IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5750 OF 2014

1. Tushar Purushottam Phegade
Age 36 years, occ. Agri.

2. Chagan Eknath Phegade
Age 64 years, occ. Agri.

Both r/o Satod, Taluka Yawal
Dist. Jalgaon … Petitioners

Versus

1. Arman Ramzan Tadvi
Age major, occ. Agri.
R/o Wadri Khurd, Tq. Yawal
Dist. Jalgaon

2. The Tahsildar
Yawal, Tq. Yawal
Dist. Jalgaon … Respondents

Mr. P.V. Khiste, Advocate for the Petitioners.
Mr. S.B. Pulkundwar, AGP for Respondent no. 2.
Mr. S.A. Ambilwade, Advocate holding for Mr. S.B. Gothwal, Advocate for Respondent no. 1.

Coram : N.M. Jamdar, J.

Date : 22 November 2018.

ORAL JUDGMENT :

1. Rule returnable forthwith. Learned counsel for respective parties waive notice.

2. By this petition, the petitioners are challenging the order passed by the Maharashtra Revenue Tribunal, Aurangabad dated 11 June 2014 and the order passed by the Tahsildar, Yawal dated 10 October 2013. The proceedings were instituted by respondent under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. Both the authorities have allowed the application of respondent and have directed the petitioners to handover possession of the property to respondent since the sale in favour of the petitioners is found to be in breach of the provisions of the Act.

3. The property in question is bearing no. 172/5 situated at village Kolwad, Tq. Yawal, Dist. Jalgaon. Respondent filed an application before the Tahsildar, Yawal, under the provisions of the Act more particularly, sections 3 and 4 of the Act of 1974. It is the case of respondents that one Tukdu Pahada Tadvi was the original owner of the suit property. He had three sons Hussain, Ramzan and

Bismilla. Hussain and Ramzan expired in 1975 and 1991 respectively and, Bismilla expired in 1989. Applicant gave names of heirs of these three persons. Appellant stated that on 24 October 1964, the land in question was purchased by the petitioners. Appellant contended that the consolidation proceeding took place thereafter, In view of provisions of the act of 1974, since the transaction was between 1 April 1957 and 6 July 1974, the said transaction was void since the purchaser was a non-tribal and the property needs to be restored to the applicant who was a tribal. Petitioners contested the application contending that the applicant alone was not the owner of the property, the consolidation proceedings have taken place and that the applicant was not tribal.

4. The Tahsildar, by order dated 10 October 2013 rejected the objection of petitioners and allowed the application. Petitioners thereafter filed appeal under section 6 of the act of 1974 with the Maharashtra Revenue Tribunal, which was dismissed.

5. As regards tribe status of the respondent-applicant is concerned, it is observed by the Tribunal that a certificate of validity is placed on record by respondent-applicant. Certificate shows that respondent belongs to Tadvi Bhill caste which is a Scheduled Tribe.

6. Learned counsel for petitioners advanced sole contention that the respondent-applicant alone is not the owner. Learned counsel for respondent has placed on record certified copy of the heirship certificate which is granted in favour of respondent-applicant in Misc. Application No. 56/2015.

7. It appears that the property was earlier owned by one Tukdu Pahada Tadvi who had three sons Hussain, Ramzan and Bismilla. Names of heirs of Bismilla appear in the revenue record bearing no. 656. As regards the heirs of other sons, respondent has given explanation as their heirs do not survive and only respondent-applicant is the only heir. Finding of fact to that effect is recorded by the Collector, which has been accepted in appeal by the Tribunal. Petitioners have not shown that there are other heirs i.e. heirs of Hussain and Ramzan to upset this finding. If it is the contention of petitioners that there were other heirs, atleast some contra assertion on behalf of petitioners was required. Bare statement that Respondent is not the only heir, cannot be accepted.

8. In the circumstances, it cannot be said that both the orders are without jurisdiction or illegal or perverse. Both the authorities have

given effect to the provisions of the act of 1974, which is a beneficial legislation. In these circumstances, there is no merit in this writ petition which is accordingly rejected. Rule is discharged. No order as to costs.

N.M. Jamdar, J.