

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8642 OF 2013

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Kisan Bhimaji Khopade ... Petitioner
V/s.
Madhukar Shankar Palshikar,
Since deceased through his LRs. & Ors. ... Respondents

**WITH
CIVIL APPLICATION NO. 61 OF 2021
IN
WRIT PETITION NO.8642 OF 2013**

Kisan Bhimaji Khopade ... Applicant
V/s.
Madhukar Shankar Palshikar,
Since deceased through his LRs. & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO. 239 OF 2026
IN
WRIT PETITION NO.8642 OF 2013**

Suresh Madhukar Palshikar ... Applicant
V/s.
Kisan Bhimaji Khopade ... Respondents

Mr. P. B. Shah with Mr. Kayval P Shah, for the
Petitioner.

Mr. Prathamesh Bhargude a/w Sumit Sonare, for
Respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : MAY 6, 2026

PRONOUNCED ON : MAY 7, 2026

JUDGMENT:

1. By the present Writ Petition instituted under Articles 226 and 227 of the Constitution of India, the Petitioner has called in question the legality, correctness, and propriety of the Judgment and Order dated 29 April 2013 passed by the learned Member, Maharashtra Revenue Tribunal, Pune in Revision Application No. TNC/REV/149/2007/P.

2. The facts giving rise to the present Petition, in brief, are that the father of Respondent No.1, namely late Shankar Bala Palshikar, was admittedly the owner of the agricultural land situated at Village Shiravali, Taluka Bor, District Pune, bearing Gat No.132, admeasuring 2 Hectares and 40.7 R along with Potkharab land admeasuring 0 Hectare and 66.5 R. According to the Petitioner, the said Shankar Bala Palshikar had inducted Bhimaji Khopade, who was the father of the present Petitioner, as a permanent tenant in respect of the said agricultural land and had created tenancy rights in his favour for cultivation thereof. It is the specific case of the Petitioner that the father of the Petitioner had been cultivating the subject land continuously and uninterruptedly as a tenant for a period exceeding 35 years and, after his demise, the Petitioner succeeded to the tenancy rights and continued to cultivate the land in the same capacity. It is further the case of the Petitioner that Khand/rent in respect of the subject land was being regularly paid to Respondent No.1. However, due to cordial and longstanding relations between the parties, no formal receipts acknowledging such payment came to be issued by the Respondents and, correspondingly, no insistence for issuance of such receipts was

made by the Petitioner.

3. The Petitioner has further averred that late Shankar Bala Palshikar as well as the Respondents were residing at Bhor and were engaged in service for earning their livelihood and, therefore, were never personally cultivating the subject agricultural land. According to the Petitioner, even after the demise of late Shankar Bala Palshikar, the Respondents neither visited the subject land nor undertook any agricultural operations thereon. The Petitioner asserts that he continued to remit 6 Man of rice towards Khand/rent to the Respondents. It is further contended that the Respondents were not possessing any agricultural implements, cattle or other necessary means ordinarily required for agricultural cultivation, which circumstance, according to the Petitioner, clearly probabalises the case that the Respondents themselves were not cultivating the suit land personally.

4. In the aforesaid background, the Petitioner instituted Tenancy Case No.2 of 2003 before the learned Tahsildar, Bhor seeking a declaration that he was a permanent tenant in respect of the subject land. The said proceedings came to be contested by Respondent No.1 by filing his say and opposing the claim of tenancy raised by the Petitioner. During the course of the proceedings, both sides adduced oral as well as documentary evidence in support of their respective contentions.

5. Upon appreciation of the oral and documentary evidence available on record and after considering the rival submissions advanced on behalf of the parties, the learned Tahsildar, Bhor was

pleased to allow the application preferred by the Petitioner and declared the Petitioner to be a permanent tenant under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948. Being aggrieved by the said decision, Respondent Nos.1 and 2 preferred an Appeal under Section 74 of the said Act before the learned Sub Divisional Officer, Bhore Sub Division, Pune challenging the findings recorded by the learned Tahsildar.

