

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2195 OF 2013

Omprakash Harishankar Jaiswal ... Petitioner
Vs.
Narendra Ramkaran Dubey and others ... Respondents

Mr. Mangal Bhandari a/w. Mr. Manesh M. Deshmukh for Petitioner.
Mr. V. A. Gangal for Respondent Nos.1 to 4.
Mr. S. H. Kankal, AGP for Respondent Nos.6 to 8.
Mr. Ashok T. Gade for Respondent Nos.9 to 24.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 04, 2019

P.C. :

This case was heard on 17.10.2019 and today is fixed for delivery of order. Accordingly order is dictated.

2. Heard Mr. Mangal Bhandari and Mr. Mangesh M. Deshmukh, learned counsel for the petitioner; Mr. V.A. Gangal, learned counsel for respondent Nos.1 to 4; Mr. S. H. Kankal, learned AGP for respondent Nos.6 to 8; and Mr. Ashok T. Gade, learned counsel for respondent Nos.9 to 24.

3. By filing this petition under Articles 226 and 227 of the Constitution of India, petitioner seeks quashing of order dated 24.04.2012 passed by respondent No.7 dismissing the tenancy appeal filed by the petitioner as well as the order dated 03.08.2012 passed by the Maharashtra Revenue Tribunal, Mumbai rejecting the revision petition filed by the petitioner; and further seeks a direction to the State respondents, more particularly, respondent Nos.7 and 8 to condone the delay in filing the tenancy appeal and thereafter to hear and decide the tenancy appeal on merit.

4. Case of the petitioner, as projected in the writ petition, is that one Mrs. Pratapikuwar M. Vishveshwar was the original owner of the land in question i.e., land bearing Serve No. 37/1, Area-4.6 hectare located in Veur village, Taluka-Palghar, District-Thane.

5. She by one lease deed dated 02.05.1953 had given the said land to one Sri Ramkaran Bacchu Dubey only for the purpose of cutting rainy grass for a period of 10 years. The lease deed was duly registered; following which mutation entry No.355 was entered in the revenue record in respect of the land in question on 03.07.1953.

6. By another lease deed dated 03.11.1964, she again granted lease of the land in question to Sri Dubey for further 10 years for cutting of rainy grass. This lease deed was also duly registered; following which mutation entry was entered in the revenue record in respect of the land in question.

7. According to the petitioner, after expiry of the lease deed, Mrs. Pratapikuwar M Vishveshwar had transferred the said land to her daughter Smti. Krusnadevi Sitaram Jaiswal by a registered will dated 04.01.1975; following which mutation entry No.1085 was entered in revenue record on 10.05.1978.

8. It is the further case of the petitioner that in the year 1976, the said Sri Ramkaran Bacchu Dubey had fraudulently registered the said land in his name as a tenant by filing a case, being Case No.2/76 under Section 70 (b) of the Maharashtra Tenancy and Agricultural Lands Act (earlier called the Bombay Tenancy and Agricultural Lands Act, 1948). Petitioner has stated that notice of the said case was not issued to Smti. Krusnadevi Sitaram Jaiswal or her predecessor-in-interest.

9. Thereafter, the said Sri Ramkaran Bacchu Dubey had fraudulently and illegally purchased the said land by filing Case No.177/82 under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act ('the Act' hereinafter); following which mutation Entry No.1260 was obtained and registered in respect of the land in question.

10. It is stated that on 02.11.1992, Sri Ramkaran Bacchu Dubey expired and on his death, names of respondent Nos.1 to 4 were entered in the revenue record as his legal heirs; following which mutation Entry No.1834 in respect of the land in question was entered in the revenue record and registered.

11. Petitioner states that he is the nephew of Smti. Krusnadevi Sitaram Jaiswal and being so, he used to visit the land in question as she being 88 years of age in 2009 and residing at Katra Bazaar, Bhadohi, Taluka-Chauthar, District-Sant Ravidas Nagar, Uttar Pradesh was unable to look after the property. During one of his visits in July, 2009, some of the neighbours and well wishers had informed him about the illegal transfer of the said land by respondent Nos.1 to 4. When the petitioner came to know about it, he immediately applied for the relevant land document and also informed about the above to Smti. Krusnadevi Sitaram Jaiswal. According to the petitioner, Smti. Krusnadevi Sitaram Jaiswal had decided to take legal action against respondent Nos.1 to 4 and had given power of attorney to the petitioner for the said purpose.

12. Petitioner challenged mutation Entry Nos.1260 and 1834 before respondent No.7. However, because of a communication gap, petitioner could not pursue the matter which resulted in rejection of his challenge. Against this, he filed appeal before Addl. Collector, Javhar, being RTS Appeal No.19/2010. During the pendency of the said appeal, Smti. Krusnadevi Sitaram Jaiswal expired on 22.11.2010. Son of Smti. Krusnadevi Sitaram Jaiswal, namely, Sri Harishankar Sitaram Jaiswal had predeceased her on 16.04.1988. According to the petitioner, he and

respondent No.5 are the only surviving heirs of deceased Smti. Krusnadevi Sitaram Jaiswal. However, the appeal was dismissed on 22.02.2011.

