



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 WRIT PETITION NO. 500 OF 2020

TUKARAM GOTIRAM PAWAR
VERSUS
ABDUL RAHEMAN FAKIRA THROUGH LRS ABDUL SALIM
ABDUL RAHEMAN AND OTHERS

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Advocate for Petitioner : Mr. Pawar D. B.
Advocates for respective Respondents : Mr. Ajeet D. Kasliwal,
Mr. Pahilwan Gautam J., respectively.

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CORAM : S. G. MEHARE, J.
DATE : 25.04.2024

PER COURT :-

1. Heard the learned counsel for petitioner and respective learned counsels for the respondents.
2. This is a case of carrying misconceptions about the law. A person with no right or interest in the suit land is opposing the execution of the Court's order under the garb of an agreement to sell for the last 22 years. Fortunately, the petitioner admits that the suit land is tenanted land under the Hyderabad Tenancy and Agricultural Lands Act, 1950. He also admits that Somla Chavan was the tenant of the suit land, and the respondents were the landlords.

3. This case is based upon the agreement to sell. The first agreement to sell he had with one Kaushalyabai W/o Bhikanrao Sansane, dated 22.07.1998, and the second one was with the original tenant Somla Bhika Chavan, dated 05.07.2000. The reason best known to the petitioner why he had agreement to sell for the same property with two different persons. On the basis of these documents, he contends that he had a right to impugn the orders of the Tenancy Tribunals.

4. The admitted fact was that the original tenant filed an application before the Tahsildar/Tenancy Tribunal on 26.06.1998 for surrendering his tenancy rights in favour of the landlord. The Tahsildar accepted the prayer on 15.01.2000, and the legal heirs of Somla, the tenant, also gave an affidavit. Thereafter, one of the legal heirs of Somla, namely Vasant Somla Chavan, had preferred a petition disputing the order dated 15.01.2000. However, subsequently, he withdrew that petition. The Deputy Collector of Land Reforms accepted the pursis of withdrawal and dismissed the appeal on 21.10.2013. Surprisingly enough, the present petitioner filed an application for a stay in the decided proceeding. The Deputy Collector again granted the stay to the order dated 31.10.2001. However, the petitioner has no documents to show that what

final decision the Deputy Collector took on his application. Without disclosing anything about its result, the petitioner approached this Court impugning the order of the M.R.T., dated 12.07.2019. The petitioner had impugned the order of the Deputy Collector passed in an appeal preferred by Vasant Somla Chavan against the surrender of the tenancy, which was registered as Case No.2000/LR/TNC/A/22) decided on 31.10.2001.

5. The learned Tribunal held that Somla was not the landlord. Hence, he has no right to transfer the tenanted property. It is also observed that since Somla has no right to transfer, Kaushalya could not get the title. It has also been held that the said transaction between Somla and Kaushalya was illegal. The petitioner did not produce any sale deed or transfer document from Kaushalyabai. There is also no document showing that Kaushalya transferred the land by way of legal and valid documents to the petitioner. Since there was no valid transfer, the possession of the petitioner is not legal and valid. Whatever possession the petitioner holds is illegal. He was not a necessary party to the proceeding before the Tahsildar or the Deputy Collector. The petitioner had no locus to impugn the

order. The revision of the above findings was dismissed. Against the said order, the petitioner is before this Court.

6. The vehement argument of the petitioner is that in view of Section 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950, the learned Tribunal i.e. MRT is duty-bound to examine all facts. No opportunity for hearing was not granted to him. He read that Section and argued that the order of the Deputy Collector was contrary to the law. The longstanding possession of the petitioner for about 25 years over the suit land has been ignored. His whole arguments revolved around the agreement to sell. He submitted that his document protects the possession of the petitioner. He has also referred to the notice of the Circle Inspector dated 16.05.2002 and submitted that he cannot be dispossessed without following due procedure of law. He had also referred to the order of the Deputy Collector, dated 23.05.2002, passed in a surrender application decided on 31.10.2001. However, he could not point out the final decision that the Deputy Collector had passed on his stay application. He then referred to the findings of the learned MRT and argued that all these findings were against the provisions of the law. The MRT has not considered

the issues involved in the petition. Therefore, the matter should be remitted to the MRT for fresh consideration.

7. Per contra, learned counsel Mr. Kasliwal for respondents has vehemently argued that the original tenant had applied to the Tahsildar for surrendering the tenancy on 26.06.1998. The Tahsildar accepted the surrender on 15.01.2000. The tenant has no rights to transfer the tenanted land. One of the legal heirs of the original tenant Somla, namely Vasant had preferred the appeal against the order accepting the surrender. However, he suo motu withdrew the appeal. In that appeal, the petitioner had moved an application for stay and then directly impugned the said order before the MRT. He would submit that the petitioner has no locus to impugn the said order. Before the so-called agreement to sell, the tenant had surrendered his tenancy rights. On the day of the so-called agreement to sell, the tenant had no right to hold the land as a tenant. Therefore, the impugned order is legal, correct and proper. The contention of the learned counsel for the petitioner that the Tribunal did not grant him a hearing is apparently incorrect, and no ground as such has been raised in the writ petition. On the contrary, the impugned order reveals that he heard the learned counsel,

Mr. Bochara, speak for the petitioner. Since this argument is against the facts, it stands discarded.

8. The entire claim of the petitioner is based upon the agreement to sell. Firstly, he was claiming that one Kaushalya had derived the right to transfer the suit land. Therefore, he has executed an agreement with her on 22.07.1998. The burden was on the petitioner to prove that Kaushalya had a transferable right or interest in the suit land. The petitioner is silent as to why he has executed another agreement to sell dated 05.07.2000 from Somla Bhika's legal heir, who was the tenant. This goes to show that the legal heirs of Somla and the petitioner were in collusion to defeat the rights of the landlord. Vasant Somla has filed an affidavit to the surrender proceeding. The foremost important thing is that the surrender application was allowed on 15.01.2000. Vasant Somla knew this order. But, the agreement was silent on this point. One more important thing is that this agreement with the legal heirs of Somla was executed after around six months of the orders of the Tahsildar accepting the surrender. The contents of the agreement to sell are also not in consonance with the contract. It simply shows that there was an agreement to sell. There were no terms of the agreement. There was no date

fixed for completing the contract. This agreement itself raises serious doubts about its veracity. Be that as it may, the facts remain that the agreement to sell does not create any right, title or interest in favour of the purchaser.

9. The suit land is a tenanted land. The transfer of the tenanted land is governed under the Hyderabad Tenancy and Agricultural Lands Act 1950. Unless an appropriate leave is obtained from the Tenancy Tribunal the tenant has no right to create a third-party interest or transfer such land. Even the landlord has also no right to get the land surrendered without following the due procedure of law provided under the above Act. The initial burden was on the petitioner to prove that he had right or interest in the suit land. He did not produce any document to believe that he is in possession of the land under the legal and valid transaction. Therefore, the learned Tribunal has correctly observed that the petitioner has no locus to impugn the order of the Tahsildar, dated 15.01.2000. The learned counsel for the respondent is correct in pointing out that on the date of the so-called agreement to sell, the tenant also had no right or interest in the property as it was already surrendered. Learned Tribunal has also correctly observed that

since Somla is not the landlord, he has no right to sell the suit land. Even if any transaction is made, it is illegal.

10. The argument of the learned counsel for the petitioner reveals that without understanding the legal provisions of the law, he wanted to keep the matter pending and deprive the landlord of getting possession for about 22 years. To remit the matter for fresh consideration, there must be some apparent defect in the impugned order. The case cannot be remitted to the Court below only at the desire of the parties there must be a substance in the matter. Remitting the matter to the Court below is not a mechanical process. Therefore, the desire of the petitioner to go again and again before the Court that too without having the right is nothing but an abuse of the law and a wastage of valuable time of the Court. The petitioner has no locus/interest or right in the suit land. The order of the Tahsildar, dated 15.01.2000, is executable. The impugned order of the learned MRT is free from infirmity and illegality. Therefore, the writ petition stands dismissed.

11. No order as to costs.

12. Learned counsel for the petitioner submits that this order may be stayed for four (4) weeks as he wanted to approach the

Supreme Court. The learned counsel for the respondents submits that for 17 years, the matter was pending before the MRT. The landlord has been running pillar-to-post to get possession since 2002. The petitioner has no locus to oppose the execution. Hence, this order may not be stayed.

13. Learned counsel for the petitioner submits that for the last four years, the *status quo* order has been running.

14. After having regard to the facts and circumstances of the case and the nature of litigation, this Court is of the view that this is not a fit case to stay the impugned order as prayed. Hence, prayer for stay stands rejected.

(S. G. MEHARE, J.)

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