



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10513 OF 2022

1. Laxman Ramji Shelke
(Deceased) Through L.Rs.
- A. Bhau Laxman Shelke
Age : 77 years, Occ : Agriculture,
Through G.P.A. holder

Nitin S/o Bhaurao Shelke
Age : 46 years, Occ : Agri.,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar.

..PETITIONER

VERSUS

1. Murlidhar Baburao Shelke
Age : Major, Occ : Agriculture,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar.
2. Shridhar Narayan Kulkarni
(Died) Through L.Rs.
- A) Sanjay Shridhar Kulkarni
Age : Major, Occ : Agri.,
R/o Priti Sanam, 1321,
Kasba Peth, Pune,
Tq. & Dist. Pune.
- B) Smt. Asawari Ramesh Dekhne
Age : Major, Occ : Household,
R/o Priti Sangam, 1321,
Kasba Peth, Pune,
Tq. & Dist. Pune.
- C) Snehalata Shridhar Kulkarni
Age : Major, Occ : Household,
R/o Priti Sangam, 1321,
Kasba Peth, Pune,
Tq. & Dist. Pune.

- D) Amey Shridhar Joshi
Age : Major, Occ : Service,
R/o Priti Sangam, 1321,
Kasba Peth, Pune
Tq. & Dist. Pune.
3. Mukund Digambar Kulkarni
Age : Major, Occ : Agri.,
R/o A-802, Sai Regency, Bhoir Nagar,
Mulund (East), Mumbai - 400 081.
4. Ramabai Vishnu Kulkarni
Age : Major, Occ : Household,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar
5. Amit Vijay Kulkarni
Age : Major, Occ : Agriculture,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar.
6. Vishwas Vishnu Kulkarni
Age : Major, Occ : Agriculture,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar.
7. Ranjana Babanrao Punde
Age : Major, Occ : Agriculture,
R/o Chande, Tq. Karjat,
Dist. Ahmednagar.
8. Prabhakar Trimbak Kulkarni
(Deceased), Through L.Rs.
- A. Mahesh Prabhakar Kulkarni
Age : Major, Occ : Agri.,
R/o 4, Swanam Apartment,
Chintamani Colony, Rajiv Nagar,
Tq. & Dist. Nashik.
9. Sudhakar Trimbak Kulkarni
(Deceased) Through L.Rs.

A. Vaibhav Sudhakar Kulkarni
(Died) Through L.Rs.

9A-1. Suvarna Vaibhav Kulkarni
Age : 50 years, Occ : Service,

9A-2. Smruddhi Vaibhav Kulkarni
Age : 26 years, Occ : Service,

9A-3. Vaishnavi Vaibhav Kulkarni
Age : 22 years, Occ : Service,

All L.Rs. are resident of
Flat No.5, Plot No.4,
Suyash Corner, Malhar Chowk,
success vihar, Opposite to Jawahar Nagar,
Police Station, Aurangabad,
Maharashtra.

10. Waman Narayan Kulkarni
Age : Major, Occ : Agri.,
R/o Narayanbag, Bhivandi Road,
Kalyan,
Tq. & Dist. Thane
**(Respondent No.10 deleted as per
Court's order dated 14.11.2022).**

11. Smt. Rakhamabai Vishnu Kulkarni
Age : Major, Occ : Agri.,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar.

..RESPONDENTS

WITH
WRIT PETITION NO. 11968 OF 2022

1. Prabhakar Trimbak Kulkarni
(Died), Through L.Rs.

1-A. Mahesh Prabhakar Kulkarni
Age : 46 years, Occ : Business,
R/o 4, Swanam Apartment,
Chintamani Colony, Rajiv Nagar,
Tq. & Dist. Nashik.

2. Sudhakar Trimbak Kulkarni
(Died) Through L.Rs.

2-A. Vaibhav Sudhakar Kulkarni
(Died) Through L.Rs.

2-A-1. Smt. Suvarna Vaibhav Kulkarni
Age : 50 years, Occ : Household,

2-A-2. Smruddhi Vaibhav Kulkarni
Age : 26 years, Occ : Service,

2-A-3. Vaishnavi Vaibhav Kulkarni
Age : 22 years, Occ : Student,

Applicant Nos.2-A-1 to 2-A-3
are R/o Flat No.5, Plot No.4,
Suyash Corner, Malhar Chowk,
Aurangabad

3. Digambar Yeshwant Kulkarni
(Died) Through L.Rs.

3-A. Mukund Digambar Kulkarni
Age : 66 years, Occ : Business,
R/o A-802, Sai Regency, Bhoir Nagar,
Mulund (East), Mumbai - 400 081.

4. Vishwas Vishnu Kulkarni
Age : 56 years, Occ : Agriculture,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar.

..PETITIONERS

VERSUS

1. Laxman Ramji Shelke
(Died) Through L.Rs.
Bhau Laxman Shelke
Age : 77 years, Occ : Agriculture,
Through G.P.A. holder
Nitin S/o Bhaurao Shelke
Age : 46 years, Occ : Agri.,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar.

2. Shridhar Narayan Kulkarni
(Died) Through L.Rs.
- 2-A) Sanjay Shridhar Kulkarni
(Died)
- 2-B) Smt. Asawari Ramesh Dekhne
Age : Major, Occ : Household,
R/o Priti Sangam, 1321,
Kasba Peth, Pune,
Tq. & Dist. Pune.
- 2-C) Snehalata Shridhar Kulkarni
Age : Major, Occ : Household,
R/o Priti Sangam, 1321,
Kasba Peth, Pune,
Tq. & Dist. Pune.
- 2-D) Amay Shridhar Joshi
Age : Major, Occ : Service,
R/o Priti Sangam, 1321,
Kasba Peth, Pune
Tq. & Dist. Pune.
3. Waman Narayan Kulkarni
(Died) Through his L.Rs.

Vasumatibai Waman Kulkarni
(Died Issueless)

(The petitioners and respondent
nos.2, 5 and 6 are the only L.Rs.
which is already on record)
4. Ramabai Vishnu Kulkarni
Age : Major, Occ : Household,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar
5. Vijay Vishnu Kulkarni
(Died) Through his L.Rs.

Amit Vijay Kulkarni
Age : Major, Occ : Agriculture,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar.

6. Ranjana Babanrao Punde
Age : Major, Occ : Agriculture,
R/o Chande, Tq. Karjat,
Dist. Ahmednagar.

7. Murlidhar Baburao Shelke
Age : Major, Occ : Agriculture,
R/o Bota, Tq. Sangamner,
Dist. Ahmednagar.

..RESPONDENTS

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Mr. D.G. Nagode, Advocate for petitioners in WP
No.11968/2022

Mr. V.D. Sapkal, Senior Advocate a/w Mr. Yash A. Jadhav i/b

Mr. S.R. Sapkal, Advocate for petitioners in WP

No.10513/2022

Mr. S.S. Jadhavar, Advocate for respondent no.7 in WP

No.11968/2022

Mr.S.S. Jadhavar, Advocate for respondent no.1 in WP

No.10513/2022

Mr. D.G. Nagode, Advocate for Respondent Nos.3, 6, 8(A),
9/A/1 to 9/A/3 in WP No.10513/2022.

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CORAM : ROHIT W. JOSHI, J.

RESERVED ON : 23rd JUNE, 2025

PRONOUNCED ON: 3rd SEPTEMBER, 2025

JUDGMENT :

In the body of the judgment, the status of parties
as petitioner and respondents is mentioned as per cause title
of Writ Petition No.10513/2022.

2. The controversy in the present petitions pertains to tenancy over agricultural lands situated at village Bota, Tq.Sangamner, Dist. Ahmednagar, the details whereof are as under :-

Sr. No.	Old Number	New Number	Area
1.	339/2 to 5	186	19R
2.	346/5A	181	09R
3.	345/3	221	12R
4.	341/23/3/5	197	2H 14R pot kharaba 6 R
5.	340/1 to 6	196	20R
6.	340/12 to 18	191	29R
7.	339/12 & 13	182	22R
8.	339/9 and 10	184	13R
9.	338/8C/12/14	213	09R
10.	343/6	203	56R

3. The aforesaid lands are hereinafter referred to as “the suit lands”. One Shridhar Narayan Kulkarni, the predecessor of respondent nos.2 to 11 was admittedly owner of the suit lands. The name of respondent no.1 was recorded as tenant of the suit lands. Respondent No.1 had filed an application before the Avval Karkun, Sangamner, stating that he was surrendering the tenancy of the suit lands since he had other agricultural lands and it was not possible and

convenient for him to cultivate the suit lands. The said application was filed on 28.07.1956. Respondent No.1 recorded his deposition before the Avval Karkun on 08.08.1956 reiterating the averments made in the application for surrender and confirmed that he was surrendering the tenancy over the suit lands. It will be pertinent to mention that as per the deposition of respondent no.1, he was 18 years old at the relevant time.

4. The Avval Karkun passed order dated 08.08.1956 on the said application, recording that respondent no.1/applicant had filed the proceeding in order to surrender his tenancy rights over suit lands and that during the course of his deposition, he has stated that he was surrendering the tenancy rights since he was unable to cultivate the same. The Avval Karkun recorded his satisfaction that the surrender was voluntary and accordingly, directed deletion of name of respondent no.1 from record of rights. The record discloses that vide mutation entry no.2877, the name of respondent no.1 was deleted from the record of rights in view of the said order dated 08.08.1956 passed by the Avval Karkun.

5. Thereafter, an entry is recorded on 15.02.1962 vide Mutation Entry No.3449 stating that since respondent no.1 had surrendered his tenancy rights over the suit lands, question of issuance of sale certificate in his favour under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the M.T.A.L. Act") does not arise. The record also indicates that Mutation Entry No.2974 was recorded on 21.01.1958 mentioning that respondent no.1 had cultivated the suit lands as tenant of the respondent/landlord (Kulkarnis) in the year 1957-58 and, therefore, his name was required to be recorded as tenant. The present petitioner is a family member of respondent no.1.

6. The petitioner and respondent no.1 belong to different branches in the same family. The petitioner had filed an application dated 06.01.1964 before Avval Karkun, Sangamner, *inter alia*, contending that suit lands were jointly cultivated by him and respondent no.1 for years together and that although the name of respondent no.1 was recorded alone as a tenant, as a matter of fact, the tenancy rights were vested with the entire joint family in which the petitioner and respondent no.1 had half share each. The Avval Karkun

allowed the said application vide order dated 20.06.1964. Perusal of the order will demonstrate that before allowing the application vide order dated 20.06.1964, the Avval Karkun had recorded statements of the petitioner, respondent no.1 and the land owner.

7. Respondent No.10 - landlord (Waman Narayan Kulkarni) had filed suit for recovery of possession of some of the suit lands owned by him against the petitioner and respondent no.1, being Regular Civil Suit No.332/1975. Likewise, respondent no.2 - landlord (Shridhar) had also filed similar suit with respect to suit lands owned by him, being Regular Civil Suit No.333/1975. In both these suits the contention of the plaintiffs (respondent nos.2 and 10) was that the suit lands were let to deceased Baburao, father of respondent no.1 (Murlidhar) as a tenant in the year 1950 and that after the demise of his father-Baburao, respondent no.1 continued to cultivate the lands as tenant. It is then contended that respondent no.1 had surrendered the tenancy with respect to the suit lands by filing proceeding bearing Tenancy Case No.115/1956, which was allowed vide order dated 08.08.1956 passed by the Avval Karkun, Sangamner. It was

further contended that the petitioner, who was arrayed as defendant no.2 in the said suit had no concern whatsoever with the suit lands although he was claiming the suit properties to be properties of the Joint Hindu Family held in tenancy rights. Perusal of the judgments in the said suits will demonstrate that the petitioner had filed written statements in the said suits. Respondent No.1 had filed a pursis adopting the written statements filed by the petitioner as his written statements. Perusal of the judgments will indicate that it was stated in the written statements that the petitioner and respondent no.1 were members of Joint Hindu Family and that the suit lands were under cultivation of their forefathers as tenants and in the partition of Hindu Family, suit properties fell to the share of branch of petitioner (defendant no.1 in the said suit). It was further stated in the written statements that from the date on which the lands fell to the share of branch of petitioner, he had become tenant of the suit lands and that the plaintiffs had no right to terminate the tenancy of the petitioner (defendant no.1). It was also stated that alleged surrender of tenancy by respondent no.1 (defendant no.2 in said suit) was not binding on the petitioner (defendant no.1 in the said suit).

