

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

WRIT PETITION NO.4616/2015

Dr Ishwarchand Suwalal Hurkat

..Vs..

Mangleshwar Maharaj Sansthan, through its trustees Bhagirath Kisanlalji Sarda
and others

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

Court's or Judge's orders

Shri S.R. Deshpande, Advocate for the petitioner.
Shri Abhay Bhide, Advocate for the respondents.

CORAM : Z.A. HAQ, J.

DATE : 18.1.2018.

1. Heard.

2. The respondent / trust had filed application under Section 120(c) of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "the Act of 1958") praying that the present petitioner be summarily evicted from the agricultural land in question as he is in unauthorized occupation of the land. The present petitioner had filed written statement opposing the claim of the public trust. The Sub-Divisional Officer considered the material on record and by the order dated 13th August, 2010 allowed the application filed by the public trust and directed eviction of the present petitioner from the agricultural land in question. This order was challenged by the present

petitioner before the Maharashtra Revenue Tribunal in revision, which is dismissed by the impugned order.

3. The relevant facts are :

Shri Suwalal Hurkat (father of present petitioner) was tenant of the land in question. On 16th November, 1965, the respondent No.1 / public trust got the certificate of registration as public trust. On 13th August, 1966 exemption certificate under Section 129(b) of the Act of 1958 came to be granted in respect of land in question.

4. The submission on behalf of the petitioner before this Court is that Shri Suwalal Hurkat (father of petitioner) was cultivating the land in question since prior to 1st April, 1963 and on 1st April, 1963 was in possession and, therefore, he became owner of the land in question as per the provisions of Section 49A of the Act of 1958 and as father of petitioner had become owner of the land on 1st April, 1963, the petitioner being his legal representative, cannot be summarily evicted under Section 120(c) of the Act of 1958.

Though the submission made on behalf of the petitioner relying on the provisions of Section 49A of the Act of 1958, for the sake of arguments, appears to be acceptable, the written statement filed by the petitioner in proceedings before the Sub-Divisional Officer, shows that this stand was not taken by him before the Sub-Divisional Officer. In paragraph No.2 of the written

statement, which was filed by the petitioner before the Sub-Divisional Officer in proceedings under Section 120(c) of the Act of 1958, the petitioner denied that he got possession of the land in question as legal representative of his father Shri Suwalal Hurkat. The petitioner came out with specific case that after death of Shri Suwalal Hurkat, the petitioner is inducted as tenant by the respondent No.1 / public trust and he had been paying the lease money to the public trust. The arguments made for the first time before this Court in petition under Article 227 of the Constitution of India relying on the provisions of Section 49A of the Act of 1958 cannot be considered to determine whether the tenant had become the owner of the agricultural land as per Section 49A of the Act of 1958. To determine this it is necessary to find out whether the land in question was cultivated by the tenant personally on 1st April, 1963. In the present case, the petitioner has not placed any material on record on the basis of which the fact as to whether Shri Suwalal Hurkat was personally cultivating the land in question on 1st April, 1963 can be ascertained.

5. As far as the case of the petitioner that he is inducted as tenant by the respondent No.1 / public trust after death of his father in 1982, and that he had been paying the lease money to the public trust is concerned, I find that the petitioner has failed to discharge the burden of proving that he was inducted as tenant in 1982 and

that he had been paying the lease money to the respondent No.1 / public trust.

6. Not only this, the learned Advocate for the respondents has pointed out that the petitioner has filed Regular Civil Suit No.131/2012 alongwith 13 other plaintiffs against the respondents, praying for decree for declaration that the order passed by the Sub-Divisional Officer in proceedings under Section 120(c) of the Act of 1958 on 13th August, 2010 are null and void. In this civil suit, the plaintiffs have prayed for declaration that the respondent No.1 is not a public trust and have sought decree for injunction restraining the respondent No.1 / public trust from taking possession of the suit field. The plaintiffs in the civil suit (including the present petitioner) have prayed for decree for specific performance of agreement, which according to them is entered into about 9 years prior to the filing of the suit and by the alleged agreement, the present respondents had agreed to sell the agricultural land in question to the plaintiffs.

Be that as it may, as I find that the petitioner has not been able to substantiate his claim that he is inducted as tenant after the death of his father in 1982 and that he had been paying the lease money, I find that the issues raised on behalf of the petitioner before this Court relying on the provisions of Section 49A of the Act of 1958 are not required to be dealt with. Similarly, the issue raised by the learned Advocate for the petitioner

before this Court that the exemption certificate granted under Section 129(b) of the Act of 1958 is unsustainable and it cannot affect the rights which were conferred on Shri Suwalal Hurkat on 1st April, 1963, also are not required to be considered as there is no foundation of such challenges in the written statement which was filed by the petitioner in proceedings before the Sub-Divisional Officer.

As the petitioner has failed to show that he is in lawful possession of the land in question, I do not see any reason to interfere with the impugned orders. The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

Tambaskar.