

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3849 OF 2012
WITH
WRIT PETITION NO.3989 OF 2012

1. Bhairu s/o Vishnu Suryawanshi,
Age : Major, Occ. Agril.,
2. Sudhakar s/o Vishnu Suryawanshi,
Age : Major, occ. Agri.,

Both R/o Shivoor, Tq. & Dist. Latur
3. Rukhminibai w/o Vishnu Suryawanshi,
Since deceased deleted as per Court
Order dt. 15.09.2011
4. Mangalabai w/o Vithal Mulay,
Age : Major, Occ. Household,
R/o Jawali at present Shamnagar,
Tq. & Dist. Latur

..PETITIONERS
(Ori. Appellants)

VERSUS

1. Govind s/o Raghunath @
Ranga Suryawanshi,
Age : Major, Occ. Service,
R/o Terna Vasahat Coloney,
Near Ayodha Colony,
Latur
2. Ram Raghunath @ Ranga
Suryawanshi,
Age : Major, Occ. Agril.,
R/o Shivoor, Tq. & Dist. Latur
3. Shrikirshna Raghunath @ Ranga
Suryawanshi, Age : Major, Occ. Agri.,
R/o As above

4. Rajendra Raghunath @ Range
Suryawanshi, Age : Major, Occ.Agri.,
As above

..RESPONDENTS
(Ori. Applicants)

Mr V.D. Salunke, Advocate for petitioners;
Mr S.G. Jadhavar, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 27th April, 2015

ORAL ORDER :

Since both these petitions question the common judgment dated 28th February, 2012, rendered by the Member, Maharashtra Revenue Tribunal, Aurangabad, in Case No.18-A-98-L and Case No.84-B-01-L, they are heard together and are being decided by this order.

2. So far as Case bearing No.18-A-98-L is concerned, the same was preferred by the petitioners for a claim under section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the "Tenancy Act"), whereas Case No.84-B-01-L was preferred under section 91 of the Tenancy Act.

3. The facts, as are necessary for decision of the present writ petitions, are as under :-

So far as Case No.18-A-98-L is concerned, the respondents therein, so also the respondents to the present petition, preferred an application before the Special Deputy Collector, Land Reforms, Latur, for recovery of possession of the property, under section 98 of the Tenancy Act, *inter alia* alleging therein, that the respondents being real brothers had a common ancestor by name Ranga, who was a protected tenant of the suit land, ad measuring 8 acres and 12 Gunthas from from survey No.12-A, which was subsequently included in Gat Nos.26 and 30, situated at village Shivur, Taluka Latur.

4. One Vishnu Bhavani Suryawanshi was the owner of the said land. The common ancestor of the respondents herein, namely, Ranga was declared as a owner of the suit land under section 38-E of the Tenancy Act and after the said declaration he became statutory owner and was put in possession thereof. The name of Ranga came to be entered into the revenue record as statutory owner and cultivator for the year 1970-71 to 1973-74.

5. It is claimed that since Ranga was very old and present respondents were minor, he was unable to protect possession over the suit land. The petitioners dispossessed him in 1970-71, in collusion with the revenue authorities.

6. After implementation of the consolidation scheme, in the revenue record the name of the previous land owner, i.e. the ancestor of the present petitioners, came to be recorded as owner and possessor of Gat Nos.26 and 30. The present petitioners are the legal representatives of original owner and as such, the respondents sought possession of the suit land by ordering their summary eviction under section 98 of the Tenancy Act.

7. The petitioners resisted the said claim by filing written statement, denying the status of Ranga as a protected tenant. It was also denied that there was no declaration under section 38-E of the Tenancy Act, in favour of Ranga in respect of the suit property, and declaration, if any, under section 38-E in favour of Ranga is void and without any basis. It was further stated that the petitioners are in cultivating possession of the suit land and Ranga or the present petitioners were never in possession of the suit property. Apart therefrom, an issue of limitation was raised.

