

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14786 OF 2023.

Genu Bala Herkal Since Decd. Thr. Lrs. ...Petitioners.

Versus

Bhalchandra Ganesh Chitnis (Since Decd. Thr.
Lrs. And Ors. ...Respondents.

Mr. Vishwanath Talkute for the Petitioners.
Mr. Vijay Killedar for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : 11th June, 2024.

P. C. :

1. The Petition takes exception to the judgment and order dated 31st August 2023 passed by the Maharashtra Revenue Tribunal in Revision Application No.NS/X/2/2021 (B-334) as well as judgment and order dated 15th July 2021 passed by the Sub-Divisional Officer, Wai in Tenancy/Re-inquiry/09/2011. By the order of Sub-Divisional Officer, the subject property has been directed to be handed over by the Petitioners to the Respondent-landlord. The MRT by the impugned order has rejected the revision application filed by the Petitioners

against the order of the Sub-Divisional officer.

2. The facts of the case are that the suit land is situated at Wai bearing New Gat No.8 (Old Survey No.7). The case of the Petitioners is that the suit land originally belonged to the Respondent's father, Ganesh who had received that same in the partition. Along with the suit property there were four other properties as well as two houses on CTS No.1332A and 1332B situated at Wai which was allotted to the share of Ganesh. The case of Petitioners was that Petitioners' predecessor was cultivating the suit land as tenant prior to the enactment of the Bombay Tenancy and Agricultural Land Act, 1948 and were recorded as tenants *vide* mutation entry No.8498 dated 8th October, 1949. The landlord i.e. Respondent's father expired on 13th January, 1972 leaving behind surviving as his legal heirs two sons viz., Bhalchandra and Ravindra and daughter Suman and by virtue of mutation entry No.16214, their names came to be recorded as heirs in respect of properties bearing survey number 566, 7, 552, 153/1 and 153/2. The legal heirs also inherited the house properties.

3. Mutation entry No.16253 was certified on 29th March, 1973 on the basis of application filed by Suman Patil for deleting her name recorded in above stated 5 landed properties and for name of Bhalchandra and Ravindra to be added to the extent of 8 anna share.

Bhalchandra and Ravindra were in army service and hence provisions of Chapter III-AA of the Maharashtra Tenancy and Agricultural Lands Act, 1947 (Tenancy Act) relating to special provision for termination of tenancy by the landlord, who are members of the armed forces was applicable. On 13th September 1975 the Petitioners' tenancy was terminated and on 7th January 1976 the proceedings were initiated under Section 43-1B seeking possession of the suit land before the Sub-Divisional Officer which was registered as Tenancy Application No.1 of 1976. The Application was opposed by the Petitioners on the ground that the partition of the joint family property has not taken place and that the landlord Suman has not been given her share and even the houses at Wai had not been partitioned. *Vide* judgment and order dated 31st August, 1978 the tenancy application was allowed and the possession of the suit land was directed to be withdrawn from the Petitioners' tenant and restored to the Respondent landlord. As against this Revision Application under Section 76A of the Tenancy Act was filed before the Additional Commissioner which was rejected by order dated 2nd April, 1981. As against this, the Petitioners filed Writ Petition No.2112 of 1981. *Vide* order dated 23rd December, 1997, this Court remanded the matter to the Sub-Divisional Officer for re-inquiry.

4. After remand Ravindra filed his affidavit-in-examination-in-chief contending that the suit properties after the death of their father was recorded in the name of Ravindra, Bhalchandra and Suman and thereafter Suman relinquished her share in the five landed properties in favour of her two brothers who was given share in the house property bearing CTS No.1332A. Based on this mutation entry 16253 was recorded. Ravindra further deposed about the sale of agricultural property and house property and produced the certified copy of the sale transaction by which Suman had sold her share in the house property to one Tupe on 9th August 2002.

5. By judgment and order dated 15th July, 2021, the Sub-Divisional officer confirmed the order dated 31st August, 1978 and directed the land bearing old survey No. 7 (new survey No.8) to be handed over to the Respondent-landlord. As against this Revision Application was filed before MRT and by order dated 31st August 2023, Revision Application came to be dismissed.

6. Heard Mr. Vishwanath Talkute for the Petitioners and Mr. Vijay Killedar for the Respondents.

7. Mr. Talkute, learned counsel appearing for the Petitioners submits that the provisions of Section 43-1B permitted a landlord who

was a member of the armed forces to terminate the tenancy and obtain possession only to the extent of his share in the land subject to an inquiry by Mamlatdar that such share has been separated by metes and bounds and the share is in same proportion as his share in the entire joint family property and not in larger proportion. He submits that the inquiry contemplated under the statutory provisions, has not been done in the present case. Pointing out to the order of remand passed by this Court on 23rd December, 1997, he submits that remand was for the purpose of inquiry as to whether Suman had relinquished her share in the entire joint family property or she was given her share. He submits that by the order dated 15th July, 2021 the Sub Divisional Officer has not conducted any inquiry and has not recorded any satisfaction as contemplated by the relevant statutory provisions. Pointing out to the affidavit of examination-in-chief of Ravindra, he submits that it is specifically deposed that Suman had relinquished her share in the landed property in favour of Ravindra and Bhalchandra whereas in respect of house property she has been given her share. He submits that the partition was not *bona fide* as only in the respect of landed properties share has been relinquished which is only for the purpose of defeating the claim of the Petitioners' tenant as both Bhalchandra and Ravindra were serving in army and as such tenant would be deprived of the suit property. He would further submit that

the MRT has failed to notice the issue in controversy and has also committed a factual error by holding that photocopies of sale deed dated 13th July, 2023 has been produced by which the house properties had been sold to Vasant Tupe, which cannot be taken into consideration. He submits that during the evidence the certified copy of the sale deed was produced. He further submits that the MRT has further held that the partition and relinquishment of share are two different concepts and relinquishment of Suman could not be challenged by the Petitioners. He submits that the MRT has failed to note the dispute between the parties and has rendered incorrect findings. In support he relies upon the following decisions:

1. Balkrishna Somnath & Ors. vs. Sadu Devram Koli and Ors., (1977) 2 SCC 15;

2. Shiva Ragho Kumbhar vs. Kalyan Krishnaji Kurne, 2004(4) Mh. L. J. 730;

3. Anant Dattatraya Mali and Ors. vs. Chintaman Govindpatil and Ors., 1969 Mh. L. J. 35;

4. Khandu Daulat Dangade vs. Jaywantrao Yadavrao Kharade and Ors., 1996(1) Mh. L. J. 712.

8. *Per contra*, Mr. Killedar appearing for the Respondents would submit that what is contemplated by Section 43-1B is that the share of the landlord in the land held by the joint family property has been separated in the same proportion as his share in the entire joint family property and not in larger proportion. He submits that the said provision does not place any restriction on relinquishment by member of the joint family property. He submits that as far as the relinquishment is concerned, the relinquishment was prior to the amendment to Section 6 of the Hindu Succession Act and thus as held by Apex Court in the decision of ***Vineeta Sharma Vs. Rakesh Sharma, (2020) 9 SCC 1*** an oral partition is permissible. He submits that Suman had only 1/ 9th share that is share in her father's share and she has relinquished that share and in lieu thereof is granted 1/ 3rd right in the house property. He submits that Mamlatdar upon an inquiry as contemplated under Section 43-1B has passed the order dated 15th July, 2021. He further submits that evidence in that regard has been led pursuant to which the order has been passed by the Sub-Divisional Officer.

9. Considered the submissions and perused the record.

10. The issue to be decided is whether any satisfaction has been recorded by the Mamlatdar upon conducting proper inquiry as to what

was the share of Respondent- landlord in the entire joint family property, the proportion that the allotment of land bears to his share in the entire joint family property in order to ascertain that there is no unfair partition effected only for the purpose of defeating the scheme of the Act or to deprive the tenant of his statutory right of purchase. In the present case, this Court by order dated 23rd December, 1997 had remanded the matter to the Sub-divisional Officer for the purpose of ascertaining whether there was a relinquishment by Suman in the entire joint family property which included two houses. The matter was remanded to consider whether Suman had relinquished her share in the entire joint family property or she was given her share. The remand was on specific issue and the order of Sub-Divisional Officer would indicate that the Sub- Divisional Officer has failed to conduct the necessary inquiry as contemplated under Section 43-1B of the Act. There is no satisfaction recorded by the Mamlatdar that the share of the landlord in the land is in the same proportion to his share in the entire joint family property, which adjudication is required to ensure that the partition is *bona fide*. The Sub-Divisional Officer has merely referred to the Revenue entry 16253 which notes that Suman has relinquished her undivided share in favour of Ravindra and Bhalchandra which has not been challenged. Based on the solitary ground of existence of mutation entry Sub-

Divisional Officer has passed the order dated 15th July 2021. There is absolutely no discussion and no satisfaction recorded by the Mamlatdar as contemplated by Section 43-1B of the Tenancy Act and there is no finding on the issues on which the matter was remanded to the Sub-Divisional Officer. The MRT by impugned order dated 31st August, 2023 has also failed to appreciate the requirement as contemplated by Section 43-1B of the ACT. MRT has also confined itself only to the mutation entry 16253 and has held that Suman had relinquished her share which cannot be objected to by the Petitioners. Mr. Killedar, upon query by this Court has fairly conceded that the finding of MRT could not be justified.

11. In ***Shiva Ragho Kumbhar vs. Kalyan Krishnaji Kurne, 2004(4) Mh. L. J. 730***, this court was considering the provisions of Section 43/1 B of the Tenancy Act in the context of the exercise which is expected from the Authority during the inquiry in light of the enunciation of law by the Apex Court in ***Balkrishna Somnath & Ors. vs. Sadu Devram Koli, (1977) 2 SCC 15*** wherein the Apex Court in paragraph 13 has noted as under:

“13. The proviso clearly states that the disabled person's share 'in the joint family' must have been 'separated by metes and bounds'. Separation from the joint family means separation

from all the joint family assets. Otherwise the sharer remains partly joint and, to that extent, is not separated from the joint family. Notional division or division in status also may not be enough because the Act insists on separation "by metes and bounds'. Ordinarily 'metes and bounds' are appropriate to real property, meaning, as the phrase does, the boundary lines of land, with their terminal points and angles'. In the context. the thrust of the expression is that the division must be more than notional but actual, concrete, clearly demarcated. The ineptness and involved structure and some ambiguity notwithstanding, the sense of the sentence is clear. The share of a person in the joint family, plainly understood, means his share in all the joint family properties and not merely in the real estate part. What is more, the section uses the expressions 'the share of such person in the joint family', 'the share of such person in the land', the share of that person in the entire joint family property'. Thus it is reasonable to hold that when the expression used is the share of such person in the joint family', it is not confined to the share in the land only. It really means his share in the entire joint family property. Moreover, the statutory exercise expected of the Mamlatdar by the proviso involves an enquiry into the share of the disabled person in the land, and its value, the share of that person in the entire joint family property, the proportion that the allotment of the land bears to his share in the entire joint family property with a view to see that there is no unfair manoeuvre to defeat the scheme of the Act. The necessary postulate is that there is a division in the entire joint family property. Therefore, the imperative condition for the operation of the proviso is that

there should be a total separation and so far as a disabled member is concerned it must cover all the joint family properties."

12. Mr. Talkute has rightly placed reliance on the said decision wherein the adjudication which is expected of the Mamlatdar has been clearly set out. Upon confronted with this decision, Mr. Killedar would fairly concede that the inquiry as contemplated as well as which was necessitated by virtue of remand by this Court in the first instance does not appear to have been conducted by the Sub-Divisional Officer.

13. In light of the above, this Court is constrained to once again remand the matter to the Sub-Divisional officer for conducting necessary inquiry into share of the Ravindra and Bhalchandra in the land, its value, their share in entire joint family property, the proportion that the allotment of the land bears to his share in the entire joint family property to ensure that the same is in conformity with the statutory requirement. As evidence has already been led the Sub-Divisional Officer is directed to decide the issue in light of the observations made in the present order after giving an opportunity to the parties to place their written submissions on record, expeditiously and in any event within a period of six months from the production of this order before the Sub-Divisional Officer. In view of the above

remand the order of the Sub-Divisional Officer dated 15th July 2021 as well as order of MRT dated 31st August 2023 are hereby quashed and set aside.

14. Writ Petition is allowed in the above terms.

[Sharmila U. Deshmukh, J.]