IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14369 OF 2017

SURAJ ASARAM PAWAR
VERSUS
INDUBAI NARAYAN PAWAR AND OTHERS
...
Advocate for the Petitioner : Shri Patil Hanmant V.
Advocate for Respondents 1 to 3 : Shri D.R. Adhav h/f Shri Rajale Gulab
...

CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 11th January, 2022

<u>Per Court</u>:

1. A short point raised by the petitioner in the present Writ Petition is whether, it was open for the Maharashtra Revenue Tribunal, Aurangabad, to pass the impugned order challenging the legality and validity of the order passed by the Tahasildar, Shrigonda on 30.08.2016 in the restoration case. The Tahasildar had passed the order under Sections 36 and 36-A of the Maharashtra Land Revenue Code, 1966 and Sections 3 and 4 of the Maharashtra Restoration of Land to Scheduled Tribes Act, 1974, on an application being preferred by the petitioner for recalling the permission granted under Section 36-A of the MLRC.

2. The learned counsel for the petitioner, by relying upon the Division Bench decision of this Court in the case of ***D.A. Pingale and vs. P.S. Potinde and others***, in Writ Petition No.9845/2015 (Bombay) decided

on 17.02.2016, would submit that the position as regards instituting the proceedings before the Maharashtra Revenue Tribunal has been put to rest by the Division Bench by referring to the jurisdiction of the Maharashtra Revenue Tribunal as contemplated under Section 315 of the Maharashtra Land Revenue Code, 1966, which operates as an exception to the general provisions of appeals and revisions contained in Chapter 13 and therefore, it was concluded that an appeal would lie under Section 247 of the MLRC by virtue of Schedule-E, to the Divisional Commissioner. The copy of the judgment delivered by this Court in ***D.A. Pingale (supra)*** is placed on record.

3. The learned counsel for the respondents fairly concedes to the legal position and submits that the Maharashtra Revenue Tribunal has no jurisdiction to entertain the proceedings, since in the wake of the provision of Section 274 of the MLRC, an appeal would lie to the Divisional Commissioner. This is the end of the matter, since the learned counsel for the respondents has conceded that the Maharashtra Revenue Tribunal lacks jurisdiction to decide the appeal and therefore, the remand of the proceedings to the Tahasildar, Shrigonda under the impugned judgment for it’s re-determination de-novo could not have been directed and the said order is non-est.

4. In the wake of the position of law, which is undisputed, the judgment dated 22.09.2017 passed by the Maharashtra Revenue Tribunal

is liable to be quashed and set aside and is, accordingly, set aside. On the impugned judgment being set aside, the remand of the matter to the Tahasildar, Shrigonda for deciding the proceedings de-novo, cannot sustain, resultantly the order passed by the Tahasildar, Shrigonda on 30.08.2016 in Restoration Case No.166/2014 is revived to it's original position.

Needless to state that, if the respondents are aggrieved by the said order, by adhering to the principles of limitation, they are at liberty to institute an appeal before the appropriate authority, which would be the Divisional Commissioner.

5. With the aforesaid observations, the Writ Petition is allowed.

kps **(SMT. BHARATI H. DANGRE, J.)**