

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14399 OF 2016

Shobha Daulatrao Bankar
Residing at Pipalgaon Baswant,
Taluka- Niphad District- Nashik

..... Petitioner

VERSUS

- | | | | |
|----|---------------------------------|-------|--------------------|
| 1. | Sadashiv Anaji Gangurde |) | |
| | |) | |
| 2. | Vishnu Damodhar Gangurde |) | |
| | |) | |
| 3. | Snajay Damodhar Gangurde |) | |
| | |) | |
| 4. | Tulsabai Dasrath Salwe |) | |
| | |) | |
| 5. | Satyabhamabai Vithoba Salwe |) | |
| | |) | |
| 6. | Malini Arun Barve |) | |
| | Nos. 1 to 6 R/at. Block No. 45, |) | |
| | Room No. 358, Near Post Officer |) | |
| | Neharu Nagar & Sharwan Dhara, |) | |
| | Jail Road, Mangal Murti Nashik |) | |
| | Road, Nashik. |) | |
| 7. | Shivaji Daulatrao Bankar |) | |
| | |) | |
| 8. | Santosh Daulatrao Bankar |) | |
| | Nos. 7 & 8 R/at. Pimpalgaon |) | |
| | Baswant, Taluka- Niphad |) | |
| | Dist. Nashik. |).... | Respondents |

Mr. S.G. Karandikar, Advocate for the Petitioner.
Mr. J.M. Pathade, Advocate for Respondent No. 1.
Mr. Prawrtak Pathak, Advocate for Respondent No. 3.

CORAM : S. S. SHINDE J.

Reserved On : 10th April 2019

Pronounced On : 3rd June 2019.

JUDGMENT :-

1. This writ petition is filed with following substantive prayer:-

(a) By issuing appropriate writ/order/direction, the impugned order dated 07.05.2016 passed by the Member (Administrative) Maharashtra Revenue Tribunal, Mumbai in Revision Application No. TNC/REV/NSK/56/2004 be quashed and set aside and that passed by the Sub Divisional Officer, Niphad Division, Niphad dated 15.05.2004 in Tenancy Appeal No. 3 of 2004 and order dated 21.12.2002 passed by the Tahsildar and ALT, Niphad in Tenancy Case No. 2 of 1999 be restored.

2. The facts in brief, leading for filing the petition are as under:-

3. It is the case of the petitioner that, the petitioner's predecessor preferred application under Section 70 (B) of Bombay Tenancy & Agricultural Lands Act, for declaration of tenancy. By order dated 06.09.1996, petitioner's predecessor was declared as tenant. However, said decision was set aside in appeal and the matter was remanded for re-trial. Once again by order dated

04.09.1998, petitioner's predecessor was declared as tenant. Again the matter was remanded by SDO, Niphad Division, Niphad in Tenancy Appeal No. 7 of 1998. After this second remand, the case was numbered as Tenancy Case No. 2 of 1999 and was tried by Tahsildar and ALT, Niphad. It is further the case of the petitioner that in the meantime, by consent of parties, purchase price in respect of remaining two lands bearing Survey Nos. 758/12 and 758/13 came to be fixed, and accordingly purchase price was paid and accepted by the landlords. The Petitioner submits that, however, in respect of Survey No. 758/14, the proceeding of application under Section 70 (B) of the said Act, continued.

4. It is further the case of the petitioner that, in the third remand, after repeated adjournments, on 20.10.2000, on behalf of the land owners, statement was recorded wherein they have clearly accepted the lawful cultivation by petitioner's grandfather, and thereafter petitioner's father and thereafter petitioner. Remaining landlords also consented for said statement. In the statement of petitioner's predecessor dated 19.01.2001, it was specifically deposed by him that the land was in his lawful cultivation and said cultivation was, since from his grandfather's time and the rent has been paid to the landlords, regularly. The learned Tahsildar, upon perusal of record and proceeding and after going through the available evidence was pleased to declare Daulatrao Pandharinath Bankar as tenant in respect of suit land by his order

dated 21.12.2002.

5. The Petitioner further submits that, further proceeding under Section 32G of the said Act, was also initiated and purchase price came to be fixed by order dated 31.07.2003. The petitioner submits that, respondent nos. 1 to 6 also participated in said proceeding and in said proceeding specific plea was raised that, since they have not received any rent from 1975 onwards, they are entitled to possession of the land. It is further the case of the petitioner that, said order passed under section 32G of the said Act, was never challenged by the land owners and the same order attained finality.

