

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

WRIT PETITION NO. 7183 OF 2014

Shri Shridhar Krishna Patil, through its
power of attorney holder :
Shri Dinesh Shridhar Patil ... Petitioner.

V/s.

Shri Litya Navsha Rawate, since deceased
through legal heirs :
1A. Smt. Pati Dharma Pandhara & Ors. ... Respondents.

Mr. Sandesh D. Patil, Advocate for the Petitioner.

CORAM : A. K. MENON, J.

DATE : 28th OCTOBER, 2015

P.C. :

1 This is a writ petition, challenging the order dated 28th January, 2014 passed by the Maharashtra Revenue Tribunal, Mumbai, while considering a common order passed by the Tahsildar & A.L.T. in Case No.RTS/14/75/SR-3/ 2005 on 05th March, 2010, whereby the Tahsildar & A.L.T. decided two separate applications : one under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as “the Restoration Act”) and another under section 70(b) of the Maharashtra Tenancy & Agricultural Lands Act (hereinafter referred to as “the Tenancy Act.”).

2 Two proceedings were initiated by the Respondents before the Tribunal against the petitioner herein; as result, a common order came to be passed. As far as the application for restoration is concerned, the Tribunal found that under the Restoration Act an appeal against the order of the Tahsildar lies before the Tribunal. Accordingly, the appeal was entertained and considered on merits by the Tribunal. The Tribunal, however, found that as far as the application under section 70 (b) of the Tenancy Act is concerned, the appellate authority would be the concerned Sub-Divisional Officer and no appeal could have been filed directly with the Tribunal. Hence, the Tribunal proceeded to dispose of the appeal under the Restoration Act.

3 The petitioner had filed an Appeal being Misc. Civil Appeal No. 101 of 2004 before the Court of District Judge-4, Thane; being aggrieved by the decision in Regular Civil Suit No. 12 of 1987 dated 30th April, 2004, wherein the application made by the applicants came to be rejected. In appeal, the Appellant secured a favourable order. During the pendency of the proceedings, it appears that Respondent No.1 in appeal passed away. As a result, the heirs of respondent no.1 alongwith respondent no.2 have preferred the appeal. By virtue of the order in the appeal, the defendants therein were restrained from interfering with the suit land. The Tribunal,

however, found that the Tahsildar had committed an error in clubbing the proceedings under the two Acts. The Tribunal found that in view of the order passed in the aforesaid appeal and since the appellant claims to be in possession of the suit land, there is no question of any change, requiring interference. However, as far as the application under section 70(b) of the Tenancy Act is concerned, the Tribunal observed that the Tahsildar should have written a separate judgment in respect of 70(b) proceedings. Accordingly, the Tahsildar was directed to dispose of the matter expeditiously and the record and proceedings were sent back to the Tahsildar for expeditious disposal.

4 It is the case of the petitioner today that the Tribunal did not have jurisdiction to pass the aforesaid order and remand the matter back to the Tahsildar for disposal with the direction contained in paragraph no. 11. Learned counsel for the petitioner submitted that even though the fact that the Tribunal had already observed that the appellate authority would be the Sub-Divisional Officer, the Tribunal had expressed a view that it had no jurisdiction to entertain the appeal and therefore, could not have passed the order, directing the Tahsildar to hear the matter after considering the oral and documentary evidence. This error of jurisdiction, it is submitted, will justify interference by this court in present writ petition.

5 Learned counsel for the petitioner relied upon the judgment of the Supreme Court in the case of **Athmanathaswami Devasthanam vs. K. Gopalaswami Ayyangar**, reported in 1964 (3) SCR 763 : AIR 1965 SC 338 and submitted that the Supreme Court had observed in paragraph 14 that when the civil court had no jurisdiction over the subject matter of the suit, it can not decide any question on merits. It can simply decide on the question of jurisdiction and if it comes to the conclusion that it had no jurisdiction, a plaint would have to be returned. Alluding to similar situation in the present case, the learned counsel for the petitioner submitted that the directions by the Tribunal in paragraph 11 of the impugned order could not have been made in view of the fact that the Tribunal itself had found that it was not the appellate authority and that the appellate authority was the Sub-Divisional Officer.

6 I have perused the order of the Tribunal as well as that of Tahsildar. In the first instance, the Tahsildar has proceeded to summarily dispose of the application by the common order, without considering the documentary and oral evidence. The Tahsildar relied upon the order passed by the District Court in Misc. Civil Appeal No. 101 of 2004 and relied upon the decision dated 17th April, 2009 and proceeded to dispose of the applications on the basis of the injunction

granted. In my view, the Tribunal cannot be faulted for having observed that the Tahsildar ought to have passed separate and independent orders in two proceedings under section 70(b). Adverting to the submissions of the learned counsel for the petitioner that an order could have been passed, directing the Sub-Divisional Officer to hear the appeal. I am of the view that no purpose would be served by directing the Sub-Divisional Officer to hear the appeal in view of the fact that the order of the Tahsildar is bereft of any detailed reasoning and the Sub-Divisional Officer would also be handicapped while deciding the appeal. In the circumstances, the judgment cited by the petitioner will be of no assistance to the petitioner since that was the case where on facts the civil court had no jurisdiction and the High Court had dealt with certain cross-objections filed by the appellant in relation to certain amounts paid by the respondents. In the present case, the fact situation is completely different. Accordingly, I am of the view that the Tribunal's order does not call an interference by this court. Accordingly, I pass the following order.

7 The writ petition is dismissed. There will be no order as to costs.

(A.K. MENON,J.)

.....