

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5819 OF 1995

1. Dagdu s/o Baburao Jadhav
aged 47 years, Occu. Agri.,
r/o Deolali, Taluka Paranda,
District Osmanabad.
2. Vinayak s/o Baburao Jadhav,
aged 39 years, Occu. Agri. and
Service, r/o Deolali,
Taluka Paranda,
District Osmanabad.
3. Apparao s/o Baburao Jadhav,
aged 37 years, Occu. Agri.,
r/o Deolali, Taluka Paranda,
District Osmanabad.
4. Sukhdeo s/o Baburao Jadhav,
aged 33 years, Occu. Agri.,
r/o Deolali, Taluka Paranda,
District Osmanabad.
5. Rukhminbai w/o Bibhishan Nalawade,
aged 34 years, Occu. House-hold,
r/o Khandkoni, Taluka Barshi,
District Solapur.
6. Mainabai w/o Ajinath Garad (died) ... Petitioners

Versus

1. Hanmant s/o Madhav Agav
aged 33 years, Occu. Agri.,
r/o Khandkoni, Taluka Barshi,
District Solapur.

2. Ramchandra s/o Bhausahab Kulkarni,
aged 50 years, Occu. Agri.,
r/o Deolali, Taluka Paranda,
District Osmanabad.
3. The Maharashtra Revenue Tribunal,
Aurangabad. ... Respondents

**WITH
WRIT PETITION NO. 5820 OF 1995**

1. Dagdu s/o Baburao Jadhav
aged 47 years, Occu. Agri.,
r/o Deolali, Taluka Paranda,
District Osmanabad.
2. Vinayak s/o Baburao Jadhav,
aged 39 years, Occu. Agri. And
Service, r/o Deolali,
Taluka Paranda,
District Osmanabad.
3. Apparao s/o Baburao Jadhav,
aged 37 years, Occu. Agri.,
r/o Deolali, Taluka Paranda,
District Osmanabad.
4. Sukhdeo s/o Baburao Jadhav,
aged 33 years, Occu. Agri.,
r/o Deolali, Taluka Paranda,
District Osmanabad.
5. Rukhminbai w/o Bibhishan Nalawade,
aged 34 years, Occu. House-hold,
r/o Khandkoni, Taluka Barshi,
District Solapur.
6. Mainabai w/o Ajinath Garad (died) ... Petitioners

Versus

1. Bhaskar s/o Vikram Tambe,
aged-major, Occu. Agri.,
r/o Deolali, Taluka Paranda,
District Osmanabad.
2. Ramchandra s/o Bhausahab Kulkarni,
aged 50 years, Occu. Agri. & Service,
r/o Deolali, now at Chandulal Seth
High School, Khed, Taluka Khed,
District Ratnagiri.
3. The Maharashtra Revenue Tribunal,
Aurangabad. ... Respondents

.....

Mr. S. S. Choudhari for the petitioners in both Petitions.

Mr. A. S. Shelke for Respondent Nos. 1 and 2.

.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 28.03.2018**

**Date of pronouncing
the Judgment : 03.05.2018**

JUDGMENT :-

1. Being aggrieved by the judgment and orders dated 09.10.1995 passed by the Designated Member, Maharashtra Revenue Tribunal, Pune, Camp at Aurangabad, in Revision Application Nos. MRT-16-B-93-0 and MRT-17-B-93-0, the petitioners/original applicants have approached this Court by filing the above two Writ Petitions.

2. Brief facts giving rise to the present two Writ Petitions are as follows:

a. The petitioners are common in both the Writ Petitions. In the year 1991, the petitioners have submitted applications before the Additional Tahsildar, Tenancy and Ceiling, Taluka Paranda, District Osmanabad for cancellation of the registered sale deed in respect of land Gat No. 175 ad-measuring 11 Hectares 14 R. to the extent of 2 Hectares 36 R., which is the subject matter of Writ Petition No. 5819 of 1995 and the land out of the same land Gat No. 175 ad-measuring 1 Acre 20 Gunthas which the subject matter of Writ Petition No. 5820 of 1995 against the respective respondents of these two Writ Petitions, under Section (48) 7 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as, "Act of 1950"). According to the petitioners, Babu Jadhav was declared protected tenant on the land Gat No. 175 ad-measuring 11 Hectare and 14 R. situated at village Deolali, Taluka Paranda and he was in possession till his death. The petitioners are the legal heirs of deceased Babu Jadhav and therefore, they are entitled to claim tenancy rights on the land in dispute. The petitioners had published a notice in

the daily newspaper Tarun Bharat dated 11.10.1991 stating therein that they are the legal heirs of deceased Babu Jadhav and if any alienation by way of will deed, sale deed or mortgage deed would be made by the landlord, it would not be binding on the petitioners and they could not be held responsible. However, even after the said publication as stated above, respondent no.2/Ramchandra sold the land in dispute to respondent no.1 in Writ Petition no. 5819 of 1995 to the extent of 2 Hectares and 36R. by executing registered sale deed bearing no.38 on 07.01.1991 and respondent no.2/Ramchandra also sold land to the extent of 1 Acre 20 Gunthas to respondent no.1/Bhaskar Vikram Tambe, which is the subject matter of Writ Petition No. 5820 of 1995, by executing registered sale deed bearing no. 39 on 07.01.1991. The respondents herein were the non-applicants to the application made to the Additional Tahsildar, Tenancy and Ceiling, Taluka Paranda. They contended that said Babu Jadhav was not at all declared properly as a tenant and he was not a tenant or in possession of the disputed land at the time of sale transaction. It has also been contended that the petitioners did not apply for possession of the disputed land within a period of two years as provided under Section 32 of the Act of 1950 and as

such, they have lost the remedy. After hearing the parties, the learned Additional Tahsildar, by judgment and order dated 27th April, 1992, cancelled both the registered sale deeds in accordance with the provisions contained in Section 48 of the Act of 1950 as invalid. The learned Tahsildar has also observed that the petitioners had preferential right to purchase the land in dispute.

b. Being aggrieved by the same, the respondents in these two Writ Petitions preferred two separate appeals before the Deputy Collector (L.R.), Osmanabad bearing nos. 92/TNC/A-1 and 92/TNC/A. The learned Deputy Collector (L.R.), Osmanabad, by common judgment and order dated 15.12.1992, dismissed both the appeals and confirmed the order passed by the Additional Tahsildar.

c. Being aggrieved by the same, the respondents herein have preferred two separate Revision Applications before the Maharashtra Revenue Tribunal, Aurangabad and the learned Designated Member of the Maharashtra Revenue Tribunal, Pune, Camp at Aurangabad by the impugned judgment and orders

dated 09.10.1995, allowed the Revision Applications and quashed and set aside the judgment and order passed by the Deputy Collector (L.R.). Hence these Writ Petitions.

3. The learned counsel for the petitioners submits that the Designated Member of the Maharashtra Revenue Tribunal, Pune, Camp at Aurangabad has not taken into consideration the findings recorded by the Additional Tahsildar and confirmed by the Deputy Collector, Osmanabad. The learned Designated Member of M.R.T. has observed that the decrees of the Civil Court shows that Ramchandra/respondent no.2 herein was the owner of the land in dispute and deceased Babu had relinquished his tenancy rights under compromise in the said Civil Suits and delivered possession of the disputed land to respondent no.2 Ramchandra/landlord. The learned counsel submits that the Designated Member of the M.R.T. has further erroneously observed that it is well settled law that the tenant is entitled to voluntarily surrender his land and such surrender would not amount to dispossession. The learned counsel submits that the Designated Member of M.R.T. has not taken into consideration the provisions of Section 19 of the Act of 1950

which contemplates that notwithstanding any agreement or usage or any decree or order of a court of law, no tenancy shall be terminated otherwise than by the tenant by surrendering of his rights to the land holder at least a month before the commencement of the year. The first proviso of Section 19(1)(a) also contemplates that such surrender is to be made by the tenant in writing and is admitted by him before and is made in good faith to the satisfaction of the Tahsildar. The learned Designated Member of M.R.T has committed a serious mistake of law in concluding that under the decree passed by the Civil Court, said deceased Babu Jadhav had surrendered his tenancy rights in terms of the compromise effected between respondent no.2 and deceased Babu Jadhav in the said suits, which is contrary to the provisions of Section 19 (1) read with Section 2(y) of the Act of 1950. Consequently, there was no valid surrender of tenancy rights by deceased Babu and his right as protected tenant subsists till his death. The petitioners undisputedly succeeded to the interest of deceased Babu Jadhav under Section 40 of the Act of 1950. The learned counsel submits that consequently, the sale deeds executed in favour of the other respondent/purchaser by respondent no.2/landlord

have not affected the rights of deceased Babu Jadhav nor the rights of the petitioners. The learned counsel submits that both the authorities below have recorded findings in favour of the petitioners including the finding about possession over the suit land and as such, interference in the findings recorded by the Additional Tahsildar and the Deputy Collector (L.R.), by the Maharashtra Revenue Tribunal in its revisional jurisdiction under Section 91 of the Act of 1950 is uncalled for. The learned counsel submits that application of provisions of Section 32 of the said Act by the Designated Member of M.R.T. is wholly irrelevant to the facts and circumstances of the present case.

4. The learned counsel for the petitioners submits that deceased Babu was protected tenant of the land Gat No. 175 ad-measuring 11 Hectares 14 R situated at village Deolali, Taluka Paranda, District Osmanabad. He was not at all dispossessed from the land in dispute. He was cultivating the land in disputed till his death. After his death, the present petitioners have come in possession of the disputed land and they are cultivating the same as tenants. In accordance with the provisions contained in Section 40 of the Act of 1950, the petitioners are entitled to

claim tenancy rights. It should be deemed that the surviving members of the undivided Hindu family of tenant would continue to be tenants on the land, and if the tenant was not a member of the undivided Hindu family, his heirs would be deemed to be tenants on the same terms and conditions on which the tenant was holding it at the time of his death. Further, possession of the land in dispute was not at all taken from deceased Babu Jadhav by taking recourse to the relevant provisions of the Act of 1950. The learned counsel submits that in accordance with the provisions contained in Section 38 of the Act of 1950, the tenants have got a preferential right to purchase the tenanted land. As the petitioners are tenants on the disputed land, they are entitled to purchase the land in dispute in accordance with the provisions contained in Section 38 of the Act of 1950 and respondent no.1 has no right to purchase the same depriving the petitioners.

5. The learned counsel for the petitioners, in order to substantiate his contentions, placed his reliance on the following cases:

1. **Ramchandra Keshav Adke (Dead) by Lrs vs Govind Joti Chavare and Others**, reported in AIR 1975 SC 915,
2. **Dattu Gundu Parit vs Javahar Nanchand Shah**, reported in 2006 (1) Mh.L.J. 776,
3. **Haribhau Rahuji Takke vs Babasaheb Marotirao Rasave & Another**, reported in 1991 MCR 467,
4. **Janardhan Nanasaheb Choudhari vs Sk. Haju Sk. Baban**, reported in 2002 (2) Mah.L.R. 130 and
5. **Abdul Ajij Shaikh Jumma and another vs Dashrath Indas Nhavi and others**, reported in AIR 1987 SC 1626.
6. The learned counsel appearing for the respondents in both Writ Petitions submits that respondent no.2/Ramchandra had instituted Regular Civil Suit No. 10 of 1973 against deceased Babu Jadhav before Civil Judge, Junior Division, Paranda for declaration of ownership and perpetual injunction in respect of the suit land. In terms of the compromise arrived at between the parties to the said suit, half share of respondent no.2/Ramchandra from land Survey No. 120/B-2 was sold under

