

**BEFORE THE PRESIDENT, MAHARASHTRA  
REVENUE TRIBUNAL, MUMBAI**

**TNC/REV/RAG/73/21  
TNC/REV/RAG/75/21**

Yakub Baig Trust Panvel  
Erstwhile Mominpada Masjid Yakub Baig Trust  
Through its Trustees

1. Imran Salim Khan
2. Yusuf Khan Akabar Khan
3. Allabaksh Appalal Khan
4. Muhammad Tasalim Mahammad Hussain (Trustee)  
R/o. Mominpada, M.G. Road,  
Tal. Panvel, Dist. Raigad

Applicant/s

V/s.

1. Ananta Ragho Karnuk  
R/o. Ritghar, Tal. Panvel, Dist. Raigad
2. Bhausahab Namdeo Shingade  
R/o. 901-902, 905-908, Shelton Cubics,  
Plot No.87, Sector-15, C.B.D. Belapur,  
Navi Mumbai- 400 614

Respondent/s

**TNC/REV/RAG/74/2021  
TNC/REV/RAG/77/2021  
TNC/REV/RAG/81/2021**

Yakub Baig Trust Panvel  
Erstwhile Mominpada Masjid Yakub Baig Trust  
Through its Trustees

1. Imran Salim Khan
2. Yusuf Khan Akabar Khan
3. Allabaksh Appalal Khan
4. Muhammad Tasalim Mahammad Hussain (Trustee)  
R/o. Mominpada, M.G. Road,  
Tal. Panvel, Dist. Raigad

Applicant/s

V/s.

1. Prakash Mahadu Jadhav  
R/o. Ritghar, Tal. Panvel, Dist. Raigad
2. Bhausahab Namdeo Shingade  
R/o. 901-902, 905-908, Shelton Cubics,



Plot No.87, Sector-15, C.B.D. Belapur,  
Navi Mumbai- 400 614

Respondent/s

**TNC/REV/RAG/78/2021**  
**TNC/REV/RAG/79/2021**

Yakub Baig Trust Panvel  
Erstwhile Mominpada Masjid Yakub Baig Trust  
Through its Trustees

1. Imran Salim Khan
2. Yusuf Khan Akabar Khan
3. Allabaksh Appalal Khan
4. Muhammad Tasalim Mahammad Hussain (Trustee)  
R/o. Mominpada, M.G. Road,  
Tal. Panvel, Dist. Raigad

Applicant/s

V/s.

1. Khandu Bhagaji Tatre  
R/o. Khanav, Tal. Panvel, Dist. Raigad
2. Bhausahab Namdeo Shingade  
R/o. 901-902, 905-908, Shelton Cubics,  
Plot No.87, Sector-15, C.B.D. Belapur,  
Navi Mumbai- 400 614

Respondent/s

Shri. Sachin Punde, advocate for the revision applicant, in all the matters.

Shri. Konde-Deshmukh, advocate for the respondent, in all the matters.

CORAM :Hon'ble Shri K. U. CHANDIWAL, J.  
Heard on :13<sup>th</sup> January,2023  
Dictated/Pronounced on:- 19<sup>th</sup> January,2023  
Transcribed on :- 19<sup>th</sup> January,2023

**-:JUDGMENT:-**

1. Heard finally.
2. These seven revisions by the Landlord Trust question legality and correctness of orders recorded by Ld. Sub Divisional Officer, Panvel dated 4/11/2020 and orders of Ld. Tahsildar, Panvel dated 22/05/2018. The authorities had conferred right of



purchase U/s. 32G of the Tenancy Act 1948 to respondent no.1. Respondent no.2 is purchaser of the properties from respondent no.1.

3. Description of suit properties:- (1) Land Survey No/Hissa No. 13/3, admeasuring 0-59-4H.R. (2) Land Survey No/Hissa No. 13/6, admeasuring 0-12-90 H.R (3) Land Survey No/Hissa No. 13/1, admeasuring 0-39-2H.R (4) Land Survey No/Hissa No. 13/4, admeasuring 0-49-10 H.R (5) Land Survey No/Hissa No. 13/7, admeasuring 0-92-08H.R (6) Land Survey No/Hissa No. 13/5, admeasuring 01-76-3H.R (7) Land Survey No/Hissa No. 13/2, admeasuring 0-6-3 H.R situated at Village Khanav, Tal. Panvel, Dist. Raigad.
4. Shri. Sachin Punde, advocate, criticised order of Ld. Tahsildar & Sub Divisional Officer, Panvel by pointing that entire proceedings are taken up with jet speed and concluded within a span of 42 days from 24/01/2018 to 08/03/2018. He has stressed that there is nothing on record to indicate that the respondent no.1 was cultivating the suit property prior to 1957, barring one entry of 1988-89. He has also pointed that in Consolidation Scheme of suit property reference of Tenant does not reflect. Earlier dropping of the proceeding U/s. 32G of the Tenancy Act 1948 are not challenge by the Tenants. He says, the applicant Trust had exemption certificate U/s. 88B of the Tenancy Act 1948. Right to purchase does not exist.
5. Shri. Konde Deshmukh, advocate for the respondent, claiming tenancy to respondent no.1 has disputed status of the applicant Trust to file the revision and urge to discard the same on this legal aspect. The suit property was never a Trust property in schedule-I of the Trust, it is so reflected even in 1990 registered with Charity Commissioner Mumbai. The Trust has failed to produce exemption certificate or any proof that provisions thereof applicable to the suit property. He has stated, from 1948 the predecessor of the respondents were cultivating the property and remitting rentles to the Landlord/Trust. The possession was never disputed nor any action in terms of Section 29 or 31 of the Tenancy Act 1948 was even initiated. The Tenant has under a valid permission U/s. 43, sold the suit property to respondent no.2 and respondent no.2 is enjoying the same as a owner.
6. After hearing the Ld. Counsels, perusal of the record following points arise for my consideration.



1. Whether the Ld. Sub Divisional Officer, Panvel discharge his obligation as an appellate authority U/s. 74 of the Tenancy Act 1948 ?
2. Whether the Ld. Tahsildar, Panvel appreciated the record to confer right of Tenant for fixation of purchase price in favour of the Tenant/The respondent no.1.
3. What order?

My findings to above points are

1. Ld. Sub Divisional Officer, Panvel fail to appreciate the record being fact finding authority in terms of Section 74 of the Tenancy Act 1948.
2. The Ld. Tahsildar, Panvel did not evaluate the record and gave illegal incentive to the respondent no.1.
3. Revisions are allowed, for following reasons

### **REASONS**

7. The Trust applicant vehemently stressed about exemption from applicability of the Tenancy Act 1948, having conferred with such exemption certificate U/s. 88B of the Tenancy Act 1948. On perusal of record it appears in Civil Suit No. 8/1952 decided on 23/02/1953, there was short of indication for utilisation of the earning from the agricultural property for religious and educational purposes. Paragraph no. 14 of the said order shows that very meagre amount from 15/16<sup>th</sup> share to 2/3 share to be expended on religious, charitable, social and education objects as laid down in Trust Deed dated 19/02/1909. Such arrangement in the Trust Deed basically is contrary to law in terms of Section 88B proviso (ii). The picture of exemption projected by the Trust has failed to ground as in none of the proceedings such exemption certificate issued prior to 1961 is ever produced. Reliance of Mutation Entry of 1961, does not even refer to case number of Ld. Collector and date of order of such exemption certificate. Aggrieved and interested persons were never notified in so called proceedings. In spite of opportunity by the Ld. Tahsildar the Trust has failed to produce exemption certificate. Hence I hold the Trust is not entitled to seek relief under banner of exemption U/s. 88B of the Tenancy Act 1948.



8. The Respondent no.1 at some place challenge Locus Standi of the applicant Trust and at some place claim relation as Landlord and Tenant. This is contrary to law.
9. A person claiming and urging for accepting purchase price, has necessarily to establish existence of unbridled rights as a tenant turn deem purchaser. None of the record/7/12 extract, disclose name of the Tenant to be cultivating property anytime barring one year. This will not generate to accept that predecessor of the respondent no.1 was a Tenant prior to 1/4/1957. The Tenant has failed to tender any evidence showing lawful cultivation in terms of Section 4 of the Tenancy Act 1948. No case of contractual tenancy U/s. 2/18 has figured. The Authorities should have concentrated on this aspect and to have insisted for a declaration U/s. 70(b) of the Tenancy Act 1948. Straight way accepting right to remit purchase price has nakedly rebelled Tenancy Act 1948. There is no well nor any construction in any of the field. If the Tenant claims remitting rentals to Ahamad Baig Yakub, some plausible proof should have been tendered. The respondent no.1 has also stated that in recent past the rental is not paid as nobody from Panvel Masjid Ahamad Baig Yakub Baig was present. There was no injunction to the Tenant to follow legal procedure to remit the rent if the Landlord has ever avoided. Mere words of the relation as a Tenant and Landlord are not sufficient.
10. By Mutation Entry No. 1034 dated 13/09/2011, Mutation Entry No. 1027 dated 09/09/2011, Mutation Entry No.1006 dated 01/08/2011 and Mutation Entry No.991 dated 13/05/2011 the names of respective Tenants in other right column was deleted. Even if the Ld. Tahsildar, Panvel feels that Land Gat No. 13/1 Khanav is not shown in column no. 3 to be of Panvel Masjid Vahivatdar (cultivator) Ahamad Baig Yakub however, it will not diminish the worth of entry in 7/12 extract showing cultivation and enjoyment by Landlord the Trust. The Ld. Tahsildar, Panvel fail to examine any of the record to show that the suit property was cultivated by respondent no.1 or predecessor prior to 01/04/1957. Any mutation without notice to the Landlord, and without any certification, would not bind the landlord. Such Mutation Entry could not have been accepted by the Ld. Tahsildar, Panvel.
11. The Ld. Tahsildar, Panvel apparently did not evaluate the record and hurriedly within a span of 42 days concluded the

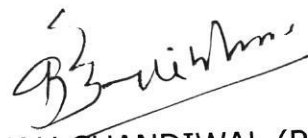
proceeding, virtually denying right to the Landlord to establish and represent its case.

12. The observation of the Ld. Tahsildar, Panvel and the Sub Divisional Officer, Panvel in all the matters is uniform, common, which has prompted the parties/advocate to request to this Tribunal for a common order. The lack of record, evidence, should have been considered on its worth by the Ld. Tahsildar, Panvel and equally by the Ld. Sub Divisional Officer, Panvel. However, unfortunately both the authorities fail to discharge the obligation. The survey of all the facts, therefore concludes as point no. 1 & 2 against the respondent, point no.3 revisions allowed.

### **ORDER**

1. Revision No. TNC/REV/RAG/73/21, TNC/REV/RAG/74/21, TNC/REV/RAG/75/21, TNC/REV/RAG/77/21, TNC/REV/RAG/78/21, TNC/REV/RAG/79/21 and TNC/REV/RAG/81/21, are allowed.
2. The order of Ld. Sub Divisional Officer, Panvel 04/11/2020 and the order of Ld. Tahsildar, Panvel dated 22/05/2018 are set aside.
3. No costs.

Place :Mumbai  
Dated:19/01/2023

  
( Justice K.U.CHANDIWAL,(Rtd))  
President  
Maharashtra Revenue Tribunal,  
Mumbai