

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

WRIT PETITION NO.2306 OF 2019

KISHAN GIRIJAPPA THOMBRE (DIED) THROUGH LRS.
KHELBA KISHAN THOMBRE (DIED) THROUGH LRS
KASHIBAI W/O KHELBA THOMBRE AND OTHERS
VERSUS
KERBA KHANDU THOMBRE AND OTHERS

...

Advocate for Petitioners : Mr. Humbe Vilas M.
AGP for Respondents-State : Mr. S P Deshmukh
Advocate for Respondent nos.2,3 & 8: Mr. Doke K.R.

...

CORAM : V.K. JADHAV, J.
Dated : February 16, 2021

...

PER COURT :-

1. Heard finally with consent of the parties at admission stage.

2. Present writ petition is directed against the judgment and order dated 3.8.2018 passed by the Maharashtra Revenue Tribunal, Aurangabad whereby the revision application filed by the petitioners has been dismissed with the observations that the order under challenge has been implemented and L.Rs. of Khelba Kishan Thombre has not been taken on record.

aaa/-

3. Learned counsel submits that Kisan Girjappa Thombre (forefather of petitioner) had filed an application for restoration of the suit land from the original owner before the Tenancy Tahsildar, Bhoom on the grounds that though original owner had taken possession of the suit land for their personal cultivation, they had contravened the conditions. Learned Tenancy Tahsildar, Bhoom had rejected the said application on 13.10.1971. Being aggrieved by the same, Kisan Thombre had filed an appeal before the Deputy Collector (LR), Osmanabad challenging the said order and by order dated 31.1.1979 appeal was allowed by the Deputy Collector (LR), Osmanabad with the findings that Kisan Thombre (forefather of the petitioner) is a tenant and entitled for restoration of the possession. Being aggrieved by the same, original owner had filed the revision application before the Maharashtra Revenue Tribunal, Aurangabad and the Maharashtra Revenue Tribunal, Aurangabad by judgment and order dated 15.12.1980 partly allowed the said revision application and thereby remanded the matter back to Deputy

aaa/-

Collector (LR), Osmanabad with the directions to hear the application dated 01.03.1978 by giving an opportunity to both sides.

4. Learned counsel for the petitioner further submits that in the said application filed by Kisan Thombre for restoration of the possession of the suit land, Khandu Mahalu Thombre (forefather of the respondents) was party before the Court below. After the decision of Maharashtra Revenue Tribunal, the Deputy Collector (LR), Osmanabad has decided the appeal by judgment and order dated 27.2.1991 thereby the possession of Kisan Thombre (forefather of the petitioners) came to be restored with the directions to the Tenancy Tahsildar, Bhoom to handover the possession of the suit land to the tenants i.e. Kisan Girajappa Thombre. Learned counsel submits that in view of the said order, possession of the suit land was handed over to Kisan Thombre on 6.7.1991 and to that effect the panchnama was also drawn.

5. Learned counsel submits that Kerba Khandu Thombre and others have filed an application for seeking possession to the extent of half portion of the suit land before the Tenancy Tahsildar, Bhoom on 14.12.1993. By order dated 23.11.1995, Tenancy Tahsildar Bhoom, rejected the said application by holding that the application submitted by said Keraba Thombre and others is not in consonance with the provisions of law. They have failed to prove that they are the tenants of the suit land and on the other hand record shows that Kisan Thombre is the protected tenant of the suit land.

6. Learned counsel submits that being aggrieved by the same, said Kerba Thombre (respondents herein) have preferred an appeal before the Deputy Collector (LR), Osmanabad against the decision dated 23.11.1995 delivered by the Tenancy Tahsildar, Bhoom. By order dated 30.10.1996 the appellate authority has allowed the appeal and set aside the order passed by the Tenancy Tahsildar dated 23.11.1995. Being aggrieved by

aaa/-

the same, Kisan Thombre (forefather of the petitioner) has filed the revision proceedings before the Maharashtra Revenue Tribunal, Aurangabad and by order dated 13.12.2000 the Maharashtra Revenue Tribunal, Aurangabad has partly allowed the said revision, quashed and set aside the impugned order dated 30.10.1996 passed by the Deputy Collector (LR), Osmanabad and remanded the matter to the Deputy Collector (LR), Osmanabad with the observations that there is no supporting evidence about inheritance of family lineage, their joint family is not clear and to that effect there is no clear evidence. By order dated 31.3.2006 the Deputy Collector (LR), Osmanabad has allowed the appeal filed by the respondents herein by quashing and setting aside the order dated 23.11.1995 passed by the Tenancy Tahsildar, Bhoom and remanded the matter back to the Tahsildar, Bhoom for fresh inquiry to record the finding on family lineage, blood relations between Kisan and Keraba and about their joint family.

