



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

WRIT PETITION NO.2224 OF 2018

Devidas Krishna Surwase
Since deceased through L.R's

1. Smt. Shivkanta W/o Devidas Surwase
Age: 72 years, Occu. Agri,
R/o: Bhandari, Tal. & Dist. Osmanabad
 2. Prema W/o Mhadeo Godse
Age: 52 years, Occu: Household,
R/o: Loni Kalbhor, Tal. & Dist. Pune
 3. Balaji S/o Devidas Surwase
Age: 42 years, Occu: Agri.,
R/o: Loni Kalbhor, Tal. & Dist. Pune
 4. Anjali W/o Shahu Mane,
Age: 37 years, Occu: Household
R/o: Loni Kalbhor, Tal. & Dist. Pune.
 5. Nanasaheb S/o Devidas Surwase
Age: 32 years, Occu: Agri.,
R/o: Bhandari, Tal. & Dist. Osmanabad
 6. Pachubai Shahaji Magar
Age: 52 years, Occu: Household
R/o: Shindewadi, Tal. & Dist. Osmanabad
- ...Petitioners

Versus

Haribhau S/o Maruti Murumkar
Since deceased through LR's

1. Balika Haribhau Shinde
Age- Major, Occu- Nil.
R/o. Bhandari, Tal. & Dist. Osmanabad
 2. Sonali Haribhau Shinde
Age- Major, Occu- Nil.
R/o. Bhandari, Tal. & Dist. Osmanabad
 3. Kuldip Haribhau shinde
Age- Major, Occu- Nil.
R/o. Bhandari, Tal. & Dist. Osmanabad
- ...Respondents

.....
Mr. Avinash Khande, Advocate h/f Mr. Manoj Shinde, Advocate for
Petitioner

Mr. P. K. Deshmukh, Advocate for Respondent

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CORAM : MANJUSHA DESHPANDE, J.
RESERVED ON : 22nd JANUARY, 2025
PRONOUNCED ON : 17th FEBRUARY, 2025

ORDER :

1. Petitioner is challenging the order dated 06/02/2015, passed by the Member, Maharashtra Revenue Tribunal, Aurangabad, in case No.51/B/2001/O, thereby rejecting the revision application filed by petitioner under Section 91 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as 'the said Act') challenging the order dated 29/04/2002, passed by the Deputy Collector (L.R.), Osmanabad, in case No.2001/TNC/WS/634.

2. Brief facts of the litigation between the parties are as under:-

Land admeasuring 6 Acre 39 Gunthe in Survey No.49/1 at village Bhandari, Taluka and District Osmanabad, was declared as tenancy land and father of petitioner Krishna Narsu Surwase was declared as protected tenant over the said land under Section 38E of the said Act. Certificate to that effect was issued in favour of Krishna Surwase on 07/02/1958. The owner of the land was one Govind Bali Murumkar. Petitioner submits that though the declaration and certificate was issued in favour of Krishna Surwase on 07/02/1958, the original owner never challenged the same. Krishna Surwase had lost the possession of the above land when the declaration was made. Thereafter, the Tahsildar conducted further

inquiry and assessed the value of land and granted ownership rights in favour of Krishna Narsu Surwase by order dated 24/10/1960. By the same order Tahsildar had also directed eviction of Govind Bali and directed to handover possession of land to Krishna Narsu Surwase. However, Govind Bali did not vacate the suit premises. Hence, the Tahsildar in file No.L.R. 156/1961 issued notices to Govind Bali as well as Krishna Surwase. Still there was no compliance of the order of eviction dated 24/10/1960.

3. In the meanwhile, protected tenant Krishna Surwase passed away and the Naib Tahsildar (L.R.) by order dated 23/05/1964 directed that petitioner Devidas Krishna Surwase, who is legal heir of Krishna Surwase, to be put into possession. Even the said order was not complied by the land owner and there was failure to deliver possession to the petitioner.

