HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.763 of 1983

Keru Govinda Jondhale,
Since deceased by heirs:
Smt.Janabai w/o. Keru Jondhale
and ors. Petitioners

Vs.

Mohamad Mohiddin Patel, deceased
by heirs:

1. Abdul Rahim Mohamad Patel,
deceased by heirs:
Amirunissa Abdulrahim Patel & ors. Respondents

Mr.H.D.Gole with Mr.P.S.Gole for petitioners.

Mr.P.D.Gharge for Resp.Nos.1A to 1G, 2, 3, 5, 6
- absent.

Mr.R.V.Govilkar h/f. Mr.V.D.Govilkar for
Resp.Nos.12, 12-C, 13, 14 to 18, 20 and 21.

Mr.P.D.Dalvi for Resp.Nos.8, 9 and 11.

CORAM: B.H.MARLAPALLE,J.

June 21, 2006.

ORAL JUDGMENT:

1. This petition filed under Article 227 of the Constitution arises from the order dated 10th March 1981 passed by the Sub Divisional Officer, Karvir Division, Kolhapur in Tenancy Case No.8 of 1975 instituted under Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Tenancy Act") and duly confirmed by the Maharashtra Revenue

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Tribunal vide its judgment and order dated 24/9/1982 in Revision Application No.91 of 1981.

2. The brief undisputed facts relevant are that the agricultural land in revised Survey No. 341 and admeasuring 15 Acres and 11 Gunthas of village Top in Hatkanangale Taluka of Kolhapur District was owned by late Shri Mohamad Mohiddin Patel who left behind him six sons and one brother i.e. respondent nos.1 to 7 in the present petition. The said land was being cultivated by three different tenants viz. Keru Govinda Jondhale, Dadu Govinda Jondhale and Rama Sakharam Khot and each of them was in separate possession of 1/3rd share of the total land i.e. about 5 acres and 4 gunthas, much prior to the year 1954. Keru died in March 1954 leaving behind him the present petitioner no.1 i.e.Janabai his widow and present petitioner no.2 - Dnyanu, his son. On the demise of Janabai during the pendency of this petition the petitioner no.2 and his two sisters have been brought on record as the LRs of Janabai.

3. When Keru died in March 1954 the petitioner no.2 was a minor (aged about 4 years) and, therefore, on attaining majority he approached the Sub

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Divisional Officer, Karvir Division, Kolhapur by filing an application under Section 84 of the Tenancy Act praying for eviction of Respondent No.12 i.e. Aba Tatoba Khot who was in fact his maternal uncle (mother's cousin) and the landlord. This application came to be registered as Tenancy Case No.8 of 1975 and it was stated by the applicants that on the demise of Keru, the tenancy rights in respect of the agricultural land admeasuring 5 acres and 4 gunthas came to be transferred in the name of petitioner no.1 i.e. Smt.Janabai for the agricultural year 1954-55 and for the first time in the year 1956-57 the landlord in collusion with the Talathi got her name removed from the tenancy column and managed to incorporate the entry of "self cultivation". However, in the year 1958-59 the landlord in connivance with the respondent no.12 put the suit land in possession of the respondent no.12. The petitioner no.1 being the widow was seeking the help of her cousin who joined hands with the landlord and managed these entries and in collusion with the landlord took possession of the suit land forcibly and he remained in possession till the application was filed. The applicants, therefore, prayed for summary eviction of respondent no.12 and to hand over

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the suit land in their possession for cultivation.

4. The parties were heard and some of them who appeared before the SDO, their statements were recorded. The application came to be dismissed by the SDO on the plain ground that the application was required to be filed under Section 29 of the Tenancy Act and the application filed under Section 84 of the said Act was not maintainable. Surprisingly this view taken by the SDO has been confirmed by the Maharashtra Revenue Tribunal and, therefore, the short question that is required to be decided by this Court is whether the application filed under Section 84 was maintainable. Section 29 of the Tenancy Act to the extent relevant reads as under:

> "(1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar. The application shall be made in such form as may be prescribed and within a period of two years from the date on which the right to obtain possession of the land or dwelling house is

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deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be.

(2) Save as otherwise provided in sub-section (3A), no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be, is deemed to have accrued to him."

Section 84 of the Tenancy Act reads thus:

"**84. Summary eviction :-** Any person unauthorisedly occupying or wrongfully in possession of any land -

(a) the transfer or acquisition of which either by the act of parties or by the operation of law is invalid under the provisions of this Act,

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(b) the management of which has been assumed under the said provisions, or

(c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such persons, may be summarily evicted by the Collector."

. The scheme of Section 29 and Section 84 is distinct and operates in different situations. The provision under Section 29 of dispossessing the tenant is mainly against the landlord whereas section 84 provides for summary eviction of any person unauthorisedly occupying or wrongfully in possession of the land which was in possession of the tenant. The case made out in the application submitted before the SDO was that for the year 1958-59 onwards the landlord in collusion with respondent no.12 took forcible possession of the suit land from the petitioners and for the earlier two years i.e. 1956-57 and 1957-58 the landlord manipulated the record to show his self cultivation. The applicants thus stated that as on the tiller's day i.e.

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1/4/1957 the respondent no.12 was not cultivating the land as a tenant and it was under the cultivation of the applicants but the landlord had manipulated the entry of the cultivation column in collusion with the Talathi of the village and showed the land under self cultivation. The applicants further stated that from 1958-59 onwards they were forcibly dispossessed by the respondent no.12 in collusion with the landlord and the said respondent no.12 remained in possession all along of the suit land. The application was thus for eviction of respondent no.12 and not the landlord. The 7/12 extract copies which are on record clearly support this case of the applicants. The respondent no.12 failed to explain as to how he came in possession from the year 1958-59 and the origin of such possession was never disclosed. In any case when the original applicants were cultivating the land as on 1/4/1957, though the landlord had only manipulated the entry in 7/12 extract to show as self-cultivation on that date, the eviction of the applicants was not as per the scheme of the Tenancy Act and the landlord had never applied for restoration of the land for his self cultivation under Section 31 of the Tenancy Act. The scheme of Section 29 also envisages that the landlord also can

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move an application under the said Section read with Section 31 for restoration of the land for self cultivation. The Tribunals below thus committed a gross and patent error on the face of the record by holding that the applicants were required to file an application under Section 29 and the application filed under 84 of the Tenancy Act was not maintainable.

5. In the normal course the revision application could have been remanded to the MRT but as on today the said Tribunal does not exist and by the orders passed by this Court in Public Interest Petitions Divisional Commissioners of different divisions have been given powers only to pass interlocutory orders in place of the Revenue Tribunal and, therefore, remand is not an efficacious remedy, more so when the record viz. 7/12 extracts are very clear and were not disputed in the enquiry undertaken by the SDO. The 7/12 extracts for the year 1954-55 have the names of the three tenants with 1/3rd share each on the total land of 15 acres and 11 gunthas and they were Smt.Janabai wife of Keru Govinda Jondhale, Dadu Govinda Jondhale and two sons of Rama Sakharam Khot viz. Dnyanu and Bapu. The said entry was carried in

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the next agricultural year 1955-56 but in the subsequent agricultural year 1956-57 the names of Dadu Govinda and the two sons of Rama Khot remained but the landlord replaced the name of Smt. Janabai by the entry of self cultivation on 1/3rd of the total land. The said entry was carried for the agricultural year 1957-58 and in the agricultural year 1958-59 in place of the landlord's self cultivation the name of Aba Tatoba Khot i.e. Respondent No.12 appeared in the cultivation column. Thus the applicants were dispossessed forcibly by Respondent No.12 in collusion with the landlord in the agricultural year 1958-59 i.e. after the tiller's day. It was necessary for the SDO to appreciate the undisputed record and entries in 7/12 extract which was not disputed by any of the parties. In fact no one appeared on behalf of the landlord in the enquiry and it was only respondent no.12 who was contesting. Even if Smt. Janabai did not appear before the SDO and her statement could not be recorded, the record spoke for itself and the SDO could not close his eyes to the same. Apparently the respondent no.12 or his LRs continued to be in possession of the suit land to the extent of 5 acres and 4 gunthas right from 1958-59 onwards and totally

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in defiance of the provisions of the Tenancy Act. The benefits that could be made available under the Tenancy Act to the applicants were hijacked by the respondent no.12 and he thus defeated the intention of the Parliament as well so as to grant the ownership rights to the tillers of the land as on the tiller's day.

6. In the premises this petition succeeds and the same is hereby allowed. Rule is made absolute in terms of prayer clause (VII). The SDO, Karvir Division, Kolhapur is hereby directed to restore the suit land admeasuring 5 acres and 4 gunthas to the petitioners within a period of four weeks from today. The respondent no.12 and his LRs remained in possession of the suit land illegally and, therefore, the SDO is directed to calculate the yearly mesne profits and recover the same from the LRs of Respondent No.12 who are in possession of the land and in turn pay the mesne profit to the petitioners.

(B.H.MARLAPALLE,J.)

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