

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.543 OF 1992

- l) 1. Dattatraya Balkrishna Khanapurkar,
(died), through L.Rs.
- 1A. Vasudeo Balkrushna Khanapurkar,
Age major, Occu. Nil,
R/o Medical College, Miraj,
District Sangli
- 1B. Madhukar Balkrushna Khanapurkar,
Age Major, R/o Mondha, Taluka Kalyan,
District Thane
2. Vasudeo Balkrishna Khanapurkar,
Major, Occu. Clerk, Medical College,
Meeraj, Taluka Meeraj,
District Sangli.
3. Madhukar Balkrishna Khanapurkar,
Major, R/o House No.279, Titwala,
Mhada, Taluka Kalyan, Dist. Thane
(Petitioner Nos.2 and 3 through
General Power of Attorney No.1) .. Petitioners

Versus

1. Smt.Sitabai w/o Tukaram Patil
deceased through L.Rs.
- 1A. Vithal Tukaram Patil,
Age 22 years, Occu. Agril.,
R/o Khirdi Bk., Taluka Raver,
District Jalgaon
- 1B. Mrs. Kalpana w/o Anil Patil,
Age 24 years, Occu. Household
R/o Khirdi Bk., Taluka Raver,
District Jalgaon
2. Smt. Godavaribai Tukaram Patil
3. Vitthal Tukaram Patil
4. Kalpana Tukaram Patil alias
Kalpana w/o Anil Patil,

All Major, R/o Khirdi,
Taluka Raver, Dist. Jalgaon .. Respondents

(Parties in Tenancy Appeal No.144/1990)

- II. 1. Shankar Raghunath Khanapurkar,
since deceased by his heirs and
legal representatives :
- 1A. Smt.Umabai Shankar Khanapurkar,
R/o Narsing Bhavan, Gokul Path,
Nagpur
- 1B. Smt.Kamal Shankar Khanapurkar,
R/o Narsing Bhavan, Gokul Path,
Nagpur
- 1C. Sow. Rajan Prabhakar Deshpande,
R/o General Managers' quarters,
Khopoli, District Raigad
2. Dattatraya Balkrishna Khanapurkar,
R/o Near Pandurang Talkies,
Bhusawal, District Jalgaon

(Petitioners No.1-A to 1-C, through their
General Power of Attorney – Petitioner No.2)

.. Petitioners

Versus

1. Smt.Sitabai w/o Tukaram Patil
deceased through L.Rs.
- 1A. Vithal Tukaram Patil,
Age 22 years, Occu. Agril.,
R/o Khirdi Bk., Taluka Raver,
District Jalgaon
- 1B. Mrs. Kalpana w/o Anil Patil,
Age 24 years, Occu. Household
R/o Khirdi Bk., Taluka Raver,
District Jalgaon
2. Smt. Godavaribai Tukaram Patil
3. Vitthal Tukaram Patil
4. Kalpana Tukaram Patil alias
Kalpana w/o Anil Patil,

All Major, R/o Khirdi,
Taluka Raver, Dist. Jalgaon
(Parties in Tenancy Appeal No.145/1990)

.. Respondents

- III. 1. Prabhakar Laxman Khanapurkar,
At and post Shyamnagar,
Amravati
2. Pramod Laxman Khanapurkar,
At and post Revenue Colony,
Akola, Taluka and Dist. Akola
3. Dattatraya Balkrishna Khanapurkar,
R/o Near Pandurang Talkies,
Bhusawal, District Jalgaon

(Petitioners No.1 and 2 through their
General Power of Attorney – Petitioner No.3) .. Petitioners

Versus

1. Smt.Sitabai w/o Tukaram Patil
deceased through L.Rs.
- 1A. Vithal Tukaram Patil,
Age 22 years, Occu. Agril.,
R/o Khirdi Bk., Taluka Raver,
District Jalgaon
- 1B. Mrs. Kalpana w/o Anil Patil,
Age 24 years, Occu. Household
R/o Khirdi Bk., Taluka Raver,
District Jalgaon
2. Smt. Godavaribai Tukaram Patil
3. Vitthal Tukaram Patil
4. Kalpana Tukaram Patil alias
Kalpana w/o Anil Patil,

All Major, R/o Khirdi,
Taluka Raver, Dist. Jalgaon
(Parties in Tenancy Appeal No.146/1990) .. Respondents

..

