

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 724 OF 1993

Chabu Bhalchandra Kale	..	Petitioner
vs.		
Mahadev Ganpat Deshmukh, heirs of Respondent No. 1		
Popat M. Deshmukh & Ors.	..	Respondents

Mr. Ajay Joshi for Petitioner.
Mr. P. M. Arjunwadkar for Respondent No. 1A to 1-I, 2 and 5 to 13.
Mr. A. R. Metkari – AGP for Respondent No. 3.
Mr. Ashok Misal for Respondent Nos. 4A to 4C.

CORAM : M. S. SONAK, J.
DATE : 06 FEBRUARY, 2015

P.C. :-

1] This petition takes exception to the judgment and order dated 16 October 1991 made by the Maharashtra Revenue Tribunal (MRT) in Tenancy Revision Petition No. 256 of 1990 instituted by the respondent nos. 1 and 2 (“Deshmukhs”).

(2) The brief facts, necessary to adjudicate the issues which arise in this petition are as follows:

(A) This petition concerns property bearing Gat Nos. 486 and 487 at Pandharpur (“said property”);

(B) In the survey records pertaining to the said property, the following entries appear :

(i) Landlord – respondent nos. 1 and 2 or the predecessors in title of the respondent nos. 1 and 2 (Deshmukhs);

(ii) Tenant-Anant Londhe – respondent no. 4, now represented by his legal heirs (“Londhe”);

(iii) Kabjedar – Bhalchandra Kale, petitioner, now represented by his legal heirs (“Kale”).

(C) Some time in the year 1986, Londhe applied to the Additional Tahsildar, Pandharpur, under Section 15 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (“said Act”) for the surrender of his tenancy in the said property in favour of the Landlords – Deshmukhs. This proceedings came to be numbered as Tenancy Case No. 1 of 1986. To this proceedings, Bhalchandra Kale was not even impleaded as respondent.

(D) The Additional Tahsildar, by order dated 11 April 1986, not only accepted the surrender by Anant Londhe in favour of Deshmukh, but further went on to observe that Kale is cultivating the said property unauthorizedly and without any right. The Additional Tahsildar ordered action under Section 84 of the said Act against Kale for evicting him from the said property.

(E) The Deshmukhs, thereafter instituted proceedings under Section 84 of the said Act before the Sub Divisional Officer, Pandharpur. In these proceedings, Kale was impleaded as a respondent.

(F) The Sub Divisional Officer (SDO) by judgment and order dated 29 May 1990 rejected the application under Section 84 of the said Act. Further, the SDO set aside the order dated 11 April 1986 made by the Additional Tahsildar in Tenancy Case No. 1 of 1986 and remanded the matter to the Additional Tahsildar for fresh inquiry in the light of observations made.

(G) The Deshmukhs, thereupon instituted Tenancy Revision Petition No. 256 of 1990 before the MRT, in which the impugned order dated 16 October 1991 came to be made, allowing the revision application, setting aside the SDO's order dated 29 May 1990 and directing the eviction of Kale under Section 84 of the said Act.

(H) Hence, the present petition by petitioner - Kale.

3] Mr. Joshi, the learned counsel for the petitioner pointed out that MRT in making the impugned order has specifically upheld the order dated 11 April 1986 made by the Additional Tahsildar by observing that the same was in no way incorrect. The Additional Tahsildar's order dated 11 April 1986, which held that the petitioner was in unauthorised occupation of the said property and ordered action under Section 84 for his eviction, was both without jurisdiction and made in breach of principles of natural justice and fair play. The impugned order, to the extent it has upheld the

Additional Tahsildar's order dated 11 April 1986, is therefore vitiated by error apparent on face of record. Mr. Joshi submitted that the petitioner, without prejudice to his rights and contentions and have no objection to that part of the Additional Tahsildar's order dated 11 April 1986, to the extent it purports to accept surrender of tenancy by Londhe in favour of Deshmukhs. However, the part of the Additional Tahsildar's order which declares the petitioner as an unauthorised occupant and requires his eviction therefrom is *ex facie* without jurisdiction and in breach of principles of natural justice and fair play.

