

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4015 OF 2016
AND
WRIT PETITION NO. 3982 OF 2016

RAJARAM KEDARI POWAR, deceased
through his legal heirs

- A. BALIRAM RAJARAM POWAR**,
deceased through the legal heirs
- i. MALAM BALIRAM POWAR**
 - ii. AJIT BALIRAM POWAR**
 - iii. ARVIND BALIRAM POWAR**
 - iv. ASHOK BALIRAM POWAR**
All residing at 2460, B-Ward,
Mangalwar Peth, Kolhapur.
- B. JAGANNATH RAJARAM POWAR**,
deceased through the legal
representatives
- i. YUVRAJ JAGANNATH POWAR**
 - ii. NANDKISHOR JAGANNATH
POWAR**
 - iii. SANDEEP JAGANNATH POWAR**
All residing at 2460, B-Ward,
Mangalwar Peth, Kolhapur.
- C. KESHAV RAJARAM POWAR**,
residing at 2460, B-Ward, Mangalwar
Peth, Kolhapur.
- D. VASANT RAJARAM POWAR**,
residing at 2460, B-Ward, Mangalwar

Peth, Kolhapur.

- E. SUNIL RAJARAM POWAR,**
residing at 2460, B-Ward, Mangalwar
Peth, Kolhapur.
- F. DATTATRAY RAJARAM POWAR,**
residing at 2460, B-Ward, Mangalwar
Peth, Kolhapur.
- G. SUNANDA ANANDRAO AJABE,**
residing at Sambhaji Nagar, A Ward,
Kolhapur.
- H. PREMA CHANDRAKANT
GHATGE,** deceased through the legal
representatives
 - a. AMIT CHANDRAKANT GHATGE,**
residing at Ichalkaranji, Tal.
Hathkanangale, District Kolhapur.

No. A to H through the PoA Holder
**BHAUSAHEB BAPUSAHEB
DHERE,** residing at Namrata
Apartment, Plot No. 9, Ghadge
Colony, Kadamwadi, A Ward,
Kolhapur.

All Applicants/Petitioners through the
PoA holders **VASANT RAMLAL
RAIGANDHI,** residing at 1330/1,
Chatrapati Colony, Shastri Nagar,
Kolhapur

... **PETITIONERS**

versus

- 1. SHAMRAO DADOBANALAWADE,**
deceased through the legal heirs :
 - a. MALUTAI SHAMRAO
NALAWADE,** residing at Shiye, Taluka

Karveer, Dist.: Kolhapur

- b. **TANJI SHAMRAO NALAWADE**,
residing at Shiye, Taluka Karveer,
Dist.: Kolhapur
 - c. **SAMBHAJI SHAMRAO
NALAWADE**, residing at Shiye, Taluka
Karveer, Dist.: Kolhapur
 - d. **KAMAL SHIVAJI POKARNIKAR**,
residing at Parite, Taluka Karveer,
Dist.: Kolhapur.
2. **RAMCHANDRA DADoba
NALAWADE**, since deceased through
the legal representatives:
- a. **HOUSABAI RAMCHANDRA
NALAWADE**
2406, B-Ward, Taste Galli, Mangalwar
Peth, Kolhapur.
 - b. **DILIP RAMCHANDRA
NALAWADE**, since deceased through
his legal representatives:
 - i. **UMA DILIP NALAWADE**,
2406, B-Ward, Taste Galli, Mangalwar
Peth, Kolhapur.
 - ii. **RAHUL DILIP NALAWADE**,
2406, B-Ward, Taste Galli, Mangalwar
Peth, Kolhapur.
 - iii. **PRAPHUL DILIP NALAWADE**,
2406, B-Ward, Taste Galli, Mangalwar
Peth, Kolhapur.
3. **RAJARAM RAMCHANDRA
NALAWADE**,
RE Apartment, 10th Galli Ranjaram
Puri, Kolhapur.