registered sale deed in favour of deceased Babu Jadhav and in exchange, deceased Babu Jadhav had relinquished his rights of tenancy in respect of the suit land and put respondent no.2 in possession of the suit property. The learned counsel submits that respondent no.2/Ramchandra was required to institute the suit bearing R.C.S. No. 35 of 1980 against deceased Babu Jadhav in the Civil Court for perpetual injunction which came to be decreed on 21.02.1980 by way of compromise and deceased Babu Jadhav had accepted the ownership and possession of Ramchandra over the suit land. The learned counsel submits that in view of the same, respondent no.2-Ramchandra was cultivating the land Gat No. 175 to the extent of his share since 1971 and his possession has also been recorded in the 7/12 extract of the years 1982-1983 till 1989-1990. Thereafter, the respondent-purchaser had purchased the land to the extent as detailed in the foregoing paragraphs from respondent no.2/Ramchandra under registered sale deed for a valuable consideration. They were put in possession in the year 1991 itself and they are cultivating the said land since then. The learned counsel submits that both the authorities below have not appreciated the oral and documentary evidence in its proper

perspective. The Revision Petitions came to be allowed by setting aside the orders passed by the tenancy authorities. The learned counsel submits that neither deceased Babu nor the petitioners have applied under Section 32 of the Act of 1950 before the tenancy tribunal for recovery of possession of the suit lands nor they applied in time for declaration of protected tenancy in their favour. Deceased Babu Jadhav had voluntarily surrendered his possession which does not amount to dispossession. The learned counsel submits that no competent authority has determined the tenancy rights of the petitioners. The petitioners have not filed any application within a period of two years as contemplated under Section 32 of the Act of 1950 and as such, they have lost the right to purchase the agricultural land from the rightful owner in terms of the provisions of Section 48 of the Act of 1950.

7. The learned counsel for the respondents, in order to substantiate his contentions, placed reliance on the following cases:

1. **Dnyanoba Deorao Ugle & others vs Shaikh Hussain (deceased) through LRs. & another,** reported in 2000 (1) Bom.C.R. 11.
 2. **Dhondiram Tatoba Kadam vs Ramchandra Balwantrao Dubal,** reported in 1994 (2) Mh.L.J. 1284.
 3. **Radhu Gokul Gawali died through L.Rs. & Ors. Vs Mohan Kishan Gawali died through L.Rs. & Ors.,** reported in 2007 (5) Bom.C.R. 93 and
 4. **Kisan Yeshwant Dhirade vs Sonabai Bappu Lohar,** reported in 1995 (1) Mh.L.J. 884.
8. On careful perusal of the impugned judgment and orders passed by the learned Designated Member of M.R.T., Aurangabad, particularly para no. 5 of the judgment, it appears that the learned Designated Member has given reference to the certified copies of the decrees passed in R.C.S. Nos. 14 of 1973 and 35 of 1980 and the written statement filed in R.C.S. No. 35 of 1980. The learned Designated Member has also observed that the decrees of the Civil Court shows that respondent no.7/Ramchandra (respondent no.2 herein) was the owner of

the suit land and deceased Babu Jadhav had relinquished his tenancy rights and given possession of the land to Ramchandra.

9. In the light of the above observations, the provisions of Section 19 of the Act of 1950 are required to be reproduced, which are as below:

19. Termination of Tenancy:- (1) Notwithstanding any agreement or usage or any decree or order of a court of Law, no tenancy shall be terminated otherwise than-

(a) by the tenant by surrender of his rights to the land holder at least a month before the commencement of the year;

Provided that such surrender is made by the tenant in writing and is admitted by him before and is made in good faith to the satisfaction of the Tahsildar; or

Provided further that where the land is cultivated jointly by joint tenants or members of an undivided Hindu Family, unless the surrender is made by all of them, it shall be ineffective in respect of such joint tenant as have not joined in the application for surrender, irrespective of the fact that the names of all the joint tenants are not mentioned in the certificate;

(b) by the land holder on the ground specified in sub-section (2).

