

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 775 OF 1998**

Dhaku Lakhu Bhura,
resident of village Varvade,
Taluka Talasari,
District Thane.

.....Petitioner.

Vs.

Sukhala Lakhu Bhura,
resident of village Varvade,
Taluka Talasari,
District Thane, through
his legal heirs.

.....Respondents.

- (a) Madya Sukhala Bhura
- (b) Devji Sukhala Bhura
- (c) Nathuram Sukhala Bhura
- (d) Dasma Sukhala Bhura
- (e) Smt. Makshu Sukhala Bhura
(a) to (e) all residents
of village Varvade (Paraspada),
Taluka Talasari, Dist. Thane.

Mr. Shreepad Murthy a/w Abhishek Patil for the Petitioner.
Mr. S.H. Joshi for the Respondent Nos. 1(a) to 1(e).

CORAM : A. S. GADKARI, J.
DATE : 24th JUNE, 2019.

ORAL JUDGMENT:-

By the present Petition under Article 227 of the Constitution

of India, the Petitioners have challenged the concurrent findings recorded by Revenue Authorities below.

2 Heard the learned counsel appearing for the Petitioner and the learned counsel for the Respondents. Perused the record.

3 The record indicates that, on the basis of the information given by the Petitioner by way of filing an Application that, he has 50% share in the property belonging to the father of the Petitioner and the Respondent Lakhu Bhura, the Mutation Entry No. 639 was effected pertaining to Survey Nos. 51, 150, 170 and 227 lying and situated at Village Varvada Taluka Talasari, within the jurisdiction of then District Thane.

4 The Respondent Sukhala Bhura challenged the said mutation entry before the Sub-Divisional Officer, Dahanu Division, Dahanu under Section 247 of the Maharashtra Land Revenue Code, 1966 (MLR Code) by filing RTS Appeal No. 23 of 1987. The Sub-Divisional Officer, Dahanu Division, Dahanu allowed the said Appeal predominantly on the ground that, the suit land was a tenanted land and therefore, it attracts the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "*the BTAL Act*") and prior to 1982, partition was also not allowed itself with the prior permission of the Collector.

5 The RTS Appeal No. 38 of 1988 preferred by the Petitioner before the Resident Deputy Collector and Additional Collector (Appeal), Thane, has also been dismissed by its Judgment and Order dated 12nd February 1992 and confirmed the Order dated 25th August, 1988 passed by the Sub-Divisional Officer, Dahanu Division, Dahanu. The Resident Deputy Collector and Additional Collector (Appeal), Thane in its Judgment and Order dated 12nd February, 1992 has elaborately discussed the evidence available on record and the right of the Petitioner herein.

6 Feeling aggrieved by the said Judgment and Order dated 12th February, 1992 passed by the Resident Deputy Collector and Additional Collector (Appeals), Thane, the Petitioner preferred further Revision before the Additional Commissioner, Konkan Division, Mumbai bearing Revision No. 34 of 1992. The learned Additional Commissioner, Konkan Division, Mumbai by the impugned Judgment and Order dated 1st September, 1997 has turned down the said Revision and confirmed the findings recorded by both the Authorities below.

7 As noted earlier, all the Revenue Authorities below have recorded concurrent findings against the Petitioner about his entitlement to have his name entered into the Revenue records.

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.

8 The contentions and pleadings of the Petitioner would amount to reappreciation of evidence, which is not permissible. The perusal of material available on record would indicate that, all the Authorities below have not committed any error either in law or on facts while appreciating the evidence available on record and reaching to the conclusion recorded by them. In view of the above, this Court finds no merits in the Petition.

Writ Petition is accordingly dismissed.

(A.S. GADKARI, J.)