

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

WRIT PETITION NO. 12620 OF 2018

Pandharinath S/o Mahadu Patil,
Age : 72 years, Occ : Agril.,
R/o. Talvel, Taluka Bhusawal,
District Jalgaon.

... Petitioner

versus

1. Chaitanya Kashinath Patil,
Age : 57 years, Occ : Service,
R/o. Talvel, Tq. Bhusawal,
District Jalgaon.
2. Devidas Ramdas Patil,
Age : 58 years, Occ : Agril.,
R/o. Talvel, Taluka Bhusawal,
District Jalgaon.
3. Lala Ramdas Patil,
Age : 51 years, Occ : Agril.,
R/o. Talvel, Taluka Busawal,
District Jalgaon.
4. Meera W/o Devidas Patil,
Age : 47 years, Occ : Agril.,
R/o. Talvel, Taluka Bhusawal,
District Jalgaon.

... Respondents

**WITH
WRIT PETITION NO. 7594 OF 2018**

Pandharinath S/o Mahadu Patil,
Age : 72 years, Occ : Agril.,
R/o. Talvel, Taluka Bhusawal,
District Jalgaon.

... Petitioner

versus

1. Chaitanya Kashinath Patil,
Age : 57 years, Occ : Service,
R/o. Talvel, Tq. Bhusawal,
District Jalgaon.
 2. Devidas Ramdas Patil,
Age : 58 years, Occ : Agril.,
R/o. Talvel, Taluka Bhusawal,
District Jalgaon.
 3. Lala Ramdas Patil,
Age : 51 years, Occ : Agril,
R/o. Talvel, Taluka Busawal,
District Jalgaon.
 4. Meera W/o Devidas Patil,
Age : 47 years, Occ : Agril,
R/o. Talvel, Taluka Bhusawal,
District Jalgaon.
- ... Respondents

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Mr. R. N. Dhorde, Senior Advocate i/by Mr. V. R Dhorde, Advocate
for the Petitioner in both Writ Petitions.

Mr. A. M. Gholap, Advocate for Respondent Nos. 2 to 4 in both
Writ Petitions.

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CORAM : V. K. JADHAV, J.
RESERVED ON : 19.12.2019
PRONOUNCED ON : 27.04.2020

ORDER :-

1. These are the connected Writ Petitions between the same parties in respect of the same suit property and therefore taken together for discussion and decided finally with consent at admission stage.

2. Writ Petition No. 12620 of 2018

By way of this Writ Petition, the petitioner is challenging the order dated 24.08.2018 passed by learned Member (Administrative), Maharashtra Revenue Tribunal, Aurangabad Bench, Aurangabad in Revision No. 76/B/2002/Jalgaon dismissing the same and confirming the judgment and order dated 31.08.2002 passed by the Sub Divisional Officer, Bhusawal in Appeal No. 5 of 2001 so also the order passed by the Tahsildar in Tenancy Case No. 3 of 1996 dated 27.06.2001.

Writ Petition No. 7594 of 2018

By this Writ Petition, the petitioner is challenging the order dated 03.01.2018 passed below Exhibit 18 in Regular Civil Appeal No. 387 of 2014 (Old RCA No. 6 of 1998) by District Judge-2, Bhusawal, dismissing thereby the application Exhibit 18.

3. Brief facts giving rise to these two Writ Petitions are as follows:

a. The land Gat No. 2 admeasuring 3 H 67 R situated at Village Talvel, Taluka Bhusawal, District Jalgaon is the suit land. One Kashinath Chavdas Patil, who died on 08.03.1984, was the

original owner of the suit land and his widow, namely, Kamlabai Kashinath Patil succeeded the above property. Thereafter, Kamlabai adopted Chaitanya as her son and his name came to be included in the revenue record by Mutation Entry No. 576 which is effected on 06.04.1985. It is the case of the petitioner that the above suit property was orally leased to him for a period of five years by Chaitanya Kashinath Patil as he was unable to cultivate the same. The tenancy was from June to June and the petitioner was in physical possession of the property. It is the case of the petitioner that from 1987 till 1992 he was cultivating the suit property on the basis of the oral lease. On 31.03.1992, the oral lease agreement was renewed for further five years on the same terms and conditions but the lease amount was increased from 9,000/- to 13,000/- per year. However, on one occasion, said Chaitanya directed the petitioner Pandharinath to accept an amount of Rs.50,000/- and surrender the tenancy to him by vacating the land as he wanted to sell the land to a third party. The petitioner therefore instituted a suit bearing R.C.S. No. 346 of 1993 (New 386/1996) before Civil Judge, Junior Division for declaration and injunction. On 10.02.1993, the Civil Court granted injunction in favour of the petitioner restraining the respondent from disturbing the possession of the petitioner over the suit land. The said order

