



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 4698 OF 2011

Shyamsunder s/o Madhaorao Yedkey,
aged about 65 years, Occupation – Retired,
R/o Rajapeth, Amravati, Tahsil and District – Amravati.

...PETITIONER

Versus

- 1] ~~Smt. Leelabai wd/o Ajabrao Balbudhe.~~
Deleted as per Court's order dated 14/6/2013
- 2] Poonam w/o Sunil Bhadange,
aged – major, R/o Khanapur,
Near Morshi, District – Amravati.
- 3] Monika Hemant Raut,
aged – major, R/o Durgawada,
Near Morshi, District – Amravati.
- 4] Suraj s/o Panditrao Wankhede,
aged – major, Nos. 2 to 4 are R/o
Narsinghpur, Post – Yawale (Shahid),
Tq. and District – Amravati.
- 5] Tahsildar, Amravati Office Camp,
Amravati, Pin Code – 444601.
- 6] The Sub-Divisional Officer, Amravati.

...RESPONDENTS

Mr. S.P Kshirsagar, Counsel for the petitioner.
Mr. M.M. Kalar, Counsel for respondent nos. 2 to 4.
Ms P.C. Bawankule, A.G.P for respondent nos. 5 and 6.

CORAM : ANIL L. PANSARE, J.

DATE : JANUARY 21, 2025

ORAL JUDGMENT :

Leave to add Sub-Divisional Officer, Amravati, as

respondent no.6 is granted. Amendment be carried out forthwith.

2] The learned A.G.P. waives notice for the newly added respondent.

3] The petitioner – landlord is aggrieved by order dated 15/11/2010 passed by the Member, Maharashtra Revenue Tribunal, Nagpur, in Tenancy Revision No. TEN/B-109/2000, arising out of order dated 4/9/2000 passed by the Sub-Divisional Officer, Amravati, in R.C.No. 50(20) Narsingpur-5/1998-99. The petitioner filed proceedings under Section 120(c) of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short “Act of 1958”), which provides that the Collector may summarily evict a person unauthorizedly occupying or wrongfully possessing the land.

4] The reasons why the petitioner filed application under Section 120 of the Act of 1958 can be found in order dated 7/1/2025 passed by this Court, which not only shows that the Tribunal and authorities below failed to consider the

provisions of the Act of 1958, but were, pending petition, mislead by the respondents to get favourable order. The order reads thus :

“On 26.09.2024, following order was passed.

“ On 9/9/2024 following order was passed :

“ Stand over to 26-9-2024.

The parties are put to notice that this petition will be heard on next date with clear understanding that no further adjournment will be granted.”

2. Heard for sometime.

3. It appears from the order dated 4/9/2000 passed by the Sub Divisional Officer, Amravati that the Respondent No.1 – Smt. Leelabai Barbuddhe had filed proceedings before the Tahsildar to purchase disputed land, but her case was dismissed on 30/11/1995.

4. The learned Counsel for Petitioner submits that in such eventuality, Sub-section (14-A) of Section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1958 (for short, ‘the Act of 1958’) will come into play, which reads thus:

“14-A. If a tenant fails to exercise his right of purchase under section 41 in respect of any land or the purchase of any land becomes ineffective, the land shall be deemed to have been surrendered to the landlord, and thereupon the provisions of sub- sections (1) and (2) of section 21 and Chapter VII shall apply to such land as if the land was surrendered by the tenant under section 20.”

5. Thus, according to the learned Counsel, since the Respondent No.1 failed to exercise her right of

purchase under Section 41, the tenancy stands surrendered in favour of the Petitioner in terms of Section 20 of the Act of 1958.

6. At this stage, learned Counsel for Respondents seeks time. Time granted, subject to costs of Rs. 500/-, to be deposited with the High Court Bar Library, Nagpur within one week from today.

7. List the Petition in the week commencing from 7th October, 2024.”

2. Counsel for the respondents is absent to make his submissions on the aforesaid contentions.

3. In addition, Mr. Kshirsagar, learned counsel for the petitioner, has invited my attention to the subsequent events, as put forth by way of amendment to the petition. It appears that the respondents have, pending present petition, approached Tahsildar, Amravati and filed an application under Section 46 of the Act of 1958 to purchase the property under question. The respondents suppressed the fact of pendency of the present writ petition, rather made a statement in the application that proceedings for possession filed by the petitioner were concluded at Maharashtra Revenue Tribunal level and nothing is pending. The respondents, who have then successfully obtained ex parte order of purchase of property from the Tahsildar concerned vide order dated 31.01.2014, did not disclose the said order to this Court. The petitioner, having come to know is, by way of amendment, challenging the subsequent order as well.

4. It thus appears that the respondents have abused the process of law and have played fraud upon this Court as well as the authorities below. None is, however, appearing for the respondents and, therefore, before I proceed to pass final order, I deem it appropriate to give one opportunity, but as a last chance, to the respondents.

5. List the petition on 21.01.2025 in the Admission Board.”

5] As could be seen, the predecessor of respondent nos. 2 to 4 failed to purchase the land under question, and order to that effect was passed on 30/11/1995. The effect of dismissal of proceedings, seeking to purchase disputed land, resulted into surrenderance of the land in terms of sub-section 14-A of Section 43 of the Act of 1958. In that eventuality, there arises no question of termination of tenancy by written surrender at the hands of tenant. Where the tenant fail to purchase the land or request to purchase the land is refused, the land occupied by the tenant stands surrendered by operation of law, viz., sub-section 14-A of Section 43 of the Act of 1958, and thereupon, provisions of Section 21 of the Act of 1958 would apply.

6] The argument of the learned Counsel for respondent nos. 2 to 4 that unless tenancy is surrendered in writing, there would not be surrender of land, is contrary to what has been noted hereinabove and, therefore, the argument stands rejected. As such, he has relied upon judgment passed by the Hon'ble Supreme Court in the case of *Bhagwant*

Pundalik And Another Vs. Kishan Ganpat Bharaskal And Others [1971(1) SCC 15]. However, having gone through the said judgment, it is noticed that the facts were altogether different. The case revolved on Section 20 of the Act of 1958, and in that context, the Supreme Court held that since there was no surrender of tenancy in writing and no verification of surrender by the Tahsildar, the landlord could not have obtained possession, except under order of the Tahsildar. The effect of dismissal of proceedings initiated by tenant to purchase the land was not considered because the same was not the issue before the Court. Thus, the judgment will be of no help to respondent nos. 2 to 4.

7] Going further, order dated 7/1/2025 indicates that pending petition, respondent nos. 2 to 4 approached the Tahsildar, Amravati, under Section 46 of the Act of 1958, to purchase the property by suppressing material fact, viz., dismissal of earlier proceedings and pendency of present petition. The said respondents have then successfully obtained *ex parte* order of purchasing the property from the Tahsildar concerned vide order dated 31/1/2014, which is now the

subject matter of challenge, by way of amendment.

8] As has been noted in order dated 7/1/2025, there is material sufficient to show that respondent nos. 2 to 4 have abused the process of law and have played fraud upon this Court as well as the Tahsildar concerned. In context with above, the learned Counsel for respondent nos. 2 to 4 was called upon to make his submissions against what has been noted in order dated 7/1/2025.

9] The learned Counsel, however, could not tender any good reason to justify the subsequent proceedings. His emphasis is on Section 20 of the Act of 1958 to argue that unless there is written surrender of tenancy, possession cannot be given to the landlord. This argument goes contrary to what has been noted in the order dated 7/1/2025 as also the provision under Section 120 of the Act of 1958, which empowers the Collector to summarily evict a person, who is in occupation or possession of any land, which is put to use and the occupation, which the occupier is not entitled under the provisions of the Act of 1958.

10] In the case of *Kashiram Shriram Dobale Vs. Maharashtra Revenue Tribunal, Nagpur and another* [1970 *Mh.L.J.* 462], the Full Bench has explained the jurisdiction of the Collector under Section 120 of the Act of 1958. The Full bench answered the question, so referred to it, in following terms :

“In proceedings for summary eviction under section 120 of the Bombay Tenancy and Agricultural Lands Act, 1958 where a question is raised by a party thereto that he is a tenant, the Collector would have jurisdiction to go into that question provided the conditions laid down in section 120 are strictly fulfilled.”

11] Thus, the proceedings as filed by the petitioner under Section 120 of the Act of 1958 were maintainable inasmuch as respondent nos. 2 to 4 failed to purchase the property, rather the proceedings filed by the said respondents in that regard were dismissed and, therefore, the tenancy stood surrendered by virtue of sub-section 14-A of Section 43 of the Act of 1958 and, therefore, the tenant had no authority to occupy the land; in fact, in such eventuality, the tenant ought to have handed over possession to the landlord in terms of law

laid down by the Supreme Court in the case of *Janba (Dead) Through LRs Vs. Gopikabai (Smt)* [(2000) 4 SCC 1].

12] As against, the Maharashtra Revenue Tribunal dismissed the revision by assigning the reason that the petitioner failed to produce any evidence to show as to how respondent nos. 2 to 4 were wrongfully occupying the suit land. This finding is also apparently perverse inasmuch as in the application filed by the petitioner under Section 120(c) of the Act of 1958, he has categorically stated that the application filed by respondent nos. 2 to 4 to purchase the land was rejected vide order dated 30/11/1995. Despite such pleading, the Tribunal and the Sub-Divisional Officer failed to take cognizance of the same and, thus, committed error in dismissing the application and the revision. Similarly, in the subsequent proceedings, which respondent nos. 2 to 4 had filed under Section 46 of the Act of 1958, they obtained *ex parte* favourable order in their favour by misleading the Tahsildar, Amravati. As stated above, they did not disclose the fact of dismissal of application filed by their predecessor to purchase the land and secondly, the pendency of the present writ

petition. The said order, i.e., order dated 31/1/2014 passed by the Tahsildar, Amravati, is, therefore, liable to be quashed and set aside.

13] Accordingly, the petition is allowed. Order dated 4/9/2000 passed by the Sub-Divisional Officer, Amravati, in R.C.No. 50(20) Narsingpur-5/1998-99, order dated 15/11/2010 passed by the Member, Maharashtra Revenue Tribunal, Nagpur, in Tenancy Revision No. TEN/B-109/2000, and order dated 31/1/2014 passed by the Tahsildar, Amravati, are quashed and set aside. Respondent nos. 2 to 4 shall handover possession of the disputed property to the petitioner within eight weeks from today, failing which the petitioner may approach the Tahsildar, Amravati, to get the possession from respondent nos. 2 to 4, and in that eventuality, the Tahsildar shall render all assistance to the petitioner. Respondent nos. 2 to 4 shall pay to the petitioner exemplary cost of Rs.10,000/- for abusing process of law and playing fraud upon the Court and the authorities below. The cost be paid within four weeks from today.

14] Rule is made absolute in the aforesaid terms. No costs.

JUDGE

Sumit