

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

WRIT PETITION NO. 1789 OF 2022

**SANTOSH
SUBHASH
KULKARNI**

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- 1 Gitabai Namdev Jadhav (Kumbhar)
- 2 Manohar Namdev Jadhav
- 3 Pramila Arvind Tamdale
- 4 Hemlata Kalias Bhagwat
- 5 Chandrakala Manoj Kumbhar
- 6 Shubhda Pravin Kumbhar
- 7 Anusaya Kashinath Jadhav (deceased)
through LRs.
- 7a Mundabai Trimbak Jagadale
- 7b Shivananda Uttam Sonavane
- 7c Ijabai Ashok Bhalerao
- 7d Shayalee Ranganath Gaikwad
- 7e Sulabai Kacharu Vishwase
- 7f Kamabai Ragunath Gaikwad
- 8 Kisan Kashinath Jadhav
- 9 Laxmibai Vasant Jadhav
- 10 Ganesh Vasant Jadhav
- 11 Jaywant Vasant Jadhav
- 12 Suvarna Sameer Shinde
- 13 Yashoda Thakaji Jadhav
- 14 Baban Thakaji Jadhav
- 15 Bharat Thakaji Jadhav

...Petitioners

Versus

- 1 Kisan Tulsiram Aware (deceased)
through LRs
- 1a Govind Kisan Aware
- 1b Murlidhar Kisan Aware
- 1c Balu Kisan Aware
- 1d Valabai Kalu Khatale
- 1e Bijlabai Mahadu Jadhav
- 2 Namdev Vasant Jadhav
- 3 The State of Maharashtra

...Respondents

Mr. Sandesh Patil, i/b Ms. Divya Pawar, for the Petitioners.

Mr. Pratik Rahade, i/b Mr. P. N. Joshi, for Respondent
Nos.1(b) to 1(e).

Mr. C. D. Mali, AGP for the State/Respondent No.3.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 6th APRIL, 2023

PRONOUNCED ON: 5th JUNE, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2. The petitioners take exception to a judgment and order dated 9th February, 2021 passed by the learned President, Maharashtra Revenue Tribunal, Mumbai, in Tenancy Revision – NSK No.193 of 2017, whereby the revision application preferred by respondent Nos.1a to 1e came to be allowed by setting aside the order dated 23rd March, 2015 passed by the Agricultural Land Tribunal (“ALT”) and Tahsildar, Igatpuri holding that respondent Nos.1a to 1e are not the tenants, and the order dated 8th June, 2017 passed by the Sub-Divisional Officer, Igatpuri, in Tenancy Appeal No.5 of 2015, affirming the aforesaid order of the ALT. The Maharashtra Revenue Tribunal (“MRT”) thus held that respondent Nos.1a to 1e were the tenants of the agricultural land bearing Gat No.296 situated at village Mukane, Taluka Igatpuri (“the subject land”).

3. Background facts leading to this petition can be stated in brief as under:

(a) The petitioners claim that Namdeo Kondaji Jadhav, the husband of petitioner No.1 and father of petitioner No.2, was the holder of the subject land. As the subject land has been the ancestral property of Namdeo, the name of Kondaji Nana Kumbar, the predecessor-in-title of Namdeo was mutated to the cultivator's column of the subject land in the year 1937. However, in connivance with the officers of the revenue department and behind the back of the predecessor-in-title of the petitioners the name of one Babu Devram Aware came to be mutated to the subject land as the owner thereof by making a pencil entry. Subsequently, the name of Kisan Tulshiram Aware, the predecessor-in-title of respondent No.1a to 1e, came to be mutated to the cultivator's column of the subject land. All these entries were allegedly made without notice to the predecessor-in-title of the petitioners and the subject land had along been in the possession and cultivation of the predecessor-in-title of the petitioners.

