



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3569 OF 2022

Bhanudas s/o Ranga Ingale
(Deceased through LRs) .. Petitioner

versus

Smt. Madanbai w/o Kishanlal Lodha
& others .. Respondents

Mr. R. S. Deshmukh, Senior Counsel along with Mr. Shriram
Deshmukh and Mr. Vikhyati Jain, Advocates instructed by Mr. D. S.
Mundhe, Advocate for Petitioner.
Mr. S. N. Kendre, AGP for the State.
Mr. R. N. Dhorde, Senior Counsel instructed by Mr. Milind Patil
Ahmedpurkar, Advocate for Respondent No. 1.
Mr. K. B. Bhise, Advocate for Respondent Nos. 2 to 5.

WITH
WRIT PETITION NO. 3580 OF 2022

Bhanudas s/o Ranga Ingale
(Deceased through LRs) .. Petitioner

versus

Smt. Madanbai w/o Kishanlal Lodha
& others .. Respondents

Mr. R. S. Deshmukh, Senior Counsel along with Mr. Shriram
Deshmukh and Mr. Vikhyati Jain, Advocates instructed by Mr. D. S.
Mundhe, Advocate for Petitioner.
Mr. S. N. Kendre, AGP for the State.
Mr. R. N. Dhorde, Senior Counsel instructed by Mr. Milind Patil
Ahmedpurkar, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.
RESERVED ON : 15th APRIL, 2025.
PRONOUNCED ON : 24th APRIL, 2025.

PER COURT :

1. By consent of both sides, these petitions are heard finally at the stage of admission.

2. Since a common order is passed by the Maharashtra Revenue Tribunal (for short 'MRT') in Revision Application No. 71/B/2002/Osmanabad and Tenancy Appeal No. 37-A/2004/Osmanabad, these petitions are heard and decided by this common judgment.

3. The relevant facts which led to filing of these petitions can be narrated in brief as under :-

There is no dispute about the fact that Survey No. 34 situated at Shelka/Dhanura, Tq. Kallam, Dist. Osmanabad (for short 'subject land') was owned by Bhanudas Lodha. It is the case of the Petitioner that said Bhanudas Lodha during his life time had retained more than 200 acres of land and it was a coparcenary property belonging to him as well as his brother Kishanlal.

Bhanudas Lodha induced Bhanudas Ranga Mahar (predecessor of Petitioner) in the subject land and he was cultivating the same prior to coming into force of Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short 'Tenancy Act'). It is his further case that his name appeared in the final register of tenancy in form Namuna No. 5 and was shown as protected tenant over the said land. It is his claim that due to his ignorance and illiteracy, even though he was in possession of the said land, certificate of ownership could not be obtained. There is allegation against the owner that land owner and his brother Kishanlal in collusion with revenue authorities transferred some land in the name of other persons hailing from same village and Petitioner's interest in the suit land was confined to the extent of area admeasuring 7H and 77 R.

4. It is further claimed by Petitioner that on coming into force of The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, (for short 'Ceiling Act'), excessive and surplus land was shown in the name of landlord who had filed return with the authority by concealing the fact about land bearing Survey No. 34. In order to avoid the rigours of the Ceiling Act, the subject land was shown in the name of wife of Kishanlal on the basis of partition.

In this backdrop, in the year 1999, Bhanudas filed application under Section 38E of the Tenancy Act for grant of ownership certificate, which came to be granted to him by order dated 31.07.1999. Pursuant to the issuance of the said certificate, the Tahsildar, Kallam, sanctioned mutation entry on the application of the protected tenant and consequently, the name of landlord was deleted from the record vide ME No. 408 dated 25.01.2000.

5. Being aggrieved by the order of grant of ownership certificate by Tahsildar by order dated 31.07.1999, landlords/Respondents filed appeal before the Deputy Collector, Land Reforms, Osmanabad. This authority by judgment dated 21.03.2000, allowed the appeal on the ground that the land lord was not heard before passing of the order of issuance of ownership certificate. An order was passed directing remand of the proceeding before the Additional Tahsildar for denovo disposal. In year 2000, Bhanudas also filed application under Section 98 of the act seeking his restoration into possession of the subject land. This application came to be allowed by the competent authority by order dated 09.01.2001.

6. The Tahsildar, on remand of the proceeding under Section 38E of the act, rejected application of the Petitioner for grant of ownership certificate for the reason that the Petitioner has orally surrendered tenancy rights in respect of the subject land in the year 1953 and since Petitioner is not in possession of the subject land, ownership certificate was denied. This order came to be challenged before authority and finally taken exception before the MRT. MRT dismissed appeal by order dated 09.01.2002. This order to MRT was challenged before this Court in Writ Petition No. 8191/2002. This Court remanded the proceeding to the authority for denovo trial.

7. In the meantime, Deputy Collector, Land Records, Osmanabad, allowed the application under Section 98 of the act directing delivery of possession to Petitioner. Appeal came to be filed against mutation entry effected by the revenue authority. The Sub-Divisional Officer however, rejected the said appeal by order dated 23.09.2005 against which Revision bearing No. 71/B/2002/Osmanabad was filed before the Divisional Commissioner, Aurangabad who confirmed the order passed by the appellate authority.

8. Landlords/Respondents raised challenge to the order dated 15.02.2006 by filing Writ Petition No. 2724/2006 and also took exception to the order dated 16.02.2006 by filing Writ Petition No. 2725/2006. Both petitions were dismissed by this Court. Against the order of dismissal of petitions by learned Single Judge of this Court, Letters Patent Appeals bearing No. 22/2008 and 23/2008 came to be filed. These appeals were partly allowed by the Division Bench of this Court by order dated 18.04.2019 and the matters were remitted back to the MRT for re-consideration. After passing of this order, the proceedings were heard by MRT and by impugned order dated 07.12.2021, revision application and tenancy appeal filed by Respondents came to be allowed. Hence, these petitions.

9. Learned Senior Counsel for Petitioner submits that owing to the provisions of the Tenancy Act, it was not open for the landlord to claim surrender of tenancy by tenant Bhanudas in contravention with the provisions of Sections 19 and 32 of the Act. It is his submission that there is ample evidence on record to indicate that the name of Petitioner/Tenant was included in the register maintained of the protected tenant in respect of the suit land. It is his submission that once such entry is found, it was obligatory on

the part of the landlord or any other person who take exception thereto within a period of one year. It is his submission that admittedly, no such proceedings were initiated against the Petitioner/tenant. Thus, according to him, the issue of tenancy or surrenderance thereof could not have been entertained by the Tahsildar and the only issue under Section 38E of the Tenancy Act was for determination of the purchase price of the subject land. It is his submission that the appellate authorities have rightly taken into consideration said provisions and held that alleged surrenderance of tenancy by tenants was not in consonance with the provisions of the Act. He drew attention of the Court to provisions of Section 19(1) of the Act which according to him, mandates surrenderance of tenancy only in the manner as prescribed thereunder. Thus, it is his contention that the claim of oral surrenderance of tenancy as made by the landlord cannot be entertained. It is his submission by referring to Section 98 of the act that any person who is in unauthorised possession of the land can be removed in summary manner and once it is held that Petitioner is protected tenant and that surrender of the tenancy is not valid, provisions under Section 98 of the Act can be invoked by the authorities for seeking eviction of the person in possession thereof and put Petitioners in possession. It

is his submission that MRT has committed error in law by disturbing the findings of fact recorded by the authorities below, which amounts to exercise of jurisdiction not been vested in it.

10. To support his submissions, he placed reliance on judgment of Hon'ble Supreme Court in case of Ramchandra Keshav Adke (Dead) by LRs. And others vs. Govind Joti Chavare and others, (1973) 1 Supreme Court Cases 559 and judgment of this Court in case of Laxmanrao Anantrao Stardekar vs. Bapu Satyappa Pawar, AIR 1988 Bombay 244.

11. Learned Senior Counsel for contesting Respondents submits that though voluminous record is sought to be brought to the notice of this Court, however, according to him, a very short issue involved in these petitions is as to whether claim of the landlord of oral surrenderance of tenancy by tenants is acceptable in law or not. It is his submission that the provisions of Section 19 of the Act as they stood prior to the amendment do not contemplate surrender of tenancy in the manner now prescribed after amendment. He drew attention of the Court to the unamended Section 19 of the Act which according to him, does not preclude oral surrenderance of tenancy by

tenant in favour of the landlord. He further argued that the year of notification applying provisions of this Act to Osmanabad is 1957. Thus, till this date, there was no prohibition for surrenderance of tenancy and that the amended Section 19 would have no application to the present case. In order to buttress his submissions, he placed reliance on judgment in case of Yadavrao s/o Dhondo vs. Maliba, **1963 T.L.R. 2B.**

