

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4355 OF 1994

Shashikant Gajanan Shilotri and Anr. ... Petitioners

V/s.

Rama Nathu Shelar and Ors. ... Respondents

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None for the Petitioner.

Mr. Sunil G. Karandikar for Respondent No.3.

Mr. Y. D. Patil, AGP for the State-Respondent Nos. 4
and 5.

CORAM : AMIT BORKAR, J.

DATED : MARCH 15, 2024

P.C.:

1. Challenge in this petition is to the order dated 7th March 1991, passed by Additional Commissioner Konkan Division Konkan in Revision Application No.WTN-4591, whereby the Respondent No.4 in exercise of power under Section 7 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (the Act) directed action to be taken under the provisions of the said Act for restoration of land as to the tribal as per Section (4) of the said Act.

2. Survey Nos.63/2 and 78/2 admeasuring 11 Acres 25 Gunthas and 7 Acres 72 Gunthas are the subject matter of the present writ petition.

3. The respondent No.1 filed an application on 24th November

1977 before the Tahsildar Wada seeking a declaration that he be declared as a tenant under Section 70(B) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 and accordingly the tenancy Case No.28 of 1972 was initiated based on spot inspection memorandum reduced into writing on 29th June 1978. The Tahsildar dropped the proceedings under Section 70 (b) with the result respondent No.1 was not declared as tenant in relation to properties in dispute. Thereafter, respondent No.1 and 2, initiated proceedings under the provisions of Restoration Act. The Tehsildar by judgment and order dated 10th September 1980 held that the provisions of restoration Act are not applicable to the proceedings initiated by respondents as they were not declared as tenant in relation to the properties in dispute.

4. Therefore, the respondent No.4 by exercising suo-motu power issued show-cause notice calling upon the petitioner as to why judgment and order dated 10th September 1980 passed by Additional Tahsildar Wada should not be set aside observing that respondents were in possession of property in dispute on 1st April 1957. The respondent No.4 allowed the revision application observing that whole Survey Nos.63/2 and 78/2 were cultivated by predecessor of respondent Nos. 1 and 2. The Commissioner held that such lands need to be restored to respondent Nos. 1 and 2 under Section 4 of the said Act. The petitioner has, therefore, filed present writ petition challenging the order passed by the Commissioner.

5. The issue, therefore, arises for consideration is whether a person whose claim for declaration of tenancy under Section 70(B)

of the Maharashtra Tenancy and Agricultural Lands Act, 1948 was decided on merits by the Authorities under the Act holding him not to be tenant in respect of property in dispute, is entitled to restoration of lands under Section 4 of the said Act.

6. For the purpose of adjudication of such issue, it is necessary to consider Sections 2(i), 3 and 4 of the Act which reads as under:

“2(i) “transfer” in relation to land means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April 1957 and ending on the 6th day of July 1974, either—

(a) by act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made inter-vivos, or

(b) under a decree or order of a Court, or

(c) for recovering any amount of land revenue due from such Tribal, or for recovering any other amount due from him as an arrears of land revenue, or otherwise under the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force but does not include a transfer of land falling under the proviso to sub-section (3) of section 36 of the Code; and the expressions, “Tribal-transferor” and “non-Tribal-transferee” shall be constructed, accordingly ;

3. Restoration of Transfer of lands to Tribals in certain Cases :-(1) Where due to transfer—

(a) the land of a Tribal-transferor is held by a non-Tribal-transferee, or

(b) the land acquired in exchange by a Tribal-transferor is less in value than the value of the land given in exchange, and the land so transferred is in possession of the non-Tribal-

transferee, and has not been put to any non-agricultural use on or before the 6th day of July, 1974, then, notwithstanding anything contained in any other law for the time being in force, or any judgment, decree or order of any Court, Tribunal or authority the Collector either suo motu at any time, or on the application of a Tribal-transferor, made, within thirty years from the 6th July 2004 shall, after making such inquiry as he thinks fit, direct that—

(i) the lands of the Tribal-transferor and non-Tribal-transferee so exchanged shall be restored to each other; and the Tribal-transferor, or as the case may be, the non-Tribal-transferee shall pay the difference in value of improvements as determined under clause (a) of sub-section (4), or

(ii) the land transferred otherwise than by exchange be taken from the possession of the non-Tribal-transferee, and restored to the Tribal-transferor, free from all encumbrances and the Tribal-transferor shall pay such transferee and other persons the amount determined under clause (b) of sub-section (4):

Provided that, where land is transferred by a Tribal-transferor, in favour of non-Tribal-transferee before the 6th day of July, 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so transferred shall be restored to the Tribal-transferor.

4. Restoration of lands of persons belonging to Scheduled Tribes.— Where any land of a Tribal is, at any time on or after the 1st day of April 1957 and before the 6th day of July 1974, purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant tenancy law by a non-Tribal-transferee or where any acquisition has been regularised on payment of penalty under such law and such land is in

possession of a non-Tribal transferee and has not been put to any non-agricultural use on or before the 6th day of July 1974, then the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on an application by the Tribal made 1[within thirty years from the 6th July 2004] and after making such inquiry as he thinks fit, direct that the land shall, subject to the provisions of sub-section (4) of section 3, be restored to the Tribal free from all encumbrances and that the amount of purchase price or a proportionate part thereof, if any, paid by such non-Tribal- transferee in respect of such lands in accordance with the relevant tenancy law shall be refunded to such non-Tribal-transferee either lump sum or in such annual instalments not exceeding twelve (with simple interest at 4½ per cent. per annum) as the Collector may direct. The provisions of clauses (d), (e), (f) and (g) of sub-section (4) of section 3 shall, so far as may be, apply in relation to the recovery of the amount from the Tribal and payment thereof to the non-Tribal-transferee and the persons claiming encumbrances, if any :

Provided that, where land is purchased or acquired by a non-Tribal-transferee before the 6th day of July 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so purchased or acquired shall be restored to the Tribal-transferor.”

7. On careful reading of the Section 4 and Section 2(i) of the Act, it appears that only a person who was owner of the land and the land was transferred to non-Tribal can institute proceedings under the provisions of the Act. The expression transfer is defined under Section 2(i) Act to mean transfer of land belonging to a Tribal in favour of non-Tribal during the period of commencement on 1st April 1957 ending on 6th July 1974 either by Act of the

parties or under the decree of the Court or for recovery of land revenue under the provisions of statute mentioned therein. On conjoint reading of Section 2(i), Section 3 and 4 of the said Act, it is evident that a person who is owner of the property and is Tribal whose land was transfer between the period prescribed in Section 2(i) and in the manner provided under Section 2(i) can institute proceedings for restoration of possession.

8. In the facts of the case, undisputedly the authorities under the Maharashtra Tenancy and Agricultural Lands Act, 1948 had dismissed the claim of predecessors of respondent No.1 and 2 for declared him a tenancy with the result there was no conferment of ownership on predecessor of respondent Nos. 1 and 2 nor of respondent Nos. 1 and 2. Undisputedly, there was no transfer as contemplated by Section 2(i) of the said Act. Therefore, in the absence of fulfillment of necessary ingredients of the provisions of the Act, Revisional Court could not have exercised of power under Section 7 of the Act, to direct authorities under the Act to restore properties in dispute in favour of Respondent Nos. 1 and 2.

9. Hence, the order passed by Respondent No.4 deserves to be quashed and set aside.

10. Rule is made absolute in terms of prayer clause (a).

(AMIT BORKAR, J.)