

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11806 OF 2014

Mahadu s/o Dipa Koli
Since deceased through his L.Rs.

- 1] Narayan s/o Mahadu Koli
Age- 61 years, Occ- Agri.,
- 2] Smt. Sumanbai Mahadu Koli
Age- 67 years, Occ- Agri.,
Both R/o: Khed Digar, Tq. Shahada,
Dist. Nandurbar.

...PETITIONERS

VERSUS

- 1] Pabudan Suganmal Jain
Age- 72 years, Occ- Agri.,
- 2] Bansilal Dagdu Jain
Since deceased through his L.Rs.
- 2A] Madanbai Bansilal Jain
Age- 67 years, Occ- Agri.,
- 2B] Rajenderakumar Bansilal Jain
Age- 52 years, Occ- Agri.,
- 2C] Sunil Bansilal Jain
Age- 44 years, Occ- Agri.,
All R/o. Khetiya Tq. Pansemal,
Dist. Badwani Madhya Pradesh.
- 3] Ahemadmiya Musa Miya Musalman
Age- 67 years, Occ- Agri.,

4] Mohmad Miya Musamiya Musalman
Age- 64 years, Occ- Agri.,

4A] Shahjadbee Musamiya Musalman
Age- Major, Occ- Agri.,
All R/o. Shahada, Tq. Shahada,
Dist. Nandurbar.
Died her L.Rs, are on record as
Respondent No. 3 and 4.

5] The Sub Division Officer,
Taloda, Dist. Nandurbar.

6] The Tahsildar
Shahada, Dist. Nandurbar
And
President, Agriculture Lands Tribunal
Shahda.

RESPONDENTS

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Mr. V.D. Hon, Senior Advocate i/by. Mr. V.G. Sakolkar, Advocates for
Petitioners.

Mr. S.P. Shah h/f. Mr. Amit Savale, Advocate for Respondent No. 1.

Mr. S.B. Pulkundwar, AGP for Respondent-State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 22nd MARCH, 2022

PRONOUNCED ON: 6th JUNE, 2022.

ORDER :

1. This petition filed under article 227 of the Constitution of
India, takes exception to the order passed by the learned
Administrative Member, Maharashtra Revenue Tribunal, Aurangabad

in Case No. 45/B/2012/Nandurbar, thereby confirming the orders passed by Respondents No. 5 and 6, dated 04.08.2012 and 17.04.2014 respectively.

2. The predecessor of the petitioners Mahadu Koli was the tenant of lands Block No. 58 (admeasuring 8 Acres 5 Ghuntas) and Block No. 60 (admeasuring 6 Acres 7 Ghuntas) of village Kheddiger, Taluka- Shahada, District- Nandurbar. The landlord was Musamiya who is predecessor of respondents No. 3 and 4. In the year 1957, the landlord filed an application bearing Tenancy Application No. 130/1957, under Section 31 of the Tenancy Act, 1938 (for short 'said Act') before the Additional Mamlatdar, for retaining the land for his personal cultivation. On 22.08.1957 the original landlord Musamiya expired during the pendency of said application. The proceedings were therefore, prosecuted by his legal heirs. By order dated 24.02.1958, the Additional Mamlatdar allowed Tenancy Application No. 130/1957 and granted half northern portion of land of Survey No. 58 and 60 to the landlord for his personal cultivation.

3. The tenant challenged the order by filing appeal before the Deputy Collector (Tenancy), Dhule, by filing Tenancy Application No. 57/1959. The appeal came to be allowed and the order passed by the Additional Mamlatdar was set aside. The legal heirs of the landlord challenged the order of Deputy Collector by filing revision bearing No. TEN/A/1896/59 before Bombay Revenue Tribunal. The said revision was dismissed thereby confirming the order of Deputy Collector (Tenancy), Dhule. The order of Bombay Revenue Tribunal was thereafter challenged by legal heirs of landlord by filing Special Civil Application No. 592/1960 before this Court at Bombay. In the said special civil application on 24.08.1960 following order is passed:

“whereas Mr. Vaidya who appears on behalf of the third opponent has stated that he will allow the petitioner to continue in possession of the lands till the end of November 1960 and whereas the petitioner has also agreed to hand over possession of the lands to opponent No. 3 voluntarily on or before 1st December, 1960 and whereas in view of these facts Mr. Rizvi who appears for the petitioner, has asked for permission to withdraw the petition, the court accordingly allowed the petitioner to withdraw the petition.

Petitioner to pay the cost for opponents No. 3. No orders in regard to the costs of other opponents.”

Thus, the orders passed by the Deputy Collector (Tenancy), Dhule and the Tribunal were confirmed.

4. It is the case of the petitioners that in the meantime the legal representatives of Musamiya (respondents) had taken possession of half portion of land in question as per the order in Tenancy Application No. 131/1957 on 20th June, 1958. Pursuant to the orders of this Court in Special Civil Application No. 592/1960, tenant Mahadu received back possession from the respondents and he continued to be in possession. Therefore, tenant Mahadu became statutory owner of land Survey No. 58 as well as Survey No. 60 on 01.04.1957. Since on that date legal representative of Musamiya i.e. Shahajadbee was widow, tillers day was postponed to 24.08.1960 and on that date tenant Mahadu became statutory owner. Purchase price of survey No. 58/2, 60/1 and 60/2 was determined by the competent authority and same was deposited by tenant Mahadu and he became owner of the said lands. It is further case of the petitioners that purchase price of land survey No. 58/1 was not determined as the proceedings were pending. In spite of these facts Shahajadbee/Respondent No. 4A contended in the Tenancy

Application No. 02/1961 filed under Section 15 and 20 of the said Act, that tenant has surrendered possession of Survey No. 58/1 of village Khed. Additional Mamlatdar on 10.04.1961 passed an order in Tenancy Application No. 02/1961 about surrender of tenancy in respect of land survey No. 58/1 admeasuring 9 Acres 3 Ghuntas.

According to the petitioners landlady illegally sold out property (Gut No. 58/1) to Respondent No. 1, behind the back of tenant in the year 1966.

5. Tenant Mahadu filed Special Civil Suit No. 23/1973 in the Court of Civil Judge, Senior Division, Dhule against the legal heirs of original landlord Musamiya, legal representatives of Musamiya and the purchaser/Respondent No. 1. After the appearance of defendants in the suit and on their objection as to the maintainability of the suit, the suit was dismissed on 23.02.1976. Dismissal of the suit was challenged in First Appeal No. 515/1976 before this Court.

The first appeal was allowed in following terms.

“7. The appeal is allowed and the decree of dismissal of the trial Court is set aside and the suit is remanded to the trial Court to the Agricultural Lands Tribunal for the its decision

and on receipt of the finding on the same the trial court to decide the suit in the light of observations hereinabove and according to provisions of said Act.

(i) Whether original plaintiff Mahadu Dipa Koli had become deemed purchaser of the suit land with effect from 20th August, 1960.

The Agricultural Land Tribunal, to whom this issue shall be referred by the trial Court, shall issue notices to the appropriate parties, shall record evidence on the said issue and shall record its finding on the same parties shall be entitled to file appeal or revision application as permitted by law, including writ petition etc. and the ultimate finding of the Court shall be returned to the trial court which shall decide and dispose of the suit in accordance with the provisions of law.

Costs to be costs in the cause.”

6. The decision in first appeal was questioned by Respondent No. 1 by filing Special Leave Petition No. 1233/1987, the same was withdrawn. Pursuant to the orders passed in first appeal, the issue of tenancy was referred for decision to Respondent No. 6. By order dated 27.04.2010, the respondent No. 6/Tahsildar, Shahada gave a finding

that on 20/24.08.1960, the plaintiff/tenant was not a deemed purchaser/owner of the suit land. The said finding is confirmed in Appeal No. 18/2010 by Respondent No. 5/Sub Divisional Officer and by the impugned order passed by the Tribunal dated 15.12.2014. Hence, the present petition.

7. Heard Mr. V.D. Hon, Senior advocate instructed by Mr. V.G. Sakolkar for the petitioners, Mr. S.P. Shah holding for Mr. Amit Savale for Respondent No. 1 and Mr. S.B. Pulkundwar, Assistant Government Pleader for Respondent-State.

8. The learned Senior Advocate for the petitioners strenuously submitted that in the order passed by this Court in Special Civil Application No. 592/1960 it is recorded that the tenant shall continue in possession of the land till November-1960 and the landlady/widow agreed to handover the possession of the land to the tenant Mahadu voluntarily on or before 01.01.1960. This undertaking given by the landlord cannot be lightly brushed aside. By relying on the observations passed in the order of first appeal, he submits that, the impugned orders passed by the revenue authorities are contrary to the

observations of this Court. The revenue authorities have ignored findings of fact recorded by this Court in the first appeal and therefore, the impugned orders are unsustainable. He therefore, submits that the impugned orders are contrary to the orders passed by this Court in special civil application as well as in the first appeal and therefore, the same are not sustainable. In support of his aforesaid submissions, he placed reliance on Sushani Gopinath Dadkar v. Rabhaji Gangaram Naikwadi (2009 (1) Mh.L.J. 339), Dadu Bhagoji Patil vs. Ramakant Dattatraya Deshpande (1998 (1), Mh.L.J. 715) and Vasu Dhondi Sutar v. Ganapati Dhondi Sutar (1192 Mh.L.J. 730).

9. Per contra, the learned advocate for Respondent No. 1 submitted that in 1961, the original tenant Dipa father of Mahadu surrendered the tenancy in favour of landlord Musamiya in proceedings No. 2/1961. In the suit filed by Mahadu i.e. Special Civil Suit No. 23/1973 a declaration was sought that he is the owner of the land in question and possession of the said land be recovered from defendants No. 1 to 6 (present respondents). He submits that validity of surrender of Survey No. 58/1 by the tenant to the landlord was at no point of time challenged in any proceedings and the same has become

final. He submits that it is not the case of the tenant that he became deemed purchaser on 01.04.1957. Admittedly, he became deemed purchaser on the postponed date i.e. 24.08.1960, in terms of order passed in Special Civil Application No. 592/1960. On 10.09.1956, the landlord issued notice under Section 31 of the said Act, therefore, deemed date got postponed to 24.08.1960. According to him, the landlord complied with the order and the possession was handed over to the tenant. By relying on the decision of Mamlatdar in Tenancy Case No. 2/1961 under Section 15 and 29 initiated by Mahadu, against landlady Shahejadi, he submits that landlady/widow was in possession of exemption certificate, therefore tiller's day was postponed and therefore, he is not the deemed purchaser. By relying on the findings of Mamlatdar in the said order, by which the possession of Survey No. 58/1 was directed to be given to the landlady/widow by the tenant and the right of the tenant to the said land as directed to be extinguished, he submits that since this order is not challenged at any point of time, the same has become final and therefore, the authorities were justified in passing the impugned orders.

Further submission is that the tenant backed out from

surrender by filing Special Civil Suit No. 23/1973 (which is renumbered as Regular Civil Suit No. 91/2001) on 09.04.1973 i.e. after delay of 12 years. He further submits that in the year 1966 since the land was surrendered by the tenant in favour of the landlord, it was sold by the landlord with prior permission of the competent revenue authorities to Respondent No. 2. He placed reliance on averments in para 4 of the plaint in Regular Civil Suit No. 23/1973 that, 'purchase price of Survey No. 58/1 is not yet decided and for that the tenant has filed application before the Tahsildar and revenue authorities'. According to him these averments supports the case of the landlady/widow.

10. He further submits that reliance placed by the petitioners on the findings in first appeal are misplaced and misconceived as this Court referred the issue, 'whether Mahadu became deemed purchaser of the suit land on 20.08.1960' was referred for proper adjudication to the competent authority. The competent authority after considering the material placed on record has arrived at a correct finding and reliance placed by the petitioners on the findings recorded by this Court is misplaced and misconceived. He submits that the revenue

authorities were right in coming to the conclusion that the tenant has not become deemed purchaser on 20.08.1960. Even in the order passed by this Court in first appeal there is no reference of surrender as the said fact was never brought to the notice of the High Court by any of the parties to the first appeal. He therefore, supported the impugned orders by further submitting that during life time of the landlady/widow the tenant surrendered the land Survey No. 58/1 and therefore, tenant has not become deemed purchaser of the said land. In support of his submissions, he placed reliance on Dayandeo Ganpat Jadhav (2005) 8 SCC 340, Lal Chand (Dead) By L.Rs and others Vs. Radha Krishan (1977), 2 SCC 88, Motiram Jagannath Bhoir Vs. Rajaram Gopal Mhaskar since deceased represented by LRs. Tukaram Rajaram Mhaskar and others, 2005 (1) Mh.L.J. 169, Anna Bhau Magdum since deceased by his legal representatives vs. Babasaheb Anandrao Desai, (1995) 5 SCC 243.

11. In reply, the learned Senior Advocate for the petitioners submit that on the tillers' day i.e. 01.04.1957, the landlord as well as the tenant were alive. The landlord applied under Section 31 of the said Act during his lifetime and he expired on 22.08.1957 and then

landlady/widow came into picture. According to him, for valid surrender, procedure prescribed has to be followed, which is not followed in the present case, therefore, the impugned orders are unsustainable.

12. The learned Assistant Government Pleader for Respondent-State supported the impugned orders.

13. Heard Mr. V.D. Hon, Senior advocate instructed by Mr. V.G. Sakolkar for the petitioners, Mr. S.P. Shah holding for Mr. Amit Savale for Respondent No. 1 and Mr. S.B. Pulkundwar, Assistant Government Pleader for Respondent-State, at length. Perused the record.

14. The record reveals that tenant Mahadu filed Tenancy Application No. 2/1961, under Section 15 and 29 of the said Act. In the said case following points were decided by the Mamlatdar:

- (i) Whether the applicant is the tenant of survey numbers 58 and 60 of Khed Digar village and the opponent is the owner?
- (ii) Whether the tenant is voluntarily surrendering an area measuring 9 A- 0 G out of survey number 58?

(iii) Whether the opponent is entitled to get the possession?

(iv) Whether the relation of tenant and landlord still exist between the parties?

The Mamlatdar in the judgment held that the fact that Mahadu was tenant of survey numbers 58 and 60 was admitted by the landlady/widow. The tenant voluntarily surrendered 9 Acre 0 Ghunta land out of Survey No. 58. In the order dated 10.04.1961, the Mamlatdar directed the tenant to handover possession of Survey No. 58/1 to the landlady/widow and the right of the tenant to that land was extinguished.

15. It is a matter of record that in First Appeal No. 515/1976, this Court enumerated basic positions. Fact remains that the issue *‘whether the tenant had become deemed purchaser of the said land w.e.f. 20.08.1960’* was directed to be referred for adjudication to the Agricultural Lands Tribunal. In the said order it is observed *“if it is found by the competent Court that he had become deemed purchaser, subsequent surrender taken by respondent No. 1 to 4 would be non-est and of no legal consequence.”* The question whether a person has become deemed purchaser of the land or not falls within the

jurisdiction of the Agricultural Lands Tribunal, under Section 32(G) of the said Act, the issue was directed to be referred to the Tribunal. The Tribunal was directed to issue notices to the appropriate parties, to record evidence on the said issue and to record its findings on the same.

