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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 2628 OF 2017

Vilas S. Jadhav (since deceased,
through Legal Heirs) & Ors. ... Petitioners
Vs.
Shankarsingh V. Pardeshi & Ors. ... Respondents

Mr. Prashant D. Patil, for the Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.

DATE : SEPTEMBER 13, 2017

PC :

1. On 20th March, 2017 this Court passed following order:

“1. Heard Mr. P. D. Patil, the Learned Counsel appearing for the Petitioners.

2. Issue notice to the Respondents, returnable on 17.04.2017. In addition to service of notice through Court, the advocate for the Petitioners shall serve a private notice by Registered Post A. D. and / or by Courier service and / or by hand delivery on the Respondent and shall file affidavit of service before the returnable date.

3. The parties are put to notice that in view of the narrow controversy involved the Petition may be heard and

disposed of finally at the admission stage. Till the returnable date, the parties are directed to maintain status-quo.”

2. The learned counsel appearing on behalf of the Petitioners states that service is complete upon the respondents and an affidavit of service has also been filed. As noted in the earlier order dated 20.3.2017, this Court had put the parties to notice that the petition may be heard and disposed of finally at the stage of admission. Hence, rule. Rule is made returnable forthwith.

3. From the perusal of the impugned judgment and order dated 13th February, 2017 passed by the Maharashtra Revenue Tribunal (for short the “MRT”), it is seen that main contention of the Petitioners that permission under S. 43 of the Bombay Tenancy & Agricultural Lands Act, 1948 cannot be granted after the property in question is already alienated, does not appear to have been considered. In addition to this issue, the Petitioners had already raised issue of fraud and other irregularities. The MRT has declined to exercise jurisdiction by observing that such issues cannot be gone into in the proceedings under the said Act, and for adjudication of these issues, it is for the parties to file civil suit. However, there does not appear to

be any consideration to the contention raised by the Petitioners that Section 43 contemplates prior permission and not the ex-post facto permission.

4. On the basis of aforesaid grounds, the impugned order made by the MRT is set aside and the matter is remanded back for fresh decision in Rev / 110 / B / 2011. The MRT is requested to dispose of the revision application afresh on its own merits and in accordance with law, without being influenced in any manner by the impugned order dated 13.2.2017 which, in any case, is set aside, as well as the observations made by this Court in the present order. All contentions of all the parties are kept open for determination by the MRT. The MRT is requested dispose of the revision application as expeditiously as possible, and in any case within a period of four months from the date of receipt of authenticated copy of this order.

5. Since the MRT by an order dated 8.12.2012 had granted interim relief pending disposal of the revision application, the said interim relief is also restored.

7. The parties shall appear before the MRT on 28th

September, 2017 at 11.00 a. m. and produce authenticated copy of this order.

8. Since the respondents despite service of notice have remained absent, the MRT is requested to issue fresh notice to them. The Petitioners also to communicate present order to the respondents.

9. Rule is made absolute in the aforesaid terms and writ petition is disposed of. All concerned to act on the basis of an authenticated copy of this order.

Sd/-
[M. S. SONAK, J.]

Vinayak Halemath