6. The said Appeal was resisted by the present Petitioner by supporting the findings recorded by the learned Tahsildar. The learned Sub Divisional Officer, after hearing the parties and upon re appreciation of the material placed on record, was pleased to dismiss the Appeal and confirmed the findings as recorded by the learned Tahsildar holding in favour of the Petitioner.

7. Being dissatisfied with the concurrent findings recorded by both the authorities below, Respondent Nos.1 and 2 preferred a Revision Application under Section 76 of the Bombay Tenancy and Agricultural Lands Act before the Maharashtra Revenue Tribunal, Pune. The learned Member of the Tribunal, by the impugned Judgment and Order dated 29 April 2013, allowed the said Revision Application and set aside the concurrent findings recorded by the learned Tahsildar and the learned Sub Divisional Officer. The legality and correctness of the said Judgment and Order passed by the learned Tribunal is the subject matter of challenge in the present Writ Petition at the instance of the Petitioner.

8. Mr. P. B. Shah, learned Advocate appearing on behalf of the Petitioner, submits that the learned Member of the Maharashtra Revenue Tribunal committed a serious error in observing that the witnesses examined on behalf of the Petitioner were not agriculturists owning adjacent lands in the village. It is submitted that the learned Member failed to properly appreciate the evidence of witness Ramchandra Yashwant Mandhare, who is admittedly the owner of land adjoining the subject property. According to the learned counsel, the said witness has categorically deposed that the Respondents, being owners of the land, were residing at Bhor and were not personally cultivating the suit property, whereas the Petitioner was cultivating the same as a tenant and was paying Khand/rent in the form of rice. The witness has further stated that he had personally witnessed the transportation and delivery of rice bags to the Respondents towards payment of Khand/rent. He has also specifically deposed that the Respondents had never cultivated the subject land personally. It is submitted that the learned Member failed to consider the aforesaid material evidence in its proper perspective and discarded the same without assigning cogent reasons, thereby demonstrating complete non application of mind to the evidence available on record. Learned counsel therefore submits that the impugned Judgment and Order deserves to be quashed and set aside and the concurrent findings recorded by the learned Tahsildar, Bhor, as confirmed by the learned Sub Divisional Officer, deserve to be restored. It is further submitted that the revenue record itself reflects the name of the Petitioner in the capacity of tenant in respect of the subject land and also

establishes that the aforesaid witness is owner of the adjoining land from the same Gat number.

9. The learned Advocate for the Petitioner further submits that the learned Member failed to take into consideration an earlier Judgment and Order passed by the learned Tahsildar in proceedings initiated at the instance of the father of Respondent No.1, wherein a categorical finding was recorded that the Petitioner had been cultivating the subject land for a period of about 25 years prior to the passing of the said order. According to the learned counsel, the said finding constituted a material circumstance having direct bearing upon the controversy involved in the present proceedings. However, despite the same forming part of the record, the learned Member completely overlooked the said material piece of evidence while exercising revisional jurisdiction.

10. It is further submitted that in the year 1995-96, the learned Tahsildar, Bhor had passed an order directing that the name of the present Petitioner be entered in the 7/12 extract as a tenant in respect of the subject land. According to the learned counsel, the said order was never challenged by the Respondents before any competent forum and, therefore, the same attained finality. It is submitted that the learned Member failed to appreciate the legal effect and evidentiary value of the said unchallenged order while adjudicating the Revision Application.

11. In support of the aforesaid submissions, the learned Advocate for the Petitioner has placed reliance upon the following

decisions, namely, *Babu Hari Patil and Another vs. Rama Ananda Jadhav*, reported in 2005 (1) All MR 329; *Dharma Radhya Vartha and Others vs. Ramesh Vrijlal Shah and Another*, reported in 2005 (3) Mah LJ 352; *Rukhamanbai vs. Shivram and Others*, reported in (1981) 4 SCC 262; *Jagan alias Jagannath Umaji vs. Gokuldas Hirallal Tewari*, reported in 1987 (Supp) SCC 566; *Jagannath Vithu Jadhav (since deceased) through Legal Representatives and Others vs. State of Maharashtra and Others*, reported in 2013 (2) Mah LJ 285; and *Dahya Lala vs. Rasull Mahomed Abdul Rahim*, reported in AIR 1964 SC 1320. On the basis of the aforesaid decisions, it is prayed that the present Writ Petition be allowed by quashing and setting aside the Judgment and Order dated 29 April 2013 passed by the learned Member, Maharashtra Revenue Tribunal, Pune.

12. Per contra, Mr. Bhargude, learned Advocate appearing on behalf of the Respondents, has opposed the Petition and submits that the Petitioner has absolutely no concern whatsoever with the suit property. According to the Respondents, the Petitioner is neither a tenant nor in lawful possession of the subject land as alleged by him for the past 35 years. It is submitted that the Respondents have consistently taken such stand before all the authorities below, including in their statement before the learned Tahsildar. Learned counsel further submits that even in the Memorandum of Revision Application filed before the Maharashtra Revenue Tribunal, the Respondents had specifically contended that the Petitioner had no right, title or interest in the suit property and was not in possession thereof in any lawful capacity.

13. The Respondents further submit that the present Petitioner had filed proceedings under Rule 31 of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971. According to the Respondents, the said proceedings were initiated in collusion with the revenue authorities, who allegedly guided the Petitioner to seek mutation of his name in the Vahiwat column of the revenue record. It is submitted that two Vahiwat cases came to be filed by the Petitioner under Rule 31 of the said Rules. Learned counsel contends that proceedings under Rule 31 are of a limited nature and no such application for recording cultivation in the manner sought by the Petitioner was maintainable thereunder. It is further submitted that no notice whatsoever was served upon the present Respondents in the said proceedings. Although the order passed under Rule 31 records that notice was issued and statement was recorded, it is the specific case of the Respondents that no such notice was ever served and no such statement was recorded. According to the Respondents, even the Petitioner in his cross-examination has admitted circumstances supporting the said contention. It is thus submitted that, in collusion with the revenue authorities, an order dated 15 February 1996 came to be passed directing entry of the Petitioner's name in the cultivation column for the agricultural year 1995-96. The said order further directed that the following entry be recorded in the relevant column: "खोपडे यांचे वहिवाट सदरी सन १९९५-९६ करिता नाव दाखल करावे. रित्त सदरी [-] अशी नोंद करावी."

14. It is further submitted on behalf of the Respondents that during the aforesaid proceedings under Rule 31, a Panchanama

came to be prepared recording that the Petitioner had been cultivating the suit land for a period of 20 to 25 years. According to the Respondents, no such finding regarding long-standing cultivation or tenancy could legally have been recorded in proceedings contemplated under Rule 31 of the said Rules. It is therefore contended that the very entry reflecting the Petitioner's name in the 7/12 extract is illegal and without jurisdiction. Learned counsel submits that a mere revenue entry effected pursuant to Rule 31 proceedings would neither confer tenancy rights upon the Petitioner under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act nor establish that he had been cultivating the suit property for the last 35 years. It is submitted that the mutation entries appearing in the revenue record for the years 1995, 1996, 1997 and 1998 indicate that two separate Vahiwat cases had been initiated. Thereafter, on 13 April 1999, the Petitioner filed proceedings seeking declaration of tenancy under Section 70(b). According to the Respondents, taking advantage of the mutation entry in the 7/12 extract, the Petitioner thereafter entered into possession of the suit property. It is further submitted that the learned Tahsildar improperly relied upon the order passed under Rule 31 while deciding the tenancy proceedings. Learned counsel has drawn attention to the cross-examination of Madhukar Shankar Palshikar, wherein it was stated that the Petitioner was shown in cultivation in the 7/12 extract for the year 1995-96, and submits that the learned Tahsildar erroneously treated the same as an admission of tenancy and consequently allowed the application under Section 70(b).

