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WP-9486-2014

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9486 OF 2014

Rasabai w/o Motiram Bhil
died, through proposed Lrs.
Suresh s/o Ganpat Thakre and Ors. ...Petitioners

VERSUS

The State of Maharashtra and Ors. ...Respondents

WITH
CIVIL APPLICATION NO. 6362 OF 2024
IN
WRIT PETITION NO.9486 OF 2014

Rasabai w/o Motiram Bhil and Ors. ...Applicants
Versus

The State of Maharashtra and Ors. ...Respondents

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Mr.Amit A. Mukhedkar Advocate for the petitioners.
Mr. D. r. Korde, AGP for Respondent Nos.1 to 3.
Mr. S. B. Yawalkar for Respondent Nos.5B, 5C, 6A to 6C and 7.
Mr. R. B. Bhosale for Respondent No.8.

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CORAM : KISHORE C. SANT, J.
RESERVED ON : 18th NOVEMBER 2024
PRONOUNCED ON : 10th JANUARY 2025

PC :-

1. Heard the learned Counsel for the parties.
2. The petition is directed against a judgment and order dated 17th

May 2014 passed by the Respondent No.1 in Case No.BIW-0613/C. No.177/L-4 C. No.588(09) 2013/ABPU.

3. By the impugned judgment and order, the Respondent No.1 has allowed the application of Respondent Nos.4, 5 (now represented by legal heirs), 6 (now represented by legal heirs) and 7. The Respondent No.1 is the State. Respondent Nos.2 and 3 are the Divisional Commissioner, Nashik and the District Collector, Jalgaon, respectively. The proceeding is in respect of the revenue record.

4. The present petitioners initiated the proceedings by filing Watan Application No.02 of 2011 before the Collector under Section 3 of the Bombay Inferior Village Watans Abolition Act, 1958. It is the case of the petitioners that the land was given to their ancestor namely, Motiram Kisan Bhil in the year 1941-42 and 1942-43. Later on in the year 1943, the land was wrongly given to the ancestor of Respondent No.5 to 8. The prayer was made to give the land in their possession as Watan land. They prayed for deletion of entries No.1689 and 1800 as those are illegally taken.

5. It is the case of the Respondents that though the land was given to

the ancestor of the petitioners, he did not cultivate the land after 1943. Thereafter, the land was again taken in possession of the Government. The Government later on re-granted the land to the ancestor of the respondents and since then, they are cultivating the land and it is the respondents, who are having possession over the land. The petitioners have no concern with the land.

6. The learned Collector held that the lands were re-granted to the ancestor of the respondents and thereafter, there is no concern of the petitioners with the said lands. He further held that the name of father of the Respondents was taken in 1965 in the possession column of the land. The application before the Collector was moved by the petitioners after 45 years. On both the counts, he rejected the appeal of the petitioners.

7. The petitioners being aggrieved thereby, preferred a revision before the learned Divisional Commissioner, Nashik. The learned Divisional Commissioner considered Sections 36 and 36-A of the Maharashtra Land Revenue Code, 1966 (for short "MLRC"), while considering the revision. The learned Divisional Commissioner Nashik

however, held that the Collector has not properly considered that the petitioners happen to be tribals and their land could not have been given to the respondents. The possession of the land needs to be restored. The land ought to have been re-granted to the petitioners. In case, it was to be re-granted to any other persons, notices were required to be given to the petitioners. The learned Divisional Commissioner set aside the order passed by the learned Collector and directed the Tahsildar to take action under Sections 36 and 36-A of the MLRC. Against the order of the learned Commissioner, the Respondents approached the State Government. The State Government by way of impugned order, allowed the revision of the Respondents. The petitioners are therefore, before this Court.

8. Learned Advocate Mr.Mukhedkar, appearing for the petitioners, forcefully argued that the petitioners happen to be persons belonging to tribal community. The land was being cultivated by Mr. Motiram Bhil, ancestor of the petitioners till 1942. His land could not have been taken by the Government as the land was granted to him by the Government being '*Talpadi Inam Land* ' an inferior Watan. The Government by

issuing circular dated 14th July 2009 has relaxed the period of limitation for taking action under Sections 36 and 36-A of the MLRC, in cases where the lands of the tribals are transferred to non-tribals. The findings of the Collector on limitation is thus erroneous. The learned Collector and the State have failed to appreciate this aspect. He relied upon the judgment of this Court in the case of ***Rangnath Dashrath Vadar and Ors. Vs. Bhagatsing Vithalsing Kotwal***¹. He thus prays to allow the writ petition.

