

Anand

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

WRIT PETITION NO. 8038 OF 2023

Prafulla Damodar Mhatre & ors.

.Petitioners

Vs.

The Tahsildar & ALT, Alibaug & ors.

.Respondents

Mr. Rakesh Misar & Ms. Rupali Jadhav, Advocate, for the
Petitioners

Ms. V. S. Nimbalkar, AGP, for the Respondent – State

CORAM : MADHAV J. JAMDAR, J.

DATE : 28.11.2023

P. C.

1. Heard Mr. Misar, learned counsel appearing for the
Petitioners and Ms. Nimbalkar, learned AGP appearing for the
Respondent – State.

2. The challenge in this Writ Petition is to the legality
and validity of the order dated 22.03.2022 passed by the
Tahsildar & ALT, Alibaug – Respondent No. 1. By the said order,
the Application dated 14.02.2020 filed by the present Petitioner
i. e. Respondent No. 10 has been rejected. The said Application
has been filed by *inter alia* contending that the said proceedings
are barred by the principles of res judicata.

3. In the said proceedings, the present Petitioners, who

are opponents in Tenancy Case No. 6 of 2016 filed under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “**Said Act**”) have filed an Application contending that the said proceedings are barred by the principles of res judicata. However, it appears that the learned Member (Administrative), Maharashtra Revenue Tribunal, Mumbai by order dated 12.06.2019 in Revision Nos. TNC/REV/RAG/98/18 & TNC/REV/RAG/99/18 remanded the matter to the Tahsildar. After remand of the case, the Application dated 14.02.2020 has been filed and same has been rejected.

4. The Supreme Court in the case of ***Sathyanath & anr. Vs. Sarojamani***, reported in ***2022(4) SCC 644***, particularly, in paragraph Nos. 31 & 32 has held as follows :-

“31. We find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those

circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2).

*32. The objective of the provisions of Order XLI Rules 24 and 25 is that if evidence is recorded by the learned Trial Court on all the issues, it would facilitate the first Appellate Court to decide the questions of fact even by reformulating the issues. It is only when the first Appellate Court finds that there is no evidence led by the parties, the first Appellate Court can call upon the parties to lead evidence on such additional issues, either before the Appellate Court or before the Trial Court. **All such provisions of law and the amendments are to ensure one objective i. e., early finality to the lis between the parties.**"*

(Emphasis added)

In view of the above legal position, no interference in the impugned order is warranted.

5. By keeping all the contentions open with respect to the said point of res-judicata to be decided at the final hearing of the said tenancy case, the Writ Petition is dismissed, however, with no order as to costs.

(MADHAV J. JAMDAR, J.)