

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2393 OF 1998

Chandrashekhar Mukund Shalu since deceased through legal heirs Ramakant M. Shalu & Ors.	..	Petitioners
VS.		
Smt. Laxmibai Gorakh Jagdale & Ors.	..	Respondents

Mr. R. A. Thorat with Mrs. Pratibha Shelke, Mr. Ramakant Shalu
and Mr. Chetan Mhatre i/b. Utangale & Co. for Petitioners.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE : 15 FEBRUARY 2016

P.C :

1] The challenge in this petition is to the orders dated 2 June 1986, 12 February 1990 and 4 December 1997 made by the Additional Tahsildar, Sub Divisional Officer (SDO) and Maharashtra Revenue Tribunal (MRT) *inter alia* holding that the '*tillers' day*', in the present case, has been postponed, until the legal representatives of the deceased tenant cease to be under disability.

2] The impugned orders concern properties bearing old survey nos. 258/2 and 257 (new corresponding survey nos. R 52/2 and 51 respectively) situated at Village Masnarwadi, Taluka Daund, Dist: Pune admeasuring about 1 acre 12 gunthas and 2 acres 11 gunthas

respectively (suit properties).

3] The suit properties originally belonged to Dattatraya Shalu, who expired on 28 August 1942, leaving behind his widow Godubai. On 25 November 1975, Godubai made a Will bequeathing the suit properties to Chandrashekhar Mukund Shalu (predecessor in title of the petitioners). Godubai expired on 28 April 1980. On 4 September 1980, the said Chandrashekhar applied for restoration of the suit properties, to himself, on the ground that he required the same for bonafide and personal cultivation. Although, the record is not quite clear, it appears that even the tenant expressed willingness to purchase the suit properties, now that the widow Godubai expired.

4] The Tahsildar, by order dated 2 June 1986 has purported to dispose of the application made by Chandrashekhar for restoration of the suit land as well as, the request of the tenant to purchase the suit properties. The Additional Tahsildar, after noticing that even the tenant has expired on 26 March 1984, leaving behind his widow and minor children, has held that the tillers day or in any case the right of the tenant to purchase the suit properties stand postponed. This impugned order is not quite clear, particularly, since in its operative portion, it makes reference to the suit property bearing survey no. 258/2.

5] Chandrashekhar's tenancy appeal no. 35 of 1986 was dismissed by the SDO, by order dated 12 February 1990. In the said appeal, in the context of the suit property bearing no. 257, there arose the question of re-grant, since, there was some material on record that the suit property was Patil Watan Land. This contention was answered by the appeal Court by playing reliance upon the order of the Tahsildar bearing No. 375/71 dated 22 April 1971, observing that there was indeed re-grant in the matter. Ultimately, the tenancy appeal no. 35 of 1986 was dismissed by the judgment and order dated 12 February 1990.

6] Chandrashekhar instituted revision before the MRT, which was again, dismissed on 4 December 1997. Hence, the present petition.

7] Mr. Thorat, the learned counsel for the petitioners has placed reliance upon the decision of the Division Bench of this Court in the case of *Harshavardhan Shrinivas Potnis vs. Mahadu Pundalik Gangurde*¹, to contend that when a person of exempted category succeeded by another person of exempted category, there is no question of the tillers' day being postponed till the disability of the successor ceases. Mr. Thorat submitted that the Authorities in

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making the impugned orders, have not adverted to this position in law and therefore, the impugned orders are required to be set aside. Further, Mr. Thorat submitted that the Tahsildar's order No.375/71 dated 22 April 1971, upon which reliance came to be placed by the appeal Court in the context of suit property surveyed under no. 257, has already been set aside by the SDO, by his order dated 30 October 1980. The matter was once again remanded to the Tahsildar for fresh decision after afford of due opportunity to all the parties. Mr. Thorat submitted that matter is still pending before the Tahsildar and as late as on 2015, notices were issued in the pending matter. Mr. Thorat therefore submitted that the reliance placed by the appeal Court upon the Tahsildar's order No.375/71 dated 22 April 1971, was improper and any decision with regard to suit property surveyed under no. 257 has to await decision of the Tahsildar, consequent upon remand vide order dated 30 October 1980.