9. Learned Advocate Mr.Yawalkar appearing for Respondents submits that the main proceeding initiated by the petitioners itself was not maintainable because of delay and laches. Though no limitation is provided still the petitioners were expected to approach within reasonable time. In the present case, they approached after more than 45 years. Even as per the case of the petitioners, the name of their ancestor was appearing in the revenue record prior to 1943. Since thereafter no any grievance was raised by father of the petitioners during his lifetime. The entry in the revenue record dated 9th February

1 2003 (3) Bom.C.R. 18

1962 is only under challenge. The petitioners have not challenged the entry No.1805 dated 23rd January 1965. The entry No.1805 is taken after payment of taxes. In any case, he submits that there is no certificate produced on record to show that the petitioners belong to tribal community. As it is the proceeding is under the provisions of the Bombay Inferior Village Watans Abolition Act. There is no application under Sections 36 and 36-A of the MLRC. The Commissioner has exceeded his jurisdiction by considering the provisions of Sections 36 and 36-A of the MLRC. The findings recorded by the Collector would clearly show that the proceeding was under Watans Act. He supports the order passed by the State Government. He submits that the provisions of Section 36 of the MLRC or the Maharashtra Restoration of Lands to Scheduled Tribes Act are not attracted in the present case. By referring to definition of word "occupant" in Section 2(23) of MLRC, he submits that the petitioners do not fall under the definition of occupant. The provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act are not applicable also for the reason that it is not the case even of the petitioners that they were the owners of the property. He submits that,

no case is made out to exercise jurisdiction under article 227 of the Constitution of India, in this case.

10. In rejoinder, learned Advocate for the petitioners submits that the mutation entry No.1800 is under challenge and in view of the same, he need not challenge further entries. He further submits that the petitioners have now produced on record a tribe certificate issued in favour of the petitioners.

11. The learned AGP supports the impugned order. He submits that the learned Minister has rightly passed an order. He prays for dismissal of the petition.

12. After hearing the parties and after going through petition paperbook, this Court need to answer following questions. First, whether Watans of petitioners is abolished? second, whether the application suffers from delay and laches?; third, whether the provisions of Sections 36 and 36-A of MLRC are applicable? and lastly, whether the provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act are applicable?

13. From the record it is clearly seen that in 1941-42 the petitioners ancestor was in possession. In 1943, the land was re-granted in favour of ancestor of respondent Nos.5 to 8. There is no dispute about the said fact. Thereafter, there is no challenge by the petitioners' father during his lifetime. The petitioners do not have any concern with the suit land thereafter. The land was taken back by the Government. The Government thereafter re-granted the land to ancestor of the respondents. Thus, no case was made out to pass order in favour of the petitioners under the Bombay Inferior Village Watans Abolition Act. So far as limitation is concerned, the petitioners for the first time challenge the entries taken in 1965 by filing proceedings in the year 2011 before the Collector. It is held in the judgment of the Hon'ble Apex Court in the case of *Santoshkumar Shivgonda Patil and Ors. Vs. Balasaheb Tukaram Shevale and Ors.*² that when no limitation is provided, parties are still supposed to approach within reasonable time i.e. three years. In the present case, this Court holds that the proceedings suffers from delay and laches. The learned Collector and the State have rightly considered

2 [2010(2) Mh.L.J.150

that the application suffered from delay and laches and has rightly concluded that the application was not maintainable on that account.

14. So far as the applicability of provisions of Section 36 and 36-A of the MLRC and Restoration Act is concerned, there was no case even of the petitioners before the Collector that they have filed proceedings under the Maharashtra Restoration of Lands to Scheduled Tribes Act. The learned Commissioner has exceeded the jurisdiction by considering Sections 36 and 36-A of the MLRC when that is not the case even of the petitioners. Thus about non applicability of provisions of Maharashtra Restoration of Lands to Scheduled Tribes Act also, this Court finds substance in the submission of Mr.Yawalkar. To attract provisions of the Restoration Act what is required is that there is a transfer of a land from tribal to non-tribal. In this case, there is no transfer of land from petitioners to respondents. So far as the judgment in the case of ***Suresh Bapu Sankanna and Ors. Vs. State of Maharashtra and Ors.***³, this Court finds that the said is not applicable in the present case. Reliance placed on the said judgment is of no use in the present case. This Court has

already considered the judgment in the case of ***Santoshkumar Shivgonda Patil*** (supra) and has come to the conclusion that the proceedings was not entertainable after 45 years. Thus, for all these reasons, this Court finds that the petitioners have failed to make out a case calling for interference in the impugned judgment. Petition therefore deserves to be dismissed. Hence, the following order:-

ORDER

- (i) Writ Petition stands dismissed.
- (ii) No order as to costs.
- (iii) In view of dismissal of Writ Petition, Civil Application does not survive and disposed off accordingly.

[KISHORE C. SANT, J.]