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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1917 OF 2013

Shankar B. Raut	...Petitioner
V/s.	
State of Maharashtra & Ors.	...Respondents

Mr.A.P. Ranade for the Petitioner.

Mr.A.R. Metkari, A.G.P. for the State – Respondent No.1.

CORAM : R.D. DHANUKA, J.
DATE : 30TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 7th July, 2012 passed by the Maharashtra Revenue Tribunal in TNC Revision No.TNC 1/B/2001 thereby setting aside the order passed by the learned Tahsildar and also partly setting aside the order of the learned Sub-Divisional Officer. None appeared for the respondent nos.2 to 7 when the matter was called out.

2. It is the case of the petitioner that the petitioner and his forefather had been cultivating the land bearing survey no.16/1, 16/7, 29/1 and 30/1. The certificate under section 32-M of the Bombay Tenancy & Agricultural Lands Act, 1940 was issued in favour of the petitioner. However, the survey no.30/1 was omitted in the same

proceedings. The petitioner accordingly filed an application under section 70(b) of the Bombay Tenancy & Agricultural Lands Act, 1940 on 9th March, 1982. The said application was allowed by the learned Tahsildar on 30th March, 1990.

3. Being aggrieved by the said order, the respondent nos.2 to 7 preferred Tenancy Appeal before the learned Sub-Divisional Officer. Learned Sub-Divisional Officer passed an order on 12th November, 1998 thereby remanding the matter back on the ground that the records and proceedings before the learned Tahsildar were not available. The petitioner herein impugned the said order passed by the learned Tahsildar by preferring Tenancy Revision Application bearing No.1/B/2001 before the Maharashtra Revenue Tribunal, Mumbai. The said tenancy revision application was before the Maharashtra Revenue Tribunal for quite some time.

4. Both the parties were absent before the Maharashtra Revenue Tribunal on 7th July, 2012. The Maharashtra Revenue Tribunal thus proceeded the matter in absence of the parties and held that the records and proceedings of Tahsildar and the learned Sub-Divisional Officer were available before him and after perusing the said records itself decided the matter on merits and has set aside both the orders i.e. orders passed by the learned Tahsildar as well as the learned Sub-Divisional Officer. The President of the Maharashtra

Revenue Tribunal also dismissed the Tenancy Revision Application filed under section 70(b) of the Bombay Tenancy & Agricultural Lands Act, 1940.

5. Mr. Ranade, learned counsel appearing for the petitioner invited my attention to the orders passed by the learned Tahsildar, learned Sub-Divisional Officer and the order passed by the President, Maharashtra Revenue Tribunal. It is submitted that the learned Sub-Divisional Officer has remanded the matter back in view of the fact that the papers and proceedings before the learned Tahsildar were not traceable. He submits that even if the said records and proceedings were traceable before the Maharashtra Revenue Tribunal, the Maharashtra Revenue Tribunal could not have decided the matter itself after perusing the matter and ought to have remanded the matter back to the learned Sub-Divisional Officer. Both the parties were absent before the Maharashtra Revenue Tribunal. In my view, the learned Sub-Divisional Officer had not decided the matter on merits and had remanded the matter back to the learned Tahsildar. The Maharashtra Revenue Tribunal ought to have remanded the matter to the Sub-Divisional Officer and could not have decided the matter on merits after perusing the records, if any, available before the Maharashtra Revenue Tribunal and that also in the absence of both the parties.

6. In my view, the impugned order passed by the Maharashtra Revenue Tribunal shows perversity. I therefore, pass the following order :-

a). The impugned order dated 7th July, 2012 passed by the Maharashtra Revenue Tribunal is quashed and set aside. The proceedings filed by the respondent nos.2 to 7 are restored before the learned Sub-Divisional Officer, Bhiwandi for deciding the matter afresh without being influenced by the observations made and the conclusion drawn in the impugned order dated 7th Jul, 2012 passed by the learned President, Maharashtra Revenue Tribunal.

b). Learned Sub-Divisional Officer, Bhiwandi to decide the said tenancy appeal expeditiously. The parties to this proceedings are directed to appear before learned Sub-Divisional Officer on 26th September, 2018 at 3:00 p.m.

c). The petitioner is directed to convey this order to the respondent nos.2 to 7 as well as the learned Sub-Divisional Officer, Bhiwandi for compliance.

7. The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)