

(1)

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

WRIT PETITION NO. 405 OF 1994

Dagadu s/o Govinda Yemgar,
Age: 67 years, Occu: Agril.,
R/o. Yemgarwadi, Tq. Tuljapur,
Dist. Osmanabad

..PETITIONER

VERSUS

- 1) Shivram s/o Krishna Yemgar,
deceased through L.R.
- 1-a) Bhagwan s/o Shivram Yemgar,
Age: 60 years, Occu: Agril.,
R/o. Yemgarwadi, Tq. Tuljapur,
Dist. Osmanabad
- 2) Vithoba s/o Pirtappa Yemgar,
deceased through L.Rs.
- 2-a) Rahibai w/o Vithoba Yemgar,
Age: 57 years, Occu: Agril.,
R/o Yemgarwadi, Tq. Tuljapur,
Dist. Osmanabad
- 2-b) Shivaji s/o Vithoba Yemgar,
Age: Major, Occu. & R/o. As above
- 2-c) Apparao s/o Vithoba Yemgar,
Age: Major, Occu. & R/o. As above
- 2-d) Maroti s/o Vithoba Yemgar,
Age: Major, Occu. & R/o. As above
- 2-e) Dhannu s/o Vithoba Yemgar,
Age: Major, Occu. & R/o. As above
- 3) Maharashtra Revenue Tribunal,
Aurangabad
(Resp. No. 3 is deleted as per
Court's order dated 26/04/1994)

..RESPONDENTS

Mr V. G. Mete, Advocate for petitioner;
Mr S. R. Deshpande, Advocate for respondent No. 1-a
Mr S. P. Chapalgaonkar, Advocate for respondent Nos. 2-a to 2-e

(2)

CORAM : N.W. SAMBRE, J.**Date : 14th December, 2015****JUDGMENT :**

Heard Mr Mete, learned Counsel appearing on behalf of the petitioner; Mr S.R. Deshpande, learned Counsel on behalf of respondent no.1 (a) and Mr S.P. Chapalgaonkar, learned Counsel on behalf of respondents no.2 (a) to 2 (e).

2. The petitioner herein, claiming to be purchaser of the land bearing survey No.1/A, ad measuring 2 Acres and 11 Gunthas, situated at village Yemgarwadi, Taluka Tuljapur, District Osmanabad, by virtue of registered sale deed dated 31st December, 1973, has questioned the order passed by the Tahsildar, Tuljapur on 26th June, 1975, order of Deputy Collector, Osmanabad, dated 25th April, 1991 and the judgment and order rendered by the Member, Maharashtra Revenue Tribunal, Aurangabad, on 5th August, 1992, in Case No.98/B/91/0.

3. The present litigation has a chequered history.

4. Respondent no.1, claiming to be the tenant on the above referred property, moved an application under section 32 (1) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short "Act") against one Vithoba Yemgar, i.e. respondent no.2 to the present petition and the

(3)

present petitioner. It is claimed by respondent no.1 that the land was originally owned by respondent no.2 Vithoba, who dispossessed him and thereafter sold the land in question on 31st December, 1973 to the petitioner, without obtaining any permission. He claimed that he was dispossessed by respondent no.2 on 16th March, 1972. Seeking possession under section 32 (1) of the Act, respondent no.1 approached before the Naib Tahsildar, Tuljapur, vide Case No.74 TNC.32 (1) 25.

5. The said application for restoration of possession came to be allowed against the present petitioner and respondent no.2, which was further upheld by the Deputy Collector, in Case No.1979-TNC-A-106, by an order dated 25th April, 1991. The revision at the behest of the present petitioner – purchaser, preferred against the tenant and original owner, pursuant to the provisions of section 91 of the Act, also suffered fate of dismissal.

6. Heard Mr Mete at length. In the background, he would raise following points in support of his contentions.

7. The invocation of provisions of section 32 (1) of the Act, for seeking restoration of possession by tenant against the present petitioner was not tenable, as there was no landlord – tenant relationship between the petitioner and respondent no.1 on the date of filing of the application under section 32 (1) of the Act, before the Tahsildar. He would then urge that there was no landlord – tenant relationship between respondent nos.1 and

(4)

2 and the Tahsildar ought to have decided the said issue first and then given finding as regards dispossession. He would next urge that the proceedings initiated were not within limitation as provided under section 32 of the Act. Mr Mete then would urge that in view of provisions of sections 44 and 45 (1) of the Act, it is the tenant who is entitled for relief against the original owner, if the original owner has not cultivated the land after termination of tenancy at the behest of original landlord and as such, the order cannot be implemented against the petitioner, who is subsequent purchaser. According to him, the revenue entries of 1961-62 to 1973-74 do not create any right in favour of respondent no.1 - tenant and in absence of challenge to the sale deed in his favour, the proceedings itself were not maintainable at the behest of respondent no.1. As the tenancy was not proved pursuant to the provisions of section 8 of the Act, the petition deserves to be allowed.

8. While countering the submissions, the learned Counsel appearing on behalf of the respondent has invited attention of this Court to the provisions of Chapter IV-B of the Act, which provides for termination of tenancy by landholder for cultivating the land personally and entitlement of the tenant for restoration of possession, if land owner fails to cultivate the land personally within one year from the date on which he resumed possession of the land, if permitted under section 44 of the Act. He would then urge that section 46 provides for recovery of possession by tenant and in view of the said provisions, the application under section 32 of the Act was very much tenable. Learned Counsel then would urge that for

(5)

disposal of the land in question, pursuant to the provisions of Chapter V of the Act, the permission of the competent authority was necessary before transferring the land, as the statute provides for offering first opportunity to the tenant to purchase the land in question and then upon permission of the competent authority to sell the same to a third party, which is not at all followed by the petitioner or his predecessor-in-title. According to him, the petitioner was well within notice, having purchased the land in question.

9. Having bestowed my anxious thought to the submissions made, it is required to be considered that there exists revenue record in favour of present respondent no.1 – tenant depicting his possession over the suit property for the period from 1961-62 to 1973-74.

10. The fact remains that respondent no.2, the earlier owner of the suit property, has transferred the property in question to the petitioner by a registered sale deed, without adhering to the provisions of Chapter V of the Act. Apart from above, it is required to be noted here that the petitioner, stepping into the shoes of the earlier owner, i.e. respondent no.2 was bound by the provisions of the Act. The Tahsildar, while considering the claim of respondent no.1, having framed a specific point as regards the status of respondent no.1 as a tenant, has recorded finding in his favour declaring him as a tenant. The revenue record was formed to be the basis for the same. Apart therefrom, all the authorities below have concurrently held against the petitioner, that respondent no.1 was a tenant of respondent no.2 and the petitioner had purchased the property in question

(6)

contrary to the provisions of Chapter V of the Act. Though the petitioner has raised an issue as regards the provisions of section 98 of the Act, i.e. seeking possession by respondent no.1 from the petitioner as there was no relationship of landlord and tenant between them, in my opinion, the said provisions will hardly be of any assistance to the petitioner, particularly when he himself has acted in contravention to the provisions of Chapter V of the Act. Apart therefrom, it is required to be noted that the entries as were recorded from 1962 to 1973, were not at all challenged by the petitioner or his predecessor-in-title. Once all the authorities having concurrently held against the present petitioner, in my opinion, no case for interference is made out.

11. In the result, the petition fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj