

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

3 WRIT PETITION NO. 5389 OF 2015

PANDIT DEVRAM KOLI (SAPKALE), LRS MANDABAI AND
OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioners : Mr. Garud N.C.

AGP for Respondents/State : Mr. S.B.Jadhav

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CORAM : KISHORE C. SANT, J.

DATE : 16.10.2024.

PER COURT :

1. Heard the learned Advocate for the petitioners. The petitioners have challenged the order passed by the learned Member, MRT, Aurangabad dated 05.09.2014 dismissing the appeal of the petitioners and thereby confirming the order passed by the learned Tahsildar, Aurangabad in proceeding bearing No. Watan/Case/1/2004, dated 29.01.2005.

2. The father of the petitioners had filed an application in the year 2004 in the office of learned Tahsildar for declaration that the sale deed executed for restoration of possession under

the restoration of land to the person belonging to SC and ST category. It is stated that the land was given by way of mortgage by Devram on 19.02.1937. The said Devram and Shivram thereafter sold the land to Sadu Nyahaji by way of sale deed dated 05.01.1938 without giving its possession. At the time of sale deed in the year 1938 the said Devram and Shivram were minor. It was stated that the said mortgage and subsequent sale deeds are not binding on the applicant namely Pandit Devram Koli. It is further stated that no permission of the Collector was obtained before executing those documents. He has given earlier history of the year 1910 when the land was given for cultivation by one Kalu Nyahaji.

3. The applicant i.e. father of the petitioners was born on 03.07.1951. After attaining the majority he has filed an application on 20.10.1975 to the learned Collector for restoration of possession of land, however no inquiry was held. It is stated that in view of above facts he has a right to get the possession of the property.

4. This application came to be rejected by the learned Tahsildar after inquiry. It is held that the land was purchased

by the grand father of the respondents in the year 1937 and since then the land is in possession of the respondents. It is further held that the petitioners do not belong to Hindu Tokare Koli. The land is the Inam land. Thus, on these grounds application came to be rejected.

5. The said order was challenged by the father of the petitioners before MRT, The learned MRT observed that though the petitioners belongs to Hindu Tokare Koli i.e. Scheduled tribe, however, considering that the alleged transactions are not within the period in between 01.04.1957 to 06.06.1974 thus, the transactions are not hit by the provisions of the Act. The first transaction was of the year 1910 and the another transaction was of the year 1938. It is for the reasons the appeal came to be dismissed.

6. Learned Advocate for the petitioners vehemently argued that inspite in the year 1975 itself an application was filed however, no inquiry was conducted by the learned tahsildar at that time and therefore, again he was required to approach this Court by filing the Writ Petition bearing No. 1656 of 2003. This Court granted liberty to approach the learned

Tahsildar within eight weeks, the application was therefore, within period.

7. Learned Tahsildar has wrongly held that the petitioners father was Hindu Koli and not Hindu Tokare Koli and not a person belonging to the Schedule Tribe. He further submits that though the learned MRT accepted that the father of petitioners belongs to Hindu Tokare Koli. i.e. Schedule Tribe, still has not accepted the case of the petitioners father and has rejected the appeal. Therefore, now the sons of the original applicants have approached this court. They submit that since the fact that the petitioners father was belonging to Hindu Tokare Koli, is accepted then possession of the land ought to have been given to him by declaring said transaction as illegal. He thus submitted that the petition deserves to be allowed.

8. This court finds that as the petition is filed in the year 2015 and pending since then without passing any order, it is taken for final disposal. After hearing the parties, this Court has seen the orders passed by both the authorities.

9. Learned MRT has rightly observed that none of the transactions have taken place during the period of 01.04.1957

to 06.06.1974 and therefore, the transactions are hit by the provision of Act.

10. Merely because the petitioners are belonging to the Scheduled tribe shall not make the transaction illegal, so far as the contention of the petitioners that no permission was sought of the learned Collector before transferring the land, is of no use to the petitioners as the petitioners father and grand father had already given the right over the land in 1938 i.e. much prior to 1956.

11. There is nothing on record to show that the transaction was challenged at that time. This Court finds that the entertainment of the petition is of no use as there is no merit in the petition, therefore, the petition stands dismissed. No order as to the costs.

(KISHORE C. SANT)
JUDGE

mahajansb/