

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

WRIT PETITION NO.292 OF 1997

**SHRI. CHANGDEO BHIKA VARDE
VERSUS
NANDKISHOR SHIVNARAYAN KABRA**

...
Advocate for Petitioner : Mr. S. S. Kulkarni h/f Mr. S. D. Kulkarni.

...
CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th JUNE, 2022

PER COURT :

1. This petition filed under Article 227 of the Constitution of India is directed against the order dated 24/10/1996 passed by the learned Member of the Maharashtra Revenue Tribunal, Pune-1, in Tenancy Revision No. MRT.AH.X.2/94, thereby confirming the judgment in Tenancy Appeal No.8/89, passed by the Sub Divisional Officer, Sangamner.

2. On 03/05/1982 the petitioner filed an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'the said Act') before the Tenancy Awal Karkun, Kopargaon seeking a declaration that he is tenant of land Survey No.87/2, admeasuring 2H 78R, situated at Khirdi-Ganesh, Taluka Kopargaon, District Ahmednagar (for short 'the said land'), which was originally owned by the respondent/original landlord. The said application was registered as Tenancy Case No. Khirdi/70-B/82. The Respondent/landlord failed to attend the matter and by judgment

and order dated 31/05/1982 the tenancy case was decided in favour of the petitioner. It was declared that, in view of the provisions contained in Section 70(b) of the said Act, the petitioner is tenant of the said land. Necessary entry to that effect was directed to be taken in 7/12 extract of the said land.

3. Respondent/landlord challenged the said order by filing Tenancy Appeal No.8/89 under Section 74 of the said Act before the Sub Divisional Officer, Sangamner. After hearing the parties, appeal filed by the respondent was allowed and the order passed by the Tenancy Awal Karkun, Kopargaon was set aside and the application filed by the petitioner under Section 70(b) was dismissed. The petitioner unsuccessfully challenged the order passed by Sub Divisional Officer before the Maharashtra Revenue Tribunal, Pune-1, in proceedings No. MRT.AH.X.2/94. The petitioner filed the present petition being aggrieved by the orders passed by Sub Divisional Officer and the Maharashtra Revenue Tribunal.

4. Heard Mr. S. S. Kulkarni, learned advocate h/f Mr. S. D. Kulkarni, learned advocate for petitioner. None appears for the respondent.

5. Admittedly, the suit land was originally owned by the petitioner's father who died in the year 1939. After two to three months of his father's death, due to some family problems the said land was sold by petitioner to Kanahyalal Mohanlal, the predecessor

of respondent. Name of the predecessor of respondent was entered in the 7/12 extract. Thereafter, in family partition the said land has come to the share of respondent. Since there was some litigation going on between the petitioner and respondent's predecessor, the said land remained fallow.

6. As the said land remained fallow, the Prant Officer, Sangamner on 06/03/1951 passed order of assumption of the said land under Section 65 of the said Act, in case No. WS/111/821/51 and allotted the management of the said land to Mamlatdar Kopargaon. Thereafter, the Mamlatdar, Kopargaon leased out the said land to petitioner on 18/02/1951. Since then the petitioner continued to be in possession of the said land.

7. While allowing the application filed by petitioner under Section 70(b), the Awal Karkun has relied on the report of Additional Tahsildar, Kopargoan, wherein it is mentioned that the said land was originally in possession of Bhika Vithu Varde before assumption and also after the assumption order and since the possession of the said land was never taken away from the petitioner, the Awal Karkun treated the petitioner as tenant of the said land and therefore, allowed the application filed by the petitioner.

8. In view of the fact that the suit land was taken under the management by the Government under Section 65 of the said Act

in the year 1951 and while it was under the management of Mamlatdar, it was leased out to the petitioner and the management of the said land was terminated on 15/10/1973 and the said land was ordered to be handed over into the possession of original land owner, the Sub Divisional Officer has rightly set aside the order passed by the Awal Karkun and dismissed the application filed by the petitioner.

The Sub Divisional Officer, has also recorded a finding that the said land was kept fallow for more than two years and therefore, it was taken under the management by the Government, and therefore, it was not in possession or under *Wahiwat* of the petitioner, before it was taken over. It is further observed that there is no evidence to show that the petitioner tried to obtain possession of the said land within a period of two years. At the time of taking over the management of the said land, it was not in possession of the petitioner and after the management was taken over the same was leased to the petitioner. The Sub Divisional Officer, therefore, is justified in coming to a conclusion that lease cannot create tenancy in favour of the petitioner and after termination of management of the Government the original owner/respondent to whom the land was sold, is entitled to receive the possession. These findings of the Sub Divisional Officer are confirmed by a well reasoned order passed by the Maharashtra Revenue Tribunal.

9. Learned advocate for petitioner strongly urged that on tillers' day the petitioner was in possession of the said land and therefore, he is deemed to be a tenant. The order passed by the Awal Karkun, therefore, is correct and the Sub Divisional Officer had no reason to interfere in the said order.

10. It is a matter of record that the land was under the management of Government on the tillers' day and the petitioner was in possession of the said land on the basis of lease granted by the Mamlatdar. In that view of the matter, the petitioner cannot be said to be a tenant as the said land was in his possession as a lessee of the Government. Therefore, argument of the petitioner that he was in possession of the said land as a tenant of the said land is liable to be rejected.

11. The Sub Divisional Officer and the Maharashtra Revenue Tribunal have properly appreciated the contentions of both the parties and have passed well reasoned orders. There is no illegality or perversity in the impugned orders. No case is made out by the petitioner to warrant exercise of extraordinary writ jurisdiction. The writ petition is, therefore, dismissed. Interim relief granted earlier is vacated. Rule discharged. No costs.

(NITIN B. SURYAWANSHI, J.)