

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13709 OF 2024

Ravindra Anant Chavan ... Petitioner
V/s.
Rajashri Narayan Chavan and ors. ... Respondents

*Mr. Vikram N. Walawalkar with Mr. Rohan A. Desai, Advocates for the
Petitioner.*

Mr. R.V. Bansode with Mr. Kiran A. Nikam, Advocates for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 04 February, 2025.

PC. :

1. Heard Mr. Walawalkar, learned counsel appearing for the Petitioner and Mr. Bansode, learned counsel appearing for the Respondent No.10.

2. The challenge in the present petition is to the order dated 19th August, 2024 passed by Maharashtra Revenue Tribunal (**MRT**) by which the Tribunal has set aside the two orders dated 5th June, 2021 passed by the Sub-Divisional Officer (**SDO**) as well as the initial order dated 29th August, 2019 passed by the Tahasildar, Malvan under Maharashtra Tenancy and Agricultural Lands Act, 1948 (**the Act**).

3. It appears that in Regular Civil Suit No.32 of 2010 filed by the Plaintiff for injunction *qua* the suit property, the Civil Court made an order

of Reference under provisions of Section 85 of the Act to the Tahasildar and Agricultrual Land Tribunal (**ALT**) for deciding the issue as to whether Plaintiffs are tenants in respect of the suit property.

4. After hearing the parties, Tahasildar passed order dated 29th August, 2019 holding that Plaintiffs are tenants only in respect of the portion ad-measuring 0.03R in land bearing Survey No.644, Hissa No. 20 and Municipal House No.915 and land beneath the same. In respect of the balance suit property, the Tahasildar rejected the tenancy claim of the Plaintiffs.

5. Cross-appeals were filed before SDO both by Plaintiffs as well as Defendant. Plaintiffs' appeal was to the extent of rejection of tenancy claim *qua* balance portion of suit property whereas the Defendant was aggrieved by declaration of Plaintiffs as tenants in respect of land ad-measuring 0.03R in Survey No. 644 and Municipal House No.915 and land beneath it. SDO passed two separate orders on 5th July, 2021, partly allowing both the appeals and remanded the proceedings before Tahasildar for re-inquiry. The Petitioner/Defendant accepted the order of remand and did not challenge the same any further. On the contrary, Plaintiffs/ Respondents got aggrieved by both the order dated 5th July, 2021 passed by SDO and filed Revision Application before MRT. MRT has passed a rather strange order on 19th August, 2024 by merely setting aside SDO's order dated 5th July, 2021 and Tahasildar's order dated 29th August, 2019. Mr. Bansode reads the MRT's order to mean that the MRT has declared Plaintiffs to be the tenants in respect of the entire suit property. On the contrary, Mr. Walawalkar contends that the order of the MRT is inconclusive

as the same does not issue any declaration apart from setting aside the orders passed by SDO and Tahasildar.

6. In my view, there appears to be an apparent error in the order passed by MRT in merely setting aside the orders passed by SDO and Tahasildar and not issuing any final declaration in respect of tenancy claim of the Plaintiffs. Though the MRT has made observations in support of Plaintiffs' tenancy claim in respect of the entire suit property in the reasoning part, there appears to be no final directions/declaration upholding Plaintiffs' tenancy claim. Apart from the above error, the MRT appears to have committed jurisdictional error in not remanding the proceedings before SDO for fresh decision. It appears that MRT has not approved the approach of the SDO in remanding proceedings to the Tahasildar for re inquiry. In such circumstances, MRT ought to have expected the SDO to decide the tenancy claim of the Plaintiffs on merit. However, reasoning adopted by the MRT would indicate that the MRT itself went on to decide the tenancy claim and made some observations in favour of the Plaintiffs.

7. If the order of MRT is read to mean as if tenancy claim of the Plaintiffs is upheld, the same would amount to decision of the tenancy claim directly at the revisional level without SDO first deciding the same in appeal. In the process, the Petitioner/Defendant has lost the opportunity of having the findings by the Appellate Court (SDO) with regard to tenancy claim of the Plaintiffs. Therefore, if the order of MRT is read to mean upholding of tenancy rights of Plaintiffs, the same would mean that there is adjudication of tenancy rights firstly at the level of Tahasildar and

thereafter, directly before the MRT. There is no adjudication on the said issue by SDO.

8. In my view, therefore the propriety demanded that if the MRT was not to approve the approach of the SDO in remanding the proceedings for fresh determination before Tahasildar, the MRT ought to have directed SDO to decide the tenancy claim of the Plaintiffs.

9. In my view therefore the order passed by the MRT suffers from twin errors as indicated above and the same is therefore, liable to be set aside.

10. The Petition accordingly succeeds partly and I proceed to pass the following order:-

(i) Order dated 19th August, 2024 passed by MRT is modified to the extent that as a consequence of setting aside the order dated 5th July, 2021 passed by SDO, the proceedings shall stand remanded before the SDO for being deciding afresh.

(ii) Accordingly, both the Appeals No.48 of 2019 and 50 of 2019 shall stand restored on the file of SDO, who shall proceed to decide the same on own merits and determine whether Plaintiffs' claim for tenancy rights in respect the suit properties can be upheld.

(iii) To the above limited extent, the order passed by the MRT on 19th August, 2024 shall stand modified.

(iv) The SDO shall decide the appeal afresh on its own merits without being influenced by any of the observations recorded by the MRT in the order dated 19th August, 2024.

11. With the above directions, the petition is partly allowed and disposed of.

12. Considering the long passage of time, SDO is requested to decide the remanded appeals in an expeditious manner.

(SANDEEP V. MARNE, J.)