

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2722 OF 1995

Smt.Apshanbi Ramjan Tadavi,
(Died through LR's')

1. Hussain Ramjan Tadavi, Age-50 years,
2. Husan Ramjan Tadavi, Age-45 years,
3. Kurban Ramjan Tadavi, Age-40 years,
4. Nyajoddin Ramjan Tadavi, Age 35 years,
5. Khalil Ramjan Tadavi, Age-30 years,
6. Nurjahan Nijam Tadavi, Age-42 years,
7. Najama Ramjan Tadavi, Age-20 years,

All R/o Vargavhan, Post : Khirdi,
Taluka - Chopda, Dist. Jalgaon

-- PETITIONERS

VERSUS

1. Babulal Rajdhar Koli
(Died thousand LR's)
- a. Pandurang s/o Bhaulal Sapkale (Koli),
Age-53 years, Occu-Agriculturist,
- b. Pralhad s/o Bhaulal Sapkale (Koli),
Age-33 years, OccuAgriculturist,
- c. Sau.Lilabai Chudaman Sonwane,
Age-28 years, Occu-Household,
- d. Renabai w/o Bhaulal Sapkale (Koli),

Age-58 years, Occu-Household,

All R/o Kinod, Post : Kathora,
Tq. and Dist. jalgaon

2. The President,
Maharashtra Revenue Tribunal,
Bombay

-- RESPONDENTS

Ms.Rashmi S.Kulkarni h/f Mr. V. T. Choudhary, Advocate for the
petitioners.

None for the respondents.

(CORAM : BHARATI H. DANGRE, J.)

RESERVED ON : 13/01/2022
PRONOUNCED ON : 10/02/2022

JUDGMENT :

1. By the present writ petition, the petitioners seek to challenge the order passed by the Maharashtra Revenue Tribunal in Revision Application No.Ten.A.16/1993 and the petitioners are aggrieved by the said order since the Tahsildar as well as the Sub Divisional Officer, Amalner had granted the claim of the petitioners in Tenancy Case No.06/1991 in form of a reference made u/s 85-A of the Bombay Tenancy and Agricultural Lands Act, 1948 (Hereinafter referred to as Tenancy Act).

2. The petition came to be admitted on 06/07/1995 and the stay to the impugned judgment came to be granted, which is in operation as on date.

Heard the learned Advocate Ms.Rashmi Kulkarni alongwith learned Adv. Mr. V. T. Choudhary for the petitioners.

4. The suit land, around which the proceedings are revolving, is located in Gat No.6 of Icchapur, Tal.Chopda and it is the claim of the petitioners that her deceased husband Ranjan was cultivating the said land in the year 1955-56 as a tenant. He became deemed purchaser on 01/04/1957 i.e. on the tiller's day since he was in actual possession and cultivation of the suit land under the Bombay Tenancy Act and in furtherance of the said steps, the A.L.T. and Tahsildar Chopda issued notice to him u/s 32-G of the Tenancy Act for the fixation of purchase price of the suit land.

5. Respondent No.1 claiming to be the owner of the suit land staked his claim based on premise, that in the year 1959, the Bhoodan Samiti had transferred the land to him, and he instituted RCS No.43/1988 in the Court of learned Civil Judge, Jr.Division, Chopda,

seeking an injunction against the petitioners, impleaded as defendants therein. In the said suit, the petitioner who was impleaded as a tenant, staked his claim of tenancy in respect of the suit land and the learned Civil Judge framed an issue of tenancy and resultantly in the wake of Section 85-A, referred the issue to the Tenancy Court to determine whether the petitioner is a tenant u/s 70-B of the Tenancy Act. The defendants to the suit also claimed that they belong to "Tadavi Bhil community", which is recognized as ST under the Scheduled Tribe Union Territories Order, 1951.

On the reference being made to decide the status of the petitioner under the Tenancy Act, the Tahsildar, by his order dated 14/07/1992, declared the petitioner to be the tenant of the suit land u/s 70-B of the Tenancy Act. The declaration was given to the effect that, Smt.Aphshanbi Ramjan Tadavi, is a protected tenant as per Section 70-B of the Tenancy Act.

This order passed by the Tahsildar on 14/07/1992 was challenged in Appeal before the Sub Divisional Officer, Amalner u/s 74 of the Tenancy Act. The Sub Divisional Officer, being confronted with the question as to whether the petitioner is a deemed tenant, answered the said in the positive. On examination of the facts involved in the

context of Section 4 of the Act, which prescribes that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant and if the land is not cultivated personally by the owner and if such person is not a member or owner of the family, servant on wages payable in cash or kind, but not any crop share, a mortgage in possession, the Sub Divisional Officer rendered a finding that the disputed land seems to be in possession of the respondent since 1955-56, which is apparent from the entries recorded in the " पिकपेरा " coloumn. Receipts of payments of land revenue were produced on record in support of the evidence and by further recording that the appellant could not produce sufficient evidence to the contrary, regarding disputed land, demonstrating that the said land is of Bhoodan Samiti and the provisions of Tenancy Act, could not be applicable, the plea raised in the appeal was turned down. The learned Appellate Authority also record that despite ample opportunity to produce evidence in support of his claim, the appellant has failed to do so and therefore the finding rendered by the Tahsildar and the A.L.T. Chopada do not warrant any interference. Resultantly, the appeal came to be dismissed by the Sub Divisional Officer, Amalner and the order passed by the A.L.T. Chopda on 14/07/1992 declaring the respondent

as a tenant according to the provisions of Section 70-B of the Act came to be upheld.

6. This order once again was subjected to challenge by the respondent before the Maharashtra Revenue Tribunal by preferring a revision, which came to be numbered as No.Ten.A.16/1993. The learned Tribunal heard the respective parties in the wake of the impugned order passed by the Sub Divisional Officer and considered the contention advanced on behalf of the present petitioner (opponent) that she was the tenant of the suit land on 01/04/1957 and when the contention of the Applicant is appreciated, the suit land came to be allotted to him by Bhoodan Samiti in the year 1959 and he claimed ownership on the basis of the said allotment. It was argued before the Tribunal that the fact that a notice came to be issued u/s 32-G to the tenant on 27/12/2008, which was produced before the Tahsildar, was sufficient evidence to recognize the tenancy. Further the attention of the Tribunal was invited to the entries in the cultivation column in the year 1959-1960 and in 1960-1961 and it is only by mutation entry dated 08/06/1959, the suit land has been shown to be granted to the applicant through Bhoodan Samiti. Since the land has been given by

Jilha Bhoodan Samiti to the applicant on 04/05/1959, and this was certified by the Tahsildar.

The submission appreciated by the Tribunal is to the effect that as per the provision of Section 88-A of the Tenancy Act, the provisions of the Tenancy Act, do not apply to the land transferred by Bhoodan Samiti, under the aegis of State Government and since the mutation entry has been certified by the petitioner Revenue Authority in favour of the applicant on transfer of the land in his favour by Bhoodan Samiti by the District, it was sought to be argued before the Tribunal that the opponent is not entitled to claim tenancy.

The Tribunal found substance in the said argument and expressed its agreement, that the land has been rightly transferred to the applicant u/s 88-A of the Bhoodan Samiti and he was handed over the possession of the land in the year 1959 and since the order of Bhoodan Samiti is not challenged by the opponent and the mutation entry stand in the name of applicant as owner of the suit land and since the notice issued u/s 32-G on the basis of which the opponent assails his right to be a tenant, has not been concluded finally as there is no order u/s 32-G from the competent authority. The Tribunal, recorded that both the authorities below ought not have relied upon the mutation entry under

which the applicant claimed his ownership and possession of the suit land, on being transferred validly through Bhoodan Samiti u/s 88-A but this was completely ignored and on the contrary, the Sub Divisional Officer had cast the burden upon the applicant and rendered a finding that he was unable to discharge the burden. Resultantly, the revision came to be allowed and the concurrent findings rendered by the Tahsildar and the Sub Divisional Officer was set aside. The Tribunal gave a declaration to the effect that provisions of Section 88-A do apply to the suit land and hence the claim staked by the opponent / petitioner as a tenant, came to be rejected. This order faces a challenge in the present writ petition.

