

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

WRIT PETITION NO. 3091 OF 2001

- 1] Malu Dhondapa Bule
(deceased through his legal heirs)
- 1A] Bhagaji Malu Bule,
age 50 years, occ.agril.,
R/o Dhangarwadi under Sonai
Tq. Newasa, Dist. Ahmednagar
- 1B] Raosaheb Malu Bule,
age 53 years, occ.agril.,
R/o Dhangarwadi under Sonai
Tq. Newasa, Dist. Ahmednagar
- ...Petitioners

VERSUS

- 1] Baburao s/o Shaharam Adik,
age 53 years, occ. Agril.,
R/o Khanpur, Tq. Shrirampur,
Dist. Ahmednagar,
- 2] Padmakar Shaharam Adik,
age 49 years, occ. Agril.,
R/o Khanpur, Tq. Shrirampur,
Dist. Ahmednagar,
- 3] Shankar s/o Bhaguji Doiphode,
age 62 years, occ. Agril.,
R/o Sonai, Tq. Newasa,
Dist. Ahmednagar,
- 4] Yadav s/o Matharba Katore,
(deceased through his legal heirs)
- 4A] Bhaskar s/o Yadav Katore,
age 40 years, occ. Agril.,
R/o Dhangarwadi under Sonai,
Tq. Newasa, Dist. Ahmednagar,

- 4B] Tukaram s/o Yadav Katore,
age 36 years, occ. Agril.,
R/o Dhangarwadi under Sonai,
Tq. Newasa, Dist. Ahmednagar,
- 4C] Gorakshnath s/o Yadav Katore,
age 32 years, occ. Agril.,
R/o Dhangarwadi under Sonai,
Tq. Newasa, Dist. Ahmednagar,
- 5] Karbhari s/o Narayan Sonawane,
age 56 years, occ. Agril.,
R/o Sonai,
Tq. Newasa, Dist. Ahmednagar,
- 6] Murlidhar Narayan Sonwane,
age 53 years, occ. Agril.,
R/o Sonai,
Tq. Newasa, Dist. Ahmednagar
- ...Respondents

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Shri S.B.Jadhav, advocate for petitioners
Shri K.D.Bade Patil, advocate for respondent nos. 1 and 2
Shri B.T.Bodkhe, advocate for respondent no.3
Shri V.J.Dixit, Senior counsel for respondent no.4
Respondent nos. 5 and 6 deleted vide courts order dt. 7.9.2007

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WITH

WRIT PETITION NO. 3093 OF 2001

- 1] Shankar s/o Bhaguji Doiphode,
(Deceased through L.Rs.),
- 1A] Gangubai wd/o Shankar Doiphode,
age 75 years, occ. Nil.,
- 2B] Eknath s/o Shankar Doiphode,
age 45 years,. Occ. Agril.,
- 2C] Lahanu s/o Shankar Doiphode,
age 40 years, occ. Agril.,
- All At Dhangarwadi, Post. Sonai,
Tq. Newasa, Dist. Ahmednagar
- ...Petitioners

VERSUS

- 1] Baburao s/o Shaharam Adik,
age 53 years, occ. Agril.,
R/o Khanpur, Tq. Shrirampur,
Dist. Ahmednagar,
- 2] Padmakar Shaharam Adik,
age 49 years, occ. Agril.,
R/o Khanpur, Tq. Shrirampur,
Dist. Ahmednagar,
- 3] Malu Dhondapa Bule
(deceased through legal heirs)
- 3A] Bhagaji Malu Bule,
age 35 years, occ. agril.,
R/o Dhangarwadi under Sonai
Tq. Newasa, Dist. Ahmednagar
- 3B] Raosaheb Malu Bule,
age 30 years, occ. agril.,
R/o Dhangarwadi under Sonai
Tq. Newasa, Dist. Ahmednagar
- 4] Yadav s/o Matharba Katore,
(deceased through legal heirs)
- 4A] Bhaskar s/o Yadav Katore,
age 40 years, occ. Agril.,
R/o Dhangarwadi under Sonai,
Tq. Newasa, Dist. Ahmednagar,
- 4B] Tukaram s/o Yadav Katore,
age 36 years, occ. Agril.,
R/o Dhangarwadi under Sonai,
Tq. Newasa, Dist. Ahmednagar,
- 4C] Gorakshnath s/oYadav Katore,
age 32 years, occ. Agril.,
R/o Dhangarwadi under Sonai,
Tq. Newasa, Dist. Ahmednagar,
- 5] Karbhari s/o Narayan Sonawane,

age 56 years, occ. Agril.,
R/o Sonai,
Tq. Newasa, Dist. Ahmednagar,

- 6] Murlidhar Narayan Sonwane,
age 53 years, occ. Agril.,
R/o Sonai,
Tq. Newasa, Dist. Ahmednagar ...Respondents
[Original Applicant Nos. 1 and 2
Original Opponent Nos. 1, 3, 4 & 5]

.....

