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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10027 OF 2017

Nathu Bhiku Dighe and ors ... Petitioners

V/s.

The State of Maharashtra and ors ... Respondents

Mr. Shilpan Gaokar a/w Mr. Avishkar Sawant i/by S. K.Legal Associates, for the Petitioners.
Mr. Surel Shah i/by Anand S.Shalgaonkar, for the Respondent No.6.
Mr. J. A. Madane, AGP for respondent Nos. 1,3 and 4.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7st MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioners and respondents.

2] By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging the order dated 17.10.2016, passed by Maharashtra Revenue Tribunal, Bench at Pune, thereby partly allowing the Revision Application bearing No.TNC/REV/96/2007/P, and modifying the judgment and order passed by the Appellate Court i.e. Sub Divisional Officer, Bhor, in

Tenancy Appeal No.6 of 2004 and as a result setting aside the judgment and order passed in the tenancy proceeding bearing No.32G/Velhe/426/94, dated 3rd August, 1994 and the consequential effect given against Mutation Entry No.99. The net result is that as per the order passed by the Revisional Authority and the Appellate Authority-S.D.O. Bhor, the matter is now remanded for fresh enquiry before the Tahasildar in respect of 32G proceeding. It was held by both the authorities that there is no evidence to show that the notice of 32G proceeding was duly served upon the respondent landlords. It was also held that that as the proceeding under Section 33(B) and 33(C) of Bombay Tenancy and Agricultural Lands Tribunal Act (for short called as "the Act"), were also initiated and said subject matter was somewhere pending or otherwise decided, it needs to be considered by the Tahasildar, while deciding the proceeding under Section 32G of the Act. Hence the remand of the matter was necessary.

3] The grievance of the learned counsel for the petitioners is that there was absolutely no necessity for the remand of the matter for fresh enquiry by the S.D.O. Bhor and therefore, the said order was challenged before the Maharashtra Revenue Tribunal. However, Maharashtra Revenue Tribunal has without considering the entire record and proceeding of the case, confirmed the order of remand passed by the S.D.O. Bhor and further directed even to cancel the Mutation Entry No.99.

4] It is urged that if the record and proceeding of the Tenancy Case is seen, it is evident that notices of the said proceeding were duly served on the respondents, who claimed themselves to be the legal heirs and the daughters of deceased landlord.

5] However, it is admitted position that the Tenancy Appeal No.6 of 2004 was filed by the respondents with a grievance that they had not received the notice and in such situation how their names came to be deleted from the revenue record. The order passed by the Tahasildar in the said proceeding also clearly goes to show that an attempt was made for service of notice on respondents, by affixing it on their last known address and thereafter, the Tahasildar has proceeded to conduct enquiry exparte. Thus, the fact remains, as held by S.D.O., that the notice of the proceeding was not personally served on the respondents. In such situation the S.D.O., was justified in remanding the case to the Tahasildar for deciding 32G proceeding afresh and hence Maharashtra Revenue Tribunal was also justified in upholding the said order.

6] As per consistent legal position, as the order of remand is normally within the discretion of the appellate authority, it is not open to the Revisional Court to enquire as to whether such discretionary order has been properly passed or not. In the instant case, therefore, the order of remand passed by S.D.O., and also confirmed by the Maharashtra Revenue Tribunal, does not call for any interference.

7] The real grievance of the learned counsel for the petitioners appears to be in respect of the observations made in paragraph No.3 of impugned order by the Maharashtra Revenue Tribunal, which are as follows :-

> "Furthermore, Adv. Gujarathi for the respondents strongly submitted that meantime proceeding u/s 33(B) and 33(C) were also initiated and the subject matter was somewhere pending or otherwise decided. In short, the several legal aspects are involved in respect of the enquiry before grant of certificate u/s 32G of the Act. Such as, notices to the interested persons including landlord, option/willingness of the tenant for purchase, enquiry in respect of the ceiling limit before grant of such certificate etc. Apparently, there is no record before this Tribunal about thorough enquiry, if any, conducted while passing the order in tenancy file No.32G/Velhe/426/94 dated 3.8.1994 is required to be re-investigated. For that purpose the judicial discretion used by appellate tribunal not required to be interfered by this Tribunal within its limited jurisdiction".

8] According to learned counsel for petitioners, the proceedings under Section 33(B) and 33(C) of the Act, were not only initiated but concluded twice and they have achieved finality, therefore, it would not be proper to reopen those proceedings.

9] In my considered opinion, as observed by the Maharashtra Revenue Tribunal, the Record or Proceedings under Section 33(B) and 33(C) of the Act, was not before it, to arrive at any conclusion. Hence, Maharashtra Revenue Tribunal has directed the Tahasildar to consider that aspect also. Therefore, it is for the Tahasildar to consider whether the proceedings under Section 33(B) and 33(C) of the Act were finally concluded or not.

10] This writ petition, hence can be conveniently disposed of by directing the Tahasildar that if he arrives at factual finding that the proceedings under Section 33(B) and 33(C) of the Act were finally concluded in the earlier litigation, then he need not reopen the same and if he arrives at finding that those proceedings were not finally concluded he may reconsider the said proceeding also. Otherwise the order of remand will be only to the limited extent of deciding Tenancy proceeding under Section 32G.

11] With this clarification, the Writ petition stands disposed of as dismissed.

12] Considering that this proceeding of tenancy are pending since long, it would be desirable to direct the Tahasildar to make endeavour to dispose of the same within the time stipulated by the Maharashtra Revenue Tribunal, that is within six months from the receipt of record and proceeding.

[DR.SHALINI PHANSALKAR-JOSHI, J.]