

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4492 OF 1988
WITH
INTERIM APPLICATION NO. 106 OF 2020
WITH
INTERIM APPLICATION NO. 103 OF 2020
WITH
INTERIM APPLICATION NO. 107 OF 2020
WITH
INTERIM APPLICATION NO. 102 OF 2020
IN
WRIT PETITION NO. 4492 OF 1988

Shankar Shripad Latkar
(since deceased) through his LRs.
1A. Shripad Shankar Latkar & Ors.

.. Petitioners

Versus

Dattatraya Haribhau Borawake
(since deceased) through his LRs.
1a. Mrs. Lata V. Harekal & Ors.

.. Respondents

WITH
WRIT PETITION NO. 2523 OF 1991
WITH
CIVIL APPLICATION NO. 323 OF 2018
IN
WRIT PETITION NO. 2523 OF 1991

Dattatraya Haribhau Borawake
(Since deceased) through his LR's
1A. Smt. Shantabai Dattatraya Borawake
(Since deceased) through her LR's
1B. Shri. Vasant Dattatraya Borawake and Ors.

.. Petitioners

Versus

Shankar Shripad Latkar
(Since deceased) through his LR's
1A. Shripad Shankar Latkar and Ors.

.. Respondents

WITH
WRIT PETITION NO. 2520 OF 1991

Dattatraya Haribhau Borawake
(Since deceased) through his LR's
1A. Smt. Shantabai Dattatraya Borawake
(Since deceased) through her LR's
1B. Shri. Vasant Dattatraya Borawake and Ors. .. Petitioners

Versus

Shankar Shripad Latkar
(Since deceased) through his LR's
1A. Shripad Shankar Latkar and Ors. .. Respondents

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- Mr. Anil Anturkar, Senior Advocate i/by Ms. Vrishali L. Maindad, Advocate for Petitioners in WP No.4492 of 1988 and Respondents in WP No.2523 of 1991 and WP No.2520 of 1991.
 - Mr.Dilip Bodake, Advocate for Petitioner in WP No.2523 of 1991 and WP No.2520 of 1991 and Respondent in WP No.4492 of 1988.
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CORAM : MILIND N. JADHAV, J.
RESERVED ON : FEBRUARY 02, 2023.
PRONOUNCED ON : JUNE 05, 2023.

JUDGMENT :

1. Heard Mr. Anil Anturkar, learned Senior Advocate for Petitioners in WP No.4492 of 1988 and Respondents in WP No.2523 of 1991 and WP No.2520 of 1991 and Mr. Dilip Bodake, learned Advocate for Petitioner in WP No.2523 of 1991 and WP No.2520 of 1991 and Respondent in WP No.4492 of 1988.

2. Writ Petition No.4492 of 1988 has been filed by Shankar Shripad Latkar and others (for short "**landlord**") against the judgment and order dated 21.01.1988 passed by the Maharashtra Revenue Tribunal, Pune (for short "**MRT**") in MRT Revision Case No.328 of 1985.

3. Writ Petition No.2523 of 1991 has been filed by Dattatraya Haribhau Borawake Ors. (for short “**tenant**”) against the same judgment.

4. Writ Petition No.2520 of 1991 has been filed by the tenant against the judgment and order dated 14.04.1991 passed by the MRT, Pune in MRT Case No.64 of 1990.

5. The description of the suit lands is under:-

Survey No.	Area H.R.	Assessment Rs.P.s.
1] 24/2A	7.86 60 ----- 8.46	20=35 19=30 Judi
2] 24/2B	7.86 60 ----- 8.86	20=35 19=30 Judi ----- 39=64

6. Parties shall be referred to as landlord and tenant for convenience. Needless to state that the parties to the present Petitioners are all successors-in-title of the landlord and tenant and shall be bound by the outcome of the present Writ Petitions. Such of the relevant facts which are necessary for determination of the present dispute are stated herein under:-

(i) On 05.05.1943, the suit land was leased to the tenant

for harvesting sugarcane by a registered lease deed.

- (ii) On 20.05.1964, rent of the suit lands was fixed at Rs.950/- per year in Case No.74 of 1964 filed by the landlord.
- (iii) On 19.03.1973, landlord filed Tenancy Case No.08 of 1973 in the Court of the Tahsildar, Phaltan seeking possession of the suit land on the ground of the tenant being in arrears of rent for three years prior thereto for the years 1969 -1970, 1970 -1971 and 1971 – 1972 and also in view of sub-division of the suit land.
- (iv) On 05.03.1975, Tahsildar, Phaltan dismissed the said case.
- (v) On 31.01.1976, landlord's Appeal No.18 of 1975 against the aforesaid judgment and order of Tahsildar was dismissed by the Sub-Division Officer (for short "SDO"), Phaltan.
- (vi) On 31.12.1976, MRT allowed the landlord's Revision Application and set aside both the aforesaid judgments passed by the Tahsildar and SDO and remanded the case to the Tahsildar for fresh consideration and disposal.

