

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4522 OF 2019

Narayan Antu Godase Through
His Poa Holer

...Petitioner

Vs

Hanmant Shripati Godase And
Ors.

...Respondents

Mr. P. B. Shah a/w. Ms. Gunjan Shah for the Petitioner.

*Mr. Sanjeev P. Kadam a/w. Ms. Varsha M. Thorat for the Respondent
Nos.1,2 , 3A and 3C.*

Coram : Sharmila U. Deshmukh, J.

Date : 16th October 2024.

P. C. :

1. Heard.
2. By this petition, the challenge is to the order dated 24th December 2018 passed by learned Member of Maharashtra Revenue Tribunal in the Revision Application No.212 of 2005 reversing the findings of the Tahsildar and the SDO confirming the Petitioner to be the tenant of the suit land from the year 1954 in a Reference under Section 85A of the Maharashtra Tenancy and Agricultural Lands Act (for short, Tenancy Act.)
3. The facts of the case are that the Respondent-landlord had filed Regular Civil Suit No. 252 of 1986 seeking declaration of ownership of

Gat No.646 (Old Survey No.124/3) situated at District Satara and for an injunction restraining the Petitioners from interfering with the possession of the Respondent-landlord and for recovery of possession. One of the issues framed by the Trial Court by order dated 6th August 1990 was as under:

“1. Does the defendant prove that father was tenant in the year 1954 onwards and thereafter defendant is in possession of the suit land as tenant ?”

4. The Civil Court remitted the issue as framed to the Tenancy Court for recording the findings in accordance with Section 85A of the Tenancy Act which was registered as Tenancy Court Reference No.1 of 1992. *Vide* order dated 16th January 1993 , Aval Karkun on the basis of the records held that prior to the year 1956-1957 the predecessor of the Petitioner were tenants of the premises. As against this subsequently by order of remand by this Court, the matter was heard by SDO and *vide* order dated 24th October 2005, SDO held that the Petitioners were the tenants of the subject land. As against this the landlord preferred revision application No.212 of 2005 before the MRT, Pune Bench which by the impugned order dated 24th December 2018 allowed the application and negated the issue framed by the Civil Court.

5. Heard Mr. P. B. Shah for the Petitioner, Mr. Sanjeev P. Kadam for the Respondent Nos.1,2 , 3A and 3C.

6. Learned counsel for the Petitioner has taken this Court in detail through the order passed by the Aval Karkun as well as the SDO. He would submit that in the Reference the Aval Karkun has considered Mutation Entry No.1288 which was certified on 13th March 1958 showing the Petitioners as tenants which was not challenged. He would further point out that after considering the records which showed the name of Petitioner's predecessor's as tenant and the assessment taxes in respect of the property as well as the 7/12 extract, has held that the Petitioner was tenant. He would further submit that during the evidence adduced before the Aval Karkun the receipt for payment of water tax for purpose of agricultural land were produced. He submits that the Petitioners have proved that they were the tenants of the suit land since 1954. He would further submit that the SDO has thereafter considered the records and has upheld the findings of the Aval Karkun. He submits that the MRT has misdirected itself by considering the application as one for the purpose of claiming deemed ownership as on tillers day on 1st April 1957. Pointing out to the findings of MRT he submits that MRT has considered that the Mutation Entry 1288 has been certified on 13th March 1958 which is after the tillers day. He submits that the Reference which was required to be answered is

whether the Petitioner and the predecessor were tenants since the year 1954 which was evidenced from the revenue records. He submits that the MRT has erroneously held that the entries of the Petitioners are not from 1956-1957 but from 1957-1958. He submits that the issue is not as regards the fixation of the purchase price but only as to whether the predecessor of the Petitioners were tenants in 1954 and whether the Petitioner is in possession of the suit land as tenant from 1954 onwards.

