

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

WRIT PETITION NO. 703 OF 2025

Keru Tukaram Mukadam and Ors. **...Petitioners**

V/s.

Dhanjisha R. Zaveri and Ors. **...Respondents**

**WITH
WRIT PETITION NO. 705 OF 2025**

Keru Tukaram Mukadam and Ors. **...Petitioners**

V/s.

Dhanjisha R. Zaveri and Ors. **...Respondents**

Mr. Kailas S. Dewal *i/b. Mr. Yash Dewal and Mr. Sham S. Thakur for the Petitioners.*

CORAM : SANDEEP V. MARNE, J.

Dated : 21 January 2025.

Oral judgment:

1) Writ Petition 703 of 2025 challenges judgment and order dated 28 August 2024 passed by the Maharashtra Revenue Tribunal, Mumbai (**MRT**) dismissing Revision Application preferred by Petitioners and confirming orders dated 16 September 2022 passed by the Sub Divisional Officer, Thane (**SDO**) as well as order dated 10 June 2022 passed by the

Tahsildar and Agricultural Lands Tribunal (**ALT**) in proceedings under Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**MTAL Act**) filed by Respondent No.12 -M/s. Roma Builders seeking a negative declaration that Petitioners are not tenants in respect of the land in question.

2) Writ Petition No.705 of 2025 challenges judgment and order dated 28 August 2024 passed by the learned President, Maharashtra Revenue Tribunal, Mumbai dismissing Revision Application preferred by the Petitioners and confirming order dated 16 September 2022 passed by the SDO as well as order dated 13 June 2022 passed by the ALT in proceedings under Section 32-G of the MTAL Act filed by the Petitioners for fixation of purchase price of the land.

3) Thus in both the Petitions, the common issue involved is about status of Petitioners as tenant in respect of the land in question and their entitlement to purchase the same in capacity as tenants.

4) I have heard Mr. Dewal, the learned counsel appearing for the Petitioners. He would submit that Tehsildar, SDO and MRT have not decided the issue as to whether Petitioners are tenants in respect of the land in question. He would submit that no inquiry is conducted into Petitioners' status as tenants on the strength of various documents produced by them and their

tenancy claim is rejected only on account of issuance of Notification dated 15 October 2013 under the provisions of Section 88(1)(b) of the MTAL Act by which the land in question is reserved for industrial development. He would submit that otherwise Petitioners have produced voluminous evidence to demonstrate their tenancy claim before the ALT. He would invite my attention to the rent receipts issued in the name of Anandibai Dhondu Patil in support of her tenancy claim. He would submit that even today, the names of Petitioners continued to be reflected in the revenue records. He would therefore submit that proper enquiry ought to have been conducted by the ALT into the tenancy claim of the Petitioners and it is entirely erroneous on the part of the ALT to close his eyes to the tenancy claim only on the strength of Notification issued under the provisions of Section 88(1)(b) of the MTAL Act.

5) So far as the Notification issued under the provisions of Section 88(1)(b) of the MTAL Act is concerned, Mr. Dewal would submit that said Notification, issued in the year 2013, cannot have any effect on the tenancy claim of Anandibai Dhondu Patil considering the provisions of Section 32 of the MTAL Act, under which Anandibai Patil is deemed to have purchased the land in question in her capacity as a tenant and what is required to be performed under the provisions of Section 32-G of the MTAL Act is a mere ministerial act for which proceedings were initiated by Petitioners before the ALT. In support of his contention that tenant acquires status of owner as on the Tiller's Day under

Section 32 of the MTAL Act, Mr. Dewal would rely upon judgments of the Apex Court in ***Sri Ram Ram Narain Medhi V/s. State of Bombay***¹ and ***Amrit Bhikaji Kale and Ors. V/s. Kashinath Janardhan Trade and Anr.***². He would also rely upon judgment of this Court in ***Pralhad Ganaba Kapare V/s. Sadaba Rambhau Bhosale***³ in support of his contention that mere subsequent issuance of Notification under Section 88(1)(b) of the MTAL Act does not affect tenancy rights of tenants and cannot preclude him from applying for fixation of purchase price under Section 32-G of the MTAL Act.

6) I have considered the submissions, have gone through the findings recorded by ALT, SDO and MRT and have also perused the records of the case.

