

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1297 OF 1997
WITH
CIVIL APPLICATION NO. 1775 OF 2014

Pandu Dadu Chile
since deceased through his
L.Rs. Dattatraya D. Chile & Ors. .. Petitioners
vs.
Sarjerao Keraba Gaikwad & Ors. .. Respondents

Mrs. Anjali N. Helekar for Petitioners.
Mr. P. M. Arjunwadkar for Respondent Nos. 1 to 3.
Ms. Gauri Raghuwanshi h/f. Ms Suhasini Mutalik for Respondent
Nos. 10B to 10D.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 21 November 2015

Date of Pronouncing the Judgment : 27 November 2015

JUDGMENT :-

1] This petition challenges judgment and order dated 19 November 1996 made by the Maharashtra Revenue Tribunal (MRT) in Tenancy Revision Application No. 10 of 1996. By the impugned order, the MRT, has set aside the orders dated 24 April 1994 and 20 September 1995 made by the Tahsildar and Sub Divisional Officer (SDO) directing the restoration of possession of the suit property to the petitioners.

2] This petition concerns the northern half portion of the property bearing Gat No. 994 Mouje Devale, Panhala, Kolhapur (suit property). The entire property i.e. Gat No. 994 originally belonged to Shriram Shankar Anekar - Respondent No. 9. The northern half portion of this property was leased to the predecessor in title of the Petitioners. The said Anekar instituted Tenancy Case No. 142 of 1957-1958 under Section 31 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (said Act) claiming possession of the suit property.

3] By order dated 10 May 1958, the said suit was decreed and the possession of the suit property was restored to the Respondent No. 9 on 10 August 1974. Upto this stage, there is no serious dispute as to facts between the parties. However, it is the case of the Petitioners that though possession of the suit property was restored to the Respondent No. 9 on 10 August 1974, the Respondent No. 9 never cultivated the suit property, but rather, for the period between 1974 and 1982, it is the Petitioners who were cultivating the suit property. It is further the case of the Petitioners that in or about the year 1982, the Respondent No. 9 placed Respondent Nos. 1, 2 and 3 in possession of the suit property, for purposes of cultivation. Thereafter, by conveyance dated 19 January 1993, the Respondent No. 9 sold and transferred the suit

property in favour of the Respondent Nos. 1 to 4, even though, the said Respondents were not agriculturists.

4] In the year 1993, the Petitioners instituted Tenancy Case No. 5 of 1993 before the Agricultural Lands Tribunal (ALT) & Additional Tahsildar, Panhala seeking restoration of the possession of the suit property to themselves. The grounds urged were that the Respondent No. 9 after obtaining possession of the suit property, in breach of the provisions contained in Sections 37 and 39 of the said Act, had failed to cultivate the suit property personally. Another ground urged was that the Respondent Nos. 1 to 4, to whom the suit property was sold vide Conveyance dated 19 January 1993, were not at all agriculturists and the sale was in breach of provisions contained in Sections 63 and 84 of the said Act. Breach of Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947, was also urged, though not substantiated.

5] The ALT & Additional Tahsildar by order dated 24 April 1994 upheld the Petitioners contentions and directed the restoration of the suit property to the Petitioners. The Respondent Nos. 1 to 4 instituted Tenancy Appeal No. 11 of 1995 before the Assistant Collector, Karvir Division, Kolhapur, which appeal was dismissed by order dated 20 September 1995. The Respondent Nos. 1 to 4

thereupon instituted a revision petition no. 10 of 1996 before the MRT, which was allowed by judgment and order dated 19 November 1996, thereby, setting aside the orders dated 24 April 1994 and 20 September 1995. Hence the present petition.

6] Mrs. Anjali Helekar, the learned counsel for the Petitioners has made the following submissions in support of this petition :

(A) That the MRT, in making the impugned order has exceeded the bounds of Revisional Jurisdiction prescribed under Section 76 of the said Act;

(B) That the material on record very clearly establishes that the Respondent No. 9 had failed to cultivate the suit property personally after having obtained possession of the same under Section 31 of the said Act. This constitutes breach of Section 37 and therefore, the Tahsildar was justified in restoring the possession of the suit property to the Petitioners upon an application under Section 39 of the said Act;

(C) The MRT has not even adverted to the issue of the Respondent Nos. 1 to 4 not being agriculturists. In terms of Section 63 of the said Act, there is a bar to transfer agricultural lands to non agriculturists. In any case, such sale is incompetent, where the same is effected without permission from the Collector. Such omission, clearly constitutes failure of exercise jurisdiction.

7] Mr. Arjunwadkar, the learned counsel for the Respondent Nos. 1 to 3 submitted that the petition as instituted is required to be dismissed, as the Petitioners have suppressed relevant and material particulars and documents in relation to the civil suits between the parties and the consent decrees obtained therein. In any case, Mr. Arjunwadkar submitted that the consent decrees in the suits make it clear that the possession of the suit property was restored to the Respondent No. 9 on 10 August 1974. It is the Respondent No. 9 who was in possession of the suit property from the said date. In the tenancy case no. 5 of 1993 instituted by the Petitioners, there was not even any assertion that the Petitioners were cultivating the suit property from 1974 to 1982. The so-called evidence, which is clearly beyond the pleadings was not required to be even considered by the Tahsildar. Mr. Arjunwadkar submitted that the Respondent Nos. 1 to 4 were agriculturists and the material in this regard has been duly considered by the Revisional Court. In any case, Mr. Arjunwadkar submitted that there is no power vested in the Tahsildar to entertain complaints about any alleged breach of the provisions contained in Section 63 of the said Act. Further, in terms of Section 84C of the said Act, even assuming that the transfer is invalid, there is no question of restoration of the suit property to the Petitioners. For all these reasons, Mr. Arjunwadkar

submitted that this petition is liable to be dismissed.

8] The rival contentions now fall for determination.

9] At this stage, although the petition need not be dismissed on the ground of suppression of material particulars, reference to such material particulars becomes necessary. There is really no dispute that the possession of the suit property was restored by the Petitioners to the Respondent No. 9 on 10 August 1974. This position was accepted by the Petitioners in Tenancy Case No. 5 of 1993. This position is also not disputed in the present petition. However, it is the case of the Petitioners that even though the possession of the suit property was restored to the Respondent No. 9 on 10 August 1974, it is the petitioners who were cultivating the suit property between the years 1974 and 1982. The onus of establishing this contention was obviously upon the Petitioners.

10] The record indicates that the Petitioners instituted Civil Suit No. 136 of 1982 in the Court of the Civil Judge, Junior Division, Panhala, *inter alia* against the Respondent Nos. 1, 2, 3 and 9 seeking a permanent injunction restraining the said parties from interfering with the Petitioners possession of the suit property. Record also indicates that the Respondent No. 9 instituted Regular

Civil Suit No. 138 of 1982 in the Court of Civil Judge, Junior Division Panhala, seeking permanent injunction against the Petitioners, in the matter of interference in the suit property. This was followed by yet another Regular Civil Suit No. 73 of 1985, instituted by the Respondent No. 9 against the Petitioners, once again seeking permanent injunction in the matter of interference with the suit property. Finally, the Respondent Nos. 1 to 4 instituted Civil Suit No. 108 of 1993 against the Petitioners seeking permanent injunction from interference with the suit property. The factum of such suits and the decrees therein was not disclosed by the Petitioners either at the stage of institution of Tenancy Case No. 5 of 1993, or for that matter in the present petition. The disclosure in this petition as necessary, because by the time the present petition was filed, there were consent decrees obtained in the said civil suits, which, to a great extent, belie the contentions raised in Tenancy Case No. 5 of 1993 and the contentions, which have now been asserted in this petition.

11] The Regular civil Suit No. 73 of 1985 which was instituted by the Respondent No. 9 against the Petitioners was disposed of in terms of consent decree dated 15 April 1990. Relying upon this consent decree, terms of compromise were recorded in Regular Civil Suit No. 136 of 1982 which had been instituted by the

Petitioners against the Respondent Nos. 1, 2, 3 and 9. Both the suits were accordingly disposed of in terms of the consent decrees specifically recorded in Regular Civil Suit No. 73 of 1985. The consent terms make it clear that the Petitioners were not to obstruct or interfere with the possession of the Respondent No. 9, in so far as the suit property is concerned. The consent decrees make it clear that there was no substance in the contentions of the Petitioners with regard to their alleged possession of the suit property between the year 1974 and 1982. In fact, in Tenancy case No. 5 of 1993 there were no pleadings that it is the Petitioners who were cultivating the suit property between the years 1974 and 1982. Therefore the statements made to this effect in the course of evidence, indeed travelled beyond the pleadings and were rightly excluded from the consideration by the MRT in making the impugned order.

12] Section 37 of the said Act provides that if the landlord takes possession of the land after termination of the tenancy under Section 31 and he fails to use it for any of the purposes specified in the notice given under Section 31 within one year from the date of which he took possession or ceases to use it at any time for any of the aforesaid purposes within twelve years from the date of which he took such possession, the landlord shall forthwith restore the

possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or as offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept offer within three months of the receipt thereof. If the landlord fails to restore possession of the land to the tenant, such landlord shall be liable to pay such compensation to the tenant as may be determined by the Tahsildar for the loss suffered by the tenant on account of eviction.

13] Section 39 of the said Act provides that if at any time tenant makes an application to the Mamlatdar and satisfies him that the landlord has failed to comply within a reasonable time with the provisions of Section 37, the tenant shall be entitled on the direction by the Mamlatdar to obtain immediate possession of the land and to such compensation as may be awarded by the Mamlatdar for any loss caused to the tenant by eviction and by failure on the part of the landlord to restore or give possession of the land to him as required by Section 37.

14] The provisions as aforesaid, are quite clear. Where a landlord has secured possession of the tenanted land after

termination of tenancy under Section 31 of the said Act, the landlord is bound to make use of the recovered land for any of the purposes specified in the notice given under Section 31 of the said Act. In case, the landlord, within one year from the date of recovery of possession fails to use the same or ceases to use the same within twelve years from the date of recovery of possession, the landlord is rendered liable to restore the possession to the erst while tenant and also pay such compensation to the tenant as may be determined by the Mamlatdar for the loss suffered by the tenant on account of eviction. Section 39 provides for the mode for enforcement of the provisions contained in Section 37 of the said Act.

15] In this case, the possession of the suit property was admittedly restored to the Respondent No. 9 – landlord on 10 August 1974. The application under Section 39 of the said Act came to be made by the Petitioners some time in April of 1993 i.e. after a period of almost nineteen years from the date of restoration of possession of the suit property to the landlord. Although, it is the case of the Petitioners that the Respondent No. 9 landlord failed to use the property for agricultural purposes between the years 1974 and 1982, there is absolutely no record of any such grievance made by the Petitioners during the said period. If the institution of Regular

Civil Suit No. 136 of 1982 by the Petitioners is to be regarded as such grievance, then, the effect of such grievance stands substantially neutralised by the consent decree obtained in the said suit on 15 April 1990, whereby the Petitioners agreed not to interfere with the possession of Respondent Nos. 1, 2, 3 and 9 in so far as the suit property is concerned. The transfer of the suit property by the Respondent No. 9 in favour of the Respondent Nos. 1 to 4 vide conveyance dated 19 January 1993, is admittedly beyond period of twelve years from the date the Respondent No. 9 secured possession of the suit property in terms of Section 31 of the said Act. Such transfer, as has been rightly held by the MRT, does not constitute breach of the provisions of Section 37 of the said Act.

16] The MRT whilst making the impugned order has virtually held that the Tahsildar's and Collector's orders were contrary to law and the said Authorities had failed to determine material issues of law. Therefore, there is no transgression of the revisional powers vested in the MRT in terms of Section 76 of the said Act.

