

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 617 OF 2013

Gangabai w/o Narayan Bhande
& another

Petitioners

Versus

District Collector
& others

Respondents

Mr. V.D. Gunale, advocate for petitioners.

Mr. S.P. Sonpawale, A.G.P. for respondents 1 to 3.

Mr. A.N. Raut, advocate holding for Mr. N.N. Shinde, advocate for respondents 4 to 6.

CORAM : R.M.BORDE, J.

DATE :16th NOVEMBER, 2017

PER COURT:

1. Application tendered by petitioners at Exh. 47 in Special Civil Suit No. 13/2011 requesting the trial Court to frame issue of tenancy in respect of predecessor of respondents-original defendants has been turned down by the trial Court, which order is subjected to challenge in this petition.

2. Petitioners claim to be purchasers of the property in dispute. Respondents-original defendants however, claim that their father was cultivating the land as tenant since 1952 and was in possession as on 01.07.1960 and as such, occupancy rights were granted to him. It is further contended that the land was re-granted to the father of defendants-respondents since he has been recognised as occupant of the land on the notified date and since

he has deposited the occupancy price fixed by the Government. It is further contended that the Tahsildar, Udgir, has issued an order on 18.07.1961 in respect of grant of occupancy and directed to deposit occupancy price and, on the basis of said order, mutation entries have also been recorded in favour of father of defendants. Defendants as such contend that plaintiffs do not have any entitlement to purchase the property since their father was tenant and was declared as occupant since he was in possession of the land on the notified date i.e. 01.07.1960.

3. Plaintiffs have disputed contention of defendants as regards tenancy of their father and grant of occupancy certificate. Plaintiff as such tendered an application to the trial Court for framing issue as to whether defendants 4 to 6 prove that deceased Yadav Biradar was tenant of the said land and acquired occupancy right over the suit land. Application has been turned down by the trial Court and as such, plaintiffs-petitioners are before this Court.

4. It must be taken note of that defendants claim to be occupant over the suit land and their contention is based upon order passed by the Tahsildar, Udgir. If at all, claim of tenancy of father of defendants and grant of occupancy rights in their favour is a matter of dispute, it is for the defendants to prove their contention. The burden in respect of proving tenancy rights of defendants and grant of occupancy right in their favour does not rest on plaintiffs. Defendants, in order to succeed, are bound to prove their case as stated in the written statement. It is not for the plaintiffs to prove all contentions/facts stated in the written statement by defendants to substantiate their case. Plaintiffs have

to prove their claim as stated in the plaint and does not have to bother as to whether defendants prove their defence.

5. The application tendered by petitioners itself was misconceived and rejection of that application by trial Court does not infact affect the claim of plaintiffs. If at all, defendants tender such application, it would be open for the trial Court to consider the same on its own merit. Interlocutory order passed by the trial Court during the continuance of suit need not be interfered in exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India. Petition is devoid of substance hence stands rejected.

**R.M.BORDE
JUDGE**

dyb