(vii) On 03.06.1984, landlord filed an Application before the Tahsildar, Phaltan seeking possession of the suit land from the tenant on the following grounds:-

- (a) that the tenant committed defaults in payment of rent for more than three years;
- (b) that the tenant sublet and sub-divided the suit lands without landlord's permission; and
- (c) that the landlord required the suit lands for his bonafide personal cultivation.

(viii) On 04.03.1985, the Tenancy Court allowed the landlord's Application by returning a finding that the tenant committed default for more than three years beginning from 1967 - 1968 onwards up to 1982 - 1983 that is for 15 years and the landlord required the suit lands for his bonafide cultivation. In so far as the ground of subletting and sub-division was concerned, landlord's Application on that ground was dismissed.

(ix) On 30.09.1985, the SDO confirmed the aforementioned findings and dismissed the tenant's Appeal No.17 of 1985.

(x) On 27.01.1988, the tenant's Revision Application

No.328 of 1985 was allowed by the MRT by re-appreciating and reassessing the entire evidence and resultantly concurrent findings given by the Tahsildar and the SDO were set aside. MRT held that landlord had failed to prove his case under Section 25(2) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “**the said Act**”) and remanded the case back to the Tahsildar with a direction that on the Application of the tenant for making payment of arrears of rent together with costs of proceedings, the Tahsildar shall give the tenant time of three months to deposit the arrears and on such compliance pass a suitable order under the provisions of Section 25(1) of the said Act.

(xi) Being aggrieved landlord on 29.04.1988 filed the present Writ Petition No.4492 of 1988 challenging the order dated 27.01.1988.

(xii) On 10.06.1991 i.e. after 3 years the tenant filed Writ Petition No.2523 of 1991 challenging the same judgment and order of the MRT.

(xiii) Pursuant to the order dated 27.01.1988 which is the subject matter of challenge in both the aforesaid Writ Petitions, though the tenant was directed to deposit

arrears of rent in the Trial Court within three months from the date of the said order, the tenant failed to deposit and / or comply with the order of the MRT. The landlord therefore filed Application seeking possession of the suit lands being Tenancy Case No.15 of 1988.

(xiv) On 30.09.1988, Tahsildar allowed the above Application and directed the tenant to deliver possession of the suit lands to the landlord.

(xv) On 25.01.1999, tenant's Appeal against the above judgment and order of the Tahsildar was partly allowed by the SDO, Phaltan and the matter was remanded back to the Tahsildar.

(xvi) On 18.04.1991, landlord's Revision Application No.64 of 1990 against the order of the SDO was allowed by the MRT, Pune and the Tahsildar was directed to take steps to hand over possession of the suit lands to the landlord.

(xvii) Being aggrieved in June 1991 the tenant filed the third Writ Petition namely Writ Petition No.2520 of 1991 against the aforesaid order dated 18.04.1991 passed by the MRT, Pune.

7. The above three Writ Petitions having common facts are heard together and disposed of by this common judgment.

8. At the outset, it is pertinent to note the reliefs prayed for by the parties in the above three Writ Petitions. For convenience, reliefs prayed for are reproduced herein under:-

8.1. In Writ Petition No.4492 of 1988, the following relief is prayed for by the landlord:-

“(A) That this Hon’ble Court may in the exercise of its jurisdiction under Article 227 of the Constitution of India quash the order at Ex. C and restore the order at Ex. ‘A’ which is confirmed by the order at Ex. ‘B’.”

8.2. In Writ Petition No.2523 of 1991, the following relief is prayed for by the tenant:-

“(a) the part of the Judgment of the Maharashtra Revenue Tribunal, Pune in Revision Application No.MRT-MS-VIII-12/85(TNC.B.328/85) and the Judgments and orders passed in Tenancy Case No.17 of 1985 by the Sub Divisional Officer, Phaltan, District Satara and the Judgment and order passed in Tenancy Case No.7 of 1984 passed by the Tenancy Aval Karkoon Phaltan, be set aside and quashed.”

8.3. By this Petition findings pertaining to payment / non-receipt of rent were challenged.

8.4. In Writ Petition No.2520 of 1991, the following relief is prayed for by the tenant:-

“(a) that the Judgment and Order passed in Revision Application No.MRT.NS.III/1/90 (TNC.64/90) and the

Judgment and order passed in Tenancy Case 15 of 1988 by the Tenancy Aval Karkoon, Phaltan, be set aside and the Judgment and order passed in TNC Appeal 37 of 1988 by the Assistant Collector, Phaltan Sub Division, District, Satara, be restored and confirmed.”

9. Mr. Anturkar, learned Senior Advocate appearing for the landlord i.e. Petitioners in Writ Petition No.4492 of 1988 and the Respondents in Writ Petition No.2523 of 1991 and Writ Petition No.2520 of 1991 has made the following submissions:-

- (i) That there is no dispute about the various proceedings between the parties before the Authorities as the orders speak for themselves. That the issue herein pertains to Section 25(2) of the said Act. That it is an undisputed fact that tenants have been in possession of the suit property since long. That tenants have defaulted to pay the agreed rent for more than three years which is the minimum requirement for their eviction under Section 25(2) of the said Act.
- (ii) That there are concurrent finding of fact, in favour of the landlord on the above issue regarding default in payment of rent.
- (iii) It is settled law that the Revisional Court should not interfere in the concurrent finding of fact, unless the said finding is perverse, which no ordinary prudent

person could have arrived at. There is no such finding recorded by the MRT, that the concurrent finding which has been recorded by the Tahsildar and the Sub-Divisional Officer is a perverse finding and therefore, the limited jurisdiction of the Revisional Tribunal, could not have been used by MRT for the purpose of interfering with concurrent finding of fact.

- (iv) He would submit that the impugned order holds that the notice dated 24.02.1984 was sent on the same ground for recovery of rent from 1969 – 70 onwards which is an incorrect finding. That admittedly in the earlier round of litigation in Tenancy Case No.8 of 1973 which was decided on 14.03.1973, the period of default of payment of rent was from 1969 – 70 to 1971 – 1972. Hence according to him once this position was settled by the order dated 14.03.1973, the subsequent notice dated 24.02.1984 pertained to the period 1973 – 1974 onwards upto 1984. He would submit that MRT has returned a finding that on two receipts dated 11.04.1975 and 17.04.1974 the landlord has admitted the signatures of Digamber on the said receipts. He would submit that even if this is true the Respondents cannot succeed on the basis this fact alone. The entire

period between 1973 – 1974 and 1983 – 1984 is bereft of any documentary evidence of payment of rent. Particulars of payment of rent, money, orders, receipts etc. for the entire period has not been produced. Despite that in the impugned order dated 27.01.1988 the MRT has given the benefit of doubt to the tenant and directed him to pay the arrears in 3 months and on such payment directed the Tahsildar to pass order Section 25(2). This having not been complied with, the Petitioner landlord has approached this Court. He would submit that for the order dated 27.01.1988 to sustain, the payment of rent for the period 1973 – 74 to 1983 – 84 is required to be placed on record. The MRT has not examined the same and therefore the decision is challenged by the landlord. Parties had agreed to a yearly rent of Rs.950/- per year. No shred of evidence to show payment of rent made has been produced, thus tenant's Revision ought to have been rejected. He would submit that in one sweeping statement the MRT has allowed the tenant's Revision by holding that from 1973 onwards upto 1984 the rent sent to them (landlord) was refused by them. In the deposition of landlords (2 of them) no such statement appears.

- (v) The case of the tenant is that there are rent receipts of 29.05.1976, 31.05.1978, 28.03.1981, 02.04.1982, 20.05.1976, 31.05.1978, 31.03.1979, 20.03.1981 and 31.03.1983. However these are not produced. According to the landlord from 1973 to 1984 no rent was paid at any given point of time.
- (vi) Hence, he has prayed for setting aside of the impugned order dated 27.01.1988.

10. Mr. Bodake, learned Advocate for the tenant i.e. Respondent Nos.5a to 5e and the Petitioners in Writ Petition No.2523 of 1991 and Writ Petition No.2520 of 1991 has in his reply made the following submissions:

- (i) According to him the question that arises for consideration is whether the landlord proves that the tenant has committed three defaults in payment of rent and whether the tenancy is terminated by a legal and valid notice?

That the case regarding arrears of rent for the year 1969 - 1970 to 1971 - 1972 is decided in favour of tenants right up to the High Court in Special Application No.901 of 1978 and therefore said finding is binding on landlord. Hence the notice dated

29.02.1984 which was served upon the tenant by the landlord cannot be said to be a legal and valid notice. It is pertinent to note that above said notice dated 29.02.1984 does not disclose the specific years of rents defaults made by the tenants. Hence the case of the landlord based on the said subsequent notice is held to be illegal and the tenant has been given a chance to remedy the payment of arrears under the order dated 27.01.1988.

