
(2005) 07 BOM CK 0123
In the Bombay High Court
Case No : Writ Petition No. 412 of 1990

Santram singh Rajput

APPELLANT

Vs

Shivlal Ramling Rajput and Another

RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2006) 1 ALLMR 371 : (2006) 2 BomCR 834 : (2005) 4 MhLj 987

Hon'ble Judges : A.B. Naik, J

Bench : Single Bench

Advocate : Anjali Bajpai Dube, for the Appellant; A.S. Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Naik, J.—By this petition, the petitioner ex-tenant of the land S. No. 91(B) situate at Shivankhed, Taluka Ahmedpur, Dist. Latur has challenged the judgment and order passed by the Maharashtra Revenue Tribunal, allowing the revision application filed by the respondent. No. 1.

2. These proceedings has a checkered history and to understand the controversy raised in this petition few facts required to be noted.

The land S. No. 91(B) (hereinafter referred to as the suit land situate at Shivankhed, admittedly belong to Gazioddin @ Janimiya. The present petitioner was undisputedly occupying the land as a tenant thereof. Gazioddin landlord has submitted an application u/s 44 of the Hyderabad Tenancy and Agricultural Lands Act, (hereinafter referred to as the Act) seeking possession of the land for cultivation of the same personally. The said application filed u/s 44 read with Section 2 of the Act was allowed by Tahsildar, Ahmedpur on 20th October, 1959. Pursuant to the said order the tenancy was terminated and the request of the landlord for personal cultivation was allowed and accordingly, the landlord received the possession of the land.

3. After land was put in possession of the landlord, it appears that landlord has discontinued the cultivation of 7 acres of the land out of total area of 14 acres which was received by him under the order passed by Tahsildar. As the landlord has discontinued the cultivation of the land and inducted one Bhaguram Sudam. The ex-tenant moved an application u/s 45 of the Act to the Tahsildar, Ahmedpur complaining that the landlord has contravened the provisions of Section 45 of the Act, as such he is entitled to possession of that land. That application was enquired into by the Tahsildar, Ahmedpur and by the order dated 3-2-1965 the Tahsildar directed that the tenant be put in possession to the extent of 7 acres of the land which was leased out by the landlord after he obtained possession of the land u/s 44 of the Act. In execution of the order dated 3-2-1965 passed by the Naib Tahsildar, Ahmedpur 7 acres of land was put in possession of the tenant on 28-5-1965, the tenant on the same day executed the receipt acknowledging the possession of the land.

4. The present proceedings now relates to remaining 7 acres of the land of which the possession was obtained by the landlord, the ex-tenant on January 27, 1970 filed an application in form No. 6 Rule 12 of the Hyderabad Tenancy and Agricultural Lands Rules, inter alia contending that the landlord who obtained possession of the land u/s 44 of Act, is not cultivating the land admeasuring 7 acres and has leased out the land to the present respondent No. 1 in the year 1968-69. In that application he contended that possession of respondent No. 1 is recorded in the revenue record in respect of the suit land and shown in the cultivation column as mode No. 4 i.e. cultivation on Batai basis i.e. (crop share) and the fact of possession of respondent No. 1 is thus indicative of the fact that the landlord is not cultivating the land personally. He contended that respondent No. 2 was inducted on the land on 6-6-1968 and the application is being filed within two years from 6-6-1968 to seek possession of the land. In support of his contention, the tenant has produced 7/12 extract of the land. On receipt of the application by the tenant, Tahsildar noticed the respondents namely he landlord. The respondent was duly served but the landlord did not appear in the proceedings. No evidence was led by the respondent before the Tahsildar nor written statement was filed. Accordingly, the Tahsildar allowed the application filed by the tenant and directed the possession should be restored to the tenant. This order came to be passed by Additional Tahsildar, Ahmedpur on June 20, 1972.

5. The landlord has not challenged the order passed by the Tahsildar but respondent No. 1 who was at the material time in possession of the land, preferred an appeal before the Deputy Collector, Land Reforms, Osmanabad being Tenancy Appeal No. 229/1972. The appellate authority having noticed that the applicant was not party to the proceedings and order affects his right, as the Tahsildar proceeded ex-parte as the landlord did not appear in the matter. Considering the contentions which is advanced by the respondent before the Deputy Collector that the appellant i.e. present respondent No. 1 has claimed that he has purchased the land in an auction conducted by the Tahsildar as the

land was put to auction as landlord Gaziuddin was in default of payment of excise duty to the government. Moreover, the tenant has surrendered his right by making an application on 8-5-1973. Therefore, it was contended that the application filed by the tenant was not maintainable and required to be rejected. The Deputy Collector accepted the contentions of the respondent No. 1 and remanded the matter to Tahsildar for fresh enquiry after setting aside the order passed by the Addl. Tahsildar on 26-6-1972. The appellate authority was of the view that an opportunity was required to be given to prove the contention which is advanced before the appellate Court. Accordingly, the appeal was allowed vide order dated 30-4-1973 and the matter was remanded back to Tahsildar for deciding the matter afresh as per the directions issued.

6. As per the order passed by the Deputy Collector the matter was reheard by the Tahsildar. After remand from the Deputy Collector, the present respondent No. 1 filed his written submissions on 17th October, 1973, inter alia contending that the application as filed u/s 32 is not maintainable. He contended that the land was put to auction after it was attached by the Government as the landholder was in arrears of the excise dues and this land was auctioned by Tahsildar, Ahmedpur and he being the highest bidder, his bid was accepted and accordingly possession was given to him by the Tahsildar, thus he came in possession of the land as auction purchaser from the Government and not as a lessee of the landlord as alleged by the ex-tenant. In support of this contention respondent No. 2 has filed on record the challan dated 2-1-1965 showing payment of auction money, Panchanama dated 9-6-1965 and the copy of application dated 8-6-1965 filed by the tenant expressing desire not to have the land, to show that he has surrendered the land. The Tahsildar also recorded the statement of the respondent No. 1 and one witness. In his statement he has reiterated the stand taken by him in his written reply/arguments. He also examined one Pundlik Rama to prove the fact that the land was put to auction by the Government and in auction he has purchased the land. Before Tahsildar the respondent No. 1 filed an application with a request to call the file from the Excise Department regarding the auction sale of the land of landlord but however, the file could not be received. Thereafter, the tenant's statement was recorded by Tahsildar on 9th October, 1987. On the basis of the documents which were produced on record, the Tahsildar on 16th October, 1987 heard the arguments of the respective advocates. After arguments were concluded on 20-11-1987 the respondent produced 5 documents relating to the auction of land. The Tahsildar on hearing the parties and considering the documents by the order dated 14-12-1973 rejected the application filed by the tenant holding that respondent is in possession as auction purchaser.

7. Feeling aggrieved by the judgment and order passed by Tahsildar on 14-12-1973, the tenant preferred an appeal before the Deputy Collector, Land Reforms, Osmanabad. The Deputy Collector dismissed the appeal and confirmed the judgment and order passed by Tahsildar on 14-12-1973. Feeling aggrieved by the order passed by the Deputy Collector, the tenant approached the M.R.T.

and the M.R.T. vide order dated 4-9-1983 allowed the revision application, set aside the order passed by the Deputy Collector and remanded the matter for recording evidence afresh. After remand the Tahsildar again conducted an enquiry as no fresh evidence was laid by the parties the Tahsildar decided the case on available record (evidence), by observing that in spite of giving an opportunity, the respondent No. 1 did not produce any new evidence. The Tahsildar by his order dated 30-11-1987 granted the application and held that the tenant is entitled to restoration of possession as the landlord has not cultivated the land personally.

8. Feeling aggrieved by the judgment and order dated 30-11-1987 passed by the Addl. Tahsildar, Ahmedpur, the respondent No. 1 preferred an appeal before the Deputy Collector, Land Reforms, Latur. The Deputy Collector after hearing the parties and considering the evidence on record and more particularly the Panchanama dated 9-6-1965 which was filed by the respondent No. 1 to indicate that he is not in possession of the land as an auction purchaser. He found that the present respondent though was shown in possession but the subsequent entries in the revenue record from the year 1968-69, 1969-70 which shows that the respondent was cultivating the land as Batai and on the basis of this document, the Deputy Collector concluded that the respondent No. 1 is not the owner of the land nor he is purchaser of the land but he is cultivating the land as Bataidar and held that the respondent No. 1 has failed to establish that he was introduced on the land by the Government as an auction purchaser. With this finding, the Deputy Collector, dismissed the appeal and confirmed the order passed by the Tahsildar, Ahmedpur.

9. Feeling aggrieved by the judgment and order dated 6-5-1988 passed by the Deputy Collector, Land Reforms, Latur in File No. 88/TNC/A/4 the respondent preferred revision before the M.R.T. being Revision Application No. 5 I/B/88-Latur. The learned designated Member of the Maharashtra Revenue Tribunal did not agree with the finding recorded by the Deputy Collector. The designated Member was of the view that the documents which are produced on record such as Panchanama, proclamation and the challan goes to show that the respondent No. 1 was the auction purchaser and was not inducted on the land by the landholder on the basis of the agreement of lease. The M.R.T. also opined that the present tenant has not brought on record any evidence to show that the landlord Gazioddin has inducted respondent No. 1 as tenant on the land. On the basis of this observation, the learned Member of the M.R.T. opined that the finding recorded by the Tahsildar and confirmed by the Deputy Collector being perverse and against the evidence on record and therefore, he reversed the order passed by both the Courts below and allowed the revision application and dismissed the application filed by the tenant.

10. Feeling aggrieved by the judgment and order dated 24-4-1989 passed by the learned designated Member of the M.R.T. the present petitioner has approached this Court by filing this writ petition under Article 227 of the Constitution of India.

11. Smt. Anjali Bajpai Dube, learned advocate appearing for the petitioner submitted before me that the learned designated Member of the Maharashtra Revenue Tribunal exceeded his jurisdiction in allowing the revision application and setting aside the order passed by both the Courts below. Smt. Dube, submitted that M.R.T. in reversing the concurrent finding of fact recorded by the Tahsildar and the Deputy Collector has exceeded the jurisdiction conferred on it by Section 91 of the Act. She further submitted that orders passed by both the authorities below were based on the evidence on record and therefore, the M.R.T. was hearing a revision application u/s 91 of the Act has no jurisdiction to reappraise the evidence and record a contrary finding. She submitted that the question which was raised in the proceedings revolve around only on one aspect whether the landlord has discontinued the cultivation of the land. She submitted that it is not disputed that the land was resumed by the landlord after the order passed by the Tahsildar. The landlord thereafter, did not cultivate the land to the extent of 7 acres and thereby the ex-tenant/petitioner applied to Tahsildar who on holding that the landlord has discontinued the cultivation and the land was again restored. She submitted thereafter, the landlord did not cultivate the land and inducted respondent No. 1 on the land. Therefore, she submitted that as the landlord has contravened the order passed u/s 44 read with Section 45, and did discontinued the cultivation of the land within 10 years from the date of possession, therefore, she submitted the petitioner is entitled to restore the possession u/s 45 of the Act. She submitted that respondent No. 1 came with a definite case that the land S. No. 91(B) was put to auction and he has purchased the land under the auction conducted by the Tahsildar. Opportunity was given to respondent No. 1 to establish the fact but no evidence worth naming was produced by him to substantiate the stand that he is an auction purchaser. She therefore, submitted that the M.R.T. on the basis of the documents which according to her are not proved in accordance with law has wrongly held that the landlord has not inducted respondent No. 1 on record as tenant but he is on behalf of the Government. She therefore, submitted that the consequences as provided u/s 45 follows automatically as the landlord who fails to cultivate the land personally has to restore the land to the ex-tenant if the application is so made. She submitted that respondent No. 1 has come with the case before the Court that he has purchased the land in an auction which was conducted in the year 1964 but the revenue record which is produced on record does not support the stand. She submitted that the revenue record which is produced on record shows that since 1963-64 onwards possession of respondent No. 1 was recorded. That shows that the landlord has discontinued the cultivation of the land. Therefore, she submitted that the M.R.T. has committed an error apparent on the face of record in ignoring the revenue entries.

12. Per contra, Shri Arvind Deshmukh, learned advocate for the respondent submitted that after the remand by the Tahsildar respondent No. 1 has produced documents to show that the land was attached by the Excise Department and thereafter, the land was auctioned and the respondent No. 1 being highest

bidder, his bid was accepted and he has deposited the amount. Then possession was delivered to him by the Tahsildar and not by the landlord. He submitted that the documents which were produced on record by the respondent No. 1 after remand goes to show that he is cultivating the land as an auction purchaser. Shri Deshmukh, submitted that the treasury challan dated 2-1-1965 and the Panchanama dated 9-6-1965 establishes the fact that he has taken part in the auction and his bid was accepted. Shri Deshmukh, pointed out that the respondent No. 1 made efforts to produce the record pertaining to the auction of the land of Gazioddin @ Janimiya the landlord who was in arrears of excise duty. An application was filed by the respondent No. 1 for calling the record, in response no record was called but however, the respondent No. 1 along with the letter signed by the Superintendent, Prohibition and State Excise dated 18-11-1987 has produced on record copies of the document pertaining to the land which was put for auction issued from the office of the Tahsildar. Shri Deshmukh, therefore, submitted that the land which is in possession of respondent No. 1 is not as a lessee from the landlord but his possession is on the basis of the auction. Shri Deshmukh, therefore, submitted that the petitioner who has come to the Court by making an application contending that the landlord inducted the respondent has leased the land. He submitted that the burden was on the petitioner to establish the fact of creation of tenancy or lease. He submitted that mere entries in the revenue record does not establish the fact of lease. He pointed out that the entries which are made in the revenue record are inconsistent. He submitted that initially the revenue record shows rit (one) meaning thereby as a owner and subsequently it was noted as rit No. (4) means Batai which cannot go together i.e. at same time as owner and bataidar. He also submitted that these entries are not the entries in the record of right but these are only in the, cultivation column and that too in pencil. He further pointed out that the revenue entries cannot be solely relied to decide the controversy but to establish the fact that the entries made in the revenue record are relied which does show his possession as the auction purchaser. He therefore, submitted that the petitioner has no cause to file an application against the present respondent No. 1 who has purchased the land in an auction. He therefore, submitted that while remanding the matter by the Deputy Collector by his order dated 30-4-1973 has specifically framed a point about nature of the possession of the respondent No. 1. He therefore, submitted that whatever record which was available was produced before the authorities below but the Tahsildar and the Deputy Collector erroneously assumed that the respondent No. 1 was not a person in possession as an auction purchaser but his possession is that of lessee. Shri Deshmukh, therefore, submitted that the M.R.T. having noticed that the authorities below have recorded a perverse finding qua the nature of possession, the record does indicate and established the fact that the respondent is in possession of land as auction purchaser. He also brought to my notice the documents which are produced on record along with the letter of the Collector, Land Reforms, Osmanabad dated 20th September, 1973. He pointed out that, that letter was addressed to the Additional Tahsildar, Ahmedpur by the

Collector's office, Osmanabad and along with that letter the documents mentioned therein were forwarded. Those documents are (i) Treasury challan dated 22-1-1965; (ii) 7/12 extract of the land S. No. 91(B); (iii) copy of panchanama dated 9-6-1975 and the application of the tenant verified by the Tahsildar dated 8-6-1973. By referring to all these documents, Shri Deshmukh, submitted that the M.R.T. was justified in interfering the order passed by the Tahsildar and confirmed by the Deputy Collector. He therefore, submitted that as the respondent No. 1 is in possession of the land as auction purchaser, he cannot be held to be a lessee from landlord or he has been inducted by the landlord on the land. Therefore, he submitted that induction of respondent No. 2 on the land is not through the landlord but it is from the Government. Shri Deshmukh, then pointed out the record which was produced along with the document dated 20-11-1981 does establish that land S. No. 91 was put for auction under the provisions of Hyderabad Land Revenue Act, 1317 Fasli. He submitted from the documents produced on record show that the landlord was in arrears of excise dues amounting to Rs. 14,091=75, the Collector, Osmanabad in exercise of power u/s 124 of the Land Revenue Act, has permitted to auction the land and accordingly, the proclamation was issued on 19-11-1964 and the auction was conducted accordingly. Section 124 of the Land Revenue Act, 1317 Fasli :

