

(1996) 07 BOM CK 0070
In the Bombay High Court
Case No : Writ Petition No. 53 of 1985

Sampat

APPELLANT

Vs

Farooq Ali and Others

RESPONDENT

Date of Decision : 17-07-1996

Acts Referred:

Evidence Act, 1872 — Section 3, 58

Citation : (1997) 2 BomCR 699

Hon'ble Judges : R.G. Deshpande, J

Bench : Single Bench

Advocate : A.M. Dabir, for the Appellant; P.F. Patni, for S.N. Loya, for respondent Nos. 1, 3 and 4 and S.K. Kadam, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.G. Deshpande, J.—The present proceedings are initiated on the basis of an application u/s 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as ("the Act") for short). The present petitioner - Sampat s/o Zingu claim to be a tenant over an area of 9 acres 20 gunthas from Field Survey No. 94 having an area of 11 acres 32 gunthas and Field Survey No. 93 having an area of 17 acres 11 gunthas. These two field Survey Numbers subsequently appear to have been consolidated into Gut No. 277. The application u/s 98 of the Act was filed by the present petitioner on 21st January, 1980 against the present respondents. This application was registered as an Application No. 81/IR/TNC/53 on the file of the Collector, Aurangabad. In his application, it was the contention of the petitioner that he was a protected tenant along with one deceased Maruti s/o Abaji as a co-tenant from the year 1941-42. It was also his contention that his possession as a tenant is evidenced from Khasara Patrak for the year 1954-55 and also from Pahani Patrak for the years 1955-56 to 1958-59. In support of his contention, he further pointed out in his application that the entries in the 7/12 extract from the years 1959-60 to 1962-63, which according to him, were sufficient to establish his tenancy rights

on the field in question. It was his case through his application that he has been wrongly and illegally dispossessed in the year 1962-63 by one Sukhlal s/o Chunnilal, who happened to be the respondent No. 2 in this petition and who expired in the year 1988 during the pendency of the present petition. I have to make a reference at this stage to one important fact on the record that since all the legal representatives of Sukhlal are not brought on record, there is an order from the registry of this office on the record of the case that the petition stood abated as against Sukhlal. I feel it necessary to make a reference to another point at this stage only that respondent No. 1 in the present petition, who was one Farooq Ali has also expired long back in the year 1986 itself, as is pointed out by the learned Counsel for the respondent and unfortunately for the petitioner his legal representatives are also not brought on the record till this date. The question as to whether could in such circumstances, the present petition survives as against respondent Nos. 3 and 4 needs decision also. The respondent Nos. 3 and 4 i.e. Vilas and Kailas are already on the record right from the proceedings before the Collector, which were initiated u/s 98 of the Act.

2. Referring back to the application of the petitioner u/s 98 of the Act the petitioner in his application mentioned that he was dispossessed in the year 1962-63 in execution of a Civil Court decree with a further specific statement by the petitioner himself, that though he was a protected tenant along with deceased Maruti s/o Abaji, his name was not entered into the protected tenancy certificate. On notice, the respondent did file their written statement and naturally denying all the allegations made by the petitioner in his application and specifically denying the tenancy of the petitioner. It is pertinent to note that it is a common written statement which was filed by all the non-applicants therein i.e. the present respondents Nos. 1 to 4. In the written statement, it was the case of the non-applicants ---respondents that there was a civil litigation between the respondent No. 1 Farooq Ali and respondent No. 2 - Sukhlal and in the execution of a decree in that civil litigation Sukhlal was put in possession and as such Sukhlal could not be said to be or regarded to be a person in unlawful or in unauthorised possession. Since the application was filed u/s 98 of the Act, it would be worth while to refer to the provisions of the said section, which says, many person unauthorisedly occupying or wrongfully in possession of any land to the use and occupation of which he is not entitled under the provisions, may if the said provisions do not provide for the eviction of such person be summarily evicted by the Collector". The question, therefore, arose before the Collector, who was dealing with the matter, as to whether the present respondents could be said to be unauthorisedly occupying the field in question or were they in any manner wrongfully in possession thereof. Simultaneously, a point also naturally arose for consideration as to whether the present petitioner was a tenant and whether was he entitled to get relief u/s 98 of the Act. The learned Deputy Collector, Land Reforms, Aurangabad, by his order, dated 19th March, 1983, after due appreciation of the documents and the evidence on the record reached to the conclusion that the present petitioner Sampat was not a protected tenant,

nor was the possession of the present respondents in any manner unauthorised or illegal. The natural consequence of these findings was that the application u/s 98 of the Act filed by the petitioner was rejected.

3. Aggrieved petitioner approached the Maharashtra Revenue Tribunal, Aurangabad, by filing an appeal u/s 90 of the Act, which was registered as Appeal No. 142/A/1983/ Aurangabad and the learned Member of the Revenue Tribunal, by his judgment and order, dated 1.8.1984 dismissed the appeal upholding the findings given by the Deputy Collector, Land Reforms, Aurangabad. It is against this order the present writ petition is filed by the unsuccessful petitioner.

To understand the rival contentions, it would be necessary to have a reference to certain facts, to which so far there is no reference in the judgment above.

Regular Civil Suit No. 63/1 of 1958 was initiated by the present respondent No. 2 - deceased Sukhlal against the present respondent No. 1 - deceased Farooq Ali for possession of the Field Survey Nos. 93 and 94, to which reference is already made above and which was decreed on 4.8.1950 as against the respondent No. 1 and in favour of the respondent No. 2 - Sukhlal. The said litigation did not stop on that point, but the respondent No. 1- Farooq Ali filed First Appeal before the learned District Judge, Aurangabad, which was registered as Appeal No. 161/51. The said appeal was dismissed on 30.4.1951 and the judgment and decree passed by the Trial Court was maintained. From the record before this Court, it is clear that the matter also had gone to High Court in second appeal, which was registered as second as Second Appeal No. 316/2 of 1952. From the record, it is also clear that at this stage during the pendency of Second Appeal, the matter was compromised and the present respondent No. 2 - Sukhlal was declared to be the owner of Field Survey Nos. 93 and 94 and the present respondent No. 1 was given some other field Survey number as a owner thereof in the compromise decree. In view of the compromise of the matter on 9.10.1956 the same was executed vide Regular Darkhast No. 41/59, in pursuance of which Field Survey Nos. 93 and 94 were given in possession of the respondent No. 2 - Sukhlal (since deceased). It would be necessary at this stage to refer to one more important aspect that the time of execution of the decree vide Regular Darkhast No. 41/59, necessary objection was raised by the present petitioner to the said execution, which was rejected and thereafter the decree was executed. While rejecting the objection, it is not disputed by both the parties before this Court that it was observed that the present petitioner had some other remedy under other provisions of law. The question, therefore, is as to whether the possession of the present respondent No. 2 and of the respondent Nos. 3 and 4, who happened to be the sons of deceased Sukhlal could be said to be unauthorised and illegal. It is clear that they have been put in possession and to be precise respondent No. 2 - Sukhlal was put in possession in pursuance of the decree which was passed lawfully, and further that the objection of the petitioner to the execution thereof was also rejected and, therefore, the possession of the present respondents Nos.

3 and 4 (and for the purpose of discussion of the respondent No. 2) could not be said to be either illegal in any manner or unauthorised by any stretch of imagination. It is also pertinent to note that the learned Civil Judge, Junior Division, Sillods, who was dealing with the civil suit, had observed that if at all the judgment debtors in that suit had any claim under the Act, they were at liberty to approach the proper Court having jurisdiction to get their grievances redressed. This order was passed on 10th June, 1961. It is also pertinent to note that the present petitioner, thereafter, and in spite of having the knowledge that the respondent No. 2 had taken over the possession in pursuance of the decree, slept over the matter for years together and it was for the first time in the year 1980 he moved his present application u/s 98 of the Act. He even did not bother to find out as to whether he could have in any way challenged the decision which was arrived at in the said litigation on the basis of compromise.

4. Another aspect of the matter is as to whether could the present petitioner make the application u/s 98 of the Act and that too at such a late stage i.e. after about 17 to 18 years. In fact, if at all the case of the petitioner was that he was a tenant on the field in question, he could have conveniently approached the proper Authority under the Act in accordance with the provisions of section 32 (1) read with section 8 of the Act. However, the present petitioner was not even diligent enough in taking proper steps in the matter. The learned Member of the Revenue Tribunal, who dealt with the appeal, therefore, rightly observed that the relief was not available to the petitioner by the present application u/s 98 of the Act. The view taken in the case of Kerba Bhivaji Shinde Vs. Salubai and Others, , clearly establishes that whenever there is a dispute between the landlord and the tenant in respect of the tenanted land, the tenant should resort to the provisions of section 32 (1) of the Tenancy Act and no other section is available to the tenant. In the instant matter, the point to be seen is that as to whether could the present petitioner be said to be a tenant of the respondent No. 2 and also of the respondent Nos. 3 and 4. The petitioner has claimed his tenancy from Farooq Ali and at the same time he was also claiming to be a co-tenant with one Maruti. It was his case in the application, which was filed on 10.2.1958 that he was cultivating the land of Shri Ganpat s/o Maruti from last ten years along with Farooq Ali and hence his name should have been entered in the protected tenancy register and other village record. In fact, even from the contents of his application and his case put up before the Authorities below, the petitioner appeared to have been shifting his stand quite constantly. It is pertinent to note that all through this litigation this Ganpat is nowhere in the record nor he is in any way made party to the proceedings. It is important to note that it is his own case that his name is not recorded as a protected tenant in the relevant certificate. When this Farooq Ali, in fact, could not be said to be the owner of the field in question, and more so, when in execution of the decree this Field Survey Nos. 93 and 94 have gone to Sukhlal, the question is, could it be said that the present petitioner established his relationship as a landlord and tenant with Sukhlal. For invoking the provisions of section 98 of the Act, relationship of

