

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9318 OF 2014

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| 1. Shri. Piraji Bhujangrao Shelke |] |
| (Deceased through his legal heirs) |] |
| 1A. Jaysing Piraji Shelke, |] |
| Age 80 years, Occu:-Agriculturist |] |
| 2. Shri. Shahaji Piraji Shelke, |] |
| (Deceased through his legal heirs) |] |
| 2A. Shri. Vikas Shahaji Shelke, |] |
| Age 44 years, Occu:-Agriculturist, |] |
| 2B. Shri. Subhash Shahaji Shelke, |] |
| Age 42 years, Occu:-Agriculturist, |] |
| 2C. Smt. Minakshi Rangnath Shirsat, |] |
| Age 46 years, Occu:-Agriculturist |] |
| Nos.1A, 2A to 2C are residing at |] |
| Sadhana Society, Infront of Shriram |] |
| Institute, Solapur-Pune Road, |] |
| Hadapsar, Pune 411 028. |] |
| 3. Shri. Narsingh Piraji Shelke, |] |
| Age 73 years, Occu:-Agriculturist, |] |
| 4. Shri. Parshuram Piraji Shelke, |] |
| Age 71 years, Occu:-Agriculturist, |] |
| 5. Smt. Shantabai Bhausahab Nandkhile, |] |
| (Deceased through her heirs) |] |
| 5A Shri. Shivaji @ Balu Bhausahab Nandkhile, |] |
| Age 53 years, Occu:-Agriculturist, |] |
| 5B. Shri. Chaba Bhausahab Nandkhile, |] |
| Age 53 years, Occu:-Agriculturist, |] |
| 5C Smt. Sushila Shivaji Hinge, |] |

Age 60 years, Occu:-Household,	]
Nos.6A to 6C are residing at	]
Kedgaon, Taluka Daund, District Pune.	]
6. Smt. Ratan @ Sushila Maruti Shitole,	]
Age 59 years, Occu:-Household,	]
R/at- Kolwadi, Taluka Haveli,	]
District Pune.	]
7. Smt. Malan Namdeo Dhamdhere,	]
R/at- Kolwadi, Taluka Haveli,	]
District Pune.	]
8. Shri. Krishnarao Piraji Shelke,	]
(Deceased through legal heirs)	]
8A. Shri. Sachin Krishnarao Shelke,	]
Age 35 years, Occu:-Agriculture,	]
R/at- Hadapsar, Pune.	]
8B. Shri. Amit Krishnarao Shelke,	]
Age 32 years, Occu:-Agriculture,	]
R/at- Hadapsar, Pune.	]
All through Power of Attorney Holders	]
Shri. Vikas Shahaji Shelke and	]
Shri. Suhas Parshuram Shelke	]
Age-Adult, Occ:-Agriculturist,	]
R/at- Kedgaon, Taluka Daund,	]
District Pune.	].. Petitioners

Versus

Mr. Shaikh Abdul Hamid Rehman,	]
R/at- C-8, Tatya Tope Society, Wanwadi,	]
Pune 411 048.	].. Respondent

Shri. D. S. Patil, for the Petitioners.

Shri. P. B. Shah, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 14th AUGUST, 2015

ORAL JUDGMENT

1. Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the judgment and order dated 14.12.2005 passed by the Learned Member of the Maharashtra Revenue Tribunal, Pune (for short “the MRT”), by which order the Revision Application filed by the Petitioners came to be dismissed and it was directed that the possession of the land in question be restored to the Respondent under Section 32P of the Bombay Tenancy & Agricultural Lands Act, 1948 (for short “the said Act”).

3. It is not necessary to burden this order with unnecessary details having regard to the nature of the final order to be passed. Suffice it to state that the Petitioners are the heirs of one Shri. Piraji Bhujangrao Shelke (“Piraji” for short) who was the protected tenant of the land bearing Survey No.262 (Gat No.664) situated at Kedgaon, Taluka Daund, District Pune. It appears that though the proceedings under Section 32(G)

of the said Act were required to be initiated the then Mamletdar passed an order holding that the said Piraji is not entitled to purchase the tenanted land and that the same would be disposed of by initiating the proceedings under Section 32(P). It is the case of the Petitioners that the said Piraji was the protected tenant in respect of the half portion of the land bearing the said Survey No.262. However, without initiating the proceedings under Section 32(G) the then Mamletdar initiated the proceedings under Section 32(O) which was not permissible.

