

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

**WRIT PETITION NO.341 OF 2014**

Nilesh S/o Ravindra Varode,  
Age : 35 years, Occu. Service & Business,  
R/o. Near old Mamaldar Kacheri,  
Taluka Kopargaon,  
District Ahmednagar. ... **Petitioner**

Versus

1. The State of Maharashtra,  
Through the Secretary  
Revenue Department, Mantralaya,  
Mumbai – 32.
2. The Tahsildar,  
Rahata, Taluka Rahata,  
District Ahmednagar.
3. The Sub Divisional Officer,  
Shrirampur, Taluka Shrirampur,  
District Ahmednagar.  
Now residing at the new office  
of Sub Divisional Officer,  
Shirdi, Taluka Rahata,  
District Ahmednagar.
4. Anil Pritamdas Hothchandani,  
Through G.P.A. Deepak Revachand Narayani,  
Age : 45 years, Occu. Business,  
R/o Shirdi, Taluka Rahata,  
District Ahmednagar.
5. Ashokkumar Arjundas Panchwani,  
Age : 55 years, Occu. Business,  
R/o 401, Daffodils Annexe,  
Plot No.1-1 & 1-2 Sector – 14,  
Vashi, New Mumbai 400 703.

6. Shankar Ashokkumar Panchwani,  
Age : 35 years, Occu. Business,  
R/o 401, Daffodils Annexe,  
Plot No.1-1 & 1-2 Sector – 14,  
Vashi, New Mumbai 400 703.
7. Dayalchand Murchand Gurnani,  
Age : 66 years, Occu. Business,  
R/o 99, National Park,  
Lajpatnagar IV,  
New Delhi 110 024.

... **Respondents**

...

Mr. R.A.Tambe, Advocate for Petitioner.

Mr. A.B.Chate, AGP for Respondents-State.

Mr. R.M.Joshi, Advocate for Respondent No.4.

Mr. V.D.Sapkal h/f Mr. Youraj Choudhari, Advocate for  
Respondent Nos.5 to 7.

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**CORAM : V. K. JADHAV, J.**

**RESERVED ON : 03.12.2019**

**PRONOUNCED ON : 02.01.2020**

**JUDGMENT :-**

1. Heard finally at admission stage by consent. Rule. Rule made returnable forthwith.

2. Being aggrieved by the judgment and order passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad dated 19.12.2013 in case No.57/B/2013/AN, the

original applicant preferred this Writ Petition.

3. Brief facts giving rise to the Writ Petition are as follows :

Respondent No.4 had purchased the land Gut No.30/1 admeasuring 21 R. situated at village Nimgaon, Korhale, Taluka Rahata, District Ahmednagar, under the registered sale deed on 23.01.2009. In view of the restrictions, on transfer of the agricultural lands under the provisions of Section 63 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (herein after referred to as 'Tenancy Act'), respondent No.4 has produced the 7/12 extract of Gut No.465 situated at village Rui, Taluka Rahata, District Ahmednagar and also the certified copy of the sale deed to prove that he is an agriculturist. So far as the said sale deed pertaining to the land situated at village Rui, Taluka Rahata, District Ahmednagar as stated above, respondent No.4 had submitted the proof of the 7/12 extract of Gut No.112/4 to show and prove that he had purchased the land admeasuring 30 R., Pot Kharaba 0.06, total 36 R. at village Jambhulpada, Taluka Sudhagad, District Raigad. So far as the purchase of the said land at village Jambhulpada, Taluka Sudhagad, District Raigad as mentioned above, respondent

No.4 had produced the certificate issued by the Tahsildar, District Akola to show that he had purchased the land Survey No.188/2 at village Derwan, Taluka Akola, District Akola. The petitioner wanted to purchase the agricultural land in Rahata Taluka, more particularly in village Nimgaon and as such he was in search of the agricultural lands for same. During the said search, it has come to the knowledge of the petitioner that respondent no.4 had purchased the land Gut No.30/1 by producing false and bogus documents and on the basis of those documents pretended to be an agriculturist. According to the petitioner, respondent No.4 is not an agriculturist and he is an agent in the sale and purchase of the agricultural properties. Thus, the petitioner has submitted an application before respondent No.2 – Tahsildar, Rahata requesting the Tahsildar to conduct an inquiry into the matter. The learned Tahsildar, Rahata – respondent No.2 has issued notice to respondent No.4 and also collected the information suo motu from the Tahsildar, Sudhagad, District Raigad and also from the Tahsildar, Akola in respect of the various transactions of the agricultural lands as referred above entered with by respondent No.4. The learned Tahsildar, Sudhagad by communication dated 17.09.2012 has

informed to respondent No.2, Tahsildar Rahata that respondent No.4 along with one Mangesh Yashwant Wadhavkar had purchased the land Gut No.112/4, admeasuring 36 R., situated at village Jambhulpada, Taluka Sudhagad vide mutation entry No.1380, dated 19.11.2004 and while purchasing the said land respondent No.4 had submitted the proof of his being agriculturist, the certificate issued by Tahsildar, Akola about the land Survey No.188/2, area 1.07 hector R. situated at Mouza Derwan, Taluka Akola, District Akola standing in the name of respondent No.4. The learned Tahsildar Sudhagad has also informed that so far as the land purchased at village Jabhulpada by respondent No.4 along with one Mangesh Yashwant Wadhavkar, respondent No.4 and said Mangesh Wadhavkar sold the said land to one Manmohan Singhvi, Abhay Manharlal Doshi and Mahendra Maniklal Shaha vide mutation entry No.1417, dated 27.10.2005 and as such, since 01.10.2005 there is no land in the name of respondent No.4 at village Jambhulpada, Taluka Sudhagad. In response to the communication sent to the Tahsildar, Akola, the Tahsildar Akola has informed to respondent No.2 – Tahsildar, Rahata that the said village Derwan which has been referred in

the communication, is not in existence so far as the 199 villages included in Akola Taluka.

4. On receipt of the said information, the Tahsildar, Rahata by judgment and order dated 30.01.2013 in terms of the provisions of Section 63 read with Section 84 (C) declared that the transfer / acquisition of the land Gut No.30/1 situated at village Nimgaon, Korhale, Taluka Rahata, District Ahmednagar is invalid.

5. Being aggrieved by the same, respondent No.4 has preferred Tenancy Appeal No.2 of 2013 before the Sub Divisional Officer, Shrirampur and the learned Sub Divisional Officer, Shrirampur by judgment and order dated 06.07.2013 dismissed the appeal and confirmed the order passed by the Tahsildar, Rahata dated 30.01.2013. It is to be mentioned here that during the pendency of the said proceedings the said land was converted into a non-agricultural land vide order dated 20.12.2011 passed by the District Collector, Ahmednagar. Being aggrieved by the said order passed by the Sub Divisional Officer, respondent No.4 has preferred the revision No.57 of 2013 before the Maharashtra Revenue Tribunal, Aurangabad

and the learned Member of the Maharashtra Revenue Tribunal, Aurangabad by judgment and order dated 19.12.2013 allowed the revision application, quashed and set aside the orders passed by both the authorities. The learned Member of the Maharashtra Revenue Tribunal, Aurangabad has allowed the revision on the grounds that the petitioner has no *locus standi* to initiate the proceedings and even if it is considered that the Tahsildar has taken the action suo-motu, the said action was not taken in a reasonable period. Hence, this Writ Petition.

6. The learned counsel for the petitioner submits that the petitioner has filed an application before respondent No.2 – Tahsildar, Rahata expressing his doubts about the status of respondent no.4 as an agriculturist and the learned Tahsildar, Rahata has collected the information from Tahsildar, Sudhagad so also from Tahsildar Akola on his own. In fact the petitioner was not knowing as to the documents submitted by respondent No.4 in his earlier transactions to substantiate his claim as an agriculturist. The learned counsel, thus submits that in terms of the provisions of Section 84(C) of the Tenancy Act, the learned Tahsildar, Rahata seems to have carried out the suo motu inquiry and as such the *locus standi* of the petitioner

loses its significance. The petitioner may not be a person interested in such land. However, the Tahsildar, Rahata has conducted the inquiry as contemplated under Section 84 (C) of the Tenancy Act to find out whether such transfer or acquisition of the land was in contravention of Section 63 of the Tenancy Act.

