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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4305 OF 2019**

Uddhav Maruti Pawar

Since deceased through Legal Heirs

1. Narsinh Uddhav Pawar
Age : Major, Occ : Agriculturist
2. Ramling Uddav Pawar
Age : Major, Occ : Agriculturist
3. Hanumant Uddhav Pawar
Age : Major, Occ : Agriculturist
4. Dattu Uddhav Pawar
Age : Major, Occ : Agriculturist
5. Arjun Uddhav Pawar
Age : Major, Occ : Agriculturist
All r/o. Pimpalgaon Dhas,
Tal. Barshi, District : Solapur
6. Kondabai @ Sangeeta Rambhau Patil
Age : Major, Occ : Agriculturist
R/o. Nizama Jawla, Tal. Paranda
District : Osmanabad

..... Petitioners

Versus

1. Alka Narayan Shah @
Alka Rajeshbai Shah
Age : Major, Occ : Household,
R/o. Urban Bank Colony
Station Road, B-5, Shivneri Marg
Ahmednagar
 2. Latha Pramod Shah
Age : Major, Occ : Household
R/o. 242, Budhwarpeth
Near Dattamandir, Pune-411 030
 3. Chhaya Bharatlal Shah
Age : Major, Occ : Household
R/o. Jamkhed Talula
District : Ahmednagar
 4. Mangal Jitendra Shah
Age : Major, Occ : Household,
R/o. 2503/4/1, Near Ganesh Mandir
Gosavi Hospital
Islampur, District : Sangli
- Respondents

Mr. S. G. Deshmukh a/w. Mr. Rajendra Madhukar Haridas for the
Petitioners.

Ms. Gunjan Shah a/w. Mr. Kayval P. Shah for the Respondents.

CORAM : GAURI GODSE, J.

DATE : 20th MARCH 2024

Oral Judgment:

1. This petition takes exception to the Judgment and Order passed by the Maharashtra Revenue Tribunal ("MRT"), dismissing the petitioners' revision application. The revision application was filed to challenge the order passed by the Sub-Divisional Officer ('SDO') in the appeal preferred by the respondents. By Judgment and Order passed by the SDO, the declaration under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 ("Tenancy Act") granted in favour of the petitioners by the Tahsildar has been set aside.

Brief facts:

2. Order dated 30th May 1986 declared the deceased petitioner as a tenant in proceeding under Section 70(b). The respondents challenged the said declaration by filing an appeal, which was allowed on 29th May 1987, and the matter was remanded for fresh inquiry. After remand the petitioners examined witnesses in support of the tenancy rights of the deceased petitioner. After holding an inquiry, the

learned Tahsildar passed an order on 10th October 1996 declaring the deceased petitioner as a tenant on the ground that he had been cultivating the suit land since the year 1970 on crop sharing basis. The respondents challenged the said decision by filing an appeal, which was allowed by the learned SDO on 1st April 2002 and the declaration granted by the learned Tahsildar was set aside. Aggrieved by the decision, the petitioners filed a revision application before the MRT.

3. The petitioner's revision application was dismissed by the Judgment and Order dated 22nd March 2019, which is impugned in this petition, and the order passed by the learned SDO is confirmed.

Submissions on behalf of the petitioners:

4. Learned counsel for the petitioners submitted that an application under Section 70(b) of the Tenancy Act was filed on the ground that the deceased petitioner was a contractual tenant and had been cultivating land on crop sharing basis since the year 1970. The said application was opposed by the respondents on the ground that the deceased petitioner and his brothers were cultivating the land as servants of the respondents and, in support of the same respondents,

had relied upon a document styled as 'Nokarnama' executed in favour of the deceased petitioner and his brothers.

5. Learned counsel further submitted that on the ground that the deceased petitioner was cultivating land as a servant of the respondents, a civil suit was filed by the respondents for injunction. In the said suit, a Court Receiver was appointed, and the possession of the suit land was in the custody of the Court Receiver. The Nokarnama, which was relied upon by the respondents in the civil suit and the tenancy proceeding, is not a registered document. Though the said document is not required to be compulsorily registered, the authenticity of the same would have been proved if it was registered in the same manner as a Will is not compulsorily registrable; still, if it is registered, its authenticity is proved.

6. The learned counsel for the petitioners submitted that though the landlord contended that the deceased petitioner was cultivating the land as a servant, neither the document was proved, nor any evidence was led to prove that any salary was paid to the deceased petitioner. In support of his submissions, learned counsel for the petitioners relied upon Section 4 of the Tenancy Act. He submitted that a person

lawfully cultivating land is deemed a tenant, and the only exception was that the person lawfully cultivating is not a member of the owner's family or servant on wages or mortgagee in possession as specified in clause (a), (b) and (c) of sub-section (1) of Section 4. Though the case of the petitioners was that there was a contractual tenancy in favour of the deceased petitioner, the interpretation of deemed tenancy is relied upon only in support of the submissions that once a person is lawfully cultivating land, the person cultivating will be entitled to be a deemed tenant.

7. The learned counsel for the petitioners further submitted that the learned SDO had set aside the declaration granted by the learned Tahsildar mainly on the ground that no documents and/or evidence is produced to support the contention that the deceased petitioner was cultivating the land on a contractual basis. The impugned judgment and order passed by the SDO and the MRT have not considered the landlord's case that the deceased petitioner was cultivating land as a servant. Once it is accepted that the deceased servant was cultivating the land since 1970 and the case of the landlord that the deceased tenant was cultivating as a servant is not proved, the case of the

petitioners for declaration of tenancy rights on the ground that the deceased tenant was cultivating land on crop sharing basis ought to have been accepted. Thus, even assuming for the sake of argument that no document and/or evidence was produced in support of the tenancy claim, once the landlord accepted that the deceased petitioner was cultivating the land as a servant of the landlord, the burden shifted upon the landlord to prove the same. Once the said burden is not satisfactorily proved, the petitioners' case of tenancy claim on a contractual basis should have been accepted. He thus submitted that the petition would require consideration and interference by this Court.

Submissions on behalf of the respondents:

8. Learned counsel for the respondents supported the impugned orders. He submitted that the petitioners have taken an inconsistent stand. For the first time in this Court it is contended that the deceased petitioner was entitled to a declaration on the ground of deemed tenancy under Section 4. The petitioners' claim was of contractual tenancy based on the submission that the tenancy was on crop sharing basis. Petitioners are not entitled to take an inconsistent stand for the first time in this Court that the deceased petitioner was a

deemed tenant. The case of the respondents-landlord in the civil proceeding as well as in the tenancy proceeding was that the deceased petitioner was cultivating land as a servant of the landlord. The learned counsel for the respondents relied upon sub-section (6) of Section (2) for interpretation of the term “to cultivate personally”. The word to cultivate personally is defined under Section 2(6) to mean that cultivating the land on one’s own account or by one’s own labour. He thus submitted that the case of the landlord that the deceased petitioner was cultivating as a servant of the landlord would, therefore, mean that the cultivation was done personally by the landlord.

9. Learned counsel for the respondents submitted that the application under Section 70(b) for declaration of the tenancy rights of the deceased petitioner was filed in the name of the deceased petitioner through his son as power of attorney holder. After the order of remand, the petitioners led evidence and examined witnesses. All the witnesses examined by the petitioners were minors in the year 1970, i.e. the year since the contractual tenancy was claimed on the ground that the deceased petitioner was cultivating the land. However, to support the claim of tenancy in the name of the deceased petitioner,

he never stepped into the witness box and failed to lead any evidence. All the witnesses examined supporting the claim were admittedly minors at the relevant time and hence had no personal knowledge regarding the alleged contractual tenancy of the year 1970. He thus submitted that the appellate authority rightly reversed the learned Tahsildar's finding and dismissed the petitioners' claim. MRT has also considered the submissions made on behalf of the petitioners and, after examining the record, has confirmed the findings recorded by the first appellate authority.

10. The learned counsel for the respondents submitted that once the claim of contractual tenancy was raised, the submission made for the first time in this Court by relying upon Section 4 of the Tenancy Act would amount to an inconsistent stand for claiming tenancy. He submits that such an inconsistent stand is not permissible to claim tenancy rights. In support of his submissions, he relied upon the decision of this Court in the case of ***Anusayabai Ganpati Gaikwad (deceased through her heirs) Krishna Ganpati Gaikwad and Another vs. Baba Tatya Nikam since deceased through Lrs***

Tolabai Baba Nikam and Others.¹ He submitted that this Court has taken the view that a person is not entitled to raise an inconsistent stand of deemed tenancy and at the same time claim to be a contractual tenant to get protection under the provisions of Section 4 of the Tenancy Act. For deemed tenancy, a person is required to lawfully cultivate the land belonging to another person. He submitted that the interpretation of deemed tenancy as provided under Section 4 is thus considered by this Court in the said decision, and this Court has taken the view that such an inconsistent stand is not permissible.

11. Learned counsel for the respondents thus submitted that the reasons recorded by the first appellate authority and confirmed by the MRT are based on the tenancy claim of the deceased petitioner on the ground that there was a contractual tenancy. The petitioners are not entitled to any such declaration once no document or evidence is brought on record supporting such a claim. He thus submitted that no interference from this Court is called for to interfere in the impugned orders.

¹ 2003 (4) Mh.L.J. 956

Submissions on behalf of the petitioners in rejoinder:

12. In response to the submissions made on behalf of the respondents that the tenant is not entitled to seek inconsistent stands, learned counsel for the petitioners submitted that the petitioners, even in this Court, maintain the original claim of contractual tenancy. He submitted that the reliance on Section 4 was only in support of the contention that the burden would shift upon the landlord to prove that the deceased petitioner was cultivating the land as a servant, and thus, once that burden is not proved, the case of the petitioners of contractual tenancy should have been accepted. He, therefore, submitted that the decision relied upon by the learned counsel for the respondents cannot be argued against the petitioners as the petitioners have not raised any inconsistent stand.

Consideration of submissions and findings:

13. I have considered the submissions. Perused the papers. The petitioners' claim is based on a contractual tenancy of the deceased petitioner since the year 1970 on crop sharing basis. It is not disputed that no documentary evidence was produced supporting the claim of

contractual tenancy. So far as the oral evidence supporting the petitioners' case is concerned, a perusal of the same indicates that the deceased petitioner, who has claimed to be a contractual tenant, has not examined himself. Oral evidence is led by his son, who was a minor in the year 1970 when, according to the petitioners, the tenancy was created. The other witnesses were also minors at the relevant time when the contractual tenancy was claimed to have been created in favour of the deceased petitioner. Thus, in the absence of any supporting documents and/or oral evidence regarding the creation of the contractual tenancy, the first appellate authority and MRT have rightly not accepted the case of the petitioners of contractual tenancy.

14. With reference to the argument made on behalf of the petitioners that the burden would shift upon the landlord to prove that the deceased petitioner was cultivating land as a servant, is of no assistance to support the claim of contractual tenancy. The owner has consistently taken a stand in the civil proceedings and tenancy proceedings, saying that the deceased petitioner and his brothers were cultivating the land as servants.

15. The petitioners' claim is not deemed tenancy but a contractual one. Hence, the reliance placed on the provision of Section 4 of the Tenancy Act, defining deemed tenancy, is of no assistance to the petitioners. The burden on the landlord to prove that the deceased petitioner was cultivating the land as a servant would have been relevant if there was a claim of deemed tenancy. The term "tenant" has been defined under sub-section 18 of Section 2 of the Tenancy Act, which reads as under:

2 (18) "tenant" means a person who holds land on lease and include, -

(a) a person who is deemed to be a tenant under Section 4;

(b) a person who is protected tenant; and

(c) a person who is permanent tenant;

and the word "landlord" shall be construed accordingly.

16. The petitioners' claim of tenancy does not fall under any of the clauses of the term 'tenant' defined under the said sub-section. The case of the petitioners is of contractual tenancy, and thus, in the absence of any document or any supporting evidence, the petitioners are not entitled to any declaration of contractual tenancy.

17. Learned counsel for the respondents is right in relying upon the definition of the term “to cultivate personally” as defined in sub-section (6) of Section 2 of the Tenancy Act. Sub-section (6) of Section 2 of the Tenancy Act reads as under:

2(6) “To cultivate personally” means to cultivate land on one’s own account -

- (i) by one’s own labour, or*
- (ii) by the labour of any member of one’s family, or*
- (iii) under the personal supervision of oneself or any member of one’s family, be hired labour or by servants on wages payable in cash or kind but not in crop share,*

being land, the entire area of which -

- (a) is situate within the limits of a single village, or*
- (b) is so situated that no piece of land is separated from another by a distance of more than five miles, or*
- (c) forms one compact block.*

Provided that the restrictions contained in clauses (a), (b) and (c) shall not apply to any land, -

- (i) which does not exceed twice the ceiling area,*
- (ii) upto twice the ceiling area, if such land exceeds twice the ceiling area*

18. Thus, once the landlord has denied the claim of contractual tenancy on the ground that the deceased tenant was cultivating as his servant, in view of the term “to cultivate personally” defined under sub-section (6) of Section (2) of the Tenancy Act, would mean that the landlord contended that he was cultivating the land through his servant, i.e. deceased petitioner.

19. The petitioners claimed a declaration of contractual tenancy; hence, the initial burden was on the petitioners to prove the contractual tenancy. The petitioners cannot take benefit of the grounds raised on behalf of the landlord to contend that the burden to prove the claim in the negative would shift upon the landlord. Thus, there is no substance in the arguments made on behalf of the respondents that in view of Section 4, the burden would shift upon the landlord to prove that the deceased petitioner was cultivating the land as a servant and as that burden is not proved, the case of the petitioners of contractual tenancy should have been accepted.

20. The petitioners' case, even in the present petition, is only based on contractual tenancy. A perusal of the record indicates that the petitioners' case is based on contractual tenancy in the name of the

deceased petitioner. Except for the oral evidence, no documentary evidence is shown in support of the contractual tenancy. After examining the oral evidence, the learned SDO has recorded findings on facts, disbelieving the case of contractual tenancy. After examining the evidence, the learned member of MRT confirmed the findings recorded by the learned SDO. Thus, there is no substance in the arguments raised on behalf of the petitioners by relying upon the definition of deemed tenancy.

21. In the decision of ***Anusuyabai Ganpati***, this Court held that there is a perceptible difference between a deemed tenant and a contractual tenant, and it is not permissible to take inconsistent stands. Thus, the learned counsel for the respondents has rightly relied upon the said decision to oppose the contention raised on behalf of the petitioners by relying upon the definition of deemed tenancy under Section 4 of the Tenancy Act.

22. I do not find any error or any illegality in the findings recorded by the learned SDO and confirmed by MRT, warranting any interference by this Court under Article 227 of the Constitution of India.

23. The petition is devoid of any merits. For the reasons recorded above the petition is dismissed.

[GAURI GODSE, J.]