

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1238 OF 1998

Shri. Narayan Bandu Shendge, Age: Adult,
(Since deceased through legal Heirs and
Representatives).

Shri. Nitin Mahadeo Palkhe,

Age: about 35 Yrs.

R/A. Khadakpura, Shendgewada, Indapur, Dist.
Pune.

...Petitioner
(Orig. Tenant.
Applicant.)

Versus

Shri. Pandurang Kondiba Koli, Age: Adult,
Since deceased through L/h
Namdeo Pandurang Koli
residing at Shaha, Mahadeo Nagar, Taluka
Indapur, District Pune.

...Respondent
(Orig. Landlord
Opponent)

WITH

CIVIL APPLICATION NO. 2105 OF 2014

Pandurang Kondiba Koli (since Decd.) Through
his heirs & Legal representatives.

Shri. Namdeo Pandurang Koli,

Age: about 58 Years,

Occupation: Driver & Agriculturist,

R/at. Mahadeo Nagar, (Shaha).

Post Hingangaon, Tal. Indapur, District: Pune.

...Applicant.
(Orig.
Respondent in
W.P)

IN THE MATTER BETWEEN

Shri Narayan Bandu Shendge,
Age: Adult, R/at Khadakpura, Near Maruti
Temple, Indapur Taluka Indapur, District: Pune.
(died on 27.07.2013 during pendency of the
Writ Petition)

... Petitioner
(Orig. Tenant)

Versus

Shri. Pandurang Kondiba Koli
Since deceased through his Heirs & Legal
representatives.

NAVNATH
SITARAM
WAGHMARE

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Shri. Namdeo Pandurang Koli,
Age: about 58 Years,
Occupation: Driver & Agriculturist,
R/at. Mahadeo Nagar, (Shaha).
Post Hingangaon, Tal Indapur, District: Pune. ...Respondent

WITH
CIVIL APPLICATION NO. 1995 OF 2019
(early hearing)

Pandurang Kondiba Koli (since Decd.) Through ...Applicant/
Lrs. Namdeo P Koli Petitioner

IN THE MATTER BETWEEN

Narayan Bandu Shendge,
Since deceased through his L.Rs. Nitin Mahadeo
Palkhe ... Petitioner

Versus

Pandurang Kondiba Koli
Since deceased through his Heirs & Legal
representatives.
Namdeo Pandurang Koli. ...Respondent

Mr. Vaibhav R. Gaikwad for the Petitioner-(through VC).
Mr. Dilip Bodake a/w Mr. Shreeniwas Magar & Mr. Rushikesh Salunkhe
for the Respondent.

CORAM : M.M. SATHAYE, J.

DATE : 19th AUGUST, 2026

JUDGMENT :

1. The Petition is filed invoking Articles 226 and 227 of the Constitution of India, challenging order dated 19.09.1997 passed by designated Member, Maharashtra Revenue Tribunal, Pune ('the Tribunal' for short) in MRT.PVII.12/1996 (Review)(C-7)-1996, by which review filed by the Respondent- landlord was allowed, setting aside order dated 07.02.1996 passed by the Tribunal in MRT.PVII.5/1994 and confirming the order of Sub-Divisional Officer ('SDO' for short)

Baramati dated 10.06.1994 in Tenancy Appeal No. 14 of 1994 and order of Agricultural Land Tribunal (Additional Tahsildar, Indapur) Baramati ('ALT' for short) dated 16.03.1994 in Tenancy Case No. 32-G-Shaha-39-1993, Indapur Tenancy Case.

2. Agricultural land bearing Survey No. 8/2, admeasuring 2 Hectors 93 Ares situated at Village Shaha, Taluka Indapur, District Pune, is the subject matter property (hereinafter referred to as 'the said land' for short).

BACKGROUND

3. The Petitioner is claiming to be legal representative of the tenant (Narayan Bandu Shendge) and Respondents are legal heirs of original landlord. The tenant filed application under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the said Act' for short). ALT, Indapur, by order dated 30.11.1960 closed said proceeding on the ground that landlord has obtained certificate under Section 88C of the said Act. The tenant again filed application under Section 32G of the said Act in September, 1993. This application was rejected by ALT, Indapur, by order dated 16.03.1994. The tenant filed Tenancy Appeal No. 14 of 1994. The said appeal was rejected by SDO Baramati by order dated 10.06.1994. The tenant filed Revision No. MRT.PVII.5/1994 before the Tribunal under Section 76 of the said Act. By order dated 07.02.1996 the Tribunal allowed the revision and set aside the orders passed by the concerned SDO and remanded the matter back to Additional Tahsildar & ALT Baramati for fresh inquiry. The landlord filed Writ Petition No. 3209 of 1996, challenging the order of remand. This Court (Coram : S.H. Kapadia, J) by order dated 11.07.1996 dismissed the petition, however, observing that if the landlord is able to produce application under Section 33B or if the Tribunal is in a position

to review the application, the Tribunal may consider as to whether review can be ordered or not. This liberty was given to file review within three weeks. The landlord filed review on 31.07.1996. The Tribunal allowed review application by order dated 19.09.1997 setting aside the earlier order passed by the Tribunal dated 07.02.1996.

4. In such circumstances, the tenant filed present petition. The petition was admitted on 15.06.1998 and impugned order passed in review was stayed.

5. On 08.01.2014, Civil Application No. 3116 of 2013 was allowed permitting the present Petitioner- Shri. Nitin Mahadeo Palkhe to be brought on record.

6. The added Petitioner- Shri. Palkhe filed Civil Application No. 1331 of 2014 for bringing legal heirs of Respondent on record and by order dated 17.06.2014, the said application was allowed, bringing legal heirs of deceased Respondent on record.

7. The Respondent filed above Civil Application No. 2105 of 2014, praying that petition be dismissed as abated and alternatively to determine heirs/ legal representatives of deceased sole Petitioner/tenant and for declaration that present Petitioner Shri. Palkhe is not entitled to claim tenancy through tenant late Narayan Bandu Shendge.

SUBMISSIONS

8. Learned counsel Mr. Gaikwad for the Petitioner, submitted as under:

8.1. That the first order of the Tribunal clearly recorded that after obtaining certificate under Section 88C of the said Act, the landlord has

not taken action for terminating tenancy and obtaining possession and therefore, the case was remanded to ALT for fresh inquiry and this order is confirmed by this Court in Writ Petition No. 3209 of 1996.

8.2. That by taking advantage of the liberty granted by this Court, the Respondent landlord has filed review and the Tribunal has allowed it solely on the basis of letter issued by Tahsildar on 31.10.1996. That the said letter is issued in 1996 about existence of application for possession under Section 33B in the year 1960.

8.3. That the review application is not filed in time.

8.4. That the first order of Tribunal remanding the matter is a non-prejudicial order and it should not have been set aside.

9. On the other hand, Mr. Bodake, learned counsel for the Respondent- landlord submitted as under:

9.1. That the petition is liable to be dismissed as abated because sole Petitioner -tenant has expired during pendency of the petition leaving behind 8 daughters, whose details were provided to the tenant, however, those legal heirs are not brought on record despite intimation letter given in July, 2014. That the present Petitioner Shri. Palkhe has been brought on record as legal representative on the basis of a alleged Will dated 02.08.2002, which amounts to transfer/assignment of tenancy rights, which assignment is prohibited under Section 43 of the said Act. That the Will is without permission of the Collector. He relied on judgment of **Vinodchandra Sakarlal Kapadia Vs. State of Gujarat & Ors, 2021 (1) ALLMR 716 (SC)** in support of his submission. That therefore, present Petitioner has no *locus standi* to continue the petition as representative of sole Petitioner tenant. Under Section 40 of the said Act, only legal heirs continue as tenant, but none of the 8 daughters of

tenant are coming forward as heirs. Therefore, the present Petitioner Shri. Palkhe claiming to be legatee under Will, cannot continue as tenant.

9.2. That the said objection is raised by Civil Application No. 2105 of 2014 praying for dismissal of petition as abated or deciding about *locus standi* of the Petitioner Shri. Palkhe.

9.3. That since the appeal challenging certificate under Section 88C of the said Act is dismissed and since exemption certificate has attained finality, the same is binding upon the tenant. That therefore, the provisions of Section 32 to 32-R will not apply to the said land and therefore, ALT had rightly declined to determine purchase price, which is confirmed by the concerned SDO. That the Tribunal in review has rightly accepted the landlord's contention and therefore no interference is required in the concurrent findings.