was further confirmed in Misc. Civil Appeal No.33/1974 by order dated 06.01.1995 passed by the Additinal District Judge, Jalgaon by dismissing the appeal filed by Chaitanya. According to the petitioner, in the said R.S.C. No. 346 of 1993, the petitioner had filed application Exhibit 52 to refer the matter to the tenancy court. However, the trial court held that in a suit simplicitor for injunction the issue of reference to tenancy court will not arise. The trial court therefore rejected the application Exhibit 52. The petitioner challenged the said order before this Court in Civil Revision Application No. 1170 of 1995 and the same came to be dismissed by this Court. Even the Supreme Court has also dismissed the SLP and confirmed the order passed by this Court in C.R.A. No. 1170 of 1995. It is further case of the petitioner that meanwhile, during pendency of the above suit, Chaitanya executed an agreement of sale in favour of one Devidas Patil and others i.e. respondent nos. 2 to 4 herein. In turn, respondent nos. 2 to 4 have instituted a suit bearing R.C.S. No. 347 of 1994 for specific performance of contract against Chaitanya. Both the suits came to be decided by the Civil Court. The petitioner's suit came to be dismissed, whereas the suit instituted by respondent nos. 2 to 4 came to be decreed. The petitioner filed First Appeal No. 6 of 1998 before District Court, Jalgaon against the judgment and decree passed in his suit bearing

R.C.S. No. 346 of 1993. So far as the judgment and decree passed in R.C.S. No. 347 of 1994 is concerned, the petitioner filed First Appeal No. 35 of 1998 before this Court. However, due to the change in jurisdiction, the said appeal came to be transferred to Jalgaon court.

b. It is further case of the petitioner that meanwhile, the present petitioner had filed an application under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short, "Tenancy Act") being TNC No. 3/1996 before the Tahsildar to declare him as tenant of the suit property. The application was initially rejected by the Tahsildar. However, it was remanded back for fresh hearing as per the order passed by the Sub Divisional Officer (SDO), Bhusawal. After remand, by order dated 27.06.2001, the Tahsildar has rejected the said application. Being aggrieved by the same, the petitioner has filed tenancy appeal no. 5 of 2001 before the SDO, Bhusawal, Division Bhusawal and by the impugned order dated 31.08.2002, the SDO has confirmed the order passed by the Tahsildar and dismissed the appeal. Being aggrieved by the same, the petitioner preferred revision before the Maharashtra Revenue Tribunal (for short, 'MRT'), Aurangabad bearing Revision No.76/B/2002. By the impugned order dated

24.08.2018, learned Member of MRT dismissed the appeal by confirming the orders passed by learned SDO and learned Tahsildar. The petitioner has therefore preferred Writ Petition No. 12620 of 2018.

c. So far as Writ Petition No.7594 of 2018 is concerned, in continuation with the facts narrated above, during pendency of R.C.A. No. 387 of 2014, before District Court, Bhusawal, the petitioner had filed an application below Exhibit 18 requesting therein to defer the hearing of the appeal till the decision of the MRT. By the impugned order dated 03.01.2018, the appellate court has rejected the application Exhibit 18. The petitioner has therefore preferred Writ Petition No. 7594 of 2018. Needless to say that the MRT has already disposed off the Revision against which the petitioner has preferred the connected Writ Petition No. 12620 of 2018 and the fate of Writ Petition No. 7594 of 2018 entirely depends upon the decision to be rendered in the connected Writ Petition No. 12620 of 2018.

4. Learned senior counsel for the petitioner submits that the impugne order dated 24.08.2018 passed by the learned Member, MRT, Aurangabad in Revision No. 76/B/2002, dismissing the same

and confirming the judgment and order passed by the SDO in appeal no. 5 of 2001 and also the order passed by the Tahsildar in Tenancy Case No. 3 of 1996 dated 27.06.2001, is contrary to the provisions of law and evidence on record. Learned senior counsel submits that the learned Member, MRT, Aurangabad, without considering the contention raised by the petitioner and further ignoring the ratio laid down by this Court in the case of ***Babu Hari Patil & Another v. Rama Ananda Jadhav (deceased) & Others***, reported in ***2005 (1) All M.R. 329***, dismissed the revision erroneously. Learned senior counsel submits that the entry in the tenancy column of a rent note or a rent receipt to support the claim of a tenant to be a "deemed tenant" under the provisions of the Tenancy Act is not a pre- condition. Even without there being an entry in the tenancy column, a person who is in lawful possession, must be declared as a 'deemed tenant' under Section 4 of the Tenancy Act irrespective of the fact whether or not the authority of such person is derived directly from the owner of the land. Learned senior counsel submits that all that is required under Section 4 of the Tenancy Act is the 'lawful' cultivation by a person other than the member of the family of the landlord subject to said conditions specified in that Section for claiming the status of the 'deemed tenant'. Learned senior counsel submits that in the aforesaid case,

this Court has laid down the aforesaid ratio. Learned senior counsel submits that even the learned SDO has specifically held that the present petitioner is in lawful cultivation of the suit land. However, this fact has been ignored by the learned Member of MRT. Learned Member of MRT erred in observing that the money paid to Kashinath Patil by cheque was towards the royalty of water though there was no such agreement between the petitioner and Chaitanya Patil. Learned senior counsel submits that the Supreme Court as well as this Court from time to time specifically held that the issue of tenancy is required to be decided by the statutory authority under the provisions of the Tenancy Act and the Civil Court has no jurisdiction to decide the above issue. Learned senior counsel submits that the appellate authority i.e. the SDO which is the last fact finding authority, on the basis of documentary as well as oral evidence, came to the conclusion in the impugned order dated 31.08.2002 in tenancy case no. 5 of 2001 that the petitioner is lawfully cultivating the suit land. In view of the same, in the revision, the MRT had no jurisdiction to interfere in this finding on fact. Learned senior counsel submits that the issue of tenancy in a suit for simpliciter injunction required to be referred to the tenancy authority. The Civil Court while passing order dated 28.09.1995 below Exhibit 52 in RCS No. 346 of 1993 committed mistake in

relying upon the judgment in the case of ***Baliram Maruti Satvekar v. Dadu Govind Tipugade and others*** [1985 Mh.L.J. 311]. This Court rejected CRA NO. 1170 of 1995 filed by the petitioner by one word "rejected" and the Apex Court has summarily rejected the SLP. Learned senior counsel submits that however, the order dated 28.09.1995 passed below Exhibit 52 in RCS No. 346 of 1993 is itself nullity as the Civil Court has relied upon the judgment in the case of ***Baliram Maruti Satvekar*** (supra) which is considered by the Division Bench of this Court in ***Bhagwanrao s/o Jijaba Auti v. Ganpatrao s/o Mugaji Raut & another*** [1987 (3) BCR 258] and the Division Bench held that prior to deciding the suit for perpetual injunction on merits, it is mandatory to refer the issue of tenancy raised in the suit to the tenancy authorities. Hence, the decree passed in the civil suit is nullity. The present petitioner has therefore rightly approached the tenancy authority under Section 70(b) of the Tenancy Act to decide that the petitioner is the tenant of respondent no.1 Chaitanya Patil. Even said Chaitanya Patil, who is the original landlord, though duly served, has not appeared before the MRT and challenged the findings recorded by the SDO.

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

1. *Gundaji Satwaji Shinde v. Ramchandra Bhikaji Joshi*, reported in AIR 1979 SC 653.
2. *Saraswatibai Trimbak Gaikwad v. Damodhar D. Motiwale and others*, reported in 2002(3) Mh.L.J. 69.
3. *Mathura Prasad Sarjoo Jaiswal and others v. Dossibai N.B. Jeejeebhoy*, reported in AIR 1971 SC 2355.
4. *Dahya Lala and others v. Rasul Mahomed Abdul Rahim and others*, reported in AIR 1964 SC 1320.
5. *Jagannath Vithu Jadhav (since deceased) through LRs. Smt. Shalan Jagannath Jadhav and others*, reported in 2013(2) Mh.L.J. 285.
6. *Babu Hari Patil & Another v. Rama Ananda Jadhav (deceased) & Others*, reported in 2005 (1) All M.R. 329.
7. *Bhagwanrao s/o Jijaba Auti v. Ganpatrao s/o Mugaji Raut & another*, reported in 1987 (3) BCR 258.
8. *Baliram Maruti Satvekar v. Dadu Govind Tipugade and others*, reported in 1985 Mh.L.J. 311.
9. *Marybai Marshal Pimenta and another v. Ramnath Gopal Bhuskute and others*, reported in 1987 Mh.L.J. 628.

6. Learned counsel for respondent nos. 2 to 4 submits that the petitioner is neither a permanent tenant nor a protected tenant. Learned counsel submits that no tenancy was ever created in favour of the petitioner and the petitioner has never cultivated the land in question as a tenant. There is no evidence that the amount which was allegedly paid by the petitioner to respondent no.1 is as a *khand*, which is the amount required to be paid by a *kul* (tenant) to the owner of the land. Except bare words of the petitioner, there is no evidence adduced by the petitioner that he paid any amount to respondent no.1 landlord as a profit. It is not a proved or admitted fact that the petitioner initially from the year 1987-88 to 1991-92, for five years, had cultivated the suit land against the amount of Rs.9,000/- and after expiry of said five years, got the land for cultivation on oral agreement for another five years. As per the case of the petitioner, the so called contractual tenancy came to be created after the Tillers Day. It is therefore essential for the petitioner to establish that within the valid tenancy agreement what authenticated rent / *khand* he has actually paid. In the instant case, the petitioner has claimed oral agreement and therefore, it ought to have been supported by unimpeachable evidence. There is no revenue entry of the present petitioner as a

tenant either in the 'crop cultivation' column or in the 'other rights' column. There is also no proof that the amount which was allegedly paid by the petitioner and received by the landlord is that of the rent / *khand*. On the other hand, it is revealed that the amount paid by cheque is towards the royalty of water. Learned counsel submits that the provisions of Section 32 of the Tenancy Act speak about right of the tenant whose tenancy is created after the Tillers Day to purchase the land. However, the petitioner does not fulfill the conditions of Section 32-O and therefore, his application filed under Section 70(b) of the Tenancy Act has been rightly rejected. There is no substance in the petition. Learned counsel submits that the judgment relied upon by the petitioner in ***Babu Hari Patil & Another*** (supra) is not applicable to the facts of the case pleaded by the petitioner because he was not a protected tenant or deemed tenant and also in view of the fact that the petitioner had never cultivated the land in question lawfully. Learned counsel submits that the finding of fact of the Agricultural Tribunal/Tahsildar are based on the evidence on record and there is no miscarriage of justice or flagrant violation of law. Even in terms of the ratio laid down in the aforesaid case of ***Babu Hari Patil***, as summarized in head note (C), no interference is called for in the impugned order.

7. Learned counsel for the respondents further submits that present respondent no.1 agreed to sell the subject matter/suit land to respondent nos. 2 to 4 on 31.12.1993 vide registered document. However, in view of failure of present respondent no.1 to execute sale deed, respondent nos. 2 to 4 instituted Special Civil Suit No. 347 of 1994 for specific performance of the agreement to sale dated 31.12.1993 and the present petitioner was also arrayed as defendant no.2. On the date of execution of agreement to sale dated 31.12.1993 in favour of respondent nos. 2 to 4, the petitioner herein had filed RCS No. 346 of 1993 on 31.12.1993 which was re-numbered as RCS No. 386 of 1996. The said suit was filed against the sole defendant that is the present respondent no.1 owner of the land for declaration and injunction in relation to the suit land. Both the suits were clubbed together. However, by separate judgment and decrees passed in respective suits, the Special Civil Suit No. 347 of 1994 filed by respondent nos. 2 to 4 herein is decreed and the decree of specific performance was passed in their favour on 28.11.1997 against the present respondent no.1 and further decree to hand over possession was passed against present respondent no.1 and the present petitioner. Against the said decree passed in Special Civil Suit No. 347 of 1994, RCA No. 35 of 1998 was filed by the present petitioner and

there is an interim order in operation staying the execution of the decree to the extent of delivery of possession only. In terms of the said decree, sale deed came to be executed on 24.09.1998 through court commissioner in favour of respondent nos. 2 to 4 and their names also stand mutated in respect of the suit land. On the other hand, the suit instituted by the petitioner came to be dismissed and against the said decree of dismissal passed in RCS No. 386 of 1996, the present petitioner has preferred RCA No. 6 of 1998 which is re-numbered as RCA No. 387 of 2014 and it is pending for final disposal. It has been specifically held by the Civil Court on perusal of the 7/12 extract that respondent no.1 original landlord has cultivated the suit land up to 1993-94. It is also observed by the Civil Court that there is no record with the petitioner indicating that he had cultivated the land in question from 1986-87 up to 1991-92. It is also observed by the Civil Court that the petitioner has not adduced any evidence to show that he was paying Rs.9,000/- per year from 1986-87 to 1991-92. The Civil Court has also observed to the effect that no evidence has been produced by the petitioner to show that he had laid pipeline in the suit field. The civil court has further accepted the case of respondent no.1 vide document Exhibit 146 dated 10.04.1993 that respondent no.1 was purchasing water from the land Gat No. 433 belonging to the

petitioner which is adjacent to the suit land and respondent no.1 has paid to him Rs.10,000/- per year for water supply to the suit land and the petitioner has further agreed to supply water from 1993-94 to 1997-98 and accepted Rs.50,000/- in cash on 10.04.1993. It is further held by the trial court in the said civil suit that the petitioner has received Rs.9,000/- as a hand loan from respondent no.1 landlord through cheque vide receipt dated 5.2.1992 Exhibit 147. It is also specifically held by the Civil Court that the petitioner is in possession of the land after grant of status quo order on 31.12.1993 and it is only thereafter the petitioner has applied to mutate his name to the suit land on the strength of the *ex parte* status quo order. Learned counsel submits that in terms of the provisions of Section 17 (d) of the Indian Registration Act, the lease of immovable property exceeding one year is required to be registered and Section 49 of the said Act mandates that the document which is required to be registered under Section 17, if not registered, the same does not affect the property comprised therein and it also cannot be received in evidence. In the instant case, even the oral agreement is also not there. Learned counsel submits that the petitioner has not produced any original document before the tenancy authorities for declaring him as a tenant. It is rightly held that the rent as per Section 8 of the Tenancy Act has

not been fixed. It is also necessary to note here that the request made by the petitioner for referring the issue of his tenancy was rejected by the Civil Court and the said order was confirmed up to the Supreme Court. The authorities below have rightly held that the petitioner is not a tenant and there is no payment made as a tenant to the landlord. There is no proof of payment of rent/*khand* to the landlord. Learned counsel submit that both the Writ Petitions are thus liable to be dismissed.

8. By order dated 16.01.2019, this Court has recorded the statement of the counsel for the petitioner. Learned counsel for the petitioner prayed that notice to respondent no. 1 is not necessary. In view of the same, notice has not been issued to respondent no.1.

9. I have carefully considered the submissions advanced by the learned senior counsel for the petitioner so also the learned counsel for respondent nos. 2 to 4. With their able assistance, I have perused the pleadings, grounds taken in the petitions, annexures thereto and the reply filed by the respondents.

