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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3731 OF 1999

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Ganpati Bhau Kavale (Patil)
Since Deceased Through His
Legal Heirs & Ors.

... Petitioners

V/s.

Vijaysingh Khanderao Gaikwad

... Respondent

Mr. Ashwin R. Kapadnis for the petitioners.

Mr. Joel D'Souza i/by Suresh M. Kamble for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2025

P.C.:

1. By this Writ Petition under Article 227 of the Constitution of India, the petitioners have invoked the supervisory jurisdiction of this Court assailing the legality, validity and propriety of the judgment and order passed by the learned Additional Commissioner, Pune Division, Pune, whereby the Revision Application filed by the petitioners came to be dismissed, thereby confirming the judgment and order passed by the learned Additional Collector, Kolhapur. By the said order, the learned Additional Collector had allowed an application under Section 43-2B of the Bombay Tenancy and Agricultural Lands Act, 1948

(hereinafter referred to as "the BTAL Act") directing delivery of possession of the suit land in favour of the respondent, who is a person belonging to the armed forces.

2. The facts giving rise to the filing of the present Writ Petition, in brief, are as under:

The land in question is an agricultural land bearing Gat No.18, admeasuring 1 hectare 78 R and 0.1 R pot kharaba, situate at village Male, Taluka Panhala, District Kolhapur (hereinafter referred to as "the suit land"). The respondent, claiming to be a retired Colonel from the Indian Army, filed an application under Section 43-1B of the BTAL Act seeking possession of the suit land. It is the case of the respondent that he is the owner of the suit land and the petitioners are the tenants in possession thereof. The respondent contended that after his retirement from military service, he requires the suit land for personal cultivation as a means of livelihood. Consequently, he issued a notice to the petitioners terminating their tenancy as contemplated under Section 43-1B(2) of the BTAL Act and thereafter instituted proceedings under Section 29(3-A) of the said Act seeking possession.

3. The reply filed by the petitioners to the said application is not available on record. However, from the written submissions filed by the petitioners before the authorities below, the contentions raised by the petitioners can be summarised thus: The petitioners contended that the respondent has not produced the original partition deed which forms the basis of his ownership

claim. It was further contended that the respondent had only filed a photocopy of the alleged partition deed which was neither duly proved nor admissible in evidence. Even assuming the partition deed dated 25th March 1957 to be proved, it was urged that the said partition was contrary to the settled principles of Hindu Law, as the mother, who was entitled to a share, had not been allotted any share in the partition. It was also contended that the partition was not effected by metes and bounds and, therefore, could not confer exclusive ownership rights upon the respondent. The petitioners further questioned the genuineness of the rent receipts produced by the respondent.

4. Upon consideration of the pleadings and material placed on record, the learned Additional Collector framed the necessary issues, inter alia, as to whether the respondent is a member of a joint Hindu family, and if so, whether he could legally terminate the tenancy; whether the rent receipts were duly proved; and whether the respondent had established that he was duly retired from military service.

5. On appreciation of the evidence, the learned Additional Collector recorded a categorical finding that the respondent was not a member of a joint family in respect of the suit land and had proved his independent ownership. The learned Additional Collector further held that the respondent had duly proved the rent receipts and his retirement from the Indian Army. In view thereof, the authority allowed the application filed by the respondent and directed the petitioners to hand over possession of the suit land.

6. Being aggrieved, the petitioners preferred a Revision Application before the learned Additional Commissioner, Pune Division, Pune. The learned Additional Commissioner, after reappreciating the material on record, concurred with the findings recorded by the learned Additional Collector and dismissed the Revision Application. The concurrent findings of fact recorded by the authorities below, after due appreciation of evidence, have thus led to the filing of the present Writ Petition by the petitioners.

7. Learned Advocate appearing for the petitioners submitted that the respondent had failed to establish, by cogent and admissible evidence, that he was serving in the military. It was submitted that the respondent had also failed to prove the factum of partition and that the suit land had been allotted to him pursuant to such partition. The learned Advocate submitted that only a photostat copy of the purported registered partition deed of the year 1958 was produced on record, along with photostat copies of certain rent receipts. In absence of production and due proof of the original documents, it was contended that the authorities exercising powers under the BTAL Act ought not to have relied upon such secondary evidence, and consequently, could not have directed delivery of possession of the suit land to the respondent. Reliance was placed by the learned Advocate for the petitioners on the judgment of this Court in the case of *Mannappa Rana Patil v. Narsingrao Ganpatrao Dalavi and Others*, reported in 1992 Mh.L.J. 1037, to contend that where the landlord belongs to a joint family, his entitlement under Section 43-1B of the BTAL Act is restricted only to the extent of his share in the joint

family property. It was, therefore, submitted that unless and until the respondent established his exclusive ownership over the suit land or the exact extent of his share therein, no order for possession could have been passed. On these submissions, it was urged that both the authorities below erred in appreciating the material placed on record and recorded findings which are perverse and contrary to law. It was, thus, submitted that the impugned orders are liable to be quashed and set aside.

8. Per contra, the learned Advocate appearing on behalf of the respondent supported the concurrent findings recorded by the authorities below. It was submitted that the partition deed dated 9th March 1957 was duly registered on 18th March 1957 and the authenticity of the said partition deed was never seriously disputed before the authorities below. The learned Advocate submitted that the contention that the suit land was not allotted to the respondent in partition was never raised before the original authority or before the revisional authority and, therefore, it is not open for the petitioners to raise such a plea for the first time before this Court in exercise of writ jurisdiction. It was further submitted that pursuant to the said registered partition deed, a Mutation Entry bearing No.7345 came to be recorded in the year 1982, which categorically reflects that the suit land stood allotted to the share of the respondent. It was urged that the revenue records, including the Mutation Entry, remain undisturbed and the same further substantiate the respondent's claim of ownership.

9. The learned Advocate contended that the authorities under the BTAL Act had rightly concluded that the requirements of

Section 43-1B of the said Act were duly satisfied, namely, that the respondent was a person who had served in the armed forces, had retired, and bona fide required the land for personal cultivation for livelihood. It was submitted that the proceedings initiated by the respondent were in strict compliance with the statutory scheme and, therefore, no interference is warranted in the well-reasoned concurrent orders passed by the authorities below.

10. Rival contentions fall for consideration.

11. On careful perusal of the record, it emerges that the respondent had duly complied with the statutory requirement of issuing a notice in writing to the tenant before seeking possession, as mandated under Section 43-1B(2) of the BTAL Act. The respondent produced on record a copy of the letter issued by one Sudarshan Kaur, S.C.S.D., Sahayyak Sena Sachiv/Sevanivrutte, certifying that the respondent stood retired from the military service on 30th April 1994. The notice of termination came to be issued to the petitioners on 25th May 1995. The application for possession under Section 29(3-A) of the BTAL Act was filed on 24th April 1996, within the statutory period. The petitioners, during their examination-in-chief and in the course of cross-examination, have admitted receipt of the said notice. In view of the settled law that admission is the best evidence against the maker thereof the said admission duly proves compliance with the procedural requirement of notice.

12. The principal contention raised on behalf of the petitioners that the respondent had failed to prove that the suit property was

allotted to him under the registered partition deed dated 18th March 1957, does not merit acceptance. On perusal of the registered partition deed placed on record, it is evident that Revision Survey No.4, situate at village Male, Taluka Panhala, District Kolhapur, was allotted to the share of the respondent. The learned Advocate for the petitioners attempted to contend that the suit property bears Gat No.18, whereas the property mentioned in the partition deed is Survey No.4. However, the rent receipts placed on record by the respondent disclose that the predecessors-in-title of the petitioners had paid rent to the respondent, and the said receipts refer to Survey No.4 at village Male. Furthermore, the petitioners, in their cross-examination, have unequivocally admitted payment of rent to the respondent.

13. Additionally, Mutation Entry No. 7345 has been duly recorded in the year 1982, incorporating the respondent's name as the exclusive owner of the property, pursuant to the registered partition deed dated 18th March 1957. It is a settled principle of law that mutation entries, though not documents of title, are evidence of possession and recognition of ownership. Thus, the cumulative effect of the partition deed, rent receipts, and mutation entry establishes the respondent's exclusive ownership over the suit property, negating the contention that the property is still joint family property.

14. As regards the contention raised by the petitioners that a certificate under Section 32M of the BTAL Act had been issued in their favour, the record indicates that the said certificate pertains to Gat No.2, whereas the suit property is Gat No.18. Therefore, the

reliance placed by the petitioners on the Section 32M certificate is clearly misplaced. It is not open for the petitioners to assert ownership over the suit property by virtue of the said certificate which pertains to an altogether different survey number.

15. The next limb of the argument advanced by the petitioners pertains to the evidentiary value of the documents produced by the respondent, being photostat copies. It is true that under the strict provisions of the Indian Evidence Act, secondary evidence requires due foundational proof. However, it is well-settled that the proceedings under the BTAL Act are summary in nature and not strictly governed by the rigours of the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. Quasi-judicial authorities need not follow the strict rules of evidence applicable to regular civil suits, and are expected to act on principles of natural justice. The authorities under the BTAL Act are to decide cases based on preponderance of probabilities rather than strict proof.

16. In the facts of the present case, the petitioners have not seriously disputed the contents of the partition deed before the first authority. Their contention was limited to challenging the allotment of the suit property. In such circumstances, it was not incumbent upon the respondent to prove the partition deed strictly in accordance with the requirements of the Evidence Act.

17. The learned Advocate for the petitioners placed reliance on the judgment of this Court in *Mannappa Rana Patil v. Narsingrao Ganpatrao Dalavi and Others* (1992 Mh.L.J. 1037) to contend that a landlord who is a member of a joint family is entitled to recover

possession under Section 43-1B only to the extent of his share. The said proposition is well settled. However, in the present case, the factual matrix reveals that the respondent had become exclusive owner of the property in dispute by virtue of the partition deed dated 18th March 1957, which has been duly registered and acted upon, as reflected in the revenue records. Hence, the ratio laid down in *Mannappa Rana Patil* (supra) is not attracted to the facts of the present case.

18. In view of the aforesaid discussion, it is evident that the respondent had duly satisfied all the ingredients of Section 43-1B of the BTAL Act. The authorities below have concurrently recorded findings based on appreciation of the evidence on record, which are neither perverse nor suffer from any material irregularity warranting interference in the limited supervisory jurisdiction under Article 227 of the Constitution of India.

19. Accordingly, I am of the considered opinion that there is no merit in the present writ petition. The writ petition is, therefore, dismissed. There shall be no order as to costs.

20. Pending interlocutory application(s), if any, stand disposed of.

21. At this stage, learned Advocate for the petitioners states that the interim relief granted during pendency of the writ petition be continued. Considering facts of the case, interim relief is continued for a period of four weeks from today.

(AMIT BORKAR, J.)