IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13584 OF 2019

Satishchandrasinh Yograjsinh Parihar,
Through General Power of Attorney
Ravirajsinh Satishchandrasinh Parihar
Age: 36 years, Occu. Agriculturist,
R/o Parihar Chowk, Dharangaon,
Dist. Jalgaon. … Petitioner

Versus

1. Hon'ble State Minister,
Revenue Department,
Mantralaya Mumbai.

2. Additional Divisional Commissioner,
Nashik Division, Nashik.

3. The Additional Collector,
Jalgaon, Tq. and Dist. Jalgaon.

4. The Sub Divisional Officer,
Erandol, Dist. Jalgaon

5. The Tahsildar, Dharangaon,
Dist. Jalgaon

6. Navinchandra Bhojraj Shah,
Age: Major, Occu. Doctor,
R/o. 4, Indrapuri Housing Society,
Pach Pakhadi, Naupada, Thane,
Dist. Thane. Pin.400602. … Respondents

…

Mr. V. D. Sapkal, Sr. Advocate i/b Mr. Harshal Prakash Randhir, Advocate for Petitioner
Mr. P. G. Borade, AGP for Respondent Nos.1 to 5
Mr. Girish Rane, Advocate h/f Mr. Tapan Sant, Advocate for respondent No.6

…

WITH
WRIT PETITION NO.13585 OF 2019

Satishchandrasinh Yograjsing Parihar,
Through General Power of Attorney

Ravirajsingh Satishchandrasinh Parihar
Age: 36 years, Occu. Agriculturist,
R/o Parihar Chowk, Dharangaon,
Dist. Jalgaon. … Petitioner

Versus

1. Hon’ble State Minister,
Revenue Department,
Mantralaya Mumbai.

2. Additional Divisional Commissioner,
Nashik Division, Nashik.

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Jalgaon, Tq. and Dist. Jalgaon.

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5. Navinchandra Bhojraj Shah,
Age: Major, Occu. Doctor,
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Pach Pakhadi, Naupada,
Thane. 400602 … Respondents

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Mr. V. D. Sapkal, Sr. Advocate i/b Mr. Harshal Prakash Randhir, Advocate for Petitioner
Mr. P. G. Borade, AGP for Respondent Nos.1 to 4
Mr. Girish Rane, Advocate h/f Mr. Tapan Sant, Advocate for respondent No.5

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 21st AUGUST, 2023
PRONOUNCED ON : 13th SEPTEMBER, 2023

ORDER :

1. Since both these petitions raise similar question of law and fact, both were heard together and are being decided by this common order. For the sake of convenience facts in Writ Petition No.13585/2019, are taken into consideration.

2. Petitioner by these petitions has challenged judgment and order dated 09/09/2019, passed by the Hon'ble State Minister for Revenue in Revision RTS.3219/Pr.Kr.256/J-6A.

3. Dispute in both these petitions is in respect of crop entry of land Gut No.617 (Old Survey No.370/A), ad-measuring 5 H 19.34 R, situated at Dharangaon, Dist. Jalgaon. Since the said land has come under the jurisdiction of Dharangaon Municipal Council, as per Section 43(C) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short 'the said Act'), it could not be purchased under Section 32G of the said Act. Petitioner is landlord and respondent No.5 in Writ Petition No.13585/2019, is tenant. Father of the petitioner namely Yograjsing Shankarsing Thakur purchased the said land from Arjun Khemji and Company, Mumbai, on 03/04/1950. Accordingly, Mutation Entry No.7333 was taken. On partition of the said land, it came to the share of petitioner in the year 1952 and Mutation Entry No.7334 was taken in that behalf.

4. It is the case of petitioner that, respondent No.5 is residing at Mumbai and is practicing as 'Doctor', hence, he was not in need to cultivate the land, since respondent No.5 failed to cultivate the said land during the period from 1999 to 2002, it remained fallow and since then petitioner is in possession of the same. Petitioner cultivated the land from 2004-2005 till 2014-2015.

Accordingly, crop entries as per Rule 30 of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971 (for short 'the said Rules'), are taken in cultivation column of 7/12 extract of the said property, by mentioning "Khudd". No objection was raised by the 5th respondent about the said crop entries. In the year 2016, 5th respondent approached the Sub Divisional Officer, Erandol, by filing RTS Appeal No.35/2016, under Section 247 of the Maharashtra Land Revenue Code, 1966, challenging the crop entries taken in favour of petitioner. The appeal was dismissed on 28/07/2016. Second RTS Appeal No.172/2016 filed by the 5th respondent before Additional Collector, Jalgaon, under Section 247 of the Maharashtra Land Revenue Code, was dismissed on 27/04/2018. The Divisional Commissioner, Nashik Division, Nashik, has also dismissed RTS Revision No.566/2018 filed by 5th respondent, on 04/01/2019. The 5th respondent, then approached the Hon'ble Revenue Minister for State of Maharashtra, by filing second revision RTS No.3219/Pr.Kr.256/J-6-A, which is allowed by the order dated 09/09/2019. Petitioner is aggrieved by this order.

5. Heard learned Senior Advocate for petitioner, learned Advocate for respondent No.5 and learned Assistant Government Pleader for respondent Nos.1 to 4. Perused the memo of writ

petitions, annexures thereto, the impugned order, affidavit-in-reply filed by respondent No.5 and the affidavit-in-reply filed by respondent Nos.1 to 4.

6. Learned Senior Advocate for petitioner assailed the impugned order contending that the crop entry taken in terms of Rule 30 is not an 'order' or 'decision' and therefore, the appeals filed by respondent No.5 under Section 247 were not maintainable, as the said section provides that *".. an appeal shall lie from any decision or order .."*. He submits that as per Rule 30(1), every year after inspection of crops grown in the field, name of the petitioner is recorded in the cultivation column in Form-XIII and no case was made out by the 5th respondent. Since the entry was taken by following relevant rules, revenue authority has rightly rejected the appeals and revision filed by 5th respondent. However, the first respondent/Hon'ble Minister has erroneously entered the second revision and has allowed the same by giving unacceptable reasons. He submits that as per Section 2(18) of the said Act, tenant means a person who holds the land and since the petitioner is cultivating land since 2004-2005 till 2014-2015, it is clear that 5th respondent is not in possession of the suit land and is not a tenant since 2004-2005. He further submits that, in the order dated 31/05/2017, passed by Tahsildar and Agricultural Lands Tribunal, Dharangaon, in

application filed by the petitioner, it is declared that 5th respondent is not a tenant of the suit land and the said order is confirmed by the Sub Divisional Officer, Erandol, by order dated 06/02/2018. Further submission is that Section 70(b) of the said Act specifically states that Mamlatdar is competent to decide whether a person 'is' or 'was' at any time in the past a tenant, protected tenant or permanent tenant. Therefore, tenancy does not remain forever. According to him, first respondent has ignored the said decision of competent authorities and has recorded contrary findings in the impugned order. Rule 30 and 29 of the said Rules is not considered while passing the impugned orders. Hence, the impugned order is liable to be quashed and set aside.

7. Per contra, learned advocate for respondent No.5 submits that the revenue entry recording 5th respondent as protected tenant is not in dispute. Possession of 5th respondent from the year 1942 to 2004 is also not disputed. By referring to the earlier litigation under the Bombay Rent Act, he submits that father of the petitioner had filed suit for possession under the Bombay Rent Act. The said proceedings was carried upto the Supreme Court, in which, in the year 1961, it is held that possession over the suit property is of 5th respondent. Petitioner then had filed Regular Civil Suit No.171/2018, under the Bombay Rent Act, which was

wrongly decreed. However, regular civil appeal filed by 5th respondent, was allowed by the appellate Court on 16/03/1996 and the said judgment and decree of the Trial Court was set aside. Petitioner then filed Writ Petition No.3803/1996. This Court, by order dated 19/04/2004, dismissed the said writ petition observing that the suit land is agricultural land and it does not fall within the definition of premises as defined under the Bombay Rent Act and the provisions of Rent Act are not applicable to the suit land. He, therefore, submits that, all the efforts of petitioner to take possession of the suit land have failed and thereafter, at no point of time the land was surrendered in favour of petitioner. He, therefore, supported the impugned order passed by the first respondent and submitted that there is no merit in the writ petitions and the petitions are liable to be dismissed.

8. Before entering into the merits of rival submissions, it is apt to consider Rule 29 and Rule 30 of the said Rules, which reads thus;

> *"29. Register of crops:*
>
> *A register of crops showing the crops grown in the land and the area in which they are grown shall be maintained in every village. It shall be in the form of a separate card in Form XIII in respect of each survey number or sub-division of a survey number and the contents thereof shall be incorporated at the end of Form I. Entries in the register shall be made every year in the manner provided in Rule 30.*

30. Procedure of making entries in register of crops:

1) *Every year at any time, during the period when the crops grown in a village are standing in the fields and during such other period as may be directed by the Collector for different crops, Talathi shall, subject to the orders of the Collector in this behalf, visit the village for the purpose of inspection of the crops and making entries in the register of crops in Form XIII.*

2) *Subject to the provisions of sub-rule (1), the Talathi shall fix a date of his visit to the village for the purpose of that sub-rule at least seven days in advance and arrange to inform the villagers by beat of drum or by any other suitable method, about the date of his visit and its purpose and to call upon the villagers to be present in their fields along with their khate pustika and witness the entries being made in the register of crops. He shall likewise give an intimation of his visit to the Sarpanch of the Village Panchayat, if any, and through him request the members of the Village Panchayat to accompany him during the crops inspection.*

3) *On the date fixed for his visit to the village, the Talathi shall visit every field in the village in the presence of the villagers, the members of the Village Panchayat and the Sarpanch, if any, as may be present there and make entries in the register of crops in respect of each survey number or sub-division of a survey number after actual inspection. He shall allow the persons interested in the Land to see the entries made by him in respect of each land. He shall simultaneously copy out the relevant entries in Khate Pustika also.*

4) *As soon as may be practicable after the Talathi has made entries in the register of crops, any revenue or survey officer not below the rank of a Circle Inspector shall, for purpose of verification of the said entries, visit the village of which advance intimation as aforesaid shall be given to the villagers, and after due enquiry correct the entries which may be found to be incorrect. He shall cause the Talathi to make resultant changes in the entries in the respective Khate Pustika also.*"

Before taking crop entry above procedure is required to be followed.

9. Considering the crop entries taken in the name of petitioner, it is required to be held that entries recording name of

the petitioner as *"Khudd"* from 2004-2005 till 2014-2015, were taken by following procedure prescribed in Rule 30 of the said Rules. Impugned order passed by the first respondent appears to be passed without considering the purport of the said Rule. It appears that, the said crop entries are interfered with by the first respondent by observing that, since crop entry register was changed after 2004, subsequent entries are taken without considering the previous crop entries. The said observation is contrary to Rule 30 and hence, cannot be sustained.

10. The Tahsildar, Sub Divisional Officer, Additional Collector and the Divisional Commissioner have consistently held in favour of the petitioner. The declaration that 5th respondent is not a tenant of the suit land is taken into consideration by recording concurrent findings of fact. Revenue authorities have *prima facie* held that, from the year 2004-2005 to 2014-2015, the suit land was not in possession of 5th respondent. The Commissioner has rightly held that, since 5th respondent is claiming that he is a tenant, he should seek relief under Tenancy Act. It is further held that since 5th respondent has already approached the Maharashtra Revenue Tribunal, Aurangabad, challenging the orders passed by Tahsildar and Agricultural Lands Tribunal, Dharangaon, and the Sub Divisional Officer, Erandol, declaring that he is not a tenant, the decision in the said proceedings shall be binding upon the parties. However,

since 5th respondent is not held to be tenant, it can be held that he is not in possession of the suit land.

11. Petitioner has also relied on one more circumstance in support of his case that 5th respondent is not in possession of the suit land. By application filed under Right to Information Act, petitioner inquired with the Yawal Forest Department, Jalgaon, seeking information in respect of the receipt filed by 5th respondent in respect of purchasing Bamboo risen and Teak stump from the said office. It is informed to the petitioner that the office has not sold Bamboo risen and Teak stump to the 5th respondent during the period from 01/08/2015 to 31/08/2015 and no transit pass for the same is issued. This further falsifies the claim of 5th respondent that he has planted Bamboo risen and Teak stumps in the suit land in the year 2015.

12. Petitioner has also filed statements of adjoining agriculturists which supported his contention that he was cultivating the suit land during the relevant period and therefore, crop entries were rightly taken in the name of petitioner. Petitioner has also relied on electricity bill as well as the crop loan taken by the petitioner. These aspects are ignored by the first respondent while passing the impugned order.

13. There is a merit in the contention of petitioner that, by

order dated 31/05/2017 in Tenancy Case No.01/2016, filed by the petitioner, Tahsildar and Agricultural Lands Tribunal has, after hearing 5th respondent, declared that 5th respondent is not a tenant of the suit land. The appeal filed by 5th respondent challenging the said order is dismissed by the Sub Divisional Officer on 06/02/2018. Both these orders, are subject matter of challenge before the Maharashtra Revenue Tribunal, Aurangabad. Though these orders were placed on record, the first respondent has not even referred to these orders in the impugned order.

14. Section 84 of the said Act reads thus;

> *"84. Summary eviction*
>
> *Any person unauthorisedly occupying or wrongfully in possession of any land -*
>
> *(a) the transfer or acquisition of which either by the act of parties or by the operation of law is invalid under the provisions of this Act.*
>
> *(b) the management of which has been assumed under the said provisions, or*
>
> *(c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons, may be summarily evicted by the Collector."*

15. Petitioner is right in contending that 5th respondent ought to have availed the remedy provided under Section 84 of the said Act, for summary eviction of the petitioner.

16. The revenue authorities have rightly recorded finding against 5th respondent. First respondent has, without assigning cogent reasons and without considering the relevant aspects has

passed the impugned order. First respondent further erred in going into the issue of tenancy, as the same is pending before the competent forum i.e. Maharashtra Revenue Tribunal, Aurangabad, and therefore, the first respondent ought not to have commented on that issue.

17. For the aforestated reasons, impugned order is vitiated on the ground of non-application of mind and for non-consideration of relevant Rules. Impugned order, therefore, cannot be sustained. In the result, following order:-

ORDER

(I) Writ petitions are allowed.

(II) Impugned order dated 09/09/2019, passed by the Hon'ble State Minister for Revenue in Revision RTS.3219/Pr.Kr.256/J-6A, is quashed and set aside.

(III) It is made clear that parties shall be bound by the order passed by Maharashtra Revenue Tribunal, Aurangabad, in tenancy case.

18. Observations made in this order are limited to the extent of considering the impugned order passed by the first respondent and shall not influence the Maharashtra Revenue Tribunal while deciding the tenancy case on merits.

(NITIN B. SURYAWANSHI, J.)

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