

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

WRIT PETITION NO.11698 OF 2014

Tarachand s/o. Bapu Petkar,
Age : 65 years, Occ. Agri.,
r/o. Puntamba, Tq. Kopargaon,
Dist. Ahmednagar

..Petitioner

Vs.

1. Abasaheb s/o. Shankar Sambre,
Age : 52 years, Occ. Agri.,
r/o. Puntamba, Tq. Kopargaon,
Dist. Ahmednagar

2. Changdeo Sugar Mill Ltd.,
Changdeonagr, Puntamba,
Tq.Kopargaon, Dist. Ahmednagar,
Through its authorised Officer

..Respondents

Mr.V.R.Dhorde, Advocate for petitioner
Mr.S.D.Kulkarni, Advocate with Mr.Sanket S. Kulkarni, Advocate,
for respondent no.1

**CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 15, 2021
PRONOUNCED ON : JULY 23, 2021**

JUDGMENT :-

Heard. Rule. Rule made returnable forthwith. With
the consent of learned counsel appearing for the parties, Writ
Petition is heard finally.

2. The challenge in this Writ Petition is to the order dated 16.10.2014 passed by Maharashtra Revenue Tribunal, Aurangabad (M.R.T.), Aurangabad, in Revision Application No.2-B-1990. By the impugned order, the Revision Application preferred by respondent no.1 herein ("landlord", for short) for restoration of the land back to him has been allowed, directing the petitioner ("tenant", for short) to deliver possession of the land, survey no.182/1 admeasuring 3 H 20 R (8 Acres) to the landlord.

FACTS:-

3. It is the case of the tenant that initially, his father had held agricultural land admeasuring 16 acres and 20 Gunthas. The father leased out said land in its entirety to respondent no.2 - Changdeo Sugar Mill Ltd. ("sugar factory", for short) for a period of 99 years. No land remained with the father of the tenant. The landlord also leased out his 9 acres 39 gunthas of land to the sugar factory. The sugar factory granted 8 acres of land in survey no.182/1 to the father of the

tenant on lease for a period of 20 years. It was in the nature of a sub-lease. This land belonged to the landlord. This 8 acres of land ("writ land", for short) is the subject-matter of the present proceedings. On the tillers' day, i.e. 1st April, 1957, the father of the tenant was in possession of the writ land and continued to possess the same till date.

4. Under the scrutiny in view of the provisions of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, many of the lands leased to the sugar factory, were held surplus. The State of Maharashtra established Maharashtra State Farming Corporation (M.S.F.C.). The surplus lands were transferred to M.S.F.C. It was decided in 1974 to allot some lands to its' ex-lessors. The tenant, thus, came to be allotted 4 acres 20 gunthas of land. The tenant, thus, came to hold 12 acres 20 gunthas land (writ land plus 4 acres and 20 gunthas). The landlord, on the other hand, held 14 acres and 4 gunthas of land.

5. Chapter III-A of the Maharashtra Tenancy and Agricultural Lands Act ("M.T. & A.L. Act", for short) speaks of

special provisions for lands held on lease by industrial or commercial undertakings and by certain persons for the cultivation of sugarcane and other notified agricultural produce. Section 43A of M.T. & A.L. Act pertains to non application of some of the provisions of said Act to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane or fruits or flowers. Sub-section (3) of Section 43A authorises the State Government to direct, by notification in the Official Gazette, that the leases to which the provisions of sub-sections (1) and (2) of Section 43A of M.T. & A.L. Act apply, shall be subject to such conditions as may be specified in the notification. The State of Maharashtra, in exercise of said power, issued Notification dated 08.02.1978 authorising the landlords to regain possession of the lands leased to the sugar factory, which might have been sub-leased.

6. To take advantage of the said notification, the landlord preferred application (Case No.134 of 1978) to the Tenancy Awal Karkun (T.A.K.), Kopargaon, for possession of the

writ land. The T.A.K., vide order dated 29.09.1980, allowed the application directing the tenant to restore land to the landlord. The appeal preferred by the tenant against said order was dismissed by the Sub-Divisional Officer (S.D.O.), Sangamner. The tenant, therefore, preferred Revision Application to M.R.T., Pune. Said Revision Application was allowed, remanding the matter back to the T.A.K. to decide, whether the writ land was perennially irrigated within the meaning of Section 6A of the M.T. & A.L. Act. The T.A.K., in turn, held the land to have not been perennially irrigated. He rejected the landlord's application vide order dated 27.02.1989. The landlord preferred appeal there-against (14 of 1989) to the Sub-Divisional Officer, Sangamner. The appeal came to be dismissed vide order dated 03.04.1990. The landlord, therefore, preferred Revision Application to M.R.T. The Revision Application came to be allowed remanding the matter again to the T.A.K. for deciding the same in the light of the provisions of Section 33B(5)(b) of the M.T. & A.L. Act. The T.A.K. was, thus, directed to ascertain extent of holdings of the

landlord and the tenant. The landlord preferred Writ Petition (381 of 1996) against the decision of the M.R.T. Learned single Judge of this Court, vide order dated 11.06.2008, allowed the Writ Petition and set aside the order of remand. The parties were directed to produce evidence before the M.R.T. itself, as regards extent of their holdings. **As such, the dispute between the landlord and the tenant was restricted to ascertainment of their holdings of agricultural lands.**

7. The landlord and the tenant produced their respective evidence. On appreciation of the evidence, learned Member, M.R.T., Aurangabad, passed the order impugned in this Writ Petition. He held the tenant to have been holding land in excess of the land held by the landlord. The application of the landlord for possession of the writ land for personal cultivation, therefore, came to be allowed. Hence, present Writ Petition.

8. Mr.V.R.Dhorde, learned counsel for the petitioner-tenant, would submit that the landlord had placed before the

M.R.T. a list dated 11.08.2012 depicting the extent of holdings of both of them. Said list was riddled with many mistakes. The authorities concerned, therefore, revised said list. As per the revised list, the extent of holdings of land by the landlord, is more than the holding of land by the tenant. Learned Member did not consider the revised list. Moreover, some surplus land held by M.S.F.C. came to be returned to both landlord and tenant. Because of the same, the landlord's holdings got increased. Learned counsel would further submit that in the year 1984-85, the holdings of the landlord got increased due to surrender of some of the lands by his tenant. Said fact has been suppressed by the landlord from M.R.T. Moreover, the landlord sold 99 gunthas land in June, 2011. Said fact had also been suppressed. According to learned counsel, since the holdings of the landlord is in excess of the holdings by the tenant, the impugned order is liable to be set aside. He, therefore, urged for allowing the Writ Petition.

9. Mr.S.D.Kulkarni, learned counsel for respondent no.1 – landlord, would, on the other hand, justify the impugned

order. According to learned counsel, the writ Jurisdiction of the High Court is limited to seeing that the judicial or quasi judicial authority do not exercise their powers in excess of their statutory jurisdiction. So long as those authorities function within the letter and spirit of law, High Court has no concern. The High Court is not justified in interfering with the order of appellate authority so as to correct mere errors. Learned counsel relied on following judgments :-

(i) Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte and ors., MANU/SC/0504/1975;

(ii) Mohd. Aashique Hussain Vs. Union of India, through the Secretary, Ministry of Labour, New Delhi and anr., L.P.A. No.523 of 2019

He, ultimately, urged for dismissal of the Writ Petition.

10. The writ land originally belonged to the landlord. It was leased out to the sugar factory. The sugar factory, in turn, sub-leased the same to the tenant. The writ land was exempted from application of certain provisions of the M.T. &

A.L. Act in view of Section 43A thereof. By virtue of notification dated 08.02.1978, the landlord became entitled to seek possession of the land for personal cultivation. The landlord, therefore, terminated the tenancy by issuance of a notice in that regard and then, preferred the application to the T.A.K. Rest is the history as stated herein above. By virtue of order dated 11.06.2008 passed in Writ Petition No.381 of 1996, the controversy was restricted to the question of ascertainment of agricultural holdings of both landlord and tenant. It would, therefore, be apposite to refer to Section 33B(5)(b) of the M.T. & A.L. Act, which reads thus:-

(b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation--the area resumed or the area left with the tenant being a fragment, notwithstanding, and notwithstanding anything contained in section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

11. The landlord produced before the M.R.T. the list dated 11.08.2012. His name appeared at serial no.28, while the tenant's name figured at serial no.93 in the list. True, as per said list, the tenant held land more than the land held by the landlord. It is the case of the tenant that said list was riddled with many mistakes. The list, therefore, came to be revised. As per the revised list, the extent of holdings by the tenant is 12 acres 20 Gunthas, whereas the landlord's holdings is 14 acres 04 Gunthas, i.e. more than the tenant's. It is not known as to why learned Member of the M.R.T. did not take into consideration the revised list. Needless to mention that the revised list is a public document prepared by the public authorities namely, Deputy Collector, Tahsildar, Deputy Superintendent of Land Records, Taluka Agricultural Officer. Said list has been signed by these authorities. It appears that learned Member of M.R.T. considered the land which had already been leased out to the sugar factory for 99 years. Learned Member ought not to have considered the extent of the land leased out by the father of the tenant to the sugar

factory. Here, learned Member of M.R.T. committed a glaring mistake rendering the impugned order perverse. The same requires to be corrected in exercise of the writ jurisdiction.

12. There could be no two views over the proposition of law advanced by learned counsel for the landlord relying on the aforesaid two authorities.

In my view, if the mistake committed by learned Member, M.R.T., is not corrected, the same would result into miscarriage of justice.

13. It is also the case of tenant that the lands held by M.S.F.C. have lateron been returned to the ex-lessors including him and the landlord. It appears that the M.S.F.C., initially, did not return the lands to the landlord and the tenant herein, on the ground of there being a litigation pending between them. The landlord, therefore, preferred Writ Petition, being Writ Petition No.1522 of 2013. It was decided on 20.08.2013.

14. Exhibit-M annexed to this petition is the final revised list indicating holdings as under:-

**Tenant – 12 acres 20 Gunthas;
Landlord - 14 acres 04 Gunthas**

In addition to the said holdings, both tenant and landlord were allotted land admeasuring 2 acres 13 Gunthas and 5 acres 20 Gunthas, respectively, taking their holdings to 12 acres 20 Gunthas and 14 acres 04 Gunthas. This fact was not brought to the notice of the M.R.T., Aurangabad. A copy of the list (Exhibit-M) was obtained by the tenant in November, 2014. The tenant has also placed on record certain documents to indicate that the landlord sold 99 gunthas land in July, 2011. He also placed on record mutation entry no.16923 to indicate that his other tenants had surrendered land in favour of the landlord way back in November, 1984. Even if we ignore this subsequent document placed on record herein, indicating sale and surrender of the lands, as per the revised list, the holdings of the landlord comes to 19 acres 24 Gunthas (14.4 + 5.20),

while the tenants holdings comes to 14 acres 33 Gunthas (12.20+2.13).

15. In view of Section 33B(5)(b) of the M.T. & A.L. Act, the landlord shall be entitled to terminate the tenancy and take possession of the land leased but to the extent only of so much thereof, as would result in both the landlord and the tenant's holdings thereafter in the total an equal area for personal cultivation. Here, the holdings of the landlord is more than the holdings of the tenant. The landlord, therefore, shall not be entitled to take possession of the writ land. In my view, the extent of the holdings would be, as on the date, the final order in the proceedings for resumption of land for personal cultivation is passed.

16. For all these aforesaid reasons, interference is called for with the impugned order. In the result, the Writ Petition succeeds. The Writ Petition is, therefore, allowed in terms of prayer clause (B). Rule is made absolute accordingly.

[R.G. AVACHAT, J.]