

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

WRIT PETITION (ST.) NO. 23436 OF 2018

Khashaba Pandurang Mahadik & Ors.	...	Petitioners
V/s.		
Bharat Shripad Deshpande & Ors.	...	Respondents

Mr.R.C. Barge for Petitioners.

CORAM : A.S. GADKARI, J.

DATE : 26th July 2019.

P.C. :

1] Heard Mr.Barge, learned counsel for the petitioners. Perused the record.

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

3] It is the contention of the petitioners that, the petitioners were in possession and cultivating the suit land on tillers day i.e. on 01/04/1957 and continued to be in possession of it. That the suit land

was subsequently transferred in favour of the Trust namely Naikba Devasthan Trust, Village Banpuri & Janugadewadi, Taluka Patan, District Satara, which was registered in the year 1962. It is the contention of the learned counsel for the petitioners that, though the lands were transferred in favour of the trust, the petitioners continued to be in possession and cultivation of the suit lands and therefore, their claim as tenants under Section 70(B) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 is not affected. It is therefore submitted that, all the Authorities below have failed to consider the said vital aspect and therefore, the said orders may be quashed and set-aside.

4] The record indicates that, the application of the petitioners under Section 70(B) of the M.T.A.L. Act has been rejected by the Agricultural Lands Tribunal, Patan by its Order dated 06/05/2013 by holding that the suit land belongs to Shri Naikba Devasthan and is covered by the category of 'Inam Lands Class-3' and therefore, the provisions of the M.T.A.L. Act are not applicable to it.

The appeal preferred by the petitioners under Section 74 of the M.T.A.L. Act and the Revision preferred by the applicant under Section 76 of the M.T.A.L. Act have been turned down by the Sub-

Divisional Officer and Maharashtra Revenue Tribunal, Pune, by their Orders dated 03/10/2017 and 05/06/2018 respectively.

5] 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.

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 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 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*.

8] As noted earlier, there is concurrent findings recorded by all the authorities below.

A perusal of record would indicate that, a Mutation Entry No.1360 pertaining to the suit land has been effected by the Revenue Authorities wherein it is categorically mentioned that the name of Pandurang Mahadik i.e. the predecessor-in-title of the petitioners has been deleted from the revenue records, as he was not cultivating suit land consecutively for two years prior to effecting the said entry. It is also mentioned in the column of Remarks that, the said land is “Devasthan Inam Class-3” and the date of said entry is 19/11/1957. Thus it is apparent that on the tillers day i.e. 01/04/1957 the father of the petitioners was not in possession and was not cultivating the suit land as a tenant. The said fact goes to the root of the matter.

9] After perusing the entire material available on record, this Court is of the considered view that, all the Authorities below have not committed any error either in law or on facts while rejecting the claim of the petitioners as tenants in the suit property.

10] Petition being devoid of merits is accordingly rejected.

[A.S. GADKARI, J.]