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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4077 OF 2021**

Subhash Ananda Kaldoke and Anr. Petitioners.
V/s
Arun Madhukar Kulkarni and Ors. Respondents

**ALONGWITH
INTERIM APPLICATION NO.1850 OF 2021
IN
WRIT PETITION NO. 4077 OF 021**

Subhash Ananda Kaldoke and Anr. Applicants.

In the matter between

Subhash Ananda Kaldoke and Anr. Petitioners.
V/s
Arun Madhukar Kulkarni and Ors. Respondents
And
Shri Dattatray Namdev Yelwande
and Ors. ... Proposed
Respondents.

Mr. G.S. Godbole i/b Mr. Drupad Patil for the Petitioners.
Mr. Prasad Dani, Senior Advocate i/b Mr. Abhijeet Bachakar for
Respondent Nos 1 to 3.
Mr. Nikhil Wadikar i/b Mr. Nandu Pawar for Respondent Nos. 1 and 2.
Mr. Pradip Zende for Respondent Nos. 3 to 5.
Mr. Faiza Shaikh for Respondent No.4.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 22, 2022

P.C.:-

1] Heard finally by consent.

2] Petitioners in Special Civil Suit No.242 of 2017, based on pleadings of tenancy sought relief of declaration of ownership, permanent injunction from dispossessing and creation of third party interest. In the suit, Petitioners took out an application for grant of temporary injunction, thereby restraining the Respondents from dispossessing and also creating third party interest, which prayer came to be rejected by the Trial Court vide impugned order dated 20/10/2018 passed below Exhibit-5 which was confirmed in Appeal being Misc. Civil Appeal No.390 of 2018 on 16/07/2021, whereby Appeal of the Petitioners came to be dismissed. As such, this Petition.

3] Heard Mr. Godbole learned Counsel for the Petitioners and Mr. Dani, learned Senior Counsel appearing on behalf of Respondents/Defendants.

4] Mr. Godbole would invite attention of this Court to the pleadings in Plaint and Written Statement so as to claim that possession of the Petitioners over the suit property was admitted by the Defendants at Exhibit-25. It is further claimed that even if tenancy proceedings under the Bombay Tenancy and Agricultural Lands Act ("BT & AL

Act”) are answered against the Petitioners, that by itself will not disentitle the Petitioners to the relief of temporary injunction as (a) such proceedings are already subject matter of Writ Petition pending on the file of this Court and (b) there is enough documentary evidence on record to infer that the Petitioners are in settled possession of the suit property. He would claim that Trial Court has at all not considered pleadings and evidence brought on record and by cryptic order rejected prayer for grant of temporary injunction, whereas Appellate Court only on the ground of rejection of tenancy proceedings has rejected the prayer for grant of temporary injunction.

So as to substantiate his claim of settled possession, Mr. Godbole has invited my attention to various documentary evidence such as revenue proceedings of 31/5/1983 taken out before Tahasildar, Mawal, Revenue Entry taken at Serial No.493 pursuant to the tenancy proceedings in favour of the Petitioners, various money orders paying rent, the notice served on the Petitioners under Section 31G of the BT & AL Act, thereby asking the Petitioners to deposit purchase price, document showing purchase of the Motor Pump, pipes, electricity bills, affidavit, Entries in 7 X 12 Extract, Grampanchayat entries about

existence of house claimed to be in suit property.

5] As such, according to Mr. Godbole, all the aforesaid documents are not dealt with by both the Courts below and the Appellate Court while rejecting prayer for grant of temporary injunction has lost sight of settled possession of the Petitioners over the suit property in the capacity of tenants..

6] In the aforesaid background, it is claimed that Petitioners are entitled for injunction from dispossession.

7] While countering aforesaid submissions, Mr. Dani, learned Senior Counsel for Respondents/Defendants would submit that in the tenancy proceedings taken out under BT & AL Act, already findings of possession are recorded against the Petitioners and in favour of the Respondents/Defendants which are confirmed up to the Maharashtra Revenue Tribunal. Even if Petition at the behest of the present Petitioners is pending consideration of validity of the said order, in the said Writ Petition, no interim order is in operation in favour of the Petitioners. He would further claim that perusal of the plaint would

rather reveal that claim in the plaint is based entirely on tenancy proceedings. He would then claim that revenue entries rather depict that the Petitioners were never in cultivating possession of the suit property on tiller's day. Rather, it demonstrates that Respondents/Defendants were cultivating the suit property through labour. As such, according to him, there is hardly any material which warrants interference in concurrent findings recorded by both the Courts below.

8] I have considered the rival submissions.

9] The subject matter of the suit property is land bearing Gat No.126, old Survey No.25, Hissa No.4 situated at Village Sudumbare, Taluka Mawal, District – Pune. It appears that the Petitioners initiated proceedings under Section 32-O of the BT & AL Act for fixing purchase price being proceedings No.70B/32-O/7/90 on 21/1/1993. Accordingly, Tahasildar passed an order deciding purchase price against which Respondents-Defendants/owners preferred Tenancy Appeal No.13 of 1993. Matter as such, came to be remanded to the Tahasildar. The Tahasildar while considering the claim put-forth by

the Petitioners in view of provisions of Section 32 of the BT & AL Act has recorded findings that on 30/11/1987 under Section 32 of the Maharashtra Land Revenue Code, Tahasildar has already passed an order in relation to the suit property and tenancy of the Petitioners was removed. While trying to establish the claim of purchase price under BT & AL Act, Petitioners have claimed that they are in possession of the suit property since 1960 and sought issuance of purchase certificate in their favour under Section 32M. The said prayer was granted by the Tribunal on 21/1/1993. Tahasildar thereafter has found that on tiller's day i.e. on 1/4/1957, Petitioners were not found to be in possession of the suit property as there is no material/evidence on record to infer about such possession over the suit property. As a consequence of above, status of the Petitioners as tenant was not recognized.

10] The present Petitioners preferred Tenancy Revision against the aforesaid order dated 12/01/2017. The Sub-Divisional Officer while considering the said proceedings has appreciated rival submissions and while dealing with the claim of possession of the Petitioners over suit property has recorded that in Tenancy Case No.7 of 1966 on 2nd July,

1966 possession of the suit property was taken over from Genu Hari Kaldoke and was handed over to the Respondents/Defendants. Accordingly, revenue/Mutation entry No. 1039 came to be recorded in favour of the Defendants. In the aforesaid backdrop, the said authority has recorded findings that the Petitioners have failed to establish their right as tenant and possession over the suit property. Apart from above, even in the proceedings taken out by the Petitioners before the Maharashtra Revenue Tribunal under Section 76 of BT & AL Act in the form of Second Revision, Tribunal has appreciated all the aforesaid findings and recorded that Petitioners never took out proceedings under Section 29 of the Act for getting their possession restored. As such, Petitioners cannot be said to be in possession of the suit property. The aforesaid findings recorded by the competent authorities under BT & AL Act are already governing relationship between the Petitioners and Respondents as same are neither upset nor stayed by this Court in pending Writ Petition.

11] It appears that the entire pleadings in the Plaint are based on tenancy rights of the Petitioners under BT & AL Act. Petitioners have come out with a case in the plaint that they are in settled possession

for last more than 50 years. In the wake of aforesaid findings recorded by this Court in the backdrop of three concurrent findings of the authorities under BT & AL Act, it cannot be inferred that Petitioners are in possession of the suit property.

12] Certain revenue entries which are sought to be relied on by the Petitioners to establish their possession as tenant or occupier also go contrary to the subsequent orders of the Tribunal passed under BT & AL Act. The other documents viz money order, purchase of equipments such as water pump, pipes etc or electricity bills does not specify that same were for the purpose of cultivating the suit property. Even Grampanchayat entry does not mention about the suit property.

13] It appears hat the revenue entries and documentary evidence which the Petitioners have tried to rely upon so as to establish their settled possession over the suit property cannot be read contrary to the findings recorded by the aforesaid statutory authorities. The aforesaid documents depict that revenue entries were taken contrary to the findings recorded by the aforesaid statutory authorities in relation to tenancy rights and possession.

14] In the aforesaid backdrop, against the concurrent findings, in my opinion, no case for interference is made out. Petition as such fails and same stands dismissed. As a consequence, Interim Application does not survive and same stands disposed of.

15] It is informed that interim order is in operation in favour of the Petitioners for considerable long time. That being so, protection, if any, to continue for a period of three weeks from today.

(NITIN W. SAMBRE, J.)