2024:BHC-AUG:863

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12411 OF 2019

Usha W/o Sopanrao Suryawanshi,
Age : 61 Years, Occ. Household,
and agriculture, resident of
Sahakarnagar, Near Varad Hospital,
Aurangabad. ….Petitioner
(Orig. Respondent No.1)

VERSUS

1. The State of Maharashtra
Revenue Department, Mantralaya,
Mumbai.

2. The Deputy Collector,
(General Administration),
Collector Office, Aurangabad.

3. The Tahsildar,
Tahsil Office, Aurangabad.

4. Dattatraya s/o Suryabhan Tupe,
Age : Major, Occ. Agriculture &
Business , resident of
At present New Hanuman Nagar,
Near High Court Cidco Aurangabad

5. Pandit s/o Namdeo Mule,
Age : Major, Occ. Agriculture
R/o. Mitmita Tq. And District
Aurangabad.

6. Girjabai w/o Gangadharrao Dhopeshwarkar,
Age : Major, Occ. Household,
R/o. Uma Nagar, adjacent to
Gopal Cultural Hall, Osmanpura,
Aurangabad. ..Respondents

WITH
WRIT PETITION NO. 1075 OF 2020

1. Amit S/o Jawahar Gandhi,
Age : 39 Years, Occ. Business,
R/o. 19, Amitambar, Shantiniketan
Colony, Aurangabad.

2. Ambar S/o Jawahar Gandhi,
Age : 37 Years, Occ. Business,
R/o. As above.

3. Lalit Vasantlal Gandhi,
Age : 49 Years, Occ. Business,
R/o. 18, Mangesh Nagar, Jalna Road,
Aurangabad.

4. Ganesh S/o Shankarlal Darakh,
Age : 53 Years, Occ. Business
R/o. Bunglow No. 25, Cantoment,
Aurangabad.

5. Dinesh S/o Shankarlal Darakh,
Age : 50 Years, Occ. Business,
R/o. As above

6. Hanif Mohd. Harish Mohd. Kadar,
Age : Major, Occ. Business,
R/o. Jaysingpura, Near University Gate,
Aurangabad. ..Petitioners

VERSUS

1. The State of Maharashtra,

2. The Deputy Collector,
(General Administrtion),
Collector Office, Aurangabad.

3. The Tahsildar,
Aurangabad.

4. Dattatraya Suryabhan Tupe,
Age : Major, Occ. Business and Agri.
R/o. New Hanuman Nagar,
Near High Court, Aurangabad.

5. Pandit Namdeo Muley,
Age : Major, Occ. Agriculture,
R/o. Mitmita, Aurangabad.

6. Girjabai Gangadharrao Dhopeshwarkar,
Age : Major, Occ. Household,
R/o. Umanagar, Near Gopal Cultural Hall,
Osmanpura Aurangabad. .. Respondents

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Advocate for the Petitioner in W.P. 12411/2019 : Mr. V.G. Mete
Advocate for the Petitioner in W.P. 1075-2020 Mr. P. N. Kalani
AGP for Respondent Nos. 1 to 3: Mr. A.S. Shinde
Advocate for Respondent No.4 : Mr. D.P. Palodkar

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CORAM : S. G. MEHARE, J.
DATE : 09.01.2024

PER COURT :

1. Heard the learned respective counsels at length.

2. The petitioners are the purchaser of the disputed lands. The dispute has a checkered history. One Punjaba Dhondiba Tupe had filed an application before the Tahsildar on 16.09.2004 against the contesting respondent No.4 Dattatraya, claiming that the suit lands were under cultivation of Punjaba as a tenant. He was an ordinary tenant of land Survey No 213 (Gut No. 301) of village Mitmita, Taluka and District Aurangabad, to the extent of 5 Acres 10 gunthas. Under Section 38 (G) of the Hyderabad Tenancy and Agricultural Lands Act, 1950, the ownership certificate was issued on 16.08.1969. However, the present petitioners are the purchasers from the original purchaser Girjabai. She was the party to that proceeding. She had contested the application filed by Dattatraya and Gayabai. After hearing the parties, a third-party application by Girjabai was rejected, and the price for 5 Acres and 10 gunthas of the land was determined. The Tahsildar called the copy of 7/12 extract of the land and rough map from Talathi for fixation of the boundaries. Thereafter, boundaries of the land were fixed in the presence of the applicant. Further, it has been directed that after fixing the boundary marks and depositing the reasonable price by the applicant, the ownership certificate under Section 38(6) was issued to him. The Tahsildar had passed the above order on 06.10.2008.

3. Admittedly, as per the argument advanced by the learned counsel for the petitioners, Ushabai had purchased the land on 13 October 2010. She preferred an appeal before the Deputy Collector against the order of Tahsildar dated 06.10.2008, along with a delay condonation application. The Deputy Collector has condoned the delay by order dated 11.08.2016. The present respondent/original applicant, Dattatraya, had impugned the said order before the Maharashtra Revenue Tribunal. The present petitioners raised an objection that the revision against the order of condonation of delay under Section 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, is not maintainable. Dattatraya preferred an application dated 15.10.2018 claiming the relief that respondent No.1 has to come forward and show that she had not purchased or had purchased the declared portion. If she had not purchased, she is not an aggrieved party, and her appeal is not maintainable before the Deputy Collector, Aurangabad and thus, the revision filed by the revisional petitioner is liable to be allowed. In the said application, it has also been prayed that if the respondent/present petitioner is not aggrieved by the judgment and order of the Tahsildar, her appeal is not maintainable before the Deputy Collector at Aurangabad, and alternatively, she may

be directed to say and submit, whether she had purchased declared portion 5 Acres 19 gunthas.

