

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6530 OF 1998**

Shri. Yashwant Pandit alias Baba Maharaj
Since deceased through LR's.

- 1A Mr. Shrikrishna Yashwant Maharaj
Rajguru, Age: 49 years,
Occ. : Agriculture
- 1B Mr. Raoji Yashwant Maharaj Rajguru,
Age : 46 years, Occ. : Advocate
- 1C Mr. Pandit Yashwant Maharaj Rajguru,
Age : 43 years, Occ. : Trade
- 1D Mrs. Vinda Yashwant Maharaj Rajguru
@ Vinda A. Kulkarni,
Age : 48 years, Occ. : Household
- 1E Smt. Nalini Yashwant Maharaj Rajguru
Since deceased through LR's
 - 1Ei Mr. Shrikrishna Yashwant Maharaj
Rajguru, Age : 49 years,
Occ.: Agriculture
 - 1Eii Mr. Raoji Yashwant Maharaj Rajguru
Age : 46 years, Occ.: Advocate
 - 1Eiii Mr. Pandit Yashwant Maharaj Rajguru
Age : 43 years, Occ. : Trade
 - 1Eiv Mrs. Vinda Yashwant Maharaj Rajguru
@ Vinda A. Kulkarni
Age : 48 years, Occ. : Household

All R/o : 355 'B' Ward,
Guru Maharaj Wada,
Mangalwar Peth, Kolhapur. Petitioners

Vs.

- 1 Shri. Anil Chandrakant Deshpande & Anr.
R/o : Kavathesar, Taluka Shirol,
Dist. Kolhapur
- 2 The Circle Officer,
Jaysingpur, Taluka Shirol,
Dist. Kolhapur. Respondents

Mr. S.S. Patwardhan i/by Mr. Rahul P. Walvekar, Advocate for the Petitioner.

Mr. Rajesh S. Patil, Advocate for Respondent no.1.

Ms. M.S. Bane, AGP for Respondent no.2.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 17th October, 2016

JUDGMENT :

1 The facts of the present petition disclose a classic example of intentional and brazen misuse of the process of law. Respondent no.1, with his willingness to gamble upon the structure for the administration of justice supported by shrewd legal advice has sought to perpetuate his possession over the properties in question, without a semblance of right to it. The litigation initiated by him in the year 1976 is continuing for the last 40 years and it's end even as on today is unpredictable. The procedural provisions that are meant to ensure that a litigant gets fair and effective hearing for redressal of wrong done to him has

been put to use by respondent no.1 for illegally holding on to the possession of the land in question. Another disturbing revelation which should concern everyone connected to the system of administration of justice is that even a false litigation pursued doggedly over a long time can wear the other side out, specially if the other side, is the Government or Government authorities.

2 The facts which are either undisputed or stand established by the record are as under :

Originally, Shri. Yeshwant Maharaj, Shrinivas Maharaj, Pandit alias Rajguru Maharaj were the owners of the land at Gat no.910, (old survey no.169), admeasuring 5 hectare and 50 Are (hereinafter described as “the land” for short). It is a “Gawalipad” land, which according to the provisions of the Bombay Tenancy & Agricultural Lands Act is used for allowing grass to be grown naturally and then cutting the grass for sale. There were tenants on the property. On account of disputes between one Yesu Phagun Chougule and Annappa Adappa Mangave over the tenancy rights in respect of the land, proceedings under Section 145 of the Code of Criminal Procedure were initiated prior to the year 1950. The Judicial Magistrate First Class, Kurundwad by his order dtd. 18th February, 1953 held that the evidence led before him was not sufficient to decide as to who was in exclusive possession of the land and directed the parties to get their title established by a competent court. He rejected the application for appointment of Receiver and merely attached the property under Section 146 Code

of Criminal Procedure. The operative part of the order reads as under :

“As I am unable to satisfy myself as to which of the parties was in possession of the subject of dispute, I attach the property under Section 146 Cr.P.C. i.e. attachment under Section 145 to continue until a competent court has determined the rights of the parties thereto or the person entitled to possession thereof under Section 146 Cr.P.C.. The amount of sale-proceeds of grass shall be paid to the party as per decision of a competent court after deducting the charges of a watchman. Either party is at liberty to move the court to remove the watchman, if his services are not needed”.

It would be relevant and also necessary to note the reasons stated in his order for refusing to appoint Receiver. The same read as under :

“A request was made to appoint a Receiver but a consent order was passed allowing Yesu Fasu to remove the grass on deposit of Rs.800/- with a clear understanding that he was to get no better title than a purchaser of grass for a period of one month only. In one case, the Revenue Tribunal has held that the provisions of the Bombay Tenancy Act are applicable to the tenants appointed by the Receiver. With due respect to that view does not appear to be correct. Receivers are the representatives of the Court as well as of the persons who are to be held as rightful cultivators of the property at the end. I am of the opinion that the tenants appointed by the Receivers are not entitled to get any

benefit under the Bombay Tenancy Act. In order to leave no doubt, I am not going to appoint a Receiver in this proceeding.”

As will be noticed hereinafter, that over the excessive length of litigation, the above order stating in clear terms, the apprehension of possible mischief went out of sight, probably on account of its non-production in the Court, in subsequent proceedings, permitting perpetration of the very mischief that was sought to be avoided by the order.

3 From the year 1953 onwards every year, respondent no.2, the Circle Officer would auction the right to cut grass and sell it and the highest bidder would get the right under Kabuliyat on yearly basis. In the year 1975-1976, respondent no.1 was the highest bidder and had the kabuliyat for the Land for a period of 11 months. For the next year i.e. for the year 1976-1977 also he was the highest bidder and was permitted to cut the grass on the Land for a period of 11 months.

4 In the year 1976, respondent no.1 filed Regular Civil Suit No.108 of 1976 in the Court of Civil Judge, Junior Division, Jaisingpur against respondent no.2, the Circle Officer alone for an injunction simplicitor to restrain respondent no.2 from evicting him from the Land. In that suit, he filed an application for interim injunction in the same terms as the permanent injunction. By the order dtd. 30th July, 1976, that application was dismissed.

Respondent no.1 then filed Miscellaneous Appeal No.100 of 1976 to the District Judge, Kolhapur, who partly allowed the appeal and remanded the matter for fresh hearing of the trial court. After fresh hearing, the trial court granted interim injunction to respondent no.1. The Circle Officer challenged the order by preferring the appeal to the District Judge, Kolhapur. The appeal was dismissed. After which the Circle Officer approached this court by way of Civil Revision Application No.502 of 1981, which was also dismissed.

5 Then respondent no.1 filed an application for framing issue of his alleged agricultural tenancy and sought it's reference to the tenancy authorities in view of the provisions of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "The Bombay Tenancy Act"). The trial court rejected the application.

6 Respondent no.1 preferred Civil Revision Application No.686 of 1984 to this Court to challenge the order. He contended therein that he having been put in possession of the land under a Kabuliyat, had acquired status of a tenant and as such was entitled to the protection under the provisions of the Bombay Tenancy Act. According to him, application of Section 4B is saved by Section 88B of the Bombay Tenancy Act and therefore the person put in possession by the Receiver as a lessee even for a year gets protection of the Bombay Tenancy Act. Per contra the Assistant

Government Pleader appearing for respondent no.2 argued that a Receiver appointed by the learned Sub-Divisional Magistrate was not competent to create any tenancy. The suit land in respect of which there was a dispute between two tenants was a grass land where grass naturally grew and the Receiver had given the land on Kabuliyat to respondent no.1 for one year for cutting the grass and in the second year also, there was auction and respondent no.1 took the Land for one year for cutting grass. He had thus merely acted as an agent of the Court Receiver and did not acquire any tenancy rights. It was further argued that, the provisions of the Bombay Tenancy Act are not applicable to the lands taken under management temporarily by the civil, revenue or criminal courts by themselves or through Receivers appointed by them till the decision of the title of the holders and therefore, persons cultivating the land for and on behalf of the Receiver during the continuance of the management by the Receiver cannot claim any tenancy rights under the Bombay Tenancy Act.

