

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14599 OF 2024

M/s. Accord Developers Partnership Firm } ...*Petitioner*

-Versus-

1. Shri. Narayan Maruti Falke

Since deceased through legal heirs

1A. Sindhubai Narayan Falke and others } ...*Respondents*

WITH

WRIT PETITION NO. 5178 OF 2016

Mr. Ranjeet Buwaji Nimhan

Since deceased through legal heirs

1.1. Kanta Ranjeet Nimhan and others }... *Petitioner*

-Versus-

1. Shri. Narayan Maruti Falke

Since deceased through legal heirs

1A. Sindhubai Narayan Falke and others } ...*Respondents*

WITH

WRIT PETITION NO. 17409 OF 2024

Mr. Ranjeet Buwaji Nimhan

Since deceased through legal heirs

1.1. Kanta Ranjeet Nimhan and others }... *Petitioner*

-Versus-

1. Shri. Narayan Maruti Falke

Since deceased through legal heirs

1A. Sindhubai Narayan Falke and others } ...*Respondents*

WITH
WRIT PETITION NO. 17410 OF 2024

M/s. Accord Developers through its Partners

1. Mr. Jaspritsingh Ragbirsingh Rajpal and others } ...*Petitioner*
-Versus-

1. Shri. Narayan Maruti Falke

Since deceased through legal heirs

1A. Sindhubai Narayan Falke and others } ...*Respondents*

Dr. V. V. Tulzapurkar, Senior Advocate with Mr. Mandar Soman, for Petitioner in WP/14599/2024 and for the Respondent No. 15 in WP/17409/2024.

Mr. Sunil G. Karandikar with Mr. H. P. Vyas (through V. C.), for Petitioner in WP/5178/2016.

Mr. Surel Shah Senior Advocate (through V. C.), i/by Mr. Sahil Mahajan, for Petitioner in WP/17409/2024.

Mr. Anil Anturkar, Senior Advocate with Mr. Rishi Bindra i/by Ramiz Shaikh for Respondent Nos. 2a, 2b, 2d and 3 in WP/14599/2024 and for Respondent No. 1.1 to 1.3, 2, 3.1, 3.3, 3.4 and 4 in WP/17410/2024.

Mr. Ramiz Shaikh with Mr. Harshil Gandhi, for Respondent Nos. 1.1, 1.2, 1.3, 2, 3.1, 3.3, 3.4 and 4 in WP/17409/2024.

Mr. Ramiz Shaikh with Mr. Rishi Bindra, for Respondent Nos. 2a, 2c, 2d and 3 in WP/5178/2016.

Ms. Kavita S. Solunke, AGP for State-Respondent in WP/14599/2024.

Mr. S. D. Rayrikar, AGP for State-Respondent in WP/17409/2024.

Ms. Dhruti Kapadia, AGP for State-Respondent in WP/17410/2024 and WP/5178/2016.

CORAM : SANDEEP V. MARNE, J.

Reserved On : 24 January 2025.

Pronounced On : 4 February 2025.

JUDGMENT :

1) The challenge in these four petitions is to declaration of tenancy rights in favour of the contesting Respondents under provisions of Section 70(b) of Maharashtra Tenancy and Agricultural Lands Act, 1956 (**the Act**) and to fixation of purchase price under Section 32-G thereof in their favour. Writ Petition No. 14599 of 2024 is filed by the developer-M/s Accord Developers and Writ Petition No. 5178 of 2016 is filed by purchaser-Ranjeet Buwaji Nimhan challenging order dated 13 January 2016 passed by Maharashtra Revenue Tribunal (**MRT**) dismissing their Revision Application and confirming the order passed by Sub-Divisional Officer (**SDO**) dated 30 March 2005. The SDO had allowed the Appeal preferred by contesting Respondents and set aside the order passed by Agricultural Lands Tribunal and Tehsildar (**ALT**) dated 18 November 2003 rejecting their claim of being tenants in respect of the lands in question. The net effect of the order passed by the MRT is that tenancy claim of contesting Respondents in respect of the lands in question has been upheld.

2) On account of upholding of tenancy claims of the contesting Respondents, they applied for fixation of purchase

price of lands under Section 32G of the Act and by order dated 21 October 2024 the ALT, has fixed such purchase price and has directed issuance of purchase certificate under Section 32M in favour of contesting Respondents, on payment of determined price. Both Accord Developers and Ranjeet Nimhan are aggrieved by order dated 21 October 2024 and have accordingly filed Writ Petition Nos. 17410 of 2022 and 17409 of 2024 respectively.

3) A brief factual narration for better understanding of the issue at hand would be necessary. Agricultural lands bearing Survey Nos. 396, 401, 403, 405, 410, 413, 417/4, 419, 420/2, 423/1, 423/4 and 427 at Village Bhugaon, Taluka Mulshi, District Pune were originally owned by members of Angre family. It is claimed that the one of the original owners Genu Tukaram Angre has inducted Maruti Cheema Falke as a tenant in respect of the lands. The daughter of Maruti Cheema Falke viz. Sheelabai was married in the family of landlords to Krishna Genu Angre and her name post her wedding became Sheelabai Krishna Angre. Son and grandchildren of Maruti Cheema Falke viz. (i) Narayan Maruti Falke, Chandrakant Shankar Falke and Rajendra Shankar Falke filed Tenancy Case No. 20/2003 before the ALT seeking a declaration that they are tenants in respect of agricultural lands under the provisions of Section 70(b) of the Act. In their application, the Applicants (Respondent Nos. 1, 2 and 3) claimed that Maruti Cheema Falke used to pay *Khand* (rent) towards cultivation of the lands to Angre family. It appears that Sheelabai Krishna Angre (daughter of Maruti Cheema Falke) admitted the

tenancy claim of Respondent Nos. 1, 2 and 3 by filing Affidavit before ALT. However, it appears that Sheelabai Krishna Angre separately filed an application dated 18 June 2003 for recording her name as heir of Krishna Angre in respect of one-third portion of lands in question. After conduct of inquiry, ALT proceeded to reject the application preferred by Respondent Nos. 1, 2 and 3 vide order dated 18 November 2003 holding that relationship of landlord and tenant could not be established.

4) Respondent Nos. 1 to 3 preferred Tenancy Appeal No.20/2004 before the SDO challenging the ALT's order dated 18 November 2003 and prayed that the proceedings be remanded to ALT in order to enable them to lead evidence. It appears that Respondent Nos. 1 to 3 filed additional documents directly before the SDO. The SDO considered the additional documents and proceeded to allow the Appeal preferred by Respondent Nos. 1 to 3 by order dated 30 March 2005 and declared that Respondent Nos. 1 to 3 are protected tenants in respect of the lands by setting aside ALT's order dated 18 November 2003.

5) Angre family members filed Tenancy Revision Application No. 122/2005 before the Divisional Commissioner, which apparently came to be transferred to MRT. It appears that during pendency of Revision Application before the Tribunal, the lands were purchased by Shri. Ranjeet Nimhan on 7 October 2005 from Angre family members. A Development Agreement dated 31 December 2007 was executed by Shri. Ranjeet Nimhan in

favour of Accord Developers. Accordingly, both Shri. Ranjeet Nimhan and Accord Developers applied for intervention in the Revision Application filed by Angre family members. It appears that they were initially impleaded as Respondents and subsequently transposed as Revision Applicants. The Tribunal has rejected the Revision Application by judgment and order dated 13 January 2016 which is subject matter of challenge in Writ Petition No. 14599 of 2024 filed by Accord Developers and Writ Petition No. 5178 of 2016 filed by Shri. Ranjeet Nimhan.

6) During pendency of Writ Petition Nos. 14599 of 2024 and 5178 of 2016, it appears that Respondent Nos. 1 to 3, filed proceedings before the ALT for fixation of purchase price of the lands. By order dated 21 October 2024, the ALT has allowed the application preferred by Respondent Nos. 1 to 3 and has fixed purchase price of the lands under provisions of Section 32G of the Act with a further direction that upon payment thereof, Certificate of Purchase under Section 32M of the Act would be issued in their names. Both Accord Developers and Shri. Ranjeet Nimhan are aggrieved by the said order dated 21 October 2024 and have accordingly filed Writ Petition Nos. 17410 of 2024 and 17409 of 2024.

7) Dr. Tulzapurkar, the learned senior advocate appearing for M/s. Accord Developers, who is Petitioner in Writ Petition No. 14599 of 2024 and Respondent No. 15 in Writ Petition No. 17409 of 2024, would submit that the SDO has grossly erred

in setting aside ALT's order and in declaring Respondent Nos. 1 to 3 as tenants ignoring the fact that the only prayer made was for remand of proceedings for re-inquiry. That the SDO would not have decided something which was beyond the prayers raised in Appeal filed before him. That SDO erred in permitting Respondent Nos. 1 to 3 to produce additional evidence before him which was never produced before the ALT. That production of additional evidence directly before SDO was contrary to the prayer made in application for grant of opportunity to lead additional evidence by remand of proceedings before the ALT. He would submit that unfair trial and fair appeal is a concept unknown to law. That a specific prayer was made before the Tribunal that the order passed by SDO was contrary to the prayers. He would submit that the Respondent before SDO was not even aware about production of additional documents and did not receive any notice about filing of additional documents. Dr. Tulzapurkar would therefore submit that the SDO has committed jurisdictional error by declaring Respondent Nos. 1 to 3 as tenants contrary to the prayers made before the SDO. In support of his contentions, Dr. Tulzapurkar would rely upon the judgment of the Apex Court in *Bachhaj Nahar Versus. Nilima Mandal and another*¹. He would therefore pray for setting aside the impugned orders passed by SDO and MRT.

8) Mr. Karandikar the learned counsel appearing for Shri. Ranjeet Nimhan in Writ Petition No. 5178 of 2016 would

¹ (2008) 14 S.C.R. 621

adopt submissions of Dr. Tulzapurkar and would additionally submit that what was produced before the SDO were mere photocopies of some of the unsubstantiated documents. He would invite my attention to finding recorded by MRT that the Tehsildar was right in rejecting tenancy claim and would criticise the MRT in still dismissing Petitioner's Revision Application. He would further submit that the finding recorded by SDO about erroneous entry made by Tehsildar of '*Rit I*' in cultivation column is perverse. He would submit that the application under Section 70(b) of the Act was required to be treated as a plaint by following the provisions of the Mamlatdar Courts Act. That in the present case neither issues were framed nor evidence was recorded by ALT or SDO and tenancy claim of Respondent Nos. 1 to 3 is erroneously accepted. He would submit that after purchase of the lands, Shri. Ranjeet Nimhan was originally impleaded as Respondent to the proceedings before ALT and subsequently transposed as Revision Applicant. That since Respondent Nos. 1 to 3 did not challenge impleadment and transposition orders, they are now estopped from questioning the locus of Petitioners in filing the petitions. He would pray for setting aside the orders passed by SDO and MRT.

9) Mr. Shah, the learned senior advocate appearing for Petitioner-Accord Developers in Writ Petition No. 17409 of 2024 would submit that the orders passed by ALT fixing purchase price under Section 32G of the Act is liable to be set aside since declaration of tenancy rights in favour of Respondent Nos. 1 to 3

is itself illegal. He would therefore submit that if Writ Petition Nos. 14599 of 2024 and 5178 of 2016 are allowed, the impugned order passed by ALT on 21 October 2024 fixing the purchase price would automatically be rendered *ab initio void*.

10) Mr. Anturkar, the learned senior advocate would appear on behalf of the contesting Respondents would oppose the petitions. He would submit that Petitioners are chance takers, who whole heartedly participated in hearing before SDO without raising any objections about decision on merits of the claim by the SDO. That they did not raise any objection before SDO for taking the additional documents and evidence on record. He would submit that the objection of SDO deciding merits of the tenancy claim was not raised before MRT in Revision Application filed by Angre family nor even orally argued when the Revision Application was heard and decided. That Shri. Ranjeet Nimhan and Accord Developers do not have locus to challenge SDO's order as both of them did not participate in proceeding before SDO and as subsequent purchasers who have taken calculated risk of purchasing the land despite full knowledge of the tenancy claim of Respondent No.1 was already upheld by SDO. That their purchase transaction is itself void as Angre family was no longer competent to sell land to Shri. Ranjeet Nimhan nor Shri. Ranjeet Nimhan had authority to execute Development Agreement in favour of Accord Developers. Mr. Anturkar would further submit that the judgment of the Apex Court in *Bachhaj Nahar* (supra) has no application to the present case as the judgment is rendered in

the light of importance of pleadings in a civil suit. He would submit that it is the duty of ALT under the provisions of the Act to determine tenancy rights. That provisions of the Code of Civil Procedure do not apply to tenancy proceedings and therefore the order passed by SDO cannot be questioned merely on the basis of technicalities of absence of prayer in the appeal memo. Mr. Anturkar would therefore pray for dismissal of the petition.

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

12) The main ground of challenge to the order passed by the SDO and MRT is about the SDO exceeding the prayer made in the Appeal memo and proceeding to decide the merits of tenancy claim. The ALT had rejected the tenancy claim of Respondent Nos. 1 to 3 by order dated 18 November 2003, *inter-alia* holding that name of Respondent No.1 was indicated in respect of most of the lands in the cultivation column and though growth of grass was reflected in respect of some of the lands, Respondent Nos.1 to 3 could not produce any evidence to show that their forefather owned cattle. The ALT further held that Respondent Nos.1 to 3 did not produce evidence about payment of rent or rent agreement. The ALT further held that Respondent Nos.1 to 3 were close relatives of Angre family and that therefore they cannot be treated as tenants of the land. This is how ALT proceeded to reject the tenancy claim of Respondent Nos.1 to 3.

13) When the Respondent Nos.1 to 3 filed Appeal before the SDO, they made following prayers in their appeal :

तरी मे. कोर्टास विनंती की,

अ) केस क्र. /७०ब/एस.आर./ २०/२००३ या अर्जकामी तहसिलदार मुळशी यांनी दिलेला आदेश रद्दबातल ठरविण्यात यावा.

ब) मामलतदार कोर्ट अॅक्ट १९०६ व मुंबई कुळवहिवाट व शेतजमिन अधिनियम १९४८ मध्ये असणाऱ्या तरतुदीप्रमाणे अॅपेलन्ट, रिस्पॉन्डंट व साक्षीदार यांचे पुराव्याकामी शपथेवर जबाब, सरतपासणी, उलटतपासणी, घेतलेले नाहीत ते घेण्यात यावेत व त्याकामी फेरचौकशी करण्यात यावी.

क) अपीलाचे मुदतीत रिस्पॉन्डंट यांनी दावा मिळकतीत त्रयस्थ व्यक्तीचे हितसंबंध निर्माण करू नयेत. अगर तिन्हाईत इसमास मिळकतीची विक्री करू नये असा त्यांचे विरुद्ध मनाईचा हुकूम करण्यात यावा.

ड) अपील दुरुस्तीस परवानगी असावी.

इ) इतर योग्य व न्यायाचे हुकूम व्हावेत.

14) Thus in their Appeal, Respondent Nos.1 to 3 prayed for setting aside the order passed by the ALT and for remand of the proceedings before the ALT for grant of opportunity to lead evidence. Thus the only prayer made by Respondent Nos.1 to 3 in their Appeal was for conduct of re-enquiry by the ALT by recording evidence in accordance with the provisions of Mamlatdar Courts Act, 1906 and Maharashtra Tenancy and Agricultural Lands Act, 1958.

15) However, contrary to their prayer in the Appeal, Respondent Nos.1 to 3 apparently produced additional evidence relating to old 7/12 extracts and about proof of ownership of cattle directly before the SDO. According to the Petitioners, the

landlords did not have any notice of production of any additional evidence. Perusal of the order passed by the SDO infact shows that the SDO was inclined to remand the proceedings before ALT by holding that Respondent Nos.1 to 3 were not able to produce evidence in support of the tenancy claim before the ALT. The SDO also criticised ALT for not granting adequate opportunity to Respondent Nos.1 to 3 to produce the relevant documents. SDO further held that Respondent Nos.1 to 3 were not in a position to record their statement or to submit written submissions without procuring the old documents. It would be apposite to reproduce the findings recorded by SDO in his order dated 30 March 2005 :

