

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3159 OF 1999

Vainataya Dattatraya Tulzapurkar	.. Petitioner
vs.	
Chander Raghu Chambhar & ors.	.. Respondents

Dr. V.V. Tulzapurkar, Senior Advocate a/w. Suneet Moholkar for the Petitioner.

Mr. P.N. Joshi a/w. S.M. Sabrad for Respondent No.1.

Ms Aparna Vhatkar, AGP for Respondent Nos.2,3 and 5.

Mr. P.S. Dani, Senior Advocate a/w. Vilas Tapkir for Respondent Nos.6 & 7.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 19 January 2015.

Date of Pronouncing the Judgment: 23 January 2015.

JUDGMENT .:-

1] The petitioner challenges the order dated 31 December 1993 made by the Tahsildar and order dated 2 January 1999 made by the Maharashtra Revenue Tribunal, Pune (MRT), which have the effect of declaring the respondent no. 1 as a tenant in respect of the suit land described hereafter.

2] The petitioner was the owner of agricultural land bearing Survey No.55, Gat No. 89/3 admeasuring 4 Acres, 34 & ½ Ares situated at Malagali, Taluka Mawal, Dist. Pune (suit land). The respondent No.1 made an application before the Tahsildar on 30 June 1993 for determination of purchase price under Section 32 G of

the Bombay Tenancy and Agricultural Lands Act, 1948 (said Act) in respect of suit land.

3] Both, the petitioner as well as respondent no. 1 made statements before the Tahsildar with regard to their respective claims. The petitioner stated that respondent no. 1 is an agricultural tenant in respect of a specified portion of the suit land admeasuring about One Acre and the remaining suit land is cultivated by the petitioner by engaging daily wage labourers.

4] The Tahsildar, by order dated 31 December 1993, proceeded to determine the purchase price in respect of the entire suit land. As the petitioner's contention that respondent no. 1 was a tenant only in respect of the portion of One Acre was neither taken cognizance of, nor adjudicated, the petitioner instituted an appeal before the Sub Divisional Officer (SDO), Pune, being tenancy appeal no. 16 of 1994. The SDO by order dated 4 January 1995 allowed the said appeal, set aside the Tahsildar's order dated 31 December 1993 and observed that in case respondent no. 1 claims to be a tenant then it is for him to prove the same under the relevant provisions of the said Act before the Tahsildar, Mawal.

5] The respondent no. 1, instituted tenancy revision application no. 9 of 1995 before the MRT impugning the SDO's order dated 4 January 1995. By order dated 2 January 199, MRT allowed the revision application, set aside SDO's order dated 4 January 1995 and confirmed Tahsildar's order dated 31 December 1993. Hence, the present petition.

6] This Court, on 3 September 1999 issued interim relief in terms of prayer clause (g) staying effect and operation of MRT's order dated 2 January 1999. During the pendency of this petition, respondent no. 1 transferred portions of the suit land in favour of respondent nos. 6 and 7 vide sale deed dated 14 February 2013. Accordingly, leave was granted to implead respondent nos. 6 and 7 as parties to the present petition and certain interim reliefs were granted as well.

7] Dr. Tulzapurkar, the learned senior counsel appearing for the petitioner submitted that both the Tahsildar and the MRT have not at all addressed themselves to the specific plea raised by the petitioner that respondent no. 1 was not the agricultural tenant in respect of the entire suit land and that the tenancy right of respondent no. 1 was restricted only to a specific portion thereof admeasuring about One Acre. Further, the learned senior counsel submitted that the impugned order made by the MRT is vitiated by error apparent on face of record, in as much as the 7/12 extracts, upon which the MRT has purported to rely upon have in fact been either not read by the MRT or clearly misread the same. For all these reasons, the learned senior counsel submitted that the impugned orders made by the Tahsildar and the MRT are required to be set aside.

8] Mr. Joshi, the learned counsel appearing for respondent no. 1 and Mr. Dani, the learned senior counsel appearing for respondent nos. 6 and 7 defended the impugned orders by contending that

findings of fact recorded therein were borne from the material on record and consequently warranted no interference. Mr. Joshi, in particular, adverted to the entries in 7/12 extract and submitted that the mode of cultivation recorded therein, made it clear that it is respondent no. 1 who was always actually cultivating the suit land, in his capacity as a tenant thereof.

