

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3500 OF 1997
(Writ petition No. 2635 of 1987 Bombay)
WITH
CIVIL APPLICATION NO. 1948 OF 2014

1. Chaban Bhau Phulari
(Since deceased through L.Rs.)
- 1A) Thjakubai w/o Chaban Phulari,
Age 74 years, Occ. Agriculture
- 1B) Bahiru s/o Chaban Phulari,
Age 45 years, Occ. Agriculture
- 1C) Kailash s/o Chaban Phulari
Age 43 years, Occ. Agriculture,

All above R/o. Phulari Mala
Savedi Road, Ahmednagar,
Through G.P.A.
Gorakh s/o Baban Phulari
Age 35 years, Occ. Agriculture
R/o. Phulari Mala, Savedi Road,
Ahmednagar, District Ahmednagar
- 1D) Bibi w/o Kashinath Raikar,
Age 55 years, Occ. Household
R/o. Phulari Mala, Savedi Road,
Ahmednagar, District Ahmednagar
- 1E) Kalavati w/o Dattatraya Dhadge,
Age 53 years, Occ. Household
R/o. Nasik Road, Behind Gandhi
Nagar, Nashik, District Nashik
- 1F) Leelavati w/o Suresh Bhutkar,
Age 53 years, Occ. Household,
R/o. Tryambekeshwar, Nashik
District Nashik
- 1G) Pramila w/o Vijay Kanade
Age 51 years, Occ. Household
R/o. Phulari Mala, Savedi Road,
Ahmednagar, District Ahmednagar

- 1H) Rama w/o Raghunath Zagade
Age 42 years, Occ. Household,
R/o. Karjat, Tq. Karjat
District Ahmednagar
- 1I) Mandakini w/o Raghunth Mehetre
Age 38 years, Occ. Household
R/o. Phulari Mala, Savedi Road,
Ahmednagar, District Ahmednagar
- 1J) Pushpa w/o Prakash Hazare
Age 36 years, Occ. Household
R/o. Sanmitra Housing Society,
Balikashram Savedi Road,
Ahmednagar, District Ahmednagar. ...Petitioners

versus

1. Suresh Vithal Phulari
(deleted as per order dt. 9.11.2017)
2. Chandrakant Vithal Phulari
R/o. Tilak Road, Ahmednagar
District Ahmednagar.
3. Khandu Balaji Jare
(since deceased, through L.Rs.)
- 3A) Gajanan s/o Balaji Jare
Age 70 years, Occ. Nil,
R/o. Krushnadam Road,
Ahmednagar
- 3B) Laxman s/o Balaji Jare
(Since deceased through L.Rs.)
- 3B-1) Gulab s/o Laxman Jare
Age 55 years, Occ. Agri.
R/o. Tapovan Road,
Ahmednagar
- 3B-2) Kisan s/o Laxman Jare
Age 53 years, Occ. Agri.
R/o. Bhutkarwadi, Ahmednagar
- 3B-3) Suresh s/o Laxman Jare
Age 50 years, Occ. Agri.
R/o. Wadgaonvatta,
Ahmednagar

- 3B-4) Vasant s/o Laxman Jare
(since deceased through L.Rs.)
- 3B-4.1) Janabai w/o Vasant Jare
Age 45 years, Occ. Agri.
R/o. Bhutkarwadi,
Ahmednagar
- 3B-4.2) Pravin s/o Vasant Jare
Age 25 years, Occ. Nil
R/o. Bhutkarwadi,
Ahmednagar
- 3B-4.3) Kalpana w/o Santosh Ghodke
Age 26 years, Occ. Household
R/o. Burudgaon, Ahmednagar
- 3B-4.4) Deepika w/o Santosh Ghodke
Age 25 years, Occ. Household
R/o. Sasewadi Baijabaiche Jeur,
Ahmednagar
- 3B-4.5) Rupali d/o Vasant Jare
Age 24 years, Occ. Household
R/o. Bhutkarwadi, Ahmednagar
- 3B-4.6) Mangala w/o Balasaheb Jadhav
Age 22 years, Occ. Household
R/o. Shingve Naik, Nagar Manmad
Road, Ahmednagar
- 3B-5) Balasaheb s/o Laxman Jare
Age 40 years, Occ. Agri.
R/o. Bhutkarwadi,
Ahmednagar
- 3B-6) Sanjay s/o Laxman Jare
Age 41 years, Occ. Agri.
R/o. Bhingardivewada,
Bhutkarwadi, Ahmednagar
- 3C) Parwati Pandurang Jare
Age 62 years, Occ. Nil,
R/o. Anandnagar, Gulmohar
Road, Ahmednagar.
- 3D) Subhash Pandurang Jare
Age 38 years, Occ. Nil,
R/o. Anandnagar, Gulmohar

Road, Ahmednagar

- 3E) Subhash Pandurang Jare
Age 30 years, Occ. Nil,
R/o. Anandnagar, Gulmohar
Road, Ahmednagar.
- 3F) Dagdu Raghu Jare
(Since deceased through L.Rs.)
- 3F-1) Mandbai w/o Dagdu Jare
Age 64 years, Occ. Household
R/o. Bhutkarwadi, Ahmednagar
- 3F-2) Ashok s/o Dagdu Jare
(Since deceased through L.Rs.)
- 3F-2.1) Sangeeta w/o Ashok Jare
Age 35 years, Occ. Household,
R/o. Bhutkarwadi, Ahmednagar
- 3F-2.2) Shubhangi d/o Ashok Jare
Age 17 years, Occ. Nil,
(Under Guardianship of
mother)
Sangeeta w/o Ashok Jare)
R/o. Bhutkarwadi, Ahmednagar
- 3F-2.3) Saurav s/o Ashok Jare
Age 08 years, Occ. Nil,
(Under Guardianship of
mother)
Sangeeta w/o Ashok Jare)
R/o. Bhutkarwadi, Ahmednagar
- 3F-3) Sandip s/o Dagdu Jare
Age 32 years, Occ. Agri.
R/o. Bhutkarwadi, Ahmednagar
- 3F-4) Surekha d/o Dagdu Jare
Age 35 years, Occ. Household
R/o. Ganeshnagar, Bhutkarwadi
Ahmednagar
- 3F-5) Sharda w/o Raghunath Widhote
Age 35 years, Occ. Household,
R/o. Laxmanwadi, Tapovan Road,
Ahmednagar
- 3F-6) Anjali d/o Rajendra Bote

Age 32 years, Occ. Household
R/o. Gandhinagar, Bolhegaon,
Ahmednagar

4. Baban Bhau Phulari
Bhutkarwadi (Savedi),
Ahmednagar
5. Sopan Vithal Borhade
(deleted)
6. Sarita Misrilal Bhandari
7. Chandrakant Punamchand Bhandari
8. Mrs. Nirmala Chandrakant Bhandari
R/o. 6 to 8 R/o. 2585, M.G. Road,
Ahmednagar
9. Nathumal Premraj Kataria,
(deleted)
10. V.R. Waval, promoter
(deleted)
11. R.V. Lokhande,
Collectorate, Pune
(W.P. stand dismissed)
12. Rankoji Takaji Wakale,
R/o. Savedi, Ahmednagar
13. Nandkumar Damodhar Ranavikar
R/o. Laltaki, Ahmednagar
14. Damodhar Shankar Renavikar
R/o. Laltaki, Ahmednagar
15. Suresh Vitthal Sant
R/o. Opp. Zopadi Canteen,
Savedi, Ahmednagar
16. Dhanraj Chhoonilal Soni
(since deceased through L.Rs.)
- 16A) Jagdish s/o Dhanraj Soni
Age 55 years, Occ. Business,
R/o. Civil Hudco, Savedi Road
Ahmednagar

- 16B) Manohar s/o Dhanraj Soni
Age 45 years, Occ. Service
R/o. Soni Mangal Karyalaya,
Savadi Road, Ahmednagar
- 16C) Naresh s/o Dhanraj Soni
Age 40 years, Occ. Business,
R/o. Sarjapura, Ahmednagar
- 16D) Smt. Shakuntala Manik Sonar
Age 57 years, Occ. Household
R/o. Sarjapura, Ahmednagar
- 16E) Smt. Shobha Vijaykumar Sharma
Age 43 years, Occ. Household
R/o. D-49, Shastri Nagar,
Badbhada Road, Bhopal (MP)
17. Shri M.R. Deshpande
Designated Member,
Maharashtra Revenue Tribunal,
PUNE
- ...Respondents

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Mr. N.V. Gaware, advocate for the Petitioners

Ms. Pradnya S. Talekar h/f Mr. S.B. Talekar, advocate for respondent Nos. 3C to 3E, 3G to 3I, 3B-1 to 3B-3, 3B-5, 3B-6, 3B-4-1 to 3B-4-6, 3F-1, 3F-3 to 3F-6, 3F-1-1 to 3F-2-3.

Mr. Y.V. Kakade Patil, Advocate for respondent Nos. 6 to 8, 13 and 16A to 16E.

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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment: 19.12.2017**

**Date of pronouncing
the Judgment: 05.01.2018**

JUDGMENT:-

1. The petitioners are challenging the legality and validity of the order dated 13.3.1987 passed by the learned Member, Maharashtra Revenue Tribunal, Pune in Revision application No. MRT-AS-I-12 of

1985.

2. Brief facts giving rise to the present writ petition are as follows:-

a) This pertains to the agricultural land bearing Survey No. 176/1, admeasuring 21 Acres and 15 Gunthas and potkharaba 14 gunthas, situated at village Savedi, Tq. and District Ahmednagar and the dispute relates to the land admeasuring 6 acres and 5 gunthas, out of the aforesaid land survey No. 176/1. The said land was originally owned and possessed by one Laxman Gangaram Dange and six others. Respondent No.3 Khandu Balaji Jare and one Bandu Sagaji Bhingardive were tenants on the said land in the village record prior to tillers day i.e. 1.4.1957.

b) Respondent No.3 Khandu Balaji Jare and Bandu Bhingardive vide tenancy application No. 20 of 1957 filed before learned Mamlatdar, Ahmednagar voluntarily surrendered the land from survey No. 175 and 176 in favour of original landlord viz. Laxman Gangaram Dange and others and accordingly an order came to be passed by the learned Mamlatdar regarding surrender. Pursuant to the said surrender, the tenants vacated the land and possession was handed over to the original landlords. The said surrender was verified and accepted by the Mamlatdar in accordance with the

provisions of Bombay Tenancy and Agricultural Lands Act (hereinafter for the sake of brevity referred to as "the said Act"). Accordingly, mutation entry No. 1493 regarding surrender came to be certified by the Revenue authorities and even the names of the tenants were deleted and the names of landlords i.e. Laxman Gangaram Dange and six others were duly entered in the village record in respect of the said agricultural lands. The original landlords thereafter, cultivated the said land for some period and decided to alienate the said land.

c) On 29.2.1960, the original landlord Laxman Dange and others executed registered sale deed in favour of the petitioners in respect of land survey No. 175/1 and 176/1 admeasuring 9 acres, 12 gunthas and 14 acres, 8 gunthas, respectively.

d) In the year 1962, land survey No. 176/1 purchased by the petitioners was included within the municipal limits of Ahmednagar Municipal Council and numbered as final Plot Nos. 99 and 1000 of T.P. Scheme No.4. The petitioners from time to time sold out the part of the said land to respondent Nos. 5 to 16 and others and only 6 acres 5 gunthas of land remained in possession of the petitioners Chaban Phulari.

e) In the year 1979, respondent Nos. 1 and 2, who happened to be nephews of the petitioner, filed an application before learned Tahsildar and A.L.T. Ahmednagar, alleging therein that the sale transaction effected by the petitioners be declared as invalid and possession of suit land be given to the elder brother of the petitioner viz. Baban Bhau Phulari, as manager of the joint family. The said application was numbered as T.N.C. Case No. 67 of 1979. The learned A.L.T. Ahmednagar, had recorded statements of respondent No.3 Khandu Balaji Jare and Dada Bandu Bhingardive. They have disclosed that the land survey No. 176 and 21 were taken by the landlords in possession for personal cultivation and therefore, they surrendered their tenancy. They have also stated in their respective statement that instead of personal cultivation of land, the landlord immediately sold the land and as such, they prayed for restoration of the possession.

f) By order dated 23.12.1982, the learned Additional Tahsildar, passed an order that respondent Nos. 1 and 2 if at all having share in the property may approach the Civil Court and further passed order that the possession of the petitioners over the agricultural land admeasuring 6 acres 5 gunthas out of the land survey No. 176 be withdrawn and the land should be handed over in favour of the tenants i.e. respondent No.3 Khandu Jare and Bandu Bhingardive in

terms of provisions of Section 37 r.w. Section 39 of said Act.

g) Being aggrieved by the said order passed by the learned Tahsildar, Ahmednagar, the petitioners preferred tenancy appeal No. 1 of 1983 and original respondent Nos. 1 and 2 preferred appeal No. 2 of 1983 before the Sub Divisional Officer, Nagar division, Ahmednagar. By order dated 8.9.1984 the Sub Divisional Officer, Nagar division, Ahmednagar allowed appeal No.1 of 1983 and set aside the order passed by the Tahsildar and dismissed the appeal No. 2 of 1983 filed by respondent Nos. 1 and 2.

h) In the year 1985, respondent Nos. 1 to 3 and Bandu Bhingardive preferred revision application No. 12 of 1985 before the Maharashtra Revenue Tribunal, Pune challenging the order dated 8.9.1984 passed by learned Sub Divisional Officer, Ahmednagar. During pendency of said revision, Bandu Bhingardive came to be deleted from the array of applicants vide order dated 11.3.1987.

i) By order dated 13.3.1987 in Revision application MRT-AS-I-12 of 1985, learned Member of M.R.T. Pune has allowed the Revision application No. 12 of 1985 and also set aside the order dated 8.9.1984 passed by Sub Divisional Officer, Ahmednagar and confirmed the order dated 23.12.1982 passed by the learned

Tahsildar, Ahmednagar. Hence this writ petition.

3. Learned counsel for the petitioners submits that the Tribunal has committed error of law by allowing the revision application of respondent Nos. 1 and 3 and by restoring the order of the Tahsildar A.L.T. Nagar Division, Ahmednagar and the said error is apparent on the face of record. Learned counsel submits that Sections 37 and 39 of said Act are not at all attracted to the facts and circumstances of the present case, as the suit land was voluntarily surrendered by the original tenants. Learned counsel submits that in terms of provisions of Section 15 of the said Act, the tenant may terminate the tenancy in respect of his land at any time by surrendering his interest in favour of landlord, provided that such surrender shall be in writing and has to be verified before the Mamlatdar in the prescribed manner. After recording the verification, learned Mamlatdar has accepted the surrender being voluntary and unconditional and as such, subsequent proceedings for restoration, purportedly under Sections 37 and 39 of the said Act, are not maintainable. Learned counsel submits that the proceedings initiated after a lapse of 22 years and 7 months are not maintainable, as the same are not within limitation. The legal heirs of deceased tenants would not have any right to inherit the property of so called tenants under Section 37 of the said Act since name of one of the tenant being deleted from the array of

applicants, before the Tribunal. Learned counsel submits that even in absence of any application for condonation of delay caused in filing Revision before the Tribunal, the said proceedings are also not maintainable in the eyes of law. Learned counsel submits that by invoking the provisions of Section 32 of the said Act, the tenants *ifso facto* cannot be entitled for ownership of disputed property. Learned Member of the Tribunal has exceeded the jurisdiction which has resulted into miscarriage of justice.

4. Learned counsel for the petitioners submits that on 31.1.1957 Taluka Awwal Karkun, Nagar Taluka had recorded statement of original tenant Khandu Balaji Jare, wherein said Khandu Jare had stated that the tenants wanted to surrender the land voluntarily, as the tenants had to cultivate their own land and it was not possible for them to cultivate the land of the landlord. Learned counsel submits that on verification, the Taluka Awwal Karkun, Nagar Taluka by order dated 31.1.1957 had observed that the tenants are willing to surrender their rights of tenancy and possession voluntarily though they are aware of the rights of tenants. Learned counsel submits that Taluka Awwal Karkun had recorded his opinion on verification that the surrender is purely voluntarily and accordingly passed the orders that the possession of the suit land should be restored to the landlord subject to the provisions of sub-sections (2) and (3) of Section 15 of

the said Act that the names of tenants recorded as protected tenants should be deleted from the record of rights. Learned counsel submits that the Town Planner, Ahmednagar has sanctioned the lay out submitted by the petitioners Chaban Phulari with regard to plot Nos. 99 and 100 and by virtue of the same, the lands are already divided into 44 plots and the said property is put to non-agriculture use. Learned counsel submits that in terms of provisions of Section 29 of the said Act, the procedure for taking possession is contemplated and as such, the application is required to be made within a period of two years from the date on which the right to obtain possession of the land deemed to have been accrued to the tenant. Learned counsel submits that the provisions of section 37(1) of the said Act could be invoked only in cases wherein the landlord has taken possession of the land after termination of tenancy under Section 31 or Section 33(b) of the said Act and has further failed to use the land for any of the purpose specified in the notice under Section 31 and 33(b) of the said Act and the case of the landlord to get possession of the land under Section 15 of the said Act upon surrender having been made by the tenant and having been verified by the Mamlatdar under Section 15 is not covered by Section 37 of the said Act. Learned counsel submits that in sub-section (2) of Section 15, a reference has been given to Sections 31 and 31-A in respect of landlord's rights to retain the land has been subjected to

certain restrictions mentioned therein viz. the landlord can retain the land subject to like purposes or the like extent or the like conditions as are mentioned in Sections 31 and 31-A cannot convert an order passed under Section 15 into an order passed under Section 31 of the said Act. Learned counsel submits that the Mamlatdar as well as learned Member of the Tribunal has ignored the application submitted by the tenants for termination of tenancy voluntarily and learned Mamlatdar and Taluka Awwal Karkun had verified the said surrender and recorded a finding to the effect that the surrender of interest in the land has been made voluntarily in favour of the landlord. Learned counsel submits that even in the statement recorded in Tenancy Case No. 67 of 1979 the tenant Khandu Balaji Jare and the legal heirs of tenant Bandu Bhingardive had admitted their verification and surrender in favour of landlords.

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

- i) Vithal Rangnath Gaikwad and Ors. vs. Murlidhar Waman Dhavale and others, reported in 1975 (1) LJSOFT 288.
- ii) Krishna @ Kisan Rajaram Karve & Others vs. Dinkar Anaji Kumbhar and others, reported in 2005 (1) Bom.C.R. 750
- iii) Raghosingh vs. Mohansingh, reported in 2000 DGLS (SC) 686

- iv) Santoshkumar Shivgonda Patil & Ors. vs. Balasaheb Tukaram Shevale, reported in 2009 DGLS (SC) 1277
- v) Gulabrao Bhaurao Kakade (Smt) since deceased through L.Rs. vs. Nivrutti Krishna Bhilare and others, reported in 2001 (Suppl.1) Bom.C.R. 688.
- vi) Dattu Appa Patil and others vs. State of Maharashtra and others, reported in 2006 (6) Bomb.C.R. 246
- vii) V.S. Charati vs. Husein Nhanu Jamadar (Died) by L.Rs. Reported in 1999 (3) Bom.C.R. 131
- viii) Maruti Bala Raut vs. Dashrath Babu Wathare, reported in 1974 DGLS (SC) 256
- ix) Maruti Ramaji Patil since deceased by his L.Rs. Ananda Maruti Patil and others vs. Babu Dhondi Mohite and others, reported in 2006 (5) Mh.L.J. 785
- x) Unreported judgment of this Court in writ petition No. 1707 of 1992 dated 14.08.2014 in the case of Onkar Kashiram Mahajan (Died L.Rs.) vs. Rajaram Shamu Mahajan and others.

6. Ms. Talekar, learned counsel appearing for the concerned respondents submits that Laxman Dange alongwith his five brothers were the owners of land bearing survey No. 176/1 to the extent of 21 acres and 15 gunthas and 14 gunthas potkharaba situated at village Savedi, Tq. and District Ahmednagar. Respondent No.3 Khandu Jare and Bandu Bhingardive were the tenants of the suit land prior to

tillers day i.e. 1.4.1957. The tenants vide Tenancy application No. 20 of 1957 filed before the learned Mamlatdar, Ahmednagar surrendered the land in favour of the landlords for the purpose of personal cultivation and accordingly names of tenants were deleted and the names of landlords came to be entered in the village record. However, the landlords did not cultivate the suit land and entire land of 21 acres and some gunthas was sold to the petitioner Chaban Phulari. Even the petitioner Chaban Phulari from time to time sold out the said land and also converted some portion of land into non agricultural land. In the year 1979, only 6 acres and 5 gunthas of agricultural land remained in his possession. In the year 1979, two nephews of the petitioner Chaban Phulari, filed an application before learned Tahsildar and A.L.T., Ahmednagar contending therein that the property was purchased as a joint family property and the said sale transactions effected by petitioner Chaban Phulari are invalid and possession of the suit land was given to the elder brother Baban. The nephews of said Phulari have also made respondent No.3 herein and said Bandu Bhingardive original tenants as respondents in the said application. Learned counsel submits that even the tenants, including respondent No.3 also filed separate application before the Tahsildar for restoration of possession of suit land by invoking the provisions under Sections 37 r.w. 39 and 15 of the said Act. It has been contended in the said application that the said tenants who

have surrendered the land to the landlords for their personal cultivation and since the landlords have committed breach of the said condition, the tenants are entitled for restoration of possession of the suit land. The learned Tahsildar, disposed of the application of Phulari's nephew with liberty to approach the civil court, however, allowed the application of the tenants and directed restoration of possession of the suit land to the extent of 6 acres and 5 gunthas. Learned counsel submits that though the Sub Divisional Officer, Ahmednagar has quashed and set aside the order passed by the Tahsildar, the learned Member of the Tribunal, has rightly allowed the revision application and upheld the order passed by the Additional Tahsildar, dated 23.12.1982.

7. Learned counsel for the respondents submits that the landlord instead of personally cultivating the suit land, immediately sold it to the petitioners and one Baban Bhau Phulari. Learned counsel submits that learned Additional Tahsildar while deciding TNC Case No. 67 of 1979 had an occasion to peruse the entire record of surrender and accordingly learned Tahsildar has given a reference to the statement of landlord Laxman Dange, who appeared before the Tahsildar as Mukhtyar for all his brothers and his statement is recorded by Taluka Awwal Karkun, Ahmednagar on 31.1.1957. Learned Tahsildar has observed that on perusal of said record, it

appears that the landlord Laxman has specifically stated that he wants to cultivate the suit land personally and the tenants are willing to surrender the same. Learned counsel submits that the tenants have filed separate application dated 3.12.1979 in the same proceedings bearing TNC Case No. 67 of 1979 and contended therein that the landlord ceases to cultivate the land personally within 12 years from the date on which they took possession and as per the provisions contained in Section 37 of the said Act, the landlord is bound to restore the possession of the land to the tenants. In the said application, the tenants have specifically contended that the landlords have sold the suit land to the third party within 12 years and as such, they are entitled for restoration of possession of suit land for breach of condition.

8. Learned counsel for the respondents submits that Section 15(2) of the said Act incorporate the conditions as provided under Sections 31 and 31-A of the said Act for termination of tenancy. Thus, the remedy of restoration of land in case of breach of conditions is available under Sections 37 and 39 of the said Act. Learned counsel submits that it is well settled that remedy under Section 39 of the said Act for restoration of land to the tenant is available to the cases of surrender, if the same is made conditional to the personal cultivation by the landlord. Learned counsel submits

that such an application under Section 39 of the said Act for recovery of possession by the tenants can be filed at any time. In the instant case, after taking possession of suit land, the landlord ceases to use the suit land for his personal cultivation within 12 years from the date on which the landlord took such possession and as such, there is clear cut breach of provision of Section 37 of the said Act for which remedy lies under Section 39 of the said Act. Learned counsel submits that order of surrender under Section 15 of the said Act is made subject to the condition as contemplated under Section 15 (2) of the said Act. Learned counsel submits that once the surrender is conditional, there is no other remedy except under Section 37 read with Section 39 of the said Act. Learned counsel submits that surrender by the tenant was not unconditional but rather limited by the condition of personal cultivation. Learned Tahsildar after perusing application and the statements of the landlord and the tenants and the order of Awwal Karkun, recorded a finding that surrender by the tenant was for personal cultivation. Even the brother of the present petitioner has also accepted said conditional surrender by the tenants for personal cultivation of the landlord. Statement of subsequent purchaser Chaban Phulari and statement of respondent No.3 tenant Balaji Jare also support the case of conditional surrender for personal cultivation by the landlord. Learned counsel submits that the fact of the conditional surrender

occurred in the year 1959 was accepted by the petitioner in all three previous proceedings and no point can be raised in this regard for the first time before this Court. There is no factual foundation for raising such new ground before this Court in the Writ petition. Learned counsel submits that the voluntariness of surrender is not in question but condition of surrender is in question. Merely because surrender is voluntary, the same does not become unconditional. There is no question of limitation, as there is no provision of limitation under the said Act for remedy under Sections 37 and 39 of the said Act. Though, the appeal before the Maharashtra Revenue Tribunal was filed after two years and four months after the judgment and order passed by the Sub-Divisional Officer, however, issue of delay was not raised by the petitioner before the Tribunal and same cannot now be raised before this Court. Learned counsel submits that so far as the land admeasuring 6 Acres and 5 Gunthas out of the land Survey No. 176/1 is concerned, the learned Tahsildar has recorded a clear cut finding that the said land did not fall within the Municipal limits, nor the Town Planning Scheme was made applicable to the said land. Learned counsel submits that there is no merit in the writ petition and the writ petition thus liable to be dismissed.

9. Learned counsel for respondents in order to substantiate her contentions placed reliance on the following judgments.

- i) Improvement Trust, Ludhaina vs. Ujagar Singh and others, reported in (2010) 6 SCC 786.
- ii) Bachhaj Nahar vs. Nilima Mandal and another, reported in (2008) 17 SCC 491,
- iii) Bhanwar Lal vs. T.K.A. Abdul Karim, reported in 1993 Supp (1) SCC 626,
- iv) Samarth Ramdas Math vs. Atmaram Damu Rane and others, reported in (1983) 1 Bom.C.R. 333
- v) Anna Tatoba Todkar vs. Bhau Balu Makane, reported in 2003 (2) Mh.L.J. 300
- vi) Jankibai Rajhans vs. Suryabhan Thorat and another, reported in 1996 SC Online Bom. 328
- vii) Bhagwat Sadashjiv Sarode vs. Somnath Salunke and ors. In writ petition No. 3252 of 1989 (Aurangabad).
- viii) Krishnabai and others vs. Raghunath and others, reported in 1994 Suppl (2) SCC 566,
- ix) Uttam Namdeo Mahale vs. Vithal Deo and others, reported in (1997) 6 SCC 73
- x) Ghanashyamprasad Natwarlal Bhatt vs. Gendalsingh Vakhatsingh and others, in Special Civil Application No. 764 of 1955.
- xi) Vithoba Ram Rahane and another vs. Bhalchandra Sadashiv Joshi, reported in 1993 Mh.L.J. 419.

- xii) Vishwanath vs. Prabhu and others, reported in (1999) 1 SCC 56
- xiii) Kisan Sayaji Shelke vs. Madhukar Mohan Deshpande, reported in 2010 (7) Mh.L.J. 347,
- xiv) Hasan Bi Salam vs. Madhavrao Rangnathrao Shinde, reported in 2015 (2) Mh.L.J. 483
- xv) Eknath Raghoba and others vs Somla Lalu Lamani, reported in 1992 Mh.L.J. 541.
- xvi) Laxman Shankar Bandgar (Died) vs. Venkat Rama Bandgar (writ petition No. 623 of 2001, Bombay High Court)

10. Mr. Kakde, learned counsel appearing for respondent Nos. 6 to 8, 13 and 16A to 16E has adopted the arguments advanced by learned counsel for the petitioners.

11. In the light of rival submissions canvassed by the learned counsel for the respective parties, it would be appropriate to reproduce here-in-below the provision of Section 15 of the said Act.

“Section 15 -Termination of tenancy by surrender thereof.

(1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlords.

Provided that such surrender shall be in writing, and verified

before the Mamlatdar in the prescribed manner.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions, as are provided in sections 31 and 31A for the termination of tenancies.

(2A) The Mamlatdar shall in respect of the surrender verified under sub-section (1), hold an inquiry and decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf.

(3) The land, or any portion thereof, which the landlord is not entitled to retain under sub-section (2), shall be liable to be disposed of in the manner provided under clause (c) of sub-section (2) of section 32P."

12. In the instant case, on 31.1.1957 the tenants Khandu Balaji Jare and Bandu Sagaji Bhingardive vide Tenancy application No. 20 of 1957 filed before the learned Mamlatdar, Ahmednagar under Section 15 of the said Act voluntarily surrendered their interest in respect of the suit land in favour of landlord. On perusal of the record of tenancy application No. 20 of 1957, I find that the Taluka Awwal Karkun, Nagar Taluka, has recorded statement of landlord Laxman Gangaram Dange and also tenant Khandu Balaji Jare. On careful perusal of statement of tenant Khandu Balaji Jare, it appears that, in unequivocal words, the tenant Mr. Jare has surrendered his

interest in the suit land in favour of landlord for the reason that due to burden of cultivation of his own land, he is not in a position to cultivate the suit land belonging to the landlord and as such, he is going to surrender voluntarily his interest in the suit land in favour of the landlord. On perusal of statement of landlord Laxman, it appears that he has given statement on behalf of his all brothers and for himself and stated that the tenants are surrendering their interest in the suit land voluntarily in favour of himself and his brothers and he did not pressurize them in any manner. The landlord Laxman has also given a reference in his statement that he would cultivate the suit land personally. On the basis of these statements, the Taluka Awwal Karkun, Nagar Taluka on 31.01.1957 has passed the following order:-

"The applicant has filed this application for restoration of possession of S.R. No. 175 and 176 of Sawedi in the ground of voluntary surrender by the opponents. The opponents have declared that, they do not require the suit land for their cultivation and that they are willing to surrender the rights of tenancy and possession voluntarily that they are aware of the rights of a tenant but that they do not require the same. I consider that the surrender is purely voluntary and accordingly I order that the possession of the suit lands should be restored to the applicant subject to the provisions of Sub-Section (2) and (3) of Section 15 of the Tenancy Act, 1955 and that the names of the opponents recorded as protected tenants should be deleted to the record of rights. The village Officer should be informed of the order."

13. On careful perusal of order passed by the Taluka Awwal Karkun, Nagar Taluka, as mentioned above, I do not find that on verification, the Taluka Awwal Karkun has recorded a finding about conditional surrender. In the year 1979, when nephew of the present petitioners filed TNC application No. 67 of 1979, the tenants for the first time have filed an application for restoration of possession of the suit land under the provisions of Sections 37 and 39 of the said Act. The tenants never challenged the said order passed by the Taluka Awwal Karkun on 31.1.1957 and after inordinate delay of 22 years and seven months, in the different proceeding not initiated by them, filed an application for restoration of possession under Sections 37 and 39 of the said Act. According to the tenants, the surrender was conditional to the extent of personal cultivation of the suit land and the landlord ceases to use the suit land for his personal cultivation, within 12 years from the date on which the possession was taken.

14. Learned counsel for the respondents vehemently submits that in the light of provisions of Section 15(2) of the said Act, the landlord is entitled to retain the possession of the land subject to the like conditions mentioned under Sections 31 and 31-A of the said Act as well as in the like purposes and to the like extent. Learned counsel submits that it means that for all practical purposes the order under

Section 15 of the said Act must be considered as an order under Sections 31 and 31-A of the said Act.

15. In order to appreciate the above submissions, the provisions of Sections 31 and 31A of the said Act are reproduced herein below:-

“Section 31 Landlords right to terminate tenancy for personal cultivation and non-agricultural purpose:

(1) Notwithstanding anything contained in section 14 and section 30 but subject to section 31A to 31D (both inclusive), a [landlord (not being a landlord within the meaning of Chapter III-AA) may], after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona-fide requires the land for any of the following purposes:-

(a) for cultivating personally, or

(b) for any non-agricultural purpose.

(2) the notice required to be given under sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession under section 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

(3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability then such notice may be given [and an application for possession under section 29 may be made,]:-

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which mental or physical disability ceases to exist; and

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

Section 31A Conditions of termination of tenancy:-

The right of a landlord to terminate a tenancy for cultivating the land personally under section 31 shall be subject to the following conditions:-

(a) If the landlord at the date on which the notice is given and on the date on which it expires has no other land of his own or has not been cultivating personally any other land, he shall be entitled to take possession of the land leased to the extent of a ceiling area.

(b) If the land cultivated by him personally is less than a ceiling area, the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make up the area in his possession to the extent of a ceiling area.

(c) The income by the cultivation of the land of which he is entitled to take possession is the principal source of income for his maintenance.

(d) The land leased stands in the record of rights or in any public

record or similar revenue record on the 1st day of January 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors [but not of any person from whom title is derived, whether by assignment or Court sale or otherwise] or if the landlord is a member of a joint family, in the name of a member of such family.

(e) If more tenancies than one are held under the same landlord, then the landlord shall be competent to terminate only the tenancy or tenancies which are the shortest in point of duration.”

16. In the case of ***Vithal Rangnath Gaikwad and others vs. Murlidhar Vaman Dhavale and another, reported in 1975 AIR (Bom) 358***, the Division Bench of this Court had an occasion to deal with the question pertains to applicability of Section 37 of the said Act to the proceedings taken and order passed under Section 15 r.w. Section 29 of the said Act. This particular question has been referred to the Division Bench, since there was conflict of decisions. In the cited case, the submissions were advanced on behalf of tenants that even to a case covered by Section 15 of the said Act, Section 37 was attracted in terms of provisions of sub-section (2) of Section 15 in which a reference has been made to Sections 31 and 31-A of the said Act. It has been also contended that in terms of provisions of sub-section (2) of section 15, where the tenant surrendered his tenancy and landlord shall be entitled to retain the land so surrendered for the like purposes and to the like extent and in so far

as the conditions are applicable subject to the like conditions, as are provided in Sections 31 and 31-A for termination of tenancy. It has been also contended that for all practical purposes, an order under Section 15, under which the landlord obtains possession of the land for personal cultivation should be regarded as an order having been passed under Section 31 of the said Act, in which case the provisions of Section 37 would get immediately attracted. In support of the submissions advanced in the case cited above, the counsel therein relied upon the decision in the case of Sarubai vs. Vinayak Govind, reported in AIR 1973 Bom. 71 and also an unreported decision of this Court in the case of Asaram Hari Pawar vs. Lata Raghunath Joshi, in Special Civil Application No. 824 of 1969, decided on 8.8.1972 (Bom.). On the basis of above two cases, the counsel submitted that surrender in the case, under Section 15 of the said Act was rightly held to be conditional surrender by the lower authorities and since surrender was conditional one and since the landlord committed breach of the conditions on which possession was delivered to him under the order passed by the Additional Tahsildar, the lower authorities were right in resorting to Section 37 of the said Act and restoring the possession of the land to the tenants. The Division Bench of this Court, after going through those two cases, referred above, in para 7 and 8 has made the following observations:-

"7. The next question that arises for our determination is whether the provisions of Section 37 of the Tenancy Act are attracted to a case falling under Section 15 of the said Act or not. Section 37(1) in terms merely refers to cases of a landlord taking possession of the land after termination of tenancy under Section 31, 33-B and 34 of the said Act as it stood before the commencement of the Amending Act, 1956, and then failing to use the land for any of the purposes for which he has recovered possession and does not make any mention of Section 15 at all. Section 37 (1) runs as follows:

"If after the landlord takes possession of the land after the termination of the tenancy under Section 31, 33-B or Section of this Act as it stood immediately before the commencement of the Amending Act, 1956 he fails to use it for any of the purposes specified in the notice given under Section 31, 33-B or Section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956 within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purpose within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof."

On a fair reading of Section 37(1), therefore, it appear clear that the provisions of that section could be invoked only in cases where the landlord has taken possession of the land after termination of tenancy under section 31, or Section 33-B or the old Section 34 and has further failed to use the land for any of the purposes specified in the notice given under Sections 31, 33-B or old Section 34, and prima facie, the case of a landlord taking possession of land under Section 15 of the said Act upon a surrender having been made by the tenant

and having been verified by the Mamlatdar under Section 15 is not covered by Section 37. The only manner in which Section 37 was sought to be attracted to a case governed by Section 15 of the said Act was by reason of the provisions of sub-section (2) of Section 15 in which reference to Sections 31 and 31-A has been made. It would be therefore necessary to set out the provisions of Section 15 of the said Act. Section 15 runs as follows:

"(1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord.

Provided that such surrender shall be in writing and verified before the Mamlatdar in the prescribed manner.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent and in so far as the conditions are applicable subject to the like conditions, as are provided in Sections 31 and 31-A for the termination of tenancies.

(2-A) The Mamlatdar shall in respect of the surrender verified under sub-section (1), hold an inquiry and decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf.

(3) The land or any portion thereof, which the landlord is not entitled to retain under sub-section (2), shall be liable to be disposed of in the manner provided under clauses(c) of sub-section (2) of Section 32-P."

It was urged on behalf of the tenant that since sub-section (2) of Section 15 provides that whenever a tenant surrenders his tenancy the landlord shall be entitled to retain the land so surrendered "for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions as are provided in sections 31 and 31-A" for all practical purposes, the landlord's obtaining possession for personal cultivation upon termination of a tenancy by way of surrender under Section 15 should be regarded on the same

footing as under Section 31, and therefore an order passed under Section 15 for all practical purposes should be regarded as an order passed under Section 31 of the said Act and thus Section 37 gets clearly attracted. It was pointed out that such a contention has been accepted by Mr. Justice Vaidya in Sarubai's case reported in AIR 1973 Bom 71. It is not possible to accept this contention for the reasons which we shall presently indicate. It is true that sub-section (2) makes a reference to Ss. 31 and 31-A but the mere reference to Sections 31 and 31-A or the further fact that the landlord's right to retain land has been subjected to certain restrictions mentioned therein, viz, he can retain the land subject to the like purposes or the like extent or the like conditions as are mentioned in Section 31 and 31-A cannot convert an order passed under Section 15 into an order passed under Sections 31 of the said Act. In our view, all that sub-section (2) of Section 15 does is to incorporate by reference the conditions of termination of tenancy embodied in Sections 31 and 31-A of the said Act, but because of that the order under Sections 15 cannot be regarded as one having been passed under Section 31 or Section 31-A of the said Act. The provisions in terms speaks of termination of tenancy brought about by surrender and not by a notice by a landlord as required by Section 31. It is only the consequences of a surrender of tenancy made by a tenant that are enjoined to be worked out having regard to such of the conditions as may be applicable as mentioned in Sections 31 and 31-A. That is the only effect of sub-section (2) making a reference to Section 31 and 31-A. The view expressed in Sarubai's case therefore cannot be regarded as correct.

8. *It was, however, urged on behalf of the tenant before us that after all, the ultimate result to a large extent was one and the same whether the parties went before the Mamlatdar either under Section 15 or under Section 31, for the ultimate result was that the landlord obtained and retained possession of the land either for personal cultivation or his N.A. use, and if the landlord failed to make use of the*

land for the purpose for which he obtained it, there was no reason why the tenant should not get back possession from such defaulting landlord. It was pointed out that it was possible that undue advantage of a tenants illiteracy might be taken by an unscrupulous landlord when he desired to achieve his objective by resorting to Section 15 rather than Section 31 of the said Act, and therefore, irrespective of the question as to whether the proceedings, which result in the landlord obtaining possession, have been taken under Section 15 or under Section 31, any landlord who has obtained and retained possession of the land in question should be subjected to the provisions of Section 37 of the said Act. In the first place, this aspect concerns policy and it is for the Legislature to make suitable provision and the simplest way would have been to include cases covered by Section 15 within the scope and ambit of Section 37, but as stated earlier Section 37 does not make any reference to Section 15 at all. Secondly, there is vast difference between the termination of tenancy on the part of the tenant by surrendering the land in favour of the landlord, and the termination of the tenancy by the landlord for the purposes of obtaining the land for personal cultivation or for his N.A. use, and it is only the latter type of termination that has been specifically included in Section 37 of the said Act. Mainly under Section 31, the termination of tenancy is by the landlord in exercise of his right to obtain possession of the land for personal cultivation while under Section 15 it is the tenant who initiates the said Action by surrendering his tenancy and upon such surrender being verified as voluntary, the land is given to the landlord and cases are not inconceivable where sheer inability to cultivate the land on account of largeness of the tenants own holding might prompt the tenant to make voluntary surrender in which event there may be no occasion to restore the surrendered land to him on landlords failure to use it for the purpose for which he had obtained it. No useful purpose would have been served by bringing such cases within the purview of Section 37. Moreover it is not correct to say that even the ultimate result is one and the same whether proceedings are initiated

under Section 15 or Section 31. A landlord initiating proceedings under Section 31 r.w. Section 29 would ordinarily be entitled to recover possession of half the land and the other half would always remain with the tenant and on the tiller's day he becomes absolute purchaser of that portion, whereas if tenancy is terminated by surrender as contemplated by Section 15, then, in proceeding taken thereunder, the landlord, depending upon his own holding at the material time may be entitled to the entire land or such portion thereof as would make his total holding equal to the ceiling area. There is yet one more difference. In proceedings instituted under Section 31, if the landlord were to fail to prove his bona fide requirement for personal cultivation, his application for possession would fail, and the tenant would become the owner of the entire land on the tiller's day. But in proceedings instituted under S. 15 of the said Act upon the surrender being found voluntary, even if the landlord were to fail to establish his requirement for personal cultivation or any requirement for non-agricultural use, and for that matter, even if the landlord were to say that he did not want the land for himself, such land would not revert back to the tenant but it would form part of the pool distributable under Section 32-P of the said Act. In other words, the two modes of termination of tenancy are different the two procedures are different and even the consequences flowing therefrom including ultimate results are different, and, therefore it would be difficult to ascribe any intention to the Legislature that even to cases falling under Section 15 of the said Act, the provisions of Section 37 were to be applied, especially when Section 37 in terms merely refers to termination of the tenancy by the landlord under Sections 31, 33-B or the old Section 34. For the reasons indicated above, we are clearly of the view that Section 37 of the said Act is not attracted to a case falling under Section 15 of the said Act unless of course in a given case on facts it is found that the surrender itself was conditional and the order passed by the Mamlatdar under Section 15 directed delivery of possession upon condition that the landlord shall cultivate the land personally or

make use of it for his own non-agricultural purposes as was the case in Special Civil Appln. No. 548 of 1962 (Bom)."

17. In view of the observations made by the Division Bench, it is clear that sub-section (2) of Section 15 though incorporate the conditions of termination of tenancy, embodied in Sections 31 and 31-A of the said Act, but because of that, the order under Section 15 cannot be regarded as one having been passed under Sections 31 or 31-A of the said Act. It is only the consequences of surrender of tenancy made by the tenant that are enjoined to be worked out having regard to such of the conditions, as may be applicable, as mentioned in Sections 31 and 31-A of the said Act that is only effect of sub-Section (2) of Section 15 making a reference of Sections 31 and 31-A of the said Act. The Division Bench has not subscribed the views taken in the referred cases and further observed that even in the proceedings instituted under Section 15 of the said Act upon surrender being found voluntary, even if the landlord were to fail to establish his requirements for personal cultivation or any requirement for non agriculture use and for that matter even if the landlord were to say that he did not want the land for himself, such land would not revert back to the tenant but it would form part of the pool distributable under Section 32-P of the said Act. The Division Bench has observed in unequivocal words that two modes of termination of tenancy are different, the two procedures are different and even the

consequences flowing therefrom including ultimate results are different and therefore, it would be difficult to ascribe any intention to the Legislature that even to cases falling under Section 15 of the said Act, the provisions of Section 37 were to be applied, especially when Section 37 in terms merely refers to termination of tenancy by the landlord under Sections 31, 33-B or the old Section 34. Section 37 of the said Act is not attracted to a case falling under Section 15 of the said Act unless of course in a given case, on facts, it is found that surrender itself was conditional and the order passed by the Mamlatdar under Section 15 of the said Act directed delivery of possession upon condition that the landlord shall cultivate the land personally or make use of it for his own non agricultural purposes.

18. In the instant case, the Taluka Awwal Karkun, Nagar Taluka has not observed in the order that surrender was conditional and has directed delivery of possession under Section 15 of the said Act upon condition that the landlord shall cultivate the land personally. In terms of provisions of section 29 of the said Act, the tenant is entitled to the possession of any land, may apply in writing for such possession to the Mamlatdar, within a period of two years from the date on which right to obtain possession of the land is deemed to have accrued to the tenants. In the instant case, when the provisions of Sections 37 and 39 of the said Act are not attracted then it is part of record that

the tenants have not submitted any application within two years, as contemplated under Section 29 of the said Act, leave apart that the legal representatives of second tenant Bhingardive are not at all taken on record in the proceedings and his name simply came to be deleted from the array of respondents.

19. It further appears from the record that the learned Member of the Tribunal has entertained the revision which is delayed by two years and four months from the date of judgment and order passed by the Sub Divisional Officer. In terms of provisions of Section 315(2) of Maharashtra Land Revenue Code 1966, the application for revision under clause (b) of section (1) would lie to the Tribunal and in terms of sub-section (6) of section 315 such revision is required to be filed within a period of 60 days from the date of order or direction of the Collector and the provisions of Section 4, 5, 12 and 14 of the Limitation Act 1963 shall apply for filing of such application or revision. It is well settled that in the delayed case, unless the same is decided on an application, the delay is not liable to be condoned. In the facts of the present case, it clearly emerges that there has been no application for condonation of delay in filing revision application before the Tribunal. It is also well settled that where statute does not stipulate any limitation, the right has to be exercised within reasonable time.

20. In the case of ***Improvement Trust, Ludhaina vs. Ujagar Singh and others, reported in (2010) 6 SCC 786***, relied upon by learned counsel for the respondents tenants, the Supreme Court has observed that while considering the application for condonation of delay, no straight jacket formula is prescribed to come to the conclusion that if sufficient and good grounds have been made out or not. Each case has to be weighed from its facts and the circumstances in which the party acts and behaves. From the conduct, behaviour and attitude of the appellant, it cannot be said that it had been absolutely callus and negligent in prosecuting the matter, for after it became aware of non appearance of its counsel, it prosecuted the matter with due diligence. The Supreme Court has also observed that the delay is not so huge so as to warrant dismissal on such hyper-technical ground or which could not have been condoned.

21. In the instant case, though there is provision under the statute prescribing the limitation of 60 days in filing application or revision from the date of order or decision of the Collector and further made the provisions of Sections 4, 5, 12 and 14 of Limitation Act applicable, the learned Member of the Tribunal has entertained the revision without there being any application seeking condonation of

delay and without condoning the delay. It further appears from the impugned order passed by the Tribunal that the Tribunal has reproduced the observations made by the learned Tahsildar in verbatim.

22. In view of the discussion made in the foregoing paragraphs, this writ petition deserves to be allowed. Hence, the following order:-

O R D E R

- I. Writ petition is hereby allowed in terms of prayer clause "B".
- II. The order dated 08.09.1984 passed by the Sub Divisional Officer, Nagar Division, Ahmednagar in T.N.C. Appeal No. 1 of 1983 stands confirmed.
- III. Rule is made absolute in the above terms.
- IV. Pending civil application is also disposed of.

(V. K. JADHAV, J.)

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