



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

WRIT PETITION NO. 1675 OF 2019

(Rukhmini Pandurang Sansthan, Gandhi Chowk, Yavatmal, through its Trustees Vs. Bhaurao Narayanrao Sonnar)

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

Court's or Judge's orders.

Mr. S.S. Bhalerao, Counsel for the petitioner.
Mr. M.M. Agnihotri, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
APRIL 21, 2025

Challenge is to order dated 12/7/2018 passed below Exhibits 72 and 89 by the 8th Joint Civil Judge Junior Division, Yavatmal, in Regular Civil Suit No. 4/2010, thereby rejecting the application Exh. 89 filed by the petitioner – defendant to strike-off the issues framed by the trial Court as regards tenancy rights of the respondent – plaintiff, and allowing Exh. 72 filed by the respondent to refer the dispute to the Tenancy Court in terms of Section 125 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 (for short “Act of 1958”).

2] Having heard both sides and having gone through the record, it appears that the trial Court had framed three additional issues on 13/1/2017, which read as under :

“1) Whether the plaintiff proves that, his grandfather became owner of the suit property as per Bombay Tenancy Act on 01/04/1961 and 01/04/1963 ?

2) Whether the plaintiff proves that, exemption certificate obtained by defendant as per section 129 (b) of the Bombay Tenancy Act is null and void not binding on the plaintiff ?

3) Whether the plaintiff proves that, he is entitled for declaration as sought ?”

3] The petitioner – defendant filed an application to delete additional issue nos. 1 and 2 on the ground that exemption certificate, issued under Section 129(b) of the Act of 1958, has attained finality and, therefore, the said issues will not arise.

4] The trial Court noted that the respondent – plaintiff has come up with a case that his grandfather (original claimant)/tenant was not noticed by the authority before issuing exemption certificate under Section 129(b) of the Act of 1958 and, therefore, the same is not binding on the respondent.

5] On this point, the learned Counsel for the respondent submits that there is nothing on record to show that notice was ever issued to the respondent's predecessor, as required under law, before issuing exemption certificate to the petitioner – Trust under Section 129(b) of the Act of 1958.

6] On this point, the trial Court referred to the judgment passed by a Division Bench of this Court in the case of *Keraba Dattu Borachate and others Vs. Shri Sheshashai And Vishnu Trust [1990(2) Mh.L.J. 1183]*, wherein the Court held that it is mandatory for the Collector, while holding enquiry in the matter of issuance of exemption certificate, to give notice to the tenant in question.

7] At this stage, the learned Counsel for the petitioner submits that the other tenants had questioned issuance of exemption certificate under Section 129(b) of

the Act of 1958, but failed, and in that sense, the exemption certificate has attained finality.

8] I do not find substance in the aforesaid submission. The learned Counsel for the respondent is correct in contending that the exemption certificate, as regards the respondent, cannot be said to have attained finality, because the respondent was not even aware of issuance of such certificate, since notice was not served on the respondent's predecessor.

9] The respondent has come up with a specific case that he came to know of the exemption certificate when the petitioner – Trust put up the land in question for auction in December – 2009. Immediately thereafter, *viz.*, in January – 2010, the respondent moved the Civil Court with a suit for declaration and injunction.

10] Thus, there is serious dispute as regards validity of issuance of certificate. The trial Court, therefore, has rightly formulated issues under the Act of 1958, and further, was correct in referring the matter to the Tenancy Court to decide the said issues.

11] The order appears to be in consonance with the material placed before the trial Court as also the law applicable. In other words, there is no substance in the petition. The petition is accordingly dismissed. No costs.

(ANIL L. PANSARE, J.)

Sumit