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

**WRIT PETITION NO.9868 OF 2016**

**Savaliram Radhu Wagh**
**Since deceased through LRs**
**Vittal Savaliram Wagh**
**since deceased through LRs**
**Kedarnath Vittal Wagh and ors. : Petitioners.**
**Versus**
**Balu Bhaguji Kute : Respondent.**

**Mr. Bhushan V Deshmukh for the Petitioners.**
**None for the Respondent.**

**CORAM : S. S. SHINDE, J**
**DATE : 26th March 2019**

**P.C.**

1 The writ jurisdiction of this Court is invoked against the judgment and order dated 04/12/2015 passed by the Maharashtra Revenue Tribunal, Mumbai (for short "MRT") by which order the Appeal bearing No. TRI/APL/NSK/41/2015 filed by the Respondent herein came to be allowed and resultantly the order passed by the Tahasildar, Niphad in Adiwasi Case No.8/2000 dated 24/02/2015 came to be set aside.

2 The facts giving rise to filing of this Writ Petition can in brief be stated thus :-

The proceedings before the Tahasildar, Niphad is in respect of land bearing Gat No.322 admeasuring 1 H.58 R. situated at village Saykheda.

In the year 1941, the land in question was sold by the predecessor of the Respondent herein to the predecessor of the Petitioners by a registered document which was registered at Sr.No.1348. Thereafter the Respondent herein has purchased the said land by a registered sale deed dated 22/05/1985 for a consideration of Res.35,000/- from one Savaliram Radhu Wagh and others. The said sale deed is registered with Deputy Registrar, Niphad at Sr. No.1059 of the year 1985. On the basis of said sale deed, an entry was effected in the revenue records vide Mutation Entry No.430. Whilst effecting the said mutation entry, remarks were made in the other rights column of 7x12 extract that the land belongs to tribal. Because of the said remarks suo motu proceedings under section 3 of the Restoration Act of 1974 r/w provisions of Section 36 & 36A of the Maharashtra Land Revenue Code, 1996 were initiated by the Tahsildar, Niphad. In the said proceedings, the notices were issued to the Petitioners and the Respondent. The Respondent herein filed say to the proceedings along with the documents. The Petitioners herein also filed their written say and contended that the transaction is against the provisions of the Act of 1974 and they are entitled for the restoration of the land and objected to remove the remarks made in the other rights column from the revenue record. They have also produced the photocopies of their caste certificates issued by the Sub Divisional Officer, Niphad.

3 The Tahsildar, Niphad on the basis of the material on record and

after considering the submissions placed before him, recorded a finding that the Petitioners herein, who are the original respondents before the Tahsildar, are tribals under the provisions of the Act of 1974 as they belong to Hindu Bhil Tribe which is recorded as Scheduled Tribe. It is also recorded by Tahsildar that the transaction between the parties was executed without obtaining requisite permission from the competent authority. In so far as compensation is concerned, the Tahsildar held that no proof is produced on record, hence separate proceedings to be initiated. Accordingly by order dated 24/02/2015 the Tahsildar has directed to restore the land to the Petitioners.

4 Being aggrieved with the said order of Tahsildar, Niphad, the Respondent herein approached the MRT, Mumbai by way of Appeal No.41 of 2015. As indicated above, the learned President of the MRT Mumbai by the impugned order dated 04/11/2015 has allowed the said Appeal filed by the Respondent herein thereby setting aside the order dated 24/02/2015 passed by the Tahsildar in Adiwasi Case No.8 of 2000. The MRT was of the view that the transaction dated 22/05/1985 between the parties is not covered within the meaning of transfer as defined under section 2(1)(i) of the Act of 1974. The MRT has recorded the finding that the Tahsildar has committed an error in holding that the Petitioners belong to the tribal community in the absence of caste validity certificate issued by the Caste Scrutiny Committee. Accordingly the MRT has allowed the Appeal filed by the Respondent herein by order dated

04/11/2015. It is the said order dated 04/11/2015 passed by the MRT which is taken exception to by way of the above Writ Petitions.

5 The learned counsel appearing on behalf of the Petitioners submitted that the Petitioners belong to Scheduled Tribe and therefore the transaction dated 22/5/1985 between the parties is hit by the provisions of the Act of 1974. The Revenue Authorities have made remarks in the other rights column that the land belongs to the tribal. He further submitted that the Petitioners have already produced on record the photocopies of their caste certificates issued by the Sub-Divisional Officer, Niphad. The learned counsel for the Petitioners also contended that the Petitioners are entitled for the restoration of the land, and therefore, they rightly objected to remove the remarks made by the Revenue Authorities at the time effecting the Mutation Entry No.430. He therefore contended that the Tahsildar, Niphad has rightly held that the land in question belongs to the tribal and the Petitioners herein are entitled for restoration of the said land. He further contended that the MRT has committed an error in holding that the transaction between the parties does not hit the provisions of the Act of 1974. He lastly contended that the impugned order passed by the MRT is required to be quashed and set aside, and the order passed by the Tahsildar is required to be upheld.

6 I have heard the learned counsel for the Petitioners. It appears

that on the basis of remarks made in the other rights column, that the proceedings under Section 3 of the Act of 1974 were initiated by the Tahasildar Niphad. In the said proceedings notices were issues to the Petitioners and the Respondents. The Petitioners produced photocopies of their caste certificates before the Tahsildar. The Tahsildar recorded a finding that the Petitioners belongs to Hindu Bhil which is a scheduled tribe and therefore the transaction executed between the parties was without obtaining requisite permissions. Accordingly the Tahsildar passed the order directing to restore the land to the Petitioners. In the Appeal the said order of Tahsildar has been set aside by the MRT. The MRT held that the transaction between the parties is not covered within the meaning of transfer as defined under Section 2(I)(i) of the Act of 1974. The MRT observed that the Tahsildar has committed an error in directing the restoration of land to the Petitioners in the absence of caste validity certificate issued by the Caste Scrutiny Committed.

7 It is pertinent to mention at this stage that before the MRT the Applicants i.e. the Respondent herein has disputed the claim of the Petitioners herein that the Petitioners belong to tribe community. It was also brought to the notice of the authorities below that the Petitioners herein have not placed on record their caste validity certificates. Admittedly there was no tribe/caste validity certificate produced by the Petitioners on record before the authorities below. Therefore as rightly observed by the MRT that the Tahsildar has

committed an error in restoring the land in favour of the Petitioners herein. Hence the findings recorded by the MRT to the effect that the Tahsildar has committed an error in holding that the Petitioners belong to the tribal community in the absence of caste validity certificate issued by the Caste Scrutiny Committee cannot be said to be perverse. It is required to be noted at this stage that the caste of the Petitioners as belonging to Hindu Bill Scheduled Tribe has to be validated from the Caste Scrutiny/Verification Committee. Therefore there is no reason to interfere with the impugned order of the MRT. However, liberty is granted to the Petitioners herein to file fresh proceedings after obtaining tribe/caste validity certificate from the Competent Caste Scrutiny/Verification Committee for reconsideration. In that view of the matter, the Writ Petition stands disposed of.

**[S. S. SHINDE , J]**