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wp10108.19

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10108 OF 2019

Kundlik Madhav Shingate,
Age-52 years, Occu-Agri,
R/o. Village Rui, Tq. Washi,
Dist. Osmanabad

...PETITIONER

VERSUS

Shivajirao Hanumantrao Kulkarni (died)
through his LRs
Smt. Nirmala Shivajirao Kulkarni and others

...RESPONDENTS

AND

WRIT PETITION NO.8740 OF 2021

Shahaji Dnyandev Ghadge,
Through its GPA holder
Mr. Vilas Bhagwat Ghadge
Age-44 years, Occu-Agri,
R/o. Rui, Tq. Washi, Dist. Osmanabad

...PETITIONER

VERSUS

Shivaji Hanumant Kulkarni (Died)
Through LRS
Smt. Nirmala Shivaji Kulkarni
Age-55 years, Occu-Household,
R/o. Village Pargaon, Tq. Washi,
Dist. Osmanabad and others

...RESPONDENTS

Mr. V. S.Undre, Advocate for the petitioner
Mr. S. B. Choudhary, Advocate for the respondent Nos. 1-A to 1-E in both the petitions

CORAM : KISHORE C. SANT, J.
RESERVED ON : 10th FEBRUARY, 2025
PRONOUNCED ON : 18th MARCH, 2025

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1. Heard the parties.
2. By consent of the parties the matter is taken up for final disposal at the stage of admission.
3. In both the petitions contesting respondents i.e. heirs of Shivajirao Kulkarni (died) are the same.
4. The petitioners in both the petitions are formal respondents in petitions of each other and the dispute is identical. Both the orders under challenge are in respect of the same land, the matters are therefore, taken up together.
5. In Writ petition No. 10108/2019 the challenge is to an order dated 25-09-2018 passed in Revision No. 54/A/2017/0

by the learned President, MRT, Aurangabad and in Writ Petition No.8740/2021 is arising out of the order passed by the President MRT, Mumbai dated 31-01-2020 in Revision NO.77/B/2019/O.

6. Few facts giving rise to the petitions are as under:-

7. The petitioners by different proceeding approached the Tahasildar for getting declaration that they are protected tenants in the land under Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950 on the land to the extent of 50% of the land in land Survey No. 68-E, from village Rui, Tq. Washi.

8. It is the case of the Shingte that his great grandfather Raghu Tatya Shingte was a protected tenant. The said land as on today is in his possession to the extent of 50%, same is the case of Ghadge that his great-grandfather Vithoba was in possession of remaining 50% land of respondents. Shingte filed the proceeding 2011/Jama-1/Kavi/63. Ghadge filed the

proceeding 2011/Jama/1/Kavi/63. The learned Tahasildar in both the cases held that the petitioners have proved that they are tenants in the land and allowed the proceeding by charging 60 times amount of land revenue and declared them as owners of land. This order was passed on the basis of the orders in tenancy proceeding dated 03-03-1967 passed by the learned Tahasildar and the order dated 21-03-1963 passed by the learned Sub-Divisional Officer and thereafter order passed by the Tahasildar dated 10-10-1970. The learned Tahasildar further considered the Tenancy Register of 1950 till 1960-1961 and also considered 7/12 extract from 1958-1959, 1967-1968 and 1973-1974 till 2009. Said order was challenged by the respondents before the learned Sub-Divisional Officer. The learned SDO allowed the appeal and set aside the order passed by the learned Tahasildar. The petitioner, therefore, approached the MRT. The learned President, MRT dismissed the appeal and thus the petitioners are before this court.

9. The learned advocate for the petitioners in both the

petitions Mr. Undre vehemently argued that the learned President MRT has committed irregularity. There is findings recorded that the great-grandfather of the petitioner was in possession of the suit land on tiller's day and they were shown to be protected tenants. This basic aspect is not considered by the learned SDO and by the learned President MRT. The revenue entries continuously show possession of the tenants over the property. There is findings recorded by the Civil Court in the year 1975 in favour of the petitioners. In WP/10108/2019 wherein specific issues were framed. So far as petition No.8740/2021 he submits that respondents were not party and prays for remand of both the matters.

10. The learned Advocate for the respondent Mr. Choudhari, for respondents vehemently argued that there are two lands i.e. 68/1, adm. 16-A 10-R and 68/2 adm. 7-R. There were two tenant Raghu and Nana. Forefathers of the respondents had filed an application for possession of the land for personal cultivation. That proceeding was initiated in 1959

against the predecessor of both the petitioners. By order dated 14-04-1960 the application was allowed. The said order was not challenged by Ghadge. The land to the extent of 8-A thus, was resume TO the Landlord. Thus the right of Ghadge was closed. Thereafter, civil suit was filed in 1963 and this order was not pointed out to the Tahasildar. Both the petitioners approached the Tahsildar without pointing out this position. The Deputy Collector, Osmanabad however, rightly considered all these aspects and allowed the appeals/revisions of the respondents on merit. It is rightly considered by the learned SDO that there is violation of principles of natural justice and same is rightly confirmed by the MRT. Thus, no interference is required.

