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

WRIT PETITION NO.1547 OF 2022

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Govind Chima Waghmare (Katkari)
Since Deceased Through His Legal Heirs ... Petitioner

V/s.

Ganpat Baburao Shinde (Deceased)
Through Vimalkumar Ramniranjan
Ghuwalewalla & Anr. ... Respondents

Mr. Sandesh D. Patil with Mr. Prabhakar D. Thorat i/by
Mr. Prithviraj S. Gole for the petitioner.

Mr. V. P. Sawant, Senior Advocate with Mr. Prabhakar
Jadhav, Mr. Jayant Gaikwad, Ms. Pushpa Prajapati and
Ms. Sunita Gaikwad for respondent No.1.

Mr. S. D. Rayrikar, AGP for respondent No.2/State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 27, 2024

P.C.:

1. The petitioner is challenging the order dated 20th April 2021 passed by the Maharashtra Revenue Tribunal, Mumbai in TNC/REV/RAG No.76 of 2018, confirming the order passed by the Sub-Divisional Officer, Khalapur, Sub-Division Karjat dated 13th January 2017.

2. The petitioner applied for restoration of four lands bearing Survey Nos.23/2, 24/2, 33/2 and 35/1 at Mauje Pali Budruk,

Taluka Khalapur, District Raigad and Mauje Bhilawale, Taluka Khalapur, District Raigad. The Sub-Divisional Officer rejected the application. However, by Clause 2 of the said order, the Sub-Divisional Officer directed the applicant to deliver possession of properties to the opponents.

3. Aggrieved thereby, the petitioner filed a revision before the Maharashtra Revenue Tribunal. The Tribunal, by impugned order dated 20th April 2021, dismissed the revision mainly on the ground that neither the petitioner nor his father were declared owners of the suit properties. The petitioner has, therefore, filed a present writ petition.

4. Learned advocate for the petitioner inviting my attention to sections 3 and 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, submitted that the tenant of agricultural land becomes owner on tillers day i.e. 1st April 1956 and, therefore, the Sub-Divisional Officer and the Tribunal were not justified in rejecting the petitioner's application. He submitted that alternatively the petitioner is entitled to restoration of land even in the capacity as a tenant of agricultural land, as section 4 of the Act nowhere requires a person to be owner of the property. He submitted that assuming the rejection of the application was right, the Sub-Divisional Officer had no power to direct the petitioner to deliver possession to the respondents in a proceeding instituted by the petitioner under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

5. Per contra, learned Senior Advocate on behalf of respondent

No.1 submitted that the purpose of the Restoration Act was to protect the properties of Tribals. The Restoration Act contemplates the protection of properties owned by the Tribals and the rights conferred under the provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948, have no relevance in the context of enforcement of rights under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. In support of his submission, he relied on the Division Bench judgment of this Court in the case of **State of Maharashtra and Anr. vs. Khatua Makanji and Company Pvt. Ltd., Bombay and Ors.** reported in 1987 Mh.L.J. 908.

6. I have considered the submissions on behalf of both sides. For the purpose of adjudicating the issue involved, it is necessary to set out relevant provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, which are as under:

“2. Definitions.

(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 arrear 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 or 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 commencement of this Act 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 claiming encumbrances 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.

[Explanation.— Where the lands of a Tribal and non-Tribal are purported to have been transferred to each other, otherwise than by exchange, but the date on which, the instruments for such transfers are registered is the same or, where such instruments are also registered on different dates, but the interval between the dates of registration is thirty days or less, then, notwithstanding anything contained in such instruments, for the purposes of this section, such transfers shall be deemed to be by way of exchange.]

(1A).....

(2)

(3) The Tribal-transferor shall, notwithstanding anything contained in any law for the time being in force in the State, be entitled to restoration of land

under this section only if he undertakes to cultivate the land personally and to pay such amount to the non-Tribal-transferee as the Collector may, under the provisions of sub-section (4), determine:

Provided that, in the case of a minor, the undertaking may be given by his guardian, and in the case of any other person under disability by his authorised agent.

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 Tribunal made within thirty years from the commencement of this Act 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 in lump sum or in such annual installments 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 a conjoint reading of aforesaid provisions, it appears that the rights of Tribals have been protected in relation to properties owned by the Tribals. If the legislature intended to protect the rights of Tribal as a tenant or as a mortgagee, specific provisions to that effect would have been inserted in the Act. The provisions of the Act cannot be interpreted based on the expressions which are absent in the Act. Transfer defined under section 2(i) contemplates the act of the parties by way of sale, gift, exchange, mortgage lease or any other disposition made inter-vivos. It also contemplates the transfer of land belonging to a Tribal. Considering the object of the Act, the expression "belonging" needs to be interpreted as ownership of Tribal. Therefore, unless the Tribal is the owner of the land, he cannot file proceedings under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

8. The interpretation above gets strength from the observations made by the Division Bench of this Court in the case of **Khatua Makanji and Company Pvt. Ltd.** (supra), where the Division Bench has held that the legal title over the agricultural land does not vest in the tenant until all such conditions are satisfied including the payment of purchase of price of lands. It is held that the expression

“belonging to a Tribal” after the expression of “transfer of land”, makes it abundantly clear that the question of transfer can arise only if the agricultural land belonged to the Tribal i.e. the title in the agricultural land vested in the Tribal.

9. In the facts of the present case, a 32M certificate has not been issued in favour of the petitioner. Therefore, the petitioner cannot be said to have become the owner of the land on the date of initiation of the proceedings. Therefore, no interference in the orders passed by the authorities below rejecting the petitioner's application is called for.

10. However, Clause 2 of the order passed by the Sub-Divisional Officer directs the petitioner (Tribal) to deliver possession of properties in favour of the opponents. It needs to be noted that the Sub-Divisional Officer derives power under section 4 of the Act. The only power conferred on the Sub-divisional Officer is to ascertain whether tribal land can be restored in favour of the Tribal. If the Sub-Divisional Officer records a finding of the fulfilment of ingredients of section 4 of the Act, he has the power to direct restoration of the land. However, in the absence of fulfilment of ingredients of section 4 of the Act, he is bound to reject the application. Except for rejecting or allowing the application for restoration, an order prejudicial to the interest of the Tribal directing the Tribal to deliver possession could not have been passed by the Sub-Divisional Officer. This aspect has not been considered by the Maharashtra Revenue Tribunal.

11. Therefore, in my opinion, Clause 2 of the order passed by the

Sub-Divisional Officer on 13th January 2017, confirmed by the Maharashtra Revenue Tribunal needs to be quashed and set aside.

12. Hence, the writ petition partly succeeds.

13. The order dated 13th January 2017 to the extent of Clause 2 passed by the Sub-Divisional Officer Khalapur, Sub-Division Karjat, District Raigad in Restoration/Revision Appeal No.6 of 2016 at Exhibit-H is quashed and set aside.

14. The writ petition stands disposed of accordingly. No costs.

(AMIT BORKAR, J.)