

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

WRIT PETITION NO. 6071 OF 1996

1. Govind Genaba Sable
(Deleted as per Order dated 15/10/2018)
2. Mohan Genaba Sabale
(Since deceased) Through LR.
- 2(i) Smt.Nirmala Mohan Sabale
- 2(ii) Devidas Mohan Sabale
- 2(iii) Vinod Mohan Sabale
- 2(iv) Smt.Rupali Mohan Sabale
All R/o. A/p. Veer, Tq.Purandhar,
District Pune.

... **Petitioners**

V/s.

1. Pramod Prabhakar Panse
2. Shirish Prabhakar Panse
3. Prafulla Prabhakar Panse
4. Pradeep Prabhakar Panse
5. Smt.Vimalabai Prabhakar Panse
(Since deceased) Through LR.
- 5(a) Pramod Prabhakar Panse
- 5(b) Shirish Prabhakar Panse
- 5(c) Prafulla Prabhakar Panse
- 5(d) Pradeep Prabhakar Panse
All R/at 319, Hingane Khurd,
Behind Dispensary of Dr.Bhagali,
Sinhgad Road, Pune-51.
- 5(e) Sou. Ashwini Arun Brahme
R/at Brahman Ali, Saswad,
Tq.Purandar, District Pune.
6. Sou. Ashwini Arun Brahme
R/at Brahman Ali, Saswad,
Tq.Purandar, District Pune.

... **Respondents**

Ms.A.R.S. Baxi for Petitioners.
Mr.Uday Warunjikar i/b. Mr.S.A. Pilankar for Respondent
Nos.1 to 4 & 6.

CORAM : A.S. GADKARI, J.

DATE : 1st August 2019.

ORAL JUDGMENT :-

1] The present petition filed under Article 227 of the Constitution of India takes exception to Order passed in Revision Application No. MRT.P-VIII-2/1994 (TNC.B.-269/94) filed by the petitioners under Section 76 of *the Bombay Tenancy and Agricultural Lands Act, 1948* (for short, “*B.T.A.L. Act*”) dismissing the said Revision and confirming the Order passed by the Revenue Authorities below.

2] Heard Ms.Baxi, the learned counsel for the petitioners and Mr.Warunjikar, the learned counsel for Respondent Nos.1 to 4 & 6. Perused the record.

3] Initially Petitioner No.1-Govind Genba Sable and Petitioner No.2-Mohan Genaba Sable had filed this Writ Petition claiming tenancy rights in the suit property through their father Genaba Sabale.

The record discloses that, on 15/10/2018, the petitioner No.1-Govind Genaba Sable, submitted before this Court that, he does not want to pursue the present petition and filed an affidavit dated 28/06/2018 stating that, the present petition No.6071 of 1996 and Writ Petition No.6072 of 1996 were filed by him due to misunderstanding and he has no claim in the suit property. Therefore by an Order 15/10/2018 the name of the petitioner No.1-Govind Genaba Sable was deleted from the record of present petition and Writ Petition No. 6072 of 1996.

It is to be further noted hear that, the legal heirs of Sadashiv Sable had filed Civil Application No.651 of 2016 to intervene in the present petition, which was dismissed by this Court by its Order dated 13/01/2017, holding that, the said applicants were not parties to the proceedings before the lower authorities including the Revenue Tribunal and the said applicants had given up their rights in respect of the suit lands in-question, which was recorded in the statement before the ALT Purandar.

4] In this backdrop the present petition is taken up for final hearing.

Shorn of unnecessary details, the facts giving rise to the present petition can be summarized as under :

(i) The land in-question herein is bearing Gat No.229 (old Survey No.226) admeasuring 13 Hectors and 55 Ares as well as Gat No.228 (old Survey Nos.63, 64 and 65) admeasuring 5 Hectors and 29 Ares lying and situated at village Tondal, Taluka Purandar, District Pune. The suit lands belongs to the respondents-landlords.

In the aforesaid suit land there were in all three tenants, namely, Laxman Krishna More having 50% of the share, Kondiba More having 25% of the share and it is claimed that the father of the petitioner Genaba Sable was having 25% of the share in the suit land.

(ii) The record further indicates that the grand father of petitioner, namely, Mahadeo Sable was alleged to be tenant in the suit property and after him, name of his other son Sadashiv was entered into the revenue records as tenant. Father of the petitioners, namely, Genaba Sable and Sadashiv Sable were real brothers and successors in-title of Mahadeo. The record further indicates that on 01/04/1957 i.e. on the tillers date, name of Sadashiv Sable was recorded in the revenue records as a tenant, as he was actually cultivating the suit land. A Mutation

Entry No.1060 (*sic* 1063) dated 16/12/1953 was effected in that behalf.

