



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8460 OF 2023

1. Kamlakar Haribhau Naik
2. Naresh Haribhau Naik
3. Vasant Haribhau Naik

...Petitioners

V/s.

1. The State of Maharashtra
2. Minister, Revenue, State of Maharashtra.
3. Deputy Director of Land Records, Kokan Division, Mumbai.
4. District Superintendent, Land Records, Palghar.
5. Bhupesh Sadanand Raut
6. Jagdish Vishnu Naik
7. Kamlesh Dinkar Thakur
8. Vishal Nandan Patil
9. Sagar Bhuvanesh Patil
10. Yogesh Balkrishna Naik
11. Mangesh Balkrishna Naik
12. Moreshwar Bhau Naik
13. Manohar Yashwant Naik.
14. Milind Yashwant Naik
15. Santosh Yashwant Naik since deceased through his heirs and legal representatives-
 - a) Nutan Santosh Naik
 - b) Samiksha Santosh Naik

...Respondents

Ms. Neeta Karnik, Senior Advocate i/b. Ms. Sharwari Lopes for the Petitioners.

Ms. Anjali Helekar with Ms. Anu C. Kaladharan for Respondent Nos.10 to 15

Mr. Kaivalya Manoj Raul with Mr. R.P. Patil i/b. Ms. Ruchita Rajpurohit for Respondent Nos.5 & 7 to 9.

Mr. Bapusaheb Dahiphale, AGP for Respondent-State.

Mr. Sunil Karandikar Amicus Curiae

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CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 12 February 2025.

Judgment pronounced on : 25 February 2025.

Judgment :

1) By this Petition Petitioners challenge order dated 21 March 2023 passed by the learned Minister (Revenue) partly allowing Revision Application filed by Respondent Nos.5 to 9 and confirming the order dated 17 June 2022 passed by the Deputy Director Land Records, Kokan (**DDL**R) directing that the *Aakarphod Patrak* No.12 of 1968 has been rendered infructuous and meaningless and that therefore sub division measurements be conducted in respect of Respondent Nos.5 to 9 of land bearing Survey No.78/1A and 78/1B.

2) Briefly stated, facts of the case are that a partition was recorded between Hari Balwant Naik, Mahadev Aba Naik and Ganesh Bhai Naik by statement made in front of Talathi in respect of various lands and as per the said statement, lands came to the share of three persons as under:-

Land allotted to Shri Mahadev Aba Naik

Survey No.	Hissa No.	Area	Akhar
279	1 pai.	01-18-0	22-13-6
300	1 pai.	00-31-7	7-14-0
288	1 pai.	1-00-0	13-0-6
275	4/1 pai	01-18-5	16-14-4
301	1 pai.	00-21-5	06-14-0

Land allotted to Shri Hari Balwant Naik

Survey No.	Hissa No.	Area	Akhar
304	1 pai.	02-10-2	22-13-6

300	1 pai.	00-31-7	7-14-0
288	1 pai.	1-00-0	13-0-6
275	4/1 pai	01-18-5	16-12-4
301	1 pai.	00-21-5	06-14-0

Land allotted to Shri Ganesh Bhai Naik

Survey No.	Hissa No.	Area	Akkar
279	1 pai.	02-17-7	22-13-6
288	1 pai.	2-00-0	26-1-6
275	4/1 pai	00-20-00	06-0-0

3) For recording the above partition, Mutation Entry No.2414 was certified on 11 October 1955 thereby recording names of the three sharers in respect of various lands and areas as more particularly described in the said Mutation Entry.

4) It appears that the said three sharers decided to get the lands coming to their respective shares physically sub-divided and accordingly approached the Deputy Director of Land Records, Vasai, who carried out the exercise of sub-division of land bearing Survey No. 279 in the year 1968 by diving the land in 12 shares as Survey Nos. 279/1/1 to 279/1/12. The sub-divided lands were accordingly reflected in Hissa Form No.4 (*Gunakar* Book). However, though land bearing Survey No.279 was recorded in the shares of Mahadev Naik and Ganesh Bhai Naik and no portion was allotted to the share of Hari Balwant Naik in the partition effected in the year 1955, it appears that while creating the sub-division, name of Hari Balwant Naik was also reflected in three out of 12 shares of land bearing Survey No.279 in Hissa Form No.4 (*Akarphod Patrak* No. 12 of 1968). Thus, the Akarphod Patrak reflected sub-division of land bearing Survey No.279 into 12 shares and name of Hari Balwant Naik was reflected in respect of Hissa No.279/1/5, 279/1/6 and 279/1/12. The

entries made in Hissa Form No.4 giving effect to the sub-division were apparently signed by each of the three partitioning parties. It appears that based on entries made in Hissa Form No.4 (*Aakarphod Patrak No.12 of 1968*) Mutation Entry No.3342 was certified on 8 February 1972 recording names of the sharers corresponding to one indicated in Hissa Form No.4. Accordingly, name of Hari Balwant Naik came to be mutated in respect of land bearing Survey No.279/1/5, 279/1/6 and 279/1/12 vide Mutation Entry No. 3342. However, the said Mutation Entry No.3342 came to be cancelled by Tehsildar by order dated 16 October 1972.

5) The above position of cancellation of Mutation Entry No. 3342 continued for a long time. It appears that the land bearing Survey No.279 was subsequently assigned Survey No. 78 and instead of giving effect to the *Aakarphod Patrak* by dividing the land into 12 independent shares, the same was divided only into two shares bearing Survey No.78/1A and 78/1B. Petitioners apparently noticed that their names were not being reflected in any portion of the land bearing old survey No.279/1/5, 279/1/6 and 279/1/12 and in new Survey No.78/1A and 78/1B and accordingly initiated proceedings in the year 2016 for mutating their names corresponding to *Aakarphod Patrak* /Hissa Form No.4. Since Petitioners were relying on the *Aakarphod Patrak* No. 12 of 1968 for claiming right on the land bearing old Survey No.279, it appears that Respondent Nos.5 to 9 alongwith others initiated proceedings before the District Superintendent of Land Records, Palghar (**DSLRL**) on 14 September 2017 for correction of *Aakarphod Patrak*/ Hissa Form No.4, consequent to cancellation of Mutation Entry No.3342. It appears that Petitioners were not impleaded to the said proceeding. Initially, DSLR

allowed the application for condonation of delay by order dated 15 November 2017. Later, the proceedings were heard on merits and order dated 29 November 2017 was passed allowing the Appeal preferred by the Appellants and directing cancellation of *Aakarphod Patrak* No. 12 of 1968 only in respect of old Survey No.279(New Survey No.78).

6) Petitioners got aggrieved by the order dated 29 November 2017 passed by the DSLR and filed Survey Appeal No.1153 of 2021 before the DDLR. The DDLR initially allowed the Application for condonation of delay by order dated 29 March 2022 and proceeded to hear the Appeal on merits. By order dated 17 June 2022, DDLR allowed the Appeal preferred by the Petitioners and set aside order dated 29 November 2017 passed by the DSLR. The DDLR however observed that proceedings were required to be initiated for challenging cancellation of Mutation Entry No. 3342 by applying for condonation of delay.

7) Respondent Nos.5 to 9 felt aggrieved by order dated 17 June 2022 passed by the DDLR and filed Revision Application before the learned Minister (Revenue). By order dated 21 March 2023, Revision Application has been partly allowed by the learned Minister holding that *Aakarphod Patrak* No. 12 of 1968 was not timely implemented and had therefore, become infructuous and meaningless. He further held that sub-division created by the said *Aakarphod Patrak* does not match with revenue entries relating to title. He further held that Mutation Entry No.3342 had also become meaningless. He however, held that the demand of Respondent Nos.5 to 9 for sub-division measurement of Survey No.279(new survey No.78) could not be

conducted at regional level and that therefore there would be no impediment for conduct of such measurements as per Rules. The learned Minister therefore held that it was not necessary to interfere in the order passed by the DDLR. The learned Minister accordingly directed that land bearing Survey Nos.78/1A and 78/1B be subjected to measurement of sub-division. Petitioners are aggrieved by orders dated 29 November 2017 passed by the DSLR and 21 March 2023 passed by the learned Minister and have filed the present Petition.

8) Ms. Neeta Karnik, the learned senior advocate appearing for the Petitioners would submit that the impugned orders passed by the DSLR and the learned Minister are ex facie illegal as the same virtually tantamount to giving precedence to the Mutation Entry over the *Aakarphod Patrak* /Hissa Form No.4. She would submit that sub-division created vide *Aakarphod Patrak* /Hissa form No.4 confers title on parties against whose name various lands are indicated. That the entries in Hissa Form No.4 have been signed by each of the sharers and title of each of them has accordingly been crystalised in the year 1968 itself. She would submit that whether effect is granted to *Aakarphod Patrak* No.12 of 1968 through mutation entry or not is absolutely irrelevant. That therefore mere cancellation of Mutation Entry No.3342 becomes meaningless so long as sub-division created by *Aakarphod Patrak* / Hissa Form No.4 stands good. In support of her contention that *Aakarphod Patrak* constitutes a document of title and would have precedence over mutation entry, Ms. Karnik would rely upon judgment of this Court in ***Ramchandra Yeshwant Desai V/s. Krishna Sitaram Desai and Ors.***¹

¹ 2016 (2) ALL MR 515.

