



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1403 OF 2020**

Daulatrao S/o Kondiba Shelke (Died)
through Lrs

1. Limbajirao S/o. Daulatrao Shelke,
Age: 60 years, Occ: Agril,
R/o. Mankeshwar, Tq. Jintoor,
Dist. Parbhani.
2. Sambhaji S/o. Daulatrao Shelke,
Age: 57 years, Occ: Agril,
Through GPA of Petition No.1. ..Petitioners

Versus

Pandit s/o Bhikaji Dakhure,
Age: 61 years, Occ: Agri,
R/o. Mankeshwar, Tq. Jintoor,
Dist. Parbhani. ..Respondent

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Mr. V. D. Patnurkar, Advocate for Petitioner.
Mr. M. P. Kale, Advocate for Respondent No.1.

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CORAM : S. G. CHAPALGAONKAR, J.
DATED : 12th JULY 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.
2. The petitioners impugn the order dated 12.07.2019 passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad (for short 'M.R.T., Aurangabad') in Review Petition No.8-C/14/Parbhani.
3. Mr. Patnurkar, learned Advocate appearing for the petitioners submits that the petitioners' father had purchased lands bearing Survey No.22-B and Gut No.84/2 under registered sale deed, from father of respondent. The sale deed was executed

on 30.01.1968. The petitioners' father was put into the possession and mutation was certified in his favour. On 07.07.2000, the respondent filed proceeding invoking provisions of Maharashtra Restoration of Land to Schedule Tribe Act, 1974 (for short 'Act of 1974') r/w Section 36(2) of the Maharashtra Land Revenue Code, 1966 (for short 'MLR Code') alleging that sale transaction is not sustainable in law. He is tribal person and land is transferred in favour of non-tribal person without prior permission of the Collector. The learned Tahsildar acted upon such representation and dispossessed petitioners and handed over possession to the respondent.

4. The petitioners filed Appeal before the M.R.T., Aurangabad. The said Appeal was allowed vide order dated 22.10.2013 holding transaction to be valid since both the parties to the transaction were tribal belonging to 'Andh' tribe. It is further observed that challenge to the transaction after 32 years was barred by limitation. The respondent filed Review Petition alongwith Application for condonation of delay, so also obtained *ex-parte* stay. The petitioners then approached this Court challenging the order on stay application. The said Writ Petition came to be disposed of giving direction to M.R.T., Aurangabad to decide the Review Petition within a period of six weeks. On 12.07.2019, the learned Member of M.R.T., Aurangabad allowed the Review Petition and remanded matter for re-enquiry to Collector, Parbhani

5. Mr. Patnurkar, submits that it is not disputed that the respondent belongs to 'Andh' tribe. Even petitioner belong to same tribe. However, the M.R.T., Aurangabad erroneously observed that no admissible evidence regarding tribe of the petitioners is placed on record. He would further submit that subject sale transaction is dated 30.01.1968. The respondent raised objection after 32 years.

The tribe 'Andh' is designated as Tribe by the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 i.e. after 8 years of execution of sale deed. As such, as on the date of execution of sale deed, the vendor cannot be said to be tribe. He would further submit that the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975 (for short 'Act of 1975') was also not promulgated at the time of execution of sale deed/transfer of land in favour of the petitioners' father. In that view of the matter, proceeding initiated by the respondent was not maintainable and that could not have been entertained, particularly after 32 years.

6. Per contra, Mr. Kale, learned Advocate appearing for the respondent submits that the matter is remanded back to the Authority, who is empowered to decide the validity of transaction in light of Section 36 of the MLR Code or Act of 1974. All the issues raised before this Court can be canvassed before the Competent Authority and can be elaborately dealt with. He would further submit that in absence of adequate evidences as regards to the tribal status of the parties, issue involved cannot be properly addressed. Therefore, M.R.T., Aurangabad rightly remand the matter for recording fresh finding on crucial issue of tribal status. No prejudice would be caused to the petitioners, if they appear before the learned Collector and put up their stand.

7. Having considered submissions advanced by the learned Advocates for the respective parties and after perusal of the documents tendered before this Court, it can be observed that respondent specifically contends that he belongs to 'Andh' tribe, therefore, sale deed executed by his father to non-tribal is hit by the provisions of Act of 1975 as well as Section 36(2) of the MLR Code. It is not in dispute that the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 has been promulgated w.e.f.

20.11.1976. Accordingly 'Andh' tribe is included in the list of Scheduled Tribe in State of Maharashtra. Even, the Act of 1975 has been promulgated w.e.f. 28.05.1975.

8. It can be evinced from the aforesaid factual aspects that as on the date of execution of sale deed dated 30.01.1968, neither the father of the respondent had recognition being a tribal nor was Act of 1975 promulgated. In this background, whether the proceeding instituted after 30 years of the sale deed could have been entertained is the issue posed for consideration before this Court. Pertinently, the similar issue was subject matter in case of **Gopal Vs. Poshatti and Ors¹**, this Court observed that if the tribe of a transferor is recognized to be Scheduled Tribe any time after the date of sale-deed, then he is not entitled to the benefit of the provisions of the Maharashtra Restoration of lands to the Scheduled Tribes Act, 1974. Similar view is reiterated by the Division Bench of this Court in case of **Tukaram Laxman Gandewar Vs. Piraji Dharmaji Sidarwar by Lrs. Laxmibai²**. This Court while considering the provisions of Section 36-A of the MLR Code observed thus:

“9. The provisions of section 36-A, therefore, provide that no such occupancy of a tribal shall be transferred in favour of any non tribal by way of sale, etc. except on the application of such non tribal and except with the previous sanction of the Collector. This section, therefore, provides that no occupancy of the tribal can be transferred by way of sale without permission of the Collector in favour of a non tribal. The restriction is provided for transfer. The status of the parties, therefore, has to be considered at the time or prior to completion of the transfer. The change in status after the transfer, if any, has no relevance and restriction provided under section 36-A are not at all attracted. The sale may be even after 1974 but the sale must be between tribal and non tribal. The parties must have that status of being tribal at the time of the transfer and not subsequently. That does not

¹ 1997 MCR-227.

² 1989 Mh.LJ. 815.

seem to be the intention of the Legislature. The Legislature wanted to extend protection to the person who are tribal at the time of transfer. The protection, therefore, cannot be extended to the persons who were not tribals at the time of transfer but the status of belonging to Scheduled Tribe is conferred thereafter. In our opinion, the provisions of section 36-A are not at all attracted in the present case in view of the admitted fact that the status of respondent No. 1 as Scheduled Tribe is conferred on him by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976, which came into force on 27th day of July, 1977. The respondent deceased Piraji could claim status of belonging to Scheduled Tribe on or after 27th day of July, 1977 and not before that. The transfer under a sale deed dated 9-9-1974, was therefore not between tribal and non tribal but between non tribals to which provisions of section 36-A cannot apply. ”

9. Similar view is reiterated by this Court in several unreported judgments. If the law espoused by this Court in aforesaid judgment is applied in the facts of this case, particularly in view of undisputed fact that the claim of respondent is based on contention that his father belongs to ‘Andh’ tribe and transfer made by him in favour of the petitioners’ father is hit by the provisions of Act of 1974 and Section 36(2) of the MLR Code, the proceeding itself was not maintainable. The respondent had no cause of action to raise the dispute after 32 years. Considering this legal position, the order passed by M.R.T., Aurangabad remanding the matter back to the Collector would be unsustainable. Consequently, Writ Petition deserves to be allowed. Hence, the following order:

ORDER

- a. Writ Petition is allowed in terms of prayer Clause (B).
- b. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE