

(2025) 04 BOM CK 0290

In the Bombay High Court

Case No : Writ Petition No. 1374 Of 1998 With Civil Application No.1985 Of 2017
In Writ Petition No.1374 Of 1998

Ramchandra Sitaram Supanekar And Ors APPELLANT

Vs

Shri Uttamrao Yashwant Khot (Decd) By Heirs And Lrs RESPONDENT

Date of Decision : 16-04-2025

Acts Referred:

Maharashtra Tenancy and Agricultural Lands Act, 1948 — Section 4, 4A, 70(b)
Maharashtra Land Revenue Code, 1966 — Section 149
Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules 1971 — Rule 30, 31

Citation : (2025) 04 BOM CK 0290

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : S.P. Thorat, Dr. Uday P. Warunjikar, Gargi Warunjikar

Final Decision : Allowed/Disposed Of

Judgement

Sandeep V. Marne, J.

1. Petitioners have filed this Petition challenging the judgment and order dated 6 December 1997 passed by the learned Member, Maharashtra Revenue Tribunal, Pune, (MRT) allowing the Revision Application preferred by the Respondents and setting aside the order passed by Sub Divisional Officer (SDO) dated 31 January 1994. The SDO had allowed the Appeal preferred by the Petitioner and had set aside Tahsildar's order dated 7 October 1993 declaring Respondents as tenants in respect of the land in question. Thus, the net result of the order passed by the MRT is that tenancy claim of Respondents in respect of the land has been upheld.

2. The case has a chequered history. Agricultural land bearing Gat No.3273 (new Gat No.396) admeasuring 50 R. and Gat No.836 (new Gat No.125) admeasuring 1 H. 53 R. situated at village Masur, Taluka Karad, District Satara is the subject matter of the Petition. Both the pieces of lands were initially owned by Bhagirathibai Tope and Bajrang Balwant Tope. After death of the parents, their

son Shankar Bajrang Tope became owner of both the pieces of land and his name was apparently entered in the revenue records as owner. Uttamrao Yashwant Khot (Uttamrao) claimed tenancy in respect of both the pieces of lands claiming that he was cultivating the same since the year 1965-66. He filed Tenancy Case No.5 of 1982 under provisions of Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) in which he admitted that though he was cultivating the land since the year 1965-66, his name was never mutated in the revenue records in 'cultivation' column. He pleaded that Sunil Shrirang Rasal purchased land bearing Gat No.3273 on 16 July 1982 whereas Ramchandra Sitaram Supanekar (Petitioner No.1) purchased land bearing Gat No.836 on 16 July 1982 from Shankar Bajrang Tope and got their respective names mutated in the revenue records. Uttamrao alleged that Sunil Rasal and Ramchandra Supanekar started intervening with his possession of lands bearing Gat Nos.3273 and 836 which gave cause of action for Uttamrao to file Tenancy Case No.5 of 1982. Uttamrao therefore sought a declaration that he was cultivating both the pieces of land as tenant and sought injunction against Sunil Rasal and Ramchandra Supanekar from obstructing his possession. The Tenancy Awal Karkun, Karad, (TAK) allowed Tenancy Case No.5 of 1982 by his judgment and order dated 20 August 1985 declaring Uttamrao as a tenant in respect of both the pieces of lands. Petitioner No.1 alongwith heirs of Shankar Bajrang Tope filed Appeal before the SDO, Satara, challenging the order of TAK dated 20 August 1985. The SDO proceeded to allow the Appeal inter alia holding that Uttamrao could not prove his claim of tenancy. The SDO set aside the order passed by the TAK by his order dated 22 January 1987. Uttamrao filed Revision Application before the MRT which came to be partly allowed by judgment and order dated 21 December 1988 observing that Sunil Rasal and Ramchandra Supanekar had applied before TAK for transfer of the case and District Collector had directed Tenancy Case No.5 of 1982 to be heard by Tehsildar and not by TAK and ignoring the said order of transfer, TAK had proceeded to decide the tenancy case. The MRT therefore set aside the orders passed by the SDO as well as TAK and remanded the proceedings to Tehsildar, Karad for decision of Tenancy Case No.5 of 1982 afresh.

3. In the remanded proceedings, evidence of Uttamrao's son Ravindrakumar was recorded. Similarly, statement of Petitioner Ramchandra Supanekar was also recorded. Tehsildar proceeded to allow Tenancy Case No.5 of 1982 by judgment and order dated 7 October 1993 holding that Uttamrao was a tenant in respect of both the pieces of lands bearing Gat Nos.3273 and 836.

4. Both Sunil Rasal and Ramchandra Supanekar filed Tenancy Appeal No.39 of 1993 before the SDO challenging Tehsildar's order dated 7 October 1993. The SDO allowed the Appeal of duo and set aside Tehsildar's order dated 7 October 1993 vide his judgment and order dated 31 January 1994. The heirs of Uttamrao filed Revision before the MRT, which has been allowed by judgment and order dated 6 December 1997 and the MRT has set aside SDO's order and confirmed Tehsildar's order dated 7 October 1993. This is how tenancy claim of Uttamrao

has been finally upheld under provisions of Section 70(b) of the Tenancy Act. Aggrieved by MRT's order dated 6 December 1997, Ramchandra Supanekar as well Sunil Rasal have jointly filed the present Petition.

5. Initially by order dated 18 April 1998, this Court dismissed the Petition by upholding the order of MRT. However, Review Petition No.6583 of 1998 was filed by the Petitioners, in which both the sides consented for recall of order dated 18 April 1998. Accordingly, the Petition was restored and admitted by order dated 7 October 1998.

6. During pendency of the Petition, it appears that disputes between Sunil Shrirang Rasal and heirs of Uttamrao got settled and heirs of Uttamrao purchased land bearing Gat No.3276 from Sunil Rasal in the year 2008. Therefore, there is no dispute about tenancy rights of Uttamrao/his heirs in land bearing Gat No.3276. Sunil Rasal has sold the land bearing Gat No.3276 to the heirs of Uttamrao. Therefore, now the dispute is restricted to only land bearing Gat No.836 (new Gat No.125) admeasuring 1 H. 53 R. which is purchased by Petitioner No.1-Ramchandra Sitrama Supanekar from Shankar Tope, and who disputes tenancy right of heirs of Uttamrao in that piece of land.

7. Mr. Thorat, the learned counsel appearing for Petitioners, who are now heirs of Ramchandra Sitaram Supanekar would submit that the MRT has grossly erred in setting aside the order passed by the SDO and recognizing tenancy rights of Uttamrao. He would submit that admittedly, there is no rent agreement/note or rent receipt evidencing creation of tenancy in Uttamrao's favour at any point of time. That Uttamrao could not produce even a single receipt showing payment of rent. That names of Shankar Tope consistently remained recorded in revenue records not just as owner but also as cultivator. That the claim of cultivation of land by Uttamrao since 1965-66 was fallacious as Uttamrao's son Ravindrakumar admitted in his cross-examination that Uttamrao was taking education in college at Karad at that times and later had shifted to Pune for a job. He would take me through the cross-examination of Ravindrakumar Uttamrao Khot in which specific admissions are given about non-execution of any written agreement of tenancy. He would submit that Uttamrao actually was brother of Bhagirathibai. That Bhagirathibai's mother had adopted Uttamrao and the relationship between Bhagirathibai and Uttamrao was that of sister and brother. That additionally, Uttamrao was also real cousin brother of Bhagirathibai. He would rely upon provisions of Section 4 of the Tenancy Act in support of his contention that mere cultivation of land by relative does not make such relative deemed tenant. He would submit that Uttamrao's son repeatedly gave admissions about relationship between his father and Bhagirathibai. Mr. Thorat would therefore submit that the tenancy claim of Uttamrao was therefore required to be rejected.

8. Mr. Thorat would further submit that there is no semblance of evidence of payment of rent by Uttamrao to Bhagirathibai or Shankar Tope at any point of time. That even if one letter evidencing payment of Rs.2,000/ is to be considered, the payment was in capacity as a relative and not as a tenant. He

would rely upon Section 149 of the Maharashtra Land Revenue Code, 1966 (MLR Code) in support of his contention that it is obligatory on the part of any person in occupation of the land to issue intimation of his possession to the revenue authorities. That it is inconceivable that Uttamrao had not taken any steps for 15-16 long years for mutation of his name as possessor and cultivator of the land. He would submit that even if some documents relating to land bearing Gat No.3276 are to be accepted, there is absolutely no evidence of creation of tenancy, payment of rent or personal cultivation of the land bearing Gat No.836. He would therefore submit that qua the land admeasuring 1 H 53 R in Gat No.836, the tenancy claim deserves to be outrightly rejected. He would submit that false tenancy claim was raised only after realizing that the original landlord Shankar Tope had sold both the pieces of land to outsiders (Rasal and Supanekar). That false tenancy claim was raised after realizing that the original landlord was no longer interested in defending the tenancy. He would submit that findings recorded by the MRT are clearly perverse as the same are not borne out by evidence on record. In support of his contentions, Mr. Thorat would rely upon following judgments:

1. Appalal Alias Ismail Ibrahim Vs. Shaba Shiraj Mulla & Ors. 1999 Vol. 101 (3) Bom L.N. 388

2. Mahadeo @ Mahadu Haribhau Nigune Vs. Indulal Ranchhoddas Shah & Ors. 2001(1) ALL MR 222

3. Smt. Anusayabai Ganpati Gaikwad(deceased) Vs. Baba Tatyā Nikam(deceased) 2003(3) ALL MR 1000

4. Bansrajidevi wd/o Bhuval Singh Ramniranjan Singh& Ors. Vs. M/S Byramjee Jeejeebhoy Pvt. Ltd. & Ors. 2006(6) Mh.L.J .95

5. Narayan Laxman Patil Vs. Gala Construction Company Pvt. Ltd. & Ors. 2016(14) SCC 388

9. On above broad submissions, Mr.Thorat would pray for setting aside the order passed by MRT.

10. The Petition is opposed by Dr. Warunjikar, the learned counsel appearing for the Respondents. He would submit that the MRT has rightly appreciated the evidence on record for setting aside SDO's order and for upholding the tenancy claim of Uttamrao. That there is voluminous evidence on record about payment of land revenue, cultivation of crops and payment of rent by Uttamrao. He would submit that land bearing Gat No.3273 was bagayat (irrigated land) whereas land bearing Gat No.836 was jirayat (non-irrigated land). That therefore substantial evidence was produced about cultivation of crops in respect of land bearing Gat No.3273 and the purchaser Sunil Rasal ultimately gave up the claim qua that land and sold the same to the Respondents in the year 2008. That the entire evidence was required to be taken as a whole and cannot now be split as the tenancy claim was wrongly disputed in respect of both pieces of land by raising

same contentions. That it is inconceivable that tenancy claim qua land bearing Gat No.3273 is upheld whereas similar claim regarding other piece of land bearing Gat No.836 is put to more rigorous test of production of separate and independent piece of evidence. Nonetheless according to Dr. Warunjikar, the Respondents have discharged the burden of producing relevant documentary evidence to demonstrate cultivation of land bearing Gat No.836. He would particularly rely on letter dated 3 August 1976 by which Uttamrao had sent Rs.2,000/- towards rent to landlord Shankar Tope. He would also rely upon receipts relating to payment of land revenue in support of tenancy claim of Uttamrao. He would submit that for proving tenancy claim, it is not necessary to produce rent agreement/receipt and that tenancy claim can be upheld even on the basis of proof of personal cultivation. That in the present case, there is ample evidence of personal cultivation of Gat No.836 by Uttamrao Khot.

11. Dr. Warunjikar would further submit that the theory of Uttamrao Khot being brother of Bhagirathibai is totally fallacious. He would submit that relationship between Bhagirathibai and Uttamrao is sought to be inferred on the basis of alleged adoption of Uttamrao by the mother of Bhagirathibai. That therefore Uttamrao cannot be treated as a family member within the meaning of Section 4A of the Tenancy Act. That adopted son is a part of distant unit for the purpose of determining the tenancy claim. Dr. Warunjikar would accordingly pray for dismissal of the Petition.

12. Rival contentions of the parties now fall for my consideration.

13. Uttamrao claimed tenancy rights in two pieces of lands bearing Gat Nos.3273 and 836. In his application filed in Tenancy Case No.5 of 1982, Uttamrao pleaded that both the pieces of land were originally owned by Bhagirathibai and Bajrang Tope. After death of Bhagirathibai and Bajrang Tope, name of his son Shankar Bajrang Tope was mutated to the revenue records. Uttamrao Khot claimed that Bhagirathibai and Bajrang Tope were not agriculturists and used to reside outside the village for their service. That therefore, both the pieces of land were given for cultivation as tenant to Uttamrao, 15/16 years prior to filing of Tenancy Case No.5 of 1982. Thus Uttamrao claimed possession and tenancy in both pieces of land roughly from the year 1966-67. Uttamrao Khot claimed that he used to take crops in land bearing Gat No.3273. In the year 1982, he cultivated sugarcane in area of one acre and crop of rice in remaining 10 gunthas in Gat No.3273. In respect of Gat No.836, he pleaded that he took various non-irrigated crops in the same. He claimed that Shankar Bajrang Tope was permanent resident of Satara and used to operate printing press and had never cultivated either of the lands. That Shankar Tope illegally got his name mutated in the cultivation column in the year 1981-82 and thereafter sold Gat No.3273 to Sunil Rasal and Gat No.836 to Ramchandra Supanekar. That both the purchasers mutated their names to the revenue records. Uttamrao claimed that both the purchasers started obstructing his possession, on account of which he filed Tenancy Case No.5 of 1982 before TAK. The Application preferred by Uttamrao was shown to have been filed under

provisions of Section 70(b) of the Tenancy Act. However the prayers made by Uttamrao in his Application read thus:

14. Mr. Thorat has sought to suggest that the application filed before TAK cannot be treated as the one seeking declaration of tenancy under Section 70(b) of the Tenancy Act. There was no prayer in the Application seeking declaration of tenancy. The main prayer was for seeking injunction against Shri. Rasal and Shri. Supanekar from obstructing his possession as he was possessing the lands as tenant. However, ignoring the manner in which prayers in the Application were couched, I proceed to examine whether Uttamrao has established his claim of tenancy in the lands.

15. As observed above, Uttamrao succeeded in the first round of litigation by securing declaration of tenancy in his favour by order

dated 20 August 1985, which was set aside by the SDO by order dated 22 January 1987. The MRT remanded the proceedings by order dated 21 December 1988 for fresh decision, not by TAK, but by Tehsildar. In the remanded proceedings, Uttamrao once again succeeded before Tehsildar and secured declaration of his tenancy vide order dated 7 October 1993. Tehsildar proceeded to accept the tenancy claim by recording following finding:

16. Thus, Tehsildar held that though there was no written agreement for creation of tenancy, creation of tenancy was admitted in the statement and that the opposite party did not produce any evidence about non-existence of tenancy of Uttamrao. In my view, the Tehsildar did not conduct proper enquiry while upholding tenancy rights of Uttamrao. Tenancy case was filed by Uttamrao and it was his burden to prove existence of tenancy. He could not have upheld the tenancy rights of Uttamrao by holding that the opposite side could not disprove existence of such tenancy rights. Further finding of admission about existence of tenancy is totally perverse as I do not find any admission on the part of the opposite parties in respect of tenancy rights of Uttamrao. In the remanded proceedings, it appears that evidence was recorded and Ramchandra Sitaram Supanekar did not admit that Uttamrao was tenant of Bhagirathibai Bajrang Tope or of Shankar Bajrang Tope. On the contrary, he specifically led evidence that Shankar Bajrang Tope was personally cultivating the land. Tehsildar had before him evidence of two witnesses running into 72 pages, but proceeded to answer the vital issue of existence of tenancy rights by recording reasons running into only in 4 to 5 lines. The nature of enquiry conducted by Tehsildar was clearly improper and does not appeal to this Court.

17. So far as Issue No.4 before the Tehsildar is concerned, the same was about existence of landlord-tenant relationship between the parties. Issue No.4 was thus, clearly co-related to Issue No.3, which was about grant of land to Uttamrao as tenant. Issue No.4, which again was a vital issue, came to be cursorily decided by Tehsildar by recording following terse findings:-

18. Thus, except recording reasons of Shankar being employed in court at Karad and Uttamrao residing at village-Masur, Tahsildar has not recorded any independent findings for accepting landlord-tenant relationship. The finding of Tahsildar i.e. 'सा. वाले यांनी तंटा जमीन ते स्वतः करतात याचे बदल काही पूर्वा लेखी / तोंडी दिला नाही.' is unsustainable as the burden of proving personal cultivation was on the tenant and it was not for the landlord to prove the negative. The further finding that 'या

is again unsustainable. Here again, the burden of proving personal cultivation was squarely on the shoulders of Uttamrao and even if the 'cultivation' column was blank, the same would not ipso facto mean that the land was cultivated by Uttamrao. If the cultivator column is blank and entry of crops is made, the presumption is that the holder of the land has cultivated those crops.

19. I have perused the original record and proceedings. Along with his application in Tenancy Case No.5 of 1982, Uttamrao had filed 7/12 extracts of land bearing Gat No.3273 and 836. In both the extracts, name of Bajrang Tope is recorded as the holder. In Village Specimen No.12, various kind of crops are reflected from 1975-76 to 1980-81. However, against the column 'जमीन करणाऱ्यांचे नाव there is vertical line upto 1980-81. For the year 1981-82, name of Shankar Bajrang Tope is mentioned as the cultivator. It is on the basis of these 7/12 extracts, the Tahsildar held that the name of person cultivating the land was left blank from 1975-76 till 1980-81 and that the same came to be added for the first time in 1981-82.

20. It is Uttamrao's case that though he was cultivating the land personally, his name was never mutated in the 'cultivation' column and that Shankar Tope, who was otherwise working as Nazir in Court at Karad and that he had neither knowledge nor equipment for cultivation and took disadvantage of that position and got his name entered in the 'cultivator' column for the first time in the year 1981-82. According to him, this was done few days before selling the lands to Sunil Rasal and Ramchandra Supanekar. The Tahsildar questioned recording of name of Shankar Bajrang Tope in the 'cultivator' column and held that there was no evidence of conduct of enquiry under Rule 31 of Maharashtra Land Revenue Rules. The Tehsildar further held that after sale of both the pieces of lands, Uttamrao Khot filed injunction suit before Civil Court at Karad and got his name mutated in the revenue records by filing applications dated 15 September 1982 and 14 August 1982. Tehsildar also relied upon receipts produced by Uttamrao regarding supply of sugarcane to the sugar factory. This is how Tehsildar proceeded to allow Uttamrao's application in the remanded proceedings.

21. The SDO proceeded to set aside Tehsildar's order holding that no prayer was made by Uttamrao in his application for declaration as tenant under Section 70(b) of the Act and that Tehsildar had erred in declaring him as tenant in absence of such a prayer. SDO relied upon 7/12 extracts of 1992-93 to hold that Sunil Rasal and Ramchandra Supanekar started personally cultivating the lands. He further held that rent receipt dated 25 October 1962 could not be accepted as evidence as no entry in revenue records was made in the year 1962-63 if the

land was really granted in tenancy in that year. The SDO also criticised Uttamrao for maintaining silence by not getting his name recorded in the 'cultivation' column for 20 long years. SDO therefore refused to accept existence of landlord-tenant relationship and set aside Tehsildar's order vide his order dated 31 January 1994.