(b) Taking undue advantage of the paper entry Kisan Tulshiram Aware started to cause obstruction to the possession of the plaintiffs predecessor-in-title over the subject land. Namdeo Jadhav thus was constrained to initiate proceedings for a declaration that Kisan Aware was not a tenant in the subject

land. The said Tenancy Application No.3 of 1979 was allowed. In appeal, however, the Sub-Divisional Officer negated the claim of Namdeo and made a declaration in favour of Kisan Aware. Tenancy Appeal No.87 of 1981 preferred before the MRT was also dismissed primarily on the ground of delay in filing the revision application. Writ Petition No.928 of 1982 preferred by Namdeo came to be disposed of as withdrawn with liberty to institute appropriate proceedings, if so advised.

(c) In the meanwhile, the deceased Kisan Aware, preferred Regular Civil Suit No.145 of 1979 seeking a decree of perpetual injunction. By a judgment and decree dated 9th February, 1999, the learned Civil Judge, Junior Division, Igatpuri, decreed the suit and perpetually restrained the predecessor-in-title of the petitioners from causing obstruction to the possession and enjoyment of Kisan Aware over the subject land otherwise than by following due process of law. Civil Appeal No.6 of 2000 preferred by the petitioners came to be dismissed on 29th September, 2001. The second appeal preferred thereagainst is subjudice before this Court.

(d) The petitioners instituted a suit, being Regular Civil Suit No.251 of 2001, before the Civil Court, Nashik, for possession, declaration and injunction. By orders dated 18th

September, 2009 and 13th September, 2009, the learned Civil Judge was persuaded to frame issues as to whether the Civil Court had jurisdiction to entertain the suit and whether the deceased respondent No.1 was the tenant of the subject land and also make a reference to the ALT for adjudicating the issue of tenancy. Writ Petition No.1050 of 2009 preferred by Namdeo came to be rejected with a request to the trial court to direct the ALT to decide the reference expeditiously.

(e) The ALT and Tahsildar, Igatpuri, by a judgment and order dated 23rd March, 2015 was persuaded to return a finding under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (“the Act, 1948”) that deceased Kisan Aware was not a tenant of the subject land within the meaning of Section 4 of the Act. It was further declared that the tenancy of deceased Kisan Aware stood terminated under Section 32-O of the Act, 1948. The ALT was of the view that there was no material to show that the deceased Kisan Aware had paid rent to the landlord and receipts were passed.

(f) Respondent Nos.1a to 1e preferred an appeal being Tenancy Appeal No.5 of 2015 before the Sub-Divisional Officer, Igatpuri – Trimbakeshwar Sub-Division. By a judgment and

order dated 8th June, 2017 the SDO dismissed the appeal concurring with the view of ALT.

(g) Being further aggrieved respondent No.1a to 1e preferred revision, being Tenancy Revision NSK 193/2017. By the impugned judgment and order, the learned President, MRT, was persuaded to allow the revision holding that the findings recorded by the authorities below that deceased Kisan Aware was not the tenant of the subject land were perverse and rendered upon an incorrect impression of the provisions contained in Section 4 and 32-O of the Act, 1948. The petitioners have thus invoked the writ jurisdiction.

4. I have heard Mr. Patil, the learned Counsel for the petitioners, Mr. Mali, the learned AGP for the respondent – State and Mr. Rahade, the learned Counsel for respondent Nos.1b to 1e. I have also perused the material on record including the orders passed by the authorities below.

5. Mr. Sandesh Patil, the learned Counsel for the petitioners, mounted a two-fold challenge to the impugned order. Firstly, with the death of respondent No.1a Govind Aware in the year 2018 during the pendency of the revision before the MRT and his legal representatives having not been brought on record, the revision abated as a whole. Thus the orders impugned before

the MRT having attained finality qua deceased respondent No.1a Gonvind Aware, it could not have been interfered with by the MRT qua respondent No.1b to 1e as well, as it brought into existence two conflicting orders.

6. Secondly, the learned President, MRT, committed a grave error in law in interfering with the concurrent findings of facts recorded by ALT and Sub-Divisional Officer, in exercise of limited revisional jurisdiction. Mr. Patil would submit that the learned President did not make any endeavour to come in close quarters with the reasons ascribed by the authorities below. The fact that there were neither receipts nor any material to show that rent was ever paid by Kisan Aware, was rather incontrovertible. In the circumstances, the learned President had no reason to take a contrary view.

7. Mr. Patil further submitted that the finding recorded by the ALT and SDO that the tenant had not exercised the right to purchase the subject land from the landlord within one year of creation of the tenancy under Section 32-O of the Act, 1948 was also factually impeccable. Thus, the MRT was not at all justified in interfering with the orders passed by the authorities below.

8. In opposition to this, Mr. Rahade the learned Counsel for respondent Nos.1b to 1e submitted that the fact that Kisan

Aware had been in possession of the subject land has been established in multiple proceedings and beyond the pale of controversy. The predecessor-in-title of the petitioners had not succeeded in obtaining a negative declaration before the tenancy authorities that Kisan Aware was not the tenant of the subject land. The said matter attained finality with the dismissal of the writ petition by this Court. The Civil Court had also recorded a categorical finding that Kisan Aware was in cultivation of the subject land since 22 to 25 years prior to the institution of Regular Civil Suit No.145 of 1979. In this backdrop, the order passed by ALT that Kisan Aware was not the tenant of the subject land for want of receipts and proof of payment of rent, being wholly perverse, was rightly interfered with by MRT.

9. It was submitted that it is well neigh recognized that to establish lawful cultivation under Section 4 of the Act, 1948 proof of payment of rent or receipt is not peremptory. What has to be shown is the lawful cultivation. To bolster up this submission, Mr. Rahade placed a strong reliance on a decision of this Court in the case of *Jagannath Vithu Jadhav (since deceased) thorough LRs Smt. Shalan Jagannath Jadhav and ors. vs. State of Maharashtra and others*¹.

1 2013(2) Mh. L.J. 285.

10. Mr. Rahade further urged that the ALT as well as SDO completely misconstrued the scope of the provisions contained in Section 32-O of the Act, 1948. As the petitioners – landlords have been disputing the status of respondent Nos.1a to 1e as tenants of the subject land, the period of limitation of one year would commence from the date of final adjudication of the tenancy and not before. To buttress this submission as well, the learned Counsel for respondent Nos.1b to 1e placed reliance on the aforesaid judgment in the case of *Jagannath Jadhav* (supra) and *Gulabrao Sahebrao Shinde vs. Sayaji Shankar Shinde 2004(1) Mh.L.J. 873*. On the aspect of the alleged abatement of the revision in its entirety, the learned Counsel for respondent Nos.1b to 1e submitted that since the estate of deceased respondent No.1a was represented by respondent Nos.1b to 1e there could be no abatement of revision.

11. The learned AGP also supported the impugned order.

12. I deem it in the fitness of things to first appreciate the challenge to the impugned order on merits. Few facts are rather incontestible. In the record of right of the subject land, for the year 1966 to 1967, the name of Babu Devram was mutated as the holder and that of Kisan Aware as the tenant. Indisputably, the predecessor-in-title of the petitioners had instituted a

proceedings purportedly under Section 70-b of the Act, 1948 being Tenancy Case No.3 of 1979 seeking a declaration that Kisan Aware was not the tenant of the subject land. The said proceedings came to be dismissed and appeal thereagainst being Tenancy Appeal No.8 of 1980 also came to be dismissed and the revision being Tenancy Revision No.87 of 1981 before the MRT met the same fate. There is not much controversy over the fact that deceased Kisan Aware had instituted RCS No.145 of 1979 seeking a decree of perpetual injunction and it came to be decreed by judgment and order dated 9th December, 1999. Civil Appeal No.6 of 2000 preferred by the predecessor-in-title of the petitioners was dismissed by the first Appellate Court by judgment and order dated 29th September, 2001 and the second appeal is pending before this Court.

13. In the light of the aforesaid uncontroverted facts, the petitioners instituted the suit seeking declaration and possession of the subject land, being Suit No.251 of 2001, in which the issue of tenancy came to be framed and referred for adjudication to the ALT. While determining the said issue, by order dated 23rd March, 2015 the ALT was persuaded to hold deceased Kisan Aware failed to establish tenancy over the subject land for the reason that there was no proof of payment

of rent either in cash or kind nor the landlord had passed the rent receipts. The ALT was also of the view that the tenancy of Kisan Aware was recorded till the year 1966 – 1967 and thus it was incumbent upon the tenant to make an application to purchase the subject land within one year as provided under Section 32-O of the Act, 1948.

14. Whether the aforesaid approach of the ALT, which was affirmed by SDO, was justifiable, was the question before the MRT. The learned President held that the authorities below erred in appreciating the factum of possession as well as the legal significance of cultivation under Section 4 of the Act, 1948. Since the petitioners were disputing the tenancy of deceased Kisan Aware the time to make application to purchase the subject land under Section 32-O of the Act, 1948 did not commence.

15. A tenant is defined under Section 2(18) of the Act, 1948 as under:

“2(18) “tenant” means a person who holds land on lease and include,

(a) a person who is deemed to be a tenant under Section 4;

(b) a person who is a protected tenant; and

(c) a person who is a permanent tenant; and the word “landlord” shall be construed accordingly;”

16. Section 4 of the Act, 1948 defines who are deemed to be the tenants for the purpose of the Act, 1948. It reads as under;

“S.4 Persons to be deemed tenants:

¹(1) A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not—

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

Explanation ²[(I)]: A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the land as provided under section 2-A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant.

¹[*Explanation II.*— Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to clause (6) of section 2, such tenant shall be deemed to be a tenant within the meaning of this section].

.....

(3) Notwithstanding anything contained in sub-clause (a) of clause (ii) of sub-section (1) of section 32H, the purchase price in such cases shall be 200 times the assessment.]”

17. Since controversy revolves around the correct construction of the provisions contained in Section 32-O of the Act, 1948, it may be apposite to extract the same at this stage itself.

“32-O. Right of tenant whose tenancy is created after tiller's day to purchase land.

(1) In respect of any tenancy created after the tillers' day 4 [by a landlord (not being a serving member of the armed forces)] notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to

purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

[(1A) A tenant desirous of exercising the right conferred on him under subsection (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section].

(2) The provision of section 32 to 32N (both inclusive) and of sections 32P, 32Q, and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1).”

18. From the perusal of the provisions contained in Section 2(18) read with Section 4 of the Act, 1948, it becomes evident that apart from the contractual tenant, deemed tenant, protected tenant and permanent tenant are subsumed with the definition of tenant under the Act, 1948. For a person deemed to be a tenant, such person shall be in lawful cultivation of the land belonging to another person, if such land is not cultivated personally by the owner and such person is not one of the excluded categories, namely, a member of owner’s family, a servant on wages and a mortgagee in possession.

19. What is of critical significance is, “lawful cultivation of the subject land”. The definition of deemed tenant does not envisage a situation of cultivation with the consent or under the authority of the owner/landlord. If it is a case of cultivation with the consent or authority, it would ordinarily be a case of contractual tenancy. By expanding the scope of tenancy by

incorporating a deeming provision with the only qualification being lawful cultivation of the subject land, the legislature has expanded the amplitude of the beneficial provision.

20. In the case of *Dahya Lala and others vs. Rasul Mahomed Abdul Rahim and others*², the Constitution Bench of the Supreme Court considered the question whether a person claiming the status of deemed tenant must have been cultivating the land with consent or under the authority of the owner. Answering the question in the negative, the Supreme Court expounded the legislative object behind incorporating the beneficial provisions as under:

“6. But the Act has by Section 2(18) devised a special definition of tenant and included therein persons who are not contractual tenants. It would therefore be difficult to assume in construing Section 4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must cultivate land with the “lawfully” : it is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such a condition it is to rewrite the section and destroy its practical utility. A person who derives his right to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a “deemed tenant”. Persons such as licencees from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural land as contractual tenants and subject to the exceptions specified all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the benefit of its

2 1964 SCC 1230(1).

provisions to persons who derive their authority from the owner, either under a contract of tenancy, or otherwise. In our view, all persons other than those mentioned in cls. (a), (b) and (c) of Section 4 who lawfully cultivate land belonging to other persons whether or not their authority is derived directly from the owner of the land must be deemed tenants of the lands.”

21. The aforesaid pronouncement makes it abundantly clear that the primary enquiry ought to be to ascertain whether a person is in lawful cultivation of the land of another and he does not fall within any of the excluded categories envisaged by Sub-Section (1) of Section 4. In the circumstances, insisting upon the consent or the authority of the landlord would amount to adding conditions which do not find mention in the definition of tenant and deemed tenant.

22. The ALT and SDO did not keep in view the aforesaid nature of the, “deemed tenancy” and the legislative object. They proceeded on the premise that there was no document to show the creation of the tenancy between the landlord and deceased Kisan Aware. This vitiated the entire approach of ALT and SDO. Negating the claim of deceased Kisan Aware on the ground that there was no proof of payment of rent to landlord manifested the incorrect impression which the authorities entertained.

23. In the case of *Jagannath Jadhav* (supra) a learned Single Judge of this Court after adverting to the pronouncements of this Court in the cases of *Dhondu Bapu Survey vs. Aniruddh Yeshwant Vaidya*,³ *Gulabrao Shinde* (supra) and *Special Civil Application No. 475 of 1975* held that this Court has taken a consistent view that it is not necessary to have an entry in the tenancy column or rent note or a rent receipt to support the claim of a tenant of statutory tenancy. It has further been held that all that is required under Section 4 of the Act, 1948 is lawful cultivation by a person other than the person of the excluded category, subject to other conditions laid down in Section 4.

24. In Special Civil Application No.475 of 1975, this Court has observed in clear and explicit terms that the reasoning of the Tribunal that there ought to be an entry in the tenancy column or rent note or rent receipt was against the provisions of Section 4 of the Tenancy Act, which does not require an entry in the tenancy column or a rent note or a rent receipt to support the claim of a tenant to statutory tenancy under that section. Such a view was a fashioned notion of the law of landlord and tenant which the legislature had consciously omitted in the definition of, “statutory tenancy”.

3 77(25) T.L.R. 6 in Special CA No.479/1972.

25. In the case at hand, the ALT as well as SDO had based findings on the traditional notions of tenancy rooted in contract. In the face of overwhelming material to show that deceased Kisan Aware was in lawful cultivation of the subject land, the claim could not have been discarded for want of receipt or proof of payment of rent. The learned President, MRT, was fully justified in correcting the error into which the authorities below had fallen in.

26. At this juncture, the incongruity in the claim of the petitioners as regards their status as landlord of the subject land also assumes importance. The material on record, especially the pleadings in RCS No.251 of 2001, indicate that the petitioners questioned the title of Mr. Babu Devram as the holder of the subject land. The learned Civil Judge in the judgment in RCS No.145 of 1979 noted that there was a clear inconsistency in the claim of the predecessor-in-title of the petitioners over title to the subject land. At one breath, it was contended that one Bhau Rama Kumbhar had transferred the suit land in the name of Kondaji Nana Kumbhar, father of Namdeo, on 1st March, 1933. At another breath, it was asserted that the legal representatives of deceased Babu Devram had sold the suit land and waived their rights over the suit land.

Noting this incongruity, in the impugned order, the learned President recorded that the petitioners initially based their claim of ownership on the basis of an entry in the revenue record and later on relied upon the Agreement for Sale purported to have been executed on 23rd March, 1979 and the claims were clearly inconsistent bordering on dishonest.

