



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3102 OF 1995

1. Shri Balkrishna, Dadoba Yedekar
residing at 926, Shwale Galli,
Nalbhag, Sangli, Dist- Sangli.

2. Smt. Sonabai Parashram Jagdale,
residing at Khanbhag, Sangli
Dist. Sangli.

...Petitioners

Versus

Sangli Municipal Council,
Dist. Sangli

...Respondent

WITH

WRIT PETITION NO.10925 OF 2017

1. Smt. Indubai Balkrishna Yedekar,
Age 73 Years, Occ: Agriculturist
R/o. 926, Shwale Galli, Nalbhag,
Sangli, District : Sangli.

2. Mrs. Asha Chandrakant Kale
Age 53 years, Occ : Housewife
R/o Khanbhag, Sangli.
District : Sangli.

3. Mrs. Shital Tukaram Patil
Age 45 years, Occ : Housewife
R/o Khanbhag, District : Sangli.

...Petitioners

4. Miss. Vrinda Balkrishna Yedekar
Age 48 years, Occ : Agriculturist & Service
R/o. Khanbhag, District : Sangli

5. Umesh Balkrishna Yedekar
Age 41 years, Occ :Agriculturist & Service
R/o. Khanbhag, District : Sangli

Versus

Sangli Miraj Kupwad Municipal Corporation
Through its the Municipal Commissioner
District : Sangli

...Respondent

Adv. Vivek V. Salunke for the Petitioner.

Adv. N. V. Walawalkar, Sr. Advocate a/w G. H Keluskar for the Respondent.

Coram : Sharmila U. Deshmukh, J.
Reserved on : August 1, 2024.
Pronounced on : September 11, 2024

JUDGMENT :

1. The papers of Writ Petition No.3102 of 1995 were permitted to be reconstructed. Writ Petition No.10925 of 2017 was admitted vide order dated 21st February, 2024.
2. This Court vide order dated 25th June, 2013 observed that there was mis joinder of causes of action as Writ Petition No.3102 of 1995 challenged the order of Assistant Judge, Sangli in Civil Appeal No.435 of 1969 reversing the order passed by the Civil Judge, Junior Division, Sangli recording compromise decree dated 17th September, 1958 and also the order of the Maharashtra Revenue Tribunal [for short "MRT"] dated 23rd March, 1995 under Maharashtra Tenancy and Agricultural Lands Act, 1948 [for short "Tenancy Act"]. This Court permitted the Petitioners to file an independent Petition to challenge the order of MRT and retained the challenge to the Civil Court order in Writ

Petition No. 3102 of 1995. Subsequently Writ Petition No. 10925 of 2017 came to be filed. Common submissions were advanced and the Petitions are being disposed of by this common judgment.

FACTUAL MATRIX:

3. There is a chequered history to this litigation which has commenced way back in the year 1952 leading to several rounds of litigation between the parties which is set out hereinafter briefly.

4. The subject land is Survey No.99/2 admeasuring 13 acre and 18 guntas. By registered lease deed dated 29th January, 1942, the subject land was leased for period of four years to father of the Petitioner No.1 i.e. Dadoba Yedekar by the owner i.e. Mahadev Dattatray Bhide. During the subsistence of the lease, on 23rd June, 1945, notification was issued under Section 6 of the Land Acquisition Act, 1894 by the State Executive Council of Sangli State published in the Gazette dated 30th June, 1945 for acquisition of land for northern extension scheme of Sangli town. By Huzur Order (Royal Decree) dated 6th March, 1948, issued by Sangli State the subject land was declared to form the corpus of a Trust, with Sangli Municipal Council as trustee to implement the object of Trust of providing water and drainage scheme. On 17th June, 1950, Trust came to be registered.

5. The subject land continued to be under the cultivation and possession of Dadoba. In the interregnum, in the year 1948, the

Bombay Tenancy and Agricultural Land Act, 1948 came on the statute book repealing the Bombay Tenancy Act, 1939 to the extent mentioned in Schedule-I.

6. Sangli Municipal Council filed a suit being Chalu Vahiwat Suit No. 3 of 1952 in the Court of Mamlatdar Miraj for possession of the subject land on the ground that Dadoba was only tenant for the year 1949-50. The Mamlatdar's Court dismissed the suit on 13th October, 1952 holding that Dadoba was annual tenant against which Revision Application was preferred before Assistant Collector which came to be allowed. Dadoba challenged the order of the Assistant Collector by filing Civil Revision Application No.1386 of 1952 before this Court which by order dated 26th August, 1955 set the order of the Assistant Collector and held Dadoba to be the annual tenant of the agricultural land and unless the tenancy is determined, the possession of the subject land cannot be recovered from Dadoba.

7. The Sangli Municipal Council terminated the tenancy of the Dadoba by notice dated 25th February, 1956 calling upon him to hand over possession of the agricultural land on 6th June, 1956. For recovery of possession, Regular Civil Suit No.59 of 1957 was filed in the Sangli Court. On 17th September, 1958, Dadoba and Sangli Municipal Council entered into compromise terms under which it was agreed that Dadoba will be the tenant of Sangli Municipal Council for the period of

7 years from 1957 to 31st March, 1964 and after expiry of the said period, Dadoba would hand over the possession of the subject land to Sangli Municipal Council.

8. Due to non compliance of the compromise terms by Dadoba, Sangli Municipal Council filed Durkhast No.140 of 1964 seeking possession. The execution was resisted contending that the compromise was against the provision of Tenancy Act and therefore, the decree is not executable, that the judgment debtor is a protected tenant and in view of Section 4B of the Tenancy Act, the tenancy cannot be terminated. The jurisdiction of Civil Court was questioned to entertain issue of eviction of agricultural tenant. The Executing Court rejected the contentions of judgment debtor and issued warrant of possession. During the pendency of the Darkhast, Dadoba expired and his legal heir, the Petitioner No.1 challenged the order of issuance of warrant of possession by way of Civil Appeal No.39 of 1967. The Appellate Court set aside the order of issuance of warrant of possession dated 20th November, 1967 observing that the Dadoba was protected tenant and remanded the matter to Trial Court for fresh consideration vide order and Judgment dated 30th July, 1968.

9. After remand, the Trial Court held that the decree passed in terms of compromise was not executable as the agreement defeated provisions of law and dismissed the Darkhast by judgment and order

dated 26th September, 1969. Sangli Municipal Council preferred Civil Appeal to the District Court against the order of dismissal of the Darkhast and the District Court observed that the Civil Court has no jurisdiction to decide whether the Dadoba or his heirs were the tenants of the agricultural land in view of Section 85A of the Tenancy Act. The District Court stayed the execution and allowed the Trial Court to refer the issue of tenancy to the Revenue Court i.e. the Mamlatdar for determination of issue of tenancy by judgment and order dated 15th July, 1971.

10. The issue of tenancy was referred to the Tahsildar in Tenancy Case No.24 of 1978. The Petitioners contended that the issue of tenancy was already adjudicated in Vahiwat Suit No.3 of 1952 and that the Petitioners were continuously cultivating the land since year 1942 and they be declared as tenants under Section 70(b) of the Tenancy Act. The Mamlatdar came to a conclusion that the subject land is situated in the municipal limits and major portion of the land was under grass which grows naturally and held that the judgment debtors were not tenants by order dated 29th November, 1988.

11. The Petitioners preferred Tenancy Appeal No.6 of 1988 before the Subdivisional Officer who dismissed the Appeal as against which Revision Application No.30 of 1989 was preferred before MRT. The Learned Member of MRT by the impugned judgment and order dated

22nd December, 1989, dismissed the Revision Application holding that the Petitioners cannot be declared as tenants on the suit land. The Review Application filed by the Petitioners came to be dismissed by order dated 22nd March, 1995.

SUBMISSIONS :

12. Mr. Salunkhe, Learned Counsel for the Petitioners would submit that by virtue of consent terms entered in the year 1958, the Petitioner was to remain as tenant of the decree holder in respect of the subject land from 1st April, 1957 till 31st March, 1964. He submits that the compromise was entered into after the amendment to the Tenancy Act of 1956, which brought Section 4B on the statute book prohibiting termination of tenancy by efflux of time. He would point out that though under Section 88B(1), the land of the local authorities is exempted from other provisions of the Tenancy Act, however, Section 4B is applicable. He has taken this Court in detail through the various orders passed in the proceedings and submits that in first Chalu Vahiwat Suit of 1952, Dadoba was held to be annual tenant and therefore, there was no question of again referring the issue of tenancy to the Revenue Court. He has taken this Court in detail through the order of MRT and would submit that the MRT has accepted that Dadoba was a tenant of the suit land and had also held that the provisions of Section 4B are applicable to this case. He