8. The said suits came to be decreed vide judgment and decree dated 09.06.1999. The decree of possession was passed against the petitioner and respondent no.1 directing them to deliver possession of the suit lands to the plaintiffs (respondent nos.2 and 10 herein). The learned Civil Court had however directed that the decree for possession would take effect subject to adjudication of tenancy disputes between the parties which was pending while the suit was decided. It will also be pertinent to state that the learned Civil Court has recorded a finding that the petitioner had failed to substantiate his contention of occupying the suit lands as tenant. The present petitioner preferred two separate appeals challenging the said judgments and decrees passed by the learned Civil Court. Both these appeals, registered as Regular Civil Appeal No.839/2000 and 840/2000 came to be dismissed vide judgment and decree dated 17.06.2006 passed by the learned Additional District Judge, Sangamner. It will be pertinent to mention that respondent no.1 did not challenge the decree for possession. The petitioner has thereafter filed Second Appeal No.911/2006 and Second Appeal No.912/2006 against the said concurrent decrees for

possession. Both these second appeals are admitted by this Court, vide orders dated 23.08.2010 and 19.10.2010 and are pending for adjudication. This Court has also granted stay to execution of the decree for possession on the condition that the petitioner shall not alienate or create third party interest over the suit lands.

9. It will be pertinent to state that respondent no.1 and the petitioner had jointly filed a proceeding under Section 32G of the M.T.A.L. Act before the Tahsildar, Sangamner seeking issuance of sale certificate. The said application which was filed on 18.11.1975 came to be rejected vide order dated 05.06.1978. The Tahsildar has placed reliance on order dated 14.10.1974 passed on application filed by petitioner in a proceeding under Section 33C of the M.T.A.L. Act for addition of his name as party. The said application was rejected holding that there was no evidence to establish claim of tenancy of petitioner. As regards respondent no.1, the application was rejected on the ground that earlier proceeding under Section 32G was already closed vide order dated 10.10.1962. Perusal of the order dated 14.10.1974 will indicate that the learned Additional Tahsildar has observed that as per record as on

01.04.1962, which is the relevant date for deciding an application under Section 33C, respondent no.1 alone was cultivating the suit lands and that the petitioner, who sought inclusion of his name in the proceeding had no concern with the said lands as per the record, and therefore, his name could not be included in the proceeding. Accordingly, application for inclusion of the name filed by the petitioner in the said proceeding was rejected by the learned Additional Tahsildar.

10. The petitioner filed an appeal challenging the order dated 02.06.1978 passed by the Additional Tahsildar rejecting the application for issuance of sale certificate. The said Appeal came to be rejected vide order dated 31.03.1980. It will be pertinent to mention that there was typographical error in mentioning the name of the petitioner. Instead of mentioning the name of petitioner "Laxman Ramji Shinde", name is mentioned as "Murlidhar Ramji Shinde". It is necessary to state that respondent no.1 did not file appeal challenging the order dated 02.06.1978.

11. The petitioner thereafter filed revision before the

Maharashtra Revenue Tribunal challenging the order dated 02.06.1978 passed by the Tenancy Tahsildar, which was in turn confirmed by the Deputy Collector, vide order dated 31.03.1980. The said revision was allowed by the learned Maharashtra Revenue Tribunal, vide judgment and order dated 28.02.1985. The orders dated 02.06.1978 and 31.03.1980 passed by the learned Tenancy Tahsildar and Deputy Collector were quashed and the matter was remanded to the learned Additional Tahsildar to decide Section 32G application afresh by giving opportunity of hearing the parties. The issue of jointness of tenancy of the petitioner and respondent no.1 was also directed to be decided.

12. The learned Tenancy Tahsildar took up the case for fresh consideration in view of the aforesaid order of remand passed by the learned Maharashtra Revenue Tribunal (hereinafter referred to as "MRT"). After remand of the matter, the learned Tahsildar decided the same vide order dated 11.03.1999 rejecting the application on the ground that respondent no.1 had surrendered the tenancy on 08.08.1956, as held by the Avval Karkun in the proceeding for surrender filed by respondent no.1. The present petitioner again filed

Appeal challenging the said order dated 11.03.1999. The said Appeal was allowed by the Sub-Divisional Officer vide order dated 24.04.2000. The Sub-Divisional Officer quashed and set aside the order dated 11.03.1999 passed by the Tenancy Tahsildar and remanded the matter for fresh adjudication.

13. After remand of the matter, the learned Tenancy Tahsildar decided the application vide order dated 28.03.2018. The application filed by the petitioner was allowed. The learned Tenancy Tahsildar determined the purchase price of the suit lands at Rs.34,588/- and directed the petitioner to deposit the said amount within a period of three months. Further directions were issued to issue sale certificate in favour of the petitioner under Section 32M of the M.T.A.L. Act. It will be pertinent to state that the said order is passed in favour of the petitioner alone.

14. Respondents - land owners challenged the said order dated 28.03.2018 passed by the learned Tenancy Tahsildar by filing an Appeal before the Sub-Divisional Officer, being Tenancy Appeal No.142/2018. The said Appeal came to be dismissed vide order dated 19.01.2019.

15. It will be necessary to state that in this appeal, respondent no.1 raised a contention that the petitioner was not a tenant of the suit lands and that the tenancy rights are vested with him. He questioned the findings recorded by the Tenancy Tahsildar in favour of the petitioner and decision to issue sale certificate in the name of the petitioner alone. The Sub-Divisional Officer has held that surrender of tenancy in the year 1956 was never acted upon. He has also recorded a finding that the name of respondent no.1 in the said appeal i.e. present petitioner was also recorded in the revenue record as tenant. The Sub-Divisional Officer has held that on Tillers Day, the father of the petitioner was in possession of the suit lands as tenant. As regards the objection raised by respondent no.1, the learned Sub-Divisional Officer has recorded that in the earlier round of litigation findings were recorded against respondent no.1, which did not challenge. It is held that if respondent no.1 was aggrieved by any findings or order passed earlier, he ought to have challenge the same. It is observed that respondent no.1 had surrendered his tenancy in Tenancy Case No.115/1956 and order dated 08.08.1956 accepting the surrender was passed by the Competent Authority. It is also observed that pursuant to the said order

relevant entries of mutation were also recorded deleting the name of respondent no.1. In view of such findings, the order dated 28.03.2018 passed by the Tenancy Tahsildar directing the issuance of sale certificate in the name of petitioner alone was upheld and the Appeal was dismissed.

16. Being aggrieved by the said order, respondent no.1 preferred a Revision bearing Case No.41/B/2019/AN. The Revision Application came to be rejected on the ground that respondent no.1 had not filed Appeal challenging the order dated 28.03.2018 passed by the Tenancy Tahsildar, and therefore, Revision at his behest in order to challenge order dated 19.01.2019 passed by the Sub-Divisional Officer in Appeal preferred by landlord was not maintainable. The learned Maharashtra Revenue Tribunal has also made certain observations with respect to conduct of respondent no.1 in not challenging decrees passed in the suits for possession filed by the landlords.

17. It will be pertinent to mention that the landlords had also preferred a Revision bearing Case No.34/B/2019/AN

challenging the order dated 28.03.2018 passed by the Tenancy Tahsildar directing issuance of sale certificate in favour of the petitioner and the order dated 19.01.2019 passed by the Sub-Divisional Officer dismissing the Appeal preferred by the landlords. While Revision Application was pending the present petitioner and respondent/landlord entered into out of Court settlement. The land in question was acquired by National Highways Authority. Petitioner and respondent/landlord entered into settlement for apportionment of amount of compensation awarded. The parties filed joint compromise pursis dated 28.01.2020 before the Maharashtra Revenue Tribunal. An application for deletion of name of respondent no.1 was also filed on 28.01.2020. The learned Tribunal allowed the application for deletion of name of respondent no.1 and disposed of the Revision in terms of compromise arrived at between the petitioner and respondent/landlord.

18. Respondent No.1 thereafter preferred a petition before this Court, being Writ Petition No.3401/2020 challenging the order dated 23.01.2020 passed by the learned Maharashtra Revenue Tribunal in Revision Case No.41/B/2019/AN preferred by him, which was dismissed as

not maintainable vide order dated 23.01.2020. This Court has disposed of the said petition vide order dated 28.02.2020 with liberty to respondent no.1 to avail of statutory remedy in accordance with law. While disposing of the petition, it is observed that since the Revision was dismissed as not maintainable, the observations on merits of the matter made by the learned Maharashtra Revenue Tribunal should be ignored while deciding the matter afresh.

19. Respondent No.1 had also preferred a Petition, being Writ Petition No.3534/2020, challenging the order dated 28.01.2020 passed by the Maharashtra Revenue Tribunal permitting deletion of name of respondent no.1 in Revision Case No.34/B/2019/AN and disposing of the same in terms of the compromise arrived between the petitioner and respondent/landlord. The said petition is admitted vide order dated 04.03.2020, however, this Court has refused to grant any interim relief to respondent no.1 (petitioner in the said petition).

20. In this backdrop, respondent no.1 preferred

Tenancy Appeal No.66/2020 before the Sub-Divisional Officer in order to challenge the order dated 28.03.2018 passed by the Tenancy Tahsildar directing issuance of sale certificate in favour of the present petitioner. Since there was delay, an application for condonation of delay was also filed. The application for condonation of delay was allowed. The said Appeal came to be allowed vide order dated 20.07.2021. The order dated 28.03.2018 came to be quashed. It is held that respondent no.1 alone is the tenant of the properties in question and accordingly, the directions were issued to the Tenancy Tahsildar to calculate appropriate sale consideration from him and to issue sale certificate under Section 32M of the M.T.A.L. Act in his favour. While allowing the appeal, the learned Sub-Divisional Officer has observed that as on 01.04.1957, name of respondent no.1 and prior to that name of his father alone were reflected in the revenue record as tenants. The Sub-Divisional Officer has observed that the alleged surrender of tenancy on 08.08.1956 is not in accordance with law and further that the said surrender was never acted upon since possession was never delivered. It is held that the present petitioner or his predecessors were never in occupation of the suit lands as tenants.

21. The present petitioner and respondents/landlords (petitioners in Writ Petition No.11968/2024) thereafter preferred two separate Revision Applications bearing Case Nos.44/B/2021/AN and 47/B/2021/AN respectively, challenging the order dated 20.07.2021 passed by the Sub-Divisional Officer in Tenancy Appeal No.66/2020. The learned Maharashtra Revenue Tribunal has dismissed the said Revision Applications vide common judgment dated 26.08.2022. The learned Maharashtra Revenue Tribunal has observed that the surrender of tenancy on 08.08.1956 is not a valid surrender since the order accepting surrender is passed by a Avval Karkun and not by the Mamlatdar. It is further observed that despite the order of surrender dated 08.08.1956, the name of respondent no.1 appeared in the revenue records till the year 1981-82. On this basis, it is held that the surrender was never acted upon. The learned Tribunal has held that earlier name of Babu Bhagwanta Shelke, the father of respondent no.1 was recorded as protected tenant and after his demise on 07.04.1952, name of respondent no.1 was recorded as tenant, being legal heirs of the original tenant deceased Babu. The learned Tribunal has also observed that after the order dated

08.08.1956 regarding surrender of tenancy was passed, the landlord did not file any application for delivery of possession, and therefore, the surrender was not valid and effective on this ground as well. As regards the present petitioner, it is observed that the entries in the record did not indicate possession of the petitioner or his predecessors as on 01.04.1957 i.e. the Tillers Day. It is also observed that there is no pleading that petitioner and respondent no.1 are family members. The learned Tribunal has further held that the landlord had all the while accepted respondent no.1 alone as a tenant. In view of the aforesaid findings, the learned Maharashtra Revenue Tribunal has confirmed the order dated 20.07.2021 passed by the Sub-Divisional Officer in Tenancy Appeal No.66/2020 and has dismissed the Revision Applications accordingly. The present petitions are filed challenging the said orders dated 20.07.2021 passed by the Sub-Divisional Officer and dated 26.08.2022 passed by the learned Maharashtra Revenue Tribunal.

22. Mr. V.D. Sapkal, learned Senior Advocate for the petitioner in Writ Petition No.10513/2022 contends that the Appeal preferred by respondent no.1 was not maintainable.

He draws attention to the order dated 28.03.2018 passed by the Tenancy Tahsildar in favour of the petitioner and by drawing attention to the said order, learned Senior Advocate states that a positive finding was recorded by the Tenancy Tahsildar that the petitioner was holding the suit lands as tenant and accordingly, specific order for issuing sale certificate in favour of the petitioner was passed. Mr. Sapkal contends that although, the landlord had filed Appeal challenging the said order, respondent no.1 who was also party to the said proceeding did not file any Appeal. He contends that respondent no.1 had accepted the said order. The learned Senior Advocate further contends that the respondent/landlord had filed Appeal challenging the order dated 28.03.2018 and the said Appeal was dismissed by the Sub-Divisional Officer on 19.01.2019. The learned Senior Advocate contends that the Sub-Divisional Officer has confirmed the order directing issuance of sale certificate in favour of the petitioner alone. Drawing attention to the said order, it is contended that respondent no.1 had raised contention with respect to merits of this case in Appeal filed by the respondent/landlord, however, the Appellate Authority maintained the order for issuance of sale certificate in the

