

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 410 OF 2014  
WITH  
CIVIL APPLICATION NO.1876 OF 2014

The Estate Investment Company  
Private Limited

.. Petitioners.

vs.

Parshuram Mukund Vaity & ors.

.. Respondents.

Mr. G.R. Rege a/w. Ms S.A. Mudbidri for the Petitioners/Applicants.  
Mr. Nitin Gangal a/w. Ms M.V. Adate for Respondents.

**CORAM : M. S. SONAK, J.**  
**DATE : 09 FEBRUARY , 2015**

**P.C. :-**

1] This petition takes exception to the concurrent findings of fact recorded by the Tahsildar, Sub-Divisional Officer (SDO) and the Maharashtra Revenue Tribunal (MRT) that the respondents are the agricultural tenants in respect of the properties bearing Survey No.228/1-B and 232/1-B (said properties).

2] All the three authorities, upon appreciating the material and evidence on record have come to the conclusion that the respondents are indeed the agricultural tenants in respect of the said properties. This position is substantially borne by old entries in survey records as also the documents in the form of receipts and payments to the petitioners or their predecessor-in-title.

3] The petitioners, to commence with, deny the position that the respondents are agricultural tenants in respect of the said properties. Thereafter a vague plea was raised to the effect that the respondents may be agricultural tenants in respect of some other properties of the petitioners or their predecessor-in-title. Neither in reply nor in the course of evidence before the Tahsildar was this plea substantiated. In these circumstances, the Revisional Tribunal, which is even otherwise not concerned with appreciation or re-appreciation of the facts observed that the petitioner cannot take any advantage of the lacuna in its own case, arising by way of vagueness in pleadings as also failure to step into witness box and substantiate its case. Neither before the SDO, which is the first Appellate Authority, nor the MRT, which the Revisional Authority was even made any attempt to seek remand on the ground that the evidence was available, but for the cogent reasons the same could not be produced.

4] In this Court, however, the petitioners have taken out Civil Application No.1876 of 2014, which is considered together with present petition. In the said Civil Application, the petitioners seek to produce on record certain 7/12 extracts as also the Register of rights. On basis of these documents, the petitioners contend that

the properties in respect of which the respondents were the agricultural tenants have since been specified. From this, the petitioners seek to contend that in respect of remaining properties, the respondents have no right of whatsoever nature.

5] The perusal of the documents would indicate that the inference which the petitioners seek to draw therefrom is entirely misconceived. That apart, there is no explanation whatsoever as to what prevented the petitioner, which is an Investment Company, from leading evidence and producing these very documents before the Tahsildar, at the stage when the Tahsildar made his order dated 1 October 2009. In the Civil Application the only submission is that such documents be taken on record and construed as an evidence in the Writ Petition, in order '*to do complete justice to the parties*'. If at this stage, such documents are taken on record and read in evidence, then certainly the same would work out to injustice to the respondents. The same would only entail a remand and protract the proceedings. Even otherwise, as noted earlier, the documents which the petitioners seek to produce on record, do not in any manner demolish the case of the respondents with regard to the claim of their agricultural tenancy in respect of the said properties.

6] The learned counsel for the petitioners placed reliance upon the decision of the Supreme Court in case of *Hanmanta D. Nimbal since deceased by his heris and Lrs. vs. Babasaheb D. Londhe*<sup>1</sup>, in support of his submission that the entries in survey record neither establish title nor lawful possession. There is no dispute with regard to the proposition advanced. In this case, Tahsidlar, SDO and MRT have not based upon their conclusion, merely upon the entires in survey records. The conclusion is based upon oral as well as documentary evidence tendered by and on behalf of the respondents. The conclusion is also based upon the circumstance that the petitioners, despite opportunity, failed to produce on record any relevant evidence to rebut the case set out by the respondents. Further in a case of *Hanmanta (supra)*, the Supreme Court has held that entires in revenue record cannot establish the lawful possession, when admittedly no notices were given to the respondents before making those entries. The petitioners, have nowhere made out a case that either the petitioners, nor their predecessors-in-title were not given any notices before such entries were made. Beside, the entries relate to the long years and there is no explanation as to the steps taken by petitioners, in the matter of correction of those entries. The decision in the case of *Hanmanta (supra)* is therefore, clearly distinguishable.

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1 AIR 1996 SC 223

7] Therefore taking the overall circumstances into account, the petitioners have made out no case to warrant interference with the order or to grant any leave to produce evidence at this stage. The Writ Petition as also the Civil Application are liable to be dismissed and same are dismissed.

8] In the facts and circumstances of the present case, the petitioners shall pay costs, which are assessed at Rs.25,000/- (Rs. Twenty Five Thousand), to the respondents.

9] At this stage, learned counsel for the petitioners seek a stay of six weeks upon the direction for payment of costs. The request is reasonable, accordingly, same is granted.

**(M. S. SONAK, J.)**

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