IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 06 OF 2002

Baburao Bapuji Rale
(Since deceased) Through LRs. & Ors. ... **Petitioners**
V/s.
Jaba Dhondiba Rale
(Since deceased) Through LRs. & Ors. ... **Respondents**

Mr.Rajesh Parab i/b. Mr.D.S. Sawant for Petitioner.
Ms.V.S. Nimbalkar, AGP for Respondent No.3-State.

CORAM : A.S. GADKARI, J.

DATE : 1st August 2019.

P.C. :

1] By the present petition under Article 227 of the Constitution of India, the petitioners/legal heirs of original tenant, namely, Baburao Bapuji Rale have impugned Judgment and Order dated 25/10/2001 passed by the Additional Commissioner, Pune Division, Pune, in Revision Application No.RTS/Pune/245/2001 under Section 257 of the Maharashtra Land Revenue Code, 1966, rejecting the said Revision Application and confirming the Order dated 29/12/2000 passed by the

Additional Collector, Pune, dismissing RTS Appeal No.II-A-122/1993.

2] Heard Mr.Parab instructed by Mr.Sawant, the learned counsel for petitioners and Ms.Nimbalkar, learned AGP for the respondent No.3. The respondent Nos.1 and 2 are absent though duly served.

3] The facts giving rise to the present petition can briefly be stated as under :

(i) The land in-question is Survey No.114/1 ad-measuring 6 acres and 32 ares out of the total suit land lying and situated at Village Koye, Taluka Khed, District Pune.

The father of the petitioners, namely, Baburao Bapuji Rale along with the respondent No.1-Jaba Dhondiba Rale were tenants in the lands owned by the respondent No.2-landlord. The said two persons were tenants in the suit land and were cultivating it since 1953-1954.

(ii) The father of the petitioners Baburao Bapuji Rale along with the respondent No.1-Jaba Dhondiba Rale filed an application bearing No. Tenancy-32-G/Koye-8-77 under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "B.T.A.L. Act") on 21/12/1976 for fixing purchase price of the suit land in their favour before the Agricultural Lands Tribunal (for short, “ALT”) Khed. By an Order dated 18/07/1977 the ALT Khed was pleased to dismiss the said application.

(iii) Baburao Bapuji Rale along with respondent No.1-Jaba Dhondiba Rale therefore preferred an appeal bearing Tenancy Appeal No.41 of 1977 before the Assistant Collector, Junnar Sub-Division, Khed, District Pune. The Assistant Collector, Junnar Sub Division, Khed by its Judgment and Order dated 07/05/1978 remanded the said matter back before the ALT Khed for fresh consideration.

(iv) The record indicates that on 07/12/1976 the Tahsildar, Khed passed an Order and directed the Talathi of Village Koye to enter the names of Baburao Bapuji Rale and respondent No.1-Jaba Dhondiba Rale in the revenue record. Accordingly, the names of Baburao Bapuji Rale and Jaba Dhondiba Rale were entered into the revenue record by effecting Mutation Entry No.37.

(v) In view of the observations made therein the ALT Khed conducted fresh enquiry into the matter and after hearing the parties thereto granted the said application under Section 32G of the B.T.A.L. Act and fixed the price of the suit land as per its Order dated

26/11/1979.

(vi) Feeling aggrieved by the mutation entry No.37 thereby entering the names of Baburao Bapuji Rale and Jaba Dhondiba Rale in the revenue records, the respondent No.2 filed Appeal bearing RTS Appeal No.29 of 1977 before the Sub-Divisional Officer, Khed. The Sub-Divisional Officer, Khed by its Order dated 25/04/1978 allowed the said appeal and set-aside Mutation Entry No.37.

(vii) Being aggrieved by the said Order passed by the Sub-Divisional Officer dated 25/04/1978 the petitioners preferred Second Appeal bearing No. RTS/A/78 before the Additional Collector, Pune. The Additional Collector, Pune remanded the matter back before the Tahsildar Khed for fresh enquiry.

(viii) After remand before the Tahsildar Khed, the said proceedings i.e. RTS Appeal No.29 of 1977 was re-numbered as RTS/17/78 (Remand), on its file, in the meantime in the month of February 1992 a Certificate under Section 32M of the B.T.A.L. Act was issued in the name of Baburao Bapuji Rale pertaining to land admeasuring 3 acres and 16 ares bearing Survey No.114 (Gat No.356 western side) lying and situated at Village Koye, Taluka Khed, District

Pune. The record further indicates that and as per the submissions made by the learned counsel for the petitioners, the said Order under Section 32G dated 26/11/1979 and issuance of Certificate under Section 32M of the B.T.A.L. Act in the month of February 1992 have not been challenged by the respondent No.2 till today and the said two Orders hold field even as of today.

(ix) In this backdrop, the Tahsildar Khed heard the RTS Appeal No.17 of 1978 (Remand) and confirmed the Mutation Entry No.37 which was recorded in favour of the petitioners.

(x) Feeling aggrieved by the said Order dated 30/07/1992 passed by the Tahsildar, Khed, confirming Mutation Entry No.37, the respondent No.2-landlord preferred Appeal bearing RTS Appeal No.104 of 1992 under Section 247 of the Maharashtra Land Revenue Code, 1966 before the Sub-Divisional Officer, Junnar Sub-Division, Khed, District Pune. The Sub-Divisional Officer, Junnar Sub-Division by its Judgment and Order dated 31/03/1993 allowed the said appeal and cancelled the Mutation Entry No.37. By the said Order, the respondent No.2 was permitted to challenge the Certificate issued under Section 32M of the B.T.A.L. Act in favour of the petitioners.

It is to be noted hear that, in the said Judgment and Order, practically no reasoning at all was recorded by the Sub-Divisional Officer, Junnar Sub-Division, Khed, while cancelling Mutation Entry No.37.

A Perusal of the said Order dated 31/03/1993 passed by Sub-Divisional Officer, Junnar Sub-Division, Khed, clearly indicates that, after recording submissions of the rival parties, in one sentence i.e. *"This assertion of the Lower Court is correct one",* the said Authority has allowed the appeal. If the assertion made by the lower Court was correct, then there was no need for the Sub-Divisional Officer, Junnar Sub-Division, Khed, to cancel the Mutation Entry No.37, as the lower Court i.e. Tahsildar Khed had elaborately recorded reasoning for confirming Mutation Entry No.37, recording names of Baburao Bapuji Rale along with Jaba Dhondiba Rale, the respondent No.1 herein.

The father of the petitioners Baburao Rale therefore preferred Appeal bearing No.RTS/II/A/122/1993 before the Additional Collector, Pune under Section 247 of the Maharashtra Land Revenue Code. The said authority has taken note of the fact that, the petitioners herein have produced the case papers pertaining to the 32G proceedings, the Order fixing price of the suit land and the 32M Certificate issued in favour of Baburao Bapuji Rale and despite the said fact without taking into consideration its implication, the concerned Authority has dismissed the Appeal filed by the petitioners by its Judgment and Order dated 29/12/2000.

(xi) The petitioners feeling aggrieved by the said Judgment and Order dated 29/12/2000 passed by the Additional Collector, Pune, preferred Revision under Section 257 of the Maharashtra Land Revenue Code before the Additional Commissioner, Pune Division, Pune, bearing No.RTS/Pune/245/2001. The Additional Commissioner, Pune rejected the said revision by its Judgment and Order dated 25/10/2001 and confirmed the Order dated 29/12/2000 passed by the Additional Collector Pune.

(xii) The Additional Commissioner Pune Division, in its impugned Judgment and Order dated 25/10/2001 has observed that, in the proceedings under the Maharashtra Land Revenue Code, the names of tenants/deemed purchasers under the provisions of B.T.A.L. Act cannot be taken into consideration. It is further observed that, the Tahsildar Khed, who has confirmed Mutation Entry No.37 has erroneously taken into consideration the said aspect and confirmed the said Mutation Entry No.37.

The said Judgment and Order dated 25/10/2001 is impugned herein.

4] The chronology of events mentioned hereinabove are the admitted facts on record.

As noted earlier, the respondent No.2 till today has not challenged the Order dated 26/11/1979 passed under Section 32G and the Certificate issued under Section 32M in the month of February 1992 under the provisions of B.T.A.L. Act. Entering name of tenant/deemed purchaser after making necessary payment, as per the Order passed under Section 32G and after getting a Certificate under Section 32M of the B.T.A.L. Act, it is a consequence of the operation of the said provisions and the Revenue Authorities were therefore under the legal obligation to enter the name of tenant in the revenue record, as per the provisions of the Maharashtra Land Revenue Code. The observations made by the Additional Commissioner, Pune Division, Pune, in the impugned Order are therefore contrary to the settled cannons of law. A minute perusal of record would indicate that, the Sub-Divisional Officer, Junnar Sub-Division, at the first instance and thereafter other Appellate Authorities in hierarchy have clearly erred in appreciating the necessary implications of Orders passed under Section 32G and issuance of Certificate under Section 32M of the B.T.A.L. Act by the Competent Authority while considering the claim of the petitioners while effecting the said mutation entry.

5] In view thereof, the Order dated 30th July 1992 passed by the Tahsildar Khed, confirming Mutation Entry No.37 is hereby upheld. The impugned Orders dated 31st March 1993 passed by the Sub-Divisional Officer, Junnar Sub-Division, Khed in RTS Appeal No.104 of 1992, dated 29/12/2000 passed by the Additional Collector, Pune, in RTS Appeal No.II/A-122/1993 and the Order dated 25/10/2001 passed by the Additional Commissioner, Pune Division, Pune, in Revision Application bearing No.RTS/Pune/245/2001 are hereby quashed and set-aside and. As a consequence thereof, Mutation Entry No.37 in favour of petitioners is confirmed.

6] Petition is allowed in the afore-said terms.

[A.S. GADKARI, J.]