

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5232 OF 1995
 WITH
 CIVIL APPLICATION NO. 1292 OF 1998
 WITH
 CIVIL APPLICATION NO. 3097 OF 2011
 WITH
 CIVIL APPLICATION NO. 12857 OF 2018
 WITH
 CIVIL APPLICATION NO. 471 OF 2020

- . Gopal alias Tulshiram S/o Vithoba
 Age: 70 years, Occu: Agricultural,
 R/o Nideban, Taluka: Udgir,
 District: Latur
 Through his Legal Heirs;
- (1) Gitabai wd/o Gopal Somwanshi,
 Age: 85 years, Occu: Household
- (2) Kondiba S/o Gopal Somwanshi,
 Age: 68 years, Occu: Govt. Service
- (3) Gangubai W/o Nagorao Gaikwad
 Age: 62 years, Occu: Household
 R/o: Kshetrappa, Taluka: Udgir,
 District: Latur
- (4) Jijabai w/o Sheshrao Gaikwad,
 Age: 60 years, Occu: Household
- (5) Narsing s/o Gopal Somwanshi
 Age: 55 years, Occu: Agricultural & Govt. Service
- (6) Bhaurao S/o Gopal Somwanshi,
 Age: 52 years, Occu: Agricultural & Govt. Service
- (7) Mudrikabai w/o Rawan Waghmare,
 Age: 50 years, Occu: Household
- (8) Bharatbai w/o Goroba Gaikwad
 Age: 22 years, Occu: Household
 R/o: Lalwadi, Jalnga,
 Taluka & District Jalna

- (9) Tejabai w/o Dadarao Mane
Age: 40 years, Occu: Household

Petitioner Nos.1,2 & 4 to 7 & 9
R/o Nideban, Taluka Udgir,
District Latur

... Petitioner

(Orig. Respondent in Revision)

Versus

1. Sayyed Mainuddin S/o Sayyed Nuruddin
Age: 52 years, Occu: Agricultural
R/o: Udgir, Taluka: Udgir,
District: Latur.

(Respondent No.1)

(Orig. Revision Petitioner in Revision)

2. The State of Maharashtra,
Through Additional Commissioner,
Aurangabad Division, Aurangabad

(Respondent No.2)

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Mr. S.D. Tawashikar, Advocate for the Petitioner
Mr. A.G. Dalal, Advocate for Respondent No.1
Mr. A.B. Chate, AGP for Respondent No.2-State
Mr. Milind Patil Beedkar, Advocate for Applicants in CA/1292/1998
Mr. S.V. Chandule, Advocate for Applicant in CA/3097/2011
Mr. S.A.P. Quadri, Advocate for Applicant in CA/12857/2018
Mr. P.V. Barde, Advocate for Applicants in CA/471/2020

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CORAM : V. K. JADHAV, J.
RESERVED ON : 16.01.2020
PRONOUNCED ON : 27.04.2020

JUDGMENT:-

1. By way of this writ petition, the petitioner is challenging the judgment and order dated 04.10.1995 passed by the Additional Commissioner, Aurangabad Division, Aurangabad in Case No.1993-REV-R-110. The petitioner has

prayed to quash and set aside the said order passed by the Additional Commissioner by confirming the order passed by the Tahsildar Udgir, Special Land Acquisition Officer, Latur and Additional Collector, Latur in respect of sanctioned of Mutation Entry No.08 regarding occupancy rights of the petitioner in respect of suit lands.

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

(a) The dispute in this litigation pertains to the four field properties bearing Survey Nos.84/1, 84/2, 85/1 and 85/2, in all measuring 20 acres 20 gunthas situated at village Nideban, Taluka Udgir. These landed properties originally belonged to deceased Inamdar Sayyed Nuruddin S/o Sayyed Kadar. These fields were '*Inam Madad Mash*'. According to the petitioner, the above stated lands were in possession of and being cultivated by him as a tenant on behalf of Inamdar since prior to 1950. The petitioner further contends that he was granted 'Protected Tenancy Certificate' by the Tahsildar, Udgir under Sections 35 and 37 of Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short, "Hyderabad Tenancy Act"). According to the petitioner, he remained in possession of the aforesaid field properties throughout till date including the date of vesting of lands with the Government under the provisions of the Hyderabad Inams and Cash Grants Act, 1954 (for short,

"Act of 1954") and since he happened to be a permanent tenant of Inamdar, he was granted occupancy rights under Section 2-A (1) (vi) of the said Act of 1954 . According to the petitioner, by the order of Tahsildar, Udgir dated 31.08.1961 in Case No.Inam/9/1/M/61, the petitioner was directed to pay occupancy price and he was declared entitled to the occupancy rights as such in respect of those four field properties. As per directions of Tahsildar, Udgir, vide order dated 31.08.1961, the petitioner had paid occupancy price by depositing requisite amount in the Treasury and applied to the Tahsildar, Udgir, after completing necessary formalities for mutation entries in the revenue record in respect of the suit field properties on the strength of occupancy rights granted to him under Section 2-A (1) (vi) of the Act of 1954.

(b) After hearing both sides, the Tahsildar Udgir, by judgment and order dated 17.07.1975, directed the village Talathi to enter name of the petitioner as an occupant of suit lands. According to the petitioner, on production of receipts showing the credit of occupancy price and execution of Agreement Bond, Tahsildar, Udgir, issued order to the village Talathi for recording entries in the ROR dated 02.04.1976 and accordingly, the village Talathi recorded Mutation Entry No.8 in favour of the petitioner in the ROR.

(c) Being aggrieved by the judgment and order passed

by the Tahsildar dated 17.07.1975, respondent no.1's father, namely, Sayyed Nuruddin had preferred an appeal to S.D.O, Udgir and by order dated 14.05.1992, the Special L.A.O., (S.P.), Latur, in File No.1975/ROR/72, dismissed the same. Meanwhile, original Inamdar i.e. Sayyed Nuruddin died and his son Mainuddin (present respondent no.1) preferred an appeal to the Collector, Latur against the order passed by the S.D.O, Udgir dated 14.05.1992. By judgment and order dated 23.04.1993, learned Additional Collector, Latur was pleased to dismiss the same, confirming the orders of both the courts below.

(d) Being aggrieved by the judgment of the Additional Collector, Latur dated 23.04.1993, respondent no.1 herein had preferred the Revision before the Commissioner (Revenue) Aurangabad Division, Aurangabad and by judgment and order dated 04.10.1995, the Commissioner (Revenue) Aurangabad Division, Aurangabad in Case No.1993/REV-R-110 allowed the said Revision and set aside the orders passed by the authorities below. Hence this writ petition.

3. Learned counsel for the petitioner submits that the impugned judgment and order passed by the Additional Commissioner is contrary to law and not sustainable on the strength of material on record. Learned counsel submits

that the Additional Commissioner has committed grave error in holding that the order of Tahsildar, Udgir dated 31.08.1961, vide Exhibit-B, was without jurisdiction. Learned counsel submits that as per legal position, as it stood with the Government of Maharashtra, Revenue Department, Circular No.HIA-1059-VI-L, Sachivalaya, Bombay, Bombay dated 09.07.1960, the powers of the Collector under Section 2-A (1) (vi), of the Act of 1954 were delegated to the Tahsildar and that is why the said order granting occupancy rights of the suit lands to the petitioner could not have been held as nullity and *void ab initio* by the learned Additional Commissioner. Learned counsel submits that the order dated 31.08.1961 in the matter of occupancy rights of suit lands bestowed on the petitioner had become final and conclusive in absence of any action taken for challenging the same by original Inamdar Sayyed Nuruddin or his son Sayyed Mainuddin (respondent no.1 herein) till date. Learned counsel submits that the Additional Commissioner has also committed an illegality in holding that no enquiry has been conducted by the Tahsildar, Udgir, while granting occupancy rights in respect of the suit lands to the petitioner vide order dated 31.08.1961. Learned counsel submits that the learned Additional Commissioner has committed an error in holding that the possession of the

petitioner over the suit lands is not lawful on the ground that he was not a lawful tenant and his possession was also not legal. These findings are perverse and contrary to the record and the legal position as well. Learned counsel submits that the petitioner is in lawful possession of suit lands as a permanent tenant of Inamdar Sayyed Nuruddin since prior to 1950 till date with the grant of 'Protected Tenancy Certificate' so also grant of occupancy rights to him on 31.08.1961. Learned Additional Commissioner has erred in holding that the petitioner's possession over the suit lands was not legal. Learned Additional Commissioner has also erred in applying the ratio laid down in the case of **Dattatraya Sadashiv Dhond Vs. Ganpati Raghu Gauli (1965) Mh.L.J, 881**, as the facts of the case were quite different. Learned counsel submits Circular No.HIA.1069.LI dated 20.11.1969 issued by Government of Maharashtra, Revenue and Forest Department, Sachivalaya, Bombay-32 also clearly shows that the Tahsildar, Udgir had the powers as delegated to him to grant occupancy rights to the petitioner in respect of suit lands under Section 2-A (1) (vi) of the Act of 1954. Learned Additional Commissioner has failed to go through the said circular and get himself apprised of the legal position in the matter.

4. Learned counsel for the petitioner submits that in terms of the provisions of Section 33 of the Act of 1954, application of the provisions of Hyderabad Tenancy Act, to any inam was not to be affected by the Act of 1954 save insofar as the said provisions were inconsistent with the provisions of the Act of 1954. Section 33 of the Act of 1954 saved the mutual rights and obligations of an Inamdar and his tenant. It would, therefore, follow that the combined effect of Clause (b) of Section 3(2) and of Section 33 of the Act of 1954 is that the mutual rights and obligations of the Inamdar and the tenant were not affected by the Act of 1954. Learned counsel submits that there is an ample evidence to indicate that the petitioner was the tenant when the inam came to be vested in the State and thus consequently, acquired rights of occupant under Section 6 (1) of the Act of 1954. Learned counsel submits that it is thus clear from the provisions of the Act of 1954 that it was not intended to disturb the possession of the person actually in possession and thus the provisions of the Act provided for grant of occupancy rights to the person in possession of the Inam lands.

