

Vidya Amin

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

WRIT PETITION NO. 13659 OF 2017

Deepak Raghunath Pandekar & Ors.	... Petitioners
V/s.	
Vitthal Narayan Kadam & Ors.	... Respondents

Mr. Aniket P. Ranade for the petitioners.
Mr. Shankar P. Thorat a/w. Mr. G.B. Walawalkar for respondent no. 1.

**CORAM : G.S.KULKARNI, J.
DATE : 29 November, 2021**

PC.:

1. This petition has been filed praying for the following reliefs:
 - “(a) Rule be issued. Call for the records and proceeding from the Maharashtra Revenue Tribunal in the matter of Revision being No. TNC/REV/RAG/8/2017 and after scrutiny and perusal as to propriety, legality, validity and correctness, the judgment and order dated 28.09.2017 passed therein may kindly be quashed and set aside and the judgment and order dated 23.05.2016 passed by the Sub-Divisional Officer, Karjat in the Tenancy Appeal No. 17 of 2015 and judgment and order dated 20.03.2015 passed by the Tahsildar and the A.L.T. Khalapur in the Tenancy Case No. 32G/14/2011 be confirmed;
 - (b) Pending the hearing and final disposal of the Writ Petition, the execution, operation, implementation and effect of the judgment and order dated 28.09.2017 passed by the Maharashtra Revenue Tribunal, Mumbai in the Revision being No. TNC/REV/RAG/8/2017 be stayed;
 - (c) Ad-interim relief in terms of prayer (b) above.
2. There is a chequered history to this litigation, which has arisen

under the Bombay Tenancy and Agricultural Lands Act, 1948 (for short **“the Act”**). There were diverse proceedings between the parties. The dispute between the parties arises in respect of Land Gat No. 1/1/B New S.No. Area 31.6R, land Gat No. 13/2, new S.No. 13/2 area admeasuring 91R situated at village Wawandhal, Taluka-Khalapur, District Raigad.

3. The respondents claimed to be project affected persons, as they were displaced from their lands which were acquired for the Koyna Dam Project in Patan, District Satara. The respondents contended that they shifted to Village Wawandhal on 24 August, 1959. It was their case that one Omkarmal Oswal, predecessor-in-title of the respondents had purchased the said land under the registered sale deed, which was after ascertaining that there were no entries of any tenancy rights in respect of the said land. The respondents also asserted that from the year 1955 upto 1971, the respondents did not face any obstruction in respect of the said land. However, the dispute between the parties had arisen by way of one mutation entry, being mutation entry no. 359, which came to be made in the record of rights, in respect of the said land, showing the name of one Mahadu Pednekar (tenant) by virtue of an order dated 5 February, 1971 passed by the Tahsildar. The

petitioners are successors of Mahadu Pednekar, who are claiming tenancy rights in respect of the said land.

4. The petitioners in asserting tenancy rights on the land in question have placed reliance on proceedings which had taken place between the petitioners-tenants and the original owner Omkarmal Oswal. The said proceedings referred by the petitioners/tenants were proceedings under section 32G of the Act, under which an order dated 4 March, 1969 was passed by the Additional Tahsildar and A.L.T, Khalapur, who rejected the claim of the petitioners/tenants holding that the tenants had failed to exercise right to purchase the said land as conferred under section 32F of the Act. The said order was stated to be confirmed by the Collector, Colaba by an order dated 30 September, 1969. Being aggrieved by the order passed by the Collector, the petitioners-tenants approached the Maharashtra Revenue Tribunal (for short "the tribunal"). By an order dated 28 September, 1970, the tribunal set aside the order dated 4 March, 1969 passed by the Additional Tahsildar and A.L.T, Khalapur as also the order dated 30 September, 1969 passed by the Collector, Colaba. The Tribunal's order was challenged by the predecessor of the respondents/landlords before this Court. The proceedings were rejected by this Court. Consequent

thereto, a fresh enquiry was undertaken and notices were issued to all the parties, which culminated into an order dated 29 September, 1977 being passed, which was after recording the statement of Smt. Leelabai Raghunath (Petitioner No.2 since deceased) on behalf of the petitioners/tenants. Petitioner no. 2 has expired during the pendency of the present proceedings and who is represented by her legal heir Smt. Susheela Raghunath Pednekar. It was held that there was no evidence to show any intimation of purchase as issued by the tenants as per the requirements of Section 32G of the Act and hence, the application as made by the petitioners/tenants, was rejected by an order dated 29 September, 1977.

5. It, however, appears that the dispute remained dormant, after the order dated 29 September, 1977 was passed by the Additional Tahsildar & A.L.T. Khalapur. However, after about 32 years, i.e., in the year 2009, by an order dated 18 February, 2009, the Tahsildar directed to record the names of the petitioners-tenants. Being aggrieved by the said order passed by the Tahsildar, the respondents, who have claimed to have purchased the land under the registered sale deed dated 24 August, 1959 preferred Tenancy Appeal No. 38 of 2009 against recording of names of the tenants. Such appeal came to be dismissed by an order

dated 22 April, 2010. In view of the dismissal of the appeal, the petitioners-tenants filed an application for fixation of purchase price against the landlords-respondents on 19 May, 2011. On such proceedings, by an order dated 20 March, 2015 passed by the Tahsildar, purchase price came to be fixed and a certificate to that effect was received by the petitioners under section 32M on 18 April, 2015.

6. The respondents/landlords being aggrieved by such order preferred Tenancy Appeal No. 17 of 2015 before the Sub-Divisional Officer, Karjat, being Appellate Authority, who dismissed the said appeal by an order dated 23 May, 2016. Against such order passed by the SDO, the respondents/landlords preferred Tenancy Revision Application before the Tribunal. In the said Revision Application, the respondents/landlords contended that by virtue of the order dated 29 September, 1977 passed by the Additional Tahsildar & ALT, Khalapur, the petitioners' right to claim any tenancy stood rejected and hence the petitioners/tenants had no right to re-agitate the issue, as the said order dated 29 September, 1977 had attained finality.

7. The tribunal by the impugned order has allowed the respondents' revision by following operative order:

“ORDER

“1. Revision Application No. TNC/REV/RAG/8/2017 is allowed. The orders dated 23/5/2016 passed by Id. Sub-Divisional Officer, Karjat in Tenancy Appeal No. 17/2015 and the orders dated 20/3/2015 passed by Tahsildar & A.L.T, Khalapur in proceeding numbered as 14/2011 are set aside.

2. No costs.

3. Record and proceedings be sent to the concerned authorities.

4. Tenants are at liberty to exhaust appropriate remedy, if available to them, before the appropriate forum, if so advised.”

8. The meager reasoning to pass the above order is reflected in paragraphs 8 to 11 of the impugned order.

9. Learned counsel for the petitioner has a serious grievance against the impugned order that the case of the petitioners-tenants has not at all been considered in the proper prospective. His contention is that the petitioners had categorically asserted before the tribunal that the order dated 22 April, 2010 passed by the SDO, Panvel Division, Panvel which was based on the Tenancy Appeal No. 38 of 2009 filed by the respondents-landlords was never challenged by the landlords and hence the impugned order could not have been passed without considering such contention as urged on behalf of the petitioners.

10. On the other hand, Mr. Thorat would support the impugned

order while contending that the order dated 29 September, 1977 passed by the Additional Tahsildar & ALT rejecting the Tenancy Application against the original owner in the proceedings initiated under section 32G of the Act, had attained finality and hence there was no question of the petitioners-tenants reopening the issue of tenancy in the teeth of such order. It is his submission, that in fact, after almost 32 years, the petitioners could not have re-agitated such issue which was a dead issue in view of the said order dated 29 September, 1977 passed by the Tehsildar. Mr. Thorat, however, would not dispute that there are some legal consequences which was brought about by order dated 22 April, 2010 passed by the SDO rejecting the respondents-landlords Tenancy Appeal No. 38 of 2009.

11. On perusal of the impugned order, it appears that once the parties had placed their respective assertions relying on said different orders, the Tribunal should have applied its mind to such contentions and findings ought to have been recorded either in accepting or rejecting such contentions. There appears to be no discussion in this regard in the impugned order.

12. In view of the above situation and as brought about by the

impugned order, after quite some discussion, learned counsel for the parties agree that it would be in the interest of both the parties that the proceedings are remitted to the Maharashtra Revenue Tribunal for fresh hearing by setting aside the impugned order, so that the rival contentions of both the parties and the legal consequences as brought about by different orders which are earlier passed, either in favour of each of these parties or against them, can be appropriately considered, to reach a conclusion, in accordance with law on the rights of the parties in regard to the land in question.

13. In my opinion, considering the facts of the case, it would be appropriate that the proceedings are remanded back instead of the writ petition being admitted in this Court and then to be taken up for final hearing. Considering the impugned order passed by the tribunal, it is quite likely that the Court may have to come to the same conclusion at the final hearing that the tribunal decides the entire issue afresh.

14. In the above circumstances, the impugned order passed by the Maharashtra Revenue Tribunal is set aside. The tribunal is directed to hear the parties afresh on the proceedings of TNC/REV/RAG/8/2017 and after considering rival contentions and all the earlier orders passed by the different authorities, pass a fresh order in adjudicating the

proceedings.

15. Let the tribunal decide the proceedings afresh within a period of six months of the parties presenting this order before the tribunal.

16. All contentions of the parties in that regard are expressly kept open.

17. Needless to observe that it appears from the record that the petitioners are in possession. Let the said status continue till the proceedings are decided by the Maharashtra Revenue Tribunal.

18. Disposed of in the above terms. No costs.

(G.S.KULKARNI, J.)

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