9) Ms. Karnik would further submit that the alleged partition of 1955 recorded vide Mutation Entry cannot take precedence over document of title in the form of *Aakarphod Patrak*/Hissa Form No.4. She would submit that since the concerned parties have signed against entries of each allotted shares under the *Aakarphod Patrak*, the entries made therein would prevail over Mutation Entry effected in past or in future. She would submit that deletion of Mutation Entry No.3342 is mysterious as there are absolutely no reasons as to why said Mutation Entry got cancelled. She would however submit that mere cancellation of Mutation Entry No.3342 would not *ipso facto* amount to cancellation of *Aakarphod Patrak* No.12 of 1968. She would submit that learned Minister recorded a perverse finding that *Aakarphod Patrak* No.12 of 1968 has been rendered infructuous in absence of any order setting it aside. She would accordingly submit that order passed by the learned Minister deserves to be set aside and the order passed by the DDLR deserves to be upheld.

10) Petition is opposed by Mr. Raul, the learned counsel appearing for Respondent No.5 and 7 to 9. He would submit that partition effected between Mahadev Aba Naik, Hari Balwant Naik and Ganesh Bhai Naik on 10 September 1955 vide Mutation Entry No.2414 would ultimately prevail. That in the said partition, no land was allotted to the share of Hari Balwant Naik in Survey No.279, which went entirely in the shares of Mahadev Aba Naik and Ganesh Bhai Naik. That Hari Balwant Naik as well as Petitioners lived with the said reality and did not question non-mutation of their names to the revenue records relating to land bearing Survey No.279. He would submit that Hari Balwant Naik passed away on 22 August 1978 and after his death, Petitioners got their names mutated on various lands

coming to their share vide Mutation Entry No.3566, in which they consciously excluded land bearing Survey No.279. That as on 21 December 1978, when Mutation Entry No.3586 was effected, Petitioners were happy with the fact that Hari Balwant Naik did not have any semblance of right in the land bearing Survey No.279 and therefore they did not apply for mutation of their names to the said land. He would submit that Petitioners subsequently attempted to take undue advantage of *Aakarphod Patrak* No.12 of 1968 which had lost all its significance and which was not given effect at any point of time. That Petitioners did not challenge Mutation Entry No.3342 cancelled on 16 October 1972, which had the effect of cancellation of *Aakarphod Patrak* No. 12 of 1968. He would therefore pray for dismissal of the Petition.

11) Ms. Helekar the learned counsel appearing for the Intervenor would also oppose the Petition submitting that *Aakarphod Patrak* or Hissa Form No.4 does not constitute title on any party. In support, she would rely upon judgment of this Court in ***Govindrao Shankarrao Reddy V/s. Rukminibai w/o. Vithal Reddy and Ors.***² as followed in ***Babu Gopala Gaware V/s. Sheshrao Ganpati Gaware.***³ She would submit that both the judgments were not brought to the notice of this Court while rendering judgment in ***Ramchandra Yeshwant Desai*** (supra) and that therefore judgment in ***Ramchandra Yeshwant Desai*** (supra) is *per incuriam*. Ms. Helekar would accordingly submit that Petitioners cannot claim any right, title or interest in the land bearing Survey No.279(new Survey No.78/1A and 78/1B) on the strength of ineffective

² (2009) 2 Mah. LJ 583

³ (2015) 4 Bom CR 395

Aakarphod Patrak No. 12 of 1968. She would pray for dismissal of the Petition.

12) The arguments in the petition were concluded on 27th January 2025 and the judgment was reserved. However, the petition was listed for directions on 10th February 2025 with a view to enable the parties to answer the queries raised by the Court. Upon a suggestion made by this Court for appointment of an *Amicus Curiae*, the rival parties fairly agreed that Mr. Karandikar could be appointed as *Amicus Curiae* for assisting the Court to decide the issue about *Aakarphod Patrak* constituting a document of title, especially in view of this Court noticing some conflict in the views expressed by the Coordinate Benches. Accordingly, by order dated 10 January 2025, this Court appointed Mr. Karandikar as *Amicus Curiae* to assist the Court. The arguments in the petition were accordingly further heard on 12th February 2025, when Mr. Karandikar has also assisted this Court by canvassing submissions on the issue taken up for consideration. Accordingly, after further hearing of submissions of learned counsel appearing for the rival parties as well as of the learned *Amicus*, the judgment was once again reserved on 12th February 2025.

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

14) The broad issue that arises for consideration in the present Petition is whether *Aakarphod Patrak* or Hissa Form No. 4 (based on *Gunakar book*) prepared at the time of sub-division of the land constitutes a document of title.

15) Petitioners have relied upon *Aakarphod Patrak* No. 12 of 1968 thereby sub dividing land bearing Survey No. 279 into 12 shares and allotting share Nos.279/1/5, 279/1/6 and 279/1/12 in favour of Hari Balwant Naik for the purpose of claiming title in respect of those three shares. The DSLR held that *Aakarphod Patrak* No. 12 of 1968 is liable to be set aside only on the ground that Mutation Entry No.3342 executed in pursuance thereof was set aside and new Survey number of the land bearing 78 is sub-divided only as 78/1A and 78/1B. The DSLR held that since 12 sub-divisions in respect of old Survey No.279 as per *Aakarphod Patrak* No.12 of 1968 are not given effect in the New Survey No. 78, it was necessary to set aside *Aakarphod Patrak* No.12 of 1968. He accordingly directed the DSLR to set aside *Aakarphod Patrak* relating to old Survey No.279 by his order dated 29 November 2017. The DDLR however reversed the findings of the DSLR and held that Mutation Entry certified in pursuance of *Aakarphod Patrak* No.12 of 1968 was cancelled and that therefore, if the said *Aakarphod Patrak* No.12 of 1968 was to be given effect in the revenue records, it was necessary to first challenge the order cancelling the Mutation Entry. Thus, what the DDLR has done is to maintain existence of *Aakarphod Patrak* No.12 of 1968 and to grant liberty to Petitioners to challenge cancellation of Mutation Entry No. 3342 by seeking condonation of delay. DDLR's order essentially envisaged that Petitioners should take steps for giving effect to the *Aakarphod Patrak* No.12 of 1968 in the revenue records. The learned Minister while partly allowing the Revision filed by the contesting Respondents and held that *Aakarphod Patrak* No.12 of 1968 has been rendered meaningless. There was apparently a prayer for further sub-division of New Survey No. 78/1A and 78/1B and accordingly the learned Minister has directed further sub-division thereof.

16) Before proceeding to answer the issue at hand, it would be necessary to take a quick stock of the manner in which the present proceedings were triggered. The proceedings for cancellation of *Aakarphod Patrak* No.12 of 1968 by contesting Respondents has its origin in an altogether different proceedings, which were initiated by Petitioners for giving effect to the said *Aakarphod Patrak* No.12 of 1968 in revenue records. After about 49 long years of coming into effect of the *Aakarphod Patrak* No.12 of 1968, Petitioners thought of initiating process for mutation of their names in land bearing Survey No. 279, which was later renumbered as Survey Nos. 78/1A and 78/1B. They accordingly filed application before Tehsildar for mutation of their names to the said two new Survey Numbers. While considering the request made by Petitioners, it appears that the Circle Officer sent a report to Sub-Divisional Officer/Tehsildar, Vasai vide letter dated 27 January 2017, which reads thus:-

महोदय,

श्रीम.दुर्गीबाई हरिभाऊ नाईक मयत यांचे वतीने वारस श्री. कमळाकर हरिभाऊ नाईक, रा. उंबरगोठण, वटार, ता.वसई, यांनी गांव मौजे वटार, ता. वसई येथील स.नं. ७८/१ पै. (जुना स.नं. २७९/१ पै.) मधील जमिनीचा हिस्सेवाटपानुसार ७/१२ सदरी अंमल देणेबाबत मा. तहसिलदार साहेब यांचेकडे विनंती अर्ज केला आहे. त्याकामी खालील प्रमाणे अहवाल सादर करित आहेत.

गांव मौजे वटार, ता.वसई येथील फेरफार क्र.२४१४ मध्ये समाविष्ट असलेल्या अर्जदार यांच्या समायिक जमीन मिळकतीच्या क्षेत्रफळाचे कारणापुरतें विभाजन सन १९५५ साली झाले ते येणेप्रमाणे :-

१) महादेव आबा नाईक यांचे नाव दाखल झालेली मिळकत

स.नं.	हि.नं.	क्षेत्र	आकार
२७९	१ पै.	०२-१८-०	२२-१३-६
३००	१ पै.	००-३१-७	७-१४-०
२८८	१ पै.	०१-००-०	१३-००-६
२७५	४/१ पै	०१-१८-५	१६-१४-६.
३०१	१ पै.	००-२१-५	०६-१४-०

२) हरी बळवंत नाईक यांचे नाव दाखल झालेली मिळकत

स.नं.	हि.नं.	क्षेत्र	"आकार
३०४	१ पै.	०२-१०-२	११-०४-०
३००	१ पै.	००-३१-७	७-१४-०
२७५	४/१ पै.	०१-१८-५	१६-१४-०
३०१	१ पै.	००-२१-५	६-१४-०

३) गणेश भाई अ. पा. क. रामचंद्र लक्ष्मण नाईक यांचे नाव उरलेली मिळकत

स.नं.	हि.नं.	- क्षेत्र	आकार
२७९	१ पै.	०२-१७-७	२२-१३-६
२८८	१ . पै.	००-०७-७	०-००-०
२८८	१. पै.	०२-००-०	२६-०१-
२७५	४/१ .पै. ख	००-१७-७	००- ००
२७५	४/१ पै.	००-२०-०	०६-०-०

गांव मौजे वटार, स.नं.२७९/१ पै. मधील मिळकतीचे वाटपही पूर्वीच पूर्ण झाले असून भूमी अभिलेख वसई यांच्या दफ्तरील हिस्सा फॉर्म नं. ४ मधील गुणाकार बुकात या वाटपाचा तपशिल पुढील प्रमाणे नोंदविलेला आहे.