5. Learned counsel for the petitioner, in order to substantiate his contention, placed reliance on the following cases:

(i) **State of Maharashtra Vs. Lazmen Abaji and Ors.** reported in AIR 1971 SC 1859

(ii) **Rangnath Vs. Daulatrao and Ors.** reported in AIR 1975 SC 2146

(iii) **Syed Samiullah Vs. State of Maharashtra** reported in 1999 (3) Mh.L.J. 966

(iv) **Dattatraya Sadashiv Dhond Vs. Ganpati Raghu Gaudi** reported in (1965) Mh.L.J, 881

6. Learned counsel for respondent no.1 submits that undisputedly, the father of respondent no.1, namely, Sayyed Nuruddin, was the original Inamdar of suit lands and the said lands are in nature of Inam service lands. Learned counsel submits that in terms of provisions of the Act of 1954, the Tahsildar had no jurisdiction to decide the nature of Inam and in consequence thereof, to determine entitlement of person for occupancy rights. Learned counsel for respondent no.1 submits that even if it is assumed that those powers are delegated to Tahsildar then also the order dated 31.08.1961 is illegal as the rights preferred to the petitioner as a tenant since 1954-1955. Learned counsel submits that after coming into force the Act of 1954, all the inam lands came to be vested in the Government in the year 1954 – 1955 and the Inamdar was not competent to create a tenancy nor the petitioner would get rights of

tenancy over the suit lands. Learned counsel submits that these proceedings, which are ultimately before this Court in the writ petition pertains to the Mutation Entry No.8 and thus the scope of this writ petition is limited to that extent.

7. Learned counsel submits that in the instant case, the petitioner is neither a lawful tenant of the suit lands nor his possession was legal. He was not entitled to claim any tenancy over the suit lands. Learned counsel submits that the Special Tahsildar for Land Reforms, Udgir under his order 03.12.1959 rejected the application filed by the father of the petitioner for seeking permanent tenancy rights under Section 38-E of the Hyderabad Tenancy Act and on 17.10.1962, the said order has also been confirmed in appeal preferred by the petitioner's father to the Deputy Collector, Osmanabad. The suit lands were held to be inam lands and the appeal by the petitioner's father to be the tenant of the suit lands came to be rejected. Learned counsel submits that even the Tahsildar, Udgir noted this legal position and totally disregarded it and passed the order dated 31.08.1961 conferred the occupancy rights to the father of the petitioner. Learned counsel submits that only because the petitioner's father was found in possession of the suit lands, he was declared to be an occupant without bothering to know as to whether his possession was lawful.

Learned counsel submits that in terms of the provisions of Section 6 of the Act of 1954, the Collector's powers can at the most be delegated to the Deputy Collector, Land Reforms, who is competent to decide the issues arising under Section 6 especially conferring the occupancy rights on the holder. So far as the Tahsildar is concerned, he certainly had no powers nor he was competent to decide about the occupancy rights in respect of the suit lands. Learned counsel for respondent no.1 submits that the Additional Commissioner, Aurangabad has correctly noted this legal position and held that the order passed by the Tahsildar dated 31.08.1961 is void and nullity and it is bad in law. Learned Additional Commissioner has, therefore, rightly quashed and set aside the orders passed by the authorities below. There is no substance in this writ petition and the same is thus liable to be dismissed.

8. I have also heard the learned AGP appearing for respondent No.2-State.

9. I have also heard the learned counsel Mr. Milind Patil Beedkar for the applicants in Civil Application No.1292 of 1998, learned counsel Mr. S.V. Chandole for the applicant in Civil Application No.3097 of 2011 and learned counsel Mr. S.A.P. Quadri for the applicant in Civil Application No.12857

of 2018. They also claim to be the legal heirs of original Inamdar. It appear that though there is an internal dispute in respect of succession amongst the legal heirs of original Inamdar, however, so far as this litigation is concerned, the counsel appearing for respective applicants adopted the submissions made on behalf of learned counsel for respondent no.1.

10. Learned counsel Mr. P.V. Barde submits that the applicants in Civil Application No.471 of 2020 claims to be the co-tenant. Thus the learned counsel for the applicants adopted the submissions made on behalf of the petitioner.

11. Though, this matter pertains to Mutation Entry No.8 sanctioned in favour of the petitioner, the base of mutation entry in the name of the petitioner is the order dated 31.08.1961 passed by the Tahsildar, Udgir. Undisputedly, the father of respondent no.1, namely, Sayyed Nuruddin was the original Inamdar of four field properties bearing Survey Nos.84/1, 84/2, 85/1 and 85/2, in all admeasuring 20 acres 20 gunthas situated at village Nideban, Taluka & District Udgir. These fields were '*Inam Madad Mash*'. It is the case of the petitioner that the suit lands were being cultivated and in possession of the petitioner as a tenant on behalf of the Inamdar since prior

to 1950. He was even granted the 'Protected Tenancy Certificate' by Tahsildar, Udgir. According to the petitioner, the petitioner/original tenant-Gopal remained in possession of the aforesaid field properties throughout his life time and till this date including the date of vesting of land with the Government under the provisions of the Act of 1954. According to the petitioner, since tenant-Gopal was a permanent tenant, he was granted occupancy rights under Section 2-A (1) (vi) of the Act of 1954 by the order of Tahsildar, Udgir dated 31.08.1961 and he was declared entitled to occupancy rights and directed to pay occupancy price in respect of those four field properties. It is also the case of the petitioner that as per the said order passed by Tahsildar, Udgir dated 31.08.1961, the tenant-Gopal had paid occupancy price by depositing the requisite amount in the Treasury and applied to the Tahsildar, Udgir after completing the necessary formalities for mutation entries in the revenue record in respect of the suit field properties on the strength of occupancy rights granted to him under Section 2-A (1) (vi) of the Act of 1954 for making necessary enquiry. After hearing both sides, the Tahsildar, Udgir by judgment dated 17.07.1975, directed to Village Talathi to enter the name of the petitioner as an occupant on the suit lands and on production of receipts showing the credit of

