

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5305 OF 2021

1. Shamrao Rambhau Konde
Age : 70; Occ : Agriculturist;

2. Gulabrao Rambhau Konde
Age : 65; Occ : Agriculturist;
Both residing at – Tanajinagar, Post-Arvi,
Taluka – Haveli, District – Pune.

...Petitioners

V/s.

1. State of Maharashtra
Through the Department of Revenue,
Mantralaya, Mumbai.

2. The Presiding Officer,
Maharashtra Revenue Tribunal, Pune,
District-Pune.

3. Sub Divisional Officer, Haveli
7, Nilgiri Bungalow, Queen Garden,
Alpa Bachat Bhavan Backside,
Taluka-Haveli, District-Pune.

4. The Tahsildar, Haveli,
Kharak Mal, Shukrawar Peth,
Taluka -Haveli, District – Pune.

5. Nathu Shiva Konde
(Since dead through legal heirs)
a. Dattaray Balu Konde
b. Manda Balu a.k.a. Shivaji Konde
Both residing at Tanajinagar,
Post-Arvi, Taluka-Haveli, District-Pune.

c. Bharti Ajay Karanjavne
R/at – Kirkatvadi, Taluka–Haveli,
District – Pune.

d. Sadhna Rajendra Kadu
R/at Tanajinagar, Post-Arvi,
Taluka-Haveli, District-Pune.

6. Bharat Nathu Konde
7. Gyaneshwar Nathu Konde
Both residing at Tanajinagar,
Post-Arvi, Taluka – Haveli,
District – Pune.

Ms. Sanjukta Dey a/w Mr. Sagar Paspohe for the Petitioners.
Mr. A. B. Kadam, AGP for Respondents No. 1, 3 and 4.
Mr. Manoj Patil for Respondents No.5 to 7.

CORAM : ABHAY AHUJA, J.

DATE : 16TH JUNE 2022

ORAL JUDGMENT :

1. For the reasons to be recorded separately, the Writ
Petition is dismissed.

2. Set forth hereunder are the reasons.

3. By this Petition filed under Article 227 of the
Constitution of India, Petitioners are challenging the impugned
order dated 8th March 2021, passed by Respondent No.2 Presiding
Officer, Maharashtra Revenue Tribunal, Pune in Revision

Application No.P/II/7/2021 under Section 13(4) of the Maharashtra Revenue Tribunal Rules, 2013, rejecting the said Revision Application.

4. Petitioners are the legal heirs of the original tenant of the land bearing Survey Nos.99/1, 99/3, admeasuring 5 Acres 33 Gunthas of Village Arvi, Tanajinagar, Taluka Haveli, District Pune (for short 'the said land'). Respondent No.1 is the State of Maharashtra through its Department of Revenue, Respondent No. 2 is the Revenue Tribunal, Respondent No.3 is the SDO, Haveli, Respondent No. 4 is the Tahsildar, Haveli and having jurisdiction over the said land as per the provisions of the Maharashtra Land Revenue Code, 1966 (the 'MLRC') and the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short 'the Tenancy Act'). Respondents No. 5 to 7 are the original Respondents in Revision Application No.P/II/7/2021 filed before Respondent No.2 Tribunal by Petitioners.

5. The brief facts on behalf of the Petitioners' as stated in the Petition are set out as under :-

(a) One Gopal Joshi, father of Shankar, Dattatraya and Jagannath was the original owner of the said land. Bhiva Arjun Konde Deshmukh, i.e., the Petitioners' grandfather, was the tenant since 1931 and a protected tenant as per Mutation Entry No.958 dated 30th July, 1949, which was entered on 29th November, 1949 under Rit No.3. It is submitted that Rit No. 3 involves cultivation through a person on the basis of Bataee, which means share in crop to the owner/occupant by the person cultivating the land. That this mutation has not been cancelled till date by adopting any proceedings under Section 29 of the Tenancy Act.

(b) On Tiller's day i.e. on 1st April, 1957, since Bhiva Arjun Konde Deshmukh was in charge and in possession of the said land, he became the owner and/or deemed purchaser in accordance with Section 32 of the Tenancy Act. It is submitted that therefore, under the provisions of the Tenancy Act, the Petitioners, viz., his legal heirs automatically became the owners of the said land under Section 40 of the Tenancy Act.

(c) In the year 1969, after the consolidation of Village Mauje Arvi under the Mumbai Prevention of Fragmentation and

Consolidation of Holdings Act, 1947 (the “Mumbai Consolidation of Holdings Act”) into a group, the survey numbers got converted to Gat Numbers and accordingly in the 7/12 extract, the property numbers 648, 655, 649 and 647 also changed. Thereafter the division of the Village Arvi got divided into two parts, viz., Tanajinagar and Arvi and the ancestral record of the Petitioners and Respondents No. 5 to 7 in 7/12 extracts were changed to Gat Nos. 6, 8, 9 and 10 and became a part of Tanajinagar. Till 2001, the Petitioners were having common possession and cultivation in Gat Nos. 6, 8, 9 and 10.

(d) Around the year 1996, Nathu Shiva Konde Deshmukh, the ancestor of Respondents No. 5 to 7, filed an application being Case No.232 of 1996 under the Mumbai Consolidation of Holdings Act against the Rambhau Bhiva Konde, father of the Petitioners, for cancellation the mutation (ferfar) or the four parts of the Survey No.99/1 and to further include his name on the 7/12 extract of the said Survey No.99/1.

(e) It is submitted by Petitioners that Nathu Shiva Konde Deshmukh, i.e., the ancestor of Respondents No. 5 to 7 played fraud

and by Order dated 30th December, 1997 illegally got the names of the ancestor of Petitioners deleted in the District Superintendent of Land Records (“DSLRL”) in violation of the rules by adopting the wrong method under the consolidation scheme, without even filing an application for condonation of delay of more than 18 years in challenging the consolidation order. Rambhau Bhiva Konde, viz., Petitioners’ father passed away on 19th September, 1998.

(f) On 30th September, 1999, Petitioners filed an application/appeal before the Deputy Director of Land Records, Pune challenging the order dated 30th December 1997 passed by the DSLR, Pune. The said application/appeal was rejected under Section 43 of the Tenancy Act and Petitioners were further advised to approach the proper forum.

(g) By Mutation Entry (Ferfar) No.150 of 2001, the names of the ancestor of Respondents No. 5 to 7 were entered in the revenue records by means of Shuddhipatrak/rectification letter. Thereafter, Petitioners came to know about the same and immediately filed a Civil Suit in 2001, which statedly came to be disposed in the year 2017.

(h) In or about 2006, Petitioners were advised to file an appeal under Section 247 of the MLRC, 1966 challenging and seeking cancellation of Mutation Entry (Ferfar) No.1544 resulting from Section 32G proceedings in Case No.149/197 dated 19th June 1964. Petitioners filed RTS/Appeal No.345 of 2006 before Respondent No.3, which came to be rejected on 18th August, 2010 on the ground that Petitioners should file an appeal under Section 74 of the Tenancy Act challenging the Section 32G proceedings.

(i) Petitioners thereafter tried to obtain the 32G proceedings in case No.149/197 from the revenue records but were informed by the office of Respondent No.4 that there were no such proceedings available in the records.

(j) Petitioners submit that they could only obtain copy of the proceedings in case No. Arvi/149/1918/196 provided by the Revenue Authority in respect of the said lands in which the tenancy proceedings were in the name of one Dinkar Ganpati Konde as the tenant and not Nathu Shiva Konde Deshmukh, the ancestor of Respondents No. 5 to 7. It is submitted that though the tenancy proceedings were filed in the name of Dinkar Ganpati Konde as a

tenant, however, as per order dated 2nd May, 1964, the said Dinkar Ganpati Konde was accepted as the tenant who had agreed to purchase as per his right to purchase wherein Nathu Shiva Konde, the ancestor of Respondents No.5 to 7, was only a witness to the said proceeding. But despite this the 32M certificate in respect of the said land was issued in favour of Nathu Shiva Konde Deshmukh on 25th May, 1977, in case No.Arvi/149/191. Under these circumstances, Petitioners were unable to file any Appeal before the competent authority.

(k) In the year 2015, Petitioners filed an application, being Miscellaneous Application No.84C/SR/260/2015, before Respondent No.4 Tahsildar against Respondents No. 5 to 7 for violating Section 43 of the Tenancy Act and also pointing out all the illegalities in the said application. It is submitted that on 2nd March, 2019, the Respondent No.4 Tahsildar partly allowed the application of Petitioners for taking over the possession of Gat No.10 of the said lands for violation of Section 43 of the Tenancy Act and further directed Petitioners to challenge Section 32G order dated 2nd May, 1964 in Case No.149/1918/196 and Mutation Entry No.1544 before the appropriate forum under Section 74 of the Tenancy Act.

(1) In the year 2019, Petitioners had filed an Appeal No.542 of 2019 before Respondent No.3 SDO seeking cancellation of proceedings in 32G application and subsequent certificate issued under Section 32M in favour of the ancestors of Respondents No. 5 to 7. Petitioners had also filed an application for condonation of delay of six months alongwith the Appeal. It is submitted that during the course of hearing, Respondent No.3 SDO gave oral directions to Petitioners to file another application for condonation of delay thereby explaining the delay since the inception of the case. It is stated that accordingly Petitioners filed an application for condonation of delay before Respondent No.3 explaining the stand of Petitioners in respect of the alleged delay. Petitioners state that if the date of the 32M Certificate viz. 25th May, 1977 is considered, then there would be a delay of 42 years, if the date of consolidation order of the year 2001 is considered, then there is a delay of 18 years, if the date of the disposal of the civil suit is considered, then there is a delay of two years, if the date of the order of the Tahsildar is considered, then there is a delay of only six months. Petitioners further state that till date, the possession of the said land is still with Petitioners.

(m) It is submitted that on 10th December, 2020, Respondent No.3 rejected the Appeal filed by Petitioners without considering the merits and factual aspects. That Respondent No.3 wrongly came to the conclusion that there is a delay of almost 55 years on the part of Petitioners to challenge the said proceedings and hence rejected the said Appeal without getting into the illegalities and fraud played by the ancestors of Respondents No. 5 to 7.

(n) In the year 2021, Petitioners filed Revision Application bearing No.P/II/7/2021 before Respondent No.2 Tribunal against the order dated 10th December, 2020 passed by Respondent No.3. On 8th March, 2021, Respondent No.2 rejected the said Revision Application thereby upholding and confirming the order of Respondent No.3.

6. Being aggrieved by the aforesaid order, Petitioners have filed the present Writ Petition.

7. Ms. Dey, learned Counsel for the Petitioners would submit that the second Respondent ignored the fact that from a

bare perusal of the case proceedings in case No.Arvi/149/1918/196 furnished by the Revenue Authority, the tenancy proceedings were in the name of one Dinkar Ganpati Konde as a tenant and not in the name of ancestor of Respondents No.5 to 7 viz. Nathu Shiva Konde Deshmukh. She would submit that it is evident from said proceedings that the tenancy proceedings were filed in the name of one Dinkar Ganpati Konde as the tenant, however as per order dated 2nd May, 1964 of Respondent No.4 wherein the said Dinkar Ganpati Konde was accepted as a tenant, who had agreed to purchase as per his right to purchase and that the ancestor of Respondents No.5 to 7, i.e., Nathu Shiva Konde was only a witness to the said proceedings. Learned Counsel would submit that despite the same, the 32M certificate was issued in favour of Nathu Shiva Konde Deshmukh as on 25th May, 1977 with respect to the said lands in another case No.Arvi/149/191. She would submit that therefore admittedly no such proceedings of of 32G were ever carried out in the name of the ancestor of Respondents No.5 to 7 Nathu Shiva Konde. She draws the attention of this Court to Exhibit 'F' in support of her contention.

8. Learned Counsel would also submit that Respondent No.2 has grossly erred in considering that there were no faults and/or frauds in the documents even though the documents available on record are self-evident of the same, allegedly at the behest of Nathu Shiva Konde.

9. Learned Counsel for Petitioners would submit that Petitioners are in possession and the ancestor of Respondents No.5 to 7 was never in possession.

