



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (CAW) NO.760 OF 2019
IN
WRIT PETITION NO.7726 OF 2018

Kamlakar Soma Kumbhar & Ors. ...Applicants

IN THE MATTER BETWEEN:-

Rajendra Harishchandra Chavan & Anr. ...Petitioners

Versus

State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO.7726 OF 2018

Rajendra Harishchandra Chavan & Anr. ...Petitioners

Versus

State of Maharashtra & Ors. ...Respondents

Mr. Jagdish G. Aradwad (Reddy) a/w Ms. Ashwini Jadhav for Applicants in CAW/760/2019 and Respondent Nos.2 to 5 in WP/7726/2018.

Mr. Aniket Ranade (through VC) for Petitioners.

Ms. S. D. Vyas, Addl. G. P. a/w Mr. A. A. Alaspurkar, AGP for Respondent-State.

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 16 October 2024

PC:-

1. Heard learned counsel for the parties.
2. This Civil Application No.760 of 2019 seeks vacation of the interim order granted by this Court on 27 July 2018 in Writ Petition No.7726 of 2018. The applicants are the Respondents in the main writ petition.

3. The order dated 27 July 2018 reads as follows:-

“Heard. Rule. Notice to the Advocate General. Interim relief in terms of prayer clause (d). To be listed alongwith the Writ Petition No.743 of 2009”

4. Prayer clause (d) of Writ Petition No.7726 of 2018, in terms of which the interim relief has been granted, reads as follows:-

“Kindly stay the execution, effect and implementation of the impugned orders dated 06.05.2017 passed by Maharashtra Revenue Tribunal, Mumbai in TNC/Rev/110/B/2011 and order dt. 31.03.2010 passed by Ld. Tahasildar, Chiplun in Tenancy Case No.12/2009 and order dt. 31.01.2011 passed by Ld. SDO, Chiplun in Tenancy Appeal No.19/2010”

5. In effect, this Court has stayed the execution, effect and implementation of the orders dated 31 March 2010 made by Tahasildar, 31 January 2011 made by SDO, and 6 May 2017 made by MRT, Mumbai.

6. However, there is no dispute that the above three orders were challenged by the Original Petitioners (Landlord) in Writ Petition No.10194 of 2017. This petition was dismissed by a detailed judgment and order dated 5 January 2018, and the validity of the above three orders was upheld.

7. The learned Single Judge even dismissed the Review Petition against the 5 January 2018 order in Writ Petition No.10194 of 2017 on 23 April 2018.

8. Though the Petitioners may have disclosed the facts concerning Writ Petition No.10194 of 2017 and Review Petition (Stamp) No.9378 of 2018 in the present writ petition, still, it appears

that the attention of this Court was not drawn to the said two orders when the interim order was made on 27 July 2018.

9. Admittedly, the interim order was made at the stage where no notice had been served upon the present applicants, though they were impleaded as Respondent Nos.2 to 5 in the writ petition. Only the 'B' Panel Counsel (Government Counsel) appeared on behalf of the State.

10. Once the learned Single Judge, by judgment and order dated 5 January 2018, had already upheld the validity of the three orders that have now been stayed and even dismissed the review against the same, there was no question of granting any stay to the execution of the orders or granting any interim relief in terms of prayer clause (d) of the writ petition.

11. The three orders that were stayed have already merged with the judgment and order dated 5 January 2018, which was not and could not have been challenged before the Division Bench in W.P. No. 7726 of 2018. All this suggests that the Original Petitioners, by craftily drafting the prayer for interim relief and not inviting the attention of the Division Bench to the fact that the orders sought to be stayed had already merged with the judgment and order dated 5 January 2018, obtained a stay from this Court.

12. Furthermore, the records show that the orders that have been stayed were already implemented. Based on those orders, the present Applicants have secured orders dated 16 July 2018 and 17 July 2018 under Sections 32-O and 32-M of the Bombay Tenancy and Agricultural Lands Act, 1948. Therefore, nothing much remained to be implemented

as of 27 July 2018. This circumstance was also not brought to the notice of this Court.

13. Mr Reddy has raised several issues about the maintainability of the writ petition, *inter alia*, on the grounds of *res-judicata* or constructive *res-judicata*. These questions can always be considered at the hearing of the main writ petition.

14. However, we are satisfied that the interim order granted by this Court on 27 July 2018 must be vacated *inter alia* for at least three reasons. The first is that the validity of those orders was already upheld by the learned Single Judge of this Court, and the Original Petitioners have not further challenged the order. Secondly, the records show that the orders which have been stayed were already implemented since, based upon those orders, the present Applicants have secured orders dated 16 July 2018 and 17 July 2018 under Sections 32-O and 32-M of the Bombay Tenancy and Agricultural Lands Act, 1948. The Original Petitioners never pointed out these two vital facts, though they may have been pleaded when the stay was granted without notice to the contesting Respondents.

15. Mr. Ranade, learned counsel for the Original Petitioners, submitted that the Petitioners have instituted appeals against the orders dated 16 July 2018 and 17 July 2018. He pointed out that interim relief has been prayed for in those appeals. Accordingly, he submitted that this Court should clarify that those appeals or the applications for interim relief therein be decided without being influenced by the present order.

16. We are vacating the interim relief granted by our order dated 27 July 2018 for the above two reasons. In this application, we are not concerned with the validity or otherwise of the orders dated 16 July 2018 and 17 July 2018. Therefore, the appeal instituted by the Original Petitioners or the application for interim reliefs prayed for therein should be decided on their own merits following the law without being influenced by the present order.

17. This Civil Application No.760 of 2019 is disposed of by vacating the interim order we granted on 27 July 2018. The prayer clause (c) of Civil Application No.760 of 2019 is kept open to be considered at the final hearing of the writ petition.

18. Place Writ Petition No.7726 of 2018 and Writ Petition No.743 of 2009 and connected matters for directions on 21 November 2024.

(Jitendra Jain, J)

(M.S. Sonak, J)