

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

WRIT PETITION NO.11494 OF 2013

Liladhar Bhaskar Gurav and others

..Petitioners

Versus

State of Maharashtra and others

..Respondents

Mr. A. P. Ranade for the Petitioners.

Mrs. V. S. Nimbalkar, AGP for the Respondent No.1.

Mr. S. C. More for the Respondent Nos.7, 8, 11 to 13.

CORAM : R. M. SAVANT, J.

DATE : 23rd MARCH, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 25.09.2013 passed by the Learned Member of the Maharashtra Revenue Tribunal (For short "MRT), Mumbai, by which order, the Revision Application filed by the Respondent Nos.3 to 8 came to be allowed and resultantly, the order dated 26.10.2005 passed by the Special Land Acquisition Officer in Tenancy Appeal No.48 of 2004 came to be set aside and the matter came to be remanded back to the Tahsildar for a de-novo consideration of the application filed by the Petitioners under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (Now "the Maharashtra Tenancy and Agricultural Lands Act") (For short "the BTAL Act").

2 The Petitioner herein as indicated above is the original Applicant who had filed the application under Section 70(b) of the BTAL Act for a declaration that he is a tenant in respect of the lands in question, being six lands which are mentioned in the said application. To the said application, as many as eight persons were joined as Respondents being landlords of the lands in question, amongst them was one Kalindi Malpekar. It seems that on 23.06.2004, the advocate for the parties were not present before the Tahsildar, though the parties were present. The Tahsildar proceeded to record the statement of Kalindi and Sudhakar Malpekar in the absence of their advocates. The said Kalindi Malpekar in her statement stated that the Applicants were in possession and were cultivating the land, whereas Sudhakar Malpekar gave a correct description of the property. The Tahsildar thereafter on the same day i.e. on 23.06.2004 allowed the said application filed by the Applicants under Section 70(b) of the BTAL Act and declared the Applicants Narayan Gurav, Liladhar Gurav and Ramesh Gurav as tenants of the suit properties.

3 The Respondents/Landlords excluding Kalindi Malpekar thereafter carried the matter in Appeal aggrieved by the order passed by the Tahsildar by filing Appeal No.48 of 2004 before the Sub Divisional Officer. Suffice it would be to state that the Special Land Acquisition

Officer who it seems was the Sub Divisional Officer by order dated 26.10.2005 dismissed the Appeal and thereby confirmed the order passed by the Tahsildar dated 23.06.2004. The Respondents thereafter filed Revision under Section 76(b) of the BTAL Act before the MRT, Mumbai. As indicated above, the Revision Application filed by the Respondents/Landlords came to be allowed by the impugned order dated 25.09.2013 by the Learned Member of the MRT. The gist of the reasoning of the Learned Member of the MRT as can be seen from the impugned order is that the statements of the said Kalindi Malpekar and Sudhakar Malpekar were recorded in the absence of their advocate and that the Tahsildar has without giving an opportunity to the Respondents to lead their evidence has in haste concluded the proceedings on the same day i.e. on 23.06.2004. The Learned Member of the MRT has observed that it is desirable that an equal opportunity is required to be given to the parties whilst adjudicating the proceedings and that it is necessary not only to see to it that justice is done, but also seen to be done. The Learned Member of the MRT has accordingly set aside the order dated 26.10.2005 passed by the Sub Divisional officer in Appeal and has remanded the matter back to the Tahsildar for a de-novo consideration of the application filed by the Petitioners in terms of the directions as contained in the operative part of the order and especially clause 3 thereof. The

Learned Member has directed the Tahsildar to record evidence in terms of the provisions of the Evidence Act and only after the closure of the evidence pursis filed by the parties that the Learned Tahsildar may proceed to hear the arguments. The Learned Member of the MRT considering the fact that the application is of the year 2004 has directed expeditious disposal of the said application on remand.

4 The Learned Counsel appearing on behalf of the Petitioners Mr. A. P. Ranade would contend that the MRT had erred in setting aside the order passed by the Sub Divisional Officer and remanding the matter back to the Tahsildar when in the Appeal filed by the Respondents/ Landlords before the Sub Divisional Officer the said Kalindi Malpekar was not made a party and thereafter in the Revision also. The Learned Counsel would therefore contend that the Respondent Nos.3 to 8 herein have obtained orders without joining the said Kalindi Malpekar as party to the proceedings. The Learned Counsel seeks to rely upon the judgment of the Apex Court in the matter of *J. S. Yadav Vs. State of U. P. and another in Civil Appeal No.3299 of 2011* in support of the contention that in a case of non-joinder of a necessary party, the Plaintiff/Petitioner may not be entitled for the relief sought by him.

5 Per contra, the Learned Counsel appearing for the

Respondent Nos.3 to 8 i.e. landlords would support the impugned order. The Learned Counsel would seek to draw this Court's attention to the fact that the statements of Kalindi Malpekar and Sudhakar Malpekar were recorded when the advocates for both the sides were not present on 23.06.2004 and significantly, the Tahsildar has also delivered the judgment on 23.06.2004 without affording an opportunity to the Respondents to lead evidence. It was therefore the submission of the Learned Counsel that no interference is called for with the impugned order as the impugned order would result in proper opportunity being given to the parties.

6 Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated above, the Learned Member of the MRT has remanded the matter back to the Tahsildar for a de-novo consideration of the application filed by the Petitioners under Section 70(b) of the BTAL Act. This course of action was probably adopted by the Learned Member of the MRT having regard to the fact that the application under Section 70(b) was principally allowed relying upon the statements of Kalindi Malpekar and Sudhakar Malpekar which were made before the Tahsildar. As indicated above, the said statements were recorded by the Tahsildar when their advocates were absent on 23.06.2004. It is also pertinent to note that the Tahsildar had decided the

matter on the same day i.e. on 23.06.2004 without affording an opportunity to the Respondents to explain the statement or to lead evidence in the matter. It is required to be noted that in the Revision Application filed by the Respondents they have sought to explain the circumstances in which the said Kalindi Malpekar had made the statement before the Tahsildar. As indicated above, the Learned Member of the MRT has deemed it appropriate to set aside the impugned order and remanded the matter back to the Tahsildar in view of the fact that the Learned Member of the MRT was not satisfied with the manner in which the Tahsildar has dealt with the matter. The judgment of the Apex Court in ***J. S. Yadav's case (supra)*** would not further the case of the Petitioners herein. It is required to be noted that there are number of persons in the landlord's family, amongst whom is the said Kalindi Malpekar. The said Kalindi Malpekar had not chosen to file an Appeal and thereafter was not party to the Revision which was flowing out of the order passed in the Appeal. Hence when the other landlords were very much parties to the proceedings by way of an Appeal and Revision, the absence of said Kalindi Malpekar would not make any difference. Having regard to the grounds on which the order passed by the Sub Divisional Officer is set aside and the matter is remanded back to the Tahsildar, no case for interference in the writ jurisdiction of this Court is made out. The

Writ Petition is accordingly dismissed.

7 Since the application under Section 70(b) was filed in the year 2004 and since the Learned Member of the MRT has expedited the hearing of the same, the Tahsildar, Rajapur is directed to hear and decide the said application under Section 70(b) expeditiously and not later than 31.07.2017. The parties to appear before the Tahsildar on 05.04.2017 at 3.00 p.m. with a copy of the instant order.

8 Parties to act on a copy of this order duly authenticated by the Court Shirestedar.

[R.M.SAVANT, J]