IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1368 OF 2006
WITH
INTERIM APPLICATION NO. 7712 OF 2023

Pralhad Dagaji Sonawane)
Age -53 Years,)
R/o at and post Satana)
Taluka Baglan, District Nashik) ...Petitioner/
) Applicant

NAVNATH SITARAM WAGHMARE

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Versus

1. Vishnu Vithoba Gite)
2. Yamunabai Rambhau Gite)
3. Kamlabai Narayan Gite)
4. Govind Narayan Gite)
M/G Kamlabai Narayan Gite)
5. Nirmala Shashikant Jadhav)
6.Hausabai Gyanu Mandlik)
no.1 for self and power of)
attorney holder of Nos. 2 to 6)
residing at Ganeshwadi,)
Post Panchvati, Nashik)
Taluka and District Nashik.) ...Respondents

****

Mr. Vivek M. Punjabi a/w Mr. Priyansh R. Jain, Mr. Sahil Panjwani & Mr. Ritik Gupta for the Petitioner.
Mr. R.D. Soni a/w Mr. Sujay Gawade i/b M/s Shree & Co. for Respondent Nos. 1 to 6.

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CORAM : M.M. SATHAYE, J.
RESERVED ON : 30th JUNE, 2026
PRONOUNCED ON : 19th NOVEMBER, 2026

JUDGMENT :

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1. Invoking Articles 226 and 227 of the Constitution of India, the Petitioner/Landlord is challenging judgment and order dated 04.01.2006 passed by Divisional Commissioner, Nashik in Tenancy Revision No. 73 of 2005 confirming the judgment and order passed by the Sub-Divisional Officer ('SDO' for short), Nashik Sub-Division in Tenancy Appeal No. 16 of 2002 dated 29.07.2005 by which the order of Tahsildar passed in Tenancy Case No. 5 of 1993 dated 07.07.1995 under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 ('the said Act' for short) for fixation of purchase price was confirmed.

BACKGROUND

2. This case has a checkered history. Hence, I am recording the factual background, as submitted by learned counsel for the Petitioner. According to him/Petitioner, following is the chronology of events :

2.1. Agricultural land bearing Survey No.193-A-1/6A (variously recorded as 193-A/6/1-B / 193-A-6/1A) admeasuring 16 Acre with Potkharab 34 Are situated within the municipal limits of Nashik, District Nashik, is the subject matter land.

2.2. In May 1942, father of the Respondents - Mr Vithoba sold the land to father of the Petitioner, Daga ji.

2.3. In June 1943, the Petitioner's father sold part of the land to a third party by name Mr. Sardesai retaining 1 Acre 9 Gunta.

2.4. In March 1948, entry No. 5339 came to be entered reflecting Respondents' predecessor as tenant in the subject matter land.

2.5. Father of the Petitioner transferred the subject matter land in

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favour of the Petitioner, who was a minor at that time.

2.6. Tiller's Day 1st April 1957 dawned !

2.7. On 10.12.1957, the subject matter land was included in the limits of Nashik municipal Council.

2.8. On 07.06.1963, father of the Respondents - Mr Vithoba filed tenancy application under section 32G of the said Act for fixation of purchase price.

2.9. The Petitioner filed Regular Civil Suit No. 451 of 1965 in the Civil Court at Nashik. In view of section 85A of the said Act, the dispute was referred to tenancy Court for adjudication.

2.10. On 29.06.1968, learned Tahsildar Nashik declared the Respondent's father - Vithoba as tenant of the subject matter land in Tenancy Case No. 1 of 1968, which was confirmed in appeal.

2.11. On 29.10.1971, Vithoba filed Application No. 755 of 1971, learned Tahsildar, Nashik rejected price fixation and dropped 32G proceedings holding that on postponed date - 29.05.1959 (from Landlord's section 29/31 application under the said Act), the subject matter land was within municipal limits and therefore provisions of section 32 to 32R of the said Act do not apply, as barred under section 43C of the said Act. Another reason was that the Landlord was minor on Tiller's Day. This order was not challenged by Respondents or their predecessor.

2.12. On 05.03.1993, after a period of more than 22 years, legal heirs of Vithoba - Respondent Nos. 1 to 6 filed Tenancy Application No. 5 of 1993 and reopened the case.

2.13. On 07.07.1995, learned Tahsildar Nashik fixed purchase price

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under section 32G in favour of the Respondents and declared them as purchasers. It is held that the subject matter land was included in the municipal limit from 18.02.1958, which is after Tiller's Day and therefore the Respondents were held entitled to purchase.

2.14. Petitioner filed Tenancy Appeal No. 10 of 1995. This appeal was allowed on 20.10.1997, by the concerned SDO, setting aside order dated 07.07.1995 on the ground of *res judicata* holding that order dated **29.09.1971** has become final. Learned SDO held that since Tahsildar had already decided the issue in the year 1971, same authority could not have reopened the case in fresh application after 22 years.

2.15. On **23.06.1998**, Maharashtra Revenue Tribunal ('MRT' for short) set aside the order of the SDO and remanded the matter for fresh hearing on *res judicata* and postponed date as well as transfer to minor son. This order was passed on Revision No. 178 of 1997 filed by the Respondent. The learned Tribunal held that the learned SDO had not granted an opportunity of hearing to the Respondents, and therefore remanded the matter for fresh hearing.

2.16. On 30.06.2000, concerned SDO allowed the appeal and quashed the order dated 07.07.1995 on the ground of *res judicata* and mutation entry No. 7069 in favour of the Petitioner being unchallenged.

2.17. On 04.09.2001, MRT again allowed the revision filed by the Respondents and again remanded the matter on the ground that service upon the Respondents was doubtful, but no opinion was expressed on merits. This order was passed in Revision No. 26-B/2001.

2.18. On 29.07.2005, the learned SDO dismissed the appeal filed by the Petitioner and confirmed the order of Tahsildar dated 07.07.1995.

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It was held that the subject matter land was included in municipal limits after Tillers' Day. It was also held that Petitioner's share as a minor was not separated by metes and bounds. It was also held that proceedings initiated by the Petitioner's father was withdrawn and not decided on merits. It was held that rights of Vithoba was recorded as tenant since 1948 and the issue regarding non-payment of rent and non-cultivation of land and misuse of land would not come in the aid of the Petitioner's case.

2.19. The Petitioner filed Tenancy Revision Application No. 73 of 2005 before the learned Divisional Joint Commissioner Nashik.

2.20. By impugned order dated 04.01.2006, the learned Divisional Joint Commissioner Nashik dismissed the revision, thereby confirming the order of SDO dated 29.07.2005.

3. Being aggrieved by the said dismissal dated 04.01.2006, the Petitioner/Landlord has filed the present petition. The Petition was admitted on 08.06.2007 and impugned order was stayed.

4. Learned counsel Mr Punjabi submitted as under. That the core controversy in the matter is that 32G (price-fixation) issue was conclusively decided by Tahsildar on 29.09.1971, thereby dropping the same, because landlord, being minor, had postponed the tiller's day. That since the land was brought within municipal limits, bar under section 43C of the said Act, also applied. That these findings having attained finality, reopening of the case after more than 22 years (in the form of Tenancy Case No. 5 of 1993) is barred by *res judicata.* Following judgments in support of his case:

1. Patel Maganbhai Jethabhai Vs. Somabhai Sursang 1958

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SCC Online Bom 116.

2. Ishverlal Thakorelal Almaula Vs. Motibhai Nagjibhai 1965 SCC Online SC 102.

3. Anna Bhau Magdum since deceased by his legal representatives Vs. Babasaheb Anandrao Desai (1995) 5 SCC 243.

5. On the other hand, Mr Soni submitted as under. That the Respondents or their predecessor were tenants and cultivating the said land since the year 1948 and continued to do so on Tiller's day i.e. 01.04.1957. That Respondents had initially applied under section 32G of the said Act for fixation of purchase price but that application was not decided on merits and was in fact dismissed on maintainability and on incorrect premise that the land was in the municipal limits on the Tiller's day and on that ground that Landlord was minor, postponing deemed purchase. He submitted that factually the said land was included in the municipal limits after Tiller's Day, on 28.03.1958. He relied on public notice and notification to the effect which were produced before Tahsildar. He submitted that the alleged transfer in the name of minor was only by way of application by father on 06.01.1957 on the ground of convenience and there is neither any document of transfer nor any partition in the family of the landlord. That the mutation entry whereby the name of minor son was recorded is without any notice to the tenant, whose name appeared in the other rights column. That the application for transfer was without any supporting document about partition and was obviously to circumvent the provisions of the said Act. He submitted that on all these grounds, Tenancy Application No. 5 of 1993 has been rightly allowed, fixing purchase price. He submitted that purchase price is already paid and

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certificate under section 32M is also granted. That this order is confirmed up to Divisional Commissioner. He submitted that the argument of *res judicata* is misconceived in as much as the earlier order was not on merits but was on wrong factual/legal footing. He further submitted that the Landlord had unconditionally withdrawn his application under section 29 read with 31 of the said Act and therefore the proceedings by Landlord stand concluded. He relied on following judgments in support of his case:

1. Navinchandra Ramanlal Vs. Kalidas Bhudarbhai and Anr. AIR 1979 Supreme Court 1055.

2. Mahadeo Vithoba Nikam Vs. Gajanan Pandurang Kulkarni (1998) 9 SCC 716.

3. L.J. Kriplani Vs. Manik Aditwar Patil and Ors. (2000) 3 ALL MR 281.

4. Zoroastrian Anjuman Fund Trust and Ors. Vs. Chimanaji Jayaram Mali 2009 (4) ALL MR 795.

REASONS AND CONCLUSION

6. I have considered the rival submissions and perused the record.

7. The first submission is that the issue regarding price fixation under 32G of the said Act was conclusively decided by Tahsildar under order dated 29.09.1971 and therefore the said issue could not have been reopened after a long gap of 22 years in Tenancy Case No. 5 of 1993. Perusal of order dated 29.09.1971 clearly indicates that the order relies upon an earlier order dated 29.05.1959, which is an order passed in absence of the tenant. Perusal of the said order further indicates that

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in fact it is an order rejecting the application of the Landlord, made under section 29 read with 31 of the said Act. The said order was passed when the landlord Mr. Dagaji gave application stating that the subject matter land belongs to minor Prahlad (present petitioner) and the same is within the municipal limits of Nashik Municipal Council and therefore the landlord does not want to proceed further. This order can hardly be said to be an order adjudicating rival contentions. The Tahsildar, while passing order dated 29.09.1971 relied upon this order dated 29.05.1959 holding that the said was the postponed date and the subject matter land was included in municipal limits and therefore section 32 to 32R will not apply in view of bar under section 43C of the said Act. This order presupposes that the earlier order dated 29.05.1959 is a correct order.

8. In this respect, it is material to note that there is nothing on the record to show that on Tiller's day, there was partition by metes and bounds in the family of the landlord keeping subject matter land in the name of a minor separately. Mutation Entry No. 7069 relied upon in this behalf dated 06.01.1957, clearly indicates that the said entry was made on a plain application by Landlord requesting to enter the subject matter land in the name of minor 'for convenience'. There is nothing to indicate that partition had taken place in the Landlord's family on the said day or that the other shareholders had applied or agreed for such partition. In that view of the matter, for postponement to happen under section 32F of the said Act, the fact of share of minor in joint family to be separated by metes and bounds before 31.03.1958 is necessary. In fact under proviso to section 32F satisfaction of Mamlatdar and enquiry that share of such minor person is separated having regard to area assessment, classification and value of land is necessary. Nothing of this

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sort is on record. Also, at the relevant time, Dagaji (father of Petitioner) was a member of joint family outside the category of being minor. Similarly worded provision can also be seen in proviso to Section 31(3) of the said Act. Therefore, the very basis of order dated 29.09.1971 (that the landlord was minor and therefore deemed purchase is postponed) cannot be accepted. For the same reason, the judgment of **Anna Bhau Magdum (supra)** will not help the Petitioners, because case of landlord being minor as required under 32F of the said Act is not sufficiently proved in the present case.

9. The next thing that was considered in the said orders is that the subject matter land is situated within the municipal limits and therefore the Landlord did not want to proceed with the matter. This aspect has to be considered in the backdrop of facts of the present case where there is nothing to indicate that the authority has applied its mind on the effect of subject matter land getting included in the municipal limits. In fact, the said order dated 29.05.1959, simply records that the Landlord did not want to proceed with the application because according to Landlord, inclusion of subject matter land in municipal limits is the reason for not proceeding. In that view of the matter, there is no real adjudication about how the subject matter land being included in municipal limits would affect the application of the said Act or how bar under section 43C thereof would apply.

10. So far as **Patel Maganbhai Jethabhai (supra)** is concerned, Full Bench of this Court has determined that the proviso to Section 43C of the said Act is retrospective in nature, thereby restoring and protecting tenant rights acquired under the original 1948 Act, despite intervening legislative amendments that had temporarily excluded certain

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municipal areas from the Act's jurisdiction. This judgment supports the case of the Respondents / tenants because in the present case at hand, the subject matter land was included in Municipal area on 18.02.1958, which is after tiller's day (01.04.1957) and therefore the tenant had acquired deemed purchaser's right by then.

11. So far as **Ishverlal Thakorelal Almaula (supra)** is concerned, Hon'ble Supreme Court affirmed that the 1956 amendment was intended to protect agricultural tenants by retrospectively undoing the exclusions introduced in 1952, thereby preserving vested tenancy rights. The Hon'ble Supreme Court upheld the retrospective operation of the proviso to Section 43C and held that tenancy rights acquired under the 1948 Act on or after 28.12.1948 stood restored, notwithstanding their exclusion by the 1952 Amendment. It further held that questions relating to whether a person was a tenant or protected tenant, and whether the tenancy was validly terminated, fell within the exclusive jurisdiction of the Mamlatdar and the Civil Court was required to refer such issues to the Mamlatdar under Section 85A and decide the suit in accordance with his findings. It highlighted that the restoration of statutory rights must be recognized in pending litigation, and the final resolution of such suits must be consistent with the findings of the authorized revenue officials. In the present case, issue involved is not about suit or reference to Mamlatdar, but if the overall ratio of the judgment is seen, it will not help the Petitioners.

12. In the peculiar facts of this case, it is important to note that the subject matter land was included in municipal limits on 18.02. 1958, which was declared in newspaper under public notice dated 28.03.1958. Considering both these dates, it is clear that the subject

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matter land was outside municipal limits on the Tiller's Day (01.04.1957) and was included within the municipal limits after the Tiller's Day. Also it is clear, as explained above, that on Tiller's Day, there was no disability (minority of landlord) as provided under section 32F of the said act. Hence, no postponement took place, so far as rights of the tenant is concerned and therefore it cannot be said that section 32 to 32R did not apply or bar under section 43C applied.

13. Having said that, what remains to be seen now is whether order dated 29.09.1971 can be said to act as a bar of *res judicata*. The authorities have rightly considered that since there is no adjudication on merits under order dated 29.09.1971, the same cannot act as *res judicata*.

14. Also, so far as the argument of re-opening of proceedings after more than 22 years is concerned, in **L.J. Kriplani (Supra)**, it is clearly held by this Court that merely because tenant initiates the proceedings belatedly, it cannot rob him of the right, which is crystallised in his favour on Tiller's Day of having become a deemed purchaser. It is also held that provisions and section 32G of the said Act are mainly for determining purchase price in respect of land, which has been 'deemed to have been purchased' by the tenant and therefore delay in initiating proceedings by tenant cannot disentitle them from the relief. This case directly supports the Respondents.

15. It is important to note that 32M certificate is already issued in favour of the respondents' predecessor.

16. Viewed in the light of what is observed above, when the impugned order is perused, it is seen that the learned Divisional

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Commissioner, who was authorized to hear the tenancy revision at the relevant time (under section 76 of the said Act) has considered the entire history and factual backdrop of the case. The learned Commissioner has considered the circumstances in which the transfer in the name of minor has been effected. The learned Commissioner has considered M.E.No.7069 and has rightly concluded that the transfer does not appear to be the result of partition among family members. The learned Commissioner has considered the order dated 29.09.1979 and has rightly held that it was passed *ex-parte* behind the back of the tenant. The learned Commissioner has rightly held that the landlord Mr. Dagaji himself requested not to proceed with his application (filed under section 29 read with 31 of the said Act) and therefore, the said application was rejected. The learned Commissioner has rightly held that the plea of the landlord that 'date of deemed purchase was postponed' is not tenable. The learned Commissioner has also rightly concluded that the subject matter land was included in municipal limits after Tiller's Day based on documentary evidence.

17. In the aforesaid facts and circumstances and for reasons indicated above, three authorities have held in favour of the respondents/tenants. No perversity is found in the concurrent findings. The view taken by the authorities below is the most probable view. Hence, there is no reason to interfere in the limited writ jurisdiction.

18. In the result, there is no merit in the petition. Writ petition is accordingly dismissed. Interim relief is vacated. Rule is discharged. No order as to cost. In view of dismissal of writ petition, pending interim application (for early hearing) is also disposed of.

19. At this stage, learned counsel for the Petitioner seeks

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continuation of interim relief that was granted in favour of the Petitioner during pendency of the petition. Learned counsel for the Respondents have opposed the request. Considering that Petitioner was protected during pendency of the petition, the operation of this order is stayed for a period of 6 weeks only.

20. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)

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