4. In spite of order of the Tahsildar the original land owner Govind Bali did not hand over the possession. Further in collusion with the revenue authorities Govind Bali in the year 1976 got Mutation Entry No.238, entered on the basis of partition to the share of respondent herein i.e. Haribhau Maruti Murumkar. In the meanwhile, the Tahsildar issued notice to Krishna Surwase for non-payment of purchase price. In reply to the notice, petitioner Devidas Surwase who is legal heir of Krishna Surwase filed application explaining that, since he had lost possession of the land which continued with the original land owner Govind Bali, the purchase

price could not be deposited. Wife of Devidas Surwase filed application seeking permission to deposit the amount of reasonable price of the land fixed by Tahsildar.

5. It is the contention of petitioner that he has also filed applications on 21/12/1998, 28/12/1998 and 04/01/1999 seeking permission to deposit the price of the land. It is further submitted that, the Additional Tahsildar, Osmanabad, without considering the applications filed by petitioner and the fact that since his possession was not restored, he did not deposit the purchase price, concluded the inquiry, by order dated 10/03/1999, holding that declaration of ownership right of protected tenant Krishna Surwase has become ineffective and thereby he has forfeited his right to purchase the land.

6. The Additional Tahsildar, vide order dated 10/03/1999 relying on Section 38(5)(b) of the 'said Act', held that the reasonable price is required to be deposited in installments not exceeding eight years and in the present case since it is not paid within eight years, the purchase is not effective as provided under Section 38(6)(d) of the said Act. Hence, the applicant forfeits the right of purchase. It was observed that, Krishna Surwase was declared as owner of the land under Section 38E of the said Act, and reasonable price was also fixed at Rs.600/- to be paid in ten equal installments. However, Krishna Surwase and his legal heir i.e. petitioner have failed to deposit the reasonable price for more than

30 years. Therefore, considering the default it was declared that the protected tenant forfeited his right of purchase.

7. Being aggrieved by the order dated 10/03/1999, petitioner preferred appeal before the Deputy Collector, Land Reforms, Osmanabad, who by his order dated 21/10/2000, directed the Tahsildar (TNC) to hold inquiry under Section 38E (Explanation) of the said Act. Pursuant to the order dated 21/10/2000, the petitioner filed application before the Tahsildar, who conducted inquiry and passed order on 09/02/2001 holding that the reasonable price of Rs.1150/- is already paid vide Challan No.39 on 12/01/1999, there is no impediment to issue ownership certificate as per rules in favour of applicant Devidas. The Additional Tahsildar has directed to issue ownership certificate as prescribed under Section 22 of the said Act, in respect of suit land in favour of petitioner.

8. The respondent herein preferred two separate appeals before the Deputy Collector, Land Reforms, Osmanabad. One appeal was preferred against the order dated 09/02/2001 passed by Additional Tahsildar, Osmanabad, directing to issue ownership certificate and the other was challenging the Tenancy certificate issued by the tenancy authority in favour of ancestor of the petitioner on 07/02/1958. The Deputy Collector, by way of common judgment and order dated 29/04/2002 allowed both the appeals and quashed and set aside the impugned orders.

9. In the meanwhile, respondent had also filed Revision

before the Maharashtra Revenue Tribunal, Aurangabad, challenging the order passed by Deputy Collector (L.Rs.), dated 21/10/2000, in file No.99/TNC/A/16, directing Tahsildar to hold inquiry under Section 38E (1) Explanation of the said Act. Simultaneously, being aggrieved by the common judgment and order passed by the Deputy Collector (L.R.) on 29/04/2002, petitioner preferred revision application bearing Appeal No.51-B/2002 before the Maharashtra Revenue Tribunal, Aurangabad. During pendency of the Revision the petitioner expired on 11/07/2003, therefore, the legal heirs of petitioner have conducted further proceedings. Considering that both the Revision Applications were in respect of same tenancy land, both the revision applications were decided by the MRT simultaneously and has passed separate judgment in the above Revisions on 06/02/2015. So far as revision application filed by respondent is concerned, it was disposed of as infructuous. According to the petitioner the Revision Application filed by petitioner is dismissed without assigning proper reasons and contrary to the provisions of the 'said Act'.

10. The learned advocate for petitioner submits that owner of the land has challenged the tenancy certificate issued in the year 1958 in favour of petitioner in the year 2001, hence, it was not challenged within reasonable time. Therefore, the Deputy Collector should not have entertained the application of the owner on that ground alone. It has also not been taken into consideration by the

MRT as well as Deputy Collector, that when petitioner was declared as Protected Tenant, in spite of orders of eviction passed against the owner he has failed to hand over the possession of the land to petitioner. Hence, he could not deposit the reasonable price which was fixed for the land.

11. While dismissing the Revision Application, the MRT has observed that ownership certificate was issued in favour of father of the petitioner on 07/02/1958, and the price was also determined. Relying on the proceedings initiated under Section 38E (1) Explanation, it is observed that petitioner had appeared before Tahsildar and stated that his father has cultivated the land for only one year and thereafter relinquished possession of the land in favour of owner of the land i.e. Govind Bali, and has declined to accept the possession and pay the reasonable price.

12. Learned advocate for petitioner, in order to counter the above observations has drawn my attention to the Panchanama dated 26/09/1964. According to him observations made by the MRT are contrary to the Panchanama conducted by Naib Tahsildar, Camp Osmanabad. He places reliance on the observation in the Panchanama wherein it is recorded that, the petitioner was called for handing over the possession from the original owner Govind Bali, but he was not present on the spot for handing over the possession. Learned advocate for petitioner submits that in the Panchanama it is stated that owner Govind Bali is not present and applicant is

present, and he has refused to take possession, therefore, the possession could not be handed over. The MRT has wrongly observed that petitioner has declined to accept the possession and failed to deposit the reasonable price of the land. Hence, the findings recorded by the MRT as regards to refusal to deposit the reasonable price is contrary to the record. There is no such denial to deposit fixed price on record.

13. According to learned advocate for petitioner, in the present case, the purchase price is already fixed on 24/10/1960, and the statement is recorded before the Tahsildar on 26/09/1964, therefore, the case law relied upon by the MRT is not at all applicable to the facts of the present case. Hence, the purchase does not become ineffective.

14. According to learned advocate for petitioner merely preparing the document of surrender under Section 19A(1) is not sufficient compliance but the procedure prescribed under Section 19A(2) of the said Act is also required to be followed by the Tahsildar, which reads thus:

“19A. Lands or portion thereof which landholder is not entitled to retain on surrender to be declared as surplus:

(1) Subject to the provisions of this section, where a tenancy is terminated by surrender under clause (a) of sub-section (1) of section 19, the landholder shall be entitled to retain so much only of such land as will prevent the total area which he cultivates personally,

whether as owner or tenant, or both from exceeding three family holdings.

(2) The Tahsildar shall hold an inquiry and declare whether the whole, or what part (if any) of the land surrendered the landholder is entitled to retain under sub-section (1), and notwithstanding anything in that sub-section, he may adjust by reduction or increase the area of any such part to be retained, but only so as to ensure that such part is not a fragment within the meaning of the Hyderabad Prevention of Fragmentation and Consolidation of Holdings Act, 1956 (Hyd. Act No.XL of 1956). The Tahsildar shall declare any land surrendered which the landholder is not entitled to retain under the provisions of aforesaid, to be surplus land."

15. Hence, after due inquiry which is contemplated under Section 19A(2), the Tahsildar is required to declare, any land which he is not entitled to be retained under the provisions of the said Act, to be surplus land. In the present case, according to learned advocate for petitioner no such exercise has been undertaken by the Tahsildar. Hence, reliance placed on the surrender as well as panchanama is misplaced.

16. It is observed by the MRT in the impugned order that since purchase has become ineffective the applicant does not have any right to claim ownership well as possession over the land. Therefore, the MRT has refused to interfere with the order passed by the Deputy Collector (L.R.) cancelling order for issuance of

ownership certificate passed by the Additional Tahsildar on 09/02/2001.

17. So far as the issue regarding challenge to the certificate dated 07/02/1958 is concerned, according to him, there is no delay condonation application filed along with the application challenging the issuance of certificate. Therefore, the order passed by Deputy Collector in the said appeal is contrary to the law. However, considering that the purchase has become ineffective the certificate dated 07/02/1958 becomes inconsequential. Hence, the revision has been dismissed.

18. In view of aforesaid background of the facts the judgment and order passed by the MRT is challenged by the petitioner. The question raised in the present writ petition is whether the sale in respect of land of which the petitioner has been declared as Protected Tenant, has become ineffective?

19. Section 38 provides for mechanism of purchase of land by the Protected Tenant. Protected tenant is defined under Section 2(r) of the said Act, which reads thus:-

“Protected tenant means a person who is deemed to be a protected tenant under the provisions of Sections 34 to 37A.”

The rights of the protected tenant are provided in Chapter 4 of the said Act. According to Section 34, a person shall, subject to the provisions of sub-sections (2) and (3), be deemed to be a protected tenant in respect of the land if he has held such land as a tenant

continuously (i) or a period of not less than six years, being a period wholly included in the Fasli years 1342 to 1352 (both years inclusive); or (ii) for a period of not less than six years immediately preceding the 1st day of January, 1948; or (iii) for a period of not less than six years commencing not earlier than the 1st day of Fasli Year 1353 (6th October, 1943), and completed before the commencement of this Act. Therefore, the persons who are in possession of the land for not less than six years immediately preceding 1st January, 1948, and is in possession and cultivating the land is declared to be a Protected Tenant.

20. A provision by way of an amendment to Section 37A has been added, which provides that, person holding land as tenant at the time of coming into force of the said Act, shall be deemed to be Protected Tenant, if the total area of the land owned by the landholder including the land under the cultivation of his tenants is more than three times the area of a family holding.

21. Section 38 (2) provides that protected tenant who desires to exercise the right conferred by sub-section (1) shall make an offer to the landholder stating the price which he is prepared to pay for the landholder's interest in the land up to fifteen times for dry lands or eight times for wet lands irrigated by wells and six times of wet lands irrigated by other sources, of the rent payable by him, and where he is not entitled to purchase the whole of the land, the portion thereof which he is entitled to purchase.

22. Sub-section 3 of the Section 38 provides that if the landholder refuses or fails to accept the offer and to execute a sale deed within three months from the date of the offer, the protected tenant may apply to the Tribunal for the determination of the reasonable price of the land.

23. Therefore, once there is declaration as Protected Tenant and he offers a particular price to the landholder and the landholder refuses to accept the offer and execute the sale deed within three months of the offer, the tenant has right to apply to the Tribunal for determination of reasonable price.

24. Upon serving notice to landholder the Tribunal shall determine reasonable price after taking into consideration landholder's interests in the land not exceeding the maximum multiple of rent provided in sub-section (2) in conformity with such rules as may be prescribed.

25. It is further provided that protected tenant shall deposit the fixed price in the Tribunal (a) in lumpsum within the period fixed by Tribunal or (b) in such installments not exceeding 16 and at such intervals during a period not exceeding 8 years. On deposit or recovery of the entire amount of reasonable price by the tenant, Tribunal issues certificate in prescribed form to the protected tenant declaring him to be the purchaser of the land and such certificate shall be conclusive proof of the sale as against landholder.

25. Section 38(6)(b) provides that if a protected tenant is

permitted to pay the reasonable price in installments under sub-section (5), interest at the rate of 3% per annum shall be payable by him in respect of the balance of price due and if he commits default in respect of any installment, the same may be recovered by the Government as arrears of land revenue.

26. There are two conditions provided under Section 38(6) (b). One is, the purchase price is permitted to be paid by the tenant in installment and the other is if he commits default, the amount is to be recovered as arrears of land revenue. Therefore, even if the tenant fails to deposit the installment of the price fixed which is payable by him, the same is required to be recovered from him by the Government as arrears of land revenue. Section 38(6)(b) and (d) reads thus:

“(b) If a protected tenant is permitted to pay the reasonable price in installments under the provisions of sub-section (5), interest at the rate of three per cent per annum shall be payable by him in respect of the balance of the price due and if he commits default in respect of any installment the same may be recovered by the Government as arrears of land revenue.

(c)

(d) If the protected tenant fails to pay the entire amount of the reasonable price within the period fixed under sub-section (5), or the same is not recovered from him, the purchase by the protected tenant shall not be effective and he shall forfeit the right of purchase of the land, and the amount paid by him towards the reasonable price shall be refunded to him with interest at three per cent per annum together with land revenue paid by him if any after deducting therefrom the rent due from him for the period: Provided that if the amount of reasonable price in respect of which the protected tenant has committed default, does not exceed one- fourth of the price fixed by the Tribunal under

sub-section (5), the right of purchase of the protected tenant shall not be forfeited and the Tribunal shall cause the balance of reasonable price to be recovered as arrears of land revenue and paid to the landholder.”

27. Section 38(6)(d) provides that, if a protected tenant fails to pay the entire amount of reasonable price, within the period fixed under sub-section 5 or the same is not recovered from him, the purchase by the protected tenant shall not be effective and he shall forfeit the right of purchase of the land and the amount paid by him towards reasonable price shall be refunded to him with interest at the rate of 3% per annum. Therefore, there are two conditions which are required to be fulfilled before the sale becomes ineffective.

28. It is the contention of petitioner that finding recorded by the MRT is contrary to the provisions of law, by relying on the Panchanama wherein petitioner is alleged to have declined to take possession, the MRT has come to conclusion that by refusing to take possession, the sale has become ineffective, this finding is contrary to Section 38(6)(d). The MRT has not taken into consideration all orders passed by subordinate Courts / Officers and cursorily passed cryptic order rejecting the revision filed by petitioner.

29. Learned advocate for petitioner submits that, it is not within the powers of Additional Tahsildar to declare purchase of the land of protected tenant to be ineffective in pursuance to Section 38(6)(d) of the said Act. In the *suo moto* proceeding initiated by the Additional Tahsildar notice was issued to protected tenant on

29/09/1998 for giving reason for non-payment of reasonable price of the land and the date was fixed for hearing of the matter. During pendency of proceeding itself the protected tenant has filed application to allow the legal heirs of protected tenant to deposit the reasonable price of suit land with a prayer to issue ownership certificate. Therefore, it was not within the powers of Additional Tahsildar to pass an order declaring the purchase to be ineffective and thereby forfeiting the petitioner's rights of purchase.

30. Learned advocate for petitioner relies on the decision of this Court in case of ***Ganpat Sakharam Deshmukh vs. Yeshwant Digambar Deshmukh, reported in 2000(1) Mh.L.J. 126***, wherein it has been categorically held by this Court that for declaring the transfer of ownership in favour of protected tenant under Section 38E of the said Act, ineffective two conditions are required to be fulfilled i.e. (i) tenant commits default in payment of entire purchase price; (ii) inspite of proceedings for recovery, the purchase price could not be recovered from tenant, as arrears of Land Revenue. It is also held that Section 38E provides that statutory right of ownership is automatically conferred from the date notified by the Government in favour of protected tenant. There is no role assigned to the landholder except to apply for fixation of reasonable price, to make transfer under Section 38E effective. Provisions of Sub-section(3) of the said Section alone will

apply and the provisions of clause (d) of Sub-section (6) of Section 38 do not come into play at all. Hence, while concluding the reference it was held that, for declaring the purchase under Section 38E of the said Act ineffective, two conditions are essential: (i) tenant commits a default in payment of entire purchase price; and (ii) inspite of the proceedings for recovery the entire price amount could not be recovered.

31. Therefore, it is the contention of petitioner that even if the protected tenant fails to deposit the entire purchase price fixed, steps are required to be taken by the Government to recover the amount, and only on failure to recover the amount as arrears of land Revenue, the purchase becomes ineffective. In the present case, no such steps for recovery have been taken by the Government for making purchase ineffective. Hence, the case of petitioner is squarely covered by the above judicial pronouncement, which is not at all taken into consideration by the Additional Tahsildar while passing the impugned order. Therefore, the order dated 10/03/1999, passed by Additional Tahsildar, Osmanabad, in file No.1998/TNC /WS/140 10/03/1999 declaring the purchase ineffective, also needs to be quashed and set aside.

32. Learned advocate for petitioner further submits that while considering the issue of purchase becoming ineffective, the MRT has not taken into consideration the orders passed by the subordinate authorities and it's validity in it's proper perspective. The

reliance placed by MRT on the case law cited by respondent **Hanmantrao Vithalrao** (supra) is totally misplaced for the reason that the same was passed by Single Judge of this Court and later on the issue was referred to the Division Bench and while answering the issue Division Bench has given the finding that two conditions are required to be fulfilled for the purchase becoming ineffective.

