

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

WRIT PETITION NO. 13491 OF 2017

Suresh Bhikaji Gawali & Ors. ... Petitioners
V/s.
Mahin Rohinton Devlaliwalla & Ors. ... Respondents

Mr. Rajesh B. Parab for the Petitioners.

CORAM : V.L. ACHLIYA, J.

DATE : 14th FEBRUARY, 2018.

PC. :

1 Being aggrieved by the judgment and order dated 2nd/3rd December, 2016 passed by learned President, Maharashtra Revenue Tribunal, Mumbai, (hereinafter referred to as Tribunal) in Revision No. TNC/REV/NSK/56/2016 declaring the respondent No.1 as an agriculturist within the meaning of Sec.2(2) of Bombay Tenancy & Agricultural Lands Act, 1948, the petitioners have preferred this Petition under Article 227 of the Constitution of India.

2 In short it is the contention of the petitioners that the Tribunal has exceeded its revisional jurisdiction u/s.76 of Bombay Tenancy & Agricultural Lands Act, 1948, in upsetting the concurrent findings of fact recorded by both the authorities below. It is contended that the Tahsildar

Sinnar to whom the Civil Court made reference to decide the issue u/s.70(A) of Bombay Tenancy & Agricultural Lands Act, 1948, conducted the enquiry and recorded the finding that the respondent No.1 failed to prove that she is an agriculturist. In appeal preferred by respondent No.1, the Sub-Divisional Officer, Niphad, District Nashik confirmed the finding recorded by Tahsildar Sinnar and dismissed the appeal. Being aggrieved the respondent No.1 preferred revision before President, Maharashtra State Revenue Tribunal u/s.76 of Bombay Tenancy & Agricultural Lands Act, 1948. In revision, the tribunal has set aside the concurrent findings of facts recorded by both the authorities below and allowed the Revision Petition and thereby exceeded its jurisdiction. In this background learned counsel submit that the tribunal has exceeded its jurisdiction u/s.76 of Bombay Tenancy & Agricultural Lands Act, 1948 and thereby the impugned order is not sustainable in law and liable to be set aside. In support of the submission advanced, the learned counsel has referred and relied upon the decision of this Court in the case of *Dattatraya Yamaji Bhutkar vs. Vaijinath Madhav Panhalkar*¹ and *Durgabai Dattajirao Ghatge vs. Yesaba Santu Kamble*².

1 1998(1) Mh.L.J. page 79

2 2001 MLJ page 938.

3 In order to appreciate the submissions advanced, I have thoroughly perused the orders passed by the Tahsildar, Dindori, District Nasik, and confirmed in Appeal by the Sub-Divisional Officer, Niphad, District Nasik, as well as the order passed by the tribunal in exercise of revisional jurisdiction. In my view, no case is made out to entertain the petition. The order passed by the Tribunal is reasoned and within the scope of exercise of powers u/s.76 of the said Act. There is no merit in the submission of learned counsel that the tribunal has exceeded its jurisdiction u/s.76 of the said Act. The submission as advanced were also made before the Tribunal and the Tribunal has dealt the same in the impugned order. In the case of **Dattatray Bhutkar** (supra) referred and relied by learned counsel for petitioner itself this Court has held that the Tribunal in exercise of jurisdiction u/s.76 of Bombay Tenancy & Agricultural Lands Act, 1948 has the jurisdiction to examine the findings of fact if same are based on no evidence or found to be perverse. In the impugned judgment the Tribunal has specifically observed as to how the reasons and findings recorded by authority below perverse and contrary to evidence on record. In this context it is useful to refer observations made in paragraphs 7 to 11 and 12 which reads as under :-

