

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO.3175 OF 2020
IN
WRIT PETITION NO.1443 OF 2003

VIKRAM DAGDOBA PADWAL AND OTHERS
-VERSUS-
DEORAO BAJIRAO THORAT (DIED) AND OTHERS.

...
Shri V.D.Salunke h/f Shri P.K.Deshmukh, Advocates for the applicants.
None for the respondents.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th October, 2020

Per Court:

1 The applicants, who are the original petitioners in the disposed off Writ Petition No.1443/2003, had moved this Court for urgent orders. This application was placed before the Court assigned with this roster (Coram : Mangesh S. Patil, J.). By order dated 23.09.2020, my learned Brother found it appropriate to observe that this application should be placed before this Court by virtue of Chapter XXX Rule 3 of the Bombay High Court (Appellate Side) Rules.

2 As such, the learned advocate for the applicants circulated this application, which was shown on the daily board on 09.10.2020 when I have passed the following order:-

- "1. In view of the order passed by Hon'ble Shri Justice Mangesh S.Patil, dated 23/09/2020, this application has been circulated before this Court. All the non-applicants i.e. respondent Nos.1-A to 1-E, 2-A and 2-B have been served pursuant to the order of this Court dated 11/03/2020.
2. None present for the respondents.
3. In view of the above, in order to grant one more opportunity to the respondents to participate in this proceeding, stand over to 13/10/2020 at 2.30 p.m. If the respondents choose to remain absent, this proceeding would be considered on its merits."

3 Even today, none appears for the respondents though they have been served by newspaper publication. Such service is evidenced by the report of the Writ Section seen on the Farad Sheet dated 05.10.2020.

4 I have considered the strenuous submissions of Shri Salunke, learned advocate for the applicants. I have gone through the earlier order passed by this Court (Coram : K.U.Chandiwal, J.) dated 13.01.2012 in Writ Petition No.320/2011 vide which, it was held that the non applicants herein are not in possession of the suit property. I have also perused my earlier order dated 18.07.2019 disposing off Writ Petition No.1443/2003 since Writ Petition No.211/2006 between the parties, was pending. I have also gone through the judgment delivered by this Court (Coram : V.K.Jadhav, J.) dated 18.12.2019 vide which, Writ Petition No.211/2006 filed by the non-applicants herein, has been dismissed. It was observed that the Trial Court should proceed with the pending suit.

5 As the non applicants herein had attempted to take the aid of the police force and according to the submissions of Shri Salunke, were attempting to take over the possession of the suit property, I had passed the following order on 11.03.2020 :-

"1. On 6.3.2020, after the learned Advocate for the petitioners expressed grave urgency, I had passed the following order:-

“1. A grave urgency is voiced by the applicants. All earlier orders and judgments annexed to the Civil Application are pointed out. It is submitted that the standing crops, belonging to the applicant are to be harvested and on the pretext of there being no protection to the applicants, the original plaintiffs in RCS No. 98 of 1975 are attempting to dispose the applicants with the aid of the police.

2. It is informed that Shri S.D.Kulkarni, learned Advocate had earlier appeared for the respondents in Writ Petition No.1443 of 2003.

3. Considering the above, this application be listed on 11.3.2020 in the Urgent Orders Category.

4. The learned Advocate for the applicants is at liberty to make a request to Shri S.D. Kulkarni to assist the Court in this matter on the next date.”

2. On the request of the Court, Shri S.D.Kulkarni, learned Advocate has appeared. He, however, submits that, as the Writ Petition was decided, it would not be appropriate on his part to address this Court, though on the request of the Court.

3. I find that Shri Kulkarni is justified.

4. The applicant has preferred this Civil Application in the disposed off Writ Petition, as the respondents have moved an application, dated 18.2.2020, in RCS No.98 of 1975 seeking police protection for harvesting standing crop. No orders, as yet, have been passed on the said application.

5. In similar circumstances, in Writ Petition No.320 of 2011,

filed by the respondents, this Court had passed an order on 13.1.2012, concluding in paragraph No.3 that, "When the controversy relates to dispute of possession, grant of police aid to protect possession would be supplanting the plaintiffs' assertion to take possession by might. Such exercise was rightly discarded by the learned Judge."

6. *By judgment dated 18.12.2019, delivered by this Court in Writ Petition No. 211 of 2006, filed by the respondents, this Court has finally concluded the issue of tenancy in favour of these applicants and the Writ Petition has been dismissed. It was also recorded in paragraph No.24 that the trial Court should proceed with the pending suit.*
7. *It is informed that the suit is presently at the stage of recording evidence and is 45 years' old. The hearing on the tenancy issue has consumed decades.*
8. *In view of the above, issue notice to the respondents, returnable on 2.4.2020. Besides service of Court notice through the regular mode, the petitioners shall serve the respondents through paper publication in dailies Parshvabhoomi (Beed Edition), Sangharsh (Osmanabad and Latur Editions) atleast ten days prior to the returnable date.*
9. *Until the next date, the trial Court would not pass an order on the application dated 18.2.2020. It shall, however, proceed with RCS No.98 of 1975 expeditiously and preferably on day to day basis."*

6 Despite the above and taking into account the fact situation emerging from the various orders referred to above and in view of the order of this Court dated 11.03.2020, I find that the respondents/ non applicants herein are not interested in participating in the adjudication of this application. Regular Civil Suit No.98/1975 is pending for adjudication for the last 45 years.

7 As this Court had already concluded vide its order dated 13.01.2012 in Writ Petition No.320/2011 that these non applicants are not in possession of the suit property and keeping in view the judgment of this Court dated 18.12.2019 in Writ Petition No.211/2006 coupled with my observations in the order dated 11.03.2020, this Civil Application is allowed in terms of prayer clause "B", which reads as under :-

"B) *The status quo order granted by this Hon'ble Court in injunction proceedings, directing both the parties to maintain status quo in C.R.A. No.1129/1993 continued in Writ Petition No.1443/2003 by order dated 25.06.2003 continued, further by order dated 18.07.2019, may be continued till final disposal of RCS No.98/1975.*"

kps

(RAVINDRA V. GHUGE, J.)