

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

WRIT PETITION NO.200 OF 1997

Kaluram Purshottam Sheth
(Since deceased through Lrs.)

1A. Rajan K. Sheth

..Petitioner

V/s.

Mr.Pandurang Lala Marchande
(Since deceased through Lrs.)

1a) Dagdu Pandurang Marchande & Ors.

..Respondents

Mr.S.S. Patwardhan for the Petitioner.

Mr.A.P. Ranade for Respondent No.1A & 1C.

CORAM : M. S. SONAK, J.

DATE : 15th SEPTEMBER 2017

ORAL JUDGMENT :

1. Heard Mr.S.S. Patwardhan for the petitioner and Mr.A.P. Ranade holding for Mr.Karandikar for the respondent.

2. The challenge in this petition is to the following judgments and orders :-

(a) Judgment and order dated 31st January 1987 made by the Tahasildar in Tenancy case No.8 of 1996;

(b) Judgment and order dated 29th March 1993 made by the SDO in Tenancy Appeal No.5 of 1992; and

(c) Judgment and order dated 29th February 1996 made by the Maharashtra Revenue Tribunal (MRT) in Tenancy Appeal No.113 of 1993.

3. By the judgment and order dated 31st January 1987, Tahasildar has allowed the respondent's (tenants) application under Section 32G of the Maharashtra Tenancy and Agriculture Lands Act, 1948 (Tenancy Act). The judgments and orders dated 29th March 1993 and 29th February 1996 dismissed the petitioners (landlords) Appeal and Revision against Tahsildar's judgment and order dated 31st January 1987. This means that concurrently, three authorities, have held against the petitioner-landlord.

4. Mr.Patwardhan, the learned counsel for the petitioner however raises the following two points in support of this petition :-

(a) Mr.Patwardhan submits that all the three authorities have failed to consider the scope and merit of document dated 11th May 1957, which establishes two things :-

(i) Firstly that the respondent was only a *naukar* (servant) and not a tenant;

(ii) In any case the respondent came in possession on 11th May 1957 and not on 01st April

1957 which is '*a tillers day*'. He submits that the non-consideration of such relevant and vital material constitutes perversity and on this ground the impugned judgments and orders are liable to be set aside.

(b) Mr.Patwardhan submits that MRTP has completely erred in holding that once certificate is issued under Section 32M of the Tenancy Act, the same is completely conclusive and the issue as to whether the order under Section 32G of the Tenancy Act was rightly made or not can never been gone into. He submits that the certificate under Section 32M of the Tenancy Act is always subject to the order made under Section 32G of the Tenancy Act. If the said order is found to be vulnerable, then, relief cannot be denied on that ground and in the meantime a certificate under Section 32M has already been issued.

5. Mr.Ranade, the learned counsel for the respondents submits that the document dated 11th May 1957 has been duly considered by the authorities. He submits that in this case, the respondents had applied for declaration of tenancy and such declaration was in fact granted by the Competent Authority. Such

order granting declaration has attained finality and therefore, at the stage of determination of purchase price under Section 32G of the Tenancy Act, the issue as to whether the respondents were indeed tenants or not could not have been gone into. Mr.Ranade submits that the principle of *res judicata* was clearly attracted and there is absolutely no case made out to interfere with the impugned judgments and orders.

6. In this case, the record indicates that the respondents on 27th November 1969 had applied for declaration as tenants under Section 70(b) of the Tenancy Act. The Tahasildar, who is Competent Authority in such matters, in fact allowed the application and declared the respondents as tenants. The petitioner challenged the Tahasildar's orders before the SDO and the matter was remanded to the Tahsildar. On remand, the Tahasildar, by order dated 08th July 1974 once again declared the respondents as tenant in respect of the suit property. This order was never challenged by the petitioner and consequently has attained finality.

7. In the year 1986, the respondents instituted proceedings under Section 32G of the Tenancy Act for determination of purchase price. These proceedings were allowed

and the purchase price was determined. The petitioners appealed to the SDO, which appeal was dismissed. The petitioners instituted Revision before the MRT under Section 76 of the Tenancy Act, which Revision was allowed and the matter was remanded to the SDO for reconsideration. Upon reconsideration the SDO once again dismissed the petitioners appeal, primarily relying upon the circumstance that the Tahasildar's orders dated 08th July 1974 declaring the respondent as tenant had attained finality. Against SDO's order dated 29th March 1993, the petitioner instituted tenancy Revision Application No.113 of 1993 before the MRT. The MRT by impugned judgment and order dated 29th February 1996 has since dismissed the Revision Petition of the petitioner.

8. In this case, the authorities have rightly held that the declaration dated 08th July 1974 issued by the Tahasildar in favour of the respondent has attained finality. In proceedings under 32G of the Tenancy Act, it was really, not open to the petitioners to re-agitate this issue. The MRT has rightly relied upon the decision in ***Mohanlal Goenka V/s. Benoy Kishna Mukherjee & Ors.***¹ In this, the Hon'ble Supreme Court has held that principles of *resjudicata* apply even at different stages of the same proceedings. In the facts

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of the present case principles of *resjudicata* were clearly attracted. The declaration dated 08th July 1974 issued by the Tahasildar in favour of the respondents had attained finality by way of challenge by the petitioners. In the second round of proceedings instituted for the determination of purchase price on the basis of the declaration already granted, there was no question of the authorities revisiting the issue of tenancy of the respondents. Such attempt on the part of the petitioners, was barred under the principles of *resjudicata*.

9. Thus construed, there was no legal infirmity on the part of the SDO in not discussing the document dated 11th May 1957. In any case, the MRT, has considered the effect of the document dated 11th May 1957 but ruled that the same makes no dent to the earlier declaration. In this case, three authorities, have held against the petitioner and the petitioner has not been able to make out any case of mis-direction of law or perversity and in regard of any findings of facts.

10. Insofar as second contention of Mr.Patwardhan is concerned, although, in principle, there is *prima-facie* merit in the submission made, the question, really does not arise. Despite the observation as regards conclusiveness, the MRT, in this case, has

considered the other grounds raised by the petitioner and ruled that there was no infirmity in the orders made by the Tahasildar and SDO. Thus, this is not a case where the MRT has refused to consider the grounds raised by the petitioner only on the ground that the certificate under Section 32M is conclusive and debarred any challenge to the order made under Section 32G of the Tenancy Act.

11. For the aforesaid reasons, this petition is dismissed. There shall however be no order as to costs.

(M. S. SONAK, J.)