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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7509 OF 2016

Krushna Bhairu Patil
(since deceased through LRs.) & Ors. ... Petitioners
Vs.
Prakash Balvant Kulkarni & Ors. ... Respondents

Mr. G. N. Salunke, for the Petitioners.
Mr. C. G. Patil, for Respondent Nos. 1 and 2.
Mr. A. P. Vanarase, AGP for the Respondent-State.

CORAM : C. V. BHADANG, J.

DATE : DECEMBER 18, 2019

PC :

1. The challenge in this petition is to the judgment and order dated 31st December, 2014 passed by the Maharashtra Revenue Tribunal, Pune ("MRT" for short) thereby dismissing the revision application filed by the Petitioners and confirming the order passed by the Sub-Divisional Officer ("SDO" for short) dated 31st March, 2004 in Appeal No. 5 of 2003. The net result is that order dated 3rd March, 2003 passed by the Avval Karkun Gadhinglaj, allowing application of the Petitioners under S. 70(b) of the Bombay Tenancy and Agricultural Tenancy Act, 1948 ("Act" for short), declaring the

Petitioners as tenants, has been set aside.

2. The land Gat No. 608 of village Yenchevandi, tahsil Gadhinglaj, district Kolhapur, admeasuring 2 H - 48 Rs is the subject matter of dispute. According to the Petitioners, their predecessors / ancestors were cultivating the said land as tenants, alongwith others. In the year 1952 some of the other tenants, over part of the land, tendered resignation to the landlords. However, predecessors of the Petitioners continued to be in possession of the said land as tenants and paid rent.

3. The Petitioners approached the Avval Karkoon, Gadhinglaj for a declaration under S. 70(b) of the Act. The Avval Karkoon by an order dated 3rd March, 2003 granted the declaration, which order was set aside by the SDO on 31st March, 2004 in Appeal No. 5 of 2003. The Petitioners challenged the same before the MRT in Revision Application No. TNC / Rev / 90 / 2004/ KP. It appears that the said revision application came to be dismissed in default on 16th July, 2012. The Petitioners moved for restoration of the revision application, which was eventually restored on 30th September, 2013 and renumbered as TNC/REV/KP/VII/1/ 2012.

4. According to the Petitioners, on 12th November, 2014, the revision application was on the board for verification of payment of costs. On 24th December, 2014 the Power of Attorney of the Petitioners could not remain present on account of illness, as he was advised rest from 22nd December, 2014 till 31st December, 2014. On that day the MRT after hearing the learned counsel for the Respondents dismissed the revision application, which order is subject matter of challenge in this petition.

5. I have heard the learned counsel appearing for the respective parties.

6. Mr. Salunke, learned counsel for the petitioners strenuously urged that the revision application was simplicitor fixed for verification of payment of costs, which was imposed when the revision application was restored. It is submitted that in any event, the MRT could not have decided the revision application on merits in the absence of the Petitioners. The learned counsel has taken me through the roznama in order to demonstrate the various dates on which the revision application was fixed and the stage. He submitted that

important rights of the Petitioners as tenants of the said land are in question, and therefore, the matter may be remanded back to the MRT for deciding afresh after hearing the Petitioners.

7. The learned counsel for the Respondents has supported the impugned order. It is submitted that the matter is pending since prior to 2003 and the record discloses that the Petitioners have not been diligent in prosecuting the revision application. It is pointed out that the revision application was dismissed in default in the year 2012 and even after its restoration in 2013, it was not prosecuted diligently. Learned counsel has placed reliance on the Maharashtra Revenue Tribunal Regulations, 2013 ("Regulations" for short) in order to submit that MRT can decide the revision application on merits in the absence of any party.

8. I have considered the circumstances and the submissions made and I do not find that any case for interference is made out in exercise of the extraordinary or supervisory jurisdiction of this Court under Article 226 / 227 of the Constitution of India. The record discloses that the

Petitioners have not prosecuted the revision application with due diligence. As observed above, the revision application was dismissed in default and the MRT has shown indulgence in restoration of the same by an order dated 30th September, 2013. Petitioners ought to have prosecuted the revision application with diligence. Insofar as contention that revision application could not have been dismissed on merits in the absence of the Petitioners, I find that Regulation 19 of the Regulations would indicate that the Tribunal is authorised to decide the matter even on merits. Regulation 19, which is relevant for the purpose reads thus:

“19. Procedure in case of non-appearance of parties.- (1) If on the date fixed for hearing or any other subsequent day to which the hearing is adjourned, the appellant or applicant does not appear either in person or through his agent or lawyer when the appeal or application is called for hearing, the Tribunal may dismiss the appeal or application or may decide it on merits, after hearing the respondent or his agent or lawyer, if present.

(2) If on the date fixed for hearing or on any other subsequent day to which the hearing is adjourned, the respondent or opponent, as the case may be, does not appear in person or through his agent or lawyer when the appeal or application is called for hearing, the Tribunal may decide the same on merits, after hearing the appellant or applicant or his agent or lawyer, if present.”

9. Thus, the said contention also cannot be accepted. Once it is found that it is open for the MRT to decide the revision application on merits, and indeed the same is decided on merits, no case is made for restoration of the revision application again to be decided on merits.

10. I have carefully gone through the impugned order passed by the MRT and I do not find that any case of interference is made out. The writ petition is accordingly dismissed with no order as to costs.

Sd/-
C. V. BHADANG, J.

Vinayak Halemath