

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4718 OF 2015

Smt. Vithabai Jagannath Kadam	..Petitioner
Versus	
Smt. Hirabai Sampat Jagtap and Ors.	..Respondents

Mr. A.B.Kadam , Advocate for the Petitioner.

Coram : R.M.SAVANT, J.

Date : 17th November, 2016.

P. C. :

The order dated 19.12.2014 passed by the learned President of the Maharashtra Revenue Tribunal, Pune allowing the Revision Application No.NS/XI/3/2012 is taken exception to by way of the above Writ Petition. By the impugned order, the Maharashtra Revenue Tribunal has set aside the judgment and order passed by the Sub-Divisional Officer, Phaltan in Tenancy Appeal No.6 of 2011 and thereby restored the order dated 19.12.2011 passed by the Tehsildar in Tenancy Case No.70(b)/1/2009.

2 The Petitioner herein is the sister of one Bajirao Babaji Jagtap who was a protected tenant in respect of the land in question being Survey No.1504/A situated at Village: Nimbalak. A certificate under

Section 32M of the Maharashtra Tenancy and Agricultural Lands Act came to be issued in favour of said Bajirao. It seems that the said Bajirao had paid the purchase price in respect of land in question and therefore, became the tenant-purchaser of the land in question. The Petitioner is admittedly the sister of the said Bajirao. It is the case of the Petitioner that she was put in possession of the land in question as a consequence of agreement dated 9.5.1961, which was executed by the heirs of the said Bajirao, i.e. the Respondents herein. The Petitioner had claimed declaration of tenancy under Section 4 of the said Act by filing an application before the Tehsildar and Administrative Land Tribunal, Phaltan. The Tehsildar had framed the following issues:

- “(i) Whether the opponents are the owners of the land ?*
- (ii) Whether on execution of an agreement dated 9th May, 1961, the opponents have inducted the applicant as a tenant in respect of the suit land ?*
- (iii) Whether under the agreement dated 9th May, 1961, whether the applicant was inducted as a tenant ?*
- (iv) Whether there is any cause of action to file the application ?”*

Tehsildar having regard to the material on record answered all the issues against the Petitioner herein. Tehsildar having regard to the

covenant in the said agreement dated 9.5.1961 recorded a finding that the said agreement does not disclose that the Petitioner was put in possession. The Tehsildar also recorded a finding that the other attributes of being tenant were not satisfied in the instant case. The Tehsildar and Administrative Land Tribunal, Phaltan, accordingly, by order dated 19.12.2011 rejected the application filed by the Petitioner for declaration of being tenant.

3 The Petitioner aggrieved by the said order dated 19.12.2011 passed by the Tehsildar and Administrative Land Tribunal, Phaltan filed an Appeal before the Sub-Divisional Officer, Phaltan being Tenancy Appeal No.6 of 2011. The Sub-Divisional Officer, Phaltan by order dated 15.10.2012 allowed the said Appeal and set aside the order dated 19.12.2011 and issued declaration of tenancy in favour of the Petitioner. The Respondents aggrieved by the same filed a Revision Application No.NS/XI/3/2012 before the Maharashtra Revenue Tribunal, Camp at Pune against the said order dated 15.10.2012. The Maharashtra Revenue Tribunal by the impugned order has allowed the said Revision Application filed by the Respondents and thereby set aside the order dated 15.10.2012 passed by the Sub-Divisional Officer, Phaltan. The Maharashtra Revenue Tribunal was of the view that the Sub-Divisional Officer exercising appellate powers ought to have given reasons as to

why the findings recorded by Tehsildar and Administrative Land Tribunal, Phaltan could not be sustained. The Maharashtra Revenue Tribunal held that there was no material on record to indicate that the Petitioner was a tenant in respect of the land in question. The Maharashtra Revenue Tribunal also found fault with the manner in which the appellate powers were exercised by the Sub-Divisional Officer, Phaltan.

4 As indicated above, the Petitioner is the sister of the said Bajirao, who was a tenant-purchaser and, therefore, was a close relation of the tenant-purchaser. It is well settled that tenancy cannot be claimed between close relations. Having regard to the order passed by the Tehsildar as confirmed by the order passed by the Maharashtra Revenue Tribunal, in my view, the exercise of writ jurisdiction of this Court under Article 227 of the Constitution of India is not warranted. The Writ Petition is , accordingly, dismissed.

[R.M.SAVANT, J.]