

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

Writ Petition No.8261 of 2019

Deepak s/o Sitaram Meshram

vs.

Shri Varlu Shripat Murke (Dead), through L.R. & others

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

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Court's or Judge's Orders

Mr. V.M. Kulsange, Advocate for the Petitioner.

Mr. T.S. Deshpande with Mr. Alpesh Deshmukh, Advocates for Respondent No.1.

Mr. H.D. Dubey, A.G.P. for Respondent Nos.2 & 3.

CORAM : MANISH PITALE, J.
DATE : 31st MARCH, 2022.

By this writ petition, the petitioner has challenged order dated 04/06/2019 passed by the Maharashtra Revenue Tribunal, Nagpur (MRT), whereby an appeal filed by respondent No.1 was allowed and order passed by the Tahsildar in favour of the petitioner under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as 'the Act of 1974' for short), was set aside.

02] The petitioner had instituted proceedings under the provisions of the Act of 1974 for restoration of land, claiming that since the predecessor of respondent No.1 was not a tribal, the sale transaction dated 05/02/1973, whereby the father of the petitioner had sold agricultural land to the predecessor of respondent No.1, was hit by the provisions of the Act of 1974.

03] By an order dated 28/12/2011, the Tahsildar allowed the application and directed the respondent No.1 to restore the possession of the land in question to the petitioner. The said order was challenged before the MRT at the behest of respondent No.1. By an order dated 28/05/2014, the MRT partly allowed the appeal filed by respondent No.1 and remitted the matter back to the Tahsildar for fresh consideration. Aggrieved by the same, the petitioner filed Writ Petition No.3863/2014. The said writ petition was allowed by an order dated 13/07/2015 and the order of remand passed by the MRT was set aside and instead the proceedings were remitted to the MRT for consideration afresh. It was directed that the appeal shall be decided on its own merits.

04] Thereafter, the MRT has passed the impugned order on 04/06/2019, *inter alia*, on the ground that the petitioner himself had initiated an earlier proceedings for identical relief under the provisions of the Act of 1974, which was dismissed by an order dated 18/02/1985 by the Tahsildar and since the said order had attained finality, no relief could be granted to the petitioner. On this basis, the order passed by the Tahsildar in favour of the petitioner was set aside.

05] Mr. Kulsange, learned Counsel appearing for the petitioner submitted that the impugned order passed by the MRT was unsustainable for the reason that there was absence of sufficient material on record to indicate that while the petitioner belonged to the tribal community, the

respondent No.1 and his predecessor did not. It was submitted that these facts were not taken into consideration in the proper perspective by the MRT while allowing the appeal filed by respondent No.1.

06] On the other hand, Mr. Deshpande, learned Counsel appearing for the contesting respondent No.1, in the first instance, invited attention of this Court to paragraph 5 of the writ petition. It was submitted that the statement in the said paragraph was false and that on this sole ground the present writ petition deserved to be dismissed. It was further submitted that the order passed by the Tahsildar on 18/02/1985, was deliberately suppressed by the petitioner from this Court. By the said order, proceeding initiated by the petitioner along with his brother under the very Act of 1974 for restoration of land, was rejected and the said order had attained finality. On this basis, it was submitted that the MRT correctly applied the principle of *res judicata* in the facts and circumstances of the present case to hold that the subsequent proceedings on the same cause of action could not have been initiated by the petitioner. On this basis, it was submitted that the writ petition deserved to be dismissed.

07] This Court has considered the material on record. It is evident that the petitioner did not place on record the order dated 18/02/1985, passed by the Tahsildar in proceedings initiated by the petitioner and his brother for relief under the provisions of the Act of 1974, while seeking restoration of the land. Instead, in paragraph 5 of the writ petition, it was stated as follows:

“5. The petitioner submits that, after the demise of deceased Sitaram, the elder brother of the petitioner by name Gunwant had filed the proceedings for restoration of suit land, however, it was rejected by the authority on the ground that the present respondent was also a tribal and, therefore, the transaction was not illegal. It is to be noted here that the said order is void ab initio, illegal inasmuch as the respondent had not filed any document including the caste validity certificate on record to substantiate his claim as belonging to the Scheduled Tribe category. The petitioner submits that the said decision is not binding on the petitioner.”

08] A perusal of the above quoted portion of the writ petition shows that a clear statement was made that the elder brother of the petitioner had filed the earlier proceedings before the Tahsildar and that the decision passed thereon was not binding on the petitioner.

09] In this context, when the order dated 18/02/1985, passed by the Tahsildar is perused, it becomes clear that the petitioner along with his elder brother had together initiated the proceedings under the Act of 1974 for restoration of possession of the land in question. A copy of the said order was produced on behalf of the contesting respondent No.1 along with his reply. This Court has perused the certified copy of the said order to satisfy its conscience. The certified copy of the order also shows that it was the petitioner along with his brother, who had initiated the said proceedings, wherein the Tahsildar held that the application for restoration of the land under the provisions of the Act of 1974, deserved to be dismissed, *inter alia*, for the reason that both the parties were tribals.

10] Thus, it becomes clear that the statement made in the above quoted paragraph 5 of the writ petition was a false statement made before this Court. The writ petition deserves to be dismissed only on this ground.

11] Apart from the aforesaid state of affairs, this Court has examined the contentions raised on behalf of respondent No.1 on the principle of *res judicata*. It is the settled law that once an order has attained finality between the parties, the same cause cannot be agitated in fresh proceedings before the very same authority. This is based on public policy and in the interest of justice. The learned Counsel appearing for respondent No.1 is justified in relying upon the judgment of the Hon'ble Supreme Court in the case of Sulochana Amma vs. Narayanan Nair – (1994) 2 SCC 14, wherein it has been held that the principle of *res judicata* equally applies to quasi-judicial proceedings of tribunals other than the civil courts. In the present case, there is no dispute about the fact that the order dated 18/02/1985, passed by the Tahsildar rejecting the application filed on behalf of the petitioner and his brother under the provisions of the Act of 1974, had attained finality. Despite, the aforesaid fact emerging from the record, the petitioner chose to initiate subsequent proceedings before the Tahsildar for the very same cause of action, which was clearly barred by the principle of *res judicata*.

12] A perusal of the impugned order shows that the MRT has taken this aspect into consideration and it is noted that the order of the Tahsildar passed in 1985 had attained finality.

13] In this context, reliance placed by the learned Counsel appearing for the petitioner on the judgment of the Hon'ble Supreme Court in the case of Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and others – (2008) 9 SCC 54, is misplaced, because while reiterating the principle of *res judicata*, the Hon'ble Supreme Court has held that even a wrong decision attracts the principle of *res judicata*, but only exceptions to the said principle are that when the judgment or order in question is passed by an authority without jurisdiction or when it is obtained by fraud. There is nothing to indicate any of these exceptions in the order dated 18/02/1985, passed by the Tahsildar. Therefore, the principle of *res judicata* squarely applied in the present case, which the MRT appreciated in the correct perspective while allowing the appeal of respondent No.1 and setting aside the order of the Tahsildar.

14] In any case, as noted above, the petitioner having made a false statement before this Court in the writ petition, disentitled himself for consideration of his case on merits.

15] In view of the above, the writ petition is dismissed.

JUDGE

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