

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4164 OF 1998

Shri. Dnyanu Rau Mane
since deceased and now survived
by his legal heir, viz.
Shri Bahiru Dnyanu Mane,
Residing at Rahimatpur,
Tal. Koregaon, Dist. Satara

.... Petitioner
(Ori. Opponent)

Vs.

Shri. Krishnurao Yadu Mane
Residing at Rahimatpur,
Tal. Koregaon, Dist. Satara

.... Respondent
(Ori. Applicant)

Mr. Uday Warunjikar, Advocate for the Petitioner.
Mr. R.A. Thorat, Senior Advocate a/w Mr. Pradeep J. Thorat for
the Respondent.

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

Date : 28th November, 2016

JUDGMENT :

1 This petition challenges the judgment and order dtd.
16th March, 1998, by which the Maharashtra Revenue Tribunal,
Pune allowed the revision application filed by the respondent and
set aside the order of Sub Divisional Officer, Koregaon in the
tenancy appeal.

2 The respondent is the owner of the land in question i.e. Survey No.328.8, admeasuring 13 R, situate at Village Rahimatpur, Taluka Koregaon, Dist. Satara. As per the revenue record, the father of the petitioner was the ordinary tenant in respect of the land in question during the period 1952-1953 to 1954-1955, as such continued till 15th June, 1955. Since then the respondent has been in possession of the property and cultivating the same.

3 On 9th July, 1979, the petitioner filed Application No.4 of 1979 to the Tahsildar under Section 32 (1B) of the Bombay Tenancy And Agricultural Lands Act (the “Tenancy Act” for short). The application was styled as “reminder”. The petitioner claimed in the application that his father was forcibly dis-posessed from the land in question in the year 1956-1957. As a result, on the Tiller's day i.e. on 1st April, 1957, the petitioner's father was not in possession of the land in question, though he was the tenant. The petitioner's father died in the year 1969. In the same year, as soon as Section 32 (1B) was introduced into the Tenancy Act, the petitioner made an application for restoration of possession of the land in question, by taking it from the respondent. That application is not available on record. However, according to the petitioner, notices of the original application had been issued on 20th May, 1971 and 21st July, 1971. The issuance of those notices, according to him indicate that the original application had been

made in the year 1969. Later due to non-availability of his original application, the reminder filed by him in the year 1979 came to be registered as an application.

4 The Tahsildar, Koregaon by his short order dtd. 19th August, 1980, dismissed the application holding that the father of the petitioner was not in possession of the land in question in the year 1955-1956. His possession was there only until 15th June, 1955. As such the application as filed under Section 32 (1B) was not maintainable.

5 Being aggrieved by the order, the petitioner preferred an appeal to the Sub Divisional Officer, which appeal was allowed by the order dtd. 30th October, 1987 and the matter remanded to the Tahsildar for fresh hearing. The Sub Divisional Officer in his order found that reliance by the Tahsildar upon mutation entries alone to decide the application was not proper.

6 On remand, the Tahsildar, Koregaon heard the application by giving due opportunity to the parties to lead evidence thereon. By his order dtd. 19th January, 1991, the Tahsildar dismissed the application with a finding that the father of the petitioner was in possession as a tenant of the land in question till 15th June, 1955. As such on the Tiller's day i.e. on 1st April, 1957, he was not in possession. The Revenue records showed that father of the petitioner was the tenant in respect of

the land in question during the period 1952-1953 to 1954-1955. He had been treated as an ordinary tenant. His tenancy came to an end on 15th June, 1955. Since then the land in question has been in possession and cultivation of the respondent. The Tahsildar also noted that the petitioner had not produced any evidence of actual possession and cultivation of the land in question by the father of the petitioner, after 15th June, 1955. Therefore, the petitioner was not entitled for restoration of possession under Section 32(1B) of the Tenancy Act. The father of the petitioner had himself made no complaint of forcible dis-possession against the respondent.

7 The petitioner then once again preferred appeal to the Sub-Divisional Officer being TNC/Appeal No.6 of 1991. By the order dtd. 28th October, 1991, the appeal was allowed and the petitioner was declared as the tenant of the land in question and possession was directed to be given to him. The appellate Court held for the first time that the proceedings under Section 32(1B) had been initiated by the father of the petitioner although the alleged original application was not available on record. It then referred to 7/12 extract which shows that the father of the petitioner was the ordinary tenant for the period 1951 to 1955. In fact this has been admitted by the respondent in his evidence as noted by the Appellate Court. Thereafter the appellate court held that there was no evidence of relinquishment of the tenancy rights by the father of the petitioner. It dis-believed the mutation entries stating reason that the mutation had been recorded without any

order of the competent officer and that while mutating the record, a cause of action for the mutation, its propriety and the grounds for mutation are required to be stated in the body of the mutation. The appellate authority opined that when a tenant desires to surrender his tenancy rights, he is required to make an application to the Tahsildar and after verification of the genuineness of the application and recording the statements of the tenant as well as the landlord an order of surrender of the tenancy is made. No such procedure was seen to have been followed. It therefore, held that there was in fact no cause for mutating the mutation entry relied upon by the respondent.

8 Being aggrieved by the order of the appellate authority, the respondent approached Maharashtra Revenue Tribunal, Pune by way of a revision application, which revision application has been allowed by the order impugned in the petition. The Revenue Tribunal firstly noted that the father of the petitioner was cultivating the land as a tenant during the period 1951-1955. But undisputedly since the year 1955, the respondent has been personally cultivating the land. There is no record to show the date of dispossession of father of the petitioner. The petitioner has not led his own evidence in the proceedings. Therefore, neither the date of dispossession of the father nor the date of his death of his father has been brought on record. This becomes relevant in view of the fact that there are no sue motu proceedings initiated by the Revenue Authorities. Further after dispossession in the year

1955, when the application for restoration is filed, as late as in the year 1969, the application ought to have contained some explanation for the delay. In the long period of 24 years, since the date of alleged forcible dispossession, neither father of the petitioner nor the petitioner ever applied to the Revenue Authorities for restoration. So far as the mutation entry is concerned, the Tribunal noted that the same was certified on 23rd November, 1955 in which father of the petitioner was shown as the tenant, but the subsequent mutation entry No.10792 disclosed that the father of the petitioner was not in possession of the land in question and his rights had come to an end. This mutation entry was certified on 29th February, 1956. By virtue of the two mutation entries, the Tribunal held that the possession of the land had been restored to the landlord. These mutation entries have not been challenged at any point of time. Therefore, mutation entries cannot be disbelieved. The third reason stated by the Tribunal is that father of the petitioner never tried to seek any declaration under Section 70B or the declaration of tenancy in the Tenancy Court after the mutation entries were made against him. Also there was no evidence of forcible dispossession by the landlord produced. On the other hand the 7/12 extracts of the relevant period shows that at that time, the respondent in fact was a minor and his guardian was his mother. The respondent attained majority on 5th January, 1962. Therefore, the dispossession by a minor under the guardianship of his widowed mother could not be disbelieved. Lastly the Tribunal observed that it was necessary for

the father of the petitioner to seek possession of the land by making application to the competent Revenue Authority within a period of two years from dispossession.

9 In my considered opinion, each reason stated by the Revenue Tribunal for reversing the order of the appellate authority is justified in law. The petitioner alleged forcible dispossession of his father in the year 1956. He has, however, not deposed in his own application. The only evidence led was that of an occupant of the adjoining land. All that this witness stated was that until 5-6 years after the year 1951-1952, father of the petitioner had been cultivating the land in question. He did not speak of forcible dispossession of the father of the petitioner. On this background, when one considers the undisputed fact of the respondent being a minor at the relevant time, under the guardianship of his widowed mother and having attained majority, about six years after the alleged incident of dispossession, it would be difficult to believe that father of the petitioner was forcibly dispossessed from the land in question. This is apart from the fact that there are no details of the alleged act of forcible dispossession stated either in the application or in the evidence produced by the petitioner.

10 Mr. Warunjikar, the learned advocate for the petitioner has relies upon decision of the Apex Court in Savaliram Gotiram Teli (deceased) by heirs and LRs vs. Madhukar Yeshwant Patankar and Others, reported in (1996) 11 Supreme Court Cases, page 28 to submit that Section 32(1B) cannot be rendered inapplicable on the

ground that the tenant during his lifetime, after dispossession, had not taken steps to get restoration of possession under Section 29 of the Tenancy Act within two years of dispossession. Section 32(1B) of the Tenancy Act operates on its own and includes within it the non-obstante clause meaning thereby overriding the provisions of Section 29 of the Act. Even if this argument is to be accepted and the observation of the Tribunal, on failure on the part of the father of the petitioner seeking restoration of possession is to be ignored, the fact remains that there is no evidence before the court of forcible dispossession by the respondent. Mr. Warunjikar next argues that surrender of tenancy by the father cannot be held to bind the petitioner and for that purpose seeks to rely upon the decision of Single Judge of this Court in Shankar M. Pawar (deceased) others vs. Anusayabai alias Ambabai w/o Punja Avhad Another, reported in (2002) 5 Maharashtra Law Journal, page 328. The decision cited can be distinguished on facts. In the proceedings before the learned Single Judge, a brother of the petitioner had allegedly surrendered possession of the agricultural land and that surrender was held to be not binding on the other brothers. The allegation with which the petitioner has come to the court is not of surrender of tenancy but of forcible dispossession.

11 For all the reasons stated above, the petition is dismissed.

(Smt. R.P. SondurBaldota, J)