

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

WRIT PETITION NO.4200 OF 2014

Gangaram Chhabildas Charity Trust Yeola,
Tal. Yeola, Dist. Nasik through the Trustees

1. Shri Dhavalchandra Tribhuvandas Patel
Age : 63 years, Occu: Agriculture
 2. Shri Atmesh Krishnadas Patel
Age : 56 years, Occu: Agriculture
 3. Shri Bhushan Vishnudas Patel,
age : 48 years, Occu: Agriculture
R/o. Trustee No.1 to 3 are residing at Hundiwala Lane,
Yeola, Taluka Yeola, Dist. Nasik
 4. Dr. Yuvraj Dhavalchandra Patel
Age : 28 years, Occ: Agriculture
R/o. Yevlekar Building, Panchavati Karanja,
Panchavati, Nashik, Dist. Nasik.
- ... PETITIONERS**

VERSUS

1. The State of Maharashtra
through Secretary, Ministry of Revenue and Forest,
State of Maharashtra, Mantralaya, Mumbai
 2. The Collector Ahmadnagar
Collector Office Premises, Ahmednagar
 3. The Sub-Divisional Officer, Sangamner
Sub-Divisional Office Premises, Sangamner Division,
At and Post Sangamner, Dist. Ahmadnagar
 4. The Sub-Divisional Officer, Shirdi
Sub-Divisional Office Premises, Shirdi Division,
At and Post Shirdi, Dist. Ahmadnagar
 5. The Tahasildar Rahata
The Tahsil Office Premises, Rahata,
Taluka Rahata, Dist. Ahmadnagar
 6. Smt. Anandibai Shekhchand Pipada
Age : 82 years, Occu: Household
 7. Shri Chetan Ishwarlal Pipada
Age : 27 years, Occ: Agriculture
R/o. Rahata, Tal. Kopargaon, Dist. Ahmadnagar
- ... RESPONDENTS**

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Advocate for Petitioner : Mr. M.M. Bhokarikar
AGP for respondent Nos.1 to 5 : Mr. PN. Kutti

Advocate for Respondent : Mr. Anil Anturkar, Senior advocate i/b. Mr. B.K. Patil

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**WITH
WRIT PETITION NO.3144 OF 2015**

1. Smt. Anandibai Shekchand Pipada
Age : 82 years, Occu: Agriculturist

Late Smt. Anandibai Shekchand Pipada,
through LR's Petitioner No.1
- i. Chetan Ishwarlal Pipada
Age : 32 years, Occu: Agriculture
Residing at Rahata, Tal.: Rahata
Dist. Ahmadnagar.
(already on record as petitioner No.2)
- ii. Shobha w/o. Ishwarlal Pipada,
Age : 62 years, Occ: Agriculture,
Residing at : Rahata, Tal. : Rahata,
District – Ahmadnagar.
- iii. Prajakta Gautam Khichechya,
Age : 36 years, Occ: Housewife and Agriculture,
Residing at Adgaon Naka Nashik, Tal. Nashik
District Nashik.
2. Chetan Ishwarlal Pipada
Age : 27 years, Occu: Agriculture
Both R/o. Rahata, Tq. Rahata,
Dist. Ahmednagar.

... PETITIONERS

VERSUS

1. Shri Gangaram Chhabildas Charity
Trust, Yeola, Tq. Yeola, Dist. Nashik,
through Managing Trustee
 - a. Shri Dhawalchandra
Tribhuvandas Patel (Gujarathi),
Age : 63 years, Occu: Business,
 - b. Shri Atmesh Krishnadas Patel,
Age : 56 years, Occu: Business
 - c. Dr. Ramdas Vishnudas Patel,
Age : Adult, Occu: Agriculture
R/o. Trustee No.a,b,c are residing
at Hundiwala Lane,
Yeola, Taluka Yeola, Dist. Nasik
2. Dr. Yuvraj Dhavalchandra Patel,
Age : appr. 28 years, Occu: Doctor
R/o. Yevlekar Building, Panchavati

Karanja, Panchavati, Nashik,
Dist. Nasik.

... **RESPONDENTS**

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Advocate for Petitioner: Mr. Anil Anturkar, Senior advocate i/b. Mr. B.K. Patil
AGP for respondent/State : Mr. P.N. Kutti
Advocate for Respondent : Mr. M.M. Bhokarikar

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WITH
WRIT PETITION NO.8597 OF 2017
WITH
CA/13351/2021 IN WP/8597/2017

1. Chetan Ishwarlal Pipada
Age : 30 years, Occu: Agriculture
Residing at Rahata, Tal.: Rahata
Dist. Ahmadnagar.

2. Anandibai Shekchand Pipada
Age : 82 years, Occu: Household
Residing at : Rahata Tal. Rahata
Dist. Ahmadnagar.

Late Smt. Anandibai Shekchand Pipada,
through LR's Petitioner No.2

i. Chetan Ishwarlal Pipada
Age : 32 years, Occu: Agriculture
Residing at Rahata, Tal.: Rahata
Dist. Ahmadnagar.

(already on record as petitioner No.1)

ii. Shobha w/o. Ishwarlal Pipada,
Age : 62 years, Occ: Agriculture,
Residing at : Rahata, Tal. : Rahata,
District – Ahmadnagar.

iii. Prajakta Gautam Khichechya,
Age : 36 years, Occ: Housewife and Agriculture,
Residing at Adgaon Naka, Nashik, Tal. Nashik
District Nashik.

... **PETITIONERS**

(Applicant No.1 Org third party and
applicant No.2 Org. Judgment Debtor)

VERSUS

1. Gangaram Chhabildas Dharmarth Arya
Aushadhalay Trust, Yewala, Taluka : Yewala,
District Nashik through the Trustee
2. Dhawalchand Tribhuwandadas Patel,
Trustee Gangaram Chhabildas Dharmarth Arya
Aushadhalay Trust
Age : 63 years, Occu: Agriculture

- Residing at : Hundiwale Lane, Yewala,
Taluka : Yewala, Dist. Nashik
3. Aatmesh Krishnadas Patel,
Trustee Gangaram Chabildas Dharmath Arya
Aushadhalay Trust,
Age : 46 years, Occu: Agriculture
Residing at Hundiwale Lane Yewala,
Taluka : Yewala, Dist. Nashik
 4. Bhushan Vishnudas Patel,
Trustee Gangaram Chabildas Dharmath Arya
Aushadhalay Trust,
Age : 48 years, Occ: Agriculture
Residing at Hundiwale Lane, Yewala,
Taluka : Yewala, District Nashik.
 5. Dr. Yuvraj Dhawalchand Patel,
Age : 28 years, Occu: Agriculture
Trustee Gangaram Chabildas Dharmath Arya
Aushadhalay Trust,
Residing at Yewalekar Building,
Panchawati Karanja, Panchawati,
Nashik, District Nashik.

... **RESPONDENTS**
(Org. Decree Holder)

...
Advocate for Petitioner: Mr. Anil Anturkar, Senior advocate i/b. Mr. B.K. Patil
Advocate for Respondent : Mr. M.M. Bhokarikar

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WITH
WRIT PETITION NO.4477 OF 2020

1. Anandibai wd/o. Shekchand Pipada
Age : 82 years, Occu: Agriculturist

Late Smt. Anandibai Shekchand Pipada,
through LR's Petitioner No.1
- i. Chetan Ishwarlal Pipada
Age : 32 years, Occu: Agriculture
Residing at Rahata, Tal.: Rahata
Dist. Ahmadnagar.
(already on record as petitioner No.2)
- ii. Shobha w/o. Ishwarlal Pipada,
Age : 62 years, Occ: Agriculture,
Residing at : Rahata, Tal. : Rahata,
District – Ahmadnagar.
- iii. Prajakta Gautam Khichechya,
Age : 36 years, Occ: Housewife and Agriculture,
Residing at Adgaon Naka, Nashik, Tal. Nashik
District Nashik.

2. Chetan s/o. Ishwarlal Pipada
Age : 32 years, Occu: Agriculture
Both R/o. Rahata, Tq. Rahata,
Dist. Ahmednagar.

... PETITIONERS
(Org. Applicants)

VERSUS

1. Dhawalchandra Tribhuwandas Gujarathi (Patel),
Age : Adult, Occu: Business,
2. Atmesh Krishnadas Gujrathi (Patel),
Age : Adult, Occu: Business
3. Ramdas Vishnudas Gujrathi (Patel)
Age : Adult, Occu: Business
Respondent Nos. 1 to 3
all residing at : At post – Yewala,
Taluka – Yewala,
Dist. Nashik.