10. According to the petitioner, the suit land was orally leased for a period of five years by respondent no.1 and the

tenancy was from June to June and the petitioner was in physical possession of the suit land. From 1987 till 1992, the petitioner was cultivating the suit land on the basis of the oral lease and the said agreement was renewed for a further period of five years on the same terms and conditions and the lease amount was also increased from Rs.9,000/- to Rs.13,000/- per year. Apart from the civil litigation between the parties, learned senior counsel for the petitioner has vehemently submitted that in terms of the provisions of Section 4 of the Tenancy Act, the petitioner shall be deemed to be a tenant as he was cultivating the suit land lawfully. The petitioner is thus entitled for declaration as a tenant over the suit land in terms of the provisions of Section 70(b) of the Tenancy Act. Learned senior counsel for the petitioner has also vehemently submitted that the issue of tenancy is required to be decided by the statutory authority under the provisions of the Tenancy Act and the Civil Court has no jurisdiction to decide the issue and therefore, the findings recorded by the SDO to the extent of lawful possession of the petitioner over the suit land should have been considered by the learned Member of MRT in the revision. Per contra, respondent nos. 2 to 4, who are the purchasers of the suit land, submit that as per the entries in the revenue record, the landlord himself has cultivated the suit land up to the year 1993-94. So far as the

amount of rent / *khand* is concerned, it is the case of the respondents that respondent no.1 was paying charges on account of the water supply from the well situated in the petitioner's land. Petitioner is the owner of the land adjacent to the suit land and there is a well in the said land belonging to the petitioner. There is no well in the suit land. However, there is a pipeline laid in the suit land from the well situated in the land of the petitioner. Learned counsel for the respondents has vehemently submitted that the application Exhibit 52 filed by the petitioner herein in the pending civil suit seeking reference of the tenancy issue came to be rejected by the trial court and that order was confirmed up to the Supreme Court. In view of the same, the findings recorded by the Civil Court are relevant. Learned counsel has further submitted that the authorities under the Tenancy Act however, independently assessed the evidence and came to the right conclusion.

11. In view of the rival submissions as above, it is necessary to reproduce herein Section 4 of the Tenancy Act which reads as under:

"4. [1] A person lawfully cultivating any land belonging to another persons shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is

not-

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

Explanation (I) - A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the land as provided under section 2-A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant.

Explanation (II) - Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to clause (6) of section 2, such tenant shall be deemed to be a tenant within the meaning of this section.

[2] Notwithstanding anything contained in sub-section (1), where any land in the Ratnagiri and Sindhudurg districts is being cultivated by a person (other than the person who, according to the Records of Rights, has right to cultivate), for not less than 12 years, such person shall be deemed to be a tenant for the purposes of this section if there is circumstantial evidence that he has been uninterruptedly cultivating the land personally, and the Sarpanch, Police Patil or the Chairman of Vividh Karyakari Sahakari Society, and the cultivator of the adjoining land state on affidavit that, the

said land is in the possession of, and is being cultivated by, such person, uninterruptedly for not less than 12 years.

Explanation I. - For the purpose of this sub-section, the expression "land" includes the "warkas land".

Explanation II. - For the purpose of this sub-section, the expression "circumstantial evidence" includes extract of voters list, ration card, electricity bill or house assessment receipt from the same village or any receipt in respect of sale of agricultural produce or any document regarding permission of felling of trees or excavation of minor mineral or any such permission granted with respect to such land.

[3] Notwithstanding anything contained in sub-clause (a) of clause (ii) of sub-section (1) of Section 32H, the purchase price in such cases shall be 200 times the assessment."

12. Learned senior counsel for the petitioner has placed reliance in the case of ***Babu Hari Patil*** (supra) wherein this Court (Coram : D. B. Bhosale, J.) has dealt with the term "deemed tenant". In the facts of the said case, it is held that an entry in the tenancy column of a rent note or a rent receipt to support the claim of a tenant to be a "deemed tenant" under Section 4 is not a precondition. Even without there being any entry in the tenancy column on a rent note or a rent receipt in favour of a person, who is in lawful possession, must be declared as "deemed tenant" under Section 4 of the Tenancy Act irrespective of the fact whether or not

the authority of such person is derived directly from the owner of the land. It is held that "all that is required under that Section is 'lawful' cultivation by a person subject to the other conditions specified in that Section for claiming a status of the deemed tenant". The Court has made observations in para nos. 6 and 7 of the judgment as follows:

"6. That takes me to consider the provisions of section 4 of the Tenancy Act. It provides that a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not a member of the owner's family or a servant on wages payable in cash or kind but not in crop share or hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or a mortgagee in possession. In the instant writ petition we are not concerned with the explanations I and II appended to sub-section (1), sub-section (2) and sub-section (3) of section 4 of Tenancy Act. This court in Dhondu Bapu Survey Vs. Aniruddh Yeshwant Vaidya 1997 TLR Volume XXV Page 6 in Special C.A.No.479 of 1972 had an occasion to deal with the provisions of section 4 of the Tenancy Act. In this case the reasoning of the Tribunal were held to be against the provisions of section 4 of the Tenancy Act. It was held that an entry in the tenancy column or a rent note or a rent receipt to support the claim of a tenant to be a "deemed tenant" under the section is not a precondition. The relevant observations in the judgment reads thus :

"All that is required under that section is 'lawful'

cultivation by a person other than the member of the family of the landlord subject to other conditions laid down in section 4. It is not open to the Revenue Tribunal to read into that section old fashioned notion of the law of landlord and tenant, which required the entries in the tenancy column, rent note or rent receipt to support the case of tenancy. The Legislature knowing all these old requirements has adopted a definition of 'statutory tenancy' irrespective of such things."

I am in respectful agreement with the observations made in the said judgment.

6.1. The Apex Court also had an occasion to deal with provisions contained in section 4 of the Tenancy Act and to interpret the expression "deemed tenant" in Dahya Lala and Ors. Vs. Rasul Mohamed Abdul Rahim and Ors., AIR 1964 SC 1320. In that case the Apex Court was considering as to whether the person claiming status of "deemed tenant" must have been cultivating land with the consent or under authority of the owner. The Apex Court was dealing with argument of the learned counsel for the landlord that there can be no tenancy without the consent or authority of the owner to the occupation of the land in dispute. The Apex Court while dealing with the arguments in paragraph 6 of the report held thus:

"But the Act has by section 2(18) devised a special definition of tenant and included therein persons who are not contractual tenants. It would therefore be difficult to assume in

construing section 4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must be cultivating land "lawfully". It is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such condition is to rewrite the section, and destroy its practical utility. A person who derives his rights to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a "deemed tenant". Persons such as licenses from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural lands as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the benefit of its provisions to persons who derive their authority from the owner, either under a contract or otherwise. In our view, all persons other than those mentioned in clauses (a) and (b) and (c) of section 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land

must be deemed tenants of the lands".

6.2. In yet another judgment in Kishan Ramchandra Kumbhar and Others Vs. Kashinath Bandu Teli and Others, 2004(1) Mh.L.J. 285 : [2003(3) ALL MR 817] this court has reiterated the principle of law laid down in Dahya Lala's case (supra).

7. The law is thus clear that even without there being an entry in the tenancy column on a rent note or a rent receipt in favour of a person, who is in lawful possession, must be declared as "deemed tenant" under section 4 of the Tenancy Act irrespective of the fact whether or not the authority of such person is derived directly from the owner of the land. All that is required under that section is "lawful" cultivation by a person other than the member of the family of the landlord subject to other conditions specified in that section for claiming a status of the "deemed tenant". In the circumstances I have no hesitation in holding that respondent Nos.1 to 3 were cultivating the land lawfully and are, therefore, entitled to claim status of "deemed tenant" as contemplated under section 4 of the Tenancy Act. In the result writ petition is dismissed. Rule stands discharged. No order as to costs."

13. It appears that this Court has relied upon the ratio laid down by the Supreme Court in a case of ***Dahya Lala and others*** (supra). In the said case, which is relied upon by learned senior counsel for the petitioner, in para 3 of the judgment, the Supreme Court has made the following observations:

"3. The Bombay Tenancy Act of 1939 was enacted to protect tenants of agricultural lands in the Province of Bombay and for certain other purposes. That Act was repealed by S. 89 of the Bombay Tenancy and Agricultural Lands Act, 1948, which came into operation on December 28, 1948. By the repealing clause, certain provisions of the Act of 1939 with modifications were Continued. By the Act of 1948, under S. 2(18) as it stood at the material time, a tenant was defined as an agriculturist who holds land on lease and includes a person who is deemed to be tenant under the provisions of this Act." Section 14 of the Act provides that notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be determined unless the conditions specified in that section are fulfilled. It is unnecessary to set out the conditions because it is common ground that the tenancy of the respondent was not sought to be determined on any of the grounds in S. 14: it was in execution of the award made by the Debt Relief Court that the respondent was dispossessed. Section 29, by sub-s. (2) provides that no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form". Section 4 of the Act in so far as it is material provides: "A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant, if such land is not cultivated personally by the owner and if such person is not - (a) a member of the owner's family, or (b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or (c) a mortgagee in possession". Section 4 seeks to confer the status of a tenant upon a person lawfully cultivating land belonging

to another. By that provision, certain persons who are not tenants under the ordinary law are deemed to be tenants for purposes of the Act. A person who is deemed a tenant by S. 4 is manifestly in a class apart from the tenant who holds lands on lease from the owner. Such a person would be invested with the Status of a tenant if three conditions are fulfilled - (a) that he is cultivating land lawfully, (b) that the land belongs to another person, and (c) that he is not within the excepted categories."

