

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

WRIT PETITION NO.2081 OF 2014

Shyamsundar Ramsamuj Mishra,
Aged about 55 years,
Occupation – Agriculturist,
R/o Godhani, Tahsil and District
Yavatmal

.... **PETITIONER**

VERSUS

Shri Rukmini Pandurang Sansthan Trust
at Yavatmal, through its President/ Trustee
Shri Madhav Diwakar Damle,
Resident of Shri Rukmini Pandurang Mandir,
Gandhi Chowk, Yavatmal, Tahsil and District
Yavatmal

.... **RESPONDENT**

Shri H.S. Chitale, Advocate for the petitioner,
Shri S.C. Bhalerao, Advocate for the respondent.

CORAM : Z.A. HAQ, J.

DATED : 24th AUGUST, 2015.

ORAL JUDGMENT :

1. Heard Shri H.S. Chitale, learned Advocate for the petitioner and Shri S.C. Bhalerao, learned Advocate for the respondent.

2. **Rule.** Rule made returnable forthwith.

3. The petitioner has challenged the order passed by the Maharashtra Revenue Tribunal, dismissing the revision filed by the petitioner and upholding the order passed by the Sub-Divisional Officer under Section 120 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred as the “Tenancy Act of 1958”).

4. The suit field undisputedly belongs to the respondent-Trust. The respondent-Trust has obtained a certificate from the competent authority under Section 129 of the Tenancy Act of 1958. It is the case of the respondent-Trust that Shri Ramsamuj Mishra (father of the petitioner) was cultivating the suit field since 1948-1949, however, after his death in the year 1998, the respondent-Trust was entitled for possession of the suit field. According to the respondent-Trust, the petitioner continued with the occupation of the suit field though he has no legal right to continue with the occupation of the suit field as the tenancy rights are not heritable in view of the certificate granted in favour of the respondent-Trust under Section 129 of the Tenancy Act of 1958. The respondent-Trust filed an application under Section 120 of the Tenancy Act of 1958 seeking eviction of the petitioner. The Sub-Divisional Officer, by the order dated 30-07-2011,

found that the petitioner was in unauthorised occupation of the suit field and directed his eviction. The petitioner being aggrieved by the order passed by the Sub-Divisional Officer, had filed revision before the Maharashtra Revenue Tribunal which came to be dismissed. The petitioner being aggrieved in the matter, has filed this petition.

5. Shri H.S. Chitaley, learned Advocate for the petitioner has submitted that the certificate issued in favour of the respondent-Trust under Section 129 of Tenancy the Act of 1958 is unsustainable in law as no enquiry was conducted by the concerned authority before issuing the certificate. It is submitted that the father of the petitioner and the petitioner were not given any notice of the proceedings nor were granted hearing before the certificate came to be issued in favour of the respondent-Trust. The learned Advocate has submitted that the certificate is not binding on the petitioner, and the respondent-Trust cannot take any advantage of the certificate to evict the petitioner. In support of the submissions, the learned Advocate for the petitioner has relied on the following judgments :

- (i) Judgment given by this Court in the case of ***Mahadeo Sansthan, Wadali vs. Syed Turab s/o Syed Jaffar and others*** reported in ***2010(6) Mh.L.J. 22.***

- (ii) Judgment given by this Court in the case of *Hirabai Baburao Shidankar and another vs. Rayat Shikshan Sanstha, Satara and others* reported in **2009(3) Mh.L.J. 117.**
- (iii) Judgment given by this Court in the case of *Keraba Dattu Borachate and others vs. Shri Sheshashai and Vishnu Trust* reported in **1990 Mh.L.J. 1183.**
- (iv) Judgment given by this Court in the case of *Bhimrao Chandru Patil and others vs. Balkrishna Dattatraya Joshi and others* reported in **2002(1) Mh.L.J. 125.**

6. It is further submitted on behalf of the petitioner that he is a deemed tenant within the meaning of Section 6 and Section 7 of the Tenancy Act of 1958 as the petitioner had been lawfully cultivating the suit field alongwith his father since prior to the deemed date. Shri H.S. Chitaley, learned Advocate has submitted that the Sub-Divisional Officer and the Maharashtra Revenue Tribunal have not considered that the petitioner is a deemed tenant within the meaning of Section 6 and Section 7 of the Tenancy Act of 1958 and therefore, the orders passed by them are not sustainable. Relying on the provisions of Section 46 and Section 49A of Tenancy the Act of 1958, it is submitted

that the father of the petitioner acquired the status of deemed owner as he was in lawful cultivation of the suit field on the deemed date and the certificate under Section 129 of the Tenancy Act of 1958 was not issued in favour of the respondent-Trust till 29-10-1964. It is submitted that the issuance of certificate under Section 129 of the Tenancy Act of 1958 on 30-10-1964 cannot take away the right of the father of the petitioner and the petitioner regarding the conferral of statutory ownership which had accrued in their favour much before the certificate came to be granted in favour of the respondent-Trust. It is submitted that for all the above stated reasons, it cannot be said that the petitioner is in unauthorised occupation of the suit field and can be evicted summarily under Section 120 of the Tenancy Act of 1958.

7. Shri S.C. Bhalerao, learned Advocate for the respondent-Trust has submitted that the contention of the petitioner that he was tenant of the suit field alongwith his father cannot be accepted. It is submitted that the Sub-Divisional Officer and the Tribunal has concurrently recorded the finding of fact that the father of the petitioner was cultivating the suit field and that the petitioner had not been the tenant of the respondent-Trust. Relying on the judgment given by the Hon'ble Supreme Court in the case of *Shriram Mandir*

Sanstha @ Shri Ram Sansthan Pusda vs. Vatsalabai and others reported in **1999(1) Mh.L.J. 321**, it is submitted that as the respondent-Trust is granted certificate under Section 129 of the Tenancy Act of 1958, the petitioner cannot claim the tenancy right by way of inheritance and after the death of Shri Ramsamuj Mishra-father of the petitioner, in the year 1998, the petitioner has no right to cultivate the suit field and his occupation over the suit field is unauthorised. It is further submitted that the reliance placed on the judgments in the cases of *Hirabai Baburao Shidankar and another*, *Keraba Dattu Borachate and others*, and *Bhimrao Chandru Patil and others* is misdirected inasmuch as in those cases the grant of certificate under Section 129 of the Tenancy Act of 1958 was the subject matter of challenge and in the present case the certificate is granted on 30-10-1964 and the father of the petitioner had not raised any challenge in the matter till his death. It is submitted that the petitioner cannot challenge the certificate granted in favour of the respondent-Trust on 30-10-1964 now. It is prayed that the petition be dismissed with costs.

8. The challenge of the petitioner is substantively based on the contention that the petitioner had been the tenant of the suit field

alongwith his father since prior to the deemed date i.e. 01-04-1961 and 01-04-1963. The petitioner has not been able to substantiate his contention. The petitioner has not brought any evidence on the record to show that he had been tenant of the suit field alongwith his father since prior to the deemed date. The Sub-Divisional Officer and the Tribunal have recorded that the petitioner is not entitled to continue in the occupation of the suit field as he cannot claim tenancy rights after the death of his father in view of the certificate granted in favour of the respondent-Trust on 30-10-1964. The age of the petitioner as shown in the petition is 55 years. The petitioner claims to be a tenant in respect of the suit field since prior to the deemed date i.e. 01-04-1961 on which date the petitioner might have been about one year old. It is unacceptable that the respondent-Trust could have entered into an agreement of lease with the petitioner who was minor at the relevant time. Considering this fact, the petitioner should have placed appropriate material on the record to prove that he had been the tenant of the suit field in his own rights, prior to the deemed date. The facts on the record show that the petitioner has tried to put forth the defence that he had been the tenant of the suit field since prior to the deemed date, as he found it difficult to defend his possession in view of the judgment given by the Hon'ble Supreme Court in the case of

Shriram Mandir Sanstha @ Shri Ram Sansthan Pusda, in which it is held that the tenancy rights are not inheritable if the certificate under Section 129 of the Tenancy Act of 1958 is granted.

9. In the judgments given in the cases of ***Hirabai Baburao Shidankar and another, Keraba Dattu Borachate and others***, and ***Bhimrao Chandru Patil and others***, the certificate issued under Section 88B of the Maharashtra Tenancy and Agricultural Lands Act, 1948 which provision is *pari-materia* to Section 129 of the Tenancy Act of 1958, was challenged. This Court, in the above cases, examined the legality of the decision of the competent authority issuing certificate. In the present case, the certificate under Section 129 of the Tenancy Act of 1958 is granted on 30-10-1964 and it is not challenged till date. Under these circumstances, the reliance placed on the above referred judgments is misplaced.

10. In my view, the Sub-Divisional Officer and the Tribunal have not committed any error and the orders passed by them do not suffer from any patent illegality or perversity which necessitate the interference by this Court in the extra-ordinary writ jurisdiction.

11. The writ petition is dismissed with costs quantified at Rs.5,000/- to be paid by the petitioner to the respondent-Trust within one month from today.

2JUDGE

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