

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1828/2018

(CHABELAL JANGLI RATNAKAR & OTHERS VERSUS WASUDEO BHIKAJI GHARAT & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.D. Meghe, counsel for petitioners.
Shri A.M. Sudame, counsel for R-1.
Shri A.V. Palshikar, A.G.P. for R-2 & 3.

CORAM : A.S. CHANDURKAR, J.

DATE : JULY 12, 2019.

The challenge in the present writ petition is to the order passed by the Additional Commissioner on 13.10.2017 thereby dismissing the appeal preferred by the petitioners under Section 247 of the Maharashtra Land Revenue Code, 1966 (for short, 'the Code') and confirming the order passed by the Tahsildar on 13.12.2016 directing restoration of the land that was purchased by the petitioners on 29.02.1980 from the father of the respondent no.1.

According to the petitioners on 29.02.1980, Field Survey No.176/2 was purchased from the father of respondent no.1-Bhikaji. The petitioners were in possession since that date. On 09.02.2015, the son of the vendor Bhikaji moved an application under Section 36A of the Code seeking restoration of possession on the ground that the sale-deed had been executed by his father who was a tribal in favour of the petitioners who were non-tribals without obtaining prior permission of the Competent Authority. That application was moved before the Tahsildar who after hearing

the parties allowed the said application and directed restoration of possession. The appeal filed by the petitioners before the Additional Commissioner came to be dismissed. Being aggrieved, the present writ petition has been filed.

Shri P.D. Meghe, learned counsel for the petitioners raised two fold contentions. According to him, the application dated 09.02.2015 had been filed beyond the period of thirty years as contemplated by the provisions of Section 36A(4) of the Code. As the sale-deed was executed on 29.02.1980, the application for restoration ought to have been moved within a period of thirty years from that date. The application dated 09.02.2015 was moved after the period of thirty years. Hence, it was not liable to be entertained. The other contention urged was that the restoration was not sought by vendor-Bhikaji but by his son, respondent no.1. The respondent no.1 could not be said to be a person interested to enable him to move such application. Both these aspects were not considered by the Tahsildar or by the Additional Commissioner in appeal. It was thus submitted that these aspects would vitiate the impugned order.

Shri A.M. Sudame, learned counsel for the respondent no.1 and Shri A.V. Palshikar, learned Assistant Government Pleader for the respondent nos.2 and 3 supported the impugned order. Shri A.M. Sudame, learned counsel, referred to the provisions of Section 36A(4) of the Code and submitted that by virtue of Maharashtra Act No.XLIII of 2011 said provisions had been amended and an application could be made within a period of thirty years from 06.07.2004. As the application in question was made within that period, it was rightly entertained. Further the respondent no.1 being the son of the vendor he was a person interested and he was entitled to move the application in question. Both the Authorities

had considered all relevant aspects and had rightly directed restoration of possession.

On hearing the learned counsel for the parties and on perusing the documents on record, it is found that the Authorities were justified in directing restoration of possession pursuant to application dated 09.02.2015. The provisions of Section 36A(4) after being amended by Maharashtra Act No.XLIII of 2011 indicate that an application for restoration of possession by a tribal can be made within a period of thirty years from 06.07.2004. The earlier provision of requiring such application to be made within thirty years from the date of transfer of the occupancy now ceases to operate. The submission that the period of thirty years should be reckoned from 29.02.1980 cannot be accepted in view of the amended provision which stipulates an application to be made within thirty years from 06.07.2004. That contention therefore does not deserve acceptance.

It is not in dispute that the applicant is the son of Bhikaji who had sold the land in question to the petitioners. The provisions of Section 36A(4) of the Code use the expression “any person interested”. Its import is wide to include the son of the tribal transferee. It therefore cannot be said that the respondent no.1 did not have any interest in the said land. It is thus seen that the Authorities have considered all the relevant aspects. Since the transfer of the land in question was by a tribal in favour of a non-tribal on 29.02.1980 and the application for restoration was moved within a period of thirty years from 06.07.2004, the jurisdiction has been rightly exercised. There is no ground to interfere with the impugned order.

The Writ Petition is therefore dismissed. No costs.

JUDGE

APTE