

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5894 OF 2018

(Kanhuladku Tohke and others Vs. Anant Chandrakant Ambawane and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders	Court's or Judge's orders
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Mr. A. G. Kunderkar for Petitioners.

CORAM : R. G. KETKAR, J.**DATE : 20TH DECEMBER, 2018****P.C.:**

Not on Board. At the request of Mr. Kunderkar, learned Counsel for the petitioners taken up for admission.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 05.01.2018, learned Member (Administrative), Maharashtra Revenue Tribunal, Mumbai (for short 'Tribunal') in TNC/REV/THN/249/14. By that order, the Tribunal allowed the Revision Application filed by the respondent No.1 under Section 76 of the then Bombay Tenancy and Agricultural Lands Act, 1948 (now Maharashtra Tenancy and Agricultural Lands Act) (for short 'Act'). That Revision was filed by the respondent No.1 challenging the order dated 16.06.2014 passed by the Sub-Divisional Officer, Kalyan (for short 'S.D.O.') in Tenancy Appeal No.8 of 2013 confirming the order dated 04.05.2012 passed by the Tahsildar and Agricultural Lands

Tribunal, Murbad (for short 'A.L.T.') fixing purchase price under Section 32-G of the Act. The Tribunal remitted the matter to S.D.O. principally on the ground that respondent No.1 had produced document showing that proceedings under Section 32-G were earlier concluded. Though these documents were produced before the S.D.O., the S.D.O. did not deal with this aspect. The Tribunal observed that S.D.O. is a fact finding Court. In Revision, finding of fact cannot be interfered with. As the S.D.O. did not touch this aspect, matter requires to be remitted to the S.D.O.

3. Mr. Kundekar contended that the respondent No.1 produced photocopies of the documents and in any case they were not pertaining to the property in dispute in the present case.

4. It is not necessary for me to express any opinion on merits. A perusal of the order of the S.D.O. shows that on behalf of the respondent No.1, a specific contention was raised that petitioners' predecessor-in-title had filed proceedings under Section 70(b) before the A.L.T. It was declared that they are not tenants. The proceedings instituted for fixing purchase price under Section 32-G are barred by principles of res judicata. A perusal of the impugned order does not show that the S.D.O. has dealt with these submissions. In view thereof, I do not find that Tribunal committed any error in remitting the matter before S.D.O. The Tribunal directed S.D.O. to decide condonation of delay application first by separate reasoned

order and if he condones the delay then to proceed with the matter on merits. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. S.D.O. will decide the appeal uninfluenced by the observations made in the impugned order and in this order. All contentions of the parties, on merits, are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab