

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7240 OF 2023

Mangala Mangesh Mhatre

...Petitioner

Versus

Laxman Chintaman Vaidya Since Thr Legal Heirs And ...Respondents
Ors

Mr. Kailas Dewal a/w Mr. Yash Dewal, Advocate for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 19, 2025

P. C. :

1. The Writ Petition No. 7240 of 2023. Rule made returnable forthwith and with consent taken up for final disposal.
2. By the present petition, the challenge is to the order dated 16.01.2023 passed by the Maharashtra Revenue Tribunal and judgment and order dated 25.01.2022 passed by the Sub-divisional Officer, Alibaug in Remand Tenancy Appeal no. 39 of 2018. The petition also seeks confirmation of the judgment and order dated 06.03.2013 passed by the Tahsildar in Tenancy 70b Case no. 3 of 2011.
3. The facts of the case are that the Petitioner filed an Application

before the Agricultural Land Tribunal and Tahsildar under Section 70 (b) of the Maharashtra Tenancy and Agricultural Land Act, 1948 [for short "***The Tenancy Act***"] seeking a declaration that the Petitioners are the tenants of the subject land i.e Gat No. 117. In support, the crop cultivation records were produced, and it was requested, that in the 7/12 extract, the name of the Petitioner be recorded as tenant. It appears that in these proceedings there was no notice which was served upon the Respondent i.e. the landlord. The Agricultural Land Tribunal by order dated 06.03.2013, allowed the Application and directed the name of the Petitioners to be recorded in the 7/12 extract as tenant. The Agricultural Land Tribunal held that the Petitioner has produced 7/12 extract of the year 1964-1965 in respect of old Survey no. 32, Khasra No. 2b, 7/12 extract of Gat No. 117 of the year 2008-2009 to 2010-2011, extract of consolidation scheme, the crop cultivation records for the year 2005-2006 and the Application by the Petitioners dated 27.10.2006 for recording their name in the crop cultivation column and the order of 06.11.2007 by the Tahsildar pursuant to the Application of the Petitioner for recording the name of the Petitioner in the crop cultivation column. Based on this document which were produced the Tahsildar held that the Petitioners are cultivating the subject land for the purpose of rice cultivation and the Panchnama shows that the landlords are not residing in the village and

their whereabouts are not known. It noted that, though, the public notice was issued, there was no appearance caused on behalf of the landlord. It held that the facts proved that the Petitioner was lawfully cultivating the subject land as tenant based on the crop cultivation records for the year 2006-2007.

4. As against this, the Respondent-landlord preferred a Tenancy Appeal 13 of 2013 before the Sub-Divisional Officer. The Sub-Divisional Officer by the order of 25.01.2022 allowed the Appeal holding that it is not sure as to how the subject land came into the possession of the Petitioner and there is no rent receipt or rent agreement which has been produced by the Petitioner. It is held that for the purpose of recording the name of a party other than that of land owner, the possession should be lawfully shown to have been handed over and should follow the landlords title. It further held that, at the time of recording the name of Petitioner in the crop cultivation column, it is not shown that any notice was given to the landlord. It further held that merely because the land is being cultivated, the same will not amount to the party cultivating the land to be considered as a tenant. Based on these observations, the Sub-Divisional Officer allowed the Appeal and set aside the order of the Tahsildar dated 06.03.2013. The Petitioners preferred a Revision Application before the Maharashtra Revenue Tribunal by the impugned order dated 16.01.2023, the

Revision Application came to be dismissed maintaining the order of the Sub-Divisional Officer. The Tribunal held that the record before the Tahsildar, Alibaug shows cultivation by the landlord prior to 1958-1959 and before the Sub-Divisional Officer upon verification of the record, it is not shown that there was any cultivation by the Petitioners. As the Revision Application came to be dismissed, the present Petition has been filed by the learned counsel appearing for the Petitioner has taken this Court to the findings of the Tahsildar, Sub-Divisional Officer and the Maharashtra Revenue Tribunal. He would submit that the Petitioners had produced the Panchnama and the statement which was recorded by the Talathi, the 7/12 extract which records the name of the Petitioner as the cultivator for the year 2005-2006. The Application seeking the recording of name of the Petitioner in the crop cultivation column as well as the 7/12 extract for the year 2006-2007. He would submit that, the Sub-Divisional Officer has approved the findings of the Tahsildar on the ground that there is no record which is produced by the Petitioners as regards the rent agreement and the rent receipt in order to demonstrate the lawful possession of the Petitioner. He submits that in the case of ***Babu Hari Patil and Anr vs Rama Ananda Jadhav***¹ passed by the learned Single Judge of this Court in [2005(1) Mh.L.J.], this Court following the decision of the Hon'ble Apex Court in

