REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1675 OF 2004

GOVINDA BALA PATIL (D) BY LRS. APPELLANTS

VERSUS

GANPATI RAMCHANDRA NAIKWADE (D) BY LRS. RESPONDENTS

JUDGMENT

CHANDRAMAULI KR. PRASAD,J.

This appeal arises out of a proceeding under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948. One Govinda Bala Patil, since deceased, the predecessor-in-interest of the appellants, hereinafter referred to as "the landlord", owned land being R.S. No. 51 admeasuring 35 gunthas at Village Pandewadi within Taluka Radhanagari in the District of Kolhapur. A proceeding under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Act", was initiated by one Rama

Dattu Naikwade, predecessor-in-interest of the respondents, for determination of price of the land on the plea that he shall be deemed to have purchased the land. The Additional Tahsildar & ALT, Radhanagari, at the first instance, held that the land in question was leased out for growing sugarcane and, accordingly, dropped the proceeding. However, in appeal, the said order was set aside and the matter ultimately remitted back to him to hold fresh inquiry. Accordingly, the Additional Tahsildar held fresh inquiry and again by its order dated 10th of December, 1981 reiterated its earlier finding and held that the land was leased out for growing sugarcane and the proceeding was dropped. The tenant thereafter preferred appeal which was heard by the Sub-Divisional Officer, Shahuwadi Division, Kolhapur who allowed the appeal and set aside the order of the Additional Tahsildar on its finding that the landlord has failed to prove the specific purpose of the lease. The landlord then preferred revision before the Maharashtra Revenue Tribunal, Kolhapur, hereinafter referred to as “the

Tribunal", which set aside the order of the Sub-Divisional Officer and restored that of the Additional Tahsildar. While doing so, the Tribunal held as follows:

> "In the instant case as I have stated earlier there is sufficient evidence on record to show on the basis of entries in the "E" Patrak that suit land was continuously growing sugarcane crop from the year 1946 and this particular fact is also corroborated to some extent by two independent witnesses examined by the applicant-landlords. So in this case it cannot be said that no agreement of lease was established between the parties and in as much as sugarcane crop was grown in the suit land since the year 1946, there are reasons to believe that the main purpose of lease was for growing sugarcane crop."

The tenant assailed the aforesaid order before the High Court in a writ petition. The High Court by the impugned order set aside the order of the Tribunal and held that the Tribunal erred in setting aside the finding of the Sub-Divisional Officer that the land in question was not leased

out for sugarcane cultivation. The High Court, in this connection, has observed as follows:

> "12. While toppling the judgment and order passed by the Sub-Divisional Officer, Shahuwadi, the learned Member of M.R.T. has dislodged the findings of facts recorded by the said authority. After examining the judgment and order passed by the S.D.O. Shahuwadi, this Court comes to the conclusion that the findings recorded by the S.D.O. Shahuwadi were consistent with the evidence on record. The approach adopted by him was correct, proper and legal. When that was so, it was beyond the jurisdiction of the learned Member of M.R.T. to dislodge it in the revision. The findings of facts consistent with evidence and law cannot be dislodged by revisional authority."

The High Court has further held that Section 43A of the Act will not govern the field as the lease in question was not given to more than one person. At this juncture, we consider it appropriate to reproduce the reasoning of the High Court in this regard:

> "11. Section 43A of the Bombay Tenancy Act was exempting certain categories of the cultivation of the land and the persons cultivating it for growing sugarcane, for making improvement in

> the financial and social status of the peasants using the land for growing sugarcane, fruits or flowers or for the breeding of livestock. The words which are used in sub-clause (b) of Section 43A(1) clearly provide that such exemption was available to the leases of land granted by "any bodies" or "persons" other than those mentioned in clause (a) for cultivation of sugarcane or the growing of fruits or flowers or for breeding of livestock. The words used in sub-clause (b) "any bodies" or "persons" cannot be made applicable to a single person. Such an attempt would be throttling the spirit of enacting Section 43A of the Bombay Tenancy Act……..”

We have heard Dr. Rajeev B. Masodkar, learned counsel for the appellants whereas respondents are represented by Mr. Kailash Pandey, Advocate.

Dr. Masodkar contends that the finding recorded by the Tribunal that the lease was for cultivation of sugarcane has been set aside by the High Court without assigning any reason and it merely stated “that the finding recorded by the SDO Shahuwadi is consistent with the evidence on record” and “the approach adopted by him was

correct, proper and legal" and in such circumstances "it was beyond the jurisdiction" of the Tribunal "to dislodge it in the revision". He points out that the Sub-Divisional Officer had jumped to a finding without assigning any reason and hence it was open for the Tribunal to upset the same and record its own finding. Mr. Pandey, however, submits that the Tribunal, which is a court of revision, cannot act as a court of appeal and, hence, the High Court was right in setting aside its finding.

We have considered the rival submission and we find substance in the submission of Dr. Masodkar. True it is that the revisional court ordinarily does not reappraise the evidence but in case it is found that the finding recorded by the appellate authority is perverse, nothing prevents it from upsetting the finding of the appellate authority. If the appellate authority records a finding without consideration of the relevant material or on consideration of irrelevant material or the

finding arrived at is such that no person duly instructed in law can reach at that finding, such finding in law is called perverse and in such a contingency, in our opinion, it is within the jurisdiction of the revisional court to set aside the said finding.

Bearing in mind the principles aforesaid, when we consider the facts of the present case we are of the opinion that the finding recorded by the Sub-Divisional Officer is patently perverse. The Sub-Divisional Officer has referred to the statement of the landlord and his witnesses that the land was leased out for growing sugarcane but rejected the evidence on the ground that the "landlord and his witnesses have not been able to prove the purpose of lease beyond reasonable doubt" and ultimately held that "the landlord has failed to prove the specific purpose of the lease." While doing so, the Sub-Divisional Officer, in our opinion, has lost sight of the basic principle that the nature of the proceeding is decided on the preponderance

of probability and the principle of proof beyond reasonable doubt does not apply in such proceeding. Further, the Sub-Divisional Officer, without assigning any reason, has rejected the evidence of the landlord and his witnesses and jumped to a conclusion without reference to the evidence. We have quoted the observations of the Tribunal which has recorded the finding that it was leased out for the purpose of growing sugarcane. The Tribunal has referred to the evidence of the landlord and his witnesses and further to the record of rights and from that it has come to the aforesaid conclusion.

In the face of what we have observed above, the Tribunal was well within its right in setting aside the finding of the Sub-Divisional Officer and holding that the land was leased out for the purpose of growing sugarcane. That being so, we are of the opinion that the High Court erred in setting aside the finding of the Tribunal. Accordingly, we restore the finding of the Additional Tahsildar as affirmed by the Tribunal

and hold that the land was leased out for cultivation of sugarcane.

Dr. Masodkar, then submits that the High Court committed a grave error in coming to the conclusion that Section 43A of the Act would not govern the field and cannot be made applicable to a single person. He submits that in law, the plural covers the singular also. Mr. Pandey, however, submits that the High Court is right in holding that in view of the use of the expression "any bodies or persons" in sub clause (b) of Section 43A(1) of the Act, the same cannot be made applicable to a single person. He points out that in the present case, it is an admitted position that the land in question was given on lease to a single person. In order to appreciate the rival submissions, we deem it expedient to reproduce Section 43A(1)(b) of the Act:

> **"43A.Some of the provisions not to apply to leases of land obtained by industrial or commercial undertakings,**

certain co-operative societies or for cultivation of sugarcane or fruits or flowers

(1) The provision of sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive), 33A, 33B, 33C, 43, 63, 63A, 64 and 65, shall not apply to-

(a) xxx xxx xxx

(b) leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;

(c) xxx xxx xxx”

Section 43A excludes the application of various provisions of the Act including 33C in respect of “leases” granted to “any bodies or persons” inter alia for the purpose of cultivation of sugarcane. However, in view of the plural expression “any bodies” or “persons”, the High Court has come to the conclusion that it shall cover only those cases in which lease has been given to more than one person and not singular person. It seems that the attention of the Court was not drawn to Section 13

of the Bombay General Clauses Act, 1904 which inter alia provides that words in the singular shall include the plural and vice versa. Section 13 of the aforesaid Act reads as follows:

> "**Section 13 - Gender and number.**
>
> In all Bombay Acts or Maharashtra Acts, unless there is anything repugnant in the subject or context, -
>
> (a) words importing the masculine gender shall be taken to include females; and
>
> (b) words in the singular shall include the plural, and vice versa."

It is relevant here to state that the High Court has not come to the conclusion that there is anything repugnant in the subject or context so as to come to the conclusion that the plural will not include the singular. We have examined the use of the plural word "persons" from that angle and we do not find that there is anything repugnant in the subject or context so that it may not be read as singular. It is worth mentioning here that sub-

section (b) of Section 43A(1) of the Act has also used the plural expression “leases” and if we accept the reasoning of the High Court, the aforesaid provision shall cover only such cases where there is more than one lease. This, in our opinion, will defeat the very purpose of the Act.

Thus, the impugned judgment of the High Court is vulnerable on both the counts and, hence, cannot be sustained.

In the result, the appeal is allowed, impugned judgment of the High Court is set aside and that of the Tribunal is restored. In the facts and circumstances of the case, there shall be no order as to costs.

……J
(CHANDRAMAULI KR. PRASAD)

…….……..J
(V.GOPALA GOWDA)

NEW DELHI,
JULY 29, 2013.