IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5283 OF 1994

Kusum Laxman Mohite and others … Petitioners
Vs.
Maruti Tatya Mane (decd) through heirs
Tanubai Maruti Mane and another … Respondents

Ms Anjali N. Helekar for Petitioners.
Ms M. S. Bane, 'B' Panel AGP for Respondent No.2.

CORAM : R. G. KETKAR, J.
DATE : 21ST AUGUST, 2015

P.C. :

Heard Ms Helekar, learned Counsel for petitioners and Ms Bane, learned AGP for respondent No.2-State.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioners have challenged the judgment and order dated 31.05.1994 passed by the Sub-Divisional Officer, Karad Division, Karad in Tenancy/88B/2/84. By that order, the Sub-Divisional Officer dismissed the application filed by the petitioners under Section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'Act'). The Petition was instituted on 14.09.1994 and was admitted on 25.09.1995 by issuing Rule.

3. Ms Helekar submitted that the Petition was instituted in this Court under Articles 226 and 227 of the Constitution of India, as in the case of *Shrimant Jagdeorao Anandrao Pawar Vs. Kisan Namdeo Pawar*, **1979 Mh.L.J. 687**, this Court held that in an inquiry under Section 88-B(2) of the Act, notice is not a must and the issue arises between the Trust and the Collector. Though sub-section (2) of Section 88-B requires the Collector to issue a certificate after holding enquiry, the said enquiry

does not partake of the character of trial which should end in an order. It is an enquiry for purposes of entitlement to acquire a piece of conclusive evidence on certain matters. The word 'inquiry' in Section 88-B cannot be treated as judicial trial which must end in an order or decision. Certification proceedings therefore, result in issue of certificate which has been given the status of conclusive proof under the statutory rule of evidence enacted by sub-section (2)and nothing more. It is further held that as certification proceedings under Section 88-B(2) do not end in any order or decision and as conclusive character is given to the certificate, the matter having been left to the authority of the Collector, the power of revision under Section 76 is not available. She, therefore, submitted that since this decision was in the field, petitioners did not file Revision under Section 76 of the Act.

4. Ms Helekar submitted that subsequently, the said decision was considered by the Division Bench of this Court in the case of *Keraba Vs. Shri Sheshashai Trust*, **1990 Mh.L.J. 1183**. This Court overruled the decision in the case of **Shrimant Jagdeorao Anandrao Pawar** *(supra)* on the point that the Collector is bound to issue a notice to the tenant of the agricultural lands before holding an enquiry and must permit the tenant to participate in the inquiry before granting exemption certificate under Section 88-B of the Act.

5. Ms Helekar submitted that the decision of the learned Single Judge in the case of Shrimant Jagdeorao Anandrao Pawar (supra) was subsequently considered by the learned Single Judge of this court in the case of *Hanuman Vs. V. D. K. Public Trust*, **2014 (6) Mh.L.J. 198** and in paragraph 3 thereof, the learned Single Judge held that the certificate under Section 88-B would be revisable, and therefore, the Revision would be maintainable. She, therefore, prays for withdrawal of this

Petition with liberty to institute Revision under Section 76 before the Maharashtra Revenue Tribunal (for short 'Tribunal'). She submits that petitioners will take out appropriate application for condonation of delay for excluding the time bonafide spent by the petitioners in prosecuting the above Writ Petition.

6. As noted earlier, the learned Single Judge of this Court in **Shrimant Jagdeorao Anandrao Pawar** *(supra)* has held that notice in inquiry under Section 88-B is not necessary. To that extent, this view is overruled by the Division Bench of this Court in the case of **Keraba** *(supra).* In the case of **Hanuman** (*supra*), the learned Single Judge considered the decision of the Division Bench in **Kerba's case** *(supra)* and observed in paragraph 3 thus,

> 3. … The sequitur to the said Judgment of the Division Bench in Kerba Dattu Borachate's case would be that the certificate granted under Section 88-B would be revisable and therefore the Revision Application would be maintainable against the grant of the certificate under Section 88-B. The impugned order is accordingly set aside. The Revision Application is relegated back to the MRT for a denovo consideration of the same. Needless to state that all the contentions of the parties on merits are kept open for being urged before the MRT. On remand the MRT to decide the Revision Application expeditiously and latest by 31-3-2015. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.”

7. Perusal of paragraph 3 extracted hereinabove shows that the learned Single Judge, after considering the decision in **Keraba's case** (*supra*), held that certificate granted under Section 88-B would be revisable and therefore, the Revision Application would be maintainable against the grant of the certificate under Section 88-B.

8. As noted earlier, when the Petition was instituted, the decision of the learned Single Judge in the case of **Shrimant Jagdeorao Anandrao**

Pawar *(supra)* was in the field. In view thereof, the petitioners rightly instituted Writ Petition in this Court under Articles 226 and 227 of the Constitution of India. In view of the decision of the learned Single Judge in the case of **Hanuman** (*supra*) that the certificate granted under Section 88-B is revisable, I find that the request made by Ms Helekar is reasonable. Hence, Petition is allowed to be withdrawn reserving liberty to the petitioners to institute Revision Application under Section 76 of the Act before the Tribunal. It will be open to the petitioners to apply for condoning the delay in filing Revision on the ground that they were prosecuting this Petition bonafide. Rule is discharged accordingly with no order as to costs.

9. Ms Helekar assures that within 8 weeks from today, petitioners will file Revision in the Tribunal and intimate filing of the Revision to the Registry. In view thereof, notwithstanding withdrawal of the Petition, the record shall be retained by the office for a period of 8 weeks from today. If the petitioners institute Revision in the Tribunal within 8 weeks from today and intimate filing thereof to the Registry, the Registry shall transmit the record to the Tribunal. If during this period, intimation is not received from the petitioners, the Registry will transmit the record to the concerned Court.

(R. G. KETKAR, J.)

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