33. The other order which was challenged before the Deputy Collector was the order dated 09/02/2001, passed by Additional Tahsildar in File No.2000/TNC/WS/139, wherein after remand of the matter back to the Additional Tahsildar for initiation of proceedings under Section 38E(1) Explanation of the said Act, order came to be passed considering that the applicant was declared protected tenant under Section 38E of the said Act. It is observed that the legal heir of deceased tenant had deposited reasonable price of the suit land of Rs.1150/- in the State Bank of Hyderabad, through Challan No.39, on 12/01/1999. It was held that there is no impediment in issuing ownership certificate as per the Rules and directed to issue ownership certificate in prescribed form under Section Rule 22 of the said Act.

34. While passing the order dated 29/04/2002, the Deputy Collector has observed that since the protected tenant has failed to deposit the purchase price within time, by order dated 10/03/1999, purchase of the suit land was declared to be ineffective as provided under Section 38(6)(d) of the said Act. Which was challenged by the

protected tenant before the Appellate Court which was dismissed on 21/10/2000, against which the tenant has not preferred any appeal before the competent Court. Therefore, the order declaring the purchase of the suit land ineffective has attained finality.

35. Though the order declaring purchase to be ineffective issued by the Additional Tahsildar was challenged before the Deputy Collector, and it was dismissed, however, while dismissing the Appeal the Deputy Collector had granted liberty for filing proceedings under Section 38E(1) Explanation. It is only on account of the declaration of purchase of suit land to be ineffective, the order dated 09/02/2001 directing issuance of ownership certificate under Section 22 of the said Act, has not been upheld by the Deputy Collector as well as the MRT.

36. Per contra, learned advocate appearing for respondent opposes the writ petition contending that protected tenant Krishna Surwase was not at all in possession of the suit land. The Tahsildar initiated proceedings and issued notice against deceased Krishna in respect of Survey No.49/1, however, the petitioner had given statement that his father was protected tenant who had died before four years and he was declared as owner of the suit land. Since his father cultivated the suit land only for one year prior to seven to eight years, he was not interested in the suit land. He had surrendered his right to owner Govind Bali. Since then owner Govind Bali is cultivating the land. He further stated that he being only son

of Krishna Surwase, is not interested in the land as he himself owns 9 Acres land at village Bhandari, which is sufficient. He had further stated that he did not have agricultural equipments or bullocks for carrying out agricultural operations. He has expressed his inability to deposit the purchase price of the land and thereby surrendered his rights in respect of the suit land. The statement of petitioner was recorded before Naib Tahsildar (N.T.L.R.), Camp Bhandari, on 11/03/1964, who thereafter passed order dated 23/05/1964, declaring to restore the possession of suit land in favour of petitioner. The Naib Tahsildar had also prepared panchanama by following due procedure on 26/09/1964 for restoring possession of suit land in favour of petitioner who had refused to take possession in the presence of panchas, and has surrendered his legal rights in favour of original owner Govind Bali.

37. According to Mr. P. K. Deshmukh, learned advocate appearing for respondent, the petitioner has denied the surrender of suit land and is contending that the authorities have failed to deliver possession which is contrary to the documents produced on record. He further contends that the petitioner is suppressing material facts from this Court and on that ground alone the writ petition deserves to be dismissed. It is his contention that once having surrendered his right by refusing to take possession in the year 1964, his rights are extinguished and he cannot reopen the proceedings for issuing ownership certificate after 34 years.

38. Learned advocate for respondent further contends that, as per Section 38(5)(b) amount of reasonable price is to be deposited in installments not exceeding 8 years. The reasonable price of the suit land was fixed at Rs.600/- in the year 1959 to be paid in 10 equal installments. Since the protected tenant has failed to deposit the reasonable price in time, in view of Section 38(6)(d) the purchase has become ineffective and petitioner has forfeited his right to purchase. Therefore, in view of the provisions of law, the order passed by Additional Tahsildar rejecting application of petitioner on 10/03/1999 is just and proper.

