(2016) 07 BOM CK 0129

In the Bombay High Court

Case No : Writ Petition No. 1548 of 2015

Purushottam Devidas Yogi APPELLANT

Vs

Sub Divisional Officer RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 111
Maharashtra Land Revenue Code, 1966 — Section 148, Section 247

Citation : (2017) 1 ALLMR 824 : (2016) 6 MhLJ 803

Hon'ble Judges : A.S. Chandurkar, J.

Bench : Single Bench

Advocate : Mr. R.J. Shinde, Advocate, for the Respondent Nos. 4 to 7; Ms. T. Khan, Asstt. Govt. Pleader, for the Respondent Nos.1 to 3; Mr. R.D. Wakode, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

A.S. Chandurkar, J.(Oral) - Rule. Heard finally by consent of the learned Counsel for the parties.

2. The petitioners are aggrieved by the order passed by the Maharashtra Revenue Tribunal, Nagpur in Revision Application preferred by respondent nos. 4 to 7 in proceedings under Section 111 of the Maharashtra Tenancy and Agricultural Lands Act, 1958 (for short "the Tenancy Act").

3. Facts relevant for adjudicating the present Writ Petition are that - according to the petitioners, they are owners of field survey no. 35, admeasuring 4 Hectors 63 Ares. It is their case that one Tatya Motiram Kamble was permitted to look after the said land by carrying out agricultural operations. Said Tatya, expired on 14.02.1988. However, after his death, his name was mutated in the revenue records as occupier the said land with tenancy rights. The petitioners challenged the aforesaid mutation entry by initiating proceedings under the Maharashtra Land Revenue Code, 1966 (for short "the Code"). On 22.01.2007, the Tahsildar passed an order stating therein that as the legal heirs of said Tatya Kamble had

expressed desire to seek a declaration as regards their tenancy rights, the said application was not prosecuted. However, as the said mutation entry continued, the petitioners filed fresh proceedings before the Naib Tahsildar for deleting said entry. The Tahsildar by an order dated 06.09.2008, dismissed said application. The Sub Divisional Officer however, allowed the appeal filed under Section 247 of the Code and by order dated 16.07.2013, directed deletion of said entry. Respondent nos. 4 to 7, challenged this order by filing a revision application before the Maharashtra Revenue Tribunal. By the impugned order, the Tribunal set aside the order of the Sub Divisional Officer and directed the Tahsildar to decide the aspect of tenancy of respondent nos. 4 to 7.

4. Shri. Wakode, the learned Counsel for the petitioners submitted that against the order passed by the Sub Divisional Officer, the revision application under Section 111 of the Tenancy Act was not maintainable. The order of the Sub Divisional Officer having been passed under Section 247 of the Code, further appeal ought to have been filed before the Additional Collector under Section 247 of the Code. According to him, the entire exercise undertaken by the Tribunal was without jurisdiction. He further submitted that the Tahsildar, could not have been directed to decide the tenancy rights of the said respondents.

5. Shri. Shinde, the learned counsel for respondent nos. 4 to 7 supported the impugned order. According to him, the Tribunal had jurisdiction to entertain the revision application, as the aspect of tenancy of the said respondents was involved. He submitted that as it was found by the Tribunal, that the said respondents were tenants of the property, mutation entry was cancelled, and the Tahsildar was directed to pass necessary orders for declaration of their tenancy and fixing the purchase price. Ms. Khan, the learned Assistant Government Pleader for respondent nos. 1 to 3 however, supported the submissions made on behalf of the petitioners by relying upon the affidavit in reply.

6. Having heard the respective counsel and having perused the documents filed on record, it is clear that the order passed by the Maharashtra Revenue Tribunal in proceedings under Section 111 of the Tenancy Act, is without jurisdiction. The application moved by the petitioners was for correction of the record of rights maintained under Section 148 of the Code. The said application was rejected by the Tahsildar. The Sub Divisional Officer while entertaining the appeal under Section 247 of the Code held in favour of the petitioners. The remedy that was available to respondent nos. 4 to 7 was under Section 247 of the Code by filing further appeal before the Collector. As the proceedings were initiated for having the mutation entries cancelled, the revenue authorities, as mentioned in Schedule-E of the Code alone had jurisdiction in that regard. Under the provisions of the Code or under the Tenancy Act, the Maharashtra Revenue Tribunal is not conferred with any jurisdiction under Section 111 of the Tenancy Act to consider a challenge to the order passed by the Sub Divisional Officer under Section 247 of the Code. It is therefore, clear that the Maharashtra Revenue Tribunal has exercised jurisdiction that is not vested with it. Hence, on

this short ground the impugned order is liable to be set aside.

7. On behalf of respondent nos. 4 to 7, it is submitted that after the order of remand was passed by the Maharashtra Revenue Tribunal, the Tahsildar has passed a fresh order on 30.03.2015, holding in favour of the said respondents. Once it is found that the order passed by the Maharashtra Revenue Tribunal is without jurisdiction, the subsequent and consequential order passed by the Tahsildar would automatically fall to the ground. In view of the aforesaid, the following order is passed.

Order

(i) The order dated 03.12.2014, passed by the Maharashtra Revenue Tribunal in Revision Application preferred by the respondent nos. 4 to 7 is, quashed and set aside. As a consequence thereof, the subsequent order dated 30.03.2015, passed by the Tahsildar shall cease to operate.

(ii) It is open for respondent nos. 4 to 7, to file further appeal before the Additional Collector, under Section 247 of the Code, if they are aggrieved by the order dated 16.07.2013 passed by the Sub Divisional Officer. If such appeal is within filed a period of 6 weeks from today, the same shall be entertained by the Collector on merits and in accordance with law.

(iii) It is made clear that this Court has not examined the correctness of the findings recorded by the Maharashtra Revenue Tribunal in the order dated 03.12.2014 or the order dated 30.03.2015, passed by the Tahsildar in the subsequent proceedings. The respective contentions in that regard are kept open.

(iv) Writ Petition is allowed. Rule is made absolute in the aforesaid terms with no order as to costs.

