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(This order is modified and uploaded vide speaking to the minutes order dated 10.12.2025)

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7813 OF 2024 WITH
CONTEMPT PETITION NO. 736 OF 2024

Takdis Salim Kokani & others .. Petitioners

versus

The State of Maharashtra & others .. Respondents

WITH
WRIT PETITION NO. 7885 OF 2024 WITH
CONTEMPT PETITION NO. 735 OF 2024

Tehseen Jilani Kokani & others .. Petitioners

versus

The State of Maharashtra & others .. Respondents

Mr. Alankar Kirpekar along with Shantanu Chandratore and Mr.
Ayush Tiwari i/b Mr. Amit Savale, Advocate for the Petitioners.
Mr. S. G. Joshi, AGP for the Respondent-State.
Mr. R. R. Karpe, Advocate for Respondent No. 8.

CORAM : R. M. JOSHI, J.

DATE : 5th DECEMBER, 2025.

ORDER :

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

2. Since the facts involved in these Petitions involve common question of facts and are between the same parties and hence, by consent of both sides, they are heard together and decided by this common judgment.

3. Writ Petition No. 7813/2024 is filed taking exception to the order dated 24.06.2024 passed by the Honourable Minister (Revenue) in Appeal No. 2021/A.No. 54 J-7 and also proceedings No. ROR/REV/28/2019 before the Commissioner 1, Aurangabad, whereas Writ Petition No. 7885/2024 takes exception to the order dated 24.06.2024 passed by the Honourable Minister (Revenue) in Appeal No. 2021/A.No.55/J-7 and also proceeding No. ROR/REV/27/2019 before the Additional Divisional Commissioner 1, Aurangabad confirming order dated 31.01.2018 passed by the Additional Collector, Jalna in Appeal No. 2017/RB/APPL/CR-173.

4. The facts which led to filing of these Petitions can be narrated in brief as under :-

It is the case of the Petitioners that Ishwarsing-grand father of Respondent No. 8 claimed to have entered into agreement to sale in respect of the subject lands. The said sale, however, was not

completed but the grand-father of Respondent No. 8 came to be put into possession of the subject lands pursuant to the agreement to sale. The original owner Mehboob Ali Khan filed Civil Suit bearing Regular Civil Suit No. 59/1961 before the Civil Judge Senior Division, Jalna seeking recovery of possession of the subject land from Ishwarsing on the ground that he was a trespasser. By judgment and decree dated 30.06.1962, the said suit came to be dismissed. Appeal preferred against the said judgment being Regular Civil Appeal No. 158/1962 was also dismissed by the District Court. Similarly, Second Appeal No. 1271/1967 is dismissed by this Court on 20.10.1972.

5. It is the further case of the Petitioners that during the pendency of said proceeding before Civil Court, grand-father of Respondent No. 8 applied for entering his name in the revenue record and on 05.09.1962, Mutation Entry No. 32 came to be sanctioned. An objection was raised by original owner Maheboob Ali Khan before the Tahsildar, Jalna. By order dated 13.07.1978, the Tahsildar directed deletion of name of Ishwarsing from the column of ownership in respect of the subject lands however, maintained his

name in “other rights” column. The said order was given effect by mutation entry No. 188 on 17.08.1978.

6. According to Petitioners, on the demise of Ishwarsing, the name of his son Dhanusing was entered into the “other rights” column in respect of the subject lands. Dhanusing filed Appeal being Appeal No. 78/APPL/MLRC/A-13 before the Collector, Aurangabad against the order dated 17.08.1978. This Appeal came to be allowed confirming the name Dhanusing in the column of “other rights” as occupier of the said land. After of death of original owner Mehboob Ali Khan on 30.04.1988, the names of his legal heirs were mutated in the revenue record and they were shown as owners in respect of the subject lands. Legal heirs of Mehboob Ali Khan sold the said land to Petitioners by executing **five sale-deeds** duly registered with the office of Sub-Registrar Assrurances, Jalna-1. On the basis of said sale-deeds, names of Petitioners were included in the ownership column in respect of the subject lands by Mutation Entry Nos. 449 to **453**.

7. It is further claimed by Petitioners that in or around 1980, a portion of the said land was acquired under the provisions of Land Acquisition Act and a reference under Section 30 being LAR No.

116/1980 came to be filed before the competent Court. In this reference, Mehboob Ali Khan as well as Dhanusing were parties. Reference Court rendered findings by order dated 09.01.1981 that Memboob Ali Khan continued to be the owner of the said lands, and Dhanusing and other legal heirs of Tuljasing are having right of possession of the said land on the basis of agreement to sale. It is the case of the Petitioners that Respondent No. 8 or his ancestors never filed any suit for specific performance of contract. It is claimed that on the basis of un-registered agreement to sale, no right can be claimed by them. The order passed by the Reference Court was challenged by the predecessors of Respondent No. 8 by filing First Appeal No. 173/1981 before this Court. Similarly, Writ Petition No. 49A/82 was also preferred. Both the First Appeal as well as Writ Petition came to be disposed of by this Court by order dated 22.01.1985 wherein this Court has dismissed the challenge of Dhanusing to the order passed by the Reference Court dated 09.01.1981. It is observed therein while modifying the order under Appeal by consent that Mehboob Ali Khan, real owner of the property, is entitled for a sum of Rs. 11,000/- and rest of the amount is payable to the Appellant represented by Dhanusing.

8. It is further contended by Petitioners that on 29.10.2010, Dhanusing passed away and his legal heirs thereafter sought to incorporate their names in the ownership column in respect of the lands in question. Writ Petition No. 545/2013 was filed, which came to be disposed of by order dated 27.01.2016 directing the Tahsildar to hear and dispose of pending representation of Respondent No. 8 on its own merits. The Tahsildar, by order dated 01.06.2016, rejected the Application and directed Respondent No. 8 to approach appropriate Civil Court. Respondent No. 8 preferred Appeal before the Deputy Collector (Bhumi Sudhar), Jalna. The Deputy Collector, by order dated 29.04.2017, allowed the Appeal. It is the case of the Petitioners that though the said Appeal was filed under Section 247 of MLRC challenging mutation in favour of the Petitioners, the Deputy Collector, travelled beyond his jurisdiction and held that Respondent No. 8 and his ancestors were tenants and in that capacity in possession of the suit lands prior to 1950 and therefore, they are entitled to include their names in the ownership column. This order came to be challenged before the Additional Collector, Jalna. The Additional Collector, allowed said appeal and the order passed by the Deputy Collector was set aside. Respondent No. 8 being aggrieved thereby challenged the said order before the

Additional Divisional Commissioner, Aurangabad, successfully. The Additional Divisional Commissioner, by order dated 05.04.2021, set aside the order passed by the Additional Collector and restored the order passed by the Deputy Collector. Petitioners took exception to the said order before the Honourable Minister by filing Revision Application bearing No. Appeal/2021/P/54/J-7. The Minister, by order dated 31.05.2021, stayed the order passed by the Additional Divisional Commissioner, Aurangabad. It is the case of the Petitioners that without giving an opportunity of hearing, the Honourable Minister vacated the interim relief and decided the proceeding by order dated 24.06.2024. Hence, these Petitions.

9. Learned Advocate for the Petitioners submits that it was never case of the contesting Respondents or predecessors of Respondents that in the capacity of tenant of the subject lands they came into possession thereof. By referring to the previous proceedings including proceeding before the Trial Court, it is contended that all throughout, a claim was raised on the basis of the agreement to sale entered into between ancestors of Respondent No. 8 and the original owner of the subject land. Attention of the Court is also drawn to the orders passed by the Civil Court protecting

possession of the contesting Respondent and predecessors on the basis of the agreement to sale and they being inducted in the subject lands under the said agreement. It is submitted that at no point of time, the status of Respondent No. 8 or his predecessors was held to be of a tenant by the competent Tenancy Tribunal. It is submitted that even before the Tahsildar, when exception was taken to mutation of names of the Petitioners in the revenue record qua subject lands, it was not the case of the contesting Respondents about them or predecessors being tenants in respect of the said lands. It is submitted that it is for the first time, before the appellate authority, a claim is made under Section 247 of MLRC with regard to the tenancy. It is further argued that the Deputy Collector, while exercising powers under Section 247 MLRC, has no jurisdiction to enter upon the issue as to whether the party before him is tenant or otherwise and the said issue can be decided only in the proceeding under Hyderabad Tenancy and Agricultural Lands Act by the competent Tribunal. It is submitted that the Additional Collector has rightly set aside the order passed by the Deputy Collector however, the same was erroneously restored by the Additional Divisional Commissioner. The order passed by the Honourable Minister is taken exception to on dual grounds; firstly, that the Petitioners being not given fair opportunity

to submit their case before the Minister and secondly on merit that the Minister ought to have considered the fact with regard to there being no claim made by the contesting Respondent or his ancestors about tenancy till filing of the Appeal before the Deputy Collector under Section 247 of MLRC. On these, amongst other submissions, learned counsel for the Petitioners seeks setting aside of the impugned orders.

10. Learned counsel for contesting Respondent opposed the Petitions basically on the ground that the proceeding filed before the Deputy Collector though is under nomenclature of an appeal under Section 247 of MLRC, the said proceeding is not an Appeal against the order passed by the Tahsildar but is an Application seeking correction of the revenue record. In this regard, attention of the Court is drawn to the memo of Appeal filed before the Deputy Collector indicating that there is no prayer for setting aside order passed by the Tahsildar on Application filed by Respondent No. 8. It is further argued that since this is not an Appeal against the order passed by the Tahsildar, it was open for the Deputy Collector for the first time to entertain the contention of Respondent No. 8 with regard to the claim of tenancy and possession over the subject lands on the

basis of tenancy rights. It is further argued that the observations made in the previous proceedings indicate that the possession of Respondent No. 8 and his predecessors is protected since 1950 and therefore, as they were in possession of the subject lands, they become tenant by effect of law i.e. Hyderabad Tenancy and Agricultural Lands Act.

11. At the outset, it needs to be recorded that there is no dispute made by the parties with regard to the fact that Mehboob Ali Khan was the owner of the subject land. The civil proceeding of the year 1961-1962 indicates that it was the case of the Ishwarsing of having been in possession of the subject land on the basis of agreement to sale executed in his favour by the owner. With this plea, civil proceeding is contesting by the ancestors of Respondent No. 8. this contention of Respondent No. 8's predecessors came to be accepted by the Civil Court and his possession is maintained over the subject land. The said proceeding has attained finality on dismissal of the Second Appeal by this Court.

12. Further, there is no denial of the fact that in or around 1980, there was acquisition of portion of the land from the subject

lands and the said litigation, after the order passed by the Reference Court, came up to this Court. It is relevant to take note of the order passed by the Division Bench of this Court in First Appeal No. 173/1981 and Writ Petition No. 49A/1982. This order came to be passed on the basis of compromise terms entered into between the parties. It is fruitful to re-produce the same as under :-

“The appellant and respondents have settled their dispute and file consent terms in satisfaction of their claims to compensation amount of acquired lands S.No. 40, 41 of village Indewadi Tq. & Dist. Jalna, Acq. R. 115/80. Appellants accepts ownership of respondents of above said acquired lands.

1. The appellants accept Rs. 3000/- and respondents Rs. 11000/- out of total compensation awarded by the lower court in satisfaction of their respective claims.

2. That appellants further admit ownership of respondent No. 1 in respect of 24 acres 31 gunthas of land in Ceiling Case No. 5/C/79/A pending before Maharashtra Revenue Tribunal, Aurangabad present appellants have given up their claims regarding these lands. Respondent No. 1 is entitled to get possession of these lands 24 acres 31 gunthas from Maharashtra Revenue Tribunal Aurangabad.

3. That Appellants/petitioner in W.P. 49A/82 withdrew the W.P. 49A/82 and have no objection and they are to continue names of petitioners and respondents in

Revenue Records according to decision of Commissioner Aurangabad in Case No. 80/Rev/4-34 D/25-05-81.

4. That respondent No. 1 has withdrawn Rs.14000/- from the lower court in this case. He is allowed to deposit Rs. 3000/- in the lower court by the end of April **1985**, after deducting the part of amount already deposited in lower court for paying the same to the appellant as per lower court decision.

5. That in the light of consent terms F.A. 173/01 and WP 49A/82 be allowed to be withdrawn and order be passed accordingly without costs.”

Pursuant to the said compromise, an order came to be passed by the Division Bench of this Court dated 22.11.1985 wherein it is held as under :-

“5. These being the admitted positions consented to by the parties including the State we make the following order.

Modifying the order under appeal we hold by reason of the consent Mohd. Mehboob Ali Khan the real owner of the property to be entitled to a sum of Rs. 11,000/- and rest of the amount payable to the appellants represented by Dhannusingh. The apportionment and appropriation of the compensation amount should be made in this way.”

This order has not been taken exception to and has attained finality. It is thus clear on the basis of this order too that Respondent No. 8's predecessors did not dispute the fact that Mehboob Ali Khan is the owner of the subject lands. Needless to say that the admission given and consent recorded by the predecessors of Respondent No. 8 would bind him.

13. In the light of the aforestated facts, if the Application filed before the Tahsildar is considered, pertinently, in that Application though Respondent No. 8 seeks inclusion of his name in the revenue record as owner, he does not claim to be the tenant in respect of the subject lands under the provisions of Hyderabad Tenancy and Agricultural Lands Act. This Court has made a specific query to the learned counsel for Respondent No. 8 to bring to the notice of this Court any Application made to the Tahsildar claiming Respondent No. 8 to be the tenant in respect of the subject lands. In spite of giving opportunity, nothing is placed on record to indicate that any such plea was raised before the Tahsildar. The plea before the Tahsildar was on the basis of agreement to sale and since title is claimed on the basis of agreement to sale, the Tahsildar has rightly

directed Respondent No. 8 to approach Civil Court for establishing his title over the subject lands.

14. Then thereafter, an Appeal came to be filed before the Deputy Collector under Section 247 of MLRC. Herein, for the first time, it was claimed by Respondent No. 8 to be the tenant in respect of the subject lands. For the purpose of raising said claim, no order passed by the Tenancy Tribunal was relied upon. In the proceeding under Section 247 of MLRC, practically the Deputy Collector has held that Respondent No. 8 is the tenant in respect of the subject lands and therefore, he becomes owner/deemed owner and hence, mutation needs to be effected to that effect. It is pertinent to note that under the MLR code, the revenue authorities cannot decide the status of any person to be a tenant and the same is to be decided by the competent Tribunal. Admittedly, no such declaration has been given by the Tenancy Tribunal in favour of Respondent No. 8 in respect of the subject lands. The order passed by the Deputy Collector, therefore, is beyond jurisdiction and hence cannot sustain. The Additional Collector, was therefore, justified in setting aside the said order. The Additional Divisional Commissioner as well as the Honourable Minister, however, failed to take into consideration the

jurisdictional aspect of the matter and confirmed the order passed by the Deputy Collector mechanically. Having regard to the provisions of Hyderabad Tenancy and Agricultural Lands Act and powers of revenue authorities under MLRC, the orders passed by the Deputy Collector, being without jurisdiction, consequently, Additional Divisional Commissioner and the Honourable Minister are not sustainable in law hence deserve to be set aside.

15. In view of above discussion, the Petitions are allowed. The impugned orders are set aside.

16. In view of disposal of Writ Petitions, pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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