39. It is his contention that the purchase price of tenancy land was already declared in the year 06/09/1959. Therefore, the subsequent application for depositing the purchase price under Section 38(6) was not tenable. Hence, the order passed by the Additional Tahsildar directing to issue ownership certificate under Section 22 does not deserve consideration. According to him, order passed by MRT is just and proper, hence does not deserve interference.

40. The learned advocate for respondent Mr. P. K. Deshmukh, has relied on ***Hanmantrao Vithalrao Vs. Bhimrao and Others, 1983 Mh.L.J. 434***, in support of his contention that purchase of the land by protected tenant has become ineffective, since the protected tenant has made statement before the competent authority that he does not want to purchase the land. In

support of his submission he relied on the observations in the judgment supra, wherein it is observed that protected tenant at the stage prior to fixing of price can make statement before competent authority that he does not want to purchase the land and on such statement being made the purchase becomes ineffective.

41. Learned advocate for respondent places reliance on the decision of this Court dated 08/03/2010 passed in Writ Petition No.4949/2000 (*Gajmal Ringamali Patil Vs. Damodar Avadhut Deshmukh*), in support of his contention that when protected tenant refuses to purchase the land, statutory purchase becomes ineffective. The power of MRT to resume and dispose of the land which is not purchased by tenant can be exercised suo moto or on application of the landlord. According to him, High Court can only exercise jurisdiction to the extent of scrutinizing whether the impugned judgment suffers from vice of arbitrariness or perversity or is rendered without there being any material to infer that statutory purchase had become ineffective. The High Court cannot re-appreciate evidence as it is outside the scope of Article 227 of the Constitution of India.

42. Further reliance is placed on ***Ramchandrahashadalvi (Deceased) Through LRs. Vs. D. Patwardhan***, reported in **1999 AIR(SC) 2039**, wherein in similar facts it is observed that tenant once having surrendered his rights voluntarily cannot again approach the authority contending that the statement was not

voluntarily. The application was rejected by the Agricultural Lands Tribunal holding that at that stage evidence could be led only with respect to proceeding under Section 32-F of the Act and the statutory sale in favour of tenant having become ineffective the landlord was entitled to be put in possession of the land.

43. I have heard the respective counsel for the parties, after hearing learned advocate for petitioner as well as respondent, it is apparent that order was passed by the Deputy Collector, Osmanabad, on 24/10/1960, wherein it is observed that in spite of directions issued by the Collector under Section 98 of the said Act, to the original owner Govind Bali who was occupying the suit land to hand over the possession to Krishna Surwase, it has not been followed and implemented.

44. It is not disputed that Krishna was declared as protected tenant and he was not handed over the possession of tenancy land. Therefore, order came to be passed by the Deputy Collector, Osmanabad, on 24/10/1960. Even on 23/05/1964 similar order was passed observing that even on the previous occasion, in spite of passing order of eviction and directing to hand over possession to protected tenant, the possession is not handed over to the petitioner and the order has not been implemented. Therefore, again an order came to be passed directing the petitioner to be put in possession of the suit land. In spite of consecutive orders, the possession was not handed over to the protected tenant. Therefore,

the purchase price could not be paid by the protected tenant.

45. From the documents placed on record it can be seen that in the meanwhile the original owner Govind Bali had entered name of respondent in the land which is declared to be tenancy land, on the basis of partition by making an application. The Tahsildar has taken mutation entry to that effect on 26/11/1996. Though the Additional Tahsildar, initiated *suo moto* proceedings calling upon petitioner as to why the petitioner has failed to deposit reasonable price already fixed in the year 1958, the protected tenant appeared in the proceeding and sought permission to deposit the reasonable price so fixed. In the proceedings initiated *suo moto* by Tahsildar, he has passed order dated 10/03/1999 declaring the purchase ineffective under Section 38(6)(d) of the said Act.

46. So far as the declaration of purchase of the petitioner to be ineffective is concerned, it is covered under Section 38(6)(d) wherein twin conditions are required to be fulfilled before declaring the purchase ineffective, as has been held in the judicial pronouncement of this Court in case of **Ganpat Sakharam Deshmukh** (supra). A mechanism is provided under the said Act itself, in which the safeguards are provided in order to protect the rights of tenant. The very object of the said Act is to protect the tenancy rights of the persons who are cultivating the land of the owner for years together.

