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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 546 OF 1998  
WITH  
WRIT PETITION NO. 3439 OF 2016  
\* \* \* \* \*

WRIT PETITION NO. 546 OF 1998

Nama s/o. Kera Mang (died) .. Petitioner  
L.R. Bajirao s/o. Nama Mang (Gaikwad)  
Age. Major, Occ. Agriculture,  
R/o. Gadwad, Tq. & Dist. Latur.

Versus

1. Shaikh Jilani s/o. Sk. Mehboob .. Respondents  
Age. Major, Occ. Agriculture,  
R/o. Gadwad, Tq. & Dist. Latur.
2. Vishwanath so. Vithalrao Dayal,  
Age. Major, Occ. Agri,  
R/o. As above.
3. Kashinath s/o. Vithalrao Dayal,  
Age. Major, Occ. Agri.,  
R/o. As above.
4. Gangabai Nagorao Dhumal,  
Age. Major, Occ. Agri.,  
R/o. As above.  
Died- through LRs.
  - a) Haribhau s/o. Nagorao Dhumal,  
Age. 55 years, Occ. Agriculture,  
R/o. Gadwad, Tq. & Dist. Latur.



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- b) Madhukar s/o. Nagorao Dhumal,  
Age. 42 years, Occ. Agri.,  
R/o. As above.
- c) Suresh Nagorao Dhumal,  
Age. 39 years, Occ. Agri.,  
R/o. As above.
- d) Rambhau s/o. Nagorao Dhumal,  
Age. 36 years, Occ. Agri.,  
R/o. Gadwad, Tq. & Dist. Latur.
- e) Shobha Nagorao Dhumal  
married Shobha w/o. Bhagwan Gund,  
Age. 33 years, Occ. Household,  
R/o. Chincholi (B), Tq. & Dist. Latur.
- f) Alka w/o. Shivaji Kadam,  
Age. 30 years, Occ. Household,  
R/o. Gadwad, Tq. & Dist. Latur.
- g) Satubai Mukinda Gaikwad,  
Age. Major, Occ. Household,  
R/o. Tandulja, Tq. & Dist. Latur.
5. Haribhau Nagorao Dhumal,  
Age. Major, Occ. Agri., R/o. As above  
Died – Through LRs.
- A) Kesharbai w/o. Haribhau Dhumal,  
Age. 65 years, Occ. Household,  
R/o. Gadwad, Tq. & Dist. Latur.
- B) Prakash Haribhau Dhumal  
Age. 42 years, Occ. Agri.,  
R/o. Gadwad, Tq. & Dist. Latur.



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6. Rama s/o. Tukaram Gaikwad,  
Age. Major, Occ. Labour,  
R/o. Gadwad, Tq. & Dist. Latur,  
at Present residing at C/o. Dighe-Joshi,  
Associates, 484/99, Mitramandal  
Colony, Pune – 411 009.  
Died – Through LRs.

- a) Mahananda w/o. Ramu Gaikwad  
Age. Major, Occ. Household,
- b) Subhash Ramu Gaikwad,  
Age. Major, Occ. Labour,
- c) Bebi d/o. Ramu Gaikwad,  
Age. Major, Occ. Household,
- d) Vanmala d/o. Ramu Gaikwad,  
Age. Major, Occ. Household,
- e) Sukmala d/o. Ramu Gaikwad,  
Age. Major, Occ. Household,
- f) Deepak s/o. Ramu Gaikwad,  
Age. Major, Occ. Labour

All R/o. S. No.120, Kishkindanagar,  
Kothrud, Pune – 29.

7. Designated Member,  
Maharashtra Revenue Tribunal, A'bad.

**WITH**  
**WRIT PETITION NO. 3439 OF 2016**

Nama s/o. Kera Mang  
Deceased through L.Rs.  
Bajirao s/o. Nama Gaikwad

.. Petitioner



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Age. 65 years, Occ. Agriculture,  
R/o. Gadhwad, Tq. & Dist. Latur.

Versus

1. Shaikh Jilani s/o. Shaikh Mehboob .. Respondents  
Age. 58 years, Occ. Agriculture,
2. Haribhau s/o. Nagorao Dhumal,  
Age. 68 years, Occ. Agriculture,
3. Madhukar s/o. Nagorao Dhumal,  
Age. 58 years, Occ. Agri.,
4. Rajaram s/o. Nagorao Dhumal,  
Age. 53 years, Occ. Agri.,
5. Suresh Nagorao Dhumal,  
Age. 39 years, Occ. Agri.,
6. Kashinath s/o. Vithalrao Dayal,  
Age. Major, Occ. Agri.,
7. Vishwanath so. Vithal Dayal,  
Age. 43 years, Occ. Agri,
8. Hanumant Shaligram Marwadi,  
Age. 83 years, Occ. Agri.,
9. Rama s/o. Tukaram Gaikwad,  
Age. 68 years, Occ. Labour,  
(Abated)
10. Lochanbai Raosaheb Kadam  
Age. 68 years, Occ. Agricultural  
(Abated)  
All R/o. Gadhwad, Tq. & Dist. Latur.



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11. The Administrative Member,  
Maharashtra Revenue Tribunal,  
Mumbai Bench at Aurangabad.

Mr.N.B. Khandare, Advocate for the petitioners in WP No. 546 of 1998.  
Mr.B.N. Patil, Advocate for petitioner in WP No.3439 of 2016.  
Smt.Rekha Choudhari h/f. Mr. S.S. Choudhari, Ad for respondent No.1.  
Mr.R.K. Ashtekar, Advocate for respondent No.4A to 4E.

**CORAM** : **KISHORE C. SANT, J.**  
**RESERVED ON** : **14.07.2023**  
**PRONOUNCED ON** : **27.09.2023**

#### **J U D G M E N T :-**

01. In both these petitions the parties are same and the petitions are in respect of same properties. Therefore, both the petitions are taken together for final disposal. Decision of Writ Petition No.3439 of 2016 is subject to outcome of Writ Petition No. 546 of 1998.

02. In Writ Petition No. 546 of 1998 the petitioner has challenged the judgment and order passed by the learned Member, Maharashtra Revenue Tribunal (for short "MRT") dated 03.12.1997 passed in Case Nos. 81/B/92/L, 51/B/92/L and 52/B/92/L by reversing the order passed by the learned Deputy Collector (L.Rs.), Latur dated 28.11.1991 in File Nos. 91-TNC-A-38, 91-TNC-A-16 and 91-TNC-A-17.



03. In Writ Petition No. 3439 of 2016 the prayers are for setting aside judgment and order passed by the learned Administrative Member, MRT, Aurangabad dated 14.08.2014 in Appeal No. 32-A-1996-Latur and to restore judgment and order passed by the learned Dy. Collector (L.R.) Latur in File No.1995/Tenancy/Appeal/CR-19 dated 22.03.1996.

04. In Writ Petition No. 546 of 1998 the facts in brief are that deceased Nama Kera was a protected tenant in land Survey No.172 situated at village Gadwad, Tal. & Dist. Latur, admeasuring 28 acres and 34 gunthas having Gat No.322. The father of deceased Nama was declared as a protected tenant under section 38-E of the Hyderabad Tenancy and Agricultural Lands Act [for short "the HT&AL Act"] to the extent of 6 Acres 32 Gunthas by order dated 13.11.1959. The price was fixed at Rs.301.50 by the Tahsildar. On such declaration, his name came to be recorded as a protected tenant in the other rights column in 7/12 extract. Later-on, Nama Kera was dispossessed by the land holder without following any procedure and transferred the land without obtaining permission under section 50-B of the HT&AL Act, in favour of the respondent. Suddenly, on 17.12.1988 the Tahsildar issued a notice suo-



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moto to the petitioners stating that Nama was declared owner under section 38-E of the HT&AL Act. However, price of the land was not deposited and in view of that said purchase should be made ineffective. A show cause notice was issued to the purchasers also asking as to why their sale transaction be not held to be ineffective. The petitioners conveyed that they are ready to deposit the price by depositing the said amount. The Tahsildar pursuant to the show-cause notice declared the sale-deed of the purchasers ineffective by order dated 06.09.1990. The Tahsildar also held that since the action was not taken within time by the heirs of the tenant, their tenancy right could not be considered. On this, the petitioner preferred appeal before the Dy. Collector, Latur. The respondents also preferred two appeals. The learned Dy. Collector by order dated 28.11.1991 allowed the appeal of the petitioner by dismissing the appeals of the purchasers.

05. Against the order of the Tahsildar two revision applications came to be filed in the MRT by respondent nos. 1 to 6. All the revisions came to be allowed by the learned MRT and thus the petitioner is before this Court.

06. So far as WP No. 3469 of 2016 is concerned, it is in respect of



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remaining land of Gat No. 322 to the extent of 22 Acres 2 Gunthas, which was in possession of the purchasers. The petitioner filed application under section 98 of the HT&AL Act for restoration of possession. The appeal filed by the petitioner came to be allowed by the learned Dy. Collector, Latur. The respondents preferred appeal before the MRT and the same came to be dismissed in default. Later-on, same was restored under the orders of this Court passed in Writ Petition No. 597 of 2002. The learned MRT after remand, allowed the appeal on the ground that Writ Petition No. 546 of 1998 is pending in this Court. The petitioner is, thus, before this Court for the land to the extent of 22 Acres 2 Gunthas. Fate of this petition is therefore subject to outcome of Writ Petition No.546 of 1998.

07. In Writ Petition No. 546 of 1998, a question is as to whether the learned MRT is right in holding that Nama Kera became tenant under section 38-E of the HT& AL Act. Whether the learned MRT erred in holding that NamaKera was not in possession on the notified day. Whether it further erred in considering that the land-lord has not come forward to purchase the land assuming that there is case of failure of the tenant to pay him the price. Whether the sale transaction of the purchasers was rightly held to be invalid



under section 50-B of the HT&AL Act and therefore they have no right to come forward. The question thus revolves around section 50-B of the HT&AL Act. Section 50-B of the HT&AL Act is in respect of restriction of transfers of land purchased or sold under this Act, which reads as under :-

“50B Restriction on transfers of land purchased or sold under this Act:- (1) No land purchased by a tenant under section 38, 38A, 38E, 38F, 38G or 38H or 46D or 48, or; sold to any person under section 53F, 53G, 53H or 98C, shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector.

Provided that no such previous sanction shall be necessary for the sale, gift, exchange, mortgage, lease or assignment of the land in respect of which ten years have elapsed from the date of purchase or sale of land under the sections mentioned in this sub-section, subject to the conditions that -

- (a) before selling the land, the seller shall pay a nazarana equal to forty times the assessment of the land revenue to the Government;
  - (b) the purchasers shall be an agriculturist;
  - (c) the purchasers shall not hold the land in excess of the ceiling area permissible under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961; and
  - (d) the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 shall not be violated.
- (2) Any transfer of land in contravention of sub-section (1) shall be invalid.

08. Section 38-E of the HT&AL Act deals with declaration of a person as a protected tenant in the land, who was in possession of the land in the



capacity as a tenant.

09. The learned Advocate for the petitioner submits that the learned MRT has limited jurisdiction for considering revision under section 19 of the HT&AL Act, which is akin to provisions of section 100 of the Civil Procedure Code. In this limited jurisdiction the learned MRT could not have set aside the judgment of the Dy. Collector, which was necessarily on facts. He submits that the learned Tahsildar suo-moto issued show-cause notice to the alleged protected tenant for not depositing the purchase price. Same was issued in the name of Kera Mahar. Copies were also served upon the purchasers. The Tahsildar had rightly considered the question that the purchase price can be accepted from the tenant. The respondents cannot purchase the land. While deciding those issues, the Tahsildar did not call for original proceeding of declaration of tenancy under section 38-E of the HT&AL Act and still came to a conclusion that Nama Kera was a protected tenant and he did not deposit the price to the extent of declaration of the sale-deed invalid. He had rightly considered the said aspect.

10. He further submits that though the Tahsildar has fixed the price



of land, however, no notice of demand was ever issued to Nama Kera till he was alive. The notice of fixing of price was not within the knowledge of legal representatives of Nama and therefore they could not pay the price fixed by the Tahsildar. The petitioner's father was forcibly dispossessed by the landlord and thereafter sold the tenanted land to the respondents without permission under section 50-B of the HT&AL Act for sale of the land. The sale is hit by provisions of section 48 of the Act and the same is illegal. The learned Advocate for the petitioner relied on provision of section 91 of the HT&AL Act.

Same is reproduced as under :-

91. Revision (1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, an application for revision may be made to the Bombay Revenue Tribunal constituted under the said Act against any order passed on appeal or under section 90B by the Collector on the following grounds only :-

- (a) that the order of the Collector was contrary to law,
- (b) that the Collector failed to determine some material issue of law; or
- (c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this section the Bombay Revenue Tribunal shall follow the procedure which may be prescribed by rules made by the State Government under this Act after consultation with the Bombay Revenue Tribunal.

He further argued that before the authorities the question was



only about the validity of the sale transaction. There was no question of validity of declaration of ownership under section 38-E of the HT&AL Act and the ownership certificate issued in favour of the petitioner. This question had already attained finality. The attempt of the respondent was only to the extent of validity of the sale-deed. There was no question of restoration of possession of the respondents. The question of restoration of possession was beyond the scope of the proceedings. The learned MRT has, however, dealt with all these questions and exceeded jurisdiction vested in it. There was no challenge to the declaration of the ownership under section 38-E in favour of the petitioners. He ultimately submits that all the findings recorded by the Revisional Court were not only perverse but beyond the scope of revision.

11. The learned Advocate for the respondents submits that the respondents purchased the property in the year 1977. There was no reason for them to have knowledge of the tenancy proceedings. Section 32 of the HT&AL Act is in respect of procedure of taking possession. Section 98 of the Act provides for summary eviction of a person in unauthorized and unlawful possession. Section 98C provides invalidating alienation after holding inquiry by the Tahsildar. Thus, he supports the order passed by the learned Member



of the MRT.

12. The learned Advocate for the petitioner relied upon following judgment :-

- (I) Maruti Jaywant Shinde Vs. Smt. Shantabai Baburao Gotharne & Ors., Writ Petition (St) No.4146 of 2020 (Principal Seat of Bombay High Court).
- (II) Hanmant Jaisingh Ahirekar & Ors. Vs. Baburao Raghunath Ahirekar & Ors., Writ Petition No.2335 of 1995 (Principal Seat of Bombay High Court).
- (III) Shamrao Maruti Patil & Anr. Vs. Shantabai Dattatraya Salokhe, 1994 (4) Bom.C.R. 432.

13. The learned Advocate for the respondents placed reliance on the following judgments :-

- (I) Bhimrao Devrao Kale Vs. Sambha Narayan Mudhal, 2012(3) Bom.C.R. 311.
- (II) Dattu Patil since deceased Vs. Ramesh Anandrao Patil, 2003 BCI (0) 37.
- (III) Rangrao Ganpatrao Kulkarni Vs. Sayyed Haikim, 2000 (1) ALL M.R. 417.
- (IV) Nancy John Lyndon Vs. Prabhatilal, AIR 1987 (SC) 2061.
- (V) Binayak Swain Vs. Rameshchandra, AIR 1966 SC 948.



- (VI) Union of India & Anr. Vs. Paras Laminates, (1990) 4 SCC 453.
- (VII) Madhukar Babarao Deshmukh Vs. Jalgaon Jilha Marahta, 2002 (Supp) Bom. C.R. 847.
- (VIII) Meghmala & Ors. Vs. G. Narsimha Reddy, (2010) 8 SCC 383.
- (IX) Vijayabai & Ors. Vs. Shriram Tukaram & Ors., 1998 (5) Bom.C.R. 913.

14. To consider the arguments, the Court has to first see the legal position as enumerated in the judgment cited by the parties. In the case of Maruti Jaywant Shinde (Supra), question was as to whether the MRT had exceeded its revisional jurisdiction vested in it under section 76 of the Bombay Tenancy and Agricultural Lands Act. In that case the learned MRT interfered with the finding of fact recorded by the authorities on the basis of mutation entries. The question as to whether father of the petitioner therein was in possession of the land on the tillers day was held to be necessarily a question of fact. It is further held that when the finding on these facts was recorded by both the authorities, it was not open for the MRT to interfere with the said findings.

15. In the case of Hanmant Jaisingh Ahirekar (Supra) the question



was about scope of powers of the Tribunal under section 76 of the BT&AL Act. It is held on the basis of judgment of the Supreme Court in the case of **Rahimatulla Rahiman Sarguru Vs. Bapu Hari Mane & Anr., 1979(4) SCC 391** that the power of revision of the MRT are practically identical to the second appellate power of the High Court under section 100 of the Code of Civil Procedure, before it was amended by Act 104 of 1976. In that case also the learned MRT had interfered with the findings of the fact recorded by the lower authorities. In view of that the order passed by the learned MRT was quashed and set aside.

16. So far as judgment in the case of **Shamrao Maruti Patil (Supra)** is concerned, this Court held that if a decision is based on evidence, however, unsatisfactory the judgment may be, it does not cease to be question of fact and unless the Tribunal finds that there was no evidence for the finding of fact, mere insufficiency of evidence or defect in the appreciation of evidence will not convert a question of fact into a question of law and the Tribunal, in exercise of its revisional jurisdiction, cannot re-appreciate the evidence and give a fresh finding of its own unless it holds that the finding of the Appellate Authority is perverse. In that case it was specifically observed that the



Tribunal had exceeded the jurisdiction by proceeding to decide a matter afresh by reappreciating evidence and set aside the order of the Appellate Authority.

17. Thus, the ultimate conclusion looking to these judgments is that the learned MRT cannot go into question of fact unless it finds it perverse or without any evidence.

18. Coming to the judgments cited by the learned Advocate for the respondents, the first judgment is in the case of **Bhimrao Devrao Kale (Supra)**. This judgment is in respect of sections 38, 98 and 98-C of the HT&AL Act. It is held that even if a person is to be evicted under section 98 of the Act, certain procedure needs to be followed and it that view the petition was allowed. There cannot be any dispute about this proposition.

19. In the case of **Ananda Dattu Patil (Supra) & Rangrao Ganpatrao Kulkarni (Supra)**, it was held that the Revisional Court can certainly look into the material on record and can correct the mistake committed by the Appellate Authority. The Tribunal can interfere when there is substantial defect in following the procedure that has resulted in miscarriage of justice.



20. In the case of Nancy John Lyndon (Supra), it is held that on restoration of the proceedings dismissed in default would also restore the earlier orders passed prior to the dismissal. In the case of Binayak Swain (Supra), it is held that restitution is automatic on reversal of a decree, when anything is done in pursuance of erroneous decree. In the case of Paras Laminates (Supra), it is held that the Tribunals have inherent powers to do complete justice. In the case of Madhukar Baburao Deshmukh (Supra), it is held that whether setting aside an order on the ground of lack of jurisdiction would result in the revival of an illegal order, then refusal of interfere even with the order lacking jurisdiction would be justified. In the case of Meghmala (Supra) same principal is reiterated.

21. So far as the judgments cited by the petitioners are concerned, this Court finds that there is substance in the arguments of the petitioner. In view of the judgments this Court finds substance in the submissions of the petitioners. Though the judgments cited are the judgments dealing with section 76 of the BT&AL Act, same is akin to the provisions of section 91 of the HT&AL Act. The Courts in unequivocal terms have held that the revisional



powers can be exercised only within the powers and in the circumstances enumerated in section 91. Any interference with finding on the fact recorded by the lower authority by revisional authority certainly amounts to exceeding jurisdiction.

22. So far as judgments relied upon by the respondents are concerned, this Court finds that there cannot be dispute about the proposition. The revisional Court certainly has power to set aside the judgment, provided the findings recorded are perverse, treating the evidence as it is or are without any evidence. This Court finds that in the present case certainly there was material before the authorities, on the basis of which the finding was recorded. It is rightly pointed out by the petitioner that the case of the respondents was only in respect of protecting their sale-deed. The question of the right of the petitioner as protected tenant was not really an issue before the any of authorities. The learned MRT has unnecessarily gone into the aspect of section 38-E and 98-C of the HT&AL Act and finding of fact. This Court does not find that the findings of the fact recorded by the lower authority was in any way perverse or without any evidence. It also further needs to be observed that there was no question of section 38-E or 98 of the



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Act involved as such. It is rightly pointed out that when the price was fixed by the authority under section 38-E, it could have been recovered from the tenant. Merely because of non-payment of the price fixed by the authority is no reason to come to a conclusion that the tenancy is terminated. From all these facts this Court finds that Writ Petition 546 of 1998 deserves to be allowed. So far as Writ Petition No. 3439 of 2016 is concerned, as the impugned judgment is passed mainly in view of pendency of Writ Petition No.546 of 1998, it would be desirable to remand the said matter to the MRT for fresh decision in the light of this judgment. Hence, following order :-

**ORDER**

- (i) Writ Petition No. 546 of 1998 is allowed in terms of prayer clause "C".
- (ii) So far as Writ Petition No.3439 of 2016 is concerned, the matter is remanded back to the Dy. Collector (Land Reforms), Latur for afresh hearing. The Dy. Collector (Land Reforms), Latur shall decide the matter afresh bearing No. 1995/Tenancy/Appeal/CR-19 in the light of judgment in respect of Writ Petition No.546 of 1998.

[KISHORE C. SANT, J.]