



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 4841 of 2019

- (1) Devidasgir Laxmangir Gosavi,
aged 56 years, occupation agriculturist,
- (2) Vilasgir Laxmangir Gosavi,
aged 45 years, occupation agriculturist,
- (3) Ankushgir Subhashgir Gosavi,
aged 34 years, occupation agriculturist,
- (4) Bhagwatgir Dattagir Gosavi
(deceased) through legal representatives -
- (5) Bhaskargir Bhagwatgir Gosavi,
aged __ years, occupation agriculturist,
- (6) Sureshgir Bhagwatgir Gosavi,
Laxmangir Gosavi, aged 42 years,
occupation agriculturist,
- (7) Ravindragir Bhagwatgir Gosavi,
Laxmangir Gosavi, aged 42 years,
occupation agriculturist.
- (8) Ganesh Gir S/o Dasta Gir,
aged about 71 years, Occupation
Agriculturist,
- (9) Pusnabai @ Annapurnabai w/o
Suresh Gir, aged about 75 years,
Occupation Agriculturist,
All resident of and Post of Kinhala,
Tahsil Chikhali, District Buldana.

... Petitioners

- Versus -

Shri Ratigir Sansthan Kinhala
through Baburao Sadashiv Bahekar,
aged __ years, occupation agriculturist,
resident of Kinhala, Tahsil Chikhali,
District Buldana.

... Respondent

Mr. S. S. Deshpande, Advocate for the petitioners
Mr. N. B. Kalwaghe, Advocate for the respondent

CORAM : ANIL L. PANSARE, J.

DATED : 26-09-2024

JUDGMENT

Learned counsel for the petitioners submits that he will deposit costs of Rs. 500/- in terms of order passed by this Court on 3-9-2024. Costs be deposited within two working days.

2. Heard.

3. Rule. Rule made returnable forthwith. Head finally with consent of learned counsel appearing for the parties.

4. The petitioners are aggrieved by order dated 19-6-2019 passed by the Maharashtra Revenue Tribunal, Nagpur in revision filed under Section 111 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short 'the Act of 1958').

5. Having heard both sides and having gone through the material placed before me, it appears that the Tribunal has, by relying upon the judgment passed by Hon'ble Supreme Court in the case of *Shriram Mandir Sansthan @ Shri Ram Sansthan Pusda Vs. Vatsalabai*

and others [1999(1)Mh.L.J. 321], dismissed the revision filed by the petitioners and thus upheld the order dated 5-1-2017 passed by the Sub Divisional Officer (SDO), Buldana rejecting the right of inheritance of tenancy as claimed by the petitioners under Section 54 of the Act of 1958.

6. According to the petitioners, their father was a tenant of the property under question and after his death, the petitioners will inherit the tenancy. As against, the respondents came up with a case that since the respondent is a religious trust, the legal heir of the tenant, if any, shall be not entitled to inherit the tenancy right under Section 54.

7. The Supreme Court in the case of ***Shriram Mandir Sansthan*** has on this point held thus :

“7. Sections 6, 7 and 8 fall under Chapter II of the Tenancy Act of 1958 which deals with general provisions regarding tenancy. Under Section 46 which forms a part of Chapter III, there is a provision for transfer of ownership of all lands held by tenants, which they are entitled to purchase from their landlords under any of the provisions of this Chapter with effect from 1st of April, 1961. There are certain exceptions to these provisions which are set out in that section. Under Section 49A which was inserted in Chapter III by the Maharashtra Act 2 of 1962, notwithstanding anything contained in sections 41 or 46, on and from the 1st of April, 1963, the ownership of all lands held by a tenant being land which is not transferred to the tenant under section 46, or which is not purchased by him under section 41 or 50, shall

stand transferred to and vest in such tenant who shall, from the date aforesaid, be deemed to be the full owner of such land, if such land is cultivated by him personally, and on condition that the landlord has not given a notice of termination of tenancy as set out in that section and subject to the various other provisions of that section. These sections which form a part of Chapter III do not apply to tenancies of lands covered by Section 129.

.....

14. Section 129 clearly seeks to protect certain lands from the provisions of the tenancy Act of 1958. The section thus protects lands held or leased by a local authority or a university, lands which are the property of a trust for an educational purpose, hospital, panjarpole, Gaushala or an institution for public religious worship, provided the entire income of such land is appropriate for the purposes of such trust. It also protects lands assigned or donated by any person before the commencement of the said Act for the purpose of rendering services useful to the community, namely, maintenance of water works, lighting or filling of water troughs for cattle. It also protects any land taken under management by a civil, revenue or criminal court as set out therein. There is a further safeguard ensuring that the income from such lands is appropriated for the purposes of a trust covered by Section 129(b). The explanation provides for the grant of a certificate by the collector after holding an inquiry. Thus, the clear intention of Section 129 is to protect certain lands from tenancy legislation where the lands or income from such lands is being utilised for public purposes set out there. In this context, if the tenancy of such lands are not made heritable, this would clearly be in furtherance of the purpose of exempting such lands under Section 129.”

The Supreme Court has thus in clear terms held that the intention of Section 129 is to protect certain lands from tenancy legislation which

are covered by the said Section. The provisions of Chapter III of the Act of 1958 do not apply to tenancies of lands covered by Section 129.

8. Further the coordinate Bench of this Court in the case of ***Vidarbha Maharogi Seva Mandal, Tapovan, Amravati Vs. Member, Maharashtra Revenue Tribunal, Nagpur and ors. [2016(4) Mh.L.J. 645]*** has considered the effect of Section 129(b) of the Act of 1958 in following terms.

“42. Though the tenant satisfies the requirement of sub-section (1) of Section 46 or sub-section (1) of Section 49-A under Chapter III of the said Act, the exemption under Section 129(b) of the said Act can be claimed only after coming into force of the said Act. Once it is held that the Trust is entitled to exemption under Section 129(b) of the said Act, the provisions of Chapter III therein shall cease to apply to such land with effect from the tillers' day, i.e. 1-4-1961, and [neither the legal heirs of the tenant shall be entitled to inherit the tenancy rights under Section 54, nor shall be entitled to protection under Section 120 of the said Act]. The Question No.(1) is, therefore, answered accordingly.”

9. Thus, the Court held that once the trust is found entitled for exemption under Section 129(b) of the Act of 1958, the provisions of Chapter III therein shall cease to apply to the trust land and the legal heirs of the tenant shall be not entitled to inherit tenancy rights under Section 54.

10. In the present case, the respondent – trust is found to be entitled to exemption under Section 129(b). Certificate to that effect has been issued by the SDO, Buldana vide order dated 5-1-2017.

11. Learned counsel for the petitioners submits that the said order is challenged and is pending consideration before the Tribunal. To my mind, merely because, the said order is under challenge is not the ground to quash and set aside the impugned order. The fact remains that when the impugned order was passed, there existed certificate under Section 129(b) of the Act of 1958, meaning thereby that the trust is entitled for exemption under Section 129(b) of the Act of 1958. Consequently, the petitioners claim of inheritance of tenancy is not maintainable. The order passed by the Maharashtra Revenue Tribunal is just and proper. No interference is called for in the writ jurisdiction. The petition is dismissed.

12. Rule is discharged.

(Anil L. Pansare, J.)