

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.474/2016

Smt. Manjusha Daulat Donadkar and others

..VS..

Durveshwar Maharukh Kazi W/o Tanveer Khan

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : 10.8.2016.

Heard Shri S.A. Saoji, Advocate for the petitioners
and Shri M.S. Abbasi, Advocate for the respondent.

The respondent filed an application under Section 120(c) of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "Tenancy Act of 1958") contending that the present petitioners had encroached over 0.55 Hecter of land owned by the respondent and the possession of the petitioners over the said portion of land was unauthorized and, therefore, they be evicted summarily. The Sub-Divisional Officer conducted summary enquiry and relying on the measurement report of Taluka Inspector of Land Records, accepted the claim of the respondent that the petitioners are illegally occupying 0.55 Hecter of land out of Survey No.63/1 owned by the respondent. However, the Sub-Divisional Officer dismissed the application filed by the respondent on the ground that the respondent will have to approach the civil Court and the prayer of the respondent cannot be considered under Section 120(c) of the Tenancy Act of 1958.

The respondent challenged the above order before the Maharashtra Revenue Tribunal in revision which is allowed by the impugned order. The petitioners, being aggrieved by the order passed by the Tribunal, has filed this petition.

The contention of the petitioners is that the Sub-Divisional Officer had rightly dismissed the application concluding that the claim made by the respondent cannot be granted under Section 120(c) of the Tenancy Act of 1958. The judgment given by the Full Bench of this Court in the case of *Kashiram Shriram Doble V/s. Maharashtra Revenue Tribunal at Nagpur and another* reported in **AIR 1970 Bombay 366 (V. 57 C 62)** is relied upon. Alternative submission is made that if at all it is held that application filed by the respondent under Section 120(c) of the Tenancy Act of 1958 is maintainable then the matter be remanded to the Sub-Divisional Officer for deciding the application on merits. It is further submitted that the petitioners disputed the claim of the respondent that she is owner of Gat No.63/1 and this is nowhere considered either by the Sub-Divisional Officer or the Tribunal.

The learned Advocate for the respondent has pointed out from paragraph No.4 of the order passed by the Sub-Divisional Officer, the findings recorded in favour of the respondent relying on the measurement report of Taluka Inspector of Land Records. It is pointed out that the petitioner No.1 was present at the time of measurement by Taluka Inspector of Land Records and being dissatisfied with the report of Taluka Inspector of Land Records, the petitioners had again applied for measurement and again it was found that there is an encroachment over 0.55 Hectore of land out of Gat No.63/1. It is submitted that the findings

recorded by the Sub-Divisional Officer are not challenged by the petitioners even in the present petition. It is further submitted that though the Sub-Divisional Officer recorded findings against the petitioners relying on the measurement report of Taluka Inspector of Land Records, the petitioners have not challenged the report of Taluka Inspector of Land Records also.

After considering the submissions made on behalf of the respective parties, I find that the Sub-Divisional Officer has recorded that there is an encroachment on 0.55 Hector of land out of Gat No.63/1 owned by the respondent. Though an attempt is made at the time of hearing to urge that the respondent has failed to prove her ownership over Gat No.63/1, the documentary evidence on record in the form of measurement report of Taluka Inspector of Land Records and the findings recorded in paragraph No.4 of the order passed by the Sub-Divisional Officer which are not challenged till date, does not support the contention of the petitioners on this point. It is well settled that the enquiry under Section 120(c) of the Tenancy Act of 1958 is of summary nature and the Sub-Divisional Officer having recorded finding against the petitioners that they have encroached over 0.55 Hector land out of Gat No.63/01 owned by the respondent, in my view, the matter is not required to be remanded.

The Tribunal has properly dealt with all relevant aspects. I do not find any infirmity or perversity in the impugned order. The petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

CERTIFICATE

“ I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order”.

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