

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1280 OF 1999

1 Sou. Chindhabai Vithal Tapale Deleted as per
order dtd.9/6/2015

2 Ramchandra Vithal Tapale
Adult

3 Balkrishna Vithal Tapale,
Adult

All agriculturists,
Residing at Kanhe, Tal. Maval,
District Pune.

..... Petitioners

V/s.

Sudatta Shankar Kshirsagar
Adult, Residing at 147,
Budhwar Peth, Pune

..... Respondent

* * * * *

Mr. Mahendra Agvekar a/w. Mr. Piyush N. Shah, Advocate for the
petitioners.

Ms. Sunita Mane i/by. Mr. P.B. Shah, Advocate for the respondent.

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

DATED :- 29TH JULY, 2016.

JUDGMENT :-

1). This petition challenges the order dated 14th December, 1998 passed by the Maharashtra Revenue Tribunal, Pune allowing Revision Application filed by the respondent.

2). The petitioners are the heirs and legal representatives of one, Vithal Savlaram Tapale who was agricultural tenant in respect of land at Survey No. 48/1 and 48/2 admeasuring 2 acres and 24 gunthas and 2 acres and 16 gunthas respectively situate at Village-Kaane, Taluka-Maval, District-Pune. Vithal was the tenant on 1st April, 1957 i.e. the tillers day. On 6th January, 1957 mutation entry no. 796 came to be made by the revenue authorities recording partition of the properties between the respondent, his brother, Surendra and their father Shankar Kshirsagar. Under the partition, the two properties in question came to the share of the respondent who at the relevant time was a minor. Prior to that i.e. on 6th December, 1956 notice of termination of the tenancy of Vithal had been given on the ground of personal cultivation under Section 31(1) of the Bombay Tenancy and Agricultural Lands Act ("the Tenancy Act" for short). Thereafter, proceedings for possession under Section 31 of the Tenancy Act were initiated but it came to be dismissed on 31st July, 1957. Thereafter, at the instance of Vithal enquiry for fixation of price under Section 32G came to be initiated by Agricultural Lands Tribunal, Vadgaon, Maval. The enquiry came to be dropped on 2nd May, 1960 on the ground that the respondent was at the relevant time a minor.

3). The respondent attained majority on 21st November, 1969. Thereafter, he initiated proceedings for obtaining exemption

certificate under Section 88 of the Tenancy Act by filing Tenancy Case No. 1 of 1970. That came to be rejected on the ground that partition of the joint family recorded in mutation entry no.796 on 6th January, 1957 was not valid. The share of the respondent was not separated having regard to the area assessment, classification and valuation of the land. Also the brother of the respondent was not given any share in the land. An appeal preferred by the respondent against that order came to be rejected and the order attained finality.

4). On 4th September, 1972 the proceedings under Section 32G of the Tenancy Act for fixation of the price of purchase came to be reviewed by the Agricultural Lands Tribunal, Maval and the purchase price was fixed at Rs.1,350/-. Vithal was directed to pay the amount with interest in five equal installments. The respondent preferred appeal to challenge the order. The appeal was allowed by the Deputy Collector who remanded the matter for reconsideration. On remand, fresh enquiry was made and by the order dated 14th November, 1977 purchase price fixed at Rs.1203.05/-. Aggrieved by the order, the respondent preferred appeal before the Sub-Divisional Officer, Haveli and on dismissal of the appeal to the Maharashtra Revenue Tribunal, by way of Revision Application being Revision Application No.3 of 1981. The Revision Application was initially dismissed by the order dated 9th April, 1981. Pursuant to the order passed by this Court in Writ Petition No. 2313 of 1983, the Revision Application remanded to the Tribunal for fresh consideration. The Tribunal after taking note of the history of the

case held that the partition of the joint family property that took place in January, 1957 was correct and that it was not open for the petitioners to challenge the partition. The reasons therefor are stated at paras-10 to 13 of the order. The first reason is that, the petitioners never objected to the postponement of the proceedings under Section 32G in the year 1960 on the ground of minority of the landlord. The respondent had become landlord of the petitioners on account of partition. Besides, the petitioner had admitted ownership of the respondent in the proceedings before the Agricultural Lands Tribunal. In his statement recorded on 2nd June, 1968 the proceedings under Section 32G were reopened in the year 1972. Even at that time, the petitioner had not challenged the ownership of the respondent and the Agricultural Lands Tribunal on 4th September, 1972 fixed the price of the land. When the matter was carried further to the Sub-Divisional Officer also, there was no challenge to the ownership. Thus for 15 years during the year 1960 of 1975 there was no challenge to the ownership of the respondent by the petitioner. It is also noted by the Tribunal that, if the partition of the joint family property was to be disputed by the petitioners it was necessary for them to make other joint family members as parties to the proceedings before the Agricultural Lands Tribunal. Instead the notice given by the petitioners was only to the respondent. The other most important fact noted by the Tribunal was that, based on the very partition, the petitioners had purchased another piece of land from the brother of the respondent, Surendra by initiating proceedings under Section 32G of the Tenancy Act. This would mean that the petitioners had been challenging and/ or

accepting the fact of partition so as to suit their conveniences.

5). Based on the above facts, the Tribunal held that the respondent had proved the partition and the fact of the parties having acted upon the partition. In the circumstances, it was necessary for the petitioners to exercise their willingness to purchase their land within a period of 2 years from 21st November, 1969 when the respondent attained majority. As the petitioners failed to exercise their willingness within time, the purchase became ineffective in view of Section 32-F(1)(a) of the Tenancy Act. It therefore allowed the Revision Application by the respondent.

6). None of the facts stated above have been disputed by the petitioners. In the circumstances, the only unmistakable conclusion to be drawn therefrom is as drawn by the Tribunal. Therefore, there is no substance in the petition. The petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)