

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1978 OF 1998
WITH
INTERIM APPLICATION NO.1932 OF 2023
IN
WRIT PETITION NO.1978 OF 1998**

Rangrao Mahadu Pethkar
(deceased, through Heir & LR)
Jaywant Rangrao Pethkar
Age 40 years Occ. Agri.
R/o Yedemachindra,
Tal. Walwa, Dist. Sangli.

.... Petitioner/Applicant

-Versus-

- 1 Sadashiv Maruti Vibhute
(Since deceased through heirs and L.Rs.)
- 1A. Shivaji Sadashiv Vibhute,
Age: 40 years,
- 1B. Tanaji Sadashiv Vibhute,
Age: 37 years,
- 1C. Meena Murlidhar Phalle,
Age: 44 years,
- 1D. Ranjana Santram Shingare,
Age: 42 years,
- 1E. Sumati Sadashiv Vibhute,
Age: 62 years,
- Nos. 1A to 1E - R/o. Yedemachhindra,
Tal. Walwa, Dist.Sangli.
2. Ramchandra Khandu Vibhute,
(Since deceased through heirs and L.Rs.)
- 2A. Hanmant Ramchandra Vibhute,
(Since deceased through heirs and L.Rs.)

2A(i). Sarika Hanmant Vibhute,
Age: 26 years,

2A(ii). Ganesh Hanmant Vibhute,
Age: 2 years,
Since minor represented through
natural guardian mother- Resp. 2A(i)

Nos. 2A(i) to 2A(ii) residents of
A/p. Yedemachhindra,
Tal. Walwa, Dist.Sangli.

2B. Anjana Shivaji Kshirsagar,
Age: 37 years,
R/o Danole Tal. Shiro)
Dist. Kolhapur.

2C. Manisha Sambhaji Salunkhe,
Age: 32 years,
R/o. Narsinhpur,
Tal. Walwa, Dist. Sangli.

2D. Shalan Ramchandra Vibhute,
Age: 57 years,
R/o.Yedemachhindra,
Tal.Walwa, Dist.Sangli.

3. Vasant Khandu Vibhute,
(Since deceased through heirs and L.Rs.)

3A. Shivaji Vasant Vibhute,
(Since deceased through heirs and L.Rs.)

3A(i) Yogita Shivaji Vibhute,
Age: 31 years,

3A(ii) Yash Shivaji Vibhute,
Age: 5 years,

Since minor represented through
natural guardian mother- Resp. 3A(1)

3B. Yogesh Vasant Vibhute,
Age: 12 years,

Since minor represented through
natural guardian mother- Resp. 3C

3C. Sunanda Vasant Vibhute,
Age: 51 years,

3D. Anita Jayvant Phalle,
Age: 31 years,

Nos. 3A(i). 3A(ii) and 3D
R/o.Yedemachhindra,
Tal. Walwa, Dist Sangli.

....Respondents

**WITH
WRIT PETITION NO.1982 OF 1998**

Rangrao Mahadu Pethkar
(deceased, through Heir & LR)
Jaywant Rangrao Pethkar
Age 40 years Occ. Agri.
R/o Yedemachindra,
Tal. Walwa, Dist. Sangli.

....Petitioner

-Versus-

- 1 Sadashiv Maruti Vibhute
(Since deceased through heirs and L.Rs.)
- 1A. Shivaji Sadashiv Vibhute,
Age: 40 years,
- 1B. Tanaji Sadashiv Vibhute,
Age: 37 years,
- 1C. Meena Murlidhar Phalle,
Age: 44 years,
- 1D. Ranjana Santram Shingare,
Age: 42 years,
- 1E. Sumati Sadashiv Vibhute,
Age: 62 years,

Nos. 1A to 1E - R/o. Yedemachhindra,
Tal. Walwa, Dist.Sangli.

2. Ramchandra Khandu Vibhute,
(Since deceased through heirs and L.Rs.)

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(Since deceased through heirs and L.Rs.)

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Age: 26 years,

2A(ii). Ganesh Hanmant Vibhute,
Age: 2 years,
Since minor represented through
natural guardian mother- Resp. 2A(i)

Nos. 2A(i) to 2A(ii) residents of
A/p. Yedemachhindra,
Tal. Walwa, Dist.Sangli.

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Age: 32 years,
R/o. Narsinhpur,
Tal. Walwa, Dist. Sangli.

2D. Shalan Ramchandra Vibhute,
Age: 57 years,
R/o.Yedemachhindra,
Tal.Walwa, Dist.Sangli.

3. Vasant Khandu Vibhute,
(Since deceased through heirs and L.Rs.)

3A. Shivaji Vasant Vibhute,
(Since deceased through heirs and L.Rs.)

3A(i) Yogita Shivaji Vibhute,
Age: 31 years,

3A(ii) Yash Shivaji Vibhute,
Age: 5 years,

Since minor represented through
natural guardian mother- Resp. 3A(1)

3B. Yogesh Vasant Vibhute,
Age: 12 years,
Since minor represented through
natural guardian mother- Resp. 3C

3C. Sunanda Vasant Vibhute,
Age: 51 years,

3D. Anita Jayvant Phalle,
Age: 31 years,

Nos. 3A(i). 3A(ii) and 3D
R/o.Yedemachhindra,
Tal. Walwa, Dist Sangli.

....Respondents

Mr. Pratap V. Patil, *for the Petitioner/Applicant.*

Mr. Mandar Goswami *with Mr. Siddhant Choudhari, for Respondents.*

CORAM: SANDEEP V. MARNE, J.

Judgment Reserved on : 21 March 2025.

Judgment Pronounced on : 2 April 2025.

J U D G M E N T :

1) These petitions are filed by Petitioner challenging the order dated 30 December 1997 passed by the Maharashtra Revenue Tribunal, Pune (**MRT**) in Revision Application Nos.43 of 1997 and 38 of 1997. The MRT, by its order dated 30 December 1997, has allowed Revision

Application No.38 of 1997 filed by Respondent Nos.1 to 3 and has dismissed Revision Application No.43 of 1997 filed by the Petitioner and has set aside the order passed by Sub Divisional Officer (**SDO**) dated 21 March 1997 by which the SDO had remanded the proceedings to Tahsildar for fresh enquiry. The MRT has allowed the application filed by Respondent Nos.1 to 3 and has directed restoration of possession of the land in their favour by taking it out from possession of the Petitioner. In short, the impugned order passed by the MRT has resulted in loss of possession of the tenanted land by the Petitioner and restoration thereof in favour of Respondent Nos.1 to 3.

2) Agricultural land bearing Gat No.399 admeasuring 1 H 39 R situated at Village-Yedemachindra, Taluka-Walwa, District- Sangli is the subject matter of the present Petition (**agricultural land**). The predecessors of Respondent Nos.1 to 3 were the owners in respect of the agricultural land and Petitioner's father was a tenant therein. It appears that the proceedings for fixation of purchase price of the agricultural land have neither been initiated nor purchase of the land by the tenant has taken place. This is on account of the land being given for cultivation of sugarcane crop. However, there was litigation between the landlord and the tenant over the issue of quantum of rent payable in respect of the agricultural land. The initial rent of the land was Rs.68.50/-. By way of order passed in Tenancy Case No.55 of 1968, the rent was increased to Rs. 250/-. The landlord again filed Tenancy Case No.709 of 1987 before the Agricultural Lands Tribunal, Walwa (**ALT**), which was decided on 27 March 1990 and the rent was further increased to Rs.500/-. The landlords filed Tenancy Appeal No.35 of 1990 before the SDO and by allowing the Appeal, the rent was increased to Rs.1,500/-. The landlords filed Revision Application before the MRT

for enhancement of the rent and the said proceedings were pending as on the date of filing of the petition.

3) According to the Petitioner, on account of pendency of dispute about quantum of rent, he could not pay rent for the years 1991-92, 1992-93 and 1993-94. The Respondents sent three notices to the Petitioner on 11 June 1992, 14 June 1993 and 10 June 1994 for alleged non-payment of rent during the years 1991-92, 1992-93 and 1993-94 respectively. As the Petitioner did not pay the rent despite service of notices, Respondents filed Tenancy Case No.217 of 1995 before the Tenancy Avhal Karkun, Islampur, seeking restoration of possession of the agricultural land on the ground of default in payment of rent. The Tenancy Avhal Karkun allowed the said Application by his judgment and order dated 30 March 1996 holding that the Petitioner had committed default in payment of rent. Tenancy of the Petitioner was accordingly terminated and direction was given for recovery of possession of agricultural land from the Petitioner by handing it over to the Respondent Nos.1 to 3.

4) Petitioner filed Tenancy Appeal No.12 of 1996 before the SDO challenging the order of Tenancy Avhal Karkun. By judgment and order dated 4 July 1997, the SDO allowed the Appeal partly by setting aside the order passed by the Tenancy Avhal Karkun and remanded the proceedings by directing Tahsildar, Walwa to make an enquiry into the case as per provisions of Sections 14, 25 and 29 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**Tenancy Act**).

5) The Tahsildar conducted a fresh enquiry in Tenancy Case No.217 of 1995 and confirmed the tenancy rights of the Petitioner in

respect of the agricultural land under provisions of Section 25 of the Tenancy Act. The Tahsildar further directed Petitioner to pay rent at the rate of Rs.1,500/- for the years 1991-92, 1992-93 and 1993-94 in addition to expenses of Rs.200/- (*Total Rs.4,700/-*) within three months. The order passed by the Tahsildar on 14 January 1997 was challenged by Respondents before SDO by filing Tenancy Appeal No.3 of 1997. The Appeal came to be partly allowed by SDO by setting aside Tahsildar's order dated 14 January 1997. The SDO remanded the proceedings for fresh enquiry to Tahsildar.

6) Both Petitioner as well as Respondents felt aggrieved by remand order made by SDO on 21 March 1997 and preferred cross revisions before the MRT. Respondents preferred Revision Application No.38 of 1997 challenging the order of remand and prayed for allowing their application for restoration of land, whereas Petitioner filed Revision Application No.43 of 1997 challenging the order of remand and praying for confirmation of the order passed by the Tahsildar on 14 January 1997. By impugned order dated 30 December 1997, MRT has allowed Revision Application No.38 of 1997 filed by the Respondents and has dismissed the Revision Application No.43 of 1997 filed by the Petitioner. The MRT has set aside the SDO's order dated 21 March 1997. The MRT has allowed the application preferred by the Respondents for restoration of the agricultural land and has directed possession of the land to be restored in favour of Respondents by taking it away from the Petitioner. Petitioner is aggrieved by the order dated 30 December 1997 passed by the MRT and has accordingly filed these two Petitions. Writ Petition No.1978 of 1998 is filed to the extent of dismissal of Petitioner's Revision Application No.43 of 1997 whereas Writ Petition No.1982 of 1998 is filed to the extent of allowing the Revision Application No.38 of

1997 filed by Respondents. By order dated 23 April 1998 the petitions came to be admitted by directing the Petitioner to deposit amount of Rs.4,700/- for years 1991-92 till 1993-94 and costs of Rs.200/- as ordered by Tahsildar. The Petitioner has further been directed to deposit rent at the rate of Rs. 1500/- per year from 1994-95 till 1997-98 (Rs.6,000/-). The Petitioner was also directed to deposit rent at the rate of Rs.1,500/- per year during pendency of the Petition with corresponding liberty to the Respondents to withdraw the same. By further order dated 4 August 1999, this Court directed investment of the deposited amount in the event of non-withdrawal thereof by the Respondents. By order dated 8 August 2008, the Respondents were permitted to withdraw the deposited amount. The Petitions are called out for final hearing.

7) Mr. Pratap Patil, the learned counsel appearing for Petitioner would submit that the MRT has grossly erred in allowing the Revision filed by Respondents and in dismissing the Revision of the Petitioner. He would submit that the deeming fiction of purchase of the agricultural land under provisions of Section 32 of the Tenancy Act has not taken place in the present case on account of the land being rented out for cultivation of sugarcane. He would invite my attention to provisions of Section 43A of the Tenancy Act, under which provisions of Sections 32 to 32 R (both inclusive) of the Tenancy Act are excluded in respect of leases of land for cultivation of sugarcane. He would also invite my attention to sub-section (3) of Section 43A of the Tenancy Act, under which the State Government is empowered to issue Notification in the Official Gazette to issue directions in respect of lands covered by sub-sections (1) and (2) in respect of duration of lease, improvement to be made on land, payment of land revenue and any other matters. He would submit that in exercise of power under sub-section (3) of Section

43A of the Tenancy Act, the State Government has issued Notification relating to land leased out for cultivation of sugarcane, under which termination of lease can be made only by giving three months' notice to the tenant in writing and stating therein the reasons for such termination.

8) Mr. Patil would also rely upon provisions of Section 14 of the Tenancy Act under which also tenancy can be terminated on the grounds of default of payment of rent only after giving three months' notice in writing. He would submit that in the present case, no such notice of termination of lease was ever served on the Petitioner. He would submit that though termination notice was apparently prepared by the Respondents on 20 February 1995, the same was not served on the Petitioner and that the records indicate that a copy thereof was sent to Additional Collector and Agricultural Lands Tribunal, Walwa under certificate of posting (UCP).

9) Mr. Patil would then invite my attention to the provisions of Section 25 of the Tenancy Act. He would submit there were three intimations given to the Petitioner in respect of non-payment of rent during three years. He would submit that the said intimations were given under provisions of sub-section (2) of Section 25 of the Tenancy Act and the said intimations cannot be construed as notice of termination of tenancy. Mr. Patil would submit that the Tahsildar had rightly appreciated this position and had held that the termination notice was never served on the Petitioner. He would therefore submit that in absence of valid service of notice of termination notice on the Petitioner-tenant, MRT has erroneously allowed the revision application. He would therefore submit that the order passed by the

MRT is erroneous and liable to be set aside.

10) Mr. Goswami, the learned counsel appearing for Respondents would submit that the MRT has properly applied its mind to the entire records of the case while passing the impugned order. That non-payment of rent for three consecutive years is an admitted position in the present case. He would submit that right till filing of the present Petitions and passing of the admission order on 23 April 1998, Petitioner had not bothered to pay rent in respect of the land.

11) Mr. Goswami would further submit that in all the three intimations, Petitioner was clearly informed about the default committed by him in payment of rent. That additionally termination notice dated 28 February 1995 was also issued to the Petitioner. That commission of consistent defaults in payment of rent would necessarily entail termination of tenancy of the Petitioner. He would submit that land leased out for cultivation of sugarcane is something, which is sought to be raised by the Petitioner for the first time before this Court as such case was never pleaded or argued before the lower authorities. He would submit that the Maharashtra Revenue Tribunal has recorded a finding of fact about commission of default in payment of rent and termination of tenancy which does not warrant interference in exercise of extraordinary jurisdiction by this Court under Article 227 of the Constitution of India. That there is no perversity in the findings recorded by the Tribunal and he would pray for dismissal of the petition.

12) Rival contentions of the parties now fall for my consideration.

13) There is no dispute about the relationship of landlord and tenant between the parties. Respondents do not really dispute that Petitioner/his father was cultivating the land on the Tiller's Day of 1 April 1957. Ordinarily therefore, there would have been deeming fiction of purchase of the tenanted land under the provisions of Section 32 of the Tenancy Act. Why such deeming fiction under Section 32 did not kick in and why the tenant did not purchase the tenanted land by getting the purchase price fixed under Section 32G of the Tenancy Act has not really been borne out from the records of the case. The records and proceedings of the case have been transmitted to this Court and I have minutely gone through the same. Perusal of the application filed by the Respondents (*Tenancy Case No. 217/1995*) before the Avhal Karkoon, Walwa would indicate that the same does not clarify as to why purchase of the tenanted land has not taken place in the present case under the provisions of Section 32G of the Tenancy Act. The application straightaway proceeded with a pleading that the Petitioner was a tenant in respect of the land whose tenancy was terminated on 31 May 1995 on account of non-payment of rent. However, during the course of his submissions, Mr. Patil has clarified that the agricultural land was given on tenancy basis for cultivation of sugarcane, on account of which, provisions of Section 32 could not be invoked in the present case. It would therefore be necessary to briefly take an overview of the provisions of the Tenancy Act in this regard.

14) Ordinarily, Section 32 of the Tenancy Act creates a deeming fiction of purchase of land cultivated by a tenant on Tiller's Day of 1 April 1957. The tenant can then apply under the provisions of Section 32G of the Act for fixation of purchase price and after payment thereof, Certificate of Purchase under Section 32-M is issued in the name of the

tenant, who then acquires ownership in respect of the tenanted land. However, Chapter-III A came to be inserted in the Tenancy Act by Bombay Amendment Act, 13 of 1956 making special provisions in respect of lands held on lease for certain purposes such as industrial or commercial purpose or for cultivation of sugarcane and other notified agricultural produce. Under Section 43A, various provisions of the Tenancy Act are excluded from being applied to the lands enumerated therein. Section 43A provides thus:

43-A. Some of the provisions not to apply to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivation of sugarcane or fruits or flowers.

(1) The provisions of sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R, (both inclusive) [33A, 33B, 33C], 43, 63, 63A, 64 and 65, shall not apply to—

(a) [land leased to or held by] any industrial or commercial undertaking (other than a Co-operative Society) which in the opinion of the State Government *bona fide* carries on any industrial or commercial operations and which is approved by the State Government;

(b) leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;

(c) to lands held or leased by such co-operative societies as are approved, in the prescribed manner, by the State Government which have for their objects the improvement of the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture and allied pursuits.

(2) The State Government may by notification in the *Official Gazette*, in this behalf direct that the provisions of the said sections shall not apply to a lease of land obtained by any person for growing any other class of agricultural produce to which it is satisfied that it will not be expedient in the public interest to apply the said provisions. Before the issue of such notification, the State Government shall direct an inquiry to be made by an officer authorised in this behalf by the State Government and shall give all persons who are likely to be affected by such notification, an opportunity to submit their objections.

(3) Notwithstanding anything contained in sub-sections (1) and (2), it shall be lawful for the State Government to direct, by notification in the *Official Gazette*, that the leases [or lands, as the case may be,] to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be

specified in the notification, in respect of –

- (a) the duration of the lease;
- (b) the improvements to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies;
- (c) the payment of land revenue, irrigation cess, local-fund cess and any other charges payable to the State Government or any local authority; or
- (d) any other matter referred to in sections mentioned in sub-section (1).

15) Thus the lands, in respect of which lease is granted for cultivation of sugarcane or growing of fruits or flowers or for breeding of livestock, are included under Section 43A of the Tenancy Act and provisions of Sections 32 to 32R (*both inclusive*) do not apply to such land. This means that there is no deeming fiction of purchase under Section 32 of the Tenancy Act in respect of the land granted for cultivation of sugarcane. Sub-section (2) of Section 43A empowers the State Government to notify lands for exclusion of applicability of various provisions of the Act to lease of land for growing any other class of agricultural produce. Under sub-section (3) of Section 43A, the State Government is empowered to specify, by way of Notification in Official Gazette, various conditions in respect of the lands included under sub-section (1) and sub-section (2) of Section 43A in relation to duration of lease, improvements made on the land, payment of land revenue and other matter.

16) It appears that in exercise of power under sub-section (3) of Section 43A, the State Government has issued Notification No.T.N.C.5157/173483-M specifying the conditions relating to (i) duration and termination of lease and (ii) purchase of land by lessee in respect of the lands covered by Clause-(b) of sub-section (1) of Section

43A i.e. lease granted for cultivation of sugarcane. In the Notification, it is directed that no such lease shall be liable to be terminated on the ground that the period fixed by agreement or usage for its duration has expired. Para-2 of the Notification provides that if lessor *bonafidely* requires any land so leased by him for cultivating it personally or for any non-agricultural use, such lease can be terminated by lessor by giving the lessee, one month's notice in writing stating therein the reasons for the termination of the lease. Para-3 of the Notification provides that if a lessee commits any default mentioned in clause (a) of sub-section (1) of Section 14 in relation to such lease of land, the lease may be terminated by the lessor by giving the lessee three months' notice in writing stating therein the reasons for such termination. The relevant part of Notification reads thus:

Sec. 43A(3) of the B.T. & A.L. Act, 1948.- no. T.N.C. 5157/173483-M. in exercise of the powers conferred by sub-section (3) of sec. 43-A, of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), the Government of Bombay hereby directs that the leases of land referred to in clause (b) of sub-section (1) of the said sec. 43A and to which the provisions of sub-section (1) of said sec. 43-A apply shall be subject to the following conditions namely:

Conditions as to the duration and termination of lease --

1. No such lease of land shall be liable to be terminated on the ground that the period fixed by agreement or usage for its duration has expired.
2. If a lessor *bona fide* requires any land so leased by him for cultivating it personally or for any non-agricultural use, such lease may, subject to the conditions mentioned in secs. 31-A, 31 B, 31-C and 31-D be terminated by the lessor by giving the lessee [a month's] notice in writing stating therein the reasons for the termination of the lease:

[Provided that, if the holding of a lessor does not exceed one economic holding and such lessor earns his livelihood principally by agriculture or by agricultural labour, the conditions mentioned in sec. 31-A and 31-B shall not apply but the lessor's right to resume land shall be subject to the conditions mentioned in clauses (b) and (c) of sub-section (5) of sec. 33-B, with this modification that clause (c) of the said sub-section (5) shall be read as if for

the words "the commencement date" appearing therein the words, letters, figures and brackets "the date of Government Notification, Revenue and Forests Department. No. TNC. 6769/9667-M. Spl. dated the 8th October, 1969" were substituted.]

3. If a lessee commits any of the defaults mentioned in clause (a) of sub-section (1) of sec. 14 in relation to such lease of land, the lease may be terminated by the lessor by giving the lessee three months' notice in writing stating therein the reasons for such termination.

17) Since para-3 of the Notification refers to the provisions of Section 14, it would be necessary to consider that provision as well. Section 14 of the Tenancy Act deals with termination of tenancy for default of tenant in payment of rent and provides thus :

14. Termination of tenancy for default of tenant.

(1) Notwithstanding any law, agreement or usage, or the decree or order of a court, the tenancy of any land shall not be terminated—

(a) unless the tenant—

(i) has failed to pay the rent for any revenue year before the 31st day of May thereof;

(ii) has done any act which is destructive or permanently injurious to the land;

(iii) has sub-divided, sub-let or assigned the land in contravention of section 27;

(iv) has failed to cultivate it personally; or

(v) has used such land for a purpose other than agriculture or allied pursuits; and

(b) unless the landlord has given three months' notice in writing informing the tenant of his decision to terminate the tenancy and the ground for such termination, and within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated.

(2) Nothing in sub-section (1) shall apply to the tenancy of any land held by a permanent tenant unless by the conditions of such tenancy the tenancy is liable to be terminated on any of the grounds mentioned in the said sub-section

18) Thus, under the provisions of Section 14, if tenant fails to

pay the rent for any revenue year before 31st day of May thereof, the landlord can serve three months' notice in writing informing the tenant of his decision about termination of tenancy and the ground for such termination and if the tenant fails to remedy the breach within the notice period, the tenancy becomes liable to be terminated.