further submits that the MRT after holding that Section 43C of the Tenancy Act which is applicable to the area under Municipal Council cannot take away the continuation of tenancy rights, travelled beyond the scope of the reference and held that the Petitioners cannot be declared as tenants under Section 70(b) of the Tenancy Act by relying upon the photocopy of the Gazette dated 28th March, 1977 which shows that out of survey No.99/2 some portion is reserved for development scheme Nos. 24 and 25 and therefore Section 88 of the Tenancy Act would apply. He submits that on 15th July, 1971, the reference was directed by the Appellate Court and the reference was made on 9th September, 1976. He submits that the relevant period for determining the issue of tenancy is the date of reference and subsequent development of the year 1977 could not have been taken into consideration. He submits that the reference was not an original proceeding and the later development was not the subject matter. He submits that once it is accepted that the Petitioners are the tenants of the premises, it cannot be said that the Petitioners have lost the tenancy right for the reason that from the date of notification, the Tenancy Act was not applicable by virtue of Section 88. He would further submit that the reference was made as the provisions of the Tenancy Act were applicable and therefore, now it cannot be said that the Tenancy Act is not applicable by virtue of Section 88.

13. *Per Contra*, Mr. Walawalkar, learned Senior Advocate would submit that under Section 85A of the Tenancy Act whenever any issue arises which is required to be dealt with by any of the authority under the Tenancy Act, the same is to be referred to the Competent Authority for determination. He submits that the reference was on the issue whether the Petitioner's tenancy is protected by the Tenancy Act. He has taken this Court in detail through the order of MRT and submits that MRT has held that there are no rights left of the Petitioners as tenants. He would submit that the suit which was filed by the Sangli Municipal Council resulting in an agreement created a tenancy in the year 1958. He submits that if the Petitioner claims tenancy of the year 1942 then, the unamended provisions of the Tenancy Act would apply and the land leased by the local authority would be exempted from the provisions of the Tenancy Act.

14. He submits that if the Petitioners claims tenancy of the year 1958, then in view of Section 88(1)(b), the Tenancy Act will not apply. He submits that the decree has already been executed and the possession has been taken by the Sangli Municipal Counsel and there is a bus depot and only the Petitioner's structure is protected by this Court. He would submit that the Petitioners cannot become deemed purchasers. He submits that the consent terms were executed in the

year 1958 and as per Section 111 of the Transfer of Property Act, 1882, the tenancy is determined by efflux of time. He submits that as the tenancy was determined, no notice is required to be issued under the provisions of Transfer of Property Act, 1882. He submits that the Tenancy act will not protect the tenancy created by virtue of the Consent Terms and the tenant will have no higher status that of an ordinary tenant.

15. He submits that Writ Petition No.3102 was filed in the year 1995 and in 2013, liberty was given to file the second Petition, which was filed in the year 2017 after a lapse of about four years. He submits that the order of MRT passed on 22nd December, 1989 had been challenged by virtue of the second Petition filed in the year 2017. He would further submit that the operation of the bus depot is in public interest and therefore, delay and laches come into play and this Court may not exercise jurisdiction under Article 227 of Constitution of India.

16. In rejoinder, Mr. Salunke would dispute that the possession has been taken and submits that portion of land has been reserved for development scheme. He admits that there has been delay in filing of the Petition, however, the issue of delay will not arise as the Petitions were already admitted.

17. In sur-rejoinder, Mr. Walawalkar, would submit that the Respondent Municipal Council was not heard at the time of admission and the status quo for the structure was given. He would further submit that Mr. Salunke has admitted that portion is reserved for development out of Survey No.99/2.

REASONS AND ANALYSIS :

18. Although it was contended by Mr. Salunkhe that the fate of Writ Petition No.3102 of 1995 would decide the fate of Writ Petition No.10925 of 2017, the substantial submissions advanced by Mr. Salunkhe was on the validity of the MRT order dated 22nd December, 1989. In the reconstructed Writ Petition No.3102 of 1995, the prayer clause seeks relief in respect of the Civil Court's order as well as the orders of the Competent Authority under the Tenancy Act. However, I have considered the order of this Court dated 25th June, 2013 which permitted the Petitioners to retain the challenge to the Civil Court's order in Writ Petition No.3102 of 1995.

