

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

WRIT PETITION NO.7937 OF 2018

Murgendra Dhanappa Sawale (since
deceased through legal heirs)

1a. Ramesh Murgendra Sawale and

Ors.

...Petitioners

Versus

Gurulingeshwar Devasthan and Anr.

...Respondents

.....

Mr. Bhooshan Walimbe with Mr. Shashank P. Borade for the
Petitioners.

Mr. Vijay Killedar for the Respondent No.1.

Mr. Y.D. Patil, AGP for the Respondent No.2-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 30th JANUARY, 2019.

P.C.:-

With consent, heard finally at the stage of admission.

2. The Petitioners herein have challenged the order dated 9th April, 2018 passed by the learned Member of Maharashtra Revenue Tribunal Pune Camp Kolhapur in Revision Application No.SS/VII/1/2016 confirming the order dated 19th May, 2016 passed by the Sub-Divisional Officer, Jath in Tenancy Appeal No.14 of 2015 and order dated 14th July, 2015 passed by the learned Tahasildar and A.L.T., Jath in Tenancy Case No.Kulvahiwat/SR/11/2014.

3. Heard the learned counsel for the respective parties. I have perused the records.

4. The Petitioners claimed to be protected tenants of the properties under Gat No.292 and 293 of Village Dafalpur Taluka-Jath, District Sangli. The records indicate that the Petitioners had filed proceedings under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short 'the Act'). The learned ALT had passed an order under Section 32G of the Act. The SDO had allowed the appeal filed by the Trust holding that the Trust being registered the provisions under Sections 32G to 32R of the Act are not applicable. The order of the SDO had been upheld by the MRT and the writ petition filed against the said order was dismissed by this Court on 17th January, 2011.

5. The Respondent-Trust thereafter filed an application under Section 29(2) of the Act, which was registered as Tenancy/SR/11/2014. The Petitioner had specifically stated that the Application was not maintainable as the same was filed beyond two years from the date of the order of this Court i.e. 17th January, 2011.

The learned Tahasildar and A.L.T., Jath, have allowed the said application filed by the Respondent No.1-Trust without lending any finding on the issue of limitation. The Petitioners unsuccessfully challenged the order before the SDO and aggrieved by the order of the SDO he filed revision before the MRT.

6. The learned Member of the MRT has for the first time recorded a finding that the application under Section 29(2) of the Act was filed in the year 2012 and not in the year 2014.

7. The learned Member of the MRT has observed that the original application bears the date 17.9.2012 and that someone might have changed the date in certified copy as 7.7.2014. The learned Member further observed that since the application was filed on 17.9.2012 the same is within the period of limitation.

8. It is to be noted that the Petitioner had specifically averred that the application was filed beyond the period of two years from the date of the order of the High Court. There was no denial of this statement in the reply filed by the Respondent No.1-Trust. The Respondent No.1-Trust had also not made any categorical statement in

the reply that the said application under Section 29(2) of the Act was filed in the year 2012. The learned counsel for the Petitioners submitted that though the learned Member of the MRT has held that the original application under Section 29(2) was filed on 17.9.2012, he has failed to note that the stamp affixed on the said application is of 10.12.2012. Said application was registered as Tenancy Application No. 524 of 2012. Notice issued in Tenancy Proceedings No.524 of 2012 (Exhibit-F) is in respect of application received for deletion of mutation entry. All the above facts, in fact raise a doubt as to whether the application under Section 29(2) was in fact filed on 17.9.2012. The learned Member of the MRT had not given any opportunity to the Petitioners to explain the aforestated discrepancies. Under the facts and circumstances, the finding of the learned Member of the MRT that the proceedings under Section 29(2) were filed in the year 2012 cannot be sustained. Since the issue of limitation was not considered by the learned ALT, the matter is required to be remanded to consider the issue of limitation.

9. Under the facts and circumstances, the petition is allowed. The impugned order is set aside. The matter is remanded to the learned ALT. The Learned ALT is directed to decide the objections

raised by the Petitioners after giving opportunity of hearing to all the concerned parties. It is made clear that I have not gone into the merits of the matter and all the points and contentions of the respective parties are expressly kept open.

10. Parties to appear before the ALT, Jat on 18.2.2019 at 11.00 a.m.

11. All concerned to act on an authenticated copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)