

drp

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1083 OF 1999

Mankabai Haribhau Suryawanshi and Others PETITIONERS

VERSUS

Member, M. R. T. Aurangabad and Others RESPONDENTS

Mr. C. R. Deshpande, Advocate for the petitioners
Mr. S. W. Munde, AGP for respondent - State
Mr. B. A. Darak, Advocate for respondent No.2

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th JULY, 2022

ORDER :

1. Challenge in this petition is to the order passed by the Maharashtra Revenue Tribunal, Aurangabad in Review Petition No. 2/C/98/L dated 8th February, 1999.

2. For the sake of convenience, hereinafter the parties are referred as, petitioners as "tenants" and respondent No.2 as "landlord".

3. The landlord, on 18th July, 2019, filed application under section 19 (2), 32 (2) read with section 28 of the Hyderabad Tenancy and Agricultural Lands Act, (hereinafter for short "the

Tenancy Act”) for possession of land Survey No. 61 admeasuring 12 Acre 22 Guntha and land Survey No. 62, admeasuring 19 Acre 37 Guntha i.e. Gut No. 189 situated at village Arajkheda, Taluka and District – Latur.

4. Haribhau Yeda Suryawanshi and Namdeo Yeda Suryawanshi were the protected tenants of land survey No. 61 and 62 to the extent of 11 Acre 8 Guntha, under section 38 E of the Tenancy Act. The remaining land, out of the said Gut number, continued in possession of the tenants. By order dated 31st July, 1987, the Tahsildar allowed the application filed by the landlord. The tenants challenged the order of the Tahsildar in Appeal, before the Deputy Collector (Land Records), which came to be dismissed by order dated 23rd May, 1988. The tenants challenged said order by filing revision before the Maharashtra Revenue Tribunal (“Tribunal” for short), which was dismissed by order dated 27th July, 1989. The dismissal by the Tribunal was challenged by the tenants in Writ Petition No. 2503 of 1989, which was also dismissed on 8th November, 1989.

5. The landlord thereafter, on 14th November, 1989, filed application for execution of the order under section 32 (2) of the Tenancy Act against the tenants. The Additional Tahsildar, after hearing the parties, passed order on 24th May, 1990 directing to

put the landlord in possession of land to the extent of 11 Acre 10 Guntha out of survey No. 61 and to the extent of 19 Acre 37 Guntha out of survey No. 62.

6. Said order dated 24th May, 1990 passed by the Additional Tahsildar was challenged by the tenants in appeal before the Deputy Collector, which was dismissed on 22nd February, 1991. The revision filed by the tenants was partly allowed by the Tribunal by order dated 13th November, 1997 and the orders passed by the Additional Tahsildar and the Deputy Collector were set aside and the landlord was directed to file application under section 21 of the Mamlatdar's Courts Act.

7. The landlord filed review petition before the Tribunal challenging the order passed in the revision. This review is allowed and the order passed by the Tribunal in revision was set aside and the judgment and orders passed by the Additional Tahsildar dated 24th May, 1990 and by the Deputy Collector dated 22nd February, 1991 were confirmed. The Tribunal further directed the Tahsildar to allow the tenants to retain possession of 11 Acre 12 Guntha land on eastern side of survey No. 61 and remaining land to the extent of 11 Acre 11 Guntha towards western side along with survey No. 62 admeasuring 19 Acre 37 Guntha be given to the landlord, by carrying out the

measurement through cadastral surveyor. This order is challenged by the tenants in the present writ petition.

8. Heard learned advocate for the tenants – petitioners, learned Assistant Government Pleader and learned advocate for landlord-respondent No.2.

9. The argument of the tenants that the Tribunal has no power to review its orders passed in revision, is unacceptable in view of the decision of the co-ordinate bench of this Court in ***"Rathunath Gambhirseth V/s Ganpat Motiram and Others" 1953 Bom 284.***

10. During the course of hearing of the review petition, the Tribunal, by taking into consideration the admitted fact that 11 Acre 12 Guntha land, out of survey No. 61, along with well is allotted to the tenant, but, at the time of said declaration, no dimensions of the said land were given, thought it fit to appoint Court Commissioner to verify the exact location of the well. Accordingly, the Court Commission gave exact location of the well.

The Tribunal, therefore, held that out of survey No. 61, eastern side land admeasuring 11 Acre 12 Guntha be kept with the tenants and the remaining land from the said survey No.

admeasuring 11 Acre 11 Guntha and 19 Acre 37 Guntha out of survey No. 62 be given to the Landlord. The Tribunal, by relying on the decision of the learned Single Judge of this Court in **"Sopan Sakharam Bhosale V/s Shaih Maheboob (Died) LRs and Another" 1992 (1) Mh.L.J. 290**, has rightly held that since the Tenancy Act provides procedure and manner for conducting inquiry into the application of possession of land and location of land for taking possession, it is not necessary to follow the procedure laid down under section 21 of the Mamlatdar's Courts Act. The Tribunal, therefore, has rightly modified the order passed by it in revision, by which the landlord was directed to file application under section 21 of the Mamlatdar's Courts Act for possession of the lands claimed by the landlord.

11. The Tribunal has passed a well reasoned order and the tenants have failed to make out any ground to interfere in the same, in extraordinary writ jurisdiction.

12. Learned advocate for the landlord submits that pursuant to the order impugned in the present petition, possession of 31 Acre, 39 Guntha land was handed over to the landlord on 6th and 7th March, 1999 and the tenants have retained 11 Acre 12 Guntha Land. It is, thus, clear that the order impugned in the present petition is executed in the year 1999.

13. In the light of the aforesaid discussion, there is no merit in the writ petition. Writ petition is, therefore, dismissed. Rule discharged.

[NITIN B. SURYAWANSHI]
JUDGE

drp/wp1083-99