IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3092 OF 2015
WITH
CIVIL APPLICATION NO.940 OF 2015

Vasant Dagadu Dumbare **..Petitioner**

Vs.

Vishwasrao Shankarrao Dumbare & Ors. **..Respondents**

Mr. S. G. Kudle for the Petitioner
Mr. D. S. Patil for the Respondent No.1
Mr. S. D. Rayrikar AGP for the Respondent No.2

CORAM : R. M. SAVANT, J.
DATE : 20th July, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 7-8-2014 passed by the Maharashtra Revenue Tribunal (Maharashtra Revenue Tribunal) Mumbai, by which order, the application filed by the Respondent No.1 herein came to be allowed and resultantly the order passed by the Sub Divisional Officer (SDO) Junnar, dated 22-10-2008 came to be set aside and it was directed that the Petitioner be summarily evicted from the possession of the suit land and the same be delivered to the Respondent No.1 herein who is the Applicant.

2 The impugned order has its origins in the application made by the

Respondent No.1 under Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short the said Act). The said application was made by the Respondent No.1 on the ground that the Petitioner was trying to oust him from the land in question which land is in occupation of the Petitioner and prior thereto his forefathers since the year 1946 as tenants. The said application was rejected by the SDO solely relying on the Mutation Entry No.4663 recorded on 13-8-1965 to the effect that since the forefathers of the Respondent No.1 had refused to participate in the proceedings under Section 32G of the said Act, the proceedings were turned ineffective and the land in question would revert back to the Government. The SDO therefore refused to entertain the said application on the ground that such an application could not be entertained under Section 84 of the said Act.

3 The Respondent No.1 aggrieved by the said order dated 22-10-2008 passed by the SDO carried the matter by way of the Revision before the MRT. Inspite of notice being issued, the Petitioner/Opponent was unrepresented, at the time of hearing though appearance of Advocate Mr. S. D. Wagh was filed. The Tribunal decided to consider the said Revision Application and has by the impugned order dated 7-8-2014 allowed the same. The Tribunal has observed that Mutation Entry No.4663 effected on 13-8-1965 is questionable in view of the fact that it has been made by the Gramsevak and has also not been certified in the manner in which the Mutation Entries are

required to be certified. The Tribunal held that there was no order passed by the ALT forfeiting the suit land to the Government and therefore the Tribunal was of the view that the order dated 10-4-1964 passed in the proceedings filed under Section 32P directing that the suit land to be included in the Collector's pool is without jurisdiction.

4 In so far as the Petitioner herein is concerned, the Tribunal ordered that the Petitioner has not paid the amount of Rs.2400 and the fine of Rs.500 as per the order dated 2-4-1979 for encroachment on the part of the suit land admeasuring 14.5 Ares., as per the order dated 2-4-1979. The Tribunal therefore held that the possession of the Petitioner herein who was the Opponent in Revision was unlawful and unauthorised. The Tribunal further held that since on the demise of his father the Respondent No.1 herein has inherited the suit land as a tenant, he is entitled to restoration of possession under Section 84 of the said Act. The Tribunal observed that the SDO having regard to the aforesaid facts has at the initial stage wrongly dismissed the application under Section 84 filed by the Respondent No.1. The Tribunal as indicated above has accordingly by the impugned order dated 7-8-2014 allowed the Revision Application filed by the Respondent No.1.

5 The Learned Counsel appearing for the Petitioner would contend that an inquiry under Section 84C was required to be conducted by the

Tahsildar and it is only on such inquiry that the nature of the possession of the Petitioner could be ruled upon. The Learned Counsel would contend that the Petitioner is an allottee from the Government and since the Respondent No.1 herein has not participated in the proceedings under Section 32G, he has no right to file an application under Section 84 of the said Act. The Learned Counsel sought to place reliance on Mutation Entry No.4663 as also Mutation Entry No.8201 dated 16-6-1979 to buttress his said contentions.

6 Per contra, the Learned Counsel appearing for the Respondent No.1 would support the order passed by the Maharashtra Revenue Tribunal and would contend that the Mutation Entry No.4663 is highly suspicious and in so far as the Mutation Entry No.8201 is concerned, it is undisputed position that the Petitioner has not paid the amount which were directed to be paid in the year 1979.

7 Having heard the Learned Counsel for the parties, in my view there is no merit in the above Petition. It is required to be noted that the Respondent No.1's forefathers were tenant in the suit land as recorded in the 7/12 extract even predating the year 1957. In so far as the Petitioner is concerned, the Petitioner has been changing his stand as can be seen from the grounds in the Writ Petition wherein in the first ground the Petitioner claims to be a tenant and in the other ground the Petitioner claims to be the owner and

still in another ground the Petitioner claims that the Respondent No.1 is his tenant. The Petitioner also seeks to rely upon the said Mutation Entry No.8201 wherein the encroachment of the Petitioner was sought to be regularise on the payment of Rs.2400/- and Rs.500 as penalty. Hence as indicated hereinbefore, the Petitioner seems to be taking contrary stand.

8 Be that as it may, the Mutation Entry No.4663 has effected in the year 1965, prima facie discloses from a reading of the same that it is effected by a Gramsevak and is also not certified in a manner which is required to be certified under the Maharashtra Land Revenue Code. The Tribunal was therefore right in casting a suspicion on the said Mutation Entry No.4663 wherein it has been recorded that the proceedings under Section 32G have turned ineffective. The foundation of the order passed by the SDO as mentioned herein above was the said Mutation Entry No.4663. It is required to be noted that the Tribunal has also observed that there is no order passed by the ALT under Section 32P and therefore the reversion of the land in favour of the Government is illegal. The Tribunal has therefore ordered that since the Respondent No.1 herein is in possession since his forefathers time, the Respondent No.1 would be required to be put back in possession by summary eviction of the Petitioner.

9 In my view, having regard to the aforesaid conspectus of facts, the

order passed by the Maharashtra Revenue Tribunal does not suffer from any error of jurisdiction or any other infirmity or illegality for this Court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

10 In view of the dismissal of the above Petition, the Civil Application No.940 of 2015 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]