

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

WP No. 2555 of 2014
Krishna and ors v. The State of Maharashtra and ors

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's Orders.

Court's or Judge's orders.

Mr S. S. Dhengale, Adv for petitioners
 Mr A. S. Fulzele, AGP for respdts 1,2
 Mr A. V. Bhide, Adv for respdt no.3

CORAM : B. P. DHARMADHIKARI AND
 A. P. BHANGALE , JJ

DATED : 9th January 2015

1. Heard. Respondent no. 3 before this Court has been allotted evacuee property as per order dated 16th June 1982. Some tenants placed in possession by the Government of that property as evacuee property had filed civil suit claiming declaration and injunction. That civil suit was dismissed by the trial Court as also by the appellate Court and ultimately, by this Court, observing that as the properties were evacuee properties, the civil court could not have taken any cognizance.

2. Respondent no. 2 Tahsildar has thereafter issued notice to present petitioners calling upon to vacate within six months. These notices dated 23.5.2014 are questioned in the present writ petition.

3. Petitioners do not have any order showing the right in which they are placed in possession. They

are relying upon copy of the Enquiry Register which mentions the property as evacuee property and also records that evacuee properties were let out on annual rent to certain persons. Thus, fact that properties are evacuee properties is not in dispute.

4. Learned counsel for petitioners has relied upon an incomplete copy of order passed at Bombay in Special Civil Application No. 1848 of 1971. There, the Division Bench of this Court has made rule absolute directing respondents to transfer and allot the agricultural lands from and out of compensation pool in payment of the compensation to the petitioner therein equivalent to the petitioner's agricultural land mentioned therein. Petitioner in matter at Bombay was one Shamumal Hariram. The operative part produced is insufficient to conclude that only agricultural land can be allotted and residential premises cannot be given to respondent no. 3.

5. Other contention is to contend that respondent no. 3 had filed some petitions earlier and those petitions were disposed of. However, except for making such statement in rejoinder, the prayers made in those petitions or contents thereof are not disclosed. Advocate Bhide has produced before this Court copy of order dated 9th December 2011 passed at Bombay in Writ Petition No. 5562 of 2011. Said order shows that writ petition was allowed to be withdrawn with liberty to approach Nagpur Bench.

6. In any case, material on record is

insufficient to apply either *res judicata* or *constructive res judicata*. As the property is evacuee property, issue stands concluded by orders dated 9.4.2001 passed in Writ Petition No. 1928 of 1993 in so far as plaintiffs in civil suit are concerned.

7. The petitioners have not challenged the order of allotment dated 16th June 1982 in favour of respondent no. 3. When residential premises are declared as evacuee property, the contention that the same cannot be allotted to a migrant from Pakistan has not been substantiated by inviting our attention to any legal provisions or any precedent.

8. No case is made out warranting interference. Petition is accordingly dismissed. No costs.

9. Learned counsel for petitioners at this stage requests for continuation of interim order dated 28.5.2014. That request is vehemently opposed by learned counsel for respondent no. 3. However, in the interest of justice, we order status-quo as on today to continue for a period of six weeks from today. This direction shall cease to operate thereafter automatically.

JUDGE

JUDGE

joshi