IN THE HIGH COURT OF JUDICATURE AT BOMBAY

rrpillai

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1336 OF 1999

1. Sopan Balbhim Jagtap
since deceased through his
heirs and legal representatives:

1A. Kondiba Sopan Jagtap ….. Petitioner

Versus

1. Shri. Babu Ganpat Teli
(since deceased through Legal heirs)

1a. Vimal Baburao Bamane, Age : 60 years

1b. Maruti Baburao Bamane, Age : 45 years

1c. Ganpat Baburao Bamane, Age : 35 years
At: R/at. Dhanore, Post-Manegaon,
Tal-Madha, Dist-Solapur-413410

RAJESHWARI RAMESH PILLAI

Digitally signed by RAJESHWARI RAMESH PILLAI
Date: 2024.05.17 11:59:15 +0530

1d. Nita Mahadev Giram, Age : 30 years
R/o. C/o. Maruti Baburao Bamane
At. Dhanore, Post-Manegaon,
Tal-Madha, Dist-Solapur-413410

2. Shri Ambadas Ganpat Teli
of Dhanore Tal/Madha
District : Solapur

3. Malanbai Pandharinath Teli
R/o. Narkhed Tal. Mohol
District : Solapur

4 Keshar alias Kesharbai Kisan Kevate
R/o, C.T.S. No. 1561,
Jayshankar Mill Road, Barshi
Dist. Solapur

5. Kamal Revan Teli
R/o. Degaon Tal. Mohol
District : Solapur

….. Respondents

Ms. Geeta Mulekar for the Petitioner.

Mr. M. L. Patil for the Respondents.

CORAM : GAURI GODSE, J.

DATE: 18th APRIL 2024

ORAL JUDGMENT:

1. This petition challenges the Judgment and Order dated 14th August 1998 passed by the Maharashtra Revenue Tribunal, Pune [“MRT”]. By the said order the Revision Application filed by the landlord is allowed and the order passed rejecting the landlord’s application under Section 33B of the Bombay (now ‘Maharashtra’) Tenancy and Agricultural Lands Act, 1948 [“The Tenancy Act”] is set aside. MRT has thus directed that the proceeding under Section 32G of the Tenancy Act initiated by the tenant shall remain in abeyance till disposal of the proceeding under Section 33B filed by the landlord.

2. The petitioner is the heir and legal representative of the original tenant. Respondents are the heirs and legal representative of the original landlord. Petitioner is hereinafter referred to as “tenant” and respondents are hereinafter referred to as “landlord”.

3. For the easy understanding of the controversy, it is necessary to know the basic facts of the case. Landlord had made an application on 11th September 1961 for grant of exemption certificate under sub-section 4 of Section 88C of the Tenancy Act. The said application was allowed on 31st May 1962 by holding that the landlord had half share in the land and accordingly certificate was ordered to be issued with respect to half share of the suit land. Being aggrieved by the said order, landlord had filed an Appeal claiming exemption in respect of the entire land. The tenant had also filed appeal challenging the grant of exemption certificate with respect to the half share. Both the appeals were dismissed. Hence, the order granting exemption under Section 88C stands confirmed so far as half share in the suit land is concerned.

4. It is the landlord’s case that intimation of the said decision under Section 88C was received by the landlord on 2nd March 1964 and an

application for copy of exemption certificate was made on 26th March 1964. It is landlord's contention that the exemption certificate was handed over on 7th April 1964. Hence, the landlord issued notice to the tenant on 4th May 1964 for possession under sub-section 3(b) of Section 33B of the Tenancy Act. The tenant had replied to the said notice. Thereafter, the landlord filed an application on 2nd June 1964 under Section 33B.

5. The application under Section 33B was rejected on the ground of delay on 31st July 1965. Hence, the landlord filed an appeal which was allowed on 29th November 1966 and the Agricultural Land Tribunal ["ALT"] was directed to proceed on the basis that the application was filed within time. Being aggrieved by the said order, the tenant filed Revision Application before the MRT. MRT decided the revision application on 27th November 1969 and remanded the matter back to the ALT for fresh inquiry with an observation that the ALT while hearing the application of the landlord should keep in mind that he has to compute the period of three months from the date of receipt of the certificate by the landlord and decide the case in accordance with law under Section 33B (3) of the Tenancy Act. It is the landlord's

contention that after the said remand, the landlord was never intimated about the hearing of the application and the application was rejected without any notice to the landlord. Hence, the order rejecting the application under Section 33B on 30th April 1973 was not within the knowledge of the landlord.

