IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4757 OF 2024
WITH
WRIT PETITION NO.16740 OF 2023

Kisan Tukaram Mhatre **... Petitioner**

Versus

Mohammad Hanif Mohammad
Hassid And Ors **... Respondents**

Mr. S. G. Karandikar *i/b Mr. Sachin B. Chandan for the Petitioner.*

CORAM : SANDEEP V. MARNE, J.

DATE : 8 JANUARY 2025.

P.C. :

1) These Petitions challenge judgment and order dated 1 December 2022 passed by Maharashtra Revenue Tribunal, Mumbai allowing Revision Applications filed by the contesting Respondents and setting aside order dated 29 May 2019 passed by the Sub-Divisional Officer, Panvel. By order dated 29 May 2019, the Sub-Divisional Officer, Panvel, had allowed the Appeal filed by the Petitioner and had set aside order dated 24 March 1961 passed by the Additional Tahsildar and Agricultural Lands Tribunal, Panvel (**ALT**) fixing purchase price under provisions of Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948. The learned MRT has now set aside the order passed by Sub-Divisional

Officer on 29 May 2019 and aggrieved by the decision by the Tribunal, the Petitioner has filed the present Petitions.

2) I have heard Mr. Karandikar, the learned counsel appearing for Petitioner and have considered the submissions canvassed by him. According to Mr. Karandikar name of late Bhiva Bapu Mhatre was mutated in the revenue records as protected tenant in respect of the land in question and the said entry continued to survive till the same was erroneously deleted by Mutation Entry No.491 dated 1 January 1958. Thereafter, by another Mutation Entry No. 521 dated 2 January 1958, name of his brother Namdev Bapu Mhatre came to be recorded to the revenue records as a tenant. He would submit that as on the tiller's day of 1 April 1957, the name of late Bhiva Bapu Mhatre admittedly remain reflected in the revenue records as protected tenant. He would therefore submit that it was Bhiva Bapu Mhatre, who, alone who was entitled to purchase the property under provisions of Section 32 of the Act. He would submit that law does not permit deletion of status of a person as a protected tenant by mere effecting an entry in revenue records. He would further submit that mere fact of Namadev Bapu Mhatre allegedly cultivating the land in the year 1958 could not have been a reason for deleting the name of Bhiva Bapu Mhatre as a protected tenant. That in any case, subsequent mutation of name of Namdev Bapu Mhatre as a tenant in respect of the land (based on alleged claim of cultivation) is meaningless so long as it remains an admitted position that Bhiva Bapu Mhatre was a protected tenant as on the tiller's day of 1 April 1957. He would further submit that the learned MRT has urged in considering the issue of delay in filing appeal by the Petitioner before the Sub-Divisional Officer. He would submit that the delay in filing the

appeal was condoned by the Sub-Divisional Officer by a separate order passed on 11 October 2018 which order was never questioned by the contesting Respondents by filing any revision. That the order condoning the delay thus attained finality and therefore the MRT is not justified in highlighting the aspect of delay in filing the appeal before SDO for the purpose of upsetting the SDO's order.

3) After having considered the submissions canvassed by the Mr. Karandikar, it is seen that purchase price in respect of the land under provisions of Section 32-G of the Act came to be fixed vide order dated 24 March 1961. In my view, while fixing the purchase price, the ALT must have conducted a factual enquiry about actual status of Namdev Bapu Mhatre cultivating the land as a tenant. Petitioner's forefather (Bhiva Bapu Mhatre) did not raise any objection about his brother Namdev Bapu Mhatre getting the purchase price fixed in respect of the land under provisions of Section 32-G and paying the same and acquiring status as a owner of the land. Even Petitioner's father never thought of questioning the right of Namdev Bapu Mhatre to have the purchase price fixed and in acquiring ownership of the land by paying the purchase price.

4) Petitioner is now attempting to take disadvantage of the fact that name of Bhiva Bapu Mhatre was reflected for some time as a tenant in respect of the land in question during 1954 to 1958. However, there are two factors for the purpose of assuming that Bhiva Bapu Mhatre was not actually cultivating the land and it was his brother Namdev Bapu Mhatre, who was actually cultivating the land as a tenant. This is borne out from Mutation Entry No. 521 dated 2 January 1958. Furthermore, ALT must have conducted a factual enquiry about actual cultivation of land by Namdev Bapu

Mhatre as a tenant thereof while fixing the purchase price by order dated 24 March 1961. It is therefore too late in a day at this juncture to rely on mere revenue entry in the name of Bhiva Bapu Mhatre for the purpose of holding that Namdev Bapu Mhatre did not have a right to have purchase price of the land fixed under provisions of Section 32-G of the Act.

5) Even if the issue of inordinate delay of 60 years in filing the Appeal before the SDO is to be momentarily ignored, this Court cannot lose site of the fact that the land has changed hands during passage of such a long time. It appears that Respondent Nos. 1 to 3 are the purchasers of the land from the heirs of Namdev Bapu Mhatre sometime in the year 2008. They have purchased the land after noticing absence of any dispute with regard to the tenancy for a considerable period of time. It is only in the year 2018 that the Petitioner woke out of his deep slumber and ignored the tacit consent given by his grandfather and father to acquisition of ownership in respect of the tenanted land by Namdev Bapu Mhatre and thought of taking advantage of existence of revenue entry in the name of Bhiva Bapu Mhatre, which existed for a short period from 1954 to 1958.

6) The SDO ought not to have condoned the delay in filing the Appeal by the Petitioner. Order dated 11 October 2018 was merely an interim order could always be questioned while challenging the final order by the contesting Respondents in the revision filed by them before the learned MRT on principles under Section 105 of the Code of Civil Procedure, 1908. Perusal of the Revision Memo filed by the contesting Respondents would indicate

that they raised specific grounds about errors committed by the SDO in condoning inordinate delay of 60 years in filing the Appeal.

7) Also of relevance is the fact that though the Petitioners succeeded before the SDO vide order dated 29 May 2019. The SDO merely set aside the order dated 24 March 1961, which has the effect of nullifying fixation of purchase price in favour of Namdev Bapu Mhatre. However, it appears that the SDO did not set aside the 32-M certificate and more importantly did not direct the ALT to conduct an enquiry for fixation of purchase price in the name of the Petitioner. Though the Petitioner did not fully succeed in his appeal before the SDO, he did not challenge of the order of SDO before the learned MRT.

8) Considering overall conspectus of the case, I am not inclined to interfere in the order passed by the learned MRT. The Writ Petitions are devoid of merits are accordingly **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.]