

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

WRIT PETITION NO. 12775 OF 2019

- 1) Khabulal Vaziroddin – Died Through L.Rs.
- 2) Naziroddin Khabulal- Died Through L.Rs.
- 2A) Tahera Begum Naziroddin Shaikh,
Age 68 years, Occ. Agriculture,
R/o. Neknoor, Tq. & Dist. Beed.
- 2B) Gaus Mohioddin Naziroddin Shaikh,
Age 45 years, Occ. Agriculture.
R/o. Neknoor Tq. & Dist. Beed.
- 2C) Mhinajoddin Naziroddin Shaikh,
Age 43 years, Occ. Agriculture
R/o. Neknoor Tq. & Dist. Beed.
- 2D) Fasiuddin Naziroddin Shaikh,
Age 39 years, Occ. Agriculture.
R/o. Neknoor Tq. & Dist. Beed.
- 2E) Shafiuddin Naziroddin Shaikh,
Age 68 years, Occ. Agriculture,
R/o. Neknoor Tq. & Dist. Beed.
- 3) Hajanoddin Khabulal
Age 40 years, Occ. Agriculture,
R/o. Neknoor Tq. & Dist. Beed.
- 4) Shamshoddin Khabulal,
Age 35 years, Occ. Agriculture,
R/o. Neknoor Tq. & Dist. Beed.
- 5) Tahera Begum Naziroddin,
Age 55 years, occ. Agriculture.
R/o. Neknoor Tq. & Dist. Beed.
- 6) Bibijan Hasanoddin,
Age 35 years, Occ. Agriculture,
R/o. Neknoor Tq. & Dist. Beed.

- 7) Shaikh Nasiroddin Khabulal,
Age 55 years, Occ. Agriculture,
R/o. Neknoor Tq. & Dist. Beed.
All R/o. Neknoor, Post Neknoot,
Galli No. 11, Khaja Chowk,
Neknoor, Tq. & Dist. Beed.

... Petitioners.

VERSUS

- 1) Malanbai Dattatraya Naik-Died.
2. Sushilabai Govindrao,
Age 50 years, Occ. Household,
R/o. Beed.
- 3) Kisabai @ Shubhabai Ganpatrao
Died, Through her L.Rs.
- 3A) Sulbha Sunil Deshmukh,
Age Major, Occ. Household,
R/o. Gvali Mohalla, Old Jalna,
Tq. & Dist. Jalna.
- 3B) Sow. Rekha Chandrakant Kulkarni,
Age Major, Occ. Household,
R/o. At Present Sindphal, Tq. Tuljapur,
District Osmanabad.
- 3C) Gopal Ganpatrao Sarvade,
Age Major, occ. Household,
R/o. Yogeshwari Mahavidyalaya
Ambajogai, Parli Main Road,
Tq. Ambajogai, Dist. Beed.
- 4) Kumudinibai Sakharam Kulkarni,
Age 30 years, Occ. Household,
R/o. Beed Tq. & Dist. Beed.
- 5) Shaikh Akila Begum Wahebuddin,
Age Major, Occ. Household,
R/o. Washi, Tq. & Dist. Jalna.
- 6) Laila Begum Rahimuddin,
Age Major, Occ. Household,
R/o. Jogeshwari, Mumbai.

- 7) Mahetabee Aminoddin,
Age Major, Occ. Household,
R/o. Saigaon Tq. & Dist. Latur.
- 8) Naseem Begum Faroque,
Age Major, Occ. Household,
R/o. Neknoor, Tq. & Dist. Beed.
- 9) Latifa Begum Shaikh Barkat,
Age Major, Occ. Household,
R/o. Yeola, Dist. Nashik.

... Respondents.

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Advocate for the Petitioners : Mr. S. B. Bhapkar.
A.G.P. for the Respondent No. 2 : Mr. G. K. Thigale (Naik)

CORAM : MANGESH S. PATIL, J.

