

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

**WRIT PETITION NO. 15776 OF 2022**

Dilip Thakursingh Patil and ors. ...Petitioners

**Versus**

Anna alias Umesh Kathod Bhagat and ors. ...Respondents

Mr. Y. S. Jahagirdar, Senior Advocate, i/b Mr. Jaydeep Deo, for  
the Petitioners.

Mr. S. G. Karandikar, i/b Milind Parab & Asso., for  
Respondent No.1.

Mrs. V. S. Nimbalkar, AGP for the State.

**CORAM: N. J. JAMADAR, J.**

**DATED : 12<sup>th</sup> JUNE, 2023**

**ORAL ORDER:-**

1. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order passed by the learned President, Maharashtra Revenue Tribunal, Mumbai ("MRT"), dated 14<sup>th</sup> November, 2022 in Tenancy Revision/THN/36/2022, whereby the learned President was persuaded to allow the revision and set aside the order passed by the Sub-Divisional Officer, Thane, in Tenancy Appeal No.00117 of 2021 and remit the matter back to the competent revenue authority for afresh decision.

2. The petitioners claim to be the legal representatives of Ganpat Balu Patil, who according to the petitioners was the

tenant of the land bearing Gat No.80 (old Survey No.14 Hissa No.5) situated at village Parsik, District Thane, (“the suit land”) on Tillers date. Respondent No.1 claims to be one of the legal representatives of Padya Nagya Bhagat, whose name was entered in the record of right as protected tenant vide Mutation Entry No.363, in the year 1956.

3. Respondent No.1 preferred an application to mutate the name of the legal representatives of Padya Nagya Bahgat, which came to be disposed by an order dated 21<sup>st</sup> October, 2019 opining that respondent No.1 and the legal representatives of Padya Nagya Bhagat were at liberty to establish their right, title and interest in the suit land before the appropriate court.

4. It seems that on 19<sup>th</sup> November, 2020, respondent No.1 again preferred an application and correspondence ensued between the office of Tahsildar and jurisdictional Talathi. After exchange of responses and reports, by an order dated 19<sup>th</sup> March, 2021, the Tahsildar, Thane, directed that the mutation entry in respect of Padya Nagya Bhagat, who was shown a protected tenant in 1956, be restored. Mutation Entry No.1316 was effected.

5. The petitioners challenged the aforesaid order in Tenancy Appeal No.00117 of 2021. By an order dated 9<sup>th</sup> February, 2022,

the appeal came to be allowed and the directions issued by the Tahsildar dated 17<sup>th</sup> March, 2022 to restore ME in respect of Padya Nagya Bhagat and the consequent ME No.1316 was set aside.

6. Being aggrieved, respondent No.1 preferred revision application.

7. By the impugned judgment and order, the learned President, MRT, recorded a finding that since the main enquiry before the competent authority/ALT was underway appeal could not have been preferred under Section 74 of the Tenancy Act, 1948, before the Sub-Divisional Officer. Thus by setting aside the order passed by the Sub-Divisional Officer, the matter was remitted to the competent revenue authority.

8. I have heard Mr. Jahagirdar, the learned Senior Counsel for the petitioner and Mr. Karandikar, the learned Counsel for the respondent.

9. Both are in unison on the point that the issue needs to be adjudicated. They differ on the remit of the enquiry before the Tahsildar. According to Mr. Jahagirdar, the enquiry ought to be under the provisions of Maharashtra Tenancy and Agricultural Lands Act, 1948 ("the Act, 1948"). Mr. Karandikar, on the other hand, submits that respondent No.1 had simply prayed for

mutation of the name of the legal representatives of the protected tenant to the record of right of the suit land and, therefore, the appeal before the SDO under Section 74 of the Act, 1948 was not competent.

10. The nature of the proceedings and the provisions of law under which the parties institute the proceedings are relegated to secondary position if the core question in controversy between the parties is appreciated. The core question in controversy appears to be, who was cultivating the suit land on the Tiller's day. The said question needs to be adjudicated by the Tribunal under the provisions of Section 70(b) of the Act, 1948.

11. In the aforesaid view of the matter, the order passed by the Maharashtra Revenue Tribunal remitting the mater back to the competent revenue authority as per law, though sounds ambiguous, yet it becomes evident that the question, of necessity, must be decided by the ALT.

12. Thus, keeping open all the contentions of all the parties, including the applicability of the provisions of the Act, 1948, let the ALT/Tahsildar, Thane, decide all the questions between the parties after providing an effective opportunity of hearing.

**13.** Subject to aforesaid clarification the petition stands disposed.

**14.** By way of abundant caution, it is clarified that the exchange of correspondence between the Tahsildar and Talathi will not influence the decision of ALT/Tahsildar.

**[N. J. JAMADAR, J.]**