22. When the proceedings reached MRT, the revision has been allowed by recording following findings:-

"At very outset the application u/sec.70B which was filed by the present revision applicants father before Tahsildar, Karad in which it is clearly mentioned that claim U/sec.70-B so also in para 3 of the said petition he has claimed tenancy and alleged that Respondents owner i.e. landlord who, is residing at Satara. The prayer of the said application also shows that he is claiming tenancy u/sec.70-B. So far as page No.13,15, 453, 455 and 457 are concerned, there is a name of Uttamrao Yeshwantrao Khot as a cultivator of the land in dipuste and at page No.259, 261, 263, 265, 273 and 275 all these documents infer that land revenue is paid by Uttamrao (deceased tenant) and land revenue receipts are in respect of disputed land. So also at page No.323 a letter is sent by landlord to the tenant that certain amount is received. At page No.357 of lower court's file there is a letter and demand of money by landlord to the tenant. At page No.359 a letter was issued stating that tenant has deposited Rs.2000/- with the Bank and obtained a demand draft of Rs.2,000/-and it has been sent to the landlord. So also sugarcane receipt in favour of tenant is at page 443 which includes the disputed Gat No. So also at page No.449 there are two cane receipts and there is inclusion of Gat No.3273 which is disputed land. The said cane receipt is in the name of Uttamrao, the deceased tenant. So all above documents like 7/12 extract, revenue record, rent receipts and sugarcane receipts goes to prove that the deceased Uttamrao Khot was tenant on the land in dispute. When Uttam is not concerned with the land, the question is why he has interested to deposit land revenue why his name is entered in VII.XII. So also why he has deposited the amount of Rs.2,000/- and why the disputed land is included on the sugarcane receipt of the tenant? Obviously the tenant is related witht he disputed land as a tenant and he is cultivating the land since 1962 as he has claimed. On the other hand page No.249 there is a certificate issued by the Talathi. Certificate is that purchasers Supnekar is not resident ofthe said village and he is not agriculturists. At page 253 the Ramchandra Supnekar the Opponent is commission agent at Agriculture Produce Marketing Committee at Karad. So also there is one Certificate(PAge-255) which shows that Ramchandra Sitaram Supnekar is not agriculturist before 1982 and he used to reside at Umbraj. So all these documents shows that the present opponents who are purchasers are not agriculturists, and a sham and bogus sale deed is executed in favour of non-agriculturists, only to deprive the present revision applicant from their tenancy rights. So far the igredients of Sec.70-B are concerned. The present revision application fully and with a corroborative evidence prove their tenancy beyond reasonable doubt and I agree with the arguments advanced byt

he advocate for revision applicants. Sub-Divisional Officer has ignored all these documents which were on record before him the reasons best known to him only. So far as Sale deed dated 16.7.1982 is concerned, there is no effect of sale deed on the right of tenancy of revision applicant. So I am of opinion that the Sub Divisional Officer did not consider the documents properly and I have no alternative except to set aside the order of Sub Divisional Officer. Whereas the A.L.T. Karad rightly observed, rightly considered the oral as well as documentary evidence on record and rightly came to the conclusion that present revision applicants are the tenants of the disputed land. Hence I am constrained to interfere into the order of Sub Divisional Officer and confirm the judgment of ALT Karad.

23. MRT has thus proceeded on an assumption that Uttamrao's name was recorded as cultivator of the lands in dispute. He has referred to documents at page Nos.13, 15, 453, 455 and 457. However, documents at Sr. Nos.13 and 15 of record and proceedings are 7/12 extracts of Gat Nos.3273 and 836 and in both the 7/12 extracts, name of Uttamrao is not recorded in 'cultivator' column. As held above, there is a vertical line in the 'cultivator' column from 1975-76 to 1980-81 and name of Shankar Bajrang Tope is recorded as cultivator in 1981-82. Thus the finding of MRT that Uttamrao was cultivator of the land as per 7/12 extracts is perverse.

24. The document at page 453 of the R&P is the receipt issued by the Sugar Factory in respect of Gat No.3273 on 2 April 1976. The document at page 457 is about transfer of shares from the name of Uttamrao Yashwantrao Khot to Ravindrakumar Uttamrao Khot and the same is irrelevant for deciding the issue at hand. The MRT has thereafter relied on documents at page Nos.259, 261, 263, 265, 273 and 275 to infer that land revenue was paid by Uttamrao. Though, most of the receipts for payment of land revenue do not reflect Gat Number of the land, all the receipts indicate the name of Bhagirathi Balvant Tope followed by the name of Uttamrao Tope. The fact that name of Bhagirathi and Uttamrao are borne on same receipt would clearly indicate that the same are in respect of disputed lands in question. The issue however is whether payment of land revenue by Uttamrao on few occasions would make him a tenant? This is discussed in latter part of the judgment.

25. The MRT has thereafter relied on letter dated 3 August 1976 issued by Uttamrao Yashwant Khot which reads thus:-

26. In the present case, admittedly there is not even a single rent receipt showing payment of rent by Uttamrao to Bhagirathibai or Shankar. In absence of rent receipt, Uttamrao has relied upon letter dated 3 August 1976 sent on the letter head of 'M/s. Khot & Associates' to 'Bhau'. Though the letter is addressed to 'Shri. Bhau' at Satara, there is an endorsement towards the end of the letter in a different ink as under:

प्रति S.B.टोपे ६८, भवानी पेठ सातारा

27. This endorsement is clearly in a different ink than the rest of the contents of the letter, which appears to be the carbon copy of the original letter. There is thus some interpolation in the said letter, which fact is admitted by Uttamrao's son Ravindrakumar in his cross-examination. It is contended that Rs.2,000/- sent by Demand Draft by letter dated 3 August 1976 was towards rent. However, why rent was sent on letterhead of the firm 'M/s. Khot & Associates' is difficult to digest. If Uttamrao was a mere tenant cultivating the land, why he associated himself with some firm named 'Khot & Associates' has not been explained. On the other hand, there are specific suggestions in the cross-examination about the amount of Rs.2,000/- was returned towards other transaction between the parties. Though the word 'खंडांचे' appears in the letter, it is the case of the Petitioners that the said word 'खंडांचे' has been interpolated in the said letter. Except the letter dated 3 August 1976, there is absolutely no other documentary evidence to infer that Uttamrao ever paid any rent to Bhagirathibai or to Shankar. There is another letter dated 16 July 1982 addressed by Shankar to Uttamrao, contents of which show as if the letter was sent by one relative to another. The contents of the letter don't show as if the same was communication between a landlord and tenant.

28. What makes the case of the Uttamrao really difficult is repeated admissions given by his son-Ravindrakumar that Uttamrao was taken in adoption by Bhagirathibai's mother, Taibai. He has repeatedly given admissions that Uttamrao and Bhagirathibai were brother and sister. He has further admitted that Uttamrao was maternal uncle of Shankar. Thus, there is admission of relationship between Bhagirathibai and Uttamrao, as well as between Shankar and Uttamrao. This admitted relationship between Uttamrao and Bhagirathibai/Shankar explains several things. Firstly, it explains why Uttamrao might have paid land revenue on behalf of Bhagirathibai on few occasions. It is possible that being Bhagirathibai's brother, Uttamrao made payments on behalf of his sister-Bhagirathibai to the Revenue Authorities. On many receipts, the word 'हस्ते' is mentioned in respect of the name of Uttamrao which

shows that Uttamrao may have made payments on behalf of Bhagirathibai or Shankar. When letter dated 3 August 1976 is viewed from the nature of relationship between Uttamrao and Shankar, one can infer that there is possibility of private monetary transaction between the two relatives. This appears to be the reason why payment is made on letterhead of 'M/s. Khot & Associates'. The amount is a round figure of Rs.2,000/-. There is not even a whisper about the exact amount of annual rent. No evidence is led to prove that Rs.2,000/- represented rent for any specific period. Appearance of the word 'खंडांचे' in the gap between the words 'ऐवजी' and 'आपणास' right at the end of right hand side of the letter creates doubt about its authenticity and makes room for suggesting possible interpolation. In my view therefore it is dangerous to infer that rent of Rs.2,000/- was paid by Uttamrao to Shankar vide letter dated 3 August 1976. The letter dated 3 August 1976 is preceded by Shankar's letter dated 10 June 1976 in which he stated that 'I am awaiting your arrival. I am suffering through tremendous difficulty. Therefore start immediately with yours money'. The letter dated 3

August 1976 appears to a response to Shankar's letter dated 10 June 1976. Shankar never demanded any rent in the said letter dated 10 June 1976. What he demanded was only 'money' expressing that he was suffering from tremendous difficulties. Uttamrao replied on 3 August 1976 on letterhead of the firm 'M/s. Khot & Associates' stating that he was unable to personally visit Shankar and therefore sent demand draft of Rs.2,000/- to Shankar. The fact that Shankar addressed letter to Uttamrao in English language and Uttamrao responded to the same by using letter-head of a firm makes it difficult to believe that the duo was corresponding about demand and payment of rent in respect of agricultural land cultivated by a tenant. The contents of both the letters and the manner in which the same are written makes it believable that the same are in relation to some other business or private transaction between two relatives.

29. Ravindrakumar (Uttamrao's son) admitted in his cross-examination that:

30. Thus, Ravindrakumar has admitted in his cross examination that there is some interpolation in the office copy of letter dated 3 August 1976. Therefore, inference of payment of rent cannot be drawn only on the basis of the said letter. It also becomes quite believable that refund of Rs.2,000/- by Uttamrao to Shankar was towards some other monetary transactions particularly between the two relatives, Uttamrao being maternal uncle of Shankar (Bhagirathibai's brother). Also, for inferring that remittance of amount of Rs.2000/- was towards rent, it was necessary for Uttamrao to plead or lead some evidence about the exact quantum of rent fixed between the parties. However, in the entire application, there is no whisper about the amount of rent fixed between the parties and in what manner Uttamrao paid the same. In fact, the application in Tenancy Case No.5 of 1982 was concentrated more on challenging the sale-deeds executed in favour of Shri. Rasal and Shri. Supanekar rather than proving tenancy of Uttamrao. When Uttamrao is accepted as adopted son of Bagirathibai's mother, mere cultivation by him of the land on some occasions isn't sufficient to accept his claim of tenancy. He ought to have averred about the exact quantum of rent fixed between the parties and how he paid the same. His application is however completely silent on this aspect. The relevant and the only pleadings made by Uttamrao in his application in support of his claim of tenancy are as under:

31. Respondent No.1-Ramchandra Sitaram Supanekar stated in his evidence that Uttamrao was taking education in a College at Karad till 1965-66 and thereafter he was serving in Pune for 1-2 years. He further deposed that after loss of job, Uttamrao started the business as Contractor. His son, Ravindrakumar held Diploma in Civil Engineering and was also a Contractor. There is no cross-examination of Shri. Supanekar on the issue of Uttamrao taking education at Karad till 1965-66 and thereafter serving in Pune for 1-2 years. It therefore becomes unbelievable that Uttamrao could be inducted as a tenant in respect of either of the lands 15-16 years prior to filing of Tenancy Case No.5/1982.