14. The Apex Court has held that a person who is deemed a tenant by Section 4 of the Tenancy Act, is manifestly in a class apart from the tenant who holds land on lease from the owner. Such a person would be invested with the status of a tenant if three conditions are fulfilled, (a) that he is cultivating the land lawfully, (b) that the said land belongs to another person and (c) that he is not within the excepted categories. In the facts of the said case, the respondent was undoubtedly cultivating the land which belonged to another person and he derived his right to cultivate it from the mortgagee of the land and he did not fall within the excepted categories. It was submitted on behalf of the appellants therein that a person can be said to be lawfully cultivating the land within the meaning of Section 4 only if he has derived his right to cultivate directly from the owner of the land and not from some other person who has a limited interest, such as a mortgagee from

the owner. The Apex Court has not accepted those submissions and held that Section 2 (18) of the Tenancy Act has devised a special definition of "tenant" and included therein persons who are not contractual tenants and it would be, therefore, difficult to assume in construing Section 4 that the person who claims the status of a deemed tenant must be cultivating the land with the consent or authority of the owner. Though the issue was different, however, the Supreme Court in order to consider the provisions of Section 4 of the Tenancy Act in its right perspective, laid down three conditions to be fulfilled to bring a cultivator within the compass of Section 4 as a deemed tenant and those conditions are that (a) he is cultivating the land lawfully, (b) that the land belongs to another person and (c) that he is not within the excepted categories.

15. In the instant case, the Tahsildar, Bhusawal, in the impugned order dated 27.06.2001, after going through the entire record, observed that for the years 1986-87 to 1993-94, the land holder, namely, Chaitanya Patil was personally cultivating the land. It is further observed that though in the year 1994-95, name of the petitioner is appearing in the 7/12 extract, however, there is no record as to in what capacity the petitioner was cultivating the land. Further, a reference has also been given to the agreement

dated 10.04.1993 executed between the petitioner and respondent no.1. It was agreed between the parties that the petitioner for the years 1987-88 to 1991-92 would supply water to the portion of the suit land from the well situated in his own land gat no. 433 and for that purpose, accepted Rs.10,000/- per year from respondent no.1 Chaitanya Patil. It has also been recited that for the years 1993-94 to 1997-98, an amount of Rs.50,000/- was accepted by the petitioner for the same reason. On the basis of the said agreement, the Tahsildar, Bhusawal has held that the relation between the petitioner and respondent no.1 are limited to the extent of supply of water and not further. The Tahsildar, Bhusawal has recorded the oral evidence led by the petitioner. The Tahsildar has referred the depositions of witnesses, namely, Trimbak Vitthal Patil, Jagannath Vana Patil, Bhagwat Khandu Fegde and Sopan Khandu Patil. However he has discarded their oral evidence on the ground of the said agreement dated 10.04.1993 pertaining to the water supply between the petitioner and respondent no.1 and further referred one another agreement dated 07.11.1993 wherein the petitioner has executed an agreement pertaining to drip irrigation. The Tahsildar, Bhusawal has unequivocally held that the petitioner Pandharinath Mahadu Patil has failed to substantiate his contention that he was cultivating the suit land on the basis of the

oral lease. Further, by referring the deposition of the petitioner, the Tahsildar has observed that the petitioner has failed to substantiate his contention about the payment of rent / *khand* to the respondent in view of his contractual tenancy.

16. In the appeal the SDO, by referring the 7/12 extract of the suit land for the year 1994-95 and on perusal of the L.R. receipt and other receipts of crop protection taxes and the amount of Rs.9,000/- paid through cheque to the respondent by the petitioner, held that the petitioner was in possession of the suit land as per the oral lease and entries to that effect like crop entries recorded in the 7/12 extract for the year 1994-95 and 1995-96 substantiate the same. However, according to the SDO, the rent was not fixed according to Section 8 of the Tenancy Act and therefore, Sections 43 A and 43 B apply to the suit land. It is to be repeated here that according to the petitioner, he came in possession of the suit land on the basis of the oral lease from the year 1986-87 to 1993-94. Though learned Tahsildar, Bhusawal has specifically observed that for those years from 1986-87 to 1993-94 landlord Chaitanya Patil was personally cultivating the land, learned SDO has ignored the same and only considered the crop entries for the years 1994-95 and 1995-96. Even though learned

Tahsildar has observed that there is no evidence as to in what context Rs.9,000/- have been paid through cheque to the respondent, however, learned SDO has considered the said payment as rent ignoring the agreement between the parties about the drip irrigation.

17. Learned Member of MRT, Aurangabad has thus rightly given waitage to the observations of the learned Tahsildar, Bhusawal. Learned Member of the tribunal has correctly observed that contractual tenancy is created after the Tillers Day and it must be supported by a valid tenancy agreement and the authenticated amount of rent. The learned Member of MRT has further observed that since it was an oral agreement, the same must be supported by strong evidence. Further, learned Member of MRT has rightly observed that the entry after the proceedings under Maharashtra Land Revenue Code is made in favour of the present applicant (petitioner herein) on the basis of the cultivation and there is no proof provided by the petitioner regarding payment of rent as a tenant and whatever amount is transacted between the parties through bank cheque is the royalty of water. Learned Member of MRT has therefore specifically stated in the judgment itself that though the tribunal is not in agreement with the finding of the

SDO, further agrees with the final order of the SDO confirming the order of the Tahsildar declaring that the petitioner is not a tenant and the petitioner could not prove the relation of tenant and landlord.

18. It is also necessary to add here that during pendency of the suit bearing RCS No. 346 of 1993 instituted by the petitioner against respondent no.1 herein for declaration and injunction, the petitioner had filed an application Exhibit 52 to refer the matter to the tenancy court. However, the said application came to be rejected on the ground that the suit is filed only for injunction and not for possession. It is not necessary to refer the issue to the tenancy authorities. The trial court rejected the application by observing that reference can be considered if the petitioner is held to be in lawful possession at the time of filing of the suit. The said order passed below Exhibit 52 in RCS No. 346 of 1993 came to be confirmed up to the Supreme Court. Though the learned senior counsel for the petitioner has vehemently submitted that the issue of tenancy and possession as a tenant has to be decided by the tenancy authority and the civil court has no jurisdiction, however this Writ Petition pertains to the order passed under Section 70(b) of the Tenancy Act by the tenancy authorities. As discussed in the

foregoing paragraphs, the Tahsildar, Bhusawal has also recorded oral evidence of the petitioner and also that of his witnesses and considered the oral and documentary evidence. Thus, the tenancy authorities have independently considered the status of the petitioner. furthermore, out of curiosity, I have gone through the judgment and decree passed by the learned Civil Judge, Senoir Division in RCS No. 386 of 1996 (old 346/1993) (the suit instituted by the present petitioner for declaration and perpetual injunction against respondent no.1 Chaitanya Patil) wherein, the trial court has recorded the finding on issue no. 3 to the effect that the plaintiff (petitioner herein) cultivated the crop in the suit land after obtaining *ex parte* injunction.

19. In the light of the ratio laid down by the Supreme Court in the case of ***Dahya Lala*** (supra), though relied upon by learned senior counsel for the petitioner, and in the light of the decision of this Court in the case of ***Babu Hari Patil*** (supra), the material consideration is whether the person who claims to be a tenant has lawfully cultivated the land. In the instant case, there is no evidence to substantiate the contention raised by the petitioner that he was lawfully cultivating the land on the basis of the oral lease. It thus appears that his possession, if any, is nothing but possession of

a trespasser which is not protected by the provisions of the Tenancy Act and the question of benefit of Section 4 does not arise.

20. In the case of ***Hanmanta Daulappa Nimbal since deceased by his Heirs and LRs. v. Babasaheb Dajisaheb Londhe***, reported in **AIR 1996 SC 223**, in the same set of facts, in para nos. 4, 6 and 7, the Supreme Court has made the following observations:

"4. The only material question is whether the appellant had any tenancy rights in respect of the land in question? His claim is that he came into possession under the oral tenancy for 1968-69. That was denied by the maternal uncle who was examined on behalf of the respondent-landlord. It is true that one witness was examined on behalf of the appellant and that evidence was believed by the Appellate Authority, and the Revisional Authority did not disturb that finding. But the Revisional Authority primarily proceeded on the finding that the appellant is a deemed tenant. The question, therefore, is whether the ingredients of Section 4 of the Tenancy Act are satisfied. Section 4 reads thus:

"A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not----

5.

6. *The question springing for consideration is whether the appellant has lawfully cultivated the land for the year 1968-69? The admitted position is that the respondent filed the suit for injunction on January 20, 1969 and ad-interim injunction was issued on January 21, 1969. The appellant issued notice on January 22, 1969 claiming oral tenancy. In other words, the appellant had raised his claim for the first time, after the landlord had filed the suit. The appellant could have got lawful possession over the lands, if there would have been an agreement with the landlord, and pursuant thereto the landlord inducted the tenant in possession for beneficial enjoyment of the demised land on payment of premium or rent etc., or there would have been acquiescence of the landlord, for the tenant continuing to possess by accepting the rent. Since the claim of the appellant that he came into possession in the year 1968-69 under oral lease was not conclusively accepted and there is no proof that the landlord had accepted any rent, the appellant is a trespasser on the land. The suit was filed for injunction against the appellant. The burden is on the appellant to establish his lawful possession. Except the oral tenancy, no other evidence was brought on record. Entries in the revenue records cannot establish lawful possession, when admittedly, no notice was given to the respondent before making those entries. The other circumstance is payment of land revenue to the Government through Talhatti (village servant). For the payment thereof also, there is no notice or acquiescence by the landlord.*

7. *If these two circumstances are excluded, then the only fact is on the land, but the possession cannot be said to be lawful possession. In other words, his possession is of a trespasser, which is not protected by the Act. The question of benefit of Section 4 does not arise. Though the Tribunals below or the High Court has not adverted to this aspect of the matter, we feel that the order passed by the High Court needs no interference."*

21. In view of the discussion above, I find no substance in Writ Petition No.12620 of 2018. The same is hereby dismissed. Further, the fate of Writ Petition No. 7594 of 2018 was only depending upon the result of Writ Petition No. 12620 of 2018. Since Writ Petition No. 12620 of 2018 is now dismissed, Writ Petition No. 7594 of 2018 is also liable to be dismissed. Hence I proceed to pass the following order:

ORDER

Both the petitions i.e. Writ Petition No. 12620 of 2018 and Writ Petition No. 7594 of 2018 are hereby dismissed.

22. At this stage, the learned counsel for the petitioner prays that the interim relief may be kindly be continued for a period of six weeks so as to enable the petitioner to approach the Supreme Court. However, considering the nature of litigation I am not inclined to continue the interim relief. Request refused.

(V. K. JADHAV, J.)

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