

Rama

Vs

State Of Maharashtra and Others

Civil Appeal No. 6528 of 1995

(G. T. Nanavati, S. P. Kurdukar JJ)

15.10.1998

JUDGMENT

NANAVATI, J. -

1. The appellant is questioning in this appeal the correctness of the judgment of the Bombay High Court in Writ Petition No. 1858 of 1982.
2. One Dina Bisan was the Kotwar of Village Bhandare. He died in 1953. The respondent, Sharad who was his nephew and the only heir was appointed as a Kotwar in his place. As Sharad was a minor at that time, the appellant was appointed as a "Gumasta"/Deputy of Sharad. Sharad became a major in 1959. He made an application on 18-4-1959 for deleting the name of the appellant as "Gumasta Kotwar" as that arrangement was no longer necessary. No order was passed on it till 1964. Therefore, he again applied to the Naib Tehsildar to delete the name of the appellant. By that time, the appellant had also, along with other persons, applied for regrant of the land as the rights of Kotwars came to be abolished in 1962 by the M.P. Land Revenue Amendment Act, 1962 and he was the de facto holder on the appointed date, i.e., 31-5-1962 and, as such, entitled to regrant of the land. The appellant's application was granted.
3. The respondent, Sharad filed an appeal to the Deputy Collector but it was dismissed. Appeal to the Commissioner, Nagpur Division, was also dismissed. He then filed a revision application to the State Government and it was allowed. The State Government took note of the fact that the appellant was merely a Deputy for Sharad and that the appellant was appointed independently as a Kotwar in 1964. As the appellant was not a Kotwar on 31-5-1962, he was held not entitled to claim any right of regrant under Section 150-B of the Act. Aggrieved by the order passed by the State Government, the appellant filed a writ petition in the Bombay High Court. The High Court after considering the legal position and all the materials on record upheld the finding recorded by the State Government and dismissed the writ petition.
4. It was contended by the learned counsel for the appellant that the appellant was really in possession of the land and had worked as a Kotwar though as a Deputy of Sharad. He was thus the real Kotwar and, therefore, consistently with the object of the Act, the land was rightly regranted to him particularly when Sharad had not made any application for regranteeing the land to him. In our opinion, the submission raised on behalf of the appellant is misconceived. The post of Kotwar was a hereditary post. It is not in dispute that Dina was one of the recorded Kotwars of Village Bhandare. It is also not in dispute that Sharad was the only heir of Dina and, therefore, on the death of Dina, under Section 53 of the Act, he became entitled to be appointed as a Kotwar. The State Government has in its order clearly stated that in fact, Sharad was appointed as a Kotwar after the death of Dina

and his name was so recorded in the revenue records. As Sharad was a minor at that time, the appellant, Rama was also appointed as a "Gumasta" or a "substitute Kotwar". The hereditary right of being appointed a Kotwar was abolished in 1962. Obviously till 1962, no independent right to be appointed as a Kotwar could have been claimed by the appellant. It is also not in dispute that an application was made by the appellant for being appointed as a Kotwar for the first time in 1964, and an order to that effect was passed by the SDO, Bhandare, on 13-7-1964. Therefore, on 31-5-1962 which is the relevant date, the appellant was not a Kotwar and no right of his came to be abolished when the Act was amended and Sections 150-A and 150-B were inserted in it. The appellant's application made under Section 150-B, therefore, deserved to be rejected. We agree with the reasons given by the High Court and uphold the order passed by it. The appeal is, therefore, dismissed.