



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.1394/2009

Smt. Taramanidevi w/o Purushottamdasji
Mohata, aged 65 yeas, landlady and
cultivator, r/o Digvijay House, Naorangpura,
Ahmadabad (Gujrat) **.....APPELLANT**

...V E R S U S...

1. State of Maharashtra through
Collector, Wardha.
2. Shree Laxmi Investment Company Ltd.
(Now under Liquidation), through
Official Liquidator, Civil Liens,
Nagpur. **...RESPONDENTS**

Mr. S.W.Kolhe, Advocate instructed by Mr. S.S. Deshpande, Advocate
for appellant.

Ms D. V. Sapkal, A.G.P. for respondent No.1.

Mr. S. Deshpande, Advocate for Official Liquidator.

Mr. D. Parsoya, Official Liquidator.

CORAM:- ANIL L. PANSARE, J.

DATED :- 25.04.2025

ORAL JUDGMENT

Mr. S. W. Kolhe, learned counsel instructed by Mr. S. S. Deshpande, learned counsel for appellant, seeks time on the ground that the arguing counsel Mr. S. S. Deshpande was required to go out of town. The adjournment has been opposed by counsel for respondent No.2 on the ground that the matter was heard by this

Court substantially on previous date and was put for final hearing today.

2. As such, the appellant's counsel should have made necessary arrangement, nonetheless, in the interest of justice, adjournment was granted and Mr. Kolhe was requested to instruct Mr. S. S. Deshpande to appear through video conferencing in the afternoon session. Accordingly, the matter was called to find that Mr. Deshpande did not join on video conferencing. Mr. Kolhe submits that the counsel is driving car and is not in a position to join. This reason appears to me to be a wayout to prolong the litigation. The appeal has been filed in the year 2009. The challenge is to award dated 06.07.2009. The award itself indicates that the dispute is pending since 1970.

3. It will be appropriate to mention here that number of opportunities were given to the appellant. On 09.06.2023, none appeared and accordingly the appeal was listed for dismissal on next date. On 07.02.2025, similar was status, however, in order to give one more opportunity, appeal was adjourned. On 28.02.2025, again none appeared for appellant. Again one more opportunity was given. The appeal was accordingly listed on 07.03.2025. Counsel for appellant sought time to take instructions whether the appellant is

alive. Accordingly, the appeal was adjourned to 04.04.2025. The appeal was, however, partly heard and accordingly the counsel was directed to place on record copy of order passed in Writ Petition No.3871/1998.

4. In the circumstance, it was incumbent on the part of Mr.S.S. Deshpande to appear and/or to make an arrangement to argue the appeal. In any case, he could have argued through video conferencing. No efforts, however, were taken nor was any valid reason given, firstly what were compelling circumstances that made him to travel out by skipping scheduled date of hearing and secondly, for not joining on video conference.

5. In the circumstance, I refuse to adjourn the matter and accordingly heard Mr. Kolhe, learned counsel for appellant, Ms D.V. Sapkal, learned A.G.P. for respondent No.1 and Mr.Shrinivas Deshpande, learned counsel for respondent No.2. Mr. Kolhe, learned counsel for appellant has shown his inability to argue the matter as not prepared.

6. The appellant is aggrieved by the award dated 06.07.2009, passed by Civil Judge Senior Division, Wardha in Land Acquisition Case No.20/1981 and Land Acquisition Case

No.15/1981. It appears that the appellant had lodged reference, being Land Acquisition Case No.20/1981 and respondent No.2 lodged reference being Land Acquisition Case No.15/1981. Learned Civil Judge Senior Division, Wardha, by common judgment dated 06.07.2009, held that respondent No.2 – Shree Laxmi Investment Company Ltd., through Liquidator is entitled to the amount of compensation of Rs.91,400/- along with interest at the rate of 6% per annum from the date of notification viz. 23.11.1979.

I am informed that the amount of compensation has been received by respondent No.2.

7. Appellant and respondent No.2 claimed entitlement to the compensation for land acquired by respondent No.1. Reference Court held respondent No.2 and not the appellant as entitled for the compensation. Appellant claimed entitlement on the ground that she is a statutory tenant of the land. She examined PW1 Puruthottam Mohota and PW2 Pandharinath Deode as witnesses. Except their versions, the Reference Court found no document of whatsoever nature being submitted by the petitioner to prove that she was tenant of the land. PW2 Pandharinath, in cross-examination, admitted that litigation between petitioner and respondent No.2 is going on since year 1971-72 and that one Pandharinath Kalar was cultivating suit

field being servant of respondent No.2. He continued cultivation till his death. He died some time in the year 1992-93.

