IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10920 OF 2014

Ahmed Gulab Mestri
since deceased through Lrs
Hamid Ahmed Mestri & Ors. ...Petitioners
vs.
Mohammed Farouq Mohammad
Ismail Mulla ...Respondent

Mr. S. M. Gorwadkar i/b. Niranjan Mogre for the Petitioner.
Mr. A. S. Khandeparkar i/b. Pratap Patil for the Respondent.

CORAM : R. M. SAVANT, J.

DATE : 11th MARCH, 2015.

P.C. :-

The writ jurisdiction of this Court is invoked against the order dated 31st August, 2013 passed by the learned President of the Maharashtra Revenue Tribunal, Mumbai, by which order the Revision Application being TNC/REV/108/B/2007 came to be allowed and resultantly the order dated 29th May, 2007 passed by the Sub-Divisional Officer, Panvel in Tenancy Appeal No.9/2006 came to be set aside.

2] The Petitioners herein are the heirs of the original Defendant in Regular Civil Suit No.19/1980. The said suit has been filed by the Respondents herein for injunction. Since a defence was raised by the original Defendant whose heirs are the present Petitioners that he is a tenant in respect of the suit property that a reference was made to the tenancy authorities under section 85A of the Bombay Tenancy & Agricultural Lands Act, 1948 for deciding the issue as to whether the Defendant is an agricultural tenant. It appears that in the first round, the initial adjudication by the Tahsildar reached the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal by its order dated 20th October, 2001 remanded the matter back to the Tahsildar for conducting an inquiry in respect of the limited issue as to whether the land was leased for brick kiln or for agriculture. In the second round, the Tahsildar recorded the evidence of the parties in respect of their respective assertions. The Tahsildar returned a finding that the Defendant was not an agricultural tenant. The Defendant aggrieved by the said order passed by the Tahsildar carried the matter in Appeal to the Sub-Divisional Officer, Panvel, by way of Tenancy Appeal No.9/2006. The Sub-Divisional Officer upset the order passed by the Tahsildar and allowed the Appeal and recorded a finding that the Defendant is in possession since 1969 and that he is an agricultural tenant. The said order passed by the Sub-Divisional Officer is dated 29th May, 2007. The Respondent herein i.e. the original plaintiff took exception to the said order dated 29th May, 2007 by filing a Revision before the Maharashtra Revenue Tribunal.

The Maharashtra Revenue Tribunal considered the finding recorded by the Sub-Divisional Officer in Appeal on the touchstone of the material on record. The Maharashtra Revenue Tribunal on such consideration came to a conclusion that the Defendant was not an agricultural tenant. The Maharashtra Revenue Tribunal on the basis of the receipts issued by the Plaintiff came to a conclusion that the purpose for giving the land was for brick kiln and not for agricultural purposes. The Maharashtra Revenue Tribunal observed that there was paddy crop in the year 1969-70, however, thereafter the land continuously remained fallow and, therefore, came to a conclusion that the land was not given for the purposes of agricultural use but it is for non-agricultural purpose and, therefore, the provisions of the Tenancy Act would not apply. The Maharashtra Revenue Tribunal has also adverted to the fact that in 20 Ares of land there was a brick kiln and in the remaining portion the land was used for the brick business. The Maharashtra Revenue Tribunal observed that the solitary entry in the year 1979-80 of grass would not suffice to return a finding in favour of the Defendant that he was an agricultural tenant.

3] In the light of the finding recorded by the Maharashtra Revenue Tribunal and having regard to the order passed by the Sub-

Divisional Officer who by a cryptic order held that the Defendant is an agricultural tenant. The impugned order passed by the Maharashtra Revenue Tribunal cannot be said to suffer from any illegality or infirmity for this Court to exercise its writ jurisdiction. The Writ Petition is accordingly dismissed.

(R. M. SAVANT, J.)

wadhwa