

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

WRIT PETITION NO.5445 OF 2000

Shantilal Keshav Shah & Ors. Petitioners

V/s.

Shantaram Gopal Bankari Respondent

WITH

WRIT PETITION NO.3479 OF 2024

Rajendra Ramchandra Kundale Petitioner

V/s.

The Tahsildar Kalyan & Ors. Respondents

WITH

WRIT PETITION NO.3481 OF 2024

Devram Kathod Suroshe Petitioner

V/s.

The Tahsildar Kalyan & Ors. Respondents

WITH

WRIT PETITION NO.3480 OF 2024

Shantaram Gopal Bankari, Since Decd. Thr. Petitioner
His Lrs.

V/s.

The Tahsildar Kalyan & Ors. Respondents

WITH

WRIT PETITION NO.5451 OF 2000

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Shantilal Keshav Shah & Ors. Petitioner

V/s.

Ramchandra Murari Kundale & Ors. Respondents

**WITH
WRIT PETITION NO.5450 OF 2000**

Shantilal Keshav Shah & Ors. Petitioner

V/s.

Devram Kathod Suroshe Respondent

Mr.Girish S. Godble, Senior Advocate i/b Mr.Rahul Soman a/w Mr.Aditya P. Shirke, for the Petitioner in WP No.5445 of 2000, WP No.5450 of 2000 and WP No.5451 of 2000.

Mr.Kaustubh Thipsay i/b Ms.Deepshikha Godbole, for Respondent Nos.3 to 5 in WP No.3479 of 2024, WP No.3480 of 2024 and WP No.3481 of 2024.

Mr.C.G. Gavnekar a/w Mr.Ashutosh Gavnekar and Mr.Rohit Parab, for Respondent Nos.1(a) to 1(h) in WP No.5445 of 2000 and for Respondent Nos.1 to 8 in WP No.5450 of 2000 and for Respondent Nos.2 to 5, 6, 7 and 8 in WP No.5451 of 2000.

Ms.V.S. Nimablkar, AGP, for Respondent Nos.1 and 2-State in WP No.3479 of 2024, WP No.3481 of 2024 and WP No.3480 of 2024.

CORAM : R.M. JOSHI, J.

DATE : 19th SEPTEMBER 2024

P.C:-

. The contesting parties herein are seeking disposal of

this Petition in view of the Consent Terms filed on record. The parties are seeking modification of common judgment in tenancy Application No.2/1986, 3/1986 and 4/1986 to the following extent.

“5. The Petitioners accept the Respondents in Writ Petition No. 5445 of 2000 as tenants in respect of land admeasuring 00 Hectares 80 Are from the land bearing Survey No. 35 Hissa No. 41 and land admeasuring 4 Hectares 20 Are from the land bearing Survey No. 52 Hissa No. 4 of Village Kambe, Taluka Kalyan, District: Thane which is shown demarcated in Blue Colour in the Map annexed as Annexure "A" to these Consent Terms.

6. The Respondents in Writ Petition No. 5445 of 2000 accept that except the aforesaid area of Survey No. 35/41 and 52/4, they do not claim any rights as tenants and shall handover the possession of the balance area of land admeasuring 3 Hectares 20 Are from land bearing Survey No. 35 Hissa No. 41 and land admeasuring 1 Hectares 80 Are from bearing Survey No. 52 Hissa No. 4 of Village Kambe, Taluka Kalyan, District: Thane, within 4 weeks from the issuance of the amended 32-G and 32-M certificates of the modified area(s), without any encumbrances.

7. Consequently, the Judgment and Order dt. 27.6.2000 passed by the Tahasildar and A.L.T. Kalyan in Application Nos. 429 of 1997 u/s 32G of the MT & AL Act, 1948 and the Certificate u/s 32M of the said Act, issued pursuant to the said order dt. 27.6.2000 is quashed and set aside.

8. Tahasildar and A.L.T. is directed to issue a fresh certificate u/s 32M of the B.T. & A.L. Act, 1948 in favour of the

Respondents for an area admeasuring 00 Hectares 80 Are from the land bearing Survey No. 35, Hissa No. 41 and land admeasuring 4 Hectares 20 Are from the land bearing Survey No. 52 Hissa No. 4 of Village Kambe, Taluka Kalyan, District: Thane.

