



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 628 OF 2013

Shriram Keshav Pathak,
age : 63 Years, Occu : Service,
R/o.: Sukli (Bk.), Old Tq. Hingoli,
New Tq. Sengaon, Dist. Old Parbhani,
New, Hingoli. Through G.P.A. Holder,

Shri. Deepak s/o Keshav Pathak,
age : 60 Years, Occu : Pensioner,
R/o. "Matrakunj", Near Tahsil Office,
Samarthnagar, Risod, Tq. Risod,
Dist. Washim

...PETITIONER

Versus

Dhondnakh Mahipaji Sirsath,
age : 95 Years, Occu : Agri.,
R/o. Sukli (Bk.), Tq. Sengaon,
Dist. Hingoli, Died through LR.

1. Muktabai w/o Kisan Thoke,
age : 53 Years, Occu : Household,
R/o. Sukli (Bk.) Tq. Sengaon,
Dist. Hingoli.
2. Sheshabai Kaluji Thoke,
age : 60 Years, Occu : Household,
R/o. As above.
3. Panabai Dhattuji Dhewase,
age : 55 Years, Occu : Household,
R/o. As above.
4. Meerabai Pralhad Narwade,
age : 51 Years, Occu : Household,
R/o. As above.
5. Gayabai w/o Baliram Narwade,
age : 49 years, Occu : Agri.,
R/o. As above.

...RESPONDENTS

Mr. Chandrant D. Biradar, Advocate for the Petitioner.

Mr. Deodatta P. Palodkar, Advocate for Respondents.

CORAM : ABHAY J. MANTRI, J.
RESERVED ON : OCTOBER 14, 2025
PRONOUNCED ON : DECEMBER 09, 2025

JUDGMENT :

1. Heard. **Rule.** Rule is returnable forthwith and heard finally with the consent of Mr. Biradar, learned counsel appearing for the petitioner and Mr. Palodkar, learned counsel appearing for the respondents.

2. By this petition, the petitioner is challenging the judgment and order dated 23rd December 2010, passed by the learned Member, Maharashtra Revenue Tribunal, Aurangabad (hereinafter referred to as the “*Tribunal*”) in Case No.86-B-2000-P, whereby set aside the judgment and order 24.01.1994 passed by the learned Deputy Collector, Land Reforms, Parbhani, in case No. 92/ TNC/ A/ 44/ 10, and confirmed the order dated 16th April 1992, passed by the learned Additional Tahsildar, Hingoli, in Case No.91/TNC/44/24, thereby the rejected the application filed by the petitioner for restoration of the possession of Survey No.27/2(A) to the extent of 8 Acres (3H. 20R) of village Sukli (Bk.), District Hingoli, (for short-‘*the land*’) to him by terminating the tenancy of the respondents under Section 44 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 (hereinafter referred to as the “*Tenancy Act*”).

3. Mr. Biradar, learned counsel appearing for the petitioner, vehemently submitted that the learned Additional Tahsildar overlooked the fact that the petitioner is an Army Personnel, and that upon cessation of his service, on 30th June 1986, he issued the termination notice to the tenants within two years from the date of such cessation, which was duly served on the respondents. He drew my attention to the notice dated 30th June 1986 and submitted that, due to the tenants' default in payment of the rent, the petitioner is entitled to possession of the land. However, the learned Additional Tahsildar failed to consider this fact and erroneously held that tenant Dhondya Mahar was in possession of the land as a tenant well before the petitioner joined the armed forces, and therefore concluded that the petitioner is not entitled to the relief sought.

4. Secondly, he argued that, before recording the mutation entry in the revenue record, a Gift Deed had been executed. Therefore, it cannot be said that the tenancy was earlier in point of time. However, the learned authorities below did not consider this aspect in its proper perspective and erred in discarding the same.

5. Thirdly, he canvassed the issue regarding the recording of mutation entry No.180 in the revenue record, without production of an ownership certificate or tenancy certificate, whether it can confer ownership rights or the status of a protected tenant in favour of the respondent, notably when the respondent failed to produce any such ownership or

tenancy certificate before the Authority.

