

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 394 OF 2012**

Smt. Savitagauri J. Modi and ors. ... Petitioners
V/s.
Shri Rajendra Ganesh Kadam and ors.... Respondents

Mr. K.K. Malpathak with Mr.Lanke for the Petitioners.

Mr. Sudhir Prabhu for Respondent Nos.1 to 7.

Mrs. M.S.Bane, "B" panel Counsel for Respondent No.8.

CORAM : M.S. SONAK, J.

DATE : 21st MARCH, 2016.

ORAL JUDGMENT :-

1. This Petition had been disposed of by order dated 1st March, 2016. However, for the reasons separately recorded in the Review Petition No.41 of 2016, the order dated 1st March, 2016 has been recalled. Both the learned Counsel for the parties have been heard afresh in the matter.

2. The Petitioners-Landlords challenge the Judgment and order dated 19th October, 2011 made by the Maharashtra Revenue Tribunal (MRT), reversing the orders

made by the Tahsildar and the Sub-Divisional Officer (SDO) in their favour. Both the Tahsildar and the SDO had conquerrently held that the Petitioner landlords were entitled to the recovery of the possession of the suit property from the Respondents-Tenants, on the ground that the Respondent-Tenants had committed defaults in payment of rent and further committed acts which were destructive or permanently injurious to the suit property.

3. The MRT in its impugned judgment and order dated 19th October, 2011, relying upon the decision of this Court in the case of ***Rama Dattu Naikwade Vs. Govinda Bala Patil, 2003(3) Mah.L.J. 157*** has held that the provisions contained in Section 43(A) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) shall not apply to Lessee of lands granted to any individual but will apply only in case of Lessee of lands to any bodies or persons collectively. On these basis the MRT has held that the Petitioner landlords did not even have the right to institute proceeding seeking recovery of possession from the Respondent-Tenants.

4. The aforesaid reasoning as well as conclusion of the MRT is required to be set-aside because, in the meanwhile, the Hon'ble Supreme Court in the case of ***Govinda B. Patil (D) by Lrs. Vs. Ganpati R. Naikwade (D) by Lrs., 2013(9) SCALE-649***, has reversed the decision upon which reliance was placed by the MRT by holding that the interpretation with regard to the provisions contained in Section 43(A) of the Tenancy Act as adopted by this Court, is not correct. In paragraph 9, 10 and 11, the Hon'ble Supreme Court has observed thus;

“9. Dr. Masodkar, then submits that the High Court committed a grave error in coming to the conclusion that Section 43A of the Act would not govern the field and cannot be made applicable to a single person. He submits that in law, the plural covers the singular also. Mr. Pandey, however, submits that the High Court is right in holding that in view of the use of the expression “any bodies or persons” in sub clause (b) of Section 43A(1) of the Act, the same cannot be made applicable to a single person. He points out that in the present case, it is an admitted position that the land in question was given on lease to a single person. In order to appreciate the rival submissions, we deem it expedient to reproduce Section 43A(1)(b) of the Act:

“43A. Some of the provisions not to apply to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane or fruits or flowers (1) The provision of sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive), 33A, 33B, 33C, 43, 63, 63A, 64 and 65, shall not apply to-

(a) xxx xxx xxx

(b) 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;

(c) xxx xxx xxx”

10. Section 43A excludes the application of various provisions of the Act including 33C in respect of “leases” granted to “any bodies or persons” inter alia for the purpose of cultivation of sugarcane. However, in view of the plural expression “any bodies” or “persons”, the High Court has come to the conclusion that it shall cover only those cases in which lease has been given to more than one person and not singular person. It seems that the attention of the Court was not drawn to Section 13 of the Bombay General Clauses Act, 1904 which inter alia provides that words in the singular shall include the plural and vice versa. Section 13 of the aforesaid Act reads as follows:

“Section 13 - Gender and number.

In all Bombay Acts or Maharashtra Acts, unless there is anything repugnant in the subject or context, -

(a) words importing the masculine gender shall be taken to include females; and

(b) words in the singular shall include the plural, and vice versa.”

11. It is relevant here to state that the High Court has not come to the conclusion that there is anything repugnant in the subject or context so as to come to the conclusion that the plural will not include the singular. We have examined the use of the plural word “persons” from that angle and we do not find that there is anything repugnant in the subject or context so that it may not be

read as singular. It is worth mentioning here that subsection (b) of Section 43A(1) of the Act has also used the plural expression "leases" and if we accept the reasoning of the High Court, the aforesaid provision shall cover only such cases where there is more than one lease. This, in our opinion, will defeat the very purpose of the Act."

(emphasis supplied)

For the aforesaid reason, the view taken by the MRT in the context of applicability of the provisions contained in Section 43-A(1)(b) of the Tenancy Act is required to be set aside and is hereby set aside.

