

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 732 OF 1990

Bali S/o Gaibi Mali,
Since deceased, through his L.Rs.

- 1) Bhagwan S/o Bali Mali (Raut),
Age: 60 years, Occu.: Agriculturist,
- 2) Ganpat S/o Bali Mali (Raut),
Age: 65 years, Occu.: Agriculturist,
- 3) Pralhad S/o Bali Mali (Raut),
Age: 55 years, Occu.: Agriculturist,

All R/o. Warapgaon, Post. Lokhandi,
Dist. Beed

..PETITIONERS

VERSUS

- 1) Indumati w/o Vasudeorao Deshpande,
Aged : 70 yrs, Occ. : Household work
- 2) Shamrao s/o Vasudeorao Deshpande,
Aged : 40 yrs, Occ. : Service
- 3) Ramrao s/o Vasudeorao Deshpande,
Aged : 37 yrs, Occ. : Business
- 4) Mohan s/o Vasudeorao Deshpande,
Aged : 25 yrs, Occ. : Business

All resident of Deshpande Galli,
at post Ambajogai, Dist. Beed

All L.Rs. Of deceased Vasudeorao

..RESPONDENTS

Mr Sachin Deshmukh, Advocate for petitioners;
Mr M. V. Deshpande, Advocate holding for Mr P. D. Suryawanshi,
Advocate for respondent nos. 2 to 4

CORAM : N.W. SAMBRE, J.

DATE : 16th April, 2015

ORAL JUDGMENT :

The present petition is by the alleged tenant, questioning the legality and validity of the order dated 21st September, 1989, passed by the Member, Maharashtra Revenue Tribunal, Aurangabad, in Case No.71/B/88/Beed, confirming the order passed in Appeal No.87/TNC/A/21, by Deputy Collector, Land Reforms, on 31st May, 1988, whereby the order passed by the Tahsildar in File No.86/TNC/A/73, dated 15th April, 1987, came to be confirmed.

2. The petitioner has filed Regular Civil Suit No.126 of 1972, in the Court of Civil Judge, Junior Division, Ambajogai against the respondents for perpetual injunction in relation to the property survey no.1-AA, ad measuring 3 Acres and 30 Gunthas, situated at village Warappaon, Taluka Ambajogai. In the said suit, it is claimed by the petitioner that he is a tenant in the property since last 25 years prior to the institution of the suit and further claimed that the respondents/defendants, who have no concern whatsoever, are trying to interfere in his possession.

3. While responding to the suit summons, the respondents/defendants, in their written statement, denied the claim of the petitioner of tenancy rights and possession.

4. Having regard to the pleadings, in view of section 99-A of the Hyderabad Tenancy and Agricultural Lands Act (hereinafter referred to as the "Act", for the sake of brevity), the issue "whether the plaintiff proves that he was and is tenant of the suit land ?", came to be referred to the Tahsildar.

5. The said reference was decided by the Tahsildar after recording the evidence of the plaintiff and that of Mohan – respondent no.4 and one Narayan. The Tahsildar, by his order dated 15th April, 1987, answered the reference in negative, i.e. against the present petitioner, which was upheld by the Deputy Collector under section 8 of the said Act, vide his decision dated 31st May, 1988 and further confirmed in Revision before the Maharashtra Revenue Tribunal, Aurangabad, by order dated 21st September, 1989. Thus, the present petition.

6. Mr Deshmukh, learned Counsel appearing on behalf of the petitioner, while questioning the legality and validity of the orders impugned, has urged that the revenue record of the year 1959-60, in regard to survey No.1/AA was in the name of the petitioner- tenant for

1959-60 to 1975-76, i.e. for a period of fifteen years. In view thereof, he would urge that the said entries in the 7/12 extract must be read to the interest of the petitioner and by reading such entries to the detriment of the petitioner, the authorities have acted in contravention of the provisions of second and third proviso to section 5 and section 7 of the Act. He would urge that the relevant dates, in the light of proviso to section 5 are 8th June, 1958 and 18th October, 1960 and as, on the said dates, the petitioner was in possession of the suit property, there was no necessity to establish the said fact independently as the same reflects the entry of the petitioner in the suit field as a legal tenant. In addition to above, Mr Deshmukh would further urge that the petitioner has come out with a specific case that his entry in the field is by virtue of Batainama (contract) and as such, he is a contractual tenant. In support of said contention, he has placed reliance upon the evidence of petitioner and other documentary evidence.

7. Mr M.V. Deshpande, learned Counsel appearing on behalf of respondents no.2 to 4, has invited attention of this Court to the observations made by all the three authorities *qua* claim made in the petition. He would urge that the authorities, while passing the impugned orders adverse to the interest of the petitioner, have considered the revenue entries in favour of the petitioner and have rejected the same after having considered the evidentiary value thereof. He would urge that

in absence of specific entry *qua* status of the present petitioner as tenant in the revenue record or in absence of the certificate in favour of the present petitioner *qua* his entry in the register maintained with the revenue authorities about the tenant, the authorities have rightly drawn conclusion against the petitioner. He, therefore, has prayed for dismissal of the petition.

8. Upon perusal of the orders impugned, it is required to be noted that the petitioner, while contesting his claim for getting declared as a protected tenant, has relied upon his own evidence and other documentary evidence. The Tahsildar, while dealing with such claim, has rejected the evidence *qua* 7/12 extracts for the year 1959-60; in relation to survey No.1/AA and for the year 1959-60 to 1975-76; in relation to survey No.18/E as the name of the present petitioner was entered as 'cultivator' and not as a 'tenant'. The entry of the petitioner was required to be established by him by cogent evidence so as to assert that he is entitled for protection as a tenant under the Act. The said revenue entries were of hardly any assistance to the present petitioner and the reliance placed on the said revenue entries by the petitioner, in my opinion, will be of futility, as the said proof, so as to form an inference that the right of tenancy was sufficiently established or so as to conclude the right of tenant, conferring the tenancy in his favour. It is also required to be noted that the basis for making such entries in the revenue record as a cultivator was a notice

given to the land-owner of such entries, is also not explained by the petitioner. In the case in hand, the petitioner has stated that he has entered in the land by virtue of Batainama, however, same was not established by supportive evidence.

9. In view thereof, in my opinion, the authorities have rightly concluded against the present petitioner that he has failed to establish his claim for declaring his status as a protected tenant. Appropriate support can be drawn from the judgment of this Court, in the matter of **Vaijnath Karpure (died) through L.R. & anr. vs. Mahadeo s/o Maruti Mote**, reported in **2010 (5) Bom. C.R. 860**. Based on the observations made by the Apex Court, this Court has already taken a view that such revenue entries will be hardly of any assistance, in aid of the present petitioner. Appropriate reliance can be placed on paragraphs 6 and 7 of the said judgment.

10. In view of above, in my opinion, no case for interference is made out. The writ petition being devoid of merit stands dismissed. Rule stands discharged with no order as to costs.

(N.W. SAMBRE, J.)

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