



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5525 OF 2016

1. Chandbi Marda Majar Kha Momin
Died Through LR's

1-A Shaikh Muzaffar Shaikh Majhar,
Age : 58 years, Occu.: Agri.,
R/o : 1436 Mnagrul Naka, VTC Raver,
Tq. Raver District Jalgaon.

1-B Shaikh Mukhtar Shaikh Mazhar Momin
Age : 48 years, Occu.: Agri.,
R/o : Manyar Wada Tq. Yawal Dist. Jalgaon.

1-C SaberaBi Shaikh Karim
Age : 60 years, Occu.: Agri.,
R/o : Manyar Wada Faizpur (Rural) Tq. Yawal Dist. Jalgaon.

1-D Naseem Bi w/o. Jamil Ahmed,
Age : 32 years, Occu.: Household,
R/o : Ward No.2, Nehru Nagar, Shikarpura,
Burhanpur, Tq. and Dist. Burhanpura (Madhya Pradesh).

1-E Shabanabi Mazhar Shaikh
Age : 50 years, Occu.: Household,
R/o : 8421, Sanagat Mandir, Faizpur Tq. and Dist. Jalgaon.

2. Sugrabi Marda Rasul Momin,
Deceased Through L.R's.

2-a) Shaikh Rajjak Shaikh Rasul Momin,
Age : Major, Occ: Agriculture,

2-b) Shaikh Salim Shaikh Rasul Momin
Age : Major, Occ: Agriculture,
Died Through LR's

2-b-1) Haseena bi Shaikh Salim Momin
Age : 58 years, Occu.: Agri.,

R/o : Masjid Ali Mohallah, Dharangaon,
Tq. Dharangaon, Dist. Jalgaon.

2-b-2) Shaikh Zuber Abdul Salim
Age : 28 years, Occu.: Agri.,
R/o : Masjid Ali Mohallah, Dharangaon,
Tq. Dharangaon, Dist. Jalgaon.

2-c) Sufiyabi d/o Shaikh Rasul Momin,
Age : Major, Occ: Household,

2-d) Saberabi Marda Abdul Karim Momin,
Age : Major, Occ: Agriculture,

2-e) Nasarinbi Karim Momin,
Age : Major, Occ: Household,
Respondent Nos. 2a to 2e
R/o Near Mashidali, Masjid, Dharangaon,
Tq. Dharangaon, Dist. Jalgaon.

Petitioners

Versus

Nimba Arjun Mali (Mahajan),
Age : 58 years, Occu. Agriculture,
R/o Nagduli, Tq. Erandoli,
Dist. Jalgaon

Respondent

Advocate for Petitioners : Mr. S. S. Kazi a/w Mr. F.F. Shirpurkar
and Mr. Syed Quadri

Advocate for Respondent No.1 : Mr. Girish S. Rane

CORAM : ROHIT W. JOSHI, J.

RESERVED ON : 12th AUGUST, 2026

PRONOUNCED ON : 28th SEPTEMBER, 2026

JUDGMENT :

1. The present petition is filed to challenge the judgment

and order dated 04.08.2014 passed by the learned Designated Member, Maharashtra Revenue Tribunal, Aurangabad, in Revision Case No. 39/B/2011/JGN. By the said judgment, the learned Tribunal has quashed and set aside the judgment and order dated 31.05.2011 passed by the Sub-Divisional Officer, Amalner, in Tenancy Appeal No. 5/2011, and confirmed the order dated 12.09.2008 passed by the Tahsildar, Erandol, District Jalgaon, in Tenancy Case No. 22/2001. By the order dated 12.09.2008, the Tahsildar has fixed the purchase price of the suit property at Rs.1,862/- in exercise of powers under Sections 32(G) of the Maharashtra Tenancy and Agricultural Lands Act (for short, "MTAL Act"). The suit property comprises of agricultural land admeasuring 2.71 HR, bearing Gut No. 506 (Survey No. 133), situated at Village Nagduli, Tahsil Erandol, District Jalgaon.

2. The present Respondent had filed Case No. 22/2001 inter alia seeking fixation of purchase price of the suit property under Section 32(G) of the MTAL Act. The Tahsildar, Erandol, dismissed the said application for want of prosecution vide order dated 07.08.2003.

3. Being aggrieved by the order dated 07.08.2003 dismissing his application under Section 32(G) in default, the Respondent preferred an appeal before the Sub-Divisional Officer, which came to be registered as Tenancy Appeal No.

6/2003. The said appeal was allowed vide order dated 01.07.2004, whereby the Sub-Divisional Officer quashed and set aside the order and remitted the matter back to the Tahsildar for passing appropriate orders under Section 32(G) of the MTAL Act.

4. The present Petitioners had also filed an application, registered as Case No. 21/2002, for deletion of the respondent's name as ordinary tenant from the revenue records. That application was also dismissed on merits by a separate order dated 07.08.2003. The Petitioners however did not challenge the said order dated 07.08.2003 whereby their application for deletion of name of Respondent as ordinary tenant was rejected by the Tahsildar.

5. After the matter was remanded by the Sub-Divisional Officer, the Tahsildar allowed the application filed by the Respondent fixing purchase price at Rs.1862/- The Petitioners challenged the said order by filing Tenancy Appeal No.5/2011 before the Sub-Divisional Officer. The Sub-Divisional Officer allowed the appeal by order dated 31.05.2011. The Sub-Divisional Officer recorded that the suit property belongs to a public trust registered under the Maharashtra Public Trusts Act, 1950, namely "Peer Saheb, Manager Budhan Jamal Momin." It is held that, since the property belongs to a registered public trust, requisite permission under Section 36

of the Maharashtra Public Trusts Act would be necessary for alienation of the suit property. Apart from this, it is held that the suit property is Devsthan Inam Class-III land and, therefore, the Respondent could not seek fixation of purchase price in view of Section 88B of the MTAL Act. The Sub-Divisional Officer held that Sections 32 to 32R of the MTAL Act are not applicable to the suit property. Apart from this, the Sub-Divisional Officer also held that the Respondent had failed to establish how he acquired the status of a tenant, since he did not offer any clarification as to the manner in which the land was legally cultivated by him prior to the tiller's day. It is observed that there is no reference to any agreement or payment of rent by the Respondent or his predecessor to the Petitioners. In the light of these reasons, the Sub-Divisional Officer allowed the appeal preferred by the Petitioners and quashed and set aside the order passed by the Tahsildar.

6. Being aggrieved by the aforesaid order passed by the Sub-Divisional Officer, the Respondent preferred Revision before the Maharashtra Revenue Tribunal. The said revision came to be allowed by the learned Maharashtra Revenue Tribunal. The learned Maharashtra Revenue Tribunal has recorded that application seeking exemption from applicability of the provisions of the MTAL Act filed by the Petitioners was rejected earlier vide order dated 09.03.1968. The learned Maharashtra Revenue Tribunal held that the trust was

registered under the Maharashtra Public Trusts Act, 1950, after the tiller's day, and therefore the trust could not claim exemption from the applicability of the provisions of the MTAL Act. In view of the aforesaid reasons the learned Maharashtra Revenue Tribunal quashed and set aside the appellate order passed by the Sub-Divisional Officer and confirmed the order passed by the Tahsildar fixing purchase price for the suit property.

7. It will be pertinent to state that, in the operative order, the learned Maharashtra Revenue Tribunal has erroneously confirmed the order dated 07.08.2003 instead of the order dated 12.09.2008 passed by the Tahsildar. Vide order dated 07.08.2003, the application for fixation of purchase price was dismissed in default. That order was set aside by the Sub-Divisional Officer in an earlier appeal. The said order was not questioned by the Petitioners, and the matter was consequently remanded before the Tenancy Tahsildar by the Sub-Divisional Officer, whereupon the application came to be allowed by order dated 12.09.2008. The appellate order quashed by the Maharashtra Revenue Tribunal is the order whereby the Tahsildar's order dated 12.09.2008 was set aside. Thus, it is evident that the Maharashtra Revenue Tribunal has, in effect, confirmed the order dated 12.09.2008 passed by the Tahsildar in Tenancy Case No. 22/2001, and not the earlier order dated 07.08.2003

whereby the application was dismissed for want of prosecution.

8. Mr. Kazi the learned Advocate for the petitioners vehemently argues that the land in question is allotted to the trust as Class-III Devsthan. The learned Advocate contends that in view of Section 88CA, such lands are exempted from the applicability of the provisions of the Tenancy Act. He also states that provisions regarding purchase of land under MTAL Act will not be applicable in the case at hand in view of Section 88B of the said Act since the land is owned by a registered public trust for religious purpose. The learned Advocate further argues that, although the Respondent claims to be a tenant, particulars with respect to the tenancy are neither pleaded nor proved. The learned Advocate vehemently contends that no documentary evidence is produced on record regarding any tenancy agreement. Likewise, he submits that there is no evidence of payment of rent. He further states that even the quantum of the alleged rent has not been mentioned by the Respondent. The learned Advocate argues that unless all the terms and conditions of the tenancy are properly established, a person cannot claim to be a tenant of agricultural land merely on the basis of possession. He places reliance on judgment of the Hon'ble Supreme Court in **Hanmanta Daulappa Nimbal (since deceased) by LRs. v. Babasaheb Dajisaheb Londhe, (1995) 6 SCC 58** and decision

of this Court in the case of **Ramdas Gopal Patel Vs. State of Maharashtra and Others, 2023 (3) MhLJ 705**. The learned Advocate would further argue that the land in question is dedicated for a religious purpose as per Muslim Law and as such it is a Waqf property. Mr. Kazi learned Advocate has placed reliance judgment of this Court in the **Arjun Bhimaji Lakre (deceased) through LRs. and Anr. vs. Hindustani Momin Banarasi Jaatichhe Panch Mandali and Anr. reported in 2014 (3) MhLJ 870** to contend that the proceedings ought to have been instituted before the Waqf Tribunal and also for the proposition that tenancy of agricultural lands belonging to a Waqf is not heritable. The contention of the learned Advocate is that, in the absence of the Waqf Board as a necessary party to the proceedings, the same could not have been allowed. Mr. Kazi further contends that, the suit property was governed by the erstwhile Waqf Act, 1954, which contained pari materia provisions with Wakf Act, 1995. The learned Advocate further contends that Petitioner No. 2 had expired on 17.07.2002 while the proceedings were pending before the Tahsildar, and as such, the order passed by the Tahsildar is a nullity, having been passed against a dead person. The learned Advocate also submits that the order passed by the Tahsildar is liable to be quashed and set aside on the ground that, although Petitioner No. 2 had expired long before the decision of the said application, order passed by the Tahsildar mentioning that statement of Petitioner No. 2 was recorded in the

proceedings before him.

9. Per contra Mr. Girish Rane the learned Advocate for the Respondent supports the order passed by the learned Maharashtra Revenue Tribunal. The contention of the learned Advocate is that applicability of MTAL Act, cannot be disputed since in the earlier round of litigation, the Sub-Divisional Officer has passed the order of remand relegating the proceeding to the Tahsildar for fixation of purchase price and this remand order was not challenged by the Petitioners. He contends that the remand was not for determining the status of the Respondent as a tenant or whether the Respondent was entitled to purchase the suit property under the provisions of the Tenancy Act but for a limited purpose of fixation of purchase price. The learned Advocate also contends that the application filed by the Petitioners seeking exemption from applicability of provisions of the MTAL Act was rejected earlier vide order dated 09.03.1968. He contends that, since the trust was registered after tiller's day and since the respondent's predecessor held the suit property as a tenant on the tiller's day, he had become owner thereof on the tiller's day itself. The learned Advocate therefore submits that subsequent registration of the trust cannot divest the predecessor of the Respondent of his ownership over the suit property. He argues that in view of Section 4 of the MTAL Act proof of agreement of tenancy, terms and conditions thereof

and/or payment of rent is not necessary and that even proof of lawful cultivation is sufficient to hold that the person cultivating land owned by another person is a tenant unless the case falls under any exception provided under Section 4. The learned Advocate also contends that the provisions of MTAL Act are applicable to Inam Class-III lands. Mr. Rane contends that the provisions of Waqf Act, 1954 were not made applicable to Jalgaon District and prior to commencement of the Waqf Act 1995 the respondent's predecessor had become owner of the suit property by virtue of the provision of MTAL Act.

10. Mr. Rane has placed reliance on judgment of the Hon'ble Supreme Court in the case of **Janaradhan Dagdu Khomane and Anr. Vs. Eknath Bhiku Yadav and Ors. 2019 (10) SCC 395** to contend that when a trust is registered as a public trust after the tiller's day, the ownership rights vested in a tenant as on the tiller's day cannot be divested by subsequent registration of the trust. Reliance is also placed on judgments of this Court in the cases of **Laxminarayan Temple Kothure through his Trustees Vs. Laxman Mahadu Chandore deceased by his Legal Representatives and Others, AIR 1970 BOM 23, Chhatrapati Devasthan Trust Vs. Parisa Appa Bhoksa and Others, AIR 1979 Bom 218** and **Shri Nivruttinath Yatra Khajur Donation Trust, Dist. Nashik Vs. Sub-Divisional Officer, Dist. Dahanu and Ors. reported in 2005 (1) ALL MR 341**. In the

judgments of this Court referred to above, it is held that, and therefore when landlord-Trust is registered under the Maharashtra Public Trusts Act after the tiller's day, a tenant acquires ownership rights over the agricultural lands hold by such on the tiller's day, and therefore the landlord-Trust is not entitled to obtain a certificate of exemption under Section 88B of the MTAL Act.

11. I have heard the rival submissions as aforesaid. I have also perused the impugned orders with the able assistance of the leaned Advocates. The learned Advocates have also taken me through the relevant documents on the record while making elaborate submissions.

12. It is pertinent to note that the application filed by the Petitioners for deletion of the Respondent's name from the cultivating column was rejected by the Tahsildar, and the Petitioners did not choose to challenge the said order further. Likewise, in the earlier round of litigation, the Sub-Divisional Officer had remanded the proceedings for determination of purchase price, and the Petitioner did not challenge the said remand order. Likewise application filed by the Trust for exemption from applicable of MTAL Act was also rejected on 09.03.1968 itself. In view of the above, contention raised by the Petitioner that the Respondent cannot claim tenancy rights over the suit property and is consequently not entitled

to a purchase certificate is liable to be rejected. However the contentions raised are also dealt with on merits.

13. At the outset, it will be appropriate to deal with the preliminary objection of Mr. Kazi that the order passed by the Tahsildar is against a dead person. The said objection is recorded only to be rejected. Perusal of the order passed by the Tahsildar will demonstrate that the name of Petitioner No.2 is typed in the title clause of the order and below that the name of Petitioner No.2(a) is mentioned as her legal representative. It will also be relevant to state that after the name of Petitioner No.2(a), the words "and Other four" are also mentioned. The name of deceased Petitioner No.2/Sugrabi is typed. However, upon realizing that she had expired and was represented by her legal representatives, her name is put in brackets and below that name of Petitioner No.2(a) and the words "four others" are written by hand. Record of the present petition also indicates that deceased Petitioner No.2 is survived by five legal representatives viz. Petitioner Nos. 2(a) to 2(e). Thus the legal representatives of deceased Petitioner No.2 were brought on record in the proceedings before the Tahsildar. It must also be stated that in point no.4 of the arguments advanced by the Petitioners in Appeal before the Sub-Divisional Officer a contention is raised that although the Petitioner No.2 had expired and her legal representatives were also brought on record, the order

records that statement of deceased Petitioner No.2 was recorded by the Tahsildar. This contention raised in Appeal also indicates that legal representatives of deceased Petitioner No.2 were brought on record before the Tahsildar. The contention of Mr. Kazi that order passed by the Tahsildar is against a dead person is thus contrary to the record and cannot be accepted.

14. It must also be stated that in the order passed by the Tahsildar it is mentioned that statements of Petitioner Nos. 1 and 2 were recorded in the office of the Tahsildar on 13.07.2005. Mr. Kazi contends that although Petitioner No.2 had expired on 17.07.2002, the order indicates that her statement is recorded by the Tahsildar on 13.07.2005. He therefore contends that the order is obtained from the Tahsildar by practicing fraud. The said contention although attractive at the first blush, cannot be accepted on a deeper scrutiny. At the outset, it must be stated that the petitioners have not filed copy of the alleged statement of petitioner no.2 on record. The order passed by the Tahsildar recites that the statement of Petitioner Nos. 1 and 2 was recorded in the office of the Tahsildar on 13.05.2005. The order records that notice dated 05.07.2005 was issued to both sides to remain present at the suit property for recording statements. It is stated that the Respondent was present at the agricultural land, however the Petitioner Nos. 1 and 2 appeared in the

office of the Tahsildar where their statements are recorded. The Petitioners do not dispute statement of Petitioner No.1 was recorded. They do not state that Petitioner No.1 had been to the office of Tahsildar alone. It appears that just as initially mistake was committed in typing the name of the petitioner no.2 in the title clause of the order passed by the Tahsildar in the body also same mistake was committed.

15. The petitioners, as mentioned above, have also not produced copy of the alleged statement of deceased petitioner No.2 on record. Most importantly neither the Tahsildar nor the learned MRT who have decided the case against the petitioners have based their orders on the statements made by the petitioners. The order of SDO passed in favour of the Petitioners is also not based on statements recorded by the parties. All the three authorities have decided the matter on the basis of documents on record and legal provisions. The adjudication of the lis revolves around entitlement of a tenant to purchase agricultural land held by him as a tenant in the light of relevant statutory provisions. Likewise the Sub-Divisional Officer who has passed order in favour of the petitioners has also not recorded finding that statement of a dead person was recorded by the Tahsildar.

16. It will now be appropriate to refer to the rival contentions with respect to merits of the matter. The first contention of Mr. Kazi is that the provisions of the MTAL Act

are not applicable to the suit property, since it is Inam Class-III land. The learned Advocate draws attention to the alienation register of the suit property, wherein the class of alienation is recorded as "Class-III Devasthan." Attention is also drawn to the 7/12 extract of the suit property to demonstrate that the suit property was recorded as Devasthan.

17. These documents do indicate that the suit property is Inam Class-III land. The Inam, according to the case of the petitioners and the documents placed on record, is for rendering service to the Deosthan. Inam is not granted for any service to or for benefit of the Government. Section 88CA of MTAL Act reads as under :

88CA. Sections 32 to 32R not to apply to certain service lands. - Nothing in sections 32 to 32R (both inclusive), [33A, 33B and 33C] shall apply to land held as inam or watan for service useful to Government but not assigned as remuneration to the person actually performing such service for the time being under section 23 of the ³[Bombay Hereditary Offices Act, 1874 (Bom. III of 1874)], or any other law for the time being in force.]

. Perusal of Section 88CA of MTAL Act will indicate that provisions of Section 32 to 32R are not applicable to lands when the same is held for service to the Government. Exemption under Section 88CA is not available to land granted as Inam for service to Deosthan. Therefore Section 32 to 32R will be applicable to Inam lands for service to a religious place

of workshop. The legal position in this regard is clarified by the judgment of this Court in **Kachru Lakhu Aher Vs. Masjid Mandad Deosthan and Others, 1990 MhLJ 440**. It is categorically held in the said case that Inam Class-III lands are governed by the provisions of the MTAL Act, except in cases where the Inam is for the benefit of the Government. It is categorically held that provisions of MTAL Act are applicable to Inam lands when the Inam is for service to a Deosthan. In the said case also the land was granted in favour of a Masjid as Deosthan Inam Class-III land. It is held that unless the grant is as Inam for benefit of the Government, exemption from applicability from the provisions of MTAL Act cannot be claimed. In view of this categorical pronouncement in *Kachru Lakhu Aher (supra)*, the contention that the provisions of the Tenancy Act are not applicable to the suit property in view of section 88CA of MTAL Act is liable to be rejected.

18. The second contention of the petitioner is that possession by itself cannot give rise to presumption that the respondent's predecessor was a tenant. Finding by the Sub-Divisional Officer that tenancy is not proved since agreement of tenancy, terms thereof and payment of rent is not established is justified by the learned Advocate for the petitioners. In support of his contention that mere possession of agricultural land cannot lead to inference of tenancy, the petitioners have placed strong reliance on judgment of this

Court in the case of **Ramdas Gopal Patel** (supra) and another judgment of Hon'ble Supreme Court in the case **Hanmanta Daulappa Nimbale** (supra).

19. Perusal of order passed by the Tahsildar in favour of the respondent will reveal that a finding is recorded that petitioners predecessor was in cultivating possession of the suit land since the year 1947. This finding is not disturbed by the Sub-Divisional Officer while allowing the appeal. The Sub-Divisional Officer has held that the case of tenancy is not proved since there is no evidence regarding terms and conditions of tenancy or even evidence with respect to payment of rent. It must be stated that the finding that the predecessor of the respondent was in cultivating possession since the year 1947 is also recorded in the order dated 07/08/2003 passed by the Tahsildar rejecting application filed by the petitioners for deletion of name of the respondent's predecessor as tenant. This order is not assailed further by the petitioners and as such the finding regarding the respondent's predecessor being in occupation of the suit property since the year 1947 has assumed finality and cannot be questioned.

20. In this regard it will be appropriate to refer Section 4 of the MTAL Act which provides that a person in lawful cultivating possession of agricultural land belonging to another

shall be deemed to be a tenant unless he is a family member of land owner, or servant on wages payable in cash or kind, but not in crop share, or a hired labour or a mortgagee in possession. It is not the case of petitioners that the respondent's predecessor falls under any of the excepted categories provided under Section 4. Therefore, the respondent's predecessor must be held to be a deemed tenant as per Section 4 even if, agreement of tenancy, terms of letting for payment of rent is not proved. The contention of the learned Advocate for the petitioners that tenancy is not proved since terms of tenancy and payment of rent is not established is therefore liable to be rejected.

21. In this regard it will be appropriate to refer to the case of **Kishan Ramchandra Kumbhar and Others vs. Dr. Kashinath Bandu Teli and others, 2004 (1) Mh.L.J. 285**, where the petitioners claimed that they were in possession of the suit property, which was an agricultural land, prior to the tiller's day, and asserted that they had become deemed purchasers of the suit property and were entitled to purchase the same. The Respondent opposed the contention of the petitioners of being deemed tenants on the ground that the predecessor of the petitioners was appointed as a watchman on payment of Rs.100 per month, and that he had worked as a watchman for around twenty years without ever being treated as a tenant. It was in this context that the definition

of the term "tenant" under Section 2(18) of the MTAL Act and Section 4 of the Act fell for consideration before this Court. This Court has held that a person lawfully cultivating land belonging to another is deemed to be a tenant and if he is cultivating the land as on the tiller's day i.e. 01.04.1957 he would thereby become the deemed purchaser of the land. Relevant observations in paragraphs 11 and 12 of the judgment are reproduced herein below for ready reference:

From the above ruling, it is seen that a person, who is lawfully cultivating the land belonging to another person and not falling under the excepted category, shall be deemed to be a tenant of that land. And if he was so cultivating on the tiller's day i.e. 1st April, 1957, he would become deemed purchaser of such land. This is the mandate of the scheme of the provisions of the Act. Merely because there is no Lease or Kabulayat Rent Receipt is not produced, that alone cannot be the basis to discard the claim of such a person, for there is legal presumption by virtue of Section 4 that he is deemed tenant. The reasoning of the Tribunal is against the provision of Section 4 of the Tenancy Act, which does not require an entry in the tenancy column or a rent note or a rent receipt to support the claim of a tenant to statutory tenancy that section. All that is required to be examined to decide the claim under Section 4 of the Act is of lawful cultivation by a person other than the excepted category. It is not open to the Authorities to read into that section old fashioned notion of the law of landlord and tenant which required the entries in the tenancy column, rent note or rent receipt to support the case of tenancy. The Legislature knowing all these old requirements has adopted a definition of 'statutory tenancy' irrespective of such things..... Having regard to the above enunciation and the established facts from the record of the present case, as has been found by the authorities below, the Petitioners will necessarily have to be held as tenants at least with regard to the land brought under cultivation to the extent of about 5 acres out of 18 acres of such land. And, therefore, the Petitioners are entitled to be declared as deemed purchasers of that portion of land, provided they do not exceed the prescribed holding. The appropriate Authority will have to examine that aspect and also determine the purchase price for such land to be

paid by the Petitioners.

22. In *Kishan Kumbhar (supra)*, this Court placed reliance on the judgment of the Hon'ble Supreme Court in ***Dahya Lala and Others v. Rasul Mahomed Abdul Rahim and Others (AIR 1964 SC 1320)***. In that case before the Hon'ble Supreme Court, the contention of the landowner that tenancy could be created only with the consent and authority of the owner of the property on the basis of a contract came to be rejected, in view of the definition of the term "tenant" under Section 2(18) of the MTAL Act. The Hon'ble Supreme Court held that Section 2(18) devised a special definition of "tenant" which includes all persons who, though not contractual tenants, lawfully cultivate land belonging to another person. Relevant observations in the judgment of the Hon'ble Supreme Court are reproduced below for ready reference:

The Act of 1948, it is undisputed, seeks to encompass its beneficent provisions not only tenants who held land for purpose of cultivation under contracts from the owners but persons who are deemed to be tenants also. The point in controversy is whether a person claiming the status of a deemed tenant must have been cultivating land with the consent or under the authority of the owner. Counsel for the appellants submits that tenancy postulates a relation based on contract between the owner of land, and the person in occupation of the land, and there can be no tenancy without the consent or authority of the owner to the occupation of that land. But the Act has by Section 2(18) devised a special definition of tenant and included therein persons who are not contractual tenants. It would therefore be difficult to assume in construing Section 4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must be cultivating land "lawfully": It is not the condition that he must cultivate land with the

consent of or under authority derived directly from the owner. To import such a condition is to rewrite the section, and destroy its practical utility. A person who derives his rights to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a "deemed tenant". Persons such as licencees from the owner may certain be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural lands as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the benefit of its provisions to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. In our view, all persons other than those mentioned in Clauses (a), (b) and (c) of Section 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the lands."

23. It will also be profitable to refer to the judgment of the Hon'ble Supreme Court in the case of **Jagan Alias Jagannath Umaji v. Gokuldas Hiralal Tewari, AIR 1989 SC 2489** which is also followed in the aforesaid of **Kishan Kumbhar** (supra). In the said case, the property belonged to a temple. A Pujari was appointed for worshiping the deity and for the management of the temple and the *Dharamshalas*. The Pujari was allowed to cultivate the agricultural land of the temple and appropriate crop against payment for services rendered by him. In this backdrop section 4 of the MTAL Act fell for consideration before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that cultivation by the Pujari was lawful cultivation since he was permitted by the landlord to cultivate the land, although in lieu of payment of wages for

services. The Supreme Court observed that the record indicated right to cultivate the land of temple was vested with the Pujari. In this backdrop of facts, it is held that the Pujari had assumed the status of a deemed tenant. A person who renders service for a share in the crop is not deemed to be a tenant under Section 4 of the MTAL Act. Since the pujari in the case before the Hon'ble Supreme Court was entitled to appropriate entire crop and not merely a share in the crop in lieu of wages as a consequence of which his case squarely fell under section 4 and the exception accordingly he was held to be a tenant.

24. Similar view is taken by this Court in the case of **Babu Hari Patil Vs. Rama Ananda Jadhav, 2005 (1) Mh.L.J. 1063.** In this case, it was clearly laid down that, for claiming the status of a deemed tenant, a person is only required to show lawful cultivation of land belonging to another. It is further held that, if the tenant was in possession prior to the tiller's day, this would also confer ownership upon him by way of statutory fiction.

25. In view of the aforesaid legal position, in the facts of the present case, it must be held that the respondent has successfully proved his case of being a deemed tenant. Even if the Respondent had no contract of tenancy or proof of payment of rent, since his predecessor was lawfully cultivating

the land prior to the tiller's day, he assumed ownership over the suit property by statutory fiction.

26. It is duly established that the predecessor of respondent is in cultivating possession of the suit property since the year 1947 and as such deemed to be tenant in view of Section 4 of the MTAL Act. Section 32 of the Act provides that, every tenant shall be deemed to have purchased the tenanted land held by him as tenant from his landlord on the tiller's day i.e. 01/04/1957. In view of the statutory mandate of Section 32 the respondent's predecessor is deemed to have purchased the suit property on 01/04/1957.

27. The Trust came to be registered under Maharashtra Public Trust Act, 1950 (MPT Act) on 17/03/1967. The question that arises for consideration is, as to effect subsequent registration of the Trust in view of Section 88B of the MTAL Act. Relevant portion of Section 88B of MTAL is reproduced as below :

'88-B. Exemption from certain provisions to land of local authorities, universities and trusts.—

(1) Nothing in the foregoing provisions except sections 3, 4-B, 8, 9, 9-A, 9-B, 9-C, 10, 10-A, 11, 13 and 27 and the provisions of Chapters VI and VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in the sections mentioned above, shall apply—

(a).....

(b) to lands which are the property of a trust for an educational purpose, a hospital, Panjarapole, Gaushala or an institution for public religious worship:

Provided that—

(i) such trust is or is deemed to be registered under the Bombay Public Trusts Act, 1950 (Bom. XXIX of 1950), and

(ii) the entire income of such lands is appropriated for the purposes of such trust;

(c).....

(d).....

(2) For the purposes of this section, a certificate granted by the Collector after holding an inquiry, that the conditions in the proviso to sub-section (1) are satisfied by any trust shall be conclusive evidence in that behalf.

28. Section 88B of the MTAL Act provides that the provisions of the said Act shall not be applicable to a property of a registered trust which is an institution of public religious worship. In order to claim exemption under Section 88B, a trust must be a registered public trust and the entire income of the trust must be utilized for benefit of the trust. Both these conditions must be satisfied.

29. Legal position that subsequent registration of a trust cannot divest ownership vested in a tenant on the tiller's day is well-settled. In the case of **Janaradhan Dagdu Khomane** (supra) the landlord Trust was in existence prior to the tiller's day i.e. 01/04/1957. The landlord Trust was registered after the tiller's day. The property of Trust was in cultivation of a tenant. The Trust obtained order of exemption under Section

88-B of the MTAL Act after 01/04/1957. The issue which fell for consideration before the Hon'ble Supreme Court was as to whether the tenant could be divested of ownership vested in him in view of subsequent registration of the landlord Trust under Maharashtra Public Trust, 1950 (hereinafter referred to as MPT Act). The Hon'ble Supreme Court has held that the effect of registration will be prospective and as such the tenant cannot be divested of right of ownership statutorily vested on the tiller's day in view of subsequent registration of the landlord Trust under the MPT Act.

30. Likewise in the case of **Laxminarayan Temple Kothure**, the tenant of Trust had become owner of the agricultural land owned by the trust on 01/04/1957. The Trust was registered under MPT Act, 1950 on 28/03/1958 i.e. after vesting of ownership on tiller's day. This Court has held that the landlord Trust will not be entitled to claim exemption from applicability of provisions of MTAL Act in view of subsequent registration under MPT Act.

31. Similar view that subsequent registration of landlord Trust under MPT Act cannot divest statutory ownership of a tenant acquired on tiller's day is taken in the case of **Chhatrapati Devasthan Trust** where the application for registration of landlord Trust under MPT Act was filed on 18/01/1956 and the Trust was registered on 31/05/1959 and

the tenant who was cultivating the land had acquired ownership on 01/04/1957.

32. In the case of **Shri Nivruttinath Yatra Khajur Donation Trust** (supra), it is held that qua lands over which tenant statutorily acquired ownership on the tiller's day, landlord Trust is not entitled to claim exemption upon registration under MPT Act after the tiller's day since the ownership is already transferred in favour of the tenant prior to registration of the landlord Trust.

33. In view of the aforesaid legal position, it cannot be said that the registration of the trust in the year 1967 will have the effect of divesting the ownership of the predecessor of the Respondent over the suit property on the tiller's day, i.e., 01.04.1957.

34. As regards the judgment of the Hon'ble Supreme Court in **Hanmanta Daulappa Nimbale** (supra) relied by the Petitioners, in that case the claim of tenancy was made from the year 1968-69, which was after the tiller's day. It was found that the land in question had been mortgaged, and the mortgagee was placed in possession of the suit land and was cultivating the same since 1964-65, i.e., prior to the creation of the alleged lease in 1968-69. The case of the Respondent before the Hon'ble Supreme Court was one of oral tenancy in

1968-69. In that case, the landlord had instituted a suit for injunction against the Appellant/Tenant, and an order of ad-interim injunction was passed in favour of the landlord on 21.01.1969. The Appellant/Tenant claimed oral tenancy for the first time by issuing a notice dated 22.01.1969. However, contrary to the case set up by the Respondent, the learned Maharashtra Revenue Tribunal decided the revision treating it as a case of deemed tenancy under Section 4 of the Tenancy Act. The Hon'ble Supreme Court observed that the plea of oral tenancy was raised for the first time after order of ad-interim injunction was passed in favour of landlord. In these peculiar set of facts the Hon'ble Supreme Court has held that in order to establish lawful possession over agricultural land, it is necessary for the tenant to establish that there was an agreement with the landlord, that he was inducted as a tenant pursuant to such agreement, and that he was making payment of premium or rent, as agreed. These observations must be appreciated in the backdrop of the facts of that case. Therefore, the ratio of the said judgment cannot be applied to the present case.

35. So far as case of **Ramdas Gopal Patel** (supra) is concerned, in the said case the petitioners claimed to be in possession of the suit property on tiller's day that is on 01.04.1957. The tenancy tahsildar Sub-Divisional Officer and learned Maharashtra Revenue Tribunal had rejected the

application appeal and revision respectively preferred by the petitioners. The said orders were subjected to challenge in the writ petition. Dealing with the contention of the Petitioner that his predecessors were in possession of the suit land prior to tiller's day, the authorities recorded positive findings that there was no record prior to the year 1986 to indicate that petitioners' predecessors were in possession of the property. Categorical findings came to be recorded that the petitioner had failed to prove his possession prior to 01.04.1957. The High Court confirmed the findings in the petition. The case is clearly distinguishable on facts, since in the said case the petitioner had failed to prove possession of his predecessor-in-title prior to the year 1986. There was no evidence on record to even remotely indicate possession of the petitioners predecessors on or before the tiller's day.

36. It will also be pertinent to state that **Ramdas Gopal Patel** (supra) confirms the ratio of the aforesaid decisions in **Ramdas Gopal Patel** (supra) and **Babu Hari Patil**.

37. The contention of Mr. Kazi, learned Advocate for the petitioners, is that since the suit property belongs to a wakf, the deceased father of the respondent cannot claim to be a deemed purchaser of the suit property under Section 32. It is further contended that since the property is a wakf property, the respondent cannot inherit the same in view of the same

under Section 4 of the MTAL Act. The inter-play between the provisions of the Wakf Act and the corresponding provisions of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, is elaborately considered by this Court in **Sunil s/o Vasudeo Nirgude and Others Vs. Hasan Khan s/o Maheboob Khan and Others**, reported in **2023 (6) Bom.C.R. 311**. This Court has dealt with Section 56 of the Wakf Act, 1995 along with the provisions of the MTAL (VR) Act to arrive at a conclusion that the said provisions are not in conflict and that protection of the provisions of the Tenancy Act can be granted to a tenant against properties of a Wakf. Relevant observations in paragraph No.45 of the Judgment are quoted hereinbelow:

45. Thus, both the Acts i.e. Section 56 of the Wakf Act, 1995 and Sections 6, 7, 9 and 46 of the 1958 Act are not in conflict. The Act of 1958 can grant protection to a lawful tenant of a wakf property who was cultivating the land on the date when the 1958 Act came in force and can also grant ownership certificate to the tenant. Thus, Section 56 of the Wakf Act does not have overriding effect on the provisions of Vidarbha Region Tenancy Act, 1958.

38. While arriving at the said conclusion, this Court has considered the Judgment of the Hon'ble Supreme Court in **Sabir Ali Khan Vs. Syed Mohd. Ahmad Ali Khan and others**, **(2024) 13 SCC 683**, wherein the Hon'ble Supreme Court has held that it is open for a person to stake claim of ownership over Wakf property by way of adverse possession.

39. It must also be stated that a tenant in lawful cultivation of agricultural land, prior to the tillers day, acquires ownership over the said land by statutory force of Section 32 of the MTAL Act on the tillers day. Tillers day under the MTAL Act is 01/04/1957. The provisions of the Wakf Act, 1995 have come into force with effect from 01/01/1996. It must also be stated that the erstwhile provisions of the Wakf Act, 1954 were applicable only to that portion in the State of Maharashtra which was earlier a part of erstwhile Hyderabad State. The suit property is situated in Jalgaon District which was not a part of erstwhile Hyderabad State. The provisions of the Wakf Act, 1954 were therefore not applicable to the suit property. The father of the respondent had acquired ownership over the suit property prior to commencement of the Wakf Act, 1995. The respondent has inherited the suit property from his father who was not a tenant on the date of his demise but owner of the suit property by virtue of Section 32.

40. In view of the aforesaid, it must be held that the contention of Mr. Kazi that the father of the respondent could not claim to have acquired ownership over the suit property as per Section 32 of the MTAL Act cannot be accepted.

41. As regards Judgment of the Hon'ble Supreme Court in

the case of **Sayyed Ali and others Vs. Andhra Pradesh Wakf Board**, reported in **1998 (2) SCC 642**, the said Judgment holds that grant of a Patta in favour of Mokhasadar for a wakf under Inams Act does not alter the character of the property as wakf property. The settled legal principle, once wakf always a wakf, is reiterated in the said decision. However, the said Judgment does not lay down that a tenant in lawful cultivation of an agricultural land is not entitled to protection of the provisions of the Tenancy Act. It must also be stated that this Court has considered this Judgment in the case of Sayyed Ali (Supra) in the case of Sunil Vasudeo Nirgude (Supra).

42. As regards Judgment of this Court in the case of Arjun s/o Bhimaji Lakare (supra), in the said case the respondent had filed a suit seeking possession of an agricultural land. The property belonged to Masjid and was a wakf as such. A contention was raised by the petitioners – original defendants that they were tenants of the suit property which was an agricultural land and therefore the Wakf Tribunal did not have jurisdiction to decide the suit. The suit property was let to the father of the defendants for a period of five years vide a registered lease deed. The tenure of lease was from 20/12/1944 to 19/12/1949. This Court has held in the said Judgment that there was no material on record to indicate that the tenancy had continued after the said period of five years which expired on 19/12/1949. Reliance was

placed on Section 88B of the MTAL Act to hold that provisions of Section 40 which provide for right of inheritance of tenancy rights over agricultural lands, is not applicable to agricultural land belonging to a registered public trust and therefore the case of defendants that they were tenants over the suit property was not accepted. Perusal of the Judgment will indicate that the wakf was also registered under the Maharashtra Public Trust Act as a public trust. However, date of registration of the trust is not mentioned in the Judgment. The Maharashtra Public Trust Act, 1950 came into force in the year 1950. Tiller's day under the MTAL Act, 1948 is 01/04/1957. It is not clear from the judgment as to whether the Trust was registered as a public trust prior to or after the tiller's day. As held above, exemption from applicability of MTAL Act can be claimed by a trust only upon satisfaction of two conditions, namely, the trust being a registered public trust and the proceeds of the trust are utilized for purposes of the trust. In the present case the trust was registered on 17/03/1967 i.e. after the tillers day i.e. 01/04/1957. The respondent acquired ownership over the suit property on the tillers day. In view of the above, the ratio in the case of Arjun Bhimaji Lakare will not be applicable to the facts of the present case.

43. The Sub-Divisional Officer had allowed the appeal preferred by the petitioners also on the ground that the

property belonged to a Public Trust and the same could not be transferred in the absence of permission for transfer as contemplated under Section 36 of the MPT Act. The Sub-Divisional Officer has erred in holding so. The said provision is applicable only in cases of voluntary transfer. The provision is not applicable to case of statutory transfer.

44. It is argued that the jurisdiction to entertain the application was vested with the Wakf Tribunal and that the order passed by the Tenancy Tahsildar is without jurisdiction. The application was filed by the respondent for fixation of purchase price under Section 32G of the MTAL Act. The respondent claims ownership over the suit property as per Section 32 of MTAL Act. Section 32 states that every tenant shall be deemed to have purchased from the landlord, land held by him as a tenant free from all encumbrances on the tiller's day i.e. on 01.04.1957. The said right is statutorily conferred by MTAL Act. The provisions for enforcement of said rights are also provided under the MTAL Act. Thus, this is a case of right being conferred and remedy being provided *uno flatu*. Therefore, the jurisdiction of the Tenancy Tahsildar to determine purchase price under Section 32G will be exclusive jurisdiction which will not be available with any other authority including the Wakf Tribunal. It will also be pertinent to note that the Wakf Act came into force on 01.01.1996 and the respondent was deemed to be owner of

the suit land on 01.04.1957 itself. The proceeding filed by the respondent which is subject matter of present petition was for limited purpose of determining the purchase price. Although, Section 85 of the Wakf Act bars jurisdiction of Civil Court, Revenue Court or any other authority in respect of any dispute, question or other matter relating to wakf property, there is no provision under the Wakf Act enabling the Wakf Tribunal to determine the purchase price of agricultural lands deemed to be purchased by the tenants in view of the statutory mandate of Section 32 of MTAL Act. Although, Section 83 of the Wakf Act is very widely worded and confers jurisdiction upon a Wakf Tribunal to determine any dispute, question of other matter relating to Wakf property including issue pertaining to eviction of tenant or determination of rights and obligations of a lessor of lessee, under the said provision, the Wakf Tribunal cannot exercise jurisdiction to fix purchase price under Section 32G of the MTAL Act. The Judgment in the case of Sunil Vasudeo Nirgude (Supra) also holds that questions pertaining to tenancy under provisions of relevant Tenancy Act can be adjudicated only by authorities under the said Act and not by Wakf Tribunal. Relevant portion in paragraph No.51 of the Judgment is reproduced hereinbelow:

'51. The tenancy protected under the 1958 Act can only be inquired and adjudicated upon by the authorities constituted under the Act of 1958. Civil Courts jurisdiction is barred in deciding the issue of tenancy

under the 1958 Act. The Wakf Tribunal can only decide issues relating to Wakf and cannot decide the issue of tenancy under the 1958 Act.'

45. This judgment in Sunil Nirgude is also followed by this Court in the case of Sayyad Moinuddin s/o Sayyed Saifoddin Vs. Pratapsingh s/o Nursing Kakarwal and Another (Civil Revision Application No.3 of 2021 with Civil Revision Application No.4 of 2021, decided at Aurangabad Bench on 14/02/2024). The said Judgment also holds that the Wakf Tribunal does not have jurisdiction to decide issues of tenancy which are only to be adjudicated upon by authorities under the Tenancy Acts.

46. The learned Advocate for the petitioner also contends that since the application for fixing purchase price is filed after commencement of Wakf Act, 1995, the Wakf Board was a necessary party. The said contention cannot be accepted and is liable to be rejected since objection in this regard was not raised before the first authority i.e. the Tahsildar. It must also be stated that the petitioners have stated that the suit property is the only agricultural land held by them and were opposing the claim of respondent on the said ground which is for enforcement of their personal right. It must be reiterated that the proceeding in the present matter has arisen out of an application for fixation of purchase price under Section 32. Application for deletion of name of the respondent as tenant

filed by the petitioners was already rejected by the competent authority vide order dated 07/08/2003 and the said order is not challenged further. Likewise, the claim for exemption from applicability of Tenancy Act on the ground that the landlord is a religious public trust was also rejected vide order dated 09/03/1968. It is therefore not permissible for the petitioner to raise ground with respect to non-joinder of Wakf Board as a necessary party.

47. In the light of reasons recorded above, no case for interference is made out. Writ petition is therefore dismissed with no orders as to costs.

**ROHIT W. JOSHI
JUDGE**

Na Feeb..