RESERVED ON : 19/10/2020

PRONOUNCED ON : 26/10/2020

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocate Mr. Thigale waives service for the contesting respondent No. 2. With the consent of both the sides the matter is heard finally at the stage of admission.

2. Invoking the jurisdiction of this Court under Article 227 of the Constitution of India the petitioners are impugning the concurrent findings of the three Authorities under the Hyderabad Tenancy and Agricultural Lands Act (hereinafter 'the Tenancy Act') whereby their claim that their predecessor Khabulal was a tenant in three lands belonging to one Dattatraya Amrapurkar on the basis of oral agreement of Batai and after demise of Dattatraya, on the basis of a Batai Patrak dated 16.06.1976 executed by the respondent No. 2's mother Malanbai, has been dismissed.

3. The facts leading to filing of the petition may be summarized as under:

Original owner of the three lands Dattatraya Amrapurkar died on

25.01.1968. After his demise his wife Malanbai became the owner of the lands. Alleging that Khabulal was obstructing her possession she filed Regular Civil Suit No. 120/1975. It was decreed in her favour on 25.01.1979. Khabulal appealed against the judgment and decree in Regular Civil Appeal No. 20/1979 which was dismissed on 02.02.1982. Malanbai died on 31.12.1980. According to the Will stated to have been executed by Dattatraya his daughter respondent No. 2 succeeded to the lands. Since the decree had reached finality she filed Regular Darkhast No. 81/1982 for execution. During the execution proceeding, Khabulal initiated a proceeding before the Revenue Authorities for mutation in VII-B record under the Tenancy Act. Since the matter had reached High Court, it was directed to the Executing Court to refer the issue regarding tenancy for decision in accordance with the provisions of the Tenancy Act.

4. Accordingly the Executing Court framed following issue and referred it under Section 99A of the Tenancy Act to the Tenancy Authorities. The learned Tahsildar after conducting necessary hearing by extending an opportunity to both the sides by the judgment and order dated 31.03.1997 concluded about the petitioners having failed to prove the tenancy. They preferred Appeal before the Deputy Collector Land Reforms but even the appeal was dismissed on 17.06.2002. The petitioners approached the Maharashtra Revenue Tribunal in Revision and by the impugned judgment and order dated 05.07.2019 even the revision has been dismissed. Hence, this Petition.

5. The learned advocate Mr. Bhapkar for the petitioners strongly submitted that though there are concurrent findings of the three Authorities below, the manner in which the decisions have been rendered clearly demonstrates that none of them has judiciously approached the matter in issue and has drawn jumping conclusions based on conjectures and surmises. Even they have failed to apply the law correctly. They have not discussed the evidence of the witness on the Batai Patrak namely Sher Ali.

The decisions have been rendered arbitrarily and capriciously. This Court should intervene by invoking the powers under Article 227 of the Constitution of India.

6. The learned advocate Mr. Bhapkar would further point out by referring to the decision in the case of **Janki Vashdeo Bhojwani v. Indusind Bank Ltd., (2005) 2 SCC 217** that even the respondent No. 2 should have stepped into the witness box after demise of Malanbai. The petitioners have examined Sher Ali who alone from amongst the signatories on the Batai Patrak was alive. He had specifically deposed about the execution of Batai Patrak by Malanbai and there was no reason for discarding his testimony. He would further submit that the Sub Divisional Officer who recorded the testimony of Sher Ali as per the direction of Maharashtra Revenue Tribunal in the earlier round failed to discuss his evidence and lightly brushed aside with a blunt observation that it was contrary to the record and therefore was not reliable. The learned advocate therefore submitted that all the three Authorities below have decided the matters by the impugned judgments and orders which are perverse, arbitrary and capricious and may be quashed and set aside and if necessary the matter may be remanded to the Maharashtra Revenue Tribunal for decision afresh.

7. The learned advocate Mr. Thigale for the respondent No. 2 at the outset would submit that the powers of this Court under Article 227 of the Constitution of India have been invoked and would come with inherent limitations. The scope of this power has been elaborately considered and laid down by the Supreme Court in the case of **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil; (2010) 8 Supreme Court Cases 329** . The power under Article 227 of the Constitution of India is discretionary and has to be exercised sparingly on equitable principles. He therefore submitted that since the view taken by the three Authorities is plausible, this is not a fit case where any inference can be caused as if sitting in Appeal even while exercising the jurisdiction under Article 227 of the Constitution of India.

8. Turning to the facts, the learned advocate Mr. Thigale points out that the theory being propounded by the petitioners about creation of tenancy itself is very shaky. Though they claim that Khabulal was inducted by original owner Dattattraya, at no point of time till his death on 17.04.2008 he had ever dared to substantiate his claim by stepping into the witness box. If really the Batai was on the basis of some oral agreement as is being averred by the petitioners, there would not have been any need for executing of Batai Patrak abruptly in the year 1976. He would further point out that the Batai Patrak was abruptly produced during Execution Proceeding and no plausible explanation is to be found as to why during pendency of the suit it was not produced and sought to be proved. This circumstance heavily weighs against the petitioners' claim and the learned Deputy Collector Land Reforms while deciding the appeal of the petitioners has pointedly noted this circumstance while refuting the claim of tenancy.

9. The learned advocate would further submit that if really Khabulal was tenant in the lands, in the normal course his name would have appeared in the tenancy register under Section 37A of the Tenancy Act. He would submit that the issue touching this aspect has been comprehensively dealt with by this Court in the case of **Vaijinath Yeshwant Jadhav Vs. Afsar Begum Nadimuddin Kazi; 2010 (6) Bom. C.R. 787**. Since name of Khabulal never appeared in the Tenancy Register, it is indeed a strong circumstance justifying refusal of petitioners' claim of he being a tenant. This aspect has also been rightly considered by the Deputy Collector Land Reforms while dismissing the appeal. The learned advocate therefore submitted that there is no sufficient ground to quash and set aside the impugned judgments and orders.

10. I have carefully considered the papers and the rival submissions. In my view, one need not delve much as far as the scope of the powers of this Court under Article 227 of the Constitution of India which have been elaborately considered and laid down by the Supreme Court in the case of

Shalini Shyam Shetty (supra). One merely needs to bear in mind the principles laid down therein and proceed to decide the matter.

11. Admittedly, Malanbai had filed a suit against Khabulal seeking declaration of her claim to the ownership of these lands and injunction restraining Khabulal and the present petitioners who are his successors from obstructing her possession. The suit was decreed. The appeal preferred by the petitioners was also dismissed. She then filed an execution proceeding. In that execution proceeding Malanbai applied for a restoration under Section 144 read with Section 151 of the Code of Civil Procedure alleging that after obtaining stay to the execution and operation of the decree after filing of the appeal the petitioners had dispossessed her. It is for the first time in the execution proceeding the petitioners took a plea of tenancy. It is thereafter that when a warrant for possession was issued by the Executing Court that the petitioners approached this Court in Civil Revision Application No. 260/1988 wherein by the judgment and order dated 14.12.1988 the Executing Court was directed to frame necessary issue regarding tenancy of the petitioners and directed it to be referred to the Authorities under the Tenancy Act.

12. If really the Batai Patrak had seen the light of the day on 16.06.1976, no explanation can be found any where as to why at any earlier point of time it was not produced before the Civil Court. This is a vital circumstance which has been relied upon by the Deputy Collector (Land Reforms) while dismissing the appeal.