Shri B.T.Bodkhe, advocate for petitioner
Shri K.D.Bade Patil, advocate for respondent nos. 1 and 2
Shri S.B.Jadhav, advocate for respondent no.3
Shri V.J.Dixit, Senior counsel for respondent no.4A to 4C

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AND

WRIT PETITION NO. 3094 OF 2001

- 1] Yadav s/o Matharba Katore,
since deceased, by his heirs
and legal representatives

- 1A] Bhaskar s/o Yadav Katore,
age 40 years, occ. Agril.,

- 1B] Tukaram s/o Yadav Katore,
age 35 years, occ. Agril.,

- 1C] Gorakshnath s/o Yadav Katore,
age 31 years, occ. Agril.,

All R/o Dhangarwadi under Sonai,
Tq. Newasa, Dist. Ahmednagar ...Petitioners

VERSUS

- 1] Baburao s/o Shaharam Adik,

2] Padmakar Shaharam Adik,
Both R/o Khanapur, Tq. Shrirampur,
Dist. Ahmednagar,

3] Malu Dhondapa Bule
since deceased, by his heirs
and legal representatives

3A] Bhayaji Malu Bule,

3B] Raosaheb Malu Bule,

4] Shankar s/o Bhaguji Doiphode,

Nos. 3A, 3B, and 4
R/o Dhangarwadi, Post Sonai,
Tq. Newasa, Dist. Ahmednagar,

5] Karbhari s/o Narayan Sonawane,

6] Murlidhar Narayan Sonwane,

Nos. 4 and 5 R/o Sonai,
Tq. Newasa, Dist. Ahmednagar ...Respondents

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Shri V.J.Dixit, Senior counsel for the petitioners

Shri K.D.Bade Patil, advocate for respondent nos. 1 and 2

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CORAM : V.M.DESHPANDE, J.

DATE OF RESERVING

THE JUDGMENT

: 29.01.2015

DATE OF PRONOUNCEMENT

OF THE JUDGMENT

: 26.02.2015

J U D G M E N T :-

1] The group of these three Writ Petitions can be decided by this common judgment, in view of the fact that these three Writ Petitions arise out of the judgment and order, passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad in Revision No. 122/B/2000/AN, dated 18.6.2001. The petitioners in all these three petitions are aggrieved by the said judgment and order, in view of the fact that the learned Member of the Maharashtra Revenue Tribunal allowed the Revision and thereby set aside the order, passed by the Assistant Collector, Rahuri, dated 16.4.1985 in Appeal No. 13 of 1983 and directed that the petitioners be evicted from the suit land and possession of the suit land be restored to the Revision Applicants.

FACTUAL MATRIX

2] In all these three Writ Petitions, respondent nos. 1 and 2 are (1) Bburao Sakharam Adik and (2) Padmakar Sakharam Adik.

Respondent nos. 1 and 2 filed the proceedings in the court of Sub-Divisional Officer, Rahuri, District Ahmednagar under Section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 (herein after referred to as 'BTAL Act' for the sake of brevity)

Those proceedings under Section 84 of the BTAL Act were registered as Tenancy Case No. 13 of 1983.

The said proceedings were filed against following persons :-

(1) Shri Malu Dhondiba Bule (2) Shri Shankar Bhaguji Doiphode
(3) Shri Yadav Mhatarba Katore (4) Shri Karbhari Narayan
Sonawane (5) Murlidhar Narayan Sonawane

The petitioners in Writ Petition No. 3091 of 2001 are legal representatives of Malu Dhondiba Bule.

Shankar Bhaguji Doiphode the petitioner in Writ Petition no. 3093 of 2001 died on 19.10.2008. His Legal representatives, Gangubai, Eknath and Lahanu filed Civil Application No. 9028 of 2014 for substituting their names in his place. To the said application, learned counsel for respondent nos. 1 and 2 Shri K.D.Bade Patil gave no objection and thus on 29.1.2015 the said application was allowed and legal representatives of Shankar Bhaguji Doiphode were substituted in place of the original petitioner.

Petitioners in Writ Petition No. 3094 of 2001 are legal representatives of Yadav Mhatarba Katore.

3] The application under Section 84 of the BTAL Act was in respect of certain lands, situated at Mauje Sonai, Taluka Newasa, District Ahmednagar.

The said application was pertaining to the following lands, situated at village Sonai.

<u>Gat No.</u>	<u>Area (H. R.)</u>
(Survey Nos. 437 & 438) 2902	11.10
(Survey No. 439) 2903	04.93

(Survey No. 442) 2910	06.41
(Survey No.440) 2904	04.40

The application under Section 84 proceeds that the afore said lands were originally owned by Shri Baburao Raghunath Darandale. He died on 20.5.1944. At the time of his death, he was not having wife, son and daughter, and therefore, the names of his two real sisters Asarabai Shahram Adik and Anjanabai through her legal representative Karbhari Narayan Sonawane were mutated vide Mutation Entry No. 7411.

It is further stated in the application that Asarabai Adik was residing at Mauje Khanapur, Taluka Shirampur and Karbhari Sonawane was minor. Taking the disadvantage of this situation, the non-applicant nos. 1 to 3 in the application namely Malu Bule, Shankar Doiphode and Yadav Katore mutated their names as the tenants. It was further stated that all these lands were Patel Inam lands, and therefore, there is an entry in the 7/12 extract that "it is a new tenure land" and as such the provisions of BTAL Act were not applicable.

It has been further pointed out in the said application that on these grounds and since the afore said non-applicants were the tenants after 1957, the proceedings under Section 32 G of the BTAL Act were dropped by the Agricultural Lands Tribunal in proceeding No. 241 of 1961.