6. The tenant initiated proceeding under Section 32G. It appears that the landlord had filed application on 9th March 1976 requesting that the proceeding under Section 32G should be kept in abeyance till the application under Section 33B was decided. Thus, it is the landlord's case that unaware about the order dated 30th April 1973, the said application was filed in the proceeding initiated by the tenant under Section 32G. Thereafter, on 27th August 1980 ALT dismissed the proceeding under Section 32G. Thereafter on 6th October 1982 ALT passed an order holding that the tenant was entitled to purchase the land under Section 32G and fixed the purchase price.

7. Being aggrieved by the said order the landlord filed Tenancy Appeal before the SDO. By order dated 16th August 1988 SDO allowed the appeal and remanded the matter back to the ALT for fresh enquiry. By Judgment and Order dated 16th August 1988 SDO had

decided two appeals and the proceedings were remanded back to the ALT for fresh enquiry. Thus, it appears that there was also an appeal preferred by the tenant raising a grievance regarding the interest on the quantum of price fixed. Hence, by a separate order dated 16th August 1988 the appeal of the tenant was also allowed, and the matter was remanded back for fresh enquiry.

8. The said orders passed on 16th August 1988 were challenged before the MRT by the tenant. By Judgment and Order dated 29th August 1991, MRT allowed the revision application and remanded the matter back to the ALT by issuing directions as specifically contained in the operative order. Thereafter, the landlord filed an appeal before the SDO challenging the order dated 30th April 1973 rejecting the landlord's application under Section 33B. It is this order which is the point for consideration in the present writ petition.

9. The SDO by order dated 21st April 1997 rejected the said appeal. Hence, the landlord filed revision application before the MRT. MRT allowed the revision application by setting aside the rejection of the appeal as well as rejection of the application under Section 33B. MRT further directed that the proceedings under Section 32G shall remain

in abeyance till the proceeding under Section 33B are decided. Thus, in view of the said order passed by the MRT, the application under Section 33B filed by the landlord was to be decided. However, the said order was stayed during the pendency of this petition. Hence, it appears that the proceeding under Section 33B as well as the proceeding under Section 32G has remained stayed. In view of the interim relief passed in this order, further proceedings under Section 32G have also remained stayed.

Submissions on behalf of the Petitioner-Tenant

10. Learned counsel for the tenant submitted that the landlord was aware about the rejection of the application under Section 33B, however, no action was taken by the landlord. She submits that after a period of eighteen years for the first time the landlord challenged the order dated 30th April 1973 by filing appeal before the SDO. There was no application filed for condonation of delay and the appeal was rejected. Hence, the landlord had filed Revision Application before the MRT. She submitted that before the MRT landlord had questioned the rejection of the appeal as well as the rejection of application under Section 33B. However, even before MRT no case was made out for

justifying the delay in filing an appeal before SDO. She submitted that there was even a delay in filing Revision Application before the MRT. The rejection of the application under Section 33B was passed in the year 1973 and the landlord was aware about the said rejection.

11. To support her contention that the landlord was aware about the order dated 30th April 1973, learned counsel for the tenant relied upon the order passed by the ALT under Section 32G where there was a reference of rejection of application under Section 33B. She thus submitted that similar observation in the judgment of MRT revision application arising out of price fixation under Section 32G shows that the landlord was aware about the dismissal of the application under Section 33B. She further submitted that perusal of the order dated 30th April 1973 would itself indicate that the landlord had participated in the proceeding and was thus aware about the order. She submitted that in the order dated 30th April 1973 it is observed by the ALT that in cross examination held on 19th July 1965 landlord had admitted that 88C certificate dated 31st May 1962 was received by him on 3rd June 1962. She thus submits that reference to the cross examination of the landlord indicates that he had participated in the said proceeding and

hence it cannot be said that the landlord was not aware about the inquiry made on his application under Section 33B and rejection of the application on 30th April 1973.

12. The learned counsel for the tenant further submitted that the said admission would categorically show that the application under Section 33B itself was also barred by limitation as it was filed beyond the period of three months as required under the said provisions. She thus submitted that the original application under Section 33B was also barred by limitation. Though the landlord was aware about the rejection of the application, no steps were taken against the said rejection. She thus submitted that the MRT in the impugned order without taking into consideration that the appeal preferred by the landlord challenging rejection of 33B application was time barred, entertained the grievance of the landlord. She submitted that once the appeal itself was time barred, the SDO and MRT would not have jurisdiction to examine the merits of the order dated 30th April 1973 rejecting the landlord's application.

