

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

CRIMINAL APPEAL NO.776/2023

KAILASH SADASHIV SURVE

..APPELLANT

VS.

THE STATE OF MAHARASHTRA & ANR

..RESPONDENTS

Adv. Sudeep Pasbola, Adv. Ayush Pasbola, Adv. Sankalp Vichare for the appellant.

Mr. S. H. Yadav, APP for the State.

Adv. Siddharth Sonaji Ingle a/w. Adv. Akshay B. Gawali & Adv. Buddhabhushan Kamble for the respondent no.2.

API Sanjay Mohite, Nhvashiva Police Station, Navi Mumbai.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 8, 2024.

ORAL JUDGMENT :

1. Heard learned counsel for the appellant, learned APP for the respondent no.1 and learned counsel appearing for the respondent no.2.

2. The appellant is apprehending his arrest in the First Information Report bearing No.96/2023 registered with Uran Police Station, Navi Mumbai, for alleged commission of the offences punishable under Sections 420, 468, 470, 471 read with 34 of the Indian Penal Code (hereafter 'the IPC' for short) read with Sections 3(1)(f) and 3(1)(g) of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter 'the Atrocities Act' for short).

3. Briefly stated it is the case of the respondent no.2 that the land involved in the complaint belonging to her predecessors is a tribal land. Her predecessor, deceased Gopal Lahanya Katkari was cultivating the land as a tenant. The appellant is the accused no.5. The accused nos.1 to 4 (referred to as 'Gharats') have taken advantage of illiteracy of Goptal Katkari and incorporated the names of the accused nos.1 to 4 as heirs by manipulating and forging the revenue records in connivance with the revenue officers. The necessary entries in the revenue record indicating such change was effected in the year 1983. It is further the case of the respondent no.2 that the accused nos.1 to 4 alienated the said land in favour of the present appellant in the year 1996. The present appellant is thus the purchaser of the land from 'Gharats'.

4. Learned APP as well as learned counsel for the respondent no.2 while opposing this appeal invited my attention to the observations of the trial Court rejecting the application for anticipatory bail. Learned counsel

for the respondent no.2 was at pains to submit that the accused nos.1 to 4 have manipulated and forged the revenue records and that, admittedly the accused nos.1 to 4 who are not the legal heirs of the deceased Gopal Katkari, in active connivance with the revenue officers effected entries in the revenue records detriment to the interest of the respondent no.2, projecting 'Gharats' to be the legal heirs of the said Gopal Katkari. It is the submission of learned counsel that the respondent no.2 was cultivating the land right till she and the other heirs were forcibly dispossessed by the present appellant sometime in the year 1996. Learned counsel submitted that the land being a tribal land, in view of the provisions of the Section 36A of the Maharashtra Land Revenue Code, 1966, cannot be sold without permission of the Collector/Competent Authority. It is submitted that no such permission has been obtained. It is therefore submitted that dispossessing the respondent no.2, a tribal, from the land constitutes an offence which attracts the bar under Section 18 of the Atrocities Act against the appellant. Learned counsel further submitted that the appellant was aware that the land in question is

tribal land and therefore, ought to have exercised due diligence and caution while purchasing the said land from 'Gharats' in the year 1996. It is further submitted that even prior to 1996, in the application made to the authorities under the Bombay Tenancy and Agricultural Lands Act (hereafter 'BTAL Act' for short) in 1955, the appellant as well as the 'Gharats' had jointly applied for such permission. Learned counsel for the respondent no.2 invited my attention to the provisions of Section 2(f) and (g) while urging that the appellant has wrongfully dispossessed the respondent no.2 who is the member of the Scheduled Tribes from cultivating the said land.

5. Learned APP in addition submitted that pursuant to the interim order passed in favour of the present appellant, the appellant is not co-operating with the investigation. It is submitted that some other revenue officers involved in the manipulation of the revenue records are yet to be arrested. Learned APP submitted that the materials and the charge-sheet which is filed against the accused nos.1 to 4 would reveal the involvement of the present appellant as well.

6. I have heard learned counsel. The allegation of the

respondent no.2 is of land grabbing which undoubtedly is a serious allegation more so having regard object of enacting the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereafter 'the Atrocities Act' for short). The materials and reading of the report of the investigating officer and even the FIR reveal that the accusations are primarily against the accused nos.1 to 4 (Gharats) and the revenue officers. After the demise of the predecessors of the respondent no.2, that is Gopal Lahanya Katkari in the year 1980, the allegation is that the 'Gharats' entered their names in the revenue record as legal heirs. This was as far back as in the year 1983. It is only in the year 1995, as the materials indicate, that the present appellant along with the accused nos.1 to 4 filed an application to the competent authority for permission under the provisions of the BTAL Act. The registered sale deed which is executed by 'Gharats' in favour of the present appellant is dated 3/1/1996. The allegation against the present appellant is that he should have exercised due diligence and caution while purchasing the said land. The allegations proceed on the footing that as the appellant

failed to exercise due diligence, having made an application in 1995 under the BTAL Act prior to the execution of the sale deed in 1996, it pre-supposes that the appellant was aware about the nature of the land being a tribal land. It needs to be borne in mind that the application under the BTAL Act is for transfer of tenancy and nothing to do with transfer of a tribal land. Prima facie, there are no materials to infer that the appellant had knowledge that the land in question in occupation of the respondent no.2 is a tribal land.

7. The sale deed in favour of the appellant is of 1996. It was only in 2009 that the proceedings were initiated before the revenue authorities by the legal heirs of Gopal Katkari challenging the mutation entry effected in favour of the 'Gharats'. The proceedings are still pending. Though an order has been passed in the challenge to the mutation entry by the revenue officers for deleting the name of the 'Gharats' from the revenue records and entering the name of the legal heirs of Gopal Katkari including the respondent no.2, the said order has been stayed by this Court in Writ Petition No.8439/2023 which is pending as on date. There is a delay in initiating the revenue proceedings. I may not be

construed as expressing any opinion on such delay as to the rights of the parties which shall be decided in appropriate proceedings. The observation is made in the limited context of deciding this appeal.

8. So far as the contention of learned counsel for the respondent no.2 that the State Government has issued a circular dated 31/5/2012 issuing necessary guidelines regarding the implementation of Section 36 of the Maharashtra Land Revenue Code, 1974, there is no doubt that the procedure as required in the said circular has to be followed. It is always open for the respondent to claim the restoration of the land under the relevant provisions on the plea that the 'Gharats' have illegally sold the tribal land without necessary permission of the competent authority and as regards their consequent dispossession in appropriate proceedings.

9. Learned counsel for the respondent no.2 then relied upon the decision of the Supreme Court in the case of **Shakuntla Devi vs. Baljinder Singh**¹ to submit that in view of the specific bar under Section 18 of the Atrocities

¹ (2014)15 SCC 521

Act, since *prima facie* case is made out against the appellant, the appeal be dismissed. The question is whether a *prima facie* case is made out against the appellant in the facts of the present case. If that is so, the bar is attracted.

10. From what is discussed above, it is seen that there are revenue proceedings pending in respect of the mutation entries which have been effected. *Prima facie*, it appears that the appellant is a purchaser of the said land from the 'Gharats'. The accused nos.1 to 4 are alleged to have manipulated the mutation entries in their favour and to the detriment of the respondent no.2. As indicated earlier, the allegation against the appellant is that he has purchased the said land from the 'Gharats' that is the accused nos. 1 to 4 in 1996 without exercising due diligence and caution and this is the basis for the respondent no.2 as well as the investigating agencies for forming an opinion that the appellant may be aware that the lands in question are tribal lands to allege that the offence under the Atrocities Act is made out. *Prima facie* there is no incriminating material on record against this appellant to indicate that the appellant as a purchaser of the land and the consequent

dispossession was aware that the land in question was a tribal land or that the respondent no.2 is a member of the Scheduled Tribe.

11. The appellant had attended the investigating officer but according to learned APP, the appellant is not co-operating. The appellant must co-operate with the investigating officer. Learned counsel for the appellant submits that the appellant shall report to the investigating officer whenever called or as per the directions of this Court and co-operate with the investigation.

12. The charge-sheet has already been filed against the accused nos.1 to 3. In the facts of the present case, *prima facie* I am of the opinion that the alleged offence under the Atrocities Act is not made out against the present appellant and hence, the bar under Section 18 of the aforesaid Act is not attracted. It is made clear that the observations in this order are *prima facie* in nature limited for deciding this appeal. The trial Court shall not be influenced by these observations. Hence the following order.

ORDER

(a) The appeal is allowed.

(b) In the event of arrest in connection with the aforesaid FIR, the appellant shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/-with one or two sureties of the like amount.

(c) The appellant initially shall report to the concerned police station on 17th, 18th and 19th January, 2024 between 10.00 a.m. to 1.00 p.m. and thereafter, once in a week that is every Saturday between 11.00 a.m. and 01.00 p.m. till filing of the charge-sheet. The appellant shall attend the investigating officer as and when required.

(d) The appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

13. The appeal is disposed of accordingly.

(M. S. KARNIK, J.)