12. It is his further submission that the revenue record indicates that after 1953, Petitioner was never in possession of the subject land and the record on the contrary indicates that the subject land was in possession and cultivation of Shivram and thereafter the landlord. It is his submission that on surrenderance of tenancy the possession of the land came to the landlord and as such the surrenderance being valid having effected prior to 1954, the possession of landlord will have to be accepted as lawful and cannot be interfered with in summary manner under Section 98 of the Act. Further, according to him, the factum of cultivation of landlord itself is a proof of surrenderance and no separate evidence in this regard is necessary. To support his submission, he placed reliance on judgment in case of Gudasa Chandusa vs. Chimasa, **1965 T.L.R. 23.**

Reference is also made to the judgment of Division Bench of this Court in case of Runjaji s/o Kisan vs. Sambha in Special Civil Appeal No. 1097/1961, to submit that amendment to Section 19 would be prospective and cannot be given retrospective effect. It is his submission that unless there is express words giving retrospective effect, it is not open to apply amendment retrospectively. Thus, it is his contention that Section 19 would have application to the present case.

13. Similarly, it is his submission that there is surrenderance of tenancy in the year 1953. However, for inordinately long period of over 40 years, no action was taken by the Petitioner and since the action has not been initiated within reasonable time, the remedy is barred for the Petitioner. To support his submission, he placed reliance on judgment of the Hon'ble Supreme Court in case of Situ Sahu and another vs. The State of Jharkhand, in Appeal (Civil) No. 2414-15 of 1999 and Jai Mangal Oraon vs. Smt. Mirza Nayak and others, **2000(3) S.C.R. 1128**. Finally, he placed reliance on judgment of learned Single Judge of this Court in Writ Petition No. 1223/1990 in order to argue that Section 98 of the Tenancy Act cannot be invoked with vague averment and under Section 32 of the

Act, such application for restoration of possession ought to have been moved within a period of 2 years of coming into force amended act of 1957. On these amongst other submissions, he seeks dismissal of petitions.

14. In order to appreciate submissions made on behalf of rival parties, it would be relevant to take note of certain findings of fact recorded by Tahsildar as well as Deputy Collector in their respective orders. The Tahsildar, while dealing with application under Section 38E of the Tenancy Act for declaration of ownership rights of the tenant, has observed that tenant has not been declared as owner at the relevant time though the land holder had more than 200 acres of land. It is further observed that on the basis of surrendrance of tenancy rights by the tenant, his case was not considered for grant of ownership rights. The Tahsildar rejected the application filed by tenant for declaration of ownership rights. Though the Deputy Collector in his order dated 07.09.2002 has allowed the appeal filed by tenant, however, it is observed that from the perusal of declaration record under Section 38E of the Act i.e. worksheet and final declaration list, it is seen that at that time no

declaration of ownership was made in favour of tenant though he was eligible for declaration being protected tenant of the suit land.

15. The aforestated findings of fact are not disputed by the tenant. Though there is a record indicating that the name of the tenant was included in the worksheet, however, there is no final declaration that tenant is a protected tenant. In absence of his inclusion in the final list, it cannot be held that Petitioner's predecessor was protected tenant in respect of the subject land.

16. Perusal of record and proceeding received from MRT indicates that the contesting Respondents have placed on record final tenancy register of 1955-1956 in which name of Shivram Sakharam is shown as protected tenant in respect of Survey No. 34. Similarly, Khasra Pahani register of 1954-1955 shows Shivram Sakharam as ordinary tenant. There is no challenge made by Petitioner or their predecessor to the inclusion of name of Shivram as protected tenant in respect of subject land in final register. Objection if any in this regard ought to have been raised within a period of one year from recording of such entry in view of Section 35 of the Act. Without taking exception to the said record and inclusion of name of Shivram

Sakharam as protected tenant in the final register, now it is not open for the Petitioner or their predecessor to file an application under Section 38E of the Tenancy Act for issuance of ownership certificate in their favour. There is no dispute about the fact that revenue record indicates absence of tenant in the subject land since 1953. Though for some time, Shivram is shown as tenant in respect of the subject land, however, at later point of time, name of the land holder appears in the column of cultivation.

