

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1400 OF 2015

Shrimant s/o Namdeo Jadhav,
Age 55 years, Occ. Agriculture,
R/o. Patoda, (Mamdapur),
Tq. Ambajogai, Dist. Beed

...Petitioner
(Ori. Oppo. No.4)

versus

1. Dagadu s/o Narhari Holkar
Age 69 years, Occ. Agriculture
R/o. Anjanpur, Tq. Ambajogai,
District Beed.
2. Kashinath s/o Narhari Holkar
Age 64 years, Occ. Agriculture
R/o. Anjanpur, Tq. Ambajogai,
District Beed.
3. Raghunath s/o Narhari Holkar
Age 56 years, Occ. Agriculture
R/o. Anjanpur, Tq. Ambajogai,
District Beed.
4. Navnath s/o Narhari Holkar
Age 49 years, Occ. Agriculture
R/o. Anjanpur, Tq. Ambajogai,
District Beed.
5. Bajrang s/o Baliram Jamdar
Age 42 years, Occ. Agriculture
R/o. Patoda (Mamdapur),
Tq. Ambajogai, District Beed.
6. Narsingh s/o Hanumant Jamdar,
Age 38 years, Occ. Agriculture
R/o. Patoda (Mamdapur),
Tq. Ambajogai, District Beed.
7. Dattu s/o Hanumant Jamdar
Age 26 years, Occ. Agriculture
R/o. Patoda (Mamdapur),
Tq. Ambajogai, District Beed.

(R. Nos. 1 to 4 original
Applicants)

(R. Nos. 5 to 7 original
Opponents 1 to 3)

8. The Maharashtra Revenue Tribunal,
Aurangabad.
 9. The Deputy Collector,
(Land Reforms), Beed
- ...Respondents

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Mr. S.S. Chouhary, advocate for the petitioner
 Mr. V.J. Dixit, senior counsel i/b Mr. S.V. Dixit, advocate for respondent
 Nos. 1 to 4
 Mr. S.N. Kendre, A.G.P. for respondents 8 and 9

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WITH
 WRIT PETITION NO. 6457 OF 2015

1. Dagadu s/o Narhari Holkar
Age 69 years, Occ. Agriculture
R/o. Anjanpur, Tq. Ambajogai,
District Beed.
 2. Kashinath s/o Narhari Holkar
Age 64 years, Occ. Agriculture
R/o. Anjanpur, Tq. Ambajogai,
District Beed.
 3. Raghunath s/o Narhari Holkar
Age 56 years, Occ. Agriculture
R/o. Anjanpur, Tq. Ambajogai,
District Beed.
 4. Navnath s/o Narhari Holkar
Age 49 years, Occ. Agriculture
R/o. Anjanpur, Tq. Ambajogai,
District Beed.
- ...Petitioners
(Ori. Applicants)

versus

1. Shrimant s/o Namdeo Jadhav,
Age 55 years, Occ. Agriculture,
 2. Bajrang s/o Baliram Jamdar
Age 42 years, Occ. Agriculture
 3. Narsing s/o Hanumant Jamdar,
Age 38 years, Occ. Agriculture
 4. Dattu s/o Hanumant Jamdar
- (Ori. Opponents No.4)
- (R. Nos. 2 to 4 original

Age 26 years, Occ. Agriculture

Opponents 1 to 3)

All R/o. Patoda (Mamdapur),
Tq. Ambajogai, District Beed.

...Respondents

.....
Mr. V.J. Dixit, senior counsel i/b Mr. S.V. Dixit, advocate for petitioners
Mr. S.S. Choudhary, advocate for respondent No.1.

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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Order : 13.07.2018**

**Date of pronouncing
the Order : 26.10.2018**

ORDER :-

1. Being aggrieved by the judgment and order dated 27.11.2014 passed by the Maharashtra Revenue Tribunal, Aurangabad in appeal No. 66-A-2012-Beed and the judgment and order dated 03.11.2012 passed by the Deputy Collector (Land Reforms), Beed in case No. 2010/TNC/Appeal-3, the original respondent No.4 in case No. 2010/TNC/Appeal-3, preferred writ petition No. 1400 of 2015 whereas the original applicants in the said case have preferred writ petition No. 6457 of 2015. Since the impugned judgment and order are common in both the writ petitions, they are being decided by this common judgment and order.

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

a) Respondent Nos. 1 to 4 in writ petition No.1400 of 2015/ original applicants (petitioners in writ petition No. 6457 of 2015) moved an application bearing No. 2010/TNC/Appeal-3, before the Deputy Collector (Land Reforms), Beed on 23.4.2010 under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter for short called as "the Act of 1950) for summary eviction of the petitioner in writ petition No. 1400 of 2015 and respondent Nos. 5 to 7 therein, from land survey No. 48 admeasuring 4 Hectare 36 R to the extent of 1 Hectare 47 R on the ground that they are unauthorizedly occupying or wrongfully in possession of the said land.

b) According to original applicants, the original holder of the land was one Shankar Dattatraya Gosavi. The grand fathers of original applicants by name Mahadu Gyanba Holkar and Raosaheb Vitthal Holkar were declared as protected tenants. Mahadu Gyanba Holkar was declared tenant as per the provisions of the Act of 1950 to the extent of 03 acres 25 R out of total area 10 acres 36 R. The remaining area admeasuring 7 acres 11 R was mutated in the name of Raosaheb Vitthal Holkar and Sambha Sitaram Holkar in equal proportionate. The applicants further contended that their grand father Mahadu Holkar remained in possession of the land to the

extent of 1 Hectare 47 R till the year 1959. After his death, his son Narhari Mahadu Holkar being the legal heir, remained in possession of the said land as protected tenant. Thereafter, father of the original applicants (petitioners in writ petition No. 6457 of 2015) viz. Narhari Mahadu Holkar, due to his weak financial condition, left the village to earn his livelihood and in the meantime, by taking disadvantage of absence of father of the applicants, Baliram Ganpati Jamdar entered his name in the revenue record in respect of the said land survey No. 48 and name of the father of the applicants was deleted in the year 1967 from the column of tenant in the 7x12 extract. The said Baliram Ganpati Jamdar is father of opponent No.1 and grand father of opponent Nos. 2 and 3. Baliram Ganpati Jamdar had unauthorizedly occupied the said land after the death of original owner Shankar Dattatraya Gosavi and thereafter sold the said land to opponent No.4 (petitioner in writ petition No. 1400 of 2015) under registered sale deed No. 2466/91 dated 27.08.1991, unauthorizedly and as such, the said petitioner (original opponent No.4) unauthorizedly occupied or wrongfully remained in possession of the land. The original applicants, thus moved an application under Section 98 of the Act of 1950 for recovery of possession of the land to the extent of 1 Hectare 47 R out of 04 Hectare 36 R, situated at village Anjanpur, Tq. Ambejogai, District Beed.

c) The petitioner in writ petition No. 1400 of 2015 and respondent Nos. 2 to 4 in writ petition No. 6457 of 2015 have strongly resisted the application by filing their say. According to them, the grand fathers of the original applicants viz. Mahadu Gyanba Holkar and Raosaheb Vitthal Holkar were not tenants in respect of the land in dispute. There is no documentary evidence and they have no concerned with the original holder of the land, Shankar Dattatraya Gosavi, who died in the year 1968-69. The said Baliram Ganpati Jamdar was protected tenant of the land to the extent of 1 Hectare 47 R out of land survey No. 48. Accordingly, his name was entered in the revenue record in respect of the said land. Therefore, Baliram Ganpati Jamdar was entitled to remain in possession and accordingly he purchased the land on 26.4.1968 from Shankar Dattatraya Gosavi for consideration of Rs.600/- and since then he remained in possession of the land. The mutation entry was also effected accordingly. Said Baliram Ganpati Jamdar died in the year 1968. He was survived by his two sons viz. Bajrang and Hanumant. The said Bajrang Baliram Jamdar and father of original opponent Nos. 2 and 3 Hanumant Baliram Jamdar had executed registered sale deed in favour of purchaser (petitioner in writ petition No. 1400 of 2015) for consideration of Rs.52,000/- by registered sale deed, as stated above. The purchaser was also put in possession of the land.

d) After hearing the parties, the Deputy Collector, (Land Reforms) Beed, by judgment and order dated 3.11.2012 allowed the application filed by respondent Nos. 1 to 4 in writ petition No. 1400 of 2015 and petitioners in writ petition No. 6457 of 2015, holding that their grand father viz. Mahadu Gyanba Holkar was protected tenant of the land in dispute and the sale deed executed in favour of purchaser on 27.08.1991 was bad in law.

e) Being aggrieved by the said judgment and order dated 3.11.2012 passed by the Deputy Collector (Land Reforms) Beed, the purchaser and respondent Nos. 5 to 7 in writ petition No. 1400 of 2015 have preferred appeal No. 66-A-2012/Beed before the Maharashtra Revenue Tribunal, Bench at Aurangabad. The Tribunal after hearing both the parties, by judgment and order dated 27.11.2014 quashed and set aside the order passed by the Deputy Collector (Land Reforms) and directed to refer the matter to Tahsildar, Ambejogai for deciding the issue as to whether the sale deed executed in favour of the purchaser (original opponent No.4) is valid or invalid.

f) Being aggrieved by the same, the original opponent No.4 purchaser has preferred writ petition No. 1400 of 2015 whereas the original applicants preferred writ petition No. 6457 of 2015.

