

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

WRIT PETITION NO.5804 OF 2021

Ashok S/o Balwant Barse
Age: 74 years, Occu: Agri.,
R/o Babhaleshwar, Tq. Rahata,
Dist. Ahmednagar
Through his General Power of Attorney
Sunil S/o Ashok Barse
Age: 52 years, Occu: Agri.,
R/o: Karegaon, Tq. Shrirampur,
Dist. Ahmednagar
At present R/o Babhaleshwar, Tq. Rahata
Dist. Ahmednagar.

... Petitioner

Versus

1. Bhima S/o Yashwant Barse
(Since deceased) Through his LR.s

1-A. Udhav S/o Bhima Barse
Age: 58 years, Occu: Agri.,
R/o: Karegaon, Tq. Shrirampur,
Dist. Ahmednagar.

1-B. Awantika Karbhari Dushing
Age: 62 years, Occu: Household,
R/o: Karegaon, Tq. Shrirampur,
Dist. Ahmednagar.

1-C. Manda Subhash Rokade
Age: 35 years, Occu: Household,
R/o: Karegaon, Tq. Shrirampur,
Dist. Ahmednagar.

1-D. Vimal Dattatray Barse
Age: 60 years, Occu: Agri.,
R/o: Karegaon, Tq. Shrirampur,
Dist. Ahmednagar.

1-E. Prakash S/o Dattatray Barse
Age: 37 years, Occu: Agri.,

R/o: Karegaon, Tq. Shrirampur,
Dist. Ahmednagar.

1-F. Suresh S/o Dattatraya Barse
Age: 27 years, Occu: Agri.,
R/o: Karegaon, Tq. Shrirampur,
Dist. Ahmednagar.

2. The Tahsildar, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

3. The Sub-Divisional Officer
Shrirampur Division, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

... Respondents

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Mr. Rahul A. Tambe, Advocate for Petitioner

Mr. R. L. Kute, Advocate for Respondent Nos.1-A to 1-F

Mr. Y. G. Gujarathi, Advocate for Respondent Nos.2 & 3

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 16th June, 2022

PRONOUNCED ON : 06th September, 2022

JUDGMENT :

1. This petition filed under Article 227 of the Constitution of India is directed against the order dated 25-11-2020, passed by the Maharashtra Revenue Tribunal, Mumbai (Camp Aurangabad) in Revision No.1/B/2019/AN, thereby allowing the revision and setting aside the order passed by the Revenue Authorities in favour of the petitioner.

2. Land survey no.3/7 and survey no.3/10, total admeasuring 66 gunthas, which were later numbered as Gat No.5 in consolidation scheme, situated at village Karegaon, Taluka Shrirampur, District

Ahmednagar (for short 'the suit land') is the subject matter of the present petition.

3. The suit land was allotted to the petitioner under the provisions of the Maharashtra Inferior Village Watan Abolition Act, 1958 (for short 'the Watan Abolition Act') and accordingly, Mutation Entry No.1572 was certified.

4. On 13-07-1988, the petitioner filed a Tenancy Case No.23/88 under Sections 14, 29, 31 and 32 of the Bombay Tenancy and Agricultural Land Act, 1948 (for short 'the Act of 1948') claiming that the suit land is his ancestral property, which is given to the Bhima Yashwant Barse (predecessor of respondents) on rental basis. Bhima Yashwant Barse failed to pay the rent and he has caused damage to the suit land. Bhima is not cultivating the land personally. He owns land Gat No.246, admeasuring 2 Hectare 77 R in Karegaon Shivarat, which is in his cultivatory possession. Hence, he claimed the possession of the suit land be taken from Bhima and it should be given to him.

5. In Mutation Entry No.6196 of the suit land, it is recorded that the said land is Class 6-B inam land and as per the order passed by the Mamlatdar, Shrirampur dated 24-08-1961, Bhima Yahwant Barse is a tenant to the suit land owned by the petitioner. It is

further mentioned that since the said land is Class-B inam land of survey no.3/7 and 3/10, respondent no.1 has no right to purchase the said land. On 18-03-1962, by Mutation Entry No.6239, the name of state was recorded as owner and possessor of the suit land, in view of abolition of the inam. By Mutation Entry No.1572, the name of the petitioner is recorded as cultivator of the said land.

6. The petitioner claims that in view of the provisions of Watan Abolition Act, the suit land was to be regranted to the holder on their paying occupancy charges. The petitioner paid occupancy charges on 01-03-1969 and 25-01-1994 and applied to the Talathi, Shrirampur for recording his name and deleting the name of government from the revenue record. The petitioner issued notice dated 18-11-2003 to respondent no.1 terminating his tenancy on the ground that he has not paid rent and the suit land is cultivated by some other persons and the petitioner requires the land for self cultivation, as it is only the source of income to him. By the said notice, the petitioner terminated tenancy of Bhima from December-2003 and asked him to handover the possession. On failure of the respondent no.1 to handover possession, petitioner filed Tenancy Case No.23/1988 seeking possession of the suit land. The same was withdrawn by the petitioner and the petitioner thereafter filed Tenancy Case No.1/2004 for possession of the suit land on the

above grounds, which was allowed by the Tahsildar/respondent no.2.

7. The respondents challenged the said decision by filing Tenancy Appeal No.2/2007 before the Sub-Divisional Officer, Shrirampur/respondent no.3. The matter was remanded back by respondent no.3 holding that perusal of 7/12 extract shows that there is entry in the name of respondent no.1 as cultivator from the years 1952-1953, 1961-1962 and 1970-1971. After the remand, the matter is numbered as Remand Case No.1/2012. The respondent no.2 rejected the said case filed by the petitioner holding that respondent no.1 is the tenant prior to 01-04-1957. The petitioner challenged the said decision by filing Tenancy Appeal No.166/2014 before the Sub-Divisional Officer, Shrirampur. By partly allowing the same, the matter was again remanded back to the Tahsildar.

8. After remand, the matter is numbered as Remand Tenancy Case No.1/2004. The Tahsildar allowed the said case in favour of the petitioner and directed to remove respondent no.1 as tenant from the suit land as per Section 32-P of the Act of 1948 and confirmed the decision of Tahsildar dated 28-03-2007. The said decision is confirmed in appeal by the Sub-Divisional Officer in Tenancy Appeal No.134/2017 by order dated 28-06-2018. The

respondents challenged the decisions of Tahsildar and Sub-Divisional Officer before the Maharashtra Revenue Tribunal, Aurangabad by filing Revision No.1/B/2019. The Tribunal has allowed the revision filed by respondents by the impugned judgment dated 25-11-2020. The petitioner is aggrieved by the said decision.

9. Heard the learned Advocate for the petitioner, learned Advocate for respondent nos.1-A to 1-F and the learned Assistant Government Pleader for respondent nos.2 & 3/State.

10. The learned Advocate for the petitioner assailed the impugned decision contending that respondent no.1 was not a protected tenant and he was in unauthorized possession of the suit land. By relying on the decisions of the Tahsildar and Sub-Divisional Officer, he submits that the Tribunal has erred in interfering in the concurrent finding of fact recorded by both the revenue authorities. He submits that the Tribunal has ignored the provisions of Section 4-A of the Watan Abolition Act and further erred in holding that the admission of Bhima that landlord is from his brotherhood would not brand Bhima or his legal heirs to be family members of the landlord and though names of the parties show one ancestor before five generations, that by itself will not bring the matter within the bracket of Section 4-A of the Act of 1948, to decline tenancy status.

By relying on the decision **Rangnath Dashrath Vadar (Since deceased) Vs. Shri. Bhagatsing Vithalsing Kotwal** reported in **2003 (1) ALL MR 1142**, he submits that since the suit land was resumed by the government under the provisions of Watan Abolition Act and the same was re-granted to the petitioner, therefore, when the oral tenancy was created between the petitioner and respondent no.1 in the year 1968, was illegal and therefore, respondent no.1 was not a tenant. He, therefore, supports the orders passed by the revenue authorities being concurrent finding of fact recorded on the basis of evidence and legal provisions. According to him, the Tribunal has erred in interfering in the same without assigning proper reasons and therefore, the impugned order is liable to be quashed and set aside by allowing the present petition.

11. On the other hand, the learned Advocate for the respondent nos.1-A to 1-F submits that by relying on the admission given by the petitioner in the proceedings that suit land was in possession of respondent no.1 and prior to that the suit land was in possession of Bhima Yashwant Borse from 1951 to 1952. He submits that the entries in the 7/12 extracts placed on record also support the said facts. The entries in the 7/12 extracts are not considered by the revenue authorities and it is held that, tenancy is created in the

year 1968. According to him, the Tribunal was right in holding that tenancy was created before 01-04-1957. He further submits that the Watan Abolition Act was made applicable to the Ahmednagar District on 01-02-1962. Therefore, right of respondent no.1 was crystallized on 01-04-1957 i.e. on tillers day.

12. He further submits that there are no pleadings of the petitioner in respect of Section 4 and no evidence in support of the arguments which is advanced in respect of Section 4 is led by the petitioner. By relying on **Kondu Thaku Chavan Vs. Ashok Shankar Chavan** reported in **2018(6) Mh.LJ 660**, **Shantabai Dada Koli Vs. Bhujgonda Adgonda Patil** reported in **2005 (1) All MR 344** and **Sadashiv Dada Patil Vs. Purushottam Omkar Patil** reported in **2007 (1) Mh.LJ 149**, he submits that there is no substance in the petition and the same may be dismissed.

13. The learned Assistant Government Pleader has supported the order passed by the Tribunal.

14. It is clear from the 7/12 extracts of the years 1952-1953, 1961-1962 and 1970-1971, respondent no.1 was cultivating the suit land as tenant on crop share basis. In cross examination, the petitioner has admitted this fact. Thus, on the tillers day i.e. on 01-04-1957, the respondent no.1 was in possession of the suit land and he has acquired the status of deemed tenant. He has also

admitted that his father Balwant Barse was a Driver in P.M.T, Pune and he expired on 29-02-1956, while suit land was under cultivation of respondent no.1 from 1952-1953 on crop share basis. He has also admitted that there was no written agreement, but there was oral agreement between the petitioner and respondents. These admissions prove that the respondent no.1 was cultivating the suit land as tenant prior to 01-04-1957.

15. Section 8 of the Watan Abolition Act reads thus :

"8. Application of tenancy law-if any watan land has been lawfully leased and such lease is subsisting on the appointed date, the provisions of the tenancy law shall apply to the said lease and the rights and liabilities of the holder of such land, and his tenant or tenants shall, subject to the provisions of this Act, be governed by the provisions of said law."

16. Watan Abolition Act was made applicable to Ahmednagar District on 01-02-1962. The learned Advocate for the respondents is right in submitting that the right of respondent no.1 was crystallized on 01-04-1957 and therefore, applicability of the Watan Abolition Act would not in any manner affect the tenancy right of respondent no.1 as tenant of the suit land which was already subsisting since 1952 onwards. Fact remains that, suit land was re-granted to the petitioner by the government.

17. The petitioner has failed to bring on record any material to show that the respondent no.1 was member of the family, therefore

reliance of petitioner on Section 4 (4-1A) of the Act of 1948 is misplaced and misconceived.

18. The Tahsildar has erred in coming to a conclusion that the suit land was Class 6-B inam land and the said inam is abolished by the Watan Abolition Act and since respondent no.1 being a tenant at that time, did not deposit the occupancy price till 31-01-1968, therefore, the suit land was owned by the government and hence, the oral tenancy created by the petitioner and respondent no.1 in the year 1968 is illegal.

19. In Rangnath Dashrath Vadar (*Supra*), this Court has observed:

"14. In the result, I find that the relationship between the parties in respect of the land in question would not be liable to be governed by the provisions of the Bombay Tenancy Act, the lands having been resumed by the State Government under the provisions of the Watan Abolition Act unless the land is re-granted. Accordingly, the writ petition is allowed in terms of prayer clause (a). In the result, the proceedings under section 32G as well as the orders passed therein are quashed and set aside. The rule is made absolute. No order as to costs."

20. Coming to the facts of the present case, since it is a matter of record that respondent no.1 was in possession of the suit land as tenant since 1952-1953 onwards, even before application of the Watan Abolition Act to the suit land, in the year 1962 and since he has become deemed tenant on tillers day i.e. on 01-04-1957, this

citation does not help the case of the petitioner.

