

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3006 OF 2013

Smt. Asha Prabhakar Kelkar .. Petitioner
vs.
The State of Maharashtra & Ors. .. Respondents

Mr. P. S. Dani – Senior Advocate with Mr. Rakesh Bhatkar for Petitioner.

Mr. S. D. Rayrikar – AGP for Respondent No. 1.

Mr. S. A. Sawant with Mr. Ketan Joshi for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE : 18 FEBRUARY, 2015

P.C. :-

1] This petition takes exception to the judgment and order dated 28 December 2012 made by the Maharashtra Revenue Tribunal, Mumbai (MRT) dismissing the petitioner's revision application against the order dated 10 June 2009 made by the Sub Divisional Officer (SDO). The SDO, by order dated 10 June 2009 had in fact dismissed the petitioner's appeal against the order dated 31 January 2006 made by the Tahsildar. Thus, it is clear that three authorities i.e. the Tahsildar, the SDO and the MRT have ruled against the petitioner's contention that the respondent nos. 2 to 8, or their predecessors-in-title were not the tenants in respect of the suit property.

2] Mr. Dani, the learned Senior Advocate for the petitioner however in support of the petition contended as follows:

(A) That in the present case, the revisional authority i.e. the MRT, contrary to the provisions of Section 76 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("said Act") has itself appreciated the facts and therefore the impugned order made by the MRT deserves to be interfered with;

(B) That in the present case, the authorities have laid excessive emphasis upon a decision in RCS No. 144 of 1949, instituted by the predecessor in title of the respondents against some third party. The authorities have held that in the said civil suit there are findings to the effect that the predecessor-in-title of the respondents was indeed the tenant of the suit property. Mr. Dani contended that in the first place, the petitioner was not party to the said suit. Secondly, the civil court was not at all competent to return any finding with regard to the tenancy;

(C) The exercise of appreciation of evidence by the MRT, besides being in excess of jurisdiction conferred upon the MRT by Section 76 of the said Act is even otherwise vitiated by perversity and application of incorrect tests.

3] Mr. Sawant, the learned counsel for the respondent no. 2 defended the impugned orders by pointing out that there was voluminous evidence in order to sustain the findings of tenancy recorded in favour of the respondents by three authorities concurrently. For this reason, Mr. Sawant submitted that the present petition be not entertained.

4] Having heard the learned counsel for the parties and perused the record, in my judgment, no case is made out to entertain the present petition. Although it is true that in terms of Section 76 of the said Act, the revisional court is ordinarily not expected to interfere with findings of fact by way of re-appreciating the evidence, it cannot be said that in the present case the MRT has indulged into such exercise in the first instance. The perusal of the orders made by the Tahsildar would indicate that the Tahsildar has appreciated both oral as well as documentary evidence on record in returning findings of fact in favour of the respondents. The Tahsildar, has made reference to survey entries from dates much prior to the appointed date. The Tahsildar has also made reference to rent receipts as also correspondence, on the basis of which the findings can be sustained. The Tahsildar has also made reference to several litigations, which also support the case of tenancy set up by the respondents.

5] In so far as the regular civil suit of 1949 is concerned, it is true that the petitioner was not party to the same. However, the records would indicate that Parvatibai, original landlady was examined in the said civil suit and she had supported the case of the payment of rent by the predecessors-in-title of the respondents. Besides, this is not a case where the authorities under the said Act have *per se* relied upon some findings of tenancy recorded by the civil court. The respondents of their predecessors in title instituted proceedings under the said Act for obtaining a declaration of tenancy. In these proceedings, by way of evidence, reliance was placed not merely upon the decision in the regular civil suit no. 144 of 1949 but also the deposition of the original landlady therein.

6] The SDO, has affirmed the findings of fact recored by the Tahsildar. As such, the criticism that the two fact findings authorities, namely, the Tahsildar and the SDO have not adequately appreciated the evidence on record and returned findings of fact, is itself misplaced. As noted earlier, ordinarily, the revisional court is not expected to re-appreciate the evidence on record. But this is mainly for the purposes of interfering with or reversing the findings of fact recorded by the fact finding authorities. In the present case, it cannot be said that the fact finding authorities have either exceeded their jurisdiction or have failed to exercise jurisdiction vested under

them. The revisional authority in the present case has merely agreed with the findings of fact recorded by the two fact finding authorities. In this case, therefore, it may not have been necessary for the revisional authority to have embarked upon any exercise of appreciation of facts. However, merely because the revisional authority has done so, that by itself, does not render the impugned order as being without jurisdiction.

7] In so far as the findings of fact are concerned, it is not for this Court to once again appreciate or re-appreciate the material on record. In this case, the material on record overwhelmingly supports the findings of fact recorded by the three authorities. Even sufficiency of evidence is normally not a matter that can be gone into in proceedings in judicial review. Suffice to note that the findings of fact recorded in the present case are by no means perverse or contrary to the weight of the material on record.

8] In the aforesaid circumstances, no case is made out to entertain the present petition. Petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)