

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13268 OF 2018

Shankarrao Sakharam Adhav
Age : 77 years, Occ : Agriculture,
Through GPA Holder,
Shivaji Sakharam Adhav,
Age : 60 years, Occ : Agriculture,
R/o. Adhav Vasti, Kopargaon,
Dist. Ahmednagar

..Petitioner

Versus

1. Prakash Nilkanth Joshi,
Age : 65 years, Occ : Legal Practitioner,
R/o. 4/Gangotri Society Indira Peth,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar.
2. Sub Divisional Officer,
Shirdi Division, Shirdi,
Dist. Ahmednagar.
3. The Tahsildar,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar

..Respondents

WITH
WRIT PETITION ON.13265 OF 2018

1. Madhav Kacheshwar Adhav
(Since deceased through LR's)
- 1A. Jagannath Madhavrao Adhav,
Age : 65 years, Occ : Agriculture,
- 1B) Goraknath Madhavrao Adhav,
(Since deceased through L.Rs.)
- 1B-1. Vijay s/o. Gorakhnath Adhav
Age 54 years, Occ. Business,
R/o. Opposite Manjula Apartment
Dharangaon Road, Kopargaon,
Tq. Kopargaon Dist. Ahmednagar.

- 1B-2. Ajay s/o. Gorakhnath Adhav
Age 52 years, Occ. Service,
R/o. Sainagar (Laxminagar) Kopargaon,
Tq. Kopargaon Dist. Ahmednagar.
- 1B-3. Vikram s/o. Gorakhnath Adhav
Age 47 years, Occ. Business,
R/o. Adhav Building, Juna Post Road,
Kopargaon, Tq. Kopargaon
Dist. Ahmednagar.
- 1B-4. Lilabai w/o Gorakhnath Adhav
Age 70 years, Occ. Household,
R/o. Adhav Building, Juna Post Road,
Kopargaon, Tq. Kopargaon
Dist. Ahmednagar.
- 1C. Raghunath Madhavrao Adhav,
Age : 62 years, Occ : Agriculture
- 1D. Ramesh Madhavrao Adhav,
Age : 59 years, Occ : Agriculture,
- 1E. Ravindra Madhavrao Adhav,
Age : 56 years, Occ : Agriculture,
- 1F. Satish Eknath Adhav,
Age : 49 years, Occ : Agriculture,
2. Ambadas Kacheshwar Adhav,
(Since deceased through LR's)
- 2-A. Hirabai Ambadas Adhav
Age 75 years, Occ. Agri/Household,
- 2-B. Arun Ambadas Adhav
Age 53 years, Occ. Agri
- 2-C . Kiran Ambadas Adhav
Age 51 years, Occ. Agri
Opponent No. 2A to 2C
R/o. Adhav Vasti. Near Om Nagar,
Old Takali Road, Tq. Kopargaon
Dist. Ahmednagar

2-D. Ujwala w/o Jalindar Kale,
Age 57 years, Occ. Agri/Household,
R/o. Kale Vasti, Chincholi, Tq. Rahuri,
Dist. Ahmednagar.

2-E. Sunanda w/o. Balasaheb Kharde.
Age 55 years, Occ. Agri/Household,
R/o. Aaswi (kh), Tq. Sangamner,
Dist. Ahmednagar.

..Petitioners

Versus

1. Prakash Nilkanth Joshi,
Age : 65 years, Occ : Legal Practitioner,
R/o. 4/Gangotri Society Indira Peth,
Kopargaon, Tq. Kopargaon,
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2. Sub Divisional Officer,
Shirdi Division, Shirdi,
Dist. Ahmednagar.

3. The Tahsildar,
Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar

..Respondents

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Advocate for the Petitioners : Mr. P.S. Dighe h/f Mr. V.R. Dhorde

AGP for Respondent/State : Mr. A.S. Shinde

Advocate for Respondent No.1 : Mr. A.P. Bhandari

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CORAM : S.G. MEHARE, J.

RESERVED ON : MARCH 04, 2024

PRONOUNCED ON : APRIL 29, 2024

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of parties.

2. Since in both petitions the common issue was involved and the respondent is common; hence, taken up for disposal together.

