



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

WRIT PETITION NO. 2755 OF 2023

1. Ananda S/o. Ragho Puri (Died)
Through his legal heirs
- 1A. Somwar S/o. Anada Puri,
Age : 73 years, Occu. : Agri.
2. Shivram S/o. Ananda Puri,
(Deceased through legal heirs)
- 2A. Suman Wd/o. Shivram Puri,
Age : 55 years, Occu. : Household.
- 2B. Mahesh @ Manoj S/o. Shivram Puri,
Age : 35 years, Occu. : Agri./Service.
- 2C. Rajesh @ Satish S/o. Shivram Puri,
Age : 38 years, Occu. : Agri./Service.
3. Haranpuri S/o. Ananda Puri,
Age : 58 years, Occu. : Agri./Service,

All R/o. Kendra (Bk), Tq. Sengaon, Dist. Hingoli.

**.. Petitioners
(Orig. Appellants)**

Versus

1. The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. Sudhakar S/o. Ananda Khandhare,
Age : 44 years, Occu. : Agri.
3. Bhimrao S/o. Ananda Khandhare,
Age : Major, Occu. : Agri.

4. Kaushlya Shrirang Khandhare,
Age : 54 years, Occu. : Agri.
5. Ashok S/o. Shrirang Khandhare,
Age : 34 years, Occu. : Agri.
6. Ramdas S/o. Shrirang Khandhare,
Age : 32 years, Occu. : Agri.

All R/o. Kendra (Bk), Tq. Sengaon, Dist. Hingoli

**.. Respondents
(Orig. Respondents)**

Mr. V. D. Sapkal, Senior Advocate i/by Mr. S. R. Sapkal, Advocate for the Petitioners.

Mr. K. B. Jadhavar, AGP for Respondent No. 1.

Mr. Gaurav L. Deshpande, Advocate for Respondent Nos. 2 to 6.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 22nd January, 2025.

Date on which judgment pronounced : 06th May, 2025.

JUDGMENT :-

. This petition arises out of the judgment and order passed by the learned Member, Maharashtra Revenue Tribunal (MRT) in Appeal No. 12/A/2022/H dated 25.01.2023. The learned Member by way of impugned judgment dismissed the appeal. The judgment and order passed by the learned Additional Collector, Hingoli dated 16.03.2022 is confirmed by which application of the respondents came to be allowed. It is directed to learned Tahsildar to give possession of land Survey No. 38 to the petitioners as protected tenants.

2. The dispute revolves around the tenancy rights and eviction proceedings under Section 98 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as “Hyderabad Tenancy Act”). There is checkered history to this litigation. The parties are litigating since last more than 60 years. In the meantime, various proceedings have taken before the Revenue Court which reached even till this High Court. The petitioners claim their right as a tenant and are fighting for the same. The respondent Nos. 2 to 6 - landlords had started proceeding for restoration of possession under Section 98 of the Hyderabad Tenancy Act. The dispute is in respect of land Survey No. 38 Gat No. 189 admeasuring 9H 20R from village Godankheda, Taluka Sengaon, District Hingoli.

3. The facts of this case in short are as below :

4. The suit land was originally owned by one Gajanan Bhagwantrao Kulkarni. The predecessor of the applicant was the protected tenant of the suit land. It is the case of the petitioners that though they were protected tenants of the land Survey No. 38, they were wrongly shown as protected tenants of the land Survey No. 4. After getting the knowledge of this mistake, Ananda Ragho Puri – petitioner filed application under Section 31 (1) of the Lagandari Act, 1950 before the learned Tahsildar. It was the case that, the petitioners were cultivating

land Survey No. 38 admeasuring 21 Acres 26 Gunthas, however, the landlord was interfering in the possession. On the basis of application an enquiry was conducted, however, it was only decided that one Rambhau Raghoji was tenant with one Shankar Malhari. The said order was passed on 13.07.1953. Against the said order, appeal was preferred before the learned Collector. That appeal came to be rejected. Against the order of the learned Collector civil revision application was filed before this Court. The said civil revision application came to be dismissed. That litigation ended there and the petitioners were finally shown as tenant in land Survey No. 4 only.

5. It is further case of the petitioners that, they continued to cultivate land Survey No. 38. The name of Rambhau was recorded as tenant in land Survey No. 4. A certificate also came to be issued under Section 38 (E) of the Hyderabad Tenancy Act showing the petitioners as protected tenants of land Gat No. 38 where, the name was shown in the owners column. This certificate was issued on 25.05.1957. Thereafter, one committee was appointed to verify the actual position on the tenanted land headed by learned Tahsildar, Hingoli. An enquiry was completed on 14.06.1958. The objections were called till 23.03.1958. Thereafter, proclamation came to be issued on 14.06.1958 calling for objections about the final list of protected tenants. In the

said proceeding it was again confirmed that the petitioners are tenants on land Survey No. 38. However, the owner objected the declaration saying that the petitioners were not tenants of the suit land as the owner at that time was minor. An enquiry came to be conducted before the Tenancy Tribunal. The objection of the landlord came to be rejected. The landlord filed an appeal before the learned Collector. The learned Collector remanded the matter to learned Tahsildar for fresh enquiry. The petitioners filed revision before the MRT challenging the judgment of the learned Collector. The revision came to be allowed by confirming the order of the learned Tahsildar by order dated 28.10.1967. The owner filed Special Civil Application No. 1925/1968 before this Court. The said application came to be dismissed that attained finality.

6. In the meantime, learned Tahsildar issued notice to the petitioners directing them to deposit the purchase price of the suit land by giving eight installments. Again on 13.11.1973 the learned Additional Tahsildar issued another notice directing to deposit the reasonable price. The petitioners therefore deposited an amount of Rs. 3019.70/- before the competent authority. It is thereafter a certificate came to be issued under Section 38 (E) of the Hyderabad Tenancy Act. In the certificate it is recorded that the purchase price is

paid by the petitioners and declared the petitioners as owner of the suit land. The said certificate was issued on 14.09.1978. In the said period, no proceeding under Section 98 of the Hyderabad Tenancy Act was initiated. For the first time in the year 2012 the respondent Nos. 2 to 6 filed appeal before the learned Additional Collector, Hingoli. Suddenly, in the year 2012 the proceeding under Section 98 of the Hyderabad Tenancy Act came to be filed. The learned Collector dismissed the appeal by order dated 10.12.2015. The respondents approached the MRT against the order passed by the learned Collector. The learned Member, MRT allowed the appeal partly by order dated 23.01.2019 and directed to conduct de-novo enquiry. This order was challenged by the petitioners by way of Writ Petition No. 3375/2019. The same also came to be dismissed on 11.08.2021 holding that the order of remand was proper.

7. Pursuant to the direction, the learned Additional Collector, Hingoli entertained the application and directed to handover possession to the present respondents. Against this order, the petitioners filed appeal before the MRT, Aurangabad. The learned Member, MRT dismissed the appeal of the petitioners and thus the petitioners are before this Court.

8. The learned senior advocate Mr. Sapkal for the petitioners

submits that, all the rights till Writ Petition No. 3375/2019 proceedings the petitioners are treated as protected tenants under the Hyderabad Tenancy Act. That finding was nowhere disturbed and that had even reached finality in the year 1973. The landlord/respondent never challenged the said finding, nor initiated any action under Section 98 of the Hyderabad Tenancy Act. Now suddenly in the year 2012 the application came to be filed by the respondents claiming themselves to be the owner. The proceeding was hopelessly barred by delay and laches. The respondents have not shown as to how they get the right as owners. A certificate under Section 38 (E) of the Hyderabad Tenancy Act was issued and that issue was concluded. In the proceedings under Section 98 of the Hyderabad Tenancy Act, the authorities have now decided the lands of the parties which cannot be done. The proceeding under Section 98 of the Hyderabad Tenancy Act is not for determining as to the tenancy rights or the rights of the owner, but is merely eviction proceeding. The possession can be take only if it is found to be unauthorized or wrongful. The possession of the petitioners is long standing possession. In no case it can be said to be unauthorized or wrongful possession when the certificate is issued in the year 1978 after deposit of the purchase price. The respondents approached the authorities after 45 years. The learned advocate relied upon the following judgments :

- (i) Smt. Durgaben Manibhai Makanji Vs. Moria Bavia reported in AIR 1956 Bombay 706.
- (ii) Vishnu Sitaram Patil Vs. Gopal Avaba Asurlekar, Since deceased by his heirs Smt. Chagunabai Gopal Asurlekar etc. reported in 1998 AIHC 2195.
- (iii) Shrikant Gangaram Teli Vs. Bhaskar Narayan Kuvalekar and others reported in 1998 (3) Mh.L.J. 542.
- (iv) Bharatlal Hemraj Vs. Kondiba Govinda Jadhav & others reported in 2001 (3) Mh.L.J. 980.

9. The learned advocate Mr. Deshpande for respondent Nos. 2 to 6 vehemently opposes the petition. He submits that, in fact, the tenancy proceeding had come to an end long back. He relies upon the document showing that in the year 1959 itself the petitioners had prayed to learned Tahsildar for giving some time to hand over the possession stating that there was standing crop in the field. A certificate under Section 38 (6) can be issued only to the tenant by following Rule 22 of the Tenancy Rules. In the present case, there is nothing to show that the said rules were followed and thereafter, the certificate was issued. A certificate itself was obtained by fraud. The fraud committed by the petitioners cannot be sustained in the eyes of law. Because of the conduct of the petitioners entire proceeding is vitiated. The learned Member, MRT has considered all these aspects in

detail. The learned advocate further submits that the application filed before the learned Tahsildar in the year 1955 is not decided and is still alive. The person who occupies the field illegally cannot claim any right as a tenant. Time was sought to vacate the land since the petitioners had been knowledge that they were not protected tenants. The subsequent orders are obtained by suppressing the fact that they are not declared as tenants. So far as limitation is concerned, he submits that under Section 98 of the Hyderabad Tenancy Act no time limit is prescribed. The learned advocate relied upon the following judgments :

(i) A. V. Papayya Sastry & Ors. Vs. Government of A.P. & Ors. reported in 2007 (4) SCC 221.

(ii) Ram Parshotam Mittal & Anr. Vs. M/s Hillcrest Realty Sdn. Bhd. & Ors. Etc. reported in 2009 AIR SCW 5177.

(iii) Mesaji s/o Laxman Ubare Vs. Ramchandra (DR.) s/o Laxminarayan Toshniwal and others reported in 2011 (4) Mh.L.J. 668.

(iv) Kisan Sayaji Shelke Vs. Madhukar Mohan Deshpande & ors. reported in 2010 (5) AIR Bom R 512.

(v) Vaijnath Yeshwant Jadhav since deceased, by L.Rs. & Ors. Vs. Afsar Begum Nadimuddin Kazi since deceased

by L.Rs. & Ors. reported in 2010 (6) Bom.C.R. 787.

(vi) S.P. Chengalvaraya Naidu Vs. Jagannath reported in 1994 AIR (SC) 853.

10. In the case of Smt. Durgaben Manibhai Makanji (*supra*), it is held that the learned Collector does not have the appellate jurisdiction while acting under Section 84 of the Bombay Tenancy and Agricultural Lands Act (for short “Bombay Tenancy Act”) (Akin to Section 98 of the Hyderabad Tenancy and Agricultural Lands Act) which deals with summary eviction of tenant. In the said case, it was the case of the landlord that he was entitled to possession under the order passed by the Mamlatdar. The landlord was in possession on the basis of title. It was necessary for the tenant to get the order of Mamlatdar declared as invalid in appropriate proceedings. The learned Collector under Section 84 of the Bombay Tenancy Act reversed the order of the Mamlatdar passed in favour of the landlord. It is held that, the only way available for the learned Collector to set aside the Mamlatdar’s order was under Section 74 of the Bombay Tenancy Act which provides an appeal. The appellate powers cannot be used while exercising the summary powers under Section 84 of the Bombay Tenancy Act.

11. In the case of Vishnu Sitaram Patil (*supra*), the learned SDO had upset the findings of fact recorded in proceedings under Section 32-G

and 32-P of the Bombay Tenancy Act holding that notices were not properly served on the respondent therein. On the basis of Hon'ble Apex Court judgment it is held that, the tenant can apply for possession by showing that he is entitled to possession of the land. Once it is held that, tenant is entitled to possession of the land under any of the provisions of the Act, he has a right under Section 29 (1) to apply to the Mamlatdar for restoration of possession. The Mamlatdar has to satisfy himself that tenant is entitled to possession and then, the possession can be restored. This power is available only against the person who is unauthorisedly occupying or is in wrongful possession of any land under Section 84.

12. In the case of **Shrikant Gangaram Teli** (*supra*), also it is held that, the certificate issued under Section 32 (A) of purchase is a conclusive evidence of purchase.

13. In the case of **Bharatlal Hemraj** (*supra*), it was a case under Hyderabad Tenancy and Agricultural Lands Act. It is held, on the basis of Hon'ble Apex Courts judgment in the case of **Dr. Rash Lal Yadav Vs. State of Bhar and others** reported in **1994 (5) SCC 267** that, if statute expressly or by necessary implication omits the application of rule of natural justice the statute will not be invalidated for that omission on

the ground of arbitrariness. It is considered that, when the statute creates a legal fiction that something shall be deemed to have resulted from the facts established in a particular circumstance, then full effect has to be given to the legal fiction created by the statute. It was a case under Section 38 (E). The Court was considering the provisions of Section 38 (E) i.e. declaring the tenant as deemed purchaser. As such, protection is given to the tenants under certain circumstances. It is held that, there is no need of any individual notice to be issued at the time of issuance of declaration of ownership in favour of protected tenant. Thus, the position is clear.

14. Considering all these judgments it is clear that, once the protected tenant is declared as such as purchaser of the land, the landlord does not get any right to possession unless the said certificate is set aside in an appeal. It is equally clear that, no such tenant can be evicted by following summary procedure by the landlord with the help of the authorities.

15. So far as the judgments relied upon by the respondent Nos. 2 to 6, those are considered here.

16. In the case of Mesaji s/o Laxman Ubare (*supra*), the tenant had filed application against the landlord and others for recovery of

possession. The learned Collector considered the application under Section 98 and allowed the same directing to hand over the possession to the tenant. The said order was challenged by the landlord before the MRT. This Court in the said judgment held that the provision of Section 38 (E) came into force on 01.02.1957 when notification was issued extending the provisions to Parbhani District superseding any custom, usages, decree, contract or grant to the contrary. The protected tenants became full owners of the land from the date of notification under Section 38 (E). The tenant was not expected to take any steps for acquiring ownership in view of deeming fiction under Section 38 (E). The land holder is required to file an application before the learned Tahsildar for determination of reasonable price to exercise right to become owner. The obligation is upon the land owner to apply for determination of market price. This Court considering the judgment in the case of **Radhu Gokul Gawali and others Vs. Mohan Kishan Gawali and others** reported in **2007 (6) Mh.L.J. 117** held that, the petitioner therein had purchased the property by registered sale deed when there was a protected tenant in the land. So the tenant had never filed any application raising any claim to suit property or to get his right as protected tenant. It is held that, the person who purchased the property in the year 1966 need not face proceeding under Section 98 after 18 to 19 years. Though no limitation is prescribed, it is held

that, the action be initiated within reasonable time. It is held that, as no period of limitation is prescribed under Section 98, it is deliberately not provided with that object that such proceeding can be taken at any time.

17. In the case of Kisan Sayaji Shelke (*supra*), the petitioner had applied for eviction of unauthorized occupant. It is held that, the tenant ought to have filed an application under Section 32 of the Act within time. He could not have filed application under Section 98 after 22 years for dispossession. It is also held that, Section 32 has applied to a case where transfer was made prior to tillers day. In the said case it was not shown that the tenant was in possession since prior to tillers date.

18. In the case of Vaijnath Yeshwant Jadhav (*supra*), this Court held that the declaration under Section 38 (E) is not a decision or order within meaning of Section 90 of the Hyderabad Tenancy Act and therefore, no appeal against such is maintainable. In that case, it was found that the father of the petitioner was not shown as tenant of the land. It is held that, such defect can be rectified at any time and there is no bar of limitation if the decision is rendered without any legal basis, by mistake or by fraud.

19. In the case of **A. V. Papayya Sastry & ors.** (*supra*), it is held that, if the party has obtained order by playing fraud, then it cannot be said to be a judgment or order in the eyes of law and the said judgment, order and decree is a nullity. This judgment needs to be considered in view of submissions of the respondent – landlord that the tenant had played a fraud in obtaining the certificate on 14.09.1978 by suppressing the fact that he had already sought time to vacate the land in the year 1957. Paragraph Nos. 22, 26 and 38 of the said judgment reads as under :

“22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of finality of litigation cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.

38. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior.”

20. Considering all these judgments and the submissions this Court thus has to consider as to whether the petitioners have made out a case that, no order can be passed in favour of the landlord as petitioner is declared protected tenant. The second question as to whether the respondents have made out a case showing that the order that petitioner is protected tenant is obtained by playing fraud on the authority.

21. From the proceedings it is clearly seen that, it was already held that the petitioner is not a tenant of the land. The proceeding had come to this Court by way of CRA No. 917/1957. This Court in the said revision has clearly held that, the petitioner is not a protected tenant. The said order attained finality. No further proceeding was

taken pursuant to challenging the said order. After this finding attained finality, there was no question of taking any other proceeding by the petitioner. Passing any order by any authority when the order in CRA was in force would be legal. It is seen from the record that, by order dated 24.11.1966 even the mutation entry No. 74 taken in the revenue record was rejected. Even the said order was not carried in appeal or revision by the present petitioner. When this was the position, it is not clear what made him to initiate another proceeding.

22. The learned Member of the M.R.T. has rightly considered both these aspects. It is rightly considered that, the order passed by this Court in Special Civil Application No. 1925/1968 dated 20.01.1972 is not binding upon the present respondent as the father of the present respondent was not a party to the said proceedings.

23. This Court in view of the judgment in the case of A. V. Papayya Sastry & Ors. (*supra*), has no hesitation to hold that the subsequent proceedings taken out by the petitioner was by playing fraud. No person can take benefit of the order obtained by playing fraud on the authorities of the Court.

24. For all these reasons, this Court does not find any reason to

interfere with the impugned judgment and order. The writ petition, therefore, fails. Rule is discharged. No order as to costs.

(KISHORE C. SANT, J.)

1. At this stage, learned advocate for the petitioners prays for continuation of interim relief that was running in his favour.
2. A request is objected by learned advocate Mr. Deshpande for respondent Nos. 2 to 6.
3. Since the petition is pending more than two years and there is interim relief granted, the same be continued for a period of four (04) weeks from today.

(KISHORE C. SANT, J.)

PS.B.