

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6620 OF 2018

Ramchandra Krishna Mali and Ors.	..Petitioners
Vs.	
The State of Maharashtra & Ors.	..Respondents

.....

Mr. Aniket P. Ranade, Advocate for Petitioners.
Mr. Y. D. Patil, AGP for Respondent No.1.
Mr. Sanjay Jain a/w. Sumeet Bansod i/b. L. J. Law, Advocate for
Respondent Nos.2 to 4 and 7 to 15.

CORAM : C. V. BHADANG, J.

DATE: 09th JANUARY, 2020

PC.:

By this petition under Article 227 of the Constitution of India, the petitioners are challenging the judgment and order dated 7/3/2018 passed by the Maharashtra Revenue Tribunal (MRT) in Tenancy Revision No.115/2017. By the impugned judgment, the MRT has confirmed the order passed by the learned Sub-Divisional Officer (SDO) Karjat dated 3/4/2017 in Tenancy Appeal No.2/2016 which in turn confirms the order passed by the Agricultural Lands Tribunal (ALT) in Tenancy Case No.41-A/2012.

2. The brief facts necessary for the disposal of the petition may be stated thus-

That field survey Nos.29, 31, 32 and 44 of Village Gaulwadi, Taluka Karjat, District Raigad form the subject matter of dispute. Gangaram was the common ancestor and protected tenant of the

laforesaid properties as recorded vide Mutation Entry (ME) No.860 dated 10/8/1948. Gangaram had four sons Janu, Krishn, Parshuram and Chango and two daughters namely Hasubai and Barkubai. Gangaram died somewhere in the year 1968 and after his death ME No.1865 was effected on 10/1/1969, thereby recording the names of legal representatives of Gangaram as referred above.

3. It appears that Krishna one of the sons of Gangaram initiated proceedings under Section 32G of the Maharashtra Tenancy Agricultural Lands Act 1948 ('Act' for short) and accordingly the purchase price was fixed and eventually a certificate under Section 32M of the said Act was issued in the name of Krishna. The record discloses that ME No.111 was accordingly recorded on 27/12/1990.

4. Somewhere in 1994, the names of heirs of Janu and Parshuram (the other two sons of Gangaram) were recorded in respect of the suit property vide ME No.201 and 202. That was challenged by Krishna in Appeal No.3/1996 against Tukaram and 15 others. The learned SDO directed deletion of ME Nos.201 and 202 by order dated 31/5/2001. This was unsuccessfully challenged by Tukaram and others, initially before the learned Additional Collector in an Appeal which was dismissed on 11/10/2002. That was carried in revision application before the learned Additional Commissioner Kokan Division and the learned Additional Commissioner dismissed the same on 30/5/1994.

5. Be that as it may, the Additional Commissioner in his order had noted the submission on behalf of Mr. Tukaram and others (the applicants before the Additional Commissioner) that Tenancy Appeal

No.13/2001 filed by them challenging the order passed by the ALT under Section 32G of the said Act, was pending. Learned Additional Commissioner has noted that the entries in the record of rights will ultimately govern by the decision of the said Appeal filed by Tukaram and others who are the respondents in this petition.

6. Coming to the present case, the ALT by an order passed in March 2013 in Tenancy Case No.41-A/2012 has held that the names of Tukaram and 13 others be recorded in respect of suit properties as joint holders. That was challenged by the petitioners before the SDO in Tenancy Appeal No.2/2016 which was dismissed on 3/4/2017 which has been further confirmed by the MRT by the impugned order. Hence, this petition.

7. I have heard the learned counsel for the parties and perused record.

8. It is submitted by the learned counsel for the petitioner that on the Tillers day, the land lady Annapurnabai Joshi, was a widow and therefore the vesting of ownership, was deferred as per Section 32F of the said Act. It is submitted that Krishna, the predecessor of the petitioners has taken prompt action within the time stipulated under Section 32F of the Act and the suit properties were in his cultivating possession. It is submitted that Krishna was not the elder son of Gangaram and as such Krishna cannot be said to be in possession of the properties as a Karta of any Hindu Undivided Family (HUF). It is submitted that the order passed in favour of Krishna somewhere in the year 1977 was challenged after a period of 24 years and there is no specific order passed by any of the

authorities below condoning such inordinate delay. It is submitted that the proceedings under Section 32G were concluded in the year 1964.

9. On the contrary, the learned counsel for the respondents have supported the impugned order. It is submitted that three Courts below have concurrently found against the petitioners and in the absence of the order or the finding recorded being shown to be perverse, no case for interference is made out.

10. It is submitted that the MRT has rightly found that the case set up by the petitioner was discrepant, in as much as, at one stage it was claimed that the suit properties have come to the share of Krishna, in a partition which is contrary to the case set up about Krishna being the sole tenant of the suit property in his personal capacity.

11. I have considered the submissions made. It is a matter of record that Gangaram was the common ancestor of the parties. Krishna the predecessor of the petitioners, was one of the sons of Gangaram. After the death of Gangaram in the year 1968 the suit properties were recorded in the name of the legal representatives in as much as Gangaram had four sons and two daughters and the relevant entry is ME No.1865 which was recorded on 10/1/1969.

12. The petitioner who are successors of Krishna claim that Krishna was the sole tenant in his personal capacity, in as much as the 32M certificate was issued in his favour and ME No.111 was effected on 27/12/1990. The MRT has noted that it was contended

on behalf of the petitioners that suit property had come to the share of Krishna during the lifetime of Gangaram in a oral partition. The MRT as a matter of fact has found that no such theory of oral partition has been substantiated and on the contrary ME No.1865 dated 10/1/1969 clearly shows that the suit property was of joint character as tenants flowing from Gangaram. The MRT has also noted that ME No.2199 dated 5/1/1977 by which the daughter of Chango (one of the brothers of Krishna) namely Nanda being a minor, was shown under the guardianship of Krishna Mali. Learned MRT has found that if at all there was any partition of the properties, there was no reason for such entry being recorded wherein the name of Krishna was shown as a guardian of Nanda, daughter of Chango.

13. The MRT has then went upon considering the provisions of Section 32G of the said Act, in order to find that it was mandatory for the ALT to have complied with the various provisions such as 32G 1(a) to issue notice to all the tenants and 32G 1(c) where under, the ALT was required to issue notice individually to each of the tenants. The MRT has found that there is no record that the provisions of Section 32G were scrupulously followed and in that view of the matter, it has negated the case of Krishna being the exclusive tenant in his personal capacity of the suit property. The said finding concurrently recorded by the authorities below to my mind is not open to interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

14. Reliance placed on behalf of the petitioner on Section 40 of the said Act, is misplaced. All that Section 40 provides is that where

a tenant (other than a permanent tenant) dies, the landlord shall be deemed to have continued the tenancy on the same terms and conditions on which such tenant was holding it, at the time of his death, to such heir or heirs of the deceased tenant as may be willing to continue the tenancy. It is nowhere the case made out by the petitioners that Krishna alone had shown willing to continue the tenancy or the other legal representatives of Gangaram (whose names were recorded vide ME No.1865 dated 10/1/1969) had shown unwilling to continue the tenancy. Thus, Section 40 cannot come to aid of the petitioner in this petition.

15. The other contentions raised on behalf of the petitioners including about delay to my mind cannot be accepted. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.