

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4575 OF 1998

Shri Maruti Dagadu Pote .. Petitioner
vs.
Shri Sitaram Rambhau Midge & Ors. .. Respondents

Mr. U. B. Nighot for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE : 06 MAY 2016

P.C :

1] Rule was issued in this petition on 5 October 1998. Interim relief was also granted in terms of prayer clause (c) and the hearing of the petition was expedited.

2] The challenge in this petition is to the judgment and order dated 3 July 1998 made by the Maharashtra Revenue Tribunal (MRT) under the provisions of the Maharashtra Tenancy and Agricultural Lands Act 1948 (Tenancy Act).

3] There is no dispute that Babubai Dagadu Pote, the predecessor in title of the petitioners was agricultural tenant in respect of the suit property owned by the respondents (landlords). On the tiller's day i.e. on 1 April 1957, however, the said Babubai was a widow. In 1974, Babubai applied for fixation of purchase

price, but the enquiry was dropped on 3 June 1974, on the ground that Babubai was a widow. In 1974, Babubai through her son and duly constituted power of attorney Maruti Dagadu Pote again applied for fixing purchase price. Again, this proceedings were dropped, *inter alia* on the ground that Babubai was a widow. Maruti Dagadu Pote expired during the life time of Babubai. Once again, Babubai, this time through her grand-son and duly constituted power of attorney, applied for fixation of purchase price. These proceedings came to be numbered as 32-F/5 of 1993.

4] In the aforesaid proceedings, the landlords filed their response, *inter alia* contending that Babubai, besides being a tenant of the suit property, is tenant of certain other properties as well. It was also contended that Babubai had sold some land owned by her on 15 May 1971. The landlords claimed that they have no other properties and therefore, *bona fide* required the suit property for their own purposes. The landlords also contended that Babubai has failed to pay any rents to the landlords and therefore was liable to be evicted from the suit property under section 14(1)(a) of the said Act.

5] The Tahsildar, by order dated 5 February 1996 has virtually said nothing about Babubai's claim for purchase of the suit property

but proceeded to make an order for eviction of Babubai *inter alia* on the ground that Babubai has defaulted in payment of rents and further, the landlords have no other land for the purposes of their sustenance, other than the suit property.

6] Babubai instituted a tenancy appeal no. 4 of 1996 before the SDO under section 74 of the said Act. The SDO vide judgment and order dated 3 June 1997 allowed the appeal and set aside the Tahsildar's judgment and order dated 5 February 1996. The appeal court, also took cognizance of the circumstance that on 24 May 1995 Babubai died and ordered price fixation under section 32G of the said Act, on the basis that Babubai's grand-son, Balasaheb Maruti Pote is entitled to seek such fixation of purchase price.

7] The landlords instituted revision petition no. 11 of 1997 before the MRT invoking the provisions under section 76 of the said Act. The MRT vide impugned judgment and order dated 3 June 1997 has reversed the SDO and set aside its judgment and order dated 3 June 1997. Hence, the present petition.

8] Mr. Nighot, learned counsel for the petitioner has submitted that the Tahsildar's judgment and order dated 5 February 1996 was *ex facie* without jurisdiction. He submitted that in the absence of the

landlords terminating the tenancy of Babubai and instituting appropriate proceedings for recovery of possession from Babubai, the Tahsildar had no jurisdiction whatsoever to order Babubai's eviction. He submitted that the Tahsildar's order was rightly set aside by the SDO and the MRT clearly exceeded its limited jurisdiction under section 76 of the Tenancy Act, in interfering with the SDO's judgment and order. Mr. Nighot submitted that the MRT, also exceeded jurisdiction in adverting to the provisions contained in section 32F of the Tenancy Act, which in any case, had been substantially complied with by the petitioners.

9] The respondents, though duly served, were neither present nor represented. This being an expedited matter of the 1998, the matter was taken up for final hearing. Although, Mr. Nighot concluded his submissions on 5 May 2016, the matter was posted for the next day, so as to afford opportunity to the respondents to make their submissions in the matter. However, since position on 6 May 2016, with regard to the presence of the respondents or their Advocates was the same. This matter is being finally disposed of.

10] There is merit in the contention of Mr. Nighot that the Tahsildar, in making the judgment and order dated 5 February 1996 and ordering the eviction of Babubai, had exceeded jurisdiction. It

must be noted that tenancy case no. 32-F/5 of 1993, instituted by Babubai in her life time against the landlords, had merely sought for determination of the purchase price in terms of section 32G of the Tenancy Act. In case, the Tahsildar was of the opinion that such an application is not maintainable, either because similar application had been made and was dropped earlier or because no such application lies, whilst the widow – tenant is actually living, the Tahsildar could have simply rejected such application for the said reasons. However, in an application made by Babubai seeking determination of purchase price, the Tahsildar lacked jurisdiction to order the eviction of Babubai, upon the spacious plea that Babubai was a defaulter in the matter of payment of rent and further that the landlords were in greater need of the suit property than Babubai, who was admittedly a tenant of the suit property.

11] There is really no dispute that Babubai was indeed the tenant of the suit property on 1 April 1957, the tiller's day. However, since Babubai was a widow on the said date, the tiller's day stood postponed, in so far as she was concerned. In case, the landlords were of the opinion that Babubai has failed to pay the rents in respect of the suit property, it was possibly open to them to terminate the tenancy in terms of the provisions contained in section 14 of the Tenancy Act. Sub section (1) of section 14, inter alia

provides that notwithstanding any law, agreement or usage, or the decree or order of the court, the tenancy of any land shall not be terminated unless the tenant failed to pay the rent for any revenue year before 31st day of May thereof. Further, this sub section also provides that termination of tenancy by the landlord has to be preceded by three months notice in writing informing the tenant of the landlords decision to terminate the tenancy and the ground for such termination and the tenant has failed to remedy the breach for which the tenancy is liable to be terminated.

12] This means that the landlords were required to give three months notice in writing informing Babubai of their decision to terminate the tenancy, inter alia on the ground that she has failed to pay rent for any revenue year before 31st day of May thereof. If upon receipt of such notices, Babubai were to have paid the rents, then the landlords would not be entitled to terminate the tenancy. Only upon valid termination of tenancy could the landlords have applied to the Tahsildar for recovery of possession from Babubai. In the present case, neither was any notice as contemplated by Section 14(1) of the tenancy Act ever served upon Babubai, nor the tenancy in fact terminated. Further, the landlords did not even institute any proceedings seeking recovery of possession but merely, filed a reply in Babubai's application for determination of

purchase price, urging that Babubai be evicted from the suit property, *inter alia* on the ground that she was a defaulter and that the landlords were in greater need of the suit property than Babubai. On the basis of said reply, and without any satisfaction with regard to the the compliances with the provisions contained in section 14(1) of the Tenancy Act, the Tahsildar, clearly exceeded jurisdiction in ordering eviction of Babubai. The SDO by judgment and order dated 3 June 1997, quite correctly interfered with the Tahsildar's order dated 5 February 1996 and set aside the same.

13] The MRT has also exceeded jurisdiction in interfering with the SDO's judgment and order dated 3 June 1997, except perhaps in regard to the direction to determine purchase price under section 32G of the Tenancy Act. The SDO, in the facts and circumstances of the present case, was not required to issue such direction at the appellate stage. Similarly, the MRT was also not justified to go into the issue of compliance with section 32F (1), simply because original proceedings had been instituted in the life time of Babubai and the same were instituted by Babubai and not the landlords, seeking recovery of possession from Babubai or her legal representatives. The issues as to whether there was compliance with the provisions of section 32F or not could have perhaps been gone into in appropriate proceedings, if initiated by the landlords

before the Tahsildar. In the present case, only real issue which arose was whether the Tahsildar acted within jurisdiction in ordering eviction of Babubai, in an application preferred by Babubai seeking determination of purchase price under section 32G of the Tenancy Act, by advertizing to and taking cognizance of the contentions of the landlords in their reply to the effect that Babubai had failed to pay the rents and that the landlords were in greater need of the suit property. In my judgment, the Tahsildar clearly exceeded jurisdiction in ordering the eviction of Babubai, in such circumstances. The SDO was perfectly justified in interfering with the eviction order made by the Tahsildar. The MRT taking into consideration the limited parameters of revisional jurisdiction under section 76 of the Tenancy Act, has exceeded its jurisdiction in interfering with the SDO's order dated 3 June 1997, at least to the extent it had set aside the Tahsildar's order dated 5 February 1996 ordering the eviction of Babubai and restoring possession of the suit property to the landlords.

14] The SDO, however, was not justified in directing the fixation of purchase price under Section 32G, at the behest of the legal representatives (grand son) of Babubai, without in-depth examination of the facts and circumstances, particularly in the context of the provisions contained in Section 32F of the Tenancy

Act. Accordingly, even though the impugned judgment and order dated 3 July 1998 made by the MRT is being set aside, so also, the direction in the SDO's judgment and order dated 3 June 1997 for determination of purchase price under section 32G of the Tenancy Act is also being set aside. The issue with regard to the determination of the purchase price under section 32G of the Tenancy Act as also compliances with the provisions contained in section 32F of the Tenancy Act are specifically kept open. Accordingly, if such issues arise in future, the authorities under the Tenancy Act shall decide the same in accordance with law and uninfluenced by any observations or findings in the SDO's order dated 3 June 1997 or for that matter the MRT's judgment and order dated 3 July 1998 (which in any case is hereby set aside).

15] The impugned judgment and order dated 3 July 1998 is accordingly set aside. The direction for determination of purchase price under section 32G made by the SDO in judgment and order dated 3 June 1997 is also set aside. However, the judgment and order dated 3 June 1997, to the extent, it sets aside the Tahsildar's judgment and order dated 5 February 1996, is hereby upheld.

16] Rule is accordingly made absolute to the extent indicated herein above. There shall be no order as to costs.

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

(M. S. SONAK, J.)

Chandka