

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4418 OF 1996

Dinkar Laxman Shirke .. Petitioner
vs.
Smt. Sundarabai Hari Parit
(since deceased through her L.Rs.
1.a) Sulochana Suresh Nanavare
and anr.) and anr. .. Respondents

Mr. Rahul S. Kate for the Petitioner.
Mr. Abhijit P. Kulkarni a/w. Mr. S.G. Karandikar for Respondent
Nos.1a and 1b.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 23 November 2015.
Date of Pronouncing the Judgment : 10 December 2015.

JUDGMENT :-

1] This petition is directed against the following judgments and orders:

a] Judgment and order dated 25 November 1990 made by the Tahsildar, Baramati directing the Petitioner to pay rents in respect of suit property for five years, i.e., from 1984 to 1989 at the rate of Rs.200/- per annum;

b] Judgment and order dated 22 November 1993 made by the Sub-Divisional Officer (SDO), Baramati, ordering the eviction of the Petitioner from the suit property; and

c] Judgment and order dated 26 April 1996 made by the Maharashtra Revenue Tribunal, Pune (MRT) dismissing the Petitioner's revision application against the judgment and order dated 22 November 1993.

2] The Petitioner, since the year 1946, was admittedly agricultural tenant in respect of property ad-measuring 6 Acres and 37 Guntas against payment of annual rent of Rs.200/-. In the year 1962 or thereabouts, property to the extent of 4 Acres and 27 Guntas was surrendered by the Petitioner to the Respondents-landlord. The Petitioner continued as the tenant in respect of the balance portion, i.e., the suit property. However, there is no record as to precise rate of annual rent in respect of suit property post 1962.

3] There is no serious dispute that the suit property was leased for the purposes of cultivation of sugarcane. Therefore, in terms of Section 43A of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (said Act), the provisions contained in Section 32 to 32R (both inclusive) do not apply in respect of the tenancy to the suit property. The Respondents-landlord issued notice dated 6 February 1984 to

the Petitioner alleging defaults in the payment of rent for last 20 years and on the said ground, purported to terminate tenancy. Since, neither was the notice responded to nor any rents paid, the Respondents-landlord instituted Tenancy Case No. 1 of 1987 before the Tahasildar, seeking recovery of possession of the suit property from the Petitioner.

4] The Petitioner denied the allegation of default and also produced a rent receipt dated 1 February 1960 in relation to payment of annual lease rent of Rs.200/- to the Respondents-landlord. The Petitioner also contended that the annual lease rent of Rs.200/- was in respect of property ad-measuring 6 Acres and 37 Guntas. After the surrender/compromise of 1962, the Petitioner retained the suit property admeasuring 2 Acres and 10 Guntas and the annual lease rent was proportionately reduced. The Petitioner called upon the Tahasildar to determine the appropriate rent and offered to pay such rent, without prejudice to the defence that there was no default.

5] The Tahasildar has disposed of Tenancy Case No. 1 of 1987 vide judgment and order dated 25 November 1990. The Tahasildar,

relying upon rent receipt dated 1 February 1960 produced by the Petitioner has concluded that the annual lease rent for the suit property was Rs.200/-. No order for eviction/recovery of possession was made by the Tahasildar. However, the Tahasildar directed the Petitioner to pay annual lease rent of Rs.200/- for the period 1984 to 1989. The operative portion of the judgment and order dated 25 November 1990 reads thus:

ORDER

The rent of the suit land for the period of five years from 1984 to 1989 @ Rs.200/- p.a. totalling to Rs.1000/- shall be paid by the tenant to the landowner within three months from the date of the receipt of this order. In default thereof the same shall be viewed for termination Tenancy right.

Baramati.

Dt.25.11.90.

Sd/-

Tahsildar Baramati.

5] The Respondents-landlord did not appeal against the judgment and order dated 25 November 1990. The Petitioner, however, instituted Tenancy Appeal No. 38 of 1992 to the SDO being aggrieved by determination of annual lease rent at the rate of Rs.200/- per annum. It was the case of the Petitioner that annual lease rent at the rate of Rs.200/- was in respect of entire property ad-measuring 6 Acres and 37 Guntas. Whereas, post 1962, the Petitioner had retained tenancy in respect of suit property ad-

measuring only 2 Acres and 10 Guntas and annual lease rent, therefore, could never have been Rs.200/- per annum. The Petitioner also pointed out that the receipt upon which the Tahasildar had placed reliance was dated 1 February 1960, whereas, in terms of surrender/compromise of 1962, the Petitioner had surrendered tenancy rights to considerable portions of the property and chosen to retain the suit property admeasuring only 2 Acres and 10 Guntas.

6] The SDO, in its judgment and order dated 22 November 1993, not only refused to interfere with the Tahasildar's order dated 25 November 1990, but further directed the Petitioner to hand over the possession of the suit property to the Respondents- landlord, *inter alia*, on the ground that the Petitioner has not paid any rents to the Respondents-landlord, since the order dated 25 November 1990.

7] The Petitioner thereupon, instituted Tenancy Revision Application No. 8 of 1994 before the MRT. The same was dismissed of by the MRT vide judgment and order dated 26 April 1996. Hence, the present petition.

8] Mr. Kate, learned counsel for the Petitioner, has submitted that the Tahasildar, by his judgment and order dated 25 November 1990, had not ordered the eviction of the Petitioner. The Respondents-landlord had never appealed against the judgment and order dated 25 November 1990. In the appeal instituted by the Petitioner questioning the quantum of annual lease rent, therefore, the SDO could never have ordered the eviction of the Petitioner. The order made by the SDO and its confirmation by the MRT is clearly in excess of jurisdiction.

9] Mr. Kate further submitted that even determination of annual lease rent made by the Tahasildar at the rate of Rs.200/- per annum was vitiated by perversity. Admittedly, post 1962, the tenancy holding of the Petitioner was reduced from 6 Acres 37 Guntas to 2 Acres and 10 Guntas. Relying upon the receipt dated 1 February 1960 produced by the Petitioner, the Tahasildar could never have concluded that the annual lease rent for the reduced holding post 1962 also continued to be Rs.200/-. The SDO and MRT have not even adverted to this issue and there is clearly failure to exercise jurisdiction.

10] Mr. Kate finally submitted that in this case there has been no compliance with the provisions contained in Section 25 of the said Act. There is no clear evidence with regard to service of notice dated 6 February 1984. That apart, the notice dated 6 February 1984 had alleged defaults on the basis that annual lease rent was Rs.1000/-. The default alleged was in respect of over 20 years. Since alleged default period exceeds three years, there was requirement in terms of Section 25(2) of the said Act to furnish intimation/notice within a period of three months on each default. This was admittedly not done. Therefore, the proceedings for recovery of possession, i.e., Tenancy Case No. 1 of 1987 was not at all maintainable. Mr. Kate, without prejudice, submitted that neither the SDO nor the MRT granted the Petitioner opportunity of three months to clear any alleged arrears together with the costs of proceedings, in lieu of making any ejectment order. For all these reasons, Mr. Kate submitted that the impugned judgments and orders warrant interference under Article 227 of the Constitution of India.

11] Mr. S.G. Karandikar, learned counsel for Respondent Nos.1a and 1b- landlord, defended the impugned judgments and orders made by the Authorities under the said Act. Mr. Karandikar pointed

out that the Petitioner has throughout been irregular in the matter of payment of annual lease rent. There were defaults in the matter of payment of annual lease rent, even before this Court. That apart, Mr. Karandikar pointed out that the Tahasildar in his judgment and order dated 25 November 1990, upon determination of annual lease rent at the rate of RS.200/- per annum had granted three months time to the Petitioner to clear the same. Since the Petitioner failed to clear the same within the period of three months, the Appeal Court has acted well within the bounds of its jurisdiction in ordering the eviction of the Petitioner. The MRT very rightly refused to interfere with the judgment and order dated 22 November 1993 made by the SDO. Mr. Karandikar submitted that the provisions of Section 25(2) of the said Act do not apply to the facts and circumstances of the present case and accordingly, there was no legal necessity on the part of the Respondents-landlord to have issued notice or given intimation to the tenant within period of three months on each default. For all these reasons, Mr. Karandikar submitted that the Petitioner has made out no case for warranting interference with the impugned judgments and orders.

