

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9993 OF 2012

Shri. Eknath Shankar Kadam and others ..Petitioners
Versus

Shri. Vithobadev Devasthan Trust
Dindori, Through its Trustee,
Shri. Subhash Dattatray Dhongade and others ..Respondents

Mr. G. A. Agrawal for the Petitioners.
Mr. R. N. Gite for the Respondent Nos.1 to 3.

CORAM : R. M. SAVANT, J.
DATE : 17th FEBRUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 30.11.2011 passed by the Learned President of the Maharashtra Revenue Tribunal, Mumbai (For short "MRT"), by which order, the application filed by the Petitioner for correction of the order dated 10.01.1990 passed in Tenancy Revision No.Rev.A.(a)3/1989 by the MRT came to be dismissed for non-prosecution as also on the ground that it was barred by limitation. Hence, apart from dismissing the application on the ground of non-prosecution, it is dismissed on the ground of limitation. As indicated above, the application was filed seeking correction of the area of the land mentioned in the order dated 10.01.1990. The Petitioner has been prosecuting the proceedings before

the authorities under the Bombay Tenancy and Agricultural Lands Act, 1948 (Now the Maharashtra Tenancy and Agricultural Lands At, 1948) on the basis that the area of the land in occupation of the Petitioner was 4.96 hectares. However whilst deciding the Revision Application filed by the Petitioner in the earlier round, the MRT had erroneously mentioned the area as 1.86 hectares.

2 The Petitioner it seems that thereafter filed an application before the Tahsildar under Section 32G of the said Act. It is at the said time whilst passing the order the Tahsildar directed the Petitioner to first get the order dated 10.01.1990 corrected from the MRT that is how the instant application came to be filed by the Petitioner before the MRT. As indicated above, the application has been rejected on the twin grounds i.e. on the ground of non-prosecution and having been barred by limitation. The application filed by the Petitioner can be said to be an application analogous to an application under Section 152 of the Civil Procedure Code, which is for the correction of a decree. Hence, there is no question of the Petitioner filing an application for review or revision of the said judgment and order dated 10.01.1990. The application was plain and simple for correction of the area mentioned in the order dated 10.01.1990.

3 In my view, the MRT swayed by the fact of the non-appearance of the Petitioner on the earlier date had dismissed the application for non-prosecution as well as on the ground of limitation. In my view, therefore the impugned order would have to be set aside and the matter would have to be relegated back to the MRT for a de-novo consideration of the application filed by the Petitioner in terms of the observations made hereinabove. Needless to state that the application filed by the Petitioner would be tried on its own merits and in accordance with law. The contentions of the parties are kept open for being urged before the MRT. With the aforesaid directions, the Writ Petition is disposed of.

[R.M.SAVANT, J]