

(2000) 06 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 4637 of 1986

Ganesh Vasudeo Parab Since Deceased by his Legal Heirs and
Representatives and Others

APPELLANT

Vs

Vyankatrao Subhram Patankar Since Deceased by his Heirs
and Others

RESPONDENT

Date of Decision : 22-06-2000

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2000) 4 ALLMR 642 : (2000) 102 BOMLR 925 : (2001) 2 MhLj 240

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

Bench : Single Bench

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This petition under Article 227 of the Constitution of India is directed against the order passed by the Maharashtra Revenue Tribunal, Bombay dated 19.3.1986 in Tenancy Appeal No. 159 of 1985.

2. The Petitioners herein claim to be the tenants in respect of the suit lands bearing S. No. 6 H.No. 31; S.No. 7, H.No. 1+2A : and S. No. 10 H. No. 1. totally admeasuring about 13 acres 24.9 gunthas. The respondents are the owners in respect of the suit lands.

3. Sometime on 30.6.1973 the petitioners filed an application u/s 70(b) of the Bombay Tenancy & Agricultural Lands Act before the Tahsildar, Vengurla for a declaration that they were the tenants in respect of lands bearing S. No. 6 H. No. 31 and S. No. 7 H. No. 1+2A. That as a counter blast to the said application taken out by the petitioners, the respondents filed a suit for injunction against the petitioners in the Court of Civil Judge, Junior Division, Vengurla being Suit No. 18 of 1974, inter alia, praying that the petitioners be restrained from entering upon or interfering with the possession of the respondents in respect of the suit lands bearing S. No. 7 H. No. 1+2A; S. No. 10 H. No. 1; and S. No. 6 H. No. 31, all situated at village Vajrath, taluka Vengurla. In the said suit the

petitioners filed written statement and claimed that they were the tenants in respect of all the three suit lands. In the circumstances the Civil Court made reference to the Tenancy Court to decide as to whether the petitioners were the tenants in respect of said three suit lands. Additional Tahsildar, Vengurla, after the aforesaid reference, consolidated the reference proceedings as well as the application filed by the petitioners u/s 70(b) of the Act. The Tahsildar by his judgment dated 6.3.1979 passed the following order:

11. Defendants have not furnished any evidence oral or documentary to prove that they have become tenant purchasers that is owners of the suit land. It is also seen clearly from the application from the evidence and from the argument of the defendant's learned advocate that it is not defendant's case that he has become tenant purchaser.

17. Considering the above discussion it is hereby decided that defendants have proved that they are the tenants of survey No. 6 Hissa No. 31 and are in possession of and vahiwat as tenants in the said land but simultaneously it is held that defendants have failed to prove that they are tenants of survey No. 7 hissa No. 1+2A and of survey No. 10 hissa No. 1 and have not proved that they are in possession and vahiwat as tenants in these two pot hissass. It is also held that defendants have not proved that they have become tenant purchaser of the suit land.

4. Both, the petitioners as well as the respondents, being aggrieved by the aforesaid order, filed revision appeals before the Addl. Collector, Ratnagiri being Appeal Nos. 17 of 1979 and 18 of 1979. The Appellate Authority after examining the rival contentions was of the view that, in addition to the evidence already recorded, it would be necessary to examine some of the persons to find out the exact area and the name and location of the lands which were in possession of the petitioners herein as tenants immediately before the Pot Hissa measurement was carried out in the village. The Appellate Court accordingly was pleased to set aside the aforesaid order passed by the lower Court and remanded the matter for hearing afresh. The Appellate Court also granted liberty to the parties to file further documents and adduce oral evidence before the lower Court.

5. After remand, the matter proceeded before the Additional Tahsildar. Interestingly, in spite of the opportunity given to both the parties to adduce further evidence, they filed pursis before the Authority that they were not interested in adducing any further evidence. Naturally, the Addl. Tahsildar, Vengurla was required to consider the competing claims on the basis of the evidence already on record. The Tahsildar after examining the materials on record and the submissions made at the hearing came to the conclusion that the petitioners were tenants in respect of land bearing S. No. 6 H. No. 31, however, they have failed to prove that they were tenants in respect of the other two survey numbers. The Additional Tahsildar accordingly answered the issues referred to it by the Civil Court in favour of the petitioners.

6. The respondents, the owners, did not challenge the decision of the Addl. Tahsildar with regard to the finding recorded in respect of S. No. 6 H. No. 31 that the petitioners herein were tenants thereof. As such the said decision was allowed to become final by the respondents. However, the petitioners herein filed Appeal before the Sub-Divisional Officer, bearing Appeal No. 105 of 1983, challenging the finding recorded by the lower Court in respect of other two survey numbers that they were not tenants in respect of the said lands. The Appellate Court examined the matter afresh and having regard to the evidence on record in the shape of receipts produced by Shri Parab, notice dated 17.12.1956 sent by the landlord Shri Patankar terminating the tenancy, Protected Tenancy Registrar and Akar Phod Patrak held that the petitioners had established that they were tenants in respect of S. No. 7 H. No. 1+2A as well as S. No. 10 H. No. 1. The said conclusion has been reached mainly because all the documents except the receipts referred to above clearly indicate the survey numbers of the land which were held by the petitioners herein as tenants. In said view of the matter, the Appellate Court declared that the petitioners were tenants in respect of all the three survey numbers mentioned in the plaint filed before the Civil Court on behalf of the respondents. The Appellate Court thus held that the petitioners were cultivating the suit lands on the tiller's day i.e. 1.4.57 and have become deemed purchasers in view of the provisions contained in the Bombay Tenancy & Agricultural Lands Act.

7. Against the above said decision, the respondents preferred revision application before the Maharashtra Revenue Tribunal, Bombay. The Tribunal by its judgment and order dated 19.3.1986 was pleased to set aside the order passed by the Sub-Divisional Officer dated 31.5.1985 and remanded the matter for fresh decision in accordance with law.

8. The learned Counsel for the petitioners contends that the Tribunal has clearly exceeded its jurisdiction u/s 76 of the Act. In the first place, it is contended that, there was no reason for the Tribunal to remand the matter for recording of further evidence particularly when the parties had filed pursis before the trial Court after remand that they were not interested in adducing any further evidence either oral or documentary. It is next contended that, with regard to the merits of the decision arrived at by the Appellate Court, while reversing the same, the Tribunal has generally stated that the conclusion reached by the Appellate Court was totally without application of mind as in its view the Appellate Court had not considered the evidence critically and properly. There is no other reason indicated in the judgment of the Tribunal as to why the conclusion reached by the Appellate Court on the basis of the evidence on record can be said to be without application of mind. On the other hand, the learned Counsel for the respondents supported the order of the Tribunal.

9. However, after considering the rival submissions, I am of the view that the Tribunal has clearly exceeded its jurisdiction while exercising revisional jurisdiction u/s 76 of the Act. In the first place, the Tribunal has not given any

cogent reason so as to justify the reversal of findings of facts reached by the Appellate Court. The only reason indicated by the Tribunal for remanding the matter for the second time was that the Courts below have not complied with the earlier remand order in requiring the parties to adduce evidence. This reasoning clearly overlooks the fact that both the parties had filed pursis before the lower Court after remand that they were not interested in adducing any further evidence either oral or documentary. In my view, the reason recorded by the Tribunal for ordering remand is wholly unsustainable both on facts and in law.

10. Even while considering the merits of the case, the Tribunal, by a general observation held that the decision of the Appellate Court suffers from non - application of mind. For reaching the said conclusion the Tribunal has not assigned any reason muchless a cogent reason as to what was the material which weighed with it to reverse the finding of fact recorded by the Appellate Court, which was the final fact finding Court. The learned Counsel for the respondents made a grievance that the respondents were not heard before the Appellate Court, for that I thought it appropriate to examine the matter with utmost care. I have not only perused the judgments of the Courts below but also perused the original record to reassure myself that the finding recorded by the Appellate Court that the notice dated 17.1.56 sent by the landlord Shri Patankar terminating the tenancy of the petitioners : Protected Tenancy Registrar and Akar Phod Patrak, unequivocally record that all the three survey numbers were possessed and enjoyed by the petitioners as tenants. Even the learned Counsel for the respondents was unable to dispute the said position on examining the said documents. In the circumstances, I am of the view that the Tribunal had clearly misdirected itself, being wrongly influenced by the fact that the parties did not adduce any further evidence in spite of remand order for that specific purpose. If the parties do not choose to adduce any evidence, the Court cannot force them to do so, but adjudicate the matter on the basis of evidence already led before it. This is precisely what the Courts below have done in this case after remand when the parties filed pursis that they were not interested in adducing any further evidence. Consequently, no fault could be found with the Courts below in the facts of the present case.

11. In the circumstances, I am of the view that the judgment of the Tribunal under appeal is wholly unsustainable both on facts and in law and the same deserves to be set aside and instead the decision of the Sub-Divisional Officer, Sawantwadi dated 31.5.1985 in Tenancy Appeal No. 105 of 1983 be restored. Consequently, issues referred to by the Civil Court for being considered by Tenancy Court being issue Nos. 3 and 4 are answered in favour of the petitioners-tenants.

12. The suit which is pending before the Civil Court since May, 1974 may now proceed. I hope and trust that the Civil Court would decide the suit expeditiously and preferably within six months from today as the same is pending since year 1974. The Tenancy authorities may also take consequential steps for fixing the

purchase price in respect of suit lands as required u/s 32G of the Act and pass appropriate orders after hearing both the sides.

13. Writ petition is accordingly allowed in the above terms with no order as to costs. Rule made absolute.