

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

LETTERS PATENT APPEAL NO. 66 OF 2010
IN
WRIT PETITION NO. 2006 OF 1991
WITH
CIVIL APPLICATION NOS. 3743/2010, 3962/2011, 2450/2012

1. Vaijinath s/o. Yeshwanta Jadhav,
deceased by L.R's.
 - 1-A. Chandrakant s/o. Vaijinath Jadhav,
Age 60 years, Occu. Agril.,
R/o. Ghatnandur, Tq. Ambejogai,
Dist. Beed.
 2. Vishwanath s/o. Yeshwanta Jadhav,
deceased by L.R's.
 - 2-A. Shivaji s/o. Vishwanath Jadhav,
Age 36 years, Occu. Agril.,
R/o. Ghatnandur, Tq. Ambejogai,
Dist. Beed.
 - 2-B. Sambhaji s/o. Vishwanath Jadhav,
Age 29 years, Occu. Agril.,
R/o. Ghatnandur, Tq. Ambejogai,
Dist. Beed.
 - 2-C. Mathurabai w/o. Vishwanath Jadhav,
Age 55 years, Occu. Agril.,
R/o. Ghatnandur, Tq. Ambejogai,
Dist. Beed.
 3. Smt. Subhadrabai w/o. Harishchandra
Salunke, Age 45 years, Occu. Household,
R/o. Salunkewadi, Tq. Ambejogai,
Dist. Beed.
 4. Smt. Bhimabai w/o. Annasaheb Shinde,
Age 41 years, Occu. Household,
R/o. Gitta Post Tq. Ambejogai,
Dist. Beed.
-Appellants.**

Versus

Smt. Afsar Begum w/o. Nadimuddin
Deceased by L.R's.

1. Mumtajoddin s/o. Kazi Nadimuddin Siddiqui,
Age 57 years, Occu. Serving as Search
Asst., Maharashtra State Financial
Corporation, Regional Office, Station
Road, Aurangabad.
2. Ajijoddin s/o. Kazi Nadimuddin Siddiqui,
Age 54 years, Occu. Service in the office
of Maharashtra State Elec. Board
Ambajogai, Dist. Beed.

....Respondents.

Mr. B.A. Darak, Advocate for appellants.

Mr. V.J. Dixit, Senior Counsel i/b. Mr. Mujtaba Gulam Mustafa,
Advocate for respondent Nos. 1 and 2.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.
DATED : MARCH 19, 2018.**

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed against the decision given by learned Single Judge of this Court in Writ Petition No. 2006/1991 filed under Article 227 of Constitution of India. Both the sides are heard.

2) The aforesaid petition was filed by present appellants to challenge the decision given by Maharashtra Revenue Tribunal, Aurangabad (hereinafter referred to as 'MRT' for short) in Revision Petition No. 13/B/89-Beed and dated 21.9.1990. MRT has allowed the revision and order of the Appellate Tribunal created under the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter

referred to as 'the Act' for short) is set aside. At the same time, the order made by the Additional Tahsildar in file No. 83/TNC/Camp/6 and dated 23.12.1987 is confirmed by MRT. Due to the decision of MRT, the certificate of purchase issued under section 38-E of the Act came to be cancelled.

3) The submissions made and the record show that two lands like land Survey No. 202AA, admeasuring 9 Acre 20 Gunta and land Survey No. 189, admeasuring 1 Acre 37 Gunta were owned by Kazi Nadimuddin. Present respondents are sons of said Kazi Nadimuddin. One Smt. Afsarbegum was widow of Kazi Nadimuddin. Nadimuddin died in or about the year 1962. Respondents were brought on the record as legal representatives of Smt. Afsarbegum.

4) Certificate was issued in favour of appellants under section 38-E of the Act in respect of aforesaid both the lands. The final certificate on the basis of provisional certificate came to be issued in the year 1970. Some proceedings were filed by the sons of Kazi Nadimuddin after attaining majority, but those were disposed of. The proceeding filed by the widow of the deceased Smt. Afsarbegum came to be allowed by the Tahsildar. The Tahsildar and MRT have held that present appellants were not protected tenants of land Survey No. 202AA and either by mistake or due to mischief,

certificate under section 38-E was issued in respect of land Survey No. 202AA also when the certificate could have been issued only in respect of land Survey No. 189. By making such observations, the decision is given in favour of the land holder.

5) The learned counsel for appellants submitted that the learned Single Judge has not considered the legal position. He submitted that it was not open to Tahsildar to reopen the matter and make observations of aforesaid nature. On the other hand, the learned Senior Counsel for respondents land holders submitted that there was either mistake or mischief and due to that, in the same certificate which was to be issued only for Survey No. 189, other land of Kazi Nadimuddin was included and so, to that extent it was open to the authority to correct the mistake.