3. In Writ Petition No.13268 of 2018, the petitioner has impugned the order of the learned Member, Maharashtra Revenue Tribunal, Aurangabad passed in Case No.17/B/2016/Ahmednagar dated 24.09.2018. In Writ Petition No.13265 of 2018 has impugned the order of the Hon'ble Member, Maharashtra Revenue Tribunal, Aurangabad in Case No.16/B/2016/Ahmednagar dated 24.09.2018. The petitioners in both cases were tenant and respondent no.1 was the landlord.

4. The facts in Writ Petition No.13268 of 2018 were that the father of respondent no.1 had leased the suit land by registered lease deed dated 16.09.1967 for 16 years on yearly lease of Rs.60 p.a. The land was leased for cultivating the sugarcane. It was a contractual lease. Since the petitioners/tenants failed to cultivate the land and violated the terms of lease deed, the respondent issued him a notice of determining the lease under Section 14 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ('Act of 1948' for short) on 17.12.2005. The petitioner replied the notice and denied the reasons for determining the tenancy. Respondent no.1 filed the proceeding before the tenancy Tahsildar under Section 29 of the Act of 1948. On 08.03.2011, the Tahsildar dismissed his case. Respondent no.1 has preferred the tenancy appeal before the Sub-Divisional Officer. The Sub-Divisional Officer allowed his appeal and directed the petitioners to handover the possession of the suit land. Against the said order,

the petitioner had preferred the revision before the Maharashtra Revenue Tribunal. The learned Member dismissed the revision and maintained the order of Sub-Divisional Officer.

5. The facts of Writ Petition No.13265 of 2018 were that the vendor of respondent no.1 had leased the agreement on 16.09.1967 in the name of deceased Madhavrao for 16 years at the rent of Rs.60 p.a. However, deceased Madhavrao did not cultivate the land leased for sugarcane. Therefore, by notice dated 17.12.2005, respondent no.1 determined the tenancy. Then he preferred an application before the Tahsildar under Section 29 of the Act of 1948. The Tahsildar dismissed the petition. Then the Sub-Divisional Officer allowed the appeal. Against that appeal, revision preferred by the petitioner was dismissed.

6. The another argument in both cases for the petitioners were that they could not cultivate the land as the lands were situated out of town and there was no sufficient water to cultivate the sugarcane. The landlord/respondent no.1 has also a land adjoining to the suit land. He also could not cultivate the land. The notice was barred by limitation. It was not issued from the date of the approval of the right to terminate the tenancy. Therefore, there was no direct compliance of Section 14(1)(a)(iv) of the Act of 1948. In view of the notification dated 14.02.1958 issued under Section 43-A (3) of the Act of 1948, no lease of land should be terminated on the ground that

the period fixed by the agreement has been expired. The application under Section 29(2) of the Act of 1948 was not in prescribed form. Therefore, it was liable to be dismissed. He also argued that the Sub-Divisional Officer as well as the Maharashtra Revenue Tribunal did not consider the material admissions of respondent no.1 which proves that it was beyond the control of the petitioners to cultivate the land and it was not a deliberate failure on their part. The petitioners were not at fault in not cultivating the land. There was no water to cultivate the sugarcane. Respondent no.1 failed to provide the water to cultivate the land as per the agreement. He prayed to allow both petitions.

7. Per contra, learned counsel Mr. Bhandari for respondent no.1 has argued that the learned counsel for the petitioners has misinterpreted Section 29 of the Act of 1948. He would submit that sub-section (1) of Section 43-A of the Act of 1948 did not apply to lease the land granted for cultivation of sugarcane. The lease agreement was for a specific object. Hence, it was terminable by notice as provided under the Act. The notification issued under Section 43-A of the Act of 1948 provides for termination of the tenancy for default of tenant. Sub-clause (4) covers the case of the petitioners. To bolster his arguments, he relied on the case of Gajanan Vasant Vijay and Another Vs. Valubai Bapu and Others, 1982 Mh.L.J. 933. He advanced the arguments that Sections 14 and 27 are not

applied to lease of land granted for the cultivation of the sugarcane. The notification issued under Section 43-A did not specifically mentioned applying it to the lands leased for the sugarcane. Therefore, in the absence of any such reference, it would not be proper for the Court to apply Section 27, just because the government had referred Section 14(1)(a). He also argued that the notice was correctly served and tenancy was terminated for non-cultivating the land personally and the petition was within limitation.

8. It is not in dispute that the lands were leased for 16 years by a written agreement specifically for producing the sugarcane. The terms of the lease which are identical reveal that the lease was for 15 to 16 years. The lessee has accepted the responsibility to lift the water for sugarcane and produce a short term agricultural produce. The landlord has a case that since 2001, the tenants did not cultivate the land personally. Therefore, he was entitled to determine the lease and seek the possession.