landlord and tenant between the respondent No. 2 and petitioner was required to be necessarily established. However, in the instant matter, this is totally missing and, therefore, as is rightly pointed out by the learned Counsel for the respondents Nos. 3 and 4 Shri P.F.Patni that for creating a tenancy on the fields in question Farooq Ali was absolutely a stranger and he had no right whatsoever to create any tenancy in favour of any one of the fields in question and if at all any such tenancy is created, that is absolutely unauthorised and thereby the person claiming through him as a tenant could be said to be nothing but a person in wrongful possession or a trespasser. I do see much substance in this argument of the learned Counsel for the respondent and I have no difficulty in agreeing with him on this point.

5. Shri Dabir, the learned Counsel for the petitioner vehemently argued that the documents in the nature of Khasra Patrak, Pahani Patrak and the document of 7/12 extract, to which reference is already made in the previous paragraphs of this judgment, do definitely indicate that the petitioner was a tenant and further that at least there should have been an inquiry in to the matter on this point. It is already pointed out that if the petitioner wanted to rely on these documents, then the remedy open for the petitioner was not the application u/s 98 of the Act, but remedy was u/s 32 (1) read with section 8 of the Act, which, as pointed out earlier, the petitioner failed to avail of.

6. At this stage, the learned Counsel Shri Patni for the respondents brought to my notice a judgment, dated 15.11.1960, passed by the Assistant Collector, Sillod in Case No. TNC/AR/2558, between Sampat s/o Zingu i.e. the present petitioner on one hand and Farooq Ali the present respondent No. 1 and also Ganpat s/o Maruti to whom already reference is made above on the other hand. This appeared to be a litigation initiated by the present petitioner Sampat contending that he was cultivating the fields in question of Opponent No. 2 i.e. Ganpat Maruti for last ten years along with Opponent No. 1 Farooq Ali. He, therefore, by the said application, sought for necessary entry of his name into the list of the protected tenants and also in other relevant village records pertaining thereto. While dealing with this aspect, the learned Assistant Collector has observed that Sampat failed to prove that he was a tenant on the field in question and further that there was no necessity to enter his name as a tenant in the relevant revenue records. In fact, it is a clear cut finding given that the present petitioner was not a tenant on the lands. Shri Patni, the learned Counsel brought to my notice that this judgment is not upset by any of the higher Authorities and according to him, it does not appear to have been challenged at all. Shri Patni has rightly taken the advantage of this judgment to support his contention that the petitioner is not a tenant at all. Shri Dabir tried to point out that this judgment is not binding in any way on the Revenue Authorities below, who were dealing with the matter u/s 98 of the Act. Without expressing my views as to whether it is binding or not, this judgment if seen in the nature of evidence, as it is a certified copy of the judgment, I do not think that Shri Patni, learned Counsel was in any way wrong in relying on the said judgment as a piece

of evidence to show that the petitioner was not a tenant on the fields in question.

7. Shri Dabir further faintly tried to suggest that the Revenue Authorities below should have made necessary inquiry as regards the status of the petitioner as a tenant and then should have given a finding further and thereafter evicting the present respondents from the fields in question. I am unable to agree with Shri Dabir on this point, particularly when a specific remedy was open for the petitioner u/s 32(1) read with section 8 of the Act to challenge the said order. I think, there is no necessity to remand the matter for that purpose. Shri Dabir further tried to place reliance on sub-section (2) of section 32 of the Act pointing out that his eviction even in execution of a Civil Court's decree was illegal and the parties to that civil suit should have obtained at the most a paper possession, but could not have evicted the petitioners from the fields in question. After reading of the provision of this section, it is clear that this section also perpetuates the relationship between the persons agitating that of landlord and tenant. I have already pointed out above that there was no relationship of landlord and tenant between the petitioner and the respondent No. 2 (since deceased) and the respondent Nos. 3 and 4. This provision is also, in view of this Court, not of any help to the petitioner.

8. In the result, the petition fails and the same is accordingly dismissed. Rule is discharged. The petitioner shall bear the costs of the respondents Nos. 3 and 4 in this petition.