

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10620 OF 2017

Shripati Gundu Naik
Age- 46, Occ – Agriculturist,
R/at Mendholi, Tal. Ajra
Dist. Kolhapur.

... Petitioner

VERSUS

1. State of Maharashtra
2. Smt. Suvarna Dilip Deshpande
3. Ketki Dilip Deshpande
@ Ketki Parag Kulkarni
4. Shalaka Dilip Deshpande
@ Shalaka Sushant Kulkarni
5. Gaurav Dilip Deshpande
6. Ashok Balchandra Deshpande
7. Sau Aruna Sudhakar Kamat
8. Sau Shobha Vijay Manjarekar
Sr. No. 2 to 8 All R/at Azad Road,
New Vasahat, Near Church, Gadhinglaj,
Tal. Gadhinglaj, Dist. Kolhapur.
9. Hanmant Gundu Naik
10. Sau. Vithabai Ganpati Naik
11. Sandeep Ganpati Naik
12. Ku. Neelam Ganpati Naik
@ Neelam Sunil Ilge

13. Vasant Bapu Naik
14. Suraj Tanaji Sawant
15. Gangubai Balku Naik
16. Maruti Gundu Naik
17. Sau Reshma Siddhappa Ghevde
18. Krushna Ambaji Naik
19. Ajit Bapu Naik
20. Anusaya Bapu Naik
21. Sau Shila Suresh Chavan
22. Sau Mangal Gajanan Nandwadekar
23. Maruti Ramu Ghevde
24. Suresh Ramu Ghevde
25. Smt. Hausabai Ramu Ghevde
26. Ananda Parsu Ghevde
27. Chandrakant Parsu Ghevde
28. Mahadev Ganu Ghevde
29. Krushna Ganu Ghevde
30. Maruti Kushapa Ghevde
31. Rajaram Balu Ghevde
32. Tukaram Balu Ghevde
33. Malubai Ashok Ghevde
34. Maruti Bhiku Jadhav
(Deleted as per order dated 9.4.2018)
35. P. B. Joshikar
Sr. No. 9 to 35 All R/at Mendholi,
Tal. Ajra, Dist. Kolhapur.

36. Sau. Lata Tanaji Sawant
37. Tanaji Masnu Sawant
Sr. No. 36 & 37, R/at Shrugarwadi,
Tal. Ajra, Dist. Kolhapur
38. Rajesh Suryaji Narvekar
R/at Polgaon, Tal. Ajra, Dist. Kolhapur.
39. Laxman Suryaji Narvekar
(deleted as per order dated 9.4.2018)
40. State Bank of India Branch
Gadhinglaj Tal. Gadhinglaj,
Dist. Kolhapur. ... Respondents

Mr. Aniket P. Ranade, Advocate for Petitioner.

Mr. C. D. Mali, AGP for Respondent No.1.

Mr. Chetan G. Patil, Advocate for Respondent Nos. 2to8.

Mr. Ruturaj P. Pawar, Advocate for Respondent
Nos.14,15, 36 & 37.

CORAM : S. S. SHINDE, J.

RESERVED ON : 28TH MARCH, 2019

PRONOUNCED ON : 3RD JUNE, 2019

JUDGMENT:

. Rule. Rule made returnable with the consent of counsel appearing for the parties and petition is being heard finally.

2. This writ petition takes an exception to the impugned order dated 04th August 2017 passed by Ld. Maharashtra Revenue Tribunal, Pune in Tenancy Revision Application No. 25 of 2010, KP/I/1/2012 and KP/II/1/2012.

3. The dispute in the present case arises out of the Proceeding initiated under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act (hereinafter referred to as "the Said Act") by the respondents i.e. landlord, in respect of land bearing Survey No. 102 Gat No. 395 admeasuring 5H-26R situated in Village-Mendholi, Tal. Ajra, Dist. Kolhapur. It is the case of the petitioner that, the respondents categorically admitted the predecessors of the petitioners were cultivating the suit property as tenants on the tillers day i.e. 01.04.1957, and the said application further states that the landlords have no objections if the tenants are ready and willing to purchase the property. Notices of the said proceeding were never issued to the petitioner. The respondent landlords perpetrated fraud upon the Revenue Officers by signing on behalf of the petitioners and his other co-sharers.

4. It is further the case of the petitioner that, it can be seen by naked eye that the signature appearing in the purported statements in 32-G proceeding recorded by Tahasildar and ALT, Ajra bare no resemblance with the actual signature of the petitioner. The Tahasildar and ALT, Ajra was pleased

to pass an order dated 12.12.2003 and a purchase price in respect of only half of the suit property was fixed in favour of the petitioner by holding that the petitioners were not ready and willing to purchase the entire property. The petitioner was not served any notice of the said order. They received a notice of delivery of possession dated 23.01.2004 and on receipt of this notice they came to know about the fraud perpetrated by the respondents. The petitioner immediately wrote a letter to the Collector seeking information about the notice dated 23.01.2004. In the meanwhile a panchnama was conducted in the absence of the petitioner and on the same day i.e. 05.02.2004 possession was shown to be handed over. The petitioner having no knowledge or notice of the order dated 12.12.2003, filed an application before the Human Rights Commission and the Human Rights Commission forwarded the request of the petitioner to Tahasildar and ALT, Ajra. Tahasildar and ALT, Ajra refused to take cognizance of the letter by stating that the papers of 32-G proceeding were forwarded to SDO, Gadhinglaj.

5. It is the case of the petitioner that, he ultimately approached the State Right to Information Cell (in short "RTI Cell") and the RTI Cell, Mumbai directed Tahasildar and ALT, Ajra to produce papers of

32-G proceeding, and accordingly on 09.06.2008, Tahasildar and ALT, Ajra produced papers before RTI Cell, Mumbai. The petitioner immediately applied for certified copies of the papers and filed a Tenancy Appeal No. 15 of 2008. The petitioner also filed application for condonation of delay.

6. The Ld. SDO, Gadhinglaj was pleased to partially allow the Appeal and remanded the matter back to Tahasildar for fixing the purchase price in respect of 2.88 Hectors of the suit property which was not sold to the petitioner in 2003.

7. The respondents filed Tenancy Revision Application No. 25 of 2010 challenging the said order passed by SDO, Gadhinglaj but never obtained any interim relief.

8. It is the further case of the petitioner that the Tahasildar and ALT, Ajra, concluded the fresh inquiry and fixed the purchase price in respect of the remaining 2.88 Hectors and vide order dated 01.10.2010. The said order dated 01.11.2010 was challenged by Tanubai Naik and Suvarna Dilip Deshpande by way of filing Tenancy Appeals no. 4 of 2011 and 9 of 2010 before the SDO, Gadhinglaj respectively. However both

the said Tenancy Appeals were dismissed by SDO, Gadhinglaj vide orders dated 30.11.2011 and 05.03.2011. The orders passed by Ld. SDO, Gadhinglaj were challenged by them by way of filing Tenancy Revision Application Nos. KP/I/1/2012 and KP/II/1/2012 respectively. Though Tenancy Revision Application No. 25 of 2010, and the subsequent two revision applications filed in 2012, were challenging completely different orders, Ld. Maharashtra Revenue Tribunal, Pune decided to hear them together and accordingly said revisions were heard. By the impugned order dated 04.08.2017 the Maharashtra Revenue Tribunal quashed the order dated 01.10.2010 passed by Ld. Tahasildar and ALT, Ajra and restored the order dated 12.12.2003 passed by the Tahsildar and ALT, Ajra. Hence this Writ Petition challenging the aforesaid order passed by the Maharashtra Revenue Tribunal, Pune.

9. The learned counsel appearing for the petitioner submits that the predecessors of the petitioner were admittedly cultivating the suit property on 1st April 1957. Therefore, the predecessors of the petitioner became deemed purchaser of the suit property. There could not be any surrender of tenancy after 1st April 1957. The purported surrender and delivery of possession in favour of the private

respondents was done without following procedure prescribed under Section 15 and 29 of the Maharashtra Tenancy and Agricultural Land Act. The purported signatures of the tenants appearing on the undated statement recorded by Tahasildar and ALT, Ajra had no resemblance to their actual signatures.

10. The learned counsel invites attention of this Court to the provisions of Section 32-G of the said Act and submits that the application filed by the private respondent nos.1 to 6 before the Tahasildar in the year 2003 was not maintainable. The learned counsel invites attention of this Court to the findings recorded by the Appellate Authority in Tenancy Appeal No. 15 of 2018 filed by the petitioner and submits that, the Appellate Authority for the reasons recorded in its judgment deemed it fit to remit the matter back to the Tahasildar to reconsider the proceeding initiated by the Landlord under Section 32-G of the said Act. It is submitted that the Tahasildar and ALT, Ajra on reconsideration of entire case found that the claim of the landlord was not tenable. The learned counsel further invites attention of this Court to the grounds taken in the petition annexures thereto and submits that petition deserves to be allowed.

11. On the other hand, the learned counsel appearing for the respondent no.2 to 8 relying upon the findings recorded by the Maharashtra Revenue Tribunal submits that the aforesaid Tenancy Appeal No. 15 of 2018 was filed by the petitioner i.e. original tenants after five years from passing the order by the Tahasildar and ALT, Ajra on 12.12.2003. There was no explanation for delay of five years in filing the appeal. It is submitted that with the consent of the legal heirs of original tenants Ganu Santu Ghevade and Ganu Bala Naik, application filed by the landlord for return of 2 Hectors and 88R land was allowed by the Tahsildar, Ajra and pursuant to the order passed by Tahasildar Ajra, the order was passed under Section 32(P)(2) of the Maharashtra Tenancy and Agricultural Lands Act, thereby the tenants on their failure to purchase the land were directed to surrender the land to the extent of 2 Hectors and 88R to the landlord. It is submitted that there was five years delay in filing the Tenancy Appeal No. 15 of 2008 by the petitioner herein and in absence of any explanation, the said delay was condoned by the Appellate Authority. The said delay could not have been condoned in absence of sufficient cause disclosed by the petitioner and without assigning reasons by the Appellate Authority. In support of aforesaid contentions, the learned

counsel appearing for the petitioner placed reliance on the ratio laid down in the case of **Krishna @ Kisan Rajaram Karve & Others Vs. Dinkar Anaji Kumbhar & Others** reported in **2005(1) Bom.C.R.750**. Therefore learned counsel appearing for respondent nos. 2 to 8 submits that petition may be rejected.

12. The learned AGP appearing for the respondent-State relying upon the affidavit-in-reply submits that this Court may pass the appropriate orders.

13. Heard the learned counsel appearing for the petitioner, learned counsel appearing for private respondents and learned AGP appearing for respondent-State. With the able assistance of the counsel appearing for the parties, perused the pleadings and grounds taken in the petition and annexures thereto, the reasons assigned in the impugned judgment and orders passed by the Tahasildar and ALT, Ajra, the Appellate Authority and also the Maharashtra Revenue Tribunal and reply filed by the respondent-State. The landlord namely Shri Dilip Bhalchandra Deshpande, Shri Ashok Bhalchandra Deshpande, Sau. Aruna Sudhakar Kamat and Sau Shobha Vijay Majarekar filed the application taking recourse to Section 32-G of the said Act. The said application was numbered as 32-G-Mendholi-26/03.

The said application was allowed by the Tahasildar and ALT Ajra and necessary orders were passed under Section 32-G(3) of the said Act and thereafter under Section 32(P)(2) of the said Act.

14. The said order passed by the Tahasildar was challenged by the petitioner herein on various grounds before the Sub Divisional Officer, Gadhinglaj by way of filing Tenancy Appeal No. 15 of 2018. Upon perusal of the order passed by the aforesaid Appellate Authority, it appears that, Appellate Authority had assigned cogent and sufficient reasons while allowing the said appeal and remitting the matter back to the Tahasildar, Ajra for reconsideration. One of the reason given by the Appellate Authority is that under Section 32-G of the said Act proceedings should have been initiated by the concerned Authority/Agricultural Land Tribunal by giving public notice and individual notices to the tenants and landlord and also other affected parties, if any.

15. It is observed that it was for the Competent Authority contemplated under Section 32-G of the said Act to suo-moto initiate the proceeding. At this stage it would be relevant to reproduce herein below provisions of Section 32-G of the said Act which reads

as under:-

"S.32-G. Tribunal to issue notice and determine price of land to be paid by tenants:

(1) As soon as may be after the tillers' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon,-

(a) all tenants who under section 32 are deemed to have purchased the lands,

(b) all landlords of such lands, and

(c) all other persons interested therein, to appear before it on the date specified in the notice. The Tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other person calling upon each of them to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant.

(3) Where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective:

Provided that if such order is passed in default of the appearance of any party,

the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32H and of sub-section (3) of section 63A:

[Provided that where the purchase price in accordance with the provisions of section 32H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant's consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.]

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be after such date determine the price of the land.

(6) If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holders

thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such persons shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant."

16. On careful perusal of the aforesaid provisions, it is for the concerned Tribunal in whose jurisdiction tenanted land is situated to publish or cause to be published a public notice in the prescribed form after tillers day in the concerned village. Calling upon all tenants under Section 32-G deemed to have been purchase the land of landlord of such land and all other persons interested in the said land calling them to appear before the said Authority on the dates specified in the notice. The said provisions also contemplates that the Tribunal shall issue a notice individually to each such tenant landlord and also other persons interested in the said land. It is also contemplates that the statement of the tenant, whether he is or is not willing to purchase the land held by him as a tenant is also necessary to meet mandate of the said provision.

17. In the present case as it is apparent from the

contentions raised by the petitioner and also the reasons recorded by the Appellate Authority, while disposing Tenancy Appeal No. 15 of 2008, that mandate of provision of Section 32-G of the said Act was not followed by the Tahasildar and ALT, Ajra while dealing with application filed by the landlord under Section 32-G of the said Act. In the first place the application filed by the landlord itself was not keeping in view the provisions of Section 32-G of the said Act. In fact, as already observed the said provisions contemplates an initiation of proceedings by the Tahasildar and ALT, Ajra in whose jurisdiction land is situated the Appellate Authority while deciding the said appeal has assigned convincing and cogent reasons keeping in view the mandate of Section 32-G of the said Act. However, it appears that the Maharashtra Revenue Tribunal has not applied it's mind to the reasons given by the Appellate Authority for remitting the application filed by the landlord to the Tahasildar for reconsideration.

18. It appears that, being aggrieved by the impugned order in aforesaid appeal, the landlord preferred two appeals before the Appellate Authority. However, those appeals were disposed of by the Appellate Authority without entering upon the merits

and observing that the Tenancy Revision Application No. 25 of 2010 challenging the order passed by the SDO, Gadhinglaj is pending before the Maharashtra Revenue Tribunal, and therefore it is not appropriate to decide the appeals filed by the landlord on merits.

19. It further appears that being aggrieved by the orders passed by the Appellate Authority the landlord filed two Tenancy Revision Applications before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal made endeavour to hear and dispose of the Revision Application No. 25 of 2010, Tenancy Revision Application Nos. KP/I/1/2012 and KP/II/1/2012 together, and thereafter the impugned judgment and order is passed by the Maharashtra Revenue Tribunal.

20. As already observed herein before, upon perusal of the judgment and order of the Maharashtra Revenue Tribunal, it is abundantly clear that the Maharashtra Revenue Tribunal has not given any reasons to discard the findings of facts recorded by the Tahasildar and ALT, Ajra in its judgment and order dated 01.10.2010. The Maharashtra Revenue Tribunal has not gone in to an important aspect that, whether the landlord has placed on record sufficient proof as required under Section 33-B of the Said Act, to hold

