BDP-SPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10490 OF 2013

Shri Gurunath Krishnaji Joshi
deceased, through his legal heirs
1] Nilambari Gurunath Joshi
and Anr. ….. Petitioners.

V/s

Shri Shivaji Ramchandra Jadhav
and Others …... Respondents.

Mr. Shriram S. Kulkarni for the Petitioners.
Mr. Amitkumar D. Sale for Respondent Nos. 1 to 4.
Mr. C.D. Mali, AGP for Respondent Nos. 7 to 9.

CORAM: NITIN W. SAMBRE, J.

DATE: 8th July, 2019

P.C.:-

1] This Petition is by landlord, questioning the orders passed under Section 32-G and 32-M of the Maharashtra Tenancy & Agricultural Lands Act (For short “the Act”), whereby purchase price was fixed and the sale certificate was issued in favour of the Respondents-tenants.

2] The facts necessary for deciding the Petition are as under:-

3] The land bearing Gat No.703, Survey No.141 admeasuring 09 Hectares 71 R i.e. 19 Acres 34 Gunthas plus 4 Acres 6 R potkharaba, located at Village Palashi, Taluka Khanapur, District Sangli, was purchased by Krishnaji Eknath Joshi from Sadashiv Atmaram Udale vide registered Sale Deed dated 04/04/1951. As a consequence of this Sale Deed, it is the case of the Petitioner that mutation was carried out in the name of Krishnaji vide Mutation Entry No.1642 being its owner. In family arrangement, it is claimed that the land had fallen to the share of Gurunath Joshi and, accordingly, Mutation Entry No.1771 was carried out. Before the Sale Deed dated 04/04/1951, the names of Respondents-tenants viz. Pandu Bala Jadhav and Ramu Bapu Jadhav were existing in the record of rights. The Mutation Entry No.1462 in the name of Pandu Bala Jadhav was deleted, as it is the contention of the Petitioner that the tenants were not in cultivating possession at the relevant time. The Petitioner claimed that vide order dated 07/09/1960, Mutation Entry No.1566 in the name of Ramu Bapu Jadhav was deleted. However, the aforesaid deletion was scratched from the revenue record and, upon inquiry under RTI, Petitioner is not supplied with any information about deletion of these entries.

4] In the aforesaid background, the Respondents-tenants claimed to have approached the Tahasildar under the provisions of Section 32-G and 32-M and after the first round of remand, by the order impugned, passed on 29/11/2008, Tahasildar, in exercise of powers under Section 32-G fixed the purchase price in favour of Respondents-tenants and also after purchase price was deposited, ordered issuing of Sale Certificate under Section 32-M.

5] The present Petitioner-landlord, feeling aggrieved, preferred an appeal before the Sub-Divisional Officer being Tenancy Appeal No.2 of 2009, which came to be rejected on 20/07/2009, which order at the behest of the Petitioner was confirmed in Revision being Tenancy/Revision/398/2009/SS. As such, this Petition

6] The submission of Mr. Kulkarni, the learned Counsel appearing for the Petitioner is, all these three orders passed by authorities below are not sustainable, particularly when from the revenue entries it can be inferred that on the tiller's day, Respondents were not in cultivating possession and, as such, they cannot be termed as protected tenants. According to him, non-availability of proceedings in regard to deletion of Mutation Entry being Mutation Entry No.1566 with the office of Tahasildar, scratching/deletion of entries from the revenue record, in the absence of any order to that effect, affects the impugned orders adversely. He would urge that the Petitioner, at the relevant time, was an ex-serviceman and provisions of Section 43-1A of the Act are completely ignored by the authorities below.

7] The next limb of the submission of Mr. Kulkarni is, the Petitioner has been rendered landless because of the impugned orders which aspect, all the three authorities lost sight of. The learned Counsel would urge that very Respondents have questioned the title of the Petitioner and that being so, the Respondents ceased to become deemed tenant in the absence of finding under Section 70(b) of the Act. As such, according to him, the orders impugned are not sustainable.

8] Per contra, the learned Counsel for the Respondents, including learned Assistant Government Pleader, supports the orders impugned. According to him, apart from the fact that the Petition is preferred against the concurrent findings of facts recorded against the Petitioner, in earlier round of litigation this Court has already dealt with the claim put-forth by the Petitioner about status of the Respondents as that of tenants. According to him, Petition of the present Petitioner was since dismissed by this Court, it is not open for the Petitioner to canvass the said claim before this Court.

9] Considered the rival submissions.

10] Respondents-tenants approached the Tahasildar under Section 32-G wherein order came to be passed in favour of Respondents, thereby determining the purchase price, including that of award of Sale Certificate under Section 32-M of the Act, as reflected in the order dated 03/07/2006. The Petitioner's appeal against the same pursuant to the provisions of Section 74 of the Act before Sub-Divisional Officer came to be partly allowed vide order dated 11/10/2007. Sub-Divisional Officer directed Tahasildar by remanding the matter to reconsider the evidence. As a consequence of above, Tahasildar passed a fresh order on 29/11/2008, thereby recording finding of fact that 7/12 extract since 1956 in categorical terms establishes the very status of the Respondents as that of protected tenants. The Respondents have paid revenue and also rent to the Petitioner. Even if Petitioner has purchased the land in question by virtue of registered Sale Deed dated 04/04/1951, the status of the Respondents as that of protected tenants will not be extinguished. The Tahasildar has then proceeded to record finding of fact that in 1946-47, the entry in the name of Rama Bapu and Pandu Bala Jadhav i.e. Respondents under Section 3(A) of the Act is that of protected tenants. It is also recorded that on the tiller's day i.e. on 01/04/1957, Respondents were in cultivating possession of the suit property.

11] The Tahasildar then proceeded to record finding that the order of the revenue authorities, thereby declaring the Respondents as tenants was not upset in favour of the Appellant/Petitioner before the Divisional Commissioner and Petition preferred by the Petitioner challenging the said order was also dismissed.

12] The aforesaid issues were formed to be the basis for recording finding of fact in favour of the Respondents as that of protected tenants and they being entitled for determination of purchase price and issuance of Sale Certificate. The Respondents in categorical terms have invited attention of this Court to the order passed in Writ Petition No.2894 of 1993 in which the Petitioner has tried to establish extinguishment of tenancy of the Respondents. The Respondent-S.D.O., while confirming the finding of fact recorded in favour of the Respondents-tenants and against the Petitioner, has re-appreciated the entire material, including that of pleadings and evidence and has dismissed the appeal, which order was confirmed in revisional jurisdiction by the Maharashtra Administrative Tribunal. The fact remains that once the finding of fact is recorded that Respondents, on the tiller's day, were protected tenants in view of available revenue records to that effect, demonstrating that the Respondents have paid revenue and rent to the Petitioner. In absence of any material it is impossible to infer that the order impugned is contrary to the provisions of Section 32-G and 32-M of the Act. Apart from above, in view of the fact that proceedings initiated by the

Petitioner-landlord raising challenge to the revenue record so as to establish that Respondents are not tenants, having been failed and Writ Petition of the Petitioner questioning same is already dismissed, same is required to be considered against the Petitioner. That being so, in my opinion, no case is made out for interference. Petition fails and the same is dismissed.

(NITIN W. SAMBRE, J.)