8. The learned Deputy Collector, with whom the proceedings were initiated, had noticed that there was a declaration under section 38-E of the Tenancy Act, in favour of Ranga and based on the said declaration, mutation entry No.80 was sanctioned, and as such, proceeded to declare him as a statutory owner, who cultivated the land for some period. It was also declared that the possession of the predecessor of the present

petitioners was wrongful and unauthorized and directed that the present respondents are entitled for recovery of possession of the suit property under section 98 of the Tenancy Act. Feeling aggrieved thereby, Revision No.18-A-98-L was preferred.

9. So far as Revision No.84-B-01-L is concerned, the declaration under section 38-E of the Tenancy Act, was challenged therein by the legal representatives of former landlord, i.e. the petitioners, by filing Appeal No.97-TNC-0-15 before the Deputy Collector (Land Reforms), Latur.

10. The petitioners in the said revision alleged that Ranga was neither in cultivating possession of the suit land nor was a protected tenant. According to them, the declaration under section 38-E of the Tenancy Act is void and without any legal basis. It is further claimed that the declaration made by the Deputy Collector under section 38-E of the Tenancy Act in favour of Ranga and the mutation entry pursuant thereto, recording name of Ranga as an owner, be held to be invalid. The Deputy Collector (Land Reforms) noted that there exists a declaration under section 38-E in favour of Ranga and based on the same, mutation entry came to be sanctioned. Pursuant thereto, the name of Ranga came to be recorded as statutory owner, who was in cultivating possession for certain period, as is reflected in the revenue record. It was further noted by the

Deputy Collector (Land Reforms) that the proceedings against the declaration under section 38 of the Tenancy Act, are barred by limitation and dismissed the same, which has prompted the present petitioners to prefer Revision No.84-B-01-L.

11. Both the Revisions came to be dismissed by judgment and order dated 28th February, 2012, rendered by the Member, Maharashtra Revenue Tribunal, Aurangabad. Thus, the present petitions.

12. Heard Mr Salunke, learned Counsel appearing on behalf of the petitioners, at length. He would urge that the suit property, which consists of 8 Acres and 20 Gunthas out of land Gat Nos.26 and 30, situated at Shivur, Taluka Latur, was admittedly owned by Vishnu Suryawanshi, predecessor (father) of the present petitioners, who was original landlord. It is further urged by him that the claim of Ranga, father of the respondents herein as that of tenant, was without any basis, as according to him, in 1966 itself, said Vishnu, father of the petitioners, had moved an application before the Tahsildar when Ranga was not in possession of the suit property, to make an inquiry as regards status of Ranga as a protected tenant. According to Mr Salunke, during the said inquiry, Ranga volunteered a statement which is placed on record, that he was not in need of the land in question and he was not a protected tenant, the property stood vested in the original land owners, i.e. father of the

petitioners. He would further urge that the proceedings before the Naib Tahsildar, pursuant to the application dated 11th April, 1966, are required to be referred to, so as to infer that Ranga was neither a protected tenant nor was in possession of the suit property. He has also invited attention of this Court to the statement of the protected tenant, recorded in the said proceedings of 1966 and that of an adjoining land owner Narsing Surwase, who had stated that Ranga was neither protected tenant nor was in possession of the suit property. According to the learned Counsel, since then till 1997, at no point of time, any grievance was made as regards the status of Ranga as protected tenant. He would further urge that the claim for possession, based on declaration under section 38-E of the Tenancy Act, is barred by limitation as the price of the land that was fixed, was never paid. According to him, in view of above, the judgments and orders impugned herein, are not sustainable.

13. While countering the above referred submissions, Mr Jadhavar, learned Counsel appearing on behalf of the respondents would urge that the Deputy Collector (Land Reforms) had conducted a complete inquiry in the matter and had noted that Vishnu Bhavani, predecessor-in-title and ancestor of the present petitioners, was holding more than 100 Acres of land. It is claimed by him that in view of the declaration as an owner under section 38-E of the Tenancy Act, the father of the respondents is entitled for protection under the Tenancy Act. He would urge that the

office of the Tahsildar has handed over possession of the suit property in 1970-71 in favour of the respondents' father and accordingly a mutation entry to that effect was taken.

