

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 7223 of 2018
Dheerajlal Babulal Rupareliya Vs. Urmila Pradeep Daga and Others

WITH

Writ Petition No. 7222 of 2018
Dheerajlal Babulal Rupareliya Vs. Dilip Chitranjan Daga and Others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

W.P No. 7223 of 2018
Mr. V.D. Ruparelia, Advocate for the petitioner
Mr. N.A. Padhye, Advocate for respondents No.1 to 3
Mr. P. S. Sadavarte, Advocate for respondent No.11, 12-A & 13.

W.P No. 7222 of 2018
Mr. V.D. Ruparelia, Advocate for the petitioner
Mr. N.A. Padhye, Advocate for respondent No.1
Mr. P. S. Sadavarte, Advocate for respondent No.9, 10-A & 11.

CORAM : MANISH PITALE, J.

DATED : DECEMBER 11, 2020

These two Writ Petitions have been filed by the petitioner against a common order dated 29/05/2018, passed by the Maharashtra Revenue Tribunal, whereby two Applications at Exhs.51 and 61, filed by the petitioner for being joined as party in the proceedings pending before the Tribunal, were rejected. According to the petitioner, the Tribunal committed an error in rejecting the said Applications because, not only is the petitioner a necessary party in

the pending proceedings, but, he is also likely to be adversely affected if the revision proceedings initiated by the contesting respondent No.1 in Writ Petition No. 7222 of 2018 and the contesting respondents No.1 to 3 in Writ Petition No. 7223 of 2018, stand allowed in their favour.

2. The contesting parties in the real sense in these Writ Petitions are the petitioner on the one hand and the respondent No.1 in Writ Petition No. 7222 of 2018 and the respondents No.1 to 3 in Writ Petition No. 7223 of 2018. For the limited purpose for which the present Petitions have been filed, the other respondents in these Writ Petitions are not contesting respondents. This Court is of the opinion that, therefore, these Petitions ought not to wait for certain steps that may be required to be taken for bringing on record legal representatives of deceased respondent No.9 in Writ Petition No. 7222 of 2018 and respondent No.11 in Writ Petition No. 7223 of 2018.

3. The brief facts leading up to filing of the present Writ Petitions are that, the original owners of lands in survey Nos.158/1 and 158/1-B had initiated summary eviction proceedings against the aforementioned contesting respondents in these Writ Petitions under Section 120 of the Maharashtra Tenancy and Agricultural Lands Act, 1958.

4. It was claimed that the tenants therein,

including the aforementioned contesting respondents had undertaken certain actions, including, executing sale deeds, which invited the summary eviction proceedings. There is no dispute about the fact that the proceedings so initiated by the original owners stood allowed by order dated 09/09/1997, issued by the Sub-Divisional Officer. The revision proceedings before the Tribunal were initiated by the contesting respondents herein to challenge the said order of summary eviction. It is claimed by them that they ought not to have been evicted from land situated in land survey No.158/1-C and they based their claims on a registered sale deed dated 31/03/1983.

5. The petitioner claimed that he purchased land from land survey No.158/1-B by registered sale deed dated 16/09/1997 i.e. after the aforesaid order dated 09/09/1997 of summary eviction was passed by the Sub-Divisional Officer.

6. It is claimed by the petitioner that since the contesting respondents herein were allegedly laying claim on the land that was so purchased by them by registered sale deed dated 16/09/1997, located in survey No.158/1-B, they caused a measurement of the lands to be conducted by the Taluka Inspector of Land Records (TILR). It was further claimed that the measurement report along with map prepared by the said authority, according to the petitioner indicated that the land to which they claimed rights, stated to be

in land survey No.158/1-B, was the very land from which eviction was being resisted by the contesting respondents by filing the proceedings before the Tribunal. In other words, what was being claimed was that the boundaries of the two lands were identical and that, therefore, the petitioner herein was clearly interested in the pending proceedings before the Tribunal.

7. It was brought to the notice of this Court that a suit for injunction was filed by the petitioner in the year 2001, which is pending and further that another suit was filed by the petitioner against the original tenants and their subsequent purchasers in the year 2001, which is also pending.

8. It is claimed that the petitioner first became aware about the pendency of the Revision Application filed by the contesting respondents before the Tribunal, when the pendency of the said proceedings was divulged in a written statement before the Court of Civil Judge (Senior Division), Buldhana, in a pending civil suit. It is claimed that the petitioner had intervened in the said suit and that he was added as party therein.

9. Upon becoming aware at this stage about the pendency of the aforesaid proceedings before the Tribunal, the petitioner moved Applications at Exhs.51 and 61, before the Tribunal for being added as party.

The basis for the claim of the petitioner before the Tribunal was that the identity of the land to which the petitioner and the contesting respondents herein were making claims, was one and the same. It was further claimed that even if the contesting respondents claimed that they were resisting eviction in the land survey No.158/1-C, in reality the same was nothing but the land in respect of which sale deed had been executed in favour of the petitioner in land survey No. 158/1-B. It was further claimed that any order passed by the Tribunal in favour of the revision applicants i.e. the contesting respondents herein, would certainly adversely affect the interest of the petitioner and that, therefore, it was necessary that he was joined as party.

10. These Applications were resisted by the contesting respondents by pointing out that they were concerned only with resisting eviction from land in survey No.158/1-C and that the petitioner had no concern with the same. It was also pointed out that the scope of the proceedings before the Tribunal was limited to examining the validity of the summary eviction order passed by the Sub-Divisional Officer against them. It was also submitted before the Tribunal that the petitioner could very well air his grievance before the Civil Court, where civil suit is already pending.

11. By the impugned common order, the Tribunal rejected both the Applications filed by the

petitioner at Exhs.51 and 61, *inter-alia*, reaching a finding that even as per the petitioner, the property sold to him was from survey No.158/1-B and the Revision Application pending before the Tribunal related to land located in land survey No.158/1-C. The Tribunal found that suits were pending before the Civil Court and in fact there was injunction order also protecting the petitioner herein and that, therefore, no case was made out by the petitioner to join as a party. Aggrieved by the said common impugned order, these two Writ Petitions have been filed.

12. Mr. V.D. Ruparelia, learned counsel for the petitioner in both these Writ Petitions submitted that the Tribunal had committed an error in passing the common impugned order. According to him, there was ample material on record, particularly, the report of the TILR and the map drawn by the said Authority, allegedly in presence of the contesting respondents, to indicate that the land in question from which the contesting respondents were resisting their eviction was in fact the land sold to the petitioner. It was submitted that this fact was enough to indicate that the Tribunal had erred in rejecting the Applications at Exhs.51 and 61 by the impugned common order. It was submitted that although civil suits were pending before the competent Civil Court, that could not be a ground for rejecting the Applications filed by the petitioner.

13. On the other hand, Mr. N.A. Padhye, learned counsel appearing for the contesting respondents in these Writ Petitions submitted that the Tribunal adopted a correct approach and that a perusal of the impugned common order, at paragraph 20, would show that the Tribunal correctly understood the controversy. It was submitted that the claims made by the petitioner were still to be accepted by the competent Civil Court and in the absence thereof, the Applications at Exhs.51 and 61 filed by the petitioner could not have been considered by the Tribunal.

14. Mr. P. S. Sadavarte, learned counsel has entered appearance for some of the respondents in these Writ Petitions, who were the original tenants. This Court has already found that the said respondents cannot be said to be the contesting respondents for the limited controversy with which this Court is concerned in the present Writ Petitions.

15. Heard learned counsel for the rival parties and perused the material on record.

16. The limited question that arises for consideration before this Court is, as to whether the petitioner in these Writ Petitions could be said to be a necessary or proper party in the proceedings pending before the Tribunal and whether the Tribunal committed an error in passing the impugned common order.

