

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3869 OF 2013

Sadguru Dasharat Morje (since deceased)
through LR's ... Petitioners
Vs.
Nagesh Narayan Bandekar through Madhukar
Narayan Bandekar and others ... Respondents

Mr. Surel S. Shah for Petitioners.
Ms Shilpa Mahabaleshwar Morje a/w. Karen Chandra Kapat for
Respondent No.1.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 14, 2019

P.C. :

Heard Mr. Shah, learned counsel for the petitioners and Ms Morje, learned counsel for respondent No.1.

2. This case is of the year 2013 and was heard in part on 07.11.2019. Hearing has been completed and order is dictated.

3. This writ petition has been filed challenging the legality and correctness of the following orders:-

- (i) order dated 11.03.2013 passed by the Maharashtra Revenue Tribunal, Mumbai in TNC.REV.259/B/2001; and
- (ii) order dated 09.04.2001 passed by Deputy Collector and Land Acquisition Officer in Tenancy Appeal No.14 of 1999.

4. Case of the petitioners is that they are the legal heirs of the original applicant - Sadguru Dasharat Morje. It is stated that Sadguru Dashrat Morje was in occupation, possession and cultivation of the land bearing S.No.9, H.No.3 of Village Varchi Ker, Taluka Vengurla, District Sindhudurg (referred to hereinafter as "the land in question") since the days of his forefather.

4.1. However, in the year 1987, name of respondent No.1 was entered in the land records as tenant in respect of the land in question. Such entry was made by the Land Surveyor, *Tahsildar*.

5. By order dated 02.07.1992, the Consolidation Officer, Sindhudurg, Sawantwadi cancelled the aforesaid order of Land Surveyor, *Tahsildar*.

6. On 06.12.1996, Sadguru Dasharat Morje filed application under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 contending that he was the tenant of the land in question and name of respondent No.1 was wrongly entered as the tenant. The said application was filed before the *Tahsildar* who issued notice to all concerned including respondent No.1 who contested the claim of the predecessor-in-interest of the petitioners.

7. After hearing the matter, *Tahsildar* passed the order dated 24.12.1998 declaring Sadguru Dasharat Morje as the tenant of the land in question.

8. Being aggrieved by the order dated 24.12.1998, respondent No.1 filed appeal before the Deputy Collector, which was registered as Appeal No.14 of 1999. In the meanwhile, Sadguru Dasharat Morje died and his legal heirs i.e., the petitioners contested the said appeal. By the order dated 09.04.2001, Deputy Collector allowed the appeal filed by respondent No.1 restoring tenancy in respect of the land in question in favour of respondent No.1.

9. Against the said order dated 09.04.2001, petitioners preferred revision application before the Maharashtra Revenue Tribunal, Mumbai, which was registered as Revision Application No.TNC/REV/259/B/2001.

9.1. Initially, President of Maharashtra Revenue Tribunal, Mumbai (Tribunal) was pleased to grant stay of order dated 09.04.2001.

9.2. Thereafter respondent No.1 appeared and contested the revision.

9.3. After hearing both the sides, Tribunal passed the order dated 11.03.2013 dismissing the revision application.

10. Hence the writ petition.

11. Learned counsel for respondent No.1 submits that her client Nagesh Narayan Bandekar had expired on 07.08.2016. This fact was brought to the notice of the Court as well as to learned counsel for the petitioners. However, no steps have been taken by the petitioners for substitution of the legal heirs of respondent No.1.

11.1. She submits that since the tenancy rights have devolved upon the legal heirs of respondent No.1, in their absence, writ petition cannot be adjudicated upon. Since petitioners have failed to make the substitution for more than 3 years, the writ petition should be dismissed on this ground alone.

12. Though this is a valid ground for dismissal of the writ petition, Court is however of the view that on merit also there is hardly any scope for the writ court to interfere with the concurrent findings of fact of the appellate court as well as of the revisional court.

13. While dismissing the revision application, revisional authority took note of the fact that respondent No.3 who had appeared on behalf of the landlord had admitted tenancy of respondent No.1. Respondent No.3 was cross-examined and in his cross-examination, he specifically admitted tenancy of respondent No.1 while denying the claim of the revision applicants i.e. the petitioners.

14. At this stage, learned counsel for the petitioners submits that this finding is contrary to the materials on record and that the revisional authority could not have re-appreciated the evidence. Revisional authority ought to have remanded the matter back to the appellate authority for a re-finding on fact. He also relied on a decision of this Court in ***Abdul Rajtak Abdul Rehman Mulla Vs. Ibrahim Yusuf Lambe, 2006 (1) ALL MR 472*** in support of his contention that revisional authority cannot re-appreciate evidence.

15. I am afraid such contention of learned counsel for the petitioners can be accepted.

16. Adverting to the impugned order, it is seen that the revisional authority had come to a definite conclusion that respondent No.1 was the tenant of the landlords and in this connection, revisional authority held as under:

“6. In this case, one major factor in favour of Respondent No.1, is the admission of tenancy of Respondent No.1 by Respondent No.3 who appeared on behalf of landlords. Respondent No.3, through cross-examination made on his behalf, has specifically admitted tenancy of Respondent No.1, but denied that Revision Applicants were tenants. Fact remains that none of the landlords claimed to be in actual possession of the land. The fact that there is tenant in the land is also not disputed. No rent receipt is issued either to Revision Applicant or Respondent No.1. None of the landlords, including Respondent No.3, entered into witness box.

