



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2925 OF 2022

Amol s/o Kashinath Patge
age 41 years, occ. Agriculture
r/o Juni Peth, Omerga, Tq. Omerga
Dist. Osmanabad.

.. Petitioner

versus

1. The Deputy Collector (Land Reforms)
(General Administration), Osmanabad
Dist. Osmanabad.
2. The Tahsildar, Omerga
Tq. Omerga, Dist. Osmanabad.
3. Mahadppa Bandppa Patge
age major, occ. Agriculture
r/o Juni Peth, Omerga, Tq. Omerga
Dist. Osmanabad.
4. Ashok Basapa Patge
age major, occ. Agriculture
r/o Juni Peth, Omerga, Tq. Omerga
Dist. Osmanabad.
5. Basvraj Ramling Chorge
(Deceased through LRs)
- 5A Sindhu w/o Basavraj Chorge
age 50 years, occ. Agriculture
r/o Juni Peth, Omerga, Tq. Omerga
Dist. Osmanabad.
- 5B Sonali d/o Basvraj Chorge
age 28 years, occ. Agriculture
r/o Juni Peth, Omerga, Tq. Omerga
Dist. Osmanabad.

5C Vaishali d/o Basavraj Chorge
age 26 years, occ. Agriculture
r/o Juni Peth, Omerga, Tq. Omerga
Dist. Osmanabad.

5D Ram s/o Basavraj Chorge
age 24 years, occ. Agriculture
r/o Juni Peth, Omerga, Tq. Omerga
Dist. Osmanabad.

.. Respondents

Ms. P. S. Talekar, Advocate holding for Talekar & Associates, for
Petitioner.

Mr. B. A. Shinde, AGP for the State.

Mr. S. P. Urgunde, Advocate holding for Mr. V. S. Urgunde, Advocate
for Respondent No. 4.

Mr. V. D. Salunke, Advocate holding for Mr. D. S. Mali, Advocate for
Respondent No. 5.

Mr. V. S. Bedre, Advocate for Respondent No. 7.

CORAM : R. M. JOSHI, J.

RESERVED ON : 26th MARCH, 2025.

PRONOUNCED ON : 7th APRIL, 2025.

PER COURT :

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

2. This petition takes exception to the judgment and order
dated 20.12.2021, in Case No. 48-B-2020-O, passed by Maharashtra
Revenue Tribunal, Aurangabad, (for short 'MRT').

FACTS OF THE CASE

3. The facts as they appear from record can be narrated in brief as under :-

It is the case of the Petitioner that he is tenant in respect of agricultural land bearing Survey No. 154 (Now Block No. 158) admeasuring 9 H 1 R situated at Omerga, Tq. Omerga, Dist. Osmanabad. In respect of the writ land, name of Basappa was shown as tenant in Pahani Patrak of year 1955-1956, 1957-1958 and also in the revenue record till 1961. Baappa and after his death, his legal heirs are paying taxes in respect of the writ land and such taxes are paid till the year 2018. In or around 1965, land holder Ramling Chorge claimed that Basappa has surrendered tenancy in the year 1965. Basappa thereafter applied in July 1965 claiming that he never surrendered any tenancy. The Tahsildar accepted surrender of the tenancy to be proper so also revisional authority confirmed the said order passed by the Tahsildar. This order came to be challenged in Special Civil Application No. 774/1971. This Court, by order dated 16.09.1974, directed remand of the said proceeding for decision afresh. Even on remand, the Tahsildar held surrender to be voluntary and that the land holder is eligible for possession of the land under Section of the 32 of Hyderabad Tenancy and Agricultural

Lands Act, 1950 (for short 'Act of 1950'). Appeal against said order before the Deputy Collector was successful. This order came to be challenged before MRT. The Tribunal allowed the revision and set aside order of Collector and restored order of Tahsildar accepting surrender. This order was challenged in this Court in Writ Petition No. 375/1985. This Court, by order dated 16.03.1990 has held that the surrender of tenancy of writ land by Basappa is invalid.

4. Pursuant to the said order, tenant filed application for possession of writ land. This application came to be allowed and tenant was put into possession of the land by order dated 22.08.1990. There was challenge to this order before Deputy Collector who decided the same on 17.10.1992 relegating the matter back to the Tahsildar for decision. In the year 1995, land holder filed application for recovery of possession. This application however, came to be rejected by Tahsildar on 28.02.2003 holding that unless the order directing handing over of possession to the tenant is set aside, land holder cannot be given possession thereof. Pursuant to the said order, mutation entry No. 5121 dated 18.12.2008 came to be effected in the name of Ashok Basappa as restricted owner. This entry was called in question before the Sub-Divisional Officer under

Section 247 of the Maharashtra Land Revenue Code (for short 'Code'). The Sub-Divisional Officer rejected said mutation entry by order dated 25.12.2014. Challenge raised by Ashok to the said order before the Additional Collector was unsuccessful. This authority rejected the appeal by order dated 30.06.2015. It is thereafter, Petitioner requested the Talathi to record name of Petitioner in respect of the writ land in revenue record. Instead of recording name of the Petitioner, the Talathi recorded name of land holder by mutation entry No. 10992 dated 30.09.2015.

5. Petitioner filed application for issuance of ownership certificate. Tahasildar allowed the application under Section 37A. Considering the statement of legal heirs of original land holder and consent recorded by them for issuance of such certificate, panchanama dated 18.04.2016 also came to be drawn. Purchase price was fixed at Rs. 1,26,000/- and it was directed to issue tenancy certificate by order dated 06.06.2016. On the basis of this certificate, Petitioner filed application to mutate their names in the revenue record. As there occurred dispute between the Petitioner and the branch of Ashok Basappa, Regular Civil Suit No. 5/2011 came to be filed for partition and separate possession. This suit was

partly dismissed against which Regular Civil Appeal No. 28/2018 came to be filed. In this appeal, a settlement was arrived at between the parties and it was agreed between them by virtue of compromise decree that Basappa, Mahadappa and Kashinath are the tenants in respect of the writ land. Against the order passed by Tahsildar on 06.06.2016, land holder i.e. Respondent No. 5 herein preferred appeal before the Deputy Collector. The Deputy Collector dismissed the said appeal by order dated 02.03.2020. This order came to be challenged before the MRT in revision by legal heirs of land holder. During pendency of the proceeding, legal heirs of original land holder sold writ land to third party. The Tribunal, by impugned order dated 20.12.2021, allowed the revision and set aside orders dated 02.03.2020 passed by the Sub-Divisional Officer and 06.06.2016 passed by the Tahsildar. As the Petitioner is aggrieved by this order, present petition.

6. Respondent No. 5 who is legal heir of land holder filed affidavit of Shivam Chorge. It is claimed by this Respondent that the writ land is his ancestral property and the name of his great grand father was recorded in the revenue record. It is alleged that the Petitioner has manipulated record to enter his name in connivance of

revenue authorities. Reference is made to old Khasra Patrak and Pahani Patrak which according to him, shows the name of Siddharam only. It is further claimed that though the Petitioner is claiming tenancy over the land, there are no basic documents to show that he was entered as tenant to cultivate the land and there is no record of tenancy.

7. It is further alleged that during the intervening period at some places manipulation has been done in the record indicating name of predecessor of Petitioner. It is however not in dispute that in the record of the year 1955-1958, name of Basappa has been shown as cultivator of the land. Basappa is father of Respondent No. 4. It is also claimed that this entry too is manipulated for the purpose of creating record. In respect of further entries it is stated that name of Respondent No. 4 came to be inserted in other rights column only for one year i.e. 1991 however, it was continued illegally till 2008. It is claimed that mutation entry No. 4121 has been cancelled by Sub-Divisional Officer which order is confirmed by Additional Collector by order dated 25.12.2014 and 30.06.2015 respectively. It is also claimed that Petitioner or his uncles i.e. Respondent Nos. 3 and 4 were not declared as protected tenants. Reference is made to

mutation entry No. 10992 by which name of original land holder is restored in the 7/12 extracts as the owner and in possession of the writ land from the year 2014. In so far as proceeding before Tahsildar for ownership certificate is concerned, it is claimed that the Tahsildar has obtained consent recorded by the family members of the land owner stating that Ashok i.e. Respondent No. 4 was tenant and hence ownership certificate would be issued in his name. It is claimed that no tenancy can be established nor any one can be declared as protected tenant on the consent of the landlord as no such procedure has been contemplated under the provisions of the act and the rules. It is further claimed that unless declaration is issued that the person is a protected tenant, there is no question of issuance of ownership certificate. On these amongst other contentions, legal heirs of original land holder opposed the Petition and supported the impugned judgment and order passed by the Tribunal.

8. Respondent No. 4 filed affidavit-in-reply denying claim of the Petitioner about Basappa, Mahadappa and Kashinath being members of joint Hindu family. It is claimed that Kashinath and Mahadappa never stayed with Basappa nor cultivated the writ land.

In fact in the affidavit, he has stated about not raising any claim in respect of land being Block No. 158.

9. On behalf of the State, Ratan Kajale, Naib Tahsildar, filed affidavit. In unusual manner, he does not support the order passed by the Tahsildar but takes altogether different stand than the one taken by the Tahsildar while passing order dated 06.06.2016. He also claims that as per record name of Basappa is shown as the owner. It is claimed that Basappa, Mahadappa and Kashinath were not declared as protected or otherwise tenant of the writ land and there was no agreement, no receipt etc. in regard to the land. It is also claimed that they were not in continuous possession of the land in question.

SUBMISSIONS

10. At the outset, learned counsel for the Petitioner has drawn attention of the Court to the previous litigation between the parties. It is her submission that the order passed by this Court in Writ Petition No. 375/1985 and order passed in Misc. Civil Application No. 774/1971 clearly demonstrate that Basappa was tenant in respect of the writ land. It was claimed by the predecessor

of Respondent No. 2 that Basappa had surrendered the writ land in favour of the land holder. The orders passed by the Tahsildar and confirmed by other authorities on this issue came to be set aside by this Court by order dated 16.03.1990 in Writ Petition No. 375/1985 by holding that there was no surrender of tenancy. According to her, name of Basappa appears on 7/12 extracts of writ land as tenant and owing to the provisions of Act of 1950, he is deemed tenant thereof, consequently the land holder is required to take objection to the tenancy of the tenant within a period of one year before the Tahsildar by moving an application before the Tahsildar. In this case, according to her, since the same has not been done, the issue of tenancy stood concluded in favour of Basappa. It is her further submission that the dispute arose between legal heirs of Basappa and his brothers Mahadappa and Kashinath and in this context reference is made to Regular Civil Suit No. 5/2011 for partition and the decree passed in Regular Civil Appeal No. 28/2018 indicating that the tenancy was joint family tenancy and as such legal heirs of all three brothers are entitled to become tenants thereof. According to her, this compromise decree has attained finality for want of any challenge thereto. It is submitted that the dispute before the revenue authority was in respect of mutation of name of the Petitioner and in

the said proceeding, there was no right with the revenue authority in order to go into the issue of tenancy as tried to be canvassed by learned counsel for the contesting Respondents. To oppose the submissions sought to be canvassed on behalf of the contesting Respondents about no application being filed for obtainment of ownership certificate for long time, it is argued that there is no period of limitation prescribed for seeking ownership certificate by tenant in respect of the land in question. It is her submission that in view of Section 37 of the act, on the date of issuance of notification, ordinary tenants as well as protected tenants have become deemed owners of the land in question. It is submitted that confusion is sought to be created on behalf of the contesting Respondents in respect of ordinary tenant and protected tenant and which, according to her, has no relevance in view of the various provisions of the act. It is submitted that the Tribunal has considered the case of land holder as if it was a proceeding for determining status of Petitioner as tenant or otherwise. It is her submission that on expiry of period of limitation of one year, the said issue of tenancy can not be gone into by any authority much less by authority under Land Revenue Code. It is submitted that even if it is considered that the MRT has exceeded its jurisdiction, this is not a fit case for remand of the

proceeding to the authorities below for decision afresh. It is her further contention that in view of the position of law settled by the judgment of the coordinate bench of this Court, the order of issuance of certificate of ownership is an administrative act and a such no exception thereto could have been raised by the Respondents. In support of her submission, she placed reliance on following judgments :-

- (i) Bharatlal s/o Hemraj vs. Kondiba Govinda Jadhav & others
2001(3) Mh.L.J. 380

(Declaration under Section 38E is not a decision or order within meaning of Section 90 of the act and no appeal against such declaration is maintainable. Secondly, when person wanted to dispute the status of another person as protected tenant or deemed tenant, former is required to file application and invoke order from Authority – Para Nos. 16 and 17.)

- (ii) Prakash s/o Raosaheb Pawade & others vs. Deorao s/o Hari
Pawade & others, 2011(6) Mh.L.J. 198

(Statutory ownership under Section 37E – Issuance of certificate of ownership is only a formality and does not depend upon payment of purchase price by them (Para Nos. 21, 22 and 26)

- (iii) Babu Hari Patil & another vs. Rama Ananda Jadhav & others
2005(1) Mh.L.J. 1063

(The law is clear that even without there being only entry in the tenancy column or a rent note or a rent receipt in favour of a person,

who is in lawful possession it must be declared as deemed tenant under section 4 of the Tenancy Act. (Para No. 7)

- (iv) Vaijinath s/o Yeshwanta Jadhav & others vs. Afsar Begum w/o Nadimuddin & others, (2020) 15 SCC 128
(Supreme Court set aside order passed by this Court in 2010(4) ALL MR 906)

11. Learned counsel for contesting Respondents i.e. legal heirs of original land holder contends that the case of the Petitioner is without any basis and infact it is based on fabrication of record. In order to support the said submission, he has made reference to various documents in order to canvass that record is apparently manipulated and on the basis of the said record it cannot be held that the Petitioner is a tenant. Reference is also made to document indicating that Babu Helkar is tenant of the land. In so far as the order passed by the Tahsildar is concerned, it is contended that the Tahsildar had no authority to allow the application for ownership certificate on the basis of alleged consent of land holders. It is his submission that unless enquiry is conducted, no such order of determination of purchase price can be done. He responded to the contention of learned counsel for the Petitioner about the act of issuance of ownership certificate to be administrative order by

referring to the order passed by the Tahsildar which, according to him, not only deals with the issuance of certificate but also determines the quantum of purchase price. Thus, it is his submission that this is not a case wherein the order of issuance of ownership certificate only came to be challenged. Thus, it is his submission that judgment in case of Bharatlal (supra) has no application to the case as the certificate issued only is not challenged. It is his submission by referring to the judgment and order of the MRT that the Tribunal has rightly taken into consideration the various aspects which are appearing from the record and the Tribunal was within its jurisdiction to record the said finding and in exercise of writ jurisdiction no interference is required therein. With regard to the jurisdiction of Tribunal reference is made to the relevant provisions of the Act and rules framed thereunder. It is his submission that in the event this Court comes to the conclusion that this is a case of remand of the proceeding, the remand needs to be made to the Tahsildar for decision of the proceeding afresh. To support his submissions, reliance is placed on following judgments :-

- (i) Radhakisan Soni vs. Gangaram, 1978(1) LJSOFT 90

(In case there is nothing on record to show any rent was paid by the petitioner. There is no documentary evidence on record to

show landlord-tenant relationship is created. If possession not lawful, provision of Section 5 would not apply and he cannot be said to be deemed tenant (para No. 4)

- (ii) Govindrao Kanba Hatkar vs. Ramchandra Kishan Banjara
1963 Mh.L.J. 7

(Declaration of ownership is to be made after leaving with the landlord area which is not less than twice the family holding)

- (iii) Meenakshi M. Gurao vs. Krishna S. Rahate,
2006(6) ALL MR 475

(Order by fraud and collusion with Tahsildar not sustainable. Proceedings arising out of application under Section 7B of Bombay Tenancy and Agricultural Lands Act.)

- (iv) Vaijinath Karpure & another vs. Mahadeo s/o Maruti Mote
2010(12) LJSOFT 107

(Mere relying upon revenue entry without any proof as to on what basis the said entry has been made, would not be sufficient to come to conclusion of tenancy (Para Nos. 8, 9, 12 and 13)

- (v) Smt. Kubra Begum vs. IIIrd Addl. Dist. Judge, Moradabad & others, AIR 2006 ALLAHABAD 55

(rent proved- no tenancy can be said to be created. Proceeding under section 107 of Transfer of Property Act) (Para No. 2)

- (vi) S. P. Chengalvaraya Naidu vs. Jagannath & others
AIR 1994 Supreme Court 853

(Decree is vitiated by fraud)

(vii) T. Vijendradas & another vs. V. M. Subramaniam and others
AIR 2008 Supreme Court 563

(suppression of facts)

(viii) Wamanrao Trimbakrao vs. Bhaurao Mahadu

(entitlement of protected tenant to purchase land in excess of
double of family holding.