6. Fourthly, the learned counsel for the petitioner contended that the respondent is a defaulter, having failed to make payments of rent in time. Therefore, the petitioner is entitled to recover possession of the land on this ground as well. The respondent has not produced any proof of payment of the rent to the petitioner. Similarly, the respondent has failed to produce any contract, lease or agreement executed between him and his ancestor regarding the creation of the tenancy. Hence, it cannot be said that the respondent is a protected tenant.

7. Lastly, the learned counsel for the petitioner propounded that the learned Deputy Collector had considered the petitioner's case properly and rightly held that the tenant failed to produce the contract, lease, or agreement to demonstrate that he had acquired tenancy rights based on such documents. Therefore, the respondent was unable to prove the existence of tenancy. Likewise, the learned Deputy Collector held that the petitioner, being a Military Personnel, is entitled to restoration of possession of the disputed land. Hence, it was urged that the order passed by the Tribunal is illegal and perverse, whereas the judgment passed by the learned Deputy Collector is just and proper, and therefore, deserves to be restored.

8. The petitioner, in support of his contention, also filed the written arguments along with judgments and documents on record. To buttress his submissions, the learned counsel for the petitioners relied on the

Gift Deed and the decisions of this Court in (A) (i) *Vinayakrao s/o Wamanrao Doiphode Vs. Kisanrao Ganpatrao Tarodekar* (on the point of default in payment of the rent), (ii) *Gangubai w/o Bhagwanrao Pawatekar, Vs. Kishanrao s/o Limbajirao Kadam, & Fancy Rehabilitation Trust and another Vs. Union of India & others* (on the point of interpretation of Statutes), (iii) *Bansi Yada Kalge (Koli) Vs. Ramkrishna Laxman Joshi and others* (on the point of termination of tenancy under Sections 32 and 44 of the Tenancy Act), (iv) *P. P. Suroshe, Addl. Chief Metropolitan Magistrate, Mumbai Vs. State of Maharashtra, Wamanrao Trimbakrao Vs. Bhaurao Mahadu*, (on the point of whether such tenants can purchase lands in excess of double family holding of all lands held by the landholder), (v) *Radhakishan Soni Vs. Gangaram* (Tribunal has no jurisdiction to disturb the finding of facts on the appreciation of evidence), (vi) *Vajjnath Karpure (Died) through L.R. & Anr. Vs. Mahadeo s/o Maruti Mote* (on the point of mere entry in the revenue record does not create the right),

(B) Judgments of the Hon'ble Supreme Court in (i) *Hanmanta Daulappa Nimbal Since Deceased By his Heirs and Lrs. Vs. Babasaheb Dajisaheb Londhe* (on the point of no written lease granted in favour of the appellant therein), (ii) *Hari Shankar and Others Vs. Rao Girdhari La, Chowdhury and Sanjay Kumar Pandey and others Vs. Gulbahar Sheikh and others* (on the point of scope of revision), (iii) *Surendra Kumar Vs. Nathulal* (on the point of Gift Deed), (iv) *T. Vijendradas and Anr. Vs. M. Subramanian and Ors.* (on the point of Order XXI Rule 92 and Order XXXI Rule 1 of CPC), and judgment of the Calcutta High Court in

Swapan Kumar Achariya and Others Vs. Subhas Chandra Bhattacharjee and others.

9. *Per contra*, Mr. Palodkar, learned counsel appearing for the respondents, strenuously opposed the petition, contending that the judgments and orders passed by the learned Tribunal, as well as the learned Additional Tahsildar, are just and proper, and therefore, no interference is required. He further drew my attention to the order passed by the learned Deputy Collector and findings recorded therein, more particularly, that the tenant failed to produce the agreement/contract/lease deed, whether oral or written, before the Authority and consequently failed to prove the tenancy, and submitted that the same are contrary to the record. On the contrary, the record shows that the ancestor of the respondents was the tenant before 1950. However, the learned Deputy Collector failed to consider the said fact in its proper perspective. Hence, he submitted that no interference is required in the impugned judgments and orders.

10. He further submitted that the tenancy was created in favour of the ancestor of the respondents before 1950, and therefore Mutation Entry No.180 was effected. The said entry is in force and has not been challenged. He also canvassed that the issuance of the termination notice by the petitioner amounts to an admission that the respondents are tenants of the land. Moreover, the notice itself was defective and vague, and nothing has been placed on record to demonstrate that the respondents committed any default in payment of the rent. Thus, he urged that no interference is

required in the impugned judgments and orders and prayed for dismissal of the petition.

11. Having heard the learned counsel for the parties, the short question that arises before this Court is “*whether the petitioner is entitled to restoration of possession by termination of the tenancy under Section 44 of the Tenancy Act*”.

12. While dealing with the above facts, I would like to mention a few material facts of the case as follows:

13. It is pertinent to note that on 18th August 1980, the Circle Inspector approved the entry, which shows that the ancestor of the respondents had established his tenancy rights over the disputed land. Therefore, his name was recorded in the 7/12 extract as a protected tenant. It further appears that the 7/12 extracts of the year 1950-1951 and prior thereto were produced before the concerned Authority, and accordingly, the concerned Authority recorded the said entry. However, the petitioner has failed to produce any document on record to show that the said entry was ever cancelled or reversed. Thus, it can be inferred that the respondents have acquired tenancy rights over the disputed land.

14. It also appears that in the year 1988, the statement of original tenant, Dhondya Mahar, was recorded, in which he categorically deposed that he had possessed the land for 40-45 years. This itself indicates that he had been in possession of the disputed land as a tenant before 1948.

Therefore, based on his statement and the revenue record, his name was recorded as a protected tenant. The said mutation entry has neither been cancelled nor revoked to date; therefore, there is no reason to discard it. The said entry *prima facie* indicates that the respondents' ancestor was the protected tenant of the disputed land.

15. It is worth noting that the petitioner himself, vide notice dated 30th June 1986, categorically admitted that the ancestor of the respondents was in possession of the disputed land as a tenant. However, alleging that the respondent had failed to pay rent, the petitioner issued a notice of default in rent payment and sought termination of his tenancy rights. The issuance of this notice indicates that the petitioner admitted that the respondents' ancestor was a tenant of the disputed land.

16. It further appears that the petitioner is claiming rights over the disputed land based on the Gift Deed dated 08th June 1982, which his father executed in his favour. However, it does not appear that, before executing the said Gift Deed, the owner, Keshav, had obtained the necessary permission from the Competent Authority. Similarly, nowhere in the Gift Deed is it stated that the possession of the said land was handed over to the petitioner. The notice, as well as the initiation of proceedings, demonstrates that the petitioner did not have possession of the disputed land; rather, the ancestor of the respondent had the same.

17. The first ground raised by the learned counsel for the petitioner is that the learned Additional Tahsildar overlooked the fact that he is an army personnel and that, upon cessation of his service, he issued notice to the tenants within two years from the date of such cessation. Therefore, he is entitled to the relief sought. The learned Additional Tahsildar, in his order, categorically observed that the petitioner became the landholder of the disputed land based on the Gift Deed executed on 08th June 1982 and that he is currently serving in the armed forces. It is further observed that the petitioner was not in the armed forces in the year 1950, when the ancestor of the respondent was in possession of the disputed land. Therefore, it cannot be said that, in the year 1950, the petitioner was serving in the armed forces or that he is entitled to possession of the disputed land on this basis.

18. It also appears from the record that before the year 1950, the ancestor of the respondent was in possession of the disputed land, and at that time, the petitioner was not serving in the armed forces. Therefore, I find substance in the findings recorded by the learned Additional Tahsildar that the petitioner is not entitled to claim any benefit on the ground that he was serving in the Armed Forces. Hence, his contentions are without merit and stand rejected.

19. While dealing with the second ground raised by the learned counsel for the petitioner, it is to be noted that in the year 1980, the Circle

Inspector, based on the 7/12 extract of the year 1950-1951, recorded Mutation Entry No.180 in the revenue record, specifying that the ancestor of the respondent, Dhondya Mahar, was a protected tenant. Therefore, it cannot be said that the Gift Deed was executed before the approval of the Mutation Entry No.180 of the concerned Circle Inspector. It further appears that the said mutation entry was challenged before the Sub-Divisional Officer, who cancelled it and remanded the matter for a fresh enquiry. After remand, the concerned authority concluded the fresh enquiry, and the said entry was again confirmed on 21st February 1988. Therefore, it cannot be said that the mutation entry was recorded after the execution of the Gift Deed in 1982; rather, it was recorded based on ongoing proceedings before that execution of the gift deed.

20. *Apart from that*, the petitioner has categorically disputed that the ancestor of the respondent was in possession of the disputed land before 1950. The learned Additional Tahsildar, as well as the learned Tribunal, has considered this fact and recorded findings that the ancestor of the respondent, and then the respondent, had been in possession of the disputed land since 1950, and that the respondent's tenancy was not newly created. They also observed that the respondent's tenancy was not created after or just before the execution of the Gift Deed in favour of the petitioner; rather, the respondent's tenancy rights over the land had existed for a long period of time. Accordingly, the contention of the learned counsel for the

petitioner was rightly discarded. Therefore, I do not find any illegality in the said findings, warranting interference in the Writ Jurisdiction.

21. The third ground raised by the learned counsel for the petitioner is that, without having a certificate of the protected tenancy or an ownership certificate, the ancestor of the respondent could not have acquired rights based on the Mutation Entry No.180. The learned Additional Tahsildar has already dealt with this issue and observed that the recording of Mutation Entry No.180 does not affect the respondent's claim, as the petitioner has sought termination of tenancy of the respondent over the land and restoration of possession of it, and the grant of mutation has no bearing on those rights. It was further held that the ancestor of the respondent had been granted rights of a protected tenant over the land more than 32 years before the execution of the Gift Deed; at that time, the petitioner was not the landholder of the land. However, Kashibai was the landholder in 1950. Therefore, the subsequent recording of Mutation Entry No.180 does not affect the long-standing tenancy rights of the respondent's ancestor and respondents. Hence, the contention raised by the learned counsel was found to be baseless and without substance.

22. The learned counsel for the petitioner further argued that the respondent had committed default in the payment of rent in respect of the disputed land and that both the learned Additional Tahsildar and the learned Tribunal failed to appreciate this aspect in its proper perspective,

thereby erred in discarding the petitioner's contention. While examining this aspect, it is necessary to go through the contents of the impugned notice dated 30th June 1986. Upon perusal of the said notice, it is evident that the allegations regarding default in payment of the rent are vague and lack the essential particulars required under law. The petitioner did not specify in the notice the period during which the respondent allegedly failed to pay rent, nor did he mention any particular year or period during which the default occurred. The notice merely contains a general averment that the respondent failed to pay rent "*as he has to pay*," and on that basis alone, the petitioner purported to terminate the tenancy. While dealing with this issue, the learned Tribunal, in paragraph 11 of the judgment, has categorically held that the notice was vague and failed to disclose the specific years or periods during which the alleged defaults were committed, what the rent was, or the arrears of rent. The Tribunal further noted that although the notice refers to the petitioner having issued prior intimation or notice to the tenant regarding the defaults, no dates, months, or particulars of any such prior intimation have been mentioned. As a result, the Tribunal concluded that the notice dated 30th June 1986 was defective and that the tenancy could not be legally terminated because it failed to contain the necessary details to enable the respondent to understand and meet the allegations of default.

23. These observations make it clear that the learned Tribunal has dealt with the issue comprehensively and has correctly held that the notice is vague, lacking in material particulars, and therefore insufficient to sustain a claim of default in payment of the rent, resulting in the termination of the tenancy. I do not find any illegality, perversity, or infirmity in the findings recorded by the learned Tribunal on this point. Consequently, the contention raised by the learned counsel for the petitioner regarding alleged defaults in payment of rent is without merit and cannot be accepted.

24. It appears from the order of the learned Deputy Collector that he has recorded the contention of the learned counsel for the respondent filed before him vide written notes of arguments and contended that the appellant, i.e. the petitioner, has examined his real brother and father on behalf of him before the additional Tahsildar. Still, there are major contradictions between both of their statement. His brother has said that the previous owner of the suit land was Kashibai, w/o Gangadhar. In contrast, his father says that his mother's name was not Kashibai but her name was Mankarnabai it seems that the father of appellant i.e. Keshav s/o Gangadhar is false, *at record of tenancy list 1950 has shown that owner of suit land was Kashibai w/o Gangadhar pathak as tenant is shown "Dhondya Mahar" therefore it appears that tenant was in possession over the suit land before gift deed is made without sanction of Collector consequently it has no value in eye of law.* Moreover, the respondent was examined before the Addi. Tahsildar, along with the

witnesses, who supported the respondent and confirmed the respondent's cultivation. Further contention of the appellant, i.e. the petitioner, is that the respondent has not paid rent for three years. Still, this contention lacks force, as the respondent has paid the entire rent amount to the petitioner's father by money order. A receipt of a money order with the signature of the father of the petitioner has been produced on the record. Therefore, it cannot be said that the respondent is a defaulter. Although the deputy collector has observed that “*from all these points and documents on record, there is no force in the appeal, and it is liable to be dismissed with costs.*”

25. Bare perusal of the same, it appears that the learned Deputy Collector has categorically observed that the tenancy record of 1950 demonstrates that Kashibai was the owner of the land and ‘***Dhondya Mahar as tenant of the land***’, and further noted that he was in possession of the disputed land long prior to the execution of the Gift Deed. It was also held that, in the absence of the Collector’s sanction, the execution of the Gift Deed has no legal validity. Similarly, the brother and father have confirmed that the ancestor of the respondent had been cultivating the disputed land. The said finding appears to be against the case of the petitioner; however, the petitioner has not challenged it before the Higher Authority. Consequently, the finding has remained unchallenged and has attained finality. Therefore, it binds the petitioner.

26. *Likewise*, the learned Deputy Collector has categorically held that the contention of the petitioner that the respondent had not paid the rent has no merit, *as the respondent had paid the entire rent to the petitioner's father through a money order, and a money-order receipt bearing the father's signature was produced before him*. This finding was also not challenged by the petitioner before the Higher Authority and has therefore remained unchallenged and attained finality. It is pertinent to note that both findings are against the petitioner and, having failed to challenge them, the petitioner is bound by them.

27. However, the learned Deputy Collector, without considering the respondent's contention and without examining the record, observed that the Gift Deed produced by the petitioner was genuine and that the tenant had not complied with the contract with the landholder. He further held that the tenant failed to prove the alleged contract either orally or in writing and had not produced any documentary evidence in that regard. Thus, it appears that the learned Deputy Collector did not consider the contention of the respondent in its proper perspective and, without assigning adequate reasons, held that the Gift Deed was genuine and that the respondent had failed to produce any oral or written agreement to establish his tenancy.

28. The learned Deputy Collector also failed to examine the revenue record, which clearly indicates that since 1950, the ancestor of the respondent had been in possession of the disputed land. Despite this, and

without considering the documents on record, he concluded that the tenancy cannot be created without an agreement or contract. This finding appears contrary to the settled position of law that any party in possession of the disputed land before 1943 is deemed to be a protected tenant under Section 34 of the Tenancy Act. The learned Deputy Collector overlooked these facts, when undisputedly no material has been brought on record to show that the ancestor of the respondent did not possess the disputed land prior to 1950 or 1943. Therefore, the said finding cannot be sustained in the eyes of the law and was rightly set aside by the learned Tribunal. As such, I do not find any illegality in the said findings.

29. To sum up the above discussion, it appears that the order passed by the learned Additional Tahsildar, as well as the order confirmed by the learned Tribunal, are just and proper. On the contrary, the order passed by the learned Deputy Collector is contrary to Section 34 and the settled position of law. The said order is cryptic, lacks proper reasoning, and has been passed without considering Section 34 of the Tenancy Act and applying its mind. Therefore, it cannot be sustained in the eyes of the law. Thus, I do not find any substance in the contention raised by the learned counsel for the petitioner in that regard.

30. I have gone through the judgments cited by the learned counsel for the petitioner. The learned counsel for the petitioner contended that, in view of the decisions in *Gangubai (supra)*, *Hari Shankar (supra)* and *Sanjay*

Kumar Pandey (supra), it was not permissible for the Tribunal to re-appreciate the evidence of the witnesses, as doing so would be beyond the scope of revisional jurisdiction. Therefore, according to him, the findings recorded by the learned Tribunal are liable to be set aside. However, I do not find merit in this contention, as the facts of the present case are distinct from those in the cited judgments. The learned Deputy Collector failed to consider the material placed before him in its proper perspective and passed a cryptic order without considering the provisions of the Tenancy Act, the documents on record, or the settled position of law. In such circumstances, the interference by the learned Tribunal is justifiable and proper. Therefore, I do not find substance in the contention raised by the learned counsel for the petitioner in that regard. The observations made in the cited judgments are of hardly any assistance to the petitioner, and they do not apply to the facts of the present case.

31. In the judgment of the Hon'ble Supreme Court in *Hanmanta (supra)*, the only question that arose for consideration was whether the appellant therein was in lawful possession of the property when admittedly no written lease had been granted in his favour, and undisputedly his possession was from 1968 to 1969 as claimed solely based on an oral lease. However, the facts in the present case are distinguishable from those in the said judgment. Here, the respondent contends that his ancestor was in possession of the disputed land prior to the tillers' date, i.e. 1950, and

therefore, under Section 34 of the Tenancy Act, the ancestor of the respondent acquired tenancy rights over the disputed land. Hence, the observations made in the aforesaid judgment are of no assistance to the petitioner in support of his contention.

32. In the judgment of this Court in *Vinayakrao (supra)*, the facts were that the tenant had failed to pay rent for three years, and therefore the Court held that the landlord therein was entitled to initiate the action. The intimation of default had also been duly sent to the tenant by Registered Post. However, in the case at hand, nothing has been brought on record to show that the respondent committed any default in payment of the rent. Similarly, the notice issued appears vague and does not contain any specific averments as required. Hence, the observations made in the said authority are not helpful to the petitioner in support of his contention.

33. It is to be noted that although the learned counsel for the petitioner has cited various judgments in support of his submissions, he has failed to demonstrate how those judgments are relevant to the facts and issues involved in the present case. He has not pointed out specific paragraphs, observations or how principles laid down in the cited judgments would assist him. Mere submission of the judgments, without showing their applicability, is not sufficient while dealing with the contention of the petitioner. In fact, it is incumbent upon the learned counsel to establish how the law laid down in those judgments is relevant to the facts and issues

involved in the case at hand. However, he has failed to do so and has merely placed the judgments on record. In my considered view, the facts of those cases are altogether different from the present matter. Therefore, the observations made therein are hardly of any assistance to the petitioner in support of his submissions.

34. Thus, it appears that the judgments and orders are just and proper, and no interference is required in the exercise of revisional jurisdiction.

35. Consequently, the petition, being bereft of merit, stands dismissed with costs of ₹ 5,000/-. The petitioner is directed to deposit the said costs with the High Court Legal Services Authority, within five (05) weeks from the date of pronouncement of this order.

36. Rule is discharged.

(ABHAY J. MANTRI, J.)