

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4954 OF 1997.

Shri. S. S. P (DECD)THROUGH Heirs Shri.T.S.P. ...Petitioners.
(DECEASED) By Heirs Smt. Laxmibai T. Panaskar
And Ors

Versus

Shri. Shripati Bala Pawar (since Deceased) Through ...Respondents.
His Legal Heirs 1.1.Putalabai Sitaram Pawar And

Mr. Prafulla Shah a/w Ms. Gunjan Shah for the Petitioners.
Ms. Pratibha Shelake for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : December 12, 2024.

P. C. :

1. Rule was issued on 17th October 1997. The present Petition takes exception to the Judgment and Order dated 29th October 1984 passed by the Additional Tehsildar and ALT in proceedings instituted under Section 32-F of the Maharashtra Tenancy and Agricultural Lands Act, and the impugned Judgment and order dated 25th January 1988, passed by the Sub Divisional Officer and the impugned Judgment and Order dated 17th September 1996, passed by the learned member of the MRT in Revision Application No. 10 of 1988. The subject land is Gat No. 384, 820, 974 and 1193 situated at Village Malhar Peth Taluka Patan District Satara.

2. The facts of the case are that on 12th October 1960, the

proceedings under Section 32-G of the Tenancy Act were postponed by the ALT Patan as the land lady was widow. The land lady i.e. Walubai expired issueless on 20rd March 1975 and upon her death the name of Bhimabai was entered into revenue record on 2nd January 1984. By order dated 29th October 1984, the Tehsildar and ALT held that the purchased has become ineffective by reason of non compliance of Section 32F (1A) of Tenancy Act. On 30th November 1984 Bhimabai expired and on 8th March 1985 Tenancy Appeal A-121 of 1985 was filed before the Sub Divisional Officer. The legal heirs of Bhimabai contested the Appeal on the ground that the Appeal has abated as the same was instituted against Walubai through the deceased Bhimabai. By order dated 25th January 1988, impugned in the present proceedings, the SDO considered that Bhimabai had expired on 30th November 1984 and did not delve into the merits of the case and in view of the abatement disposed of the Appeal proceedings. As against the order passed by the SDO, Revision was filed before the learned member of MRT by the legal heirs of the deceased Tenant which came to be dismissed by reason of dismissal of the Application for bringing the legal heirs of the deceased Tenant as well as the deceased Respondent land lady and holding that the Revision against a dead person is not maintainable and is nullity and that the Revision Application stands abated.

3. Heard Mr. Shah, learned Counsel appearing for the

Petitioner and Ms. Shelake, learned Counsel appearing for the Respondents.

4. Learned Counsel appearing for the Petitioner would submit that before the SDO an Application was moved for bringing on record the legal heirs of the said Bhimabai, which is evident from the records and proceedings called by this Court. He submits that without deciding the said Application, the SDO by order dated 25th January 1988 have disposed of the proceedings as abated. He submits that it was necessary for SDO to decide the said application and without adjudicating the said Application and without noticing the application, the SDO have held the proceedings to have been abated. He would submit that at the time of filing the Revision the Original Tenant had also expired and the Revision Application was filed through the heirs of the deceased tenant along with an Application for bringing on record the legal heirs of the deceased tenant as well as for bringing on record the legal heirs of the deceased land lady. He submits that though sufficient reasons were made out for the delay in filing the Application for bringing on record the legal heirs, the learned member of MRT did not consider the said explanation, and has held that as the Application was filed against the dead opponent, it is a nullity. He submits that it was necessary to render reasons and findings on the cause which was put-forth for condoning the delay and without any such discussion the

learned member of MRT has dismissed the Application. He would further rely on the decision of the Apex Court in the case of **Vasant Ganpat Padave vs. Anant Mahadev Sawant**¹ which is in the context of Section 32-F of the Tenancy Act holding that intimation about the death of the land lady is required to be given to the Tenant for the period to commence. He submits that meritorious matter had been thrown out on the ground of delay.

5. *Per contra*, learned Counsel appearing for the Respondent would fairly concede that an Application for bringing the legal heirs on record of the deceased land lady was filed before the SDO which has not been decided. She would however submit that it was for the Petitioner to prosecute the said Application and point out to the SDO the pendency of the Application and as the same was not done the SDO has held that the proceedings had abated. She would further submit that even before the Revisional Authority the Original Tenant had expired and the Applications came to be rightly dismissed as there was no sufficient explanation tendered for the delay. She submits that the proceedings have been rightly decided and no interference is warranted.

6. I have considered the submissions and perused the record.

7. Perusal of the original record would indicate that in

1 (2019) 19 SCC 577.

Tenancy Appeal No. 21 of 1985 the Petitioners had preferred an Application for bringing on record the legal heirs of the deceased land lady. Considering that the Application was pending before the SDO without the said application being decided the Appeal could not have been taken up for hearing. The SDO without noticing the said Application has only decided the issue whether the appeal has abated or not and by considering that the land lady Bhimabai had expired on 30th November 1984 and without adjudicating the Application, filed for bringing on record the legal heirs of the deceased Bhimabai, have disposed of the proceedings as abated.

8. It is not disputed that the said Application was on record and should have been pointed out to the learned SDO, however, it was expected of the SDO as to while deciding whether the Appeal has abated or not to examine the records to ascertain whether any Application has been filed. Both parties are equally to blame as though the Application was filed the same was not pointed out to the SDO. At the same time it needs to be appreciated that the proceedings were being prosecuted by agriculturists who may not be well-versed in legal procedures.

9. The learned member of the MRT though being aware of the Application being filed for bringing on record the legal heirs of the Tenant have not condoned the delay of about six months which was

caused in preferring the Application. The Revision Application was instituted by the legal heirs of the deceased Tenant with an Application for bringing legal heirs on record with an Application for condoning the delay stating that the legal heirs were residing in different villages and thus time was consumed. The delay of six months was not such colossal delay which could not have been condoned particularly considering the facts of the case.

10. As regards the reason for dismissing the Application for bringing on record the legal heirs of the deceased land lady the date of death of the land lady has been taken into consideration without noting that even before the SDO the Application was filed and as there was no adjudication on the said Application, the legal heirs could not be brought on record. These peculiar facts were not noted by the learned member of MRT and the Application came to be disposed of as abated.

11. Considering the facts of the present case as the Tenancy Appeal was not adjudicated on merits and neither the Revisional Authority has considered the matter on merits coupled with the fact that the Application for bringing on record the legal heirs of the deceased land lady was filed and pending before the SDO the appropriate course is to quash and set aside the orders of abatement passed by the SDO and the learned member of MRT and remand the

Tenancy Appeal to the file of SDO to be considered afresh.

12. In light of the discretion above, the impugned order dated 25th January 1988, passed by the SDO and the impugned judgment and order dated 17th September 1996, passed by the learned member of MRT are hereby quashed and set aside.

13. Tenancy Appeal No. 21 of 1985 is restored to the file Sub Divisional Officer. Considering the year of the Appeal, the Sub Divisional Officer is requested to decide the same expeditiously.

14. Petition is allowed in above terms. Rule is made absolute.

[Sharmila U. Deshmukh, J.]