

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8235 OF 2016

Mr. Ramchandra Vishwanath Gurav & Another ...Petitioners
Versus
Mr. Krushnarao Kesu Gurav (Decd.) Through Lrs. & Ors. ...Respondents
...
Mr. Anil D. Joshi, for Petitioners.
Mr. P. B. Shah a/w Mr. Sandeep Patade i/by Mr. K. P. Shah, for Respondent
Nos. 1a to 1c.
...

CORAM : SANDEEP V. MARNE, J.
DATE : OCTOBER 12, 2023.

P.C.:

1. Challenge in this Petition is to the order dated 12 January 2016 passed by the Maharashtra Revenue Tribunal (**MRT**) rejecting Petitioners' revision application. In that revision application, Petitioners had challenged the order dated 24 February 2012 passed by the Sub Divisional Officer, Karad. The Sub Divisional Officer (SDO) in turn has upheld the order passed by Tahsildar and Agricultural Lands Tribunal, Patan passed in December 2008.
2. The dispute involved in the Petition relates to a claim raised by Respondent No.1 about the transaction of sale executed by Respondent Nos. 2 & 3 (landlords) in favour of the Petitioners (co-tenants) after receipt of

possession of the tenanted land. Respondent No. 1 claims such transaction to be illegal on account of statutory prohibition on the landlords from not-cultivating the land received back from a tenant. He is aggrieved by landlord's action of selling the tenanted land to their co-tenant and want return of land.

3. Respondent No.1 accordingly instituted proceedings before the Agricultural Lands Tribunal and Tahsildar, Patan under provisions of Section 39 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**Tenancy Act**) for restoration of possession of one half of the sold land under provisions of Section 37 of the Tenancy Act. It was the case of Respondent No.1 that the land which came in possession of the landlord in the year 1986 was illegally sold to Petitioners in the year 1992 instead of cultivating the same for a period of 12 years as mandated under Section 37 of the Tenancy Act. Interestingly both Petitioners as well as Respondent No.1 were tenants of Respondent Nos.2 & 3. All three parties received possession of 1/3rd share of the land in question in tenancy proceedings. In addition to receipt of 1/3rd share as a tenant, Petitioners entered into purchase transaction with the landlord in the year 1992 and purchased landlords' 1/3rd share as well. This sale transaction effected in the year 1992, according to Respondent No.1, is in violation of Section 37 of the Tenancy Act.

4. The Tahsildar, by order passed in December 2008, upheld the claim of Respondent No.1 and has directed restoration of one half portion of sold land in favour of Defendant No.1 under Sections 37 and 39 of the Tenancy Act. The Revision Applications preferred by Petitioners before Sub Divisional Officer and MRT have been rejected. Petitioners are accordingly before this Court aggrieved by the orders of Tahsildar, SDO and MRT.

5. The learned counsel appearing for the Petitioners would submit that Section 37 of the Tenancy Act does not require that the land must be cultivated continuously for a period 12 years. That after receipt of possession of the land, the landlords did cultivate the same during the period of 1982 to 1992. He would submit that the Respondent No.1 instituted Regular Civil Suit No.89 of 1992 for challenging the Sale Deed dated 3 February 1992. The said suit has been disposed of under provisions of Order 9, Rule 3 of the Code of Civil Procedure and the order has attained finality. He would therefore submit that no further challenge to the Sale Deed dated 3 February 1992 could be maintained by filing parallel proceedings before the Agricultural Lands Tribunal. He would further submit that, once the sale deed is now held to be legal, the Authority is under Tenancy Act could not have made a declaration under provisions of Sections 37 & 39 of the Tenancy Act. He

would further draw my attention to the partition effected in the year 1999 between the Petitioners and Respondent No.1, under which the land in question was specifically executed thereby indicating that Respondent No.1 waived his rights in respect of the land which was purchased by way of Sale Deed dated 3 February 1992. Once the rights in respect of the land in question are waived by Respondent No.1 in the partition effected in the year 1999, it was no longer open for him to file proceedings under Section 39 of the Tenancy Act before the Tahsildar in the year 2003.

