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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10864 OF 2017

Shri. Tukaram Parashu Kambere .....Petitioner

V/s.

Shri. Girish Anantlal Gujarathi and others .....Respondents

Mr. Amit A. Gharte for the Petitioner
Mr. Mahendra Agavekar a/w Shraddha Chavan for respondent nos. 1 to 4
Mr. R. P. Kadam AGP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 10, 2019.

P.C.

Heard respective parties.

2 Petitioner initiated proceedings under Section 70B of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ('the Act' for short). The Mamalatdar vide order dated 30/09/2013 passed in Tenancy Case No. 46 of 2011 declared the present petitioner as a tenant. While granting such declaration in relation to land bearing

survey no. 15/1 Area 0.71.9R at Mouje Vavloli has relied upon the uninterrupted mutation entry for a period 1963-2010 and also the earlier entries wherein intermittently, the petitioner tenant remained in possession. The other circumstances viz. change in mutation entries, orders passed by the State Government in regard to mutation entry no. 305 on 03/04/1972, mortgaging the property in question by the petitioner to Co-operative Society as against the loan obtained, absence of any documentary evidence, Tenancy proceedings no. 146/55/56 whereby respondent-landlord was put into possession on 29/05/1957 are formed to be basis. In an Appeal the Sub-Divisional Officer ('SDO' for short) confirmed this finding by dismissing Tenancy Appeal No. 5 of 2013. Feeling aggrieved, respondent-landlord preferred Revision before Maharashtra Revenue Tribunal ('MRT' for short). The MRT vide its order dated 02/08/2017 allowed the Revision. As such, this petition.

3 The submissions of the learned counsel for the petitioner are, the Tribunal committed an error of law in transgressing its limits *qua* Revisional Jurisdiction. According to him, the Revenue Tribunal

has re-appreciated entire evidence and in a most cryptic manner passed the order impugned.

4 He would then urge that Revenue Tribunal has failed to consider the continuous revenue entries in favour of petitioner since 1963-2010 and also absence of proceedings which are relied upon by the respondent-landlord being Tenancy Case No. 146/55/56. As such, according to him, order impugned is not sustainable.

5 Though the learned counsel for respondent-landlord who is assisted by the learned AGP has supported the order of Tribunal, however, when confronted on the aforesaid issue, on instructions from the respondent, conceded for order of remand.

6 In my opinion, the aforesaid concession extended by the respondent is very much justified, particularly having regard to the fact that the Maharashtra Revenue Tribunal has *prima facie* appears to have committed an error of law in exceeding its jurisdiction by re-appreciating evidence that too only such evidence which is produced

by respondent-landlord.

7 As such, petition stands allowed.

8 The order impugned passed by the Maharashtra Revenue Tribunal is hereby quashed and set aside. Revision preferred by the respondent-landlord stood restored to the file of Maharashtra Revenue Tribunal.

9 Parties hereto agree that they shall appear before the Tribunal on 26/08/2019. Tribunal is requested to decide the Revision of the respondent-landlord expeditiously.

[NITIN W. SAMBRE, J.]