"124. (1) The Taluqdar may forfeit the holding in respect of which an arrear of land revenue is due and let it out on lease for a period not exceeding ten years; but If he deems it fit that such land should be sold he may, with the previous sanction of Subedar sell the right of occupancy pertaining thereto. Any sum, recovered by sale or through some other management of the land shall be credited to the account of the defaulter. (2) Government may whenever necessary by general or special order authorise any Taluqdar or additional Taluqdar to sell the holding forfeited under Sub-section (1) without the previous sanction of Subedar."

Shri Deshmukh, also pointed out that after the proclamation, the Collector received objections from interested persons which includes the objection by the wife of Gaziuddin landlord and that objection was considered by the Tahsildar and the Tahsildar recorded that Gaziuddin is the owner of land S. No. 91(B). It is to be noted that an application came to be filed before the Collector by three persons which includes the present petitioner. That application is at page 229 of the record i.e. joint application filed by Sangram, Ganpati, Shankar and Santoba, where they requested that they are ready to take part in the auction. It is to be noted that the land was put to auction and respondent being highest bidder got the land. Therefore, Shri Deshmukh, submitted that the judgment of the M.R.T. being proper, no interference is called for.

13. On giving my anxious consideration of the counsel, following point emerged for my consideration :

(i) Whether the respondent No. 1 was inducted on the land by the landlord;

(ii) Whether the petitioner has proved that the landlord has inducted the respondent on the land as a tenant/lessee.

14. Before answering this question one aspect has to be noted that the landlord is not cultivating the land personally. The present dispute is in respect of 7 acres of land therefore, it is not necessary to refer to the earlier aspect of the matter. Now the record which is brought before Court below goes to show that land S. No. 9I(B) was put to sell by the Collector u/s 124 of the Land Revenue Act, 1317 Fasli. Section 124 permits the Taluqdar to sell the land with permission of Subedar in respect of which arrears of land revenue is due from the defaulter. Document at page 296 dated 19-11-1964 refers to Section 124 and the copy of the proclamation has come from the office of Tahsildar, Ahmedpur, it has to be accepted to be correct one. It is clear from the proclamation dated 19-11-1964, the proclamation was issued u/s 130 of the Land Revenue Act, 1317 Fasli. Section 130 of the Land Revenue Act, 1317 Fasli. 1317 Fasli reads thus :

"130. When any sale of defaulter's property is ordered under the provisions of this Chapter, the Tahsildar or any Taluqdar or Second Taluqdar shall issue a proclamation in the vernacular language of that place as well as in Urdu, wherein the following particulars shall be specified :-

- (a) time and place of sale;
- (b) by whom the sale shall be confirmed;
- (c) when the property to be sold be land paying revenue, its area and the revenue assessed upon it;
- (d) any other particulars which the Taluqdar may think necessary.

Such proclamation shall be affixed in the Chauri or any other place in the village wherein the property was seized and in the Tahsil Office in some conspicuous place and its substance shall be made known by beat of drum in the village wherein the property was seized and in such other places also as the Taluqdar may deem proper. If the property to be sold be immovable property, a copy of the proclamation shall be affixed in the Taluqdar's office also in some conspicuous place and its substance shall be made known by beat of drum at the headquarters of the district, and in every case the Taluqdar may in addition to the aforesaid method get the notice published in any other manner also."

