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

**WRIT PETITION NO.289 OF 2018
WITH
CIVIL APPLICATION NO.63 OF 2025**

1) Dinaji s/o Laxmanrao Navghare,
Age 67 Years, Occ. Agri,

2) Bapurao S/o Ramrao Navghare,
Age 57 years, Occ. Agri,
Both R/o Pokharni, Post. Limbgaon,
Tal. & Dist. Nanded. … Petitioners

Versus

1) Kishan s/o Laxman Kokate,
Age 62 years, Occ. Agri.
R/o Chimegaon, Tal. & Dist. Nanded.

2) Girji S/o Laxya Athwale (Deceased through L.R),
Savitribai W/o Kishan Khirade,
Age 59 years, Occ. Household,
R/o Pirpuran Nagar, Tal. & Dist. Nanded

3) Parasram s/o Dattatraya Dhutraj,
Age 61 years, Occ. Agri,
R/o Sonkhed, Tal. Loha, Dist. Nanded.

4) Kamlabai D/o Kishan Gache,
(Deceased) Through his L.Rs.
4A) Satvashila Yashwant Thorat,
Age 40 years, Occ. Housewife,
R/o Rahul Colony, Bhangi,
Tal. & Dist. Nanded

5) Khemaji S/o Raghoji Pohare,
Age 63 years, Occ. Agri,
R/o Marlak, Tal. & Dist. Nanded

6) Subhadrabai W/o Bramhaji Dhutraj,
Age 66 years, Occ. Household,
R/o Sonkhed, Tal. & Dist. Nanded

7) Pramilabai D/o Srinivasrao Deshpande
Age 66 years, Occ. Agri,
R/o Sayal, Tal. & Dist. Nanded
(Deleted as per order dated 29/03/2019)
… Respondents

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Mr. V.D. Sapkal, Sr. Advocate i/b Mr. A.B. Jagtap, Advocate for

Petitioners
Mr. P.R. Katneshwarkar, Sr. Advocate i/b Mr. G.G. Suryawanshi, Advocate for Respondent Nos.1 to 3, 5 & 6.

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CORAM : MANJUSHA DESHPANDE, J.

DATE : 27th JANUARY, 2025

JUDGMENT :

1. In the present writ petition, petitioner has challenged order dated 03/11/2017, passed by the President, Maharashtra Revenue Tribunal, Mumbai, Camp Aurangabad, in case No.21/B/2015/N, thereby rejecting the Revision filed by petitioners under Section 91 of the Hyderabad Tenancy And Agricultural Lands Act, 1950 (for short 'the said Act'), which was filed against the order dated 18/10/2014, passed by the Additional Collector, Nanded, in case No.Tenancy/Appeal/CR-88/2013, filed by respondents under Section 98 of the said Act. By the order dated 18/10/2014, the Additional Collector, Nanded, has allowed the appeal filed by respondents, thereby declaring ownership of respondents over the land Survey No.71, Gut No.139, admeasuring 13 Acre 29 Gunthe out of 26 Acre 33 Gunthe, under Section 38E of the said Act. Petitioners are basically challenging the powers of Additional Collector to pass an order under Section 98 of the said Act, which is titled as 'Summary eviction of any person unauthorisedly occupying or wrongfully in possession of any land'.

2. Learned Senior Counsel Mr. Sapkal appearing for

petitioners submits that the Additional Collector has committed jurisdictional error by passing an order which is beyond the scope of Section 98 of the said Act. The relief which was not even prayed has been granted by the Additional Collector vide order dated 18/10/2014. According to him, appellants i.e. respondent Nos.1 to 4 herein had filed appeal before the Collector for possession of land Survey No.71, Gut No.139, to the extent of 13 Acre and 20 Gunthe situated at Sayal, Tal. and District Nanded. The relief claimed was for the possession of land to be handed over to respondents by dispossessing petitioners from the said land. With total disregard to the prayers made by respondents in their appeal, the Additional Collector has allowed the appeal and has granted declaration under Section 38E of the said Act, to the effect that appellants/ respondents are declared to be the owners of land Survey No.71, Gut No.139, admeasuring 13 Acre 29 Gunthe out of 26 Acre 33 Gunthe.

3. The brief facts of the litigation which culminated into the order passed by Maharashtra Revenue Tribunal are that:

According to petitioners, they are the owners and possessors of the suit property vide registered sale deed No.2250, dated 22/10/1973, which was executed by respondent No.7 Pramilabai S. Deshpande who was the original land owner. Upon execution of the sale deed they held a legal and valid title of the agricultural land Survey No.71, Gut No.135, to the extent of 12

Acres out of 26 Acres and 33 Gunthe . According to petitioners, after the sale deed was executed on 22/10/1973, respondents for the first time after 31 years filed application in the year 2004 before Tahsildar, Nanded, under Section 32 of the said Act, for possession of land Survey No.71, Gut No.135, admeasuring 13 Acres 20 Gunthe and in Survey No.29, admeasuring 7 Acre 11 Gunthe situated at village Sayal, Nanded. The application of respondents was rejected by the Tahsildar vide order dated 01/11/2006. The order of Tahsildar was subject matter of Appeal before the Additional Collector, Nanded. The Additional Collector, vide order dated 06/11/2007 has allowed the appeal by setting aside the order of Tahsildar and has observed that original applicants may file an application under Section 98 of the said Act, for claiming possession of the suit property. Pursuant to the said order, respondents have filed application under Section 98 of the said Act before the Collector, Nanded, wherein it is prayed that:-

> *"That, application may kindly be allowed and possession of land G.No.139, S.No.71, Area 13 A, 20 Gs. and S.No.29, admeasuring 7 Acre 11 Gunthe, situated at Sayal Tq. & Dist. Nanded may kindly be delivered to applicants by dispossessing respondents anybody claims through them and direction may please be issued to concerned authority to record name of applicants in revenue record of above land and oblige."*

4. Petitioners herein filed their written statement to the application filed under Section 98 of the said Act, raising various objections including that of limitation and locus of applicants, on the

ground that applicants are not legal heirs and successors of protected tenant Laksha Raghaya, since there is no heirship certificate of Laksha Raghaya and without proving the relationship with him the application is not tenable. After recording the submissions of respective parties, the Additional Collector has decided the application vide order dated 18/10/2014 declaring the applicants to be the owners of land Survey No.71, Gut No.139, to the extent of 13 Acre 29 Gunthe out of 26 Acre 33 Gunthe.

5. The order dated 18/10/2014, passed by Additional Collector, is challenged by petitioners in Revision application before the Maharashtra Revenue Tribunal, Aurangabad. Upon notices being served, respondents caused their appearance and filed their say opposing the Revision. The President, Maharashtra Revenue Tribunal, Aurangabad, by order dated 03/11/2017 has rejected the Revision filed by petitioners and confirmed the order dated 18/10/2014 passed by Additional Collector, wherein respondents were declared as owners of the suit land.

6. The learned Senior Advocate for petitioners submits that scope of Section 98 of the said Act, is limited and circumscribed by the opening words used in the section itself that the summary eviction can be resorted to only when a person is unauthorisedly occupying or wrongfully in possession of the land. According to him, since petitioners are valid owners of the land as they have

purchased the land from original owner Pramilabai Deshpande, therefore, he cannot be categorized as unauthorised occupant or in wrongful possession of the land. He also relies on the sub-section (c) of Section 98 of the said Act, which provides that if a person is unauthorized occupant or in wrongful possession of the land which he is not entitled under the said provisions, may, if the said provisions do not provide for the eviction of such person, be summarily evicted by the Collector. Therefore, according to him, Section 98 which is summary proceedings cannot be invoked to seek possession from petitioners. The other ground raised by the learned Senior Advocate for petitioner is that the respondent has filed Application under Section 98 of the said Act, however, the Additional Collector has granted relief under Section 38E of the said Act, by making a declaration that respondent is owner of 13 Acre 29 Gunthe land of Gut No.139 as per Section 38E of the said Act. The relief granted was not according to the prayer made. The prayer was made as per Section 98 of the said Act. The power to grant relief under Section 38E, lies with the Tahsildar. Only after due inquiry the relief under Section 38E can be granted. Therefore, the order passed by Collector is *ex facie* beyond the powers of Collector. Therefore, it is required to be set aside.

7. According to learned Senior Counsel for petitioners, the remedy which is available to respondents is under Section 38E

(Explanation) as well as Section 32, which provides for procedure for taking possession. Remedies provided under Sections 32 and 38E are required to be resorted to for seeking restoration of possession. So far as powers under Sections 32 and 38E are concerned, they are exercised by the Tahsildar, only after making due inquiry orders are passed by the Tahsildar. Therefore, the order passed by Additional Collector amounts to usurpation of powers of the Tahsildar, which is not permissible. When the statute provides for exercise of powers by a particularly authority, it has to be exercised by that Authority only. Order passed by Additional Collector, therefore, is passed by exceeding the powers conferred upon him by the statute.

8. Learned Senior Counsel for petitioners though initially raised issue of limitation, however, in view of the judgment cited by learned Senior Counsel Mr. Katneshwarkar for respondents, he not press the issue of limitation.

9. Although learned Senior Counsel for petitioners has argued on the merits of the matter in detail, however, considering that the challenge is raised on the ground of usurpation of powers by the Collector, the details of the facts of the case are not required to be gone into.

