

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6003 OF 2001

Digambar G. Mahanubhav
(since deceased through His L.H.

Prabhakar D. Mahanubhav
since deceased through L.H.

1a} Aruna P. Mahanubhav
(since deceased through L.H.
1-aa] Suhas A. Daravade and ors.)

.. Petitioners

vs.

Mrs. Kusum B. Jagtap and ors.

.. Respondents

Mr. P.B. Shah for the Petitioners.

Mr. Abhijit Kulkarni i/b M/s. D.D. & Abhijit Associates for
Respondent Nos.1 to 7.

CORAM : M. S. SONAK, J.

DATE : 2 FEBRUARY 2016.

P.C. :-

1] It does appear that this matter is governed by the judgment and order dated 22 January 2015 made in Writ Petition No. 727 of 2000 and therefore, an order similar to the one made in said petition will have to be made in the present case as well. However, reference to some facts is necessary.

2] By the judgment and order dated 21 July 1959, the Tahsildhar purporting to exercise powers under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (said Act) demanded the purchase price, in respect of two properties and two tenants. One of

the properties ad-measure 30 Acres and 32 Guntas purportedly tenanted to Dadu S. Kanchan. The said property was subject matter of Writ Petition No. 727 of 2000. The second property, with which the present petition concerns, ad-measures 2 Acres 20 Guntas, which was purportedly tenanted to the Petitioner Digamber G. Mahanubhav.

3] The Respondents-landlords after a period of almost 36 years instituted an appeal before the Sub-Divisional Officer (SDO) challenging the Tahsildhar's common order dated 21 July 1959. The appeal was dismissed by the SDO vide order dated 17 January 1998. The Respondents-landlord, then instituted a common revision petition before the Maharashtra Revenue Tribunal (MRT) being Revision Application No. MTR-P-IV-3-98 (3-23/98). By the impugned judgment and order dated 6 July 1999, the MRT is allowed the revision petition and remanded the matter to the Tahsildar for decision, on its own merits, within three months.

4] In pursuance of the remand as aforesaid, the Tahsildhar, by the judgment and order dated 14 December 1999, has decided the matter against the Petitioners. Although the petition is not quite

clear, Mr. P.B. Shah, learned counsel for the Petitioners has stated that the Petitioners had instituted an appeal against the Tahsildar's order dated 14 December 1999 before the SDO. However, since the present petition was instituted, to challenge the MRT's order dated 6 July 1999 and the interim relief was granted in this petition, the SDO has disposed of the appeal. In this petition also, the Petitioners has alongwith the MRT's order dated 6 July 1999 challenge the Tahsildar's order dated 14 December 1999.

5] By the judgment and order dated 22 January 2015 in Writ Petition No. 727 of 2000, the challenge was to the MRT's order dated 6 July 1999 as also the Tahsildhar's order dated 14 December 1999, made in pursuance of remand by the order dated 6 July 1999. For the reasons set out therein, both the orders, i.e., MRT's order dated 6 July 1999 and Tahsildar's order dated 14 December 1999 were set aside and the matter was remanded to the SDO to decide the Respondents' application for condonation of delay in instituting the appeal against the Tahsildar's order dated 21 July 1959 and in case, the delay is condoned, to dispose of the appeal itself on merits. For the reasons set out in the judgment and order dated 22 January 2015, the same course of action will have to be followed in the

present case, as there is virtually no difference in the facts and circumstances of the two cases, at least upon the material aspects which concern setting aside of the two orders

6] Mr. Abhijeet Kulkarni, learned counsel appearing for the Respondents-landlords, has however submitted that in this case, the Tahsildar's order dated 21 July 1959 was procured by fraud. He submits that before the SDO, the Respondents-landlord had applied for condonation of delay and in said application also set out fraudulent circumstances, in which the Tahsildar's order dated 21 July 1959 was procured. Therefore, he submits that there is a difference in the present case and in case which was subject matter of Writ Petition No. 727 of 2000. At this stage, it is not possible to accept this contention, particularly since the matter is being remanded to the SDO for the purposes of determining whether sufficient cause was made out for condoning the delay in instituting an appeal against the Tahsildar's judgment and order dated 21 July 1959. In considering the cause so shown, the SDO will undoubtedly consider and decide upon the Respondents-landlord contention with regard to the alleged fraud in procuring the order dated 21 July 1959. All contentions of all parties are specifically kept open.

7] Accordingly, for the reasons set out in the judgment and order dated 22 January 2015 made in Writ Petition No. 727 of 2000, the impugned orders dated 6 July 1999 made by the Tahsildar and SDO's order dated 17 January 1998 are set aside. The matter is remanded to the SDO for decision in tenancy appeal against the Tahsildar's order dated 21 July 1959. The SDO, should, first consider the Respondents-landlord application for condonation of delay and fraud in procuring the order dated 21 July 1959 and in case, the delay is condoned or fraud is established, proceed to dispose of the Respondent-landlord's appeal, on its own merits and in accordance with law. The SDO to decide this matter as expeditiously as possible and in any case on or before 30 June 2016.

8] Parties to appear before the SDO on 16 February 2016, at 3.00 p.m. and produce an authenticated copy of this order.

9] The Registry to transmit the record and proceedings to the SDO, Pune, as early as possible and in any case on or before 15 February 2016.

10] It is made clear that this Court has not made any observations on merits or de-merits of the case, as set out by the respective parties or on the aspects of condonation of delay and/or fraud. All contentions of all parties are kept open.

11] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

12] Parties to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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