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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4396 OF 2020

Vasant Shankar Bhange (Died) LRs

PETITIONER

- A. Narayan Shivram Bhange
Age - 65 years, Occ - Agriculture
R/o Momin Galli, Kallam
District - Osmanabad
- B. Dilip Shivram Bhange
Age - 60 years, Occ & R/o As above
- C. Pushpa Girmaji Nadgavali (Dead)
- D. Ashok Bhagwan Bhange
Age 55 years, Occ & R/o As above
- E. Sanjay Bhagwan Bhange
Age - 50 years, Occ & R/o As above
- F. Shila Vitthalrao Gavali
Age - 65 years, Occ - Household
R/o As above
- G. Nanda Bhagwan Bhange
Age - 60 years, Occ & R/o As above
- H. Sunita Bajrang Nandgavali Kishirsagar
Age - 50 years, Occ & R/o As above

VERSUS

- 1. Shankar Jyotiram Shelwane
Age - 66 years, Occ - Retired
R/o Sale Galli, Near Old Post Office
Kallam, Taluka - Kallam
District - Osmanabad
- 2. Narayan Jyotiram Shelwane
Age - 64 years, Occ - Retired
R/o Jijau Chowk, Barshi Naka
Osmanaabd

RESPONDENTS

3. Rama Jyotiram Shelwane (Died) LRS
 - 3A Kiranmala Ram Shelwane (dead)
 - 3B Vanwala Kisan Shelwane
Age - 50 years, Occ - Household
R/o Shere Galli, Near Old Police Station
Kallam, Taluka - Kallam, District - Osmanabad
4. Sitabai Audumbar Vidhate
Age - 55 years, Occ - Househld
R/o C/o Shankar Shelwane
Sale Galli, Near Old Post Office
Kallam, Taluka - Kallam, District - Osmanabad
5. Babu Arjun Shelke
Age - 75 years, Occ - Agriculture
R/o Borda Taluka - Kallam,
District - Osmanabad
6. Ambrushi Arjun Shelke (Ded)
Though LRs
 - 6A Prabhakar Ambrushi Shelke
Age - 45 years, Occ - Agriculture
R/o Borda, Taluka - Kallam
District - Osmanabad
 - 6B Balalsaheb Ambrushi Shelke
Age - 42 years, Occ & R/o As above
 - 6C Ravi Ambrushi Shelke
Age - 38 years, Occ & R/o As aove
7. Subhadrabai Jyotiram Shelwane (Dead)
8. Babu Krishna Shelke
Age - 62 years, Occ & R/o As above
9. Arjun Parsha Shelke (Dead)
10. Mohan Bhagwan Shelke
Age - 75 years, Occ & R/o As above
11. Subrao Krishna Shelke (dead) through LRS

- 11A. Kesharbai Subrao Shelke
Age – 70 years, Occ – Household
R/o Borda, Taluka – Kallam,
District – Osmanabad
- 11B Vilas Subrao Shelke
Age – 55 years, Occ – Agriculture
R/o Asa bove
- 11C Ratnamala Bharat Shelke
Age – 50 years, Occ & R/o As above
- 11D Balaji Bharat Shelke
Age – 22 years, Occ & R/o As above
12. Chandu Krishna Shelke (Dead)
13. The Member,
Maharashtra Revenue Tribunal
Aurangabad

.....
Mr. Ashok R. Tapse, Advocate for the Petitioners
Mr. Kishor R. Doke, Advocate for Respondent No.2
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[CORAM : MANJUSHA DESHPANDE, J.]

DATE : 23rd JANUARY, 2025

ORDER :

1. By the present Writ Petition, filed under Articles 226 and 227 of the Constitution of India, the Petitioners have assailed the order dated 28th February, 2018 passed by the Member, Maharashtra Revenue Tribunal, Aurangabad (to be referred as “MRT”) in Revision Petition No. 6/B/2004/O, thereby quashing and setting aside the order dated 2nd December, 2003 passed by

Deputy Collector, Land Reforms, Osmanabad and confirming order dated 20th June, 2001 passed by Additional Tahsildar Land Ceiling, Kalamb in File No. 2001/TNC A-18, to the extent that Vasant Bhange is not tenant of the suit land.

