

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11974 OF 2017

Shri Prakash Laxman Dive

.. Petitioner

v/s.

Smt. Nilaben Pravinchand Parekh
& Ors.

..Respondents

Mr. Rajeev Pandey a/w. Sanjeev Punalekar, Madhur Rai i/b. PRS
Legal for the Petitioner.

Mrs. R.M.Shinde, AGP for the State.

Mr. Yogesh Patil, Mr. H.N.Vakil i/b. Mulla & Mulla CB&C for the
respondent No.4.

Mr. J.G.Reddy a/w.Arvind Aswani for the Respondent No.5.

Mr. S.G.Karandikar, S.K. Tyagi i/b. M.B.Sawant for the Respondent
No.7.

Mrs. Neeta Karnik for the Respondent No.11.

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : JUNE 20, 2018.

P.C. :

1. Heard the learned Counsel appearing for the respective parties.

By this petition, the petitioner is challenging Order dated 7th
September, 2017 passed by the Maharashtra Revenue Tribunal in
Appeal No. 3 of 2017. The said appeal arises out of the Thane

Tahsildar's Order dated 2nd March, 2017 whereby the petitioner's application under Section 3 and 4 of the Maharashtra Restoration of the Land to Schedule Tribe Act, 1974 came to be dismissed.

2. The record reveals that initially the proceeding for restoration of the land under Section 3 and 4 of the Maharashtra Restoration of the land to Schedule Tribe came to be filed in the year 1979 before the Tahsildar & ELT between the petitioner's father Laxman and D. Dayabhai & Co. Pvt. Ltd. The Tahsildar & DLT by his order dated 19th July, 1979 observed that the case does not fall under the provisions of Section 3 and 4 of the Maharashtra Restoration of Land to Schedule Tribes Act, 1974. The Tahsildar observed that the name of the petitioner's father has already been removed from the record and he has not become occupant, tenant or purchaser of the land on 1st April, 1997. It was also observed that there is no transfer of the said land from tribal to non-tribal and therefore the provisions of Section 3 and 4 of the Maharashtra Restoration of Land to Schedule Tribes Act, 1974 are not applicable and accordingly dropped the proceeding.

3. This order was never challenged by the petitioner's father, nor

by the petitioner, and therefore has attained finality. The petitioner and his sister, however, subsequently in the year 2016 again approached the Tahsildar, Thane for restoration of the subject land under the provisions of Section 3 and 4 of the Maharashtra Restoration of Land to Schedule Tribes Act, 1974 by filing Tribal Case No. 1 of 2016. This case was dismissed by the Tahsildar on the ground that the earlier proceeding was initiated by the petitioner's father, and that proceeding was dropped in the year 1979. The petitioner challenged the order by filing appeal before the Maharashtra Revenue Tribunal. As stated above, the Maharashtra Revenue Tribunal dismissed the appeal agreeing with the finding recorded by the Tahsildar.

4. We are of the considered view that the petitioner or his father having chosen not to challenge the order dated 19th July, 1979, whereby the proceeding under Section 3 and 4 of the Maharashtra Restoration of Land to Schedule Tribes Act were dropped, it was not open for the petitioner to file fresh proceeding under the said provisions for the same relief. We are therefore not inclined to interfere with the impugned order.

5. The learned Counsel for the petitioner however submits that the Tahsildar's order passed in the year 1979 is non-est and that the petitioner or his father were not aware of the same and were therefore entitled to file the application was filed before the Tahsildar in the year 2016. The submission of the petitioner cannot be accepted as the petitioner himself, as a legal heir of his father, had earlier filed Writ Petition No. 7953 of 2003. Copy of which is annexed at page 291 to this petition. The petitioner had filed said petition seeking direction to the Government for initiating appropriate proceeding to restore the possession of the subject land to the petitioner by removing the present occupant thereon. He had also sought to set aside the sale deed executed by the Court Receiver in favour of D. Dayabhai & Co.. In para 11 of the appeal, the petitioner has made following averments:-

“ 11. The father of the Petitioner, namely Laxman Bala Varli @ Dive, in the year 1979 initiated proceedings under the provisions of Maharashtra Restoration of Lands to the Schedule Tribes Act, 1974. But the said proceedings came to be dropped as there was no transfer from tribal to non-tribal, because the present purchasers

have purchased the said land from Dayabhai & Co. i.e. the respondent No.1 herein, who in turn had purchased the same from the Court Receiver. Annexed herewith and marked as Exhibit “D” is the true copy of the intimation of the order passed in the said proceedings.”

6. The above stated averments clearly indicate that the petitioner was very much aware of the order passed by the Tahsildar in the year 1979 under which the proceeding under Section 3 and 4 of the said Act were dropped. The said petition was dismissed by the Division Bench of this Court by order dated 27th June, 2005. This order has also attained finality. Having failed to get the relief in earlier proceedings, the petitioner cannot re-agitate the same issue by filing fresh proceedings. Hence, in our considered view, the Tahsildar was justified in dismissing the proceeding of the petitioner.

7. The learned Counsel for the petitioner submits that the order of Tahsildar passed in the year 1979 is the outcome of fraud. It is settled position of law that fraud is required to be pleaded and proved. In the absence of any pleading thereof, we are not inclined to entertain this plea.

8. Before we conclude, we must mention that the respondent no.11, who is the sister of the petitioner has also challenged the Tahsildar's order passed in the year 1979, by filing a revision before the Government and we are told that the said revision is pending. We make it clear that the Revisional Authority shall dispose of the said revision independently on its own merits and in accordance with law.

9. Subject to the above, we do not find any merit in the petition. The same is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)