4] Mr. Arjunwadkar, the learned counsel appearing for the Deshmukhs, on the other hand submitted that there is neither any error apparent on face of record nor any jurisdictional error in the making of the impugned order. The MRT has time and again noted that the petitioner, despite opportunities failed to produce any material on record with regard to his right qua the said property. In these circumstances, the MRT acted well within its jurisdiction in allowing the application under Section 84C and directing the eviction of the petitioner. Mr. Arjunwadkar, in defence of the Additional Collector's order dated 11 April 1986 submitted that the scope of proceedings under Section 15 of the said Act is to ensure that proposed surrender by a tenant is indeed voluntary and that

there is no element of exploitation involved. To such proceedings, only the landlord and tenant can be parties and there is no scope for intermeddling by any third party. Mr. Arjunwadkar submitted that therefore there was absolutely no infirmity in the non impleadment of Kale to the proceedings under Section 15 which came to be instituted before the Additional Tahsildar. Mr. Arjunwadkar pointed out that even though the Additional Tahsildar had ordered for action under Section 84 of the said Act, it is not on basis of the said order that the petitioner is sought to be evicted from the said property. For this purpose, the Deshmukhs instituted appropriate proceedings under Section 84 before the SDO. It is in these proceedings that the petitioner ought to have produced material in support of his right to remain in the said property. As the petitioner failed to do so, the MRT, by the impugned order has rightly ordered action under Section 84 of the said Act. Mr. Arjunwadkar also submitted that the order of the SDO, which has now been set aside by the MRT was itself vitiated by errors apparent on face of record. The SDO proceeded on the basis that it was sitting in appeal over the decision of the Additional Tahsildar, when in fact the proceedings initiated before the SDO were original proceedings under Section 84 of the said Act. The SDO accordingly had no jurisdiction either to set aside the Additional Tahsildar's order dated 11 April 1986 or to remand the matter to the Additional Tahsildar for the purposes of a

fresh decision in the matter. The SDO, further erred in observing that there was any procedural deficiency in the matter of record of surrender as between the tenant and the landlord and on the said ground remanding the matter to the Additional Tahsildar. In view of all such errors apparent on the face of the record of the SDO, the MRT was well justified in interfering with the order of the SDO. For all these reasons, Mr. Arjunwadkar submitted that this Court ought not to interfere with the impugned order made by the MRT.

5] Mr. Misal, the learned counsel for the respondent no. 4 i.e. the legal heirs of the original tenant Londhe adopted the submissions made by Mr. Arjunwadkar and submitted that the present petition may be dismissed.

6] Rival contentions now fall for my determination.

7] Although several contentions have been raised by the parties, in my judgment, it is not necessary to decide the same in the present proceedings. This is because the basic issue which is involved in this petition is whether MRT was right in upholding decision of the Additional Tahsildar dated 11 April 1986 in Tenancy Case No. 1 of 1986?

8] As noted earlier, in Tenancy Case No. 1 of 1986, which was instituted by Londhe (respondent no. 4) against Deshmukhs (respondent nos. 1 and 2), Kale (the petitioner) had not even been impleaded as a party. In fact, Mr. Arjunwadkar is right in his submission that normally in proceedings for surrender of tenancy instituted under Section 15 of the said Act, there is no scope for the impleadment of any third party. The corollary to the acceptance of this submission would also mean and imply that the Additional Tahsildar in dealing with an application for surrender of tenancy, cannot make any orders adverse to the interests of third parties. This is precisely what the Additional Tahsildar has done in the latter part of his order dated 11 April 1986.

9] The learned counsel for the petitioner, has made it clear that without prejudice to the rights and contentions of the petitioner, the petitioner can have no serious grievance on the aspect of record of surrender of tenancy by Londhe in favour of Deshmukh. Therefore, there is no question of going into the issue as to whether such surrender of tenancy was recorded in accordance with the provisions of Section 15 of the said Act or not. The grievance of the learned counsel for the petitioner is basically to the latter part of the order dated 11 April 1986 made by the Additional Tahsildar, which reads thus :

“ The landlord Shri Mahadeo Ganpati Deshmukh has also deposed on 17.3.86 and told the same story as stated by the applicant tenant and requested to take action against Shri Chhabu Bhalchandra Kale, who is cultivating the suit lands unauthorizedly by and without any right, u/s. 84 of the B.T. & A.L. Act.

It is seen from the extracts of V.P. VII – XII of the suit lands produced by the applicant tenant that Shri Chhabu Bhalchandra Kale of Karkamb is cultivating the suit lands unauthorizedly without any right.

In view of the position stated above I order that action u/s. 84 of the B.T. and A.L. Act against Shri Chhabu Bhalchandra Kale for evicting him from the suit lands be taken.

Parties and the Tahsildar Pandharpur should be infavoured accordingly.”

