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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITIOIN NO. 692 OF 2000

Shri Bhagwan Dhondiba Nazirkar & Anr. **..Petitioners**
Vs
Shri Parshuram Ganapati Kapare & Ors. **Respondents**

Mr. A.R.S. Baxi for the Petitioners.
Ms. Gunjan Shah I/b P.B. Shah for Respondent Nos.1,3,6 and 7.

CORAM : A.S.GADKARI, J.
DATE : 1st July 2019.

ORAL JUDGMENT :-

1] By the present petition under Article 227 of the Constitution of India, the petitioners, legal heirs of late Shrihari Nazirkar, the tenants in the land of respondent Nos.4 and 5 have impugned the Judgment and Order dated 19th April 1999 passed by the learned Member of the Maharashtra Revenue Tribunal, Pune in Revision Application No. MRT/P/3/4/92 of 1992, dismissing the said revision and confirming the Order dated 24.1.1992 passed by the Sub-Divisional Officer, Baramati in TNC/AP/35 of 1990 under Section 74 of Bombay Tenancy And Agricultural Lands Act, 1948 (for short "B.T.A.L. Act")

2] Heard, learned counsel for the petitioners and the learned counsel for respondent Nos.1,3,6 and 7. Perused record annexed to the petition.

3] The record discloses that, the lands bearing Gat Nos.648, 649, 650 and 650(part) lying and situate at village Nazare Kade Pathar, Taluka Purandar, District Pune were originally belonged to Gopal G. Khomane and Bala J. Khomane. Gopal G. Khomane and Bala J. Khomane were having one-half share each in the said land. Late Shrihari Maruti Nazirkar, grand father of the petitioners was allegedly protected tenant in the said lands since 1949 and Mutation entry No.665 dated 1.6.1949 was effected by the Revenue Authority in that behalf.

4] Gopal G. Khomane on 20.7.1956 executed a Deed of Mortgage by conditional sale in favour of Shrihari M. Nazirkar, grand father of the petitioners pertaining to his one-half share in the suit land which was recorded in the record of rights by effecting Mutation entry No.1008 dated 26.8.1956. That a registered Deed of Reconveyance dated 10.5.1957 was executed by Shrihari M. Nazirkar in favour of Gopale G. Khomane. The said Deed of Reconvayance in favour of Gopale G. Khomane was given effect in the record of rights and Mutation entry No.1048 dated

10.5.1957 was incorporated. Gopal G. Khomane on the same day i.e. 10.5.1957 executed agreement of sale in favour of respondent Nos.1 and 2 agreeing to sell them the said land. By a deed of sale/deed of transfer dated 8.8.1957, Gopal G. Khomane sold his half share in the suit lands to respondent Nos.1 and 2 and Mutation entry No.1053 has been effected in revenue records on 7.9.1957.

5] The record further indicates that, on 8.7.1961 the Agricultural Lands Tribunal-III and Second Additional Mamlatdar, Purandar initiated enquiry under Section 32G of the B.T.A.L. Act on an application filed by the grand-father of the petitioners and held that, the transfer of land of Gopal G. Khomane in favour of respondent Nos.1 and 2 by sale deed dated 8.8.1957 was in contravention of the provisions of B.T.A.L. Act i.e. without obtaining permission from the Mamlatdar under section 64 of the said Act and inasmuch as the lands were sold to a person other than the tenant i.e. the said Shrihari Nazirkar. The Agricultural Lands Tribunal (for short "A.L.T.") accordingly directed that, matter be referred to Mamlatdar for necessary action under Section 84C of B.T.A.L. Act and was pleased to drop proceedings under Section 32-G of the said Act. Accordingly, an enquiry under Section 84-C of the said act was conducted by the A.L.T., Purandar and by its Order dated 30.7.1990 the sale deed/transfer deed dated 8.8.1957 between the aforesaid parties was declared invalid and the disputed lands were forfeited in favour of the State Government. The record fuhrer indicates that, Shrihari M. Nazirkar expired on 26.1.1986 leaving behind his only son Dhondiba Nazirkar. That, the respondent Nos.1 to 3 thereafter preferred Tenancy Appeal bearing No.35 of 1990 under Section 74 of B.T.A.L Act before the Sub-Divisional Officer, Baramati Division challenging the order dated 30.7.1990 passed by the A.L.T. The Sub-Divisional Officer, Baramati by its Judgment and Order dated 24.1.1992 allowed the appeal and set aside the Order of A.L.T.

6] Feeling aggrieved by the Judgment and Order dated 24.1.1992 passed by the Sub-Divisional Officer, Baramati, father of the petitioners namely Dhondiba Shrihari Nazirkar preferred a Revision bearing No.MRT/P/3/4/90 of 1992 before the Maharashtra Revenue Tribunal Pune at Pune. The learned Member of Revenue Tribunal, Pune by its Judgment and Order dated 19.4.1999 was pleased to dismiss the said Revision. The said Orders dated 24.1.1992 passed by the Sub-Divisional Officer, Baramati and dated 19.4.1999 passed by the Revenue Tribunal are impugned herein.

7] Ms. Baxi, the learned counsel for the petitioners submitted that, in view of Mutation entry No.665 a safe inference can be drawn that, the grand-father of the petitioners was a protected tenant of the property and he never surrendered his tenancy in favour of Gopal G. Khomane. She further submitted that, a conditional sale deed was executed by Gopal G. Khomane in favour of late Shrihari Maruti Nazirkar as Gopal G. Khomane was in need of money and grant-father of the petitioners advanced the said amount to him. After re-conveyance of the property, the grand-father of the petitioners namely Shrihari Nazirkar was continued to be a tenant in the suit land and therefore the sale deed effected on 10.5.1957 by Gopal G. Khomane in favour respondent Nos.1 and 2 without taking permission under Section 64 of B.T.A.L Act is bad in law. She further submitted that, both the Authorities below have committed error in upsetting finding recorded by A.L.T. by its Order 30.7.1990. She therefore prayed that, the present petition may be allowed by setting aside the impugned Judgment and Orders passed by the Revenue Authorities below.

8] The learned counsel for the respondents Nos.1,3,6 and 7 vehemently opposed the petition. The learned counsel for the said respondents drew my attention to the finding recorded by the Revenue

Tribunal and submitted that, simply because the name of Shrihari M. Nazirkar was entered as a tenant by Mutation entry, it does not prove that he was in fact a tenant in disputed land. She submitted that, the Sub-Divisional Officer, Baramati and the Revenue Tribunal after scrutinizing the entire evidence available on record have recorded their respective findings which are within the conformity of law and the said concurrent findings need not be dismissed. She therefore prayed that, the present petition may be dismissed.

9] Perusal of the record would indicate that, in the proceedings initiated by the A.L.T., Purandar, the statement of Shrihari M. Nazirkar was recorded on oath. In his deposition, he has admitted that, the suit land was with him as a tenant, however, after the Sale Deed between him and Gopal G. Khomane, he relinquished the said lands in favour of the landlord and the said lands are in possession of the landlord. It is to be noted here that, a statement made on oath by Shrihari M. Nazirkar before the Competent Authority established under the law, undoubtedly assumes importance in the eyes of law. It has its own evidential value in law. The record indicates that, except the said statement, there is no other contemporaneous record from which it can even remotely be inferred that Shrihari M. Nazirkar i.e.

the grand-father of the petitioners was in fact a tenant in the suit land belonging to Gopal G. Khomane.

10] The record further indicates that, the petitioners have failed to produce on record either the agreement of tenancy or rent receipts in support of their claim that, Shrihari M. Nazirkar was in fact a tenant of Gopal G. Khomane. As noted earlier, assuming for the sake of argument that, Shrihai M. Nazirkar was a tenant in the suit land belonged to Gopal Khomane, then there was no need for Gopal Khomane to execute a Mortgage Deed by conditional sale dated 20.7.1956 in favour of Shrihari M. Nazirkar. It is further to be noted here that, Shrihari M. Nazirkar during his life-time never initiated proceedings under Section 70(b) of B.T.A.L. Act, with the contention that, he was a protected tenant in the suit land.

The Revenue Tribunal has observed that, as, Shrihari M. Nazirkar was not at all tenant in the suit land, there is no rent receipt or rent note or other evidence to prove tenancy of the grand-father of the petitioners. The Sub-Divisional Officer has recorded proper findings pertaining to the contravention of Section 64 of the B.T.A.L Act.

11] 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.

12] As noted earlier, there are concurrent finding recorded by both the Revenue Authorities.

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*.

13] The contention of the petitioner and arguments so advanced amounts to reappreciation of evidence. After perusal of the entire record, this Court is of the considered view that, both the Revenue Authorities below have appreciated the evidence available on record in its proper perspective and have not committed any error either in law or on facts while passing impugned Judgment and Order.

Writ Petition being devoid of merits, is accordingly dismissed.

(A.S.GADKARI, J.)