(ix) Gangubai w/o Bhagwanrao Pawatekar vs. Kishanrao s/o
Limbajirao Kadam & others, 2012(5) ALL MR 114

(Revenue Tribunal under section 91 of Hyderabad Tenancy Act, 1950,
application under section 8 of the act to seek declaration as tenant –
lapse of long period of time not maintainable. (Para 15 and 14)

(x) Vajinath s/o Yashwant Jadhav vs. Smt. Afsar Begum w/o
Nadimuddin Kazi , 2010(4) ALL MR 906

(This judgment though cited has been set aside by Supreme
Court by judgment dated 30.01.2020)

12. Learned counsel for Respondent No. 4 i.e. son of Basappa
submits that Respondent No. 4 is not a tenant in respect of the writ
land and that Babu Helkar is tenant thereof. He has referred to the
affidavit filed by Respondent No. 4. It is his submission that in order
to end the dispute, Ashok Basappa has been made a party to the

sale-deed effected by legal heirs of original land holder in favour of the subsequent purchaser.

13. Learned counsel for Respondent No. 5, who is the purchaser, has sought to support the impugned order.

RELEVANT PROVISIONS OF ACT OF 1950.

14. In order to appreciate the submissions made across the bar on behalf of the rival parties, it would be relevant to take note of some of the provisions of the act. Section 2(m)(m) defines 'Ordinary Tenant' which means a tenant other than a protected tenant. Protected tenant as defined by sub-section (r) of Section 2 means a person who is deemed to be a protected tenant under the provisions of Section 34 to 37A. The definition also indicates family holding in view of section 2(h). Section 4 makes provision about the determination of area of family holding.

15. Chapter III deals with tenants. Section 5 provides as to who are the persons who are deemed to be tenants. A person who is lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the

land holder. The said provision however makes exception as provided in clause Nos. A to C. First proviso thereto makes it mandatory for the land holder to apply within a period of one year from the commencement of this act to Tahsildar for declaration that such person is or not a tenant. This provision makes it absolutely clear that the person who is lawfully cultivating any land belonging to other person on the date of commencement of this act is deemed to be the tenant of the land in question. Similarly it prescribes a one year period of limitation to the land lord/landholder for seeking declaration from the Tahsildar that such person is or not a tenant. Other provisions with regard to the tenant in this chapter deal with tenancy being not terminable by efflux of time, record of rights to be mutated and that Tahsildar to decide the question whether a person is a tenant etc. Section 19 deals with termination of tenancy.

16. Chapter IV of the act deals with protected tenants. Section 34 defines protected tenant. It prescribes conditions under which a person shall be deemed to be the protected tenant. The period of six years as specified in clause No. 1 to 3 read with Clause No. B that he is cultivating the said land personally during such period enables him to get the status of a protected tenant. This

provision also deals with the claim of the person who has been dispossessed and is no longer in the possession of the land in which he is deemed to be a protected tenant. Sub section 3 deals with the said issue. It provides that the person who at the commencement of this act is no longer in possession of the land in respect of which he is deemed to be the protected tenant shall notwithstanding anything contained in that sub section not to be deemed tenant if he was evicted from such land in pursuance to a decree or order of competent court or such land is being cultivated personally by land holder at least on year before the commencement of the act or a permanent structure has been built by the land holder on such land or such land has been permanently diverted by the landholder to non agricultural uses. Thus even if a tenant /protected tenant is no longer in the possession of the land, his right shall not be affected if he is not removed from land in accordance with these provisions.

17. Section 35 provides that if any question arises whether any person or if so what person is deemed under section 34 to be protected tenant in respect of any land the land holder or any person claiming to be so deemed may within one year of the commencement of this act apply in the prescribed form to tahsildar for the decision of

the question and the Tahsildar shall enquiring into the claim or claims in the manner prescribed declare what person is entitled to be deemed to be a protected tenant or not so entitled. This provision makes it clear that in case land holder disputes a person to be a protected tenant within one year of commencement of this act an application in prescribed form is required to be filed with the Tahsildar so also any person other than the deemed tenant claim deemed tenancy he may also apply within this period. Determination of such claim by the Tahsildar is conclusive. Having regard to the nature of this provision, it would not be open for the land holder or any other person claiming to be tenant, to take exception to the status of tenant.

18. Section 37 deals with the situations in which the persons are not entitled under section 34 to be deemed protected tenants. It is only in respect of the land holder being minor, till one year of expiry of date on which he attains majority or the land holder is permanently incapable of cultivating the land by reason of mental disability and till one year of such mental disability being removed. However, in case of a joint holders, such conditions would not apply.

19. A careful perusal of these provisions indicates that in any event even if the tenant does not comply with the order of the payment of reasonable price, the consequence thereof would be that he would not become the absolute owner of the land and would remain restricted owner. This has no consequence on the tenancy right as protected or ordinary tenant.

20. Section 37A has been brought to the Statute in the year 1956. This provision states that notwithstanding anything contained in this act, every person who at the commencement of the Amended Act of 1955 holds as a tenant any land in respect of which he is not deemed to be a protected tenant under this act shall be deemed to be protected tenant if the total area of the land owned by the land holder including the land under cultivation of his tenant is more than three times of the area of family holding.

21. This provision has application only to the cases in which the person was not holding the land or cultivating the land on the date of coming into force of act of 1950 however, as on the date of the amendment act 1955, he holds the land. Thus, only in such cases, the question of the Tahsildar / tenancy tribunal going into the issue

of conditions prescribed therein would arise. Explanation added thereto by Mah. 45 of 1961, shows that where a person is immediately before such commencement, in possession of land, then such person shall notwithstanding any judgment, decree of any Court or order of Revenue Board/Tribunal and the fact that he did not hold/lease in conformity with provisions of Sections 6, 8 or 9 as those sections stood immediately before 8th day of June 1958, be deemed to hold land as tenant as such commencement for the purpose of this sub-section.

22. Chapter IV A deals with the right of protected tenants, ordinary tenants and land holders. It does not deal with the decision as to whether a person is a protected tenant ordinary tenant or otherwise.

23. Section 38 states about the right of protected tenant to purchase land and it deals with the procedure for the purpose of determining the right of the protected tenant or even ordinary tenant to purchase the land. This prescribes the procedure, the manner in which the reasonable price is to be determined so also the consequence of non deposit of the amount has been spelt.

24. Section 38E is also an important provision to be looked into. This provides that notwithstanding anything in this chapter or any law for the time being in force or custom, uses etc. the Government by notification in official gazette declare in respect of any area from such date as may be prescribed that the ownership of all lands held by the protected tenants which they are entitled to purchase from the land holder in such area under the provisions of this chapter shall stand transferred to and vest in the protected tenant holding them and from such date the protected tenant shall be deemed to be full owners of such land. Section 38G speaks about the transfer of ownership of land to tenants from notified date declaring area from such date as may be specified that the ownership of all lands held by ordinary tenants which they are entitled to purchase from their landholders, shall stand/vest in such tenants as full owners of such land. As per Section 40 rights of tenants are inheritable.

25. The Act of 1950 came into force from year 1950 and for District Aurangabad effective date for Section 38E is 26.01.1956, whereas 11.07.1956 is date effective for Section 38F.

26. Thus, keeping in view the aims and objects of the Act, the facts of the case need to be considered and correctness or otherwise of order is required to be decided.

27. Carefully considered plea of rival parties, submissions made, case laws cited and documents placed on record.

ANALYSIS

28. Before dwelling upon application filed by Petitioner before the Tahsildar under Section 38G of the Act of 1950, it would be relevant to take note of the orders passed by this Court as well as Civil Court in respect of issue of tenancy as well tenancy being joint/ancestral of Basappa and his two brothers in respect of the writ land.

29. There is no dispute about the fact that Basappa was tenant in respect of writ land and that he had filed application under Section 19 of the Act before the Tahsildar raising objection to the alleged surrender of tenancy by him in favour of the land holder. Tahsildar as well as Sub Divisional Officer rejected the contention of

the tenant. Tenant, therefore, preferred an application being Misc. Civil Application No. 774/1971, wherein this Court has relegated the matter back to the Tahsildar for decision afresh. In the second round of litigation on this application under Section 19 of the Act, similar orders came to be passed by Tahsildar as well as the appellate authority. Being aggrieved by the said orders, Writ Petition No. 375/1985 was filed before this Court. This Court, by order dated 16.03.1990, decided the issue of surrender of tenancy in favour of the tenant. It would be material to take note of certain observations of this Court while passing the order impugned which read thus :-

“5. There are also Rules governing the surrender. Rule 7 of the Hyderabad Tenancy and Agricultural Lands Rules, 1958, provides as to how the Tahsildar should satisfy himself as to voluntary surrender of tenancy. For satisfying himself that the surrender is made voluntarily and in good faith, the Tahsildar shall secure the presence of the tenant, examine him on oath by putting him question to ascertain whether the tenant understands the nature and consequences of the surrender whether he has any objection to surrender and, thirdly, any other matter, which the Tahsildar deems necessary to know from the tenant. Sub-rule (2) of rule 7 further provides that the Tahsildar shall thereupon record his finding as to whether the surrender has or has not been made in good faith to his satisfaction.

6. These are the requirements of law regarding voluntary surrender made by the tenant. When the High Court directed to consider the surrender on merits, the authorities should have considered the merits on the basis of law prevalent in the year 1965, when the surrender was alleged to have been made. This stringent requirement is provided for regarding the surrender of lands since 1954 and the provisions continue to be same till today.

7. Neither the Additional Tahsildar nor the Revenue Tribunal has considered the surrender from this point of view at all. Instead of considering the surrender, they have considered the evidence regarding the surrender. From the record, I have seen the original surrender application and the endorsement of the Tahsildar on it. Though the application of surrender is verified by the Tahsildar, there is no endorsement or order regarding satisfaction of the Tahsildar as to voluntariness of the surrender. The rules regarding surrender prescribe that mere application of surrender and verification of it by and before the Tahsildar is not enough, but for surrender to be effective, the Tahsildar has to record his finding as to whether the surrender has or has not been made in good faith and to his satisfaction. This provision is made knowing fully well that most of the tenants are illiterates and are poor persons, have no knowledge of law and are

likely to be misled by the landlords or other persons. Therefore, it was for the Tahsildar himself to satisfy after explaining to the tenant regarding the nature and consequences of the surrender and further requirement is that he has still to satisfy himself. The satisfaction relates not only to the mode and manner of surrender, but basically, he has to consider whether the surrender is made in good faith. If, independently, he comes to the conclusion that the surrender is not in good faith, the fact of surrender by the tenant is irrelevant. I have seen from the original record the application of surrender and endorsement by the Tahsildar thereon. Except bare verification, there is nothing that is recorded by the Tahsildar, indicating that he had applied his mind to the question regarding good faith of the surrender of as to whether he has apprised the tenant of the consequences of the surrender.

