

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2251 OF 2002

Vijaysingh Khanderao Gaikwad

.. Petitioner

Versus

Pandurang Vithal Shinde (Bhat)
(since deceased) through heirs

Omkar Pandurang Shinde (Bhat) & Ors.

.. Respondents

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- Mr. U.P. Bobade i/by J.H. Ramugade a/w Mr. P.G. Chandeliya, Advocates for Petitioner
 - Mr. P.N. Joshi for Respondent Nos. 1(a), 1(c), 1(d) & 1(e)
-

CORAM : MILIND N. JADHAV, J.

DATE : JULY 02, 2025

P. C.:

1. Heard Mr. Bobade, learned Advocate for Petitioner and Mr. Joshi, learned Advocate for Respondent Nos. 1(a), 1(c), 1(d) & 1(e).

2. Present Writ Petition challenges the judgment & order dated 02.03.2001 passed by Additional Commissioner, Pune Division, Pune partially allowing Revision Application filed under Section 73(A)(3) of **The Maharashtra Tenancy and Agricultural Lands Act, 1956** (for short "said Act").

3. Essentially the dispute between the parties is with respect to determination of Application under Section 43-1B of the said Act. However by virtue of the impugned judgment & order, the twin orders dated 22.07.1999 and 07.06.2000 passed by the ALT - Tahsildar,

Karveer and Additional Collector were set aside and Tenancy Appeal No. 1/1999 was remanded back to the Tahsildar Collector, Kolhapur for fresh consideration.

4. According to Mr. Bobade, learned Advocate for Petitioner the impugned judgment & order is not sustainable because the order dated 22.07.1999 passed by Tahsildar, Karveer appended at page Nos. 32-39, Exh. 'C' and the order in Appeal dated 07.06.2000 passed by Additional Collector, Kolhapur have been correctly passed and the said Statutory Authorities have correctly adjudicated the proceedings under Section 43-1B of the said Act. He would therefore persuade the Court to set aside the judgment & order passed in Revision by the Additional Commissioner which is challenged in the present Petition.

5. Before I advert to the submissions of the learned Advocates on merits, to appreciate the dispute between the parties, it would be necessary to delve into the relevant facts.

6. The suit land is described as Gat No. 607 having an area admeasuring 3.37 Hectares (8 Acres 18 Gunthas and assessed at Rs. 35.62) situated in Village Karveer, Dist. Kolhapur. According to Petitioner on 18.03.1957, there was a partition effected between Petitioner's father and Petitioner's uncle whereby by virtue of the said partition, Petitioner's father became entitled to certain Rayatawa and

Inam lands. Thereafter on 25.03.1957 partition was effected of the said lands between the Petitioner's father and Petitioner pursuant to which Petitioner became entitled to the suit land situated at Village Bachani, Taluka Karveer, District Kolhapur.

7. Petitioner is retired from the army. On 15.03.1991, he issued a notice for termination of tenancy under the provisions of Section 43-1B to Respondents / predecessor of Respondents who was tenant of the suit land. On 02.04.1991 Petitioner filed Application before the Agricultural Land Tribunal (ALT) - Tahsildar, Karveer under Section 43-1B against Respondents seeking determination of the subject land to be the holding of Petitioner. On 12.10.1992, Application of Petitioner was allowed and it was held that Petitioner was not a member of the joint family and the suit land was not joint family property and consequently Petitioner held it as sole owner. On 05.12.1992, Collector, Kolhapur in Tenancy Case No. 2/1991 allowed Petitioner's claim and Application and terminated tenancy of Respondents, which order was confirmed by Additional Commissioner in Revision Application on 09.02.1993. Respondents filed Writ Petition No. 5222/1992 in this Court against the aforesaid order but later on withdrew the said Petition with liberty to file fresh Petition. Thereafter Respondents filed Writ Petition No. 189/1993 in this Court wherein by order dated 24.02.1993, the orders passed by ALT, Collector and

Additional Commissioner were set aside and Tahsildar, Karveer was directed to decide afresh the share of Petitioner landlord in the land of joint family held by him. After the above remand, Tahsildar declined to answer and concluded that Petitioner was sole owner of the suit land and not member of the joint family which order was once again set aside by the High Court while remanding the matter back to the Tahsildar, Karveer to examine the claim of Petitioner *qua* his share in the joint family property and accordingly decide his Application. Before the Tahsildar, Karveer, Petitioner submitted his own affidavit dated 27.11.1998 along with affidavits of his mother and brother and his statement was recorded on 08.02.1999.

