

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

Writ Petition No.2240/2023

Smt. Janabai and another V State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. R.V. Gaikawad, Adv for petitioners.
Mrs. Barabde, AGP for resp. nos. 1 and 2.

CORAM : AVINASH G GHAROTE, J.
DATE : 06-04-2023

Heard learned Counsel for the petitioners.

2. The petition challenges the order dated 10-11-22 (page 45) by which the application Exh 167 filed before the Executing Court to frame the issue of tenancy in respect of the property in possession of the petitioners and to refer the same to the Tenancy Tahsildar has been rejected.

3. The impugned order, in para 11, recorded the following position (page 41).

"11. Now it is necessary to consider the order passed by Tahsildar in proceeding filed by judgment debtors. Record shows that Judgment debtor namely- Waman Suryabhan Dhabarde, Pandurang Keshvrao Urkudkar, Kavdu Sonba Wankhede (through LR's-present applicant) filed Tenancy case before Tahsildar. The proceeding filed by Janabai before Tahsildar, Samudrapur

was bearing Tenancy Case No.1/59(11/94-95). Waman and Pandurang had also filed Tenancy case before Tahsildar, Tahsildar, Samudrapur by his order dated 21/06/2022 rejected the application filed by Janabai. The application filed by Janabai and other LR's was rejected as they were not found to be the tenant of the suit property. Only the application of judgment debtor-Waman was allowed by the concerned authority, Janabai and other LR's of Kavdu-Judgment debtor No.9 referred revision against the order of Tahsildar before Sub Divisional Officer, Hinganghat. The Revision Appeal is bearing no.2/59-11/02-03. On 24/03/2005, the sub Divisional Officer, Hinganghat dismissed the appeal, against the order passed by Tahsildar rejecting the claim of Janabai. Revision was preferred by decree holder against the order passed by Tahsildar in tenancy case filed by Waman. In revision, Sub Divisional Officer set aside the order of Tahsildar and remanded the same for deciding the issue afresh. Waman preferred Revision before the Maharashtra Revenue Tribunal being Tenancy Revision TEN/B/1/2006. The revision was dismissed by MRT on 08/04/2013 but the possession of Waman was protected. Janabai also filed writ petition bearing no.1076 of 2014 before the Hon'ble High Court of Bombay (Nagpur Bench). The Copy of the order of Hon'ble High Court of Bombay is filed below list exhibit 170. The writ petition filed by Janabai was rejected on the ground of maintainability."

4. Except for the position that WP No.1076/14 filed by petitioner no.1/Janabai is still pending, the above position is not disputed by Mr. Gaikwad, learned Counsel for the petitioners. The filing of the application

at Exh 167, therefore has to be viewed in the context of the above said situation, inasmuch as since the question of tenancy was already decided by the Tahsildar, the question of framing the said issue again and sending it to the Tenancy Tahsildar for determination did not arise at all.

5. That being the position, I am not inclined to interfere in the order impugned in this petition. The petition is dismissed. No costs.

6. Needles to say that the dismissal of present petition would not come in the way of the petitioners for challenging the issuance of warrant of possession in appropriate proceedings.

JUDGE