19. As far as the relief sought *qua* the Civil Court's orders are concerned, the prayer is to quash and set aside the impugned Judgment and Order dated 17th September, 1958 recording the compromise decree. No submissions were advanced on the aspect of setting aside of the compromise decree and rightly so as in exercise of jurisdiction under Article 227 of Constitution of India, no such relief

could be granted.

20. The other order under challenge is the order dated 15th July, 1971 passed in Civil Appeal No.435 of 1969 directing Reference. By the impugned order dated 15th July, 1971, the Appellate Court framed the issue whether the Executing Court had the jurisdiction to decide the question whether the Judgment Debtors were the tenants. The Appellate Court rightly considered the provisions of Section 70(b) and Section 85A of the Tenancy Act and directed the reference. The defence which was raised by the Petitioners to the execution proceedings was that Dadoba was the protected tenant and the Sangli Municipal Council had not obtained a decision from the Tenancy Court that Dadoba was not protected tenant and Civil Court had no jurisdiction and the execution proceedings be stayed under Section 85A of Tenancy Act and matter be sent for decision to the Mamlatdar. The said contentions were accepted by the Appellate Court and the matter was referred under Section 85A of Tenancy Act. Having questioned the jurisdiction of Civil Court to decide the Petitioner's tenancy and invoking Section 85A of Tenancy Act, the Petitioners are now estopped from contending that there could be no reference under Section 85A as the Mamlatdar had held that the Petitioners predecessor was annual tenant in Chalu Vahiwat Case No.3 of 1952. There was no challenge to the order directing Reference and the

Petitioners participated in the proceedings before the Competent Authority and therefore, cannot now maintain a challenge to the order of Reference of the year 1971.

21. Coming now to the challenge to the order of MRT dated 22nd December, 1989, the moot question which arises for consideration is whether the tenancy of the Petitioners cannot be determined in view of Section 4B of Tenancy Act and therefore, the Petitioners continue to be tenants of the subject land.

22. Before deciding the applicability of Section 4B, a brief recapitulation of the facts is necessitated as the ownership of the subject land changed over different periods of time and accordingly the applicable statutory provisions will have to be considered. The Petitioner was a lessee of the subject land under the original owner in the year 1942, the land came to be acquired by virtue of a notification under Section 6 of the Land Acquisition Act, 1894 on 23rd June, 1945, on 6th March 1948, there was a royal decree issued stating that the land would form corpus of the Trust and Sangli Municipal Council will be the trustee. On 17th June, 1950, the trust was registered. In the year 1952, the suit was filed before the Mamlatdar for recovery of possession which was dismissed by holding Dadoba to be annual tenant. On 25th February 1956, the Sangli Municipal Council terminated the tenancy by issuing notice of termination. Regular Civil

Suit No.59 of 1957 was filed for recovery of possession and on 17th of September, 1958, by virtue of compromise decree, it was agreed that Dadoba will be a tenant of Municipal Council for seven years from 1st April, 1957 to 31st March, 1964. For execution of the said compromise terms, Darkhast was filed in which the issue of tenancy was referred to the Competent Authority leading to the impugned order.

23. In the interregnum, by virtue of Amendment Act 13 of 1956, Section 4B was brought on the statute book prohibiting determination of tenancy by efflux of time. At the time of executing compromise terms in the year 1958, Section 4B was already introduced. In the execution proceedings taken out by Sangli Municipal Council, the issue whether the Petitioners are tenants of the decree holder was referred to the Revenue Authorities in view of Section 85A of the Tenancy Act, which reads thus :

“[85A. (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the “competent authority”), the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.”

24. In the reference proceedings, the Tahsildar held against the Petitioners who approached the MRT. The findings of the MRT can be broadly summarized as under:

(a) Dadoba cannot be considered as deemed purchaser on tiller's day i.e. 1st April, 1957 as the subject land was located within municipal limits and belonged to a Trust and therefore the status of Dadoba remained as a tenant.

(b) The compromise terms executed between Dadoba and Sangli Municipal Council created a tenancy for 7 years.

(c) Section 4B of Tenancy Act is applicable and Section 43C cannot take away continuation of tenancy rights as only statutory rights of purchase are kept in abeyance.

(d) The Petitioners are not tenants under Section 70(b) of Tenancy Act as the Gazette dated 28th March, 1977 produced along with the development plan for Sangli Municipal Council shows that out of Survey No. 99/2 a portion is reserved for development under Scheme No. 24 and 25 and the Municipal Council requires the entire survey No. 99 for the purpose of development scheme which is sanctioned by Government of Maharashtra.