8. After taking stock of the evidence and the documents placed before it, the Reference Court, while denying the claim of the petitioner held thus :

“20) Admittedly, there was proceeding under ceiling Act and question arose before those authorities whether land in question should be considered for deciding the holding of N.A. No.2. Applicant Taramanidevi had submitted that she being statutory tenant, his land should be excluded. This question whether applicant Taramanidevi was a tenant or not is decided by Maharashtra Revenue Tribunal. The decision of the Maharashtra Revenue Tribunal in Civil Appeal No.ALC.A-47/79, dated 31/12/1980. With regard to the fact of tenancy of the disputed land is final one. The copy of the said judgment is filed on record at Exh.114. In the proceeding, question of tenancy was decided and claim of applicant Taramanidevi about the lease was rejected. This decision of M.R.T. in fact was in Ceiling Case. However, question of tenancy was raised and it was decided. Though, the order of M.R.T. was challenged before Hon'ble High Court the finding about the Tenancy is not interfere or set aside by the Hon'ble High Court. Thereafter, Tahsildar Samudrapur had passed order dated 28/08/1995 in Revenue Case No.298/68/75-76. In this order, the Tahsildar hold that applicant Taramanidevi is the tenant of his acquired land. This order of Tahsildar was challenged before Additional Commissioner, Nagpur Exh. 121 is the copy of the decision of Additional Commissioner, Nagpur. In this order the Joint Commissioner

specifically hold that order passed by Tahsildar Samudrapur is illegal and it exceed the jurisdiction. Tahsildar Samundrapur has no authority to go beyond decision of Maharashtra Revenue Tribunal which was given by order dated 31/12/1980. Hence, the Additional Commissioner had set aside order of Tahsildar Samudrapur, Dated 28/08/1995. Thus, the decision given by Maharashtra Land Revenue Tribunal dated 31/12/1980 about the fact of tenancy is final one. Claim of applicant is rejected by the Concerned Tribunal. This Court cannot consider the said question again and is bound by the said decision. In the result, applicant being not a statutory tenant, she is not entitled for the compensation awarded N.A. No.2 being the land owner are entitled for the compensation.”

9. Thus, the Court below referred to decision of the Maharashtra Revenue Tribunal (for short the, “MRT”) in Civil Appeal ALC A-47/79 dated 31.12.1980. Claim of the appellant that she was statutory tenant was rejected. As such, the decision of the MRT was in context with the case under the provisions of the Maharashtra Agricultural Lands (Ceiling On Holdings) Act, 1961 (for short the, “Ceiling Act”). However, the question of tenancy was raised by the appellant for the relief of exemption. The MRT found no substance in the claim of petitioner that she was statutory tenant and accordingly, the said issue was decided. As such order of MRT was challenged before this Court, the finding as regards tenancy has been, however, not interfered by this Court.

10. In this context, appellant was called upon to place on record copy of order dated 15.07.2010 passed in Writ Petition No.3871/1998. The same has been placed on record. I have gone through the same. The case arose out of the provisions of the Ceiling Act. The appellant asserted to be a tenant of the land and to be in continuous possession. The Sub Divisional Officer caused inquiry and found that respondent No.2 – Company had 246.06 Acres of land in excess of ceiling order and made declaration in terms of Section 61 of the Ceiling Act. This order was challenged before the MRT, which was pleased to remand the inquiry back to decide objection raised by appellant – tenant and one Kamladevi.

11. It is worth mentioning here that Kamladevi has not challenged the order under question. Be that as it may, appellant asserted before the revenue authorities the rights of tenancy of land being survey Nos.218, 219 and 231 total admeasuring 93.78 Acres. The Sub Divisional Officer, in the second round, declared an area viz. 152.38 Acres of land as in excess of ceiling area and further held that the surplus lands holders were entitled to 96 Acres. The Sub Divisional Officer excluded the land admeasuring 93.78 Acres which was in possession of appellant and Kamlabai.

12. This order was again challenged by respondent No.2 before the MRT, which was pleased to direct that 93.78 Acre land in possession of appellant and Kamlabai be excluded from the holding of land holder.

13. The proceedings were then again commenced before revenue authorities because landlord filed retention statement and choice in terms of Section 16 of the Ceiling Act. The Landlord i.e. respondent No.2 offered lands which were claimed by appellant and Kamlabai but the choice was not accepted by the Sub Divisional Officer vide order dated 11.04.1973. The order was challenged before the MRT in appeal, who was pleased to hold that the land offered as surplus was in possession of the appellant and Kamlabai and being an encumbered land was not liable to be accepted. The appeal was accordingly dismissed.

14. The order of the MRT was challenged before this Court, which was pleased to set aside the order and remand the matter back to the MRT for hearing afresh. The MRT vide order dated 31.12.1980, disposed of the appeal observing that three fields viz. survey Nos. 218, 219 and 231 cannot be included/accepted by the Sub Divisional Officer as surplus for distribution being encumbered land.

15. The matter was referred in inquiry before Surplus Land Determination Tribunal (For short the, “SLDT”), who analysed the chequered history and accepted the contention of the appellant and Kamlabai. Thereafter, the Commissioner suo motu opened the file and did not agree with the finding of the learned SLDT. The order was questioned in writ petition. This Court referred to order dated 31.12.1980 and noted that the MRT held that there was no document entitling the appellant to cultivate the field as lessee as the burden of proving contract of lease or ordering possession in terms of contract was on the petitioner. Thus, this Court, in a way, certified the finding rendered by the MRT that the appellant failed to prove that she is a statutory tenant.

16. Subsequent finding of this Court relates to possession of the appellant and Kamlabai over the property and since it was found that they were in possession, such land should have been excluded and accordingly upheld the finding of the SLDT and set aside the Commissioner’s order.

17. The above discussion would make one thing clear that the appellant failed to establish that she was a statutory tenant. Maybe that she and Kamlabai were in possession of the property belonging

to respondent No.2, the fact, however, remains that the appellant was not a statutory tenant. This is what has been held by reference Court in paragraph 20 of its judgment. That being so, I do not find any reason to interfere with award so passed by the reference Court. The appeal is accordingly dismissed. No order as to costs.

(Anil L. Pansare, J.)

kahale