IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5296 OF 1991

WITH

CIVIL APPLICATION NO. 2398 OF 1993

AND

WRIT PETITION NO. 1649 OF 1996

1. Smt. Ashalata Anand
   Dabholkar,
2. Archana Anand
   Dabholkar,
3. Sheetal Anand
   Dabholkar,
4. Vikram Anand Dabholkar ... Petitioners

versus

1. Smt. Vrindevati Tukaram
   Bhaire,
2. Pundalik Gopal Bhaire,
   since deceased, by his L.Rs.:
   1) Ramesh Pundlik Narvekar,
   2) Gopal Pundlik Narvekar,
3. Vithal Gopal Bhaire,
4. Smt.Rukmini Vithal Bhaire,

Res.Nos. 3 and 4, both dead,
per their L.Rs.:
1) Mrs. Vimal Mahadev Kalsekar,
2) Mrs. Shubhangi Shankar Sakpal,
3) Mrs. Pushpa Suresh Yeram,
4) Mrs. Shubhada Suresh Shindkar,
5) Mrs. Vaishali Vinayak Pednekar ... Respondents

...

Mr. A.L.Desai, for the Petitioners.
Messrs. S.G. Karandikar, K.K. Tated, and P.A. Sawant, G.B. Karandikar, for the appearing Respondents.
Other Respondents served.

...

CORAM : A.M.KHANWILKAR,J.
30th July 2004

ORAL JUDGMENT :

. Both these petitions can be disposed of by a common Judgment. Writ Petition No. 5296 of 1991 challenges the order passed by the District

Court, Satara in Miscellaneous Civil Appeal No. 38 of 1988 dated 14th November 1991, whereas Writ Petition No. 1649 of 1996 challenges the decision of the Maharashtra Revenue Tribunal dated November 29, 1995. As the parties in both the proceedings are common and pertain to the same suit land, the petitions are being disposed of by this common order. The land in question in the present proceedings is agricultural land bearing Survey No. 507, Hissa No. 14 admeasuring 97 ares only,i.e., 2 acres 17 gunthas, out of total 10 acres 19 gunthas. The said land was originally owned by Dinanath Shantaram Dabholkar (hereinafter referred to as "the landlord"). One Pundalik Gopal Bhere was cultivating Survey No. 507, Hissa No. 14, admeasuring 2 acres 25 gunthas and Survey No. 506, Hissa No. 6, admeasuring 1 acre 15 gunthas as tenant. The landlord filed Regular Civil Suit No. 30 of 1958 in the Civil Court at Vengurla against the tenant for permanent injunction relalting to Survey No. 507, Hissa No. 14 in the year 1988. The landlord also simultaneously filed application in the Mamlatdars' Courts Act under section 70(b) of the Bombay Tenancy and

Agricultural Lands Act for a negative declaration that Pundalk Gopal Bhere was not the tenant in respect of the suit land. That application was filed in the year 1959. During the inquiry of the said application, both the landlord and the tenant compromised the matter and filed purshis before the Mamlatdar. In the said compromise purshis, the landlord admitted that Mr. Pundalik Bhere was the tenant in respect of the suit land Survey No. 507, Hissa No. 14. In the same compromise purshis, it is also mentioned that trees standing in the said land will, however, continue to belong to the landlord Dinanath Dabholkar. On the basis of the purshis filed by the parties, the proceedings under section 70(b) of the Act were disposed of by the Mamlatdar. It appears that in the suit filed by the landlord in the year 1958, reference was made to the tenancy authority and the same is, therefore, answered by the Agricultural Lands Tribunal on 17th August 1963 observing that defendant Mr. Pundalik Bhere was tenant in the land bearing Survey No. 506, Hissa No. 6, admeasuring 1 acre 15 gunthas, and Survey No. 507, Hissa No. 14, admeasuring 2 acres 25 gunthas. The authority also found that

