

Vivekanand

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

WRIT PETITION NO. 979 OF 2015

Abasaheb Sopanrao Jachak

... Petitioner

V/s.

Smt. Devai Somnath Mansukhe

(Decd) Through Lrs. Shri.

Dattatray Somnath Mansukhe

And Ors.

... Respondents

Mr. Sunil G. Karandikar i/b Mr. Abhijit P. Kulkarni, for
the Petitioner.

Sr. Adv. Surel Shah a/w Saakshat Relekar, Bhoomi
Maheshwar i/b Manisha Devkar, for the Respondent
Nos. 1B to 1C.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 31, 2026

P.C.:

1. Challenge in this petition arises out of an application filed by the landlord under Section 32-O read with Section 32-P to declare purchase by petitioners/alleged tenant ineffective and consequential order of delivery of possession.

2. In the application filed by the Respondents-Landlord, it is stated in paragraph 2 that one Manikrao Sopanrao Jachak was tenant in his own right on 1 April 1934 and thereafter petitioner was inducted as a tenant. Since the petitioner has failed to exercise his right to purchase, the purchase be declared ineffective under

Section 32 (O) and order under Section 32 (P) be passed directing petitioner to deliver possession.

3. The Petitioner raised a defence contending that Manikrao was cultivating the land on behalf of joint family and, therefore, the tenancy of Manikrao was for on behalf of joint family and, hence, the petitioner is entitled to succeed on the ground that the petitioner was part of joint family of Manikrao.

4. All the three authorities disbelieved defense raised by the Petitioner that on 1 April 1957 Manikrao was in possession of land in dispute for and on behalf of joint family. This finding of fact remains unassailable. However, Mr. Sunil Karandikar, learned Advocate for the Petitioner, submits that once Manikrao is accepted to be statutory tenant on 1 April 1957, the deeming fiction under Section 32 (1) and other provisions of BT & AL act would get triggered, resulting into conferment of ownership on Manikrao in his individual capacity. Once, Manikrao becomes owner of the property by virtue of the deeming fiction under the provisions of BT & AL act no tenancy including creation of tenancy in favour of petitioner was permissible. He submitted that in the application filed by respondents, plea of surrender was raised. However, he submitted that the law in regard to the surrender of tenancy of agricultural land is settled in view of the judgment in case of *Ramchandra Keshav Adke & Others vs. Govind Joti Chavare Vs. Govind*, 1975 (1) SCC 559. He submits that unless such surrender is verified in the manner prescribed in the Act, the surrender will have no effect. He, therefore, submits that rights of Manikrao as deemed purchaser on 1 April 1957 stand unaffected.

5. Per contra Mr. Surel Shah, Senior Advocate on behalf of Landlord, submitted that the defence raised by the petitioner stating that the Manikrao tenancy was on behalf of family has been disbelieved by all three authorities regarding finding of act. He submitted that once petitioner accepts that Manikrao was tenant of the property, petitioner cannot be termed as aggrieved person so as to enable him to challenge orders passed by the authorities under the act and therefore petitioner had no locus to challenge the order passed against him. He, therefore, submitted that once the facts pleaded in the applications are held to be established by the authorities under the act by recording concurrent finding of act, no interference in under which jurisdiction is called.

6. Having heard the learned Advocates appearing for both sides and having considered the material placed before the authorities, in my opinion, the following facts emerge from the record and can safely be held to be established.

a) On 1 April 1957, Manikrao was the statutory tenant in respect of the land in dispute. This position is important because 1 April 1957 is the Tillers' Day under the Bombay Tenancy and Agricultural Lands Act. The rights of a tenant who was in possession on that date are therefore required to be examined with reference to the statutory scheme of the Act.

b) The tenancy in favour of the Petitioner came into existence after Tillers' Day. Therefore, the Petitioner's alleged tenancy cannot be treated in the same manner as the

tenancy which was existing on 1 April 1957. The rights which arose in favour of Manikrao on Tillers' Day have to be considered first.

c) The case of the Respondents, when their application is read as a whole, appears to proceed on the footing that the tenancy of Manikrao came to an end and thereafter the Petitioner was inducted as a tenant. In substance, therefore, the case of the Respondents is based upon the alleged surrender of the tenancy of Manikrao and creation of a fresh tenancy in favour of the Petitioner. It is on this basis that the subsequent tenancy is sought to be brought within the provisions of Section 32-O of the Bombay Tenancy and Agricultural Lands Act.