17. The basis of the claims made by the petitioner in these Writ Petitions and before the Tribunal, is the fact that he has purchased land in survey No.158/1-B as per sale deed dated 16/09/1997. A perusal of the documents on record shows that the summary eviction proceedings were filed before the Sub-Divisional Officer, culminating in the order of summary eviction dated 09/09/1997, concerning the lands in survey Nos.158/1 and 158/1-B. The contesting respondents have approached the Tribunal by filing the Revision Applications, claiming that the summary eviction order passed against them was wholly unsustainable. The matter is pending before the Tribunal on merits, hence, this Court refrains from making any comments on the merits of the matter.

18. The contesting respondents have placed reliance on the sale deed executed in their favour in respect of the land in which they are resisting eviction. The said sale deed was of the year 1983, which undisputedly indicates that the land is located in survey No.158/1-C. The contesting respondents are concerned about resisting eviction from the said land.

19. The petitioner has claimed, not only before the Civil Courts in suits filed before the competent Courts, but, in the Applications at Exhs.51 and 61, filed before the Tribunal that he is likely to be affected by the pending proceedings before the Tribunal, for the

reason that, according to him, the land purchased by him from land survey No.158/1-B is in fact land on which the contesting respondents claimed rights and from which they are resisting eviction. In other words, the petitioner claims that the boundaries are common and that in fact, the land purchased by him is the very land from which the contesting respondents are resisting eviction. This is claimed on the basis of, *inter-alia*, the aforesaid measurement report and map of TILR. There is no dispute about the fact that these very claims of the petitioner are pending before the competent Civil Court.

20. This Court is of the opinion that unless the aforesaid claims made by the petitioner are decided by the competent Civil Court, there is no way in which the petitioner could claim right to be heard before the Tribunal in the pending proceedings. It is yet to be decided by a competent Court as to whether the aforesaid claims made by the petitioner are acceptable. Whether the boundaries of the lands in question are one and the same and whether the petitioner is justified in saying that the land purchased by him from land survey No.158/1-B is the same in respect of which the contesting respondents are resisting eviction and that, therefore, their claim of the land being in land survey No.158/1-C is incorrect, are yet to be decided and in that sense the right of the petitioner is yet to be crystallized.

21. It is in this backdrop that the Tribunal made an observation in paragraph 20, which reads as follows:

“As the property sold to the applicant by the respondents is from 158/1-B, and the present two revisions are restricted to the issue of ownership and possession of the petitioners relating to 158/1-C and both of the parties claim ownership and separate possession, there is no ground to allow the applicant to take part in the proceedings bearing Revisions Nos. 100/1999 and 101/1999. It is to be appreciated that, the order dated 09/09/1997 is only challenged by petitioners with respect to their eviction from 158/1-C, and no other has challenged the order in respect of 158/1-B. As such, the contention of the applicant cannot be accepted.”

22. The said observation cannot be found fault with, given the nature of the claims made by the petitioner and the material available on record.

23. It appears that the petitioner is seriously aggrieved by the observations made in paragraph 22 by the Tribunal, wherein it is recorded as follows :

“It is pertinent to note here that, it is claimed by the applicants that, certain part of 158/1-B owned by applicant is claimed to be in possession of the petitioners. If that is true, it is not known as to why applicant has not taken any action since 16/09/1997 till this date, claiming possession of property from petitioners.”

24. It is claimed on behalf of the petitioner that he is very much in possession of the land in survey

No.158/1-B and that the Tribunal to that extent was wrong in observing that the petitioner had not taken any steps in that regard for dispossessing the contesting respondents. This submission is also difficult to accept for the reason that in paragraph 20 quoted above that the Tribunal clearly found that the claim made by the petitioner pertained to land survey No.158/1-B and the contesting respondents herein are concerned only about resisting eviction from land in survey No.158/1-C.

25. This Court finds that the petitioner has not been able to demonstrate as to how, in the absence of determination of his claims in accordance with law, could he claim to be added as a party in the pending proceedings before the Tribunal. In that view of the matter, this Court finds that the petitioner cannot be said to be a necessary or proper party in the proceedings before the Tribunal and there is no way in which the petitioner could be said to be an affected party in the context of the said pending proceedings.

26. Hence, this Court finds no merits in the Writ Petitions. Accordingly, they are dismissed. No costs.

JUDGE