

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

SECOND APPEAL NO.64/2019

Arun Nilkanth Wasnik and anr

..VS..

Sarvajanik Bouddha Vihar Samitee, thr. its President/Secretary

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

Court's or Judge's Order

.....
Shri Nitin Vyawahare, Counsel for the Appellants.

CORAM : V.M.DESHPANDE, J.

DATED : JUNE 14, 2019.

1. Heard learned counsel Shri Nitin Vyawahare for the appellants who are original defendants.
2. Only submission canvassed before this Court by the appellants is, in absence of permission from the Charity Commissioner suit by the respondent, which is a public trust, is not maintainable.
3. Though status as tenant was denied by the appellants before the Court below, concurrently learned Judges of both the Courts below recorded findings of fact that the appellants were indicted as tenant in the suit property owned by the respondent public trust. In absence of any material to show contrary, those findings cannot be disturbed.
4. The suit filed by the respondent Trust for handing over possession and recovery of arrears of rent was decreed. Appeal filed by the defendants was also dismissed.

5. Insofar as the only submission canvassed before this Court about the permission from the Charity Commissioner, it would be useful to reproduce clause (ii) of Section 50 of the Maharashtra Public Trust Act:

*“Suit by or against or relating to public trusts or trustees or others
In any case,-*

(i)

(ii) where a direction or decree is required to recover the possession of or to follow a property belonging or alleged to be belonging to a public trust or the proceeds thereof or for an account of such property to proceeds from a trustee, ex-trustee, alienee or any other person but not a person holding adversely to the public trust, trespasser, licensee or tenant,]

(iii)

(iv)

6. Plain reading of the aforesaid, it shows that the permission of the Charity Commissioner is not necessary especially when learned Judges of Courts below record findings of fact about status of the defendants as tenant.

7. In that view of the matter, the second appeal is dismissed and disposed of. No costs.

JUDGE

!! BRW !!

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