



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

WRIT PETITION NO.5343 OF 2021

Prakash Dattuji Dandge and another .Vs. Additional Commissioner, Amravati
Division, Amravati and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.A. Gawande, Advocate for the petitioners.

Shri N.R. Patil, A.G.P. for the respondent Nos.1 to 4/State.

CORAM : ANIL S. KILOR, J.

DATED : 21/08/2023

1. Heard.

2. This matter pertains to restoration of land to the scheduled tribes. Admittedly, no validity certificate was produced before any of the authorities below namely the Tahsildar, the Sub-Division Officer and the Collector or the Additional Commissioner or there is no reference of any such validity certificate before directing the petitioner to restore back the land to the respondent No.6.

3. It is thus, apparent that, only on the basis of tribe certificate, order of restoration was passed by the Tahsildar and it was upheld by the Sub-Divisional Officer, the Collector and the Additional Commissioner.

4. The Co-ordinate Bench of this Court in the case of *Punjaji C. Halde Versus State of Maharashtra and others*¹, has held thus:

"14. It is needless to say that the transfer in question in favour of respondent No. 4 can be declared as invalid being in contravention of the provisions of Section 36-A of the Maharashtra Land Revenue Code for want of previous sanction by the Collector, provided that the petitioner is proved to be a tribal belonging to Pardhi caste as claimed by him. Therefore, it is not necessary to go into the question of merits of the order of the Additional Commissioner which is the subject-matter of the challenge in this petition. There is much substance in the submission of Mr. Khapre, learned counsel for respondent No. 4 that respondent No. 4 agitated this question as to the caste claim of the petitioner before the Court in this petition while supporting the order of the Additional Commissioner. He rightly placed reliance on decision reported in 1980 Mh LJ 612. In that case the question that raised before the High Court in a writ petition --Whether the respondent is entitled to support the order passed by the Rent Controller by challenging the findings which were recorded against him. It is observed that :

"In a petition filed by a party challenging the adverse order passed against him in appeal arising out of the order passed by the Rent Controller, the respondent in such petition can support the order passed by the Rent Controller even on findings which were pronounced against him. When a landlord seeks grant of permission under the C. P. and Berar Letting of Houses and Rent Control Order for determination of the lease on more grounds than one as provided in Clause 13(3) of the Order and if permission is granted to him on some grounds, negating others, the order is wholly in favour of the landlord so far as the ultimate relief which he prayed for is concerned and he could not have appealed against the adverse findings simply by way of criticism of the Judgment."

1 2001 SCC OnLine Bom 886

It is further observed that a right of appeal is conferred to get an order set aside or out of the way. Even if a person has a grievance against a finding he cannot come by way of appeal unless he challenges the order itself and wants to get it interfered with. Or unless it is held this way, even if the order is entirely in favour of a party, he would be required to file an appeal against a finding if the other side were to appeal against the order as it is. On general probe the High Court observed that party who has an order in its favour is entitled to show that the order is justified on some grounds which was decided it in the Court below. Therefore, it is very clear that respondent can agitate the plea as to the challenge to the caste claim of the petitioner while supporting the order passed by the Additional Commissioner, Amravati.

15. The learned counsel for the respondent No. 4 submitted that there has been no adjudication as to the caste claim of the petitioner at any stage of the proceeding. This submission of the learned counsel for respondent No. 4 holds good as it is found that there has been specific challenge by the respondent by raising a contention that the petitioner was not a Tribal. In earlier part of the judgment, I have pointed out how the Courts below have dealt with this question. The Sub-Divisional Officer as also the Resident Deputy Collector, Buldhana found the transfer as invalid on the footing that the petitioner was tribal and this fact is being admitted by the respondent as such. It is only the Resident Deputy Collector, when the matter was before him at the second round of litigation, that he found that the petitioner was a Tribal as he was satisfied with the xerox copy of the caste certificate of the petitioner issued as a sufficient piece of evidence to establish that the petitioner was a tribal belonging to Scheduled Tribe. However, it is found that there was no adjudication of the caste claim as such as required by law. It is already pointed out that the Additional Commissioner passed the order on the assumption that the caste claim of the petitioner was admitted by the respondent.

