



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 2823 OF 2024

(Maroti s/o Rama Atram and others ..vs.. State of Maharashtra, through the Collector, Yavatmal and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. Mankar, Counsel for the petitioners,
Ms. N.P. Mehta, Addl.G.P. for respondent No.1.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 30-04-2024

Heard Mr. A. Mankar, learned Counsel appearing for the petitioners.

2. Petitioner Nos.1 to 6 are claiming to be the tribals and are protected under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short "Restoration Act") so also Sections 36 and 36A of the Maharashtra Land Revenue Code, 1966 (for short "MLR Code of 1966").

3. The petitioners are seeking declaration that the action of respondent Nos.1-State of Maharashtra and respondent No.2-Corporation owned and controlled by the State Government within the meaning of sub-section (cc) of Section 3 of the Land Acquisition Act, 1894 (for short "Act of 1894") is against the well settled provisions of law. The respondent-Collector to take action pursuant to the provisions of the Restoration Act and the MLR

Code of 1966 with directions to restore land Gat No.15, area admeasuring 4.73 Hectares situated at Mouza Pardi, Tahsil Zari Jaamani, District Yavatmal in favour of the petitioners. In alternate, the petitioners have sought issuance of directions to the respondent authorities to acquire the land as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “Act of 2013”).

4. The genesis of the case of the petitioners is that respondent No.2-Corporation upon approval of respondent No.1 executed a Medium Irrigation Project in Yavatmal district. For the said irrigation project since the land of the petitioners was required, they have executed a registered sale-deed in favour of respondent No.2 at Sr.No.10127/157701 on or about 11-11-2009.

5. The petitioners executed the aforesaid registered sale-deed after having received a consideration of Rs.13,29,130/- which was deposited in the bank account of the petitioners through a cheque drawn on 16-10-2009.

6. The contentions of Mr. Mankar, learned Counsel appearing for the petitioners are that aforesaid sale-deed was got executed by respondent No.2 by practising fraud, coercion and misrepresentation as the respondent authorities were in law duty bound to sensitize the

petitioners about their legal rights that the land in question could have been acquired also under the provisions of the Land Acquisition Act, 1894 which would have yielded more compensation than the consideration which was paid to the petitioners. The second submission of the learned Counsel Mr. Mankar is that the land in question which was owned by the petitioners, is protected pursuant to the provisions of the Restoration Act and the MLR Code of 1966. According to him, the petitioners have produced on record the Caste Certificate in relation to Aya Rama Atram i.e. petitioner No.2 who happened to be brother of petitioner No.1. As such, he would claim that by virtue of provisions of Sections 3 and 4 of the Restoration Act, the land of the petitioners ought not to have been got transferred by respondent No.2 by executing sale-deed without there being permission from the Collector as is contemplated in law.

7. Mr. Mankar, learned Counsel as such would urge that it is for the respondents to either take out a fresh proceedings for acquisition under the Act of 2013 and may award appropriate compensation after adjusting the amount of consideration which is undisputedly received by the petitioners.

8. As against above, the learned Additional Government Pleader would oppose the prayer as according to her, the petition suffers from delay and laches and cannot be entertained in extraordinary writ

jurisdiction. Her further contentions is, perusal of the recitals in the sale-deed depicts that the petitioners in vernacular i.e. Marathi Language, which was known to them, have received the consideration and executed the sale-deed which was duly registered. She would claim that pursuant to the provisions of Section 60 of the Registration Act, 1908 there is statutory presumption in favour of the 'registered document'. So also, there is a similar provision under Section 114, Illustration (e) of the Indian Evidence Act, 1872 which would arise to the effect that the events contained in the endorsement of registration, were regularly and duly performed and are correctly recorded. As such, the claim that the sale-deed was got registered by respondent No.2 by coercion or misrepresentation cannot be accepted. According to her, at the most the petitioners can take recourse to an alternate remedy which is permissible and advisable in law.

9. We have appreciated the aforesaid contentions.

10. The execution of the sale-deed by the petitioners in favour of respondent No.2 and they having received the consideration, is not a fact in dispute as could be borne out of record.

11. The petitioners are claiming that they are tribals and in view of the provisions of Sections 36 and 36A of the MLR Code of 1966 and Sections 3 and 4 of the

Restoration Act, the tribals' land ought not to have been transferred in favour of respondent No.2.

12. The prerequisite for such a plea raised by the petitioners is that each of the petitioners who are claiming tribals must hold a validity. The law on the aforesaid point is quite settled as could be borne out of the Full Bench judgment in the matter of *Baliram s/o Reva Chavan v. Gajanan s/o Shekrao Wanjare and others in Writ Petition No. 1701/2019*. Apart from above, the petitioners have produced on record the Caste Certificate of petitioner No.2 whereas there is no iota of evidence to record to infer or justify the claim that the petitioners are tribals. As such their land ought not to have been purchased. That being so, the contention of the petitioners that the action needs to be taken pursuant to the provisions of Sections 3 and 4 of the Restoration Act or Sections 36 and 36A of the MLR Code of 1966 cannot be said to be justified as the petitioners have failed to establish a very basic requirement in law of possessing the validity certificate.

13. This takes us to the next objection raised by the learned Additional Government Pleader Ms. N.P. Mehta. According to her, the petition suffers from delay and laches as the sale-deed was got executed way back in 2009 and not only the execution of sale-deed but also receipt of consideration is also not disputed.

14. The fact remains that we have already observed hereinabove that there is a presumption in favour of a valid transaction in view of an existence of registered deed. The fact that it was open for the petitioners at the relevant time to question the sale-deed before the competent court thereby leading evidence to establish that such sale-deed was executed by practising fraud or misrepresentation or coercion.

15. Apart from above, the fact remains that the sale-deed is indirectly sought to be questioned in the writ petition that too after a period of almost fourteen years. For such delay, the only explanation coming forward from the learned Counsel for the petitioners is the provisions of the Act of 2013 contemplate the power vested in the Collector to acquire the land at any stage. In our opinion, such protection cannot be availed by the petitioners, particularly when the land already stood vested in the respondent-acquiring body by virtue of registered sale-deed.

16. Apart from above, a grievance made by the petitioners to the aforesaid effect was duly looked into by the Collector and the Collector through the Tahsildar based on the communication in 2016 served on 28-1-2016 has categorically rejected the case of the petitioners. The petitioners have not questioned such communication or order passed by the Collector through a statutory appeal which is not only provided under

Section 36A of the MLR Code of 1966 but also under the provisions of the Restoration Act to the Tribals.

17. The issue of limitation according to the learned Counsel Mr. Mankar will not be attracted in the case in hand, particularly having regard to the powers vested in the Collector under Section 4 of the Restoration Act. The aforesaid contentions raised by Mr. Mankar is also liable to be rejected for the reason that the petitioners are not holding tribe validity in their favour and as such, it is not open for the petitioners to take recourse to the provisions of Sections 3 and 4 of the Restoration Act.

18. The fact remains that the Act of 2013 came into effect post 2013 and it was always open for the petitioners to seek benefits post such Act being notified which the petitioners have failed to seek within the reasonable time.

19. The petitioners are praying for taking out fresh acquisition proceedings under the Act of 2013 if evaluated, the fact remains that the petitioners intend to have the compensation under the New Act that too at much higher rates for which there is no legal justification.

20. Even otherwise the petitioners have failed to demonstrate that other similarly placed persons like the petitioners for the vary project paid higher compensation.

21. For all these reasons, in our opinion, no case for causing indulgence is made out and the petition lacks merit. Hence, the petition stands dismissed.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

adgokar