

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8402 OF 2017  
(Arising out of SLP (C) No.7033 of 2005)

Rambhau & Ors. ... Appellants

Versus

Smt. Shantabai (D) through L.R.s & Ors. ... Respondents

O R D E R

Leave granted.

A revenue case No.2/59(32)67-68 of Andura was initiated before the Additional Tahsildar, Balapur by one Narayan son of Surajmal and six others claiming that the appellants are not tenants in respect of the suit land in question. The additional Tahsildar, passed an order dated 30.12.1968 holding that the original non-applicant therein are not the tenants of the suit land. Being grieved by the aforesaid order, the appellants preferred an appeal before the Collector under Section 107 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (For brevity, 'the Act'). That apart, the original non-applicant also filed an application under Section 46 read with Section 48 of the Act seeking a declaration before the Collector that he is the tenant in respect of the land in question. The Collector disposed of the application filed by the predecessor-in-interest of the appellants and also the appeal by a composite order dated 30.09.1969. The

Collector, as the order would reflect, arrived at the following conclusion :-

"I thus differ with the lower court and hold that the appellants Sukhdeo, Rambhau and Hari are the tenants of the land S. No.262 of Andura. The order of the Additional Tahsildar is set aside and the appeal is allowed. Consequently, the order passed by the Agriculturist lands Tribunal is Revenue Case No.830/59(13)63-64 of Andura, is also set aside. The appeal No.406/59(13)/68-69 of Andura is allowed and that case is remanded to the Agriculturist Lands Tribunal for further enquiry under Section 46 read with Section 48 of the tenancy Act."

The legal representatives of the original applicant preferred a revision before the Maharashtra Revenue Tribunal (for short, 'the Tribunal') which, vide order dated 3.2.1971 came to hold that the appeal before the Collector was not maintainable. Being of this view, it set aside the order passed by the Collector and affirmed that of the Tahsildar. A writ petition was filed by the appellants before the High Court of judicature at Bombay, Nagpur Bench, Nagpur. The learned Single judge, considering the scheme of the Act, vide Judgment dated 11-06-2001 came to hold that the order passed by the Tribunal did not warrant any interference as no appeal against the order of the Tahsildar was maintainable. An application for review was filed before the learned Single Judge who expressed his disinclination and dismissed the same on 16-09-2003. Against the order passed by the learned Single Judge, an LPA was filed wherein the Division Bench vide order dated 21.10.2004 held that against the order

passed by the learned Single Judge under Article 227 of the Constitution, LPA was not maintainable.

We have heard Mr. Ramesh P. Bhatt, learned senior counsel appearing for the appellants and Dr. R. Masoodkar, learned counsel appearing for the respondents.

The only ground urged by Mr. Bhatt, learned senior counsel, is that the appellants cannot be rendered remediless. According to him, the Tahsildar had declared that the appellants are not tenants. He had filed an application before the Collector to establish his claim as the tenants. The Tribunal has held, as we have noticed, that an appeal is not maintainable but has not adverted to the issue whether a revision could be entertained. The High Court, as we notice, held that the appeal was not maintainable, for when the statute does not provide for an appeal, it could not have been preferred. That apart, the learned Single Judge has only observed that when Section 110 of the Act provides that where no appeal has been filed within the period provided for it, the Collector may suo motu or on a reference made in this behalf by the Commissioner or the State Government at any time call for the record and pass such other order as it may deems fit.

In our considered opinion, the appellants cannot be without a remedy. The order passed by the Tahsildar cannot be allowed to attain finality. If no appeal or revision is

maintainable, as held by the High Court, the validity of the order of the Tahsildar could be directly questioned under the writ jurisdiction of the High Court. Besides, the efficacy of the application filed by the appellants before the Collector under Section 46 read with Section 48 of the Act ought to be examined. As the High Court has not adverted to the merits, we set aside all the orders barring the order of the Tahsildar and remit the matter to the High Court to deal with the *lis* on merits. The appeal stands disposed of.

The High Court is requested to dispose of the writ petition within a period of six months hence. The interim order passed by this Court shall remain in force till the High Court decides the writ petition. There shall be no order as to costs.

.....,J.  
(Dipak Misra)

.....,J.  
(A.K. Khanwilkar)

New Delhi;  
July 4, 2017.

Revised

ITEM NO.1

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 7033/2005

(Arising out of impugned final judgment and order dated 21-10-2004 in LPA No. 182/2004 11-06-2001 in SCA No. 325/1972 19-09-2003 in MCA No. 184/2001 passed by the High court of bombay)

RAMBHAU

Petitioner(s)

VERSUS

SHANTABAI (DEAD) THRU LRS.

Respondent(s)

Date : 04-07-2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA  
HON'BLE MR. JUSTICE A.M. KHANWILKARFor Petitioner(s) Mr. Ramesh P. Bhatt, Sr. Adv.  
Mr. Kailash Pandey, Adv.  
Mr. Ranjeet Singh, Adv.  
Mr. Sridhar Potaraju, AORFor Respondent(s) Dr. R. Masoodkar, Adv.  
Mr. Rahul Chitnis, Adv.  
Mr. Chander Shekhar Ashri, AORUPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal stands disposed of in terms of the signed order. There shall be no order as to costs.

(Gulshan Kumar Arora)  
Court Master(H.S. Parasher)  
Court Master

(Signed order is placed on the file)

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For Petitioner(s) Mr. Sridhar Potaraju, AOR

For Respondent(s) Mr. Chander Shekhar Ashri, AOR

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Court Master

(H.S. Parasher)  
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