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Bharat
D. Pandit

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5675 OF 1995

Bharamu Nana Vatharkar(since
deceased by his 12 Legal representatives)
1] Mahendra Bhupal Vanjale and Others ….. Petitioner

V/s

Shri Babu Ananta Shete and Others …... Respondents

Mr. S.G. Deshmukh alongwith Mr. Ramdas Shelke algonwith Mr. Gautam Kanchanpurkar for the Petitioners
Mr. Surel Shah for Respondent No.1, 2B and 2D.

CORAM: NITIN W. SAMBRE, J.

DATE: 1st August, 2019.

P.C.:-

1] On 30/01/1985, the Additional Tahasildar, Tasgaon has recorded finding of fact in favour of the Petitioner. Consequently, in exercise of powers under section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act (For short “the Act”), Petitioner was declared as tenant. An order of possession was passed in exercise of powers under Section 29 of the Act. The said order passed by the Additional

Tahasildar, Tasgaon, was the subject matter of challenge before the Sub-Divisional Officer i.e. Assistant Collector, who confirmed the same on 22/05/1987.

2] The present Respondents feeling aggrieved, preferred Revision under Section 76 of the Act, which came to be allowed by an order impugned dated 26/4/1995. As such, this Petition.

3] The submissions are, once both the authorities i.e. Tahasildar and the Assistant Collector have recorded a finding of fact that the Petitioner was a tenant in 1976 and as such entitled for declaration under Section 70(b) of the Act, as a consequence of dispossession, he is entitled for order under Section 29 of the Act for restoration of possession. The Revenue Tribunal, in exercise of revisional jurisdiction, ought not to have disturbed the said finding. According to the learned Counsel for the Petitioner, Revenue Tribunal has exceeded its jurisdiction.

4] While countering the aforesaid submissions, the learned Counsel for the Respondents/landlords would urge that failure to make application under Section 32-G, pursuant to certificate obtained under Section 88-C is required to be considered in favour of the Respondents/landlords, which prevailed before the Revenue Tribunal to pass an order, thereby upsetting the finding recorded by both the authorities below. According to him, in view of legal fiction, on tiller's day since the Petitioner was not in possession of the property as a tenant, he cannot become a deemed purchaser. According to him, in view of above, Revenue Tribunal has rightly inferred that there was no landlord-tenant relationship on the date of dispossession and that being so, proceedings were not maintainable. He therefore sought dismissal of the Petition.

5] Heard, the rival submissions.

6] In spite of earlier round of litigation under Section 88-C of the Act, Respondents/landlords have chosen to deny the relationship between Petitioner and themselves as that of landlord and tenant, which has prompted the authorities to record a finding that the Petitioner is a tenant under Section 70(b) of the Act and on a given date i.e. in the year 1976, the Petitioner was dispossessed and as such, entitled for restoration of possession. As a consequence of defense raised by the Respondents/landlords before the authorities below, the said findings are required to be recorded. Rather, it will not be out of place to observe here that the Petitioner was prompted to take out proceedings for declaring him as tenant under Section 70(b) of the Act in view of the stand taken by the Respondent/landlords of cessation of relationship of landlord and tenant.

7] In the aforesaid background, once both the authorities have granted declaration in favour of the Petitioner that he is a tenant and is entitled for restoration of possession under

Section 29 of the Act, in excess of its revisional jurisdiction, Revenue Tribunal has proceeded to record a perverse finding that there does not exist any landlord-tenant relationship and that being so, proceedings under Section 70(b) and consequential proceedings under Section 29 were not maintainable.

8] The view expressed by the Revenue Tribunal appears to be without any legal basis. The fact remains that even prior to tiller's day, Petitioner was already in possession of the property in question as a tenant, as is reflected in the finding of fact recorded by Tahasildar and confirmed by the Assistant Collector in appeal.

9] In view of above, the order impugned is liable to be quashed and set aside. Petition as such, stands allowed in terms of prayer clause (b).

10] The order under Section 29 in favour of the

Petitioner be given effect to by the competent authority expeditiously.

11] At the request of learned Counsel for the Respondents/landlords, order passed by this court is stayed for a period of two weeks.

(NITIN W. SAMBRE, J.)