

HARSHAD H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3857 OF 1997

Baban Dattu Bankar and Ors.

.. Petitioners

Versus

Shantabai Gangaram Ghanwat

.. Respondent

.....
Mr. Rupesh R. Lanjekar for Petitioner

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 19, 2023

P.C.:

- 1.** Heard Mr. Lanjekar, learned Advocate for Petitioner.
- 2.** On 15.12.2022 this Court has passed the following order:-

“1. Heard Mr. Lanjekar, learned Advocate for Petitioner. Petition is admitted. Called out for final hearing on the final hearing Board.

2. Perused the Judgment dated 30.06.1992 passed in Tenancy Appeal No.27 of 1988 by Sub Divisional Officer (S.D.O.), Phaltan and the judgment dated 30.09.1994 passed in Regular Civil Suit No.115 of 1978 by Civil Judge Junior Division, Phaltan.

3. Record indicates that the learned Tahsildar, Phaltan by judgment in Court Reference No.4 of 1983 dated 11.04.1988 held the Respondent to be an agriculturist on the ground that she was the wife of the agricultural labourer and hence entitled for benefit under the Maharashtra Tenancy and Agricultural Lands Act, 1948. However in Tenancy Appeal No.27 of 1988 dated 30.06.1992 filed by the Petitioners the order of Tahsildar was reversed by the S.D.O. Respondent being aggrieved approached the Maharashtra Revenue Tribunal in Revision proceedings under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1949. By judgment and order dated 17.02.1997 the Maharashtra Revenue Tribunal allowed the said revision. Hence the present Petition.

4. Mr. Lanjekar has also drawn my attention to Issue No.9 decided in Regular Civil Suit No. 115 of 1978 between the parties, inter alia, with respect to entitlement of Respondent to get execution of the sale deed despite not being an Agriculturist having been decided by the learned Trial Court in the negative.

5. *None has appeared for the Respondent.*
6. *Record indicates that Respondent is represented by Advocate Sonwalkar. Hence, issue fresh notice to the Respondent. Humdast permitted. In addition to Court's notice, Petitioner is directed to serve the Respondent and her Advocate and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date.*
7. *Respondent is directed to file affidavit-in-reply to the Petition within one week after receipt of notice, if so desired. Rejoinder, if any, to be filed within one week thereafter.*
8. *It is clarified that if Respondent does not appear, considering that this is an old Writ Petition, this Court shall be constrained to hear the Writ Petition and decide it finally.*
9. *Stand over to 19th January, 2023 on the final hearing board."*

3. Despite being served pursuant to the last order none appears for the Respondent today.

4. Pursuant to the last order an attempt to serve the Respondent has been made by the Petitioner and the packet has been returned back by the postal authority by the remark 'Addressee moved'. Advocate Mr. Sonwalkar who has filed the Vakilpatra in year 1997 is 75 years old and has stopped practice. The aforementioned details are mentioned in the Affidavit of Service dated 19.01.2023 and it is taken on record and marked "**X**" for identification. Writ Petition can no longer be further protracted. It is taken up for hearing.

5. On 15.12.2022 it is seen that the learned Trial Court in Regular Civil Suit No.115 of 1978 has passed the Order 30.09.1994 holding that the Respondent is not an Agriculturist which has been noted in the order dated 15.12.2022. Decision on Issue No.9 is also placed on

record in the present Writ Petition at Page No.40 of the Writ Petition.

6. Perusal of the judgment and order dated 17.02.1997 passed in Revision proceedings under Section 76 of the Bombay Tenancy and Agricultural Lands Act 1949 would reveal that the said order has been passed *Ex parte* without hearing the Petition.

7. Admittedly, the order of the Civil Court is not taken into consideration. The order passed by the learned Civil Court dated 30.09.1994 and if the said order would have been placed before the learned Tribunal the decision would have been to the contrary.

8. Considering that the learned Trial Court has already decided the issue of the Respondent - Smt. Shantabai Gangaram Ghanwat not being an Agriculturist in substantive Civil Court proceedings, the impugned order dated 17.02.1997 passed by the Maharashtra Revenue Tribunal allowing the Revision of the Respondent is not sustainable in law. The impugned order dated 17.02.1997 thus deserves to be quashed and set aside.

9. Writ Petition therefore stands allowed in terms of prayer clause (b) which reads thus:-

“b. That this Hon’ble Court may be pleased to call for the records and proceedings of the case and after examining the legality and propriety thereof may please quash and set aside the order dated 17-2-97 passed by the Designated Member of the Maharashtra Revenue Tribunal Pune, in case No. MRT .N.S.VIII.6/92 (TNC.B.118/92)”.

10. In view of the above, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

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