

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3375 OF 2019

1. Ananda S/o Ragho Puri
(Deceased through L.R.)
2. Somwar S/o Ananda Puri
Age-65 years, Occu:Agri.,
3. Shivram S/o Ananda Puri
(Since Deceased through L.R.)
 - A) Suman Wd/o Shivram Puri,
Age-50 years, Occu:Household,
 - B) Mahesh @ Manoj S/o Shivram Puri,
Age-Major, Occu:Agri/Service,
 - C) Rajesh @ Satish S/o Shivram Puri,
Age-Major, Occu:Agri/Service,
- 4) Haranpuri S/o Ananda Puri,
Age-57 years, Occu:Agri/Service,

All are permanent R/o-Kendra (Bk),
Tq-Sengaon, Dist-Hingoli.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Revenue Department,
Mantralaya, Mumbai-32,

- 2) The Add. Collector,
Hingoli, Dist-Hingoli,
- 3) Sudhakar S/o Ananda Khandhare,
Age-44 years, Occu:Agri.,
- 4) Bhimrao S/o Ananda Khandhare,
Age-Major, Occu:Labour,
- 5) Kaushlya S/o Shrirang Khandhare,
Age-54 years, Occu:Labour,
- 6) Ashok S/o Shrirang Khandhare,
Age-34 years, Occu:Agri.,
- 7) Ramdas S/o Shrirang Khandhare,
Age-32 years, Occu:Agri.,

Respondent Nos. 3 to 7 are
R/o-Kendra(Bk), Tq-Sengaon,
Dist-Hingoli.

...RESPONDENTS

...
Mr.Sachin Deshmukh Advocate h/f. Mr. Manoj U. Shelke
Advocate for Petitioners.
Mr.K.B. Jadhavar, A.G.P. for Respondents No.1 and 2.
Mr.H.V. Patil Advocate for Respondents No. 3 to 7.

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CORAM: MANGESH S. PATIL, J.

DATE : 11th AUGUST, 2021

JUDGMENT :

. Rule. The Rule is made returnable forthwith. Heard
learned advocates for the parties finally, by consent.

2. The facts, as are necessary for the decision of the writ petition, may be summarized as under:

(i) Respondents No. 3 to 7 assert that their predecessor – Ananda Khandhare was protected tenant of land Survey No.38 of village Gondhankheda and in whose favour the certificate under Section 38 – E was issued under the Hyderabad Tenancy and Agricultural Lands Act, 1950 (“the Tenancy Act”), approached Respondent No. 2 contending that the Petitioners herein were illegally pretending that their predecessor was in fact a protected tenant in whose favour a similar certificate was issued. They assert that the Petitioners were holding possession of the land illegally and claimed its possession by filing an application before the Respondent No. 2.

(ii) Respondent No.2, by his order dated 10th December 2015, treating the proceeding of Respondents No. 3 to 7 as the one filed under Section 32 of the Tenancy Act, without indulging into and recording any finding on merits, dismissed the application on the ground of limitation.

(iii) Respondents No. 3 to 7 challenged the order of Respondent No. 2 before the Maharashtra Revenue Tribunal, Aurangabad and by the impugned Judgment and order, the order of Respondent No. 2 has been quashed and set aside and the matter has been remanded to Respondent No. 2 for holding a *de novo* inquiry and deciding it afresh.

3. Learned Advocate for the Petitioners, Mr. Deshmukh would submit that considering the stand taken by Respondents No. 3 to 7 and the grounds on the basis of which the application was filed before Respondent No. 2, there was no error on the part of Respondent No. 2 to treat and decide the application on the premise that it was preferred under Section 32 of the Tenancy Act. He would, therefore, submit that once it is concluded that it was an application under Section 32 of the Tenancy Act, the conclusion was inevitable since the application was hopelessly barred by the limitation prescribed thereunder. There was no reason for the Tribunal to ignore such vital aspect. It has not at all indulged in any discussion as to if the application of Respondents No. 3 to 7 was an application under Section 32

or Section 98 of the Tenancy Act, which two provisions are relevant though operate in different fields. Unmindful of the distinction between the two provisions, by indulging in the scrutiny of the facts, the Tribunal has illegally remanded the matter.

4. The learned AGP supports the impugned order.

5. Learned Advocate for Respondents No. 3 to 7, Mr. Patil would submit that going by the averments in the application, when Respondents No. 3 to 7 were asserting to be the heirs of the protected tenant in whose favour certificate under Section 38 – E of the Tenancy Act was issued, their application could not have been treated as the one under Section 32 of the Tenancy Act, which provides a remedy to the tenant to claim possession under sub-section (1) or the land holder under sub-section (2). It is their stand that the Petitioners were holding the possession unauthorizedly and illegally and the only provision in the Tenancy Act to meet the situation is of summary eviction by resorting to Section 98 of the Tenancy Act. Though the learned Member of the Tribunal has not considered and

discussed these aspects, he has clearly referred to and pointed out the facts which clearly show that the predecessor of the Respondents No. 3 to 7 was a protected tenant, and referred to various proceedings by the revenue authorities as back as in the year 1953 onwards. Since Respondent No. 2 had rejected the application illegally treating it to be a request under Section 32 rather than the one under Section 98 of the Tenancy Act, a serious prejudice has been caused to Respondents No. 3 to 7. He would then submit that no prejudice is likely to be caused to the Petitioners in as much as, the matter has been remanded back to Respondent No. 2 for conducting an inquiry *de novo* and to decide the matter afresh. All the disputed questions of facts which were not earlier decided by Respondent No. 2, would now be decided by extending an opportunity to both the sides.

6. Suffice for the purpose to observe that whole dispute and controversy revolves, for the time being, around the impugned order which directs remand of the matter and decision afresh. As is apparent, Respondents No. 3 to 7 had not styled their application before Respondent No. 2 as if they were seeking to invoke the provisions of Section 32 of the Tenancy Act, which

prescribes limitation of two years. It is also not clear from the order passed by Respondent No. 2 as to how and why he proceeded on the premise that it was an application under that provision.

7. One need not delve much but only point out that there is a clear distinction between the provision of Section 32 and Section 98 of the Tenancy Act. The former provides a limitation of two years, whereas the latter does not prescribe any limitation. Since Respondent No. 2 had proceeded on the premise that it was an application under Section 32 of the Tenancy Act, having concluded that the application was time barred, did not feel it necessary to go into the factual disputes.

8. True it is that even the Tribunal, in the impugned order, has not entered into that controversy even to record a *prima facie* observations as to if the approach of Respondent No. 2 in treating the application of Respondent Nos. 3 to 7 was correct or otherwise.

9. But then, when Respondent No. 2 was called upon to decide the application, he should have assigned some reasons

for treating the application as the one under Section 32 of the Tenancy Act. He has neither assigned these reasons nor has he touched to the facts in dispute.

10. Irrespective and independent of the reasoning given by the Tribunal in the impugned Judgment and order, the matter has now been remanded for decision afresh. Obviously, it would always be open for both the sides, not only to avail an opportunity to address Respondent No. 2 on disputed questions, but also on the point as to if the application is to be treated under Section 32 or 98 of the Tenancy Act. Needless to say that depending upon the finding on this aspect, the further fate of the proceeding would hinge. No prejudice, therefore, is likely to be caused to the petitioners by passing of the impugned order when they are to get the suitable opportunity to present the case once again before Respondent No. 2.

11. Both the sides have placed on record several decisions of this Court touching the aspect as to the scope and ambit of provisions of Section 32 and Section 98 of the Tenancy Act. However, in my considered view, it will not be appropriate

for this Court to enter into that controversy in this proceeding and it would be appropriate to leave that for the just consideration by Respondent No. 2.

12. In my considered view, there is no merit in the Petition and it is liable to be dismissed.

13. The Writ Petition is dismissed. Rule is discharged.

[MANGESH S. PATIL, J.]

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