that the landlord was having small land holding in his name. The Maharashtra Revenue Tribunal has overlooked that, the statement of tenant Shri Ganesh Gundu Naik has shown to have been recorded, however, on which date said statement has been recorded is not mentioned in his statement. His name is also not mentioned on the said statement. It is also not clear, as to whether the statement of Ganapati was restricted to his claim or it was also on behalf of the other tenants. The names of deceased Shri Tukaram Balu Ghevde and Shri Ashok Balu Ghevde are show at Sr.No. 17 and Sr.No.18 respectively. However, their names are shown in the list of tenants whose statement were recorded. The Maharashtra Revenue Tribunal has not properly looked in to the documents showing willingness of the tenants to purchase the said land as reflected in their Tenancy Appeal filed before the Appellate Authority. The Maharashtra Revenue Tribunal ought to have properly considered the contention of the tenants that they did not receive individual notices from the Tribunal/Tahasildar and ALT, Ajra in the proceeding initiated by the Tahasildar in the application filed by the landlord. The Maharashtra Revenue Tribunal did not appreciate that the Tahasildar while allowing the application filed by the landlord has recorded the findings that the subject land is of inferior quality, and it is also observed

that there are no trees and well situated in the said land. However, the appellant has produced the photographs and other material on record, which would prima facie show that, there are trees in the said land and also land is cultivable and crops like groundnuts etc. was taken by the tenants in the said land. There are other reasons recorded by the Additional Tahasildar and Agricultural Land Tribunal, Ajra in his judgment and order dated 01.10.2010, for rejecting the application filed by the landlord for seeking possession of the tenanted land from land survey No. 102.

21. As already observed the Maharashtra Revenue Tribunal has not adverted to aforesaid findings of fact recorded by the Tahasildar and Agricultural Land Tribunal, Ajra. The Maharashtra Revenue Tribunal has also ignored the reasons given by the Appellate Authority while remitting the application filed by the landlord for reconsideration.

22. The judgment of the Maharashtra Revenue Tribunal suffers from assigning sufficient and cogent reasons and also same is pronounced ignoring findings of facts recorded by the Additional Tahasildar and ALT, Ajra. The Maharashtra Revenue Tribunal has also

ignored that the two appeals filed by the landlord before the Appellate Authority were not decided on merits and merely because earlier revision No.25 of 2010 filed by the landlord was pending before the Maharashtra Revenue Tribunal. Those appeals were disposed of without entering upon contentions raised on merits in the said appeals. It would have been possible for the Maharashtra Revenue Tribunal to restore the appeals filed by the landlord before the Appellate Authority and give directions to the said Appellate Authority to decide the said appeals on merits. The scope of hearing of the appeal is wider than the Revision, in as much as, the appeal can be considered on facts as well as law. However, the Maharashtra Revenue Tribunal by cryptic reasons and by holding that, there was delay of five years on the part of the tenants in filing Tenancy Appeal No. 15 of 2008 before the Appellate Authority, allowed the Revisions filed by the landlords.

23. In the light of discussion in foregoing paragraphs, this Court is of the opinion that, an approach adopted by the Maharashtra Revenue Tribunal and cryptic reasons given while setting aside the orders passed by the Authorities below, is not factually as well as legally sustainable, and therefore

the impugned order passed by the Maharashtra Revenue Tribunal, Pune 04th August 2017 deserves to be quashed and set aside and the proceeding before the Maharashtra Revenue Tribunal deserves to be restored to its original file so as to consider the said Revisions afresh by de novo hearing.

24. In the light of the above discussion, the following order is passed:-

i] The impugned order dated 04th August 2017 passed by Ld. Maharashtra Revenue Tribunal, Pune in Tenancy Revision Application No. 25 of 2010, KP/I/1/2012 and KP/II/1/2012 is quashed and set aside.

ii] Tenancy Revision Application No. 25 of 2010, KP/I/1/2012 and KP/II/1/2012 is restored to its original file.

iii] The Maharashtra Revenue Tribunal is directed to hear the aforesaid proceedings afresh, and take the decision as expeditiously as possible, however, within 3 months from the date of the receipt of this judgment and order.

iv] The Maharashtra Revenue Tribunal shall not get influenced by the observations made herein before and proceed to pass an appropriate orders after affording an opportunity of hearing to the parties and in accordance with law.

25. Rule is made absolute in above terms. The Writ Petition stands disposed of accordingly.

[S.S. SHINDE, J.]