d) The Respondents-landlords have accordingly pleaded in their application that after the Petitioner became a tenant, he failed to exercise the right to purchase the land within the period prescribed by law. On that basis, the Respondents claimed that the purchase had become ineffective and that the tenancy had come to an end. They therefore sought an order for delivery of possession under Section 32-P of the Act. Thus, the relief claimed by the Respondents is dependent upon the Petitioner's tenancy being a legally valid tenancy and upon the provisions of Section 32-O being applicable to such tenancy.

e) The next question is whether the alleged surrender of Manikrao's tenancy can be accepted in law. On this issue, the

legal position is no longer open to doubt in view of the judgment of the Supreme Court in *Ramchandra Keshav Adke & Others v. Govind Joti Chavare*, 1975 (1) SCC 559. The Supreme Court has explained the manner in which surrender of an agricultural tenancy is required to be made and verified. A tenant cannot be treated as having surrendered his tenancy merely because the landlord says that the tenant had surrendered it or because another person was put in possession. For a valid and effective surrender, the surrender must be in writing. It must thereafter be verified before the Mamlatdar in the manner required by the Act. The Tehsildar or the concerned authority must also satisfy himself that the tenant understands the nature and consequences of the surrender and that the surrender is being made voluntarily. The statutory requirement is therefore intended to protect the tenant from losing his valuable tenancy rights by an informal or doubtful surrender. The requirement of verification is a safeguard provided by the statute. Unless the prescribed procedure is followed, the alleged surrender cannot be treated as having legally brought the tenancy to an end.

7. In the present case, there is no material shown to this Court demonstrating that the written surrender of tenancy was made by Manikrao and that it was verified in the manner required by law. There is also no material showing the satisfaction or endorsement of the concerned authority regarding Manikrao's understanding of the nature and consequences of surrender and the voluntary

character of such surrender. In absence of compliance with these statutory requirements, the alleged surrender cannot be accepted as a valid surrender in the eye of law., the tenancy rights of Manikrao which existed on 1 April 1957 cannot be treated as having been lawfully extinguished merely on the basis of the subsequent possession of the Petitioner.

8. The next question which therefore arises is whether, after Manikrao was found to be the tenant in possession on 1 April 1957, a fresh tenancy could legally be created in favour of the Petitioner. In my opinion, this question has to be answered by keeping in view the effect of Section 32(1) of the Act. Once it is established that Manikrao was the tenant in possession on 1 April 1957, the statutory consequences provided by Section 32(1) are attracted, subject of course to the conditions, exceptions and provisos contained in the Act. The statute creates a scheme under which the tenant in possession on Tillers' Day is entitled to become a deemed purchaser of the land, subject to compliance with the requirements of the Act. Therefore, the rights flowing from the tenancy existing on Tillers' Day cannot be defeated merely by an arrangement between the landlord and the tenant after that date. If the tenancy of Manikrao continued in law, the mere fact that the parties put the Petitioner in possession cannot by remove the statutory rights which had attached to Manikrao.

9. The Petitioner's case that he was a member of the joint family of Manikrao has been rejected by all three authorities. Therefore, the Petitioner cannot claim the benefit of Manikrao's tenancy on the basis of joint family rights. But this does not mean

that the Court has to accept the other part of the case of the Respondents, namely, that Manikrao's tenancy was validly surrendered and that a fresh tenancy was created in favour of the Petitioner. These are two separate questions. The finding against the Petitioner's joint family defence does not establish a valid surrender of Manikrao's tenancy.

10. In my opinion, therefore, once Manikrao is held to have been the tenant in possession on 1 April 1957, the parties could not, merely by their subsequent act, create a fresh tenancy in favour of another person in a manner which would defeat the statutory consequences attached to the tenancy existing on Tillers' Day. The provisions of the Act have to operate according to the conditions prescribed by the statute. The rights of the tenant existing on 1 April 1957 cannot be avoided by simply describing the subsequent possession of another person as a fresh tenancy. If the original tenancy was required to be surrendered, such surrender had to be made in accordance with the procedure prescribed by the Act.

11. In the present case, the necessary statutory requirements for a valid surrender have not been established. Therefore, the foundation on which the alleged subsequent tenancy of the Petitioner is sought to be based becomes doubtful. Once the foundation fails, the subsequent proceedings treating the Petitioner as a tenant under Section 32-O also require examination on that basis.

12. I now turn to the submission of Mr. Shah that the Petitioner cannot be treated as a person aggrieved. According to the

Respondents, since the Petitioner had himself taken the position that Manikrao was the original tenant, the Petitioner had no independent right to challenge the orders passed by the authorities under the Act. I am unable to accept this submission in the facts of the present case. The expression "person aggrieved" cannot be given such a narrow meaning that a person who is actually in possession and against whom an order for delivery of possession is passed is prevented from challenging that order. The question of locus has to be considered with reference to the nature of the order and the effect which such order produces upon the person challenging it.

13. The Supreme Court in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed*, (1976) 1 SCC 67, has explained the distinction between a person aggrieved, a stranger and a busybody. The Supreme Court observed in paragraph 37 as follows:

"37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) "person aggrieved"; (ii) "stranger"; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court

should do well to reject the applications of such busybodies at the threshold."

14. The Supreme Court explained in paragraph 38 that the distinction between a person aggrieved and a stranger is not always capable of being drawn by one fixed rule. It observed:

"38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved". In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved"."

15. In paragraph 39, the Supreme Court also laid down the broad considerations which may be applied for deciding whether a person is aggrieved. It observed:

"39. To distinguish such applicants from "strangers", among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person "against whom a

decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?"

16. The above principles, when applied to the present case, make it difficult to accept that the Petitioner is a stranger or a busybody. The proceedings initiated by the Respondents were directed against the Petitioner. The Petitioner is stated to be in possession of the land. The authorities have passed orders affecting that possession and directing delivery of possession. The Respondents themselves proceeded against the Petitioner on the basis that he was in possession as a tenant. Therefore, the Petitioner has a direct and substantial interest in the order under challenge. It is true that the Petitioner's defence that Manikrao was a tenant on behalf of the joint family has not been accepted. That finding is binding upon the Petitioner in the present proceedings. But rejection of that particular defence does not take away his right to question whether the statutory provisions invoked against him were applicable at all. His possession is affected by the impugned orders. He therefore falls within the category of a person aggrieved and cannot be denied a hearing on the ground of want of locus.

17. The question, which then remains is whether the application filed by the Respondents under Section 32-O was maintainable on the facts of the present case. The foundation of the application under Section 32-O is that the person against whom the proceedings are initiated is a tenant whose purchase has become ineffective because of failure to exercise the statutory right to

purchase. Therefore, before granting relief under Section 32-O read with Section 32-P, the authority was required to be satisfied that the Petitioner had a recognised tenancy to which Section 32-O could apply.

18. In the present case, the original tenant on Tillers' Day was Manikrao. The alleged subsequent tenancy of the Petitioner is based upon the case that Manikrao had surrendered his tenancy. As held above, there is no material showing that the alleged surrender was made and verified in the manner required by law. Therefore, the legal foundation for treating the Petitioner as a tenant under a fresh tenancy created after Tillers' Day is not established. If the Petitioner is not legally a tenant in respect of the land for the purpose of Section 32-O, the consequence under Section 32-O cannot be imposed upon him merely because he was found in possession. The provisions of Section 32-O read with Section 32-P cannot be used for creating a tenancy where the statutory requirements for such tenancy are not established.

19. This, however, does not mean that the Respondents-landlords are without any remedy. If the Petitioner is in possession of the land without any valid tenancy or other legal authority, the Respondents may adopt such proceedings as are permissible in law for obtaining possession from a person who has no lawful right to remain in possession. The Court is not expressing any final opinion on what other remedy may be available to the Respondents. That question will have to be decided in appropriate proceedings and in accordance with the provisions applicable to such proceedings.

20. What cannot be sustained is the particular course adopted in the present case, namely, treating the Petitioner as a tenant for the purpose of Section 32-O and thereafter passing an order under Section 32-P on the footing that his purchase had become ineffective. The necessary legal basis for invoking those provisions against the Petitioner has not been established.

21. For these reasons, the impugned orders passed by the authorities under the Act, insofar as they exercise jurisdiction under Section 32-O read with Section 32-P against the Petitioner and direct delivery of possession on that basis, cannot be sustained. The impugned orders are therefore required to be set aside.

22. The Respondents-landlords shall, however, be at liberty to adopt such appropriate proceedings against the Petitioner as may be permissible in law and available to them under the provisions of the Act or any other applicable law. No finding in this judgment shall be understood as preventing the Respondents from pursuing such remedy.

23. All the contentions of both parties, except to the extent decided above, are kept open. The findings recorded in this judgment shall operate only for deciding the validity of the proceedings under Section 32-O read with Section 32-P which are impugned in the present Petition.

(AMIT BORKAR, J.)