

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7021 OF 2013**

Shivram Ragho Gharat (deceased) through LRS ..Petitioners
Vs.
Trimbak Narayan Kharkar & Ors. ..Respondents

Mr. Sachin Punde for the Petitioners
Mr. Vinay Bhate for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 13th MARCH, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 19-1-2012 passed by the Learned Civil Judge Junior Division, Panvel, by which order the application Exhibit 60, came to be allowed and the issue to the following effect came to be framed, “Does the Plaintiff prove that one Vinayak Dhundiraj Biwalkar was the landlord and he was the tenant over the land mentioned in plaint in paragraph No.1”. The said reference made to the ALT has its basis in the order dated 14-3-2008 passed by a Learned Single Judge of this Court in Writ Petition No.7020 of 2006 by which order the Plaintiff was given liberty to file a fresh application for the issue being referred to the ALT. It is pursuant thereto that the instant application Exhibit 60 came to be filed.

2 It appears that though opportunity was given to the Defendants no reply was filed to the said application. However, it is the case of the Defendant Nos.1(1) to 1(3) as urged by Mr. Punde the Learned Counsel appearing for the

Petitioners that in fact there were proceedings under Section 32(G) which have been concluded in favour of the Defendant No.1 Shivram Ragho Gharat whose heirs are the Defendant Nos.1(1) to 1(3) and therefore there was no warrant to refer the dispute to the Agricultural Land Tribunal. Pertinently in the above Writ Petition an averment in paragraph 1 appears that the authorities in the said proceedings have already decided the tenancy proceedings and findings recorded in those proceedings have not challenge. There is no reference to any order passed under Section 32(G) or any certificate issued thereafter under Section 32(M). In the absence of such material being on record atleast in the above Petition, it is not possible to sustain the contention urged on behalf of the Petitioner that there was no necessity to make the reference. Hence there is not merit in the challenge to the impugned order. The Writ Petition is accordingly dismissed. However, the Petitioners can produce the order passed under Section 32(G) or the certificate issued under Section 32(M) if such order or certificate exists. If any such order or certificate before the ALT is produced, the ALT would consider the same and thereafter decide whether there is necessity to proceed with the adjudication of the issue which has been referred to it.

[R.M.SAVANT, J]