occupancy price and execution of agreement bond, Tahsildar Udgir, issued the order to village Talathi, for making entries in ROR dated 02.04.1976 and accordingly, the Village Talathi recorded Mutation No.8 in favour of the petitioner (original tenant-Gopal) in ROR and that mutation was sanctioned by Nayab Tahsildar, Revenue, Tahsil Office, Udgir on 05.04.1977. The original Inamdar i.e. Sayyed Nuruddin, aggrieved by the judgment of the Tahsildar dated 17.07.1975, had preferred an appeal to SDO, Udgir and by judgment and order dated 14.05.1992, Special L.A.O. (S.P.), Latur in File No.1975/ROR/72 dismissed the said appeal. Further, after demise of Inamdar Sayyed Nuruddin, present respondent no.1 preferred an appeal to the Collector, Latur and even by order dated 14.05.1992, the Additional Collector, Latur pleased to dismiss the appeal by order dated 23.04.1993, confirming the orders of both the courts below. It is part of record, as noted by learned Additional Commissioner in the impugned order, that even though the certificate under Section 38-E of Hyderabad Tenancy Act is granted in favour of tenant-Gopal, the said certificate under Section 38-E has been cancelled for the reason that after enactment of the Act of 1954, the land vests in the Government and no such declaration under Section 38-E can be made in favour of tenant-Gopal.

However, the facts remained as it is that tenant-Gopal was in possession and cultivated in suit lands as a tenant even prior to 1950 and even till the order passed by the Tahsildar dated 31.08.1961 continuously without any interruption. However, learned Additional Commissioner, Aurangabad, by order dated 04.10.1995 allowed the Revision preferred by respondent no.1 herein and set aside the orders passed by the authorities below mainly on the following grounds:

(i) The Special Tahsildar for Land Reforms, Udgir, by order dated 03.12.1959 has rejected the petition of tenant/Gopal seeking permanent tenancy rights under Section 38-E of Hyderabad Tenancy Act and the said decision has also been confirmed in appeal by the Deputy Collector, Osmanabad by order dated 17.10.1962. Thus, the order passed by the Special Tahsildar, Land Reforms, Udgir dated 03.12.1959 has attained the finality. Learned Additional Commissioner has also observed that the suit lands were held to be inam lands and the appeal filed by the respondent's father (tenant-Gopal) came to be rejected.

(ii) Though in the order dated 31.08.1961 itself, conferring the occupancy rights on tenant-Gopal, the Tahsildar, Udgir noted the aforesaid decision, however, ignoring the same, the learned Tahsildar, Udgir has granted occupancy rights to the tenant-Gopal.

(iii) Learned Additional Commissioner has also observed that only because the respondent's father (tenant-Gopal) was in effective possession of the suit lands, he was declared to be an occupant without bothering to know whether his possession was lawful.

(vi) According to the learned Divisional Commissioner, in terms of the provisions of Section 6 of the Act of 1954, the Deputy Collector to whom the powers of Collector are delegated, can decide the issues arising under Section 6 especially conferring the occupancy rights on the holder and the Tahsildar had no powers nor he was competent to decide the issue of occupancy rights in respect of suit lands. Learned Divisional Commissioner held that the order dated 31.08.1961 passed by the Tahsildar, Udgir is without jurisdiction and thus void and nullity.

12. In view of the above, it is necessary to reproduce herein below certain provisions of the Act of 1954. Section 6 speaks about the occupancy rights in respect of occupied land to which Section 5 does not apply. Section 6 reads as under:

“6. Occupancy rights in respect of occupied land to which section 5 does not apply:

1) In the case of an occupied land comprised in an inam other than land to which the provisions of section 5 apply :

(a) where such land is in the possession of the Inamdar, or kabiz-e-kadim or of a permanent tenant or tenant holding from

the Inamdar, then such Inamdar, kabiz-e-kadim, permanent tenant shall, in respect of the land which is in his possession, be primarily liable to the State Government for the payment of land revenue and shall, subject to the provisions of sub-sections (2), (3), (4) and (5), be entitled to all the rights and be liable to all the obligations as an occupant in respect of such land under the Land Revenue Act, 1317 Fasli and the rules made thereunder;

(b) the rest of the land, in respect of which under clause (a) neither the Inamdar nor the kabiz-e-kadim nor the permanent tenant nor the tenant is primarily liable for the payment of land revenue, shall be at the disposal of Government and any person in possession of such land shall be deemed to be unlawfully occupying Government land and shall be liable to be evicted therefrom in accordance with the provisions of the Land Revenue Act, 1317 Fasli.

2) In respect of the land for which the Inamdar, kabzi-e-kadim, permanent tenant or tenant is liable under sub-section (1) for the payment of land revenue :

(a) the Inamdar or, as the case may be, the kabiz-e-kadim, shall be liable to pay an occupancy price equal to six times the amount of the full assessment of the land.

(b) the permanent tenant shall be liable to pay an occupancy price equal to eight times the amount of the full assessment of the land, and

(c) the tenant shall be liable to pay an occupancy price equal to twelve times the full assessment of the land, to the State Government within the prescribed period either in lump sum or by such instalments as may be prescribed.

3) The occupancy granted under sub-section (1) shall not be transferable or partible by metes and bounds without the

previous sanction of the Collector and except on payment of such sum to the State Government as the State Government may by general or special order, determine.

4) If any person liable to pay to the State Government the occupancy price under sub-section (2) fails to pay the same within the period prescribed under that sub-section, it shall be recoverable as an arrear of land revenue and if it is not recovered within a period of one year from the expiry of the period prescribed under sub-section (2), the person shall be deemed to be unlawfully occupying Government land and shall be liable to be summarily evicted in accordance with the provisions of the Land Revenue Act, 1317 Fasli.

5) If the occupancy price payable by a permanent tenant or tenant under sub-section (2) is paid by him or recovered from him under sub-section (4), then;

(a) A sum equal to one-fourth of the amount paid by, or recovered from, the permanent tenant, and

(b) A sum equal to one-half of the amount paid by, recovered from, the tenant shall be paid to the inamdar.

6) Nothing in this section shall entitle the Inamdar, kabiz-e-kadim, permanent tenant, tenant or any other person to claim compensation for the modification or extinguishment of any of his rights to, or interest in, the land to which this section applies.”

13. Section 2-A (1) (vi) of the Act of 1954 reads as under:

“2-A. Power of State Government or authorized officer to decide certain questions relating to inams and appeals:

1) If any question arises:

(i)

(ii)

(iii)

(iv)

(v)

(vi) Whether any person is a kabiz-e-kadim, permanent tenant or tenant, the State Government or an officer authorised by that Government shall decide the question.

2)

3)

4)

14. Section 33 of the Act of 1954 is the saving clause, which reads as under:

“Savings:

Nothing in this Act shall in any way be deemed to affect the application of the provisions of the Hyderabad Tenancy and Agricultural Lands Act, 1950, to any inam or the mutual rights and obligations of an Inamdar and his tenants, save insofar as the said provisions are in any way inconsistent with the express provisions of this Act.”

15. It is clear from the conjoint reading of these provisions that the Legislature intended to save mutual rights and obligations of an Inamdar and his tenant and to continue the mutual relationship between them during the period from 20.07.1955 to 01.07.1960. The object of the Act of 1954 as stated in the preamble was to provide for the abolition of inams and cash grants. However, the various provisions of the Act show that it was not intended to disturb the possession of the person who was actually in possession, or to take possession from him. The Act of 1954

has therefore provided for grant of occupancy rights to the person in possession of the inam land. The mutual rights and obligations of an Inamdar and his tenant, which were saved by Clause (b) in Sub-section 2 of Section 3 read with Section 33, included a right to possession. There is no provision in the Act of 1954 empowering the Government to resume possession or to evict the person in possession (except when occupancy price is not paid). It is thus clear that Government cannot, therefore, be said to have been in a constructive possession of the inam land when the inam was abolished. It is also equally true that after an inam was abolished, the ownership of the inam land did not stand transferred to and vests in the tenant under Section 38-E of the Hyderabad Tenancy Act, because Section 38-B of Hyderabad Tenancy Act provides for transfer of the ownership rights of the landholder to the protected tenant. As after 20.07.1955, by enactment of the Act of 1954, the title to the land vested in the State, the landholder had no ownership rights left which the tenant could purchase under Section 38 and which could be transferred to him under Section 38-B. The order passed by the Special Tahsildar, Land Reforms dated 03.12.1959 and confirmed by the Deputy Collector in a tenancy appeal by order dated 17.10.1962 are in the same line. Learned Divisional

Commissioner however in his impugned order had misconstrued the provisions of the Act of 1954, particularly Section 6, Section 2-A (1) (vi) read with Section 33 of the Act of 1954 and erroneously came to the conclusion that if tenant-Gopal is not declared as a protected tenant under Section 38-E though he is in possession of the suit lands, he would not get the occupancy rights. It is clear from the order passed by the Tahsildar so also the Deputy Collector in those proceedings that the certificate of protected tenant though granted in favour of tenant-Gopal came to be cancelled only for the reason that Section 38 cannot be made applicable since the enforcement of the Act of 1954.

16. In a case of Dattatray Sadashiv Dhond Vs. Ganpati Ranghu Gaoli (Supra), certain questions pertaining to the provisions of the Act of 1954 and the Act of 1950, were referred to the Full Bench of this Court consisting of H.K. Chainani, CJ, Y.V. Chandrachud and H.R. Gokhale, JJ. Question nos.1 and 3 are relevant for the present discussion.

“ (1) Whether in, cases, in which the inam was abolished with effect from July 20, 1955, under the Hyderabad Abolition of Inams and Cash Grants Act, 1954, and in which the inam land had been, leased, to a tenant before that date, the relationship of landlord and tenant continued to subsist between July 20, 1955, and July 1, 1960, and whether the provisions of the Hyderabad Tenancy and Agricultural Lands Act applied thereto ?

(3) Whether in order to be entitled to the rights of an occupant under Sections 5 or 6 of the Hyderabad Abolition of Inams and Cash Grants Act, as the case may be, the Inamdar or other person should have been, in possession of the land on July 20, 1955, or July 1, 1960?