32. The next and the most vital aspect is that under the provisions of Section 4

of the Tenancy Act, a member of owner's family can never become a deemed tenant. Section 4 reads thus:

4. Persons to be deemed tenants

(1) A person lawfully cultivating any land belonging to another persons shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not, -

(a) a member of the owner's family, or

(b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

Explanation (I).-A person shall not be deemed to be a tenant under this section if such person has been on an application made by the owner of the land as provided under section 2A of the Bombay Tenancy Act, 1939, declared by a competent authority not to be a tenant.

Explanation II. Where any land is cultivated by a widow or a minor or a person who is subject to physical or mental disability or a serving member of the armed forces through a tenant then notwithstanding anything contained in Explanation I to clause (6) of section 2, such tenant shall be deemed to be tenant within the meaning of this section.

(2) Notwithstanding anything contained in sub-section (1), where any land in the Ratnagiri and Sindhudurg districts is being cultivated by a person (other than the person who, according to the Records of Rights, has right to cultivate, for not less than 12 years, such person shall be deemed to be a tenant for the purposes of this section if there is circumstantial evidence that he has been uninterruptedly cultivating the land personally, and the (Sarpanch, Police Patil or the Chairman of Vividh Karyakari Sahakari Society, and the cultivator of the adjoining land state on affidavit that, the said land is in the possession of, and is being cultivated by, such person, uninterruptedly for not less than 12 years).

Explanation I. For the purpose of this sub-section, the expression "land" includes the "warkas land".

Explanation II. For the purpose of this sub-section, the expression "circumstantial evidence" includes extract of voters list, ration card, electricity bill or house assessment receipt from the same village or any receipt in respect of sale of agricultural produce or any document regarding permission of felling of trees or excavation of minor mineral or any such permission granted with respect of such land.

(3) Notwithstanding anything contained in sub-clause (a) of clause (ii) of sub-section (1) of Section 32H, the purchase price in such cases shall be 200 times

the assessment.

33. Thus, once Ravindrakumar accepted that there was relationship of sister and brother between Bagirathibai and Uttamrao and once he admitted adoption of Uttamrao by Bhagirathibai's mother, Uttamrao would clearly become family member of landowner within the meaning of Section 4(1)(a) of the Tenancy Act. Therefore, Uttamrao cannot be recognised as a deemed tenant in respect of land at Gat No.836. The Tahsildar and MRT did not apply their mind to the above factors and erroneously upheld the tenancy claim of Uttamrao. As observed above, Tahsildar did not conduct proper enquiry and recorded cursory findings running into couple of paragraphs for upholding tenancy claim of Uttamrao. The burden of proving personal cultivation was on Uttamrao and mere absence of any entry in the cultivation column during 1975-76 to 1980-81 would not lead to a presumption that Uttamrao was cultivating the same. For upholding the tenancy claim, if the tenant is unable to produce rent receipts or rent agreement, he must atleast prove personal cultivation of the land by producing some evidence. The entries in the 'cultivation' column are made by the Talathi by personally visiting the land. Here it would be apposite to refer to Rules 30 and 31 of the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules 1971, which provides thus:

30. Procedure of making entries in register of crops:-

1) Every year at any time, during the period when the crops grown in a vil - lage are standing in the fields and during such other period as may be di - rected by the Collector for different crops, Talathi shall, subject to the or - ders of the Collector in this behalf, visit the village for the purpose of in - spection of the crops and making entries in the register of crops in Form XIII.

2) Subject to the provisions of sub-rule (1), the Talathi shall fix a date of his visit to the village for the purpose of that sub-rule at least seven days in advance and arrange to inform the villagers by beat of drum or by any other suitable method, about the date of his visit and its purpose and to call upon the villagers to be present in their fields along with their khat pustika and witness the entries being made in the register of crops. He shall likewise give an intimation of his visit to the Sarpanch of the Village Panchayat, if any, and through him request the members of the Village Panchayat to accompany him during the crops inspection.

3) On the date fixed for his visit to the village, the Talathi shall visit every field in the village in the presence of the villagers, the members of the Vil-lage Panchayat and the Sarpanch, if any, as may be present there and make entries in the register of crops in respect of each survey number or sub-division of a survey number after actual inspection. He shall allow the persons interested in the Land to see the entries made by him in respect of each land. He shall simultaneously copy out the relevant entries in Khat Pustika also

4) As soon as may be practicable after the Talathi has made entries in the

register of crops, any revenue or survey officer not below the rank of a Circle Inspector shall, for purpose of verification of the said entries, visit the village of which advance intimation as aforesaid shall be given to the villagers, and after due enquiry correct the entries which may be found to be incorrect. He shall cause the Talathi to make resultant changes in the entries in the respective Khate Pustika also.

