



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4927 OF 2024

Vimal Babasaheb Ghogare And Others
VERSUS
Dattatrya Chandrabhan Ghogare And Another

Mr. A. Z. Gandhi, Advocate for petitioners
Mr. S. P. Shah, Advocate for respondents

CORAM : R. M. JOSHI, J.

DATE : 10th DECEMBER, 2024

PER COURT :-

1. This petition involves short question for determination as to whether during the pendency and till attainment of finality to the issue referred before the Authority under the prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short '**Fragmentation Act**'), the original proceeding can be proceeded further. An application (Exhibit 108) moved by plaintiff for the stay of R.C.S. No. 165/2012 on the ground that the issue decided by the Authority in the act has not attained finality and as such suit can't be proceeded with. This application came to be rejected. Hence this petition.

2. Learned counsel for the petitioners submit that once the learned trial Court has framed issue and referred the same to the Authority under the Fragmentation Act, unless the said issue is determined finally, suit cannot be proceeded with.

3. Learned counsel for the respondents/original defendants vehemently opposes the petition with the basic contention that the learned trial Court ought not to have referred the said dispute before the Authority for its decision. To support the said submissions, he pointed out that from the pleadings of the party, the issue is as to whether property purchased by the defendants is fragment or not. This, according to him, could be decided on the basis of the notification issued under the said Act. It is his contention that even though the order passed by the trial Court referring such dispute to the Authority is not under challenge, it is open for this Court to consider correctness thereof. To support his contention, he placed reliance on judgment of Division Bench of this Court in case of ***Phulmati Shayamlal Mishra & another V/s Ramkrishna Gangaprasad Bajpai & others 1981 Mh LJ 321***. He further submits that if the Court cannot assume that it is under obligation to frame issue and remit the same, the Tenancy Authority has done in the said case. Similarly, it is his contention by referring to the judgment of Coordinate Bench of this Court in ***Maruti Sambha Surve Vs. Parshuram Krishna Koratkar & another 1983 Mh LJ958*** that it is open for this Court even to hold that the order passed by the trial Court of referring the dispute itself is not tenable. It is his submission that such determination is required to prevent the abuse of law.

4. Though, learned counsel for the respondents is successful in pointing out the judgments which deal with the issue as to the correctness, legality and propriety of reference being made to the Authority under the Tenancy and Agricultural Land and that the said judgments would definitely apply to the present case though the present case is one under the Fragmentation Act, question arises before this Court for consideration as to whether in absence of any challenge to the original order of referring the dispute before the competent Court under the Fragmentation Act or even in challenge to any further order passed therein, would it be open for this Court to make any observation with regard to the correctness or otherwise of order passed by the trial Court referring the said dispute. In considered view of this Court, it is not open in this petition to even indirectly take exception to the said order which was never challenged by the parties before any Competent Court of law. This argument would survive when the final order is passed by the Authorities under the Fragmentation Act and if such order is challenged.

5. This Court, therefore, finds substance in the petition. Hence, impugned order is set aside. Application Exhibit 108 filed in Regular Civil Suit No. 165/2012 stands allowed.

(R. M. JOSHI, J.)

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