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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5474 OF 2013

Vandana W. Nichite ...Petitioner
V/s.
Posu C. Wagh ...Respondent

Mr.Rajesh Datar for the Petitioner.

Ms.Ronita Bhattacharya I/b Kranti L.C. for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 4TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 28th February, 2013 passed by the Maharashtra Revenue Tribunal in the revision application filed by the petitioner before dismissing the said revision application and upholding the order passed by the learned Sub-Divisional Officer dated 10th July, 2003. Some of the relevant facts for the purpose of deciding this writ petition are as under :

2. It is the case of the petitioner that the petitioner is the owner and possess a plot of land bearing survey no.101 admeasuring 20.5 – R of village Eklahare, Taluka Murbad, District Thane. The husband of the petitioner Waman Dharma Nichite had purchased the said land from Dhondu Mahadu Badhe by a registered Sale Deed

dated 1st March, 1982 for consideration.

3. On 2nd March, 1994, the respondent made an application to Tahsildar and Agricultural Lands Tribunal, Murbad for initiating the proceedings under section 32-G of the Maharashtra Tenancy & Agricultural Lands Act, 1948 (for short the "said Act") in respect of the suit land. It was the case of the respondent in the said application that he was the tenant since prior to Tillers Day and that there were entries in 7/12 extract to that effect. By an order dated 2nd March, 1994, learned Tahsildar rejected the said application filed by the respondent on the ground that the name of the father of the respondent was deleted from the record of rights of the suit land vide mutation entry no.352 effected on 17th February, 1957 i.e. prior to the Tillers Day and therefore the land should not be sold to him under section 32-G of the said Act.

4. The respondent thereafter preferred Tenancy Appeal No.1 of 1994 before the learned Sub-Divisional Officer. By an order dated 21st July, 1995, the learned Sub-Divisional Officer dismissed the said appeal filed by the respondent. The Maharashtra Revenue Tribunal passed an order on 1st August, 1996 in the revision application filed by the respondent thereby remanding the matter to the learned Tahsildar for holding a fresh enquiry. The respondent challenged the mutation entry No.352 which culminated into filing of RTS Revision

Applications No.86 of 1996 and 48 of 1996 which came to be decided by an order dated 8th September, 1998 by the Additional Commissioner, Konkan Division. The mutation entry no.352 was set aside. It was directed to initiate the proceedings under section 32-G of the said Act.

5. The petitioner herein challenged the said order dated 8th September, 1998 passed by the learned Additional Commissioner by filing a Writ Petition (6220 of 1998) in this Court. This Court passed an order on 2nd December, 1998 thereby directing the Agricultural Lands Tribunal and the learned Tahsildar to determine all the questions required to be decided under order 1st August, 1996 passed by the Maharashtra Revenue Tribunal as well as the issue of validity of the mutation entry no.352 uninfluenced by the order passed by the learned Additional Commissioner, Konkan Division. The said order was passed by this Court by consent of parties.

6. On 29th November, 1999, the learned Tahsildar decided the matter and rejected the application made by the respondent and held that the name of grand-father of the respondent was deleted from the record of rights of the land before 1st April, 1957 and that the grand-father of the respondent was not a tenant in respect of the suit land.

7. Learned Sub-Divisional Officer allowed the Tenancy Appeal No.3 of 2000 filed by the respondent by an order dated 10th

July, 2003 and has set aside the mutation entry no.352 and directed initiation of the proceedings under section 32-G of the said Act for fixing the purchase price of the suit land.

8. The Maharashtra Revenue Tribunal dismissed the Revision Application No.1025 of 2003 filed by the petitioner by an order and judgment dated 28th February, 2013. The petitioner has impugned the said order dated 28th February, 2013 by filing this writ petition under Article 227 of the Constitution of India.

9. Mr.Datar, learned counsel appearing for the petitioner invited my attention to various annexures to the writ petition and would submit that the proceedings filed by the respondent for setting aside the mutation entry no.352 was hopelessly barred by limitation. The impugned order passed by the learned Sub-Divisional Officer and the Maharashtra Revenue Tribunal are based on no evidence and thus deserves to be set aside on that ground.

10. It is submitted by the learned counsel that the findings rendered by the learned Tahsildar in favour of the petitioner were rightly rendered and thus could not have been set aside by the learned Sub-Divisional Officer and the order of the learned Sub-Divisional Officer thus could not have been confirmed by the Maharashtra Revenue Tribunal.

11. Learned counsel for the petitioner invited my attention to

the various findings rendered by the Maharashtra Revenue Tribunal and also the findings rendered by the learned Sub-Divisional Officer and would submit that the findings rendered by both the authorities being perverse, this Court has ample power to set aside such perverse findings.

12. Learned counsel for the respondent on the other hand submits that the predecessor of the respondent i.e. Posu Chima Wagh was the tenant of the suit land bearing survey no.101 admeasuring 20.5-R of village Eklahare, Taluka Murbad, District Thane on the Tillers Day. The name of the grand-father of the respondent was shown in the 7/12 extract to be a person cultivating the suit land from 1944-45 to 1955-56 and thus his name could not have been deleted by mutation entry no.352 dated 17th February, 1957. The respondent was not aware of the deletion of the name of the grand-father of the respondent from the mutation entry. The application of the respondent was rejected by the authority by an order dated 2nd March, 1994 on the ground that the name of the grand-father of the respondent was deleted by mutation entry no.352 dated 17th February, 1957. She submits that the learned Sub-Divisional Officer has rightly recorded various findings of fact after considering various documents referred to and relied upon by both the parties and has rightly set aside the order passed by the learned

Tahsildar, which findings are rightly upheld by the Maharashtra Revenue Tribunal.

13. Learned counsel for the respondent submits that the petitioner could not produce any document to show before the learned Sub-Divisional Officer as well as before the Maharashtra Revenue Tribunal that the grand-father of the respondent ceased to be in possession after deletion of the name of the grand-father of the respondent by mutation entry. She submits that the learned Sub-Divisional Officer as well as the Maharashtra Revenue Tribunal have also considered the oral evidence led by the respondent and have rightly interfered with the order passed by the learned Tahsildar. She submits that the findings rendered by the learned Sub-Divisional Officer and the Maharashtra Revenue Tribunal being not perverse, cannot be interfered by this Court in this writ petition filed under Article 227 of the Constitution of India.

14. A perusal of the order passed by the learned Sub-Divisional officer and also the order passed by the Maharashtra Revenue Tribunal indicates that in both the orders, oral as well as the documentary evidence led by both the parties were considered.

15. A perusal of the record indicates that the learned Tahsildar rejected the application filed by the respondent on the ground that the name of the grand-father of the respondent was deleted by mutation

entry no.352 dated 17th February, 1957 i.e. prior to the Tillers Day and thus the land could not be sold to him.

16. Learned Sub-Divisional Officer as well as the Maharashtra Revenue Tribunal however, considered oral evidence also of the witness examined by the respondent in great detail. The Maharashtra Revenue Tribunal has rendered specific finding that the witnesses examined by the petitioner did not say as to when and under what circumstances the said Poso Chima Wagh, grand-father of the respondent ceased to be in possession. It was not the case of the petitioner that the grand-father of the respondent had surrendered the land prior to the Tillers Day. It was also not the case of the petitioner that during the period 15th June, 1955 and 1st April, 1957, the grand-father of the respondent was dispossessed.

17. In my view, the Maharashtra Revenue Tribunal has rightly held that the learned Sub-Divisional Officer rendered a finding that the Gram Sevak had no authority to certify the entry deleting the name of the person as a protected tenant, as no such power had vested in the said Gram Sevak. No opportunity was or notice was issued to the grand-father of the respondent before deletion of his name from the mutation entry.

18. In my view, the findings rendered by the learned Sub-Divisional Officer and the Maharashtra Revenue Tribunal are based

on oral and document evidence led by both the parties and being not perverse, cannot be interfered with by this Court in this writ petition filed under Article 227 of the Constitution of India.

19. In my view, the petition is devoid of merit. I therefore, pass the following order :-

a). The Writ Petition No.5474 of 2013 is dismissed.

b). There shall be no order as to costs.

(R.D. DHANUKA, J.)

Vasant Anandrao Idhol

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