

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 1743 OF 1993

Dattatraya s/o Chintaman Patankar,
(Deceased) Through his L.Rs.

- 1-a. Partibha Dattatraya Patankar,
Age 77 years, Occu: Household,
- 1-b. Sanjivan Dattatraya Patankar,
Age 53 years, Occu: Service,
- 1-c. Jayant Dattatraya Patankar,
Age 51 years, Occu: Service,
- 1-d. Pravin Dattatraya Patankar,
Age 48 years, Occu: Service,
All R/o. Flat No.1, Akshay Apartment,
Samarthnagar, Aurangabad,
Taluka & District Aurangabad.

... PETITIONERS
Original Applicants

VERSUS

- 1. Maruti s/o Honaji Haran,
(Deceased. His L.Rs.)
 - a. Vithal s/o Maruti Haran,
age 35 years;
 - b. Govindrao Maruti Haran,
age 45 years;
All Occ: Agri; R/o Shivani
Tq. Kalamnuri, District-Parbhani.
- 2. Narayan s/o Honaji Haran,
(Deceased. His L.Rs.)

- a. Subhash s/o Narayan Haran,
age 28 years; Occ: Agri;
R/o Shivani, Tq. Kalamnuri,
District-Parbhani.
3. Babanrao Honaji Haran,
(Deceased. His L.R.)
 - a. Bapurao Babanrao Haran,
(Deceased. His L.Rs.)
 - 3/A/ (I) Smt. Nilawati w/o Bapurao Haran,
Age 50 years, Occ : Household,
r/o Shivani (bk), Taluka Kalmanuri,
District Hingoli.
 - 3/A/ (II) Smt. Surekhabai w/o Bapurao Haran,
Age 40 years, Occ : Agricultural,
r/o Shivani (bk), Taluka Kalmanuri,
District Hingoli.
4. Achutrao Honaji Haran (died) through L.Rs.
Keshav Achutrao Haran (died) through L.Rs.
 - 4/A] Shahaji s/o Keshav Haran,
Age 21 years, Occ : Agri.
R/o Shivaji (bk) Taluka Kalmanuri,
Dist. Hingoli.
 - 4/B] Shivaji s/o Keshav Haran,
Age 21 years, Occ : Agri.
R/o Shivaji (bk) Taluka Kalmanuri,
Dist. Hingoli.
5. Sadashiv Honaji Haran,
(Died) through L.Rs.
 - 5/A] Sudhakar s/o Sadashiv Haran,
Age 40 years, Occ : Agri.
R/o Shivaji (bk) Taluka Kalmanuri,
Dist. Hingoli.

5/B] Kishan s/o Sadashiv Haran,
Age 38 years, Occ : Agri.
R/o Shivaji (bk) Taluka Kalmanuri,
Dist. Hingoli.

5/C] Suresh s/o Sadashiv Haran,
Age 36 years, Occ : Agri.
R/o Shivaji (bk) Taluka Kalmanuri,
Dist. Hingoli.

5/D] Prasad s/o Sadashiv Haran,
Age 34 years, Occ : Agri.
R/o Shivaji (bk) Taluka Kalmanuri,
Dist. Hingoli.

(Original Non-Applicants)

6. The Member,
Maharashtra Revenue Tribunal,
Aurangabad.

... **RESPONDENTS**

...

Mr. N. K. Kakade, Advocate for Petitioners.

Mrs. A. N. Ansari, Advocate for Respondent Nos.1-a, 1-b, 2-a, 3-a & 5.

...

CORAM : **V. K. JADHAV, J.**

RESERVED ON : 21st December, 2017.

PRONOUNCED ON: 22nd December, 2017.

JUDGMENT:

. Being aggrieved by the judgment and order dated 23rd April, 1992 passed by the Maharashtra Revenue Tribunal, Aurangabad in Case No.86/B/91/Parbhani, the Respondent (original Applicant / Plaintiff) has approached to this Court by filing the present

writ petition.

