

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

WRIT PETITION NO.6336 OF 2017

(Amir Ali s/o Hussein Ajani Vs. Waman s/o Sitaram Khandare (dead) thr. LR's Smt.
Godawari wd/o Waman Khandare and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Prasad Dharaskar, Advocate for Petitioner.
Shri N.B. Bargat, Advocate for Respondent Nos.1 to 10.
Shri A.M. Kadukar, AGP for Respondent No.11.

CORAM: RAVINDRA V. GHUGE, J.

DATE: 27th JANUARY, 2020.

1] The petitioner is aggrieved by the order dated 05.10.2016 passed by the Maharashtra Revenue Tribunal ('MRT') vide which, the order passed by the Sub-Divisional Officer, Pusad dated 30.12.1989 in Tenancy Case No.6/59(27)/76-77, has been quashed and set aside and the matter has been remitted.

2] I have heard the learned Advocate for the respective sides and the learned AGP on behalf of respondent no.11.

3] The record reveals that the predecessors of the petitioners, are undisputedly the original owners of land Survey No.7, admeasuring 4 hectares and 68 R at Mouza Dharmoha, Taluka Mahagaon, District Yavatmal. The maternal grand-father of the petitioner was the original owner of the property and was survived by his wife and three daughters. The petitioner is the son of one of the

daughters namely Sakinabai.

4] The litigation between the parties reached the tenancy court and thereafter the issue fell for consideration of this Court in Writ Petition No.186/1980. This Court recorded that, in proceedings under Section 49A of the Bombay Tenancy Act, 1958, the trial court had recorded a finding that the deceased Sitaram (predecessor-in-title of the petitioners before the court), was a tenant of the suit field. The facts of the case were recorded by this Court and it was noted that the trial court had directed compulsory transfer of ownership. The Appellate Court had taken a different view of the matter and had dropped the proceedings by order dated 31.05.1976. A revision was preferred and by order dated 31.05.1977, the revision was dismissed on its merits as well as on account of being barred by limitation. This order was the subject-matter of the writ petition.

5] This Court has recorded the events that have occurred in the said case in paragraph no.2 which read as under:-

2. Certain dates may be noticed in order of time. Even according to the petitioners, Sitaram died sometime in September 1976 and they learnt about the appellate Court's Order on 29th June 1977 on receipt of notice of proceedings under section 120 of the Bombay Tenancy Act. They applied for copy on 24th November 1977 which copy they received on 6th December 1977. It is on 31st May 1977 that the revision has been filed. This delay has been explained in an

application under section 5 of the Limitation Act. According to the petitioners, Sitaram was suffering from virulent type of leprosy and he was, therefore, unable to attend the proceedings. No date was fixed by the Sub-Divisional Officer for passing the order. The petitioners after a couple of months that they learnt about the order passed in appeal on receipt of the notice. After obtaining copies on 6th December 1977 they could not file the revision for a period of over 5 months because of the strike of the Government employees. The revisional court was not satisfied about the genuineness of the reason for delay. It is pertinent to notice that even the copy of the summons alleged to have been received on 27th June 1977 is not placed on the record. The learned member of the M.R.T. has mentioned that the strike began from 14th December 1977 and ended on 5th February 1978 and thus this could not be the first cause for further delay. The delay appears to be gross. It is true that there is no counter affidavit filed on behalf of the respondents but this does not mean that in the absence of counter-affidavit the statement made in the application for condonation of delay must be accepted. It is nobody's case that the dates given by the learned member of the M.R.T. about the strike period are wrong.

3. Under all these circumstances, I see no reason to interfere with the Order passed by the M.R.T. holding that the revision was grossly delayed. The rule is thus discharged. No order as to costs.

6] By the above conclusion, the petition was dismissed and rule was discharged. This concluded the issue as regards tenancy and the alleged tenants were therefore,

held to be encroachers.

7] The learned Advocate for the respondents has strenuously canvassed all issues pertaining to the tenancy. Notwithstanding that the tenancy issue has attained finality and these respondents are no longer held to be tenants, yet an attempt is made by the respondents to convey as if they are still the tenants and the tenancy issue is still alive.

8] In the proceedings before the MRT which led to the passing of the impugned order, the issue that was canvassed was that the Sub-Divisional Officer, Pusad has appreciated that the attachment of the proceedings was a technical issue and based on such technical issue, the Sub-Divisional Officer should not have taken a decision on the tenancy aspect which was so done vide the impugned order dated 30.12.1989. The MRT, while delivering the impugned order, failed to note that the tenancy issue was no longer open. Probably it was not aware about the judgment delivered by this Court on 04.04.1983 in Writ Petition No.186/1980. It has merely remitted the matter back to the Sub-Divisional Officer, Pusad by observing that it could not have passed the order dated 30.12.1989.

9] I find that the MRT has practically declined to exercise jurisdiction which it was expected to exercise while dealing with the matter. It could not have remitted the matter to the lower authority and without assigning reasons, could not have interfered with the order of the Sub-Divisional Officer, Pusad dated 30.12.1989.

10] In view of the above, this petition is partly

allowed. The impugned order dated 05.10.2016 is quashed and set aside and the Revision/Tenancy/YAV-27/16 is remitted to the Maharashtra Revenue Tribunal at Nagpur. The litigating parties shall appear before the said authority on 10.02.2010 at 11:00 a.m. and shall abide by the dates on which the matter is posted for hearing. After the hearing in the proceeding is concluded, the MRT is expected to deliver a reasoned order on the merits of the case and shall keep in view the judgment dated 04.04.1983 delivered by this Court in Writ Petition No.186/1989.

11] All contentions of the parties are left open, save and except the issue of tenancy which has attained finality.

(Ravindra V. Ghuge, J.)