



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.854/2012

PETITIONER : Mr. Ulhas Vinayak Nirmale,
Age 40 years, Occupation – Teacher,
R/o Wardha, Dist. Wardha.

...VERSUS...

RESPONDENTS : 1. Keshav s/o Yashwant Kale,
Age 70 years, Occupation – Cultivation,
Through his power of attorney holder,
Mr. Ashok s/o Keshav Kale,
R/o Chikamoh, Taluka Hinganghat,
Dist. Wardha.
(Dead) through L.Rs.

1.a. Bebi Wd/o Keshav Kale (Wife)
Age : Major, Occupation Household.

1.b. Ashok S/o Keshav Kale (Son)
Age : Major Occupation : Nil.

1.c. Arun S/o Keshav Kale (Son)
Age : Major Occupation : Nil.

1.a to 1.c R/o Post Chikmoh, Tah.
Hinganghat, Dist. Wardha.

1.d. Mrs. Nirmala Fartale (Daughter)
Age : Major, Occupation : Nil
R/o At Post, Kangaon (Giroli),
Hinganghat, Dist. Wardha.

1.e. Mrs. Pramila Rokde (Daughter)
Age : Major Occupation : Nil
R/o Shahalangdi road, Hinganghat,
Dist. Wardha.

1.f. Late Thakare (Pre-Deceased Daughter,
through heirs)

- 1.f.i. Suraj Thakre
Age: Major, Occupation : Nil
- 1.f.ii. Swati Thakre
Age : Major Occupation : Nil
- 1.f.i. and 1.f.ii C/o Bebi Wd/o Keshav Kale
Post Chikmoh, Tah. Hinganghat, Dist. Wardha.

(Added proposed L.Rs. of R-1 i-e 1 (a) to 1(e)
and L.Rs. of 1 f i, e 1 f i & 1 f ii as per Court's
order dtd. 31/8/23.

(Amendment carried out as per Court's order
dated 31.08.2023)

2. Mr. Pundlik s/o Sukhdeo Jambhulkar,
Age 63 years, Occupation – Nil,
R/o Chikamoh, Taluka – Hinganghat,
Dist. Wardha.
3. State of Maharashtra,
Through Sub Divisional Officer,
Hinganghat, Dist. Wardha.
4. Tahsildar, Taluka Hinganghat,
Dist. Wardha.
5. Learned Member,
Maharashtra Revenue Tribunal, Nagpur.

Mr. A.U. Deshmukh, Advocate for petitioner
Mr. Anand N. Shinde, Advocate for respondent Nos.1 (a) and 1 (b)
Mr. S.B. Bissa, AGP for respondent Nos.3 to 5

CORAM : ROHIT W. JOSHI, J.
DATE : 27/11/2025

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned Advocates for the rival parties.

2. The present petition is filed challenging the judgment and order dated 21/10/2011, passed by the learned Member, Maharashtra Revenue Tribunal (MRT), Nagpur in Revision Application No.TEN/B-40/2009, whereby the learned MRT has reversed the judgment and order dated 31/12/2008, passed by the Tenancy Tahsildar, Hinganghat in Revenue Case No.2/59-13/2001-02 of village Chikmoh and Pardi and judgment and order dated 19/11/2009, passed by the Sub Divisional Officer, Hinganghat in Revenue Appeal No.2/59-13/2008-09 of Mouza Chikmoh, Tahsil Hinganghat, District Wardha.

3. The dispute between the parties pertains to agricultural land bearing Survey No.8 admeasuring 7.01 HR (New No.224)) of village Pardi and land bearing Survey No.148 (New No.72) admeasuring 1.90 HR situated at village Chikmoh. Respondent No.1 claimed ownership over these lands on the ground that he is a deemed tenant with respect to these lands as per Section 6 of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short hereinafter referred to as "Tenancy Act"). As against this, the case of the petitioner is that respondent No.1 was never a tenant or even a deemed tenant and that he was cultivating the land of the petitioner as servant under the supervision of one Punjabrao Saykar, who was working with the petitioner and his family as accountant (Diwanji).

