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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2478 OF 2018

1. Gunda Rama Birajdar PETITIONER
Since deceased Through LRs

1A. Kamalabai Gunderao Birajdar
Deceased Through LRs

1B. Babu Gunderao Birajdar
Age - 65 years, Occ - Agriculture

1C. Kiran Gunderao Birajdar
Age - 45 years, Occ - Agriculture

1D. Bhanudas Gunderao Birajdar
Age - 60 years, Occ - Agriculture

1B to 1D R/o Ghugi Sangwi
Yashwant School,
Taluka - Shirur Anantpal
District - Latur

1E Balaji Gunderao Birajdar
Age - 52 years, Occ - Agriculture
R/o Shriram Vidyalaya Sanstha
Mamadpur, Taluka & District - Latur

1F. Laxmi Balaji Patil
Age - 50 years, Occ - Household
R/o Rapka, Taluka - Shirur Anantpal
District - Latur

VERSUS

1. Subhash Manikrao Birajdar RESPONDENTS
Age - Major, Occ - Agriculture
R/o Ghugi Sangwi
Taluka - Shirur Anantpal
District - Latur

2. Deputy Collector for Land Reforms
Collector Office,
Latur

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Mr. Parag V. Barde, Advocate for the Petitioners
Mr. V. N. Patil (Jadhav) AGP for Respondent - State
Mr. D. P. Palodkar, Advocate for Respondent No.1
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[CORAM : MANJUSHA DESHPANDE, J.]

RESERVED ON : 5th FEBRUARY, 2025
PRONOUNCED ON : 17th FEBRUARY, 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the respective parties.
2. The Petitioners have challenged judgment and order dated 6th October, 2017 passed by Member, Maharashtra Revenue Tribunal, Aurangabad (to be referred as "MRT") in Case No. 8/A/2020/Latur, whereby the claim of Respondent No.1 is remanded for fresh inquiry to the Deputy Collector.
3. It is the contention of the Petitioners that Respondent No.1 had filed an application before Deputy Collector, Latur invoking section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (to be referred as "the said Act") for eviction of the Petitioners from the suit land. Contention of Respondent No.1 is that father of Respondent No.1 Manikrao received a certificate under section 38 (E) of the said Act, thereby declaring him to be owner of land admeasuring 5 Acre 36 Guntha, situated at Mauje

Ghugi Sawangi, Taluka - Shirur Anantpal, District - Latur. Revenue entries to that effect were taken. However, there is no document available with Respondent No.1 as well as with the Revenue Authorities, whereby certificate under section 38 (E) of the said Act had been issued in favour of Respondent No.1.

4. It is the case of the Petitioners that Respondent No.1 had filed Regular Civil Suit No. 126 of 1979 against the Petitioners for possession of the property in question. The suit was subsequently compromised between the parties and it was agreed that the Petitioners will remain in possession of the land to the extent of 2 Acre 20 Guntha and Respondent No.1 will retain 3 Acre 16 Guntha land. The compromise was recorded and accordingly acted upon. A decree to that effect was drawn by the Civil Court on 24th July, 1979. The parties remained in possession of their respective lands as per the terms of the compromise. However, after a period of 30 years, Respondent No.1 filed an application under section 98 of the said Act before the Deputy Collector claiming that the compromise decree passed in the Regular Civil Suit No. 126 of 1979 is bad in law and contrary to the provisions of the said Act. Hence Respondent No.1 claimed the entire land ad measuring 5 Acre 36 Guntha.

5. The application filed by Respondent No.1 was opposed by

the Petitioners contending that Respondent No.1 has not produced the certificate allegedly issued under section 38 (E) in his favour, in support of his claim that he is owner of the entire land to the extent of 5 Acre 36 Guntha. It was further contended that in spite of taking efforts to locate the record pertaining to the declaration of ownership to Respondent No.1, under section 38 (E) of the said Act, the Revenue Authorities could not locate the record. Therefore, considering the amicable settlement before the Civil Court, the Petitioners had prayed for dismissal of the proceedings filed by Respondent No.1.

6. The Deputy Collector, by order dated 30th January, 2010 has rejected the claim of Respondent No.1. Being aggrieved by the judgment and order passed by the Deputy Collector, Respondent No.1 filed Revision before MRT. The MRT, by its judgment and order dated 6th October, 2017, remanded the matter back to the Deputy Collector for further inquiry. It is this order, which is being challenged by the Petitioners in this Writ Petition.

7. The facts, leading to the litigation can be encapsulated as under:

Respondent No.1 had filed Appeal before the Deputy Collector contending that certificate declaring Respondent No.1

to be the protected tenant was issued on 2nd September, 1971 to the extent of 5 Acre 36 Guntha in Survey No. 5A. Accordingly, Mutation Entry was also recorded. Respondent No.1 has contended that, inadvertently, he had filed Regular Civil Suit No. 126 of 1979 in the Court of Civil Judge, Junior Division, Nilanga for declaration of ownership and injunction. Compromise was entered into between the parties and according to the said compromise, father of the Petitioners Gunda Rama, who was in possession of the land to the extent of 2 Acre 20 Guntha, since his forefathers and was enjoying the yields from the said land, was allowed to continue with the possession of the portion of the land of which he was in possession since long. As against that Respondent No.1 who was in possession of 3 Acre 16 Guntha, since his forefathers continued in possession of the land, on the basis of certificate issued under section 38 (E) of the said Act.

It is the contention of Respondent No.1 in the Application that he was not aware that the Civil Court did not have jurisdiction to decide tenancy proceedings. Therefore, the compromise, which has entered into between the parties before the Civil Court, is not binding on Respondent No.1. Referring to the jurisdiction of the Court under section 99 of the said Act, it was contended that the compromise decree is not binding on Respondent No.1.

The stand of the Petitioners - non applicants before the Deputy Collector was that, only after accepting rights of the Petitioners as protected tenants on the land, which was in their respective possession, the compromise was entered into between the parties. Since decree to that effect was drawn, Respondent No.1 cannot deny the binding effect of the decree, which is drawn by the Civil Court on the basis of compromise entered into between the parties. It is contention of the petitioners that the suit land belonged to one Sangan Basanappa Mallikarjun. Father of Petitioners - Gunda Rama was in possession of 2 Acre 20 Guntha land from southern portion of the land and Respondent No.1 was in possession of 3 Acre 16 Guntha land from the northern portion as tenants. Gunda Rama as well as Manik Gopal were belonging to the same family. Name of Gunda Rama appeared in Pahani as well as Khasara Patrak and Names of Gunda Rama as well as Manik Gopal appeared in column of rights as protected tenants. On the basis of the comprise entered into between them, Mutation Entry No. 73, dated 25th April, 1981 was also entered into after issuing notice to the Respondent. The Mutation Entry was never challenged by Respondent No.1. Considering that the Petitioners are in possession of the suit land, prior to 1940, the appeal of Respondent No.1 was not entertained. It is also contended that

when the Petitioners filed application before the Tahsildar seeking copies of record in respect of issuance of declaration of certificate in favour of Respondent No.1, under section 38 (E) of the said Act, dated 2nd December, 1971, it was informed that the record in respect of the land is not available. The Petitioners tried their best to obtain the record, but in vain.

On the basis of the rival contentions of the respective parties and after going through the evidence of the witnesses, the Deputy Collector, recorded a finding that Respondent No.1 cannot refuse the compromise, which is entered into by him with the Petitioners. If Respondent No.1 had any grievance against the compromise, Respondent No.1 ought to have challenged the compromise decree before appropriate court. Respondent No.1 has admittedly not challenged the compromise decree, therefore, Respondent No.1 cannot claim that the compromise decree is not binding on him.

Similarly, the Mutation Entry which came to be effected on the basis of compromise decree is also not challenged by Respondent No.1. It was further observed that the record discloses that the Petitioners as well as Respondent No.1 belong to the same family and they share a common ancestor (grandfather).

8. When the matter was taken to MRT by Respondent No.1, MRT, after taking into consideration the order passed by the Deputy Collector and also evidence, which was led by the parties before the Deputy Collector, has recorded a finding that the arguments as well as documents disclose that the suit land had two protected tenants i.e. forefathers of the Petitioners and Respondent No.1, while Respondent No.1 claims to be owner of the entire land to the extent of 5 Acre 36 Guntha and the Petitioners to be unauthorized occupants. A finding is also recorded that even forefathers of the present Petitioners have been declared as protected tenants. Since Respondent No.1 could not produce certificate of ownership issued under section 38 (E) of the said Act, claim of Respondent No.1 as exclusive owner of the suit land cannot be conclusively decided.

9. It is observed that the Deputy Collector has not gone into inquiry of the ownership certificate issued under section 38 (E) of the said Act. Certificate under section 38 (E) is material document to decide the issue whether the father of Respondent No.1 was tenant of the entire land. Therefore, in order to verify as to whether any certificate was issued by concerned authority under section 38 (E) of the said Act, the matter has been remanded back to the Deputy Collector. It is also observed that if

the Deputy Collector is satisfied about the ownership certificate granted in favour of Respondent No1, proceedings under section 50B of the said Act should be initiated as per the provisions of law.

10. It is the contention of the Petitioners that Deputy Collector, while deciding the application filed by Respondent No.1 under section 98 of the said Act, has limited scope. The Deputy Collector has already taken into consideration that during the proceedings Respondent No.1 could not produce the certificate under section 38 (E) of the said Act, as he was not in possession of the said certificate. It is also recorded that original record in respect of the certificate issued under section 38 (E) of the said Act, was also called from the Tahsildar, however, the same could not be made available, since it was not available in the Tahsil office. Deputy Collector has recorded that though the Petitioners have taken efforts to obtain relevant record, but said record appears to have been destroyed.

11. Hence, observations reflect that during the pendency before Deputy Collector, the record with respect to certificate under section 38 (E) of the said Act could not be made available.

12. It is the contention of the Petitioners though the MRT, already having considered and gone through the order passed by

the Deputy Collector, has remanded the matter back to the Deputy Collector to enquire about the issue of ownership certificate under section 38 (E) of the said Act. It is the contention of the Petitioners that, there is already a compromise which has taken place long back and on the basis of the compromise, the parties are in possession of the respective lands for more than 30 years. After such a long time, Respondent No.1 cannot deny binding nature of the compromise decree, on the ground that while entering into the compromise, Respondent No.1 was not aware about the bar of the Civil Court under the said Act and hence it is not binding on him. Fact also remains that though Mutation Entry as well as the compromise have not been challenged by Respondent No.1 before appropriate forum, in view of the above, it was not appropriate for Respondent No.1 to file proceedings seeking eviction of the Petitioners under section 98 of the said Act.

13. Even upon going through section 98 of the said Act, the scope of the same is limited. A person, who claims to be owner or on the basis of substantive rights invokes powers vested in the Collector under section 98 of the said Act, against the person unauthorisedly occupying or wrongfully in possession of any land. According to the learned Advocate for the Petitioners, he cannot be termed as a person who is occupying the land

wrongfully, since he is in settled possession of the land since his forefathers, much prior to 1940, which is supported by revenue entries and which are not in dispute. Therefore, invocation of section 98 of the said Act for his eviction is not at all tenable and the MRT has committed an error in remanding the matter back to the Deputy Collector for inquiry under section 38 (E) of the said Act. The scope of section 98 of the said Act is very limited, proceedings under section 98 of the said Act are summary proceedings, it does not contemplate any inquiry. Hence, according to the learned Advocate for the Petitioners, the order passed by MRT suffers from non application of mind and error of law.