- IV. 1. Vinayak s/o Raghunath Khanapurkar,
since deceased, by his L.Rs.
- 1A. Arun s/o Vinayakrao Khanapurkar,
since deceased, by his L.Rs. And
legal representatives :

- 1A-i. Smt.Nandatai Arun Khanapurkar,
Age 45 years,
- 1A-ii. Deepali Arun Khanapurkar,
Age 25 years,
- 1A-iii. Kalyani Arun Khanapurkar,
Age 20 years,
- 1A-iv. Renu @ Prajakta Arun Khanapurkar,
Age 15 years,
- 1A-v. Shripriya Arun Khanapurkar,
Age 18 years, minor, through
her guardian mother
Smt.Nandatai Arun Khanapurkar
- 1A-vi. Dhanshri Arun Khanapurkar,
Major

All R/o Malkapur, Dist. Buldhana,
[L.Rs. Of deceased petitioner No.1A.
Brought on record vide Court's order
dated 8.10.2004 passed in C.A.No.
6376 of 1998)

.. Petitioners

Versus

- 1. Smt.Sitabai w/o Tukaram Patil
deceased through L.Rs.
- 1A. Vithal Tukaram Patil,
Age 22 years, Occu. Agril.,
R/o Khirdi Bk., Taluka Raver,
District Jalgaon
- 1B. Mrs. Kalpana w/o Anil Patil,
Age 24 years, Occu. Household
R/o Khirdi Bk., Taluka Raver,
District Jalgaon
- 2. Smt. Godavaribai Tukaram Patil
- 3. Vitthal Tukaram Patil
- 4. Kalpana Tukaram Patil alias
Kalpana w/o Anil Patil,

All Major, R/o Khirdi,
Taluka Raver, Dist. Jalgaon

.. Respondents

(Parties in Tenancy Appeal No.147/1990)

Mr V.J.Dixit, Senior Counsel i/b Mr Sushant Dixit, Advocate for petitioners

Mr G.V. Wani, Advocate for respondents No.1A (i) to 1A (vi)

Mr P.R. Katneshwarkar, Advocate for respondent No.4

CORAM : N.W. SAMBRE, J.

DATE : 6th May 2015

ORAL JUDGMENT

Heard.

2. The respondent - Sitabai filed an application on 30th August 1970 in the Court of Mamlatdar/Tahsildar seeking mutation in her name in relation to land Survey No.5/4 ad measuring 1 hectare 54-R which is owned by the petitioners herein. It was claimed that since 1959, the husband of respondent - Sitabai viz. Tukaram was in cultivating possession, who expired on 11th June 1969 and from that point of time, she continued in possession as tenant. It is also claimed that her late husband Tukaram in 1961-1962 constructed a well and with the help of electric pump irrigated the land.

3. The similar application was made in relation to land ad measuring 1 hectare, 39-R having Survey No.5/2, 1 hectare, 58-R having Survey No.5/1, 1 hectare 44-R having Survey No.5/3.

4. The Tahsildar, Rever by his order dated 3rd November 1970 while dealing with the applications declared the respondent as tenant which was subject matter of appeals before the Assistant Collector, Jalgaon who has allowed the appeals by order dated 30th September 1971 and remanded the matter back.

5. The petitioners herein filed Tenancy Case Nos. 7, 8, 9 and 10 of 1971 before the Tahsildar, Raver under Section 70 (b) of Bombay Tenancy Act, 1948 seeking negative declaration that the respondents are not the tenants. The Tahsildar, Raver, while rejecting the said applications by order dated 1st February 1975 declared that the petitioners are not in cultivating possession of the land in question and declared entitlement of respondents on the lands as tenants.

