



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.338 OF 2021

Vishwanath Dhondiba Davne
Age: 67 years, Occu: Agriculture
R/o. Nilanga, Tq. Nilanga,
Dist. Latur
Since deceased, per L.Rs.

1-A. Vatsalabai vishwanath davne
Age:67 years, Occu. Household,
R/o. Savtamali Chowk, Mali Galli,
Nilanga, Taluka Nilanga, District Latur

1-B. Balaji Vishwanath Davne
Age. 45 years, Occu.
Agriculture, R/o. As above

1-C. Madhav vishwanath davne
Age: 43 years, Occu: Agriculture,
R/o. As above

1-D. Dattatray Vishwanath Davne
Age: 41 years, Occu: Agriculture,
R/o. As above

... Petitioners

VERSUS

1) Shewantabai W/o. Tulshiram Chambarge
(Died through her legal heirs)

1-A) Hirkanbai W/o. Sheshrao Fulsamdar
Age: 71 Years, Occu. Household,
R/o. Hasangaon, Tq. Ausa, Dist. Latur.

1-B) Tirwanbai W/o. Dhondiram Jagtap
Age: 61 Years, Occu. Household,
R/o. Gangapur, Latur, Tq. & Dist. Latur

2) Wrandabai W/o. Anilkumar Wadwale
Age: Major, Occu. Household,
R/o. Mali Galli, Nilanga, Tq. Nilanga, Dist. Latur.

3) Anilkumar S/o. Shantaram Wadwale

Age: 50 Years, Occu. Business,
R/o. Mali Galli, Nilanga, Tq. Nilanga, Dist. Latur.

4) Santosh S/o. Shivajirao Rashme
Age: 46 Years, Occu. Business,
R/o. Shivaji Nagar, Nilanga, Tq. Nilanga, Dist. Latur. ... Respondents

.....

Mr. S. S. Bora, Advocate for the Petitioners
Mr. C. D. Biradar, Advocate for Respondents

.....

CORAM : SIDDHESHWAR S. THOMBRE, J.
Reserved On : 04.03.2026
Pronounced On : 30.04.2026

JUDGMENT :

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

2. The petitioners are aggrieved by the order dated 18.10.2019 passed by the learned Member Maharashtra Revenue Tribunal, Aurangabad (for short 'the Tribunal'), in Revision Application No. 17/B/2018/Latur; the order dated 14.11.2017 passed by the learned Deputy Collector (General Administration), Latur in Appeal No. 2014/General/Cr-18; and the order dated 27.01.2014 passed by the Tahsildar, Nilanga, in File No. 2002/Land Development/Kavi/82.

3. The petitioners have further prayed that the issue regarding tenancy over the suit land bearing Survey No. 235/B, admeasuring 2H 17R, under the *Bataipatra* dated 01.06.2001 executed by deceased Respondent No. 1, be answered in the affirmative, in view of the reference made under Section 99-A of the Hyderabad Tenancy and

Agricultural Lands Act, 1950 (hereinafter referred to as “the Act of 1950”).

3. The facts of the present case are as follows :-

[I] As per the case of the petitioner, it is contended that the petitioner had transferred land bearing Survey No. 235/B, admeasuring 2 Hectares 17 R, in the name of Shevantabai by a registered sale deed dated 10.01.1975, and accordingly, her name was entered in the revenue record as owner vide Mutation Entry No. 1138. Thereafter, Shevantabai executed a *Bataipatra* dated 01.06.2001 in favour of the petitioner in the presence of witnesses, pursuant to which the petitioner came into possession of the said land. By virtue of the said *Bataipatra*, a contractual tenancy was created, which is recognized under Section 4-A of the Act of 1950. It is further contended that Respondent No. 1, at the instigation of certain ill-wishers, attempted to alienate the suit land to third parties though the Petitioner was entitled to purchase the same as per Section 48 of the Act, 1950 and also obstructed the petitioner’s possession. Hence, the petitioner filed Regular Civil Suit No. 288 of 2001 seeking perpetual injunction. The learned Civil Judge (Junior Division), Nilanga by order dated 11.10.2002, granted temporary injunction in favour of the petitioner, thereby restraining Respondent No. 1 from interfering with the petitioner’s peaceful possession. The said order was challenged by Respondent No. 1 by filing MCA No. 30 of 2002 before the District Court, which came to be dismissed.

[II] During the pendency of the suit, Respondent No. 1 sold the suit land to Respondent Nos. 2 and 3 and attempted to disturb the

petitioner's possession. Therefore, the petitioner filed an application below Exhibit-116 seeking temporary injunction against the purchasers, which was allowed by the trial court on 13.12.2010. On 08.08.2012, the petitioner was forcibly dispossessed by Respondent No. 4. Consequently, the petitioner filed an application below Exhibits – 179 and 216 for mandatory injunction and restoration of possession. The Petitioner could not find favor before Hon'ble Trial Court or the Appellate Court. Finally, the said proceeding was concluded vide remand order in Writ Petition No. 1369/2013 and direction was issued to the Trial Court to record specific finding as regards to the dispossession of the Petitioner. After remand of the matter, the finding was recorded that, Petitioner was in lawful possession and he was illegally dispossessed at the hands of defendant Nos.4 in violation of the order of temporary injunction operating in his favor. The said order was made subject matter of Writ Petition No. 10816/2014 before this Hon'ble Court. This Hon'ble Court confirmed the aforesaid order granting restoration of possession of the Petitioner. Even, the SLP filed by defendant No.4 against the order of this Hon'ble Court came to be dismissed. As such, Petitioner came to be restored in his possession and enjoying the possession till this date as a tenant.

[III] Pursuant to the said orders, the petitioner was restored to possession on 01.02.2018. In view of the pleadings and as per Section 99-A of the Act of 1950, the issue of tenancy was referred by the civil court to the tenancy authorities. The Tahsildar, Nilanga, without granting an opportunity of hearing to the petitioner, held that the petitioner is not a tenant. The said order was upheld by the Deputy Collector, Latur. Being aggrieved, the petitioner preferred a revision before the Tribunal. The Tribunal remanded the matter to the

Tahsildar for fresh adjudication after giving an opportunity to adduce evidence. However, upon remand, the Tahsildar again rejected the petitioner's claim on the ground that there were no old revenue entries reflecting the petitioner's tenancy. The said order was confirmed by the Additional Collector, observing that there was no finding by the civil court regarding the genuineness of the *Bataipatra* dated 01.06.2001 and that no revenue entries existed pursuant thereto. Being aggrieved thereby, the petitioner preferred a revision before the Tribunal, which came to be dismissed by order dated 18.10.2019 against which present Petition is filed.

4. The learned counsel, Mr. Bora, appearing for the petitioner, submits that the Tahsildar, after remand, rejected the petitioner's claim on the ground that there were no entries reflecting the petitioner's tenancy in the revenue record for the period from 1954 to 2001. He submits that the petitioner's case is primarily based on the *Bataipatra* dated 01.06.2001, and therefore, the Tahsildar ought to have considered the record subsequent to 01.06.2001. It is contended that the findings recorded by the Tahsildar are perverse. He further submits that, unfortunately, the Tribunal failed to consider this crucial aspect.

4.1 In support of his submissions, he relies upon the following Judgments :

[a] **Gnyandeo Vs. Pandurang Jyoti Pirange ; AIR 1994 BOM 265;**

[b] **Kishan S/o Dashrath Naikwade Vs. Asrabai W/o Babu Naikwade and Ors.; 1991 (1) Mh.L.J. 68 ;**

5. Per contra, the learned counsel, Mr. Biradar, appearing for the respondents, invited my attention to the provisions of the Act of 1950, and contended that there is no concept of contractual tenancy under the said Act, and that only protected tenancy and ordinary tenancy, as contemplated under Sections 38-E and 38-G, are recognized. He further submits that the petitioner and Respondent No. 1 are brother and sister. According to the petitioner's own case, he executed a sale deed in favour of Respondent No. 1 in the year 1975, pursuant to which Respondent No. 1 became the absolute owner of the suit property. Therefore, Respondent No. 1 was fully entitled to transfer the property, and accordingly executed a sale deed in favour of Respondent Nos. 2 and 3, and thereafter Respondent No. 3 further transferred the property to Respondent No. 4. He further points out that Respondent No. 1 – Shevantabai has specifically denied the execution of the alleged Bataipatra. It is submitted that the said document does not bear the signature of Respondent No. 1, and the petitioner has merely examined a witness to support the alleged contractual tenancy. In these circumstances, it is submitted that, after remand, the Tahsildar, the Deputy Collector, and the Tribunal have rightly appreciated the evidence and correctly decided the matter.

5.1 In support of his submissions, he relies upon the following Judgments :

- [a] **Radhakishan Soni Vs. Gangaram; 1978 (1) LJSOFT 90 ;**
- [b] **Sampat s/o Zingu Vs. Farooq Ali s/o Chunnilal & Others; 1997 (2) Bom. C.R. 699 ;**
- [c] **Gangubai w/o Bhagwanrao Pawatekar Deceased through LRs. Vs. Kishanrao s/o Limbajirao Kadam Deceased through LRs and Ors.**

[d] **Nilawabaj Sida Khajure Vs. Chanmalappa Basappa and Ors.; 1977 Mh.L.J. 443 ;**

[e] **Sunderbai Sahebrao Shinde Vs. Balbai Bansi Chalak and Ors. 1992 MCR 312 ;**

[f] **Sheshrao Bolegave Vs. Shivram s/o Amrutrao Patil; 2005 (2) Mh.L.J 1102 ;**

6. Having heard the learned counsel for the respective parties and upon perusal of the orders passed by the Tahsildar, the Deputy Collector, and the Tribunal, it appears that the issue of contractual tenancy has arisen from the pleadings before the civil court. Accordingly, the civil court framed an issue of tenancy and referred the same to the tenancy authorities for adjudication. In the earlier round of litigation, the Tribunal remanded the matter with a specific direction to the Tahsildar to decide the issue of contractual tenancy. It appears that the Tahsildar after complying with the directions issued by the Tribunal in the earlier round of litigation, has come a conclusion that, the Petitioner is not tenant of the said property as no revenue record from the year 1954 to 2001 was produced showing tenancy in favour of Petitioner. The *Bataipatra* relied upon by the Petitioner does not confer tenancy rights upon the Petitioner. Even if the said *Bataipatra* is considered to be genuine, it is merely a contractual agreement for sharing the crops between land owner and the person sowing the field. *Bataipatra* is a mutually agreed contractual engagement by the land owner with another person to plough his field for the consideration of sharing of crops between them. Therefore, the meaning of *Bataipatra* itself does not confer any tenancy rights upon the person in whose favour the *Bataipatra* is executed. In *Bataipatra* possession is handed over only for the purpose

of growing crops and not for the purpose of tenancy as required under the Act of 1950.

7. The contention of the learned counsel for the Petitioner that Section 4-A of the Act of 1950 confers contractual tenancy in favour of Petitioner is liable to be rejected for the reason that no such concept exists in the Act of 1950. I have gone through the said provision and it speaks about applicability of Transfer of Property Act, 1882 with the Act of 1950. So far as the Judgmetns cited by the learned Advocate for the Petitioners are concerned, the same are not applicable to the present facts as the case of the Petitioner is solely based on *Bataipatra*, which does not confer any tenancy rights upon him. As the case of the petitioner is based on the *Bataipatra* dated 01.06.2001, I am of the opinion that the findings recorded by the Tahsildar in remand, which are also confirmed by the Revenue Authorities, are proper. Therefore, the present Petition deserves to be dismissed. Hence, I proceed to pass the following order :

ORDER

- [I] The writ petition is dismissed.
- [II] No order as to costs.
- [III] Rule is discharged.
- [IV] Pending civil applications, if any, stand disposed of.

[SIDDHESHWAR S. THOMBRE, J.]