

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.126 OF 1993

Smt. Gangubai w/o Tukaram Garad,
Deceased through L.Rs.

1. Balasaheb s/o Krishna @ Kishanrao Mhaske,
Age : Major, Occu. Agri.,
R/o. Pathra, Tal. Dist. Parbhani.
2. Shivaji s/o Krishna @ Kishanrao Mhaske,
Age : Major, Occu. Agri.,
R/o. Pathra, Tal. Dist. Parbhani.
3. Smt. Dharubai @ Mathurabai Kishanrao Mhaske,
Deceased through L.Rs.

3/1] Balasaheb s/o Kisanrao Mhaske,
Age : 65 years, Occu. Agril.,

3/2] Shivaji s/o Kisanrao Mhaske,
Age : 62 years, Occu. Agril.,

3/3] Subhash s/o Kisanrao Mhaske,
Age : 58 years, Occu. Agril.,

3/4] Ashok s/o Kisanrao Mhaske,
Age : 54 years, Occu. Agril.,

3/5] Dyaneshwar s/o Kisanrao Mhaske,
Age : 40 years, Occu. Agril.,

All R/o Raipur,
Taluka and District Parbhani. ... **Petitioners**

Versus

Mahadu s/o Gangaram (expired)
through L.Rs.

1. Prayagbai Mahadu (expired)
through L.Rs.

- 1A) Prakash s/o Mahadu Garad,
Age : 28 years, Occu. Agril.,
R/o Pathra, Tq. District Parbhani.
- 1B) Jijabai d/o Mahadu Garad,
Age : Major, Occu. Agril.,
R/o Bramhapuri, Tq. District Parbhani.
- 1C) Santoba @ Santra s/o Gangaram Garad,
since deceased through L.Rs.
- 1C-1. Vithal Santoba Garad, Age : Major,
1C-2. Sopan Santoba Garad, Age : Major,
1C-3. Dnyanoba Santoba Garad, Major,
All above R/o Pathra, District Parbhani.
- 1D) Anusayabai w/o Bapu Mhaske,
Age : Major, Occu. Agril.,
R/o Raipur, Taluka and District Parbhani.
2. Member, Maharashtra Revenue Tribunal,
Aurangabad.
3. The Tahsildar, Parbhani. ... **Respondents**

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Mr. E.P. Sawant, Advocate for Petitioners.
Mr. A.S.Shinde, AGP for Respondent Nos.2 & 3.
Mr. S.S.Deshmukh, Advocate for Respondent Nos.1A & 1B, C-1
to C-3.

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CORAM : V. K. JADHAV, J.

RESERVED ON : 16.01.2020

PRONOUNCED ON : 27.04.2020

JUDGMENT :-

1. The petitioner deceased Gangubai is the original
landlady. Petitioner Nos.1 to 3 are the legal heirs of deceased

Gangubai landlady and also purchased the land in dispute from deceased Gangubai in the year 1973. Respondent Nos.1A to 1C are the legal heirs of the original tenant Mahadu and respondent Santoba @ Santra, who is the brother of deceased tenant. According to the petitioners, deceased Gangubai was having 63 acres and 16 gunthas of land in toto and out of the said total holding of 63 acres and 16 gunthas of land, the tenancy authorities declared the land survey Nos.19 and 20 of village Dastapur to the extent of 21 acres in favour of one Tenanat, Krushna S/o Chimnak of village Dastapur on 25.05.1957. According to the petitioners, the said declaration was made in favour of Tenant Krushna under Section 38-E and after completing the required procedure, a certificate under Section 38-E (6) was issued to the declared tenant. Even by effecting panchnama dated 05.10.1971, the possession of the said land was also delivered to the said tenant. According to the petitioners, the tenancy record of village Dastapur shows the name of Krushna as a declared owner under Section 38-E treating the deceased Gangubai as a land owner. According to the petitioners, however, again the tenancy authority declared the name of respondent Mahadu s/o Gangaram as a declared