16. In order to establish the caste claim, the learned counsel for respondent No. 4 rightly placed reliance on the decision reported in 1994 Mh LJ 1710. The matter before the High Court was a writ petition challenging the orders passed in respect of restoration of the land of

a tribal wherein the claim was resisted on the ground that the respondent -- occupant was not a Tribal. The learned Assistant Collector before whom the matter was, mainly relied upon the certificate issued by the Executive Magistrate in favour of respondent No. 2 and proceeded to discuss elaborately what meaning would be assigned to a tribal in the context of the facts of the case and concluded that the respondent No. 2 was a tribal. Before the High Court the challenge was to that conclusion of the Collector as to the caste claim as a tribal. The High Court observed that :

"The Assistant Collector had decided the matter as far back as on 25-10-1976 and the Tribunal had decided it as far back as on 3rd January 1977. At that time, the Government did not have any machinery for the verification of tribal claims of the persons claiming to be tribals. This Court as well as the Supreme Court, were required to deal with such matters/points in a number of cases, as a result of which, the Scrutiny Committee has been appointed under the Directorate of Tribal Research and Training, Pune-1. That Committee consists of the experts who are well-acquainted with the subject. The aforesaid committee is considered, presently, as the competent authority to verify the tribal claims, even though the Taluqua Executive Magistrate and other authorities have issued certificates earlier in that context. The certificates so issued by the other authorities are since required to be verified by the aforesaid Committee before a conclusion could be arrived at as to whether or not, a person was a tribal. We cannot find fault with the efforts made by the Assistant Collector or the Maharashtra Revenue Tribunal in determining whether or not, the respondent No. 2 belonged to any Scheduled Tribe. In deed, the judgment delivered by the Assistant Collector exhibits the efforts put in by him to arrive at his own conclusion. But, in the circumstances discussed above, we cannot accept the aforesaid finding as conclusive unless and until the same is got verified at the hands of the Scrutiny Committee. On that count, the impugned orders needs to be quashed and set aside and directions are required to be given to the authorities concerned to refer the matter to the Scrutiny Committee for verification of the Tribe Claim."

In the case beforehand having regard to the observations of the High Court, as quoted above, we

cannot, accept the finding of the Resident Deputy Collector as conclusive unless and until the certificate is got verified at the hands of the Scrutiny Committee. It is much more so having regard to the fact that the Resident Deputy Collector has placed reliance on the xerox copy of the certificate. That cannot be sufficient proof to establish the caste claim of the petitioner. Therefore, it has to be said that the authorities below, have failed to adjudicate the caste claim of the petitioner. It follows therefore that the petitioner has failed to establish that he belongs to Scheduled Tribe.

17. It is clear that the findings of the authorities below that the transfer in favour of the respondent is invalid for want of sanction cannot sustain, as there is no adjudication of the issue of tribe claim of the petitioner. On that count also the order of the Additional Commissioner under challenge holding that the sanction by the Collector and by the Government was the deemed and regularised, cannot sustain. Therefore, the impugned order passed by the Additional Commissioner dated 30-3-1994 and that of Resident Deputy Collector dated 28-6-1989 are liable to be quashed and set aside. The original proceedings initiated by the Sub-Divisional Officer Buldhana bearing No. Revenue Case No. LND-31/I/1985-86 is remanded to Collector Buldhana with a direction to decide the matter afresh as expeditiously as possible with a direction that he should refer the certificate issued in respect of tribal claim of the petitioner to Scrutiny Committee prior to decide the claim of the petitioner. The Collector shall decide the application of the petitioner for restoration after the decision of the Scrutiny Committee.

17A. In the light of the considerations, the writ petition is allowed. Impugned orders are quashed and set aside. The matter is sent back to the Collector, Buldhana with a direction to refer the caste certificate issued in favour of the petitioner regarding his caste claim, to the caste scrutiny committee duly empowered to decide the claim and then after the caste claim is decided, the Collector shall decide the matter as expeditiously as possible and in any event within six months. The Collector to decide the validity of the transfer and the claim of the petitioner for restoration of the land independently without being influenced by the observations made by

the Additional Commissioner. The parties are directed to appear before the Collector, Buldhana on 29-10-2001. The record and proceedings of the case be remitted to the Collector Buldhana communicating the order passed by this Court. Rule is made absolute accordingly. No orders as to costs.”

5. Thus, it is evident that, the Tahsildar was obligated to refer the matter to the Caste Scrutiny Committee in order to verify the genuiness of the certificate submitted by the respondent No.6 and he ought not to have directed restoration of land without adopting such course.

6. Though the respondent No.6 is served, nobody appeared on behalf of the respondent No.6 therefore, it is difficult to find out whether the respondent No.6 is having any validity certificate.

7. Moreover, no such validity certificate is filed along with the present writ petition therefore, it can be presumed that there is no validity certificate.

8. However, since the Additional Commissioner without verifying the same has passed the order, I am of the opinion that, the matter remand back to the Additional Commissioner to decide the matter afresh after verifying the validity certificate if any and if there is no validity certificate, the Additional Commissioner may refer the documents to the Caste Scrutiny Committee for validity certificate and

after receiving the decision from the Caste Scrutiny Committee, the Additional Commissioner shall take the decision afresh. Accordingly, I pass the following order:

- i) The writ petition is **partly allowed**.
- ii) The order dated 12.11.2021 passed by the Additional Commissioner in Case No. Revision Application No.114/LND-31/Kani Mirzapur/2021, is hereby quashed and set aside.
- iii) The Commissioner is directed to decide the matter afresh after the compliance as observed herein above.

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE