

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4640 OF 2014

Sau. Sindhutai w/o Pundlik Tikar
VS.
Digambar s/o Pundlik Karangale & others

Office Notes, Office Memorandum of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Shri. R. L. Khapre, counsel for petitioner.
Shri. H. R. Gadhia, counsel for respondents No.1 to 4.
Shri. B. M. Lonare, AGP for respondent No.5 to 7.

CORAM : MANISH PITALE J

DATED : 04.11.2019

Petitioner herein had moved an application under Sections 43 and 48 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, before the respondent No.7 Tahasildar for determination of purchase price, contending that she was inducted as the tenant by the Predecessor of the respondents No.1 to 4 in the year 1976 for a period of 30 years and that thereafter on 31.12.2005, for a period of one year. A notice as contemplated under Section 43 of the aforesaid Act was served by the petitioner upon the respondents and in pursuance thereof the said application was moved before the Tahasildar. By order dated 31.03.2011, the Tahasildar accepted the contentions raised on behalf

of the petitioner and allowed the application thereby determining the purchase price. From a perusal of the said order dated 31.03.2011, it is not clear as to whether the respondents No.1 to 4 were at all give an opportunity to cross-examine the petitioner as regards the claims made by her in the application as well as affidavit and oral evidence placed before the Tahasildar.

2. Aggrieved by the said order passed by the Tahasildar, the respondents No.1 to 4 moved an appeal before the Sub Divisional Officer, inter alia, contending that they were not given an opportunity at all to contest the claims made by the petitioner and that therefore, the order passed by the Tahasildar was not sustainable. It was claimed by the respondent that no fresh tenancy was agreed on 31.12.2005 and that the claim of the petitioner that the respondent No.1 as 'Karta' of the joint family had created a fresh oral tenancy was not sustainable.

3. It was submitted that in any case even if it was assumed that respondent No.1 had indulged in any such action, it would be limited to his share only. By order dated 09.08.2012, the Sub Divisional Officer gave findings against the petitioner, to the effect that the petitioner had failed to produce material on record to prove her claim and that therefore, the Tahasildar ought not to have allowed the application filed by her. On this basis, the appeal was allowed

and effectively the application itself filed by the petitioner before the Tahasildar stood dismissed.

4. Aggrieved by the same, the petitioner filed revision application before the Maharashtra Revenue Tribunal. By judgment and order dated 12.08.2013, the Tribunal dismissed the revision application and confirmed the order passed by the Sub Divisional Officer.

5. Aggrieved by the same, the petitioner has filed the present Writ Petition.

6. The learned counsel appearing for the petitioner contended that even if the appellate authority i.e. Sub Divisional Officer came to the conclusion that sufficient opportunity was not granted to the respondents No.1 to 4 to contest the claim made by the petitioner, the appellate authority i.e. Sub Divisional Officer could have only passed order of remanding the matter back to the Tahasildar and the matter could not have been decided on merits by the appellate authority.

7. It was further submitted that Tribunal also committed the same error. It was fairly submitted that perusal of the order of the Tahasildar did not indicate that despite service of notice, the respondents No.1 to 4 had chosen not to appear before Tahasildar or to cross-examine the petitioner

and that, therefore, it was a fit case for remanding the matter back to the Tahasildar for fair decision.

8. The learned counsel appearing for the contesting respondents No.1 to 4 submitted that the Tahasildar had proceeded completely in a one sided manner and sufficient opportunity was not granted to respondents No. 1 to 4 to contest the claim made by the petitioner. It was submitted that Sub Divisional Officer had taken into consideration the material on record and found that the same was not sufficient to prove the case of the petitioner. On this basis, it was submitted that no interference was warranted in the impugned order passed by the authorities below.

9. Having heard the learned counsel for the rival parties and upon perusal of the orders passed by the authorities below, it becomes evident that the Tahasildar seems to have proceeded on the basis of the claims made by the petitioner in her application under the provisions of the said Act. Although reference is made to the fact that the documents produced by the respondents No.1 to 4 were also perused, the order of the Tahasildar does not show that any opportunity was ever granted to the said respondents to cross-examine the petitioner or to contest her claim. In any case, no reference is made to contentions raised on behalf of respondents No.1 to 4 before the Tahasildar. It appears that the Tahasildar proceeded only on the basis of the

contents of the application moved by the petitioner and the affidavit as well as oral evidence tendered by the petitioner before the Tahasildar.

10. A perusal of the appeal memo filed by the respondents No.1 to 4 before the Sub Divisional Officer also shows that one of the main grounds raised in the appeal was denial of opportunity by the Tahasildar to respondents No.1 to 4 to effectively contest the application moved by the petitioner.

11. But appellate authority i.e. Sub Divisional Officer, while considering the appeal proceeded to peruse the material on record and came to an abrupt conclusion that the petitioner had failed to show creation of tenancy on 31.12.2005. The material on record available before the Tahasildar was the application moved by the petitioner and the affidavit and oral evidence tendered on her behalf, claiming that tenancy was created on 31.12.2005. In the absence of any contra material placed on record by respondents No.1 to 4 or opportunity not being granted to them to produce such material, it is difficult to understand how the Sub Divisional Officer could come to the conclusion that the petitioner had failed to make out her case. In fact, the situation that arose before the Sub Divisional Officer warranted setting aside of the order of the Tahasildar and remanding the proceedings for fresh consideration by granting opportunity to the rival parties to prove their

respective claims. Having not done so and having held against the petitioner it appears that the Sub Divisional Officer committed an error. The Tribunal while deciding the revision application of the petitioner failed to notice the aforesaid error committed by the Sub Divisional Officer and thereby confirmed the order.

12. There were submissions made on behalf of respondents No.1 to 4 before this Court seeking to raise doubts about the claim of the petitioner regarding creation of tenancy on 31.12.2005 and also that non registration of a written document signifying the tenancy was also fatal to the claims of the petitioner. It was contended that no such oral tenancy could be proved and therefore, on this ground itself the contentions raised on behalf of the petitioner before this Court need not be considered. But, the central dispute in the present case pertains to the question of creation of fresh tenancy on 31.12.2005 and if so, whether the notice issued on 17.07.2006 by the petitioner satisfied the requirements of the provisions of the said Act.

13. The said dispute could be decided in an appropriate manner only after granting sufficient opportunity to the parties to support their claim, including contentions raised on behalf of the respondents No.1 to 4 as regards the mandatory registration and written document for creation of

tenancy in favour of the petitioner.

14. The above material clearly shows that in the present case, even though the order of the Tahasildar could not be said to be sustainable, the Sub Divisional Officer i.e. appellate authority and the revisional authority i.e. Tribunal ought to have remanded the matter to the Tahasildar for fresh consideration, instead of allowing the appeal of the respondents No.1 to 4 on merits and dismissing the revision filed by the petitioner.

15. In view of above, the impugned order passed by the Sub Divisional officer and the Tribunal are set aside. The order passed by the Tahasildar is also found to be unsustainable in view of observations made above and therefore, all the three orders i.e. 31.03.2011 passed by the Tahasildar, order dated 09.08.2012 passed by the Sub Divisional Officer and order dated 12.08.2013 passed by the Maharashtra Revenue Tribunal, are quashed and set aside.

16. The matter is remanded back to the Tahasildar for fresh consideration. All the contentions of the rival parties are kept open for consideration before the Tahasildar.

17. Parties are directed to remain present before the Tahasildar on 2nd December 2019. The Tahasildar is directed to provide sufficient opportunity

to the rival parties to place their respective claims and material on record as they deem fit in support of their respective claims. The Tahasildar is directed to complete the proceedings and pass order on the application of the petitioner under the provisions of the said Act, within **six months** from 02.12.2019.

18. Writ Petition is disposed of in above terms.

JUDGE

KOLHE