

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

WRIT PETITION NO. 8789 OF 2018

WITH

INTERIM APPLICATION NO. 10519 OF 2022

Bhimrao Bhairu Injal and Ors.

...Petitioners

V/s.

Ramu Laxman Redekar Through
POAH, Shri. Pandurang Annappa
Redekar

...Respondent

Mr. Naveen B. Khaire, for the Petitioners.

Mr. Mandar Bagkar i/by. Mr. Chetan Patil, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 13 September 2023.

P.C. :

1. Praceipe is moved for speaking to the minutes of the order dated 28 August 2023. It is submitted that in para-5, fifteenth line, the words 'original tenants' are required to be substituted by the word 'original landlord'. The corrections be accordingly carried out and the order be read accordingly.

2. The praceipe is disposed of.

SANDEEP V. MARNE, J.

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....Respondent

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Mr. Prashant Kulkarni a/w. Mr. Naveen B. Khaire, for the
Petitioners.

Mr. Chetan G. Patil, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 28 August 2023.

P.C. :

1. Heard learned Counsel for the parties.
2. By this petition, Petitioner challenges judgment and order dated 6 July 2018 passed by the Maharashtra Revenue Tribunal (**Tribunal**) in Revision Application No.KP/XII/3/15. The Tribunal has dismissed the Revision Application by its judgment and order dated 6 July 2018 and has confirmed the decision given by the Assistant Collector, Gadhinglaj Division on 30 November 2015 in Tenancy Appeal No.2/2013. The Assistant

Collector, Gadhinglaj had confirmed the decision of the Tenancy Avval Karkun, Gadhinglaj dated 9 April 2013 passed in Tenancy Case No.9/2011.

3. Considering the narrow controversy in this petition, it is not necessary to narrate the entire facts of the case. Suffice it to state that the Respondents herein are the purchasers of the land in which the Petitioners claim to be tenants. The Respondents instituted Regular Civil Appeal No.410/1999 *inter-alia* for recovery of compensation from Petitioners. Though the Suit was decreed and the Appeal was rejected, this Court in Second Appeal No.168/1992 remanded the suit for retrial to the Trial Court by its judgment and order dated 5 December 2008. In pursuance of the order passed by this Court remanding the suit, the Trial Court framed the issue '*Whether plaintiff proves that tenancy has been validly surrendered as pleaded in the plaint ?*'. This issue was referred to the Tenancy Court by the Trial Court.

4. The Tenancy Avval Karkun, Gadhinglaj by its decision dated 9 April 2013 was pleased to answer the question in affirmative. Petitioner filed Tenancy Appeal No.2/2013 challenging the decision of the Tenancy Avval Karkun which came to be rejected by the Assistant Collector, Gadhinglaj by order dated 30 November 2015. Petitioner thereafter filed Revision before the Tribunal, which has been rejected by the Tribunal by order dated 6 July 2018.

5. As seen above, there are concurrent findings of facts by the Tenancy Avval Karkun, Assistant Collector as well as by Tribunal with regard to valid surrender of tenancy. Faced with the above position, the learned counsel for Petitioners would submit that the Tenancy Avval Karkun, Assistant Collector as well as the Tribunal have lost sight of the fact that the original landlords were not impleaded as parties to the tenancy proceedings. However, he fairly concedes that the said point was not raised in Tenancy Case No.9/2011 when the issue was determined by the Tenancy Avval Karkun. It appears that this issue of non-impleadment of landlord was raised vaguely before the Revision Application filed before the Tribunal. Since this issue was not raised before the Tenancy Avval Karkun or the Assistant Collector, the Tribunal was infact not even required to decide this issue. Even otherwise, it is incomprehensible as to why presence of original **landlord** is required to determine the issue of valid surrender of tenancy. Valid surrender of tenancy is asserted by the Respondents on the ground of Mutation Entry No.1590 was effected on 10 April 1955. It is undisputed position that the said Mutation Entry No. 1590 remained uncontested and attained finality. It is on account of Mutation Entry No.1590 effected on 10 April 1955 , the Tenancy Avval Karkun, Assistant Collector as well as the Tribunal have arrived at a finding that there was valid surrender of tenancy prior to the Tillers Day. Since the three quasi judicial authorities have applied their minds to the points raised by the Petitioner and have

recorded their findings, it would not be open for this Court to exercise jurisdiction under Article 227 of the Constitution of India to examine the correctness of those findings by re-appreciating the evidence on record. The findings recorded are plausible and supported by material on record. No case of perversity is made out by Petitioner in the findings recorded by the Authorities below. Interference by this Court is therefore not warranted. Writ Petition being devoid of merits is **dismissed** without any orders as to costs.

6. With dismissal of the Writ Petition, Interim Application No. 10519 of 2022 does not survive. The same is disposed of as having become infructuous.

SANDEEP V. MARNE, J.

Note : Corrections in bold are carried out in para-5 only pursuant to speaking to minutes order dated 13 September 2023.