

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2029 OF 1996

Bakaram Rama Gavit,
Resident of Bijgaon, Tal.Nawapur,
Dist.Dhule

PETITIONER

VERSUS

Rajendra Magan Sonar,
Resident of Nawapur,
Taluka Nawapur, Dist.Dhule.

RESPONDENT

Mr.Yogesh Bolkar h/f Mr.R.B.Raghuwanshi, Advocate for the petitioner.
Mr.J.R.Shah, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 21/04/2016

ORAL JUDGMENT :

1. This petition was lodged at Bombay on 09/07/1991. By order dated 11/07/1991, this petition was admitted and interim relief in terms of prayer clause "C" was granted, which reads as under :-

"That pending the hearing and final disposal of this petition, this Hon'ble Court be pleased to stay execution and implementation of the judgment and order dated 03/04/1991 passed by the learned Member of the Maharashtra Revenue Tribunal, Bombay, in Revision Application No.169 of 1888 at Exhibit E hereto and the judgment and order dated 5th September 1988 passed by the learned Collector of Dhule, in Tenancy Appeal No.1 of 1988 at Exhibit 'D' hereto ;"

2. The petitioner is aggrieved by the following orders :-

- [a] Order dated 16/02/1987 delivered by the ALT and Tahsildar, Nawapur, Dist.Dhule by which the Tenancy Case No.127/1986 instituted by the petitioner was dismissed and the application of the respondent seeking restoration of land was allowed.
- [b] Order dated 05/09/1988 delivered by the District Collector, Dhule in Tenancy Revision Case No.1/1988.
- [c] Order dated 03/04/1991 delivered by the learned Maharashtra Revenue Tribunal by which the Tenancy Revision No.169/1988 filed by the petitioner and the Tenancy Revision No.147/1988 filed by the respondent were adjudicated upon and the revision filed by the petitioner was dismissed and the revision filed by the respondent was allowed.

3. I have heard both the learned Advocates for the respective sides at length. The following aspects are undisputed :-

- [a] Rajendra Magan Sonar of Nandurbar is the original owner of land Gat No.8 admeasuring 2 hectares and 74 R and land Gat No.84 admeasuring 1 hectre and 27 R at village Bijgaon,Tal. Nawapur, Dist. Dhule.
- [b] Respondent Rajendra/original landlord moved an application dated 23/06/1978 to the Sub Divisional Officer, Nandurbar seeking permission to lease out his land in both the gat numbers as New Tenure (NT) land for a period of 5 years.
- [c] The said application was dealt with by the District Collector and by order dated 19/07/1978, the permission to lease out the land as new tenure land was granted on the following conditions :-

- (i) that the land shall be cultivated by the lessee personally ;
 - (ii) land shall revert to the original occupant and in case the lessee is continued on the land beyond the period of 5 years without prior approval of the Collector, the relation of lessee and original occupant will go under the Bombay Tenancy and Agricultural Lands Act, 1948 ;
- [d] The tillers date with regard to the Bombay Tenancy and Agricultural Lands Act (For short, B.T. and A.L. Act) is 01/04/1957.
 - [e] The respondent Rajendra Magan filed an application to the Sub Divisional Officer/Tahsildar on 07/02/1980 seeking cancellation of the lease and restoration of the land, prior to the tenure of 5 years coming to a close.
 - [f] The petitioner Bakaram Rama filed an application to the Sub Divisional Officer on 23/03/1980 seeking fixation of the price under under Section 32-O and 32-G of the B.T. and A.L. Act.
 - [g] By order dated 16/02/1987, the application filed by the petitioner was dismissed with costs and the application filed by the respondent was allowed. Possession of the land was restored to the original landlord, respondent herein.
 - [h] The petitioner moved a Tenancy Case No.4/1987 before the S.D.O. Nandurbar who allowed the appeal by order dated 04/07/1988 and set aside the order of the Tahsildar dated 16/02/1987.
 - [i] Being Aggrieved by the order dated 05/09/1988, the petitioner Bakaram Rama filed Tenancy Revision No.169/1988 before the learned M.R.T. Bombay.
 - [j] The respondent Rajendra Magan, being aggrieved by the order of the S.D.O. dated 04/07/1988, moved Tenancy Revision

No.147/1988 before the learned M.R.T. Bombay.

- [k] The District Collector, Dhule exercised his revisional powers u/s 76(A) of the B.T. and A.L. Act (presently the Maharashtra Tenancy and Agricultural Lands Act) and by order dated 05/09/1988, set aside the order of the S.D.O. dated 04/07/1988 and restored the order of the Tahsildar dated 16/02/1987.
- [l] By judgment dated 03/04/1991, the learned M.R.T. dismissed the revision filed by the petitioner and allowed the revision filed by the respondent.

4. The learned Advocate for the petitioner has put forth a two fold argument. Firstly, that after the 5 years tenure of the lease, as was granted by the District Collector on 19/07/1978, came to an end on 18/07/1983, the petitioner has continued to cultivate the lands at issue and is in possession of the lands even today. Therefore, unless eviction proceedings under the Maharashtra Land Revenue Code are not initiated, the petitioner cannot be evicted. Secondly, the District Collector could not have suo-motu exercised powers under section 76(A) for directing the restoration of the land to the respondent and setting aside the order dated 04/07/1988 passed by the S.D.O.

5. In addition to these submissions, he submits that he would acquire the right to seek fixation of the price of the land u/s 32-O

since if any tenancy is created after the tillers date, which is 01/04/1957 under the said act, by a landlord, the petitioner as a tenant cultivating the land personally would get a right to purchase the land from the landlord.

6. He further submits that the learned S.D.O. Nandurbar has rightly understood the provisions of Law and has therefore set aside the order passed by the Tahsildar dated 16/02/1987 and has rightly allowed the appeal filed by the petitioner. Though the Collector has passed the order of lease, same is not created by the Collector, but the said lease is created on the application dated 27/06/1978 filed by the respondent. This was rightly appreciated by the S.D.O. and therefore the order of the Tahsildar was rightly set aside.

7. He has made a serious grievance about the order passed by the District Collector dated 05/09/1988 by which the order of the Tahsildar has been restored and the order of the S.D.O. has been set aside. He contends that there was no occasion for the District Collector to pass any order in the absence of an appeal. He makes a similar grievance about the order passed by the learned M.R.T. He adds that notwithstanding the pending proceedings, he has been in possession of the lands at issue and therefore his possession may be

protected.

8. Mr.Shah, learned Advocate for the respondent submits that Section 32-O would not come into the picture since the factual matrix in this case is different. On an application made by the landlord, a lease was created and both the lands were given for cultivation to the petitioner as new tenure lands. No tenancy was created at that stage. Two conditions were imposed by the Collector while granting permission on 19/07/1978. Once the petitioner has accepted the said conditions on the basis of which he acquired the temporary right to cultivate the lands, he cannot go against the said conditions. Moreover, had he not been agreeable to the conditions imposed by the District Collector in the order dated 19/07/1978, he would not have acquired the lease rights to cultivate the said land. In short, the right to cultivate was created on conditions and the petitioner, therefore, could not go beyond these conditions.

9. He submits that the application filed by the respondent for seeking cancellation of the lease was no doubt prior to the expiry of the said 5 years period. Notwithstanding the same, the desire of the respondent/landlord that he did not want the lease to be continued, was made explicit by the application seeking cancellation. Even if

the said application was entertained and the authority would have come to a conclusion that the landlord does not desire the continuation of the lease, the said termination of the lease could have been made effective from the completion of the 5 years period. He, therefore, submits that the contention of the petitioner that he has continued on the land leased out without the permission of the Collector is unsustainable since the petitioner has continued in the possession of the land under fortuitous circumstances of the pending litigation which creates no rights or equities in the petition.

10. He submits that the District Collector has rightly exercised his powers u/s 76-A and considering the fact that the respondent / landlord did not desire the continuation of the lease, has rightly set aside the order of the S.D.O. dated 04/07/1988 which was apparently an erroneous order.

11. He further submits that the respondent had already tendered a tenancy revision bearing No.147/1988 before the learned M.A.T. and the petitioner came up with his subsequent tenancy revision bearing No.167/1988. He has drawn my attention to the conclusions arrived at by the learned M.A.T. from paragraph No.9 onwards and submits that the said conclusions do not call for any interference in the

supervisory and writ jurisdiction of this Court.

12. I have considered the submissions of the learned Advocates which have been reproduced hereinabove. The undisputed factors are apparent.

13. The learned District Collector as well as the learned M.R.T. has considered the aspect as to whether any right would be created in the petitioner in seeking fixation of the purchase price of the land on the ground of tenancy u/s 32-O. Both the said authorities have concluded that no such right would accrue to the petitioner u/s 32-O considering the fact that the lease was created under the sanction of the Collector for a period of 5 years. Within these 5 years, no right would have accrued to the petitioner.

14. The authorities have also relied upon the judgment of this Court in the matter of Keshav Vithal Mhatre Vs.Arvind Ranchhod Parekh, which was decided on 27/07/1972 and reported at 1972 (75) BLR 697. This Court has relied upon the judgment of the Hon'ble Supreme Court in the matter of Dahyalala Vs.Rasul, (1962) 65 BLR 328 SC, wherein it was concluded that when a lease granted comes to an end with the termination of the Management of the land, a

tenant who continues to remain on the land thereafter would be cultivating it unlawfully as a trespasser and he cannot therefore claim to be a deemed tenant.

15. Considering the above, I do not find that the impugned orders could be termed as being perverse or erroneous. Merely because a different view may have been possible, would not mean that the impugned orders are erroneous and call for any interference.

16. In the light of the above, this petition is devoid of merit and is, therefore, dismissed. Rule is discharged.

17. At this juncture, learned Advocate for the petitioner prays for staying this judgment for a period of 8 (eight) weeks. Learned Advocate for the respondent opposes the said request. Considering the fact that by the interim order dated 11/07/1991, the petitioner has been in possession of the lands at issue, this judgment shall not come into operation for a period of 4 (four) weeks from today subject to the condition that the petitioner or his representative or assignees shall not create any third party interest in the lands at issue.

(RAVINDRA V. GHUGE, J.)