5. There is ample material on record to establish that the Respondents-Tenants have defaulted in the payment of rents to the Petitioner-Landlords virtually since the year 1982. To such charge, the Respondents-Tenants did not even bother to file any response and therefore, the default in the matter of payment of rents is quite evident. The MRT, however, relied upon the provisions contained in Section 25(1) of the Tenancy Act and has held that even though, the default in payment of rents has been established, no order of ejectment could have been made by the Tahsildar or confirmed by the SDO.

6. The reasoning of the MRT is again unsustainable because the MRT has failed to take a note of the provisions

contained in Section 25(2) of the Tenancy Act which carves out, so to say, an exception to the general provisions contained in Section 25(1) of the Tenancy Act. Section 25(2) of the Tenancy Act inter alia provides that nothing in Section 25(1) shall apply to any tenant, whose tenancy is protected for non payment of rent, if he has failed in any three years to pay rent and landlord has given intimation to the tenant to that effect within a period of three months of each default. In this case, the Petitioners-Landlords had alleged default right from the year 1982, that is, for a period in excess of three years. As noted earlier the material on record also establishes defaults for period much in excess of three years. In such circumstances, there was no question of non suiting, the Petitioners-Landlords on the basis of the provisions contained in Section 25(1) of the Tenancy Act. Rather, the MRT should have taken cognizance of the provisions contained in Section 25(2) of the Tenancy Act.

7. Notwithstanding the aforesaid, however, the Petitioners-Landlords cannot succeed in securing a eviction order under Section 25(2) of the Tenancy Act, unless such Petitioners-Landlords establish that they have given intimation to the tenants within a period of three months of each default. In the present case, there are neither any pleadings nor is there any material on record to establish that the Petitioners-Landlords

have indeed given intimation to the tenants within a period of three months on each default. Mr. Malpathak, learned Counsel for the Petitioners did make attempts to contend that some Civil Suit had been filed and therein the material with regard to such intimation has been produced. At this stage will not be appropriate to consider such material stated to have been produced by the Petitioners-Landlords in the said Civil Suit. Therefore, although the reasoning of the MRT is not approved, considering the facts and circumstances as they appear on record, the conclusion of the MRT that no order of eviction could have been made, in view of the provisions contained in Section 25 of the Tenancy Act need not be disturbed.

8. The next ground upon which the Petitioner had applied for recovery of possession was that the Respondents-Tenants have indulged into acts which were destructive or permanently injurious to the land. In this regard, suffice to note that there are clear pleadings on record describing the acts of both omission and commission, which the Respondents-Tenants have indulged and which acts can be said to be destructive or permanently injurious to the land. The pleadings make reference not only to the destruction of the house of the Petitioner-Landlords in the suit property but also several acts leading to destruction and permanent injury to suit property. In particular,

there is reference to felling of almost 500 suru trees, which were planted in the suit property to protect the same from being affected by erosion, considering that the suit property is a beach side property.

9. The Tahsildar and the SDO and also the MRT have clearly held that valid notices was served from time to time upon the Respondents-Tenants but they choose not to participate in the proceeding before the Tahsildar. Infact the MRT in its impugned Judgment and order dated 10th October, 2011 and upon which the Respondents-Tenants have placed reliance has held that the Respondents-Tenants can make no complaint with regard to service of notices in the proceedings and that there was valid service upon them. In paragraph 6 of the impugned Judgment and order the MRT has observed thus;

6. In this case, I am satisfied that notices of proceedings before Tahsildar were served on all the applicants and respondent No.9. Respondent Nos.8 & 10 were then at Bombay and therefore as per Talathi's report notices were fixed on the door of the house. Original Respondent No.1 Meenakshi Kadam was seriously ill and therefore, was not served. It is argued on behalf of applicant that Meenakshi died on very next day of service of notices on other appellants and respondents. I may refer to the report of Talathi on page 121 and the postal acknowledgements at pages 155 & 157. Even though the absence of applicants in October, 2008 could be overlooked in view of death of Meenakshi, still there was no reason for applicants and respondent No.9 not to appear before learned Tahsildar for enquiry in November, December, January & February. It is worth noting that Respondents 8

& 10 did not file Appeal or Revision against the impugned order. In the circumstances, I am not satisfied that present Revision Applicants had no sufficient opportunity contesting the proceedings before learned Tahsildar and it is a matter worth of remand.

10. From the aforesaid, it is quite clear that the Respondents-Tenants did not even contest the foundational facts in the pleadings of the Petitioners-Landlords to the effect that they have done acts which were destructive and permanently injurious to the suit property. Notwithstanding the same, the Tahsildar, framed issues/points for determination and further required the Petitioners-Landlords to tender their evidence in the matter. The evidence tendered is in the form of affidavits as well as documentary evidence. The Respondents-Tenants despite valid service of notices did not bother to attend the proceeding before the Tahsildar or to either object to or question the evidence lead in before the Tahsildar. The Respondents-Tenants also did not seek liberty to tender their own evidence in the matter. Therefore, the evidence on the aspect of destruction and permanent injury to the suit property has virtually gone unchallenged. There are concurrent findings of facts recorded by the Tahsildar and the SDO on this aspect.

11. The MRT has interfered with these concurrent findings and fact by reasoning that in terms of Section 72 of the Tenancy Act, the Tahsildar was required to apply the procedure prescribed under the Mamlatdar Courts Act, 1906. The MRT has held that in this case the procedure followed by the Tahsildar was not in consonance of the provisions contained in Section 19(2) and 19(3) of the Mamlatdar Courts Act, 1906 and upon this ground held that the findings of fact concurrently recorded by the authorities cannot be sustained. The learned Counsel for the Respondents-Tenants has submitted that this was a correct view and in this case the MRT has neither reassessed nor appreciated the material on record. The MRT has only found fault with the procedure adopted by the Tahsildar and on the said ground exercised revisional powers conferred upon it by Section 76 of the Tenancy Act.

12. If the provisions of the Mamlatdar Courts Act, 1906 are perused, it cannot be said that even in a case where the opposite party has chosen not to appear or to contest the pleadings, as of necessity oral evidence has to be recorded. In this case affidavits were filed by the

Petitioners-Landlords together with documentary evidence in the form of Survey records, Panchanamas etc. This is not a case where the Respondents-Tenants can be said to have been prejudiced by the procedure followed, as the Respondents-Tenants, despite service of several notices, did not even bother to attend the proceedings before the Tahsildar. This is not a case whether the Respondents-Tenants applied for but were deprived opportunity of cross-examination or the opportunity for tendering their own evidence.

13. In the facts and circumstances there was substantial compliance with the procedure prescribed. The procedure adopted by the Tahsildar was in consonance with the principle of natural justice and fair play. In such circumstances, the MRT was not at all justified in exercising its revisional jurisdiction and interfering with the concurrent findings and facts recorded by the authorities on the ground of some alleged defects in the procedure. It is to be noted that Section 76 of the Tenancy Act permits exercise of revisional jurisdiction only when it is established that there has been a substantial defect in following the procedure

provided under the Tenancy Act, which has resulted in the miscarriage of justice. In the facts and circumstances of the present case there was neither any substantial defect in following the procedure nor can it be said that the alleged non compliance with the procedure has resulted miscarriage of justice. The findings of fact as recorded by the two authorities are borne out from the material on record. There is ample material on record to establish the existence of almost 500 suru trees in the suit property planted obviously to prevent the erosion of the suit property which is a beach side property. In such circumstances, the onus was clearly upon the Respondents-Tenants to explain as to why such suru trees are not existing now in the suit property. The Respondents-Tenants neither bothered to dispute the averments in the application for eviction filed by the Petitioners-Landlords nor bothered to lead any evidence on the aspect of acts destructive or permanently injurious to the suit property.

14. In these circumstances the MRT has clearly exceeded its jurisdiction in interfering with the concurrent findings of fact.

15. If the impugned Judgment and order dated 19th October, 2011 is perused is quite apparent that the MRT has virtually indulged in re-appreciation or reassessment of the material on record. Even here the ground for interference is by no means substantial. The MRT has failed to take into consideration the facts and circumstances on record, including interalia the position that one of the witness was 92 years of age. Apart from such witness, affidavit of other independent witnesses are also on record. There is documentary evidence which also supports the case of destruction and permanent injury to the suit property. The Panchanama in that regard was also produced on record. There is material with regard to destruction of the landlords house in the suit property. All this material was more than sufficient to make out a case under Section 14(1) (2) of the Tenancy Act.

16. Findings recorded by the MRT that since suru trees are not fruit bearing trees, their destruction was required to be lightly considered, is with respect, a perverse finding. The suru trees had been planted to prevent erosion,

considering that the suit property is a beach side property. The presence of the suru trees was extremely necessary to prevent erosion. The circumstances that suru trees are not fruit bearing trees is in fact a irrelevant consideration and the order of eviction ought not have been upset on such basis.

17. For all the aforesaid reasons and upon due consideration of the material on record, the impugned order dated 19th October, 2011 made by the MRT is set aside. The orders made by the Tahsildar dated 12th February, 2009 and by the SDO dated 3rd September, 2009 are hereby restored. This Petition is therefore allowed in terms of prayer clause (a). There shall be no order as to costs.

18. All concerned to act on the basis of the authenticated copy of this order.

(M.S. SONAK, J.)

19. At this stage Mr.Sudhir Prabhu, the learned Counsel for the Respondents-Tenants applies for restraint upon execution of the order made by the Tahsildar and the SDO, which is now being restored. Accordingly, for a period of six weeks from today the said orders shall not be enforced. However, the Respondents-Tenants are also directed to maintain status-quo in respect of the said property.

(M.S. SONAK, J.)