

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6386 OF 2014

Prabhakar s/o Baburao Suradkar,
age: 69 years, Occ: Agriculturist,
R/o Village Bharaj Budruk,
Taluka Jafrabad, District Jalna.

Petitioner

Versus

01 Zamsingh s/o Ramsingh Kayate,
age: major, Occ: Agriculturist;

02 Harisingh s/o Ramsingh Kayate,
age: major, Occ: Agriculturist;

03 Bhimsingh s/o Ramsingh Kayate,
age: major, Occ: Agriculturist,

All R/o Village Pasodi, Taluka
Jafrabad, District Jalna.

Respondents

Mr.Swapnil Joshi, advocate i/by J.P.Legal Associates, for the
petitioner.

Mr.S.B .Bhapkar, advocate for Respondents No.1 to 3.

CORAM : R.M.BORDE, J.

DATE : 27th March, 2018

JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and
heard finally by consent of learned Counsel for respective parties.

2 The petitioner, who claims to be the owner of the
agricultural land admeasuring 3 hectares 92 Ares bearing
G.No.225, situate at village Aadha, Taluka Jafrabad, District Jalna,
has approached this Court objecting to the order dated 08.05.2014,

passed by the Maharashtra Revenue Tribunal, whereby the Revision Application tendered by Respondents-tenants came to be allowed and the order passed by the Deputy Collector in an appeal preferred by the landlord i.e. petitioner herein has been quashed and set aside.

3 Respondents claimed to be tenants in possession of the land belonging to the petitioner. According to the petitioner, the respondents have not paid amount of *thoka*/rent, which is settled at half crop share in the agricultural produce or value of the crop share since last 5/6 years.

4 The petitioner, hereinafter referred to as 'the landlord', has issued statutory notices terminating tenancy of respondents-tenants on 14.06.2010 and 19.02.2011 and claimed recovery of possession of the land. The landlord initiated proceedings for recovery of possession of the land under Sections 19 and 28 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as 'the Act of 1950'). The learned Tahsildar rejected the application tendered by the landlord vide order dated 27.07.2012. Being aggrieved by the order passed by the Tahsildar, Jafrabad, the landlord, petitioner herein, preferred an appeal to the Deputy Collector, Jalna, and the appellate authority, after hearing the parties, allowed the appeal presented by the landlord and remitted the matter back to the Tahsildar for holding fresh inquiry.

5 The tenants, being aggrieved by the order passed by the Deputy Collector, approached the Maharashtra Revenue Tribunal, by presenting Revision Application and the Revision

Application tendered by the tenants came to be allowed by the Maharashtra Revenue Tribunal vide judgment and order dated 08.05.2014.

6 The petitioner contends that the Maharashtra Revenue Tribunal has exceeded its jurisdiction in allowing the Revision Application. It is the contention of the respondents that the notices issued by the petitioner-landlord alone directing termination of tenancy are incompetent and all the landlords, who have entitlement in relation to the land, should have been joined by the petitioner. It is contended that the tenancy of tenants can be terminated by a landlord amongst all the other landlords who have ownership rights in respect of the property and merely because other members of the family have not joined the petitioner will not render the notices defective. It is contended that even otherwise, the petitioner has admittedly entitlement in relation to the property and as such, his rights, as a owner, cannot be denied. The tenants have not questioned the ownership of the petitioner.

7 It is contended that on termination of the tenancy by issuing notices, right accrues to the landlord to claim recovery of possession of the property. Even if it is assumed, without admitting, that in the event landlord fails to prove his entitlement to recover possession of the land from the tenants, entitlement of the landlord to receive arrears of rent, ought to have been considered by the Tahsildar and appropriate order shall have to be passed under Section 28 of the Act of 1950. Section 28 of the Act of 1950 reads thus:

28 Relief against termination of tenancy for non-payment of rent:

(1) Where a tenancy of any land held by a tenant is terminated for non-payment of rent and the land holder files any proceedings to eject the tenant, the Tahsildar shall call upon the tenant to tender to the land holder the rent in arrears together with the cost of proceedings within ninety days from the date of the order, and if the tenant complies with such order, the Tahsildar shall, in lieu of making an order of ejectment pass an order directing that the tenancy has not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated :

Provided that nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent within the period specified in sub-clause (1) of clause (a) of Sub-section (2) of section 19 and the land holder has given intimation to the tenant of the default within a period of six months of such default.