10. Learned Counsel reiterates that Petitioners' ancestor, viz., Bhiva Arjun Konde Deshmukh was a protected tenant as on Tiller's day and no such application preferred by the landlord, viz., Gopal Joshi under Sections 29 and 31 of the Tenancy Act and, therefore, on Tiller's day the ancestor of the Petitioners is the original owner of the said land. Therefore, Petitioners being the legal heirs automatically become the owners of the said land under Section 40 of the Tenancy Act.

11. She would submit that fraud vitiates all action and therefore, Respondent No.2 ought not to have misdirected itself

while rejecting the appeal by holding that Petitioners have preferred the same after a delay of 55 years.

12. On the other hand Mr. Manoj Patil on behalf of Respondents No.5 to 7 submits that Respondents No. 5 to 7 are the rightful claimants of the said lands in view of the proceedings conducted under Sections 32G and 32M. He would submit that the son of Bhiva Arjun Konde Deshmukh viz. Rambhau Bhiva Konde who is also the father of Petitioners did not take any steps to challenge the decision dated 2nd May, 1964 and cannot be permitted to agitate the same after 55 years. He also denies that Petitioners are in possession of the said land. Learned Counsel submits that such a claim cannot be sustained in law or in equity.

13. I have heard Ms. Sanjukta Dey, learned Counsel for Petitioners, Mr. A. B. Kadam, learned AGP for Respondents No.1, 3 and 4 and Mr. Manoj Patil, learned Counsel for Respondents No.5 to 7. I have also perused the impugned order dated 8th March, 2021 passed by Respondent No. 3-Maharashtra Revenue Tribunal, and given my thoughtful consideration to the rival contentions.

14. A perusal of the impugned order indicates that Petitioners being aggrieved by the judgement dated 10th December, 2020 by the Sub-Divisional Officer, Haveli, in Appeal No.542 of 2019 had filed an appeal before the Maharashtra Revenue Tribunal. The SDO had rejected Petitioners' appeal on the ground that Petitioners sought to challenge the decision dated 2nd May, 1964 in original case No.LLT/ Arvi/149/1918/196 after 55 years.

15. It is Petitioners' case that petitioners' grandfather Bhiva Arjun Konde Deshmukh was a protected tenant in respect of the said property which was evidenced by Mutation Entry No.958 and that Petitioners are in possession of the said land in their capacity as heirs of their grandfather. That even today, Petitioners predecessor's name is entered in the other rights column as vahiwatdars in the 7/12 extract. That Respondents No. 5 to 7 or their predecessors even though having no connection of whatsoever nature with the said lands have in the year 1964 obtained order under Section 32 of the Tenancy Act in the name of Nathu Shiva Konde (predecessor of the said Respondents) on the basis of erroneous record and consequently obtained the Certificate under

Section 32M of the Tenancy Act. Therefore, Petitioners are desirous of setting aside the said order of 1964.

16. It is observed from the impugned order that on the deemed date of Tiller's day i.e. on 1st April, 1957, the said lands bearing original survey number 99/1, 99/3 have been entered in the name of Nathu Shiva Deshmukh vide Rit No. 3. That the name of Bhiva Arjun Deshmukh was seen in the records only till the year 1942-43, which fact is not controverted. Petitioners have not given any explanation before any of the tribunal/authorities below as to why their vahiwat or entry is not seen in the records from the year 1953-54 up to the deemed date of Tiller's day. It is settled law that while passing an order under Section 32G of the Tenancy Act, the entries appearing prior to the deemed date is considered as effective and valid and to raise a dispute by relying only upon the entry made prior thereto in the column of other rights in the 7/12 extract cannot be permitted. It is observed by the Revenue Tribunal that after the death of the original tenant Bhiva Arjun Deshmukh, his son i.e. the father of Petitioners herein viz. Rambhau Bhiva Konde has not claimed any tenancy rights in respect of the property in question during his lifetime. Petitioners have chosen to challenge

the decision dated 2nd May, 1964 after 55 years merely on the basis of the other rights column in the 7/12 extract and on the basis of a claim that they have been in actual possession. It is also worth noting that in this period of 55 years, the 7/12 extract has also undergone consolidation but neither Petitioners nor their father viz. Rambhau Bhiva Konde, during his lifetime had raised any contention with respect to the vahivat of Nathu Shiva Deshmukh to the said land. A claim after 55 years cannot be sustained in law or in equity. The Tribunal order records that in the proceedings which were conducted under Sections 32G and 32M of the Tenancy Act it is mentioned that Nathu Shiva Konde Deshmukh is carrying out vahiwat. The Petitioners have not made any complaint regarding earlier vahiwat. Attempting to raise a dispute only on the basis of entries made in the other rights column would in my view not be sufficient for challenging the validity of the rights in this matter. Except bald allegations, no details or specific particulars of the alleged fraud on the part of Respondents No. 5 to 7 or their ancestor Nathu Shiva Konde Deshmukh have been demonstrated. I therefore agree with the findings of the Tribunal that the attempt by Petitioners to agitate this issue after 55 years does not merit any consideration. The tenancy rights have already been settled 55

years back in the year 1964. Admittedly, even after the 32M Certificate was issued on 25th May, 1977 in the name of Nathu Shiva Konde Deshmukh, the ancestor of Respondents No.5 to 7, there is a delay of 42 years, which in my view cannot be countenanced. It would be unjust in my view to permit Petitioners to agitate the same after such an inordinate delay particularly in the absence of any proved fraud or illegality.

17. In this context, the decision of a Division Bench of this Court in the case of **Dattu Appa Patil since deceased by LRs Ananda Dattu Patil and others Vs. State of Maharashtra and others, 2007 (1) Mh.L.J. 393** comes to mind where this court set aside the orders of the Consolidation Officer on the ground of inordinate delay of 27 years. The Division Bench referred to the judgement of this court in the case of **Gulabrao Bhaurao Kakade Vs. Nivrutti Krishna Bhilare and others, 2001(4) Mh..L.J. 31** where sixteen years after the scheme was finalised, the original Petitioner received a notice informing him that the scheme earlier finalised had been varied under Section 32 (1) of the Mumbai Consolidation of Holdings Act and possession as per the varied scheme would be taken on 14th February, 1989 which decision was set aside by this Court even

though there was no time limit prescribed under the law to vary the scheme, observing that though no time limit has been prescribed the said power can be exercised within a reasonable period but initiating proceedings after sixteen years cannot be said to be within reasonable time. Paragraphs 17 to 20 of the said decision of this Court in the case of **Dattu Appa Patil since deceased by LRs Ananda Dattu Patil and others Vs. State of Maharashtra and others (supra)** are instructive and are quoted as under :-

“17. In our opinion, the impugned orders are liable to be set aside on the ground of delay. In this connection, we may usefully refer to the judgment of this Court in Gulabrao's case (supra). In that case, 16 years after the Scheme was finalised, the original petitioner received a notice informing him that the Scheme earlier finalised had been varied under Section 32(1) of the said Act and possession as per the varied Scheme would be taken on 14-2-1989. Aggrieved by that order, the original petitioner filed a writ petition in this Court. This Court noted that there was no dispute that the Scheme was finalised following the procedure contemplated under the said Act way back in the year 1973 whereby the earlier Survey No. 95/4 was divided into different Gat numbers and the said Scheme was enforced and it remained in force without any demur or objection by any party for about 15 years. This Court then referred to Sections 32 and 31A of the said Act and observed that Section 32 gives power to Settlement Commissioner to vary the Scheme on the ground of error, irregularity or informality other than the

errors referred to in Section 31A. It was observed that though there is no time limit prescribed under Section 32(1) for the Settlement Commissioner to vary the Scheme, which has come into force, but obviously even in the absence of any period prescribed under Section 32, the said power can only be exercised within a reasonable period in any case. It was further observed that what would be the reasonable period for exercise of power under Section 32(1) by the Settlement Commissioner may depend on facts and circumstances of each case. It was observed that ordinarily exercise of such power after 3 years of finalisation of the Scheme under Section 22 may not be justified. This Court analysed the facts before it and held that the exercise of power by the Settlement Commissioner for variation of the Scheme which had come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within the reasonable time. It was further observed that the earlier Scheme was finalized in the year 1973 under the said Act to the knowledge of all the parties concerned. Nobody was aggrieved by the said Scheme finalised under the said Act and the Scheme came into force under Section 22. It was further observed that the said Scheme which had been finalised in accordance with law and which came into force and continued to be in force, could not have been unsettled by initiating proceedings for variation under Section 32 on the purported ground of error, irregularity or informality after a lapse of about 15 years and thus the exercise of power by the Settlement Commissioner under Section 32 for variation of the Scheme in the facts and circumstances of the case was grossly unjustified.

18. We feel that these observations are clearly attracted to the present case. We have already noted that the Consolidation Scheme came to be applied to the Village Asurle in the year 1962. The lands were exchanged by consent of the parties in the year 1962 after recording statements of the parties. Possession receipts were executed. Accordingly, changes were introduced in the village revenue records and parties continued to cultivate their respective allotted lands. This arrangement was accepted by the parties without any demur. The father of respondent 3 was alive till 1988. He made no complaints about any fraud having been committed. It is only in the year 1989 that respondent 3 for the first time made an application for variation. The application for variation is made nearly after about 27 years. Therefore, the Settlement Commissioner erred in exercising his power under Section 32(1) of effecting variation in the Scheme. Period of 27 years can certainly not be called reasonable period. Besides, serious allegations of fraud could not have been decided by him in such a manner.

19. We find no substance in the submission advanced by the learned Counsel for the respondent that since Section 32(1) prescribes no period of limitation, it cannot be read into it. Answer to this submission is found in the judgment of the Supreme Court in Mohamad Kavi's case (supra) where the Supreme Court has reiterated its view in the earlier decisions that where no time limit is prescribed for exercise of power under a statute, it does not mean that it can be exercised at any time. Such power has to be exercised within a reasonable time. It is true

that in Uttam Mahale's case (supra) three learned judges of the Supreme Court have held that where there is a statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. It is also true that the judgment in Mohamad Kavi's case (supra) is delivered by two learned Judges of the Supreme Court. In our opinion, that would, however, not make any difference. In Javed Ahmed's case (supra) the Supreme Court has stated that the Supreme Court sits in divisions of two and three Judges for the sake of convenience and it may be inappropriate for a Division Bench of three judges to purport to overrule the decision of a Division Bench of two judges and it may be otherwise where a Full Bench or Constitution Bench does so. Though the Supreme Court has clarified that it was not embarking upon this question, the above observations of the Supreme Court cannot be glossed over.

20. *We must also note that in Mohamad Kavi's case (supra) the Supreme Court was dealing with suo moto powers of Mamlatdar under Section 84C of the Bombay Tenancy and Agricultural Lands Act, 1976. In the present case, the impugned order of the Additional Chief Secretary, Government of Maharashtra is passed under Section 35 of the said Act. Section 35 of the said Act refers to the power of the State Government or the Commissioner to call for and examine the record of any case for the purpose of satisfying itself or himself as to the legality or propriety of any order passed by any officer under the said Act. In Uttam Mahale's case (supra), however, the Supreme Court was dealing with execution proceedings initiated under Section 21 of the Mamlatdar's Courts Act, 1906. Section 21*

makes statutory provision for execution of Mamlatdar's decision. In our opinion, in Mohamad Kavi's case (supra) the Supreme Court was dealing with a provision which is somewhat similar to the provision with which we are concerned and, therefore, we are of the opinion that the present case is covered by the ratio of that judgment. In the ultimate analysis, therefore, in view of the judgment of the Supreme Court in Mohamad Kavi's case (supra) and also the judgment of this Court in Gulabrao's case (supra), we feel that exercise of powers by the Consolidation Officer after about 27 years, is totally unjustified and on that ground alone the impugned orders need to be set aside.

(emphasis supplied)

18. In view of the above discussion, I am not inclined to interfere with the decision of the Tribunal. The Tribunal was justified in refusing to entertain the revision application on behalf of Petitioners challenging the order dated 2nd May, 1964 after 55 years. The Petition is dismissed. No costs.

(ABHAY AHUJA, J.)

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signed by
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