

(2009) 08 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 3019 of 1997

Ramkrishna Jagannath Jajodiya

APPELLANT

Vs

Kalyan Shankarrao Jadav

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 100(2), 111, 41, 42, 43
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2010) 4 BomCR 431

Hon'ble Judges : S.R. Dongaonkar, J

Bench : Single Bench

Advocate : B.S. Deshpande, for the Appellant; J.R. Kidilay, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Dongaonkar, J.—Heard Shri B.S.Deshpande, Advocate, for the petitioner. None present for the respondent (Shri J.R. Kidilay, learned Counsel for the respondent appeared after dictation is over)

2. The petitioner has filed this petition under Article 227 of the Constitution of India to challenge the order passed by the Member, Maharashtra Revenue Tribunal, Nagpur Bench, Nagpur, in Revision Application No. Ten-A-42/1992, dated 28th July, 1997, in original application filed by the petitioner. The petitioner was declared to be the tenant and was declared to be entitled to purchase the suit land i.e. Gat No. 339, area 3.69 hectare of Mouza Mahankal, belonging to the respondent, in the proceedings, he had preferred the application i.e. Application No. 656/1990, before the Tahsildar, Wardha, in Case No. 1/59-13/1986-87, of Mouza Mahakal, Tq. & Distt. Wardha, which was an application u/s 50, 100(2) and 41 to 44 of the Bombay Tenancy and Agricultural Land (Vidarbha Region) Act, 1958. He had succeeded in that application and got the order in his favour against the respondent, for purchase of the said land.

3. The respondent challenged that order by filing the Tenancy Appeal No. 59/13/6/89-90 of Mouza Mahakal before the Sub Divisional Office, Wardha. He by order dated 13th April, 1992, allowed that appeal. He set aside the order passed by the Tahsildar, Wardha, in favour of the petitioner. The reasons for coming to this conclusion were that the petitioner had failed to produce any sufficient evidence to prove his tenancy before the Tahsildar as well as before the S.D.O. in respect of the suit land. He found that there are no entries in the land record showing the petitioner to be in possession of the suit land. It was his finding that the petitioner could not produce any documentary evidence, particularly the lease agreement, rent receipts, account of the expenditure, green card etc. He also noticed that the evidence and certificate issued by Talathi, dated 26.11.1985 in favour of the petitioner to show him in cultivating possession of the suit land was not borne out. For these main reasons, he had allowed the appeal.

4. The petitioner then raised the matter before the Maharashtra Revenue Tribunal, Nagpur Bench, Nagpur, in Revision Application No. Ten-A-42/1992 u/s 111 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. The learned Member, Maharashtra Revenue Tribunal, Nagpur Bench, took the same view as taken by the S.D.O. and therefore, dismissed the revision application. This petition challenges that order.

5. Learned Counsel for the petitioner has contended that the parties had led evidence before the Tahsildar and the Tahsildar, after considering the evidence and appreciating the same in proper perspective took the view in favour of the petitioner. According to him, the learned S.D.O., while considering the appeal, did not refer to the oral evidence on record and therefore, he failed to appreciate the rival contentions in proper perspective. He also submitted that the Member, Maharashtra Revenue Tribunal, Nagpur, while deciding the revision application, has also not considered the relevant aspects of the case. According to him, there was no copy of lease document, nor there was any question of maintaining the accounts of the receipt & expenditure in respect of the suit land. According to him, the lease contract was oral and the consideration of the lease was settled to be Rs. 1100/which was proved by oral evidence on record. According to him further, the evidence of Talathi has not been properly appreciated by the appellate authority as well as Revisional authority i.e. Maharashtra Revenue Tribunal. Therefore, he contended that both the orders i.e. of S.D.O. and Maharashtra Revenue Tribunal are liable to be set aside and order of Tahsildar needs to be restored.

6. None appeared for the Respondent .

7. Here is the case where parties have led evidence before the Tahsildar. The question is whether the appellate authority as well as Revisional authority have considered the evidence in proper perspective. In this regard, the reasons recorded by the S.D.O. while deciding the appeal, need to be closely perused. He has observed in para 5, thus

5. On having gone through the lower Courts case record and after examining the arguments made by both the parties, in the light of the provisions of law, it appears to me that all the arguments made by the appellants counsel are correct and I agree with his arguments. The arguments made by the respondents counsel are not at all acceptable or none of them are supported by proper evidence. The burden to prove his tenancy lies upon the respondent No. 1. The respondent No. 1 has just claimed to be a tenant of the suit land but he failed to produce sufficient evidence to prove his tenancy before the Tahsildar and this Court also. There is no any entry in land records showing that the respondent was in cultivating possession of the suit land. The respondent could not produce any documentary evidence particularly the lease agreement, rent receipts, account of the expenditure, green card etc. The certificate dated 26-11-1985 issued by the Talathi is contradicted by the Talathi himself in his oral evidence. Even if the arguments of the learned Counsel that this certificate cannot be disbelieved is accepted this mush is not a sufficient proof to prove the respondents tenancy. Even then the Tahsildar declared him to be a tenant and fixed a purchase price of the suit land. The Tahsildars impugned order is thus defective and bad in law and needs to be set aside. The proceedings u/s 145 Cr.P.C. have no relevance in this case particularly when the point of possession remained undecided in that case.

8. The Revisional authority i.e. Maharashtra Revenue Tribunal while dismissing the revision application has found that the main documents relied by the petitioner to substantiate his case of tenancy is a certificate issued by the Talathi, to come to the conclusion that the petitioner was a tenant and entitled to purchase the land under the provisions of Bombay Tenancy and Agricultural Land (Vidarbha Region) Act, was not reliable. The learned Member has specifically found that the evidence of Patwari/Talathi is not at all reliable. In fact, it is observed by the learned Member, M.R.T. that although the concerned Talathi was examined as witness before the Tahsildar, but his evidence is full of contradictions and is not at all conclusive as regards the claim of the petitioner and the averments made by the said Talathi during his cross examination reveal clearly that he has proved that the certificate which had been issued by him on 26.11.85 was false and unreliable. He has held that the conclusions drawn by the learned S.D.O. Wardha are not assailable.

9. One of the aspect taken into consideration by the learned Member, M.R.T., Nagpur, was regarding filing of certain documents in proceedings. He has observed that,

Although the applicants counsel has filed three documents before this Tribunal together with the written note of argument dated 28.11.96, no cognizance of the said documents can be taken by me, in view of the fact that they have been filed at a very late stage and throw no light on the possession of the applicant over the suit field during the period of 1984-85 to 87.

These documents are not produced even at this stage. The observation of the

learned Member that they throw no light on the possession of the applicant over the suit filed at the relevant time cannot be said to be incorrect in absence of production of those documents in the writ petition.

10. Taking over all view of the matter, it is impossible to say that the order of the Sub Divisional Officer, Wardha as well as the Member, Maharashtra Revenue Tribunal, Nagpur Bench, Nagpur, are perverse and are not based on the inferences that can be drawn from the record and evidence that is led. When there is nothing substantial on record to take the different view of the matter, the petition is liable to be dismissed. The same is accordingly dismissed. No order as to costs.