IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5230 OF 2009

Smt. Rukminibai Narayan Mhatre
Deceased – through Moreshwar
Narayan Mhatre
(deceased through his legal heirs)

(1a) Mr. Ramesh Moreshwar Mhatre
since deceased through his heirs
and legal representatives

1(a) 1 Smt. Rekha Ramesh Mhatre
1(a) 2 Shri. Amit Ramesh Mhatre
1(a) 3 Chhaya Ramesh Mhatre
all are residing at near Ganapati
Temple Vinayak, Post Kegaon,
Taluka Uran, District Raigad

1(a) 4 Mrs. Sandhya Shailesh Mhatre
residing at Girikunj, 6th floor, Flat No. 604,
Ghodbunder Road, Owale, Dist: Thane.

1(a) 5 Smt. Suvidha Sudhir Mhatre
residing at House No. 53,
Bamnoli, near Laxmi Temple,
Taluka Alibaug, Dist: Raigad

1(b) Mrs. Asha Ravindra Patil
residing at Bldg. No. 65 Room No.216/
Mehru Nagar, Kurla (East),
Mumbai – 400 024.

(1c) Manisha Manohar Patil
residing at Building No. 15,
Room No. 806, 2nd floor,
Deeplaxmi Co Op. Hsg-Society,
Khar, Mumbai – 400 051.

(1d) Mrs. Seema Ramesh Gharat
residing at House No. 304,
Maniknagar, Naigaon, Ghatpada,
Taluka Uran, Dist. Raigad.

1(e) Mr. Virendra Moreshwar Mhatre
residing at Room No. 319, 3rd Floor,
B-Wing, Kalina Darshan, Baburao
Parulekar Marg, Dadar (West),
Mumbai – 400 028.

(1f) Mr. Rajendra Moreshwar Mhatre
residing at Amrut Park CHS, B-7,
Shastrinagar, Kalwa, Dist: Thane

2. Smt. Sharda Dattatraya Gharat
3. Smt. Radhabai Gopal Mhatre
residing at Near Ganapati Mandir,
Vinayak, Uran, Dist: Raigad …..Petitioners

Vs.

Sadanand Raghunath Gharat
residing at Village Vinayak,
Taluka Uran, Dist: Raigad …..Respondent

Mr. S. G. Karandikar i/b Ms. Smita Mhatre for petitioner nos. 1(a)2, 1(a)3, 1(a)4, 1(a)5, 1(b) to 1(f)
Mr. D. V. Sawant i/b V. Juris for Respondent

CORAM : GAURI GODSE, J.

DATE : 15th FEBRUARY 2024.

ORAL JUDGMENT:

1. This petition challenges the judgment order passed by the Maharashtra Revenue Tribunal ('MRT') on 12th March 2009 in Tenancy Revision No. 278 of 2001 filed by the petitioners. The revision application was filed to challenge the Judgment and Order passed by the Sub-Divisional Officer ('SDO') on 31st May 2001 in an appeal filed by the respondent challenging the dismissal of his application under section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act').

Facts of the case:

2. The respondent in the capacity of the trustee of the landlord-trust had filed an application under section 70(b) for a negative declaration that the petitioner i.e. Rukminibai was not the tenant in respect of the suit land and her name entered in the revenue record as a tenant should be cancelled. The said application was dismissed by the

learned Tahsildar. Hence, the respondent had filed an appeal before SDO who had allowed the appeal by holding that Rukminibai was not the tenant of the suit land and that she was a tenant in respect of only the structures i.e. house on the suit land. Hence the declaration was given that Rukminibai was not the tenant of the suit land. The said order was challenged by the petitioners i.e. heirs and legal representatives of Rukminibai before MRT. By the impugned order, MRT has rejected the revision application of the petitioners and confirmed the order of the SDO.

Submissions on behalf of the petitioners:

3. Learned counsel for the petitioners submitted that Rukminibai was the wife of Narayan Mhatre. She was a tenant in her independent capacity in respect of the suit land. The respondent had relied upon a document styled as Nokarnama which was for 10 years which came to an end in the year 1939. The Tenancy Act came into force initially in 1939 and thereafter the Bombay Tenancy and Agricultural and Lands Act in the year 1948.

4. Learned counsel for the petitioners further submitted that perusal

of the Nokarnama relied upon by the respondent indicates that after 10 years, servants mentioned in the Nokarnama i.e. Rukminibai's husband and his brother will have to remove the structures and hand over the land. It is further submitted that the respondent has relied upon a certificate issued under section 88B of the Tenancy Act granting exemption in favour of the Trust. In the said proceedings, Rukminibai was added as a party opponent which clearly shows that she was always accepted as a tenant in her independent capacity by the landlord/trust. In the proceedings for obtaining exemption under section 88B, Rukminibai was accepted as a tenant and subsequently, the application under Section 70(b) was filed for removal of the name of Rukminibai from the revenue records as the tenant of the suit land. Once Rukminibai was accepted as a tenant in the proceedings under section 88B, the respondent was not entitled to seek any negative declaration against Rukminibai that she was not the tenant of the suit land.

5. Learned counsel for the petitioners relied upon section 4B of the Tenancy Act and submitted that once Rukminibai was accepted as the

tenant of the suit land, her tenancy could not have been terminated without issuing any notice of termination. Even under section 4B of the Tenancy Act, no tenancy of any land can be terminated merely on the ground that the period fixed by the agreement or usage for its duration has expired. Thus, the respondent cannot take recourse to provisions under section 70(b) and seek a negative declaration against Rukminibai.

6. In support of his submissions that in proceedings under section 88B seeking exemption, it is incumbent upon the landlord to add the tenants as party respondents, the learned counsel for the petitioners relied upon the decision of this court in the case of ***Keraba Dattu Borachate and others Vs Shri Sheshashai and Vishnu Trust***[1]. By relying upon the said decision, he submitted that for securing the certificate of exemption, the respondent had chosen to add Rukminibai as the party opponent. Hence, Rukminibai was accepted as a tenant in respect of the suit land. Thus, in view of the action taken by the respondent himself, no other supporting document is necessary for holding that Rukminibai was the tenant of the suit land in her

1 **[1990(2) Mh.L.J.1183]**

independent capacity.

7. The learned counsel for the petitioners thus, supported the order passed by the learned Tahsildar rejecting the application filed by the respondent by holding that the name of Rukminibai was entered in revenue records as tenant of the suit land and that the same was never challenged by the respondent and, thus, it is clear that Rukminibai was in possession of the land for last many years. He thus submitted that learned Tahsildar rightly rejected the application by relying upon the undisputed mutation entry no. 951.

8. By referring to the order passed by the learned SDO, the learned counsel for the petitioners submitted that the document relied upon for granting a negative declaration was a document of Nokarnama, which was in the name of Rukminibai's husband and his brother. He thus submitted that the said document could not have been relied upon against Rukminibai, who was claiming independent tenancy rights based on the mutation entry effected in her favour. He relied upon the mutation entry No. 951 dated 28th May 1957 which records the name of Rukminibai as an ordinary tenant as she was cultivating the said

land. He thus submitted that once there was an undisputed mutation entry in the name of Rukminibai stating that she was cultivating as a tenant, learned SDO could not have relied upon Nokarnama to which Rukminibai was not a party.

9. With reference to the judgment and order passed by the MRT, the learned counsel for the petitioners submitted that none of the submissions made on behalf of the petitioners were considered which were based on the said undisputed mutation entry. MRT has misappreciated the document styled as Nokarnama to hold that predecessors in title of Rukminibai were cultivating the land in capacity as servants and hence, Rukminibai's predecessors were not tenants. The fact that Rukminibai was claiming independent tenancy based on mutation entry has not been appreciated by the MRT. Thus, he submitted that the order passed by the SDO granting a negative declaration and confirmation of the same by MRT suffers from misappreciation of the clear evidence on record in favour of Rukminibai. He therefore submits that the petition deserves to be allowed by quashing and setting aside the orders passed by the SDO

as well as MRT.

<u>**Submissions on behalf of the respondent**</u>:

10. Learned counsel appearing for the respondent submitted that the document styled as Nokarnama was for the Trust property i.e. survey nos. 50 and 51 which are subject matter of the exemption certificate granted under section 88B. Rukminibai is occupying the structures that were given on rent and the land was cultivated by her predecessors based on the Nokarnama. At the time of granting the declaration that Rukminibai is not the tenant of the land, her rights with respect to the structures are protected. Revenue entries are only for fiscal purposes and have only presumptive value, hence, Rukminibai was not entitled to claim any tenancy rights only based on the revenue entry. According to him, the order granting declaration in favour of the respondent passed by the SDO is correctly passed by properly interpreting the Nokarnama. The Nokarnama clearly stated that a sum of ₹25 per annum was fixed towards rent in respect of the structures given on rent, out of which the amount of ₹13 per annum was fixed towards services rendered by the predecessors of Rukminibai for the Trust

activities. Thus, an amount of ₹12 was being paid towards rent by the predecessors of Rukminibai after deducting the amount towards salary. Nokarnama which is a registered document is sufficient evidence to show that predecessors of Rukminibai were cultivating the land as the servants of the trust and they had no independent right in respect of the suit land. He thus submitted that in view of the said document, even Rukminibai cannot claim any better rights independently.

11. The learned counsel for the respondent also relied upon the order of exemption under section 88B and submitted that the suit land is exempted in terms of section 88B. Trust was registered in the year 1953 i.e. much before the tillers date i.e. 1st April 1957. Proceedings under section 32G were initiated by Rukminibai, however, in view of the exemption order granted under section 88B, the said proceedings were suspended. Therefore the proceedings under section 32G were never decided in favour of Rukminibai.

12. In support of his submissions, the learned counsel for the respondent relies upon the decision of Hon'ble Supreme Court in the

case of ***Sawarni (Smt) Vs Inder Kaur (Smt) and Others***[2] and the decision of the Hon'ble Supreme Court in the case of ***P. Kishore Kumar Vs. Vittal K. Patkar***[3]. He relies upon the aforesaid decisions in support of his contention that revenue entries are only for fiscal purposes and have presumptive values and thus Rukminibai is not entitled to claim any tenancy or occupancy rights only based on the revenue entries. He in particular relied upon paragraphs 10 to 12 of the decision in the case of ***P. Kishore*** to contend that the revenue records are trite law and are not documents of title. He thus submits that the petitioners claiming through Rukminibai are not entitled to claim any tenancy rights in the suit land. The order passed by the SDO declaring that Rukminibai has no tenancy rights is rightly confirmed by the MRT. He thus, submitted that there is no merit in the present petition, and the same be dismissed.

Consideration of the submissions:

13. I have considered the submissions made on behalf of both the parties. I have perused the record. It is not in dispute that the mutation

2 **(1996) 6 Supreme Court Cases 223**
3 **Civil Appeal No. 7210 of 2011 Dt. 20/11/2023**

entry records the name of Rukminibai on 28th May 1957 stating that she has been recently cultivating the suit land i.e. survey nos. 50 and 51. A perusal of the Mutation Entry No. 951 indicates that the name of Rukminibai is entered based on her independent tenancy rights stating that she has been recently cultivating the land and hence her name is entered as an ordinary tenant. It is further not disputed that the said mutation entry was never challenged by the respondents. A perusal of the application filed by the respondent before learned Tahsildar indicates that a prayer was made that Rukminibai was not a tenant in respect of the suit land, hence her name should be removed from the revenue records. It appears that the said application was treated as an application under section 70(b) of the Tenancy Act, and after making an enquiry, learned Tahsildar rejected the application by holding that Rukminibai's name is entered by way of Mutation Entry No.951 as a tenant as she was cultivating the land. The said mutation entry was not challenged and the respondent had not appeared at the time of hearing the application and he had no merit in the case. Thus, based on the said mutation entry, recording the name of Rukminibai as a tenant, the prayer for a negative declaration made by the respondent was rejected.

14. Learned SDO in the appeal preferred by the respondent has relied upon the document styled as Nokarnama. Learned SDO has failed to take into consideration the effect of the undisputed mutation entry which clearly indicates that Rukminibai's name was entered as her independent right of tenancy on the ground that she was cultivating the land. However, the learned SDO relied upon the Nokarnama executed in the name of Rukminibai's husband and his brother for holding that Rukminibai through her predecessor had rights in respect of the structure, who were cultivating the land as servants of the Trust. It was sought to be contended on behalf of the respondent that SDO had also made a proper enquiry and as per the report of the concerned Talathi, it was held that the structures on the suit land were given on rent and the suit land was in possession of the temple and hence, the name of Rukminibai was wrongly entered as a tenant in respect of the suit land.

15. I have perused the reasons recorded by the learned SDO.

Though it is seen that the report of Talathi was relied upon by the learned SDO, the findings recorded by the learned SDO do not clearly indicate that Rukminibai was never found in the cultivation of the suit land. It is not even the case of the respondent that land was not cultivated by the predecessors of the Rukminibai or Rukminibai. The only contention raised on behalf of the respondent is that they were cultivating only as servants and in support of the said contention, the only document relied upon is Nokarnama to which Rukminibai is never a party. However, the learned SDO relied upon the Nokarnama and set aside the order passed by Tahsildar and granted a declaration that Rukminibai's name should be removed from the revenue record.

16. The order of learned SDO has been confirmed by the MRT again by relying upon the Nokarnama. Even MRT has referred to and relied upon Nokarnama and held that Rukminibai's husband and his brother were cultivating the land for salary and the structures were given to them on rent for which the amount of salary was deducted and the remaining amount was paid towards rent. Thus, it was held that Rukminibai's predecessors were cultivating the land in the

capacity of servants. Hence, MRT held that Rukminibai's status as a tenant only on the ground of revenue entry cannot be accepted.

