

2] Heard Mr.Kulkarni i/b. Mr.Diwan, learned counsel for the petitioners and Mr.Karandikar, learned counsel for the respondent. Perused the record.

3] The chequered history giving rise for filing of the present Writ Petition can briefly be summarized as under :-

i) The land in dispute is 1/4th share in the larger area of land out of Survey No.616 admeasuring 4 acres and 34 ares lying and situated at village Koregaon, District Satara ('the suit property' for brevity). The respondent herein is the legal heir of Smt.Annapurnabai w/o. Gopalrao Vechalekar and Shri Dattatray Krushnarao Vechalekar.

ii) The petitioners are legal heirs of original tenant late Balkrishna Malhar Kshirsagar. The original landlords of the suit property were late Smt.Annapurnabai w/o. Gopalrao Vechalekar and Shri Dattatray Krushnarao Vechalekar. The present dispute arises out of proceedings initiated by the landlord under Section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "BTAL Act").

iii) Smt.Annapurnabai w/o. Gopalrao Vechalekar filed tenancy case bearing Application No. 192 of 1962 under Section 33-B of BTAL Act seeking possession of the land from her tenant i.e. Balkrishna

Malhar Kshirsagar. The said application was dismissed on 16th November 1963 by the concerned authority.

iv) Late Smt.Annapurnabai filed Appeal bearing No.36 of 1964 before the Deputy Collector. By an Order dated 15th March 1965 the said appeal came to be allowed and the matter was remanded for re-trial before the Tahsildar.

v) The record indicates that, on 14th October 1965, original applicant Smt.Annapurnabai died and as per Mutation Entry No.11107 the name of the respondent was entered into revenue records as manager of Joint Hindu Family.

vi) Late Dattatray K. Vechalekar had also filed Tenancy Case bearing Application No.193 of 1962 under Section 33-B of the said Act seeking possession of the land from tenant Shri Balkrishna Malhar Kshirsagar. The said Application No. 193 of 1962 was decided and the possession of 1/4th portion of the suit land was awarded to the landlord by an Order dated 31st August 1963 passed by the concerned authority.

vii) After the demise of Dattatray K. Vechalekar on 29th April 1964, or thereabout the name of the respondent was brought on record as his heir.

viii) The record further indicates that, the tenancy appeal bearing TA No.852/844 of 1964 before the Special Deputy Collector challenging the Order dated 31st August 1963 on the ground that, 1/4th share granted in favour of the landlord is in excess and it ought to have been 3/16th and that the respondent cannot be the only legal heir of late Smt.Annapurnabai. That on 31st March 1965 the Special Deputy Collector allowed the appeal filed by the tenant and remanded the matter for fresh consideration. The aforesaid two matters were remanded with observations that, there was no necessity of filing two different applications, as the certificate granted under Section 88-C of the said Act was common. The said matters were remanded to re-consider as to whether the landlord holds 3/16th or 1/4th share in the suit property.

ix) After remand, the Tahsildar Koregaon, heard and decided the said two tenancy cases bearing Nos.192 of 1962 and 193 of 1962 together afresh. After perusing the entire evidence available on record, the Tahsildar Koregaon came to the conclusion that, the landlord is entitled for possession of land to the extent of 1/4th share in the suit property.

x) The original tenant Balkrishna M. Kshirsagar feeling aggrieved by the said Order dated 6th August 1979 passed by the Tahsildar Koregaon in Tenancy Case Nos.192 and 193 of 1962, preferred Tenancy Appeal No.13 of 1979 as contemplated under Section 74 of the said Act before the Sub-Divisional Officer, Koregaon, Sub Division, Satara. The Sub-Divisional Officer, Koregaon after re-appreciating the entire evidence available on record and hearing the parties thereto dismissed the appeal with costs by its Order dated 29th November 1981 and confirmed the Order dated 6th August 1979 passed by the Tahsildar Koregaon.

xi) The tenant, Balkrishna Kshirsagar therefore filed Revision Application No.MRT-NS-VII/8/82 (Tenancy B-190/82) before the Maharashtra Revenue Tribunal, Pune. The learned Member of the Maharashtra Revenue Tribunal dismissed the said Revision by its Judgment and Order dated 19th August 1983.

xii) The petitioner feeling aggrieved by the dismissal of his Revision Application No.MRT-NS-VII/8/82 preferred Writ Petition No. 4289 of 1983 before this Court. This Court by its Order dated 20th July 1999 partly allowed the said petition and set-aside Order dated 19th

August 1983 passed by the Revenue Tribunal in Revision Application No.MRT-NS-VII/8/82 and remanded it back to the Revenue Tribunal for deciding it afresh after giving notice to the parties concerned and hearing them.

xiii) After remand, the Revenue Tribunal heard the matter afresh. The Revenue Tribunal by its Judgment and Order dated 27th April 2000 set-aside the Orders passed by both the lower Courts and the said case was remanded back to the trial Court for fresh enquiry in the light of the discussion and directions issued by the Tribunal therein.

xiv) The record reveals that, being dissatisfied by the said Order of remand passed by the Revenue Tribunal dated 27th April 2000 in Revision No.MRT-NS-VII/8/82, the landlord preferred Writ Petition No. 589 of 2001 in this Court. This Court by its Order dated 23rd August 2001, set-aside the Order dated 27th April 2000 passed by the Revenue Tribunal and remanded the matter back to the Tribunal for deciding it afresh according to law. This Court while setting aside the said Order dated 27th April 2000 has observed that, the Revenue Tribunal has to hear and decide Revision Application within the permissible limits under law but at the same time, it was not expected of Tribunal to sent the

matter back to the Courts below on cryptic reasoning. It was further observed that, the consideration of Revision Application by the Revenue Tribunal was not proper and the Order dated 27th April 2000 cannot be sustained and the Revision Application No.MRT-NS-VII/8/82 needs to be re-heard and considered by the Tribunal according to law.

xv) In pursuance of Order dated 23rd August 2001 passed by this Court in Writ Petition No. 589 of 2001, the said Revision Application was remanded to the Revenue Tribunal for its consideration afresh. The Revenue Tribunal after hearing the parties hereto at length and after perusing the entire evidence on record, as may be permissible under the law has dismissed the said Revision by its impugned Judgment and Order dated 24th July 2015, confirming the Order dated 29th November 1981 passed by the Sub-Divisional Officer, Koregaon Sub-Division in Tenancy Appeal No. 13 of 1979.

4] Mr.Kulkarni, the learned counsel appearing for the petitioners submitted that, in view of admission given by the respondent, the legal heir of the said original two landlords that, his income is more than Rs.1500/- per annum, the respondent does not fall within the purview of Section 88-C and therefore, is not entitled to terminate

tenancy of the petitioners for personal cultivation of land as contemplated under Section 33-B of BTAL Act. It is submitted that, whatever bonafide requirements placed or established by the original landlord cannot be extended to the legal heirs and the legal heirs are now required to establish their bonafide requirement independently. He submitted that, the Revenue Tribunal has committed gross error in dismissing the said Revision and confirming the Orders passed by the Revenue Authorities below. He therefore prayed that, the said impugned Judgment and Order of the Revenue Tribunal may be quashed and set-aside by allowing the present Writ Petition.

5] Per contra, Mr.Karandikar, the learned counsel for the respondent submitted that, Section 33-B and 88-C of BTAL Act operate in different fields. He submitted that, the argument that the legal heir of the certified landlord has to show that his income is less than Rs.1500/- per annum would completely nullify the legislative intent behind enacting the beneficial provision for small and poor land owner whose interests are sought to be protected vis-a-vis a tenant holding larger area of land than held by landlord, which is precisely the case in hand. In support of his contention, he relied upon the decision of this Court in the

case of *Nivrutti Gangaram Pawar (Since deceased Through his Legal heirs and LRs) Prakash Nivrutti Pawar & Others Vs. Dinkar Maruti Jadhav*, reported in 2012(2) Mh.L.J. 219. He submitted that, in view of the ratio of the said decision, the arguments advanced by the learned counsel for the petitioner are fallacious and has no substance in it. He therefore prayed that, the present petition may therefore be dismissed.

6] As noted earlier, the three authorities below i.e. the Tahsildar Koregaon in Tenancy Case No.192 of 1962 and Tenancy Case No.193 of 1962 by its Order dated 6th August 1979, the Sub-Divisional Officer, Koregaon Sub Division, Satara in Tenancy Appeal No.13 of 1979 by its Order dated 29th November 1981 and the Revenue Tribunal in Revision No.MRT-NS-VII/8/82 by its Judgment and Order dated 24th July 2015 have recorded the concurrent findings in the present matter.

7] The Supreme Court in the case of *Maruti Bala Raut Vs. Dashrath Babu Wathare & Ors. reported in AIR 1974 SC 2051*, has held that, the Tribunal while exercising its powers under Section 76 of the said Act, has no power to deal with the matter as an Appellate Authority and was not therefore entitled to appreciate the evidence and come to its own conclusion. It is further held that, the High Court while

exercising its powers under Article 227 of the Constitution of India was not entitled to discuss the evidence and come to its own conclusion on the evidence as to who was in possession of the land. That was a matter for Revenue Authorities.

8] The Constitution Bench of the Supreme Court in the case of *Syed Yakoob Vs. K.S. Radhakrishnan & Ors.*, reported in AIR 1964 SC 477, while enumerating the nature and limits of the jurisdiction of the High Court in issuing a writ of certiorari has held that, the jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that the findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. That, an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be.

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence

which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot, however, be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding.

9] It is an admitted fact on record that, the predecessors-in-title of the respondent were certificated landlords. That the original tenant Balkrishna Kshirsagar was holding land of 10 acres, other than the suit land pertaining to other co-sharers who had not obtained exemption certificates and he had purchased the said land as tenant under Section 32G of the BTAL Act. It is also an admitted fact on record that, the respondent has lesser quantum of area of land in his possession than the tenant. That the predecessors-in-title of the respondent were in bonafide need of the suit land for their personal cultivation. As held by this Court in Nivrutti Gangaram Pawar (supra) the criteria of bonafide requirement is with respect to the person who claimed the land under Section 33-B and is not applicable to the legal heir. That the said provision is enacted

by the legislature with an intent that, it is a beneficial provision for a landlord owner whose interests are sought to be protected vis-a-vis his tenant holding larger area of land than held by the landlord, which is precisely the case in hand.

10] In view of the above and after taking into consideration the ratio laid down by the Hon'ble Supreme Court in the afore-stated decisions, this Court is of the considered view that, all the authorities below have not committed any error either in law or on facts while allowing the claim of the respondent and directing the petitioners to handover the suit land mentioned herein-above.

11] I find no merit in the petition. Petition is accordingly rejected.

12] At this stage, the learned counsel for the petitioners submitted that, the petitioners are intending to challenge present Order in the Hon'ble Supreme Court and requested to stay the operation and implementation of this Order. Learned counsel for the respondent vehemently opposed the said request.

13] However, at the request of the learned counsel for the petitioners, the ad-interim relief granted by this Court on 19th June 2019 to continue for a period of four weeks from the date of uploading of the present Order on the High Court website.

[A.S. GADKARI, J.]