

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

WRIT PETITION NO. 6103 2021

1. Yuvraj s/o. Gulab Koli .. Petitioner
Age. 54 years, Occ. Agri.,
R/o. Machale, Tq.Chopda,
Dist. Jalgaon.

Versus

1. The Sub-Divisional Officer .. Respondents
Amalner,Tq. Amalner, Dist. Jalgaon.
2. The Tahsildar and Agricultural Lands Tribunal
Chopda, Tq. Chopda, Dist. Jalgaon.
3. Sumati Bhimrao Nikam
(Name after marriage Sumati Chandrakant Kadam)
Age. 62 years, Occ. Household,
R/o. Machale, Tq. Chopada, Dist. Jalgaon,
At Present R/o. Flat No.2, Shiv Nandan,
B-2, Opp. Shubhecha Mangal Karyalay,
Left Bhusari Colony, Kothrud Depot, Pune,
Dist. Pune.

Mr. Prakashsingh B. Patil, Advocate for the petitioner.

Mr. K.B. Jadhavar, Advocate for respondent Nos. 1 and 2.

Mr. V.B. Patil, Advocate for respondent No.3.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	13.06.2023
PRONOUNCED ON	:	06.07.2023

ORDER : -

01. This petition is by a person claiming to be a tenant in the

agricultural land of respondent No.3.

02. The facts as stated in the petition are that father of the petitioner was inducted by the landlady in her land, bearing land Gut number 8/1, admeasuring 1 hectare 86 R – 3.07 pk. total 4 hectare 93 R, on the basis of annual rent. Since the father was cultivating the land, his name was entered in the cultivation column of the land. The entries were taken since 1985 till 1991. However, thereafter, his name was not shown till 2000-2001. The petitioner, therefore, filed an application and entered his name in the cultivation column. As per his case, after his father he continued to cultivate the land. The said order attained finality.

03. The petitioner was cultivating the land and was in possession thereof. He filed an application under section 32G of the Maharashtra Tenancy and Agricultural Lands Act (For Short “MTAL Act”), as a tenant for determination of the purchase price of land. However, on finding that the said application is not maintainable, he filed an application for converting said application and treating it to be under section 70-D of the MTAL Act. The Tahsildar allowed the application and also allowed the tenancy case No. 1/14.

This order came to be challenged by respondent No.3 by filing tenancy appeal No. 20 of 2016. The learned Sub-Divisional Officer by his judgment and order rejected the appeal of the respondent. The respondent challenged the order passed by learned Sub-Divisional Officer on 02.01.2019. The learned Member, Maharashtra Revenue Tribunal (MRT) allowed the revision and set aside the order passed by the Tahsildar, Chopda and the order passed by the learned SDO Amalner, declaring the petitioner as a tenant by judgment and order dated 20.10.2020.

04. However, by the time of filing of the revision before the MRT sale-deed was already executed in favour of the petitioner by the Tahsildar on 22.09.2017 and petitioner's name came to be mutated. The petition is filed before this Court challenging the order passed by the learned Member, MRT. In view of subsequent development that took place after filing of the petition, the petitioner sought amendment and petition came to be amended challenging the subsequent order dated 16.04.2021, thereby respondent No.1-SDO passed order and acted upon the order passed by the MRT. By this order, the learned SDO, Amalner cancelled the order passed in Tenancy/SR/1002/16 dated 05.07.2017 and sale certificate came to be issued

on that basis. Now, two orders are under challenge; one passed by the learned Member, MRT, setting aside earlier orders holding the petitioner as a tenant and deciding purchase parts of the land and subsequent orders cancelling the sale certificate in respect of the land.

05. The learned advocate for the petitioner submits that the possession of the petitioner is longstanding. The Tahsildar had already passed order under section 70(b) and held the petitioner to be a tenant and further issued sale certificate. The landlady-respondent No.3 approached the MRT after unreasonable delay when the right had already accrued in favour of the petitioner. The respondent could not have challenged the order before the MRT after the sale certificate was issued. It is further submitted that the learned Member, MRT also failed to appreciate this fact and has wrongly passed the order.

06. As against this, the learned Advocate for the respondents vehemently argued that by going to the definition of section 2(16) defining 'rent' as any consideration by a tenant for purchase or occupation of the land and shall not include rendering of any personal service or labour. Section

2(18) of the Act defines 'tenant' as a person, who holds land on lease and includes a person who is deemed to be a tenant under section 4. He thus submits that for becoming a tenant, a person has to show that he is covered by section 2(18). Clause (a) of section 2(18) requires a person to be tenant under section 4 of the Act. He submits that in this case, the petitioner has failed to show that he was lawfully cultivating the land, and thus supports the order. He further relies upon sections 105 106, 107, 117 of the Transfer of Properties Act and submits that in this case, the petitioner was holding the land merely on the basis of contract, and thus he cannot be said to be a tenant.

07. The learned Advocate for respondent No.3 further submits that proceedings under section 32-G is of substantive nature and cannot be converted into proceeding under section 70(b). In any case for treating application under section 70(b) the Tahsildar has to follow the proceeding under section 70(a). It was necessary for the Tahsildar to decide the status of the tenant first and then to proceed further. Independent procedure is given under section 71 and 72 of the Act. The Tahsildar has failed to follow that procedure. He submits that even application under section 70 requires to be

in specific format. On facts he submits that the petitioner has not shown as to how he has paid lease rent, and thus has totally failed to prove the lease and thus he submits that the learned Tahsildar as well as learned SDO have recorded perverse findings without there being any material on record. The entries in 7/12 extract are taken for the fiscal purposes and could not have been relied upon. His main submission is that once section 70(b) goes, naturally the proceeding under section 32-G also goes. Under section 32G proceedings cannot stand independent of section 70.

08. The learned AGP supports the order passed by the learned Member, MRT and also supports the action of the authorities.

09. The relevant provisions of the MTAL Act are quoted as below :-

Section 2 (16) "Rent" means any consideration, in money or kind or both, paid or payable by a tenant on account of the use or occupation of the land held by him but shall not include the rendering of any personal service or labour;

Section 2 (18) "tenant" means a person who holds land on lease and include -
(a) a person who is deemed to be a tenant under section 4;
(b) a person who is a protected tenant; and
(c) a person who is a permanent tenant; and the word
"landlord" shall be construed accordingly;

10. This court finds that a person has to prove that he was lawfully

inducted person in the land, paying lease/rent to the landlord. For the proceeding under section 70(a) different procedure is prescribed under sections 71 and 72 of the Act. Sections 71 and 72 of the MTAL Act read as under :-

Section 71 :- 1. Commencement of proceedings - Save as expressly provided by or under this Act, all inquiries and other proceedings before the *Mamlatdar* or Tribunal shall be commenced by an application which shall contain the following particulars:-

- (a) the name, age, profession and place of residence of the applicant and the opponents;
- (b) a short description and situation of the property of which possession is sought, or the amount of the claim, as the case may be;
- (c) the circumstances out of which the cause of action arose;
- (d) a list of the applicant's documents, if any, and of his witnesses, and whether such witnesses are to be summoned to attend or whether the applicant will produce them on the day of the hearing;
- (e) such other particulars as may be prescribed.

72. Procedure. - In all inquiries and proceedings commenced on the presentation of applications under section 71 the *Mamlatdar* or the Tribunal shall exercise the same powers as the *Mamlatdar's* court under the *Mamlatdars' Court's Act*, 1906, and shall [save as provided in section 29] follow the provisions of the said Act as if the *Mamlatdar* or the Tribunal were a *Mamlatdar* Court under the said Act and the application presented was a plaint presented under section 7 of the said Act. In regard to matters which are not provided for in the said Act, the *Mamlatdar* or the Tribunal shall follow the procedure as may be prescribed by the [State] Government. Every decision of the *Mamlatdar* or the Tribunal shall be recorded in the form of an order which shall state reasons for such decision.

11. The judgments which are relied upon by the parties are also required to be considered. The learned advocate for the petitioner relied

upon a judgment reported in (1996) 6 SCC 660 in the case of United Bank of India Vs. Naresh Kumar and Ors. to submit that substantive rights should not be allowed to be defeated on technical grounds or procedural irregularities so as to ensure that no injustice is done to any of the parties.

12. The learned Advocate for the respondents relied upon judgment reported in (i) AIR 1996 SC 223 in the case of Hanmanta Daulappa Nimbal Vs. Babasaheb Dajisaheb Londhe (ii) 2012 (2) Mh.L.J. 151 in the case of Rajaram Hiralal Bhoi Vs.Chintaman Waman Sathe and ors. (iii) 2021 DGLS(SC) 439 in the case of Jitendra Singh Vs. State of Madhya Pradesh & Ors.

13. In the case of Hanmanta (Supra), it was a case under BTAL Act. A specific question was posed before the court as to whether any tenancy right in respect of the land in question was there in favour of a person claiming to be a tenant. The court specifically considered section 4 of the Act i.e. a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant and considered that the circumstances that needs to be considered as to whether such person has made payment of land revenue to the

government through Tahsildar. In such cases, the burden is on the tenant who claims to be in lawful possession. There needs to be evidence to show the tenancy and mere entries in the revenue record cannot establish lawful possession. In that case, admittedly no notice was given to the respondent before taking entries in the revenue record. In the present case, though statement is made that the entries in 7/12 extracts were taken by giving notice, however, no material is produced.

14. In the case of **Rajaram Hiralal Bhoi (Supra)**, this court considered provisions of section 70(b). In that case, the Agricultural Lands Tribunal had given a finding in favour of a person claiming to be a tenant and allowed application under section 70(b). In that case, the tenant had failed to discharge the duty to prove the tenancy. No rent receipt or tenancy agreement was produced on record. In that case, earlier tenancy application was unconditionally withdrawn. In that case two Nokarnamas were placed on the record. However, those could not prove relationship of landlord and tenant. Thus, it was held that the tenant person had failed to prove the tenancy.

15. In the judgement in the case of Jitendra Singh (Supra), the Hon'ble Apex Court considered similar issue under the Madhya Pradesh Rent Act. In that case, there were mutation entries in the revenue record. The petitioner therein had submitted an application to mutate his name on the basis of alleged sale deed. However, the sale deed was disputed. The question is answered that the mutation entry does not confer any title, right, interest in favour of a person and the mutation entry is only for the fiscal purposes.

16. Considering all these judgments, this Court finds in the present case that only averment is that the petitioner's father was inducted in the land in the year 1985. However, from the year 1991 till 2000, even such entries were not taken. It is only after the petitioner filed application, his name was again taken in 7/12 extract. This court finds substance in the submission of respondent No.3, that section 70(b) is different than the proceedings under section 32-G. A notice was issued by the Tahsildar. However, same appears to be not served on respondent No.3. Therefore, notice was served by paper publication. Thus, no personal notice was served upon her. While considering the application, the Tahsildar has casually converted proceeding under section 32G to one under section 70(b) of the Act. From the conclusion it is seen that

only on the basis of power of attorney executed by respondent No.3, the petitioner was in possession. Further conclusion is that since 12 years, the petitioner is cultivating land, and he was inducted in lawful manner. The Tahsildar has held that the petitioner satisfied the condition under section 4. The learned SDO also has considered only this aspect. The order of the SDO shows that, in fact, he has held everything in favour of respondent No.3. However, still in the operative order, he dismissed the appeal. The order is therefore apparently perverse.

17. On going through the order passed by the learned Member, MRT, it is seen that the learned Member has rightly considered all the aspects involved in the matter. It is rightly considered that the entries in the cultivation column in the name of the petitioner was only for the specific year 2001. It is rightly appreciated that there is no cogent or coherent evidence to confer the status of a tenant. Mere possession for 12 years uninterrupted would not be sufficient to confer status of the tenant in view of section 4 of the Act and this Court finds that there is no perversity in the order passed by the learned Member, MRT. The petitioner has not made out a case to cause any interference in the impugned order.

18. So far as the aspect of execution of sales certificate is concerned, same was on the basis of order, which is now held to be illegal and is set aside and therefore, the same also has to go. This Court thus finds that in view of that the cancellation of sales certificate also deserves to be accepted. Thus, this Court finds that the petitioner has not made any ground to call for interference in the impugned order. The writ petition, therefore, deserves to be dismissed and same is hereby dismissed.

[KISHORE C. SANT, J.]