7 The Bench of Single Judge hearing the Civil Revision Application considered the relevant provisions of the Bombay Tenancy Act and for the detailed reasons stated in the order dtd. 7th October, 1986 found that, legally respondent no.1 cannot claim to be a tenant thereunder and therefore it was not necessary to raise an issue on that point and refer it to the competent authority. But because a different view had been taken by another bench of a Single Judge, it made a reference to the Division Bench for

deciding the following question of law:

“Whether a person inducted on the land taken under management temporarily by the court, in an auction for a year by the Court Receiver can claim to be a tenant during the subsistence of the management of the Court Receiver and can claim protection under Section 4B of the Bombay Tenancy Act.”

8 When the reference was heard by the Division Bench, the Additional Government Pleader did not remain present to assist the court. The Division Bench, heard the Advocate for respondent no.1 and by the order dtd. 14th June, 1989 opined that the real question falling for consideration in the Revision Application was whether the issue regarding tenancy of respondent no.1 ought to be referred to tenancy authorities or not. The question was not to decide as to whether respondent no.1 is a tenant of the Land. It then observed that :

“This Court in its revisional, supervisory or writ jurisdiction cannot for the first time, decide the question as to whether a particular person is a tenant or not – a question which has to be decided by the Mamlatdar under the provisions of the Bombay Tenancy Act. This is the legal effect of the provisions contained in Section 85 of the Bombay Tenancy Act read with Section 70 of the same Act.”

The Division Bench held, on going through the averments in the plaint and denials thereof, that the issue of tenancy had to be framed and once framed had to be referred to the tenancy

authorities. Stating these reasons, the Division Bench found that it was not necessary to decide the question of law under reference and hence did not answer the reference. It allowed the Revision Application instead of returning it to the Learned Single Judge. The Division Bench was obviously not unmindful of the effect of its decision in the facts of the case as it observed at para 9 of the order that :

“We are not unaware of the fact that as a result of these proceedings, the petitioner would be unjustifiably occupying the suit land if it is later held that he is not the tenant of the suit land. But that again is the result of the law and has nothing to do with the merits of a particular case.”

9 On the reference being made to him, Tahsildar, Shirol took up the issue of the claim of tenancy by respondent no.1 for consideration. During the course of hearing before him, between 19th March, 1990 to 8th July, 1991, respondent no.1 took as many as 22 adjournments. Then on 8th July, 1991, he presented an application for transfer of the case to another authority stating that he apprehended that the justice would not be done to him. The Sub-Divisional Officer, Karveer Division, Kolhapur, by his order dtd. 4th September, 1991 rejected the application at RTS No.504 of 1991 and intimated respondent no.1 accordingly. But on the next date, i.e. on 31st October, 1991, respondent no.1 once again presented an application claiming that the application for transfer was pending and requested that the matter may be stayed. That

application was also rejected. Thereafter he applied for an adjournment to carry the matter further.

10 After his attempts at transfer of the matter failed, respondent no.1 stopped attending to the proceedings. Consequently, no evidence was led in support of his claim of tenancy. The Circle officer, Jaysingpur had filed his written arguments to contend that the suit land was “Gavalipad”. As per the provisions of the Bombay Tenancy Act where land is used for allowing grass to be grown naturally and then cutting the grass for sale, such land is not covered by the definition of land and the tenant of such land is not protected by the Bombay Tenancy Act.

11 The Tahsildar, Shirol by his order dtd. 15th November, 1991 declared that respondent no.1 is not the tenant of the Land as claimed by him. For that purpose, he noted that in view of Section 88 of the Tenancy Act, the provisions thereof are not applicable to the land leased out by the government. He observed that the Land is under management of the Receiver i.e. the representative of the government and it was leased out to respondent no.1 for the years 1975-1976 and 1976-1977 on yearly basis for a period of 11 months only. Hence, respondent no.1 could not claim the right of tenancy over the suit land.

12 Respondent no.1 preferred an appeal against the above order to the Sub-Divisional Officer. His appeal came to be

dismissed by the order dtd. 31st July, 1992. The Sub-Divisional Officer while confirming the order of the Tahsildar further observed that respondent no.1 had failed to produce any evidence to show that he is the tenant of the Land. The order was then carried by him in revision under Section 76 of the Bombay Tenancy Act to the Maharashtra Revenue Tribunal. Unfortunately, before the Tribunal, the Circle Officer was not represented and by the order dtd. 6th April, 1998, the Tribunal set aside the concurrent findings of fact, of the authorities below. This order is impugned in the present petition.

