

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

936 WRIT PETITION NO.10012 OF 2019

RAMDHAN VITHOBA LAMB
VERSUS
MAROTI AMBADASARAO KANKAL AND OTHERS

Advocate for Petitioner : Mr. Santosh S. Jadhavar
AGP for Respondent No.4 : Mrs.G.L.Deshpande
Advocate for Respondent Nos.1 to 3 : Mr.V.P. Latange

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 8th July, 2022

ORDER :-

1. The petitioner is aggrieved by the order passed by the Maharashtra Revenue Tribunal, (hereinafter referred to as "the Tribunal") Aurangabad in revision No.60/B/2017/Beed, thereby allowing the revision petition and remanding the matter back for re-enquiry to the Tahsildar, Kaiz.

2. The petitioner claims that his father was declared as protected tenant by the competent authority in respect of the property in question. After his father's death, petitioner's name is recorded in the revenue record of the said property.

3. The petitioner thereafter, applied for recording his name as owner of the disputed property. The landlords, respondent Nos.1

to 3 also moved application under Section 28(2) of the Hyderabad Tenancy and Agricultural Land Act, 1950 (hereinafter referred to as “the Act of 1950”) for recovery of property in dispute.

4. By the common Judgment and order passed on 5 June, 2014, the Tahsildar allowed the application filed by the petitioner and rejected the application filed by respondent Nos.1 to 3. The respondent Nos.1 to 3 approached the Deputy Collector, Beed, by filing appeal challenging the Tahsildar’s order. The appeal was allowed and the matter was remanded back to the Tahsildar.

5. After the remand, the Tahsildar, allowed the application filed by the petitioner and directed issuance of ownership certificate under Section 38(6) of the Act of 1950 in favour of the petitioner. Accordingly, on 10 September, 2015 ownership certificate is issued to the petitioner.

6. Respondent Nos.1 to 3 challenged the order of the Tahsildar in appeal before the Deputy Collector, Beed. Appeal is allowed. Judgment and order passed by the Tahsildar as well as ownership certificate issued in favour of the petitioner were set aside. The tenancy of the petitioner was terminated and petitioner was directed to deliver the possession of the said

property to respondent Nos.1 to 3. The petitioner challenged the order passed by the Deputy Collector, Beed by filing revision before the Maharashtra Revenue Tribunal. The revision is partly allowed. The Judgment and order passed by the Tahsildar and the ownership certificate issued in favour of the petitioner are set aside and the matter is remitted back to the Tahsildar with a direction to decide the proceedings afresh on or before 31 July, 2019. This order is impugned in the present petition.

7. Heard the learned Advocate for the petitioner, the learned Advocate for respondent Nos.1 to 3 and the learned AGP for respondent No.4.

8. The learned Advocate for the petitioner assailed the impugned order contending that the Tribunal has travelled beyond the scope of its jurisdiction. Order passed by the Tahsildar was not challenged before the Tribunal and the Tribunal has committed an error in remanding the matter back.

9. The learned Advocate for respondent Nos.1 to 3 supports the impugned order. The learned AGP has also supported the impugned order.

10. The Tribunal while remanding the matter back to the Tahsildar, Kaij, has held that the Tahsildar should not have

decided the proceedings filed by the petitioner and respondent Nos.1 to 3 at the same time. Proceedings filed by the petitioner were under Section 32 and 38 of the Act of 1950, whereas proceeding filed by the respondent Nos.1 to 3 was under Section 28 of the Act of 1950. If the proceedings filed by the respondent Nos.1 to 3 would have been allowed, there was no question of considering the proceedings of the petitioner under Sections 32 and 38 of the Act of 1950. The Tribunal has further observed that no proper enquiry was conducted in landlord's application filed under Section 28 of the Act of 1950. It is further observed that the observations of the Deputy Collector are not followed and or applied by the Tahsildar, while considering the proceedings under Section 38 of the Act of 1950. Because of clubbing of both the proceedings of the tenant and the landlord, the parties were not in a position to properly conduct the matters and establish their rights on record. The Tribunal, therefore, came to a conclusion that there is procedural impropriety on the part of the Tahsildar clubbing both the matters and deciding the same by a common Judgment.

11. The perusal of the record indicates that the Tribunal was justified in coming to the said conclusion. If the parties were not in a position to establish their rights and contentions on record, the procedural impropriety committed on the part of Tahsildar

goes to the root of the matter and Tribunal, therefore, is right in setting aside the order passed by the Tahsildar and remanding the matter back to him for giving the parties opportunity to lead evidence and prove their respective contentions/claims.

12. No illegality or perversity is found in the impugned order. The writ petition is devoid of merit and it is, therefore, rejected. No costs.

13. Taking into consideration the fact that the Tribunal has directed the Tahsildar, Kaij to decide the matter on 31 April 2019 and directed the parties to appear before the Tahsildar on 30 April 2019, the parties are directed to appear before the Tahsildar, Kaij on 17 August 2022.

14. The Tahsildar shall give an opportunity of hearing and permit the parties to lead their respective evidence and decide the matter on merits, within a period of three months from 17 August, 2022.

(NITIN B. SURYAWANSHI)
JUDGE

SPT