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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3310 OF 1995

Narayan Vaidu Patil (Died) LRs

PETITIONER

- A. Atmaram Narayan Patil
Age – 65 years, Occ – Agriculture
- B. Arun Narayan Patil
Age – 35 years, Occ – Agriculture
- C. Balu Narayan Patil
Age - 45 years, Occ- Agriculture
- D. Dnyaneshwar Narayan Patil
(Deceased by His LRS__

Sarlabai Dnyaneshwar Patil
Age – 35 years, Occ – Household
- E. Kamalbai w/o Dinkar Patil
Age – 48 years, Occ – Household
- F. Nirmalabai Motiram Patil
Age – 30 years, Occ – Household
- G. Kewalbai Bansi Patil
Age – 40 years, Occ – Household

All R/o Chunchale, Taluka – Chopda
District – Jalgaon

VERSUS

- 1. The State of Maharashtra
- 2. Babulal Purushottamdas Potdar
(Died Through LRs)
 - A. Pradipkumar Babulal Potdar
Age - 52 years, Occ – Service

RESPONDENTS

- B. Maheshkumar Babulal Potdar
Age – 48 years, Occ – Service
- C. Sau. Chhaya GopalDas Shah
Age – 45 years, Occ – Household
- D. Sau. Radha Nitinkumar Tapar
Age – 40 years, Occ – Household
- E. Smt. Nila Kirtikumar Potdar
Age – 60 years, Occ – Household
- F. Sneha Kirtikumar Potdar
Age – 23 years, Occ – Household
- G. Swati Kirtikumar Potdar
Age – 19 years, Occ – Household

(Respondents No.2 Maheshkumar Babulal Potdar is Gen. Power of Attorney of Respondent No.2A to 2C to 2G)

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Mrs. R. S. Kulkarni h/f Mr. V. T. Choudhary, Advocate for petitioner
Mr. Y. G. Gujrathi, AGP for respondent - State
Mr. Vijay B. Patil, Advocate for respondents No.2A to 2G
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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 12th JULY, 2022
PRONOUNCED ON : 26th AUGUST, 2022

JUDGMENT :

1. This petition, filed under Article 226 and 227 of the Constitution of India, is directed against the order dated 20th September, 1991 passed by the Sub Divisional Officer, Amalner Sub Division, Amalner in Appeal No. Tenancy A-1/90 and the

judgment and order passed by the Maharashtra Revenue Tribunal, Bombay dated 23rd December, 1994 in Revision Application No. Ten. A.26/1992.

2. The land in question is northern portion of Gut No. 35-B admeasuring 4 Acre 6 Guntha out of total land of 13 Acre 26 Guntha, situated at village Chunchale, Taluka – Chopda, District-Jalgaon (hereinafter for short “the said land”).

3. Babulal Purushottam Potdar was the original landlord and Narayan Vedu Patil was the tenant. The said land was leased out to Fula Vedu, Narayan Motiram and Mandabai Chaitram, who were cultivating the said land separately. After 1st April, 1957 proceedings under section 32G of the Bombay Tenancy and Agricultural Lands Act, 1956 (hereinafter “the said Act” for short) were initiated. In the said proceedings it was found that Fula Vedu was in possession of land in excess of ceiling limits, therefore, no purchase price was fixed, so far Fula Vedu is concerned. The land continued to be in possession of Fula Vedu.

4. For the sake of convenience, hereinafter, the parties will be referred to petitioner as “*tenant*” and respondent No.2 as “*landlord*”.

5. The tenant filed application contending that there had been

oral partition of the land in between brothers in the year 1951-52 and the said land has come to his share. He prayed for declaring him as tenant of the said land. This application came to be dismissed and the dismissal order is upheld by the Maharashtra Revenue Tribunal (MRT).

6. Thereafter, the tenant filed tenancy suit No. 5 of 1983 before Agricultural Land Tribunal / Tahsildar, Chopda for fixing of price under section 32G of the said Act. The said application was rejected by the Tahsildar, as the tenant was cultivating the land by Mode No.1. The tenant being aggrieved by the order of the Tahsildar, filed appeal before the Sub Divisional Officer. The Sub Divisional Officer, set aside the order of the Tahsildar and remanded the matter back to the Tahsildar for taking action as per the provisions of section 32E read with 15 and 32P of the said Act.

7. The tenant challenged the order passed by the Sub Divisional Officer, by filing Revision before the MRT, which was dismissed on 7th January, 1988, thereby confirming the order of the Sub Divisional Officer dated 26th September, 1986.

8. Pursuant to the remand order, passed by the Sub Divisional Officer, The Tahsildar initiated proceedings under

section 32E read with 15 and 32P of the said Act. The parties were called by issuing notices. The tenant and landlord attended the proceedings and submitted their written arguments. The Tahsildar, after hearing the parties and perusing the record, held that as per the statement given by the landlord on 9th December, 1957 before the Tenancy Mahalkari, that the lands situated at Vadtli and Chopda have come to his share in partition amongst brothers, the total holding of the landlord, therefore, came to 17 Hectare 81 Are, and the land transferred after 9th December, 1957 should be considered as holding of the landlord and the land situated at Kathore admeasuring 5 Hectare 77 Are also belongs to Potdar family and hence their total holding comes to 23 Hectare 58 Are, which is in excess of the ceiling limit and no document has been produced in respect of the partition, therefore, said land cannot be handed over to the landlord. The said land also cannot be given to the tenant, as the Sub Divisional Officer has already held that he cannot be a tenant of the said land. The Tahsildar, therefore, directed to resume the said land to the government.

9. The Landlord challenged the order passed by the Tahsildar of resumption of the land to the Government, by filing appeal under section 74 of the said Act before the Sub Divisional Officer,

Amalner. In the said appeal, he has arrayed only the State Government as party respondent. The Sub Divisional Officer, after hearing the landlord and the State and after perusing the record, arrived at a conclusion that there is no documentary evidence on record to show that the landlord possessed excess land than ceiling limits. As per the definition of ceiling area, 48 Hectare land is exempted and in the case in hand, the landlord was in possession of only 13 Hectare 7 Are land, which is less than the ceiling limits. So it was held that the Tahsildar has wrongly calculated the ceiling area of the landlord. Taking into consideration the fact that the tenant is not declared as a deemed tenant, it was held that there is no question of surrender of tenancy and hence, the provisions of section 15 of the Tenancy Act, could not be applied in the matter.

10. The Sub Divisional Officer allowed the appeal of the landlord and set aside the order passed by the ALT Chopda and directed possession of the land be handed over to the landlord under section 32P (2) of the said Act.

11. The tenant challenged the decision of the Sub Divisional Officer in appeal No. Ten/A/1/90, by filing Revision No. Ten.A.26 of 1992 before the MRT. The MRT rejected the revision by order dated 23rd December, 1994, thereby confirming the order passed

by the Sub Divisional Officer. Hence, the present writ petition.

12. Heard learned advocate for the tenant, learned advocate for the landlord and learned Assistant Government Pleader.

13. Learned advocate for the tenant assailed the impugned orders passed by the Sub Divisional Officer as well as by the MRT submitting that there is gross violation of principles of natural justice as the landlord did not make tenant as party respondent in the appeal filed before the Sub Divisional Officer and hence, according to him, the impugned orders are liable to be quashed and set aside. Further submission is that right of the tenant under section 32P (4) of the said Act still survives and the tenant can still claim right to purchase the land. The Sub Divisional Officer should have recorded finding under section 31A (c) of the said Act. According to her, since Tahsildar's order is in favour of the tenant, being a small holder, preferential right to purchase the land vests with the tenant. According to her, the impugned orders passed by the Sub Divisional Officer and confirmed by the MRT are nullity and hence, no appeal was preferred by the tenant challenging the same. By relying on ***"Husein Miya Dosumiya V/s Chandubhai Jethabhai and Others"*** ***AIR 1954 Bom 239***, she submits that since the impugned order passed by the Sub Divisional Officer was a nullity, therefore, it

was not necessary for the tenant to file appeal against the same. If the order is nullity, the tenant is entitled to ignore it. Reliance is also placed on "*Vishnu Ganesh Joshi V/s Dang Seva Mandal*" **1984 ALL MR Online 12** in support of her submissions. She further submits that still the tenant is in possession of the said land. Present petition was dismissed in default and thereafter the landlord had taken only paper possession of the land, however, in fact, till date the tenant is in actual physical possession of the said land. By filing Civil Application No. 3756 of 2018, stay to the execution of the order passed by the Sub Divisional Officer, impugned in the present writ petition, is sought.

14. Per contra, learned advocate for the landlord supported the impugned order, by submitting that admittedly, the tenant was found in possession of excess of land than the ceiling limits in proceedings under section 32G of the said Act and hence, his claim was rightly rejected at that point of time, in the year 1957. This decision was not challenged by the tenant or his brother. The tenant, thereafter, filed proceedings under section 17B for declaration as deemed tenant, which is also rejected. Now, the tenant has come out with a case that there was partition in the year 1951-52 and the said land came to the share of the tenant. This claim was rightly rejected by both the authorities i.e. the

Sub Divisional Officer and the MRT. He submits that Tahsilar had resumed the said land to the Government and this order was never challenged by the tenant as the finding recorded against him that he was holding excess land than ceiling limits and it is only the landlord who challenged the same. In the said proceedings, the Sub Divisional Officer has held that the tenant is a trespasser. He, therefore, submits that it was not necessary to add the tenant as party respondent in the appeal filed by the landlord. The MRT has considered the challenge raised by the tenant and has rightly negated it. He, therefore, submits that there is no substance in the petition and the same may be dismissed.

15. Learned Assistant Government Pleader supported the impugned orders and prayed for dismissal of the writ petition.

16. It emerges from the record that the landlord was the original owner of the said land, which was being cultivated by the tenant. Proceedings under section 32G of the said Act was initiated, but, since it was found that Fula Vedu, original tenant was in possession of the land in excess of the ceiling limits, price of the land was not fixed, but the land continued to be in possession of Fula Vedu. The tenant filed application seeking declaration as deemed tenant of the said land, contending that

there was oral partition in between brothers in 1951-52 and the said land came to his share. This application is dismissed by the Tahsildar and the said order is confirmed by the MRT.

17. The tenant, then filed Tenancy Suit No. 5 of 1983 before ALT, Chopda for fixing price under section 32G of the said Act, which is rejected, as the tenant was cultivating the land by Mode No.1. In the appeal filed by the tenant against this decision the Sub Divisional Officer though set aside the order passed by the Tahsildar, however, directed to take action as per section 32E read with 15 and 32P of the said Act. This order of the Sub Divisional Officer was challenged by the tenant, by filing revision before the MRT, which is also dismissed on 7th January, 1988 thereby confirming the order of the Sub Divisional Officer dated 26th September, 1986.

18. Pursuant to remand order passed by the Sub Divisional Officer, the Tahsildar commenced proceedings and both the parties were called by issuing notices and they have submitted written arguments. The ALT Chopda, in the said proceedings, has held that the landlord was in possession of excess land than ceiling limits and, therefore, ordered that said land be resumed to the Government.

19. Admittedly, the tenant has not challenged said order. It is only the landlord, who has challenged the said order by arraigning only State as party respondent, by filing appeal before the Sub Divisional Officer, Amalner. The Sub Divisional Officer, after perusing the record, has rightly allowed the said appeal, as there was no documentary evidence on record that the landlord possessed excess land than ceiling limits. As per definition of ceiling area, the maximum land ceiling is 48 Hectare, whereas, the landlord possessed only 13 Hectare 7 Are land and, therefore, the Sub Divisional Officer was right in coming to a conclusion that the ALT has wrongly calculated ceiling area of the landlord.

20. The Sub Divisional Officer has also taken into consideration the arguments advanced on behalf of the tenant before the ALT that section 15 of the said Act lays down that there cannot be surrender after Tillers' Day and landlord cannot accept surrender from the tenant, as there is no tenancy left after the Tillers' Day.

21. It is a matter of record that Narayan Vedu, the tenant was not declared as deemed tenant and therefore, the Sub Divisional Officer was justified in holding that the question of surrender does not arise, and, therefore, provisions of section 15 of the Tenancy Act, cannot be made applicable and under section 32P

(2) (a) and (b), the landlord has right to claim the said land. The Sub Divisional Officer was, therefore, right in holding that the landlord is entitled to take possession of the said land as per the provisions of section 31 (a) and (b) of the said Act.

22. In the light of these facts, the Sub Divisional Officer was also justified in recording a finding that Narayan Vedu was trespasser and he has no concern with the said land because neither he was a tenant nor he had tenancy rights. The Sub Divisional Officer, therefore, was justified in allowing the appeal filed by the landlord.

23. The tenant challenged the order of the Sub Divisional Officer, by filing Revision before the MRT, raising the same ground i.e. violation of the principles of natural justice and his right under section 32P (4) of the said Act, still survives and the tenant can claim right to purchase the said property.

24. It is a matter of record that the tenant has not challenged the order passed by the Tahsildar directing that the said land should be resumed to the Government with immediate effect. It is only the landlord who had challenged the said order on the ground that he was entitled to the possession of the said land, as he did not hold land in excess of ceiling limits. In this view of the

matter, it was not necessary for the landlord to add the tenant as party respondent in the appeal filed before the Sub Divisional Officer.

25. In the earlier round of litigation, the MRT had passed an order on 7th January, 1988 in Tenancy Appeal No. 11 of 1987 by making following observations :

“In the present case at one time the applicant claimed that he is cultivating the suit land as he got the land in dispute in partition which took place in 1952-53. Then he changed his version. Now his contention is that since 1972-73 he is lawfully cultivating the suit land. It is significant to note that when the proceeding under sec. 32-G of the Tenancy Act was started his brother Fula Vedu did not contend that the applicant is a tenant of the suit land on the basis of partition. It, therefore, appears that the applicant has taken this stand because in 32-G proceeding the holding of Fula Vedu was found to be more than the ceiling area and therefore the entry was made in the record of rights, without the knowledge of the landlord opponent No.1. Under these circumstances it cannot be said that the applicant is lawfully cultivating the land in dispute.”

