

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5394 OF 2004

MURLIDHAR

APPELLANT(S)

VERSUS

PRABHAWATIBAI & ORS.

RESPONDENT(S)

O R D E R

Heard counsel for the parties.

The appellant has assailed the order passed by the Deputy Collector, In charge, Land Records, Osmanabad dated 23.11.1987 against which the writ petition was dismissed by the High Court upholding the finding recorded by the Deputy Collector that the appellant who admittedly claims to be the tenant of land in dispute, was an unauthorised occupant on the land in question as the land was never settled in his favour and he had also failed to deposit the required amount which was essential for settling the land in his favour as tenant.

Learned counsel has taken great pains to impress upon this Court that the courts below as also this Court should over look the delay in making the payment as the appellant had been allowed to cultivate the land in question since long after the land was resumed by the respondent-State of Maharashtra from the contesting respondent nos. 1-4 who claimed that the land belonged to them as their 'Watan Land'.

Learned counsel also endeavored hard to impress upon this Court that the appellant is still cultivating the land in question which was settled in his favour after the land was resumed by the State Government. However none of revenue courts of fact nor the High Court recorded a finding in favour of the appellant that he has been the actual cultivator of the land in question. In fact, the finding recorded by the courts below is that the appellant was never in authorised occupation of land in question as he had failed to make the payment which was legally due against the appellant tenant.

When the appellant failed to establish his case on the aforesaid submissions, he later took an alternative route and submitted that the appellant in fact was tenant even before 1951 as he was cultivating the land on behalf of the respondent who has been held entitled to retain the land as his Watan Land.

We, therefore, granted opportunity to the counsel for the appellant to show any averment to this effect before any of the courts below, but he has failed to establish that this was ever the case of the appellant-tenant that he had been cultivating the land even before vesting of the land in the State. In fact from the order of the High Court, it is clear that all the courts below have admittedly proceeded on the footing that the land in question was the Watan Land of the erstwhile owner through whom the contesting respondents have been claiming which admittedly stood protected from vesting in the State as the land in question was Watan Land. It is no doubt true that Watan Land also could be vested in the State in view of some of the provisions under Section 3 of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 which states that-

"(3) notwithstanding anything contained in any law, usage, settlement, grant, sanad or order -

(1) all pargana and kulkarni watans shall be deemed to have been abolished;"

The true import and consequence of this provision is that if the land in question admittedly was a Watan Land and even if it had been settled/ granted in favour of any other person, the same would have no effect as the same will be deemed to have been abolished. Hence resumption of Watan Land in favour of the respondent-State could be resumed only if it were an unalienated land. Admittedly, the land in question was not an unalienated land in their favour by the predecessor of the contesting respondents as it is an admitted case of the parties that the land in question was a Watan Land and the same even if it were to be settled in favour of the appellants, certain conditions were fit to be imposed regarding payment of dues liable to be paid by the appellant to the State.

However, it is not even necessary to enter into the question regarding the nature and character of the land as the courts below have proceeded on the footing that even if the land in question is Watan Land and had been resumed by the State rightly or wrongly, the same was not legally settled in favour of the appellant as the appellant had failed to make the payment at the relevant time. Therefore, the finding recorded by the courts below that the appellant is an unauthorised occupant on the land in question as he had failed to make the payment which would have held him entitled for the land in question, cannot be interfered with by this Court.

The appellant has further failed to show us any finding from the order of the Courts below that he is in actual physical possession of the land in question or that he had been cultivating the land. Although, orally, it has been asserted by the counsel that the appellant is in actual cultivating possession, in fact, it is the contesting respondents who are held to be in possession.

Be that as it may, this question no longer arises at this stage since the appellant's entitlement to the land in question has not been upheld by the courts below and they are held to be in unauthorised occupation of the land in question.

Failing in all submissions recorded herein above, learned counsel took the last attempt and contended that the land in any view would vest in the State and the contesting respondents cannot be held entitled to the same even if the appellant is not entitled to the same. However, this again was never a plea of the appellant at any stage nor the respondent-State had laid any claim to the land in question. In any view, if the appellant/tenant has not been held entitled to the land in question and is held to be unauthorised occupant on the land in question, he cannot be permitted to raise the plea that the land in question would vest in the State. If at all this plea was sustainable, the appellant should have taken this point before the courts below which was never an issue to be adjudicated upon. Hence at the final stage of appeal under Article 136 of the Constitution, this plea cannot be allowed to be raised by the appellant for the first time specially when he has been held to be an unauthorised claimant. The appeal is thus dismissed with no cost.

.....J.
(GYAN SUDHA MISRA)

.....J.
(PINAKI CHANDRA GHOSE)

NEW DELHI,
23rd JULY, 2013.

ITEM NO.102

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(s). 5394 OF 2004

MURLIDHAR

Appellant (s)

VERSUS

PRABHAWATIBAI & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 23/07/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE GYAN SUDHA MISRA
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Appellant(s) Mr. Venkateswara Rao Anumolu,Adv.
Mr. Prabhakar Parnam, Adv.

For Respondent(s) Ms. Preeti, Adv.
For Mr. Shivaji M. Jadhav ,Adv

Mr. Shankar Chillarge, Adv.
For Ms. Asha Gopalan Nair ,Adv

Ms. Chandan Ramamurthi,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

|(Neetu Khajuria)

|(S.S.R. Krishna)

|
|Sr.P.A.

|Court Master

(Signed order is placed on the file.)