6. It is the case of the petitioner that the order passed by Tahsildar and SDO, were challenged before the Maharashtra Revenue Tribunal, by preferring revision application under Section 76 of the Maharashtra Tenancy & Agricultural Lands Act, 1948. That, originally the revision was filed in 2004 before the Commissioner, Nashik Division, Nashik since the Maharashtra Revenue Tribunal was not functioning. Said revision was transferred to Maharashtra Revenue Tribunal, Mumbai and was pending from 2004 to 2016 for final disposal. In the year 2016, said revision application was heard by learned Member (Administrative), MRT, Mumbai. By order dated 07.05.2016, learned Member (Administrative), MRT, Mumbai was pleased to allow the revision application by setting aside the concurrent findings recorded by the courts below. Hence this

writ petition challenging the aforesaid order passed by the Maharashtra Revenue Tribunal, Mumbai.

7. Learned counsel appearing for the petitioner submits that, the tribunal committed serious error by interfering with the concurrent findings of fact recorded by the courts below, and has transgressed the jurisdiction conferred by Section 76 of the M.T. & A.L. Act, 1948. It is further submitted that, the tribunal has decided the matter on the ground which was neither pleaded nor raised in the courts below and has allowed the revision on that ground which was never argued or even pleaded in the courts below. Even otherwise, the finding of Tribunal is perverse in as much as the respondents-landlords on more than one occasion had admitted receipt of rent and as such it was not permissible to raise such defence at this late stage.

8. It is submitted that, the tribunal has failed to consider that in 32G proceeding the landlords had specifically contended that no rent was received after 1975, thereby indicating that till 1975, the rent was duly received thereby accepting the existence of valid contract between the parties. The statement made by tenant in 2001 that rent was being regularly paid to the land owners is also completely ignored. This evidence of tenant had gone unchallenged and as such there was no reason to disbelieve the same. As a matter of fact, Tribunal has not even touched that part of the evidence before recording finding for the first time

on the issue of tenancy. Even bare perusal of revision memo filed on behalf of the respondents would go to indicate that no specific ground was raised in the revision application about validity of lease at any point of time, and as such there was no reason for parties to lead evidence on the said aspect of the matter.

9. The tribunal has failed to take into consideration that Section 8 of the Inferior Village Watan Abolition Act clearly makes provisions of Tenancy Act, applicable even in respect of fixation of the purchase price, after of date of re-grant. The law laid down by the Hon'ble High Court as well as the Supreme Court, has been clearly ignored while recording the finding by the Tribunal. The petitioner further submits that, the tribunal has simply copied the written submission of revision applicants in first four pages and thereafter in one paragraph has purportedly recorded the submissions of petitioner. The tribunal has not even bothered to record the submissions of petitioner in proper manner and therefore, there is no consideration whatsoever of those submission. It is further submitted that, the tribunal has completely failed to take into consideration the admitted facts as well as the continuous entries in the revenue record relating to tenancy of petitioner's predecessor. In support of aforesaid contentions learned counsel placed reliance in the case of **Sadashiv Dada Patil Vs. Purushottam Onkar Patil (Dead) By LRS, (2006) 11 SCC 161.**

10. On the other hand, learned counsel appearing for Respondent No. 3 invites attention of this Court to the reasons/findings recorded by the Maharashtra Revenue Tribunal, Mumbai and submits that, under the Bombay Hereditary Offices Act (3 of 1874) in Part II (Watan Property and Profits thereof) Section 5 provided for prohibition of alienation of watan and watan rights. It is submitted that, in the present case subject land is watan land therefore, said land cannot be transferred in view of Section 5 of the Bombay Hereditary Office Act. It is further submitted that, the petitioner has not placed on record proof showing that subject land has been lawfully leased in favour of the predecessor of the petitioner with the previous approval of the Collector, and name of said predecessor was subsisting on the appointed date. It is submitted that, provisions of Section 32G (6) of Bombay Tenancy and Agricultural Lands Act, 1948 are required to be read alongwith Schedule which is to be seen at the end of the Act. The Maharashtra Inferior Village Watans Abolition Act is not included in the schedule and therefore, there cannot be any benefit of Section 32G (6) of the Bombay Tenancy & Agricultural Lands Act, 1948. Even otherwise, Section 32G (6) is for the benefit of such tenant who was inducted lawfully and such lease would be surviving on 1st April 1957. It is submitted that, in the present case, upon re-grant of the land in 1964, the original watandar became full fledged owner of the land, however, provisions of tenancy Act became applicable only to those persons whose leases were initially valid with the permission of Collector

and which had continued till 1st February 1959. In the instant case, the so called tenancy based on possession simplicity has not conferred any right of petitioner herein. Therefore, learned counsel appearing for the Respondent No. 3 submits that, petition may be rejected.

11. Heard learned counsel appearing for the parties at length. With their able assistance carefully perused pleadings in the petition, grounds taken therein, annexures thereto and the findings/reasons recorded by the Maharashtra Revenue Tribunal, Mumbai in the impugned judgment. The contention of the counsel appearing for the petitioner that the concurrent findings of facts, that the predecessor of the petitioner and petitioner are continuously cultivating the subject land and there are continuous entries in the revenue record, and same are disturbed by the Maharashtra Revenue Tribunal, cannot be accepted. It is true that the crop inspection entries of year 1953-54 onwards are in the name of predecessor of petitioner and the petitioner. However, Tribunal observed that, since there is no creation of valid tenancy by way of lease, as contemplated under Section 8 of the Maharashtra Inferior Village Watan Abolition Act, and the initial induction of the predecessor of the petitioner on the land was admittedly without previous approval of the Collector/State Government, there cannot be any valid tenancy by lease. It is also observed that, admittedly the suit land was Mahar Watan land. The land was inferior village watan land and the same was regulated

by the provisions of Bombay Hereditary Office Act. On conjoint reading of provisions under Bombay Hereditary Office Act and provisions of the Maharashtra Inferior Village Watan Abolition Act, the Tribunal observed that, for creation of tenancy, permission from the competent authority i.e. Collector, would be required and any lease granted without permission of Collector would be invalid under Section 5 of the Said Act. It is also observed that, the lands in question continue to be watan land till 1st February 1959, the date on which the inferior watan came to be abolished. It is further observed that till 01st February 1959, provisions of relevant tenancy law i.e. Bombay Tenancy & Agricultural Lands Act, 1948 were not applicable. Thus there could not have any case of deemed tenancy under Section 4 till 01st February 1959. It is further held by the Maharashtra Revenue Tribunal that, the person claiming to be tenant must prove when he was inducted on watan land by watandar with previous approval by Collector. However, in the present case no such claim is made by the present petitioner.

12. Section 8 of the Maharashtra Inferior Village Watans Abolition Act reads thus:-

8. *If any watan land has been lawfully leased and such lease is subsisting on the appointed date, the provisions of the tenancy law shall apply to the said lease and the rights and liabilities of*

the holder of such land and his tenants shall, subject to the provisions of this Act, be governed by the provisions of the said law.

Explanation- For the purpose of this section the expression "land" shall have the same meaning as assigned to it in the tenancy law.

13. Section 5 of the Bombay Hereditary Offices Act reads thus:-

5. Prohibition of alienation of watan and watan rights.

(1) Without the sanction of the State Government or in the case of mortgage, charge, alienation, or lease of not more than thirty years, of the Commissioner it shall not be competent.

(a) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof, or any interest therein, to or for the benefit of any person who is not a watandar of the same watan;

(b) to a representative watandar to to mortgage, charge, lease or alienate any right with which he is invested, as such, under this Act.

(2) In the case of any watan in respect of which a service commutation settlement has been effected, either under section 15 or before that section came into force, clause (a) of this section shall apply to such watan, unless the right of alienating the watan without the section of

the State Government is conferred upon the watandars by the terms of such settlement or has been acquired by them under the said terms.

14. In the instant case nothing is brought to the notice of the Court that, predecessor or the petitioner was inducted on watan land by watandar with previous approval of the Collector as lessee. Nothing is brought to the notice of this Court that there was creation of valid tenancy by way of lease prior to 1st February 1959 with permission of the Collector as required under the provisions of Maharashtra Inferior Village Watan Abolition Act, 1958. It is true that, the petitioner is in continuous possession on the basis of crop entries however, keeping in view the provisions of Maharashtra Inferior Village Watans Abolition Act, and Section 5 of the Bombay Hereditary Offices Act, it will have to be concluded that no evidence was placed on record by the petitioner showing that the petitioner or predecessor of the petitioner was inducted on the watan land by watandar with previous approval of the Collector as lessee and lawful lease was created in favour of the predecessor of the petitioner.

15. Taking overall view of the matter and keeping in view the aforesaid provisions, and the fact that no evidence was placed on record by the petitioner to show that there was creation of valid tenancy by way of lease as contemplated in the aforesaid Acts, with the prior permission of the Collector and therefore,

findings recorded by the Maharashtra Revenue Tribunal, Mumbai are in consonance with the material brought on record and also provisions of aforesaid two Act. The view taken by the Maharashtra Revenue Tribunal is reasonable and plausible. The Maharashtra Revenue Tribunal, upon appreciation of material placed on record and in the light of the provisions of aforesaid two Acts and Section 32G (6) of the Bombay Tenancy & Agricultural Lands Act, 1948 has rightly concluded that the said provision of Section 32G (6) is for the benefit of tenancy who was inducted lawfully and such lease would be surviving on 1st April 1957. In that view of the matter, no case is made out to cause interference in the impugned judgment and order passed by the Maharashtra Revenue Tribunal, Mumbai. Hence writ petition stands rejected.

[S.S. SHINDE, J.]

After pronouncement:

Date:- 3rd June 2019.

At this stage the learned counsel appearing for the petitioner prays for continuation of ad-interim relief for further eight weeks which was in force during pendency of the Petition. Prayer is vehemently opposed by the learned counsel appearing for the Respondents. However, in the interest of justice, the ad-interim relief which was in force during pendency of this Petition would continue to operate for further period of six weeks from today.

[S.S. SHINDE, J.]