

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

WRIT PETITION NO.7190 OF 2019

Janka Babu Waghmare and Ors. ..Petitioners
Versus
Sudhakar Ramkrushna Jadhav and Ors. ..Respondents

Mr. Surel S. Shah, for the Petitioners.
Mr. R. D. Soni i/by Ram & Co., for Respondent Nos.1 to 12.
Mr. C. D. Mali, AGP for Respondent Nos.14 & 15.

CORAM : NITIN W. SAMBRE, J.

DATE : 5th JULY, 2022

P.C.

1. The order impugned is dated 19th January, 2016 passed by the Sub Divisional Officer, whereby the appeal of the respondents preferred under Section 74 of the Maharashtra Tenancy and Agricultural Lands Act (hereinafter referred to as “the Act” for the sake of brevity) came to be allowed directing the petitioners to hand over possession of the suit property pursuant to the provisions of Section 73 of the said Act to the respondents.

2. Petitioners feeling aggrieved preferred revision under Section 76 of the said Act. The Maharashtra Revenue Tribunal vide order impugned dated 24th January, 2019 has held that the order passed under Section 32P since has attained finality, the revision is not maintainable.

3. In addition to above, the Tribunal has gone ahead by recording further findings as to whether the order of Sub Divisional Officer is justified in the fact of the case. While questioning the aforesaid orders, counsel for the petitioners Mr. Surel Shah would urge that both these orders are not sustainable, as according to him, the order passed by the Sub Divisional Officer on 19th January, 2016 is hit by provisions of Sub Section (2) of Section 29 of the Act, as possession ought to have been claimed under Section 32P of the Act within period of two years from date of the cancellation of the sale certificate. In addition, his contentions are, once the Tribunal has held that it has no jurisdiction, it has committed an error in recording finding that the order passed by Sub Divisional Officer dated 19th January, 2016 is justified.

4. Mr. R. D. Soni, counsel appearing for the respondents would urge that even if the order of the Tribunal is without jurisdiction, still in the facts and circumstances of the case, the order of Sub Divisional Officer is justified. He would invite attention of this Court to the fact as regards cancellation of sale certificate in favour of the petitioners for non-deposit/non-payment of purchase price. According to him, said order has attained finality. As such, order impugned passed under Section 32P of the Act as a sequel of the same. In addition, his

contentions are, the issue as regards limitation under Sub Section (2) of Section 29 of the Act was never canvassed and that being so, the orders impugned are justified.

5. I have appreciated the submissions.

6. The fact that the order impugned passed by the Sub Divisional Officer is in exercise of powers under Section 32D of the Act, whereby the petitioner, who was earlier held to be tenant was directed to hand over possession of suit property in favour of the respondent/landlord.

7. It is not in dispute that the purchase price proceedings were answered in favour of the petitioner and there was failure on the part of the petitioner to deposit the same. As a consequence, the sale certificate in favour of the petitioner was cancelled. The said order is not questioned by the petitioner till this date.

8. Mr. Surel Shah though has claimed that in the aforesaid eventuality, instead of cancelling sale certificate the Revenue Authorities ought to have taken recourse to Section 32K thereby recovering the amount of purchase price in the form of revenue recovery.

9. Be that as it may, said issue can be taken care in

view of the following order is passed :-

- a) The fact remains that there is embargo provided under Sub Section (2) of Section 29 of the Act, whereby the proceedings under Section 32P are required to be taken out within period of two years. The effect of such embargo or limitation its applicability is not looked into by the Sub Divisional Officer, so also this Tribunal.
- b) Though Mr. R. D. Soni was justified in claiming that the said contentions based on legal provisions were neither canvassed before the SDO nor before the Tribunal, however, since the contentions are based on legal provisions, it was expected of the authorities to deal with the issue in the backdrop of the said provisions.

Section 29 of the Act provides for remedy to the tenant in the matter of possession. Section 32P makes the sale in favour of the tenant ineffective if he fails to pay purchase price and the powers are given to Government to resume the land and dispose of the same. As far as aforesaid two provisions are concerned, this Court expects the Sub-Divisional Officer to deal with its impact while deciding claim of Respondent Nos.1 to 12 under Section 73 of the Act.

- c) Apart from above, once the Tribunal was of the view that it has no jurisdiction to entertain revision under Section 76 of the Act, the Tribunal ought not to have gone into the merits of the matter rather should have relegated the petitioner to appropriate legal remedies.
- d) In this view of the matter, both these orders dated 19th January, 2016 passed by the Sub Divisional Officer, Solapur, so also the order of the MRT delivered on 24th January, 2019 are hereby quashed and set aside.
- e) The proceedings which were initiated by the respondents herein on the file of Sub Divisional Officer, Solapur No.1 stood restored to the file in which the parties hereto agree to appear on 18th July, 2022.
- f) Mr. Surel Shah assures that appropriate pleadings in the said proceedings shall be completed within a period of two weeks from the said date.
- g) As such, this Court expects the Sub Divisional Officer to decide said proceedings expeditiously and in any case within a period of three months from 18th July, 2022.

- h) Needless to clarify that said proceedings be decided independent of disposal of the present petition or the findings recorded herein.

[NITIN W. SAMBRE, J.]