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905WP343.22

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

905 WRIT PETITION NO. 343 OF 2022

**KISANLAL FATTECHAND LODHA DEAD THROUGH HIS LRS
MADANBAI KISNLAL LODHA AND OTHERS**

....Petitioners

VERSUS

**SOPAN MARUTI MALI KORE DEAD THROUGH HIS LRS DAGDU
SOPAN MALI AND ANOTHER**

.....Respondents

Mr. Milind Patil, Advocate for the petitioners

Mr. G. K. Naik Thigle, Advocate h/f Mr. G. J. Kore, Advocate for
the respondent No.1

Mr. V. S. Badakh, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 09th OCTOBER, 2024

P. C.

1. Heard the parties.

2. In this petition challenge is raised to an order passed
by the learned Tahasildar, Kalamb dated 28-01-2024 under
Section 38(e) and 44(2) of the Hyderabad Tenancy and
Agriculture Lands Act, 1950.[for short “said Act”]

3. At the opening of the matter this court asked the learned advocate for the petitioners about availability of the remedy under section 90 of the said Act, which provides for appeals. It was also asked as to why remedy of appeal can not be said to be an efficacious and adequate. This court also indicated that this court may impose heavy cost, if advocate argues the petition without answering the question. However, no straight answer is given in spite of repeatedly asking the queries and the learned advocate for the petitioners continued to argue for substantial time. At last he relied upon the unreported judgment dated 26-10-1998 in the case of Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai and Ors. He submits that alternative remedy is no bar when there is violation of the principles of natural justice. He further relied upon the judgment dated 27-10-2010 in writ petition No.6480/2009 in the case Mohammed Sikandar S/o. Mohammed Shaukat and Ors Vs Maharashtra State Board of Wakf Through its Chief Executive Officer Aurangabad and ors. In the said judgment, based on judgment in the case of whirlpool (*supra*) it is has

observed that bar of alternative remedy could not operate mainly in three contingencies a) where the writ petition seeks enforcement of any of the fundamental rights b) where there is violation of principles of natural justice c) where the order or the proceedings are wholly without jurisdiction or the vires of an act is challenged.

4. In this case by way of impugned judgment and order under Section 38(e) the learned Tahasildar has allowed the application filed by the respondent No.1. This order is passed by giving notice to the present petitioners. The petitioners have appeared in the proceedings. No violation of principle of natural justice is pointed out. This is not a case of violation of any fundamental rights. There is no challenge raised to validity of any of the provisions of the act being ultra-vires to the Constitution. The cited judgments, therefore, are not applicable to the present case. This court finds that effective remedy is available under Section 90 of the said Act where all the questions of facts can be agitated which are sought to be

agitated before this court. It is tried to submit that the respondents had no *locus-standi*. He was never declared as tenant under section 38(e) of the Act and therefore proceeding itself is not maintainable.

5. This court finds that section 90 of the said Act provides effective remedy where all the questions can certainly be agitated.

6. This court expressed that in spite of specific repeated query, the learned advocate for the petitioners continued to argue without answering the straight question of the court. This court, therefore finds that the petition deserves to be dismissed with costs.

7. This court had expressed that the cost would be Rs.75,000/-. However, considering that this is the first time, this court is imposing cost of Rs.25,000/- only. Payment of cost shall be condition precedent for filing an appeal.

8. Needless to say that the petitioners can still avail the alternate remedy available to the petitioners. The period consumed before this court in prosecuting the matter, shall be excluded while considering the question of condonation of delay.

9. The writ petition is dismissed with costs of Rs.25,000/- [Rupees Twenty Five Thousand Only]

[KISHORE C. SANT, J.]

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