6. *Par contra* Mr. Shah, the learned counsel appearing for Respondent No.1 would oppose the Petition and support the order passed by the Tribunal. He would submit that the dismissal of Civil Suit would not create a bar for entertainment of application filed under provisions of Section 39 of the Tenancy Act. He would submit that Civil Court does not have jurisdiction to decide any of the issues covered by the Tenancy Act and that there is specific bar under the provisions of the Tenancy Act under which, the Civil Court cannot entertain any tenancy disputes. That therefore the Agricultural Lands Tribunal was the correct Authority, which could be moved by Respondent No.1 for restoration of possession of land, which was not cultivated by the landlord under provision of Section 37 of the Tenancy Act.

7. I have considered the submissions canvased by the learned counsels appearing for the parties. Section 37 of the Tenancy Act reads thus:

“Section 37 Landlord to restore possession if he fails to cultivate within one year

(1) If after the landlord takes possession of the land after the termination of the tenancy [1] [under section 31,] [2] [33B or section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956] he fails to use it for any of the purposes specified in the notice given under [1] [section 31], [2] [33B or section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956] within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy of the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof.

(2) After the tenant has recovered possession under sub-section (1) he shall, subject to the provisions of this Act, hold such land on the same terms and conditions on which he held it at the time his tenancy was terminated.

(3) If the landlord has failed to restore possession of the land to the tenant as provided in sub-section (1) he shall be liable to any such compensation to the tenant as may determined by the Mamlatdar for the loss suffered by the tenant on account of eviction.

[3] [(4) The provisions of this section shall not apply to a landlord who becomes a serving member of the armed forces; and on that account, fails to use the land, or ceases to use it, for any of the purposes specified in the notice referred to in sub-section (1) and within the period specified in that sub-section.]

8. Thus, it is mandatory for a landlord, who receives possession of tenanted land to take possession of the same within a period of one year and to further cultivate the land for a period of 12 years. The words used in this

Section are “or *ceases to use it at any time for any of the aforesaid purposes.... within 12 years from the date on which he took such possession.....*”. Thus, if at any point of time within 12 years from the date of possession, it is noticed that the landlord has failed to cultivate the land, the tenant becomes entitled to seek restoration of possession under Section 37 of the Tenancy Act. In the present case, there is no dispute to the position that the possession was given to the landlords in the year 1986 and that he has executed a Sale Deed in respect of that very land on 3 February 1992. Thus, it is conclusively established that the landlord has failed to cultivate the land for a period of 12 years. In that view of the matter, the conclusions reached by the Agricultural Lands Tribunal about failure on the part of the landlord to cultivate the land for 12 years cannot be faulted.

9. So far as the dismissal of Regular Civil Suit No.89 of 1992 instituted by Respondent No.1 is concerned, in my view, Civil Court would not have any jurisdiction to make a declaration under Section 37 of the Tenancy Act. Therefore, mere dismissal of the suit filed for setting aside the Sale Deed dated 3 February 1992 would not create a bar for the Agricultural Lands Tribunal, which exercises jurisdiction vested in it under Section 37 of the Tenancy Act. In fact it is highly debatable as to whether that suit was

maintainable in view of bar of Civil Court's jurisdiction under Section 85 of the Tenancy Act.

10. So far as the contention with regard to partition effected in the year 1999 between the Petitioner & Respondent No.1 is concerned, in my view the same would have no bearing on the issue of right of Respondent No.1 to seek restoration of possession under Sections 37 & 39 of the Tenancy Act. The cause for seeking restoration of possession arose in the year 1992 and the subsequent partition allegedly effected in the year 1999 would not extinguish the right created in favour of Respondent No.1 on account of sale effected on 3 February 1992.

11. The Agricultural Land Tribunal, Sub Divisional Officer and Maharashtra Revenue Tribunal have recorded concurrent findings. Those findings do not suffer from any patent error. No case is made out for interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. Writ Petition being devoid of merits, is dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)