IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3020 OF 1989

1. Smt. Sojabai W/d. Bomtu Patil (died)

2. Rajaram Bomtu Patil (died)
Through Legal heirs

2-A Smt. Dagubai W/o. Rajaram Patil,
Age: 75 Years, Occu: Labour

2-B Arun Rajaram Patil (Mali),
Age: 46 years, Occu: Labourer,
Both R/o. Kandari(Bk) Tq. Dharangaon,
Dist. Jalgaon

2-C Shalik Rajram Patil (died),
Through Legal heirs

2-C-1 Sushila Shalik Mali,
Age: 48 years, Occu: Nil

2-C-2 Harchand Shalik Mali,
Age: 26 years, Occu: Agri.

2-C-3 Chhaya Shalik Mali,
Age: 21 years, Occu: Nil

2-C-4 Atul Shalik Mali,
Age: 23 years, Occu: Nil,
Above 2-C-1 to 2-C-4
R/o Kandari (Bk.),
Tq. Dharangaon,
Dist. Jalgaon

2-D Asaram Rajaram Patil,
Age: 55 years, Occu: labourer,
R/o. Behind Nagoba Madhi,
Kahit Galli, Erandol, Tq. Erandol,
Dist. Jalagon

2-E Sau. Sumanbai Daga Mahajan,
Age: 48 years, Occu: Housework,
R/o. Near Ashapuri Talkies,
Sundar Gandhi, Chopda,
Tq. Chopda, Dist. Jalgaon

2-F Sau. Lalitabai W/o. Somnath Mali,
Age: 45 years, Occu: Housework,
R/o. Pardhiwada, Amalner Road,
Parola, Tq. Parola, Dist. Jalgaon

2-G Ramesh Rajaram Patil, (Dead)
Through Legal heirs

2-G-1 Smt. Shobhabai Ramesh Patil,
Age: 45 years, Occu: Housework,
R/o Kandari(Bk.), Tq. Dharangaon,
Dist. Jalgaon

2-G-2 Sau. Rekha Dinesh Mahajan,
Age: 27 years, Occu: Housework,
R/o. Maroti Madhi, Near Mahatma
Fule Statue, Erandol, Tq. Erandol,
Dist. Jalgaon

2-G-3 Sau. Bharti Yogesh Gaikwad,
Age: 24 years, Occu: Housework,
R/o. Jaykhede, Malegaon,
Tq. Malegaon, Dist. Nashik

2-G-4 Sau. Sheetal Tushar Mahajan,
Age: 20 years, Occu: Housework,
R/o. Maroti Madhi, Near Mahatma
Fule Statue, Erandol, Tq. Erandol,
Dist. Jalgoan

3. Motiram Bomtu Patil,
Age: Major, Occu: Agri.

4. Atmaram Bomtu Patil,
Age: 62 years, Occu: Agri.

5. Bhaskar Bomtu Patil,
Age: Major, Occu: Agri.

Petitioner Nos. 3 to 5 are R/o. Kandari (BK.)
Tq. Dharangaon, Dist. Jalgaon

6. Smt. Girjabai W/o Tulshiram Patil(died),
Through Legal heirs

6-A. Shantaram Tulshiram Patil,
Age: Major, Occu: Agri.,

6-B. Ashok Tulshiram Patil,
Age: Major, Occu: Agri.,

6-C. Appa Tulshiram Patil,
Age: Major, Occu: Agri.

6-D. Vijay Tulshiram Patil,
Age: Major, Occu: Labourer,
6-A to 6-D All R/o. Kandari (Bk.),
Tq. Dharangaon, Dist. Jalgaon

7. Sau. Indubai Onkar Mahajan,
Age: Major, Occu: Household,
R/o. Kandari (Bk.), Tq. Dharangoan,
Dist. Jalgaon

8. Smt. Kewalbai Jagan Mahajan,
Age: Major, Occu: Household,
R/o. C/o Kashiram Mistri, Bhoi Wada,
Dharangaon, Tq. Dharangaon,
Dist. Jalgaon ...Petitioners

Versus

1. Harbanssing Chatarsing Tavar (Pardeshi),
Age: 61 years, Occu: Labour,
R/o. B-9, Chousala House, Khatipura Road,
Zotwada, Bajarang Colony, Jaipur,
Dist. Jaipur

2. Sau. Shakuntala Hardayal Kachawa (Pardeshi),
Age: 64 years, Occu: Household,
R/o. 1408, Mo. Rana Colony,
Vistarkheshtra Kishanpol, Jaipur,
Tq. & Dist. Jaipur

3. Sau. Bharti Kishansingh Bisen (Pardeshi),
Age: 58 years, Occu: Household,
R/o. 1217-C, Near Vanand Society,
At post Khapat, Tq. Porbandar,
Dist. Porbandar

Through
General Power of Attorney Holder,
Shri. Pravinsingh Dilipsingh Parihar,
Age: 35 years, Occu: Agri.,
R/o. 112-5, Ahilyabai Holkar Chowk,
At post Dharangaon, Tq. Dharangaon,
Dist. Jalgaon ...Respondents

.....
Mr. V.B. Patil, Advocate for petitioners
Mr. S. S. Kulkarni, Advocate for respondents
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CORAM : N.W. SAMBRE, J.

Reserved on : 10/12/2015
Pronounced on:22/12/2015

JUDGMENT :

The subject matter of the present petition is an order passed by Maharashtra Revenue Tribunal, Bombay on 12/09/1980 exercising powers under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter shall be referred as 'the Act'), allowing the appeal preferred by respondents and setting aside the order of Sub Divisional Officer, Amalner on 15/12/1977, so also the order of Tahsildar, Erandol dated 30/09/1975 and declared that the present petitioners are not tenants of the respondents.

2. The facts as are necessary for deciding the petition are as under :

The respondents-plaintiffs filed Special Civil Suit No. 22 of 1966 before the Court of Civil Judge, Senior Division, Jalgaon for possession of land Survey Nos. 4, 6 and 46 at Mukhepat, Taluka Erandol (hereinafter shall be referred to 'suit property').

3. The petitioners-defendants appeared in the suit and claimed that they are tenants over the suit property and raised appropriate plea pursuant to the provisions of the Act.

4. In view of stand taken by the present petitioners-defendants in the suit, the issue as regards whether the petitioners are tenant or not came to be referred to the Tahsildar i.e. competent authority within provisions of Section 85A of the Act. The Tahsildar, after considering the claim put forth by rival parties, by an order dated 30/09/1975 declared that the petitioners-defendants are tenants, which was subject of Tenancy Appeal No. 49 of 1977 before the Sub Divisional Officer, Amalner Division, Amalner under Section 76 of the Act. The appeal by present respondents-plaintiffs came to be dismissed on 15/12/1978 by Sub Divisional Officer, Amalner Division, Amalner, confirming the order of the Tahsildar, Erandol declaring the petitioner as tenant. The respondents, as such, preferred revision, pursuant to the provisions of Section 76 of the Act before Maharashtra Revenue Tribunal, Bombay. The Maharashtra Revenue Tribunal, Bombay after considering the revision has reversed the findings recorded by both the authorities i.e. Tahsildar and Sub Divisional Officer and declared that the petitioners are not tenants to the suit property.

5. While questioning the legality and validity of the order of tribunal, Mr. Patil, learned Counsel for the petitioners would strenuously urged that the scope of revisional jurisdiction as provided under Section 76 of the Act was exceeded to by the tribunal by exercising powers in question in favour of the respondents-plaintiffs. According to him, for setting aside concurrent findings, revenue tribunal, in revisional powers, has set aside both the orders of lower authorities by reappreciating the entire factual matrix and evidence on record, which according to him, is not permissible. He would then urge that revisional jurisdiction can be exercised only in case there is failure to exercise, vesting of jurisdiction or revisional authority has noticed that the authorities below have exceeded jurisdiction. He would then urge that the petitioners, who are in possession of the suit property being lessee, since 04/04/1945, which was initially for period of five years and before expiry of five years, the land was given to respondents-landlord. He would then urge that the land thereafter taken up under management pursuant to Section 65 of the Act in the year 1950 as is reflected from Mutation Entry No. 436 of 1944 as is effected in record of rights and land thereafter was again leased by Tahsildar, Erandol in favour of present petitioners. The lease was for period of ten years, however, management of the land was terminated by Government by order dated 26/04/1956 resulting into M.E. No.436. According to him, termination of management by an

order of the Tahsildar, Erandol on 26/04/1956 pursuant to the provisions of Section 61, possession of the land was taken over by Tahsildar and handed over to General Mukthyar Amarsing in the year 1955-56 as is apparent from possession receipt dated 07/07/1956. However, it is claimed that the petitioners later on in 1956-57 were put into possession by land lord of the suit property and as such, they remained in cultivating possession.

6. It is claimed that, crop cultivation by forefathers of the petitioners was pursuant to procedure No. 3 and entry to that effect could be noticed in 7/12 extract that is cultivation by payment of paying cash to the landlord. He would then urge that in view of Section 157 of Maharashtra Land Revenue Code, there is presumption as to the correctness of the entries in the record of right and register of mutation. He would then claimed that, on the tiller's day i.e. 01/04/1957, the petitioners were in possession as tenants and as such, became owner of the suit property. According to him, the tribunal needs to fix purchase price of land in question pursuant to Section 32 G of the Act. He would then urge that, factum of possession of respondents since years together could be inferred from the fact that the respondents/landlord approached Collector on 08/07/1964 seeking possession of the suit property. According to him, then suit in question came to be filed before the learned Civil

Judge, Senior Division, Jalgaon for possession of the suit property. According to him, reference of issue of tenancy pursuant to the provisions of Section 85A of the Act was rightly decided by the Tahsildar and Sub-Divisional Officer and sought indulgence of this Court. According to him, as per findings recorded by tribunal in revisional jurisdiction, he has been termed as trespasser, which are perverse and arbitrary and prays for allowing the present petition.

7. Mr. Kulkarni, learned Counsel for the respondent/landlords would urge that, the issue of tenancy is referred to the competent authority pursuant to defence raised by present petitioners in the suit. According to him, the petitioners owes an explanation as to source of his possession after possession was handed over to the present respondents/plaintiffs by the State Government and petitioners having executed the possession receipt dated 07/07/1956. He would then urge that, revisional jurisdiction, as is exercised by the tribunal, is in tune with the power conferred, as according to him the tribunal has noted the authority below have exceeded their jurisdiction. According to Mr. Kulkarni, learned Counsel for the respondents, the claim of the respondents/plaintiffs made in the plaint is, illegal possession of the suit property by present petitioners, being trespassers and as such, has rightly appreciated and dealt with by the learned trial Court. According to

him, the petition is liable to be dismissed.

8. The Tahsildar, Erandol, while dealing with the issue which was referred to him pursuant to the provisions of Section 85A of the Act has framed the points for its consideration.

a) Whether the opponent is lawful tenant of the suit lands ?

b) whether the applicants are the landlord of the suit lands ?

The Tahsildar, based on the original record available with him in relation to the suit lands and developments as taken place prior to the date of filing of the suit, has noticed that, in the year 1944, the suit land was leased for five years in favour of the petitioners pursuant to lease deed as is there on record. The possession thereafter was handed over to the respondents in 1948 and the land was taken under Government management pursuant to Section 65 of the Act and leased out by Government through Tahsildar for a period of 10 years in favour of the petitioners. The Tahsildar has considered the above referred evidence by referring the page number of original record in his order. The Tahsildar then based on the documentary evidence inferred that, the land was kept vacant by the petitioners from 1948-49 and thereafter though the land was leased to the petitioners by Government, said lease was terminated by communication dated 26/04/1956. He would then observe that, though Taba Pavati/possession receipt was executed, the land then should have remained in possession of the landlords, but in the present case, the fact about filing of the proceedings before Collector and suit in question reflects that, it is the petitioners, who are in possession of the suit property. He has inferred that, pursuant to the notice served on 17/12/1954, it is apparent that tenancy of the petitioners continued up to 1954 and the suit was filed for recovery of rent on 20/07/1953 by the respondents, wherein they claimed that, the petitioners were their tenants. It is further noticed from the observations that, pursuant to the application filed by the respondents for possession of the suit land and restoration of the same to the present respondents on 08/07/1964, the Collector has informed that the land was in possession of the tenants, and as such, informed respondents to approach the Court for taking possession of the suit property. The Tahsildar, as such, has recorded the findings based on the original record available with him that it is the respondents/plaintiffs/landlords to continue the tenancy of the present petitioners in the background of above narrated events.

9. The Sub-Divisional Officer also upon considering the mutation entry and official record, has reached to a conclusion that the order of Tahsildar is just and proper.

10. In revisional proceedings under Section 76 of the Act, Maharashtra Revenue Tribunal noted that, possession receipt was executed on 07/07/1956 signed by one Amarsing, representative of the plaintiffs/landlords receiving possession of the suit land from opponent. However, by reappreciating the said Taba Pavati/Possession Receipt the revenue tribunal shifted burden on present petitioners as to how they remained in possession of the suit property.

11. The term “to cultivate” is defined under the Bombay Tenancy and Agricultural Land Act, 1948, which reads thus :

> "to cultivate" with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce, whether by manual labour or by means of cattle or machinery, or to carry on any agricultural operation thereon; and the expression "uncultivated" shall be construed correspondingly;
>
> Explanation:- A person who takes up a contract to cut grass, or to gather the fruits or other produce of trees on any land, shall not on that account only be deemed to cultivate such land”

The Act then recognized in all six modes of cultivation, which are as under :

1)Cultivated by the highest holder himself and with his own hands; sometimes assisted by hired labour, 2)cultivated wholly by labour hired by the occupant (highest holder) or his agent but supervised personally and regularly by him, 3)tenant paying cash, 4) tenant paying a share of the crop, 5) tenant paying a fixed quantity of produce and 6) tenant paying rent involving some mixture of the foregoing forms of rent.

12. Mode No. 3 as is prescribed speaks of tenant paying cash to the landlord. If the above referred legal provisions are taken into account and record that is brought before this Court is examined, it is to be noted that, all the old revenue entries i.e. of 1952 onwards till 1976 speaks of parties adopting mode No. 3. As such, revenue records pursuant to the provisions of Maharashtra Land Revenue Code, particularly Section 157, which provides for presumption of correctness of entries in record of rights and registration of mutation, prompts this Court to accept the claim of the petitioners that land was cultivated by them under mode No. 3. Apart from above, it is also required to be taken note of the fact that, present

respondents/plaintiffs have filed civil suit against the tenants on 20/07/1953, in which they have admitted the present petitioners as tenant as is apparent from the reference made to page No. 89 of official record of the matter. Even if, it is presumed that, pursuant to possession receipt dated 07/07/1956, possession was handed over to the respondents, subsequent revenue entries speaks of adopting mode No. 3 under the notes framed under definition clause of 'cultivation' as is apparent from the revenue record. From the same, an inference can be drawn of independent agreement in between plaintiffs/petitioners and respondents that of tenancy, and petitioners were paying rent to the landlord pursuant to mode No. 3 of cultivation. The said legal issue is at all not considered and dealt with by the tribunal, by appreciating revenue entries which were part and parcel of original record.

13. Apart from above, it is required to be noted herein that, but for the issue of Taba Pavati dated 07/07/1956, the burden is shifted by the learned tribunal on the present petitioners so as to show their entry in the suit land. The revenue entries as are existing up to 1976 which are brought to the notice of this Court speaks of possession of the present petitioners pursuant to following procedure i.e. mode No. 3 i.e. payment of rent by the tenant to the landlord. Apart from above, one more aspect of which this Court must take

judicial note, in addition to revenue entries, the possession of the disputed property claimed to have been taken over by the respondent-landlord pursuant to possession receipt dated 07/07/1956. If possession was with him, the respondent could have approached the revisional authority for correction of revenue record. The fact that the respondents have approached the authority i.e. Collector seeking possession in 1964 and thereafter has initiated suit in 1966, pre-suppose possession of present petitioner over the suit property, which in the background of revenue entries discussed above could be inferred.

14. Though Mr. Kulkarni, learned Counsel for the petitioner has relied upon the judgment of the Apex Court in the matter of Mithumal vs. Shankar reported in 1999(3) B.C.R. 92, so as to canvass that after 07/07/1956 the possession of the petitioner is that of trespasser and not by following any legal means, it is required to be noted herein that the revenue entries as are discussed herein above, particularly from the year 1950 onwards till 1976 speaks of possession of the present petitioner in the capacity of cultivator by adopting Mode No. 3 i.e. payment of rent to the landlord by him, as such, law laid down by the Apex Court in the matter of Mithulal (supra) will be of hardly any assistance to the respondent.

15. It is to be noted that the revenue entries though are not taken into account by learned Revenue Tribunal, this Court is not inclined to remand the back to Revenue Tribunal for consideration of the same as what is done by revenue tribunal is interpretation and appreciation of possession receipt dated 07/07/1956 which was formed to be the basis for quashing the orders of both the authorities below. It is also required to be noted that based on the interpretation, the tribunal has noticed that the source of possession of the present petitioner over the suit land is not established, that too without considering revenue entries from 1950 to 1976.

16. One more aspect of which this Court must take note of the fact is, learned revisional authority has interpreted the document Taba pavati dated 07/07/1956 in favour of respondent so as to exercise revisional jurisdiction, as such point of excessive jurisdiction by revisional authority, in my opinion, canvassed by the petitioner, is required to be rejected.

17. The civil suit is pending since 1966 in the present matter and the petition was filed in 1989, hence it will be inappropriate and will add to the suffering of parties (of delayed justice) if I proceed to remand the matter to the revisional authority for reconsideration. Hence, this Court has decided the issue here only.

18. In view of above observations, the writ petition succeed. The order passed by the tribunal on 12/09/1980 in Revision Tenancy A/262(R) of 1976 is hereby quashed and set aside and the order of Tahsildar passed on 30/09/1975 in Tenancy Case No. 07/1971 before the Tahsildar, Eradol and Tenancy Appeal NO. 49 of 1977 by Sub Divisional Officer, Amalner Division, Amalner on 15/12/1978 stands restored.

19. The writ petition is allowed to above extent. Rule made absolute in above terms.

[**N.W. SAMBRE, J.]**

At this stage, learned Counsel for respondents prays for stay to this order for a period of four weeks. Prayer stands granted.

[**N.W. SAMBRE, J.]**

Tupe/22.12.15