4. Initially, the respondent No.1 had filed a civil suit being Regular Civil Suit No.6/1995 against the present petitioner and respondent No.2, seeking perpetual injunction against forcible dispossession. It was the contention of respondent No.1 that the agricultural lands were given to his predecessor for cultivation on crop sharing arrangement (Batai). The respondent No.1 accordingly claimed that he has become tenant of the suit property by virtue of Section 6 of the Tenancy Act, since the land was in cultivating possession of his family prior to 01/04/1961, which is the tiller's day under the Tenancy Act.

5. The petitioner opposed the suit as also contention of the respondent No.1 that he was in occupation of suit property as a deemed tenant. As stated above, the defence of the petitioner is that the respondent No.1 was cultivating the land merely as a servant.

6. The learned trial Court vide order dated 09/08/2000 referred the issue of tenancy for adjudication before the Tenancy Tahsildar as per provisions of Tenancy Act. Learned Tenancy Tahsildar has held that the respondent No.1 failed to prove his case of tenancy and accordingly held that the respondent No.1 was not a tenant of the suit property vide judgment dated 31/12/2008. The respondent No.1

preferred appeal before the Sub Divisional Officer, which was dismissed vide judgment and order dated 19/11/2009. The Sub Divisional Officer has concurred with the findings recorded by the learned Tahsildar and has held that the respondent No.1 failed to prove that he was in occupation of the suit land as a tenant.

7. Aggrieved by the said order, the respondent No.1 preferred a revision before the MRT, which came to be allowed vide judgment dated 21/10/2011, which is subject matter of challenge in the present petition.

8. The petition was initially decided *ex parte* in favour of the petitioner. However, the respondent No.1 had approached the Hon'ble Apex Court. The Hon'ble Apex Court has remitted the matter to this Court for deciding the petition afresh.

9. The learned Tribunal has held that the respondent No.1 was admittedly in cultivating possession of the suit land prior to the tiller's day. The learned Tribunal has, therefore, by placing reliance on Section 6 of the Tenancy Act held that the respondent No.1 was a deemed tenant. The learned MRT has also taken into consideration Section 8 of the Tenancy Act. It will be pertinent to mention that the

name of the respondent No.1 is included in the register of tenants, maintained as per the mandate of Section 8 of the Tenancy Act. The learned Tribunal has held that if a person is deemed to be a tenant under Section 6, proof of terms of tenancy, as in case of other tenants, will not be necessary. The learned MRT has held that a person who is in lawful cultivating possession of an agricultural land before the tiller's day and does not fall within any of the exceptions, provided under Section 6, that by itself is sufficient to hold that such person is a deemed tenant. The learned Tribunal, therefore, held that both the authorities, namely, Tahsildar and Sub Divisional Officer committed error in not taking into consideration the mandate of Section 6 of the Tenancy Act and also ignoring the presumption under Section 8 of the Tenancy Act.

10. Mr. Deshmukh, learned Advocate for the petitioner contends that the learned MRT has erred in reversing concurrent findings of fact, recorded by the learned Tahsildar and learned Sub Divisional Officer. He contends that the respondent No.1 did not discharge the initial burden of proof with respect to the claim of tenancy. As regards, the entries in the register of tenancy, learned Advocate contends that the said entry is merely pencil entry, which is not duly certified and therefore, reliance has not been placed on the said date. He has placed reliance on the judgment of this Court in the

matter of *Shri Maruti L. Sawant Vs. The Collector of North Goa and another*, reported in *1997 (4) ALL MR 77* in support of his contention.

