

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9210 OF 2018

Sayyed Mujim Sayyed Khudabaksh and another ... Petitioners

Versus

Ramniwas Ramprasad Oza and others ... Respondents

....

Mr. I. D. Maniyar, Advocate for petitioners.

....

CORAM : M. S. KARNIK, J.

DATED : 16th AUGUST, 2019

PER COURT :-

1. Heard learned counsel for the petitioners.
2. By this petition, the petitioners-original landlords are challenging the orders passed by the trial Court as well as the first appellate Court. The trial Court, during pendency of the suit, allowed application Exhibit-5 in Regular Civil Suit No.44 of 2017 filed by the respondents herein-original plaintiffs granting temporary injunction restraining the petitioners-original defendants from interfering and obstructing into the peaceful possession of plaintiffs over the suit lands.

3. Learned counsel for the petitioners would contend that in view of the provision contained under Section 99 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short 'the said Act'), the trial Court has no jurisdiction to settle or deal with any question of tenancy. In the submission of learned counsel for petitioners, the respondents are claiming to be the tenants in respect of the suit lands. He would therefore submit that when there is an issue of tenancy arising, the Courts below ought to have referred the issue of tenancy to the appropriate authority. Moreover, learned counsel for the petitioners in support of his submissions submit that the petitioners are in possession and in occupation '*Khopi*' (hut) in the suit lands.

4. I have gone through the orders passed by the Courts below. It would be pertinent to mention that the father of petitioner No.2 had filed a suit against the present respondent No.4 – original plaintiff No.4 for possession of suit land. The said suit was partly decreed, but decree for possession was declined on the ground that the possession of the present respondents-plaintiffs was in capacity of tenants. It is also a matter of record that the present respondents have also obtained the certificate of tenancy under Section 98-A of the said Act after depositing the Najrana amount to the Government and thereafter, the suit lands have been recorded as *Pratibandhit Satta Prakar*.

5. Learned counsel for the petitioners invited my attention to the application made to the Tahsildar for setting aside the certificate granted in favour of the present respondents. Thus, the tenancy proceedings at the behest of the petitioners are pending before the competent forum, however, as on today, the respondents-original plaintiffs are having a certificate of tenancy under Section 98-A of the said Act in their favour.

6. In the event, any orders are passed by the tenancy Court setting aside the certificate of tenancy, the petitioners would be at liberty to move the trial Court for appropriate reliefs which may be considered by the trial Court on its own merits and in accordance with law.

7. I have gone through the orders passed by the Courts below. I do not find any reason to interfere with the concurrent findings recorded by the Courts below in granting temporary injunction in favour of the present respondents during the pendency of the suit. The writ petition is therefore, dismissed.

[M. S. KARNIK, J.]

SMS