8] The respondents, though served, are not present. The Advocate whose name appear on record is also not present. This is the petition of the year 1998. On 11 December 2015, since neither parties nor their Advocates were present, the matter had been posted under the caption '*for dismissal / disposal*'. On 11 January 2016, the matter was again posted to 3 February 2016 under the

caption '*for dismissal / disposal*' because on the same date an adjournment was applied for by the learned counsel for the petitioners. In these circumstances, it is not possible to further adjourn the final hearing in the present petition, particularly, since the petition relates to the year 1998.

9] Mr. Thorat is right that in so far as suit property surveyed under no. 257 is concerned, any final decision, in respect of the same, shall have to await the decision of the Tahsildar, consequent upon remand vide SDO's order dated 30 October 1980. The first appellate Court, as well as the revisional Court taking up tenancy appeal and tenancy revisions instituted by Chandrashekhar have placed reliance upon the Tahsildar's order no. 375/71 dated 22 April 1971 in the context of re-grant. The order dated 22 April 1971 was appealed against in RTS Appeal No. 12 of 1974 and the same, has been set aside by the SDO by his order dated 30 October 1980. The SDO, has remanded the matter to the Tahsildar for fresh decision after afford of opportunity to all parties. The matter is stated to be pending before the Tahsildar. The impugned orders are therefore required to be set aside and the proceedings remanded to the Tahsildar, to dispose of the matters afresh, including, remand in pursuance of order dated 30 October 1980 concerning suit property surveyed under no. 257. Accordingly, the impugned orders are set

aside and the Tahsildar, is directed to dispose of the matters, including, the matter remanded by order dated 30 October 1980 as expeditiously as possible and in any case, within a period of six months from the date of production of authenticated copy of this order.

10] In so far as, suit property surveyed under no. 258/2 is concerned, although, it is not clear, as to whether the issue of re-grant is involved, it will be appropriate if the entire impugned orders are set aside. This is because, there is no clarity in the impugned orders as to the precise nature of proceedings before the Tahsildar. The proceedings, appear to have commenced on the basis of application by Chandrashekhar seeking restoration of possession. However, it also appears that the tenants in the said proceedings, or, *de hors* the said proceedings, expressed their willingness to purchase the suit properties in their capacity as tenants. By the time, the applications came to be disposed of, the original tenant had expired and his legal representatives i.e. widow and minor, were under a disability. That apart, there is no clarity as to the basis upon which, the impugned orders treat Chandrashekhar as being a disabled person. The factual basis for ascertaining as to whether, the decision of the Division Bench in the case of *Harshavardhan* (supra) will indeed apply or not is also by no means clear.

Therefore, rather than order any truncated remand, it will be appropriate if the impugned orders are set aside and the matter is remanded to the Tahsildar for fresh determination of all issues and after afford of appropriate opportunity to all parties. For this purpose, all contentions, of all parties are left open.

11] Further, since the tenants or their legal representatives are already in possession of the suit properties, it will be appropriate to direct that both the parties maintain *status quo* in so far as the suit properties are concerned during the pendency of the proceedings, now remanded to the Tahsildar.

12] The impugned orders are accordingly set aside. The matters are remanded to the Tahsildar for fresh decision. This matter should be taken up along with the matter remanded to the Tahsildar by the SDO vide order dated 30 October 1980 in relation to property surveyed under no. 257. All these matters to be disposed of as expeditiously as possible and in any case, within a period of six months from the date of production of authenticated copy of this order. The Tahsildar to issue notices to all parties and thereafter give full opportunity to all the parties in relation to their respective contentions. All points are kept open.

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

14] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

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