

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1962 OF 1997
WITH
INTERIM APPLICATION NO. 30132 OF 2022

Prabhu Anant Lungase and Anr.

.. Petitioners

Versus

~~Pralhad Hanumant Kamble~~

Since deceased through his legal heirs

Dattatraya Pralhad Kamble and Ors.

.. Respondents

-
- Mr. Ajay A. Joshi, Advocate for Petitioners.
 - Mr. A.R. Metkari, Advocate for Respondents.
-

CORAM : MILIND N. JADHAV, J.
RESERVED ON : FEBRUARY 02, 2023.
PRONOUNCED ON : JUNE 05, 2023.

JUDGMENT:

1. This Writ Petition arises out of proceedings between parties under provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “**the said Act**”). The order impugned in the present Writ Petition is dated 12.09.1996 passed by the Maharashtra Revenue Tribunal, Pune (for short “**MRT, Pune**”) in Revision proceedings under the said Act. By this order, the MRT, Pune dismissed the Revision Application filed by the Petitioners and upheld the order dated 15.02.1994 passed by the Sub-Divisional Officer, Madha (for short “**SDO**”) in Tenancy Appeal No.18 of 1993 and the order dated 30.09.1993 passed by the Tahsildar, Madha in Tenancy Case No.83 of 1991.

2. Thus, there are three concurrent orders against the Petitioners. Writ Petition was filed in 1997 and interim order in terms of prayer clause 'c' was granted on 17.04.1997. On 25.09.1997, interim order was varied and parties were directed to maintain status quo during the pendency of the Petition.

3. To appreciate the *lis* between the parties, it will be apposite to refer to the relevant facts which are outlined herein under:-

- (i) Petitioner's predecessor-in-title i.e. their father namely Anant Lungase was the tenant of land bearing Gat No.75 situated at Village Lahu, Taluka Madha, District Solapur (for short "**the subject land**"). Predecessor-in-title of Respondents namely their father Hanumant T. Kamble was the landlord.
- (ii) It is the Petitioners' contention that their father became a deemed purchaser of the subject land in view of the provisions of the said Act.
- (iii) According to Petitioners, proceedings under Section 32G of the said Act were initiated sometime in the year 1959. However, averment to that effect is made without furnishing any details. According to Petitioners, proceedings under Section 32G were numbered as 17 of 1969. On 27.05.1968, an agreement for sale was

entered into between the predecessor-in-title of Petitioners and Respondents which was registered. Once again save and except the averments, the copy of registered agreement is not produced on record.

- (iv) On 31.03.1984 the Tahsildar passed an order allowing the proceedings in favour of the Petitioners' predecessor-in-title and directed issuance of the certificate under Section 32M of the said Act.
- (v) Certificate under Section 32M of the said Act was granted. Respondents' predecessor-in-title being aggrieved filed Tenancy Appeal No.48 of 1984 before the Appellate Authority i.e. SDO. By order dated 25.11.1987, SDO dismissed the Appeal and upheld the order dated 31.03.1984 passed by the Tahsildar. Being aggrieved, Respondents' predecessor-in-title filed Revision proceedings before the MRT, Pune being proceedings No.MRT.SH.III./4/88. By order dated 31.03.1989, the MRT, Pune quashed and set aside the orders passed by the Tahsildar (31.03.1984) and SDO (25.11.1987) and allowed the Revision Application on the ground that proceedings under Section 32G of the said Act could not have commenced as the landlord

(predecessor-in-title of Respondents') had obtained the exemption certificate under Section 88C of the said Act.

- (vi) In view of the above ruling, predecessor-in-title of Respondents namely Hanumant T. Kamble i.e. their father filed Tenancy Case No.83 of 1991 under Section 33B of the said Act seeking possession of the subject land from the predecessor-in-title of Petitioners. During pendency of the said proceedings both the original landlord and tenant expired and proceedings were continued by their legal heirs who are parties before me.
- (vii) By order dated 30.09.1993, Tahsildar, Madha allowed Tenancy Case No.83 of 1991 in favour of Respondents and against the Petitioners. Being aggrieved, Petitioners filed Tenancy Appeal No.18 of 1983 before the Appellate Authority i.e. SDO. By order dated 15.02.1994, SDO dismissed the Tenancy Appeal and upheld the order passed by Tahsildar, Madha. Being aggrieved, Petitioners filed Revision proceedings before the MRT, Pune against the order passed by the SDO. On 12.09.1996, MRT, Pune dismissed the Revision proceedings and upheld the order dated 30.09.1993

passed by Tahsildar, Madha and 15.02.1994 passed by SDO in Tenancy Appeal.

