

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10855 OF 2017

Sahebrao Ramchandra Hande,	]	
Age : 69 years, Occ. Agricultural,	]	
R/at Chapadgaon, Tal. Niphad,	]	
District Nashik.	]	 Petitioner

Versus

Jagannath Abaji Nirbhavane,	]	
Age : 67 years, Occ. Agricultural,	]	
R/at Karangaon, Tal. Niphad,	]	
District Nashik.	]	 Respondent

Mr. N.V. Walawalkar, Senior Counsel, with Mr. Suresh M. Sabrad, for the Petitioner.

Mr. Harshad M. Inamdar for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH FEBRUARY 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Walawalkar, Senior Counsel for the Petitioner, and Mr. Inamdar, learned counsel for the Respondent.

2. By this Writ Petition, filed under Articles 226 and 227 of the

Constitution of India, the Petitioner is challenging the order dated 17th February 2017 passed by the Member (Administrative), Maharashtra Revenue Tribunal, Mumbai, in Revision Application No.REV/TNC/NSK/72/2013, thereby dismissing the said Revision Application and confirming the order passed by the Sub-Divisional Officer, Niphad, in Tenancy Appeal No.9 of 2012 as well as the order passed by the Tahsildar, Niphad, in Tenancy Case No.7 of 2003.

3. As per the case of the Petitioner, Respondent herein has filed Regular Civil Suit No.172 of 1994 against Petitioner and his brother in the Court of Civil Judge, Senior Division, Niphad, District Nashik, for declaration and permanent injunction, restraining the Petitioner from cultivating the suit land. After the Petitioner appeared in the said Suit, he raised the plea of being tenant in the suit land from the year 1972-73 and as a result thereof, the issue relating to tenancy was referred to the Tenancy Authority, under Section 85-A of the Bombay Tenancy and Agricultural Lands Act, 1948, (*for short, "Tenancy Act"*). The said Suit came to be dismissed for default on 18th December 2003. Hence, on the next date, the Petitioner filed an application under Section 70(b) of the Tenancy Act, which was numbered as 'Tenancy Case No.7 of 2003' in the office of Tahsildar, Niphad.

4. It is a matter of record that, after hearing the parties, Tahsildar

was pleased to reject the plea of tenancy raised by the Petitioner vide his order dated 12th September 2011 and the said order was confirmed by the Sub-Divisional Officer, Niphad, vide his order dated 22nd November 2012. The Petitioner approached the Maharashtra Revenue Tribunal against the said order and the Maharashtra Revenue Tribunal was also pleased to dismiss the Revision Application preferred by the Petitioner vide its order dated 17th February 2017.

5. In view of this concurrent finding of fact arrived at by the three different Authorities, it is needless to state that, there hardly remains any merit in the present Writ Petition preferred by the Petitioner to challenge the said finding, as it is based on the material produced on record. Especially, having regard to the fact that, as per the Petitioner himself, he was tenant from the year 1972-73; therefore, on the Tiller's Day, on 1st April 1957, he was not in possession of the suit land. In respect of the persons, who claim to be in possession as tenants after the Tiller's Day, the provisions of Section 32-O of the Tenancy Act apply. As per the said Section, the person, who claims to be tenant after the Tiller's Day, he has to exercise his option to purchase the suit land within one year. However, Petitioner has not exercised such option. Petitioner has also not produced any evidence on record proving his possession as a 'tenant' over the suit property, like the Rent Receipt or the other documents, and hence, it has to be held that, all the three Authorities

have concurrently and rightly held that the Petitioner has failed to prove his plea of tenancy over the suit property.

6. The only submission, therefore, advanced by learned counsel for the Petitioner in this Petition is, on the basis of Section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948, which provides for 'deemed tenancy'. Section 4 of the Tenancy Act provides that,

“A person, who is lawfully cultivating any land belonging to another person, shall be deemed to be a 'tenant', if such land is not cultivated personally by the owner and if such person is not a member of the owner's family or a servant on wages payable in cash or kind but in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family or a mortgagee in possession.”

7. Here in the case, it is submitted that, the Petitioner is not falling in any of the restricted category, but, as he is still lawfully cultivating the suit land belonging to the Respondent, he is required to be considered as 'deemed tenant'.

8. In this respect, learned counsel for the Petitioner has drawn attention to the fact that, the Suit filed by the Respondent, bearing Regular Civil Suit No.172 of 1994, seeking declaration that the Petitioner has no right or concern with the suit land, has been dismissed for default on 18th December 2003. Therefore, as on today, there is no

such declaration that, the Petitioner is having no right or concern over the suit land and hence, it has to be held that, the Petitioner is lawfully cultivating the suit land, which is belonging to the Respondent, and as the Petitioner is not falling in any of the categories restricted by Section 4 of the Tenancy Act, he is required to be held as 'deemed tenant'.

9. However, in my considered opinion, this plea, which is raised, totally as an after-thought, cannot be accepted for the simple reason that, whenever such issue of tenancy is referred to the Tenancy Authorities in the pending Suit and when the Tenancy Authorities give their order on Reference, under Section 85-A of the Tenancy Act, there is no such order passed by the Civil Court, declaring that possession of the tenant is illegal or unlawful. In that situation, every person, who raises such plea of tenancy and on whose plea the Reference is made under Section 85-A of the Tenancy Act, will become a 'deemed tenant'. That cannot be the effect or purport of Section 4 of the Tenancy Act.

10. Moreover, in this case, admittedly, after the Suit filed by the Respondent came to be dismissed for default, the Petitioner has filed an independent application, under Section 70(b) of the Tenancy Act and that application has been decided on its own merits by all the three Authorities. In such situation, Petitioner cannot take advantage or benefit of Section 4 of the Tenancy Act.

11. In this respect, learned counsel for the Respondent has rightly placed reliance on the Judgment of the Apex Court in the case of *Hanmanta Daulappa Nimbal (since deceased), by his Heirs and LRs Vs. Babasaheb Dajisaheb Londhe, AIR 1996 SC 223*, wherein, in the identical facts, the Appeal by special leave was filed, which was arising from the Judgment of the High Court. In that case also, the Respondent – landlord has filed a Civil Suit and since the Appellant has raised the plea of oral tenancy agreement from the year 1968-69, Civil Court has referred the issue as to '*whether the Defendant proves the tenancy over the suit land thereon*', to the Tahsildar and the Tahsildar and the Appellate Authority, including the Revisional Authority, had come to the conclusion that, plea of tenancy is not established by the Appellant-tenant. In view thereof, when the plea of 'deemed tenancy', under Section 4 of the Tenancy Act, was raised, the said plea was rejected by the Hon'ble Supreme Court, holding that, his possession being of a trespasser, which is not protected by the Tenancy Act, the question of extending benefit of Section 4 of the Tenancy Act, in such situation, does not arise.

12. In the present case also, the Petitioner has not established his lawful possession over the suit land, his plea of being in possession of the suit land as a 'tenant' being already rejected by the concurrent finding of three authorities.

13. In such situation, this Writ Petition holds no merits and hence, stands dismissed.

14. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.]