4. **MANGAL VIJAY NIKAM**,
46, A-Ward, Near Old Vashi Naka,
Kolhapur.
 5. **CHINGUTAI BABURAO ADHIK**,
875/1, E-Ward, Near Post Office,
Ramnmala, Kolhapur.
 6. **PRAVIN RAMESH RATHOD**,
Plot No. 14, Mahavir Nagar, Kolhapur.
 7. **POPATBAI HAZARIMAL
RATHOD**,
Plot No. 14, Mahavir Nagar, Kolhapur.
 8. **CHANDRAKANT HAZARIMAL
RATHOD**,
Plot No. 14, Mahavir Nagar, Kolhapur.
 9. **RAMESH HARIMAL RATHOD**,
Plot No. 14, Mahavir Nagar, Kolhapur.
 10. **ASHA NARENDRA JAIN**,
Plot No. 14, Mahavir Nagar, Kolhapur.
 11. **MAHESH DALITCHANDRA JAIN**,
Bhatipuja Nagar, Mangalwar Peth,
Kolhapur.
- ... **RESPONDENTS**

APPEARANCES

FOR THE PETITIONER	Mr PB Bhargude.
FOR RESPONDENTS NOS. 1, 2 & 5	Mr Prasad Dani, Senior Advocate, <i>with Mandar Bagkar & Suraj Bansode.</i>
FOR RESPONDENT NO. 3.	Mrs Amruta A Sawant.
FOR RESPONDENTS NOS. 6 TO 11.	Mr PK Dhakephalkar, Senior Advocate, i/b PM Arjunwadkar.

CORAM : G.S.Patel, J.
DATED : 7th December 2017.

ORAL JUDGMENT:

1. Writ Petition No. 3982 of 2016 challenges an order dated 7th October 1999 of the Designated Member, Maharashtra Revenue Tribunal (“**MRT**”), Kolhapur dismissing the Petitioner’s Revision Application dated 11th November 1998. The Revision Application was directed against an order dated 23rd July 1999 of the Sub-Divisional Officer (“**SDO**”), Karvir, Kolhapur dismissing the Petitioner’s Tenancy Appeal No. 51 of 1992. That appeal in turn, was against an order dated 20th May 1992 of the Additional Tahsildar and Agricultural Lands Tribunal (“**ALT**”) under Section 70(b) of the Bombay Tenancy & Agricultural Lands Act, 1948 (now the Maharashtra Tenancy & Agricultural Lands Act, 1948; “**the MTAL Act**”), by which the Tahsildar & ALT allowed an application by the present contesting Respondents and dismissed applications filed by the Petitioner. The accompanying Writ Petition No. 4015 of 2016 challenges an order in Review Application No. 7/C/1999/KB of the MRT passed on 21st December 2015.

2. I admitted both the matters together and I have heard them finally together. Evidently, if Writ Petition No. 3982 of 2016, and which I will therefore treat as the principal petition, fails, then the accompanying Writ Petition No. 4015 of 2016 will not survive.

3. The dispute pertains to a tract of land, Survey No. 511/16 of about 1 Hectares 21 Are at Kasba Karveer but within Kolhapur Municipal Corporation limits today. Of course, this land was not always within those municipal limits; the city has grown around the land and absorbed it. The writ Petitioner (“**Rajaram**”) claims in essence to be the “deemed tenant” of this land. This claim is in two parts. The first is that he has been a tenant shown to be in possession on the land records for several decades, very possibly as early as 1941. The second claim is that on the date material in view of the provisions of the MTAL Act, 1st April 1957, he was a tenant lawfully cultivating the land and is therefore entitled to all the benefits conferred by Section 32G read with Section 32 of that Act.

4. I will turn to these statutory provisions and the authorities cited subsequently. The factual narrative runs like this. One Shamrao Nalavade and his brother Ramchandra claimed to be the owners of this land. Shamrao and Ramchandra were the principal Respondents to all these proceedings, and are today represented by the heirs and legal representatives. In a matter such as this, it is perhaps necessary to set the chronology moving backward in time simply because that is the only way to properly appreciate the manner in which events unfolded.

5. Shamrao and Ramchandra applied to the Tahasildar and ALT on 5th August 1991 saying that their elder brother along with Rajaram’s ancestor were initially together in joint cultivation of the land. Shamrao and Ramchandra’s brother died. They were in possession until the date of the application. They filed copies of the 7/12 extracts and these showed the names of Ganpat Dada Nalavade

and Rajaram's father or ancestor Kedari for the years 1960 to 1962-1963. From 1965 onwards, it was the possession of the landlord Nalavade that is shown. The application filed was to delete the name of Rajaram and the basis of this application was, to quote directly from it, that the entry of Rajaram's name was '*pokal*' meaning hollow or worthless since Rajaram was — and this is important — never in possession.

6. A notice was issued to Rajaram. He filed a written reply on 30th August 1991. Not all the relevant documents are annexed to the petition and there is a compilation separately filed by Mr Bhargude to which I will refer shortly. But this reply seems to me to be central to the Petitioner's case. It is at page 4 of this compilation. The document is in Marathi and it is best to reproduce a facsimile of it (*scan reproduced on the following page*):

... continued

7th December 2017

7. From this two things are apparent. First, Rajaram claimed *never* to have lost possession. He said that his name appeared in the other rights column consistently since 1956-1957. He spoke repeatedly here of his induction and continuance as an agricultural (i.e., cultivating) tenant. The critical ingredients claimed here are, therefore, first, a lawful occupancy for the purposes of cultivation as a tenant emanating from some sort of agreement or understanding with the owner; two, uninterrupted and continued possession through 1956-1957, a statutorily critical period; and three, continued possession without interruption even thereafter.

8. The first of these requires some explanation because I have understood Mr Bhargude to say that the claim here was *not* expressly that of a contractual tenancy. I must confess to being somewhat puzzled by this submission because if this tenancy was not contractual, then it is unclear what it was and how it originated. Further, the narration to the extent that it mentions the Nalavade family and their ownership of the land clearly posits that the induction of Rajaram's ancestor was on the basis of some agreement or understanding between these two families. In actuality, this more or less condenses the entirety of the dispute and only a further few facts are necessary.

9. Rajaram claimed that because of the provisions of Section 32G of MTAL Act he became a deemed owner/purchaser of the land in question. All that remained was to fix the price and on payment of his, his title would be complete. I note in passing that this claim expanded somewhat because there was another application filed before the MRT where Rajaram said that his

tenancy started in 1941. For our purposes this is not determinative, except to this extent that Rajaram's case seems to me to have been all along something of a work in progress; as we shall see, it continued to take different forms at different times.

10. There was a response before the MRT from the land owners, the Nalavade brothers, in which they seem to have said that although Rajaram's name was in the other rights column and shown to be a tenant, he was never actually a cultivator. It was pointed out that — and this will be material — that from 1965 onwards the 7/12 extracts and other records do not show Rajaram to have been in possession at all. This is what the Tahsildar & ALT found, as a matter of fact, viz., that for nearly a quarter of century, Rajaram's name did not show, and that he did nothing to validate or reinstate any mutation entry showing his continued possession. In fact, until the time that Nalavades filed that application dated 5th August 1991, Rajaram did nothing at all. He made no application under Section 29 of the MTAL Act. He filed no suit before the Civil Court to re-establish his right to possession. Indeed other than the response to the application by the Nalavades, Rajaram did nothing.

11. Moving very quickly ahead, I must note that Rajaram did later file not one but two civil suits seeking injunction from dispossession. These suits were tried before the Civil Courts in Kolhapur, and, after trial, came to be dismissed. The result of this, at least as far as the record before the Court stands today, is that the only civil suits that Rajaram filed were *after* the Nalavades' application to the Tahsildar and ALT, and both suits ultimately failed. From 1965 till

the date of the Nalavades' application there was no attempt by Rajaram to assert the rights that he today claims.

12. The formulation that I have understood Mr Bhargude to embrace most vigorously is that Rajaram did not need to do anything, because the law from 1st April 1957 so thoroughly operated in his favour that he had no call, no matter what any land record said, no matter what any Municipal Corporation did, and no matter what Mr Dhakephalkar's clients were going about doing, to do anything himself at all. He bases this submission of course on a cold reading of Section 32G and Section 32. The two sections read thus:

"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 and 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 clause (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."

"32G. Tribunal to issue notices 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 possession interested therein,

to appear 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 other 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."

13. Now Section 32(1)(a) and (b) are both speak of "permanent tenant". This phrase is defined in Section 2(10A), which reads thus:

"2. Definitions

In this Act, unless there is anything repugnant in the subject or context:—

... ..

(10A) "**Permanent Tenant**" means a person:-

(a) who immediately before the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1955 (hereinafter called "the Amending Act, 1955"):- (Bom XIII of 1956)

(i) holds land as mulgenidar or mirasdar; or

(ii) by custom, agreement, or the decree or order of a Court holds the land on lease permanently; or

(b) the commencement or duration of whose tenancy cannot satisfactorily be proved by reason of antiquity;

and includes a tenant whose name or the name of whose predecessor-in-title has been entered in the record of rights or in any public record or in any other revenue record as a permanent tenant immediately before the commencement of the Amending Act, 1955;

Explanation.— If the members of the family of a Holder work on the land for the purpose of cultivation thereof, the labour of such members shall be taken into account in estimating the expenses of cultivation referred to in this clause."