7) Firstly, I am unable to agree that no enquiry has been conducted by any of the authorities into the tenancy claim of the Petitioners. True it is that the ALT seems to have mainly relied upon Notification issued under the provisions of Section 88(1)(b) of the MTAL Act for the purpose of holding that Petitioners are not tenants and for rejecting their application for fixation of purchase price under Section 32-G of the MTAL Act. However, both the SDO as well as MRT appear to have conducted enquiry into the tenancy claim of the Petitioners. SDO has recorded findings that though the name of Anandibai Patil was initially

1 AIR 1959 SC 459

2 AIR 1983 SC 643

3 AIR 1973 Bom 172

recorded as tenant in respect of the land in question vide Mutation Entry No.458, the same was set aside by the order passed by Divisional Commissioner on 7 August 1962. The Divisional Commissioner apparently remanded the proceedings for conducting the same afresh. However, instead of conducting the proceedings as per the observations made by the Divisional Commissioner in order dated 7 August 1962 the Tehsildar apparently proceeded to certify Mutation Entry No.1327 once again recording the name of Anandibai Dhondu Patil as a tenant in respect of the land on 10 October 1976. Said order dated 10 October 1976 came to be set aside by the Additional Commissioner, Konkan on 10 December 1987 by setting aside Mutation entry No.1327. Apparently, there is no order passed after 1987 directing certification of any mutation entry for recording name of Anandibai Dhondu Patil in revenue records. The Sub Divisional Officer has observed that despite Mutation Entry Nos.458 and 1327 being set aside, name of Anandibai Dhondu Patil continued to be reflected in the revenue records without any fresh mutation entry. After her death, Tukaram Undir Mukadam got his name mutated to the revenue records vide Mutation Entry No.2295. Sub Divisional Officer has considered the effect of the above revenue records and has recorded a finding that mere continuation of name of Anandibai Dhondu Patil in the revenue records despite setting aside of Mutation Entry Nos.458 and 1327 did not mean that any tenancy rights got created in her name.

8) What is more shocking in the present case is the fact that Petitioners, who claim to be successors to Anandibai Dhondu Patil and Tukaram Undir Mukadam, took full advantage of the fact that their names continued to be reflected in revenue records despite cancellation of Mutation Entry Nos.458 and 1327 and executed Agreement for Sale dated 15 February 1995 with Respondent No.12 -Developer for valuable consideration. It appears that Respondent No.12 has filed Special Civil Suit No.131 of 2011 concerning the said Agreement dated 15 February 1995 and has secured an order of interim injunction dated 17 February 2011. After having executed the Agreement for Sale dated 15 February 1995, Petitioners turned around and thought of raising a claim of ownership in respect of the land in question by filing proceedings under Section 32-G of the MTAL Act for fixation of purchase price. Curiously, this step was taken by the Petitioners on 24 February 2020, by which time Respondent No.12- Developer had already instituted Application under the provisions of Section 70(b) of the MTAL Act on 22 December 2019 seeking a negative declaration that Petitioners are not tenants of the land in question. Petitioners thus encashed the position of reflection of their names in Revenue Records by securing valuable consideration from the Developer by executing an Agreement for Sale dated 15 February 1995 and thereafter took a *volte face* and thought of trying their luck by raising claim of tenancy by filing proceedings under Section 32-G of the MTAL Act on 24 February 2020.

9) In any case, apart from above deplorable conduct of the Petitioners, the MRT has also taken into consideration the fact that names of the Petitioners /their predecessors have not been reflected in the 'cultivation' column at any point of time. The MRT has also considered that the Petitioners have never entered the land after the year 1995.

10) Considering the above position, it cannot be contended that no enquiry has been conducted into tenancy claim of the Petitioners. Issuance of Notification under Section 88(1)(b) of the MTAL Act is merely an additional factor, which is taken into consideration especially by the SDO and MRT.

11) So far as the provisions under Section 88(1)(b) of the MTAL Act are concerned, the said provision creates an exception to tenancy claims in respect of lands, which are notified by the State Government as having been reserved for non-agricultural or industrial development. Section 88(1)(b) of the MTAL Act provides thus:

88. Exemption to Government lands and certain other lands-

(1) Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act shall apply,-

- (a) to lands belonging to, or held on lease from, the Government;
- (b) to any area which the State Government may, from time to time, by notification in the Official Gazette, specify as being reserved for non-agricultural or industrial development;

- (c) to an estate or land taken under the management of the Court of Wards or of a Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890.
- (d) to an estate or land taken under management by the State Government under Chapter IV or Section 65 except as provided in the said Chapter IV or Section 65, as the case may be, and in Sections 66, 80-A, 82, 83, 84, 85, 86 and 87.

12) It is Mr. Deval's contention that a tenant becomes deemed owner under the provisions of Section 32 of the MTAL Act. True it is that the objective behind enactment of Section 32 of the MTAL Act is to create a deeming fiction in respect of the tenant cultivating the land as on Tiller's Day of 1 April 1957. However, it would be too adventurous to accept the contention that Notification issued by the State Government under the provisions of Section 88(1)(b) of the MTAL Act would become ineffective and a person, who never initiated any proceedings for claiming tenancy, can then file application for fixation of purchase price of the land covered by Notification issued under Section 88(1)(b).

13) Though Section 32G of MTAL Act may create a deeming fiction of purchase of the tenanted land, some steps are required to be taken for giving formality to the purchase transaction. In absence of fixation of purchase price, payment thereof by the tenant and issuance of purchase certificate under Section 32-M, the transaction of purchase does not take effect. What Section 88(1)(b) seeks to do is to suspend and terminate taking of any steps for fixation of purchase price, payment thereof and

issuance of 32-M certificate once a notification for reservation of land for industrial purposes is issued. Once fixation of purchase price under Section 32-G is prohibited after issuance of Notification under Section 88(1)(b), the purchase transaction does not take place and the deeming fiction under Section 32 does not Kick in. It must also be borne in mind that the objective behind enactment of Section 32 of the MTAL Act is to ensure that the tenant actually cultivating the land becomes owner thereof. Thus, the key is cultivation of the land. The object is not to confer ownership right on a person who is not a cultivator. Therefore, once the land is reserved for industrial use under Section 88(1)(b) of the MTAL Act, it can no longer be cultivated and permitting any person to apply for fixation of purchase price of such uncultivable land post issuance of Notification would frustrate the entire object behind the enactment. However this would not mean that Section 88(1)(b) would have effect of cancellation of tenancy rights already recognised and termination of ownership of tenant who has already purchased the land by paying purchase price under Section 32-G of the Act. Such tenant would already become owner of the land before issuance of the Notification and the landlord cannot use issuance of Notification for claiming back possession and title of land from the tenant. However, at the same time, if no proceedings for purchase of land under Section 32-G of the Act are initiated and/or finalized, fresh claims for fixation of purchase price cannot be entertained after issuance of Notification under Section 88(1) (b) of the Act. This is the interplay between provisions of

Sections 32 and 88 of the MTAL Act. This interpretation also presents harmonious coexistence of the two provisions without causing violence to each other.

14) It must also be borne in mind that the event of issuance of Notification under Section 88(1)(b) must necessarily occur after the Tiller's day of 1 April 1957, which is apparent from use of the expression '*from time to time*'. To illustrate, the erstwhile agricultural land may be brought within the jurisdiction of a Municipal Corporation by issuance of a Notification the same can be reserved for non-agricultural use after the Tiller's day. If contention of deemed purchase of that land as on Tiller's day is accepted and a person claiming to be the tenant is permitted to file proceedings for purchase of the land post issuance of such Notification, the effect of the Notification would get negated and the land would continue to remain agricultural land despite its reservation for non-agricultural purposes. Such an interpretation would create a havoc where the land included in municipal corporation and developed by construction of buildings can be claimed by a person by filing proceedings under Section 32-G of the Act for fixation of purchase price.

15) Mr. Deval has relied upon the Apex Court judgments ***Sri Ram Ram Narain Medhi*** and ***Amrit Bhikaji Kale*** (supra) in support of his contention that the purchase of land by the tenant under Section 32 is a deeming fiction. However, in both the judgments, the issue of interplay between Sections 32 and 88(1)

(b) of the MTAL Act was not involved. The Apex Court did not have any occasion to consider the effect of statutory termination of steps for purchase of land on account of Notification under Section 88(1)(b) of the Act. In ***Pralhad Ganaba Kapare*** (supra) Single Judge of this Court encountered a situation where landlord had filed proceedings for termination of tenancy and had secured an order upto this Court for deduction of 1/4th in the leased land under Sections 29 and 31 of the MTAL Act thereby retaining the balance 3/4th of the land with the tenant, who then became statutory purchaser. After the proceedings attained finality before this Court, a Notification under Section 88(1)(b) of the MTAL Act was issued by the State Government and taking benefit of issuance of said notification, the landlord attempted to take a *volte face* by contending that the tenancy rights had come to an end. In the light of these peculiar facts and circumstances of the case, this Court held that principle of estoppel would apply against landlord on account of final decision of proceedings under Sections 29 and 31 of the MTAL Act. Facts in the case of ***Pralhad Ganaba Kapare*** (supra) are thus clearly distinguishable.

16) In the present case, in addition to enquiry into tenancy claim of Petitioners, issuance of Notification under Section 88(1)(b) of the MTAL Act has otherwise negated any claim by Petitioner about tenancy in the land. Additionally, the conduct of the Petitioners is such that this Court would be loathe to entertain Petitions at their instance where they have already

entered into Agreement for Sale in favour of Respondent No.12-Developer on 15 February 1995 by taking full benefit of existence of revenue entries in their names. Now they want to earn a lottery by raising a claim of tenancy by filing proceedings under Section 32-G after issuance of Notification under Section 88(1) (b). This Court would not permit its jurisdiction to be exercised for such activities.

17) Considering the overall conspectus of the case and particularly the conduct of the Petitioners, I am not inclined to entertain the Petition for disturbing the concurrent findings recorded by the ALT, SDO and MRT. Writ Petitions are devoid of merits and are accordingly dismissed with no orders as to costs.

[SANDEEP V. MARNE, J.]