

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10194 OF 2017

Rajendra Harishchandra Chavan & Ors

.....Petitioners

V/s.

The State of Maharashtra & Ors

....Respondents

Mr. Aniket P. Ranade for the petitioner.

Mr. P. P. More AGP for respondent no. 1.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 5, 2018.

P.C.

The petitioner claims to be owner of land Gat no. 633 admeasuring 0.49.7 hector located at Vahal, Taluka Chiplun, District Raatnagiri. The petitioner claim that one Harishchandra Barka Dhumak was a tenant over the said property and by mutation entry no. 1026 effected by the revenue authorities, the name of the said tenant came to be deleted.

2 The respondent claiming to be tenant of the said property and also owner of adjoining land Gat no. 967 moved an application under section 4 of the Maharashtra Tenancy and Agricultural Lands Act, 1948. (hereinafter referred to as the 'Act' for the sake of brevity) It is claimed in the application preferred before Tahsildar by the respondent tenant that he is in lawful

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cultivating possession of the suit property for a period a period for more than 12 years. In support of such claims of being a deemed tenant pursuant to the provisions of section 4 of the Act certain documents viz. benefit of the scheme floated by the State Government in relation to digging up a well in the suit property, the resolution of the general body of the Grampanchayat passed on May 30, 2008, the affidavit of the Sarpanch of Grampanchayat, affidavit of the adjoining land owners, affidavit of the Police Patil and respected person from the village was relied upon.

3 The learned Tahsildar after having appreciated the pleadings, documentary evidence declared the respondent as a deemed tenant under section 4 of the Act.

4 The present petitioner feeling aggrieved preferred Tenancy Appeal No. 19 of 2010 before Sub-Divisional Officer, Chiplun which came to be dismissed on January 31, 2011, which order was further confirmed in Revision No. 100/B/2011 by the Maharashtra Revenue Tribunal vide its order dated May 6, 2011 as such this petition by the landlord.

5 Shri. Aniket Ranade, the learned counsel for the petitioner would invite the attention of this court to the provisions of section 4, sub section 2 particularly the circumstantial evidence as is required to be taken into account for the purpose of determining an issue of deemed tenancy. He would submit that even though the respondent has failed to produce the certificate from the

Chairman of Vividh Karyakari Sahakari Society, the authorities below have categorically held that the respondent is deemed tenant within the meaning of the Act. He submits that the wordings in sub section 2 of section 4 clearly speaks of requirement of certificate from Sarpanch, Police Patil and Chairman of Vividh Karyakari Society so as to infer lawful cultivating possession of the alleged deemed tenant. He would then claim that the authorities below have committed an error of law in ignoring the said provision and as such the order warrants interference in extra ordinary jurisdiction. In addition, he would also tried to assail the finding of fact recorded by the authority below of not consideration of surrender of tenancy by Harishchandra and effecting of mutation entry no. 1026 so as to claim that the respondent must explain the source of possession over the suit property as a tenant.

6 *Per contra*, the learned Assistant Government Pleader appearing for the respondent opposes the claim and submits that the petition against the concurrent findings is liable to be dismissed as this court cannot re appreciate the evidence and substitute finding of facts. He would then urge that the remedy available to the petitioner *qua* claim made by the petitioner denying the status of the respondent as that of tenant would be redressed pursuant to the provisions of section 43 (1) (b) of the Act. He would then submit that the authorities below have given appropriate reasons for dismissing the claim of the present petitioner as such the petition is liable to be dismissed.

7 Considering the rival submissions, provisions of sub-section 2 of

section 4 of the Act which reads thus:

“S. 4. Persons to be deemed tenants:

(1).....

[(2) Notwithstanding anything contained in sub-section (1), where any land in the Ratnagiri and Sindhudurg districts is being cultivated by a person (other than the person who, according to the Records of Rights, has right to cultivate), for not less than 12 years, such person shall be deemed to be a tenant for the purposes of this section if there is circumstantial evidence that he has been uninterruptedly cultivating the land personally, and [the Sarpanch, Police Patil, the Chairman of Vividh Karyakari Sahakari Society, and the cultivator of the adjoining land state on affidavit that, the said land is in the possession of, and is being cultivated by, such person uninterruptedly for not less than 12 years.]”

Explanation 2 to the said provision reads thus:

“Explanation I

Explanation II: *For the purpose of this sub-section, the expression “circumstantial evidence” includes extract of voters list, ration card, electricity bill or house assessment receipt from the same village or any receipt in respect of sale agricultural produce or any document regarding permission of felling of tress or excavation of minor mineral or any such permission granted with respect to such land”.*

8 What is required to be demonstrated by the respondent to claim to be a deemed tenant is that he remained in lawful uninterrupted cultivating possession of suit property for a period of 12 years as prescribed in above provision.

9 From the record it depicts that so as to substantiate the claim of the respondent of being a deemed tenant, he has produced on record copy of the resolution passed by the general body of the Grampanchayat stating that he is

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in possession of the property for a period of more than 12 years. In addition, he has also produced on record the certificate issued by Sarpanch of the Grampanchayat, affidavit of Police Patil, affidavit of adjoining land owner viz. certificate nos. 966 & 978 and also of respected person from the village.

10 It appears that this evidence was scrutinized by the Tahsildar in the wake of claim made by the respondent of being deemed tenant and passed a well reasoned order conferring the status of deemed tenant on the respondent. The Appellate Authority re-appreciated the entire evidence on record and endorsed the finding recorded by the Tahsildar.

11 The petitioner's revision under section 76 of the Act before the Tribunal was considered and dismissed having regard to the scope of revisional jurisdiction.

12 In the wake of above, the finding of fact recorded by all three courts below against the petitioner, particularly when the petitioner was given complete opportunity to adduce evidence to demolish the case of the respondent tenant, which he has failed to establish, the order impugned does not warrant any interference.

13 So far as the submission of Mr. Aniket Ranade, the learned counsel for the petitioner by relying upon sub-section 2 of section 4 to claim that the document viz. certificate by the Chairmana of Vividh Karyakaari Society was

mandatory is also without any legal basis. Sub-section 2 of section 4 warrants co-joint reading of explanation II with it. The certificate as is referred by the Chairman even though not produced, however the fact remains that the certificate by the Sarpanch and Police Patil was produced which was termed as circumstantial evidence as could be gathered from the language of the section.

14 The word circumstantial evidence is further clarified in explanation II to mean and include voter list, ration card, electricity bill, house assessment receipts and such other documents as mentioned therein. It is brought on record by the respondent before the authority below that he has taken benefit from the Government, under the “Jawahar Vihar Yojana” so as to dig up well on the suit property. Such document taking benefit from the Government scheme can be considered as circumstantial evidence as provided in sub-section 2 of section 4 and explanation II thereto.

15 Explanation II to sub-section 2 of section 4 of the Act has to be read in aid of section thereby giving the meaning and intendment of the Act and the provision. The vagueness of the section can be explained with the aid of the explanation appended thereto. The language of the explanation also aid in determining the purpose and construction consistent with that of the purpose of main section. The said explanation acts as an additional support to the dominating object of the Act so as to make the section meaningful and purposeful. Appropriate support for the aforesaid observation can be drawn

from the judgment of the Apex Court in the matter of **S. Sundaram Pillai and Ors Vs. R. Pattabiraman and Ors**¹.

16 Though sub-section 2 of section 4 is inclusive one, however, this Court is not reading down the explanation to give some different meaning to the purpose or object of the main section. That being so, the claim put forth by Mr. Ranade, the learned counsel for the petitioner that the certificate from the Chairman of the society is mandatory is liable to be rejected.

17 In the wake of aforesaid finding I hardly notice any legal infirmity or irregularity so as to warrant interference in the extra ordinary jurisdiction. Petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]

¹ (1985) 1 SCC 591