

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1724 OF 2018

Vithoba Bua Sodmise Deceased
through his legal heirs Mohan

Vithpna Sodmise and Ors.

...PETITIONERS

V/S.

Maharashtra Revenue Tribunal,
Pune Bench Pune and Ors.

...RESPONDENTS

Appearances :

Mr. Rahul S. Kadam, for the Petitioner.

Mr. Dilip Bodake, for Respondent Nos. 4A, 5A, 6 to 11.

Mrs. Vaishali Nimbalkar, AGP for Respondent Nos. 2 and 12.

CORAM : SANDEEP V. MARNE, J.

Reserved on : 12 September 2023.

Pronounced on : 25 September 2023.

JUDGMENT :

1. This petition is filed challenging judgment and order dated 14 August 2017 passed by the Maharashtra Revenue Tribunal, Pune in Tenancy Revision Application No.38/2002, by which the Revision is rejected and judgment and order dated 25 July 2002

passed by the Sub-Divisional Officer (**SDO**) in Tenancy Appeal No.19/2002 has been upheld.

2. Petitioners claim to be the tenants of the land bearing Survey No.31/1 and 31/2, Village-Ravdi, Taluka-Phaltan, District-Satara, of which, Bhate Family was the landlord. Some litigation took place between the Petitioners-tenants and Bhate Family with regard to Petitioners' status as tenants and it appears that Petitioners were held to be lawful tenants of the land in proceedings upto the Supreme Court. The landlord-Bhate family had instituted Regular Civil Suit No. 357/1980 for injunction against Petitioners to restrain them from disturbing possession of Bhate Family. In the said suit, parties arrived at a compromise, under which Petitioners-tenants and landlord-Bhate family agreed to retain one-half share each in the land. In pursuance of the compromise so arrived between the parties, Petitioners-tenants paid purchase price in respect of one-half share of the land and were confirmed as purchasers therein under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act (**Tenancy Act**) .

3. It appears that after such compromise and declaration of Petitioners as purchasers in respect of one-half portion of the land, the landlord-Bhate Family sold the remaining half-portion, which had come to their share, to Respondents No.8 to 11-Dhumal Family by registered sale-deed executed on 3 July 2002. Petitioners thereafter filed Tenancy Case No.3/2001 before the Tehsildar, Phaltan under Sections 15 and 32G of the Tenancy Act for a

declaration that the surrender effected by Petitioners on 28 April 1989 was invalid and for fixation of price under Section 32G of the Tenancy Act and for handing over possession of the land from the purchasers-Dhumal Family.

4. The Bhate Family as well as Dhumal Family appeared in the Tenancy Case No.3/2001 and filed application on 4 June 2001 for framing of preliminary issues of maintainability and limitation and to dismiss the same. Petitioners resisted the application by filing their reply. Tehsildar passed order dated 1 October 2001, partly allowing the application but did not dismiss the tenancy case. Instead, he directed both the parties to produce evidence in respect of their respective contentions. Since the Tehsildar did not dismiss Petitioner's Tenancy case, Bhate Family and Dhumal Family filed Tenancy Appeal No.19/2002 before the SDO challenging Tehsildar's decision. By order dated 25 July 2002, SDO allowed the Appeal and set aside the order of the Tehsildar holding that the tenancy case filed by Petitioners was hit by the principles of *res-judicata*. Petitioners filed Tenancy Revision Application No. 38/2002 before the Maharashtra Revenue Tribunal, Pune challenging SDO's decision. The Tribunal however rejected the Revision Application by order dated 14 August 2017. The order passed by the Tribunal is the subject matter of challenge in the present petition.

5. Mr. Kadam, the learned counsel would appear on behalf of the Petitioners and question the very maintainability of the

application dated 4 June 2001 filed by Bhate and Dhumal Families. He would submit that the provisions of the Code of Civil Procedure are not applicable to proceedings before the Tehsildar and therefore rejection of tenancy case could not have been sought on framing of preliminary issues. He would submit that the application filed by Bhate and Dhumal families was only for framing of preliminary issues. That the prayer for dismissal of tenancy case was rejected by Tehsildar by forming an opinion that parties were required to given an opportunity to lead evidence in respect of their respective contentions. That if SDO was of the view that the decision of the Tehsildar was erroneous, he could have, at the highest, framed preliminary issues and directed the Tehsildar to decide the same. Instead, he decided the issue of maintainability of tenancy case and his order has resulted in rejection of the entire case without grant of any opportunity to Petitioners to argue the issue of maintainability. The Tribunal has failed to correct the said apparent error in SDO's order.

6. Mr. Kadam would further submit that SDO could not have ventured into the merits of the case while deciding prayers made in the application dated 4 June 2001 filed by Bhate and Dhumal Families. He would submit that the tenancy case is otherwise not barred by the principles of *res-judicata*. That under the provisions of the Tenancy Act, the landlords are required to cultivate the land themselves and since the Bhate Family sold the land to Dhumal Family immediately after surrender, such surrender automatically

became invalid, creating right in favour of the Petitioner to seek back the land under the provisions of Section 15 of the Tenancy Act. He would submit that cause of action for filing the tenancy case was due to the action of the Bhate Family in selling the land to Dhumal Family, which was not the subject matter of challenge in the suit or the compromise. That therefore there is no question of applicability of principles of *res-judicata*. He would therefore submit that even on merits, the decision of the Sub-Divisional Officer as well as the Tribunal are erroneous and are liable to be set aside.

7. Mr. Bokade the learned counsel would appear on behalf of the Respondent-Bhate and Dhumal Families and oppose the petition. He would submit that Petitioners were seeking to reopen the validity of compromise deed executed before the Civil Court in their tenancy case filed before the Tehsildar which is impermissible in law. Since the tenancy case filed by the Petitioners was wholly baseless and not maintainable, Bhate and Dhumal families rightly filed application for nipping the same in its bud so as to prevent any further pendency of litigation. That SDO's order has infact resulted in putting a full stop to the litigation relating to tenancy rights of Petitioners which was already settled in the compromise deed executed between the parties in the suit. That once the Petitioners gave up their tenancy rights in respect of one-half of the land and recognised right, title and interest of the landlords in respect of that half portion, the landlords were entitled to sell the same to Dhumal family and such sale would not create any cause of action in favour of Petitioners to reopen the tenancy issue. He would pray for dismissal of the petition.

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

9. Petitioners filed Tenancy Case No.3/2001 before the Tehsildar for declaration of surrender made on 28 April 1989 as invalid, for fixation of purchase price under Section 32G and for grant of possession of $\frac{1}{2}$ portion of land which remained in ownership of landlords and which was sold by Bhate family in favour of Dhumal family. An objection as to maintainability of the Tenancy case was raised by both Bhate and Dhumal families by filing Application dated 4 June 2001. The maintainability essentially was questioned on the grounds of *res-judicata* and limitation. Perusal of the order passed by the Tehsildar on 1 October 2001 would indicate that he found merit in the contentions of both the parties but did not feel appropriate to take decision in the case on the basis of submissions advanced in support of the application dated 4 June 2001. He formed an opinion that parties were required to give opportunity to lead evidence in respect of their rival contentions. Though Tehsildar held that the application was partly allowed, he neither framed preliminary issues nor decided the same. SDO in his order dated 25 July 2002 went into the merits of the matter and decided whether the Tenancy case filed by the Petitioners was maintainable. He held that the surrender dated 28 April 1989 effected by Petitioners-tenants was in pursuance of a compromise deed executed before the Civil Court. That such compromise deed could not be challenged before the Tehsildar in a tenancy case and

that therefore the tenancy case was not maintainable. He held the same to be barred by the principles of *res-judicata*.

10. Mr. Kadam cannot be said to be entirely wrong in contending that SDO exceeded his brief in deciding the merits of the matter when he was required to decide the correctness of Tehsildar's orders refusing to frame preliminary issue. It may be well be said that SDO could have only decided whether framing of preliminary issues was warranted and if he was of the opinion that framing of preliminary issues was absolutely necessary, he could have remanded the case to Tehsildar for decision on those issues. In the present case, however SDO has not really decided whether framing of preliminary issues was necessary. He apparently heard both the parties on the issue of maintainability of the tenancy case himself and has given his verdict. Perusal of the order passed by SDO does not indicate in any manner that Petitioners ever objected before Tehsildar that he should not venture into the merits of the matter while deciding correctness of the Tehsildar's order. Assuming that SDO committed an error in deciding merits of the matter, the said objection should have at least been raised before the Tribunal. However, perusal of the Revision Application filed before the Tribunal would indicate that this ground was not even raised before the Tribunal also. Petitioners instead joined issue with the other side on merits of the matter.

12. The submissions of Mr. Kadam about the Sub-Divisional Officer erroneously entering into the merits of the matter may appear to be attractive in the first blush but on deeper scrutiny, is

unfounded. But not only Petitioners failed to raise any objection to the Sub-Divisional officer deciding merits of the matter, the peculiar facts of the case are such that the order passed by the Sub-Divisional Officer need not be set aside for any technical breach of procedure.

13. Mr. Kadam did canvass before me that cause of action for filing Tenancy Case No.3/2001 was entirely different than the one involved in Regular Civil Suit No. 357/1980. He has submitted that Bhate Family's action of selling the land to Dhumal Family within months of surrender of rights by the Petitioners, gives rise to a cause of action for Petitioners to file Tenancy Case No.3/2001. However, perusal of prayers made in Tenancy Case No.3/2001 would indicate that the cause of action is not the selling of the land but the surrender made on 28 April 1989 in pursuance of the compromise deed. In this connection prayers made in the Tenancy case are reproduced below :

अ. अर्जदार यांनी दिनांक २८/४/८९ रोजी वाद मिळकतीचा कबजा सोडून दिला ते कायदेशीर सरेंडर नाही त इन्व्हॅलीड सरेंडर आहे हे ठरवून मिळावे.

ब. दावा मिळकतीची कुळ कायदयाप्रमाणे कु. का. क. ३२ ग अन्वये किंमत ठरवून मिळावी.

क. दावा मिळकतीचा प्रत्यक्ष कबजा जाबदार खरेदीदार ५ ते ८ यांचेकडून अर्जदार यांना प्रत्यक्ष मिळावा.

ड. या अर्जाचा खर्च जाबदार यांकडून अर्जदार यांना मिळावा.

इ. कारणपरत्वे अर्ज दुरुस्तीस परवानगी असावी.

फ. मे. कोर्टांनी योग्य आणी न्यायाचे हुकुम करावेत. येणेप्रमाणे अर्ज असे.

Thus, in Tenancy Case No.3/2001 Petitioners did attempt to re-agitate the issue of correctness of the Compromise Deed executed in Regular Civil Suit No. 357/1980 on 28 April 1989. In this connection, following pleadings in the Tenancy Case would be relevant:

८. अर्जदार आणि जाबदार जमिन मालक भाटे यांचेमध्ये फलटण कोर्टाच २.दि.मु.नं. ३५७/८० मध्ये दिनांक २८/४/६९ रोजी झालेली तडजोड मुंबई कुळ वहिवाट आणी शेतजमिन अधिनियम १९४८ चे कलम १५ चा भंग करणारी आहे. अर्जदार यांनी कुळ कायदा कलम १५ अन्वये जमिन मालकास जमिन सरेंडर केलेली नाही सदर सरेंडर मे. तहसिलदार सो. यांचे समोर झालेली नाही. सदर सरेंडर अर्जदार कुळाने वाद मिळकती संबंधी असणारी कुळहक्काची कुळ वहिवाट संबंधीत जमिन मालकाच्या म्हणजे जाबदार जमिन मालक भाटे यांचे स्वाधीन करून समाप्त केलेले नाही तसे मामलेदार पुढे लेखी केले नाही. त्याबाबत मामलेदार पुढे विहित रितीने प्रपादीत करून दिलेले नाही. कुळाने हितसंबंध लेखी न देता जमिन जमिन मालकाचे स्वाधीन केली तर ते संबंध संपुष्टात येत नाहीत कुळाला पुन्हा जमिन मागण्याचा हक्क रहातो अशी कायद्यामध्ये तरतूद असलेने आणी जमिन मालक भाटे याने जमिन घरी कसली नसलेने तसेच सदर जमिनीची विक्री केलेने जाबदार यांचेकडून ५ ते ८ यांचेकडून वाद मिळकतीचा प्रत्यक्ष कबजा अर्जदार यांना मिळणेसाठी आणी वाद मिळकतीचा कुळ कायदा कलम ३२- ग होवून म्हणजे खरेदी किंमत ठरवून मिळणेसाठी अर्जदार यांना प्रस्तुतचा अर्ज दाखल करणे भाग पडले.

Looking at the above pleadings, leaves no matter of doubt that Petitioners are trying to reopen the compromise effected by them on 28 April 1989 in a Tenancy Case filed before the Tehsildar. Also of relevance is the fact that Petitioners acted on the compromise deed and took benefit thereof by keeping the purchase price fixed under

Section 32G in respect of their half portion of the land in Tenancy Case No.18/1988 and 32M Certificate has been issued in their favour in that case on 26 October 1989. On that basis, mutation entry No. 1696 came to be effected on 28 October 1989, mutating name of Petitioners to half portion of the land. Now Petitioners want to walk back on the compromise and contend that the surrender effected by them on 24 April 1989 in pursuance of the compromise-deed was invalid. This was the prayer made by them in Tenancy case No. 3/2001 before the Tehsildar. In my view, the Tenancy Case No.3/2001 filed by the Petitioners was gross abuse of the process of law where Petitioners attempted to reopen the issue of their tenancy rights and wriggle out of the compromise deed dated 28 April 1989. Thus the compromise effected before the Civil Court in a substantive civil suit is sought to be declared invalid before the Tehsildar. Such proceedings were required to be thrown out at their very inception which Tehsildar failed to do and Sub-Divisional officer was required to step in. In these circumstances, even though the Tehsildar proceeded to decide the issue of maintainability of Tenancy Case, since his ultimate decision is found to be correct, there is no necessity of remanding the case back to the Tehsildar. The Tribunal has correctly appreciated the order passed by the Sub-Divisional Officer and has dismissed the Revision filed by the Peittioners. The order passed by the Sub-Divisional Officer has resulted in nipping the prolonged litigation sought to be initiated by the Petitioners in its bud which the need of hour in the present case.

14. I therefore do not find any error in the decision of the Sub-Divisional Officer or of the Tribunal. Infact, conduct of Petitioners in trying to walk back on the compromise deed executed before the Civil Court by filing Tenancy Case before the Tehsildar, is totally erroneous and worthy of imposition of costs by dismissing the petition. However, considering the fact that the Sub-Divisional Officer immediately put a fullstop to the entire litigation, I am not imposing any costs while dismissing the petition. Writ Petition being devoid of merits is dismissed without any orders as to costs.

**NEETA
SHAILESH
SAWANT**

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NEETA SHAILESH
SAWANT

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SANDEEP V. MARNE J.