It is further averred in the application that in spite of the order in proceeding no. 241 of 1961 by the Agricultural Lands Tribunal, the afore said three non-applicants remained in possession.

It was further stated that the mother of respondent no.1

Baburao Adik and Padmakar Adik by name Asarabai died on 1.4.1980 and the names of respondent nos. 1 and 2 are mutated vide Pher Phar Entry No. 2979.

It was further stated that in spite of making request to the afore said three non-applicants, since they failed to vacate the land, they were required to approach the authority by moving the application under Section 84 of the BTAL Act.

4] The said application was contested by the non-applicant nos. 1 to 3.

Respondent no.1 Baburao Adik adduced his evidence in Tenancy Case No. 13 of 1983 on 18.3.1985. He was cross-examined.

The non-applicants also adduced their respective evidence and they were also cross-examined.

Various documents were placed on record including 7/12 extracts, the statement of non-applicants and also the statement of Asarabai Adik and Karbhari Narayan Sonawane in the proceedings under Section 32 G and the order of Agricultural Lands Tribunal in the said proceedings on 28.6.1961.

After appreciation of the case, the learned Assistant Collector, Rahuri Division Ahmednagar dismissed the said application under Section 84 of the BTAL Act for summary eviction on 16.4.1985 and directed that the non-applicant nos. 1 to 3 in the said proceedings shall continue to cultivate the suit lands as tenants.

5] Being aggrieved by the said order, dated 16.4.1985,

respondent nos. 1 and 2 preferred Revision under Section 76 of the BTAL Act before the Maharashtra Revenue Tribunal at Pune, which was registered as Revision Petition No. 16 of 1996. It appears that subsequently the said proceeding was transferred to the Maharashtra Revenue Tribunal, Aurangabad and it was numbered as Revision Petition No. 122/B/2000/AN.

The learned Member of the Maharashtra Revenue Tribunal, Aurangabad delivered the judgment on 18.6.2001. By the said judgment, the learned Member allowed the Revision filed on behalf of respondent nos. 1 and 2 by setting aside the order passed by the Assistant Collector, Rahuri and directed that the non-applicants Malu Bule, Shankar Doiphode and Yadav Katore be evicted from the suit land and possession of the suit land be restored to the Revision applicants.

6] The present Writ Petitions question the correctness of the wisdom of the learned Member of the Maharashtra Revenue Tribunal, Aurangabad.

SUBMISSIONS

[7] I have heard Shri V.J.Dixit, learned Senior counsel for the petitioner in Writ Petition No. 3094 of 2001.

The learned counsel appearing in other two Writ Petitions adopted the arguments of the learned Senior counsel.

I have also heard Shri K.D.Bade Patil, learned counsel for respondent nos. 1 and 2 in all the Writ Petitions.

By both the sides, extensive arguments were advanced.

With the able assistance of the learned counsel from both the sides, I have gone through the record and proceedings.

The gist of the submissions of the learned Senior counsel Shri V.J.Dixit is as under :-

(A) In view of the provisions of BTAL Act Tillers day is 1.4.1957 and on the said date the predecessor-in-titles of all the petitioners were in actual cultivating possession of the lands in question.

(B) On 1.4.1957 the predecessor-in-titles of the present petitioners were firmly in cultivating possession of the lands in question is an admitted position.

(C) In view of the provisions of Section 32 of the BTAL Act, which is a deeming provision, the predecessor-in-titles of the present petitioners are deemed to have purchased the lands on the tillers day.

(D) On 1.4.1957 by fiction of law i.e. in view of Section 32 of the BTAL Act, the predecessor-in-titles of the present petitioners became owners and only formalities, namely (a) determination of purchase price, (b) payment of price, and (3) issuance of

ownership certificates, were to be done.

(E) Once the ownership of the lands in question was vested in the predecessor-in-titles of the present petitioners, such ownership, which was conferred upon them by operation of law, cannot be divested.

(F) The dropping of the proceedings under Section 32 G initiated for fixation of purchase price cannot divest the ownership conferred upon the tenants.

(G) There is no document on record to show that the lands in question were given to original land owner as Patel Inam land, except its reference in the revenue record, such as 7/12 extracts.

(H) In absence of availability of any documents on record, such as Order, Grant or Sanad, the lands in question cannot be treated as 'Patel Inam land', as held by the Maharashtra Revenue Tribunal.

(I) Alternatively, it was submitted that assuming that it is Patel Inam land, by virtue of Section 8 of the Maharashtra Revenue Patel (Abolition of Office) Act, 1962, the provisions of the tenancy law shall apply, since on the appointed day of the said Act the predecessor-in-titles of the present petitioners were in possession of the lands in question.

(J) The application under Section 84 itself was

not maintainable, since it was known to respondent nos. 1 and 2 that the predecessor-in-titles of the present petitioners were holding the lands as tenants. The application under Section 84, according to the learned Senior counsel, was deliberately moved in order to save limitation as contemplated under Section 29 of the BTAL Act.

(K) Further it was the submission of the learned Senior counsel that the Revision filed before the Maharashtra Revenue Tribunal was barred by limitation. According to him, there was delay of about 192 days in preferring the Revision. He submitted that period of limitation is 60 days and in absence of any prayer for condonation of delay, the Revision itself was not maintainable.

