

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9927 OF 2004

Shri Rama Babli Ugvekar
deceased through legal heirs
Smt. Yashoda Rama Ugvekar
& Ors. .. Petitioners
vs.
Girish Vinayak Abhyankar
(legal heirs) M. V. Abhyankar & Ors. .. Respondents

Mr. A. S. Khandeparkar with Mr. Rakesh Pathak i/b. Khandeparkar
& Associates for Petitioners.
Mr. Abhijit Kadam i/b. Mr. Sudhir Prabhu for Respondent Nos. 1c, 2,
3 and 6.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 26 April 2016

Date of Pronouncing the Judgment : 02 May 2016

JUDGMENT :

1] This petition is directed against the judgments and orders dated 30 July 1999 and 10 October 2001 made by the Special Land Acquisition Officer, Konkan Railway Project, Sindhudurg (SLAO) and the Maharashtra Revenue Tribunal (MRT), concurrently negating the petitioners claim of tenancy in respect of the property admeasuring approximately 1.62 Ha, bearing Survey no. 36, Hissa No. 2 of Village Aros, Tal : Sawantwadi (suit property).

2] The petitioners application under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) was in fact allowed by the Tahsildar, Sawantwadi, vide

judgment and order dated 31 March 1994, thereby declaring the petitioners as agricultural tenants in respect of the suit property. The SLAO, upon appeal instituted by the respondent no.1(c), 2, 3 and 6, who also claim to be agricultural tenants in respect of the suit property, has reversed the Tahsildar by the impugned judgment and order dated 30 July 1999. The revision petition instituted by the petitioners about MRT was also dismissed vide impugned judgment and order dated 10 October 2001. Hence, the present petition.

3] Mr. Khandeparkar, learned counsel for the petitioners has submitted that the SLAO and MRT have exceeded jurisdiction in interfering with the Tahsildar's well reasoned order dated 31 March 1994. Mr. Khandeparkar submitted that in the present case, the landlords had fully supported the case of the petitioners and even admitted the petitioners as agricultural tenants in respect of the suit property. That apart, the petitioners had produced rent receipts and even the name of the petitioners was recorded in the survey documents. The oral evidence also supported the petitioners claim to agricultural tenancy. In the light of all these facts and circumstances borne out from the record, both the SLAO and MRT clearly exceeded their jurisdiction in depriving the petitioners their status as agricultural tenants in respect of the suit property. Mr. Khandeparkar submitted that the findings of fact recorded by the

SLAO are perverse and the MRT failed to exercise jurisdiction vested in it, by not interfering with the SLAO's judgment and order dated 30 July 1999.

4] On the other hand, Mr. Kadam, learned counsel appearing for respondent nos. 1(c), 2, 3 and 6 submitted that it is these respondents who are the agricultural tenants in respect of the suit property. Mr. Kadam submitted that the material on record very clearly establishes that the petitioners have a structure in the suit property, about which, there is no dispute. Mr. Kadam however submitted that the petitioners taking advantage of the existence of said structure and the noting in the survey records corresponding to the said structure are trying to lay claim to agricultural tenancy in respect of the suit property. Mr. Kadam submitted that the SLAO and the MRT have very correctly appreciated the material on record and negated the claim of the petitioners. Mr. Kadam submitted that this Court, in the exercise of its supervisory jurisdiction under Article 227 of the Constitution of India may not interfere with the well reasoned decisions and the concurrent findings recorded by the SLAO and the MRT. For these reasons, Mr. Kadam submitted that this petition may be dismissed.

5] The respondents – landlords, though served, have not appeared in this petition.

6] The rival contentions now fall for determination.

7] At the outset it must be noted that in matters of this nature, the scope of interference in the exercise of supervisory jurisdiction is quite limited. This jurisdiction is to be exercised, not as a matter of routine, but only in appropriate cases in order to keep the subordinates courts within the bounds of their authority and not for correcting mere errors. In the exercise of its jurisdiction under Article 227 of the Constitution of India, this Court can set aside or reverse finding recorded by the subordinate court or a tribunal only in a case where there is no evidence or where no reasonable person could possible have come to the conclusion which the court or tribunal has come to.¹ In the exercise of such jurisdiction, the court cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principles of law and justice.²

8] In ***Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil***³, the Hon'ble Apex Court has held that the High Courts cannot at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution of India, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of

1 AIR 1954 SC 215 Waryam Singh vs. Amarnath

(1991) 3 SCC 141 Mani Nariman Daruwala vs. Phiroz N. Bhatena

2 (1995) 6 SCC 576 Laxmikant Revchand Bhojwani vs. Pratapsing Mohansingh Pardeshi

3 (2010) 8 SCC 329

this power, act as a court of appeal over the orders of courts or tribunal subordinate to it. The parameters of interference by High Courts in exercise of power of superintendence have been repeatedly laid down by this court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this court in **Waryam Singh** (supra), which have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

