

BEFORE THE MEMBER (SHRI V.K. KADAM), MAHARASHTRA
REVENUE TRIBUNAL, AURANGABAD

Appeal No. 1/A/2019/J

1. Prabhakar Uttam Jadhav **Appellants**
Age-58 yrs, Ocu-Agril
R/o. Anand Swami Galli, Near Shani Mandir,
Old Jalna, Tq. Jalna, Dist. Jalna.
2. Chandrakala Shaligram Jadhav
Age-65 yrs, Occu-Household,
R/o. H.No.46, Yeshwant Nagar,
Behind Nikalje Complex, Ambad Road,
Jalna, Tq. Dist. Jalna.
3. Satish Laxman Jadhav
Age-50 yrs, Occu-Agri, and Service
R/o. Kasliwal Market B2/2, CIDCO, N-2
Mukundwadi, Aurangabad
Dist. Aurangabad
4. Ashok Laxman Jadhav
Age-43 yrs, Occu-Agril,
R/o. Village Dolara,
Tq. Partur, Dist. Jalna
5. Aasha Dattatray Waghmare
C/o. Dattatray Ramchandra Waghmare
Nawayuwak Tailor, Near Natraj Talkies,
M.G. Road, Jalna, Tq. Dist. Jalna.

V/s.

1. Syed Isak Syed Hussain **Respondents**
Age- 77 yrs, Occu-Labour
R/o. Dawalwadi, Tq. Badnapur, Dist. Jalna

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2. Syed Abas Syed Hussain
Age-64 yrs, Occu-Labour,
R/o. Indalkarwadi, Tq. Dist. Jalna
3. Rabiya Sk. Wahab
Age -62 yrs, Occu- Household,
R/o. Sanjaynagar, Deolgaon Raja
Dist. Buldhana
4. Syed Ismail Syed Osman
Age-45 yrs, Occu-Labour,
R/o. Shastri Mohalla, Jalna
Tq. & Dist. Jalna
5. Mehra and Company
through
Dhirendra Mahendra Prasad Mehra
Age- 41 yrs, Occu-Agri & Business,
R/o. Srikrishna Nagar, Rukhmani Nagar,
New Mondha Jalna,
Tq. & Dist. Jalna

Shri L.H. Vijaywarigya advocate for appellants.

Shri A.E. Bomble advocate for respondents no. 1 to 4.

Shri J.S. Gavane advocate for respondent no. 5.

CLAIM : -Appeal under Section 90 of H.T. & A.L. Act

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: JUDGEMENT :**(Delivered on 11/01/2023)**

1. Being aggrieved and dissatisfied by the judgment & order passed by the Deputy Collector (General Administration) Jalna dated 21/11/2016, in Case No. 2016-Sasha-Kul-J.Vikri-CR-75 the appellants have preferred this appeal on the following grounds.
2. That the permission for alienation granted under Section 50 (B) of H.T. & A.L. Act is against the provisions of Law which is based on illegal order passed by such authority, that the purchase price of the land should have been deposited as mentioned in Khata Register within time prescribed as mentioned in Khata Register. That the permission under Section 50 (B) is granted on 21/11/2016 but the respondents got extended time up to 4 months. But again the time was extended up to 21/12/2017. Thereafter again the present respondents requested to grant time on 06/08/2018. Again the time is extended. It is submitted that the Deputy Collector (General Administration) Jalna having no power to extend the time, on these grounds the appeal have been preferred.
3. The respondent nos. 1 to 4 appeared and resisted the appeal by filing reply contending enter alia that the respondent nos. 1 to 4 on 04/07/2016 filed the application before the Deputy Collector (General Administration) Jalna for permission of the land Gat no. 273 admeasuring 9 Hectare 66 R situated at Village

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Nagewadi Tq. & Dist. Jalna. It was also contended that the Isarpavati was executed and therefore permission for agricultural purpose may be given, after verifying the record granted sale permission dated 21/11/2016 in favour of the respondent nos. 1 to 4. Before the Deputy Collector Jalna the present appellants are not party. Therefore the appellants have no locus standee to make comment upon the sale permission granted by Deputy Collector Jalna. That the Deputy Collector Jalna by order dated 21/12/2017 extended time execution for sale deed and time was extended for 4 months. Thereafter The Deputy Collector Jalna on the application of the respondent again passed order dated 15/09/2018 and granted time for further 4 months for execution of sale deed.

4. That the father of the present respondent nos. 1 to 4 namely Syed Hussain Babanbhai was declared protected tenant under the provisions of Section 38 E of the Hyderabad Tenancy and Agricultural Lands Act 1950. That the declaration was made in the name of Syed Hussain Babanbhai was not challenged by the present appellants or their predecessor in any Competent Court. That as per section 35 of the H.T. & A.L. Act 1950, if the owner wants to dispute the tenancy of the tenant then within one year owner is require to file proceeding before the proper court for disputing the tenancy of the tenant. In the present case the original owner who was predecessor of the present appellants namely Eknath Manaji was specifically admitted

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before the Tahsildar that, declaration was made in the name of the tenant and he did not filed any proceeding for cancellation of tenancy. That the purchase price was also fixed by the Tribunal and purchase price of Rs.375/- and the interest from 1957 to 1963 of Rs.78.75 paise and totally amount is Rs.453.75/- paise was fixed and it was also mentioned in Khata Register that protected tenant was Syed Hussain Babanbhai and the name of the owner was shown as Eknath Manaji. It was also stated in Khata Register that the purchase price of Rs.453.75 paise was fixed therefore it is clear that, the father of the respondent no.1 to 4 was declared as tenant and depositing the purchase price the ownership certificate is required to be issued in the name of the tenant.

5. Syed Hussain Syed Babanbhai was declared tenant under Section 38 E of the H.T. & A.L. Act to the extent of 24 acres land and the possession of the suit land was also given to the tenant. However they are ready to deposit the purchase price and after depositing the purchase price and following the procedure their names may be shown in the 7/12 extract. The Tahsildar did not pass any order, therefore the respondent no. 1 to 4 made complaint to the Additional Collector Jalna and Additional Collector Jalna by order dated 21/05/2015 directed to the Tahsildar the purchase price may be accepted from the respondent no. 1 to 4. That against the said order present appellants filed the Appeal No.33/A/2015/Jalna before the

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Maharashtra Revenue Tribunal at Aurangabad and Hon'ble Member M.R.T. Aurangabad by order dated 29/09/2015 allowed the appeal on the ground of jurisdiction and given liberty to the respondent no. 1 to 4 to file application before the Tahsildar. That again the Deputy Collector Jalna passed order on 20/05/2016. Against the said order the present appellant filed Appeal No.32/A/2016/Jalna before the M.R.T. Aurangabad and Ld. Member of M.R.T. Aurangabad by order dated 16/08/2017 allowed the appeal and set aside the order of the Deputy Collector on the ground of jurisdiction and given liberty to the present respondent no. 1 to 4 file application, therefore the respondent no. 1 to 4 filed the application before the Tahsildar and said application is allowed.

6. That against the mutation entry no. 2344 the present appellants filed appeal before the S.D.O. Jalna. That S.D.O. Jalna by order dated 05/06/2017 rejected the appeal of the present appellants. That against the order of the S.D.O. dated 05/06/2017 the present appellants filed appeal before the Additional Collector Jalna. That the Additional Collector Jalna by order dated 21/08/2018 allowed the appeal of the appellants and order passed by S.D.O. Jalna dated 05/06/2017 was quashed and set aside and cancel the mutation entry no.2344. That against the order of Additional Collector Jalna dated 21/08/2018 the present respondent nos.1 to 4 filed revision before the Additional Divisional Commissioner Aurangabad by order dated

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07/08/2020 allowed the revision of the respondent no. 1 to 4 and set aside the order passed by Additional Collector Jalna dated 21/08/2018 and confirmed the mutation entry no. 2344. Therefore the mutation entry no. 2344 was confirmed and intact, when the matter was pending before the Tahsildar Jalna at that time the Tahsildar Jalna called report from Circle Officer of the concerned Talathi the concerned official also submitted their report to the Tahsildar on 10/07/2015 and contended that they have conducted the Punchnama on 06/07/2015 and the tenant i.e. present respondent no. 1 to 4 are in possession over the suit land.

7. After obtaining the sale permission the respondent no. 1 to 4 have executed the sale deed in favour of respondent no. 5 on 19/09/2018 and possession was handed over the respondent no. 5. That the present appellants have filed the appeal before this Hon'ble Court against the order of sale permission dated 21/11/2016 and subsequent extension order dated 15/09/2018. Therefore this Hon'ble Court is only required to see whether the order of sale permission is proper or not. The present appellant unnecessary trying to club the issue in respect of the tenancy of the father of the appellant and trying to mislead the Hon'ble Court.
8. That the father of respondent no. 1 to 4 was declared as protected tenant. The father of the respondent no. 1 to 4 was illegally dispossess and therefore the proceeding under Section

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38 E (i) explanation was initiated by the Tahsildar and that proceeding decided in favour of the tenant and directed the possession of the suit land was restored to the father of the respondent no. 1 to 4 thereafter the notices was issued to the original owner and the original owner Eknath Manaji was present before the Tahsildar and his statement was recorded and in his statement he has specifically admitted that the declaration was made in the name of the tenant and he did not filed any proceeding for cancellation of tenancy.

9. Thereafter following the procedure the possession of the suit land was given to the tenant who was father of the respondent no. 1 to 4 on dated 08/04/1963. Thereafter the Punchnama in respect of handing over the possession was conducted and the receipt was also given by the father of the respondent no. 1 to 4 in favour of the Revenue authority. It is further submitted that the present appellants have contended in their appeal memo that against the order of Tahsildar Jalna they have filed appeal before the Additional Collector Jalna. That the appeal filed before Additional Collector Jalna was remanded and again Tahsildar decided the matter. Thereafter the present appellant filed appeal before Collector Jalna and Collector Jalna by order dated 12/08/2022 rejected the appeal of the present appellants and confirmed the order passed by Tahsildar Jalna dated 18/11/2020. That while deciding the appeal of the present appellants, the Collector Jalna has rightly considered that the

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declaration was made in the name of the tenant and proceeding under Section 38 E (i) explanation the possession was given to the tenant and the original owner in the proceeding. In that proceedings the statement of original owner namely Eknath Manaji on affidavit and he was admitted that the declaration was made in the name of tenant and he did not filed any proceeding with regard to the right of tenancy and the possession of the suit land was also handed over to the tenant on 08/04/1963 and the receipts was also given by tenant in favour of the Revenue Authority.

10. That therefore it is clear that the respondents no. 1 to 4 are the legal heirs of the tenant and in view of the Section 40 they are entitled for tenancy right and purchase price was deposited and ownership certificate was issued and therefore the original owner did not remain any right in the suit property and therefore the order of the sale permission is legal and proper and appeal filed by the appellants is required to be rejected. That after the possession was handed over to the tenant in the year 1963 there is no any document or order to show that the tenancy of the tenant was terminated under section 19 of Section 44 of H.T. & A.L. Act 1950. Moreover the original owner within period of two years did not apply for possession under Section 32 (2) of the Tenancy Act and there is no any order to show that, owner is in possession of the suit land under Section 32(2) of Tenancy Act. Lastly prayed for dismissal of the appeal.

Courtesy
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11. The respondent no.5 also appeared and resisted the appeal by filing reply he has contended the same contentions which are already contended by respondent no. 1 to 4 so I have avoid to mention here the contentions of respondent no. 5 in order to avoid the repeatation, the respondent no.5 contended that, he is in possession of the suit land from the date of execution of sale deed i.e. from 19/09/2018. That the respondent no.5 also given application to the concerned Tahsildar in respect of the possession, thereafter the concerned Tahsildar directed to the concerned Talathi to conduct the Punchnama and concerned Talati and Circle Officer conducted the Punchnama dated 21/07/2020 and submitted their report to the Tahsildar. Therefore from the perusal of the Punchnama dated 21/07/2020, it is clear that the present respondent no. 5 is in possession of the suit land upon execution of register sale deed the mutation entry no. 2596 was sanctioned in favour of respondent no.5 and on that basis the name of respondent no.5 was shown in the revenue record lastly he prayed to dismiss the appeal.
12. Heard Shri Vijaywarigiya senior advocate for the appellant, Shri Bomble advocate for respondents no. 1 to 4 and Shri J.S. Gavane advocate for respondent no.5 in considerable length.
13. On the submissions advance by both the parties. The following points arise for my determination and findings are given against each point for the reasons below.

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Sr.No.	Points	Findings
1	Whether the judgment and order passed by Deputy Collector (General Administration) Jalna dated 21/11/2016 in case no.2016-Sasha-Kul-J.Vikri-CR-75 and of subsequent extension of time up to 15/09/2018 bearing file no.2017- Sasha Bhusudhar-Kul-J.Vikri-CR-75 is proper, legal and maintainable in the eyes of law ?	Yes
2	Whether interference at the hands of this court or this Tribunal is required in the judgment and order passed by Deputy Collector (General Administration) Jalna dated 21/11/2016 in case no.2016-Sasha-Kul-J.Vikri-CR-75 and of subsequent extension up to 15/09/2018 bearing file file no. 2017-Sasha Bhusudhar-Kul-J.Vikri-CR-75?	No
3	What order?	As per final order

For the reasons below-

As to point no.1 & 2-

The points No. 1 & 2 are being interlinked. It can be dealt by giving common reasons.

14. According to the appellants the land survey no. 131 of Village Nagewadi Tq. Dist. Jalna admeasuring 26 acres 12 gunthas, which was subsequently converted in Gut no. 273 admeasuring 10 Hectare 25 R, was owned and possessed by Eknath Manaji Jadhav. It has been

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stated by respondents that their predecessor was protected tenant over the suit land and he was declared owner under section 38 E of H.T. & A.L. Act. There is no record that they were cultivating the suit land at any material point of time as provided under Section 34 of H.T. & A.L. Act or on the enforcement date i.e. 10/06/1950. Even the name of predecessor is not appearing in the other right column of Revenue Record as "Kul" tenant. That there is absolutely no record about their name appearing in final list of tenancies, not they are having the certificate issued under section 35 & 37 of H.T. & A.L. Act.

15. It is further contended by the appellant that there is only one single document with them i.e. copy of Namuna No.12 i.e. copy of Khata Register which shows the 8 installments from 1957 were fixed. The amount Rs.47 should be paid from 26/01/1957 up to 21/06/1964 in equal 8 installments. But they did not paid a single installment. Notice was sent to their predecessor, as well as legal heirs, but it returned unserved. That the present respondents obtained the order from Additional Collector Jalna on 21/05/2015, that the Tahsildar should accept the reasonable price and their names should be taken in ownership column of 7/12 extract of Gat no. 273 of Village Nagewadi Tq. & Dist. Jalna. The order passed by Additional Collector dated 21/05/2015 was challenged before Hon'ble Member Revenue Tribunal Aurangabad and Member M.R.T. Aurangabad has decided the Appeal on 29/09/2015 bearing Appeal No.33/A/2015/Jalna and the Hon'ble Member by its order dated 29/09/2015 set aside the order passed by Additional Collector Jalna. In spite of the order

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passed by the Hon'ble Member, Maharashtra Revenue Tribunal at Aurangabad dated 29/09/2015 and liberty was given to file application before the Tahsildar Jalna, again these respondents no. 1 to 4 filed an application before Deputy Collector (General Administration) Jalna order to deposit the reasonable price and ordered to take the name of respondents in ownership column. The respondent by order of Deputy Collector (General Administration) Jalna deposited the reasonable price of land Rs.1039/- on 21/06/2016 which is illegal. The order passed by Deputy Collector Jalna dated 20/05/2016 is challenged before the Hon'ble Member M.R.T. Aurangabad and the Member M.R.T. Aurangabad set aside the order passed by Deputy Collector Jalna on 16/08/2017 in Appeal No.32/A/2016/Jalna. The Punchnama for handing over the possession to the respondent no. 1 to 4 were conducted on 06/07/2015 without issuing the notices to the original land owner, it shown that Talathi and Revenue Inspector conducted the Punchnama of Gut no. 273, but infact Talathi and Revenue Inspector might not knowing the location of Gut no. 273 of Village Nagewadi. They had conducted the Punchnama of Gat no. 285. That the Tahsildar Jalna conducted the enquiry and decided on 31/08/2018 that the respondent no. 1 to 4 are in possession and paid the reasonable price. The judgment passed by Tahsidlar on 31/08/2018 is completely illegal and against the provisions of law. That the mutation entry no.2344 is taken by Talathi for depositing the reasonable price, which was challenged before S.D.O. Jalna, who

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dismissed the appeal on 05/06/2017. On the basis of illegal orders and documents the sale permission under Section 50 (B) was granted by Deputy Collector (General Administration) Jalna on 21/11/2016 in favour of respondent no. 5.

16. Shri Vijaywargiya senior advocate for appellant further submit that no proper procedure has been followed by the Revenue Officers while conducting the Punchnama he has placed his reliance on following judicial precedent in the case Kishan S/o. Ganpati Mule (deceased) through L.R's- .. Petitioners V/s. Abdul Razzak S/o. Abdul Kadar and others --- Respondents reported in 2005(3) B C J 139 their Lordship has observed that –

The word "Protected tenant" is defined in Section 2(r); The word "Tenant" is defined in Section 2 (v). Next, the relevant section for the purpose of decision in this petition is Section 34 & 38. Section 34 defines protected tenant which reads thus :

"34 (1) A person shall, subject to the provisions of sub-section (2) and (3), be deemed to be a protected tenant in respect of land if he - (a) has held such a land as tenant continuously.

- (i) for a period of not less than six years, being a period wholly included in the Fasli years 1342 to 1352 (both years inclusive)*
- or*
- (ii) for a period of not less than six years immediately preceding the 1st day of January 1948 or*

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(iii) for a period of not less than six years commencing not earlier than the 1st day of the Fasli year 1353 (6th October 1943) and completed before the commencement of this Act, and

(b) has cultivated such land personally during such period:

(Provided that where the landholder is a minor (or is a serving member of the armed forces) the tenant shall not be deemed to be protected tenant if before the expiration of one year from the date on which the minor attains majority.

On going through the keen observations of the fact of the cited judicial precedent it appears that it is not useful to the case in hand. The Ld. advocate Shri Vijaywargiya further submitted that the Punchnama conducted by Talathi and Circle Inspector has no evidence any value.

17. Shri Vijaywargiya advocate has placed his reliance on following judicial precedent in the case Maruti Balu Patil.. Petitioner V/s. Smt. Sulbha Prabhakar Patil ... Respondents reported in 2007 (1) B C J 81 : 2007 (1) Mh L J 102 their Lordship has observed that Placitum A –

A. *Bombay Tenancy and Agricultural Lands Act, 1948, Section 70 (b)- Maharashtra Land Revenue, Record of rights and Registers (Preparation and Maintenance) Rules, 1971, Rules 30 & 31- Inquiry as to possession of tenant- Duty of Revenue Officer- It is obligatory to give notice to owner of land before visiting site to find out*

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prima facie possession- Panchnama and report showing respondent / tenant in possession without notice, has no evidentiary value.

On going through the keen observations of the fact of the cited judicial precedent it appears these are not useful to the case in hand.

18. On the contrary Shri Gavane advocate for respondent no. 5 submitted that the respondent no. 1 to 4 on 04/07/2016 filed an application before Deputy Collector (Gen Administration) Jalna for permission of the land gut no. 273 admeasuring area 9 hectare 66 R situated at Village Nagewadi Tq. & Dist. Jalna after verifying the record granted sale permission on 21/11/2016 in favour of respondent no. 1 to 4 and Deputy Collector Jalna by order dated 21/12/2017 extended time for execution of sale deed and time was extended. Thereafter Deputy Collector Jalna on the application of the respondent again passed order on 15/09/2018 and granted time for 4 months for execution of sale deed. The father of the present respondent no. 1 to 4 namely Syed Hussain Babanbhai was declared protected tenant in the provision of Section 38 E of the Hyderabad Tenancy and Agricultural Lands Act 1950 that the declaration was made in the name of the Syed Hussain Babanbhai was not challenged by the present appellants or their predecessor in any competent court. As per section 35 of the H.T. & A.L. Act 1950 if the owner wants to dispute the tenancy of the tenant than within one year owner is require to file

Occasion
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proceeding before the appropriate court for disputing the tenancy of the tenant in the present case the original owner who was predecessor of the present appellants namely Eknath Manaji was specifically admitted before Tahsildar that declaration was made in the name of the tenant and he did not file any proceeding for cancellation of tenancy.

19. It is further submitted by Shri Gavane advocate for the respondents that purchase price was also fixed by the Tribunal of Rs. 375 and the interest from 1957 to 1663 of Rs. 78.75 paisa totally amount is Rs. 453.75 paisa was fixed and it also mentioned in Khata Register that protected tenant was Syed Hussain Babanbhai and the name of the owner was shown as Eknath Manaji. It also stated in the Khata Register that purchase price of Rs.453.75 paisa was fixed therefore it is clear that the father of the respondent no. 1 to 4 was declared a tenant after depositing purchase price ownership certificate is required to be issued in the name of the tenant the suit land was also given into the possession of tenant the tenants are ready to deposit purchase price and after depositing the purchase price and following the procedure has their names may be shown in the 7/12 extract the Tahsildar passed any order therefore the respondent no. 1 to 4 made complaint to the Additional Collector Jalna and Additional Collector Jalna by order dated 21/05/2015 directed the Tahsildar the purchase price may be accepted from the respondent no. 1 to 4. That against the said order the present appellants filed appeal

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no. 33/a/2015/Jalna before Maharashtra Revenue Tribunal at Aurangabad and Hon'ble Member M.R.T. Aurangabad by order dated 29/09/2015 allowed the appeal on the ground of jurisdiction and given liberty to the respondent no. 1 to 4 to file application before the Tahsildar that against the Deputy Collector Jalna passed order on 20/05/2016 against the said order the present appellants file appeal no.32/A/2016/J before M.R.T. Aurangabad by order dated 16/08/2017 allowed the appeal and set aside the order of Deputy Collector on the ground of jurisdiction and given liberty the present respondent no. 1 to 4 filed application therefore the respondent no. 1 to 4 filed the application before Tahsildar and said application is allowed.

20. It is further submitted by Shri Gavane advocate that the mutation entry no. 2344 the present appellants filed appeal before S.D.O. Jalna. S.D.O. Jalna by order dated 05/06/2017 rejected the appeal of the appellants. Against the said order of S.D.O. dated 05/06/2017 the appellant filed appeal before Additional Collector Jalna that the Additional Collector Jalna by order dated 21/08/2018 allowed the appeal of the appellants and quashed the order of S.D.O. and cancel mutation entry no. 2344. That against the order of the Additional Collector Jalna dated 21/08/2018 the present respondent no. 1 to 4 filed revision before the Additional Divisional Commissioner Aurangabad. That the Additional Divisional Commissioner Aurangabad by order dated 07/08/2020 allowed the revision of the respondent no.1 to

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4 and set aside the order passed by the Additional Collector Jalna dated 21/08/2018 and confirmed the mutation entry no. 2344 therefore the mutation entry no. 2344 was confirmed and intact.

