

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

WRIT PETITION NO. 1701 OF 2019

Baliram Reva Chavhan __ Vs. __ Gajanan Shekrao Wanjare and 4 others

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

Court's or Judge's orders

Mr. A.M.Sudame, Advocate for the petitioner
Mr. R.D.Narkhede, Advocate for respondent no.1
Mrs. M.A.Barabde, AGP for respondent no.5

CORAM : AVINASH G. GHAROTE, J.
DATE : 13/06/2023

1] Heard Mr. Sudame, learned counsel for the petitioner, Mr. Narkhede, learned counsel for the respondent no.1 and learned AGP for respondent no.5.

2] The petition questions the order of the Tahsildar dated 28.9.2017, whereby under the provisions of Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribe Act, the land transferred by the father of the respondent no.1 to one Dhansingh Rathod under the sale-deed of 1967 has been directed to be restored and so also the order dated 6.2.2019 passed by the learned Maharashtra Revenue Tribunal, which confirms the order of the Tahsildar.

3] To complete the narration of facts, Dhansingh Rathod had partitioned the land between his sons and the share of the respondent no.2 came to be transferred to the respondent no.4 on 1.11.1992, who in

turn transferred it to the petitioner on 22.6.1994. The application under Section 3 of the aforesaid Act was filed on 6.1.2016. It is an admitted position that the father of the respondent no.1 belongs to Aandh community, which in certain areas of Yavatmal was declared as Scheduled Tribe. The area in which the father of the respondent no.1 was residing was not included in the notification in which such declaration was made. The area restriction was removed in the year 1976.

4] The question therefore was whether the transaction of the year 1967 which was done with the father of respondent no.1 on account of his residence was not entitled to be recognized as such and could be cancelled on account of the removal of area restrictions subsequent in point of time.

5] In the present petition itself, considering the discord between the different judicial pronouncements, the matter was referred to the Full Bench of this Court, which by judgment dated 21.4.2023 has rendered its opinion holding that subsequent recognition of a transferor as a Tribal within the meaning of Section 2(1)(j) of the Restoration Act would not entitle him to seek restoration of the land transferred by him to a non-Tribal-transferee and his subsequent recognition as such is of no assistance to him for the purpose of availing of the benefit of Section 3 of the Restoration Act.

6] Mr. Narkhede, learned counsel for respondent no.1 does not dispute the aforesaid factual position, in view of which considering the opinion of the learned Full Bench, the impugned orders dated 28.9.2017 passed by the learned Tahsildar and that of the learned MRT dated 6.2.2019 cannot be sustained and are hereby quashed and set aside and the application under Section 3 of the aforesaid Act filed by the respondent no.1 is hereby dismissed.

7] The petition is hereby allowed in above terms. Considering the circumstances, no costs.

JUDGE

Rvjalit