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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10831 OF 2017

Shri Parashram Kondaji Kirkade & Anr. Petitioners.

V/s

Shri Udhav Ashok Gavand and Others Respondents.

Mr. S.M. Gorwadkar, Senior Advocate I/b Mr. Prashant Patil for the
Petitioners.

Mr. Pratik B. Rahade for Respondent Nos. 1 to 4.

Mr. Sunil G. Karandikar for Respondent Nos. 5 and 6.

CORAM: NITIN W. SAMBRE, J.

DATE: 12th July, 2019

P.C.:-

1] Heard Mr. Gorwadkar, learned Senior Counsel appearing on
behalf of the Petitioners and Mr. Karandikar, learned Counsel
appearing on behalf of Respondent Nos. 5 and 6.

2] The present Petition is directed against an order passed in Tenancy Revision No.14 of 2003 by the Maharashtra Revenue Tribunal (For short “MRT”), confirming the order of the learned Sub-Divisional Officer in Tenancy Appeal No.7 of 2006.

3] The facts, as are necessary for deciding the issue raised in the Petition, are as under:-

4] The present Petitioners claiming to be the tenants of the Respondents/land owners based on tenancy agreement dated 15/07/2002, preferred proceedings under Section 32O of the Maharashtra Tenancy & Agricultural Lands Act (Fort short “the Act”). The case of the Petitioners is, Respondents, who are owners of land bearing Gat No.257, 282, 283 situated at Village Eklahare, Taluka & District Nashik, rented the said property pursuant to the provisions of the Act in favour of the Petitioners. Since the Petitioners came across a public notice in the newspaper on June 4, 2003, about a prospective purchaser intending to purchase the land in question from Respondents/owners, caused to issue notice under Section 32-O(1A)

of the Act on 19/06/2003 and 30/6/2003, thereby expressing their desire to purchase the land in question. The said notice, according to the Petitioners, was never replied to and as such, the Petitioners were prompted to initiate proceedings before the Tahasildar vide Tenancy Case No.14 of 2003 under Section 32G for fixation of purchase price.

5] After the said proceedings were objected by the Respondents/land owners, the Tahasildar/Agricultural Lands Tribunal, by an order dated 16/01/2006 was pleased to dismiss the said Tenancy Case No. 14 of 2003, which order was latter on confirmed in favour of the Respondents in Tenancy Appeal No. 7 of 2006 vide order dated 09/02/2009 passed by Sub-Divisional Officer, Nashik, which was further confirmed in Tenancy Revision No.161 of 2009 by the learned MRT vide order dated 05/05/2017. All these three orders are questioned in the present Petition.

6] The learned Senior Counsel appearing on behalf of the Petitioners, would urge that the plain reading of the provisions of Section 32O contemplates preexisting right in favour of tenant who

has shown his intention to purchase the property in question. He would then urge that the only ritual which is required to be followed for taking right of the tenant to its logical end is to initiate proceedings under Section 32G before the Agricultural Lands Tribunal, so as to determine purchase price. According to him, the land in question was already sold by the Respondents/land owners in favour of third party i.e. Respondent Nos. 5 and 6, who have initiated RCS No.70 of 2005 against the Petitioners for injunction. According to him, the said suit was dismissed. However, a finding is recorded that the present Petitioners are in possession of the suit property. According to him, the said findings since are confirmed up to this Court in Second Appeal No.814 of 2015, same will operate as constructive *res judicata* against the Respondents/land owners.

7] The next limb of the submission of the learned Senior Counsel is, once the Respondents/land owners have not entered into witness box to discharge the burden i.e. of proving the fact that the Petitioners are not tenants, adverse inference needs to be drawn against the Respondents/land owners. A support is drawn from the

judgment of the Apex Court in the matter of *Vidhyadhar vs. Mankikrao and another*¹. As such, the learned Senior Counsel submits that all the three authorities have committed an error apparent on the face of record and as such, the said orders are not sustainable.

8] The learned Counsel for the Respondents while supporting all the three orders, would urge that the Petitioners have come out with a case of contractual tenancy. So as to substantiate the said claim, he submits that the Petitioners are required to prove the same before the authorities and all the three authorities have concurrently held against the Petitioners that they are not statutory tenants. He submits that such findings are recorded by all the three authorities in exercise of powers under Section 70(b) of the Act and as such, the said findings are germane to the cause. The learned Counsel would urge that the authorities have appreciated the evidence of the witnesses of the present Petitioners and has recorded a finding of fact that the Petitioners have failed to prove the source of their possession over the suit property and that being so, this Court need not re-appreciate the evidence in exercise of its powers under Article 227 of the

1 AIR 1999 SC 1441

Constitution of India. The learned Counsel then would urge that the findings recorded in the suit between Respondent Nos. 5 and 6 and the Petitioners will be hardly of any consequence, as the Petitioners are required to prove their tenancy once the said fact is disputed by the Respondents/land owners. As such, according to him, the Petition is liable to be dismissed.

9] Considered the rival submissions.

10] The provisions of Section 70(b) appears to have been invoked by the learned Tahasildar/Mamlatdar while dealing with the application of the Petitioners preferred for fixation of purchase price under Section 32G against the landlords having regard to the defense raised by the Respondents, denying the status of the Petitioners as that of tenants.

11] Though the learned Senior Counsel is right in pointing out that the Petitioners have specifically come out with the pleading that they are tenants by virtue of Tenancy Agreement dated July 15, 2002 and

in such an eventuality the burden would shift on the Respondents to prove otherwise. The said fact has prompted the revenue authorities in framing the issue for determining the status of the Petitioners as that of tenants.

12] Both the authorities below have appreciated the evidence of witnesses of the Petitioners and have gone on record to observe that the witnesses of the Petitioners are not supporting the petitioners for determining their status as tenants.

13] The law does not presuppose the status of the person(s) as that of tenant by virtue of his possession, unless he establishes such right of tenancy under the provisions of the Act. Even no such findings are recorded by the Civil Court, which Judgment was confirmed in Second Appeal as regards status of the Petitioners as tenants.

14] Once the Petitioners have been concurrently held not to be the tenants by all the three authorities, in my opinion, there is no perversity or illegality in the aforesaid findings which warrants

interference in the supervisory jurisdiction of this Court.

15] Apart from above, the claim put-forth as regards the constructive res judicata will be hardly of any assistance to the Petitioners, particularly when the Civil Court is not empowered to record the findings as regards status of the Petitioners as that of tenants under the provisions of the Act and appropriate support to this fact can be drawn from the provisions of Section 85A of the Act.

16] The learned Senior Counsel has also urged that the Tahasildar/Mamlatdar is not authorized to decide the issue of tenancy pursuant to the provisions of Section 70(b) of the Act. In support of the said contention, he has invited attention of this Court to the designation of the authorities who have passed the order. However, no material is placed on record to substantiate the said contention to infer that Tahasildar/Mamlatdar cannot act as an Agricultural Tribunal to determine the said issue. Even otherwise, this issue is raised for the first time before this Court, when the fact remains that the Petitioners have submitted to the jurisdiction of the three

authorities. As such, the said contention also stands rejected.

17] In the aforesaid background, in my opinion, no case for interference is made out. Petition fails and the same is dismissed.

(NITIN W. SAMBRE, J.)