

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5090 OF 1995

1. Dattaram Sakharam Patkar]
resident of & Post : Chedwan, Tal. Kudal,]
Dist.Sindhudurg.]
2. Kanta Govind Patkar]
resident of & Post : Chedwan, Tal. Kudal,]
Dist.Sindhudurg.]
3. Eknath Govind Patkar,]
resident of & Post : Chedwan, Tal. Kudal,]
Dist.Sindhudurg.]
4. Sudhakar Raghunath Patkar,]
resident of & Post : Chedwan, Tal. Kudal,]
Dist.Sindhudurg.]
5. Sakharam Govind Patkar,]
resident of Maniar Bldg.,]
2nd floor, R.No.16, Tardeo,]
Bombay 37.]
6. Mr.Prabhakar Govind Patkar,]
since deceased by his heirs. :]
6A. Smt. Vaishali Prabhakar Patkar]
Age : 45 years.]
6B Hemant Prabhakar Patkar,]
Age : 17 years.]
6C Kanchana Prabhakar Patkar,]
Aged : 13 years.]
6B and 6C are minors under]
guardianship of Petitioner No.6A.]
resident of Aryanagar Bldg.]
No.1, R.No.3, Tardeo, Bombay 34.]

7. Laxman Rajaram Patkar]
 since deceased by his heirs:]
 7A. Sudhir Laxman Patkar]
 7B- Rajan Laxman Patkar,]
 Both residing at at Chendwankar House,]
 Vasai Road, Navghar,]
 Vasai (E) Dist. Thane].. Petitioners.

Versus

1. Vasant Vasudeo Bakhale,]
 Since deceased by his heirs 2 and 3]
 2. Smt. Vasanti Vasant Bakhale]
 3. Smt. Vishal Vasant Bakhale]
 4. Smt. Vaibhav Vasant Bakhale]
 5. Bhalchandra Vasudeo Bakhale]
 Since deceased by following heirs :]
 A- Shobhana w/o Bhalchandra Bakhale]
 residing at Chandwan, Tal. Kudal,]
 Dist. Sindhudurg]
 B- Prasanna Bhalchandra Bakhale,]
 minor by guardian Respondent No.5A.]
 6. Smt. Pratibha Prabhakar Bakhale]
 7. Vinayak Mahadeo Bakhale,]
 Residing at Rukhamini Nagar,]
 Nandra Sawant Chawl no.2, R.11,]
 Bhandup, Bombay.78.]
 Nos. 2 to 4 and 6 residing at]
 Chandwan, Post Chandwan,]
 Tal. Kudal, Dist. Sindhudurg].. Respondents

Shri Sushil Inamdar I/b P. L. Naik, Advocate for petitioners.

Mr. A.S. Khandeparkar a/w. Mr.Amogh Karandikar and Shri Rajdeep D. Gude, Advocate for respondent No.7.

CORAM : N.J. JAMADAR, J.

RESERVED ON : 2ND APRIL 2019

PRONOUNCED ON : 10TH APRIL 2019

JUDGMENT :

1) This petition is directed against a judgment and order passed by the Maharashtra Revenue Tribunal ('MRT') in Revision, Tenancy No.A.130 of 1993, dated 4th July 1995 whereby the learned Member of the Tribunal had rejected the above-numbered revision application and confirmed the order passed by the Sub-Divisional Officer, Sawantwadi dated 31st May 1993 in Tenancy Appeal No.19 of 1989.

2) Shorn of unnecessary details, the background facts can be summarized as under :-

(a) The respondents herein are the holders of the agricultural land bearing survey No.44 (old survey No.144), sub-division No.2A/1, admeasuring 9 Acres, 20 Gunthas situated at village Chedwan, Taluka : Kudal, District Sindhudurg (hereinafter referred to as 'the suit land'). The petitioners herein claimed to be in possession and cultivation of the suit land as tenants. However, their names were not entered in the revenue record of the suit land. In the year 1986, the respondents obstructed to the petitioners' peaceful possession and cultivation of the suit land and had set ablaze the dwelling house of the petitioners, bearing Grampanchayat

No. 322, situated in the suit land. Thus, the petitioners filed an application under Section 70 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the said Act') and sought a declaration that they are the tenants qua the suit land.

(b) The Additional Tahasildar-cum-Agricultural Land Tribunal No.2, Kudal ('ALT') by his order dated 31st December 1988, having found that Shri Dattaram Patkar and Shri Kanta Govind Patkar were in cultivation of the suit land since prior to 1st April 1957, declared the petitioners as tenants of the suit land and gave further directions that the names of the above petitioners be entered in the revenue record as such.

(c) Being aggrieved by the aforesaid order and declaration of tenancy, the respondents preferred appeal before the Sub-Divisional Officer, Sawantwadi, bearing Tenancy Appeal No.19 of 1989. The Appellate Authority was persuaded to allow the appeal and, thus, the declaration made by the ALT was quashed and set aside. The petitioners herein took the matter in revision. The learned Member, MRT, by the impugned judgment and order dated 4th July 1995 concurred with the findings recorded by the Appellate

Authority and, thus, the revision preferred by the petitioners came to be rejected by upholding the order passed by the Appellate Authority in Tenancy Appeal No.19 of 1989. Being further aggrieved and dissatisfied with the impugned order, the petitioners have invoked the writ jurisdiction.

3) I have heard Shri Sushil Inamdar, the learned counsel for the petitioners and Shri A.S. Khandeparkar, the learned counsel for the respondent No.7.

4) The counsel for the petitioners strenuously urged that the learned Member, MRT, as well as the Appellate Authority had grossly erred in overturning the declaration of tenancy in favour of the petitioners justifiably made by the ALT, on an incorrect appreciation of the evidence and material on record. The Appellate Authority, according to the learned counsel for the petitioners, could not have interfered with the order passed by the ALT without ascribing any cogent reason to take a different view of the matter. In the process, according to the learned counsel for the petitioners, the Appellate Authority unjustifiably eschewed from consideration vital material, which firmly establishes the cultivation of the suit land by the petitioners. This manifest error on the part of the Appellate Authority ought to have been corrected by the revisional authority. The learned Member, MRT, without delving into the legality of the findings

recorded by the Appellate Authority, simply concurred with the Appellate Authority for self-same reasons. Thus, both the impugned orders deserve to be interfered with and the declaration made by the ALT is required to be restored, urged the learned counsel for the petitioners.

5) In opposition to this, it was submitted on behalf of the respondents that the material on record indicates that the petitioners had delivered the possession of the suit land in pursuance of an order passed by the competent authority in the year 1948 itself, on account of default in payment of rent. From the year 1948-49 onwards, the revenue record consistently indicates that the respondents were personally cultivating the suit land and there was no trace of tenancy over the suit land either in favour of the petitioners or any other person. The ALT, in the instant case, had ignored the said vital material and made declaration of tenancy on the basis of the alleged admissions in a letter, which was not duly proved. The Appellate Authority, on the other hand, has properly appreciated the evidence by applying correct principles and came to a justifiable conclusion that the petitioners have not been in occupation and cultivation of the suit land, after they were made to surrender possession thereof in the year 1948. In the face of this clinching material, the MRT was within its rights in not interfering with the well reasoned order of the Appellate Authority in exercise of the revisional jurisdiction, which is of limited nature. Thus,

according to the learned counsel for the respondent No.7, the writ petition is devoid of substance.

6) In the light of the rival contentions and submissions canvassed across the bar, the pivotal question that arose for consideration before the authorities under the Act was, *“whether the petitioners were in possession and cultivation of the suit land on the tillers day?”* The ALT recorded a finding that the petitioners Dattaram Patkar and Kanta Patkar were in possession and cultivation of the suit land since prior to 1st April 1957. The ALT was persuaded to take the aforesaid view primarily on the basis of two factors. One, the respondent No.7 Vinayak Mahadeo Bakhale had addressed a letter to the petitioners on 5th January 1983 and had acknowledged the status of the petitioners as the tenants of the respondents. Secondly, during the spot visit to the suit land, a dwelling house was found in the suit land. The said dwelling house has been shown in the names of the petitioners in the village panchayat record, i.e., house No.322. Thus, the ALT returned the findings that the petitioners were the tenants of the suit land.

