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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1152 OF 2017
WITH
WRIT PETITION NO.13734 OF 2016

Smt. Sitabai Pandurang Patil @
Smt. Sitabai Maruti Patil ..Petitioner.
V/s.
Shriram Sitaram Patil & Ors. ..Respondents.

Mr.G.N.Salunkhe for the petitioner in both the petitions.

Ms.Neeta Karnik for respondent No.1 in both the petitions.

CORAM: NITIN W.SAMBRE, J.

DATE : JUNE 25, 2019

P.C.:-

By an order dated December 18, 2009, pursuant to section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the Act' for short), the respondent Shriram Sitaram Patil was declared as a tenant in land Survey No.71/5 admeasuring 39.2 Aar at village Diva, District Thane.

2. The said order was followed with an order under section 32(O) of the said Act fixing the purchase price of the land

in question. It appears that the respondents sought aforesaid relief as they were in possession of the land on the Tillers day i.e. April 1, 1957.

3. Subsequent thereto, the petitioners, feeling aggrieved preferred an appeal before the Sub-Divisional Officer questioning the order passed under Section 70(b) of the Act. The appeal came to be allowed by order dated May 31, 2013. What prevailed before the said Sub-Divisional Officer was, the proceedings taken under section 70(b) of the Act were against the dead person.

4. The respondents, feeling aggrieved, preferred a revision before the Revisional Tribunal, which came to be allowed by an order dated June 20, 2016. As such, this petition.

5. The submissions of learned counsel for the petitioners are, the petitioners are the legal heirs of erstwhile owner, namely Maruti son of Budhya, who died on October 25, 1984 whereas Budhya died in May 17, 1976. As such, the submissions are the proceedings under section 70(b) of the Act were concluded against the dead persons.

6. Further submission canvassed by learned counsel for the petitioner is, revenue entry under 7/12 extracts speak of

respondents as a tenants. Such entries are good enough for fiscal purpose and cannot be termed as evidence for determining possession of the parties.

7. *Per contra*, Ms.Karnik, learned counsel for the respondents would urge that the petitioners dispute the question of fact. According to her, death certificate which is produced on record certifying the death of Budhya appears to be shown as Waghya Manglya Patil whereas, Maruti is shown to be the son of Budhya Patil. According to her, the petitioners are trying to impersonate the real heirs by taking undue advantage of the common name appearing therein. According to her, in addition to the notice issued by the authorities, public notice was also issued in the daily newspapers which was a sufficient service. According to her, the petition is liable to be dismissed.

8. Considered rival submissions.

9. Perusal of the order in exercise of powers under section 70(b) of the Act passed by the Mamlatdar appears to have been passed in absence of the non applicants in the said proceedings viz. Maruti Budhya Patil and one another.

10. So far as the said order passed by the Mamlatdar is

concerned, thereby declaring the respondents as tenant under the powers of section 70(b) of the Act is concerned, the same was upheld by the Sub-Divisional Officer in appeal. The findings recorded by the Sub-Divisional Officer are based on facts, viz. though the petitioners ancestor was declared dead, the proceedings under section 70(b) of the Act were continued against the dead person.

11. The respondents feeling aggrieved, thereto have preferred a revision before the Maharashtra Revenue Tribunal and by the order impugned, the Revisional Tribunal has proceeded to record a finding there there was service of notice and the revenue records *prima facie* speaks of possession of the respondents over the land in question and as such, set aside the order of the Sub-Divisional Officer.

12. The fact remains that the petitioners claim that they were not served before the Mamlatdar in section 70(b) proceedings. The Sub-Divisional Officer, having regard to the aforesaid fact, has proceeded to remand the matter to the first fact finding authority i.e. the Mamlatdar, who is empowered to conduct a detailed inquiry in the matter. Whether the petitioners

are legal heirs of the erstwhile owner is the issue of fact which needs a thorough inquiry as is rightly claimed by the petitioners.

13. In the aforesaid backdrop, it is really difficult to accept the findings recorded by the Maharashtra Revenue Tribunal whereby the impugned order passed under section 70(b) of the Act, whereby claim of the petitioners, in absence of any opportunity of hearing, came to be negated. It will not be out of place to mention here that the Maharashtra Revenue Tribunal ought to have been sensitive about the scope of revisional jurisdiction and should have invited a findings of fact from the learned Tahsildar / Mamlatdar on the issues which were raised by the petitioners. In the aforesaid backdrop, the order impugned passed by the Maharashtra Revenue Tribunal is not sustainable and as such, the order dated June 20, 2016 is hereby quashed and set aside.

14. As a consequence of above, the parties are relegated to to Mamlatdar / Tahsildar who is directed to conduct a detailed inquiry under section 70(b) of the Act, including, on the issues raised by the respondents as regards the locus and status of the petitioners being legal heirs of decease Budhya and Maruti, if

required by referring the matter to the competent Civil Court.

15. Considering the period of time for which the proceedings are pending, in my opinion, the proceedings before the Mamlatdar are expedited, who shall make an endeavour to complete the proceedings within a period of six months from the date of appearance of the parties.

16. The parties to appear before the respondent-Tahsildar on July 22, 2019 with their pleadings and documentary evidence in respect of such pleadings.

17. Both the petitions are allowed partly allowed in the above terms.

(NITIN W.SAMBRE, J.)