name of the petitioner alone. The learned Senior Advocate further contends that this order was further challenged by the respondent/landlord by filing revision, which came to be disposed of by way of compromise. The learned Senior Advocate further contends that the order dated 28.03.2018 has merged with the appellate order dated 19.01.2019 passed by the Sub-Divisional Officer. The contention of the learned Senior Advocate is that after the order dated 28.03.2018 had merged with the appellate order dated 19.01.2019, respondent no.1 filed Appeal challenging the said order dated 28.03.2018 before the same appellate authority i.e. Sub-Divisional Officer. He contends that the Sub-Divisional Officer has erred in setting aside the order dated 28.03.2018 ignoring the fact that the said order had merged with appellate order dated 19.01.2019 passed by the same appellate authority i.e. the Sub-Divisional Officer. In view of the above, three contentions are raised by the learned Senior Advocate, (i) the order dated 28.03.2018 did not exist in law since it had merged with the subsequent order dated 19.01.2019; (ii) the Sub-Divisional Officer could not have passed the order for issuance of sale certificate in favour of respondent no.1 in view of earlier order passed by the same authority directing

issuance of sale certificate in favour of the petitioner and (iii) Appeal preferred by respondent no.1 was liable to be dismissed as the same was barred by principle of resjudicata. It is also contended that the appeal was barred by limitation and was liable to be dismissed as such. He contends that respondent no.1 had not even file an application for condonation of delay and in the absence of any application or order condoning the delay, the order passed by the Sub-Divisional Office is liable to be quashed as the Sub-Divisional Officer, acting as appellate authority, could have invoke jurisdiction to entertain the appeal on merits only after condoning the delay.

23. At the outset, Mr. Jadhavar points out to order passed on application for condonation of delay by the learned Sub-Divisional Officer, copy whereof is filed on record with reply affidavit. As regards merits, Mr. Jadhavar, learned Advocate for the respondent contends that the order dated 08.08.1956, which is foundation of the case of the petitioner, is nullity in the eyes of law. He contends that surrender of tenancy is complete only upon possession of the tenanted property being delivered to the landlord. It is his contention

that the record clearly reveals that possession of the suit lands was never delivered, and therefore, the alleged surrender had never taken effect. He further contends that the order of surrender is not passed by following mandatory provisions of Tenancy Act. He contends that the Avval Karkun did not follow the prescribed procedure as per Section 15 of the Act. It is contended that a surrender of tenancy, in order to be valid must be in writing; it must be verified by Mamlatdar; Mamlatdar must be satisfied that the surrender is voluntary and consequences of such surrender are understood by the tenant and finally the Mamlatdar must endorse his satisfaction with respect to the aforesaid on the document of surrender. He argues that although the order dated 08.08.1956 records that the surrender is voluntary, it does not record that the consequences of surrender were understood by the tenant. The objection of Mr. Jadhavar is that the order is passed by Avval Karkun, who is not a Mamlatdar. He, therefore, contends that the alleged surrender is void, ab-initio and *non est*. He further contends that surrender of tenancy is never complete unless it is coupled with possession. It is his contention that the landlord never applied for resumption of possession and as such the tenancy continued. Another

contention is that foundation of the case of the petitioner is that he was a joint tenant of the land with respondent no.1, and therefore, there is absolutely no question of issuance of sale certificate in favour of petitioner alone. It must be stated that the said contention is raised in the alternative, without prejudice to the main contention that respondent no.1 alone is the tenant of subject properties. As regards the issue of resjudicata, contention of the learned Advocate is that the earlier orders are with respect to the dispute between the landlord and the tenant and the issue in the earlier round of litigation was whether the tenancy is surrendered or not. He contends that the issue as to whether petitioner or respondent no.1 was the tenant or that they were joint tenants did not fall for consideration and as such, the issue as regards who amongst the petitioner or the respondent no.1 is the tenant was not directly and substantially in issue in the earlier round of litigation. The learned advocate therefore, contends that the contention with respect to resjudicata raised by the learned Senior Advocate for the petitioner needs to be rejected.

24. In view of the arguments made above, the issues

that are fall for consideration in the present petitions, are as under :-

- (i) What is the effect of order dated 08.08.1956 passed by Avval Karkun recording surrender of tenancy ?
- (ii) Whether, petitioner and respondent no.1 were joint tenants of the properties in question ?, Whether, respondent no.1 alone was the tenant of the suit lands ?, whether the suit lands were allotted to the branch of petitioner in partition between branches of petitioner and respondent no.1 ?
- (iii) Whether, order dated 20.07.2021 passed by the Sub-Divisional Officer allowing the appeal preferred by respondent no.1 whereby the order dated 28.03.2018 passed by the Tenancy Tahsildar for issuance of sale certificate of petitioner barred by resjudicata in view of the earlier order dated 19.01.2019 passed by the Sub-Divisional Officer dismissing the appeal preferred by respondent/ landlord challenging order dated 28.03.2018 ?
- (iv) Whether, the order dated 28.03.2018 passed by the Tenancy Tahsildar directing issuance of sale certificate in favour of the petitioner to the exclusion of respondent no.1 merged with order dated 19.01.2020 passed by the Sub-

Divisional Officer in appeal preferred by landlord and order dated 23.01.2020 passed by the Maharashtra Revenue Tribunal in Revision preferred by respondent no.1 ?

POINT NO.(i) :-

25. The order dated 08.08.1956 is passed on application filed by respondent no.1 for surrender of tenancy. Respondent no.1 has not disputed that such application was filed. Perusal of the application dated 28.07.1956 will demonstrate that respondent no.1 states that he had vacated the possession over the suit property held in tenancy rights on his own accord since he had ownership over vast stretch of agricultural lands. The record also reveals that the evidence of respondent no.1 was recorded in which he reiterated that he was unable to cultivate the suit lands and was, therefore, surrendering tenancy rights with respect to the suit property. The deposition is recorded on 08.08.1956. The order accepting surrender is passed on 08.08.1956. Avval Karkun has recorded that the surrender was voluntary and that respondent no.1 categorically stated that he was not in position to cultivate the suit lands.

26. It does not appear from reading of the order and on perusal of the record that the consequences of surrender

were explained by the authority to respondent no.1. It also does not appear that the authority has made an endorsement on the document of surrender that the consequences of surrender were understood by the tenant. It is thus clear that the surrender is not in accordance with the mandate of Section 15 of the Act. Such a surrender has been held to be void by the Hon'ble Supreme Court of India in the matter of ***Ramchandra Keshav Adke (Dead) by Lrs v. Govind Joti Chavare and others*** reported in ***AIR 1975 SC 915***. It is held that provision of Section 15 are mandatory and failure to comply with the same renders the surrender *non est*. As regards the requirement of recording that the tenant understood the consequences of surrender, this Court has in the matter of ***Keshav Ganesh Bedekar Vs. Gopinath Krishna Salunke*** reported in ***(2003) 3 All M.R. 585 (Bom.)*** held that surrender of tenancy should not only be the voluntary but it should also be established that the tenant understood the consequences of such surrender. This Court has held that unless record shows that the tenant understood the consequences of surrender and such satisfaction is endorsed on the deed of surrender, surrender cannot be said to be valid or legal surrender.

27. It must also be stated that the order dated 08.08.1956 does not direct respondent no.1 to deliver possession of the suit lands to the respondent/landlord. There is statement in the application that respondent no.1/tenant had already surrendered possession. The words "ताबा स्वखुशीने सोडला आहे." imply that respondent no.1 stated that he had already given up or surrendered the possession of the suit lands. However, perusal of the evidence, which is recorded on 08.08.1956, will demonstrate that respondent no.1 stated that he was surrendering the tenancy rights over the suit property. The deposition of respondent no.1 is silent on the aspect of delivery of possession. The order dated 08.08.1956 does not direct the tenant to deliver possession of the suit lands to respondent/landlord. The order simply records that respondent no.1 - tenant had voluntarily surrendered his tenancy and is completely silent on the aspect of possession. It is also matter of record that respondent/landlord also did not file any application for resumption of possession in view of surrender of tenancy rights by respondent no.1-tenant. In this regard, learned Advocate for respondent no.1 has placed reliance on the judgment of this Court in the matter of ***Bhikubai Bhima Gaidhane Vs. Khandu Daji Pagar and another***

reported in **AIR 1973 Bom. 101**, wherein it is held as under :-

"7. Under Section 15 a tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord. Such surrender shall be in writing and verified before the Mamlatdar in a prescribed manner, where a tenant surrenders his tenancy the landlord shall be entitled to retain the land so surrendered. Mamlatdar also in this connection shall hold an inquiry and decide whether the landlord is entitled to retain the whole or any portion of the land so surrendered and specify the extent and price in that behalf. The landlord also should get an order for getting possession under Section 29(2). The landlord shall obtain possession of any land held by a tenant only under an order of the Mamlatdar. For obtaining such an order he shall make an application in the prescribed form and within a period of two years from the date on which he becomes entitled to obtain possession of the land. Now, the legislature by enacting these provisions has safeguarded the interest of the tenants who may be ousted by an unscrupulous landlord. But the landlord in the instant case says that because the tenant has made a statement before the Agricultural Lands Tribunal that he was no more a tenant and that he was no more in possession, it should be treated as good as his giving up his tenant's rights. That certainly cannot be accepted.

8. *Undoubtedly the record shows that the respondent was tenant of the land from the years 1952-53 to 1964-65. No wonder therefore that the Agricultural Lands Tribunal had started proceedings under Section 32-G. Because of the statement of the respondent-tenant the Agricultural Lands Tribunal dropped the proceedings. Now the statement of the respondent merely shows that he had surrendered his tenancy and that he has given up his possession. However, his statement will not stop the operation of a social legislation which is for the benefit of tenants and which is to safeguard their interests. Even if, therefore the respondent-tenant says that he had surrendered his possession, things ought to have taken place according to law. Termination of tenancy by virtue of surrender should be in accordance with Section 15. Possession by a landlord should be in accordance with Section 29. It cannot be in any other way. It cannot certainly be merely as a result of the statement of a tenant in S. 32-G proceedings. It, therefore, cannot be said that the alleged statement of the tenant in the instant case leads only to one inference and that is that he ceased to be a tenant and that he ceased to be in possession of the land."*

28. It will also be profitable to refer to the judgment in the matter of ***Madhao Tatya Sonar Vs. The Maharashtra Revenue Tribunal at Nagpur and others*** reported in ***AIR 1971***

Bom. 106, wherein while dealing with *pari materia* provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, this Court has held as under :-

"28. Thus, a consideration of the provisions of Section 20 and Section 36(1) and (2) and of the several authorities to which we have referred above leads to the following conclusion:

(i) That Section 36(2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, is plenary and controls Section 20. Thus, without an order of possession of the Tahsildar, a tenant does not cease to be a tenant even though he has handed over possession of the land he held as a tenant and even though the surrender is verified under the proviso to Section 20 read with Rule 11.

(ii) That the consent or willingness of the tenant to surrender is irrelevant and does not affect the operation of the above rule.

(iii) That an order for possession need not necessarily be passed upon a separate application under Section 36. It is sufficient if such an order is passed at the time when the surrender comes up for verification under Section 20."

. Sections 20 and 36 of the M.T.A.L. (Vidarbha Region) Act are *pari materia* with Sections 16 and 29

respectively of the M.T.A.L. Act.

29. It is consistent view of this Court and the Hon'ble Supreme Court that if a surrender is not strictly in accordance with Section 15, the surrender is *non est*. It is expressly held that not only should the surrender be voluntary but it must also be established that the authority had arrived at satisfaction that the tenant understood the consequences of surrender. This satisfaction should be endorsed on the document of surrender itself. In the present case, although the order dated 08.08.1956 records that the surrender is voluntary, it does not record that respondent no.1/tenant has understood the consequences of surrender. Such an endorsement by Avval Karkun is not found on the record of the case. In that view of the matter, order dated 08.08.1956 does not result in valid surrender in accordance with law.

30. Perusal of the aforesaid observations will demonstrate that surrender of tenancy is not complete unless landlord takes possession of the agricultural land pursuant to an order passed by the Tenancy Tahsildar for delivery of

possession. The delivery of possession must be pursuant to an order passed by the Competent Authority for delivery of possession. There must be an order for delivery of possession in the order passed for surrender of tenancy under Section 15 or a separate order under Section 29. Thus, surrender of tenancy is complete only when a tenant delivers possession of the property to the landlord pursuant to an order passed by the Mamlatdar. Delivery of possession by tenant without an order does not result in surrender of tenancy in view of the aforesaid decisions of this Court.

31. In the case at hand, there is no order directing delivery of possession. The order dated 08.08.1956 admittedly does not direct delivery of possession. Moreover, the record unerringly demonstrates that respondent no.1 continued to be in possession of the suit lands even after 08.08.1956 i.e. date on which the order of surrender of tenancy was passed. It is therefore explicitly clear that the surrender has not come into effect in view of the fact that respondent no.1 continued to be in possession of the suit lands.

POINT NO.(ii):-

32. As regards joint tenancy, it must be stated that the case of the petitioner was that he and respondent no.1 had joint tenants, since the lands were cultivated by their common ancestors as tenants. However, in the written statements filed in suit for possession by the landlords, being Regular Civil Suit No.332/1975 and 333/1975, the petitioner came up with a stand in written statement that in the partition in the family, these tenanted lands were allotted to his share. Respondent No.1 also filed pursis adopting the same written statements. It must be reiterated that the application under Section 32G is a joint application wherein both claimed tenancy over the suit lands. The stand taken in this application was not altered even after filing of written statement in the said suits. It must also be stated that after the matter was remanded by the MRT in the first round of litigation vide order dated 28.02.1985 directing the ALT to decide the issue of jointness of tenancy of the petitioner and respondent no.1, the ALT recorded finding that respondent no.10 alone was tenant and he had surrendered the tenancy on 08.08.1956. Accordingly, the application was rejected, vide order dated 11.03.1999. This order was challenged by the petitioner by filing appeal before

the Sub-Divisional Officer. Appeal came to be decided vide order dated 24.04.2000. The Sub-Divisional Officer has recorded that the tenancy rights were vested jointly with petitioner and respondent no.1. As regards surrender, it is observed that the surrender does not become effective unless possession is delivered. The learned Sub-Divisional Officer has therefore remanded the matter to ALT to decide Section 32G application afresh. Perusal of findings will clearly demonstrate that the learned Sub-Divisional Officer held that petitioner and respondent no.1, both were tenants of the suit lands. The matter was remanded to decide as to whether the respondent/landlord or the tenants i.e. petitioner and respondent no.1 were in possession of the suit lands after 08.08.1956 i.e. date of surrender. Thus, the Sub-Divisional Officer had remanded the matter back to the Tenancy Tahsildar after holding that petitioner and respondent no.1 were joint tenants of the suit lands. It will be pertinent to mention that neither the petitioner nor respondent no.1, who now claim tenancy rights to the exclusion of the other have not challenged this order. Initially, respondent no.1 was not even interested in contesting the proceedings as is apparent from the record. The petitioner, who was prosecuting the

proceedings participated in the proceeding after remand with the finding that the tenancy was joint tenancy of petitioner and respondent no.1. Thus, this order of remand is binding on both parties. It will also be pertinent to mention that the case of the petitioner that the suit lands had fallen to his share in partition between the family as is raised in the civil suits filed by the respondent/landlord is not accepted by the learned Trial Court and also by the First Appellate court. The Second Appeals are also not admitted by framing question regarding exclusive tenancy rights of the petitioner.

33. After remand of the matter, the ALT decided the application vide order dated 28.03.2018. Perusal of issues framed by ALT will demonstrate that the issues were framed as to whether the petitioner was in occupation of the lands as a tenant and whether he was entitled to purchase the lands under Section 32G. The learned ALT has observed that the record indicated possession of petitioner and respondent no.1. The learned ALT has also recorded that the Sub-Divisional Officer had held in Tenancy Appeal No.2/1999 that the surrender dated 08.08.1956 was merely a paper event and the surrender was never acted upon. It is thereafter observed that

as on the Tillers Date, name of the father of the applicant was recorded in the revenue record as tenant. It is further held that in the earlier round of litigation, decision in respect of tenancy of respondent no.1 alone was taken, and therefore, right of applicant to purchase the lands was not closed. In view of the aforesaid, the ALT directed issuance of sale certificate in favour of the petitioner alone. The finding recorded by the ALT is contrary to finding recorded by the Sub-Divisional Officer while remanding the matter. The Sub-Divisional Officer has categorically held that petitioner and respondent no.1 were joint tenants. However, the ALT has held that the petitioner alone was the tenant. The finding is clearly unsustainable, being contrary to the order passed by the Appellate Authority while remanding the matter. The ALT has also not considered the contents of application filed by petitioner on 06.01.1964 claiming joint tenancy rights with respondent no.1 and the order passed thereon directing name of the petitioner to be added as joint tenant with respondent no.1.

34. However, respondent no.1 did not challenge the said order earlier. The said order was challenged by the

landlord. Appeal preferred by the landlords came to be dismissed by the Sub-Divisional Officer, vide order dated 19.01.2019. Perusal of the order passed by the Appellate Authority will demonstrate that respondent no.1 had raised objection that the sale certificate could not be ordered to be issued in favour of the petitioner alone. Although, the respondent no.1 did not file any Appeal, these contentions were raised orally during the course of arguments. The learned Sub-Divisional Officer has held that respondent no.1 had surrendered the tenancy rights recorded in order dated 08.08.1956. The learned Sub-Divisional Officer has observed that in view of order dated 08.08.1956 tenancy rights of respondent no.1 stood terminated and the petitioner alone was entitled to sale certificate.

35. These findings by the learned ALT which are in turn confirmed by Sub-Divisional Officer are contrary to the order of remand passed by the Sub-Divisional Officer. It is well settled that findings recorded by the Appellate Authority while remanding the matter before the Court or Authority of first instance, are binding on both the parties as also the authorities who decide the matter between the party are also

not supposed to take contrary view other than the view taken in order of remand which is accepted by both sides. The order dated 28.03.2018 passed by the Tenancy Tahsildar as also order dated 19.01.2019 passed by the Sub-Divisional Officer are therefore clearly unsustainable in view of earlier order of remand. Once, it is held by the Appellate Authority that petitioner and respondent no.1 are joint tenants, the ALT which is a subordinate authority as also the Sub-Divisional Officer while entertaining the subsequent appeal could not have recorded any contrary findings than the findings recorded by the same Authority while remanding the matter. The findings are also unsustainable in view of clear pleading of petitioner in the application filed under Section 32G regarding joint tenancy with respondent no.1, as also in the application dated 06.01.1964 filed by him for recording his name as a tenant with respondent no.1.

36. As stated above, the revision filed by respondent no.1 challenging the order dated 19.01.2019 passed by the Sub-Divisional Officer was rejected on the ground of maintainability and in the petition filed by respondent no.1 liberty was granted to take recourse to appropriate legal

remedies. In view of the liberty granted, respondent no.1 filed an appeal. This Appeal came to be allowed vide impugned order dated 20.07.2021 in which it is held that respondent no.1 alone is the tenant of the suit lands and is entitled to purchase the suit lands under Section 32G of the Act. This order dated 20.07.2021 is also contrary to the order of remand passed by the Sub-Divisional Officer dated 24.04.2000. As stated above, the order of remand holding that petitioner and respondent no.1 were joint tenants is binding on parties. It is further well settled that findings which are confirmed and accepted in an order of remand cannot be altered subsequently when the matter is decided afresh pursuant to order of remand. The Sub-Divisional Officer has clearly erred in recording findings about exclusive tenancy rights of respondent no.1 contrary to the order of remand dated 24.04.2000. The Sub-Divisional Officer has also not taken into consideration the pleadings in 32G application filed by petitioner and respondent no.1, wherein respondent no.1 clearly admitted jointness of tenancy with petitioner. The finding in the order of remand dated 24.04.2000 is not assailed by any party. In the subsequent round of litigation, said finding was binding and no finding could be recorded by

any judicial authority contrary to the finding recorded in the order of remand. It must therefore be held that petitioner and respondent no.1 were holding the lands as joint tenants. Neither the petitioner nor respondent no.1 can claim that he alone is the tenant of the suit lands to the exclusion of the other.

37. As regards the revision filed before the MRT, the revision came to be dismissed. The learned MRT has also not taken into consideration the express admissions in pleading of respondent no.1 regarding jointness of tenancy. The pleadings in 32G application are the foundation of claim of petitioner and respondent no.1 is bound by his pleading, which the learned MRT has completely ignored. The learned MRT has also not taken into consideration the fact that pursuant to an application dated 06.01.1964, order dated 20.06.1964 was passed by Avval Karkun directing recording of the name of petitioner as tenant along with respondent no.1. This order is also binding on respondent no.1. It also needs to be mentioned that the findings in the remand order passed by the Sub-Divisional Officer regarding joint tenancy cannot be disturbed by the MRT since respondent no.1 had not

challenged the said findings recorded in the remand order.

POINT NO.(iii):-

38. The contention of the learned Senior Advocate for the petitioner is that the order dated 28.03.2018 directing issuance of sale certificate in favour of the petitioner was confirmed by the Sub-Divisional Officer vide order dated 19.01.2019 in Appeal preferred by the respondent/landlord. He contends that in view of this order dated 19.01.2019 passed in Appeal, the Sub-Divisional Officer could not have directed issuance of sale certificate in favour of respondent no.1 vide order dated 20.07.2021. His contention is that the earlier order dated 19.01.2019 will operate as resjudicata. He contends that the Sub-Divisional Officer while allowing the Appeal preferred by respondent no.1 has committed serious error of law in not following the principle of resjudicata and as a consequence of this, two self contradictory orders with respect to the same dispute are passed by the same authority. The learned Senior Advocate contends that whereas vide order dated 19.01.2019 passed by the Sub-Divisional Officer sale certificate is ordered to be issued in favour of the petitioner, by the subsequent order sale certificate with respect to the same lands is ordered to be issued in favour of

respondent no.1. He further contends that order dated 28.03.2018 has already merged with the appellate order dated 19.01.2019, and therefore, the order dated 28.03.2018 could not have been challenged by respondent no.1 by filing separate appeal since the order dated 28.03.2018 had lost its existence due to merger with appellate order dated 19.01.2019.

39. Perusal of the first order of remand passed by Maharashtra Revenue Tribunal dated 28.02.1985 will demonstrate that two points were directed to be decided by the learned MRT, first relating to subsistence of tenancy and second relating to *inter se* rights of the petitioner and respondent no.1 as tenants. Vide order dated 28.03.2018, the Tenancy Tahsildar has held that landlord-tenant relationship existed between petitioner and respondent and directed issuance of sale certificate in favour of petitioner. It is held that respondent no.1 had surrendered his tenancy rights. Thus, there are two points which are decided vide order dated 28.03.2018.

40. The Appeal filed by respondent/landlord was first

in point of time and the same is dismissed vide order dated 19.01.2019. The point which fell for consideration in this appeal was as to whether the landlord and tenant relationship existed between the parties and whether tenants were entitled for issuance of sale certificate in their favour. So far as, the subsequent appeal prepared by respondent no.1 is concerned, the issue therein was with respect to *inter se* dispute between the petitioner and respondent no.1, both of whom claimed to be tenants. In the Appeal preferred by landlord, the point directly and substantially in issue was relating to right of tenant to get sale certificate and appeal preferred by respondent no.1, the point directly and substantially in issue in the subsequent application filed by respondent no.1 was as to whether the petitioner or respondent no.1 was the tenant.

41. In view of the above, the subsequent appeal preferred by respondent no.1 will not be barred by resjudicata since the point directly and substantially in issue in both the appeals is different.

POINT NO. (iv) :-

42. As regards merger also the same principle will

apply. The order dated 28.03.2018 merged with the order dated 19.01.2019 preferred by respondent/landlord to the extent of adjudication of relationship of landlord and tenant. The landlord contended that the relationship was not in existence at all. The landlord was not concerned with *inter se* dispute between the two tenants. His contention was that tenancy does not subsist at all. The order passed by the Tahsildar has merged with the appellate order passed by the Sub-Divisional Officer in this regard. The said order will not have the effect of foreclosing right of respondent no.1 on merits with respect to claim of tenancy rights *inter se* between him and the petitioner. Appeal preferred by respondent no.1 was therefore maintainable.

43. Vide order dated 28.03.2018, the Tahsildar has held that the petitioner was entitled for a sale certificate in his name. Two parties can be said to be aggrieved by the said order, one respondents/landlords and second respondent no.1/co-tenant. The doctrine of merger will not have an effect of foreclosing of rights of co-tenant to challenge the order passed by the Mamlatdar only because the challenge by the landlord had failed and the order by Tahsildar in that sense

and to that extent had merged with the order of appellate authority i.e. Sub-Divisional Officer. The Appeal preferred by respondent no.1 was maintainable.

44. In view of the findings recorded above, in the considered opinion of this Court, the petition needs to be partly allowed as under :-

ORDER

- (i) Writ Petition No.10513/2022 is partly allowed.
- (ii) The order dated 26.08.2022 passed by the Maharashtra Revenue Tribunal, Aurangabad in Revision No.44/B/2021/AN and Revision No.47/B/2021AN and order dated 20.07.2021 passed by the Sub-Divisional Officer, Sangamner Division, Sangamner in Tenancy Appeal No.66/2020 are quashed and set aside.
- (iii) The order dated 28.03.2018 passed by the Tahsildar and Agricultural Tenancy Tribunal, Sangamner in Tenancy Case No.3/2017 of village Bota, Tq. Sangamner is modified by holding that petitioner and respondent no.1 are jointly entitled to purchase the suit properties for consideration specified in the said orders and directing issuance of sale certificate in joint name of petitioner and respondent no.1.

(iv) The petitioner and respondent no.1 have equal share in the said lands.

45. Civil Applications, if any, stand disposed of.

WRIT PETITION NO. 11968 OF 2022 :-

For the reasons mentioned above, Writ Petition stands dismissed. Civil Applications, if any, stand disposed of.

[ROHIT W. JOSHI, J.]

sga/2025