

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3203 OF 1995

Nivrutti Dattu Sawant (deceased) & ors. ...Petitioners

Versus

Achyut Damodar Kulkarni (deceased) & ors. ...Respondents

Mr. S. G. Karandikar, for the Petitioners.

CORAM: N. J. JAMADAR, J.

DATED: 1st April, 2019

Oral Order:-

1. This is a petition under Article 227 of the Constitution of India assailing the legality, propriety and correctness of the judgment and order passed by the learned Member, Maharashtra Revenue Tribunal, Kolhapur, dated 28th April, 1993, whereby the learned Member dismissed the revision preferred by the Petitioner herein, under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act', for short) against the order passed by the Sub-divisional Officer, Miraj on 6th September, 1984, whereby the application preferred by the original landlord was remanded for a fresh enquiry by the Tahasildar-cum-ALT.

2. Heard Mr. Karandikar, the learned Counsel for the Petitioners.

3. The facts which emerge from the record reveal that an application was filed by the original landlord Mr. Achyut Damodar Kulkarni, under Section 32-R, 43 and 84-C of the Act, in respect of the agricultural land bearing Survey No.81 admeasuring 13 acres and 11 gunthas situated at village Paluj, Taluka Tasgaon, District Sangli. In respect of the said land, a proceeding under Section 32-G was held and an order was passed on 28th April, 1993, which attained finality. The original landlord filed application before the Tahasildar, Tasgaon, District Sangli, on the ground that there has been alienation of the said land and it has not been cultivated by the tenants. The Tenancy Awal Karkun, vide order dated 31st October, 1980 dismissed the application. The original landlord preferred an appeal bearing Appeal No.TNC Appeal No.5 of 1981 before the Sub-divisional Officer, Miraj Sub-division. The Appellate authority found that the matter requires re-examination as there was discrepancy in the area of the land which was exchanged with Kirloskar Brothers and the question as to whether the conditions imposed under Section 43 of the Act have been complied with, has not been

properly appreciated by the ALT. Thus, the appeal was allowed and the matter was remanded back to the Tahasildar, Tasgaon, with further direction to provide opportunity of hearing to the parties.

4. Being aggrieved, the Petitioners herein preferred revision bearing Revision No.MRT-SS-176 of 1985 before the MRT under Section 76 of the Act. The learned Member, MRT by the impugned order, concurred with the view of Appellate authority that the matter warranted further enquiry. The learned Member was of the view that the Appellate Authority has ascribed justifiable reasons for remanding the matter to the Tahasildar.

5. The learned Counsel for the Petitioner would urge that as the application was preferred by the original landlord after a considerable period and there was no material to show that the Petitioner have either contravened the conditions of Section 43 or were not cultivating the suit land, re-opening of the issue by directing further enquiry was not called for.

6. On perusal of the material on record it becomes evident that the Sub-divisional Officer has assigned cogent reasons in support of finding that the matter warrants further examination. The discrepancy in the area of the suit land has

been specifically adverted to. Since the Tribunal exercises a limited jurisdiction under Section 76 of the Act and the scope of interference in the order passed by the Tribunal in its revisional jurisdiction by this Court is also restricted, I am not inclined accede to the submission on behalf of the Petitioners. A proper enquiry, after providing effective opportunity of hearing to the parties, is what the impugned orders direct.

7. In this view of the matter, the petition deserves to be dismissed. However, all the contentions of the parties on merits of the matter are kept open and the Tahasildar, Tasgaon, shall conduct the enquiry, as directed by Sub-Divisional Officer, Miraj, by order dated 6th September, 1984, after giving effective opportunity of hearing to all the parties.

8. The petition is, thus, dismissed. In the circumstances, there shall be no order as to costs.

9. Rule stands discharged.

[N. J. JAMADAR, J.]