2. Facts, leading to the litigation, in the order impugned, shorn of unnecessary details, are as follows:

The suit land is old Survey No. 45, new Gut No. 245 *ad measuring* 17 Acre 15 Guntha, situated in village - Borda, Taluka - Kalamb, District - Osmanabad. Original Respondent No.1, Vasant Bhange had filed Regular Civil Suit No. 172 of 1975 in the Court of Civil Judge, Junior Division, Kalamb for perpetual injunction. During pendency of the suit, the Civil Court framed issues regarding tenancy and referred the same to the Tenancy Court for decision. In the first round of litigation, the MRT had remanded the matter back to the Tahsildar Kalamb as per Order dated 22nd January, 1999 to decide the case afresh in view of Section 50B and 4A of the Hyderabad Tenancy and Agricultural Lands Act.

The question, which was to be decided, was whether the lease deed in question has been made in contravention of section 4A of the Hyderabad Tenancy Act?

After the matter was remanded to the Tahsildar Land Ceiling, Kalamb, he has passed an order on 20th June, 2001, thereby declaring that original Respondent Vasant Bhange is not the tenant of the suit land.

3. According to learned Advocate for the Petitioners, the original owner of the suit land was one Ratan Lal Marwadi. His land was being cultivated by Govinda Krishna Shelwane as tenant. After the death of Govinda, his son Chandu was cultivating the suit land. During his lifetime, Chandu, who was the tenant, had leased out the suit land to Vasant Bhange. '*Khandpatra*' was executed on 1st June, 1974 in favour of Vasant Bhange. On the basis of the *Khandpatra*, name of Vasant Bhange appeared in seven twelve extract since 1974.

4. It is contended by the learned Advocate for the Petitioners that Chandu died issue less. He was not survived by any legal heir. On the basis of *Khandpatra*, Vasant Bhange continued to be in possession of the suit land. However, Jyotiram Shelwane - father of present Respondent No.1 obstructed the possession of the Petitioner Vasant Bhange. Therefore, Vasant Bhange filed Regular Civil Suit No. 172 of 1975 for injunction. Temporary Injunction Application filed by Vasant Bhange was allowed by the Trial Court. After framing of the issues, two issues relating to

tenancy, were referred to the Tenancy Court.

5. It is the contention of the Petitioners that during the pendency of the issues before the Tenancy Court, compromise was arrived at between Petitioner – Vasant Bhange and Jyotiram Shelwane, in which they had decided to equally share the land and cultivate the same. A *purshis* to that effect was placed on record on 29th January, 1976 before the Civil Judge, Junior Division, Kalamb. An order was passed on the *purshis* recording that the plaintiff and defendant No.1 are present, they are identified by the advocates. Contents of the compromise are read over to them and they have admitted the contents of the compromise. It is further observed that the compromise *purshis* is read and recorded.

6. It is the contention of the Petitioners, the *purshis* which is filed in the Court has culminated into compromise, therefore, Jyotiram Shelwane is estopped from obstructing Petitioners' possession over the suit land. However, to his surprise, after the compromise, father of Respondent No.1 filed Regular Civil Suit No. 397 of 1987 against the present Petitioners for declaration and injunction. Temporary Injunction application filed by Jyotiram – father of Respondent No.1 was rejected on 6th January, 1988. Due to the death of Jyotiram, the suit stood abated.

7. The issues which were referred to the Tenancy Court, read thus -

1A. Does the plaintiff prove that he is tenant of the suit field on the basis of lease executed by Chandu?

1B. Does defendant No. 4 and 6 prove that they are tenant of suit land since 1978 on the basis of lease deed executed by Chandu?

8. The Tahsildar has answered issue No.1 in affirmative in favour of present Petitioners vide order dated 3rd October, 1987 and held that Defendants No.4 and 6 are not tenants of the suit land. It is against this order, original defendant No.1 Jyotiram and defendants No.4 and 6 filed two separate appeals before the Deputy Collector. The Deputy Collector, after hearing the respective parties, allowed the Appeal filed by Jyotiram and dismissed the Appeal filed by Defendants No.4 and 6. The present Petitioners, being aggrieved by the order passed by Deputy Collector in favour of Jyotiram, had filed Revision before the MRT.

9. The Member MRT, vide order dated 22nd January, 1999 partly allowed the Revision Application filed by Vasant Bhange and set aside orders dated 15th April, 1995 passed by Deputy

Collector, Land Reforms, Osmanabad and Additional Tahsildar dated 8th October, 1987 and remanded the matter back to the Tahsildar to decide it afresh, according to the provisions of law.