7. Learned counsel further submits that, after remand, by order dated 2.6.2011 the Tenancy Tahsildar, Bhoom has rejected the said application filed by the respondents herein for possession of the suit land. Learned counsel submits that the Tenancy Tahsildar, Bhoom has conducted proper inquiry in the matter and on the basis of the supporting evidence lead by the parties, held that there are no blood relations, there is no joint family and Kisan Girajappa Thombre alone is in possession of the suit land as tenant. It has been also directed to issue protected tenancy certificate pertaining to the suit land to the petitioner by depositing certain amount. Learned counsel submits that after death of Kisan Thombre, petitioners legal heirs are taken on record. Thus, in view of the Tahsildar's order dated 2.6.2011 Tenancy certificate under section 38(6) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter for short referred to as 'the Act') came to be issued. The petitioners have also deposited Rs.540/- through Challan in the Bank on 22.6.2011.

8. Learned counsel submits that the respondents herein have filed an appeal before the Deputy Collector (LR), Osmanabad against the said order dated 2.6.2011 passed by the Tahsildar Tenancy, Bhoom. By order dated 16.10.2012 the Deputy Collector (LR), Osmanabad has allowed the appeal partly, quashed and set aside the order dated 2.6.2011 passed by the Tenancy Tahsildar, Bhoom and remanded the matter back for detail inquiry about blood relations between the parties. After remand, by order dated 12.9.2014, the Tenancy Tahsildar, Bhoom has allowed the application filed by the respondents and directed the petitioners herein to handover half portion of the suit land to the respondents. Learned counsel submits that, being aggrieved by the same, Kisan Thombre has preferred the revision application before the Maharashtra Revenue Tribunal, Aurangabad. By judgment and order dated 3.8.2018 the Maharashtra Revenue Tribunal, Aurangabad has dismissed the revision application on the ground that the legal heirs of Khelba Thombre were not brought on record and the impugned judgment has already been implemented.

aaa/-

Writ Petition is preferred against the judgment and order dated 3.8.2018 passed by the Maharashtra Revenue Tribunal, Aurangabad.

9. Learned counsel submits that the original owners failed to cultivate the land for ten years and, therefore, the petitioners application for restoration of the possession was allowed and possession of the suit land was handed over to them on 7.6.1991. Since then, the petitioners are in possession of the suit land. Learned counsel submits that the Tenancy Tahsildar, Bhoom by its judgment and order dated 2.6.2011 held that the petitioners are legal heirs of Kisan and, therefore, they are entitled for Tenancy certificate of the suit land and accordingly, granted tenancy certificate under section 38 (6) of the Act on 24.6.2011. Learned counsel submits that respondents application dated 14.12.1993 for possession of half share in the suit land itself is not maintainable. Learned counsel submits that twice the matter was reached upto the Maharashtra Revenue Tribunal, Aurangabad and remanded the matter back to

aaa/-

the case, wherein the authorities have repeatedly held that the petitioners have produced evidence on record to indicate that they alone are the tenants of the suit land. Learned counsel submits that the order dated 16.10.2012 passed by the Deputy Collector (LR), Osmanabad remanding the matter third time without considering the evidence on record itself is not legal, proper and liable to be quashed and set aside.

10. Learned counsel for the petitioners, in order to substantiate his contentions placed reliance on following judgments :-

i. B.S.Mahabala (Dead) through legal representatives Vs. Gopala Krishna and another reported in (2017) 12 Supreme Court Cases 685.

ii. Shri Lhousakhotuo Vimero s/o Lhounai-o Vs. The State of Nagaland and others in Writ Petition No.(C). No.30(K) of 2016 dated 24.4.2017.

11. Learned counsel appearing for respondent nos. 2,3 and 8 submits that writ petition itself is not maintainable, as it is filed against the judgment and order dated 3.8.2018 passed by the learned Member,

aaa/-

Maharashtra Revenue Tribunal Aurangabad in Revision application No.65/B/12/Osmanabad by which the Maharashtra Revenue Tribunal had declared the revision as infructuous on the ground that the order dated 16.10.2012 passed by the the Deputy Collector (LR), Osmanabad, which is under challenge is already executed and implemented. Learned counsel submits that the revision petition before the Maharashtra Revenue Tribunal, Aurangabad was against the order of the Deputy Collector (LR), Osmanabad dated 16.10.2012 by which the learned Deputy Collector (LR) remanded the matter back to the learned Tenancy Tahsildar, Bhoom. By order dated 12.9.2014 the learned Tenancy Tahsildar, Bhoom had decided the matter in favour of the respondent nos. 2,3 and 8.

12. Learned counsel submits that being aggrieved by the same, the petitioners have preferred an appeal before the learned Deputy Collector (LR), Osmanabad against the said order passed by the Tenancy Tahsildar, Bhoom dated 12.9.2014. Copy of the appeal memo in

aaa/-

file No.2015/सापू/भुसुधार/कावी-01 (Exh.R-1) filed by the petitioners before the learned Deputy Collector (LR) Osmanabad is marked at Exh.R-1.

13. Learned counsel submits that in addition to the same, original landlord had also filed an appeal before the learned Deputy Collector (LR), Osmanabad challenging the judgment and order of Tenancy Tahsildar dated 12.9.2014 by filing separate appeal. Learned counsel submits that the petitioners have also filed petition against the dead person i.e. respondent no.1, who was already died. Petitioners have not deliberately implemented Caveator no.3-Arjun Kerba Thombre, as party respondent.

