

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5001 OF 2018

Krushnabai Dharma Jaigude	...	Petitioner
V/s.		
Pandarinath Dattatrya Waikar & Ors.	...	Respondents

Mr.Surel Sunil Shah for Petitioner.
Mr.S.N. Chandrachood for Respondent Nos.1 to 4.
Mr.P.P. Pujari, AGP for Respondent No.5.

CORAM : A.S. GADKARI, J.

DATE : 30th August 2019.

P.C. :

1] By the present Petition under Article 227 of the Constitution of India, the petitioner tenant has impugned concurrent finding recorded by all the Revenue Authorities below.

2] Heard Mr.Shah, learned counsel for the petitioner, Mr.Chandrachood, learned counsel for the respondent Nos.1 to 4 and Mr.Pujari, AGP for the respondent No.5. Perused the record.

3] The record indicates that, the respondent Nos.1 to 4 had filed an application under Section 32P of the Maharashtra Tenancy and

Agricultural Lands Act, 1960 (*for short, "M.T.A.L. Act"*) on 4th November 2012 for possession of the suit land i.e. land bearing Survey No.112, Hissa No.2 admeasuring 64 ares lying and situated at Sidhanathwadi, Taluka Wai, District Satara before the Tahsildar Wai. The said application was numbered as Tenancy/SR/09/12. After receipt of the said application, the Tahsildar Wai issued notice to the petitioner. After hearing the parties to the said application and after evaluating the evidence available on record, the Tahsildar Wai came to the conclusion that, the suit land falls within the jurisdiction of Wai Municipal Council. The said fact has been admitted by the petitioner in her statement. The Agricultural Lands Tribunal, Wai (*for short, "A.L.T."*) in its Order dated 24th March 1961 has held that, the provisions of Section 32G to 32R are not applicable to the suit land. It is further observed that, the husband of the petitioner had given a statement to the A.L.T. Wai in the said proceedings that, the suit land falls within the jurisdiction of Wai Municipality and therefore, the provisions of Section 32G to 32R are not applicable to the said land. It is further observed that, the husband of the petitioner did not challenge the said Order dated 24th March 1961 passed by the A.L.T. Wai and has accepted the ownership of the respondents in

the said land. The Tahsildar Wai by its Order dated 30th April 2013 allowed the application filed by the respondents under Section 32P of the MTAL Act.

4] The petitioner thereafter preferred Tenancy Appeal No. 14 of 2013 under Section 74 of M.T.A.L. Act before the Sub-Divisional Officer, Wai Sub Division, Wai against the Order dated 30th April 2013 passed by the Tahsildar, Wai. After hearing the parties thereto and after re-appreciating the entire evidence available on record, the Sub-Divisional Officer has rejected the said application by its Judgment and Order dated 4th June 2014.

The Revision Application No.NS/VII/2/2014 preferred by the petitioner before the Maharashtra Revenue Tribunal, Pune Bench at Pune (for short, "Revenue Tribunal") has met with the fate of its rejection by the impugned Judgment and Order dated 9th November 2017 passed by the learned Member of the Revenue Tribunal.

5] Mr.Shah, learned counsel for the petitioner submitted that, if the land falls within the jurisdiction of Municipal Council and the provisions of Section 32G to 32R of M.T.A.L. Act are not made applicable to the suit land, the respondents-landlords are also denuded from filing

application under Section 32P of M.T.A.L. Act. In support of his contention, he relied upon the decision of this Court in the case of *Kashinath Baba Asbe & Others Vs. State of Maharashtra & Another*, reported in 2001(2) Bom. C.R. 506. Mr.Shah therefore submitted that, all the Revenue Authorities below have committed grave error in appreciating the fact on record and therefore, the impugned Orders may be quashed and set-aside by allowing the present Petition.

6] The record clearly indicates that, the suit land is situated within the jurisdiction of Wai Municipal Council even prior to the date of conducting proceedings under Section 32G of M.T.A.L. Act by the A.L.T. Wai. It is the reason that, the predecessor-in-title of the petitioner, namely, Dharma Kondiba Jaigude, the husband of the petitioner, gave a statement before the A.L.T. Wai that, as the land situated within the jurisdiction of Wai Municipal Council, he was not interested in purchasing the said land. The A.L.T. Wai in its Order dated 24th March 1961 has observed the said fact and thereafter dropped proceedings under Section 32G of M.T.A.L. Act initiated in that behalf.

The husband of the petitioner has accepted the said verdict of A.L.T. Wai dated 24th March 1961 and the same holds field even as of

today. In view thereof, the petitioner being wife of the said Dharma Kondiba Jaigude is now estopped from raising any other plea in that behalf, after a lapse of about 40 years.

In view of the admission given by the husband of the petitioner and his denial to purchase the suit land before the ALT Wai in 1961, the facts herein are clearly distinct from the facts in the case of *Kashinath Baba Asbe* (supra) and therefore, the said decision relied upon by the learned counsel for the petitioner is of no assistance to him.

7] As noted earlier, there is concurrent finding recorded by all the three Revenue Authorities below.

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.

8] The Supreme Court in the case of *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil*, reported in (2010) 8 SCC 329 has enumerated the principles in the exercise of High Court's jurisdiction under Article 227 of the Constitution of India. It is held that, the High Courts cannot, at the drop of a hat, in exercise of its power under Article 227 of the Constitution, interfere with the Orders of tribunals or courts

interior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. That, the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

It is further held that, in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised. That, the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

The afore-stated view expressed in the case of *Shalini S.*

Shetty (Supra) has been further affirmed by the larger Bench of the Supreme Court in the case of *Radhey Shyam & Anr. Vs. Chhabi Nath and Ors. Reported in (2015) 5 SCC 423*.

9] 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.

10] The pleadings in the Petition and arguments advanced across the bar amounts to re-appreciation of evidence. After perusing entire material available on record and applying 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 passing Orders.

11] Petition being dehors of merits is accordingly rejected.

12] At this stage, Mr.Shah, learned counsel for the petitioner submitted that, the petitioner is intending to question the correctness of the present Order before the Hon'ble Supreme Court and therefore, the interim relief granted by Order dated 8th August 2018 may be continued for a period of eight weeks from today.

 Mr.Chandrachood, learned counsel for the respondents vehemently opposed the said prayer.

 However, at the request of the learned counsel for the petitioner, the interim relief granted by Order dated 8th August 2018 shall remain in force for a period of six weeks from today.

[A.S. GADKARI, J.]