

Nikita

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

WRIT PETITION NO.8333 OF 2022

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Santu Kashiram Bhoye

... Petitioner

V/s.

Atmaram Sadashiv Chougule and Ors.

... Respondents

Mr. Vaibhav R. Gaikwad, for the Petitioner.

Mr. Girish R. Agrawal a/w Mr. Shubham Jangam for
respondent No.1.

Mr. P. G. Sawant, AGP for the State-Respondent Nos. 3
to 5.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 6, 2024

P.C.:

1. Challenge in this petition is to the order passed by Revenue Minister dismissing petitioners revision application under Section 257 of the Maharashtra Land Revenue Code, 1966 confirming rejection of the application under Section 36(A) of the Maharashtra Land Revenue Code, 1966 for setting aside the sale deed in favour of respondent Nos. 1 and 2 on the ground that the sale deed was executed in relation to land held by tribal that is the petitioner.

2. The facts relevant for adjudication of the petition are as

under:

3. On 14th June 1973, petitioners father executed an agreement to sale with respondent Nos 1 and 2. Respondent Nos. 1 and 2 filed Regular Civil Suit No.192 of 1982 for specific performance of agreement to sale. In the said suit, the Civil Court framed an issue as to whether the predecessor of petitioner was tribal (Mahadev Koli) within the meaning of Maharashtra Restoration of Lands to Scheduled Tribes Act 1975. The issue was referred to the Collector. The Collector by communication dated 13th September 1989 informed the Civil Court that petitioner's predecessors belongs to Hindu Koli which is not Scheduled Tribe under the presidential order. The Civil Court based on communication made by Collector decreed the suit directing the execution of sale deed. Accordingly, the sale deed was executed in favour of Respondent Nos. 1 and 2.

4. The petitioner thereafter filed an application under Section 36(A) before the Competent Authority for setting aside the sale deed of respondent Nos. 1 and 2. The Competent Authority by order dated 29th January 2010 rejected the application. The petitioner challenged the order of Tahsildar before the Maharashtra Revenue Tribunal. Maharashtra Revenue Tribunal remitted the matter back to the sub-divisional Officer. The Sub-divisional Officer by order dated 7th April 2014 dismissed the appeal of the petitioner. The effect of dismissal of such appeal is that the order under Section 36(A) on an application filed by the petitioner attained finality.

5. The petitioner thereafter again filed an application under

Section 36(A) based on certificate issued by Caste Scrutiny Committee contending that the Competent Authority i.e. Caste Scrutiny Committee has declared the petitioner to be a person belonging to Scheduled Tribe (Mahadev Koli). The Tahsildar allowed the application holding that the Competent Authority has held petitioner to be a person belonging to Scheduled Tribe and, therefore, sale deed in favour of respondent Nos.1 and 2 was void. The respondent No. 1 and 2 challenged the order of Tahsildar before the Commissioner. The Commissioner by order dated 14th August 2018 allowed the appeal of respondent Nos. 1 and 2 on the ground that such application under Section 36(A) was decided on merits in earlier ground of litigation. Aggrieved thereby, petitioner filed revision application under Section 257 of the Maharashtra Land Revenue Code. By the impugned order the Minister has dismissed the revision application. Hence, the present petition.

6. Learned counsel for the petitioner contended that the Civil Court had no jurisdiction to consider an issue which is required to be adjudicated by the Authority under the Land Revenue Code, 1966. According to him, the Tahsildar while deciding the first application under Section 36(A) had not considered certificate issued by Caste Scrutiny Committee which was the competent Authority and, therefore, earlier adjudication under Section 36(A) will not bar subsequent application. According to him, once the Competent Authority under the Act of 2001, grants validity certificate, same is conclusive proof of the fact that the petitioner belonging to Scheduled Tribes (Mahadev Koli) in support of his contention, he placed reliance on the judgments of this Court in

the cases of **Babasaheb s/o. Dhondiba Kute Vs. Radhu Vithoba Barde** reported in 2019 (3) ALL MR 542, **Adivasee Sarvangan Vikas Samitee Vs. State of Maharashtra and Ors.** reported 2013 (6) Mh. L.J. 557, **Chandan Singh s/o Sandhu Singh Chandel Vs. Kokilabai Balkrishna Salame and Ors.**, reported in 2021 (3) Mh. L.J.494.

