



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 7237 OF 2023**  
**WITH**  
**WRIT PETITION NO. 7403 OF 2023**

1. Smt. Satybhamabai Rajaram Khole Decd. Thr.  
Lhr Dr. Medha Vinayak Khole .

2. Varsha Vinayak Khole (deceased)  
Through the legal Khole Dr. Medha Vinayak Khole,  
Age, 56 years, Occ :- Service,  
R/at : Sita Park, 18, Shivajinagar,  
Pune- 411005.

**...Petitioners**

**Versus**

1. Madhukar Yamauji Parkhi  
(since deceased through the legal heirs)

1A. Arjun Madhukar Parkhi.

1B. Jeevan Ulhas Parkhi.

1C. Dasharath Madhukar Parkhi.

1D. Sopan Madhukar Parkhi

All Residing At: Mann, Taluka Mulshi,  
District Pune.

1E. Sou. Sushila Balasaheb Tapkir  
R/at : Flat No. 3, Sushilaraj Park,  
Shitolenagar, Old Sangvi,  
Pune 411027.

1F. Sou. Vimal Ganpat Mhaske  
R/at: Dalilmb Shindavane,

Taluka Daund, District Pune

2. Mahendra Sampatrava Godage  
R/at: Flat No. B/102, Gold Cost Society,  
Pune 411008.
3. Hemlata Dnyaneshwar Shinde  
R/at: 1076/13, Vidyavihar Colony,  
Shivajinagar, Pune.

**...Respondents**

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*Senior Advocate A. V. Anturkar, i/b, Amol Gatane, & Adv. S. B. Deshmukh,  
for the Petitioner in both matters.*

*Senior Advocate Mr. Y. S. Jahagirdar, a.w, Adv. K. S. Dewal, i/b, Mr.  
Yogesh Thorat & Adv. D. D. Shinde, for the Respondent Nos. 2 & 3.*

*Adv. S. G. Karandikar, i/b, Adv. Ankita Pandit for the Respondent Nos. 1(a)  
to (1e).*

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**CORAM : SHARMILA U. DESHMUKH, J.**

**RESERVED ON : February 03, 2026**

**PRONOUNCED ON : March 05, 2026**

**JUDGMENT :**

1. **Rule.** With consent Rule made returnable forthwith and taking up for final disposal.
2. The subject property in both Petitions is the same and the proceedings arise between the same parties. Common submissions were canvassed with consent and both Petitions are being disposed of by this common judgment.

3. Writ Petition No. 7237 of 2023 challenge the order of dismissal by Maharashtra Revenue Tribunal [for short "**MRT**"], Pune Bench dated 23<sup>rd</sup> February, 2023 in Revision Application No. P/VIII-5-2020, the order of Sub-Divisional Officer dated 20<sup>th</sup> March, 2020 (wrongly typed in the prayer clause as 28<sup>th</sup> March, 2020) and order of Tahsildar and Agricultural Land Tribunal dated 17<sup>th</sup> May, 1977.

4. Writ Petition No. 7403 of 2023 challenges the Judgment and order dated 23<sup>rd</sup> February, 2023 passed by MRT in Revision Application No. P/VIII-5-2020 and P/IX/4/2021 dismissing the revision filed against the order of Sub-Divisional Officer dated 20<sup>th</sup> March, 2020 and 3<sup>rd</sup> June, 2020 in respect of fixation of purchase price and grant of sale permission respectively.

5. The facts of the case are one Rajaram Damodar Kolhe, who was the pre-decessor in title of the present Petitioner was the owner of subject property being Old Survey No. 335/2 New Survey No. 286/2 and Old Survey No. 336/3 New Survey No. 287/3 situated in Village Maan, Taluka Mulshi, District Pune. Rajaram obtained certificate under Section 88C of the Maharashtra Tenancy and Agricultural Lands Act, 1948 [for short "**Tenancy Act**"] and subsequently filed an application under Section 33B of the Tenancy Act for termination of tenancy of the tenant Yamaji, the pre-decessor in title of the Respondents herein and

for eviction of the tenant Yamaji Ramji Parakhi. Vide order dated 4<sup>th</sup> October, 1962, the Tahsildar allowed the application and passed eviction order against Yamaji. An Appeal was preferred against the order of eviction and vide order dated 28<sup>th</sup> March 1963, the Sub-Divisional Officer allowed the appeal and set aside the order dated 4<sup>th</sup> October 1962 evicting Yamaji. In revision by Rajaram, vide order dated 24<sup>th</sup> December, 1963, MRT set aside order of the Tahsildar as well as the order of the Sub-Divisional Officer and remanded the matter for fresh consideration.

6. After remand, the Tahsildar passed order on 18<sup>th</sup> April 1968 in favour of Rajaram as against which appeal was preferred by Yamaji and vide order dated 22<sup>nd</sup> November 1968, the Sub-Divisional Officer [for short "**SDO**"] set aside the order of the Tahsildar holding Section 88C certificate to be void. On 27<sup>th</sup> January, 1970, MRT dismissed the Revision filed by the Rajaram and confirmed the order dated 22<sup>nd</sup> November, 1968.

7. The Respondent tenant initiated proceedings under Section 32G of Tenancy Act and vide order dated 16<sup>th</sup> October, 1975, the application was granted and vide order dated 17<sup>th</sup> May 1977, the purchase price was fixed under Section 32G holding the tenant to be deemed purchaser upon rejection of Section 33B application on 22<sup>nd</sup> November,

1968 by the SDO.

**8.** On 17<sup>th</sup> January 1964, in civil proceedings, the subject property of Rajaram was auctioned and his wife – present Petitioner purchased the subject property. Against the order dated 17<sup>th</sup> May, 1977 fixing the purchase price in favour of the Respondent tenant, the present Petitioner filed Tenancy Appeal No. 26 of 1977 which was allowed by the Sub-Divisional Officer and the matter was remanded vide order 25<sup>th</sup> March, 1978. The Petitioner filed revision application before MRT and vide order dated 16<sup>th</sup> June, 1979, MRT dismissed the Revision Application and the order of Sub-Divisional Officer remanding the matter attained finality.

**9.** For the period from 16<sup>th</sup> June, 1979 till 28<sup>th</sup> March 2017, though the matter was remanded, there was no further proceeding. On 29<sup>th</sup> March 2017, the Respondent-tenant filed an application seeking reinquiry as per order of remand. On 13<sup>th</sup> July, 2018, the Tahsildar granted Section 32M certificate in favour of the tenant. The Petitioner preferred Tenancy Appeal No. 20 of 2018 before the Sub-Divisional Officer and vide order dated 20<sup>th</sup> March, 2020, the appeal came to be dismissed. On 3<sup>rd</sup> June, 2020, permission was given by the SDO for sale of the subject property under Section 43 of the Tenancy Act.

**10.** Revision Applications were filed being P/VIII-5-2020 against the

order dated 20<sup>th</sup> March, 2020 in Section 32G proceedings in favour of the Respondent tenant and P/IX-4-2021 challenging the sale permission given under Section 43 of the Tenancy Act. Both Revisions came to be dismissed leading to the present Petitions.

**11.** Mr. Anturkar, learned Senior Advocate appearing for the Petitioners has tendered a chart detailing the litigation between the parties. He would submit that the finding of MRT is that the Respondent was tenant of the subject property on 1<sup>st</sup> April, 1957 however, after the decision on Section 33B application, the present owner of the subject property is the Petitioner who acquired rights in the property on 17<sup>th</sup> January, 1964 and therefore, the same is the date for the purpose of fixing the purchase price under Section 32G. He submits that the said finding has not been challenged by the Respondents and has attained finality. He submits that the MRT having rendered a finding that the tiller's day in the present case is 17<sup>th</sup> January, 1964, the provisions of Section 32 O governs the present proceedings as the tenancy is created after 1<sup>st</sup> April, 1957. He submits that right of a tenant whose tenancy is created after the tiller's day to purchase a land is subject to an intimation to be given in that behalf to the landlord within a period of one year from commencement of such tenancy. He submits that admittedly in the present case there is no

notice which is given by the tenant to purchase the said land which renders the purchase ineffective under Section 32P of the Tenancy Act leading to the consequence of the tenant being summarily evicted and land being surrendered to the former landlord.

**12.** He submits that the certificate issued to Rajaram under Section 88C could have been challenged only by an appeal under Section 88C (5) and any stray observation in other proceedings cannot result in disturbing the Section 88C certificate. He submits that the MRT having given a finding of the tiller's day in the present case being 17<sup>th</sup> January, 1964, the only consequence of the purchase being rendered ineffective is the restoration of the land in the former landlord.

**13.** *Per contra* Mr. Karandikar, learned Counsel appearing for the Respondent – Tenant would submit that in the Revision Application filed by the Petitioner arising out of the Section 32G proceedings, the arguments about Section 32O and 32P of Tenancy Act were not canvassed. He would further point out that the Petitioner in revision relied upon the provisions of the Section 32G of the Tenancy Act and in the present proceedings contend about non applicability of Section 32G of Tenancy Act.

**14.** He submits that in the second round of litigation before the Tahsildar under Section 32G proceedings, the issue was as regards the

price relating to the trees which was recalculated, fixed, and additional price was paid. He submits that in the appeal preferred before the Sub-Divisional Officer, the Petitioner's stand was that the tenant could not resile from the non-willingness demonstrated earlier. He submits that the challenge before the MRT was on the ground of the order of possession by the Tahsildar on 4<sup>th</sup> October, 1962, the finality of certificate under Section 88C, the tenant not being in cultivation on 1<sup>st</sup> April, 1957, the non-application of Section 32 to 32R of the Tenancy Act upon Section 88C certificate being issued and non-willingness of the tenant. He submits that in the present Petition, a completely different case is sought to be set out and not only the order of the Tribunal but also the order passed by the Sub-Divisional Officer of 20<sup>th</sup> March, 2020 and of the ALT dated 17<sup>th</sup> May, 1977 is sought to be challenged which is impermissible.

**15.** He submits that Section 32O governs tenancy created after tillers' day and will not apply to the present Petitioners, who were tenants on 1<sup>st</sup> April, 1957. He submits that Section 88C gives exemption from certain provisions to land leased by persons with annual income not exceeding Rs.1,500/- and therefore, reliance on Section 88C implies an admission that the land was leased and there is no question of any new tenancy being created for applicability of Section 32O. He submits

that the exemption under Section 88C is individual centric and would not cover the subsequent purchaser i.e., his wife. He has drawn attention of this Court to the provisions of Sections 33A, 33B and 33C to contend that the subsequent purchaser is an uncertificated landlord. He submits that upon rejection of the application under Section 33B, the tenant becomes deemed purchaser, whether the rejection was on 22<sup>nd</sup> November, 1968 or 27<sup>th</sup> January, 1970 as the landlord was uncertificated.

**16.** Mr. Jahagirdar, learned Senior Advocate appearing for Respondent No. 3 adopts the submissions of Mr. Karandikar and would submit that the Revision Application was filed against the order dated 28<sup>th</sup> March, 1963 and on 18<sup>th</sup> April, 1968, the Tahsildar passed an order in favour of Rajaram and during these proceedings Rajaram did not disclose the order of auction sale in favour of his wife on 17<sup>th</sup> January, 1964. He submits that the pleadings in the Petition challenging the sale permission granted under Section 43C of the Tenancy Act conveys an impression as if the proceedings have been adjudicated without the knowledge of the present Petitioner whereas Rajaram is the husband of the present Petitioner.

**17.** In rejoinder, Mr. Anturkar would submit that it is not disputed that Section 88C certificate is person centric. He submits that as held

by MRT, the tillers' day is 17<sup>th</sup> January 1964 which takes away the protective umbrella of deemed purchase on 1<sup>st</sup> April, 1957 and a new tenancy is created between the present Petitioner and the tenant. He would further submit that in Section 32G proceedings before the Additional Tahsildar, the tenant was held to be deemed purchaser on the date on which the application under Section 33B has been finally decided i.e. 22<sup>nd</sup> January, 1968 and the MRT has held the date to be 17<sup>th</sup> January, 1964 and therefore there are two deemed dates which necessitate the setting aside of the impugned order.

**18.** Rival contentions now fall for determination.

**19.** The issue to be determined is whether the auction sale of the subject property to the uncertificated landlord resulted in creation of new tenancy after the tiller's day i.e. 1<sup>st</sup> April, 1957 between the Petitioner and the Respondent tenant to which the provisions of Section 32O and Section 32P will apply.

**20.** There were two streams of litigation initiated between the parties. One segment of litigation flows from the certificate granted under Section 88 C of Tenancy Act and its culmination into rejection of application under Section 33B of Tenancy Act seeking termination of tenancy, which has attained finality. The exemption granted to leased land by virtue of section 88C certificate gives a protective umbrella to

the landlord against deemed purchase by tenant under Section 32 of Tenancy Act. The finding of SDO in the order of 22<sup>nd</sup> November, 1968, is that the exemption granted under Section 88C is in respect of land exceeding the economic holding and is granted without jurisdiction and is void. It further held that such void certificate does not give the landlord a right to apply for possession under Section 33B of Tenancy Act. The order not only rejected the application under Section 33B but also resulted into a declaration of Section 88C certificate being void.

**21.** The second set of litigation arose out of Section 32G proceedings initiated by the Respondent tenant which was allowed vide order dated 16<sup>th</sup> October, 1975. The purchase price was fixed vide order dated 17<sup>th</sup> May, 1977. The order of 17<sup>th</sup> May, 1977 was challenged by the Petitioner before the SDO in Tenancy Appeal 26 of 1977 and vide order dated 25<sup>th</sup> March, 1978, the SDO remanded the matter, which order was upheld by MRT. The challenge by the Petitioner was only to the order of 17<sup>th</sup> May, 1977 fixing the purchase price and upon remand the ALT has revised the purchase price. The order of remand dated 25<sup>th</sup> March, 1978 directed inquiry into whether Survey No 336/3 was grass land, into the description/valuation of trees, rent in respect of other land etc.

**22.** In the year 2017, the Respondent tenant applied for conducting

the re-inquiry as directed by order of 25<sup>th</sup> March, 1978. Despite service of notice by ALT, the Petitioner did not appear. After due consideration, the ALT fixed the revised purchase price of subject property vide order dated 13<sup>th</sup> July, 2018 and Section 32M certificate was issued. The order was upheld by SDO vide order dated 20<sup>th</sup> March, 2020 and sale permission was granted vide order dated 3<sup>rd</sup> June, 2020 and challenge by the Petitioner in the MRT failed, which led to the present Petitions.

**23.** The appeal before the SDO was against the order of 17<sup>th</sup> May, 1977 on the ground that the subject property is grass land, the possession was handed over to the landlord, no opportunity of hearing, earlier non willingness of tenant to purchase the entire property. Before the MRT, the same contentions were advanced as to the possession being handed over to the landlord, the rejection of Section 88C certificate could not be done by SDO, the tenant was not occupant of the subject land on tillers day, the effect of grant of Section 88C certificate, non willingness of tenant to purchase the entire property. Before this Court for the first time, the contentions have been raised as regards the applicability of Section 32O of Tenancy Act and creation of new tenancy between the Petitioner and Respondent tenant, which could not have been raised for the first time in proceedings under Article 227 of Constitution of India. On this count alone, the Petitions

deserve to be dismissed. However, this Court has proceeded to consider the said submissions.

**24.** The SDO vide order dated 22<sup>nd</sup> November, 1968 held the certificate granted under Section 88C to be void and dismissed the Section 33B application. The contention of Mr. Anturkar is that the certificate granted under Section 88C could be challenged only by way of appeal to the Collector under Section 88(5) and would therefore, stress on subsistence of Section 88C certificate. I am unable to accept that Section 88C certificate still subsists as it has not been set aside in proceeding under Section 88C(5). The certificate was declared a void document and granted without jurisdiction. Such declaration of void document could be granted even in collateral proceedings. The result of the Section 88C certificate being declared void is that it becomes non est in law, void *ab initio* and resultantly, does not convey any rights to Rajaram. The declaration of Section 88C certificate being void has attained finality and cannot be ignored as sought to be contended.

**25.** The order of SDO was passed on 22<sup>nd</sup> November, 1968 by which time the subject property was sold to Petitioner, however, the SDO was not informed about the said auction sale. In any event the certificate under Section 88C being person centric did not grant any right to the Petitioner of exemption of the leased lands from the provisions of

Section 32 to 32 R. The effect of order of SDO dated 22<sup>nd</sup> November, 1968 resulted in Rajaram being an uncertificated landlord and continuation of the Respondent tenant's tenancy and resultant deemed purchase on tiller's day i.e. 1<sup>st</sup> April, 1957. The statutory interdict by reason of Section 88C certificate stood removed upon the certificate being declared void and related back to deemed purchase by the Respondent tenant on tiller's day of 1<sup>st</sup> April, 1957. The Petitioner upon purchase of the subject land merely stepped into the shoes of Rajaram and did not affect the Respondent's statutory purchase of the subject land under Section 32 of Tenancy Act. The deemed date whether of 22<sup>nd</sup> November, 1968 or 17<sup>th</sup> January, 1964 as held by different authorities cannot override the statutory scheme of Section 32 of Tenancy Act. The tenancy continued and the tenant became the deemed purchaser on 1<sup>st</sup> April, 1957.

**26.** The MRT has considered the Mutation Entry No 1075 dated 20<sup>th</sup> August, 1944 recording the name of the tenant in respect of the subject property. Mr. Anturkar would rely on paragraph 6.2 of the impugned order to contend that MRT has held that the purchase of subject property by the Petitioner on 17<sup>th</sup> January, 1964 makes that date the tillers day for purchase of the subject land. In my view, the same is an incorrect reading of the said paragraph. Careful reading of

paragraph 6.2 of the impugned order indicates that MRT has recapitulated the findings in the earlier order of ALT of 16<sup>th</sup> October, 1975 and the same does not constitute the finding of MRT. Upon reading of the order of 16<sup>th</sup> October, 1975, I do not find any such observation recorded by ALT and it appears to be a factual error on part of MRT. It needs to be noted that with removal of Section 88C certificate, the statutory scheme of Section 32 stood revived and related back to the tillers day i.e. 1<sup>st</sup> April, 1957. There could not be any shifting of tiller's day to the date of auction sale by Petitioner and resultant creation of new tenancy.

**27.** By the present Petition, the Petitioner has challenged even the order of fixation of purchase price by the ALT on 17<sup>th</sup> May, 1977 which was already challenged and the matter was remanded. There cannot be any fresh challenge to the order of 17<sup>th</sup> May, 1977.

**28.** As the certificate under Section 88C was declared void, the statutory interdict of exemption from provisions of Section 32 to 32 R was removed and tenancy related back to the tillers day of 1<sup>st</sup> April, 1957. The subsequent purchase by the present Petitioner effects a change in the ownership of the subject land from Rajaram to his wife and will not impact the tenancy of Respondent tenant and deemed purchase on 1<sup>st</sup> April, 1957. The order of 16<sup>th</sup> October, 1975 allowing

the Respondent tenant's application under Section 32G was allowed and not challenged resulting in the Respondent tenant being held to be the deemed purchaser of the subject land on tiller's day i.e. 1<sup>st</sup> April, 1957. The auction purchase in the year 1964 did not result in creation of new tenancy between Petitioner and the tenant, as there was no termination of tenancy, no handing over of possession and by reason of purchase, the Petitioner merely stepped into the shoes of Rajaram. Hence, there is no question of application of Section 32O of the Tenancy Act.

**29.** In light of the above discussion, there is no merit in the Petitions. The Petitions are dismissed. Rule stands discharged.

**30.** In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of.

**[SHARMILA U. DESHMUKH, J**