



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1268 1998 WITH
CIVIL APPLICATION NO. 11064 OF 2021

Bapu s/o Sakaraji Sanap
(Deceased through LRs)

- 1-A Shahadev s/o Bapurao Sanap
age 56 years, occ. Agril.
- 1-B Radhabai w/o Ramkisan Aghav
age 63 years, occ. Agril.
- 1-C Subhadrabai w/o Bhaskar Dhakne
age 59 years, occ. Agril
- 1-D Janabai s/o shahadev Nagargoje
age 54 years, occ. Agril.,

All r/o Wadzari
Tq. Patoda, Dist. Beed.

.. Petitioners

versus

- 1. Padmakar s/o Narhar Deshmukh
(Deceased through LRs)
- 1-A) Ashwini d/o Padmakar Deshmukh
@ Ashwini w/o Satyavijay Kulkarni
age 35 years, occ. Housewife
r/o Rampuri, Tq. Georai, Dist. Beed.
- 1-B) Aboli d/o Padmakar Deshmukh
age 27 years, occ. Student
r/o Bidkin, Tq. Paithan,
Dist. Aurangabad.
- 2. Madhukar s/o Narhar Deshmukh
age 42 years, occ. Service,
r/o 1786, Sadashiv Peth Pune

Vidyarthi Griha Pune,
Tq. & Dist. Pune.

3. Chanrakant s/o Narhar Deshmukh
age 37 years, occ. Service
r/o Dr. Dhondiraj Apartment,
Chinchawada Gaon, Pune 400 033.

4. The State of Maharashtra .. Respondents

Mr. Kedar Warad, Advocate holding for Mr. S. V. Warad, Advocate for the Petitioner.

Smt. R. R. Tandale, AGP for the State.

Mr. D. K. Kulkarni, Advocate for Respondent No. 1.

Mr. R. P. Dhase, Advocate for Respondent Nos. 1 to 3.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 8th OCTOBER, 2025.

PRONOUNCED ON : 20th NOVEMBER, 2025.

JUDGMENT :

1. This Petition arises out of the proceeding under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act ("HTAL" for sake of brevity). The proceeding is initiated in the second round by present Respondent Nos. 1 to 3, who claim to be the owners of the suit land. They sought eviction of the Petitioner under Section 98A of HTAL. Petitioner is land tenant in the land and is in possession.

2. Civil Application No. 11064/2021 is filed by Petitioners for production of documents i.e. revenue record from 1956 to 1961.

3. The facts in short as stated in the Petition are that the Petitioner (deceased father of present Petitioners) happened to be the tenant inducted in the suit land prior to 1955 i.e. prior to Hyderabad Abolition of Inams and Cash Grants Act, 1955 (for short 'Abolition of Inams Act') came into force on 20.07.1955 and prior to notification date i.e. 01.07.1960. Description of the suit lands is as under :-

Survey No.	Gut No.	Area
124/B	464	5 A 20 G
125/A	422	4A 3 G
128/A	421	6 A 13 G
139/A	419	4 A 10 G
Total	-	20 A 06 G

Petitioner was inducted by landlord-deceased Devidas Deshmukh. Devidas filed proceeding under Section 98 of the HTAL for summary eviction of the Petitioner before the Collector. The same was immediately withdrawn. Devidas, later on, filed Regular Civil Suit No. 35/1997 for declaration of ownership and for recovery of possession. In the said proceeding, the Petitioner appeared and filed an Application under Section 99A for framing of issue of tenancy and to refer the same to the Tenancy Court. Accordingly, the issue was framed and was referred to the Additional Tahsildar, Patoda. The

said issue came to be decided by order dated 29.05.1972 in favour of the Petitioner holding that he is the tenant in the land. The landlord carried the challenge till Supreme Court by filing SLP No. 13137/1984. The same also came to be dismissed by order dated 07.01.1985. On losing in the SLP, landlord Devidas withdrew the suit. After conclusion of the proceeding in favour of the tenant-present Petitioner, the entire dispute came to an end.

