

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5084 OF 2017

Popat Murlidhar Patil & Anr.

.... Petitioners

V/s.

Akkatai Balu Rajmane (Since Deceased),

Through LR :-

Vilas Bala Kulkarni

.... Respondent

Mr. Pratap Patil for the Petitioners.

Mr. Manoj A. Patil for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 8TH MARCH 2018.

P.C. :

1. Heard Mr. Pratap Patil, learned counsel for the Petitioners, and Mr. Manoj Patil, learned counsel for the Respondent.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 24th March 2017 passed by the Maharashtra Revenue Tribunal, Pune Bench, in Revision Application No.TNC/REV/26/206/SS, thereby rejecting the said Revision Application and confirming the order passed by the Sub-Divisional Officer, Walva, Dist. Sangli, in Tenancy Appeal No.14 of 2005.

3. This Revision Application, preferred before the Maharashtra Revenue Tribunal, was arising out of the tenancy proceedings initiated by the Petitioners, under Section 70-B of the Bombay Tenancy and Agricultural Lands Act, 1948, (*for short, "Tenancy Act"*). The *Tenancy Avval Karkoon*, by his order dated 17th January 2002, held the Petitioners to be the 'tenants' in respect of the suit lands. When this order was challenged before the Sub-Divisional Officer, Walva Division, Islampur, he has set aside the said order, having regard to the earlier litigation between the parties. When the said order was challenged before the Maharashtra Revenue Tribunal, Pune Bench, the said Tribunal has confirmed the order of the Sub-Divisional Officer.

4. While challenging this order of the Maharashtra Revenue Tribunal, the submission of learned counsel for the Petitioners is that, the Sub-Divisional Officer has considered the time barred Appeal, by about 5 to 6 years. Secondly, it is submitted that, in the earlier tenancy proceedings, the tenancy has not come to an end. It will come to an end only on termination of the tenancy. The right to purchase the land, under Section 32-G of the Tenancy Act, at the most, might have been taken away, but their tenancy cannot be taken away. Further it is submitted that, the earlier litigation, i.e. Regular Civil Suit No.347 of 1985, pertains only to southern half portion of the land; hence, it cannot have effect on the entire portion of the land.

5. Thus, in sum and substance, the submission of learned counsel for the Petitioners is that, neither the Sub-Divisional Officer nor the Maharashtra Revenue Tribunal has properly appreciated the documents and also the legal submissions advanced by learned counsel for the Petitioners. Therefore, the impugned order passed by the Maharashtra Revenue Tribunal needs to be quashed and set aside.

6. Per contra, learned counsel for the Respondent has submitted that, there is concurrent finding of fact arrived at by the two lower Authorities, namely, the Sub-Divisional Officer and also the Maharashtra Revenue Tribunal, and in such situation, this Court should be slow in interfering with the said concurrent finding of fact; especially, when it is based on the material on record. In support of his submission in respect of the scope of the jurisdiction of this Court, learned counsel for the Respondent has relied upon two Judgments of this Court in the case of *Dattatraya Yamaji Bhutkar & Ors. Vs. Vaijinath Madhav & Ors.*, 1998 (3) Bom.C.R. 286, and *Anant Chintaman Oze & Anr. Vs. Laxman Mahadu Nigrose & Anr.*, 2011 (6) Bom.C.R. 462. In both these authorities, it is held that, in the light of the concurrent finding of fact arrived at by both the lower Authorities, the scope of the Revision itself is limited and it is needless to state that, in the writ jurisdiction, that scope becomes further limited.

7. In this limited scope of the jurisdiction, if one considers the facts of the present case, then, it is apparent that, earlier also, the Petitioners had filed Tenancy Appeal No.66 of 1982, under Section 32-G of the Tenancy Act, and the said Appeal came to be dismissed. No Appeal is preferred against the said decision and that decision has become final. This fact is not disputed by the Petitioners also. Their only contention is that, though their right to purchase the tenanted land is no more surviving, in view of the decision in Tenancy Appeal No.66 of 1982, preferred under Section 32-G of the Tenancy Act, their tenancy does not stand terminated. However, to prove this plea of tenancy, there has to be some evidence on record, but, as pointed out by learned counsel for the Respondent and as held by both the lower Authorities, there is absolutely no evidence is produced on record to that effect.

8. As regards the evidence, which is adduced in this proceedings also, even cursory glance thereto is sufficient to show that, it is not at all consistent. The Petitioners have stated that they are not paying any fund or lease to Nakutai; whereas, Nakutai has stated that, they are paying such rent. Moreover, though the Petitioners contend that they are in possession of the suit property since 40 to 45 years, no such document in evidence is produced on record to that effect and the Sub-Divisional Officer has categorically recorded the finding to that effect.

Therefore, even in order to entertain the application under Section 70(2) of the Tenancy Act, it was necessary for the Petitioners to produce some evidence to show that they are in possession of the tenanted property and that possession is for more than 40 to 45 years, since the time of their father.

9. As a matter of fact, in the earlier Suit filed by the Respondent, bearing Regular Civil Suit No.347 of 1985, it was categorically held that, the Petitioners' father has failed to prove that he is in possession of the tenanted property.

10. In such situation, when neither the Court, nor any of the Authorities below, i.e. the Sub-Divisional Officer and Maharashtra Revenue Tribunal, is categorically stating that the Petitioners are not tenants or not in possession of the suit property and when, admittedly, present Respondent - Akkatai was not heard in the tenancy proceedings before the lower Authorities, when the tenancy claim of the Petitioners was heard, the Sub-Divisional Officer was perfectly justified in entertaining the said Tenancy Appeal and deciding the question.

11. Accordingly, on the basis of the material placed before it, the Sub-Divisional Officer has rightly considered the contentions advanced by learned counsel for both the parties and has recorded the finding. In the

revisional jurisdiction, the Maharashtra Revenue Tribunal has again considered those findings recorded by the Sub-Divisional Officer in the tenancy proceedings and found them to be legal and correct. In such situation, in the writ jurisdiction, this Court cannot disturb those findings, which are based on the material produced on record. Apparently, there is no patent illegality or perversity in the impugned orders passed by both the lower Authorities, namely, the Sub-Divisional Officer and the Maharashtra Revenue Tribunal. Hence, this Court does not find any reason to interfere in the same.

12. The Writ Petition, therefore, being without merits, stands dismissed.

13. At this stage, learned counsel for the Petitioners requests the Court to continue the earlier order of status-quo for a period of eight weeks, in order to enable the Petitioners to approach the Apex Court. Learned counsel for the Respondent opposes the said prayer. However, considering that the order of status-quo is in existence till today, the same order is extended for a further period of eight weeks from today.

[DR. SHALINI PHANSALKAR-JOSHI, J.]