12] The rival contentions now fall for determination.

13] There is no serious dispute that the provisions of Section 32 to 32R of the said Act do not apply in respect of the suit property which was let out for the purposes of sugarcane cultivation. Section 43-A of the said Act, *inter alia*, provides certain provisions of said Act, including in particular Section 32 to 32R (both inclusive) do not apply to leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock. In view of inapplicability of the provisions contained in Section 32 to 32 R of the said Act , the Respondents- landlord had right to terminate the tenancy in respect of suit property, in case, suitable grounds warranting such termination existed and further, the requisite mode for termination stands complied with.

14] There is really no discussion in the impugned judgments and orders on the aspect of receipt of notice dated 6 February 1984, which was base for institution of Tenancy Case No. 1 of 1987 by the Respondents- landlord. The learned counsel for the Respondents- landlord were unable to demonstrate conclusively the factum of address and receipt of such notice. Neither was the learned counsel for the Petitioner able to demonstrate that such notice was indeed

not received by the Petitioner. However, since all the Authorities have proceeded on the basis that such notice was indeed addressed by the Respondents- landlord to the Petitioner, at this stage, it would be appropriate to proceed on the said basis.

15] The Notice dated 6 February 1984 alleged defaults in payment of annual lease rent for period of about 20 years. The notice alleged that the annual lease rent was Rs.1000/-. There is however, no material whatsoever produced by the Respondents-landlord in support of their case that the annual lease rent was indeed Rs.1000/-. The onus of establishing this aspect was upon the Respondents-landlord, particularly, as the admitted annual lease rent in respect of entire property ad-measuring 6 Acres and 37 Guntas was only Rs.200/-. The Tahasildar, in his judgment and order dated 25 November 1990, has recorded a finding that the annual lease rent in respect of suit property was Rs.200/-. Mr. Kate, learned counsel for the Petitioner, is right in his submission that such finding could not have been recorded on the basis of rent receipt dated 1 February 1960, as admittedly the tenancy holding of the Petitioner had reduced from 6 Acres 37 Guntas to 2 Acres and 10 Guntas in 1962.

16] There is no dispute that some time in the year 1948, the property admeasuring 6 Acres 37 Guntas was leased out by the Respondents-landlord to the Petitioner. There is also no dispute that pursuant to surrender/compromise of 1962, the Petitioner surrendered substantial portion of such property to the Respondents-landlord and retained the tenancy rights in respect of the suit property ad-measuring 2 Acres and 10 Guntas. The annual lease rent in respect of entire property ad-measuring 6 Acres 37 Guntas was Rs.200/- per annum. Consequent upon substantial reduction in the area, it was for the Respondents-landlord to establish that the annual lease rent continued to be Rs.200/- and that the same was not reduced as contended by the Petitioner. The Petitioner, no doubt, produced rent receipt dated 1 February 1960 indicating annul lease rent at the rate of Rs.200/-. However, the same was in the context of allegation of non-payment of any annual lease rent for over a considerable period. The receipt, which was admittedly dated 1 February 1960, could never have formed the basis for record of finding that the annual lease rent, even after 1962 continued to be Rs.200/-. Admittedly, post 1962, the area of leased property stood substantially reduced from 6 Acres 37 Guntas to 2 Acres 10 Guntas. Based upon the receipt in respect of lease property ad-measuring 6

Acres 37 Guntas, the Tahasildar was not justified in concluding that the annual lease rent in respect of suit property ad-measuring only 2 Acres and 10 Guntas post 1962, was also Rs.200/- per annum. The Appeal Court does not appear to have adverted to this issue at all. The Appeal Court has merely observed that the annual lease rent at the rate of Rs.200/- is '*since induction of tenancy till today*'. This is hardly a satisfactory manner to consider the serious issue raised by the Petitioner.

17] The Tahasildar, in his judgment and order dated 25 November 1990, had not really ordered eviction the Petitioner. The Tahasildar had issued a positive direction to the Petitioner to pay annual lease rent at the rate of Rs. 200/- for the years 1984 to 1989. Thereafter, the Tahasildar had merely observed that in case of default, the same “*shall be viewed for termination of tenancy right*”. Section 25 (1) of the said Act provides that where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceedings to eject the tenant, the Mamlatdar (Tahasildar) shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding within three months from the date of order, and if the tenant complies with such order,

the Mamlatdar shall, in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated.

