

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

WRIT PETITION NO. 9750 OF 2023

- 1) Dadarao s/o Laxman Khandalwad,
Age; 58 years, Occ; Nil,
- 2) Kausalyabai w/o Gangadhar Parashwad,
Age; 52 years, Occ; Household,
- 3) Shantabai w/o Vijaykumar Kalyanpad,
Age; 51 years, Occ; Household,
- 4) Neelabai w/o Nagorao Parashwad,
Age; 48 years, Occ; Household,

All R/o Sawargaon Tanda
Tq.Kinwad, District; Nanded.

...PETITIONERS

V E R S U S

- 1) Nyalsingh s/o Mahadu Pandhare,
Age; 63 years, Occ; Agri.,
R/o; Sawargaon Tanda,
Tq.Kinwat Dist. Nanded.
- 2) The Additional Collector,
District Collector Office, Nanded
District; Nanded.
- 3) The Tahsildar, Kinwat,
Tq. Kinwat, District; Nanded.

...RESPONDENTS

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Advocate for the Petitioners : Mr. Sachin Deshmukh h/f Mr. Amol
G. Vasmatar
Advocate for Respondent No. 1 : Mr V.D.Salunke i/by Mr. Avishkar
S. Shelke & Mr. Ganesh R. Jadhav
A.G.P. for the Respondent Nos. 2 & 3/State : Mr. B.K.Jadhavar
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CORAM : KISHORE C. SANT, J.

Date of Reservation : 09.08.2023.

Date of Pronouncement : 03.10.2023.

JUDGMENT [PER : KISHORE C. SANT, J.] :

1. Rule. Rule made returnable forthwith with the consent of the parties.
2. This petition is filed against the judgment and order dated 26.07.2022 passed by the learned Member, Maharashtra Revenue Tribunal (for short "MRT") in Revision Petition filed by Respondent No. 1 bearing no. 40/B of 2022 allowing the same, whereby the judgment and order passed by the Additional Collector, Nanded dated 20.06.2022 is quashed and set aside, consequently an order passed by the Tahsildar Kinwat dated 20.01.2020 is confirmed. The Tahsildar had passed an order directing to cancel the mutation entry No. 112 in the name of the petitioner after the

receipt of the order from the superior officer by keeping it open to the parties to approach to the Competent Authority.

3. Respondent No. 1 had filed a proceeding before the Tahsildar. It was his case that one Gonderao Dattaram was the owner of land Survey No. 98 from Savargaon Tanda. The name of elder brother of the grand-father of the respondent No. 1 i.e. Tayam Jalva Mansa Pandhare was mutated as protected tenant. An application was, therefore, filed for declaration as protected tenant as per Section 38 (4) the Hyderabad Tenancy and Agriculture Lands Act, 1950 (for short "the Act). The said land was transferred in favour of the grand-father of the respondent No. 1. Jalva Mansa Pandhare deposited the price of the land for the area 28 Acre & 4 Guntha and pursuant thereto the name of Jalva Mansa Pandhare was shown as owner in the 7/12 extract and in the revenue record. It is the case of the father of the present petitioners that by taking mutation entry No. 111, the respondents got mutation entry in the name of the State, without holding any inquiry and without issuing any notice to them. There was a civil proceedings pending between the parties.

4. The facts as appearing on record are that one Gonderao

Dattaram was the original owner of new Survey No. 98. Jalva Mansa Pandhare was shown as protected tenant in the year 1954. On 28.05.1959, a notice was issued to Jalva Mansa Pandhare under Section 38 (4) of the Act. Pursuant to the said notice he deposited an amount on 09.03.1960 and his name came to be shown as owner. Till 1980 the name of Jalva Mansa Pandhare was intact. When the name was taken in the revenue record, one Laxman Kandalwad was shown to be the owner, therefore, the tenant filed proceedings for possession. In the year 1960 an entry as protected tenant is not shown but it was shown as 'Inam' land. The mutation entry No. 111 was taken on 27.06.1961 in the name of the State of Maharashtra, without giving notice to the tenant and vide mutation entry No. 112 the land was given to Laxman Narayan as 'Inam' land. In view of this Mahadu Pandhare, the father of the respondent No. 1 had filed an appeal in 1975 under the Bombay Inferior Village Watans Abolition Act, 1958, in which, the learned Deputy Collector passed an order in favour of the respondent No. 1 canceling the mutation entry No. 111. It was thus, prayed for declaration that the respondent No. 1 is protected tenant and for effecting mutation as such.

5. It is the case of the petitioners that an appeal was decided in favour of the father of the petitioners. The judgment in appeal was challenged by Laxman Narayan Kalandwad before the Commissioner, Aurangabad. The Commissioner decided against the Laxman Narayan Kalandwad and thereafter, a Special Civil Application No. 2845 of 1975 was filed. The High Court by judgment and order dated 17.01.1980 allowed the Special Civil application in favour of Laxman Narayan Kalandwad. The said judgment attained finality and thus the respondent No. 1 has no right. The father of the respondent No. 1 had also filed a suit for declaration, ownership and possession bearing Special Civil Suit No. 5 of 1980 against said Laxman Narayan Kalandwad. The said suit was decided against one Mahadu Pandhare. Against which an appeal was filed, the same also came to be dismissed. Thereafter, Second Appeal was filed by Mahadu Pandhare. During pendency of the appeal, Mahadu Pandhare as well as Laxman Kalandwad died, therefore, their legal representatives were brought on record. The Second Appeal also came to be dismissed. The judgment in Second Appeal also thus became final. Thus, no right of the respondent No. 1 is in existence. Thereafter, again suits were filed by the respondents bearing No. 51 of 2010 and 16 of 2012. In both the

proceedings, the High Court has decided against the respondent No. 1 and thus, he has no right to file the present proceedings.

6. An appeal was filed against that proceedings. The said was decided against Mahadu Lalu. He therefore, filed Second Appeal in the High Court bearing No. 17 of 1983. During pendency of the said appeal, father of the respondent Mahadu Lalu died. Said Laxman also died. Lateron, the Second Appeal was decided against the respondent No. 1.

7. It was the case of the present petitioners that the respondent No. 1 does not have any right. Jalva Mansa is not related to the present respondent No. 1 by blood. The surname of Jalva Mansa was Padval and not Pandhare. There is no documentary proof to show the relation between the said Jalva Mansa and respondent No. 1. Jalva Mansa had no issue. The Tahsildar, Kinwat had cancelled the certificate under Section 78 (4) of the Act and declared one Laxman Narayan Kalandwad i.e. the husband of the present petitioner No. 1 as 'Inamdar' by taking occupation price of Rs. 92 and 43 ps. The said order was challenged by one Bhalji Mansa before the Deputy Collector, Nanded. The said appeal came to be rejected by order dated 28.02.1967. Against

which an appeal was preferred by Bhalji Mansa in MRT, Aurangabad. The said appeal also came to be rejected. Thus, the tenancy claim of Jalva Mansa or Bhalji Mansa is already rejected and hence no fresh inquiry can be held.

8. However, in the final record Jalva Mansa is shown as protected tenant on the suit land. Since 1980 Laxman Narayan Kalandwad is shown as owner of the Inam land. The High Court also in Second Appeal has held that it is for the Tahsildar to decide as to whether the said land is under Inam Abolotion Act or the Tenancy Act. On this, the learned Tahsildar passed an order that one Jalva Mansa Pandhare is shown as protected tenant under the Hyderabad Tanancy Land Act, 1950. In the certificate issued by the Circle Officer, there is no mention of the relationship of the respondent No. 1 with said Jalva Mansa Pandhare. It is directed that the Tahsildar has no authority to cancel the entry No. 112 and the said is done after the orders passed by the superior authority. The rights of the parties were kept open to be agitated before the proper authority.

9. The said order was challenged by the present petitioners before the Additional Collector (Revenue), Nanded. The Additional

Collector allowed an appeal of the petitioners canceling an order passed by the Tahsildar by its judgment and order dated 20.06.2022. It is clearly held that the original owner was one Gundewar Dattaram and the name of Laxman Narayan Kandalwad is shown in the cultivation column. This order was challenged by the respondent No. 1 by filing revision before the learned MRT. The learned MRT decided the revision as stated above, confirming the order passed by the learned Tahsildar. It is submitted that the order of learned MRT is illegal and needs to be quashed and set aside.

10. The learned Advocate Mr. Sachin Deshmukh for petitioners vehemently argued that the issue of tenancy could not have been re-opened as the same is not permissible. Respondent No. 1 had failed every where in the Civil Court as well as in the Revenue Court. All his challenges were rejected. An order passed by the Tahsildar itself was without jurisdiction. In the Second Appeal the rights of the parties were finally decided as the said order has attained finality. He relied upon the following judgments :

- (a) **2014 (6) SCC 351** – Union of India Vs. Major S.P.Sharma
- (b) **AIR 1965 SC 1150** – Devilal Modi Vs. Sales Tax Officer,

Ratlam and others.

11. The learned Senior Advocate Mr.Salunke for respondent No. 1 opposes the petition submitting that grand-father of respondent No. 1 was declared as protected tenant. He had even paid the price of the land and thereafter his name was recorded in the revenue record. That mutation entry was cancelled and the name of the petitioners was entered. In Special Civil Application it is held that declaration in favour of respondent No. 1 was under the wrong Act and therefore, notices were set aside. That will not take away the right of the respondent No.1. It is in that view the proceeding was filed before the Tahsildar under Section 8 of the HTAL Act. The Tahsildar has rightly held that grand-father of the respondent No.1 was the protected tenant. Since an appeal was filed by the petitioners and the same was allowed, the respondent No. 1 had approached the MRT. The MRT has rightly passed an order. He submits in fairness that the impugned order be set aside and the matter be remanded back for giving fresh hearing to the parties. The proceeding is necessarily under Section 8 of the HTAL Act. He further submits that he has no objection for remanding the matter for dealing with all issues afresh.

12. The learned Advocate for the petitioners in rejoinder submits that when the respondent No. 1 could not establish their relations with Jalva Mansa the original tenant, there is no question of approaching this Court that too after 50 to 60 years.

13. The learned AGP supports the order passed by the learned Member, MRT. Coming to the legal position, this Court finds that the Tahsildar in his order has held that respondent No. 1 could not prove his relationship with the original tenant namely Jalva Mansa and that point is crucial for deciding this petition. This Court in Special Civil Application No. 2845 of 1975 by considering Section 8 of the Bombay Inferior Village Watans Abolition Act, 1958 held in favour of father of the present petitioners. The orders passed by the Deputy Collector and the Commissioner declaring Mahadu Lalu as occupant of the field were quashed and set aside. In the second Appeal filed by the successor of Mahadu Pandhari also this Court decided in favour of the present petitioners. There is clear finding in the judgment of Second Appeal No. 117 of 1983 in paragraph No. 11 that Mahadu was never declared as statutory owner as tenant of the suit land under the provisions of the Hyderabad Tenancy and Agriculture Lands Act 1950. It is

specifically recorded that the declaration of ownership lies in the name of Laxman i.e. the father of the present petitioners duly corroborated by the entries in the Inam Land Patrak. This Court has also treated the judgment in the Special Civil Application No. 2845 of 1975 as constructive res-judicata. It was also held that the Civil Court was incompetent to decide the issue in favour of the deceased plaintiffs and the second appeal was dismissed.

14. The learned Tahsildar by order dated 22.05.2020 has rightly rejected an application of the respondents. The learned SDO had remanded the matter back to the Tahsildar. The Tahsildar lateron has wrongly come to the conclusion that the respondents get right as brother of grand father of the respondent No. 1 was shown to be protected tenant. In the same operative order in Clause 2 it is clearly stated that in the succession certificate there is no mention of the relationship of the respondents with original protected tenant Jalva Mansa Pandhare, still directed to cancel the entries in the names of petitioners.

15. The learned Additional Collector, Nanded thereafter, by considering all the relevant factors in detail allowed the appeal of the petitioners by cancelling the order dated 20.01.2020 passed by

the Tahsildar. It is specifically recorded that in the Khasara Pahani Patrak in respect of suit land Gonderao Dattaram is shown to be the owner. In the record of 1955-56, 1956-57, 1957-58 and 1959-60 shows Gonderao Dattaram is owner and the name of Laxman Narayan Kandalwad is shown in the cultivation column. The learned MRT, however, without considering this factual position has set aside the judgment of the learned Additional Collector. This Court finds that the findings of the learned MRT are thus, without any basis. As observed, the crucial aspect was to see as to whether the respondent No.1 has proved the relation with Jalva Mansa. The second crucial point is that as per the Khasara Patrak and Pahani Patrak the name of Laxman Narayan Kandalwad is shown in the cultivation column.

16. The learned Advocate Mr. Salunke relied upon the judgment reported in Devilal Modi (supra) to show that doctrine of constructive res-judicata would not apply to the writ proceedings. The Hon'ble Apex Court has also considered the doctrine of finality of judgment. The above case law of the Hon'ble Apex Court is not applicable to the present case, as the finding was recorded even by the Hon'ble High Court in Special Civil application and later on

even in the second appeal, are binding on the authorities. Considering the judgment in the case of Union of India (supra), this case was in respect of scope of judicial review in the matter of termination of employee. In view of article 309, 310, 311 of the Constitution of India and pleasure doctrine, this Court finds that said judgment is also not applicable to the present case.

17. This Court finds that considering the material and facts of the case a clear case is made out to allow the petition by quashing and setting aside the judgment of the learned MRT. The petition is, therefore, allowed in terms of prayer clause (B). The Rule is made absolute.

(KISHORE C. CHANT)
JUDGE

mahajansb/