(viii) The order dated 12.09.1996 is impugned in the present Writ Petition.

4. Though it is seen that the impugned order emanates from the proceedings in Tenancy Case No.83 of 1991, the learned Advocate appearing for the Petitioners would submit that the first round of litigation between the predecessor-in-title of the parties culminating in passing of the order dated 31.03.1989 by the MRT, Pune has given rise to the present proceedings. He would submit that the facts and the orders passed by the authorities in the first round of litigation between the parties is crucial since the said proceedings emanate from the grant of certificate under Section 32M of the said Act to the predecessor-in-title of Petitioners.

5. Mr. Joshi, learned Advocate appearing for the Petitioners has painstakingly made the following submissions:-

- (i) While entertaining the Application under Section 33B of the said Act, the Authority did not recorded any specific finding on the point of the statutory requirement on relevant consideration of facts / evidence in the case; that even though as per Section 33B, the landlord was under a statutory obligation to

prove the fact of 'bonafide requirement of land for personal cultivation', the landlord has miserably failed to lead any evidence on this point; that the finding on this issue is wholly based on irrelevant consideration; that the first Authority i.e. the Tahsildar, in the judgment dated 30.09.1993 held that "remaining legal heirs have given up their rights of ownership in favour of Mr. Eknath as they have relinquished their right of ownership and therefore they will not be held as a landlord. Thus the said Authority has committed a flagrant error by not considering the fact that the landlords i.e. other legal heirs of the deceased have not executed any registered deed of relinquishment and therefore this finding is perverse. That this is so observed in order to circumvent the evidence of Petitioners that other landlords are well educated and settled landlords i.e. they are employed as Tahsildar, Doctor and consequently do not have any 'bonafide need' and therefore in order to veil this evidence, this observation is recorded, therefore exercise of power is clothed with bias.

- (ii) That the Petitioners had raised following points for consideration specifically in their written submissions which are required due consideration:-
- (a) On 01.04.1957 predecessor of Petitioners was tenant and therefore declared as 'deemed purchasers';
 - (b) That fixation of price and its payment etc. are consequential; once tenant becomes a deemed owner, other proceedings are not maintainable;
 - (c) In the proceedings restarted under Section 32G, the landlord had waived his right and entered into an agreement for sale and same is admitted by the landlord in his statement recorded before the Tahsildar;
 - (d) Considering the above fact, price was fixed and Section 32M certificate was issued. Therefore, the landlord was precluded from initiating proceedings under Section 33B for possession as he had no right to initiate such proceedings under Section 33B.

- (e) Because of the registered agreement and voluntary statement of the landlord before the Authority for such transaction, the landlord was estopped from filing the proceedings seeking possession;
- (f) That once the agreement was executed between parties, the relation of landlord and tenant came to an end;
- (g) That proceedings under Section 33B were initiated only because of the order of MRT dated 31.03.1989. However the said decision is without jurisdiction as the order dated 31.01.1969 under Section 32G was passed with the consent of the landlord and has not been challenged by either party. Therefore the said decision is a nullity;
- (h) That proceedings under Section 33B cannot be initiated by the landlord for the reason that certificate under Section 88C was obtained by the father of the landlord who expired before 1968 (01.11.1963). Present proceedings under Section 33B have not been initiated within limitation. Therefore, the same is not maintainable;

