IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2981 OF 2015

1. Dashrath s/o Rau Darekar,
Age 67 years, Occ. Agri.,
R/o At Post Hiradgaon, Tal. Shrigonda,
District Ahmednagar.

2. Zumbar Rau Darekar,
Age 57 years, Occ. Agri.,
R/o as above.

3. Ambadas s/o Rau Darekar,
Age 52 years, Occ. Agri.,
R/o as above.

4. Narayan s/o Rau Darekar,
Age 47 years, Occ. Agri.,
R/o as above.

5. Gaubai Suryabhan Galande,
Age 69 years, Occ. Agri.,
R/o At Post Takli Lonar,
Tal. Shrigonda, Dist. Ahmednagar.

6. Hirabai Nanasaheb Galande,
Age 50 years, Occ. Agri.,
R/o At post Takli Lonar,
Tal. Shrigonda, Dist. Ahmednagar. … Petitioners

Versus

1. Bapu s/o Rangnath Darekar,
Age 52 years, Occ. Agri.,
R/o At post Hiradgaon,
Tal. Shrigonda, Dist. Ahmednagar.

2. Ganpat s/o Rangnath Darekar,
Age 67 years, Occ. Agri.,
R/o at Post Malthan, Tal. Daund,
District Pune.

3. Sub Division Officer,
Sub Division, Karjat,

Tq. Karjat, Dist. Ahmednagar.

4. Tahsildar or A.L.T. Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.

5. Chandrakant Rajaram Devkar
Age: 57 years, Occ.: Agri,
R/o.: 375 Plot No.402, Sundar Plaza,
Falake Colony Indor,
Madhya Pradesh.

6. Shakuntala Rajaram Devkar,
Age: 62 years, Occ.: Agri,
R/o.: 375 Plot No.402, Sundar Plaza,
Falake Colony Indor,
Madhya Pradesh.

7. Jitendra Arun Devkar
Age: 31 years, Occ.: Agri,
R/o.: 375 Plot No.402, Sundar Plaza,
Falake Colony Indor,
Madhya Pradesh.

8. Prakash Rajaram Devkar
Age: 61 years, Occ.: Agri,
R/o.: 375 Plot No.402, Sundar Plaza,
Falake Colony Indor,
Madhya Pradesh.

9. Nanda Guddu Shinde
Age: 51 years, Occ.: Agri,
R/o.: 375 Plot No.402, Sundar Plaza,
Falake Colony Indor,
Madhya Pradesh.

10. Seema Manohar Devkar
Age: 44 years, Occ.: Agri,
R/o.: House No.223 Sector–E,
Slice No.3, Scheeme No.78, Indor,
Madhya Pradesh.

11. Mohit Manohar Devkar,
Age: 21 years, Occ.: Agri,
R/o.: House No.223 Sector–E,
Slice No.3, Scheeme No.78, Indor,

Madhya Pradesh.

12. Ashok Rajaram Devkar
Age: 55 years, Occ.: Agri,
R/o.: House No.223 Sector–E,
Slice No.3, Scheeme No.78, Indor,
Madhya Pradesh.

13. Manoramma @ Bebi Pandurang Abhang
Age: 64 years, Occ.: Agri,
R/o.: House No.223 Sector–E,
Slice No.3, Scheeme No.78, Indor,
Madhya Pradesh. … Respondents

…

Advocate for Petitioners : Mr. A. K. Gawali and Mr. V. P. Narwade
and Mrs. Manjushri Narwade
AGP for Respondent – State : Mr. Y. G. Gujrathi
Advocate for Respondent No.1 : Mr. N. P. Ghanwat
Advocate for Respondent Nos. 5 to 13 : Mr. P. N. Khedkar

…

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 11th AUGUST, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.

2. The petitioner is aggrieved by order dated 22/01/2015 passed by the Maharashtra Revenue Tribunal, Aurangabad, in Revision Petition No.19/B/2012/Ahmednagar, to the extent of direction issued in clause '4' of the operative order, which reads thus:-

> *"4. The case is remanded to Tahsildar & A.L.T. Shrigonda to take action as per Section 32 P (2) (A) &*

> *(B) of B.T. & A.L. Act. The parties are directed to present before A.L.T. and Tahsildar, Shrigonda on 26/02/2015."*

The order dated 05/03/2018, passed by Tahsildar and A.L.T., Shrigonda, in Tenancy Case No.32G/1/2009, is also impugned in the present petition.