9] Having heard the learned counsels for the parties and perused the record, in my judgment, the impugned orders made by the Tahsildar and the MRT are required to be set aside. This is because the vital issue as to whether or not the respondent no. 1 was a tenant in respect of the entire suit land has not been considered. Before the Tahsildar, the petitioner, when called upon, admitted tenancy of the respondent no. 1 with regard to specified portion admeasuring one Acre from out of the suit land. The Tahsildar however, in making the order dated 31 December 1993 proceeded on the basis that no such plea was ever raised and determined the purchase price in respect of the entire suit land. This was obviously improper. The MRT has also not given any serious consideration to the petitioner's specific plea that the respondent no. 1 was not the tenant in respect of the entire suit land but that the respondent no. 1 would be regarded as a tenant only of a specified portion of the suit land admeasuring one Acre. The MRT did make reference to 7/12 extracts in support of its order dated 2 January 1999. However, perusal of such extracts, at least *prima facie* indicate that the name of the respondent no. 1 was entered in the tenants' column qua property admeasuring one Acre and not the entire suit land. In respect of the balance, for the years 1953-54, 1954-55, 1955-56 and 1956-57, there are entires which indicate that

the lands were cultivated '*self through labour*'. This was the position upto the tiller's day i.e. 1 April 1957. Mr. Joshi's contention that the entry which indicates '*mode of cultivation*' in the 7/12 extracts is indicative of the respondent no.1 being in cultivation of the entire suit land, has also not been considered by the MRT in making the impugned order dated 2 January 1999. Thus the consideration of the entire matter by the MRT, cannot be said to be satisfactory. Relevant contentions and material have been ignored or in any case not adverted to in their proper perspective. A case is therefore made out to set aside the impugned order dated 2 January 1999 made by the MRT.

10] The SDO by its order dated 4 January 1995 had in fact remanded the matter for fresh consideration by the Tahsildar. This is evident from the tenor of the order dated 4 January 1995, even though the operative portion of the said order may be slightly ambiguous on this aspect. The perusal of the records would indicate that the Tahsildar, before making the order dated 31 December 1993, had only recorded the statements of the petitioner and the respondent no. 1. There is no record of any evidence as such having been lead by the contesting parties. Therefore, considering the controversy involved, it would be appropriate if both the contesting parties are afforded an opportunity to present their case effectively before the Tahsildar.

11] Accordingly, the orders dated 31 December 1993 and 2 January 1999 are quashed and set aside to the extent they purport to declare the respondent no. 1 as tenant in respect of the entire suit land.

However, the said orders are affirmed to the extent they declare the respondent no. 1 as a tenant in respect of specified portion of the suit land admeasuring One Acre. This is because even the petitioner has not disputed that the respondent no.1 is indeed a tenant in respect of specified portion of the suit land admeasuring One Acre. Similarly, the certificate of purchase issued under Section 32M of the said Act is not interfered with to the extent it applies to such specified portion of the land admeasuring One Acre. The Authorities, in the meanwhile may issue fresh certificate of purchase under Section 32M of the said Act, restricted to such portion of One Acre as aforesaid. Till such fresh certificate is issued, the certificate of purchase already issued, shall be deemed to be restricted to the such portion of One Acre as aforesaid. The issue as to whether the respondent no.1 is a tenant in respect of the portion of the suit land admeasuring 3 Acres and 34 ½ Ares as on 1 April 1957 is remanded to the Tahsildar for adjudication afresh and enquiry as contemplated by Section 70(b) of the said Act. For this purpose, the parties to appear before the Tahsildar on 5 March 2015 at 11 a.m. The Tahsildar is directed to dispose of the proceedings as expeditiously as possible and in any case on or before 31 July 2015. All parties to cooperate with the Tahsildar for such expeditious disposal.

12] As noted earlier, during the pendency of this petition the suit land has been purported to be transferred by sale dated 14 February 2013 to respondent nos. 6 and 7. Such sale shall be subject to the final outcome of proceedings hereby remanded to the Tahsildar. Further all parties to this petition including, in particular, respondent nos. 6 and 7 shall maintain status quo in respect of the suit land, till

the Tahsildar decides and disposes of the matter which has been remanded by this order.

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

14] The Registry is directed to remit the record and proceedings to the Tahsildar Mawal, Village Malavali, District Pune, at the earliest and in any case before 1 March 2015.

15] All parties to act on an authenticated copy of this order.

(M. S. SONAK, J.)