

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

CIVIL REVISION APPLICATION NO. 425 OF 2016

Shri. Narayan Laku Mankar & ors. ... Petitioners

vs.

Maharashtra State Wakf Tribunal and ors. ... Respondents

WITH

CIVIL REVISION APPLICATION NO. 426 OF 2016

Shri. Dattatraya Jaganath Bhoir & ors. ... Petitioners

vs.

Maharashtra State Wakf Tribunal and ors. ... Respondents

Mr. S. P. Bharti a/w Mr. P. R. Yadav, Advocate for the petitioners.

Mr. Y. H. Muchhala, Senior Advocate a/w Javed Patel i/by Mr. Umaath Moolya, Advocate for respondents no.3 to 6.

Coram : Smt. R. P. SondurBaldota, J.

Date : 26th July, 2016

P.C. :

1. This is a common order on the above two revision applications that arise out of a same order of the Wakf Tribunal i.e. the order dated 29th April, 2016. By the impugned order the applications filed by the petitioners being Applications No. 80 of 2010, 81 of 2010, 82 of 2010, 83 of 2010, 84 of 2010, 86 of 2010, 88 of 2010, 89 of 2010, 90 of 2010, 91 of 2010, 92 of 2010 and 93 of 2010 were

dismissed and the order passed by Chief Executive Officer (CEO) of Maharashtra State Wakf Board, Aurangabad vacating the petitioners from the suit property was confirmed.

2. One Lahu Rama Bhoir claimed to be agricultural tenant in respect of the properties to which the petitioners claim to have a right. The petitioners in the first petition are the purchasers of the land from the tenant and the petitioners in the second petition are the heirs and legal representatives of the tenant. It was the claim of the tenant that in the year 1950, he was cultivating the land owned by one Riazuddin Nijamoddin Kazi. He desired to sell the land to the tenant by adopting due process of law. Accordingly the Additional Tahsildar and Agricultural Land Tribunal fixed the purchase price of the land at Rs.4,800/- under Section 32G of the Bombay Tenancy And Agricultural Land Act, 1948 ('the Tenancy Act', for short). Lahu Rama Bhoir deposited the purchase price and certificate under Section 32M of the Tenancy Act was issued to him. Thereafter, Lahu Rama Bhoir with the permission of the Collector distributed the lands amongst his sons and family members, who in turn sold their shares to the petitioners in the first petition.

3. The respondent no.3 is an Educational Trust registered under Public Trust Act in the year 1953. Perusal of the record of the Public Trust shows that on the date of it's registration, it was the owner of the agricultural land

Gat Nos. 35/1/A, 35/1/B, 37/1, 37/2, 38/1, 38/2, 38/3, 41, 43/1, 42/2, 55/1, 68, 69/1, 72, 73, 73/4/1, 73/4/2 and 118/4 situated at Sherawali, Taluka Vasai, Dist. Thane, in respect of which Lahu Bhoir claimed to be the tenant and now claims ownership. Respondent no.3 filed an application for eviction of the petitioners in the two petitions on the ground that in view of Section 88, the provisions of the Tenancy Act are not applicable to the property in question and there could be no benefit derived by Bhoir on declaration of the Tillers date. As such, he could not have purchased the land by getting the purchase price fixed by the Tahsildar and acquired certificate under Section 32M of the Tenancy Act.

4. The Tribunal has noted the fact of registration of the trust, and the register in the office of the Charity Commissioner to hold that the trust is the owner of the properties in question. In that circumstance, the provisions of the Tenancy Act were clearly not applicable to the lands in question. Therefore, there could not have been sale of the land to the tenant.

5. Mr. Bharti, the learned advocate for the petitioner sought to argue that the application filed by respondent no.3 Trust was after the delay of more than 50 years. Therefore, the same could not have been considered by the Tribunal and the Chief Executive Officer. The source of the right claimed by the petitioners to the properties in question is sale of the property by one Riazuddin

Najmoddin Kazi to Lahu Rama Bhoir by the purchase under Section 32G of the Tenancy Act. There is nothing on record to show that Riazuddin Kazi was the owner of the land in question. The evidence before the Court is that respondent no.3 is the owner of the land in question. Therefore any agreement by Riazuddin to sell the property to Lahu Bhoir is of no consequence. The sale by a person without title is void. As such, the heirs of Lahu Bhoir and the purchasers from the heirs of Lahu Bhoir in turn, will have no right, whatsoever, to the land in question. Therefore, there is no infirmity in the impugned order. Hence, the petitions are dismissed.

[Smt. R. P. SondurBaldota, J.]