3. Gut No.514, admeasuring 11 H 50 R, situated at village Hiradgaon, Taluka Shrigonda, (for short 'the suit land') is subject matter of present dispute. The suit land was originally owned by Rajaram Babu Devkar and Sitaram Babu Devkar, both residents of Madhya Pradesh. One Rau Nana Darekar was tenant over the suit land. Mutation Entry No.1055 to that effect was certified on 19/02/1955. Rau Nana Darekar continued in possession of the suit land. It appears that, there is some reference to the revenue record, according to which Rau has surrendered the suit land. It is the case of the petitioners that the said surrender is not in accordance with law and no procedure prescribed in law is followed at the time of alleged surrender. After death of Rau Nana Darekar in the year 1978, names of the petitioners, being legal heirs, were entered in the revenue record of the suit land. The petitioners' names continued in the cultivation column as tenants. According to the petitioners, since Rau was original tenant and was in possession of the suit land on tiller's day i.e. on 01/04/1957, he became owner

of the suit land.

4. Petitioner No.1 Dashrath, one of the legal representatives, filed application bearing Tenancy Case No.32G/4/1991 for fixation of purchase price of the suit land before Tahsildar and A.L.T., Shrigonda. The said application was rejected. Thereafter, petitioner No.1 Dashrath filed Tenancy Appeal No.5/1994 before Sub Divisional Officer, Karjat, which came to be allowed on 13/10/1995, holding that Rau Nana Darekar was tenant of the suit land since 1955-56, he continued in possession and was cultivating the suit land as tenant and the tenancy has not come to an end. Therefore, the petitioner was held entitled to purchase the suit land, under Section 32 G of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short 'the said Act').

5. Pursuant to the decision of Sub Divisional Officer, Karjat, petitioners deposited purchase price and became owners of the suit land. Certificate under Section 32 M of the said Act, was issued in favour of the petitioners and accordingly Mutation Entry No.2798 was certified.

6. Respondent No.1, thereafter, filed Tenancy Case No.32G Hiradgaon/1/2009 under Section 32 G(3) of the said Act, seeking review of the order passed by Sub Divisional Officer on 13/10/1995,

claiming that his father Rangnath was real brother of Rau Nana Darekar and was cultivating the suit land jointly. Since his father was tenant as per revenue record dated 01/04/1957, he is entitled to purchase 50% land i.e. 5 H 78 R, under Section 32 G of the said Act. When this was the factual position, the petitioner by misleading the revenue authorities has represented before them that Rau Nana Darekar was the only tenant of the suit land and has obtained orders in his favour. In the said application he has also prayed that, if there is a delay in filing review application, the same may be condoned. The said proceeding was filed on 15/07/2009. After hearing the parties, by order dated 09/12/2010, delay was condoned by the Tahsildar and A.L.T., Shrigonda, and direction to initiate inquiry under Section 32 G of the said Act, is issued.

7. The petitioners challenged the said order of condonation of delay by filing Tenancy Appeal No.1/2011 and 3/2011 under Section 74 of the said Act. Sub Divisional Officer, Karjat, rejected the said appeal and confirmed the order dated 09/12/2010, passed by Tahsildar and A.L.T., Shrigonda. The petitioners questioned orders passed by the Tahsildar and Sub Divisional Officer by filing Revision Application No.19/B/2012/Ahmednagar under Section 76 of the said Act before the Maharashtra Revenue Tribunal, Aurangabad. Maharashtra Revenue Tribunal, by the impugned order,

though set aside the order of delay condonation passed by the Tahsildar and A.L.T., Shrigonda, however, remanded the matter back to the Tahsildar and A.L.T., Shrigonda and directed to take action as per Section 32 P(2) (A) and (B) of the said Act. Petitioners are aggrieved by this direction.

Pursuant to the direction of the Maharashtra Revenue Tribunal, the Tahsildar and A.L.T., Shrigonda, has passed the impugned order dated 05/03/2018 in Tenancy Case No.32G/1/2009, thereby rejecting the application filed by the petitioners and directing that possession of the suit land be given to the original land owner. This order is also impugned in the present petition.

8. Heard rival submissions of learned advocate for petitioners, learned advocate for respondent No.1, learned advocate for respondent Nos. 5 to 13 and the learned Assistant Government Pleader for respondents – State. Perused the documents placed on record by the respective parties.

9. Admittedly, the order dated 13/10/1995, passed by Sub Divisional Officer, Karjat, has become final, as it was not challenged by the landlord. Respondent Nos. 1 and 2 were not in picture at that time. The said order is challenged by respondent No.1 by filing proceeding on 15/07/2009. In the said proceeding there is no

whisper about why the application is being filed belatedly after delay of 19 years. No separate delay condonation application was filed by the respondents. The said proceeding was filed as review under Section 32 G(3) of the said Act. Since the order under review was passed by Sub Divisional Officer, the Tahsildar being sub-ordinate officer could not have reviewed the order passed by Sub Divisional Officer.

10. While condoning delay, the Tahsildar has ignored these relevant aspects and has also ignored the fact that order passed by the Sub Divisional Officer on 13/10/1995 has become final as it was not challenged by any of the parties and there is no sufficient ground given for condonation of delay. The record further indicates that respondent Nos. 1 and 2 had knowledge about the order passed by the Sub Divisional Officer in favour of petitioners. The order passed by the Tahsildar, since is passed on irrelevant considerations and by ignoring relevant facts, is not sustainable. The Sub Divisional Officer, by ignoring these facts, has dismissed the appeal filed by the petitioners on the ground that the Tahsildar failed to give notices to all the concerned tenants and owners of the suit land.

11. Admittedly, challenge before the Maharashtra Revenue Tribunal was only to the extent of delay condonation. It was not

proper on the part of the Tribunal to go into other aspects and issue direction for action under Section 32 P(2) (A) and (B) of the said Act. While issuing said direction, the Tribunal has ignored the fact that the landlord has not challenged decision of the Sub Divisional Officer of declaring the petitioners as tenant and granting them certificate under Section 32(M) of the said Act in the year 1995, at any point of time. It is clear that the Tribunal has exceeded it's jurisdiction under Section 76, in directing action under Section 32 P(2) (A) and (B) of the said Act. The impugned direction issued by the Tribunal is, therefore, unsustainable.

12. Action initiated by the Tahsildar and A.L.T., Shrigonda, pursuant to the direction of Maharashtra Revenue Tribunal, Aurangabad, also, therefore, cannot be sustained in the facts of the present case.

13. Learned advocate for petitioners was justified in relying on the decision in ***Bhimrao Hanmant Patil (Died) Through LRs. And Others Vs. Naganath Santoba Bubane and Another, 2001(1) Mh.L.J. 232,*** wherein it is held that :-

> *"6. After having examined the rival contentions and after closely scrutinising the record I find that the Tribunal has clearly exceeded its revisional jurisdiction under Section 76 of the said Act. Moreover, the scope of the present proceedings before the Tribunal was a very limited one. So far as the finding recorded as to*

> *whether the petitioner became deemed purchaser, the same had attained finality and was not challenged by the respondent No.1. Admittedly, the said decision has not been challenged by the respondent No.1 at any point of time. Accordingly, the only issue that could have been examined by the Courts below in the present round of litigation was regarding fixation of the purchase price and nothing more. Instead of confining to that limited issue, the Tribunal clearly exceeded its authority to decide the entire matter afresh, without being bound by the earlier decision of the same Court, which had attained finality. Besides the Tribunal proceeded on totally wrong assumption that said Bhimrao was cultivating the suit land prior to 1-4-1957 as member of the joint family and not in his individual capacity. This assumption overlooks the finding recorded by the Courts below and which finding had attained finality. In that the suit lands are not subject matter of the Civil Suit for partition which was filed between the brothers of Bhimrao inter se. Moreover, Courts below have concurrently found that there is nothing on record to discard the presumption that the suit lands were held by Bhimrao in his individual capacity. In the circumstances the Tribunal has clearly misdirected itself and has committed error apparent on the face of record in concluding that the suit lands were held by Bhimrao as member of the joint family. Once the said finding recorded by the Tribunal is upset, in that case, there is no reason to deny the relief to the petitioners."*

14. The above observations are squarely applicable to the facts of the present case.

15. In the result, writ petition is allowed in terms of prayer clauses 'A' and 'A-1'. The impugned direction issued by the Maharashtra Revenue Tribunal, Aurangabad, in Revision Petition No.

19/B/2012/Ahmednagar, in clause ‘4’ of the operative order is hereby quashed and set aside. The impugned order dated 05/03/2018 passed by Tahsildar and A.L.T., Shrigonda, in Tenancy Case No.32G/1/2009, is also quashed and set aside.

16. Rule is made absolute in the above terms. No costs.

(NITIN B. SURYAWANSHI, J.)

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