“7 While opposing these submissions, Adv. Rajesh Parab would urge that the Tribunal is hearing the revision

u/s. 76 of the Act of 1948. As this is a revision, the revisional court cannot reconsider the concurrent finding recorded by both the courts below. He put the proposition that when concurrent finding is recorded by the courts below on the basis of material evidence placed before the trial court and on that material two probable inferences can be drawn, then the inference drawn by both the courts below cannot be substituted by revisional court by substituting another possible inference. In support, he placed reliance on the matter of **Dattatray Yamaji Bhutkar and others Vs. Vaijinath Madhav Panhalkar 1998 (1) Mh.L.J. Page 79**, and particularly, a paragraph below the head note and the observation of the Bench in para 5 of the judgment. He would urge that the finding recorded is not a perverse finding. As the finding is based on the marshalling of the evidence by the trial Court, which is confirmed/upheld by the first appellate court and as it is a concurrent finding recorded by the courts below, to reverse these findings in its revisional jurisdiction by the Tribunal is nothing but to exceed the jurisdiction vested in the Tribunal. He would further urge that it is a matter of admission that the revision applicant herself has admitted in her cross-examination that she had sold the property she had purchased and if it is so, the inference drawn by the first appellate court that she is indulged in the business in the sale and purchase of the agricultural properties need no disturbance. In substance, he would pray that the revision to be dismissed with costs. These submissions advanced on behalf of Resp.Nos.9 to 12 are adopted on behalf of Resp. No.3, the vendor, through her Adv. Shri Rajendra Tambat.

8 In the light of these submissions, following points are formulated for the consideration of this Tribunal, which read as follows:

- (1) Whether the finding recorded by both the courts below is a perverse finding?
- (2) Whether the judgment and order impugned is contrary to law?
- (3) What order?

9 Before dealing with the evidence led by the parties, so far as finding whether it is perverse or otherwise, it is necessary to consider observation of the Bench in the matter of **Dattatray Yamaji Bhutkar (Supra)**). It is observed by the Bench, particularly in para 5 of which it is a substance “Finding of facts on the basis of evidence are to be written only by the trial court or by the first appellate court”. The Tribunal u/s.76 of the B.T. & A.L. Act **has the jurisdiction to examine the finding of fact if the same are based on no evidence or are found to be perverse.** So long as there is some material on record and the findings of fact have been arrived at thereon, the Tribunal would have no jurisdiction to upset the concurrent findings of fact. (Highlighted underlined portion is mine and it is supplied).

10 Clear analysis of the above referred para from the observation of the Bench in the matter of **Dattatray Yamaji Bhutkar (Supra)** it cannot be disputed that the concurrent finding of fact recorded by the trial court and the first appellate court not to be disturbed or reconsidered in the revisional jurisdiction by the Tribunal. It is a settled legal principle. **At the same time, the observation of the Bench, which is highlighted, which is a rule of exception to this general rule, which indicates that if this concurrent finding of fact is perverse, and otherwise than the material on record, then, even in revisional jurisdiction Tribunal is empowered to re-assess it and to consider what is the effect of it.**

11 In the light of these settled legal principles, first, it is necessary to consider, what is the documentary evidence led by the applicant before the trial court. In the earlier part of the judgment, I have already given list of the documents produced by the applicant which is at page 77 of the record and proceedings received from the trial court. At the first instance, total 11 documents are produced by the revision applicant before the trial court, i.e. the tenancy authority. Out of these 11 documents, document

at Sr. No. 3,4,5,6 are either notarised photocopies of the registered sale deeds or original sale deeds, which are not under disputed by the defendant to the civil suit, who are respondents to the present revision and also respondents before the trial court and first appellate court. Out of these four sale deeds, property in S.No. 134/2A/1 situated at village Bhagur Tal & District Nashik was purchased under the registered sale deed dt. 25th October, 1978, while property subject matter of the document at Sr. No.3 was purchased in the year 1981 on 17th November, 1981. It is situated at village Pandhurli, Taluka-Sinnar, District-Nashik while the remaining two properties were purchased in the year 1982 and both the properties were situated at village Pandhurli. They were purchased from different persons. Total property purchased under these four sale deeds is 20 H 67 R. It is approximately 51 A 27 Gunthas. Out of these four properties, as per the record produced, only property in old Gat No.70, new Gat No.96 admeasuring 1 H 75 R was sold to Bhor brothers on 20th May, 2001. Photocopy of this sale deed produced by the respondent is at page 219 to 243. Thus, one fact is clear that out of the four properties purchased, property at Sr. No.4 was only sold by the Revision Applicant as per the record. In spite of this, she is fair enough to admit that she had sold total 37 Acre properties during this period. That means from perusal of the record, still as per oral evidence 3 1/2 acre agricultural land still is in possession of the applicant. Now, in this light, observation in the last two lines of the conclusion drawn by the trial court is required to be considered. The trial court has observed that on perusal of the record and proceedings produced by the parties it is clear that all the properties purchased by the revision applicant were sold and at the time of decision of the trial court, she was holding no property at all. When the record shows that still the revision applicant, plaintiff in the civil suit, is still holding the properties, but the conclusion states that she is not holding any property two possible inferences of which one inference, which cannot be substituted. On the contrary, this observation recorded by the trial court is far away from the documentary evidence and oral evidence led by the parties.

And if it is the finding, in law, it is called a perverse finding.

12. *In this light, on this point, judgment and order of the first appellate court also requires a scrutiny. In the judgment and order of the first appellate court, in the observation, on internal page 7 unnumbered para 3 from bottom, which is para 4 from top, it is observed that even though the applicants have purchased the properties during the period 1978 to 1982, on that basis, the inference cannot be drawn that she is an agriculturist. Fact remains that the ownership of properties was is not under dispute. These properties were recorded in the revenue record is also not under dispute. Out of the four properties as per record, only one property was sold and so far as remaining properties, there is admission to the effect of part of the properties. And hence, if the record shows that the revision applicant is an owner of the agricultural land, then, under the tenancy act she becomes an agriculturist, but the revenue officers like Sub-Divisional Officer, was pleased to observe that the entire properties were sold, when in fact merely part of the property is sold. In law, this is called the perverse finding. Further, on internal page 8, observation in unnumbered para 2 from bottom, wherein it is observed that even though the properties were purchased at two places, Bhagur and Pandhurli, but those properties were sold from time to time, which itself goes to show that the main profession of the applicant is to sell and purchase the agricultural land, is also a perverse finding as there is no issue referred to the authority to record the finding whether the applicant is an estate agent and in absence of such an issue, no evidence to be led and but natural parties have not led evidence to that effect. Apart from it, the sale deed on record of the property which was sold in the year 2001 when purchased in the year 1982. The period during these two transactions is of about 19 years. As a prudent common person, if a person is indulging in sale and purchase of the properties, even though he will wait to earn some profit, but within reasonable period and period of about 20 years cannot be*

*termed as reasonable period and hence, this finding recorded by the first appellate court cannot be accepted as recorded from material on record, as material on record shows sale of property after a period of 19 years. Thus, finding is also recorded without any base on material on record. In such circumstances, the Tribunal to record the observation that the observation by the trial court as well as the appellate court, all the properties purchased were sold by the applicant is on the basis of surmises and not on the basis of oral and documentary evidence on record. If it is so, then in legal language, it is a perverse finding recorded by both the courts below. In view of this discussion, with due respect to the observations in the matter of **Dattatray Yamaji Bhutkar Vs. Vaijinath Panhalkar 1998 (1) Mh.L.J. page 79** as observed in para 5, will not come to the rescue of the respondent but will come to the rescue of the revision applicants as the concurrent finding recorded by both the courts below is not based on the material on record, but it is based against the material placed on record and hence it is perverse. Thus, there is no doubt in the mind of the Tribunal, that the finding of fact recorded by both the courts below is a perverse finding. ”*

4 Thus, in the light of reasoned order passed by Tribunal, no case is made out to entertain the petition. Accordingly, the Petition is dismissed.

(V.L. ACHLIYA, J.)