11. In view of this, this court has to consider as to whether the judgment and order passed by the learned President is correct, whether any case is made out by the petitioner showing their right to get declaration under Section 38-E of the Hyderabad Tenancy and Agricultural Lands Act, 1950. While reversing the judgment of the Tahsildar, the learned SDO

considered that from the revenue record of 1951-1952, tenancy is shown to have been cancelled. No name of Ghadge appears on land Survey No. 68/1 and 68/2 in possession column in 7/12 extract since last twenty years. In tenancy proceeding the learned Tahasildar by judgment dated 14-04-2006 held that right of tenancy were on hold and therefore, no tenancy right could be given to them. It is also recorded that tenancy was terminated by order dated 21-03-1963. The Revision was preferred thereagainst also came to be rejected. The owner is in possession of the land only to the extent of ceiling area. No excess land was available with the owners. No record is available of payment of rent by tenant. The learned SDO, thus, recorded that the learned Tahasildar passed the order without making the respondent owner as party and passed the order. Therefore, the appeal came to be allowed.

12. From the order passed by the learned President, MRT it is seen that the learned President has also considered all the record available. It is specifically held that no enquiry was

held while fixing the purchase price in 14-11-1963. The land was within family holding of one family. The court considered section 38 (7) (c) of the Tenancy Act. Thus, if the land was to be purchased by the tenant no sufficient land would have been left with the owners and that was considered. It is further held that the learned Tahasildar without adding the Landlord as party has declared the petitioner as tenant. This order was against the record and confirmed the order passed by the learned SDO. To appreciate this case, this court considered the section 38 (e) and 38(7)(c) of the Hyderabad Tenancy Act which reads as under:-

“Section 38: Rights of protected tenant to purchase land:

(7) The right of a protected tenant or as the case may be, ordinary tenant under this section to purchase from his landholder the land held by him as a protected tenant or, as the case may be, ordinary tenant shall subject to the following conditions, namely;

*a. ****

*b. ****

*c. The extent of the land remaining with the landholder after the purchase of land by the tenant whether to cultivate personally or otherwise shall not be less than one family holding [***]*

Section 38 (E): Ownership of lands held by protected tenants to stand transferred to them from a notified date:

*Notwithstanding anything in this chapter or any law for the time being in force or any custom, usage, decree, contract or grant to the contrary, the Government may, by notification in the [Official Gazette], declare in respect of any area and from such date as may be specified therein that ownership of all lands held by protected tenants which they are entitled to purchase from their landholders, in such area under any provision of this Chapter shall [***] stand transferred to and vest in the protected tenants holding them as from such date the protected tenants shall be deemed to be the full owners of such lands:*

Provided that the transfer under this sub-section shall be

*subject to the conditions (a) and (b) mentioned in the sub-section (7) fo the section 38 and the further condition that the extent of the land remaining with the landholder after the purchase of the land by the protected tenant, whether to cultivate it personally or otherwise, shall not be less than twice the area of a family holding [***]*

Provided further that where in respect of any such land, any proceeding under sections 19, 19A or 32 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date on which such proceeding is finally decided and the tenant retains possession of the land in accordance with the decision in such proceeding.”

13. Considering all above & from reading section, it is clear that the learned Tahasildar though had passed the order in favour of the petitioners that was passed in absence of respondent/ owner. The parties have placed on record the judgment in RCS/817/2019 filed by Kundlik against the Landlord. In the said judgment, the learned Civil Judge Junior Division has dismissed the suit with cost. It is seen that the petitioners have thus failed to prove their right even before the Civil Court. The respondent has also produced on record the judgment in Civil Suit No. 75/1965 filed by one Suman Deshpande against the respondent for possession of the land and house property of the respondent wherein properties Survey No. 68/1 and 68/2 are also shown. Said suit also came to be dismissed as against present respondents. In the said suit Raghu

and Vithoba were directed to deliver symbolic possession to the plaintiffs from the land Survey No. 68/E and 68/2 by the judgment and order dated 29/08/1975. It is thus clear that they were not in possession. This fact also needs to be considered.

14. On considering above, this court does not find any right is vested in the petitioners. This court also does not find any perversity in the order passed by the MRT. There is no substance in the petitions. The petitions, therefore, deserves to be dismissed and same are dismissed. No order as to costs.

[KISHORE C. SANT, J.]

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