
(2011) 06 BOM CK 0158
In the Bombay High Court
Case No : Writ Petition No. 28 of 2011

Mr. Mukund Venkatraman Divgikar	APPELLANT
Vs	
Sai Krupa Enterprises and Lalita Devendra Bakal	RESPONDENT

Date of Decision : 20-06-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 7 ALLMR 30

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : Sudin Usgaonkar, for the Appellant; S. Shet, for the Respondent

Final Decision : Allowed

Judgement

A.P. Lavande, J.—Heard Mr. Usgaonkar, learned Counsel for the Petitioner and Mr. Shet, learned Counsel for the Respondents.

2. Rule. By consent heard forthwith.

3. By this petition under Article 227 of the Constitution of India, the Petitioner challenges order dated 25/08/2010 passed by the Civil Judge, Senior Division, Panaji, in Special Civil Suit No. 272/1992/A by which application dated 29/9/2009 filed by the Defendants to refer the issue of tenancy of Defendant No. 2 to the Rent Controller has been allowed.

4. The Petitioner filed a suit for eviction against the Respondents in which the Defendants took a plea of tenancy. The tenancy is admittedly in respect of a building. By the impugned order, the learned Civil Judge, Senior Division has referred the issue of tenancy to the Rent Controller.

5. Mr. Usgaonkar, learned Counsel for the Petitioner placed reliance upon the judgment of this Court passed in Writ Petition No. 477/2010 dated 3/2/2011 and submitted that the issue involved in the present petition is squarely covered by the said judgment in favour of the Petitioner.

6. According to Mr. Usgaonkar, the Civil Court is entitled to decide the issue of tenancy in respect of a building and there is no provision in the Act to oust the same.

7. Mr. Shet, learned Counsel appearing for the Respondents fairly conceded that the impugned order is liable to be quashed and set aside.

8. In my opinion the issue involved in the matter is squarely covered by the judgment of this Court in Writ Petition No. 477/2010. In respect of a residential building the Civil Court has jurisdiction to decide the issue of tenancy if the issue arises in the suit. The learned Trial Court has misconstrued the ratio of the judgment in the the case of Smt. Madhumati Athcut Parab v./ Shri Rajaram v. Parab and Ors. which was delivered in respect of the Goa, Daman and Diu Agricultural Tenancy Act, 1961. In terms of the said Act, the jurisdiction to decide whether a person is a tenant or not vests exclusively in the Mamlatdar, which is not the position under the Rent Control Act as held by me in Writ Petition No. 477 of 2010 (M/s. Shine Enterprises v. Shri Darraram Naryan Marathe and Anr.).

9. This being the position, the impugned order is liable to be quashed and set aside and is hereby quashed and set aside.

10. Rule is made absolute . There shall be no order as to costs.