

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1766 OF 1998

Shri. Popat Jagannath Sutar @ Mahamuni .. Petitioner

vs.

Shri. Mohan K. Nikam

.. Respondent

Mr. P.B. Shah for the Petitioner.

None for the Respondents

CORAM : M. S. SONAK, J.

DATE : 22 SEPTEMBER 2017.

ORAL JUDGMENT :-

1] Neither the respondent present nor represented, despite the order made by this Court on 1st September 2017. In fact the order made by this Court on 1st September 2017 reads thus:

“The learned Counsel for the Petitioner submits that though the Maharashtra Revenue Tribunal in the impugned order has confirmed the order of Tenancy Awal Karkun, Koregaon in the judgment, the Tribunal has recorded a finding that the Respondent is a tenant since 1950 and in possession till date. The learned Counsel submitted that even assuming the case of the Respondent under Section 32(O) of the Bombay Tenancy and Agricultural Lands Act, 1948 of being in possession since 1981 is to be accepted, it was never the case of the Respondent that he was in possession since 1950. He submitted that such observation may be construed by the Respondent as being held as deemed tenant under Section 32(G) of the Act which will take away the further remedy of the Petitioner.

2. Prima-facie, reading of the impugned judgment and order passed by the Tribunal, it appears that though this observation has been made, the ultimate order is confirming the order of Tenancy Awal Karkun, which upheld the right of the Respondent under Section 32(O) of the Act.

3. Since it is informed that the learned Counsel for the Respondent has filed a Leave Note, stand over one week.”

2] In this case, the respondent instituted Tenancy Case No. 26 of 1993 before the Awal Karkoon seeking declaration regards tenancy.

3] The Awal Karkoon by order dated 13th April 1994 declared that the respondent is the tenant in respect of the suit property from prior to 1981. The petitioner appealed to Sub-Divisional Officer (SDO) vide Tenancy Appeal No 30 of 1994. This appeal was allowed vide SDO's order dated 20th December 1994. The respondent then instituted a revision application before the Maharashtra Revenue Tribunal (MRT). The MRT, by judgment and order dated 12th November 1997 has set aside the SDO's order and confirmed the Awal Karkoon's order.

4] Mr. Shah, learned counsel for the petitioner, submits that the material on record, at the highest suggest that the respondent was the tenant in respect of the suit property from 1981, but not from 1st April 1957. He states that even the Awal Karkoon, in his order dated 13th April 1994 has not recorded any categorical finding that the respondent was the tenant in respect of the suit property as on 1st April 1957. He submits that the MRT, by the impugned order, could

therefore, have not recorded a finding that the respondent, was the tenant in possession of the suit property as on 1st April 1957.

5] From the perusal of Awal Karkoon's order, it does not transpire that any specific finding has been returned as regards the tenancy of the respondent from 1st April 1957. The MRT, in its operative portion of the order, has merely restored/confirmed the Awal Karkoon's order dated 13th April 1994. However, in the impugned judgment and order dated 12th November 1997, the MRT has recorded the following:

“It is an admitted fact that the land is cultivated by the father of the present revision applicant since 1950 and he was also in possession of the land on 1/4/1957 i.e. on the Tiller's Day”.

6] There is merit in the contention of Mr. Shah that the MRT ought not to have recorded such a categorical finding, particularly when Awal Karkoon has not recorded the same. However, in these proceedings, it is not possible to say conclusively whether the respondent was a tenant as on 1st April 1957 or not. The Awal Karkoon, in the operative portion of his order dated 13th April 1994, has declared that the respondent was the tenant in respect of the suit property from “*from prior to 1981*”. This is quite ambiguous. This can mean that the respondent was a tenant in respect of the suit

property prior to 1st April 1957 or between 2nd April 1957 and the year 1981.

7] From perusal of the MRT's order dated 12th November 1997, there is reference to revenue receipts between year 1972 and 1975. However, it is not quite clear as to the basis on which the MRT, has recorded the aforesaid findings with regard to the respondent's tenancy as on 1st April 1957.

8] In view of the aforesaid, despite being conscious that this is an old matter, the matter is required to be remanded to the MRT only for the purposes of determining whether the declaration of tenancy in favour of the respondent should relate to the year 1st April 1957 or post 1st April 1957. Insofar as the declaration that the respondent is a tenant is concerned, there is really no case to interfere with this finding.

9] This petition is therefore, disposed of with the following order:

a] The conclusion recorded by the MRT that the respondent is a tenant in respect of the suit property is upheld;

b] However, the portion of the impugned order, which suggests that the respondent was the tenant in possession of the suit property on 1st April 1957 is set aside. The matter is remanded to the MRT for deciding whether this finding should be reiterated or varied. The MRT should issue notice to the parties and after afford of opportunity of hearing to them and further, after adverting to the materials on record, decide this issue.

c] For aforesaid purpose, the petitioner to appear before the MRT on 6th November 2017 at 11.00 a.m. Since, the respondents had not appeared, the MRT not to proceed in the matter without service of notice upon the respondent, who, is the revision applicant before the MRT. The MRT to endeavour to dispose of the revision application expeditiously, since, only a short issue is now involved before the MRT.

10] The Rule is made partly absolute to aforesaid extent only. There shall however, be no order as to costs.

(M. S. SONAK, J.)