

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

926. WRIT PETITION NO. 13603 OF 2018

1. Ganesh S/o Vishwanath Ingale,
age 63 years occupation agriculture
R/o Hingone Taluka Yawal Dist. Jalgaon
2. Sunil S/o Vishwanath Ingle (Died by L.Rs.)
- 2/A. Rajani D/o Vishwanath Ingale,
age 55 years occup. household & Agri.
R/o Hingone Taluka Yawal Dist. Jalgaon. ...Petitioners

VERSUS

1. Hiranman S/o Ganpat Patil,
age major occupation nil
R/o Hingone Taluka Yawal Dist. Jalgaon
2. The Sub-Divisional Officer,
Faizpur Taluka Yawal Dist. Jalgaon
3. The Tahsildar & Agricultural Lands Tribunal,
Yawal Dist. Jalgaon
4. The Talathi,
Hingone Taluka Yawal Dist. Jalgaon ...Respondents

Mr. M.K. Deshpande, Advocate for petitioner

Mr. V.B. Patil, Advocate for respondent No.1

Mr. N.T. Bhagat, Asstt. Govt. Pleader for respondents No. 2 to 4

CORAM : ROHIT B. DEO, J.

DATE : 9th January, 2020

J U D G M E N T :

1. Rule. Rule is made returnable forthwith. Heard finally with consent.

2. The petitioners are aggrieved by the judgment and order dated 29th September 2018, rendered by the Member, Maharashtra Revenue Tribunal, Aurangabad Bench, Aurangabad, (for short "M.R.T."), whereby and whereunder the revision preferred by the petitioners challenging the judgment and order dated 30th April 2016 rendered by the Sub-Divisional Officer, Faizpur, in Tenancy Appeal No. 5/2016 is rejected. Effect of the aforesaid order is that the order of the restoration dated 15th December 2015 passed by the Tahsildar-cum-Agricultural Lands Tribunal, Yaval, (for short "A.L.T."), is confirmed.

3. The controversy lies in an extremely narrow compass and only those facts, which are essential, need be stated.

4. Shri Ganpat Patil was the tenant of Shri Narayan Patil and was in possession of agricultural land bearing Gat No. 1822/1 admeasuring 2H.84R situated at village Hingone.

5. The landlord initiated the proceeding against the tenant

for restoration of land for personal cultivation under Sections 5, 14, 29 & 34 of the Maharashtra Tenancy and Agricultural Lands Act (for short "Tenancy Act").

6. The Tahsildar-cum-A.L.T. allowed the application of the landlord and the possession of the half land was restored to the landlord. Irrefutably, the date of restoration of the land to the landlord is 13th January 1969.

7. It is not in dispute that vide sale deed dated 12th February 1980, the landlord sold the said land to petitioner Shri Ganesh Ingle and deceased Sunil Ingle.

8. The tenant initiated the proceeding under Section 37 of the Tenancy Act for restoration of possession on the premise that the landlord failed to personally cultivate the land for the period of 12 years. By order dated 5th November 1992, the A.L.T. allowed the tenancy application. In revision, the M.R.T. remanded the matter to the A.L.T. The A.L.T. dismissed the application vide order dated 29th September 1997. The tenant preferred an appeal No. 17/1997, which was allowed and the matter was remitted to the A.L.T., which after remand allowed the tenancy application vide order dated 20th March 2003. Petitioner No.1, the purchaser, preferred Tenancy

Appeal No. 13/2003, which was allowed. The tenant challenged the order in favour of the purchaser in Appeal No. 1/2005, which was dismissed. The tenant then approached the M.R.T. in revision and in revision which again resulted in a remand order. On remand, the A.L.T. allowed the tenancy application for restoration, the Sub-Divisional Officer dismissed the appeal and the revision preferred by the petitioner is dismissed by the M.R.T.

Section 37 of the Tenancy Act reads thus:

" 37(1). Every person, who at the commencement of this Act holds as tenant any land in respect of which no person is deemed to be a protected tenant under section 34, shall, on the expiration of one year from such commencement or the final rejection of all claims by any other person to be deemed under section 34 to be a protected tenant in respect of such land, whichever is later, be deemed to be a protected tenant in respect of such land unless the land-holder has before such expiration or final rejection as aforesaid made an application in the prescribed form to the Tahsildar for a declaration that such person is not a protected tenant.

(2) If after enquiring in the prescribed manner into such application, the Tahsildar refuses to make such declaration and his decision is not set aside by the Taluqdar on first appeal or by the

Board of Revenue on second appeal, the tenant shall be deemed to be a protected tenant.

(3) The rights as a protected tenant of a person deemed under sub-section (1) or sub-section (2) to be a protected tenant shall be recorded in the Record of Rights or, where there is no Record of Rights, in such village record as may be prescribed."

9. The learned Counsel for the petitioner, Shri Deshpande, would submit that the fact that the landlord executes a sale deed within 12 years of the restoration of the possession does not *ipso facto* attract the rigours of section 37(1) & (2). The submission is that the execution of the sale deed does not render the landlord liable to suffer restoration order unless it is proved that the landlord also parts with possession. In essence, the submission is that as long as landlord continues to be in possession and continues to personally cultivate the land, the fact that the landlord has executed a sale deed or any other deed of alienation within 12 years' period, would not entitle the tenant to seek restoration. Shri Deshpande would invite my attention to the view taken by the learned Single Judge in the case of ***Narayan Ganpati Raut Vs. Habiba Yusuf and others [1981 Mh.L.J. 261.***

10. The submission of Shri Deshpande, as a proposition of law, is unexceptionable. However, the obstacle in the way of the petitioners is that there is a recital in the sale deed to the effect that the possession is delivered. The landlord, who executed the sale deed in favour of the petitioners, is not examined. Scrutiny of the evidence recorded before the A.L.T. would show that there is no cogent and compelling evidence on the record for this Court to hold that recital in the sale deed is not consistent with the factual position. This observation is dehors the broader question as to evidenciary value of the oral or other evidence adduced to show that the factual position is contrary to the recitals in the sale deed.

11. The decision, on which reliance is placed, takes the case of the petitioners no further. The learned Single Judge was considering the scope of section 37 in the teeth of the irrefutable documentary material on record, which suggested that the possession was not delivered at the time of execution of the sale deed. There were contemporaneous documents indicating that the landlord did not part with the possession. The decision turns on the factual matrix.

12. Adverting to the present case, I am satisfied that the

finding concurrently recorded by all the Authorities - A.L.T., S.D.O. and M.R.T. suffers from no infirmity much less an infirmity warranting interference in Writ Jurisdiction.

13. The petition is dismissed.

14. Rule stands discharged.

15. At the request of the learned Counsel for the petitioners, interim order in operation shall continue to operate for a further period of four weeks to enable the petitioners to approach the Hon'ble Apex Court.

(ROHIT B. DEO)
JUDGE

Madkar