

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1201 OF 2014

- 1) Laxman s/o Daji Warpe,
(Deceased L.Rs.)
- 1-A) Mathubai @ (Muktabai) w/o
Nilkanth Gaikwad,
Aged 55, Occu: Household,
R/o Piti, Tq. Vashi, Dist. Osmanabad
- 1-B) Sheshabai w/o Natha Mule,
Age: 73, Occu: Household,
R/o Saramkundi, Tq. Vashi,
Dist. Osmanabad
Through power of Attorney
Yuvraj Sheku Warpe,
Age: 44 years, Occu. Agriculture & Business,
R/o. Injora, Tq. Bhoom,
Dist. Osmanabad

..PETITIONERS
(Orig.R.No. 8-A & 8-B)

VERSUS

- 1) Vilas s/o Madhavrao Khandekar,
Age: 53 years, Occu. Agril.
- 2) Sakharam s/o Tukaram Warpe,
Age: 30 years, Occu. Agril.
- 3) Baliram s/o Nagnath Warpe,
Age: 65 years, Occu. Agril.
- 4) Jagannath s/o Nagnath Warpe,
Age: 62 years, Occu. Agril.
- 5) Mohan s/o Sitaam Warpe,
Age: Major, Occu. Agril.
- 6) Ananta s/o Sitaram Warpe,
Age: Major, Occu. Agril.

- 7) Saku s/o Sitaram Warpe,
Age: Major, Occu. Agril.
- 8) Sonaji s/o Bhimrao Khandekar,
Deceased L.Rs.
- 8A) Deelip s/o Sonaji Khandelkar,
Age: Major, Occu. Agril.
- 8B) Pradeep s/o Sonai Khandelkar,
Age: Major, Occu. Agril.
- 9) Maroti s/o Chandrabhan Warpe,
(Deceased L.Rs.)
- 9A) Anant s/o Vithal Warpe,
Age: Major, Occu. Agril.
- 9B) Bhanudas s/o Maroti Warpe,
Age: Major, Occu. Agril.
- 9C) Sopan s/o Maroti Warpe,
Age: Major, Occu. Agril.
- 9D) Bhujang s/o Maroti Warpe,
Age: Major, Occu. Agril.,
All R/o. Massa (Kh.), Tq. Kallam,
Dist. Osmanabad

..RESPONDENTS
(Orig. Respondents)

Mr S.M. Kulkarni, Advocate holding for Mr D. G. Nagode, Advocate for petitioners;

Mrs M.A. Kulkarni, Advocate holding for Mr A. M. Kulkarni, Advocate for respondent Nos. 2,3,4, 8A and 8B

CORAM : N.W. SAMBRE, J.

DATE : 23rd April, 2015

ORAL ORDER :

The petitioners claim to have tenancy rights in relation to the property in question. Tahsildar, on 30th September, 2005, passed an order at the behest of respondent no.5 Mohan in respect of the suit property for cancellation of mutation entries. The said proceedings were allowed by the Tahsildar, which order was set aside in appeal by the Deputy Collector on 20th January, 2006. A revision before the Maharashtra Revenue Tribunal came to be allowed at the behest of respondent no.1 Vilas, in which the present petitioners were added as party respondents, for the first time.

2. According to Mr Kulkarni, learned Counsel appearing on behalf of the petitioners, the observations made in the revision which was allowed at the behest of respondent no.1 Vilas, resulting in restoration of the order of Tahsildar in relation to the cancellation of entries, is not sustainable for two reasons :-

- (a) That wrong address of the petitioners was mentioned in the memo of revision and at no point of time they were served with the notice;
- (b) That the observations made by the Maharashtra Revenue Tribunal in relation to the tenancy rights of the petitioners are without any foundation.

3. In order to substantiate his contentions, Mr Kulkarni, learned Counsel appearing on behalf of the petitioners has strenuously urged that the petitioners, from the revenue record, could be inferred as having tenancy rights in the suit property. In addition to above, he would urge that even though no tenancy proceedings were taken out, by virtue of inferring from the revenue entries, the status of the present petitioners could be inferred as that of protected tenants. In addition to above, he would urge that cancellation of the rights *qua* protected tenancy as is observed in the order passed by the Maharashtra Revenue Tribunal in paragraph 7 of the judgment, is without any foundation as no such rights were cancelled by the competent authority on 14th September, 1959. According to him, in view thereof, the order impugned is not sustainable and thus deserves to be quashed and set aside.

4. Mrs Kulkarni, learned Counsel appearing on behalf of respondents no.2, 3, 4, 8-A and 8-B, while countering the above referred contentions, has invited attention of this Court to a categorical statement made in the reply, so as to canvass that the present petitioners were very much served before the Tribunal and they had engaged a Lawyer, who on their behalf had filed his appearance, so also written notes of argument, which were taken into account by the Tribunal while passing the order. In addition to above, she would urge that the observations of the Tribunal about cancellation of tenancy rights are based on record and such inference

unless is demonstrated before this Court to be without foundation, being part of the quasi judicial proceedings, are required to be appreciated and as such prayed for dismissal of the petition.

5. Having considered rival contentions of the parties and upon analyzing the observations made by the Tribunal, which are impugned herein, it is required to be noted that the Tribunal has marked presence of a Lawyer on behalf of the present petitioners. The fact about filing of written notes of argument is also not disputed either by filing a re-joinder to the affidavit-in-reply, or otherwise. In view thereof, it is required to be inferred that the petitioners very much appeared before the Tribunal so as to defend their claim. One more aspect of the matter of which this Court must take note is that, what is disputed in the petition is about service of notice on the petitioners on the address mentioned therein. However, no categorical statement is noticed in the petition, that the petitioners were neither represented by a Lawyer nor a Lawyer was authorised to do so. In view thereof, the said contention of the petitioners is rejected.

6. So far as the second contention of the petitioners is concerned, the Tribunal has made observation that the petitioners rights, which according to them flow from Laxman, were cancelled by the competent authority on 14th September, 1959. There is presumption in accordance with the provisions of the Evidence Act in favour of such findings, that the findings

being part of the record maintained by the quasi judicial authority/Tribunal are based on the evidence and the pleadings. Mr Kulkarni, while making submissions though has sought to rely upon revenue entries, nothing contrary to the same was demonstrated by him including that of any adjudication about tenancy rights of the petitioners by the competent tenancy authorities. In view thereof, the said observations made by the Tribunal, in my opinion, are required to be accepted as based upon the evidence. In view thereof, the said contention also stands rejected.

7. In view of the foregoing observations, no case for interference in exercise of extra-ordinary jurisdiction of this Court is made out. Thus, the writ petition fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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