

PETITIONER:
RAMA

Vs.

RESPONDENT:
STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT: 15/10/1998

BENCH:
G.T.NANAVATI, S.P.KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT
NANAVATI.J.

The appellant is questioning in this appeal the correctness of the judgment of the Bombay High Court in Writ Petition No. 1858 of 1982.

One Dina Bisan was the Kotwar of Village Bhandare. He died in 1953. 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 major in 1959. He made an application on 18.4.1959. for deleting 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 name of the appellant. By that time, the appellant had also, along with other persons, applied for re-grant of the land as 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

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 she appellant was not a Kotwar on 31.5.1962 he was held not entitled to claim any right of re-grant 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 material on record upheld the finding recorded by the State Government and dismissed the writ petition.

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 re-granted to him particularly when Sharad had not made any application for re-granting the land to him. In our opinion, the submission raised on behalf of the appellant is mis-conceived. 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 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 appellant Rama was also appointed as a 'Gumasta' or 'substitute Kotwar'. The hereditary right of being appointed a Kotwar was abolished in 1962. Obviously till 1962 no independent right to be appointed as 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 S.D.O. 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 150A and 150B were inserted in it. The appellant's application made under Section 150B, 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.