6) This Court has carefully gone through the reasoning given by MRT and also the learned Single Judge of this Court. The reasoning given by the learned Single Judge shows that there was record before learned Single Judge like register of tenancy. The register showed that as against the name of appellants only land Survey No. 189 was shown and there was declaration that appellants were protected tenants of Survey No. 189. There was no mention of Survey No. 202AA. Further, there was no name of the appellants in

provisional list of tenants. There was no name of the appellants in Pahani Patrak prepared between the years 1950 and 1956. Pahani Patrak of the years 1953 to 1954 were available, but in that record also, there was no mention of Survey No. 202AA though there was mention of Survey No. 189. For getting the status of protected tenant, a person needs to satisfy the conditions given in section 34 or subsequent sections of the Act. No record is there to show that appellants were satisfying those conditions. Thus, there was no record to show that appellants were protected tenants or they were cultivating the land from prior to 1956. Only due to the admission given by widow of Kazi Nadimuddin, it can be said that in 1956 due to ill health of Kazi Nadimuddin, appellants were allowed to cultivate land Survey Nos. 202AA. There is record to show that their names were entered in 7/12 extract in crop cultivation column in the said land first time in the year 1959-60. Due to these circumstances and after making inquiry, the authorities created under the Act have come to the conclusion that there was either mistake or mischief and due to that Survey No. 202AA was included in certificate issued under section 38E of the Act. The order is made to correct that mistake.

7) The learned counsel for appellants placed reliance on some observations made by Andhra Pradesh High Court in the case

reported as **AIR 1988 ANDHRA PRADESH 77 [Sada and etc. Vs. The Tahsildar, Untoor, Adilabad District and Anr.]** and the judgment of Apex Court in **Civil Appeal No. 7996/2016 (Arising out of SLP (Civil) No. 3438/2011) [B. Bal Reddy Vs. Teegala Narayana Reddy & Ors.]** connected with other appeals dated 12.8.2016. The points involved in those matters were totally different. There was due procedure followed for declaration of protected tenant. In view of that circumstance, the certificate under section 38-E of the Act was to follow.

8) The learned counsel for appellants submitted that the certificate issued under section 38-E of the Act is not a decision or order within the meaning of section 90 of the Act and so, no appeal lies against that certificate. In support of this submission, he placed reliance on observations made by this Court in the case reported as **2001 (3) Mh.L.J. 380 [Bharatlal s/o. Hemraj Vs. Kondiba Govinda Jadhav and Ors.]**. There cannot be dispute over this proposition. In the present matter, proceeding was filed before Tahsildar and in that proceeding, it was open to Tahsildar to consider the challenge as provided under section 38 (6) and also section 8 of the Act. When there was no record to show that appellants were 'protected tenants' as defined under the Act, there was no question of issuing certificate under section 38-E of the Act in their favour.

When such mistake is detected, there is the jurisdiction with the authority to correct such mistake. That proceeding is original proceeding and not an appeal and so, the observations made in aforesaid case are of no use to the appellants. The learned counsel for appellants placed reliance on some observations made by Apex Court in the case reported as **2014 AIR SCW 6893 [Dr. Subramanian Swamy Vs. State of Tamil Nadu & Ors.]** and submitted that due to issuance of certificate, the authority could not have reconsidered the matter and there was bar of res-judicata. This submission is not at all acceptable as there was no inquiry made in the past to ascertain as to whether appellants were tenants or protected tenants and so, there was no question of issuing certificate in respect of land Survey No. 202AA in favour of appellants. Thus, there was no order as such in existence and only mistake was to be corrected. The learned counsel for appellants placed reliance on the observations made by this Court in the case reported as **2005 (4) Mh.L.J. 180 [Indrabai w/o. Kishanrao Muley and Ors. Vs. Abdul Razak s/o. Abdul Kadar and Ors.]**. This case was also on different point. It is observed that relevant date for granting declaration under section 38-E is the date when the provisional list of tenant was published under the Rules. There cannot be dispute over this proposition. But, in the present matter, there is no record to show that in the provisional list of tenants the names of

appellants were published in respect of land Survey No. 202AA. In the same case, this Court has considered the nature and scope of power of High Court available under Article 227 of Constitution of India. It is observed that this Court while dealing with the petition under Article 227 cannot act like Appellate Court.

9) The learned Senior Counsel for respondents submitted that L.P.A. itself is not tenable as the Writ Petition was filed by appellants under Article 227 of Constitution of India. It is not disputed that the petition was filed only under Article 227 of Constitution of India. On this point, reliance was placed by the learned Senior Counsel on two cases reported as **2011 (2) Mh.L.J. 916 [Advani Oerlikon Ltd. Vs. Machindra Govind Makasare and Ors.]** and **2010 ALL SCR 1681 [Shalini Shyam Shetty and Anr. Vs. Rajendra Shankar Patil]**. This Court had an occasion to consider such challenge while deciding **L.P.A. No. 40/2003 filed in Writ Petition No. 4203/2001 [Aba s/o. Bapu Dange, Died through L.Rs. & Ors. Vs. Vishwanath Bhaurao Morale, Died through L.Rs. & Ors.] decided on 9.2.2018**. After referring the provisions of aforesaid Act and particularly provisions of sections 91 and 92, this Court held that if MRT had acted within the revisional jurisdiction fixed by aforesaid two provisions, then the proceeding available in the High Court is only under Article 227 of Constitution

of India. In view of that matter, L.P.A. is not tenable. In the present matter also due to aforesaid circumstances, this Court holds that L.P.A. is not tenable. In the result, the appeal stands dismissed with no order as to costs. Civil Applications, if any, are disposed of.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/