

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 26 OF 2016
IN
WRIT PETITION NO. 410 OF 2014

The Estate Investment Company Pvt. Ltd. .. Petitioner

vs.

Parshuram M. Vaity & ors. .. Respondents

Mr. Rajendra Desai i/b Ms Shakuntala A. Mudbidri for the Petitioner.
Mr. Nitin Gangal i/b Ms Minakshi Adate for Respondent Nos.1 to 7.

CORAM : M. S. SONAK, J.

DATE : 10 JUNE 2016.

P.C. :-

1] This petition seeks review of the judgment and order dated 9 February 2015 disposing of Writ Petition No. 410 of 2014 and Civil Application No. 1876 of 2014 made therein.

2] As against the judgment and order dated 9 February 2015, the petitioner had preferred Petition for Special Leave to Appeal (c) No. 12102 of 2015, which came to be disposed of by the Hon'ble Supreme Court by the order dated 3 July 2015, which reads thus:

“Upon hearing the counsel the Court made the following

ORDER

It is submitted by the learned counsel for the petitioner that the respondents at one point of time been declared by the competent authority that they are not the tenants. As no document had been filed before the High Court, liberty is granted

to the petitioner to file an application for review along with the documents within four weeks hence. If the application for review is filed within four weeks from today, the same shall be disposed of on merits and not to be thrown at the threshold on the ground of limitation.

The special leave petition is, accordingly, disposed of.”

3] The main contention of the review petitioner is that the father of the respondent had in fact applied under section 70-B of the Bombay Tenancy and Agricultural Land Act, 1948 (said Act) to be declared as tenant of the suit property, but such application was rejected by the Tahsildar by order dated 16 April 1970. In view of such rejection, it was urged that the respondents would never have been declared as agricultural tenants of the suit property.

4] At the outset, it is required to be clarified that such contention was never raised before this court when the writ petition and civil application was finally heard and the judgment and order dated 9 February 2015 came to be made. In fact, learned counsel for the review petitioner candidly conceded this position and agreed that the averment to this effect in para 10 of the review petition was not correct.

5] Learned counsel for the review petitioner, however, submitted that the record indicates that such a ground was raised in the written statement filed before the Tahsildar as also before the appellate and revisional authorities and non-consideration thereof, constitutes an error apparent on the face of record. Learned counsel also contended that after the judgment and order dated 9 February 2015 was made, the review petitioner by application dated 6 May 2015 applied to the Tahsildar for issue of copy of the judgment and order dated 16 April 1970. He pointed out that the Tahsildar, by communication dated 23 July 2015 has, however, replied that no records of such cases are available. Learned counsel for the review petitioner pointed out that the review petitioner had an old Register maintained in the usual course and in such Register, there is an entry with regard to the order dated 16 April 1970. Learned counsel for the review petitioner also submitted that the respondents were quite evasive in their answers upon this vital issue and submitted that in terms of the decision of the Hon'ble Supreme Court in case of *Jahuri Sah and ors. Vs. Dwarika Prasad Jhunhunwala and ors. - AIR 1967 Supreme Court 109*, an evasive denial is no denial at all. For these reasons, learned counsel submitted that a case has been made out to review the judgment and order dated 9 February 2015.

6] Mr. Gangal, learned counsel for the respondents-tenants, submitted that the sole ground upon which liberty came to be granted by the Hon'ble Supreme Court to the review petitioner to institute the present review petition, was the alleged existence of a document, by which, the claim of tenancy allegedly raised by the predecessor-in-title of the respondents, had been allegedly rejected in 1970 by the Tahsildar. Mr. Gangal submitted that liberty was granted by the Hon'ble Supreme Court to the review petitioner to produce such judgment and order, if indeed the same exists. The review petitioner, even alongwith review petition and the documents produced alongwith, have not produced the alleged judgment and order dated 16 April 1970, by which the claim of predecessor-in-title of the respondents-tenants had been allegedly rejected. Besides, there is no explanation whatsoever as to why such a vital document, if indeed in existence, was never produced by the review petitioner before the Tahsildar, SDO or the MRT in the course of proceedings, which commenced some time in the year 2004. Mr. Gangal submitted that the review petitioner has commenced search in respect of non-existent documents only after order dated 9 February 2015 was made by this Court and despite being unsuccessful in such search, have instituted the present review petition. Mr. Gangal

submitted that no diligence whatsoever has been demonstrated by the review petitioner since the year 2004 and at this stage therefore, there is absolutely no case made out for the exercise of review jurisdiction. Mr. Gangal submitted that even the statements in the review petition, including in particular the statements in paras 10 and 16 are patently incorrect. Mr. Gangal submitted that there is variance even in the averments in para 16 and the documents annexed in alleged support thereof. For all these reasons, Mr. Gangal submitted that there is no case made out for exercise of review jurisdiction.

7] In my judgment, the review petitioner has neither demonstrated any error apparent on the face of record nor is the case of the review petitioner covered under the other provisions of Order 47 Rule 1 of the Code of Civil Procedure, 1908 with regard to discovery of new and important matter or evidence which, after the exercise of due diligence was not within the petitioner's knowledge or could not be produced by the petitioner when the order was made.

