



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6139 OF 2010

1. Shri Musa Mainuddin Varekar
(deceased)
 2. Shri Yakub Mainuddin Varekar
Age: Adult, Occ.-
R/at: Kasar Vadavali,
Dist. Thane.
- .. Petitioners

V/s.

Smt. Seludhan Mistry,
(Through her Power of attorney)
Shri Vikas Walawalkar,
Age: Adult, Occ. -
R/at: 11/F/19 -B, Suyash,
Amarhind Mandal,
Gokhale Road,
Dadar, Mumbai.

..Respondent

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Ms. Sachin Dhakephalkar, Advocate for the Petitioners.
Mr. Vineet Naik, Senior Advocate, a/w Mr. Kunal Bhanage,
Mr. Nilesh Tated i/by Mahimtura & Company, Advocates for
Respondent.

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CORAM : SANDEEP V. MARNE, J.
DATE : 7 OCTOBER 2023

Judgment:

1. By this petition, Petitioners challenge Judgement and Order dated 3rd July 2010 passed by the President, Maharashtra Revenue Tribunal, Mumbai (**MRT**) in TNC Revision No.127/B/2003. By that order, the MRT has confirmed the Order dated 9th September 2002 passed by the Sub Divisional Officer, Thane (**SDO**) in Tenancy Appeal No. 31 of 2000 preferred by the Respondent landlord. The SDO had in turn, set aside Order dated 18th September 2000 passed by Agricultural Land Tribunal and Tehsildar, Kalyan in Application No.3 of 1997 declaring Petitioners to be the tenants.

2. Briefly stated, facts of the case are that village Borivade was a Salsette Estate village, where neither survey of lands was conducted nor the land was subject to levy of land revenue. Predecessor of Respondent had purchased the land of entire village by Deed of Conveyance dated 21st April 1925, which included land which was subsequently numbered as Survey No. 47, Hissa No.2 and which is the subject matter of the petition. Respondent's predecessor-in-title was thus the Estate Holder in respect of the land in village Borivade. After enactment of the Salsette Estate (Land Revenue Record

Exemption Abolition) Act, 1951, the exemption from payment of land revenue was withdrawn and it became necessary for the revenue authorities to carry out survey settlement of lands in village Borivade. Accordingly, the survey was conducted and Survey numbers were designated to various lands ,including the land bearing Survey No.47, Hissa No.2. On 8th April, 1960, Mutation Entry No. 4 was effected by which name of predecessor of Petitioners-Mainuddin Abbas Shaikh was recorded to the revenue records in respect of the land in question. That Mutation Entry was challenged by Manijeh Doctor, predecessor of the Respondent. Another Mutation Entry No.131 not recognizing the rights of estate holders was also challenged. On 5th December 1968, an order was passed by the Commissioner, Bombay Division holding the mutation of name of Mainuddin Abbas Shaikh as illegal. Accordingly, name of Manijeh Doctor was inserted as holder of the land in the revenue records. It was directed that the name of Mainuddin Abbas Shaikh be inserted in other rights column of 7/12 extract. On 4th April 1977, Manijeh Doctor (Hakim) transferred the land in question in favour of Sohrab Ardeshir Hakim and Sillo Dhan Mistri (Respondent). Respondent's name was accordingly inserted in the revenue records in respect of land bearing Survey No.47, Hissa No.2.

By agreement, Power of Attorney and Deed of Conveyance dated 17th June 1982 Respondent conveyed and transferred the land bearing Survey No.47, Hissa No.2 to Samartha Borivade Village Co-operative Housing Society Ltd. By Mutation Entry No.332, the name of the society was inserted by deleting respondent's name from revenue records.

3. On 15th July, 1985 Application No.39 of 1985 was filed by the Petitioners' predecessor under Section 32G of the Maharashtra Tenancy Agricultural Lands Act, 1948 (**Tenancy Act**) for purchase of the land bearing Survey No.47, Hissa No.2. For Application was rejected by the Tehsildar and Agricultural Lands Tribunal (**ALT**) on 17th March 1987. Ten years later, Petitioners filed Tenancy Case No.3 of 1997 under Section 70(b) of the Tenancy Act for a declaration he was tenant of the land bearing Survey No.47, Hissa No.2. The Application was allowed by the Tehsildar by Order dated 18th September 2000. Respondent filed Tenancy Appeal No.31 of 2001 before the SDO, which came to be allowed by Order dated 9th September 2002 setting aside the order passed by the Tehsildar. Review Application filed by the Petitioners before SDO was dismissed on 20th December 2002. In the meantime, Petitioners filed Regular Civil Suit No.376 of 2003

before Civil Judge, Senior Division at Thane seeking a declaration of being in continuous and peaceful possession of land in question as well as an injunction to restrain Respondent from disturbing Petitioners' possession. They also filed Revision Application before MRT challenging SDO's Order dated 18 September 2003. By impugned Judgement and Order dated 03.07.2010, MRT has proceeded to dismiss the Revision Application filed by the Petitioners. Aggrieved by the Tribunal's decision dated 03.07.2010, Petitioners have filed the present petition.

4. This Court issued *Rule* in the petition on 30th June 2011. During pendency of the present petition, the Regular Civil Suit No.376/2003 filed by the Petitioners came to be dismissed vide Judgment and Order dated 9th November 2020.

5. Mr. Dhakephalkar, the learned counsel appearing for Petitioners would submit that the order passed by the MRT is *ex facie* illegal and passed in ignorance of the fact that Petitioners have been in possession of the land in question for several years, without any objection. That the name of the Petitioners/ their predecessors have always been shown in cultivation column of the land in question for over 50 years

and no efforts were made by the Respondent to delete their names from revenue records. That, such names had been entered in the cultivation column in view of Order dated 5th December, 1968 passed by the Commissioner, Bombay Division, which has remained unchallenged. That, the SDO did not take into consideration the fact that no settlement had taken place between the parties. That SDO and Tribunal have erroneously recorded a finding that the Petitioners gave up their tenancy rights. That, affidavit filed on behalf of the Petitioners by earlier advocate, in the absence of any authority to do so, would not bind the Petitioners. That undisputed possession of the Petitioners of land in question was correctly appreciated by Tehsildar for making declaration of tenancy in favour of Petitioners. So far as dismissal of the Regular Civil Suit No.376/2003 is concerned, Mr. Dhakephalkar would contend that a First Appeal has been filed challenging the Decree dated 9th November 2022 and that Petitioners must be granted liberty to agitate their tenancy rights in the event they succeed in the First Appeal.

6. Mr. Naik would appear on behalf of the Respondent to oppose the petition. He would submit that dismissal of RCS No.376/2003 would prove beyond any modicum of doubt that

Petitioners never possessed the land in question. That dismissal of that Suit would conclusively put to rest any claim for tenancy by Petitioners.

7. Mr. Naik would further submit that irrespective of the decision in RCS No.376 of 2003, Petitioners miserably failed to establish their tenancy rights. He would submit that Petitioners are attempting to have multiple bites at the cherry. That, they first instituted Application No.39 of 1995 under the provisions of Section 32G of the Tenancy Act and after rejection of that Application on 17th March 1987, they maintained silence for long period of time and later instituted Tenancy Case No.3 of 1997 under Section 70(b) of Tenancy Act as an afterthought, which was time barred. Mr.Naik would further submit that specific affidavit was filed by the Petitioners before the SDO admitting that they are not tenants of the land. Such admissions were subsequently sought to be wriggled out by filing a Review Petition before the SDO, by making false accusations against their own Advocate. That, in the Review Application Petitioners admitted execution of the affidavits. That in such circumstances, Petitioners cannot be permitted to blow hot and cold by once again ascertaining

their false tenancy claim which they have long since relinquished.

8. Mr. Naik would also take me through the Order passed by the Commissioner, Bombay Division on 5.12.1968 to demonstrate that the name of the Petitioners' predecessor was directed to be deleted. That Petitioners/his predecessors were granted liberty to file proceedings for declaration of their status vis-a-vis Respondent/her predecessor, which they failed to adopt that Petitioners and thereby acquiesced in deletion of his name in the review records. That therefore they could not have later instituted any proceedings for declaration of tenancy. Mr. Naik would pray for dismissal of the Petition.

9. Rival contentions of the parties now fall for my consideration.

10. The land bearing Survey No.47, Hissa No.2 village Borivadi in which Petitioners claim to be a tenant was governed by exemption from payment of land revenue as the village Borivadi was a Salsette Estate village. Therefore revenue entries were not maintained in respect of the lands

situated in village Borivadi, including the land bearing Survey No.47, Hissa No.2 Salsette Estate (Land Revenue Exemption Abolition) Act, 1951 came into effect on 1st March 1952, which has resulted in withdrawal of exemption from payment of land revenue. The revenue authorities accordingly carried out survey of the land in village Borivadi in the year 1956 in which the land in question was allotted Survey No.47, Hissa No.2. For recording names of owners/occupiers of land in question, Mutation Entry No.4 was effected on 8th April 1960 by which, name of predecessor of Petitioners came to be mutated in the revenue records. By another Mutation Entry No. 131, rights of the Estate Holder (Respondent's predecessor-in-title) was not recognised. At that time, Respondent's predecessor was the title holder in respect of the land in question and was required to institute proceedings before Commissioner, Bombay Division (Collector Mumbai) to challenge Mutation Entry Nos. 4 and 131. The Commissioner, Bombay Division passed Order dated 5th December 1968 giving following directions;

In view of the above discussion, the opponents must held to be holding the lands through or under the Estate holder and as such Estate holder i.e. the revision applicant is eligible to be recognized as occupants and entered as such in the record of rights. The orders passed by the E.A.K. Thana and Asstt. Collector, Thana Dn. Thana are therefore, set aside and the Estate holder is ordered to be recognized as occupant of the lands under dispute and be entered as such in the Record of Rights. It is open for the opponents to get their status vis-a-vis

estate holder declared by separate proceeding in the proper Court of Law and till then proceedings are finalized, their names be retained in other rights column with above remarks.