14. Per contra, Mr. Palodkar, learned Advocate for Respondent No.1 submits that Respondent No.1 was granted certificate under section 38 (E) of the said Act, vide case No. 148/38 E/62 dated 2nd December, 1971 in respect of survey No. 5A to the extent of 5 Acre 36 Guntha and he was declared as protected tenant under the said Act. On the basis of the certificate, Respondent No.1 has got his name mutated in the revenue record and entry to that effect has been taken, wherein in the remarks it is stated 38 (E) certificate, 50A received and approved. Accordingly, even in 7/12 extract, name of Respondent No.1, has been entered. Though Respondent No.1 had entered into compromise with the

Petitioners, it is not binding on him in view of section 99 of the said Act, which creates a bar to the jurisdiction of the Civil Court. Therefore, considering that the compromise entered by him was barred by Section 99 of the said Act, was not binding on Respondent No.1, the Petitioners should be restrained from enjoying possession of the land, of which Respondent No.1 has been declared as protected tenant. Since certificate under section 38 (E) of the said Act has been granted in his favour, the Petitioners are trespassers in the said land.

15. Therefore, considering that possession of the Petitioners on the suit land is not in the capacity as tenants, but they are trespasses and therefore, the Petitioners need to be evicted by restoring possession of Respondent No.1.

16. After the matter was closed for placing citations on record, the Advocate for the Respondent has placed on record certain documents supported by affidavit. He has relied on the old documents of Mutation Entries recorded in the year 1963 and also declaration issued under section 38 (E), which was challenged by the landlord and rejected by the Naib Tahsildar on 3rd August, 1962 and subsequent orders of Deputy Collector dated 4th November, 1963 and decision of the MRT dated 5th March, 1964 in support of his case. However, the fact remains

that scope of present Writ Petition is limited only to the extent of considering legality and correctness of the order passed by MRT. Reliance which is placed by learned Advocate for the Respondents, by producing documents along with affidavit on record, is not relevant for decision of the present Writ Petition. The scope of present Writ Petition is limited only to the extent of order passed by the Deputy Collector under section 98 of the said Act and the order passed by the MRT, which was arising out of proceedings initiated under section 98 of the said Act.

17. After hearing learned advocates for the respective parties, the question before this Court is whether the order passed by the MRT, thereby remanding the matter back to the Deputy Collector for further inquiry, is appropriate in view of scope of section 98 of the said Act. Section 98 of the said Act reads thus,

“98. Summary eviction:

Any person unauthorisedly occupying or wrongfully in possession of any land -

(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act, or

(b) the management of which has been assumed under the said provisions, or

(c) to the use and occupation of which he is not entitled under the said provision, may, if the said provisions do not provide for the eviction of such person, be summarily evicted by the Collector.

18. Upon going through the provisions, which are reproduced

herein above, it is clear that a person who claims to be lawful owner of the land, which is occupied unauthorizedly and wrongfully, by person in possession can be evicted resorting to section 98 of the said Act. It is claim of the present Respondent that he is declared as protected tenant in respect of the whole of the suit land to the extent of 5 Acre 36 R, in Survey No. 5A. Though he had entered into compromise with the present Petitioners, in a suit which he himself had filed, he claims that he has inadvertently filed the suit in which he had entered into compromise with the Petitioners, but in view of section 99 of the said Act, which bars jurisdiction of Civil Court, the compromise decree is not binding on him.

19. In the application filed before the Deputy Collector, the Respondent has claimed two reliefs; one is regarding eviction of the petitioners from the land to the extent of 2 Acre 20 Guntha and the second is in respect of declaration that the compromise entered into between the Petitioners and Respondent in Civil Court on 24th July, 1979, is not binding on the Respondent. Such relief, admittedly, is not capable of being granted by the Deputy Collector.

20. The Petitioner is aggrieved by the order, wherein appeal filed by the Respondent is partially allowed, wherein the matter

is remitted back to the Deputy Collector for further inquiry.

