

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
WRIT PETITION NO.5194 OF 2022**

1. Sayyad Imam Sayyad Dagdu,  
since deceased through his L.Rs.
  - 1A) Sayyad Nasir Sayyad Imam,  
Age 70 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.
2. Sayyad Mehboob Sayyad Dagdu (since deceased  
thr. L.Rs.)
  - 2A) Sayyad Sandu Sayyad Mehboob,  
Age 50 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.
  - 2B) Sayyad Manna Sayyad Mehboob  
Age 49 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.
  - 2C) Sayyad Sultan Sayyad Mehboob  
Age 46 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.
  - 2D) Sayyad Hussain Sayyad Mehboob  
Age 43 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.
3. Sayyad Dadabhai Sayyad Dagdu  
since deceased through his L.Rs.
  - 3A) Sayyad Najir Sayyad Dadabhai,  
Age 61 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.
  - 3B) Sayyad Amin Sayyad Dadabhai  
Age 60 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.
  - 3C) Sayyad Yusuf Sayyad Dadabhai  
Age 58 years, Occu. Agri,

R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

3D) Sayyad Afsar Sayyad Dadabhai,  
Age 50 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

3E) Sayyad Akhtar Sayyad Dadabhai,  
Age 40 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

4. Sayyad Bashirbhai Sayyad Dagdu,  
since deceased through his L.Rs.  
4A) Sayyad Shabbir Sayyad Bashir  
Age 65 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

4B) Sayyad Vajir Sayyad Bashir,  
Age 60 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

4C) Sayyad Shamsud Sayyad Bashir,  
Age 45 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

5. Sayyad Banebhai Sayyad Dagdu,  
Age 75 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

..Petitioners

Versus

1. The State of Maharashtra,  
Through Principal Secretary,  
Revenue and Forest Department,  
Mantralaya, Fort, Mumbai-32.

2. Sayyad Sharifa Aishabee W/o Habib Hasan  
since deceased through his L.Rs.

2A) Ali Hasan S/o Habib Hasan,  
Age 75 years, Occu. Agri,  
R/o. Bidkin, Tq. Paithan,  
Dist. Aurangabad.

- 2A (1) Sharifa Rukhayya W/o Habib Ali  
R/o. House No.5/84  
Bidkin, Tq. Paithan,  
Dist. Aurangabad.
- 2A (2) Ayesha Sharifa W/o Habib Hamad  
R/o. Gut No.86, Kohinoor Garden,  
House No.204, Mitmita, Kasim Bari  
Dargah, Dist. Aurangabad.
3. Chandrakant S/o Narayan Tandale,  
Age 75 years, Occu. Agri,  
R/o. Rajnagar, Railway Station Road,  
Near Bansilal Nagar, Opp. Goldie Theatre  
Tq. & Dist. Aurangabad.
4. Asha w/o Baba Bhand,  
Age 59 years, Occu. Household,  
R/o. Bansilal Nagar, Opp. Goldie Theatre  
Tq. & Dist. Aurangabad.
5. Baba S/o Saluba Bhand,  
Age 59 years, Occu. Agri,  
R/o. Bansilal Nagar, Opp. Goldie Theatre  
Tq. & Dist. Aurangabad.
6. Saket S/o Baba Bhand,  
Age 75 years, Occu. Agri,  
R/o. Bansilal Nagar  
Tq. & Dist. Aurangabad.
7. Rambhau S/o Ganpat Jagtap Kshirsagar,  
Age Major, Occu. Agri,  
R/o. Gandhinagar near Fire Brigade,  
Bansilal Nagar, Tq. & Dist. Aurangabad.
8. Dattatraya S/o Ganpat Jagtap,  
Age Major, Occu. Agri,  
R/o. Gandhinagar near Fire Brigade,  
Bansilal Nagar, Tq. & Dist. Aurangabad.
9. Kiran S/o Prabhakar Deshmukh,  
Age Major, Occu. Agri,  
R/o Bhaji Mandi, Railway Station,  
Dist. Aurangabad.
10. Pannalal S/o Kachru Kavde,  
Age: 70 years, Occu: Agri.  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.
- ..Respondents

**AND**  
**WRIT PETITION NO.5195 OF 2022**

1. Sayyad Imam Sayyad Dagdu,  
since deceased through his L.Rs.
  - 1A) Sayyad Nasir Sayyad Imam,  
Age 70 years, Occu. Agri,  
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Dist. Aurangabad.
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thr. L.Rs.)
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Age 49 years, Occu. Agri,  
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Age 46 years, Occu. Agri,  
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Age 60 years, Occu. Agri,  
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Age 58 years, Occu. Agri,

R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

3D) Sayyad Afsar Sayyad Dadabhai,  
Age 50 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

3E) Sayyad Akhtar Sayyad Dadabhai,  
Age 40 years, Occu. Agri,  
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Age 60 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

4C) Sayyad Shamsud Sayyad Bashir,  
Age 45 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

5. Sayyad Banebhai Sayyad Dagdu,  
Age 75 years, Occu. Agri,  
R/o. Chitegoan, Tq. Paithan,  
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House No.204, Mitmita, Kasim Bari  
Dargah, Dist. Aurangabad.

3. Chandrakant S/o Narayan Tandale,  
Age 75 years, Occu. Agri,  
R/o. Rajnagar, Railway Station Road,  
Near Bansilal Nagar, Opp. Goldie Theatre  
Tq. & Dist. Aurangabad.

4. Wamanrao S/o Tatyaba Kshirsagar,  
since deceased through his L.Rs.  
4(1) Sunil S/o Waman Kshirsagar,  
R/o 21/A, Rajnagar, Railway Station Road  
Aurangabad.

4(2) Sau. Shraddha Shahikant Gaikwad  
C/o Sunil S/o Waman Kshirsagar,  
R/o 21/A, Rajnagar, Railway Station Road  
Aurangabad.

4(3) Sau. Arati P. Gawali,  
R/o. Plot No.21, Sy. No.49/1 and 2,  
Near Vasundhara Colony,  
Near Nandanvan Colony,  
Bhavsingpura Road, Aurangabad.

4(4) Sau Sushmita Vilas Nikambe,  
R/o Royal Galaxy, 202, B-wing,  
Behind Navnit Motor,  
Showroom, behind Union Bank  
Gokulnagar, Ghodbandar Road,  
Thane (West).

4(5) Smt. Mangala Shashikant Daithankar,  
R/o 3, Priya Varali Sea Face,  
Mumbai (Varali).

4(6) Smt. Kamalbai Waman Kshirsagar,  
R/o 21/A, Rajmagar, Railway Station Road,  
Aurangabad.

5. Kiran S/o Prabhakar Deshmukh,  
Age Major, Occu. Agri,  
R/o Bhaji Mandi, Railway Station,  
Dist. Aurangabad.

6. Pannalal S/o Kachru Kavde,  
Age: 70 years, Occu: Agri.  
R/o. Chitegoan, Tq. Paithan,  
Dist. Aurangabad.

..Respondents

...  
Mr. Namit S. Muthiyan, Advocate for the  
Petitioners.

Mr. S. N. Morampalle, AGP for Respondents-State.

Mr. A. N. Kakade, Advocate for Respondent Nos.4 to  
9 in WP/5194/2022 and respondent no.5 in  
WP/5195/2022.

...  
**CORAM : SANDEEP V. MARNE, J.**  
**DATE : 11<sup>th</sup> NOVEMBER, 2022**

#### **JUDGMENT:-**

1. Rule. Rule made returnable forthwith.  
With the consent of parties, matter is taken up for  
final hearing at the admission stage.

#### **THE CHALLENGE**

2. These two petitions have been filed by the  
petitioners challenging common judgment and order  
dated 21.09.2021 passed by the Maharashtra Revenue  
Tribunal, Mumbai, Camp at Aurangabad in Revision  
Nos.30/B/2015/A and 31/B/2015/A. By that judgment  
and order, the Tribunal has upheld the order passed  
by the Deputy Collector, Aurangabad dated  
02.02.2015 setting aside the order passed by the

Tahsildar, Paithan dated 09.01.2014. By order dated 09.01.2014 the Tahsildar held petitioners to be tenants in respect of lands, determined the price at Rs.5000/- under Section 38(4) of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short 'the Act, 1950) and upon payment of the said amount, a direction was issued for issuance of purchase certificate under the provisions of Section 38(5) and 38(6) of the Act, 1950.

#### **FACTUAL MATRIX**

3. The case of petitioners as pleaded is that their grandfather late Dagdu Bhai Raheem Bhai was a protected tenant in respect of lands bearing survey no.25 admeasuring 17 acre 9 gunthas as well as survey no.26 admeasuring 9 acre 31 gunthas(hereinafter referred to as 'disputed lands'). Petitioners further aver that the name of Dagdu Bhai Raheem Bhai was recorded in the 'other rights column' of 7/12 extract, khasara patrak and phalni patrak. His name was also recorded in the register of tenants alongwith a consolidation statement.

4. On 11.11.2011, petitioners filed applications under Section 38 of the Act, 1950 before the Tahsildar, Paithan for fixation of reasonable price of disputed lands under Section 38(5) of the Act, 1950 and for issuance of purchase certificate under Section 38(6). The applications

were resisted by respondent nos.3 to 9 herein by filing written statement.

5. Petitioners claim that a panchanama was conducted by Talathi, Chitegoan on 14.02.2012 recording a finding that the disputed lands were in their possession. The Tahsildar proceeded to pass orders dated 09.01.2014 allowing the applications of petitioners holding that their grandfather Dagdu Bhai Raheem Bhai was a protected tenant in respect of the disputed lands, which was in his possession prior to 1950. The Tahsildar relied upon panchanama conducted by Talathi, Chitegoan to arrive at a conclusion that the disputed lands still remained under possession of petitioners. The Tahsildar, therefore, declared them to be tenants in respect of the disputed lands and determined Rs.5000/- to be the purchase price of the disputed lands under Section 38(4) of the Act, 1950. The Tahsildar further directed that upon payment of that amount, purchase certificate be issued in the name of the petitioners under the provisions of Section 38(5) and 38(6) of the Act, 1950. On 17.02.2014 the Tahsildar directed the Talathi, Chittegaon to mutate the names of petitioners as tenants of the lands in the record of rights.

6. Aggrieved by the orders passed by the Tahsildar, respondent no.9 filed appeals before Deputy Collector, Aurangabad challenging the orders passed by the Tahsildar. Respondent nos.4 to 8 also filed their separate appeals before the Deputy

Collector challenging the orders passed by the Tahsildar. Respondent nos.4 to 9 claim to be successors in title to the disputed lands. The Deputy Collector was pleased to allow appeals by its order dated 02.02.2015 and set aside the orders passed by the Tahsildar on 09.01.2014.

7. Petitioners preferred Revision Petition before the Maharashtra Revenue Tribunal, Camp at Aurangabad challenging the orders passed by the Deputy Collector. The Tribunal has proceeded to dismiss the Revision by orders dated 21.09.2021, which are subject matter of challenge in the present petition.

8. Petitions are opposed by respondent nos.4 to 9 by filing affidavits-in-reply. It is contended that respondent nos.4 to 9 are the purchasers of the disputed lands. That petitioners have suppressed material facts from this Court while filing petitions. It is averred that the original owner of the lands Sayyad Sharifa Aishabee had submitted an application dated 10.03.1978 to the Tahsildar stating that even though there was an encumbrance of Dagdu Bhai Raheem Bhai as tenant on the disputed lands, the same was being cultivated by her for past 12 years. She, therefore, requested for removal of encumbrance. Respondent nos.4 to 9 have produced copy of mutation register which shows that notices were apparently issued and the application of Sayyad Sharifa Aishabee was allowed by Tahsildar on 07.04.1978. Respondent nos.4 to 9

therefore contend that the name of Dagdu Bhai Raheem Bhai was removed from the record of rights as a tenant in respect of disputed lands.

9. It is further contended by respondent nos.4 to 9 that the disputed lands were sold to Shri. Chandrakant Narayan Tandale in the year 1983, who also submitted application dated 04.03.1983 for removal of name of Dagdu Bhai Raheem Bhai from 'other rights column' of the disputed lands, which was allowed by the Additional Tahsildar on 15.03.1983 holding that the tenant was not in possession of the lands for the past 20 years and therefore, he cannot remain to be tenant in respect thereof. Therefore, a declaration was issued under Section 8 of the Act, 1950 that the land was free from encumbrance. It is contended by respondent nos.4 to 9 that the aforesaid orders dated 07.04.1978 and 15.03.1983 attained finality, as the same were never questioned by Dagdu Bhai Raheem Bhai or any of his legal heirs. It is contended that these orders were suppressed by the petitioners while filing applications before the Tahsildar in the year 2011 as also in the present petitions.

10. The respondent nos.4 to 9 have made serious allegations about the manner in which the orders were passed by the Tahsildar and contend that those orders were an outcome of fraud on account of which First Information Report has been lodged on 31.05.2014 against the Tahsildar and some

petitioners. It is further contended that the petitions seeking quashing of the said FIR have been rejected by this Court. It is further averred by respondent nos.4 to 9 that they are in peaceful possession of the lands since 1983.

#### **SUBMISSIONS**

11. Appearing for the petitioners Mr. Muthiyan, the learned counsel has submitted that Dagdu Bhai Raheem Bhai was a 'protected tenant' in respect of the disputed lands. He would further submit that if for any reason his status as protected tenant was to be disputed, late Dagdu Bhai Raheem Bhai was in any case an 'ordinary tenant' within the meaning of Act, 1950. Mr. Muthiyan would contend that there is no concept of loss of tenancy under the provisions of Act, 1950. Relying on provisions of Section 38-G of the Act, 1950 Mr. Muthiyan would contend that there is deeming fiction under which the ownership of the land automatically stands transferred and vests in the tenant and that it is not necessary that the tenant should apply for fixation of price or to pay the same. He would submit that the responsibility of fixation of price is upon the owner and not the tenant. He would further submit that as per deeming fiction created under Section 38-G of the Act, 1950 Dagdu Bhai Raheem Bhai automatically become owner of the disputed lands.

12. Mr. Muthiyan, learned counsel would further submit that the orders passed by the Tahsildar on 07.04.1978 and 15.03.1983 for removal of name of Dagdu Bhai Raheem Bhai as tenant were *ab initio void* and a nullity as Dagdu Bhai Raheem Bhai had already become owner of the land as per deeming fiction under Section 38-G of the Act, 1950. Since orders are nullity, the same were not required to be challenged by petitioners. Strong reliance is placed by Mr. Muthiyan on the panchanama dated 14.02.2012 conducted by Talathi, Chitegoan to demonstrate that petitioners continued to be in possession of disputed lands. Referring to the applications made by the Sayyada Sharifa Aishabee and Chandrakant Narayan Tandale in the year 1978 and 1983 respectively, Mr. Muthiyan would submit that as per the admissions of the duo, Dagdu Bhai Raheem Bhai was not in possession of the disputed lands either as on 1965 or 1963. Mr. Muthiyan would therefore contend that the Tahsildar had rightly granted relief in favour of petitioners by issuance of purchase certificate in respect of disputed lands.

13. In support of his contentions Mr. Muthiyan would rely upon the judgment of this Court in **Mesaji S/o Laxman Ubare Vs. Dr. Ramchandra S/o. Laxminarayan Toshniwal and Ors.**, 2011 (4) ALL MR 25 and **Datta Manika Dhobi and Ors. Vs. Dattatraya and Ors.**, Writ Petition No.1584/1988 decided on 20.01.2003.

14. Per contra Mr. Kakade, the learned counsel appearing for respondent nos.4 to 9 would oppose the petitions submitting that the orders passed by the Tahsildar was an outcome of fraud for which petitioners are being criminally prosecuted. Mr. Kakade would demonstrate as to how the Tahsildar proceeded to pass orders after orders of his transfer and relieving were issued and effected. He would therefore submit that the Tahsildar was hand-in-gloves with petitioners, on account of which illegal orders came to be passed by him.

15. Mr. Kakade would further submit that the name of Dagdu Bhai Raheem Bhai as tenant was already removed by the Tahsildar twice on 07.04.1978 and 15.03.1983 and those orders were never questioned and thus attained finality. That Petitioners suppressed those orders of Tahsildar while filing applications for issuance of purchase certificate. Mr. Kakade would rely upon provisions of Section 32 of the Act, 1950 to contend that there is time limit of two years for a tenant to take the possession of tenanted lands. He would submit that the possession of the disputed lands was lost by Dagdu Bhai Raheem Bhai long back and no proceedings were initiated under Section 32 of the Act, 1950 to regain such possession. He would submit that allowing petitioners' applications for issuance of purchase certificate filed in the year 2011 would tantamount to circumventing the provisions of Section 32 of the Act, 1950.

Referring to panchanama dated 14.02.2012 Mr. Kakade would contend that the report of the handwriting expert demonstrated that the panchanama was prepared by Tahsildar himself in his own handwriting showing his involvement in the entire matter. He would therefore submit that no credence can be given to such panchanama. In support of his contentions Mr. Kakade would rely upon the judgment of this Court in **Ramchandra Balwantrao Dubal Vs. Dhondiram Tatoba Kadam**, Special Civil Application No.2655/1975 decided on 21.06.1980 [reported in LAWS (BOM)-1980-6-8].

16. Mr. Morampalle, learned AGP appearing for the State also opposes the petitions.

#### **REASONS AND ANALYSIS**

17. The claim of the petitioners is essentially premised on the entries in the name of Dagdu Bhai Raheem Bhai in some of the documents like khasara patrak, pahani patrak and consolidation statement. On the basis of those documents, it is claimed that Dagdu Bhai Raheem Bhai was a tenant in respect of the disputed lands and possession of lands is sought to be established. The khasara patrak and pahani patrak shows possession of the lands upto the year 1955-56. Thereafter, possession of lands is claimed straight on the basis of panchanama allegedly effected on 14.02.2012. In the entire petitions, petitioners have not narrated the events that took

place between 1955-56 to 2012. As observed hereinabove two vital events took place on 07.04.1978 and 15.03.1983. On 07.04.1978 encumbrance of tenancy of Dagdu Bhai Raheem Bhai was removed on an application made by the original tenant. This was on a premise that she was in possession of the lands since past 12 years from the date of application made in 1978. Later, the lands were purchased by Chandrakant Narayan Tandale, who noticed the name of Dagdu Bhai Raheem Bhai appearing in the 'other rights column' and requested for removal of the same and sought declaration that the disputed lands were free from encumbrance by filing application on 04.03.1983. That application was allowed by Additional Tahsildar by order dated 15.03.1983 declaring that the disputed lands were free from tenancy under Section 8 of the Act, 1950.

18. The aforesaid two events of 07.04.1978 and 15.03.1983 in my opinion were the most vital events that had adverse effect on the rights, if any, of Dagdu Bhai Raheem Bhai and of petitioners over the disputed lands. Petitioner chose to suppress these events in their applications made before Tahsildar in the year 2011. Mr. Muthiyan would attribute such conduct of the petitioners to their alleged ignorance of the said events. I am unable to agree for two reasons. Firstly, if name of Dagdu Bhai Raheem Bhai was removed from record of rights, the same ought to have been noticed by him or by his legal heirs. Secondly, as held by the Tribunal, the

petitioners are cultivating adjacent lands and it was impossible that they did not notice the original owners, the first purchaser Shri. Chandrakant Narayan Tandale and subsequent purchasers (respondent nos.4 to 9) claiming ownership and possession in respect of the disputed lands. I am of the view that petitioners and their predecessors were fully in knowledge the events that took place in the year 1978 and 1983. In any case with due diligence the said events could be traced and appropriately disclosed in the applications made before the Tahsildar in the year 2011. The petitioners, however, chose to suppress the said events.

19. More curiously atleast Tahsildar ought to have noticed the said events while entertaining the petitioners' applications for issuance of purchase certificate. In his orders passed on 09.01.2014 there is no whisper about these events.

20. The effect of the decisions taken on 07.04.1978 and 15.03.1983 was that tenancy, if any, of Dagdu Bhai Raheem Bhai stood terminated and in any case, a declaration was issued that the disputed lands were free from tenancy. To counter this position, Mr. Muthiyan has submitted that there is no concept of termination or extinction of tenancy under the provisions of the Act, 1950. I am unable to agree. There is a specific provision under Section 19 of the Act, 1950 under which the land owner can terminat tenancy *inter alia* on the

ground that tenant had failed to cultivate the land personally.

21. Now I turn to the submission of Mr. Muthiyan that the orders passed on 07.04.1978 and 15.03.1983 are nullity and were not required to be challenged. Before I deal with this contention, I must observe that this contention is nothing but an improvisation of case as such a contention was never raised before any of the Authorities/Tribunal below or even in the Petitions. In fact, orders dated 07.04.1978 and 15.03.1983 were suppressed in proceedings before Tahsildar and even in present petitions. In their appeals filed before the Tribunal, the petitioners did not set up a case that the orders passed on 07.04.1978 and 15.03.1983 were nullity and were not required to be challenged. Having not raised these contentions before the lower Authorities/Tribunal, the petitioners cannot be permitted to raise the same directly before this Court and on this ground alone, the contentio deserve to be rejected. Nonetheless, I proceed to determine the correctness of the said contention. Mr. Muthiyan has not been able to demonstrate as to how the orders dated 07.04.1978 and 15.03.1983 are either *void* or without jurisdiction. It is not his case that the Tahsildar did not have jurisdiction to pass those orders. As observed hereinabove, the concept of termination of tenancy on failure to cultivate the land by tenant is recognized under the provisions of Act, 1950. Therefore, it cannot be stated that

the orders were passed without any jurisdiction. It cannot therefore be contended that the orders are nullity and need not be challenged. Faced with these situations, Mr. Muthiyan has contended that the petitioners or their predecessors did not receive any notices in respect of orders passed on 07.04.1978 and 15.03.1983. This contention may point out a possible irregularity in the orders and the same by itself would not render the orders a nullity. If the orders dated 07.04.1978 and 15.03.1983 were indeed erroneous or illegal, it was incumbent upon petitioners to set up a challenge to them before the appropriate Authorities. However, far from challenging the said orders, petitioners chose to suppress the same. It is only after they were confronted with the said orders that they are chosen to raise a plea of non-receipt of notices, which cannot be countenanced. Therefore, Mr. Muthiyan has failed to demonstrate that the orders dated 07.04.1978 and 15.03.1983 are *ab initio void* or *nullity* for that they need not be challenged. Even otherwise, it is settled principle of law that even void orders are required to be challenged. The reference in this regard can be made to the judgment of the Apex Court in **Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**, (2011) 3 SCC 363, in which it is held as under:

*"16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any*

*person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil [(1996) 1 SCC 435 : AIR 1996 SC 906] , Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd. [(1997) 3 SCC 443 : AIR 1997 SC 1240] , M. Meenakshi v. Metadin Agarwal [(2006) 7 SCC 470] and Sneha Gupta v. Devi Sarup [(2009) 6 SCC 194] , this Court held that **whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.**"*

*(emphasis supplied)*

22. Thus it is established that the orders dated 07.04.1978 and 15.03.1983 attained finality. The effect of those orders is that all rights of Dagdu Bhai Raheem Bhai in respect of disputed lands stood terminated/extinguished. By ignoring the said orders, the Tahsildar erroneously proceeded to decide the applications filed by petitioners in the year 2011 for issuance of purchase certificate. Therefore, orders passed by the Tahsildar were *ex facie* illegal and have been rightly set aside by the Additional Collector whose order has been upheld by the Maharashtra Revenue Tribunal.

23. Now I turn to the manner in which the Tahsildar proceeded to entertain and decide the

applications filed by petitioners for issuance of purchase certificate. First, I deal with the panchanama dated 14.02.2012. On being repeatedly enquired as to how occasion arose for Talathi, Chitegoan to draw panchanama dated 14.02.2012, Mr. Muthiyan was unable to demonstrate any specific direction issued by the Tahsildar for drawl of such panchanama. The Additional Collector has perused the entire records relating to the panchanama and has recorded a finding that the panchanama is not found on the file of the Tahsildar. He has further arrived at a findings that there is no entry in the Roznama of Tahsildar about such panchanama being drawn. The Additional Collector has also held that an expert opinion was solicited about the panchanama which has concluded that the panchanama as well as the applications made for possession certificate are in the handwriting of the same person. The Additional Collector has raised serious doubts about the genuineness of the said panchanama. After considering the findings recorded by the Additional Collector, I am of the view that, the panchanama allegedly prepared on 14.02.2012 is a highly doubtful document on which no reliance can be placed. Even otherwise, the conclusion drawn in the panchanama to the effect that petitioners are in possession of the disputed lands is unbelievable in that the title and possession in respect of the disputed lands changed hands multiple times and it is impossible to believe that the legal heirs of Dagdu Bhai Raheem

Bhai (whose rights were terminated in 1978 and 1983) continued to remain in possession of the disputed lands in 2012. No notices appear to have been issued to the purchaser of the lands before drawl of panchanama. Therefore, no inference can be drawn based on the panchanama that petitioners continued to remain in possession of the disputed lands. In any case a FIR has been lodged against the concerned personnel responsible for drawl of panchanama and the matter is already subject matter of criminal investigation and prosecution and I need not express any further opinion in this regard.

24. The next issue is about passing of orders dated 09.01.2014 by Tahsildar. The Tribunal has observed that the Tahsildar had reserved the orders on 21.09.2012 and delivered the same belatedly after 15 months on 09.01.2014. Mr. Kakade has contended that as on the date of pronouncement of the order on 09.01.2014 the Tahsildar had already been transferred. The Tribunal has further recorded that the Tahsildar had directed by his orders dated 09.01.2014 deposit of purchase price of Rs.5000/- and issuance of purchase certificate after deposit of that amount. However, before the purchase price was actually deposited (deposited later on 23.01.2014), the Tahsildar directed registration of ownership certificate in favour of the petitioners on 17.01.2014 itself. He further proceeded to direct the Talathi, Chitegoan to record mutation of names of the petitioners on 17.01.2014. All this

was done before deposit of purchase price. All these events create serious doubts about the intention of Tahsildar, which appear to be far from *bonafide*. The Tribunal has already made strong observations against the Tahsildar about the manner in which he proceeded to pass the orders. The conduct of the Tahsildar and other personnel are subject matter of FIR and criminal prosecution. I need not delve any further in the matter.

25. Coming to the merits of the orders passed by the Tahsildar, I find that he failed to record even single cogent reason for declaring petitioners as tenants in respect of the disputed lands. The only reason recorded by Tahsildar in his order alleged possession of the petitioners over the disputed lands as per panchanama drawn by the Talathi. I have already made observation upon the manner in which that panchanama was prepared. Apart from the panchanama, there is no other reason recorded by the Tahsildar for entertaining belated applications of petitioners and declaring them tenants after passage of long time. The order of the Tahsildar is thus cryptic and suffered from non-application of mind. It was an outcome of gross suppression of material facts by Petitioners. The manner in which the Tahsildar acted while passing the same does not inspire confidence. It is rightly been set aside by the Additional Collector and by the Tribunal.

26. What remains now is to deal with the judgments cited by Mr. Muthiyan. In **Mesaji S/o Laxman Ubare** (*supra*) the issue was about transfer of ownership to a protected tenant. Firstly, petitioners have not been able to demonstrate before any of the authorities below or before the Tribunal that Dagdu Bhai Raheem Bhai was a protected tenant being in possession of the lands on the relevant date on 11.07.1958. Faced with this situation, Mr. Muthiyan has attempted to bring him within ambit of the term 'ordinary tenant'. Considering the orders that were passed on 07.04.1978 and 15.03.1983 extinguishing all rights of Dagdu Bhai Raheem Bhai, it is difficult to believe that he continued to remain even as ordinary tenant in respect of the disputed lands. The facts of the present case are unique and therefore, the judgment in **Mesaji S/o Laxman Ubare** (*supra*) has no remote application to the present case. The judgment in **Datta Manika Dhobi** (*supra*) is equally inapplicable for the same reason. In that judgment, this Court has held that till the ownership of tenant is not cancelled by adopting due process of law or by procedure prescribed under the Act, the land vests in the tenant. In the present case the rights, if any, of Dagdu Bhai Raheem Bhai were extinguished by passing orders dated 07.04.1978 and 15.03.1983. Due process of law was initiated. Therefore, judgment has no application to the fact of the present case.

**CONCLUSION**

27. After considering the entire conspectus of the matter, I am of the firm view that no error is committed by the Maharashtra Revenue Tribunal while dismissing the Revisions filed by petitioners. The Additional Collector has rightly set aside the orders passed by the Tahsildar which were grossly illegal and perverse. There is thus absolutely no merit in the present petitions. For suppression of decisions dated 07.04.1978 and 15.03.1983 in the petitions, Petitioners are required to be saddled with costs, while dismissing the petitions. Considering the fact that Petitioners claim to be agriculturists, I refrain from imposing exemplary costs. A token costs of Rs. 5000 in each petition would in my opinion be appropriate for the act of suppression indulged in by Petitioners. I accordingly proceed to pass the following order:

**ORDER**

- A. Both Writ Petitions are dismissed with costs of Rs.5000/- in each of the Petitions to be paid by the Petitioners with High Court Legal Services Committee, Aurangabad within 4 weeks.
- B. Rule discharged.

**(SANDEEP V. MARNE)**  
**JUDGE**