

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

WRIT PETITION NO.7340 OF 2018

Vijay S/o Uttamchand Bothara and others .Vs. State of Maharashtra, through
Secretary, Revenue Department, Mantralaya, Mumbai and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.R. Deshpande, Advocate for the petitioners.

Ms Shamsi Haider, A.G.P. for the respondent No.1/State.

Shri S.R. Charpe, Advocate for the respondent No.2.

CORAM : ANIL S. KILOR, J.

DATED : 10/07/2023

1. Heard.

2. This writ petition takes exception to the judgment and order passed by the Member (Judicial), Maharashtra Revenue Tribunal (MRT), Nagpur dated 24.04.2018, dismissing the appeal filed by the petitioners challenging the order dated 27.09.2006 passed by the Tahsildar, restoring the land under Section 36(2) of the Maharashtra Land Revenue Code, 1966 in favour of the respondent No.2.

3. At the outset, the learned counsel for the respondent No.2 raises a preliminary objection that the petitioners are the third person as regards the property in dispute. It is submitted that the plaintiffs Sushil Balmurlidhar Gaikwad and Ashil Balmurlidhar Gaikwad

filed Regular Civil Suit No.192 of 2012 before the Civil Judge Senior Division, Buldhana, against the petitioners and the respondent No.2. However, subsequently, the respondent No.2 was deleted from the array of defendant and the suit was proceeded against the petitioners. In the said suit, the plaintiffs claimed declaration as owner of the suit property i.e. the land which is the subject matter of the present writ petition and which has been directed by the Tahsildar to restore to the respondent No.2.

4. In the said suit, the petitioners and the plaintiffs arrived at a compromise and accordingly decree came to be passed and thereby the petitioners have admitted the ownership of the plaintiffs and handed over the possession of the land in question to the plaintiffs. It is therefore submitted that, as the petitioners are not claiming that they are in possession of the suit property or any title over the suit property, any order passed by the Tahsildar or the MRT directing to restore the land in possession of the petitioners cannot be said as adverse to the respondent No.2. He, therefore, submits that the appeal filed before the MRT and the present petition, both are not maintainable and the petition needs to be rejected on the ground of locus.

5. Shri Deshpande, learned counsel for the petitioners is not disputing about the compromise decree

and the terms recorded in the compromise decree. He also not disputing that the petitioners are not in possession of the suit property. However, he submits that the learned MRT ought to have dropped the proceeding after the fact of compromise was brought to the notice of the MRT and since the MRT did not drop the matter, the writ petition is filed.

6. Thus, it is evident that even it is the case of the petitioners that once the compromise decree was passed and the petitioner have accepted that they are not the owner of the suit property or they are not in possession of the suit property, no further proceeding ought to have entertained.

7. In the circumstances, I have no hesitation to hold that the petitioners have no locus in this matter to raise grievance in respect of land in question and therefore, any challenge to the order of the Tahsildar and the MRT at the behest of the petitioners is not maintainable. Accordingly, the writ petition is **dismissed**.

JUDGE