8. According to Petitioner's case, he was in physical possession of the subject land since 25.03.1957 when partition was effected between his father and himself and he claimed to have received his share including the subject land. It was Petitioner's case that by consent of his family members, he occupied the share which belonged to him out of family's total Rayatawa lands as also Inam lands. Petitioner referred to an order dated 14.10.1994 passed in Writ Petition No. 940/1991 contending that share of Petitioner's family joint property - land was decided by the High Court by virtue of the said order. It was Petitioner's contention that when division of family's land took place, Petitioner purposely took a lesser share out of the said

land with the hope of procuring land held by the Respondents as tenants after their eviction. Petitioner based his submissions on the provisions of Section 43-1B of the said Act since he was a retired army person and his family was a holding Rayatawa land and Inam land which was partitioned.

9. *Prima facie* it is seen that before the Tahsildar, Karveer case of Petitioner was based on partition of the family land coming to his share on a notional basis without the same having been partitioned as a consequence of law. It is also an admitted position that insofar as Inam lands were concerned, they were partitioned much later in the year 1987.

10. Mr. Bobade, learned Advocate for the Petitioner has argued to contend that the order passed by the Tahsildar, Karveer and upheld by the Additional Collector has been correctly passed holding that Petitioner was the independent owner of the suit land and was in possession / entitled as a consequence of partition having taken place in 1957 and therefore was entitled to maintain Application under Section 43-1B of the said Act. He would therefore attempt to persuade the Court to uphold the twin orders and reject the impugned order in Revision, wherein the Commissioner has come to the conclusion that the Application filed under Section 43-1B deserves to be reheard in

accordance with law. Hence he would persuade the Court to make the Petition absolute.

11. *Per contra*, Mr. Joshi, learned Advocate for Respondents would draw my attention to the provisions of Section 43-1B to lay stress on the contents of the said provision in the facts of the present case. He would submit that it is an admitted position that partition though alleged to have been effected between the father of Petitioner and Petitioner in 1957, it was however not done by metes and bounds and more specifically with due regard to area, assessment, classification and value of the suit land out of the family land held by Petitioner's family. He would vehemently submit that on 18.03.1957 first partition took place between Petitioner's father and Petitioner's uncle and it is Petitioner's claim that immediately thereafter within one week on 25.03.1957, there was a notional partition between his father and Petitioner of the land holding which came to the share of Petitioner's father. He would submit that since 1957 onwards until the Petitioner filed his Application for the first time in 1991 under Section 43-1B, admittedly there has been no partition of Petitioner's share and holding by metes and bounds which is a *sine qua non* for maintainability of Application by an army person under Section 43-1B of the said Act. He would therefore submit that for maintainability of Petitioner's Application under Section 43-1B unless Petitioner proves

that his share and holding came to him by virtue of partition done by metes and bounds with respect to the quality, area, share and assessment as contemplated by the provisions of Section 43-1B, Petitioner cannot agitate his grievance under Section 43-1B being an army person.

11.1. That apart Mr. Joshi would persuade me to consider the fact that even according to Petitioner's own case, Petitioner has got a larger share than what he would be entitled to in the subject land on a notional partition because according to Petitioner, Petitioner's mother had refused to accept her share in the partition between the family members and Petitioner's sister was not entitled to any share at the then time. He would therefore submit that Petitioner was holding his share by virtue of an unequal partition within his family without actually holding possession of his share coming to him after it having been divided by metes and bounds out of the family property - land.