2 Brief facts giving rise to the present writ petition are as follows:

- i. Original Petitioner deceased (Dattatraya) is the owner of lands bearing Survey Nos.17/1, 17/2 and 27 situated at village Shivani (Bk.), Taluka Kalamnuri, District Parbhani. Deceased Maruti / original non-applicant had cultivated the lands as tenant from 1955 onwards. Original Petitioner / Plaintiff (Dattatraya) had issued the notice of termination of tenancy under Section 19(2) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as “the Tenancy Act, 1950”) to deceased Maruti on the ground that deceased Maruti had sublet the lands and failed to cultivate the lands personally. Original Petitioner / Plaintiff (deceased Dattatraya) had filed an application dated 2nd August, 1973 purporting to be one under Section 32 read with 19(2) of the Tenancy Act, 1950. Original non-

applicant / tenant (deceased Maruti) had raised a plea that all the real brothers of deceased Maruti are the members of joint Hindu family and deceased Maruti being eldest brother and *Karta*, look after all the family affairs. It has been contended that the aforesaid lands have been given on Batai basis to deceased Maruti and his brothers and the name of deceased Maruti being the eldest member of the family, incorporated in the revenue record. All the members were cultivating the suit lands since 10 years before the police action. It has been also contended that the notice as required under Section 19 (2) of the Tenancy Act, 1950, never issued nor served on deceased Maruti at any time. It has been also stated that the Petitioner / Plaintiff (deceased Dattatraya) has not filed the application to obtain the possession of the aforesaid lands within a period of two years from the date on which the right to such possession

accrued to him and as such, the application is not tenable in view of the provisions of sub-Section (2) of Section 32 of the Tenancy Act, 1950.

- ii. The learned Additional Tahsildar by order dated 9th June, 1988 in File No.82/TNC/32(2)-19(2)-1, allowed the petition filed by Plaintiff (Dattatraya) and accordingly, directed restoration of the lands to the Petitioner by terminating the tenancy rights of deceased Maruti under Section 19(2) and Section 32(2) of the Tenancy Act, 1950. Being aggrieved by the same, deceased Maruti along with his brothers preferred an appeal before the Deputy Collector Land Reforms, Parbhani and the Deputy Collector Land Reforms, Parbhani by order dated 16th July, 1990 dismissed the appeal by upholding the judgment of the Additional Tahsildar, Kalamnuri. Aggrieved by the same, the legal heirs of his two brothers and others members preferred a

revision before the Maharashtra Revenue Tribunal, Aurangabad and the learned Member of the Maharashtra Revenue Tribunal, Aurangabad by judgment and order dated 23rd April, 1992 in Case No.86/B/91/Parbhani, allowed the revision petition, quashed and set aside the orders passed by the lower Courts and rejected the application of the land owner filed under Section 19(2) read with Section 32(2) of the Tenancy Act, 1950. Hence, this writ petition.

3 The learned counsel for Petitioner (legal heirs of original Petitioner / Plaintiff [deceased Dattatraya]) submits that the Maharashtra Revenue Tribunal has no legal authority to interfere with the finding of facts arrived at by the Courts below. The learned counsel submits that the question of notice as contemplated under Section 19(2) of the Tenancy Act, 1950 has been concluded by order of Additional Tahsildar and confirmed by the Deputy Collector. The learned counsel submits that deceased Maruti (original tenant) had sublet the suit lands to the persons, who are his real brothers. The

learned counsel submits that from perusal of 7/12 extract, which is a part of record, it appears that deceased Maruti had cultivated the lands from 1955-56 to 1966-67 and thereafter, sublet the lands from 1967-68 to 1972-73 in the names of different persons. From perusal of Namuna No.5 i.e. the abstract of tenancy of village Shivani (Bk.) in respect of the suit lands, it is clear that the suit lands had been sublet to different persons. Even from the perusal of agreement (VADAPATRA) dated 19th May, 1985 and 22nd March, 1987, it is also clear that the suit lands had been sublet. The learned counsel submits that the Petitioner had filed an application seeking direction to the non-applicant (deceased Maruti) to produce on record the original notice of termination of tenancy and despite the directions given by the learned Additional Tahsildar, failed to produce it on record and as such, the learned Additional Tahsildar has rightly placed his reliance on the acknowledgment receipt. The learned counsel submits that though copy of legal notice was not produced on record, the acknowledgment receipt produced on record, makes it clear that deceased Maruti had received the notice on 4th November, 1972 and thereafter, the Petitioner / Plaintiff (deceased Dattatraya) had filed an application before the Tahsildar on 2nd August, 1973 i.e. after expiry of

