



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

WRIT PETITION NO. 4685 OF 2016

(MAHADEO MOTIRAM NEMANE..VS.. SHRI GURUBHARTI TRUST & ONE.)

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

Court's or Judge's orders

Shri A.P.Tathod, Advocate for Petitioners.
Shri V.G.Wankhede, Advocate for Respondent No.1.
Ms Payal Bawankule, A.G.P. for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : OCTOBER 31, 2023.

1. Heard.

2. This matter pertains to eviction of a tenant from the agricultural land. It is the case of the petitioners that their predecessor Bhivsan became the deemed tenant of the suit field as he was in possession of the field from prior to 1958. However, to defeat the benefits of the beneficial legislation a trust was created and registered in the year 1961. In 1963 the original tenant Bhivsan expired and the petitioners continued in possession of the suit field.

3. Thereafter in 2005, the respondent trust moved an application under Section 120 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "Tenancy Act") for summary eviction on the ground that the tenancy is not heritable. The said proceeding was filed against Narayan father of the petitioners.

4. The Sub-Divisional Officer vide order dated 23/06/2010 allowed the application filed by the respondent under Section 120 of the Tenancy Act.

5. The said order was the subject matter of challenge before the Maharashtra Revenue Tribunal. The learned Tribunal dismissed the revision application vide impugned judgment and order dated 05/07/2016. The same is under challenge in this writ petition.

6. In the above referred backdrop, it is necessary to go into the issues namely, whether in absence of the Certificate under Section 129(b) of Tenancy Act on the date of filing of the application under Section 120 of the Tenancy Act, can it be said that the tenancy was not heritable? Further, it has to be examined that if the tenancy is heritable under Section 54 of the Tenancy Act in the above referred backdrop, the application under Section 120 of the Tenancy Act is maintainable?

7. The Sub-Divisional Officer, without referring to any provision or recording any reason how the tenancy is not heritable, has recorded the findings to the effect that the tenancy is not heritable. Moreover, there is no discussion showing the requirement under the law that unless the tenant applies under the provisions of the Tenancy Act he cannot be treated as deemed owner under Section 46 of the Tenancy Act. Thus, it is evident that without recording reasons in support of the findings

recorded by the Sub-Divisional Officer which would reflect the application of mind, the said findings cannot be considered as fair and proper in the eyes of law.

8. In the present matter, admittedly, the application under Section 120(c) of the Tenancy Act was moved in the year 2005, and the certificate under Section 129(b) of the Tenancy Act came to be issued in favour of the respondent No.1-Trust in the year 2018 i.e. after 13 years. Thus, it is an admitted fact that on the date of filing of the application under Section 120 of the Tenancy Act, there was no certificate issued in favour of the respondent-Trust under Section 129(b) of the Tenancy Act.

9. In that view of the matter, I am of the opinion that the order dated 23/06/2010 passed by the Sub-Divisional Officer and the judgment dated 05/07/2016 passed by the Maharashtra Revenue Tribunal need to be quashed and set aside and the matter is liable to be remanded back to the Sub-Divisional Officer to decide the same in view of the observations made herein above.

10. Accordingly, I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 05/07/2016 passed by the Maharashtra Revenue Tribunal, Nagpur and the impugned order dated 23/06/2010 passed by Sub-Divisional Officer, Mangarulpur.

- iii) The matter is remanded back to the Sub-Divisional Officer, Mangrulpir to decide the same afresh on its own merits, after hearing both the parties.
- iv) The parties shall appear before the Sub-Divisional Officer, Mangrulpir on 29/11/2023 at 11:00 a.m.
- v) The Sub-Divisional Officer shall decide the application within three months from the date of appearance of the parties.

The Writ Petition is **disposed of** accordingly.
No order as to costs.

JUDGE