21. It is submitted that when the matter was pending before Tahsildar Jalna at that time Tahsildar called report from Circle Officer and the concerned Talathi and the concerned officials also submitted their report to the Tahsildar on 10/07/2015 and contended that they have conducted the Punchnama on 06/07/2015 and the tenant i.e. respondent no. 1 to 4 are in possession of the suit land. It is further submitted that after obtaining the permission the respondent no. 1 to 4 executed the sale deed in favour of the respondent no.5 on dated 21/09/2018 and possession was handed over to the respondent no.5. In this regard, he has placed his reliance on following judicial precedent in the case of **Vithal Malhar Kulkarni.. Petitioner Versus Tarabai Anna Patil & another.. Respondents reported in 2003 (2) Bom. C.R. 282 Bombay High Court** their Lordship has observed that –

Bombay Tenancy and Agricultural Lands Act, 1948, Secs.43,32-M,32P & 84 C- Grant of permission for sale- Objection by landlord- On the ground that because land was tenancy land transferred under section 32 of Act, landlord had to be heard before it was permitted to be sold by the tenant- Held, after land is transferred and certificate of purchase issued under Section 32-M to tenant, landlord has no right to object to subsequent disposal of the same.

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It is matter between the tenant (owner) and the authority granting the permission. Even under Section 84-C if transfer of land is found invalid, it has not to got to landlord but to persons as per priority listed in section 84-C(4) and 32P (2)(c) hence landlord has no right to object to the permission for sale. (Para 9,10 & 11).

On going through the keen observations of the facts of the cited judicial precedent it appears that is applicable to the case in hand.

21. Shri Gavane advocate further relied on following judicial precedent in case of Ganpat S/o. Sakharam Deshmukh .. petitioner V/s Yeshwant S/o. Digamber Deshmukh ... respondent reported in 2000 (2) Bom. C.R. 40 their Lordship has observed that Placitum (B)-

(B)- Hyderabad Tenancy and Agricultural Lands Act, 1950, Secs, 38 & 38 E- Protected/Ordinary tenant- Distinction between – Protected tenants certificate of sale made ineffective because he could not pay the price within time in spite of notices – Held, section 38 & 38 E have to be read independently. In case of protected tenant steps contained in section 38 E have to complied with and unlike in case of ordinary tenant sale cannot be made ineffective for mere default in payment. (para8)

On going through the keen observations it appears that is applicable to the case in hand.

Conceding
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22. On going through the entire proceedings it reveals that the father of the respondent no. 1 to 4 was declared as protected tenant the father of the respondent no. 1 to 4 was illegally dispossessed and therefore the proceeding under Section 38 E (i) explanation was initiated by the Tahsildar and the proceeding decided in favour of the tenant and directed the possession of the suit land was restored, to the father of the respondent no. 1 to 4 therefore the notices was issued to the original owner and original owner Eknath Manaji was present before the Tahsildar and his statement was recorded and in his statement he has specifically admitted that the declaration was made in the name of the tenant and he did not file any proceeding for cancellation of tenancy therefore following the procedure the possession of the suit land was given to the tenant who was the father of the respondent no. 1 to 4 on dated 08/04/1963. Thereafter the Punchnama in respect of handing over the possession was conducted and receipt was also given by the father of the respondent no. 1 to 4 in favour of the revenue authority. The copies of the proceeding under Section 38 E (i) explanation of the Punchnama and receipt of possession have been placed on record and on perusal these documentary evidence it reveals that the proceeding was conducted by the Tahsildar and possession was given to the father of the respondent no. 1 to 4 on 08/04/1963.

