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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10827 OF 2017

Shri Kishor Damodar Dive .. Petitioner
Vs.
The State of Maharashtra & Ors. .. Respondents

Mr. Sanjay C. Prabhu for the Petitioner.
Mrs. P. N. Diwan, AGP for Respondent No.1.
None for Respondent Nos.2 & 3.

CORAM : R. M. BORDE & V. L. ACHLIYA, JJ.
DATE : 4th JANUARY, 2019.

P. C. :

1. Heard. Rule. Rule with the consent of the parties.

2. This Petition is taken up for final hearing at the admission stage. None appeared for Respondent Nos. 2 and 3 though served. The Petitioner had tendered an application to the Tahasildar claiming restoration of land which has already been alienated in favour of the Respondents in contravention of the provisions of Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. The Petitioner claims to be a person belonging to the scheduled tribe category and is claiming the relief in respect of restoration of the land sold by his predecessor in favour of the Respondents in violation of provisions of Act of 1974. In pursuance of the application tendered by the Petitioner, notice was directed to be issued to the Respondents herein and after considering

the contentions of both the parties, the Tahasildar came to a conclusion that the application of the Petitioner does not deserve to be allowed and as such rejected the same by an order dated 03.01.2015. Aggrieved by the decision rendered by the Tahasildar rejecting the application for restoration of the land of the Petitioner, he tendered an appeal to the Sub-Divisional Officer bearing R.T.S. Appeal No. 14/15. According to the Petitioner, the Sub-Divisional Officer allowed the Appeal vide order dated 08.01.2016. The operative portion of the order has been annexed at Exhibit 'G'. The Sub-Divisional Officer while allowing the Appeal directed the cancellation of Mutation Entry No. 1784 and remitted the matter back to the Tahasildar, Vasai for holding a fresh inquiry.

3. The Petitioner has invited our attention to the communication dated 06.05.2016 forwarded by the Sub-Divisional Officer to the President, Maharashtra Revenue Tribunal, Mumbai. The communication refers to the application of the Respondent dated 18.03.2016. It appears that the Respondent has tendered the above referred application seeking review of the order passed by the Sub-Divisional Officer. The Sub-Divisional Officer has sought guidance of the Maharashtra Revenue Tribunal referring to Section 6 of the Act of 1974. The Sub-Divisional Officer has expressed doubt as regards the correctness of the order passed by him earlier in an Appeal presented by the Petitioner. The exercise undertaken by the Sub-Divisional Officer appears to be misdirected. The Appeal invoking

provisions of Section 247 of the Maharashtra Land Revenue Code was itself not competent before the Sub-Divisional Officer since the order under challenge passed by the Tahasildar was issued in exercise of powers under Section 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. The Tahasildar exercised jurisdiction under Section 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 acts as delegatee of the Collector and the order is appellable not to the Sub-Divisional Officer but to the forum prescribed under Section 6 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 i.e. the Maharashtra Revenue Tribunal. It does appear that the Sub-Divisional Officer while passing the order in an appeal presented by the Petitioner has not applied his mind to the record of the case. The Petitioner had approached the Sub-Divisional Officer objecting to the order passed by the Tahasildar rejecting his application seeking restoration of the land under the provisions of Section 4 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. The Petitioner has not at all merely objected to mutation entry but has claimed restoration of possession of the agricultural land stated to have been alienated by his predecessor in contravention of Section 3 of the Act. The Sub-Divisional Officer has directed the quashment of Mutation Entry No. 1784 and has remitted the matter back to the Tahasildar for holding a fresh inquiry. If at all there are grounds raised in the memorandum of appeal concerning the mutation entry, those are consequential aspects and cannot be considered to be the main relief claimed by the Petitioner in the Appeal. In fact, there was no question raised as regards the Mutation Entry No. 1784 and it was absolutely uncalled for that the Sub-Divisional Officer to quash the mutation entry and remit the matter back to the Tahasildar. Apart from this, as recorded above, the Appeal to the Sub-Divisional Officer by the Petitioner was not at all competent. It was unnecessary for the Sub-Divisional Officer to seek guidance from the Maharashtra Revenue Tribunal which is an Appellate Authority as provided under Section 6 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. In any case, the order passed by the Sub-Divisional Officer in an Appeal presented by the Petitioner being without jurisdiction is unsustainable and deserve to be quashed and set aside. The Appeal presented by the Petitioner to the Sub-Divisional Officer challenging the decision of the Tahasildar refusing to restore the land in his favour is not entertainable and the Appellate Forum provided under Section 6 of Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 is Maharashtra Revenue Tribunal and the Appeal ought to have been presented to the said Forum.

4. In view of the above, the order passed by the Sub-Divisional Officer, Vasai dated 08.01.2016 is quashed and set aside. It would be open for the Petitioner to avail of the remedy provided under Section 6 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 and to

present the Appeal to the Maharashtra Revenue Tribunal. If the Petitioner presents the Appeal to the Maharashtra Revenue Tribunal within a period of 8 weeks from today, the Appellate Forum shall consider the aspect of pendency of instant Petition before this Court while considering the application seeking condonation of delay that would be presented by the Petitioner along with Appeal.

5. Rule is made absolute to the extent as specified above. There shall be no order as to costs.

[V. L. ACHLIYA, J.] **[R. M. BORDE, J.]**