

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9081 OF 2016**

**Smt. Vijaya Raghunath Pawar
Vs.
Shri Kisan Anna Gurav & Ors**

..Petitioner

..Respondents

**Mr. S. R. Borulkar i/b Mr. M. A. Patil for the Petitioner
Mr. T. S. Ingale for the Respondent Nos.1 & 3
Mrs. V. S. Nimbalkar AGP for the Respondent Nos.8 & 9**

**CORAM : R. M. SAVANT, J.
DATE : 16th MARCH, 2017**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 29-3-2016 passed by the Learned Member of the Maharashtra Revenue Tribunal (for short MRT) by which order the Revision Application filed by the Petitioner came to be dismissed and resultantly the orders passed by the Tahsildar dated 16-2-2003 and the order dated 3-3-2005 passed by the Sub Divisional Officer (for short SDO), came to be confirmed.

2 The Petitioner herein claims to have purchased the land which was in possession of the original landlord. The Respondent Nos.1 and 3 are the original tenants of the land in question. The landlords had filed an application that they may be handed over possession of half the tenanted land for personal cultivation. The said application was filed under Section 31 of the Bombay Tenancy and Agricultural Lands Act 1948 (for short the said Act). The

said application of the landlord ultimately came to be allowed the MRT by order dated 4-2-1986 and thereby half the portion of the tenanted land was restored to the landlord. The said order passed by the MRT was challenged by both the landlord and by the tenants by filing Writ Petitions in this Court being Writ Petition No.1089 of 1988 and Writ Petition No.4025 of 1986. This Court by order dated 19-6-1997 passed in the said Writ Petitions confirmed the order passed by the MRT. The half portion of the land was accordingly restored to the landlord and possession was handed over to them on 7-10-1998. It seems that the landlord thereafter on 19-6-2000 sold the land to the present Petitioner. The Respondent Nos.1 and 3 therefore filed an application before the Tahsildar and ALT for restoration of the said half portion of the land to the tenants in view of the breach committed by the landlord. The said application was filed by the tenant under Sections 37 and 39 of the said Act. It seems that the Petitioner herein inspite of notice did not participate in the said proceedings before the Tahsildar and ALT. The Tahsildar and ALT by order dated 16-12-2003 allowed the application filed by the tenants and thereby ordered the restoration of the lands to the tenants. The said order dated 16-12-2003 was challenged by the Petitioner herein by filing an Appeal before the SDO. The SDO by order dated 3-3-2005 dismissed the Appeal and thereby confirmed the order dated 16-12-2003 passed by the Tahsildar and ALT. The Petitioner thereafter carried the matter by way of a Revision before the MRT. The said Revision ultimately came to be dismissed by the impugned judgment

and order dated 29-3-2016 passed by the Learned Member of the MRT. The Learned Member referred to the conspectus of facts as aforesaid and on the said basis did not find any reason to interfere with the orders passed by the lower authorities.

3 It was the submission of the Learned Counsel for the Petitioner Mr. Borulkar that though the Petitioner had not appeared in the proceedings before the Tahsildar, the Petitioner had filed a say on 15-12-2003 i.e. a day prior to the decision being rendered by the Tahsildar. However, no reference to the say is found in the order passed by the Tahsildar. This has resulted in the Appellate Authority as well as the Tribunal dealing with the matter without considering the say of the Petitioner. The Learned Counsel therefore would submit that the matter is required to be relegated back to the Tahsildar for a denovo consideration on the basis of the say filed by the Petitioner.

4 Per contra the Learned Counsel appearing on behalf of the Respondent Nos.1 and 3 i.e. the tenants would contend that the record does not disclose that no such say was filed by the Petitioner on 15-12-2003 as contended by the Learned Counsel for the Petitioner. The Learned Counsel would contend that the alleged say filed by the Petitioner has not even annexed to the above Petition and the said contention has been raised in the above Petition long after the Tribunal has adjudicated upon the matter.

5 Having heard the Learned Counsel for the parties, in my view, there is no merit in the above Petition. The cause for the tenants filing the application under Sections 37 and 39 of the said Act, was the fact that the landlords before the moratorium of 12 years coming to an end had entered into a transaction with the Petitioner for sale of the said land. The said fact therefore superimposes itself on the proceedings. This is to be considered in the context of the fact that half portion of the land was restored to the landlord for personal cultivation. If that be so, then rigors of Section 37 of the said Act become applicable. In the instant case, the facts on record clearly indicate that before the moratorium of 12 years had come to an end, the landlord had dealt with the land by selling it to the Petitioner. Hence even if assuming that the Petitioner had filed her say before the Tahsildar and the same was not considered by the Tahsildar, the same would not make any difference. Hence exercise of the Writ Jurisdiction of this Court is not warranted against the concurrent orders passed by the authorities below. The Writ Petition is accordingly dismissed.

6 If there are any standing crops in the land in question, the Petitioner is granted 4 weeks time to deal with the same.

[R.M.SAVANT, J]