21. So far as inquiry under section 38 (E) is concerned, these powers are necessarily exercised by Tahsildar. No inquiry is contemplated while exercising powers under section 98 of the said Act by the Deputy Collector

22. In the case of ***“Kisan Rama Khatri V/s Sanjeevanrao Dattatrayrao Atre and Others”*** reported in ***2020 Near Law (Bombay High Court, Aurangabad) online 668 in Writ Petition No. 3439 of 2000***, in similar facts, where the dispute was amongst the joint family members, this Court has held that, whether the tenancy was for joint family or independently of one of the members, is the question which is required to be decided by Competent Authority and finding on the status of the petitioner, who claimed to be a tenant ought to have been recorded in appropriate proceedings. Paragraphs No. 14 to 16 from the Judgment are reproduced hereinbelow:

“14. Section 98 of the Tenancy Act reads thus :

“98. Any person unauthorisedly occupying or wrongfully in possession of any land -

(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act, or

(b) the management of which has been assumed under the said provisions, or

(c) to the use and occupation of which he is not entitled under the said provisions, may, if the said provisions do not provide for the eviction of such person, be summarily evicted by the Collector”.

A plain reading of the provision would indicate that the inquiry is a summary inquiry. The petitioner is not a trespasser. Whether the petitioner was a member of joint family alongwith Sandu Rama or whether the tenancy was for the benefit of the joint family or whether the petitioner was legal heir of Sandu Rama, are questions which ought to have been addressed by the Competent Authority and finding on the status of the petitioner, who claimed to be a tenant, ought to have been recorded in appropriate proceedings.

15. Section 8 of the Tenancy Act is relevant and reads thus :

“8. If any question arises whether any person is or was at any time in the past a tenant, the Tahsildar shall, after holding an inquiry, decide such question”.

It is irrefutable that the inquiry contemplated under Section 8 of the Tenancy Act was not conducted nor was the finding recorded by Tahsildar as regards the status of the petitioner. Such an inquiry could not have been conducted in the proceedings under Section 98 of the Tenancy Act.

16. Even if it is assumed that in proceedings under Section 98 of the Tenancy Act a finding of the status of occupier can be recorded, considering that the inquiry is summary, in contentious matters, the statutory scheme would mandate that such inquiry be conducted by the appropriate Authority under Section 8 of the Tenancy Act who would reach appropriate conclusions after permitting the parties to

adduce evidence.”

23. Section 8 of the said Act provides for enquiry to be conducted by the Tahsildar when any question of deciding status of tenant arises.

24. Since the proceedings under section 98 of the said Act are summary proceedings, when the status of tenancy is in question, the finding of status of tenancy cannot be recorded in proceedings under section 98 of the said Act. Therefore, the status of the tenancy has to be decided by the Tahsildar in an inquiry conducted under section 8 of the said Act, as mandated under the statutory scheme.

25. In view of the scope of the powers conferred under section 98 of the said Act, the inquiry cannot be conducted by the Deputy Collector, but has to be by the Tahsildar under section 8 of the said Act.

26. Therefore, the order passed by the MRT, remanding the matter back to the Deputy Collector for inquiry whether the father of applicant was alone granted certificate under section 38 (E) of the said Act, is quashed and set aside and the matter is remitted back to the Deputy Collector, Latur who would refer the matter to the Tahsildar for inquiry under section 8 of the said Act

and on receiving the report, the Deputy Collector shall decide the Application of Respondents on the basis of the report.

27. The parties are directed to appear before the Deputy Collector (Land Reforms) Latur on 20th March, 2025.

28. The Deputy Collector (Land Reforms), Latur shall make a reference to the Authority under section 8 of the said Act, within 15 days from appearance of the parties and the Tahsildar shall conclude the inquiry within 6 months from the date of reference made by the Deputy Collector.

29. Writ Petition is allowed. Rule is made absolute in above terms.

[MANJUSHA DESHPANDE_]
JUDGE