14. I have also heard the learned AGP for the respondent-State.

15. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the petition, annexures
aaa/-

thereto and the reply filed by the concerned respondents.

16. It appears that deceased respondent no.1 Kerba Khandu Thombre and others had filed an application dated 14.12.1993 for seeking possession of the suit land to the extent of half portion before the Tenancy Tahsildar, Bhoom. By order dated 23.11.1995 the Tenancy Tahsildar, Bhoom has rejected the said application. Being aggrieved by the same, the respondents have preferred an appeal before the Deputy Collector (LR), Osmanabad. By order dated 30.10.1996, the Deputy Collector (LR), Osmanabad has allowed the appeal and quashed and set aside the order passed by the Tenancy Tahsildar, Bhoom dated 23.11.1995 rejecting thereby the application filed by deceased respondent no.1 Kerba and others dated 14.12.1993. Being aggrieved by the same, deceased Kisan Girajappa Thombre (forefather of the petitioners) has preferred the revision before the Maharashtra Revenue Tribunal, Aurangabad challenging the said order passed by the

aaa/-

Deputy Collector (LR), Osmanabad. By order dated 13.12.2000 the Maharashtra Revenue Tribunal, Aurangabad has quashed and set aside the order dated 30.10.1996 passed by the Deputy Collector (LR), Osmanabad and remanded the matter to Deputy Collector (LR), Osmanabad.

17. It further appears that by order dated 31.3.2006 Deputy Collector (LR), Osmanabad has allowed the appeal filed by the respondents, quashed and set aside the order dated 23.11.1995 passed by the Tenancy Tahsildar, Bhoom and remanded the matter to the Tenancy Tahsildar, Bhoom for fresh inquiry.

18. It further appears that after remand of the said case, the Tenancy Tahsildar, Bhoom by its judgment and order dated 2.6.2011 has conducted inquiry into the matter and rejected the application dated 14.12.1993 filed by deceased respondent no.1 Kerba Khandu Thombre and others.

aaa/-

19. Being aggrieved by the same, respondents herein have filed an appeal before the Deputy Collector (LR), Osmanabad against said order dated 2.6.2011 passed by the Tenancy Tahsildar, Bhoom. By judgment and order dated 16.10.2012 the Deputy Collector (LR), Osmanabad has allowed the appeal partly, quashed and set aside the order dated 2.6.2011 passed by the Tenancy Tahsildar, Bhoom and remanded the matter for detail inquiry about blood relations between the parties. After remand, by order dated 12.9.2014 the Tenancy Tahsildar, Bhoom has again decided the case, allowed the application filed by deceased respondent no.1 Kerba Thombre and others and directed the petitioners herein to hand over the possession to the extent of half portion of the suit land.

20. It appears that being aggrieved by the same, deceased petitioner Kishan Girajappa Thombre has preferred the revision application challenging the said order passed by the Deputy Collector (LR), Osmanabad dated 16.10.2012. By impugned judgment and order dated 3.8.2018 the Maharashtra Revenue Tribunal,

aaa/-

Aurangabad has dismissed the revision application on two grounds that the impugned judgment has already been implemented and legal heirs of Khelba Kisan Thombre were not brought on record.

21. It is clear that by order dated 12.09.2014 the learned Tenancy Tahsildar, Bhoom had decided the matter in favour of the present respondent nos.2,3 and 8 and being aggrieved by the same, petitioners herein have preferred an appeal before the Deputy Collector (LR), Osmanabad against the judgment and order of the learned Tenancy Tahsildar, Bhoom dated 12.9.2014. However, deceased Kisan Girajappa Thombre preferred the revision application challenging the order dated 16.10.2012 passed by the Deputy Collector (LR), Osmanabad thereby remanding the matter back to the Tenancy Tahsildar, Bhoom for detail inquiry about blood relations between the parties. It is clear that in terms of the said order of remand, the Tenancy Tahsildar, Bhoom has conducted inquiry and by order dated 12.9.2014 decided the matter in favour of respondent nos.2,3 and

aaa/-

8 herein and directed the petitioners herein to hand over half portion of the suit land to the respondents. It appears that, after remand of the matter by the Deputy Collector (LR), Osmanabad, by order dated 16.10.2012, present petitioners have participated in the proceedings before the Tenancy Tahsildar, Bhoom and even challenged the order passed by the Tahsildar, Bhoom dated 12.9.2014 by filing a substantive appeal before the Deputy Collector (LR) Osmanabad in file No.2015/सापू/भुसुधार/कावी-01 (Exh.R-1).

22. In view of the above, the Maharashtra Revenue Tribunal, Aurangabad has rightly dismissed the revision by observing that the order of remand passed by the Deputy Collector (LR), Osmanabad dated 16.10.2012 came to be implemented. In view of the same, I find no substance in this writ petition. The petitioner can pursue their appeal, if it is pending before the Deputy Collector (LR), Osmanabad, as referred above and in case, if it is decided, then, further course of action is

aaa/-

open for the petitioners by preferring the revision etc.

Hence, I proceed to pass the following order.

ORDER

Writ Petition is hereby dismissed.

(V.K. JADHAV, J.)

...