14. It is further claimed that in 1976-77, the father of the respondents was dispossessed and so far as the claim for payment of price of the land in question is concerned, the same could have been recovered as an arrears of land revenue, however, the respondents are ready and willing to pay the same. According to him, so as to substantiate the claim, sufficient evidence was placed on record, which was rightly appreciated. He would urge that the present petitions, which are against concurrent findings recorded by the fact finding authority and the Maharashtra Revenue Tribunal, being devoid of merit, deserve to be dismissed.

15. Having bestowed my anxious consideration to the submissions made by learned Counsel appearing on behalf of respective parties, this Court has proceeded to analyze their claim, particularly in the background of the scope of judicial review, as is permissible in the matters in hand. It is required to be noted here, that the Revenue Tribunal, while dealing with the proceedings initiated by the present petitioners, has framed the issues/points for its consideration, particularly in the light of the claim under section 98 of the Tenancy Act and in Revision No.84-B-01-L. Learned Member, Maharashtra Revenue Tribunal, then has proceeded to

notice that there is a declaration under section 38-E of the Tenancy Act, in favour of deceased Ranga and the respondents herein are the legal representatives of said Ranga, which fact was very much established (not disputed). It is required to be noted here that the name of Ranga appeared in the revenue record in 1971-75 as a possessor and protected tenant and was protected under section 38-E of the Tenancy Act.

16. The said declaration issued under section 38-E of the Tenancy Act was challenged by the former land-holder, namely, Vishnu by filing appeal on 30th October, 1997. In view of above, the inference that could be drawn is that there exists a declaration under section 38-E of the Tenancy Act in favour of Ranga, the father of the respondents herein.

17. So far as the claim that the declaration under section 38-E of the Tenancy Act is void and without any legal basis is concerned, it is required to be noted here that the land-holders challenged the declaration under section 38-E of the Tenancy Act, in the year 1997. The said application was filed by the land-owners subsequent to the filing of application under section 98 of the Tenancy Act by the present respondents. It is required to be noted that the declaration under section 38-E of the Tenancy Act was never challenged within time as prescribed by the statute, as it will not be out of place to refer here that the limitation prescribed for questioning the status of a person as tenant, within the meaning of the Tenancy Act, is one

year and there was no such proceedings initiated by the petitioners or their father, in the matter of declaration of status of Ranga as a tenant. Once such proceedings were not initiated, the declaration under section 38-E of the Tenancy Act has attained finality and at such a belated stage, particularly in the year 1997, the same cannot be subjected to scrutiny and to further judicial scrutiny before this Court. It is further required to be noted that the declaration under section 38-E of the Tenancy Act is not appealable, as is noted by the Member, Maharashtra Revenue Tribunal from the judgment of this Court, reported in the matter of **Bharatlal s/o Kondiba Hemraj vs Kondiba Govinda Jadhav & ors.**, reported in **2001 (3) Mh.L.J. 380**, as the same is neither a decision nor an order within the meaning of section 90 of the Tenancy Act. As such, the proceedings questioning the declaration under section 38-E of the Tenancy Act, initiated by the present petitioners, itself were held to be not maintainable.

18. It is further required to be noted here that once there exists a declaration under section 38-E of the Tenancy Act, the relationship of the landlord and that of tenant comes to an end and as such, the remedy under section 32 cannot be invoked by the present petitioners. It is further required to be noted that the proceedings initiated under section 98 of the Tenancy Act does not prescribe any limitation and the law laid down by the Supreme Court, in the matter of **Santosh Kumar vs. Balasaheb**, reported in **2010 (2) Mh.L.J. 150**, was rightly relied upon by the Tribunal.

19. Apart therefrom, on facts, it is required to be noted that Ranga came to be declared as owner, pursuant to declaration under section 38-E of the Tenancy Act and was put into possession of the property through the office of the Tahsildar. It is further required to be noted from the revenue record of 1970-71, that Ranga appears to have been shown to be owner and possessor of the suit property.

20. In view of the above referred background, in my opinion, no illegality or irregularity could be noticed in the impugned judgments and orders, which calls for any interference in the judicial review, while entertaining the present petitions.

21. In the light of above, both writ petitions fail and stand dismissed with no order as to costs.

22. In view of dismissal of writ petitions, pending Civil Applications do not survive and stand disposed of.

(N.W. SAMBRE, J.)

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