

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6900 OF 2013

MAHENDRA SAMPATRAO GONDKAR
VERSUS
ASHIYAN DEVELOPERS PVT. LTD. CO.

Mr.A.D.Shinde, Advocate for the petitioner.

Mr.A.S.Patil-Barhate h/f Mr.S.S.Chapalgaonkar, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2019

PER COURT :

1. By an order dated 30/08/2013, this Court had stayed the pending Spl.Civil Suit No.134/2008.

2. I have considered the brief submissions of the learned Advocates for the respective sides. The issue as to whether the plaintiff is an agriculturist u/s 63 of the Bombay Tenancy and Agricultural Lands Act, has been framed by the Trial Court. The respondent/plaintiff moved an application Exh.73 seeking deletion of the said issue No.4, whereas the defendant/petitioner herein moved Exh.70, praying for referring issue No.4 to the competent authority u/s 85-A of the said Act. By the impugned order dated

22/08/2013, the Trial Court has rejected both the applications.

3. Reliance is placed upon the judgments of the Hon'ble Apex Court in the matters of Gundaji Satwaji Shinde Vs.Pamchandra Bhikaji Joshi [1979 AIR (SC) 653] and Saraswatibai Trimbak Gaikwad Vs. Damodhar D.Motiwale and others [2002(5) Bom.C.R182].

4. The learned Advocate for the respondent/original plaintiff submits on instructions that this petition can be allowed by consent and issue No.4 can be referred to the competent authority under the Maharashtra Tenancy and Agricultural Lands Act.

5. Considering the above, this petition is partly allowed. The impugned order dated 22/08/2018 is partly set aside to the extent of rejecting application Exh.70. The decision to the extent of rejecting application Exh.73 is sustained.

6. The Trial Court shall pass an order within 3 (three) weeks from today referring issue No.4 to the competent authority under the Maharashtra Tenancy and Agricultural Lands Act. The parties to the pending suit shall thereafter appear before the said authority. The

Trial Court would therefore stay Spl.C.S.No.134/2008 until the decision of the competent authority.

(Ravindra V.Ghuge, J.)