- (ii) That as per provisions of Section 14(1)(i) of the said Act, the tenant is required to pay rent for any revenue year before 31st May of that particular year. So, the forfeiture for rent default would be incurred on the 31st May and therefore, notice given prior to such date would not be legal and valid notice in view of said provision of law. That the notice sent by the landlord is premature and therefore could not be acted upon.
- (iii) That the landlord has received rent by money orders which were sent by the Respondents / tenants and it appears from record that money orders were deliberately refused by the landlord. That perusal record shows that the landlord has admitted in his cross

examination that whatever rent receipts were issued in favour of the tenant were acceptable to him and the same were signed by him or Digambar. Hence according to him it would imply that the landlord separately and separate receipts were issued to them.

- (iv) That in support of the landlords' case reliance is placed on the evidence of the witness namely Mr. Digambar Raoji Wagh who has deposed that he used to accompany the landlord at the time of demanding the rent. He has further deposed that tenants never paid rent but receipts were issued to the tenants. It appears from his evidence that he respected the landlords as his "Guru Ghar". This was since the time of his ancestors as he was just the neighbour of the landlords. That this witness admitted that he did not know which crops were produced in the suit land in the year 1960 – 1967 and from 1969 - 1983. He has also deposed that tenants have not paid rent and the rent receipts were passed by Digambar, but he did not attest them as witness. Hence from his evidence it is clear that he is an interested witness who has got due veneration / respect for the landlords as his "Guru Ghar" and therefore his evidence cannot be accepted.

(v) That landlords had received rent till the year 1972 and said fact landlord has been admitted in cross-examination. It is also admitted by the landlords that no notice was served on the tenants from the 1969 - 1984 for non-payment of rent by the tenants. This conduct on the part of the landlord goes to show that there was no substance in the notice which was subsequently issued by the landlords to the tenants on 29.02.1984 as they could not have proved that the tenants had committed default in payment of rent for any “three years” and that they had given intimation to the tenants to that effect within the period of three months after each default. Hence this case would not fall under the provisions of Section 25(2) of the said Act. The findings and observations made by both the authorities below that the landlords have satisfied all the requirements of Sections 14, 25 and 27 and provisions of Section 43 of the said Act, therefore cannot be said to be correct.

(vi) That in view of the above submissions, this case cannot fall under the provisions of Section 25(1) of the said Act, and the tenants will have to be given further statutory time to deposit the arrears of rent in the Court

from the date of the order and if they comply with the same, the Tahsildar shall in lieu of making the order for ejectment should pass order directing that the tenancy had not been terminated and thereupon the tenants shall hold the land as if the tenancy had not been terminated.

11. In respect of Writ Petition No.2523 of 1991 and Writ Petition No.2520 of 1991 are concerned parties have made identical submissions.

12. I have heard the learned Advocates and with their able assistance perused the pleadings in the present proceedings. Submissions made by Advocates has received due consideration of the Court.

13. The fundamental facts are admitted. Relationship of parties is also admitted. The only dispute is whether the default of payment of rent occurred, whether it was for a continuous period of 3 years and whether the statutory notice was issued by the landlord. The controversy revolves around the answers to these 3 questions. Though the order dated 27.01.1988 is directed against the landlord, it clearly gives the opportunity to the tenant to make the Application to the Tahsildar and pay the arrears of rent and on payment to pass a suitable order under Section 25(1). Record clearly indicates that tenant has

not complied with this order within the stipulated time. The time granted to the tenant and the Tahsildar came to an end on 26.04.1988. Therefore the landlord filed Application being Tenancy Case No.15 of 1988 seeking possession. This Application was allowed by the Tahsildar, SDO and the MRT and order dated 18.04.1991 was passed by the MRT which is impugned in the 3rd Writ Petition.

14. In the above background, tenant still pleads that the order dated 27.01.1988 (though partly in favour of tenant) but now no longer sustainable and order dated 18.04.1991 be set aside and a fresh opportunity be given to the tenant to pay the arrears of rent. Once the order dated 18.04.1991 was passed, the tenant filed Writ Petition No.2523 of 1991 on 10.04.1991 to challenge the order dated 27.01.1988 partly. The timeline and conduct of the tenant suggests one and only one thing. That there has been gross dereliction on the tenant's part in complying with the order dated 27.01.1988.

15. That apart, on merits also the case of the tenant does not stand proven. Compliance of the provisions of Section 25 require payment of rent every year and in case of non-payment of rent for 3 years continuously the said provision can be invoked. Tenant's plea that rent has been paid for the period 1969 to 1984. All that has to be done is to show as to how the rent was paid. Payment of rent cannot be accepted on the basis of averments, conjecture and surmises as is

being done in the present case. Mr. Bodake has argued that this Court needs to presume that if there are two rent receipts one of 1974 and the other of 1975 admitted on record, then it be presumed that the tenants had paid rent for all the preceding and succeeding years between 1973 and 1984. The provisions of Section 25(2) are clear and unambiguous. Section 25(2) talks of 3 consecutive defaults. Copy of notice is on record. The receipt of notice is not denied by the tenant. Hence factum of notice is proved. Record indicates that the tenant has replied to the notice. Once the notice satisfies the requirements of Sections 14, 25 and 27, it has to be deemed to be a valid termination notice. Hence on this ground the tenant's case fails.

16. In the present case, it is seen that rent has been statutorily fixed for the suit lands in tenancy proceedings No.74 of 1962 @ Rs.950/- per year. The tenant has produced some money order coupons, but the landlord has specifically denied the same / receipt of the same. Landlord has entered the witness box in support of his case, but the tenant chose not to enter the witness box and lead his evidence on this crucial testimony. Hence the Tahsildar has correctly held and given cogent reasons in respect of findings in answer to the questions pertaining to termination notice, arrears of rent, intimation of default and commission of defaults. It has been clearly held that the payment of rent by money order should also be complete. Record indicates that none the money order amount shows or tallies with Rs.950/- per

annum. Certainly the rent cannot be partly paid by money order and partly by cash. It has to be either fully by money order or fully by cash. In this context the tenant has deposed that Rs.950/- was to be paid in full for the suit lands in full and it was never agreed that each of the tenant's successors shall pay their respective share. The Tahsildar has returned a very serious finding that the receipts of payment produced by the tenant for the years 1974, 1969 and 1972 seem to be fabricated to the naked eye and hence not reliable. Further there is a finding that some receipts of the money orders do not show the dates and the tenant has admitted the same. This is a very strong circumstance.

17. The next question which is relevant and decided in favour of the landlord is with respect to his bonafide requirement for his personal cultivation. The impugned order dated 27.01.1988 emanates from Tenancy Case No.7 of 1984 decided by the Tahsildar. This is a detailed and speaking judgment which cogently decides all issues on the basis of evidence under the provisions of Section 14(a) read with Section 25(2) and 29 of the said Act. The Appeal against this judgment is comprehensively dismissed on 30.09.1985 by the SDO. However in the Revision proceedings and the order under challenge i.e. judgment dated 27.01.1988 in paragraph No.11 has it is held that the tenant had made a valid tender of rent each year to the landlord but the landlord for reasons best known to him refused to accept the money orders. This finding is attributable in a very general sense

without specifying any period. This is not acceptable. Such a finding has to be specific and cannot be based upon presumption.

18. Once there is ambiguity on proving the tenant's case on the basis of material evidence, the same has to be decided accordingly on the basis of the material on record. The period of default in the statutory notice is from 1973 to 1984. Nowhere in the record continuity of 3 years of payment of rent is established. There is no doubt that 3 consecutive defaults have occurred in the present case during the above period. Thus invocation of Section 25(2) of the said Act is called for and the same are attracted.

19. In view of the above observations and findings, the impugned judgment dated 27.01.1988 passed by the MRT is quashed and set aside. The judgments / orders dated 04.03.1985 passed by the Tahsildar in Tenancy Case No.7 of 1984 and the SDO in Tenancy Appeal No.17 of 1985 are upheld. Consequently the orders dated 18.04.1991 and 25.01.1990 stand quashed and set aside as a result of which the order / judgment dated 30.09.1988 in Tenancy Case No.15 of 1988 under Section 25(2) of the said Act is upheld.

20. Writ Petition No.4492 of 1988 stands allowed in the above terms.

21. Writ Petition No.2523 of 1991 is dismissed.

22. Writ Petition No.2520 of 1991 is disposed of in the above

terms and in view of the judgment / order allowing Writ Petition No.4492 of 1988.

23. Interim Applications, if any, and Civil Application, if any, all stand disposed.

[MILIND N. JADHAV, J.]

24. After the Judgment is pronounced, Mr. Bodake, learned Advocate appearing for the contesting Respondent has sought stay of the Judgment to enable the Respondents to approach the Supreme Court. The request of Mr. Bodake, though opposed by Mr. Deshmukh, learned Advocate for Respondents, is however granted. The present Judgment / Order shall remain stayed for a further period of 10 weeks from today.

[MILIND N. JADHAV, J.]

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