3. Learned counsel for the petitioner in writ petition No. 1400 of 2015 and respondent No. 1 in writ petition No. 6457 of 2015 submits that original applicants have failed to establish that their grand father was protected tenant in the land in dispute and they were in continuous possession of the said land. Learned counsel submits that original applicants were not in possession of the land in dispute or protected tenants in any capacity at any point of time. Learned counsel submits that Baliram Ganpati Jamdar was in possession of the land. He had purchased the said land on 26.4.1968 being tenant on the land for consideration of Rs.600/- from the original holder and his possession was continuous one. After death of Baliram Ganpati Jamdar, his two sons Bajrang and Hanumant, i.e. respondent Nos. 5 and 6 and 7 (respondent Nos. 6 and 7 are sons of Hanumant), who are legal heirs of Baliram came in possession of the land. They have right to alienate the land being successors of Baliram. Accordingly, they had executed registered sale deed in favour of purchaser (petitioner in writ petition No. 1400 of 2015) on 27.8.1991 for valuable consideration. Thus, the possession of the petitioner-purchaser over the land in dispute cannot be said to be illegal or unauthorized. Learned counsel submits that original applicants are not entitled to file application under Section 98 of the Act of 1950. If at all original applicants are tenants of the land in dispute, they could have filed

application for recovery of possession in accordance with the provisions of Section 32 of the Act of 1950 and the period of limitation for making such application under Section 32 is of two years only.

4. Learned counsel for the petitioner in writ petition No. 1400 of 2015 and respondent No. 1 in writ petition No. 6457 of 2015 submits that in the case of ***Radhu Gokul Gawali vs. Mohan Kishan Gawali, reported in 2007 (6) Mh.L.J. 117***, this Court has held that long span of time in filing application under Section 98 of the Act of 1950 is unconceivable in the absence of plausible explanation and material for the same. This Court has accordingly held that such belated application under Section 98 of the Act of 1950 could not have been entertained by the authorities concerned. Learned counsel submits that the Tribunal has unnecessarily remanded the matter to the Deputy Collector (Land Reforms), Beed. The original applicants have failed to establish the tenancy. Learned counsel submits that the writ petition No. 1400 of 2015 deserves to be allowed and the judgment and order dated 27.11.2014 passed by the Maharashtra Revenue Tribunal at Aurangabad in case No. 66-A-2012-Beed and the judgment and order dated 03.11.2012 passed by the Deputy Collector (Land Reforms), Beed in case No. 2010/TNC/Appeal-3, deserve to be quashed and set aside and the application filed by the original applicants bearing case No.

2010/TNC/appeal-3 is also liable to be dismissed.

5. Learned counsel for the petitioner in writ petition No. 1400 of 2015 and respondent No. 1 in writ petition No. 6457 of 2015, in order to substantiate his submissions placed reliance on the following cases:-

- i) Radhu Gokul Gawali and others vs. Mohan Kishan Gawali and others, reported in 2007 (6) Mh.L.J. 117,
- ii) Ram Chand and others vs. Union of India and others, reported in (1994) 1 SCC 44,
- iii) Mohamad Kavi Mohamad Amin vs. Fatmabai Ibrahim, reported in (1997) 6 SCC 71;
- iv) Radhabai Balkrishna Deshpande and another vs. Babu Dhondu Shewale (deceased by L.Rs.) Bhika Dhondu Shewale and others, reported in 2001 (1) Mh.L.J. 629

6. Learned senior counsel for the respondents 1 to 4 in writ petition No. 1400 of 2015 (original applicants) and also the petitioners in writ petition No. 6457 of 2015 submits that the learned Member of the Tribunal has failed to appreciate that the maintainability of application under Section 98 of the Act of 1950 filed by original applicants and jurisdiction of the Deputy Collector, (Land Reforms) Beed, never disputed by the respondents in their appeal memo. Thus, learned Member of the Tribunal has travelled beyond

its scope while adjudicating over the maintainability and jurisdiction of Deputy Collector (Land Reforms). Learned senior counsel submits that in para 6 of the judgment, the Tribunal has held that the conclusion drawn by Deputy Collector (Land Reforms) to the extent that Mahadu Gyanba Holkar was protected tenant in respect of the disputed land admeasuring 1 Hectare 47 R out of the land survey No. 48 are correct, however, further observed that the declaration of the sale deed of the year 1991 as invalid, is beyond the scope of jurisdiction of Deputy Collector, (Land Reforms) and the same has to be decided by the Tahsildar. Learned senior counsel submits that original applicants have filed application under Section 98 of the Act of 1950 for summary eviction of the respondents from the land in dispute. They have not filed any application under Section 98(c) of the Act of 1950. Learned senior counsel submits that the Collector, is empowered to exercise the powers of summary eviction as contemplated under Section 98 of the Act of 1950. The original applicants have not sought any declaration in respect of the sale deed executed in the year 1991. By operation of section 98 of the Act of 1950, if any person unauthorizedly occupying or wrongfully in possession of any land, the transfer of which either by the act of parties, the Collector, is empowered to summary evict such person. Learned senior counsel submits that the impugned judgment and order to the extent of giving direction to the Tahsildar to decide as to

the validity of the sale deed of the year 1991 and further quashed and set aside the well reasoned order of the Deputy Collector (Land Reforms) is improper, incorrect and illegal. Learned senior counsel submits that the order is thus liable to be set aside and judgment and order of the Deputy Collector, (Land Reforms), Beed deserves to be confirmed.

7. Learned senior counsel for the respondents in order to substantiate his submissions placed reliance on the following cases:-

- i) Eknath Raghoba and others vs. Somla Lalu Lamani through his legal heirs and others, reported in 1991 (3) Bom.C.R. 519
- ii) Laxman Shankar Bandgar vs. Venkat Rama Bandgar, reported in 2014 (6) ALL MR 661,
- iii) Limbaji Shankar Munde vs. Bhaurao Baliram Munde reported in 2010 Mh.L.J. 138
- iv) Mesaji Laxman Ubare vs. Dr. Ramchandra Laxminarayan Toshniwal and others, reported in 2011 (4) Mh.L.J. 668
- v) Judgment of Division Bench of this Court (Aurangabad Bench) in the case of Hasan Bin Salam s/o Salam Bin vs. Madhavrao Rangnathrao Shinde, in L.P.A. No. 42 of 2002 decided on 21.08.2014.

8. I have also heard the learned A.G.P. for the respondents-State authorities.

9. It is not disputed that original holder of the land was one Shankar Dattatraya Gosavi. Original applicants claim that their grand father Mahadu Gyanba Holkar and Raosaheb Vitthal Holkar were declared as protected tenants. Mahadu Gyanba Holkar was declared tenant to the extent of 03 acres 25 R out of land survey No. 48. The remaining area admeasuring 7 acres 11 R was mutated in the name of Raosaheb Vitthal Holkar and Sambha Sitaram Holkar in equal proportion. The applicants further contended that their grand father Mahadu Gyanba Holkar remained in possession of the land to the extent of 1 hectare 47 R (3 acres 27 R) till the year 1959. After his death, Narhari Mahadu Holkar being the legal heir remained in possession of the said land as protected tenant. However, thereafter by taking undue advantage of absence of Narhari Mahadu Holkar and his family members in the village, Baliram Ganpati Jamdar entered his name in the revenue record in respect of the said part of land out of survey No.48 and name of the father of original applicants came to be deleted in the year 1967 in cultivation column. Said Baliram Ganpati Jamdar has unauthorizedly occupied the said land and thereafter sold the same to the petitioner in writ petition No. 1400 of 2015 under registered sale deed No. 2466/91 dated 27.8.1991.

10. According to the respondents/original opponents, the grand

father of original applicants viz. Mahadu Gyanba Holkar and Raosaheb Vitthal Holkar were not tenants in respect of the land in dispute. Original holder Shankar Dattatraya Gosavi died in the year 1968-69. Baliram Ganpati Jamdar was the protected tenant of the land to the extent of 1 hectare 47 R out of land survey No. 48. Accordingly, his name was entered in the revenue record in respect of the said land. Therefore, said Baliram Ganpati Jamdar was entitled to remain in possession and accordingly he had purchased the land on 26.4.1968 from Shankar Dattatraya Gosavi for consideration of Rs.600/- and the mutation entry was also effected accordingly. Said Baliram Ganpati Jamar died in the year 1968 and he was survived by his two sons viz. Bajrang and Hanumant. They had executed registered sale deed in favour of purchaser (petitioner in writ petition No. 1400 of 2015) for consideration of Rs.52,000/- by registered sale deed and he is in possession of the suit land.