27. Mr. Sandesh Patil advanced a severe criticism against the aforesaid reasoning of the learned President on the ground that such a ground was taken for the first time in the revision. The articulation by the learned President may be termed harsh. However, the clear inconsistency in the stand of the predecessor-in-title of the petitioners as to the ownership over the subject land is a matter which has a significant bearing. The learned President was thus justified in taking into account the said fact as well.

28. The second ground of tenants not having moved to purchase the subject land within one year of the creation of the tenancy under Section 32-O of the Act, 1948 ascribed by the ALT and SDO to negative the claim of deceased respondent No.1 was equally untenable. Evidently, the predecessor-in-title of respondent Nos.1a to 1e had asserted the claim of the tenancy at least since the year 1979 and the predecessor-in-title of the

petitioners disputed the same by seeking a negative declaration that deceased Kisan Aware was not the tenant of the subject land, again, at least, since the year 1979. The status of deceased Kisan Aware as the tenant of the subject land was itself put in contest by the predecessor-in-title of the petitioners, and the petitioners, in successive proceedings. In the circumstances, the learned ALT and SDO could not have taken a view that deceased Kisan Aware ought to have moved to purchase the subject land within one year of the termination of the tenancy, purportedly in the year 1968.

29. The legal position is no longer *res integra*. In the case of ***Gulabrao Shinde*** (supra) a learned Single Judge of this Court held that the question of exercising right to purchase the land under Section 32-O of the Act would arise only after the proceedings in which the tenancy was questioned were finally culminated with a finding that the tenant was in lawful cultivation of the land. Only upon culmination of the proceedings (writ petition before the Court) would the petitioner – tenant be required to give intimation for the purpose of Section 32-O of the Act, 1948.

30. In the case of ***Jagannath*** (supra), after following the aforesaid pronouncement and the decision of this Court in the

case of *Bhila Keshav Patil vs. Ganpati Chunilal Kabre*,⁴ it was enunciated that this Court has taken a consistent view that until the landlord accepts the statutory tenancy or until his contentions denying the tenancy are finally and conclusively overruled, the period of one year provided for sending intimation under Section 32-O will not commence.

31. The aforesaid exposition of law is to advance the object of protecting the interest of a tenant, whose tenancy is created after the tiller's date. If the period of limitation of one year prescribed in Section 32-O is held to run from the date of the creation of tenancy, even where the landlord disputes the creation of tenancy, the statutory protection envisaged by Section 32-O would be rendered negatory as the landlord, on the one hand, would dispute the tenancy and, on the other hand, take advantage of the lapse of time and urge that since intimation had not been given within one year of the commencement of the tenancy the right under Section 32-O is lost. The learned President, MRT, was thus within his rights in correcting the error which the authorities below had committed.

4 1973 Mh.L.J. 344.

32. The conspectus of aforesaid discussion is that, on merits, I do not find any reason to interfere with the order passed by the learned President, MRT.

33. This takes me to the challenge to the impugned order on the ground that the revision itself stood abated with the death of respondent No.1a Govind Aware. Mr. Patil submitted that the orders impugned before the MRT were indivisible. Once the revision abated on account of the death of respondent No.1a Govind, the abatement would operate against one and all. Lest, there would be incongruous orders, as is manifested in the instant case. One, confirmation of the orders passed by the authorities below qua respondent No.1a due to abatement of the proceedings. Two, reversal of those orders by the impugned order. To lend support to this submission Mr. Patil placed a strong reliance on a Division Bench judgment of this Court in the case of *Sheela Vijay Choudhari and others vs. Central Bank of India and ors.*⁵

34. In the said case, this Court, in the backdrop of the facts wherein one of the defendants i.e. defendant No.2a who was initially impleaded as a respondent No.2 to the appeal came to be deleted and the appeal was prosecuted by the original

5 1998(1) Mh.L.J. 928.

defendant Nos.2b to 2d, held that the fact of deletion of name of respondent No.2 – original defendant No.2a from the appeal-memo was that the decree passed by the trial court which was impugned in the said appeal had become final as against deleted respondent No.2 – defendant No.2a and in the event the appeal was ultimately allowed the net result would be that two different decrees would hold the field. Such a situation is against the law enunciated by the Supreme Court in the case of *State of Punjab vs. Nathu Ram*⁶ and the subsequent judgments. It was thus held that where a decree was joint and indivisible in nature, and as the decree has become final against one of the defendants, the appeal would abate as a whole.

35. Mr. Patil placed reliance on the following observations of the Supreme Court in the case of *Nathu Ram* (supra):

“8. The difficulty arises always when there is a joint decree. Here again, the consensus of opinion is that if the decree is joint and indivisible, the appeal against the other respondents also will not be proceeded with and will have to be dismissed as a result of the abatement of the appeal against the deceased respondent. Different views exist in the case of joint decrees in favour of respondents whose rights in the subject matter of the decree are specified. One view is that in such cases, the abatement of the appeal against the deceased respondent will have the result of making the decree affecting his specific interest to be final and that the decree against the other respondents can be suitably dealt with by the appellate Court. We do not consider this view correct. The specification of shares or of interest of the deceased respondent does not affect the nature of the decree and the capacity of the joint decree- holder to execute the entire decree or to resist the attempt of the other party to

6 AIR 1962 SC 89.

interfere with the joint right decreed in his favour. The abatement of an appeal means not only that the decree between the appellant, and the deceased respondent has become final, but also, as a necessary corollary, that the appellate Court cannot, in any way, modify that decree directly or indirectly. The reason is plain. It is that in the absence of the legal representatives of the deceased respondents, the appellate Court cannot determine anything between the appellant and the legal representatives which may affect the rights of the legal representatives under the decree. It is immaterial that the modification which the Court will do is one to which exception can or cannot be taken.

(emphasis supplied)

36. Per contra the learned Counsel for respondent Nos.1b to 1e submitted that if the estate of deceased party was fully and substantially represented there would be no abatement. Reliance was placed on a recent decision of the Supreme Court in the case of *Shivshankara and another vs. H.P. Vedavyasa Char⁷*.

37. During the pendency of the revision, respondent No.1a Govind Aware expired on 15th November, 2018. Evidently, the legal representatives of respondent No.1a - petitioner No.1a, in the revision application were not brought on record. Respondent Nos.1b to 1e, being the legal representatives of deceased Kisan Aware and siblings of respondent No.1a Govind represented the estate of deceased respondent No.1a Govind Aware. Thus, the revision would not abate in its entirety. The analogy of a single and individual decree sought to be imported

7 AIR 2023 Supreme Court 1780.

on behalf of the petitioners thus would not govern the facts of the case at hand. Therefore, non-impleadment of the legal representatives of respondent No.1a Govind Aware before the Tribunal would not entail the consequence of abatement of the revision petition as a whole.

38. I am, thus, not persuaded to accede to the submission on behalf of the petitioners that the revision petition abated in its entirety.

39. The upshot of the aforesaid consideration is that on both counts the petition fails.

40. Hence, the following order:

: O R D E R :

- (i) The petition stands dismissed.
- (ii) Since the proceedings arose out of reference to the ALT, for the sake of clarity, especially for the purpose Section 32-O of the Act, 1948, it is declared that the deceased Kisan Aware, during his lifetime, was, and after the demise of the Kisan Aware, respondent no.1a, during his life, was, and respondent Nos.1b to 1e, are the tenants in respect of the subject land.

(iii) Subject to the aforesaid clarification, the rule stands discharged.

(iv) No order as to costs.

[N. J. JAMADAR, J.]

The learned Counsel for the petitioners seeks stay to the effect and operation of the order.

As the interim protection was in operation during the pendency of the petition till the pronouncement of the judgment, the execution and operation of this order is stayed for a period of six weeks.

However, in the meanwhile, the petitioners shall not proceed with RCS No.251 of 2001.

[N. J. JAMADAR, J.]