14. I will assume that the claim that Mr Bhargude mounts is, therefore, under these two sections read with Section 2(10A)(a)(ii) and not any other part of that definition. It is enough also to note that under this Act, there are only three types of tenants, a deemed

tenant, a protected tenant and a permanent tenant. Sub-clauses (i), (ii) and (iii) of Section 32(1)(b) are relatable only to Section 32(1)(b) and not to Section 32(1)(a). I have understood Mr Bhargude's submission to be, therefore, that his case falls within Section 32(1)(a) and that Rajaram was a permanent tenant cultivating the land personally. The evidentiary basis for this is a set of 7/12 extracts in the additional compilation from page 60 onwards which show the name of Rajaram Powar and the crop being cultivated (paddy). These records especially one at page 51 apparently also indicate two further things. First, that there was some sort of a division of the land in two parts, the basis of which is not immediately apparent, and, second, the possession of the landlord jointly.

15. Before the Tahasildar, the claim to possession was of course disputed. Rajaram examined himself before the Tahasildar. He said that Ganpati Dadoba Nalavade was the owner and importantly deposed that Ganpati Dadoba Nalavade leased the land to him as a tenant in 1956-1957, after which he is in continuous possession. This portion at least is plain. This is a finding of fact returned by not one but three authorities below, and it is not possible for me in this writ petition to enter into any dispute about what it was that Rajaram himself said in the initial round of trial. It is true that he also said that he continued to be in possession and had never surrendered his possession. The Tahasildar considered the evidence, and then held that there was no dispute about the title of the landlords, and that Mutation Entry 4801 showing Rajaram in the other rights column in 1957 would not itself suffice to confer a tenancy on Rajaram. That mutation seems to have been made without any notice whatsoever

to the Nalavades, the landlords. Before Rajaram's name was entered there was another name shown as a tenant. Rajaram's name appears along with the landlord and since 1964-1965 his name is removed. There is at best a mixed vahivat and no independent kabuliyat or agreement nor any rent receipts corroborating the tenancy. The Tahasildar also considered the impact of the land now being within the municipal agglomeration and ultimately allowed the application filed by the Nalavades and ordered removal of the name of Rajaram's predecessor. The application made by the Petitioner at the same time (for fixation of the price for purchase) was rejected. This was the order Rajaram carried in appeal. Rajaram's Appeal No. 51 of 1992 was dismissed by Sub-Divisional Officer on 23rd July 1998 and so Rajaram found himself before the third authority, the MRT, in revision. Once again the same contentions broadly were taken claiming possession uninterrupted for four or five decades.

16. It appears that certain documents were filed before the MRT in the revision hearings, and there was some controversy over that, but I will let that pass. The findings of the MRT which are assailed before me actually start at page 49 from paragraph 13 onwards. I have carefully studied what the MRT said in the opening paragraphs and this seems to me to be broadly correct. If I may be permitted the liberty of paraphrasing this, it seems to me that Rajaram's claim was not based of any proof of his tenancy or possession, but solely as a matter of reductive reasoning, that from the 1952 to 1957, the land records showed his name in the other rights column. The rest, the Tahasildar, the Sub-Divisional Officer, the MRT, and now I, are all asked to presume, viz., that because Rajaram's name is seen on those records, therefore, it follows that he must have been in

possession; and from this it in turn follows that he must have been cultivating (for what else would he be doing on that land?); and from this it follows that he must have been a tenant; and from this, it follows that he must therefore be a deemed or protected tenant. Whether one puts it quite like this or not, that is the long and short of this, and that is all there is to it. But, as so often happens, we see here, too, the appearance of the fatal reductive fallacy, a false result or conclusion deduced from an incorrect starting hypothesis. That incorrect starting hypothesis is that the initial entry showing possession is correct and was validated. This has been negated throughout. What the MRT did was to notice precisely is this, when it said that the mutation that Rajaram seeks to put forward as the foundation of this whole edifice of his case is based on an inference of being a tenant found to be in possession.

17. The next few statements by the MRT should not, I think, be misunderstood. I do not believe the MRT said that every act or possession must be based on a written document. Perhaps the sentence at page 27 of the order is not quite as felicitous as it ought to have been. All that the MRT intended to say, I think, is that a claim for possession, tenancy and deemed tenancy merely on a revenue record is altogether too slender a case to withstand scrutiny. A claim for possession must receive some evidence independently, or *aliunde*, and importantly what the MRT sought was some evidence of the claim of not just the asserted possession, but to show that the possession was indeed lawful, because this is of the essence of Sections 32 and 32G.

18. Mr Dhakephalkar is correct when he points out that in this entire construct of a case of an agricultural tenancy, we are told virtually nothing at all about the tenancy itself. The actual area remains undefined. The date of commencement, as we have already seen, swings widely from 1956 to 1941 and back again. The terms of this tenancy are always unknown. The only basis for the entirety of this claim is the Mutation Entry 4801, and here is the real difficulty in this matter. The findings returned by the MRT and the authorities below are findings of fact. I think it is very difficult indeed to interfere with those findings unless there is a very great material irregularity demonstrated. The argument does not also countenance that the entries of 1956-1957 show the landlord as well, therefore indicating concurrent occupation and possession; and they also seem to be indicative of a mixed Vahivat. Solid proof as required of exclusive possession, which the MRT noted is a prerequisite of the tenancy, was altogether absent. A deemed tenancy claim could not possibly survive a factual finding returned of a mixed vahivat and joint possession. Added to this is the fact that Rajaram claimed to be holding the land as a tenant since 1941 but this was a statement that contradicted the evidence before the Courts. Then, there was the fact of his complete inactivity from 1965 onwards for the next 30-odd years, and, finally, the indubitable failure of Rajaram's civil suits for injunctive relief based on this very (and only this) material. There, in those civil suits, Rajaram might have been able to paint on a broader canvas, and adduce additional evidence. Even this he was not able to do.

19. Mr Bhargude says that we must look at the position not as if today, not as of 1941, but only as of 1st April 1957. This is an

argument more of expedience than jurisprudential accuracy. It demands that I overlook all contradictory statements made by Rajaram himself, of that which, according to him, went before, and fully ignore everything that he did — or more accurately did not do — for 30 years thereafter. This is not a plead bred in equity, law or justice. It seems to be founded on some principle to which I confess I am a completely stranger, viz., that a party can sit over his rights, indolent and shiftless, for several decades, and yet mount a claim of this kind. That is not the argument that I am persuaded to accept.

20. In fairness, Mr Bhargude does agree that proof required is of lawful cultivation. It is, however, his case that the moment he claims to be a tenant and the land records show him cultivating in possession, it is not for him to show anything further to establish that there was *lawful* cultivation. The burden would then be on the Nalavades to show otherwise. He submits that it is implicit in his statement that he was cultivating the property lawfully, and that he was doing so as a tenant. This portion I do not believe I can fully accept at least in the manner in which it is framed. As we have seen there are somewhat shifting stands when it comes to the claim of tenancy itself and these cannot be without consequence.

21. Mr Bhargude first refers to the decision of a learned Single Judge of this Court in *Vithoba Ram Rahane & Anr v Bhalchandra Sadashiv Joshi since deceased by heir & Ors*,¹ for the proposition that once a person has acquired rights on 1st April 1957, those rights accrue absolutely. On that day the landlord's title is extinguished

1 1993 Mh LJ 419.

and a new title in favour of the tenant is created. There can be no quarrel with this position, and it is indeed settled law, but the point of distinction between the two cases is that there does not seem to have been a dispute in the case cited about the nature of possession as on 1st April 1957. Both of these are in fact seriously contested before me today.

22. Then in *Rajaram Tukaram Pawar since deceased through LRs & Ors v Muktabai Narayan Salunkhe since deceased through Parvatibai Shankar Chavan & Ors*,² a learned Single Judge of this Court held that a person found to be cultivating on Tillers' Day, 1st April 1957, is a deemed purchaser unless there is an express surrender by the tenant. Mr Bhargude urges that the surrender by Rajaram or his predecessor resulting in a mutation entry showing only the landlord was never established. But what was in question before the authorities was not the correctness of 1965 entry, and indeed what all the authorities questioned, was the correctness of Mutation Entry 4801 which, so to speak, let Rajaram through the door in the first place. It is this entry that the SDO and the MRT were moved to comment on. The discussion in *Rajaram Tukaram Pawar* case will therefore not assist Mr Bhargude, for there is no quarrel with the proposition that the rights conferred under Section 32-G are inalienable and unfettered, and even a dispossession by a Court of