4. In a nutshell, it is the contention of the present respondent Dattatraya, that the appeal preferred before the Deputy Collector was not maintainable. The point of maintainability was to be decided as a preliminary issue.

5. The petitioners have replied that the said application was mainly opposed, contending that the revision preferred by the respondent Dattatraya itself is not maintainable under Section 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. Even then, the Member, Maharashtra Revenue Tribunal, Aurangabad, decided the said application on 15.10.2018 by the impugned order dated 19.07.2019.

6. The main grievance of the petitioners before this Court is that the Member, Maharashtra Revenue Tribunal, instead of deciding the objection of tenability of the revision, has decided the application on merits and illegally imposed the negative burden upon the petitioners to prove whether she had purchased the land from the declared portion. It is a grievance of the petitioners that they were not heard on

merit, but on the preliminary issue, the entire application has been decided, and the matter was illegally remitted to the Collector for a fresh decision. They also contended that when the application was simply filed, raising objections to the tenability of the revision application, the Maharashtra Revenue Tribunal ought not to have decided the issues on merits; therefore, the impugned order is illegal.

7. The learned counsel for the petitioners Mr P. N. Kalani, in Writ Petition No. 1075 of 2020, prayed to remit the matter with direction to the Member, Maharashtra Revenue Tribunal to decide the issue of tenability of the revision against the impugned order. The learned counsel for the petitioner in Writ Petition No. 12441 of 2019 also conceded that this is a fit case to remit the matter.

8. Per contra, the learned counsel for the respondent, Dattatraya, has vehemently opposed the application. He would submit that the revision is very well maintainable under Section 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. Law is not remediless. Against the order of the Collector, the only remedy lies before the respondent to approach to the Maharashtra Revenue Tribunal. By the impugned order, no prejudice is caused to the petitioners. He prayed to dismiss the petition. He also added that though the objection was to

the tenability of the revision application was raised, they have put forth their entire case, and the Maharashtra Revenue Tribunal correctly considered it. The learned counsel for the respondent Dattatraya would submit that the petitioners have also preferred the appeal challenging the ownership certificate dated 16.08.1969 under Section 38(e), 38(f) and 38(g) and certificate dated 05.01.2012 under Section 38(6) of the Hyderabad Tenancy and Agricultural Lands Act, 1950. He would submit that this Second Appeal goes to the root of the matter; therefore, the said appeal is liable to be stayed. He moved the Civil Application, and this Court had stayed the proceeding. He prayed to continue the stay to the said appeal.

9. The learned counsel for the petitioners has strongly opposed the contention and submitted that another appeal for cancellation of the certificate is an independent proceeding and has no bearing on this case. He relied on the case of ***Vaijinath Yeshwant Jadhav Versus Afsar Begum Ndimuddin Kazi 2010 (6) Bombay Cases reporter 784***.

10. The forceful argument advanced by the learned respective counsels pertains to the impugned orders, and the serious objection of the petitioners is that the impugned order is passed on merit without hearing them. They had plainly raised an objection about the tenability

of the revision, and it was not decided properly. Therefore, this Court is of the view that the ratio laid down in the case of Vaijnatha (supra) may not be considered at this juncture.

11. Perusal of the impugned order reveals that there was a dispute regarding the tenability of the revision before the Maharashtra Revenue Tribunal against the order of the Deputy Collector condoning the delay in preferring the appeal against the order passed by the Tahsildar in favour of the respondent Dattatraya. The opening paragraph of the impugned order reveals that the Maharashtra Revenue Tribunal intended to decide the application on 15.10.2018. The said application was replied to, and the main objection was raised, that the revision itself is not tenable. The order does not reflect any comment on the objection to the tenability of the revision application. Though it reflects the discussion on merit, a serious objection has been raised that the revision application was not argued on merit. This is a disputed issue. The question was very simple: Can the revision against the delay condonation application be entertained under Section 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The Maharashtra Revenue Tribunal was expected to decide the tenability issue first, but the Tribunal has decided the revision on merit except

for that issue. Unless the opportunity is granted to the respective parties to hear on merits, the decision on merit is legally not correct. Hence, this case is fit for remittance.

12. As far as the stay of the proceeding Outward No.2020/19- Mauje Mitmita- CRA-13 is concerned, *prima facie,* it appears that it goes to the root of the dispute. However, considering the experience of the snail speed of the proceeding before the revenue authority, it would be inappropriate to stay that proceeding. The said proceeding may proceed subject to the decisions of the issues raised before this Court in this petition. The appellate authority shall ensure that the issues in that appeal do not conflict with those involved in the earlier proceeding, i.e., revision application No.12-B/2017/Aurangabad and 13/B 2017/A. In view of the above, the following order is passed

ORDER

(i) The Writ Petitions are allowed.

(ii) The impugned judgment and order of Member, Maharashtra Revenue Tribunal Aurangabad passed in revision application No. 12/B/2017/A and 13/B 2017/A/ dated 19.07.2019 stands quash and set aside.

(iii) The matter is remitted to the Member, Maharashtra Revenue Tribunal Aurangabad, for deciding the issue of the tenability of the revision petitions under Section 91 of the Hyderabad

Tenancy and Agricultural Act 1950 within three months from the appointment of the Administrative Member of Maharashtra Revenue Tribunal, Aurangabad.

(iv) The appeal/proceeding, Outward No. 2020/19 Mauje Mitmita-CRA-13, would proceed ahead. However, the authority dealing with said proceedings should ensure that its findings do not conflict with the issues involved in revision before the Member, Maharastra Revenue Tribunal Aurangabad.

(S. G. MEHARE, J.)

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