10. The Additional Tahsildar, Kalamb, upon the matter being remanded, has passed an order on 20th June, 2001 declaring that Vasant Bhange is not the tenant of the suit land and Defendants No.4 and 6 are also not the tenants of the suit land on the basis of lease deed. Hence, the Issues No.1A and 1B were answered accordingly and it was informed to the Civil Judge, Kalamb.

11. Being aggrieved by the order passed by the Additional Tahsildar, Kalamb, the Petitioners approached the Deputy Collector, Land Reforms, Osmanabad, by filing an appeal on 26th October, 2001, which was decided on 2nd December, 2003. The Deputy Collector, Osmanabad has allowed the Appeal filed by Petitioners and the order passed by the Additional Tahsildar dated 20th June, 2001 was set aside, by holding that issue No.1A regarding tenancy of Vasant Bhange is answered in affirmative whereas issue No.1B regarding tenancy of Respondents No.4 and 6 is answered in negative.

12. Present Respondents No.1 to 6, being aggrieved by the order whereby Vasant Bhange was declared to be tenant of the suit land, approached MRT, Aurangabad by filing Revision No.

6/8/2004/Osmanabad. The Revision was preferred under section 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950. The Revision was pending before the MRT for a long time. The MRT, by order dated 28th February, 2018, has decided the revision, thereby allowing the same and quashed and set aside the order of the Deputy Collector Land Reforms and confirmed the order dated 20th June, 2001 passed by the Tahsildar, to the extent that Vasant Bhangé is not tenant of the suit land.

13. Learned Advocate for the Petitioners submits that in fact, the Revision filed by Shankar Jyotiram is not at all maintainable for the reason that Chandu had died issue less and present Respondent No.1 has no connection whatsoever with the suit irrespective of that he has obstructed the possession of the Petitioners. Even he has not taken efforts to restore the suit filed by his father Jyotiram, which stood abated, after the death of Jyotiram. It is his contention that the findings recorded by Tahsildar in his order dated 10th August, 1987 are recorded in his favour. Similarly, he places reliance on the observations made by the Member MRT in order dated 22nd January, 1999, while remanding the matter back to the Tahsildar. While remanding the matter back to the Tahsildar, it was remanded to decide whether Vasant Bhangé is tenant of the suit land. Therefore, according to him, there are two orders passed by the Revenue

Authorities, which stand in his favour as on the date. In spite of that, MRT has not taken into consideration the provisions of the Hyderabad Tenancy and Agricultural Land Act in its true spirit. He also points out that in fact, he was not heard by the MRT before passing the order impugned. No appropriate hearing is given to him. It can be gathered from the observations made by the MRT in paragraph No. 4 of the order dated 28th February, 2018, wherein it is observed that Advocate for the appellant i.e. present Respondent No.1 has filed written statement and Advocate for respondents i.e. present Petitioners have remained continuously absent for hearing, thereby recording 3 dates on which advocate for respondents – present petitioners remained absent. It is argued that the Petitioner – being respondent in the Revision before MRT, was not heard before passing the final order by the MRT. Substantive rights of the Petitioners being at stake, opportunity of hearing should have been afforded to the Petitioners before passing the order impugned. Rules of natural justice have been violated by the MRT. Hence, on this ground, the order passed by MRT deserves to be quashed and set aside.

14. Mr. Doke, learned Advocate for Respondent No.1 opposed the prayer made by the Petitioners. The contention of the Petitioners that Respondent No.1 is not concerned with the suit property and it solely belong to Chandu Shelwane, is denied by

him. According to him, Shelwane family, more specifically, deceased Jyotiram and Govinda were the protected tenants of the suit property. Grandmother of Respondent No.1 Subhadrabai Jyotiram Shelwane was declared as owner of the suit property under section 38 (E) of the Hyderabad Tenancy and Agricultural Lands Act. Sale certificate to that effect was also issued in her name on 27th August, 1998. The Sale certificate is not challenged by anybody till date. Even the Petitioners do not deny that Shelwane family was the protected tenant of the suit land, who had sublet the land to the Petitioners. According to him, after death of original tenant, his sons / Shelwane family is cultivating the suit land. On the basis of sublease, being given by Chandu Shelwane, Bhange family i.e. the family of the Petitioners is in possession of the suit land. Issues framed by the Tenancy Court clearly show that there is no decision about tenancy of Shelwane family. He further submits that only present Respondent No.1 had preferred Revision before the MRT against the order passed by the Deputy Collector, Land Reforms, Osmanabad dated 15th April, 1995. It is his contention that the said order, though was against the Petitioners, they did not take effort to challenge the said order in any appeal or revision. Hence, the Petitioners have submitted to the order of Deputy Collector.

