

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11193 OF 2013

Shri Kisan Jijaba Jadhav.	... Petitioner.
Versus	
Shri Adhikrao Balaku Watambale.	... Respondents.

Mr. K.P. Shah, advocate for petitioner.

Mr. Akshay M. Gosavi, advocate for respondent Nos. 1 to 5.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : OCTOBER 10, 2017**

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be the defendant No. 1 in RCS No. 211 of 2007 pending before the 5th Joint Civil Judge, J.D., Satara. The Petitioner herein had filed application under Order 47 Rule 1

seeking review of the order dated 24/11/2011, which was filed for referring the issue to the Competent Authority for determining the contention of the Petitioner under section 85 of the Bombay Tenancy and Agricultural Land Act, 1948. The said application was dismissed and therefore, the Petitioner had filed Review Petition. The learned Judge by an order dated 27/3/2013 was pleased to reject the application thereby confirming the order dated 24/11/2011. Hence, this petition.

4 The learned Counsel for the Petitioner submits that in fact, the issue of tenancy was framed as follows :

“Whether defendant No. 1 proves that he is in possession of the suit property since December, 1988 by 10 Anna 8 pai i.e. $\frac{2}{3}$ rd share ?”

This issue ought to have been referred to the competent authority for proper determination. The learned Counsel for the respondent vehemently submits that earlier there was a 32 G certificate in favour of the plaintiff and pursuant to the appeal, the said certificate was

cancelled. According to the learned Counsel, therefore, it would not be necessary to refer this issue to the competent authority.

5 As against this, the learned Counsel for the Petitioner submits that in fact, cancellation of the certificate between the plaintiff and the defendant No. 2 would not be binding upon the defendant No. 1 i.e. the present Petitioner and therefore, the issue has to be determined as fresh cause of action. Hence, it is incumbent upon the Civil Court to refer the matter to the competent authority under the Bombay Tenancy and Agricultural Lands Act, 1948.

6 It is a settled position in law that the issue of tenancy cannot be determined by the Civil Court and it has to be determined by the Competent Authority. In view of this, the petition needs to be allowed to the limited extent of referring the issue to the Competent Authority under the Bombay Tenancy and Agricultural Lands Act, 1948. The Competent Authority shall decide the said issue within 6 months from the date of reference.

7 With these observations, the order dated 22nd March, 2013 thereby confirming the order dated 24/11/2011 is hereby quashed and set aside. The learned Civil Court shall refer the issue to the Competent Authority.

8 It is made clear that this Court has not gone into the other aspects of the matter or merits of the matter besides referring the same to the Competent Authority for deciding the limited issue of tenancy.

9 The Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)