17. In this backdrop, the Petitioner's predecessor had filed an application under Section 38E of the Tenancy Act for declaring him as the owner in respect of the land in question. Land holder on the other hand has raised specific claim of oral surrenderance of tenancy in the year 1953 and since then he being not in possession of the subject land. Though the Tahsildar has not dealt with the provisions of Section 19 of the Act, however, accepted the fact that after surrender of tenancy in the year 1953, the tenant is not in possession of the said land. This finding however came to be reversed by the Deputy Collector with observation that there is no documentary evidence in respect of surrender of tenancy rights. It is further held that in absence of evidence on record to show that the

land owner has obtained possession of the land as contemplated by Section 32(2) of the Act, the surrender in question is not legal. These findings are confirmed by the Divisional Commissioner in his order dated 15.02.2006. This authority too observed that the land owner has not adduced any evidence in support of the claim of surrender of tenancy. Reference is made to the amended Section 19 of the act to ultimately hold that surrender is not in consonance with the said provisions. These two authorities have also held that there is no evidence to indicate the actual surrender of tenancy.

18. Undeniable, Section 19 of the Tenancy Act had undergone drastic changes with introduction of Amendment Act of 1954 with effect from 04.02.1954. It is pursuant to this amendment, the surrender of tenancy must be admitted before the Tahsildar to his satisfaction. Surrender should be in writing and voluntary. There is no dispute about the fact that the land holder has claimed surrender of tenancy by tenant in the year 1953. It is claimed to be oral surrender of tenancy. Thus, at the time of surrender of tenancy, the provisions of unamended Section 19 were applicable. There is no gain in saying that the amendment which came into effect from

04.02.1954 would have application to surrender of tenancy in the year 1953.

19. There is cardinal principle of construction that every statute is prima facie prospective unless expressly or by necessary implications made to have retrospective effect. This rule would apply where object of statute is to affect vested rights or impose any new condition etc. as far as amendment to Section 19 is concerned, the same imposes at length new conditions for the surrenderance of tenancy rights by tenant in favour of landholder. Reference can be made to judgment of Division Bench of this Court in Special C.A. No. 1097/1961 in case of Runjaji (supra).

20. It would be relevant to take note of the judgments cited on the subject. In case of Ganpat vs. Rama in Special C.A. No. 229/1967, Division Bench of this Court in order dated 18.03.1963 has held that in year 1953 the law did not require that surrender should be verified by Mamlatdar. Non-obtainment of permission under Section 32(2) does not make possession invalid prior to 1954.

21. Now, question arises as to whether the findings recorded by the Deputy Collector as well as the Divisional Commissioner in rejecting the said surrender are in consonance with the law. Surrender of tenancy is not accepted by these authorities on two counts; firstly, that there is no documentary evidence in order to show surrenderance of tenancy and secondly, that the said surrender of tenancy even if it is accepted it is contrary to the provisions of Section 19 of the Act.

22. Insofar as rejection of surrender of tenancy for non-compliance of Section 19 of Tenancy Act is concerned, prior to the amendment to Section 19 of the Act in the year 1954, oral surrender of tenancy was not prohibited by law. It is only after the year 1954, surrender of tenancy was mandatorily in writing before the Tahsildar and to the satisfaction of the Tahsildar. The authorities, therefore, have committed error in rejecting the claim of land holder of surrender of tenancy and obtainment of permission of landholder, on the ground of non-compliance of Sections 19 and 32(2) of the Tenancy Act. This Court in case of Swada Isram vs. Khandu Vithoba, Spl. C.A. No. 1473/1963, decided on 07.10.1964, has held that it was not necessary in case of a valid surrender prior to 1954

that permissions of land should have been taken by the landlord through Tahsildar under Section 32(2) of the Act.

23. Once it is claimed by the land holder that the tenant has surrendered his tenancy orally, question of calling upon the land holder to produce documentary evidence in this regard does not arise. In any case, the factum of surrender of tenancy can be ascertained from the attending/surrounding circumstances. Admittedly, the predecessor of Petitioner was tenant in respect of Survey No. 34. Upto the year 1953, his name appears in the revenue record as tenant and cultivator of the land. His name however, does not appear therein from 1953 onward. The record further indicates that for some time, another person was shown as tenant and then the land holder was in possession and cultivation of the land. Pertinently, since 1953 till 1999, no action was initiated by the tenant for claiming ownership or possession of the subject land. Thus, there was more than sufficient evidence to indicate that there was surrender of tenancy by tenant in the year 1953. The findings recorded by the Deputy Collector and Divisional Commissioner are not in consonance with the material evidence on record.

24. Insofar as rejection of surrender of tenancy for non-compliance of Section 19 of Tenancy Act is concerned, prior to the amendment to Section 19 of the Act in the year 1954, oral surrender of tenancy was not prohibited by law. It is only after the year 1954, surrender of tenancy was mandatorily in writing before the Tahsildar and to the satisfaction of the Tahsildar. The authorities, therefore, have committed error in rejecting the claim of land holder of surrenderance of tenancy on the ground of non-compliance of Sections 19 and 32(2) of the Tenancy Act.

25. Coming to the issue raised by the Respondent about inordinate delay on the part of Petitioners and their predecessor to seek declaration and permission is concerned, it would be fruitful to refer to judgment of Hon'ble Supreme Court in case of Situ Sahu (supra). While dealing with similar situation, the Hon'ble Supreme Court has observed that :-

“There is no dispute about the fact that by notification dated 01.02.1957, the provisions of Section 38E of Tenancy Act came to be applied to District Osmanabad. As on that date, there was already surrender of tenancy by the tenant. Similarly, though his name was appearing in the worksheet, his name was not included in the final list of tenant. In such

circumstances, it was obligatory on the part of the tenant to take exception to his non-inclusion in the list of protected tenant within a reasonable time. Since 1953 till 1999, I.e for about 46 years, there was inaction on the part of the tenant in seeking his declaration as tenant so also possession of the subject land.

Similarly, in case of Jai Mangal Oraon (supra), Supreme Court has held that term at any time can not be construed as the powers could be exercised without any point of limit. In that case also nearly 40 years time was taken, which is not accepted. In case of Gangayya Khandya vs. Gangadhar Tanaji, **2011(1) Bom.C.R. 504**, Single Judge of this Court has held that :-

“6. Facts which are on record clearly show that the respondent no. 1 has purchased the suit land some time in the year 1966. The claim of the petitioner that he is protected tenant has not been accepted by the authorities. In any case, it is not the contention of the petitioner that he was dispossessed in 1966 by the present respondent no. 1. The pleadings to which attention has been invited show that the petitioner claims to have been dispossessed ‘several years before’. Thus, no specific date of dispossession has been pleaded anywhere. The moment, it is accepted that the petitioner has failed to establish the case of

dispossession, it is obvious that Section 98 can not have any application. Section 98 of Hyderabad Act envisages summary eviction of person unauthorisedly occupying or wrongfully in possession of any land. However, it also contains a condition that the provision which render possession of person wrongful, must not provide for his eviction. Thus, when there is no provision anywhere for his eviction and the person is found to be unauthorisedly in occupation or wrongfully in possession, then only Section 98 can be taken recourse too. Here, it is not in dispute that Section 32 of Hyderabad Act prescribes procedure for taking possession by tenant or agricultural labour and it further requires him to move application for restoration of possession within a period of two years from the date of Hyderabad Tenancy and Agricultural Lands (Amendment) Act, 1957 came into force or the date on which the right to such possession accrued to him, whichever may happen later. The application is to be made to Tahsildar in writing in prescribed form for such possession. The petitioner was dispossessed prior to 1957 and the above mentioned Amendment act came in to force in the year 1957 therefore, within two years, the petitioner could have applied for restoration of possession. He has not moved any such application.

26. One more aspect which has a bearing on the decision of this issue is the subsequent proceeding initiated by the authorities under the Ceiling Act. There is no dispute about the fact that the proceedings under the Ceiling Act were initiated and the land holder was considered to be in surplus holding. An order came to be passed accordingly on 11.02.1975 and land to the extent of 9 Acres 36 R from Survey No. 34 was declared as surplus and the Government had taken possession of the said area in or around 1982 for disbursement of the same to the landless persons. If it was not established before the said authority under the Ceiling Act that the contesting Respondent is in possession of Survey No. 34, question of it being declared as surplus would not have arose. Similarly, there was no question of Government authorities taking possession of 9 Acres and 36 R land from said Survey No. 34.

27. Considering the position of law as it reveals from above judgments, the case sought to be made out by the Petitioners does not deserve acceptance.

28. All these aspects clearly show that the Deputy Collector and the Divisional Commissioner have committed error in allowing the appeal filed by tenant and declaring tenant to be owner in respect of Survey No. 34. The proceedings under Section 98 of the Act for possession of the subject land are consequential to the outcome of the proceeding under Section 38E. It is only in the year 2000, an application was moved under Section 98 of the Act for seeking recovery of possession by Petitioner's predecessor. Since no right of Petitioner as tenant in the subject land has been established, the question of declaration to be owner and also possession thereof does not arise. MRT has rightly taken into consideration these aspects and reversed the findings recorded by the authorities below and restored the order passed by the Tahsildar.

29. In the peculiar facts of the case, this Court finds no reason to cause any interference therein for want of perversity. Hence, both the Petitions stand dismissed.

(R. M. JOSHI)
Judge

dyb