

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3650 OF 2001**

Namdeo Anant Bhangе	)	
residing at Village Hole Kd.	)	
Tal Madha, District Solapur	)	..Petitioner

Vs.

1.Narayan Govind Manjare (deceased)	)	
though his heirs	)	
1A. Dattatray Narayan Manjare	)	
1B. Prakash Narayan Manjare	)	
1C. Shahaji Narayan Manjare	)	
1D. Mrs. Aduyanbai Narayan Manjare	)	
residing at Vhate, Tal Madha,	)	
Dist.Solapur	)	
1E. Mrs. Suman Kerba Kadam	)	
residing at Ambad, Taluka Madha	)	..Respondents

Mr. P. B. Shah for the Petitioner

Mr. M. A. Choudhari for the Respondent Nos.1A to 1D

CORAM : R. M. SAVANT, J.

DATE : 24th APRIL, 2015

ORAL JUDGMENT

1 The Writ Jurisdiction of this court is invoked against the order dated 4-12-1998 passed by the Maharashtra Revenue Tribunal (MRT) by which order, the Revision Application No.MRT-SH-II-4/1996(B-41/96) filed by the Petitioner, came to be dismissed and resultantly the order dated 30-12-1995 passed by the Sub Divisional Officer (SDO), Madha, in tenancy Appeal Nos.30 of 1994 and 31 of 1994, came to be confirmed.

2 The facts giving rise to the above Petition in a nutshell can be stated thus:

 The predecessor of the deceased Respondent one Narayan Govind Manjare claimed to be the tenant of the land bearing Gat Nos.243 and 343 in respect of area admeasurng 56 Ares and 2.74 Hectors, respectively. The said lands are situated at Village Hole, Taluka Madha, Dist Solapur. The deceased Respondent filed an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the said Act) The said application was filed on 18-9-1993 for a declaration that he is the tenant of the said suit lands. It was the case of the deceased Respondent that he is cultivating the suit lands since the year 1956 and that he is paying rent of Rs.50 to the Petitioner herein. It was his case that the Petitioner has illegally reversed the mutation entry which was standing in his name and substituted it by mutation entry No.246 in the other rights column of the 7/12 extract of the suit lands. In the light of the application which was filed by the Respondent, the Agricultural Lands Tribunal (ALT) and Tahsildar framed the following issues :

- (1) Whether the respondent is a landlord.
- (2) Whether the applicant is a tenant of the suit lands
- (3) Whether the lands are an agricultural lands

(4) Whether the applicant is cultivating the suit
lands as a tenant

In so far as the first issue is concerned, the ALT held that the Respondent is the landlord. In so far as the second issue is concerned i.e. Whether the Petitioner is a tenant of the suit lands, the said issue was also answered in the affirmative in favour of the Respondent. The third issue was also answered in affirmative holding that the said lands are agricultural lands. In so far as the fourth issue is concerned, the ALT held that pursuant to the order of possession passed in Tenancy Application No.340 of 1958 though other lands were handed over in possession to the Petitioner, the Respondent herein continued to be in possession of the land in respect of which he was a tenant. The ALT has further observed that the tenancy Avval Karkoon has ordered the removal of the present Petitioner from the suit lands and effect to the same was given vide Mutation Entry No.246. The ALT has observed that the said papers are included in the case papers of the present tenancy application on the request of the Petitioner herein.

3 What is significant to note is that the ALT has observed that notice has not been served on the present Respondent. The statement of the present Petitioner i.e. the Respondent in the said case was not attested and that notice has not been served on the Petitioner in respect of Mutation Entry No.246. The

ALT has further observed that the Petitioner herein has not led any independent evidence to show that the suit lands were not leased out to the Petitioner and that the lands are under his personal cultivation. The ALT however, curiously on the ground that the name of the Petitioner has been removed and since no Appeal has been preferred against the order passed in Case No. 84-C/84 proceeding or even against the Mutation Entry No.246, declared the Respondent herein as a trespasser. The ALT accordingly by its Judgment and Order dated 24-10-1994 disposed of the proceedings.

