

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

WRIT PETITION NO. 6929 OF 2019

Mahadeo Laxman Raut and another
vs.
Kailash haribhau Dalavi and others

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

Court's or Judge's orders

Dr. Mrs. R. S. Sirpurkar, counsel for petitioner.
Shri. R. N. Ghuge, counsel for respondents No.1 to 5.

CORAM : MANISH PITALE J.

DATED : 27/02/2020

By this writ petition, the petitioners have challenged order dated 19/09/2019 passed by the Court of Joint Civil Judge Junior Division Malegaon, whereby an application moved on behalf of the petitioners seeking reference of issue about tenancy to the Sub Divisional Officer, Washim, has been rejected. The other order made subject matter of challenge in the present writ petition is also on a similar application moved by the petitioners in another suit in which they are defendants and they have moved a counter claim. The core issue sought to be raised on behalf of the petitioners in applications filed in the aforesaid suits i.e. R.C.S. No.39/2014 and R.C.S.No.49/2018, is the claim of the petitioners that the issue of tenancy, which according to them, squarely arises in the suits needs to be referred to the Sub Divisional Officer, Washim under Section 124 of

the Maharashtra Tenancy Agricultural Land (Vidarbha Region) Act, 1958.

2. It is contended on behalf of the petitioners that the Court below has not considered the application of the petitioners on merits and the impugned orders have been passed mainly for the reason that the said applications were allegedly moved on behalf of the petitioners to delay the proceedings.

3. It is submitted that the reasoning given in the impugned orders is not germane to the issue specifically raised on behalf of the petitioner, and therefore, the impugned orders deserve to be set aside and the applications filed on behalf of the petitioners in the two suits deserve to be allowed in terms of the prayers made therein.

4. On the other hand, the learned counsel appearing for the contesting respondent has invited attention of this Court to certain documents filed along with the reply affidavit in the present writ petition. According to the respondent, the issue of tenancy has been already decided as per order dated 30th September 1980, passed by the Court of Additional Tahasildar, Washim in a proceeding initiated in the year 1978-1979. According to the learned counsel for the contesting respondent, the said order was made subject matter of challenge on behalf of the petitioners before the Sub Divisional Officer after 20 years by way of an Appeal,

which was filed with an application for condonation of delay. The appeal was allowed and the order dated 30th September, 1980, was set aside, which in turn was confirmed by the Maharashtra Revenue Tribunal in a revision proceeding initiated by the contesting respondent. But, when the matter reached this Court in Writ Petition No.4659/2011, the orders passed by the Sub Divisional Officer and the Tribunal stood set aside and the matter was remitted to the Sub Divisional Officer to decide the application for condonation of delay afresh. This is where the matter stands. On this basis, it is contended by the learned counsel for the contesting respondent that the court below was justified in passing the impugned orders and refusing to refer the issue of tenancy to the authorities under the aforesaid Act.

5. The documents on record clearly indicate that as on today the order of the Additional Tahasildar, Washim dated 30/09/1980, recognizing the tenancy of the Predecessor of the contesting respondents, is holding field, although the matter is now pending before the Sub Divisional Officer for decision on the application for condonation of delay filed on behalf of the petitioners in order to challenge the said order. Therefore, the issue of tenancy at this stage has been decided in favour of the contesting respondent by the original authority and it is to be seen as to whether the application for condonation of delay filed by the petitioners before the Sub Divisional Officer is granted and then the appeal filed by them is

taken up for consideration on merits by the Sub Divisional Officer.

6. In the face of these admitted facts, this Court is of the opinion that no error can be attributed to the Court below in having passed the impugned orders in the applications moved on behalf of the petitioners in R.C.S. No.39/2014 and R.C.S.No.49/2018. Therefore, this Court finds that there is no merit in the present writ petition. It is clear that the request made on behalf of the petitioners for referring issue of tenancy to the authorities under the provisions of the said Act was a superfluous request, as the proceedings on the issue of condonation of delay is already pending before the Sub Divisional Officer in terms of the order passed by this Court dated 09/07/2012 in Writ Petition 4659/2011. Therefore, this Court declines to interfere with the impugned orders and the writ petition is dismissed.

7. At this stage, the learned counsel for the petitioners submitted that even if that be so, the proceedings before the Court below in the suits deserve to be stayed under Section 125 of the aforesaid Act. This Court refuses to entertain any arguments on the said question, as it would be open for the petitioners to approach the Court below to make submissions in that regard, which undoubtedly shall be decided by the Court below in accordance with law.

JUDGE