

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7760 OF 2017

Hiraman Ganpat Hajare

... Petitioner

ATUL
GANESH
KULKARNI

Vs.

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2026.08.11
11:25:00 +0530

Ganesh Raghunath Dixit,
through his legal heirs

1. Manoj Ganesh Dixit

2. ~~Indrayani Ganesh Dixit~~ (deleted)

... Respondents

Mr. Drupad Patil with Ms. Srushti Chalke for the
petitioner.

Mr. S.C. Naidu with Mr. Manoj Gujar, Mr. T.R. Yadav,
Ms. Divya Yajurvedi, and Mr. Pradeep Kumar i/by Mr.
Abhishek Ingale for the respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 10, 2026.

PRONOUNCED ON : AUGUST 11, 2026

JUDGMENT:

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order dated 22 September 2016 passed in Review Application No. P/III/1/2016 and the order dated 21 December 2015 passed in Revision No. TNC/REV/102/2004-P by the Member, Maharashtra Revenue Tribunal, Pune Bench, Pune.

2. According to the petitioner, the facts and circumstances which led to filing of the present writ petition are as follows. The petitioner is in possession and cultivation of the suit land bearing Survey No. 86/3, situated at Revenue Village Chinchali, Taluka Haveli, District Pune. The said land originally belonged to Manohar Keshav Dixit. The petitioner's father, Ganpat Gopal Hajare, was in possession and cultivation of the suit land as a tenant from a period before the Tiller's day, that is, 1 April 1957. His name was recorded as a tenant in the 7/12 extract of the suit land.

3. On 1 April 1957, the suit land was situated within the limits of Village Chinchali, Taluka Haveli, District Pune. Dehu Road Cantonment was established on 6 October 1958. On the same date, the suit land came to be included within the limits of the Dehu Road Cantonment Board.

4. The petitioner's father, Ganpat Gopal Hajare, executed a registered Will dated 6 June 1956 by which he bequeathed the suit land and other tenanted lands to the petitioner. The petitioner's father died on 12 August 1958. After his death, the petitioner continued to remain in possession and cultivation of the suit land as a tenant. The petitioner's name was recorded as a tenant in the 7/12 extract of the suit land.

5. In the year 2001, the petitioner submitted an application dated 30 July 2001 before the Agricultural Land Tribunal and Tahasildar, Haveli, Pune, seeking fixation of the purchase price of the suit land under Section 32G of the Bombay Tenancy and

Agricultural Land Act, 1948 (B.T. & A.L. Act). On the basis of this application, the Agricultural Land Tribunal, Haveli, Pune initiated an inquiry under Section 32G of the B.T. & A.L. Act in respect of the suit land in Tenancy Case No. 32G/SR/31/2001. Notices were issued to the opponent-landlord and the petitioner-tenant in the said proceedings.

6. According to petitioner in an earlier proceeding bearing Tenancy Case No. N/ALT/1/58, the petitioner's brother, Shri Shivram Ganu Hajare, was shown as a legal heir of their deceased father, Ganpat Shivram Hajare. A notice dated 20 February 1963 was issued to the petitioner's brother in the said 32G proceeding before the A.L.T., Haveli, Pune. According to the petitioner, however, no notice of the said 32G proceeding was issued to him in his capacity as tenant. The A.L.T., Haveli, Pune, by judgment and order dated 25 March 1963, declared the purchase of the suit land ineffective on the ground that the tenant had remained absent.

7. By order dated 25 March 1963, the A.L.T., Haveli, Pune, declared the purchase of the suit land ineffective on the ground that the tenant had remained absent, though according to the order he had been duly served. The petitioner claims that he was himself in possession and cultivation of the suit land as a tenant at that time. He was, however, not made a party to the said proceeding and no notice of the 32G inquiry was served upon him by the A.L.T., Haveli, Pune. According to the petitioner, therefore, the said order dated 25 March 1963 passed in the 32G proceeding was without jurisdiction and was null and void.

8. Thereafter, by order dated 2 May 2002 passed in Case No. 32G/SR/31/2001, the A.L.T., Haveli, Pune, fixed the purchase price of the suit land. The petitioner-tenant was directed to deposit the said price in the Government Treasury within one year. The A.L.T. directed that a 32-M Certificate be issued to the petitioner after the purchase price was deposited. The petitioner deposited the purchase price within the prescribed time. Accordingly, the A.L.T. and Tahasildar, Haveli, Pune, issued a 32-M Certificate dated 17 May 2002 in favour of the petitioner in respect of the suit land. Thereafter, the petitioner's name was recorded in the ownership column of the 7/12 extract by Mutation Entry No. 776.

9. The petitioner states that the respondent filed Tenancy Appeal No. 18 of 2002 before the Sub-Divisional Officer, Haveli, Pune, challenging the order dated 2 May 2002 passed by the A.L.T., Haveli, Pune, in Tenancy Case No. 32G/SR/31/2001. The Sub-Divisional Officer, Haveli, Pune, by judgment and order dated 6 March 2004, allowed Tenancy Appeal No. 18 of 2002.

10. The petitioner filed Revision No. TNC/REV/102/2004/P challenging the judgment and order dated 6 April 2004 passed in Tenancy Appeal No. 18 of 2002 by the Sub-Divisional Officer, Haveli, Pune. The petitioner filed an application seeking stay to the operation and execution of the order dated 6 March 2004 passed by the Sub-Divisional Officer, Haveli, Pune, in the said appeal.

11. By judgment and order dated 21 December 2015, the Member, Maharashtra Revenue Tribunal dismissed the Revision No. TNC/REV/102/2004/P filed by the petitioner and vacated the

stay/status quo which had been granted. The petitioner filed Review Application No. P/III/1/2016 seeking review of the judgment and order dated 21 December 2015 passed in Revision No. TNC/REV/102/2004-P. The main ground raised by the petitioner was that the original tenant, Ganpat Shivram Hajare, who was the petitioner's father, had died on 12 August 1958. According to the petitioner, after his father's death, he acquired the tenancy rights in the suit land under the registered Will dated 6 June 1956 executed by his father. The petitioner further contended that notice of the 32G inquiry conducted by the A.L.T., Haveli, in 1963 was never served upon him. Therefore, according to him, the order dated 25 March 1963 passed in the earlier proceedings under Section 32G was without jurisdiction and was null and void. It was further contended that such an order could not operate as res judicata in the subsequent Section 32G inquiry initiated in 2001 in Tenancy Case No. 32G/SR/31/2001.

12. The Member, Maharashtra Revenue Tribunal, Pune, by letter dated 14 July 2016 called upon the petitioner to comply with the requirements in the said Review Application. The petitioner accordingly completed the required compliance in the Review Application.

13. By order dated 22 September 2016, the Member, Maharashtra Revenue Tribunal, Pune, dismissed Review Application No. P/III/1/2016 at the stage of admission. According to the petitioner, this was done without giving him an opportunity of hearing. The petitioner has, therefore, filed the present writ petition challenging the said order.

14. Mr. Drupad Patil, learned Advocate appearing for the petitioner, submits that the original tenant, namely, the petitioner's father Ganpat Shivram Hajare, died on 12 August 1958. According to him, after the death of the petitioner's father, the petitioner acquired the tenancy rights in respect of the suit land under the Will dated 6 June 1956. However, notice of the 32G proceeding in Tenancy Case No. ALT/IV/1/58 was not served upon the petitioner. He therefore submits that the entire 32G proceeding was without jurisdiction and was null and void. He further submits that after the death of the petitioner's father in 1958, the petitioner acquired the tenancy rights in the suit land and continued in possession of the land as a tenant. Therefore, the order dated 25 March 1963 passed by the A.L.T. in the 32G proceeding, without giving notice to the petitioner as tenant, was without jurisdiction and was null and void. According to him, such an order could not operate as res judicata in the 32G inquiry conducted in 2001. On this basis, he submits that there was an apparent mistake in the order dated 21 December 2015 passed by the Tribunal in Revision No. TNC/REV/102/2004-P.

15. In support of his submission, Mr. Patil relied upon the judgment of this Court in the case of *Pralhad Ganaba Kapare vs. Sadaba Rambhau Bhosale*, 1972 SCC OnLine Bom 48.

16. Mr. Naidu, learned Advocate appearing for the respondents, submits that the 32G proceedings in respect of the suit land were first started suo motu by the A.L.T. in the year 1958. According to him, the notice issued to the tenant Ganapat Gopal Hajare was accepted by Mrs. Laxmibai Shivram Hazare. Despite service of the

notice, the tenant remained absent. Mr. Naidu submits that when the A.L.T. starts proceedings suo motu and an adult member of the family accepts the notice, it is for that person to remain present and, if the person to whom the notice was issued has died, to inform the Court or Tahasildar about his death and to bring his legal heirs on record. According to him, this was not done in the present case. Therefore, the A.L.T. had no occasion to know whether the person to whom the notice had been issued was alive or dead. He submits that the order dated 25 March 1963 appears to have been passed by the A.L.T. against the deceased person. According to Mr. Naidu, however, in the facts of the present case it cannot be said that the order was non-est or that it could not operate as *res judicata*, particularly when the notice had been accepted by a legal heir of the party.

17. Mr. Naidu further submits that the order dated 25 March 1963 passed by the A.L.T. in Case No. A.L.T./1958 and Case No. A.L.T./Chincholi/4/1963 has never been challenged before any Court. He further submits that when the present revision applicant filed a fresh application before the A.L.T. on 30 July 2001 for fixation of the purchase price of the suit land under Section 32G of the Tenancy Act, he did not disclose the earlier order dated 25 March 1963 passed by the A.L.T. on the same issue. He submits that the effect of the earlier order had been reflected in the revenue record by Mutation Entry No. 681 dated 26 September 1963. According to him, the A.L.T., while conducting the fresh proceedings in Tenancy Case No. 31/2001, appears to have overlooked this fact. He therefore submits that the order dated 25

March 1963 operates as res judicata. According to him, the S.D.O. was therefore correct in setting aside the fresh order dated 2 May 2002 passed by the A.L.T.

18. In support of his submission, Mr. Naidu relied upon the judgments of this Court in the cases of *Zoroastrian Anjuman Funds Trust & Others vs. Chimanaji Jayaram Mali (deceased) through his heirs and others*, 2009 SCC OnLine Bom 518, and *Rajkumar Sampatraoji Kuthe vs. State of Maharashtra & Ors.*, 2012 (1) Mh.L.J. 299.

REASONS AND ANALYSIS:

19. The main question for consideration is whether the order passed by the Agricultural Lands Tribunal in the earlier 32G proceeding, by which the purchase of the suit land was held to be ineffective because the tenant remained absent, can be used against the petitioner. The petitioner contends that after his father's death, the tenancy rights came to him. It is not in dispute that his father had died before the said order was passed. The petitioner contends that no notice was served upon him and that he was not brought on record in that proceeding. Therefore, the connected question is whether the earlier order can be treated as res judicata and can stop the Agricultural Lands Tribunal from looking into the later application made by the petitioner under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948.

20. The basic facts are not in dispute. The suit land bearing Survey No. 86/3 was originally owned by Manohar Keshav Dixit.

The petitioner's father was in possession and was cultivating the land as tenant from before 1 April 1957. His name was shown as tenant in the 7/12 extract. The petitioner relies upon the registered Will dated 6 June 1956 executed by his father. According to the petitioner, by this Will the suit land and other tenanted lands were given to him. The petitioner's father died on 12 August 1958. After his death, the petitioner continued in possession and cultivation of the suit land as tenant and his name came to be recorded in the revenue record as tenant.

21. This fact is important because 1 April 1957 was the tillers' day under the Bombay Tenancy and Agricultural Lands Act, 1948. Therefore, the right under Section 32 has to be seen according to the position which existed on that date. The land came within the limits of Dehu Road Cantonment only on 6 October 1958. Therefore, this later inclusion cannot decide whether a right had come into existence in favour of the tenant on 1 April 1957.

22. The question about later inclusion of land in municipal or cantonment limits has been considered by this Court in *Pralhad Ganaba Kapare*. In that case, the question was whether a statutory right which had become vested in the tenant under Section 32 could be taken away because the land was included within the limits of a Municipal Corporation. The Court followed the earlier Division Bench decision in *Pokhraj Trilokchand Jain v. Janardhan Khandu* and held that a right which had vested in the tenant before the later inclusion of the land in the municipal area was not lost.

23. The principle stated in the quoted portion of *Pralhad Ganaba Kapare* is important. The Court observed:

“...The scope and effect of section 32 and the following sections were considered by the Supreme Court in *Sri Ram Ram Narain v. State* [(1958) 61 Bom. L.R. 811, S.C.] . At page 825 it was observed that the title to the land, which was vested originally in the landlord, passed to the tenant on the tillers' day, 1st April 1957, that there was a completed purchase or sale as between the landlord and the tenant and that the title acquired by the tenant is defeasible only in the event of the tenant failing to appear before the Tribunal or making a statement that he is not willing to purchase, or committing default in the payment of the price as determined by the Tribunal. The tenant gets a vested interest in the land defeasible only in either of these cases. In view of this decision of the Supreme Court, it must be held that the opponent-tenants had become the owners of the lands and had acquired title thereto on 1st April 1957. Section 32G of the Act gave them a right to pay only such purchase price as is specified in the Act and to get it determined in the manner laid down in the Act by the Tribunal. These rights had become vested in the tenants on 1st April 1957. They could not, therefore, be lost on subsequent inclusion of the lands within the limits of the Thana Municipal Borough and the relevant provisions of the Act ceasing to apply to them.”

24. The same principle was again stated by the Court in paragraph 8 of *Pralhad Ganaba Kapare*:

“8. The ratio of that decision will apply with all force to the facts of the present case as in the present case the lands were excluded from the operation of the Act because they were included in the limits of the Poona Municipal Corporation; and under an earlier notification of 1956 all lands included within the limits of the Poona Municipal

Corporation were reserved for non-agricultural and industrial purposes within the meaning of s. 88(1)(b). Although the notification under s. 88(1)(b) was prior to the tillers' day the notification including the area which is the subject matter of these petitions was subsequent to the vesting of the title under s. 32 to the tenants. With respect therefore, I, being bound by the said decision of the Division Bench, must hold that the Deputy Collector in the instant case was right in holding, following the said decision, that the Agricultural Lands Tribunal had power to determine the purchase price in respect of the land."

25. This principle takes care of one part of the dispute. In the present case, the land came within the limits of Dehu Road Cantonment only on 6 October 1958. The tillers' day was 1 April 1957. Therefore, if the petitioner's father had acquired the statutory right under Section 32 on 1 April 1957, the later inclusion of the land within the cantonment limits could not take away that right. The question is whether the right which had arisen was made ineffective because of the earlier 32G proceeding and the order passed in that proceeding.

26. The respondents rely upon the earlier proceeding. Their case is that the Agricultural Lands Tribunal had started the 32G proceeding suo motu in 1958. According to Mr. Naidu, notice was issued to Ganapat Gopal Hajare and the notice was accepted by Mrs. Laxmibai Shivram Hazare. According to the respondents, after an adult member of the family accepted the notice, it was her duty to remain present and inform the Tribunal about the death of the tenant and bring the legal heirs on record. It is further submitted that the petitioner did not challenge the order dated 25

March 1963 for many years. It is submitted that when the petitioner filed the application for fixation of purchase price in 2001, he did not disclose the earlier order. On this basis, it is submitted that the earlier order operates as *res judicata*.