13. Besides, the submission of the learned advocate Mr. Bhapkar about respondent No. 2 having not stepped into the witness box and instead her husband having deposed and it is fatal to her case in view of the observations of the Supreme Court in the case of **Janki Vashdeo Bhojwani (supra)** the same argument would equally hold good as against his own clients i.e. the petitioners. Admittedly, Khabulal was alive till the stage

appeal was preferred before the Deputy Collector Land Reforms who decided it on 17.06.2002. If such was the state of affairs, when he was a party to the Batai Patrak, for the reasons best known to him, he never made any attempt to step into the witness box to prove the Batai Patrak. So far as the respondent No. 2 is concerned, she is not a party to the Batai Patrak. However, Khabulal himself was a party to that Batai Patrak and he and the other petitioners were claiming tenancy rights on the basis of that Batai Patrak. But he having conspicuously abstained from stepping into the witness box, an adverse inference was available to be drawn against the petitioners as has been drawn by the Appellate Authority, Deputy Collector Land Reforms and the Revisional Authority the Maharashtra Revenue Tribunal in the impugned judgments and orders.

14. The Authorities below have also considered the fact that except the bald averment and this spurious document in the form of Batai Patrak nothing was produced to substantiate the claim of tenancy. Except for the surreptitious entry in the VII-B record of the year 1982-1983 to 1984-1985, name of Khabulal never appeared in the revenue record. If at all he was a tenant of Dattattraya who was the original owner inducted many years back, his name would have certainly appeared in the tenancy register under Section 37-A of the Tenancy Act. Its importance has been succinctly laid down in the case of Vaijnath Yeshwant Jadhav (supra). The Appellate and the Revisional Authority have also considered the testimonies of the witnesses in the proper perspective and refused to rely upon them for a plausible reason that when Khabulal himself had avoided the witness box the testimony of these witnesses were doubtful. They also noticed that though the petitioners are claiming that initially it was only an oral Batai, there was no evidence about its details as to the time, place and year. It was also noticed that it was only one Babu Kanade who was examined to prove the oral Batai but even he had failed to give details. Besides, when Khabulal himself has not stepped in the witness box, testimony of Babu Kanade was

of no consequence.

15. So far as testimony of Sher Ali is concerned though he was allowed to be examine at a later stage when the matter had reached the stage of Revision before Maharashtra Revenue Tribunal it is not clear as to why he was held back till then. Interestingly his son who was not a party to the Batai Patrak was however examined by the petitioners. Having drawn adverse inference against them for not examining Khabulal himself being best witness, one cannot give weightage to the fact of Appellate Authority discarding testimony of Sher Ali.

16. In my considered view the reasoning given by the Appellate Authority Deputy Collector Land Reforms Beed was clearly based on plausible appreciation of the material before him, the Maharashtra Revenue Tribunal could not have intervened while exercising the powers of revision.

17. In the facts and circumstances, the observations and the conclusions of the Authorities under the Tenancy Act are clearly based on a plausible appreciation of the material before them. They have refuted the claim of the petitioners of being tenants consequently there is no merit in the Writ Petition.

18. The Writ Petition is dismissed. The Rule is discharged.

(MANGESH S. PATIL, J.)

19. After pronouncement of judgment the learned advocate Mr. Bhapkar prays for stay to the operation of the judgment for a period of eight weeks to enable the petitioners to approach the Supreme Court. He points out that the matter has been heard finally at the stage of admission. The petitioners are in possession of the property in dispute. The execution is pending and the purpose of approaching the Supreme Court is likely to be

frustrated if in the meantime the execution proceeds and the possession changes hands.

20. The learned advocate Mr. Thigale strongly opposes the request and submits that no interim relief is in operation during pendency of the Writ Petition and therefore the petitioners are not entitled to claim any fresh order in that nature.

21. Admittedly, the petitioners are in possession of the property in dispute. The matter has been heard finally at the stage of admission. It would be just and proper to extend sufficient opportunity to the petitioners to challenge this judgment and order.

22. In the circumstances, the operation of the judgment and order in the Writ Petition shall stand stayed till 07.12.2020.

(MANGESH S. PATIL, J.)

mkd/-