(respondent No.4 added as party respondent on page No.2A
as per order dated 13.08.2021 and 17.08.2021)

4. Gangaram Chhabildas Dharmarth Charity
Trust Yeola, through Managing Trustee,
Dhawalchandra Tribhuvandas Gujrathi/ Patel,
Age : 70 years, Occu: Agriculturist,
R/o. Yeola, Tal. Yeola, District Nashik.

... RESPONDENTS

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Advocate for Petitioner: Mr. Anil Anturkar, Senior advocate i/b. Mr. B.K. Patil
Advocate for Respondent : Mr. M.M. Bhokarikar

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WITH

WRIT PETITION NO.5116 OF 2020

1. Anandibai wd/o. Shekchand Pipada
Age : 82 years, Occu: Agriculturist

Late Smt. Anandibai Shekchand Pipada,
through LR's Petitioner No.1
- i. Chetan Ishwarlal Pipada
Age : 32 years, Occu: Agriculture
Residing at Rahata, Tal.: Rahata
Dist. Ahmadnagar.
(already on record as petitioner No.2)
- ii. Shobha w/o. Ishwarlal Pipada,
Age : 62 years, Occ: Agriculture,
Residing at : Rahata, Tal. : Rahata,
District – Ahmadnagar.

- iii. Prajakta Gautam Khichechya,
Age : 36 years, Occ: Housewife and Agriculture,
Residing at Adgaon Naka, Nashik, Tal. Nashik
District Nashik.
- 2. Chetan s/o. Ishwarlal Pipada
Age : 32 years, Occu: Agriculturist,
Both residing at
at post Rahata, Tq. Rahata,
Dist. Ahmednagar.

... PETITIONERS
(Org. Applicants)

VERSUS

- 1. Gangaram Chabildas Dharmarth Arya
Aushadhalaya Trust,
at post - Yeola, Taluka Yeola, Dist. Nashik,
through the Trustees,
- i) Dhawalchandra Tribhuwandadas Gujrathi (Patel),
Age : Adult, Occu: Business
- ii) Bhushan Vishnudas Gujrathi (Patel)
Age : Adult, Occu: Business
- iii) Yuvraj Dhawalchandra Gujrathi (Patel)
Age : Adult, Occu: Business
- iv) Atmesh Krishndas Gujrathi (Patel),
Age : Adult, Occu: Business

... RESPONDENTS

...

Advocate for Petitioner: Mr. Anil Anturkar, Senior advocate i/b. Mr. B.K. Patil
Advocate for Respondent : Mr. M.M. Bhokarikar

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CORAM : MANGESH S. PATIL, J.

Reserved on : 03.12.2021

Pronounced on : 13.01.2022

JUDGMENT :

Heard the learned Senior advocate Mr. Anturkar and learned advocate Mr. Bhokarikar.

2. At the outset Mr. Anturkar, on instructions, seeks leave to withdraw Writ Petition No.3144/2015.

3. Rule in rest of the Writ Petitions. It is made returnable

forthwith. The learned advocates for the respective respondents waive service. At the joint request of the parties, the matters are heard finally at the stage of admission. Since the facts relevant for decision of all these petitions are common, these are being disposed of by this common judgment. For the sake of convenience the parties are hereinafter referred to by their names.

4. These matters present a chequered history, the events and particulars can be summarized as under. :-

- a) One Tribhuvandas was the original owner of the writ property being land Survey No.114 corresponding to Gat No.438/3 admeasuring 17 Acres 39 Gunthes of Village Sakuri Tq. Kopergaon, District Ahmednagar.
- b) By executing a written lease dated 06.08.1955 Tribhuvandas leased out the writ property to Deepchand for a period of 15 years.
- c) Deepchand died on 25.01.1958. He was survived by son Shekchand and daughter in law Anandibai Shekchand.
- d) Under another lease deed the writ property was leased out by Tribhuvandas to Shekchand in the year 1960.
- e) Tribhuvandas sold the writ property to one Gangaram Chhabildas Trust (herein after the Trust) under the registered sale deed dated 11.01.1962.
- f) Shekchand died in the year 1975.
- g) Anandibai then took Ishwarlal in adoption after demise of

Shekchand.

h) The Trust instituted Regular Civil Suit No.534/1992 for eviction of Anandibai. The Suit was decreed on 18.07.2003.

i) Anandibai preferred Regular Civil Appeal No.96/2003 which was dismissed on 07.01.2011.

j) Anandibai preferred Second Appeal No.119/2011 which was also dismissed on 17.03.2011.

k) She preferred Review Application No.112/2011 but even it was dismissed on 14.12.2011.

l) Anandibai preferred Special Leave Petition (c) No.13398-13399/2012 in Civil Appeal No.6447/2012. It was dismissed on 19.04.2012.

m) The Trust has preferred an execution being Regular Darkhast No.18/2014 for recovery of possession in view of the decision of the Civil Court which was finalized up to the Supreme Court.

n) Chetan preferred objections (Exhibit-16 and Exhibit-45) under Section 47 of the Civil Procedure Code read with Section 3 and 85 of the Tenancy Act.

i) He contended that the civil court had no jurisdiction to decide the nature of the tenancy and the decree which was confirmed up to the Supreme Court was a nullity.

ii) He also took a stand that since Deepchand had

become the deemed purchaser even he (Chetan) had 50% of share being his grandson. The decree was passed only against Anandibai and was not binding on his half share.

iii) The executing court by the order dated 04.05.2017 rejected both these objections (Exhibit-16 and Exhibit-45).

o) Being aggrieved, Chetan and Anandibai have filed Writ Petition No.8597/2017.

p) Anandibai has died during pendency of these writ petitions and Chetan who is already on the record and other two heirs have been brought on record.

q) Ishwarlal died in 2009 and is survived by a son – Chetan.

r) Anandibai and Chetan filed Tenancy Case No.9/2012 before the Agriculture and Lands Tribunal (ALT) under Section 32 (G) of the Maharashtra Tenancy and Agricultural Lands Act (hereinafter the Tenancy Act) asserting that their predecessor Deepchand was a permanent tenant who was cultivating the writ property personally on the tillers' day i.e. 01.04.1957 and had become a deemed purchaser on that day and requested for fixing purchase price.

i) It was averred by Anandibai and Chetan that the writ property was in possession of Deepchand since the year 1920. The lease was being extended from time to

time. He was personally cultivating the writ property.

- ii) There was no reference about the lease being for cultivation of sugarcane crop while executing the lease deed on 06.08.1955.
- iii) Without efflux of the period of lease of 15 years, in order to come out of the clutches and rigours of the Tenancy Act a fresh lease deed was got executed from Shekchand for a period of 30 years in 1960.
- iv) Even in that lease there is a recital about the earlier possession being confirmed demonstrating that Deepchand was in possession of the writ property on the tillers' day i.e. on 01.04.1957.
- v) At no point of time Tribhuvandas had applied for possession under Section 29 of the Tenancy Act.
- vi) The writ property was sold by Tribhuvandas to the Trust after the Tillers' day and it had no effect on the title created in favour of Deepchand.
- vii) Though a certificate under Section 88B of the Tenancy Act was issued in favour of the Trust to the effect that the writ property being a trust property it is exempt from the provision of the Tenancy Act, it has no bearing on the right and title of the Deepchand and, Anandibai and Chetan as his successors.

viii) The proceeding was filed against heir of Tribhuvandas and couple of other persons but the Trust was not made a party.

ix) Tribhuvandas contested that proceeding by raising a point that :

Deepchand was not a permanent tenant.

The writ property was leased out to him exclusively for cultivation of sugarcane crop. Therefore by virtue of Section 43 the provisions of Section 32 to 32 R were not applicable to it.

An order under Section 43 was issued to that effect on 04.12.1959.

Pursuant to such order dated 04.12.1959 Mutation Entry No.2388 was effected on 22.12.1959.

- s) The ALT allowed the Tenancy Application No.9/2012 by the order dated 30.09.2013. A certificate under Section 32 M of the Tenancy Act was issued after Anandibai and Chetan deposited the purchase price fixed by the ALT.
- t) Tribhuvandas and others challenged the order of ALT in Tenancy Appeal No.594/2014 before the Sub Divisional Officer Shirdi.
- u) Even the Trust challenged the order of ALT by preferring a separate appeal bearing Tenancy Appeal No.97/2014.

- v) The SDO allowed both the appeals by separate judgments on 06.10.2016.
- w) Being aggrieved Anandibai and Chetan preferred two separate revision applications before the Maharashtra Revenue Tribunal, Aurangabad being Revision Application No.80/B/2016/ Ahmednagar and 79/B/2016/ Ahmednagar.
- x) The Trust has filed the Writ Petition No.4200/2014 against Anandibai and Chetan being aggrieved by the order in the Tenancy Case No.9/2012 to which it was not a party.
- y) The Maharashtra Revenue Tribunal by the orders under challenge in Writ Petition No.4477/2017 and Writ Petition No.5116/2020 dismissed the Revision Applications.
- z) The Sum and substance of the conclusions drawn by the learned SDO and the Maharashtra Revenue Tribunal are to the following effect:
 - i) The writ property was leased out for cultivation of sugarcane therefore by virtue of provisions of Section 43A(1)(b) of the Tenancy Act the provisions of Section 32 to 32 R were not applicable. Based on such an order dated 04.12.1959, Mutation Entry No.2388 was effected.
 - ii) At no point of time, Deepchand had applied under Section 32 G during his life time.
 - iii) Even Shekchand who died in the year 1975 had never

moved any such application.

- iv) Baring four to five years the revenue record demonstrated that sugarcane was being cultivated in the writ property.
- v) There was a specific stipulation in the lease deed between Tribhuvandas and Shekchand for cultivation of the writ property for sugarcane.
- vi) The Mutation Entry No.2388 was also never challenged nor was the order dated 04.12.1959 on the basis of which it was effected.
- vii) The ALT had no jurisdiction to grant application under Section 32-G in the facts and circumstances and was not even having jurisdiction to direct cancellation of the Mutation Entry No.2388.

5. The basic proposition advanced by Mr. Anturkar is to the effect that in view of the aforementioned facts and circumstances, the dispute is not in respect of tenancy at all in as much as, Deepchand had become a deemed purchaser of the writ property on the tillers' day i.e. 01.04.1957 in view of the provisions of the Tenancy Act. Anything that had taken place after this crucial date has to be simply ignored and has no bearing at all on the rights being claimed by Anandibai and Chetan, including the decisions of the civil court.

6. Mr. Anturkar would submit that the writ property was sold to the Trust after 01.04.1957 and such subsequent sale would not affect the

title created in favour of Deepchand by operation of law. In support of this submission he would rely upon the decision in the case of **Janardan Dagdu Khomane and Anr Vs. Eknath Bhiku Yadav and Ors ; (2019) 10 SCC 395.**

He would submit that even though subsequently the Collector has issued a certificate under Section 88B in favour of the Trust declaring exemption from applicability of the provisions of the Tenancy Act, it would have no bearing and would not divest Deepchand of the writ property deemed to have been purchased by him.

7. Mr. Anturkar would then submit that so far as the fact of their being any order passed under Section 43 A (1) (b) of the Tenancy Act on the basis of which Mutation Entry No.2388 was taken, Mr. Anturkar would submit that no such plea was ever raised before the lower courts or even in the testimony. It was not even argued and considered by anybody. He would submit that there is a reasonable suspicion about even genuineness of the alleged order which is not to be found in the office of Tahsildar as is informed by that office. He would submit that even no certified copy of any such order has ever been placed on record. Only an inadmissible photocopy of the order has been produced which cannot be taken as an evidence which can be admitted. He would, therefore, submit that this ground for refuting the claim of the Anandibai and Chetan does not sustain.

8. Mr. Anturkar would then submit that Anandibai and Chetan have been raising a ground that the decree passed by the civil court is a nullity in view of the aforementioned facts and circumstances. He would

therefore submit that in view of catena of judgments of the Supreme Court objection as to the nullity of the decree is available to be raised even in the execution proceeding. When admittedly Deepchand was in possession of the writ property on the crucial date i.e. 01.04.1957 and had become a deemed purchaser by operation of law, the decree passed by the Civil Court which has been put to execution by the Trust is a nullity. The executing court ought to have considered all these aspects before rejecting the objections raised by them which order is palpably illegal.

9. Lastly Mr. Anturkar would submit that Chetan was not a party to the suit which was filed by the Trust against Anandibai and the decree in which has been put to execution. Since his father Ishwarlal was an adopted child of Shekhchand, he would become a coparcener in his own rights and would be entitled to assert it since his grandfather Deepchand had become the owner being a deemed purchaser. Therefore even otherwise that decree would not bind his share.

