

Urmila Ingale

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

WRIT PETITION NO. 3986 OF 2021

Tukaram Namdev Ghorpade and ors. Petitioners
Vs.
Shailaja Muralidhar Kulkarni and ors. Respondents

**WITH
WRIT PETITION NO. 4002 OF 2021**

Tukaram Namdev Ghorpade and ors. Petitioners
Vs.
Shailaja Muralidhar Kulkarni and ors. Respondents

**WITH
WRIT PETITION NO. 3990 OF 2021**

Prakash Shankar More and ors. Petitioners
Vs.
Madhukar Nagesh Pavangadkar and ors. Respondents

**WITH
WRIT PETITION NO. 3992 OF 2021**

Tukaram Namdev Ghorpade and ors. Petitioners
Vs.
Madhukar Nagesh Pavangadkar and ors. Respondents

Mr.R.M.Hardas i/b Mr.Dilip B.Shinde, for the Petitioners in all Petitions.

Mr.Laxman K. Kalel, for Respondents No.1 to 4 in WP/3990/21 & for Respondents No. 1 to 7 in WP/3986/2021, WP/4002/2021 & WP/ 3992/2021.

Mr.A.P. Vanarase, AGP for State in WP/3986/2021.

Mr.S.D.Rayrikar, AGP for State in WP/4002/2021.

Mr.P.P. Pujari, AGP for State in WP/3990/2021.

Mr.C.D. Mali, AGP for State in WP/3992/2021.

CORAM : M. S.KARNIK, J.

DATE : 10th AUGUST, 2021

P.C. :

. Heard learned Counsel for the Petitioners and learned Counsel for the Respondents.

2. The Petitioners are the protected tenants. The proceedings were initiated under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short 'the said Act') before Tahsildar and ALT. The Petitioners succeeded before the Tahsildar. The landlords filed Appeal before Sub-Divisional Officer (for short 'SDO') . The Appeal came to be dismissed. The landlords then approached Maharashtra Revenue Tribunal (for short 'Tribunal') by filing the a revision under Section 76 of the said Act. The Tribunal in paragraphs 8 & 9 held that the Tahsildar did not follow mandatory procedure as laid down in the provisions of the said Act while granting 32G certificate. Learned Counsel for the Petitioners submits that even 32M certificate has been issued. The Tribunal in paragraphs 8 & 9 while holding that the mandatory procedure of recording evidence and the statement of the landlords having not been followed, remanded the matter back to the Tahsildar. It is the contention of the

learned Counsel for the Petitioners that the entire records were before the Tribunal. He relied upon the decision of this Court in the case of **Shankar Keshav Chopde Vs. Dnyanu Babu Shinde, 2012(1 MhL.J. 915** to support his contention that unless there is an error apparent on the face of the record, the remand order cannot be made in exercise of revisional jurisdiction. He further submitted that this section has been repeatedly interpreted by the Hon'ble Supreme Court and it has been held that power of revision cannot be exercised lightly.

3. It is one of the submission of the learned Counsel for the Petitioners before the Tribunal that proper opportunity of representing the Petitioner's case was not given in as much as the matter was taken up for hearing during the on-going pandemic. It is in effect his submission that order has been passed without giving a reasonable opportunity of hearing the Petitioners. Learned Counsel pointed out that there was voluminous evidence on record in the form of the documentary evidence to support the contention that proper procedure was followed and even without calling for record, Tribunal passed the impugned order.

4. Learned Counsel for the landlords on the other hand supported the impugned order. He has submitted that the orders passed by Tahsildar & SDO is in breach of statutory provisions mandated by the said Act. Therefore no interference is called for.

5. After hearing the matter for some time, learned Counsel for the Petitioners sought liberty to approach the Tribunal for placing these facts on record in as much as according to him the Petitioners were not given proper opportunity to be represented. He submits that appropriate proceedings will be taken before the Tribunal in support of the Petitioner's submissions that the Petitioners be heard and that the hearing which took place by the Tribunal in the pandemic resulted in the Petitioners not getting adequate opportunity to be represented and making out a case on their behalf thereby seriously prejudicing their case. In case such an application is filed contending that proper representation/opportunity was not given to the Petitioners, the same be considered by the Tribunal in accordance with law. For a period of 6 weeks from today, the order of remand passed by the Tribunal not to be given effect to. The Tribunal is requested to hear the application/s made by the Petitioners expeditiously. I may not be understood to have expressed any opinion on merits. Liberty to challenge the

impugned order in the Petitions is kept open at a later stage, as presently the Petitioners want to approach the Tribunal bringing on record certain facts as indicated hereinbefore. With this liberty, present Petitions are disposed of. Further liberty to challenge the impugned order at appropriate stage, if necessary is kept open.

(M.S.KARNIK, J.)