

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7044 OF 2018

Laxman s/o Haribhau Vyawahare & ors. ... **PETITIONERS**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

.....
Shri V.S. Bedre, Advocate for petitioners
Shri A.B. Chate, A.G.P. for respondents No.1 and 2
Shri A.G. Ambetkar, Advocate for respondent No.3
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CORAM : R. G. AVACHAT, J.

Date of reserving order : 2nd March, 2021

Date of pronouncing order : 7th May, 2021

ORDER :

The challenge in this Writ petition is to the order dated 9/9/2016, passed by the Tahsildar, Parner in Adivasi Restoration Case No.125/2016 and confirmed by Deputy Commissioner (Rehabilitation), Nasik Division, Nasik in R.T.S. Revision No.719/2016.

2. The respondent No.3 preferred the application to the Tahsildar for restoration of the lands, Gut Nos.96 and 97, situated at Gajadipur Wadgaon Savtal, Taluka Parner, District

Ahmednagar on the ground of having been transferred/ sold in contravention of the provisions of Section 36-A of the Maharashtra Land Revenue Code, 1966 (MLRC). The Tahsildar, on enquiry, held the transfers/ sale of those lands to have been in contravention of Section 36A of the MLRC and, therefore, to be invalid, and directed those lands to vest in the State Government. The petitioners unsuccessfully challenged the said order in revision before the Deputy Commissioner. The petitioners are, therefore, before this Court.

FACTS :-

3. The lands Gut Nos.96 and 97 originally belonged to one Rambha Bala Pawar, grandfather of the respondent No.3. Rambha and his son Uttam sold these lands to Rahibai Haribhau Vyawahare on 3/3/1986. Rahibai, in turn, sold these lands to Ramdas Pokale, Shankar Pokale and Laxman Vyavahare on 15/2/2011. Ramdas and Shankar, in turn, sold the lands to Bhau Chormale, Sona Dehekale and Bhima Shingate (petitioners No.2 to 4 herein).

4. The respondent No.3 moved the application dated 24/1/2014 to the Collector, alleging the lands to have belonged to his grandfather, a person belonging to Scheduled

Tribe and the sale of the lands, therefore, were in breach of Section 36-A of the MLRC. He also claimed for restoration of those lands back to him and other heirs of late Rambha Bala Pawar.

As stated above, both the authorities have concurrently held that the lands belonged to a tribal and have been transferred to a non-tribal without previous sanction of the Collector with the approval of the State Government.

5. Heard. Mr. V.S. Bedre, learned counsel for the petitioners would submit that, both the authorities below have not taken into consideration the fact that the lands have changed many a hands during the period of 35 years. The respondent No.3 did not take exception to the earlier sale transactions. Late Rambha Pawar has other heirs/representatives besides the respondent No.3. They have not taken exception to the transfer of the lands under various sale deeds. The learned counsel has relied on the judgment of this Court in case of **Vasant Mahadeo Tikekar and others Vs. State of Maharashtra and others [2010(4) Mh.L.J. 773]**, and ultimately urged for remand of the matter for de novo hearing since the Tahsildar did not take into consideration all the aforesaid aspects.

6. Shri A.G. Ambetkar, learned counsel for respondent No.3 would, on the other hand, submit that the lands belonging to tribal came to be transferred to a non-tribal. The sale instances are, therefore, invalid. The authorities below have rightly allowed the application moved by the respondent No.3. No interference is therefore called for with the impugned order.

The learned A.G.P. supported the impugned order.

7. Section 36-A of the MLRC speaks of restrictions on transfers on transfers, occupancies by transfer. Section 36A(1) reads :-

“36. (1) Notwithstanding anything contained in sub-section (1) of Section 36, no occupancy of a Tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, be transferred in favour of any non-tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any Tribunal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-Tribal and except with the previous sanction –

(a) in the case of a lease or mortgage for a period not exceeding 5 years, of the Collector; and

(b) in all other cases, of the Collector with the previous approval of the State Government :

Provided that, no such sanction shall be accorded by the Collector unless he is satisfied that no Tribal residing in the village in which the occupancy is situate or within five kilometers thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

Provided further that, in villages in Scheduled Areas of the State of Maharashtra, no such sanction allowing transfer of occupancy from tribal person to non-tribal person shall be accorded by the Collector unless the previous sanction of the Gram Sabha under the jurisdiction of which the tribal transfer resides has been obtained.

Provided also that, in villages in Scheduled Areas of the State of Maharashtra, no sanction for purchase of land by mutual agreement, shall be necessary, if, –

- (i) such land is required in respect of implementation of the vital Government projects; and
- (ii) the amount of compensation to be paid for such purchase is arrived at in a fair and transparent manner.”

