

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2566 OF 2016

- 1) Ashroba S/o Kadaji Shelke,
Age : 76 years, Occu: Agri.,
R/o Bhilaj, Tq. Jintur, Dist. Parbhani.
- 2) Sundrabai W/o Ashroba Shelke,
Age : 71 years, Occu: Agri.,
R/o Bhilaj, Tq. Jintur, Dist. Parbhani. ...Petitioners

Versus

- 1) The Union of India,
Through its Secretary,
Tribal Affairs Ministry, New Delhi.
- 2) The Government of Maharashtra,
Through Principal Secretary,
Tribal Development Department,
Mantralaya, Mumbai.
- 3) Sub Divisional Officer (S.D.O.) and
President Sub Divisional Forest Scheduled
Tribes and other Traditional Forest
Dwellers (Recognition of Forest Tribe)
Committee, Selu, Dist. Parbhani.
- 4) The District Collector, Parbhani,
and President District Level Forest
Scheduled Tribes and other
Traditional Forest Dwellers (Recognition
of Forest Tribe) Committee, Parbhani,
Dist. Parbhani.
- 5) Deputy Forest Protection Officer,
Forest Department, Parbhani,
Tq. and Dist. Parbhani. ...Respondents

Mr M.P. Kale, Advocate for Petitioners
Mr K.N. Lokhande, Assistant Government pleader for
Respondents-State

**CORAM : PRASANNA B. VARALE AND
ANIL S. KILOR, JJ.**

DATE : 05.11.2019

ORAL JUDGMENT : (PER : ANIL S. KILOR, J)

1. Rule. Rule made returnable forthwith. With the consent of the advocates of the parties, the writ petition is taken up for final disposal at admission stage.

2. The petitioners claim to be “forest dwelling Scheduled Tribes” as they belongs to caste ‘Aundh’ which is recognized as Scheduled Tribes. They further claim to be in possession of land Gut No.81 admeasuring two hectors situated at village Bhilaj, Tal. Jintur, Dist. Parbhani since 1972. The petitioners accordingly applied under the provisions of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for short ‘the Act’) for regularization of their encroachment, which has been rejected by the Collector, vide its order dated 17.08.2015. The petitioners have called in question the legality and correctness of the said order dt. 17.08.2015, by way of the present writ petition.

3. The brief facts, which are necessary to consider the case of the rival parties, are stated herein below.

4. The petitioners are claiming to be ‘Aundh’ which is recognized as Scheduled Tribes. The petitioners are further claiming to be in possession of land Gut No. 81, admeasuring two hectors

situated at village Bhilaj, Tal. Jintur, Dist. Parbhani since 1972. They also claim that prior to them, their forefathers since 4 to 5 generations were in possession of the land in dispute.

5. After the Act of 2006 came into force, the petitioners applied under section 4 of the said Act for recognition of and vesting of rights as "forest dwelling scheduled tribes".

6. The Circle Inspector and Talathi on 01.08.2007 prepared the panchanama relating to the land in question. The panchanama acknowledges possession of the petitioners by way of encroachment for the period from prior to 35 years. The joint measurement was also carried out by Talathi, Village Development Officer and the Range Forest Officer to determine the exact location of the land, which has been encroached by the petitioners. The measurement and panchanama was prepared on the basis of G.P.S. system.

7. As per the provisions of the Act, Village Level Committee visited the spot and submitted its report to the Gram Sabha and the Gram Sabha recommended the proposal of the petitioners and forwarded the same to the Sub Divisional Committee for recognition of forest sites.

8. The Sub Divisional Committee after verifying the claim referred it to the District Level Committee for the further decision.

9. However, the Collector rejected the proposal of the petitioners on 17.08.2015, the same is under challenge in the present petition.

10. Shri M.P. Kale, learned Counsel for the petitioners submits that the petitioners are belonging to Scheduled Tribes and as per the provisions of the Act of 2006, the petitioners applied for recognition of their forest rights in view of the fact that the land in question that is Gut No.81 admeasuring two hectares 0 R, situated at village Dongar Tala, is in possession of the petitioners since 1972 and prior to that it was in possession of the forefathers of the petitioners.

11. According to the learned Counsel for the petitioners, once the Sub Divisional Officer has recommended the proposal of the petitioners for recognition of their forest rights, the District Level Committee has to approve the recommendation of the Sub Divisional Officer and can not reject it.

12. The learned Counsel for the petitioners argues that the Scheme of the Act of 2006 does not give any power to the Collector, who is the Chairman of the District Level Committee to reject the proposal once it is being recommended by the village Level Committee and the Sub Divisional Officer.

13. Per contra, the learned Assistant Government Pleader Shri K.N. Lokhande pointed out that the forest land situated in village Dongar Tala and admittedly the petitioners are not residents of the village Dongar Tala, but they are residents of village Bhilaj, and therefore, the provisions of Act, 2006 will not apply to the case of the petitioners, and therefore, on the report of the Forest Officer, bringing the said fact to the notice of the Collector, the Collector rightly rejected the proposal of the petitioners.

14. The learned Assistant Government Pleader further urged that right to grant approval includes right to reject the approval, and therefore, according to him, the contentions of the petitioners that there is no power lies with the Collector being Chairman of the District Level Committee to reject the recommendation once made by the Village Level Committee and the Sub Divisional Officer, has no merit. The learned Assistant Government Pleader thus, prayed for dismissal of the present writ petition.

15. To consider the rival contentions, it is necessary to refer the definition of "Forest Dwelling Scheduled Tribe" given under the Act, which reads thus:

"forest dwelling Scheduled Tribes means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bonafide livelihood needs and includes the Scheduled Tribe pastoralist communities"

16. It is clear from the definition of "Forest Dwelling Scheduled Tribe" that the members or community of the Scheduled Tribes who primarily reside in forest and who depend on forest or forest lands for bonafide livelihood is a Forest Dwelling Scheduled Tribe.

17. It is undisputed fact that the petitioners are residents of village Bhilaj whereas, the rights claimed by the petitioners on the land in dispute is within the forest area of village Dongar Tala. Thus, from the said fact, we have no hesitation to hold that the petitioners are not primarily residing in the forest, which is mandatory as per the provisions of the Act, 2006.

18. The submission of the petitioners that the village Dongar Tala and village Bhilaj are adjoining villages. According to him, there is Gut Gram Panchayat for both the villages i.e. village Dongar Tala and Bhilaj and therefore, though the land in question is situated in forest area of Dongar Tala, it will not make any difference as far as rights of the petitioners under the Act of 2006 are concerned. In view of the definition of "Forest Dwelling Scheduled Tribe" under the Act, it is apparent from the record that the petitioners do not fulfill the condition of residents of forest village, and therefore, according to us the Collector on the report of the Forest Officer rightly rejected the claim of the petitioners.

19. That as far as the other contentions of the petitioners as regards the powers of the District Level Committee, since the petitioners failed to establish their entitlement under the Act 2006, this Court is of the opinion not to enter into the said issue in this matter. Thus, without touching to the said issue and keeping the said issue open, we hold that the petitioners are not entitled for the rights claimed by the petitioners as "Forest Dwelling Scheduled Tribe", and therefore, the petition deserve to be dismissed. Accordingly, the petition is dismissed with no order as to costs.

[ANIL S.KILOR]
JUDGE

[PRASANNA B. VARALE]
JUDGE

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