10] A perusal of the aforesaid portion of the Additional Tahsildar's order dated 11 April 1986 would indicate that the Additional Tahsildar has in the first place recorded a finding that the suit lands are unauthorizedly and without any right being cultivated by Kale i.e. the petitioner. Further, the Additional Tahsildar has proceeded to order action under Section 84 of the said Act, which provides for summary eviction of any person unauthorizedly occupying or wrongfully in possession of any land.

11] In the first place, the Additional Tahsildar could not have recorded a finding that the petitioner – Kale is unauthorizedly cultivating the said property, without the petitioner – Kale being a party to the proceedings. Such a finding, undoubtedly visits the petitioner with serious civil consequences. Accordingly, the

minimum that was expected was that such a finding is not made behind the back of the petitioner or any proceedings to which the petitioner was not even impleaded as a party. Secondly, the Additional Tahsildar has no jurisdiction whatsoever to make any order under Section 84 of the said Act. Such power of summary eviction under Section 84 of the said Act has been vested in the Collector. For both these reasons, it is clear that the Additional Tahsildar, in making the order dated 11 April 1986 and recording a finding that the petitioner – Kale was unauthorizedly cultivating the said property and ordered action under Section 84 of the said Act, has exceeded jurisdiction and acted in gross breach of principles of natural justice and fair play.

12] The MRT in the impugned order at paragraphs 6 and 8 has observed thus :

“6. I am of the view a direction given by the Addl. Tahsildar in his order dt. 11.4.98 that action u/s. 84 of the Tenancy Act be taken against present opponent for summarily evicting him was in no way incorrect.”

8. So on basis of the evidence on record it is clear that there is no oral or documentary proof on record to support the lawful and continuance of the present opponent on the suit land and therefore in my opinion the direction given by the Tahsildar by his order dt. 11.4.86 to summarily evict the present opponent from the suit land was in no way incorrect.”

13] The MRT has virtually upheld and approved the order of the

Additional Tahsildar dated 11 April 1986 to the extent it affects directly the rights of the petitioner. In my judgment, the order of the Additional Tahsildar dated 11 April 1986, to the extent it affects the rights of the petitioner was *ex facie* without jurisdiction and in breach of the principles of natural justice and fair play. To that extent therefore, the impugned order is also vitiated by error apparent on face of record. The MRT failed to note that the Additional Tahsildar's order, which it has approved, was made behind the back of the petitioner. The MRT also failed to note that the Additional Tahsildar lacked any power to exercise jurisdiction under Section 84 of the said Act and consequently there was no question of approving such an order made in excess of jurisdiction. On this short ground, the impugned order made by the MRT is required to be interfered with.

14] Setting aside of the impugned order dated 16 October 1991, would imply the revival of the SDO's order dated 29 May 1990. However, Mr. Arjunwadkar, the learned counsel for the Deshmukhs is right in his submission that the SDO proceeded with the matter before him under Section 84 of the said Act, as if the same were appeal against the order dated 11 April 1986 made by the Additional Tahsildar. Proceedings under Section 84 of the said Act are original proceedings to be instituted before a Collector. In this case, there is no dispute that powers of the Collector have been delegated to the

SDO. In such proceedings, there is no question of the SDO exercising any appellate jurisdiction over the orders made by the Additional Tahsildar. The SDO, was accordingly not entitled to set aside the Additional Tahsildar's order dated 11 April 1986 and to remand the matter to the Additional Tahsildar for fresh inquiry. Accordingly, notwithstanding the setting aside of the impugned order made by the MRT, it is necessary to interfere with and set aside the SDO's order dated 29 May 1990 as well.

15] Mr. Arjunwadkar however contended that the petitioner having failed to produce any material before the SDO or the MRT with regard to his right qua the said property, the final conclusion recorded by the MRT, which directs action under Section 84 against the petitioner, ought not to be interfered with. This contention cannot be accepted. In the first place, it cannot be said that the petitioner had produced no material whatsoever in support of his case qua the said property. The SDO did not advert to such material because the SDO proceeded on the basis that he was sitting in appeal over the decision of the Additional Tahsildar in the matter of order dated 11 April 1986. Even otherwise, since, the Deshmukhs were heavily relying upon the Additional Tahsildar's order dated 11 April 1986 and the findings therein, it was always open to the petitioner to contend before the SDO, that the said order and the findings therein ought

not to be made use of against the petitioner, simply because said order and the findings therein were made behind the back of the petitioner. Considering the scope of revision proceedings under Section 84 of the said Act, there was no question of the MRT, for the first time adverting into factual issues and making eviction order against the petitioner on the alleged ground that no material had been produced by the petitioner in support of his claim qua the said property.