(2) The land holder may terminate a tenancy on the ground that the tenant:-

(a)(i) has failed to pay in any year, within fifteen days from the day fixed under the Land Revenue Act, for the payment of the last instalment of land revenue due for the land concerned in that year; the rent of such land for that year; or

(ii) if an application for the determination of reasonable rent is pending before the Tribunal or the Collector, under section 17, has failed to deposit within 15 days from the aforesaid date with the Tribunal or the Collector as the case may be, a sum equal to the amount of rent which he would have been liable to pay for that year if no such application has been made; or

(iii) In case the reasonable rent determined under section 17, is higher than the sum deposited by him, has failed to pay the balance due from him within two months from the date of the decision of the Tribunal or the Collector as the case may be; or

(b) has done any act which is destructive or permanently injurious to the land; or

(c) has sub-divided the land; or

- (d) has sub-let the land or failed to cultivate the land personally or has assigned any interest therein; or
- (e) has used such land for a purpose other than agriculture;

Provided that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section unless the land holder gives six months' notice in writing intimating his decision to terminate the tenancy and the grounds for such termination; and

Provided further that the tenancy of a tenant who-

- (a) is a female or a minor, or
- (b) is subject to physical or mental disability or
- (c) is a serving member of the Armed Forces, shall not be determined on the ground only that the land comprised in the tenancy has been sublet by or on behalf of such tenant

10. It is also necessary to reproduce Rule 7 of the Hyderabad Tenancy and Agricultural Lands Rules, 1958 (for short, "Rules of 1958") which reads as under:

"7. How Tahsildar to satisfy himself as to voluntary surrender of tenancy:- (1) For satisfying himself that the surrender of tenancy by a tenant is made voluntarily and in

good faith the Tahsildar shall secure the presence of the tenant and examine him on oath by putting him questions to ascertain,-

- (a) Whether the tenant understands the nature and consequences of the surrender,
 - (b) Whether he has any objection to the surrender, and
 - (c) any other matter, which the Tahsildar thinks necessary to ascertain.
- (2) The Tahsildar shall thereupon record his finding as to whether the surrender has or has not been made in good faith and to his satisfaction.”

11. In the instant case, there is no surrender of tenancy rights as contemplated under Section 19 of the Act of 1950, nor in terms of the provisions of Rule 7 of the Rules of 1958 as reproduced hereinabove. It is well settled that the legal formalities of surrender are required to be followed in *stricto sensu* prior to restoration of possession in favour of the landlord. On the basis of any decree or order of a court of law, no tenancy shall be terminated otherwise than by the tenant by surrender of his rights to the land holder at least a month before the commencement of the year and such surrender shall be made by the tenant in writing and is admitted by him before and is made

in good faith to the satisfaction of the Tahsildar. In the instant case, admittedly no proceedings as contemplated under Section 19 of the Act of 1950 read with Rule 7 of the Rules of 1958 have been initiated and complied with and as such, the alleged surrender of tenancy rights in favour of the respondent/Ramchandra is contrary to the provisions of Section 19(1) of the Act of 1950 read with Rule 7 of the Rules of 1958. The learned Designated Member has committed a serious error of law in recording the finding contrary to the provisions of Section 19 of the Act of 1950 read with Rule 7 of the Rules of 1958.

12. In the case of **Janardhan Nanasaheb Choudhari vs Sk. Haju Sk. Baban** (supra), relied upon by the learned counsel for the petitioners, in paragraph nos. 21 to 24 of the judgment, this Court (Coram: A. B. Naik, J) has made the following observations:

“21. I have given my anxious consideration to the ratio laid down by the full bench. I have gone through the provisions of the Bombay and Hyderabad Act and rules and the verification which was below the application

from the said verification, the verification as required under rule 7 and satisfaction of Tahsildar u/s 19 of the Act is not present below the application. The verification, is ordinary verification as required to verify in pleadings but not the verification that is required for the purpose of surrender. As I stated earlier, apart from verification which was requirement of the Bombay Act and Rules but the Rules framed under the Hyderabad Act are different which require the presence of the tenant and also requires the Tahsildar to examine him on oath, before verifying the surrender. In view of striking difference between the two Act and Rules, i.e. Bombay Act and Rules and Hyderabad Act and Rules, the ratio laid down by the full Bench, in my respectful opinion, is not at all applicable.

22. *As it is accepted that the application under Section 19 of the Act was submitted on 14.08.1974 after submitting the application, no further steps were taken by the Tahsildar, there is no record produced by the respondents to show that the Tahsildar who passed an order on 17th August, 1981 has an occasion to consider, (a) whether the tenant surrendered his tenancy rights to the landholder at least month before the commencement of the year; (b) secure the presence of the tenant; (c) to examine him on oath, by putting his questions. Hence the respondents have failed to establish that the acceptance of surrender by Tahsildar on 27.08.1981 is valid. A valid*

surrender as required under the Hyderabad Act, the tenant has to surrender his tenancy right to the landholder, "at least a month before the commencement of the year". The term year is defined in Hyderabad act i.e. Section 2(y) so as to mean any year ending on 30th June or such other date the Government may, by a notification in the Official Gazette appoint for any area. In the present case, admittedly the application of the so called surrender is filed on 14.8.1974, which is not in accordance with the provisions of section 19(1) read with Section 2(y). In view of the basic infirmity in the procedure of accepting surrender by the Tahsildar and the different procedure in Bombay Tenancy Act and Rules and Hyderabad Tenancy Act and Rules, it is difficult for me to accept the contentions of Shri Dharashive, learned AGP, as the ratio of Full Bench is not applicable, in this case.

23. *From the facts and statement of the law noticed by me in the foregoing paragraphs, the following facts emerge:*

(i) By application dated 14.8.1974 filed by Nanasaheb the protected tenant there, is no valid surrender of tenancy;

(ii) Acceptance of surrender by Tahsildar on 27.8.1981 is invalid, as it is not done in accordance with the

provisions of Section 19(1) of the act and Rule 7;

(iii) On the date of passing of the order i.e. 27.8.1981, Nanasaheb was dead,

(iv) No valid surrender of tenancy right by Nanasaheb and his right as protected tenant subsist, till his death;

(v) Petitioner succeeded to the interest of Nanasaheb u/s 40 of the Act;

(vi) Application u/s 38 of the Act is the only remedy and petitioner is entitled to purchase interest of land-holder in the land;

(vii) Consequently the sale deed dated 14.8.1974 has not affected the rights of Nanasaheb.

24. *In view of the above discussion, I am of the firm view that the Revenue tribunal has committed an error appearing on the face of the record in holding that there was valid surrender of tenancy by Nanasaheb and the application u/s 38 is not tenable. The order passed by the Revenue Tribunal is required to be quashed and set aside by issuing Writ of Certiorari. Accordingly, the said writ is issued."*

In the above cited case, this Court has even given importance to the verification as required under Rule 7 and to the satisfaction of the Tahsildar as contemplated under Section 19 of the Act of 1950 and observed that the same is not present below the application. In the instant case, admittedly no such proceedings are ever initiated before the learned Tahsildar for surrender of the tenancy rights as contemplated under Section 19 of the Act of 1950.

13. In the case of **Haribhau Rahuji Takke** (supra), this Court (Coram: B. N. Deshmukh, J.) in almost similar facts, in paragraph nos. 5 and 7 of the judgment, has made the following observations:

“5. Section 19 of the Hyderabad Tenancy and Agricultural Lands Act provides for termination of tenancy. Sub-section (1)(a) of the said section provides that, there can be surrender by the tenants, of his rights, to the land-holder, provided such surrender is made by the tenant in writing and is admitted by him before the Tahsildar and is made in good faith to the satisfaction of the Tahsildar. The manner, in which the surrender is to be effected, is also provided under the relevant Rules. If

surrender is to be effective, it should have been in writing, made before the Tahsildar and verified to the satisfaction of the Tahsildar. There can not be any estoppel against the requirement of the statute. The Revenue Tribunal was, therefore, in error in considering the application of doctrine of estoppel as against the provision of the statute. If the surrender is to be effected, it must be in accordance with the provisions of Section 19 of the Hyderabad Tenancy and Agricultural Lands Act and the relevant Rules. There can not be termination of tenancy by virtue of compromise, filed even in civil court. Mentioning of surrender in such a compromise, will not estop at all the tenant from claiming to be a tenant thereafter also, as the surrender is not in accordance with the provisions of Section 19 of the Hyderabad Tenancy and Agricultural Lands Act.

6.....

7. The second contention raised by Shri Joshi is that, presently the landlord is not in possession and the application under Section 32, therefore, is not maintainable. I am unable to appreciate this contention of Mr. Joshi as the application is made for possession on 17.1.1985 and the respondent No.2 has sold the land to the respondent No.1 by a sale deed on 29.4.1985. I have gone through the contents of the sale deed. I do not find anything, which indicates that prior to 29.4.1985, the

possession was handed over to the respondent No.1 or to anybody else. The recitals in the sale deed, indicate that the respondent No.2 the original land-holder, was in possession on 29.4.1985. In view of this, it is not possible to hold that the application of the tenant, filed on 17.1.1985 was not maintainable.”

In the instant case, the learned Designated Member of the M.R.T., by referring the compromise decree passed in the Civil Suit and further the written statement filed in R.C.S. No. 35 of 1980, has committed a serious error of law in observing that deceased tenant Babu Jadhav had surrendered his tenancy rights by virtue of the compromise filed in the Civil Court. It is to be made clear that mentioning of surrender in such a compromise will not estop the tenant from claiming to be a tenant thereafter also, as the surrender is not in accordance with the provisions of Section 19 of the Act of 1950.

14. In the other cases of **Ramchandra Keshav Adke (Dead) by Lrs** (supra) etc., relied upon by the learned counsel for the petitioners, though under Section 15 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, “Act of 1948”), the

provisions of Section 15 of the Act of 1948 read with Rule 9 of the Bombay Tenancy and Agricultural Lands Rules, 1956 are almost similar to the provisions of Section 19 of the Act of 1950 and Rule 7 of the Rules of 1958. In the said cases, the Supreme Court as well as this Court, by referring the said provisions of Section 15 of the Act of 1948, has dealt with the issue of valid surrender by the tenant and held that the aforesaid provisions are mandatory and not directory and non-compliance of the same would vitiate the surrender in question.

15. In the case of *Dnyanoba Deorao Ugle* (supra), relied upon by the learned counsel for the respondents, in para 14 of the judgment, this Court has in the facts of the said case, held that this is not a surrender under Section 19(1) as the original tenant in unequivocal terms admitted that he was never a protected tenant. In the fact of the said case, this Court has observed that the application filed under Section 98 is liable to be rejected outright. In the instant case, however, there is a specific recital in the written statement filed in R.C.S. No. 35 of 1980 by giving reference to the earlier compromise effected in R.C.S. No.14 of 1973 that deceased Babu Jadhav had relinquished his right of

tenancy in favour of respondent no.1/Ramchandra. Thus, the above cited case cannot be made applicable to the facts and circumstances of the present case.

16. In the case of **Dhondiram Tatoba Kadam** (supra) relied upon by the learned counsel for the respondents, the Supreme Court had an occasion to deal with the provisions of Section 32 (1-B) of the Act of 1948. In the facts of the said case, the Supreme Court has given importance that both the tribunal and the High Court concurred on the surrender by the appellant and the effect of surrender was that the appellant ceased to be tenant. The Supreme Court has further observed that assuming that surrender was invalid and the appellant left the possession over land on his own accord, whether he was dispossessed under Section 32(1-B) of the Act. The Supreme Court held that voluntary giving up of possession does not amount to dispossession unless the law provides for it. In the instant case, the facts are totally different. In the aforesaid case, the Supreme Court had no occasion to deal with the provisions of Section 15 of the Act of 1948 which are similar to the provisions of Section 19 of the Act of 1950. Thus, the ratio laid down in the aforesaid

case cannot be made applicable to the facts and circumstances of the present case.

