Nikita

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7239 OF 2018

NIKITA KAILAS DARADE
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Date: 2024.02.05 17:18:40 +0530

Sampat Mahadu Surve (since deceased) Through LRS. … Petitioner

V/s.

Nathu Barku Ghuge (since deceased) through LRS and Ors. … Respondents

Mr. Pramod N. Joshi for the Petitioner-Applicant.

Mr. Vishwajeet S. Kapse for Respondent No. 1 A.

Mrs. V. S. Nimblakar, AGP for the State-Respondent Nos. 4 to 5.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 5, 2024

P.C.:

1. Challenge in this petition is to the order dated 14th August 2013 passed by Sub-divisional Officer in Tenancy Appeal No.36 of 2013 confirming the order passed by Tahsildar dated 30th October 2013. Learned advocate for the petitioner relying on judgment of Apex Court in the case of **V. S. Charati Vs. Hussain Nhanu Jamadar by L.Rs.** Reported in 1999 (1) Mh. L.J. 782 urged that the Tahsilsar in Tenancy Case No.1 of 2011, had not power to reopen proceedings under Section 32 (G) and 32(M) in first round of litigation. Such power is available with the Appellate Authority against such order. The proceedings under Section 32(G) has attained finality in view of the order passed by Maharashtra Revenue Tribunal dated 29th July 1987.

2. Learned advocate for the respondents invited my attention to the impugned order dated 14th August 2013. According to him, the Appellate Authority under Section 74 of Bombay Tenancy and Agricultural Lands Act, 1958 has exercised the power and, therefore, petitioner has alternative statutory remedy by way of revision before the Maharashtra Revenue Tribunal.

3. Having considered the submissions made on behalf of both sides, I am of the opinion that the grievance raised by the petitioner needs to be adjudicated by Maharashtra Revenue Tribunal in a revision which is a statutory remedy.

4. Considering the nature of dispute and facts and circumstances of the case, in my opinion, the petitioner is entitled to benefit of Section 14 of the Limitation Act, 1963.

5. Considering the availability of statutory remedy before the Maharashtra Revenue Tribunal, in view of the judgment of Apex Court in the case of **Commissioner of Income Tax and Ors. Vs. Chhabil Dass Agarwal** reported in 2014 (1) SCC 603 in paragraph No.15 held as under:

> "15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in ***Thansingh Nathmal V. Supt. Of Taxes,*** AIR 1964 SC 1419, ***Titaghur Paper Mills Co. Ltd. v. State or Orissa,***

> (1983) 2 SCC 433 and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

6. The writ petition is disposed of by granting opportunity to the petitioner to invoke remedy of revision before the Maharashtra Revenue Tribunal. No costs.

(AMIT BORKAR, J.)