

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

WRIT PETITION NO.4212 OF 2020

1. Sambhaji s/o. Govindrao Sul,
Age : 58 years, Occ. Agri.,
2. Subhash s/o. Govindrao Sul,
Age : 64 years, Occ. Agri.,
3. Shobha w/o. Sarjerao Kale,
Age : 54 years, Occ. Housewife,
4. Manik s/o. Govindrao Sul (died)
Through his L.Rs.
- 4.1 Suman w/o. Manikrao Sul
Age : 59 years, Occ. Agri.,
- 4.2 Bharati w/o. Manohar Waghmode
Age : 41 years, Occ. Housewife
- 4.3 Rahul s/o. Manikrao Sul,
Age : 36 years, Occ. Doctor
- 4.4 Vikas s/o. Manikrao Sul,
Age : 33 years, Occ. Agri. and Lawyer,

All r/o. Sul Galli, Latur,
Tq. and Dist. Latur
and others

..Petitioners

Vs.

1. The State of Maharashtra,
Through the District Collector,
Collector Office, Latur
2. Tahsildar, Latur
c/o. Tahsil office, Latur

3. MahetabWaldImamsab Khoriwale (died)
Through L.Rs.
- 3.1 Abdul Ajam s/o. Mahetabsab Khoriwale (died)
Through Lrs.
Tohida Begul Abdul Ajam Mehtab Khoriwale
Age : Major, Occ. Housewife
r/o. Alampura, Latur,
Tq. and Dist Latur
- 3.2 Abdul Ajaj s/o. Mahetabsab Khoriwale,
Age : Major, Occ. Agri.,
r/o. Sul Galli, Latur
- 3.3 Sanjida Haidarali Sayyed,
Age : Major, Occ. Agri.
r/o. Alampura, Latur
- 3.4. Umeda Amin Shaikh,
Age : Major, Occ. Housewife,
r/o. Renapur, Tq. Renapur,
Dist.Latur
- 3.5 Sajeda Salim Sayyed,
Age : Major, Occ. Housewife,
r/o. Balepir, Galli, Latur
- 3.6 Abul Sattar Mahetabsab Khoriwale,
Age : Major, Occ. Agri.,
r/o. Sul Galli, Latur,
Tq. and Dist. Latur
4. Abdul Jalilmamsab Khoriwale (died)
Through Lrs.
- 4.1. Mahemuda Begum Abdul Jalli,
Age L Major, Occ. Housewife,
- 4.2 Asad Abdul Jalil,
Age : Major, Occ. Agri.
- 4.3 Salma Shaikh Yunus,
Age : Major, Occ.Agri.,

- 4.4 Hani Shaikh Azaz,
Age : Major, Occ. Agri.,
- 4.5 Irfana Begum Mahamad Pathan,
Age : Major, Occ. Housewife,
- 4.6 Tayyaba Abdul Jalil,
Age : Major, Occ. Housewife,
- 4.7 Najira Abdul Jalil,
Age : Major, Occ. Housewife,
Resp. Nos.4.1 to 4.7,
All r/o. Sul Galli,
Latur
- ..Respondents

Mr.B.R.Kedar, Advocate for petitioners
Mr.S.P.Tiwari, AGP for respondent nos.1 and 2
Mr.R.S.Deshmukh, Senior Advocate i/b. Mr.D.R.Deshmukh,
Advocate for respondent no.3.6
Mr.V.D.Gunale, Advocate for respondent no.4
Mr.S.R.Choukidar, Advocate for intervenors

**WITH
CIVIL APPLICATION [STAMP] NO.3834 OF 2021
IN
WRIT PETITION NO.4212 OF 2020**

Anant s/o. Shivajirao Patil
and ors.

Vs.

..Applicants

Sambhaji s/o. Govindrao Sul
and ors.

..Respondents

Mr.S.R.Choukidar, Advocate for applicants
Mr.B.R.Kedar, Advocate for respondent nos.1 to 4.4
Mr.S.P.Tiwari, AGP for respondent nos.5 and 6
Mr.R.S.Deshmukh, Senior Advocate i/b. Mr.D.R.Deshmukh,
Advocate for respondent nos.7.6
Mr.V.D.Gunale, Advocate for respondent no.8

CORAM : R.G. AVACHAT, J.
RESERVED ON : FEBRUARY 01, 2021
PRONOUNCED ON : MAY 07, 2021

ORDER :-

Civil Application (Stamp) No.3834 of 2021 for intervention is allowed and disposed of. The applicants are permitted to intervene in the matter.

