

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1677 OF 2017
IN
WRIT PETITION NO.637 OF 2017**

Shri Nivrutti Sopan Chondhe & Ors **..Applicants**

In the matter between

Shri Shankar Ramchandra Choudhari & Ors **..Petitioners**

Vs.

Shri Nivrutti Sopan Chondhe & Ors. **..Respondents**

Mr. S. S. Kulkarni i/b Shri Chaitanya Nikte for the Applicants

Mr. Nitin P Deshpande for the Respondents / original Petitioners

CORAM : R. M. SAVANT, J.

DATE : 9th APRIL, 2018

(IN CHAMBER AT 2.45PM.)

P.C.

1 The modification of the order dated 5-1-2017 passed by this Court in the above Writ Petition, is sought on the ground that the remand of 32G proceedings in Tenancy Case No.48 of 1969 made by the SDO is not warranted in view of the fact that an order has already been passed by the ALT on 10-11-1977. A copy of the order dated 10-11-1977 purported to be an order passed under Section 32G is annexed to the above Civil Application at Exhibit C and the extract of the register as regards the payment of purchase price is at page No.16 and the certificate under Section 32M is annexed at Exhibit D. It is not necessary for this Court in its Writ Jurisdiction to go into the said documents

having regard to the observations made by the Maharashtra Revenue Tribunal (MRT) whilst dismissing the Revision Application being No.TNC/Rev/88/B/2000/P filed against the order of remand passed by the SDO. The excerpt from paragraph 6 of the Judgment dated 13-8-2009 (Exhibit F page 22) passed by the MRT is material in the said context and is reproduced hereinunder for the sake of ready reference:

“The learned S.D.O passed an order of remand on 30/9/1973 in tenancy appeal no.81/73. It is significant to note that both the parties have produced the letters issued by Tahsildar Mulashi showing that R and P of 32G / Bhugaon / 103 dated 10-11-1977 is not available in Tahsil record. If on the remand of the matter by S. D. O the Tahsildar / ALT has decided the case as per the directions of SDO given in remand order, this revision is likely to be infructuous.

However, the original record regarding the order of ALT/Tahsildar 10/11/1977 passed in 32G / Bhugaon / 103 is not made available. The opponents have also not produced the certified copies of the relevant record from the said case. Moreover they have not taken stand that this revision has become infructuous in view of the order passed in 1977 after the remand of the matter by SDO, so in my opinion it is necessary for the trial court to verify the record and if order is not passed after remand, by giving opportunity of hearing to both the parties, decide the matter afresh.

(emphasis supplied)

2 Hence the MRT has directed the Trial Court meaning thereby the ALT to verify the record and if an order is not passed after remand by giving opportunity of hearing to both the parties, decide the matter afresh. Hence it

is for the ALT to consider the documents on which the reliance is placed by the Applicants and then arrived at a conclusion one way or the other as regards whether the application under Section 32G has been decided or not.

3 However, since the time stipulated by this court by order dated 5-1-2017 of which modification is sought has already come to an end, time would accordingly have to be extended. The ALT and Tahsildar Mulshi is directed to conclude the proceedings on remand which would be on the touchstone of the directions of the MRT as reproduced hereinabove, latest by 31-10-2018.

4 The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]