31. Register of persons in possession other than the persons deemed to be in possession according to the Record of Rights:-

1) During course of inspection of crops under Rule 30, the Talathi shall verify whether the person in actual possession of a survey number or sub-division of a survey number is the one whose name is recorded in the record of rights. If the Talathi finds that the person in actual possession is other than the persons who according to the entries in the record of rights is entitled to cultivate the land, he shall enter his name in the register of persons in possession other than the persons who should have been in possession of the land according to the record of rights. The register shall be in Form XIV. As soon as may be practicable after any entries are made in the register, the Talathi shall forward the relevant extract thereof to the Tahsildar for necessary action.

2) On receipt of the register in Form XIV, under sub-rule (1), the Tahsildar shall visit the village for making necessary enquiries about the possession of the land by the persons mentioned in the said register. He shall give prior intimation of the date and time of his visit to the Talathi and the Sarpanch of the village panchayat if any, at least seven days in advance. The Talathi shall arrange to inform all the interested persons of the Tahsildar's visit and shall call upon them to remain present in the village Chavdi along with their Khate Pustika at the appointed date and time.

3) On the appointed date and time, the Tahsildar shall hear the persons interested and after holding further enquiry as he deems necessary decide the matter. After the resultant entries are made in the record, he shall cause necessary entries to be made in the relevant Khate Pustika

34. Thus, under Rule 30, the Talathi is required to make personal inquiry at the land about cultivation of crops and make entries in the register. Under Rule 31, if a person other than the holder is found be cultivating the land, the Talathi is required to enter his name in the 'cultivator' column. If Uttamrao was indeed independently cultivating the land, (though being the adopted brother of Bhagirathibai) from 1965, atleast at some point of time, Talathi would have noticed his independent cultivation and would have entered his name in the cultivation column. If name of the cultivator is blank, the presumption of cultivation cannot go in favour of a tenant but the same would naturally go in favour of the owner.

35. Thus, there is absence of evidence of payment of rent, as well as absence of evidence of personal cultivation in the form of revenue records. The Tahsildar

relied upon bills of sugar factory about supply of sugarcane from Gat No.3273. However, heirs of Uttamrao have subsequently purchased land bearing Gat No.3273 from Shri. Rasal. If heirs of Uttamrao were entitled to cultivate Gat No.3273 as protected tenants under the Tenancy Act, why they purchased Gat No.3273 from Shri. Rasal is difficult to fathom. Such purchase would contain implied admission of ownership of land by Shri. Rasal. So far as Gat No.836 is concerned, there is admittedly no supply of sugarcane to the sugar factory or sale of any other crops. Though, Dr. Warunjikar has attempted to suggest that land bearing Gat No.836 being unirrigated land, sugarcane was not cultivated therein, the burden was ultimately on Uttamrao's heirs to prove personal cultivation of the land to the exclusion of Bhagirathibai or Shankar. It is too dangerous to infer creation of tenancy in Uttamrao's favour only on the basis of receipts of sugarcane supply. It appears that Uttamrao had his own lands in the village apart from Gat No. 3273 and 836. He is also brother of Bhagirathibai. Therefore production of few receipts showing supply of sugarcane is not sufficient to draw concrete inference of creation of tenancy in Uttamrao's favour.

36. As observed above, MRT has recorded a perverse finding that the 7/12 extracts record names of Uttamrao as cultivator of the land. MRT failed to appreciate that Uttamrao's name came to be mutated for the first time as a cultivator in the year 1983-84 shortly before TAK passed the first order. The order of MRT thus suffers from perversity and is liable to be set aside.

37. After considering the overall conspectus of the case, I am of the view that Uttamrao and his heirs have thoroughly failed to prove that there existed landlord-tenant relationship between Uttamrao and Bhagirathibai/Shankar. Admittedly, there is no rent agreement or rent receipts. Payment of land revenue on few occasions by Uttamrao is properly explained on account of Uttamrao being Bhagirathibai's brother. The letter dated 3 August 1976 by which Uttamrao sent Demand Draft of Rs.2,000/- to Shankar also does not create any presumption of demand/payment of rent. Uttamrao is admitted to be the brother of Bhagirathibai. Therefore, he cannot become a deemed tenant under Section 4 of the Tenancy Act. Uttamrao was a college going student in 1965 and thereafter shifted to Pune for service for couple of years. Therefore, his induction as tenant in 1965-66 appears to be unbelievable. Neither Tahsildar nor MRT considered this vital aspect of the matter of Uttamrao being the brother of Bhagirathibai on account of his adoption in Tope Family. In my view, therefore the orders passed by the Tahsildar and MRT are clearly unsustainable and are liable to be set aside.

38. The petition accordingly succeeds, and I proceed to pass the following order:

(i) Order dated 6 December 1997 passed by the Maharashtra Revenue Tribunal, Pune is set aside.

(ii) Tenancy Case No.5/1982 filed by Respondent No.1 is dismissed.

39. Writ Petition is allowed in above terms. Rule is made absolute. There shall be no order as to costs.

40. In view of disposal of the Writ Petition, nothing would survive in the Civil Application and the same is also disposed of.

41. After pronouncement of the judgment, Dr. Warunjikar, the learned counsel appearing for the first Respondent seeks stay of the operative portion of order for a period of eight weeks. Though the request is opposed by Mr. Thorat, he would fairly submit that for a period of eight weeks, the Petitioners shall maintain status quo in respect of the disputed land. The statement is recorded and accepted.