

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3835 OF 2018

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Sadashiv Gajanan Kulkarni (Bhingare) &
Ors.

... Petitioners

V/s.

Mahadev Vithoba Nikam

... Respondent

Mr. Prathamesh B. Bhargude for the petitioners.

Mr. Anil Sakhare, Senior Advocate i/by Mr. Jagannath
S. Pawar for the respondent.

Mr. Maruti Mahadev Nikam, CA of respondent is
present.

CORAM : AMIT BORKAR, J.

DATED : MARCH 6, 2024

PC.:

1. The challenge in this writ petition is to the orders passed by the Maharashtra Revenue Tribunal in Revision Application No.MRT/67/B/2001 dated 10th July 2001 and Revision Application No.NS/3/2002 dated 16th December 2017.

2. Property bearing old Survey Nos.57/1 and 56/1 and Gat Nos.251 and 248 at Rethare Budruk, Karad, District Satara are the properties in dispute.

3. The proceedings under section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948, were initiated in the year 1960. However, the predecessor of the petitioners was granted certificate under section 88C of the Maharashtra Tenancy

and Agricultural Lands Act, 1948, hence, proceedings under section 32G of the Act were stayed by order dated 6th July 1963. Thereafter, for the reasons which are not clear from the record, the proceedings under section 32G of the Act were started again. There is no material on record to show about further progress of proceedings under section 88C of the Act initiated by landlord. The order dated 23rd October 1985 indicates that the purchase of respondent tenant was declared ineffective and he was directed to deliver possession. In a proceedings arising out of inquiry under section 32P of the Act, the Apex Court in Special Leave Petition No.18075 of 1996 allowed tenant's Special Leave Petition by order dated 22nd November 1996, and directed authorities under the Act to proceed with proceeding under section 32G of the Act. The Apex Court set aside order dated 22nd May 1985 declaring ineffective under section 32P of the Act. After remand, the authorities under the Act including Maharashtra Revenue Tribunal accepted tenant's plea of issuance of certificate under section 32G. The order of the Maharashtra Revenue Tribunal dismissing its revision is subject matter of present writ petition.

4. Learned advocate for the petitioners submitted that once the predecessor of the petitioners applied for certificate under section 88C of the Act, the proceedings under section 32G could not have been proceeded with. He further submitted that there was no material on record to show that the respondent was tenant in property in dispute.

5. Per contra, learned Senior Advocate on behalf of tenant submitted that initiation of proceedings under section 88C of the

Act, itself is sufficient to indicate that the predecessor of the petitioners accepted respondent as tenant in the property. He submitted that it was for the petitioners to place on record material to show that proceedings under section 88C were pending on the date of adjudication by authorities under the Maharashtra Tenancy and Agricultural Lands Act or such certificate was issued in their favour.

6. Having considered the submissions made on behalf of both sides, it appears that the authorities below considered the plea of the petitioners that proceedings under section 88C of the Act was pending on the date of adjudication under section 32G of the Act. The petitioners failed to produce any material before the Court to indicate that on the date of passing of order by the first authority, the proceedings under section 88C were pending. Even during pendency of present writ petition, the petitioners were granted opportunity to place on record documents to indicate that such proceedings under section 88C of the Act were pending either on the date of adjudication of the first authority or as of today. However, inspite of such opportunity being granted to the petitioners, they failed to produce any material on record to show that on the date of adjudication by first authority, the proceedings under section 88C of the Act were pending. In absence of production of certificate under section 88C of the Act on record, there was no impediment for first authority to grant certificate under section 32G as the initiation of proceedings by landlord under section 88C itself amounts to admission by respondent's right as tenant in the property. Therefore, in my opinion, the

Revenue Tribunal was justified in dismissing the revision application based on the material on record. Hence, there is no merit in the writ petition.

7. The writ petition is dismissed. No costs.

8. The ad-interim relief which in force for last six years is continued for period of four weeks from today.

(AMIT BORKAR, J.)