18] Though after some delay, the Petitioner did appeal against the Tahasildar's judgment and order dated 25 November 1990 primarily on the ground that the determination of annual lease rent at the rate of Rs.200/- was vitiated by perversity. There was a serious dispute between the parties in the matter of determination precise annual lease rent and in such facts and circumstances, there was no question of recording any positive finding on the aspect of arrears and consequent defaults. The Appeal Court, i.e., SDO chose not to address itself on the issue of quantum of annual lease rent at all. Rather, the SDO proceeded on the basis that there is default on the part of the Petitioner, since, no rents were paid from the date of Tahasildar's judgment and order dated 25 November 1990 and on the said basis made an eviction order. The Respondents- landlord had not even appealed against the Tahasildar's order dated 25 November 1990. The SDO, however, proceeded to grant the Respondents- landlord an order for for restoration of possession in

the appeal instituted by the Petitioner questioning the quantum of annual lease rent. This is an exercise in excess of jurisdiction.

19] Even if the determination of annual lease rent at the rate of Rs.200/- made by the Tahsildar and confirmed by the SDO is to be sustained, then, in the facts and circumstances of the present case, there was no question of SDO, virtually for the first time, ordering restoration of the possession of the suit property to the Respondents-landlord. In terms of Section 25(1) of the said Act, in the first place, the Tahsildar has to determine that the termination of tenancy on ground of non-payment of rent is valid and case to said effect is indeed been made out. In a case, where there is a very serious dispute as to the quantum of rent payable, the Tahsildar is required to rule upon such dispute as, without such ruling, it may not be appropriate to conclude default in matter of payment of rent. In the present case, the Respondents-landlord had claimed that the annual lease rent was Rs.1000/- post 1962 and on the said basis alleged default in the payment of rent. Further, the Tahsildar, upon record of finding that the tenancy may have been validly terminated for non-payment of rent, is nevertheless required to call upon the tenant to tender to the landlord the rent in arrears together with the cost of

the proceeding within three months from the date of order, and if the tenant complies with such order, the Tahsildar shall, in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated.

20] The Tahsildar, in this case, no doubt determined that the annual lease rent was Rs.200/- and that there was default on the part of the tenant in the matter of payment of the same. As noted earlier, this determination of annual lease rent at the rate of Rs.200/-, is itself vitiated by perversity. That apart, this is not a case where Tahsildar, after record of default in the matter of compliance with direction for payment of arrears, directed ejectment of the tenant. In this case, though after some delay, the tenant appealed against the decision of the Tahsildar to SDO in the matter of determination of quantum of annual lease rent. Even assuming that the SDO was right in confirming the determination of annual lease rent by the Tahsildar, in the facts and circumstances of the present case, it was incumbent upon the SDO to have called upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding within a period of three months and only, upon

failure on the part of the tenant, ordered ejectment. The SDO, has exceeded jurisdiction by directly ordering the eviction of the tenant, and that too in proceedings instituted by the tenant questioning the determination of annual lease rent.

21] In this case, the allegation of the Respondents-landlord was that there was default in payment of rent for a period of about 20 years. The allegation has not really been substantiated, but if this be the allegation, the provisions of sub-section (2) of Section 25 of the said Act might apply. Sub-section (2) of Section 25 of the said Act, in terms provides that nothing in Section 25 shall apply to any tenant whose tenancy is terminated for non-payment of rent, if he has failed for any three years to pay rent and the landlord has given intimation to the tenant to that effect within a period of three months on each default. In this case, there is absolutely no material on record which establishes that the landlord had given intimation to the tenant in regard to any alleged defaults in payment of rent for any three years, within a period of three months on each default. The Authorities, have not even addressed themselves to this issue.

22] Therefore, upon cumulative consideration of all the aforesaid aspects, as also in particular, the scheme of provisions contained in Section 25 of the said Act, the impugned judgments and orders cannot be sustained. The same are consequently set aside and Rule is made absolute in terms of prayer clause (c). There shall, however, be no order as to costs.

(M.S. SONAK, J.)