

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

WRIT PETITION NO.445 OF 2024

Subhash s/o. Baburao Biramane
since deceased through LRs.
Vijay Baburam Biramane

...Petitioner

V/s.

The State of Maharashtra and Ors.

...Respondents

Mr. G.S. Godbole, Senior Advocate i/b. Mr. Siddharth Karpe for
the Petitioner.

Dr. R.A. Thorat, Senior Advocate i/b. Mr. Pandit Kasar for
Respondent No.6.

Mr. Hamid Mulla, AGP for Respondent-State.

CORAM: SANDEEP V. MARNE, J.

Dated: 2 May 2025.

P.C.:

1) Petition challenges order dated 9 August 2023 passed by the Hon'ble Minister, Revenue, allowing review filed by Respondent No.6 and recalling the order dated 22 June 2022. By virtue of recalling order dated 22 June 2022, the Hon'ble Minister has confirmed the order passed by the Additional Collector, Satara, on 18 August 2009.

2) I have heard Mr. Godbole, the learned senior advocate appearing for the Petitioner, Mr. Thorat, the learned

senior advocate appearing for Respondent No.6 and Mr. Hamid Mulla, the learned AGP for Respondent Nos.1 to 5-State.

3) Petitioner filed Revision Application No. 20 of 2002 for setting aside Mutation Entry No.1252. It appears that by that Mutation Entry dated 4 December 1963, the Tehsildar had ruled that provisions of Maharashtra Tenancy and Agricultural Lands Act, 1948 (**Tenancy Act**) were not applicable to the land in question on account of the same being located within the municipal limits of Panchgani as well as implementation of the Town Planning Scheme. Said RTS Revision Application No.20 of 2002 was filed under the provisions of Maharashtra Land Revenue Code, 1966 (**the MLRC**). However, in substance, the Petitioner invoked the provisions of the Tenancy Act for challenging the findings recorded by the Tehsildar and ALT about non-applicability of provisions of Tenancy Act to the land in question. The Sub Divisional Officer, Wai (**SDO**) allowed RTS Revision Application No.20 of 2002 by order dated 28 May 2003 and straightway directed issuance of certificate under Section 32M of the Tenancy Act after recovery of purchase price at 200 times of land revenue from the Petitioner.

4) After securing the order dated 28 May 2003 from the SDO, the Petitioner apparently realised that purchase price of the land was never fixed under Section 32G of the Tenancy Act and he accordingly filed Tenancy Case under the provisions of Section 32G of the Tenancy Act before the Tehsildar and ALT,

which came to be allowed by order dated 4 July 2003 fixing purchase price of the land. It appears that Respondent No.6 is aggrieved by order dated 4 July 2003 passed by the Tehsildar and ALT and has filed an appeal before the SDO, which is apparently pending.

5) Simultaneously, Respondent No.6 was also aggrieved by order dated 28 May 2003 and filed RTS Appeal before the Additional Collector. The Appeal came to be allowed by order dated 18 August 2009 by Additional Collector by holding that the SDO could not have been adjudicated tenancy claim while deciding the proceedings filed under the provisions of the MLRC. Additional Collector accordingly set aside SDO's order dated 28 May 2003 vide his order dated 18 August 2009. Additional Commissioner, however allowed the revision filed by the Petitioner and set aside the order passed by the Additional Collector on 18 August 2009 vide his order dated 28 January 2014. Though the Hon'ble Minister initially dismissed the revision filed by the Respondent No.6 by order dated 22 June 2022, in review the Hon'ble Minister has corrected himself and has confirmed the order passed by the Additional Collector on 18 August 2009.

6) Mr. Godbole would question exercise of review jurisdiction by the Hon'ble Minister for recalling order dated 22 June 2022. However, in my view, the SDO appears to have committed a serious jurisdictional error in passing order dated

28 May 2003. In proceedings filed under the provisions of the MLRC, SDO proceeded to adjudicate correctness of order dated 4 December 1963 by holding that the provisions of Tenancy Act do not apply to the land in question. While adjudicating proceedings under the MLRC, the SDO proceeded to issue certificate under Section 32M of the Tenancy Act. Petitioner himself realised the jurisdictional error committed by the SDO and was advised to file proceedings under Section 32G of the Tenancy Act for fixation of purchase price of the land. Accordingly, the purchase price has been fixed by order dated 4 July 2003. Thus, proceedings initially initiated under erroneous provisions of the MLRC before the SDO were apparently brought back to track by the Petitioner by filing tenancy case under Section 32G of the Tenancy Act, which has been allowed by order dated 4 July 2003. Correctness of the order dated 4 July 2003 is pending adjudication before the SDO. Thus, the issue whether provisions of Tenancy Act would apply to the land has ultimately been decided by the ALT in proceedings filed under Section 32G of the Tenancy Act. Therefore the finding recorded by the SDO in proceedings filed under MLRC would necessarily had to be set aside. In my view therefore, initial order dated 28 May 2003 passed by the SDO suffered from serious jurisdictional error and was liable to be set aside. Additional Collector had rightly set aside order dated 18 August 2009. Additional Commissioner and Hon'ble Minister had committed an error in setting aside order of the Additional Collector. Hon'ble Minister has corrected himself in exercise of review jurisdiction and has confirmed order

dated 18 August 2009. Since the initial order of the SDO was itself without any jurisdiction, I am not inclined to interfere in the order passed by the Hon'ble Minister on 9 August 2023 in exercise of review jurisdiction. Exercise of review jurisdiction by the Hon'ble Minister has ultimately resulted in setting aside erroneous order passed by the SDO on 28 May 2003. It must also be noted that ultimate contest between the parties is about applicability of provisions of Tenancy Act and right of the Petitioner to purchase the land under the provisions of Section 32 of the Tenancy Act. The said contentious issue would be decided between the parties in proceedings, which are now pending before the SDO. Therefore, the proceedings initiated under the MLRC becomes irrelevant. Therefore, even though order dated 28 May 2003 passed by the SDO is being set aside, the same would not have any reflection on the tenancy case, which was filed before the ALT and which is now pending adjudication before the SDO.

7) Petition is accordingly **dismissed**. However, it is clarified that dismissal of the Petition as well as setting aside SDO's order dated 28 May 2003 shall not have any effect on tenancy case preferred by Petitioner before the Tehsildar and ALT, which is pending adjudication before the SDO, which shall be decided on its own merits.

8) All rights and contentions of the parties in respect of the tenancy claim are expressly kept open. The SDO shall not be

influenced by observations made by this Court in the present order while deciding the pending revision before him.

[SANDEEP V. MARNE, J.]