4 The Petitioner possibly aggrieved by the finding recorded by the ALT and the Respondent aggrieved by the finding recorded by the ALT that he is the trespasser, filed Appeals. The Respondent filed two Appeals being Tenancy Appeal NO.30 of 1994 and Tenancy Appeal No.31 of 1994. The Respondent therefore also filed an Appeal against the order passed in Case No.84-C/84 proceeding. The Appellate Authority i.e. SDO Madha, allowed the said Appeals by Judgment and Order dated 30-12-1995. The Appellate Authority held that the perusal of the record does not disclose that any Judgment having been delivered in case No.84-C/84 and only there is an intimation of the said decision. In so far as the statements that were recorded are concerned, the Appellate Authority held that the said statements were not recorded before any competent authority. The Appellate Authority therefore found serious irregularities in so far as the order dated 30-3-1984 is concerned.

The Appellate Authority held that since the ALT has passed an order on the basis that the Appeal has been passed against Mutation Entry No.246 and since the Mutation Entry No.246 is now challenged, both the Appeals were required to be allowed. The Appellate Authority accordingly allowed the Tenancy Appeal No.30 of 1994 and Tenancy Appeal No.31 of 1994. The order passed by the ALT was accordingly set aside and the Respondent was declared as tenant.

5 The Judgment and Order dated 30-12-1995 passed by the Appellate Authority was challenged by the Petitioner by filing a Revision application before the MRT. The MRT by the impugned order dated 4-12-1998 has dismissed the said Revision. The MRT confirmed the findings recorded by the courts below that the Respondent is in possession. The MRT also upheld the findings recorded by the Appellate Authority that the Respondent is a tenant. The MRT also confirmed the findings that the order in case No. 84-C/84 proceeding as also the Mutation Entry No.246 were made without notice to the Respondent and it is behind the back of the Respondent that the entry in his name was deleted. The MRT also took note of the fact that the Petitioner had challenged the order of the Tahsildar and ALT Madha by way of Tenancy Appeal No.29 of 1994 which was dismissed on 4-9-1996 and since the same was not challenged, the order has become final. In so far as the aspect of possession is concerned, the MRT held that since no remedy has been availed

by the Petitioner in any competent revenue court, the Petitioner has lost the right to ask for possession. The MRT also took note of the statements of the adjoining owners and the 7/12 extract which according to it irresistibly lead to a conclusion that the Respondent was a tenant who was in lawful possession. The MRT lastly observed that there is no record of any proceeding that the Petitioner has got possession by virtue of the order of any competent court. The MRT therefore did not find any reason to interfere with the order passed by the Appellate Authority and the ALT in the revisionary jurisdiction and accordingly dismissed the Revision by Judgment and Order dated 4-12-1998. As indicated above, it is the said Judgment and Order passed in Revision which is taken exception to by way of the above Petition.

6 At this stage, it is required to be noted that the Petitioner had also filed Regular Civil Suit No.1 of 1997 for perpetual injunction against the Respondent for restraining him from interfering with his possession. The said Suit came to be dismissed by the Trial Court by Judgment and Order dated 29-9-2001 i.e. Judgment of the Learned Joint Civil Judge Junior Division, Madha. According to the Learned Counsel appearing for the Respondent the matter was not carried further. The Learned Counsel for the Petitioner sought to dispute the said position. However he has not produced any order to show that the proceeding are pending in any higher Court. It is further required to be noted that 32G proceedings were adopted by the Respondent. The Tahsildar by

his order dated 25-1-2006, allowed the said proceeding and 32G declaration came to be issued in favour of the Respondent. The Petitioner carried the matter by way of an Appeal before the SDO. The SDO by order dated 26-3-2007 dismissed the Appeal. It seems that thereafter the Respondent has paid the purchase price and 32M certificate has been issued in his favour on 16-10-2007.

7 The Learned Counsel for the Respondent has tendered a compilation of the aforesaid documents and submitted it to this Court at the time of the hearing of the above Petition.

8 The principal contention urged by the Learned Counsel appearing for the Petitioner is that the authorities below as well as the MRT have not taken into consideration the order passed in application No.340 of 1958. The Learned Counsel would contend that once there is an order of possession in favour of the landlord, the tenant i.e. the Respondent could not make an application under Section 70(b) of the said Act. The Learned Counsel would contend that the application in question which was filed in the year 1993, was filed without disclosing the fact that the order was already passed for possession in the said Tenancy Application No.340 of 1958. The Learned Counsel would also question the finding recorded by the authorities below as well as the MRT that the Respondent is in possession and that he is cultivating

the lands which has resulted in the declaration of he being a tenant issued in his favour. The Learned Counsel would therefore contend that the exercise of Writ Jurisdiction of this Court is warranted.

