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

WRIT PETITION NO.7836 OF 2019

1. Smt. Annapurna wd/o Rajaram Sasane,
Aged 56 years, Occupation : Agriculturist.

2. Nandkishor s/o Rajaram Sasane
Aged about 25 years, Occupation : Agriculturist
Both R/o Wadad (Bramhi), Post- Kasola,
Tah. Mahagaon, District- Yavatmal. .... **PETITIONERS**

...V E R S U S...

1. Dhyaneshwar S/o Govinda Chibhade,
Aged : 35 years, Occupation : Agriculturist
R/o. Chikhali Camp, Tah. Pusad,
District – Yavatmal.

2. The Tahsildar, Mahagaon,
Tq. Mahagaon, District Yavatmal.

3. The Learned Member,
Maharashtra Revenue Tribunal,
Nagpur Bench, Nagpur. .... **RESPONDENTS**

Mr. P. R. Agrawal, Advocate for Petitioners.
Mr. A. M. Joshi, AGP for Respondent Nos.2 and 3/State.

CORAM: **ANIL L. PANSARE, J.**
DATE: **9th JULY, 2024.**

ORAL JUDGMENT:

1. Rule. Rule made returnable forth. Heard finally with consent of learned counsel appearing for the parties.

2. The petitioner No.1's husband had purchased the property in question from grand-father of respondent No.1 on 20.03.1971.

3. The respondent No.1, in the year 2018 filed application under Section 36A of the Maharashtra Land Revenue Code, 1966 (for short MLR Code) read with provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short 'Restoration Act') before the Tahsildar, Mahagaon, District Yavatmal. The learned Tahsildar vide order dated 06.11.2018 taking aid of Section 3(1) of the Restoration Act has cancelled the sale-deed and directed the petitioner to restore the land to the respondent No.1.

4. The petitioners made an attempt to convince the Appellate Authority i.e. Maharashtra Revenue Tribunal, Nagpur that the provisions of Section 36A of MLR Code and provisions of Restoration Act are not applicable. However, the Tribunal did not find any substance in the appeal.

5. Having heard both sides at length, it appears that as far as the transaction in question i.e. sale-deed dated 20.03.1971,

is concerned there is no dispute that the parties herein belong to 'Andh' tribal community which was included in the list of Scheduled Tribe contained in the Scheduled Tribes Order, 1950 only in the year 1974. In that sense, it is evident that at the time of execution of sale-deed, the parties were not recognized as tribal community. The question therefore, arises whether such transaction will be hit by the provisions of MLR Code read with the provisions of 1974 Act.

6. The counsel for the petitioner has invited my attention to the Full Bench judgment of this Court in the case of ***Baliram s/o. Reva Chavhan v. Gajanan s/o. Shekrao Wanjare & Ors. [2024(1) ALL MR 560 (F.B.)]*** which covers the issue involved in the present petition. The question that was referred to the Full Bench is answered as follows:

> *Subsequent recognition of a transferor as a Tribal within the meaning of Section 2(1)(j) of the Restoration Act would not entitle him to seek restoration of the land transferred by him to a non-tribal-transferee and his subsequent recognition as such is of no assistance to him for the purpose of availing of the benefit of Section 3 of the Restoration Act.*

7. As could be seen the Full Bench has held that

subsequent recognition of a transferor as a Tribal will not entitle him to seek restoration of the land and further his subsequent recognition as tribal is of no assistance to him for the purpose of availing the benefit of Section 3 of the Restoration Act, 1974.

8. That being so and despite the petitioner making out case to that effect, the authorities below have ignored the vital fact that in the year 1971 the parties to the transaction were non-tribal.

9. None appears for respondent No.1. The learned AGP made an attempt to support the judgment. However, in view of the Full Bench's judgment, the issue having been answered in clear terms, the impugned orders are contrary to the provisions of law and therefore, are liable to be quashed and set aside.

10. Accordingly, the order dated 06.11.2018 passed by Tahsildar – respondent No.2 and order dated 15.10.2019 passed by Maharashtra Revenue Tribunal – respondent No.3 are hereby quashed and set aside. The application filed by respondent No.1 before the Tahsildar is rejected.

11. Rule is made absolute in the above terms. No order as to costs.

(ANIL L. PANSARE, J.)

NSN