

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

WRIT PETITION NO. 7221 OF 2013

Shivram Shankar Patil
Since deceased through legal heirs
Santosh Shivram Patil & Ors.

...Petitioners

Versus

Shailesh Gumanchand Solanki &ors.

...Respondents

.....

Mr. Rahul More for the Petitioner.
Mr. A.A. Siddique I/b. A.A.Siddique and Associates for Respondent
Nos. 1 to 3.

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**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JUNE 27, 2018**

P.C. :

1. Rule. Rule made returnable forthwith. By consent of the parties, the Writ Petition is disposed of at the stage of admission.

2. This Petition invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India is filed wherein the order dated 20th February, 2013 passed by the learned Civil Judge, Senior Division, Alibaug below exhibit 65 in Special Civil Suit No. 55 of 2007 is challenged.

3. The respondents, who are the original plaintiffs, have filed a Special Civil Suit No. 55 of 2007 for specific performance of the contract and permanent injunction against the petitioners, who are the original defendants in the suit. The defendants have filed an application below exhibit 57 thereby challenging the status of the plaintiffs as an agriculturist. After considering both the sides, the learned Judge of the trial Court framed additional issue by order dated 15th November, 2010, which is as under :-

“Whether plaintiffs are agriculturist?”

The issue was referred to a Competent Authority working under Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the said Act”). A reference was made under Section 85-A of the said Act. An inquiry was made before the Additional Tehsildar, Agricultural Land Tribunal, Alibag, District-Raigad. By order dated 9th May 2012, the Additional Tehsildar has informed that the plaintiffs have adduced evidence in respect of the ownership of the agricultural lands, but the lands shown by the plaintiffs are from Tehasil-Shivganj- Rajasthan and, therefore, the

concern Tehsildar of Tehasil –Shivganj, State –Rajasthan is having jurisdiction over this issue. In the absence of territorial jurisdiction, this issue cannot be decided. Thereafter, the plaintiffs again moved a fresh application below exhibit 65 before the learned Civil Judge, Senior Division, Alibaug that, after considering the report dated 9th May, 2012 of Additional Tehsildar, Agricultural Land Tribunal, Alibag, District-Raigad, the plaintiffs are presumed to be agriculturist and the issue at serial no. 6-A has to be decided accordingly. It was contested by the defendants. By order dated 20th February 2013, the learned Judge of the trial Court allowed the application below exhibit 65 and declared that there is sufficient evidence to substantiate the status of the plaintiff is of an agriculturist. Hence, this Writ Petition.

4. The learned Counsel for the petitioners has submitted that the Civil Court cannot decide the status of a person whether he is agriculturist or not hence that is to be decided by the Competent Authority under the said Act. The learned Judge of the trial Court ought not to have allowed the said application and declared the status of the plaintiff as an agriculturist for which the Civil Court is not empowered. Hence, he prays that the order dated 20th

February, 2013 passed by the trial Court be set aside.

5. Per contra, the learned Counsel for the respondents has submitted that the plaintiffs have filed the suit for specific performance, which is pending since 2007. He has further submitted that the plaintiffs have tendered documentary evidence to show that they own the lands at Tehasil- Shivganj, State – Rajasthan and accordingly, they have produced a certificate. The learned Judge of the trial Court again considered the documents produced by the plaintiffs and answered the status of the plaintiffs are of agriculturist.

6. Perused the impugned order. Considered the submissions of the learned Counsel for both the sides and provisions of the said Act. In the light of earlier order dated 15th November, 2010 passed by the learned Judge of the trial Court, the plaintiffs to file an Appeal before the District Collector under Section 74 (1) (b) of the said Act and, therefore, the order dated 20th February, 2013 passed by the learned Judge of the trial Court is required to be set aside. I allow this Writ Petition. Rule made absolute. Hence, I pass the following order :

ORDER

- (i) The order dated 20th February, 2013 passed by the learned Civil Judge, Senior Division, Alibaug is hereby set aside.
- (ii) The respondents/ plaintiffs shall file an Appeal before the Collector, District- Raigad for declaration as an agriculturist on or before 16th July, 2018 and thereafter, the District Collector to decide the Appeal on or before 31st August, 2018.
- (iii) Parties to maintain *status-quo* till Appeal is decided.

7. A point of delay is not to be raised before the Collector, as the plaintiffs were prosecuting before the Civil Court.

(MRIDULA BHATKAR, J.)