11. Thus as per the order passed by the Commissioner, Bombay Division, Respondent's predecessor-in-title (estate holder) was recognized as an occupant of the land in question and his name came to be entered into the record of rights. Liberty was granted to the predecessor of Petitioners to get their status vis-a-vis estate holder declared by filing separate proceedings in proper Court of law. The order passed by the Commissioner, Bombay Division on 05.12.1968 attained finality. Petitioners/his predecessors acquiesced in the position that Respondent's predecessor-in title was declared as occupant of the land in question. A lame attempt was made by Petitioners to get themselves declared as purchaser of the land in capacity of tenant under Section 38G of the Tenancy Act, by filing Tenancy Application No.39 of 1995 before the Tehsildar and Agricultural Claims Tribunal. That Application came to be rejected by Order dated 17th March 1987, holding that Petitioners were not a legal tenants in respect of land nor had any right to purchase the land under Section 32G. There was again long hiatus on the part of the Petitioners. After long gap of 10 years, they opened a new battlefront to claim status as tenant by filing Tenancy Case No.3 of 1997 under Section

70(b) of the Tenancy Act. Orders passed by hierarchical revenue officers/Tribunal in that Tenancy Case No.3 of 1997 are subject matter of challenge in the present petition. As held above, Petitioners succeeded before Tehsildar in Tenancy Case No.3 of 1997 declaring themselves to be the tenant. The Tehsildar's Order has been set aside by SDO as Petitioners settled the disputes and filed Affidavits declaring that they are not tenants. Later they sought to wriggle out of the admission and filed Review Petition before SDO, which was rejected. SDO's Orders have been confirmed by MRT.

12. There are three major factors which completely falsify the claim of Petitioners being tenant of the land in question:

First, the name of Respondent's predecessor-in-title was directed to be included in capacity as 'occupant' by the Order passed by the Commissioner, Bombay Division on 05.12.1968. That, order remained unchallenged and though a liberty was granted to Petitioners' predecessor entitled to establish their rights vis-a-vis Estate holder, no proceedings were filed in pursuance of that liberty.

Second, Petitioners filed specific affidavits before SDO admitting that they are not tenants in respect of the land

in question. The subsequent attempts to wriggle out of those affidavits by seeking to blame their Advocate has been repelled by both SDO and MRT, by holding that execution of the affidavits was never disputed by the Petitioners. Petitioners have thus stated on oath that they are not tenants in respect of the land in question. Despite filing of such affidavits, Petitioners could not have continued their quest for declaration of tenancy by filing revision before MRT. In this regard following finding recorded by MRT would be relevant to reproduce:

This judgement also makes it clear that learned Advocate Shri Mudholkar appearing for these petitioners filed affidavits of the petitioners before learned S.D.O. By the said affidavit, present petitioners disclaimed to be tenants and gave consent to declare them not to be the tenants. Relying upon that admission of the petitioners and perusing the record, learned S.D.O. held that there is no documentary evidence as such showing status of petitioner to be a tenant or no documents such as rent receipts. So, considering the admission and other evidence, on merit, learned S.D.O. declared that these petitioners are not the tenants. The appeal came to be dismissed on 9/9/2002. Present petitioners on 13/11/2002 filed Review Application. In the Review Application, in paragraph No.2, they have admitted that during pendency of the Appeal, there was a meeting to settle the dispute and petitioners agreed to give up their claim of tenancy as landlord promised lucrative consideration. They have admitted in Review Application itself that they have executed the affidavits. They admit that they have engaged Advocate Mudholkar, but Adv. Mudholkar mis-placed those documents and Advocate Shri Patil anyhow got it and produced before learned S.D.O. Execution of affidavits is not disputed, but according to them, those documents were mis-placed which were in the custody of Mudholkar and Shri Patil

got it. There is no substance in this contention. The judgement shows that Shri Mudholkar argued the appeal on behalf of these petitioners before learned S.D.O. and the judgement also makes mention that She Mudholkar produced affidavits before learned S.D.O. by which affidavit tenants gave up their contentions to be a tenant of disputed lands. So, the afterthought story put forth on behalf of present petitioners that affidavits are obtained from them by fraud, which story was pleaded in Review Application, was found rightly disbelieved by S.D.O. while rejecting the Review Petition. It cannot be said that order of S.D.O. Is obtained by practicing a fraud and on that count, this Revision petition cannot be allowed while exercising revisional jurisdiction.

