

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

**WRIT PETITION NO.2818 OF 1999
WITH
WRIT PETITION NO.2816 OF 1999**

Shri Basgonda Sidgonda Patil and ors. ... Petitioners

V/s.

Shri Nabi Gajbar Mulla

(Since deceased) by legal heirs and ors.... Respondents

**WITH
WRIT PETITION NO.3028 OF 1999**

Ashmatbi Babalal Hawaldar ... Petitioner

V/s.

Shri Nabi Gajbar Mulla and ors. ... Respondents

**WITH
WRIT PETITION NO.9570 OF 2018**

Gulab Gajbar Mulla

(Since deceased) by legal heirs and ors.... Petitioners

V/s.

Basgonda Sidgonda Patil

Through POA holder and ors. ... Respondents

Mr.R.S.Kate, Advocate for the Petitioner in WP No.2818 of 1999 and WP No.2816 of 1999.

Mr.S.S.Redekar, Advocate for the Petitioner in WP No.9570 of 2018 and for Respondent Nos.2,3 and 5 in WP No.2818 of 1999 and for Respondent Nos.2,3,5,4A,4D and 1A in WP No.2816 of 1999.

Mr.V.S.Kapse, Advocate for the Petitioner in WP No.3028 of 1999 and for Respondent No.7 in WP Nos.2818 of 1999 and 2816 of 1999.

Mr.Shiriniwas Patwardhan, Advocate for Respondent Nos.1 and 3 in WP 9570 of 2018.

Mr.C.D.Mali, AGP for the State-Respondent Nos.4 to 8 in WP No.9570 of 2018.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 28, 2019.

P.C.:-

1. This order will dispose of Writ Petition Nos.2816, 2818, 3028 of 1999 and Writ Petition No.9570 of 2018.

2. Heard Mr.R.S.Kate, learned counsel for the Petitioner in Writ Petition No.2816 of 1999 and Writ Petition No.2818 of 1999; Mr.S.S.Redekar, learned counsel for the Petitioner in Writ Petition No.9570 of 2018 and for Respondent Nos.2,3 and 5 in Writ Petition No.2818 of 1999 and for Respondent Nos.2,3,5,4A,4D and 1A in Writ Petition No.2816 of 1999; Mr.V.S.Kapse, learned counsel for the Petitioner in Writ Petition No.3028 of 1999 and for Respondent No.7 in Writ Petition Nos.2818 of 1999 and 2816 of 1999; Mr.Shiriniwas Patwardhan, learned counsel for Respondent Nos.1 and 3 in Writ Petition

No.9570 of 2018; and Mr.C.D.Mali, learned AGP for the State-Respondent Nos.4 to 8 in Writ Petition No.9570 of 2018.

3. In the three writ petitions of the year 1999 i.e. Writ Petition Nos.2816, 2818 and 3028 of 1999, petitioners have assailed legality and correctness of the order dated 31st August, 1999 passed by the Maharashtra Revenue Tribunal in Revision affirming the order dated 28th January, 1993 of the Sub-Divisional Officer in Tenancy Appeal and seek restoration of the order dated 31st March, 1972 passed by the Tahsildar.

4. In Writ Petition Nos.2816 and 2818 of 1999 the petitioners claim to be owners of the land in question on the strength of a sale deed, whereas the petitioner in Writ Petition No.3028 of 1999 claim to be the original landlord of the land in question.

5. It may be mentioned that in Tenancy Case No.4 of 1971 (Hingappa Basappa Kotyagpol Vs. Nabi Gajbar

Mulla and ors.), Tahsildar, Gadhinglaj passed order dated 31st March, 1972 declaring that defendant No.1 (Nabi Gajbar Mulla) was not a tenant in possession of the suit property on the date of the suit i.e. on 28th March, 1969.

6. This finding of the Tahsildar came to be challenged in Appeal by defendant No.1 (Nabi Gajbar Mulla) before the Sub-Divisional Officer, Gadhinglaj Division, Gadhinglaj. By the order dated 28th January, 1993, Sub-Divisional Officer set aside the order of the Tahsildar and declared that the appellant i.e. defendant No.1 (Nabi Gajbar Mulla) was the tenant over the suit land.

7. This finding of the Sub-Divisional Officer was assailed by the petitioners in the three writ petitions of 1999 before the Maharashtra Revenue Tribunal, Kolhapur (Tribunal) by filing revision applications. By a common order dated 31st August, 1999, Tribunal dismissed the revision applications by upholding the order of the Sub-Divisional Officer dated 23rd January, 1993. Tribunal reaffirmed the finding of the Sub-Divisional Officer that

the revision opponent i.e. Nabi Gajbar Mulla was a tenant over the suit land.

8. Aggrieved, the three writ petitions have been filed.

9. Submissions made by learned counsel for the parties have been considered.

10. Though elaborate submissions were made by learned counsel for the parties, it may not be necessary to delve into the same in details. However, for proper appreciation of the controversy in question, it would be apposite to advert to the order passed by the Sub-Divisional Officer dated 28th January, 1993, relevant portion of which is extracted hereunder:-

“I have gone through the evidence on record very carefully and have also considered the rival contentions of the learned advocates. It is seen that the land was given in the possession of Shri Gajabar Allisaheb Mulla by a registered Kaul patra dated 15/4/40. This registered document which shows that the possession of the suit land was given to the appellants father on 15/4/40 for a period of 19 years. This period was to expire in the year 1959. According to the provision of section 3-A of the

B.T. & A.L. Act, 1948 every tenant shall from the date 8-11-47 be deemed to be a protected tenant for the purpose of this act and his rights as such protected tenant shall be recorded in the record of rights unless his landlord has prior to the aforesaid date, made an application to the Mamlatdar for a declaration that the tenant is not a protected tenant.

A person shall not be deemed to be a protected tenant if such person has been on an application made by the owner of the land as provided in section 3-A of the Bombay Tenancy Act, 1939 declared by a competent authority not to be a protected tenant.

M.E.No.3823 should go to show that the name of Shri Nabi Gajabar Mulla was recorded in other rights column of R of R holding that this Mulla was held to be the protected tenant of the suit land. The proper course for the landlord was to bring the negative declaration. This has not been done by the landlord. Further, according to the provisions of Section 4(B) of the Act the Tenancy of a person cannot be terminated by efflux of time similarly from M.E.No.4311 dated 15/1/63. It is seen that the proceeding u/s 32-G in respect of the suit land was initiated during the year 1962, in which it was held that the right of a tenant to purchase the land is postponed because the landlady was widow landlady. This show that right of the tenant Shri Mulla was held in abeyance. No appeal seems to have been filed against this decision. If at all, there was no relationship of a landlord and tenant, between the parties, it is not understood as to why the inquiry u/s 32-G was started at all, no satisfactory explanation has been given by either of the advocates appearing on behalf of the respondents. There are also certain receipts dt. 18/3/69, 10/4/71 which show that rent of the suit land was received by Aminabai from

Shri Nabi Gajabar Mulla. If according to Aminabai, the thumb impression upon this receipts were not impressed by her, it was for the prove contrary by referring these receipt to the expert. She tried to shift her burden to the other side and according to me, they have not appreciated the evidence on record carefully. It is crystal clear that the appellant is continuously possession of the suit land since the year 1940. His possession was neither disturbed at any time, nor it was taken from him by adopting the due process of law. As regards applicability of the provisions of the B.T. & A.L. Act, 1948 to the lands covered under the provisions of the Bombay Inferior Village Watan Abolition Act, it is now a well settled principle of law that the provisions of the tenancy Act are applicable to such lands. Considering these provisions, I am unable to agree with the contention of the learned advocate on behalf of the respondents. The available evidence on record according to me certainly go to compel me to hold that the appellant was holding the land in the capacity of a tenant. Similarly, as regards necessary parties to the proceedings it must be noticed that these are the court references and by no stretch of imagination the status of the party would change. This point will be a point for consideration, during the course of the trial of the civil Suit before the Civil Court. For this purpose the status of the person would not affect his right.

With these observations I proceeds to pass the following order.

ORDER

Both the appeals are allowed. The order passed by the Tahsildar in Tenancy Case No.4/71 dated 31/3/72 and the order passed by the Tenancy A.K. in Tenancy Case No. 24/77

dated 28/12/78 are set aside and it is further declared that the appellant is the tenant of the suit land."

11. This finding of the Appellate Authority was affirmed by the Revisional Authority i.e. the Tribunal in revision by dismissing the revision applications vide the order dated 31st August, 1999. Relevant portion of the order dated 31st August, 1999 passed by the Tribunal is extracted hereunder:-

"It is an admitted fact that the father of revision opponent is a tenant over the suit land and his name is recorded as protected tenant. The ' ' of the year 1940 is a registered document, by virtue of which father of revision opponent is inducted upon the suit land as a tenant. It was for 19 years. However, it is a plea of revision applicants that on 7/4/1958 the revision opponent has given up his possession as a tenant by making an endorsement in writing over the said registered documents. In the first place I do not feel that the effect of registered document will be wiped away by a simple endorsement over such document. Though the subsequent record after 1958 does not show the name of revision opponent in 7/12 extract and that can be attributed to this simple reading of abandonment embodied in ' ' yet the concerned Revenue Officers were wrong in relying upon such endorsement and in deleting the name of the revision opponent. The right of tenancy was never extinguished

