IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO.10211 OF 2013

Bakulbai Purushottam Kulkarni And Others.
VERSUS
Keru Bhika Ghanwat Died. Through his Lrs
Muktabai wd/o Kerba/Keru Ghanvat and Others
...
Advocate for the Petitioner : Mr. B.K. Patil
Advocate for Respondents no.1 to 5 : Mr. V P Latange
Resp. Nos.6 And 7 - Deleted
...

CORAM : S. G. CHAPALGAONKAR, J.
Dated : 02nd August, 2024

ORDER :-

1. The petitioners impugns the order dated 28.8.2013 passed by the Member, Maharashtra Revenue Tribunal, Aurangabad in Revision Petition No.8-B-2010.

2. Respondent nos.1 to 5 contend that land bearing survey no.263 situated at village Loni Masadpur (gat no.61) was originally owned by Smt. Annapurna Kulkarni. Respondents Grandfather was cultivating the land. His name was entered as protected tenant vide mutation entry no.798. Smt. Annapurna Madhav Kulkarni died on 20.11.1949. Name of Anant Waman Kulkarni was entered in the record of rights as legal heir of land owner. However, on 24.9.1953 Anant Waman Kulkarni also died and his son Purushottam and Gopal were brought on

record as legal heirs. Grand father of respondent i.e. Kanu Dewaji Ghanvat died on 23.7.1956. Name of his son Bhika Kanhu Ghanvat was recorded as his legal heir. On Tiller's day i.e. 1.4.1957 Bhika Kanhu Ghanvat was cultivating the land. His name was appearing in mutation record and in cultivation column. Consequently, he became deemed purchaser and statutory owner of the land in terms of section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short BT and AL Act).

3. Respondent nos.1 to 5 filed application for fixation of purchase price of agriculture land claiming themselves to be protected tenants and deemed purchaser before the Tahsildar in Tenancy Case No.6 of 1999. Inspite of objections from petitioners, the learned Tahsildar fixed purchase price vide his order dated 31.12.2003 in terms of section 32 G of the BT and AL Act. Petitioners assailed the order of Tahsildar before the Sub Divisional Officer, Karjat in Tenancy Appeal No.1 of 2004 under section 74 of the Act. Said appeal came to be allowed and matter was remanded back to Tahsildar recording deficiencies in the order of the Tahsildar.

4. Respondent nos.1 to 5 challenged order of the Sub Divisional Officer in Revision Petition no.8-B-2010 before the Member, Maharashtra Revenue Tribunal, Aurangabad. However, the Maharashtra Revenue Tribunal

pleased to set aside the order of Sub-Divisional Officer and restored the order of Tahsildar.

5. Mr. B.K. Patil, learned advocate appearing for petitioners submits that, Kanhu Dewaji, alleged protected tenant was not in personal cultivation of the land continuously for six years prior to 1.1.1945. He would further submit that on 1.4.1957 Kanhu Dewaji was not in actual possession. He died on 23.6.1956. However, lateron vide mutation entry No.1560 dated 25.1.1960 his legal heirs are brought on record. It is, therefore, clear that on Tiller's day Kanhu Dewaji was not protected tenant. According to him, from 23.6.1956 till 8.12.1959 legal heirs of the Kanhu were not in possession and after period of 3 years and 5 months of death of Kanhu their names are entered. Mr. Patil, would further invite attention of this Court to the observations made by the Deputy Collector, Land Reforms in his order dated 18.12.2009. He would submit that no evidence was brought on record to show that Kanhu Ghanvat was in possession of the land since 1930-1931 and there are discrepancies in the revenue record. The entry as to protected tenancy in the name of Kanhu is not backed by the sufficient material. There is discrepancy as regards to death of Kanhu. One Bansi Ganpat Ghanvat was shown in possession on Tillers' day. Therefore, possession has been repatriated to the original owner in terms of section 32

(1A)(a) of the BT AL Act. He would therefore submit that order passed by the Maharashtra Revenue Tribunal is liable to be quashed and set aside and matter needs to be remanded back to the Tahsildar for fresh inquiry into the aforesaid aspects.

6. Per contra, Mr. Latange, learned advocate appearing for the respondents/tenants submit that there is voluminous evidence to show that Kanhu was protected tenant of the land in question. He invites attention of this Court to the 7/12 extracts and mutation entry right from 1930 depicting name of Kanhu as cultivator of the land. He would further submit that on the Tillers day i.e. 1.4.1957 also name of Kanhu is appearing in the record of rights as a Tenant. Therefore, he is a protected tenant. In view of operation of law, he became owner of land possessed by him and title is deemed to be transferred in his favour. Mr. Latange would further invite attention of this Court to the observations of the Maharashtra Revenue Tribunal that name of Kanhu Deoji Ghanvat was shown as a tenant in 7/12 extract from 1930-1931 to 1956 to 1957 and after his death, entry of Bhika Kanhu Ghanvat appears since 1956-1957 onwards till 1996-1997. After consolidation scheme was implemented survey number 236 was converted into gat no.24.

7. Purushottam Anant and Gopal Anant Kulkarni were original owners of the land. After death of Purushottam Kulkarni, Bakulabai Purushottam Kulkarni became owner to the extent of 50% of the area. Annapurna Madhav Kulkarni was widow of land lord as on 1.4.1957. Thereafter, name of Anant Kulkarni and his brother Madhav was recorded. The revenue record right from 1931 show that Kanhu Deoji Ghanwat was in possession of the suit land. On his death, name of Bhika Ghanwat came to be recorded as cultivator, which continued till 1996-1997.

8. It appears from the record that there was no impediment to bestow tenancy rights and deemed tenancy in favour of the respondents as land-lord was not widow, minor or disabled person. Consequently, Tahsildar in exercise of his powers under section 32G of the BT and AL Act fixed price of the suit land. Apparently, only because no rent was paid to the landlord, protected tenant does not loose his right. Law is well settled on this aspect. The supreme Court of India in case of ***Amrit Bhikaji Kale and others Versus Kashinath Janardhan and another reported in 1983 BCI (0) 82,*** observed as under :-

> *"6. The Tenancy Act was comprehensively amended by Amending Act 15 of 1957. The amendment brought in a revolutionary measure of agrarian reforms making tiller of the soil the owner of the land. This was done to achieve the object of removing all intermediaries between tillers of the soil and*

the State. Sec.32 provides that by mere operation of law, every tenant of agricultural land situated in the area to which the Act applies shall become by the operation of law, the owner thereof. He is declared to be a deemed purchaser without anything more on his part. A Constitution Bench of this Court in (Sri Ram Ram Narain Medhi v. The State of Bombay) 1 held that :-

"the title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The title of the land which was vested originally in the landlord passes to the tenant on the tillers' day and this title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or commit default in payment of the price thereto as determined by the Tribunal."

Therefore, it is unquestionably established that on the tillers' day, the landlord's interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. That very moment landlord-tenant relationship as understood in common law or Transfer of Property Act comes to an end. The link and chain is broken. The absent non-cultivating landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil becomes the owner thereof. This is unquestionable. The landlord from the date of statutory sale is only entitled to receive the purchase price as determined by the Tribunal u/s 32-G. In other words, the landlord ceases to be landlord and the tenant becomes the owner of the land and comes in direct contact with the State. Without any act of transfer inter vivos the title of the landlord is extinguished and is created simultaneously in *the tenant making the tenant the deemed purchaser."*

9. If the aforesaid exposition of law applied in the facts of the case, there is no difficulty to conclude that respondents/tenants were entitled for the relief, as claimed and granted by the Tahsildar. The Member, Maharashtra Revenue Tribunal has rightly concluded that Grandfather of respondents was in possession of the land as tenant as on the day of Tiller's day. There is nothing on record to infer that Tenant of his L.Rs. lost interest on land or it was repatriated to owner by act of parties or operation of law. Hence, no interference is called for in writ jurisdiction of this Court. Consequently, writ petition stands dismissed. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

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aaa/-