2. The challenge in this Writ Petition is to the order dated 09.03.2020 passed by the Tahsildar, Latur, in the execution proceedings, No.2019/Tenancy/KAVI-403. By the impugned order, the Tahsildar has refused to direct the Circle Officer to hand over possession of tenancy land jointly to the petitioners and respondent nos.3.1 to 3.6.

3. Heard learned counsel appearing for the parties. Also heard learned counsel appearing for the interveners.

FACTS

4. It is the case of the petitioners that the lands, survey nos.243 and 248 situate at Latur, were held/possessed by Mehtabsab Khoriwale and Govind Sul, predecessors in title of the respondent nos.3.1 to 3.6 and petitioners, respectively, as joint tenants. Mehtabsab, Govind Sul and Imamsab filed application under Section 46 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 ("Act of 1950", for short) for recovery of possession of the tenancy lands (survey nos.243 and 248) to the extent of 11 acres 2 Gunthas and 12 acres 20 Gunthas before the Tahsildar, Latur, on 03.08.1973. Said application was rejected by the Tahsildar on 24.02.1989. The legal representatives of Imamsab filed appeal, bearing No.89/TNC/4/18, against the decision of the Tahsildar. The appeal was allowed with a direction to the landlord to restore possession of the lands to the tenants.

5. Said order passed in the appeal has been confirmed by the High Court in Writ Petition No.1980 of 1998 vide order

dated 13.08.2010 and has further been confirmed in Letters Patent Appeal Nos.304 of 2010 and 229 of 2011 vide judgment and order dated 04.02.2019. The applicants, though were not parties to the appeal No.89/TNC/4/18, came on record in Writ Petition No.1980 of 1998. Since the order passed in that appeal attained finality, the petitioners and respondent no.3.1 to 3.6, being legal representatives, as joint tenants, became entitled to possession of the tenancy lands. An application was, therefore, moved to the Tahsildar. The same came to be rejected vide impugned judgment and order dated 09.03.2020, on the ground that the petitioners (legal representatives of tenant – Govind Sul) were not parties to the appeal No.89/TNC/4/18 decided by the Deputy Collector on 22.01.1992.

6. Mr.Kedar, learned counsel for the petitioners, would submit that the predecessor in title of the petitioners was one of the joint tenants. A joint application had already been moved way back in on 03.08.1973, by the original joint tenants, seeking possession of the tenancy land. The further

proceedings that took place were nothing but continuation of the said application. Although the predecessor in title of the petitioners was not party to the tenancy appeal, his legal representatives (petitioners) were brought on record of the petition. Respondent no.3 did not take exception to bring on record the petitioners in the said proceedings. Any order or decree passed in a proceeding initiated by any of the joint tenants enures for the benefit of the joint tenants. He would further submit that by virtue of the Order XLI Rule 4 of the Code of Civil Procedure, one of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all. According to learned counsel, the Tahsildar was not justified in passing the impugned order. On the question of availability of efficacious alternate remedy, learned counsel would submit that the order passed under the Act of 1950 regarding delivery of possession is to be executed in the manner provided in Section 21 of the Mamlatdar's Courts Act, 1906 ("Act of 1906", for short). The Act of 1906 does not provide for remedy of appeal. The remedy of revision under

the said Act is provided in respect of any finding or order passed in a suit under the Act of 1906. The order impugned in this Writ Petition is not a finding or order passed in a suit under the Act of 1906. The remedy of revision is, therefore, not available. According to the learned Counsel, approaching the High Court in the Writ Petition is the only remedy.

7. Mr.Deshmukh, learned counsel appearing for respondent no.3.6, would submit that the petitioners have equally efficacious remedy in the nature of appeal under the Act of 1950. The Writ Petition is, therefore, not maintainable. On the question of merit of the case, he would submit that both the predecessors in title of the petitioners and respondent no.3.1 to 3.6 professed different faith. There was, therefore, no question of their holding tenancy land as joint tenants. Learned counsel supported the impugned orders.

8. Mr.Gunale, learned counsel for legal representatives of respondent no.4, made submissions consistent with the submissions made by learned counsel for the petitioners.

