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Restoration of Land by Scheduled Tribe — decision by Full Bench of the High Court Bombay — An Analysis

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1. Recently, a Full Bench of Bombay High Court (Nagpur Bench) comprising of Their Lordships Mr. Justice Sunil B. Shukre, Mr. Justice A. S. Chandurkar and Mr. Justice Anil L. Pansare have put to rest at least in the State of Maharashtra a vexed question, which regularly arose while applying the provisions of Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (Restoration Act) in respect of transfer of land from a tribal to a non-tribal.

2. A reference was referred to the Full Bench as the Learned Single Judge, who was hearing Writ Petition No. 1701 of 2019 *Baliram Reva Chavhan* Vs. *Gajanan Shekrao Wanjare & Ors.*, 2023(3) Bom.C.R. 887, was faced with a question as to whether or not transfer of land by a tribal to non-tribal would be affected under Section 3 of the Restoration Act if on the date of such transfer the tribal was not recognized to be of a Scheduled Tribe and his tribe was not specifically included in the List of Schedule Tribes Order, 1950. The Learned Single Judge, while deciding the above Writ Petition, had further found it difficult to opine and give a decision in view of conflicting views of two Division Bench judgements which were delivered over 3 decades ago and both these decisions were separately followed in various judgements pronounced by various Single Judges of the Bombay High Court right upto 2006.

3. The facts of the matter are that on 26th June, 1994 under a registered Sale Deed, the Petitioner, a non-tribal, had purchased the land from one Asha Rajusingh Rathod. The land in question was a part of larger piece, which belonged to one late Shekrao, father of Respondent No. 1, Gajanan and who sold it to one Dhansingh Rathod, father of Respondent Nos. 2 and 3 in the year 1968. Upon partition by Dhansingh, the land came to the share of Ravichand Dhansingh Rathod, the Respondent No. 2, who sold it to Asha Rajusingh Rathod, Respondent No. 4, who had on 22nd June, 1994 sold it to the Petitioner, Baliram, father of Respondent No. 1, who belonged to one "Andh" Tribal Community, which came to be included in List of Scheduled Tribes Order, 1950 in the year 1974. The land was transferred by late Shekarao, father of Respondent No. 1 to Dhansingh Rathod in 1968 at which time the "Andh" Community was not recognized as a Scheduled Tribe. The Restoration Act came into force in the State of Maharashtra with effect from 1st April, 1975.

4. The two divergent views of the Bombay High Court were, one in the case of *Tukaram Laxman Gandewar* Vs. *Piraji Dharmaji Sidhalwal by LR's Laxmibai and Ors.*,

1989(3) Bom.C.R. 156 : 1989 Mh.L.J. 815, (*Tukaram*) and the other one, in case of *Kashibai widow of Sanga Pawar and ors.* Vs. *State of Maharashtra*, 1990 DGLS(Bom.) 1 : 1993(3) Mh.L.J. 1168 (*Kashibai*). In *Tukaram's* case, the Division Bench took a view that a Transferor of land *viz.* tribal to non-tribal, a Tribal - Transferor would be entitled for restoration of the transfer of land under Section 36A of the Maharashtra Land Revenue Code. 1966 (Code) only, if he was tribal as defined under the Explanation to Section 36 of the Code on the date of transfer and not otherwise. In *Kashibai's* case, the Division Bench in a case decided later in point of time took a view that irrespective of the date on which the tribe is recognized and included in the Scheduled Tribes Order, 1950 such a tribal would be entitled to the restoration of the lands. *Kashibai's* case thus took a view that Section 3(1) of the Restoration Act would apply to the past transactions and/or with retrospective effect.

