

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

WRIT PETITION NO. 3884 OF 2014

Shri Shriniwas Bapurao Deshpande
(since deceased) through legal heirs
Shri Babasaheb Shriniwas Deshpande & anr. ... Petitioners.

Versus

Dattu Hari Patil (since deceased)
through legal heir
Shri Dhondi Dattu Patil & anr. ... Respondents.

Mr. N.V. Walawalkar, Sr. Counsel i/b. Mr. Suresh M. Sabrad,
advocate for Petitioners.

Mr. Manoj A. Patil, advocate for respondent Nos. 1 and 2.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : NOVEMBER 16, 2017

P.C.:

1 Heard the learned counsel for the petitioners and the learned
Counsel for the respondents.

2 The Petitioners herein impugned the order dated 8/11/2013
passed by learned Member of Maharashtra Revenue Tribunal, Pune
seeking setting aside of the order dated 18/5/2007 passed by the Sub-
Divisional Officer, Ichalkaranji. The petitioners herein are the owners

of the land bearing Survey No. 169/1 (Gat No. 765) admeasuring 1H 58 Ares at Mauje Ingali, Taluka Hatkanangale, District Kolhapur. Shrinivas Deshpande, the predecessor in title i.e. the father of the petitioners had filed proceedings under section 88C of Bombay Tenancy and Agricultural Act, 1948(hereinafter referred as the said Act) seeking exemption of the said land from the provisions of Section 32 to 32R of the said Act. By an order dated 4/9/1961 the said application was allowed by the Then Tenancy Court which issued certificate under section 88C of the said Act in favour of the father of the Petitioners. The said order was not challenged and hence, had attained finality. Hence, the father of the petitioners had filed proceedings under section 33B and 29(2) of the said Act which was registered as Tenancy Case No. 349 of 1962. Since the Petitioners application under section 88C was allowed, the application under section 33B was allowed and the matter was remanded to the tenancy court.

3 By an order dated 20/11/2003, the respondents herein were directed to hand over peaceful possession in favour of the father of

the petitioners. The respondents herein had preferred tenancy appeal No. 5/2004 before the Sub-divisional Officer at Ichalkaranji. The learned Sub-divisional officer by an order dated 23/6/2006 was pleased to set aside the order dated 20/11/2003 and was pleased to remand the matter to the Tahasildar, Hatkanangale. The learned Tahasildar by an order dated 15th March, 2007 was pleased to hold that the Petitioners therein i.e. landlords were entitled to possession of the entire suit land and hence, had maintained the directions that the respondents shall hand over the possession in favour of the landlords.

4 The respondents had preferred tenancy appeal No. 2 of 2007 before the Sub-divisional officer, Ichalkaranji. It was the case of the respondents that they have been cultivating the said suit land for more than 42 years and therefore, they could not be deprived of being protected tenants. The sub-divisional officer had partly allowed the tenancy appeal and had directed the respondents to hand over 94 Ares of the suit land and retain balance of 64 Ares.

5 Both the parties being aggrieved by the said order had approached the Maharashtra Revenue Tribunal. By a common Judgment and Order dated 8/11/2013 the learned Maharashtra Revenue Tribunal was pleased to allow Revision Application No. 99 of 2007 filed by the Respondents herein and hence had set aside the order passed under section 33-B of the said Act. Hence, this Writ Petition.

6 The original owner had in fact, filed 3 tenancy cases bearing Nos. 345/62, 348/62 and 349/62. That the tenancy appeal No. 345/62 was partly allowed by the Tahasildar vide order dated 24/11/1962 and the respondent Bharmu Itwade, who was tenant was directed to hand over the possession of 2 acres and 2 gunthas to the appellant in tenancy case No. 349 of 1962. The present respondent was directed to hand over possession of 2 acres and 13 gunthas. Tenancy appeal No. 348 of 1962 was dismissed against tenant Mahadu Kamble.

7 It is pertinent to note that being aggrieved by the Judgment and Order dated 24/11/1962 Bharmu Itwade had filed an appeal. In appeal, the predecessor of the present petitioners had compromised case with Shri Itwade and the said land was sold in favour of the tenant at much higher rate. In tenancy case No. 348/62 also there was a compromise with Mahadu Kamble. Part of the land was sold to him for cultivation and the landlord had retained the half of the remainder land.

8 During the pendency of the tenancy case No. 349/62 the original landlord Shriniwas Deshpande has expired. The legal heirs were not brought on record within the period of limitation and hence, by an order dated 28/2/1986 the case was disposed of. However, it was restored at the request of the legal heirs. During the pendency of the said case two sons of Shriniwas Deshpande, namely Bapu Deshpande and Datta Deshpande had expired. They had left a Will and had bestowed 1/4th share to the petitioners. Hari Deshpande had entered into an agreement with the tenant in respect of the land which had come to his share by an agreement dated 2/9/1995. Hari

Deshpande had personally received an amount of Rs. 40,000/-. As contemplated under section 32G of the Maharashtra Tenancy and Agricultural Lands Act, the price was determined and the same was paid by the tenant and he was granted the purchase certificate. It was the case of the owner that the said lands were sold out of legal necessity. In fact, the petitioners had sold the land without mentioning the legal necessity. In fact, it was agreed that the said lands are sold by the original landlord, it can be safely inferred that the landlord did not want the lands for personal cultivation.

9 The very fact that the original landlord had agreed to sell the lands to the tenants, it can be safely inferred that the landlord could not have sought restoration for personal cultivation.

10 Learned Counsel for the Petitioners submits that the Tahasildar and the Sub-Divisional Officer are the authorities to record findings of fact and such findings of facts are binding upon the Maharashtra Revenue Tribunal unless they are perverse. In the present case, the Sub-Divisional Officer had partly allowed the tenancy appeal and had

directed the respondents to hand over 94 Ares of the suit land and retain 65 Ares. The Sub-Divisional Officer had held that although the land owner is suffering from heart disease, he could get land cultivated through labour. In fact, that would not satisfy the requirement of bonafide need of the land owner. While considering the fact that the land owner had sold his land to Bharu Itwade, Sub-Divisional Officer has held that there was a compromise between the land owner and the tenant and that the land was sold. However, that would not be sufficient to show that the land owner did not have bonafide need. Such findings could not be binding upon the Maharashtra Revenue Tribunal. The Sub-Divisional Officer has also committed grave error while appreciating the sale of land in favour of Appasaheb Patil by Hari Shriniwas Deshpande. It is apparent on the face of the record that after recovering possession of land from the present respondents, legal heirs of the original land owner would sell the land. It is in these circumstances that the findings recorded by the Maharashtra Revenue Tribunal cannot be set aside.

11 As contemplated under section 33B of the Maharashtra Tenancy and Agricultural Land Act, it would be incumbent upon the landlord to prima facie demonstrate bonafide requirement of such land for personal cultivation. Moreover, it is a matter of record that the share of the deceased brothers was sold by the present petitioners. It is their defence that it was for the purpose of legal necessity. But as observed earlier, no such legal necessity was apparent on the face of the record. The learned Maharashtra Revenue Tribunal has observed that the Petitioners herein were granted certificates under section 88C of the said Act since they were legal heirs of Shriniwas Deshpande. However, it would be incumbent upon the legal heirs to demonstrate the bonafide requirement while seeking possession of the tenanted lands. As far as the other tenants were concerned, the petitioners had filed purshis to dispose of the application seeking re-possession of the said land as they had entered into a compromise. The learned Court has observed that at the time of seeking possession of the tenanted lands, the annual income of the petitioners was more than Rs. 10,000/-.

12 The learned Tribunal has also considered the fact that while compromising other tenancy cases, the landlord had submitted that he is not physically competent to cultivate the said lands and therefore, he had transferred the land in the names of his sons. In fact, section 33B contemplates that the landlord has to demonstrate the need as well as capacity to cultivate to repossess the land.

13 Section 33B (5)(b) contemplates as follows :

“Sec. 33B(5)(b)- The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation- the area resumed or the area left with the tenant being a fragment, notwithstanding, and notwithstanding anything contained in section 31 of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act.”

14 The learned Tribunal has considered that the original landlord was in possession of 1 Hector 87 Are from Gat No. 212, 0.26 Are in Gat No. 170 which in totality is 2 Hector 13 Ares, whereas 1 Hector 58 Ares was sold to the one tenant. 1 Hector and 13 Ares was in

possession of the petitioners. Hence, it is clear that the petitioners were in possession of excessive land than that of the tenant. As per the act, only in the eventuality that the holding of the tenant is more than the landlord, the landlord would be entitled to seek restoration. In fact, the landlord had sold land to the other tenant only to show small holdings. The learned Tribunal had perused entire proceedings in the tenancy case and has rightly arrived at a conclusion that the order dated 18/5/2007 deserves to be quashed and set aside. The impugned order calls for no interference as the learned Tribunal has not only considered the facts involved in the case but has read the facts in consonance with the provisions of the Maharashtra Tenancy and Agricultural Land Act.

15 Hence, the Writ Petition being sans merits stands dismissed.

(SMT. SADHANA S. JADHAV,J)