

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

WRIT PETITION NO.4463 OF 2016

Shrirang Shivram Mali & Ors. .. Petitioners

Vs.

Shivaji Bhagwan Shinde & Ors. .. Respondents

Mr.S.G. Deshmukh i/by Mr.Dilip Shinde for the petitioners.

Mr.Drupad Patil for the respondent nos.1 to 3.

Mr.Sanskar Marathe i/by Ms. Leena Patil for the respondent no.7.

CORAM : R.D. DHANUKA, J.

DATE : 28th August 2018

P.C.:

. Rule. Mr. Patil, learned counsel waives service for the respondent nos.1 to 3. Mr. Marathe, learned counsel waives service for the respondent no.7. All the contesting parties are present before the Court through their respective counsel. By consent of parties, writ petition is heard finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 17th July 2015 passed by the learned Member (Judicial), Maharashtra Revenue Tribunal, Mumbai in Revision Application No.152 of 2006 and the order dated 16th October 2006 passed by the Sub-Divisional Officer, Khanapur, Sub-Division at Vita annexed at page 28 of the petition. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. The petitioners are the original applicants and the respondents are the original respondents in the revision application filed before the Maharashtra Revenue Tribunal. The land in dispute is situated

at Village Tasgaon bearing S.No.1/3/2 and was included in the jurisdiction of the Tasgaon Municipal Council. Shri Dattatray Mahadeo Karmarkar and his brothers were the landlords. The learned Tahsildar Tasgaon has decided the application and held that the present respondents were the tenants in the land. The learned Sub-Divisional Officer, Miraj in Tenancy Appeal No.45 of 2000 was pleased to set aside the order dated 30th September 1999 passed by the learned Tahsildar.

4. Mr.Shivaji Shinde however filed a Review Application No.1 of 2005 before the learned Sub-Divisional Officer, Miraj which application was transferred to the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita. The said review application was allowed by the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita and the earlier order passed by the Sub-Divisional Officer, Miraj in Tenancy Appeal No.45 of 2000 came to be set aside. This order of the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita came to be impugned by the petitioners by filing Revision Application No.152 of 2006 under Section 76 of the Bombay Tenancy and Agriculture Land Act, 1948 (for short “the said Act”) before the Maharashtra Revenue Tribunal. By an order dated 17th July 2015, the learned Member (Judicial), Maharashtra Revenue Tribunal, Mumbai rejected the said application filed by the petitioners.

5. Being aggrieved by the said order dated 17th July 2015 passed by the learned Member (Judicial), Maharashtra Revenue Tribunal, Mumbai and the order dated 16th October 2006 passed by the Sub-Divisional Officer, Khanapur, Sub-Division at Vita, the petitioners have filed this writ petition under Article 227 of the Constitution of India.

6. Mr.Deshmukh, learned counsel for the petitioners invited my attention to the annexures to the writ petition and more particularly to the orders passed by the learned Sub-Divisional Officer, Miraj and also to the order passed by the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita.

7. It is submitted by the learned counsel that the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita could not have passed any order under Section 76 of the said Act thereby setting aside the earlier order passed by the learned Sub-Divisional Officer, Miraj in the revision application filed by the respondents. He submits that the said order is totally without jurisdiction. The remedy against the order of Sub-Divisional Officer, Miraj was not by way of filing revision application under Section 76 of the said Act or by filing a review application before the Sub-Divisional Officer, Khanapur, Sub-Division at Vita.

8. Learned counsel for the petitioners invited my attention to the findings rendered by the Member (Judicial), Maharashtra Revenue Tribunal in the impugned order and would submit that though the Member (Judicial), Maharashtra Revenue Tribunal has rendered a positive finding that the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita could not have passed an order in the revision application filed by the respondents and could not have set aside the order passed by the Sub-Divisional Officer, Miraj, the learned Member (Judicial), Maharashtra Revenue Tribunal has decided the matter himself on merit and upheld the order passed by the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita.

9. Mr.Patil, learned counsel for the respondent nos.1 to 3 does not dispute that the remedy of his clients to seek recall of the order passed by the earlier learned Sub-Divisional Officer was not by filing a revision application under Section 76 of the said Act before the successor of the Sub-Divisional Officer, Miraj. Learned counsel could not defend the order passed by the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita as well as the order passed by the learned Member (Judicial), Maharashtra Revenue Tribunal.

10. In my view, the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita could not have entertained the revision application filed by the contesting respondents for recall of the order of the earlier Sub-Divisional Officer, Miraj purportedly exercising the powers under Section 76 of the said Act. In my view, the order passed by the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita thereby setting aside the order passed by the earlier Sub-Divisional Officer, Miraj is ex facie without jurisdiction and illegal.

11. Though the learned Member (Judicial), Maharashtra Revenue Tribunal has rendered a positive finding that the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita could not have passed the order of setting aside the order passed by the predecessor of the learned Sub-Divisional Officer, Miraj, learned Member (Judicial), Maharashtra Revenue Tribunal himself decided the matter on merit and upheld the order passed by the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita. The order passed by the learned Member (Judicial), Maharashtra Revenue Tribunal also shows perversity and thus deserves to be set aside.

12. I therefore pass the following order :-

- (i) The order dated 16th October 2006 passed by the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita is quashed and set aside.
- (ii) The order dated 17th July 2015 passed by the learned Member (Judicial), Maharashtra Revenue Tribunal, Mumbai in Revision Application No.152 of 2006 is also quashed and set aside.
- (iii) Rule is made absolute in aforesaid terms.
- (iv) It is made clear that if the contesting respondents adopts any appropriate remedy in accordance with law, the time taken in prosecuting the revision application filed by the contesting respondents before the learned Sub-Divisional Officer, Khanapur, Sub-Division at Vita and the time taken by the learned Member (Judicial), Maharashtra Revenue Tribunal, Mumbai in deciding the revision application filed by the petitioners and also the time taken by this Court in disposal of this writ petition shall be excluded.
- (v) The contesting respondents have agreed to file appropriate proceedings within four weeks from today. If such proceedings is filed within four weeks from today, the competent authority shall decide the said proceedings expeditiously.
- (vi) Writ petition is allowed in aforesaid terms. No order as to costs.
- (vii) Parties as well as the authorities to act on the authenticated copy of this order.

R.D. DHANUKA, J.