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

Letters Patent Appeal No. 19 of 2013 in W.P.No. 4096 of 2011

Anant s/o Shrikrishna Metkar vs. Shri Gaurakshan Gopalkrishna Sansthan and another.

| Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's Orders. |
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Mr. M.V.Mohokar, Adv. for the appellant.
Mr. N.R.Saboo, Advocate for R-1.

**CORAM: B.R.GAVAI & MRS. MRIDULA R. BHATKAR,JJ**
**DATE : 13.1.2015**

This appeal challenges the order passed by the learned Single Judge of this Court, dated 23rd July, 2012, by which the learned Single Judge has confirmed the order passed by the learned Sub Divisional Officer thereby directing the eviction of the present appellant and the order passed by the learned Maharashtra Revenue Tribunal dismissing the revision of the present appellant and confirming the order passed by the learned Sub Divisional Officer. Being aggrieved thereby, the Letters Patent Appeal came to be filed before this Court. The Letters Patent Appeal was dismissed by the

Division Bench of this Court (to which one of us, B.R.Gavai, J was a party), vide order dated 25th July, 2013 by observing that:-

> "We find no illegality or infirmity in the concurrent orders passed by the authorities. There is no substance in the appeal and hence rejected."

2. The appellant, being aggrieved by the order of the Division Bench in Letters Patent Appeal, filed S.L.P. before the Hon'ble Apex Court. Their Lordships of the Apex Court, vide Judgment and order dated 3rd March, 2014, found that the order passed by this Court was a non speaking order. It further found that the issue, that the appellant's grand father was cultivating the suit land and was a tenant of the suit land prior to 1st of April, 1964 and by virtue of Section 46(1) of the Tenancy Act, 1958, and had become the owner of the suit land, has not been considered by the Division Bench of this Court and, therefore, set aside the order passed by this Court dated 25th July, 2013 and remitted back the matter to the Division Bench for decision on merits. The Apex Court has also granted liberty to the parties to raise all the contentions before the Division Bench.

3. We have heard Mr. Mohogaonkar, the learned counsel for the appellant and Mr. Saboo, the learned counsel for respondent no.1.

4. Mr. Mohogaonkar, the learned counsel for the appellant relies on the Judgment of the Apex Court in the case of Amrit bhikaji Kale and others vs. Kashinath Janardhan Trade and another, reported in (1983) 3 Supreme Court Cases, 437, in support of the proposition that on the tillers' day since his grand father was in possession of the suit land as a tenant, he had become deemed owner of the suit land and as such impugned orders are not sustainable.

5. In the present case, though it is the contention of the appellant that his grand father was in possession of the suit land on the tillers' day and as such had become deemed owner, it should be noted that the proceedings which were pending before the Tahsildar under Section 46 r/w Section 49A of the Bombay Tenancy Act, the proceedings came to be dropped vide order dated 28th July, 1966, since the landlord had certificate of exemption under Section 129. Admittedly, this order was not challenged either by the grand father of the

appellant or his father or any one else. It will be relevant to refer to Section 129 of the Bombay Tenancy and Agricultural Lands, Act, 1958, which reads as under:

"129. Exemption from certain provisions to lands held by local authorities, Universities, trusts, etc---Nothing in the foregoing provisions except Section 2, the provision of Chapter II (excluding Sections 21,22, 23, 24 and 37) and Section 91 and the provisions of Chapters X and XII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in sections mentioned above shall apply---

a) to lands held or leased by a local authority, or university established by law in the State;

b) to lands which are the property of a trust for an educational purpose, hospital, panjarpole, Gaushala, or an institution for public religious worship, provided the entire income of such lands is appropriated for the purposes of such trust; and

c) to lands assigned or donated by any person before the commencement of this Act for the purpose of rendering any of the following services useful to the community, namely:--

maintenance of water works, lighting or filling of water roughs for cattle;

d) to any land taken under management by a Civil, Revenue or Criminal Court:

Provided that, from the date on which the land referred to in clause (d) is released from such management, all the provisions of this Act shall apply thereto, but subject to the following modifications, that is to say,---

i) in the application of Section 38 to such land, for the time mentioned in sub-section (1) thereof for giving notice to the tenant and making an application for possession, there shall be substituted a period of one year from the date of the release of land from such management, and the said section shall not apply so as to entitle a landlord to terminate a tenancy of a tenant (or his successor-in-title) in respect of whom he had an opportunity to terminate under section 38;

ii) if on the date on which the land was taken under management the landlord was personally cultivating the land then on the release of the land from management the tenancy of any person subsisting at the date of the release shall be deemed to be terminated, and the land shall be restored to the possession of the landlord;

iii) the right of the tenant to purchase the land under the relevant provisions relating thereto shall be exercised within one year from the expiry of the period during which the landlord is entitled to terminate the tenancy as provided in clause (i).

Explanation---For the purpose of clause (b), a certificate granted by the Collector after holding an inquiry, that the conditions mentioned in the said clause are satisfied by the trust shall be the conclusive evidence in that behalf."

6. It would, thus, be clear that Section 129 and clause (b) specifically provides that the provisions of Chapter II excluding Sections 21,22,23,24 and 37 and Section 91 and the provisions of Chapters X and XII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in sections mentioned above, shall not apply to the lands which are the property of a trust for an educational purpose, hospital, panjarpole, gaushala or an institution for public religious worship, provided the entire income of such lands is appropriated for the purposes of such trust. Explanation to Section 129 provides that, for the purpose of

clause (b), a certificate granted by the Collector after holding an inquiry, that the conditions mentioned in the said clause are satisfied by the trust shall be the conclusive evidence in that behalf.

7. Undisputedly, such certificate was placed on record in the proceedings, which were initiated by the Tahsildar under Section 46 read with Section 49A of the said Act and upon perusal of the said exemption certificate granted under Section 129, the proceedings under Section 46 r/w 49A came to be dropped vide order dated 28th July, 1966. Undisputedly, the said order has not been challenged by the present appellant and has reached finality.

8. When the provisions of Section 129 give an overriding effect and specifically provide that the lands belonging to a trust are exempted from the provisions of the Act, merely because the proceedings under Sections 46 and 49 A were initiated, does not ipso fact entitle the appellant to the ownership of the land. Moreover, when the appellant's predecessors-in-title have not challenged dropping of the proceedings after the Tahsildar was satisfied with the

exemption certificate granted in favour of the landowner, no interference could have been made with the concurrent orders passed by the Sub Divisional Officer, Maharashtra Revenue Tribunal and the learned Single Judge.

9. In so far as the Judgment, on which the learned counsel for the appellant relies is concerned, in the said case, one Tarachand was a landlord on the tillers' day i.e. on 1st April, 1957. However, said Tarachand died on August 12, 1959 and before his death, he executed the will bequeathing the suit land to Ashoklal, who was minor at the time of the death of Tarachand. The said Ashoklal, subsequently on the ground that he was a minor when the land was bequeathed to him, contended that the vesting of ownership in the tenant, got postponed on account of he being minor. The Apex Court found that on tillers' day it is not Ashoklal, who was the owner of the land but Tarachand and as such since no proceedings were initiated by Tarachand under any of the provisions for resumption of land the vesting ownership in favour of the tenant i.e. Janardhan, had become complete and as such subsequent proceedings at the instance of Ashoklal were not permissible. We find that the facts in the said case are totally

different. In the present case, the proceedings under Section 46 r/w Section 49A were pending and in those proceedings upon perusal of the exemption certificate granted under Section 129(b), the Tahsildar dropped the proceedings under Section 46 r/w 49A, holding that the lands were entitled for exemption. In that view of the matter, we do not find that any error has been committed either by Sub Divisional Officer or the Maharashtra Revenue Tribunal or by the learned Single Judge, warranting interference in the appellate jurisdiction. Hence, the appeal is rejected.

**JUDGE** **JUDGE**

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