



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 1281 of 2011

Raje Jayantrao S/o Vinayakrao Deshmukh
Aged about 67 years, Occupation – Retired,
R/o. Pusad, Th. Pusad Dist. Yawatmal.

... Petitioner

- Versus -

(1) Jaywant S/o Amarsingh Jadhav,
aged about 40 years, Occupation Agriculturist,
Sai (E), Mahagaon Dist – Yawatmal
R/o. C/o Saheli beauty Parlour,
Opp. Shetki Niwas, Shivaji Chowk,
Pusad, Th : Pusad, Dist : Yawatmal.

(2) Maharashtra Revenue Tribunal Nagpur
Old Commissionerate, Civil Lines, Nagpur.

(3) Sub Divisional Officer Pusad
Tah. Pusad Dist. Yawatmal.

(4) Tahsildar Mahagaon Tahsil Mahagaon
Dist. Yawatmal.

... Respondents

with

Writ Petition No. 1282 of 2011

Raje Jayantrao S/o Vinayakrao Deshmukh
Aged about 67 years, Occupation – Retired,
R/o. Pusad, Tah. Pusad Dist. Yawatmal.

... Petitioner

- Versus -

(1) Jaywant S/o Amarsingh Jadhav,
aged about 40 years, Occupation Agriculturist,
Sai (E), Mahagaon Dist – Yawatmal
R/o. C/o Saheli beauty Parlour,
Opp. Shetki Niwas, Shivaji Chowk,
Pusad, Th : Pusad, Dist : Yawatmal.

(2) Maharashtra Revenue Tribunal Nagpur.

(3) Sub Divisional Officer Pusad, Pusad

(4) Tahsildar Mahagaon Tahsil Mahagaon
Dist. Pusad.

... Respondents

Mr. A. S. Deshpande, Advocate for the petitioner

Mr. K. V. Deshmukh, Advocate for respondent no. 1

Ms. D. V. Sapkal, AGP for respondent nos. 2 to 4

CORAM : ANIL L. PANSARE, J.

Date of reserving judgment : 03-02-2025

Date of pronouncing judgment : 14-02-2025

COMMON JUDGMENT

Both the petitions arise out of the common order dated 18-10-2010 passed by the Maharashtra Revenue Tribunal (hereinafter referred to as 'MRT'), Nagpur wherein two tenancy revisions filed by the petitioner were decided. As such, both the revisions were dismissed.

2. The reason why two revisions were filed are as under :

The petitioner – plaintiff filed the suit for possession against respondent no. 1 and his father(not party to the petitions), being Regular Civil Suit No. 261/1985. The suit is still pending before the Civil Judge Junior Division, Pusad. Four issues were framed. Issue no. 2 was referred to the tenancy court vide order dated 28-7-1987

passed by the trial Court for adjudication and till then, the suit came to be stayed. Issue no. 2 reads as under.

“2. Does the Deft. No. 2 prove he is cultivating the suit field as tenant of plaintiff from 1969-70 till the date of suit ?”
(emphasis supplied)

3. Thus, the defendant no. 2 - Amarsingh Jadhav had to prove that he is/was cultivating the suit field as tenant of the plaintiff from 1969-70 till the date of the suit. The tenancy court i.e. Tahsildar, Mahagaon vide order dated 24-10-2003 held that Shri Jaywant Amarsingh Jadhav (respondent no. 1/defendant no. 1) is in possession of the suit lands since the year 1980 and since he himself is cultivating the same, he stands declared as tenant in terms of Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948. Accordingly, Tahsildar, Mahagaon took up yet another revenue proceedings and passed order dated 21-12-2004 to effect entry in Village Form No. 7 of the suit field in favour of Shri Jaywant Amarsingh Jadhav. These two orders viz. holding Shri Jaywant Amarsingh Jadhav as tenant and effecting entry in Village Form No. 7 were unsuccessfully challenged by the petitioner before the Sub Divisional Officer(SDO). The petitioner then filed two revision petitions before the MRT, Nagpur and suffered same fate as suffered before the SDO. Aggrieved by these orders of tenancy proceedings, present petitions are filed.

4. Learned counsel for the petitioner submits that tenancy court has committed error of law by invoking provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. The provisions of the Act are applicable to Mumbai area of the State of Maharashtra. The suit land is situated at Tahsil Mahagaon, District Yavatmal. Thus, according to him, the provisions of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 would be applicable. He further submits that the Tahsildar concerned ought to have decided the issue referred to him. The question/issue referred was whether defendant no. 2 proved that he is/was cultivating the suit field as tenant of plaintiff from 1969-1970 till the date of suit. Instead of deciding said issue, the Tahsildar has held that defendant no. 1, who is father of defendant no. 2, is in possession of the suit lands since the year 1980 and declared him as tenant.

5. As against, learned counsel for respondent no. 1 submits that merely because wrong provisions of law were quoted would not vitiate the enquiry in as much as the provisions of two Acts viz. the Act of 1948 and 1958 are *pari materia* and no prejudice is caused to the petitioner.

6. The issue here is, whether the Tahsildar has rightly exercised the jurisdiction. To my mind, the Tahsildar should have

restricted his finding to the issue referred by the Civil Court. He could not have travelled beyond the issue to declare defendant no. 1 as tenant. The question before him was whether defendant no. 2 is/was cultivating the suit field as tenant of plaintiff. It was never the issue before the Tahsildar whether defendant no. 1 was tenant of plaintiff or whether he was cultivating the suit field.

7. At this stage, Mr. K. V. Deshmukh, learned counsel for respondent no. 1 made an attempt to invite my attention to the provisions of the Act of 1958 which relates to procedure to be followed to declare someone as tenant to which this Court expressed a view that the procedure will be irrelevant in the context of finding rendered by the Tahsildar. Mr. Deshmukh then responded that too, in high pitch, that this is not the way to decide the petition. He was then made to realize the importance of maintaining decorum. He tendered unconditional apology and showed willingness to express the same in writing. However, since the apology was apparently from heart, the request to put it in writing was found not necessary. Even otherwise, the Courts are not fond of seeking apology from the counsel or the parties. The endeavour is to uphold the majesty of the Court.

8. Coming back to the merits of the case, the fact remains that the Civil Court referred one issue and Tahsildar has answered another.

The mistake committed by the Tahsildar has been carried forward by the Sub Divisional Officer and also by the Tribunal.

9. Learned counsel Mr. Deshmukh then submits that the petition itself is not maintainable because the petitioner has not joined defendant no. 2 - Amarsingh Jadhav as party respondent to the petition. He submits that Amarsingh Jadhav was also not joined as party in the appeal filed before Sub Divisional Officer, in the revision filed before Divisional Commissioner and also before the MRT, Nagpur.

10. Learned counsel for petitioner submits that the Tahsildar did not decide the issue referred to him by the trial Court. He had rendered an altogether different finding in favour of respondent no. 1 – original defendant no. 1 declaring him as tenant. The appeal was filed against such independent finding and, therefore, presence of Amarsingh Jadhav was not necessary. He further submits that even Amarsingh Jadhav did not challenge the said finding which goes against him. Lastly, by referring to Rule 13 of Order I of the Code of Civil Procedure, 1908, he submits that an objection to non joinder of party should be taken at the earliest possible opportunity, unless it has subsequently arisen and if such objection is not so taken, it shall be deemed to have been waived.

11. I find substance in the aforesaid argument and shall be taken as reasons to reject the submissions made by learned counsel for respondent no. 1.

12. The sum and substance of above discussion is that both the orders are liable to be quashed and set aside. Further, the consequential proceedings and order resulting into mutation entry in Village Form No. 7 in favour of defendant no. 1 will be also unsustainable.

13. Accordingly, present petitions are allowed. The common order dated 18-10-2010 passed by the Maharashtra Revenue Tribunal, Nagpur (respondent no. 2) in Tenancy Revision No. 95/TNC/1/59/2003-2004 Mouza Sai and Tenancy Revision No. 285/TNC/1/59/Sai Izara/2005-2006 is quashed and set aside. Needless to say that consequential order dated 21-12-2004 passed by the Tahsildar, Mahagaon effecting revenue entry in Village Form No. 7 in favour of defendant no. 1 stands quashed and set aside and original position stands restored.

14. The issue referred by the Civil Judge Junior Division, Pusad and the enquiry thereon is restored on the file of Tahsildar, Mahagaon for consideration afresh in accordance with law as also in the light of what has been stated in the body of the order.

15. The parties shall appear before the Tahsildar, Mahagaon on 10-3-2025.

16. Writ petitions are disposed of in above terms. No order as to costs.

(Anil L. Pansare, J.)

wasnik