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

WRIT PETITION NO.1536 OF 1996

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1. Dinkar Shankar Thorat

Since deceased through LR's.

1A. Mr. Baban Dinkar Thorat,

Age 71 years, R/o. B-10/5,
Sahyadri Nagar No.1, Near Birla
School, Kalyan (W), Thane.

1B. Mr. Shrirang Dinkar Thorat,

Age 68 years, Occu.: Nil,
R/o. Raviwar Peth, Wai,
District Satara.

1C. Mr. Prakash Dinkar Thorat,

Age 60 years, Occupation Nil,
R/o. Laxmi Mandir Java 1,
Hingnale Vill, Hingnale, Karad,
District Satara

1D. Mrs. Mangal Ramesh Kamble,

Age 55 years, Occupation.
R/o. Laxmi Mandir Javal,
Hingnale Vill, Hingnale Karad,
District Satara

... Petitioners

V/s.

1. Baban Ganu Mali,

2. Anandrao Shankar Mali,

Both of Hinganale, Taluka Karad,
District Satara

... Respondents

Ms. Gunjan Shah i/by Mr. P.B. Shah for the petitioners.

Mr. S.P. Thorat for respondent Nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 16, 2024

ORAL JUDGMENT:

1. The petitioner/original tenant is challenging the Judgment and Order passed by the Maharashtra Revenue Tribunal ("MRT" for short) confirming Judgment and Order passed by the Sub-Divisional Officer ("SDO" for short) setting aside Judgment and Order passed by the Tahsildar allowing petitioner's application under Section 37, 39 & 29 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ("the said Act" for short).

2. Lands bearing Gat Nos.415, 539, 546 and 543 described in the application are "lands in dispute". According to the petitioner, based on the Certificate of Exemption under Section 88C dated 30 April 1964, respondent No.1 on 27 May 1964 applied for possession of the lands in dispute under section 33B read with Section 29 for personal cultivation. On 2 March 1966 application of respondent Nos.1 for delivery of possession from the petitioner was allowed. After dismissal of appeal, on 2 July 1975 respondent No.1 handed over actual possession of the lands in dispute. On 5 February 1986 respondent No.1 sold lands in dispute to respondent No.2. Mutation entry of sale was effected on 3 August 1987 and certified on 16 October 1987.

3. The petitioner filed Application No.2 of 1988 on 21 March 1988 under Section 39 read with Sections 37 and 29 of the said Act stating that land in dispute had been sold by respondent No.1 by registered sale deed within 12 years from the date of taking

over possession under Section 33B of the said Act and, therefore, he had ceased to use the land for the purpose specified in proceedings under Section 33B of the said Act. The Tahsildar allowed the application.

4. Respondent Nos.1 and 2 filed Appeal No.9 of 1990 before SDO, Satara. By order dated 23 August 1990, SDO allowed the appeal setting aside the order of delivery of possession.

5. The petitioner challenged the order of SDO by filing a revision before MRT. MRT by the impugned order dismissed the petitioner's revision. Hence, the petitioner has filed a present writ petition.

6. Learned advocate for the petitioner submitted that provisions of Section 37(4), 43-1A, 1B and 1C are inapplicable in the facts of the present case as the said provisions apply to an application filed by the landlord who is or has ceased to be a serving member of the Armed Forces. Said provisions are inapplicable to the application filed by the tenant against a landlord who was or is a member of the Armed Forces. She further submitted that the application filed on 23 March 1988 under Section 29 was within a period of two years as the revenue entry for the sale of lands was effected on 3 August 1987 which is the date of knowledge and the application. She further submitted that the application on behalf of legal representatives of the original tenant can be filed by one heir as such heir has implied agency on behalf of other co-tenants unless such agency is revoked or objected to by the other heirs before filing of the application. She, therefore, submitted that the

Judgments and Orders passed by the SDO and MRT are liable to be set aside.

7. Per contra, the learned advocate for respondents Nos.1 and 2 submitted that one heir cannot file an application for possession from the landlord for breach of conditions of the said Act, in the absence of partition amongst heirs of the original tenant. By inviting my attention to Sections 43-1B, 1C, 37(4), he submitted that the proceedings pending before the Tahsildar needed to be transferred to the Collector as the Tahsildar had no jurisdiction to pass an order of possession. He submitted that the application by the tenant for delivery of possession under Section 29 is after a period of two years the sale deed was effected on 6 February 1986. He further submitted that the provisions of the said Act including proceedings for delivery of possession from the landlord are inapplicable after the grant of certificate under Section 88C of the said Act. He, therefore, submitted that the orders passed by the SDO and MRT do not suffer from legal infirmity.

8. Having considered the submissions made on behalf of both sides, in my opinion, the orders passed by the SDO and MRT deserve to be quashed and set aside for the following reasons.

9. The SDO allowed the appeal filed by respondent Nos.1 and 2 on three grounds:

(i) the application under Section 37 filed by the petitioner before the Tahsildar was not maintainable as such power was available only to the Collector;

(ii) the application was barred by limitation as it is filed after

two years from the date of the sale deed; and

(iii) all legal representatives of the tenant ought to have applied and only one heir had no authority to file such application.

10. For the purpose of adjudication of the points, it is necessary to set out relevant provisions of the said Act, which reads thus:

“29. Procedure of taking possession. — (1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the *Mamlatdar*. The application shall be made in such form as may be prescribed and within a period of two years from the date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be.

(2)

(3)

3A. Where a landlord proceeds for termination of the tenancy under sub-section (1) of section 43-1B, then, notwithstanding anything contained in this Act, the application for possession of the land shall be made to the Collector, who shall, after holding an inquiry in the prescribed manner, pass such order thereon as he deems fit.

33A. Definitions. — For the purposes of sections 33B and 33C, —

(i) "certificated landlord" means a person who holds a certificate issued to him under sub-section (4) of section 88C but does not include a landlord within the meaning of Chapter III-AA holding a similar certificate; and

(ii) "excluded tenant" means a tenant of land to which

sections 32 to 32R (both inclusive) do not apply by virtue of sub-section (1) of section 88C.

33B. Special right of certificated landlord to terminate tenancy for personal cultivation.—

(1) Notwithstanding anything contained in sections 31, 31A, or 31B a certificated landlord may, after giving notice and making an application for possession as provided in sub-section (3), terminate the tenancy of an excluded tenant, if the landlord *bona fide* requires such land for cultivating it personally.

(2)

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(6)

(7)”

“37. Landlord to restore possession if he fails to cultivate within one year.— (1) If after the landlord takes possession of the land after the termination of the tenancy under section 31, 33B or section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956 he fails to use it for any of the purposes specified in the notice given under section 31, 33B or section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956 within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy of the same terms and conditions or has offered in

writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof.

(2) ...

(3) ...

(4) The provisions of this section shall not apply to a landlord who becomes a serving member of the armed forces; and on that account, fails to use the land, or ceases to use it, for any of the purposes specified in the notice referred to in sub-section (1) and within the period specified in that sub-section.”

“39. Application for recovery of possession by tenant.— If at any time the tenant makes an application to the *Mamlatdar* and satisfies him that the landlord has failed to comply within a reasonable time with the provisions of section 37, the tenant shall be entitled on a direction by the *Mamlatdar* to obtain immediate possession of the land and to such compensation as may be awarded by the *Mamlatdar* for any loss caused to the tenant by eviction and by failure on the part of the landlord to restore or give possession of the land to him as required by section 37.”

“43-1A. Definition.— In this Chapter, unless the context requires otherwise, "landlord" means a landlord (including a certificated landlord within the meaning of section 33A) who is, or has ceased to be, a serving member of the armed forces; and in relation to the land of a landlord who is dead, includes his widow, son, son's son, unmarried daughter; father or mother.

43-1C. Transfer of pending proceedings to Collector and State Government.— All proceedings for recovery or restoration of possession of land filed under section 31 or 33B by a landlord pending immediately before the commencement of the Tenancy and Agricultural Lands

Laws (Amendment) Act, 1964, before a *Mamlatdar* shall (subject to any rules made as respects such transfer or any matter incidental thereto) on such commencement, stand transferred to the Collector, and all such proceedings pending in appeal before the Collector or in revision before the Maharashtra Revenue Tribunal shall likewise stand transferred to the State Government; and such proceedings shall be deemed to have been instituted for restoration of the land before the Collector under section 43-1B, or as the case may be, pending in revision before the State Government under section 73-A and be disposed of accordingly.”

11. On consideration of the aforesaid provisions, it is evident that the Maharashtra Tenancy and Agricultural Lands Act confers right on the tenant for restoration of possession in case the landlord who gets possession under Section 32 or 33B or 34 and if such landlord ceases to use such land for the purposes for which he takes possession of the land. Section 29(1) lays down the procedure for taking possession on an application filed by the tenant or other persons enumerated in the provision. If such application is filed within two years from the date when the right to obtain possession accrues in favour of the tenant or other persons, sub-section (4) of Section 37 provides that provisions of Section 37 shall not apply to the landlord who becomes serving member of Armed Forces and 'on that account' fails to use the land or ceased to use it for the purpose specified in the notes referred to in subsection (1). Section 43-1A to 43-1C confers the right of a landlord who is serving or a past member of the Armed Forces to terminate the tenancy and to seek recovery of possession from the tenant. Section 43-1C contemplates transfer of proceedings to the

Collector when such proceedings for recovery or restoration of possession of land under Section 31 or 33B of the said Act were pending on the date of commencement of Chapter III-AA.

12. The findings recorded by the SDO and MRT is that only the Collector had power to decide the application filed by the tenant under Sections 29 read with Sections 37 and 39 of the said Act. In my opinion, the Collector has the power to decide proceedings for recovery or restoration of possession of land filed under Sections 31 or Section 33B of the Act by the 'landlord'. Chapter III-AA, and in particular Sections 43-1B and 43-1C apply to only those proceedings which are filed by a 'landlord' who is or was a serving member of the Armed Forces.

13. Section 37(4) of the said Act will apply on the fulfillment of two conditions: (i) the landlord who becomes a serving member of the Armed Forces; and (ii) 'on that account' fails or ceases to use the land for the purposes referred in the notice under sub-section (1). Fulfillment of both conditions is essential for the applicability of sub-section (4) of Section 37. In the facts of the case, only ingredient (i) is fulfilled. In the facts of the present case, the landlord had not ceased to use the lands in dispute on account of being a member of the Armed Forces. The expression "on that account" used in sub-section (4) is of significance. The purpose of taking away rights conferred on agricultural tenants under the provisions of the said Act which is a beneficial provision for tenants on account of the social reform policy of the Government at the relevant time was interpreted by the Court's favouring interpretation in favour of the tenant. However, the exception is

made in favour of landlords serving in the Armed Forces by inserting Chapter III(AA). The purpose of inserting such a Chapter was to confer benefits on the serving members or past members of the Armed Forces for the services rendered to the nation's security. It is, therefore, necessary to balance the rights of members of the Armed Forces and the tenants for whose benefit the legislation was brought about. Therefore, the expression "on that account" in sub-section (4) needs to be interpreted keeping in view the purpose of the act and introduction of Chapter III(AA). Therefore, Section 37(4) shall apply only when the landlord fails to use or cease to use the land 'on account of he becoming a member of the Armed Forces'. Therefore, in my opinion, the finding recorded by the SDO and MRT holding that the Tahsildar had no power to pass an order of delivering possession under Section 29 read with Section 37 of the Act is unsustainable.