six months period from the date of receipt of notice for termination of tenancy. The learned counsel submits that the original Petitioner / Plaintiff (deceased Dattatraya) had examined himself before the learned Additional Tahsildar and also examined two witnesses to substantiate his contentions. The said witnesses are adjoining land holders. In their presence, deceased Dattatraya had given the suit lands to deceased Maruti alone for cultivation on Batai basis and deceased Dattatraya as well as those witnesses have stated before the Additional Tahsildar that deceased Maruti was residing separately from his father and brothers at the relevant time. They have stated specifically and unequivocally that the suit lands were given to deceased Maruti alone for his personal cultivation and for some time deceased Maruti had cultivated the lands personally. However, he had sublet the lands to his brothers and the brothers thereafter, started cultivating the lands as per the shares allotted to them. The learned counsel submits that the Additional Tahsildar has correctly allowed the petition / application filed by deceased Dattatraya and the said order was confirmed by the Deputy Collector Land Reforms, Parbhani. The learned counsel submits that the learned Member of the Maharashtra Revenue Tribunal cannot interfere with the finding of

facts of the lower Courts by appreciating the evidence and comes to its own finding. The learned counsel submits that the learned Member of the Tribunal has no jurisdiction to interfere with the findings of the Additional Tahsildar.

4 The learned counsel for Petitioners in order to substantiate his submissions, placed his reliance on the following cases:

- a) **Maruti Bala Raut Vs. Dashrath Wathare and others**, reported in, **1974 Mh.L.J. 972**,
- b) **Smt. Durgabai w/o Dattajirao Ghatge since deceased by her LRs. & ors. Vs. Yesaba Santu Kamble since deceased by his LRs & ors**, reported in, **2004 (4) MAH.L.J. 938**.

5 The learned counsel for Respondent submits that the learned Member of the Maharashtra Revenue Tribunal has noticed that the authorities below have committed error apparent on the face of record. The learned Member of the Maharashtra Revenue Tribunal has not re-appreciated the evidence on record, however, has

considered the effect of non-compliance of the provisions of Section 19(2) and 32(2) of the Tenancy Act, 1950. The learned Member of the Tribunal has considered the question whether the cultivation of the land by the real brothers of original tenant amounts to subletting of the land and whether the tenancy has been terminated under Section 19(2) of the Tenancy Act, 1950 by issuing notice as required by the said provisions and whether the application for eviction of tenant is within the prescribed time of limitation as contemplated under Section 13(2) of the Tenancy Act, 1950. The learned Member of the Tribunal has considered this legal position on the factual findings recorded by the authorities below.

6 The learned counsel for Respondent submits that it is the contention of the Petitioner / Plaintiff (deceased Dattatraya/landlord) that deceased Maruti, who is admittedly the tenant, has inducted his other brothers on the suit lands for cultivation and in this way, he had sublet the suit lands. The other non-applicants are the real brothers of the admitted tenant and they are the members of joint Hindu family. The learned counsel submits that the term “to cultivate personally” as defined under Section 2(1)(g) of the Tenancy Act, 1950, it is clear that in case of undivided Hindu family, the land shall be deemed to be

cultivated personally, if the same is cultivated by any member of such family.

The learned counsel for the Respondent submits that in terms of the provisions of Section 19(2)(d) of the Tenancy Act, 1950 read with first proviso, no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section unless the landholder gives six months' notice in writing intimating his decision to terminate the tenancy and the grounds for such termination. The learned counsel submits that in the instant case, notice or copy of notice is not at all produced on record and merely on the basis of the so-called acknowledgment receipt, the authorities below have considered compliance of the said proviso. The learned counsel submits that not only the notice in writing to be served on the tenant is important, however, the grounds for such termination in the notice are also equally important. The learned counsel submits that in absence of the draft of the notice on record, both the authorities have erroneously presumed the compliance of notice as contemplated under Section 19(2) proviso. The learned Member of the Tribunal has rightly considered this legal position and concluded that the original Petitioner has failed to prove that the notice has been issued in

compliance with Section 19(2) proviso to the non-applicant for termination of tenancy.

The learned counsel for Respondent submits that the landholder has initiated the proceedings under Section 19(2) read with 32(2) of the Tenancy Act, 1950. In terms of the provisions of Section 32(2) of the Tenancy Act, 1950, no landholder shall obtain possession of any land by a tenant except by an order of the Tahsildar, for which he shall apply in the prescribed form within a period of two years from the date on which the right of such possession is accrued to the landlord. The learned counsel submits that it is the contention of the landholder that from the year 1965 deceased Maruti had sublet the lands to his own brothers and thus, the cause of action arose in that year itself. However, the landlord has filed the application in the year 1973 i.e. almost after the lapse of five years. The learned counsel submits that all these legal aspects of the matter have not been considered by the lower authorities. The learned Member of the Tribunal has rightly allowed the revision application and quashed and set aside the orders passed by the authorities below. No interference is required.

7 The learned counsel for the Respondent in order to substantiate her contentions, placed reliance in the case of **Samba Motiram Alone Vs. Tukaram Mahadeo Chandakar**, reported in, **1980 Mh.L.J. 213**.

8 In the backdrop of these submissions, relevant provisions of the Tenancy Act, 1950, are required to be reproduced hereinbelow (the relevant Sections 19 and 32 are reproduced hereinbelow alongwith the definition “to cultivate personally”):

“2. Definitions:

(1) In this Act, unless there is anything repugnant in the subject, or context,—

(g) “to cultivate personally” means to cultivate on one’s own account—

(i) by one’s own labour, or

(ii) by the labour of any member of one’s family, or

(iii) by servants on wages payable in cash or kind, but not in crop share or by hired labour under one’s personal supervision, or the personal supervision of any member of one’s family.

Explanation.— In the case of an undivided Hindu family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family:

.....

19. Termination of tenancy:

- (1) ...
 - (a) ...
 - Provided ...
 - Provided ...
 - (b) ...

(2) The landholder may terminate a tenancy on the ground that the tenant –

- (a) (i) ...
 - (ii) ...
 - (iii)...
- (b) ...
- (c) ...

(d) has sub-let the land or failed to cultivate the land personally or has assigned any interest therein ; or

- (e) ...

Provided that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section unless the landholder gives six months' notice in writing intimating his decision to terminate the tenancy and the grounds for such termination : and

- Provided
- (a) ...
- (b) ...
- (c) ...

.....

32. Procedure of taking possession:

- (1) ...
 - Provided

(2) Save as otherwise provided in sub-section

(3A), no landholder shall obtain possession of any land or dwelling house held by a tenant except under an order of the Tahsildar, for which he shall apply in the prescribed form within a period of two years from the date of the commencement of the Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1957, or the date on which the right to such possession accrued to him whichever is later.

(3) ...

(3A) ...

(4) ...”

9 On careful perusal of the judgment and order passed by the Tribunal, it appears that the learned Member of the Tribunal has not re-appreciated the evidence, but considered the legal position in terms of the findings recorded by the authorities below on the factual aspects in terms of the provisions of Section 19(1) of the Tenancy Act, 1950. The learned Member of the Tribunal has accepted the finding of facts recorded by the authorities below, however, framed the following legal questions arise in the matter:

- (1) Whether the cultivation of the land by the brothers of the tenant amounts to sub-letting the lands?

- (2) Whether the tenancy has been terminated under Section 19(2) by issuing notice as required under the said provisions?
- (3) Whether the application for eviction of the tenant is within the prescribed time limitation?

10 The learned Member of the Tribunal has referred the definition of Section 2(1)(g) of the Tenancy Act, 1950 and noticed that if the land is cultivated by the other member of undivided Hindu family, it shall be deemed to be cultivated personally by the original tenant. The learned Member of the Tribunal has also observed that both the authorities below have erroneously recorded the finding of compliance of Section 19(2) first proviso, when the copy of the notice itself is not produced before the Additional Tahsildar. The learned Member of the Tribunal has also considered that only on the basis of the acknowledgment receipt, if the compliance of the notice as contemplated under Section 19(2) is to be drawn then the same is erroneous and contrary to the provisions of the Tenancy Act, 1950. The learned Member of the Tribunal has also observed that the notice as contemplated under Section 19(2) first proviso, is not only required to be in writing intimating the landlord's decision to terminate the

tenancy, but also required the incorporation of the grounds for such termination in the notice. In the given facts and circumstances of the case, the Tribunal has noticed that in terms of the provisions of Section 32(2) of the Tenancy Act, 1950, both the authorities below have failed to notice that the application for taking possession is beyond the period of limitation.

11 In view of the above, the aforesaid two cases namely *Maruti Bala Raut Vs. Dashrath Wathare and others* (supra) and *Smt. Durgabai w/o Dattajirao Ghatge since deceased by her LRs. & ors. Vs. Yesaba Santu Kamble since deceased by his LRs & ors* (supra) relied upon by the learned counsel for Petitioner cannot be made applicable to the facts and circumstances of the present case. In terms of the provisions of Section 19(1) of the Tenancy Act, 1950, the learned Member of the Tribunal has passed the impugned order. The learned Member of the Tribunal has rightly observed that the orders passed by the authorities below, are contrary to the law and both the authorities below have failed to determine some material issues of law and there is substantial defect in following the procedure provided by the Tenancy Act, 1950, which has resulted into miscarriage of justice.

12 The learned counsel for Petitioner has vehemently submitted that in the pending proceedings before the Additional Tahsildar, the Petitioner had filed an application seeking directions to the non-applicant deceased Maruti to produce on record the original notice issued by the Petitioner for termination of tenancy and despite the order passed by the Additional Tahsildar, the non-applicant deceased Maruti had failed to produce the said notice on record. The learned counsel submits that the said order came to be confirmed even by the Tribunal when challenged by the non-applicant during the pendency of the said proceedings before the Additional Tahsildar. The learned counsel submits that therefore, the Additional Tahsildar has rightly placed reliance on the postal acknowledgment receipt produced on record. I do not find any substance in these submissions for the reason that, if such notice is not produced despite the directions given, the Petitioner was at liberty to lead secondary evidence to prove the contents of the notice by placing on record the office copy of the notice. Mere production of postal acknowledgment receipt on record cannot be construed as a due compliance of Section 19(2) first proviso. It was essential for the Petitioner to establish that six months notice in writing given to the tenant for termination of

tenancy and also to prove the grounds of such termination as incorporated in the said notice.

13 In the case of *Samba Motiram Alone Vs. Tukaram Mahadeo Chandakar* (supra) relied upon by the learned counsel for Respondent, in paragraphs 12, 13 and 14 of the order, this Court has made the following observations:

“12. Mr. Ghate for the respondent contended that this was a new point being taken up now in the petition. No objection to the validity of the notices had been raised by the petitioner in the trial Court. It is true, in the trial Court, no such contention was taken. The validity of the notice as a proper notice terminating the tenancy, was the very basis on which the Tahsildar could not under section 28(1) of the Tenancy Act, and, therefore, it was for the Tahsildar to decide, irrespective of whether an objection was taken or not by the tenant, whether the tenancy had been properly terminated on a valid notice. As observed earlier, the Naib Tahsildar, Rajura did actually notice this point and he did hold that the notices were not valid and the tenancies were not properly terminated, though he again committed an error by passing a conditional order of possession. From the revision petition of the petitioner to the Revenue Tribunal, it does appear that this ground was specifically taken as ground No. (iv) in the said revision

application to the Maharashtra Revenue Tribunal, but it appears the Revenue Tribunal has not taken cognizance of this point. This ground has also been specifically taken in the present petition as ground No. (iv). In fact a proper termination of the tenancy by a proper notice under section 19(2)(a)(i) of the Tenancy Act, read with the proviso below section 19(2) of the Tenancy Act would be the very basis of an action under section 28(1) of the Tenancy Act and an invalidity of such a notice would go to the root of the whole matter and can be considered properly even in a writ petition.

13. Mr. Ghate then contended that if the notices were held to be not valid notices terminating the tenancies of the petitioner, then the case should be remanded to the trial Court. It was urged that no explanation in this respect had been got from the respondent-landlord in the trial Court, because no objections to the validity of the notices were taken in the trial Court. If this question is to be enquired into, Mr. Ghate contends that it would be necessary to get the explanation of the respondent landlord as to what he meant by saying in the notices that legal proceedings would be taken against the tenant. Therefore, Mr. Ghate requested that in that case would be necessary to remand the case to the trial Court. It is not possible to even accept this contention of Mr. Ghate. The validity of the notices terminating the tenancy has to be determined by the Court upon a proper construction of the recitals of the notices

themselves, and not upon the particular manner in which the landlord chooses to interpret those recitals.

14. In the view taken by me, this writ petition will have to be allowed. The orders passed by all the Revenue Courts below are hereby quashed and instead it shall be ordered that the application of the landlord-respondent for possession filed in the Court of the Tahsildar, Rajura under section 28 read with section 19 of the Tenancy Act, shall stand rejected. The rule is made absolute with costs.”

14 In the instant case, even the draft or office copy of the notice is not produced on record leave apart the grounds incorporated therein in compliance with the provisions of Section 19(2) of the Tenancy Act, 1950. The learned Member or the Tribunal has therefore, rightly held that non-compliance of the provisions of Section 19(2) of the Tenancy Act, 1950 is fatal.

15 The original Petitioner / Plaintiff (deceased Dattatraya) had filed an application against the non-applicant (deceased Maruti) and his real brothers contending therein that deceased Maruti had inducted his other brothers in the suit lands for cultivation and in this way, deceased Maruti had sublet the suit lands. Though there is word against word in the oral evidence led by the parties about the status of

the family as a joint or separate, it is to be mentioned here that the Petitioner has nowhere mentioned in his original application that the brothers of deceased Maruti were residing separately and there was no undivided Hindu family at the relevant time. It is simply contended in the application that deceased Maruti had permitted his brothers to cultivate the lands and as such, in that way, he had sublet the suit lands to his brothers. In absence of any specific averments in the original application, the presumption is required to be drawn about the undivided Hindu family and in terms of the provisions of Section 2(1) (g) of the Tenancy Act, 1950, the lands shall be deemed to be cultivated personally, if it is cultivated by any member of such family. The learned Member of the Tribunal has rightly observed that this legal aspect of the matter has not been considered by the authorities below.

16 The original Petitioner / Plaintiff (deceased Dattatraya) has not stated in the application as to when the cause of action arose, however, has admitted in his cross-examination that the suit lands were given to deceased Maruti on Batai basis in the month of April 1955. Deceased Dattatraya has further stated that for 5 / 7 years thereafter, deceased Maruti had cultivated the suit lands personally

and thereafter, sublet the suit lands to his real brothers for cultivation. On the basis of the oral evidence of deceased Dattatraya, the inference could be drawn that in the year 1967, the right to possession of the suit lands accrued to deceased Dattatraya as per the provisions of sub-Section (2) of Section 32 of the Tenancy Act, 1950. However, deceased Dattatraya had filed the said application on 2nd August, 1973 i.e. almost after the period of five years from the date on which the right to such possession accrued to him.

17 In view of the above discussion, the learned Member of the Maharashtra Revenue Tribunal, Aurangabad has rightly allowed the revision petition. There is no substance in this writ petition. The writ petition is thus, liable to be dismissed. Hence, the following order:

ORDER

- I. The writ petition is hereby dismissed. In the circumstances, there shall be no order as to the costs.
- II. Rule discharged.
- III. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]