by legal and valid methods. The Case Law cited by revision opponents in this behalf supports this contention of mine. The Judgment passed in 1978 T.L.R. at page 72 by Justice Savant is more in consonance with the facts and the circumstances of the present case. As particularly the revision opponents of the present case has also paid rent to the revision applicant Aminabai subsequent to that alleged writing of ' ' as has happened in the cited decision of the Hon'ble High Court. It is pertinent to note that by a purses, dt. 13/2/1967 filed in R.C.S.No. 103/66 Aminbi had admitted that the suit land was in possession of the revision opponents. In a Civil suit bearing No.RCS 27/69 the application of Ningappa Kotyapgol for temporary injunction was dismissed and even miscellaneous appeal No.55 of 1969 preferred before the Dist. Judge was also dismissed and revision opponent was held to have been at least in prima facie in possession. In the said suit R.C.S. 27/69 landlady Aminabi admitted in her affidavit that suit land was in possession of revision opponents and that the fact that she received rent from him for the years 1967-68 and 1968-69. thus it is subsequent to the deletion of the name of revision opponent that the landlord has admitted the possession of revision opponent Nabi Gajbar Mulla. Therefore, even the effect of orders passed in R.T.S. proceedings and in the appeals there under is washed away. Report of the Commission in R.C.S. 52/73 indicates possession of revision opponents. Taking into consideration all these facts and circumstances I am inclined to hold that the possession of revision opponent as a tenant has never been effectively terminated or taken away in due course of law. The case Law reported in 1994 M.L.J. PAGE -1284 and

cited by by learned Advocate Shri D.B.Bhosale is not applicable to the facts and circumstances of the present case, because that principle has been enunciated while deciding a case u/s 32-(1-B) and dispossession in the cited case was prior to 1957. Besides it cannot be said that the revision opponents voluntarily left the possession which did not require any verification or satisfaction of the Tahsildar to be endorsed upon. Had he left the possession voluntarily then it was not required even to reduce it in writing over the document of the registered sale-deed. When it was so reduced into writing it was only because the landlords wanted to get the land surrendered. If this was so, actual surrender deed should have been executed and the revision opponent might have made a statement before Tahsildar who verifying the same would have endorsed his satisfaction over the surrender. As per the law that was the only method to effect surrender. That method is not adopted. Therefore, the simple writing over the back registered lease-deed cannot nullify the contents of a registered document. Taking into consideration all these aspects I am inclined to and cannot take the place of a valid surrender hold that the impugned judgment and order of the S.D.O. is quite legal and valid and it has rightly set aside the orders of the A.L.T. I thus, find that the revision opponent is a tenant over the entire suit land and therefore, uphold the order of the S.D.O. dt. 23/1/1993 passed in Tenancy Appeal No.5/92 and 6/92 jointly. Hence, the following order.

ORDER

All the three revision applications bearing Nos.MHT-KP-48/93, 49/96 and 90/93 are dismissed herewith.

No order as to costs."

12. The Appellate Authority had come to a definite finding that appellant (Nabi Gajbar Mulla) was in continuous possession of the suit land since the year 1940. His possession was neither disturbed at any point of time nor was taken away from him by following the due process of law. Regarding relationship of landlord and tenant, Appellate Authority referred to certain rent receipts in respect of the suit land which were received by Aminabai from Nabi Gajbar Mulla. After considering the evidence and other materials on record, Appellate Authority held that appellant (Nabi Gajbar Mulla) was holding the land in question in the capacity of a tenant.

13. This is a finding of fact returned by the Appellate Authority on perusal of the evidence and other materials on record. It is trite that jurisdiction of the Appellate Authority vis-a-vis determination on facts is co-extensive as that of the original authority, Tahsildar in this case.

14. This finding of fact arrived at by the Appellate Authority was affirmed by the Revisional Authority i.e., the Tribunal. Revisional Authority held that in the related Regular Civil Suit No. 97 of 1969 landlady Aminabai had admitted in her affidavit that the suit land was in possession of the revision opponent (Nabi Gajbar Mulla). Revisional Authority also held that the landlady received rent from the tenant (Nabi Gajbar Mulla) for the years 1967-68 and 1968-69. Therefore, Revisional Authority affirmed the finding of fact returned by the Appellate Authority.

15. In the present proceedings under Article 227 of the Constitution of India, court is not inclined to disturb such concurrent findings of fact reached by the two authorities below after due consideration of the evidence on record. Consequently, court is of the view that the three writ petitions, namely, Writ Petition Nos.2816, 2818 and 3028 of 1999 are liable to be dismissed.

16. This brings us to the fourth writ petition i.e. Writ Petition No.9570 of 2018, where the petitioner is Gulab Gajbar Mulla, legal heir of Nabi Gajbar Mulla. Prayer made in this writ petition is to set aside the order dated 5th June, 2018 passed by the Hon'ble Minister, Revenue, Maharashtra and to restore orders dated 17th June, 2006 passed by the Tahsildar, Gadhinglaj and order dated 1st July, 2015 passed by the Additional Commissioner, Pune Division, Pune.

17. The controversy in so far the fourth writ petition is concerned has been succinctly summed up by this court in its order dated 27th August, 2018 whereby notice was issued and the impugned order dated 5th June, 2018 was stayed. Relevant portion of the order dated 27th August, 2018 is extracted hereunder:-

"2 Heard learned counsel for the petitioners. He submits that the petitioners' predecessor (Gajbar Mulla) was a protected tenant and was in possession of the land in question since 1940. He submits that the petitioners are in possession of the land in dispute and have presently cultivated sugarcane on the said land. He further submits that three Authorities have decided in favour of the petitioners. He

submits that the respondent No. 1 had filed an appeal under Section 257 before the learned Minister, challenging the order of the Additional Commissioner, Pune. He submits that the learned Minister closed the said appeal on 10th August 2016, and after more than one year nine months, passed the impugned order dated 5th June 2018 upsetting the order passed by the Additional Commissioner, Pune Division, Pune as well as the order passed by the Tahasildar, Gadhinglaj dated 17th June 2006. According to the learned counsel, the learned Minister had not even heard the respondent No.1 in the said proceedings. He further submits that pursuant to the order passed by the learned Minister, the petitioner has received a notice under Section 160(1) of the Code of Criminal Procedure, pursuant to which, the present petition has been filed.

3 Issue notice to the respondents, returnable on 17th September 2018. Learned A.G.P waives notice on behalf of the respondent Nos.4 to 8. In addition to Court notice, petitioner to serve the respondent Nos. 1 to 3 by Advocate's notice and file an affidavit of service before the returnable date.

4 In the meantime, till the next date, there shall be ad-interim relief in terms of prayer clause (c)."

18. Reverting to the facts of the case, it is seen that by the order dated 17th June, 2006 passed by the Tahsildar, Gadhinglaj, name of Gulab Gajbar Mulla was recorded as an occupant in respect of the land in question. This was contested by respondent No.1 i.e., Basgonda

Sidgonda Patil before the Sub-Divisional Officer by filing revision application which was allowed vide order dated 28th March, 2007.

19. Petitioner filed Second Appeal No.107 of 2007 before the Additional Collector, Kolhapur who by order dated 27th July, 2010 allowed the said appeal by setting aside the order dated 28th March, 2007. Respondent No.1 challenged the order dated 27th July, 2010 before the Additional Commissioner, Pune, who by order dated 1st July, 2015 dismissed the challenge of respondent No.1 by affirming the order of the Tahsildar.

20. Thereafter, respondent No.1 preferred application styled as an appeal before the Hon'ble Minister. Matter was heard on 10th August, 2016, on which date even respondent No.1 was absent though petitioner was present. After more than one year nine months thereafter impugned order dated 5th June, 2018 came to be passed setting aside the order of the Additional Commissioner

dated 1st July, 2015 and that of the Tahsildar dated 17th June, 2006.

21. This is under impugnement in Writ Petition No.9570 of 2018.

22. Impugned order dated 5th June, 2018 cannot be sustained for more than one reason.

23. Firstly, in view of the clear finding of fact returned by the Sub-Divisional Officer as affirmed by the Tribunal, which is a quasi-judicial forum, that predecessor-in-interest of the petitioner Nabi Gajbar Mulla was the tenant and in occupation of the suit property, impugned order could not have been passed by the Hon'ble Minister which is clearly contrary to the record.

24. Secondly, Hon'ble Minister heard the application of respondent No.1 styled as an appeal on 10th August, 2016. After closing the hearing on 10th August, 2016, the impugned order was passed after more than one year

nine months on 5th June, 2018. Such delay in delivery of order by itself would vitiate the impugned order dated 5th June, 2018.

25. Thirdly and more importantly, the orders passed by the Tahsildar and by the Additional Commissioner were under Rule 31 of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971. Hon'ble Minister could not have entertained an application of respondent No.1, styled as an appeal under Section 257 of the Maharashtra Land Revenue Code to examine the legality of such orders.

26. That being the position and on a thorough consideration of the matter, court is of the view that impugned order dated 5th June, 2018 cannot be sustained and is accordingly set aside.

27. Consequently, Writ Petition Nos.2816, 2818 and 3028 of 1999 are dismissed; whereas Writ Petition No. 9570 of 2018 is allowed.

28. No cost.

(UJJAL BHUYAN, J.)