IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4224/2016

Shri Dhondu s/o Hanumantu Gedam
...Versus...
Lukman Musa Baksh and others

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

Ms A.S. Athaley, Counsel for petitioner
Shri N.R. Bhishikar, Counsel for respondent no.1
Shri H.D. Dubey, AGP for respondent nos.2 & 3

CORAM : AVINASH G. GHAROTE, J.
DATE : 03/03/2020

1. Heard Ms Athaley, learned Counsel for the petitioner, Shri Bhishikar, learned Counsel for respondent no.1 and Shri Dubey, learned Assistant Government Pleader for respondent no.2 and 3.

2. By the present petition, challenge is raised to the order dated 17/1/2014, as passed by the Maharashtra Revenue Tribunal in Appeal No.109/2/2010, whereby the proceedings were remanded back to the Tahsildar for fresh determination.

3. The dispute relates to the land of Survey No.41 (New Survey No.69), admeasuring 4.89 Hectares, which was belonging to Hanumantu Gedam, who is claimed to have

transferred the same to one Sharifabi Musa Baksh, the mother of the respondent no.1 by sale-deed dated 21/5/1971.

4. On proceedings being initiated under Section 3 (1) of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as “The Act of 1974”), an order came to be passed on 10/12/1977 in Revenue Case No.400/LND/31/D/76-77, whereby the possession of the entire land was directed to be taken from Sharifabi w/o Musa Khan and restored to Shri Hanumantu Gedam free from encumbrances. Sharifabi w/o Musa Khan is the mother of the respondent no.1. This order dated 10/12/1977, was not challenged by either Sharifabi or anyone claiming through her and thus attained finality. It however so happened that the Sub Divisional Officer, Rajura, by a licence dated 5/6/1979, which is claimed to have been issued in pursuance to the order dated 10/12/1977, granted half of the land of Survey No.41, to Sharifabi, consequent to which Sharifabi continued to be in possession of 50% of the land. It is, however, stated by the learned Counsel for the petitioner that the possession of the entire land was in fact handed over to Hanumantu Gedam, who continued in possession thereof and continues in possession even today.

5. The revenue record in pursuance to the licence dated 5/6/1979 therefore stood mutated half in the name of Sharifabi and half in the name of Hanumantu Gedam. In the

year 2008, the respondent no.1 noticed that the entire land stood mutated in the name of Hanumantu Gedam, as a result of which, an application was filed for correction of the record upon which the Tahsildar, Korpana on 2/12/2008 passed an order rejecting the same which was challenged before the Sub Divisional Officer by way of an appeal which came to be rejected by the order dated 3/9/2010. On a challenge being raised to the same, the Maharashtra Revenue Tribunal by the impugned order dated 17/1/2014 set aside the order dated 2/12/2008, as passed by the Tahsildar as well as the one dated 3/9/2010, as passed by the Sub Divisional Officer and remanded the matter to the Tahsildar for fresh enquiry according to law, which is the subject matter in the present petition.

6. At the outset, upon a query being posed, the learned Counsel for the respondent no.1 conceded to the fact that the order dated 10/12/1977 has not been upset by any challenge thereto. He also concedes to the fact that in between 10/12/1977 and 5/6/1979, there are no other proceedings initiated between the parties so as to enable the Sub Divisional Officer to divide the land in equal parts. That being the position, in my humble opinion, rights to the entire land of Survey No.41, were lost by Sharifabi by virtue of the order dated 10/12/1977, in light of which, there was no legal basis for the execution of a ‘Parwana’ on 5/6/1979, giving 50% of the land to her. This is more so, for the reason

that the 'Parwana' makes a specific reference to the order dated 10/12/1977, as passed in the proceedings under the Act of 1974.

7. The reliance placed by Shri Bhishikar, learned Counsel for the respondent no.1, on the proviso to Section 3 of the Act of 1974, is clearly misplaced, for the reason that the order dated 10/12/1977 does not exercise any power under the proviso. That being the case, the order, as passed by the learned Maharashtra Revenue Tribunal, 17/1/2014 to remand the matter back to the Tahsildar, is clearly unsustainable in law. The same is, therefore, quashed and set aside. In light of this, the consequent order, as passed by the Tahsildar dated 19/6/2015, which is a consequence to the order dated 17/1/2014, also does not survive, in the result of which, the same is also quashed and set aside, and the Appeal TRI-A-109/2/2010 before the Maharashtra Revenue Tribunal is dismissed.

The writ petition therefore is allowed in the above terms. No order as to costs.

JUDGE