



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3657 OF 2013

Govindlal S/o Hanumandas Totala,
Since deceased through his L.Rs.

1. Phuladevi W/o Govindlal Totlala,
Age: 68 yrs. Occu: H.H.
2. Rajendrakumar S/o Govindlal Totala,
Age: 50 Yrs Occ: Business,
3. Anilkumar S/o Govindlal Totala,
Age: 47 Yrs Occ: Business,

Petitioners No.1 to 3 R/o
A-1 Chowk Akkalkot,
Tq. Akkalkot Dist Solapur,

4. Ravikumar S/o Govindlal Totala,
Age: 43 Occ: Business,
R/o Samartha Canvassing Market Yard,
Latur, Tq and Dist Latur.
5. Sow. Sangita W/o Ramesh Toshniwal,
Age: 45 Occ: HH.,
R/o C/o Ramesh Kiranana,
Main Road Murud, Tq. and Dist. Latur.

Petitioners No.1 to 5 through their
Special Power of Attorney Holder
Mr Dhirajkumar S/o Kishorkumar Totala,
Age: 29 years, Occ: Service,
R/o 'Suraj' Shanti Society, Mantri Nagar,
Latur - 413512.

... **Petitioners.**

Versus

1. Maruti S/o Anantrao Ambekar,
Age: major Occ: Agri.,
2. Indrajit S/o Anantrao Ambekar,
Age: Major Occ: Agri.,

Both R/o Tavshi-Gad,
Tq. Lohara, Distt. Osmanabad

... Respondents.

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Advocate for Petitioners : Mr. P R. Katneshwarkar i/b
Mr. Girish N. Kulkarni (Mardikar).
Advocate for Respondent Nos. and 2 : Adv V. D. Gunale.
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CORAM : S. G. MEHARE, J.

RESERVED ON : 15.01.2024

PRONOUNCED ON : 12.04.2024

JUDGMENT :-

1. Rule. The rule is made returnable forthwith and heard finally by consent of the parties.
2. The petitioner claimed to be the tenant in the suit land since 1958 and impugned the order of the learned Member Maharashtra Revenue Tribunal. Aurangabad passed in Revision Case No.26/B/2004/O/TNC, dated 08.02.2013, and the order of learned Deputy Collector (LR), Osmanabad, in file No.2003/TNC/A-44, dated 31.03.2004.
3. The facts of the case, in brief, were that in 1957, the original tenant took the lands for cultivation from respondents Nos.1 and 2, who were claimed to be the owners of the suit land and the lands from the adjacent Gut numbers from village

TavshiGad. Govindlal (original tenant) was cultivating the suit land as a tenant. His name was entered into the revenue record. The tenant, Govindlal and the respondent's father mutually agreed to enter into the contract of sale of the suit land for consideration of Rs.5,000/-. On 07.06.1958, they entered into an agreement. An affidavit was also executed in the form of an agreement. The petitioner paid Rs.4,500/- to the father of the respondents. Since then, the said land was in possession of Govindlal Totla. The brothers and stepmother of the original tenant had filed a suit for partition. The suit land was allotted to the share of Vijaykumar Kishorkumar, the brothers of the original tenant and the stepmother Soorjabai Totla. It was an inter se family compromise in 1982. Since 1982, the petitioners have been in possession.

4. The petitioner has filed the proceeding in 2003 under Section 38 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short 'Act 1950') for the execution of the sale deed of the suit land. The Tahsildar held that the suit lands were in possession of the original tenant in 1958 and accordingly allowed the application. The respondents had impugned the order of the Tahsildar before the Deputy Collector, Land Reforms, Osmanabad. He in turn, reversed the

order of the Tahsildar. The petitioner preferred the revision before M.R.T. The M.R.T. also dismissed the revision application. Hence, he is before this Court.