9 Per contra, the Learned Counsel appearing on behalf of the Respondent Mr. Choudhari would contend that though the ALT has declared the Respondent as a trespasser. If the order passed by the ALT is perused, the same discloses that all the findings are recorded in favour of the Respondent. The Learned Counsel would contend that the ALT on the basis of 7/12 extract since the year 1956 and 1957 and the statement of the adjoining land holders, has recorded a finding of fact that the Respondent is a tenant which finding has been confirmed by the SDO and thereafter by the MRT. The Learned Counsel would contend that the order passed in Tenancy Application No.340 of 1958 was not before the authorities below. The Learned Counsel would contend that a specific observation has been made by the Revisionary Authority that no notice was served on the Respondent in respect of the said proceedings and that serious irregularities were found in so far as the said proceedings are concerned and therefore the order would not impact the right of the Respondent to file an application under Section 70(b).

10 Having heard the Learned Counsel for the parties I have considered the rival contentions. The issue that arises for consideration is

whether the declaration of tenancy in favour of the Respondent is required to be interfered with in the Writ Jurisdiction of this Court under Article 227 of the Constitution of India. As indicated above, the Tahsildar has recorded a finding of fact as regards the possession of the Respondent and that he is a tenant which finding is based on the entries made in the 7/12 extract and the statement of the adjoining land holders. The said finding has been confirmed by the Appellate Authority i.e. SDO and thereafter in Revision by the MRT. The MRT has gone to observe that the deletion of the name of the Respondent was without notice to him and that the papers in the said Tenancy Application No.340 of 1958 were not before the authorities.

11 Since much store has been laid by the Learned Counsel for the Petitioner on the order passed in the Tenancy Application No.340 of 1958 by which, the Petitioner was to be put in possession, it would be necessary to consider the impact of the said order on the present proceedings. In so far as the said order is concerned, it is required to be noted that on the Petitioner's own showing it was passed in the year 1958. In the instant case, the application under Section 70(b) was filed by the Respondent in the year 1993 i.e. almost after a period of 35 years of the said order being passed. The ALT as the order passed by it discloses, recorded a finding that it is the Respondent who is in possession and that he was a tenant. Hence even assuming that an order of possession was passed in favour of the Petitioner it seems that the

said order remained only on paper and that the Respondent who was a tenant continued to be in possession of the lands in question. It is pertinent to note that the Petitioner has not adopted any proceedings for execution of the said order which avenue was open under Section 73 of the said Act or did not file any proceedings for recovery of possession. The conclusion that is therefore required to be drawn is that though it is claimed that an order of possession was passed in favour of the Petitioner, the said order only remained on paper and the Respondent herein continued to be in possession and continued to cultivate the land in question. The said fact is also fortified by the fact that the Petitioner chose to file a Suit being Regular Civil Suit No.1 of 1997 for perpetual injunction against the Respondent. The said Suit came to be dismissed and though the findings recorded by the Civil Court are not binding on the revenue authorities and vice-a-versa, it is required to be noted that in so far as possession is concerned, the Civil Court held that the Defendant in the said Suit i.e. the Respondent herein was in possession.

12 In my view, therefore the authorities below i.e. SDO and the MRT were right in issuing the declaration and confirming the same that the Respondent herein is a tenant of the suit lands. The order passed in the said Tenancy Application No.340 of 1958 therefore cannot impact the proceedings filed by the Petitioner seeking a declaration of being a tenant. The authorities below having recorded findings of fact, this Court would not like to disturb the

said findings in the exercise of its Writ Jurisdiction under Article 227 of the Constitution of India, as the view taken by the authorities below cannot be said to be a view which could not be taken in the facts and circumstances of the case. Even post passing of the impugned order a 32G order has been passed in favour of the Respondent and thereafter a 32M certificate has also been issued. In that view of the matter, no case for interdiction in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. Rule discharged with no order as to costs.

[R.M.SAVANT, J]