

Vidya Amin

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

WRIT PETITION NO. 6692 OF 2021

Maruti Shivappa Ghaugule(Decd.)
through his Lhs Smt. Shantabai M. Chaugule ... **Petitioner**

V/s.

Laxman Satappa Khot & Ors. ... **Respondents**

Mr. P. M. Arjunwadkar for the petitioner.

Mr. D. V. Sutar a/w. Mr. Nirmal Pagaria for respondent no. 1.

Mr. S.D. Rayrikar, AGP for respondent no. 2/State.

CORAM : G.S.KULKARNI, J.

DATE : 26 October, 2021

P.C.:

1. This is a petition filed under Article 227 of the Constitution of India assailing the order dated 3 June, 2021 passed by the learned Member of the Maharashtra Revenue Tribunal (for short "**the tribunal**") by which respondent no. 1's Revision Application No. KP/39/B/2002 has been allowed, whereby the order dated 7 January, 2002 passed by the Sub-Divisional Officer, Ichalkaranji in Tenancy Appeal no. 5 of 2000 and as confirmed by the Additional Tahsildar, Shirol by an order dated 4 September, 2000 stands set aside. The tribunal has also ordered rejection of original applicant-Maruti Shivappa Chaugule's (deceased husband of the petitioner) application dated 2 May, 2000 (Application No. 32 Shirdhon-1/2000) under section 32-O r/w. 32-G of the Bombay Tenancy and

Agricultural Land Act, 1948 for purchase of the land in question.

2. Learned counsel for the petitioner would submit that the said Revision Application was of the year 2002 and during the pendency of the Revision Application, Maruti Shivappa Chaugule, husband of the petitioner, expired. Consequently, the Revision Application was stated to have been amended. It is submitted that an application was moved before the Tribunal for service of the amended Revision Application to be effected on the petitioner (respondent therein). However, the amended Revision Application was never served on the petitioner herein. Learned counsel for the petitioner has drawn my attention to this admitted position as referred to in paragraph 7 of the impugned order. His submission is that despite such defect, the learned Member of the Tribunal proceeded to adjudicate on the Revision Application, considering that the revision being a old proceedings, it is required to be decided. It is his submission that this Revision Application has been decided by the impugned order dated 3 June, 2021 which was also a period when the severity of the pandemic was certainly in existent and more particularly due to the second wave of the pandemic having affected the entire country. Learned counsel for the petitioner submits that in these circumstances, it is clear even on the perusal of the impugned

order dated 3 June, 2021 that an application was made for adjournment of the proceedings and an opportunity to be given to the petitioner to file reply to the revision application, however, the same has not been considered by the tribunal and the impugned order has been passed.

3. Learned counsel for the respondent no.1-contesting respondent has vehemently opposed this petition. He submits that the petition itself has been filed as a defective petition, as respondent no. 3-Madhav Balawant alias Yashwant Mirashi, who is dead, is impleaded as a party. Responding to this objection as raised on behalf of respondent no. 1, learned counsel for the petitioner states that he would delete respondent no. 3. In my opinion, interest of justice would require that the petitioner ought not to be non-suited on such technicality. Accordingly, respondent no. 3 is permitted to be deleted. Such amendment be carried out forthwith.

4. Learned counsel for respondent no. 1 submitted that there is no reason whatsoever for this Court to interfere with the impugned order passed by the tribunal. He has submitted that ample opportunity was given to the petitioner to participate in the proceedings, however, there was no contest whatsoever before the

tribunal and hence no interference ought to be made.

5. Having heard the learned counsel for the parties and having perused the record and the impugned order, in my opinion, the tribunal ought to have granted an opportunity to the petitioner to effectively participate in the proceedings before it, more particularly, considering the fact that during the pendency of the revision application, the petitioner-Maruti Shivappa Chaugule had expired and certainly to some extent the petitioner had handicap to prosecute the pending revision proceedings. It also appears to an admitted position on record that the amended revision application was not served on the petitioner despite the fact that the application to that effect was made still the service of such amended application was not effected. The fairness of procedure to be followed by the tribunal would make no exception that if the proceedings which are subject matter of adjudication, undergo any alteration however minor, the amended application ought to have been served on all the parties. When service of such amended proceedings is effected on the petitioner, it is only then, the tribunal could appropriately exercise jurisdiction and proceed to adjudicate the revision proceedings. Thus, on this count there is a basic infirmity in the procedure as adopted by the tribunal in passing the impugned order. It also appears that respondent no.

4-original landlord Vishnu Balawant alias Yashwant Mirashi was brought on record, however, he was also not represented and as to whether service was complete on him is also not known. In the above circumstances, it is in the interest of justice that the impugned order is set aside and the parties be heard afresh on the revision application.

6. Respondent no. 1 is directed to serve the amended copy of the Revision Application to the petitioner and her advocate, whose name be informed by Mr. Arjunwadkar, advocate for the petitioner in the present proceedings. Let such service be effected within 10 days from today. The Tribunal shall cause a notice of the proceedings to be issued to Vishnu Balawant alias Yashwant Mirachi - respondent no. 4. The parties are directed to appear before the tribunal at the first instance on 15 November, 2021 at 11 a.m. The tribunal shall pass further appropriate orders so that all the parties are represented and are also granted sufficient opportunity of minimum 15 days to file reply to the revision application. The tribunal thereafter shall hear the parties on the Revision Application and decide the same within a period of three months from 15 November, 2021.

7. Writ Petition is accordingly allowed in the aforesaid terms.

No costs.

8. Needless to observe that all contentions of the parties on the merits of their respective pleas are expressly kept open.

9. Parties to act on the authenticated copy of this order.

(G.S.KULKARNI, J.)