

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 63 OF 2014

Shri. Shashikant Ganpat Kandalgaonkar ...Petitioner
v/s.
Shri Nandalal Vishwanath Malawade & Ors. ...
Respondents

....
Mr. P. J. Shinde for the Petitioner.
Mr. Sudhir Prabhu for the Respondent

CORAM : M.S.SONAK, J

DATE : 14th June 2016

P.C :

1] Heard Mr. Shinde learned counsel appearing for the petitioner.

2] The challenge in this petition is to the judgment and order dated 11th September 1997, 15th October 2011 and 26th August 2013 made by the Naib Tahsildar, Sub-divisional Officer (SDO) and Maharashtra Revenue Tribunal (MRT), respectively under the provision of the Bombay Tenancy and Agricultural Lands Act, 1948 (The said Act).

3] The Naib Tahsildar by judgment and order dated 11th September 1997 has declared the respondent No. 1 to be the

tenant of the suit property. As against this judgment and order dated 11th September 1997, one Shri Ramchandra Khot instituted an appeal being Appeal No. 83 of 1997 before SDO, which has since been dismissed by judgment and order dated 10th January 2001. It is the case of the petitioner that even though the said Ramchandra Khot was a constituted Attorney of the petitioner, the Appeal No. 83 of 1997, had not been instituted by the said Ramchandra Khot in his capacity as a constituted attorney but rather the appeal was instituted by the said Ramchandra Khot claiming himself to be the tenant of the suit property.

4] After the delay of almost 13 years, the petitioner instituted Appeal No. 52 of 2010 before the SDO in order to challenge the judgment and order dated 11th September 1997 made by the Naib Tahsildar. The said appeal was dismissed by the SDO by judgment and order dated 15th October 2011 *inter alia* on the ground that the same was barred by the principles of *res judicata*.

5] The petitioner thereafter instituted Tenancy Revision Application No. TNC/REV/4/B/2012 before MRT, which has since been dismissed by judgment dated 26th August 2013. Hence the

present petition.

6] Mr. Shinde learned counsel for the petitioner advanced two submissions in support of the present petition :-

- (a) That the appeal instituted by Ramchndra Khot was not in pursuance of the power of attorney issued by the land lords in his favour. In such circumstances Mr. Shinde contended that the appeal instituted by the landlords was not barred by the principles of Res judicata and the SDO erred in holding so.
- (b) In any case, Mr. Shinde submitted that there was absolutely no evidence on record to declare the respondent No. 1 as a tenant of the suit property. Merely because none of the landlords chose to remain present or submit their defence in the proceedings before the Naib Tahsildar, there was no case made out for drawal of adverse inference. Mr. Shinde submitted that the burden was upon respondent No. 1 to produce cogent evidence for establishing that he was tenant of the suit property. Since no such evidence was ever produced by respondent No.1, the authorities under the said Act exceeded jurisdiction in declaring the respondent No. 1 as tenant of the suit property.

7] Having heard learned counsel for the petitioner, perused the record as well as the impugned judgments and orders, I am

satisfied that this is not a fit case to interfere with the impugned orders in exercise of jurisdiction under Article 227 of the Constitution of India. This is a case where three authorities i.e. Naib Tahsildar, SDO and MRT have recorded concurrent findings of fact. In such circumstances, in the present case, it cannot be said that the declaration is issued in favour of the respondent No. 1 is based upon “no evidence” or is vitiated by perversity.

8] Although it may be true that the respondent no. 1 failed to produce documentary evidence on record, the respondent No. 1 examined himself and two witnesses in support of his claim. the Naib Tahsildar has considered the testimony of the respondent No 1 and two other witnesses. The landlords, totally 9 in number, were duly served with the process before the Naib Tahsildar. The landlords also engaged an Advocate to appear on their behalf and that advocate also cross-examined respondent No. 1 and his witnesses. However, there is no dispute that the landlords neither filed any reply before the Naib Tahsildar disputing the claim of the respondent No.1, nor did they lead any evidence themselves in the matter. In these circumstances, it cannot be said that the declaration issued by the Naib Tahsildar was based upon “no evidence” or that the same was vitiated by perversity. In addition to

the material on record in the form of depositions of respondent no. 1 and his witnesses, the Naib Tahsildar has drawn an adverse inference against landlords on account of their failure to either dispute the case set out by the respondent No. 1 or to themselves lead any evidence in the matter.

9] If the judgment and order dated 10th January 2001 made by the SDO in Appeal No. 83 of 1997 is perused, it is not quite clear as to whether the said appeal had been instituted by Mr. Ramchandra Khot in pursuance of his claim of tenancy to the suit property or whether the appeal had been instituted by the said Ramchandra Khot in his capacity as the constituted attorney for the landlords. There is however, no dispute that Ramchandra Khot had been constituted attorney for the landlords. Coupled with this significant circumstance, it is to be noted that the landlords chose not to challenge the judgment and order dated 11th September 1997 made by the Naib Tahsildar for almost the period of 13 long years. The appeal No. 52 of 2010 was instituted by the present petitioner/landlords almost 9 years after the judgment and order dated 10th January 2001 was made by the SDO dismissing the appeal instituted by Ramchandra Khot against the judgment and order of Naib Tahsildar dated 11th September 1997.

10] That apart, MRT has also considered the issue as to whether there was no material whatsoever before the Naib Tahsildar at the stage when the Naib Tahsildar passed the judgment and order dated 11th September 1997. In such circumstances there is really no case made out to exercise jurisdiction under Article 227 of the Constitution of India and to interfere with the concurrent finding of the facts recorded by the authorities.

11] For the aforesaid reasons this petition is dismissed. there shall however be no order as to costs.

(M.S.SONAK, J.)