IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10257 OF 2022

Shankar Anna Pisal and Ors. … Petitioners
versus
Vijaysinh Chandrasen Phalke and Ors. … Respondents

Mr. Sumit V. Sonare for Petitioner.
Mr. S.G.Karndikar with Mr. Satish Raut for Respondent Nos.1 to 12.
Mr. Gaurav Nankar for Respondent Nos.21 and 23.

CORAM: N.J.JAMADAR, J.

DATE : 28 MARCH 2023

P.C.

1. Heard the learned Counsel for the parties.

2. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the parties, heard finally at the stage of admission.

3. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of the judgment and order dated 15 February 2021 passed by the learned Member, Maharashtra Revenue Tribunal, Bench at Pune, in Revision Application No.NS/X/1/2019 (B-179/19) preferred by the Petitioners, whereby the said Application came to be dismissed at the stage of admission on the premise that the provisions of Sections 32 to 32R of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act of 1948) were not applicable to the subject land.

4. The Petitioners claimed to be the successors in interest of late Nana

Laxman Pisal, who was in possession and cultivation of agricultural lands bearing old Survey Nos.81, 83, 84, 131, and 85, bearing new Gat No.592/1, owned by Vijaysinh Chandrasen Phalke. Late Nana Pisal had instituted proceedings under Section 32G of the Act of 1948 being Tenancy Case No.32G/Khanapur/109+110. The Agricultural Lands Tribunal – I, by an order dated 30 November 1962, ordered that lands bearing No.81, 83, 84 and 131 be granted on new tenure to late Nana Pisal for the purchase price of Rs.828.30 plus interest payable in 12 annual installments. The Agricultural Lands Tribunal held that the land bearing Survey No.85 (subject land) was recorded in the record of right as Hill (Dongar) and the said land was, thus, being used only for quarry. The said land was not under cultivation. Nor grass grown on the land used for feeding the cattle of the tenant. Resultantly, the provisions of Sections 32 to 32L of the Act of 1948, were not applicable to the subject land.

5. It seems that the said order passed by the Agricultural Lands Tribunal attained finality.

6. In the year 2013, the Petitioners again preferred an application under Section 32G of the Act of 1948. By a judgment and order dated 8 January 2016 in Tenancy Case No.2 of 2013, the Tahasildar and Agricultural Lands Tribunal, Wai, determined the purchase price of the subject land.

7. Being aggrieved, Respondent Nos.1 to 11 preferred Tenancy Appeal No.9 of 2016 before the Sub-Divisional Officer. By a judgment and order dated 12

November 2016, the Sub-Divisional Office set aside the order passed by the Agricultural Lands Tribunal holding that out of 20.6 H land, only 1.32 H land was under cultivation and the balance 19.32 H land was hilly land and, therefore, the provisions of Section 32G of the Act, 1948 were not attracted. The Sub-Divisional Officer relied upon panchanama carried out by a Circle Officer on 16 September, 2016.

8. Being aggrieved, the Petitioners preferred a Revision under Section 76 of the Act of 1948. The learned Member was, however, persuaded to dismiss the Revision Application at the stage of admission itself as it was evident that the land was not under cultivation on Tillers day and the judgment of the Agricultural Lands Tribunal dated 30 November 1962 had attained finality and, therefore, it could not have been reopened by initiating a fresh proceedings.

9. Mr. Sonare, learned Counsel for the Petitioners submitted that the learned Member, Maharashtra Revenue Tribunal and the Sub-Divisional Officer approached the matter from an incorrect perspective. The authorities have lost sight of the fact that when the first order was passed by the Agricultural Lands Tribunal on 30 November 1962, there was no panchanama carried out, though it was not disputed that the predecessor in title of the Petitioners had been in actual possession and cultivation of the subject land. The Tahasildar, Wai, was thus justified in allowing the proceedings under Section 32G of the Act on the basis of the panchanama which indicated that the subject land was under cultivation. The learned Member,

Maharashtra Revenue Tribunal, according to Mr. Sonare, committed an error in importing the principle of res-judicata to the proceedings under the Act of 1948.

10. In opposition to this, Mr. Karandikar, learned Counsel for Respondent Nos.1 to 12 submitted that even if the Petitioners case is taken at par and a small portion of the subject land was shown to have been brought under some sort of cultivation post Tillers day, it is of no significance. In the judgment and order dated 30 November 1962, the Agricultural Lands Tribunal had recorded a categorical finding that the subject land was a hilly land and used as a quarry. The said finding, according to Mr. Karandikar, operates as a bar on the principle analogous to res-judicata. Reliance was placed on a judgment of the Supreme Court in the case of **Vaijinath Yeshwant Jadhav and Ors. V/s. Afsar Begum and Ors.**[1]

11. I have carefully perused the material on record and given anxious consideration to the rival submissions canvassed across the bar. Undisputedly, in the first proceedings under Section 32G of the Act of 1948 in respect of a number of survey numbers, the Agricultural Lands Tribunal had determined purchase price of all the survey numbers, excluding Survey No.85. The Agricultural Lands Tribunal had ascribed justifiable reasons for excluding Survey No.85. It was held that the land bearing Survey No.85 was not used for agricultural purposes within the meaning of Section 2(5) of the Act of 1948. It was specifically recorded that the record of right

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indicated that the said land was designated as a hilly land and was used only for the purpose of quarrying. It would be too late in the day to now urge that the Agricultural Lands Tribunal did not record a finding that on the Tillers day, the original tenant was not cultivating the subject land.

12. From this standpoint, the learned Member, Maharashtra Revenue Tribunal, committed no error in dismissing the Revision Application at the admission stage. After adverting to the definition "to cultivate" under Section 2(5) of the Act of 1948, the learned Member rightly recorded that if the land was not under cultivation on the Tilers day, the provisions of Section 32 to 32R of the Act were not at all attracted.

13. The broad submission on behalf of the Petitioners that the judgment of Agricultural Lands Tribunal dated 30 November 1962 does not operate as res-judicata cannot be readily acceded to. The said judgment declares that the original tenant was not in cultivation of the subject land. The subsequent change in the use of a portion of subject land, or for that matter entire subject land, is of little assistance in altering the character of the subject land on the Tillers day.

14. I am, thus, persuaded to hold that no interference is warranted in exercise of extra-ordinary writ jurisdiction. The Petition, thus, deserves to be dismissed.

15. Hence, the following order :

ORDER

(i) The Writ Petition stands dismissed.

(ii) Rule discharged.

(iii) No order as to costs.

(N.J.JAMADAR, J.)