



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

Writ Petition No.2462/2023

Ramkrushna V Varsha and others

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

Court's or Judge's Orders

Mr. Prasad Deshpande, Adv for petitioner.
Mr. U.A. Gosavi, Adv for resp. no.1.
Mr. Damle, AGP for resp. nos. 2 to 6.

CORAM : AVINASH G GHAROTE J.

DATE : 04-10-2023

Heard Mr. Deshpande, learned Counsel for the petitioner, Mr. Gosavi, learned Counsel for respondent no.1 and Mr. Damle, learned AGP for respondent nos.2 to 6.

2. The petitioner had executed a sale deed of Survey No.1, admeasuring 1.51 HR at mouza Kothara (Rith), Tah. Chimur, District Chandrapur on 13-08-1997 for a consideration of Rs 80,000/- in favour of the respondent no.1 which position is not disputed. A challenge to the sale deed was raised by the sons, daughter and wife of the petitioner in RCS No.25/2021 (old S.C.S. No. 164/98), on the ground that they were the co-owners along with the present petitioner, which suit came to be dismissed by the judgment and decree dated 29-11-2005 (pg 66). This it is stated has attained finality. The petitioner thereafter approached the learned Sub Divisional Officer, Chimur (S.D.O.), by way of an application u/s 36A of the Maharashtra Land Revenue

Code (MLR Code), for restoration of the aforesaid land on the ground that the petitioner belongs to 'Mana' tribe, which was a scheduled tribe and therefore the petitioner was entitled to restoration. The S.D.O. by his order dated 10-06-2014 (pg 19) accepted the plea of the petitioner and allowed restoration. An appeal to the Collector by the respondent no.1 came to be dismissed by the order dated 30-09-2015 (pg 26). A further appeal against that to the Commissioner also came to be dismissed on 04-04-2016 (pg 28). In a writ petition filed i.e. WP No.3932/2016 by the judgment dated 01-08-2019 (pg 42) the order of the Commissioner was set aside and the matter was remitted back as the petitioner herein did not have a validity certificate of belonging to the 'Mana' Scheduled Tribe at that point of time. Thereafter, the Caste Scrutiny Committee has granted a certificate of validity to the petitioner belonging to the 'Mana' Scheduled Tribe on 23-12-2021 which was submitted before the learned Commissioner, who by the impugned order dated 25-01-2023 (pg 53) has allowed the appeal on the ground that the certificate of validity was granted on 23-12-2021 and therefore would not affect the transaction which was effected on 13-08-1997 (pg 53).

3. Being aggrieved by the same, the present petition has been filed.

4. The learned Counsel for the petitioner submits that the grant of validity certificate by the Caste Scrutiny Committee on 23-12-2021 would not have the effect of

declaring the social status of the petitioner as belonging to the 'Mana' Scheduled Tribe, but it is only recognizing it to be so. He therefore submits that the grant of validity on 23-12-2021 cannot come in the way of the petitioner from seeking restoration of the land as indicated above and the impugned order cannot be sustained.

5. Mr. Gosavi, learned Counsel for respondent no.1, while supporting the impugned order places reliance upon the judgment of the learned Full Bench of this Court in Baliram s/o Reva Chavan V Gajanan s/o Shekrao Wanjare and others Writ Petition No.1701/2019 decided on 21-4-2023 and specifically para 31, to contend that the social status of the petitioner for availing the benefit thereof would be available to the petitioner only from the date of grant of validity and therefore would not affect the said transaction executed by the petitioner in favour of respondent no. 1 which was on 13-08-1997. It is also contended that on 27-09-2013 when the proceeding under Section 36 of the MLR Code was initiated by the petitioner, absence of validity would make the proceedings not maintainable.

6. Mr Damle, learned AGP, supports the impugned order.

7. It cannot be disputed, that the tribe 'Mana' was included in entry 12 of the Presidential (Scheduled Tribe) Order, 1950 by the amendment of the year 1956, which pertained to the scheduled tribe 'Gond' and therefore to claim

Scheduled Tribe status it was required to establish affinity with the entry 'Gond'. However, by the amendment of the year 1976 to the Presidential (Scheduled Tribe) Order, 1950 entry 12 stood substituted by entry 18 and, the word “including” as occurring in entry 12 after the word 'Gond' was deleted and so also comma was added after each entry which made every tribe included in that entry 18 independently entitled to the benefit of the social status of a Scheduled Tribe and consequent reservations. This position has been held in Mana Adim Jamat Mandal Vs State of Maharashtra and others (2003 (3) Mh.L.J. 513), which has been upheld by the Hon'ble Apex Court in State of Maharashtra and others V Mana Adim Jamat Mandal (2006 (3) Mh.L.J. 407). It is thus apparent that the entry of 'Mana' as scheduled tribe in the presidential order as an independent tribe was made way back in the year 1976 on account of the amendment to the Presidential (Scheduled Tribe) Order, 1950.

8. The contention that it is only after the validity granted by the Caste Scrutiny Committee that the benefits of reservation would be available is clearly misconceived as the benefit of the social status of a Scheduled Tribe is not conferred on account of grant of validity which only recognizes a claim by a person of belonging to a scheduled tribe, but by the independent entry, in the Presidential (Scheduled Tribe) Order, 1950, which was in the year 1976. It would also be material to note that earlier in point of time there was no process or requirement of obtaining any validity, and the same came into effect only consequent to the

Maharashtra Scheduled Caste, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Act of 2001). Grant of a validity by the Caste Scrutiny Committee therefore, is merely recognition of claim of a person belonging to a particular scheduled tribe, and is not the genesis for availing the benefits of reservation, which flow from the presidential order, which relates to Article 342 of the Constitution. Judgment in case of **Baliram Chavan** (supra) does not take, in my considered opinion, any view contrary to what has been stated above. It merely holds that subsequent recognition of a transferor as a Tribal within the meaning of Section 2 (i)(j) of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short, "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 benefit of Section 3 of the Restoration Act. In the instant case, the tribe 'Mana', to which the petitioner/transferor belongs already stood recognized as a Scheduled Tribe in the year 1976, whereas the transaction is subsequent in point of time on 13-08-1997. Thus on the date of the transaction the tribe to which the petitioner belongs, already stood declared as a Scheduled Tribe and therefore contrary contention does not carry any merit.

9. In that view of the matter, the impugned order of the Commissioner which sets aside the orders of the S.D.O.

and the Collector on the ground that validity has been granted in 2021, clearly cannot be sustained.

10. This would also apply to the plea by learned Counsel for respondent no.1 that the petitioner did not possess the validity on 27-09-2013 when the proceedings for restoration were initiated, for the reasons as already indicated above that the validity merely recognizes the fact that a person belongs to a particular tribe, and the genesis of the social status/reservation has to be related back to the entry in the presidential order.

11. In that view of the matter, in my considered opinion, the impugned order passed by the Divisional Commissioner dated 25-01-2023 (pg 51), is clearly not sustainable in law and is hereby quashed and set aside and the orders passed by the S.D.O. Chimur dated 10-06-2014 and that by the Collector dated 30-09-2015 are restored.

12. At this stage, Mr Gosavi for the respondent no.1, who is already in a possession seeks protection of his possession for a period of 8 weeks as his client intends to approach the Hon'ble Apex Court. Though the request is opposed by learned Counsel for the petitioner, however considering that admittedly since the respondent no.1 is in possession of the land in question, the possession is protected for a period of 8 weeks from today.