4. The tenant Piraji aggrieved by the communication dated 14.07.1963 of the Mamletdar filed Tenancy Appeal No.173 of 1963 before the Collector, Pune. The Additional Collector who tried the said proceedings was pleased to stay the execution of the order passed in the proceedings initiated under Section 32(O) and thereafter by order dated 24.09.1963 the Additional Collector allowed the said Appeal No.37 of 1967 and remanded the matter for fresh inquiry under Section 32(G) of the said Act. It is after remand that the ALT and Mamletdar, Daund initiated the proceedings under Section 32(G) and declared the said Piraji as protected tenant in respect of half portion of the said survey number i.e. admeasuring 8 Hectors and 72 Ares and was further pleased to fix the purchase price of the said land by order dated 30.07.1964. The Respondent/landlord challenged the said order dated 30.07.1964 by filing

an Appeal being Tenancy Appeal No.183 of 1964. By order dated 24.10.1966 the Special Deputy Collector dismissed the said Appeal as abated. The Respondent/landlord challenged the same by filing a Revision before the MRT being Revision Application No.12 of 1967. The MRT by its order dated 11.08.1967 quashed and set aside the order of abatement and remanded the matter back to the Additional Collector, Pune. After remand, the Tenancy Appeal which was earlier numbered as 183 of 1964 was renumbered as 57 of 1967. The Additional Collector allowed the said Appeal by his order dated 30.04.1968 and remanded the matter back to the ALT, Daund for inquiry in respect of the actual holding of the said Piraji. The ALT, Daund on remand held that the said Piraji is entitled to purchase half portion i.e. 8 Hectors and 72 Ares. The ALT, Daund was further pleased to fix the purchase price of the said land. The Respondent/landlord challenged the said order by filing Tenancy Appeal No.37 of 1969. The Sub Divisional Officer, Baramati who heard the Appeal passed an order dated 04.11.1969 for fresh inquiry. On remand, the ALT, Daund heard the parties and passed an order dated 30.06.1982 holding that the said Piraji was the protected tenant and held that the said Piraji was entitled to purchase only 2 Hectors and 78 Ares i.e. (6 Acres and 8 Gunthas) out of the tenanted land admeasuring 8 Hectors and 72 Ares. Being aggrieved by the said order dated 30.06.1982, the said Piraji filed

Tenancy Appeal No.48 of 1982. The Assistant Collector, Baramati was pleased to allow the said Tenancy Appeal No.48 of 1982 and further held that the said Piraji is entitled to purchase half portion of land bearing Survey No.262 (Gat No.664). The Assistant Collector, Baramati further held that the ALT, Daund had wrongly calculated the entitlement of the said Piraji as the said Piraji had got his share out of his father's land and the same was recorded vide mutation entry No.4821. The Respondent/landlord aggrieved by the said order passed by the Assistant Collector, Baramati challenged the same by filing a Revision before the MRT. The Learned member of the MRT partly allowed the Appeal by judgment and order dated 11.03.1987 and was pleased to remand the matter to the Trial Court for consideration of the effect of the mutation entry No.4821 dated 01.09.1960. The Trial Court was directed to fix the purchase price after taking into consideration the effect of the mutation entry. In so far as the proceedings filed by the landlord under Sections 42(E) and 42(B), the same were directed to be separately heard so as to decide the entitlement of the landlord for restoration of the land.

5. After remand, the proceeding was numbered as 10 of 1993. The landlord in the said proceeding filed his written statement, wherein he admitted that the said Piraji was the tenant in the said land. The ALT on remand was pleased to declare that the said Piraji was the protected

tenant and that the legal heirs of the said Piraji were entitled to purchase entire half share admeasuring 21 Acres and 22 Gunthas from out of land bearing Survey No.262 (Gat No.664). The ALT, Daund further recorded a finding on the verification of the record i.e. mutation entry No.4821 that the tenant has received the land admeasuring 14 Acres and 11 Gunthas from his father, whereas as per the revenue record the tenant has purchased the land admeasuring 11 Acres and 35 Gunthas. Hence, the total holding of tenant was recorded as 26 Acres and 16 Gunthas excluding the tenanted suit land admeasuring 21 Acres and 22 Gunthas. The ALT, Daund therefore, held that the tenant was entitled to purchase the entire tenanted land. The Respondent/landlord aggrieved by the said order dated 06.10.1987 filed Tenancy Appeal No.23 of 1997 before the Sub Divisional Officer, Baramati. The Sub Divisional Officer, Baramati by his order dated 21.12.1999 partly allowed the Appeal and remanded the matter back to the ALT for fresh consideration. In the said case, the landlord has filed his affidavit thereby accepting the position that the said Piraji and his family was tenant in the suit land. The ALT by its order dated 07.01.2002 was pleased to held that Piraji was the protected tenant and that he was entitled to purchase the tenanted land in its entirety. The landlord aggrieved by the order dated 07.01.2002 passed by the ALT filed Tenancy Appeal No.5 of 2002 before the Sub Divisional Officer, Baramati.

