



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

36 WRIT PETITION NO. 2394 OF 2021

Shiavji Ganpati Kale,  
Age : 64 years, Occupation: Agriculture,  
R/o. Tandulwadi, Taluka Kallam,  
District Osmanabad. ... Petitioner

Versus

Dhondiram Nama Dikle,  
Age : 70 years, Occupation: Agriculture,  
R/o. Tandulwadi, Taluka Kallam,  
District Osmanabad. ... Respondent

...

Mr. P. R. Katneshwarkar, Senior Advocate for the Petitioner.  
Mr. Vikram S. Undre, Advocate for Respondent.

...

CORAM : SIDDHESHWAR S. THOMBRE, J.

DATED : 4<sup>th</sup> MAY, 2026

**JUDGMENT:-**

1. **Rule.** Rule made returnable forthwith. By consent of the parties, heard finally.
2. By the present petition, the Petitioner is aggrieved by the order dated 25.05.2017 passed by the learned Deputy Collector (Land Reforms), Osmanabad in Case No.2015/sa-Pra-Bhsu-Kawi-152, whereby the appeal filed by the Respondent came to be allowed and the order dated 22.01.2020 passed by the learned President, Maharashtra Revenue Tribunal, Mumbai in Case No.44/B/2017/O, whereby the revision application filed by the Petitioner came to be dismissed.

3. It is the case of the Petitioner that his father, Ganpati, was a protected tenant of the suit land bearing Survey No.27/A, admeasuring 18 Acres 37 Gunthas, situated at Village Tandulwadi, Taluka Kallamb, District Osmanabad. He was a tenant prior to 1951. In the year 1962, the Tahsildar prepared the tenancy register under the Hyderabad Tenancy and Agricultural Lands Act, 1950 (for short “**Tenancy Act**”), wherein the name of the Petitioner’s father was recorded as a protected tenant. The Petitioner’s father expired on 04.09.1973 and thereafter the Petitioner claims to have succeeded to the tenancy rights as a protected tenant.

4. It is further contended that proceedings under Section 38E of the Tenancy Act were initiated in the year 1962 by the Petitioner’s father against the original land owner, Bhagwandas Premchand Lodha, for purchase of the land. However, in view of a sale deed executed on 06.01.1961, the said proceedings came to be dropped on the premise that the tenant had already become the owner. According to the Petitioner, though the sale deed was purportedly executed in favour of his father, it also included the name of one Nama Dikle, who had no concern with the suit property. Even after the implementation of the consolidation scheme, the name of the Petitioner’s father continued to be shown as a protected tenant in the revenue record.

5. In the year 2012, the Petitioner initiated proceedings before

the learned Tahsildar seeking a declaration that the sale deed executed between Ganpati, Nama Dikle and Bhagwandas be declared void, and for issuance of an ownership certificate under the provisions of the Tenancy Act.

6. The learned Tahsildar partly allowed the application by holding that Ganpati was a protected tenant and that he had never surrendered his tenancy. The sale deed, to the extent it concerned Nama Dikle, was held to be invalid. However, the relief of issuance of ownership certificate was not granted.

7. Being aggrieved thereby, the Respondent preferred an appeal before the Deputy Collector, Osmanabad. The learned Deputy Collector allowed the appeal without properly considering the provisions of the Tenancy Act. Aggrieved by the same, the Petitioner preferred a revision before the Maharashtra Revenue Tribunal. The learned Tribunal dismissed the revision application. Hence, the present petition.

8. Learned Advocate for the Petitioner relied upon the following judgments, which reads as under:-

*“(i). Dagdu Baburao Jadhav & Ors. Vs. Hanmant Madhav Agav & Ors. in Writ Petition No.5819 of 1995 dated 03.05.2018;*

*(ii). Janardhan Nanasaheb Choudhari Vs. SK. Haju, SK. Baban, reported in LAWS(Bom)-2001-12-3;*

*(iii). Ramchandra Keshav Adke (Dead) By L.Rs. & Ors. Vs. Govind Joti Chavare & Ors, reported in (1973) 1 SCC 559;*

*(iv). Dhondiram Tatoba Kadam Vs. Ramchandra Balwantrao Dubal (Since Deceased) by his L.Rs. & Anr., reported in*

*(1994) 3 SCC 366;*”

9. Per contra, it is the case of the Respondent that as per Namuna 5 of the final register of protected tenants for the year 1952, the original owners were shown as Bhagwandas Marwadi and Rama Keshav, and Ganpati was initially recorded as a protected tenant. However, by order dated 01.07.1952, the name of Ganpati was deleted, and the said entry continues to hold the field.

10. It is further contended that the original land owner executed a registered sale deed in favour of the Petitioner’s father, Ganpati, to the extent of 10 Acres 6 Gunthas, and that on 06.08.1962, Ganpati surrendered his tenancy before the Tahsildar by way of a written resignation. It is thus submitted that after execution of the sale deed and surrender of tenancy, both the Petitioner’s father and the Respondent’s predecessor became owners of their respective portions.

11. The Respondent further submits that from 1962 till 2012, neither the Petitioner nor his father raised any dispute regarding tenancy. The proceedings initiated after several decades are therefore hopelessly barred by limitation. It is also contended that the Respondent is in possession of the suit property, have availed loans on the basis of revenue entries, and bank charges are duly reflected in the record. The Petitioner’s claim of possession is specifically denied.

12. Learned Senior Advocate for the Petitioner, Mr. P. R.

Satneshwarkar, submits that Ganpati Kale was a protected tenant prior to 1951 and his name was recorded in the protected tenant register. He submits that there was no valid surrender of tenancy in accordance with Section 19 of the Tenancy Act. It is argued that Section 19(1)(a) mandates that surrender must be in writing and verified to be voluntary and bona fide to the satisfaction of the Tahsildar.

**13.** He further relies upon Rule 7 of the Hyderabad Tenancy and Agricultural Lands Rules, 1951, and submits that the Tahsildar is required to record satisfaction regarding voluntariness of surrender after due inquiry. It is contended that no such procedure was followed.

**14.** It is further submitted that under Section 48 of the Tenancy Act, any sale made in contravention thereof is invalid and the present case does not fall under the exceptions provided in Section 49. Reliance is also placed on Section 40 to contend that tenancy rights are heritable, and upon the death of Ganpati on 04.09.1973, the Petitioner succeeded to the tenancy rights.

**15.** It is thus contended that both the Deputy Collector and the Maharashtra Revenue Tribunal have failed to properly consider the statutory provisions and the legal position.

**16.** Per contra, learned Advocate for the Respondent, Mr. V. S. Undre, submits that the Petitioner's father as well as the Respondent's father were tenants of the suit land and that the original land owner

executed a registered sale deed in favour of both of them in the year 1961. Since then, the Petitioner and the Respondent have been in possession of their respective shares.

**17.** He also points out that on 06.08.1962, after execution of the sale deed, the Petitioner's father voluntarily surrendered the tenancy before the Tahsildar by submitting a written resignation.

**18.** It is further submitted that neither during the lifetime of the original land owner nor for several decades thereafter did the Petitioner or his father raise any objection to the said transaction. According to him, from 1962 till 2012, no challenge was raised, and only after a lapse of nearly 50 years were proceedings initiated before the Tahsildar seeking declaration and issuance of ownership certificate. The claim is, therefore, grossly delayed and barred by limitation. On these grounds, he prays for dismissal of the writ petition.

**19.** I have heard the learned Advocates appearing for the respective parties at length. I have also carefully perused the impugned orders passed by the authorities below as well as the material placed on record.

**20.** On perusal of Namuna 5 extract placed on record by the Petitioner at page 17, Exhibit-A, it reveals that the said register pertains to the final register of agricultural family records, Part-I (Protected Tenant Abstract). Column No.15 thereof specifically records that on

01.07.1952, the name of the tenant came to be deleted. The record further reveals that the said entry has remained unchallenged till date and, therefore, has attained finality.

21. Insofar as the contention raised on behalf of the Petitioner regarding non-compliance of Section 19 of the Tenancy Act and Rule 7 of the Hyderabad Tenancy and Agricultural Lands Rules, 1958 is concerned, it would be apposite to refer to the said provisions.

***“19. Termination of Tenancy:-***

*(1) Notwithstanding any agreement or usage or any decree or order of a Court of law [no tenancy shall be terminated] otherwise than—*

*(a) by the tenant by surrender of his rights to the landholder at least a month before the commencement of the year :*

*Provided that such surrender is made by the tenant in writing is admitted by him before and is made in good faith to the satisfaction of the Tahsildar; or*

*Provided further that where the land is cultivated jointly by joint tenants or members of an undivided Hindu family, unless the surrender is made by all of them it shall be ineffective in respect of such joint tenants as have not joined in the application for surrender, irrespective of the fact that the names of all the joint tenants are not mentioned in the certificate];*

*(b) by the landholder on a ground specified in sub-section (2).*

*(2) The landholder may terminate a tenancy on the ground that the tenant:-*

*(a) (i) has failed to pay in any year, within fifteen days from the day fixed under the Land Revenue Act for the payment of the last instalment of land revenue due for the land concerned in that year], the rent of such land for that year; or*

*(ii) if an application for the determination of reasonable rent is pending before the Tribunal or the Collector under section 17, has failed to deposit within 15 days from the aforesaid date with the Tribunal or the Collector, as the case may be, a sum equal to*

*the amount of rent of which he would have been liable to pay for that year if no such application has been made; or*

*(iii) In case the reasonable rent determined under section 17, is higher than the sum deposited by him, has failed to pay the balance due from him within two months from the date of the decision of the Tribunal or the Collector, as the case may be; or*

*(b) has done any act which is destructive or permanently injurious to the land; or*

*(c) has sub-divided the land; or*

*(d) has sub-let the land or failed to cultivate the land personally or has assigned any interest therein; or*

*(e) has used such land for a purpose other than agriculture :*

*Provided that no tenancy of any land held by a tenant shall be terminated on any of the grounds mentioned in this sub-section unless the landholder gives six months' notice in writing intimating his decision to terminate the tenancy and the grounds for such termination: and*

*Provided further that the tenancy of a tenant who-*

*(a) is a female or a minor, or*

*(b) is a subject to physical or mental disability, or*

*(c) is a serving member of the armed forces, shall not be determined on the ground only that the land comprised in the tenancy has been sub-let by or on behalf of such tenant."*

***"7. How Tahsildar to satisfy himself as to voluntary surrender of tenancy.:-*** *(1) For satisfying himself that the surrender of tenancy by a tenant is made voluntarily and in good Faith the Tahsildar shall secure the presence of the tenant and examine him on oath by putting him questions to ascertain,-*

*(a) whether the tenant understands the nature and consequences of the surrender,*

*(b) whether he has any objection to the surrender, and*

*(c) any other matter, which the Tahsildar thinks necessary to ascertain.*

*(2) The Tahsildar shall thereupon record his finding as to whether the surrender has or has not been made in good faith and to his satisfaction"*

**22.** After considering the aforesaid provisions, it is evident that for a valid surrender of tenancy, the requirements of Section 19 of the Hyderabad Tenancy and Agricultural Lands Act, 1950 read with Rule 7 of the Rules, 1951 are required to be strictly complied with. There is no dispute with regard to the legal position that any transaction in contravention of Section 48 is invalid and that tenancy rights are heritable in view of Section 40 of the Act.

**23.** In this backdrop, the core issue that arises for consideration is whether there was a valid surrender/resignation of tenancy by Ganpati, the father of the Petitioner.

**24.** In the present case, it is an admitted position that the original land owner executed a registered sale deed dated 06.01.1961, whereby land admeasuring 10 Acres 6 Gunthas was transferred in favour of the Petitioner's father and land admeasuring 7 Acres 20 Gunthas was transferred in favour of the Respondent's father. The record further indicates that thereafter, on 06.08.1962, the Petitioner's father tendered resignation/surrender of tenancy before the Tahsildar.

**25.** It is thus apparent that pursuant to the registered sale deed, the Petitioner's father became owner of land admeasuring 10 Acres 6 Gunthas and the Respondent's father became owner of land admeasuring 7 Acres 20 Gunthas. Therefore, by virtue of the said sale

transaction, both parties acquired ownership rights over their respective portions.

26. The contention of the Petitioner that the Respondent's father was not a protected tenant but merely a *Munim* working with the original land owner, and therefore the sale to the extent of 7 Acres 20 Gunthas is invalid, cannot be accepted at this stage, particularly in view of the admitted registered sale deed.

27. Upon perusal of Exhibit-A (page No.17), which is the Namuna 5 "protected tenant abstract", it is seen at Sr. No.9 that the names of Ramakeshav and Ganpati were initially recorded, but subsequently scored off with a specific endorsement that their names were deleted on 01.07.1952. This entry has attained finality and has not been challenged till date.

28. This clearly indicates that the Petitioner's father was not the sole protected tenant of the entire land. The record also reflects that along with Ganpati, the name of Ramakeshav was shown as protected tenant.

29. Further, the registered sale deed demonstrates that the original land owner transferred portions of land in favour of multiple persons, including the Petitioner's father and the Respondent's predecessor. Once such a registered transaction has been acted upon and followed by possession and revenue entries for decades, the same

cannot be unsettled after a lapse of nearly 50 years.

30. As regards the reliance placed on the judgment in *Dagadu Baburao Jadhav (supra)*, the facts therein are clearly distinguishable. In that case, the tenants continued to remain in possession and the sale deed was executed despite notice. In the present case, however, the sale deed was acted upon, ownership was accepted, and no challenge was raised for decades. Hence, the said judgment is not applicable.

31. Similarly, in *Janardhan Babasaheb Chaudhary (supra)*, the proceedings under Section 19 of the Tenancy Act were pending without any final order. In the present case, however, the sale deed was executed, acted upon, and remained unchallenged for an inordinate period of time. Therefore, the said judgment is also distinguishable.

32. Insofar as the judgment of the Hon'ble Apex Court in *Ramchandra Keshav Adke (supra)* is concerned, there is no dispute that compliance with the provisions relating to surrender is mandatory. However, in the present case, the sequence of events-execution of registered sale deed in January 1961 followed by resignation in August 1962 and absence of any challenge for nearly five decades-clearly indicates acceptance of the transaction by the parties.

33. The judgment in *Dhondiram Tatoba Kadam (supra)* is also not applicable to the facts of the present case. In that case, the issue

pertained to possession of the tenant vis-à-vis the land owner. In the present matter, however, it is an admitted position that pursuant to the sale deed, the Petitioner's father became owner and remained in possession of his share since 1962, while the Respondent is in possession of the remaining land.

**34.** Therefore, this is not a case where possession is sought to be recovered from the land owner, but rather a case where ownership itself is sought to be questioned after an inordinate delay.

**35.** In view of the aforesaid discussion, I am of the considered opinion that the learned Deputy Collector and the Maharashtra Revenue Tribunal have rightly appreciated the facts and applied the law. No perversity or illegality is demonstrated in the impugned orders warranting interference. Hence, I proceed to pass the following order:-

### **ORDER**

- (i). The present writ petition is devoid of merits and is accordingly dismissed.
- (ii). No order as to costs.
- (iii). Rule stands discharged.
- (iv). Pending civil applications, if any, are also disposed of.

**(SIDDHESHWAR S. THOMBRE, J.)**