

(2003) 06 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 5929 of 1987

Anna Krishan Natulkar and Others

APPELLANT

Vs

Shri Ramu Gannu Patil and Others

RESPONDENT

Date of Decision : 04-06-2003

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 27, 70, 76
Constitution of India, 1950 — Article 227

Citation : (2003) 4 ALLMR 881 : (2004) 1 BomCR 390

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : D.S. Sawant, for the Appellant; S.G. Karanikar, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of Constitution of India, takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal Pune Camp Kolhapur, dated June 18, 1987 in Revision No. MRT SS/157/84.

2. The land in question is situated at village Shrishi, Taluka Shirala, District Sangli bearing Survey No. 372/2 and 372/3. Undisputedly the said lands were in possession of one Dnyanu Dhondi Patil since 1947-48 as a tenant. It is the case of the Petitioners that since Dnyanu Dhondi Patil was having excess land, told the predecessor of the Petitioners Anna Krishna Natulkar to cultivate 2 share sin the suit lands and that he would cultivate one share thereof. The Petitioners further assert that above arrangement was arrived at between the parties in the presence of landlord Dinkar Waman Habasnis in or around 1948. According to the Petitioners since they were in possession of the suit lands on the tillers day i.e. 1-4-1957 they were entitled to be declared as deemed to have purchased the suit lands. Accordingly application was filed by the Petitioners for declaration u/s 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the said Act), that the Petitioners were tenants in 2/3rd area of the

aforesaid land. This application was resisted by the Respondents. According to the Respondents they were paying all the outgoings with regard to the suit land and the rent receipts were also in favour of the Respondents. In other words, the claim of the Petitioners that they were tenants was disputed. The Tahasildar, Shirala, before whom the said proceedings were initiated by the judgment and order dated 31-1-1980 dismissed the application accepting the claim of the Respondents that the Petitioners were not lawfully cultivating the suit lands as tenants. Against this decision the Petitioners carried the matter in appeal before the S.D.O. Sangli. The appellate authority on the other hand by judgment and order dated May 22, 1984 allowed the appeal preferred by the Petitioners and remanded the matter to the lower Court for fresh enquiry and for scanning the evidence in proper context in the light of observations made in its judgment. According to the Appellate Court there were clear circumstances to show that the petitioners were cultivating the suit lands as tenants and those material have not been properly considered by the lower court. The Respondent Nos. 1 and 2 herein preferred revision before the Tribunal challenging the remand order passed by the appellate authority. The tribunal reversed the opinion expressed by the appellate authority and found that there was absolutely no evidence in favour of the Petitioners to hold them to be tenants. The Tribunals further found that evidence sought to be relied of Watmukhtyar cannot be considered as against the weight of documentary evidence which supports the case of the Respondents. Accordingly revisional court set aside the order of the appellate authority and restored the order passed by the Tahasildar rejecting the application preferred by the Petitioners. Against this decision present writ petition under Article 227 has been filed.

3. According to Mr. Sawant for the Petitioners the revisional court has exceeded its jurisdiction in exercise of Section 76 of the Act by interfering with the discretionary order passed by the appellate authority of remanding the case to the first authority. He submits that the appellate authority has rightly referred to the circumstances which would indicate that the Petitioners were tenants in respect of the suit lands and those aspects were not properly considered by the trial Court. The learned Counsel for the Petitioners therefore contends that the Tribunal ought not to have interfered with the remand order passed by the appellate authority. To buttress the contention of the scope of provisioned jurisdiction, reliance has been placed on the decision of this Court reported in *Shri Ganapati Shankar Desai and another Vs. Shri Rau Ganu Killedar and others*, .

4. On the other hand, the Counsel for the Respondents 1 and 2 contends that there is no infirmity with the order passed by the Tribunal. Therefore, no interference is warranted in the fact situation of the present case. He submits that assuming that the Petitioners case that they were in possession of the suit land was to be accepted as it is, even then the Petitioners cannot succeed in the application u/s 70(b) of the said Act as filed. The learned Counsel contends that from the materials on record it is more than clear that the Petitioners approached the authority with specific plea that original tenant in respect of the suit lands

was Dnyanu Dhondi Patil and who in turn inducted the Petitioners' predecessor Anna Krishna Natulkar to the extent of 2/3rd portion of the above lands. The learned Counsel has invited my attention to the relevant portions in the judgment of the first authority which clearly establishes that the Petitioners instituted application u/s 70(b) of the said Act asserting that they were inducted by Dnyanu Dhondi Patil to cultivate the suit lands. In that sense the Petitioners have conceded the position that they were sub tenants in the suit lands inducted by original tenant Dnyanu Dhondi Patil. In this back drop the learned Counsel for the Respondents contends that in such a case the Petitioners are not entitled to relief of declaration that they are tenants. The learned Counsel submits that this position is no more res integra and has been expounded by the apex Court in *Gopala Genu Wagale Vs. Nageshwardeo Patas Abhishekh Anusthan Trust*, . In this view of the matter, the learned Counsel for the Respondents have supported the conclusion and order passed by the Tribunal in restoring the order passed by the Tahasildar in dismissing the application filed by the Petitioners u/s 70(b) of the Act.

5. Having considered the rival submissions I find force in the argument of Mr. Karandikar for the Respondents that no fruitful purpose would be served by remanding the matter to the first authority. It is seen from the record that the Petitioners had approached the tenancy authority for declaration u/s 70(b) with specific plea that they are sub-tenants and that they were in possession of the suit lands on the tillers day having been inducted by the original tenant some time in or around 1948. The Petitioners have not only accepted that position in the application but even in the evidence adduced before the authority below. In other words, the Petitioners have conceded the position that they were sub-tenants of Dnyanu Dhondi Patil. If that is so, in view of decision of the apex court in the case of *Wagale (supra)* they were not entitled for declaration that they were tenants in the suit lands or they were lawfully cultivating the suit land. Section 27 of the said Act prohibits sub letting of the land held by the tenant. In that sense the Petitioners were not lawfully cultivating the suit lands so as to be declared as tenants in possession on the tillers day. Understood thus, there is no force in this writ petition and the same deserves to be rejected while affirming the order passed by the tribunal in dismissing the application preferred by the Petitioners.

6. To overcome the above position Mr. Sawant contends that the case of the Petitioners is that predecessors of the Petitioners Anna Krishna Natulkar was inducted by Dnyanu Dhondi Patil to the extent of 2/3rd portion of suit land consequent to the arrangement arrived at in the presence of the landlord Dinkar Waman Habasnis. In that sense Dinkar Waman Habasnis has accepted the Petitioners' predecessor to be tenant in the suit lands and for which reason the Petitioners' predecessor will have to be treated as direct tenant of the landlord with regard to 2/3rd portion of the suit land. However, there is no force in this submission. No such case has been pleaded or proved or attempted to be proved before the authorities below. It is not possible to entertain this submission across

the Bar which is obviously a question of fact.

7. In the circumstances, there is no force in this writ petition and therefore, the same is dismissed with no order as to costs.