8] Even as of today, the review petitioner has failed to produce any judgment or order to demonstrate that the claim allegedly made by the predecessor-in-title of the respondents-tenants had been rejected by the competent authority in the year 1970 or at all. Based upon some Register privately maintained by the review petitioner, it is not possible to accept the contention that such order was indeed made in the year 1970. The respondents-tenants had instituted the application for declaration as tenants before the Tahsildar in the year 2004. From the year 2004, until well after three months after this Court made its judgment and order dated 9 February 2015, the review petitioner did not even apply to the concerned authorities for the issuance of copy of any such order, by which, the review petitioner claims that the plea of predecessor-in-title of the respondents-tenants had been rejected in the year 1970. Even in the year 2004, no efforts were made by the review petitioner to lead any evidence on this aspect. In fact, as conceded, such a contention was not even raised when the judgment and order dated 9 February 2015 was made. In such circumstances, it is not possible to grant any reliefs in this review petition.

9] In para 16 of the review petition, it is stated thus:

“16. The Petitioner states that they filed a fresh Application on 6th May 2016 to the Tahsildar and ALT, Thane in respect of five different properties and in respect of five different tenants, which is annexed hereto and marked as Exhibit-F. One of the properties was the suit lands involved in V.R. No. 208. The Petitioner states that all these five cases were filed by five different tenants almost at the same time under Section 70-B of Bombay Tenancy and Agricultural Land Act, 1948. All the five cases were dismissed by the Tahsildar, Thane by different orders. The Petitioner has a copy of order dated 30th September 1970 passed in V.R. No. 223 in respect of one such case. A copy of said order dated 30th September 1970 is annexed hereto and marked as EXHIBIT-F-1”.

10] The order dated 30 September 1970 referred to in the aforesaid paragraph neither concerns the respondents-tenants nor concerns the property in respect of which tenancy has been claimed. The order indicates that one Bhiva Ragho Keni, constituted Attorney stated that he was not the tenant of the property with which the said order was concerned and on basis of such statement, the Additional Tahsildar ordered that enquiry under Section 32-G of the said Act be dropped. As noted earlier, this order has absolutely no nexus either with the respondents-tenants or the property in respect of which the tenancy has been claimed by the respondents-tenants. Mr. Gangal is, however, right in his submission that the averment in paragraph 16 of the review petition, is incorrect to the extent it states that the order dated 30 September 1970 concerns the proceedings under

Section 70-B of the said Act. A bare reading of the order makes it clear that such averment is patently incorrect. This is yet another reason to dismiss this review petition.

11] At the hearing of the review petition, the learned counsel for the review petitioner, once again presented a compilation of following documents:

Sr. No.	Particulars
1.	Application dated 2.1.2004 filed by R's under section 70(B) before Tahsildar, Thane
2.	Written say of Petitioner dated 20 th March, 2007 before Tahsildar, Thane
3.	Statement of R's before Tahsidlar and cross-examination
4.	Appeal Memo filed before SDO, Thane in Appeal 7/2010 filed by Petitioner dated 15.1.2010 together with application for condonation of delay and stay application
5.	7 x 12 extract of S.No. 228/1/part (including typed copy)
6.	7 x 12 extract of S.No. 232/1/part (including typed copy)
7.	Mutation entry No. 315
8	Memo of Revision Petition No. 463/2010 filed by Petitioners on 20.11.2010 before MRT, Mumbai

12] None of the aforesaid documents, even remotely establish that the predecessor-in-title of the respondents-tenants had earlier

applied for declaration of tenancy and that such declaration had been denied. In any case, the documents at serial Nos.1 to 4 and 8 above, are only pleadings which form a part of the record and the documents at serial Nos. 5,6 and 7 are extracts of certificate and mutation entries. These have already been considered in the order dated 9 February 2015 particularly, in the context of disposal of civil application No. 1876 of 2014.

13] The decision in case of *Jahuri Sah (supra)* is not at all attracted to the facts and circumstance of the present case. In the said case, the plaintiff had averred that Shakarlal had been given in adoption to Sreelal. In neither of two written statements filed on behalf of the defendants had this assertion of facts by the plaintiffs, been specifically denied. Instead, what was stated in both these written statements was that the defendants have no knowledge of the allegations made in paragraph 1 of the plaintiff. In these circumstances, bearing in mind that Order 8, Rule 5 of C.P.C. provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted, the Hon'ble Supreme Court held that the response in the written

statement was vague and evasive and therefore, could never have been regarded as denial in law. Such an issue is not at all involved in the present case, particularly since the respondents-tenants herein were the applicants before the Tahsildar. Admittedly, the review petitioner had failed to produce on record any material in support of its contention that any claim for declaration of tenancy had been made by the predecessor-in-title of the respondents-tenants and that the same had in fact been rejected by the competent authorities. Accordingly, decision in the case of *Jahuri Sah (supra)* is not of any assistance to the review petitioner.

14] There is no case made out for exercise of review jurisdiction. Accordingly, this review petition is dismissed. In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)

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