(e) In view of Section 88(b) of Tenancy Act, there is no right left in the Petitioners to claim tenancy of the subject land and therefore it is not possible to grant him the status of tenant under Tenancy Act.

25. The issue will have to be examined by going back to the provisions of the erstwhile Bombay Tenancy Act, 1939 as the lease was first created in the year 1942 for period of four years which would have expired in the year 1946. Under Section 23(1)(b) of the Bombay Tenancy Act, 1939 as it stood amended in 1946 every lease subsisting

on the date when that section came into force was deemed to be for a period of not less than 10 years. The effect of Section 23(1)(b) would therefore be that the Petitioner's lease which would have expired in the year 1946 continued till the year 1952 in view of the deeming provision.

26. The Tenancy Act of 1948 came into force repealing the 1939 Act however, the Tenancy Act did not repeal but modified Section 3, 3A and 4 of the 1939 Act which dealt with protected tenancy. Section 3A which was modified by 1948 Act provided that every tenant shall, from 8th day November, 1947 be deemed to be protected tenant for the purposes of 1948 Act and his right as such protected tenant shall be recorded in the record of rights unless his landlord has prior to the death made an application to a Mamlatdar for a declaration that the tenant is not a protected tenant. In the present case, it is not shown that any such application was made as contemplated under Section 3A. The result was that the Petitioner became protected tenant by virtue of 1948 Act read with Section 3A of the 1939 Act.

27. Till the introduction of Section 88B exempting the lands leased from local authority from certain provisions of Tenancy Act, the Petitioner remained a protected tenant under the 1948 Act and thereafter his status was of a ordinary tenant. However, Section 4B continued to apply. Section 4A of Tenancy Act, which also came to be

introduced by the Act of 1956, provided that the person shall be recognised to be a protected tenant if such person is deemed to be a protected tenant under Section 3, 3A and Section 4 of the Bombay Tenancy Act, 1939. Section 4A does not apply to tenancy governed by Section 88B(1)(a) of the Tenancy Act therefore, the Petitioners were no longer the protected tenants in respect of the subject land.

28. Having dealt with the issue of protected tenancy of the Petitioners and negating the same, I shall now consider the pivotal issue of applicability of Section 4B of Tenancy Act. Section 4B reads thus:

"4B: No tenancy of any land ¹[other than the tenancy of the land duly sanctioned under section 36 or section 36A of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966)] shall be terminated merely on the ground that the period fixed by agreement or usage for its duration has expired]."

29. Section 4B prohibits the termination of tenancy merely on the ground that the period fixed by agreement or usage for its duration has expired. A plain reading of Section 4B would indicate that Section 4B militates against termination of tenancy which is sought to be terminated only on the ground that the duration for which the tenancy was created has expired. Section 4B does not put a complete embargo on the determination of tenancy on any other reason

including the reason of the subject land itself being exempted from the provisions of Tenancy Act.

30. The question referred to the Competent Authority was whether the Petitioners were tenants of the Sangli Municipal Council pursuant to the order of the Appellate Court dated 15th July, 1971. The reference was rightly directed by the Executing Court as Section 85A provides for reference by the Civil Court of the issues which are required to be settled by competent authority under the Tenancy Act. The issues which are within the jurisdiction of competent authority under Tenancy Act is provided under Section 70 which reads thus :

“70. For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar :-

- (a) to decide whether a person is an agriculturist;
- (b) to decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant;
- (c) to determine the rates of rent under section 9;
- (d) to decide dispute regarding class of land under section 9A;
- (f) to determine the amount of compensation under section 10 for the contravention of sections 8, 9, 9A and 9C;
- (h) to determine the amount to be refunded to a tenant under section 13(5);
- (i) to determine the amount of compensation for trees to which a tenant is entitled under section 19;
- (j) to determine any dispute regarding the right to produce of trees naturally growing under section 20;

(k) to determine the cost of repairing protective bunds under section 23;

(kk) to hold an inquiry and restore possession of land under subsection (1B) of section 32;

(l) to sanction exchange of tenancies under section 33;

(m) to determine the amount of compensation payable to tenant for any improvement under section 41;

(ma) to determine what is reasonable rent under section 43B;

(mb) to issue a certificate under section 84A, and to decide under section 84B or 84C whether a transfer or acquisition of land is invalid and to dispose of land as provided in section 84C;

(mc) to decide reference under section 85A;

(md) to decide any dispute under section 88C;

(n) to take measures for putting the tenant or landlord or the agricultural labourer or artisan or person carrying on an allied pursuit into the possession of the land or dwelling house under this Act;

(o) to decide such other matters as may be referred to him by or under this Act.

31. Under sub section (b) of Section 70, the Competent Authority is enjoined with the duty to decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant. MRT has held the Petitioners to be tenants of the subject land and the applicability of Section 4B to the Petitioner's tenancy. These findings have not been challenged by the Respondent Sangli Municipal Council and rightly so. The issue would still remain as to whether the Petitioners continued to remain as tenants of the subject

land upon the issuance of Gazette Notification of 28th March, 1977. The Petitioners by reason of the compromise terms of the year 1958 became tenants of Sangli Municipal Council and Section 4B placed an embargo on the determination of the tenancy by efflux of time. As indicated above, the embargo is not an absolute embargo and only restricts determination of tenancy by reason of efflux of time. During the pendency of the Reference proceedings, the Gazette Notification dated 28th March, 1977 and the development plan approved by the Government for Sangli Municipal Council was sanctioned reserving portion of Survey No 99/2 for development Scheme Nos. 24 and 25. By reason of the intervening event of the development plan being sanctioned, the provisions of Section 88(1)(b) of Tenancy Act became applicable to the subject land making it exempt from the provisions of Tenancy Act bringing with it the end of the tenancy rights of the Petitioners. I find no substance in the submission of Mr. Salunkhe that the finding of MRT was based on the subsequent development which is beyond the scope of reference and the status of Petitioners had to be decided on the date of reference. Firstly considering Section 70(b) of Tenancy Act, the Competent Authority was required to determine whether the Petitioners are or were at any time in the past the tenants or protected tenants. The MRT after holding that the Petitioners were in the past tenants of the subject land have

thereafter considered whether the Petitioners continue to remain tenants in view of the gazette notification of the year 1977. The whole purport of the Reference was to decide the status of the Petitioners as tenants so that the Civil Court could have adjudicated the execution application. In my view, the date of Reference is immaterial and it is the status of the Petitioners which was required to be determined.

32. Learned Member of MRT has held that the Municipality requires the entire Survey No.99 for purpose of development scheme which is sanctioned by the Government of Maharashtra. Mr. Salunkhe has not brought to the notice of this Court any material to dispute the said position that the entire Survey No.99 was not reserved for non agricultural purpose. That being so, the subject land was exempted from provisions of Tenancy Act by virtue of Section 88(1)(b) resulting in determination of tenancy rights of the Petitioners.

33. As far as the contention that MRT could not have held that the Tenancy Act was not applicable as reference was made, in my view, while determining the status of the Petitioners, as by reason of intervening event, the provisions of Tenancy Act were not applicable to subject land, merely because the reference has been made by Executing Court will not alter the position. The reference was made in view of defence raised by the Petitioners that they were agricultural

tenants and the Competent Authority is empowered to hold that the Petitioners are not tenants by reason of subject land being exempted under Section 88.

CONCLUSION :

34. Section 4B of Tenancy Act puts an embargo on termination of tenancy only on the ground that the tenancy has been determined by efflux of time. Section 4B cannot come to the aid of the Petitioners in view of the sanctioned development plan published in the Gazette Notification dated 28th March, 1977. Learned Member of MRT has held that the Government has already published in Official Gazette the non agricultural use of the suit land by approving the development Scheme Nos. 24 and 25 for the Sangli Municipal Council and there is no material shown to this Court to dispute the said position.

35. As the Competent Authority was determining the status of Petitioners whether tenant or not, it is not the date of Reference which is material but the status of Petitioners. The Learned Member of MRT has rightly considered the Gazette Notification dated 28th March, 1977 publishing the development plan and reached the correct conclusion that the Petitioners had no rights left with them to claim tenancy.

36. In light of the above discussion, both the Petitions fail and stand dismissed. Rule stands discharged.

37. At this stage request is made for extension of the interim relief which has been operating in favour of the Petitioners for the period of eight weeks. Mr. Walawalkar, learned Senior counsel for the Respondent opposes the extension of the interim relief. As the interim stay has been operating since long, I am inclined to extend the same for a period of eight weeks from today.

[Sharmila U. Deshmukh, J.]