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

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.4714 OF 2014**

Dinnath Shivram Bagkar

...Petitioner

V/s.

Kum. Medha Sadanand Pawaskar & Ors.

...Respondents

.....  
Mr. G. S. Godbole a/w Anilkumar R. Joshi for the Petitioner.

Mr. S. M. Gorwadkar i/b. Ms. Deepti Wadkar for Respondents.  
.....

**CORAM : A. K. MENON, J.**

**DATE : 7TH OCTOBER, 2015.**

P.C.:

This Petition challenges the order dated 28<sup>th</sup> January, 2014 passed by the Maharashtra Revenue Tribunal, Mumbai. The Tribunal dismissed the Revision Application wherein the order dated 23<sup>rd</sup> October, 2012 was under challenge. The brief facts which lead to the present Petition pertain to a plot of land bearing survey no.122 Hissa no. 14/1 and 14/2 which is the subject matter of dispute. The short point to be considered is whether the authorities below had correctly appreciated the evidence sought to be led by the present petitioner that he was fully compliant with the provisions of section 4 sub-section (2) of the Maharashtra Tenancy and Agricultural Lands Act, 1948.

Section 4 sub-section (2) clearly provides :-

*“4. Persons to be deemed tenants.— (1) .....*

*(2) Notwithstanding anything contained in sub-section(1), where any land in the Ratnagiri and Sindhudurg districts is being cultivated by a person (other than the person who, according to the Records of Rights, has right to cultivate), for not less than 12 years, such person shall be deemed to be a tenant for the purposes of this section if there is circumstantial evidence that he has been uninterruptedly cultivating the land personally, and the Sarpanch, Police Patil, the Chairman of Vividh Karyakari Sahakari Society, and the cultivator of the adjoining land state on affidavit that the said land is in the possession of, and is being cultivated by, such person, uninterruptedly for not less than 12 years.*

*Explanation-I. – For the purpose of this sub-section, the expression “land” includes the “warkas land.”*

*Explanation-II. – For the purpose of this sub-section, the expression “circumstantial” includes extract of voters list, ration card, electricity bill or house assessment receipt from the same village or any receipt in respect of sale of agricultural produce or any document regarding permission of felling of trees or excavation of minor mineral or any such permission granted with respect to such land.”*

2]           The requirements of the sub-section(2) are that a person shall be deemed to be a tenant provided there is evidence of the land being cultivated by him for a minimum period of 12 years coupled with circumstantial evidence that he has been doing so uninterruptedly and personally. This must be established by depositions of the Sarpanch of the village, the Police Patil of village, the Chairman of society and the cultivator of the adjoining land who are all required to state on oath that the land in question was in possession of the petitioner and was being cultivated by the petitioner uninterruptedly for not less than 12 years. Explanation (II) to the section sets out the meaning of the expression “circumstantial evidence” so as to include extract of voters list, ration card, electricity bill, house assessment receipts of the village etc.

3]           In the present case, Mr. Godbole, the learned counsel for the petitioner submitted that the issue was the subject matter of an earlier Writ Petition filed in this Court, being Writ Petition No.3240 of 2012 wherein the earlier order dated 10<sup>th</sup> February, 2012 passed by the Maharashtra Revenue Tribunal was under challenge. In that Writ Petition by consent of all parties, the judgment and order of the Tribunal as well as that of the Sub-Divisional Officer were set aside and the Tenancy Appeal was restored to file and the parties were to appear before the Sub-Divisional Officer for deciding the Appeal afresh.

4] It is after this order of remand that the Sub-Divisional Officer has proceeded to consider the evidence since brought on record. After the order of remand, affidavits of one Anil Bagkar neighbour of the petitioner who was said to be cultivating the adjoining land and an affidavit of the Police Patil of Adur, an adjoining village, ration card and the electricity bill for the relevant period as also the house tax receipts were all filed by the Petitioner in support of this case. It is the contention of Mr. Godbole that the aforesaid evidence has not been considered in the right spirit and according to him a proper appreciation of the documentary and oral evidence led by the Sarpanch and the owner of the adjoining land the said Anil Bagkar read with the documentation in support, clearly established that the petitioner was entitled to be declared as a deemed tenant. It is the contention of the petitioner that some of the documents such as the evidence of payment of house tax, electricity and the ration card had not even been considered in the order of Sub-Divisional Officer. He placed reliance on the deposition of the witnesses as also the cross examination in support of his contentions.

6] In response Mr.Gorwadkar, the learned senior counsel appearing for the respondents submitted that the petitioners had failed to establish before the authorities below the fact of continuous and

uninterrupted cultivation of the land personally by him. He further submitted that the cross examination of the witnesses had clearly established the Petitioner had not proved uninterrupted cultivation. Moreover even no Police Patil available in village Guhagar, the evidence of the Police Patil of the neighbouring village Adur cannot be relied upon for the purposes of giving circumstantial evidence in respect of the cultivation by the petitioner. Furthermore, as far as the deposition of Mr. Anil Bagkar is concerned, it is became clear from his cross examination that Mr. Anil Bagkar was not a regular resident of the village and that he would visit the village Guhagar and the land adjoining that of the petitioner only during holidays and festivals.

According to Mr. Gorwadkar the evidence falls short of establishing continuous uninterrupted and personal cultivation of the land by the petitioner. So also the Sarpanch, Mr. Gajanan Velhal, in his cross examination has admitted that he has not personally visited the lands so as to confirm that there has been continuous cultivation by the petitioner personally and that he has affirmed his affidavit only at the request of the petitioner.

7] Having considered the facts I find that the evidence of Sarpanch Mr. Gajanan Velhal, Mr. Anil Bagkar, the owner of the adjoining

land and the Police Patil of the other village did not in any manner help the Petitioner comply with the requirements of the section namely uninterrupted cultivation for 12 years. As far as the deposition of the petitioner himself is concerned, he has deposed that he was employed in Mumbai at New Hind Textile Mill for about 30 years and he was a resident of Mumbai till 2003. Thus being a resident of Mumbai, he could not be cultivating the land personally for 12 years uninterruptedly. Having reviewed the oral evidence relied upon by the petitioner and having considered the submissions of learned counsel, in my view, the petitioner has not been able to establish compliance of section 4(2) which calls for strict compliance. In the circumstances, no case for interference is made out and I pass the following order:-

- (i) The Petition is dismissed.
- (ii) There will be no orders as to costs.

**(A. K. MENON, J.)**

CERTIFICATE

Certified to be true and correct copy of the original signed  
Judgment/Order.