17. Thus, it appears that neither SDO nor MRT has properly appreciated the contents of the Nokarnama relied upon by the respondent. The Nokarnama was dated 21st June 1920 and was for a period of 10 years. Thus, the period of the said document came to an end in the year 1930 i.e. much before coming into force of the Tenancy law protecting the rights of agricultural tenants. Admittedly Rukminibai was not a party to the said document of Nokarnama. Learned SDO as well as MRT have also failed to take into consideration that the undisputed mutation entry in the name of Rukminibai specifically recorded tenancy rights in her independent capacity. The exemption order passed under section 88B relied upon by the respondent supports the case of the petitioners. It cannot be ignored that Rukminibai was added as a party respondent in the proceedings under section 88B. The very fact that she was added as a respondent in the proceedings under section 88B clearly indicates that she was accepted as a tenant.

18. Learned counsel for the petitioner is right in relying upon the decision of this court in the case of ***Keraba Borachate***. It is a well-settled principle of law that a tenant is required to be made a party opponent in the proceedings under section 88B. This court in the said decision has held that since the valuable tenancy rights of a tenant are destroyed by the grant of exemption certificate under Section 88B, a tenant is entitled to be heard in the inquiry for the grant of the exemption certificate. Learned counsel for the respondent relied upon the order passed under section 88B, which clearly shows that Rukminibai was added as a party respondent in the said proceedings. Thus, the respondent accepted Rukminibai as a tenant. It is also important to note that it is a submission made on behalf of the respondent that even 32G proceedings were initiated in respect of the suit land in the name of Rukminibai, however, only in view of the exemption order, the suit proceedings were suspended.

19. In the decision of the Hon'ble Supreme Court in the case of ***Sawarni*** it is held that revenue record would not create or extinguish title and that it will have no presumptive value on title. The said

decision is referred to in the decision of ***P. Kishore Kumar.*** The Hon'ble Supreme Court in the decision of ***P. Kishore Kumar*** has held in the facts of that case that evidence of record of rights for several years in an attempt to establish title, would not counter the proof of title in a test of probative value. Thus, the settled law is that the record of rights can be presumed to be correct when there exists no evidence to the contrary. The decisions relied upon by the learned counsel for the respondent would be of no assistance to the respondent in as much as the mutation entry in favour of Rukminibai is recorded for entering her name as a tenant on the ground that she was cultivating the suit land. The Respondent has not produced any evidence to the contrary. It is not the case of the respondent that Ruminibai was not cultivating the land. The exemption certificate under Section 88B and its proceedings relied upon by the respondent indicate that the respondent had accepted Rukminibai as a tenant. Since the respondent filed an application under section 70(b) for a declaration that Rukminibai was not a tenant, the burden was on the respondent to rebut the presumptive value of the undisputed mutation entry recording the name of Rukminibai as an ordinary tenant on the ground that she was cultivating the suit land.

20. Thus, there cannot be any debate on the well-settled principle of law that revenue records are for fiscal purposes and have only presumptive values. There also cannot be any debate on the proposition that based on mutation entry, a party is not entitled to claim any title qua the property. However, in the facts of the present case, when the respondent had applied for a negative declaration that Rukminibai is not a tenant of the suit land, the undisputed mutation entry for entering the name of Rukminibai as a tenant on the ground that she was cultivating the land cannot be said to be only for fiscal purposes. So far as Rukminibai's tenancy rights are concerned, it also cannot be ignored that she was added as a respondent in the proceedings under section 88B. The reliance placed by the learned SDO as well as learned MRT on the document styled as Nokarnama to hold that Rukminibai and her predecessors were cultivating the land only as servants cannot be accepted qua Rukminibai in whose favour there is a mutation entry recording her name as an ordinary tenant as

she was cultivating the suit land.

21. In any case, admittedly the Nokarnama of the year 1920 is in the name of Ruminibai's husband and his brother valid for a period of 10 years. The operative order passed by the learned SDO records that the suit structures were in possession of Rukminibai as tenant and her rights in respect of the house structures will not be affected. Thus, at the highest, the document styled as Nokarnama would be relevant so far as the house structures are concerned and the rights of Rukminibai's husband and his brother. The said document of Nokarnama cannot be relied upon to examine the tenancy rights claimed by Rukminibai in her independent capacity in respect of the suit land.

22. In view of the aforesaid, I find that the reasons recorded by the SDO as well as learned MRT relying upon the said documents are not by properly appreciating and interpreting the contents of Nokarnama as well as the mutation entry. Hence, I find substance in the arguments made on behalf of the petitioners.

23. Thus, for the reasons recorded above, the petition is allowed by

passing the following order:

ORDER

I. The impugned judgment and order passed by the SDO dated 31st May 2001 in Appeal No. TNC 9/97 and Judgment and Order dated 12th March 2009 passed by the learned MRT Mumbai in TNC Revision Application No. 278 of 2001 are quashed and set aside. Consequently, the order dated 19th May 1995 passed by Tahsildar Uran in TNC Suit No. 10 of 1992 is confirmed.

II. In view of the disposal of the petition, pending interim applications are disposed of as infructuous.

13. Writ Petition is allowed in above terms.

[GAURI GODSE, J.]