15. Learned counsel for the Respondents further submits that Section 2(18) of the Bombay Tenancy and Agricultural Lands Act contemplates different categories of tenancy, namely contractual tenancy, deemed tenancy under Section 4, protected tenancy and permanent tenancy. According to the Respondents, the stand taken by the Petitioner regarding the nature of tenancy has undergone substantial change at different stages of the proceedings. It is submitted that in the present Petition the Petitioner claims to be a permanent tenant, whereas before the learned Tahsildar his case was based upon contractual tenancy. It is further contended that during the course of arguments before this Court, an attempt has been made to canvass a plea of deemed tenancy under Section 4 of the Bombay Tenancy and Agricultural Lands Act, 1948.

16. It is submitted that such mutually inconsistent and shifting pleas regarding tenancy are impermissible in law. Reliance in this regard has been placed upon the judgment in Dwarkanath's case, wherein it has been held that once a plea of contractual tenancy fails, a subsequent plea of deemed tenancy cannot thereafter be permitted to be raised. Learned counsel further submits that the learned Sub Divisional Officer failed even to frame proper points for determination while deciding the Appeal. According to the Respondents, the Petitioner had contended before the learned Sub Divisional Officer that he was cultivating the suit land and had also produced documents purporting to be rent receipts. However, this stand is inconsistent with the case originally pleaded before the learned Tahsildar, wherein the Petitioner had asserted that after the demise of Shankar Palshikar he was paying rent to Madhukar

Palshikar and, since cordial relations existed between the parties, no rent receipts were issued to him.

17. It is further submitted that there are material contradictions not only regarding the nature of tenancy claimed by the Petitioner, namely whether contractual, permanent or deemed, but also regarding the alleged issuance of rent receipts. According to the Respondents, the Maharashtra Revenue Tribunal has rightly observed that except for oral testimony of an interested witness, there exists no documentary evidence supporting the claim of the Petitioner. It is submitted that there are no continuous revenue entries evidencing possession of the Petitioner as tenant for the last 35 years and there is also no documentary evidence establishing continuous payment of rent to the Respondents during the said period.

18. Learned counsel for the Respondents submits that the Petitioner is nothing but a trespasser upon the suit property and that the oral testimony led on behalf of the Petitioner stands materially shaken in cross examination. It is submitted that the witness examined by the Petitioner is an interested witness who admitted in his cross examination that he had witnessed and assisted in transportation of rice only on one occasion. It is further pointed out that in the course of cross examination, appearing at pages 32 to 35B of the record, the said witness admitted that except for one Palshikarbai he did not know the other members of the Palshikar family and had never entered their house and had merely gone up to the door thereof. According to the Respondents, such admissions substantially weaken the credibility of the witness

relied upon by the Petitioner.

19. Learned counsel for the Respondents has further placed reliance upon the decision of the Supreme Court in the case of Hanumant Nimbals to contend that the burden squarely lies upon the person claiming tenancy to establish lawful possession. It is submitted that lawful possession can ordinarily be inferred where there exists an agreement with the landlord and where the landlord has inducted the tenant into possession for beneficial enjoyment of the land upon payment of rent, premium or land revenue. It is further submitted that continued acquiescence by the landlord by accepting rent would also constitute a relevant circumstance. According to the Respondents, in the present case there is neither any agreement nor any payment of land revenue nor any rent receipts establishing tenancy, and therefore the claim of the Petitioner that he has been cultivating the suit property for the past 35 years remains wholly unsubstantiated.

20. So far as the reliance placed by the Petitioner upon the decision in *Babu Hari Patil and Another vs. Rama Ananda Jadhav*, reported in 2005 (1) All MR 329 is concerned, learned counsel for the Respondents submits that the facts of the said case are entirely distinguishable. It is submitted that paragraphs 5 and 6 of the said judgment clearly disclose that there was sufficient evidence available on record establishing cultivation by the tenants for a period exceeding eight years. Further, paragraph 5.2 of the said judgment records existence of an agreement for sale executed between the landlord and the tenant in respect of the suit property. According to the Respondents, no such circumstances exist in the

present case. It is further submitted that the reliance placed upon the decision in *Dahya Lala vs. Rasul Mahomed*, reported in AIR 1964 SC 1320 is equally misplaced, since the said decision dealt with the status of a person inducted into possession by a mortgagee and arose in a completely different factual context.

21. Insofar as the judgment in *Dharma Radhya Vartha and Others vs. Ramesh Shah* is concerned, learned counsel submits that the said decision also arose out of entirely different facts and circumstances. Attention is invited to paragraph 11 of the said judgment to contend that in the said case there was clear material on record establishing cultivation of the lands by the petitioners therein for more than 50 years including cultivation of Kharif and paddy crops. It is submitted that the controversy involved in the said matter pertained to the issue whether cultivation of paddy land for preparation of RAB manure constituted incidental agricultural activity and whether such activity formed an integral part of agricultural operations. Learned counsel submits that paragraph 14 of the said judgment clearly records that possession of the tenants over the suit lands was never disputed therein. According to the Respondents, the ratio of the said judgment therefore has no application to the facts of the present case. It is further submitted that the observations in *Rukhamanbai vs. Shivram*, reported in (1981) 4 SCC 262, particularly paragraphs 17 and 3 thereof, are merely reiterative of the principles laid down in *Dahya Lala's* case.

22. Learned counsel for the Respondents lastly relied upon the decision in *Jagannath Vithu Jadhav vs. State of Maharashtra*,

reported in 2013 (5) LJ Soft 107, and submits that even the said judgment is clearly distinguishable on facts. According to the Respondents, in the said case there existed continuous revenue entries evidencing cultivation by the tenants till institution of the proceedings, whereas no such consistent material exists in the present matter. It is therefore submitted that the Petitioner has failed to establish any lawful tenancy rights and is merely a trespasser upon the suit property. Learned counsel accordingly submits that the Maharashtra Revenue Tribunal has rightly interfered with the orders passed by the authorities below and, therefore, the present Writ Petition deserves to be dismissed with costs.

REASONS AND ANALYSIS:

23. I have given my anxious consideration to the rival submissions and to the entire material placed on record.

24. The first submission advanced on behalf of the Petitioner proceeds on the oral testimony of Ramchandra Yashwant Mandhare, who according to the Petitioner is an adjoining agriculturist having land adjacent to the suit property. There cannot be any dispute that the said witness is owner of neighbouring agricultural land and, therefore, in ordinary circumstances, he may be presumed to have knowledge regarding cultivation activities taking plac. The witness has supported the case of the Petitioner by stating that the Respondents were residing at Bhor and were not personally cultivating the subject land and that the Petitioner was cultivating the same while sending Khand

in the form of rice to the Respondents. The witness has further attempted to support the continuity of such arrangement by stating that he had personally seen the rice bags being sent to the Respondents. At first blush, such evidence appears to lend support to the case of the Petitioner. However, when the evidence is carefully scrutinised in the backdrop of the entire record, this Court is unable to accept the submission in the manner as canvassed by the Petitioner.

25. It is well settled that oral evidence in tenancy matters cannot be appreciated in a detached manner. More particularly, where a claim of tenancy extending over several decades is asserted, the Court is expected to examine whether the oral version is supported by surrounding circumstances, contemporaneous conduct and reliable material on record. The witness in the present case is not an official witness nor a public authority maintaining statutory record. He is an individual from the same locality and his testimony, though admissible, is required to be tested with due caution. Merely because the witness owns adjoining land does not elevate his statement to conclusive proof of tenancy. His evidence has to withstand the test of cross examination. When the cross examination of the said witness is examined, certain deficiencies become apparent. The witness has not stated that he continuously witnessed payment of rent or Khand over a period of 35 years. On the contrary, his statement indicates that he had occasion to witness transportation of rice on one particular instance. Such circumstance may show some relationship or transaction between the parties, but by itself it does not establish a tenancy for more

than three decades. In agricultural tenancy matters, especially under the provisions of the Bombay Tenancy and Agricultural Lands Act, the Court is required to ascertain lawful and continuous cultivation possessing the character of tenancy. A solitary instance of sending rice cannot substitute the requirement of continuous proof.