21. In *Shantabai Dada Koli (Supra)*, learned Single Judge of this Court held that, if the tenant is in cultivating possession of the inam land since 01-04-1957 and the said land is re-granted to the landlord on payment of occupancy price to State Government, the date of compulsory purchase of land stands statutorily postponed to the date of re-grant. It is not necessary for tenant to exercise his right to purchase within stipulated time after order of re-grant as contemplated by Section 32-O of the Tenancy Act and no new tenancy is created from the date of re-grant.

22. In *Kondu Thaku Chavan (Supra)*, this Court by relying on the Apex Court decision in **Pandurang Dnyanoba Lad Vs. Dada Rama Methe** reported in **AIR 1976 SC 1910** held that Section 32-O of the BT and AI Act applies only to the tenancies created after tillers' day. As the relationship of landlord and tenant between the parties did not come to an end, it should not be said that new relationship of the landlord and the tenant came into existence between the parties.

23. In *Sadashiv Dada Patil (Supra)*, it is held thus;

"16. Indisputably, the rights and obligations of the parties were governed by the Tenancy Act. Section 31 thereof entitled the watandar to serve a notice upon the tenant to hand over vacant possession to him of the tenanted land, if the land was

required for one or the other purposes mentioned therein. Such a notice was to be served on or before 31.12.1956. It is not contended that Respondent was served with such a notice. No proceeding was initiated before 31.3.1957. The tenancy, therefore, continued.

17. *First day of April, 1957 was declared to be the "tillers day'. If a person remained a tenant on the said date, by reason of the legal fiction created under Section 32 of the Tenancy Act, he would be deemed to have purchased the land from his landlord, free from all encumbrances subsisting thereon on the said day. Section 32-G thereof, on the other hand, casts an obligation on the Tribunal. The Tribunal is required to publish or cause to be published a public notice in the prescribed form calling upon the tenants who under Section 32 of the Tenancy Act are deemed to have purchased the land. Section 32-O contains a non-obstante clause providing notwithstanding any agreement or usage to the contrary, a tenant cultivating personally would be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.*

18. *Section 8 of the 1962 Act, as noticed hereinbefore, provides that the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of the said part, be governed by the provisions of the that law. The proviso appended hereto whereupon reliance has been placed by Mr. Dube reads as under :*

"Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the re-grant of the land under section 5 or 6 or 9, as the case maybe."

Explanation.- For the purposes of this section the expression "land" shall have the same meaning as is assigned to it in the relevant tenancy law."

19. *The provisions of both the Acts are required to be construed harmoniously. They have to be construed keeping in view the purport and object, they seek to achieve.*

20. *Section 32 of the Act confers an absolute right to the tenant.*

21. *As in 1957 the right of the respondent to purchase the land became a vested right, proviso appended to Section 8 of the 1962 Act could not be read to mean such right stood divested. Proviso appended to Section 8 refers to the application of the provisions of the relevant tenancy laws as the same does not abrogate a vested right. Proviso, it is well known, has a limited role to play. It may create an exception. It ordinarily does not create a right or takes away a vested or accrued right. Proviso to Section 8 of the 1962 Act, in our considered opinion, does not take away a vested right conferred under the Tenancy Act.*

22. *By construing both the Acts harmoniously, the High Court in our opinion, did not make a new law. It merely interpreted the same in the light of the object of the Act. The proviso appended to Section 8 of the 1962 Act merely postponed the operation of the statute. Fixation of price of the land in question subject to exercise of option by the tenant was to that extent beneficial to the landlord; but the same would not mean that legal fiction created under 32 of the Tenancy Act would stand effaced."*

24. The above cited ratio supports the case of the respondents.

25. The Tribunal has recorded its findings on the basis of record and provisions of law applicable to the facts of the present case. There is no illegality or perversity in the order impugned in the present petition. Writ Petition, being devoid of merit, is dismissed. No costs.

26. At this stage, the learned Advocate for the petitioner seeks stay to to this order. He, however, fairly concedes that there was no stay during pendency of the petition. For the reasons stated in the order, request is rejected.

[NITIN B. SURYAWANSHI, J.]

Sameer