

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 4885 OF 2014

Harishchandra Babul Raut and others	]	Petitioners
Vs.		
Asha Anant Joshi and others.	]	
(since deceased through legal heirs)	]	
Janardan Mahipat Joshi (deleted)	]	
Jyotsna Anant Joshi and others.	]	Respondents

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Mr. Vijay S. Gharat a/w Rehan R. Momin, for Petitioners.
Mr. S.G. Karandikar a/w Manjiri Parasnis i/b Sathyam Acharya, for
Respondents No.3 to 6.

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CORAM : R.G. KETKAR, J.

DATE : 21ST NOVEMBER, 2018.

P.C.

Heard Mr. Gharat, learned Counsel for the petitioners and Mr. Karandikar, learned Counsel for respondents No.3 to 6 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 23rd April, 2014 passed by the learned Member (Judicial) Maharashtra Revenue Tribunal, Mumbai (for short 'Tribunal') in TNC/Revision/112/B/2011. By that order, the Tribunal allowed Revision Application preferred by the respondents and set aside the order dated 23rd March, 2011 passed by the Sub Divisional Officer, Dahanu (for short 'S.D.O') in Tenancy Appeal No.6 of 2010. The Tribunal restored the order dated 19th April, 2010 passed by Tahsildar and Agricultural Land Tribunal, Palghar (for short 'A.L.T') in Tenancy Case No. SR-2 of 2008.

3. Before considering merits of the case, it is necessary to note the background. The controversy in this Petition is in respect of following lands;

Sr. No.	Pardi No.	Survey No.	Hissa No.	Area
1.	67	-	—	0-4-0
2.		90	10	0-2-5
3.		90	8	0-24-2
4.		90	9	0-5-1
5.		90	39	0-11-0

situate at Village Kelve, Taluka and District Palghar (for short 'suit lands'). The respondents had issued notice dated 26th July, 1999 terminating tenancy of the petitioners. The notice was replied on 8th July, 1999. The respondents filed application under section 70 (b) of the then Bombay Tenancy and Agricultural Lands Act, 1948 and now Maharashtra Tenancy and Agricultural Lands Act (for short 'Tenancy Act'). By order dated 30th September, 2000, the A.L.T, dismissed the application. Aggrieved by that decision, respondents instituted Tenancy Appeal No.13 of 2000 before S.D.O. By order dated 28th February, 2001, S.D.O partly allowed the appeal preferred by the respondents and directed the respondents to file application under appropriate provisions of the Tenancy Act for recovery of possession of the suit lands. Aggrieved by that decision, the petitioners instituted revision before the Tribunal. By order dated 3rd April, 2002, the Tribunal partly allowed the Revision Application and order passed by the S.D.O was confirmed except in respect of clause 2 of the operative part of the order advising the respondents to file application for possession under the appropriate provisions of the Tenancy Act.

4. The tenancy case filed by the respondents under section 29 (2) of the Tenancy Act was decided by A.L.T on 26th June, 2003. The A.L.T rejected the application filed by the respondents. Aggrieved by the decision, respondents preferred Tenancy Appeal No.7 of 2003. By order dated 4th February, 2005, S.D.O dismissed the appeal. Aggrieved by these decisions, the respondents preferred Revision Application before the Tribunal. By order dated 24th December, 2008, the Tribunal partly allowed the revision application and remitted the matter to A.L.T for fresh inquiry and deciding the same in accordance with law on the points other than the points relating to landlord and tenant relationship between the parties and default in payment of rent by the petitioner/tenant.

5. After remand, A.L.T allowed the application made by the respondents on 19th April, 2010 and directed deletion of entry of the petitioners as tenant in respect of the suit lands. A.L.T further directed the petitioners to hand over possession of the suit lands to the respondents. Aggrieved by that decision, Tenancy Appeal No.6 of 2010 was preferred before S.D.O. By order dated 23rd March, 2011, S.D.O allowed the appeal and set aside order dated 19th April, 2010 passed by A.L.T. S.D.O held that the provisions of Section 43A and 43B of the Tenancy Act are not applicable to the suit lands. Aggrieved by that decision, the respondents preferred revision application before the Tribunal. By the impugned order dated 23rd April, 2014, the Tribunal has allowed the Revision Application. As indicated earlier, the Tribunal set aside the order dated 23rd March, 2011 passed by S.D.O and restored and confirmed the order dated 19th April, 2010 passed by the Tahsildar and A.L.T. Against this order, the petitioners have instituted the present Petition.

6. In support of this Petition, Mr. Gharat has raised following contentions;

- [1] A.L.T and Tribunal erroneously proceeded on the premise that liberty was granted to the respondents to file application under section 29 (2) of the Tenancy Act. In fact, by order dated 3rd April, 2002, the Tribunal had set aside clause-2 of the operative part of the order dated 28th February, 2001 passed by S.D.O.
- [2] The respondents have not issued notice under section 14 of the Tenancy Act. Notice dated 26th June, 1999 does not comply the requirements laid down in clauses (a) and (b) of Section 14 of the Act. Reliance was placed on section 25 of the Tenancy Act.
- [3] The respondents cannot invoke section 29 (2) unless and until notice complying clauses (a) and (b) of Section 14 is issued.
- [4] In the facts and circumstances of the present case, section 43A is not applicable.

He submitted that the Petition requires consideration.

7. On the other hand, Mr. Karandikar supported the impugned order. He has invited my attention to;

- [1] Notice dated 26th June, 1999 issued by the respondents.
- [2] Reply dated 8th July, 1999 given by the petitioners.
- [3] Notification No.TNC/6796/9667-M (Spl) dated 8th October, 1969 issued by the State Government under section 43 of the Tenancy Act.

