

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3528 OF 2015

~~Gopal Ganpat Patil~~

(Since Deceased) through legal heir

Ramdas Gopal Patil

.. Petitioner

Versus

State of Maharashtra and Ors.

.. Respondents

-
- Mr. Vaibhav V. Ugle a/w. Mr. Roshan Chavan, Mr. Vikas Somawanshi and Mr. Shubham Vasekar for Petitioner
 - Mrs. V. S. Nimbalkar, AGP for State – Respondent No.1
 - Mr. S. G. Karandikar for Respondent Nos.10 and 11
-

CORAM : MILIND N. JADHAV, J.

RESERVED ON : DECEMBER 08, 2022

PRONOUNCED ON : FEBRUARY 14, 2023

JUDGMENT:

1. By the present Writ Petition, Petitioner has prayed for the following relief:

“a. that this Hon’ble Court be pleased to pass appropriate writ, order and direction directing the quashing and setting aside the of impugned order dated 07/01/2011 passed by Sub divisional officer, in being appeal No.27/2008 Panvel and as also the order dated 18/01/2014 passed by Maharashtra revenue tribunal, Mumbai and be pleased to allow the Revision filed by the Petitioner being Revision No. TNC/REV/47/B/2012 on such terms as this Hon’ble Court may deem fit and proper.”

2. Such of the relevant facts as are necessary for adjudicating the *lis* between the parties in the present case are as under:-

- 2.1. The subject land referred to is property bearing survey No.141 having area admeasuring 10-86-0 Hector Ares situated at

village, Moha, Tal. Panvel, Dist. Raigad. Petitioner is the tenant. Private Respondent Nos.2 to 5 are the Original landlords. Respondent Nos.6 to 11 are subsequent purchasers of the subject land from Respondent Nos. 2 to 5. Petitioner claims to be in possession of the subject land on tillers day i.e. 01.04.1957. Petitioner claims that his name is appearing in the Revenue Record i.e. 7/12 extract on tillers day in respect of the subject land. Petitioner hence approached the Tehsildar & ALT for seeking declaration as lawful tenant of Respondent Nos. 2 to 5 under Section 70 B of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “**said Act**”).

2.2. By order dated 31.08.2001 application of Petitioner under Section 70B of the said Act was dismissed and it was held that he was not a tenant of the subject land.

2.3. In Tenancy Appeal, by order dated 24.09.2004, Sub Divisional Officer (for short “**SDO**”) remanded the case for reconsideration and fresh hearing back to the Tehsildar.

2.4. On remand, by order dated 31.01.2007, Tehsildar confirmed the earlier order.

2.5. Once again a challenge was maintained before the SDO in Tenancy Appeal.

2.6. On 07.01.2011, SDO dismissed the Appeal of the Petitioner.

2.7. Being aggrieved Revision Application was filed before the Maharashtra Revenue Tribunal (for short “**MRT**”).

2.8. By order dated 18.01.2014, Revision Application was dismissed.

2.9. Hence, the present Writ Petition.

3. There are three concurrent orders viz, order dated 31.01.2007 passed by Tehsildar, dated 07.01.2011 passed by SDO and dated 18.01.2014 passed by Maharashtra Revenue Tribunal (for short “**MRT**”), all 3 which are impugned in the present Writ Petition.

4. Mr. Ugle, learned Advocate for Petitioner would contend that Petitioner has been in possession and cultivating the subject land prior to the 01.04.1957. He would submit that by mutation entry No.957, survey No.141 was divided into divided into two parts i.e. 141-A and 141-B. He would submit that at no point of time Respondents raised any objection in respect of Petitioner’s right and possession of the portion of the subject land and therefore any such claim at this stage would stand waived. He would in the alternative argue that by virtue of adverse possession, Petitioner had become the absolute tenant of the subject land. He would submit that Respondents did not lodge their claim or right in respect of the subject

land before the statutory authorities. He would submit that Petitioner was thus a tenant and acquired tenancy rights from the Original owners in respect of the subject land and hence the impugned orders be set aside.

5. ***PER-CONTRA***, Mr. Karandikar, has supported the Judgment dated 18.01.2014 passed by MRT upholding the order dated 07.01.2011 passed by the SDO in tenancy appeal No.27/2008. He has also drawn my attention to the first judgment and order dated 31.08.2001 passed by the Tehsildar in statutory proceedings initiated under Section 70 B of the said Act and contended that there is a categorical finding returned therein on the basis of evidence recorded before the Tribunal that possession and occupation of the subject land (including that of the Petitioners) on tillers day i.e. 01.04.1957 is not proved. He would submit that this crucial finding has been upheld by the SDO and MRT and therefore the claim of adverse possession cannot be allowed and adjudicated in favour of the Petitioner at this stage which is a complete afterthought. He would submit that the statutory authorities have returned cogent and reasoned findings in the facts and circumstances of the present case and the same deserve to be upheld and the Writ Petition be dismissed.

6. I have heard Mr. Ugle, learned Advocate appearing for Petitioner and Mr. Karandikar, learned Advocate appearing for the

contesting Respondents and with their able assistance perused the record and pleadings of the case.

7. It is seen that Petitioner claims tenancy through his father Gopal Ganpat Patil – since deceased with respect to a portion in Survey No. 141A i.e. part of the subject land. Originally Petitioner's predecessor alongwith others, registered four tenancy cases Nos. 12/1996, 19/1996, 20/1996 and 01/1997 before the Tehsildar. By common judgment and order dated by 31.08.2001, the Tehsildar and ALT determined the tenancy cases and dismissed their application for declaration of tenancy. Learned Tehsildar after considering the substantive oral and documentary evidence led by the parties, returned reasoned findings concluding that possession of the subject land / portion of the subject land with the predecessor-in-title of the Petitioner is not proved on the basis of the evidence placed before the Tribunal. Order records a direction given earlier in 1986 to include the names of Petitioner's predecessors-in-title in the 7/12 extract in the "*Pik Pani*" column. It records that no steps were taken by Petitioner's predecessor-in-title for mutation of their names in the "*Pik Pani*" column of the Revenue Record pertaining to the subject land until 1997. There is a categorical finding in the order that there is no evidence produce on record that prior to 1986 name of Petitioner's predecessor-in-title was appearing in the Revenue Record in respect of

the subject land.

8. It is further seen that the order dated 07.10.2011 passed by SDO in tenancy appeal is once again a detailed order which has recorded the points for determination for determining the same after referring to the evidence on record. For convenience, the points for determination and answers are reproduced below:

अ.क्र.	प्रश्न	उत्तर
१.	वादी यांनी कुळ कायदा कलम ७० ब नुसार मुदतीत खालील न्यायालयाकडे अर्ज सादर केला होता काय? सदरच्या अर्जात आवश्यक तो तपशील नमुद केला होता काय?	नाही
२.	दावा मिळकत ही वादी यांच्याकडे कुळ म्हणून वहिवाटीस होती काय?	नाही
३.	प्रतिवादी क्र. १ ते ४ यांनी कुळ कायदयाचे तरतुदीविरुद्ध प्रतिवादी क्र.५ यांना विक्री केली आहे काय?	नाही
४.	खालील न्यायालयाच्या दि.३१/१/२००७ रोजीच्या आदेशात फेरबदल करण्याची आवश्यकता आहे काय?	नाही
५.	अपिलाबाबत निर्णय	अंतिम आदेशानुसार

9. It is further seen that though Petitioner's predecessor-in-title applied for the first time for mutation of his name in the "*Pik Pani*" column of the revenue record in 1996, it is however claimed in the proceedings that Petitioner's predecessor-in-title was in possession of the subject land since prior to 1957. However no evidence is produced on record in support of Petitioner's such claim or contention that the subject land or any portion of the subject land was in possession of his predecessor on tillers day, so as to enable the Petitioner to seek an effective declaration. Record indicates that

Petitioner failed to prove before the Tehsildar and SDO that his predecessor-in-title had any right, title and interest in the subject land prior to 01.04.1957 or for that matter prior to 1986. There is a categorical finding in the order passed by the SDO that Petitioner's entire claim is based on the order passed by the Tehsildar directing Petitioner's predecessor-in-title to take steps for including his name in the "*Pik Pani*" column of the revenue record in respect of the subject land in the year 1986. SDO has concluded that Petitioner is taking undue advantage of this order to lay a retrospective claim of possession to the subject land since prior to 1957 without proving the same. According to Petitioner it is required to be assumed that his predecessor-in-title was an occupant of the subject of the land prior to 1957. Ld. SDO has concluded that such an assumption is unacceptable as such claim of the Petitioner is devoid of any proof or evidence. That apart there is one more subsequent development which is mentioned in the order of the SDO viz, that on 26.05.1986 the original owner Mr. Chintaman Joshi executed a registered sale deed of the entire subject land in favour of Mr. Manik Shah. Thereafter vide mutation entry No.1986, Mr. Manik Shah's name was mutated in the column of Kabjedar in respect of the subject land. Thereafter the subject land was converted into NA land. At that time there were 33 claims made by 33 claimants claiming to be tenant of fragmented portions of the subject land viz, survey 141-A admeasurig 10.86.00 hectare R out

