



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

Writ Petition (WP) No. 8595 of 2018

Gajanan Mohan Chavan and others

Versus

Mukul Jugalkishor Bhatia 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 R.G.Kavimandan, Advocate for the petitioners.

Shri Abhay Bhide, Advocate for the respondent nos. 1
to 8.

Ms. Payal Bawankule, AGP for the respondent nos. 9 to
11.

CORAM : ANIL S. KILOR, J.

DATED : 25th OCTOBER, 2023.

Heard.

2. The petitioners are claiming to be the tenants of Field Gat No. 214 (old survey no. 82/1, 2 and 3 of Mouza Shirala Nemane, Tq. Khamgaon, Dist. Buldhana since 1956. It is the case of the petitioners that in the year 1956 predecessor in title of respondent nos. 1 to 8 Jugalkishor Gopalkishan Bhatia inducted the grandfather of the petitioners as tenant and since then the grandfather of the petitioners were jointly cultivating the said land and after their death the present petitioners are cultivating the land. As the respondent nos. 1 to 8 started interfering with the

possession of the petitioners over the property in question, they filed the Regular Civil Suit No. 68 of 2010 for possession of the said agricultural land.

3. The learned Civil Judge, Senior Division referred the issue of tenancy in view of the issue no.4A to the Tehsildar. Thereupon the Tehsildar, vide order dated 16th November, 2013 held against the petitioners and has observed that the petitioners cannot be declared as tenant. The said order of the Tehsildar, Malkapur was confirmed Sub Divisional Officer, Khamgaon vide order dated 20th July, 2015 and by Maharashtra Revenue Tribunal vide order dated 16th November, 2017. Hence, this petition.

4. I have heard learned counsel for the respective parties.

5. Shri Kavimandam, learned counsel for the petitioners submits that in view of Section 46 and 49A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 as the petitioners were in possession of the land in dispute on 1st April, 1963 and even prior to that they deemed to have become owners of the land in question and therefore holding that the petitioners are not the tenant is contrary to law. He, therefore, submits that the learned Tribunal and the Authorities below have committed error in not

declaring the petitioners as tenants. In support of his contention, he has placed reliance of Division Bench of this Court in the case of *Mohanlal Surana Vs. Maharashtra Revenue Tribunal, Nagpur and others*¹ and judgment of the Co-ordinate Bench of this Court in the case of *Keshaorao Rajaram Acharya and others Vs. Smt. Kaushi Wd/o Mahadeo Deurkar and others*²

6. On the other hand, Shri Bhide, learned counsel for the respondent nos. 1 to 8 argues that there is no evidence produced by the petitioners to show that they were tenant from 1956. It is submitted that there are some entries which show that the petitioners cultivated the land on batai i.e. partnership basis and therefore they cannot be treated as a tenant. For this purpose he has placed reliance on the judgment of *Tanbaji and another Vs. Nathoba and others*³.

7. Learned Assistant Government Pleader supports the impugned orders and it is submitted that there is no infirmity or illegality committed by the Tribunal and Authorities below. Accordingly, she prays for dismissal of the present petition.

8. On perusal of the record, it is evident that the entries of 1962-63 and 63-64 shows that the

1 166 N.L.J 1962

2 2001 (1) Bom.C.R. 515

3 1974 Mh.L.J 484

petitioners cultivated the land on batai basis. Though the revenue entry of the year 1956-57, 59-60, 60-61 show the name of name of Sawa, Rupla, Manya and Payram, however, entry no. 61-62 shows the name of the owner of the land as cultivator in the column of cultivation. Furthermore, the entires of 1962-63, 63-64 show the name of Sawa, Rupla, Manya and Payram as the cultivator on batai basis. The Tehsildar, therefore, has held that no document was produced by the petitioners to show that the land was cultivated as tenant.

9. The Co-ordinate Bench of this Court in the case of *Tanbaji and another Vs. Nathoba and others* (supra) has held that batai means on the basis of partnership having share in the profit and therefore it does not result relationship in tenancy.

10. Thus, in absence of any evidence or any mention in the revenue record that the petitioners were cultivating the land as tenant, the Tehsildar has rejected the claims of the petitioners.

11. The learned Maharashtra Revenue Tribunal while upholding the order of the Tehsildar has made certain observations in paragraph 14 which reads thus:

14. It further appears from the documents filed by the respondents that, Gajanan Mohan Chavan had filed proceedings praying that, he should be

granted sale certificate of the land in his favour on 10/03/2010, and in that case, he clearly mentioned that, his grandfather had made an agreement and has purchased the land from the owners 52 to 60 years ago, but as Jugalkishor Bhatia died, the sale deed could not be executed. He has also given evidence on 06/05/2010 before the said Tahsildar on oath, and so also cross-examined. Similarly, the same proceedings were initiated by Sheshrao Shankar Chavan and Sanjay Bhagwan Chavan for grant of sale, therefore, in view of this, the petitioners are estopped to claim tenancy of the suit land, as they claimed purchase of land in Tenancy Case Nos. 1) TNC-59 (11)/Shirla-Nemane/16/2009- 2010 - Gajanan Mohan Chavan -vs- Jugalkishor Gopikishan Bhatia, 2) TNC-59 (11) / Shirla – Nemane /18/2009-2010 - Sanjay Bhagwan Chavan -vs- Jugalkishor Gopikishan Bhatia and 3) TNC-59 (11) / Shirla-Nemane/21/2009-2010-Sheshrao Shankar Chavan-vs-Jugalkishor Gopikishan Bhatia.

12. In the circumstances, the learned Tribunal as well as the Authorities below have rejected the claim of the petitioners as tenant of the land in dispute on the ground that no evidence was produced by them that from 1956 to 1963 they were cultivating the land as tenant or any right was created in their favour under Section 46 and 49A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958.

13. As far as the judgments cited by the learned counsel for the petitioners in the case of *Mohanlal*

Surana Vs. Maharashtra Revenue Tribunal, Nagpur and others (supra) there is no dispute about the law laid down in the said case that batai does not necessarily import in every case a document of partnership or agreement to cultivate land in partnership with the tenure holder.

14. In this case no document namely batai patra is brought on record and therefore it is difficult to find out whether there was any partnership or not. Moreover, as the petitioners failed to produce any evidence that though there is a mentioned of batai patra, there was no partnership and there was no share in the profit payable to the landlord, the said judgment is of no help to the petitioners in the present matter.

15. Another judgment namely *Keshaorao Acharya and others Vs. Smt. Kaushi Wd/o Mahadeo Deurkar* (supra) is distinguishable on facts for the reason that in the said matter the evidence was led to the effect that he was not cultivating the said land as partner and after considering the said evidence the authorities hold in favour of the petitioners.

16. In the present matter no such evidence was brought on record by the petitioners. Thus, it cannot be said that the learned Tribunal or the Authorities have committed any error in holding against the petitioners

that they are not tenant of the land in question. Having observed so, I do not find any merit in the present writ petition. Accordingly, writ petition is dismissed.

17. At this stage, learned counsel for the petitioners prays for continuation of interim order dated 18th December, 2018 for a period of four weeks.

18. Shri Bhide, learned counsel for the respondent nos. 1 to 8 strongly opposed the said request.

19. Considering the fact that from last five years, the stay is in operation in favour of the petitioners, I am of the opinion if it is continued for another four weeks no prejudice would be caused to the respondent nos. 1 to 8. Accordingly, stay granted by this Court vide order dated 18th December, 2018 shall continue to operate for a further period of four weeks.

[ANIL S. KILOR, J.]