

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

*WRIT PETITION NO. 4653 OF 2016
WITH
CIVIL APPLICATION NO. 1035 OF 2016*

Kailash Alias Suraj Bansraj Rajbhar .. Petitioner.
Vs.
Bhikari Jokhan Rajbhar & Ors. .. Respondents.

...

Mr. Jitendra Shukla for Petitioner and applicant.
Mr. Mishra V.Y. for Respondent No.1.
Mr. Deepak Poonamiya for Respondent No.6.

***CORAM : N. M. Jamdar, J.
Date : 14 December 2016.***

ORAL ORDER:

1. Heard learned counsel for the parties. Rule. Learned counsel for the respective respondents waive service.
2. Learned counsel for the petitioner submitted that the statement made on affidavit by the relative of the petitioner that the petitioner is a nephew of the wife of the deceased tenant and the ration card issued in his favour, has not been considered in a proper perspective.
3. The contest to claim tenancy after the death of deceased tenant appears to be between the tenant and respondent No. 1 (Defendant No.5). Respondent No.1 had also filed an appeal before the Appellate Bench of Small Causes Court which is also dismissed by the impugned order. It was held that respondent No.

1 failed to establish that he is deemed tenant of the suit premises. The impugned order is passed on 7th March, 2016. Till date the order is not challenged by the respondent No.1. The learned counsel for respondent No.7 draws my attention to the order passed in Writ Petition (L) No. 1149/2015 (Regular Writ Petition No.2315/2015) wherein rule has been issued and interim relief has been granted. On 23rd April, 2015, therein an interim order was passed and respondent-landlord has taken a stand that upon conclusion of the dispute between the petitioner and respondent No.1, necessary agreement will be executed in favour of the successful party. The learned counsel also drew my attention to the order passed on 25th July, 2016 in the Notice of Motion taken out by the respondent No.1.

4. Considering the fact that there is no challenge to the categorical finding rendered by the Appellate Bench by respondent No.1 and that prima facie case is made out by the petitioner for the grant of rule in this petition and that Writ Petition (L) No. 1149/2015 is pending, it is clarified that if respondent No.6 executes an agreement in favour of the petitioner, the same shall be subject to further order passed in this writ petition.

5. Civil Application No. 1035/2016 does not survive and, accordingly, stands disposed of.

(N. M. Jamdar, J.)