26. Further, the witness admittedly had limited acquaintance with the affairs of the Respondents' family. His own cross-examination shows that except for knowing one member of the family, he had no close interaction with the other members and had never even entered their residence. This circumstance may not destroy his testimony, but it certainly affects the weight to be attached to his assertions regarding tenancy arrangements between the parties. In cases of this nature, where the claim relates back to a period extending several decades, the Court expects some degree of certainty in the testimony. The evidence of the witness in the present case remains general and does not satisfactorily establish the basis under which the Petitioner was allegedly cultivating the land.

27. This Court also cannot lose sight of the fact that the tenancy claimed by the Petitioner itself has undergone change at different stages of the proceedings. At one stage, the case is projected as one of contractual tenancy. At another stage, the plea of permanent tenancy is raised. During arguments, reliance is also placed upon the concept of deemed tenancy under Section 4 of the Tenancy Act. In such circumstances, the oral evidence of a local witness assumes lesser evidentiary value unless supported by foundational

facts. The Tribunal was therefore justified in examining the testimony cautiously.

28. In the overall circumstances, though the testimony of Ramchandra Yashwant Mandhare may furnish some indication regarding possession by the Petitioner, the same cannot be treated as conclusive proof sufficient to dislodge the findings recorded by the Maharashtra Revenue Tribunal. The Tribunal has appreciated the evidence in the context of the entire material on record and has found absence of satisfactory proof regarding tenancy. This Court does not find such appreciation to be either perverse or wholly unreasonable so as to warrant interference in exercise of supervisory jurisdiction.

29. Much emphasis was laid by the learned counsel appearing for the Petitioner on the order passed in the year 1995-96 whereby the name of the Petitioner came to be entered in the cultivation column of the 7/12 extract in respect of the suit land. According to the Petitioner, since the said order was never challenged by the Respondents before any superior authority, the same attained finality and, therefore, the authorities below as well as this Court are bound to proceed on the footing that the Petitioner was recognised as tenant in possession of the land. It is required to be noted that the entry in the cultivation column came to be effected pursuant to proceedings under Rule 31 of the Maharashtra Land Revenue Record of Rights and Registers Rules. Such proceedings are essentially revenue proceedings meant for recording and maintaining entries relating to possession and cultivation for fiscal purposes. The jurisdiction exercised in such proceedings is of a

limited character. The authority conducting inquiry under Rule 31 does not exercise the same adjudicatory powers as are vested in the tenancy authorities under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act. Therefore, merely because an entry was directed to be recorded in favour of the Petitioner, it cannot automatically follow that the Petitioner thereby acquired or established substantive tenancy rights in the eye of law.

30. The distinction between a revenue entry and declaration of tenancy is of considerable importance. A 7/12 extract is maintained for fiscal administration and revenue collection. Such entries may indicate possession or cultivation at a particular point of time. They may constitute one piece of corroborative evidence. But it is equally settled that mutation entries neither create title nor conclusively establish tenancy rights. The tenancy rights under the Bombay Tenancy and Agricultural Lands Act can be recognised only upon satisfaction of the statutory requirements contemplated under the said enactment. Therefore, the Petitioner cannot be permitted to treat the Rule 31 order as if it were a final declaration under Section 70(b) of the Tenancy Act.

31. The Respondents have specifically contended that the Rule 31 proceedings themselves were irregular and beyond jurisdiction. According to them, no proper notice was served and no valid inquiry regarding tenancy could legally have been undertaken in such proceedings. Though this Court does not propose to reopen the Rule 31 proceedings in the present petition, the objection raised by the Respondents does indicate the limited nature of the said proceedings. Even assuming that the order attained finality

for revenue purposes, the same still cannot be elevated to the status of conclusive proof establishing deemed tenancy. Finality of a revenue entry and final adjudication of tenancy are two different concepts.

32. The record further indicates that the Petitioner has attempted to build almost the entire case upon the basis of the said entry. Such approach, in my view, is legally impermissible. Revenue entries may support a pre-existing lawful claim if independent evidence otherwise establishes the tenancy. However, the entry itself cannot become the source of the tenancy claim. The Tribunal, therefore, rightly held that the entry in the 7/12 extract could not by itself conclude the issue in favour of the Petitioner.

33. The more serious infirmity in the Petitioner's case, however, lies in the continuously changing nature of the pleadings and legal foundation of the claim. This aspect goes to the root of the matter and substantially affects the credibility of the Petitioner's case. The judgment in *Dwarakanath Vishram Ghurye* has clearly explained the distinction between contractual tenancy and deemed tenancy under Section 4 of the Tenancy Act. The said judgment recognises that the ingredients constituting the two categories are materially different and that a person who specifically pleads one kind of tenancy cannot ordinarily, after failure of that plea, shift to another category without proper pleadings and foundational facts. In the present case, the stand of the Petitioner has not remained consistent from the inception of the proceedings. Before the learned Tahsildar, the case projected was substantially one of contractual tenancy. In the writ petition, the Petitioner claims

status as a permanent tenant. During the course of arguments, reliance was heavily placed upon Section 4 of the Tenancy Act and the concept of deemed tenancy. This is not a loose use of words by an illiterate litigant. Each category of tenancy carries different legal ingredients, different consequences and different evidentiary requirements. A contractual tenancy presupposes consensual induction by the landlord and existence of jural relationship. A deemed tenancy under Section 4 is a statutory fiction operating even in absence of contractual relationship provided lawful cultivation is established. Permanent tenancy again stands on a separate footing altogether. The Act cannot permit a litigant to move from one legal foundation to another depending upon the weakness noticed in the earlier stand. Judicial proceedings must proceed on definite pleadings so that the opposite side knows the exact case required to be met. If the Petitioner was asserting contractual tenancy, the Respondents were entitled to contest the existence of agreement, payment of rent and induction into possession. If the case was one of deemed tenancy, the focus would shift to lawful cultivation and ingredients under Section 4. By constantly shifting the nature of tenancy, the foundation of the Petitioner's case becomes uncertain.

34. The learned counsel for the Petitioner attempted to overcome these difficulties by placing reliance upon the decisions in *Babu Hari Patil* and *Dharma Radhya Vartha*. The principles laid down in the said judgments are well settled and cannot be disputed. Those judgments recognise that in proceedings under Section 4 of the Tenancy Act, absence of rent receipts, tenancy

entries or formal agreements is not fatal if lawful cultivation is otherwise established. The Courts have repeatedly held that old fashioned notions of landlord tenant relationship cannot be imported while construing beneficial provisions relating to deemed tenancy. However, the difficulty in the present matter is not regarding the legal proposition but regarding proof of facts necessary for applying the proposition. In *Babu Hari Patil*, the Court found sufficient material demonstrating lawful cultivation and continuous possession. In *Dharma Radhya Vartha*, the cultivation activities were part of recognised agricultural practice in the Konkan region and possession itself was not disputed. Those decisions turned upon factual foundations which enabled the Court to invoke the beneficial provisions of Section 4. In the present case, the evidence does not attain that degree of continuity. The Petitioner has not produced a documentary chain showing lawful cultivation over the entire claimed period of 35 years. There is no satisfactory arrangement. The oral evidence remains limited and partly inconsistent. The Rule 31 entry merely reflects one stage of revenue recording and cannot substitute substantive proof. Therefore, though the legal principles in the aforesaid judgments are correct, the factual matrix before this Court does not permit automatic application of those principles in favour of the Petitioner.

