
(2004) 02 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 1296 of 1991

Laxman Deshmukh since deceased through his LRs Savitribai
Deshmukh and Others

APPELLANT

Vs

Rajabai Deode and Others

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 120,
36(1)

Citation : (2004) 2 ALLMR 904 : (2004) 3 MhLj 1050

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

**Advocate : A.D. Vyawahare, for the Appellant; J.J. Chandurkar and S.Y.
Deopujari, A.G.P., for the Respondent**

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—By invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India, this petition is directed against the order dated 8-11-1990 passed by the Maharashtra Revenue Tribunal, Nagpur (MRT) in revision application No. Ten. A.78/86 of Veni Bk. whereby the MRT confirmed the concurrent findings of the learned Sub Divisional Officer in appeal and the Naib Tahsildar rejecting the application filed by the petitioner (deceased Laxman through his legal heirs) u/s 36(1) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1948 (for short, the Tenancy Act) seeking possession.

2. Relevant facts are as under :

Field survey No. 37/1, area 6.00 acres at village Veni Buzruk was owned by one Umaji s/o Ramji Deshmukh and the petitioner was said to be a tenant inducted on the land by the said Umaji Deshmukh in the year 1958-59. The petitioner Laxman Ramaji Deshmukh died during the pendency of this petition and his legal heirs have been brought on record. The petitioner cultivated the land till 1962-63 and thereafter Umaji Deshmukh insisted that the petitioner should execute a

dharwar chitthi and on his insistence, the petitioner had executed a dharwar chitthi for the consideration of Rs. 1,000/-. Thereafter the petitioner cultivated the field as tenant. After 1962-63, the petitioner handed over the possession of land to Umaji Deshmukh for personal cultivation, but instead of cultivating the field personally, Umaji Deshmukh let out the field to other tenants, and therefore, the petitioner demanded the possession of the land.

3. The petitioner had filed an application u/s 36(1) of the Tenancy Act claiming the possession of the land. The learned Naib Tahsildar rejected the application by the order dated 24-10-1966 on the ground that petitioner was not a tenant. The petitioner, being aggrieved by that order, carried appeal No. 178/59(10-A)/66/67 before the Deputy Collector, Yavatmal. This appeal was allowed on 29-11-1968. Umaji, who is the owner of the disputed land, challenged the order passed by the Dy. Collector, before the MRT by way of revision. The MRT allowed the revision, set aside the order passed by the Dy. Collector and restored the order of the Naib Tahsildar. This order dated 25-3-1970 passed in Revision No. Ten. A.54/69 was challenged before this Court in Special Civil Application No. 1367/1971, which was allowed by the order dated 13-12-1974 and by that order, the matter was remanded to the Dy. Collector (Tenancy) for fresh decision, in accordance with law. The learned Sub Divisional Officer held enquiry and dismissed the application on the ground that it was not open to the tenant to apply u/s 36(1) of the Tenancy Act and held that the suit field was acquired by the Government in land acquisition proceedings and the application cannot be entertained. The findings of the Sub Divisional Officer were challenged before the MRT by filing revision application No. Ten. A.78/86 and the said revision application came to be dismissed confirming the findings of the Sub Divisional Officer. This order dated 8-11-1990 passed by the MRT is challenged in this petition.

4. Mr. Vyawahare, the learned counsel for the petitioner contended that the M.R.T. ought to have considered that the application submitted by the petitioner principally was for possession and it could have been treated as an application for eviction of the persons who were in unauthorised occupation u/s 120(c) of the Tenancy Act. He contended that approach of the M.R.T. was too technical and rejection of the application holding that it is not maintainable u/s 36(1) of the Tenancy Act cannot be sustained in law.

5. Mr. Chandurkar, the learned counsel for the respondent No. 1 contended that the land survey No. 37/1 was the subject matter of acquisition proceedings registered as Land Acquisition Case No. 17 of 1978 and the possession of the land was taken by the Government as it was required for the public purpose, i.e. for the Lower Pus Project, and therefore, the respondent No. 1 is not in possession of the said land and in view of this subsequent development, the present writ petition is not maintainable as the said survey number has ceased to be in existence. He further contended that however, the application filed by the petitioner was against four persons namely; Umaji, Sitaram Laxman, Narayan Sitaram and Laxman Sitaram and these persons were not impleaded as parties

before the Mah. Revenue Tribunal in Revision Application No. 78 of 1986 nor they have been joined as parties in the present writ petition. The order passed by the M.R.T. has become final so far as these parties are concerned and in such circumstance, the petition is liable to be dismissed.

6. I have given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is not in dispute that Laxman had filed an application claiming to be the tenant on the disputed land and he died during the pendency of this petition and his legal heirs have been brought on record. It is not in dispute that the respondent Rajabai w/o Dagdu Deode, the daughter of the original respondent died during the pendency of this petition and her legal heirs are also brought on record. It is also not disputed that the tenant Laxman cultivated the land for the year 1958-59 to 1962-63 as tenant. It is also not disputed that the petitioner had executed a deposit receipt for Rs. 1,000/- sometime in the year 1962-63 and Umaji Deshmukh demanded the possession of the land and it was handed over to him after 1962-63.

7. At this juncture, it is necessary to reproduce Section 36(1) of the Tenancy Act which contemplates as under :

"A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house or site used for any allied pursuit under any of the provisions of this Act, or as a result of eviction in contravention of Sub-section (2) may apply in writing for such possession to the Tahsildar. The application shall be made in such form as may be prescribed and within a period of three years from the date on which the right to obtain possession of the land, dwelling house or site is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be."

8. Plain reading of the aforesaid provisions of law would reveal that a tenant would be entitled to possession of any land or dwelling house or site used for any allied pursuit under any provisions of the Tenancy Act or as a result of eviction in contravention of Sub-section (2) may file an application for such possession in prescribed proforma to the Tahsildar.

9. In the present case, the petitioner tenant lost the possession sometime in the year 1962-63 and thereafter the original owner Umaji Deshmukh said to have inducted other tenants on the said land. The learned M.R.T. has considered the checkered history of this case and observed that the Sub Divisional Officer had placed reliance on the decision of this Court in Special Civil Application No. 1367/71 decided on 26-6-1975. This case was also between the parties who are also parties to this revision. This Court while deciding the case has also relied on the decision of the Division Bench passed in S.C.A. No. 505/72 in the case of Sitaram v. Hawadya 1975 M.L.J. 521. In that petition this Court held that a tenant cannot file application u/s 36 after 1-4-1963, and therefore, held that the application u/s 36 filed by Laxman on 27-7-1965 is incompetent and therefore, dismissed the said application. Relying on this decision and without entering into

the merits of the case, the Sub Divisional Officer dismissed the appeal and observed that the suit land was acquired on 29-3-1982 in Land Acquisition Case No. 17/78 and on this count also the application u/s 36 cannot be entertained.

10. In such circumstances, it is obvious that the contention of the learned counsel for the petitioner that the M.R.T. ought to have treated the application as an application u/s 120(c) of the Tenancy is devoid of any merit because as per Section 120(c) of the Tenancy Act, a procedure is prescribed for summary eviction of the trespassers or the persons who are in unauthorised occupation of the land. The proceedings instituted u/s 36(1) of the Tenancy Act are entirely different proceedings than the proceedings which would be initiated u/s 120(c) of the Tenancy Act. In that view of the matter, it is not possible to accept that the application ought to have been treated as application u/s 120(c) of the Tenancy Act.

11. However, it is admitted position that the suit land has been acquired by the Government on 29-3-1992 in Land Acquisition Case No. 17/1978 and as such the subject matter of the dispute is not in existence and the possession of the land has already been parted for the public purpose i.e. for the Lower Pus Project, therefore, there is no error or illegality in the order passed by the M.R.T. In the result, the petition is dismissed with no cost. Rule discharged.