16] Mr. Arjunwadkar placed reliance upon the decision of this Court in the case of *Ramchandra Akaram Patil vs. Parshuram Krishna Irle & Ors.*¹, which lays down that where no clinching material was produced by a party, such a party cannot urge a remand. The decision is not at all applicable to the fact situation of the present case. This is because the submission of Mr. Arjunwadkar proceeds on the basis that no material whatsoever was produced by the petitioner before the SDO. This is not the case. In any case, in the facts and circumstances of the present case, it was open for the petitioner to contend before the SDO that the decision of the Additional Tahsildar dated 11 April 1986 could not have been made use of against him both because the same was without jurisdiction and further the same was in breach of the provisions of natural justice and fair play. This position was tacitly accepted by the SDO.

1 2002 (4) ALL MR 7

17] Mr. Arjunwadkar thereafter relied upon the decision of this court in the cases of *Mahadeo @ Mahadu Haribhau Nigune vs. Indulal Ranchhoddas Shah & Ors.*² and *Rama Pratilba Gunjal vs. Vithal Tulshiram Gunjal* .³, in support of the proposition that it is for a party, who seeks any claim to a property to which the said Act applies, to apply and obtain declaration under Section 70B of the said Act, in respect of its rights. Obviously, there can be no quarrel about this proposition. However, such an issue does not even remotely arise in this petition. In any case, it is always open to the respondent nos. 1 and 2 to urge such a contention in the proceeding under Section 84, depending upon the defences of the petitioner.

18] Mr. Arjunwadkar also placed reliance upon the decision of the Supreme Court in the case of *Ramchandra Keshav Adke (Dead) by LRs. & Ors. vs. Govind Joti Chavare & Ors.*⁴ and *Dnyandeo Ganpat Jadhav vs. Madhav Vithal Bhaskar & Ors.*⁵, in the context of interpretation of the provisions contained in Section 15 of the said Act which deal with the aspect of surrender of tenancy. Once again the principles laid down therein admit of no quarrel whatsoever. In fact, based upon such decisions, Mr. Arjunwadkar submitted that in

2 2001 (1) ALL MR 222

3 1997 (1) ALL MR 259

4 (1973) 1 SCC 559

5 2005 (4) Mh. L. J.

proceedings for surrender, there is no scope for any third party as such proceedings shall to be confined to the landlord and the tenant only. Once again, there can be no dispute as to this proposition, although it is to a certain extent little broadly stated. However, as noted earlier, the corollary of this proposition is that the Tahsildar dealing with an application for surrender under Section 15 of the said Act, cannot in such a situation make any adverse orders against third parties as well.

19] Accordingly, it would be appropriate if the impugned order dated 16 October 1991 made by the MRT and order dated 29 May 1990 made by the SDO are set aside. It would be appropriate if the proceedings are remanded to the SDO in order to decide application made by the respondent nos. 1 and 2 on 19 August 1988 invoking the provisions of Section 84 of the said Act, afresh and in accordance with law. In such proceedings, the SDO shall afford opportunity both to the petitioner as well as the respondents and thereafter decide the issue in accordance with law. However, it is made clear that the SDO shall completely ignore the decision of the Additional Tahsildar dated 11 April 1986, to the extent it records that the petitioner is cultivating the said property unauthorizedly or without any right or the factum that the Additional Tahsildar had himself made an order under Section 84 of the said Act. It is open to

the SDO to independently assess the matter and decide the same in accordance with law.

20] Taking into consideration the fact that considerable time has passed since the making of application under Section 84 of the said Act, it is directed that the SDO shall dispose of the proceedings as expeditiously as possible and in any case within a period of one year from today. For this purpose, the parties to appear before the SDO on 23 February 2015 at 11.00 a.m. along with an authenticated copy of this order.

21] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

22] All parties to act on the basis of an authenticated copy of this order.

23] At this stage, the learned counsel for the respondent nos. 1 and 2 requests that the proceedings before the SDO on remand may not be commenced for a period of twelve weeks from today as the respondents 1 and 2 seek recourse against this judgment and before before the Hon'ble Supreme Court. As no prejudice whatsoever is likely to occur to the petitioner, if such a request is

granted, there is no reason to decline the same. Accordingly the proceedings before the SDO on remand shall not commence for a period of at least twelve weeks from today and shall abide by any orders which may be made by the Hon'ble Supreme Court of India in the meanwhile. In view of this, it shall be for the SDO to issue notices to the parties for appearance depending upon the outcome of the proceedings before the Hon'ble Supreme Court of India.

(M. S. SONAK, J.)

Chandka