

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1745 OF 1997.

Shri. Mohan Vithoba Pawar
of Ambewade, Taluka – Khatav,
District – Satara.]
] **...Petitioner.**

Versus

1. Shri. Shivaji Rajaram Mandke.]
(Since Deceased through his LR.)]
1A. Anusaya Shivaji Mandke]
Age – Major, Occupation – Household,]
1B. (Krishna Shivaji Mandke)]
Age – Major, Occupation – Agriculture,]
Respondent No. 1B deleted (Amendment]
carried out as per Court Order dated]
02.07.2024)]
Both 1A & 1B r/o. Ambawade, Taluka –]
Khatav, District – Satara.]
1C. Manisha Ankush Shinde]
Age – 35 years, Occupation –Household,]
R/o. Morale, Taluka – Khatav,]
District – Satara.]
1d. Taibai Sayaji Thorat]
Age – 40 years, Occupation – Household,]
R/o. Morale, Taluka – Khatav,]
District – Satara.]
2. Shri Danaji Dadu Pawar]
R/o. Ambewade, Taluka – Khatav,]
District – Satara.]
3. Shri Raghunath Savala Gurav]
R/o. Supne (Tambave), Taluka – Karad,]
District – Satara.] **...Respondents.**

Mr. Umesh Mankapure for Petitioner.
Mr. Vaibhav Gaikwad for Respondent No.1A, 1C, 1D.
Mr. Pratap Patil for Respondent No.3

Coram : Sharmila U. Deshmukh, J.
Reserved on : 17th October, 2024.
Pronounced on : 28th November, 2024.

JUDGMENT :

1. Rule was issued by this Court on 10th November, 1997.
2. This Petition takes exception to the judgment and order dated 10th January, 1997 passed by the Maharashtra Revenue Tribunal [for short, '***the MRT***'] in Revision Application No.MRT.NS.II.4 of 1993 (TNC.8.54/93) arising out of the judgment and order dated 11th January, 1993 passed by the Sub-Divisional Officer [for short, '***the SDO***'] in Tenancy Appeal No. 23 of 1992 confirming the order dated 27th May, 1992 passed by the Tenancy Awal Karkun in TNC/Case no. 70B Pimpari 8 of 1992.
3. The proceedings arise out of tenancy application being TNC/Case No.70B Pimpari 8/92 filed by the present Petitioner under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 [for short, '***the Tenancy Act of 1948***'] claiming declaration as tenant in respect of ½ portion of land bearing Survey No. 167 corresponding to Gat No. 294A. Vide order dated 27th May, 1992, the Tenancy Awal Karkun rejected the application, against which Tenancy Appeal No.23/1992 was preferred before the SDO, which came to be dismissed by order dated 11th January, 1993. The challenge was carried further

before the MRT and by the impugned judgment and order dated 10th January, 1997, the Revision Application came to be dismissed.

SUBMISSIONS:-

4. Mr. Mankapure, learned counsel appearing for the Petitioner would submit that the forefather of the Petitioner was protected tenant of the subject premises under Section 3A of the Bombay Tenancy Agricultural Lands Act, 1939 [for short, "***the Act of 1939***"] which is evidenced from the Mutation entry no. 938. He submits that the name of the Respondent No. 1's father appeared for the first time, in the year 1956-57 in the 7x12 extracts without any supporting mutation entry and the Petitioner's predecessors name was shifted to other rights column. He submits that there is no termination or surrender of tenancy as contemplated under Sections 15 and 29 of the Tenancy Act of 1948. He submits that based on the 7/12 extracts of the year 1956-57, the Authorities have considered the Respondent No. 1 as tenant and the other reason is the order passed in Section 32G proceedings in favor of the predecessors of Respondent No.1, which order cannot be taken into consideration as the land is *Deosthan Inam* land and thus, Section 32G of Tenancy Act is inapplicable. He would further submit that part of the property was acquired for which compensation was received by the Petitioner.

5. He has drawn attention of this Court to the Mutation Entry No.

938, which according to him has not been challenged till date, 7/12 extracts and land acquisition notice to substantiate his submission that from 1949 till 1956, the name of Petitioner's predecessor is recorded as tenant. He submits that though in Section 70(b) proceedings, the landlord did not appear, in the civil suit filed by the Petitioner for injunction in the year 1991, the landlord had filed an Affidavit accepting that the Petitioner was a tenant since the year 1948 and that no tenancy was created in favor of the Respondent No.1. He submits that it cannot be disputed that the Petitioner is a protected tenant under Section 4A of Tenancy Act of 1948 and the only dispute is that the records does not reflect the name from 1956 onwards. He would further submit that the Respondent has not produced any document such as lease deed or even mutation entry to show creation of tenancy and therefore, there is no lawful induction. He points out Section 2(6) of the Tenancy Act which defines the expression "to cultivate personally" and Section 6C which defines the expression "to hold land" and would submit that the requirement is to be lawfully in actual possession and to cultivate the same. He would further point out Section 10A of Tenancy Act of 1948 which defines "permanent tenant" and submits that the Petitioner's forefather's name has been entered in the year 1948 i.e. prior to the year 1955. He submits that the entry of the Respondent No.1 in the record of rights is a hollow entry as

there is no mutation under Section 149 of Maharashtra Land Revenue Code, 1966. He submits that the change is only by way of entry in the revenue records and manner of actual possession is not demonstrated.

6. He would further point out the admissions in the cross-examination of Respondent No.1 that there is no rent receipts in possession of the Respondent No. 1 and would submit that despite thereof, all the authorities have held that rent receipts had been produced. He submits that the deposition of the adjacent land owners supports the case of the Petitioner.

7. *Per contra* Mr. Gaikwad, learned counsel appearing for the Respondent No.1 would submit that the application was filed in the year 1991 although the names have been recorded in the 7/12 extract since the year 1956-1957. He submits that in the proceedings instituted by the Respondent No. 1 under Section 32G of Tenancy Act, the Tenancy Court had passed an order dated 31st December, 1962 in favor of Respondent No.1 and the purchase price was fixed which has not been challenged till date. He submits that there are concurrent findings in favour of Respondent No. 1 and except the mutation entry, there is nothing produced on record to show the tenancy of the Petitioner. He points out the assessment receipts showing the payment of assessment taxes by Respondent No.1. He submits that in the proceedings, the Petitioner has not examined the landlord and Section

32G proceedings has not been challenged by the landlord. He submits that in respect of subject land, the tenant of the balance ½ portion i.e. Dadu Hari Pawar, has deposed about the possession of Respondent No. 1 and had denied the Petitioner's predecessors possession. He points out the admissions of the Petitioner that no complaint was made with Tahsildar for the past 14-16 years, that there is no challenge to the order passed in Section 32G proceedings and that since the year 1956-57, the name of the Respondent Nos.1 and 2 are shown as tenants of the suit property and even in the Gat Numbers, the name of the Respondent Nos.1 and 2 are shown in the tenancy column and that the compensation for acquisition has not been received by the Petitioner.

8. In Rejoinder, Mr. Mankapure would submit that the proceedings under Section 32G are not binding on the Petitioner as he was not party to those proceedings. He submits that as far as revenue receipts are concerned that the same had been produced for the year 1980 onwards and that Respondent No.2 has supported the case of Respondent No.1 as he was his classmate.

REASONS & ANALYSIS:

9. At the outset, it needs to be noted that there are concurrent findings of fact recorded by three Authorities under the Tenancy Act of 1948 by which upon appreciation of evidence, all authorities have rejected the claim of tenant. The findings of fact are arrived at upon

appreciation of evidence and there is limited scope for interference under Article 227 of Constitution of India. However, I have sifted through the findings in order to examine whether there is any perversity resulting in gross miscarriage of justice which would warrant interference under Article 227.

10. The Application filed under Section 70(b) of Tenancy Act sought a declaration that the Petitioner was a tenant of the subject land by placing reliance on Mutation Entry No. 938 certified on 22nd May, 1948 reflecting the name of the Petitioner's forefather and forefather of the Respondent No. 2 as protected tenants under the Act of 1939.

11. Before proceeding to the facts of the case, it will be apposite to have a look at the legal position governing the status of protected tenant. The Act of 1939 preceded the Tenancy Act of 1948 and came to be repealed and replaced by the Tenancy Act of 1948 in December, 1948. Section 3 of Act of 1939 provides that a tenant shall be deemed to be a protected tenant in respect of any land if he had held such land continuously for a period of six years immediately preceding 1st January 1938 to 1st January, 1945 and had cultivated such land personally during the aforesaid period. Section 3A was introduced by an amendment in the year 1946 and provided that every tenant shall be deemed to be a protected tenant for the purpose of the Act, on the expiry of one year from the date of coming into force of the amending

Act. It is therefore, clear that before the provisions of Section 3 and 3A of Act of 1939 are invoked, the tenant has to meet the requirements of the provisions and prove that he had held the land continuously for the prescribed period and was cultivating the land personally. To put it simply, the tenancy must be shown to have commenced prior to the year 1946 to be counted as protected tenant under Act of 1939.

12. Under the Tenancy Act of 1948, 'Tenant' was defined to mean an Agriculturist who held the land on lease and to include a person who was deemed to be a tenant under the provisions of the Act. 'Protected tenant' was defined to mean a protected tenant under Section 31 of the Act. Section 31 declared as protected tenants, persons who were deemed to be protected tenants under Section 3, 3A or 4 of the Act of 1939. The Tenancy Act of 1948 underwent substantial amendments in 1956. Section 2(18) defined 'Tenant' 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 a protected tenant; and

(c) a person who is a permanent tenant; and the word "landlord" shall be construed accordingly:

Section 4A defined "Protected Tenant" as under:

"4A. Protected tenants: For the purposes of this Act, a person shall be recognised to be a protected tenant, if such person has been deemed to be a protected tenant under Section 3, 3A and 4 of the Bombay Tenant Act, 1939 referred to in Schedule I to this Act."

13. Thus, the Legislature has conferred upon the persons who were recognized as protected tenants under the Act of 1939, the rights and privileges available to protected tenants under Tenancy Act of 1948 and the tenancy could be determined as per the provisions of Tenancy Act of 1948.

14. In the instant case, the record of rights reflects the names of the Petitioner's forefather in the tenant column for the period from 1949 till 1956 and thereafter, shows the name of the Respondent No. 1's predecessor. By introducing Section 3A in the year 1946 to the Act of 1939, every tenant was deemed to be protected tenant on the expiry of one year from the date of coming into force of the amending Act, which protection was continued under the Tenancy Act of 1948. As the Petitioner seeks declaration of tenancy, the burden was upon the Petitioner to substantiate the Mutation Entry No. 938 and to establish that the tenancy of his forefather commenced prior to 1946 and continued thereafter and there was no termination of tenancy in accordance with the modes permissible by law under the Tenancy Act, 1948.

15. Admittedly from the year 1956, the name of the Respondent No.1's predecessor was entered into the record of rights which was not challenged at any time by the Petitioner's forefather and for the first time, the declaration of tenancy was sought by the Petitioner in the

year 1991. The Petitioner merely relied upon the Mutation Entry No. 938 without substantiating the entry by leading cogent evidence. The Petitioner was mandated to produce material on record to demonstrate that the tenancy commenced prior to the year 1946 and the continuation thereof despite the record of rights reflecting the tenancy of the Respondent No. 1 and that the entry of the Respondent No. 1 was hollow entry. The Petitioner did not adopt any proceeding since the year 1956 for rectifying the record of rights to delete the name of the Respondent No. 1's forefather from the record. If it is the case of the Petitioner that the name of the Respondent No. 1's forefather was entered without any supporting Mutation Entry, it was for the Petitioner to adopt necessary proceeding to delete the name from the revenue records. Apart from the above, the Respondent No. 1 had instituted proceeding under Section 32G of the Tenancy Act in which the order was passed in favor of the Respondent No.1. The Petitioner has not raised any challenge to the said order. It is no answer to submit that the Petitioner was not made a party to the said proceedings. The order was passed on 31st December, 1962 when the Petitioner's grandfather was alive and no steps were taken by the Petitioner or his forefather to challenge the said order. The Petitioner has deposed that his grandfather had expired in the year 1968 and his father expired in the year 1981. During their lifetime, the Petitioner's

forefather did not take any steps either to delete the name of the Respondent No. 1 from the revenue records or to challenge the order passed by the Tenancy Court under Section 32G. Mr. Mankapure would rely on the Affidavit filed by the landlord in the civil suit accepting the forefather of the Petitioner as tenant, however, the Petitioner failed to examine the landlord in the Section 70(b) proceedings to establish that the entry of the Respondent No. 1 was hollow entry. It also needs to be noted that during the consolidation proceedings, the name of the Respondent No. 1 was entered in respect of the subject land and there was no grievance raised by the Petitioner to the same.

16. The Awal Karkun was enjoined to decide the status of the Petitioner, whether a tenant or not. To achieve the relief sought, it was necessary for the Petitioner to place on record sufficient material to demonstrate that the Petitioner was tenant by producing the rent receipts, the land revenue assessment receipts, crop cultivation records, etc. The Awal Karkun which is the first fact finding Court has held that the Petitioner has not produced any documentary evidence in support of his case. The Awal Karkun has perused the 7/12 extracts and observed that the records indicate that till 1955-1956, the Petitioner's forefather was cultivating the land and from 1956-1957, the Respondent No. 1's name is shown in the tenancy column. The Awal Karkun held that the Respondent No. 1 has produced documentary as

well as oral evidence and on appreciation of evidence held that the Petitioner has failed to prove that he is tenant of the suit land.

17. The Appellate Authority re-appreciated the evidence and held that the Mutation Entry No. 938 shows that the name of grandfather of the Petitioner and name of father of Respondent are entered in the suit land as protected tenant. Mr. Mankapure would submit that the Appellate Authority has rendered factually incorrect finding. The submission presumes that the Appellate Authority was referring to the Respondent No. 1's father whereas it is evident that the Appellate Authority was referring to the predecessor of the Respondent No. 2 i.e. Dhanaji Dadu Pawar in context of the Mutation Entry No. 938. The Appellate Authority considered that since 1956-1957, the name of the predecessor of Respondent Nos. 1 and 2 are reflected in 7/12 extracts and that the Petitioner has not produced any documentary evidence except the Mutation Entry No. 938. The Appellate Authority further observed that the Petitioner has not produced lease deed, rent receipts or land revenue receipt whereas the Respondent No. 1 has produced land revenue receipts. Based on above findings, the Appeal came to be dismissed.

18. The Learned Member of MRT in revisional proceedings has rightly appreciated the contours of the jurisdiction under Section 76 of the Tenancy Act. The Learned Member of MRT observed that the

Petitioner has not produced rent receipts showing payment of rent or crop share or payment or assessment of water charges whereas the Respondent No. 1 has produced receipts showing payment of assessment charges and water charges and that the name of Respondent No. 1 was entered in the extracts since the year 1956-1957.

19. As far as the submission of Mr. Mankapure in respect of payment of compensation for land acquisition is concerned, in the cross-examination the Petitioner has admitted that he has not received the compensation. Mr. Mankapure would further challenge the finding that rent receipts had not been produced by the Respondent No. 1. The original records and proceedings when perused, discloses that the land revenue receipts evidencing payment of assessment taxes was produced by the Respondent No. 1 and the authorities have referred to the said assessment receipts. As far as the reliance of Mr. Mankapure on Section 10A of Tenancy Act of 1948 to support the case of the Petitioner is concerned, the permanent tenant is more or less on the same footing as protected tenant but as discussed above for the purpose of securing the tenancy, the Petitioner was required to place cogent material on record, which has not been done in the present case and that apart, Section 10A defines the expression "permanent tenant" whose predecessors name, has been entered in record of rights as

permanent tenant immediately before the commencement of the Amendment Act of 1955. The Mutation Entry No. 938 even if accepted does not reflect the name of the Petitioner's forefather as permanent tenant.

20. As regards the submission that the documentary evidence produced by the Respondent No. 1 will show possession and not tenancy, the Respondent No.1's name is reflected in the tenancy column since the year 1956-1957 as tenant and secondly, the water charges and assessment taxes are borne by the Respondent No. 1 and the mode of cultivation was III and therefore, not only possession but also lawful cultivation is established. In case of competing rights as tenant, it is necessary to support the entries in the revenue records with cogent evidence to demonstrate the cultivation of the land and in the present case, the reliance on the Mutation Entry No. 938 is not sufficient to support the status of Petitioner as tenant.

21. In exercise of powers under Article 227 , this Court is not expected to interfere with a finding within the jurisdiction of the authorities constituted under the Tenancy Act .except where the findings were perverse and not based on any material evidence or it resulted in manifest injustice. Except to the limited extent indicated above, this Court has no jurisdiction. Upon perusal of the concurrent findings, I find no reason to interfere with the findings of fact. The

Apex Court in the case of ***Shalini Shyam Shetty vs Rajendra Shankar Patil***¹ has held that in exercise of its power of superintendence, the High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.

22. In light of the discussion above, I find no reason to interfere in exercise of jurisdiction under Article 227 of Constitution of India to disturb the concurrent finding of three authorities. Resultantly, the Petition fails and stands dismissed. Rule is discharged.

[Sharmila U. Deshmukh, J.]

1 [2010 (7) SCALE 428]