

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

WRIT PETITION NO.2580/2020

1. Igabai alias Indubai Waman Nimbalkar,
aged about 75 years, Agriculturist.
2. Ramdas s/o Waman Nimbalkar,
aged about 55 years, Agriculturist
3. Sou. Asha Yashwantrao Thakre,
aged about 56 years, Agriculturist.
4. Sou. Sunanda Balkrushna Kale,
aged about 40 years, Agriculturist.
5. Shri Babarao Raghuji Nimbalkar (Died)
all r/o Hartala, Tq. Bhatkuli,
Dist. Amravati.

.....PETITIONERS

...V E R S U S...

1. Balasaheb Balaji Bairagi Mandir
Sansthan Kholapur, P.T.R. No.869,
through its President Shri Devidas
Govindrao Chindhe, aged 52 years,
r/o Kholapur, Tq. Bhatkuli, Dist. Amravati.
2. The State of Maharashtra through
Maharashtra Revenue Tribunal, Nagpur.
3. Sub Divisional Officer, Tiwasa (Bhatkuli),
Tq. Tiwasa, Dist. Amravati.

...RESPONDENTS

Mr. V. N. Patil, Advocate for petitioners.
Mr. C. A. Babrekar, Advocate for respondent no.1.
Mrs. M. A. Barabdhe, A.G.P. for respondent nos. 2 and 3.

CORAM:- V. M. DESHPANDE, J.
DATED :- 10.02.2021.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel for the parties. Heard Mr. Patil, learned counsel for petitioners, Mr. Babrekar, learned counsel for respondent no.1 and Mrs.Barabdhe, learned A.G.P. for respondent nos. 2 and 3-State.

2. By this petition, the petitioners are challenging judgment and order passed by learned Maharashtra Revenue Tribunal, Nagpur (hereinafter referred to as "MRT") in Tenancy Revision No.REV/TNC/AMR-81/2018, dated 04.03.2020, whereby learned Member, MRT dismissed the tenancy revision filed on behalf of the petitioners, upholding the order passed by Sub Divisional Officer, Bhatkuli dated 30.07.2018 in Tenancy Case No.59/(13)/Hartala/06/2014-2015.

3. According to the learned counsel for petitioners, respondent no.1 filed an application under Section 120 (3) of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region)

Act, 1958 for eviction of the petitioners. He submits that said application was erroneously allowed by Sub Divisional Officer and it was affirmed erroneously by learned Member of the MRT. He submits that the petitioners, being tenant of respondent no.1-trust, they cannot be evicted by taking recourse to the provisions of Section 120 (3) of the Act. He, therefore, prays that the petition be allowed.

4. Per contra, Mr. Babrekar, learned counsel for respondent no.1 submits that petitioners are not tenants of respondent no.1-Trust and they are in occupation of the trust's agricultural property unauthorisedly and therefore the authorities below have rightly exercised powers vested in them under Section 120 (3) of the Act.

5. There is no dispute that respondent no.1 is a trust and is armed with the exemption certificate. The said trust is having agricultural land bearing survey No. 31-G, Gat No.59, area 2.26 HR of village Hartala. Originally, Raghuji Nimbalkar was tenant of the respondent no.1 trust. After his death, in favour of his son Waman, tenancy was created by the trust. Waman died in the

year 1988. The present petitioners are legal representatives of Waman. According to the respondent-trust, no fresh tenancy was created in favour of the petitioners. It was the case of the trust that petitioners are in unauthorized occupation, therefore, they filed application before the Sub Divisional Officer. The petitioners, on being noticed, appeared and filed their written statement. It was their case before the authorities that after death of Waman fresh tenancy was created in their favour. Thus, this specific plea was taken by them that tenancy is created in their favour. However, the petitioners could not file anything on record to show that the tenancy was created in their favour. No documents, in the nature of '*bataipatra*' was placed on record by them though it was claimed by petitioners that the said document was executed in their favour by the trust. Similarly, the petitioners could not point out that they have paid any rent to the trust. In the proceedings before the authority, trust examined one Devidas Chidhe, who was also cross-examined. Similarly, Ramdas, petitioner no.2 entered into witness box for and on behalf of the petitioners. Even, during the course of their evidence, no documentary evidence was placed on record. The learned Member of the MRT found that though it was the claim of Ramdas in the

affidavit that fresh tenancy agreement was executed apart from fact that no such agreement was placed on record even Ramdas could not disclose what were terms and conditions of agreement.

6. Submission of learned counsel for the petitioners that one Annapurna Shewale one of the legal representatives of Waman is not brought on record. Therefore, the matter could not have proceed further. In my view, this submission cannot be considered for the reason that the trust filed an application for evicting the persons who are in unauthorised occupation of the trust property. Since, Annapurna was not in occupation or in possession of the trust property, the trust was right in not joining her as party to the proceeding.

7. The submission of learned counsel for petitioners that the trust ought to have taken recourse to Section 36 of the Act rather than Section 120 (3) of the Act is also not correct inasmuch as Section 36 would be applicable only when trust wishes to evict the victim. Here the petitioners are not tenants but they are in occupation of the land unauthorisedly.

In that view of the matter, the said contention is also untenable.

8. Learned Member of the MRT bestowed thoughtful consideration to the given set of facts and the record which was placed before it and has rightly passed the order. There is no scope for interference in the well reasoned judgment and order passed by the learned Member, MRT. The writ petition is, therefore, dismissed.

Rule is discharged. No order as to costs.

JUDGE

kahale