

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6526 OF 2019

Rohini Ravindra Mestry and others ... Petitioners
Vs.
Madha Mahendra Mhatre and others ... Respondents

Mr. Sumit S. Kothari for Petitioners.
Ms Vrushali Kabare for Respondents.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 08, 2019

P.C. :

Heard Mr. Kothari, learned counsel for the petitioners and Ms Kabare, learned counsel for the respondents.

2. The controversy in question has been succinctly summed up by this Court in the order dated 02.08.2019, which is extracted hereunder:

“ Order passed rejecting an application moved under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ('the Act' for short) on 22/08/2013, at the behest of the father of the petitioner will operate *res-judicata* in the fresh proceedings taken out by the petitioner for the similar relief, is an issue which required to be appreciated.

2 32G proceedings initiated by the petitioner were answered by the Tahsildar and in an Appeal in favour of the petitioner. For the sole reason that these two orders and the proceedings initiated by the petitioner are hit by the principle of *res-judicata*, orders were quashed and set aside by the Maharashtra Revenue Tribunal.

3 Perusal of the earlier order passed in favour of father of petitioner on 22/08/2013 of which the petitioner sought review, *prima facie*, demonstrate that said order was passed without going into the merits of the matter and on the technicality that since land in question is located within the municipal limits of Murud Municipal Council.

4 The fact remains that earlier order dated 22/08/2013 passed at the behest of the father of the petitioner is without hearing him and also without analysing merits of the matter. That being so, in my *prima-facie* opinion, embargo under Section 11 of the Code of Civil Procedure will not operate against the petitioner.”

3. Though not very relevant still the operative portion of the impugned order dated 28.03.2019 passed by the Maharashtra Revenue Tribunal (hereinafter Tribunal) in revision may be adverted to which is as under:

“8. The controversy referred to above between the parties, can be set at rest in the light of above events. The legal position, initiation of subsequent application and order by Ld. Tahsildar, dt. 3/3/2017, will definitely suffer from rigours of section 11 of C.P.C. If section 11 with explanation (1) to (8) are read conjointly, it emerges that there already operates an order against the tenant by communication dt. 22/8/2013 from the office of Tahsildar, Murud (Janjira) and the legal character of said order having not been questioned in proper appellate forum or to the higher authorities, it will operate with its rigours and impact against the tenant. Said order cannot be, at this stage, be branded to be haze or non existent. The acceleration tried to be given to section 257 of Maharashtra Land Revenue Code, 1966, either by Ld. Tahsildar or by Ld. Sub-Divisional Officer, is on factual backdrop erroneous and rather unsustainable.

9. One should not be divorced to the legal position enumerated hereinbefore and even if Adv. Shri Ranade has tried to deal with Section 43C of the Act of 1948, the major block of res judicata will certainly operate and create a hindrance for taking subsequent proceedings on same cause of action and for the same relief between the same parties litigating under the same cause. In the result, the Revision is allowed.

Order

1. Revision Application No.TNC/REV/RAG/304/2017 is allowed. The order of Ld. Tahsildar, Murud (Janjira) dt.3/3/2017 and that of Ld. Sub-Divisional Officer, Alibag dt. 29/9/2018 both are set aside.

2. In the light of dismissing the orders of Ld. Tahsildar and Sub-Divisional Officer, referred to above, the consequential development including issuance of certificate u/s. 32M of the Act of 1948 will be ineffective.

3. The rights of the tenant to question legality and correctness of order / communication dt. 22/8/2013 remains unbridled subject to limitation.

4. No costs.”

4. In the light of the finding arrived by this Court in the order dated 02.08.2019, I am of the view that the matter is required to be remitted back to the Tribunal for fresh adjudication of the revision application filed by the respondents on merit since evidently, there is no question of any *res judicata* operating against the petitioners.

5. At this stage, learned counsel for the respondents submits that petitioners are not tenants being relatives of the respondents and, therefore, they would not be entitled to the benefits of Section 32G of the Maharashtra Tenancy and Agricultural Lands Act.

6. Since the revision was allowed only on the ground that the claim of the petitioners were hit by the principle of *res judicata* and, therefore, the orders of the lower authorities were erroneous, it may not be necessary to delve into the merit of the controversy. All contentions of the rival parties are kept open which may be agitated before the revisional authority.

7. Consequently, impugned order dated 28.03.2019 passed by the Tribunal in TNC/REV/RAG/304/2017 is set aside with further direction to the said Tribunal to adjudicate afresh the revision application on merit and in accordance with law within a period of two months from the date of appearance of the parties.

8. Since both the parties are represented before the Court, let them appear before the Tribunal on 10.12.2019 at 10.30 a.m. whereafter Tribunal shall proceed with the revision application and decide the same as indicated above.

9. Writ Petition is disposed of.

(UJJAL BHUYAN, J.)