11.2. That apart he would submit that admittedly Inam lands were partitioned in the year 1987 much belatedly. He would submit that when the partition had not been effected by metes and bounds, case of Petitioner would not be maintainable under Section 43-1B which has been duly considered by the Commissioner in his Revision order and remand has been directed. He would therefore submit that the order of remand passed in Revision proceedings is a correct order to

determine the rights of parties *qua* the subject land in consonance with the provisions of Section 43-1B of the said Act in accordance with law.

12. I have heard the submissions made by Mr. Bobade and Mr. Joshi, learned Advocates for the respective parties and perused the record of the case. Submissions made by the respective Advocates have received due consideration of the Court.

13. From the record of the case, it is seen that both the parties have referred to partition of lands belonging to Petitioner which is the subject matter of the present Petition. According to Petitioner, he claims to be the sole owner of land since 25.03.1957. However Petitioner has not been able to show to the Court whether the suit land have been partitioned by metes and bounds at any point of time between himself and his father or other family members. In absence of Petitioner not been able to show the aforesaid partition having been done by metes and bounds, I am not inclined to accept the case of Petitioner *per se*. In this regard, attention is drawn to the provisions of Section 43-1B of the said Act which reads thus:-

"43-1B. Right of landlord to terminate the tenancy

(1) Notwithstanding anything contained in the foregoing provisions of this Act, but subject to the provisions of this section, it shall be lawful to a landlord at any time after the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964, to terminate the tenancy of any land and obtain possession thereof, but—

(a) of so much of such land as will be sufficient to make up the total land in his actual possession equal to the ceiling area; and

(b) where the landlord is a member of joint family, only to the extent of his share in the land (not exceeding the ceiling area) held by the joint family, provided that, the Mamlatdar on inquiry is satisfied that such share has (regard being had to the area, assessment, classification and value of land) been separated by metes and bounds in the same proportion as his share in the entire joint family property and not in a larger proportion.

(2) No tenancy of any land shall be terminated under sub-section (1), unless a notice in writing is given to the tenant, and an application for possession under sub-section (3-A) of section 29 is made to the Collector :

Provided that in the case of a landlord who has ceased to be serving member of the armed forces, such notice shall be given and application made within two years from the date of such cesser; and if he dies before the expiry of these two years without giving such notice or making such application, then within two years from the date of his death.

(3) Nothing in this Chapter shall—

(a) apply to a tenancy of land created (after obtaining possession thereof under the provisions of this Chapter) by a landlord who has ceased to be a serving member of the armed forces; but the provisions of section 32O shall apply to such tenancy as they apply in relation to a tenancy created after the tiller's day;

(b) entitle a landlord who has ceased to be a serving member of the armed forces (as a result of his being duly dismissed or discharged after a court martial or on account of bad character or as a result of desertion) or who has not been attested, to terminate the tenancy of his land under this section.

(4) Nothing in the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, shall affect the termination of any tenancy under this Chapter."

14. *Prima facie* perusal of the aforesaid provision clearly records that the said provision deals with share accruing to an army person in the land belonging to the joint family. It is seen that in the year 1964, a separate chapter was introduced in the Maharashtra Tenancy and

Agricultural Lands Act for army personnel. Case of Petitioner pertains to his right having been exercised by him under Section 43-1B of the said Act.

15. Though Mr. Bobade has vehemently argued that by virtue of the order of Tahsildar, share of Petitioner has been determined in the joint family property coming to 96 acres 23 guntahs and assessed to 342.49 after undertaking the exercise by the Tahsildar, it is *prima facie* seen that the said exercise which has been undertaken by Tahsildar is primarily on notional basis for determining the share of Petitioner and it is not a division of the joint family property by metes and bounds. In the order of Tahsildar which is heavily relied upon by Petitioner dated 07.06.2000, it is categorically stated that share of Petitioner has been arrived at after attempting a notional exercise (*emphasis supplied*) and there has been no distribution or division of Petitioner's share by metes and bounds. If Petitioner's right under Section 43-1B is required to be invoked, it would entail that Petitioner is the sole owner of the subject land which has come to his share from the joint family property after effecting partition by metes and bounds. Since that is not the case before me and all that Petitioner has referred to and relied upon is the incidnet of partition on 25.03.1957 between his father and himself pursuant to partition between the Petitioner's father and Petitioner's uncle on 18.03.1957, it is *prima facie* seen that partition