(L) He further submitted that no chance or opportunity was given for contesting the Revision on the point of limitation since there was no application for condonation of delay.

(M) He relied upon following authoritative pronouncements of Hon'ble Apex Court,

(2006) 11 SCC 161
[Sadashiv Dada Patil vs Purushottam Onkar
Patil (dead) by L.Rs.]

1992 (2) B.C.R. 178
[Smt. Kallawwa Shattu Patil and ors. Vs

Yallappa Parashram Patil and ors.]

and a single Judge's decision of this court

2001 (1) Mh.L.J. 629

[Radhabai Balkrishna Deshpande and anr. Vs Babu Dhondu Shewale deceased by L.Rs. Bhika Dhondu Shewale and ors.]

and submitted that the present Writ Petitions need to be allowed by holding that the predecessor-in-titles of the present petitioners, since were in firm cultivating possession of the subject lands on tillers day, they became owners and only ministerial act of determination of purchase price has remained to be done and for that purpose, directions can be issued to the authorities.

[8] Per contra, the gist of the submissions of Shri K.D.Bade Patil, learned counsel for the respondents can be summarised as under :-

(i) The names of the predecessor-in-titles of the present petitioners were recorded in the revenue record as tenants for the first time in the year 1957. According to him, on Tillers day these persons were not in possession.

(ii) Statements of non-applicants in the application under Section 84 and Asarabai were recorded by the Agricultural Lands Tribunal in the proceedings under Section 32 G and in

the said proceedings in terms the predecessor-in-titles of the present petitioners have admitted that the lands are 'new tenure lands'.

(iii) In view of their statement in proceedings for determination of purchase price under Section 32 G that the land is new tenure land, the Agricultural Lands Tribunal on 23.11.1960 dropped the said proceedings.

(iv) He submitted that the order, dated 23.11.1960 dropping the fixation of purchase price under Section 32 G was never challenged by the predecessor-in-titles of the present petitioners and thus the said order has become final and will operate as estoppel.

(v) In view of dropping of the proceedings in the year 1960, the relation as landlord and tenant comes to an end.

(vi) Vide mutation entry No. 1128 the names of the tenants were deleted on 5.4.1966 and the said mutation entry No. 1128 was also not challenged by the tenants.

(vii) Therefore, the decision dated 23.11.1960 and mutation entry No. 1128, which were not challenged, are binding on the present petitioners.

(viii) He further submitted that in view of the fact that the lands in question are Patel Watan lands, by virtue of the provisions of Section 88 of the BTAL Act, the provisions of the said Act cannot be made applicable to the lands in question.

(ix) He further submitted that though the Order, Grant or

Sanad is not available on record, that by itself will not change the nature of the lands in question as Patel Watan lands, in view of the fact that there is a clear cut mention that it is a new tenure land in the 7/12 extract.

(x) He further submitted that order of grant or re-grant is not relevant in as much as the tenant did not challenge the order, dated 23.11.1960 dropping the proceedings under Section 32 G.

(xi) He has relied upon following decisions :-

1993 Mh.L.J. 419

[Vithoba Ram Rahane and anr. Vs Bhalchandra Sadashiv Joshi, since deceased by heir and ors.]

1998 (1) Mh.L.J. 801

[Dagadu Rama Mali and anr. Vs Pandurang Govind Mali and anr.]

2005 (1) Mh.L.J. 238

[Kana Bala Patil since deceased through L.Rs. Kalibai Kana Patil and ors. Vs Dr. Usha Gopal Hiranandani]

2006 (5) Mh.L.J. 785

[Maruti Ramaji Patil since deceased by his heirs and L.Rs. Ananda Maruti Patil and ors. Vs Babu Dhondi Mohite and ors.]

(xii) Lastly he submitted that the learned Member of the Maharashtra Revenue Tribunal has correctly exercised the Revisional powers to upset the order passed by the Assistant Collector, Rahuri, who failed to appreciate the set of facts and

dismissed the application under Section 84 of the BTAL Act.

CONSIDERATIONS

9] On scrutiny of the impugned order, passed by the learned Member of the Maharashtra Revenue Tribunal, it is noticed that for following reasons the Revision filed on behalf of the present respondent nos. 1 and 2 was allowed.

(a) The revenue record, namely the 7/12 extract shows that it is mentioned therein that the land is, 'new tenure land'.

(b) The statements of non-applicants, namely the predecessors-in-title of the present petitioners, which were recorded in the proceedings under Section 32 G of the BTAL Act on 23.11.1960 show that they have admitted that the lands in question are 'new tenure lands' and they are not entitled to purchase it.

(c) The order of dropping the proceedings was not challenged by the predecessors-in-title of the present petitioners, and therefore, it is binding on them.

(d) The mutation entry deleting the names of the predecessors-in-title of the present petitioners was not challenged, and therefore, though their possession over the lands may be long standing, cannot be treated as legal.

10] The basic contention of respondent nos. 1 and 2 in support of their application under Section 84 of the BTAL Act is

that the lands in question are exempted from the provisions of the BTAL Act, since those lands were Patel Inam lands.

