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

WRIT PETITION NO.4894 OF 1996

Shri Dattatray Pandharinath Bodake & Ors.

..Petitioners

Vs

Smt. Shantabai Kashinath Pawar & Ors. .

..Respondents

Mr. Gurudas S. Gorwadkar for the Petitioner.

Ms. M.S. Bane,AGP for the respondent No.3.

CORAM : A.S.GADKARI, J.

DATE : 22nd July 2019.

P.C.:

1] By the present petition under Articles 226 and 227 of the Constitution of India, petitioners, the purchasers of suit land have impugned the Judgment and Order dated 10th July 1996 passed by the learned President of Maharashtra Revenue Tribunal,Mumbai in Rev.Trb.5 of 1995.

2] Heard the learned counsel for the petitioners and the learned AGP for the respondent No.3. The respondent Nos.1 and 2 are duly served. However, none appears for them despite service.

3] The record indicates that, suit land in question is bearing Gat No.293 admeasuring 3 acres and 11 ares, lying and situate at village Shimpi Takali, Taluka Niphad, District Nashik. That, Shri Pandharinath Abaji Bodake i.e. father of the petitioner No.1 had purchased the suit land from Dasharath Madhu Shelar by a registered Sale Deed dated 18th March 1969 and he was put in possession of the suit land. It is the case of the petitioners that, Shri Pandharinath Bodake incurred huge amount towards betterment and making the suit land cultivable. After the death of Pandharinath Bodake, the petitioners are in peaceful possession and occupation of the suit land.

After the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (for short 'the said Act') came into effect, Tahasildar, Niphad initiated an enquiry under the provisions of the said Act and came to the conclusion that, transferor namely Dasharath Shelar belonged to scheduled tribe and as such, transaction between Pandharinath Bodake and Dasharath Shelar was invalid. The Tahasildar, Niphad therefore directed, Pandharinath Bodake to restore possession of the suit land in favour of respondents who are the legal heirs of Dashrath Shelar.

4] Being aggrieved by the decision of the Tahasildar, Niphad, Pandharinath Bodake/father of the petitioner No.1 preferred an appeal

before the Sub-Divisional Officer, Niphad. However, the said appeal came to be dismissed by the Sub-Divisional Officer, Niphad by its Order dated 11.8.1991. Thereafter, second appeal was preferred by Shri Pandharinath Bodake bearing No.RTS.143 of 1981 before the Additional Collector, Nashik which was turned down by the said Authority by its Order dated 14.6.1982.

5] The record reveals that, petitioner filed revision bearing No.237 of 1982 against the Order dated 14.6.1982 and the same was partly allowed by the Additional Commissioner, Nashik by its Order dated 13.12.1990. By the said Order, the Additional Commissioner, Nashik remanded the said case back to the Sub-Divisional Officer, Niphad Division, for fresh enquiry and decision according to law. After remand, the said proceedings were numbered as Tenancy Revision No.4181 of 1990 before the Sub-Divisional Officer. The Sub-Divisional Officer after hearing the parties and after taking into consideration the contentions of the respondents was pleased to further remand the matter to the Tahasildar, Niphad with a direction to start proceedings under section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, as per observations made by the Additional Commissioner, Nashik Division, Nashik in its Order dated 13.12.1990.

6] After remand of the said case i.e. Valid Case No.1 of 1994 to the Tahasildar, Niphad, the Tahasildar again heard the parties to the case and after recoding say of the parties, reached to the conclusion by its Judgment and Order dated 25.4.1994, that the transferors failed to produce any documentary evidence to prove that they are tribal, to comply with the statutory provisions for transfer of the suit land in favour of the petitioners. The Tahasildar therefore dropped the enquiry under section 3 of the said Act.

7] The respondents feeling aggrieved by the decision of the Tahasildar, Niphad, preferred Revision bearing No. Rev.Trb.5 of 1995 before the Maharashtra Revenue Tribunal at Mumbai. The Revenue Tribunal after reappreciating the entire evidence available on record and after analysing the relevant provisions of the law was pleased to allow the said Revision and set aside Order dated 25.4.1994 passed by the Tahasildar, Niphad. The Revenue Tribunal by its Judgment dated 10.7.1996 directed the petitioners to restore the possession of the suit land forthwith in favour of the respondent Nos.1 and 2 who are tribals. The Revenue Tribunal has observed that, the respondents at the time of filing of the appeal before the Tribunal had filed Caste Certificate Nos.126 and 127

of 1994 dated 28.6.1994 issued by the Executive Magistrate, Niphad, wherein the respondents have been declared to be 'Hindu Bhil' belonging to Scheduled Tribe. That the said Caste Certificate issued in the year 1994 has not been challenged by the respondents and therefore there is no reason to disbelieve it.

8] The Supreme Court in the case of *Krishnanand (Dead) Through Legal Representatives & Ors. Vs. Deputy Director of Consolidation & Ors.* reported in (2015) 1 SCC 553 has held that, it is a settled law that, a jurisdiction under Article 226 of the Constitution cannot be exercised for re-appreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or acted is patently perverse. It is further observed that, interference with concurrent findings of fact can be called for only on the ground that authorities/Courts below acted perversely i.e. lacked or exceeded jurisdiction or rendered perverse findings.

It is observed in para 7 of the said decision that, a plain reading of the impugned Order therein shows that, the High Court had committed an error in re-appreciating the evidence by setting aside the findings of fact,

which is normally impermissible in exercise of its jurisdiction under article 226 of the Constitution of India.

9] 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.

10] 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*.

11] A perusal of the record would indicate that, the petitioners herein are not tribals. The Caste Certificate issued by a Competent Authority in favour of the respondents is an admitted document on record. The necessary mandatory provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 have not been complied with by the petitioners. Without complying the said provisions, the father of the

petitioner No.1 executed the said Sale Deed and got transferred the suit land in his favour from Dasharath Shelar. It is an admitted fact on record that, late Dasharath Shelar was belonging to scheduled tribe whose legal heirs are the respondent Nos.1 and 2 herein. In view of the provisions of the said Act, suit land cannot be transferred in favour of non-tribals. The Revenue Tribunal has taken into consideration all the necessary and relevant aspects of the matter and has reached to the said conclusion in its Judgment dated 10.7.1996.

12] The pleadings in petition and arguments advanced by the learned counsel for the petitioners amounts to reappreciation of evidence on record. After taking into consideration the entire record made available, this Court finds no error in the impugned Judgment and Order passed by the Revenue Tribunal, either in law or on facts. No interference is called for by this Court in the impugned Judgment and Order.

This Court finds no merit in the petition and it is accordingly rejected.

(A.S.GADKARI, J.)