14. The next ground for setting aside the order of Tahsildar is on the ground of bar of limitation contained under Section 29(2) of the said Act. The relevant facts on this point are not in dispute. The sale deed executed by the respondent No.1 is dated 5 February 1986. The mutation entry of the said sale deed had been effected on 3 August 1987. The application before the Tahsildar was filed on 23 March 1988. Sub-section (2) of Section 29 requires an application to be filed by the tenant within two years from the date on which the right to obtain possession is deemed to have accrued to him. Since the petitioner was not party to the sale deed, the deemed knowledge of such accrual of right under Section 37 is deemed to have accrued to him only on 3 August 1987. Therefore,

the application filed on 29 March 1988 is within limitation.

15. The third ground that is held against the petitioner is the non-joinder of the necessary party. According to respondent No.1, the order of delivery of possession passed on 2 March 1966 was in favour of the original tenant who was the father of the petitioner. The original tenant is survived by five heirs who are brothers of the petitioner. Therefore, according to respondents Nos.1 & 2 and the appellate and revisional authority, in the absence of all heirs joined in the application for eviction, the application under Section 29 read with Section 37 was not maintainable for the non-joinder of the necessary party.

16. The law regarding the principle of co-owners applying for eviction is well settled. The Apex Court in the cases of **Sri Ram Pasricha v. Jagannath** reported in (1976) 4 SCC 184; **Dhannalal v. Kalawatibai** reported in (2002) 6 SCC 16; and **India Umbrella Manufacturing Co. & Ors. v. Bhagabndei Agarwalla (dead) by LRs Savitri Agarwalla (Smt) & Ors.** reported in (2004) 3 SCC 178 has held that one of the co-owners can file suit for eviction of a tenant in a property generally owned by co-owners. The principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, no material is brought on record by respondent No.1 that before filing of application under Section 29 read with

Section 37 of the said Act, co-owners objected for the initiation of eviction proceedings against respondent Nos.1 and 2. Therefore, in my opinion, the findings recorded by the SDO and MRT dismissing the petitioner's application on the ground of non-joinder of necessary party suffers from legal infirmity.

17. Learned advocate for respondent No.1 during the course of submissions submitted that in view of the issuance of a certificate under Section 88C of the said Act, the provisions of Sections 29, 37, 39 and 33B are inapplicable. Section 88C of the said Act read thus:

“88C. Exemption from certain provisions to lands leased by persons with the annual income not exceeding Rs.1,500

(1) Save as otherwise provided by sections 33-A, 33-B and 33-C, nothing in sections 32 to 32-R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500:

Provided that the provisions of this sub-section shall not apply to any person who holds such land as a permanent tenant or who has leased such land on permanent tenancy to any other person.

(2)

(3)

(4)

(5)”

18. On careful reading of Section 88C, it is clear that the proceedings under Section 33B are saved and only proceedings under Sections 32 to 32R are held to be inapplicable in case the landlord is granted a certificate under Section 88C. Undisputedly, the petitioner applied Section 29 read with Sections 37 and 39 of the said Act. Therefore, the issuance of a certificate under Section 88C loses its significance. Since the provisions of Section 33B are saved under Section 88C and Sections 37 and 39 do not find a place in Section 88(C)(i), respondent No.1 is not entitled to the benefit of issuance of a certificate under Section 88C of the said Act.

19. Therefore, in my opinion, the Judgment and Order passed by the SDO and confirmed by the MRT need to be quashed and set aside. Hence, the following order:

20. Rule is made absolute in terms of prayer clauses(b) and (c).

21. No costs.

22. At this stage, the learned advocate for respondents Nos.1 and 2 seeks a stay of the implementation of this order. Since the writ petition has been pending since 1996, the effect, operation and implementation of this order is stayed for a period of 12 weeks from today.

(AMIT BORKAR, J.)