

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.442 OF 2024

Jayantilal Hukumand Gujar/Shet & Ors.

....Petitioners

V/S

Saraswati Balu Mahadik

....Respondent

Mr. Rohit D. Joshi *for the Petitioners.*

Mr. Sagar G. Talekar *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 17 FEBRUARY 2025.

ORAL ORDER :

1. The Petition challenges order dated 4 December 2023 passed by Maharashtra Revenue Tribunal, Mumbai (**MRT**) dismissing the revision preferred by Petitioners and confirming the order dated 29 March 2022 passed by Sub Divisional Officer, Roha (**SDO**) and the order dated 22 October 2021 passed by Tahsildar and Agricultural Lands Tribunal (**ALT**) fixing purchase price of the land under provisions of Section 32E of the Maharashtra Tenancy and Agricultural Land Act, 1948 (**the Act**).

2. I have heard Mr. Joshi, the learned counsel appearing for the Petitioners and Mr. Talekar, the learned counsel appearing for the Respondent.

3. Mr. Joshi has mainly attacked the orders passed by ALT, SDO and MRT on the ground that the previous proceedings were merely remanded by the MRT by order dated 21 September 2018 and instead of reconsidering the remanded proceedings, the ALT erroneously permitted the Respondent to file fresh proceedings under Section 32G of the Act in the form of initially a plain application dated 29 May 2018 followed by a detailed application dated 22 November 2018. I however find this objection to be too technical in nature. The remit of enquiry before the ALT was merely to fix the purchase price of the tenanted land under provisions of Section 32G of the Act. Since Petitioners denied existence of landlord tenant relationship, the ALT was also required to conduct an enquiry into the tenancy claim of the Respondent *qua* the land. The ALT has conducted such an enquiry in the remanded proceedings and merely because the Respondent-tenant was granted an opportunity to file additional pleadings in new application, the same would not amount to a gross error for warranting interference in the order passed by the ALT. The objection about permissibility to file fresh application after remand of proceedings by MRT is accordingly rejected.

4. Mr. Joshi would then contend that on merits Respondent was not able to produce any document before the ALT to demonstrate that there was any rent agreement executed between the parties nor she produced any rent receipt. He would submit that the land was not suitable for cultivation and was

otherwise impossible for the Respondent to personally cultivate the land as on the Tillers day. He would submit that in absence of any iota of evidence about personal cultivation of the land by Respondent as on the Tillers day, she has erroneously been accepted as a tenant for the purpose of purchase of the land under Section 32 of the Act. However if the documentary evidence produced before the ALT is considered, Mutation Entry No.366 would indicate that the name of the earlier protected tenant Krishna Hari Shirgaonkar was deleted and the name of Respondent was mutated to the revenue records as ordinary tenant by the said Mutation Entry effected on 27 April 1997. Faced with this position, Mr. Joshi has attempted to salvage the situation by contending that the said Mutation Entry cannot give rise to a presumption of personal cultivation of the land by Respondent as on 1 April 1957. However if the documentary evidence in the form of Village Specimen No.7, 7A is perused, it appears that in the cultivation column name of Hari Tolya Bane was reflected as a cultivator with Rit No.3/5 from 1949-50. In the year 1956, name of the Respondent is included in the cultivation column with Rit No.5. Her name is continued subsequently as a cultivator each year. The Rit column did not indicate number 1 or 2 at any point of time thereby clearly indicating that the landlords never personally cultivated the land on, before or after the Tillers day. Thus there is sufficient documentary evidence to indicate that Respondent was personally cultivating the land much before the Tillers day of 1 April 1957. In my view Mutation Entry No.366 coupled with the entries in the cultivation column

were sufficient for the purpose of drawal of inference of personal cultivation of the land by the Respondent on the Tillers day.

5. Mr. Joshi would then contend that the crop in the cultivation column is shown as grass (*gavat*) and that therefore the land was incapable of being personally cultivated. He would further submit that the Respondent did not plead or prove that she used the land for grazing of cattle. In my view, it is difficult to negate the tenancy claim of the Respondent only on account of the nature of crop indicated in the cultivation column especially when the Petitioners or their predecessor in title did not take any steps to either challenge Mutation Entry No.366 or the entries in the cultivation column. The Petitioners also did not raise any specific contention in the Reply filed before the ALT that the land was otherwise impossible of being cultivated. In my view, therefore the entries in the cultivation column, in the facts of the present case, are required to be taken into consideration only for the purpose of reflecting personal occupation of the land in question by the Respondent as on the Tillers day and not much needs to be inferred on the basis of type of crop shown to have been taken in the said cultivation column entries.

6. Mr. Joshi would then rely upon Mutation Entry No.550 dated 9 October 1967 by which the name of Respondent is shown to have been deleted from "other rights" column. Mr. Joshi would seek to attribute Mutation Entry No.550 to an attempt made by the Respondent for the purpose of mutation of her name as

owner of the land, possibly as a result of enquiry conducted under the provisions of the Act. However perusal of Mutation Entry No.550 would indicate an attempt made by the Respondent for the purpose of bettering her rights by substitution of her entry from the column 'other rights' to the column of 'holder'. She apparently represented before the Talathi that she was not cultivating the land as a tenant but was cultivating the same as owner. Therefore mere deletion of the name of the Respondent from 'other rights' column in the year 1967 would not lead to a necessary presumption that her personal cultivation had come to an end. It can also not be contended that any proceedings were initiated by the Respondent for fixation of purchase price of the land in the year 1967 or that Mutation Entry No.550 would act as *res judicata* for initiation of the fresh proceedings. Mr. Joshi has relied on judgment of this Court in ***Rajaram Hiralal Bhoi vs. Chintaman Waman Sathe***, (Writ Petition No.3856 of 1988) decided on 6 January 2012) in which the Petitioners therein had withdrawn the earlier tenancy proceedings by giving up the same unconditionally and therefore this Court held that filing of fresh application was barred. Similarly in ***Murlidhar vs. Shanker Hari***, 2002 (5) Mh.L.J. 141, rejection of earlier tenancy proceedings had travelled upto this Court and the said Petitions were withdrawn by the Petitioners without obtaining any leave. It is in the light of those unique circumstances that this Court held that filing of fresh proceedings subsequent to the withdrawal of the Writ Petitions was impermissible. In the present case, it cannot be

contended, by any stretch of imagination that Mutation Entry No.550 was a result of any proceedings filed by the Respondent for decision of her tenancy claim or for fixation of purchase price. In that view of the matter it would be too farfetched to contend that the proceedings initiated by her in the year 2016 were barred by the principles of *res judicata*.

7. So far as the submissions of Mr. Joshi about failure to produce rent agreement or rent receipts is concerned, it is by now a settled position of law that for the purpose of upholding status of personal cultivation of a person, it is not necessary to produce and prove existence of rent agreement or rent receipts. In that view of the matter reliance of Mr. Joshi on judgment of this Court ***Ramdas Gopal Patil vs. State of Maharashtra***, 2023 (3) Mh.L.J. 705 is inapposite. That case involved unique facts where application was made in the year 1996 for entering the name of the Petitioners therein in cultivation column in respect of the year 1957. This Court noticed that the land was transferred by the landlord in favour of the purchasers in the year 1986 and that the purchasers had got the same converted for non-agricultural purposes. It is in the light of these unique facts that this Court recorded a finding that in absence of payment of *khand*, it was not possible to accept the tenancy claim of the Petitioners. In the present case, personal cultivation of the Respondent has been proved through Mutation Entry No.366 coupled with the entries in the cultivation column.

Admittedly Petitioners did not take any steps for challenging the said Mutation Entry No.366 or entries in the cultivation column. In my view therefore, inability on the part of the Respondent to produce rent receipts/rent agreement would not be fatal so long as she was in a position to prove personal cultivation of the land as on the Tillers day.

8. This takes to me the last point canvassed by Mr. Joshi that Respondent was a widow and that therefore provisions of Section 32F(b) of the Act would apply. In my view, provisions of Section 32F of the Act are aimed at essentially suspending the deeming fiction of purchase created by Section 32 of the Act. Thus whenever the disability in the form of minority, widowed status, mental/physical disability or service as member of Armed Forces exists either for landlord or tenant, the deeming fiction of purchase of land on the Tillers day under Section 32 of the Act gets suspended and postponed. The *sine qua non* for operation of provisions of Section 32F of the Act is therefore the existence of disability on the Tillers day 1 April 1957. Acquisition of the disability subsequent to 1 April 1957 is therefore inconsequential. Seen from the above statutory framework in the light of the pleadings of the Petitioners before ALT as reflected in the order passed by the ALT, it appears that Petitioners pleaded before the ALT that “तसेच अर्जदार ही विधवा स्त्री आहे यास्तव मुंबई कुळवहिवाट अधिनियम, १९४८ चे कलम ३२ फ (ब) नुसार तीचे नावे कलम ३२ ग प्रमाणे किंमत ठरविणेचा प्रश्नच येत नाही. कलम ३२ फ (ब) ची तरतूद ही ज्यावेळी अर्ज केला जातो त्यावेळी विचारात घेतली जाते.”

9. In my view, there is no specific pleading by the Petitioners that the Respondent was a widow as on the Tillers day of 1 April 1957. Even in the present Petition, there is no specific averment by the Petitioners that Respondent was widow as of 1 April 1957. Therefore even if she has attained the status of being widow after 1 April 1957, the same would not result in operation of provisions of Section 32F of the Act. The contention in this regard is therefore stated only to be rejected.

10. After considering the overall conspectus of the case, I do not find that any case is made out for interference in the concurrent findings recorded by the ALT, SDO and the MRT. Petition is devoid of merits, it is accordingly dismissed without any order as to costs.

11. After the order is pronounced, Mr. Joshi would pray for continuation of *ad-interim* relief granted by this Court vide order dated 19 January 2024 for a period of eight weeks. The request is opposed by Mr. Talekar. Considering the fact that the *ad interim* relief is operational since 19 January 2024, the same shall continue for a period of eight weeks.

(SANDEEP V. MARNE, J.)

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