

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5080 OF 2017

WITH

WRIT PETITION NO. 5081 OF 2017

Shridhar Ramchandra Bhogale
since deceased by heir
Balkrishna Shridhar Bhogale
Residing at Halwal, Bramhanwadi
Tal : Kankavali,
Dist. : Sindhudurg

.. Petitioner

Vs.

Dilip Bapu Pandit
Residing at Halwal, Bramhanwadi
Ta. : Kankavali,
Dist. : Sindhudurg

.. Respondent

WITH

WRIT PETITION NO. 3324 OF 2017

Balkrishna Mahadev Sawant
Residing at Halwal, Bramhanwadi
Tal : Kankavali,
Dist. : Sindhudurg

.. Petitioner

Vs.

1. Dilip Bapu Pandit
Residing at Halwal, Bramhanwadi
Ta. : Kankavali,
Dist. : Sindhudurg

2. Pandhari Janardan Pandit,
since deceased by heirs :
2a. Smt. Rukmini Pandhari Pandit
Residing at Susmruti CHS,
Flat No. 543, Room No.22,
Sector-5, Charkop,
Kandivli (West), Mumbai 400 067.

3. Rajaram Pandurang Pandit,
since deceased by heirs,
3a. Devendra Hanumant Pandit
Since deceased by heirs,
3a(i) Mandar Devendra Pandit,
Residing at Deshpande House,
Ground floor, Subhash Road,
Opp. Gulab Joshi Bagnlow,
Vile Parle (East),
Mumbai 400 057

4. Manohar Mahadev Pandit
C/o. Ghanashyam Vasudev Pandit
Residing at Building No. 80/2770
3rd floor, Kurla Nehru Nagar,
Kurla (East), Mumbai 400 070.

5. Suryakant Bapu Pandit,
Residing at Halwal, Bramhanwadi
Ta. : Kankavali,
Dist. : Sindhudurg

.. Respondents

Mr.Gangadhar J. Sabnis for petitioners.

Mr.Shashank C.Mangle for respondent No.1.

CORAM : N.J. JAMADAR, J.

DATE : 12TH MARCH 2020

ORAL JUDGMENT :

1. Rule. In view of limited nature of the controversy, rule is made returnable forthwith and heard finally at the stage of admission.

2. The challenge in these petitions is to the judgment and order dated 17th February 2017 passed by the learned Member (Administrative), Maharashtra Revenue Tribunal, Mumbai in Review Application Nos.6 of 2016, 7 of 2016 and 8 of 2016, whereby the

learned Member was persuaded to dispose of the review applications on the premise that the learned Member, who had passed the judgment and order of which the review was sought, ceased to be a Member of the Tribunal. The learned Member referred to Regulation 37 of the Maharashtra Revenue Tribunal Regulations 2013 and found himself constrained to entertain the review applications, as Shri J.P. Dange, the then Member (Administrative), who has passed the order in Tenancy Revision Application No.119 of 2014, 120 of 2014 and 121 of 2014 on 7th May 2016, ceased to hold office as a Member of the Tribunal.

3. In the backdrop of the order passed by the learned Member, the reference to the facts in all the petitions is not warranted except to note the circumstances in which the review petitions came to be filed. The petitioner claims that a certificate under section 32M of the Bombay Tenancy and Agricultural Lands Act, 1948 ('The Act, 1948'), came to be issued to him in the year 1962 pursuant to an order passed by ALT in Tenancy Case No.154 of 1962. After a period of about 51 years, the petitioner asserts, the respondents filed an appeal, being Tenancy Appeal No.13 of 2013, before the Sub-Divisional Officer, Kankavali, which came to be dismissed. The respondents

carried the matter in revision in Revision Application No. TNC/RTN/121/2014. By judgment and order dated 7th May 2016, the learned Member, MRT was persuaded to allow the revision application preferred by the respondent.

4. The petitioner sought review of the said order by filing Review Application No.7 of 2016. The President, Maharashtra Revenue Tribunal, by order dated 30th June 2016 opined that it was a fit case for reconsideration. The further proceedings before the lower authorities were stayed and records and proceedings were directed to be called.

5. On 17th February 2017, when the review petitions were listed before the learned Member (Administrative), the impugned order came to be passed.