was not by metes and bounds. That apart the record indicates that joint family property was partitioned subsequently in the form of compromise at the forum of the Court which is a third partition and in 1987 the Inami lands belonging to the family were partitioned and therefore none of these partitions bring out to the fore the fact that the joint family property - share which accrued to the share of Petitioner was divided by metes and bounds. While considering the partition of joint family property by metes and bounds, it would entail division of property consisting of houses, well, share in the well, trees, share in the trees, easementary rights, share in the agricultural holdings right of way etc. In that view of the matter, I am in agreement with the findings returned by the Additional Commissioner in his Revision Order that the partition which has been relied upon by Petitioner should throw some light on the partition having been effected by metes and bounds to the extent of the share coming to the Petitioner of which he claims to be the sole owner.

16. Mr. Bobade has placed before me a recent decision of this Court dated 15.04.2025 (Coram : Amit Borkar, J.) in an indential case according to him which squarely applies to the present case at hand. This decision is passed in Writ Petition No. 3731/1999 in the case of ***Ganpati Bhau Kavalie (Patil) & Ors. v. Vijaysingh Khanderao Gaikwad.*** Respondent therein is the Petitioner before me. In that decision in

similar circumstances the High Court has upheld the order of the subordinate Court and directed possession of the land to be given to the Petitioner in proceedings under Section 43(2)B of the said Act. This order of the High Court is upheld by the Supreme Court. Hence he would submit that the the present Petition also deserves to be allowed. I have perused the decisions of the High Court and Supreme Court in that case. It concerns land in Village Male, Taluka Panhala, District Kolhapur for which Court has considered the Partition Deed in the case of Petitioner, rent receipts duly produced by him to show and prove that he was the tenant. Such facts are absent in the present case. Land in the present case is situated in Village Bachani, Taluka Karveer, District Kolhapur. Opponents are different parties. Facts governing opponents are completely different. Merely because Petitioner is a common party, *ipso facto* the facts in that case cannot apply for a decision in the present case. Each case is governed on the basis of its own facts and evidence. Facts and evidence have been discussed herein above in the present case. Petitioner has miserably failed to produce any iota of evidence as discussed in the foregoing paragraphs. Hence reliance on the above decision by Mr. Bobade is completely misplaced for arrivaing at a decision in the present case.

17. In view of my above observations and findings and *prima facie* facts governing the present case emanating from the record, I am

inclined to accept the submissions made by Mr. Joshi and sustain the decision of Additional Commissioner, Pune Division, Pune in his order dated 02.03.2001. The order dated 02.03.2001 is upheld and confirmed.

18. At the joint request of Mr. Bobade and Mr. Joshi and after considering the aforesaid timeline and remand of the case for re-examination of the issue of Partition in the light of observations made by Additional Commissioner in his order dated 02.03.2001, I am inclined to direct the concerned Court namely the Tenancy - ALT Court to decide the Application of Petitioner in Tenancy Case No. 11/1992 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law and after hearing all concerned parties including the Petitioner and Respondents.

19. Needless to state that all contentions of the Petitioner and Respondents are expressly kept open before the Tenancy Court and the concerned Court shall not be influenced by any of the observations and findings made in the present order or in any of the orders passed by the Revenue Officers, save and except the directions contained in the order dated 02.03.201 passed by the Additional Commissioner, Pune remanding hearing of the Tenancy case No.11 of 1992 before the Tenancy Court.

20. With the above directions, Writ Petition is disposed.

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[MILIND N. JADHAV, J.]

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by RAVINDRA
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