Third, Petitioners' suit being RCS No.376 of 2003 has been dismissed by Civil Judge, Junior Division by Judgement and Decree dated 9th November 2022. The suit was instituted by Petitioners claiming that they are in possession of the land in question and sought injunction against the Respondent from disturbing their alleged possession. The Trial Court has dismissed the suit vide Judgement and Order dated 09.11.2022 by recording following findings.

If anyone is in possession since long that too of an agricultural field that then he should show the crops he has taken and the efforts he has put to take the crops. Plaintiffs are totally silent about this aspect. Not a single land assessment receipt or document showing taking of crops or selling it in the market is filed by them. Possession is important tenet of ownership. Infqact if possession is there, the contention of being owner gets complete support. Even to prove the possession, direct evidence can easily be brought. In instance suit for no reason plaintiffs failed to bring any direct evidence. Hence it can be concluded that plaintiffs could not establish that are in possession of suit property.

Though the defendants were not sharing any burden, they filed direct evidence with lots of documents to establish their title and negate the claim of possession of plaintiffs. Witness Vikas gave detail testimony about the old revenue litigation and how the ownership was acquired by defendant no.1 and then defendant no.2. He relied upon document Exh.137 to Exh.154 which are revenue record and title documents. His entire testimony has went unchallenged. As said above plaintiffs even after intimation of withdrawal of Vakalatnama from their advocate did not appear. Hence no cross-examination order was passed against them which put them in disadvantageous position. The detail evidence of Vikas completely shows that the plaintiffs lost the revenue battle and were aware that suit property alongwith other properties was purchased by defendant no.1 from the original owner by valid document and thereafter it was acquired by defendant no.2 wherein there is clear claim of mention of transfer of possession. Though no direct document to show that the suit land is covered in residential zone is filed by defendants, but their contention has went unchallenged. Plaintiffs have filed no rebuttal evidence.

Herein it is to be mentioned that plaintiffs at no point of time specify as to who is the actual owner of suit property. Once they restrict their claim to the possessory right, then they should have given the names of original owner. Further though they challenged title deed of defendant no.1 in pleadings but said document is not challenged in this suit. Means no relief of declaration and cancellation regarding that document is claimed. Their contention that expired stamp paper is used in the said transaction of 1989 is substance less as the law nowhere bars use of stamp after specified time. For this reliance on case of Thiruvengada relied by defendants can be made. Hon'ble Apex Court has held that there is no expiry date for use of stamp paper. Furthermore the original owner who has every right to challenge the transaction has at no point of time disputed it. So plaintiffs being stranger cannot be permitted to do so that to without following due procedure.

In this basic suit, entire burden to porove the possession is on the plaintiffs. They miserably failed in proving so. When their possession is not established there is no question of attempt of dispossession at the hands of defendants arose. In short plaintiffs have not established both the issues under discussion. So I answer Issue Nos.1 & 2 in Negative.

It is thus proved even in the Civil Suit that Petitioners are not in possession of the land in question. Therefore, the question of they being declared as tenants of that land under Section 70(b) of the Tenancy Act would be a far-fetched proposition.

13. Mr. Dhakephalkar did attempt to canvass that Petitioners be granted liberty to institute fresh proceedings under Section 70(b) of the Tenancy Act in the event, they succeeded in the First Appeal filed challenging the Judgment and Decree dated 9th November 2022. I am afraid, such liberty cannot be granted because dismissal of RCS No.376 of 2003 is not the sole reason why this Court has negated Petitioners' claim of being as tenant of land in question. Dismissal of his suit is just an additional factor taken into consideration for conclusively demolishing the claim of tenancy. Regardless of dismissal of the suit, Petitioners have not been able to make out any case to prove the tenancy claim. Therefore such a liberty as sought for by Mr. Dhakephalkar cannot be granted. Petitioners have lost 4 battlefronts initiated before four different fora viz. (i) Commissioner of Bombay Division (ii) Tehsildar in Section 32-G proceedings (iii) Tehsildar, SDO and MRT in 70(b) proceedings and (iv) before Civil Court. Time

has come to give a full stop to the endless litigation about the tenancy rights sought to be established by Petitioners. If they succeed in the First Appeal, that possession would not be in capacity as tenant.

14. Resultantly, I find the Order passed by the MRT to be unexceptionable. The Writ Petition is devoid of merits. It is dismissed without any order as to costs. Rule is discharged.

[SANDEEP V. MARNE, J.]