10. Per contra, Mr. Bhokarikar for the Trust would vehemently submit that these matters present another example as to how a party can, with an ulterior motive, protract the litigation and deprive a successful party from reaping the benefits of the litigation. He would submit that all the arguments that are now being put forth on behalf of Anandibai and Chetan were at some point or the other raised before not only the authorities under the Tenancy Act and were duly considered but were also put forth before the civil court right upto the Supreme Court. All these facts and circumstances

and legal position were duly considered before passing the decree. Raising such a plea is clearly barred by the principles of *res judicata* and *estoppel* by record. The ALT had miserably failed to appreciate all these facts and circumstances and had illegally refused to consider the effect of the findings of the civil court confirmed up to the Supreme Court. The error was rightly corrected by the learned SDO whose orders are confirmed by the MRT while dismissing the Revisions. There is no illegality in the orders passed by them apart from the fact that even the civil court has declared the Trust to be entitled to recover possession by refuting all the grounds being put forth by Anandibai and Chetan.

11. Mr. Anturkar would respond by submitting that there cannot be any *estoppel* against law. If it can be demonstrated by operation of law i.e. Tenancy Act and Deepchand is held to have derived title to the writ property, such a plea is available to be raised by Anandibai and Chetan irrespective of the decisions of the civil court holding the Trust to be entitled to recover possession. He would also submit that since the Tenancy Act is a beneficial legislation, the principle of *estoppel* under Section 115 of the Evidence Act would not apply to a case under that Act. In support of his submission he cited the decision in the case of **Amrit Bhikaji Kale & Ors vs Kashinath Janardhan Trade & Anr; (1983) 3 Supreme Court Case 437.**

12. So far as principle of *res judicata* is concerned Mr. Anturkar would cite the decision of Division Bench of this Court in the matter of **Rushabh Outdoors and Anr. Vs. the State of Maharashtra and Anr.; Writ**

Petition No.227/2017 dated 19.03.2021. He would submit that as has been held by this Court, the principle of constructive *res judicata* has been held to be not applicable to the Writ Petitions. He would further pointed out that while reaching such a conclusion the Division Bench has relied upon the decisions of the Supreme Court in the following matters :

- i) **Amalgamated Coalfields Ltd. Vs. Janapada Sabha Chhindwara and Ors.; 1963 Supp (1) SCR 172.**
- ii) **Hasham Abass Syyed Vs. Usman Abas Syyed ; (2007) 2 SCC 355.**

13. Let us consider the rival contentions in sariatim. As can be appreciated, there is not much of a dispute as far as the aforementioned facts and circumstances are concerned except the fact as to if the lease was created for cultivation of sugarcane and that any decision/order under Section 43 A(1)(b) was passed. Rest of the facts and events mentioned herein above stand admitted. I therefore propose to begin with the facts in dispute.

14. True it is that only a photocopy was produced on the record purportedly of an order in vernacular passed by Mamlatdar and Agricultural Lands Tribunal, Kopergaon dated 08.12.1959 holding that the writ property having been leased out for cultivation of sugarcane it was exempt from application of the provisions of Section 32 to 32 R of the Tenancy Act by virtue of Section 43 A(1)(b) of that Act. Obviously, not being a certified copy of the order, it is not admissible in evidence. It was neither the original order nor was it its certified copy which alone could be admitted in evidence. Therefore, the submission of Mr. Anturkar that the Tenancy

authorities could not have legally admitted it in evidence is sustainable. Even at this stage there is nothing to rectify the error, albeit, along with Civil Application No.13351/2021 a request has been made on behalf of the Trust to take appropriate steps by calling the concerned officer to verify the copy of the order placed on the record and which application has been strongly opposed by Chetan by filing an affidavit-in-reply.

15. However, it is to be borne in mind that this being a proceeding of a civil nature, the facts are expected to be proved by preponderance of probability. It is quite apparent that Anandibai and Chetan had never raised such an objection regarding existence of the order by the Collector. Rather, while rendering a decision in their favour the Tahsildar and ALT in Tenancy Case No.9/2012 had declared and recalled the self same order dated 04.12.1959 passed under Section 43 A(1)(b) and also cancelled the Mutation Entry No.2388 certified on the basis of such order. It is quite clear that Anandibai and Chetan are blowing hot and cold at the same time. They were having no objection regarding existence of such an order when ALT recalled the order and cancelled the Mutation Entry, but now have been raising issue regarding its genuineness.

16. Admittedly, based on such order dated 04.12.1959 Mutation Entry No.2388 was certified way back. It specifically reads that it is in view of the order that the provisions of 32 to 32 R of the Tenancy Act were not applicable to the tenancy credited in favour of the Shekhchand by Tribhuvandas. If such is the state of affairs, though the fact of passing of the

order under Section 43 A(1)(b) has not been brought home by producing a certified copy of the order, when existence of such order stands reflected in the Mutation Entry No.2388 which is certified decades ago and the mutation is recorded, by the principles of preponderance of probability, one will have to conclude that the factum of passing of such order stood duly established.

17. Now turning to the other disputed fact, existence of which in a way depends upon the aforementioned fact which is rather a corollary. Ones having found that there was an order holding the writ property to be exempt from application of the provision of Tenancy Act by virtue of provision of Section 43 A(1)(b) which specifically excludes the lands *inter alia* leased out for cultivation of sugarcane, irrespective of any other evidence, even this fact deserves to be treated as having been duly established and proved.

18. Besides, as has been observed by the learned SDO while deciding the appeals against the order of ALT, the revenue record of the writ property consistently demonstrated that barring 4/5 years in between, the writ property was used for cultivation of sugarcane.

19. Further, though such a specific purpose is not mentioned in the lease deed of the year 1955, such a stipulation can be found in the deed of the year 1960 executed between Tribhuvandas and Shekchand. It is pertinent to note that it is a specific stipulation in this latter agreement to the effect that the writ property was already in possession pursuant to the earlier agreement and it was taken on lease for cultivation. It is pertinent to note that the word used in this latter agreement referring to the earlier

agreement is in vernacular “Lagwad” which word, as has been pointed out by the learned SDO is used for harvesting sugarcane and fruit bearing trees. He specifically mentions that the word has a specific connotation and is not used for cultivation of land for any other purposes. Thus it would clearly indicate that though the first lease deed executed between Tribhuvandas and Deepchand did not contain any stipulation regarding use of the writ property for cultivation of sugarcane crop, the recitals in the subsequent deed between Tribhuvandas and Shekchand are certainly indicative of such a stipulation and restriction on the use of the writ property, as has been deduced by the learned SDO while quashing and setting aside the order of the ALT.

20. There is one more aspect which needs to be addressed and which, to my mind has a serious bearing on the stand of Anandibai and Chetan. As is mentioned herein above, this order under Section 43 A(1)(b) of the Tenancy Act was passed in the year 1959. Based on such order Mutation Entry No.2388 was certified immediately thereafter. Shekhchand was alive up to the year 1975. After his demise his widow Anadibai adopted Ishwarlal and even he was alive up to the year 2009. However, at no point of time any attempt was made by Shekhchand or Anandibai or even Ishwarlal to challenge such mutation and the order under Section 43 A (1) b). For that matter even till date there is no challenge. The Tenancy Application No.9/2012 was filed touching this aspect after the litigation that was pending in the civil court reached finality in the light of dismissal of the

Special Leave Petition by the Supreme Court on 19.04.2012. Therefore even for this reason, precisely for want of any challenge to the order holding the writ property to be exempt from applicability of the provisions of Section 32 to 32 R of the Tenancy Act in view of Section 43 A(1)(b), one cannot permit Anandibai and Chetan to raise any such plea for the first time before this Court in a parallel litigation.

21. Here is not a question of delay and laches but is of challenging the order holding the writ property to be exempt from applicability of the relevant provisions of the Tenancy Act based on which they are seeking to put up a claim to the title.

22. There is one more aspect, Shekchand in spite of being aware about the earlier agreement executed between Tribhuvandas and his father Deepchand, entered into a separate lease deed in the year 1960 and consciously never put up any claim as is being put forth by Anandibai and Chetan now about Deepchand having become a deemed purchaser being in possession of the writ property on the tillers' day. In all probability, he must have conceded to the fact that the writ property was being leased out for cultivation of sugarcane and was therefore exempt from applicability of the provisions of Section 32 to 32 R and that is why he never sought to challenge such an order and the Mutation Entry No.2388 right up to his death in the year 1975. This is not a matter of mere *estoppel*, depriving a party from raising an legal plea, it is a matter of *estoppel* for not challenging it all and suffering it for years together having the drastic consequences of

exempting the writ property from the rigours of the Tenancy Law. Though not in so many words, this is what precisely has been found by the MRT while dismissing the revisions of Anandibai and Chetan. The conclusion is certainly unassailable being based on correct appreciation of the circumstance.

23. If such is the state of affairs, all the proposition being put forth by Mr. Anturkar referring to various decisions *supra* would have no place. In the case of **Janardan Dagdu Khomane** (*supra*), certainly, the Trust having become owner of the property in dispute after the tillers' day on which the tenant had already become a deemed purchaser was held to be having no title. In the matter in hand, though the Trust has derived the title after the crucial date, once having concluded that the provisions of Section 32 to 32 R of the Tenancy Act were not applicable in view of the order under Section 43A(1)(b), certainly Anandibai and Chetan are not entitled to derive any benefit of this decision.

24. So far as the second proposition of Mr. Anturkar that this ground of passing of order under Section 43 A(1)(b) having never been raised before the civil court, it is to be borne in mind that simultaneously with raising an objection in the execution proceeding, Anandibai and Chetan are challenging the orders of the SDO and MRT passed under the provisions of Tenancy Act recording a finding that by virtue of such an order they are not entitled to lay any claim banking upon the provision of Section 32 to 32 R. Therefore, submission is also liable to be discarded.

25. Simultaneously with raising an objection before the executing court to point out that the decree under execution is a nullity which is indeed a ground on which an objection can be raised in the execution proceeding as has been a trite principle recognized by the courts, rights of Anandibai and Chetan relying upon the provisions of Section 32 to 32 G of the Tenancy Act are being investigated by the tenancy authorities and consequently, one need not enter into that controversy.

26. Since the observations and conclusions by the learned SDO based on the material available on record are plausible one, and by no stretch of imagination can be said to be either perverse or arbitrary, this Court will have inherent limitation in drawing some other inference by resorting to reappraisal of the self same material.

27. Having reached such a conclusion on the factual aspects which are so vital for the decision of the writ petitions, I find no hesitation in reaching to a logical and legal corollary. Once having found that the writ property was exempt from the provisions of the Tenancy Act, there is no escape from the result. The entire case of Anandibai and Chetan about Deepchand having derived title as a deemed purchaser by virtue of the provisions of the Tenancy Act, being in possession on the tillers day, falls to the ground. Therefore independent of the fact of jurisdiction of the civil courts, applicability of principles of *res judicata*, *estoppel* and the factum of delay and laches, they would have no case to cause any obstruction in execution of the decree.

28. This takes me to the last point of argument of Mr. Anturkar regarding independent right of Chetan to lay a claim as a coparcener being the grandson of Deepchand. In fact, in view of the above observations and the conclusions, no such stand is now available for him to oppose the execution.

29. The net result of the above discussion is the fact that the civil court has found the Trust entitled to recover possession and the decree has reached finality up to the Supreme Court. The SDO and the Maharashtra Revenue Tribunal by the orders under challenge have rightly concluded about the writ property being exempt from the provision of Section 32 to 32R of the Tenancy Act. Consequently objection raised by Anandibai and Chetan to the execution is not sustainable in law. The executing court has rightly refuted the objection and the order calls for no interference.

30. Consequently, Writ Petition No.3144/2015 which is sought to be withdrawn so also the Writ Petitions No.4477/2020 and 5116/2020 challenging the orders of the Maharashtra Revenue Tribunal are liable to be dismissed. Simultaneously, the Writ Petition No.8597/2017 against order of rejection of the objections raised by Anandibai and Chetan in the execution proceeding is also liable to be dismissed.

31. So far as the Writ Petition No.4200/2014 filed by the Trust against the order passed by the ALT in the Tenancy Case No.9/2012, when independently the self same order was assailed by the Trust in an appeal before the Sub Divisional Officer, even that Writ Petition is liable to be

dismissed.

32. All the Writ Petitions are dismissed. Civil applications are disposed of. The Rule is discharged.

(MANGESH S. PATIL, J.)

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