

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11998 OF 2017

Firoz Sattar Patel & Ors. ... **Petitioners**
V/s.
Ghatkopar Sarvajanik Jivdaya Sanstha ... **Respondent**

Mr. A. S. Khandeparkar i/b. Khandeparkar & Associates, Advocate for the
Petitioners.

Mr. Samarth Raju Moray, Advocate for the Respondent.

CORAM : G. S. KULKARNI, J.

DATE : OCTOBER 26, 2021

PC :

1 Heard Mr. Khandeparkar, learned Counsel for the petitioners and Mr.
Moray, learned Counsel for the respondent.

2 By the impugned order dated 11th September 2017 passed by the
Maharashtra Revenue Tribunal revision application (Revision Application
No.236 of 2015) which was filed by the respondent against an order passed
by the Sub-Divisional Officer, Thane dated 1st September 2015 has been
allowed, whereby the said order passed by the Sub-Divisional Officer, Thane
has been set aside, declaring that the respondent's name be restored as the

owner in the revenue records.

3 Mr. Khandeparkar has limited submissions to assail the impugned order. He submits that the Sub-Divisional Officer (SDO), Thane had offered cogent reasons, however the Revision Authority while setting aside the decision of SDO, Thane passed in favour of the petitioners has set aside an observation of the SDO that the petitioners had become tenants on the Tiller's day i.e. on 01/04/1957. My attention is drawn to the observations made by the Sub-Divisional officer in paragraph No.3 of the order dated 1st September 2015 to submit that the documents which were relied by the petitioners in support of the petitioners' case that they have become lawful tenants could not have been disturbed by the revision authority. It is his contention that the order of the Tribunal without cogent reasons has upset the findings as recorded by the SDO. It is hence Mr. Khandeparkar's this submissions that recording necessary interference of this Court is called for.

4 On the other hand, Mr. Moray, learned Counsel for the respondent submits that the findings which were recorded by the Sub-Divisional Officer were patently erroneous and in fact contrary to the record. He submits that the observations made in the impugned order show the uncontroverted position on record. He submits that the petitioners have never cultivated the

suit land nor any acknowledgment was issued in favour of the petitioner by the respondent for any rent received. He submitted that the petitioner was never connected with the suit land. It is submitted that the petitioner has also not justified and has not given any explanation as allegedly observed by the Tribunal regarding withdrawal of appeal on the same cause of action before the Sub-Divisional Officer and for the first time the petitioners had mentioned that the petitioners were impersonated and no proceedings were initiated by the petitioners in that regard.

5 Mr. Moray, has submitted that the most crucial aspect of the matter was the respondents' case that the Government had issued Notification dated 4th August 1975 bearing No. TNC/5171/97660-M under Section 88(1)(b) of the Maharashtra Tenancy and Agricultural Land Act, 1947 for village Borivali, Taluka and District Thane by virtue of which the provisions of Section 70(b) and/or Section 32(G) were not applicable to the suit land and accordingly in the impugned order the revisional authority has made an observation that the petitioners could not have been maintained an application under Section 70(b) and the same could not have entertained by the SDO. Mr. Moray has drawn my attention to the observations made in that regard by the Tribunal accepting the said contention on behalf of the respondent.

6 On query made by a Court as to whether such issue was raised before the Tribunal, Mr. More has drawn my attention to the revision memo, wherein on page No.6, wherein the petitioners raised the following specific contentions :

“(d). The learned Sub Divisional Officer, Thane has failed to consider that even otherwise by the Government Notification dated 4/8/1975 bearing no. TNC/5171/97660 – M there is an 881(b) notification for the village Borivali, Taluka and District Thane. Therefore since the provisions of 881(b) apply to the suit lands and therefore the provisions of Section 70(b) or 32G are not applicable to the suit lands, therefore the application of 70(b) of the respondents ought to be dismissed on the sole ground that the suit lands are affected by the 881(b) notification.”

7 The Court’s attention is also drawn to the written notes of arguments filed by respondent in that regard wherein again the said contention was reiterated in paragraph 5 thereof. The said contention in fact goes to the root of matter as it pertained to the basic jurisdiction of the SDO to entertain any application of the nature filed by the revisioner. In this regard, my attention is drawn to the written submission filed on behalf of the petitioners wherein the petitioners have not controverted such specific averments as urged on behalf of the respondent.

8 If that be the case, then the observations as made by the Tribunal in that regard cannot be faulted. Thus, by virtue of such notification as issued by the State Government, the provisions of Section 70(b) could not have been invoked by the petitioner to claim any tenancy in respect of the suit land.

Even otherwise there was no material whatsoever which would assist the petitioners to claim any rights over the suit land. Having considered the impugned order, no case is made out for interference of this Court in its jurisdiction under Article 227 of the Constitution. No other contention falling out side the jurisdiction of the SDO and the tribunal are touched in dismissing this petition.

9 The petition is accordingly rejected. No costs.

(G. S. KULKARNI, J.)