

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

WRIT PETITION NO. 7237 OF 2023

Dattatraya Yeshwant Jagtap .. Petitioner

Versus

The Secretary,
Agricultural Produce Market Committee
and others .. Respondents

Mr. Babasaheb V. Dhage, Advocate for the Petitioner.
Mr. S. B. Pulkundwar, AGP for Respondents/State.
Mr. S. K. Shinde, Advocate for Respondent No. 1.

**WITH
WRIT PETITION NO. 12983 OF 2022**

Dattatraya Yeshwant Jagtap .. Petitioner

Versus

Hari Pandurang Jagtap
and others .. Respondents

Mr. Babasaheb V. Dhage, Advocate for the Petitioner.
Mr. S. B. Pulkundwar, AGP for Respondents/State.
Mr. Vinayak S. Bedre, Advocate for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATED : 04th JULY, 2023.

P C. :-

. Heard learned advocates for the parties for long.

2. The Petitioner is challenging the judgment and order passed by

the learned President, Maharashtra Revenue Tribunal dated 19.10.2022 in Revision No. 104/B/2015/AN preferred by respondent No. 1. The learned Tribunal has allowed the said revision in favour of respondent No. 1. The facts in short are that the petitioner claims himself to be landlord of land Gat No. 129 (443/A) admeasuring 1 Hectare 44 R Kharaba 21 R and Gat No. 128 (443/B) admeasuring 1 Hectare 43 R Kharaba 22 R. He had filed application under Section 43 and 84-C of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short "Act of 1948") before the Tahsildar, Akole in case No. 3/2012. The main ground on which the said case was filed was that the Dada Daud – brother of original tenant one Daud Rasul Shaikh sold the land to respondent No. 1 in breach of conditions under Section 43 of the Act of 1948. The Tahsildar by judgment and order dated 24.02.2014 rejected the application and directed to make endorsement in 7/12 extract of the respective land survey Nos. 128 and 129 in other rights column subject to condition under Section 43 of the Act of 1948. The Tahsildar rejected the application mainly on the ground that the petitioner has approached after much delay and laches. There is no application filed for condonation of delay. The said order came to be challenged by the petitioner by filing Tenancy Appeal No. 67/2014 before the S.D.O. The S.D.O. allowed the appeal by setting aside the order passed by the Tahsildar in Tenancy Case No. 3/2012 and directed to take action as

per Section 59 of the Maharashtra Land Revenue Code. While passing this order, the S.D.O. has observed that there was a breach of condition and thus Section 43 of the Act of 1948 is violated. It was necessary for the Tahsildar to forfeit the land to the Government.

3. The order passed by the S.D.O. came to be challenged by respondent No. 1 - Hari Pandurang Jagtap in both these petitions. The learned President, MRT mainly considered that the order of re-grant that took place in 1982 itself is not challenged by the petitioner and therefore, he has lost the right to apply to the Tahsildar for action under Section 84. The learned President relied upon the judgment of this Court in the case of Dattatray Ganpat Gorade Vs. Gourihar Mahadev Gorade reported in 2009 (1) Mh.L.J. 727. Further it is observed that the petitioner has not initiated proceeding within reasonable time. It is observed that the property was re-granted to Hari Pandurang Jagtap after its forfeiture and this in fact action under Section 43 was taken and it is only thereafter the land is re-granted to Hari Pandurang Jagtap. It is further observed that, in the year 1977 when an agreement was executed on 25.07.1977 this petitioner was a party to the sale deed and thus had the knowledge. It is also observed that, even on the sale deed pursuant to the agreement, the petitioner has signed as a witness to the sale deed executed by the tenant i.e.

purchaser under Section 32 (g) of the Act of 1948 in favour of the petitioner. Thus, it is considered that the petitioner has not come within reasonable time and the learned President has allowed both the revision applications.

4. After hearing the parties and going through the record this Court finds considerable force in arguments of learned advocate for respondents. Though it is argued by the petitioner that re-grant itself was against the provisions of the Act as the order of re-grant can be passed only in favour of a person who in authorized possession of the land.

5. It is contended by the petitioner that respondent No. 1 – Hari Pandurang Jagtap was not in authorized possession, but his possession was unauthorized and thus the order of re-grant was illegal. He fairly conceded that though no limitation is provided in the Act for breach still the person is expected to approach within reasonable time. However, his submission is that when there is total non observance of provisions of law his application ought to have been considered. The reliance is placed on Rule 21 of the Bombay Tenancy and Agricultural Lands Rules, 1956 to show that the same was not followed.

6. This Court is taken through the judgment in the case of Vithal Topanna Kamble and others Vs. Dattu Bhujinga More and others reported in 1987 Mh.L.J. 499 wherein, the petition was allowed by holding that the mandatory provisions under Section 32 (P) (2) (c) were not followed. He also relied upon the judgment in the case of Shri Kishor Govardhandas Tanna Vs. Shri Malhari Nimbaji Patil and others reported in 1999 (1) All MR 310 wherein, this Court in paragraph No. 13 has considered sub section 4 of Section 84 (c) to be mandatory. It is held that before re-grant there has to be a determination of reasonable price.

7. Learned advocate for respondent No. 1 Mr. Bedre rightly points out in the judgment in the case of Shri Kishor Govardhandas Tanna (Supra) that the Collector can exercise the revisional powers under Section 76 (a) in reasonable time.

8. Learned advocate for respondent No. 1 relied upon the judgment in the case of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim reported in (1997) 6 SCC 71 wherein, it is held that where no limit prescribed for exercise of power under statute, it should be exercised within a reasonable time. Further he relied upon the judgment in the case of Uttam Namdeo Mahale Vs. Vithal Deo and others reported in (1997) 6 SCC 73 on the similar lines. One more judgment he relied

upon is in the case of Waman Atmaram Lavand and another Vs. Dattatraya @ Dattu Baba Lavand and others reported in 2009 (5) Mh.L.J. 442 wherein, the case was under Section 43 and 84 (c) like the present case. In that case, the proceeding under Section 84 (c) was started after six years. The Court observed that it was not acceptable.

9. Considering all above aspects and the judgments relied upon by the parties this Court finds that, the learned President of the Tribunal has rightly taken a view and allowed the revisions filed by respondent No. 1 in both these petitions. No perversity or illegality is pointed out so as to call for interference of this Court under Article 227 of the Constitution of India is pointed out.

10. In view of the same, this Court finds that, both the petitions deserve to be dismissed and the same are dismissed. No order as to costs.

(KISHORE C. SANT, J.)

PS.B.