

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10665 OF 2016**

**Shri Ashok Thakarya Gharat & Ors
Vs.**

..Petitioners

Smt. Kamlabai Mithalal Jain & Ors

..Respondents

Mr. K. S. Dewal i/b Mr. J. M. Joshi for the Petitioners

Mr. Pranil K. Sonawane a/w Mr. V. V. Utekar for the Respondent Nos.1 to 7

CORAM : R. M. SAVANT, J.

DATE : 16th MARCH, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 20-4-2016 passed by the Learned Member of the Maharashtra Revenue Tribunal (for short MRT) by which order, the Revision Application filed by the Respondent No.1 to 7 came to be allowed and resultantly the order dated 4-11-2011 passed by the Sub Divisional Officer (for short SDO) in Tenancy Appeal No.22 of 2011, came to be set aside.

2 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Revision Application filed by the Respondent Nos.1 to 7 was filed challenging the order dated 4-11-2011 passed by the SDO by which order the Appeal filed by them challenging the order passed by the Tahsildar and ALT under Section 32G of the Bombay Tenancy and Agricultural Lands Act, came to be dismissed, as a consequence of which

the order passed under Section 32G by the Tahsildar and ALT came to be confirmed. In the impugned order in paragraph 15 it has been recorded by the Member of the MRT that the Respondents i.e. the Petitioners herein have not filed any arguments though Court has given them opportunity again and again. Similarly no oral arguments have been advanced.

In the said context, the Learned Counsel appearing for the Petitioners draws this courts attention to the written submissions filed by the Petitioners herein i.e. the Respondent Nos.1 to 9 in the Revision Application on 11-4-2016. Hence the said order has been passed by the Learned Member of the MRT oblivious of the written submissions filed by the Petitioners. It is pertinent to note that in the written submissions in paragraphs 5 and 6 it is contended as under :

“5. The Respondents state that the Applicant most of the time remain absent in present proceeding or junior was present without instruction and suddenly on 7th April 2016 came out with the written argument in the present revision application and without serving the revision application copy the matter was directly placed for order on 13-4-2016 with direction to file the written arguments if necessary, on 11th April 2016, the Respondents state that due to non availability of the Revision Application or due to non service of the Revision Application the detailed arguments cannot be forwarded.

6. The Respondents state that as per the knowledge of the Respondents the present Revision Application is against the order passed in the 32G proceeding and till today the declaration of the tenant in favour of the Respondents is not been challenged and for the

said reason the present revision has no locus standi in the view that the respondent been declared tenant and for the same the respondent prays that the respondents are the tenant of the suit land and in the view of the same the present revision is liable to be dismissed with cost.”

3 Hence it was the contention of the Petitioners that the Revision Application was being adjourned from time to time and suddenly on 7-4-2016 written submissions came to be filed on behalf of the Revision Applicants which was also done without serving a copy of the Revision Application on the Petitioners and the Revision Application was placed for orders on 13-4-2016 with a direction to file written arguments if necessary on 11-4-2016. It is on the basis of the aforesaid facts that it was the case of the Petitioners that the Revision Application has been decided by the Learned Member of the MRT without affording a proper opportunity to the Petitioners. In the light of the facts as aforestated, the impugned order passed by the Learned Member cannot be sustained as the same has been passed oblivious of whatever written submissions were filed on behalf of the Petitioners on 11-4-2016 as also without hearing the Petitioners as the Revision Application was closed for orders to be passed on 13-4-2016.

4 In my view therefore, the interest of justice would be served if the impugned order is set aside and the Revision Application is relegated back to the MRT for a denovo consideration. Hence the following directions :

- (i) The impugned order dated 20-4-2016 is quashed and set aside and the Revision Application is relegated back to the MRT for a denovo consideration of the Revision Application.
- (ii) The parties to appear before the MRT on 30-3-2017 with a copy of the instant order. the MRT would give an opportunity to the Petitioners as well as the Respondents to file their written arguments if they so desire to do so and thereafter hear the parties and pass appropriate orders in accordance with law. The Revision Application to be decided by the Learned Member of the MRT on or before 30-6-2017.
- (iii) Needless to state that the contentions of the parties are kept open for being urged before the Learned Member of the MRT who would decide the Revision Application on its own merits and in accordance with law.

5 With the aforesaid directions the Writ Petition is disposed of.

[R.M.SAVANT, J]