

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

WRIT PETITION NO.5469 OF 2017

Gopichand s/o Bisan Nagpure, Nagpur.

-vs-

Raja @ Govinda s/o Trimbakrao Deshmukh, Napur and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Smt V. P. Thakre, Advocate for petitioner.

Shri H. N. Bhondge, Advocate for respondent Nos.2(a) to
2(e).

CORAM : A.S.CHANDURKAR, J.

DATE : April 11, 2018

Civil Application (CAW) No.793/2018

Perused contents of the application. The name of respondent No.4 is permitted to be deleted at the risk of the petitioner. Necessary correction be carried out forthwith. Civil Application is disposed of.

Writ Petition No.5469 of 2017

The petitioner who is the original plaintiff has filed the suit for declaration that he is entitled to purchase the suit fields being the tenant of the defendants. In that suit the trial Court framed issues on 16/09/2014 and Issue No.4 was whether the plaintiff had become tenant of the suit field Nos.604, 605 and 607. The defendant No.1 filed an application at Exhibit-85 for deleting that issue on the ground that the proceedings initiated by the petitioner before the Tahsildar for

mutation of his name as tenant had been dismissed. Further appeal preferred before the Sub-Divisional Officer was also dismissed. By the impugned order the trial Court allowed that application and deleted Issue No.4.

2. It is submitted by learned counsel for the petitioner by placing reliance on the decision in ***Gundaji Satwaji Shinde vs. Ramchandra Bhikaji Joshi*** AIR 1979 SC 653 that as the issue of tenancy arises for consideration and the proceedings in that regard are pending before the Collector, the trial Court was not justified in deleting that issue. Reference is made to the orders passed by the Tahsildar and the Sub-Divisional Officer which have been challenged.

3. The learned counsel for the respondent No.2 supported the impugned order. According to him as two Authorities have held against the petitioner, deletion of the issue was justified.

4. Heard the learned counsel for the parties. The petitioner during pendency of the suit had filed an application before the Tahsildar seeking his name to be entered in the revenue records in the capacity as tenant. This application has been rejected on 25/07/2011. The appeal filed by the petitioner has been dismissed by the Sub-Divisional Officer on 25/03/2013. Against this order the petitioner has filed an appeal before the

Additional Collector which is pending. Thus, even as per the law laid down in *Gunaji Satwaji Shinde* (supra), the question as regards tenancy rights is being decided by the tenancy Authorities.

5. Considering the nature of relief sought in the suit which pertains to declaration and permanent injunction, there is no illegality in the order directing deletion of Issue No.4. However, if ultimately the plaintiff succeeds before the Authorities and his name is entered in the revenue records, it is open for the petitioner to bring the said fact on record before the trial Court in accordance with law.

With these observations, the Writ Petition is disposed of. No costs.

JUDGE