

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4211 OF 2018

Ganga Bhima Bhalerao & others

Petitioners

Versus

The State of Maharashtra & others

Respondents

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for the petitioners.

Mr. K. B. Jadhavar, AGP for respondents No. 1 to 7.

Mr. V. D. Hon, Senior Counsel instructed by Mr. A. V. Hon, Advocate for respondents No. 8, 9A, 9B, 10 and 11.

CORAM : Mangesh S. Patil, J.

DATE : 19 JULY 2022.

PER COURT :

Heard. The learned advocates and AGP request for the matter to be heard and decided finally.

2. The petitioners are aggrieved by the order passed by the Tahsildar, Rahata, dated 11.01.2018, in a proceedings initiated by the petitioners under Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter 'the Act'), seeking eviction of the contesting respondents.

3. The petitioners claim to be the successors of the original tenant in whose favour a purchase certificate under Section 32-M of the Act was issued. The contesting respondents, who are the successors of the original landlord, allegedly took back the possession. The petitioners had preferred a proceedings under Section 84 of the Act for eviction in Tenancy Case No. 2/1985 in the year 1985. By the order dated 25.05.2000, the then Sub Divisional Officer had directed the Tahsildar to record statements of the parties, inquire into and to submit a report. According to the petitioners, since thereafter, they were pursuing the matter with the concerned Tahsil office, but there was no response. Nothing was informed about further inquiry and even the papers were missing. Pointing out the earlier order, a fresh petition under Section 84 of the Act was submitted before the learned Sub-Divisional Officer, Shirdi. After hearing both the sides, by order dated 27.01.2017, the learned Sub-Divisional Officer allowed the appeal partly and directed the Tahsildar, Rahata, to undertake fresh inquiry and to pass appropriate order. Thereafter, by the order under challenge, the Tahsildar, Rahata, has refuted petitioners' claim by pointing out as to how their claim would not lie under Section 84 of the Act.

4. The learned advocate Mr. Jahagirdar for the petitioners would submit that there is no dispute about the fact that the petitioners' predecessor was issued with a certificate under Section 32-M of the Act and that he was a purchaser of the land. In spite of their earlier attempt to evict the contesting respondents, which was filed way back in the year 1985, the concerned Tahsildar had not conducted an inquiry. The subsequent proceedings, which was also styled as one filed under Section 84 of the Act, was nothing but a sequel to the earlier application. Since the papers were not traceable and nothing was being done, once again, an attempt was made. The learned Sub-Divisional Officer once again had directed the Tahsildar to undertake a fresh inquiry. Mr. Jahagirdar would submit that since it was a proceedings under Section 84 of the Act, it is only the Collector or his delegate - the learned Sub-Divisional Officer, had the jurisdiction to pass the final order in the proceeding. Though the learned Sub-Divisional Officer had called upon the Tahsildar to pass appropriate order, in the facts and circumstances of the case, it should have been borne in mind by the Tahsildar that he had no jurisdiction to pass any final order in such a proceeding and he ought to have submitted a report to the learned Sub-Divisional Officer so that the latter could have passed a final order.

Mr. Jahagirdar further submits that the order passed by the Tahsildar, therefore, would go to the root of jurisdiction. There is no alternate remedy available to the petitioners to assail the order passed by the Tahsildar. The order may be quashed and set aside and he be directed to submit a report to the Sub-Divisional Officer, calling upon him to decide the petitioners' proceeding under Section 84 of the Act.

5. The learned Senior advocate Mr. Hon and learned AGP would raise a preliminary objection regarding availability of alternate remedy of appeal under Section 74 and revision under Section 76 of the Act since the order has been passed by the Tahsildar.

6. Learned Senior advocate Mr. Hon would further submit that the petitioners ought to have challenged the order passed by the Sub-Divisional Officer directing the Tahsildar to undertake a fresh inquiry and to pass orders. The petitioners having suffered the order, they are not entitled to question the jurisdiction of the Tahsildar to pass appropriate order. If pursuant to such unquestioned directions of the learned Sub-Divisional Officer, the Tahsildar has passed the order, the petitioners cannot be allowed to question his jurisdiction.

7. Mr. Hon would further submit that after going through all the facts and circumstances and the record of his office, the Tahsildar has reached an objective conclusion which is neither perverse nor arbitrary and is strictly in accordance with law and need not be interfered with.

8. As far as the happenings are concerned, there is not much of a dispute. The petitioners had filed a similar proceedings under Section 84 of the Act way back in the year 1985. It was entertained by the learned Sub-Divisional Officer. By his order dated 25.03.2000, he had directed the Tahsildar, Rahata, to undertake an inquiry, record statements and to submit an objective report within three months. The stand of the petitioners that nothing happened in the office of the Tahsildar pursuant to these directions, remains uncontroverted. Even in the reply, the contesting respondents have not stated that pursuant to such directions, any inquiry was held and any report was submitted.

9. Precisely for this reason, narrating this history, the petitioners once again filed another proceedings under Section 84 of the Act. The learned Sub-Divisional Officer, as can be seen from the

order passed, was alive to the fact that such an order was passed on earlier occasion and for the reasons mentioned in the order, he directed the Tahsildar to undertake a fresh inquiry.

10. It is to be borne in mind that the petitioners were seeking a relief under Section 84 of the Act. The power to grant such relief vests in the Collector as can be seen from the wording of the provision. It appears that there is no dispute about the Sub-Divisional Officer having been subsequently delegated the powers to conduct the proceedings. The fact remains that going by the wording of the section, the Tahsildar cannot grant any relief under Section 84 of the Act.

11. Once having seen such a position in law, even if the learned Sub-Divisional Officer in his order dated 27.01.2017, had called upon the Tahsildar to undertake a fresh inquiry and to pass appropriate order, the latter ought to have understood the limitation on his powers, particularly his jurisdiction, taking note of the fact that it was a proceeding under Section 84 of the Act under which he could not have passed any final order.

12. If the direction of the learned Sub-Divisional Officer is understood in the abovementioned context, he was merely expecting the Tahsildar to undertake an inquiry and to submit a report. Merely because the learned Sub-Divisional Officer had used the word 'order', the Tahsildar could not have passed the order under challenge touching the merits of the matter and finding the petitioners' claim under Section 84 of the Act to be not maintainable. It would have been legal and appropriate for him to have undertaken whatever inquiry he was expected to conduct and to submit his report to the learned Sub-Divisional Officer, who thereafter alone could have finally decided the proceeding.

13. That being not the case, the order passed by the Tahsildar under the purported exercise of powers under Section 84 of the Act is sans any jurisdiction and is null and void. He will have to submit a report as was expected by the learned Sub-Divisional Officer under his order dated 27.01.2017.

14. Though the submission of Mr. Hon that the petitioners could have but had not challenged the order of the Sub-Divisional Officer dated 27.01.2017, is attractive enough, the stand of the

petitioners that they were merely hoping the Tahsildar to submit a report since the jurisdiction was not vesting in him but in the learned Sub-Divisional Officer, cannot be said to be wholly untenable.

15. So far as the question of alternate remedy of appeal under Section 74 and revision under Section 76, it is to be borne in mind that none of these remedies are available to an order passed under Section 84 of the Act.

16. In view of above, the writ petition is allowed. The impugned order passed by the Tahsildar is quashed and set aside. He shall now undertake an inquiry and submit a report to the learned Sub-Divisional Officer, who thereafter shall decide the proceeding in accordance with law. It is made clear that nothing has been expressed touching the merits of the matter.

(MANGESH S. PATIL)
Judge