IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 5620 OF 2010

SURESH SATYASEN SHRISUNDR AND ANOTHER
VERSUS
PANDHARINATH JALKU GAYKE AND OTHERS
...
Advocate for Petitioners : Mr. V. J. Dixit, Senior Advocate i/b. Mr. Gadge Satish G. and Mr. Sangeet L. V.
Advocate for Respondents : Mr. S. B. Bhapkar
...

CORAM: S. V. GANGAPURWALA, J.
DATE: 11th JULY, 2019

PER COURT:

1. Heard Mr. Dixit, learned Senior Advocate for the petitioners and Mr. Bhapkar, learned Counsel for the respondents.

2. The petitioners assail the judgment delivered by the Maharashtra Revenue Tribunal, Aurangabad confirming the judgment of the authorities below thereby dismissing the Revision filed by the petitioners.

3. Mr. Dixit, learned Senior Advocate for the

petitioners submits that the petitioners at no point of time in the written statement filed before the Tahsildar admitted the tenancy of the respondent. The contention of the present petitioners in the written statement was that the respondent is not the tenant and the other contention was that even if he claims to be a tenant he has not given any crop share. The said pleading cannot be considered to mean that the petitioners have admitted that the respondent is the tenant. The learned Senior Advocate submits that the reliance on the judgment dated 30.03.1972 of the Tahsildar is misplaced. No such order exists. The said document is forged and fabricated document. No independent appreciation has been made by the authority. The said judgment cannot withstand.

4. Mr. Bhapkar, learned Counsel for the respondents submits that based on the judgment dated 30.03.1972, the Civil Court has already passed decree for injunction in favour of the

respondent. The said judgment is not challenged by the petitioners till date. Admittedly, respondents are in possession of the writ property. The said fact is admitted by the petitioners in the written statement filed by the petitioners before the Tahsildar. It is for the petitioners to show how the respondents came into possession. Considering the entry in the revenue record in the name of the respondent the authority has rightly come to the conclusion. The petitioners, at least, in 1988 had the knowledge of the order dated 30.03.1972 passed by the Tahsildar, still they have not taken any steps to challenge the said order till today. All these facts clearly shows that the respondents are in possession of the property as tenant.

5. This Court had called for the record and proceedings and also directed the State to file affidavit. The affidavit is filed by the State stating that the name of the respondent in the tenancy record is not found.

6. It is not clear whether record of the file 1971/TNC/USC/2 is available. In the said matter, the order appears to have been passed on 30.03.1972. However, we do not have the certified copy of the said order, so also, there is the communication by the revenue authorities about the non availability of the same. The Maharashtra Revenue Tribunal has also observed that the certified copy of the said order ought to have been produced so as to place reliance. It would be appropriate if the record of the said file, if available, is produced.

7. The Maharashtra Revenue Tribunal, it appears, has observed that the petitioners had admitted in the written statement that the respondent was the tenant. Upon perusal of the written statement, it does not appear that such an admission has been given by the petitioners. The petitioners had averred that the respondent is not the tenant, however if the respondent is tenant, he is supposed to give the crop share and if the crop

share is not given then tenancy does not subsist. It cannot be considered as an admission on the part of the petitioners of respondent being a tenant.

8. The other aspect considered by the Maharashtra Revenue Tribunal is that the respondent is in possession of the property. There cannot be any dispute that the respondents are in possession of the property. Even in the written statement filed before the Tahsildar, the petitioners have averred that the petitioners have right to get back the land and the petitioners are taking steps in that regard, that would show that the petitioner has admitted the respondent to be in possession of the writ land. The question would be about tenancy. The Maharashtra Revenue Tribunal did not rely on the order dated 30.03.1972 passed by the Tahsildar, but one of the circumstances considered by the Maharashtra Revenue Tribunal was the admission of the petitioners about the respondent being tenant. However, from the written

statement it does not appear that such an admission is given by the petitioners. *De hors* the same, the Maharashtra Revenue Tribunal shall consider the case of the parties with regard to the tenancy as claimed by the respondents.

9. In the result, the order passed by the Maharashtra Revenue Tribunal is set aside. The matter is remitted to the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal shall call for the file bearing no. 1971/TNC.U/SC/2 wherein the judgment dated 30.03.1972 is said to be passed (if the same is available). If the said file is not available, then the Maharashtra Land Revenue Tribunal shall consider the totality of the circumstances and the evidence and thereafter decide afresh. The parties shall appear before the Maharashtra Revenue Tribunal on 01.08.2019. The Maharashtra Revenue Tribunal shall endeavour to decide the same expeditiously and preferably within a period of six (06) months from the date of appearance of the parties. The record and

proceedings be sent back to the Maharashtra Revenue Tribunal immediately.

10. Writ Petition is disposed of accordingly. No costs.

[S. V. GANGAPURWALA, J.]

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