7) Upon re-appreciation of evidence, the Appellate Authority found that the aforesaid factors were not of clinching tendency and could not have been given undue weightage in recording a finding that the petitioners were the tenants. As regards the letter allegedly addressed by the

respondent No.7, it was observed that the said letter was not duly proved in evidence. Secondly, it was found that the letter did not contain the requisite particulars like the survey number and the area. The letter, by itself, in the opinion of the Appellate Authority, did not establish the nature of the alleged possession of the petitioners over the suit land. As regards the dwelling house, the Appellate Authority found that the area of the suit land is 9 Acres, 20 gunthas. In this backdrop, the mere fact that the dwelling house, bearing grampanchayat No.322, was recorded in the name of the petitioners did not justify the inference that the huge tract of land, admeasuring 9 Acrs and 20 gunthas, was under the cultivation of the petitioners.

8) The Appellate Authority was also impressed by the fact that there was material to indicate that in the year 1948, an order of eviction was passed against the petitioners for failure to pay the rent. The then Circle Inspector had prepared document to show that the possession of the suit land was delivered to the landlord by beat of drums. Thus, the tenancy of the respondents came to be determined by the order of the competent authority in 1948 and it attained finality. Since then, the names of the petitioners have not been recorded in any of the revenue record. On the contrary, the respondents have been shown to be personally cultivating the suit land from the year 1948 onwards. The Appellate Authority further

found that the petitioners were alive to the rights emanating under the Act 1948 as their names were entered in the revenue record as tenants in certain adjacent lands. In this backdrop, in the opinion of the Appellate Authority as well as Revisional Authority, the petitioners could not have missed to get their names entered into the revenue record, had they been in actual possession and cultivation of the suit land on the tillers day.

9) The aforesaid approach of the Appellate Authority and Revisional Authority appear to be justifiable. It seems that the ALT approached the question of the status of the petitioners as the tenants of the suit land in a rather casual manner. The crucial factor was of the eviction of the petitioners from the suit land in the year 1948 pursuant to an order passed by the competent authority. There was material to indicate that the respondents were put in possession of the suit land, in pursuance of the said order. It is not the case of the petitioners that they were thereafter again put in possession of the suit land and have continued to be in possession thereof on the tillers day. Admittedly, in none of the revenue records, the names of the petitioners have been mutated as the tenants in the suit land. Nor there is any proof in the form of either rent receipts or any other document of similar nature, which indicates that the petitioners were in the possession and cultivation of the suit land.

10) In the backdrop of the aforesaid evidence, the ALT committed a manifest error in basing its finding on the strength of a letter addressed by the respondent No.7. The observations of the Appellate Authority that the said letter was not duly proved in evidence and, even otherwise, the nothing turned on the contents of the said letter, are borne out by the record. In the face of the material to indicate that the petitioners were evicted from the suit land since the year 1948 and since then they have never been in possession thereof, the ALT could not have banked upon the said correspondence to record a finding of tenancy.

11) The learned counsel for the petitioners, faced with the aforesaid situation, endeavoured to restrict the claim to the extent of the dwelling house. It was submitted that the fact that the dwelling house was recorded in the name of the petitioners in the Grampanchayat record vouches for the veracity of the claim of the petitioners. Therefore, to the extent of the said dwelling house and the land beneath the said dwelling house, the tenancy of the petitioners can be said to have been established beyond the pale of controversy. The situation is required to be appreciated in the backdrop of the fact that the petitioners were in possession of the suit land prior to 1948 and they were evicted therefrom. The fact that the dwelling house bearing house No.322 stood in the names of the petitioners is required to be considered through this prism. From this standpoint, the reason ascribed

by the Appellate Authority, i.e., the suit land being a large tract of land admeasuring 9 Acre 20 gunthas and claim for tenancy thereof cannot be sustained on the basis of mere recording of the names of the petitioners to the dwelling house, appears sound.

12) In the totallity of the circumstances, the finding of the ALT that the petitioners were found in possession and cultivation of the suit land since prior to 1st April 1957 appears to be wholly unsustainable. The Appellate Authority correctly re-appreciated the evidence and demonstrated the infirmity in the finding of the ALT. The revisional authority has found that the said finding of the Appellate Authority, is sustainable. In this view of the matter, this Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, does not find any justifiable reason to interfere with the concurrent findings recorded by the authorities below. The petition, therefore, deserves to be dismissed.

13) The writ petition stands dismissed. In the circumstances, there shall not no order as to costs.

14) Rule stands discharged.

[N.J. JAMADAR, J.]