11. Learned Deputy Collector (Land Reforms) and the learned Member of the Tribunal have recorded concurrent findings that the grand father of the original applicants are protected tenants of the suit land survey No. 48 to the extent of 10 acres and 36 R. On careful perusal of the revenue record, particularly, Form V final register of agricultural tenancy and abstract of the protected tenants, it appears that names of Mahadu Gyanba Holkar and Raosaheb

Vitthal Holkar were recorded as tenants in respect of the land survey No. 48 to the extent of 10 acres and 36 R and the land holder is shown as Shankar Dattatraya Gosavi. On perusal of 7x12 extract, I find that there are continuous entries in the cultivation column in the name of Raosaheb Vitthal Holkar, Narhari Mahadu Holkar and Sambha Sitaram Holkar. It is necessary to repeat here that Mahadu Gyanba Holkar is declared as protected tenant to the extent of 3 acres 25 R (1 hectare 47 R) out of total area of 10 acres 36 R. Raosaheb Vitthal Holkar and Sambha Sitaram Holkar were in possession of remaining area for admeasuring 7 acres 11 R out of land survey No. 48 as protected tenants in equal proportion. After death of Mahadu Holkar in the year 1959-60 onwards name of the father of the original applicants Narhari Mahadu Holkar is shown in the cultivation column of the land survey No.48 alongwith the names of Raosaheb Vitthal Holkar and Sambha Sitaram Holkar. Names of all these three cultivators in respect of entire area of the land survey No. 48 remained continued till the year 1965-66. However, in the year 1966-67 name of Baliram Ganpati Jamdar appeared in the cultivation column alongwith the name of Raosaheb Vitthal Holkar and Samba Sitaram Holkar. Even though the names of other two protected tenants remained as it is, the name of third protected tenant Narhari Holkar (father of original applicants) came to be deleted.

12. The respondents-original opponents claim that Baliram Ganpati Jamdar is protected tenant of the suit land. Prior to 1966-67 there was no reference at all to the name of Baliram Ganpati Jamdar, in any manner, in respect of suit land. According to the respondent /original opponents, on 26.4.1968 Baliram Ganpati Jamdar had purchased the suit land from original holder Shankar Dattatraya Gosavi under registered sale deed for consideration of Rs.600/- Accordingly, name of Baliram Ganpati Jamdar was entered in the cultivation column of the land survey No.48. On perusal of the record and proceedings of the Deputy Collector, (Land Reforms) I find one compromise decree passed in Regular Civil Suit No. 142 of 1968. The said suit came to be instituted by Baliram against the original holder of the land survey No.48 Shankar Dattatraya Gosavi for decree of perpetual injunction in respect of the suit land and the said suit came to be disposed of in terms of compromise. The original land holder Shankar Dattatraya Gosavi has admitted the ownership and cultivation of Baliram Ganpati Jamdar in respect of the suit land. Neither in the registered sale deed dated 26.4.1968 nor in the compromise decree to the said suit, there is reference to the name of father of original applicant. It thus appears that this is nothing but a planned move of Baliram Ganpati Jamdar in collusion with the original holder of land viz. Shankar Dattatraya Gosavi to evict the

protected tenants from the land otherwise than under due process of law.

13. The first ground raised by learned senior counsel for the respondents/original opponents that the applicants if at all claim to be protected tenants of the land in dispute, they could have made application for recovery of possession in accordance with the provisions contained in section 32 of the Act of 1950 and the period of limitation for making such application is of two years and if such application is not filed within a period of two years, the said right extinguishes by efflux of time.

14. In Letters Patent Appeal No. 42 of 2002 in writ petition No. 463 of 2002, the Division Bench of this court, (Coram R.M. Borde and V.K. Jadhav, JJ.) in which I myself was a Member, by referring the judgment delivered by the Division Bench of this Court in the case of **Sitaram Deoba Marathe v/s Hawadya Piraji and others, reported in 1975 Mh.L.J. 521**, has considered the analogy recorded in the said judgment of the Division Bench, held that the land which has been transferred to the tenant on the notified date provided under the provisions of the Act of 1950 shall vest in the tenant and tenant shall be deemed to be full owner of such land. The said deeming provision introduces legal fiction. The contention of the

applicant that remedy under Section 32 of the Act of 1950 is available to the respondent does not stand to scrutiny. The Division Bench has further observed that there is no scope for concluding that the tenant who became full owner under Section 38-E of the Act of 1950 can still call himself a tenant for the purpose of section 32 when he is dispossessed after the date of vesting. The tenant who has become owner of the property by virtue of legal fiction if dispossessed otherwise than in due course of law, in such case, there is presumption of continuity of possession. In para 6 and 7 of the judgment, the Divisions Bench in Letters Patent Appeal No. 42 of 2002 has made the following observations:-

*“6. Reference can be made to a Judgment delivered by the Division Bench of this Court in the matter of Sitaram Deoba Marathe V/s Hawadya Piraji and others reported in **1975 Mh.L.J.521**. The reference before the Division Bench was relating to availability of remedy under section 36(1) of the Hyderabad Tenancy Act after grant of declaration of ownership in favour of the tenant by taking recourse of provisions of section 46 and 49-A of the Bombay Tenancy & Agricultural Lands (Vidarbha Region) Act, 1958. The provisions of section 46 and 49-A of Vidarbha Act are similar to section 38-E of the Hyderabad Tenancy Act. The question that arose for determination before the Division Bench was as to whether a tenant who became owner under the provisions of section 46 and 49(A)(i) of Vidarbha Act either on 1.4.1961 or 1.4.1963 still continues to be the owner for the purpose of making an application under section 36(1) of Vidarbha*

Tenancy Act if he is dispossessed after date of vesting of title in him. While dealing with the issue, the Division Bench has observed in paragraph Nos. 23 and 25 thus:-

“23. From the reference to observations in the Supreme Court judgments, it is clear that the Supreme Court has accepted the plain meaning of the language used by the Legislature in section 46(1) and section 49A(1). Depending upon that approach, and independently construing the provisions, the Division Bench of this Court laid down that vesting is complete and transfer of title takes effect either on 1.4.1961 or 1.4.1963, as the case may be. To us, therefore, it appear that the law was well-settled and there was hardly any scope to take a different view. We may emphasis a clause present in section 46(1) as well as section 49(A) which must have been advisedly used by the Legislature to remove any doubts. Having pointed out that the land shall stand transferred to and vest in the tenant on the dates mentioned in those section, the Legislature further adds a clause that the tenant “shall be deemed owner of such land.” This deeming provision obviously means an introduction of legal fiction. Even if some formalities had remained and were to be performed later and if due to the inability to comply with those provisions, in some cases the sale was to be declared ineffective later, until that stage is reached the earlier tenant is to be deemed to be the full owner for all purposes. That is the intention of the Legislature and we find that no other view is possible on the reading of these two section.

24. ...

25. This, the Legislature has achieved by the present legislation. Having once declared them as owners, the Legislature appears to have stopped at that. The basic concept is that an owner of land must cultivate the land himself. If the owner was absent and the land was in physical possession of a tenant, the tenant was raised to the status of an owner, whether the original landlord wanted to transfer his title or not. Having created this kind of title, the new owner is now left to himself to protect his title

and possession as best as he can. We are not deciding, but we are incidentally making an observation that section 120(c) seems to have been enacted to enable anyone to get relief provided he is able to satisfy the Collector that the other person falls within the categories mentioned in that section, and is a person in unlawful possession. Short of that, the owner is left to resort to law of the land for protecting his rights as an owner. There are no provisions which indicate that a special plea must be made in favour of the ex-tenants who are now owners to enable them to make use of section 36 for the purpose of regaining possession lost by them after the title was vested in him. ”

7. *On consideration of analogy recorded in the judgment of Division Bench, it can be concluded that the land which has been transferred to the tenant on the notified date provided under the provisions of Hyderabad Tenancy Act and shall vest in the tenant and tenant shall be deemed to be full owner of such land. The deeming provision introduces legal fiction. Thus the contention of the appellant that remedy under section 32 is available to the respondent does not stand to scrutiny. There is no scope for concluding that the tenant who became full owner under section 38-E of the Act can still call himself a tenant for the purpose of section 32 when he is dispossessed after the date of vesting. The tenant who has become owner of the property by virtue of legal fiction if dispossessed otherwise than in due course of law, in such case, there is presumption of continuity of possession. The Division Bench in Sitaram's matter, held that a summary remedy under section 120 of Vidarbha Act is available to the declared owner. The provisions of section 120(c) of Vidarbha Act are pari materia with section 98 of Hyderabad Tenancy Act. Section 98 of the Act provides for a summary remedy for evicting any person unauthorizedly occupying or wrongly in possession of land (a) the transfer of which either by the act of parties or by the operation of law is invalid under the*

provisions of this Act, (b) the management of which has been assumed under the said provisions, or (c) to the use and occupation of which he is not entitled under the said provisions and the said provisions do not provide for the eviction of such person, may be summarily evicted by the Taluqdar. In this context, reference can be made to the Judgment of learned single Judge in the matter of Waman Nagorao Deshpande & others V/s Dayanand Babu Mitekari and others reported in **1983 Mah. L.J.298**. The objection in the aforesaid matter was in respect of maintainability of suit presented by a declared owner under section 38-E of the Act and it was canvassed that only remedy available to a person thrown out of possession is to apply under section 98 of the Tenancy Act. The learned Single Judge of this Court relying upon the Judgment of Division Bench in Sitaram's case (cited supra) held that both the remedies are available to the declared owner i.e. either to present a suit or to proceed under section 98 of the Act. It is observed in para No.7 of the Judgment that summary remedy of presenting application under section 98 of the Act was available to the respondent therein. However, it must be held that existence of summary remedy does not oust the jurisdiction of the Civil Court. In the instant matter, the tenant, declared owner has chosen to avail summary remedy under section 98 of the Act. In the given facts, it cannot be concluded that the availment of summary remedy by a declared owner, respondent in the instant appeal, is not permissible."

15. In the instant case, the names of grandfather of the applicants and other legal heirs and their cousin are mentioned in the final register of protected tenancy and also in the 7x12 extract there are continuous entries till the year 1965-66. It is surprising to note that

even the names of other protected tenants remained continued, however, the name of father of original applicants came to be deleted from the year 1966-67 by Baliram Ganpati Jamdar in collusion with original land holder Shankar Dattatraya Gosavi. Section 98 of the Act of 1950 provides remedy for summary eviction of any person, who unauthorizedly occupying or wrongfully in possession of any land (a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of the said Act, or (b) the management of which has been assumed under the said provisions, or (c) to the use of occupation, of which he is not entitled under the said provisions; may, if the said provisions do not provide for the eviction of such persons, be summarily evicted by the Collector. In the instant case, the tenant/declared owner has chosen to avail the remedy under Section 98 of the Act of 1950 cannot be concluded in any manner that availment of the summary remedy is not permissible. Even both the authorities below have recorded concurrent findings that remedy under Section 98 of the Act of 1950 is available to the original applicants.

16. So far as the point of limitation in availing the remedy under Section 98 of the Act of 1950 is concerned, the respondents/original opponents heavily placed reliance on the judgment in the case of ***Radhu Gokul Gawali and others vs. Mohan Gokul Gawali and***

others (supra) wherein the learned Single Judge of this Court has observed that such a long span of time is unconceivable in the absence of plausible explanation and material for the same. Learned Single Judge of this Court held that belated application under Section 98 could not have been entertained by the authorities concerned.

17. In the case of **Hasan Bin Salam s/o Salam Bin vs. Madhavrao s/o Rangnathrao Shinde, in L.PA. No. 42 of 2002, (supra)** the Division Bench in para 8, 9 and 10 has made the following observations:-

*“8. So far as limitation for entertaining application under section 98 of the Act is concerned, said section does not provide for bar of limitation. Issue raised by appellant in the instant appeal is no more res integra in view of judgment delivered by this Court (Justice R.M. Borde) in the matter of Limbaji Shankar Munde Vs. Bhaurao Baliram Munde reported in **2010(3) Mh.L.J. 138**. This Court relying upon the judgment of the Apex Court in the matter of Ram Chand Vs. Union of India reported in (1994) 1 SCC 44 has turned down the contention raised by petitioner in the writ petition as regards bar of limitation. The observations made by the Supreme court are quoted in the judgment thus :*

In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in the Limitation Act (Act 2 of 1963) stands

excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.”

9. *Similar question arose as to whether there is any limitation provided for tendering application under section 84 of the Bombay Tenancy and Agricultural Lands Act, 1948 and the same was considered by the Division Bench of this Court in the case of Ghanshyamprasad Natwarlal Bhatt vs. Gendalsingh Vakhatsing and others in Special Civil Application No. 764/1955. The Division Bench has observed thus :*

“You cannot apply limitation by analogy. Limitation either bars a remedy or extinguishes a right of a party and it is unthinkable that any Court would bar a remedy or extinguish a right when the Legislature has not done so by importing the principles of some other statute and drawing analogy from some other provision of law. If there is no limitation provided by the legislature then the only thing that the Tribunal has to do is to permit the application to be made irrespective of passage of time.”

10. *In this context, reliance can also be placed on a judgment in the matter of Kisan Sayaji Shelke Vs. Madhukar Mohan Deshpande and others reported in **2010(7) Mh.L.J. 347**. This Court has held in the aforesaid matter that provisions of section 98 do not prescribe for any limitation and as such, there can be no impediment for entertaining the application under section 98 of the Act by the competent authority at any point of time.*

18. In the case of ***Laxman Shankar Bandgar vs. Venkat Rama Bandgar and others (supra)*** the learned Single Judge of this court (Ravindra V. Ghuge, J.) by relying upon the judgment in the case of ***Mesaji Laxman Ubare vs. Ramchanra (Dr) Laxminarayan Toshniwal and others, (supra)*** and also relying upon the judgment in the case of ***Limbaji Shankar Munde (deceased through L.Rs.) vs. Bhaurao Baliram Mundhe (deceased through L.Rs.) and others, (Supra)*** and ***Ghanshyamprasad Natwarlal Bhatt vs. Gendalsingh Vakhatsingh and others, in special C. appeal /764 of 1955,*** in para 42 of the judgment, has made the following observations:-

“42. In view of the above observations of the Division Bench of this Court in ***Ghanshyamprasad Natwarlal Bhatt (supra)***, ***Limbaji Shankar Munde (supra)*** and ***Mesaji s/o Laxman Ubare ;2011 (4) ALL MR 25]***, I find it appropriate to follow the view taken in the aforesaid three judgments and, therefore, conclude that Section 98 of the Act of 1950, cannot be fettered with limitation. As such, I conclude that the application preferred by the applicants under Section 98 of the Act of 1950 was maintainable and has been correctly so held by the Deputy Collector, Land Reforms and the Maharashtra Revenue Tribunal, Aurangabad.

Even the learned Single Judge in the aforesaid case has also disagreed with the view expressed by this court in the case of ***Radhu***

Gokul Gawali and others vs. Mohan Gokul Gawali and others (*supra*) to the extent of reasonable time.

19. In view of above, I also conclude that the application preferred by the original applicants under Section 98 of the Act of 1950 was maintainable and the same cannot be fettered with the limitation. The respondents/original opponents are unlawfully in possession of the suit land though the learned Deputy Collector (Land Reforms) has allowed the application filed by the original applicants and even though the learned Member of the Tribunal has agreed with the findings recorded by the Deputy Collector (Land Reforms), quashed and set aside the said well-reasoned judgment and order passed by the Deputy Collector (Land Reforms) and referred the matter to the Tahsildar for no reason. In terms of the provisions of Section 98 of the Act of 1950, the statutory right cannot be taken away or given up even by the act of the parties. Once it is held that the protected tenants is declared as owner, unless and until ownership is cancelled by following due process of law or the procedure prescribed under the Act, the land vests in the tenant and he being statutory owner, the land holder, who is occupant of the land, as such, is required to be evicted in summary manner as provided under Section 98 of the Act of 1950. In the instant case, the respondents/original opponents are in possession of the suit land

unauthorizedly and as such, they are liable to be evicted from the suit land by taking recourse to the provisions of Section 98 of the Act of 1950.

20. In the result, the impugned judgment and order dated 27.11.2014 passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad in appeal No.66-A-2012-Beed is liable to be quashed and set aside by restoring the judgment and order dated 03.11.2012, passed by the Deputy Collector (Land Reforms) Beed, in Case No. 2010/TNC/Appeal-3, directing summary eviction of respondents/original opponents from the suit land. Though the learned Deputy Collector, (Land Reforms), Beed has not specifically directed in terms of provisions of Section 98 of the Act of 1950 the summary eviction of respondents/original opponents, however, the tenor of the order is in the manner as provided under Section 98 of the Act of 1950. Hence, the following order:-

O R D E R

- I. Writ petition No. 1400 of 2015 is hereby dismissed.
- II. Writ petition No. 6457 of 2015 is hereby allowed.

III The judgment and order dated 27.11.2014 passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad in appeal No.66-A-2012-Beed is quashed and set aside and the judgment and order dated 03.11.2012, passed by the Deputy Collector (Land Reforms) Beed, in Case No. 2010/TNC/Appeal-3, is hereby confirmed.

IV. Both the writ petitions are accordingly disposed of.

(V. K. JADHAV, J.)

rlj/