9] In a dispute arising under the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, the Hon'ble Supreme Court in the case of **Bandaru Satyanarayana vs. Imani Anasuya & Ors.**⁴ set aside the decision of the High Court which had interfered with the decisions of the courts and tribunals subordinates to it, by observing that the learned Single Judge of the High Court had overlooked the limited scope of supervisory jurisdiction vested in the High Court under Article 227 of the Constitution of India and ignored the law laid down in **Surya Dev Rai vs. Ram Chandra Rai**⁵ and **Shalini Shyam Shetty** (supra). At paragraphs 8, 9 and 10 the Hon'ble Supreme Court has observed thus :

"8. In our view, the order under challenge is liable to be set aside only on the ground that while deciding the revision filed by Respondent No. 1, the learned Single Judge overlooked the limited scope of the supervisory jurisdiction vested in the

4 (2011) 12 SCC 650

5 (2003) 6 SCC 675

High Court under Article 227 of the Constitution and ignored the law laid down in Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675 and Shalini Shyam Shetty and Anr. v. Rajendra Shankar Patil (2010) 8 SCC 329. In Surya Dev Rai v. Ram Chander Rai (supra), the Court considered the parameters for exercise of power by the High Court under Articles 226 and 227 of the Constitution and laid down various principles including the following:(SCC pp. 695-96, para 38)

“38. (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

* * *

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection

need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

9. In Shalini Shyam Shetty v. Rajendra Shankar Patil (supra), the Court again examined the scope of supervisory jurisdiction of the High Court under Article 227 of the Constitution and laid down several principles, Clauses (c),(d), (g)and (h) whereof are reproduced below:(SCC pp.347-48, para 49)

(c) The High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also

operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh v. Amarnath AIR 1954 SC 215 and the principles in Waryam Singh have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(g) Apart from the situations pointed in (e) and (f), the High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

10. In view of the law laid down in the above noted judgments, it must be held that the learned Single Judge committed a jurisdictional error by reversing the finding of fact recorded by the Tribunal that the Appellant was in cultivating possession of the suit land and had acquired the status of a statutory tenant”.

10] In matters of findings of fact, this Court in the exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India

does not sit in appeal over the concurrent findings of fact recorded by the court and the tribunal subordinate to it. Interference is permissible where there is misconstruction of certain vital documents or where the finding of fact is vitiated by perversity, in the sense that the same is based upon '*no evidence*', or where vital and relevant evidence has been totally over looked, or where the entire decision is based upon irrelevancies. In short, if the High Court comes to the conclusion that upon the materials placed on record it is not possible for a reasonable man to come to conclusion arrived at by the court or tribunal subordinate to it or where the court and the tribunal has failed to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, only then, the High Court will interfere with findings of fact recorded by the court and the tribunal subordinate to it⁶

11] Considering the limited scope of interference, in my judgment, the petitioners have failed to make out a case warranting interference with the impugned judgments and orders made by the SLAO and the MRT, recording concurrent findings of fact that the petitioners are not the agricultural tenants in respect of the suit property and that the rights of the petitioners are only restricted to the structure admittedly held by them in the suit property. Such

6 (2000) 7 SCC 522 Shama Prashant Raje vs. Ganpatrao & Ors.

concurrent findings of fact, cannot be said to be vitiated by any perversity. The conclusion recorded by the SLAO and the MRT, is substantially borne from the material on record and therefore, there is no case made out to interfere with the impugned judgments and orders in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

12] The circumstance that the landlords have supported the case of the petitioners, is no doubt relevant, but at the same time, the same is not conclusive. The survey records indicate the names of the respondents whom Mr. Kadam represents or their predecessors -in-title as agricultural tenants in respect of the suit property. The names of the petitioners or their predecessors-in-title finds place in survey record, but the same is in the context of the structure admittedly held by the petitioners. As against the names of the petitioners or their predecessors-in-title, there is significantly no reference to the area either occupied by them or under their cultivation. The rent receipts have been disbelieved by the two courts and cogent reasons have been assigned as to why such receipts cannot be accepted or acted upon.

13] The two courts have categorically held that the petitioners have admitted in their deposition that they have throughout been staying at Mumbai. The witness on behalf of the petitioners, in his

cross-examination admitted the position that from the age of 5 years he has been staying at Mumbai. There is no dispute that the respondents have been staying in or upon the said property. The material on record, including the survey documents suggest that it is the respondents, who have been cultivating the suit property. There is also record that said respondents had in fact initiated proceedings under the Tenancy Act seeking to affirm their status as deemed purchasers. However, such proceedings were ultimately dropped as the suit property was found to be pre- dominantly a cashew fruit tree plantation and consequently the provisions contained in section 32G of the Tenancy Act were inapplicable to the suit property. The SLAO and the MRT have appreciated, both the oral and documentary evidence on record and thereafter, disbelieved the case set up by the petitioners. This is not a case of either no evidence or exclusion of material and relevant evidence. This is also not a case where any irrelevancies have been taken into consideration by the two authorities. As noted earlier, in exercise of supervisory jurisdiction, this court cannot scan the material on record in order to re-appreciate the same. There is vital distinction between supervisory jurisdiction and appellate jurisdiction.

14] Therefore, upon cumulative consideration of the aforesaid facts and circumstances and bearing in mind the limited scope of jurisdiction under Article 227 of the Constitution of India, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka