

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.8972 OF 2022**

1. Shri. Rama Vithu Kurane
Since deceased through his LR.
Shri. Balaku Rama Kurane [deceased]
Smt. Tanubai Balaku Kurane [deceased]
by their LR's

1A. Shri. Aakaram Balaku Kurane
Age: 55 Years, Occu: Agriculture

1B. Shri. Shankar Balaku Kurane
Age: 58 Years, Occu: Agriculture

1B. Shri. Shankar Balaku Kurane
Since deceased through his LR's.

1B1. Smt. Gangubai Shankar Kurane
Age: 80 Years, Occu: Agriculture

1B2. Shri. Malgonda Shankar Kurane
Age: 61 Years, Occu: Agriculture

1B3. Shri. Ramdas Shankar Kurane
Age: 55 Years, Occu: Agriculture

1B4. Shri. Laxman Shankar Kurane
Age: 51 Years, Occu: Agriculture

Nos. 1B1 to 1B4 R/at: Huparenagar
Pattankadoli, Tal. Hatkanangale,
District: Kolhapur - 416202

1C. Shri. Kashinath Balaku Kurane
Age: 45 Years, Occu: Agriculture

1D. Shri. Vishwanath Balaku Kurane
Since deceased through his LR's

1D1. Smt. Shrimabai Vishwanath Kurane
Age: 45 Years, Occu: Agriculture

1D2. Shri. Sunil Vishwanath Kurane
Age: 30 Years, Occu: Agriculture

1D3. Shri. Bajrang Vishwanath Kurane

Age: 27 Years, Occu: Agriculture

All, R/at: Pattankodoli,
Tal: Hatkanangale, District: Kolhapur

- 1D4. Sou. Padmavati Shivaji Ranage
Age: Adult, Occu: Household
R/at: Pulachi Shirol
Tal: Hatkananale Dist: Kolhapur
- 1D5. Sou. Suman Kisan Debhoje
Age: Adult, Occu: Household
R/at: Herwad, Tal: Shirol, Dist: Kolhapur
- 1E. Sou. Laxmibai Eknath Kichade
Age: Adult, Occu: Household
R/at: Salgar Tal: Miraj, Dist: Sangli
- IF. Sou. Shalan Anna Khot
Since deceased through her heirs
- 1F1. Shri. Annappa Appa Khot
Age: Adult, Occu: Agri.
- 1F2. Shri. Raju Annappa Khot
Age: Adult, Occu: Agri.
- 1F3. Shri. Mohan Annappa Khot
Age: Adult, Occu: Agri.
- 1F4. Shri. Subhash Annappa Khot
Age: Adult, Occu: Agri.
All R/at: Borgaon
Tal: Chikkodi, Dist: Belgaon

..Petitioners

Versus

1. Shri. Anant Pandurang Sidhnerlikar
Since deceased through his LR
- 1A. Smt. Priyavanda Anant Sidhnerlikar
Age: Adult, Occu: Household
R/at: 60-B, Khandoba Apartment
Flat No. C-4, Near Kandoba Talim,
Shivaji Peth, Kolhapur-416012.
- IB. Sou. Mugdha Mahesh Desai
Age: Adult, Occu: Household

R/at: 60-B, Khandoba Apartment
Flat No. C-5, Near Kandoba Talim,
Shivaji Peth, Kolhapur-416012.

- 1C. Shri. Yashowardhan Anant Sidhnerlikar
Age: Adult, Occu: Service
R/at: Flat No. 503, Building No. 8
Highland Park, Kolshet Road,
Near EMI compound Dhokoli, Pune - 400607
2. Shri. Narayan Pandurang Sidhnerlikar
Since deceased through his LR's
- 2A. Smt. Shubhangi Narayan Sidhnerlikar
Age: 75 Years, Occupation: Retired
- 2B. Rajnish Narayan Sidhnerlikar
Age: 50 Years, Occupation: Service
Both R/at: 132/A, Hansmani Apartment,
Flat No.1, Dandekar Pool,
behind Bharat Petrol Pump, Pune 411030
- 2C. Medha Dinesh Jagtap
Age: 49 Years, Occupation: Housewife
R/at: 401, Rimpa Apartment, Modi Baug Area,
Ganesh Khind Road, Shivaji Nagar, Pune
Pune 411 030
3. The Member (Judicial)
Maharashtra Revenue Tribunal,
Camp, Kolhapur.

..Respondents

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Mr. Wasim Samlewale i/by Mr. Ajit Magdum, Advocate for Petitioners.
Mr. Sanjay D. Rayrikar, AGP for Respondent-State.
Mr. S. C. Mangle a/w Mr. P. H. Deshpande, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 30th SEPTEMBER, 2025.
PRONOUNCED ON : 07th OCTOBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties,
matter is taken up for final hearing at admission stage.

2. The petitioners impugn order dated 14.01.2022 passed by Member (Judicial), Maharashtra Revenue Tribunal, Camp Kolhapur, (for short 'MRT, Kolhapur'), thereby upsetting order dated 04.09.2001 passed by Sub Divisional Officer, Ichalkaranji in pending Appeal No.2/2000 and restoring order dated 31.03.1987 passed by Additional Tahsildar and A.L.T., Hatkanangale in pending Case No.32 G/Pattan-Kodoli-133.

3. Fact giving rise to present Writ Petition can be summarized as under:

The dispute pertains to land bearing Gut No.1161 situated at village Pattan Kodoli, Taluka Hatkanangale, District Kolhapur. The petitioners are tenants and respondent nos.1 and 2 are landlords. The land was given for cultivation to grandfather of petitioners namely Rama Kurane. The litigation started when landlords claimed that they were cultivating land in partnership with grandfather of petitioners and they were in joint possession as partner in cultivation. The petitioners claimed that they were tenants over entire suit land and become deemed purchasers on tiller's day. The dispute was carried by landlords in Regular Civil suit No.53/1962 before Civil Judge Junior Division, Ichalkaranji, in which issue of tenancy was framed and ultimately, it has been decided that petitioners' grandfather was tenant of entire suit land.

The tenants initiated proceeding under Section 32-G of Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short 'BT and AL Act, 1948') contending that they are deemed purchasers and claimed for fixation of purchase price. The respondents/landlords contended that 88-C proceeding is pending and sugarcane crop was grown in suit land. The proceeding was carried in Revision before MRT, Kolhapur. The Revision Application was allowed on 14.03.1980 and case was remitted back to Additional Tahsildar and A.L.T., Hatkanangale to hold limited enquiry on the point as to whether tenancy was for cultivating sugarcane crop or otherwise. The Additional Tahsildar and A.L.T., Hatkanangale passed order dated 31.03.1987 holding that provisions of Section 43-A of BT and AL Act, 1948 would attract in facts of present case and, therefore, enquiry under Section 32-G of BT and AL Act, 1948 was closed.

The petitioners/tenants filed Tenancy Appeal No.46/1987 before Sub Divisional Officer, Karveer, Sub-Division Kolhapur, who remanded matter to Trial Court for enabling tenants to produce original lease admitted by them, so as to verify whether provision of Section 43 of BT and AL Act, 1948 is applicable or otherwise. The tenants as well as landlords challenged order dated 27.03.1991 passed by Sub Divisional Officer by filing two different Revision Applications before MRT, Kolhapur, who was pleased to set aside order of Sub Divisional Officer and remitted matter for fresh decision. The Sub Divisional Officer took

fresh decision after remand and allowed Tenancy Appeal No.2/2002, thereby setting aside order dated 31.03.1987 passed by Additional Tahsildar and A.L.T. Hatkanangale in Tenancy Case No.32 G/Pattan-Kodoli-133. The landlords filed Revision Application No.KP/130/B/2001 before MRT, Kolhapur assailing order of Sub Divisional Officer. The Member, MRT, Kolhapur allowed Revision Application, thereby setting aside order dated 04.09.2001 passed by Sub Divisional Officer and restored order dated 31.03.1987 passed by Additional Tahsildar and A.L.T., Hatkanangale.

4. The learned Advocates appearing for both sides conceded to position that only issue that requires consideration in this Writ Petition is as to applicability of Section 43-A of BT and AL Act, 1948 and validity of findings recorded by Additional Tahsildar and A.L.T. Hatkanangale under his order dated 31.03.1987, which is confirmed by MRT, Kolhapur under impugned order.

5. Mr. Wasim Samlewale, learned Advocate appearing for petitioners submits that witness examined on behalf of landlords has admitted that there was no specific mention in Kabulayat (lease agreement) that land is leased out for sugarcane cultivation. The record of rights depicts that land was not beneficiary of any permanent irrigation facility. The area to the extent of one acre was only utilized for sugarcane cultivation out of large portion. In this background, Section 43-A of BT and AL Act, 1948 would not attract. The landlords

could not establish that Kabulayat was exclusively for cultivation of sugarcane. In absence of written lease on record indicating intended use of land for sugarcane cultivating, MRT, Kolhapur could not have drawn inference in favour of landlords. The occasional sugarcane cultivation on partial land cannot be accepted as proof of lease for sugarcane cultivation. The 7/12 extract indicates major portion of land was under paddy, jawar and chilly, which are seasonal crops. The Sub Divisional Officer has rightly appreciated aforesaid facts and recorded findings that Section 43-A of BT and AL Act, 1948 does not apply in facts of present case.

6. Mr. Mangle, learned Advocate appearing for respondents submits that Balku Kurane recorded his statement before MRT, Kolhapur admitting that there was written lease agreement, which has been kept in possession of his Advocate and he shall produce same on next date of hearing, however, he failed to produce same. Therefore, Additional Tahsildar and A.L.T., Hatkanangale as well as MRT, Kolhapur drawn adverse inference against tenants. He would further submit that there was adequate irrigation facility by well in land. He would submit that to attract Section 43-A of BT and AL Act, 1948, nature of lease is material. If lease is for sugarcane cultivation and tenants' actual usage of land is for mixed cultivation, Section 43-A of BT and AL Act, 1948 would attract. The evidence of Mr. Narayan Kulkarni, who was surety

on previous Kabulayats during period from 1946-47 to 1950-51 states that those Kabulayats were primarily for cultivation of sugarcane.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that Section 43-A exempts application of provision under BT and AL Act, 1948 to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivations of sugarcane or fruits or flowers.

Sub-clause (b) of clause (1) of Section 43-A states as under:

“leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;”

8. This Court in case of ***Usaf Usman Mujawar Vs. Shrimant Yeshwantrao Appasaheb Gahtage***¹ had occasion to consider application of Section 43-A, wherein following observations are made:

“It is indeed true that on language of clause (b), it has to be established that lease granted was for cultivation of sugarcane or for growing fruits and flowers etc. But it nowhere specifically mentions that purpose of lease must be specifically mentioned either in instrument of lease or that lease must be for cultivation of sugarcane etc. in entire field. On the other hand, in our opinion, what is required to be established on material evidence is whether there was a lease or whether lease was for cultivation of sugarcane or growing of fruits or flowers. In each case, it would depend on evidence, whether lease has been for cultivation of sugarcane or growing of fruits or flowers etc., and that would depend on the nature of cultivation. We are informed that cultivation of sugarcane can never be in entire field, but cultivation of sugarcane is always carried on by rotation in parts of the field. It would, therefore, depend on the facts of each case, and it would be for the Courts of fact to reach a conclusion on evidence available to it.”

¹ 1964 Mh.L.J. 190.

9. It is further observed in reference to decision in case of ***Vinayak Gopal Vs. Laxman Kashinath***² that '*normally purpose of lease can be determined from terms of document itself. If instrument of tenancy specifically and clearly declares the purpose of lease, there can be no difficulty in deciding whether lease falls under Section 6(1) or not. If instrument of lease is silent as to purpose, then it would be permissible to allow evidence aliunde in regard to the said purpose and purpose can be determined in the light of such evidence.*'

10. In present case, it is important to note that there was written lease/Kabulayat between parties. The landlords had produced certified copy of Balku's deposition recorded on 15.09.1962, wherein he has admitted before MRT, Kolhapur that original Kabulayat was with his Advocate and that he would produce it next time. However, Kabulayat was never produced. Apparently, no reason is given for non-production of Kabulayat. In this circumstance, there is good reason to draw adverse inference against tenants that terms of Kabulayat were adverse to their interest. Secondly, witness of landlords namely Mr. Narayan Kulkarni, who was surety to previous Kabulayat and attesting witness has placed on record previous Kabulayats. In those Kabulayats, it was agreed that Rs.1100/- in cash, 1/8 share of crop, one Andan and sundry gur produced would be given to landlords towards rent. The Additional Tahsildar and A.L.T., Hatkanangale on appreciation of facts concluded that lease agreement was primarily for sugarcane

cultivation. The aforesaid finding of facts are affirmed by MRT, Kolhapur in impugned order. The Member, MRT, Kolhapur has also drawn adverse inference for non-production of original lease agreement.

11. The learned Advocate appearing for petitioners submits that landlords' witness Mr. Narayan Kulkarni had admitted that there is no mention as to cultivation of sugarcane in lease agreement/Kabulayat and, therefore, attending circumstance would be relevant to decide nature of lease. In support of his contentions he relies upon observations of Single Judge of this Court in case of ***Sambhajirao Hanumantrao Sawant-Bhosale and Ors. Vs. Narsu Babaji Patil and Ors.***³, wherein in paragraph no.10 of judgment this Court observed that "*as cultivation of sugarcane in half an acre or one to two acres out of total area of about 14 acres of the suit land would not prove that it was given on lease for sugarcane cultivation purpose*".

12. However, aforesaid observations would not assist petitioners for simple reason that in that case it is nobody's case that there was written Kabulayat or lease agreement and nature of lease was to be ascertained on the basis of circumstances on record. Similarly, learned Advocate appearing for petitioners relies upon observations of Supreme Court in case of ***Sakharam Shripati Jadhav (Deceased) through his LRs and Others Vs. Chandrakant Alias Madhav Laxman Agnihotri and***

³ (2006) 4 AIR Bom R. 737.

Others⁴, wherein it is observed that “*if there are areas which were leased out separately and independently of leasing out for sugarcane and demarcated separately, then in respect of same no exemption can be given in derogation of rights of the Agricultural tenants in those leased areas. It is further observed that “in a lease for composite purposes, if there was any area where sugarcane was only cultivated, that area would be exempt from the ambit of the provisions of Act and would be exempted. If, however, along with cultivation of sugarcane, other crops were cultivated in area, such an area would not be entitled to exemption”.*

13. Even applying aforesaid observations in facts of present case, in absence of production of Kabulayat/lease agreement by tenants, merely on the basis of area of sugarcane cultivation, it would be difficult to draw definite conclusion. Therefore, opinion expressed by MRT, Kolhapur drawing adverse inference coupled with material on record that lease was for cultivation of sugarcane will have to be maintained. If tenants have intentionally withhold material piece of evidence in their possession without tendering any explanation for non-production, adverse inference drawn by MRT, Kolhapur against them coupled with other circumstances to arrive at finding of facts that land was leased for raising sugarcane crop pre-dominantly cannot be faulted. The MRT, Kolhapur has rightly interfered in decision of Sub

⁴ (1987) 1 SCC 486.

Divisional Officer, who had reversed well reasoned judgment of Additional Tahsildar and A.L.T., Hatkananagle on erroneous count.

14. In that view of matter, this Court do not find any reason to interfere in order passed by MRT, Kolhapur in exercise of Writ jurisdiction under Article 227 of Constitution of India. In result, Writ Petition stands rejected.

15. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE