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

**WRIT PETITION NO. 4855 OF 2019**

Tanaji Laxman Chikke (Since decd through LR's) .....Petitioners

V/s.

Smt. Manglabai Narayan Kalkundrikar (Since decd.) through LR's and another .....Respondents

Mr. G. N. Salunkhe i/b Mr. Anand Patil & Associates for the  
Petitioner  
Mr. Sandeep Pathak for respondent nos. 1(A) & 1(B)

**CORAM : NITIN W. SAMBRE, J.**

**DATE : JUNE 26, 2019.**

**P.C.**

Heard learned counsel for the petitioner at length. The proceedings are under the provisions of Maharashtra Tenancy and Agricultural Lands Act. 1948 (Hereinafter referred to as 'the Act' for sake of brevity) .

2 The petitioner claiming to be protected tenant under the Act

has questioned the order dated 22/01/2018 passed by Maharashtra Revenue Tribunal ('MRT' for short) whereby in Revision, the order passed by the Sub-Divisional Officer confirming the order of Agricultural Land Tribunal came to be set aside. The facts necessary for deciding the petition are as under:

(i) Father of the petitioner namely Balu was subjected to proceedings under Section 32G of the Act for determination of purchase price. Since said Balu failed to appear before Agricultural Lands Tribunal, the order deciding purchase price was declared to be ineffective under Sub-Section 3 of Section 32G of the Act.

(ii) As a sequel of aforesaid order, respondent-landlord moved a prayer for resumption of land pursuant to provisions of Section 32P of the Act which was allowed on 30/05/1962 and it is claimed that by possession Panchanama dated 23/01/1975, possession of the land came to be handed over to the respondent-landlord. In the aforesaid background, having noticed that mutation of the land in question is not ordered in favour of the respondent pursuant to the

request made by the respondent on 29/06/2002, the petition was ordered in favour of respondent-landlord by Tahsildar vide order dated 03/07/2002. The said order appears to have passed in exercise of powers under Section 149 & 150 of the Maharashtra Land Revenue Code.

(iii) The Appeal preferred by the petitioner against the aforesaid order claiming to be under Section 74 of the Act suffered fate of dismissal.

(iv) As a consequence of aforesaid two orders, one passed in exercise of powers under Section 32G and other in exercise of powers under Section 32B, after the Sub-Divisional Officer ('SDO' for short) dismissed the Appeal under Section 74 of the Act on 14/11/2003, the same was subject matter of challenge in Revision No. 11 of 2004 before MRT which came to be dismissed on 22/11/2018. Hence, this petition.

3 In the aforesaid background, while questioning all three orders

viz. Order of MRT referred above and the order passed under Section 32G & 32P of the Act, the learned counsel for the petitioner submits that the proceedings in the nature of 32G & 32B which was followed with a Panchanama for handing over possession drawn on 23/01/1975 is nothing but the forged documents/proceedings taken out by the respondent-landlord. According to petitioners, original tenant Balu died on 25/05/1974 whereas possession Panchanama taking over possession by the respondent-landlord pursuant to order dated 30/05/1962 passed in exercise of powers under Section 32P came to have been drawn on 23/01/1975 i.e. after the death of Balu which in clear terms speaks of fraud practice. It is further claimed that neither in the proceedings under Section 32G or 32P notice was served on predecessor of the petitioners namely Balu. The learned counsel for the petitioner has invited attention of this Court to the alleged mutation entry in the name of legal representatives i.e. petitioners. It is also claimed that since the suit at the behest of the petitioner is pending, MRT should have been slow in causing interference.

4 While questioning the aforesaid submissions, the learned counsel for respondent-landlord would submit that original orders namely one passed under Section 32G against the predecessor of the petitioner on 29/02/1966 and order dated 30/05/1962 passed in exercise of powers under Section 32P, was for the first time questioned by the petitioner before SDO after a period of almost 40 years for which no convincing explanation is coming forth. It is also claimed that petitioner are agitating their grievance through a suit for injunction in Regular Civil Suit (RCS) No. 55 of 2009 pending on the file of Civil Judge, Junior Division, Chandgad, District Kolhapur. As such, the submissions are, once through a possession Panchanama which is consistently believed by all the three Authorities below, the possession is received by respondent way back in 1975 and since the order impugned passed under Section 32G and 32P are questioned after period of 40 years, petition is liable to be dismissed.

5 Considered rival submissions.

6 The pendency of civil suit for injunction between the parties to the petition being RCS No. 55 of 2009 is not disputed.

7 The only important issue which needs to be addressed pursuant to the arguments of the petitioner is, whether this Court can look into the alleged aspect of drawing possession Panchanama dated 23/01/1975 pursuant to order dated 30/05/1962 passed in exercise of powers under Section 32P of the Act.

8 Both the Authorities below i.e. MRT & SDO have concurrently held against the petitioner thereby observing that possession was received by the respondent-landlord on 23/01/1975. The death certificate produced by the petitioners on record on the record of Authorities below appears to have been disputed by respondent-landlord as is apparent from order passed in Second Appeal No. 8 of 2004 against mutation entry by the Additional Collector, Kolhapur.

9 In the aforesaid background, in the given facts and circumstances, both Authorities below have noticed that notice

served on Balu Chikke thereby serving order dated 30/05/1962 and the postal acknowledgment to that effect can be borne out of record.

10 Apart from above, the fact remains that petitioners are claiming that they are in possession of the property, however, record demonstrates that possession was handed over to the respondent and as such, a suit for injunction between the parties is already pending adjudication.

11 In the aforesaid background, in my opinion, no case for showing any indulgence is made out. Petition as such fails, stands dismissed.

12 Needless to say that proceedings between the parties viz. RCS No. 55 of 2009 be decided independent of aforesaid observations.

**[NITIN W. SAMBRE, J.]**