17. In paragraph nos. 12, 13, 14 & 16 while answering reference no.1, the Full Bench has made the following observations:

“12. This view also appears to be in accordance with the object and scheme of the Act. The object of the Act as stated in the preamble was to provide for the abolition of inams and cash grants. The various provisions of the Act show that it was not intended to disturb the possession of the person, who was actually in possession, or to take possession from him. The Act has, therefore, provided for the grant of occupancy rights to the person in possession of the inam land. These occupancy rights could not be granted before July 1, 1960, when Sections 5 and 6 came into force. Till then the relationship between the inamdar and his tenant was allowed to continue and they could enforce mutual rights and obligations. The land holder could, therefore, make an application, for possession to the Tehsildar and the tenant was competent to surrender his tenancy rights.

13. The mutual rights and obligations were governed by the Tenancy Act before July 20, 1955. There is no dispute that this Act applied to inam lands other than service inam lands. Section 102 of the Tenancy Act, as it stood on July 20, 1955, provided that nothing in the preceding sections of the Act shall apply to lands leased by Government. It is not disputed before us that even after the inam was abolished, the inam land cannot be said to have been leased by Government to the inamdar's tenant, who was allowed to continue in possession. The Tenancy Act, therefore, continued to apply. "With

effect from June 8, 1958, Section 102 was replaced by Section 102A and some other sections. Clause (a) in Section 102A provides that nothing in the preceding provisions of the Act shall apply to lands leased or held by Government. The corresponding words in Section 88 of the Bombay Tenancy Act are "lands belonging to or leased by Government." The word "hold" is not denned in the Tenancy Act. Clause (z) in smb-s, (1) of Section 2 of the Tenancy Act states that words and expressions used in this Act but not defined therein shall have the meaning assigned to them in the Hyderabad Land Revenue Act. The expression "to hold" is denned in Section 2(vi) of the Land Revenue Act to mean to be lawfully in possession of land, whether such possession is actual or not. In many cases this Court has, therefore, taken the view that the word "held" implied possession of the person concerned, see *Ramjivam, Birdichand v. Pandu* (1961) Special Civil Application No. of 1960, decided by Chainani C.J. and Gokhale J., on March 1, 1961 (Unrep.) and *Deolal Bulakhi v. Eadu Tolaram*. . It has been contended by the learned Government Pleader that after the inam was abolished, the title to the inam land vested in Government and that consequently Government was in constructive possession of it with effect from July 20, 1955. The mutual rights and obligations of an inamdar and his tenant, which were saved by Clause (b) in Sub-section (2) of Section 3 read with Section 33, included a right to possession. After the abolition of the inam, the tenant, therefore, continued in possession not by reason of any authority or permission granted by Government, but because this right and. the inamdar's right to recover possession in accordance with law did not vest in. Government until July 1, 1960. The tenant was also liable to pay rent to the inamdar and not to Government, which was only entitled to receive land revenue. The scheme of the Act also shows that while the Act abolishes the inams, it does not provide for resumption of possession of the inam land. There is no provision in the Act empowering Government to resume possession or to evict the person in possession (except when occupancy price is not paid). Government cannot,, therefore, be said

to have been even in constructive possession of the inam land after July 20, 1955, when the inam, was abolished. The land cannot, therefore, be said to have been held by Government within the meaning of Clause (a) in Section 102A of the Tenancy Act. The operation of this Act was, therefore, not excluded with effect from June 8, 1958. The Act continued to apply till July 1, 1960, when under Clause (h) in Sub-section (2) of Section 3 the relationship between the inamdar and his tenant was¹ extinguished. The provisions of the Tenancy Act, under which a tenancy cannot be terminated except as provided in this Act, became inconsistent with the express provisions contained in Clause (h) of the Act, which extinguished the relationship between the inamdar and his tenant. The mutual rights and obligations of the inamdar and his tenant were no longer saved by Clause (b) in Sub-section (2) of Section 3 read with Section 33 of the Act and all rights, title and interest of both the inamdar and his tenant in the inam land thereafter vested in Government. From the same date the person in possession of the land became entitled to all the rights of an occupant under the Land Revenue Act.

14. The position, therefore, is that on July 20, 1955, all rights, title and interest in the inam land vesting in the inamdar and his tenant ceased and became vested in Government free from all encumbrances, except the mutual rights and obligations of the inamdar and his tenant under the Tenancy Act, which were saved for a limited period upto July 1, 1960. The inam, land lost its inam character and ceased to be governed by the special laws relating to inam lands previously applicable to it. The Land Revenue Act became applicable and the land became liable to payment of land revenue. The State acquired title to and proprietary rights in the land, but possession of the land was to continue with the tenant subject to his liability to pay rent to the inamdar and to the right of the inamdar to recover possession from him in accordance with law. This relationship between the inamdar and his tenant came to an

end on July 1, 1960, when the person in possession became entitled to the rights of an occupant under the Land Revenue Act.

15.

16. In regard to the second question, Sub-section (1) of Section 44 of the Tenancy Act provides that a landholder may after giving notice to the tenant and making an application for possession as provided in Sub-section (2), terminate the tenancy of any land, if the landholder bona fide requires the land for cultivating it personally. Sub-section (2) states that, the notice required to be given under Sub-section (1) shall be in writing and shall state the purpose for which the land holder requires the land and that an application for possession under Section 32 shall be made to the Tehsildar. Two things are, therefore, necessary for terminating a tenancy under Sub-section (1) :

(1) A notice must be given to the tenant stating that the landholder requires the land far cultivating it personally, and (2) the landholder must make an application for possession to the Tehsildar under Section 32 of the Act.

If these requirements are complied with, the tenancy stands terminated. Sub-section (2) of Section 32, provides that no landholder shall obtain possession of any land or dwelling house held by a tenant, except under an order of the Tehsildar, for which he shall apply in the prescribed form. A tenant is, therefore, entitled to continue in possession of the land until the Tehsildar has made an order for possession being restored to the landholder. It has, therefore, been urged that he continues to be a tenant until the Tehsildar has made his order. The manner in which a tenancy is to be terminated is, however, laid down in Section 44. Under this section the tenancy terminates when after giving the requisite notice the landholder makes an application for possession to the Tehsildar. Thereafter the tenant's possession is not unlawful, but it is not held

by him as a tenant. He has an estate in possession, which he will lose if the Tehsildar makes an order in favour of the landholder. If, however, the Tehsildar rejects the application of the landholder, the termination of tenancy by the landholder will become ineffective. The tenancy will revive and the tenant will continue in possession as if his tenancy had not been terminated. In this connection reference may be made to Sections 19 and 28. Section 19 provides for termination of a tenancy on other grounds, one of which is failure to pay rent within the prescribed time. The first proviso in Sub-section (2) states that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section, unless the landholder gives six months' notice in writing intimating his intention to terminate the tenancy and the grounds for such termination. Six months' notice as provided in this sub-section is, therefore, required for terminating a tenancy. Sub-section (1) of Section 28 is in the following terms:

(1) Where a tenancy of any land held by a tenant is terminated for non-payment of rent and the landholder files any proceeding to eject the tenant, the Tehsildar shall call upon the tenant to tender to the landholder the rent in arrears together with the cost of proceeding within ninety days from the date of the order, and, if the tenant complies with such order, the Tehsildar shall, in lieu of making an order of ejectment, pass an order directing that the tenancy has not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated.

The opening words of this sub-section make it clear that a proceeding to eject a tenant can be instituted after the tenancy has been terminated, that is to say, an application for possession can be made to the Tehsildar under Section 32 only after the tenancy has been terminated. A tenancy is, therefore, terminated by the notice given under Sub-section (2) of Section 19 and an order of the Tehsildar is not required for this purpose. In fact until the tenancy is terminated, the landholder does not get a right to possession of the

land. The words "as if the tenancy had not been terminated" at the end of the sub-section also imply that the tenancy had previously been terminated. Section 28, therefore, also shows that a tenancy is terminated by giving a notice to the tenant and that it does not continue until the Tehsildar has made an order for possession of the land.

18. While deciding point no.3 of the reference, the Full Bench in Paragraph No.22 has made the following observations:

“22. Our reply to the first question is, therefore, in the affirmative. The reply to the second question is that the tenancy terminates on the date on which the landholder makes an application for possession of the land to the Tehsildar as provided in Sub-section (2) of Section 44 of the Act, The reply to the third question is that possession as on July 1, 1960, should be considered for deciding who is entitled to the rights of an occupant. The reply to the fourth question is that the inamdar would be entitled to the rights of an occupant if a final order for possession had been made in his favour before July 1, 1960. He would also be so entitled if an order for possession was made before July 1, 1960, and if such order is not set aside in appeal or revision or other proceeding by a superior Court. Where, however, no order for restoration of the possession to the landholder had been made before July 1, 1960, or if the order for possession was subsequently set aside, the tenant would become the occupant with effect from July 1, 1960.”

19. In the case of State of Maharashtra Vs. Lazmen Abaji and Ors. (Supra) relied upon by the learned counsel for the petitioner, in Paragraph Nos. 17, 18 and 19, the Supreme Court has made the following observations:

“17. Section 4 of the 1956 Amendment Act provided for recovery of land revenue from the inamdar with effect from the date of publication of the 1955 Act, namely, 20 July, 1955. Section 4 of the 1956 Amendment Act was to remain effective and operative till the commencement of the provisions mentioned in section 1 (3) (b) of the 1955 Act, namely, 1 July, 1960. Section 4 of the 1956 Amendment Act provided for recovery of land revenue from the inamdar as if he were the occupant of such land. The words 'as if he were the occupant of such land' indicate that the inamdar was to be treated in possession of the inam. This was necessary because the grant of occupancy rights mentioned in sections 5 and 6 of the 1955 Act did not come into effect until 1 July, 1960. The dominant idea was to continue the relationship of landlord and tenant in respect of the inam land and to look to the inamdar only for land revenue by treating him to be an occupant.

18. Sections 4, 5, 6, 7 and 8 of the 1955 Act deal respectively with registration of inamdars, kabiz-e-kadim, permanent tenant, protected tenant and non-protected tenant as occupants. These occupancy rights under sections 4 to 8 could not be granted before 1 July, 1960 when those sections came into force. Upto 1 July, 1960 the mutual rights and obligations of the landlord and the tenant were preserved by providing inter alia in section 33 of the 1955 Act, the application of the Tenancy Act. Again, after the abolition of the inams by the 1955 Act the right of the landlord to be in possession was preserved. Similarly, the right of the tenant to continue in possession was preserved. Neither the right of the landlord nor the right of the tenant was any right which flowed from any authority or grant of the Government. These rights emanated from the protective provisions of the statute. It is because of the continuance of the mutual rights and obligations of the landlord and the tenant that section 4 of the

1956 Amendment Act recognised the inamdar "as if he were in occupation of the land" for the purpose of land revenue. This liability of the inamdar to pay land revenue was provided in order to enable the inamdar to enjoy all his rights including that of revenue in the inam land.

19. It may also be noticed here that although the scheme of the 1955 Act was to abolish the inams and to vest the land in the State, there was no provision in the Act empowering the Government to resume possession. The relationship between inamdar and his tenant came to an end on 1 July, 1960 when the State by reason of the coming into force of sections 4 to 8 of the 1955 Act granted occupancy rights to persons mentioned in those sections.

20. The Supreme Court in paragraph 23 has expressed an agreement with the decision as referred in the case of Dattatraya Sadashiv Dhand Vs. Ganpati Raghu Gaoli (Supra). It is thus clear that the crucial date for grant of occupancy rights under the Act of 1954 is 01.07.1960 when the entire Act of 1954 including in particular the provisions regarding grant of occupancy rights and clauses (d), (g), (h) and (i) of Section 3 (2) of the Act of 1954 came into effect. The Government became entitled to the possession of the land and also the Government became entitled to grant of occupancy rights. As on the same date, if the tenant claimed to be in possession of the land and the inamdar also claimed to be in possession, the Government will have to ascertain as to who was lawfully in possession

on the material date 01.07.1960.

21. In the instant case, by order dated 31.08.1961, learned Tahsildar, Udgir has conducted enquiry and gone through the relevant papers. It appears that those proceedings were initiated on account of the notice issued to Inamdar Nuruddin in terms of the provisions of Section 6 of the Act of 1954 in respect of the suit lands. Though the learned Tahsildar, Udgir has in brief recorded the dispute amongst the Inamdar, however, specifically noted that the Inamdar Nuruddin has accepted the tenancy of tenant-Gopal in respect of the suit lands. It has also been observed in the order that in terms of *pahani patrak*, except the land Survey Nos. 80 and 81, tenant-Gopal was in possession as a tenant in respect of the suit lands on 1954-1955 and even prior to that and also till date of passing of the order. Thus learned Tahsildar, by order dated 31.08.1961 has also held that tenant-Gopal is entitled for occupancy rights in terms of the provisions of Section 2-A of the Act of 1954.

22. In terms of the provisions of Section 2-A (1) (vi), if any question arises as to whether any person is a kabiz-e-kadim, permanent tenant or tenant, the State Government or an officer authorised by that Government shall decide the question. In terms of sub-section 2, if such question is

decided by an officer so authorized by the State Government, any person aggrieved by such decision may file an appeal to the State Government within ninety days from the date of such decision. In terms of sub-section 3 of Section 2-A, even the revisional powers have also been conferred upon the State Government in case the appeal is not preferred within one year. It is nowhere specified in Section 2-A that the Collector is only empowered to decide the question in terms of sub-section 1 clause (i) to (vi).

23. In a case of Dattaray Sadashiv Dhond Vs. Ganpati Ranghu Gaoli (Supra) and even in the case of the State of Maharashtra Vs. Lazmen Abaji and Ors. (Supra), in the facts of those cases, learned Tahsildar has conferred occupancy rights on the tenant in terms of the provisions of Section 2-A (1) (vi) of the Act of 1954.

24. In the instant case, I do not find that Inamdar Nuruddin, after the order passed by the Tahsildar dated 31.08.1961, had preferred any appeal to the State Government in terms of sub-section 2 of Section 2-A or the State Government has exercised power of Revision in terms of sub-section 3 of Section 2-A in absence of any appeal preferred by the parties.

25. It is necessary to take a note of Government's circular dated 20.11.1969 placed on record by the counsel for the petitioner marked at Exhibit-I. In this circular, reference has been given to the earlier delegated powers to all Tahsildars in Aurangabad Division and further by the aforesaid circular dated 20.11.1969, those powers are delegated to the Assistant/Deputy Collectors. By way of the said circular, it is directed that all the pending cases with the Tahsildars would stand terminated and these cases will have to be decided by the Assistant / Deputy Collectors.

26. In view of the ratio laid down by the Full Bench of this Court and also by the Supreme Court in the cases as referred above and in view of discussion made herein above, the impugned order passed by the learned Divisional Commissioner is liable to be quashed and set aside. Hence, I proceed to pass the following order:

ORDER

- (i) The writ petition is hereby allowed in terms of prayer clause B.
- (ii) Rule is made absolute in the above terms.
- (iii) The writ petition is, accordingly, disposed of.

(vi) In view of disposal of writ petition, pending civil applications are disposed of.

27. Learned counsel for the applicant in Civil Application No. 12857 of 2018 submits that the effect of this order may be stayed for eight weeks so as to enable the applicant to approach the Supreme Court. I have also heard learned counsel appearing for the petitioner. However, considering that the matter pertains to tenancy and it is quite old matter, I am not inclined to stay the effect of this order. Request refused.

(V. K. JADHAV, J.)

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