11] Consequently, the question that has to be addressed by this court is what is the nature of the lands in question, as to really those lands are Patel Watan Lands as claimed by respondent nos. 1 and 2.

12] Section 88 of the BTAL Act deals with exemption to the Government land and certain other lands. According to the learned counsel for respondent nos. 1 and 2, since the lands in question were Patel Watan lands, therefore, by virtue of provisions of Section 88 of the BTAL Act, the provisions of the BTAL Act cannot be made applicable.

13] Before the Maharashtra Revenue Tribunal, on 11.6.2001 an application was filed by the predecessors-in-title of the present petitioners to produce on record the extract of Watan Register of village Sonai, Taluka Newasa, District Ahmednagar. The said application is on record at page 221. The said application was contested by the present respondent, however, the learned member of the Maharashtra Revenue Tribunal vide order, dated 11.6.2001 allowed the application and as such the extract of the Watan Register of the said village is taken on record. The said extract of Watan Register is available on record of the court below from pages 223 to 231.

The copy of the said extract of Watan Register is also filed on record before this court in Writ Petition No. 3094 of 2001 at Exh. 'A'. Since the said extract of Register was already filed on record before the Maharashtra Revenue Tribunal and its production was allowed, reliance can be placed on the said document.

14] Perusal of the said extract of the Register would reveal that it is in two parts, the first part consists of four columns; whereas the second part pertains to the particulars of Sanad and it consists of seven columns. In first part, column no.1 is Sr. No., column no.2 is name of village, column no.3 is name of the present allences, column no.4 is class of alienations; whereas second part of the said extract is in respect of particulars of Sanad which include, number, date, month and year, name and office of the officer signing, name of the holder, name of the Taluka and District in which it is entered, number of Form of the Sanad and lastly duration of the tenure whether continuable permanently or hereditary for more live than one or for life only of for what period.

The Survey numbers of the lands in question are 437, 438, 439, 442 and 440. However, the extract of village Sonai does not reflect the inclusion of these lands in the said Register. Therefore, the document duly maintained by the revenue department in respect of the lands having any Grant does not

include the lands in question.

15] Further the learned counsel Shri Bade Patil for respondent nos. 1 and 2 has fairly stated that on record there is no Order, Sanad or Grant. However, he submitted that the 7/12 extract which shows the entry, "new tenure land", coupled with the admission given by the predecessors-in-title of the present petitioners in the proceedings under Section 32 G in the year 1960 that it was new tenure land, clearly establish that the lands in question are Patel Watan lands.

16] The 7/12 extract which is one of the revenue records, is not conclusive proof in respect of title. Title is not derived on the basis of 7/12 extract. Revenue record always follows title. The 7/12 extracts are always meant for fiscal purposes.

The basic documents to show that the lands in question are Patel Watan lands are either Sanad or Order of Grant issued by the competent authority. In absence of such primary documents, merely because there is a reference in 7/12 extract about 'new tenure land', one cannot jump to the conclusion that the lands in question were the Patel Watan lands.

In so far as the statement made by the predecessors-in-title of the present petitioners regarding its nature as new tenure land, I will discuss the same in the later part of the

judgment.

Thus, in absence of finding the place of lands in question in the extract of Register of Watan lands of village Sonai, Taluka Newasa, coupled with the fact that admittedly there is no Order, Grant or Sanad available on record, it is crystally clear that the lands in question cannot be termed as Patel Watan lands or that the lands are exempted from the provisions of the BTAL Act.

17] Now, let us examine the submissions put forth by the learned counsel for respondent nos. 1 and 2 that since the order dropping the proceedings under Section 32 G was not challenged, therefore, now they are estopped from saying anything in that respect.

In order to appreciate this submission, survey will have to be made in respect of the relevant provisions of BTAL Act.

Chapter III of the BTAL Act pertains, "Special rights and privileges of tenants and provisions for distribution of land for personal cultivation". This chapter is divided into two parts.

Part I relates to the 'termination of tenancy for personal cultivation and non-agricultural use'; whereas Part II relates to 'purchase of land by tenants'.

Section 32, which falls under Part II of Chapter III of

the BTAL Act reads as under :-

“ 32 Tenants deemed to have purchased land on tillers day

(1) On the first day of April 1957 (hereinafter referred to as "the tillers day") every tenant shall, [subject to the other provisions of this section and the provisions of] the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if:-

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates land leased personally; and

(i) the landlord has not given notice of termination of his tenancy under section 31; or

(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the land; [or]

(iii) the landlord has not terminated his tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the lands:

Provided that, if an application made by the landlord under section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal] under the provisions of this

Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date.":

Provided further that, the tenant of a landlord who is entitled to the benefit of the proviso to sub-section (3) of section 31 shall be deemed to have purchased the land on the 1st day of April 1958, if no separation of his share has been effected before the date mentioned in that proviso.

(1A) (a) Where a tenant, on account of his eviction from the land by the landlord, before the 1st day of April 1957, is not in possession of the land on the said date but has made or makes an application for possession of the land under sub-section (1) of section 29 within the period specified in that sub-section, then if the application is allowed by the Mamlatdar, or as the case may be, in appeal by the Collector or in revision by the [Maharashtra Revenue Tribunal], he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed.

(b) Where such tenant has not made an application for possession within the period specified in sub-section (1) of section 29 or the application made by him is finally rejected under this Act, and the land is held by any other person as tenant on the expiry of the said period or on the date of the final rejection of the application, such other person shall be deemed to have purchased the land on the date of the expiry of the said period or as the

case may be, on the date of the final rejection of the application.

(1B) Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29, is not in possession of the land on the said date and the land is in possession of the landlord or his successor-in-interest on the 31st day of July 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said section 29, either suo moto or on application of the tenant, hold an enquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in-interest, and shall be restored to the tenant; and thereafter, the provisions of this section and section 32A to section 32R (both inclusive) shall, in so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased the land on the date on which the land is restored to him:

Provided that, the tenant shall be entitled to restoration of the land under this sub-section only if he undertakes to cultivate the land personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area.

Explanation:- In this sub-section, "successor-in-interest" means a person who acquires the interest by testamentary disposition or devolution on death.

(2) Where by custom, usage or agreement or order of a Court, any warkas land belonging to the landlord is used by the tenant for the purpose of rab manure in connection with rice cultivation in the land held by him as tenant:-

(a) the whole of such warkas land, or

(b) as the case may be, such part thereof as the Tribunal may determine in cases where such warkas land is jointly used by more persons than one for the purpose of rab manure,

shall be included in the land to be deemed to have been purchased by the tenant under subsection (1):

Provided that, in cases referred to in clause (b) the Tribunal may determine that such warkas land shall be jointly held by persons entitled to use the same, if in the opinion of the Tribunal, the partition of such warkas land by metes and bounds is neither practicable nor expedient in the interest of such persons.

(3) In respect of the land deemed to have been purchased by a tenant under sub-section (1):-

(a) the tenant-purchaser shall be liable to pay to the former landlord compensation for the use and occupation of the land, a sum equal to the rent of such land every year, and]

(b) the [former landlord] shall continue to be liable to pay to the State Government the dues, if any, referred to in clauses (a), (b), (c) and (d) of sub-section (1) of section 10A, where [the tenant- purchaser] is not liable to pay such dues under sub-section (3) of that section,

until the amount of the purchase price payable

by the [tenant-purchaser] to the [former landlord] is determined under section 32H.]

(4) Where any land held by a tenant is wholly or partially, exempt from the payment of land revenue and is deemed to have been purchased by him under sub-section (1) or under section 32F, Section 32(O) or section 33C then:-

(a) the tenant-purchaser shall in respect of such land, be liable to pay the full land revenue leviable thereon, and

(b) the State Government shall, with effect from the date on which the tenant is deemed to have purchased the land, but so long only as the tenure on which the land was held by the landlord continues and is not abolished, pay annually to the former landlord:-

(i) where such land is wholly exempt from the payment of land revenue, a cash allowance of an amount equal to the full land revenue leviable on such land; and

(ii) in other cases, an amount equal to the difference between the full land revenue leviable on such land and the land revenue payable thereon immediately before the said date.”

Whereas clause (a) of sub-section (1) of Section 32 F reads as under :-

“32F Right of tenant to purchase where landlord is minor, etc

(1) Notwithstanding anything contained in the preceding sections:-

(a) where the landlord is a minor or a widow or a person subject to any mental or physical disability* * * * the tenant shall have the right to purchase such land under section 32 within

one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31[and for enabling the tenant to exercise the right of purchase, the landlords shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31:]

Provided that, where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and the value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion. “

18] The relevant portion of Para 41 of the judgment delivered by the Constitution Bench of Hon'ble Apex Court in **Sri Ram Ram Narain Medhi vs The State Of Bombay**, reported in 1959 SCR Suppl. (1) SCR 489 = AIR 1959 SC 459 reads as under : -

“41] ”

The title of the landlord to the land passes immediately to the tenant on the tiller's day and there is a completed purchase or sale thereof as between the landlord and

the tenant.

.....
 The title to the land which was vested originally in the landlord passes to the tenant on the tiller's day or the alternative period prescribed in that behalf. This title is defeasable only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal.
 ”

19] In view of the above and in view of the Entry No. 7490 of the revenue register of village Sonai, it is clear that the predecessors-in-title of the present petitioners were in actual physical cultivating possession of the land in question on 5.2.1957 i.e. prior to Tillers day i.e. 1.4.1957.

20] Section 32 G of the BTAL Act reads as under :-

“ 32G Tribunal to issue notice and determine price of land to be paid by tenants

(1) As soon as may be after the tillers day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon:-

(a) all tenants who under section 32 are deemed to have purchased the lands,

(b) all landlords of such lands, and

(c) all other persons interested therein,

to appear before it on the date specified in the notice. The tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the

statement of the tenant whether he is or is not willing to purchase the land held by him as tenant

(3) Where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective:

Provided that, if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and the landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32H and of sub-section (3) of section 63A:

Provided that, where the purchase price in accordance with the provisions of section 32H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenants consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be, after such date determine the price of the land.

(6) If any land which, by or under the provisions of any Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such person shall as a tenant be deemed to have purchased the land under

this section, as if the condition that it was not transferable was not the condition of regrant. ”

From the plain reading of Section 32 G it is clear that duty is cast on the Tribunal to publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction after Tillers day to all tenants who under section 32 are deemed to have purchased the lands, to all landlords of such lands, and to all other persons interested therein.

