

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

WRIT PETITION NO.1446 OF 1999

1. Sitaram s/o Narhu Kombde,
age major, Occ. Agri,
R/o Shrigonda, Tq. Shrigonda,
District Ahmednagar.
 2. Smt. Chandabai Bhau Kombde,
age major, Occ. Agri,
R/o Shrigonda, Tq. Shrigonda,
District Ahmednagar.
- ...Petitioners....
(orig. opponents)

VERSUS

1. Smt. Indumati Ganesh Khardekar
(Indumati Prabhakar Pathak)
age major, R/o 'Mahananda,'
Ganesh Colony, Amalner,
Tq. Amalner, District Jalgaon.
Since deceased through her legal
heirs Respondent nos. 1A to 1K
- ...origapplicant....
- 1A. Sudhakar Bhalchandra Khardekar,
age 40 yrs, Occ. service.
 - 1B. Balu Bhalchandra Khardekar,
age 32 yrs, Occ. service.
 - 1C. Bandu Shridhar Khardekar,
age 40 yrs, Occ. Service.
 - 1D. Yogesh Shridhar Khardekar,
age 35 yrs, Occ. Service.
 - 1E. Mahesh Shridhar Khardekar,
age 30 yrs, Occ. Service.

- 1F. Sudhakar Ganesh Khardekar,
age 60 yrs, Occ. Pensioner.
- 1G. Pramila Dattatraya Khardekar,
age 65 yrs, Occ. Household.
- 1H. Nirmala Narayan Badve,
age 62 yrs, Occ. Household.
- 1I. Smt. Malti Mahadeo Pathak
age 55 yrs, Occ. Household,
- 1J. Vasudha Bhaskar Bhangе
age 48 yrs , Occ. Household
- 1K. Vinayak Bhaskar Khardekar,
age 38 yrs, Occ.

All R/o Honrao Chowk, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.

...Respondents...

(No. 1 orig. resp 1A to 1J
heirs of respondent no.1.)

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Advocate for Petitioners : Mr. Ajinkya Deshmukh h/f A V
Hon

Advocate for Respondents : Mr. Gaware Niteen V.

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CORAM : V.K. JADHAV, J.

Dated : March 12, 2020

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JUDGMENT :-

1. By this writ petition, the petitioners/original
opponents are challenging the order dated 10.12.1998
passed by the learned Member of the Maharashtra

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Revenue Tribunal, Pune in Revision No.MRT-AH-II/3 of 1996.

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

The respondent had initiated the proceedings by filing Tenancy Case No.32P/29/Shrigonda before the Additional Tahsildar and A.L.T. Shrigonda contending therein that Narhu Gajaba Kombde (deceased), a tenant over the suit land, had surrendered the possession of the suit land to the landlord on 9.7.1957. It is also not disputed by the petitioners that the suit land was surrendered by the tenant in favour of the landlord and subsequently the tenant took forcible possession of the suit land and, as such, the petitioners are cultivating the suit land and their father had become the owner of the suit land by adverse possession. The petitioners and his family members had instituted a Regular Civil Suit No.164 of 1983 in the Court of Joint Civil Judge J.D., Shrigonda against the respondents for declaration and permanent injunction and after hearing the parties

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the learned Judge of the Civil Court had recorded the findings in favour of the petitioners that they have the become the owners by adverse possession. Even, the learned Judge was pleased to protect their possession over the suit land by granting a decree of injunction. In the application filed by the respondents, Tenancy Awwal Karkun had recorded that tenancy was surrendered after the tillers day and since the possession was taken forcibly, the provisions of Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short hereinafter referred to as 'the Tenancy Act') would not apply. It was also held that the provisions of section 32-G are pre-condition before the commencement of the proceedings under section 32-P the Tenancy Act. Being aggrieved and dissatisfied with the judgment and order dated 4.1.1984 passed by the Additional Tahsildar A.L.T., the respondents had preferred an appeal bearing Tenancy Appeal No.2 of 1984 before the Sub-Divisional Officer, Parner, District Ahmednagar, however, the Sub-Divisional Officer, Parner by its judgment and order dated 4.6.1985 was

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pleased to dismiss the appeal filed by the respondents and the case was remanded to the A.L.T. for taking necessary action in the case. Being aggrieved and dissatisfied with the said order dated 4.6.1985 the respondent had preferred the Revision no.MRT/AH/II/13/86 and the learned Member of the Tribunal was pleased to dismiss the revision filed by the respondent by holding that the respondent has not impleaded the necessary parties to the proceedings and as such, the application filed under section 32-P of the Tenancy Act is not legal and proper. In terms of the Remand order passed by the Sub Divisional Officer, Parner, as stated above, the case was tried by A.L.T. Shrigonda bearing Tenancy case No.32-G/22/88 and after conducting the enquiry, the A.L.T. Shrigonda held that holding of the landlord is more than ceiling area and, therefore, the purchase is ineffective and the order of restoration is passed under section 32-P of the Tenancy Act. Being aggrieved by the same, the petitioners preferred an appeal before the Sub Divisional Officer, Karjat, Karjat Division, District Ahmednagar.

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After considering the entire record, the learned S.D.O., Karjat was pleased to allow the appeal filed by the petitioners. Being aggrieved and dissatisfied by the same, respondent had filed the revision bearing No.MRT-AH-II-2-96 (P-43/96) before the Maharashtra Revenue Tribunal, Pune and the Member, Maharashtra Revenue Tribunal, Pune by judgment and order dated 10.12.1998 quashed and set aside the order passed by the Sub Divisional officer, Karjat and confirmed the order passed by the A.L.T. Shrigonda. Hence, this writ petition.

3. Learned counsel for the petitioners submits that the provisions of section 32-G of the Tenancy Act are not at all attracted, so also the provisions of section 32-P of the Tenancy Act are also not attracted. Learned counsel submits that the possession over the tenanted property was surrendered by the tenant, and thereafter, in the year 1957 itself the petitioner's father had started cultivating the land and as a result of which the petitioners have become the owner by adverse

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possession. The provisions of the Tenancy Act therefore would not apply. Learned counsel submits that there is no relationship of tenant and landlord existing between the parties. Learned counsel submits that the petitioners are in possession and cultivating the suit land. There is a decree passed by the Civil Court in Regular Civil Suit No.164 of 1983, wherein the Civil Court has categorically given the finding that the petitioners have become the owners by adverse possession. Learned counsel submits that as there is no relationship of landlord and tenant in existence it would not be permissible to initiate proceedings under section 32-P of the Tenancy Act for disposal of the land not purchased by tenant. Learned counsel submits that, the impugned judgment and order passed by the Maharashtra Revenue Tribunal, Pune is thus liable to be quashed and set aside.

4. Learned counsel appearing for the petitioners in order to substantiate his contentions placed reliance on a judgment in the case of **Makbul Rasul alias**

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Babalal Vs. Dastagir Dada Jamadar reported in 2003**(1) ALL MR 193.**

5. Learned counsel appearing for respondents submits that the provisions of section 32-P (2)(b) of the Tenancy Act does provide that the land should be surrendered to the former landlord subject to the provisions of section 15 of the Tenancy Act. Learned counsel submits that in terms of the provisions of Section 32-P (1) of the Tenancy Act, where the purchase of any land by tenant under section 32 of the Tenancy Act becomes ineffective under the provisions of section 32-G or 32-M or where the tenant fails to exercise the right to purchase the land held by him within the specified period under section 32-F and in cases other than those in which the purchase has become ineffective by reasons of section 32-G or 32-M, the provisions of section 32-P are applicable. Learned counsel submits that this case falls in the third contingency i.e. "in cases other than those in which the purchase has become ineffective by reasons of section

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32G or 32M of the Tenancy Act”. Learned counsel submits that in the present case it is not in dispute that the tenancy was terminated by surrender thereof by tenant in terms of the provisions of Section 15 of the Tenancy Act and in terms of sub-section (2) of Section 15 of the Tenancy Act, the landlord should be entitled to retain the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions as are provided in Sections 31 and 31A for the termination of the tenancies. The learned counsel submits that in terms of the provisions of section 32-P of the Tenancy Act, it is for the Tribunal to resume and dispose of the land not purchased by tenants. In the instant case, the Tribunal has not passed any order under section 32-P of the Tenancy Act in terms of surrender of the tenancy by the tenants as provided under section 15 of the Tenancy Act and before the said order is passed by the Tribunal, if the petitioners/tenants have dispossessed the respondent/landlord, the respondent/s are entitled to take recourse to the provisions of section 32-P of the

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Tenancy Act. Furthermore, the learned counsel submits that on tillers day the total holding of the tenant was more than ceiling limit, and as such, the tenant was not entitled to purchase the suit land. Thus, the Maharashtra Revenue Tribunal, Pune has, therefore, rightly allowed the revision and confirmed the order passed by the Additional Tahsildar, A.L.T. Shrigonda.

6. Learned counsel for the respondents, in order to substantiate his contentions placed reliance on a judgment in case of **Sakinabibi Rajabali Bohri Vs. Tukaram Gopal Gharat and others reported in 1979 Mh.L.J. 302.**

7. 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 petition, annexures thereto and the reply filed by the concerned respondents.

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8. In the instant case, it is not disputed that there was a termination of tenancy by surrender thereof as provided under section 15 of the Tenancy Act. On 9.7.1957 tenant Narhu Gajaba Kombde by making a statement before the Tenancy Mahalkari surrendered his tenancy right to the landlord Ganesh Govind Khardekar, however, instead of cultivating the said land, it was kept uncultivated. On 3.10.1957 said tenant Narhu Kombde without informing the landlord took the possession of the suit land and since then it is in the possession of the petitioners. Petitioners have raised this bold defence of their possession in respect of the suit land is independent, open and within the knowledge of all. Learned counsel for the petitioners have therefore vehemently submitted that by invoking the provisions of Section 15 of the Tenancy Act, if there was a termination of tenancy by surrender thereof, the relations as a landlord and tenant had come to an end and in view of the same, the provisions of Section 32-G so also 32-P are inapplicable to the present proceedings.

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9. In view of the submissions above, it is necessary to refer the provisions of section 15 of the Tenancy Act. Section 15 of the Tenancy Act reads as under :-

Section 15. Termination of tenancy by surrender thereof -

(1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord:

Provided that such surrender shall be in writing, and verified before the Mamlatdar in the prescribed manner.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions, as are provided in sections 31 and 31A for the termination of tenancies.

[(2A) The Mamlatdar shall in respect of the surrender verified under sub-section (1), hold an inquiry and decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf.]

(3) The land, or any portion thereof, which the landlord is not entitled to retain under sub-section (2), shall be liable to be disposed of in the manner provided under clause (c) of sub-section (2) of section 32P.]

10. In terms of the provisions of Sub-section (2) and sub section (2A) of the Tenancy Act, it is for the Mamlatdar to find out as to whether the provisions of

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Section 31 and 31A as far as possible applicable to consider the entitlement of the landlord to retain the land so surrendered and so also after enquiry, the Mamlatdar is to decide whether the landlord is entitled under sub-section (2) to retain whole or any portion of the land so surrendered.

11. In terms of the provisions of Section 32 of the Tenancy Act, the tenants deemed to have purchased land on tillers day and Section 32-G empowers the Tribunal to issue notices and determine price of the land to be paid by the tenants. In terms of the provisions of Section 32-P of the Tenancy Act, the Tribunal is empowered to resume and dispose of the land not purchased by the tenants. The provisions of Section 32P of the Tenancy Act reads as under :-

32P. Power of [Tribunal] to resume and dispose of land not purchased by tenant :-

- (1) Where the purchase of any land by tenant under section 32 becomes ineffective under section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32F, [32-O,33-Cor43-ID],the [Tribunal]may suo motu or on an application made in this behalf [* * *][and in cases other than those in which the purchase has become ineffective by reason

of section 32G or 32M, after holding a formal inquiry] direct that the land shall be disposed of in the manner provided in sub-section (2).

- (2) Such direction shall provide-
- (a) that [* * *] the [former tenant] be summarily evicted;
 - (b) that the land shall, subject to the provisions of section 15, be surrendered to the [former landlord];
 - (c) that if the entire land or any portion thereof cannot be surrendered in accordance with the provisions of section 15, the entire land or such portion thereof, as the case may be, notwithstanding that it is a fragment, shall be disposed of by sale to any person in the following order of priority (hereinafter called "the priority list") :-
 - (i) a co-operative farming society the members of which are agricultural labourers, landless persons or small holders or a combination of such persons;
 - (ii) agricultural labourers;
 - (iii) landless persons;
 - (iv) small holders;
 - (v) a co-operative farming society of agriculturists (other than small holders) who hold either as owner or tenant or partly as owner and partly as tenant, landless in area than an economic holding and who are artisans;
 - (vi) an agriculturist (other than a small holder) who holds either as owner or tenant or partly as owner and partly as tenant, landless in area than an economic holding and who is an artisan;
 - (vii) any other co-operative farming society;
 - (viii) any agriculturist who holds either as owner or tenant or partly as owner and partly as tenant land larger in

area than an economic holding but less in area than the ceiling area;

- (ix) any person, not being an agriculturist, who intends to take to the profession of agriculture:

[Provided that the State Government may, by notification in the Official Gazette give in relation to such local areas as it may specify, such priority in the above order as it thinks fit to any class or persons who, by reason of the acquisition of their land for any development project approved for the purpose by the State Government have been displaced, and require to be re-settled.]

- (3) Where any land is to be surrendered in favour of the [former landlord], under sub-section (2), the [former landlord] shall not be entitled to the possession thereof until any amount refundable to the [former tenant] is refunded to him or recovered from the [former landlord]; and until such refund or recovery is made, the [former tenant] shall continue to hold the land on the same terms on which it was held by him previously.
- (4) Where any land or portion thereof cannot be surrendered in favour of the landlord and where such land or portion is offered for sale under sub-section (2), but no person comes forward to purchase such land or portion, as the case may be, shall vest in the State Government and the [Tribunal] shall determine the price of such land or portion in accordance with the provisions of section 63A and the amount of the price so determined shall, subject to the provisions of section 32Q, be paid to the owner thereof.
- (5) Where any land is sold under sub-section (2), the [Tribunal] shall determine the price of the land in accordance with the provisions of section 63A and the price so determined shall be payable by annual instalments not exceeding six with simple interest at the rate of 4½ per cent, per annum as the [Tribunal] may determine and the price of the land recovered from the purchaser shall, subject to the provisions of section 32Q, be paid to the owner thereof.

- [(6) On the deposit of the last instalment of the purchase price, the Tribunal shall issue a certificate of purchase in the prescribed form from the purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. If the purchaser is at any time in arrears of two instalments, then unless the [Tribunal] after holding such inquiry as it thinks fit is satisfied with the reasons given and allows a further period not exceeding one year to pay the arrears, the purchase shall be ineffective and the amount deposited by such purchaser shall be refunded to him.]

12. In terms of the provisions of Section 32-P of the Tenancy Act, the purchase of the land by tenant under section 32 of the Tenancy Act becomes ineffective in the manner as provided under section 32P (1) itself :

- 1] It is ineffective under section 32G or 32M of the Tenancy Act ;
- 2] Where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32F, 32 O, 33C or 43-ID.
- 3] In cases other than those in which the purchase has becomes ineffecitve by reasons of section 32G or 32M.

13. It is also made clear in section 32-P (1) of the Tenancy Act that the land shall be disposed of in the manner provided in Sub-section (2) of the Tenancy Act. It thus appears that meanwhile before the order has been passed under the provisions of Section 32-P of the

Tenancy Act by the Tribunal, tenant started cultivating the land again, and as such it would be unjust and unreasonable to say that as the relations between them as a landlord and tenant have come to an end by virtue of Section 15 of the Tenancy Act and the provisions of Section 32G read with section 32-P of the Tenancy Act are inapplicable.

14. In a case **Maksul Rasul alias Babalal Vs. Dastagir Dada Jamadar reported in 2003 (1) All M.R. 193** (supra), relied upon by the learned counsel for the petitioners, in the facts of the said case, this Court has held that 'as no relationship of land lord and tenant in existence it would not be permissible to initiate proceedings under section 32-P for disposal of land not purchased by tenant.' This Court had relied upon the decision of the Supreme Court in case of **S.N.Sudalaimuthu Chettiar Vs. Palaniyandavan** reported in **A.I.R. 1966 Supreme Court 469**. In the cited case, petition is directed against the judgment and order of the Maharashtra Revenue Tribunal holding that
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petitioner is not tenant of the respondent, but supervising the land on behalf of the respondent. Revenue Tribunal observed that after 1959-1960 revenue record shows that lands have been cultivated by the landlord himself, i.e. respondent. Maharashtra Revenue Tribunal took a view that the petitioner is not entitled to be treated as deemed tenant in view of the fact that he was the member of the respondent's family since he has admitted the relationship namely that of cousin brother. Maharashtra Revenue Tribunal took a view that 'a cousin is a member of the family and if the landlord requests a cousin to cultivate his land, it amounts to personal cultivation of the landlord.' Maharashtra Revenue Tribunal also took a note of the fact that deceased landlord Dastagir was in Government service and thus the lands were being cultivated by him through his cousin. This Court has, therefore, held that, it would not be open and permissible to the petitioners to initiate the proceedings under section 32P of the Tenancy Act and, accordingly, upheld the impugned order. Even, in the case **S.N.Sudalaimuthu**

Chettiar Vs. Palaniyandavan reported in **A.I.R. 1966**

Supreme Court 469, wherein the question arose as to whether the son-in-law can be regarded as a Member of the family and, it is held that a person, can therefore, be properly regarded as being the member of his wife's family and not merely of his father's family. Thus, the facts of the aforesaid case are altogether different and basically there was no relationship as landlord and tenant. In the instant case, facts are altogether different.