स.नं.	हि.नं.	स्केचप्रमाणे हिश्याचे क्षेत्रफळ	कब्जेदाराचे नाव
२७९ १/१	०-११-७		नारायण दामोदर नाईक
२७९ १/२	०-११-७		तात्या काळू नाईक
२७९ १/३	०-१२-७		बेमट्या काळू नाईक
२७९ १/४	०-२७-५		यशवंत महादेव नाईक
२७९ १/५	०-२१-७		हरी बळवंत नाईक
२७९ १/६	०-२४-०		हरी बळवंत नाईक
२७९ १/७	०-१२-५		नारायण दामोदर नाईक
२७९ १/८	०-३५-०		गणेश भाई नाईक
२७९ १/९	०-०८-७		नारायण दामोदर नाईक
२७९ १/१०	०-०८-२		यशवंत महादेव नाईक
२७९ १/११	०-१५-५		रामचंद्र लक्ष्मण नाईक
२७९ १/१२	०-१७-७		हरी बळवंत नाईक

दि.०२/०१/२०१७ रोजी गांव मौजे वटार स.नं. ७८/१ पै. च्या संगणकीच ७/१२ उता-याचे अवलोकन केले असता दोन्ही उता-यावर उपविभाग अ व ब असे नोंदविलेले आहे. कोणत्याही अधिकृत वाटपाशिवाय ७/१२ वरील पोट हिश्याची अ व ब ही नोंद बेकायदेशीर असून ती रद्द होणे आवश्यक आहे.

याशिवाय स.नं.७८/१/अ व ७८/२/५ मधील ब-याच क्षेत्रफळाची विक्री झाल्याचे दिसून येते. ती विक्री मूळ हिस्सेवाटपाला छेद देणारी व बाधा आणणारी असल्याने या दोन्ही ७/१२ वरील फेरफार क्र.३३५७, ४२०९, ४२३३, ४३९९, ४६३४, ४९५५, ४९७९, ४७९३ आणि गांव मौजे वटार फेरफार क्र.२७६९, ३२५९, ३५६०, ३६५३, ३७५७, ३७६९, ४०२३, ४३९९, ४५९९, ४५२४, ४५६०, ४६९३, ५०५६, ५०५७ व स.नं.७८/१ ब वरील प्रलंबित फेरफार क्र.५०८२ हे सर्व फेरफार रद्द होणे आवश्यक आहे. म्हणून वरील सर्व फेरफार रद्द होणे आवश्यक आहे असे अर्जदार यांचे म्हणणे आहे.

सदर वाटपातील शेतजमिनीच्या हिश्याप्रमाणे वरील सर्व इसमांचे वारस त्याचा उपभोग घेत असून आजतागायत ते त्यांच्याच कब्जेवहिवाटीत आहेत. जमिनीचे वाढते भाव व स्वार्थी वृत्ती यामुळे यातील काही सहहिस्सेदार या वाटपाचा फेरफार क्र. ३३४२ हा रद्द झाल्याचे कारण पुढे करून अर्जदार यांच्या वडिलोपार्जित हक्कांपासून वंचित ठेवत आहेत. असे अर्जदार यांचे म्हणणे आहे. तरी हिस्सा फॉर्म नं.४ गुणाकार बुकातील वाटपाप्रमाणे ७/१२ सदरी अमल देणेकामी व वरील वर्णन केलेले फेरफार रद्द करणेकामी पुढील कार्यवाहीसाठी सविनय सादर

17) The Tehsildar in turn sent a report to Sub-Divisional Officer on 7 March 2018 with similar contents as that of Circle Officer's report dated 27 January 2017. It would be apposite to reproduce the recommendations of Tehsildar in letter dated 7 March 2018, which reads thus:

दिनांक ०२/०१/२०१७ रोजी गाव मौजे वटार स.नं. ७८/१ पै. च्या संगणक ७/१२ उता-याचे अवलोकन केले असता, दोन्ही उता-यावर उपविभाग अ व ब ही नोंद बेकायदेशिर असून ती रद्द होणे आवश्यक आहे. याशिवाय स.नं.७८/१/अ व ७८/१/ब मधील ब-याच क्षेत्रफळाची विक्री झाल्याचे दिसून येते. ती विक्री मूळ - हिस्सेवाटपाला छेद देणारी व बाधाआणणारी असल्याने या दोन्ही ७/१२ वरील फेरफार क्र.३३५७, ४२०९, ४२३३, ४३९९, ४६३४, ४९५५, ४९७९, ४७९३ आणि गाव मौजे वटार फेरफार क्रमांक २७६९, ३२५९, ३५६०, ३६५३, ३७५७, ३७६९, ४०२३, ४३९९, ४५९९, ४५२४, ४५६०, ४६९३, ५०५६, ५०५७ व स.नं. ७८/१ब वरील प्रलंबित फेरफार क्रमांक ५०८२ हे सर्व फेरफार रद्द होणे आवश्यक आहे. म्हणून वरील सर्व फेरफार रद्द होणे आवश्यक आहे असे अर्जदार यांचे म्हणणे आहे. सदर वाटपातील शेतजमिनीच्या हिश्याप्रमाणे वरील सर्व इसमांचे वारस त्याचा उपभोग घेत असून आजतागायत ते त्यांच्याच कब्जेवहिवाटीत आहेत. जमिनीचे वाढते - भाव व स्वार्थीवृत्तीमुळे यातील काही सहहिस्सेदार या वाटपाचा फेरफार क्रमांक ३३४२ हा रद्द झाल्याचे कारण पुढे करून वडिलोपार्जित हक्कांपासून वंचित ठेवत आहेत असे अर्जदार यांचे म्हणणे आहे. हिस्सा फॉर्म नं. ४ गुणाकार बुकातील वाटपाप्रमाणे ७/१२ सदरी अंमल देणेकामी व वरील वर्णन केलेले फेरफार रद्द करणेकामी - मंडळ अधिकारी आगाशी यांनी अहवाल सादर केला आहे. याप्रमाणे गावी अभिलेखात वस्तुस्थिती असून हिस्सा फॉर्म नं. ४ गुणाकार बुकातील वाटपाप्रमाणे ७/१२ सदरी अंमल देणेकामी आपलेकडील संदर्भित पत्रानुसार अहवाल पुढील कार्यवाहीसाठी सादर करीत आहेत.

18) It appears that these reports sent by the Circle Officer and the Tehsildar on 27 January 2017 and 7 March 2018 triggered filing of Appeal by the contesting Respondents before the DSLR for cancellation of *Aakarphod Patrak* No.12 of 1968. Curiously, Petitioners were not impleaded as parties to the said Appeal. As

observed above, the Appeal was allowed after condoning the delay by order dated 29 November 2017 holding that *Aakarphod Patrak* No.12 of 1968 was required to be cancelled and directing those entries to that effect be made by DSLR, Vasai in respect of land bearing Old Survey No.279 and new Survey No.78.

19) DDLR though has set aside DSLR's order dated 29 November 2017, has advised the Petitioners to file an Appeal challenging cancellation of Mutation Entry No.3342. He has concluded that if *Aakarphod Patrak* No.12 of 1968 is to be given effect in the revenue records, it was necessary to first challenge Mutation Entry No.3342. The DDLR has stopped at this stage and did not really grant any positive relief in favour of the Petitioners. Petitioners however, achieved success before the DDLR in the form of setting aside the order for cancellation of *Aakarphod Patrak* No.12 of 1968. The learned Minister added his share of confusion in the matter by passing somewhat self-contradictory order, which maintains DDLR's order but also holds that *Aakarphod Patrak* No.12 of 1968 has been rendered meaningless and infructuous. While maintaining the DDLR's order the learned Minister has upheld cancellation of order of DSLR, which actually had the effect of cancellation of *Aakarphod Patrak* No.12 of 1968. One may therefore read the decision of learned Minister to mean as if *Aakarphod Patrak* No.12 of 1968 would continue to survive. However, by contradicting himself, the learned Minister has further held that the said *Aakarphod Patrak* No.12 of 1968 has been rendered infructuous. In my view, the observations and direction by the learned Minister upholding the DDLR's order is an obvious error and he has actually set it aside by holding that the *Aakarphod Patrak* has been rendered infructuous. Petitioners themselves read the

learned Minister's Order as setting aside the order of DDLR and have accordingly filed the present Petition. It is therefore not necessary to delve deeper into this aspect as parties are *ad idem* that the Minister's Order negates the effect of *Aakarphod Patrak*.