9. Mr.Chaukidar, learned counsel for the intervenors, submitted that the intervenors had raised an objection to the execution proceedings, on the ground that they have purchased tenancy land. The order sought to be executed is incapable of execution. He would further submit that due to death of one of the tenants namely, Govind Sul, pending the proceedings before the Deputy Collector, and his legal representatives having been not brought on record of the appeal before the Deputy Collector, the proceedings did stand abated. The appeal has been preferred against the order impugned in this petition. This Court directed the appellate authority to decide the appeal within time frame. The rights of the applicants/objectors would be defeated if the present petition is allowed. In support of his contentions learned counsel has relied on the following authorities:-

(i) Jayant Verma and ors. Vs. Union of India and ors., AIR 2018 SC 1079;

(ii) Hemareddi (D) Through Lrs. Vs. Ramachandra Yallappa Hosmani and ors., AIR 2019 SC 3297;

(iii) Smt Parvati and ors. Vs. Smt. Fatehsinhrao Pratapsinhrao Gaekwad, AIR 1986 SC 2204;

(iv) Sardar Amarjit Singh Kalra (dead), by Lrs. and ors. Vs. Pramod Gupta (Smt.) (dead) by Lrs and ors., (2003) 3 SCC 272;

(v) Govindsingh Ramsinghbhai Vaghela Vs. C. Subbarav and ors., AIR 1971 Gujarat 131;

(vi) Narayan Ganpat Raut Vs. Smt. Habiba Yusuf Landye and ors., AIR 1981 Bombay 371;

(v) Vinod Vs. Shriram chits Pvt. Ltd., 2018(1) Mh.L.J. 575;

(v) Chhapubai Shankar Bhande, since deceased by her heirs. Vs. Ramchandra Bhau Bhandu and ors., 2003(2) Bom. C.R. 475

10. The lands survey nos.243 and 248 originally belonged to one Mariyambi. The lands were under cultivation of three tenants jointly namely, Imamsab, Mehtab, Govind Sul. Mariyambi made application under Section 44 of the Act of 1950 to the Tahsildar against the tenants for possession of those lands. The application was allowed. She was directed to be put in possession of the said lands. The tenants succeeded in getting part of the lands restored to themselves. Mariyambi

obtained possession of the part of the said land in March, 1964. Since she transferred those lands in breach of the provisions of Act of 1950, the tenants filed application under Section 46 of the Act of 1950 for restoration of possession of the land obtained from them by Mariyambi. Govind Sul, predecessor-in-title of the petitioners, was one of those applicants. Said application was rejected by the Mamlatdar. Legal representatives of Imamsab and another tenant Mehtabsab preferred appeal No.89/TNC/4/18 against the said decision. The appeal came to be allowed with a direction to restore possession of the lands survey no.243 and 248 to the extent of 11 acres 20 Gunthas and 12 acres 20 to the appellant therein. It appears that said order was under challenge first before the Maharashtra Revenue Tribunal and then before this Court in Writ Petition No.1980 of 1998.

11. The present petitioners had moved a Civil Application to bring them on record of the said proceedings. It appears that said application was not taken exception to by respondent nos.3.1 to 3.6. Said application was allowed.

Letters Patent Appeal No.304 of 2010 was preferred against the the judgment and order in Writ Petition No.1980 of 1998. The L.P.A. came to be allowed on 04.02.2019. In paragraph 18 of the judgment passed in the said L.P.A., it has been observed thus:-

"18. So far as objection regarding abatement of proceeding due to not bringing of legal representatives of tenant Govind Sule is concerned, it is suffice to say that the tenancy being "joint tenancy" after the death of Govind Sule, other two tenants can legally prosecute the proceeding on behalf of all tenants including legal representatives of Govind Sule. Thus, bringing on record the legal representatives of Govind Sule by Single Judge was well within his jurisdiction and cannot be faulted."

12. The above order has attained finality. In the case of **Suresh Kumar Kohli Vs. Rakesh Jain and anr., (2018) 6 SCC 708**, it has been observed that occupation of one of the joint tenants is occupation of all the tenants. It is not necessary for the landlord to implead all the legal representatives of the deceased tenants whether they are occupying the property or not. Since the petitioners, being legal representatives of

original joint tenant, came on record in the Writ Petition No.1980 of 1998 and said order has attained finality, it has to be observed that the petitioners continued to be parties to the proceedings that were initiated by their predecessor-in-title namely, Govind Sul, by preferring application dated 03.08.1973 under Section 46 of the Act of 1950. Moreover, respondent nos.3.1 to 3.6 did not dispute the status of Govind Sul as joint tenant along with their predecessors-in-title. Resultantly, the order passed in appeal No.89/TNC/4/18 has to be held to have been passed in favour of all the joint tenants and the same is therefore, liable to be executed by them all.