13 The impugned order makes a strange reading. On the one hand, it holds in clear terms that the owner of the Land is not the Government but a private individual and on the other hand, it holds that respondent no.2 is estopped from raising contention that respondent no.1 is not a tenant. The findings as regards the ownership of the Land at para 3 of the impugned order read as under:

“In the first place, the appointment of Receiver is made by Magistrate, a Judge, who can never be considered to be representative of the Government. Secondly, the revision opponent who is a Circle Inspector and though a Government servant, he has been appointed to act as the Receiver. The Receiver is always considered to be a limb of the Court appointing it and his management should always be considered as the management of the Court of original owners, the Pandit of Maharaja family can be

snatched away without the proceedings of acquisition under Land Acquisition Act and how without that the suit land can be said to have vested in the Government. Therefore, the statement that it is a Government land hold no water.

Once this finding was given, the Tribunal could not have permitted respondent no.1 to rely on the Kabuliyat executed with respondent no.2. In that case, it was necessary for respondent no.1 to produce evidence of tenancy with the original owners of the Land, which was not done by him.

14 In the next para i.e. para no.4, the Tribunal has stated three findings of fact alongwith the reasons therefor. They are :

- i) the Land is not “grassy” land,
- ii) rent was being regularly recovered from respondent no.1 and
- iii) respondent no.1 was inducted upon the Land by virtue of legal agreement between him and respondent no.2.

The reasons stated for the first finding are :

“It is tried to make out that suit land is a grassy land which is falsified by the 7/12 extract and further more from the fact that the Receiver himself attempted and recovered rent from the Panchaganga Sugar Factory directly, where the revision applicant had sold his sugar-cane which was grown in the suit land. This means the land is not grassy land.”

The reasons for the second finding are :

“This also signifies that rent was being recovered from the revision applicant Opponent's and the story of the revision applicant that he is paying rent regularly from the year 1974-75 to the revision opponent stands corroborated from the act of the revision opponent to recover the rent directly from Panchaganga Sugar Factory”

And the reasons for the third finding are:

“The learned Advocate further lays emphasis upon the facts that he is in lawful possession since 1974-75, he was inducted upon the suit land by virtue of the legal agreement existing between revision applicant and revision opponent. The same is corroborated was also a case filed by Revision Opponent for fixation of rent and also a Civil Suit for recovery of rent was filed in the Civil Court.”

The next persuading factor for the Tribunal was the interim injunction granted by the civil court in favour of respondent no.1.

15 After stating the above reasons, the Tribunal found fault with the approach of its subordinate authorities. It opined that the authorities were misled by the “fallacious argument holding thereby the land to be a Government land” and that they had not properly analysed the evidence on record.

16 The petitioner herein is not a party to the suit filed by respondent no.1, therefore, the first relief sought by him is of leave

to file the petition to challenge the order of the Tribunal. Mr. S.S. Patwardhan, the learned advocate for the petitioner submits that though the petitioner is not a party to the suit and the proceedings before the Tribunal and the authorities below it, he is entitled to challenge the impugned order, since as the owner of the Land, he is the most affected person by the order. Besides, he has already filed a suit for evicting respondent no.1 wherein respondent no.1 has raised the plea of tenancy. In addition, the order dtd. 18th February, 1953 passed by the Judicial Magistrate First Class, Kurandwad in the proceedings under Section 145 Code of Criminal Procedure, refers to the predecessor of the petitioner as the owner of the Land. These circumstances, in my opinion, are sufficient to grant leave to the petitioner to challenge the order of the Tribunal.

17 By way of challenge to the order, Mr. Patwardhan submits that the Tribunal while passing the impugned order has exceeded its jurisdiction under Section 76 of the Bombay Tenancy Act. He argues that the Revenue Tribunal exercising revisional jurisdiction is not supposed to go into the questions of facts and arrive at its own findings by re-appreciating the evidence on record. Since the Tribunal in the present case has done just that, its' order stands vitiated for excesses of jurisdiction. His further argument is that the Tribunal has recorded wrong and erroneous findings on the law applicable to the facts of the present case. Mr. Patwardhan refers to the decision of the Apex Court in **Dhondur Choudhary vs. Ganpat Lal Shankar Lal Agarwal**,

reported in **1991 Supp (1) Supreme Court Cases, page 513**, to submit that uncultivated land taken under the Government management and leased out by the manager does not create right of tenancy merely because the lessee has been holding over to the land. This would be so because the act does not envisage the Government as a landholder, but only as a manager. While delivering back the land into the possession of the landholder, it could not be burdened with any tenancy created or resulting while under management. Besides, there could be no privity between the landlord and the erstwhile tenant under Government in the matter of tenancy. There was no scope for application of Section 4 and 4(B) during the period from expiry of the lease to the termination of the management. Mr. Patil, the learned advocate for respondent no.1, on the other hand seeks to justify the impugned order with a submission that challenge to the finding of fact as regards the ownership of the Land by the petitioner would be inconsistent with his own case of being the owner of the Land.

18 It has been rightly submitted by Mr. Patil, that the challenge by the petitioner to the finding of the Tribunal that the Land is not a Government land will not enure to his benefit. The challenge can also not be sustained in the facts of the present case. The petitioner claims to be the owner of the land, which was a Jagir grant to his predecessor-in-title. This claim would obviously be decided in the suit filed by him for possession of the Land from respondent no.1 and there is no need for this court to dwell upon it

in the present proceedings. The limited question to be considered presently is, whether the Land is the Government Land or a private Land solely for the purpose of deciding the claim of tenancy. The impugned order holds that, a Receiver appointed in any Court proceedings can never be considered to be a Representative of the Government. He is always considered to be “a limb of the court appointing it” and his management should always be considered as the management of the court. From the impugned order, it is also seen that the Tribunal is of the opinion that the title of the owners of the Land i.e. “Pandit of Maharaja Family” cannot be taken away without adopting proceedings for acquisition under the Land Acquisition Act.

19 The Tahsildar also, in his order dtd. 15th November, 1991, by way of narration of the history of the case noted that the Land belongs to Shri. Yashwant Maharaj, Shri. Shriniwas Maharaj and Shri. Pandit alias Rajguru Maharaj and on account of the disputes between the tenants, the proceedings under Section 145 of Code of Criminal Procedure were initiated bringing the Land under the management of the Government. He has observed that, respondent no.1 has failed to adduce evidence in support of his claim of tenancy in respect of the Land. He has then considered, the claim of respondent no.1 based on the Kabuliyat for the years 1975-1976 and 1976-1977, each for a period of eleven months to hold that there cannot be a claim of tenancy under those

agreements with a Government Officer in view of Section 88 of the Bombay Tenancy Act. It is thus seen that the Tahsildar has not given the finding that the Land is the Government land. Further, the mention to Section 88 in the order is also purely in reference to the Kabuliyat with the Government Officer relied upon respondent no.1.

20 The Sub-Divisional Officer, refers to the definition of 'Land' in the Bombay Tenancy Act to hold that, the Land in question is not covered by that Act. He further observes that, respondent no.1 has not produced any evidence to establish his claim of tenancy. There is no relationship of landlord and tenant created and the provisions of the Bombay Tenancy Act are not applicable. From the above discussion, it is seen that, the Tahsildar, Sub-Divisional Officer and the Revenue Tribunal consistently find that the Land is not the Government Land. In that case, there could be no question of tenancy because a Government Officer appointed as Receiver cannot create tenancy in respect of a private holding to bind a private owner. Therefore, the only logical conclusion after the consistent finding was rejection of the claim of tenancy.

21 The claim of tenancy needs to be rejected for one more reason. Respondent no.1 claims, to be the tenant in respect of the Land and as such entitled to protection under Section 4B of the Bombay Tenancy Act. The term "tenant" being specifically defined

in the Bombay Tenancy Act, it was imperative that, respondent no.1 fits into the same. The definition of “tenant” at Section 2(18) of that Act, is reproduced below.

“2(18) *“tenant”* means a person who holds land on lease and include, -
(a) a person who is deemed to be a tenant under section 4;
(b) a person who is protected tenant; and
(c) a person who is permanent tenant;
and the word “landlord” shall be construed accordingly.”

The term “Land” used in the above definition is defined at Section 2(8) which reads as under :-

“2 (8) *“land”* means,-

(a) land which is used for agricultural purposes [or which is so used but is left fallow, and includes the sites of farm buildings] appurtenant to such land; and

(b) for the purposes of sections 11, 16, 17, 17A, 17B, 18, 19, 20, 26, 28, 29, 29A, 30, 41, 63, 64, 64A, 84A, 84B and 84C -

(i) the sites of dwelling houses occupied by agriculturists, agricultural labourers or artisans and land appurtenant to such dwelling houses ;

(ii) the sites of structures used by agriculturists for allied pursuits].”

Next, the term “agriculture” used in the definition of “land” is defined at Section 2(1). The definition reads as follows :-

“2(1) *“Agriculture”* includes horticulture, the raising of crops, grass or garden produce, [the use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle, the use of any land, whether or

not an appanage to rice or paddy land for the purpose of rab manure] but does not include allied pursuits or the cutting of wood only.”

From the above three definitions, it becomes clear that, to establish his claim of tenancy under the Bombay Tenancy Act, respondent no.1 must first establish that, the “Land” in respect of which tenancy is claimed is “Agricultural Land” as defined above. The evidence on record shows that the land is not an agricultural land.

22 The first order, passed in respect of the Land is, the order dated 18th February, 1953, passed by the Judicial Magistrate First Class, Kurundwad, in which the “Land” is described as “Gavalipad Land”, which was used for allowing the grass to be grow naturally and then cutting the grass for sale. Even the Kabuliyat executed between respondent no.1 and respondent no.2 was only for the purpose of cutting of the grass and sale of the grass. This was the description of the land at the inception of the alleged tenancy of respondent no.1. That alone, must be taken into consideration for deciding the claim of tenancy. The definition of “agriculture” above, specifically excludes “allied pursuits” and “cutting of wood only” i.e. cutting of the wood grown naturally on the land. The activity of cutting of grass grown naturally would be akin to cutting of wood only. The exclusion, therefore must be extended to that activity also. Resultantly the land on which grass is grown naturally and cut for sale is not the

land covered by the Bombay Tenancy Act. The Tribunal has considered some 7 x 12 Extract, apparently produced by respondent no.1 showing growing of sugar-cane on the Land. There is also reference to the sale of sugar-cane to a sugar factory. These documents were neither relied upon nor produced earlier. It was also not the case of respondent no.1 in any proceedings that he is growing sugar-cane on the land. The impugned order does not disclose particular of the 7/12 extract. If the extract is of the years subsequent to 1975-1976, it can be of no relevance. The same would be the position of sale of sugar-cane to sugar factory and alleged recovery of rent from respondent no.1. There are no pleadings of recovery of rent by respondent no.2. There is also no evidence of such recovery or any proceedings relating thereto. Thus, none of the reasons stated in the impugned order are valid. The reference by the Tribunal to the interim relief granted to respondent no.1 by the Civil Court was also irrelevant. Grant of interim relief can never be deciding factor for determination of the tenancy.

23 The entire above elaborate discussion as regards the claim of respondent no.1 to tenancy of the Land, based on the document of Kabuliyat with respondent no.2, described as, Court Receiver in respect of the Land, is of course on the forgotten background that, respondent no.2 was never appointed as Receiver to manage the Land. The Court of the Judicial Magistrate First Class had merely attached the Land. In that circumstance,

the act of respondent no.2 of executing Kabuliyat with respondent no.1 was merely an ministerial act executed on behalf of the court. The land remains attached and as such in the custody of the court, pursuant to the order dtd. 18th February, 1953.

24 In the circumstances, the impugned order is not just illegal but perverse. Hence, the petition is allowed in terms of prayers clause (a) and (c) with costs. The facts of the case establish gross abuse of the process of Court by respondent no.1 with intention to grab the Land embroiled in court proceedings. Such opportunistic tendency must be strictly dealt with. Respondent no.1, therefore must be subjected to exemplary costs. Respondent no.1 shall pay costs quantified at Rs.50,000/- to the petitioner and deposit costs of Rs.50,000/- with the Maharashtra Legal Services Authority. Costs to be paid within a period of eight weeks, from today.

(Smt. R.P. SondurBaldota, J)