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

WRIT PETITION NO.1040 OF 2024

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Tanvi Infrastructure & Developers
Pvt. Ltd.

... Petitioner

V/s.

Arun Hendrar Chenekar & Ors.

... Respondents

Mr. Sanjiv Sawant with Mr. Samir Suryawanshi, Mr. Aseem Naphade, & Mr. Amar Khanna for the petitioner.

Mr. Sandesh D. Patil with Mr. Krishnakant Deshmukh i/ by Mr. Chintan Y. Shah for respondent No.1.

Mr. Jagdish G. Aradwad (Reddy) with Mr. Abhijit Patil for respondent No.4/TMC.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 29, 2024

PC.:

1. The writ petition arises out of proceedings under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (“the said Act” for short) in relation to the land bearing Survey No.204/1 (part), New Survey No.107/1/2B (part) situated at Bhayandarpada, Thane (West) (“property in dispute” for short).

2. The respondent No.1 in the year 2005 filed an application under Section 70(b) of the said Act claiming declaration that he be declared as tenant in relation to Survey No.204/1.

3. After two rounds of litigation arising out of same application, last order of remand passed by the Sub-Divisional Officer, Thane Division, Thane directed Agricultural Lands Tribunal to decide respondent No.1's right as tenant in the property based on material on record. The Agricultural Lands Tribunal by judgment and order dated 20 April 2019 declared respondent No.1 as tenant in the property.

4. The petitioner who claims to be purchaser from the landlord of entire property of which the property in dispute is part filed Appeal before the Sub-Divisional Officer. The Sub-Divisional Officer by order dated 20 April 2022 dismissed the Appeal.

5. The petitioner challenged the order of the Sub-Divisional Officer by filing Revision before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal by the impugned order dated 3 October 2023 dismissed the Revision. Hence, present writ petition is filed.

6. Learned advocate for the petitioner submitted that in the year 1978 in a proceeding under Section 70(b) of the said Act, three persons were declared as tenant in relation to the property in dispute and, therefore, fresh application filed by respondent No.1 is not maintainable unless order under Section 70(b) of the said Act was challenged by way of appeal. He further submitted that the receipts relied upon by the Agricultural Lands Tribunal are of Village Owale. The property in dispute is in Bhayandarpada and, therefore, such receipts could not have been relied upon to arrive at finding of tenancy in favour of respondent No.1. He further

submitted that the document in Form 7B produced on record by the respondent No.1 could not have been relied upon by the authorities below as the respondent N.1 had not paid cess of the said land and, therefore, such document in Form 7B could not have been relied upon. He further submitted that the document in Form 7B contains an entry dating back to 46 years when age of the respondent No.1 was 38 years in the year 2005. He, therefore, submitted that the findings recorded by the authorities below as based on inadmissible evidence.

7. Per contra, learned advocate for respondent No.1 submitted that Bhayandarpada created in the year 1996 was part of earlier larger Village Owale and, therefore, receipts of the years 1957, 1960, 1961, 1962 and 1968 reflects name of Village as Owale. He further submitted that the receipts were issued in the year 2010-2011 which contain a column that the land is in possession of such person for last 46 years. He further submitted that the adjudication under Section 70(b) was in relation to other tenants in larger plot of land having eight different tenants. Out of such eight persons, proceedings under Section 70(b) was dealing with three tenants, namely, Jethya, Jana and Gopal. Respondent No.1 or his predecessor was neither an applicant nor party to the proceedings under Section 70(b) of the said Act concluded in the year 1978 and, therefore, such adjudication would not affect respondent No.1's right to claim tenancy by filing an application under Section 70(b) of the said Act. He, therefore, submitted that the findings of fact recorded by the authorities below is based on admissible evidence and, therefore, need not be interfered with.

8. I have heard advocates for the parties and perused the material produced on record by the parties.

9. On perusal of the record, it appears that the Agricultural Lands Tribunal recorded a finding that the respondent No.1 is tenant based on following material: (i) receipts dated 27 June 1957, 19 March 1960, 1 February 1961, 26 December 1962 and 31 December 1968; (ii) Form 7B of the year 2011-2012 to indicate payment of Rs.1,320/- to the Government by Annapurna Bhise on behalf of respondent No.1; (iii) affidavits of adjoining owners stating respondent No.1 to be in possession of the land in dispute; and (iv) report of the Circle Officer stating that at the time of his visit on 4 April 2019 respondent No.1 found to be in possession.

10. Based on aforesaid material, the Agricultural Lands Tribunal upheld respondent No.1's contention that he established his right as agricultural tenant in relation to the property in dispute.

11. The Sub-Divisional Officer based on the receipts referred above, Form 7B and other material confirmed the findings and dismissed the appeal.

12. The Maharashtra Revenue Tribunal relied on mutation entry Nos.691 and 591 and considering the scope of revision confirmed the findings of fact recorded by the authorities below.

13. Writ of certiorari with which I am essentially concerned is an extraordinary common law remedy. It is not a writ of right but one of discretion. The object of the writ of certiorari is to curb the excess of jurisdiction to keep inferior Courts and Tribunals within their bounds. The ground on which certiorari jurisdiction may be

invoked is 'an error apparent on the face of the record' and not every error either of law or fact can be corrected by Appellate or Revisional Authority. The error must be something that can be termed as manifest on the face of the record. The mere formal or technical error even though of law will not be sufficient to attract extra-ordinary writ jurisdiction of certiorari. The Court does not substitute its own decision nor does it direct the body whose decision is quashed as to the decision it is to get on reconsideration of the matter.

14. As noted above, the findings of the authorities below was based on admissible and relevant evidence in the form of receipts of the years 1957 to 1968, affidavits of adjoining owners and the report of the Circle Officer.

15. Learned advocate for the petitioner submitted that once three persons were declared as tenant in a proceeding under Section 70(b) of the said Act, fresh proceeding at the instance of respondent No.1 was not maintainable. However, on perusal of the judgment of the Agricultural Lands Tribunal passed in 1978, it appears that three independent persons claiming tenancy rights over larger part of Survey No.204/1 were declared as tenant. Said adjudication was not in relation to respondent No.1's claim over the property which was not subject matter of said adjudication. Therefore, such adjudication would not affect respondent No.1's right to claim tenancy.

16. The second contention is in relation to the document in Form 7B. The document is issued in the year 2011-2012. Therefore, even

if such document is excluded from scrutiny, the findings of the authorities below are still based on relevant admissible document in the form of receipts issued in favour of the predecessor of respondent No.1 of the year 1957 to 1968. In addition, other materials such as report of the Circle Officer and affidavits of adjoining owner were also considered by the authorities. Therefore, in my opinion, the findings of fact recorded by the authorities below holding respondent No.1 to be tenant in the property does not suffer from legal infirmity.

17. The writ petition, therefore, stands dismissed. No costs.

(AMIT BORKAR, J.)