8. Moreover, Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (Maharashtra Act No.XIV of 1975) (Act of 1975 for short) reads :-

“3. (1) Where due to transfer –

- (a) the land of a Tribal-transferor is held by a non-

Tribal-transferree, or

(b) the land acquired in exchange by a Tribal-transferor is less in value than the value of the land given in exchange,

and the land so transferred is in possession of the non-Tribal-transferee, and has not been put to any non-agricultural use on or before the 6th day of July, 1974, then, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any Court, Tribunal or authority, the Collector either suo motu at any time, or on the application of a Tribal-transferor, made, within thirty years from the 6th July 2004 shall, after making such inquiry as he thinks fit, direct that –

(i) the lands of the Tribal-transferor and non-Tribal-transferee so exchanged shall be restored to each other; and the Tribal-transferor, or as the case may be, the non-Tribal-transferee shall pay the difference in value of improvements as determined under clause (a) of sub-section (4), or

(ii) the land transferred otherwise than by exchange be taken from the possession of the non-Tribal-transferee, and restored to the Tribal-transferor, free from all encumbrances and the **Tribal-transferor** shall pay such transferee and other persons the amount determined under clause (b) of sub-section (4).

Provided that, where land is transferred by a Tribal-transferor, in favour of non-Tribal-transferee before the 6th day of July, 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so transferred shall be restored to the Tribal-transferor.

Explanation : Where the land of a tribal and non-Tribal are purported to have been transferred to each other, otherwise than by exchange,”

9. Section 2(j) of the Act of 1975 defines the term "Tribal" to mean a person belonging to a Scheduled Tribe within the meaning of explanation to Section 36 of the MLRC and includes his successor-in-interest. Section 2(k) of the Act of 1975 states tribal-transferor includes his successor-in-interest. It is not in dispute that Rambha Bala Pawar belonged to Bhil community. The Bhil community has been recognized as Scheduled Tribe. There is on record a copy of Tribe Certificate issued by competent authority recognizing Ashok Pawar to have belonged to Scheduled Tribe – Bhil. Undisputedly, the petitioner and other transferees are non-Tribals. The lands Gut Nos.96 and 97 changed many a hands from March 1986 to July 2012. Since the lands have been sold by a tribal without previous sanction of the Collector with the approval of the State Government. to the non-Tribal, first in March 1986 and their subsequent sale on 15/2/2011 and 10/7/2012, are hit by Section 36-A of the MLRC. The sale transactions are invalid.

10. It is true, late Rambha Pawar, original owner of the Tribal lands has other heirs/ legal representatives including the respondent No.3. It is only the respondent No.3 who has challenged the transfer of the lands. It needs no

mention that, tribal-transferor includes his successor-in-interest. The successor-in-interest may be one or more. The application dated 24/1/2014 moved by the respondent No.3 suggests that it was moved for restoration of the land to all the heirs of original tribal-transferor- Rambha. It needs no mention that, one of the successor-in-interest may file such an application for the benefit of one and all. It is also true that the respondent No.3 could have moved such application long before the lands came to be purchased by the petitioner. This, however, cannot be an excuse. The Collector has also been authorized to suo motu make enquiry as to whether transfer of lands/ occupancy is in contravention of Section 36A of MLRC. As such, there is no merit in the submission of the learned counsel for the petitioner in asking for remand of the matter.

11. I have perused the judgment in case of Vasant (supra) to find that the land therein had been purchased by one Budhiya. It was his self acquired property. Upon his death, the land was acquired by his widow – Anandibai. Although Budhiya was a Tribal, Anandibai was not. The land after having become the absolute property of Anandibai, a non-tribal, came to be sold. The proceedings under Section 3 of the Act of 1975, therefore, came to be dropped. The facts

of Vasant's case are quite different. The petitioner cannot be benefited by placing reliance on the said judgment. The respondent No.3 here claims through his grandfather – Rambha, a tribal. The respondent No.3 being successor-in-interest of the original transferor, is considered to be a tribal-transferor within the meaning of Section 2(k) of the Act of 1975.

12. When the first transfer of the tribal land was hit by Section 36-A of MLRC, the subsequent transfer thereof could not be saved. The petitioners to blame themselves for purchasing the lands which originally belonged to a tribal. Both the authorities below have rightly concluded the sale of the tribal land to have been hit by Section 36A of the MLRC. In my view, therefore, no interference is called for with the impugned orders.

The Writ Petition therefore fails and is thus dismissed. Interim relief stands vacated.

**(R. G. AVACHAT)
JUDGE**

fmp/-