

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 13574 of 2018

Mohammed Hassan Malbari & Anr

..Petitioners
(Orig.Plaintiffs)

Vs

State of Maharashtra & Ors

..Respondents.

Mr. Rupesh Geete i/by Subhash Jadhav for the petitioners.

Mr. R.P.Kadam, AGP for Respondent No. 1 to 6.

Mr. Praeep J.Thorat for Respondent No. 8 and 10.

CORAM : B.P.COLABAWALLA, J.

DATED :- 4th December, 2018.

P.C. :

1 Rule. Respondents waive service. By consent of parties, rule is made returnable forthwith and heard finally.

2 This writ petition has been filed, challenging the order passed by the learned Civil Judge, Senior Division, Thane (Trial Court) dated 3rd November, 2018 passed below Exh-181 in Special Civil Suit No. 485 of 2005. Exhibit 181 was an application filed on behalf of the plaintiff to refer issue No. 7 framed in the suit to the Tahsildar, Bhivandi for adjudication. Issue No. 7 that was framed in the suit was, whether the

defendant No.7 to 12 (wrongly mentioned as defendant No. 7 to 13) prove that they are agriculturist? This application filed by the plaintiffs was dismissed by the Trial Court vide the impugned order.

3 The learned Advocate appearing on behalf of the petitioners (original plaintiffs) has assailed the impugned order by relying upon the provisions of the Maharashtra Tenancy and Agricultural Lands Act, and more particularly Section 63, 70, 85 and 85-A of the said Act. The learned Advocate appearing on behalf of the petitioners submitted that Section 63 deals with transfer of agricultural lands to non-agriculturists and stipulates that save as provided in the Act, no sale of agricultural lands can be done to a non-agriculturist. He then submitted that Section 70 of the said Act sets out the duties of the Mamlatdar and stipulates that for the purposes of the Act, the Mamlatdar has to perform duties and functions as more particularly set out in clauses (a) to (o) of Section 70. One of the duties and functions that the Mamlatdar has to perform is to decide whether a person is an agriculturist as set out in Section 70 (a).

4 He, thereafter, brought my attention to Section 85 of the Act and submitted that no civil court would have jurisdiction to settle, decide

or deal with any question which is by or under the Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, or Manager, the Collector or the Maharashtra Revenue Tribunal. He submitted that in view of this express provision of Section 85, the issue as framed by the Trial Court, namely, whether defendant No. 7 to 12 are agriculturists, cannot be decided by the Trial Court and can be decided only by the Mamlatdar under Section 70 (a) of the Act.

5 To buttress this argument he brought to my attention Section 85-A of the Act which deals with suits involving issues required to be decided under this Act. It stipulates that if any suit instituted in any civil court involves any issues which are required to be settled, decided or dealt with by any authority, competent to settle, decide or deal with such issues under this Act, the civil Court shall stay the suit and refer such issues to the Competent Authority for determination. It is on the basis of this Section that an application was made before the Trial Court for referring issue No. 7 to the Mamlatdar to decide whether defendant No. 7 to 12 were agriculturists. As mentioned earlier, this application was dismissed by the Trial Court and hence the present writ petition.

6 After hearing the parties for some time, Mr. Thorat, learned Advocate appearing on behalf of respondent No. 7 to 12 herein (defendant No. 7 to 12 before the Trial Court) fairly stated before me that he has no objection if this issue is referred to the Competent Authority (Tahsildar, Bhivandi) for its decision on the issue “whether defendant No. 7 to 12 are agriculturists or not?” In view of this fair stand taken by Mr. Thorat, the following order is passed:-

(a) The impugned order dated 3rd November, 2018 is quashed and set aside and Exhibit 181 is allowed in terms of Paragraph 4 thereof;

(b) The Trial Court is directed to refer issue No. 7 (namely whether defendant No. 7 to 12 are agriculturists or not?) to the Competent Authority (Tahsildar, Bhivandi) who shall then submit its report to the Trial Court;

(c) Pending such decision of the Competent Authority (Tahsildar, Bhivandi) the suit, namely Special Civil Suit No. 485 of 2005 shall remain stayed;

(d) Considering that the suit has been filed in the year 2005, the Competent Authority (Tahsildar, Bhivandi) is directed to decide the issue referred to it within a period of two months from the date of receipt of the reference by the Trial Court.

7 Considering that the application for reference was made after a period of five years from the date when the issue was framed, the petitioners shall pay costs of Rs.15,000/- to the Kirtikar Law Library within a period of two weeks from today and tender the receipt on the file of this Court evidencing that payment has been made.

8 The writ petition is disposed of in the aforesaid terms.

(B.P. COLABAWALLA, J.)