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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 361 OF 1998

The Estate Investment Company	]	
Private Limited,	]	
A Company registered under the Indian	]	
Companies Act, 1913, having their	]	
Registered office at Seksaria Chambers,	]	
139 Nagindas Master Road,	]	
Fort, Mumbai – 400 001.	]	...Petitioner.

Versus

1) Shri. Dhaneshwar Vithal Patil	]	
<i>died through his Lrs.</i>	]	
1-A) Sharad Dhaneshwar Patil	]	
Aged : 58 Years,	]	
1-B) Anusaya Atmaram Mhatre	]	
Aged : 55 Years,	]	
1-C) Ranjana Bhanudas Patil	]	
Aged : 45 Years,	]	
1-D) Nilesh Bhanudas Patil	]	
Aged : 45 Years,	]	
1-E) Swapnil Bhanudas Patil	]	
Aged : 21 Years,	]	
1-F) Ruchita Bhanudas Patil	]	
Aged : 18 Years,	]	
All R/o Krushni Bhavan,	]	
Behind Gavdevi Temple, Navghar	]	
Village, Bhayandar (E), Thane-401 105	]	
2) Smt. Bhagubai Mukund Gawand	]	
<i>died through her Lrs.</i>	]	
2-A) Gangadhar Mukund Gawand	]	
Age : 63 Years,	]	

- 2-B) Suryakant Mukund Gawand]
Age : 61 Years,]
- 2-C) Laxmibai Atmaram Mhatre]
Age : 56 Years,]
Respondent No.2-A to 2-C]
residing At Malgeepad Village,]
Vasai, Tal. Vasai, Dist. Thane.]
- 2-D) Dattatraya Gajanan Bhagat, }
Age : 55 Years } Deleted as per order
dated 10.03.2015
- 2-E) Jaywant Gajanan Bhagat, }
Age : 53 Years, }
- 2-F) Devyani Narendra Bhoir,]
Age : 50 Years,]
Residing at Raimurdhe Village,]
Tq & Dist. Thane – 401 105.]
- 2-G) Chandrabai Bhanchandra Patil, }
Age : 48 Years, } Deleted as per order
dated 10.03.2015
- 2-H) Bhavna Prabhakar Mhatre, }
Age : 44 Years, }
- 3) Smt. Mathurabai Jairam Gharat]
died by her Lrs.]
- 3-A) Manjula Govardhan Bhoir]
Age : 66 Years,]
Residing at Ghodbunder Village,]
Near Raje Shivaji Vidyalaya,]
Tq & Dist. Thane]
- 3-B) Vasudeo Jairam Gharat }
Age : 64 Years, } Deleted as per order
dated 10.03.2015
- 3-C) Kalpana Dinanath Bhoir }
Age : 59 Years, }

- 3-D) Anjana Mahendra Bhoir]
 Age : 56 Years,]
 Respondent Nos.3-B to 3-D Deleted as per order
 residing at Ghodbundar Village, dated 10.03.2015
 Near P.K. Store, P.O., Kashiara]
 Taluka and Dist. Thane 401 105.]
- 3-E) Gulab Harischandra Gharat]
 Age : 50 Years,]
- 3-F) Manjula Harischandra Gharat]
 Age : 26 Years,]
- 3-G) Anju Harischandra Gharat]
 Age : 26 Years,]
- 3-H) Tarabai Jairam Bhoir]
 Age : 32 Years,]
- 3-I) Nayana Kishor Tore]
 Age : 49 Years,]
- 3-J) Mohini Prakash Mhatre]
 Aged : 46 Years,]
 Respondent Nos. 3-E to 3-J]
 resident at Maljeepada village,]
 P.O. Vasai, Tal. Vasai, Dist. Thane.]
- 4) Smt. Krishnabai Kashinath Patil]
 Residing at post Navghar,]
 Near Gavdevi Mandir, Bhayandar (E),]
 Tal. & Dist. Thane.]
- 5) Smt. Bayabai Kakaji Bhoir]
died by legal heirs.]
- 5-A) Smt. Janibai Narayan Palkar,]
 Age : 65 Years.]
 Residing at Kharbav Village]
 Near Ganpati Temple,]
 Tal. Bhivandi, District – Thane.]

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|-----|---|---|-----------------|
| 6) | The State of Maharashtra. |] | |
| 7) | M/s. Omkar Associates |] | |
| | A Partnership firm through their |] | |
| | constituted Attorney |] | |
| | Shri. Shailesh Sevantilal Shah |] | |
| | its office at Sulbha Sadan, |] | |
| | Goddeo Phathak Road, |] | |
| | Bhayandar (E). Taluka & District |] | |
| | Thane – 401 105. |] | |
| 8) | M/s. Kanika Properties Pvt. Ltd. |] | |
| | Through their constituted Attorney |] | |
| | Shri. Shailesh Sevantilal Shah |] | |
| | having their office at 349, Business |] | |
| | Point, 5 th Floor, Western Express |] | |
| | Highway (East), Mumbai. |] | |
| 9) | Shri Shailesh Sevantilal Shah, |] | |
| | having its office at Sulbha Sadan. |] | |
| | Goddeo Phathak Road, |] | |
| | Bhayandar (East), |] | |
| | Taluka and District – Thane – 401 105. |] | |
| 10) | M/s. Sundar Goldstar Developers |] | |
| | A Partnership Firm, having its office |] | |
| | At 101, Monalisa, Station Road, |] | |
| | Malad (West), Mumbai – 400 064. |] | |
| | Through its partner. |] | |
| | (a) Shri. Paragnesh Manubhai Shah. |] | |
| | (b) Shri. Atul Ajitkumar Shah. |] | ...Respondents. |

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Smt. S. A. Mudbidri, Advocate for Petitioner.

Mr. C. P. Deogirikar, Advocate for Respondent Nos.1-C to 1-F.

Mr. P.P. Pujari, AGP for Respondent No.6 – State.

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CORAM : A. S. GADKARI, J.

DATE : 13TH AUGUST, 2019

ORAL JUDGMENT :-

1. By the present petition under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the Judgment and Order dated 27.03.1996 passed by the President, Maharashtra Revenue Tribunal, Mumbai in Revision Application bearing No. TEN/A.100 of 1995, dismissing the said Revision and confirming the Order dated 02.02.1994 passed by the Sub-Divisional Officer, Thane in Tenancy Appeal No. 3 of 1994 and the Order dated 22.09.1993 passed by the Additional Tahsildar and Agricultural Lands Tribunal, Thane (for short, "ALT") in Tenancy Case No. 32-G-31 of 1992.

2. Heard Smt. Mudbidri for the petitioner, Shri Deogirikar for the respondent Nos. 1-C to 1-F and Shri P. P. Pujari, AGP for respondent No. 6 – State. Perused the record. The record indicates that, the other respondents are duly served, however none appeared for them.

3. The land in question is bearing old Survey No. 4/9 (New Survey No. 106) admeasuring 96-6 ares situated at village Navghar, Taluka and District Thane. The petitioner is the landlord. The record indicates that, the original respondent No.1 – Dhaneshwar Vithal Patil had filed an application under Section 32-G of Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "BTAL Act") for

determining the purchase price of the suit land. It was contended that, the name of tenant was recorded into other rights column of the revenue records maintained by the Authorities. A notice was accordingly issued to the landlord. The landlord filed its say in the matter and examined necessary witnesses. The ALT, Thane by its Order dated 22.09.1993 held that the Dhaneshwar V. Patil was tenant in the suit property on 01.04.1957 and cultivating the suit land prior to it. The purchase price of the suit land were accordingly fixed by the ALT, Thane by the said Order dated 22.09.1993.

The ALT, Thane in its Order dated 22.09.1993 has observed that, original names of Shri Vithal Shinwar Patil and Shri Pandurang Sakharam were recorded in the other rights column of the 7/12 extract in the revenue records. Shri Vithal S. Patil is father of the petitioner Dhaneshwar i.e. respondent no.1 herein. The suit land was held by Vithal S. Patil and Pandurang Sakharam as joint tenancy. That Pandurang Sakharam died prior to 25 years before filing of the application under Section 32-G of the said Act, by Dhaneshwar V. Patil. Wife and son of Pandurang Sakharm were also not alive on the date of the filing of the said application. Pandurang Sakharam had one daughter and was married and staying with her husband. The respondent no.1 had given statement on oath that the

name of the deceased Pandurang was wrongly recorded in the other rights column in the 7/12 extract, though he never cultivated the suit land on or prior to 01.04.1957 till the date of filing of application under Section 32-G.

4. The petitioner being dissatisfied by the Order dated 22.09.1993 passed by the ATL Thane, preferred Tenancy Appeal No. 3 of 1994 under Section 74 of the BTAL Act. The Appellate Authority after re-appreciating the entire evidence on record dismissed the said appeal by its Judgment and Order dated 02.02.1994.

The Revision preferred under Section 76 of the BTAL Act by the petitioner has met with the fate of its dismissal by the impugned Judgment and Order dated 27th March 1996.

5. Smt. Mudbidri, learned counsel for the petitioner submitted that, in the present case, the ALT ought to have first conducted the proceedings under Section 70(b) of the BTAL Act for ascertaining the tenancy rights of Dhaneshwar V. Patil. That Vithal S. Patil and/or Dhaneshwar Patil were, in fact, not tenants in the suit property and were not cultivating the suit land on 01.04.1957. She further submitted that, the ALT Thane did not issue notice to the daughter of Pandurang Sakharm, before arriving at the conclusion

that, the name of Pandurang was wrongly recorded in the Revenue Records as a tenant. She further submitted that, during the pendency of the present petition, original respondent Nos. 1 to 5 have transferred the suit land in favour of respondent Nos. 7 to 10 and therefore the respondents tenants as of today have lost their status as “tenants” in the suit property. She submitted that, all the authorities below have committed an error in allowing application of the respondent no.1 under Section 32-G of the BTAL Act and therefore the said impugned Order requires interference by this Court. She, therefore, prayed that impugned Orders may be quashed and set aside by allowing the present Writ Petition.

6. Mr. Deogirikar, learned counsel for respondent Nos. 1-C to 1-F and Mr. Pujari, learned AGP for respondent No.6-State vehemently opposed the petition by supporting the impugned orders.

Mr. Deogirikar, learned counsel for respondent Nos. 1-C to 1-F further submitted that, while passing the impugned Orders, all the authorities below have recorded concurrent findings and the same need not be disturbed. He therefore prayed that the present petition may be dismissed.

7. Perusal of the record would clearly indicate that, the

respondent no.1 Dhaneshwar Patil was cultivating the suit land since the year 1951. He was in physical possession and was also cultivating the suit land on 01.04.1957. The said land was initially granted to Vithal Shinwar Patil i.e. the father of Dhaneshwar by the petitioner for cultivation. The record clearly reveals that, the Talathi Saja or Village Navghar has given a report by its letter dated 21.01.1993 that, the suit land is in possession of the applicants therein.

8. As noted earlier, on 01.04.1957 the respondent Nos. 1 to 5 herein were cultivating the suit land and were in actual possession of it. As far as, the issue pertaining to the joint tenancy by Pandurang Sakham is concerned, the record reveals that, Pandurang Sakham died 25 years prior to filing of application under Section 32-G by the respondent Nos. 1 to 5. His wife and son were also not alive on that date. Though there is an observation made by the ALT Thane that, Pandurang Sakham was survived by a daughter, the petitioner herein did not take any efforts to trace her out and requested her to lead evidence in support of his case that Pandurang Sakham was also cultivating the suit land on the tillers day.

9. The record further clearly indicates that, the ALT Thane, therefore, on the basis of the statement made by Dhaneshwar Patil proceeded to hold that name of Pandurang Sakharam was wrongly entered into the other rights column of 7/12 extracts of the revenue records. As noted earlier, the Sub-Divisional Officer in Tenancy Appeal No.3 of 1994 after re-appreciating the entire evidence available on record was pleased to dismiss the same by its Judgment and Order dated 02.02.1994. The Revenue Tribunal has rejected the Revision by Judgment and Order dated 27.03.1996.

10. The Hon'ble 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."

11. As far as the contention by the learned counsel for the petitioner that during the pendency of the present petition, the respondent Nos. 1 to 5 have transferred the suit property in favour of respondent Nos. 7 to 10 is concerned, it appears from the record that at the time of admission of the present petition, this Court did not grant interim relief to the petitioner and therefore, it appears that the respondents were not restrained from transferring the said suit land. The petitioner is at liberty to adopt appropriate legal proceedings for challenging the sale of said land by respondent Nos. 1 to 5 in favour of respondent Nos. 7 to 12 if permissible under the law and if so advised.

Be that as it may, however, it is not the point for consideration in the present petition as to whether the respondents herein have rightly transferred the suit land in favour of respondent Nos. 7 to 10 or not. The scope of the petition is limited to the challenge of impugned Orders as noted herein above.

12. The pleading in petition and arguments advanced by the learned counsel for the petitioner amounts to re-appreciation of evidence. After perusing the entire record, this Court is of the considered view that, all the Authorities below have not committed

any error either in law or on facts while considering the claim of the respondent Nos. 1 to 5 under Section 32-G of the BTAL Act. This Court is of the considered view that, there are no merits in the petition.

13. Writ Petition is accordingly rejected.

(A. S. GADKARI, J.)