17. In the case of *Radhu Gokul Gawali* (supra) relied upon by the learned counsel for the respondents, this Court had an occasion to deal with the provisions of Section 98, 32(1), 40 and 2(ee) of the Act of 1950 and in terms of the provisions of Section 98, this Court has held that a long span of time is un-conceivable in the absence of plausible explanation and that the circumstances, under which the tenants were prevented from any disability for this long span of time and after removal of this disability they have diligently filed the application, are not explained. This Court therefore held that such belated application under Section 98 could not have been entertained by the authorities concerned. In the instant case, the petitioners have not filed any application under Section 98 claiming summary eviction of the respondents-purchasers and as such, the above cited case cannot be made applicable to the facts and circumstances of the present case.

18. In the instant case, the learned Deputy Collector (L.R.) has referred the extract of the scheme register of the consolidation scheme and further observed that the name of father of respondent nos. 1 to 6 (petitioners herein) is shown as tenant for the whole of the area of land Gat No.175. The Additional Tahsildar has also observed that the copies of the 7/12 extracts *pahani patrak* for the years 1950-1951 to 1959-1960 and thereafter copies of 7/12 extract after 1978-1979 shows the possession of deceased tenant. A copy of the tenancy register of the year 1950-1951 also proves the tenancy rights of the deceased tenant. Both the authorities below have also given due weightage to the notice published in the daily newspaper Tarun Bharat dated 11.10.1991 by the petitioners informing the interested persons that they are the legal heirs of deceased tenant of the suit land Gat No. 175 and any transaction by way of transfer of the said land by will deed, sale deed or mortgage deed behind their back would not be valid and they will not be held responsible. In spite of that, respondent no.2/Ramchandra sold both the lands under registered sale deeds dated 07.01.1991. In terms of the provisions of Section 40 of the Act of

1950, the rights of tenants are heritable and when the tenant dies, the landholder shall be deemed to have continued the tenancy. It is well settled that the heritability is an incident of tenancy. The landlord is under obligation to continue the tenancy in favour of the heirs of deceased tenant. The learned Designated Member of M.R.T. has exceeded his revisional jurisdiction under Section 91 of the Act of 1950 and caused interference in the findings recorded by the authorities below. In terms of the provisions contained in Section 38 of the Act of 1950, the tenants have got preferential right to purchase the tenanted land. Thus, the authorities below have rightly exercised the powers to cancel the registered sale deed executed by respondent/Ramchandra in favour of the respondents/purchasers under the provisions of Section 48(7) of the Act of 1950.

19. In view of the above discussion, the present Writ Petitions deserve to be allowed and the judgment and order passed by the Additional Tahsildar, Tenancy and Ceiling, Taluka Paranda and the order passed by the Deputy Collector (L.R.), Osmanabad thereby confirming the judgment and order passed by the

Additional Tahsildar, require to be restored. Hence I proceed to pass the following order:

ORDER

- I. The Writ Petitions are hereby allowed. No costs.
- II. The impugned judgment and orders passed by the Designated Member of the Maharashtra Revenue Tribunal, Pune, Camp at Aurangabad on 09th October, 1995 in Revision Petition Nos. MRT-16-B-93-0 and MRT-17-B-93-0 are hereby quashed and set aside.
- III. The judgment and orders passed by the Additional Tahsildar, Tenancy and Ceiling, Taluka Paranda dated 27th April, 1992 in File Nos.91/TNC-WS/86 and 91/TNC-WS/85 and the judgment and orders passed by the Deputy Collector (L.R.), Osmanabad dated 15th December, 1992 in File Nos. 92/TNC/A and 92/TNC/A-1 stand confirmed.
- IV. Rule made absolute accordingly. The Writ Petitions are disposed of.

20. At this stage, Mr. Shelke, learned counsel for the respondents submits that the respondents are in possession of the suit property since 1992 and therefore, the effect of this order may be stayed for six weeks so as to enable the respondents to approach the Supreme court. Thus, considering the fact that the matter is old one and the litigation is going on since 1992, the effect of this order is hereby stayed for a period of six weeks from today.

(V. K. JADHAV, J.)

vre/