(2) The land holder may apply to the Tahsildar in the prescribed form for the recovery of arrears of rent for any period not exceeding three years. The Tahsildar may, after such enquiry as he considers necessary, pass such order as he deems fit. The Tahsildar in passing an order shall allow the tenant

to set-off the sum, if any, paid by him to the land holder within the period of three years immediately proceeding the date of application made under sub-section (1) in excess of the rent due from him :

Provided that if the Tahsildar is satisfied that in consequence of a total or partial failure of crops or similar calamity the tenant has been unable to pay the rent due, the Tahsildar may, for reasons to be recorded in writing direct that the arrears of rent together with the costs of the proceedings, if awarded, shall be paid within one year from the date of the order and that if before the expiry of the said period the tenant fails to pay the said arrears of rent and costs, the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted.

(3) When a tenant tenders an amount on account of rent to the land holder for any period and if the land holders refuses to receive it or refuses to grant a receipt for it, the tenant may present to the Tahsildar an application in writing for permission to deposit in his office the full amount of rent. The Tahsildar may receive the amount in deposit and give a receipt for it, which shall constitute a discharge of the tenant's liability in respect of rent for such period and no claim or application by a land holder for rent shall be maintainable in respect of the period for which the rent has been so deposited by the tenant. Notice of the amount so deposited shall be given to the land

holder and the amount will, on his application, be paid to him.

8 The Tahsildar has recorded a finding that the notices issued by the landlord are not in consonance with Section 28 and that there are only two notices issued during two agricultural years, which does not fulfill requirement of law. Even if assuming that the stipulation provided in the proviso to Section 28(1), which confirms protection from eviction on a tenant, has not been complied with by the landlord in terms of sub-section (2) of Section 28 of the Act of 1950, the Tahsildar could have examined entitlement of the landlord to claim arrears of rent. The Tahsildar has failed to apply his mind to the claim of the landlord and has rejected the application in its totality. The Deputy Collector, while exercising appellate jurisdiction, has considered pleadings of both the parties as well as on appreciation of documentary evidence, has come to the conclusion that appropriate inquiry needs to be made in respect of claim of the landlord and as such directed that the matter be remitted back to the Tahsildar for re-inquiry.

9 In exercising revisional jurisdiction by the Maharashtra Revenue Tribunal, what can be looked into by the Tribunal is, as to whether the order passed by the Collector is contrary to law or that the collector failed to determine some material issue of law; or that there was a substantial defect in following the procedure provided in the Act, which has resulted in miscarriage of justice. The order passed by the Maharashtra Revenue Tribunal does not conform to the scope of exercise of revisional jurisdiction by the Tribunal, as provided under Section 91 of the Act. The revisional Court has, thus, exceeded in its

jurisdiction in causing interference in the well reasoned order passed by the Deputy Collector. Even otherwise, without going into the details as regards entitlement of the landlord to claim recovery of possession of the property, the issue of payment of arrears of rent by the tenants need to be considered. The proceedings initiated by the landlord, who does have entitlement and ownership rights in respect of the property, cannot be denied on the ground that other members of the family have not been impleaded. The petitioner does have entitlement to claim relief under Sections 28 and 19 of the Act of 1950. The view adopted by the tribunal as regards maintainability of the proceedings is erroneous.

10 For the reasons recorded above, writ petition deserves to be allowed and same is accordingly allowed. The order passed by the Maharashtra Revenue Tribunal in Revision Application No.32/B/2013/J dated 08.05.2014, is quashed and set aside.

11 Rule is made absolute to the extent specified above. There shall be no order as to costs.

R.M.BORDE
JUDGE

adb/