10. Learned Senior Counsel for petitioners has drawn my attention to the findings recorded by Additional Collector in his

order, wherein it is observed that the predecessor in title of the petitioners i.e. Pramilabai Deshpande and others are lawful owners of land Survey No.71, Gut No.139 to the extent of 12 Acres from total holdings of 26 Acre and 33 Gunthe. Respondents herein are declared as protected tenants of the land to the extent of 13 Acre 29 Gunthe from total 26 Acre and 33 Gunthe in Survey No.71, on 30/03/1960. According to petitioners respondents have sold their land during the subsequent years by way of various sale deeds and now they are claiming to be the protected tenants of the land which remained with the owner and the owner has executed sale deed in the favour of petitioners, on the basis of which they are in possession. In support of his submissions, learned Senior Counsel has relied on the document which is titled as हक्काचे पत्रक wherein Entry No.67 is recorded on 28/08/1978 in respect of land Survey No.71 to the extent of 13 Acre 29 Gunthe land in favour of Ragho s/o Laxman, Munjaji s/o Laxman and Nivrutti s/o Gangaram. He has also drawn my attention to the column where it is recorded that protected tenants are in possession of that land. Hence, according to him the tenants were already in possession of the land. They have sold their share of land which was declared as land of Protected Tenant in their favour and now they are claiming the part of land of which the petitioners are in possession on the basis of sale deed executed by original owner.

11. Per contra, learned Senior Counsel Mr. Katneshwarkar for respondents submits that the scope of powers of Collector under Section 98 are wide. In fact, according to him, it is not even necessary to file application before the Collector for restoration of possession, as it is his duty to restore the possession of tenants who have been wrongfully and unauthorisedly dispossessed. The Section is self explanatory. He has drawn my attention to the observation of the Maharashtra Revenue Tribunal, wherein it is recorded that certificate under Section 38E issued in favour of tenant by the competent authority and confirmation of ownership, illustrate the description of 13 Acres 29 Gunthas of the property which, on perusal of the subject sale deed, fully matches with the suit property. It is apparent that the original owner has, prior to 22/10/1973 sold the other portion of the land which was not under restriction of tenancy rights. According to him, owner of the property, has disposed the property which was subject matter of declaration. Hence, the property which is declared to be of the Protected Tenant under Section 38E, is the property which is sold by the owner to present petitioners. No prior permission was taken by the owner before executing sale deed dated 22/10/1973.

12. According to learned Senior Counsel for respondents, the permission which is placed on record is a permission obtained under the Bombay Prevention of Fragmentation and Consolidation of

Holdings Act and Section 31 of that Act creates bar to the sale agricultural property in fragments. Therefore, according to learned Senior Counsel for respondents, the petitioners are in the possession of property which is declared to be the property of protected tenants. Hence, they have a right to seek restoration of possession of the property of which petitioners are in possession.

13. On being confronted with the order of the Additional Collector, learned Senior Advocate concedes that relief which has been granted by the Additional Collector is not the relief which was prayed in the application. The application was filed under Section 98 of the said Act and the relief was granted under Section 38E of the said Act.

14. After hearing the respective parties and on perusal of the application filed by present respondents, it is evident that the relief sought by respondents was that of restoration of possession and the order passed by the Additional Collector is a declaration under Section 38E. Powers under Section 38E are conferred upon the Tahsildar whereas powers under Section 98 are conferred upon the Collector. Hence, there is jurisdictional error committed by the Additional Collector, Nanded, while granting relief under Section 38E, when the application was filed for relief under Section 98 of the said Act. This jurisdictional error was not corrected by the Maharashtra Revenue Tribunal in the Revision filed by petitioners.

Therefore, the order passed in Revision becomes unsustainable and is required to be quashed and set aside.

15. The writ petition is partly allowed. The order dated 03/11/2017, passed by the President, Maharashtra Revenue Tribunal, Mumbai, Camp Aurangabad, in case No.21/B/2015/N, is quashed and set aside. Similarly, the order dated 18/10/2014, passed by the Additional Collector, Nanded, in case No.Tenancy/ Appeal/CR-88/2013, is also quashed and set aside. The Additional Collector is hereby directed to decide the application of respondents herein afresh taking into consideration the prayer made by respondents and also the scope of powers of Collector under Section 98 of the said Act. It is also made clear that while deciding the application of respondents before Additional Collector all points regarding jurisdiction and powers of the Collector under Section 98, are kept open to be agitated, by respective parties. The Additional Collector shall decide the application of respondents preferably within a period of four months from the date of receipt of this order. Rule is made absolute in above terms. The writ petition is disposed of in the above terms, as a result pending civil application also stands disposed of.

(MANJUSHA DESHPANDE, J.)