IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

27 WRIT PETITION NO. 13245 OF 2022

Madhav Sakharam Shinde & another ....Petitioners

VERSUS

Manohar Vishwanath Agrawal & others .....Respondents

.....

Mr. Sachin S. Deshmukh along with Mr. S. S. Jangada, Advocates for the Petitioners.
Mr. P. V. Mandlik, Senior Counsel instructed by Mr. P. P. Mandlik, Advocate for Respondent No. 1.

**CORAM : R. M. JOSHI, J.**
DATE : 20th JANUARY, 2025.

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. This Petition is a classic example as to how wise drafting and filing of applications may confuse the authorities which ultimately permit the parties to circumvent the provisions of law.

3. This Petition takes exception to the order passed by Maharashtra Revenue Tribunal dated 16.12.2022 whereby Revision Application No. 67/B/2018/H came to be allowed and judgment and

order passed by the Deputy Collector, Hingoli in Appeal No. 507/Appeal/Bhusudhar/TNC/CR-38/ED-00013/2017 dated 07.06.2018 is quashed and set aside and order passed by Tahsildar, Sengaon, on application bearing No.2017/ROR/Kavi/ dated 22.05.2017 came to be confirmed.

4. The facts as they appear from record are narrated in brief as under :-

Petitioners claim to be owner of the land bearing Survey No. 3, Gut No. 51, admeasuring 24 Acre situated at village Pawati, Tq. Sengaon, Dist. Hingoli (for short 'subject property') on the basis of registered sale-deed dated 09.10.1986 executed by protected tenant of the land, in whose favour tenancy certificate came to be issued under Section 38E of Hyderabad Tenancy and Agricultural Lands Act (for short 'the Act') in 1985. The tenants are the heirs of deceased Narayan who was declared as tenant in respect of the subject land by Competent Authority under the Act. This transfer is effected on the strength of said certificate issued under Section 50B of the Act. Thus Petitioners claim right, title, interest and possession of suit property on the basis of title document executed by heirs of the original tenant. On the basis of said document names of Petitioners were recorded in the revenue record. Thus, Petitioners claim absolute right over the subject land. It is claimed that the certificate issued under Section 38E of declaration as tenant of subject land, has not been challenged by the original landlords till date and the issue with regard to the tenancy has attained finality.

5. In the year 2010, Respondent No. 1, the heir of original landlord filed an application bearing No. 29-2010-LR/Appeal/TNC/CR.35 before the Deputy Collector, Land Reform, challenging transfer of subject land on the basis of certificate under Section 50B of the Act. This application came to be filed after 24 years of transfer without explaining delay. At the first instance, the said application came to be dismissed. The Maharashtra Revenue Tribunal (MRT) however in proceeding No. 21-A-2012-Hingoli, remanded the proceeding back to the Tahsildar for decision. This order was taken exception to in Writ Petition No. 3295/2014 however, the said petition came to be dismissed for want of prosecution. The order passed by MRT remanding the proceeding remained on record. Pursuant to the remand, the Tahsildar passed order dated 22.05.2017 allowing the application filed by Respondent No. 1 and thereby directed restoration of possession in favour of

Respondent No. 1 and cancellation of mutation entry Nos. 2, 3, 4 and 5. This order was taken exception to before the Deputy Collector in proceeding bearing No. KAVI-107/Appeal/LR/TNC/CR.38/ED-0001312017 successfully. This order passed by the Deputy Collector came to be assailed before the MRT in Revision No. 67/B/2018/H. By impugned order, the Tribunal set aside the order passed by the Deputy Collector and restored the order passed by the Tahsildar. It is further claimed that after death of Narayan (original protected tenant) in July 1964, possession is restored from land owner Vishwanath to survivors of Narayan and panchanma was prepared on 29.06.1970 to that effect. Further when issue of dispossession of Respondent Nos. 2 to 4 arose, Regular Civil Suit No. 115/1974 came to be filed before Civil Judge Senior Division, Hingoli. This suit was decreed and possession of the subject land was restored to Respondent Nos. 2 to 4. Since this judgment and decree is not challenged by any one, it has attained conclusiveness.

6. Learned counsel for Petitioners submits that on 28.07.1964, Narayan (now deceased) was declared as the protected tenant. On 29.06.1970, there was only handing over of the subject land in favour of Tukaram, who represented himself to be heir of

Narayan. He placed reliance on the order passed by the NTLR as well as the panchanama dated 29.06.1970 indicating handing over of the possession of the subject land to Tukaram. He contends that thereafter daughters of Narayan obtained heirship certificate from competent Court. Mutation entry was recorded in favour of daughters of Narayan in the year 1986 on the basis of declaration obtained by them with regard to they being the heirs of Narayan. According to him, since there was dispute with third party with regard to possession of the subject land, Regular Civil Suit No. 115/1974 came to be filed. The suit came to be decreed on 30.10.1982 and pursuant thereto possession of subject land is with them i.e. heirs of Narayan. It is submitted that an application was moved by the protected tenant under Section 50B of the Act for permission to transfer the subject land in favour of Petitioners. On 29.09.1986, sanction was granted by the Deputy Collector and pursuant thereto sale-deed came to be executed on 09.10.1986.

7. It is his submission that during the lifetime of original landlord, no objection was raised by him in respect of the said transaction so also about declaration of Narayan to be protected tenant and certificate under Section 38E of the Act. It is only after

his death in the year 2010, an application came to be filed purportedly under Section 50B of the Act challenging the order passed in favour of Petitioners granting sanction of sale of the subject land in their favour. It is his submission that in absence of any challenge to the certificate issued in favour of Narayan under Section 38E of the Act, it was not open for Respondent No. 1 to challenge the same even indirectly. This, according to him, amounts to violation of provisions of law which prohibit the challenge to issuance of such certificate beyond period of limitation. He drew attention of the Court to various orders passed and documents on record in support of his submissions that Narayan was declared as protected tenant so also certificate under Section 38E came to be issued in his favour and there is no challenge thereto till date and subsequent transfer of subject land in favour of Petitioners in accordance with law.

8. Learned counsel for Respondent opposed the Petition firstly on the ground that it is sought to be canvassed on behalf of the Petitioners that certificate under Section 38E of the Act came to be issued in favour of Narayan, no such certificate was ever placed on record. It is his submission that unless such certificate is there so also there is compliance of the conditions imposed in order dated

24.09.1986, it cannot be held that Narayan was a protected tenant of subject land. In response thereto, learned counsel for Petitioners has drawn attention of the Court to the memo of revision filed before Maharashtra Revenue Tribunal wherein in Ground No. 5 it is specifically stated that Respondent Nos. 3 to 5 have obtained tenancy certificate in the year 1985. It is his contention that in view of the said admission, there is no substance in this submission.

9. Learned counsel for Respondent, on merit, sought to support the impugned order by referring to the observations made by the Revenue Tribunal in Paragraph Nos. 18 to 22. It is his submission that once the Tribunal finds that Kishan was in possession of the subject land, Narayan could not have been declared as the protected tenant. Similarly, he drew attention of the Court to the observations made with regard to the decree passed by Civil Court contending that the said decree is not binding on Respondent No. 1 herein as well as tenancy authorities.

10. In order to appreciate the submissions made across the bar, it would be relevant to take note of the provisions of the Act. Section 38E of the Act reads as under :-

**Section 38E**

1[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 2[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 3* * * * stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such lands :

3[Provided that the transfer under this sub-section shall be subject to the conditions (a) and (b) mentioned in sub-section (7) of 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 :

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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].

5[Explanation.--If a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of the Tahsildar as provided in section 32 is not in possession of the land on the date of the notification issued hereunder then for the purpose of the sub-section, such protected tenant shall notwithstanding any judgment, decree or order of any court, or the order of a Revenue Board or Revenue Tribunal or other authority, be deemed to have been holding the land on the date of the notification; and accordingly, the Tahsildar shall notwithstanding anything contained in the said section 32, either suo motu, or on the applications of the protected tenant hold summary enquiry and direct that such land in possession of the landholder or any person claiming through or under him in that area, shall be taken from the possession of the landholder or such person, as the case may be, and shall be restored to the protected tenant and the provisions of this section shall apply thereto in every respect as if the protected tenant had held the land on the date of such notification with the modification that in sub-section (8), for the words, figures and brackets “Within 90 days from the date specified in the notification under subsection (1)” the words, figures and brackets “Within 90 days from the date of restoration of the possession under the Explanation to sub-section (1)" shall be substituted].

(2) A certificate in the prescribed form declaring him to be owner shall be issued by the Tribunal to every such protected tenant and notice of such issue shall simultaneously be issued to the landholder. Such certificate shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder and all other persons having any interest therein :

Provided that when the land held by a protected tenant happens to be an "Inam" the Tribunal shall not issue such a certificate unless the previous sanction of the Government has been obtained.

(3) Within 90 days from the date specified in a notification under sub-section (1) every landholder of lands situated in the area specified in such notification shall file an application before the Tribunal for the determination of the reasonable price of his interest in the land which has been transferred to the ownership of a protected tenant under sub-section (1) 6[and if an application is not so filed within such period by a landholder but a certificate under sub-section (2) has been issued, the Tribunal may suo motu proceed to determine such price and thereupon]

all the provisions of subsections (4) to 7[(9)] of section 38 shall mutatis mutandis apply to such application :

Provided that if the protected tenant commits default in respect of any instalment, it shall be recovered by the Government as arrears of land revenue and paid to the landholder :

Provided further that if the whole or any part of the price due to the landholder cannot be recovered as arrears of land revenue, the transfer shall not be effective and the amount, if any, already paid by the protected tenant towards the price shall be refunded to him together with interest at three per cent. per annum and the land revenue paid by him, if any, after deducting therefrom the rent for the period].

This provision indicates that the certificate issued by the authority under the tenancy act is conclusive evidence of the person being held to be protected tenant. Such declaration can be challenged in a proceeding initiated under Section 35 of the Act. Section 35 of the Act reads thus :-

Section 35 - Decision on claims

(1) If any question arises whether any person, and if so what person, is deemed under section 34 to be a protected tenant in respect of any land, the landholder, or

any person claiming to be so deemed, may, within one year from the commencement of this Act, apply in the prescribed form to the Tahsildar for the decision of the question and the Tahsildar shall, after enquiring into the claim or claims in the manner prescribed, declare what person is entitled to be deemed to be a protected tenant or, as the case may be, that no person is so entitled.

(2) A declaration by the Tahsildar that the person is deemed to be a protected tenant or, in the event of an appeal from the Tahsildar's decision such declaration by the Collector 1[on appeal], shall be conclusive that such person is a protected tenant and his rights as such shall be recorded in the Record of Rights or, where there is no Record of Rights, in such village record as may be prescribed.

Thus the order of issuance of certificate under Section 38E of the Act, could be challenged within a period of an year, and application can be filed in the prescribed form to the Tahsildar for decision.

11. It is thus clear that for the purpose of taking exception to the status of Narayan as protected tenant, there is specific provision/remedy available. Undeniably, no such remedy is

exhausted. Pertinently, the certificate is issued in the year 1985 whereas for the first time any proceeding is filed on behalf of the original landlord in the year 2010. Thus question arises as to whether it is open for the Respondent No. 1 to take exception thereto, by filing proceedings under Section 50B read with 98C of the Act.

12. In this backdrop, if the contention of Respondent No. 1 is considered, then the same is not supported by provisions of the Act. Section 50-B of the Act contemplates restriction on transfer of land purchased or sold under this Act, and no land purchased by tenant under Sections 38, 38A, 38B etc. or sold to any person under Sections 53A, 53B, 96 shall be transferred without the previous sanction of the Collector. Thus, when there is case made out of there already being transfer of said land by protected tenant in favour of the Petitioner, the only limited issue which would fall for consideration of the authority is to consider as to whether it was with previous sanction. Admittedly, such sanction is obtained and document placed on record confirms the said fact. In the instant case, what is sought to be done by Respondent No. 1 is that under the guise of filing this application under Section 50B, which according to him is read with Section 98C i.e. disposal of land or

alienation thereof in fact challenge is raised to the status of Narayan as Tenant.

13. The order passed by MRT precisely proceeds on the footing that Narayan could not have been declared as protected tenant, for the reason that Kishan's name appeared in 7/12 extract. In the light of the nature of proceeding, this observation is wholly impermissible. When there is no challenge to the certificate of tenancy, it is not open for challenge the same except under Section 35 of the Act and not even indirectly. If independently such proceeding was taken out to the challenge of the certificate under Section 38E, the same would have been hopelessly barred by limitation. In the situation, this novel idea is adopted to challenge the transfer and under the guise of the same to take exception to the tenancy certificate. Before this Court, case of the Respondent is based upon the fact that there is no Section 38E certificate issued in favour of Respondent Nos. 2 to 4, heirs of Narayan. This case, however, gets falsified by submission of Respondent No. 1 himself before the revenue tribunal. As recorded hereinabove, there is candid statement made to the effect that tenancy certificate was obtained by Respondent Nos. 3 to 5 in the year 1985. The admission of party is

best evidence. Though further it is averred that the notary amount is not deposited nor there is following of the provisions and other contentions. Having regard to the nature of proceeding in no circumstance the said issue could have been gone into in this proceeding.

14. Moreover, only for the reason of non availability of record with concerned authority, it cannot be presumed that no certificate under Section 38E of the Act came to be issued in respect of the subject land. In this regard, it is pertinent to note that a specific plea was raised by Petitioner before the Tahsildar with regard to issuance of certificate under Section 38E of the act in favour of heirs of protected tenant Narayan. Similarly, document on record though indicates that initially possession of the subject land was given to Tukaram, however, the said document itself demonstrates that in the capacity of heir of Narayan he has received said possession and not in his own rights. Thus, it cannot be permitted to say now that Tukaram had taken possession on behalf of his father Kishan i.e. the person who Respondent No. 1 claims to be the tenant in respect of the subject land. It is thus clear from the order of Tahsildar that it was within the knowledge of Respondent No. 1 since beginning of the

filing of the said proceeding that there exists certificate under Section 38E of the act in favour of the heirs of deceased Narayan, but consciously no exception is taken thereto.

15. Now, it cannot be permitted to argue on behalf of Respondent No. 1 that since there was no certificate under Section 38A of the act placed on record, the same need not be considered. It was open for Respondent No. 1 to take a plea that the certificate issued is void abinitio or is obtained by fraud or there was no need to file any separate proceeding as even in collateral proceeding such objections could have been raised. Such plea is absent.

16. Suffice it to say that filing of the application by Respondent No. 1 was aimed at nothing but to circumvent the provisions of the Act and to some extent this respondent was even successful before the Tahsildar and Maharashtra Revenue Tribunal. These orders, however, being contrary to the provisions of the Act, cannot sustain.

17. Hence, petition stands allowed. Impugned order dated 16.12.2022 passed by MRT is set aside. Order of Deputy Collector

stands restored. Proceeding bearing No. 2017/ROR/Kavi before Tahsildar stands dismissed.

**( R. M. JOSHI)**
**Judge**

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