6. The said order was subject matter of challenge before the Assistant Collector, Jalgaon in tenancy appeal, who by his order dated 28th February 1976 allowed the appeals of the petitioners and declared that the respondents are not lawful tenants. The revision of the present respondents before the Maharashtra Revenue Tribunal came to be allowed by setting aside the order passed by the Assistant Collector and again matter was remanded back to the Assistant Collector, Jalgaon by an order dated 22nd March 1977. The Assistant Collector, upon remand by the Member, Maharashtra Revenue Tribunal, reconsidered the matter and allowed the appeal of the respondents-tenants by his order dated 1st September 1978 and declared them as tenants which was subject-matter of revision before the Maharashtra Revenue Tribunal. The Member, Maharashtra Revenue Tribunal by his order dated 26th March 1980, allowed the revision by setting aside the order passed by the Assistant Collector declaring respondents as tenants and again remanded the matter to the Sub Divisional Officer, Jalgaon who by his order dated 20th July 1982 upheld the order of the Tahsildar dated 1st February 1975 and as such, the declaratory status of the present respondents continued.

7. The petitioners-landlords feeling aggrieved by both the orders passed by the Tahsildar, Raver and order dated 20th July 1982 passed by the Sub-Divisional Officer, Jalgaon again approached the Maharashtra Revenue Tribunal, which was subject matter of Writ Petition No.4720 of 1984. As the writ petition was dismissed, the Sub Divisional Officer, after reconsidering the matter declared that the respondents are not tenants over the suit property. The said order of Sub Divisional Officer dated 27th August 1990 was subject-matter of revisions before the Maharashtra Revenue Tribunal at the behest of present respondents. The Maharashtra Revenue Tribunal, by its order dated 21st March 1990 allowed the revisions of the respondents and restored the order passed by the Tahsildar on 1st February 1975 by setting aside the order of Sub Divisional Officer dated 27th August 1990 as such, the present petition.

8. Learned Senior Counsel for the Petitioners Mr Dixit has strenuously urged that it is not open for the present respondents to claim the status as statutory, contractual tenants at the same time and the Tahsildar and Maharashtra Revenue Tribunal, without considering the said aspect of the matter have allowed the revisions of the respondents. According to him, the respondents have not placed on record sufficient evidence to establish their status as tenants and both the authorities below have lost sight of the fact that the respondents, at the time of mutation have put forth the case of contractual tenancy. According to him, the evidence which was recorded and taken into account by the Tahsildar and again looked

into by the Maharashtra Revenue Tribunal was that of employees and relatives of the respondents and as they being interested witnesses, their evidence should have been ignored. In addition to above, he would urge that on the tiller date, the respondents were not the statutory tenants and as such, have lost opportunity to purchase the land even as per the provisions of Section 32-O of the Bombay Tenancy Act, as the purchase should have been within one year being claim for tenants from the date subsequent to the tiller date. In support of his contentions, Mr Dixit has relied upon the judgment of this Court in the matter of **Dwarkanath Vishram Ghurye since deceased by heirs Ashok Dwarkanath Gurye and anr. Vs. Narayan Vasudeo Dhond** reported in **1989 Mh.L.J. 689** so as to draw support to the submissions that the deemed tenancy and contractual tenancy cannot be raised together.

9. In addition to above, he has also relied upon the judgment of the Apex Court in the matter of **Krishan Malhar Mirasdar (dead) by L.Rs. Vs. Saswad Mali Sugar Factory Ltd., and ors.**, reported in **1998 (2) Mh.L.J. 611** so as to canvass that mere contending that the respondents are tenants is not enough but it has to be specifically established that the person concerned was lawfully cultivating the land, as the statute confers protection upon a person who is lawfully cultivating the land. According to him, mere entries in the revenue record and the payment of land revenue would not be enough to establish that the person was a statutory tenant unless it is established that the person was in lawful possession and draw support

from the judgment of Apex Court in the matter of **Hanmanta Daulappa Nimbal since deceased by his heirs and L.Rs. V. Babasaheb Dajisaheb Londhe**, reported in **AIR 1996 SC 223 (1)**.

10. While countering the above referred submissions, Mr Katneshwarkar, learned Counsel for the respondents would urge that the application moved by the respondent-Sitabai in 1970 for mutation is sufficient proof in the form of evidence to establish the case of tenancy. He would further urge that the order of the Tahsildar which is subject matter of present petition is still holding the field and said order has, in detail, deals with the status of the present respondents as tenants. According to him, with the help of sufficient evidence, the fact about the status of the present respondents as tenants was established. This Court, in its extra-ordinary jurisdiction should be very slow in interfering in the findings recorded. In addition to above, he would urge that the case of protected tenants was specifically established and there are no contradictions in stand taken. As such, according to him the petition is liable to be rejected.

11. Upon taking into consideration the submissions of rival parties and after analysing the claim put forth by the parties, it is required to be noted that the Tahsildar framed two issues before it (i) whether the land in question is personally cultivated by the respective landlords as was claimed by the petitioners; and (ii) whether the possession over the suit property was proved by the respondents herein as tenants. It is taken into account by the authorities that on behalf of petitioners

Vinayak Khanapurkar was examined at Exh.1, Zendu Ukhardu at Exh.3, Yashwant Shankar Kulkarni at Exh.4, Shridhar Sonar at Exh.5, Phulsing Bhagwan at Exh.6, Zendu Tukdu at Exh.7, Vijay Shankar Kulkarni at Exh.8 and in addition, filed various documentary evidence. The existence of the well and the electric pump fitted thereon is an admitted fact on record. It is also admitted that the deceased Tukaram was the owner of engine and pump. The authorities proceeded to analyse the conduct of the present petitioners in permitting Tukaram to install electric motor and accessories for drawing water and irrigating the field. It was also not established by the petitioners that the amount was spent by them for digging the well in question. Though it was sought to be established that deceased Tukaram was engaged for irrigating the land from the well, however, the documents to that effect brought on record were seen to be not proved. The Tahsildar noticed that the documents Exh.1-A, 1-C and 1-D are not proved so as to establish that Tukaram had no concern with the land as original were not produced. Though it is sought to be claimed that the petitioners are personally cultivating the land, however, from the evidence it was inferred that the petitioners are absentee landlords as all of them were residing outside the area where the land was located and even were not owning or having any agricultural equipments/infrastructure for cultivating the land. Neither the purchaser of the crops, the labours who were hired in the field, or the contractors, if any, were examined nor any account of the purchase and sale of agricultural produce was maintained in view of the condition existing at the relevant time. The respondents herein

rather have brought on record in their evidence that the landlords are staying at Nagar, Akola, Amrawati and Bhusawal. The authorities discarded the evidence of the witnesses in the light of their integrity and the nature of evidence that was brought on record and as such, gave finding that the petitioners are not in cultivating position of the property. The Tahsildar, while analysing the issue as regards the status of respondents as tenants, noticed that the case that was sought to be established by the respondents was that of contractual tenants and Sitabai deposed that her husband Tukaram was tenant since 1961-1962 who died in 1969.

12. Sitabai also deposed that she was owning and in possession of the equipments required for cultivation and further brought on record Exh.2-A to show that the electric bills were paid by her. The crop that was taken prior to 1969 was sold to a group and has placed on record the receipt of Banana tax and land revenue vide Exh.2-D, 2-G,2-H,2-O. She, in her oral evidence has also established the cultivation of land by late Tukaram, digging of well, erection of engine room, fitting of motor pump etc. In support of her case, she had examined Tukaram Totaram at Exh.9, Harikisan at Exh.10, Manglu Patil at Exh.11, Devchand Onkar at Exh.12, Bhika Shripat at Exh.13, Rajaram Onkar at Exh.14, Deorak Bhika at Exh.16, Daulat Bhika at Exh.17, Hari Soma at Exh.18, Ananda at Exh.19 and Shrawan Tukaram at Exh.20. The Assistant Collector, upon taking into account the evidence of each of the above referred witnesses, some of them were working in her land, has observed that the landlords were never in possession of the land

in question. Through the said witnesses, it was also established about digging of well, construction of engine room and cultivation by the respondents. The Accountant/*Diwanji* of the respondents was examined viz. Rajaram who supported the entire case of the respondents, including that of agreement of tenancy, payment of *Khand* charges to the landlord, Other important witnesses who are associated with the cultivating and selling of agricultural produce, named as *Maparis* were also examined through whose evidence claim of respondents about tenancy was established. As such, the Tahsildar has rejected the claim of petitioners – landlords based on the findings narrated herein above. The said findings were upset by the Sub Divisional Officer purely upon re-appreciation of evidence, as he noticed that there was agreement of drawing of water only. He rejected the evidence which was brought on record by the respondents on the ground that the witnesses who were cited by the respondents were interested witnesses, as either they were working with the respondents or are relatives.

13. The revenue Tribunal, while dealing with the case of the parties herein considered the issue as regards whether the respondents herein are tenants or not. The Tribunal, in the light of chequered history of repeated remand and upon request of the parties, has gone into the original record in detail and at the request of the parties has adjudicated the claim at its level. The Tribunal analysed the evidence and noticed that the claim of the respondents was well within the purview of Section 4 of the Tenancy Act. The Tribunal noted that the

respondents are in possession of the property since 1961-1962 and they were growing Banana crop which by way of sufficient evidence proved to have been sold by the respondents. The Tribunal also noticed the proving of the fact about the installation of pump, upon request of the respondents, the demand notice given by the electric supply company and payment of said demand by late Tukaram, the contract in writing with that of landlord to pay some amount annually, though same was denied. The Tribunal noticed that the Sub Divisional Officer has by wrongly appreciating the evidence in the background of Section 4 of the Tenancy Act, has recorded finding that there was a contractual tenancy in between the petitioners and respondents. Though the Tribunal noticed that the respondents have proved case of contractual and deemed tenancy, however, in my opinion, it will be appropriate to substitute the same with that of finding of contractual tenancy in favour of respondents in the background of evidence brought on record from the point of death of Tukaram, in relation to field in question. Though Mr Dixit was right in stating that the contractual and deemed tenancies cannot go at the same time, however, it will not be appropriate for this Court to remand the matter again after the chequered history of repeated remand orders in the present case. The fact that Tukaram was in possession of the field since 1962, his wife Sitabai, after the death of Tukaram is in possession of the property, the evidence of the witnesses who were working with Tukaram and Sitabai in cultivation of the field, the documentary evidence such as the payment of Banana tax and revenue, the electricity bills, installation of electric pump, the

satisfaction of demand by the electricity department for providing the connection at the request of respondent, the evidence of the Mapari and Talathi takes this Court to the only conclusion that the respondents herein are tenants and as such were rightly so declared.

14. Though the learned Counsel Mr Dixit has placed reliance upon the judgment of this Court in the matter of Dwarkanath (died) by heirs Ashok vs. Narayan (cited supra) so as to canvass that the alternate plea of tenancy cannot be raised, however, having regard to the fact that this Court has, upon analysing the evidence brought in before the authorities and the fact that the documentary evidence also demonstrates the continuous possession with the respondents and the payment of *Khand*/ contract amount, has recorded finding of contractual tenancy. As such, the said judgment will be hardly of any support. So far as the judgment in the matter of Krishan Malhar Mirasdar (dead) by L.Rs. Vs. Saswad Mali Sugar Factory Ltd., and ors., (cited supra), so as to demonstrate that the respondents are not lawfully inducted tenants, it is required to be noted that by oral evidence, it is specifically proved that the tenants were put into possession as contractual tenants and as such, they were lawfully inducted. So far as the judgment in the matter of Hanmanta since deceased by his heirs and L.Rs. V. Babasaheb Londhe (cited supra) is concerned, it is to be noted that though the proposition of law sought to be placed in so as to establish the case by the petitioners as regards insufficiency of revenue entries to draw conclusion about the protected tenants, however, it is required to be noted in the present

case that apart from revenue entries, sufficient oral and documentary evidence, as discussed herein above was brought on record to establish the same.

15. As such, in my opinion, no case for interference is made out. The writ petition being devoid of merit, stands dismissed. Rule discharged.

(N.W. SAMBRE, J.)

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