the provisions of section 3 of the Act of 1974, learned Tahsildar has directed restoration of the possession in favour of respondent nos.1 to 4 and the learned Member of the Maharashtra Administrative tribunal has confirmed the said order. No interference is required.

7. In terms of article 342 of the Constitution of India, the President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union

territory, as the case may be. Needless to say that, there is finality of the presidential order and the court cannot add or subtract any entry.

8. The learned counsel for the petitioner has produced on record the notification published in the gazette of India pertaining to Schedule Caste and Schedule Tribes list (modification) order 1956. On perusal of the same, so far as the State of Maharashtra is concerned, it appears that, said Aandha tribal community came to be recognized as a tribe and added in the list for the first time by amended Act of 108 of 1976. Admittedly, the sale deed came to be executed in respect of the suit lands on 20.11.1958 and 11.3.1966 respectively. It is thus clear that at the time of execution of sale deed in respect of the suit lands, in absence of the presidential order as referred above in respect of their tribe, transaction is not governed by the provisions of Section 3 of the Act of 1974.

9. In a case Tukaram Gandewar Vs. Piraji Sidarwar

(supra) relied upon by the learned counsel for the petitioners, the Division Bench of this Court in identical facts held that, the status of the parties, has to be considered at the time or prior to completion of the transfer. The change of status after the transfer, if any, has no relevance and restrictions provided under section 36-A were not at all attracted. The Division Bench further observed that, the sale may be even after 1974 but the sale must be between tribal and non-tribal. The parties must have that status of being a tribal at the time of transfer and not subsequently.

10. In a case Chandrabhagabai Gutte Vs. Ladba Sidarwad (supra) relied upon by the learned counsel for the petitioner, in identical facts this Court has considered the issue of restoration of land to a tribal and observed that relevant date to consider restoration of land is the date on which the transfer is effected. Since the Tribe Naikda of respondent no.1 was not recognized as a scheduled tribe on the date he executed the sale deed in favour of the petitioners, he is not

entitled to seek restoration of the possession of the lands.

11. In the instant case, tribe Aandh was also not recognized as a Tribe on the date of execution of the sale deed and in view of the same, said transaction was purely between the non-tribals at the relevant time. Consequently, the application of the provisions of Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 is unwarranted and uncalled for. Both the authorities below have not considered this material aspect of the case. Hence, following order.

O r d e r

1. Writ Petition is hereby allowed in terms of prayer clauses 'B' and 'C.' Rule is made absolute in above terms.
2. Writ petition accordingly disposed of. No costs.

sd/-

(V.K. JADHAV, J.)

....