



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10984 OF 2015

Shri Appaso Tukaram Patil and Anr.

... Petitioner.

Versus

Shri Kalgonda Balgonda Patil (Jayanna) And Anr.

... Respondents.

Mr. Pradeep D. Dalvi a/w. Ms. Priya Dalvi, for the Petitioner No.2.

Mr. Sachin Chavan, for the Respondent No.1.

Coram : Sharmila U. Deshmukh, J.

Date : July 23, 2024

P. C. :

1. By this Petition, the challenge is to the judgment and order dated 15th July, 2015 passed by the Maharashtra Revenue Tribunal arising out of the judgment and order dated 7th March, 2008 passed by the Sub Divisional Officer challenging the judgment and order dated 18th May, 2007 passed by the Tahsildar and ALT in Tenancy Case No.3 of 2005.

2. The facts of the case are that an Application came to be filed by the Respondent No.1 under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short, "Tenancy Act") for declaring him as a tenant of the subject land. In the said Application, it was contended that the subject land was under the cultivation of the Respondent No.1 since the year 1991 till 2005 as a tenant. In these

proceedings, a reply came to be filed by the Respondent No.2-Trust contending that the Predecessor of the Petitioner was the protected tenant in respect of the subject land and subsequently by Mutation Entry No.431, the names of the legal heirs i.e. the present Petitioner came to be mutated in the revenue records. It was further contended that the Petitioner upon acceptance of certain amounts from the Respondent No.1 has permitted the Respondent No.1 to cultivate the land since the year 1990 and thus, the Respondent No.1 appears to be in possession of the said land.

3. The Tahsildar and ALT by order dated 18th May, 2007 allowed the Application of the Respondent No.1 under Section 70(b) of the Tenancy Act and further directed the name of the Respondent No.1 to be mutated in the revenue records as tenant as he has cultivated the land since 2005-2006. As against this, an Appeal came to be filed before the Sub Divisional Officer by the Petitioner and by order dated 7th March, 2008, the Appellate Authority considered that the subject land was owned by charitable Trust and it appears that the provisions of Section 88(b) will be applicable. It further held that the Tahsildar and ALT while adjudicating the Application under Section 70(b) of the Tenancy Act has not considered the applicability of the provisions of Section 88(b) of the Act. In view thereof, the Sub Divisional Officer remanded the Application to the file of the Tahsildar and ALT to be considered afresh.

4. As against this, a Revision came to be filed by the Respondent No.1 before the MRT. By the impugned order dated 15th July, 2015, the MRT allowed the Revision Application and reversed the order of the Tahsildar and ALT.

5. Heard Mr.Pradeep D. Dalvi, learned counsel for the Petitioner No.2 and Mr. Sachin Chavan, learned counsel for the Respondent No.1.

6. Mr. Dalvi, Learned counsel appearing for the Petitioner would submit that upon reading of the order of MRT, it is not clear as to why there is an interference with the order passed by the Tahsildar and ALT. He submits that there are no findings and no discussions on the order of the Sub Divisional Officer which was a reasoned order considering that the suit property belongs to Trust and therefore, the applicability of Section 88B of the Tenancy Act assumes significance. He would submit that MRT after considering the provisions of Section 4 of the Tenancy Act has thereafter considered the provisions of the Section 88B of the Tenancy Act, however, has failed to give any reasoned finding as to why there is a need to interfere with the order of the Sub Divisional Officer.

7. *Per contra*, Mr.Chavan, learned counsel appearing for Respondent No.1 would submit that the reply filed by the Trust clearly states that from the year 1990 upon acceptance of certain consideration, the Petitioner had permitted the Respondent No.1 to

cultivate the land and thus, the Respondent No.1 being in possession of the land, the Application under Section 70(b) of the Tenancy Act was rightly allowed. He submits that once it is held that the Respondent No.1 was in possession of the land and accepted as a tenant by the Trust the Appellate Authority could not have remanded the matter back for the purpose of deciding the issue under Section 88B. He would further submit that the MRT has considered that the remand of the matter would be an exercise in futility as the Petitioner has failed to produce any evidence to show that he is protected tenant.

8. Considered the submissions and perused the record.

9. The Application which came to be filed by the Respondent No.1 was under Section 70(b) of the Tenancy Act, which empowers the Mamlatdar to decide whether a person is or was at any time in the past a tenant or protected tenant or a permanent tenant.

10. The reply which was filed by the Trust before the Tahsildar and ALT specifically contends that the predecessors of the Petitioner were protected tenants. In that view of the fact the provisions of Section 32G would come into play and the Petitioner would be deemed to have purchased the land. Even if, the Respondents were cultivating the land for certain period, the same will not deviate from the fact that if the Petitioner was cultivating the land on the tillers day, they

are deemed purchaser of the land and unless their tenancy is terminated or surrendered in accordance with the provisions of law, the entitlement of the Petitioner continues. Further, in view of Section 40 of the Tenancy Act, the legal heirs of the deceased-tenant is deemed to have been continued as tenants on the same terms and conditions.

11. Considering the reply which was filed by the Trust, it appears that the Tahsildar and ALT has not rightly appreciated the reply while holding that the Respondent-Trust has accepted the Respondent No.1 as the tenant and has issued the rent receipt and in the absence of any rent receipt being produced by the Petitioner, the Tahsildar has allowed the Application under Section 70(b) of the Tenancy Act. The Appellate Authority has rightly considered that the provisions of Section 88B of the Tenancy Act will have to be taken into consideration before the issue of tenancy could have been determined by the Tahsildar and ALT. The land was admittedly belonging to the Trust and therefore whether any certificate has been obtained under Section 88B(2) of the Tenancy Act and whether the provisions of Section 32G were applicable are all issues which are required to be considered. The Tahsildar and ALT while allowing the Application under Section 70(b) of the Tenancy Act has not taken into consideration the relevant aspects and thus, the Appellate Authority had rightly remanded the matter.

12. Upon perusal of the order of the of MRT, there is no reasoning discerned therefrom as to why the said aspects which were pointed out by the Appellate Authority were not considered relevant by the MRT. Upon careful reading of the order of the MRT, it is evident that there is no discussion and no reasoned findings for holding that the remand would not serve any purpose. For the purpose of arriving at such a finding, it was necessary to support the same with reasons which appears to be missing in the present case.

13. Considering the admitted position that what was under consideration was rival claims of tenancy and coupled with the fact that the land was owned by the Trust, the relevant aspects as regards the applicability of Section 88B (1)(b) was required to be considered before any declaration of tenancy could have been given.

14. In light of the above, the impugned order dated 15th July, 2015 is hereby quashed and set aside. Consequently, the order of the Appellate Authority dated 7th March, 2008 stands revived. Petition is allowed in the above terms.

[Sharmila U. Deshmukh, J.]