IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7741 OF 2016

Bhagirathi Pandurang Misal (since deceased)
through her legal heirs
A. Harishchandra Pandurang Misal & Ors. .. Petitioners
Vs.
Hasmukh Ratanshi Thakkar & Anr. .. Respondents

Mr.K.S.Dewal I/by Mr.Jayesh Joshi for the petitioners.
Mr.Anil Anturkar, Senior Advocate i/by Mr.Sandeep Phatak for the respondent no.1.

CORAM : R.D. DHANUKA, J.
DATE : 10th September 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 8th October 2015 passed by the learned Member of Maharashtra Revenue Tribunal, Mumbai in Tenancy Review Application No.03/2014 thereby recalling the order dated 12th May 2014 passed by the same Member of Maharashtra Revenue Tribunal, Mumbai in Tenancy Revision Application No.509/B/2012.

2. It is the case of the petitioners that the predecessor of the petitioners was in possession and cultivation of the suit land i.e. land bearing Survey No.22, Hissa No.5 & Survey No.23 Hissa No.3 situated at Village Kaneri, Taluka Bhiwandi and District Thane. The petitioners had filed an application under Section 32G of the Maharashtra Tenancy

& Agricultural Lands Act, 1948 (for short "the said Act") before the learned Tahsildar for fixation of amount of purchase price. By an order dated 3rd December 1985, the purchase price was fixed by the learned Tahsildar and the same was paid by the petitioners. The respondents challenged the said order by preferring Tenancy Revision Application No.08/1997 before the learned Sub-Divisional Officer, Bhiwandi. The learned Sub-Divisional Officer passed an order allowing the said application remanding the matter back to the learned Tahsildar. The learned Tahsildar rejected the application filed by the petitioners on the ground that the said suit land was within the jurisdiction of the Bhiwandi-Nijampur Municipal Council and since the said suit land was an Inam land of the respondent no.2 trust, the purchase price of the suit land could not be fixed under Section 32G of the said Act. The learned Sub-Divisional Officer allowed the appeal filed by the petitioners and setting aside the judgment and order of the learned Tahsildar. The Member of the Maharashtra Revenue Tribunal passed an order dated 21st April 2010 thereby remanding the matter back to the learned Tahsildar for a limited purpose of impleading the respondent no.2 as a party-respondent and to decide the said application afresh.

3. Learned Tahsildar passed fresh order dated 14th March 2011 and re-confirmed the earlier order dated 3rd December 1985 passed by the learned Tahsildar. The learned Sub-Divisional Officer by an order dated 28th September 2012 dismissed the said appeal filed by the respondent no.1. The Member of the Maharashtra Revenue Tribunal passed an order dated 12th May 2014 dismissing the Tenancy Revision Application No.509/B/2012 filed by the respondent no.1. The respondent no.1 thereafter preferred a Tenancy Review Application bearing

No.03/2014 before the Maharashtra Revenue Tribunal for recall of the order dated 12th May 2014. By an order dated 8th October 2015, the learned Member of the Maharashtra Revenue Tribunal who had passed the order dated 12th May 2014 thereby dismissing the tenancy revision application filed by the respondent no.1 recalled his own order dated 12th May 2014 and quashed the order passed by the learned Sub-Divisional officer and also the learned Tahsildar and passed an order that the earlier revision application filed by the respondent no.1 to be heard by the learned Member of the Maharashtra Revenue Tribunal, Mumbai himself.

4. Learned counsel for the petitioners invited my attention to various exhibits annexed to the petition and would submits that though he does not dispute the powers of the Maharashtra Revenue Tribunal to review its own order in view of the judgment of the Full Bench of this Court in the case of ***Raghunath Narayan Bokil Vs.Vithal Sawala Limbhori, through his legal heirs & Ors., 2006 Vol.108(4) Bom.L.R. 3205.*** It is submitted that the scope of review is very limited. No case was made out by the respondent no.1 for recall of the earlier order passed by the learned Member of the Maharashtra Revenue Tribunal. He submits that the scope of remand by the Maharashtra Revenue Tribunal in the earlier round of litigation was very limited. The learned Tahsildar passed a fresh order and rendered various findings of fact which were confirmed by the learned Sub-Divisional Officer and thereafter the by learned Member of the Maharashtra Revenue Tribunal by an order dated 12th May 2014.

5. Mr.Anturkar, learned senior counsel appearing for the respondent no.1, on the other hand, would submit that the learned Circle Officer had rendered a finding in his report that the land in question was not an agricultural land and thus the said report ought to have been considered by the Member of the Maharashtra Revenue Tribunal in the order dated 12th May 2014 but the said report not having been considered, the learned Member of the Maharashtra Revenue Tribunal was justified in recalling the order dated 12th May 2014 and passing a fresh order dated 8th October 2015.

6. The next submission of the learned senior counsel is that upon remand of the matter back to the learned Tahsildar, the learned Tahsildar by an order dated 14th March 2011 could not have confirmed his own order though his order was reversed by the learned Sub-Divisional Officer.

7. It is lastly submitted by the learned senior counsel that since the land in question was not an agricultural land, the provisions of Section 32G of the said Act were not at all attracted and thus on this ground, the learned Member of the Maharashtra Revenue Tribunal is right in recalling the order dated 12th May 2014 passed by him.

8. It is not in dispute that the application filed by the petitioners under Section 32G of the said Act was allowed by the learned Tahsildar. There were several remand of the proceedings before the learned Tahsildar. The last remand was by an order dated 12th May 2014. The learned Tahsildar again, after considering the arugments of both sides,

rendered findings of facts and re-confirmed his earlier order. The said order was upheld by the learned Sub-Divisional Officer and thereafter also by the learned Member of the Maharashtra Revenue Tribunal by an order dated 12th May 2014.

9. A perusal of the record indicates that remand of the matter back to the learned Tahsildar was for very limited purpose. I have also perused the ground of review in the review petition filed by the respondent no.1 and more particularly at pages 77 and 78 of the writ petition. A perusal of the grounds in the review petition clearly indicates that the arguments advanced by the learned senior counsel for the respondent no.1 across the bar were not even raised in the review petition.

10. A perusal of the impugned order dated 8th October 2015 passed by the learned Member of the Maharashtra Revenue Tribunal indicates that the learned Member has recalled the earlier order by going into the merit as if in the review petition, the entire matter could be re-argued and findings of facts earlier rendered by the learned Tahsildar, learned Sub-Divisional Officer and by the learned Member of the Maharashtra Revenue Tribunal in his earlier order dated 12th May 2014 could be gone into by the learned Member of the Maharashtra Revenue Tribunal as if he was an appellate authority against his own order. The powers of the Review Court are very limited. In the impugned order, the learned Member of the Maharashtra Revenue Tribunal reversed all the findings rendered by the learned Tahsildar and learned Sub-Divisional Officer and by himself in the earlier order and has entered into the arena of merits which was not permissible in the said review application.

11. In my view, the impugned order dated 8th October 2015 passed by the learned Member of the Maharashtra Revenue Tribunal is totally perverse and beyond the powers of review which could be exercised by him and thus deserves to be quashed and set aside.

12. I therefore pass the following order :-

(i) The impugned order dated 8th October 2015 passed by the learned Member of Maharashtra Revenue Tribunal, Mumbai in Tenancy Review Application No.03/2014 is quashed and set aside.

(ii) The review application filed by the respondent no.1 is dismissed.

(iii) Writ petition is allowed in aforesaid terms.

(iv) There shall be no order as to costs.

R.D. DHANUKA, J.