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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.5601 OF 1998

Shri Sakharam Mavji Dhandwad ..**Petitioner**
Vs
Shri Laxman Krishna Aswale (Since Deceased)
through heirs and legal representatives :-

1(a) Shri Govind Laxman Aswale ;
1(b) Shri Dhawala Laxman Aswale.. ..**Respondents**

Mr. U.B. Nighot, for the Petitioner.
Mr. V.S. Kapse, for the Respondent No.1(a).

CORAM : A.S.GADKARI, J.
DATE : 28th August 2019.

JUDGMENT :-

1] The petitioner has taken exception to the Judgment and Order dated 3.7.1998 passed by the learned Member, Maharashtra Revenue Tribunal, Pune-1 (for short "Revenue Tribunal") in Revision Application bearing No.MRT P.I.1/95 (B-1/95), Pune, allowing the said Revision filed by the respondent and setting aside the Judgment and Order dated 16.4.1992 passed by the Sub-Divisional Officer, Junnar Sub-Division, Khed (Pune) in Case No.INC/A/22/91 and the Order dated 21.7.1991 passed by the Tahasildar, Ambegaon in Tenancy Act/32-P/ Kushire, (Budruk).

2] Heard Mr. Nighot, the learned counsel for the Petitioner and Mr. Kapse the learned counsel for the Respondent No.1(a). Perused the record annexed to the petition.

3] The land in question in the present petition is Gat No.41/3 admeasuring 6 hector and 58 ares lying and situate at village Kushire, Budruk, Taluka Ambegaon, District Pune. Petitioner is the allottee of the said land in pursuance of Order dated 24.4.1989 passed by the Tahasildar, Ambegaon under section 32P(2)(c) of the Bombay Tenancy And Agricultural Lands Act (for short "the said Act"). The respondent was the original landlord.

The record indicates that, the suit land was tenanted prior to 1957 itself. The suit land was given on tenancy basis to Shri Moga D. Kengale as a tenant. He was cultivating the suit land on tillers day i.e. on 1.4.1957. The respondent was landlord of the suit land. In the year 1958 the said tenant refused to purchase the suit land under section 32G of the said Act and relinquished his right in it. The suit land was surrendered by the tenant Shri Moga Kengale in favour of the respondent without recording any statement under section 15(1) of the said Act. It appears that, the respondent did not file Application for retaining the suit land with him after the said tenant Shri Kengale surrendered the suit land.

4] The record further indicates that, in the year 1965, proceedings under section 32P(2)(b) read with section 15 of the said Act was initiated by the

Tahasildar, Ambegaon in respect of suit land and notice dated 31.8.1965 was accordingly issued to the respondent. Despite notice, the respondent remained absent on the date of enquiry and therefore the suit land was transferred to the Collector's Pool under section 32P in the year 1969. A mutation entry No.550 was effected on 30.8.1969. The said mutation entry No.550 was certified after the suit land was forfeited to the Government i.e. appropriated in Collector's Pool on 11.8.1971.

It appears that, the respondent never challenged the Order of Tahasildar, Ambegaon forfeiting and/or appropriating the suit land in favour of Government i.e. to the Collector's School. As noted earlier, the respondent never made an application to retain the suit land under section 15(2) of the said Act.

5] The record further indicates that, in this background the Tahasildar, Ambegaon published notice dated 28.11.1988 for initiating proceedings under section 32P(2)(c) of the said Act for disposal of the suit land which was appropriated to the Collector's Pool. The petitioner being project affected person, made an application for allotment of the suit land on 28.12.1988 to the Tahasildar, Ambegaon. The respondent had also filed an application for allotment of the suit land on 12.1.1989. The Tahasildar, Ambegaon by its Order dated 24.4.1989 allotted the suit land in favour of the petitioner. On 3.5.1989 the petitioner deposited Rs.5000/- towards the said land in Sub-Treasury Office, Ghodegaon as directed by the Tahasildar, Ambegaon and on 4.5.1989, the petitioner was put in possession of the suit land. Mutation entry No.638 dated 4.5.1989 has been effected in that behalf and the name of petitioner has been entered into the 7/12 extract in the Revenue Record.