27. This submission, however, cannot be accepted in the manner in which it has been made. There is a basic difficulty in treating the order dated 25 March 1963 as an effective order against the petitioner. The petitioner's father had died on 12 August 1958. The order was passed in 1963. The petitioner contends that by then he had succeeded to the tenancy rights of his father and was himself in possession and cultivation of the suit land. His name was recorded as tenant. If the petitioner was the person whose rights were directly going to be affected by the proceeding, then he had to be given an opportunity of being heard before an order was made which would defeat the statutory purchase rights claimed in respect of the land.

28. The respondents contend that the notice had been accepted by an adult member of the family. The decision in *Rajkumar Sampatraoji Kuthe*, relied upon by Mr. Naidu, explains that service upon an adult member of the family can be treated as valid service. In that case, the Court directed the subordinate Courts to follow Order V Rule 15 of the Code of Civil Procedure as enacted by Parliament, which provides:

“15. Where service may be on an adult member of defendant's family.— Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence

and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.— A servant is not a member of the family within the meaning of this rule.”

29. But this decision does not take the case of the respondents to the extent suggested by them. Service upon an adult member of the family and bringing the legal heirs of a deceased tenant on record are different matters. Merely because one family member accepted the notice, it cannot mean that all other legal heirs became parties to the proceeding. It cannot mean that the rights of a legal heir who was not served can be decided without giving him an opportunity to put forward his case.

30. The present case is not merely about the manner in which notice was served at the house when the petitioner's father was alive. The petitioner's case is that his father had died in 1958 and the petitioner had succeeded to the tenancy rights and was in possession of the land. The order was passed in 1963. Therefore, the Tribunal had to consider the person who was then claiming the tenancy rights. After the original tenant had died, the proceeding could not continue as if the deceased tenant was still before the Tribunal without considering the person who had succeeded to his rights.

31. The Supreme Court decision in *Gurnam Singh v. Gurbachan Kaur*, (2017) 13 SCC 414, though it arose in a civil proceeding,

explains the basic principle regarding an order passed against a dead person. The Supreme Court referred to *Kiran Singh v. Chaman Paswan AIR 1954 SC 340* and observed:

“6. ... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.”

32. The Supreme Court considered an order passed in favour of or against dead persons and held:

“15. The question, therefore, is whether the impugned judgment/order is a nullity because it was passed by the High Court in favour of and against the dead persons? In our considered opinion, it is a nullity. The reasons are not far to seek.”

33. The Supreme Court further observed:

“21. It is a fundamental principle of law laid down by this Court in *Kiran Singh* case [*Kiran Singh v. Chaman Paswan, AIR 1954 SC 340*] that a decree passed by the court, if it is a nullity, its validity can be questioned in any proceeding including in execution proceedings or even in collateral proceedings whenever such decree is sought to be enforced by the decree-holder. The reason is that the defect of this nature affects the very authority of the court in passing such decree and goes to the root of the case. This principle, in our considered opinion, squarely applies to this case because it is a settled principle of law that the decree passed by a court for or against a dead person is a “nullity”...”

34. This principle cannot be applied in exactly the same way to every case where a party dies during the proceeding. The nature of the proceeding, when the person died and whether his legal representatives were brought before the authority are matters which have to be considered. But in the present case, the material before the Court does not show that the petitioner was made a party to the 32G proceeding after the death of his father. It does not show that notice was served upon the petitioner or that his claim as successor tenant was considered before the order dated 25 March 1963 was passed.

35. There is another difficulty in the submission of the respondents. They rely upon the fact that notice was accepted by a family member and contend that it was then the duty of that person to inform the Tribunal about the death of the tenant. Even if such duty is assumed, failure of that person to inform the Tribunal about the death cannot result in deciding the rights of another heir who was not before the Tribunal. The Tribunal was deciding tenancy rights concerning the land. In such a situation, an heir cannot be treated as having lost his statutory rights without being heard.

36. There is some uncertainty in the material about the exact person who accepted the notice and the capacity in which the petitioner's brother was shown as legal heir. The respondents rely upon notice dated 20 February 1963 issued to the petitioner's brother, Shri Shivram Ganu Hajare. The petitioner contends that he was not made a party and that no notice was served upon him. This cannot be treated as merely a technical objection. The

petitioner claims that he had succeeded to the tenancy and was himself cultivating the land. Therefore, before the claimed statutory right of the petitioner could be defeated, the authority had to give him an opportunity of hearing.

37. The respondents rely upon the fact that the order dated 25 March 1963 was not challenged for a long period. Delay is certainly one circumstance which has to be considered. The petitioner ought to have disclosed the earlier proceeding when he filed the application dated 30 July 2001 under Section 32G. Such non-disclosure cannot be approved. A person seeking a statutory benefit should place before the authority the history of the land and the earlier proceedings. The petitioner cannot be said to have acted properly by not disclosing the earlier order.

38. But failure to disclose an earlier order cannot make an order which is ineffective into a valid order. If the earlier order was passed without hearing the person whose rights were affected, the mere fact that the order is found in the revenue record does not make it valid against that person. The first question remains whether the order could bind the petitioner.

39. The respondents rely upon Mutation Entry No. 681 dated 26 September 1963 and submit that the effect of the order dated 25 March 1963 had been entered in the revenue record. This does not change the position. A mutation entry records the effect of an order. It does not give jurisdiction to the authority and cannot make an otherwise defective order valid. If the order on which the mutation entry is based cannot operate against the petitioner, the

mutation entry cannot take away the tenancy rights claimed by him.

40. The argument of res judicata therefore cannot be accepted. For an earlier decision to operate as res judicata against a party, there must be an earlier decision by a competent authority on the matter in issue between parties claiming under the same title, and the person against whom it is sought to be used must have had an opportunity to contest that matter. The petitioner was not a party to the earlier proceeding in the necessary sense for deciding his claimed tenancy rights. If the earlier order is found to be a nullity as against the petitioner, res judicata cannot be used to give that order a legal effect which it otherwise does not have.

41. The decision in *Pralhad Ganaba Kapare* supports the petitioner's case in another manner. The Court there held that a right vested in the tenant under Section 32 could not be lost merely because the land was later brought within municipal limits. Here, the land came within Dehu Road Cantonment only on 6 October 1958. The tillers' day was 1 April 1957. Therefore, the later change in the area cannot retrospectively take away a right which had vested, unless that right was lawfully defeated under the provisions of the Act.

42. The position could have been different if the land was within the excluded area before the tillers' day. But the material before this Court shows that the land was in Village Chinchali on 1 April 1957 and came within Dehu Road Cantonment only on 6 October 1958. Therefore, the statutory position has to be considered as it

stood on 1 April 1957.

43. The respondents rely upon the orders passed by the Sub-Divisional Officer and the Maharashtra Revenue Tribunal. Those authorities mainly relied upon the earlier 32G order. Once the foundation of that order is found defective so far as the petitioner is concerned, the later orders cannot continue merely because they are based upon that order. The Sub-Divisional Officer treated the earlier order as a valid decision. The Maharashtra Revenue Tribunal proceeded on the basis that the earlier order operated as *res judicata*. However, the authorities did not consider the specific case of the petitioner that his father had died before the 1963 order and that the petitioner was neither served nor brought on record.

44. The fact that the petitioner filed the application for fixation of purchase price in 2001 does not mean that he accepted the earlier order of 1963. His case is that the earlier order was never binding upon him and that he was entitled to have his tenancy rights considered in the later proceeding. The A.L.T. considered the application and by order dated 2 May 2002 fixed the purchase price. The petitioner deposited the amount within the period granted to him and obtained the 32-M Certificate dated 17 May 2002. His name was then entered in the ownership column by Mutation Entry No. 776.

45. These later steps by themselves cannot cure an earlier defect. But they have some relevance because they show that the competent authority, after considering the petitioner's claim in the

2001 proceeding, accepted his claim and completed the process under Sections 32G and 32M. The 32-M Certificate was not issued only because of the petitioner's own statement. It was issued after the statutory proceeding and the order of the competent authority.

46. Therefore, the submission of Mr. Naidu that the 2001 application should have been rejected because of the earlier 1963 order depends upon whether that earlier order was valid and binding upon the petitioner. After considering the material, I am unable to hold that the earlier order can operate against the petitioner when it is not shown that he was served or brought on record after the death of his father and when his claim as successor tenant was not considered.

47. The reliance placed by the respondents upon *Rajkumar Sampatraoji Kuthe* does not change this conclusion. That case deals with service upon an adult member of the family. It does not contend that acceptance of notice by one family member makes every other legal heir a party to the proceeding. It does not mean that an authority can decide the independent rights of a person who was not served or heard merely because some other family member accepted the notice.

48. Similarly, the principle in *Gurnam Singh* is not being used to contend that every order passed after the death of a party is void. It is being applied only to the extent that an adjudication which directly affects the rights of a person without bringing that person before the authority cannot ordinarily be used against him as a binding decision. The Supreme Court's observation that a decree

passed “for or against a dead person is a ‘nullity’” becomes relevant where the proceeding is continued without bringing the persons upon whom the rights have devolved before the Court.

49. In the present case, the order dated 25 March 1963 was passed after the death of the original tenant. The petitioner claims to have succeeded to the tenancy rights and to have remained in possession. There is no material showing that the petitioner was made a party or that notice was served upon him before his claimed tenancy rights were defeated. Therefore, the earlier order cannot be treated as a valid adjudication against the petitioner.

50. It is necessary to notice that in the pleadings there is reference to an order dated 22 June 1961, whereas the main challenge is to the order dated 25 March 1963. There is therefore some difference in the dates appearing in the material. But this difference does not change the main issue. The petitioner's grievance is against the earlier 32G adjudication by which the purchase was declared ineffective because the tenant was absent. Whether the relevant order is described by one date or another, the question remains whether the petitioner, whose rights were claimed to have come to him after his father's death, was given notice and opportunity of hearing. The material before the Court does not establish such valid adjudication against him.

51. The Maharashtra Revenue Tribunal, while dismissing the revision, therefore did not consider the specific case of the petitioner that he was not a party to the earlier 32G proceeding. It did not sufficiently consider whether that earlier order could

operate as res judicata against a person who claimed to have succeeded to the tenancy and who was not shown to have been served. The dismissal of the review application at the admission stage becomes important in these circumstances. After the petitioner pointed out that the original tenant had died and that notice had not been served upon him in the earlier proceeding, the Tribunal was required to consider whether there was an apparent mistake in its earlier order.

52. The respondents have relied upon the fact that the petitioner did not challenge the 1963 order for many years. This certainly raises an issue of delay. But delay cannot give jurisdiction to an authority where jurisdiction was otherwise absent. It cannot make a nullity binding upon a person who was not a party to the proceeding. The Supreme Court in *Kiran Singh*, as quoted in *Gurnam Singh*, has stated that the invalidity of a decree passed without jurisdiction “could be set up whenever and wherever it is sought to be enforced or relied upon”. Here, the respondents themselves rely upon the 1963 order for defeating the later statutory claim of the petitioner. Therefore, the petitioner can challenge its binding effect.

53. On considering the whole material, the following findings arise.

- (i) The petitioner's father was a tenant of the suit land from before 1 April 1957 and was in possession and cultivation of the land on the tillers' day;
- (ii) The suit land was within the limits of Village Chinchali

on 1 April 1957. It was included within Dehu Road Cantonment only on 6 October 1958. Therefore, the later inclusion could not retrospectively take away a right which had vested on the tillers' day. The principle in *Pralhad Ganaba Kapare* supports this finding;

(iii) The petitioner's father died on 12 August 1958, before the order dated 25 March 1963 by which the purchase was declared ineffective;

(iv) The material does not establish that the petitioner, who claims to have succeeded to the tenancy rights and continued in possession, was served with notice or brought on record before the 1963 order was passed;

(v) Even if notice was accepted by another adult member of the family, that does not establish that the petitioner was made a party or that his independent rights were decided;

(vi) The order dated 25 March 1963, insofar as it is sought to be used against the petitioner without showing that he was brought before the authority and heard, cannot operate as a binding adjudication against him;

(vii) Therefore, the said order cannot operate as *res judicata* against the petitioner's application under Section 32G filed in 2001;

(viii) The Agricultural Lands Tribunal was therefore entitled to consider the petitioner's claim under Section 32G. Its order dated 2 May 2002 fixing the purchase price and

directing issuance of the 32-M Certificate cannot be set aside only because of the earlier 1963 order;

(ix) The failure of the petitioner to disclose the earlier order dated 25 March 1963 in his application dated 30 July 2001 was not proper. This conduct can be considered while examining the credibility of the petitioner's case. But such non-disclosure cannot make an otherwise ineffective order valid against him;

(x) The subsequent issuance of the 32-M Certificate dated 17 May 2002 and Mutation Entry No. 776 are consequences of the order passed by the competent authority in the 2001 proceeding. They cannot be ignored only because the earlier order is found in the record when that earlier order cannot bind the petitioner.

54. The final conclusion has to come from all these findings taken together. The tenancy rights under the Act cannot be defeated merely by relying upon an order which was passed after the death of the original tenant and without showing that the person who had succeeded to and claimed the tenancy had been served and heard. The principle of res judicata cannot be applied to an order which is not shown to be a adjudication against the person against whom it is being used. The later inclusion of the land within the cantonment limits cannot retrospectively destroy the statutory rights which had arisen on 1 April 1957.

55. Therefore, the order dated 21 December 2015 passed by the Member, Maharashtra Revenue Tribunal, Pune, in Revision No.

TNC/REV/102/2004-P cannot be sustained.

56. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

- (i) The Writ Petition is allowed;
- (ii) The order dated 21 December 2015 passed by the Member, Maharashtra Revenue Tribunal, Pune Bench, Pune, in Revision No. TNC/REV/102/2004-P is quashed and set aside;
- (iii) The order dated 22 September 2016 passed by the Member, Maharashtra Revenue Tribunal, Pune, in Review Application No. P/III/1/2016 is also quashed and set aside;
- (iv) The judgment and order dated 6 March 2004 passed by the Sub-Divisional Officer, Haveli, Pune, in Tenancy Appeal No. 18 of 2002 is quashed and set aside;
- (v) The order dated 2 May 2002 passed by the Agricultural Lands Tribunal and Tahasildar, Haveli, Pune, in Tenancy Case No. 32G/SR/31/2001 is restored;
- (vi) Consequently, the 32-M Certificate dated 17 May 2002 issued in favour of the petitioner in respect of the suit land bearing Survey No. 86/3, situated at Revenue Village Chinchali, Taluka Haveli, District Pune, shall stand restored;
- (vii) All consequential entries and actions taken pursuant to the orders which are quashed and set aside shall stand governed by the restoration of the order dated 2 May 2002 and the 32-M Certificate dated 17 May 2002;

- (viii) The parties shall bear their own costs.
- (ix) Rule is made absolute in the above terms.

(AMIT BORKAR, J.)