20) The real contest involved in the present case is whether *Aakarphod Patrak* No.12 of 1968 created any document of title in favour of Mr. Hari Balwant Naik and consequently in favour of Petitioners who are his successors in title. Reliance is placed by Petitioners on Hissa Form No.4 produced at Ex. A to the petition. Petitioners have referred to the said document being 'Hissa Form No.4' as the *Aakarphod Patrak* No.12 of 1968. Therefore, the issue for consideration is whether the sub-division of land as reflected in Hissa Form No.4 (*Aakarphod Patrak*) conferred any title in respect of land entered against their names therein. It would therefore be necessary to examine the exact manner in which and the purpose for which Hissa Form No.4 is prepared.

21) In ***Govindrao Shankarrao Reddy*** (supra), *Justice S.B. Deshmukh* has discussed in minute details the exact purport of Hissa Form No.4 and Hissa Form No.11 prepared by Survey Officers. He has examined the entire history of survey of lands undertaken in India and particularly in Maharashtra. He has also considered the provisions of the Settlement Manual by R. G. Jorden. The judgment of S.B. Deshmukh, J. is a treatise on concept of survey and sub-division of land and presents a clearer picture regarding preparation of Hissa Form No. 4 and Hissa Form No.11, the purpose for which they are prepared and logical end to which those two Forms are ultimately taken to. It would therefore be apposite to reproduce paragraph

Nos.10 to 20 of the judgment containing detailed discussion about survey of lands. The quotation of those paragraphs would increase the length of this judgment, but in my view, reproduction of the discussion in the judgment relating to survey and sub-division of lands is necessary for achieving better clarity on the issue as to whether the Forms prepared by Survey Officers while effecting sub-division of lands would constitute documents of title. Paragraph Nos.10 to 20 of the judgment in ***Govindrao Shankarrao Reddy*** read thus :-

“10. There are two more documents placed on record by the plaintiff. Amongst these two documents first one is the document Exh. 5. It appears that measurement and survey is the usual phenomenon in the rural part of the State giving rise to disputes amongst the agriculturist. There is understanding, misunderstanding, conception and misconceptions in the minds of the fanners. This area is dealt with by two departments of the State. Such problems are infact age old problems amongst the agriculturists of the State.

11-12 Hissa Form No. IV i.e Exh. 5 has genesis to survey. This Gunakar Book/Hissa Form No. 4 makes reference of the name of the village, Tahsil of village and District of said Tahsil. There are about 13 columns in this Hissa Form No. 4. Nos. 1 and 2 pertains to description of agricultural land in Survey No., column No. 3 is regarding it's area, column No. 4 is regarding Hissa No., column No. 5 refers the area of the Hissa, Column No. 6 refers to area of all such Hissas, Column No. 10 is important wherein area of the Hissa is referred, column No. 11 is more important because the name of the occupant is to be written or mentioned in this column No. 11, column No. 12 of this Hissa Form No. 4 is also important, not only from the view point of Survey and Settlement Manual, but from the principles of natural justice. This column No. 12 makes reference that if the occupant is present at the time of measurement, his signature or thumb impression to be taken, recorded. In the absence of such occupant the Subdivision or Hissa if has been created, and explained by any person, his name should be recorded. Last column No. 13 is remarks column.

13. While carrying out measurements, either on behalf of the Department of State or on behalf of the Agriculturist the Survey and Settlement Manual contemplates issuance of notice to the

interested persons considering the exigencies for carrying out the measurement. Measurement is important step and in fact foundation of claims of the parties regarding ownership, partition, possession, etc. The manner and method of notice is also a matter of the Survey and Settlement Manual. After carrying out the measurement, this Hissa Form No. 4 obligates the entries. These entries are regarding Survey No., Hissa No., Pot Hissa No., area thereof, name of the occupant i.e Column No. 12 which is noted in foregoing paragraph. After preparation of this form No. 4, authority competent in relation to Sub-Division or Pot Hissa also has to prepare Hissa Form No. 11. The format has been originated from the Survey and Settlement Manual. This format of Hissa Form No. 11 is also part of the Exh. X, collectively. This form makes reference to sub- division of the agricultural land, name of the village, Tahsil, District etc. Apart from this there are about 27 columns in this Hissa Form No. 11. Column No. 1 makes reference to Survey No., Pot Hissa No., column No. 2 refers to area, uncultivable land, if any refers by column No. 3, cultivable portion of land refers by column No. 4, revenue of assessment is column No. 5, nature of the land is column No. 6, area is column No. 7, Hissa No. is column No. 8 and the area thereof is column No. 9, column No. 9 to 12 are regarding the area of land regarding cultivable or uncultivable, column No. 12 is about area, column No. 14 is regarding non-cultivable land, column No. 17 makes reference to source of water for irrigation, column No. 19 is regarding length of assessment, column No. 20 is regarding assessment and column No. 21 is official assessment of the land payable to the State Government, column No. 22 is regarding revision, column No. 23 is the possession obtaining at the time of revision, column No. 24 makes reference to the final assessment, column No. 25 pertains to addition or subtraction of the assessment of the agricultural land in question. Column No. 26 is the final assessment of the Pot Hissa or Hissa concern. Last column No. 27 is remarks column. Form No. 4 is titled as Hissa Form No. 4 whereas hissa form No. 11 is accordingly titled as Hissa Form No. 11.

14. Next question to be considered is what is the importance of Hissa Form No. 4 and what is significance of hissa form No. 11. Can Hissa Form No. 4 or 11 be considered as source of title to the person whether these two forms are having any probative force and/or value, if they are really having such probative value under which provision? To answer to these questions reference to the history of “survey and settlement” needs to be made.

15. India was considered purely agricultural country in ancient time. Revenue generation from the agricultural land, was forming larger source of the then British India. The systems of settlement were classified visionally. (1) Settlement of single estate under one Landlord, (2) Settlement for estates of propriety bodies usually village committees, (3) Settlement for individual occupancies called Rayatvari system.

Initial survey had been extended from Pune to Nasik. There were no guiding principles for taking such survey operations. Survey to the Konkan area and the State of Gujarat was to be undertaken. It was thought imperative with some authoritative statements of principles should be made as regards both the future conduct of the surveyor and also the revenue system to be based upon the foundation of the survey settlement. The then Government in 1847 directed the three Superintendents Mr. Goldsmith, Captain Wingate and Davidson to hold a conference at Pune for the purpose of taking into consideration the best means of bringing diversified operations of the safe revenue surveys. "Joint report" is outcome of this conference. This joint report was source of plenary inspiration for the guidance of the survey operations. Of course, there are subsequent modifications to the principles laid down. However, they are with reference to the unit of assessment and question of tenure. Authors of the joint report have also stated in para 84 of the joint report that "they should be considered applicable only to the collectorates about Ghauts already surveyed." The joint report has been divided in three main heads. (A) The unit of assessment, (B) The assessment of unit, and (C) The revenue system to be based thereupon with special reference to the important question of tenure as laid down in the joint report.

After the joint report and thereafter 3 years, survey was taken to the State of Gujarat and Konkan area (now part of Maharashtra). The same year Settlement Commissioner was appointed who was in-charge of the whole operations. He was Mr. Captain Wingate. Thereafter, District after District was taken in hand until the whole of the British territories had been brought under the operation of survey. In the year 1891, the work of survey was taken to the last Taluka i.e Devgad and Ratnagiri. Thus, "original settlement in whole was finally completed". Following are the important Acts passed by the then Government; (1) The Surveyor Settlement Act I of 1865, (2) The First Amending Act about I of 1868, (3) The Land Revenue Code, V of 1879' (4) The Amending Act to the above i.e VI of 1913.

16. Section 3, sub-section (3) of Bombay Land Revenue Code, 1879 defines "survey settlement" as includes a settlement made under the provisions of Chapter VIIIA. Sub-section (6) of section 3

of Bombay Land Revenue Code 1879 defines “survey number” means a portion of land of which the area and assessment are separately entered, under an indicative number in the land records. Section 3, sub-section (7) of the Act of 1879 defines “sub-division of a survey number” as portion of survey, a survey number of which the area and assessment are separately entered in the land records under an indicative number subordinate to that of the survey number of which it is a portion. “Holder of land” means to be lawfully in possession of land, whether such possession is actual or not, as defined under sub-section (11) of section 3 of the Act of 1879. The term “occupant” is defined under section 3, sub-section (16), meaning thereby a holder in actual possession of unalienated land other than a tenant : provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant. “Occupancy” means a portion of land held by an occupant as contemplates under section 3, sub-section (17) of the Act of 1879. Under section 3, sub-section (19) of the Act of 1879, “occupation” means possession. The term “joint holder” or “joint occupant” are defined as holders or occupants who hold land as co-sharers, whether as co-sharers in a family undivided, according to Hindu Law or otherwise and whose shares are not divided by; metes and bounds; and where land is held by joint holders or joint occupants “holders” or “occupants”, as the case may be, means all of the joint holders or joint occupants. Surveys, assessments and settlement of land revenue is listed under Chapter VIII of the Act of 1879. The State Government is vested with the power to direct the survey of any land in any part or area to which the Act of 1879 extends. The object of such survey settlement provided thereunder, was to the settlement of the land revenue and to the record and preservation of rights connected therewith or for any other similar purposes and such survey has been provided that shall be called as revenue survey. The Government was empowered to issue notification in the official gazette prescribing the territories i.e area to which the Act of 1879 extends and confirming of division is also power given to the Government under sub- section (2) of section 2 of the Act of 1879.

17. The Courts, while considering the disputes amongst citizens, often are required to consider “occupation, survey number, pot survey number (sub division of survey number), restricted tenure or new tenure, old tenure or unrestricted tenure, record and rights, etc.” The origin of all these terms, may be traced from “the Bombay Survey and Settlement Manual (Please see: Volume 1, Part 1 - by R.G Gorden second edition). Chapter 9 of the Survey Manual refers to “the land tenures”. The tenures of the then

Bombay Presidency may be divided into three classes (i) the survey tenure, (ii) Inam tenures and (iii) Miscellaneous tenures; which cannot be properly brought under either of the first two heads. The survey tenure consists in the occupancy or ordinary government land. There are two forms of survey tenure; the old and unrestricted or new or restricted form and the difference between these two tenures is clear and vital. Under the old form the occupant has, as part of the conditions upon which the land is held, the unrestricted right to alienate it by sale, mortgage or any other form of transfer, whereas under the new form that right is restricted and alienation is only allowed by permission of the Collector. The survey tenure again is sub divided in two parts, first relating to the history of the occupancy and second to a description of the rights and duties of the occupant. The word "Inam" means "gift" or "grant" and land held on an Inam tenure is technically called "alienated" i.e "transferred insofar as rights of government are concerned, wholly or partially to the ownership of any person". Such was the definition of Inam tenures under Land Revenue Code section 3(2). Miscellaneous tenures covers those tenures which are not properly classifiable under either of the two preceding heads. Examples of such tenures are the Talukdari and Maleki in the State of Gujarat and the Khoti in the Konkan area of State of Maharashtra. Prime object of the land settlement, is to record the person upon whom primary liability for payment of the land revenue rests. The entire system of settlement, imposition and recovery of the land revenue really depends upon, the answer as to the person upon whom such liability of payment of land revenue rests. In the erstwhile State of Bengal such responsibility was upon the landlord and the unit of the assessment was the estates; in the erstwhile State of Punjab such responsibility was upon the coparcenary body of village proprietors and the unit of the assessment was the village. In the erstwhile Bombay Presidency, the village lands in the vast majority of cases, were held in small parcels of individuals without any existing connection of interest, whatever their past history might have been. There were isolated cases also of landlord and village assets in the erstwhile Bombay Presidency. For example, the Talukadari and Narwadari tenures. However, in due course of time the system of settlement via. "Rayatvari" was adopted in Bombay Presidency. Main objective behind this Rayatvari system is that the payment of assessment was not placed upon large estate or the village, as a whole, however, upon the separate small holdings of individuals. Such individuals in other system of settlement would be ordinarily the tenants of the landlords/large proprietors. This principle was laid down first in point of time in the first Bombay ordinance dealing with the subject of land revenue. It was Bombay Regulation No. XVII of 1827. There the word "occupant"

and “responsibility of payment of assessment of the land” was saddled upon the occupant. Section 3 of Regulation No. XVIII of 1827 (Regulation of 1827, for short) had provided that the settlement of the assessment shall be made with the occupant of the land. If the cultivator held the land under his cultivation directly from the Government, was considered as the occupant and when such land was not held from the State Government, however, was so held from the person having the highest right or holding recognised by the custom of the country or on specific grant, which intervenes between Government and the cultivator is to be considered. The history of occupancy shows that in the Deccan unalienated land were divided into two classes (i) Mirasdar and (ii) Uparis. All these two classes Mirasdars held their land by a tenure under which these lands were heritable and, therefore, divisible, according to the ordinary Hindu law of succession as well as transferable, while they also possess a practically indefeasible right to recover even after long abandonment. The Uparis were mere tenants at will without rights of succession or transfer and thus without hereditary attachment to them. Thereafter, Mr. Pringle's settlement was holding the field basing the assessment solely upon the value of the land and not upon the status of the cultivator. This Pringle's settlement did not make any change in the relative conditions of two tenures. Thereafter, came the joint report i.e the system of the occupancy.

18. System of imposition and recovery of land revenue had been evolving even after the joint report system of occupancy. Such evolution forms large part of the correspondence between the administrators and the then government. Capt. Wingate's letter and letters of the then Government, have recorded part of such evolution of term “occupant”. Apart from the administrator i.e officers in the survey and settlement department and the then Government, Courts have also played their role. The Courts enforced partitions without record to the Joint Rules. It was because Joint Rules were not the law and, therefore, had no binding effect whatsoever upon the decisions of the Courts prevailing, in the era. The officers working under the survey and settlement department, thus, were compelled by law to effect, to carry out the partitions, orders passed by the Courts, even though the Collector was not allowed by the Joint Rules to recognise such partitions and sub divisions of the agricultural lands. In a given case, on account of partition, for example, between three sons of the deceased cultivator, the revenue officer was compelled to take them in possession of their several plots. As per the Joint Rules holding the field, in fact, Collector was to enter the name of the eldest son (Rule of primogeniture which was prevailing at the

relevant time) only and accordingly eldest son was technically recorded as “occupant” and his name was recorded in the then Government records.

The history of occupancy further reveals that such diversions had established at that time, two kinds of title to agricultural land, one founded upon possession, recognition by the Courts, the second upon “registration” recognised by the revenue authorities. History of occupancy further shows for about sixty years, it was a struggle first to reconcile and second to combine the two into one sensible and logical system. Thereafter, the first Survey and Settlement Act in the year 1865 came to be passed. This Act has thus, for the first time, had given legislative sanction to the survey/settlement operations and measures. This first Act of 1865 superseded the Joint Rules. Changes thought necessary were also incorporated in the provisions of the Act. Considerable changes relating to “occupancy” were made. There, in the Act of 1865, section II (J) was incorporated, providing that the person whose name is entered authorisedly in the survey papers, for other public accounts, is responsible to Government for payment of the assessment due upon any field or recognised share of a field. Concept of sole holder was not favoured and Rule 27 had recognised co-ownership of the occupancy. Principles of liability of payment of land revenue, however, was saddled upon the occupant proper regarding whole survey number. The joint occupant merely was conferred with right to have his/their names entered and his/their shares shown fractional parts of the rupee i.e in terms of Annas and Pai; for their share of the assessment to the occupant. Fact of subdivisions was recognised by the Act of 1865, however, said Act revised the subdivision of original survey numbers. By the Act No.IV of 1868 permission was granted to survey officers to sub-divide by survey number or share, subject to the limitations of area imposed. The law of occupancy stand revised by the Land Revenue Code (Act V of 1879) (hereinafter referred to as the Act of 1879, for short). This Act of 1879 recognised two classes of rights under two heads of “occupancy” and “registered occupancy”, Word “occupant” came to be defined by section 3 (16) of Act of 1879 meaning thereby as holder of unalienated land, or where there are more holders than one, the holder having the highest right in respect of any such land, or where such highest right vests equally in more holders than one, any one of such holders. The other category i.e registered occupancy was defined under section 3 (17) as a sole occupant or the eldest or principal of several joint occupants whose name is authorisedly entered in the Government records as holding unalienated land whether in person or by his co-occupant, tenant, agent, servant or other legal representatives. This double system of occupancy i.e occupants under section 3(16) and registered occupant under section 3 (17) of Act V of 1879

lasted for about 25 years. The confusion all along in these two terms that “occupant” and “registered occupant” was faced by the agrarians. The then Government faced the serious defects inherent in the survey settlement system. Famine Commission expressed an opinion for preparation of “record of right” for property administration. For some time “Khatedar system” was also resorted to. For manifold reasons such Khatedar system was found unuseful and was actually abolished. Thus, “Famine Commission”, in the year 1901, was of the opinion of preparation of record of rights. Study was carried out by two officers and report was submitted to the then Government. Outcome of the report was, an “Act to provide for the preparation and maintenance of record of rights in the lands of the Bombay Presidency”. Record of rights, thus, was brought into operation by Act No. V of 1913. Changes proposed were considered and embodied in the Land Revenue Code Act No. IV of 1913. Under section 6(h) “occupant” was defined. Section 6 (c) had provided sub-division of a number. Authorisation was given under section 117-A for splitting up the survey number into such sub divisions. Thus, foundation was laid of whole new system of record of rights Act V of 1913 which was repealed and amalgamated with the Land Revenue Code.

19. It is also necessary to refer to few enactments since I am dealing with the question of agricultural land from Latur district of the State of Maharashtra, which was earlier Part of Nizam's State of Hyderabad. The Hyderabad Land Revenue Act [No. VIII of 1317 F. (1927 A.D)] was applicable to the present Marathwada region of the State of Maharashtra. The Bombay Land Revenue Code, 1879 is a repealed enactment i.e repeal of Bombay V of 1913. Application of the Bombay Land Revenue Code, 1879 is given under sub-section (2) of section 1. It is provided that it extends to the pre-reorganization State of Bombay, excluding the transferred territories. In the foregoing paragraphs of this judgment, I have referred to few definitions and important is the definition of term “occupant” under section 3(16) of the Bombay Land Revenue Code, 1879, It has been provided that the survey officer had occasion of making or revising a settlement of land revenue, to prepare a register to be called “the Settlement Register” showing the area and assessment of each survey number with any other particulars that may be prescribed and other records in accordance with such orders as may from time to time be made on this behalf by the State Government. Section 135(d) of the Bombay Land Revenue Code, 1879 is important for our purpose. It provides register of mutations and register of disputed cases. A duty is cast upon the village Accountant (the then Kulkarni) to maintain such register of mutations and

register of disputed cases. Under sub-section (6) of section 135 (d) it has been provided that the entries in the register of mutations shall be tested and if found correct, or after correction, as the case may be, shall be certified by a revenue officer of the rank not lower than the Mamlatdars First Karkoon (Subsequently recognised as Taluka Awwal Karkoon, in the State of Maharashtra). Presumption of correctness of the entries in the record of rights and register of mutation is laid down under section 135 (j) of Bombay Land Revenue Code, 1879 which reads an entry in the record of rights, and the certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted thereof. One more enactment i.e the Hyderabad Record of Rights in Land Regulation 1358 Fasli (1968 A.D) needs to be referred to. This regulation is after the promulgation of Maharashtra Land Revenue Code, 1966. This Regulation of 1968, has been made enforceable to the area of whole of the Hyderabad State which is laid down under section 1(2). Section 1 (3) is also relevant from the view point of the date on which this Regulation of 1968 can be considered to be in force. In this regulation, preparation and maintenance of record of rights is provided under section 4. Section 6, under this regulation, is regarding register of mutations and register of disputed cases. Presumption of correctness of entries in record of rights and register of mutations is made available under section 13 of this Regulation of 1968. There are two more sections i.e section 17 regarding modification of law inconsistent with this regulation and section 19 repealed and savings clause.

20. Thus, terms “occupant”, “survey number”, “restricted or new tenure”, “old tenure” have their genesis in the Survey and Settlement Manual and various enactments referred to in the foregoing paragraphs of this judgment. The preparation and maintenance of record of rights, has been evolved in due course of time. The presumption attached to said record of rights is similarly worded in all the relevant sections of the earlier enactments. By and large, it can be said that the Bombay Survey and Settlement Manual and various enactments, which are referred to hereinabove, were brought in force for the fiscal purpose by the Government holding the field of governance. All along these enactments were brought in force for the purpose of imposition and recovery of the land revenue by the then Government. While imposition and recovery of the land revenue, the then Government felt the necessity of preparation of record of rights regarding, agricultural land. Recording the names of the occupant, recording the names of the cultivators, tenants etc. was all for the prime object of imposition and recovery of the land revenue by the Government. In this view of the matter,

presumption has been conferred upon the mutation entries, entry taken in the record of rights by these enactments. Such presumption always is rebuttable presumption. Apart from these enactments, presumption under section 114 of the Indian Evidence Act, 1872 regarding entries in the record of rights is also available; in favour of such entries.”

(emphasis added)

22) After discussing the entire history of survey of lands, the manner in which and the purpose for which Hissa Form Nos. 4 and 11 are prepared, *Deshmukh, J.* finally concluded that Hissa Form No.4 cannot be said to be a document created for conferring title over the person whose name is mentioned as occupant therein. This Court held in paragraph Nos.21 and 22 as under:

21. In the case on hand, learned counsel for the Appellant has placed reliance on two documents i.e Exhibit-5 Hissa Form No. 4, and Tonch Map Exhibit-85. Extensive survey of Survey and Settlement Manual, various enactments pertaining to agricultural lands have been considered by me. **In my view, Hissa Form No. 4 (origination is from Gunakar Book) cannot be said to be a document creating or conferring the title over the person whose name is mentioned as occupant in this Hissa Form No. 4. This Hissa Form No. 4 also cannot be equated with a document creating title in favour of the person whose name is mentioned in the column No. 11 of Hissa Form No. 4.** In the case on hand, Govind Shankar is the name mentioned i.e of the plaintiff. In other words, this Hissa Form No. 4, in the case on hand, cannot be said to be a piece of evidence or document creating or conferring title over the plaintiff regarding Land Survey No. 23 (1), admeasuring 00 Hectare 32 Ares. It is clarified that Pot Hissa No. 1 or sub-division No. 1 of Land Survey No. 23, admeasuring 00 Hectare 32 Ares, cannot be said to be owned by the plaintiff Govind because of this document Hissa Form No. 4 Exhibit-5.

22. The communication Exhibit-X dated 24th June, 1940 addressed by the Settlement Commissioner and Director of Land Record Pune to Mr. M.J Desai, Settlement Commissioner and Director of Land Records, Pune indicates that caution to be exercised by the officers concerned of land record

department as well as revenue department. In my considered view, after preparation of Hissa Form No. 4 and Tonch map Exhibit-85, the revenue officers have to prepare Hissa Form No. 12 Exhibit-X which consists of about twenty columns. **After preparation of this Hissa Form No. 12, said Hissa Form No. 12 has to be effected into a record of rights by the officers of the revenue department in accordance with the provisions of law.** Since this communication Exh. X is addressed by Settlement Commissioner and Deputy Director of Land Record, Pune, to Mr. M.J Desai, Director of Land Record, Pune on 24th June, 1940. Specific reference is made to section 135(d)(6) of the then Land Revenue Code i.e 1879. Thus, the procedure had to be gone into before effecting into the record of rights, the effect of Hissa Form No. 12. **In other words, it is a combination of act and actions of the survey and revenue department officials which culminates in finalisation of Hissa Form No. 12 and its actual effect into the record of rights i.e 7/12 extract, showing the name of the holder, details of the survey number/Pot Hissa Number/area of the survey number/pot hissa number, etc.** The learned counsel for the Appellant fairly concedes that Exhibit-5 i.e Hissa Form No. 4 and Tonch map Exh. 85 have not culminated in preparation of Hissa Form No. 12 and consequently have not been given effect to, in the 7/12 extract i.e the record of rights. Thus, fact remains that, despite the measurements of Pot Hissa Survey No. 23 (1), showing area 00 Hectare 32 Ares, and showing plaintiff Govind as a holder thereof, such entries have not been effected into the record of rights. **Even if they were effected into the record of rights, as observed in the foregoing paragraphs, it has got presumptive value which is rebuttable.**

(emphasis added)

23) Thus, judgment in ***Govindrao Shankarrao Reddy*** is an authoritative pronouncement on the issue as to whether mere reflection of shares in Hissa Form Nos. 4 and 11 would, by itself, constitute a document of title and it has been conclusively held by this Court that it does not. Before going further, it must be observed that the judgment in ***Govindrao Shankarrao Reddy*** has been followed by another Coordinate Bench (Coram: Ravindra V. Ghuge, J.) in ***Babu***

Gopala Gaware (supra), in which it is held in paragraph Nos.17 and 19 as under:

“17. So far as Hissa Form No. 4 is concerned, the trial Court has relied upon the judgment of the Division Bench of this Court in the matter of (Govindrao Shankarrao Reddy Vs. Rukhminibai w/o. Vithal Reddy), 2008 B.C.I., (soft) 23 (A.B.) : 2009 (2) Mh.L.J. 583 **which lays down the law that Hissa form No. 4 cannot be said to be a document creating or conferring the title upon the person whose name is mentioned as an Occupant.**

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19. The Trial Court has specifically observed that the defendant did not submit any document to establish that the entries regarding his ownership in the revenue record were made on the basis of Hissa Form No. 4. It is further observed that the defendant could not explain the sudden expansion of the land in his possession and the sudden decrease in the land which was held by the plaintiff. The T.I.L.R. report and documents on record indicated encroachment by the defendant to the extent of 30 R land.

(emphasis added)

24) Independent of the discussion in **Govindrao Shankarrao Reddy**, it otherwise appears inconceivable that the entries reflected in Hissa Form No.4 or 11, which are commonly known as *Aakarphod Patrak* can ever constitute a document of title. The very word in marathi "आकारफोड" refers to sub-division of land revenue. In the 7/12 extracts, the revenue authorities reflect area of the land as well as "आकार" which is always in monetary terms. Therefore, by undertaking the exercise of "आकारफोड" what is essentially done is sub-division of the land revenue payable in respect of each share. *Deshmukh, J.* has dealt with the exact manner in which Hissa Form Nos.4 and 11 are prepared by Survey Officers. When multiple sharers in respect of an agricultural land decide to have their shares separated by issuance of separate 7/12 extracts in respect of each share, the Survey Officer undertakes the exercise of sub-division of lands as per the desire

expressed by joint holders and in the process, the Survey Officer is also expected to sub-divide the land revenue payable in respect of the land undertaken for such sub-division. As observed by *Deshmukh J.*, there are 13 columns in Hissa Form No.4. Column No.11 represents the name of the occupant and Column No.12 bears his/her signature/thumb impression. Careful perusal of Column No.11 of Hissa Form No.4 produced at Exh. A with the Petition would show that the same has a heading "कब्जेदारांचे नाव" (*Name of Occupier*). In Column No.12, the heading is "कब्जेदार हजर असल्यास त्याचा सही किंवा अंगठा नसल्यास कोणत्या इसमाचा सांगणावरून पाडला" (*Signature/thumb impression of occupier if present, if not present the name of person on whose statement sub-division is undertaken*). Thus, mere reflection of name of Hari Balwant Naik in Column No.11 of Hissa Form No.4 and his signature in Column No.12 thereof, would not convert the said document into a document of title. After the exercise of filling up Hissa Form No.4 is complete, the Survey Officer thereafter undertakes the further process of preparation of Hissa Form No.11, which again originates from the Survey and Settlement Manual as observed by *Deshmukh J.* There are 27 columns in Hissa Form No.11, column No.26 being the final assessment of pot-hissa (sub-division). Thus, the very purpose of preparation of Hissa Form No. 4 or 11 is essentially to give its effect to the sub-division in the assessment record. After Hissa Form No.4 or 11 are finalized, the same are thereafter forwarded to the revenue authority (Talathi/Circle Officer), who then give effect to the said two forms in the revenue records. Thus, preparation of *Aakarphod Patrak* or Hissa Form Nos. 4 and 11 are merely step in aid to give effect to sub-division of land in the revenue records. If Hissa Form Nos. 4 and 11 are taken to their logical end of preparation of separate 7/12 extracts by certification of

mutation entry, mutation of such names in the revenue records may create a rebuttable presumption under provisions of Section 114 of the Indian Evidence Act, as observed by *Deshmukh J.* in ***Govindrao Shankarrao Reddy***. I therefore respectfully agree with the view expressed by *Deshmukh J.* in ***Govindrao Shankarrao Reddy*** that *Aakarphod Patrak* or Hissa Form No.4 or 11 do not by themselves constitute a document of title.

25) There is yet another decision of coordinate bench of this Court where it is held that Hissa Form No. 4 does not constitute a document of title. This Court has recently held in ***Late Mahadu Narayan Katara Vs. Shri Yashwant Krishnaji Joshi***⁴, that Hissa Form No. 4 does not constitute document of title. A coordinate bench of this Court (*Coram: Sharmila Deshmukh J.*) had held in paragraph No.8 of the order as under:

8. Next, coming to the solitary document on the basis of which it is sought to be contended that the Petitioner is a protected tenant, the reliance is placed upon the Hissa Form No. 4 of the Gunakar Book. Hissa Form No. 4 originates under the Survey and Settlement Manual and makes reference to Village, Tahsil, District etc. and column No. 11 contains the name of the occupant. As held by this Court in case of *Govindrao Shankarrao Reddy vs. Rukminibai w/o. Vithal Reddy & Ors.* [2009 (2) ALL MR 550] after carrying out measurement, Hissa No. 4 obligates the entries. The Court considered whether Hissa Form No. 4 can be considered as source of title and held that Hissa Form No. 4 cannot be equated with document creating title in name of person mentioned as column No. 11. The Court held that Hissa Form No. 4 is required to culminate in Hissa Form No. 12 and consequently in record of rights. The Court held that it is combination of act and actions of survey and revenue officials which culminates in finalisation of Hissa Form No. 12 and its actual effect in record of rights showing name of holder, survey number etc. Thus, if Hissa Form No. 4 has not culminated in Hissa No. 12, it is mere step in the procedure of measurement. The admitted position is that the

⁴ Writ Petition No.241 of 2023 passed on 14th June, 2024

same is maintained under the Survey Manual and is prepared at the time of carrying out the measurements of the land. The said document cannot be a document to establish that as on tillers date, the Petitioner's predecessors were cultivating the land. To establish the same, it was necessary for the Petitioner to bring on record the document to establish that on 1st April, 1957, the predecessor was cultivating the subject land which could have been established by showing either the mutation entry or the 7/12 extract or the crop cultivation entry in the name of the predecessor of the Petitioner. Admittedly, none of the documents which would supported the case of Petitioner that their predecessor cultivating the land has been brought on record. What is required under Section 32 of the Tenancy Act is to show that the tenant is cultivating the land on the tillers date. By the name of the predecessor of the Petitioner being reflected in Hissa Form No. 4 of the Gunakar Book, it cannot be established that on tillers date, the land was being cultivated by the tenant. In addition thereto, the Civil Court's order specifically records that the property is in possession of the landlords and the Petitioners herein have not been able to give any explanation as to when he lost the possession. Admittedly, the said order has not been challenged by the Petitioner. Considering the said observations of the Trial Court, the contention of the Petitioners that their predecessors were in cultivation of the said land and after the death of their predecessors in the year 1968 also the land was being cultivated by the Petitioners, is clearly not established. The MRT has considered the order of the Civil Court as well as the Records which indicated that the possession was never with the Petitioners on the basis of the documentary evidence and has rightly held that merely based on the solitary entry in Hissa Form No. 4 would not support the case of the Petitioners as regards their claim of tenancy.

26) With the above three authoritative pronouncements there would have been no difficulty in holding that the Hissa Form No. 4 or 11, which are commonly known as *Aakarphod Patrak* do not create a document of title. However, twist is created on account of reliance by Ms. Karnik on judgment of another coordinate bench of this Court (Coram: *R.D. Dhanuka J*, as he then was) in ***Ramchandra Yeshwant Desai*** (supra) in which it is held that a *Botkhat* or *Aakarphod Patrak* constitutes a document of title. It is held in

Ramchandra Yeshwant Desai (supra) in paragraph Nos.24, 26 and 30 as under:

“24. The question that arises before this Court is whether the respondent nos.1 to 3 had rebutted the presumption to be drawn in the entries recording the names of the appellant and respondent nos.4 and 5 in revenue record by relying upon the Botkhat (Exhibit-42) and Akharphod Patrak (Exhibit-43) were documents of title and whether those documents were sufficient to rebut the presumption.

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26. This Court in the case of **Anant Dattatraya Thakur-Desai v. Mahadev Wasudeo Thakur-Desai**, reported in XXXI B.L.R. 628 has held that an entry in Botkhat is presumptive evidence of title and possession in favour of the persons whose name appears in it. Mr. Gokhale, learned counsel for the appellants could not point out any other judgment taking a view contrary to the view taken by this Court in the case of **Anant Dattatraya Thakur-Desai v. Mahadev Wasudeo Thakur-Desai** (supra). **Learned counsel for the appellants fairly states that the said judgment of this Court holds the field.**

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30. In my view, the entries in the revenue record do not create or extinguish any title in respect of land in dispute. It enables the person whose favour the mutation is ordered to pay land revenue. **On the contrary, Botkhat and Akharphod Patrak can be considered as document of title and is sufficient to rebut the presumption arising from the mutation entry.** I am respectfully bound by the judgment of this Court in case of **Anant Dattatraya Thakur-Desai vs. Mahadev Wasudeo Thakur-Desai** (supra) which squarely applies to the facts of this case and also the judgment of the Supreme Court in the case of **State of Andhra Pradesh & Others vs. Star Bone Mill & Fertiliser Co.** (supra).”

(emphasis and underling added)

27) This Court appears to have relied on provisions of Section 88 of Maharashtra Land Revenue Code, 1966 (MLRC) and the judgment in **Anant Dattatraya Thakur-Desai Vs. Mahadeo Vasudeo Thakur-Desai**⁵. I have gone through the judgment in **Anant**

⁵ AIR 1929 Bombay XXX 333

Dattatraya Thakur-Desai (supra). The case involved claim by the Appellant therein of possession of undivided half share and right to purchase the equity of redemption. The case did not involve the issue of survey or sub-division of the land or validity of any mutation entry. While deciding the issue of validity of a mortgage deed and while dismissing the Second Appeal, a stray observation is made by *Mirza J.* in paragraph No.4 of the judgment that '*After the death of Balkrishna, the name of Gangabai was substituted in the botkhat 1988. There are several rulings of this Court that entry in the botkhat is a presumption of title in favour of whose names appears in it.*' The judgment of *Mirza J.* has been concurred with by *Murthy J.*, whose independent judgment does not deal with issue of presumptive value of any entry in a *botkhat*. In my view, the judgment of **Anant Dattatraya Thakur-Desai** (supra) is rendered while deciding altogether different issue and therefore, cannot be read in support of an absolute proposition of law that in every case, an entry made in a *botkhat* would constitute presumptive evidence of title in favour of the person whose name appears in it. Before *Dhanuka J.* it appears that the learned counsel for the Appellant made a statement that the judgment in **Anant Dattatraya Thakur-Desai** (supra) holds the field, when in fact before rendering of judgment in **Ramchandra Yashwant Desai** (supra) on 4th December, 2015, the judgments of *S.B. Deshmukh, J.* in **Govindrao Shankarrao Reddy** (4th September, 2008) and of *Ghuge, J.* in **Babu Gopala Gaware** (10th April, 2015) had already ruled that mere entry in Hissa Form No.4 does not constitute a document of title. The judgments in **Govindrao Shankarrao Reddy** and **Babu Gopala Gaware** were not brought to the notice of *Dhanuka J.* In that view, the judgment in **Anant Dattatraya Thakur-Desai** holding that an entry in *Aakarphod*

Patrak or *botkhat* constitutes a document of title would be *per incurium*.

28) Even otherwise, Section 88 of the MLRC does not create any presumption of title in favour of a person whose name appears in Hissa Form No. 4/ *Aakarphod Patrak*. Section 88 of the Code provides thus:

“88. Privilege of title-deeds.

When the original survey of any land has been once completed, approved and confirmed under the authority of the State Government, no person shall, for the purposes of subsequent surveys of the said lands undertaken under the provisions of this Chapter, be compelled to produce his title-deeds to such land or to disclose their contents.”

29) All that Section 88 of the Code provides is that the holder of the land need not present document of title every time fresh survey is undertaken. There is a distinction in the concept of ‘survey’ and ‘sub-division’ under the Code. The survey of the land under Section 79 of the Code is undertaken with a view to assessment and settlement of land revenue as well as to record rights connected therewith and such survey is to be called a revenue survey. As contradistinct from a revenue survey undertaken for the purposes of assessment and settlement of land revenue, the process of sub-division of survey number can be undertaken on a mere application by multiple holders of any particular survey number. Thus after death of father, when names of four children are entered in a revenue records, they may desire to have the survey number physically sub-divided for the purposes of creation of separate revenue records (7/12 extracts) in respect of each pot-hissa. As observed above, while creating such sub-division, revenue payable in respect of the land is also required to be

sub-divided which actually means “*Aakarphod*”. Therefore, it is otherwise inconceivable that any document leading to sub-division would by itself constitute a document of title as rightly held by *S.B. Deshmukh, J.* in ***Govindrao Shankarrao Reddy*** (supra). Once the *Aakarphod* or sub-division is given effect to by the Survey Officer by preparation of Hissa Form Nos.4 and 11, the same is to be transmitted to the revenue authorities (Talathi/Circle Officer) who then give effect to such sub-division by correction of separate 7/12 extracts. It is only after the entire exercise of creation of separate 7/12 extracts is completed that a person in whose name separate 7/12 extract is created, would be in a position to raise presumption of possession and title, which again is rebuttable, as mere entry made in revenue records for fiscal purposes do not create or extinguish title.

30) Therefore, the view expressed in ***Ramchandra Yashwant Desai*** (supra) by relying on provisions of Section 88 of the Code that an entry in *Aakarphod Patrak* would constitute a document of title does not otherwise appear to be in consonance with the statutory framework of the MLRC.

31) It is therefore held that documents created during the course of sub-division of land such as Hissa Form No.4 or Hissa Form No. 11 or *Akarphod Patrak* do not create a document of title.

32) I am therefore unable to accept the contention on behalf of the Petitioners that entries made in the name of Hari Balwant Naik in Hissa Form No. 4 relied upon by Petitioners at Ex. A to the petition would create title in his favour *qua* the shares indicated against his name. It is an admitted position that Hissa Form No. 4 did not ultimately result in creation of any revenue entry. Though Mutation

Entry No. 3342 was prepared by the Talathi on 8 February 1972 for giving effect to *Akarphod Patrak* No.12 of 1968, the Tehsildar did not approve the said Mutation Entry and ordered its cancellation on 16 October 1972. As rightly pointed out by Mr. Karandikar, said Mutation Entry No.3342 was otherwise was not restricted to the alleged sub-division between the three partitioning persons-Mahadeo Aaba Naik, Haribhau Balwant Naik and Ganesh Bhai Naik. It appears that the said Mutation Entry also sought to record names of unconnected persons such as R. Gopal Churi, Gopal R. Churi, Anand Kama Churi etc., who are not part of Naik family and whose names are not reflected in the Hissa Form No. 4. It therefore becomes difficult to otherwise believe that the Mutation Entry No.3342 was based only on *Aakarphod Patrak* No.12 of 1968. In any case, the said Mutation Entry No.3342 was never certified by Tehsildar and was in fact cancelled within a period of eight months on 16th October 1972. Thus *Aakarphod Patrak* No.12 of 1968 was not even taken to its logical end by creation of revenue entries or separate 7/12 extracts. Thus, the proposed sub-division undertaken vide Hissa Form No.4 was not even taken to its logical end and Survey No.279/1 remained intact. This is the reason why the Hon'ble Minister (Revenue) has rightly held that *Aakarphod Patrak* No. 12 of 1968 was rendered infructuous and meaningless. I fully agree with the findings recorded by the Hon'ble Minister. There is no dispute to the position that land bearing Survey No. 279/1 was subsequently assigned new Survey No.78/1. The sub-division in respect of new Survey No. 78/1 has taken place by which the said land bearing Survey No.78/1 was subdivided amongst Mahadev Baba Naik and Ganesh Bhai Naik into 78/1A and 78/1B.

33) Also of relevance is the fact that Petitioners themselves never claimed any share in land bearing survey No.279/1 and always acquiesced with the position that the sub-division undertaken in the year 1968 had become meaningless on account of cancellation of Mutation Entry No.3342 by Tehsildar on 16th October 1972. This is apparent by twin conducts of Petitioners. Firstly, after Hari Balwant Naik's death on 22nd August 1978, his legal heirs made an application for recording of their names in respect of lands coming to the share of Hari Balwant Naik. Accordingly, by Mutation Entry No. 3566 dated 21st December 1978, names of legal heirs of Hari Balwant Naik were recorded only in respect of land bearing Surveys No.275/4/1, 288/1 (P), 300/1(P), 301/1(P) and 304/1. No attempt was made by legal heirs of Hari Balwant Naik to claim any share in the land bearing Survey No.279/1. Furthermore, the legal heirs of Hari Balwant Naik filed Regular Civil Suit No. 857 of 2012 in the Court of Civil Judge Junior Division, Vasai in respect of various lands of Hari Balwant Naik which did not include the land bearing Survey No.279/1. In paragraph No.2 of the Plaint filed in the suit, Plaintiffs therein averred that the lands described in the Plaint came to the share of Hari Balwant Naik in the partition effected in the year 1955. Thus, there is implied admission in paragraph No.2 of the Plaint that Hari Balwant Naik became owner only in respect of the suit lands by partition in 1955 and not of land bearing Survey No.279/1.

34) Ms. Karnik has attempted to salvage the situation by submitting that fresh suit has been filed bearing Regular Civil Suit No.1 of 2019 in the Court of Civil Judge Senior Division, Vasai claiming declaration of title in respect of land bearing Survey No.78 (Old No. 279/1) Hissa No.1/5, Hissa No.1/6 and Hissa No.1/12. This

prima facie appears to be an improvement in the situation in 2019 after initiation of proceedings before the Tehsildar in the year 2017 for giving effect to *Akarphod Patrak* of 1968 after about 49 long years. Otherwise, no claim was ever raised for a share in land bearing Survey No. 279/1 or 78/1A and 79/1B. The Suit is filed for the first time in 2019 after 51 long years of creation of Hissa Form No. 4. Be that as it may. All that can be observed, at this stage, is that the revenue entries would obviously be subject to the decree that would be passed in Regular Civil Suit No.1 of 2019. Since some of the Petitioners have already filed suit claiming title in respect of land bearing old Survey No.279, Hissa Nos. 1/5, 1/6 and 1/12, there is no need of reopening the revenue entries which have been settled for a long period by relying on meaningless *Aakarphod Patrak* No. 12 of 1968. If Petitioners succeed in proving that Hissa Nos. 1/5, 1/6 and 1/12 of old Survey No.279/1 indeed came to the share of Hari Balwant Naik in 1955 partition or that the failed act of sub-division performed in the year 1968 amounted to partition, the Civil Court will pass appropriate decree in a suit filed by them. As of now I have unable to declare Petitioners to be owners of land bearing old Survey No.279, Hissa Nos. 1/5, 1/6 and 1/12 for the purposes of making of revenue entries in favour of Petitioners.

35) After considering the overall conspectus of the case, I am of the view that the Hon'ble Minister has rightly declared *Aakarphod Patrak* No.12 of 1968 to be meaningless. The only error committed by the Hon'ble Minister is in upholding the order dated 17th June 2022 passed by the DDLR. Since *Aakarphod Patrak* No.12 of 1968 is found to be meaningless, DDLR's order ought to have been technically set aside. Grant of further prayer of the contesting Respondents for sub-

division of land bearing Survey Nos.78/1A and 78/1B by the Hon'ble Minister also does not suffer from any infirmity once it is held that Petitioners are not entitled to have their names mutated to the land bearing new Surveys No.78/1A and 78/1B. I do not see any fetter in mutation of names of the contesting Respondents by carrying out further sub-division of lands bearing new Surveys No.78/1A and 78/1B.

36) Before parting, I must place on record my gratitude for valuable assistance rendered to the Court by Mr. Sunil Karandikar, the learned *Amicus Curiae*.

37) The Petition accordingly fails and is dismissed. There is no order as to costs. It is however clarified that the Petitioners would be free to agitate their claim of title in respect of land bearing Survey No. 78 (old No.279/1), Hissa No.1/5, 1/6 and 1/12 before the Civil Court and the revenue entries would be subject to decree that would be passed by the Civil Court.

[SANDEEP V. MARNE, J.]

38) After the judgment is pronounced, the learned counsel appearing for the Petitioners would pray for continuation of interim order passed by this Court on 11 June 2024. The request is opposed by the learned counsel appearing for the Respondents. Considering the reasons recorded while dismissing the Petition, I am not inclined to continue the interim order. Request for continuation of interim order is accordingly rejected.

[SANDEEP V. MARNE, J.]