

Dond

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

WRIT PETITIOIN NO. 6309 OF 2014

Shri Mahadev Ballappa Burud & Anr.

..Petitioners

Vs

Shri Balwant Mandrekar & Ors

..Respondents

Mr. Uday Nighot, for the Petitioners.

CORAM : A.S.GADKARI, J.

DATE : 11th June 2019.

P.C.:

1] By the present petition under Article 227 of Constitution of India, the petitioners have taken exception to the concurrent findings recorded by the three Authorities below.

2] Heard the learned counsel for the Petitioners. Perused the record.

3] The record indicates that, in Regular Civil Suit No.281 of 1996 filed by the petitioners herein, in the Court of Civil Judge, Junior Division, Chandgad, District Kolhapur, the Civil Court referred the matter to the Revenue Authority i.e. Tahasildar/Agricultural Lands Tribunal by framing the following issue :-

“Whether Plaintiffs and their ancestors are cultivating the suit lands since prior to the year 1957 as tenants ?

4] It is the contention of the petitioners that, the land in question namely R.S. No.108 and 122 lying and situate at village Turkewadi, Taluka Chandgad, District Kolhapur was originally owned by Mr. Balwant G. Mandrekar and prior to year 1948 the said lands were being cultivated as a tenant by the father of the petitioner. The predecessor in title of the respondents have issued receipts of rent in that behalf, admitting the father of the petitioner as their tenant. The respondents contested the claim of the petitioners and denied it, in its totality.

5] The Agricultural Lands Tribunal (for short “ALT”) by its impugned Order dated 15.9.2005 has held that, the petitioner has failed to produce any evidence on record to arrive at a conclusion that, the petitioners were not cultivating the suit lands prior to 1957 and it is proved that the respondents were cultivating the suit lands in question as a protected tenant.

The Tenancy Appeal No.22 of 2005 preferred by the petitioners has been turned down by the Sub-Divisional Officer, Gadhinlaj by its Order dated 30.6.2006. The petitioners thereafter preferred a Revision

Application bearing No.TNC/REV/93/2006/KP under section 76 of the Maharashtra Tenancy And Agricultural Lands Act (for short MTAL Act). The learned Member of the Maharashtra Revenue Tribunal, Pune by its Judgment and Order dated 11.4.2014 was pleased to dismiss the said Revision and confirmed the Order dated 30.6.2006 passed by the Sub-Divisional Officer in Tenancy Appeal No.22 of 2005.

A finding is further recorded by the Maharashtra Revenue Tribunal in its impugned Judgment and Order that, the petitioners have failed to produce any documentary evidence on record to show that, they or their ancestors were cultivating the suit land as on 1.4.1957 or prior to it.

6] 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 High Court while dealing with the provisions of Section 76 of the Bombay Tenancy and Agricultural Lands Act 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.

7] 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.

As noted earlier, there is concurrent finding recorded by the Revenue Authorities below.

8] In view of the facts mentioned hereinabove and after applying the ratio laid down by the Constitution Bench of the Apex Court in the aforestated decision and perusing the entire record, this Court is of the view that, the authorities below have not committed any error either in law or on facts while passing the impugned Orders and therefore the present petition is devoid of merits.

The Petition is accordingly rejected.

(A.S.GADKARI, J.)