He submitted that the fact that the suit lands are used for bagayat purpose was never in dispute. While allowing appeal on 23rd March, 2011, S.D.O held that

the suit lands are used for taking diverse crops and, therefore, section 43A (1) and (B) is not applicable. He submitted that the Tribunal rightly came to the conclusion that the suit lands are used for bagayat purpose and section 43A is applicable in the present case. He further submitted that section 14 and 32 to 32 R are not applicable in the facts of the present case as the suit lands are used for bagayat purpose in view of section 43A of the Tenancy Act. He, therefore, submitted that the Petition deserves to be dismissed.

8. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. Mr. Gharat submitted that the Authorities below proceeded on the premise that liberty was given to the respondents for filing application for recovery of possession. He submitted that no such liberty was given to the respondents. I do not find any merit in this submission. A perusal of the order dated 28th February, 2001 passed by the S.D.O shows that while partly allowing the appeal filed by the respondents, S.D.O allowed the respondents to file application for recovery of possession under appropriate provisions of the Tenancy Act. It is no doubt true that while passing order on 3rd April, 2002, the Tribunal has set aside that part and confirmed rest of the order passed by S.D.O. Paragraph 7 of that order reads thus;

“As stated earlier the point on which this revision application is made appears to be the observation of the SDO allowing the present opponents to file application for possession under the appropriate provisions. It can be stated that this observation was unwarranted on the part of the SDO after holding that the revision applicants are the protected tenants. It was not necessary for the SDO to issue any directives. **In fact if any application is made by the present opponents for possession it will have to be considered on merits and on**

the basis of the legal provisions in this respect. For this reason, the revision application deserves to be allowed regarding the specific observation made by the SDO”.

[emphasis supplied]

9. A perusal of the above extracted paragraph shows that the Tribunal was of the view that it was not necessary for the S.D.O to issue direction to the respondents herein to file application for possession under the appropriate provisions. It was further observed that if any application is made by the respondents for possession, the same will have to be considered on merits and on the basis of the legal provisions in that regard. In short, the Tribunal was of the view that such liberty was not necessary and it will be always open to the respondents to file application for recovery of possession which can be dealt with by the Authority in accordance with law. I, therefore, do not find any merit in the submission of Mr. Gharat.

10. Mr. Gharat submitted that in the present case notice issued by the respondent does not comply clauses (a) and (b) of Section 14 of the Act. He further submitted that section 43A is also not applicable in the facts of the present case. I do not find any merit in this submission for more than one reason. In the first place, a perusal of the reply dated 8th July, 1999 given by the petitioners shows that the petitioners categorically admitted that suit lands were given for bagayat purpose. Secondly, the Tribunal has also considered this aspect in paragraphs 10 to 13. The Tribunal also considered 7/12 extract since 1954-1955 onwards and held that the suit lands were given for bagayat purpose. Once, it is accepted that the suit lands are given for bagayat purpose, section 43A comes into picture. Section 43A lays down that the provisions of section 14, 32 to 32R (both inclusive) among others are not applicable in respect of leases of land obtained by industrial or commercial undertakings,

certain co-operative societies or for cultivation of sugarcane or fruits or flowers. Thus, section 14, 32 to 32R are not applicable in respect of lands which are governed by section 43A of the Tenancy Act. I, therefore, do not find any merit in the submission of Mr. Gharat that notice of termination dated 26th June, 1999 issued was not in compliance of section 14 of the Tenancy Act. In view thereof, equally I do not find any merit in the submission that section 29 cannot be invoked unless notice under section 14 is given by the respondents.

11. In my opinion, S.D.O committed serious error in observing that section 43A of the Tenancy Act is not applicable as the suit lands are not given for bagayat purpose. After perusing the material on record and also order passed by the Tribunal, I do not find that any error is committed by the Tribunal while passing the impugned order. The petitioners are not in a position to demonstrate that the findings recorded by the Tribunal are perverse being based on no evidence or that on the basis of material on record, no reasonable or prudent person would have reached the conclusion arrived at by the Tribunal. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the powers under Article 227 of the Constitution of India. In the result, the Petition fails and the same is dismissed.

12. At this stage, Mr. Gharat orally applies for continuation of order dated 13th May, 2014 for a period of 6 weeks from today. He states that the petitioners are in possession and nobody else is in possession. They have neither created third party interest nor parted with possession. The petitioners will hereafter neither create third party interest nor part with possession and within two weeks from today, the petitioners and all adult family members will file usual undertaking in this Court after giving advance copy to the other side incorporating therein;

- (a) they are in possession and nobody else is in possession of the suit lands;
- (b) they have neither created third party interest nor parted with possession of the suit lands;
- (c) they will hereafter neither create third party interest nor part with possession of the suit lands;
- (d) in case they are unable to obtain suitable orders from the higher Court within 6 weeks from today, they will hand over vacant and peaceful possession of the suit lands to the respondents No.3 to 6,

13. In view thereof, notwithstanding dismissal of the Writ Petition, order dated 13th May, 2014 is continued for a period of 6 weeks from today subject to the petitioners filing undertaking in the aforesaid terms, with express understanding that if the undertaking is not filed within the stipulated time and/or in case petitioners commit breach of any of the conditions of the undertaking, interim order shall stand vacated without further reference of the Court.

14. **List the Petition for reporting compliance on 12th December, 2018.**

[R.G. KETKAR, J.]