

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1635 OF 1999

Smt. Prayagbai Balu Kane,
since deceased through her heirs :-

Mrs. Shalan Dattatraya Parkhe,
an adult, Residing at 2252, Mahadwar
Bhandge Galli, Pandharpur,
Dist : Solapur.
(Amended as per Court's order dated
6/2/2002, passed in C.A. No.13/2002
in W.P. No. 1635/1999)

.....Petitioner
(Orig. Respondent)

V/s.

1. Shri. Bhanudas Baba Randive,
At. Tungat, P.O. Tungat
Tal-Pandharpur,
Dist. Solapur

2. Shri. Babu Baba Randive
since deceased through his
legal heirs :-

2a. Vilas Bhau Randive
2b. Hanuman Bhau Randive
2c. Prakash Bhau Randive

3. Shri. Datta Baba Randive
4. Dwarkabai Sakhdev Waghage
5. Kamal Govardhan Ingale
6. Sumanbai Raghunath More,
No.2, 3 and 5, Residing at,
At. Tungat, P.O. Tungat
Tal-Pandharpur, Dist. Solapur

No.4, Residing at : Shetphal,
Tal. Mohol, Dist. Solapur

No.6, Residing at : Mundhe Wadi,
Tal. Pandharpur, Dist. Solapur

.....Respondents
(Original Applicant
in Rev. Appln)

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Mr. K.S. Dewal, Advocate for the petitioner.

Mr. S.S. Patwardhan, Advocate for the respondents.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

DATED :- 25TH JULY, 2016.

JUDGMENT :-

1). This petition is directed against the order dated 9th October, 1998 passed by the Maharashtra Revenue Tribunal allowing Revision Application filed by the respondents to set aside the orders of eviction of the agricultural tenant passed by the trial Court i.e. the Tahsildar, Pandharpur in Tenancy Case No.4 of 1994 under Sections 14, 25 and 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Tenancy Act" for short) and the order dated 26th February, 1996 of the Sub-Divisional Officer, Pandharpur Division dismissing the appeal of the respondents being Tenancy Appeal No.5 of 1996.

2). The respondents are the agricultural tenants of the petitioner who is a widow since prior to 1st April, 1956 i.e. tillers day. As such,

the respondents right to become owners of the property on declaration of the tillers day became postponed and the liability to pay rent continued. In the year 1994, the petitioner filed Tenancy Case No.4 of 1994 before the Tahsildar and ALT, Pandharpur contending that the petitioner had given notices to the respondents on 11th February, 1991, 29th January, 1992 and 13th February, 1993 alleging that they were defaulters in payment of rent for the last 22 years and had sublet the land. With these allegations, she terminated the tenancy of the respondents. Thereafter, on 27th September she applied for restoration of possession of the land. During the course of the proceedings before the Tahsildar and ALT, the respondents had produced money order dated 20th March, 1992 sent to the petitioner towards the rent. The petitioner admitted receipt of the amount by money-order but claimed that the amount was required to be adjusted towards the rent due in the past. She, however, did not state further the manner in which that amount was adjusted by her. In that circumstance, the claim of the petitioner to the default in payment of rent was not available atleast till the year 1992. Undisputedly, the rent payable for the land by the respondents was decided in the earlier proceedings between the parties i.e. Tenancy Case No. 2 of 1969. It was fixed at Rs.67.15 p.a. Therefore the first two notices sent by the petitioner cease to be of any consequence. Even if the third eviction notice dated 13th February, 1993, despite the dispute as regards it's service, is to be taken into consideration the same cannot help the petitioner in evicting the respondent. Section 25(1) of the Tenancy Act makes it mandatory upon the Tahasildar to pass an order calling upon the

tenant to tender to the landlord the rent in arrears together with the costs of the proceedings within three months from the order. If the tenant complies with such order, there can be no termination of tenancy. Undisputedly, in the present case, no such opportunity was given to the respondents. Therefore, the order of eviction by the Tahsildar and ALT could not be sustained.

3). Mr. Deval, the learned Advocate appearing for the petitioner during his submissions draws attention of the Court to several defects in the order of the Tribunal. It is his submission that the first defect is in holding that the petitioner had not disclosed the specific default of each month and that the application is not verified by the Tahsildar as required by the procedure applicable to the Mamlatdar's Court. According to him, this defect being a procedural defect once the parties have continued with the proceedings without raising any objection thereto, it was not open for the Tribunal in its revisional jurisdiction to hold that the application for eviction filed by the petitioner was not proper. The next defect from the impugned order pointed out is as regards the finding that the default by the respondent was not a willful default, he submits that the concept of "willful default" is alien to the Tenancy Act and any action for default would be strictly governed by Section 14 of the Tenancy Act. I find substance in the submission of Mr. Deval as regards the nature of default. The third defect pointed out is in the finding that the demand of Rs.460.92 per year by the petitioner in her notices specially when there was no fixation of rent by any Court of Tribunal was not correct. However, it is seen

that in the previous proceedings for recovery of rent, the Court of Mamlatdar had ordered that a sum of Rs.67.91/- per year be paid by the tenant. Therefore, there is no merit in the submission as regards this defect. The Tribunal has held that the petitioner had failed to produce evidence of sub-tenancy allegedly created by the respondents. There is no infirmity in this finding also.

4). Irrespective of the defects pointed out from the order of the Tribunal, there can be no interference with it in view of the basic procedural defect by the Court of Mamlatdar in not giving an opportunity to the respondents to call upon them to pay rent within a period of 3 months from the order under Section 25(1) of the Tenancy Act. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)