

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST.) NO.20754 OF 2019

Shahid Ahmmed Shamiullah Ansari and others ... Petitioners
Vs.
Mohammad Hassan Malbari and others ... Respondents

Mr. Pradeep J. Thorat for Petitioners.
Mr. C. D. Mali, AGP for Respondent Nos.3 to 8-State.

CORAM : UJJAL BHUYAN, J.
DATE : NOVEMBER 05, 2019

P.C. :

Heard Mr. Thorat, learned counsel for the petitioners and Mr. Mali, learned AGP for respondent Nos.3 to 8-State.

2. Considering the subject matter of the writ petition and the order that is proposed to be passed, Court is of the view that issuance of formal notice to respondent Nos.1 and 2 is not necessary and that the case can be disposed of at this stage itself.

3. Petitioners are the defendants in Special Civil Suit No.485 of 2005 instituted by respondent Nos.1 and 2 as the plaintiffs. One of the issues which has arisen in the said Special Civil Suit is whether the defendants i.e. the petitioners herein are agriculturists or not.

4. In this connection, an application was filed by the plaintiffs for referring this aspect of the matter to the Revenue Authority i.e. Tahsildar of Bhivandi for a decision. However, learned Court below dismissed the said application vide order dated 03.11.2018.

5. This came to be challenged before this Court in Writ Petition No.13574 of 2018, which was disposed of vide order dated 04.12.2018 in the following terms:

“(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.”

6. Thereafter trial Court made the reference as above. However, Tahsildar, Bhivandi i.e. respondent No.5 passed the impugned order dated 15.05.2019 declining to render a finding as to whether petitioners are agriculturists or not on the ground that petitioners claimed to be agriculturists in the State of Uttar Pradesh.

7. Aggrieved, present Writ Petition has been filed.

8. The Maharashtra Tenancy and Agricultural Lands Act (earlier called Bombay Tenancy and Agricultural Lands Act, 1948) has been enacted to amend the law relating to tenancies of agricultural lands, governing relations of landlords and tenants and matters incidental thereto.

9. Section 70 of the said Act deals with duties of the *Mamlatdar* and as per clause (a), one of the duties of the *Mamlatdar* is to decide whether a person is an agriculturist or not.

10. Section 85 of the said Act ousts the jurisdiction of the civil court in deciding any question which is required to be decided under the said Act by the *Mamlatdar* or by the Revenue Tribunal.

11. As per Section 85A, if any suit instituted in any civil court involves an issue which is required to be settled, decided or dealt with by any authority, competent to settle, decide or deal with such issue under the Act, the civil court shall stay the suit till such decision is rendered by the competent authority under the Act.

12. In the light of the above statutory provision, this Court had rightly passed the order dated 04.12.2018 as extracted above.

13. Section 70(a) of the Act requires a *Mamlatdar* to decide whether a person is an agriculturist.

14. While deciding the above issue, no restriction as to *situs* of the agricultural land is prescribed by the Statute. In other words, it has to be decided by the *Mamlatdar* whether the person is an agriculturist or not without reference to the place of agricultural land of that person. Thus, the stand taken by respondent No.5 that since petitioners had agricultural lands in Uttar Pradesh and, therefore, he would be incompetent to decide the issue is contrary to the legal provision as discussed above.

15. That apart, there is a clear direction of this Court to respondent No.5 to decide whether petitioners are agriculturists or not and then to submit report to the trial Court.

16. In view of above, impugned order dated 15.05.2019 is hereby set aside. Respondent No.5 is directed to decide the issue as referred to by the trial Court in terms of the High Court's order within a period of 8 weeks from the date of receipt of an authenticated copy of this order. During this period, further proceedings in Special Civil Suit No.485 of 2005 shall remain stayed.

17. This disposes of the Writ Petition.

(UJJAL BHUYAN, J.)