

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1589 OF 1997

Navamal Shobhachand Gandhi
(since deceased) through Legal Heirs
Sonibai Navalmal Gandhi & Ors.

.. Petitioners

Versus

Ganpat Bendu Jadhav
(since deceased) through Heirs and Lrs.
Saraswati Ganpat Jadhav & Ors.

.. Respondents

-
- Mr. C.M. Kothari for Petitioners
 - Mr. Yogesh Patil i/by Mr. Vijay Patil for Respondents
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 08, 2022

ORDER:

1. By the present petition filed under Article 227 of the Constitution of India, Petitioners have challenged the legality and validity of the following:-

- (i) Judgment & Order dated 15.11.1994 passed by the learned Tahsildar and A.L.T., Roha under Section 70B of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short "**Tenancy Act**");
- (ii) Judgment & Order dated 30.11.1995 passed by the Sub-Divisional Officer, Mangaon in Tenancy Appeal No. 1 of 1995; and
- (iii) Judgment & Order dated 25.10.1996 passed by the

Maharashtra Revenue Tribunal (for short **“MRT”**) in Revision Application No. Ten.A. 103 of 1996.

2. The Tahsildar by his Judgment & Order dated 15.11.1994 rejected the claim of the Petitioners as statutory tenant in respect of land bearing Gat No. 302 admeasuring 42.2 R. situated at Village Varavatane, Taluka Roha, District Raigad (for short **“the said land”**). The Judgment & Order passed by the Tahsildar was upheld in Tenancy Appeal by the S.D.O. and further upheld in Revision proceedings by the MRT. Thus, Petitioners are faced with three concurrent orders passed by the Authorities in Tenancy proceedings under the said Act.

3. Before I advert to the submissions, it would be necessary to refer to such of the relevant facts as are necessary for deciding the present writ petition.

3.1. According to Petitioners, original Petitioner – Navalmal Gandhi purchased the said land from the original owner Mr. Potnis by a registered sale deed dated 01.02.1988 and obtained possession of the same. The said land was part of old Survey No. 127 admeasuring 5 Acres 80 Gunthas. The remaining land was in the possession of several other tenants. Admittedly, father of Respondents was a tenant in respect of 29.5 Gunthas of land therein. That in respect of all other lands and the said land, purchase price was fixed in the year 1962. However, the said land admeasuring 42.2 acres stood in the name of

Mr. Potnis in the revenue record and was given a separate Gat No. 302. Petitioners claim to have purchased the said land from Mr. Potnis by registered sale deed.

3.2. Respondents are legal heirs of deceased Bendu Jadhav. On 08.02.1992, some of the Respondents filed Application under the provisions of Section 70(B) of the Tenancy Act seeking declaration of tenancy in the name of Bendu Jadhav i.e. their predecessor-in-title in respect of the said land. After following the due process of law, by Judgment and Order dated 15.11.1994, Respondents were declared as tenants of the said land.

3.3. Being aggrieved, the Petitioner filed Tenancy Appeal No. 1 of 95 before the SDO, Mangaon. By Judgment & Order dated 30.11.1995, the Tenancy Appeal came to be dismissed.

3.4. Petitioner thereafter filed Revision Application against dismissal of Tenancy Appeal before the MRT By Judgment & Order dated 25.10.1996, Revision Application was dismissed.

3.5. Hence, the present petition.

4. Mr. Kothari, learned Advocate for Petitioners submitted that in the facts and circumstances of the present case, the evidence led by the Respondents in their Tenancy Application proceedings before the Tahsildar & ALT itself negates the Respondents' claim for tenancy. He

submitted that it has come in the evidence of Respondents that in the year 1962, Respondents' father i.e. Bendu Jadhav was the holder of 29.5 Gunthas of land and purchase price was fixed in 32G proceedings in respect of that land held by him. It is contended that Respondents' father was admittedly not the tenant of the said land admeasuring 42.2 R. and this land was in the possession of the original owner Mr. Potnis until 1988 when it was sold to the original Petitioner. It is further argued that if in 1962 the purchase price of all other lands in Survey No. 127 was fixed in the statutory proceedings, there was no reason for Respondents to have waited until 1992 to file their Tenancy Application for seeking declaration under the Tenancy Act. Petitioners have also challenged the four rent receipts produced in evidence by Respondents before the Tahsildar on the ground that the said receipts did not pertain to the said land. Mr. Kothari has vehemently argued that in the instant case, the Consolidation Officer had modified and certified Mutation Entry No. 631 and entered the name of Bendu Jadhav i.e. father of Respondents as tenant in the column of other rights in the Revenue record in 1992 i.e. immediately before the Tenancy Application for declaration was filed by them. He submitted that the original Petitioner was kept in the dark, though he was a bonafide purchaser for value of the said land by a registered sale deed in 1988. That name of Bendu Jadhav appearing as tenant in respect of a portion of land within Survey No. 127 was not in respect

of the said land. That the said land was not tenanted land or under cultivation with the tenant and it always remained in possession of the original owner Mr. Potnis until it was purchased by the original Petitioner. He therefore submitted that the entry effected by the Consolidation Officer of mutating the name of Bendu Jadhav in respect of the said land was an inadvertent mistake. He further submitted that the learned Tahsildar in his Judgment and Order failed to decide the issue of tenancy on its own merits and therefore, the Judgment & Order proceeds on the pre-conceived notion that Respondents are tenants of the said land and therefore entitled to declaration as tenants. Hence, he submitted that the concurrent findings returned by all three Authorities below deserve to be quashed and set aside.

5. *PER CONTRA*, Mr. Patil, learned Advocate for Respondents has referred to and relied upon the Judgments and Orders passed by the three statutory Authorities below and contended that the reading of the primary judgment dated 15.11.1994 passed by Tahsildar, Roha clearly records a finding with respect to the right, use and entitlement of the said land by the predecessor-in-title of the Respondents since prior to 1956. The said Judgment also records and returns a finding based upon documentary evidence placed on record by Respondents in the form of rent receipts since 1956. That challenge of the

Petitioner(s) to Mutation Entry No. 361 before the SDO in a separate proceeding having been rejected; hence in view thereof the Judgments and Orders have been passed on the basis of evidence before the Authorities and cannot be faulted with. He has therefore prayed for dismissal of the writ petition.

6. Submissions made by the learned Advocates have been duly considered. Record and pleadings in the case have been perused. All three Judgments & Orders passed by the Tahsildar, Roha (15.11.1994), SDO (30.11.1995) and MRT (25.10.1996) have been carefully seen.

7. It is seen that one of the principle grievance of the Petitioners is with respect to Mutation Entry No. 361 carried out by the Consolidation Officer in respect of the said land, by which name of the predecessor-in-title of Respondents came to be entered. According to Petitioners, the Mutation was due to a mistake which continued on record. However, record indicates that Petitioner(s) being aggrieved with the said Mutation Entry had filed a statutory Appeal before the Dy. S.D.O. Mangaon which was dismissed and Mutation Entry No. 361 was confirmed. No further appeal / Revision against the S.D.O.'s order was filed by the Petitioner(s). This finding is specifically returned in the Judgment & Order of the Tahsildar dated 15.11.1994. That apart pertinent documentary evidence in the form of rent receipts

since 1956 issued in favour of Bendu Jadhav in respect of the said land have also been placed on record. Further conclusion arrived at by the learned Tahsildar on the basis of the evidence placed before him that Respondents' right of cultivating the said land since long was borne by the record and LC No. 8839 clearly confirmed that area admeasuring 1 Acre 9 Gunthas out of old Survey No. 127 was not sold and therefore Respondents were entitled to declaration of tenancy sought by them. Perusal of Judgment dated 15.11.1994 clearly records these findings on the basis of substantial material produced by the Respondents. This material produced before the learned Tahsildar is in the form of rent receipts in respect of the said land, documentary evidence to show that since 1956 onwards Respondents' predecessor-in-title was cultivating rice and paddy and some portion of the said land was Workers land. Admittedly original Petitioner came into the picture in respect of the said land by virtue of his sale deed dated 01.02.1988. However, it appears that Petitioner(s) never visited the said land until the inquiry conducted by the Tahsildar in the year 1994 pursuant to filing of the Tenancy Application by Respondents. It is pertinent to note that Petitioner has not led any evidence before the Tahsildar in rebuttal of Respondents' case. Petitioners cannot prove the affirmative in their favour by negating the evidence and finding discrepancy in the evidence led by Respondents before the Tahsildar. In absence of any positive evidence on behalf of

Petitioners, Petitioners' case fails. There is no positive evidence led by Petitioners to buttress the argument that the said land was open / barren / unused land and it stood in the name of the original owner Mr. Potnis save and except the pleadings in the Writ Petition. None of these orders support the Petitioners' agreement. It is further pertinent to note that Respondents led oral as well as documentary evidence before the Tahsildar in the Tenancy Case. That both the Appellate and Revisional Authorities in their judgments have stated that they have carefully perused the record and considered the plea of the Petitioners. Both Authorities have returned and upheld the finding that record of the case clearly indicated that Bendu Babaji Jadhav and Bhiva Babaji Jadhav were cultivating the said land from 1953-54. That the record further indicated that the crop and cultivation column for the year 1956-57 showed that predecessor-in-title of the Respondents was cultivating 1 Acre 9 Gunthas of land out of old Survey No. 127. Rent receipt dated 14.12.1956 has been seen and confirmed by the Appellate and the Revisional Authorities which was placed at page No. 179 of the Trial Court's record. Hence, in view of the aforementioned concurrent findings and clear appreciation of evidence, none of the orders passed by the Tahsildar, SDO and / or the MRT call for any interference by this Court whatsoever. The Judgments and Orders impugned by the Petitioners in the present Writ Petition are confirmed.

8. Writ Petition is dismissed. Rule discharged.

[MILIND N. JADHAV, J.]

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signed by
RAVINDRA
MOHAN
AMBERKAR
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