7. The learned counsel for the petitioner submits that the said village Derwan is not in existence at all and so also the certificate said to have been issued by the Tahsildar, Akola about the land standing in the name of respondent No.4 at village Derwan is apparently a false and bogus certificate. In terms of the communication made by the Tahsildar Akola, the said village Derwan is not in existence and it is not the part of the Akola Taluka. The learned counsel submits that even during the pendency of this Writ Petition, this Court has directed respondent No.4 to place on record the documents with regard to the land standing in the name of respondent No.4 at village Derwan, Taluka Akola, District Akola and also any other document to indicate that the village Derwan is in existence though may not be a part of Akola Taluka. However, respondent No.4 has not placed any document either before

the authorities below to substantiate his contention about his status as an agriculturist nor before this Court. Furthermore, so far as the suit land purchased at village Nimgaon, Korhale, Taluka Rahata is concerned, respondent No.4 has placed the documents pertaining to the land purchased at village Jambhulpada, Taluka Sudhagad, District Raigad by suppressing the material fact that in the year 2005 itself he had sold the said land to some other persons and as such he had no land at village Jambhulpada, Taluka Sudhagad, District Raigad. The learned counsel for the petitioner submits that by playing fraud and preparing a false documents of having land at village Derwan in Taluka Akola, when the said village is not in existence, respondent No.4 had purchased the land at village Jambhulpada, Taluka Sudhagad, District Raigad and on suppression of the fact that on the date of purchase of the suit land at village Nimgaon, Korhale, Taluka Rahata, District Ahmednagar, the said land allegedly purchased by him at village Jambhulpada was already sold, respondent No.4 had purchased the suit land. The learned counsel for the petitioner submits that the Tahsildar Rahata has rightly declared the said transaction or acquisition as invalid in terms of the provisions

of Section 63 read with Section 84(C) of the Tenancy Act, which is confirmed by the Sub Divisional Officer, Shrirampur. The learned counsel for the petitioner submits that 'FRAUD' as is well known vitiates every solemn act. 'FRAUD' and 'JUSTICE' never dwell together. The learned counsel submits that the reasonable time always depends on the circumstances of the case. In the instant case, only upon the information collected by the Tahsildar, Rahata on its suo motu initiations, the fraud played by respondent No.4 has been revealed. The learned counsel submits that the approach of the learned Member of the Maharashtra Revenue Tribunal applying the ratio laid down by the Supreme court in a case *Mohd. Kavi Mohd. Amin Vs. Fatmabi Ibrahim ; (1997) 6 Supreme Court Cases, 71* which is also relied upon by the Single Judge of this court in a case *Appa Dadu Patil Vs. Sate of Maharashtra ; (2011) 2 Maharashtra Law Journal, 739*, as a straight jacket formula without taking a note of the fraud played by respondent No.4, is not proper, correct and legal. The learned counsel submits that the Writ Petition thus deserves to be allowed by setting aside the order passed by the Maharashtra Revenue Tribunal, Aurangabad and the orders passed by the authorities below

deserves to be confirmed.

8. The learned counsel for respondent No.4 submits that the petitioner is unnecessarily targeting respondent No.4. In fact the petitioner is not an author of all those proceedings and one builder in a Shirdi vicinity is the author and person behind it. The learned counsel submits that in respect of the sale deed executed on 23.01.2009, the petitioner has filed the application / complaint on 02.05.2012. The learned counsel submits that respondent No.4 and one Becharbhai had purchased the land Gut No.30/1 under the registered sale deed dated 23.01.2009. At the time of purchase of the suit land, respondent No.4 was an agriculturist owned and possessed the land Gut No.112/4 admeasuring 36 R. situated at Jambhulpada, Taluka Sudhagad, District Raigad, which is sold on 27.10.2008. The learned counsel submits that the petitioner is not an interested person as contemplated under Section 84(C) and as such he has no *locus standi*. The learned counsel submits that the Maharashtra Revenue Tribunal, Aurangabad has rightly considered that the petitioner has no *locus standi* to file a complaint before the Tahsildar, Rahata and further even assuming that the said proceedings initiated

by Tahsildar, Rahata suo motu are not within the reasonable time. The learned counsel submits that the Maharashtra Revenue Tribunal, Aurangabad has thus rightly placed the reliance in a case *Mohd. Kavi Mohd. Amin Vs. Fatmabi Ibrahim reported in (1997) 6 Supreme Court Cases, 71* and in case *Appa Dadu Patil Vs. Sate of Maharashtra ; (2011) 2 Maharashtra Law Journal, 739*. The learned counsel submits that the inquiry conducted by the Tahsildar, Rahata was an ex-parte inquiry and respondent No.4 had no opportunity to contest the said proceedings. The learned counsel submits that so far as the Tenancy Appeal No.2 of 2013 preferred before the Sub Divisional Officer, Shrirampur is concerned, respondent No.4 has filed an application on 22.06.2013 contending therein that one builder is having evil eye on the suit land and the said builder is having good contacts in the ministry. The said builder is behind the petitioner. Respondent No.4 has expressed his concern and fear that the learned Sub Divisional Officer may come under pressure. Respondent No.4 has also expressed his apprehension of passing of an adverse order and thus communicated to the learned Sub Divisional Officer that he will not attend the case on 24.06.2013 when the matter is

kept for final order. The learned counsel submits that the Maharashtra Revenue Tribunal, Aurangabad has rightly considered the issues and decided the matter in favour of respondent No.4.