19) Thus, upon conjoint reading of para-3 of the Notification with provisions of Section 14 of the Tenancy Act, if a tenant to whom agricultural land is leased out for growing sugarcane, commits default in payment of rent for any revenue year before 31st day of May thereof, the landlord can terminate the tenancy by giving three months' notice in writing. Here again, there are twin protections provided to the tenant possibly with the objective that mere failure to pay rent should ordinarily not result in loss of tenancy. As observed above in para-1 of the Notification, the tenancy continues notwithstanding expiry of tenure thereof. The first protection to the tenant is to pay the rent within a period of 3 months after receipt of notice and save the tenancy. Section 25 of the Tenancy Act provides further protection to the tenant to save the tenancy. Section 25 provides thus :

25. Relief against termination of tenancy for non-payment of rent.

(1) Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceeding to eject the tenant, the *Mamlatdar* shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding, within [three months] from the date of order, and if the tenant complies with such order, the *Mamlatdar* shall, in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated :

Provided that if the *Mamlatdar* is satisfied that in consequence of total or partial failure of crops or similar calamity the tenant has been unable to pay the rent due, the *Mamlatdar* may, for reasons to be recorded in writing, direct that the arrears of rent together with costs of the proceeding if awarded, shall be paid within one year from the date of the order and that if before the expiry of the said period the

tenant fails to pay the said arrears of rent and costs, the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted].

(2) Nothing in this section] shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent and the landlord has given intimation to the tenant to that effect within a period of three months on each default.

20) Thus, when tenancy of any land is terminated for non-payment of rent and the landlord files any proceedings for ejectment of the tenant, the Tahsildar is required to first call upon them to tender to the landlord the rent in arrears together with costs of the proceedings within three months and if the tenant complies with the said order, the tenancy gets protected. This is how twin opportunities are provided to the tenants for saving their tenancies from being terminated on the ground of default in payment of rent. Sub-section (2) of Section 25 however makes a special provision under which the second protection made available to the tenant of making good the default upon filing of proceedings gets denied. Under sub-section (2) of Section 25, if there is a default in payment of rent for three years and if the landlord has given intimations to the tenant to that effect for each such default, in that case, the Tahsildar cannot grant second opportunity to the tenant to make good the default in payment of rent after filing of the proceedings for ejectment.

21) Thus, the broad statutory scheme is that there is no deeming fiction of purchase by tenant under Section 32 of the Tenancy Act when the land is leased out for growing of sugarcane. However, though provisions of Section 32 to 32R are made inapplicable to land leased out for cultivating sugarcane, the tenancy of the tenant is still protected on account of issuance of Notification by the State Government under the provisions of sub-section (3) of Section 43A of

the Tenancy Act and the same continues notwithstanding expiry of tenure of lease. However, if the tenant commits default in payment of rent, the tenancy can be terminated by the landlord by service of three months' notice in writing. If the tenant fails to make good the default within the notice period of three months, the tenancy becomes liable to be terminated and the landlord becomes entitled to file proceedings for ejectment of the tenant. However, where the tenant has committed default in payment of rent for three years, the landlord can give intimations to the tenant informing him/her about the factum of non-payment of rent within a period of 3 months of each default. Once such three intimations are served and the tenancy is terminated under Section 14, the Tahsildar cannot grant second opportunity of making good the default under the provisions of sub-section (1) of Section 25 and the ejectment in such case becomes eminent. This is the broad statutory scheme of lands leased out for cultivation of sugarcane.

22) Turning to the facts of the present case, there is no denial to the fact that there have been three consecutive defaults on the part of the Petitioner in payment of rent for the years 1991-92, 1992-93 and 1993-94. It appears that the Respondent-landlords had filed proceedings for enhancement of the rent from time to time. Initially, the rent was Rs. 68.50/- per year. In Tenancy Case No.55/1968, the rent was increased to Rs.250/- per year. Thereafter, in Tenancy Appeal No.35/1990, the SDO fixed the rent at Rs.1,500/- per year. The landlords were aggrieved by fixation of rent at Rs.1,500/- and had filed Revision before the Maharashtra Revenue Tribunal for further enhancement of the rent which Revision was apparently pending as on the date of filing of ejectment proceedings (*Tenancy Case No.217/1995*).

23) As observed above, the Petitioner-tenant did not pay rent in the year 1991-92, 1992-93 and 1993-94. The landlords decided to invoke the provisions of sub-section (2) of Section 25 and issued three separate intimations to the Petitioner-tenant intimating him about non-payment of rent for each of the three years of 1991-92, 1992-93 and 1993-94 on 11 June 1992, 14 June 1993 and 10 June 1994 respectively. The Petitioner-tenant refused to accept the said notices nor paid the rent in respect of the said three years. Thus, provisions of sub-section (2) of Section 25 were fully complied with by the Respondent-landlords and accordingly the second opportunity of saving of tenancy from being terminated in the form of order to be passed by the Tahsildar for payment of rent with costs within three months got declined to the Petitioner-tenant under the provisions of sub-section (2) of Section 25.

24) Additionally, it appears that the Respondent-landlords had prepared termination notice dated 20 February 1995 terminating the tenancy stating therein that despite service of intimations for non-payment of rent for 1991-92, 1992-93 and 1993-94, the Petitioner-tenant had failed to pay the rent. Accordingly, the tenancy was terminated by notice dated 20 February 1995 w.e.f. 31 May 1995. The notice dated 20 February 1995 was addressed to the Petitioner, copy thereof was also shown to have been addressed to the Additional Tahsildar and Agricultural Lands Tribunal, Taluka-Walwa, Islampur. Petitioner contends that he was never served with the termination notice, whereas it is the contention of Respondents that the notice was served on him.

25) The core issue that is involved in the present petition is about the dispatch and service of Notice dated 20/23 February 1995 by which tenancy of the Petitioner was terminated by the Respondents.

According to the Petitioner, he was never served with the notice dated 20/23 February 1995. Mr. Patil has contended that perusal of records and proceedings received from the office of Avhal Karkoon would indicate that neither office copy of the said notice nor its acknowledgement was ever produced by the Respondents before the Avhal Karkoon.