Sub-section (2) of Section 32G mandates that the Tribunal is obliged to record the statement of tenant in the prescribed manner whether he is or is not willing to purchase the land held by him as tenant. Sub-section (3) shows that if the tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal is required to pass an order declaring that such tenant is not willing to purchase the land and that the purchase is ineffective.

21] There is no dispute that after the Tillers day, the Tribunal has published the notice as contemplated under Section 32 G and the said proceedings were registered as Revenue Case No. ALT/Sonai of 1960. In the said proceedings, a common statement of Malu Bule, Yadav Katore, Shankar Doiphode and Dhondi Katore was recorded. The said common statement is at Exh.2 in the said proceeding. The joint statement of Asrabai Shahram Adik, sister of deceased landlord

Darandale and Karbhari Narayan Sonawane was also recorded vide Exh.3. These two statements are available on the record of the Tenancy Case No. 13 of 1983 at pages 39 and 40. Since these two statements are of utmost importance in respect of decision, those are reproduced hereunder :-

“ **Exh.2**

आम्ही अनुक्रमे मालू धअँडी बुळे, यादव म्हातारबा कातोरे, शंकर भागुजी डोईफोडे व धअँडी म्हातारबा कातोरे, रा. सोनई सत्य प्र. वर जबाब देतो कि, स. न. ४३७, ४३८, ४३९ व ४४० ह्या चार जमिनी अशराबाई मर्द शाहराम ०-८-० व कारभारी नारायण ०-८-० अशा दोघांच्या असून आम्ही कुळ म्हणून पाहतो. ह्या जमिनी आमचेच कब्जात कुळ म्हणून आहे. १-४-५७ रोजी आम्ही जमिनी कुळ म्हणून पाहत होतो. जमीन नवीन शर्तीच्या असलेबद्दल आम्हाला माहिती नव्हते. जमीन नवीन शर्तीने मालकांना मिळाल्या असलेचे आज आम्हाला समजावून सांगितले. ते समजले जमिनी नवीन शर्तीच्या असलेने त्या आम्हाला खरेदी घेता येत नसलेचे समजावून सांगितले ते समजले हा जबाब ता. २३.११.६०

Before	सही मालू धअँडीराम बुळे
Sd/-	सही आं. यादव म्हातारबा
Mamlatdar,	कातोरे यांचा असे.
Agricultural	सही शंकर भागुजी डोईफोडे
Tribunal, Newasa	सही आं. धअँडीबा म्हातारबा
	कातोरे यांचा असे. “

“ **Exh.3**

आम्ही अशराबाई शाहराम आदिक व कारभारी नारायण सोनवणे, रा. सोनई सत्य प्र. वर जबाब देतो कि, स. न. ४४२, ४३७, ४३८, ४३९ व ४४० ह्या जमिनी नवीन शर्तीच्या आहेत. ह्या जमिनी धअँडीबा म्हातारबा वगैरे इसम १९५४-५५ सालापासून कुळ म्हणून पाहतात जमीन नवीन शर्तीच्या आहेत. नवीन शर्तीचे जमिनीस कुळ कायदा लागू नसलेने त्या कुळास खरेदी घेता येत नाही हे समजले हा जबाब ता. २३.११.६०

Before	सही आं. अशराबाई शाहराम आदिक
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Sd/- Mamlatdar, सही कारभारी नारायण सोनावणे
Agricultural
Tribunal, Newasa “

The plain reading of Exh.2 the statement of those four persons thus clearly shows that on Tillers day they were in cultivating possession of the land. However, they were not knowing that the lands are “new tenure land”. It is informed and it was made known to them that since the lands were given to the landlord by new tenure, they are not entitled to purchase the said land; whereas the statement of Asrabai and Karbhari the successors of original landlord clearly shows that the tenants were in possession from 1954-55 and since the lands are new tenure land, the tenants are not entitled to purchase the same as made known to them.

It is thus clear that on the day when the statement of the tenants was recorded, it was made known to them that since the lands are new tenure land, therefore, they are not entitled to purchase the same, which was accepted by them.

22] To appreciate the afore said statement, I have the advantage of the authoritative pronouncement of Hon'ble Apex Court in the case of **Amrit Bhikaji Kale and ors. Vs Kashinath Janardhan Trade and anr.** reported in **(1983) 3 SCC 437.**

Incidentally the afore said reported case is also from village Sonai, Taluka Newasa of Ahmednagar District. In the

said reported case also the statement of tenant Janardhan was recorded in the proceedings under Section 14 r/w 29 of the Tenancy Act that since he has become old and unable to cultivate the land, he is willing to hand over the possession. A submission was made before he Apex Court on behalf of the landlord that in view of said position, persons claiming from Janardhan are estopped from contending contrary.

