IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3610 OF 1997

Laxman Daji Varnekar
Since Deceased through his heirs
Tarabai Tukaram Shinde, deceased
by her legal heirs, Prakash Tukaram
Shinde and Ors. } ....*Petitioners*

Versus

Thaku Govinda Shinde,
Since deceased through heirs
Krishnabai Baburao Shinde & Ors. } ....*Respondents*

Mr. Vinayak Kumbhar *with Mr. Rajendra B. Khaire & Mr. Aniket S. Phapale i/by. Mr. Narendra V. Bandiwadekar, for the Petitioners*

Mr. Dilip Bodake, *for Respondent Nos.1A(a) to 1A(c).*

CORAM : SANDEEP V. MARNE, J.

Judgment Resd. On : 17 January 2025.
Judgment Pron. On : 27 January 2025.

JUDGMENT:

1) Petitioners have filed this petition challenging the judgment and order dated 19 April 1997 passed by the Maharashtra Revenue Tribunal (Tribunal) allowing the Revision Application filed by the Respondents and setting aside the order dated 28 February 1992 passed by the Sub-Divisional Officer, Satara (SDO). The SDO had allowed the Appeal filed by the Petitioners and had set aside the order dated 29 June 1985 passed by the Tenancy Awal Karkoon, Satara holding that

Petitioners are now the tenants of the land under the provisions of Section 70(b) of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**the Act**). The order was passed by the Tenancy Awal Karkoon in a Reference made to him by the Civil Judge Junior Division under the provisions of Section 85A of the Act in Regular Civil Suit No.92/1977.

2) Agricultural lands bearing Survey No.705/1, 702/5, 705/13 situated at Village-Limb, Taluka and District-Satara are the subject matter of the present case, which are hereinafter referred to as 'the suit lands.' The suit lands were originally owned by Mahadu Mali who had two sons, Krishna and Hari. It appears that Hari did not have any issues whereas Krishna had one daughter named Thakubai. Krishna executed gift-deed dated 27 March 1940 in favour of Thakubai and accordingly Mutation Entry No. 3812 was certified mutating the name of Thakubai in respect of the suit lands as owner thereof.

3) Thakubai filed Regular Civil Suit No.92/1977 in the Court of Civil Judge Junior Division, Satara against Laxman Daji Vernekar and his heirs seeking injunction against the Defendants from obstructing Plaintiff's possession of the suit land. Alternate prayer was made for seeking recovery of possession of the suit lands together with mesne profits from the date of filing of the suit. Defendants appeared in the suit and claimed possession of the suit lands.

4) Defendants raised a plea that Daji Ram Vernekar was inducted as a tenant in respect of the suit land prior to the year 1935 on basis of sharing of ½ portion of crops. It was claimed that tenancy rights of Daji Ram Vernekar were mutated in the revenue records. Since Defendants raised a plea that they are tenants in respect of the suit lands, the Civil Court made an order of reference under the provisions of

Section 85A of the Act to decide whether the Defendant in the suit is the tenant of the Plaintiff in the suit land since 1935 till the date of filing of the suit.

5) The Reference was registered as Tenancy Case No.6/1984 in the Court of Tenancy Awal Karkoon, Satara who conducted enquiry into the Reference and proceeded to pass order dated 29 June 1985 holding that Defendants are not the tenants of the Plaintiff in the suit land since 1935 under the provisions of section 70(b) of the Act.

6) Defendants filed Appeal No.92.1985 before the SDO, Satara challenging the order dated 29 June 1985 passed by the Tenancy Awal Karkoon. The SDO proceeded to reverse the order of the Tenancy Awal Karkoon by allowing the Appeal preferred by the Defendants and held that Defendants were in legal possession of the suit lands as tenants since the year 1955 and that it would therefore be presumed that they were in possession of the land in the year 1935 as well. Aggrieved by the order dated 28 February 1992 passed by the Sub-Divisional Officer, the Plaintiffs filed Revision before the Maharashtra Revenue Tribunal, which came to be allowed by order dated 19 April 1997. The Tribunal set aside the order of the Sub-Divisional Officer and confirmed the order of the Tenancy Awal Karkoon. The Reference has thus been answered in the negative. The Petitioners have filed the present petition challenging the judgment and order dated 19 April 1997 passed by the Tribunal.

7) The petition has been admitted by order dated 11 August 1997 by passing interim order that even if Petitioners succeed in the suit, the execution would not be resorted to till the final decision in this petition. During pendency of the petition, several Petitioners and Respondents have passed away and accordingly their legal heirs have

been brought on record. When the petition was called out for hearing, it transpired that Respondents No.1A(a)Krishna Baburao Shinde has passed away. However, it appears that her legal heirs are already on record and accordingly the petition has proceeded further for final hearing, with the consent of the learned counsel appearing for rival parties.

8) Mr. Kumbhar, the learned counsel appearing for the Petitioners would submit that the Tribunal has erred in reversing the well-considered decision of the SDO who had rightly held that the mutation entries certified in the year 1955 shows that the names of Daji Ram Vernekar and Laku Daji Vernekar were entered in the revenue records as cultivators and tenants in the year 1955. That existence of clear Mutation Entries showing possession of predecessor of the Petitioners as tenants in the year 1955 would necessarily lead to conferment of status of tenant entitled to purchase the property under the provisions of the Act. He would submit that Daji Vernekar was inducted as a tenant in the year 1935 by Thakubai who was looking after the suit lands of her father and who later became owner thereof by virtue of gift-deed executed in her favour. He would submit that the Tribunal has recorded perverse finding, that the mutation entries mutating the names of Daji Vernekar and Laku Vernekar have been challenged where in fact the said mutation entries remained unchallenged. That the Tribunal has failed to appreciate that the mutation entries were effected and certified after following due process of law as there is clear the remark 'Seen N.S. certified' showing thereby that due notices were served while effecting the said mutation entries. He would also reply upon the column 'type of cultivation' in the 7/12 extract showing "रीत-3 and 4" after the year 1954 onwards again

demonstrating possession and cultivation of the suit lands by Daji Vernekar and Laku Vernekar as tenants.

9) Mr. Kumbhar would also rely on the provisions of Section 4 of the Act and would submit that once lawful cultivation of the land is proved as on the Tillers Day, there is deemed conferment of status of tenant. That for recording finding of deemed tenancy under Section 4 of the Act, it is not necessary to prove payment of rent or to produce Rent Agreement or Rent receipts. In support, he would rely upon judgment of this Court in ***Babu Hari Patil & Ors. V/s Rama Ananda Jadhav & Ors.***[1] and ***Dhondu Bapu Survey V/s. Aniruddha Yashwant Vaidya***[2]. He would therefore submit that since lawful possession of the land and cultivation of the suit lands as on 1 April 1957 is established in the present case, the Tribunal ought to have upheld the status of Petitioners as deemed tenants under the provisions of Section 4 of the Act.

10) Mr. Kumbhar would further submit that the suit was instituted by Thakubai in the year 1977 in a mischievous manner for the purpose of indirectly seeking possession of the suit lands. That Thakubai never challenged mutation entries mutating the names of Daji Vernekar and Laku Vernekar in the revenue records for several years and mischievously filed the suit for securing possession thereof. That alternate prayer in the suit for recovery of possession makes such an intention on the part of Thakubai more than apparent. Mr. Kumbhar would therefore pray for setting side the order passed by the Tribunal and for confirming the order of the SDO. Mr. Kumbhar would submit that the Tribunal was exercising merely revisionary jurisdiction and could not have re-appreciated the evidence which was already done by

1 (2005 (1) Mh.L.J. 1063)

2 1997 TLR Vol.XXV Page 6

the SDO. That in the absence of element of perversity or erroneous exercise of jurisdiction by the SDO, it was impermissible for the Tribunal to reverse his decision.

11) Mr. Bodake the learned counsel appearing for the Respondents would oppose the petition submitting that the findings recorded by the Tenancy Awal Karkoon as confirmed by the Tribunal do not warrant any interference in exercise of extraordinary jurisdiction of this Court under Article 227 of the Constitution of India. He would submit that the very claim of induction of Daji Vernekar as tenant in the year 1935 by Thakubai is unbelievable in the light of the fact that Thakubai acquired ownership of the land by way of gift executed on 27 March 1940. That Thakubai did not have right, title or authority to induct any person as a tenant in the year 1935. That Petitioners never challenged the mutation entry recording the name of Thakubai as an owner. If indeed, Petitioners are their forefathers who were really cultivating the land since the year 1935, they would have objected to mutation of name of Thakubai in owners column on the basis of the gift deed executed in the year 1940.

12) So far as mutation entries shown to have been effected in 'other rights' column in the year 1955 in favour of Daji Vernekar and Laku Vernekar, Mr. Bodake would submit that such mutation entries were effected and certified behind the back of Thakubai and therefore cannot be the basis for drawing inference of tenancy rights in favour of the Petitioners. If Petitioners claim status as lawful tenants, it was incumbent for the Petitioners to produce some documentary evidence in the form of Rent Agreement or Rent receipts. That in any case, the mutation entry reflected status of Daji Vernekar and Laku Vernekar as mere ordinary tenants. Even if their possession of the suit lands is

assumed, the same would not *ipso-facto* make them tenants in absence of production of any documentary evidence and in any case in absence of proof that any permission was granted to them to occupy or cultivate the suit lands. He would submit that the Act does not recognise the principle of conferment of status as a protected tenant to every person who is temporarily allowed to cultivate the land. That the entries in the revenue records relating to cultivation are otherwise not consistent. He would submit that Respondents examined two witnesses to prove that Thakubai was personally cultivating the land. He would therefore submit that the Tenancy Awal Karkoon and the Tribunal has rightly appreciated the evidence on record for holding that Daji Vernekar or Laku Vernekar are not the tenants in respect of the suit lands. He would accordingly pray for dismissal of the petition.

13) Rival contentions of the parties now fall for my consideration.

14) The impugned order of the Tribunal in the present case has arisen out of reference proceedings made under the provisions of Section 85A of the Act by the Civil Court. As observed above, Thakubai filed a suit for injunction against the Vernekars claiming that the Defendants obstructed her when she attempted to plough the fields on 28 March 1977. It was averred in the plaint that Plaintiff noticed mutation of name of the Defendants in the revenue records and pleaded that the Defendants never possessed the suit lands as tenants and the concerned mutation entries were effected behind her back without issuing any notice. However, in the plaint the Plaintiff also raised an alternate plea for recovery of possession of the suit lands from the Defendants in the event of the Court arriving at the conclusion that Defendants are in possession thereof. Defendants filed written statement and claimed

tenancy rights in the suit lands. Plaintiff's suit filed for injunction containing alternate prayer for recovery of possession gave birth to the dispute about tenancy rights of the Defendants on account of order of reference made by Civil Court under the provisions of Section 85A of the Act. Under Section 85A of the Act, if issue arises in a suit instituted in a Civil Court, which can be settled, decided or dealt with only by an authority under the Act, the Civil Court is required to stay the suit and refer such issue to the Competent Authority for determination. The suit can then be decided only after decision of the issue by the Competent Authority. Accordingly, the issue about tenancy claim of Defendants in respect of the suit lands came to be referred to the Awal Tenancy Karkoon and this is how Tenancy Case No.6.1984 came to be registered. As observed above, the Tenancy Awal Karkoon ruled in favour of the Plaintiff by rejecting the claim of the Defendants about tenancy rights. The SDO reversed the finding of Tenancy Awal Karkoon and upheld the tenancy claim of the Defendants. The Tribunal has however set aside the order passed by the SDO and has confirmed the findings recorded by the Tenancy Awal Karkoon. Resultantly, the Reference has been answered in the negative, meaning thereby that Defendants are held to be tenants in respect of the suit lands.

15) Section 2(18) of the Act defines the word 'tenant' as under:

> 2(18) "tenant" means a person who holds land on lease and include,
> (a) a person who is deemed to be a tenant under section 4;
> (b) a person who is a protected tenant; and
> (c) a person who is a permanent tenant; and the word "landlord" shall be construed accordingly;

16) Thus, every person who is a deemed tenant or a protected tenant or a permanent tenant is treated as a tenant under the provisions

of the Act and are deemed to have purchased the land on the Tillers Day on 1 April 1957. A protected tenant under the provisions of Section 4A of the_Act is the one who was deemed to be a protected tenant under the provisions of Bombay Tenancy Act, 1939. Thus, every person who was recognised as a protected tenant under the Bombay Tenancy Act, 1939 is recognised as a tenant for the purposes of the Act of 1948 as well. In the present case, it is nobody's case that Daji Vernekar and Laku Vernekar were ever treated as protected tenants under the provisions of Bombay Tenancy Act, 1939. On the contrary, Mutation Entry No. 6583 in respect of lands bearing Survey Nos.705/1 and 705/13 shows that name of Laku Daji Vernekar was entered as 'ordinary tenant' of Thakubai Shinde as on 11 August 1955. Similarly, by Mutation Entry No.6584, name of Daji Ram Vernekar was entered in respect of the land bearing Survey No.702/5 as 'ordinary tenant' of Thakubai Shinde as on 11 August 1955.

17) Section 4 of the Act provides that every person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner so long as the person cultivating the land is not member of owner's family, servant or employee or labourer or mortgagee in possession. Section 4(1) of the Act provides thus :

> "4(1) A person lawfully cultivating any land belonging to another person 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."

18) Thus, combined effect of provisions of Section 4 and 32 of the Act is that every person who lawfully cultivates the land of the owner not only becomes tenant under the provisions of the Act but also becomes entitled to purchase the same under Section 32. This Court, has repeatedly held that for claiming status as a 'deemed tenant' under the provisions of Section 4 of the Act, it is not necessary to produce documentary evidence of rent agreement or rent receipts. Reference in this regard can be made to the judgments relied upon by Mr. Kumbhar in ***Babu Hari Patil*** (supra) in which this Court held in paras-5.2, 6, 6.1 and 6.2 and 7 as under:

> "5.2 At this stage it may be noticed that before the tenants came into possession of the land in question in 1975 the land was being cultivated by other tenants namely Chougule and Mahar. It appears that they abandon their right in the land in question and thereafter the petitioners got into possession of the said land and were cultivating it lawfully for 7-8 years prior to the sale deed dated 26.4.1983. There is no dispute that the landlord never cultivated the land in question personally. The MRT has also relied upon the other circumstances such as agreement for sale dated 20.5.1990 executed between the landlord and tenant in respect of 41 Ares out of Gat No. 1222. The MRT also noticed that the landlord never initiated any proceedings against the tenants for their eviction. It is thus clear from the judgment of the MRT which, in view of the error in law committed by the SDO, was required to reassess and evaluate the evidence on record to reach a conclusion that the tenant was lawfully cultivating the lands in question. Keeping in view the evidence that was produced on record and relied upon by the MRT, holding respondent Nos. 1 to 3 as "deemed tenants" under Section 4 of the Tenancy Act, cannot be called perverse and cannot be said to have resulted in manifest injustice. As a matter of fact the SDO overlooked the evidence and unnecessarily gave importance to the record of rights and the fact that no rent receipt was produced on record, which, in my opinion, was against the provisions of Section 4 of the Tenancy Act. I am, therefore, of the considered opinion that the findings

recorded by ALT and the MRT need no interference by this court in its supervisory jurisdiction under Article 227 of the Constitution.

6. That takes me to consider the provisions of Section 4 of the Tenancy Act. It provides that 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 member of the owner's family or a servant on wages payable in cash or kind but not in crop share or hired labourer cultivating the land under the personal supervision of the owner of any member of the owner's family, or a mortgagee in possession. In the instant writ petition we are not concerned with the explanation I and II appended to Sub-section 1, Sub-section 2 and Sub-section 3 of Section 4 of the Tenancy Act. This court in Dhondu Bapu Survey v. Aniruddh Yeshwant Vaidya 1997 TLR 25 6 in Special C.A. No. 479 of 1972 had an occasion to deal with the provisions of Section 4 of the Tenancy Act. In this case the reasoning of the Tribunal were held to be against the provisions of Section 4 of the Tenancy Act. It was held that an entry in the tenancy column or a rent note or a rent receipt to support the claim of a tenant to be a "deemed tenant" under that Section is not a precondition. The relevant observations in the judgment reads thus: "All that is required under that section is 'lawful' cultivation by a person other than the member of the family of the landlord subject to other conditions laid down in Section 4. It is not open to the Revenue Tribunal to read into that section of fashioned notion of the law of landlord and tenant, which required the entries in the tenancy column, rent note or rent receipt to support the case of tenancy. The Legislature knowing all these old requirements has adopted a denition of 'statutory tenancy' irrespective of such things". I am in respectful agreement with the observations made in the said judgment.

6.1 The Apex Court also had an occasion to deal with provisions contained in Section 4 of the Tenancy Act and to interpret the expression "deemed tenant" in Dahya Lala and Ors. v. Rasul Mohamed Abdul Rahim and Ors. MANU/SC/0324/1962 : [1963]3SCR1 . In that case the Apex Court was considering as to whether the person claiming status of "deemed tenant" must have been cultivating land with the consent or under authority of the owner. The Apex Court was dealing with argument of the learned

counsel for the landlord that there can be no tenancy without the consent or authority of the owner to the occupation of the land in dispute. The Apex Court while dealing with the arguments in paragraph 6 of the report held thus: "But the Act has by Section 2(18) devised a special denition of tenant and included therein persons who are not contractual tenants. It would therefore be dicult to assume in construing Section 4 that the person who claims the status of a deemed tenant must be cultivating land with the consent or authority of the owner. The relevant condition imposed by the statute is only that the person claiming the status of a deemed tenant must be cultivating land "lawfully". It is not the condition that he must cultivate land with the consent of or under authority derived directly from the owner. To import such condition is to rewrite the section, and destroy its practical utility. A person who derives his rights to cultivate land from the owners would normally be a contractual tenant and he will obviously not be a "deemed tenant". Persons such as licenses from the owner may certainly be regarded as falling within the class of persons lawfully cultivating land belonging to others, but it cannot be assumed therefrom that they are the only persons who are covered by the section. The Act affords protection to all persons who hold agricultural lands as contractual tenants and subject to the exceptions specied all persons lawfully cultivating lands belonging to others, and it would be unduly restricting the intention of the Legislature to limit the benet of its provisions to persons who derive their authority from the owner, either under a contract or otherwise. In our view, all persons other than those mentioned in Clauses (a) and (b) and (c) of Section 4 who lawfully cultivate land belonging to other persons whether or not heir authority is derived directly from the owner of the land must be deemed tenants of the lands".

6.2 In yet another judgment in Kishan Ramchandra Kumbhar and Ors. v. Kashinath Bandu Teli and Ors. 2004 (1) M.L.J. 285 this court has reiterated the principle of law laid down in Dahya Lala's case (supra).

7. The law is thus clear that even without their being an entry in the tenancy column or a rent note or a rent receipt in favour of a person, who is lawful possession, must be declared as "deemed tenant" under Section 4 of the Tenancy Act irrespective of the fact whether or not the authority of such person is derived directly

> from the owner of the land. All that is required under that section is "lawful" cultivation by a person other than the member of the family of the landlord subject to other conditions specied in that section for claiming a status of the "deemed tenant". In the circumstances I have no hesitation in holding that respondent Nos. 1 to 3 were cultivating the land lawfully and are, therefore, entitled to claim status of "deemed tenant" as contemplated under Section 4 of the Tenancy Act. In the result writ petition is dismissed. Rule stands discharged. No order as to costs."

19) Thus, in absence of an entry in tenancy column or a rent note or rent receipt in favour of a person, he can still acquire the status of deemed tenant if it is proved that he lawfully cultivated the land. In ***Babu Hari Patil,*** this Court referred to its previous judgment in ***Dhondu Bapu Survey*** (supra) in which also it is held that what is required is mere 'lawful cultivation' by a person other than the member of the family of the landlord subject to other conditions laid down in section 4. It is not open to the Revenue Tribunal to read into that section in an old-fashioned notion of the relationship of landlord and tenant, which required the entries in the tenancy column, rent note or rent receipt to support the case of tenancy.

20) Considering the above settled position of law, in my view, the Tenancy Awal Karkoon, as well as the Tribunal grossly erred in excepting Petitioners to produce documentary evidence of creation of tenancy in the form of rent note or rent receipts. Fortunately, the third category of documentary evidence viz revenue entry as tenant is present in the instant case. It would therefore be apposite to make a reference to revenue entries made in respect of the suit lands from time to time.

21) It appears that the suit land initially formed part of estate of Shri. Shahu Maharaj and various rent receipts issued in respect of the

possession of the land by Shahu Maharaj and thereafter by Pratap Singh Maharaj and Chatrapati Udayan Maharaj, etc in the name of Thakubai since 1941-42 till 1985 were apparently produced on record. By Mutation Entry No.2482, name of Krishna Mahadu Mali was mutated to the revenue records in respect of the suit lands. As observed above, Krishna Mahadu Mali executed gift deed dated 27 March 1940 in favour of his daughter-Thakubai and accordingly mutation entry no.3812 was effected recording the name of Thakubai Govind Shinde in the owners column in respect of the suit lands.

22) On 11 August 1955, it appears that two Mutation Entries are effected as under :

Land Survey No.	Mutation Entry No.	Name mutated	Capacity in which name mutated
705/1 & 705/13	6583	Laku Daji Vernekar	Ordinary Tenant of Thakubai
702/5	6584	Daji Ram Vernekar	Ordinary Tenant of Thakubai

23) Both Mutation Entries Nos. 6583 and 6584 appear to have been certified by the Certifying Officer after making the remark *'Seen N.S. certified'*. The abbreviation *'N.S..'* apparently refers to services of notices and would falsify the case of the Plaintiff/Respondents that the said Mutation Entries were effected without issuing notices to them. In any case if the Mutation Entries were to be effected without notices, the same ought to have been challenged on that ground. There is no presumption in law that a revenue entry automatically becomes ineffective the moment a contention is raised that the same was certified without notice. It is an admitted position that Thakubai never challenged Mutation Entries No.6583 and 6584 which recorded that Laku Daji Vernekar and Daji Ram Vernekar were their ordinary tenants as on 11 August 1955.

24) Apart from entries of Laku Daji Vernekar and Daji Ram Vernekar being made in 'other rights' column, there are additional entries to show that the lands were being otherwise cultivated by the duo. The extracts in Form No.7 in respect of the land bearing Survey No.702/5 shows name of Daji Ram Vernekar as cultivators in 1947-48 to 1949-50 with "रीत 4". Thereafter, name of Laku Daji Mali *(reflection of surname 'Mali' appears to be an error)* is reflected from 1950-51 onwards with a remark that he was giving 2/3rd share of crop to the owner and in the column "रीत", the entry is number 4.

25) Similarly, in respect of the land baring Survey No.705/13, name of Dajirao is reflected since the year 1940-41 with "रीत-4" and thereafter name of Laku Daji was reflected since 1950-51 onwards. However, there is some disturbance in the cultivation column in respect of land bearing no.705/13 in which the entry was made during the year 1941-42 till 1951-52 with "रीत.1". After making one entry in the name_of Laku Daji in 1952-53 with "रीत-4" and for years 1957-58 and onwards with "रीत-3". In respect of the land bearing Survey No.705/1, name of Lakhu is made in the cultivation column with "रीत-4" for the year 1950-51 to 1956-57 and for further years under "रीत-3" from 1957-58.

26) The entry 'रीत-1' shows personal cultivation by the owner, whereas the entries 'रीत-3' means personal cultivation by tenant and 'रीत-4' means cultivation by tenant though servants or labour.

27) The Tenancy Awal Karkoon has proceeded to discard entries in cultivation column by recording a finding that the same are not constant and consistent. He has further held that the entries otherwise do

not have presumptive value of evidence. In my view, the Tenancy Awal Karkoon has grossly erred in discarding the entries in cultivation column. The cultivation entries consistently show "रीत-3' or "रीत-4" meaning thereby that the land was cultivated by the tenant either himself or through his labourers. Except stray entries of "रीत-1" only in respect of Survey No.705/13 where "रीत-1" entries are made for limited period between 1941-42 to 1951-52, the entries after 1952-53 are constantly either "रीत-3" or "रीत-4" right upto 1961. Applying the test of preponderance of probabilities in respect of the cultivation entries, the inescapable conclusion that emerges is that the tenants were cultivating the land and not Thakubai.

28) Thus, there are two sets of revenue entries in the present case. There are revenue entries of 'Ordinary Tenant' made as on 11 August 1955 in 'other rights' columns and there are entries of cultivation in Form No.7 in favour of the tenants. These entries have never been questioned by Thakubai. Since cultivation of the land by Daji Vernekar and Lahu Vernekar appears to be more than apparent atleast after the year 1955, in my view, their tenancy claim ought to have been accepted by Tenancy Awal Kharkoon.

29) The SDO correctly relied upon Mutation Entries No.6583 and 6584 recording names of Daji Vernekar and Lahu Vernekar as 'ordinary tenants' coupled with the fact that the said entries went unchallenged. Additionally, the SDO considered the fact that proceedings under the Essential Commodities Act, 1955 were initiated against Vernekars in the year 1973 in respect of the suit land, which once again shows their possession in the year 1973. I do not find any perversity in the findings

recorded by the SDO holding that concrete proof was produced of possession and cultivation of the lands by Vernekars' in 1955.

30) The Tribunal unnecessarily laid stress on absence of right in favour of Thakubai to create tenancy in the year 1935. In my view, it was not necessary for the Defendants to prove creation of tenancy in the year 1935 and it was sufficient for them to prove that they were cultivating the land as tenants as on the Tillers Day of 1 April 1957. The Tribunal has recorded perverse finding that *'apart from that, the said entries have been challenged by the Applicants'* when in fact no proceedings are ever filed by Thakubai or her heirs to challenge Mutation Entries No.6583 and 6584. The finding that Mutation Entries made in the year 1955 are not continuous is again totally perverse since there is nothing on record to indicate that Mutation Entries Nos. 6583 and 6584 were disturbed in any manner at any point of time. The Tribunal has confused itself between entries made in 'other rights' column with entries in 'cultivation' column and has recorded perverse findings. The Tribunal has relied upon statements of two witnesses, Yashwant Shine and Nivrutti Bala Pawar stating that Thakubai was personally cultivating the land. The relevant part of the statements have been reproduced by Tenancy Awal Kharkoon. The Tenancy Case got registered before the Tenancy Awal Kharkoon in the year 1984 and it is too dangerous to rely upon oral statements of persons recorded in 1984-85 to infer personal cultivation of lands by Thakubai as on the Tillers Day of 1 April 1957. Such oral statements were recorded after passage of 28 long years and the oral statements are completely contrary to the revenue entries. In my view, therefore it is too dangerous to infer cultivation of land by Thakubai as on 1 April 1957, merely on the basis of oral statements of said two witnesses.

31) Another factor which ought to have been taken into consideration by the Tribunal is the manner in which Thakubai couched her plaint in RCS No.92/1977. The suit was premised on a vague assertion that Defendants obstructed her from ploughing the field on 28 March 1977 after which Thakubai secured 7/12 extracts and learnt about the names of Daji Vernekar and Lahu Vernekar being entered in the revenue records. It is unbelievable that Thakubai was unaware about existence of entries for 22 long years from 1955 to 1977. The very claim of Thakubai about possession of the suit lands gets fully demolished once her alternate prayer is taken into consideration. Thakubai alternatively prayed for recovery of possession of the suit lands from the Defendants, which again shows absence of assertive position that she was in possession of the suit lands. In fact while opposing the prayer for adjournment by Petitioners, Mr. Bodake did suggest that Petitioners are enjoying possession of the land during pendency of the Petition.

32) The conspectus of the above discussion is that Defendants in the suit have successfully proved acquisition of status of deemed tenant under the provisions of Section 4 of the Act. There were lawfully cultivating the land as on Tillers Day on 1 April 1957. Their names were mutated in 'other rights' column in the year 1955. Their names continued to be reflected in cultivation column demonstrating personal cultivation of the land as also the fact that Thakubai never cultivated the land In the light of these concrete evidence being available before him, the Tenancy Awal Kharkoon ought to have upheld the tenancy claim of the Defendants. The SDO had rightly set aside the erroneous order of Tenancy Awal Kharkoon. The Tribunal has erred in setting aside the order of the Sub-Divisional Officer by recording perverse findings as demonstrated above. The order passed by the Tribunal is thus indefensible and is liable to be set aside.

33) The petition accordingly succeeds and I proceed to pass the following order :

(i) Judgment and order dated 19 April 1997 passed by the Maharashtra Revenue Tribunal in Revision Application No.MRT.NS.V.3/92 (TNC B.62/92), Pune-1 is set aside.

(ii) Order dated 28 February 1992 passed by the SDO, Satara, Sub-Division, Satara upholding the status of Defendants in the Suit as tenants is confirmed.

34) Writ Petition is **allowed** in the above terms. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]