tenant treating deceased Gangubai as a original owner in respect of the land survey No.30-B and 36-KH of village Pathra Taluka and District Parbhani to the extent of 13 acres, 3 gunthas. The deceased Gangubai was the maternal grandmother of petitioner Nos.1 and 2 and also the petitioners had purchased the land survey No.30-B and 36-KH from deceased Gangubai. Being aggrieved by the said declaration and subsequent proceedings of the said declaration, the petitioners have preferred an appeal before the Deputy Collector, Land Reform, Parbhani bearing Case No.77/TNC/A/89. The learned Deputy Collector, Land Reform, Parbhani by judgment and order dated 28.02.1983, allowed the appeal, set aside the declaration made under Section 38-G of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (herein after called as 'Hyderabad Tenancy Act, 1950') from the land Survey No.30-B and 36K of village Pathra in favour of the respondents. Being aggrieved by the same, the respondents have preferred a revision petition bearing file No.115/B/63/P before the Maharashtra Revenue Tribunal, Aurangabad and the learned Member by Judgment and order dated 16.01.1986, partly allowed the said revision petition, set aside the order of

the Appellate Court and remanded the matter to the Deputy Collector, Land Reform, Parbhani permitting the petitioners herein to adduce the evidence to the extent of final declaration in favour of Krushna and to verify the holding of the landlady and decide the matter afresh. After remand, the Deputy Collector Land Reform, Parbhani by impugned order dated 18.07.1989, confirmed the declaration of Mahadu and Santoba s/o Gangaram R/o Pathra, Parbhani, as a owner, under Section 38-G on the notified date i.e. on 26.01.1965 of the Hyderabad Tenancy Act, 1950 in respect of land survey No.30-B and 36KH. Being aggrieved by the same, the petitioners herein have preferred revision No.6/B/92-P and by judgment and order dated 03.11.1992, the learned designated Member of Maharashtra Revenue Tribunal, Aurangabad dismissed the revision and confirmed the order passed by the Deputy Collector, Land Reform, Parbhani dated 18.07.1989. Hence, this Writ Petition.

2. The learned counsel for the petitioners submits that the impugned judgment passed by the Deputy Collector, Land Reform, Parbhani dated 18.07.1989 and the judgment passed by the learned designated Member, Maharashtra Revenue

Tribunal, Aurangabad, dated 03.11.1992 are contrary to the provisions of the law and the available record. The learned counsel submits that both the courts below have failed to consider the relevant record of the declaration under Section 38-E in favour of Tenant Krushna. The learned counsel submits that total holding of landlady deceased Gangubai was 63 acres and after deducting the declared land under Section 38-E to the extent of 21 acres, out of the land Survey Nos.19 and 20 of village Dastapur in favour of Krushna of village Dastapur on 25.05.1957, the land remained with landlady deceased Gangubai is less than two family holdings and hence second declaration is not sustainable in the eyes of law. The learned counsel submits that initially by judgment and order dated 28.02.1983, the Deputy Collector, Land Reform, Parbhani has allowed the appeal filed by the petitioners and thereby quashed and set aside the declaration made under Section 38-G of the Hyderabad Tenancy Act, 1950 in respect of the suit land survey No.36KH of village Pathra in favour of the present respondents. By judgment and order dated 16.01.1986 in revision file 115/B/63/P, the learned designated Member of Maharashtra Revenue Tribunal, Aurangabad has remanded the

matter to the Deputy Collector, Land Reform, Parbhani with the observations and by the specific directions. The learned designated Member while remanding the matter to the Deputy Collector, Land Reform, Parbhani has specifically observed that there was no proper inquiry about the earlier declaration remaining intact and the final holding available at the time of notification under Section 38-G of the Hyderabad Tenancy Act, 1950. The learned counsel submits that the petitioners herein also permitted to adduce the evidence about the extent of final declaration in favour of the said Krushna, however, by impugned order dated 18.07.1989, the Deputy Collector, Land Reform, Parbhani without making any further inquiry as directed in the remand order, confirmed the order passed by the Tenancy Authority in respect of the declaration under Section 38-G in favour of the respondents herein. The learned counsel submits that in terms of the provisions of Section 38-E, a certificate has been issued in favour of the Krushna as a protected tenant and the subsequent declaration under Section 38-G(1), when the total holdings of deceased Gangubai was less than two family holdings, the same is in contravention of Section 37-A. The learned counsel for the petitioners also

pointed out the Annexure Exh-A collectively. The Annexure Exh-A pertains to the certificate under Section 38-E granted in favour of legal heir of Krushna namely Devidas as a protected tenant in respect of the land survey No.19-B owned by deceased Gangubai and also the panchnama about the delivery of possession to the said protected tenant. The learned counsel submits that this writ petition deserves to be allowed by setting aside the impugned orders.

3. The learned counsel for the respondents submits that after the remand, the learned Deputy Collector, Land Reform gone through all the papers on record and re-examined the case papers. The learned Deputy Collector has seen the certified copy of the final list dated 07.05.1971 of the declaration of Shri. Krushna resident of Dastapur, however, the learned Deputy Collector has further noted that no order of final declaration appears and it also does not show the date of the final declaration. The learned Deputy Collector, therefore, held that the said declaration is void and cannot be taken into consideration. The learned Deputy Collector has also examined the documents pertaining to the final holding of deceased Gangubai and as per certified copy of Lavni Patra in Namuna

No.6 of village Pathra and Dastapur and at the time of notification under Section 38-G of the Hyderabad Tenancy Act, 1950, recorded the finding about the availability of the total land admeasuring 63 acres and 16 gunthas. The learned Deputy Collector therefore held that out of the above holding, only 13 acres and 13 gunthas land has been declared under Section 38-G to deceased Mahadu and Santoba S/o Gangaram and the same is in accordance with the provisions of the Act of Hyderabad Tenancy Act, 1950 and the rules made thereunder. The learned Deputy Collector has recorded that the holding of deceased Gangubai was more than two family holdings of the land, after this declaration under Section 38-G. The learned counsel submits that the learned designated Member of the Maharashtra Revenue Tribunal has confirmed the well reasoned order passed by the Deputy Collector, Land Reform, Parbhani dated 18.07.1989. The learned counsel submits that so far as the declaration under Section 38-E is concerned, no appeal has been provided. It is well established principle of law that when a statute creates a legal fiction, then full effect has to be given to the legal fiction created by the statute. The learned counsel submits that by relying on fresh materials

which was not before the Tribunal, there is no reason to disturb the findings of facts in exercise of such supervisory jurisdiction. The learned counsel submits that the Writ Petition is liable to be dismissed.

4. The learned counsel for the respondents in order to substantiate his contention placed reliance on following two cases :

- (i) Bharatlal S/o Hemraj Vs. Kondiba Govinda Jadhav and others reported in 2001(3) Mh.L.J. 380.
- (ii) Rena Drego Vs. Lalchand Soni and others reported in (1998) 3 Supreme Court Cases 341.

5. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the appeal memo, annexures thereto and the reply filed by the respondents.

6. On perusal of the record, it appears that initially by order dated 28.02.1983 in case No.77/TNC/A/89, the learned Deputy Collector, Land Reform, Parbhani has allowed the appeal and quashed and set aside the declaration made under

Section 38-G of the Hyderabad Tenancy Act, 1950 from the suit land Survey No.30-B, 36KH of village Pathra in favour of the present respondents. However, in the revision preferred by the respondents, the learned designated Member of the Maharashtra Revenue Tribunal, Aurangabad by order dated 16.01.1986 remanded the matter with certain observations and directions. The learned designated Member has made the observations as follows :

"Any how, as I am of the opinion that there was no proper inquiry about the earlier declaration remaining in tact and the final holding available at the time of notification under Section 38-G of the Hyderabad Tenancy Act, I have no other alternative but to remand the case for proper inquiry."

7. The learned designated Member of Maharashtra Revenue Tribunal, Aurangabad has accordingly partly allowed the revision petition, set aside the order passed by the Deputy Collector, Land Reform dated 28.02.1983 and permitted L.Rs. of deceased Gangubai (petitioners herein) to adduce the evidence about the extent of final declaration in favour of Krushna. On perusal of the impugned order, after remand, dated 18.07.1989 passed by the Deputy Collector, Land

Reform, it appears that in stead of making an inquiry and permitting the petitioners herein to adduce the evidence to the extent as directed by the revisional Court, the learned Deputy Collector has again gone through the certified copy of the final list of the declaration without calling and inspecting the original record pertaining to the declaration in favour of the Krushna resident of Dastapur. The learned Deputy Collector though observed from the certified copy that there is a declaration under Section 38-E in favour of Krushna R/o Dastapur to the extent of the land survey Nos.19 and 20, admeasuring 21 acres and further observed that despite the objections raised by landlady Gangubai, the said declaration under Section 38-E in favour of Krushna R/o Dastapur has been made, ignored the said declaration on the ground that no order of final declaration appears and the same also does not show the date of the final declaration. I do not think that the learned Deputy Collector after remand has made the inquiry and inspected the original record pertaining to the declaration under Section 38-E made in favour of the said Krushna. It is the part of the record in the form of Annexure to the Writ Petition that the certificate under Section 38-E declaring said

Krushna, as a owner came to be issued and in terms of provisions of Section 38-E, said certificate shall be conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the land holder and all other persons having interest therein. It thus appears that the learned Deputy Collector has not followed the specific directions given by the Maharashtra Revenue Tribunal. Furthermore, only on the basis of Namuna No.6 of Village Pathra and Dastapur, the learned Deputy Collector has considered the total holdings of deceased Gangubai. It is true that by relying on fresh materials, the High Court should not disturb the findings of facts in exercise of such supervisory jurisdiction. However, the conclusion drawn by the Deputy Collector, Land Reform without conducting an inquiry and inspecting the original record appears to be perverse and unreasonable. Thus, this Court left with no other choice but to remand the matter to the Deputy Collector, Land Reform, Parbhani to decide the matter afresh after conducting an inquiry into the certificate under Section 38-E in favour of Krushna pertaining to the land Survey No.19 and 20 owned by deceased Gangubai at village Dastapur and

to inspect the original record. The petitioners have also permitted to adduce the documentary evidence to that extent only. Hence, I proceed to pass the following order :

ORDER

1. The Writ Petition is hereby partly allowed.
2. The impugned judgments and orders passed by the Deputy Collector, Land Reform, Parbhani, dated 18.07.1989 and the learned Designated Member, Maharashtra Revenue Tribunal, Aurangabad, dated 03.11.1992 are hereby quashed and set aside.
3. The matter is remanded to the Deputy Collector, Land Reform, Parbhani to decide it afresh with the following directions :
 - (i) Restore the Revision No.6/B/92-P to its original position.
 - (ii) The learned Deputy Collector, Land Reform, Parbhani shall conduct the inquiry about the earlier declaration under Section 38-E in favour of Krushna pertaining to the land survey No.19 and 20 situated at village Dastapur owned by deceased

Gangubai and the final holding available at the time of impugned notification under Section 38-G of the Hyderabad Tenancy Act, 1950.

(iii) Both the parties shall permitted to adduce the documentary evidence in support of their rival contentions to the extent of the said aspect of declaration in favour of Krushna.

(iv) The parties shall appear before the learned Deputy Collector, Land Reform, Parbhani on 08.06.2020.

(v) The learned Deputy Collector, Land Reform shall decide the matter, as expeditiously as possible, preferably within a period of six (6) months from the date of appearance of the parties.

4. The Writ Petition is accordingly disposed off.
5. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

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