

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5670 OF 2021

1. Vijaya Vijayrao Khadke,
aged 65 years, Occupation – Household,
resident of Borgaon Mohana, at present Deomali,
Paratwada, Tahsil Achalpur, District Amravati
2. Shri Vijay Sheshraoji Khadke,
aged 68 years, Occupation – Retired,
resident of Borgaon Mohana, at present Deomali,
Paratwada, Tahsil Achalpur, District Amravati

Petitioners

Versus

1. State of Maharashtra through Secretary Revenue
Department, Mantralay, Fort, Mumbai.
2. Additional Commissioner, Amravati Division
Amravati, Commissioner Officer, Civil Lines,
Amravati
3. Collector, Amravati, Collector Office, Civil Lines,
Amravati
4. Tahsildar, Chandur Bazaar, District Amravati.
5. Shri. Anil Sukhdeo Bodole,
Aged 45 years, Occ. : Agriculturist Labour
6. Shri. Dshrat Mukaji Bodole (Dead)
Through its legal heir
Shri Gautam Dshrat Bodole,
Aged 52 years, Occ. : Agriculturi Labour
7. Shri. Devidas Tukaramji Bodole,
Aged 60 years, Occ. : Agriculturist Labour,
8. Shri. Ganpat Tukdaji Bodole, (Dead)
Through its legal heir
Shri Dewakar Ganpat Bodole,
Aged 47 years, Occ. : Agriculturist Labour,

Respondents

9. Shri. Ramdas Tukaramji Bodole,
Aged 55 years, Occ. : Agriculturist Labour.
All 5 to 9 R/o Borgaon Mohna, Tah – Chandur
Bazar, Dist Amravati.
10. Shri Shrawan Jairam Tayde (Dead)
Through its legal heir
Shri Pratap Shrawan Tayde,
Aged 50 years, Occ. : Agriculturist Labour,
R/o Hirul Purna, Tah- Chandur Bazar, Dist. -
Amravati
11. Shri. Vinod Shridhar Sapkal,
Aged 53 years, Occ. : Ex-servicemen,
R/o Pratappur, tah – Chandur Bazar,
Dist – Amravati
12. Shri. Dilip Haramanji Wakode,
Aged 55 years, Occ. - Ex-serviceman,
R/o Sirsgaon Band, Tah – Chandur Bazar,
Dist – Amravati
13. Shri. Jagannath Mahdeo Zood,
Aged 56 years, Occ. : Ex-servicemen,
R/o Near MIDC, Dist – Amravati
14. Shri. Akram Riyasat Ali,
Aged 61 years University Road, Camp Amravati,
Dist. Amravati
15. Shri. Narayan Tulsiramji Thorat,
Aged 64 years, Occ. : Ex-serviceman,
R/o Dula Gate, Tah. - Achalpur,
Dist. - Amravati
16. Kamal Bai Bagaji Shrishat (Dead) through legal
heir
Shri. Dyaneshwar Bagaji Shrishat,
Aged 58 years, Occ. : Agriculturist Labour,
R/o Talegaon Mohana, Tah. - Chandur Bazar,
Dist – Amravati

17. Shri Manik Haribhau Jayle (Dead)
Through Legal heir
Smt. Babytai Manik Haribhau Jayle,
Aged 67 years, Occ. : Household,
R/o Sharaswati Nagar, Dist. - Amravati

Mr. S.R. Deshpande, Advocate for petitioners

Mr. K.L. Dharmadhikari, AGP for respondent Nos.1 to 4

Mr. S.M. Prasad, Advocate for respondent Nos. 5 to 17

CORAM : MANISH PITALE, J.

RESERVED ON: 23/03/2022

PRONOUNCED ON: 06/06/2022

JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the rival parties.

2. This case has a chequered history and the parties are before this Court on the third occasion from proceedings arising out of the Maharashtra Agricultural Lands (Ceiling on Holdings), Act, 1961, hereinafter referred to as “the Act of 1961”. According to the petitioners, the impugned order dated 26/06/2020, passed by the respondent No.3 – Collector, Amravati and the impugned order dated 15/12/2021, passed by the Maharashtra Revenue Tribunal (hereinafter referred to as “MRT”), are rendered unsustainable in view of change in position of law, particularly clarified by the

Hon'ble Supreme Court in its judgment in the case of **Vineeta Sharma Vs. Rakesh Sharma & Ors.** (judgment and order dated 11/08/2020), passed in **Civil Appeal Diary No. 32601 of 2018 and connected petitions.** According to the petitioners, the effect of the said change in position of law ought to have been taken into consideration, but, the same was erroneously ignored in the impugned orders.

3. In the present case, originally one Rambhau Shamrao Patil filed return under Section 12 of the Act of 1961, in the context of determination of surplus land under the provisions of the said Act. By order dated 20/04/1978, the Surplus Land Determination Tribunal (SLDT) passed its order holding that 71.07 acres of land was surplus and 25.27 acres of land stood confiscated. Aggrieved by the said order passed by the Tribunal, the said Rambhau Shamrao Patil filed an appeal before the MRT. The said appeal came to be allowed and by order dated 26/09/1978, the matter stood remanded to the SLDT. Thereafter, on 17/12/1979, after conducting fresh enquiry, the SLDT passed an order declaring 71.07 acres land as surplus and 37.36 acres stood confiscated.

4. On an appeal filed challenging the said order of the SLDT, the MRT dismissed the appeal on 15/12/1980. The said order of MRT was made subject matter of challenge by Rambhau Shamrao Patil and others by filing Writ Petition No. 89 of 1981. The said appeal was partly allowed by a learned Single Judge of this Court by judgment and order dated 24/06/1985. It was held that while the declaration of surplus land made by the SLDT deserved to be maintained, the declaration of forfeiture deserved to be set aside. After holding in the aforesaid manner, the SLDT was directed to give fresh choice of retention to the petitioners.

5. The petitioners therein challenged the said order of the learned Single Judge by filing Letters Patent Appeal No.78 of 1986. A Division Bench of this Court slightly modified the order passed by the learned Single Judge, by holding that land admeasuring 8 acres and 11 gunthas deserved to be excluded from the total holding of the original land holder and that the appellant No.3 therein i.e. the adopted son of said Rambhau Shamrao Patil deserved to retain the said land gifted to him on 31/05/1972. The declaration was upheld with the aforesaid modification.

6. The judgment and order of the Division Bench of this Court was challenged before the Supreme Court by filing Special Leave Petition (Civil) No.4694 of 1988, but, the same stood dismissed on 20/08/1993. As a consequence, the declaration made under the provisions of the said Act by the SLDT, as modified by the orders of the learned Single Judge and Division Bench of this Court, stood finally confirmed.

7. Thereafter, the matter was to be taken forward only on the aspect of fresh choice of retention to be given by the land holders. In this process, a number of orders were passed by the said SLDT, as also the MRT. Upon the matter being remanded, eventually the Tahsildar passed orders in the matter. These orders were challenged before this Court directly by filing Writ Petition No.8472 of 2018. The subject matter of challenge in this Writ Petition was order dated 03/12/2018, passed by the Additional Commissioner, Amravati Division and order dated 11/06/1979, passed by the Tahsildar.

8. The principal ground of challenge in the said Writ Petition was that the aforesaid orders passed by the Tahsildar and the Additional Commissioner were unsustainable because the SLDT had been abolished in the meantime and that, therefore, the said orders

were rendered without jurisdiction. By order dated 25/11/2019, this Court partly allowed the aforesaid Writ Petition, holding that the orders passed by the Tahsildar and Additional Commissioner deserved to be set aside, as the Tahsildar did not have jurisdiction to pass such orders in view of abolition of the SLDT. It was held that under the provisions of the Act of 1961, upon abolition of the SLDT, it was only the Collector, who could have exercised jurisdiction in the matter. Accordingly, the Collector was directed to conduct enquiry for fresh choice of retention in pursuance of the aforementioned orders passed in the first round of litigation, pertaining to declaration of surplus land under the provisions of the Act of 1961. It is in pursuance of the said order that the Collector passed the impugned order dated 26/06/2020 and the MRT passed the impugned order dated 15/12/2021, in the appeal arising out of the aforesaid order of the Collector.

9. The material on record shows that the petitioners, who represent the interest of original landholders, placed on record written submissions before the respondent No.3 – Collector after this Court directed the Collector to conduct the said enquiry for fresh choice of retention. In these written submissions, the petitioners sought to re-agitate certain issues that were raised in the

earlier round and also raised for the first time an issue pertaining to amendment in Section 6 of the Hindu Succession Act, 1956. The Collector proceeded to pass the impugned order dated 26/06/2020, recording the history of the litigation and further specifically recorded that despite repeated opportunities given to the petitioners to exercise fresh choice of retention after the aforesaid declaration of surplus land, the petitioners failed to do so. As a consequence, the Collector proceeded to pass the impugned order in the absence of specific response on the choice of retention on the part of the petitioners.

10. Aggrieved by the said order passed by the Collector, the petitioners filed appeal before the MRT, wherein for the first time, the petitioners claimed that since some lands were originally owned by tribals, the same were required to be reduced from the holding of the landholders. In this regard reference was made for the first time to a communication dated 15/05/2014, issued by the State Government. Apart from this, by way of amendment during pendency of the appeal, the petitioners sought to raise the aforesaid issue pertaining to effect of amendment to Section 6 of the Hindu Succession Act, 1956, in the light of the aforesaid judgment of the

Supreme Court in the case of **Vineeta Sharma Vs. Rakesh Sharma** (supra).

11. By the impugned order dated 15/12/2021, the MRT dismissed the appeal with costs, while allowing intervention filed by the contesting respondents herein. It was found that the proceeding pertaining to declaration of surplus land had already attained finality in the earlier round up to the Supreme Court and that the petitioners were seeking to raise and re-agitate all kinds of issues repeatedly, only with a view to keep the litigation pending. Aggrieved by the said orders passed by the Collector and the MRT, the petitioners filed the present petition, wherein this Court issued notice. The counsels representing the petitioners and respondents were heard.

12. Mr. S.R. Deshpande, learned counsel appearing for the petitioners submitted that the Collector as well as the MRT erred in refusing to consider the specific issue raised on behalf of the petitioners in view of change in law due to amendment of Section 6 of the Hindu Succession Act and its effect in the present case, as also the issue pertaining to some of the lands originally belonging to tribals. It was submitted that neither the Collector nor the MRT realized that the findings rendered in the first round of litigation up

to the Supreme Court could not operate as a *res judicata*, as the matter was remanded to the Collector for further proceedings. By referring to judgments on the concept of *res judicata* at different stages in the same proceedings, the learned counsel appearing for the petitioners contended that findings in the earlier round of litigation, when the matter stood remanded to the Collector, could not operate as *res judicata*.

13. It was further submitted that the Collector as well as the MRT failed to appreciate the scheme under the provisions of the Act of 1961, while refusing even to consider the issues sought to be raised on behalf of the petitioners. It was also submitted that since the proceedings were yet to culminate as per the scheme envisaged under the provisions of the Act of 1961, respondent Nos.5 to 17 before this Court did not have any right to be heard in the matter, which the MRT failed to appreciate while allowing their intervention. The learned counsel for the petitioners placed reliance on the judgments of the Supreme Court in the cases of **Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi and another** AIR 1960 SC 941; **Arjun Singh Vs. Mohindra Kumar and others**, AIR 1964 SC 993 and in the case of **Vineeta Sharma Vs. Rakesh Sharma** (supra) and judgments of this Court in the cases of **Ratanlal Kisandas Vs. Bajirao Ganpat**

Mahalasne and 2 others, 1975 Mh.L.J. 65 and Hanumant Yeshwant Deshmukh and others Vs. State of Maharashtra and others, 1983 Mh.L.J. 38.

14. Mr. K.L. Dharmadhikari, learned Assistant Government Pleader appeared on behalf of respondent Nos.1 to 4 and supported the impugned orders passed by the Collector and MRT. It was submitted that the petitioners were deliberately trying to rake up issues already decided, only with a view to delay the effect of the declaration regarding surplus lands.

15. Mr. S.M. Prasad, learned counsel appearing for respondent Nos. 5 to 17 submitted that the said respondents were correctly permitted to intervene by the MRT in the appeal filed by the petitioners. They were vitally interested in the matter as the surplus lands were to be distributed to them. It was submitted that the Collector as well as the MRT were justified in holding against the petitioners, for the reason that the principle of *res judicata* clearly applied against the petitioners in the facts and circumstances of the present case. The learned counsel placed much emphasis on the provisions of the Act of 1961 and the scheme contemplated therein. It was submitted that in the first round of litigation, the aspect of

declaration of surplus land on the merits of the matter stood concluded against the petitioners and their predecessors, which could not be reopened in the proceedings before the Collector, as the said proceeding was only for fresh choice of retention to be exercised by the petitioners.

16. It was submitted that the aspect of declaration of surplus land under Section 21(1) of the Act of 1961, stood finally concluded up to the Hon'ble Supreme Court and that, therefore, there was no question of reopening the issue on the basis that there was change in position of law due to amendment of the concerned statute. It was submitted that the scheme of the Act of 1961, was appreciated by the Supreme Court in the case of **Raghunath Laxman Wani and Ors. Vs. The State of Maharashtra and Ors. (1971) 3 SCC 391**, which was followed in subsequent judgments in the cases of **State of U.P. Vs. Civil Judge, Nainital and Ors. (1986) 4 SCC 558** and **Bhikoba Shankar Dhumal (Dead) by Lrs. and Ors. Vs. Mohan Lal Punchand Tathed and Ors. (1982) 1 SCC 680**.

17. It was further submitted that a proper reading of the judgments of the Hon'ble Supreme Court in the cases of **Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi and Arjun Singh Vs.**

Mohindra Kumar (*supra*), would show that the concept of *res judicata* applied against the petitioners in the facts and circumstances of the present case. The learned counsel also placed reliance on the case of **C.V. Rajendran and Ors. Vs. N.M. Muhammed Kunhi (2002) 7 SCC 447**. On this basis, it was submitted that since the proceeding before the Collector pursuant to the orders passed by this Court was only for choice of retention, the contentions raised on behalf of the petitioners deserved to be rejected.

18. Considering the contentions raised on behalf of the rival parties, it needs to be examined as to whether the petitioners are justified in contending that the findings rendered against them up to the Supreme Court in the earlier round of litigation would not operate as *res judicata*, in the facts and circumstances of the present case. In order to examine the said contention raised on behalf of the petitioners, it would be necessary to refer to the scheme contemplated under the Act of 1961, the nature of the proceedings in the earlier round of litigation that attained finality up to the Supreme Court and the exercise that was to be carried out by the Collector, in pursuance of confirmation of the directions given in the first round of litigation.

19. The Act of 1961, was enacted for the purpose of limiting the size of agricultural holdings so as to reduce inequality in distribution of agricultural lands. In that context, it was decided that a uniform law ought to operate in the State imposing a ceiling on the possession of agricultural lands and providing for distribution of surplus lands to landless persons. Accordingly, various provisions under the Act of 1961, pertain to the ceiling imposed and the manner in which surplus land was to be determined for further distribution amongst the landless. Pursuant to the mechanism provided under the provisions of the Act of 1961, return was required to be submitted by the original landholders, for determination of the extent of surplus lands and such determination culminated in declaration by the Collector under Section 21(1) of the Act of 1961. The Collector was supposed to undertake an enquiry and upon giving hearing to all interested persons, particularly the landholders, ascertain the extent of surplus land. This necessarily resulted in identification of the extent of surplus land and the extent of land that could be retained by the landholder.

20. The scheme of the said Act was considered by the Hon'ble Supreme Court in the case of **Raghunath Laxman Wani and Ors. Vs. The State of Maharashtra** (supra), wherein it was emphasized that

the determination and declaration of such surplus land was with reference to the appointed day specified under the Act of 1961.

After referring to the provisions of the Act of 1961, in detail, it was held as follows:

“17. The scheme of the Act seems to be to determine the ceiling area of each person (including a family) with reference to the appointed day. The policy of the Act appears to be that on and after the appointed day no person in the State should be permitted to hold any land in excess of the ceiling area as determined under the Act and that ceiling area would be that which is determined as on the appointed day. Therefore, if there is a family consisting of persons exceeding five in number on January 26, 1962, the ceiling area for that family would be the basic ceiling area plus 1/6th thereof per member in excess of the number five. The ceiling area so fixed would not be liable to fluctuations with the subsequent increase or decrease in the number of its members, for, there is, apart from the explicit language of Sections 3 and 4, no provision in the Act providing for the redetermination of the ceiling area of a family on variations in the number of its members. The argument that every addition or reduction in the number of the members of a family requires redetermination of the ceiling area of such a family would mean an almost perpetual fixation and re-fixation in the ceiling area by the Revenue Authorities, a state of affairs hardly to have been contemplated by the Legislature. The argument would also mean that where a surplus is already determined and allotted to the landless persons such area would have to be taken back and given to a family, the number of whose members subsequently has augmented by fresh births.

18. It is true that Section 12 does lay down an obligation on a person to furnish to the Collector a report containing particulars of all lands held by him if he has held at any time after August 4, 1959 but before the appointed day or has on or after the appointed day acquired or held or has come into possession of any land in excess of the ceiling area as envisaged by Section 10(2) or whose lands are converted

into any other class of land as a result of the expiry of the period or date specified in Section 2(5) or whose land is converted into any other class for the reasons given in Section 11 and the Collector then has to hold an enquiry and declare his excess land under Section 21. But these are the only cases contemplated where there would have to be a re-appraisal of the ceiling area, otherwise the Act, as aforesaid, visualises the ceiling area of every person with reference to the conditions prevailing on and the land held by him as on the appointed day. Such a construction appears to be borne out by the provisions of Sections 3 and 4 as also of Sections 8 and 9 of the Act. This is also the view taken by the High Court of Bombay on more than one occasion. (See *State v. Dinkarrao Narayanrao Deshmukh* [(1969) 72 Bom LR 237] , also *Maruti Rao S. Gube Patil v. State* [Spl. CA 767 of 1968, decided on April 18, 1968, (Patil and Nain, JJ.) (Unreported)] and also Special CA No. 229 of 1968. decided on July 11, 1969). A view contrary to that taken in the above-mentioned cases was adopted in Civil Application No. 1578 of 1969, decided on July 16, 1969, by another Division Bench of that High Court. But that does not appear to be a correct view as the learned Judges there failed to appreciate that Section 12 contemplates a limited number of cases where a ceiling area has to be refixed by reason of the intervening events. Except for those cases, the scheme of the statute is that a ceiling area is to be ascertained with reference to the state of affairs existing on the appointed day. In this view, the Revenue Tribunal was right in not taking into consideration the three children born in the family after the appointed day while determining the ceiling area to which the appellants' family was entitled to.”

21. The said position was reiterated by the Supreme Court in the case of **Bhikoba Shankar Dhumal (Dead) by Lrs. and Ors. Vs. Mohan Lal Punchand Tathed** (supra), as also in the case of **State of U.P. Vs. Civil Judge, Nainital** (supra), which concerned the Uttar

Pradesh Imposition of Ceiling on Land Holdings Act, 1960, which contained *pari materia* provisions.

22. In this backdrop, when Sections 20 and 21 of the Act of 1961, are perused, it becomes clear that pursuant to a detailed enquiry the Collector determines the extent of surplus land and consequent declaration is made under Section 21(1) of the Act of 1961. Section 21(3) of the Act of 1961, specifically provides that such a declaration shall be final and conclusive and shall not be questioned in any suit or proceedings in any Court, subject to decision of MRT in an appeal under Section 33 or the State Government in revision under Section 45(2) of the Act of 1961. Section 33 of the Act of 1961, specifically provides that an appeal against an order of the Collector shall lie before the MRT in respect of specific cases provided therein, which includes a declaration or any part thereof under Section 21 of the Act of 1961. Similarly, Section 45(2) of the Act of 1961, reserves power with the State Government to *suo motu* or on an application call for the record of any inquiry or proceedings passed under Sections 17 to 21 for satisfying itself as to the legality or propriety of such inquiry or proceedings and to pass appropriate orders.

23. The said scheme contemplates under the provisions of the Act of 1961, as appreciated and interpreted by the Supreme Court in the aforementioned judgments, that a declaration issued under Section 21 of the Act of 1961, is final as it determines the extent of surplus land and findings are rendered on merits of the matter after giving due opportunity to the landholders. This is significant for considering the contentions raised on behalf of the petitioner on the aspect of *res judicata*, in the facts and circumstances of the present case. It has been specifically contended on behalf of the petitioners that since the proceedings under the Act of 1961, in the facts of the present case were yet to attain finality, the petitioners were certainly entitled to re-agitate issues before the Collector despite the same having been determined up to the Supreme Court, in view of the change in law and its effects on the extent of surplus land in the hands of the original landholders.

24. In order to appreciate the contentions raised on behalf of the petitioners and the respondents on the aspect of *res judicata*, it would be necessary to refer to the judgments brought to the notice of this Court.

25. In the case of **Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi** (supra), the Hon'ble Supreme Court held that the principle of *res judicata* is based on the need of giving finality to judicial decisions. It was emphasized that once the *res* is *judicata*, it shall not be adjudged again. It was held that usually the said principle applies between past litigation and future litigation, but, the said principle applies also as between two stages in the same litigation. In this backdrop, the Supreme Court in the said judgment held as follows:

“There can be little doubt about the salutary effect of the rule as laid down in the above cases on the administration of justice. The very fact that in future litigation it will not be open to either of the parties to challenge the correctness of the decision on a matter finally decided in a past litigation makes it, important that in the earlier litigation the decision must be final in the strict sense of the term. When a court has decided the matter it is certainly final as regards that court. Should it always be treated as final in later stages of the proceeding in a higher court which had not considered it at all merely on the ground that no appeal lay or no appeal was preferred? As was pointed out by the Privy Council in Moheshur Singh's Case (supra) the effect of the rule that at every stage of the litigation a decision not appealed from must be held to be finally decided even in respect of the superior courts, will put on every litigant against whom an interlocutory order is decided, the burden of running to the higher courts for redress of the grievances, even though it may very well be that though the interlocutory order is against him, the final order will be in his favour and so it may not be necessary for him to go to the appeal court at all. Apart from the inevitable delay in the progress of the litigation that such a rule would cause, the interests of the other party to the

litigation would also generally suffer by such repeated recourse to the higher courts in respect of every interlocutory order alleged to have been wrongly made. It is in recognition of the importance of preventing this mischief that the Legislature included in the Code of Civil Procedure from the very beginning a provision that in an appeal from a decree it will be open to a party to challenge the correctness of any interlocutory order which had not been appealed from but which has affected the decision of the case.”

26. It is significant that the Supreme Court made the above quoted observations with reference to interlocutory orders. In the case of **Arjun Singh Vs. Mohindra Kumar** (supra), the Supreme Court reiterated the position of law laid down in the case of **Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi** (supra), on the question of applicability of the principle of *res judicata* at successive stages of the same proceeding. It was observed in the said judgment as follows:

“12. We agree that generally speaking these propositions are not open to objection. If the court which rendered the first decision was competent to entertain the suit or other proceeding, and had therefore competency to decide the issue or matter, the circumstance that it is a tribunal of exclusive jurisdiction or one from whose decision no appeal lay would not by themselves negative the finding on the issue by it being *res judicata* in later proceedings. Similarly, as stated already, though Section 11 of the Civil Procedure Code clearly contemplates the existence of two suits and the findings in the first being *res judicata* in the later suit it is well established that the principle underlying it is equally applicable to the case of decisions rendered at successive stages of the same suit or proceeding. But where

the principle of *res judicata* is invoked in the case of the different stages of proceedings in the same suit, the nature of the proceedings, scope of the enquiry which the ad-jectival law provides for the decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and relevant factors to be considered before the principle is held applicable.”

27. In the case of **C.V. Rajendran and Ors. Vs. N.M. Muhammed Kunhi** (supra), the Supreme Court in this context, after referring to the judgment in the case of **Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi** (supra) held as follows:

“6. We have perused that Judgment. It is laid down therein that an interlocutory order which did not terminate the proceedings and which had not been appealed against either because no appeal lay or even though an appeal lay, an appeal was not taken, could be challenged in an appeal from the Final decree or order. It was observed that interlocutory judgments which have the force of a decree must be distinguished from other interlocutory judgments which are a step towards the decision of the dispute between the parties by ways of a decree or a final order. In that case, the question of applicability of Section 28 of the original Thika Tenancy act, 1949 was held to be interlocutory in nature, falling in the latter category.

7. We may add that Section 105 of the Code of Civil Procedure, 1908 specifically provides that any error, defect or irregularity in any order affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal which may be preferred against the original decree, orders in the nature of amendment of pleadings; late admission of documents at a later stage, admission of additional evidence and the like are orders interlocutory in nature

which can be challenged by raising a ground of objection in the memorandum of appeal which may be preferred against the original decree. Sub-section (2) of Section 105 of C.P.C. deals with an order of remand and provides that notwithstanding the provisions of sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness. Here what is sought to be re-agitated is not really the order of remand but the order deciding a germane issue which was allowed to become final at an earlier stage of the same suit. The principle of *res judicata* applies as between two stages in the same litigation so that if an issue has been decided at an earlier stage against a party it cannot be allowed to be re-agitated by him at a subsequent stage in the same suit or proceedings. This position is laid down in [Hope Plantations Ltd. v. Taluk Land Board, Peermade & A Anr.](#), [1999] 5 SCC 590, to which one of us (Syed Shah Mohammed Quadri, J.) was a party.

8. In the light of the above discussion we hold that as the question whether Section 15 of the Act bars the present eviction petition, was decided against the appellants by the Appellate Authority at the earlier stage of suit and it was allowed to become final, it is not open to the appellants to re-agitate the same at the subsequent stage of the suit. In this view of the matter, we do not find any illegality in the order under appeal to warrant any interference.”

28. Thereafter, in the case of **Erach Boman Khavar Vs. Tukaram Shridhar Bhat**, (2013) 15 SCC 655, the Supreme Court referred to the aforementioned judgments in the cases of **Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi** and **Arjun Singh Vs. Mohindra**

Kumar (supra) and other judgments. After referring to various judgments on the said issue, it was held as follows:

“34. From the aforesaid authorities it is clear as crystal that to attract the doctrine of *res judicata* it must be manifest that there has been conscious adjudication of an issue. A plea of *res judicata* cannot be taken aid of unless there is an expression of an opinion on the merits. It is well settled in law that principle of *res judicata* is applicable between the two stages of the same litigation but the question or issue involved must have been decided at earlier stage of the same litigation.”

29. It was further held that the principles laid down in the cases **Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi and Arjun Singh Vs. Mohindra Kumar** (supra), clearly spell out that the principle of *res judicata* operates at successive stages in the same litigation, but, the basic foundation of *res judicata* rests on delineation of merits and it has at least an expression of an opinion for rejection of an application.

30. The position of law that emerges from the aforesaid judgments of the Supreme Court is that the principle of *res judicata* certainly applies at successive stages in the same litigation, but, what is important is that for attracting the said principle of *res judicata*, there has to be an expression of opinion on the merits of the issue. The

question or issue involved must have been decided on merits at an earlier stage of the same litigation.

31. Applying the said principles to the facts of the present case, it becomes clear that the contentions raised on behalf of the petitioners cannot be accepted. The scheme under the Act of 1961, as is evident from the provisions contained therein and interpreted in the aforementioned judgments of the Supreme Court, shows that declaration under Section 21 of the Act of 1961, is a final determination upon detailed enquiry by the Collector, as regards the extent of surplus land with the original landholders, as on the appointed day specified under the Act of 1961. In the present case, the history of the litigation referred to hereinabove shows that the determination of surplus land was undertaken by the authority under the provisions of the Act of 1961, at that time being the SLDT, wherein the first order was passed 20/04/1978. The said declaration was subjected to challenge on behalf of the original land holders by approaching the MRT in appeal. After remand and reconsideration of the issues, the SLDT issued declaration under the Act of 1961, as regards the extent of surplus land and the land found to be liable to be confiscated. The proceedings reached this Court, wherein the

learned Single Judge partly allowed the writ petition in the following manner:

“7. In the result, the writ petition is partly allowed. The declaration of surplus land made by the learned Surplus Land Determination Tribunal is maintained. The declaration of the forfeiture of the land in sub-para (e) of para 10 of the impugned order of the Surplus Land Determination Tribunal is set aside. It is, however, directed that fresh choice of retention be given to the petitioner in the instant case. In the circumstances of the case, there would be an order as to costs.”

32. The said order of the learned Single Judge of this Court was upheld by the Division Bench of this Court in the judgment and order dated 10/09/1987, with the only modification that the land to the extent of 8 acres and 11 gunthas was to be excluded from the total holding of the original landholders. The said judgment of the Division Bench of this Court was confirmed when the Supreme Court dismissed the Special Leave Petition filed by the predecessors of the petitioners by order dated 20/08/1993. Thus, the declaration contemplated under Section 21 of the Act of 1961, stood upheld on merits up to the Supreme Court. The matter went to the Collector only for fresh choice of retention to be given by the petitioners.

33. The subsequent rounds of litigation came up to this Court in the form of Writ Petition No. 8472 of 2018, only on the ground that

in view of abolition of the SLDT, the Tahsildar could not have exercised jurisdiction under the Act of 1961, for fresh choice of retention to be given by the petitioners, in terms of finality in the earlier round of litigation. This Court partly allowed the aforesaid Writ Petition No. 8472 of 2018, by order dated 25/11/2019, holding that the Tahsildar indeed could not have exercised jurisdiction and that in view of abolition of the said SLDT, it was only the Collector under Section 2(6) of the Act of 1961, who could have exercised jurisdiction for fresh choice of retention to be exercised by the petitioners. It was in this backdrop that the matter was before the Collector when the impugned order dated 26/06/2020, was passed.

34. The petitioners sought to re-agitate the issue regarding declaration of surplus land by seeking to raise issues already decided up to the Supreme Court. The nature of the declaration issued under the provisions of the Act of 1961, cannot be said to be an interlocutory order for the petitioners to successfully claim that the issues already determined during the process of issuance of the said declaration confirmed up to the Supreme Court on merits, could be reopened and re-agitated before the Collector. As noted above, the matter stood placed before the Collector only for fresh choice of retention to be given by the petitioners. The impugned order dated

26/06/2020, passed by the Collector specifically records that despite repeated opportunities given to the petitioners to exercise fresh choice of retention, they failed to do so, resulting in the specific directions given in the said impugned order. This Court is of the opinion that the petitioners were not entitled to reopen the issues that attained finality up to the Supreme Court in the proceedings pertaining to declaration of surplus land under the provisions of the Act of 1961 and that, therefore, the attempt to claim benefit of change of law by amendment to Section 6 of the Hindu Succession Act, 1956 and the judgment of the Supreme Court in the case of **Vineeta Sharma Vs. Rakesh Sharma** (supra), was wholly misplaced. It is significant that reliance on the said judgment of the Supreme Court was placed by way of amendment in the appeal before the MRT.

35. At this stage, it would be necessary to refer to the judgment of the Division Bench of this Court in the case of **Ratanlal Kisandas Vs. Bajirao Ganpat Mahalasne** (supra), which was the sheet anchor of the contentions raised on behalf of the petitioners. It was claimed that in terms of the law laid down by the Division Bench of this Court in the said judgment, the principle of *res judicata* could not apply

against the petitioners in the facts and circumstances of the present case.

36. But, a perusal of the question formulated for consideration in the said case by the Division Bench of this Court would show that the contentions raised on behalf of the petitioners are unsustainable.

The said question reads as follows:

“Would remand order operate as *res-judicata* and preclude the remanding Court from re-opening it at the subsequent stage of the same continuing proceedings even when the law underlying remand order is differently interpreted by the larger Bench or by the Supreme Court?”

37. It is significant that the Division Bench of this Court in the said case was concerned with a situation where the law underlying the remand order was differently interpreted by a Larger Bench. In the facts and circumstances of the said case, it was found that an exceptional circumstance had arisen where the very basis of the remand order had been rendered unsustainable in view of a subsequent judgment of a Larger Bench. It is in this context that the Division Bench of this Court in the said case observed that the principle of *res judicata* is merely a rule of procedure and in its application to interlocutory remand orders is based more on propriety and public policy than on any statutory prohibition. In

other words, in the said case, the Division Bench of this Court proceeded on the basis that finality was yet to be achieved and that the remand order was interlocutory in nature.

38. As noted above, this Court is of the opinion that under the scheme of Act of 1961, as interpreted by the Supreme Court in the judgments referred to hereinabove, the declaration under Section 21 is culmination of a proceeding on merits as to the determination of surplus land in the hands of the landholders on the appointed day. There is finality attached to such declaration rendered by the competent authority. In the present case, the said declaration stood confirmed with certain modifications by the learned Single Judge and Division Bench of this Court, which in turn stood confirmed by the Supreme Court. The matter thereafter went to the Collector only for the petitioners to exercise fresh choice of retention on the basis of declaration of surplus land that had attained finality. Therefore, the aforesaid judgment of the Division Bench of this Court in the case of **Ratanlal Kisandas Vs. Bajirao Ganpat Mahalasne** (supra), can be of no assistance to the petitioners. This Court is of the opinion that the declaration of surplus land attained finality up to the Supreme Court in the facts and circumstances of the present case, wherein the extent of surplus land stood determined as on the appointed day specified

in the Act of 1961. Therefore, the petitioners were not entitled to reopen the entire controversy by claiming that there was now change in law by way of amendment of Section 6 of the Hindu Succession Act, 1956 and its interpretation by the Supreme Court in the case of **Vineeta Sharma Vs. Rakesh Sharma** (supra).

39. As regards the point sought to be raised for the first time by the petitioners before the MRT in appeal that some of the lands originally belonged to tribals and placing reliance on the letter dated 15/05/2014, allegedly issued by the State Government, this Court is of the opinion that the MRT was right in outrightly rejecting the said contention. The MRT correctly found that there was no legal basis for such a letter being issued by the functionaries of the State Government when no proceedings under the provisions of Maharashtra Restoration of Lands to Schedule Tribes Act, 1974, were undertaken in the context of some of the lands allegedly belonging to tribals. Therefore, on this aspect also no fault can be found with the view taken by the MRT in the impugned order dated 15/12/2021.

40. This Court is of the opinion that the petitioners have been raising such issues as a desperate attempt to avoid the inevitable

consequence of the declaration of surplus land that attained finality by dismissal of the Special Leave Petition, as far back as on 20/08/1993. If the contentions raised on behalf of the petitioner were to be accepted, the object of the Act of 1961, referred to hereinabove, would stand frustrated.

41. In view of the above, this Court is of the opinion that the petitioners are not justified in contending that the impugned orders deserve any interference. Consequently, the writ petition is found to be without any merit and accordingly, it is dismissed.

42. Rule is discharged.

43. Pending applications, if any, stand disposed of.

JUDGE

MP Deshpande