35. The Respondents have also rightly pointed out material contradictions in the Petitioner's stand regarding payment of rent. At one stage, the Petitioner states that rent was continuously paid in the form of rice and that no receipts were issued because cordial

relations existed between the parties. At another stage, reliance is sought to be placed upon documents suggestive of rent transactions and cultivation. These inconsistencies touch the core of the tenancy claim. Where a person asserts continuous tenancy for more than three decades, some degree of consistency is expected in the evidence regarding payment of rent and nature of possession.

36. The Court is conscious that agricultural tenancy disputes often arise from rural backgrounds where documentation may not always be available. Nevertheless, complete absence of reliable documentary support coupled with inconsistent oral assertions materially weakens the case. Long-standing tenancy rights carrying legal consequences cannot be declared solely on the basis of oral assertions, one supporting witness and disputed revenue entry. The burden to establish tenancy squarely rested upon the Petitioner. In the facts of the present case, that burden has not been satisfactorily discharged.

37. The distinction between lawful cultivation and permissive or doubtful occupation, as highlighted by the Respondents, also deserves acceptance. The judgments in *Dahya Lala* and subsequent decisions recognise that lawful cultivation may exist even in absence of contractual tenancy. However, lawful cultivation still remains a jurisdictional fact which must be established. Such lawful possession cannot be presumed because the claimant asserts it or because his name appears in a disputed cultivation entry. The Court must find satisfactory material indicating that the occupation possessed legal character recognised by the Tenancy

Act.

38. In the present matter, there is no convincing proof showing continuous payment of rent for 35 years. There is no documentary chain demonstrating recognised tenancy. There is also no material indicating that the Respondents ever accepted the Petitioner as tenant in the statutory sense. The oral evidence led by the Petitioner falls short of bridging these deficiencies. The witnesses merely indicate some cultivation activity or occasional dealings, but they do not establish lawful tenancy in the manner required under law.

39. I also find considerable substance in the submission advanced on behalf of the Respondents that proceedings under Rule 31 could not have been treated as substitute for proper adjudication under the Bombay Tenancy and Agricultural Lands Act. The Petitioner appears to have relied upon the Rule 31 proceedings as if they settled the issue of tenancy. Such approach is legally unsustainable. A summary revenue inquiry cannot replace an adjudicatory determination contemplated under Section 70(b), where the authority is required to carefully examine the nature of possession, cultivation, relationship between the parties and existence of statutory tenancy.

40. Viewed cumulatively, the foundation of the Petitioner's claim appears uncertain from the beginning. If the Petitioner was truly a permanent tenant cultivating the land for decades, one would expect more reliable material reflecting such relationship. Instead, what emerges from the record is a combination of disputed possession, isolated oral assertions, revenue entry of limited value

and inconsistent legal stands taken at different stages. Such material may create suspicion or possibility regarding cultivation, but it falls short of the standard required for declaration of tenancy rights under the Tenancy Act. In these circumstances, the view taken by the Maharashtra Revenue Tribunal cannot be said to be either perverse or contrary to law warranting interference under Articles 226 and 227 of the Constitution of India.

41. In view of the foregoing discussion, and upon overall assessment of the material submissions, evidence on record, and the findings arrived at hereinabove, the following order is passed:

- (i) The Writ Petition stands dismissed;
- (ii) The Judgment and Order dated 29 April 2013 passed by the learned Member, Maharashtra Revenue Tribunal, Pune in Revision Application No. TNC/REV/149/2007/P is hereby upheld and confirmed;
- (iii) Rule stands discharged;
- (iv) In the facts and circumstances of the case, there shall be no order as to costs;
- (v) Pending Interim Application(s), if any, do not survive and the same stand disposed of accordingly.

42. Since the petitioner has been protected by way of ad-interim relief for a number of years, said protection, despite opposition of the respondents, shall continue to operate for a period of six weeks from today.

(AMIT BORKAR, J.)