

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

Second Appeal No.96 of 2013

(M/s. Bombaywala Brothers, through its Partner Tayyab Parvel Fida Husain
v. State of Maharashtra, through Collector, Yavatmal, and others)

And

Second Appeal No.244 of 2013

(Bharat Petroleum Corporation Ltd., through its Territory Manager v. State
of Maharashtra, through Collector, Yavatmal, and others)

Office Notes, Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's order

Court's or Judge's orders

In Second Appeal No.96 of 2013 :

Shri F.T. Mirza, Advocate for Appellant.

Ms Rashi Deshpande, AGP for Respondent Nos.1 to 3.

Shri Abhay Sambre, Advocate for Respondent No.4.

In Second Appeal No.244 of 2013 :

Shri Abhay Sambre, Advocate for Appellant.

Ms Rashi Deshpande, AGP for Respondent Nos.1 to 3.

Shri F.T. Mirza, Advocate for Respondent No.4.

Coram : R.K. Deshpande, J.

Date : 27th June, 2016

1. In Regular Civil Suit No.20 of 2000, the Trial Court passed a decree on 21-12-2002 restraining the defendants from interfering in the possession of the plaintiffs on the suit plot without following due process of law and without providing alternate site in the approved lay-out in Yavatmal City, as mentioned in the Government Resolution (Exhibit 91)

dated 28-1-1983. In Regular Civil Appeal No.45 of 2003 preferred by the State Government and its authorities, the lower Appellate Court has set aside the decree passed by the Trial Court on 10-1-2013 and the suit filed by the plaintiffs has been dismissed. While passing a decree, the Trial Court recorded the finding that the plaintiffs have established tenancy in respect of the suit property. The lower Appellate Court has reversed this finding and it is held that there is no document placed on record to show that the plaintiffs are the tenants of the original defendants.

2. On 26-3-2014, this Court made it clear that the matter shall be decided finally at the stage of admission and, therefore, the record and proceedings were called. The learned counsels appearing for the parties agree that the following substantial question of law arises for consideration of this Court.

Whether the lower Appellate Court was right in reversing the findings recorded by the Trial Court without even considering the provisions of Section 116 of the Transfer of Property Act, 1882, and Sections 5 and 11 of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 and the receipts placed on record?

3. Admit. Heard finally by consent of parties.

4. The lower Appellate Court has also failed to consider the claim for alternate site on the basis of the Government Resolution dated 28-1-1983 at Exhibit 91, and hence the matter is required to be remanded back to the lower Appellate Court.

5. In view of the aforesaid undisputed position, the judgment and order passed by the lower Appellate Court on 10-1-2013 in Regular Civil Appeal No.45 of 2003, is hereby quashed and set aside. The matter is remanded back to the lower Appellate Court to consider and decide the appeal afresh keeping in view the findings recorded by the Trial Court and the contentions, as are raised and the reliefs, as are claimed. The parties to appear before the lower Appellate Court on 25-7-2016. R & P, if received, be sent back immediately. No order as to costs.

Judge.