

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9080 OF 2022

Tanaji S/o Narayan Pawar Petitioner

Versus

Angad S/o Shamrao Suryawanshi Respondent

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Mr. Chandrakant D. Biradar, Advocate for the Petitioner

Ms. M.S. Mhase, Advocate for the Respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th JUNE, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner takes exception to the order passed by the learned Civil Judge, Junior Division, Nilanga, below Exhibit-218 in Regular Civil Suit No.90 of 1994.

2. In Second Appeal Nos. 769 of 2008 and 770 of 2008, filed by the petitioner/plaintiff, this Court has given following directions:

"(iv) The trial court, in terms of the pleadings of the parties, shall frame necessary tenancy issue/s and refer it to the tenancy authority in terms of the provisions of Section 99A of the Hyderabad Tenancy and Agricultural Lands Act, 1950.

(v) *After such reference is made, the trial court shall direct the parties to the suit to appear before the tenancy authority on a particular date.*

(vi) *The tenancy authority shall decide the said reference within a period of six months after appearance of the parties before it.*

(vii) *On receipt of the decision of the tenancy court on such reference, the trial court shall dispose of the suit in accordance with law as expeditiously as possible, preferably within a period of three months thereafter."*

3. Pursuant to these directions, the issue of tenancy was referred to the Tahsildar, who has decided it against the petitioner. The petitioner challenged the said decision before the Collector, and also filed application Exhibit-218 seeking stay to the suit in view of pendency of the issue before the Collector. The said application is rejected by the Trial Court holding that, since this Court in Second Appeals has directed to decide the suit within a period of three months, there is no merit in the stay application.

4. Heard the learned advocate for the petitioner and the learned advocate for the respondent. Perused the writ petition memo, annexures thereto, and the impugned order.

5. It is informed by the learned advocate for the petitioner that the Collector has remanded the matter to the Tahsildar by order dated 27/03/2023, and now the matter is pending before the Tahsildar.

6. It is also brought to the notice of this Court by the learned advocate for the respondent that the time for disposal of Regular Civil Suit No.90 of 1994 is extended by one year by order dated 06/06/2023 passed by this Court in Second Appeal Nos. 769 of 2008 and 770 of 2008.

7. In *Baburao S/o Manaji Vs. Gangubai W/o Rambhau and others, 2000(1) BCR 121*, the learned Single Judge of this Court has held:

"4. In any circumstances, the trial Court is directed to ascertain from the parties as to whether the issue referred by the trial Court to the tenancy authorities under section 99-A has been finally adjudicated or not including the High Court and the Supreme Court and if the issue has been settled, thereafter shall proceed to hear the suit."

7. Though this decision is relied upon before the Trial Court, the Trial Court appears to be apprehensive of the direction given by this Court in Second Appeal Nos.769 of 2008 and 770 of 2008 to decide the suit within three months

from the date of receipt of the decision of the Tahsildar, and rejected the application Exhibit-218.

8. In view of the observations in paragraph No.4 in case of ***Baburao S/o Manaji*** (supra), the Trial Court is bound to stay the suit till the issue of tenancy is finally adjudicated. Hence, the following order:-

ORDER

- (I) The writ petition is allowed.
- (II) The impugned order passed by Joint Civil Judge, Junior Division, Nilanga, below Exhibit-218 in Special Civil Suit No. 90 of 1994 is hereby quashed and set aside.
- (III) The application Exhibit-218 is allowed.
- (IV) The Tahsildar, Nilanga is directed to decide the issue of tenancy within a period of two months from the receipt of writ of this order.
- (V) On challenging the Tahsildar's order by either of the parties, the appellate authority shall decide the same within two months from the filing of appeal, and Maharashtra Revenue Tribunal, if approached, shall decide the matter filed before it, within two months from the date of filing.

[NITIN B. SURYAWANSHI]
JUDGE