5. The learned Single Judge in the Writ Petition No. 1701 of 2019, whilst being confronted with the aforesaid 2 divergent views of 2 separate Division Benches of the Bombay High Court also considered a decision taken by a learned Single Bench of Aurangabad High Court in the case of-***Chandrabhagabai Dhondiba Gutte (Chandrabhaga)*** Vs. ***Ladba son of Narayan Sidarwad and Ors.*** reported in 2006(Supp.) Bom.C.R. 330 : 2006(1) Mh.L.J. 485, which had considered the judgement of the Supreme Court of India in the case of ***State of Maharashtra*** **Vs.** ***Milind,*** reported in 2001(1) Bom.C.R. 620 : 2001(1) Mh.L.J. 1. In the case of *Chandrabhagabai* (*supra*), the Learned Single Judge found that even though a person born in the tribal community, he/she would not get a status of a tribal for the purpose of Restoration Act till his community is recognized as Scheduled Tribe. Accordingly, the learned Single Judge, in order to resolve the conflicting and divergent views prevailing in the State of Maharashtra, framed the following question and referred the matter to be decided by a Bench of 2 or more learned Judges: —

> "Whether the subsequent recognition of the transferor as a tribal after transfer of the land would entitle the transferor to seek restoration of possession of land under Section 3(1) of the Maharashtra Restoration Of Lands to Scheduled Tribes Act, 1974 as held in *Kashibai wd Sanga Pawar and ors.* Vs. *State of Maharashtra*, 1990 DGLS(Bom.) 1 : 1993(2) Mh.L.J. 1168 or whether such subsequent recognition would be of no assistance to the tribal transferor as held in *Tukaram Laxman Gandewar* Vs. *Piraji Dharmaji Sidarwar by LRs Laxmibai and others*, 1989 Mh.L.J. 815."

6. The Full Bench in the Reference being accosted with the aforesaid question went into the legislative history of the Restoration Act, amendments introduced to the Code as well as in detailed discussed the conflicting views and also the views as expressed by Learned Single Judges subsequently, one set of views emanating from the case of *Tukaram* and the other view as expressed in the case of *Kashibai*. The Full Bench, in particular, examined (i) Section 3 of the Restoration Act, which deals with the restoration or transfer of lands to tribal in certain cases, (ii) the definition of 'non-tribal' under Section 2(1)(e), 'transfer' under Section 2(1)(i), 'tribal' under Section 2(1)(j) and (iii) Section 36 of the Code. After analyzing the implications of the aforesaid sections, the Full Bench opined that the Restoration Act was a remedial and beneficial legislation and Section 3 impacts the transfer of land by a Tribal-Transferor to non-Tribal-Transferee between 1st April, 1967 and 6th July, 1974. The Full Bench opined that in case of transfer of land as above and if, the land is in possession of non-tribal and has not been put to any non-agricultural use on or before 6th

July, 1974, the Tribal would be entitled to seek restoration under Section 3 of the Restoration Act. The Full Bench, however, held that in order qualify for the benefit of Section 3 of the Restoration Act, the Tribal-Transferor must be a person who belonged to a Schedule Tribe, who comes within the meaning of Explanation to Section 3 of the Code.

7. On a further careful analysis, the Full Bench observed that Section 3 of the Restoration Act would come into play only while transfer of land has taken place between 2 living persons, one a tribal and the other non-tribal. After noting relevant provisions of Article 366 (Entry No. 25) and Article 342 of Constitution of India, the Full Bench held that a tribal for the purpose of Section 3 of the Restoration Act must be a person recognized as Scheduled Tribe under Article 342 of the Constitution of India. The President of India is empowered under Article 342 to specify the tribes or tribal communities to be "schedule tribes" for the purpose of constitution and this power was exercised when the Constitution (Scheduled Tribes) Order, 1950 was notified on 6th September, 1950. The List of Specified Tribes has been amended from time to time. The Full Bench noted that one of the amendments, which came into effect from 18th November, 1976, affected the State of Maharashtra wherein area restrictions in relation to some specified tribes came to be removed and that although there are various other tribes and tribal communities in different States, all of them did not find place in the Schedule to the Order of 1950 and therefore, they found that the tribe scheduled to the Order, 1950 was selective in nature and did not include all tribes. Relying on the aforesaid, the Full Bench concluded that a person belonging to a particular tribe, would become a scheduled tribe only upon inclusion of his tribe in the Schedule to the Order of 1950 and till then he continues to be a member of tribe but not a member of Schedule Tribe. The Full Bench also explained the meaning of "membership of a tribe" and the "identity of member of Scheduled Tribe' and held that a membership of a tribe is by natural event that is by birth while identity of that tribal being a member of a Scheduled Tribe is a man-made event and thus, till a tribal acquires a social status of a Scheduled Tribe, his identity is restricted to being a member of tribe only. Keeping in mind the aforesaid principles, the Full Bench dwelled upon the intent of the legislature as regards bestowing the benefits for restoration under Section 3 of the Act to be extended to the person who was a tribal as defined under Section 2(1)(j) of the Restoration Act and who would have to be a person belonging the Scheduled Tribe as defined under Explanation to Section 36 of the Code. The Full Bench laid emphasis not only upon provisions of Article 366 (Entry No. 25) and 342 of the Constitution of India but also upon the Explanation to the Section 36 of the Code.

8. The Full Bench, whilst delivering its judgement, also carefully examined the matter decided by the Supreme Court of India in case of *State of Maharashtra* Vs. *Milind and ors.* 2001(1) S.C.C. 4 as well as the case of *Commissioner of Income Tax (Central-I) New Delhi* Vs. *Vatika Township Pvt. Ltd.*, 2014 DGLS(SC) 765 : 2015(1) S.C.C. 1 and concluded that Section 3 of the Restoration Act will have to be applied with prospective effect and cannot be retrospectively made applicable.

9. The Full Bench finally concluded and held that the decision of the Division Bench in case of Kashibai was not a good law and hence, overruled it and upheld the view taken in the case of Tukaram as a correct law and all judgements which were followed Tukaram

were affirmed by the Full Bench. Ultimately, on analyzing the case as well as judicial pronouncements, the Full Bench were went on to answer the Reference in the following manner:-

a. "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 of the Restoration Act."

10. In view of the exposition of law now being expressed by the Full Bench of the Bombay High Court, it has paved the way forward and made it clear that the subsequent recognition of the transferor as a tribal after transfer of land would not entitle the tribal transferor to seek restoration and possession of land under Section 3(1) of the Maharashtra Restoration of Lands (Scheduled Tribes) Act, 1974.

11. As the Full Bench has now cleared the pathway in dealing with the cases for restoration of land in case of Scheduled Tribes and as the law in this regard has been comprehensively clarified, it will now be circumspect for the various Courts of Law including the High Court of Bombay to follow the Full Bench order and decide the pending cases on the above subject keeping in mind that the Full Bench judgement would be a binding precedent to be followed. The binding effect as regards the precedent of co-ordinate Bench of the High Court has been well settled in various judgements expressed by both the High Court and the Supreme Court of India. The doctrine of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. The Supreme Court of India, in a recent judgment of ***Shah Faesal*** **Vs.** ***Union of India,*** reported in 2020(3) Bom.C.R. (S.C.)226 : (2020)4 S.C.C. 1, the Constitution Bench of 5 Judges held that the decision rendered by the Co-ordinate Bench is binding on subsequent Benches of equal or lesser strength. The Co-ordinate Bench of the same strength cannot take a contrary view than what has been held by another Co-ordinate Bench. The Supreme Court of India in the case of ***Dashrath Rupsingh Rathod*** **Vs.** ***State of Maharashtra,*** 2014(3) Bom.C.R.(Cri.) (S.C.)593 : 2014(9) S.C.C. 129, observed that once a decision of Larger Bench had been delivered, it is that decision which by mandatorily to be applied and the view of a Larger Bench ought not to be disregarded at all.

12. It is hoped that this authoritative pronouncement has cleared the way for the various Courts of Law including the Bombay High Court, to deal with the various cases, which are now pending and which did not have a direction and this shall now be resolved quickly keeping in mind the principles explained and clarified by the Full Bench of Bombay High Court.
