

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 7907 OF 2005

The Saswad Mali Sugar Factory Ltd

.. Petitioner

Versus

Ganpat Sadashiv Teli Kshirsagar

(since deceased) through LRs.

Subhadra Ganpat Kshirsagar & Ors.

.. Respondents

WITH

CIVIL WRIT PETITION NO. 8488 OF 2017

WITH

INTERIM APPLICATION NO. 1402 OF 2021

Subhadra Ganpat Teli (Kshirsagar) & Ors.

.. Petitioners

Versus

The Saswad Mali Sugar Factory Ltd & Ors

.. Respondents

.....

- Mr. Prafull B. Shah for Petitioner in WP/7907/2005 & for Respondent No. 1 in WP/8488/2017
- Mr. Murlidhar Laxman Patil for Respondent Nos. 1(b) to 1(h) in WP/7907/2005 & for Petitioners in WP/8488/2017

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 19, 2024

P. C.:

1. Heard Mr. Shah, learned Advocate for Petitioner in WP/7907/2005 & for Respondent No. 1 in WP/8488/2017 and Mr. Patil, learned Advocate for Respondent Nos. 1(b) to 1(h) in WP/7907/2005 & for Petitioners in WP/8488/2017

INTERIM APPLICATION NO. 1402/2021

2. Interim Application No. 1402 of 2021 is filed for bringing on record legal heirs of Respondent No. 2 who expired on 22.09.2020.

2.1. Perused the Application. For the reasons mentioned therein, Interim Application is allowed. Names of legal heirs of deceased Respondent No. 2 are permitted to be brought on record as stated in the Application. Amendment to be carried out within a period of one week from today. Copy of amended cause title be served on Respondents. Re-verification stands dispensed with.

2.2. Interim Application No. 1402 of 2021 is disposed.

WRIT PETITION NO. 7907/2005:

3. Writ Petition No. 7907 of 2005 is admitted in the year 2006 and the impugned order dated 09.08.2005 has been stayed which is passed below Exh. 50 in RCS No. 668/2002. It is appended at page Nos. 24-30 of the Petition. It is passed in the Application filed by Defendant No. 1 for deleting the name of Plaintiff No. 1 from the Suit. Plaintiff No. 1 is Sugar Mill Factory whereas Plaintiff No. 2 on the basis of the averments made in the Plaint is an allottee of the property by Plaintiff No. 1. Defendant Nos. 1 to 3 are locals and on reading the pleadings, it is gathered that the property / land of Defendant No. 1 was originally acquired by Plaintiff No. 1 at an earlier point of time by

virtue of certain proceedings. However, Defendants started interfering with the Suit property and therefore Plaintiff No. 1 along with Plaintiff No. 2 were compelled to file and institute RCS No. 668/2002 for seeking a restraint order of injunction against Defendants.

4. Application filed below Exh. 50 by Defendant No. 1 is on the basis of the averments made in the Suit plaint in paragraph No. 5. It is contended by Defendant No. 1 that according to Plaintiffs themselves, Plaintiff No.1 does not have any locus and / or nexus and / or right and / or entitlement in the suit property and as per the averments made in paragraph No. 5, property of the Plaintiffs has been allotted and allocated to Plaintiff No. 2. In that view of the matter, reliance is also sought to be placed on a Notification dated 08.02.1978 by Defendant No.1 to contend that once the Plaintiff No. 1 has sub-leased the suit property to the Plaintiff No. 2, then by virtue of that Notification, rights of Plaintiff No. 1 are extinguished in the suit property / land. However on reading the contents of paragraph No. 5, it is gathered that the substantive rights of Plaintiff No. 1 in the Suit land are still in subsistence since what is stated therein is that during the pendency of transfer between Plaintiff Nos. 1 and 2 the transfer did not take place, save and except the entry of the name Plaintiff No. 2 was made in the 7/12 extract pertaining to the said land. According to the Plaintiff right of Plaintiff is subsisting in the Suit land. The

impugned order which is passed below Exh. 50 considers the averments made in paragraph No. 5 of the Suit plaint and in paragraph Nos. 9 and 10 and returns a finding that Plaintiff No. 2 has become a deemed tenant of Plaintiff No. 1 and in that view of the matter, Plaintiff No.1 would virtually have no interest in the Suit property. Resultantly the learned Trial allows the Application of Defendant No. 1 and permits deletion of Plaintiff No. 1 from the Suit plaint. In paragraph Nos. 9 and 10, the aforementioned reasons have been enumerated.

5. *Prima facie*, it is seen that there is no question of arriving at a definite conclusion on the basis of the averments made in paragraph No. 5 that Plaintiff No. 2 has become a deemed tenant of Plaintiff No. 1 without adequate proof. The averments made in the Plaint are clearly to the effect that rights, rather substantive rights of Plaintiff No. 1 have not yet been transferred to Plaintiff No. 2, save and except the fact that name of Plaintiff No. 2 was entered into the 7/12 revenue extract, however all other proceedings were pending. Reliance is also placed on Government Notification dated 08.02.1978 by the Plaintiffs therein. On the basis of the aforementioned averments, finding returned by the learned Trial Court in paragraph No. 10 that Plaintiff No. 2 has become a deemed tenant is clearly incorrect and unsustainable. In that view of the matter, deletion of Plaintiff No. 1 is

absolutely unwarranted in the facts and circumstances of the present case. Hence, the impugned order dated 09.08.2005 is not sustainable. The same is quashed and set aside. Resultantly Application below Exh. 50 stands dismissed.

6. Learned Trial Court is directed to dispose of RCS No. 668/2002 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law and after allowing both the parties to lead their respective evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.

7. All contentions of the parties are expressly kept open.

8. Writ Petition No. 7907 of 2005 is disposed.

WRIT PETITION NO. 8488 OF 2017:

9. Writ Petition No. 8488/2017 impugns the order dated 03.08.2016 passed by learned Trial Court in the Application below Exh. 86. Said order is appended at Exh. D, page Nos. 36-37 of the Petition. The Application is filed on 29.01.2016 to set aside "No WS" order passed on 29.12.2015 on the grounds stated in the Application. Defendants have stated that due to certain personal reasons they could not remain present in Court when the impugned order came to be

passed on 03.08.2016. *Prima facie* said reasons ought to have been considered by the learned Trial Court. Having not considered the said reasons, impugned order dated 03.08.2016 is not sustainable and is therefore quashed and set aside. Written statement of Defendants is directed to be exhibited by the Trial Court and proceed with the Suit as stated herein above.

10. Writ Petition No. 8488 of 2017 is disposed.

[MILIND N. JADHAV, J.]