या प्रकरणी दोन्ही बाजूंचे लेखी युक्तीवाद, माझ्यासमोर दाखल असलेले पुराव्याचे कागदपत्र व खालील कोर्टाचा निर्णय तसेच चौकशी संचिका यांचा मी अभ्यास व छाननी केली आहे. या प्रकरणी अपिलार्थी हे दावा जमीनीचा कूळ हक्क सांगत आहेत. अपिलार्थी यांचा हा कूळ हक्क प्रतिवादी. नं. २ ते १२ यांनी नाकारला आहे. प्रतिवादी नं. १ हिने मात्र अपिल्यर्थींचे कथनास समर्थन दिले आहे. खालील कोर्टाची संचिका पाहता व निकालपत्र पाहता, खालील कोर्टाने दावा जमीनीच्या वहिवाट सदरी अपिलार्थी यांच्या असलेल्या नोदीसमोर रित नमूद नाही व जमीनी गवतपड आहेत तसेच अपिलार्थी यांनी त्यांचेकडे पशुधन असलेचा पुरावा सादर केलेला नाही व खंड, चिड्ड्या इत्यादी पुरावा सादर केलेला नाही, या कारणास्तव अपिलार्थी यांचा अर्ज फेठाळणेचा निर्णय दिला आहे. अपिलार्थी यांचे असे कथन आहे की, खालील कोर्टाने त्यांना असा पुरावा सादर करणेस पुरेशी संधी दिलेली नाही. आपल्या कथनाच्या पृष्ठयर्थ अपिलार्थी यांनी माझ्यासमोर त्यांनी दावा जमीनीचे जुन्या कालावधीचे ७/१२ इत्यादी कागदपत्रांच्या नकला मिळणेसाठी केलेला अर्ज व त्यावर अपिलार्थी यांना तहसिलदार यांनी दिलेले उत्तर यांच्या प्रती सादर केल्या आहेत. हे कागदपत्र पाहता, अपिलार्थी यांना तहसिलदार यांनी संबंधित कागदपत्र आढळून येत नसल्याने त्यांच्या नकला देता येत नसल्याचे कळविले आहे. त्यामुळे अपिलार्थी हे सदरहू पुराव्याचे कागदपत्र खालील कोर्टात सादर करू शकले नाहीत, ही वस्तुस्थिती असल्याचे स्पष्ट होते. अपिलार्थी यांनी खालील कोर्टात त्याच लेखी म्हणणे अथवा जबाबही दिलेला नाही. कारण अपिलार्थी यांना जुनी कागदपत्रे मिळाल्याशिवाय जबाब देणे किंवा लेखी म्हणणे सादर करणेही अशक्य झाले असल्याचे स्पष्ट होते. खालील कोर्टाने अपिलार्थी यांना ही कागदपत्रे सादर करणेस व लेखी म्हणणे सादर करणेस पुरेशी संधी दिलेली नाही, हे देखील स्पष्ट होते. खालील कोर्टात अपिलार्थी यांनी आपण दावा जमीनीचे

कृषकदिना पूर्वीपासूनचे कूळ असल्याचा ठराव करून मिळणेची मागणी केली होती. अपिलार्थी यांनी सादर केलेल्या ७/१२ मध्ये वहिवाट सदरी रित नमूद नाही व जमीनी गवतपड असल्याचे स्पष्ट होते.

16) After recording the above findings, ordinarily SDO ought to have granted the prayer made by Respondent Nos.1 to 3 for conduct of re-enquiry by the ALT after grant of opportunity of leading evidence to the parties. However, despite repeatedly holding that the ALT ought to have granted opportunity to Respondent Nos.1 to 3 to lead evidence, the SDO erroneously proceeded to consider the additional documentary evidence apparently produced before him by Respondent Nos.1 to 3. This is clear from the following findings recorded by the SDO :

तथापि, अपिलार्थी हे.. दावा जमीनी कोणत्या हक्काने वहिवाटीत होते व जमीनी गवतपड का ठेवल्या, याची पूर्ण चौकशी खालील कोर्टाने केलेली नाही. खालील कोर्टाने कूळ कायदा कलम २(१) मध्ये दिलेली "कृषि" या शब्दाची व्याख्या नीट न अभ्यासता जमीनी गवतपड आहेत, म्हणून अपिलार्थी यांची वहिवाट नसल्याचा व परिणामी कुळ हक्क नसल्याचा निष्कर्ष चुकीच्या पध्दतीने काढला आहे. अपिलार्थी यांनी माझ्यासमोर जुने ७/१२ तसेच अपिलार्थी यांचेकडे असलेले पशुधनाबाबतचे पुराव्याचे कागदपत्र दाखल केले आहेत. हे कागदपत्र पाहता, अपिलार्थी हे दावा जमीनीचा उपयोग त्यांचे पशुधनास चारा चारणेसाठी करीत आले असल्याचे स्पष्ट होते व हा वापर कुळ कायदा कलम २(१) मधील व्याख्येनुसार "कृषि" या संज्ञेत येतो. अपिलार्थी यांचे पूर्वज चिमाजी हे दावा जमीनीचे सन १९३० पासून कूळ असल्याचे वहिवाट सदरी असलेल्या नोंदीवरून स्पष्ट होते. अपिलार्थी तसेच त्यांचे पूर्वजांची दावा जमीनीस असलेली ही वहिवाटीची नोंद केवळ रित नमूद नाही, या कारणास्तव अमान्य करणेचा खालील कोर्टाने दिलेला निष्कर्ष चुकीचा आहे. दावा जमीनीपैकी काही जमीनीचे वहिवाट सदरी अपिलार्थी यांची वहिवाट रित-१ नुसार दर्शविणेत आली आहे. अपिलार्थी यांचे नाव दावा जमीनीचे कब्जेदार सदरी दाखल नाही. यावरून तलाठी यांनी वहिवाट सदरी नमूद केलेली रित-१ चुकीची आहे, हे सिद्ध होते. कूळ वहिवाटीबाबत निर्णय करताना केवळ अधिकार अभिलेखातील नोंदीवर विसंबता येत नाही.

17) Thus, SDO relied upon additional documents apparently produced by Respondent Nos. 1 to 3 directly before him. He had already recorded a finding that the ALT ought to have granted opportunity to Respondent Nos. 1 to 3 to lead evidence. Curiously, after considering the additional evidence directly produced before SDO by Respondent Nos.1 to 3, he once again recorded following findings :

अशाप्रकारे चौकशी करणेसाठी खालील कोर्टाने अपिलार्थी यांना पुरेशी संधी देणे आवश्यक होते.

18) In my view, the SDO has committed jurisdictional error in considering the additional evidence produced by Respondent Nos.1 to 3 directly before him. More grave is the error on the part of the SDO in going beyond the prayers made by Respondent Nos. 1 to 3 in their Appeal. In their Appeal, Respondent Nos. 1 to 3 did not pray for declaring themselves as tenants in respect of the lands in question. Their limited prayer was for remand of proceedings before ALT for conduct of re-enquiry by granting opportunity of hearing. In the light of this limited prayer being made before the SDO, he could not, by himself, have considered the merits of tenancy claim of Respondent Nos.1 to 3. SDO was acting merely as an Appellate Authority and was expected to only marshal the evidence on record for examining whether there was any error on part of the ALT while rejecting the tenancy claim of Respondent Nos.1 to 3. While deciding the Appeal, he could not have himself taken on

record any additional evidence when the prayer of Respondent Nos. 1 to 3 was for remand of the proceedings by granting them an opportunity to lead additional evidence.

19) The Respondents before SDO were defending only the prayer for remand of proceedings and were never put to notice that SDO himself would take additional evidence on record and proceed to decide the tenancy claim, by himself, based on such additional evidence. In this regard, reliance by Dr. Tulzapurkar on the Apex Court judgment in *Bachhaj Nahar* (supra) appears to be apposite wherein the Apex Court has highlighted the object and purpose of pleadings and impermissibility for the Courts to travel beyond pleadings. The Apex Court held in paragraphs-9, 10, 11 and 12 as under :

9. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

10. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and

contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

11. The High Court has ignored the aforesaid principles relating to the object and necessity of pleadings. Even though right of easement was not pleaded or claimed by the plaintiffs, and even though parties were at issue only in regard to title and possession, it made out for the first time in second appeal, a case of easement and granted relief based on an easementary right. For this purpose, it relied upon the following observations of this Court in *Nedunuri Kameswaramma v. Sampati Subba Rao* [AIR 1963 SC 884] : (AIR p. 886, para 6)

“6. ... No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion.”

But the said observations were made in the context of absence of an issue, and not absence of pleadings. The relevant principle relating to circumstances in which the deficiency in, or absence of, pleadings could be ignored, was stated by a Constitution Bench of this Court in *Bhagwati Prasad v. Chandramaul* [AIR 1966 SC 735] : (AIR p. 738, para 10)

“10. ... If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But

where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : *did the parties know that the matter in question was involved in the trial, and did they lead evidence about it?* If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. *To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another."*

(emphasis supplied)

The principle was reiterated by this Court in *Ram Sarup Gupta v. Bishun Narain Inter College* [(1987) 2 SCC 555 : AIR 1987 SC 1242] : (SCC pp. 562-63, para 6)

"6. ... *It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise.* The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. *Once it is found that in spite of deficiency in the pleadings parties knew the*

case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal."

(emphasis supplied)

12. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in *Bhagwati Prasad* [AIR 1966 SC 735] and *Ram Sarup Gupta* [(1987) 2 SCC 555 : AIR 1987 SC 1242] referred to above and several other decisions of this Court following the same cannot be construed as diluting the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu.

20) In my view therefore, it was impermissible for SDO to travel beyond the prayers raised in the Appeal filed before the SDO. There is nothing on record to indicate that Respondent Nos.1 to 3 filed any application before the SDO for leading additional evidence or that such application was considered or allowed by the SDO. The so-called documents of ownership of cattle by Respondent Nos. 1 to 3 are not backed by oral evidence. The SDO, in my view, ought to have remanded the proceedings before the ALT for being decided afresh by granting opportunity

to Respondent Nos.1 to 3 to lead evidence, both documentary as well as oral. The MRT has grossly erred in not correcting the jurisdictional error committed by SDO in going beyond the prayers in the Appeal. Mere grant of opportunity of hearing to the Petitioners before MRT would not cure the inherent defect in the order passed by the SDO.

21) After considering the overall conspectus of the case, I am of the view that the order passed by SDO and MRT are indefensible and are liable to be set aside. The proceedings deserve to be remanded before the ALT for being decided afresh by granting opportunity to Respondent Nos.1 to 3, as well as to the Petitioners to lead additional evidence. True it is that Petitioners have stepped into the shoes of Angre family members on account of execution of conveyance and Development Agreement in their favour. However, this would not preclude the Petitioners from participating in the proceedings before the ALT to rebut the additional evidence that would be produced by Respondent Nos.1 to 3 and also to examine members of Angre family if necessary and to produce any other relevant documentary evidence. Since the orders passed by the SDO and MRT are being set aside, the consequential order passed by the ALT fixing purchase price of the lands under the provisions of Section 32G of the Act vide order dated 21 October 2024 is also liable to be set aside.

22) I accordingly proceed to pass the following order :

- (i) Order dated 30 March 2005 passed by the SDO as well as order dated 13 January 2016 passed by MRT are set aside.
- (ii) Order dated 21 October 2024 passed by the Tehsildar and ALT, Mulshi fixing purchase price of the lands under the provisions of Section 32G of the Act are consequently set aside.
- (iii) Tenancy Case No.70-B/SR/20/2004 is remanded to Tehsildar and ALT, Mulshi for being decided afresh after grant of opportunity to Respondent Nos.1 to 3, as well as to the Petitioners to lead additional evidence in support of their respective claims.
- (iv) Considering long passage of time, the Tehsildar and ALT shall proceed to decide the remanded proceedings in an expeditious manner, preferably within a period of one year.
- (v) All rights and contentions of the parties on merits of their claims are expressly kept open and the ALT shall not be influenced by any of the observations made by SDO and MRT as well as by this Court while deciding the remanded proceedings afresh.

23) With the above directions, all the four Writ Petitions are **allowed and disposed of**. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

[SANDEEP V. MARNE, J.]

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2025.02.04
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