5. Learned counsel for the petitioners has reiterated the facts of the case. He submitted that pursuant to the agreement, the petitioners were in possession of the suit land. He would submit that the respondents executed an agreement admitting the petitioners' possession over the suit land in 1958. He referred to the definition of "tenant" under Section 5(2) of the Act 1959 and argued that the petitioner was the deemed tenant. There was no evidence that the landlord was cultivating the land any time after handing over the possession to Govindlal. He relied on the case of ***Rama Ananda Jadhav since deceased, his legal heirs Harubai Rama Jadhav; 2005 BCI (0) 124*** and argued that though the entry of the tenant into the tenancy register or having no rent is not essential. The person in lawful possession must be declared as a deemed tenant under Section 4 of the Act, irrespective of the fact whether or not the Authority of such person is derived directly from the owner of the land. The lawful cultivation by a person other than a member of the family of the landlord is subject to other conditions laid down in Section 4 of the Bombay Tenancy and

Agricultural Lands Act. He also referred to the findings of the S.D.O. and the M.R.T. and vehemently argued that both Courts, under misconceptions of the law arrived at the wrong conclusion. The petitioner was entitled to purchase the land and certificate under Section 38(e) of the Act, 1958. The Tahsildar has passed the reasoned order and correctly held that the petitioner was in lawful possession as tenant. He prayed to allow the writ petition.

6. Learned counsel Mr. Gunale for respondents has vehemently argued that except the name in the cultivation column, there was no evidence that Govindlal was the tenant. Bare possession does not entitle him to seek the sale certificate. The prayer was for a sale deed under Section 38(e) of the Act of 1958 was untenable. He has referred to Section 5 of the Act of 1950 and argued that the person lawfully cultivating is only deemed to be a tenant. The case of the petitioner was that Govindlal was in possession for only one year before the so-called agreement to sell. Thereafter, he was in possession pursuant to the agreement for sell. Govindlal was the merchant and not the agriculturist. Therefore, he ceased to be deemed tenant as he was in possession under the contract. Govindlal never filed a suit for Specific Performance of Contract.

Therefore, he was not entitled to claim relief under the Act of 1950. The petitioner never impugned the cancellation of the mutation entry No.85. The said entry was cancelled in 1962 as he was not cultivating the land. The Tahsildar did not determine the price. The lands were not more than two family holdings. As per Section 38(2)(aa), the ordinary tenant has to make an offer to the landholder stating the price at which he prepared to purchase the landholder's interest. Therefore, also he is not entitled to the protection of the right to purchase the land. If the landlord refuses to execute the sale deed within three months from the date of the offer, the protected tenant or, as the case may be, the ordinary tenant may apply to the Tribunal to determine. The petitioner has also not done this. Therefore, the law does not recognise his claim that he was the protected tenant. The S.D.O. correctly held that the name of the so-called tenant was not entered in the tenancy register, which was proof of holding the possession and cultivating the land as a protected tenant. Since the mutation entry was cancelled in 1962, he cannot be said to be a tenant. The so-called tenant was never in lawful possession. He relied on the case of *Hanmanta Daulappa Nimbal since deceased by his heirs and others Vs. Babasaheb Dajisaheb Londhe; AIR 1996*

Supreme Court 223. He prayed that there was no substance in the writ petition. Hence, the petition deserves to be dismissed.

7. In reply, learned counsel Mr. Katneshwarkar for the petitioners would submit that the procedure prescribed under Section 38 of the Act of 1950 provides for the purchase of the land by ordinary the tenant. Section 2 (m)(m) defines the term "ordinary tenant" that means a tenant other than the protected tenant.

8. The first question is, "Was the petitioner a tenant as defined under the Act 1950? If yes, what type of tenant was he?

9. The term "tenant" has been defined in Section (v) of 5(2) of the Act. That means an Asami, Shikhmi, who holds the land on lease and includes a person who is deemed to be a tenant under the provisions of this Act. Further, the Act also defines the "protected tenant" as a person who is deemed to be a protected tenant under the provisions of Section 34 to 37A. Clause (mm) of Section 2 of the Act 1950 defined the term "Ordinary Tenants" as a tenant other than a protected tenant. On reading, there were three types of tenants under the Act 1950. Reading the definition of "tenant", it is clear that there

must be a lease for the person claiming the right under the Act 1958, or said person should be a deemed tenant. Tenancy refers to the relationship between the rent holder and the tenant. The petitioner has no case in which Govindlal was paying either the rent or the share of the disputed land to the landlord.

10. There is no dispute of execution of the agreement to sell between the father of the respondent and Govindlal on 07.06.1958. Govindlal claimed that before the agreement to sell, he had been cultivating the land, and thereafter pursuant to the agreement to sell, Govindlal remained in possession, and then the said land was partitioned and came to the share of the family of the petitioner. So Govindlal was in possession under the contract. The person claiming tenancy under Section 5 must have been inducted on the land by land holder. A further condition is that the said induction should be in the capacity of a tenant. Section 5 of the Act 1950, by itself, does not confer tenancy rights or status of tenant. It raises only the rebuttable presumption of the person being a tenant. The case of the petitioner, in which Govindlal had an agreement to sell after the so-called possession before the agreement, is evident that there was no landlord-tenant relationship.

11. Section 38 provides for the rights of protected tenants to purchase the land. A person who at the time of the commencement of the Act 1955 holds a tenant any land in respect of which he is not deemed to be a protected tenant under the Act 1950, is deemed to be a protected tenant if the landholder, including the land under cultivation of his tenants, is more than three family holding. The condition to claim a protected tenant the landlord must have land of more than three family holdings. The petition is silent about the type of tenancy of the petitioner. Therefore, it may be presumed that he was an ordinary tenant. Section 38 also applies to the ordinary tenant. The ordinary tenant has to offer the landlord a price for the land for which he desires. The petitioner also has no case as such. The petitioner's case is very specific, and Govindlal was in possession pursuant to the agreement to sell. His contention itself indicates that there was no landlord-tenant relationship between Govindlal and the original landlord. There is no evidence or the petitioner's case that, pursuant to the agreement to sell, Govindlal filed a suit for Specific Performance of Contract against the original landlord. Therefore, in the circumstances of the case, the ratio laid down in the case of Rama Ananda (supra) that without there being

entry in the tenancy column or the rent note or rent receipt should be declared as deemed tenant would not apply.

12. The petitioner has no explanation for why he did not impugn the cancellation of mutation entry No.85, which was cancelled in 1962. Though the petitioners were in possession their possession was not arising out of the relation of rent holder and tenant. In other words, they were not in possession as a tenant. The execution of the agreement to sell itself shows that it was a contractual relationship. However, such a lawful cultivation would not be read in the context of the rights granted to the tenants under the Act of 1950. Section 4 of the Act 1950 recognize contracts under the Transfer of Property Act and excluded Chapter V of the said Act as far as applying to the tenancy and leases of the lands to which the Act 1950.

13. As far as the consent letter placed on record indicates that the respondent admitted the possession of the petitioner, it would not give the petitioner any right to claim the tenancy under the Act 1950. The respondent never denied the possession. However, he has denied that the possession was not under the lease or a tenancy. Therefore, this document would not help the petitioners to believe that they were the tenants under the Act 1950.

14. Perused the impugned judgments and orders. The S.D.O. and M.R.T. has appreciated the evidence and arrived at the correct conclusion that the petitioner was not entitled to protection under the Act of 1950. There are no errors of law in the impugned judgments and orders.

15. For the above reasons, the writ petition stands dismissed.

16. Rule stands discharged.

17. No order as to costs.

(S. G. MEHARE, J.)

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18. Learned counsel for the petitioners states that the situation of the matter kept as it is for six weeks. The petitioners have claimed that they are in possession since 1958. The petitioners have apprehension that respondents may create third party interest.

19. Considering the length and nature of dispute, this Court is of the view that this is not a fit case to pass the order as prayed.

(S. G. MEHARE, J.)

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