

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.502 OF 2019

RAMDAS DHONDU KULKARNI DIED THROUGH HIS LEGAL
HEIRS 1A RAVINDRA RAMDAS KULKARNI

VERSUS

VANABA CHINDHU MHASKE DIED THROUGH LEGAL HEIRS
1A RAGHUNATH CHINDU MHASKE AND OTHERS

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Advocate for the Petitioner : Shri P. R. Patil

Advocate for Respondent No.1A to 1C : Shri S. R. Dheple

AGP for Respondent Nos. 7 and 8 : Shri N. T. Bhagat

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 16th JANUARY, 2019.

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PER COURT :

1. I have heard the learned Advocates for the respective sides for quite some time. I am not required to advert to their entire contentions at this stage since the petition is being disposed off in view of the directions of the learned Appeal Bench which has passed an order on 07/08/2015 in Letters Patent Appeal No. 101/2013.

2. The MRT earlier had delivered an order on 12/01/1990 with regard to the tenancy Appeal No. 16/1982 which was decided by the SDO Chalisgaon on 06/06/1986 which in turn

had confirmed the order of the Tahsildar, Jamner in Tenancy Case No. 8/77 decided on 31/10/1981. The MRT, therefore, passed the following order on 12/01/1990 :-

"The revision application is dismissed. The orders passed by the learned Tahsildar in Tenancy case No. 8/77 dated 31/10/1981 and the order passed by the sub-Divisional Officer, Chalisgaon Division, Jalgaon, in Tenancy Appeal No. 16/82 dated 6.6.1986 are confirmed, with alight modification that the learned Tahsildar to hold further enquiry as provided under sub-sections (3) and (4) of sec. 84-C of the Tenancy Act and to dispose of the disputed suit land S.No. 229/1 admeasuring 1 hectere 07 ares."

2. The above stated order was subject matter of Writ Petition No. 998/1991 which was decided by the learned Single Judge of this Court on 28/01/2010. The observations in the said order are as under :-

"Considering these aspects, the concurrent findings of the Tenancy Tribunals, which are confirmed by the M.R.T., are quite legal and proper. The M.R.T. has taken due care while dismissing the revision application, to ensure that due procedure under sub-sections (3) and (4) of section 84C of the BT&AL Act should be followed while effecting disposal of the

disputed half share of the land i.e. survey No. 229/1. It goes without saying, therefore, that the impugned orders require no interference.

7. In the result, I do not find any merit in the petition. Hence, the petition is dismissed. No costs."

3. The order of the learned Single Judge was carried in LPA No. 101/2013 by Smt. Vanabai who was the Appellant. The learned Appeal Bench delivered an order on 07/08/2015 concluding as under :-

"The questions of facts raised in the instant appeal need not be gone into the exercise of jurisdiction conferred. So far as directions issued by the Maharashtra Revenue Tribunal to the Tahsildar to consider entitlement of the applicants i.e. heirs of deceased Dhondu Kulkarni under Section 84C of the Bombay Tenancy and Agricultural Lands Act. We do not find any inconsistency and irregularity with the same. Even if it is assumed that property cannot be disposed of by taking recourse to Section 84-C of the Bombay Tenancy and Agricultural Lands Act. It is open for the appellant to take appropriate contentions before the Tahsildar and resist claim of the applicants i.e. heirs of deceased Dhondu Kulkarni."

4. It is obvious from the record that the confusion in this

matter has occurred owing to the Tahsildar passing an order on 20/04/2010 addressed to the Circle Officer, Neri that the possession of the land must be handed over to Ramdas Dhondu Kulkarni and others alongwith Balkrishna Dhondu Kulkarni and necessary documents i.e. Taba Pawati, panchanama and correction in the 7/12 extract be carried out.

5. This order was passed without hearing the Appellant Vanabai. This order was then subject matter before the SDO in Appeal No. 1/2014, who delivered a judgment on 24/08/2015 confirming the order of the Tahsildar. Finally, by the impugned order passed by the MRT at Aurangabad on 14/11/2018, the matter is once again remanded to the learned Tahsildar, Jamner to cause an enquiry under Section 84C and 84 B of the Tenancy Act, 1948. Grievance voiced by the petitioner Ramdas Dhondu Kulkarni through L.Rs. is that when earlier orders restrict the enquiry to Section 84C, the MRT, by the impugned order dated 14/11/2018, has opened the enquiry even under Section 84B.

6. There is no dispute amongst the parties before this Court

that the enquiry is to be conducted under Section 84C.

7. The impugned order passed by the MRT is as under :-

"1. Revision Application No.102/B/2015/Jalgaon is allowed.

2. Order of the Ld.Tahsildar Jamner dated 20/04/2010 and order of Ld. Sub Divisional Officer Jalgaon dated 24/08/2015 are set aside.

3. The matter is remanded to the Ld. Tahsildar Jamner to cause an enquiry as contemplated under section 84 C and 84 B of the Tenancy Act 1948 by affording opportunities to the parties.

4. The Ld. Tahsildar, after remand shall cause notices to be issued to all the parties and then after hearing pass necessary orders.

5. No costs."

8. Further grievance voiced by Advocate Patil is that the MRT has also directed in paragraph 13 that the possession be handed over to the L.Rs. of Vanabai based on the direction of the Tahsildar dated 29/01/2010, which in my view and undisputedly, is an order passed by the Tahsildar rejecting the claim of Vanabai, without hearing Vanabai. Nevertheless, I find that any change of hands *insofar* as the possession of the

properties is concerned, is likely to create further complications. The petitioners are already in possession of the property from 2010 onwards. The ends of justice would be met by directing the petitioners to restrain themselves from creating third party interest or encumbrances on the said property until the Tahsildar decides the proceedings.

9. In view of the above, this petition is partly allowed. The direction in paragraph 3 issued by the MRT is modified. Section 84B of the Tenancy Act mentioned in Clause 3 of the operative order passed by the MRT reproduced above, shall stand deleted.

10. The litigating sides would appear before the Tahsildar Jamner, District Jalgaon on 08/02/2019 at 11.00 a.m. Formal notices need not be issued by the Tahsildar. The litigating sides are at liberty to address the Tahsildar strictly in the light of the direction passed by the learned Single Judge of this Court in its order dated 28/01/2010 (reproduced above) and the directions of the learned Appeal Bench dated 07/08/2015 (reproduced above).

11. Since the litigating sides are second generation litigants, the Tahsildar Jamner is directed to conclude the proceedings and pass an order by posting the matter on 30/04/2019 at 11.00 a.m. Copies of his order would be kept ready to be supplied to the litigating sides on the same date.

(RAVINDRA V. GHUGE, J.)

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