IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Writ Petition No.4302 of 2015
[Vitthal Ganpat Matkar Vs. Pushpa Ratanlal Agrawal & others]

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. V. K. Paliwal, Adv., for the petitioner.
Mr. A.V. Bhide, Adv., for respondent nos. 1 and 2.

CORAM : P.B. VARALE, J.

DATE : 05th December, 2016

Heard Mr. V. K. Paliwal, the learned counsel for the petitioner.

The petitioner is before this Court challenging the order passed by the learned Member of the Maharashtra Revenue Tribunal in the Revision preferred at the instance of respondent nos. 1 and 2. The Revision was against the order passed by the Sub-Divisional Officer dated 21st June, 2014 in Appeal No. TNC-5/Januna/5/2012-13. It was the submission before the learned Member of the Revenue Tribunal in the Revision that the respondent no.1, i.e., the petitioner herein, submitted an application for declaring the petitioner as a tenant and effecting necessary entries in the revenue record. It was submitted in the Revision that the Tahsildar exceeded the jurisdiction vested in him. It was submitted that certain facts were not taken into consideration by the authority which were necessary for the decision.

The Revision was contested by counter-submissions as well and by placing certain material on record.

The learned Member of the Revenue Tribunal in his detailed order referred to the contentions and counter-contentions of the parties. Also, a reference was made to the records called from the lower authorities. On assessment of the submissions and on perusal of records, the learned Member of the Revenue Tribunal arrived at a conclusion that the Tahsildar and the Sub-Divisional Officer without complying with the provisions of the Tenancy Law and more particularly Sections 41, 43, 8 (3) and Section 50, passed the orders and, therefore, these orders were unsustainable. Accordingly, the orders were quashed and set aside by the learned Member of the Maharashtra Revenue Tribunal by allowing the Revision.

The petitioner before this Court in challenge to the order of the learned Member of the Revenue Tribunal raised a specific ground and the same reflects in paragraph 3 of the petition. The said ground states that the Revision was fixed for hearing on stay application on 9th March, 2015 and the learned Maharashtra Revenue Tribunal was pleased to decide the Revision on merits vide the impugned order dated 25th March, 2015 without hearing the same on merits. It is further stated that the petitioner is unable to submit cause what was the hurry to the learned Maharashtra Revenue Tribunal to decide the case urgently without granting opportunity of hearing on merits when the petitioner had submitted detailed arguments before the learned Sub-Divisional Officer [emphasis supplied].

This Court, while issuing notice on 8th February, 2016 recorded the submission of the learned counsel appearing for the petitioner that while the proceedings were pending before the Member, Maharashtra Revenue Tribunal, an application for seeking stay was filed. The petitioner, I. e., the respondent before the Tribunal was contesting the prayer for stay. It is also the submission of the learned counsel that the counsel was under an impression that the Tribunal was dealing with merit of the stay application. It is the further submission that the Tribunal instead of deciding the stay application, proceeded with the matter on its merits and decided the revision itself.

It is the submission of the learned counsel for respondent nos. 1 and 2 that a reply is filed to the present petition. Along with the reply, a copy of the

Roznama of the proceedings before the learned Member of the Revenue Tribunal is also placed on record. It is submitted in the reply that no error is committed by the learned Member of the Revenue Tribunal. It is submitted that sufficient opportunities were granted to the petitioner and the statement made in the petition that the application for stay was to be decided is not in consonance with the record. It is submitted that the matter was fixed for final hearing and in spite of opportunity being granted to the petitioner, the petitioner failed to avail this opportunity and now raising a grievance before this Court that the petitioner was under an impression that the application for stay was to be decided and as such the Tribunal was not ready to proceed with the matter for hearing. The documents placed with the reply show that on 26th August, 2014, order on stay application was passed. Perusal of the copy of Roznama shows that on 17th September, 2014, the matter was adjourned to 9th October, 2014. On 9th October, 2014, as none was present, the matter was then adjourned on 31st October, 2014. On 31st October, 2014 itself, the matter was adjourned and posted for final arguments. On 21st November, 2014, written submissions were filed and a request was made at the instance of the respondent, i.e., the petitioner herein, for adjournment. Accordingly, adjournment was granted and the matter was posted on 16th December, 2014. Again on 16th December, 2014, a request was made on behalf of the present petitioner for adjournment.

Accordingly, the matter was again adjourned. The matter was then adjourned till 16th January, 2015. On 16th January, 2015, submissions were made on behalf of Revision Petitioner. It was submitted before the authority that the respondents are attempting to sell the land. The controversy is in respect of the tenancy and the ownership of the land. A submission was made for continuation of the stay order. The matter was adjourned to 29th January, 2015. Again on 29th January, 2015, the matter was adjourned and posted for final arguments. On 24th February, 2015, submissions were advanced on behalf of the revision-petitioner. As the learned counsel appearing for the respondent, i.e., the petitioner herein, was not present, to provide opportunity for the submission, the Tribunal recording that an opportunity is needed to be granted to the other side, i.e., the petitioner, adjourned the matter. It would now be useful to refer to the order of the Tribunal dated 5th March, 2015. The Tribunal observed that the learned counsel for the revision petitioner is present. Though opportunity was granted to the respondent, none was present for the respondent, i.e., the petitioner herein. Though it may not be necessary to refer to the further observations of the Tribunal, suffice it to say that the Tribunal has expressed its displeasure on the approach of the petitioner herein [the respondent before the Tribunal] and it is further observed that in spite of grant of opportunity, the respondent failed to appear before the Tribunal. Thus, the Tribunal records that the respondent, i.e., the petitioner herein, was not interested to make oral submissions before it. As such, the matter was closed for orders.

The learned counsel Mr. Paliwal for the petitioner made an attempt to submit before this Court that the petitioner be permitted to challenge the order passed by the Tribunal on merits. This Court, while issuing notice, recorded the submission of the learned counsel for the petitioner and at the cost of repetition, it is stated that even in the petition, a specific ground was raised that the petitioner was under an impression that the Tribunal is deciding the stay application and Tribunal with undue haste passed the order on merits in the Revision Petition. From the material placed before this Court in the form of the copy of Roznama of the Tribunal, this Court is of the opinion that the learned counsel for the petitioner probably was not properly instructed when the submissions were made before this Court on 8th Feb., 2016. This Court is of the further opinion that the petitioner, who made a statement in the petition supported by an affidavit that the petitioner was under an impression that the Tribunal is deciding the stay application and the petitioner was not aware that the Tribunal would hear the parties finally on merits of the Revision is, least to say, an eyewash and clearly an untrue statement is made before this Court. As referred to above, the learned Member of the Tribunal at least on more than four occasions granted opportunity to the petitioner. On four occasions, the matter was proceeded for final arguments. The Tribunal in the last order also expressed its displeasure over the way the petitioner was approaching it and in spite of grant of opportunities, was only interested in seeking the adjournments. The Tribunal was, thus, left with no choice, but to pass the final order on merits.

Considering all these facts, in my opinion, no error is committed by the learned Member of the Revenue Tribunal. The order needs no interference at the hands of this Court. The petition, thus, being devoid of merits, deserves to be dismissed and the same is accordingly dismissed.

Judge

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