

Sayali

**IN this court OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6990 OF 2017
WITH
WRIT PETITION NO. 14281 OF 2016**

Mrs. Rajashree Rajendra Deshpande and
Others ... Petitioners
V/s.
Gajanan Narayan Mulik and Others ... Respondents

Mr. Sunil Karandikar with Ms. Apoorva Kulkarni i/b
Mr. Ashwin P. for Petitioners.

Mr. S. M. Gorwadkar, Senior Counsel, i/b Mr.
Niranjan Mogre with Umang Mehta with Soham
Londe with Swaraj M. Savant, Harshal N. Mule, for
Respondent no. 1.

Mr. Atul Damle, Senior Advocate i/b Mr. Vijay Kiledar
with Mr. Sumedh Modak, for Respondent no. 2.

Mr. Pankaj Das, for Respondent nos. 3 and 4.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 12, 2026

P.C.:

1. The Petitioners have filed these Petitions to challenge the orders passed by the authorities under the Act. The land in question bears Survey No. 8/1/2 and measures 4 Hectares 8 Are, that is, 10 Acres 8 Gunthas. It is situated at Village Vadgaon Sheri, Taluka Haveli, District Pune. The land originally belonged

to Shri Vishwanath Kharadkar. Shri Narayan Ramchandra Mulik was cultivating this land as a tenant since the year 1936.

2. On 30 December 1952, Shri Vishwanath Kharadkar died. He left behind three sons, namely, Dattatray, Narayan and Digambar. On 7 May 1956, the three sons filed Tenancy Case No. 2212/1957 before the Tenancy Mahalkari, Haveli, against the tenant, Narayan Mulik. They filed the case under Section 34 read with Section 29(4) of the Tenancy Act and sought possession of 10 acres of land. Thereafter, on 20 November 1957, Dattatray, Narayan and Digambar executed a registered partition deed. Under this deed, the tenanted properties were given to the share of Dattatray. The reason stated for giving these properties to Dattatray was that he had been serving in the Armed Forces since 1942. On 11 February 1958, a compromise was reached between Dattatray, Narayan and Digambar on one side and Narayan Ramchandra Mulik on the other side. Under this compromise, Narayan Mulik agreed to surrender 5 acres of land in favour of Dattatray, Narayan and Digambar. It is alleged that Dattatray, Narayan and Digambar did not disclose the earlier partition to Narayan Mulik. Dattatray retired from the Armed Forces on 31 July 1968. Thereafter, in the year 1975, he filed Tenancy Case No. 3/1975 before the Sub-Divisional Officer (SDO), under Section 43(1)(B) read with Section 29 of the Tenancy Act. He sought possession of 5 acres of land on the ground that he wanted to cultivate it personally. On 5 February 1980, the SDO passed an order concerning the tenancy rights in respect of 2½

acres of land. On 12 May 1980, Dattatray Kharadkar filed Revision Application No. 795/1980 before the Additional Commissioner. Narayan Mulik filed Revision Application No. 799/1980. Both Revision Applications were dismissed on 16 January 1981. In the year 1981, Narayan Mulik filed Writ Petition No. 740/1981 before this court, challenging the order passed in Revision Application No. 799/1980. Dattatray Kharadkar filed Writ Petition No. 2271/1980, challenging the order passed in Revision Application No. 795/1980. On 13 March 1989, Narayan Mulik died, leaving behind his two sons, Gajanan and Dnyaneshwar. Thereafter, on 10 July 1989, Dattatray Kharadkar died. He left behind his wife, Indira, two sons, Ramchandra and Shrikant, and three daughters. On 21 July 1989, the three daughters of Dattatray Kharadkar executed a Power of Attorney in favour of their brothers, Ramchandra and Shrikant Kharadkar, in respect of the property in question. On 29 August 1991, this court passed a common order in Writ Petition No. 740/1981 and Writ Petition No. 2271/1980. this court sent the matter back to the SDO, Pune, for a fresh decision. The SDO was directed to decide whether the partition deed dated 20 November 1957 had been validly executed. Accordingly, Tenancy Appeal No. 3/1975 came up for hearing before the SDO, Pune, in the year 1991. On 20 December 1991, the SDO dismissed the appeal. The SDO held that the partition had not been validly executed.

3. In the year 1991, Ramchandra and Shrikant Kharadkar, along with the three daughters of Dattatray, filed Tenancy

Revision Application No. 144/1991 before the Additional Commissioner. On 24 April 1993, Ramchandra and Shrikant Kharadkar, the three daughters and the wife of Dattatray entered into an agreement. Under this agreement, they accepted that Gajanan and Dnyaneshwar Mulik had become the owners of Survey No. 8/1/2 under Section 32G of the Tenancy Act. The Power of Attorney dated 21 July 1989 was then in force in respect of the property in question. On 13 October 1995, Indira Kharadkar executed a release deed in favour of her two sons, Ramchandra and Shrikant. Thereafter, on 14 January 1997, Ramchandra, Shrikant and Indira Kharadkar withdrew Tenancy Revision Application No. 144/1991. Ramchandra and Shrikant were acting under the Power of Attorney executed by the Petitioners. In the year 1997, Gajanan and Dnyaneshwar filed an application under Section 32G of the Tenancy Act against Ramchandra and Shrikant Kharadkar in respect of Survey No. 8/1/2. The application was registered before the Agricultural Lands Tribunal (ALT) as Case No. 32G/223/1997. At that time, the revenue records showed the names of Ramchandra, Shrikant and their mother as the landlords and cultivators of the land. On 19 December 1997, the ALT passed an order under Section 32G of the Tenancy Act. By this order, Gajanan and Dnyaneshwar Mulik were declared to be the owners of the land in question. The ALT directed that a certificate under Section 32M be issued in their favour. Accordingly, a certificate under Section 32M was issued on 20 March 1998 in respect of the property in question.

4. On 3 March 1999, Ramchandra and Shrikant Kharadkar challenged the order passed by the ALT by filing Tenancy Appeal No. 10/1999 before the SDO. The Power of Attorney was in force at that time. On 12 March 2001, Ramchandra and Shrikant Kharadkar entered into a compromise with Gajanan and Dnyaneshwar Mulik in the said appeal. The Power of Attorney was in force when this compromise was entered into. On 20 December 2008, the Petitioners received a copy of Mutation Entry No. 8483 dated 15 April 1998. Thereafter, in January 2011, the three daughters of Dattatray Kharadkar, who are the present Petitioners, filed Tenancy Appeal Nos. 80/2011 and 81/2011 before the SDO, Pune. These appeals were filed after a delay of 14 years. In the appeals, the Petitioners did not state that the Power of Attorney dated 21 July 1989 was not binding upon them. On 27 June 2013, the SDO, Pune, dismissed both appeals on the grounds of limitation and res judicata. In the year 2013, the three daughters of Dattatray Kharadkar filed Tenancy Revision Application Nos. 5/2013 and 6/2013 before the Maharashtra Revenue Tribunal (MRT), Pune. On 30 July 2016, the MRT dismissed both Revision Applications on the grounds of limitation and locus standi. Being aggrieved by that decision, the three daughters filed the present Writ Petitions in the year 2016.

5. Mr. Karandikar, the learned Advocate appearing for the Petitioners, submitted that the Power of Attorney executed by the sisters in favour of their brothers was never used in any proceedings. He submitted that the sisters were not even aware

that such a Power of Attorney had been executed. According to him, the brothers withdrew the earlier proceedings before the authority on behalf of their sisters without informing them and without obtaining their knowledge or consent.

6. Mr. Karandikar, therefore, submitted that the orders passed by the authorities under the Act could not bind the sisters to the extent that those orders affected their rights in the property. He argued that the sisters ought to have been made parties to all the relevant proceedings and should have been given an opportunity to challenge the legality and validity of the orders passed by the authorities. According to him, without giving them such an opportunity, the authorities could not take away the rights which the sisters claimed under the Bombay Tenancy and Agricultural Lands Act.

7. These submissions were opposed by Mr. Gorwadkar and Mr. Damle, the learned Senior Advocate appearing for Respondent Nos. 1 and 4, respectively. They relied upon a copy of Civil Revision Application No. 544 of 2011. This application had been jointly filed by the sisters and their brothers in respect of the adjoining property. They relied upon this document to show that, even in the year 2011, the sisters and their brothers were jointly pursuing their claims against a third party concerning the adjoining property.

8. The learned Senior Advocates for the Respondents submitted that the provisions of the Bombay Tenancy and

Agricultural Lands Act, when considered along with the payment of consideration, showed that the sisters had knowledge of the withdrawal of the earlier proceedings. According to them, the conduct of the sisters indicated that they had accepted the withdrawal and had given their consent to it, even if such consent was not stated.

9. The learned Senior Advocates for the Respondents pointed out that the proceedings had been withdrawn in the year 2001, but the sisters did not raise any objection to the withdrawal at that time. They submitted that the sisters and their brothers continued to pursue claims against a third party jointly, at least until the year 2011. In these circumstances, according to the Respondents, the sisters could not later challenge the validity of the orders passed by the authorities under the Bombay Tenancy and Agricultural Lands Act. They submitted that Civil Revision Application No. 544 of 2011, filed jointly by the sisters and their brothers, was still pending. According to them, this showed that the sisters and their brothers continued to pursue their claims against the third party jointly even at the time of hearing of the present Petitions.

Reasons and Findings

10. I have heard The learned Senior Advocates appearing for the Petitioners and the Respondents. The main question is whether the Petitioners can now challenge the order dated 19 December 1997 passed by the Agricultural Lands Tribunal, when

their family members were dealing with the same land in different cases for many years and the Petitioners had taken part in some of those cases.

11. First, it is necessary to understand what rights the Petitioners are claiming in the land. Survey No. 8/1/2 originally belonged to Shri Vishwanath Kharadkar. Shri Narayan Ramchandra Mulik was cultivating the land as a tenant from 1936. After Vishwanath Kharadkar died, a dispute started between his sons and the tenant about possession of the land. This dispute continued before the tenancy authorities and this Court for many years. Therefore, the present case cannot be considered as if the Petitioners had no connection with the earlier cases and had approached the authorities for the first time in 2011. The earlier cases, the documents signed by the family members and the conduct of the Petitioners are important for deciding whether their present challenge can be accepted. The main argument of the Petitioners is that they did not know about the Power of Attorney dated 21 July 1989 and that it was not used with their knowledge. Mr. Karandikar submitted that their brothers withdrew the earlier cases without informing them. According to him, the orders passed thereafter could not affect the rights of the Petitioners. This argument requires consideration because a person's legal rights cannot be taken away only because another person claims to have acted on their behalf. At the same time, whether an act done by an authorised representative will bind the person concerned cannot be decided

only on the basis of a later statement denying such authority. The authority given, the documents signed, the participation in earlier cases and the conduct of the parties must be considered.

12. In this regard, the events mentioned in paragraphs 5 and 6 are important. On 21 July 1989, the three daughters executed a Power of Attorney in favour of their brothers, Ramchandra and Shrikant Kharadkar, concerning the land in question. Thereafter, in 1991, the brothers and the three sisters jointly filed Tenancy Revision Application No. 144/1991 before the Additional Commissioner. More importantly, on 24 April 1993, the brothers, the three sisters and their mother entered into an agreement accepting that Gajanan and Dnyaneshwar Mulik had become owners of Survey No. 8/1/2 under Section 32G of the Tenancy Act. These events were connected with the Petitioners. They were parties to the proceedings and to the agreement. The agreement dated 24 April 1993 is an important document. The Petitioners have not explained how their participation in this agreement can be separated from the later cases concerning the same land. If they had never accepted the claim of Gajanan and Dnyaneshwar Mulik, they were required to explain why they joined an agreement which recorded that the Mulik brothers had become owners of the land. No satisfactory explanation is found in the material placed before this Court. It is true that an agreement cannot take away a statutory right if the law does not permit it. However, the agreement is important for deciding whether the Petitioners knew about the claim of the Mulik family and had

accepted that claim at an earlier stage. In the facts of this case, the agreement does not support their present statement that they had no knowledge of the proceedings or the ownership claim.

13. The argument of the Petitioners that the Power of Attorney was never used in any proceedings cannot be accepted in the manner in which it is made. Paragraph 7 records that Ramchandra and Shrikant withdrew Tenancy Revision Application No. 144/1991 on 14 January 1997 while acting as holders of the Power of Attorney executed by the Petitioners. Paragraph 9 records that the brothers challenged the ALT's order by filing Tenancy Appeal No. 10/1999 and entered into a compromise with Gajanan and Dnyaneshwar Mulik on 12 March 2001. The Power of Attorney was still in force at that time. These facts show that the Power of Attorney and the acts of the brothers were connected with the dispute concerning the land.

14. Tenancy Revision Application No. 144/1991 was withdrawn on 14 January 1997. Thereafter, in the same year, Gajanan and Dnyaneshwar Mulik filed an application under Section 32G of the Tenancy Act before the ALT. On 19 December 1997, the ALT declared them owners of the land and directed that a certificate under Section 32M be issued in their favour. Accordingly, the certificate was issued on 20 March 1998. Thus, after the earlier revision proceedings were withdrawn, the claim of the Mulik family was decided by the authority under the Act. The Petitioners have not shown any material to establish that the

ALT had no authority to decide the application or that it passed the order without the jurisdiction required under the Act. Their main objection is that the order should not bind them because their brothers acted without their knowledge. For the reasons stated, the material before this Court does not establish this objection.

15. Mr. Karandikar submitted that the Petitioners should have been made parties to the proceedings and given an opportunity to challenge the orders before their rights could be affected. A person whose rights are affected should be given a fair opportunity to present their case. Here, the Petitioners were not strangers to the dispute. They joined the revision proceedings in 1991 and took part in the agreement dated 24 April 1993. The dispute concerned the same Survey Number and the ownership claim made by the successors of the tenant. Therefore, it is difficult to accept that the Petitioners had no knowledge of the nature of the dispute or had never taken part in the proceedings concerning this land.

16. The argument of the Petitioners does not consider the difference between getting an opportunity of hearing and reopening a case after a long time. Even if a person disputes the manner in which an earlier case was conducted, that person must approach the proper authority within the time allowed by law or show sufficient reason for the delay. An earlier order cannot be reopened merely by saying that the representative did not act

according to proper instructions. If such a course is allowed without sufficient reason, the orders passed by competent authorities will never become final. The law does not permit this result merely because a party raises an objection after many years.

17. The ALT passed its order on 19 December 1997, and the certificate under Section 32M was issued on 20 March 1998. The Petitioners received a copy of Mutation Entry No. 8483 dated 15 April 1998 on 20 December 2008. However, they filed Tenancy Appeal Nos. 80/2011 and 81/2011 only in January 2011. Thus, even after receiving the copy of the mutation entry, they did not immediately approach the SDO. As recorded in paragraph 10, the appeals were filed after a delay of 14 years. The Petitioners have not placed before this Court any satisfactory explanation covering the entire period of delay in challenging the order passed in 1997.

18. The fact that the Petitioners received the mutation entry in December 2008 does not,, prove that they knew about every proceeding from 1997 onwards. A mutation entry is a revenue record. Its effect has to be considered according to law, and it cannot decide ownership of the land. However, the Petitioners' case is not based only on the mutation entry. The agreement of 1993, their participation in the revision proceedings and the later conduct of their brothers are relevant. When all these facts are considered together, the Petitioners have not shown why they

could not challenge the order of 1997 earlier or why the delay of 14 years should be excused.

19. It is necessary to consider the argument that the Petitioners did not know about the withdrawal of the proceedings in 2001. The Respondents have pointed out that the earlier proceedings were withdrawn or settled and that the Petitioners did not raise any objection at that time. This fact,, may not prove that the Petitioners had agreed to every step taken by their brothers. Silence cannot always be treated as consent. However, the present decision is not based on silence alone. The Petitioners had participated in the revision proceedings and the agreement of 1993. Their brothers thereafter continued to act in the dispute while the Power of Attorney remained in force. No material has been placed before this Court to show that the Petitioners took timely steps to deny their brothers' authority or challenge the withdrawal when it took place. In the facts of this case, the absence of a timely objection supports the Respondents' case when considered along with the other documents.

20. The Respondents have relied upon Civil Revision Application No. 544 of 2011, which was jointly filed by the sisters and their brothers concerning the adjoining property. According to them, this shows that the sisters and brothers were jointly pursuing their claims against a third party even in 2011. This document cannot conclusively prove that the Petitioners had agreed to the withdrawal of proceedings concerning the present

land. The adjoining property was a separate matter. Merely because the sisters and brothers filed a joint case concerning that property, it does not necessarily prove that the sisters knew about every act done in the tenancy proceedings relating to Survey No. 8/1/2. Still, the document is relevant to the limited extent that it shows that the sisters and brothers continued to pursue property claims jointly. It requires the Court to examine their statement that the brothers were acting entirely without their knowledge or connection. Thus, the document supports the Respondents' case to a limited extent, though the decision in these Petitions does not depend upon this document alone.

21. The Respondents have submitted that the provisions of the Tenancy Act and the payment of consideration show that the Petitioners knew about the withdrawal and had agreed to it. The argument about payment of consideration cannot be accepted as a complete answer unless the payment, its purpose and its connection with the Petitioners are established by relevant material. Even without treating the payment as conclusive, the agreement dated 24 April 1993 and the participation of the Petitioners in the earlier proceedings remain important. The Petitioners have not explained how these acts can be reconciled with their present claim that the entire process took place without their knowledge.

22. The limits of this Court's power under writ jurisdiction must be kept in mind. This Court need not interfere with every order

merely because another view may be possible. Interference is required where the authority has acted without jurisdiction, has failed to apply the law correctly in an important matter, or has reached a conclusion which cannot reasonably be supported by the record. In the present case, the Petitioners have not established such a defect in the orders under challenge. Their main grievance is that they had no knowledge of the earlier proceedings and that their brothers had no authority to act for them. This grievance must be examined with reference to the Power of Attorney, the joint revision proceedings of 1991, the agreement of 24 April 1993, the subsequent proceedings and the long delay in filing the appeals. When all these circumstances are considered together, there is no sufficient reason to set aside the orders passed by the SDO and the MRT. This Court is aware that an order affecting rights in agricultural land may have serious consequences for the persons concerned. The Petitioners' claim cannot be rejected merely because their brothers acted in the matter or because the Mulik family obtained a certificate under Section 32M. The real question is whether the Petitioners have shown a sufficient legal ground for reopening the matter after the earlier proceedings and the long delay. The material before this Court does not show that the Petitioners were complete strangers to the dispute. Their participation in the earlier revision proceedings and the agreement of 24 April 1993 do not support their broad claim that they had no knowledge of the Mulik family's ownership claim. Their challenge was filed after a delay

of 14 years, without a satisfactory explanation. All these circumstances, when considered together, go against interference by this Court.

23. For these reasons, this Court finds that the Petitioners have failed to establish that the ALT's order dated 19 December 1997, the certificate issued under Section 32M or the subsequent orders challenged in these Petitions require interference under writ jurisdiction.

24. Accordingly, the Writ Petitions are dismissed. The orders passed by the SDO, Pune, dated 27 June 2013 and by the Maharashtra Revenue Tribunal, Pune, dated 30 July 2016 are not interfered with. There shall be no order as to costs.

(AMIT BORKAR, J.)