IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10603 OF 2016

1]	**Sharad Dinkar Ingale** **Age 66 years, Occu : Retired/Agri.**	]]]
2]	**Shri Shashikant dinkar Ingale** **Age 58 years, Occu : Agri./workshop**	]]]
3]	**Shri Sudhir Dinkar Ingale** **Age 56 years, Occu : Service**	]]]
4]	**Shri Suhas Dinkar Ingale** **Age 49 years, Occu : Agri/workshop**	]]]
5]	**Late : Sarojinir Dinkar Ingale** **(since deceased through her L.Rs.** **1 to 4 abovenamed** **R/at – 1, 2 & 4 are residing at – Vaduj** **Tal. Khatav, Dist. Satara** **No.3 is R/at - "Dipatkar" - Bunglow** **at Sanjivraje Nagar, Phaltan,** **Tal – Phaltan, Dist. Satara**	]]]]]]]]..... **Petitioners.**

Versus

1]	**The State of Maharashtra** **Through the Secretary of** **Revenue Dept. Mantralaya Mumbai**	]]]]
2]	**The Additional Commissioner, Pune** **Division Pune,** **Having office at Pune, Dist. Pune**	]]]]
3]	**The District Collector of Satara** **Having office at Powai Naka, Satara**	]]]
4]	**The Sub Divisional Officer,** **Phaltan, presently office at – Dahiwadi** **(for Man & Khatav), Tal. Man,** **Dist.Satara**	]]]]

5]	**The Tahsildar, Khatav** **Having office at – Vaduj, Tal – Khatav** **Dist. Satara.**	**]** **]** **]** **]**
6]	**The Circle Officer, of Vaduj Circle** **Having office at – Vaduj, Tal – Khatav** **Dist. Satara**	**]** **]** **]** **]**
7]	**The Talathi of village – Vaduj** **Having office at Vaduj, Tal – Khatav** **Dist. Satara.**	**]** **]** **]** **]**
8]	**Shri Vitthal Kashinath Khadke** **Age – Adult. Occu : Retired Talathi** **R/at – Vaduj, Tla – Khatav** **Dist. Satara**	**]** **]** **]** **]..... Respondents.**

Mr. Rajaram V Bansode for the Petitioners.
Mrs. V S Nimbalkar, AGP for the Respondent Nos.1 to 7.
Mr. Kuldeep Nikam for the Respondent No.8.

CORAM : R. M. SAVANT, J.
DATE : 18th January 2017

ORAL JUDGMENT :

1 Rule, having regard to the challenge raised made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 07/07/2016 passed by the Additional Commissioner, Pune Division, Pune by which order the revision application being No.3 of 2015 filed by the Respondent No.8 herein came to be allowed and resultantly the order dated 03/11/2014 passed by the Additional Collector, Satara came to be set aside and the order dated 06/05/2013 passed by the Sub Divisional Officer,

(Phaltan) came to be confirmed.

2 The genesis of the proceedings resulting in the order dated 07/07/2015 passed by the Additional Commissioner, Pune Division, Pune lies in the application/appeal filed on 17/06/2012 by the Respondent No.8 before the Sub Divisional Officer, Phaltan. Before adverting to the said application/appeal, it would be necessary to refer to a few facts. The Petitioners herein have been declared as protected tenants in respect of the various lands and, an order under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act ("Tenancy Act" for short) came to be passed in their favour by the ALT and Tahsildar. It seems that pursuant to the orders passed under Section 32G of the Tenancy Act in favour of the Petitioners herein, 32M certificates were also issued in respect of the said lands. Acting upon the said orders passed under Section 32G of the Tenancy Act, the names of the Petitioners were mutated in the revenue record in respect of the said lands. The said Mutation Entries are Nos. 10688, 11865, 15579, 12023, 12249, 15136 and 8276. The prayer clause of the said application/appeal filed by the Respondent No.8 sought the setting aside of the Mutation Entry No.15579 as also the order passed under Section 32G of the Tenancy Act. It seems that though the relief in the prayer clause was restricted to the said Mutation Entry No.15579, in the body of the application a reference was made to the other Mutation Entries made in favour of the Petitioners herein. The said

application/appeal came to be allowed by the SDO by the order dated 06/05/2013 and the Mutation Entries Nos. 10688, 11865, 15579, 12023, 12249, 15136 and 8276 came to be set aside and a direction was issued that the entries be once again made in the name of Devasthan concerned. In so far as the order passed under Section 32G of the Tenancy Act is concerned, the SDO seems to have gone into the merits of the case of the Petitioners and held that no order could have been passed in favour of the Petitioners under Section 32G of the Tenancy Act. A reference was made to the Notification dated 30/07/2010 in the said order dated 06/05/2013.

3 Aggrieved by the said order dated 06/05/2013, the Petitioners herein filed a revision application before the Additional Collector, Satara. The said revision application came to be allowed by the Additional Collector by his order dated 03/11/2014 and the order dated 06/05/2013 came to be set aside. The gist of the reasoning of the Additional Collector was that the Respondent No.8 had no locus standi in so far as the Devasthan in question is concerned. The Additional Collector also held that the orders passed by the Tenancy Authorities under Section 32G of the Tenancy Act are intact as the same have not been challenged before any competent tenancy authority.

4 The Respondent No.8 aggrieved by the order dated 03/11/2014 passed by the Additional Collector, Satara challenged the same by way of a

revision before the Additional Commissioner, Pune Division, Pune. The Additional Commissioner by the impugned order dated 07/01/2017 has allowed the said revision and thereby set aside the order dated 03/11/2014 passed by the Additional Collector and confirmed the order dated 06/05/2013 passed by the SDO. As indicated above it is aggrieved by the said order dated 07/01/2017 that the instant Writ Petition has been filed by the Petitioners.

5 The principal contention of the learned counsel for the Petitioners was that the Mutation Entries could not have been set aside by the Additional Commissioner as confirmed by the Additional Collector in view of the fact that the said entries were made on the basis of the orders passed under Section 32G of the Tenancy Act which orders are intact till this day. It was also the submission of the learned counsel for the Petitioners that the revenue authorities could not have gone into the merits of the orders passed by the authorities under the Tenancy Act.

6 Per contra, the learned counsel appearing on behalf of the Respondent No.8 would contend that what was in contention before the SDO in the application/appeal filed by the Respondent No.8 were the Mutation Entries and not the orders passed under Section 32G of the Tenancy Act. It was the submission of the learned counsel for the Respondent No.8 that in view of the Notification dated 30/07/2010 the orders passed under Section

32G of the Tenancy Act could not have been passed in favour of the Petitioners. The learned counsel would contend that the Petitioners have remedy by way of a further revision before the State Government.

7 Having heard the learned counsel for the parties, I have considered the rival contentions. Taking the last submission first i.e. whether the Petitioners are required to be relegated to the remedy by way of a revision before the State Government, it is required to be noted that a revision was already filed by the Petitioners before the Additional Collector against the order of the SDO dated 06/05/2013. The Petitioners had succeeded in the said proceedings. It is against the said order passed by the Additional Collector in revision that a further revision was filed by the Respondent No.8 before the Additional Commissioner. Hence whether the third revision could lie before the State Government is questionable. In any event whether to relegate a party to an alternate remedy or not is the discretion of the Court which the Court is required to exercise in the facts and circumstances of a case.

8 In the present case, as indicated above it is the contention urged on behalf of the Petitioners that the revenue authority in exercise of the powers as such has set aside the order passed by the authority under the Tenancy Act. In my view, therefore, for the aforesaid reasons the said contention urged on behalf of the Respondent No.8 that an alternative remedy is available and the

Petitioners should be relegated to the said remedy would have to be rejected.

9 In so far as the appeal/application filed by the Respondent No.8 before the SDO is concerned, as indicated above, the Respondent No.8 had in the prayer clause of the said application sought setting aside of the order passed under Section 32G of the Tenancy Act. This was obviously so in view of the fact that the Respondent No.8 was aware of the fact that the Mutation Entries were effected in favour of the Petitioners on the basis of the orders passed under Section 32G of the Tenancy Act. The question therefore arises is, whether the revenue authorities whilst exercising the jurisdiction in RTS proceedings could have set aside the orders passed under Section 32G of the Tenancy Act by the Tenancy Authorities. The answer has to be obviously in the negative. If that be so, the order passed by the SDO dated 06/05/2013 setting aside the Mutation Entries which as indicated herein above are based on the orders passed under Section 32G of the Tenancy Act could not have been passed. In view thereof the subsequent proceedings in fact were not maintainable. It was therefore for the Respondent No.8 to challenge the orders passed under Section 32G by filing appropriate proceedings under the Tenancy Act, if so advised. Since by the orders passed by the authorities in the RTS proceedings have the effect of setting aside the orders passed under Section 32G of the Tenancy Act, the said orders have been passed without jurisdiction. Hence all the orders right from the order passed by the SDO dated 06/05/2013

to the impugned order dated 07/07/2016 passed by the Additional Commissioner, Pune Division, Pune would have to be quashed and set aside and are accordingly quashed and set aside. The result would be that the status quo ante would stand restored. However it would be open for the Respondent No.8 if so advised to challenge the orders passed under Section 32G of the Tenancy Act by filing appropriate proceedings. If any such proceedings are filed, needless to state that the same would be tried on their own merits and in accordance with law. This Court does not express any opinion in that regard. If the issue of limitation arises, the fact that the Respondent No.8 was prosecuting the proceedings before the revenue authorities can be urged before the revenue authorities. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]