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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.4548 OF 2014

Sakharam Tulshiram Changle ...Petitioner
vs.
Smt.Charubai Harishchandra
Dhumal and others ...Respondents

Mr.P.D.Dalvi for the Petitioner
Mr.Devendranath Joshi for the respondent No.1
Ms V.S.Nimbalkar, AGP for respondent Nos.2 to 4.

CORAM : A.S.OKA, J.
DATE : JUNE 12, 2015

P.C.:

1 Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned AGP for respondent Nos.2 to 4. Rule. The learned counsel for the respondents waive service. Forthwith taken up for final disposal.

2 The petitioner being aggrieved by the order dated 10th September 2012 has preferred a Revision Application before the Maharashtra Revenue Tribunal. The Revision Application is pending. By the said order dated 10th September 2012 passed by the Sub Divisional Officer, in view of section 43(C) of the Bombay Tenancy and Agricultural Lands Act,1948, the sale deed dated 30th May 1988 has been held to be invalid. Pending the Revision Application before the Maharashtra Revenue Tribunal, an application was made by the petitioner for amendment of the memorandum of the Revision Application for

incorporating an additional ground of challenge. By the impugned order, the said application has been rejected.

3 I have perused the impugned order. I have heard the learned counsel for the parties. Only one additional ground was sought to be added by the proposed amendment. The said ground is that section 43 of the Bombay Tenancy and Agricultural Lands Act,1948 is not applicable to the land in question as the same was situated within the limits of Kalyan Dombivali Municipal Corporation on the date of the execution of the sale deed and subsequently, the said land forms part of the limits of the Kulgaon-Badlapur Municipal council. The opposition of the learned counsel for the first respondent is that the said issue was never raised before the Sub Divisional Officer. He submitted that the Maharashtra Revenue Tribunal has rightly rejected the application for amendment as the petitioner cannot belatedly agitate the said issue.

4 Perusal of the impugned order shows that even the learned Member of the Maharashtra Revenue Tribunal has proceeded on the footing that the land in question was situated within the Municipal limits on the relevant date. In paragraph 2 of the application for amendment, it is specifically stated that the land is situated within the limits of Kulgaon-Badlapur Municipal Council and earlier it was within the Corporation limits. In the reply filed to the application, this factual aspect is not

denied. Therefore, the ground which is sought to be added is a legal ground. All that the petitioner wants to agitate is the legal effect of the land falling in the municipal limits on the applicability of section 43 of the said Act of 1948. Whether section 43 was applicable or not is a matter which could have been decided at the time of final hearing of the Revision Application. Therefore, the approach of the learned Member of the Maharashtra Revenue Tribunal is erroneous and accordingly, I am of the view that the application for amendment ought to have been granted.

5 Accordingly, I dispose of the petition by passing the following order:

(I) The impugned order dated 7th April 2014 is quashed and set aside. The application made by the petitioner (Exhibit A-6) for amendment is hereby allowed;

(II) The Tribunal will permit the petitioner to carry out amendment within a period of two weeks from the date on which an authenticated copy of this Judgment and Order is produced before the Tribunal;

(III) It is made clear that the issue of applicability of section 43 of the Bombay Tenancy and Agricultural Lands Act,1948 is kept open which will be decided by the Tribunal at the time of final hearing of the Revision Application;

(IV) Rule is accordingly made absolute on above terms;

(V) There will be no order as to costs.

(A.S.OKA,J.)