4. Devidas died issueless. After demise of Devidas, his nephews i.e. present Respondent Nos. 1 to 3 started obstructing possession of Petitioner over the suit lands. The Petitioner, therefore, filed a suit seeking injunction against Respondents and the same came to be decreed. Though Respondent Nos. 2 and 3 accepted the decree, Respondent No. 1, however, challenged it by filing an Appeal. The learned District Judge dismissed the appeal with cost. Respondent No. 1 also moved the Collector under Section 98A of HTAL for summary eviction. Said proceeding came to be dismissed by the Collector holding that the Petitioner is in lawful possession. Respondent thereafter approached Maharashtra Revenue Tribunal. It is for the first time, a case is made out by the Respondent that there was a litigation pending between him and the erstwhile tenant,

which is accepted by the Tribunal. The Tribunal set aside the order passed by the Deputy Collector and allowed the Application under Section 98 of the HTAL by judgment and order dated 09.12.1997. It is thus, the Petitioner is before this Court represented by his sons – present Petitioners.

5. It is the case of the Respondents that in view of Section 6(3) of the Abolition of Inams Act, the rights are not transferable without prior sanction of the Collector as the lands are Madad Mash Inam lands. It is their case that the Petitioner was not in possession at the relevant time and there was no question of Petitioner getting right of protected tenant.

6. On this case, learned Advocate Mr. Warad vehemently submits that the issue as regard tenancy had attained finality till the Supreme Court between the Petitioner and the erstwhile landlord Devidas. Respondents had no right thereafter to initiate any proceeding. If they step into the shoes of deceased Devidas, they have to accept the outcome of the earlier round of litigation. Their action is barred by the principles of *res judicata*. It is held that the Petitioner was always in possession. Under Section 98 of HTAL

possession is to be resorted only in the cases where the case is of unauthorised possession of a person who is sought to be evicted by the landlord. In the present case, once it is held that Petitioner's possession is lawful, there was no question of resorting the provisions of Section 98 of the Act. Respondent, for the first time, sought to introduce a case under Section 6(3) of the Abolition of Inams Act. In the earlier round, no such case was made out. The learned Member, Maharashtra Revenue Tribunal, thus committed an error in accepting the case of the Respondents for the first time. To support his submissions, he places reliance on the following judgments :-

- (i) AIR 1966 SC 1961
State of West Bengal vs. Hemant Kumar Bhattacharjee and others
- (ii) (1975) 1 SCC 686
Rangnath vs. Daulatrao and others

7. Appearance of two Advocates is recorded on behalf the Respondents i.e. learned Advocates Mr. Dhase and Mr. Kulkarni. This Court, therefore, heard both the learned Advocates. Mr. Dhase submits that in view of Section 6(3) of the Abolition of Inams Act, there was no prior sanction obtained before transferring the rights or

creating tenancy. He gave genealogy that original owner Ganpat was having two sons Devidas and Narhari. Devidas died issueless. Present Respondents are sons of Narhari and thus, they got right after demise of Devidas over the land. He submits that the Maharashtra Revenue Tribunal has rightly accepted the case of the Respondents and hence no interference is required. Learned Advocate Mr. Kulkarni also supports the order. Learned Advocate Mr. Dhase relies upon following judgments :-

- (i) 1996 Mh.L.J. 443
Devidasrao vs. Rangnath
- (ii) 1965 Mh.L.J. 881
Dattatraya Sadashiv Dhond vs. Ganpati Raghu Gaoli
(Full Bench)
- (iii) AIR 1976 Bombay 372
Nagnathappa vs. Shrinivas and another
- (iv) 2004(3) All M.R. 549
Bhiva Gangaram Landge & others vs. State of Maharashtra
and others.
- (v) 2001(3) Bom.C.R. 587
Govind Annatrao Upadhya & others vs. State of Maharashtra
& others
- (vi) 1981 Bom.C.R. 747
Sadashiv Rangnath vs. Shaikh Biban Shaikh Balambhai
& others
- (vii) 1983(1) Bom.C.R. 17

Tukaram Laxman and others vs. Sk. Ameer s/o Sk. Osman
& others.

(viii) 1971 AIR(SC) 1859

State of Maharashtra vs. Lazmen Abaji : Syed Ahmed son of
Pasham

8. Considering that the issue as regards tenancy was already concluded in a litigation between deceased Devidas and the Petitioner, this Court need not go back to that issue as the same has attained finality till the Supreme Court.