7. Per contra learned counsel for the respondent Nos. 1 and 2 invited my attention to the communication of Collector dated 13th September 1989 holding that the petitioner belonging to Hindu Koli which is not a Scheduled Tribe. In the year 1989 the Collector was the Competent Authority to decide as to whether a person belongs to Scheduled Castes or Scheduled Tribes. Therefore, such certificate was valid when the Civil Court rendered its findings on issue No.5(a). Moreover, he submitted that the petitioner thereafter, filed an application under Section 36(A) of the said Act which was decided on merits with the result second application under Section 36(A) is barred by principle of res judicata. In support of his contention he relied on judgments in the cases of **Ravinder Singh Vs. Sukhbir Singh and Ors.** reported in (2013) 9 SCC 245, **Kaushik Cooperative Building Society Vs. N. Parvathamma and Ors.** reported in (2017) 13 SCC 138, **Unnikrishnan and Anr. Vs. V. K. Mahanudevan and Ors.** reported in (2014) 4 SCC 434.

8. Having considered the submissions made on behalf of both sides, following factual scenario emerges.

a) On 13th September 1989 the Collector declared the

petitioner to be a person belonging to Hindu Koli and not Mahadev Koli. On the said date, Collector was the Competent Authority for issuance of Caste Certificate.

b) Earlier application under Section 36(A) bearing Adivasi case No.1 of 2019 was dismissed on merits.

c) In appeal Tahsildar's order was confirmed. The order of Sub-divisional Officer confirming Tahsildar's order has attained finality.

d) The Caste Scrutiny committee issued validity certificate in favour of petitioner on 4th June 2010.

9. The question, therefore, arises for consideration is whether, the second application on behalf of the petitioner was barred by principle of res judicata. The applicability of principle of res judicata to the proceedings under Section 36(A) is not in dispute as the proceedings are quasi judicial in nature. All authorities exercising their quasi judicial powers are bound by the principle of res judicata. The principle is based on public policy that no person shall vexed twice on the same cause of action. Such principle is held applicable even to writ proceedings. This principle is based on two theories: (i) finality of judicial orders which finally terminates disputes between the parties is in the interest of parties and as a matter of public policy; and (ii) it is in the interest of parties to litigation to avoid multiplicity of litigation. It is thus not permissible to obtain second judgment for same relief on same cause of action. Otherwise, there is possibility of conflicting judgments by the same Authority. The exceptions to the principle

of res judicata are as follows:

- a) That earlier order was without jurisdiction.
- b) The parties are not same.
- c) The subject matter is different.
- d) The fraud or misrepresentation.

10. The petitioner has not pleaded either fraud or misrepresentation. The ground on which the petitioner sought invocation of power under Section 36(A)(4) is issuance of certificate of Caste Scrutiny Committee validating certificate issued by the Collector. Issuance of such certificate would amount to conferment of status of the petitioner that he belongs to Scheduled Tribes. However, such benefit in the facts of the case cannot be extended to reopen adjudication by the Competent Authority which on the date of its adjudication had jurisdiction to decide such issue based on available material. Moreover on 13th September 1989 when the Collector issued a certificate that the petitioner belongs to Hindu Koli, the Collector had authority to decide the petitioner's status. It is pertinent to note that in the year 1989 the Competent Authority to decide whether the person was belonging to Scheduled Castes or Scheduled Tribes lies with the Collector. The Judgment in the case of **Kumari Madhuri Patil Vs. Additional Commissioner** reported in (1994) 6 SCC 241 was passed in the year 1994 which constituted Caste Scrutiny Committee till the appropriate legislation was brought by the Legislative Assembly. Receipt of fresh material thereafter is no ground to reopen concluded proceedings.

11. The judgments relied on by the counsel for the petitioner are of no help to the petitioner as this Court in none of the judgment has considered the issue of applicability of principle of res judicata to proceedings under Section 36(A) based on discovery of new material. In the case of **Adivasee Sarvangin Vikas Samitee** (supra), this Court recorded a statement on behalf of the State that action shall be taken in relation to transfers made prior to 16th July 1994 which is of no help to the petitioner. In the case of **Chandan Singh** (supra) the Court was considering the validity of compromise deed between the parties. However, in view of specific language of Section 36(A)(1) which appears to be a conveyance in execution of a decree, there cannot be a dispute about legal proposition of the law laid down by this Court however, this judgment is of no help to get out principle of barred created by principle of res judicata.

12. Even in the case of **Babasaheb** (supra), the Court was considering a suit for specific performance of agreement to sale executed by tribal and, therefore, in the facts of the case, this Court has held that such transfer barred under the Act will apply even to agreement to sale. In absence of fraud or exception to the principle of res judicata, as laid down by the Apex Court in the case of **Ravinder Singh** (supra), a judgment given by a competent court on merits must bind all parties involved until the same is set aside in appeal, and an attempted change in the form of the petition or in its grounds cannot be allowed to defeat the plea of res judicata.

13. The judgment of Competent Court or authority shall bind

such authority in a subsequent litigation. The petitioner has failed to make out a case of exception to the principle of res judicata. Hence, no fault can be found with the impugned order.

14. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)