9.4. That the landlord has followed due process by filing application (Tenancy Case No. 128 of 1962) under Section 33B of the said Act seeking possession however since there were encumbrances of the co-operative society about loan, the concerned ALT was pleased to passed order dated 29.07.1963 putting the application in abeyance till encumbrances are removed. That intimation letter about such order and Mutation Entry No. 574 is also on record, which is required to be considered. That thereafter, encumbrances were removed and Mutation Entry No. 1091 dated 22.05.1988 is effected. However, in the meantime, proceedings were misplaced and not finally decided by the concerned ALT. Therefore, certificate was issued to that effect by concerned Tahsildar, which has been rightly considered by the Tribunal in review.

9.5. That therefore the landlord had followed procedure under Section 33B of the said Act. That the tenant has filed proceeding after lapse of about 34 years and it is not maintainable and hit by principles of *res judicata*. That documents on record corroborates the case of the landlord that proceeding under Section 32G was initiated.

9.6. That the statement of tenant's predecessor is recorded in Tenancy Application No.39/1993, where he has admitted that earlier 32G proceeding were dismissed and it was recorded under Mutation Entry No. 618.

10. Mr. Gaikwad, in rejoinder submitted that the bar under Section 43 will not apply because the matter is remanded for fresh inquiry. He submitted that the aspect of whether proceeding under Sections 33B and 33C were initiated can also be considered in the fresh inquiry and whether present Petitioner Shri. Palkhe is legal heir or not can also be considered after remand.

REASONS AND CONCLUSION

11. I have considered the rival submissions and perused the record.

12. First of all, it is important to note that the impugned order is passed by the Tribunal pursuant to liberty granted by this Court under order dated 11.07.1996. Though this Court held that the earlier order of the Tribunal dated 07.02.1996 remanding the case does not require interference, certain liberty was reserved in following words (verbatim) :

"I do not find any infirmity in the impugned order of the Maharashtra Revenue Tribunal but in the interest of justice if the Petitioner is able to produce the copy of the application

under Section 33-B or if the Maharashtra Revenue Tribunal is in a position on the Petitioner's application for Review to call for Record and proceedings then the Maharashtra Revenue Tribunal may consider as to whether Review could be ordered or not. The petitioner seeks liberty to move in Review. Liberty is given only if Review petition is moved within three weeks. Maharashtra Revenue Tribunal may also call for any evidence in respect of that application only."

(emphasis supplied)

13. Since, this Court granted liberty and permitted the Tribunal to consider whether review could be ordered, no fault can be found with the exercise of jurisdiction by the Tribunal while passing the impugned order. Hence, there is no jurisdictional error.

14. Now let us consider the impugned order.

14.1. Bare perusal thereof shows that the Tribunal has considered two aspects. First, the Tribunal has considered a letter /certificate issued by Tahsildar dated 31.10.1996 where it is stated that the landlord had applied for possession on 30.11.1960 in respect of said land however due to long lapse of time, the documents are destroyed. Based on this letter, the Tribunal concluded that the landlord had filed application for possession under Section 33B of the said Act and therefore case was pending in respect of possession in the year 1960. This has been found sufficient by the Tribunal to review the order.

14.2. Second aspect considered by the Tribunal is that the certificate granted in favour of the Respondent landlord under Section 88C was not shown to have been challenged or set aside. The Tribunal has held that since the certificate under Section 88C is obtained, provisions of Section 32 to 32-R of the said Act are not applicable.

14.3. For these two reasons and on finding that the documents are certified to be destroyed by long lapse of time, the Tribunal has allowed the review, thereby confirming the orders of SDO and ALT dated 16.03.1994 and 10.06.1994, respectively. In the aforesaid circumstances, it cannot be said that the Tribunal did not have any reason to review the order as contended by the learned counsel for the Petitioner.

14.4. Since this Court had granted three weeks time to file review, the argument about review not being filed in time (from the date of earlier order of the Tribunal) has no merit. In any case, the Tribunal in second last paragraph of the impugned order has noted that the review application is filed in time from the date of High Court order.

15. This petition has peculiar facts and circumstances, which has necessitated a decision on Civil Application No. 2105 of 2014 moved by the landlord.

16. Learned counsel Respondent has relied upon the judgment of the learned Single Judge of this Court in **Sahadeo Namdeo Mahadik (Since Deceased) Through Legal Representatives- Vs. Parvatibai Mahadeo Mahadik and Ors. 2025 BHC (AS) 56053** , where similar application under Order 22 Rule 5 was made in a tenancy dispute very similar to the present case, where learned Single Judge of this Court has considered the application on merits and ruled on the aspect of legal heir. Considering the said judgment and the fact that Respondent landlord has called upon this Court to consider the locus of the present Petitioner Mr. Palkhe, Civil Application No. 2105 of 2014 needs to be considered on merits.

17. This is a peculiar case where sole Petitioner – tenant of an agricultural land (Narayan Bandu Shendge) has expired during the pendency of the petition on 27.07.2013. After his death the advocate for the Respondent landlord by letter dated 22.07.2014 has informed the Registry that the sole Petitioner has left behind 8 daughters as his legal heirs and those legal heirs are not brought on record. It was also pointed out that present petitioner Shri. Palkhe (who is not legal heir) is

brought on record. Therefore, information under Order 22 Rule 10A of Civil Procedure Code, 1908 was given to the Registry with its copy marked to advocate for the Petitioner. The copy of the said letter showing acknowledgment from registry as well as advocate for the petitioner, is on record.

18. In this application, Respondent landlord has supplied and stated on oath names of all the 8 daughters of original tenant. This application was permitted to be amended and prayers are added callings upon this court to hold and declare that the person at whose instance present petition has been prosecuted (Mr. Nitin Mahadeo Palkhe), he is not entitled to claim tenancy through original tenant in the teeth of Section 40 of the said Act and alleged Will on the basis of which he is claiming right is in contravention of provisions of Section 43 of the said Act. A specific stand is taken that present Petitioner Mr. Palkhe has no *locus standi* to prosecute this petition.

19. It is not disputed that after the death of original Petitioner tenant, Civil Application No. 3116/2013 was filed by present Petitioner Shri. Palkhe to bring himself on record as legal representative on the basis of a registered Will. Record shows that by a one line order of Registrar (Judicial-I) dated 08.01.2014, in the absence of both parties, the application was allowed.

20. In Civil Application No. 2105 of 2014, learned counsel for the Respondent landlord has relied upon Section 40 to contend that Shri. Palkhe cannot continue as tenant on the death of original tenant because he cannot be legal heir when the daughters (being class-I heirs) are existing. It is also contented that the word 'assignment' in Section 43 of the said Act dealing with restriction of transfers of land purchased or sold under the said Act has been interpreted to include Will by a

Three Judges bench of Hon'ble Supreme Court in **Vinodchandra Sakarlal Kapadia (supra)** and therefore assignment/transfer in favour of Shri. Palkhe under Will, which is admittedly without permission of the Collector, is illegal and prohibited, thereby hitting Mr. Palkhe's *locus* directly.

21. In view of such specific objection raised by the Respondent landlord to the locus of present Petitioner Shri. Palkhe, it is imperative for this Court to consider the same on merits. No reply is filed to Civil Application No. 2105 of 2014. The Petitioner has not brought on record any clear evidence about Shri. Palkhe being grandson of tenant (son of one of the daughters) as orally submitted through his counsel. Be that as it may. The statement on oath by the landlord giving details of 8 daughters of the original tenant is not denied and therefore it can be safely concluded that not one, but 8 Class-I heirs of original tenant are available. Such Class-I heirs exclude other heirs including grandson (assuming him to be so) in view of Section 8 and 9 of Hindu Succession Act, 1956 which provides devolution firstly upon the heirs being the relatives specified in Class- I of the Schedule; and excluding other heirs. Considering the position of the Petitioner either way, as a grandson of the original tenant (assuming him to be so as argued orally) or as a legatee under Will, his competence to continue as tenant is clearly hit by Section 40 and 43 of the said Act.

22. The Hon'ble Supreme Court in three Judges' Bench in **Vinodchandra Sakarlal Kapadia (supra)**, after considering a specific question as to whether the expression 'assignment' in Section 43 of the said Act includes testamentary disposition, has held as under:

“23. If a tenant or any other person from the priority list is conferred ownership in respect of the agricultural land or

when a landlord is allowed to retain the land which was surrendered by his tenant, each one of them is obliged to cultivate the land personally. In case any of them is unwilling, the land must be given to those who principally depend upon agricultural operations for their sustenance. If a person is a beneficiary of such statutory purchase and wishes to transfer his holding the law obliges that he must take prior sanction from the Collector. While granting such sanction, the authorities may essentially check whether the transferee is an agriculturist or an agricultural labour who otherwise fulfils the requirements and would carry out the obligation of cultivating the land personally; and that his holding would not go beyond the ceiling limit. Since the ownership itself was conferred as a result of the legislative scheme as discussed hereinabove, these conditions are inherent in the very conferral of ownership and, therefore, specifically incorporated in Section 43 with direct reference to the provisions named therein.

24. A transfer *inter vivos* would normally be for consideration where the transferor may get value for the land but the legislation requires previous sanction of the concerned authority so that the transferee can step into the shoes of the transferor, and carry out all the obligations as a part of legislative scheme must be discharged. Thus, the screening whether a transferee is eligible or not, can be undertaken even before the actual transfer is effected. As against this, if a testamentary disposition which does not have the element of consideration is to be permitted, and if it is assumed that Sections 43 and 63 of the Act do not get attracted, the land can be bequeathed to a total stranger and a non-agriculturist who may not cultivate the land himself; which in turn may then lead to engagement of somebody as a tenant on the land. The legislative intent to do away with absentee landlordism and to protect the cultivating tenants, and to establish direct relationship between the cultivator and the land would then be rendered otiose. The construction put on the expression "assignment" appearing in Section 43, therefore, has to be consistent with the legislative scheme. In the context of the entire scheme, the term "assignment" used in Section 43 of the Act must include testamentary disposition as well. By adopting such construction, in keeping with the law laid down by this Court, the statute would

succeed in attaining the object sought to be achieved. On the other hand, if it is held that the testamentary disposition would not get covered by the provisions of Section 43, a gullible person can be made to execute a testament in favour of a person who may not fulfil the requirements and be eligible to be a transferee in accordance with law. This may not only render the natural heirs of the tenant without any support or sustenance, but may also have serious impact on agricultural operations."

(emphasis supplied)

23. Therefore, it is clearly held by the Hon'ble Supreme Court that a gullible person can be made to execute a testament in favour of a person who may not fulfil the requirement and may not be eligible to be transferee in accordance with law. It will not be out of place to reiterate that fulfilling requirement includes requirement under Section 40 also. In that view of the matter, present Petitioner Shri. Palkhe does not fit into description of 'heir' who can continue tenancy on the death of original tenant. Therefore, in my considered view, in the peculiar facts and circumstances of this case, since the transfer/assignment in favour of present Petitioner (Shri. Palkhe) is hit by both sections 40 and 43 of the said act, he has no *locus* to press and continue this petition. Therefore, the impugned order cannot be challenged at the instance of such party. Since the petition is being proceeded with only at the instance of Shri. Palkhe, who cannot be said to be tenant claiming through original tenant in the teeth of Section 40 and 43 of the said Act, I am afraid the impugned order cannot be challenged at his instance.

24. In the aforesaid facts and circumstances, and for reasons recorded above Civil Application No. 2105 of 2014 is allowed holding that Petitioner (Mr. Nitin Mahadeo Palkhe) is not entitled to proceed with this petition after original tenant Narayan Bandu Shendge. Other

prayers in civil application to determine the heirs of deceased Narayan Bandu Shendge cannot be considered, as nobody else has come forward and for lack of necessary material. So far as remaining prayer about abatement is concerned, suffice it to observe that the impugned order can not be challenged by present Petitioner Shri. Palkhe.

25. **In the net result, writ petition is disposed of, confirming the impugned order, in above terms.** Rule is discharged. Pending Civil Applications are also disposed of in above terms. No order as to costs.

26. At this stage, learned counsel for the Petitioner seeks continuation of interim relief. Learned counsel for the Respondent has opposed the request. Considering long pendency of the matter with interim protection, the operation of this order is stayed for a period of 6 weeks from today.

27. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)