

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

WRIT PETITION NO. 2344 OF 2019

Mohd. Usman Mohd. Yusuf
(Dead through Legal heirs..

(Ori. Non-applicant)

- 1] Mohammad Ataur Rahman
Mohammad Usman,
Aged 65 years, Occ : Retired.
- 2] Mohd. Atiquer Rahman Mohammad
Usman, Aged 60 years,
Occ : Retired.
- 3] Mohammad Irfanur Rahman Mohd.
Usman, Aged 54 years,
Occ : Agriculturist,

All R/o. Habib Nagar, No.1,
Walgaon Road, Amravati,
Tq. And District – Amravati.

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Petitioners

.. Versus ..

- 1] Smt. Shashikala Sahebrao Parteki,
Aged about adult, Occu : Household.
- 2] Rahul Sahebrao Parteki,
Aged about Adult, Occ : Business.
- 3] Atul Sahebrao Parteki,
Aged about Adult, Occ : Business.

- 4] Sau. Kamlabai Manik Madavi,
Aged about adult, Occ : Household.

All R/o. Naredi Nagar, Behind V.M.V.
Mahendra Colony, Amravati, Tq. and
District-Amravati.

- 5] The State of Maharashtra,
Through Additional Commissioner,
Amravati Division, Amravati.

- 6] Additional Collector,
Amravati Division, Amravati.

- 7] Sub-Divisional Officer,
Amravati.

- 8] Tahsildar, Amravati. .. Respondents
(Ori. Applicants)

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Shri C.A. Babrekar, Advocate for the petitioners,
Ms A.S. Lanjewar, Advocate for respondent nos.1 to 4,
Ms T.H. Khan, Assistant Government Pleader for respondent
nos.5 to 8.

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CORAM : N.B. SURYAWANSHI, J.
RESERVED ON : 11.08.2021.
PRONOUNCED ON : 27.08.2021.

JUDGMENT

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of the parties.

2. This petition takes exception to the order dated 23.1.2019 passed by the Additional Commissioner, Amravati Division, Amravati (R-5) in Revision Application No.277/MRC-81/Navsari/2017-18, by which the order passed by the Collector thereby restoring the land to the tribals is confirmed.

3. On 26.10.1994, Babarao Amrutrao Parteki, who belonged to the Gond Scheduled Tribe, purchased land Gat No. No.101/01, ad-measuring 1 Hectare 62 Ares at Mouza Navsari, Tahsil and District-Amravati from Anant Gopalrao Mahalle by a registered sale deed No.1964. On 1.2.1995, Mohd. Usman Mohd. Yusuf - the petitioner, purchased the suit land from Babarao Parteki.

4. On 18.3.1996, Babarao Parteki filed an application before the Tahsildar, Amravati for restoration of his land under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short 'Act of 1974) wherein the Tahsildar, by an exparte order restored the land to Babarao. The petitioner challenged the said order before the Sub-Divisional Officer, who maintained the said order and dismissed the appeal. Thereafter,

the appeal was referred by the petitioner before the Additional Collector, which was allowed and direction was given to the Sub-Divisional Officer to verify the matter and decide it on merit. The order of the Collector was challenged in revision before the Commissioner by the petitioner. In the said revision, the Commissioner remanded the matter back to the Sub-Divisional Officer and directed to pass order considering the provisions of Section 36 and 36-A of the Maharashtra Land Revenue Code, 1966 (for short 'M.L.R. Code').

5. In pursuance of the directions of the Commissioner, Sub-Divisional Officer reopened the case and came to the conclusion that the provisions of Section 36-A of the MLR Code are applicable to the facts of the case and since no permission of the Collector was obtained before transferring the land belonging to the tribal to non-tribal, the said transfer was illegal, hence dismissed the appeal filed by the petitioner, vide order dated 20.6.2016. The order of the Sub-Divisional Officer was challenged by the petitioner before the Maharashtra Revenue Tribunal, which was rejected for want of jurisdiction. Thereafter, the petitioner preferred appeal before the Collector

challenging the order of the Sub-Divisional Officer. The Collector, by taking into consideration the caste validity certificate issued in favour of Sunita Parteki, a close relative of Babarao Parteki, held that Babarao belonged to the Gond Scheduled Tribe. The Collector, therefore, observed that the sale transaction between the deceased Babarao and deceased Mohd. Usman Mohd. Yusuf was without obtaining prior permission of the government, hence was contrary to the provisions of the Act of 1974 and Section 36 and 36-A of the MLR Code, therefore, dismissed the appeal. The petitioner thereafter approached the Divisional Commissioner by filing a revision which was also dismissed, hence the present petition.

6. Heard the learned Advocate for the petitioners, the learned Advocate for the respondent nos.1 to 4 and the learned Assistant Government Pleader for the respondent nos.5 to 8.

7. The learned Advocate for the petitioners submitted that the Act of 1974 is applicable to the sale transaction between 1.4.1957 to 6.7.1974. Since the sale transaction between deceased Babarao and deceased Mohd. Usman Mohd. Yusuf was

of the year 1995, the provisions of the said Act are not applicable. He further submitted that deceased Babarao had purchased the land in the year 1994, by a registered sale deed, wherein his caste was mentioned as 'Kunbi'. Though the authorities below have come to the conclusion that the word 'Kunbi' appears to have been written subsequently by way of interpolation, no enquiry has been conducted in that behalf. It is wrongly presumed that the word 'Kunbi' was subsequently written. It was not possible to write the said word subsequently as the said document was in the custody of the government authorities. He further submitted that Tahsildar had no jurisdiction to try the case. No opportunity of hearing was given to the petitioner by the Tahsildar. By placing reliance on the Notification dated 15.6.1968 issued under Section 36 (2) of the MLR Code, he contended that since the land is within Municipal Council area of Amravati town, the provisions of Section 36 of the MLR Code and the Act of 1974 are not applicable. He, therefore, submits that the impugned orders passed by the Commissioner and the Collector are liable to be quashed and set aside and the petition deserves to be allowed.

8. The learned Advocate for the respondent nos.1 to 4, on the other hand, submitted that admittedly the sale transaction was entered into without obtaining prior permission of the Collector, hence the sale transaction is illegal. Tahsildar was therefore, justified in passing the order of restoration of land, which was maintained by the Sub-Divisional Officer. However, the Collector remanded the matter back. After the remand, the Sub-Divisional Officer was justified in passing the order under Section 36 of the MLR Code. She pointed out the caste validity certificate issued in favour of the respondents which are placed on record by her along with an additional reply, by which it is pointed out that the tribe claim of the respondent of Gond (18) Scheduled Tribe is validated. The validity certificates issued in favour of the respondents are placed on record. By placing reliance on the ratio in *Vimlabai w/o Janardan Mahure and another .vs. State of Maharashtra and another*, 2012 (5) Mh.L.J. 361, she submitted that the impugned orders are just legal and proper and no case is made out by the petitioners to interfere in the same.

9. The learned Assistant Government Pleader for respondent nos.5 to 8 supports the impugned orders, stating that the impugned orders are well reasoned orders and no case is made out by the petitioner to interfere in the same.

10. Admittedly, deceased Babarao had sold the suit property to deceased Mohd. Usman Mohd. Yusuf on 1.2.1995 as per Sale Deed No.208. In that sale deed, the caste of Babarao was not mentioned. It appears that when it was realized that Babarao belongs to 'Gond Scheduled Tribe', the word "Kunbi" was subsequently written in the said sale deed. It is not in dispute that 'Gond' is a Scheduled Tribe and Mohd. Usman Mohd. Yusuf was a non-tribal person. Therefore the sale transaction was between tribal and non-tribal. No permission of the competent authority was obtained before transferring the land of tribal to non-tribal. Taking these facts into consideration, the Sub-Divisional Officer was justified in recording a finding that since the sale transaction was entered into between the tribal and non-tribal and no prior permission of the Collector was obtained, the sale transaction is illegal and in such matters, the

Tahsildar has the power to restore the land to the tribal. Hence, he rightly held that Section 36-A of the MLR Code is applicable to the facts of the case and by dismissing the appeal directed the lands to be restored to the tribal i.e. the respondents.

11. The order passed by the Sub-Divisional Officer has been confirmed by the Collector stating that Babarao belonged to Gond Scheduled Tribe and the caste validity certificate of Sunita Maroti Parteki, a close relative of Babarao Parteki, was placed on record, which shows that their tribe claim was validated. Since the sale transaction between deceased Babarao Parteki and deceased Mohd. Usman Mohd. Yusuf was without permission from the government and the same was in violation of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, the Maharashtra Restoration of Lands to Scheduled Tribes Rules, 1975 and the Maharashtra Land Revenue Code, 1966, the Collector, therefore, rightly rejected the appeal filed by the petitioner.

12. The order of the Collector was confirmed in revision by the Commissioner, however, the Commissioner directed that

the necessary order of restoration of land be passed by the Tahsildar, after the validity certificate is issued in favour of the respondents.

13. The respondents, by way of additional reply, have placed on record caste validity certificates issued by the Scheduled Tribe Certificate Scrutiny Committee, Amravati Division, Amravati in their favour. Thus, the tribe claim of the respondents is validated.

14. There is no merit in the argument of the petitioner that in view of Notification dated 15.6.1968, since the land in question lies within the Municipal Corporation limits of Amravati City, the provisions of Section 36-A of the MLR Code are not applicable. The said Notification does not refer to the lands within the Municipal Corporation area. Apart from that since Section 36-A of the MLR Code was inserted by Maharashtra by amendment w.e.f. 6.7.1974, the same would prevail over the Notification, hence this submission is unacceptable.

15. Even if the contention of the petitioner that the provisions of Act of 1974 are not applicable to the facts of the

present case is accepted, since the impugned orders are passed under the provisions of Section 36 and 36-A of the MLR Code by the authorities, no fault is found with the concurrent finding of the facts recorded by the revenue authorities. The impugned orders are based on correct interpretation and application of the relevant provisions to the facts of the present case. The sale transaction was vitiated for non obtaining prior permission of the Collector under Section 36-A of the MLR Code. In that view of the matter, the impugned orders are liable to be sustained. The petitioner was not able to substantiate his contention that the provisions of Sections 36 and 36-A of the MLR Code are not applicable to the facts of the present case.

16. For the aforestated reasons, no case is made out by the petitioner to exercise extraordinary writ jurisdiction in his favour. The writ petition being devoid of any substance, is dismissed. Rule discharged. No costs.

(N.B. Suryawanshi, J.)