47. It is admitted fact that since possession was not handed over to the petitioner, he had not deposited the reasonable price fixed. Therefore, again when he sought permission for depositing the purchase price, the permission was granted and he had deposited the amount of Rs.1150/- in the State Bank of Hyderabad on 12/01/1999. The other condition as provided under Section 38(6) (d) is that on failure to deposit the purchase price, steps will have to be taken for recovery of it as arrears of land revenue. The same may be recovered from the tenant as arrears of land revenue and unless both the conditions are fulfilled the sale does not become ineffective. Hence, order declaring the purchase of suit land to be ineffective is against the provision of law and is based on perverse finding. In view of non-compliance of Section 38(6)(d) the subsequent orders of the Deputy Collector as well as the MRT are required to be quashed and set aside. Since the order of purchase becoming ineffective itself is passed against law as well as the judicial pronouncement of this Court as referred above, the order dated 09/02/2001 becomes unsustainable.

48. Though the Additional Tahsildar has passed an order directing issuance of ownership certificate in prescribed form under Section 22 of the said Act, the Deputy Collector has set aside the said order on the ground that since purchase of the suit land by the protected tenant was declared as ineffective and it was not challenged by respondent, the order declaring purchase becoming

ineffective has attained finality. Therefore, subsequent order of the Tahsildar dated 10/03/1999 and declaration under Section 38E is not proper and liable to be quashed and set aside. It is only on account of the purchase having become ineffective, the order of Additional Tahsildar dated 09/02/2001 is declared as not proper and has been quashed and set aside and resultantly the appeal filed by respondent herein has been allowed by setting aside the order of the Additional Tahsildar.

49. So far as challenge to the tenancy certificate issued on 07/02/1958 in favour of father of the petitioner is concerned, the Deputy Collector has quashed and set aside the same by way of common order dated 29/04/2002 passed in two appeals. The order of Deputy Collector quashing and setting aside the certificate of tenancy issued in favour of petitioner was not tenable for the reason that judicial pronouncement declaring ownership certificate under Section 38E which confers ownership of land in favour of tenant, is a formal certificate declaring protected tenant to be the owner thereof in relation to the property held by him. There is no adjudication of rival claims of the party at the time of issuance of such certificate. Therefore, it cannot be termed as an order within the meaning of Section 90 of the said Act. The authority issuing certificate under Section 38E have not passed any order as such. Therefore, challenge to the tenancy certificate is not maintainable by way of appeal. The above position of law has been laid down by this Court

in case of ***Bharatlal s/o Hemraj Vs. Kondiba Govinda Jadhav and Others***, reported in ***2001 (3) Mh.L.J. 380***.

50. It also needs to be considered that though the order is passed by the Tahsildar on 10/03/1999 holding that the purchase is not effective under Section 38(6)(d), fact remains that before that the protected tenant had already deposited reasonable price of Rs.1150/- on 12/01/1999. Therefore, without taking into consideration the fact that reasonable price is already deposited on 12/01/1999 the order is passed on 10/03/1999 holding that the reasonable price has not been deposited by the protected tenant, therefore, the purchase has become ineffective becomes unsustainable.

51. Hence, in view of the observations made herein above, the order dated 06/02/2015, passed by Maharashtra Revenue Tribunal in case No.51/B/2001/O, is quashed and set aside. Consequently, appeal Nos. 2001/TNC/A/WS/634 and 2001/TNC/A/WS/635 are rejected and order dated 09/02/2001 passed by Additional Tahsildar in 2000/TNC/WS/139 as well as certificate issued by the tenancy authority dated 07/02/1958 is confirmed.

52. Writ petition is accordingly allowed in above terms.

53. At this stage, learned advocate for respondents prays

for stay to the implementation and execution of the order for eight weeks since respondents are in possession of the property. However, I think it fit to grant stay to the order for a period of four weeks. Therefore, the execution and implementation of the order is stayed for a period of four weeks from today.

(MANJUSHA DESHPANDE, J.)