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## **Digambar Sutar Vs Jairam Mali and another**

**Writ Petition No. 2834 of 1990**

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**Court:** Bombay High Court (Nagpur Bench)

**Date of Decision:** June 10, 1997

**Acts Referred:**

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 " Section 20, 21, 36(2), 41, 42#Constitution of India, 1950 " Article 226

**Citation:** (1997) 3 ALLMR 651 : (1998) 1 BomCR 8 : (1997) 3 MhLj 174

**Hon'ble Judges:** S.S. Dani, J

**Bench:** Single Bench

**Advocate:** S.R. Deshpande, for the Appellant; N.S. Badhe, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

S.S. Dani, J.

The petitioner-landlord challenges the order dated 16-9-1986 of the Tahsildar, Buldana: the order dated on 31-3-1987 of

the Sub-Divisional Officer, Buldana, as well as the order dated 29-12-1989 of the Maharashtra Revenue Tribunal, Nagpur, in respect of the

possession of the land asked for u/s 36(2) read with section 21 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958

(hereinafter referred to as "the said Act").

2. The property involved is an area of 5.37 acres of Survey No. 21/1/ of Village Bhadola, Taluka and District: Buldana. The present petitioner is

the owner of the property and the present respondent No. 1 is a tenant of it from 7-5-1967. It is the case of the present petitioner that the

respondent-tenant was the partner with the present petitioner as per the partnership deed dated 4-12-1968 in respect of this property and, as

such, should have delivered the possession to the petitioner after the expiry of the period of partnership. On failure, the present petitioner then

approached the Civil Court in Regular Civil Suit No. 34 of 1973 for possession of the property and in pursuance of the plea raised by the

respondent in respect of the tenancy of the property, the matter was referred to the Tahsildar, Chikkli, u/s 125 of the said Act. The respondent

was then held to be a tenant by the Tahsildar, and the appeals filed by the present petitioner to the Sub-Divisional Officer, Buldana and the

Maharashtra Revenue Tribunal, Nagpur, were dismissed. The petitioner also approached this Court in writ petition, which also came to be

rejected by this Court. The petitioner-landlord then moved the Tenancy Authorities, i.e., the Tahsildar, Buldana, for possession u/s 36(2) read with

section 21 of the said Act. The case was numbered as 2/TNC/59/85-86, and by an order dated 16-9-1986, the application came to be rejected

by the Tahsildar. The matter was then carried in Revenue Appeal No. TNC/- Bhadola/7/86-87, and the Sub-Divisional Officer, Buldana,

dismissed the said appeal by an order dated 31-3-1987, confirming the order of the Tahsildar. Revision bearing No. Tenancy-A/97/87 to the

Maharashtra Revenue Tribunal at Nagpur also came to be dismissed by an order dated 29-12-1989. It is against these orders that the present

petitioner has approached this Court in the present writ petition.

3. Shri Deshpande, learned Counsel for the petitioner-landlord, submitted that all the Authorities below have committed an error in rejecting this

application on the ground that it was not within the period stipulated by section 36(2) of the said Act. It is further submitted that the present

application was u/s 21 of the said Act, and for such an application the limitation prescribed by section 36(2) of the said Act was of two years.

4. The provisions of the said Act, relevant for the purpose of decision of this case, are sections 20, 21, 36, 41 to 44 and section 50. Section 20 of

the said Act makes a provision for surrendering of tenancy rights by the tenant, and section 21 of the said Act deals with the right of the landlord to

retain the land, after such surrender of tenancy. Section 36 of the said Act deals with the procedure for taking possession and under sub-section

(2) of section 36, the period of two years for the landlord to obtain the possession is prescribed. Section 50 of the said Act provides that, when a

tenancy is created by a landlord after the date specified in section 49-A(1) of the said Act (i.e., 1-4-1963), a tenant is entitled to purchase it within

one year from the commencement of the tenancy and the provisions of sections 41 to 44 of the said Act in respect of the right of the tenant to

purchase the land shall apply to such purchase. It is submitted on behalf of the petitioner that when the tenancy is created, as contemplated by

section 50 of the said Act and if the tenant fails to purchase it within one year from the commencement of the tenancy, there is a deemed surrender

of tenancy and, has the same effect as contemplated by section 20 of the said Act. It is further submitted that in such a case of deemed surrender,

a landlord has to apply u/s 21 of the said Act for retaining such land, as will prevent the total area from exceeding three family holdings, and the

Tahsildar has to hold an inquiry and decide the matter under the said section. It is further submitted that the period of limitation of two years

contemplated by section 36(2) of the said Act does not apply to such cases of deemed surrender. It is, therefore, lastly submitted that the

Authorities below in the present case have not considered and decided the application of the present petitioner u/s 21 of the said Act and, by

wrongly applying the provisions of section 36(2) of the said Act to the present application, have committed an error in rejecting the said application

of the present petitioner-landlord.

5. It be noted that the Tahsildar, Buldana, the Sub-Divisional Officer, Buldana (the appellate authority), as well as the learned Member of the

Maharashtra Revenue Tribunal, Nagpur, have referred in their respective orders to the admitted position and have concluded that inasmuch as the

status of the present respondent No. 1 has been held to be of a tenant by the authority, and as it is confirmed by the appellate authorities, there is

no question of passing any fresh order in this respect. There is no-dispute that the issue raised by the present respondent No. 1 in civil suit about

his tenancy has been answered in his favour and that finding has been maintained by all the courts. However, the question involved in the present

case is not in respect of the status of the respondent No. 1, whether he is a tenant or not, but is in relation to the provisions of section 36(2) read

with section 21 of the said Act. Admittedly, the application of the present petitioner is to the effect that the tenancy of the respondent No. 1 started

in 1967 and as such he should have applied for purchase of the land u/s 50 of the said Act within the statutory period of one year, and, as he has

failed to do so, there was a deemed surrender. It is further the case that in view of the deemed surrender, the landlord is entitled to retain a land, as

prescribed and upto the limit provided for by section 21 of the said Act. It appears that the application of the present petitioner has been rejected

also on the ground that it is not made within the stipulated period of two years from the date on which the right to retain the possession is deemed

to have accrued to the petitioner, as provided for by section 36(2) of the said Act. The decision of this Court in Madhav v. Maharashtra Revenue

Tribunal, 1990 M.L.J. 991, has been, in, effect relied upon by the authorities for rejecting the application of the present petitioner, on the ground

that a tenant does not cease to be a tenant even after the possession is handed over, so long an order of the Tahsildar for possession is not

obtained u/s 36(2) of the said Act. Keeping reliance on the said ruling, it is, therefore concluded that the provisions of termination of tenancy by

surrender u/s 20 of the said Act are controlled by section 36 of the said Act and, therefore, even if there is a deemed surrender, as provided by

section 50 of the said Act, still the procedure for taking possession of such land by the landlord has to be initiated u/s 36(2) of the said Act, and

within the period of two years from the date on which the right to obtain the possession is deemed to have accrued to the landlord. In conclusion,

therefore, as the present petitioner failed to apply for seeking possession within such period of two years, he is held as disentitled to the relief of

possession and the application in the result has been rejected by the Authorities below.

6. In this connection, a reference may be made to the decision of the Supreme Court in Vallabbhai Nathabhai Vs. Bai jivi and Others, , wherein, it

is held that on surrendering the tenancy right by a tenant, the tenancy comes to an end and, consequently, the relationship between a landlord and a

tenant, and the rights arising therefrom terminate. The decision of this Court in Madhav's case (cited supra), however, ruled that under no

circumstances, a surrender, even if verified, and even if actual possession is delivered to the landlord, can destroy or terminate the rights of a

tenancy unless an order for possession u/s 36(2) of the said Act is passed. A useful reference in this connection may be made to the decision of

this Court in Letters Patent Appeal No. 38 of 1994, Krishnabai Babarao v. State of Maharashtra, decided on 12-12-1986 (unreported). In the

said decision, the question considered by the Court was : whether it was necessary for a landlord u/s 36(2) of the said Act to obtain the order from

the Tahsildar for taking from the tenant the possession of the land, even after a valid surrender? In the said decision, it has been ruled that the

decision of the Supreme Court in Vallabbhai's case (cited supra) was on all fours for deciding the involved question; and it is further ruled thus :

Section 36(2) of the Act contemplates various occasions when the landlord is required to take resort for obtaining the possession of the land held

by a tenant. However, in our opinion, on surrendering the tenancy right in his favour by a tenant, and consequent termination of a tenancy, is not an

occasion within the contemplation of section 36(2). After valid surrender of tenancy rights, according to us, the land cannot be said to be held by a

tenant as contemplated by section 36(2) of the Act..... The relationship between the landlord and tenant does not subsist after a valid surrender of

tenancy and in view of this, it was not obligatory for the landlord to take recourse to sub-section (2) of section 36 for taking possession as the

same cannot be said to be held by the tenant..... It does not appear to be logic as to how even after a valid surrender of tenancy right that the tenant

does continue to be so and that a landlord is under an obligation to take resort to sub-section (2) of section 36 of the Act.....

It is, therefore, held by this Court in the above case that whenever there is a valid surrender, the provisions of section 36(2) of the said Act for

taking possession are not required to be resorted to by the landlord. In the case at hand, as stated above, admittedly, there is a valid deemed

surrender of tenancy rights by the respondent No. 1, inasmuch as the tenant has not availed of his right to purchase the land within one year from

the commencement of the tenancy. Therefore, on the failure on the part of the respondent No. 1- Tenant to exercise his right within the statutory

period u/s 50 of the said Act, there is a deemed surrender of the tenancy u/s 20 of the said Act, and the respondent surrendered his interest as a

tenant in favour of the landlord by not resorting to section 50 of the said Act. The provisions of section 36(2) of the said Act, under which the

landlord can obtain the possession of the land only after making an application within a period of two years, does not-contemplate an occasion,

wherein the landlord is required to apply for possession when the tenancy rights are surrendered in his favour. The application in the present case

by the present petitioner was admittedly and also u/s 21 of the said Act, wherein an inquiry has to be held by the Tahsildar so as to decide as to

how much land the landlord will be entitled to retain. The application made by the present petitioner-landlord u/s 21 of the said Act was, therefore,

wrongly construed and decided u/s 36(2) of the said Act and the Authorities below were, therefore, in error in rejecting this application, as it was

not made within the period of two years, as stipulated.

7. In view of the ruling of the Supreme Court in Vallabh"s case (supra), as well as the ruling of this Court in Krishnabai"s case (supra), the present

application made after the deemed surrender of tenancy cannot be considered and rejected under sub-section (2) of section 36 of the said Act, on

the point of limitation. The impugned orders of the Tahsildar, as well as of the Appellate Authority and the learned Member of the Maharashtra

Revenue Tribunal, therefore, cannot be sustained.

8. It is not in dispute that the application of the present petitioner landlord for possession has not been decided on its merits and no inquiry has also

been held by the Tahsildar as contemplated by the said section. As-stated above, this application has been rejected by the Authorities below only

on the ground that it falls u/s 36(2) of the said Act and, as it was not made within the statutory period. In view of this, the application of the present

petitioner is required to be considered and decided under the provisions of section 21 of the said Act by the Tahsildar, Buldana. Inasmuch as the

said application has not been decided on merits, it will have to be remanded back to the Tahsildar, Buldana, for decision on merits according to

law.

9. In view of this, writ petition is required to be allowed and the impugned orders will have to be disturbed and set aside.

10. In the result, Writ Petition No. 1834 of 1990 stands allowed. The order of the Tahsildar, Buldana, dated 16-9-1985, in Revenue Case No.

2/TNC/59/85-86, the order of the Sub-Divisional Officer, Buldana, dated 31-3-1987, in Revenue Appeal No. TNC/Bhadola/7/86-87, and the

order of the learned member, Maharashtra Revenue Tribunal, Nagpur, dated 29-12-1989, in Revision Application No. Tenancy-A/97/87, are

hereby quashed and set aside. The application of the present petitioner-landlord dated 6-12-1985 is remitted back to the Tahsildar, Buldana, for

deciding it u/s 21 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, according to law It is further directed that the

Tahsildar, Buldana, shall decide the matter on its merits, after giving reasonable opportunities to both the sides, to lead necessary evidence and

shall decide and dispose of the application as expeditiously as possible, but not later than the end of December 1997. The parties are directed to

approach the Tahsildar, Buldana, on 14th July, 1997 and shall take further dates from the concerned authority. Rule made absolute in the above

terms, with no order as to costs.

11. Case remanded for enquiry.