

(1998) 05 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 509 of 1986 with Writ Petition No. 287 of 1988

Shankar Dhangar

APPELLANT

Vs

Dhondopant Narayan Kulkarni, deceased by L.Rs. and others

RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Limitation Act, 1963 — Section 5
Mamlatdars Court Act, 1906 — Section 18(3)

Citation : (1998) 4 BomCR 764 : (1998) 3 MhLj 371

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

Bench : Single Bench

Advocate : V.G. Mete, for the Appellant; S.S. Choudhary, for the Respondent

Judgement

D.G. Deshpande, J.—Heard Advocates for the petitioner and the respondents.

2. This is a dispute between the tenant and the landlord and the petitioners in both the petitions are the tenants and respondent No. 1 is the landlord.

The disputed lands are as under :

Survey No. Area

324/2

3 Acres & 12 Gunthas,

308

3 Acres & 20 Gunthas,

71

10 Gunthas,

75

2 Acres & 20 Gunthas,

323

14 Acres & 10 Gunthas,

309

14 Acres

319

6 Acres & 30 Gunthas,

77/2

1 Acre & 29 Gunthas,

74

2 Acres & 9 Gunthas.

Total :-- 49 Acres

All these lands were owned by one Dhondopant s/o, Narayan Kulkarni, who died during the pendency of the proceedings and in his place, respondent Nos. i) and ii) Smt. Dwarkabai and Vithal i.e. widow and son were brought on record.

3. Both the petitions arise out of two proceedings namely, proceeding initiated by the original landlord u/s 44 and u/s 32(2) of the Hyderabad Tenancy & Agricultural Lands Act, 1950, and another proceedings initiated by the tenant u/s 32(1) of the Hyderabad Tenancy & Agricultural Lands Act, 1950 (hereinafter referred to as "the Tenancy Act" for short).

In both the proceedings there are number of orders right from the initial order passed by the Naib Tahsildar, then orders of remand in appeal, and it is not necessary to refer all the proceedings or the orders passed therein.

Suffice it to say that Naib Tahsildar rejected the landlord's application by order dated 8-9-1971, the landlord, therefore, filed appeal before the Deputy Collector, but while the appeal was pending the original landlord Dhondopant Kulkarni died and since the L.Rs. were not brought on record at that time, the appeal stood abated. It appears from the record that the L.Rs. filed an application before the Deputy Collector for setting aside abatement, and the Deputy Collector allowed the application.

While proceedings initiated by the landlord u/s 44 and 32(2) of the Tenancy Act were going on the petitioner-tenant and simultaneously started proceeding u/s 32(2) of the Tenancy Act. In this proceeding there were number of orders passed by the trial Court, Appellate Court and M.R.T. and the matter was remanded number of times and ultimately the Deputy Collector by his order dated 6-4-1985 allowed the tenant's application for restoration of possession u/s 32(1) of the Tenancy Act. This order of the Dy. Collector was challenged before the Maharashtra Revenue Tribunal, Aurangabad by filing two revisions by the

landlord Dhondopant Kulkarni by revision No. F-61/B/85/O & F. No. 62/B/85/O. The Maharashtra Revenue Tribunal passed a common order in both these revisions on 6th May, 1986 and allowed both the revisions in favour of the landlord Dhondopant Kulkarni, and hence the tenant has filed these two writ petitions separately.

4. Even though there is common order of the M.R.T. in the two revisions filed by the landlord, the case of the landlord u/s 32(1) of the Tenancy Act will have to be separately considered. So, also whether the tenant comes u/s 32(1) will have to be considered. Consequently, I am considering the case of the petitioner tenant u/s 32(1) of the Tenancy Act, 1950.

5. On record page 75 of the Naib Tahsildar's record, there is an application filed by the tenant petitioner u/s 32(1) before the Tahsildar, Bhoom. In this application the tenant has admitted that proceedings initiated by the landlord u/s 32(1) and u/s 44(1) are pending. However, he has alleged that in April, 1959 the landlord obstructed the tenant from entering in the agricultural land and, therefore, prayer was made that the tenant be placed in possession of all the land covered by nine survey numbers in ail. The date of this application is 5th August, 1959. Verification is made on his application in red-ink on 14-10-1959. In the same record, there is an application of tenant Shankar Dhangar dt. 16-10-1959 for immediately handing over the possession of the suit land or allowing him to cultivate the land jointly alongwith Namdeo s/o. Pundalik Gapat. Further, there is a panchanama at record page 105 wherein Shankar Dattu Dhangar, present tenant has accepted the possession of half of the entire suit land for personal cultivation. Apart from this there is one more panchanama dt. 19-6-1960 in respect of the entire suit land and under this panchanama 10 acres of land is given to Shankar. After measurement, all the remaining land was taken from his possession and was delivered back to the landlord Dhondopant Kulkarni. This is the certified copy of the panchanama in file No. TNC-AR-60/59 and these proceedings were started on 30-3-1959 and concluded on 27-12- 1959. This panchanama is signed by petitioner Shankar Dhangar and original landlord Dhondopant Kulkarni and it is attested by Sarpanch and other witnesses. It is clear from this record that so far as petitioner-tenant's application u/s 32(1) is concerned, he was placed in possession of 10 acres land under this panchanama dt. 19-6-1960. The M.R.T. has on internal page 45 of its impugned order taken into consideration these documents and rightly observed that if the tenant has alleged dispossession, and was thereafter placed in possession under panchanama and the tenant has accepted the said possession of 10 acres of land only, then firstly the tenant had no right to contend, that section 32(1) of the Tenancy Act was applicable in the instant case and secondly the tenant having accepted the possession under panchanama and having not challenged the same before any authority was not entitled to make any grievance about the same. I find that, the findings of the M.R.T. on internal page 4 and 5 in this regard are consistent with the record and, therefore, it cannot be said that the tenant Shankar Dattu Dhangar was illegally dispossessed. The panchanama of delivery

of possession referred to above was made pursuant to the orders of the Court, which the tenant Shankar had accepted and therefore no interference is called for in findings of the M.R.T. regarding tenants' application u/s 32(1) of the Tenancy Act.

6. So far as the landlords case u/s 44, read with 32(2) is concerned, the main contention of Mr. Mete, Counsel for the petitioner was that once the Dy. Collector ordered that the appeal filed by the landlord stood abated on account of the death of original landlord Dhondopant Kulkarni and on account of failure to bring the legal heirs of the landlord on record, the Dy. Collector had no power to set aside abatement. My attention was drawn to sub-section (3) of section 18 of the Mamlatdar's Courts Act, which provides that in the case of death of any party while the suit is pending no application is made for bringing the legal heirs on the record, the suit was abated. Mr. Mete, contended that there is no provision in the Mamlatdar's Courts Act for setting aside abatement and, hence the Deputy Collector had no power to set aside the abatement on the application of the legal heirs of Shri Dhondopant Kulkarni. Mr. Mete, learned Counsel for the petitioner relied upon the judgment of the M.R.T. reported in 1974 22 T.L.R. 78. In this case the member of the M.R.T. held that provisions of section 18 sub-section (3) of the Mamlatdar's Courts Act were mandatory and section 5 of the Limitation Act does not override a mandatory provision and, hence there is no scope for condonation of delay in making such application for bringing legal representatives/heirs on record. I do not agree with the views expressed by Member of the M.R.T. in this case.

The Limitation Act, 1963 (Act No. 36 of 1963) started with preamble that, "an Act to consolidate and amend, the law. for the limitation of suits and other proceedings and for purposes connected therewith". And section 5 of the Limitation Act provides that, any appeal or application other than an application in any appeal of the revision under Order 29 of the C.P.C. may be admitted after the prescribed period. In the commentary of this section, in law of Limitation published by the Law Book Company 1987 i.e. VIIIth Edition, it has been stated that this section applies in so far as it is not expressly excluded by the Special Law or Local Law. Section 5 includes only the application under Order 29 of the C.P.C. and if a party contends that section 5 of the Limitation Act will not be applicable to the proceedings before the Mamlatdar's Courts and, hence the view expressed by the Member of the Maharashtra Revenue Tribunal in the aforesaid decision cannot be accepted apart from the fact that is not binding on this Court. It is, therefore held that Dy. Collector was justified in setting aside the abatement.

7. The next point that was raised by Mr. Mete was that the original tenant Dhondopant Kulkarni has filed his application u/s 44 and 32(2) of the Tenancy Act, 1950 for resumption of land for personal cultivation and if Dhondopant died during the proceeding then it was necessary for the legal heirs to prove their need for personal cultivation. There appears substance in the said contention

because after the death of Dhondopant the present respondents Dwarkabai and Vithal were joined as legal heirs of Dhondopant Kulkarni, but they did not prove their bona fide personal need. This aspect of the matter was not considered by the learned Member of the M.R.T. and hence the matter is required to be remanded back to the trial Court for this purpose. However, considering the fact that this case was started by the original landlord in 1959, it is not desirable and proper to compel the parties to challenge the orders of trial Court after remand from this Court again & again to different courts. Already about 40 years period has elapsed from the initiation of the proceedings and, therefore, it is considered in this situation to direct the trial Court to decide the question of bona fide requirement of the respondent landlords for personal cultivation by recording evidence of both the parties and send the record of the evidence so recorded to this Court directly, till then the Writ Petition 509/1986 which arises proceeding u/s 44 read with section 32(2) will have to be kept pending.

I, therefore, pass the following order.

(i) Rule in Writ Petition No. 287/1988 is discharged, and the petition is dismissed.

So far as the application of the tenant- petitioner u/s 32(1) of the Tenancy Act is concerned, this application is rejected.

The order of the M.R.T. rejecting the said application is confirmed.

(ii) So far as the Writ Petition No. 509/1986 is concerned, the order of the M.R.T. allowing the Revision of the landlord is set aside.

The matter is remanded back to the Tenancy Tahsildar, who will record evidence of the landlord namely, Smt. Dwarkabai and Vithal Kulkarni regarding their need for bona fide personal cultivation and also of the tenant in rebuttal. The Tenancy Tahsildar is directed to complete recording of evidence within six months from the communication of this order and give his findings thereon and send the same to this Court. This Writ Petition No. 509/1986 will be decided thereafter.