

(2018) 09 BOM CK 0042
In the Bombay High Court
Case No : Writ Petition No.854 Of 2012

Mr. Ulhas Vinayak Nirmale

APPELLANT

Vs

Keshav S/O Yashwant Kale, Thr. P.O.A. Mr. Ashok S/O Keshav
Kale And 4 Others

RESPONDENT

Date of Decision : 14-09-2018

Acts Referred:

Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 6,
6(1), 8, 100(2), 107, 111, 125

Citation : (2018) 09 BOM CK 0042

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : Anirudh Ananthakrishnan, R. R. Vyas, A.M. Kadukar

Final Decision : Partly Allowed

Judgement

[1] Petitioner challenges judgment dated 21.10.2011 delivered by Maharashtra Revenue Tribunal in Revision Application No.TEN/BÂ40/2009 under

Section 111 of Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as 'Tenancy Act'). Contention of

petitioner that revisional jurisdiction could have been exercised had there been some jurisdictional error or perversity. In absence of such finding, the

learned Member, Maharashtra Revenue Tribunal (M.R.T.) could not have embarked upon fresh consideration of controversy, reÂappreciated entire

evidence and arrived at a totally different conclusion.Â

[2] Nobody appears for respondent No.1 who filed revision before M.R.T., there is no appearance even for respondent No.2. Shri Kadukar, learned

Assistant Government Pleader has appeared for respondent Nos.3 to 5.

[3] Learned A.G.P. has relied upon judgment delivered by M.R.T. in an effort to

show that there the learned Member has looked into provisions of

Section 6 and Section 8 of Tenancy Act, noted ingredients thereof and then found the approach of Tahsildar or S.D.O. unsustainable. He contends

that to demonstrate perversity in approach, inference of Tahsildar drawn because of absence of bullocks with family of respondent No.1, is

appreciated by M.R.T. and found to be unsustainable.

[4] With the assistance of respective learned Counsels, I have perused records. It appears that in a civil suit, reference came to be made to Tahsildar

in terms of Section 125 of Tenancy Act. Under section 100 sub-Section (2), jurisdiction to decide whether a person is or was not at any time in past a

tenant lies only with Tahsildar. Accordingly, parties led evidence before Tahsildar.

[5] Perusal of order dated 31.12.2008 passed by Tahsildar shows narration of his case by respondent No.1 â?

Keshav. He has, in his statement deposed that he was incurring expenditure for cultivation and handing over half of yield to Sitabai. After Sitabai her

daughter Saraswatibai became owner and same arrangement continued. After death of Saraswatibai how name of present petitioner Ulhas came on

revenue record he could not explain. His cross-Examination reveals that earlier entire land with Sitabai was being looked after by her Divanji

Panjabrao. Sitabai and Panjabrao invited him and hence he came to village Chikamoh where Sitabai was residing. He started residing with Sitabai and

was working on her field. He also stated that during life time of Sitabai, he used to give accounts of expenditure and yield of all fields to Panjabrao.

After death of Sitabai, daughter Saraswatibai substituted her. Son of Saraswatibai used to accompany Saraswatibai and he was giving all accounts to

Saraswatibai. At that time, Panjabrao used to maintain accounts on behalf of Saraswatibai. In 1994 Ulhas son of Saraswatibai informed him that they

were making independent arrangement for cultivation and Keshav should stop working in his field. Keshav in his cross-Examination also stated that

there was no written agreement either with Sitabai or Saraswatibai. He also accepted that he approached Patwari and told him to introduce

Keshav's name in cultivation column in revenue records, at that time he did not produce evidence, no statement was recorded by Patwari and no

inquiry was made at that juncture. His witness Bapurao had supported case of Keshavrao and deposed that Keshav was cultivating land of Sitabai or

Saraswatibai and giving crop share to them. His cross-examination shows that he did not have any personal knowledge, was not aware of contract

between Sitabai and Keshavrao. Other witness Shankar tried to support Keshavrao, but in cross-examination accepted that Ulhas removed

Keshavrao from employment. This evidence has been accepted by Tahsildar, who answered the question referred in negative i.e. against Keshavrao.

[6] Question referred to by Civil Court and answer are reproduced below:

“Does plaintiff prove that he is cultivating suit field continuously since 1955 of deceased Sitabai and hence the plaintiff has become the tenant of

the suit field under the Bombay Tenancy and Agricultural Lands Act, 1958 and also has become the statutory owner of the suit field?”

Answer: (Negative)

[7] Keshavrao then approached Sub-Divisional Officer, Hinganghat in statutory appeal under section 107 of Tenancy Act. The Sub-Divisional

Officer has strongly relied upon admission given by Keshav Kale and upheld the order of Tahsildar.

[8] In revision, the Revisional Authority has not looked into the facts emerging through cross-examination of Keshav and his witness. It has looked

into ingredients of Section 6 and noted that admittedly Keshav was not member of family of Sitabai or Saraswatibai or a mortgagee in possession. It

holds that status of Keshav as servant receiving wages in cash or kind or as hired labourer cultivating land under the personal supervision of the owner

is not established. It has then looked into provisions of Section 8 and status of deemed tenant of person under Section 6(1).

[9] The contention of learned Counsel for petitioner that the consistent finding on facts reached by Tahsildar and Sub-Divisional Officer, reached

concurrently has been overlooked, therefore, appears to be justified. Even for the purposes of Section 6(1)(b) a person cannot be in possession as

servant. It was fact that even after death of Sitabai Panjabrao was working as Divanji, that Keshavrao was submitting all accounts and details to

Panjabrao, is not in dispute. Even after the death of Sitabai, Panjabrao continued as Divanji of Saraswatibai and same procedure was being followed.

Keshavrao has stated that Sitabai and Panjabrao came to him and he started working in field of Sitabai. He nowhere discloses details of any oral

agreement either with Sitabai or Panjabrao or that he agreed to cultivate the

land on batai basis i.e. crop sharing. He accepts that present petitioner removed him from employment. His witness also accepted this.

[10] Thus, status of Keshav as servant is accepted by Keshav himself and this evidence is correctly appreciated by Tahsildar as also by Sub?

Divisional Officer. Application of mind and appreciation of evidence by them cannot be viewed as perverse. The Revisional Court i.e. M.R.T.

therefore, could not have dealt with this evidence and recorded a finding to the contrary. The finding of Revisional Court is not only contrary to

evidence, but also overlooks the same. Moreover, in revisional jurisdiction, the M.R.T. cannot take another view merely because such other view is possible.

[11] The Revisional Court therefore has exceeded limited scope of power made available to it under Section 111 of Tenancy Act. It could have only

examined whether Tahsildar or Sub? Divisional Officer had travelled beyond the scope of jurisdiction available to them or then have ignored any

relevant material piece of evidence on record.

[12] The impugned judgment delivered by M.R.T. on 21.10.2011 is therefore, unsustainable. It is accordingly quashed and set aside. The order

delivered by Tahsildar on 31.12.2008 and answer given to reference by him (supra) are restored. [13] Writ Petition is thus, partly allowed and

disposed of. Rule is made absolute in the aforesaid terms with no order as to costs.