IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5701 OF 1999
WITH
CIVIL APPLICATION NO.7350 OF 1999

1. Smt. Muktabai wd/o. Krishna Patil,]
Occupation: Agriculture,]
Resident of Village Nerle, tal. Walwa,]
District Sangli]

2. Shri Ramchandra Dnyandeo Patil,
Occupation: Agriculture,]
Resident of Shete Building,]
2nd Floor, Elpheston Road,]
Parel, Mumbai 400 012, at present]
residing at Village Nerle,]
Tal. Walwa, Dist. Sangli.] ... **Petitioners.**

Versus

1. Shri Sudhakar Bhau Joshi,]
Resident of Nagthane,]
Dist. Satara] ... **Respondent.**

Mr. B.K. Raje, for the Petitioners.

Coram	:	**Sharmila U. Deshmukh, J.**
Reserved on	:	**July 04, 2024**
Pronounced on	:	**July 11, 2024**

JUDGMENT :

1. By this Petition the challenge is to the judgment and order dated 29th April, 1999 passed by the Maharashtra Revenue Tribunal in

Revision Application No.MRT-SS-19/1995 confirming the judgment and order dated 23rd November, 1994 by the Assistant Collector in Tenancy Appeal No.1 of 1985 thereby reversing the judgment and order dated 29th September, 1984 passed by the Additional Tahsildar and ALT in Tenancy Case No.32-G-Nerle-948/1984.

FACTS OF THE CASE:

2. The Petitioners herein are the legal heirs of one Dnyandeo Bhau Patil (Dnyanu Bhau Patil) and the Respondents are the heirs of the original-landlord i.e. Bhau Balkrishna Joshi. The Petitioners claimed that Dnyandeo was in possession of the suit land from 5th August, 1947 and thereafter the Petitioners are in possession of the same by way of registered *Kabulayat* executed by the deceased - Dnyandeo on behalf of the Krishna Sugarcane Industries Pvt. Ltd. A lease was granted by the original landlord for 99 years on yearly rent on Rs.140/-.

3. On 25th June, 1958, the Respondent's father made an application to the Tahsildar for grant of a certificate under Section 88C of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short, "Tenancy Act") claiming exemption in respect of the land bearing Survey No.200/2, 142/2 and the suit land i.e. Survey No.692 of which the Petitioners' predecessor is stated to be the tenant. The application i.e. Tenancy Case No.547/3/1958 was dismissed right upto the Special Deputy Collector, who rejected the same on 16th January, 1970 observing that the Respondent had already resumed half of the land and as such he is not entitled to the certificate under Section 88C of the Tenancy Act.

4. On 26th June, 1978, the Petitioner No.2 preferred an application under Section 32G of the Tenancy Act seeking fixation of the purchase price. The said application was sent to the Additional Tahsildar and ALT for hearing. The Tahsildar by order of 10th November, 1978 held that the suit land is leased out to Krishna Sugarcane Industries Pvt. Ltd. for 99 years and as the suit land is in possession of the Krishna Sugarcane Industries Pvt. Ltd., the provisions of Section 32 to 32R are not applicable as per Section 43A of the Tenancy Act and the inquiry came to be dropped.

5. As against this, Tenancy Appeal No.72 of 1978 was preferred before the Sub Divisional Officer, who allowed the Appeal and remanded the case for retrial by judgment and order dated 28th January, 1980.

6. Upon remand, the Tahsildar and ALT permitted the parties to produce the necessary documents. The Tahsildar held that the provisions of Section 43A are not applicable. The Tahsildar noted that the landlord has leased out the land to Dnyandeo Bhau Patil under registered *Kabulayat* dated 5th August, 1947 on behalf of Krishna Sugarcane Industries Pvt. Ltd. The Tahsildar noted that since the date of the execution of the *Kabulayat* till date the tenants and his heirs have raised Jirayat crops. The Tahsildar held that the evidence on record showed that Dnyandeo Bhau Patil was cultivating the suit land as tenant on 1st April, 1957 and no proceedings for possession of the suit land is pending and held that the tenant is deemed to have purchased the land as of 1st April, 1957.

7. On the aspect of the land being leased out to the Company, the Tahsildar held that the land is in possession of the tenant, who has raised Jirayat crops and though the land was leased out the Company, the details of its registration or approval from the government are not produced on record. On scrutiny of the lease deed, the Tahsildar held that the *Kabulayat* does not state that the land was given for cultivation for sugarcane but that it was given for construction of factory and for agricultural purposes. The Tahsildar held that the factory is not erected and land is used for agricultural purposes and the tenant Dnyandeo Patil and his heirs have raised Jirayat crops every year. The Tahsildar also noted the admission of the landlord that the land was given for agricultural purpose. On the basis of evidence on record, the Tahsildar held that the provisions contained in Section 43A of the Tenancy Act are not applicable and the provisions contained in Section 32 to 32R of the Tenancy Act are applicable. By order dated 29th September, 1984, the Tahsildar declared the tenants as deemed purchasers and fixed the purchase price.

8. As against the order of the Tahsildar the Respondent preferred Appeal being Tenancy Appeal No.1 of 1985 before the Assistant Collector. The Assistant Collector by judgment dated 23rd November, 1984 considered the registered lease-deed which shows the lease in favour of the Krishna Sugarcane Industries Pvt. Ltd. and Dnyandeo Patil was a co-sharer in the said factory and he has executed the lease deed on behalf of the Company. The Assistant Collector held that the lease was for construction of sugarcane factory and cultivation of sugarcane and Dnyandeo was cultivating the Jirayat crops. The Appeal came to be allowed.

9. As against the order of Assistant Collector the Petitioners preferred the Revision Application No.19 of 1995 before the MRT. MRT held that the tenancy is not created in an individual capacity in the name of the predecessors of the Petitioners and it was a sugar company who was the lessee. It further held that in order to claim tenancy, the predecessors of the Petitioners had to show that the previous contract was cancelled and only the present contract was executed in his favour. As regard the Section 88C proceedings are concerned, the MRT held that although the Petitioners' predecessors were impleaded as a party, the same cannot be inferred that they are impleaded as tenants. On the aspect of cultivation on tillers' day, the MRT held that the name of the predecessors of the Petitioners was entered in the cultivation column only in the year 1963 and as such dismissed the Revision Application.

10. Rule was issued on 13th October, 1999. Office record shows that the Respondent was duly served. Though served none appears for the Respondent. The matter was taken up for final hearing.

SUBMISSIONS:

11. Mr.Raje, learned counsel appearing for the Petitioners has taken this Court in detail through the findings of the Tahsildar and would contend that the Tahsildar has rightly considered the issue i.e. the cultivation as on the tillers' day. He submits that though the lease was executed in the name of the Krishna Sugarcane Industries Pvt. Ltd. there was nothing produced on record to show that the Company ever came in existence. Drawing attention of this Court to page No.17 of the Petition which is the Application filed under Section 88C of the Tenancy Act, he submits that in respect of the suit land i.e.Survey No.692 in the column of the tenant the Respondent has stated the name of the predecessors of the Petitioners as tenant. He submits that the Assistant Collector and the MRT has considered only the lease-deed which was executed in favour of a company which was never in existence and has failed to notice the documentary evidence in the form of 7/12 extracts which indicated that the land was being cultivated by the predecessors of the Petitioners. He would further submit that for the applicability of Section 43A of the Tenancy Act, the land is required to be leased by any industrial or commercial undertaking and which is approved by the State Government. Drawing attention to Rule 26 of the Bombay Tenancy and Agricultural Lands Tenancy Rules, 1956 (for short, “Rules of 1956”), he submits that for the purpose of Section 43A, an approval is required to be obtained from the State Government through the Collector. He submits that admittedly, there is no such approval which has been produced on record. He submits that there is no Company in existence no approval granted, and there is no cultivation of sugarcane and thus the provisions of Section 43A of the Tenancy Act are inapplicable to the present case. He would further submit that the Tahsildar has rightly considered that the landlord has admitted that the land was given for agricultural purpose and that the predecessors-in-title of the Petitioners had raised Jirayat crops every year like Jawar, Tur, Groundnut etc. He submits that the Deputy Collector and the MRT has wrongly reversed the findings. He further submits that the MRT has rendered factually incorrect findings that the name of the predecessors-in-title of the Petitioners was entered into the cultivation column in the year 1963. He draws attention of this Court to the 7/12 extracts produced on record which shows that for the years 1953, 1954- 1955, 1957-1958, 1958-1959, the name of Dnyandeo appears as tenant. In the crop cultivation column, the tenant's name is shown as Dnyandeo and the crop which is cultivated are Jirayat crops and not the sugarcane.

REASONS AND ANALYSIS:

12. The proceedings were initiated by the Petitioners seeking fixation of purchase price by invoking the provisions of Section 32 of the Tenancy Act. Section 32 of the Tenancy Act, provides that on the first day of April, 1957 i.e. "the tillers' day" every tenant shall, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, which right is defeasible only in event of certain contingencies. For the purpose of considering the application for fixation of purchase price the cultivation by the Applicant of the suit land as tenant on the tillers' day i.e. on 1st April, 1957 is required to be established.

13. Perusal of the 7/12 extracts shows that for the year 1953-1954, and for subsequent years Dnyandeo Patil was cultivating the land raising Jirayat crops. Although the lease is stated to have been executed in favour of Krishna Sugarcane Industries Pvt. Ltd., there is no material on record to demonstrate that any such Company was in existence and was cultivating the land in question. The predecessors-in-title of the Petitioners had executed the lease on behalf of the Krishna Sugarcane Industries Pvt. Ltd. however, the documentary evidence would indicate that in the crop cultivation column, it is the predecessors of the Plaintiff i.e. Dnyandeo who are shown to be cultivating the land and growing Jirayat crops. For the purpose of exempting the land from the provisions of Section 32 to 32R in case of industrial or commercial undertaking, Section 43A of the Tenancy Act requires the land to be shown to be leased or held by industrial or commercial undertaking and approved by the State Government. The Respondent has not brought any material on record to show that the company i.e. Krishna Sugarcane Industries Pvt. Ltd. was in fact incorporated and the land or the sugar factory was erected as per the provisions of the lease. The Tahsildar has scrutinized the lease-deed and has held that the same was given for construction of the factory and for agricultural purposes and that the factory is not erected as yet. This was the factual finding arrived at by the Tahsildar. The only reason why the order of the Tahsildar has been reversed by the Assistant Collector and the MRT is the execution of registered lease-deed in favaour of Krishna Sugarcane Industries Pvt. Ltd. for the period of 99 years. The Assistant Collector as well as the MRT lost sight of the fact that in fact from the year 1953 onward, it was Dnyandeo who was cultivating the land and growing the Jirayat crops. The requirement of Section 32 is that the tenant should be cultivating the land on tillers' day i.e. on 1st April, 1957. Tenant has been defined under Section 2(18) of the Tenancy Act as a person who holds the land on lease and includes a person deemed to be a tenant under Section 4; a person who is protected tenant; and a person who is permanent tenant.

14. Section 4 of the Tenancy Act, provides that a person lawfully cultivating any land belonging to another persons shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not a member of the owner's family, or a servant of the landlord or granted any possession. Even if, the lease was executed in favour of Krishna Sugarcane Industries Pvt. Ltd., which factory is shown not in existence, as the land is being cultivated by the predecessors of the Petitioners as on tillers' day, the predecessors of the Petitioners are deemed to be the tenants and are thus deemed to have purchased the land on tillers' day.

15. Mr. Raje has rightly pointed out that the provisions of Section 43A of the Tenancy Act are inapplicable and that there was no industrial or commercial operations being carried out on the said land

and there is no approval of State Government as contemplated by Rule 26 of the Tenancy Rules, 1956. The exemption from the provisions of Section 32 to 32R in respect of the lease given for the purpose of sugarcane is also not applicable to the present case as the land was given for factory and agricultural purposes and the documentary evidence on record establishes that Dnyandeo had raised Jirayat crops every year like Jawar, Tur, Groundnut etc.

16. From the material which has come on record, the provisions of Section 43A of the Tenancy Act are clearly inapplicable as there was no industrial or commercial operations being carried out, there was no Company which is shown to have come in existence and on tillers' day, it was the Petitioners' predecessors who were cultivating the land which fact is established from the 7/12 extracts. This position also find support from the application under Section 88C of the Tenancy Act stating that tenant in respect of Survey No.692 is Dnyandeo. The landlord has therefore himself admitted that the predecessor of the Petitioners is the tenant.

CONCLUSION:

17. In light of the above, the impugned judgment and order dated 29th April, 1999 passed by the Maharashtra Revenue Tribunal and the order of the Assistant Collector dated 23rd November, 1994 is hereby quashed and set aside. Resultantly, the order of the Tahsildar dated 29th September, 1984 stands revived.

18. Petition succeeds.

19. Rule is made absolute in the above terms.

20. In view of the disposal of the Petition, Civil/Interim Applications, if any, taken out in this Petition, does not survive and same is disposed of.

[Sharmila U. Deshmukh, J.]