9. Petitioner, during the course of argument, showed from additional record that all along possession of the Petitioner is shown in revenue entries over the lands as a tenant of deceased Devidas. There is no counter to this by the Respondents. The possession of Petitioner over the suit land thus, will have to be accepted all throughout.

10. Both the parties have relied upon Full Bench judgment in case of Dattatraya vs. Ganpati (Supra). The Full Bench of this Court was dealing with the question relating to the interpretation of the provisions of Abolition of Inams Act. It was considered that all the provisions of the act did not come into force on 20.07.1955. There

were different dates for bringing into force different provisions of the Act. The learned Maharashtra Revenue Tribunal took a view that as per the Abolition of Inams Act, the tenant held no right and there was no right left to file Application under Section 44 of the HTAL in one of the applications therein. In another Application, Petitioners were shown to be holders of Deshmukh Inam. Those were abolished with effect from 01.07.1960 under Section 2A read with Section 1(3) of the Act. In that case, Petitioner made an Application for possession of lands on 26.03.1959. The said Application was rejected by the Tribunal on the same ground in earlier Application. The questions were thus, whether to claim right a person has to be in possession of the land on 20.07.1955 or 01.07.1960 ? Whether the Inamdar is entitled to the right of an occupant under Sections 5 or 6 of the Abolition of Inams Act, if the Application is made under HTAL ? Considering that the provisions came into effect on different dates in different parts, this Court answered the first question in affirmative. For the second question, it was held that the tenancy was terminated on the date on which the landholder made an Application for possession of land to the Tahsildar under Section 44(2) of the Act. So far as next question is concerned, it is answered that the possession as on 01.07.1960 should be considered for deciding as to who is

entitled to the rights of occupant. The last question was answered that the Inamdar would be entitled to the rights of an occupant if final order for possession had been made in his favour before 01.07.1960.

11. In the present case, it is a matter of record as concluded by all the authorities that it is the Petitioner who was in possession since 1955 till 1961. Section 2A of the Act provides for the powers of the State Government to decide the question relating to Inams and appeals when the question arises as to whether any land is Inam land and whether the Inam is held with or without condition of service and not coupled with remission of whole or part of the land revenue, whether any Inam is a community service Inam or watan, whether a commutation settlement in respect of any watan has or has not been effected. In the present case, there is no case that any appeal is preferred to the State Government under Abolition of Inams Act.

12. Section 6 of the Abolition of Inams Act deals with the occupancy right in respect of occupant land to which Section 5 does not apply. Section 5 deals with occupancy right in respect of land

comprised in an Inam held in perpetuity and which was alienable. The present case is under Section 6(3) which provides that occupancy granted under sub-section (1) shall not be transferable without previous sanction of the Collector and except payment of such sum to the State Government. In the present case, Devidas never resorted to any of the provisions of Abolition of Inams Act. This Court thus finds that there is no question of considering the provisions under that Act.

13. There is no doubt in the present case that the earlier round of litigation came to an end by withdrawal of the suit by deceased Devidas after the issue of tenancy had attained finality till the Supreme Court. In the lifetime of Devidas, he never resorted or took a ground under any of the provisions of Abolition of Inams Act. For the first time a case was introduced by the present Respondents. The learned Maharashtra Revenue Tribunal, thus, erred in considering the provisions under Abolition of Inams Act.

14. This Court finds substance in the case of Petitioner that since the rights of the Petitioner have been concluded as tenant in the land, there was no question of entertaining the second round of

litigation at the behest of the present Respondents. On factual aspects, Petitioners have positively shown that it is the Petitioner Devidas who was in possession since 1955 till 1961. Taking case of the Respondents even for argument that the rights were not transferable, still those are only in cases where their possession is shown on the dates on which the provisions came into effect. Admittedly, on both the dates, it is the Petitioner who was in possession in the capacity as tenant. In any case, this Court does not find any case having been made out before the Maharashtra Revenue Tribunal to allow the proceeding filed by the Respondents. The Petition, therefore, deserves to be allowed by making rule absolute in terms of prayer clause 'C'. Petition thus stands allowed in terms of prayer clause 'C'. Rule made absolute.

15. In view of disposal of the Petition, pending Application, if any, does not survive and stands disposed of.

(KISHORE C. SANT)
Judge