9. The learned counsel for respondent No.4 submits that the petitioner has filed an application / complaint before the Tahsildar Rahata on 02.05.2012, however, the Collector, Ahmednagar by his order dated 20.12.2011 had granted permission to use the land for non agricultural purposes. Thus, the suit land at the time of the so called inquiry by the Tahsildar, Rahata was not an agricultural land. It was not necessary to take the permission for purchase of the land. Even Tahsildar, Rahata was knowing about the pending proceedings of the permission to convert the suit land for non-agricultural purposes. The learned counsel submits that the suit land was already put to an use for non-agricultural and commercial purposes since 20.12.2011. The learned counsel submits that there is no substance in the Writ Petition and the Writ Petition is thus liable to be dismissed.

10. The learned counsel for respondent Nos.5 to 7 submits

that this Writ Petition has been filed and persuaded by the petitioner with dishonest intention to achieve the desired end / result. The District Collector, Ahmednagar by order dated 20.12.2011 has accorded the permission to convert the suit land bearing Gut No.30/1 upto the extent of 4200 square meter into commercial non-agricultural use, pursuant to the application filed by the joint owners including respondent No.4. The learned counsel submits that it is well settled that a person approaching the High Court under Article 226 or 227 of the Constitution of India has necessarily plead all the material facts and cannot pick and choose the facts at his own will. It is thus a duty casts on the petitioner to plead all the necessary facts, however, the petitioner has not referred the said order about the conversion of the suit land for non-agricultural purposes passed by the Collector, Ahmednagar, dated 20.12.2011. The petitioner has not approached to Court with clean hands. The learned counsel submits that the subject matter of the present dispute is a commercial non agricultural land bearing Gut No.30/1 admeasurring 21 R. Respondent Nos.5 to 7 are the purchasers under the registered sale deed dated 08.02.2013 for a valuable consideration. The petitioner

herein has also carried out the amendment in the Writ Petition by adding the prayer that the sale deed dated 08.02.2013 executed in their favour be declared as bogus. The petitioner is not entitled for any of the reliefs. The learned counsel submits that the petitioner vide his application dated 02.05.2012 has objected the said transaction of 23.01.2009. It is thus, amply clear that after lapse of more than 3 years, the petitioner, who has not at all any way concerned with the said land, objected the said transaction by filing an application before the Tahsildar, Rahata contending therein that the said sale deed violates the provisions of the Tenancy Act. It is pertinent that at any point of time, no objection has been raised against the joint owner namely Becharbhai Bodhabhai Ahir nor the said joint owner has been added as a party to the revenue proceedings. Thus, the entire proceedings stands vitiated for non joinder of necessary parties. In view of the permission granted by the Collector, Ahmednagar, dated 20.12.2011 for conversion of the agricultural land into commercial non-agricultural, the provisions of the Tenancy Act, 1944 are inapplicable. In view of the same, the present Writ Petition itself is not maintainable. The learned counsel

submits that respondent Nos.5 to 7 had purchased the said land on 08.02.2013 from respondent No.4 by paying a huge consideration amount of Rs.1,48,40,000/- (Rupees one crore fourty eight lakhs and fourty thousand only) when the land was already converted into commercial non-agricultural purposes on 20.12.2011. Respondent Nos.5 to 7 are added as respondents in this Writ Petition for the first time. They have no concern with the sale deed dated 23.01 2009, which was objected by the petitioner by filing application on 02.05.2012 after a delay of more than three years. The learned Tahsildar has exercised the powers after the lapse of three years. The respondents are the bonafide purchasers. They have invested huge amounts for purchase of the said land. They will suffer huge financial loss if the petition is allowed. There is no substance in this Writ Petition and the petition is thus liable to be dismissed.

11. I have also heard the learned AGP for the respondents-State.

12. In the instant case, the learned Tahsildar after holding such an inquiry as contemplated under Section 84(C) of the

Tenancy Act declared the transfer or acquisition of the land by respondent No.4 as invalid. The learned Tahsildar has held that the said transfer or acquisition of the land is in contravention of the provisions of Section 63 of the Tenancy Act.

13. Respondent No.4 herein had purchased the land 30/1 admeasuring 21 R. situated at village Nimgaon Korhale, Taluka Rahata, District Ahmednagar under the registered sale deed dated 23.01.2009 (herein after called as 'suit transaction'). Respondent No.4 had produced 7/12 extract of Gut No.465 situated at village Rui, Taluka Rahata, District Ahmednagar and also the certified copy of the sale deed to prove that he is an agriculturist. So far as the said sale deed pertaining to the land situated at village Rui, Taluka Rahata, District Ahmednagar, as stated above, respondent No.4 had submitted the proof of 7/12 extract of Gut No.112/4 to show and prove that he had purchased the land admeasuring 30 R., Pot Kharaba 0.06 total 36 R. at village Jambhulpada, Taluka Sudhagad, District Raigad. So far as the purchase of the said land at village Jambhulpada, Taluka Sudhagad, District Raigad as mentioned above, respondent No.4 had produced the

certificate issued by Tahsildar District Akola to show that he had purchased the land Survey No.188/2 at village Derwan, Taluka Akola, District Akola. In view of the restrictions, on transfer of the agricultural lands in terms of the provisions of Section 63 of the Tenancy Act in favour of the non-agriculturists, respondent No.4 has produced the said documentary evidence to substantiate his status as an agriculturist. In order to purchase the land at village Jambhulpada, Taluka Sudhagad, District Raigad, respondent No.4 had produced the certificate purported to be issued by the Tahsildar, District Akola to show that he had purchased the land Survey No.188/2 at village Derwan, Taluka Akola, District Akola. It has been revealed during the course of the inquiry conducted by the learned Tahsildar that the said village Derwan is not in existence in Taluka Akola, District Akola. Thus, the fraud played by respondent No.4 is apparent on the face of the record. The various transactions as referred above can be summarized and shown in a chart as below :

|     |                                                                                          |
|-----|------------------------------------------------------------------------------------------|
| (A) | Respondent No.4 had purchased the land Gut No.30/1 admeasuring 21 R. situated at village |
|-----|------------------------------------------------------------------------------------------|

|     |                                                                                                                                                                                                                                                                                                                                              |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | Nimgaon Korhale, Taluka Rahata, District Ahmednagar under the registered sale deed dated 23.01.2009. (Suit Transaction)                                                                                                                                                                                                                      |
| (B) | Respondent No.4 had produced the 7/12 extract of Gut No.465, area 99 R. (inclusive of 15 R. Pot Kharaba) situated at village Rui, Taluka Rahata, District Ahmednagar and also the certified copy of the sale deed dated 16.10.2008 to prove that he is an agriculturist, at the time of purchasing agricultural land as per 'A'.             |
| (C) | Respondent No.4 had submitted the proof of 7/12 extract of Gut No.112/4 and the copy of the sale deed dated 19.11.2004 to show and prove that he had purchased the land admeasuring 30 R., Pot Kharaba 0.06 total 36 R. at village Jambulpada, Taluka Sudhagad, District Raigad, at the time of purchasing the agricultural land as per 'B'. |
| (D) | Respondent No.4 had produced the certificate issued by Tahsildar, District Akola to show that                                                                                                                                                                                                                                                |

|  |                                                                                                                                                                                                                |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | he had purchased the land Survey No.188/2, area 1.07 Hecter R., at village Derwan, Taluka Akola, District Akola - (false and fabricated document), at the time of purchasing the agricultural land as per 'C'. |
|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

14. On careful perusal of the record and proceedings, it appears that on 02.05.2012, the petitioner herein has filed an application before Tahsildar, Rahata, Taluka Rahata, District Ahmednagar stating therein that respondent No.4 herein had purchased the agricultural land at village Nimgaon Korhale (suit transaction) though he is not an agriculturist and further requested that the learned Tahsildar to make a detail inquiry into the matter. In continuation with the said application, the petitioner herein has also filed another application on 14.05.2012 referring therein the earlier transactions about the agricultural land by respondent No.4 and requested the learned Tahsildar Rahata, Taluka Rahata, District Ahmednagar to make an inquiry into the matter. On careful perusal of these two applications, it appears that the petitioner had no knowledge about the false and fabricated documents produced

by respondent No.4 pertaining to the transaction of village Derwan, Taluka Akola, District Akola. The petitioner has made a request to the learned Tahsildar, Rahata to make a detail inquiry into the matter. It thus appears that the learned Tahsildar Rahata, Taluka Rahata, District Ahmednagar in terms of the provision of Section 84(C) of the Tenancy Act has conducted the suo motu inquiry in respect of all the transactions made by respondent No.4. The same is evident as the learned Tahsildar Rahata, Taluka Rahata, District Ahmednagar has sent the communication to the Tahsildar Akola, Taluka Akola, District Akola and Tahsildar Sudhagad, District Raigad. By letter dated 17.09.2012, Tahsildar Sudhagad has informed to the learned Tahsildar Rahata, Taluka Rahata, District Ahmednagar that so far as the agricultural land bearing Gut No.112/4 admeasuring 36 R. situated at village Jambhulpada, Taluka Sudhagad, District Raigad (as per transaction 'C' shown in the chart). Respondent No.4 had submitted the proof to prove that he is an agriculturist, the certificate purported to be issued by the Tahsildar Akola in respect of the purchase of the agricultural land Survey No.188/2, area 1.07 R. situated at village Derwan,

Taluka Akola, District Akola. The learned Tahsildar Sudhagad has further added in the said letter that even respondent No.4 has sold the land purchased at village Jambhulpada, Taluka Sudhagad to one Manmohan Singhvi, Abhay Manharlal Doshi and Mahendra Maniklal Shaha under the registered sale deed dated 01.10.2005 and the mutation entry No.1417 dated 27.10.2005 also came to be sanctioned in respect of the said transaction. It thus appears that as on the date of the suit transaction, respondent No.4 had no agricultural land at any place. It further appears that respondent No.4 had suppressed the fact that he had already sold the land situated at village Jambhulpada, Taluka Sudhagad.

15. The learned Tahsildar Rahata has issued letter dated 18.12.2012 to the Tahsildar Akola, Taluka and District Akola requesting therein to inform as to whether - (a) such certificate has been issued from Tahsil Office, Akola, (b) the village by name Derwan is in existence and situated in Akola Taluka and (c) if it is in existence send the copies of the 7/12 extract of the survey No.188/2 admeasuring 1.07 R. from 2003 till the date of the letter. The learned Tahsildar, Akola by letter dated 29.12.2012 informed the learned Tahsildar Rahata, District

Ahmednagar that the said village Derwan is not the part of the 199 villages included in Akola Taluka. It is to be mentioned here that respondent No.4 has not produced the copy of the sale deed of the land from Survey No.188/2 admeasuring 1.07 R. purchased by him at village Derwan, Taluka Akola, District Akola at any time before any authority.

16. By order dated 11.02.2019, this Court (Coram : T.V.Nalawade, J.) directed either of the parties to place on record the 7/12 extract of the property held by respondent No.4 at village Derwan and further produced the copy of the sale deed in respect of the land from village Derwan. This Court by order dated 13.02.2019 has recorded the non-compliance of the said directions. Even I myself made the query with the learned counsel appearing for respondent No.4 to show any document indicating that village Derwan is the part of Taluka Akola or that village Derwan subsequently included in any other taluka. However, the learned counsel appearing for respondent No.4 has failed to satisfy the query made as aforesaid. Furthermore, even I myself have further requested the counsel appearing for respondent No.4 to place on record any document to show as to whether village Derwan

infact is in existence. However, no such document came to be produced. It thus appears that the village Derwan is not in existence.

17. In view of the discussion above, it is apparent on the face of the record that respondent no.4 had played a fraud and produced the false and fabricated document to get rid of the provisions of Section 63 of the Tenancy Act. On careful perusal of the sale deeds placed on record, which is the part of the record, it appears that respondent No.4 has sold the land after purchase, at various places. I find much substance in the contention raised on behalf of the petitioner that respondent No.4 is dealing in the sale and purchase of the agricultural land as an agent.

18. So far as the authorities below are concerned, after noticing the fraud played by respondent No.4 and considering the provisions of Section 63 declared that the suit transaction is in contravention of provisions of Section 63 of the Tenancy Act. However, the learned Member of the Maharashtra Revenue Tribunal, Aurangabad allowed the revision preferred by respondent No.4 mainly on the ground that the suo motu

action taken by the learned Tahsildar beyond reasonable period is contrary to law. Even the learned Member of Maharashtra Revenue Tribunal has also accepted that the Tahsildar, Rahata has conducted suo motu inquiry into the matter. Respondent No.4 herein has not challenged the said findings recorded by the learned Member of the Maharashtra Revenue Tribunal. Apart from this, as discussed in detail in the foregoing paragraphs, it is evident that the learned Tahsildar, Rahata has conducted the detail inquiry suo motu and the petitioner had no knowledge about the false and fabricated documents pertaining to the agricultural land at village Derwan produced by respondent No.4 to prove that he has an agriculturist, at the time of earlier transaction. Thus, I do not find any substance in the submissions made on behalf of respondent No.4 that the petitioner is not an interested person and as such he has no *locus standi* to challenge the suit transaction and thus the enquiry stands vitiated in its entirety.

19. The learned counsel for respondent No.4 has placed his reliance on following two cases ;

- (i) *Mohd. Kavi Mohd. Amin Vs. Fatmabi Ibrahim* reported in (1997) 6 Supreme Court Cases, 71, and
- (ii) *Santoshkumar Shivgonda Patil & others Vs. Balasaheb Tukaram Shevale & others* reported in (2009) 9 Supreme Court Cases 352.

In case of *Mohd. Kavi Mohd. Amin* (supra) relied upon by the learned counsel for respondent No.4, in paragraph No.2 of the order, the Supreme Court has made the following observations :

“2. “Although Mr. Bhasme, learned counsel appearing for the appellant took a stand that under Section 63 of the Act aforesaid, there should not be any discrimination amongst the agriculturists with reference to the State to which such agriculturist belongs. But according to him even without going into that question the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84-C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this court that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time. In the present case the transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgment of Justice S. B. Majmudar (as he then was in the High

*Court of Gujarat) in State of Gujarat v. Jethmal Bhagwandas Shah disposed of on 1-3-1990, where in connection with Section 84-C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat v. Patil Raghav Natha and in the case of Ram Chand v. Union of India has impressed that where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under Section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed. The impugned orders are set aside. No costs.”*

In a case of *Santoshkumar Patil* (supra) relied upon by the learned counsel for respondent No.4, the Supreme Court by referring the earlier decisions including the observations made by the Supreme Court in the case of *Mohd. Kavi Mohd. Amin* (supra) in paragraph Nos.11 and 12 has made the following observations :

*“11. It seems to be fairly settled that if a statute does not prescribe the time limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent*

therein.

12. Ordinarily, the reasonable period within which power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of Tahsildar passed on 30-3-1976 is flawed and legally not correct.”

20. In the instant case, the facts are somewhat different and peculiar. It is a clear case of fraud. Respondent No.4 has produced the false and fabricated certificate purported to have been issued by the learned Tahsildar Akola, Taluka Akola, District Akola to prove that he is an agriculturist and on the basis of the said certificate he had entered into the transaction as per ‘C’. This particular aspect of the fraud played by respondent No.4 came to be revealed only after the Tahsildar Akola has informed to Tahsildar, Rahata by his communication dated 29.12.2012.

21. In a case of *State of A.P and another Vs. T. Suryachandra Rao reported in (2005) 6 Supreme Court Cases, 149*, while dealing with the concept of fraud, elements, deceit and injury

in paragraph Nos.8, 9 and 10 has made the following observations :

“8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit and injury to the person deceived. Injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. (See *Dr. Vimla v. Delhi Administration and Indian Bank v. Satyam Fibres (India) Pvt. Ltd.* ).

9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S. P. Chengalvaraya Naidu v. Jagannath*).

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and

*consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including resjudicata. (See Ram Chandra Singh v. Savitri Devi and Ors.)."*

22. In a case of ***Veerayee Ammal Vs. Seeni Ammal reported in (2002) 1 Supreme court Cases 135***, the Supreme Court had an occasion to deal with the word "reasonable" has in law prima facie meaning and in paragraph No.13 has made the following observations :

*"The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to ideosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In*

*other words it means as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean :*

*"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstance will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."*

23. In a case, ***Joseph Severance and others Vs. Benny Mathew and others reported in (2005) 7 Supreme Court Cases, 667*** by referring *Veerayee Ammal Vs. Seenii Ammal* (supra) in paragraph No.11, the Supreme court has made following observations :

**"11.** According to *Advanced law Lexicon by P. Ramanatha Aiyar 3rd Edition, 2005* reasonable time means as follows:

*"That is a reasonable time that preserves to each party the rights and advantages he possesses and protects each party from losses that he ought not to suffer.*

*"Reasonable Time" is defined to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case.*

*If it is proper to attempt any definition of the words "reasonable time", as applied to completion of a contract, the distinction given by Chief Baron Pollock may be suggested, namely, that a "reasonable time" means as soon as*

*circumstances will permit.*

*In determining what is a reasonable time or an unreasonable time, regard is to be had to the nature of the instrument, the usage or trade or business, if any, with respect to such instrument, and the fact of the particular case.*

*The reasonable time which a passenger is entitled to alighting from a train is such time as is usually required by passengers in getting off and on the train in safety at the particular station in question.*

*A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than "directly" such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.*

*Reasonable time always depends on the circumstances of the case. (Kinney)*

*It is unreasonable for a person who has borrowed ornaments for use in a ceremony to detain them after the ceremony has been completed and the owner has demanded their return. (Chaturgun v. Shahzady ; AIR 1930 Oudh 395).*

*The expression "reasonable time" means so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case."*

24. In the facts of the instant case, I find that the learned Tahsildar, Rahata has conducted the suo motu inquiry within a

reasonable time. So far as the suit transaction dated 23.01.2009 is concerned, there was no occasion to verify the status of respondent No.4 as to whether he is an agriculturist or not. In the year 2012, when the petitioner herein has filed an application before the Tahsildar expressing his doubts about the status of respondent No.4 as an agriculturist, the learned Tahsildar has conducted suo motu detail inquiry into the matter. Thereafter the fraud played by respondent No.4 came to be revealed for the first time in the month of December 2012. Respondent No.4 could dare to place on record the false and fabricated certificate purportedly issued by the learned Tahsildar, Akola in respect of the purchase of the agricultural land at village Derwan when village Derwan is not at all in existence. Had there been no such certificate produced by respondent No.4 to purchase the agricultural land at village Jambhulpada, Taluka Sudhagad, District Raigad, he could not have purchase the land. In view of the bar of Section 63 of the Tenancy Act, respondent No.4 has committed the fraud to evade the provisions of the Tenancy Act. In my considered opinion, the ratio laid down by the Supreme Court in the cases relied upon by the learned counsel appearing for respondent

No.4 about the reasonable time, cannot be extended to the facts and circumstances of the present case. Furthermore, in the facts of the instant case, it appears that the learned Tahsildar Rahata has conducted the suo motu inquiry within a reasonable time and declared the acquisition or transfer as per the suit transaction invalid.

25. In the year 2012, the learned Tahsildar Rahata began with the suo motu inquiry pertaining to the suit transaction and during pendency of the said inquiry, respondent Nos.5 to 7 herein purchased the suit land under the sale deed dated 08.02.2013. Thus, respondent Nos.5 to 7 are bound by the decision of the inquiry conducted by the learned Tahsildar, Rahata. So far as the issue about the non-agricultural use of the suit land prior to initiation of the inquiry by the learned Tahsildar, Rahata, I do not think that only on its basis, the fraud played by respondent No.4, which is apparent on the face of the record, can be condoned. In my considered opinion, the provisions of Section 63 of the Tenancy Act cannot be held to be inapplicable.

26. In view of the discussion above, the learned Member of the Maharashtra Revenue Tribunal has committed error in deciding the revision in favour of respondent No.4. The authorities below have rightly held the suit transaction as invalid due to contravention of the provisions of Section 63 read with Section 84(C) of the Tenancy Act. So far as the amended prayer BB is concerned, I do not think that declaration pertaining to the sale deed dated 08.02.2013 is required. Hence, I proceed to pass the following order :

**ORDER**

- (I) Writ Petition is hereby allowed.
- (II) Order passed by the Member, Maharashtra Revenue Tribunal, Aurangabad in case No.57/B/2013/AN, dated 19.12.2013 is hereby quashed and set aside.
- (III) Order passed by the learned Tahsildar, Rahata, in case No.KV/Land/277/2012, dated 30.01.2013 confirmed by the Sub Divisional Officer in Tenancy Appeal No.2/2013, dated 06.07.2013 stands confirmed.

(IV) Writ Petition accordingly disposed off.

(V) Rule made absolute in the above terms.

**(V. K. JADHAV, J.)**

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vmk/-