17] In so far as the Petitioners third contention is concerned, it is true that the Tahsildar and the Additional Collector have recorded findings that the Respondent Nos. 1 to 4 were not agriculturists and therefore, the transfer of the suit property vide conveyance dated

19 January 1993 constitutes breach of Section 63 of the said Act. The MRT has not adverted to this issue.

18] Section 63 of the said Act provides that no sale of agricultural land shall be valid in favour of a person who is not an agriculturists unless the Collector or an officer authorized by the State Government in this behalf grants permission for said sale and upon such conditions as may be prescribed. Section 84 C of the said Act provides that where in respect of the transfer or acquisition of any land made on or after the commencement of the amending Act 1955, the Mamlatdar *suo moto* or on the application of any person interested in said land, has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of the said Act, the Mamlatdar shall issue notice and hold an enquiry as provided under Section 84 B and decide whether the transfer or acquisition is or is not invalid. If after holding said enquiry, the Mamlatdar comes to the conclusion that, the transfer or acquisition of land is invalid, he shall make an order declaring the transfer or acquisition to be invalid. Upon declaration made by the Mamlatdar, the land shall be deemed to vest in the State Government, free from all encumbrances, lawfully subsisting thereon on the date of such vesting, and shall be disposed of in the manner provided in sub section (4) of Section 84 C provides the

order on priority, in which, the Mamlatdar shall grant the land on new and impartable tenure and on payment of occupancy prices, equal to the reasonable price at the time under sub section (3) in the prescribed manner.

19] In the present case, Ms Helekar is right in her submission that the MRT ought to have at least considered the issue of breach of Section 63 of the said Act. No useful purpose would however be served by remanding the matter to MRT at this stage. The Mamlatdar & Additional Collector were basically dealing with the Tenancy Case No. 5 of 1993, which had alleged breach of Section 37 of the said Act. The Tenancy Case No. 5 of 1993 was basically application under Section 39 of the said Act though incidentally reference was made to Section 63 and 84. As noted earlier, in the present case, there was no breach of the provisions contained in Section 37 of the said Act and therefore, the MRT rightly dismissed the Petitioners application under Section 39 of the said Act. On the aspect of breach of Section 63, the Tahsildar had no jurisdiction to straightway direct the restoration of possession of the suit property in favour of the Petitioners. That apart, in the absence of specific notice under Section 63(1) to Respondent Nos. 1, 2, 3 and 9, it was not proper on the part of the Tahsildar to make any findings on the aspect of breach of the provisions contained in Section 63 (1) of the

said Act. Mr. Arjunwadkar had submitted that the Respondent Nos. 1 to 4 were also agriculturists and material in this regard was placed before the Revisional Court.

20] Accordingly, interests of justice would be met if the matter is remanded to the Tahsildar to decide whether any action as called for under Section 63 of the said Act. The Tahsildar to issue notice to Respondent Nos. 1 to 4 and Respondent No. 9 and afford them with opportunity to place material on record to establish whether or not the transfer was made in favour of agriculturists.

21] The Petitioners can also be permitted to take part in such proceedings. Based upon the material on record, the Tahsildar to decide whether any case is made out for exercise of powers under Section 63 and 84 C of the said Act and thereafter, to act accordingly. The Tahsildar shall not permit himself to be influenced by the observations made in the orders dated 24 April 1994 and 20 September 1995, which in any case, stand set aside by the impugned order dated 19 November 1996. All contentions of all parties are therefore left open to be decided by the Tahsildar.

22] The impugned order dated 19 November 1996 made by the MRT is not interfered with, to the extent, it holds that there is no

breach of Section 37 of the said Act. However, the matter is remanded to the Tahsildar for determining whether there is any breach of Section 63 of the said Act. The parties to appear before the Tahsildar on 21 December 2015 at 3.00 p.m. and produce authenticated copy of this order. Rule is made partly absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka