

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 5140 OF 2016**

Sitaram Budhya Mhatre
(Decd.) Through LRs.

.....Petitioners.

Vs.

Bhupendra Maganlal Gandhi
(Decd.) Through LRs.

.....Respondents.

Mr. S. M. Kamble for the Petitioners.
Mr. Bhushan Walimbe for the Respondent No.4.

CORAM : A. S. GADKARI, J.

DATE : 8th JULY, 2019.

P.C.:-

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

2 Heard Mr. Kamble, the learned counsel for the Petitioners, and Mr. Walimbe for the Respondent No. 4. Perused the record.

3 The record indicates that, the Respondent Nos.1 to 4 had filed an Application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "*the BTAL Act*") before the

Tahasildar, Panvel with a prayer that, it be declared that the father of the Petitioners herein was never a tenant in the suit land i.e. final plot No. 368 lying and situate within the jurisdiction of Panvel Municipal Corporation. The Tahasildar, Panvel after recording evidence of relevant witnesses and after hearing the parties to the said case, was pleased to hold that, neither the Petitioners nor their father are and were tenants in the said land. The said Application preferred by the Respondent Nos. 1 to 4 was allowed by the Tahasildar by its Order dated 19th December, 2009.

The Petitioners thereafter, preferred Tenancy Appeal No. 17 of 2010 under Section 74 of the BTAL Act before the Sub-Divisional Officer, Panvel. The Appellate Authority, after perusing the record and re-appreciating evidence, was pleased to reject the said Appeal by its Judgment and Order dated 14th October, 2010. The Revision No. 38/B/2011 preferred by the Petitioners under Section 76 of the BTAL Act has met with the fate of dismissal by the Judgment and Order dated 4th August, 2015 passed by the learned Member of the Maharashtra Revenue Tribunal, Mumbai.

4 It is thus, clear that there is a concurrent finding recorded by all the three Revenue Authorities below.

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.

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 *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*.

7 A perusal of record produced before this Court would indicate that, there is no material/evidence produced by the Petitioners to infer that, their father was in fact a tenant of the Respondents in the suit land. The pleadings in the Petition and the arguments advanced by the learned counsel for the Petitioners amounts to re-appreciation of evidence which is not permissible under the law. After perusing the entire record minutely, this Court is of the considered view that, the Authorities below have not committed any error while passing the impugned Orders. There is no irregularity or error either in law or on facts committed by the Authorities below.

In view thereof, this Court finds no merit in the Petition and is accordingly rejected.

(A.S. GADKARI, J.)