In the said Appeal, the challenge was restricted to the holding of the said Piraji. After hearing arguments of the parties, the Sub Divisional Officer, Baramati partly allowed the Appeal filed by the landlord holding that the tenant is entitled to purchase only 6 Acres and 38 Gunthas from out of the tenanted land and the remaining land shall be restored to the Government for its disposal as per the Rules. The Petitioners who are the heirs of the said Piraji, challenged the order dated 24.10.2005 by filing Tenancy Revision No.197 of 2005 before the MRT, Pune. After hearing the parties, the Divisional Commissioner was pleased to grant interim stay to the execution of the order passed by the Sub Divisional Officer. It is after hearing the parties that the instant judgment and order dated 21.07.2014 was passed by the Learned Member of the MRT. The Learned member of the MRT has recorded a finding that the said Piraji was never protected tenant of the suit land. The Learned Member has further issued a direction to restore the possession of the land to the landlord under Section 32(P) of the said Act. As indicated above, the said order dated 21.07.2014 passed by the Learned Member of the MRT which is taken exception to by way of the above Petition.

6. The principal contention of the Learned Counsel for the Petitioners is that in a Revision filed by the Petitioners, the MRT could not have issued the directions that it has issued and could not have set aside

the entitlement of the Petitioners to the area granted by the Sub Divisional Officer in Appeal. It is further the submission of the Learned Counsel for the Petitioners that the Learned Member of the MRT has erroneously come to conclusion that the said Piraji was never a protected tenant when the said fact was never disputed by the landlord and the only dispute was to the extent of the holding of the said Piraji.

7. Per contra, the Learned Counsel Shri. P. B. Shah appearing for the Respondent/landlord sought to justify the impugned order on the ground that it is the Respondent/landlord who had initiated the proceedings and therefore, the MRT was entitled to go into the aspect of the holding of the parties as also direct the restoration of possession to the Respondent/landlord. This was the principal contention urged on behalf of the Respondent/landlord.

8. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The facts as disclosed above indicate that the dispute between the Petitioners who are the heirs of the tenant Piraji and the Respondent/landlord has had a chequered history. It is on as many as three occasions that the matter was remanded back to the ALT and Tahsildar for consideration of the aspect as to whether the said Piraji was a tenant and as regards the area to which he was entitled to for a

declaration as a protected tenant. The instant Tenancy Revision Application No.197 of 2005 was filed by the Petitioners herein challenging the order dated 24.10.2005 passed by the Sub Divisional Officer, Baramati, thereby holding that the tenant is entitled to purchase only 6 Acres and 38 Gunthas from out of tenanted land. The Respondent/landlord had not questioned the said order dated 24.10.2005 passed by the Sub Divisional Officer, Baramati. The Petitioners had challenged the said order passed by the Sub Divisional Officer, Baramati, being dissatisfied by the fact that the Sub Divisional Officer, Baramati had held that the Petitioners were entitled to only 6 Acres and 38 Gunthas, when it is the case of the Petitioners they were entitled to 21 Acres and 22 Gunthas i.e. 8 Hectors and 72 Ares. There was no dispute about the status of the said Piraji as the said fact of Piraji being a protected tenant was accepted by the Respondent/landlord in his written statement which was filed by him in the proceedings. However, the Tribunal has erroneously delved into the said aspect as to whether the said Piraji was a tenant and held that the Petitioners were not entitled to purchase the land as the purchase had become ineffective. Since it was the Petitioners who had filed the Revision Application and not the Respondent/landlord, the inquiry was to be restricted to only whether the Petitioners were entitled to the larger area i.e. 21 Acres and 22 Gunthas or the Petitioners were to be restricted only 6 Acres and 38

Gunthas. However, the Tribunal in a Revision filed by the Petitioners has set aside the entitlement of the Petitioners which was recognized by the Appellate Authority i.e. Sub Divisional Officer, Baramati. How such an order could have been passed against the party who had approached the Tribunal being dissatisfied by the order passed by the Appellate Authority i.e. the Sub Divisional Officer, therefore, begs an answer. The Tribunal has further compounded the matter by directing that the possession of the entire land is to be restored to the Respondent/landlord under Section 32(P). How such a relief could be granted to the landlord in a proceeding filed by the Petitioners also begs an answer. In my view, the Tribunal had exceeded its jurisdiction in granting said the relief to the landlord when the proceedings in question were restricted to the holding of the tenant and not the entitlement of the landlord to the restoration of the possession. In my view, therefore, the impugned order dated 21.07.2014 passed by the Learned Member of the MRT is required to be quashed and set side and is accordingly quashed and set aside. The matter is required to be relegated back to the MRT for a de-novo consideration of the Revision Application in terms of the observations made in the instant order. The MRT is directed to restrict itself as regards entitlement of the Petitioners and not enter into any inquiry as to whether the ancestor of the Petitioners the said Piraji was protected tenant or the aspect of restoration

of possession to the Respondent/landlord.

9. Needless to state that on remand, the proceedings would be decided on their own merits and in accordance with law however subject to the observations made in the instant order. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs. Parties to appear before the MRT on 25.08.2015. The MRT to decide the Revision Application latest by 30.11.2015.

[R.M. SAVANT, J]