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23. Further it appears that against the order of Tahsildar Jalna they have filed appeal before the Additional Collector that the appeal filed before Additional Collector was remanded and the Tahsildar decide the matter. Thereafter present appellant filed appeal before Collector Jalna and Collector Jalna by order dated 12/08/2022 rejected the appeal of the present appellants, copy of judgment of Collector Jalna 12/08/2022 has been placed on record, he has confirmed the order passed by Tahsildar dated 18/11/2020 while deciding the appeal by Collector Jalna he has rightly considered that the declaration was made in the name of the tenant and the proceedings under Section 38 E (i) explanation the possession was given to the tenant and the original owner in the proceedings and in that proceeding the submission of the original owner Eknath Manaji on affidavit and he was admitted that the declaration was made in the name of the tenant and he did not file any proceedings with regard to the right of tenancy and the possession of suit land was also handed over to the tenant on 08/04/1963 and the receipt was also given by the tenant in favour of the revenue authority. So there is no any force in the contention of Shri Vijaywarigya advocate for the appellant that there was no any declaration in favour of the tenant regarding tenancy.
24. It is further appear that the respondent no. 1 to 4 are the legal heirs of the tenant and in view of the Section 40 of they are entitled for tenancy right of the purchase price was deposited

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and ownership certificate was issued and therefore the original owner did not remain any right in the suit property and therefore the order sale permission is legal and proper the Ld. advocate Shri Gavane has further relied on the following judicial precedent in the case of **Prakash Raosaheb Pawade & others ...Petitioners V/s. Deorao Hari Pawade & others ... Respondents reported in 2012 (Supp.1) Bom.CR 167** their Lordship has observed that Placitum (B) -

(B) - Hyderabad Tenancy and Agricultural Lands Act, 1950, Sec.38 E- Ownership certificate to protected tenant-Held, section 38(2) shows an option given to protected tenant to purchase. But under Section 38 E there is no such option either to landowner or to protected tenant. An ownership certificate can be issued to the tenant directly without any application either by him or landowners. No time limit is prescribed for said purpose in said provision.

On going through the keen observation of the fact of the cited judicial precedent it appears that is applicable to the case in hand.

25. It appears that after the possession was handed over to the tenant in the year 1963 there is no any document or order to show that the tenancy of the tenant was terminated under Section 19 or Section 44 of H.T. & A.L. Act 1950. Moreover the original owner within period of 2 years did not apply for

Concurred
11-1-2023

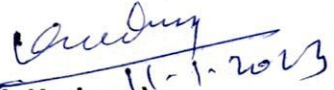
possession under Section 32 (2) of the Tenancy Act and there is no any order to show that, owner is in possession of the suit land under Section 32 (2) of Tenancy Act. Therefore the order passed by Deputy Collector (General Administration) dated 21/11/2016 in case No. 2016.Sasha-Kul-J.Vikri-CR-75 and of subsequent extension of time up to 15/09/2018 in file no.2017-Sasha-Bhusudhar-Kul-J.Vikri-CR-75 are proper, legal and maintainable in the eyes of law. Therefore interference is not warranted in the order passed by Deputy Collector stated above. I therefore answered points no. 1 is in the affirmative and points no. 2 is in the negative.

26. **As to point no. 3** - In the result, I proceed to pass the following order.

ORDER

1. The Appeal No. 1/A/2019/Jalna is here by stands dismissed.
2. The judgment and order passed by Deputy Collector (General Administration) Jalna dated 21/11/2016 in Case No.2016- Sasha-Kul-J.Vikri-CR-75 and of subsequent extension of time up to 15/09/2018 in File No. 2017-Sasha-Bhusudhar-Kul-J.Vikri-CR-75 are hereby made confirmed.
3. No order as to costs.
4. The record and proceeding be return to the concerned authority immediately.

Place : Aurangabad
Dated : 11/01/2023


(V.K. Kadam)
Member,
Maharashtra Revenue Tribunal,
Aurangabad