7. Mr. Kadam would support the findings of MRT.
8. Considered the submissions and perused the records.
9. Reference to Civil Court was on specific issue as to whether the Petitioner's predecessor was tenant in the year 1954 onwards and thereafter whether the Petitioner is in possession of the suit land as tenant. The tenancy Court based on the evidence which was adduced by the parties on record had come to a specific finding that Mutation Entry No.1288 notes the Petitioners as the tenant which has been certified on 13th March 1958. Admittedly, the revenue entry has not been challenged and is therefore confirmed. Apart from the revenue entry the Tenancy Court has also considered that by notice of 4th January 1975 the possession of the Petitioners over the suit property has been accepted by the Respondents. The Tenancy Court considered that as far as Civil Suit No.573 of 1982 is concerned the same is in

respect of gat No.60 which was old survey No.18/1 and present suit property is Gat No.646 and is therefore distinct and in respect of other properties there is separate proceedings which is going on. The Tenancy Court considered that the landlord was residing at Sangam Mauli and the children were taking education there and it shows that the land was not being cultivated by the landlord.

10. Aval Karkun considered that from the year 1957-1958, the 7/12 extract shows the name of the Petitioner's father as tenant. The finding of the Aval Karkun was based on appreciation of evidence adduced by both the parties and based on the evidence, the Aval Karkun had come to a finding that in respect of the suit property since prior to 1956-1957 the Petitioner's father was a tenant.

11. The said finding of the Aval Karkun was further fortified by SDO by taking into consideration, the crop cultivation column of 1957-1958 which reflected the name of the Petitioner. The SDO has thereafter specifically accepted the possession of the Petitioners by taking into consideration the water tax receipts and the communication dated 1th April 1955. Upon a cumulative re-appreciation of the evidence which has come on record, the SDO upheld the findings of Aval Karkun.

12. The revision which came to be filed by the MRT was under Section 76 of the Tenancy Act which vests a limited jurisdiction in MRT and provides that Revisional jurisdiction is to be exercised only on the

grounds that the order passed was contrary to law, there is failure to determine material issue of law or that there was a substantial defect in following the procedure provided by the Act which has resulted in miscarriage of justice. Despite the limited jurisdiction to be exercised as stated therein, the MRT has exercised the appellate powers and had re-appreciated the evidence which is impermissible in Revision Application filed under Section 76 of the Tenancy Act. Based on re-appreciation of the evidence, the MRT has held that the evidence on record shows that the noting in the revenue records of the year 1957-1958 appears to be hollow entries and therefore the 7/12 extracts are also disputed records.

13. Mr. Shah is right in contending that MRT has clearly misdirected itself as the Reference in the present case was limited to answer the issue whether defendant proved that his father was tenant since the year 1954 onwards and the defendants are tenants. The MRT has held that the revenue record indicates that from the year 1954 till certification of Mutation Entry No.1288 i.e. till 13th March 1958, the Petitioner's tenancy rights are not noted. The learned Member of MRT has further held that the Mutation Entry No.1288 noted on 13th March, 1958 and certified on 19th May, 1958 are beyond the tillers day and only the tenants who are cultivating the land on tillers day are deemed tenants. The learned Member further held that the validity of Mutation

Entry No.1288 is suspicious. The MRT considered the revenue records to ascertain whether the Petitioners were deemed owners as on tillers day when the same was not the issue. MRT failed to notice that there was no challenge to the Mutation Entry and what was required to be considered is not the claim of deemed ownership but the tenancy of the year 1954 onwards which was more than established from the evidence which has come on record. Section 2(18) of Tenancy Act which defines "tenant" includes a person who is deemed to be a tenant under Section 4 and Section 4 provides that a person lawfully cultivating any land belonging to another person shall be deemed to be tenant if such land is not cultivated personally by the owner. Learned Member of MRT has itself held that the records show the noting of Petitioner since the year 1957-1958. Despite holding so, MRT has not accepted the Petitioner as tenant for the reason that only the person cultivating the land on 1st April, 1957 will be the deemed tenant which is unsustainable. The order of MRT re-appreciating the evidence and coming to a different finding by upsetting the order of Aval Karkun and the SDO suffers from infirmity and is hereby quashed and set aside.

14. Resultantly, Petition succeeds. The impugned order dated 24th December 2018 is quashed and set aside. Consequently, the order of SDO dated 25th October 2005 and the Tahsildar's order dated 16th January 1993 are revived. In view of disposal of petition, Interim/Civil

Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]