



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

Writ Petition No.188/2025

Smt. Sulochana and others V Madhukar and another

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

Court's or Judge's orders

Mr. P.A. Markandeywar, Advocate for petitioners.
Mr. S.M. Pande, Advocate for respondents.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 18-08-2025.

Heard Mr. Markandeywar, learned Counsel for the petitioners and Mr. Pande, learned Advocate for the respondents.

2. The petitioners have challenged order dated 29-08-2024 passed by the trial Court, rejecting the application to refer the issue of legality and validity of a certificate under Section 43 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short, 'the Act') to the competent authority.

3. Learned Counsel for the petitioners submits that during the pendency of the civil suit in between the parties, bearing Special Civil Suit No.1230/2011, when a certificate dated 10-09-2012 was produced on record, the petitioners who are the defendants in the said civil suit filed an application under Section 124 r/w Section 125 of the Act, by which it was prayed that the issue about validity and legality of a certificate dated 10-09-2012 issued by the Tahsildar under Section 43 of the Act be referred to the competent authority.

4. The said issue is reproduced below :-

“4. Whether plaintiffs prove that purchase/sell certificate dated 10.09.2012 issued by Tahsildar under Section 43 of the B.T. Act is void-ab-initio and nullity being issued without following due procedure of law especially when there was no proceeding for transfer of ownership ?”

5. On this application, the plaintiffs have given no objection. Learned trial Court has passed order dated 29-08-2024 on this application and after giving references to various citations it is observed that even though issue no.4 (referred above) has been framed in the suit the Court does not have jurisdiction to decide that issue. It is also observed that since the parties had knowledge about the certificate from the year 2013 and they had opportunity to challenge the said certificate and since the same was not subjected to challenge, therefore the Court concluded that the issue in respect of that certificate does not arise.

6. Having regard to the contentions canvassed and the categorical observations of the trial Court that although the issue no.4 is framed the civil Court is not having jurisdiction to decide the issue and by considering the no objection given by the plaintiff to the said application in my opinion, the reasons recorded by the trial Court to reject the application are not appealing. In view of the controversy involved about legality of the certificate dated 10-09-2012, it will be necessary to ascertain whether any proceedings were in fact conducted before the Tahsildar, Nagpur,

which had issued the certificate dated 10-09-2012 under Section 43 of the Act and as such decision on that issue by the competent authority is necessary.

7. In view of this, the impugned order is unsustainable in law and it is liable to be quashed and set aside. Order dated 29-08-2024 passed by the trial Court on an application at Exhibit-82 in Special Civil Suit No.1230/2011 is quashed and set aside. The application filed by the petitioners/defendants at Exhibit-82 is allowed.

8. Writ Petition is accordingly disposed of.

(Prafulla S. Khubalkar, J.)