¹ [2005(1) Mh.L.J.]

the case of ***Dahya Lala and Ors. v/s Rasul Mohamed Abdul Rahim And Ors.***² AIR 1964 SC 1320 has held that even without there being an entry in the tenancy column or rent note or rent receipt in favor of the person who is in the lawful possession, the person must be declared as deemed tenant under Section 4 of Tenancy Act irrespective of the fact whether or not authority of such person is directly from the owner of the land and that the only requirement is of lawful cultivation. He would further point out the decision in the case of ***Kishan Ramchandra Kumbhar And Ors. v/s Kashinath Bandu Tel***³ reported in 2004(1) Mh.L.J reiterating that for the purposes of Section 4 of the Tenancy Act, there is no requirement of an entry in the tenancy column. He submits that the findings of the Sub-Divisional Officer are in the teeth of the well settled position in law. He would further submit that as the case of the Respondent was that they were not heard before the Agricultural Land Tribunal, the appropriate course was to remand the matter for fresh consideration before the Agricultural Land Tribunal and instead the Sub-Divisional Officer have adjudicated the Application. He would further point out that the Maharashtra Revenue Tribunal has recorded erroneous findings, as regards, the record showing cultivation of the landlord and that none of the records

² AIR 1964 SC 1320

³ 2004(1) Mh.L.J

before the Sub-Divisional Officer showed cultivation by the tenant which is contrary to the 7/12 extract produced by the Petitioners which show cultivation in the year 2005-2006. He submits that the petitioner seeks the declaration as a tenant of the subject premises i.e Survey no. 117 and the Petitioners predecessor have already been held to be a tenant of the adjacent Survey no. 118, 119 and 121. He submits that requirements of Section 4 of the Tenancy Act having been satisfied the Application ought to have been allowed.

5. Per contra, learned counsel appearing for the Respondent would submit that the Panchnama on which the reliance was placed by the Agricultural Land Tribunal was without notice to the Respondent-landlord. He would further submit that, what was produced before the Agricultural Land Tribunal was the 7/12 extract recording the name of the Petitioner in the crop cultivation column for the year 2005-2006 which was also without following the due procedure led down in the law and without notice to the Petitioners. He submits that, before the Sub-Divisional Officer, necessary records were produced which show that the cultivation was by the landlord prior to 1958-1959 which has also been appreciated by the Maharashtra Revenue Tribunal in the impugned order. He submits that there are no records which have been produced by the Petitioner to show cultivation prior to 2005-2006 and even in respect of the years 2005-2006, there is absolutely no

pleadings as to how the Petitioners have come into possession and that they say is without the authority and consent of the landlord. He would further submit that the order of the Agricultural Land Tribunal makes a reference to 7/12 extract of the year 1964-1965 which have never been produced and have also not been fickle.

6. I have considered the submission and perused the record.

7. Before the Agricultural Land Tribunal for the purpose of deciding as to whether the Petitioner was a tenant of the subject Gat No. 117, the Petitioners had admittedly produced the 7/12 extract which recorded the name of the Petitioner for the year 2005-2006 & 2006-2007 in the crop cultivation column. The provisions of Section 70 (b) of the Tenancy Act empowers the -- to decide whether a person is or was at any time in the past a tenant or a protected tenant or a permanent tenant. Section 4 of the Tenancy Act governs the deemed tenancy of a person and provides that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is a member of the owners family or a servant or wages and seek a mortgagee in possession. The requirement for the purpose of satisfaction of Section 4 is a lawful cultivation of the land which belongs to another if such land is not cultivated personally by the owner. The Petitioner has come with a case that they were cultivating

the land which was belonging to the landlord and had produced the records to show that in the crop cultivation column the name of the Petitioner was recorded for the year 2005 to 2007. The Agricultural Land Tribunal while accepting the case of the Petitioner has taken into consideration those records as well as the Panchnama and statement as recorded by the Talathi on 11.10.2005 for holding the Petitioner as tenant of the said premises within the meaning of Section 4. The findings of the Agricultural Land Tribunal would indicate that the Agricultural Land Tribunal was satisfied that the land belonged to the Respondent-landlord and was being cultivated by the Petitioners which was denoted from the name of the Petitioners recorded in the crop cultivation column.

8. As against this, Sub-Divisional Officer before whom the Respondents filed the Appeal claiming not to have been served with the notice of the proceedings before the Agricultural Land Tribunal, proceeded to consider the documents produced by the landlord for the first time in Appeal and allowed the Appeal. Usually as a matter of course--, the party approaches the Appellate Authority contending that there were not heard in the matter or that the matter was not duly served, the appropriate course was to remand the matter to the Agricultural Land Tribunal so that opportunity can be given to the parties to produce the necessary documents and deal with the

contentions of the rival party. The Sub-Divisional Officer allowed the Appeal of the landlord by observing that the Petitioners have not placed on record any documents to show as regards, the rent receipt or the rent agreement in order to demonstrate the manner in which the subject land had come in possession of the Petitioner. As regards the Petitioners name being recorded in the crop cultivation column, it held that the landlord was not present during the time of recording the name of the Petitioners, therefore, the mandated procedure has not been followed.

9. Learned counsel for the Petitioner has rightly relied on the decision in the case of ***Babu Hari Patil and Kishan Ramchandra Kumbhar***, where it has been held that all that is required to be shown is a lawful cultivation by the person, and it is not necessary that there should either be an entry in the tenancy column or on a rent note or rent receipt in favor of the person. The findings of the Sub-Divisional Officer are in teeth of the possession of law which has been laid down by this judicial pronouncement. The learned Tribunal has taken into consideration the record which showed cultivation by the landlord even prior to 1958-1959. Before this Court, there is no such record which is demonstrated which showed the cultivation by the landlord prior to 1958-1959. Given the order of the Sub-Divisional Officer does not make any reference to any such records being produced showing

cultivation by the landlord. The learned Tribunal did not notice the 7/12 extract which was produced by the Petitioner and confirmed the findings of the Sub-Divisional Officer that for none of the years there was any cultivation by the so called tenant. It further held, that the revenue record displayed remittance of revenue assessment by the landlord. There is no document which is produced before this Court to substantiate the findings which have been arrived at by the learned Tribunal.

10. As the contentions which has been raised is that neither the Panchnama was conducted in the presence of the landlord nor the name of the Petitioner was recorded in the crop cultivation column by giving due notice to the Petitioners, there is a procedural lapse. In such cases, it is appropriate if the matter is remanded to the Agricultural Land Tribunal to be considered afresh by directing a fresh Panchnama to be conducted in the presence of the Petitioner as well as the Respondents. It is also open for the Respondent-landlord to take out appropriate proceedings for challenging the recording of the name of the Petitioners in the crop cultivation column as the Sub-Divisional Officer has held that the necessary procedure has not been followed. Before the Agricultural Land Tribunal, there was no opportunity of hearing which was given to the Respondent-landlord, and it appears that there were certain documents which were produced before the

Sub-Divisional Officer. It is necessary for the Agricultural Land Tribunal which is the first authority to consider the documents produced by both the parties, and after giving an opportunity of hearing to both the parties to decide the matter afresh. In light of the above, the orders dated 06.03.2013, 25.01.2022 and 16.01.2022 are hereby quashed and set aside. The Application is remanded to the Agricultural Land Tribunal to be decided afresh after hearing both the parties. As reliance was placed upon the Panchnama of the Tahsildar, a fresh Panchmana to be conducted by the Tahsildar in the presence of both the parties. Both the parties are at liberty to produce documents before the Agricultural Land Tribunal in order to show the lawful cultivation. While adjudicating the matter afresh, the Agricultural Land Tribunal to be conscious of the decision passed in the case of ***Babu Hari Patil and Anr v/s Rama Ananda Jadhav*** as well as the decision of the Hon'ble Apex Court in case of ***Dahya Lala and Ors. V/s Rasul Mohamed Abdul Rahim And Ors.*** -- that all rights and contentions of all the parties are expressly kept open and the Agricultural Land Tribunal or the other Authority not to be influenced by the observations made in the present order and to decide the matter afresh on the basis of the documents which would come on record before the Agricultural Land Tribunal.

11. Considering that the applications of 2013, the Agricultural Land

Tribunal is requested to decide the same expeditiously.

12. Writ petition is allowed on the above terms. Rule made absolute.
13. **Rider** Survey no. 116,118 and 120.

[SHARMILA U. DESHMUKH, J.]