15. It is thus clear that the provisions of section 32-P of the Tenancy Act clearly speaks that after the purchase is declared as ineffective, the relationship between the landlord and tenant comes to an end and former tenant is liable to be summarily evicted. It is to be noted that even after former tenant is summarily evicted, the landlord is not entitled to take possession of his land as a matter of right. In terms of section 15 (2) of the Tenancy Act, where a tenant surrendered his tenancy, the land-lord would be entitled to retain the

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land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions as are provided in Sections 31 or 31A for the termination of the tenancies. In terms of the provisions of sub-section (2A) of Section 15, the Mamlatdar shall in respect of the surrender verified under sub-section (1) hold an inquiry and decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf. It is thus clear that the right of the former landlord to resume the land under section 32-P read with section 15 (2) of the Tenancy Act is subject to the satisfaction of only one condition under section 31A that is the extent of area to be resumed. The other restrictions in section 31-A of the Tenancy Act would not be applicable to the cases of the former landlord covered by section 15 (2) of the Tenancy Act.

16. Though, the facts are not similar, however, this Court had an occasion to deal with the somewhat

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similar contingency and in a case **Sakinabibi Rajabali Bohri Vs. Tukaram Gopal Gharat and others reported in 1979 Mh.L.J. 302** relied upon by the learned counsel for the respondents, in paragraph no.10 of the order has made following observations :-

“10. The observations of the Revenue Tribunal that the construction suggested by the counsel for the petitioner would give advantage to a land-lord who claims possession under Section 32P over one who seeks possession under Section 31 of the Act, are not correct. The Tribunal overlooked that the position of a landlord filing an application under Section 31 and one claiming possession under Section 32P(2)(b) of the Act stands on completely different footing. The landlord who files an application for restoration of possession under Section 31 seeks resumption of land from a tenant and where the relationship of landlord and tenant is still subsisting. Cases where such a tenant is to be dispossessed stand on a far different footing than cases where a tenant refuses to purchase the land and consequently is dispossessed and the land is to be resumed to the former landlord. In the latter case the relationship of landlord and tenant has come to an end and restoration of possession is not sought against the tenant. The strict compliance of all conditions under Section 31A of the Act by the former landlord is not expected by the Legislature. The Legislature was fully conscious that the tenancy legislation was enacted to protect the interest of tenants who are willing to cultivate the land. If the tenant is unwilling to purchase and is required to be evicted, then the legislature never thought that the land should not be resumed to the landlord. In fact the provisions of Section 32P clearly indicates that the claim of the landlord was given precedence over the claim of any other person. The tenancy legislation itself creates an inroad upon the general rights of a person to hold the property. The tenancy legislation is undoubtedly for the benefit of tenants, but there tenants are unwilling to purchase and are consequently required to be summarily evicted, then it would not be proper to put such construction on the section and create more impediments in the way of

former landlord to resume the land. In cases where the tenant is not willing to purchase the leased land and the relationship of landlord and tenant comes to an end, then the only restriction on the landlord to resume the land is that he would use the land either for personal cultivation or for non-agricultural use and would resume only to the extent of the ceiling area. The two conditions are required to advance the avowed object of the tenancy legislation that one who tills should be the owner and holding should be equitably distributed.”

17. Learned counsel for respondents has further pointed out that during the pendency of this writ petition in a Regular Civil Appeal No.343 of 2001 preferred by the Respondents herein against the judgment and decree passed by the Trial Court, in a suit instituted by the petitioners herein, Appellate Court by judgment and order dated 21.3.2003 allowed the appeal, quashed and set aside the order of the Trial Court and remanded the matter to the Trial Court with certain directions. After remand, the trial Court by judgment and order dated 18.2.2015 recorded the finding in the negative to issue nos.1 and 2 by holding that plaintiffs (petitioners herein) failed to prove that they are entitled to be declared as owner of the suit land by adverse possession and that they are entitled to be declared as owner of the suit land after death of Narhu Gajaba

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Kombde. However, since the plaintiffs (petitioners herein) found to be in possession of the suit land, partly decreed the suit, protecting their possession over the suit property till their dispossession by following the due process of law. Copy of the judgment and decree passed by the Trial Court dated 18.2.2015 in RCS No.164 of 1983 is placed on record.

18. In view of the discussion above, I find no fault in the judgment and order passed by the Maharashtra Revenue Tribunal, Pune. There is no reason to interfere in the said order. Accordingly, I proceed to pass the following order.

ORDER

- i. Writ Petition is hereby dismissed. Rule discharged.
- ii. Writ Petition accordingly disposed off.

(V.K. JADHAV,J.)

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