2 2013 (3) Mh LJ 690.

competent jurisdiction would not impair those rights. These are not considerations that arise.³

23. Mr Dhakephalkar relies on the decision of another learned Single Judge of this Court in *Dwarkanath Vishram Ghurye & Anr v Narayan Vasudeo Dhond*.⁴ This is in the context of the plea taken by Rajaram in the present suit. Paragraph 12 reads thus:

12. But there is a 3rd point raised by Mr Sawant, appearing for the Petitioner, and I may make a reference to the same. He relied upon the judgment of a learned Single Judge of this Court (Chandurkar, J) in Special Civil Application No. 277 of 1972, Date of Decision : 8-9-1977 (Balasaheb Londhe v H.D. Nimbal). **There it has been held that if a person pleads contractual tenancy, gets an issue framed on that basis from the Civil Court, but fails to prove his contractual tenancy in the Tenancy Court, cannot turn around and contend that if not contractual tenancy, at least a deemed tenancy arising out of section 4 of the Tenancy Act should be held proved.** This Court has held that if this plea is accepted by the Tenancy Court, after having negated the contenders plea of contractual tenancy, the Tenancy Courts would be exceeding their jurisdiction is recasting of the issue referred to them by the Civil Court. This is precisely the position in the present case.

With very great respect, I see no reason to disagree with this view. **The ingredients of a contractual tenancy and a deemed tenancy, contemplated by section 4 of the**

3 *Dadu Bhagoji Patil v Ramakant Dattatraya Deshpande & Ors*, 1998 (1) Mh LJ 715; and *Anna Babu Sul & Anr v Laxman Pandurang Tiwatne & Ors*, 1998 (1) Mh LJ 614.

4 1989 Mh LJ 689.

Tenancy Act, do vary at least to a significant extent. A deemed tenancy postulates absence of a contractual tenancy at the time when deemed tenancy is pleaded. A tenancy cannot be simultaneously a contractual tenancy and also a deemed tenancy. Deemed tenancy postulates lawful cultivation of the land by a tenant which land belongs to another person. The ingredients of the lease, contemplated by section 145 of the Transfer of Property Act, are not present in the case of such deemed tenancy for the very simple reason that if those ingredients are present, it would be a contractual tenancy and there would have been no necessity to invoke the deeming provisions of section 4 of the Tenancy Act delineating a deemed tenancy. **Something is deemed to be in existence, because it is not in existence. It is proved to be in existence, the deeming provision would be meaningless.** It is true that contractual tenancy also involves lawful cultivation of the land belonging to another. **But lawful cultivation of the land brought about by a regular lease spells something more and different. If therefore a tenant pleads contractual tenancy in a suit and an issue to that effect is referred, normally he should not be allowed by the tenancy courts to turn around at the appellate stage or at the revision stage or even in the trial Court after the evidence is led and to contend that he must be deemed to be a tenant with the meaning of section 4 of the Tenancy Act. I see no reason to disagree with the view taken by the learned Judge in the above judgment."**

(Emphasis added)

24. I am unprepared to accept Mr Bhargude's argument that this does not apply to the facts at hand or that there was no plea of a contractual tenancy. To this day, it is unclear from the records how

exactly Rajaram claimed to have acquired his tenancy cultivating rights. As I have noted, the entirety of his case seems to be based on, and only on, the disputed mutation entries from 1952 to 1957 and there is not an iota of evidence beyond those to show that he had any rights. It is also claimed that Rajaram attempted a somewhat ambitious broadening of his horizon by claiming different things at different times, and being particularly unfettered by time itself, when he first claimed that the tenancy was somewhere in the 1950's then went back a whole decade without any disclosed basis whatsoever. I am only left wondering why he stopped at 10 years and did not go further back in point of time.

25. In my view, there is absolutely no case made out for interference with the impugned order. I see no infirmity with it nor any irregularity or perversity, and certainly none as would justify interference in exercise of my discretion under Article 226 or 227 of the Constitution of India.

26. Writ Petition No. 3482 of 2016 fails and Rule is discharged. No costs. In consequence thereof, Writ Petition No. 4015 of 2016 is infructuous and will not survive. Rule is discharged in that petition as well. No costs.

27. Mr Bhargude seeks continuance of an order of *status quo*. Since I am unable to understand precisely what that involves, given the location of the land today, I am not inclined to grant any such order.

(G. S. PATEL, J)