

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

LETTERS PATENT APPEAL NO. 508/2010 IN WRIT PETITION NO. 3486/1999 (D)

1. Narayan s/o Tukaram Lanjewar. (DELETED)
2. Bandu @ Shioshankar s/o Baburao Lanjewar,
Aged about 56 years.
3. Prakash s/o Baburao Lanjewar,
Aged about 50 years.
4. Dilip s/o Baburao Lanjewar,
aged about 45 years.
5. Gajanan s/o Baburao Lanjewar,
aged about 40 years.
6. Anjanabai w/o Baburao Lanjewar. (DELETED)
7. Bebi wd/o Santosh Bhende,
aged about 50 years.
8. Maroti s/o Ramji Lanjewar.
9. Meena w/o Shrihari Pankar.
10. Laxmibai wd/o Ramji Lanjewar.

2 to 10 R/o Post Tq. and Distt. Balaji Ward, Chandrapur.

11. Sundarbai wd/o Shankar Lanjewar.
12. Manohar s/o Shankar Lanjewar.
13. Vilas s/o Shankar Lanjewar.

Nos.11 to 13 r/o and Post Dhumankheda Ward,
Tq. Bramhapuri, Distt. Chandrapur.

PETITIONERS

.....VERSUS.....

- Baliram s/o Shivram Bendre. (DEAD)
- 1(a) Harichand s/o Baliram Bendre.
 - 1(b) Prakash s/o Baliram Bendre.
 - 1(c) Suresh s/o Baliram Bendre.
 - 1(d) Ishwar s/o Baliram Bendre.
 - 1(e) Mayabai w/o Brijlal Bagmare.

R.1(a) to 1(d) all R/o Udupur,
Tah. Bramhapuri, Distt. Chandrapur.

R.1(e) R/o Shivnagar, Udupur,
Tah. Bramhapuri, Distt. Chandrapur.

RESPONDENTS

Shri M.V. Amale, counsel for the petitioners.
Shri S.S. Deshpande, counsel for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : 23RD SEPTEMBER, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

The challenge raised in this letters patent appeal is to the judgment of the learned Single Judge in Writ Petition No.3486 of 1999. By the said judgment dated 28.07.2010 the writ petition preferred by the present appellants-landlords had been dismissed and the order passed by the Maharashtra Revenue Tribunal on 09.08.1999 allowing the revision application preferred by the original respondent herein has been confirmed.

2. The dispute pertains to the direction to restore possession of Field bearing Gat No.309 admeasuring 3 Acres 24 R from Survey No.231 of Mouza Paradgaon, Tahsil Bramhapuri, District Chandrapur. The original respondent herein – Baliram claimed to be the tenant of the aforesaid land and with the grievance that he was forcibly evicted from the said land by the landlords-Narayan & Others he initiated proceedings under Section 36(1) of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short, ‘the Act of 1958’). The Tahsildar by his order dated 14.02.1993 recorded a finding that the tenant had placed on record relevant documents including the lease-deed from the years 1974-75 to

1977-78 and that in the mutation records it was duly certified that Baliram was a tenant. Since it was found that Baliram had proved that he was a tenant and he had been evicted without following the due process, the Tahsildar directed restoration of his possession. The landlords being aggrieved by the aforesaid order preferred an appeal before the Sub-Divisional Officer who allowed the same on 25.09.1997. It was directed that the possession be restored to Narayan. Being aggrieved by the aforesaid order, Baliram preferred a revision application before the Maharashtra Revenue Tribunal under Section 111 of the Act of 1958. The Tribunal after considering the records affirmed the findings recorded by the Tahsildar that Baliram was a tenant in view of the provisions of Section 6 of the Act of 1958. Baliram had been evicted by Narayan without following the due process as contemplated by Section 36(2) of the Act of 1958. The application preferred by Baliram under Section 36(1) of the Act of 1958 on 07.04.1978 was within the statutory period of three years as contemplated. It was further noted that on 27.11.1993 an order of *status quo* was passed by the Tribunal and therefore the Tahsildar was not justified in passing an order on 02.12.1998 and directing restoration of possession to Narayan pursuant to the order passed by the Sub-Divisional Officer. On that basis the revision application was allowed and the order passed by the Sub-Divisional Officer dated 25.09.1997 was set aside. However the finding that Baliram was a tenant was maintained. Being

aggrieved by the aforesaid order, the landlords filed Writ Petition No.3486 of 1999. The learned Single Judge considered the material that was placed before the Revenue Authorities and held that the Tribunal was justified in directing restoration of possession to Baliram. Being aggrieved the landlords have preferred the present letters patent appeal.

3. Shri M.V. Amale, learned counsel for the appellants submits that the lease created in favour of Baliram was not legal in view of the fact that the land was the property of a joint family. One member of the family could not have executed the lease-deed in favour of Baliram. Despite this objection being raised before the Authorities the same was not considered. It was urged that the landlords were in legal possession and there could not have been any direction to restore possession to them. He therefore submitted that the judgment passed by the Tribunal and thereafter confirmed by the learned Single Judge was liable to be set aside.

4. Shri S.S. Deshpande, learned counsel for the respondents supported the judgment of the learned Single Judge. According to him the Tribunal confirmed various findings of facts including the aspect that Baliram was a tenant and that he had been dispossessed without complying with the provisions of Section 36(2) of the Act of 1958. In absence of any jurisdictional error there was no reason to interfere with the judgment of the learned Single Judge.

5. On hearing the learned counsel for the parties we find that the Tribunal has recorded various findings of fact including the fact that Baliram was proved to be a tenant of the said land, there was no application preferred by the landlords under Section 36(2) of the Act of 1958 for evicting Baliram and that Baliram was entitled to be restored possession as a tenant. These findings recorded by the Tribunal have been upheld by the learned Single Judge. The submission that was raised that the lease was granted only by one member of the family has been considered by the learned Single Judge in the impugned judgment. It has been held that it was for the aggrieved family member to have sought appropriate declaration from the competent forum and the Tenancy Court was not the proper forum to decide that aspect.

6. We find that the Tribunal and thereafter the learned Single Judge have taken into consideration all relevant aspects. The finding of fact as recorded that Baliram was a tenant and that he was evicted without following the provisions of Section 36(2) of the Act of 1958 is based on material available on record. In absence of any jurisdictional error we do not find any reason to interfere with the judgment of the learned Single Judge. Consequently, the letters patent appeal stands dismissed with no order as to costs.

At this stage, the learned counsel for the petitioners prayed for continuation of the interim order dated 26.10.2010. This request is opposed by the learned counsel for the respondents.

Since the order of *status quo* is operating since long, it shall continue to operate for a further period of six weeks from today and the same shall automatically cease to operate thereafter.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE