



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10295 OF 2019

1. Shri. Pandurang Appasaheb Shinde
Age : 54 Year, Occu : Agriculture,
2. Shri. Vitthal Appasaheb Shinde,
Age : 57 Years, Occu : Agriculture,
3. Shri. Rajendra Appasaheb Shinde,
Age : 49 Years, Occu : Agriculture,
4. Shri. Raosaheb Nivrutti Shinde,
Age : 70 Years, Occu : Agriculture,
5. Shri. Baban Nivrutti Shinde,
Age : 65 Years, Occu : Agriculture,
All R/o. At Post Dhondpargaon,
Tq. Jamkhed, Dist. Ahmednagar.

...PETITIONERS

VERSUS

1. Shri. Somnath Rangnath Shinde
Age : Major, Occu : Agriculture,
R/o. At Post Dhondpargaon,
Tq. Jamkhed, Dist. Ahmednagar.
2. Smt. Champabai Rangnath Shinde,
Since deceased – Through her legal heirs.
- 2a. Bhausahab Rangnath Shinde
Age : 72 Years, Occu : Agriculture,
R/o. At Post. Sangvi, Tq. Ashti, Dist. Beed.
- 2b. Bappa Rangnath Shinde
Age : 52 Years, Occu : Agriculture,
R/o. At Post Dhondpargaon,
Tq. Jamkhed, Dist. Ahmednagar.

2c. Sau. Mankarnabai Maruti Nimbalkar,
Age : 74 Years, Occu : Household,
R/o. At Post Dadegaon, Tq. Ashti, Dist. Beed.

2d. Sau. Triveni Bhika Kale,
Age : 67 Years, Occu : Household,
R/o. C/o. Borawake College,
At Post. Tq. Shrirampur, Dist. Ahmednagar.

2e. Sau. Nanibai Balbhim Khedkar,
Age : 62 Years, Occu : Household,
R/o. At Post Sangvi, Tq. Ashti, Dist. Beed.

2f. Sau. Vaishali Sudhakar Dhawale,
Age : 60 Years, Occu : Household,
R/o. C/o. Dhawale Electricials,
Near S.T. Stand, At. Post Tq. Ashti,
Dist. Beed.

2g. Sau. Subhadra Digambar Dhere,
Age : 58 Years, Occu : Household,
R/o. At Post Vit, Tq. Karmala,
Dist. Solapur.

3. Tenancy Avval Karkun, Jamkhed,
Tq. Jamkhed, Dist. Ahmednagar.

...RESPONDENTS

Mr. V. P. Golewar i/b Mr. Arvind R. Joshi, Advocate for the Petitioners
Mr. M. S. Bhosale, Advocate for the Respondents.

CORAM : SIDDHESHWAR S. THOMBRE, J.
DATE : APRIL 02, 2026

JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard the petition finally with the consent of parties at the stage of admission.

2. The petitioner is aggrieved by the order dated 31st October 2017 and 10th July 2019 passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad (for short “Tribunal”) in Revision Case No.16/B/2002/Ahmednagar.

BRIEF FACTS OF THE CASE :

3. The case of the petitioners is that petitioner Nos. 1, 2 and 3 are real brothers. They purchased 57.8 R land out of Gut No. 314, situated at Dhondpargaon, Taluka Jamkhed, District Ahmednagar, by a registered sale deed dated 12th April 1993. One Bhanudas Navnath Shinde was the landlord of the said land. Half of the land was in possession of the father of Rangnath Shinde, and the remaining half was in possession of Nivrutti Keru Shinde as a tenant.

4. In tenancy proceedings, the purchase price of the subject land was determined under Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short “said Act”), and the names of the tenants were recorded in the occupancy column of the record of rights. Thereafter, Rangnath Shinde transferred his share to his wife Champabai, and her name was entered in the revenue record in respect of half share of Gut No. 314. The remaining half share held by

Nivrutti Keru Shinde was transferred to his sons, namely Raosaheb and Baban Nivrutti Shinde. Subsequently, Pandurang, Vitthal and Rajendra Shinde purchased the share of Champabai.

5. One Somnath Shinde (respondent No. 1 herein) filed an application before the Tahsildar, Jamkhed, seeking forfeiture of the land to the Government. Pursuant thereto, the Tenancy Avval Karkun, Jamkhed, by order dated 23rd December 1997, forfeited the land to the Government under Section 84C of the said Act.

6. Being aggrieved thereby, the purchasers preferred an appeal before the Sub-Divisional Officer, Jamkhed, who allowed the appeal and directed recovery of Nazrana to the extent of forty times the land revenue for regularizing the transaction.

7. Respondent No. 1 thereafter preferred a revision before the Tribunal. The Tribunal, by its order dated 31st October 2017, set aside the order dated 23rd April 2002 passed by the Sub-Divisional Officer, Karjat and confirmed the order dated 23rd December 1997 passed by the Tenancy Avval Karkun, Jamkhed. Subsequently, upon an application for setting aside the *ex-parte* order along with an application for condonation of delay, the Tribunal, by order dated 12th

June 2019, condoned the delay and restored the revision. Thereafter, upon hearing the parties, the Tribunal, by order dated 10th July 2019, again confirmed its earlier decision. Hence, the present petition.

8. Mr. V. P. Golewar, learned counsel instructed by Mr. Arvind Joshi for the petitioners, submits that the Tenancy Avval Karkun as well as the Tribunal have committed an error in entertaining and allowing the revision filed by respondent No. 1. It is submitted that the Tribunal has failed to consider the amended provisions of Section 43 of the said Act, and therefore, prior permission of the Collector was not necessary for the transaction in question. It is contended that the findings recorded by the authorities are contrary to the statutory provisions and, therefore, the impugned orders deserve to be set aside.

9. Per contra, Mr. Bhosale, learned counsel for the respondents, supports the impugned orders and submits that once a certificate under Section 32M of the said Act was issued, the provisions of Section 43-1D were attracted, requiring prior permission of the Collector. In absence of such permission, the transaction is void ab initio. It is submitted that both the Tenancy Avval Karkun and the Tribunal have rightly appreciated the legal position and no interference is warranted.

10. In support of his contentions, the learned counsel for the respondents relies upon the following judgments:

- i) *Dadu Rau Yelavade Vs. Himmat Rasul Patel* reported in 1992(2) SCC 573.
- ii) *Lotan Ramchandra Shimpi Vs. Shankar Ganpat Kayasth and Others* reported in 1994 (4) Bom Cr 575.
- iii) *Himatrao Ukha Mali Vs. Popat Devram Patil* reported in 1999 AIR (Bom.) 10
- iv) *Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Limited* reported in (2015) 1 SCC 1
- v) *Ganesh s/o Kachru Sonawane (Sonne) and Another Vs. Khushalrao s/o Sukhdeo Sable and Others* passed in Writ Petition No.9745 of 2011 dated 05th December 2023.
- vi) *Laxman s/o Shankar Bandgar (D) Thr. LRs. & Ors. Vs. Venkat s/o Rama Bandgar (D) Thr. LRs. & Ors.* Reported in 2014(6) ALL MR 661
- vii) *P. Kishore Kumar Vs. Vittal K. Patkar* reported in 2023 INSC 1009.

11. With the assistance of the learned counsel for the parties, I have considered the provisions of Section 43 as well as Section 43-1D

of the Maharashtra Tenancy and Agricultural Lands Act, 1948.

12. Before proceeding further, it would be appropriate to note certain undisputed facts for the purpose of deciding the present petition. There is no dispute that a certificate under Section 32M of the said Act was issued in favour of the tenant. There is also no dispute regarding the execution of the sale deed dated 12th April 1993.

13. The only question that arises for consideration is whether prior permission of the Collector was necessary for transferring the land, which had been purchased by the tenant under Section 32M of the said Act.

14. In order to appreciate the said issue, it would be apposite to refer to the provisions of Section 32M of the said Act, which reads as under:

“32M. Purchase to be ineffective on [tenant purchaser’s] failure to pay purchase price— (1) On the deposit of the price in lump sum or of the last instalment of such price, the Tribunal shall issue a certificate of purchase in the prescribed form, to the tenant-purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. In the event of failure of recovery of purchase price as arrears of land revenue under sub-

section (3) of section 32K, the purchase shall be ineffective and the land shall be at the disposal of the Tribunal under section 32P and any amount deposited by such tenant-purchaser towards the price of the land shall be refunded to him.

(2) Where the purchaser of any land has become ineffective for default of payment in time of the price in lump sum or in instalments, but the tenant-purchaser has nevertheless continued in possession at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964 (Mah. XXXI of 1965), then the purchase of the land shall not be deemed to be ineffective, until the Tribunal fails to recover the amount of the purchase price under sub-section (3) of section 32K.”

15. Upon consideration of the provisions of Section 32M of the said Act, it is not in dispute that the certificate issued thereunder has attained finality and has not been challenged by any party.

16. As regards the orders passed by the Tenancy Avval Karkun and the Tribunal, it is evident that the petitioners, having purchased the property from the tenant, were required to obtain prior permission of the Collector in view of the provisions of Section 43 of the said Act.

17. In order to appreciate the said aspect, it would be appropriate to refer to the provisions of Section 43 of the said Act, which read as under:

“43. Restriction on transfers of land purchased or sold under this Act.— (1) No land purchased by a tenant under section 32, 32F, 32-I, 32-O, 11[33-C or 43-ID or sold to any person under section 32P or 64 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances, and subject to such conditions, as may be prescribed by the State Government:

Provided that, no such sanction shall be necessary where the land is to be mortgaged in favour of Government or a society registered or deemed to be registered under the Bombay Co-operative Societies Act, 1925 (Bom. VII of 1925), for raising a loan for effecting any improvement of such land:

Provided further that, no such previous sanction shall be necessary for the sale, gift, exchange, mortgage, lease or assignment of the land in respect of which ten years have elapsed from the date of purchase or sale of land under the sections mentioned in this sub-section, subject to the conditions that,—

(a) before selling the land, the seller shall pay a nazarana equal to forty times the assessment of

- the land revenue to the Government;*
- (b) the purchaser shall be an agriculturist;*
- (c) the purchaser shall not hold the land in excess of the ceiling area permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Mah. XXVII of 1961); and*
- (d) the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (Bom. LXII of 1947) shall not be violated.*

(2) Any transfer of land in contravention of sub-section (1) shall be invalid.”

18. Upon perusal of the provisions of Section 43 of the said Act, it is evident that the said section makes reference to Sections 32, 32F, 32-I, 32-O, 33-C and 43-ID. Notably, Section 32M is not included within the ambit of Section 43.

19. In the present case, there is no dispute that the ownership certificate was issued under Section 32M, and the same has attained finality. In view thereof, the restriction on transfer as contemplated under Section 43, which applies to lands purchased or sold under the specified provisions, would not be attracted to transfers effected pursuant to a certificate issued under Section 32M. Therefore, in my

considered opinion, Section 43 is not applicable to the present transaction.

20. As regards the contention of the learned counsel for the respondents regarding violation of Section 43-1D of the said Act, upon perusal of the said provision, it is evident that the same forms part of Chapter III-AA, which deals with special provisions for termination of the tenancy by landlords, who are or have been serving members of the armed forces and for purchase of their lands by tenants. Section 43-1A deals with definition, whereas Section 43-1D deals with right of tenant to purchase the land from Land Lords. The present case does not relate to any of the members of the armed forces, therefore, in my considered opinion, Section 43-1D does not apply to the present case.

21. Section 43-1D pertains to cases concerning rights of tenants in such special circumstances. However, it is not the case of the respondents that the present matter falls within the scope of Chapter III-AA, nor is it the case that respondent No. 1 was a member of the armed forces so as to attract the applicability of the said provision. Hence, Section 43-1D is also not applicable to the facts of the present case.

22. In view of the above, I find that the Tenancy Avval Karkun as well as the Tribunal have failed to consider these material aspects of the matter and have misapplied the provisions of Section 43 of the said Act.

23. Consequently, the impugned orders cannot be sustained and are liable to be set aside. Hence, the following order:

ORDER

- A) The Writ Petition is allowed.
- B) The order dated 31st October 2017 and 10th July 2019 passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad are hereby quashed and set aside.
- C) The order dated 23rd December 1997 passed by the Tenancy Avval Karkun is also quashed and set aside.
- D) Rule is made absolute in above terms.
- E) Pending Civil Applications, if any, also stand disposed of.

(SIDDHESHWAR S. THOMBRE, J.)