9. The area retained with the Respondents as Tenant Purchasers is shown demarcated in Blue Colour and the area which is being handed over by the Respondents to the Petitioners is shown demarcated in Green Colour in the Map annexed as Annexure "A" to these Consent Terms. The Respondents agree and undertake to hand over the vacant and peaceful possession of the said area demarcated in Green Colour to the Petitioners within a period of 4 weeks from the issuance of the amended 32 M Certificate without any encumbrances.

10. On issuance of such fresh certificate u/s 32M of the B.T. & A.L. Act, 1948 in favour of the Respondents, the parties shall take appropriate further steps to get the same registered with the Sub Registrar of Assurances and thereafter get the corresponding entries in the Revenue Records made and obtain separate 7/12 Extracts. The cost of registration shall be borne by the Petitioners

11. Petitioners have assured the Respondents that they will be entitled to occupy, possess and enjoy the area admeasuring 0 Hectares 80 Are from the land bearing Survey No. 35 Hissa No. 41 and land admeasuring 4 Hectares 20 Are from the land bearing Survey No. 52 Hissa No. 4 of Village Kambe, Taluka Kalyan, District: Thane as Tenant Purchasers shown demarcated in Blue Colour in the Map annexed as Annexure "A" to these Consent Terms without any obstruction or interruption from the Petitioners or any other person claiming through the Petitioners and in case such obstruction arises in any manner,

the Petitioners undertake to indemnify the Respondents and also undertake to bear all the costs and consequences of such objection or obstruction in case any such claim arises in future.

12. Similarly, the Respondents have assured the Petitioners that the Petitioners will be entitled to occupy, possess and enjoy the area admeasuring 3 Hectares 20 Are from the land bearing Survey No. 35 Hissa No. 41 and land admeasuring 1 Hectares 80 Are from the land bearing Survey No. 52 Hissa No. 4 of Village Kambe, Taluka Kalyan, District: Thane as Tenant Purchasers shown demarcated in Green Colour in the Map annexed as Annexure "A" to these Consent Terms and in case such obstruction arises in any manner, the Respondents undertake to indemnify the Petitioners and also undertake to bear all the costs and consequences of such objection or obstruction in case any such claim arises in future."

2. As indicated above Clause No.6 of the Consent Terms shows that, the Respondents in Writ Petition No.5445 of 2000 do not claim any rights as tenants in respect of Survey No.35/41 and Survey No.52/4 and shall hand over the possession of the balance area admeasuring 3 Hectares 20 Rre land from Survey No.35 and 1 Hectares 80 Rre land from survey No.52 within four weeks issuance of amended 32(g) and 32(m) Certificates. In view of this Court, this amounts to surrender of tenancy by tenant, as his tenancy over the entire land has been

accepted by Tenancy Tribunal and Appellate Authorities. Considering aim and object of the Act, surrenderance of tenancy, is not permissible in any manner except as provided by law. This can not be allowed to be done even indirectly. For the said purpose, compliance of provisions of the act and decision of Authorities thereunder is necessary. An enquiry is envisaged by Section 32G and 32M and by passing these provisions no order by consent of parties can be passed.

3. Power vested in Tenancy Tribunal under the Act, cannot be assumed by this Court in exercise of Writ jurisdiction. Acceptance of Consent Terms and passing order in terms thereof, would be contrary to the legislative interest.

4. It would be a different issue, if this Court upholds the order impugned or causes interference therein on merit. This Court however, of a view that, this issues cannot decided by permitting the parties to effect settlement in circumvention of provisions of law. Having regard to the peculiar nature of the provisions of the BTAL Act, this Court is not inclined to accept

the Consent Terms and to allow Petitions in terms of Consent Terms.

5. After this Court has refused to accept the contention of both sides for allowing Petition in terms of Consent Terms, both sides have requested to file Petition for final hearing.

6. At their request, stand over to 18th November 2024.

(R.M. JOSHI, J.)