



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

**CIVIL APPLICATION NO. 5803 OF 2024  
IN  
WRIT PETITION NO. 1133 OF 2024**

1. Narayan s/o Ramrao Pate,  
Age 77 years, Occu. Agri.,
2. Vimal w/o Narayan Pate,  
Age:- 75 years, Occ. Agri.,
3. Suraj s/o Narayan Pate,  
Age:- 40 years, Occ. Agri.,

All R/o Sakhara, Tq. & Dist. Latur

Versus

1. The Collector,  
Land Reforms Latur
2. The Tahsildar Latur,  
Tq. & Dist. Latur
3. Maruti Nagu Andhare (Died)  
Through L. Rs.
- A. Nanhu Maruti Andhare,  
Died through L. Rs.
- A-1. Chimabai Vishwanath Shinde,  
Age:- 75 years, Occ. Agri.,
- A-2. Laxman Vishwanath Shinde,  
Age:- 52 years, Occ. Agri.,
- A-3. Sukhdev Manik Mote,  
Age:- 57 years, Occ. Agri
- A-4. Balaji Manik Mote,  
Age:- 54 years, Occ. Agri.,

Respondent No. A-1 to A-4,  
R/o Satdharwadi, Tq. Ausa, Dist. Latur

- A-5. Sojarbai Nehru Jadhav,  
Age:- 52 years, Occ. Agri.,  
R/o Holkar Nagar, Ausa,  
Tq. Ausa, Dist. Latur  
Through Power of Attorney  
Laxman Vishwanath Shinde
4. Sudam s/o Nivrutti Dandime,  
Age:- 66 years, Occ. Agri.,  
R/o Ganjur, Tq. & Dist. Latur
5. Madhav s/o Nivrutti Dandime.  
Age:- 63 years, Occ. Agri.,  
R/o Sakhara At Present Pandharpur,  
C/o Shiriguru Bhagvan Maharaj,  
Shivnikar Math, Ghondge Galli,  
In front of Chinchwan Talmi, Pandharpur,  
Dist. Solapur
6. Yadav s/o Nivrutti Dandime,  
Age:- 61 years, Occ. Agri.,  
R/o Sakhara, Tq. & Dist. Latur,  
At Present Gunju, Tq. & Dist. Latur.
7. Rajendra s/o Nivrutti Dandime,  
Age:- 58 years, Occ. Agri.,  
R/o Ganjur, Tq. & Dist. Latur
8. Vishnu Ramrao Pate,  
Age:- 70 years, Occ. Agri.,  
R/o Harangul, Tq. & Dist. Latur
9. Bhimji Medhji Patel,  
Age:- 55 years, Occ. Agri.,
10. Kantilal Medhji Patel,  
Age:- 52 years, Occ. Agri.,  
  
Respondent No.9 and 10,  
Vinvekanand Nagar, Latur,  
Tq. & Dist. Latur
11. Umashankar s/o Kashinath Swami,  
Age:- 51 years, Occ. Agri.,
12. Somnath s/o Chandrashekhar Swami,

Age:- 50 years, Occ. Agri.,

Respondent No.11 and 12

R/o Gul Market, Latur,

Tq. & Dist. Latur

13. Dhiraj s/o Narayan Pate,  
Age:- 48 years, Occ. Agri  
R/o Sakhara, Tq. & Dist. Latur

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Mr. P. R. Katneshwarkar h/f Mr. P. P. More, Advocate for Applicants.

Mr. V. D. Sapkal, Senior Advocate i/by Mrs. Rekha Chaudhari, Advocate for Respondent Nos.3(A) to 3(A-5).

Mrs. Priyanka P. Shinde h/f Mr. P. M. Shinde, Advocate for Respondent Nos.4 to 7.

Mr. S. V. Natu, Advocate for Respondent Nos.11 and 12.

Respondent Nos.8, 9, 10 and 13 are served (absent).

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**WITH**

**WRIT PETITION NO. 1132 OF 2024**

**WITH**

**WRIT PETITION NO. 5948 OF 2024**

**CORAM : S. G. CHAPALGAONKAR, J.**

**DATED : 29<sup>th</sup> JULY 2024.**

**ORDER:-**

1. Heard Mr. Katneshwarkar holding for Mr. More, learned Advocate appearing for applicants, Mr. Sapkal, learned Senior Advocate i/by Mrs. Chaudhari, learned Advocate appearing for respondent Nos.3(A) to 3(A-5), Mrs. Shinde holding for Mr. P. M. Shinde, learned Advocate appearing for respondent nos.4 to 7 and Mr. Natu, learned Advocate appearing for respondent nos.11 and 12.

2. The present application is moved before this Court seeking stay to the impugned notice dated 11.06.2024 issued by Circle Officer, Gategaon, by which delivery of possession of land bearing Survey No.113/B (Gut No.155) admeasuring 4H 3R has been

scheduled in favour of original applicants [present respondent nos.3(A-1) to 3(A-5)] under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short 'HT and AL Act, 1950').

3. Mr. Katneshwarkar, learned Advocate appearing for the applicants submits that substantive writ petition is filed by the applicants, thereby raising challenge to the order dated 02.01.2024 passed by Maharashtra Revenue Tribunal, Chhatrapati Sambhajanagar (for short 'MRT'), thereby dismissing Appeal and confirming order of Additional Collector, Land Reforms, Latur in File No.2019/Land Reforms/Tenancy/KV-185, by which directions were given to Tahsildar, Land Reforms, Latur to undertake proceeding under Section 40, 38 and 38(E) and extend benefits to legal heirs of protected tenant i.e. Maruti Nagu. During pendency of writ petition, learned Tahsildar, Land Reforms proceeded further and passed order declaring Maruti Nagu to be protected tenant in respect of land in question in terms of Sections 38 and 38(E) of the HT and AL Act, 1950 and also declared that respondent nos.3(A-1) to 3(A-5) are entitled to tenancy rights being legal heirs of Maruti Nagu. Further, purchase price came to be fixed under Section 38(E) and ownership certificate came to be issued.

4. Mr. Katneshwarkar would further submit that respondent nos.3(A-1) to 3(A-5) claims that Maruti Nagu Andhare was protected tenant of land Survey No.113/B (Gut No.155) admeasuring 4H 3R situated at village Sakhara, Tq. and Dist. Latur. Since Maruti Nagu was cultivating land, he was declared as protected tenant and Sanad to that effect was issued in his favour. However, in the year 1963, he was illegally dispossessed. Consequently, they claimed relief of restoration of possession under

Section 98 of the HT and AL Act, 1950. However, said application was rejected vide order dated 13.08.2013. The order of Deputy Collector was challenged before MRT vide Appeal No.102/A/2013/Latur. The MRT was pleased to partly allow the Appeal vide judgment and order dated 30.08.2017 and remanded matter back to Deputy Collector, Latur for fresh decision after hearing the parties.

5. Mr. Katneshwarkar would further submit that although initially proceeding was moved before MRT and prosecuted only by two respondents i.e. respondent nos.A and A-1, many other parties were illegally added after remand of the matter to Dy Collector. Not only that, the pleadings and prayers were also amended, thereafter, impugned order dated 03.05.2021 was passed by the Collector, thereby directing Tahsildar, Latur to take further steps in in tune with Sections 8, 34, 37, 38 and 38(E) of the HT and AL Act, 1950. Mr. Katneshwarkar would submit that said order was challenged in Appeal before MRT vide Appeal No.32-A-2021-Latur. During pendency of said Appeal, interim stay was granted. However, Appeal came to be dismissed vide order dated 02.01.2024. The applicants thereafter filed present writ petition and during pendency of this writ petition, now notice has been issued for delivery of possession by dispossessing applicants, who are in possession of land for last 50 to 60 years. He would, therefore, urge that till the matter is heard on merits, possession of applicants needs to be protected.

6. Per contra, Mr. Sapkal, learned Senior Advocate appearing for respondent nos.3(A) to 3(A-5) submits that infact no relief can be granted in this writ petition. He would invite attention of this Court to order dated 12.02.2024 passed in this petition,

particularly paragraph no.5 of the order, wherein this Court observed that this is not a fit case to grant protection to the possession of petitioners. Mr. Sapkal would further submit that order of Additional Collector, Land Reforms, Latur dated 03.05.2021 in File No.2019/Land Reforms/Tenancy/KV-185 has been already implemented. The learned Tahsildar, Land Reforms, Latur in pursuance to the said order decided further rights of the parties. The certificate under Section 38(E) of the HT and AL Act, 1950 is already issued. The respondent nos.3(A-1) to 3(A-5) are now declared as LR's of protected tenant and ownership is conferred in their favour. The applicants before this Court have already sold out land in favour of third parties under various registered sale deeds and lost their locus to prosecute present writ petition and cannot claim any relief as against respondent nos.3(A-1) to 3(A-5), who are declared to be owners. Relying upon the observations of this Court in case of ***Ramkuwar Ramkishan Pallod, deceased through L.Rs. And Another Vs. Krushnanath Sajan Belhekar and Anr.***<sup>1</sup>, he would submit that once certificate of ownership has been issued on deposit of purchase price, unless certificate is set aside, rights crystallized in favour of tenants cannot be taken away and, therefore, any proceeding cannot be entertained as long as certificate of ownership subsists.

7. I have given in depth consideration to the submissions advanced on behalf of the learned Advocates appearing for respective parties. I have perused documents on record. It appears that, question of grant of interim relief in present writ petition was once considered by this Court and submissions of parties were noted in order dated 12.02.2024. At the relevant time, the order of Tahsildar dated 02.09.2022, which has been passed in pursuance of

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<sup>1</sup> 2010 (5) All. M.R. 529.

the order passed by the District Collector dated 03.05.2021 in File No.2019/Land Reforms/Tenancy/KV-185 was assailed in Appeal before Collector. Mr. Katneshwarkar points out that said Appeal has been disposed of giving reason that very order under which learned Tahsildar issued ownership certificate in favour of legal heirs of tenant is consequence order of the Collector passed in Appeal, which was subject matter of challenge before MRT. Apparently, at present no Appeal is pending against the order of Tahsildar. Further applicants have suitably amended writ petition incorporating challenge to all the consequential orders including order of Tahsildar in present writ petition.

8. It is true that, now certificate under Section 38(E) has been issued in favour of respondent nos.3(A-1) to 3(A-5), but fact remains that possession is continued with applicants/petitioners till this date. *Prima facie*, there are many arguable questions involved in present writ petition, which are as under.

- (i) Whether after remand of the matter in earlier round by MRT, the learned Collector could have expanded scope of proceeding to pass impugned orders invoking Sections 38, 38(E) and 40 of HT and AL Act, 1950, when original proceeding was moved only for restoration of possession under Section 98 of the HT and AL Act, 1950?
- (ii) Whether the Collector could have permitted amendment in the pleadings to expand scope of proceeding and also addition of various parties, who were not before MRT, when order of remand was passed?
- (iii) Whether respondent nos.3(A) to 3(A-5) are legal heirs of alleged protected tenant Maruti Nagu?

- (iv) If Maruti Nagu was dispossessed sometimes in the year 1963, why proceeding for restoration of possession was moved after about 50 years.
- (v) Whether enquiry conducted by Tahsildar, Land Reforms, Latur leading to certificate of ownership under Section 38(E) is legal, proper and in tune with the procedure prescribed under HT and AL Act, 1950?

9. In view of the aforesaid observations, this Court is of *prima facie* view that till writ petition is considered and decided on merits, possession needs to be protected. Consequently, following order is passed:

**ORDER**

- a. Civil Application is allowed in terms of prayer Clause (B).
- b. Writ Petitions be placed for admission after eight weeks. Parties are put to the notice that if time permits, writ petitions can be taken up for final disposal at admission stage.
- c. Civil Application is disposed of.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**