15. Learned Advocate for Respondent No.1 has drawn my

attention to a document, which is at Exhibit-R-4, annexed to the reply affidavit filed on behalf of Respondent No.1. It is the certificate issued to Subhadrabai Jyotiram Shelwane in Form No. 13 (Rule 22) declaring her to be protected tenant over the suit land under section 38 (E) of the Hyderabad Tenancy and Agricultural Lands Act. Therefore, according to him, the said document undoubtedly proves that they are the protected tenants of the suit land.

16. Though it is contended by the learned Advocate for the Petitioners that Chandu was the only member of Shelwane family, who died issue less, therefore, there is no other member, who is survived after Chandu, however, learned Advocate for Respondent No.1 places reliance on the heirship certificate being granted to present Respondent No.1, vide order dated 22nd August, 2011 in MARJI No. 17 of 2011.

17. Learned Advocate for Respondent No.1, therefore, contends that MRT has rightly passed order on merit, thereby allowing the Revision filed by Respondent No.1. According to him, the Petitioners herein are merely prolonging and protracting the litigation. The Petitioners consistently remained absent before the MRT and hence the MRT was constrained to pass order in their absence.

18. Learned Advocate for Respondent No.1, therefore, submits that in view of the conduct of the Petitioners, the order passed by the MRT does not deserve any interference.

19. I have heard learned Advocates for the parties at length and I have also gone through various orders passed by the Revenue Authorities. So far as present Writ Petition is concerned, I am called upon to decide whether there is an error in the order dated 28th February, 2018 passed by the Member MRT. The order passed by the MRT will have to be evaluated in the light of the powers of superintendence while exercising powers under Articles 226 and 227 of the Constitution of India.

20. There is a chequered history of litigation between the parties, various issues, which are interlinked, are involved in the present Petition. This is the second round of litigation between the parties. Upon going through the order passed by the MRT, more particularly the observations in para 4, it is obvious that neither the Petitioners nor their advocate was heard by the MRT before deciding the Revision filed by Respondent No.1. MRT has observed that Petitioners were continuously absent for hearing on two dates i.e. 6th February and 12 April and, thereafter the matter was heard finally on 27th April, 2017. Even on the day of final hearing, none had appeared on behalf of the Petitioners.

The Member MRT has, therefore, recorded that it is constrained to decide the matter on the basis of record available.

21. It is to be noted that though the proceedings were filed in the year 2004, the matter has remained pending with the MRT for more than 14 years. The MRT has shown haste in deciding the matter *ex parte*. Merely because Advocate for the Petitioner was not present on two consecutive dates, on the third date the matter is finally decided, without hearing present Petitioners, resulting in depriving him the right of audience. He is deprived of his precious right, to present his case before the MRT. Considering the background of the matter and that valuable rights of the Petitioners are at stake. If the *ex parte* order is allowed to be sustained, it is likely to cause violation of his valuable rights. Therefore, considering that the order has been passed against the Petitioners, wherein principles of natural justice have been violated, resulting into violation of the substantive rights of the Petitioners, the order dated 28th February, 2018 passed by MRT in Revision No. 6/B/2004/Osmanabad deserves to be quashed and set aside with a direction to the MRT to pass fresh order by affording opportunity of hearing to the Petitioners and if necessary, even to Respondent No.1.

22. In the result, Writ Petition is partly allowed. Order dated 28th February, 2018 passed by Member MRT in Revision No. 6/B/2004/Osmanabad, is quashed and set aside. The matter is remanded to MRT for fresh decision after affording opportunity of hearing to the parties. It is however, made clear that the parties shall not seek adjournment on any count. Parties shall not place any new document on record and it is only on the basis of documents already filed by the parties, the MRT shall proceed to decide the matter and pass appropriate order as early as possible, preferably within a period of four months from the date of receipt of this order.

[MANJUSHA DESHPANDE_]
JUDGE