In the afore said reported case of Hon'ble Apex Court in paragraph 11 it is observed as under :-

“11.
We are not unaware of landed gentry exercising such influence over the tenants that in the absence of legal literacy they may make any statement contrary to their legally protected interest. A measure of agrarian reform cannot be permitted to be defeated by such devious means of the landlords. However apart from ignorance of his position assuming that Janardhan relinquished his right as tenant, landlord Ashoklal was nonetheless not entitled to recover possession because, when Janardhan, the deemed purchaser agreed to hand over possession subject to the provision of Section 15, the land would be at the disposal of Collector under Section 32-P. Landlord even in such a situation is not entitled to be restored to possession without bringing his case under Section 15 which appears not to be the case of landlord. “

Thus, if we appreciate the statement of the tenants in the light of afore said observations of the Hon'ble Apex Court, it

is crystally clear that their statement was not free from any influence. On the contrary, plain reading of their statement clearly reveals that their statement was greatly influenced by somebody and under such influence they made statement that it was made to understand them (आज आम्हाला समजावून सांगितले) that lands being new tenure cannot be purchased.

As observed by the Apex Court, the agrarian reforms cannot be defeated. The statutory right by which the tenants were vested with the ownership cannot be divested by such devious methods.

23] Section 32 of the BTAL Act provides that by mere operation of law, every tenant of agricultural land situated in the area to which the Act applies shall become by the operation of law, the owner thereof.

As observed in **Amrit Bhikaji Kale's** case, unquestionably it is established that on Tillers day the landlord's interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. From that moment, landlord and tenant relationship as understood in common law of the Transfer of Property Act comes to an end. The link and chain is broken. The absent non-cultivating landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil

becomes the owner thereof. This is unquestionable. The landlord from the date of statutory sale is only entitled to receive the purchase price as determined by the Tribunal under Section 32 G. In other words, the landlord ceases to be landlord and the tenant becomes the owner of the land and comes in direct contact with the State. The Apex Court in **Amrit Bhikaji Kale's** case also has repealed the arguments in respect of the estoppel.

24] The order in the proceedings under Section 32 G was passed by the Tribunal on 23.11.1960. Though there is a reference in the said order that the lands were leased by Government, there is no reference in the order as to on what date the lands were leased out by the Government.

As observed earlier, the Tribunal was obliged to publish a public notice as contemplated under Section 32 G calling upon the tenants, who under Section 32 are deemed to have purchased the land. Thus, the notice must have been issued only to such tenants, who have become the owner by virtue of operation of the law in view of the provisions of Section 32.

The Tribunal was not expected to issue notice to the tenants of the lands who were exempted from the operation of the BTAL Act in view of the provisions of Section 88. Since the notices were published, it is clear that the lands were not

exempted by the provisions of Section 88 of the Act. Therefore, the order, passed by the Tribunal on 23.11.1960 dropping the proceedings is non est.

25] Once the tenants become full owner of the tenanted land by operation of law and there is a statutory vesting of the land in them, they cannot be divested of their ownership on the basis of the entries made in the 7/12 extract.

26] Further the proceedings under Section 32 G are initiated only for the purposes of determination of purchase price. The scope of the Tribunal, therefore, under Section 32 G was very limited. The fixation of the purchase price is a ministerial act. In that view of the matter, it was beyond the scope of the Tribunal while exercising powers under Section 32 G that the tenants were disentitled to purchase the land, because those lands were leased out by the Government to the land owners.

Sub-section (3) of Section 32 G clearly mandates that if the tenant fails to appear in pursuance to the notice and if he makes a statement that he is not willing to purchase the land, then only the Tribunal by order in writing declares that since such tenant is not willing to purchase the land, the purchase is ineffective.

Therefore, in my view, while exercising powers under Section 32 G on 23.11.1960 the Tribunal has clearly exceeded

and the order dropping the proceedings, in my opinion, is non est and in fact it is not an order in the eye of law.

27] Since the order, dated 23.11.1960 passed in the proceedings under Sections 32 G is non est, nothing is accrued in favour of the landlord or their successors-in-title. They cannot take slightest advantage of such order.

28] Since I have specifically recorded a finding that the land in question was not a Patel Watan land, I have not considered the alternate submission of learned Senior counsel. At the same time, since I reach to the conclusion that the relation between the predecessors-in-title of the present petitioners and respondent no.1 as tenant and land cease to exist on 1.4.1957 by operation of law, the mutation entry No. 1128, dated 5.4.1966 deleting the names of the tenants has no value whatsoever and such entry is of no use to respondent nos. 1 and 2.

CONCLUSIONS

29] The afore said analysis leads me to draw following conclusions.

(i) That on 1.4.1957 i.e. the Tillers day, the tenants i.e. the predecessors-in-title of the present petitioners were firmly in cultivating possession of the land in question.

- (ii) By operation of law on 1.4.1957 the tenants became owner.
- (iii) Unquestionably it is established that on Tillers day the interest of the landlord was extinguished and simultaneously by a statutory sale without anything more by the parties the extinguished title of landlord was created in favour of the tenants.
- (iv) The order, dated 23.11.1960 dropping the proceedings under Section 32 G by the Tribunal is non est and was not binding on the tenants.
- (v) Since on the Tillers day the title of the landlord was extinguished, the application under Section 84 of the BTAL Act filed before the revenue authority for summary eviction by respondent nos. 1 and 2 was not maintainable.

30] In the result, all the Writ Petitions are allowed. The judgment and order, dated 18.6.2001, passed by the Member, Maharashtra Revenue Tribunal, Aurangabad, in Revision No. 122/B/2000/AN is hereby quashed and set aside. Rule is made absolute in the above terms. In the circumstances of the case, there shall be no order as to costs.

[V.M.DESHPANDE, J.]