13. The proceedings wherein the order impugned in this Writ Petition has been passed, is in the nature of execution of the order passed in appeal no.No.89/TNC/4/18. The provisions of Order XXII Rules 3, 4 and 8 have no application to the proceedings in execution of the decree or order. In view of analogy of Order XXII of C.P.C., it has to be stated that there is no substance in the contentions of learned counsel for the interveners that the original proceedings for obtaining

possession of the lands stood abated for want of bringing on record the legal representatives of Govind Sul in the appeal before the Deputy Collector.

14. It is reiterated that the legal representatives of Govind Sul were brought on record in the proceedings which were taken up against the order passed by the Deputy Collector in appeal. There is, therefore, no question of original proceedings to have been abated. The interveners herein are purchasers of some of the portion of the lands in dispute. They have already preferred appeal before the Deputy Collector and then approached this Court in Writ Petition (4250 of 2020). This Court disposed of said Writ Petition as withdrawn vide order dated 28.01.2021. While disposing of the Writ Petition, no detail argument had been advanced regarding maintainability of the Writ Petition on the ground of availability of alternate efficacious remedy. Be that as it may, if this Writ Petition is allowed, no prejudice is likely to be caused to the objectors/interveners since they have already taken exception thereto by filing an appeal before the Deputy Collector. If this

Writ Petition is allowed, the petitioners would become entitled for possession along with respondent nos.3.1 to 3.6.

15. The Mamlatdar ought to have directed the Circle Officer to deliver possession of the tenancy lands to the petitioners along with the applicants in proceedings No.219/Tenancy/KaVi/403. The impugned order is, therefore, liable to be set aside.

16. As regards the objection as to maintainability of this petition on the ground of there being equally efficacious alternate remedy of appeal or revision available is concerned, it is to be stated that the impugned order has been passed in a proceedings initiated for execution of the order passed in proceedings under Section 46 of the Act of 1950.

17. Section 94 of the Act reads thus:-

94. When an original, appellate or revisional order under this Act involves the payment of money by any person, the money shall be recoverable from such person as if it was an arrear of land revenue and where such order involves the

putting of any person in possession of land it shall be executed in the manner provided in section 21 of the Mamlatdar's Courts Act, 1906, as if it were a decision of Tahsildar under the said Act :

Provided that such order shall not be executed till the expiry of the period of appeal or as the case may be, of application for revision as provided in section 93.

18. Reading of the aforesaid provision would indicate that the order regarding delivery of possession passed under the said Act, is to be executed in the manner provided in Section 21 of the Act of 1906 as if it were decision of the Tahsildar under the said Act. By deeming fiction, order regarding delivery of possession has to be presumed to have been passed under the Act of 1906. Section 23 of the Act of 1906 bars remedy of appeal. Section 23 reads thus:-

"23(1). There shall be no appeal from any order passed by a Mamlatdar under this Act.

(2) But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceeding, finding or order in such suit is illegal or improper, may, after due notice to

the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.

(2A) The Collector may delegate the powers conferred on him by this section to any [Assistant Collector, Deputy Collector or Assistant Commissioner] subordinate to him];

(3)

19. Since the order was passed on application dated 03.08.1973 in appeal by the Deputy Collector is to be deemed to be an order passed by Mamlatdar under the Act of 1906 and is to be executed in the manner provided under Section 21 of the said Act, there is no remedy of appeal therefrom under Section 23(1) of said Act. Section 21 of the Act of 1906 speaks of decision how to be executed. By virtue of Section 23(2) of the said Act, the Collector/Deputy Collector has been empowered to revise the Mamlatdar's proceedings. Phraseology of Section 23(2) indicates that the power of revision is available in respect of any finding or order passed in suit under the Act of 1906. The order impugned in this Writ Petition cannot be deemed to be an order passed in a suit under the Mamlatdar's Courts Act.

The remedy of revision is also not available against the impugned order. Present Writ Petition is, therefore, maintainable.

20. For the reasons given herein above, the Writ Petition is allowed in terms of prayer clause (B).

[R.G. AVACHAT, J.]

KBP