16. Pursuant to the decision of this Court in first appeal, present proceedings were initiated before the Tahsildar. Accordingly Tenancy Case No. 1/2010 was registered. The Tahsildar after hearing the parties recorded a finding that Mahadu was tenant in two lands i.e. Survey No. 58 and 60. On 20.06.1958, there was compromise between the tenant and landlord and in Tenancy Case No. 02/1961 for both the lands the purchase price of Rs. 1200/- was determined and survey no. 58/2, 60/1 and 60/2 were recorded in the name of tenant by Mutation Entry No. 76 on 10.07.1961. Survey No. 58/1 was kept for personal cultivation by the landlord. Thereafter, the landlord by obtaining necessary permission from the Sub Divisional Officer on 22.09.1966 sold the land in question to respondent No. 2. Accordingly, Mutation Entry No. 120 was certified on 29.06.1967 and name of Respondent No. 2 was entered by Mutation Entry No. 49. It is also recorded in the said order that tillers day was postponed as the landlady was widow.

Tenancy Case No. 131/1957 was registered by the landlord and the tenant and in the said case by order dated 24.02.1958 passed by the Tahsildar, Shahada, 8 Acres 29 Ghuntas land was given to the landlord out of survey no. 58, which is gut No. 58/1. Entire survey no. 60 and 58/2 was given to Mahadu/tenant. Thereafter, Mahadu initiated proceedings under section 32(G) and as per order dated 10.04.1961 in Tenancy Case No. 02/1961, purchase price of Rs. 1200 was determined and Mahadu's name was recorded as owner on 10.07.1961 by Mutation Entry No. 76. Therefore, Mahadu cannot be said to be tenant and deemed purchaser on 20.08.1960.

17. In view of order passed in Tenancy Case No. 2/1961 dated 10.04.1961, it can be said that survey no. 58/1 admeasuring 9 Acres 0 Ghuntas was given to the landlord by extinguishing right of the tenant, as the tenant voluntarily surrendered the said land. As on the date of passing of the said order on 10.04.1961, a clear cut finding is recorded that the defendant is the tenant on that date, due to postponement of tiller's day.

18. In Dayandeo Ganpat Jadhav (supra), it is held:-

“24. Conjoint reading of Section 15 and Rule 9 makes it clear that a tenant who has become 'deemed purchaser' under the Act may surrender tenancy. Such surrender, however, must be as per the procedure laid down in the Act and the Rules. If the surrender is not in accordance with the law, it must be held illegal, unlawful and the status of a tenant as 'deemed purchaser' would not get adversely affected.

26. As held by this Court in Sakharam Shripati Jadhav and Ors. v. Chandrakant and Ors., [1987] 1 SCC 486, the Act has been enacted with a "high purpose of transferring the land to the tillers of the soil". In Sri Ram Ram Narain Medhi v. State of Bombay, [1959] Supp 1 SCR 489, it has been held by the Constitution Bench of this Court that the title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a complete purchase and sale between the landlord and the tenant. But in the said decision itself, it has been observed by the Court that the tenant had been given a locus penitentiae and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or he appears and shows his unwillingness to purchase it, an appropriate order can be passed by the

authority after following the procedure required by law.

27. In Ramchandra Keshav Adke v. Govind Joti Chavare, [1975] 1 SCC 559, a question similar to the one with which we are concerned came up for consideration before this Court. It was held that surrender of tenancy by a tenant in order to be valid and effective must fulfill the following requirements-

(i) It must be in writing.

(ii) It must be verified before the mamlatdar.

(iii) While making such verification the mamlatdar must satisfy himself in regard to two things, namely

(a) that the tenant understands the nature and consequences of the surrender, and

(b) that it is voluntary.

(iv) The mamlatdar must endorse his finding as to such satisfaction upon the document of surrender.

31. In our opinion, however, from the statement of Ganpat recorded on November 15, 1959, of Vitthal recorded on the same day and the order passed by the Mamlatdar and Agricultural Lands Tribunal, it was clear that the requisite procedure had been followed. The tenant was told about his rights and the effect and consequences of his

unwillingness to purchase the land and surrender of tenancy. Thereafter an order was passed by the authority on November 16, 1959. It is also clear that even in 1962 when the possession was handed over to the landlord, again statement of the tenant was recorded and he reiterated what he had stated in 1959. He had stated that on 'second thought' also, he was not willing to purchase the land. In the circumstances, in our opinion, the appellate and revisional authorities were not right in ignoring the order of 1959 and in passing the order directing the Mamlatdar and Agricultural Lands Tribunal to fix purchase price. In our judgment, the tenant had already surrendered his tenancy rights and since it was in consonance with law and after following proper procedure, an order was passed by Mamlatdar and Agricultural Lands Tribunal, it was legal and lawful. It is also clear that since 1962, the respondent-landlord was in possession of the land. No proceedings were taken by the appellate for more than a decade. It is further clear from the affidavit-in-reply filed by the landlord that in 1983, the appellant filed Regular Civil Suit No. 222 of 1983 in the Court of Civil Judge, Junior Division, Khed for perpetual injunction under Section 38 of the Specific Relief Act, 1963 but it was dismissed. An appeal filed against the said order was also dismissed by the IXth

Additional District Judge, Pune on October 4, 1999. It is thus clear that the action was in consonance with law and the High Court was right in setting aside both the orders passed by the appellate authority and revisional authority. We, therefore, see no substance in the appeal which deserves to be dismissed.”

19. In the case in hand it is borne out from the record that the tenant voluntarily surrendered land Survey No. 58/1. The surrender is in writing. Since the prescribed procedure is followed and the requirements mentioned under the said rules are complied with, this Court is of the considered view that the surrender is valid and no fault can be found with the same. Fact remains that the surrender has become final and till this date same is not challenged by the tenant/petitioners at any point of time.

20. After a delay of more than 12 years the tenant filed Regular Civil Suit No. 23/1973 (Regular Civil Suit No. 91/2001) backing out from surrender and claiming the suit property. Since the said suit was dismissed, first appeal was filed wherein direction is given to refer the issue of tenancy to the Tribunal.

21. As per the order passed in Tenancy Case No. 131/1957, 8 Acres 29 Ghuntas land out of Survey No. 58 was given to the landlord and it was numbered as Survey No. 58/1. Entire Survey No. 58 and 60/2 were given to Mahadu/tenant. It appears from the impugned order passed by the Tahsildar and the original record in his office that Survey No. 58 and 60 were cultivated by Mahadu as tenant. On 20.06.1958 there was compromise between the tenant and the landlord and the landlord was given 8 Acres 24 Ghuntas land for personal cultivation and the same was given Survey No. 58/1. Tenant Mahadu applied for determining of purchase price. Accordingly, mutation entry was certified on 14.11.1958 in respect of Survey No. 58/2, 60/1 and 60/2 which was decided at Rs. 1200, in tenancy case No. 2/1961. Accordingly, tenant became deemed purchaser of the said lands.

The record further indicates that tenant Mahadu obtained loan of Rs. 2,000/- and by way of mortgage deed mortgaged Survey No. 58/2, 60/1 and 60/2. It is necessary to mention here that in the said application Survey No. 58/1 was not mentioned. This also supports the contention of the respondents that Mahadu had surrendered land Survey No. 58/1 to the landlord. In this view of the

matter, since the tenant has surrendered land Survey No. 58/1 in favour of landlord by following prescribed procedure, his right to the said land is extinguished and he cannot claimed to be deemed purchaser of the said land. The revenue authorities therefore, are justified in recording findings in favour of landlord by assigning proper reasons.

22. In *Anna Bhau Magdum since deceased by his legal representatives* (supra), the Apex Court has held that “there is no automatic purchase of the land by the tenant in cases where the landlord happens to be a minor, or a widow or a person subject to any mental or physical disability and the said right of purchase can be availed by the tenant if he complies with the requirements of Section 32-F.”

As in the case in hand, the landlady was widow the purchase date was postponed.

23. In the light of aforesaid reasons, since the revenue authorities have recorded concurrent findings of fact on the basis of record and there is no illegality or perversity in the orders impugned in

the present petition. There is no merit in the challenge raised by the petitioners to the impugned orders. No case is made out by the petitioners to warrant interference in the extraordinary writ jurisdiction. The writ petition is therefore dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE