

(2011) 06 BOM CK 0167

In the Bombay High Court

Case No : Writ Petition No. 1003 of 1997

Amrutrao Deshmukh and Dhananjay Amrutrao Deshmukh

APPELLANT

Vs

Laxman Pawar and Others

RESPONDENT

Date of Decision : 06-06-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Constitution of India, 1950 — Article 227

Maharashtra Land Revenue Code, 1966 — Section 257

Citation : (2011) 4 ALLMR 695 : (2011) 6 BomCR 13 : (2011) 113 BOMLR 2398 : (2011) 5 MhLj 577

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : Sachin S. Deshmukh, for the Appellant; P.R. Patil and S.W. Mundhe for Respodts. 1A to 1C., Bhadekar, for Respodts. 7 for Respodts. 7A to 7C and 8 and V.A. Shinde, Learned AGP for Respodts. 2 to 6, for the Respondent

Judgement

B.P. Dharmadhikari, J.—By this Petition filed under Article 227 of the Constitution of India the challenge is to orders dated 7/2/1997 passed by Respodt. 2- Additional Divisional Commissioner in case No. 1997/Rev/R/15 & also to order dated 27/11/1996 of Respodt. 3- Additional Collector (Land Reforms) in Appeal with number 1993/CD/1/Appeal/46 which was assailed in said Revision. Consequential orders of Talathi dated 21/3/1997 implementing these orders are also assailed. It will be first proper to note facts in which these orders came to be passed & then the background facts which give rise to this challenge.

2. Perusal of R-3's order dated 27/11/1996 shows that deceased R-1 Laxman herein was the Applicant/Appellant before said authority. The proceedings began before R-4 Sub-divisional Officer, Ambajogai. The report dated 2/8/1996 submitted by SDO Ambajogai came to be accepted by that order & mutation entries 1821, 1888 & 1927 certified on 3/9/1981, 26/9/1982 & 18/5/1983 of village Parli to the extent it related to land survey No. 499EE, area 3 acres, were cancelled. The revenue authorities were directed to recover occupancy price from

Laxman & to mutate his name against said land. Petitioners revision u/s 257 of Maharashtra Land Revenue Code, 1966 (MLR Code) against it was dismissed on 7/2/1997 holding that they have no locus & documents relied upon by them had no legal sanctity.

3. An earlier order of same SDO now needs to be mentioned. Deceased Laxman had instituted case No. 87/ROR/1543 aggrieved by very same mutation entries of land 499EE and SDO had vide order dated 29/5/1990 canceled these entries. Petitioner Amrutrao filed revision u/s 257 of MLR Code with the Additional Commissioner who on 5/5/1992, quashed & set aside the same. Petitioners claim that subsequent orders by revenue authorities are in derogation of this order dated 5/5/1992.

4. There is no dispute that on 12/8/1980 Second Appeal 79 of 1972 filed by these Petitioners viz. Dhananjay & Amrut Deshmukh came to be allowed & decree passed by District Court in Regular Civil Appeal was set aside entirely in so far as survey No. 499 EE is concerned. These Petitioners/Appellants were Defendants 5 & 6 in Civil Suit 24/1967 instituted by Shri Patwardhan, the original inamdars. Three lands involved in that litigation included survey No. 499AA & 499E with present land ie survey No. 499EE. Suit No. 24 of 1967 was filed by Govindrao Patwardhan and Defendant No. 7 Nalinibai who later on was transposed as Plaintiff No. 2. In Second Appeal, it was not in dispute that the three suit lands were inam lands or madat mash ie personal inam or grant of the said Plaintiffs. Land survey No. 499EE was leased out by them in 1922 to one Tulshiram Pawar who was father of Laxman for establishing/running a Gin-- a cotton processing unit. The contention of Plaintiffs (inamdars) viz. Patwardhans was that they were entitled to restoration of possession moment the ginning business was closed down or wound up as lease stood forfeited in that event. Plaintiffs claimed that possession 499EE was demanded from Tulshiram and during talks in this respect, Tulshiram died. His heirs ie Defendants 1 to 3 in Suit encroached upon 499AA & 499E also. In 1964, these heirs leased out the lands to Defendants 5 & 6 ie present Petitioners. Trial Court held that Tulshiram had died in 1957 & rights of Plaintiffs to inam land was abolished. Hence, they had no title to file suit & accordingly, that suit came to be dismissed. In Regular Civil Appeal, it was found that legal heirs of Tulshiram (Defendants 1 to 3 in suit) could not be said to be tenants who could have leased out lands to Petitioners and Plaintiff inamdars ie Patwardhans were entitled to grant of occupancy rights of these 3 lands from Government under the assumption that there were no tenants on lands. This Court in Second Appeal found that it was necessary for First Appellate Court to find out whether lease of Tulshiram came to an end at any point of time & if yes, to determine that point of time. This Court found that neither heirs of Tulshiram (Defendants 1to 3 in suit) nor present Petitioners (Defendants 5 & 6 therein) could show any right to survey Nos. 499AA & 499E and hence, modified the Appellate Decree & granted Plaintiffs the possession of their share in these two lands. About survey No. 499EE, this Court held that after death of Tulshiram, his heirs/sons became tenants and they continued in

possession till 1964, when the said land was let out to Petitioners by them. Thus on crucial date ie 1/7/1960 relevant for grant of rights as occupant under the Hyderabad Abolition of Inams & Cash Grants Act, 1954 (which came into force on 20/7/1955), these legal heirs were tenants entitled to become occupants of the same as per Section 5 of this Hyderabad Abolition of Inams & Cash Grants Act, 1954 ie 1954 Act. Second Appeal filed by Defendants 5 & 6 - present Petitioners was therefore allowed and suit of Plaintiffs was dismissed to the extent of 499EE. Judgment of this Court dated 12/8/1980 was then questioned by Plaintiffs in Civil Appeal No. 6772 of 1983 and the same came to be dismissed by Hon. Apex Court on 10/3/1999.

5. It is not in dispute that question as to party in actual possession of survey No. 499 EE is pending consideration in RCS 315/1987 (336/1982) before competent civil court & on 18/12/1987 it appears to have directed parties to maintain status-quo until further orders. In present petition, this Court granted status-quo on 5/4/1997 & it has been continued while issuing "Rule".

6. Adv. Sachin S. Deshmukh for Petitioners has contended that after the issue was finally settled by this Court in second Appeal & its judgment was confirmed by Hon. Apex Court in Civil Appeal 6772/1983, it was improper on part of revenue authorities to ignore it and order name of sons of deceased Laxman Pawar to be recorded in Record of rights & to order recovery of occupancy price from them. This Court has found present Petitioners only entitled to & to be in possession of land survey No. 499EE. Various mutation entries taken in pursuance thereof, therefore, needed to be left undisturbed. SDO whose first attempt to unsettle those mutation entries had once met with failure, could not have thereafter, suo motu, exercised any powers and such powers are not conferred upon SDO at all. He has invited attention to various applications moved after High Court judgment dated 12/8/1980 in Second Appeal & orders of revenue authorities on it. Orders of Hon. Apex Court & Judgment dated 12/8/1980 are read out to substantiate these contentions.

7. He has also pointed out that RCS 123 of 1965 was filed on 25/6/1965 by heirs of Tulshiram Pawar against Petitioners for permanent injunction to protect their possession on all three lands & how it was compromised vide compromise at Exh. 81 and Petitioners possession was accepted. He further states that as amount of Rs. 4500/ specified in the compromise decree dated 25/22 June 1965/1966 has never been paid, the heirs of Tulshiram are not entitled to claim possession at all. Compromise at Exh. 35B dated 31/8/1965 in that suit is also pointed out to show how deceased Respondent Laxman who happened to be Plaintiff No. 1 in RCS 123 of 1965 accepted agreement with & sale-deed in favour of Petitioners by the head or Karta of hindu joint family of Pawars and withdrew himself from prosecution.

8. According to him after adverse High Court judgment dated 12/8/1980, the Inamdars ie Patwardhan family filed fresh application registered as case No. 80-HIA making claim u/s 2A of 1954 Act for recognition as occupant & holder of

survey No. 499EE and on 29/11/1980, legal heirs of Tulshiram Pawar filed their say accepting that claim & entitlement. On 23/12/1980, Petitioners also filed application before the Collector and claimed ownership of survey No. 499EE relying upon the High Court judgment. Judgment of Deputy Collector therein dated 30/6/1981 is also pointed out to show how the Petitioners came to be recognised as occupant of survey No. 499EE & its implementation vide ME 1821 dated 3/9/1981. Determination of purchase price on 23/6/1982 at their instance is also pointed out with consequential ME 1888 dated 26/9/1982 accordingly about possession. Orders obtained by them on 19/1/1983 relaxing the condition of inalienability & consequential ME 1927 dated 18/5/1983 is relied upon to show how the judgment dated 12/9/1980 in Second Appeal was fully implemented. Further changes recorded in ROR ie form No. 7, 7A & 12 is also shown to this Court. Attention is invited to orders dated 30/3/1991 in appeal No. 81/WTN/Appeal/12 by the Additional Commissioner rejecting the Inamdars challenge to above mentioned judgment of Deputy Collector dated 30/6/1981. It is urged that said authority has found all steps initiated in furtherance of the judgment dated 12/8/1980 in Second Appeal.

9. Shri Desmukh argues that during pendency of appeal No. 81/WTN/Appeal/12 before the Additional Commissioner, SDO suo-motu took cognisance of grievance of Laxman as revision u/s 257 of MLR code in case No. 87/ ROR/1543 and canceled all the three mutation entries taken as per orders of his superiors without hearing the Petitioners & though he lacked the powers. This order was set aside in by Additional Commissioner in case No. 1990/REV/R/34 by allowing Petitioners" challenge to it on 5/5/1992. Inspite of this Laxman again approached Additional Collector in fresh revision 93/CD-1-Appeal/46 u/s 257 of MLR Code & according to learned Counsel, said authority recorded findings directly in conflict with the judgment of this Court & concluded that agreement/sale by heirs in favour of Petitioners is not legal. It acted only on erroneous assumptions & presumptions. It therefore ordered cancellation of all three mutation entries and to recover occupancy price from Laxman. Rejection of Petitioners" revision on 7/2/1997 is alleged to be arbitrary and unreasoned. It is stated that said order came to be passed on very first day of filing it and without looking into grounds raised in revision. Thus there is failure to exercise the jurisdiction by that authority. Consequential orders of Talathi are therefore alleged to be bad & unsustainable.

10. He relies upon 2002 BCR (S1) 561 -Vinaykumar Kacharulal Abad v. Hon. Minister, Revenue & Forest and 2003 BCR (4) 374 - Sambappa Babappa Teli v. State of Maharashtra to explain the scope of jurisdiction available to the revisional authority. He, prays for allowing the petition & to maintain or restore the position accepted by this Court in Second Appeal.

11. Adv. P. R. Patil with S.W. Mundhe for Respodts.1A to 1C ie Lrs of deceased Laxman Pawar has at the thresh-hold submitted that dispute here is only in relation to revenue entries or mutation and all orders passed by either the

Additional Collector(Land Reforms) or the Additional Divisional Commissioner impugned herein are subject to adjudication in pending civil suit. Judgment reported at 1993 B.C.J. 431-- Rohidas Vithal Patil v. Sub-Divisional Officer (Revenue), Nandurbar is relied upon to urge that this Court should refuse to interfere in writ jurisdiction. Order of Hon. Apex Court in Civil Appeal 6772/1983 dated 10/3/1999 is heavily relied to contend that it finds Lrs of deceased Laxman viz. present Respondents 1A to 1C in possession on 1/7/1960. Judgment in Second Appeal by this Court is also cited for said purpose & to point out that heirs of Tulshiram are declared tenants therein. It is stated that inamdar Patwardhans could have procured title only upon failure of said heirs to deposit occupancy price & not till then. Paragraph 62 in Palitana Sugar Mills Pvt. Ltd. and Another Vs. State of Gujarat and Others, is cited for pointing out binding effect of these findings. The 3 entries of mutations sought by present Petitioners by approaching revenue authorities are contrary to these judgments & misleading. The issues were already finally concluded against them by the highest Court and demand or expectation for hearing thereafter is misconceived. Their present petition is also dishonest or fraudulent. A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, is pressed into service for outright dismissal of petition with heavy costs. About change in stand of Sneh Gupta Vs. Devi Sarup and Others, is shown with contention that there can not be any estoppel against statute in such matters.

12. Adv. Bhadekar for Respodts. 7 for Respodts. 7A to 7C, 8 has adopted the arguments of Adv. Patil. In addition, he invites attention to Section 3 of 1954 Act read with its Section 5 to argue that the land survey No. 499EE vests absolutely with State Government and only 4 categories of persons are entitled to get it. Here, as Laxman S/o Tulshiram Pawar being found in possession on 1/7/1960, was "occupant" entitled to its allotment, after his death, his LRs are therefore rightly held eligible therefore .The impugned orders holding Petitioners not possessing requisite locus are therefore in accordance with law. The occupancy price could not be paid by or recovered from Petitioners and hence, mutation entries procured by them have been rightly deleted & name of those LRs is correctly added. The direction to recover occupancy price from them is also as per said 1954 Act. Petitioners came in possession after 1964 and hence, neither judgment of Hon. Apex Court nor of this Court recognise them as occupants. He further states that this Court in Second Appeal has only mentioned compromise entered between some of the parties before it and alleged compromise in RCS 123 of 1965 does not figure in it. Not only this, alleged document of understanding with Laxman did not ripen into any decree & Exh. 81 is the only decree in that suit.

13. Adv. Mrs. V.A. Shinde, Learned AGP for Respodts. 2 to 6 also supports the arguments of the Respondents. She relies upon the Full Bench judgment of this Court in Dattatraya Sadashiv Dhond Vs. Ganpati Ranghu Gaoli, to explain the scheme of 1954 Act. According to her significance of possession on or of date 1/7/1960 in the scheme of 1954 Act was not required to be gone into by this

Court in S.A. 79 of 1972. The impugned orders passed by the Additional Collector or Additional Commissioner rightly look into this aspect and reach a correct decision.

14. Questions which "may" arise for adjudication in the light of facts noted above can now be summarized below:

1--Whether judgment in S.A. 79 of 1972 dated 12/8/1980 decides any "lis" about status as "occupant" between Petitioners & deceased Laxman ie members of Pawar family?

2-- Whether entitlement of Petitioners as "occupant" u/s 2A of 1954 Act is adjudicated upon in present matter?

3--Whether non-participation by Laxman in Civil Suit 24/1967, not filing second appeal against adverse first appeal verdict or then not approaching Hon. Apex Court against adjudication dated 12/8/1980 by this Court in Second Appeal in any way prejudices the rights of Laxman?

4--Whether status of "occupant" under 1954 Act can be determined by the Civil Court?

5--Whether orders of Additional Collector or Additional Commissioner impugned in this petition is second adjudication overlooking the orders of the the Additional Commissioner on 5/5/1992 quashing & setting aside the same earlier orders of SDO dated 29/5/1990 canceling the 3 mutation entries?

6--Whether defences like waiver or estoppel or then not seeking vindication within reasonable time are available in present matter against Laxman?

7--Whether "occupant" like Krishna Pawar & Laxman Pawar or other members of their family who sold away rights in survey No. 499EE before verification of their status as such can be conferred the said status with advantageous flowing therefrom ?

8--What is the effect of absence of State Government as party in Suit 34/1967 leading to Second Appeal 79/1972?

9--Whether Appeal or Revision against the orders of Deputy Collector dated 30/6/1981 or 27/11/1996 is decided on 30/3/1991 or 7/2/1997 by competent Appellate Authority as per Section 2A of the 1954 Act?

It at-once becomes clear that arguments touching all these facets are not advanced by the parties before this Court. Hence, I have used the word "may" above.

15. What is the purpose of 1954 Act and jurisdiction of machinery created thereunder must first be found out. Full Bench decision to which Learned AGP invited attention is considered little later in Niranjanshing Vs. Bhagatrai and Another, , O pponents " & I find that consideration sufficient for present purposes. It is observed by the Division Bench there:

3. Sections 5 and 6 of the Act, which deal with the grant of occupancy rights in an inam land, came into force on 1-7-1960. It has therefore, been held by a Full Bench of this High Court in Dattatraya Sadashiv Dhond Vs. Ganpati Ranghu Gaoli, that the material date for determining who is entitled to the rights of an occupant is 1-7-1960 and not 20-7-1955. The Section applicable in the present case is Section 6. Sub-section (1) of Section 6 states that in the case of an occupied land comprised in an inam other than land to which the provisions of Section 5 apply:

(a) Where such land is in the possession of the inamdar, or kabiz-e-kadim or of a permanent tenant or tenant holding from the inamdar, then such inamdar, kabiz-e-kadim, permanent tenant or tenant shall, in respect of the land which is in his possession, be primarily liable to the State Government for the payment of land revenue and shall, subject to the provisions of Sub-sections (2), (3), (4) and (5), be entitled to all the rights and be liable to all the obligations as an occupant in respect of such land under the Land Revenue Act, 1317 Fasli and the rules made thereunder.

Under this section the Petitioner will therefore, be entitled to occupancy rights if he was in possession of the land as a tenant on 1-7-1960.

4. In the present case the date of vesting, that is, the date which the lands vested in the State after the abolition of the inam is 20-7-1955. The lands were leased to the Petitioner in April 1957. The question for determination therefore, is whether the opponent could have leased the lands to the Petitioner after the lands had vested in the State on 20-7-1955. Sub-section (1) of Section 3 of the Act provides:

Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant, sanad, order or other instrument, Act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil Revenue or Atiyat Court, and with effect from the date of vesting all inams to which this Act is made applicable under Sub-section (2) or Sub-section (2-A) of Section 1 of this Act shall be deemed to have been abolished and shall vest in the State." Sub-section (2) of this section states that save as expressly provided by or under the provisions of this Act and with effect from the date of vesting, the following consequences shall ensue, namely:

(b) all rights, title and interest vesting in the inamdar in respect of the inam land other than the interests expressly saved by or under the provisions of this Act shall cease and be vested absolutely in the" State free from all encumbrances.

Except Section 33, there is no other provision in the Act which saves any interest which vested in an inamdar before the date of vesting. Section 33, which saves the mutual rights and obligations of an inamdar and his tenant, has no application in the present case, because there was no tenant on the lands on the date of vesting 20-7-1955. On this date, u/s 3 all rights, title and interest in the lands vesting in the opponent ceased and vested absolutely in the State free

from all encumbrances.

The opponent then lost all his rights in the lands, including his right to their possession. No interest of any kind was left in him.

5. In 1956 the Act was amended by the Hyderabad Abolition of Inams (Amendment) (Act, 1956 with retrospective effect from 20-7-1955, Section 4 of this Act is in the following terms:

Notwithstanding anything contained in the principal Act, with effect from the date of publication of that Act in the official Gazette and till the commencement of the provisions mentioned in Cl. (b) of Sub-section (3) of Section 1 of that Act, the full land revenue payable in respect of every inam abolished and vesting in the Government u/s 3 of that Act, shall be recovered from the inamdar of such inam as if he were the occupant of such land and, on the commencement of the said provisions of that Act, it shall be recovered in accordance with those provisions.

The principal Act, that is, the Hyderabad Abolition of Inams and Cash Grants Act, 1954, was published in the Official Gazette on 20-7-1955.

The provisions mentioned in Cl. (b) in Sub-section (3) of Section 1 came into force on 1-7-1960. Section 4 of the amending Act makes the inamdar liable to pay land revenue in respect of the inam land from 20-7-1955 till 1-7-1960.

The liability to pay land revenue imposed on the inamdar necessarily implies the right in him to continue in possession of the land upto 1-7-1960, for unless he was to derive some benefit from the land, he could not reasonably be saddled with the liability to pay the land revenue. There is also no provision in the Act for the Government's taking possession of the land before 1-7-1960, the date on which Sections 5 and 6, which provide for the grant of occupancy rights, came into force. The inamdar, who was in possession of the inam land on 20-7-1955, could therefore, lawfully continue to be in possession of the land until 1-7-1960.-

Section 33 of 1954 Act protects the application of Hyderabad Tenancy & Agricultural Lands Act, 1950 in so far as same is not inconsistent with it. Here lease by Inamdar to Tulshiram is in year 1922 & for purpose of factory as per para 3 of petition itself & hence, Section 33 has no application. Thus person in possession on 1/7/1960 becomes the "occupant" for the purposes of 1954 Act. Pleadings in paragraph 4 of the petition show the assertion by Petitioners themselves that they received possession of land on Gudi-Padwa day - a festival generally in April every year, pursuant to kaulnama ie agreement dated 10/9/1964 executed by Krishna Pawar as "karta" of Pawar family in Petitioners' favour. In paragraph 2, necessary details about Inamdar Patwardhan family are given where it is mentioned that Indirabai widow of Madhavacharya became owner & occupant of suit land (499EE) on 1/7/1960. Thus in petition vesting of inam lands with the Government on 20/7/1955 is lost sight of and the finding in Second Appeal that Tulshiram Pawar expired in 1957 & his heirs continued as tenants thereafter till 1964 is also not pointed out. Most important factor here is

Petitioners nowhere claim to be possessing said land on 1/7/1960 and rely upon a title derived through Krishna (as head or karta) ie brother of Laxman only. The findings by this Court in its judgment dated 12/8/1980 in S.A. 79 of 1972 or by Hon. Apex Court are prior to filing of this Petition.

16. Present Petitioners can not & have not denied the status of either Krishna or then Laxman Pawar as persons in possession on 1/7/1960 at least during arguments before me. During entire arguments effort was to bank on findings of this Court in Second Appeal. Respective Respondents opposing the Petitioners have also relied upon very same judgment as upheld by Hon. Apex Court. Neither side has, for obvious reasons, raised contention about or pointed out any special procedure incorporated in any Enactment or any special forum anywhere for resolving the question or dispute about the real "occupant", if it arises. According to parties, if there are rival claims for that status, the same can be decided by the Civil Court. It can not be forgotten that the claim of Petitioners before me is dependent upon & emanates from that status of Pawar family ie Laxman or Krishna only.

17. Question relevant here therefore is was there any adjudication in Second Appeal 79/1972 on said status. The answer to this question depends on another issue and it is whether there was or could have been any occasion for recording such a finding in that litigation. Original Civil Suit 24 of 1967 was instituted by landowners inamdars (members of Patwardhan family) with the contention that they were entitled to restoration of possession of 499EE as the ginning factory for which it was leased out was closed down or wound up and lease stood forfeited. Said Plaintiffs alleged that possession 499EE was demanded from Tulshiram Pawar and when talks in this respect were on, Tulshiram died. His heirs ie Defendants 1 to 3 in Suit 24/1967 encroached upon other two lands ie 499AA & 499E also. In 1964, these heirs leased out the lands to Defendants 5 & 6 who happen to be present Petitioners. Trial Court held that Tulshiram had died in 1957 & rights of Plaintiffs to inam land were abolished. Hence, they had no title to file that Suit & accordingly dismissed it. In Regular Civil Appeal, it was found that said legal heirs of Tulshiram could not be said to be tenants competent to lease out lands to Petitioners and Plaintiffs were found entitled to grant of occupancy rights of these lands from Government. This Court in Second Appeal has held that it was obligatory for Appellate Court to find out whether lease of Tulshiram was over at any "point of time" & if yes, to determine that point of time. This Court found in paragraph 19 of its judgment that neither heirs of Tulshiram nor present Petitioners (Defendants 5 & 6 therein) could show any right to survey Nos. 499AA & 499E and hence, modified the Appellate Decree & granted Plaintiffs the possession of their share in these two lands. The case of inamdar that the heirs had encroached on said two lands therefore appears to have been accepted. This Court has held that after death of Tulshiram in 1957, his heirs/ sons inherited tenancy of survey No. 499EE, and they continued in its possession till 1964, when it was let out to Petitioners by them. Thus on crucial date ie 1/7/1960 relevant for grant of rights as occupant under the 1954 Act, these legal

heirs are found to be tenants entitled to become occupants of the same as per Section 5 thereof. Second Appeal as filed by Defendants 5 & 6 -- present Petitioners is therefore allowed and suit 24/1967 of Plaintiffs was dismissed to the extent of 499EE. Judgment of this Court dated 12/8/1980 has been maintained in Civil Appeal No. 6772 of 1983 and the same came to be dismissed by Hon. Apex Court on 10/3/1999. That Civil Appeal before the Hon. Apex Court was filed by Plaintiffs ie Patwardhans /Inamdar.

18. This Court while holding that legal heirs of Tulshiram became tenants after him, noted that production of lease deed of survey No. 499EE was essential to substantiate their case by Plaintiff inamdar & it was not produced. This finding is only helpful to reject the case of forfeiture due to closure of ginning factory by Tulshiram and it does not have any bearing on status of present Petitioners as that was not in dispute there. It is important to note that Defendants 1 to 3 in Civil Suit 24 of 1967 did not file any written statement & were proceeded ex-parte. In paragraph 3 of the judgment in Second Appeal, "an event of vital importance to complete the chronology" has been noted after specifically noting that Plaintiffs(in Suit 24/1967) had chosen not to refer to it. That important event is 1954 Act and its coming into force on 20/7/1955. Its Section 3 by which all inams stood abolished & vested in State Government is also briefly pointed out. Application of mind by this Court in paragraph 16 & 17 shows a finding that on 1/7/1960 these Defendants 1 to 3 ie heirs of Tulshiram were on land survey No. 499EE. In paragraph 17 then the effect of provisions of subsections (2), (3) & (4) of Section 5 of 1954 Act is considered. It is observed in paragraph 18 that only upon failure of Defendants 1 to 3 to pay occupancy price as noted in the judgment that Plaintiffs get right to become the occupants. Discussion in last part of paragraph 20 therein reveals modification in impugned appellate judgment due to acceptance of compromise between Plaintiff No. 2 & Appellants there before High Court who are present Petitioners or were Defendants 5 & 6 in original suit 24/1967. This compromise was tendered before the High Court in Second Appeal on 1/12/1977 and thereby said Plaintiff No. 2 accepted that her 2/3rd portion in all three lands would be owned by present Petitioners. High Court has after due consideration in paragraphs 13 to 15, accepted this compromise to be valid. Provisions of Order 23 Rule 3 CPC & Section 6 of 1954 Act are scrutinized to hold it legal & binding. Because of this compromise, remaining Plaintiff is found entitled to possession of only 1/3rd portion of survey No. 499AA & 499E. But then, in next line it is observed that second appeal filed by present Petitioners needed to be allowed as far as survey No. 499EE is concerned. Their appeal against Plaintiff No. 1 about 1/3rd portion of 499AA & 499E came to be dismissed. Second Appeal is thus allowed entirely against Plaintiff No. 2 for all three lands ie 499AA, 499E by consent & 499EE. It is dismissed for 1/3rd portion of Plaintiff No. 1 in 499A & 499E. It is thus entirely allowed for suit land ie survey No. 499EE against both the Plaintiffs in suit 24/1967. Plaintiff No. 2 had given up her 2/3rd right, title or interest (if any) in survey No. 499EE also in favour of present Petitioners. She has accepted that

these Petitioners are entitled to continue in exclusive possession of her 2/3rd portion in all three lands including suit land ie 499EE. Obviously, this Court has acted upon this compromise and Hon. Apex Court in Civil Appeal preferred by aggrieved Plaintiffs did not disturb this position. Thus, due to this also, Petitioners are given survey No. 499EE by this Court & in any case, their entitlement to suit land survey No. 499EE can not now be disputed by Lrs. Of Respondents 1, 7 & Respondent 8. These Respondents who are all from family of Tulshiram Pawar were also party to this adjudication which can not be said to be in their favour and they did not approach Hon. Apex Court against it. There is nothing in said judgment to show that this Court had conferred any benefit upon the members of Pawar family in any way. Moreover, when this Court has given 2/3rd portion in survey 499EE to these Petitioners, it can not be presumed that remaining 1/3rd joint & unspecified part is given to the members of Pawar family or deceased Laxman.

19. Perusal of memo of Second Appeal 79 of 1972 filed by the present Petitioners show assertion in ground No. 3 that land was in possession of Krishna. In ground No. 4 it was urged that lease dated 16/9/1964 at Exh. 156 executed by Krishna in their favour was perfectly valid. In ground No. 6, it was contended that in absence any order of the competent authority under 1954 Act, the appellate court had no jurisdiction to hold that land must be deemed to have been granted to Plaintiffs ie inamdar. There is also a contention that 1954 Act mandated a regular inquiry and a valid order for grant of occupancy rights. It has been urged that in its absence, Plaintiff can not be presumed to be either owners or occupants, that absence of such order also did not permit recovery of occupancy price and that the finding of trial court that Ex. 156 was invalid & its observations on occupancy rights were illegal. Orders of Deputy Collector, Beed dated 30/6/1981 also show similar stand. This perusal shows claim made in pursuance of agreement by Krishna in their favour & still, the Defendants 1 to 3 ie heirs of Tulshiram did not oppose that Second Appeal. Though, there is no express finding on Exh. 156 or its validity by this Court in its judgment in Second Appeal & this Court has not refused to accept that compromise qua survey No. 499EE, compromise itself qualifies the grant or surrender in favour of present Petitioners by words "if any". This Court has found heirs of Tulshiram Pawar in possession or occupation of 499EE on 1/7/1960 and therefore dismissed the suit 24/1967 as filed about it. Court accepted the compromise by Plaintiff No. 2 in relation to her 2/3rd portion in other two lands not forming subject matter of present litigation. Suit from which that Second Appeal arose was by inamdars & this Court found heirs of Tulshiram Pawar in possession on crucial date on 1/7/1960. This finding was sufficient to dismiss that Suit as far as survey No. 499EE is concerned. Because of compromise by Plaintiff No. 2 that Suit for remaining two lands needed dismissal in so far as 2/3rd portion of Plaintiff No. 2 therein is concerned. Said compromise was between Plaintiff No. 2 & present Petitioners and heirs of Tulshiram Pawar were not involved or interested in it. Judgment dated 12/8/1980 therefore does not in any way confer status of occupant on Petitioners and also

does not decide occupancy price. At most, it could have been contended that Plaintiff No. 2 has given up her right to recover occupancy price of survey No. 499EE from Petitioners. But then it is obvious that even as per Petitioners' own stand in Second Appeal, Krishna Pawar became occupant on 1/7/1960 as heir of deceased Tulshiram Pawar who expired in 1957 after inam in survey No. 499EE came to be abolished and it vested in State Government. "Lis" inter say between the Petitioners on one hand & heirs of Tulshiram on the other could have been only in relation to or in pursuance of agreement (Kaulnama) entered into between them on 16/9/1964. Adjudication of that "lis" was not essential in Suit 24/1967 and High Court has not recorded any finding on derivative interest claimed by Petitioners in Second Appeal as the same was un-necessary for dismissal of that suit. In other words, the judgment in Second Appeal did not clothe Petitioners with status of occupant as on 1/7/1960. Most important factor is absence of State Government as party to Suit 24/1967.

20. This also necessitates an examination into status of heirs of Tulshiram Pawar after vesting of Inam lands in State Government. Reference can be made to judgment of Hon. Apex Court in 1995 AIR SCW 1843 "Lokraj v. Kishan Lal" on Section 3(1) of the A.P. (Telangana Area) Abolition of Inams Act (8 of 1955), (as amended in 1967), where upon abolition of inams & consequent vesting of pre-existing right, title and interest in inam lands in State, a suit for partition of inam land filed thereafter is held to be not maintainable. The following observations therein are important:

4. Consequent to the abolition, the pre-existing right, title and interest of the Inamdar or any person having occupation of the Inam lands stood divested and vested the same in the State until regrant is made. The inamdar, thereby lost the pre-existing right, title and interest in the land. The right to partition itself also has been lost by the statutory operation unless regrant is made. We are not concerned with the consequences that would ensue after regrant of this appeal. Therefore, it is not necessary for us to go into the question that may arise after the regrant.

Following situation emerges from reading of Section 3 of 1954 Act.

Section 3: Abolition and vesting of imams and the consequences thereof: (1) Notwithstanding anything to the contrary contained in any usage, settlement, contract, grant sanad order or instrument, Act, regulation, rules or order having the force of law and notwithstanding any judgment, decree or order of a Civil or Revenue or Atiyat Court, and with effect from the date of vesting, all imams to which this Act is made applicable under Sub-section (2) or Sub-section (2-A) of this Act shall be deemed to have been abolished and shall vest in the State.

(2) Save as expressly provided by or under the provisions of this Act and with effect from the date of vesting the following consequences shall ensure, namely:

(a) xxxx

(b) all rights, title and interest vesting in the inamdar, kabiz-e-kadim, permanent tenant & tenant in respect of the inam land, other than the interests expressly saved by or under provisions of this Act and including those in all communal lands, cultivated and uncultivated lands (whether assessed or not), waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries, shall cease and be vested absolutely in the State free from all encumbrances:

(c) to (f) xxxxxxxx

(g) the inamdar and any other person whose rights have vested in the State under Clause (b) shall be entitled only to compensation from the Government as provided for in this Act ;

(h) the relationship with regard to inam land as between the inamdar and kabiz-e-kadim, permanent tenant or tenant shall be extinguished.

(i) the inamdar, kabiz-e-kadim, permanent tenant & tenant of the inam land and any person holding under them and a holder of an inam, shall as against the Government, be entitled to only such rights & privileges and be subject to such conditions as are provided for under this Act and other rights & privileges which may have been accrued to any of them in the inam before the date of vesting against the inamdar shall cease & shall not be enforceable against the Government or the inamdar;

Under last clause ie Clause (i), the permanent tenant or tenant or any person holding under them is declared entitled only to such rights/privileges and is subject to such conditions as are prescribed in 1954 Act and his/their all other rights available before the date of vesting against the Inamdar cease and can not be enforced either against the State or Inamdar. Section 5 is about the occupancy rights over land held in perpetuity which was alienable. It declares permanent tenant or tenant primarily liable to pay land revenue to State and also confers upon him all rights & obligations as an "occupant" under Land Revenue Act, 1317 Fasli if he meets requirements of its Sub-sections (2) to (5). The permanent tenant or the tenant has to deposit occupancy price within period of 5 years from 1/7/1960 in three installments as stipulated in Rule 3 of the Rules framed under the 1954 Act. There are provisions for its recovery as arrears of land revenue & in case, it is not so recovered, tenant is deemed to be unlawfully occupying the Government Land. In case of payment, that sum is paid to Inamdar. In the event of non-recovery, land is deemed to be vested in Inamdar as occupant thereof free from all encumbrances, if any created thereupon by permanent tenant or tenant and the Inamdar becomes responsible for paying its land revenue to State. Section 6 then deals with occupancy rights in respect of occupied land to which Section 5 does not apply. Its Sub-section (1) casts primary obligation upon either the Inamdar, Kabiz-e-kadam or a permanent tenant or tenant to pay land revenue in respect of land in his possession. It also confers upon him all rights & obligations as an "occupant" under Land Revenue

Act, 1317 Fasli if he meets requirements of its Sub-sections (2) to (5). Rest of the lands not in possession of either the Inamdar, Kabiz-e-kadam or a permanent tenant or tenant are placed at the disposal of the Government and any person in occupation thereof is deemed to be an unlawful occupant liable to be evicted under the Land Revenue Act, 1317 Fasli. Its Sub-section (2) lays down the procedure & prescribed time within which either the Inamdar, Kabiz-e-kadam or a permanent tenant or tenant has to pay the occupancy price. Its Sub-section (3) lays down that such occupancy is not transferable or partible by metes & bounds without previous sanction of Collector and except on payment of such sum to State or Central Government as may be determined by general or special order. Consequence of failure to recover occupancy price are laid down in Sub-section (4) and it renders such defaulter an unlawful occupant liable for summary eviction. Sub-section (5) envisages payment of particular portion of such occupancy price to Inamdar. Sub-section (6) bars the Inamdar, Kabiz-e-kadam or a permanent tenant or tenant or any other person from claiming compensation for the modification or extinguishment of any of his rights in such land. Meaning of words like Kabiz-E-Kadam, Permanent Tenant or Tenant defined in Section 2 of 1954 Act assumes significance when issue of status of Tulshiram is to be considered.

21. Some civil suits are reportedly pending between Petitioners & heirs of deceased Laxman. Whether civil court is competent to record a finding on status as occupant by either of the parties before it or not, is also the moot issue.

In "Shivajirao Ekanthrao Kovale v. Syed Mehmood" -- 2007 (10) LJS 195 : 2007 (5) Mah. L.J. 641, this Court through its Single Judge has held:

-15.The Plaintiffs' case is that the suit lands were held by their ancestor for the benefit of the Niyamatullah Shah Dargah. Obviously, the provisions of Section 2(a1) of the said Act are not attracted in view of such specific pleadings of the Plaintiffs. It is well settled that the jurisdiction of Court is determined on basis of the pleadings set out in the plaint and not in view of defences raised by the Defendants. In case of "Pushpagiri Math" (supra) it was held that the land was granted to the Inamdar in order to render service to the Math. Since it was held as service Inam land, the Apex Court held that the pre-existing right or interest held by the Inamdar stood extinguished and, therefore, conferment of Rayatwari Patta u/s 7 r.w. Section 3 of the Andhra Pradesh Inams Abolition and Conversion into Rayatwari Act, 1956 became conclusive. It is in the aforesaid fact situation that the Apex Court came to the conclusion that jurisdiction of the Civil Court declaring title of the Inam land was excluded by implication.

In case of "Vithu Hira Mahar (More)" (supra), a Single Bench of this Court was required to deal with the provisions of Bombay Inferior Village Watans Act. The questions involved in the said case are quite different from those which have been raised in the present case. In that case, the Court was required to consider question of res-judicata. There cannot be any two opinions about interpretation of provisions of Section 2(a) of the Hyderabad Abolition of Inams and Cash

Grants Act, 1954 and there is no difficulty to reach a finding that jurisdiction of Civil Court is impliedly barred when the relevant questions are required to be determined by the competent Officer appointed by the Government under provisions of the said Act. Still, however, when the Plaintiffs have clearly stated in the plaint that the suit lands are Inams of Niyamatullah Shah Dargah then, the provisions of the Hyderabad Abolition of Inams and Cash Grants Act, 1954 are not applicable at all. The Plaintiffs have not claimed any title in themselves. Hence, I do not find any substance in the objection regarding ouster of the jurisdiction of Civil Court. The competent Officer appointed by the State Government could not have decided as to whether the suit lands were held by the religious institution, viz., Niyamatullah Shah Dargah. The objection regarding jurisdiction of Civil Court is, therefore, untenable and stands rejected.-

In Sheikh Mohamed Fatemohamed and etc. Vs. Raisuddin Azimuddin Katil and Others, etc., , Full Bench of this Court has held that statutory appeal u/s 2A(2) of 1954 Act needs to be decided by the State Government only and that power can not be delegated. Relevant observations are:

With reference to the provisions of Hyderabad Abolition of Inams and Cash Grants Act, 1954 - Section 2-A, (hereinafter, referred to as the "said Act") an interesting question arose before the Division Bench of this Court on 31-1-1989. The said Act, as the name suggests, is enacted in keeping pace with the post independence exercise of the land reforms. As a part of that drive, various State Governments in the country were undertaking the exercise of abolition of different tenures and make a simple ground reality by enabling the actual tiller to become an occupant, free from interference of so-called landlords, half of whom were absentee, making the occupant-tiller to till throughout his life for the benefit of that landlord. With this sort of expectation and to stop exploitation going over for centuries, the Statutes had to be enacted and one of such Statutes is the said Act.

2. The balance had to be struck in the course of land reforms, that both the tiller and his erstwhile landlord should get a fair deal and therefore, procedural aspect had to be taken care of. As a part of that, in the said Act, Section 2-A was enacted, which is reproduced for easy reference hereinafter:

2-A. Powers of State Government or authorised Officer to decide certain questions relating to inams and appeals:

(1) If any question arises, -

(i) Whether any land is an inam,

(ii) Whether any inam is held with or without conditions of service and whether or not coupled with the remission of the whole or part of the land revenue.

(iii) Whether any inam is a community service inam or watan..

(iv) Whether a computation settlement in respect of any watan has or has not

been effected.

(v) Whether any land held as inam is or is not alienable without permission of the competent authority, or

(vi) Whether any person is a kabiz-e-kadim, permanent tenant of tenant, the State Government or an officer authorised by that Government shall decide the question.

(2) Whether any question is decided by an officer so authorised by the State Government, any person aggrieved by such decision may file an appeal to the State Government within ninety days from the date of such decision.

(3)....

(4)....

3. Reading of Sub-section (1) makes it clear that there are two possibilities related to a question to be decided u/s 2-A of the said Act. Six questions posed under Sub-section (1) may be decided by the State Government or in a given case, by the Officer authorised by the Government to decide the question.

4. Sub-section (2) is in fact, matter of concern in the instant case. It deals with the appellate powers. As is well known, the appeals are the creation of Statutes and therefore, the right given under the Statutes has to be strictly construed wherever required in favour of the party in getting right of an appeal.

5. Sub-section (2) makes it very clear that the appeal is provided in those cases, where the six questions posed by the Sub-section (1) are decided by the delegated authority of the State Government. This would mean, if the questions are decided by the State Government in exercise of its powers, then there is no appeal. This has introduced a finality to the decision, though not stated in so many words in the Statute. Once this finality is disturbed in the form of an appeal under Sub-section (2), as quoted above, it makes, in our opinion, quite clear that the State Government has to hear the appeal.

6. The State Government wanted that the appeal be heard by its delegated authority. This would be so, though there is no mention in Sub-section (2) of delegating powers of hearing of the appeal to anyone by the State Government. In exercise of its general powers, the Government had routinely delegated the powers to the officer on Special Duty.

7. The learned Judges of the Division Bench of this Court (consisting of Kotwal, C.J. and Vaidya, J.) in Ganeshrao Kishanrao Deshmukh Vs. Devsingh Venkatasingh and Others, took a view that, when a function of making a quasi-judicial decision like one u/s 2-A is before the Court, looking to the scheme of the Statute, it cannot be delegated to another person or authority, in absence of the statutory provision authorising such delegation.

8. It is nobody's case that the Statute provides for any delegation of powers.

The State Government, as mentioned earlier, has tried to regulate it by way of its Rule of Business.

Ultimately, the Full Bench declares: 15. We are, therefore, of the view that there is a conflict between the two decisions. The conflict has to be resolved, in view of the aforesaid discussion, in favour of the view taken in Ganeshrao Kishanrao Deshmukh Vs. Devsingh Venkatasingh and Others, . As a consequence, the view taken in Maroti Pandu's case (reported in 1983 Mah LR 148 is declared as unacceptable to this Bench.

The legal provisions examined by the Hon. Full Bench have not undergone any change since this exposition and above declaration, therefore, applies with full vigour here also. Thus there exists a special forum under 1954 Act to adjudicate the status as occupant and a remedy of appeal against it to aggrieved party.

22. As per the provisions of 1954 Act looked into above, a permanent tenant or tenant in possession on 1/7/1960 can be a occupant with rights or obligations as stipulated above. Here, the Petitioners have vide ME 1927 dated 18/5/1983 obtained removal of condition of inalienability. It, therefore, appears that the land 499EE may be covered u/s 6 of 1954 Act. Chapter III beginning with Section 7 onwards then deals with compensation and award thereof. Thus in order to find out status of Petitioners or of deceased Laxman qua survey No. 499EE detail scrutiny of these provisions and its scheme is necessary. Law emerging then can be applied to facts settled. The distinction between Inamdar, Kabiz-e-kadam or a permanent tenant or tenant on one hand and any person holding under them on the other hand made by legislature with its purpose also need appreciation. When the land vests in State Government and question is of payment of revenue to it or of deposit of stipulated occupancy price or its recovery, these questions can not be decided without hearing State Government. Admittedly, State Government was not party to S.A. 79 of 1972 and hence, nothing in it can bind it. The said adjudication can not be treated as divesting the State Government of its rights under 1954 Act or then diluting or defeating its provisions. Whether a person in possession on 1/7/1960 who parts with it for valuable consideration in favour of some third party like present Petitioners can still be treated as an occupant is vexed question to be answered within four corners of 1954 Act by the authorized officer. Validity of compromise recorded by this Court in Second Appeal in relation to lands vested in State behind its back may also then surface for consideration. Parties coming together can not violate the 1954 Act. Proceedings in which impugned orders came to be passed can also not be viewed as one under 1954 Act. When questions falling squarely u/s 2A arise, the determination has to be by the competent authorized officer and then an appeal against that judgment has to be before the State Government itself. Hierarchy of forums for filing appeals or revisions prescribed under Maharashtra Land Revenue Code, 1966 is totally irrelevant thereunder.

23. Compromise in Civil Suit 123/1965 between Petitioners and heirs of Tulshiram Pawar. is not looked into either by Additional Collector or Additional

Commissioner. That Civil Suit was filed by Laxman S/o Tulshiram Pawar, Diagambar Sitaram Pawar, Bhagwan Sakharam Pawar and Madhav Rajaram Pawar against present Petitioners as Defendants 1 & 2. Krushnarao Tulshiram Pawar was joined as Defendant No. 3 with one Sambhaji Maruti Pawar as Defendant No. 4 therein. It is not in dispute that all these Plaintiffs & Defendants represented branches of joint hindu family of Pawars. Suit was for injunction to restrain present Petitioners from interfering with or disturbing the possession of Plaintiffs over all three lands including survey No. 499EE. From annexure Exh. A with memo of petition, it appears that said Suit was disposed of in November or December, 1966 after recording a compromise between Plaintiffs & Defendants 1, 2 & 3 as per Exh. 81. That Suit was withdrawn as against Defendant 4 Sambhaji Maruti Pawar. Claim of Plaintiff No. 1 Laxman was dismissed. In short under that compromise, Plaintiffs 2 to 4 were given right to possession only if they & Defendant No. 3 Krushnarao paid Defendants 1 & 2 (Petitioners herein) sum of Rs. 4500/-- by 10/2/1967. Suit at the instance of Laxman was dismissed as he filed a memorandum of understanding dated 31/8/1965 admitting the Kaulnama & Sale-deed executed by Krushna in favour of Defendants 1 & 2 and stated that said Krushna had acted as head or Karta of joint hindu family while executing the same. Laxman therefore placed on record his desire not to prosecute the Suit. Trial Court has verified & recorded this understanding on 7/9/1965. Because of this only, the claim made in suit by Laxman was rejected. Said Laxman S/o Tulshiram Pawar was Respondent 1 in present petition. Krishna S/o Tulshiram Pawar was Respondent 7 and one Gopal S/o Tulshiram Pawar is Respondent 8 before this Court. This Gopal was not party in RCS 123 of 1965. Suit No. 24 of 1967 was filed by Inamdar after this compromise came to be recorded. The Inamdar (Patwardhan) family was not party to RCS 123/1965. Second Appeal 79/1972 did arise from Suit 24 of 1967. Present Petitioners as also members of Pawar family were Defendants in that Suit. Compromise in RCS 123/1965 did not require any consideration in it. Even before this Court in Second Appeal, said compromise was not pressed into service by the Petitioners who were then the Appellants. Again State Government or any of its officers were not parties to RCS 123/1965. That compromise is therefore not binding on State Government while finding out who is occupant & entitlement to deposit the occupancy price.

24. This brings me to impugned orders. Mutation entries 1821, 1888 & 1927 certified on 3/9/1981, 26/9/1982 & 18/5/1983 of village Parli about land survey No. 499EE, area 3 acres were obtained by these Petitioners by moving an application dated 27/7/1981. They also filed order of Deputy Collector dated 30/6/1981 and copy of compromise with Nalinibai reached in High Court along with their application. These entries appear to be made as per letter from office of Tahasildar. Tahasildar had purportedly acted upon the orders of Deputy Collector dated 30/6/1981. Perusal of order dated 29/5/1990 by SDO, particularly its operative part show cancellation of these three mutation entries and a direction to abide by judgment in Second Appeal by adding name of Laxman as occupant & to initiate proceedings for determination of occupancy

price, if not initiated already as per said orders of Deputy Collector, Beed dated 30/6/1981. This order also directs initiation of departmental inquiry against the then Tahasildar, Ambajogai. Order dated 30/6/1981 by Deputy Collector shows initiation of proceedings by inamdar Patwardhans on 26/11/1980 ie after HC judgment in Second Appeal. Krishnarao, Gopalrao & Laxmanrao Pawar - all sons of Tulshiram Pawar filed their written reply before the Deputy Collector on 29/11/1980 ie just within 3 days of its institution and accepted that on 1/7/1960 inamdar Shri Patwardhan was in possession of survey No. 499EE. They also stated that name of Tulshiram was wrongly added in appendix "A" register of Parli Vaijnath and it was without any inquiry u/s 2A of 1954 Act. Prayer made by them shows request to recognize & record name of inamdar Shrikant Govindrao Patwardhan as an occupant in Appendix "A" register. Present Petitioners then filed copy of High Court judgment dated 12/8/1980 & requested for grant of occupancy rights because of their existing possession. They nowhere claimed to be in possession of survey No. 499EE on 1/7/1960. Deputy Collector has noted that proceedings u/s 2A or Section 5 of 1954 Act were not started till then and accordingly passed orders to enter name of Applicant (Patwardhan) before it as inamdar and directed Tahasildar to take mutation entries in compliance with High Court orders with direction to parties to approach him therefore. Present Petitioners referred to as decree holders were directed to get decree passed in their favour executed to settle their claim. Krishna, Gopal & Laxman all three sons of Tulshiram Pawar were parties to this case. Impugned three mutation entries were then taken & certified. Inamdar's (Patwardhan's) appeal against this direction was dismissed by Additional Commissioner on 30/3/1991. All three sons of Tulshiram & present Petitioner No. 1 were party Respondents in that appeal. The Additional Commissioner was not required to look into mode & manner of implementation of High Court orders by Tahasildar which was completed in the meanwhile and he found the directions of Deputy Collector in tune with High Court judgment. The heirs of Tulshiram also did not make any grievance in that respect. Grievance for correcting revenue records seems to have been raised by Laxman s/o Tulshiram by moving SDO & Deputy Collector in 1987 & on 29/5/1990, present Petitioner No. 1 had sought stay of those proceedings. Above mentioned order dated 29/5/1990 is passed by SDO on this day only in very same grievance of Laxman. Said order shows that grievance was treated as suo motu revision against three mutations 1821, 1888 & 1927 u/s 257 of MLR Code by SDO. Petitioner No. 1 had sought stay of this revision due to admission of SLP against judgment of High Court before the Hon. Apex Court. This application for stay also shows that Additional Commissioner had also stayed appeal before him against the order dated 30/6/1981. In his order dated 29/5/1990, SDO found mutation entries wrong & canceled it. SDO directed insertion of name of inamdar as per orders of Deputy Collector dated 30/6/1981 and initiation of departmental inquiry against the then Tahasildar. Revision of Petitioner No. 1 against this order of SDO dated 29/5/1990 came to be allowed by Additional Commissioner on 5/5/1992. Though Additional Commissioner found that SDO had no powers to revise, had preponed scheduled date of hearing

resulting in denial of opportunity to Petitioner No. 1 and necessary party viz. Petitioner No. 2 was not joined before SDO, those aspects are not very relevant as ultimately, he remanded the matter back to hold proper inquiry. Additional Commissioner noticed pending appeal before the Hon. Apex Court, kaulnama & registered sale-deed about 499EE in favour of Petitioners & its admission in RCS 123/1965. Therefore it appeared to him that Laxman had no right to have his name entered as occupant. The Additional Commissioner has allowed the revision before him partly & remanded the matter back for fresh inquiry. Thus, said authority has not recorded any final & binding conclusion in so far as mutation entries are concerned. It did not declare Petitioners as occupants entitled to deposit the occupancy price. Order dated 19/1/1983 passed by Deputy Collector relaxing the condition of inalienability proceeds on erroneous presumption that land survey No. 499EE was conferred upon the Petitioners u/s 6 of 1954 Act. This order loses its sanctity in view of later specific finding of absence of adjudication on disputed status as "occupant" by competent authority u/s 2A thereof.

25. From paragraphs 15 to 17 in memo of petition, it appears that after remand the proceedings began before the Additional Collector, Beed in File No. 93-CD-1-Appeal 46 wherein the report of SDO was called. SDO submitted that report on 2/8/1996 and it was accepted by the Additional Collector who held that Laxman inherited the tenancy from Tulshiram & lease by them in favour of Petitioners is not legal. It also observed that as copy of judgment of High Court was not produced, it ought to be against Petitioners. Some observations about the proceedings pending before the Hon. Apex Court are also made but then the meaning of same is not clear. This order of Additional Collector is dated 27/11/1996 while Hon. Apex Court decided Civil Appeal on 10/3/1999. Impugned order dated 7/2/1997 passed by the Additional Divisional Commissioner rejecting further challenge in revision to this order is also prior to judgment of Hon. Apex Court. Conclusions reached therein that the Petitioners have no locus or then documents in their favour are without any legal sanctity may be bereft of detail reasons and said order is passed on very first day of hearing or filing of revision, still the Petitioners have not pointed out that dispute about status as "occupant" is decided by competent authority u/s 2A of 1954 Act. Grant of status as "Inamdar" u/s 2A is no answer to it. As I do not find any thing in their favour in orders dated 30/6/1981 of the Deputy Collector, it is not necessary to dwell more on it. In any case, on the strength of a Full Bench decision of this Court in Sheikh Mohamed Fatemohamed and etc. Vs. Raisuddin Azimuddin Katil and Others, etc., , neither order dated 27/11/1996 of the Deputy Collector nor the order dated 7/2/1997 passed by the Additional Commissioner can be viewed as orders u/s 2A of 1954 Act. As I find the proceeding challenging orders of Deputy Collector dated 27/11/1996 was filed before an incompetent authority, it is not necessary to delve more into this aspect. As already noticed, said Deputy Collector has also recorded that proceedings u/s 2A of 1954 Act were not initiated till then and this finding is not shown to be erroneous at all. Deputy

Collector had permitted Petitioners to execute the orders of the High Court in Second Appeal ie to approach competent authority u/s 2A of 1954 Act. Petitioners have till date not done it. It is obvious that while passing these orders, the judgment dated 12/8/1980 in S.A. 79/1972 was not perused & judgment of Hon. Apex Court in SLP against it was not available & not perused.

26. Various orders mentioned above and about the mutation entries (MEs) 1821, 1888 & 1927 certified on 3/9/1981, 26/9/1982 & 18/5/1983 of village Parli pertaining to land survey No. 499EE show that there has been no recourse to forum u/s 2A of 1954 Act. The authorized officer under that provision can alone decide the status of heirs Tulshiram or of Petitioners and then their entitlement to deposit the occupancy price in the facts & circumstances as brought on record and then proceed to pass appropriate orders as per scheme of 1954 Act.. Appeal against such determination is then provided with State Government itself. Admittedly, there has been no such adjudication here. The first application was moved by the inamdar Shri Patwardhan for recording his name as such & then the Petitioners moved therein for implementing the High Court judgment. It is clear that Civil Court could not have declared Petitioners as "occupants" for the purposes of 1954 Act and competent authorized officer u/s 2A of 1954 Act has not still adjudicated upon it. Thus, in Second Appeal, for the first time, this Court can not be presumed to have exercised the jurisdiction to declare Petitioners as "occupants". As Civil Court can not grant that declaration, pending Civil Suits between parties are not relevant for this purpose. The wavering stand of Laxman Pawar is also therefore not decisive here. Said stand or understanding recorded in RCS 123/1965 & judgment in Second Appeal may be helpful only to find out the party in possession & Civil Court can use it appropriately in pending Suits for injunction. Revenue entries under MLR Code, 1966 about said possession are not final & binding on Civil Court. But then, it can not adjudicate dispute about status as "occupant". In absence of appropriate adjudication by authority prescribed by Section 2A of 1954 Act, the above mutation entries regarding the status of Petitioners as "occupants" or the payment of "occupancy price" by them or relaxation of condition of inalienability at their instance is all without jurisdiction. But then the competent authority has to hold proper inquiry u/s 2A of 1954 Act to find out the status of heirs of Tulshiram on 1/7/1960 and for that purpose grant appropriate opportunity to present Petitioners also. Impugned order of the Additional Collector, Beed dated 27/11/1996, as noticed already, is again an order u/s 257 of MLR Code, 1966. It bases itself on the report of SDO. Hence said order is also not u/s 2A of 1954 Act and of no use to Respondents 1A to 1C, 7A to 7C & 8. The said order is not in furtherance of order of remand dated 5/5/1992 passed by Additional Commissioner. There is no second adjudication here at all. Direction to record name Laxman Tulshiram Pawar as occupant & to recover occupancy price from him is therefore without jurisdiction & unsustainable. Consequential steps of Talathi as contained in communication dated 21/3/1997 implementing these orders are also bad. For the purposes of record, it is clarified that this Court has not in any way eclipsed the jurisdiction of

authorized officer u/s 2A of 1954 Act to find out who is "occupant" in case such dispute is raised before it. Some of the questions formulated above are left unanswered only with that intention so as to enable the authorised officer to evaluate the same. Conduct of heirs of Tulshiram, various compromises entered into between parties and change in their stance by Pawar family can all be then scrutinized & evaluated independently by said authorities uninfluenced by any observations made by this Court in that respect.

In view of these findings, I do not find it necessary to refer to Vinaykumar Kacharulal Abad v. Hon. Minister, Revenue & Forest and Sambappa Babappa Teli v. State of Maharashtra (both supra) relied upon by the Petitioners to explain the scope of jurisdiction available to the revisional authority. Rohidas Vithal Patil v. Sub-Divisional Officer (Revenue), Nandurbar (supra) relied upon to urge that this Court should refuse to interfere in writ jurisdiction by Adv. P. R. Patil as dispute here is only in relation to revenue entries or mutation and all orders passed by either the Additional Collector(Land Reforms) or the Additional Divisional Commissioner impugned herein are subject to adjudication in pending civil suit also need not be considered in more details. Paragraph 62 Palitana Sugar Mills (P) Ltd. v. State of Gujrat (supra) cited for pointing out binding effect of the findings recorded in Second Appeal or by Hon. Apex Court reiterates a well settled position. In present facts, as I am unable to hold that Petitioners have played any fraud or resorted to dishonest practices, reliance upon A.N. Papayya Sastry v. Government of Andhra Pradesh for outright dismissal of petition with heavy costs is misconceived. About change in stand of Laxman, Sneha Gupta v. Devi Sarup and Anr. (para-45) has been shown with contention that there can not be any estoppel against statute in such matters. But as this Court is not required to comment upon it in this litigation and said aspect can be examined by the authorized officer in inquiry u/s 2A of 1954 Act, I do not find it appropriate to consider this precedent.

27. As a result, the impugned order of the Additional Collector, Beed dated 27/11/1996 u/s 257 of MLR Code, 1966 is quashed and set aside. With the result, the Impugned order dated 7/2/1997 passed by the Additional Divisional Commissioner rejecting further challenge in revision to this order is also set aside. Consequential steps by Talathi as contained in communication dated 21/3/1997 implementing these orders also therefore fall to ground. But then that does not mean that Petitioners can be recorded as "occupants" for the purposes of 1954 Act or then the occupancy price can be recovered from them. Their petition is therefore partly allowed. Rule made absolute accordingly with no orders as to costs.

JUDGE

28. At this stage, i.e. to-day it is pointed out to this Court that Civil Application Nos. 6907/2002, 10636/2004 and 12239/2005 are pending and are to be considered at the time of final hearing. In view of the final disposal of the Writ Petition, said applications are rendered infructuous and are disposed of

accordingly.

29. Shri Patil, the learned Counsel appearing for Respondent Nos. 1(A) to 1(C) request for grant of interim order for a period of 8 weeks so as to enable those Respondents to take further appropriate steps in the matter. In the circumstances, the operation and effect of this judgment is stayed for a period of 8 weeks from today. This interim order shall cease to operate automatically after the said period.