13. In support of her submission that MRT could not have entertained the challenge to order passed in the year 1973 which was

time barred, the learned counsel for the tenant relied upon the decision of this court in the case of ***Balkrishna Sadashiv Thakur and Others vs. Prabhakar Sadashiv Thakur and Others.***[1] She thus submitted that this Court has taken a view that once there is delay in filing appeal without condonation of delay, the tribunal would not have any jurisdiction to decide the appeal on merits. She further submitted that there was no ground raised by the landlord for condonation of delay by filing a separate application for condonation of delay. Hence, the appeal filed by the landlord before the SDO was time barred and hence even MRT could not have entertained the challenge to the order rejecting application under Section 33B by examining the merits of the said application.

14. She thus submitted that though specific ground was raised before the MRT regarding the revision itself being time barred, MRT entertained the revision application and has erroneously set aside the rejection of the appeal and the original application under Section 33B. She thus submitted that MRT has committed jurisdictional error and hence the order deserves to be set aside by confirming the order

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rejecting the application under Section 33B.

Submissions on behalf of the Respondents-Landlord

15. Learned counsel for the landlord supported the impugned order. He submitted that after an order of remand was passed on 29th November 1966 and confirmed by MRT on 27th November 1969 the ALT was required to hold an inquiry for deciding the application under Section 33B. He submitted that the landlord had never received any notice of hearing of the proceeding under Section 33B and without giving an opportunity of hearing the application is rejected.

16. The landlords were unaware about the rejection and hence had filed application in the proceeding under Section 32G and submitted that the said proceeding cannot be decided until and unless the application under Section 33B was pending. In the Revision Application filed by the tenant challenging the quantum of interest regarding fixation of price, copy of the order dated 30th April 1973 was for the first time produced by the tenant. Only after the said order was produced before the MRT, the landlord had taken steps to get the certified copies of the order. It was only during the proceeding of

Revision Application Nos. 5 and 7 of 1989, the landlord learnt about the order dated 30th April 1973. Hence, immediate steps were taken to challenge the same by filing an appeal. He submitted that the appeal was not rejected as time barred and SDO decided the appeal on merits. The reasons recorded by the SDO nowhere indicates that the appeal was rejected as time barred. He relied upon observation of the SDO in paragraph 5 which indicates that the SDO refused to interfere with the order dated 30th April 1973 on the ground that the said order was considered by the MRT and hence after a period of more than eighteen years it was not necessary to entertain the appeal against the said order.

17. He submits that though the appeal was rejected with the said observations, SDO directed the ALT to hold inquiry as per the directions issued by the MRT by order dated 29th August 1991. He thus submitted that appeal was entertained by the SDO on merits, and it was not dismissed as time barred.

18. In support of the impugned order, learned counsel for the landlord submitted that the MRT has taken into consideration all the objections raised on behalf of the tenant. The observation relied upon

by the learned counsel for the petitioner that the said revision was also time barred is only a submission made on behalf of the tenant before MRT. The revision was filed within time and thus was admitted and heard finally. MRT proceeded to frame points of consideration and the revision application was entertained and examined on merits. He thus submitted that there is no substance in the ground raised by the tenant that the Revision Application was also time barred.

19. He further supported the said order and contended that all the earlier orders with regard to the 32G proceeding and the earlier orders of remand were considered by the MRT. It was specifically observed by MRT that until and unless the proceeding under Section 33B were decided, the 32G proceeding cannot be initiated or proceeded further. Hence, in view of the well settled legal principles, MRT rightly entertained the Revision Application and set aside the order rejecting the application under Section 33B filed by the landlord. He submitted that the proceeding under Section 33B could not have been rejected without proper inquiry. MRT has therefore rightly directed that proceeding under Section 32G would remain in abeyance till the proceedings under Section 33B are decided.

20. He further submitted that so far as the submissions made with regard to the original application under Section 33B being not within time, the same is required to be dealt with by the ALT by holding necessary inquiry as contemplated under Section 33B of the Tenancy Act. He referred to the dates relied upon by the landlord that the exemption certificate was handed over to the landlord on 7th April 1964 and the notice was issued on 4th May 1964. Thereafter, the application under Section 33B was filed on 2nd June 1964. He thus submitted that the aforesaid dates would make it clear that the application under Section 33B was well within limitation. He submitted that even otherwise, MRT while remanding the proceedings under Section 33B has observed regarding computation of the period of three months from the date of receipt of the certificate by the landlord. Thus, the issue regarding the application under Section 33B being within the limitation is decided by the MRT by order dated 27th November 1969. Pursuant to the said order, the proceedings were remitted back to the ALT for making inquiry on merits under Section 33B. He submitted that the said order is not challenged and hence there is no question of going into the point as to whether application under Section 33B was

within time. He submitted that the only question to be decided by MRT was whether the rejection of the landlord's application on 30th April 1973 was after hearing the landlord.

21. He thus submitted that once in the earlier round of litigation, rejection of the said application is set aside by the MRT by accepting contention of the landlord, there was no question of now deciding whether the application under Section 33B was within time. He thus submitted that no fault can be found in the reasons recorded by the MRT. Hence, no case is made out for invoking powers under Article 226 or 227 for interfering with the impugned order.

Analysis

22. I have considered the submissions. Perused the papers. With regard to the facts of the case, I have already recorded the basic facts of all the proceedings. With regard to the application under Section 33B and pendency of the said application pursuant to the order of remand passed by MRT by order dated 27th November 1969 and in view of the aforesaid submission, the only controversy to be examined in this petition is with regard to the landlords' knowledge about the

rejection of the application under Section 33B on 30th April 1973. The landlord has come up with a specific case before the SDO that it was only when the copy of the order was produced before the MRT and as recorded in the Judgment and Order dated 29th August 1991, the landlord learnt about the said order.

23. Prior to production of the said copy before MRT, the landlord was never intimated about the rejection of the application. The landlord never received any notice of hearing and hence there was no inquiry conducted as required under Section 33B. Perusal of the judgment and order dated 29th August 1991 indicates that there is reference to production of the copy of the order dated 30th April 1973. Except for reference in the said Judgment, order rejecting the said application does not appear to have been referred to in any of the orders passed in the proceeding initiated under Section 32G.

24. Reliance placed by the learned counsel for the tenants on the Judgment and Order passed by the ALT by deciding the application under Section 32G on 6th October 1982 only indicates the reference to rejection of the application under Section 33B. There is no specific reference regarding the order dated 30th April 1973.

25. It is not disputed that in the earlier round of litigation the application under Section 33B was rejected and rejection was set aside and the proceedings were remanded by order dated 27th November 1969. Hence, the reference to rejection of the application under Section 33B in the Judgment and Order dated 6th October 1982 cannot be interpreted to mean that the said rejection is with reference to order of 30th April 1973. Perusal of the said Judgment indicates that the said rejection is with reference to the rejection of the application before the order of remand.

26. The second ground raised on behalf of the tenant regarding the landlord's knowledge of the order dated 30th April 1973 is with reference to the observation made in the said order. I have perused the said order. The reference to the cross examination of the landlord on 19th July 1965 is obviously about recording of evidence before the application was first rejected. The application was initially rejected on 31st July 1965 and SDO had set aside the said rejection and remanded the matter to ALT on 29th November 1966. The said remand was confirmed by MRT on 27th November 1969. Thus, the reference to cross examination in the said order would not mean that

the landlord has appeared during the inquiry under Section 33B after the order of remand. Perusal of the entire record nowhere indicates that any notice was served upon the landlord after the order of remand. Though there is a reference made to issuance of notice to both the parties after the order of remand the judgment nowhere indicates that notice was served upon the landlord. Even before MRT while deciding the revision application of the tenant on 29th August 1991 the submissions made on behalf of the landlord indicates that the landlord was unaware of the order passed on 30th April 1973.

27. Considering the reference made as aforesaid I find substance in the argument made on behalf of the landlord that it was only when the order copy was produced in the aforesaid revision application, the landlord learnt about the order dated 30th April 1973. It appears that thereafter immediate steps are taken to challenge the same by filing appeal. Perusal of the order dated 21st April 1997 passed by SDO deciding appeal of the landlord indicates that the said appeal has been decided on merits and it is not rejected as time barred. The reasons recorded by the SDO indicates that the merits of the appeal have been examined and it is rejected on merits on the ground that as the order

dated 30th April 1973 was considered by MRT, the SDO did not find it fit to re-examine it after a period of 18 years. The observation recorded by the SDO in paragraph 5 of Order dated 21st April 1997 indicates that the appeal was decided on merits and not rejected as time barred. In the event the appeal was to be rejected as time barred, the SDO would not have examined the case on merits. Even the operative direction issued by order dated 21st April 1997 indicates that the appeal was entertained on merits.

28. It is important to note that rejection of the appeal on merits by the SDO is not questioned by the tenant. Revision Application was filed by the landlord on the ground that the appeal was rejected on merits. Point for consideration framed by MRT in paragraph 6 also indicates that the order rejecting the application under Section 33B was considered on merits by the MRT and that the appeal being time barred was not under consideration before MRT. By referring to the earlier orders under Section 88C and under Section 32G, MRT has recorded reasons for setting aside the orders rejecting the landlord's application under Section 33B.

29. Hence, I do not see any merits in the argument made on behalf

of the petitioner that the appeal filed before the SDO was time barred and hence MRT ought not to have entertained the revision on merits. Even otherwise the order passed by SDO was not questioned by the tenant. Hence, the question of the appeal before SDO being time barred was not the point of consideration before the MRT. Hence, in the present petition, I do not see any reason to interfere with the order passed by the MRT on the ground that the appeal before SDO was time barred. Even otherwise the ground raised on behalf of the landlord justifying filing of the appeal after eighteen years is acceptable. The revision application in MRT was admitted and heard finally after framing points for determination on merits. Hence, there is no substance in the submission of learned counsel for the petitioner that the revision application before MRT was time barred.

30. The decision of this Court in the case of ***Balkrishna Sadashiv Thakur*** relied upon by the learned counsel for the petitioner is on the point of jurisdiction of the Court to decide the matter on merits when the delay is not condoned. There cannot be any debate on the point that without condonation of delay the proceeding cannot be entertained on merits for want of jurisdiction. However, I do not find it necessary to

examine the same in the present case, as I have already recorded that the appeal of the landlord was decided on merits and the point of limitation was not under consideration before the MRT. Hence, in view of the aforesaid facts, reliance on the said decision is misplaced and is of no assistance to the arguments made on behalf of the petitioner.

31. I do not see any error in the reasons recorded by the MRT that without a decision on the application under Section 33B the proceeding under Section 32G could not have been proceeded. The record indicates that the proceedings initiated by the tenant under Section 32G are decided in favour of the tenant, however the order by the MRT on 29th August 1991 indicates that it appears to have been challenged by the tenant on the point of quantum of interest. In view of the aforesaid facts, I do not find any error or illegality in the reasons recorded by the MRT in the impugned judgment and order. The proceedings under Section 33B are to be decided in accordance with law, after holding due inquiry. Hence, I do not see any reason to interfere with the impugned order.

32. The scope for interference under Article 226 or 227 is well settled as summarised by the Hon'ble Supreme Court in the case of

Shalini Shyam Shetty & Another vs Rajendra Shankar Patil.[2] In the said decision of ***Shalini Shyam Shetty,*** the Hon'ble Supreme Court has summarized the scope of interference under Article 227 of the Constitution of India. The relevant extracts from paragraph 49 are as under:

> ***"49.*** *On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*
>
> *……..*
>
> ***(e) According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, "within the bounds of their authority".***
>
> ***(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.***
>
> ***(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.***

2 (2010) 8 SCC 329

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised."

emphasis applied

33. I do not find that the MRT has committed any jurisdictional error. There is no violation of the principles of natural justice. I do not find any manifest error or perversity in the reasons recorded by the Tribunal. Substantial justice is done. Powers under Articles 226 and 227 are discretionary and equitable reliefs. This is not a fit case for exercising powers under Articles 226 and 227 of the Constitution of India.

34. At this stage, learned counsel for the tenant insist for a clarification that the order under Section 88C was in respect of half area and hence the proceeding under Section 32G may not be entirely kept in abeyance on the ground of the pendency of the application under Section 33B. However, at this stage, it is not possible to give any clarification as the order under Section 32G relied upon by the tenant appears to be with respect to the entire area. The order under Section 32G dated 6th October 1982 relied upon by the learned counsel for the

tenant also refers to pending proceeding under Section 32F. Hence, I am not inclined to grant any clarification as the same may amount to further complications in the proceedings.

35. Hence, for the reasons recorded above, following order is passed:

(i) The Petition is dismissed. Rule is discharged.

(ii) Judgment and Order dated 14th August 1998 passed by MRT, Pune, in Revision Application No. 4 of 1992 is confirmed.

(iii) The registry is directed to remit the original record and proceedings back to the Agricultural Land Tribunal, Madha.

(iv) The parties shall appear before the Agricultural Land Tribunal, Madha, on 10th June 2024 at 11:00 AM.

(v) The concerned ALT shall thereafter fix the schedule for hearing. Hence, it is further clarified that no fresh notice would be necessary to the parties with regard to the inquiry under Section 33-B.

36. Writ Petition is disposed of in the above terms.

[GAURI GODSE, J.]