After issuance of proclamation the Taluqdar was authorised to consider the claims to that attached property u/s 131 of the Act and in the present case as it is brought on record a objection was received by lady which was overruled by the Tahsildar. Section 132 permits the Taluqdar to auction the property and after its conclusion, sale to be confirmed by the Taluqdar. From the record it is clear that the auction was conducted and the respondent took part in the auction and he has deposited the amount of Rs. 425 /- in the treasury on 2-1-1965. That shows prima facie that respondent No. 1 took part in the auction and bid was accepted and he deposited the amount and consequently, his name was recorded in the

revenue record showing him as auction purchaser (Harasdar). Therefore, in my judgment, looking to the documents and the findings recorded by the M.R.T., M.R.T. was justified in interfering in the order passed by both the authorities below. It appears that both the authorities below have proceeded to doubt the auction conducted as they observed that only a sum of Rs. 425/- was paid but they have forgotten the fact that the authorities were not dealing with the validity of auction but the authorities were dealing with an application filed by the petitioner seeking possession of the land u/s 45 of the Act. No doubt Section 45 requires the land holder to restore the land to the tenant if the land holder fails to cultivate personally within one year from the date on which resumed possession and having commenced such cultivation discontinued the same within 10 years of the said date. Within 10 years from the date of possession the statute mandates that he shall forthwith restore possession. Therefore, the question is whether the cultivation of the land after auction purchase by respondent No. 1 can be termed as the lessee from the land holder or the auction purchaser. In my judgment, the petitioner who approached the Court initially, he should have established the fact that the respondent No. 1 was inducted on the land as lessee or Bataidar by the landlord. Unfortunately, no attempt was made by the petitioner to establish this fact. The sole reliance of the petitioner was on the entries made in the 7/12 extract of land which in my opinion are not sufficient to prove the fact of lease but the fact remains that the documents produced on record did not establish that the land holder is cultivating the land personally but in my opinion, on the facts of this case, the discontinuation of land by the land holder was not his voluntary act but he was compelled to give the land because of recovery proceeding taken against him under the provisions of Hyderabad Land Revenue Act, 1317 Fasli. Therefore, it cannot be said that the landlord has inducted respondent No. 1 as a tenant on the land. On the other hand, it is established that the respondent No. 1 came in possession on the basis as auction purchaser. Therefore, it cannot be said that landlord has discontinued the possession on his own and inducted respondent No. 1 as "bataidar". The provisions of Section 45 of the Act are to be interpreted in the light of the facts which are brought on record. If in given set of facts, the landlord compelled to part with possession and discontinued cultivation of land which he has taken possession under an order passed by the Tahsildar u/s 44 of the Act, that will not be treated as voluntary discontinuation of possession. The true affect of Section 45 is to protect the interest of the ex tenant, whose tenancy is terminated by the landlord for his personal cultivation and after obtaining possession he discontinued the cultivation voluntarily with object to defeat the right of ex tenant. In that case the tenant is entitled to possession of the land but not on account of any other contingency. In my judgment, the discontinuation of cultivation of the land by the landlord is not his voluntary act as the land admittedly attached by the Tahsildar to recover the dues against the landlord and land was put to auction in which respondent No. 1 was successful bidder and then came in possession of the land not as lessee or bataidar of the landlord. Therefore, in my judgment, the M.R.T. was justified in interfering the

order passed by the Courts below. Smt. Dube, has submitted, taking benefit of the reference in the panchanama which is produced on record which shows that the respondent No. 1 is in possession of the land through Janimiya the landlord. On this basis, she submitted that respondent No. 1 is not cultivating the land as auction purchaser but from the land holder Janimiya. In my judgment, such contention is not available in view of the copy of challan which is produced on record and also the copies of proclamation, the objection taken by the interested persons, the application by the petitioner for seeking permission to bid at the time of auction. However, panchanama which is produced on record does show that the land was auctioned for recovery of excise dues and it was accepted by respondent No. 1 and respondent No. 1 purchased the land in auction. Therefore, the M.R.T. noticing that the authorities below i.e. Tahsildar and the Deputy Collector have incorrectly interpreted the documents and applied wrong test and therefore, the M.R.T. when records a finding that the said finding was perverse and it has to be interfered and accordingly, the M.R.T. interfered with the said orders. Therefore, in my judgment, rightly so and as such there is no substance in the petition. Petition dismissed. Rule discharged. No order as to costs.