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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9066 OF 2019

Baburao Vithoba Zavre

PETITIONER

VERSUS

The Collector, Ahmednagar and Others

RESPONDENTS

.....
Mr. Amol K. Gawali, Advocate for the petitioner
Mr. S. W. Munde, AGP for respondent - State
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th SEPTEMBER, 2022

ORDER :

1. Application (Exhibit-36) filed by the petitioner for referring issues No. 3 to 7 as to whether the sale transactions entered into between the defendants are hit by the provisions of the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, to the competent authority under section 36B of the said Act, is rejected by the Trial Court. Hence, the present petition.
2. Heard learned advocate for the petitioner and learned Assistant Government Pleader for respondents No.1 and 2. None appears for respondents No.3 to 9, though served.

3. Admittedly, the Trial Court has framed issues No.3 to 7 as to whether the sale transactions entered into between the defendants are hit by the provisions of the said Act.

4. Sections 36A and 36B of the said Act provide that -

“36A. (1) No Civil Court or Mamlatdar’s Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority.

(2) No order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdar’s Court.

36B. (1) If any suit instituted in any Civil Court or Mamlatdar’s Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the ‘competent authority’) the Civil Court or Mamlatdar’s Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court or Mamlatdar’s Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court or Mamlatdar’s Court and such Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.”

5. In the light of the above provisions, the application Exhibit-36, filed by the petitioner ought to have been allowed by the

Trial Court, however, the same is rejected by the Trial Court by giving erroneous reasons.

6. Learned Assistant Government Pleader, representing respondents No.1 and 2 also supports the contentions of the petitioner and submits that, in the facts of the present case, the Trial Court ought to have referred the said issues to the competent authority.

7. Since the Trial Court has misread and misconstrued the provisions of sections 36A and 36B of the said Act, the impugned order cannot be sustained and the same is hereby quashed and set aside.

8. Application Exhibit-36 is allowed. Writ petition is disposed of. In the circumstances, there shall be no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE