

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

**WRIT PETITION NO. 13052 OF 2018
WITH
CIVIL APPLICATION NO. 3517 OF 2021
AND
CIVIL APPLICATION NO. 3518 OF 2021**

Bhimrao s/o. Keru Waghmare .. Petitioner
died through LR's.

- a) Ashok s/o. Bhimrao Waghmare
Age. 76 years, Occ. Nil,
- b) Kishor s/o. Bhimrao Waghmare
Age. 48 years, Occ. Service,
- c) Sindhu w/o. Kailash Ingale
Age. 50 years, Occ. Household,
- d) Sunita w/o. Vishnu Gaikwad
Age. 45 years, Occ. Household,

Versus

- 1. The State of Maharashtra .. Respondents
Through its Secretary,
Revenue and Forest Department,
Maharashtra State, Mantralaya,
Mumbai.
- 2. The Deputy Collector,
(General Administration)
Aurangabad, Dist. Aurangabad.
- 3. The Tahsildar, Paithan,
District Aurangabad.

4. The Circle Officer,
Office of Circle Officer, Paithan,
District Aurangabad.
5. The Talathi, Sajja Jambhali,
Tal. Paithan, Dist. Aurangabad.
6. Aminabi Shaikh Fattu,
died through LRs.
 - a) Shaikh Kadar s/o. Shaikh Fattu,
Age. 53 years, Occ. Agri.,
R/o. Jambhali, Tq. Paithan,
Dist. Aurangabad.
 - b) Shaikh Tamizbee w/o. Shaikh Husen,
(deleted)
7. Shaikh Shabbir s/o. Shaikh Gulab,
Age. 66 years, Occ. Agri.,
R/o. Jambhali, Tq. Paithan,
District Aurangabad.
8. Chandkhan s/o. Akbarkhan,
Age. 60 years, Occ. Agri.,
R/o. Bharat Traders, Peer Bazar
Chowk, Osmanpura, Aurangabad.
9. Moinkhan s/o. Akbarkhan,
Age. 58 years, Occ. Agri.,
R/o. As above.

Mr.VD. Salunke h/f. Mr.D.H. Jadhavar, Advocate for the petitioners.
Mr.S.B. Pulkundwear, AGP for the respondent/State.
Mr.Pathan Abedkhan M. Advocate for respondent No.7.
Mr.Milind M. Joshi, Advocate for respondent No.8.
Mr.PG. Godhamgaonkar, Advocate for respondent No.9.

CORAM : **KISHORE C. SANT, J.**
RESERVED ON : **17.08.2023**
PRONOUNCED ON : **20.10.2023**

ORDER : -

01. This writ petition is filed challenging judgment and order passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad dated 13.07.2018 in Case No.56/A/2016/Aurangabad confirming judgment and order dated 11.08.2016 passed by the learned Deputy Collector, Land Records, Aurangabad. The petitioner had filed an application for possession of land under section 98-C of the Hyderabad Tenancy and Agricultural Lands Act [hereinafter referred to as “the said Act”].

02. It is case of the petitioner that he was a protected tenant of agricultural land Survey No.67, Gat No.94 admeasuring 15 Acres 11 Gunthas declared under the said Act. The father of the petitioner was declared as a tenant of the said land under section 37-A of the Act. He was cultivating land and was giving $\frac{1}{2}$ share to original owner – respondent No.6 Aminabi. After death of Aminabi, he started giving share to respondent Nos.6(a) and 6(b). His name was properly recorded in the tenancy register, Khata Patrak, Pahnri Patrak and other documents, maintained by the Revenue Officers, by collusion

with the Talathi and Circle Officer. Respondent No.6(a) and 6(b) got the land partitioned in two shares by vide mutation entry No.431. By taking disadvantage of the illiteracy of father of the petitioner, the land-lady Aminabai got entry taken in 7/12 extract and shown that the tenancy is terminated, without there being any application to that effect. It is further case that respondent Nos.6(a) and 6(b) executed sale-deed in favour of respondent No.7 of the entire land. On the basis of the sale-deed, mutation entries Nos.472 and 473 are taken. It is thus alleged that the said sale-deed in favour of respondent No.7 is in violation of section 50-B of the Act, as the same is without obtaining sanction from the Collector. Thereafter, on 29.03.2006 again sale-deed is executed in favour of respondent Nos.8 and 9 by respondent No.7. Mutation Entry No.584 and 585 are taken on the basis of sale-deed. Prayer was thus made to declare the sale-deed illegal and to give possession to the petitioner under sections 98 and 98-C of the Act.

03. The learned Dy. Collector (General Administration) observed that the petitioner could not prove his tenancy by considering the record of 1958-59 till 2011-12 in 7/12 extract. In 7/12 extract the tenancy is shown to be terminated in other rights column. The petitioner could not produce evidence

that his father was declared as a protected tenant. By recording these findings, the application of the petitioner came to be rejected.

04. The learned Member of the MRT also confirmed the order passed by the Dy. Collector and therefore present petition is filed.

05. Learned Advocate Mr. Salunke h/f. Mr. Jadhavar for the petitioners vehemently argued that respondent Nos.6(a) and 6(b) had no authority to sell the land. The subsequent sale-deed by respondent No.7 in favour of respondent Nos.8 and 9 is also illegal, as no permission under section 50-B was obtained from the Collector. Said permission was required as father of the petitioner - Keru was declared as a protected tenant on the said land. There is no record of cancellation of tenancy of Keru. There is also no record of surrender of the tenancy right. When there was tenant on the land, the land-lord had no authority to execute sale-deed. Any transaction without prior permission of the Collector under section 50-B of the Act is invalid. The authorities ought to have allowed the application of the petitioner by directing eviction of the respondents under section 98 of the Act. It was for the Dy. Collector to get the record of tenancy and to satisfy itself.

Though at the time of prosecuting the application, there was no record of tenancy available, however, during the pendency of this petition, some record is discovered, wherein the Tahsildar has supplied certified copy of declaration under section 38-A of the Act, notice of demand of purchase price etc. and same were also produced in the Civil Court. Thus, now it is clear that there was declaration as protected tenant in favour of father of the petitioner and said fact needs to be considered. It is case of the petitioner that the respondents have raised technical objection, as they could not dispute the factual position.

06. The learned Advocate Mr. Godhamgaonkar for respondent No.9 argued that the present petitioner could not produce any document to show right of tenancy over the land. Respondent 3-Tahsildar had merely given a letter stating that no record of tenancy is found. The theory of the petitioner is got up theory. The petitioner could not prove his case by producing any document before the Court. He submits that section 37-A was introduced in the year 1957. As per the same, it was category of the tenancy under section 34 of the Act, where a person is in possession as a tenant prior to coming into force of the Act. Section 37-A is the second category where the tenant is

declared after inquiry. Section 37-A is third category where a person is in possession as a tenant. In this case as per the petitioner's own case, his father was not in possession after 1950. From the 7/12 extract it is seen that there is no entry of the name of the petitioner's father as a tenant. Thus, the petitioner does not have any right over the property. The so called Sanad is a bogus document. If tenant comes with a case of dispossession, then the remedy lies under section 32 of the Act. In this case since 1953, nothing is done by the tenant. How, the petitioner cannot get any right under section 98 of the Act. The application under section 98 is filed only on 27.04.2013. The right under section 98 is available only to a person whose family is declared as a tenant. The land is converted to non-agricultural use has now ceased to be an agricultural land, as the land is acquired for MIDC in the year 2011 i.e. prior to application. He prays for dismissal of the petition.

07. The learned Advocate Mr.Joshi for respondent No.8 adopted arguments of learned Advocate Mr.Godhamgaonkar for respondent No.9. In addition, he submits that it is pre-requisite that the name of the tenant is recorded in the revenue record. The declaration of sale-deed as illegal is not within the purview of section 50-B. At the most the remedy to the petitioner

was under section 32 and not under section 98 of the Act. He submits that the petitioner has now come with a certificate, which can not be considered. In view of the provision of the Act, deposit of the amount by the tenant is pre-requisite for declaration as a protected tenant. The documents showing issuance of Sanad on 08.08.1956 is a bogus. There is no reference to the Sanad in view of the Revenue Record. The deceased Aminabi was shown as owner since 1953 till her death on 09.03.2002. There is presumption of section 157 of the Maharashtra Land Revenue Code. The notification for acquisition of land by the MIDC was issued on 13.11.2011. He, thus, submits that there is no right vested in the petitioner. Both the authorities have rightly passed the order and no interference is required.

08. The learned AGP supports the order stating that there is clear observation that the tenancy is cancelled in 1950 itself as per 7/12 extract. He, thus, prays for rejection of the petition.

09. The learned Advocate for respondent No.7 adopted arguments of other respondents.

10. In rebuttal, the learned Advocate for the petitioner Mr. Salunke submits that the Sanad issued by the Nayab Tahsildar was not traceable. Earlier inspite of great efforts, copy of the Sanad could not be obtained by the petitioner. However, now certified copy of the Sanad is issued by the Tahsildar himself. Earlier it was specific case of the petitioner that the Sanad is not available and not that it was not in existence. The letter dated 01.07.2019 by the Tahsildar only shows that the record was not found. By the said communication it is not stated that the Sanad is not issued or not in existence. It is submitted that in this case section 37-A of the Act has no application, when record of section 38-A is available. When the proceeding is filed under section 98-A, the Authorities are bound to consider only scope of section 98. Once a person is declared as a tenant, he remains tenant forever, unless his tenancy is terminated by following due process of law or it is surrendered. There is no challenge to the Sanad till now. When admittedly no sanction of the Collector is obtained, respondent Nos.7,8 and 9 do not get any right on the basis of the sale-deeds executed in violation of section 15-B of the Act.

11. Considering the above arguments, questions that fall for

consideration are as under :-

- (i) Whether the petitioner has proved that his father was declared as a tenant under section 37-A or 38-E of the Act?
- (ii) Whether the proceedings under section 98-C of the Act was maintainable?
- (iii) Whether the sale-deeds in favour of respondent Nos.7,8 and 9 are illegal for want of sanction under section 50-B of the Act?
- (iv) Whether the petitioner is entitled to get possession under section 98-C of the Act?

12. To answer the above questions, it is necessary to see whether the petitioner has proved that he was a protected tenant over the land. Looking to the judgments by the Deputy Collector and the learned Member, MRT, it is clearly seen that there was no record to show that father of the petitioner was protected tenant either in the form of revenue entries of the Sanad. This Court finds that even the petitioner's case is that no record was there before the Authorities. The case of the petitioner is that inspite of due diligence, the petitioner could not get record to show that his father was declared as a tenant. His case is that there is no record to show that the tenancy was terminated or was surrendered by following due process of law. His further case is that now in 2019 the Tahsildar has issued certified copy of the Sanad

in the name of his father and that should be considered for that purpose. This Court has to see whether the Sanad that is now sought to be produced can be considered for the first time by this Court. It is seen that on 01.01.1947 there was entry in the name of father of the petitioner. However, same was changed on 07.01.1956 and the Sanad is issued in his name on 08.08.1956. Further, there is receipt showing that on 17.07.1961 amount is recovered from the father of the petitioner. Thus, though before the Court this material was not there, now in view of issuance of certified copy, it is seen that there was some record with the Revenue Authority, which was either not traceable or was not supplied.

13. If the father of the petitioner is taken as a protected tenant, then further two questions would arise as to whether the sale-deeds are legal in favour of the respondents by landlords are valid and further as to whether the petitioner is entitled to get possession under section 98-C of the Act.

14. About the document of Sanad, the learned Advocate for respondent No.8 has relied upon reply dated 01.07.2019 received from the Nayab Tahsildar under the Right to Information Act in respect of Sanad. From

the said letter it is seen that the Tahsildar has issued a letter that file in respect of outward No. RBW-S2-AR, Tahsil Office, Paithan and certificate under section 98-C is not available.

15. This Court finds that though during the course of proceeding the Sanad/certificate issued to the father of the petitioner declaring him as a tenant was not available, no fault can be found with the order passed by the Authorities. However, now considering the fact that certified copies of Sanad and payment of price are produced on record, it would be proper to remand the matter to the Dy. Collector for deciding the matter afresh in view of the documents of which the certified copies are not produced. For that purpose the Authorities to call for the record/documents in respect of the tenancy and decide the matter afresh, by giving proper opportunity to the parties. The proceeding is under the Hyderabad Tenancy and Agricultural Lands Act. The Act is a piece of beneficial legislation and is enacted to take care of the rights of the tenants. It is for this reason, this Court feels that the petitioner should get fair chance to put up his case. The tenants should not lose their litigation only for the reason that when the proceeding was going on, he was not having necessary documents. Here it is clearly seen that though the tenant/petitioner

was trying to get the documents in support of his case, he could not procure the same. In view of this, though the questions are framed by this Court, it would not be in the interest of justice to answer the same and it would be proper to leave it to the Authorities to consider these questions, in view of the documents which are not produced during the course of hearing before this Court. Therefore, the following order :-

ORDER

- i) The writ petition is partly allowed.
- ii) The judgment and order passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad dated 13.07.2018 in Case No.56/A/2016/Aurangabad and the judgment and order dated 11.08.2016 passed by the learned Deputy Collector, Land Records, Aurangabad are quashed and set aside.
- iii) The matter is remanded back to the Deputy Collector, Aurangabad to decide it afresh.
- iv) In view of disposal of the writ petition, connected civil applications do not survive and are disposed off accordingly.

[KISHORE C. SANT, J.]

At this stage, learned Advocate Mr. Godhamgaonkar seeks leave to file an appeal. Considering the nature of the dispute and since the matter is only remanded, leave is refused.

[KISHORE C. SANT, J.]