



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

WRIT PETITION NO. 1294 OF 2024

1. Ravindra s/o Ramnath Motghare
Aged about 51 years,
Occ. Cultivation,
R/o Ayush Nagar Colony, Urja Nagar
Road, Chandrapur,
Tah. & Dist. Chandrapur.
2. Smt. Janabai w/o Omprakash
Gajbhiye
Aged 61 Yrs., Occ. Cultivation,
R/o Puyar, Tah. Lakahndur,
Dist. Bhandara.
3. Omprakash s/o Asaram Gajbhiye
Aged 62 Yrs., Occ. Cultivation,
R/o Puyar, Tah. Lakahndur,
Dist. Bhandara.
4. Smt. Sonabai Ranbhind Gajbhiye
Aged 64 Yrs., Occ. Cultivation,
R/o Pimpalgaon (Pohari),
Tah. Lakhandur, Dist. Bhandara.

PETITIONERS

Versus

Sutradhari s/o Ramdas Shinde
Aged about 56 Yrs., Occ. Cultivation,
R/o Puyar, Tah. Lakhandur,
Dist. Bhandara.

RESPONDENT

Mr. M.P. Khajanchi, Advocate for the Petitioners.

CORAM : BHARAT P. DESHPANDE, J.

DATED : 20th MARCH, 2024

ORAL JUDGMENT :-

Heard.

2. Rule. Rule is made returnable forthwith.

3. Heard finally with the consent of learned counsel for the petitioners.

4. Vide order dated 26.02.2024 notice to the respondent was issued for final disposal. In spite of service, none appeared for the respondent.

5. The petitioners herein are the judgment debtors in Execution Proceeding No.5/2015. By judgment and decree dated 23.10.2001, the petitioner(s)/defendant(s) therein was

restrained from interfering with the plaintiff's possession over the suit land area of 0.60 HR out of Gat No. 213 of Village Puyar, till the plaintiff is evicted from it by the real owner i.e. the Government.

6. The plaintiff/respondent herein, filed execution proceedings, wherein the petitioners/judgment debtors raised objection under Section 47 of the Code of Civil Procedure by filing an application and requesting the Executing Court to hold an enquiry to the contentions raised by the petitioners.

7. Mr. Khajanchi, learned counsel for the petitioners, would submit that subsequent to passing of the decree, the petitioners obtained a lease/Patta from the Government on 03.10.2022 vide order dated 19.03.2022 and accordingly they are now having rights to an area 0.80 HR of Gat No. 213 of Village Puyar. Accordingly, the objection was filed to the execution proceedings with the subsequent prayer that in view of such subsequent development and grant of Patta in favour of the petitioners, the decree in RCS No. 12/2009 is unexecutable.

8. Alongwith this objection, the petitioners had filed an

application for permission to lead evidence in support of their objection. However, the learned Trial Court rejected such application on the ground that grant of such Patta is illegal and contrary to the orders passed in the Civil Court.

9. First of all the objection raised by the petitioners is on the ground that they are now in possession of a document by which the Government has granted lease (Patta) in favour of the petitioners in the year 2022. The learned Executing Court, in view of this subsequent event and a document issued by the Government was not right in holding that such Patta is illegal specifically when no one has challenged it.

10. The purpose of raising objection under Section 47 of the Code of Civil Procedure, needs to be decided on merit and for that purpose opportunity has to given to the petitioners to establish their case.

11. By refusing such opportunity and directly holding that the lease is illegal, is clearly considered to be perverse and without jurisdiction as in execution such plea cannot be decided without holding enquiry.

12. The impugned order thus needs interference under the supervisory jurisdiction of this Court. Accordingly, the impugned order dated 29.01.2024 thereby rejecting the application below Exh. 69 of the petitioners, is hereby quashed and set aside. The learned Executing Court shall afford an opportunity to the petitioners to lead evidence in order to prove their case in Objection filed at Exh. 65.

13. Till the decision on Exh. 65, the order of granting Police protection is stayed.

14. The Petition is accordingly **allowed**.

15. Rule is made absolute in the above terms. No costs.

16. The parties shall act on the authenticated copy of this judgment.

17. Pending application/s, if any shall stand disposed of accordingly.

(BHARAT P. DESHPANDE, J.)