6] Feeling aggrieved by the Order of Tahasildar, Ambegaon dated 24.4.1989 allotting suit land in favour of the petitioner, the respondent filed Tenancy Appeal No.12 of 1989 before the Sub-Divisional Officer, Junnar, Sub-Division, Khed, Pune under section 74 of the said Act. It was the contention of the respondent that, he being the original landlord his application ought to have been considered on priority basis and also that the price of the suit land fixed by the Tahasildar, Ambegaon was very meger. The Sub-Divisional Officer by its Judgment and Order dated 31.10.1989 partially allowed the said appeal and remanded the matter back to the Tahasildar, Ambegaon for fresh hearing and decision in accordance with law.

After remand of the matter, the Tahasildar, Ambegaon heard the parties herein afresh and scrutinized the entire evidence available on record. The Tahasildar, Ambegaon by its Order dated 21.7.1991 confirmed its Order dated 24.4.1989 passed under section 32P(2)(c) of the said Act.

7] Being aggrieved by the said Order dated 21.7.1991 passed by the Tahasildar, Ambegaon, the respondent filed Appeal bearing No. No.INC/A/22/91 before the Sub-Divisional Officer, Junnar, Junnar Division, Khed (Pune). The Sub-Divisional Officer, Junnar by its Judgment and Order dated 16.4.1992 dismissed the said Appeal and confirmed Order dated 21.7.1991 passed by the Tahasildar, Ambegaon. The Sub-Divisional Officer in its Order has observed that, the respondent is continuously challenging the Order passed by the Tahasildar dated 24.4.1989, however, is not challenging the Order by which the land was vested with the Government i.e. Order dated 30.8.1969.

The respondent thereafter filed Tenancy Appeal No.11 of 1992 before the Additional Collector, Pune challenging the said Order. The Additional Collector, Pune by its Order dated 24.2.1994 returned the said appeal bearing No.11 of 1992 to the respondent for filing it before the appropriate Court.

8] The respondent thereafter filed present Revision bearing No.MRT. P.I. 1/95 (B-1/95), Pune before the Maharashtra Revenue Tribunal, Pune-1 (for short "Revenue Tribunal") on 2.1.1995. The learned Member, Maharashtra Revenue Tribunal, by its Judgment and Order dated 3.7.1998 allowed the said Revision and set aside the Orders passed by both Authorities below. The said Judgment and Order dated 3.7.1998 is impugned herein.

The Revenue Tribunal in its impugned Judgment and Order has held that, at the time of initiating the proceeding under section 32P (2)(b), no notice was issued to the landlord (respondent) for forfeiting the suit land to the Collector's Pool. It is further observed that, the delay of about 10 months in filing the said Revision has been explained, as the earlier proceeding preferred by the respondent before the Additional Collector, Pune was on the basis of advise rendered to him. It is further observed that, priority claimed by the respondent as contemplated under section 32P has not been properly considered by the Tahasildar, Ambegaon and the proceedings initiated under section 32 P(2)(c) were not legal.

9] Mr. Nighot, the learned counsel for the petitioner submitted that, after the Additional Collector, Pune returned the appeal bearing No.11 of 1992 filed by the respondent for filing it before appropriate Court by its Order dated 24.2.1994, the respondent preferred the said Revision before the Revenue Tribunal on 2.1.1995 and there was delay of more than 10 months in filing the said Revision Application. He submitted that, the respondent without explaining the said delay properly and without filing separate application in that behalf, has filed the said Revision. He submitted that, section 31 and 31A are not applicable and section 15 of the said Act is applicable to the present case. He submitted that, the respondent participated in the proceedings under section 32P(2)(c) and therefore now he is not entitled to challenge the proceedings for allotting the suit land to the petitioner. He submitted that, the petitioner did not challenge the Order dated 30.8.1969 thereby appropriating the suit land in Collector's Pool and it is only on 28.12.1988 he filed an application in 32P(2)(c) proceedings and therefore the respondent is now estoped from challenging forfeiting/appropriation of suit land to the Collector's Pool. He submitted that, the Revenue Tribunal has committed grave error in not appreciating the correct legal position. He therefore prayed that, the impugned Judgment and Order dated 3.7.1998 may be quashed and aside by allowing the present petition.