6. Since the learned Member has disposed of the review petitions under an impression that in view of the fact that Mr.J.P. Dange, the then Member (Administrative) ceased to hold office of Member of the Tribunal, the review petitions were untenable, it would be necessary to extract the observations of the learned Member:

“3. At the very find outset, I would like to refer to the mandatory provisions as laid down under the Maharashtra Revenue Tribunal Regulations, 2013

for dealing with Review Applications. Regulation 37 deals with the hearing of review applications and for the sake of clarity, it is reproduced herebelow :-

“37 Hearing of review application :-- Where a single member or the members of a bench or one of such members, who decided the case or made the order, a review of which is applied for, continues or continue to be a member or members of the Tribunal at the time when the application for such review is to be heard, such member or a bench consisting of such member or members, as the case may be, shall hear the application and o other member or bench shall hear the same.”

4 Now, in the light of the above mentioned mandatory provisions, the present Review Applications are required to be viewed as this Tribunal is bound by the provisions made in the Maharashtra Revenue Tribunal Regulations, 2013.

*5 Perusal of the orders impugned, of which the review is sought for in all the review applications reveals that in all these all the orders passed in Tenancy Revision Application Nos. 119/2014, 120/2014 and 121/2014 decided on 7th May 2016 are passed by Shri J.P. Dange, the then Member (Administrative), Maharashtra Revenue Tribunal, Mumbai as he was and as he does not continue to be a member of this Tribunal, in view of this categorical provision that no other member or bench shall hear the review application other than the member who decided the case or made the order, a review of which is applied for. There is a mandate which is reflected by the wording “**no other member or bench shall hear the same**”. In the light of this mandatory provision as incorporated in the Maharashtra Revenue Tribunal Regulations, 2013 under Regulation 37, it would not be lawful to hear the review applications and hence I proceed to pass the following final order:*

O R D E R

1. Review Application Nos. 6/2016, 7/2016, 8/2016 hereby stand disposed of as

not maintainable before this Tribunal in view of the provision laid down under Regulation 37 of the Maharashtra Revenue Tribunal Regulations, 2013, as the member who has passed the judgment and orders of which review is sought for, has ceased to be and does not continue to be a member of this Tribunal.

2. No orders as to costs.

3. Inform the parties accordingly.

4. Review Application nos. 6/2016, 7/2016 and 8/2016 stand disposed of in terms of the above order.”

7. Evidently, the learned Member has completely misconstrued the provisions of Regulations 37 of the Maharashtra Revenue Tribunal Regulations, 2013. The learned Member, though reproduced the text of Regulation 37, lost sight of the words, “continues or continue to be a member or members of the Tribunal at the time when the application for such review is to be heard”. It defies comprehension that the learned Member could construe the provision in a diametrically opposite manner to hold that once the Member who passed the order, which is sought to be reviewed, ceased to hold office, the review petitions cannot be entertained at all.

8. Regulation 37 embodies a fundamental principle that when an order is sought to be reviewed and the Judge or officer who passed

the order is available to transact judicial business, the review application shall be listed before the same Judge or officer. To construe Regulation 37 to mean that the statutory right of review is lost the moment the Presiding Officer, who passed the order sought to be reviewed, ceased to hold office, is in complete negation of the fundamental principles of judicial adjudication.

9. In all fairness, the learned counsel for the respondents did not endeavour to support the reasons ascribed by the learned Member. However, the learned counsel invited the attention of the Court to an order passed by this Court in the case of *Yeshwant Bajarya Pimple (Since deceased) Through LRs. & Ors. Vs. Jairam Kalya Sankhe & Ors.*¹ wherein, according to the learned counsel for the respondent, on identical facts, a similar challenge was negated by this Court.

10. I have perused the order passed by the learned Single Judge on 12th June 2019. The learned Single Judge has not adverted to the question as to whether a statutory right of review could be taken away for the reason that the Presiding Officer who passed the order ceased to hold office. Thus, the said order is of no assistance to the respondents.

1 Writ Petition No.2255/2018 dt. 12-06-2019

11. Resultantly, the petitions deserve to be allowed. Hence, the following order :

O R D E R

- (i) The petitions stand allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The Review Application Nos. 6/2016, 7/2016 and 8/2016 stand restored to the file of the learned Member, Maharashtra Revenue Tribunal, Mumbai.
- (iv) The President of Maharashtra Revenue Tribunal, Mumbai, is requested to assign the Review Petitions to the President/Member other than the learned Member who passed the impugned orders.
- (v) Rule made absolute in aforesaid terms.

No costs.

[N.J. JAMADAR, J.]