the trees on the suit lands were not naturally grown, for which reason the tenant had no concern with the same. After the reference was answered by the tenancy authority, the Civil Court at Vengurla proceeded to dispose of the suit between the parties in terms of compromise purshis filed in Tenancy Case No. 87 of 1959 by decision dated 23rd September 1963. It has been noted that the said Pundalik Bhere was the protected tenant in the suit land and the landlord had right over the trees standing on the suit land. The orders in proceedings under section 70(b) of the Act dated August 11, 1963, as well as of the Civil Court in Regular Civil Suit No. 12 of 1958 dated September 23, 1963 have not been challenged by any party and the same were allowed to attain finality. On the basis of the said declaration, the Agricultural Lands Tribunal, Vengurla, initiated proceedings under section 32G of the Act for determination of purchase price in respect of the suit land. By decision dated October 4, 1972, the authority proceeded to determine the purchase price and which purchase price was duly deposited by the tenant. As a consequence whereof, certificate under section

32M came to be issued in favour of the tenant. This decision was, however, challenged by one Anand Vasant Dabholkar claiming to be successor in interest of Dinanath Dabholkar by way of appeal being Tenancy Appeal No. 1 of 1978 before the Assistant Collector. The said appeal came to be allowed by decision dated September 30, 1978. The appellate authority was pleased to remand the proceedings for hearing before the Agricultural Lands Tribunal, Vengurla, under section 32G of the Act. It is stated that the remand proceedings have still not been concluded. Interestingly, instead of taking the remand proceedings to its logical end, the said Anand Dabholkar instituted Suit bearing Regular Civil Suit No. 76 of 1980 in the Civil Court at Vengurla for injunction and, alternatively, for relief of possession. The Civil Court entertained the said suit and by order dated 20th December 1980 passed ad interim order in the following terms :

> "Issue ad interim injunction against the defendant Nos. 1, 2 and 4 restraining them causing the obstruction to the

> plaintiff's possession and enjoyment of the mango groves standing in the suit land.
>
> Issue notice to the above defendants to show cause as to why the order of injunction should not be confirmed till the decision of the suit.
>
> Plaintiff to comply as per the provisions laid down in O. 39, r. 3, C.P.C.
>
> E.P. allowed. "

The said ad interim order was subsequently confirmed by the trial Court by decision dated December 5, 1988 till the disposal of the suit bearing R.C.S. No. 76 of 1980. In the meantime, however, the trial Court, on the basis of pleadings framed one of the following issue by order dated April 5, 1988, which reads thus :

> "Whether the defendants prove that they are the tenants of whole of the suit property ?"

The said issue being exclusively triable by the tenancy court, the Civil Court made reference to the tenancy authority, which case was numbered as Tenancy Case No. 21 of 1988. As mentioned earlier, the previous proceedings, which stood remanded, were kept pending before the tenancy authority. Whereas, fresh reference regarding issue of tenancy came to be made in the subsequent suit filed by the successor in interest of the original landlord Dinanath Dabholkar. Be that as it may, against the order of injunction granted by the trial Court dated December 5, 1988, the tenants carried the matter in appeal being Miscellaneous Appeal No. 38 of 1988. The District Court was pleased to allow the appeal preferred by the tenant and was pleased to dismiss the application for injunction as preferred by the landlord for the reasons recorded in its decision dated November 14, 1991. This decision as mentioned earlier is subject matter of challenge in Writ Petition No. 5296 of 1991 at the instance of the landlord. During the pendency of the appeal before the District Court, the Tahsildar being the tenancy authority

proceeded to decide the Tenancy Case No. 21 of 1988 and answered the reference as made by the Civil Court by decision dated May 7, 1990. The tenancy authority held that the defendants were tenants in the suit land bearing Survey No. 507, Hissa No. 14, admeasuring 97 ares, whereas the plaintiff landlord was having right and possession only over the mango trees standing on the suit land. Against this decision, both the parties went in appeal before the Sub-Divisional Officer by separate appeals. Both the appeals were disposed of by separate decisions on the same day, i.e., April 6, 1992. The appellate authority was pleased to remand the matter for fresh inquiry before the Tahsildar. Against the said decisions passed by the appellate authority, both the landlord as well as the tenant preferred revision applications before the Maharashtra Revenue Tribunal and both the revision applications have been disposed of by the Tribunal by common decision dated November 29, 1995. The Tribunal has set aside the order of remand and instead found that there was no necessity of making fresh inquiry. The Tribunal relying upon the decision in the earlier

proceedings concluded between the original landlord and the tenant proceeded to hold that the defendant was tenant in respect of the suit land Survey No. 507, Hissa No. 14, which was admeasuring 2 acres 25 gunthas, but, at the same time, affirmed the view taken by the tenancy authority that the landlord had right and possession over the mango trees standing on the suit land. This decision of the Tribunal has been challenged in the companion writ petition No. 1649 of 1996.

2. During the pendency of writ petition filed by the landlord, against the decision of the District Court, an application has been filed before this Court being C.A. No.2398 of 1993 praying for certain reliefs. However, no orders have been passed on the said application so far. Even the said application will now be disposed of by the present Judgment.

3. Counsel for the landlord, Mr. Rege, has assailed the decision of the tenancy authorities holding that the defendants were tenants in respect of the suit lands. He submits that the

authorities below have not addressed themselves to the main issue as to whether the defendants were tenants in the whole of the suit property, which was the issue referred to the tenancy authority. He submits that the decisions in the earlier proceedings concluded between the original landlord will be of no avail. According to him, the said decisions cannot be looked into because the same was returned on the basis of compromise purshis and not after a proper inquiry as was necessary and required to be undertaken by the authorities. He further submits that the tenants have failed to produce any evidence on record to establish their claim of tenancy and the tenancy authority could not have proceeded to decide the issue on the basis of the documents which in turn do not establish the claim of tenancy of the defendants on the tillers' day. According to him, neither the tenancy authority was justified in deciding the matter in favour of the defendants, nor the Civil Court was right in relying on the earlier decisions so as to conclude the issue in favour of the defendants by dismissing the application for injunction preferred by the landlord. He submits that in

any case because of the consent purshis filed, the landlords continued to be owners in respect of the standing mango trees on the suit land and for that reason, it was not open to the Civil Court to dismiss the application of the landlord in its entirety.

4. Mr. Karandikar and Mr.Gole, on the other hand, contend that there is no substance in the argument canvassed on behalf of the landlord. According to them, however, the authorities were bound by the decision in the earlier proceedings and it was not permissible to reopen the issue of tenancy as such. It is submitted that the issue to be resolved between the parties was one of determination of purchase price of the suit land, but the said proceedings have been kept pending before the tenancy authority upon remand for reasons best known to the said authority. It is submitted on behalf of the tenants that in view of the findings recorded in the earlier proceedings, nothing more was required for the tenants to establish their claim of tenancy as the said decision would bind both the parties, as well as the tenancy authority. It is submitted

that merely because another reference has been made in the subsequently instituted civil suit by the successor in interest of the landlord, that does not mean that the tenancy authority can ignore the decision which has attained finality between the parties in the earlier round of proceedings. It is further contended that in any case the tenants have become owners of the suit land by operation of law because they were admittedly in lawful cultivation of the suit land on the tillers' day. It is submitted that merely because it has been mentioned in the earlier proceedings that the landlords would remain owners and in possession of the mango trees standing on the suit land, that will not make any difference, because, in law, the land along with the trees standing thereon would vest in the tenants, who become deemed purchasers thereof. To buttress this submission, reliance is placed on an unreported decision of Division Bench of this Court decided on January 28, 1994 in Special Civil Application No. 1815 of 1962, wherein it is observed that under section 32, the tenant becomes the owner of the entire land held by him. It is further observed that the section does not

in so many terms say that the tenant must also be deemed to have purchased the trees standing on the land. But any doubt on the point is removed by section 63-A, which states that the price payable by the tenant for the land must also include the value of the trees planted on the land. This very argument has been considered in the said decision and the Division Bench of our High Court has ruled that the tenant would become owner of all the trees standing on the land, irrespective of the fact that they are naturally grown trees or otherwise. On the above reasoning, the learned Counsel for the tenants would contend that the decision of the Tribunal to the extent it holds that the owners would continue to possess and own trees standing on the suit land is fallacious and untenable, for which reason, the same ought to be reversed. It is further contended that no fault can be found with the District Court, which has rejected the application for interim injunction as preferred by the landlord.

5. Having considered the rival submissions, I shall first deal with the issue of efficacy of

the previous proceedings concluded between the parties. It is not in dispute that in respect of the same land, Survey No. 507, Hissa No. 14, proceedings were initiated by the predecessor of the landlord by way of civil suit No. 13 of 1958 against the tenant for permanent injunction. Reference was made in the said proceedings to the tenancy authority regarding the issue of tenancy, which case was numbered as Tenancy Case No. 8 of 1959. In the said reference proceedings, the landlord and tenant filed compromise purshis. The landlord admitted the claim of Pundlik to be tenant in lawful cultivation of the suit land on the tillers' day. Indeed, in the said compromise purshis, an arrangement is worked out that the landlord would continue to possess and own the mango trees standing on the suit land. On the basis of such compromise purshis, the Mamlatkar has answered the issue in favour of the tenant with regard to the tenancy rights in respect of the suit land and also accepted the claim of the landlord in respect of the standing trees on the suit land, bearing Survey No. 507, Hissa No. 14. On the basis of the said declaration and opinion recorded by the tenancy authority, even

the Civil suit between the parties stood disposed of by holding the said Pundalik as the protected tenant. In other words, with the culmination of proceedings before the Mamlatdar as well as the Civil Court, the issue as to whether the said Pundalik was tenant in respect of the suit land or not stood finally concluded. That issue could not have been reopened in any other manner except by challenging those decisions in appeal by the aggrieved party. That has not been done either by the original landlord or for that matter the successor in interest of the original landlord, the present plaintiff. In that sense, the said decision would bind the parties, much less the tenancy authorities.

6. On the basis of the said declaration, which had attained finality, the tenancy authority naturally commenced proceedings under section 32G of the Act for determination of purchase price. The first authority decided the purchase price on the basis of which the tenant deposited the purchase price and also obtained certificate under section 32M of the Act. That decision was challenged by the successor in

interest of the landlord in appeal, which was allowed and the matter has been remanded for fresh inquiry. The fresh inquiry to be undertaken in the said proceedings will have to be confined only to the determination of purchase price and the issue of tenancy can obviously not be reopened in the said proceedings. Be that as it may, the fact remains that the remand proceedings for determination of purchase price have not been taken to its logical end till now. Whereas, the successor in interest of the original landlord chose to file substantive civil suit for injunction and alternatively for relief of possession. In the said suit, fresh reference has been made to the tenancy authority to examine as to whether the defendants proved that they are the tenants of the whole of the suit property. For the reason already recorded earlier, that issue ought to have been answered by the tenancy authority on the basis of decision in the earlier proceedings, which has attained finality. The tenancy authority, on reference, has answered the same on the basis of the compromise purshis holding that the defendants were tenants in respect of the suit land bearing Survey No. 507,

Hissa No. 14, whereas the landlords plaintiffs were owners and in possession of mango trees standing on the suit land. Obviously, such a conclusion cannot be sustained in view of the dictum of this Court in the unreported decision, referred to above. The legal position as obtains is that on the tillers' day, the tenants would become absolute owners of not only the land, but also of all the standing trees thereon, whether naturally grown or otherwise. So understood, the finding of the tenancy authority that the landlord would continue to own and possess the standing mango trees on the suit land cannot be sustained in law. In any case, the decision of the tenancy authority was questioned in appeal, which was however remanded for reconsideration. The Tribunal in turn has set aside the remand order of the appellate authority by observing that having regard to the fact situation of the present case, there was no necessity of further enquiry in the matter. That observation made by the Tribunal is appropriate and will have to be upheld.

. As mentioned earlier, with the conclusion

of proceedings before the Mamlatdar and the Civil Court between the original landlord and the tenant, the issue of defendants being tenants in respect of the suit land on the tillers' day has been finally answered and that issue cannot be reopened or re-examined merely because fresh reference has been made by the Civil Court in the subsequent suit. Indeed, whenever any reference is made by the Civil Court, it is the duty of the reference court, namely, the tenancy authority, to answer the reference, but that does not mean that the tenancy authority can overlook the cardinal principle of res judicata and the binding effect of the decision of the earlier concluded proceedings between the parties. The earlier decision would not only bind the parties themselves, but also the tenancy authority, though it was called upon to answer the reference afresh in the subsequently instituted suit. Viewed in this perspective, in the first place, there was no occasion for fresh reference being made on the issue of tenancy. In any case, the tenancy authority was obliged to answer the same in favour of the tenant on the basis of the earlier concluded proceedings between the

parties. As mentioned earlier, the only issue to be decided between the parties is regarding the determination of purchase price, which has been pending upon remand by the appellate authority under section 32G of the Act. All questions in relation to the matters on the basis of which purchase price will have to be determined will have to be answered therein. Merely because that proceedings is pending, the issue of tenancy cannot be reopened between the parties.

7. For the reasons recorded hereinbefore, in my opinion, the authorities below have committed manifest error in answering the issue in favour of the landlords that they would continue to own and possess standing mango trees on the suit land. Inasmuch as, the tenants have not only become the owners of the suit land, but all the standing trees thereon. To that extent, the decision of the tenancy authorities will have to be set aside and, instead, the issue as referred to by the Civil Court in the subsequently instituted suit will have to be answered in favour of the defendants tenants that they are the tenants of the whole of the suit property

including the standing mango trees on the suit land. Once this issue is decided in favour of the tenants, it would necessarily follow that the plaintiffs landlords will not be entitled for injunction against the tenants, who are legitimately in possession of the suit land, including the trees standing thereon by operation of law. Indeed, it is possible to suggest that the tenants would be bound by the concession given in the compromise purshis filed in the earlier round of litigation between the original landlord and the tenant that the landlord will continue to have the rights in respect of the standing mango trees on the suit land, but as mentioned earlier, by operation of law, the tenants have become owners of the standing mango trees on the suit land and purshis entered into between the parties to that extent cannot be pressed into service against the tenants or in favour of the landlords.

8. To get over this position, Mr. Rege had vehemently contended that the real issue that ought to have been considered by the authorities below was whether the land which was under

cultivation of the tenant is different than the land on which mango trees were standing. However, there is no substance in this submission. Inasmuch as no such grievance was made before the authorities below nor the pleadings of the parties would support such a stand. This argument is being canvassed for the first time, that too across the Bar before this Court. Whereas, from the materials on record, it will be seen that in the earlier proceedings, the land has been clearly described as Survey No. 507, Hissa No. 14, admeasuring 2 acres and 25 gunthas. The tenants are not claiming to be in possession of any land except that portion, which was subject matter and put in issue in the earlier proceedings which were decided in favour of the tenants. Although Hissa No. 14 in Survey No. 507 totally admeasures 10 acres 19 gunthas, but the defendants tenants are claiming to be in possession and enjoyment of only the area admeasuring 2 acres 25 gunthas, which was subject matter in the earlier proceedings. Even in the present suit, the plaint describes the suit property as Survey No. 507, Hissa No. 14, admeasuring 97 ares, i.e., 2 acres 17 gunthas.

In other words, there is no substance in the argument that the defendants were claiming rights in respect of the land other than the land which was in issue in the previously concluded proceedings.

9. Accordingly, petition preferred by the tenants being Writ Petition No. 1649 of 1996 would succeed and the issue referred by the Civil Court to the tenancy authority in R.C.S. No. 76 of 1980 is answered in the affirmative in favour of the tenants. Whereas the writ petition preferred by the landlord, being Writ Petition No. 5296 of 1991 will have to be necessarily dismissed for the aforesaid reasons and it is accordingly dismissed. In view of the order passed above, no further order is required to be passed in Civil Application. It will be open to the applicant therein to take such remedy as may be permissible by law for recovery of the amount claimed by them in the said application. No order as to costs.

10. Parties to act on the authenticated copy of this judgment.

(A.M.KHANWILKAR,J.)