

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

WRIT PETITION NO.5770 OF 2014

Mr. Ashwin Arvind Sanghavi. ... Petitioner

Versus

Bharat Kondu Pingale
(Since Deceased) Through L.Rs. ... Respondents

....
Mr. Uday P. Warunjikar for the Petitioner.
None present for the Respondents.
....

CORAM: M.S.SONAK, J.

Date of Reserving the Judgment : 10th OCTOBER 2016

Date of Pronouncing the Judgment : 18th OCTOBER 2016

Judgment :

1. Heard Mr. Warunjikar for the petitioner.
2. The challenge in this petition is to the judgment and order dated 28th May 2012 made by the Maharashtra Revenue Tribunal (MRT) dismissing petitioner's Revision Application No.133 of 2010 and confirming SDO's judgment and order dated 29th July 2002.

3. The property, which is the subject matter of this petition, bears Survey Nos.22 and 23 of village Tungrali, Tal. Mawal, Dist. Pune admeasuring about 36,600 sq. mtrs. (said property). There is no dispute that the said property was originally owned by Shri Mahadeo Chintaman Wadekar. The survey records from the year 1930-31 up to 1962-63 indicate that the said property was under cultivation by tenants.

4. The original landlord, instituted proceedings under section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act), to declare that, Pingales (predecessors-in-title of the respondents) are not tenants of the said property.

5. The Tahsildar by order dated 15th March 1993 however, closed the proceedings by relying upon some previous order dated 17th July 1985, holding that the Pingales were not tenants in respect of the said property. It is pertinent to note that there is absolutely no clarity with regard to this earlier order dated 17th July 1985. In paragraphs 6 and 7 of the petition, the petitioner has stated that copy of judgment and order dated 17th July 1985 is

unavailable and it is the petitioner's case that he was informed that the record and proceedings in which such order was allegedly made, are not traceable. If this be the position, it is quite incomprehensible that the Tahasildar relies upon the judgment and order dated 17th July 1985 in order to non suit the Pingales. The SDO, in exercise of revisional jurisdiction, by his order dated 29th July 2002, has rightly set aside the Tahsildar's order dated 15th March 1993 and remanded the matter to the Tahasildar for reconsideration.

6. The successors of the original landlord Shri Shashikant Wadekar and others preferred an Appeal/Revision to the Additional Collector questioning the SDO's order dated 29th July 2002. By order dated 29th December 2003 the Additional Collector has dismissed such Appeal/Revision. The subsequent second appeal / second revision before the Additional Commissioner, Pune was dismissed on 15 November 2006. The SDO's order dated 29 December 2003, thus, attained statutory finality.

7. The present petitioner, who was not even a party to the proceedings between the landlords Wadekars and the tenants

Pingales, preferred a Revision Petition before the MRT questioning *inter alia* the judgment and order dated 29th July 2002 made by the SDO in the Revision instituted by the Pingales against the Tahsildar's order dated 15th March 1993. By the impugned judgment and order dated 28th May 2012 the Member, MRT has dismissed this Revision Application, thereby confirming the judgment and order dated 29th July 2002 made by the SDO. The Petitioner, in his Revision Application, claims to have purchased the said property from the original landlords i.e. Wadekars and further, even converted the said property for non agricultural purposes some time in the year 1987. It is on this basis that the petitioner had claimed the *locus standi* to institute the Revision Petition before the MRT, in which the impugned judgment and order dated 28th May 2012 has been made.

8. Mr. Warunjikar, the learned counsel for the petitioner submitted that upon purchase of the said property by the petitioner and it's conversion to non agricultural use in the year 1988, the said property ceased to be agricultural property and therefore, there was no question of Pingales asserting any rights of tenancy in respect thereof. Mr. Warunjikar also submitted that the Appeals

and Revisions instituted by Pingales and Wadekars were in relation to entries in survey records and such Appeals and Revisions were instituted before the authorities appointed under the Maharashtra Land Revenue Code. He submitted that, there was no challenge to the order dated 15th March 1993 under the provisions of Tenancy Act and therefore, the said order has attained finality. Finally, Mr. Warunjikar also placed on record the order dated 20th August 2016 issued by Tahsildar, Maval, to submit that the claim of Pingales to tenancy has been enquired into and rejected.

9. In this petition, we are concerned with the impugned judgment and order dated 28th May 2012 made by the MRT. Upon due consideration of the submissions made by Mr. Warunjikar and upon perusal of the record as also perusal of the various judgments and orders referred to earlier, in my judgment, there is no case made out to interfere with the impugned judgment and order.

10. In the first place, it is quite doubtful as to whether the petitioner was at all entitled to maintain Tenancy Revision Application No.133 of 2010 before the MRT in which, the impugned judgment and order has been made. In this Revision

Petition, the challenge was to the order dated 29th July 2002 made by the SDO, Maval. As noted earlier, the original landlords, from whom, the petitioner claims alleged rights, had already challenged the SDO's order dated 29th July 2002 earlier before the various authorities and such challenge had already been turned down. On the basis of the so called acquisition of the said property by the petitioner from the original landlords, the petitioner was not entitled to re-challenge the SDO's order. The Revision Petition at the behest of the Petitioner, was therefore, rightly rejected.

11. Even otherwise, there is no reason to fault the SDO's order dated 29th July 2002. the Tahsildar, in making his order dated 15th March 1993 appears to have relied upon order dated 17th July 1985 made by Additional Tahsildar, which order, is not at all traceable. The proceedings in which such order was made are also not traceable. The contents of such order are also not known. If the Tahasildar's order dated 15th March 1993 is perused, then, non application of mind, is writ large upon the same. The Tahasildar has merely held that since the claim of Pingales was turned down by the Additional Tahsildar by order dated 17th July 1985, he is closing the proceedings. The order of the Tahasildar

dated 15th March, 1993 was rightly set aside by the SDO in his order dated 29th July 2002. Proceedings against the order dated 29th July 2002, instituted by the successors of the original landlords i.e. Wadekars have failed and the said order has attained finality. In these circumstances, the Petitioner was clearly dis-entitled to challenge the same. In any case, the challenge of the Petitioner has been rightly turned down.

12. Mr. Warunjikar's contention that, since the property has been converted for non agricultural purposes, Pingales cannot claim any tenancy, has been rightly rejected in the impugned judgment and order. Such subsequent and belated conversion, obviously, cannot defeat the rights of tenants. At the highest, if tenancy is established, such conversion will be vulnerable. Besides, once it is established that, the said property was affected by tenancy, it is quite doubtful whether the original landlords could have even sold or conveyed the said property and the transferee could have at all converted the same for non agricultural use.

13. The contention that the Pingales had preferred appeals / revisions to the revenue authorities and not the

authorities under the Tenancy Act, is quite misconceived. Perusal of the record would indicate that the SDO, who entertained appeal against the Tahsildar's order dated 15 March 1993, was indeed, the prescribed authority under the Tenancy Act. Such objection, was, quite rightly, never even raised by the legal representatives of the original landlord, through whom the petitioner, now claims some right to the suit property. As such, it is too late in the day to contend that the Pingales had instituted appeals only under the provisions of the Land Revenue Code and not under the Tenancy Act. The mere circumstance that there is reference to the Land Revenue Code and the relief to effect mutation in survey entries, is not a very significant factor. There is no doubt that in the appeal before the SDO, the challenge was squarely to the Tahsildar's order dated 15 March 1993, which order the SDO, has set aside by his order dated 29 July 2002. Mere reference to an incorrect provision of law, does not, either vest or divest jurisdiction. There is accordingly no merit in this contention of Mr. Warunjikar.

14. This is not the occasion for taking into consideration the Tahasildar's order dated 20th August 2016 since, the same does

not concern the issues raised in this petition directly. In this Petition, the challenge is to the impugned judgment and order dated 28th May 2012 made by the MRT. For the reasons as discussed above, there is neither any jurisdictional error nor any perversity in making of the impugned judgment and order.

15. Accordingly, this petition is dismissed. There shall be no order as to costs.

16. Parties to act on an authenticated copy of this judgment and order.

(M.S.SONAK, J.)