10] Mr. Kapse, the learned counsel for the respondent vehemently opposed the present petition and submitted that, while allowing the Revision Application filed by the respondent, the Revenue Tribunal had considered the provision of section 76(1)(c) and in fact has not disturbed the concurrent finding recorded by both the Authorities below. He submitted that, the finding recorded by the Revenue Tribunal that the proceedings under section 32 P(2) (b) was not initiated by the Tahasildar and proceedings under section 32P(2)(c) were started thereon, was not legal is correct. He submitted that, in absence of any speaking Orders passed under Section 32P(2)(a) and (b) of the said Act, sub-section(c) of section 32P(2) cannot be resorted. He submitted that, the Revenue Authority has not committed any error while passing the impugned Judgment and Order and therefore the petition may be dismissed.

11] A perusal of the record would clearly indicate that, in furtherance of statement made by the tenant Moga D. Kengale and after the sale of the suit land become ineffective , the Tahasildar, Ambegaon had issued a notice under section 32P(2)(b) of the said Act dated 30.1.1965. In response to the said notice, the respondent remained absent in the said proceeding and therefore the said suit land was appropriated to Collector’s Pool and mutation entry No.550 has been effected in that behalf. The mutation entry No.550 has been certified on

11.8.1971 by the Revenue Authority. However, the respondent neither challenged the Order of transferring the suit land to the Collector's Pool nor he filed an application to retain the suit land as contemplated under section 15(2) of the said Act. The record further indicates that, in pursuance of the notice issued by the Tahasildar, Ambegaon dated 28.11.1988 in the proceeding initiated by it under section 32P(2)(c), the respondent filed an application on 12.1.1989. It clearly appears from the record that, the respondent is a permanent resident of village Amade and he is in possession of 7 hectors of land. The petitioner is the resident of village Kushire and he was in possession of comparatively small land admeasuring about 2 hector and 30 ares, which has been acquired by the Government for Dimbhe Dam. The Tahasildar, Ambegaon after remand of case to it, has evaluated the entire evidence available on record and confirmed its earlier Order dated 24.4.1989. It is to be noted here that, the respondent did not challenge the Order vesting the suit land with the Government passed in the year 1969. That the respondent also did not participate in the proceedings initiated by the Tahasildar, Ambegaon under section 32P(2)(b) despite notice and therefore now he has been estopped from raising the contention that the proceedings under section 32P(2)(a) and (b) was not properly conducted. The observations made by the Revenue Tribunal that, before forfeiting the suit land in Collector's Pool, the respondent herein was not given notice, is contrary to the record. The Revenue Tribunal has further erred in holding that, the revenue record indicates that, the respondent was in possession of suit land even after the proceeding under section 32P(2)(b) was concluded is also contrary to the available record. The revenue record clearly indicates that, after the proceedings under section 32P(2)(c) were concluded by the Tahasildar, Ambegaon and suit land was allotted to the petitioner, a specific entry of the name of the petitioner has been incorporated in revenue record by deleting the name/entry of "Collector's Pool" in that behalf. The petitioner has paid the purchase price on 3.5.1989 and since then he is in the possession of suit land.

12] The findings recorded by the Revenue Tribunal are contrary to the law laid down by the Honourable Supreme Court in the case of *Maruti Bala Raut Vs. Dashrath Babu Wathare & Ors. reported in AIR 1974 SC 2051.* The Honourable Supreme Court in the said case, 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.

13] After perusing the entire evidence available on record, this Court is of the considered view that, the Revenue Tribunal has committed serious error in appreciating the evidence available on record in its proper perspective while reaching to its own conclusion.

In view thereof, this Court is of the opinion that, the impugned Judgment and Order dated 3.7.1998 passed by the Maharashtra Revenue Tribunal, Pune cannot be sustained and is accordingly quashed and set aside. The Order of Tahasildar, Ambegaon dated 24.4.1989 allotting suit land in favour of the petitioner in Case No.B.T.A.L/Vashi/120/1, Order dated 21.7.1991 passed by the Tahasildar, Ambegaon in Tenancy Act/32-P/Kushire, (Budruk) and the Judgment and Order dated 16.4.1992 passed by the Sub-Divisional Officer in Appeal No.INC/A/22/91 are hereby confirmed.

14] Writ Petition is allowed in the aforesaid terms.

(A.S.GADKARI, J.)