- (i) In the proceedings under Section 33B, the income of landlord is to be considered and if the income of the landlord is more than 1500/- p.m. application is required to be rejected.
- (iii) That it was specifically contended by Petitioners that legal heirs of the deceased landlord are Eknath, Pralhad, Arjun and Bhima and they were all well settled. It was specifically contended that Eknath was serving in a cloth mill at Solapur and getting an amount of Rs.1000/- per month. Mr. Pralhad was getting Rs.700/- per month. Eknath was working as Godown Keeper and earning Rs.1000/- per month. Mr. Arjun was a Doctor and Bhima was serving as a Tahsildar. This evidence has not been challenged and not been considered.
- (iv) That provisions of Section 33B have been introduced in the Act of 1947 by amendment dated 09.02.1961 in view of fact that on the date of Tiller's day i.e. 01.04.1957, the status of deemed purchaser has been conferred on the tiller who was in actual physical possession of the agricultural land and therefore the relationship of landlord and tenant has come to an end

on 01.04.1957 itself, except in case of (i) disable landlord and (ii) certificated landlord as per Section 88C. Petitioners further submit that in order to extend the benefit of obtaining the possession after 01.04.1957, from the tenant who became a deemed purchaser, a scheme has been introduced by introducing provisions of Section 33A to C to the class of poor landlord who are bring recognized as '*certificated landlord*'. This scheme is not applicable to the category of general landlord as can be seen in the present case.

- (v) That provisions of Section 33B can be invoked by the certificated landlord only if he proves that (i) the landlord needs the land (ii) such need is bonafide (iii) he is in position to personally cultivate it (iv) his holding qualifies him to claim the same.
- (vi) That in the present case father of Respondents Mr. Hanumant T. Kamble procured a certificate under Section 88C on 15.10.1959. On the basis of the certificate he initiated proceedings for seeking possession purportedly in the year 1963. That the said proceedings were dropped due to death of Mr.

Hanumant T. Kamble, who expired on 01.11.1963. That after a lapse of about 27 years, the present Respondents initiated the proceedings under Section 33B in the year 1990. Therefore the test of bonafide requirement of the land for personal cultivation, was required to be satisfied by the Respondents. That considering the status (Tahsildar and Doctor) of the Respondents, by no stretch of imagination they can be considered as 'poor landlord'. Therefore the statutory requirement has been overlooked by the authorities by wrongly shifting the onus on the Petitioners and hence impugned decision is unsustainable.

- (vii) That even though the predecessor of Respondents Mr. Hanumant T. Kamble obtained certificate under Section 88C on 15.10.1959 and filed Application under Section 33B in the year 1963 and further he died on 11.11.1963 and because of his death the proceedings were dropped. That the Application under Section 33B by the present Respondents in the year 1991 is not maintainable in view of provisions of proviso of clause (iii) of sub-Section (1) of Section 33(C). Petitioners have become deemed purchaser on 01.04.1962 and

have right to retain possession of the land, after dropping of the proceedings initiated under Section 33B by Mr. Hanumant T. Kamble.

(viii) That obtaining the certificate under Section 88C itself is not conclusive for divesting the right of deemed purchaser in view of the fact that provisions of Section 33C supersede the provisions of 88C. From 1963 to 1989, the status of Petitioners got revived as deemed purchaser as per the proviso of clause (ii) of Sub-section (1) of Section 33 (C) w.e.f. 01.04.1962 or on the date of dropping of Application filed by Mr. Hanumant T. Kamble under Section 33B and therefore the present proceedings initiated in the year 1990 itself are not maintainable.

(ix) That even though the present Respondents are legal representatives of the original landlord and as per various decisions of this Court, are exempted from satisfying the ingredients of Section 88C i.e. economic holding and total annual income, having cap of 1500/-, still such legal representatives are under a statutory obligation to prove their bonafide requirements for personal cultivation. That the bonafide need should be

genuine, honest and conceived in good faith.

- (x) That legal representatives of the original landlord Mr. Hanumant Kamble are/were in service in the city at Solapur, which is 95 km away from the subject land and were earning a handsome income in their profession / service in the government as well as in the private sector.

5.1. Mr. Joshi in his usual fairness submitted that Petitioners filed Regular Civil Suit No.261 of 1996 seeking specific performance of the agreement for sale dated 27.05.1968 which was dismissed by the Civil Court on the ground of limitation and the dismissal of the Suit has been confirmed by the Appellate Court upto Second Appeal.

5.2. He would however submit that on the basis of the above propositions, the impugned order dated 12.09.1996 passed by the MRT, Pune deserves to be quashed and set aside.

5.3. In support of his above propositions, he has referred to and relied upon the following judgments:-

- (i) *Kondiba Vs. Gajanan*¹;
- (ii) *Subhadra Nivrutti Dhere & Ors. Vs. Shankar Digambar Dixit, Deceased through Legal heirs & Ors.*²;
- (iii) *Hariba Keshav Barbole Vs. Motibai Deepchand*³;

1 1974 Mh.L.J. 275

2 2009 (5) Bom. C.R. 25

3 1973 0 SC (Bom.) 99 : 1975 0 AIR (Bom.) 137

- (iv) *Chintaman Anant Khasnis Vs. Keshav Dnyanu More (Heirs of deceased Dnyanu Babaji More and Ors.*⁴;
- (v) *Maruti Namdeo Gade Vs. Dattatraya Vishnu Maval*⁵;
- (vi) *Ram Das Vs. Ishwar Chander and Ors.*⁶;
- (vii) *Dinkar Maruti Jadhav Vs. Nivrutti Gangaram Pawar (Died) By legal heirs and Ors.*⁷;
- (viii) *Shamrao D. Gosavi Vs. Bhau M. Busane*⁸; and
- (ix) *Babulal Badriprasad Varma Vs. Surat Municipal Corporation and Ors.*⁹

6. *PER CONTRA*, Mr. Metkari, learned Advocate appearing for the Respondents has made his submissions in support of the impugned order. He would submit that it is not merely the impugned order dated 12.09.1996 which is against the Petitioners. Petitioners have also lost in the Tenancy Case before the Competent Authority namely in view of the order dated 31.03.1989 passed in Revision proceedings against the Petitioners' predecessor-in-title whereby there is a categorical finding returned by the MRT, Pune that once the landlord i.e. predecessor-in-title of Respondents had obtained the statutory certificate for exemption under Section 88C of the said Act as far back as in the year 1959, the proceedings under Section 32G of the said Act could never had commenced. The said order dated 31.03.1989 passed by the MRT, Pune has become absolute and was not challenged by the

4 1977 Mh.L.J. 755

5 1977 Mh.L.J. 848

6 AIR 1988 SC 1422

7 (2008) 5 SCC 489

8 1979 Bom.C.R. 191

9 (2008) 12 SCC 401

predecessor-in-title of the Petitioners and the same still subsist. The same has become final and absolute on the ground that the predecessor-in-title of the Respondents was a “certificated landlord”. He would submit that apart from the aforesaid principal reason there are certain additional facts which are required to be brought on record which are germane to the present case. He would submit that in 1992 Petitioners filed Regular Civil Suit No.136 of 1992 before the learned Civil Judge Junior Division, Madha for injunction and declaration of title.

6.1. On 14.12.1995, the said Suit was dismissed in default for want of evidence under Order IX Rule 3 of the Civil Procedure Code, 1908. It was recorded in the order that Petitioners did not adduce their evidence nor were present. He would next submit that Petitioners filed a fresh Suit being Regular Civil Suit No.261 of 1996 seeking specific performance of the agreement for sale dated 27.05.1968 executed between the predecessor-in-title of the parties which was dismissed by judgment and decree dated 17.07.2000 by the Civil Judge Junior Division, Madha. He would submit that Petitioners filed Regular Civil Appeal No.379 of 2000 against the said judgment and decree which was also dismissed by a detailed reasoned order dated 08.04.2004 by the District Judge, Solapur. He would further submit that this Court in Second Appeal No.1162 of 2004 by a detailed

order dismissed the Second Appeal and upheld the concurrent orders passed by the learned Trial Court and the District Court.

6.2. In support of his above submissions, Mr. Metkari has referred to and relied upon the following two decisions:-

- (i) *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Ors.*¹⁰; and
- (ii) *Hiralal Motilal Baldota & Ors. Vs. Manohar Tukaram Vairal*¹¹

6.3. He would submit that the decision of the Supreme Court is on the proposition that it is not within the domain to investigate the grounds on which the findings were arrived at by the last Court of fact and substitute its opinion for the opinion of the first Appellate Court unless it is found that the conclusions drawn by the lower Appellate Court were erroneous and contrary to the mandatory provisions and settled position of law. He would submit that in the present case, it needs to be appreciated that both the orders passed by the Tahsidlar, Madha (30.09.1993) and SDO (15.02.1994) are well reasoned orders and are in consonance with the statutory provisions of the said Act as applicable to the present case. He would submit that the authorities on the basis of evidence have come to the conclusion that the land was bonafide required by the Respondents and thus finding to that effect has been returned under Section 33B of the said Act.