9. The landlord issued a notice under Section 14 (1)(a)(iv) of the Act of 1948. He had a specific case that since 2001, the tenants stopped cultivating the land. The parties are not at dispute that the lands were leased for producing the fruits and the sugarcane and more particularly the sugarcane. The tenants had agreed to make the watering arrangement for the crops. The notices were issued on 17.12.2005. The tenants have replied it. The tenants after

determining the tenancy did not hand over the possession of the suit land. Hence, an application under Section 29 of the Act of 1948 was submitted to the Mamlatdar for possession.

10. The notice under Section 14 (1)(a)(iv) of the Act of 1948 was in compliance with sub-clause (b). Three months notice was served upon the tenants. In the notice, reply was silent that within three months of notice, the tenants remedied the breach for which the tenancy was terminated. There appears to have no case that they were cultivating the land after 2001. The reply notice is vague barely denying the contents of the notice.

11. The landlord filed an application before the Mamlatdar under Section 29 of the Act of 1948 in 2007. The tenants contested the petition. It has been seriously objected for the tenants that the Tahsildar could not have entertained the petition as it was not filed within two years from the date on which the right to obtain possession of the land was deemed to have been accrued to the tenant. The vehement arguments of the petitioners were that the right to obtain possession of the land to the landlord arose in the year 2001. Therefore, the application under Section 29(2) of the Act of 1948 ought to have been filed within two years from 2001. Therefore, the petition was barred by limitation. To bolster his arguments, he relied on the case of Dattu Nikam Vs. Vinayakrao Patwardhan, 1965 Mh.L.J. 625. The case was filed by the landlord on

the ground of defaults in payment of rent. The revenue authority had directed that the possession of the land should be restored to the landlords. It has been observed that the right to obtain possession of the land and the tenants failure to pay the rent within prescribed time must be deemed to have been accrued to the landlord from the date there was default of payment of rent and limitation will run from this date. In the said case, the case of Ganpati Appa Vs. Maruti Bala, AIR 1959 Bom. 425, in which it was held that the right to obtain possession of a land accrues to the landlord on the expiry of the period of notice terminating the tenancy given by him. Under Section 14 of the Tenancy Act a landlord has to give three months notice informing the tenant of his decision to terminate the tenancy, before the tenancy can be terminated on the ground that the tenant has failed to pay the rent due from him. The period of notice expired on March 29, 1955. The application for possession was made by the opponents on March 23, 1957 i.e. within two years from the date on which the notice terminating the tenancy expired. The Tribunal, therefore, held that the application was in time.

12. The counter allegations of the learned counsel for the respondent/landlord would submits that the words of sub-section (2) of Section 29 are crystal clear that the period of two years begins to run after three months of the service of termination notice. To bolster his arguments, he relied on the case of Gajanan Vasant (supra). He

vehemently argued that the right to seek possession accrued after three months of the notice.

13. In the case of lease of the land for producing sugarcane, Section 43-A of the Act of 1948 is relevant. The said section provides for some of the provisions of Act of 1948 to the lease of land obtained for cultivation of sugarcane, fruits or flowers etc.

14. Learned counsel for the petitioners referred to the notification of Government of Maharashtra dated 14.02.1958. He specifically referred to clause (2) of the notification and vehemently argued that such tenancy could be terminated subject to the conditions mentioned in Section 31A, 31B, 31C and 31D of the Act. For that purpose, one year notice should be served upon the tenant by the landlord stating reasons for termination of the lease. Relying on this notification, he has vehemently argued that the termination of notice under Section 14(1)(a)(iv) was not in consonance with the requirements of law. He also tried to argue that the lease granted for the sugarcane is to be dealt with by the notification of the government. The Government Notification dated 14.02.1958 protects the tenant from eviction on termination of the tenancy. However, sub-clause (3) of the above notification provides that lease of the land may be terminated by the lessor by giving time to the lessee three months notice in writing stating therein the reasons for such termination if a lessee commits any of the defaults mentioned in

clause (a) of sub-section (1) of Section 14. The right of the landlord to terminate the tenancy for committing default as provided under Section 14(1)(a) were not disturbed by the said notification. In the case of Gajanan Vasant (supra), the Hon'ble Supreme Court in para 5 has observed that "so far as the leases of lands for the cultivation of sugar-cane are concerned, the Government of Maharashtra has issued a notification dated February 14, 1958, under subsection (3) of section 43A. The said notification was amended by another notification dated October 8, 1969. The relevant provisions of the said notification as so amended are as follows :

"In exercise of the powers conferred by sub-section (3) of section 43A of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), the Government of Bombay hereby directs that the leases of land referred to in clause (b) of sub-section (1) of the said section 43A and to which the provisions of sub- section (1) of the said section 43A apply shall be subject to the following conditions, namely :-

Conditions as to the duration and termination of lease :

3. If a lessee commits any of the defaults mentioned in clause (a) of sub-section (1) of section 14 in relation to such lease of land, the lease may be terminated by the lessor by giving the lessee three months' notice in writing stating therein the reasons for such termination."

15. It has been further held that “thus under the said notification a lease for cultivation of sugar-cane can be terminated by the lessor by giving the lessee three months' notice in writing stating therein the reason for such termination if the lessee commits any of the defaults mentioned in clause (a) of sub-section (I) of section 14.”

16. Section 14(1)(b) provides for saving the termination after the notice by remedied the breach for which the tenancy was terminated. The notice of termination was served for failing to cultivate the suit land personally by the tenant. After the notice, they did not started cultivating personally. Therefore, they had lost the remedy to avoid the termination.

17. So far as accrual of right to seek remedy under Section 29(2) of the Act of 1948 to obtain the possession, the Full Bench in the case of Ganpati (supra) has laid down the law in clear words that the right to obtain possession of the land accrues to the landlord on the expiry of period of notice terminating the tenancy given by him. Therefore, there is no water in the arguments of the learned counsel for the petitioners that the right to obtain possession of land accrued when the tenants stopped cultivating the land personally.

18. The another limb of argument of the learned counsel for the petitioners/tenants was that since there was no water to produce the sugarcane, the lands could not be used for producing the sugarcane. The water sources available at the time of creating the

lease were disappeared by passage of time. Therefore, the tenants would not be held defaulter. The situation was beyond the control of the tenants. Besides this, the land was surrounded by the local area. Therefore also, they could not cultivate the land for producing the sugarcane. The arguments of the petitioners indirectly were that it was a frustration of contract or act of god for which they could not be held liable to be evicted. Section 56 of the Indian Contract Act provides for frustration of contract. The frustration occurs whenever the law recognizes that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which the performance is called for would render it radically different from that which was undertaken by the contract. In simple words, whenever the situation occurs, either party has become incapable of being performed, their part of contract without default of either party, the contract will be frustrated and such frustration of contract is a void contract. However, the doctrine of frustration provided under Section 56 of the Indian Contract Act does not apply for the contract to sale of land or the lease of land. Such frustrations are governed under Section 108(e) of the Transfer of Property Act. Clause (e) of Section 108 of the Transfer of Property Act clearly indicates that where material part of the property has been destroyed, it is the lessee's option to treat the lease as void. This

clause is obviously based on the assumption that there is no frustration for the things of lease automatically coming to an end.

19. The land in question was governed under the Act of 1948. It is a complete code providing for the right to purchase, termination of the tenancy, recovery of possession etc. Therefore, the dispute would be governed and dealt with under the said Act. Therefore, this Court is of the view that the doctrine of frustration of contract or act of god would not be considered in this case.

20. The learned Member has correctly observed that the record of right clearly shows that the laws were fallow. The grounds for incapability to cultivate the land being located in local area was also not proved. It was established before the Courts below that the tenants themselves were avoiding to cultivate the land given one or the other reason.

21. On giving conscious consideration to the submissions of the respective counsels examining the facts and law, this Court is of the view that there is no error of law committed in the impugned orders. There is no substance in the petitions. Hence, both petitions stand dismissed. No order as to costs.

22. Rule stands discharged.

(S.G. MEHARE, J.)

23. Learned counsel for the petitioners submits that there was interim stay running in favour of the petitioners. He would submit that he want to challenge the decision of this Court in the Hon'ble Supreme Court and prays that the stay granted earlier may be continued for further eight weeks.

24. Learned counsel for the respondent opposed the prayer. He would submit that the interim stay is running against him since 2005.

25. Considering the issue involved in this case and the span of litigation, this Court is of the view that it will not be appropriate to stay the order. Hence, the prayer is rejected.

(S.G. MEHARE, J.)