

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

**WRIT PETITION NO.14689 OF 2022**

Vitthal Genbhau Ghanvat & Ors.

Petitioners

Vs.

Murhabai Thama Bhalerao & Anr.

Respondents.

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**Mr. Vivek Salunke**, a/w. Mr. Sidheshwar, Mr. D. R. Shinde i/b. Mr. Yash Sonawne for the Petitioner.

**Mr. Pawan S. Patil**, for Respondent No.1 & 2(a) to (f).

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**CORAM: SANDEEP V. MARNE, J.**

**DATE : 30 AUGUST 2023.**

**P. C.:**

By this petition, Petitioner challenges order dated 22 March 2022 passed by the Maharashtra Revenue Tribunal, Pune (**Tribunal**) in Revision Petition P/IX/03/2021 by which, the Tribunal has partly allowed the Revision filed by the Petitioner. However contrary to his expectation of setting aside the orders of Tehsildar and Sub-Divisional Officer, the Tribunal has proceeded to remand proceedings to the Tehsildar for conducting a fresh inquiry. Petitioner is thus aggrieved by decision of the Tribunal in remanding the proceedings to Tehsildar.

2. Learned counsel appearing for Petitioner would essentially raise three grievances with regard to the impugned orders. Firstly, he would submit that the remand was not warranted in view of the specific findings recorded by the Tribunal in paragraph No.11 and 12 of the order, wherein the Tribunal itself recorded a specific finding that the mandatory requirement under Section 32-O of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**Tenancy Act**) were not followed. He would further submit that in the light of recording of this finding, it was really not necessary for the Tribunal to remand the proceedings to the Tehsildar.

3. The second grievance of the Petitioner is that though Tribunal has recorded a finding in paragraph 12 of the order that the inquiry ought to have been conducted under Section 70B of the Act, operative portion of the order contemplates conduct of inquiry under Section 32G of the Act. The third submission of learned counsel for Petitioner is that certificate under Section 32M of the Tenancy Act and mutation entry effected in pursuance thereof have not been set aside as a consequence of setting aside Orders of Tehsildar and Sub-Divisional Officer.

4. Learned counsel for Respondent would oppose the petition and support the order passed by the Tribunal.

5. I have gone through the order passed by the Tribunal. In paragraph 11 and 12 of the order, the Tribunal has held as under-

“11. These provisions of section 32-O of the Tenancy Act make it obligatory on the tenant to give an intimation or notice within one year of the commencement of tenancy and also to apply within one year of the commencement of tenancy for purchase of land. It is, therefore, clear that the notice or intimation and application for purchase are required to be made. On scrutinizing the documents on record I do not find any notice or Intimation given by the present respondents to purchase the land under section 32-O of the tenancy act.

12. In the present case, the present respondents are claiming to be tenants since the year 1960 on the basis of a mutation entry no. 731 dated 18/08/1960 vide which names of the predecessor of present respondents namely, Baban Babu Thakar & Dula Genu Thakar were recorded as joint tenants of 5 acres said land. There was no written or oral agreement between the landlord and the tenant. Admittedly, the tenants did not give any notice or intimation at any time during the agricultural year i.e. until 18/08/1961. It is also clear that the tenants did not apply under section 32-O of the Tenancy Act within agricultural year of 1960-61, but what is borne out from the record is that the respondents, claiming to be tenants applied for purchasing 9 acres of said land under section 32G of the tenancy act and before making an application for fixing the purchase price the respondents ought to have made an application under section 70B of the tenancy act for declaring themselves as tenants.”

6. Findings recorded by the Tribunal in paragraph No.12 of its order do suggest that some opinion is expressed by the Tribunal about not giving any notice or intimation under Section 32-O of the Act to the Respondents. However, at the same time the Tribunal has arrived at a conclusion that the tenants had applied for purchase of 09 Acres of land under Section 32G of the Act and before making second application, they ought to have made an application under section 70B for declaring themselves as tenants. That is possibly the reason why Tribunal held that inquiry needs to be conducted by Tehsildar about tenancy of the tenants.

Therefore, I do not find any error in the decision of the Tribunal in directing remand of proceedings.

7. So far as Petitioner's second grievance is concerned, there appears to be some merit in the submission. There is a specific finding of Tribunal in paragraph 12 that inquiry under Section 70B of the Act is necessary. However, in paragraph 3 of the operative portion of the order, Tribunal has directed inquiry to be conducted only under Section 32G. Therefore, it needs to be clarified that while conducting an inquiry, Tehsildar shall also conduct inquiry under Section 70B of the Act.

8. So far as Petitioner's third grievance is concerned, since the order passed by the Tehsildar is set aside, the consequential certificate under Section 32-M of the Tenancy Act would automatically to be rendered meaningless. Similar would be the position of the mutation entry effected consequent to the 32M certificate.

9. Present petition is accordingly disposed of with a direction to the Tehsildar to decide both the issues formulated in paragraph 4 of the Tribunal's order which are as under-

- “i. Whether respondent's tenancy was proved accordingly?
- ii. Whether there was a compliance of section 32-O of the Tenancy Act?”

10. The Tehsildar shall also conduct an enquiry under Section 70B of the Act with a view to find out whether the Respondents therein

are tenants. The 32-M certificate issued consequent to order of the Tehsildar as well as mutation entry shall not be relied upon for any purpose.

11. With the above observations, the Writ Petition is disposed of. All the contentions of the parties are kept open.

12. With disposal of the Writ Petition, interim order granted earlier shall stand vacated.

**SANDEEP V. MARNE, J.**

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