7. In support of the case of Revision Applicant, his wife Sunita Sadguru Morje is examined on oath on page 151 of Tahsil Office file and she stated that her family has been tenant. They were watchmen of the Sabnis family. She further stated that there were 7 to 8 coconut trees and two mango trees and they used to give 25 coconuts as rent. No receipt was issued by landlord as the relations were good. It is further stated that name of Respondent No.1 Nagesh Bandekar was wrongly entered to the revenue record. It is further stated that pot hissa No.4 is belonging to Revision Applicant. In her cross-examination, she stated that original survey number was 132/1 and then land was divided into pot hissass. H.No.4 which was then entered in the name of Revision Applicant was in the name of Yashwant Narayan Joshi who expired in 1985-86. He

had no child and name of Joshi was deleted and name of Revision Applicant was entered, but she has no document to show her tenancy. She also has no receipt for payment of rent. She further denied that Respondent No.1 was in possession of hissa No.3 since 1905. But she admitted that in the disputed land Respondent No.1 has his hut. She further admitted that it was given Grampanchayat House No.2/05. It is in the name of Madhukar Narayan Bandekar (brother of Respondent No.1). It is further stated that said hut is used by Respondent No.1 as farm house. It is also admitted that said hut is used for storing agricultural implements by Respondent No.1. So, these admissions clearly show that the hut in the disputed property is in occupation and use of Respondent No.1.

8. It is further stated that in S.No.10 H.No.47, there is house of Respondent No.1 and it is adjoining S.No.9 H.No.3 and there is no fencing in between S.No.10 H.No.47 and H.No.3 of S.No.9. So, by these admissions, wife of Revision Applicant admitted that S.No.10/47 and S.No.9/3 are not separated by any fencing. Respondent No.3 on behalf of landlords denied that revision Applicant was tenant of the land. However, said Respondent No.3 has not entered into the witness box nor any witness is examined on behalf of landlords. On the other hand, there is statement of Madhukar Narayan Bandekar, the brother of Respondent No.1 as his Constituted Attorney and he stated about possession of Respondent No.1 over the disputed land since 1905 as tenant and their farmhouse. In the cross-examination for Respondent No.3, witness Madhukar, who is aged about 60, states that they have never seen Sabnis and had not paid rent to them. It was suggested that Respondent No.1 was not tenant and was falsely claiming tenancy.

9. The Tahsildar, in his judgement, has relied upon some more circumstances. He referred to the statement of Sunita Morje and her admission in cross-examination that divisions of S.No.132/1 were made as per actual possessions and enjoyment. Tahsildar has also referred to the arguments on behalf of Respondent No.1 and stated that in support of claim of tenancy, Respondent No.1 has produced M.E.No.37, V.F.7/12 extracts, Gat Nakasha, notice for measurements issued by Taluka Inspector of Land Records. It is also a fact that from 1988, the entry in the name of Respondent No.1 is not challenged till filing of the application in 1996. Adv. Shri Mahesh Raul submitted that M.E.No.37 was cancelled subsequently. But he did not produce any document in support thereof.

10. In the argument before Tahsildar, it is also argued that originally wife of Revision Applicant claimed that land was with them as watchmen. But at the same time we also find that

she spoke about relationship of landlord and tenant and payment of rent in form of coconuts. It is not case of Revision Applicant that Respondent No.1 had encroached upon their land and constructed the farmhouse which is admittedly in his possession and enjoyment. The land is hardly 4.9 R.

11. Considering these circumstances, in my opinion, the ultimate conclusion by Sub-Divisional Officer is correct though he had not given proper reasons and the reason given by Tahsildar that landlord admitted tenancy of Revision Applicant would not alone be sufficient. Landlord also did not explain under what circumstances Respondent No.1 came to be in possession of the property. Admittedly, there is no cultivation in the land, but there are only coconut and mango trees. No one claimed that land was ever cultivated and any crop was taken therein. Hence, I am of the opinion, that the ultimate conclusion by Sub-Divisional Officer that Revision Applicant failed to prove his tenancy, but Respondent No.1 could prove his tenancy and possession appears to be correct.

12. In the result, this Revision Application is dismissed for foregoing reasons.”

17. From the above, it is evident that after appreciation of the evidence on record appellate authority had arrived at a finding of fact that respondent No.1 was the tenant which finding has been affirmed by the revisional authority. Such concurrent finding of fact cannot be said to be perverse to warrant judicial interference under writ jurisdiction which is after all a supervisory jurisdiction.

18. On thorough consideration, Court is not inclined to interfere with the finding of fact arrived at by the appellate authority and affirmed by the revisional authority. Consequently, the writ petition fails and is accordingly dismissed.

(UJJAL BHUYAN, J.)

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