

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

WRIT PETITION NO. 13330 OF 2021

Wamanrao Yadavrao Bhosale,
Age : 73 years, Occu. : Agri.,
R/o Matola, Tq. Ausa,
Dist. Latur.

.. Petitioner

Versus

1. The State of Maharashtra
Through the Secretary,
Department of Revenue,
Mantralaya, Mumbai-32.
2. The Minister of State for Revenue,
Maharashtra State, Mantralaya,
Mumbai-32.
3. The Divisional Commissioner,
Aurangabad Region, Aurangabad.
4. The Additional Collector, Latur,
Dist. Latur.
5. The Sub Divisional Officer,
Latur, Dist. Latur.
6. The Tahsildar, Ausa,
Tq. Ausa, Dist. Latur.
7. Satish Subhash Bhosale,
Age : 45 years, Occu. Agri.,
R/o Matola, Tq. Ausa,
Dist. Latur.
8. Kalyan Gulab Bhosale,
Age : 63 years, Occu. : Agri.,
R/o. Matola, Tq. Ausa,
Dist. Latur.

.. Respondents

Mr. B. N. Patil, Advocate for the Petitioner.
Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 to 6.
Mr. S. B. Gute, Advocate for Respondent No. 7.
Mr. M. M. Joshi, Advocate for Respondent No. 8.

CORAM : KISHORE C. SANT, J.

DATED : 13th JULY, 2023.

P C. :-

. The petitioner has assailed the order and judgment passed by the Hon'ble Revenue Minister of State, dated 07.08.2019 in Appeal No. 2019/PK.25/J-7(A). By the impugned judgment the Hon'ble Minister has quashed and set aside the judgment and order passed by the Divisional Commissioner, Aurangabad Division, Aurangabad in Revision No. ROR/Rev/32/2014. The facts in short giving rise to the present petition are as below :

2. The father of the petitioner was a protected tenant under Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act (hereinafter referred to as HTAL Act) and was declared as such by order dated 31.01.1963 passed by the Naib Tahsildar, Land Records, Ausa. The said order was challenged before the Deputy Collector, Latur bearing Appeal No. 19/1963 by the landlord. The said appeal also came to be rejected. The owner thereafter filed a suit bearing RCS No. 90/1964 in the Court of Civil Judge Junior Division, Ausa and the same was dismissed. Against the said dismissal the owner filed an appeal bearing RCA No.

172/1965 and the same also came to be dismissed by judgment and order dated 24.11.1966. The father of the petitioner died in 1974 and till then he was in possession. The original land owner namely Bhimrao also died in the year 1973. Sons of deceased Bhimrao started obstructing possession of the petitioner and therefore he was required to file a suit seeking declaration and injunction. The said suit was decreed in favour of the petitioner. The appeal filed against that decree also came to be dismissed. The Second appeal was preferred and that appeal also came to be dismissed. Later on the sale certificate came to be issued under the HTAL Act in favour of the petitioner under Section 38 (6). Thus, all the Courts are in favour of the petitioner.

3. Thereafter, a suit came to be filed bearing RCS No. 80/1976 by the petitioner showing present respondent Nos. 7 and 8 as defendant Nos. 3 and 4. The defendant No. 5 in the said suit entered into compromise. The suit was decreed only against defendant Nos. 3 and 4. The petitioner came to be declared as owner of the land by way of judgment and order dated 07.10.2003. The present respondents preferred appeals bearing RCA Nos. 166/2002 and 171/2003. Both the judgments came to be dismissed and the second appeal against both the judgments also came to be dismissed.

4. Against the second appeal the respondents even approached the Hon'ble Apex Court, there also the SLPs came to be dismissed. Thus, the tenancy rights of the petitioner have attained finality till the Hon'ble Apex Court. However, again the respondents started proceeding claiming that the father of the petitioner was not tenant. The Tahsildar allowed the said application. The petitioner therefore preferred appeal before the Deputy Collector and the same came to be dismissed. The petitioner and his brothers therefore preferred revision application in the Maharashtra Revenue Tribunal (MRT). The said revision came to be allowed by the learned Member, MRT by way of judgment and order dated 11.09.2013 by setting aside the orders of the lower authorities. The judgment of the MRT was challenged by respondents by filing Writ Petition No. 7826/2013 in this Court and the same came to be dismissed by the judgment and order dated 04.12.2014 by considering the observations in the judgment in Second Appeal No. 548/2007.

5. In spite of this position, the respondent Nos. 7 and 8 again filed an application and got their names recorded in 7/12 extract. The said entry came to be sanctioned by the Circle Inspector. This petitioner therefore was required to file an application to cancel the mutation entries. The petitioner had approached the Additional Commissioner.

The Additional Commissioner allowed the application and cancelled the mutation entries in the name of respondent Nos. 7 and 8. However, the respondent Nos. 7 and 8 filed review application before the Additional Commissioner. The review application came to be allowed by the Commissioner. The petitioner challenged judgments passed by the Additional Commissioner in review by filing revision application before the Hon'ble Minister. The Hon'ble Minister without assigning proper reasons rejected the revision application of the petitioner. The petitioner is therefore before this Court.

6. Learned advocate for the petitioner invited attention to the observations by this Court in Writ Petition No. 7826/2013 to submit that the rights of the petitioner were recognized by this Court holding that he is a tenant under the HTAL Act. He points out that the Additional Commissioner while deciding the review application has also clearly recorded that the mutation entries in favour of this petitioner bearing Nos. 2665 and 2676 dated 25.02.2010 were rightly taken in the name of petitioner as the petitioner is held to be a tenant. Without any sufficient ground the review application is entertained. By entertaining the review application the Additional Commissioner has exceeded his jurisdiction. The Hon'ble Minister, however, has not considered the said aspect and has passed the order.

7. Learned advocate for respondent No. 7 submits that the land in dispute is admeasuring 6 Acres and 26 R. The original owner Shivmurti Kumbhar had sold the land to deceased Bhimrao and after death of deceased Bhimrao the land came to the share of Dattu and Kalyan (respondent No. 8) i.e. his sons. Dattu sold his land to the extent of 3 Acre 13 R to one Santosh. Respondent No. 7 has purchased the land from Santosh and thus respondents have got right to the land. Even Kalyan has took his portion of land. He submits that the petitioner had filed a suit bearing RCS No. 80/1976 for declaration that he has become owner. He had also prayed for recovery of possession which clearly shows that he was not in possession. It is this respondent No. 7 who was in possession and therefore, land was recorded in his name. He submits from averments in the petition that, it is the case of the petitioner himself that the petitioner is deprived from cultivating the land showing that he is not in possession. He also objected the petition on the ground that the impugned order is dated 07.08.2019 and the petition is filed on 10.11.2021 and the same suffers from delay and laches.

8. Learned advocate for respondent No. 8 adopts the argument of learned advocate for respondent No. 7.

9. Learned A.G.P submits that, the authorities have rightly passed the order by considering the record. He supports the order passed by the Additional Commissioner in review as well as the order passed by the Hon'ble Minister.

10. In rejoinder, learned advocate for the petitioner argued that, in fact, the decree that was passed in favour of the petitioner is executed and he is already put in possession of the land. In RCS No. 475/2009 there is decree passed directing the respondents not to cause obstruction to his peaceful possession. By subsequent proceedings he points out that now it is the petitioner who is in possession. So far as ground of delay and laches is concerned, the petitioner points out that though the judgment is passed on 07.08.2019, however, it was first communicated to the petitioner by way of communication dated 24.06.2021. He thus submits that, he has filed the petition without delay and laches immediately on communication of the order. He thus submits that, there is no delay and laches in filing the said petition.

11. On going through all the submissions and the chronology of the events stated in the petition, this Court finds that, the Commissioner in fact has already passed an order in favour of the petitioner. No grounds were raised making out the case of filing review. In the revision filed by the petitioner the Additional Commissioner had rightly

held that the petitioner was tenant in the land. It is considered that the Tahsildar had put the original tenant i.e. father of the petitioner in possession of the land. The Additional Commissioner had also considered the decrees passed in the civil suits. It is clear from the judgment passed by this Court in Writ Petition No. 7826/2013 that, this Court has clearly held the petitioner's possession over the land in the capacity as a tenant under Section 38 (6). In the said writ petition the judgment passed by this Court in Second Appeal No. 548/2007 was also considered. There was no reason to review the said well reasoned judgment. This Court from the order passed in review finds that the Additional Commissioner has not discussed as to on what grounds the review was entertained. In the review application no sufficient ground is discussed to show as to what made the Additional Commissioner to review the order.

12. From going through the order passed by the Hon'ble Minister this Court finds that, the Hon'ble Minister has also not given reasons in detail. From going through these facts, it was necessary for the Hon'ble Minister to at least consider and discuss these facts.

13. This Court thus finds that, on merits the petition deserves to be allowed. There are no delay and laches on the part of the petitioner.

14. In view of this, the petition is allowed in terms of prayer clause (C). No order as to costs.

(KISHORE C. SANT, J.)

PS.B.