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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 4720 OF 1995
WITH
CIVIL APPLICATION NO. 314 OF 2002
WITH
CIVIL APPLICATION NO. 3151 OF 2015**

1. Shri. Gotiram H. Pawar (Since	}	
deceased by LR petitioner no. 2	}	
2. Kashinath Gotiram Pawar,	}	
residing at Vayal, Taluka Khalapur,	}	
District, Raigad	}	
3. Laxmibai Rajaram Kabhaire	}	
Age: Adult	}	
4. Kusum Pundlik Mhatre	}	Petitioners
Age: Adult	}	
5. Nirabai Dattatraya Bhoir	}	
Age: Adult	}	
Nos. 3 to 5 Residing at Vayal	}	
Khalapur, Tal: Khalapur,	}	
Dist: Raigad.	}	
6. Nijabai Bharat Mhatre	}	
Age: Adult	}	
Residing at Vayal, Khalapur,	}	
Tal: Khalapur, Dist: Raigad	}	

V/s.

1. Shaikh Daud Yusufmiya Sain	}	
(Since deceased through LR's)	}	
1-A Zahur Daud Ismail Sain	}	
1-B Mukhtar Daud Yusufmiya Sain	}	
1-C Gunjawar Daud Sain	}	
1-D Jameela Daud Sain (Since	}	

deceased through LR's)
 1D (1) Jahoor Daud Sain }
 1D (2) Mukhtyar Daud Sain }
 1D (3) Mujafar Daud Sain }
 All adults residing at Sain Mandil, }
 Building, Pada Mohalla, M.G. Road, }
 Tal: Panvel, Dist: Raigad. }

2. Mohammed Abdulla Usmanmiya }
 Sain (since deceased) through Heirs }
 and legal representatives are }
 already on record as }
 respondent nos. 1A to 1D herein }

.....Respondents

3. Ismail Abdul Rahiman Sain }
 4. Aslam Abdul Rahiman Sain, }
 5. Nadira Liyakat Duste, }
 6. Jahida Shaikh Khayam Sain }
 7. Chandrashekhar Sadashiv }
 Deshpande, since deceased }
 through his heirs & legal }
 representatives already on record }
 as Respondent Nos. 9 & 10 }
 8. Smt. Sanjivani Chandrashekhar }
 Deshpande, Age 73 Years }
 9. Shri. Vishwas Chandrashekhar }
 Deshpande, Age 41 Years, }
 Nos. 8 & 9 R/o Vidyalankar }
 Senapati Bapat Marg, Dadar, }
 Mumbai – 400 028. }
 10. Chandrakant Ramchandra }
 Aadkar }
 11. Sou. Meera Chandrakant Aadkar }
 Age 69 Years. Nos. 10 & 11 residing }
 at 242, Kashapeth, Phaltan, }
 District: Satara and Naupada, }
 District: Thane. }

12. Capricon Infrastructure Pvt. }
Ltd. By and through signatory }
Mr. Tailor Adam, Age: Adult }
Registered office at – 5A Pera }
House, Gulmohar Road, Villeparle }
(West) Mumbai. }

Mr. Ashutosh M. Kulkarni i/b Mr. Sarthak S. Diwan for the
Petitioner

Mr. Ravi Girish Shinde i/b Mr. S. M. Gorwadkar for respondent nos.
3 to 7

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 11, 2019.

JUDGMENT:

Heard.

2 Respondent-landlord initiated proceedings under Section 70 (b) of Maharashtra Tenancy and Agricultural Lands Act, 1948 ('the Act' for short) before Tahsildar, Khalapur through Tenancy Case No. 6 of 1988. The said proceedings were answered in favour of respondent-landlord thereby declaring that the petitioner is not a tenant. The said declaration is based on the statement given by the petitioner-tenant before the Tahsildar that the respondent-landlord is in possession of the land in question and the petitioner has no concern

with the land in question. Accordingly vide order dated 31/08/1988, Tahsildar directed removal of name of the petitioner from 7/12 extract.

3 Petitioner feeling aggrieved, preferred an Appeal under Section 74 of the Act before Sub-Divisional Officer ('SDO' for short), Panvel who by order dated 30/03/1992 confirmed the findings recorded by the Tahsildar and dismissed the Appeal.

4 Feeling aggrieved, petitioner preferred Revision before Maharashtra Revenue Tribunal ('MRT' for short) vide Revision No. 179 of 1992 which also came to be dismissed on 22/06/1995. As such, this petition.

5 The learned counsel for the petitioner submits that the order of the Tahsildar declaring the petitioner not to be a tenant was passed on 31/08/1988 whereas respondent created third party interest I n the property in question on 27/04/1989. In that view, the fact remains that order impugned passed by the authorities are not

sustainable particularly when the proceedings under the Tenancy Act were pending before this Court. The next limb of submissions of the learned counsel for the petitioner is, subsequent purchaser namely Mr. Deshpande though has moved an application for intervener as party respondent before Authorities below, same was not pressed. That being so, in view of principle of acquiescence, as the claim of tenancy was not contested against the petitioner by new landlord, the prayer of petitioner for status of tenancy is liable to be allowed.

6 Third point which is canvassed by the learned counsel for the petitioner is, pursuant to Section 15 of the Act, duty is cast upon the Tahsildar to conduct a thorough enquiry in the matter and make aware about consequences of the surrender of the tenancy to the petitioner-tenant. According to him, procedure contemplated under Section 15 of the Act is not followed and that being so, order impugned is not sustainable. Reliance is placed on the Judgment of this Court in the matter of **Dattu Gundu Parit Vs. Javahar Nanchand Shah [2006 (1) ALLMR 106]** particularly paragraph 8.

7 The learned counsel for the petitioner then would invite attention of this Court to the finding recorded by MRT on the issue of non availability of the record and proceedings from the file of Tahsildar and the SDO. According to him, since the record was not traceable, findings recorded are pervert as same are contrary to requirement under Section 15 of the Act.

8 As such, the submissions are, order impugned is liable to be quashed and set aside.

9 The learned counsel for respondent supported the order impugned and submits that all the facets of the matter are considered by the Authorities and a concurrent finding is recorded. As such, dismissal is sought.

10 No doubt, it is true that MRT has recorded a finding that the record and proceedings of the case in hand from the file of Tahsildar are not traceable.

11 In such an eventuality, the option left with the petitioner was to apply for reconstruction of record or to produce on his own such material before the Authorities so as to establish his case particularly when the burden is casted on the petitioner to that effect.

12 Instead of doing so, the petitioner has tried to take undue mileage out of observations recorded by the MRT as regards non availability of the record and proceedings from the file of Tahsildar.

13 Apart from above, in the backdrop of requirement under Section 15, the case of the petitioner is appreciated, in the order of Mamlatdar which was confirmed by the SDO, what is noticed is, Gotiram, predecessor of the petitioner gave a statement on 25/04/1988 that the land in question is not fertile as such non cultivative. Only grass is grown on the same. The owners i.e. landlord are in possession of the same. It is also recorded that the tenant has no interest in the land in question which has prompted

the Tahsildar to pass the order against the petitioner based on the material brought before him during the enquiry.

14 The order of alleged surrender of tenancy/declaration that the petitioner is not a tenant is based on voluntary statement which during the course of enquiry by the Tahsildar was recorded. During the hearing of the petition, said statement is sought to be disputed on the point of misrepresentation. The issue of misrepresentation is not established by the petitioner, as neither the petitioner has come out with a pleading as to how and which manner in the proceedings before the Tahsildar, by fraud or misrepresentation, statement of surrender of tenancy was obtained.

15 Apart from above, all the three orders which are against the petitioner in categorical terms speaks of that the petitioner has surrendered his tenancy as is contemplated under Section 15 of the Act.

16 It is the contention of the petitioner that the record and proceedings was not available and still MRT has proceeded to pass

impugned order contrary to record in pervert manner. Said contentions in my opinion are liable to be rejected particularly when the petitioner has not taken any steps before the Authorities for reconstruction of record or for production of any additional evidence to establish the claim of tenancy.

17 As regards the subsequent purchaser stepping out of present proceedings is concerned, as long as original land owner was before the Authorities, subsequent purchaser have stepped into shoes of the original land owner and that being so, it was not necessary for the subsequent purchaser to contest the litigation.

18 As such, concurrent findings as are recorded by all the three Authorities against the petitioner, in my opinion does not call for any interference. Petition as such fails stands dismissed.

19 As a consequence of dismissal of the petition, pending Civil Applications also stand disposed of.

[NITIN W. SAMBRE, J.]