

# SUPREME COURT OF INDIA

Sandu

Vs.

Gulab

C.A.No.3470 of 2006

(M.Y.Eqbal and Joseph Kurian,JJ.,)

04.09.2015

## JUDGMENT

**Joseph Kurian.J.,**

1. The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as 'the Act') was introduced to provide for the restoration of certain lands to persons belonging to the scheduled tribes. It has been notified on 01.11.1975. Under Section 4 of the Act, the restoration is contemplated in respect of transactions on or after 1st day of April, 1957. Section 4 reads as follows:

"4. Restoration of lands of persons belonging to Scheduled Tribes. Where any land of a Tribal is, at any time on or after the 1st day of April 1957 and before the 6th day of July 1974, purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant tenancy law by a non-Tribal-transferee or where any acquisition has been regularised on payment of penalty under such law and such land is in possession of a non-Tribal transferee and has not been put to any non-agricultural use on or before the 6th day of July 1974, then the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo motu at any time or on an application by the Tribunal made 1[within thirty years from the 6th July 2004] and after making such inquiry as he thinks fit, direct that the land shall, subject to the provisions of subsection (4) of section 3, be restored to the Tribal free from all encumbrances and that the amount of purchase price or a proportionate part thereof, if any, paid by such non-Tribal-transferee in respect of such lands in accordance with the relevant tenancy law shall be refunded to such non-Tribal-transferee either lump sum or in such annual installments not exceeding twelve (with simple interest at 4% per cent. per annum) as the Collector may direct. The provisions of clauses (d), (e), (f) and (g) of sub-section (4) of section 3 shall, so far as may be, apply in relation to the recovery of the amount from the Tribal and payment thereof to the non-Tribal-transferee and the persons claiming encumbrances, if any :

Provided that, where land is purchased or acquired by a non-Tribal-transferee before the 6th day of July 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so purchased or acquired shall be restored to the Tribal-transferor."

2. Under Section 5A of the Act, lands which belonged to the tribals and coming under the purview of the Act which cannot be restored to the original tribals, vest in Government and such lands are to be granted to other tribals subject to prescribed restrictions.

"5A. (1) Where any land (not being land acquired in exchange), which is liable to be restored to a Tribal-transferor under sub-section (1) of section 3 cannot be so restored either on account of the failure of the Tribal-transferor to give an undertaking referred to in sub-section (3) of section 3 or for any reason whatsoever or where any land referred to in section 4 cannot be restored to the Tribal by reason of such Tribal expressing, during the inquiry held by the Collector, his unwillingness to refund the purchase price or proportionate part thereof to the non-Tribal-transferee, as required by the said section 4, or for any other reason, then, the Collector may, subject to rules, if any, made in that behalf, by order in writing direct that the land shall, with effect from the date of the order, be deemed to have been acquired and vest in the State Government free from all encumbrances.

(2) On such vesting of the land, the non-Tribal-transferee shall be entitled to receive from the State Government an amount equal to 48 times the assessment of the land, plus the value of the improvements, if any, made by the non-Tribal-transferee therein. The provisions of clauses (b) and (c) of sub-section (4) of section 3 shall mutatis mutandis apply for determining the value of improvements and for apportionment of the encumbrances, if any, on the land between the non-Tribal-transferee and the persons claiming encumbrances on the land.

(3) The land so vested in the State Government under sub-section (1) shall, subject to any general or special orders of the State Government in that behalf, be granted by the Collector to any other Tribal residing in the village in which the land is situate or within five kilometers thereof and who is willing to accept the land in accordance with the provisions of the Code, and the rules and orders made thereunder and to undertake to cultivate the land personally; so however, that total land held by such Tribal whether as owner or tenant does not exceed an economic holding within the meaning of sub-section (6) of section 36A of the Code.

(4) The person to whom land is granted under sub-section (3), shall pay to the State Government the amount referred to in sub-section (2), either in lump sum or in such annual instalments not exceeding twelve (with simple interest at 4% per cent. per annum) as the Collector may direct and shall hold the land subject to such terms and conditions as may be prescribed.

(5) Without the previous sanction of the Collector, no land granted under subsection (3) shall be transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or of an award or order of a competent authority) or by way of gift, mortgage, exchange, lease or otherwise. Such sanction shall not be given otherwise than in such circumstances and on such conditions including condition regarding payment of premium or nazarana to the State Government, as may be prescribed: Provided that, no such sanction shall be necessary where the land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in sub-section (4) of section 36 of the Code for raising a loan for effecting any improvement on such land.

(6) If sanction is given by the Collector to any transfer under sub-section (5), subsequent transfer of the land shall also be subject to the provisions of subsection (5).

(7) Any transfer of land, and any acquisition thereof, in contravention of subsection (5) or (6), shall be invalid; and as a penalty therefor, any right, title or interest of the transferor and transferee in or in relation to such land shall, after giving him an opportunity to show cause, be forfeited by the Collector; and the land together with the standing crops thereon, if any, shall without further assurance vest in the State Government and shall be disposed of in such manner as the State Government may, from time to time direct."

3. Section 6 of the Act provides for an appeal to the Maharashtra Revenue Tribunal.

"6. Appeal. (1) An appeal against any decision or order passed by the Collector may, notwithstanding anything contained in the Code, be made to the Maharashtra Revenue Tribunal constituted under the Code.

(2) Every such appeal shall be made within a period of sixty days from the date of receipt of the decision or order of the Collector. The provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of such appeal.

(3) In deciding an appeal under sub-section (1), the Maharashtra Revenue Tribunal shall exercise all the powers which a Court has subject to the regulations framed by that Tribunal under the Code and follow the same procedure which a Court follows, in deciding appeals from the decree or order of an original Court under the Code of Civil Procedure, 1908 (V of 1908)."

4. Section 7 of the Act provides for revision.

"7. Revision. Where no appeal has been filed within the period provided by subsection (2) of section 6, the Commissioner may suo motu or on the direction of the State Government at any time—

(a) call for the record of any inquiry or proceeding of any Collector for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of, such Collector, as the case may be, and

(b) pass such order thereon as he thinks fit: Provided that no such record shall be called for after the expiry of three years from the date of such order except in cases where directions are issued by the State Government; and no order of the Collector shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard."

5. The Assistant Collector, Jalgaon in the State of Maharashtra initiated proceedings under Section 4 of the Act as per notice dated 03.12.1975 in respect of land Gat. No. 71 measuring 2 hectares and 7 ares on the ground that the land originally belonged to the tribal and as the same was transferred to a non-tribal after 1957. It was found that the land was sold by the tribal to the non-tribal on 12.07.1971. However, restoration was declined and order dated 31.12.1975 was passed dropping the proceedings on the ground that the tribal was not prepared to purchase the land. The order reads as follows:

"ORDER

This case is started suo motu. The suit land belongs to the Shri Gulab Dagadu and etc. who is a member of Tribal Communities. He sold the suit land to Shri Sandu Dayaram on 27.5.1971 for Rs.12,000/-. The transferee belongs to Non-Tribal community. The case was fixed for hearing on 22.12.1975 and after hearing the case is dropped on the following grounds:-

(1) The transferor Shri Gulab Dagadu Tadvi and Supadu Dagadu Tadvi are not willing to purchase the land."

The file was hence closed. Gulab, since deceased and represented by his legal heirs, is the respondent herein. The non-tribal transferee, since deceased and represented by his legal heirs, is the appellant.

6. Thereafter, it appears, in 1985, the Additional Commissioner, Nasik (under Section 2 of the Act, the Commissioner includes Additional Commissioner) initiated suo motu proceedings under Section 7 of the Act, after the Government granted the sanction under Section 7 of the Act by letter dated 10.05.1982. In the order dated 28.03.1989, the revisional authority entered a finding that the land was liable to be restored. The order dated 31.12.1975 passed by the Assistant Collector, Jalgaon was set aside.

7. The order passed by the revisional authority was challenged before the High Court of Judicature at Bombay, Aurangabad Bench in Writ Petition No. 1170 of 1989. The main prayer under the Petition reads as follows:

"9. (A) Record and proceedings of the impugned order dated 28th March, 1989, passed in LR. Adivasi Revision Case number 4 of 1985 be called for, and after examining the legality, validity and propriety of the impugned order dated 28th March 1989 passed by the Additional Commissioner, Nasik Division, Nasik be quashed and set aside and the order passed by the Assistant Collector, Jalgaon on 31st December, 1975 in Adivasi case number 29 of 1975 be restored"

8. Neither the State of Maharashtra nor the Collector (in the instant case, the Assistant Collector, Jalgaon), who passed the order under Section 4 of the Act or the revisional authority (in the instant case, the Additional Commissioner, Nasik Division), was impleaded as parties in the Petition. Only the tribals were made respondents. In litigation on welfare legislations intended to benefit the Scheduled Tribes, Scheduled Castes or other weaker sections, the High Court should see that the State Government and the authorities concerned are impleaded for proper defence and effective assistance.

9. The High Court in the impugned judgment dated 26/27.07.2005 took the view that the Commissioner could not have exercised its revisional jurisdiction under Section 7 of the Act since the same was exercised beyond a period of three years. As a matter of fact, the Government of Maharashtra had accorded sanction for the revision by its order dated 10.05.1982 and the revisional proceedings had been initiated apparently in 1985. Under the proviso to Section 7 of the Act, the revisional authority has to exercise the suo motu powers within three years from the date of the order passed by the Collector except in a case where a direction is issued in that regard by the State Government. Where the State Government accords sanction for initiation of the revision under Section 7 of the Act, the proceedings can be initiated beyond the period of three years. In such a case, the revisional proceedings will not be vitiated on the ground that the same is hit by limitation of the period of three years as prescribed under Section 7 of the Act. But the proceedings should be initiated within a reasonable time from the date of permission given by the Government. In the case before us, the direction is issued by the State Government in 1982 and it appears the revisional authority has initiated proceedings in 1985. In the give circumstances, we are of the view that the power exercised by the revisional authority is within a reasonable time.

10. The High Court has rested its finding on vesting of the land in Government under Section 5A of the Act mainly on the ground that the Commissioner could not have entertained the revision beyond three years. However, even according to the High Court, the non-tribal transferee is to be divested of his possession and ownership though the land was not liable to be restored to the original tribal transferor. On a proceeding duly initiated under Section 4 of the Act, even if a tribal transferor is not interested to get back his land by refunding the purchase price or for other reasons indicated under Section 5A of the Act, the Collector cannot drop the proceedings, as has been done in the instant case. The Collector has to proceed further and divest the non-tribal transferee of the tribal land and pass a further order vesting the land in the State Government for being distributed to the other deserving tribals. But in the instant case, once it is held that the revision was within time, the High Court has necessarily to see whether land could have been restored to the tribal transferor as held by the revisional authority.

11. The impugned order is hence set aside, the Writ Petition is remitted to the High Court for fresh consideration in accordance with law. The State of Maharashtra, the revisional authority and the original authority shall be impleaded as parties in addition to the affected party. The appeal is allowed as above. We request the High Court to dispose of the Writ Petition preferably within six months from the date of receipt of copy of this judgment.

12. There shall be no order as to costs.