11. Per contra, learned Advocate for the respondent No.1 states that when an entry recorded under Section 8 (1) is not challenged, the said entry assumes finality and it cannot be questioned in any other proceeding. He has placed reliance on the Division Bench judgment of this Court in the matter of *Bhaurao Pandurang Raut and another Vs. Ziblabai wd/o Shankarrao Hiwanj and another*, reported in *1992 Mh.L.J. 58* in support of his contention.

12. It cannot be disputed that the name of the respondent No.1 was recorded as a tenant in the register of tenancy, maintained under Section 8 of the Tenancy Act. The said entry is admittedly not challenged by the petitioner. The entry has accordingly become final with passage of time. In this regard it will be appropriate to refer to the judgment of the Hon'ble Supreme Court in the matter of *Sahabdar Khan and another Vs. Sadloo Khan (Dead) by Lrs. and others*, reported in *(2001) 10 SCC 464*, wherein the Hon'ble Supreme Court has held that there is a strong presumption as regards correctness of longstanding entries in revenue record, even if, such entries are not found to be recorded strictly in accordance with law. The Hon'ble Supreme Court

has further held that such presumption must be drawn unless the entries are found to be recorded fraudulently. It is not the case of the petitioner that entry in register of tenancy maintained under Section 8 of the Tenancy Act is recorded fraudulently. It must be stated that the law laid down by the Hon'ble Supreme Court with respect to revenue records will apply with greater vigour to entries in register of tenancy to which finality is statutorily attached by Section 8 of the Tenancy Act.

13. Since the parties are at a contention as to whether the respondent No.1 is a deemed tenant under the Tenancy Act, it will be appropriate to refer to Section 6 of the Tenancy Act. Section 6 of the Tenancy Act provides that a person in lawful cultivating possession of an agricultural land before the tiller's day shall be deemed to be a deemed tenant. However, the person in possession must not be a family member or servant of the landlord or a mortgagee in possession. The petitioner has not disputed the fact that the respondent No.1 was in possession of the suit land prior to tiller's day. The contention is that the respondent No.1 was in possession as a servant.

14. It will be pertinent to mention that a servant, who is engaged on wages payable in cash or in kind, is only excluded from the definition of the term "deemed tenant". Although the petitioner has

pleaded in the written statement that the respondent No.1 was a servant, perusal of written statement, which is handed across the bar during the course of hearing, will demonstrate that there is no pleading that the respondent No.1 was engaged as a servant on wages, payable in cash or in kind. Likewise, there is no evidence on record with respect to payment of wages either in cash or in kind. In that view of the matter, even if it is assumed that the respondent No.1 was cultivating the land as a tenant, yet the respondent No.1 will be entitled to claim to be a deemed tenant under Section 6 of the Tenancy Act, since even according to pleading of petitioner, he was not a servant hired on wages. Legal position in this regard is no longer *res integra* and is concluded by judgment of the Hon'ble Supreme Court in the matter of ***Jagan alias Jagannath Umaji Vs. Gokuldas Hiralal Tewari***, reported in ***AIR 1987 SC 2429*** (para 8).

15. Since there is a statutory presumption in favour of a person, who is in lawful cultivating possession of agricultural land before the tiller's day that he is cultivating land as a deemed tenant, the burden of bringing the case within the exception will be on the person who claims that such person was not cultivating the land as a tenant. In the present case the burden of proving otherwise will be on the petitioner. Even it is assumed that the respondent No.1 was cultivating

the land as a servant, the contention of petitioner that he was not a deemed tenant can be accepted only if it is proved that the respondent No.1 was a servant hired on wages payable in cash or in kind. There is no specific pleading or evidence with respect to the wages allegedly paid by the petitioner to the respondent No.1 either in cash or in kind. The fact that the respondent No.1 was in cultivating possession prior to the tiller's day is not in dispute.

16. In that view of the matter, in the considered opinion of this Court, no case for interference is made out with the judgment delivered by the MRT. Writ petition is, therefore, dismissed. Rule stands discharged. No order as to costs.

(ROHIT W. JOSHI, J.)