¹⁰ (1999) 3 SCC 722

¹¹ 2006 (3) All MR 713

6.4. In support of his propositions, he has placed reliance on the decision of the Division Bench of this Court (Aurangabad Bench) in the case of *Hiralal Motilal Baldota* (*supra*) and contended that the learned Tenancy Court has after hearing the parties and perusing the evidence on record has come to the conclusion that proceedings under Section 33B of the said Act have to be concluded in favour of the Respondents.

6.5. He would urge the Court to consider the reasons given by the Tahsildar, Madha and the SDO in their respective orders which have been upheld by the MRT, Pune and also consider the subsistence of the order dated 31.03.1989 passed by MRT, Pune whereby the certificate under Section 32M of the said Act issued to the predecessor-in-title of the Petitioners was cancelled. He would therefore submit that the present Writ Petition be dismissed.

7. I have heard Mr. Joshi, learned Advocate for Petitioners and Mr. Metkari, learned Advocate for Respondents and with their able assistance perused the pleadings in the present case. Submissions made by Advocates has received due consideration of this Court.

8. At the outset, it is seen that there is no dispute about the orders passed by the authorities in the first round and the second round of litigation between the parties. Admittedly during the first round of litigation the order dated 31.03.1989 passed by the MRT, Pune concluded that in view of the exemption certificate granted

under 88C of the said Act by the Mamlatdar, Madha in TNC Suit No.364/58 dated 15.10.1959 the Section 32G order and 32M certificate was set aside. It is thus clear and undisputed that the order passed under Section 88C of the said Act on 15.10.1959 has not been set aside nor it is appealed against by the original tenant and is therefore subsisting.

9. In that view of the matter, the proceedings which have emanated under Section 33B of the said Act filed by the original landlord seeking possession have been determined by the authorities in favour of the Respondents. It is seen that while considering the Petitioners' case the learned Tahsildar before passing the order dated 30.09.1993 has framed the following points for determination:-

1. Whether the Applicant is a "certificated landlord" and the opponent is the "excluded tenant"?
2. Whether the Application filed by the Applicant is within time.
3. Whether the Applicant has served a legal notice regarding termination of his tenancy.
4. Whether the Applicant has sent a copy of the notice to the Tahsildar at the same time.
5. Whether the suit land is in the name of Applicant as his fore-father in the R. of R. on 01.01.1952 and thereafter until the commencement date in the name of the Applicant or any of his ancestor.

6. Whether the Applicants bonafide required the suit land for personal cultivation.

10. On the basis of the above points for determination, the Petitioners produced the exemption certificate dated 15.10.1959 certifying that the Respondents' predecessor-in-title is the "certificated landlord" and the Petitioners' predecessor-in-title is the "excluded tenant". It is also seen that the original landlord had issued the statutory notice to the tenant regarding termination of tenancy and a copy of the said was endorsed to the Tahsildar at the same time. It is crucial to note that the landlord i.e. predecessor-in-title of the Respondents has deposed before the Tahsildar and affirmed that in view of the exemption certificate under Section 88C of the said Act and the notice for termination of tenancy, the subject land was required for his bonafide personal cultivation. It is seen that though the Petitioners who were Respondents before the Tahsildar did raise the issue of bonafide requirement, it was too late in the day. The objection regarding bonafide requirement ought to have been taken infact in the first instance i.e. before the certificate under Section 88C was issued. That apart, the tenant did not produce any documentary evidence in respect of his submissions on bonafide requirement. It is seen that the Tahsildar has on the basis of material evidence placed before me given cogent reasons while determining point No.6. It is

correctly determined that the Tahsildar cannot start and decide the proceedings under Section 32G of the said Act in respect of the landlord who has obtained exemption certificate under Section 88C of the said Act. It is correctly held that the provisions of Section 32G of the said Act are not applicable in respect of a “certificated landlord” (under Section 88C of the said Act).

