

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5545 OF 2023

Shantabai Madhav Yadav
 (since deceased through legal
 heirs Mr Kisan M. Yadav
 since deceased through legal
 heirs Smt. Janabai K. Yadav and ors)
 and ors.

...Petitioners

V/s.

Capt. Behram K. Godrej alias
 Byram Kaki Godrej and ors.

...Respondents.

WITH

WRIT PETITION NO. 5551 OF 2023

Shantabai Madhav Yadav
 (since deceased through legal
 heirs Mr Kisan M. Yadav
 since deceased through legal
 heirs Smt. Janabai K. Yadav and ors)
 and ors.

...Petitioners

V/s.

Ali Akbar Jafari and ors.

...Respondents.

WITH

WRIT PETITION NO. 5603 OF 2023

Shantabai Madhav Yadav
 (since deceased through legal
 heirs Mr Kisan M. Yadav
 since deceased through legal
 heirs Smt. Janabai K. Yadav and ors)
 and ors.

...Petitioners

V/s.

Fareedoon K. Moriabadi Irani and ors.

...Respondents.

Mr. Atul Damle, Sr. Advocate a/w Mr. Abhishek Yende, Ms Sanjukta Dey, Ms Surbhi Agarwal, Ms Shalini Dey and Mr. Saiprasad Hole i/b Yende Legal Associates for the Petitioners in all the Petitions.

Mr. Girish Godbole, Sr. Advocate a/w. Mr. Nitesh Bhutekar, Mr. Siddharth Wakankar, Mr. Aniket Nangare, Ms Gargi Warunjikar for Respondent Nos.20 and 21 in WP 5545/23.

Dr. Uday Warujikar, Mr. Nitesh Bhutekar, Mr. Siddharth Wakankar, Mr. Aniket Nangare and Ms Gargi Warunjiar for Respondent Nos.1,22 and 23 in WP/5551/23

Mr. Ram Apte, Sr. Advocate a/w. Mr. Nitesh Bhutekar, Mr. Siddharth Wakankar, Mr. Aniket Nangare and Ms Gargi Warunjiar for Respondent Nos.1, 2 and 22 in WP/5603/23)

Mr. Surel Shah i/b Mr. Prashant Darandale for Respondent Nos.13 to 14 in WP/5551/23.

Mr. A.P. Vanarase, AGP for Respondent Nos.22, 23 and 24.

CORAM : N.R. BORKAR, J.
DATE : 23.06.2023.

P.C. :

1. The learned counsel for the petitioners seeks leave to delete Tahasildar (ALT), SDO and MRT from the array of the parties. The leave as sought is granted. Necessary amendment shall be carried out forthwith.

2. Mr. Farhad Chindhi who is Respondent No. 2 in W. P. No. 5603 of 2023, Respondent No. 3 in W.P. No. 5551 of 2023 and Respondent No. 5 in W.P No. 5545 of 2023 is not represented in these proceedings. However, he had not appeared in the proceedings before Tahsildar (ALT), Haveli in Tenancy Case No. 2 of 2020 filed by the Petitioners. He was one of the party Appellants in the Tenancy Appeal No. 26 of 2021 filed before the SDO, Haveli, Pune and one of the Applicants in Revision Application No. 8 of

2022 filed before the MRT, Pune. Similarly Mr. Aashdin Kersi Billimoria and Smt. Arnawaz Kersi Billimoria, who are Respondent Nos. 9A and 9B in W. P. No. 5603 of 2023, Respondent No. 8A and 8B in W.P No. 5551 of 2023 and Respondent No. 7A and 7B in W.P No. 5545 of 2023 and who were not parties before the Tahsildar (ALT) and SDO and were brought on record before the MRT, Pune as heirs of Kersi Billimoria were Co-Applicants in Revision Application No. 8 of 2022 filed before the MRT, Pune. They are also not represented in these Writ Petitions. However, since their co-appellants before the SDO in Appeal and co-applicants in the Revision filed before the MRT, Pune are duly represented by Advocates and further, in view of the order proposed to be passed herein viz. setting aside the Judgment and Order dated 16th April, 2020 passed by the Tahsildar (ALT) and remanding the entire proceedings for a *de novo* hearing, service of notice on the aforesaid unrepresented Respondents is waived.

3. Rule. Respective Advocates for the parties represented by them waive service of notice of Rule. By Consent Rule is made returnable forthwith.

4. Parties who are represented through their respective Advocates agree that in view of the order proposed to be passed, it is not necessary to record detailed reasons in support of the order of remand.

5. Since various disputed questions of facts are involved which would require determination by the fact finding authorities under

the M. T. & A. L. Act, 1948, viz. the Tahasildar (ALT) and the SDO, all the Judgments and Orders viz. Judgment and Order passed by Tahsildar (ALT), Haveli Pune in Tenancy/32G/SR/02/2020, Judgment and Order passed by SDO, Pune in Tenancy Appeal Nos. 41/2021, 39/2021, 40/2021 and 26/2021 and Judgment and Order passed by MRT, Pune in Revision Application No. P/VII/3/2022, Revision Application No. P/VII/4/2022 and Revision Application No. P/VIII/8/2022 are hereby quashed and set aside and Tenancy Case No. 32G/SR/02/2020 is remanded to the Tahasildar (ALT), Haveli Pune for a *de novo* trial. Parties to these petitions including those who were originally not parties in the proceedings before the Tahasildar (ALT) shall also be impleaded as parties in Tenancy Application No. 32G/SR/02/2020. All the parties before the Tahasildar (ALT) shall be entitled to lead oral and documentary evidence.

6. It is made clear that this Court has not expressed any opinion on the merits of the controversy involved in the Petitions as also about the merits and demerits of the orders passed by the Tahasildar (ALT), SDO and MRT.

7. The parties are directed to appear before the Tahasildar (ALT) on 7 July 2023, who shall fix the schedule of hearing. The Tahsildar shall issue a notice to the unrepresented Respondents namely Mr. Farhad Chindhi, Mr. Aashdin Kersi Billimoria and Smt. Arnawaz Kersi Billimoria and they shall also be entitled to an opportunity of being heard including right to lead evidence as indicated above.

8. Proceeding before the Tahasildar (ALT) are expedited and the same are directed to be disposed of on or before 31st December, 2023.
9. All contentions of parties are kept open. Liberty to apply in case of difficulty.

[N.R.BORKAR, J.]