7. The subject matter involved is the suit land situated within revenue limits of village Icchapur of which the respondents claimed to be the owners and the petitioners claim to be the tenant since the year 1955-56. From the record, it appears that the dispute regarding tenancy right of the suit land arose somewhere in 1987. The owner denied the claim of tenancy by the present petitioner or her husband. The case of the respondents is that the husband of the present petitioner/ tenant managed to enter his name in *Pikpera* column of

7/12 extract which constrained the owner to move the Tahsildar on 08/04/1987 to cancel the crop entry. The Tahsildar in RTS No. 1165/1987 ordered the name of the owner to be recorded in the *Pikpera* column against which the present petitioner/tenant vide Appeal No.33/1988 before the Sub Divisional Officer, Amalner, who dismissed the appeal. Thereafter, the tenant filed RTS No.74/1989 before the Additional Collector, Jalgaon, who lodged the appeal on 14/04/1990 and the Landlord again approached the Commissioner, Nasik and obtained stay.

8. The respondent/landlord filed RCS No.43/1988 in the Civil Court, Chopda in which issue was framed as to whether respondent is a tenant or not and the reference was made over to the Tahsildar, Chopada on 26/02/1991 and infurtherance of the said order, the Tahsildar and A.L.T. Chopada made enquiry into the matter u/s 70-G and 85 of the Tenancy Act and declared the petitioner as a tenant of the suit. This order came to be confirmed by the Appellate Authority.

9. It is pertinent to note that the crop entries are relied upon to establish the right of tenant and that the possession in the said capacity

was with the tenant on the tiller's day. The contention of the petitioner that deceased Ramjan Tadavi was in lawful possession on the tiller's day i.e. on 01/04/1957 and he shall be deemed to have purchase the land of the landlord, has to be decided in the light of the claim of the respondent that the land came to be allotted to the owner by the Bhoodan Samiti and Section 88-A of the Tenancy Act reads thus :-

" 88-A Nothing in the foregoing provision shall apply to land transferred to, or by, a Bhoodan Samiti recognized by the State Government in this behalf. "

Since the specific claim of the owner to the effect that he was given the suit land by Bhoodan Samiti in the year 1959 and i.e. how he claimed his ownership over the said property. There is no denial of the said assertion by the owner, by the present petitioner and hence the provisions of section 88-A come into operation with full force. Further this fact is established by the mutation entry certified by the competent revenue authority to the effect that the suit land has been transferred to the landlord by the Bhoodan Samiti of the District which is recognized by the State Government. In the wake of the specific case of the owner that the land has been transferred to him by Bhoodan Samiti, the provisions and the benefits flowing from Tenancy Act automatically

stand excluded. By wake of Section 88-A which declares that nothing in the foregoing provision including the provisions contained in Chapter II, which confer special rights and privileges on tenants and particularly governing the purchase of land by tenants contained in Part (ii) of the said Chapter, are excluded if the land is transferred by a Bhoodan Samittee recognized by the State Government in this behalf. Since there is no denial of this fact by the present petitioner/ tenant and since the two authorities have failed to avert itself to this important aspect, the Maharashtra Land Revenue Tribunal is perfectly justified in allowing the revision and setting aside the order passed by the Sub Divisional Officer and the Tahsildar in the wake of Section 88-A. The declaration that the petitioner is a protected tenant of the suit property and hence entitled for the benefits flowing there from, being in possession on the tiller's day, cannot be conferred on her in the wake of the bar created u/s 88-A. The submissions of the learned counsel for the petitioner to the effect that her right is prior one and must be protected, fail to impress me.

Upholding the impugned order passed by the Maharashtra Revenue Tribunal, the writ petition is dismissed.

(BHARATI H. DANGRE, J.)