26) Before proceeding further to examine the records and proceedings, it would be first necessary to examine the pleadings of the Petitioner in the present petition on the issue of non-receipt of termination notice. Perusal of the pleadings in the Memo of the petition would indicate that Petitioner has vaguely sought to contest finding of the MRT about termination of tenancy by raising following pleadings :

vii) The Lnd. Member of M.R.T. erred in concluding that Respondents herein rightly filed an application and have also rightly issued notices and legally terminated the tenancy in the month of May 1995. In this connection the Lnd. Member of M.R.T failed to see and consider that though landlords have issued notices that itself cannot terminate the tenancy unless there is such intimation of termination of tenancy given to the tenant. In the present case no such intimation has been given and hence there is no cause of action of termination of tenancy for filing an application for restoration of land.

27) Except the above pleading, there is no specific averment that the termination notice dated 20/23 February 1995 was never dispatched or served on the Petitioner.

28) The original records and proceedings in Tenancy Case No.217/1995 have been received. I have minutely gone through the original records and proceedings. In application filed in Tenancy Case No.217/1995, Respondents raised a specific pleading in para-5 thereof

that they served notice dated 23 February 1995 by registered post to the Respondent and terminated the tenancy w.e.f. 31 May 1995. On behalf of the Respondents, examination-in-chief of Sadashiv Maruti Vibhute was recorded on 4 January 1996. In his examination-in-chief, the witness stated that on 23 February 1995, termination notice was dispatched by Registered Post but the Petitioner did not accept the same. His cross-examination was conducted on 8 February 1996 and in the entire cross-examination there is no dispute created with regard to the dispatch and service of termination notice to the Petitioner. Respondents filed list of documents on 25 January 1996 and the document at serial no.5 in the said list was as under :

अ. नं.	तपशील	तारीख	शेरा
१)	अर्जदार यांनी जबादार यांना पाठविलेले नोटीसची पोच - पावती	११/६/९२	मुळ
२)	अर्जदार यांनी जबादार यांना पाठविलेले नोटीसची स्थळ प्रत	२१/६/९३	मुळ
३)	अर्जदार यांनी जबादार यांना पाठविलेले नोटीसची पोच - पावती	२१/३/९३	मुळ
४)	अर्जदार यांनी जबादार यांना पाठविलेले नोटीसची स्थळ प्रत (पोच - पावती)	११/६/९४	मुळ
५)	अर्जदार यांनी जाबदार यांना पाठविलेले नोटीसची स्थळ प्रत (पोच पावतीसह)	२३/२/१९९५	मुळ

(emphasis added)

29) However, for some odd reason, the documents at Serial Nos.1 to 4 are to be found in the records and proceedings, but the document at Serial No. 5 is conspicuously missing. Thus, in the documents appended to the list of documents dated 25 January 1996, neither office copy of the notice dated 23 February 1995 nor its acknowledgement is to be found. It becomes quite unbelievable that the

other four original documents are available in the list of documents and only the document at Serial No.5 (office copy of notice dated 23 February 1995 and its acknowledgement) are conveniently missing.

30) However, though the document at Serial No.5 at list of documents dated 25 January 1996 is missing, it appears that the copy of the notice dated 23 February 1995 was also sent to the Upper Tahsildar and ALT. The original of the said notice as received by the office of the Upper Tahsildar is however available in the records. It appears that the said office copy was dispatched by UCP. The said notice bears the stamp of the office of Tahsildar with inward number demonstrating receipt thereof on 24 February 1995.

31) Thus, it is not that the claim of the Respondents about dispatch of termination notice dated 20/23 February 1995 is entirely false. The notice was dispatched to the Petitioner and copy thereof was dispatched through UCP to Upper Tahsildar. The notice received by Upper Tahsildar is available on record, but office copy of the said notice together with acknowledgement receipt shown to have been filed before the Avhal Karkoon vide list of documents dated 25 January 1996, has curiously gone missing.

32) As observed above, the Respondents were emphatic in their application filed before the Avhal Karkoon that termination notice was dispatched to the Petitioner. This was reiterated in the examination-in-chief. In the cross-examination, there is no contest about dispatch of the termination notice and no attempt was ever made to question the correctness of the statements made in the evidence of the witness that the notice was actually dispatched to the Petitioner. What makes the

case of the Petitioner worse is the evidence of witness-Jayvant Rangrao Pethkar, Constituted Attorney of the Petitioner-Rangrao Mahadu Petkar. His evidence was recorded on 7 March 1996. He did not state in his examination-in-chief that termination notice dated 20/23 February 1995 was not received. On the contrary, in his cross-examination, he made following admissions :

१४-०६-१९९३ चे नोटीसी हे माझे वडिलाना असे कळविली होती की माझे वडिल हे थकबाकीदार झालेत हे म्हणणे खरे नाही. दि. ११-६-१९९२ व १४-०६-१९९३ चे नोटीसाला अर्जदारला आम्ही उत्तर कांही दिलेले नाही हे म्हणणे खरे आहे. पुन्हा दि. १०-०६-१९९४ ला अर्जदार नं. १ ते ३ यांनी आमचे वडिलाना रजि: पोष्टाने नोटीस पाठविली होती हे म्हणणे खरे आहे. या नोटीसीला सुध्दा आम्ही अर्जदाराला उत्तर दिले नाही हे म्हणणे खरे आहे. पुन्हा दि. २३-०२-१९९५ ला अर्जदारा ही नोटीस पाठविली होती हे म्हणणे खरे आहे. या नोटीसीला सुध्दा उत्तर दिले नाही. दि. २३-०२-१९९५ चे नोटीसीचे अर्जदार यांनी आमचा कुळ हक्क नष्ट केला आहे हे म्हणणे खरे नाही. सन. १९८४ नंतर खंडाची काहीही रक्कम अर्जदाराला दिलेली नाही हे म्हणणे खरे नाही अर्जदाराचे नोटीसींना उत्तर का दिले नाही यांचे कारण मला सांगता येत नाही.

(emphasis added)

33) Thus, there is specific admission by the Petitioner's witness about receipt of termination notice dated 23 February 1995. What he disputed is not the factum of receipt of notice, but he disputed that the notice had the effect of termination of tenancy. Therefore, though the office copy of the notice dated 20/23 February 1995 together with acknowledgement receipt has gone curiously missing from the records and proceedings, Petitioner never disputed dispatch and receipt of the said notice before the Avhal Karkoon. In fact his constituted attorney admitted its receipt in the cross examination. It is only after the proceedings were remanded for fresh enquiry that the Petitioner took a plea of non-service of termination notice in his written submissions.

34) Considering the above position, in my view, it becomes

clear that the Petitioner had never disputed receipt of termination notice dated 20/23 February 1995. Infact, his witness admitted receipt of the said termination notice. The Petitioner therefore cannot be permitted to take undue advantage of curious missing of office copy of the said notice from the records and proceedings. It otherwise becomes unbelievable that the Respondents, who were diligently serving three intimations on the Petitioner and dispatched copy of the termination notice to the Upper Tahsildar, would not dispatch the said termination notice to the Petitioner.

35) In my view, therefore the termination notice has been duly served under the provisions of Section 14 of the Tenancy Act as required under the Notification issued by the State Government under Section 43A(3) of the Tenancy Act.

36) Mr. Patil has not seriously disputed that the three intimations as required under Section 25(2) of the Act in respect of non-payment of rent for the years 1991-92, 1992-93 and 1993-94 was served within the stipulated time limit on 11 June 1992, 14 June 1993 and 10 June 1994. On account of service of three intimations as aforesaid, the provisions of sub-section (1) of Section 25, under which the Petitioner would have got a second opportunity of making good the default, was not available to him. It is also an admitted position that even during pendency of Tenancy Case No.217/1995, Petitioner did not bother to clear the arrears of rent. Infact till 14 January 1997 when the Tahsildar passed order in favour of the Petitioner in the remanded proceedings, Petitioner had failed to make good the default in payment of rent for those three years. In my view, therefore the tenancy of the Petitioner has been validly terminated by the Respondents on account of non-payment

of rent for over three years. The MRT has rightly appreciated this position. The default in payment of rent is an admitted fact. However minuscule it may be, the rent ultimately represents some form of return for the landlord in respect of the leased land. A tenant who persistently commits defaults in payment of rent and has absolutely no intention of paying the rent needs to be evicted from the land by restoration thereof to the landlords. In the present case, Petitioner has failed to avail the opportunity of saving the tenancy by making good the default in payment of rent despite receipt of three intimations and one termination notice. It is only after the proceedings reached before this Court that the Petitioner ultimately deposited the rent, that too because this Court directed him to do so vide order dated 23 April 1998. Thus the rent since 1991 was ultimately deposited by Petitioner 7 years later in the year 1998 that too under the orders of this Court. After it is proved that he is a consistent defaulter in payment of rent, all that the Petitioner has attempted to do is to take disadvantage of the position of missing office copy of termination notice and acknowledgement from the records and proceedings by ignoring the position that his witness had specifically admitted receipt of the said notice.

37) The conduct of the Petitioner in non-payment of rent appears to be otherwise consistent. He admitted receipt of intimations dated 11 June 1992, 14 June 1993 and 10 June 1994. However, he never had the intention of payment of rent. Therefore, after receipt of the termination notice dated 20/23 February 1995, Petitioner continued with his consistent conduct and refused to pay the rent. The real case of the Petitioner is not non-receipt of termination notice but (i) that he is a deemed purchaser under Section 32 of the Tenancy Act and in the alternative (ii) he was justified in not paying the rent. It would be

apposite to reproduce the main case pleaded by the Petitioner in the memo of the petition :

G R O U N D S

i) That the impugned judgement and order is contrary to law, justice, equity and principles of good conscience.

ii) That the Lnd. Member of M.R. T. has committed error apparent on the face of record which has resulted in grave miscarriage of justice.

iii) That the Lnd. Member M.R.T. failed to see and consider that the Petitioner being tenant on tiller's day in the suit land has become deemed purchaser on 1.4.57 and since that day the title in the suit land which was previously vested in the Respondents has been passed to Petitioner. Thus there is no more landlord tenant relationship between the Respondents and Petitioner and Petitioner is no more tenant but has become owner of the suit land. At the most what is remained is fixation of purchase price of the suit land. As the Petitioner is not tenant in the suit land after 1.4.57 the question of terminating tenancy on any ground including ground of default does not arise at all. On the contrary if the Petitioner has paid some amount to the Respondents as rent after tiller's day, the said amount deserves to be deducted from purchase price of the suit land which will be fixed by Agricultural Land Tribunal in due course.

iv) It is pertinent to note that even Respondents also in their application have pleaded that Petitioner was tenant in the suit land not only on 1.4.57 but even prior to that. Further more it is not the case of the Respondent that they belong to any of the categories specified in Section 31(1) of the Tenancy Act or they are certificated landlords & to them the certificate has been issued Under Section 88-C of the Tenancy Act. In the circumstances the applications of Respondents for obtaining possession of the suit land from Petitioner under Section 14 r/w. 29 of the Tenancy Act is not maintainable being made after 1.4.57.

v) Even if it is presumed for the sake of argument only and without admitting that the Petitioner is tenant in the suit land even after tiller's day, still the Petitioner is not defaulter in payment of rent. In this context it is pertinent to note that initially the amount of Rs.68.50 Ps. was fixed as rent of the suit land. But right from 1968 till today the Respondents have filed various litigations before various authorities and consequently even today also the amount of rent is not fixed. The Lnd.S.D.O. Walwa Division, Islampur by his order in Tenancy Appeal No.35/90 has enhanced the rent of Rs. 1,500/-. The Respondents have

challenged this order before M.R.T. Pune by way of Revision Application No.MRT/SS/51/93 which is still pending. Thus even if the Petitioner had paid rent to the Respondents for the years 1991-92, 1992-93 & 1993-94, it would be part payment of rent and still it would be a ground for Respondents to contend that Petitioner is defaulter. Thus only with the intention of obtaining possession of the suit land from the Petitioner by hook or crook the Respondents on one hand have kept the issue of fixation of rent pending before M.R.T. and on other hand have filed application for obtaining possession of the suit land from the Petitioner on the ground of default. It is pertinent to note that entries in 7 X 12 extracts even today also show amount of rent as 68.50 Ps. The Petitioner craves leave to refer to and rely upon the relevant 7 x 12 extracts as and when found necessary. Thus in view of pendency of issue regarding fixation of rent of the suit land and entries in 7 X 12 extracts, in no circumstances the Petitioner can be called as defaulter in payment of rent.

vi) As the Petitioner is not defaulter in payment of rent in the eyes of law, he is entitled to relief under Section 25 (1) of the Tenancy Act.

vii) The Lnd. Member of M.R.T. erred in concluding that Respondents herein rightly filed an application and have also rightly issued notices and legally terminated the tenancy in the month of May 1995. In this connection the Lnd. Member of M.R.T failed to see and consider that though landlords have issued notices that itself cannot terminate the tenancy unless there is such intimation of termination of tenancy given to the tenant. In the present case no such intimation has been given and hence there is no cause of action of termination of tenancy for filing an application for restoration of land.

viii) The Lnd.Member further erred in concluding that cause of action was arisen on the part of the landlords and they have rightly filed an application for restoration of land under Section 29 of the Tenancy Act.

ix) It ought to have been held that as Petitioner had become deemed purchaser on tiller's day he is not defaulter and hence Respondents are not entitled to obtain possession under Section 29 of the Tenancy Act.

x) The Lnd. Judge failed on facts as well as on law.

xi) Neither the provisions of law nor the principles established in settled case laws have been followed properly.

xii) The Lnd. Judge failed to exercise properly the jurisdiction vested

in him by law.

xiii) The conclusion drawn are contrary to evidence on record. The impugned judgement and order is perverse.

xiv) Even otherwise also the impugned Judgement and Order is bad in law and deserves to be quashed and set aside.

38) Thus, the Petitioner always believed that he was a deemed purchaser of the land and even if he continued to be a tenant, he had valid justification for non-payment of rent. It is only after noticing that the office copy of the termination notice had gone missing from the records and proceedings that the Petitioner took a *volte-face* and started contending in the remanded proceedings before the Tahsildar that the tenancy was not terminated by issuance of notice. However, what is conveniently ignored by the Petitioner is the fact that he never disputed dispatch and service of the said termination notice and that his witness in fact expressly admitted receipt of the notice.

39) Petitioner has invoked extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. This Court does not appreciate the conduct of the Petitioner in arguing the case before this Court contrary to the admissions given by his witness. Here, it would be apposite to refer to the Division Bench judgment of this Court in State of Bombay Versus. Morarji Kuwarjee¹ wherein Chief Justice M. C. Chagla speaking for the Division Bench as held in paras-42 and 44 as under :

42. This is, on the contrary, a case where the premises requisitioned for a public purpose are occupied by a Government servant and are sought to be taken possession of by the landlord by

¹ 1958 Bom. Law Reporter Vol LXI 318

asking the Court to throw the Government servant out and restore possession to the landlord when that landlord has never shown his need of those premises by occupying them himself. **Therefore, this is clearly a case where justice is not on the side of the petitioner, it is on the side of the State, and we see no reason why we should grant any relief to the petitioner.**

XXX

44. With respect to the learned Judge, the matter is much more serious than merely the question of this particular vacancy of 1956 not being relevant to the vacancy which is the subject matter of the requisition order. **On a writ petition, as we have already said, the petitioner has not merely to show good faith, but he has not to suppress any facts and has also to show that justice lies on his side.** If the learned Judge had taken these circumstances into consideration and then had come to the conclusion that the discretion should be exercised in favour of the landlord, then undoubtedly we would not have interfered with the order passed by the learned Judge.

(emphasis added)

40) In *M.P. Mittal Versus. State of Haryana and Ors.*², the Hon'ble Apex Court has held that discretionary jurisdiction of this Court can be declined when the Petitioner seeks to secure dishonest advantage to perpetuate the unjust claim. The Apex Court held in para-5 as under :

5. Now there is no dispute that the appellant knowingly and deliberately entered into the Guarantee agreement, and is liable as Guarantor to make payment of the dividend due from Messrs Depro Foods Limited. Nor is it disputed that the amount due, with interest, stands at Rs 2,02,166 — in respect of the period ending with the year 1977. It was not contended that the appellant in fact does not possess sufficient funds or cannot avail of sufficient personal property for the purpose of discharging the liability. The record also shows that before instituting coercive proceedings, the Assistant Collector provided the appellant an opportunity to pay up the amount due from him, and that the appellant made no attempt to discharge the liability. When that is so, we are of opinion that he is not entitled to relief in these proceedings. **The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted**

² (1984) 4 SCC 371

discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail.

(emphasis added)

41) I am therefore otherwise not inclined to exercise jurisdiction under Article 227 of the Constitution of India to interfere with the order passed by the MRT, which otherwise results in restoration of the land in favour of the Respondent-landlords who have diligently taken steps by issuing three intimations for non-payment of rent for the years 1991-92, 1992-93 and 1993-94 as well as sending termination notice dated 20/23 February 1995. The justice in the present case appears to be clearly in favour of the Respondents and the Petitioner is found to have taken undue advantage of curious missing of office copy of notice and acknowledgement from the records and proceedings by seeking to ignore admission given by its witness about receipt of termination notice. Therefore, apart from the order passed by the MRT being perfectly valid in law, the facts and circumstances of the present case, do not warrant exercise of jurisdiction of this Court under Article 227 of the Constitution of India in Petitioner's favour to interfere in the order passed by the Tribunal.

42) The Writ Petition is devoid of merits. It is accordingly **dismissed** with no order as to costs. Rule is discharged.

43) In view of disposal of the Writ Petition, nothing survives in Interim Application No. 1932 of 2023 and the same is accordingly disposed of .

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signed by
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SHAILESH
SAWANT
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[SANDEEP V. MARNE, J.]