10. In the result, I set aside the orders passed by Revenue Tribunal and the Deputy collector as also of Tahsildar holding surrender to be voluntary and legal. I hold that the surrender is not valid as per the provisions of section 19 of the Hyderabad Tenancy Act and the relevant rules. This petition is accordingly allowed. Rule made absolute. There will however be no order as to costs.

This order was not taken exception to by any party and as such this order has become final and is binding on the parties to the litigation. It also demonstrates that there was no surrender of tenancy by tenant in accordance with provisions of the Act.

30. Pursuant to the order passed by this Court, application was moved by tenant for seeking possession of the writ land. The concerned authorities handed over possession of the writ land to the tenant by drawing panchanama. Entry of the same was taken in the record of rights as other mutations. The said mutation reads thus :-

इतर फेरफार दिनांक 22/10/08	
अर्जदार अशोक बसप्पा पतगे यांनी दिलेल्या अर्जावरून नोंद घेण्यात येते की, उमरगा शिवारातील जमीन सर्वे नं. 158 क्षेत्र 9.10 चे 7/12 चे वहीती रकण्यात अर्जदाराचे नाव आहे. मंडळ अधिकारी उमरगा यांनी पत्र क. 1990/आर ओ आर/डब्ल्यू/653 दिनांक 23/8/90 चे आदेश नुसार 22/8/90ला एल आर तहसिलदार उस्मानाबाद यांचे हायकोर्ट निर्णयानुसार ताबा देणे योग्य अशा निर्णयानुसार अर्जदारास 15/8/90 रोजी सदर जमीनीचा ताबा देण्यात आलेला आहे. दि. 17/10/1992 ला डे. कलेक्टर उस्मानाबाद यांचेकडे व दि. 28/2/2003 ला अपर तहसिलदार एन सी उमरगा मुख्यालय उस्मानाबाद यांचे कोर्टात रामलिंग सिद्धमप्पा चोरगे यांनी अपील केली होते हे दोन्ही अपील इ नामंजूर फेटाळले केलेले आहे. सध्या सदर जमीन अशोक बसप्पा पतगे यांच्या ताब्यात आहे. तसा पंचनामा केलेला आहे. तरी अर्जदारांचे अर्जानुसार मागणी नोंद होणेसाठी व 7/12 ला त्यांच्या अंमल करणेसाठी नोंद घेउन	नेटीस तामीळ प्रतिबंधीत मालक म्हणून प्रस्तावीत नोंद मंजूर सही/- 18/12/08 मंडळ अधिकारी विभाग उमरगा

31. Land holder thereafter moved an application before the Additional Tahsildar for seeking re-possession of the land. This

authority, by passing order dated 28.02.2003 rejected the application filed by the land holder on the ground that the land holder has not filed any proceeding before the appellate Court for seeking possession of the writ land. It was therefore, held that the land holder is not entitled for possession of the same. There is no material on record to indicate that this order was challenged by the land holder. It is thus, clear that from 28.02.2003, the land holder has not taken any action against the tenant in respect of seeking possession of the writ land from him and the possession of land continued to remain with Petitioner and legal heirs of Basappa and Kashinath. Interestingly, though now Respondent No. 4 Ashok claims that he has no claim in respect of writ land, however, he does not dispute that Basappa, Mahadappa and Kashinath were real brothers and formed joint family.

32. In this backdrop, a dispute occurred between the legal heirs of Basappa, Mahadappa and Kashinath for the reason that name of Basappa only was mutated in the record as a tenant. Mahadappa, therefore, filed suit being Regular Civil Suit No. 5/2011 against Ashok Basappa and others for partition and perpetual injunction in respect of Gat No. 158. Trial Court, by passing

judgment and decree dated 18.02.2017 partly decreed the suit granting injunction but relief of partition was not granted. Being aggrieved by the said order, legal heirs of Kashinath filed Regular Civil Appeal No. 28/2018. In this appeal, settlement took place between the parties. Ashok Basappa, Respondent No. 4 herein, is also party to the said settlement. In view of the said settlement and decree passed by the Appellate Court, they were held to be joint tenants and entitled for share in the said property. This judgment and decree passed by the Appellate Court in Regular Civil Appeal No. 28/2018 has attained finality for want of any challenge thereto by parties to the said proceeding or any other person.

33. The aforestated undisputed facts therefore indicate that Basappa was tenant in respect of the writ land and the said tenancy was not individual tenancy of Basappa but it was joint family tenancy and a such Basappa, Mahadappa and Kashinath were tenants in respect of the same. It can therefore be said without hesitation that Basappa and his two brothers held the tenancy in respect of writ land. Thus, surrender of claim by any one person amongst others, like Ashok, Respondent No. 4, would be of no consequence on the right of tenants.

34. Record further indicates that since the name of Petitioner was not mutated in the record, an application was moved before the Tahsildar. The Tahsildar, instead of recording name of Petitioner, removed name of tenant from the 7/12 extracts and included name of the land holder and his legal heirs therein. This exercise done by the Revenue Authority sans decision of Authority under Act of 1950, is wholly impermissible in law. No legal consequences therefore can be attached to such entry taken in favour of legal heirs of land holder.

35. Petitioner moved an application for ownership certificate and determination of purchase price of the writ land under Section 38E of the Act of 1950. In the said proceeding, legal heirs of original land holder appeared and recorded no objection for issuance of ownership certificate in favour of the Petitioner. Similarly, no objection was raised with regard to determination of purchase price. Roznama recorded by Tahsildar indicates voluntary appearance of legal heirs of land holder in the said proceeding. The signatures of legal heirs of original land holder and also Ashok Basappa being party to the said proceeding and statements made therein confirm their appearance and conceding to pass appropriate order as sought

by Petitioner. In the said proceeding certificate of ownership was sought in the name of legal heirs of Basappa, Mahadappa and Kashinath. This application came to be allowed by the Tahsildar by passing order dated 06.06.2016. It would be relevant to take note of the observations made by Tahsildar while passing the said order which read thus :-

आदेश

1. तिन्ही अर्जदाराचे विनंती अर्ज कुळ कायद्याचे कलम 38(ग) प्रमाणे मंजूर करण्यात येतात.
2. हैद्राबाद कुळ वहिवाट आणि शेतजमीन अधिनियम 1950 चे कलम 38(4) आणि 50(क) प्रमाणे जमीनीची किंमत अधिक बांधकाम, विहीरी आणि झाडे वगैरेची वाजवी किंमत रु 1,26,000/- (अक्षरी एक लाख सत्वीस हजार) ठरविण्यात येते व ही रक्कम तिघांनी मिळून वाषीक आठ हप्ते म्हणजेच प्रत्येक वर्षी रु 15,750/- ही रक्कम चलनाद्वारे भरणा करावी वरील झाडे, बांधकाम वगैरेची किंमत मंडळ अधिकारी उमरगा यांचे दिनांक 18/4/2016 रोजीच्या पंचनाम्यातील किंमतीप्रमाणे आहे.

3. संपूर्ण रक्कम भरणा केल्यानंतर हैद्राबाद कुळ वहीवाट आणि शेत जमीन अधिनियम 1950 चे कलम 38(6) प्रमाणे विहीत नमुना फॉर्म नं 13 व तिन्ही अर्जदारांच्या नावे मालकी हक्काचे प्रमाणपत्र देण्यात येईल.

4. पक्षकारांना कळवा व संचिका अभिलेख कक्षात वर्ग करा.

36. At this stage, it would be relevant to take into consideration provisions of Section 38G of the Act of 1950. As per this provision, once notification has been issued in the official gazette declaring in respect of any area from such date as may be specified in such notification the ownership of the land holder by ordinary tenants which they are entitled to purchase from other land holders in such area under any of the provisions of this Chapter shall stand transferred to and vests in such tenants and from such date such tenants shall be deemed to be owners of such land. As observed hereinabove, there is no dispute about the fact that the Petitioners along with legal heirs of Basappa and Kashinath is tenant in respect of the writ land. In view of this provision, they are deemed to be full owners of such land and that no formal declaration is required in that regard. Only option which was available for the land holder or

any other person claiming right as a tenant or protected tenant as the case may be was to have filed application before the Tahsildar within a period of one year from the date of commencement of this Act. Admittedly, no such application has been filed either on behalf of the land holder or any other person within this statutory period. In the proceedings for issuance of declaration, it would not be open for the land holder to raise any other issue in respect of tenancy of the Petitioner. In so far as the right of deemed owner to purchase the land is concerned, as provided by Section 38 of the Act of 1950, there is no time limit prescribed for making such application. In view of provisions of Section 38G, since the tenant shall be deemed to be full owner of such land, it is immaterial as to the time at which such purchase price is sought to be fixed. Even otherwise, while fixing the purchase price the authority was required to only enquire into the issue with regard to the price as provided therein. In so far as this issue is concerned, land holder by recording no objection to grant certificate and by not taking exception to the reasonable price determined by the Tahsildar, said issues were not open for the land holder or his legal heirs to agitate in any proceeding before the higher authorities. Perusal of Section 38 of the Act of 1950 does not contemplate enquiry into any other aspect, for determination of price

and as to the fact of family holding within permissible limit. Here in this case, no such case ever was sought to be made out by the original land holder before Tahsildar. As a result of this, there was no issue before the Tahsildar for determination of tenancy of Petitioner and others so also entitlement of the Petitioner to get purchase price determined and to get certificate of ownership. Consequently, question of posing those issues before the Collector or MRT do not arise.

37. Record indicates that at no point of time, legal heirs of land holder have claimed that the order of Tahsildar has been obtained by fraud. The appearance before the Tahsildar is not denied, nor it is a case made out that the statements recorded by the said authority were in fact not made. In absence of any such case being made out, it is not open for these Respondents to challenge the order of Tahsildar. It is further pertinent to note that the proceedings were initiated before the Tahsildar in the year 2013 and the order came to be passed in the year 2016. Thus, this is not a case wherein the Tahsildar has passed order in haste or without considering the contentions of the land holder.

38. Above order passed by the Tahsildar clearly indicates that before this authority the legal heirs of the original land holder recorded no objection for issuance of ownership certificate so also no objection was raised with regard to the computation of purchase price. However, they preferred appeal under Section 90 of the Act of 1950 before the Deputy Collector (Administration), Osmanabad. This appeal came to be filed by taking exception to the status of the Petitioner as tenant of the writ land. In the appeal, it was contended that there is no entry in the revenue record indicating Petitioner or his predecessors are continuously tenants for a period of six years. It is however, not disputed even in this appeal that from 1958-1961, name of Basappa, father of Respondent No. 4, was reflected in the record. As far as name of the Petitioner is concerned, there is allegation that the said name has been inserted in the record by way of fabrication. It is also further sought to be contended that the occupier of the writ land of the year 1951 was shown as Babu Helikar. Objection was also sought to be raised with regard to the possession of the predecessor of Ashok over the writ land. In this regard, reference has been made to the orders passed by the authorities on the application filed by the predecessor of contesting Respondents. It is specifically averred in the memo of appeal that the

consent letter obtained from legal heirs of original land holder is illegal and the same is obtained by luring them with money.

39. Perusal of the memo of appeal and the case sought to be made out before the Deputy Collector indicate that the contesting Respondents have tried to take exception to the status of the tenant of the Petitioner or his predecessor for first time in this appeal. There is no dispute made with regard to the fact that consent was given by the legal heirs of land holder before the Tahsildar in the proceeding for obtaining ownership certificate and for determination of purchase price. Once it is not a case of the legal heirs of the original land holder that consent obtained from them is by force, coercion etc, it is not open for them to retract from the same. Though in the appeal the issue of determination of purchase price was sought to be raised, however, before the Tahsildar, no such objection was raised and infact, the amount determined by the Tahsildar was practically accepted by the legal heirs of the land holder.

40. The Deputy Collector, by order dated 02.03.2020, dismissed the appeal against which, revision was preferred before the MRT. In the revision also, same issues were raised as sought to be

raised before the Deputy Collector. The Tribunal has gone into the issue with regard to the tenancy of the Petitioner or his predecessor. The question arises as to whether it was open for the Tribunal to go into the said issue and to record any finding thereon. Owing to the provisions of Section 38E of the Act of 1950, the issue before the Tahsildar and consequently issue before the appellate authority so also revisional authority would be with regard to the determination of purchase price. In so far as the status of the parties of tenancy is concerned, the issue could not have been gone into. As observed hereinabove by referring to the provisions of Section 35 that any dispute with regard to the status of tenant whether ordinary or protected, ought to have been raised by the land lord or even by any other person claiming tenancy within one year from the date of commencement of the Act. Once no such issue was raised within period of limitation, the said issue is not open for agitation in other proceeding. The MRT has decided the revision as if it was undertaking revision against the order passed under Section 35 of the Act determining the objection to the status of the tenant. Even otherwise, the MRT has dealt with the issues and the documents sought to be placed on record which were not dealt with by the authorities below. In exercise of revisional powers, it was not open

for the MRT to undertake said exercise and to practically hold that the Petitioner or his predecessors are not tenants of the writ land.

41. Now, question arises as to whether it is a fit case for relegating the matter back to the authorities below for the purpose of determination of the issues afresh. Having regard to the provisions of Section 38G and the mandatory provision of prescribing period of limitation of one year for challenging the status of the tenant, it would not be open for the authorities to go into the said issue at this stage. As in this case, there is order of this Court accepting the surrender of tenancy by the predecessor of the Petitioner to be not valid and pursuant thereto the possession of the land has been handed over to them, the question of going into that issue in the proceeding under Section 38G of the Act of 1950 does not arise. Hence, no purpose would be served by relegating the matter back either to the Tribunal or to the authorities for reconsideration of the same. One more reason for not doing so is that there is consent recorded by legal heirs of land holder before the Tahsildar. The said consent has not been obtained by force or coercion nor any fraud is alleged to have been played therein. Contesting Respondents are therefore precluded now to claim that the said consent is not binding

on them. It was open for them to contest determination of purchase price of the land before the Tahsildar. This opportunity was not availed by them and as such, this amounts to waiver on their part to take exception to determination of price by the Tahsildar.

42. Apart from this, since no specific case has been made out by the Respondents about excess holding of the Petitioner, the question of getting into the said issue also does not arise. It is pertinent to note that the Deputy Collector in its order has specifically recorded finding that the tenants have no other land and source of income except for the writ land. There is no specific challenge raised by the contesting Respondents to this finding. In the result, this is not a fit case for relegating back the matter for rehearing before any authority.

43. Before parting, it needs to be recorded in unprecedented manner, Naib Tahsildar in reply to this petition has taken stand contrary to the order passed by Tahsildar, which came to be set aside by MRT. The said affidavit however being not in consistence with the position of law, deserves to be kept out of consideration. Similarly, statement made by Ashok, Respondent No. 4, about he having no

interest in the writ land is not bonafide. During course of hearing, this Court is informed that Ashok is party to the sale-deed executed by legal heirs of land holder in favour of third party. If Ashok had no concern about the land or not tenant thereof, there was no reason/question of he being party to the said sale-deed. In any case, having regard to the previous litigation, and more particularly, order passed by this Court in Writ Petition No. 375/1985 and compromise decree passed in Regular Civil Appeal No. 28/2018, the contention of Respondent No. 4 deserves to be rejected. The contention of the purchaser deserves no consideration as the said third party is bound by the order passed against the land holder.

44. As a result of above discussion, the order impugned passed by MRT being not in accordance with law and hence not sustainable. Impugned order dated 20.12.2021 passed by the Tribunal is set aside. Order passed by the Tahsildar dated 06.06.2016 stands restored. Petition, therefore stands allowed in terms of prayer clause A.

(R. M. JOSHI)
Judge

dyb

LATER ON :

1. After pronouncement of judgment, learned counsel for Respondent No. 5 seeks stay to the order passed by this Court for a period of eight weeks to approach the Hon'ble Supreme Court.
2. Learned counsel for the Petitioner opposes the said request.
3. It is right of the party to take exception to the order passed by any Court into the higher Court.
4. Hence, order passed by this Court stands stayed for a period of six weeks from today.
5. Interim relief granted by this Court to continue for a period of six weeks.

(R. M. JOSHI)
Judge

dyb