

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 11559 OF 2017

New Badamwadi Rahiwasi Sevak Sangh .. Petitioner.
v/s.
Life Insurance Corporation & Others .. Respondents.

Mr. Shivprasad R. Page, for the Petitioner.
Mr. Harihar Bhawe with Ms. Rupa Bhawe and Ms. Divya Menon i/b. Bhawe
& Co., for the Respondents Nos. 1 to 4.
Mr. P.G. Sawant, AGP, for the Respondent No.5.
Mr. P. K. Sonawane, for the Respondent No.6-UOI

**CORAM: A.S.OKA &
M.S.SANKLECHA, JJ.**
DATE : 1st APRIL, 2019.

P.C:-

Heard the learned Counsel appearing for the Petitioner and
the learned Counsel for the 1st to 4th Respondents.

2 By this Petition under Article 226 of the Constitution of India,
the Petitioners are virtually seeking a declaration that they are the tenants
of the premises allegedly held by them in their capacity as heirs and legal
representatives of the original tenants. There is a consequential direction
sought to transfer the tenancy rights in their names and to issue rent
receipts in their names.

3 This Petition under Article 226 of the Constitution of India

involves the disputed questions of fact. Therefore, the more appropriate remedy for the Petitioner is to seek a declaration from the competent authority.

4 Another grievance made by the learned Counsel appearing for the Petitioner is based on certain statements made in the affidavit in reply of 1st to 4 Respondents that the 1st Respondent is not following the binding decision of the Apex Court in the case of ***Dr. Suhas Phophale v/s. Oriental Insurance Company***. The learned Counsel appearing for the 1st to 4th Respondents states that the 1st Respondent has stated in the affidavit in reply that the issue has been referred to the larger bench.

5 So long as the decision in the case of Dr. Suhas Phophale (supra) continues to hold the field, the 1st Respondent is bound by the same.

6 Subject to what is observed above, we decline to entertain this Petition under Article 226 of the Constitution of India, the **Petition** is **disposed of**. Remedies of the Petitioner are kept open. The rights and contentions of the parties are also kept open.

(M.S.SANKLECHA,J.)

(A.S.OKA,J.)