11. On the issue of limitation argued by the Mr. Joshi, the Tahsildar has held as follows:-

“The Advocate on behalf of the applicant landlord has stated the landlord had applied under Sec. 33(b) for grant of possession but unfortunately his application was lost in the Court. Then he applied to the Sub-Divisional Officer, Madha Division at Kurduwadi for issuing orders to reconstruct the case. Accordingly the Sub-Divisional Officer, Madha Division, Kurduwadi has issued orders to reconstruct the case under Sec.33(b). The case was reconstructed and enquiry has been completed by this Court. He has pointed out that in proceedings under Sec.33(b) the provisions under Sec.32G have no concern. He has also pointed out that this Court has no jurisdiction to decide that the decision given by the MRT Pune is without jurisdiction. I agree with the point raised by the Advocate on behalf of the landlord.”

12. That apart, the order of the first Appellate Authority i.e. the SDO considers the above submissions on Section 33B and Section 88C of the said Act and gives cogent reasons for upholding the order passed by the Tahsildar. It is seen that before both the authorities it has been argued by the Petitioners that the order dated 31.03.1989 passed by the MRT, Pune in Revision proceedings has been passed without jurisdiction. As seen from the record, this order has not been challenged by the Petitioners. Two Civil Suits filed by the Petitioners

one in 1992 and the other 1996 have been dismissed by the Civil Court. These Suits infact sought declaration of title and permanent injunction. Both, the Tahsildar in his order dated 30.09.1993 and the SDO in his order dated 15.02.1984 have rightly concluded that they will not have jurisdiction to decide whether the decision given by the MRT, Pune dated 31.03.1989 is without jurisdiction or otherwise. The MRT, Pune while passing the order dated 12.09.1996 has considered the above position. The MRT, Pune has after considering the orders passed by Tahsildar, Madha and the SDO has returned its findings in paragraph Nos.3 and 4 of its orders which are reproduced herein under:

“3. Both the parties were heard. On behalf of the applicants, it was pointed out that both the courts below have failed to consider properly the income of the opponents – landlords. According to the Applicants, the Opponents have not proved their bonafides. It was also pointed out that both the courts below should not have restored the whole of land to the Opponents. The Opponents have supported the judgment and order passed by the Courts below.

4. I have carefully considered the arguments advanced by both the parties. It is an admitted fact that the deceased father of the Opponents had obtained an exemption certificate under section 88-C of the B.T. & A.L. Act. Thereafter, the present opponents who are legal heirs applied for possession under section 33-B of the B.T. & A.L. Act. Amongst the opponents it is the Opponent No.2, Eknath, who requires the land for his bonafide personal cultivation. The evidence shows that the Opponent No.2 Eknath is unemployed. He has no source of income. In order to earn for his own livelihood is reasonable and bonafidely requires the land in question. It is seen that the Applicant have not produced on record any evidence to rebut the evidence of the Opponent No.2. It is not the say of the Applicants that the Opponent No.2 Eknath is employed or has any other source of income. It appears that the other Opponents did not claim the land for their cultivation. It may be that they are not in need of the same. The evidence consisting of documents as well as early testimony has been properly

considered by the learned Tahsildar as well as the Sub-Divisional Officer. The findings given by both the Courts are based on the evidence on record. Thus, there is a concurrent finding. Under the circumstances, I am inclined to interfere with the judgment and order passed by the learned Sub-Divisional Officer, Madha.”

13. I see no reason for disturbing the order passed by the MRT, Pune especially in view of the fact that the order passed by MRT, Pune dated 31.03.1989 still subsist and has become final and absolute. In view of the above observations and findings, the order dated 12.09.1996 is sustained.

14. Writ Petition is dismissed.

15. In view of dismissal of Writ Petition, pending Interim Application No.30132 of 2022 does not survive and is accordingly dismissed.

[MILIND N. JADHAV, J.]

16. After the Judgment is pronounced, Mr. Joshi, learned Advocate has made an oral Application seeking stay of the Judgment / Order for a period of 10 weeks to enable the Petitioners to approach the Supreme Court.

17. The request made by Mr. Joshi, though opposed by Mr. Metkari, 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.]