

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 6672 OF 2018

Mangesh Vinayak Potphode Petitioner
Versus

Subhash Janardhar Kowale and Ors. Respondents

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Mr. Sanskar Marathe, Advocate for the Petitioner.
Mr. Vishal Ghosalkar, Advocate for Respondent Nos.1 & 2.

CORAM : R. M. JOSHI, J.

DATE : 30th AUGUST, 2024.

P.C. :

1. Heard finally at stage of admission by consent of both sides.
2. This Petition takes exception to order dated 06/10/2017 passed by Maharashtra Revenue Tribunal in Tenancy Revision bearing No. TNC/REV/RTN/177/15.
3. It is a case of the Petitioner that the subject properties were originally belonged to Laxman Potphode, who had two sons

namely Rama and Mahadev. Respondent Nos.1 and 2 are said to be legal heirs of Mahadev. It is claimed by the Petitioner that his grand father Tukaram was tenant of Rama, who was in possession of subject properties bearing Gat No.562 and 566 (Survey Nos.42/25, 42/43, 42/31, 39/3, 42/37, 44/4, 43/46, 44/1, 45/19, 45/1 and 43/1 admeasuring 46.9 and 40.8 ars land respectively, at Mandwe, village Talgaon, Tahsil Rajapur, District – Ratnagiri. It is contended that after death of Tukaram, his son Keshav became tenant and thereafter, the Petitioner and Respondent Nos.4 to 20 are entitled to the subject properties as tenants thereto.

4. It is further case of the Petitioner that Yashwant was in possession of subject land and therefore, in the year 1964, Rama son of Laxman filed application bearing No.235 of 1964 under Section 70(B) of Maharashtra Tenancy and Agriculture Land Act, 1957 (for short “MTAL Act) for declaration that Yashwant along with Mahadev as tenants. This application was opposed by Mahadev. By order dated 07/01/1965 Tahsildar, Rajapur dismissed the said application. This order came to be challenged in a tenancy Appeal bearing No.21 of 1970 before S.D.O. Ratnagiri, who also dismissed the Appeal by order dated 13/07/1973. Yashwant filed Tenancy Revision

Application bearing No.48 of 1974 before Maharashtra Revenue Tribunal (MRT), which revision came to be dismissed on 22/07/1974. Writ Petition filed against the said dismissal viz. Civil Writ Petition No.476 of 1975 also stood dismissed.

5. It is further case of the Petitioner that in the meantime Respondent Nos.1 and 2 taking advantage of unsuccessful proceeding of the Petitioner filed Civil Suit for injunction against the Petitioner and Respondent Nos.4 to 21 bearing No.35 of 1986 before Civil Judge, Junior Division, Rajapur. This suit was decreed by judgment dated 30th September, 1991. This judgment and decree passed by the Civil Court was confirmed in First Appeal No.100 of 1991. Second Appeal bearing No.571 of 1993 filed against this judgment was dismissed for non removal of office objections. The application for restoration was also dismissed by this Court.

6. According to the Petitioner an independent application for declaration of tenancy under Section 70(B) of the Act was filed before Tahsildar, Rajapur bearing No.21 of 2014. Tahsildar by order dated 14/11/2014 allowed the said application and held that the Petitioner is a tenant of the part of the subject properties. This order was challenged by filing Tenancy Appeal No.58 of 2014 before

S.D.O. Ratnagiri successfully. Revision filed against the same before the M.R.T. is also dismissed by impugned order dated 06/10/2017. Hence, this petition.

7. Learned counsel for the Petitioner seeks to assail order passed by the Maharashtra Revenue Tribunal dated 6th October, 2017 essentially, on the ground, that it is within the right of the present Petitioner to initiate proceedings under Section 70(B) of the Maharashtra Tenancy Agriculture Land Act, 1957 (for short “MTAL Act”). It is his submissions that the M.R.T. as well as S.D.O. have committed error in taking into consideration the previous proceeding initiated by landlord. It is his submissions that irrespective of the facts that in the previous round of litigation at the instance of landlord, it was held that the Petitioner is not tenant in respect of the subject property and since there is independent right vested with this Petitioner to move an application under Section 70(B), and such application could only have been decided on the basis of evidence independently placed on record. It is his submissions that the order passed by Tahsildar is after considering the merit of the case and as such there was no reason or justification for S.D.O. and M.R.T. to cause interference therein.

8. Learned counsel for the contesting Respondents supported impugned order by submitting that S.D.O. as well as M.R.T. have rightly taking into consideration the factum of the decision of the proceeding bearing No.235 of 1964 under Section 70(B) of Maharashtra Tenancy and Agriculture Land Act, 1957. It is his submissions that since the Petitioner is claiming his right of Tenancy through his predecessor who was party to the said tenancy case, owing to the principle of *res-judicata*, both Authorities below have rightly set aside the order passed by the Tahsildar.

9. There is no dispute about the facts that the Petitioner is claiming his right of Tenancy in respect of subject properties through his predecessor. There is further no denial of the fact that Rama Laxman Potphode had filed proceeding under Section 70(B) of the Act bearing Tenancy No.235 of 1964 and by order dated 7th June 1965, the said application was dismissed. This order was unsuccessfully challenged in Appeal No.21 of 1970 and S.D.O. Ratnagiri by passing order dated 13/07/1973 confirmed order of Tahsildar. This order was further challenged before the Revenue Tribunal in Tenancy Application No.48 of 1974, which came to be dismissed on merit on 22/07/1974. It is thus clear that the

proceedings under Section 70(B) in respect of the subject properties has attained finality. Now question arises as to whether it is open for the Petitioner and Respondent Nos.4 to 20 to file fresh proceedings under Section 70(B) for claiming themselves to be tenants of the subject properties.

10. It would be useful to refer to judgment of Constitution Bench of Hon'ble Supreme Court dealing with applicability of principles of *res judicata* to Writ Petition in the case of ***Devilal Modi Vs. Sales Tax Officer, Ratlam and Others***. The principles of *res judicata* thus not only applies to the civil proceedings but in order to promote fair administration of justice and to prevent abuse of law, any decision on merits made by a competent Authority / Court cannot be re-agitated by the same parties or the parties claiming through such party. When this principle applies to writ petitions, there is no reason not to apply it to proceedings under the Act. This principle therefore has application to the present case.

11. The objection of the Petitioner to the impugned order is on the ground that S.D.O. as well as Tribunal have given undue importance to the previous proceedings and order passed by therein. As observed herein-above the principle of *res-judicata* applies even

to the tenancy proceedings. Undisputedly, the proceedings under Section 70(B) instituted in respect of the predecessor of the Petitioner has attained finality. It was therefore, absolutely necessary for these authorities while entertaining subsequent proceedings to consider this relevant fact that the status of the predecessor of Petitioner was finally decided in the previous proceedings and therefore, it was not permissible for Tahsildar to pass any order contrary thereto.

12. Having regard to the aforestated facts, this Court finds no perversity in the impugned order to cause interference therein.

13. As a result of this, petition stands dismissed.

(R. M. JOSHI, J.)