which Petitioner's predecessor in title was one such claimant. Record indicates that 30 claimants settled their claim, compromised and withdrew their application save and except 3 including the Petitioner's predecessor-in-title. Both parties were given adequate opportunity to place on record documentary evidence in support of their respective claim. However Petitioner failed to prove the factum of possession in 1957 in respect of the subject land. That apart a finding is recorded that Petitioner's predecessor-in-title could not place on record any receipt of payment of "khand" either prior to 1986 or even after 1986 issued by the erstwhile landlord Mr. Chintaman Joshi or by the subsequent landlord Mr. Manik Shah. Hence, after considering the entire material evidence on record the Ld. SDO upheld the order of Tehsildar.

10. In the above background the learned MRT has considered the entire case in Revision proceedings. Considering the facts and record, the Ld. MRT has analysed the evidence thoroughly as appearing in paragraph No. 6 to 17 of its order, by scrutinizing the 7/12 extract for the period 1957-58 to 1968-69, mutation entry dated 02.08.1996, mutation entry No.1455 dated 03.01.2005, 7/12 extract for the years 1988-89 to 2007-08, receipt issued by Ballal Joshi on 05.09.1983, registered sale deed dated 26.05.1986, crop inspection report dated 15.11.2001 prepared by Tahsildar, panchanama dated

26.07.2006 drawn by circle officer, provisions of Section 4 of the said Act, cross examination of the witnesses viz, the revision applicants, legal notice dated 10.12.1987 issued by Advocate Urankar on behalf of Petitioner's predecessor-in-title, statement of another tenant viz. Dhau Ambo Mhaskar and only after considering the gamut of this evidence has returned the following conclusive finding in paragraph No.18 of the impugned Judgment which reads thus:

“18. So, considering the facts and circumstances of the case and various circumstances mentioned above, I am of the opinion that there was no relationship of landlord and tenant. Evidence shows that in about 1980 or thereafter, the Revision Applicant and others might have been inducted and various portions of S.No.141 were offered for sale to various occupants. In the circumstances, in my opinion, there is no reason to interfere with the concurrent finding of fact regarding the absence of relation ship of landlord and tenant.”

11. Mr. Ugle has referred to and relied upon the following two decisions of the single Judge of this Hon'ble Court which need to be discussed.

(i) ***Kishan Ramchandra Kumbhar & Ors. Vs. Dr. Kashinath Bandu Teli & Ors.***¹;

(ii) ***Babu Hari Patil and Another Vs. Rama Ananda Jadhav and Ors***².

11.1. He would contend that there is a legal presumption under Section 4 of the said Act that a person cultivating the said land on tillers day shall be deemed to be a tenant of that land. He has referred

1 2003 (3) ALL MR 817

2 2005 (1) Mh.L.J. 1063

to and relied upon paragraph No.11 of the decision in the case of *Kishan Ramchandra Kumbhar & Ors (first supra)* and paragraph No.6 of the decision in the case of *Babu Hari Patil and Another (second supra)* and argued that considering that petitioner's predecessor-in-title was cultivating the subject land / portion of the subject land on tillers day, the said legal presumption mandated that he shall be a tenant under the said Act. The proposition is no doubt correct in law, however it cannot be applied in the facts and circumstances of the present case. What is important to be noted here is that the person in possession of the land has to be “lawfully cultivating” the said land in order to come within the ambit of the said legal legal presumption under Section 4 of the said Act. In the present case it is seen that the predecessor-in-title of the Petitioner could not show any nexus with the subject land or portion of the subject land on tillers day and the same has not been established from the documentary evidence pertaining to the subject land for the years 1957-58. Hence, the aforesaid decisions cannot be helpful to the Petitioner’s case.

12. It is sought to be argued before me that claim of the Petitioner in respect of possession of the subject land is by adverse possession. This submission cannot be countenanced. However considering the finding that there is no relationship of landlord and tenant established between the parties which is based on the basis of

evidence on record, the impugned order 18.01.2014 passed by MRT as also the judgment and order dated 07.01.2011 passed by the SDO and the Judgment dated 31.01.2007 passed by the learned Tehsildar and ALT call for no interference whatsoever and are sustained.

13. In view of the above observations and findings, Writ Petition fails and stands dismissed.

14. Rule is discharged

15. Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date:
2023.02.14
15:03:20 +0530