

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1611 OF 2013

Bal Krishna Dinkar Gondhalekar,
since deceased, Sushma B.
Gondhalekar & Ors.

.. Petitioners

vs.

Kashiram Sonu Karabale & Ors.

.. Respondents

Mr. A. R. Gole for Petitioners.

Mr. Sumit Kothari for Respondent Nos. 1, 2a, 2-b, 3, 4-a and 15.

Ms Aparna Vhatkar – AGP for Respondent Nos. 16 to 18.

CORAM : M. S. SONAK, J.

DATE : 03 FEBRUARY, 2015

P.C. :-

1] Rule, with the consent and at the request of the learned counsels for the respondents, Rule is made returnable forthwith.

2] The two basic grievances made by the petitioners are as follows:

(A) That despite the judgment and order dated 25 June 2004 in writ petition no. 534 of 2001, the Tahsildar to whom the matter was remanded with directions to dispose of the matter on merits within six months, has failed to dispose of the matter even till date.

(B) That during the pendency of proceedings before the Tahsildar,

some of the respondents have obtained sanction under Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("said Act") on 11 January 2011 and on basis thereof even proceeded to transfer properties in favour of the respondent no. 5.

3] This Court, by judgment and order dated 25 June 2004 in writ petition no. 534 of 2001, had issued the following directions, which are relevant for the issues raised in the present petition:

" Having considered the rival submissions, I have no hesitation in taking the view that the approach of the authorities below is manifestly wrong. Indeed, the parties arrived at compromise before this Court as is correctly noted by the authorities below. Nonetheless, when the question of deciding the issue of the tenants having become deemed purchasers in respect of the portion of the suit land arose, it was obligatory on the part of the authorities to ascertain whether the land held by the tenants was or was not in excess of the ceiling area and conform to the requirements of section 32A of the Act. It is only to the extent of the permissible ceiling area the tenants would be entitled to purchase the suit lands as deemed purchasers by virtue of that provision, compromise decree or order of a court of competent jurisdiction inter se the parties notwithstanding. The ceiling area is prescribed in section 5 of the Act. This inquiry has not been undertaken by the authorities below, for which reason the appropriate course is to set aside all the orders, which are subject matter of challenge in this petition and to relegate the parties before the Tahsildar, who, in turn, shall examine the issue in the context of the requirement of Section 32A read with section 5 of the Act. The Tahsildar shall also examine the contention of the tenants that each of the tenants are entitled to separate share and possession in which case their holding does not exceed the ceiling area. That question be examined in accordance with law. All questions in relation to the entitlement of the tenants to

purchase the suit lands having regard to section 32A read with section 5 of the Act are left open to be decided by the tenancy authority. The Tenancy authority to decide the proceedings as expeditiously as possible preferably within six months from the date of receipt of writ of this Court. Parties to extend necessary co-operation to the tenancy authority for decision on the above terms."

4] There is no dispute that till date the aforesaid remand order has not been complied with. The learned AGP furnishes some explanation as to why the same could not be complied with. Rather than go into such explanation, it would be appropriate if the Tahsildar is once again directed to comply with the remand order as aforesaid within a period of four months from today. For this purpose, the parties to appear before the Tahsildar on 11 February 2015 at 11.00 a.m. along with an authenticated copy of this order.

5] In so far as challenge to the sanction granted under Section 43 of the said Act dated 11 January 2011 is concerned, there is no dispute that such sanction can be questioned by preferring a revision under Section 76 of the said Act. No doubt, Section 79 of the said Act provides that the limitation for preferring such revision shall be sixty days. However, the provisions of Sections 4, 5, 12 and 14 of the Indian Limitation Act 1908 have been specifically made applicable to the filing of appeals or applications for revision.

6] Present petition was instituted by the petitioners on 14 January 2013. Accordingly, it is only appropriate that the period between 14 January 2013 and the date of disposal of this petition i.e. 3 February 2015, shall be excluded in the matter of computation of period of limitation by the revisional authority.

7] Accordingly, the petitioners are at liberty to prefer the revision petition against the sanction dated 11 January 2011 before the revisional authority within a period of four weeks from today. In case such revision petition is instituted, then the revisional authority shall consider the same in accordance with law and on its own merits.

8] It is made clear that this Court has not expressed any opinion upon the merits and demerits of the respective cases of the parties. All issues are therefore kept open, except that in computing the period of limitation, the petitioner shall be entitled to the benefit of excluding the period between 14 January 2013 and 3 February 2015.

9] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

10] All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka