

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5851 OF 2014

Kailash Ashok Thakur & Ors.	..	Petitioners
vs.		
Mahendra D. Jain & Anr.	..	Respondents

Mr. S. G. Deshmukh i/b. R. A. Shelke for Petitioners.

WITH
WRIT PETITION NO. 4479 OF 2014

Mahendra D. Jain	..	Petitioner
vs.		
Kailash Ashok Thakur & Ors.	..	Respondents

Mr. K. S. Dewal i/b. Mr. R. S. Tanna for Petitioner.

CORAM : M. S. SONAK, J.
DATE: 11 JANUARY 2016

P.C. :-

1] The challenge in both these petitions is to one and the same order i.e. order dated 1 February 2014 made by the Maharashtra Revenue Tribunal (MRT), by which it has declined to exercise jurisdiction under Section 6 of the Maharashtra Restoration of Land to Schedule Tribes Act 1974 (said Act). The learned counsel for the petitioners in both these petitions agree that these two petitions can be disposed of by a common judgment and order.

2] Therefore, Rule in both these petitions. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The writ petition no. 5851 of 2014 has been instituted by Kailash Thakur and others seeking action under Section 4 of the said Act against Mahendra Jain and another, who have been impleaded as respondents in the said petition. The writ petition no. 4479 of 2014 has been instituted by Mahendra Jain, being aggrieved by the order dated 19 November 2012 made by the Tahsildar, Kalyan, initiating action against them under Section 4 of the said Act at the behest of Kailash Thakur and others, who have been impleaded as respondent nos. 1 to 21 in the said writ petition. The two petitions are in the nature of cross petitions, because the petitioners claim to be aggrieved by the refusal on the part of the MRT to exercise jurisdiction under Section 6 of the said Act on the basis that the order dated 19 November 2012 made by the Tahsildar relates to exercise of powers only under Sections 36 and 36A of the Maharashtra Land Revenue Code, 1966 (Code) and not under Section 4 of the said Act.

4] Heard the learned counsel for the parties, perused the record as well as the impugned order dated 1 February 2014 made by the

MRT. The MRT has not addressed itself to the merits of the matter but merely held that appeal under Section 6 of the said Act is not maintainable and the appropriate remedy in the matter is the institution of appeal under Section 247 of the Code. This is on the basis of the MRT's reasoning that the order dated 19 November 2012 which was appealed before it relates to exercise of power under Sections 36 and 36A of the Code and not under the exercise of powers under Section 4 of the said Act.

5] The complaint dated 2 February 2012 made by Kailash Thakur on basis of which the order dated 19 November 2012 has been made by the Tahsildar, makes reference to the provisions of Section 4 of the said Act and urges for action under Section 4 of the said Act. If the order dated 19 November 2012 made by the Tahsildar is perused, then it is clear that the same relates to exercise of powers under Section 4 of the said Act. Incidentally, the Tahsildar has also mentioned that there is breach of Sections 36 and 36A of the Code, for which appropriate action by the Authorities under the Code may be warranted. However, mere reference to the provisions contained in Sections 36 and 36A of the Code does not render the order dated 19 November 2012, as an order made under the Code and not an order made under Section 4 of the said Act.

6] The Section 6 of the said Act provides for an appeal against the decision made under Section 4 of the said Act. Such an appeal lies to the MRT. The MRT was therefore not justified in declining to exercise appellate jurisdiction under Section 6 of the said Act.

7] On the aforesaid short ground, the impugned order dated 1 February 2014 is liable to be set aside and is hereby set aside. The appeal instituted by Mahendra Jain i.e. TRB/583/B/2012 is restored to the MRT for adjudication on merits and in accordance with law.

8] The parties to appear before the MRT on 1 February 2016 and produce authenticated copy of this order.

9] It is made clear that this Court has not examined the merits of the matters and therefore all contentions of all parties are kept open for adjudication by the MRT.

10] Rule is made absolute in both the petitions to the aforesaid extent. There shall be no order as to costs.

11] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)