(iii) The revenue authorities had given an opportunity to Sadashiv Sable to purchase the said land as contemplated under Section 32G of the B.T.A.L. Act. The Agricultural Lands Tribunal (ALT) Purandar in its Order dated 01/11/1993 passed in the proceedings bearing Case No.32-P/Tondal/4/93 initiated by the respondents under Section 32P of the B.T.A.L. Act has observed that, Sadashiv Sable was twice given opportunity to purchase the suit land under the provisions of the said Act, however, he refused to purchase it. The record also indicates that in the year 1961 Sadashiv Sable gave a statement before ALT Purandar stating that his name was wrongly mentioned as a tenant and his name may be removed from the revenue record. It further appears from record that, in the year 1964 Sadashiv Sable was examined as a witness in the suo-moto proceedings initiated by the revenue authorities under Section 32G of the B.T.A.L. Act and his statement was recorded in the said enquiry, wherein he reiterated the said fact and declined to purchase the suit property. On 18/11/1968 the ALT Purandar decided the proceedings under Section 32G by holding that, Sadashiv Sable was not a tenant in the suit land and he had also declined to purchase the suit

land. His name was accordingly deleted from the revenue record and the Mutation Entry No.1527 was accordingly effected.

(iv) The record further indicates that, on 21/12/1987 Laxman Krishna More i.e. the other tenant filed an application under Section 32G of the B.T.A.L. Act for fixing the price of the suit land belonging to his share. In the said proceedings, after recording evidence, the ALT Purandar came to the conclusion that Laxman More was not cultivating the suit land on 01/04/1957 and was never a tenant in the suit land. The ALT Purandar by its Order dated 31/03/1993 accordingly rejected the application filed by Laxman More. In the said Order also, it is observed that, during the proceedings conducted by the ALT Purandar, Sadashiv Sable gave a statement and as he declined to purchase the suit property, a Mutation Entry No.1527 deleting his name has been effected.

It is to be noted here that, Krishna More or his heirs did not challenge Order dated 31/03/1993 passed by the ALT Purandar in Case No.32-G/Tondal/03/88.

(v) The record discloses that, though Krishna More did not prefer appeal against the said Order dated 31/03/1993 passed by the ALT, Purandar, the petitioners preferred appeal under Section 74 of the

BTAL Act before the Sub-Divisional Officer, Bhore, Sub-Division, Pune, bearing TNC Appeal No.5 of 1994. The Sub-Divisional Officer, Bhore by its Judgment and Order dated 20/05/1994 has dismissed the said appeal and confirmed the Order passed by the ALT, Purandar. In the said Judgment and Order dated 20/05/1994 the Sub-Divisional Officer, Bhore has made a passing reference that, at the time of conducting proceedings under Section 32G, on an application by Laxman More, the Tahsildar Purandar had issued notice to other tenants, namely, Shevantabai Tatyia More and Genaba Mahadeo Sable.

(vi) The Revision No.02 of 1994 preferred under Section 76 of the B.T.A.L. Act has been turned down by the Maharashtra Revenue Tribunal by its impugned Order dated 30/07/1996.

5] A minute scrutiny of the material available on record would clearly indicate that Genaba Sable was never in possession of the suit land and was not cultivating it as a tenant.

It is important to note here that, Genaba Sable during his lifetime never filed an application under Section 32G of the B.T.A.L. Act on the ground that, he was a protected tenant in the suit land and the price of the said land be fixed. As noted earlier in the suo-moto

proceedings initiated by the revenue authorities Sadashiv Sable had given a statement that, he was not willing to purchase the said land and his name may be deleted from the revenue record. The petitioners are claiming succession through Mahadeo Sable. The revenue record clearly indicates that, after Mahadeo Sable, the name of Sadashiv Sable was entered into the revenue record and it came to be deleted by effecting Mutation Entry No.1527 on the statement made by Sadashiv Sable on that behalf. It appears to me that, taking advantage of the said passing reference made by the Sub-Divisional Officer, the petitioner is strenuously harping an assertion that, his father was tenant in the suit property.

6] As noted earlier, the father of the applicants was never tenant in the suit land and it appears to be the reason for his not filing an application under Section 32G of the B.T.A.L. Act for fixing of the price of the suit land. The record further clearly indicates that, the petitioner and/or his father were never tenants in the suit lands and therefore, their claim under Section 32-G of the said Act has been rightly rejected by all the Authorities below.

7] Apart from the aforesaid fact, there are concurrent findings

recorded by all the three 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 *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.

9] 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 restrain 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*.

10] The pleadings of the petitioner and the arguments advanced in that behalf amounts to re-appreciation of evidence on record. 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.

Petition being devoid of merits is accordingly rejected.

[A.S. GADKARI, J.]