13. Aggrieved, petitioner filed Revenue Appeal No.403/2011 before the Commissioner of Konkan Division which, at the time of filing the writ petition, was stated to be pending.

14. Respondent No.7 had issued certificate under Section 32M of the Act in favour of the said Sri Ramkaran Bacchu Dubey on 28.07.1983. Being aggrieved by the said order, petitioner preferred Tenancy Appeal No.15/2011 before respondent No.7 along with an application for condonation of delay. Respondent No.7 declined to condone the delay and dismissed the application for condonation of delay vide order dated 24.04.2012. Consequently, the related appeal was dismissed as being time barred.

15. Against the order dated 24.04.2012, petitioner preferred revision petition, being Revision No.TNC/REV/285/B/2012 before the Maharashtra Revenue Tribunal, Mumbai ('Tribunal' hereafter). By order dated 13.08.2012, Tribunal dismissed the revision petition by upholding the order passed in appeal. In other words, Tribunal did not condone the delay and dismissed the revision on the ground of limitation.

16. Aggrieved, present writ petition has been filed.

17. This Court by order dated 07.03.2013 had issued notice.

18. By filing Civil Application No.2059/2014, respondent Nos.9 to 24 sought impleadment in the present proceeding as party respondents which was granted by this Court vide order dated 02.07.2015.

19. An affidavit-in-reply has been filed on behalf of respondent Nos.9 to 24. It is stated that respondent Nos.9 to 24 are *bonafide* purchasers of the land in question which is a matter of record. Respondent Nos.1 to 4 on the one hand and respondent Nos.9 to 24 on the other hand, had entered into an agreement for sale dated 22.11.2010 in respect of the land in question. By the said document, the vendors i.e., respondent Nos.1 to 4 had agreed to sell, transfer and convey right, title and interest over the land in question in favour of the vendees i.e., respondent Nos.9 to 24 for the consideration amount as mentioned in the agreement. This document was duly registered. It is stated that this fact was known to the petitioner since the year 2010 but he did not join respondent Nos.9 to 24 as party respondents to the present proceeding.

20. Nature of the land in question was agricultural and, therefore, permission for sale for non-agricultural use was necessary. Accordingly, both vendors and vendees approached the competent authority i.e., respondent No.7 for obtaining requisite permission for sale. Respondent No.7 after due scrutiny and following the laid down procedure, was pleased to accord sanction vide order dated 06.04.2011.

21. In view of sale permission granted by respondent No.7, respondent Nos.1 to 4 on one hand and respondent Nos.9 to 24 on the other hand entered into a transaction by a registered sale deed, being registration No.3261/2011 dated 29.04.2011 at Palghar. By the said registered sale deed dated 29.04.2011, respondent Nos.1 to 4 had transferred and conveyed their right, title and interest over the land in question in favour of respondent Nos.9 to 24.

22. It is further stated that since the date of purchase, respondent Nos.9 to 24 are in possession and occupation of the land in question. All necessary charges towards local authorities, assessment etc. are being paid by respondent Nos.9 to 24. Necessary entries in the record of right have also been recorded in favour of respondent Nos.9 to 24.

23. Respondent Nos.9 to 24 have questioned the *locus standi* of the petitioner. It is stated that while on the one hand, petitioner claims to be the duly constituted attorney of Smti. Krusnadevi Sitaram Jaiswal but on the other hand he also claims to be the only surviving legal heir and legal representative of the said Krusnadevi Sitaram Jaiswal alongwith respondent No.5 without however substantiating the same by any cogent evidence. No succession certificate, letter of intent etc. have been furnished by the petitioner.

24. It is stated that suit filed by the petitioner against respondent Nos.1 to 4 was withdrawn by the petitioner unconditionally. Therefore, the issue between the petitioner and respondent Nos.1 to 4 was concluded at the relevant time. Now after more than 29 years, petitioner has tried to rake up the said issue without any sufficient reason or cogent evidence.

25. Finally, it is contended that respondent Nos.1 to 4 had right, title and interest over the land in question by virtue of order passed under Section 32G of the Act following which necessary certificate was issued to them under Section 32M thereof. Respondent Nos.1 to 4 were legal owners of the land in question. Therefore, transaction of the land in question, from respondent Nos.1 to 4 in favour of respondent Nos.9 to 24 is just, legal and valid. Respondent Nos.9 to 24 are *bona fide* purchasers of the land in question and from the date of registration of the sale deed, they are in lawful occupation, possession and enjoyment of the said land till date. The registered sale deed has not been challenged by anybody in any court of law.

26. In such circumstances, respondent Nos.9 to 24 seek dismissal of the writ petition.

27. Learned counsel for the petitioner submits that the original lease was for cutting grass. A lease to cut grass is not an agricultural lease and

the person cutting grass is not a tiller. Such a person is neither an agriculturist nor a tiller. Therefore, he would not be considered as a deemed owner of the land under Section 32G of the Act. He further submits that lease to cut grass is not the same thing as lease for raising of grass which is included in the definition of 'to cultivate'. In such circumstances, order granting benefit of Section 32G and 70 (b) and consequential mutation entries would be wholly illegal and *non est* in the eye of law. His further submission is that when an order is *null and void*, the same can be challenged at any point of time. Question of limitation would not arise. In support of his contentions, he has referred to a number of decisions.

28. On the other hand, learned counsel for the respondents, more particularly, respondent Nos.9 to 24 has questioned the *locus standi* of the petitioner. It is contended that petitioner has not produced any succession certificate to show that he was the nephew of Lt. Krusnadevi Sitaram Jaiswal competent to institute the present proceeding at the expense of other legal heirs, if any. That apart, there is delay of 27 years in filing the tenancy appeal. Such inordinate delay has not been explained. Therefore, the appellate authority was justified in rejecting the appeal of the petitioner as being time barred which was rightly not interfered in revision.

29. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

30. It is seen from the documents placed on record that Sri Ramkaran Bacchu Dubey had initiated proceeding against Smti. Krusnadevi Sitaram Jaiswal before the Addl. Tehsildar (ALT), Palghar under Section 32G of the Act which was registered as Case No.177/1982. An order was passed in the above proceeding on 28.07.1983 to the effect that the tenant purchaser had already paid the purchase price of the suit land and hence certificate under Section 32M of the Act may be issued

in favour of Sri Ramkaran Bacchu Dubey. From a perusal of the said order, it is seen that Sri Dubey had stated before the said authority that he was the tenant of the land in question which was cultivated by him as a tenant. By filing the application he had prayed that the land in question be sold to him. Notices were issued to the parties. Final date of hearing was fixed on 28.07.1983 where the tenant and power of attorney holder of Smti. Krusnadevi Sitaram Jaiswal were present. Their statements were recorded. Though Advocate for the landlady had sought for adjournment, the same was declined on the ground that on the earlier date also the landlady was absent. In his statement, the power of attorney holder of the landlady Srikant Jaikaran Upadhyay admitted that Sri Ramkaran Bacchu Dubey was the tenant of the land in question which was a grass land without any trees. Price of the land in question was mutually fixed by the tenant and the landlady and that the land in question may be sold in favour of Sri Ramkaran Bacchu Dubey, the tenant. It was in above circumstances, that the order dated 28.07.1983 was passed which was followed by issuance of the certificate under Section 32M.

31. This order dated 28.07.1983 was challenged by the petitioner before respondent No.7 by filing Tenancy Appeal No.15/2011. It is interesting to note that Smti. Krusnadevi Sitaram Jaiswal died on 22.11.2010. From 28.07.1983 when the order was passed till 22.11.2010 when Smti. Krusnadevi Sitaram Jaiswal expired, the landlady did not question the order dated 28.07.1983. It was only after her death the appeal came to be filed at the instance of the petitioner. Appellate authority rightly declined to entertain the appeal because of the inordinate delay. Such decision of the appellate authority was affirmed by the revisional authority vide order dated 03.08.2012. It was noted that there was delay of 29 years in filing the appeal. It was further stated that as per the condonation application itself, an Advocate was appointed in addition to the constituted attorney of the landlady; but the constituted attorney had misused the authority. In such circumstances, Tribunal

came to the conclusion that no case for entertaining the revision petition was made out and accordingly dismissed the same.

32. Section 2(1) of the Act defines 'agriculture', which includes horticulture, raising of crops, grass or garden produce, the use by an agriculturist of the land held by him or a part thereof for the grazing of his cattle etc.. Chapter-III of the Act provides for special rights and privileges of tenants and provisions for distribution of land for personal cultivation. Part-II thereof deals with purchase of land by tenants. As per Section 32G, Tribunal is empowered to issue notice and determine price of land to be paid by tenants. Section 70 enumerates duties of the Mamlatdar which includes as per sub-clause (b) to decide whether a person is or was at any time in the past a tenant or a protected tenant or a permanent tenant.

33. Adverting to the facts of the present case, it is seen that order under Section 32G of the Act was passed on 28.07.1983. This order came to be challenged by the petitioner only in the year 2011 which is more than 28 years later. It is also significant to note that this order was not challenged when the landlady was alive. It was only after her death that the related appeal came to be filed. In the meanwhile, respondent Nos.1 to 4 sold the land to respondent Nos.9 to 24; initially an agreement for sale dated 22.11.2010 was executed and thereafter sale deed was executed on 29.04.2011. From the above, it is evident that respondent Nos.1 to 4 did not show any undue haste in selling the land in question which they had obtained under Section 32G of the Act way back on 28.07.1983.

34. Therefore, taking an overall view of the matter, it cannot be said that decision of the appellate authority to reject the appeal on the ground of inordinate delay suffered from any arbitrariness or unreasonableness. There was no question of interference of such an order in revision. In

such circumstances, Court is of the view that no case for interference under Articles 226 and 227 of the Constitution of India is made out.

35. Writ petition is devoid of any merit and is accordingly dismissed.

(UJJAL BHUYAN, J.)