26. This order is not challenged by the tenant by which the Sub Divisional Officer on 26th September, 1986 in Tenancy Appeal No. 8 of 1984 had directed ALT to dispose of said land as per provisions of section 32E read with 15 and 32P of the said Act. Thus, the matter was between the Government and the landlord as direction to resume the land to Government was issued and it

was not necessary to add the tenant as party respondent to the proceedings. At the cost of repetition, it needs to be noted here that the tenant has not challenged the said order.

27. Thus, it is clear from the record that in 1957 in a proceedings under section 32G of the said Act, Fula Vedu, the original tenant was found in possession of excess land than ceiling area and his claim was, therefore, negated. Thereafter, the tenant filed proceedings under section 17B of the said Act for declaration that he is a tenant, which is dismissed and the said dismissal order is confirmed up to MRT. It is necessary to mention here that the tenant claimed in the said proceedings that as per partition in the year 1951-52, the said land had come to his share, however, this contention was never raised by the original tenant Fula in the year 1957, when he was held to be in possession of excess land than the ceiling area.

28. From the above discussion it is clear that the tenant had no right to claim said land either as a tenant or to claim preferential right to purchase the said land under section 32E of the said Act. The landlord was rightly found to be in possession of the land less than the ceiling limits. In that view of the matter, the Sub Divisional Officer was justified in passing the impugned order in the appeal filed by the landlord under section 74 of the

said Act. The finding recorded by the Sub Divisional Officer is in consonance with the record produced before him.

29. The MRT has appreciated the contentions of the tenant and the landlord in the proper perspective and has rightly dismissed the revision filed by the tenant. Concurrent findings of facts are recorded by the Sub Divisional Officer and the MRT, which are not liable to be interfered with in the extraordinary writ jurisdiction of this Court.

30. ***"Husein Miya Dosumiya"*** (*supra*), was the case in respect of maintainability of the order passed by Mamlatdar under section 29 (1) of the said Act. Said order was challenged in civil court on the ground that the impugned order was ultra vires. The Civil Court held that its jurisdiction is ousted under section 85 (2) of the said Act, as a valid order was passed by the Mamlatdar. The learned Division Bench, in these facts held that if the order passed by the Mamlatdar was not for the purpose of the Act, then it would 'ultra vires' and the order could be challenged in the Civil Court. It is held by the Division Bench that

"The question is whether the opponents are bound to appeal and are prevented or precluded from going to a civil court. In our opinion, on principle it is erroneous to argue that merely because, a statute provides for a right of appeal, the party against whom the order is made is bound to appeal although the order made is a nullity. If the order is a nullity, the party is entitled to ignore it, to treat it as waste paper, and to go to a civil

Court for a declaration that the order is nullity and no action should be taken against the party under the order which would prejudice his rights.”

Said ratio does not help the tenant as the facts of the case in hand are different and the order passed by the Sub Divisional Officer cannot be said to be a nullity only on the ground that the tenant was not made party and was not heard.

31. In *"Vishnu Ganesh Joshi"* (*supra*), the learned Division Bench of this Court was considering provisions of section 15 (2) of the said Act coupled with section 31A, in the facts of that case. In the said case, it is held that *"even condition in clause (c) of Section 31A is required to be satisfied before Tahsildar can give direction that landlord is entitled to retain either whole or part of the land, which is statutorily treated as surrender under section 32P of the said Act"*.

32. Section 31 (a) and (b) is applicable to the facts of the present case, which lays down that if the land cultivated by the landlord personally is less than the ceiling area, then the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make area to the extent of ceiling limits. It is held by the Sub Divisional Officer that the landlord is holding less area than the ceiling limits and, therefore, he is entitled to take possession of the said land in

terms of section 31 (a) and (b) of the said Act. In this view of the matter, the said ruling would not help the tenant's case.

33. For the aforesaid reasons, no illegality or perversity is found in the orders impugned in the present writ petition. There is no substance in the challenge raised by the petitioner. No case is made out by the petitioner to cause interference in the concurrent finding of fact recorded by the authorities below and the Tribunal, in the extraordinary writ jurisdiction of this Court. The writ petition, being devoid of merits, is dismissed. Rule discharged.

34. In view of dismissal of the writ petition, Civil Application No. 3756 of 2018 is also disposed of.

35. At this stage, the learned advocate for the petitioners submits that the petitioners are in possession of said lands and crops sown by the petitioners are standing in the said lands. It is made clear that the petitioners shall be entitled to harvest the crops standing in the said lands as on today.

36. Learned advocate for the petitioners seeks stay to this order for a period of six weeks so as to enable the petitioners to

challenge it before the Hon'ble Apex Court. This order is stayed for a period of six weeks from today.

drp/wp3310-95

[NITIN B. SURYAWANSHI]
JUDGE