

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 14312 OF 2024
WITH
WRIT PETITION NO. 14311 OF 2024**

- | | | |
|---|---|------------------------------|
| 1) Yashwant Bhagirat Patil |] | |
| Age: 67 years, Occ: Agriculturist |] | |
| 2) Shri Jaitu Bhagirat Patil |] | |
| Age: 63 years, Occ: Agriculturist |] | |
| 3) Shri Parshuram Bhagirat Patil |] | |
| Age 63 years, Occ: Agriculturist |] | |
| 4) Shri Umesh Bhagirat Patil |] | |
| Age 37 years, Occ: Agriculturist |] | |
| 5) Smt. Gitabai Rohidas Patil |] | |
| Age 60 years, Occ: Agriculturist |] | |
| 6) Smt. Shitubai Hanumant Mhaske @ Ashabai |] | |
| Hanumant Mhaske |] | |
| Age 58 years, Occ: Agriculturist |] | |
| 7) Smt. Sandhya Sadanand Patil |] | |
| Age 45 years, Occ: Agriculturist |] | |
| 8) Shri Ashok Bhagwan Patil |] | |
| Age 55 years, Occ: Agriculturist |] | |
| 9) Ravi Bhagwan Patil |] | |
| Age Adult, Occ: Agriculturist, |] | |
| Nos. 1 to 9 through their Constituted |] | |
| Attorney |] | |
| Dilip Yashwant Patil, |] | |
| Nos. 1 to 9 All residing at Village: Surai, |] | |
| Taluka Bhiwandi, District Thane. |] | <u>...Petitioners</u> |

Versus

- | | | |
|------------------------------|---|--|
| 1) Shri Ram Babu Patil, |] | |
| Age 50 years, Occ: Business, |] | |
| |] | |
| 2) Shri Laxman Babu Patil |] | |
| Age 45 years, Occ: Business, |] | |

- 3) Smt. Chandrabhaga Babu Patil,]
Age 75 years, Occ: Business,]
Nos. 1 to 3 all residing at]
Village Vehale, Taluka: Bhiwandi,]
District Thane-421 311]
- 4) Smt. Narmada Ratilal Patil]
Age 58 years, Occ: Household,]
R/o. Village: Sarang, Tal: Bhiwandi,]
District Thane]
- 5) Smt. Indira Mohan Mhatre,]
Age 53 years, Occ: Business,]
R/o. Village: Kalwar, Tal: Bhiwandi,]
District Thane]
- 6) Smt. Nita Vikas Raje,]
Age 52 years, Occ: Business,]
R/o. Village: Balkum, Tal: Bhiwandi,]
District Thane]
- 7) Smt. Sonali Rajan Patil,]
Age 51 years, Occ: Business,]
R/o/ Village: Kalwar, Tal: Bhiwandi,]
District Thane]
- 8) Smt. Sunita Chandrakant Pawar,]
R/at Mulund (East), Mumbai]
- 9) Smt. Kusum Bhagwan Patil,]
Age 64 years, Occ: Agriculturist,]
- 10) Shri Rohidas Bhagwan Patil,]
Age 42 years, Occ: Agriculturist,]
- 11) Roshan Bhagwan Patil,]
Age Adult, Occu. Agriculturist,]
- 12) Smt. Sharda Ashok Patil,]
Age 45 years, Occ: Agriculturist,]
- 13) Smt. Kamla Bhagwan Patil,]
Age 38 years, Occ: Agriculturist,]
Nos. 9 to 13 all residing at Village: Surai,]
Taluka: Bhiwandi,]
District Thane]
- 14) Rubi Parvej Bhiwandiwalwa]
Age Adult, Occ: Household,]
- 15) Farhad Parvej Bhiwandiwalwa]
Age Adult, Occ: Business,]
- 16) Firdos Manekasha Bhiwandiwalwa,]
Age Adult, Occ: Household,]

- 17) Shaherbano Firozshan,]
Age Adult, Occ: Household,]
Nos. 14 to 17 all residing at]
Roshan Baugh, Tal: Bhiwandi,]
District Thane]
- 18) The Tahsildar & A.L.T. Bhiwandi, District]
Thane.]
- 19) The Sub-Divisional Officer, Sub-Divisional]
Office, Bhiwandi, District Thane.] **...Respondents**

**WITH
WRIT PETITION NO. 17864 OF 2024
WITH
WRIT PETITION NO. 17866 OF 2024**

- 1) Smt. Kusum Bhagwan Patil,]
Age: 64 years, Occ: Agriculturist]
- 2) Shri Rohidas Bhagwan Patil,]
Age 42 years, Occ: Agriculturist,]
- 3) Roshan Bhagwan Patil,]
Age 37 years, Occ: Agriculturist]
- 4) Smt. Sharda Ashok Shastri]
Age 45 years, Occ: Agriculturist,]
- 5) Smt. Kamla Bhagwan Patil,]
Age 38 years, Occ: Agriculturist,]
Nos. 1 to 5 all R/O Village: Surai,]
Taluka: Bhiwandi, District Thane] **...Petitioners**

Versus

- 1) Babu Pandu Patil]
Since Deceased Through L Rs]
- 1/1) Ram Babu Patil,]
Age 50 years, Occ: Business]
- 1/2) Shri Laxman Babu Patil]
Age 45 years, Occ: Business,]
- 1/3) Smt. Chandrabhaga Babu Patil,]
Age 75 years, Occ: Business,]
Nos. 1/1 to 1/3 all R/O]

- Village Vehale, Taluka: Bhiwandi,
District Thane-]
- 1/4) Smt. Narmada Ratilal Patil]
Age 58 years, Occ: Household,]
R/o. Village: Sarang, Tal: Bhiwandi,]
District Thane]
- 1/5) Smt. Indira Mohan Mhatre,]
Age 53 years, Occ: Business,]
R/o. Village: Kalwar, Tal: Bhiwandi,]
District Thane]
- 1/6) Smt. Nita Vikas Raje,]
Age 52 years, Occ: Business,]
R/o. Village: Balkum, Tal: Bhiwandi,]
District Thane]
- 1/7) Smt. Sonali Rajan Patil,]
Age 51 years, Occ: Business,]
R/o/ Village: Kalwar, Tal: Bhiwandi,]
District Thane]
- 1/8) Smt. Sunita Chandrakant Pawar,]
R/at Mulund (East), Mumbai]
- 2) Rubi Parvej Bhiwandiwalwa]
Age Adult, Occ: Household,]
- 3) Farhad Parvej Bhiwandiwalwa]
Age Adult, Occ: Business,]
- 4) Firdos Manekasha Bhiwandiwalwa,]
Age Adult, Occ: Household,]
- 5) Shaherbano Firozshan,]
Age Adult, Occ: Household,]
Nos. 2to 5 all R/O Roshan Baugh,]
Tal: Bhiwandi, District Thane]
- 6) Yashwant Bhagirat Patil]
Age: 67 years, Occ: Agriculturist]
- 7) Jaitu Bhagirat Patil]
Age: 63 years, Occ: Agriculturist]
- 8) Parshuram Bhagirat Patil]
Age 63 years, Occ: Agriculturist]
- 9) Shri Umesh Bhagirat Patil]
Age 37 years, Occ: Agriculturist]
- 10) Smt. Gitabai Rohidas Patil]
Age 60 years, Occ: Agriculturist]
- 11) Smt. Shitubai Hanumant Mhaske @ Ashabai]

- | | | |
|-----|---------------------------------------|---|
| | Hanumant Mhaske |] |
| | Age 58 years, Occ: Agriculturist |] |
| 12) | Smt. Sandhya Sadanand Patil |] |
| | Age 45 years, Occ: Agriculturist |] |
| 13) | Shri Ashok Bhagwan Patil |] |
| | Age 55 years, Occ: Agriculturist |] |
| 14) | Ravi Bhagwan Patil |] |
| | Age Adult, Occ: Agriculturist, |] |
| | Nos.6 to 14 through their C. Attorney |] |
| | Dilip Yashwant Patil, |] |
| | Nos.6 to 14 All R/O Village: Surai, |] |
| | Taluka Bhiwandi, District Thane. |] |

...Respondents

Sr Adv Atul Damale i/b Mr. Raju Suryawanshi a/w Suraj N Naik, for Petitioner in WP/14311/2024 & WP/14312/2024.

Mr S C Mangle, Adv for Petitioner in WP/17864/2024 and WP/17866/2024.

Sr Adv G S Godbole a/w Sumit Kothari i/b N S Bobade, for Respondent Nos. 1 to 8.

Mr Kedar Dighe, Addl GP a/w Ms V R Raje, AGP in WP/14311/2024.

Mr P V Nelson Rajan, AGP in WP/14312/2024.

Ms Savina Crasto, AGP in WP/17864/2024.

Ms S D Chipade, AGP in WP/17866/2024.

CORAM : SHARMILA U. DESHMUKH

RESERVED ON : JUNE 17th, 2026

PRONOUNCED ON : JULY 27, 2026

JUDGMENT:

1. **Rule.** With consent, Rule made returnable forthwith and taken up for final hearing.

2. This group of Petitions challenge the common judgment and order dated 3rd September, 2024 passed by the Hon'ble President of the Maharashtra Revenue Tribunal (for short "**Tribunal**"), Mumbai, in

Review Application No. 01/2024 and Review Application No. 02/2024 allowing the review applications resulting in setting aside the common judgment and order dated 5th December, 2023. The consequence of allowing the review applications is setting aside of declaration of Petitioner's pre-decessor's as protected tenant and allowing Section 32G proceedings in favour of Respondent Nos 1 to 8.

3. The land bearing Survey No. 40, Hissa No. 4 (Old Survey No. 16, Hissa No. 4), situated at village Surai, District Thane, admeasuring about 48R, Pot Kharaba of 0-02-0 H.R.P, is the subject matter of the present Petition and tenancy proceedings. In respect of the said land, proceedings were initiated under the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for short "**Tenancy Act**") by the pre-decessor of Petitioner and Respondent Nos 9 to 13, the landlord i.e. Respondent Nos 14 to 17 and pre-decessor of Respondent Nos 1 to 8.

4. For better understanding, the proceedings initiated by the parties are set out under separate heads in the Petition and accordingly herein also:

TENANCY PROCEEDINGS FILED BY ANYA GOVIND PATIL- PRE-DECESSOR
IN TITLE OF PETITIONERS AND RESPONDENT NOS 9 TO 13:

5. Anya Govind Patil was tenant in respect of the subject land and his name was recorded in the revenue records of the suit land and other lands vide Mutation Entry No. 1193, which was certified on 17th April,

1962. Anya Patil, during his lifetime, filed Section 32G proceedings for the fixation of the purchase price, and the Tahsildar and ALT, Bhiwandi, vide judgment and order dated 30th November, 1965 passed in Tenancy Case No. 32-G/Kra.L-5527, fixed the purchase price of the suit land and other lands in favour of Anya Patil. The effect of the judgment and order dated 30th November, 1965 was given in the revenue records vide Mutation Entry No. 1338, certified in the year 1965 in favour of Anya Patil. The purchase price was paid and accordingly, Section 32-M certificate was issued in favour of Anya Patil, however, the effect of the Section 32-M certificate remained to be given in the revenue records of the suit and other lands. There was no challenge to the order dated 30th November, 1965 by Respondent Nos. 14 to 17 landlords.

TENANCY PROCEEDINGS FILED BY RESPONDENT NOS 14 TO 17 - LANDLORDS:

6. On 5th August, 2010, the Respondent Nos. 14 to 17 landlords, filed proceedings under Section 70(b) of the Tenancy Act registered as Case No. 35 of 2010 before the Tahsildar and ALT seeking negative declaration and deletion of the name of the deceased, Anya Patil, as tenant from the revenue records of the subject land.

7. Anya Patil had expired on 21st August, 1977 and without impleading the Petitioners and the Respondent Nos 9 to 13, who were his legal heirs, vide order dated 5th February, 2014, the Tahsildar and

ALT allowed the application under Section 70(b).

8. After acquiring knowledge of the order dated 5th February, 2014, on 13th March, 2014, the Petitioners and Respondent Nos. 9 to 13 filed Tenancy Appeal No. 114 of 2014 before the Sub-Divisional Officer (**SDO**) under Section 74 of the Tenancy Act. The Appeal was allowed by the SDO vide order dated 11th November, 2016, setting aside the order of the Tahsildar and ALT dated 5th February, 2014 and direction was given to the revenue authorities to give effect to Mutation Entry No. 1338 in the revenue records in accordance with the Section 32-G order dated 30th November, 1965.

9. The order dated 11th November, 2016 was not challenged by Respondent Nos. 14 to 17 landlords and thus attained finality. In Tenancy Appeal No. 114 of 2014, one Babu Pandu Patil, was Opponent No. 6, who also did not challenge the judgment and order dated 11th November, 2016.

PROCEEDINGS UNDER SECTION 32 G OF TENANCY ACT BY THE PETITIONERS AND RESPONDENT NOS. 9 TO 13:

10. Being unaware that Section 32-G proceedings had already been concluded in favour of their predecessor in title, the Petitioners and Respondent Nos. 9 to 13 inadvertently filed fresh Section 32-G proceedings before the Tahsildar and ALT, Bhiwandi, registered as Case No. 48 of 2010. Upon becoming aware of the order dated 30th

November, 1965 in favour of Anya Govind Patil, they withdrew the said proceedings on 21st February, 2012.

TENANCY PROCEEDINGS BY BABU PANDU PATIL-PRE-DECESSOR IN TITLE
OF RESPONDENT NOS. 1 TO 8:

11. On 5th October, 2010, the father of Respondent Nos. 1 to 8 i.e. Babu Pandu Patil, filed an application under Section 70(b) of the Tenancy Act numbered as Case No Surai-52/2010 against Respondent Nos. 14 to 17 landlords and Anya Govind Patil for a declaration that Babu Pandu Patil is a protected tenant and for a negative declaration that Anya Govind Patil was not a tenant in respect of the suit land and was not in possession of the suit land. The Petitioners and Respondent Nos. 9 to 13 were impleaded as legal heirs of Anya Patil.

12. The application of Babu Patil came to be rejected by the Tahsildar and ALT on 8th August, 2011, as against which Babu Patil filed Tenancy Appeal No. 203 of 2011 before the SDO, Bhiwandi, under Section 74 of the Tenancy Act.

13. Babu Pandu Patil also filed Tenancy Appeal No. 9 of 2012 under Section 74 before the SDO, challenging the order dated 30th November, 1965 fixing the purchase price in favour of the deceased Anya Govind Patil only in respect of the suit land, claiming to be a tenant and that the Section 32-M certificate is wrongly issued in favour of Anya Govind Patil.

14. In Tenancy Appeal No. 9 of 2012, Babu Patil filed delay

condonation application for condoning delay of 46 years, 1 month and 16 days. Without deciding the delay condonation application, the SDO vide judgment and order dated 8th July, 2013 dismissed Tenancy Appeal No 9 of 2012 on merits. By separate order dated 8th July, 2013, the learned SDO dismissed Tenancy Appeal No. 203 of 2013, confirming the judgment and order dated 8th August, 2011 passed by the Tahsildar and ALT in Tenancy Appeal No 203 of 2011 rejecting Babu Pandu Patil's claim for tenancy.

15. Being aggrieved by the dismissal of the Tenancy Appeals, Tenancy Revisions came to be filed by Babu Patil before the Tribunal, which was numbered as Revision Application Nos. REV/TNC/535/THN/2013 and REV/TNC/536/THN/2013.

16. Vide judgment and order dated 18th May, 2015, Tribunal partly allowed Revision Application No. 535 of 2013 arising out of order in Tenancy Appeal No 9 of 2012 on the ground that without deciding the delay condonation application, the Tenancy Appeal was decided on merits, and remanded the matter to the SDO to decide the application for condonation of delay on its own merit.

17. The second Tenancy Revision No. 536 of 2013 filed by Babu Pandu Patil against dismissal of the tenancy application under Section 70(b) of the Tenancy Act claiming his tenancy, was permitted to be withdrawn by order dated 18th May, 2015.

18. The Tenancy Appeal No. 9 of 2012, which was remanded to the SDO, was renumbered as Tenancy Appeal (Remand) No. 37 of 2015, and was allowed by the SDO vide order dated 8th February, 2017 resulting in setting aside the order dated 30th November, 1965 under Section 32G of the Tenancy Act in respect of the subject land and was maintained in respect of other lands.

19. Babu Patil filed tenancy proceedings under Section 32G of Tenancy Act for fixation of purchase price, which was numbered as Case No. 32-G/Mauje Surai/Re-Enquiry/02/2017, and was allowed by the Tahsildar and ALT on 3rd May, 2017.

20. Tenancy Appeal No. 168 of 2017 was filed by the Petitioners and Respondent Nos. 9 to 13 against the order dated 3rd May, 2017, which was dismissed by the SDO by judgment and order dated 12th February, 2021, as against which Tenancy Revision Application No. 328 of 2022 was filed before the Tribunal.

PROCEEDINGS BEFORE TRIBUNAL:

21. The Petitioners along with Respondent Nos. 9 to 13 filed Tenancy Revision Application No. 373 of 2018 before the Tribunal against the order of SDO dated 8th February, 2017 setting aside the order dated 30th November, 1965 and Revision Application No 328 of 2022 against the order of SDO dated 12th February, 2021 challenging the fixation of purchase price in favour of Babu Patil.

22. The Tribunal heard both revisions together and by common judgment and order dated 5th December, 2023 allowed both revisions and set aside the order dated 8th February, 2017 passed by the SDO, by which the order dated 30th November, 1965 under the 32G proceedings was set aside, and restored the order dated 30th November, 1965 passed by the learned Tahsildar and ALT. The Tribunal also set aside the judgment and order dated 12th February, 2021 passed by the SDO dismissing the Petitioners and Respondent Nos. 9 to 13's Tenancy Appeal against the fixation of purchase price in favour of Babu Patil. The consequence of order of 5th December, 2023 of Tribunal was that Anya Patil declaration of tenancy was sustained.

23. Subsequently, Respondent Nos. 1 to 8 filed Review Application Nos. 1 of 2024 and 2 of 2024, which came to be allowed by the impugned common judgment and order dated 3rd September, 2024, which resulted in setting aside Anya Patil's declaration of tenancy and fixation of purchase price in favour of Babu Patil. Hence, the present petition.

SUBMISSIONS:

24. Mr. Damle, learned Senior Advocate for the Petitioners has taken this Court through the various orders passed by the tenancy authorities leading to the passing of the impugned judgment and order. He submits that the impugned judgment is an exercise of appellate powers as there

is re-hearing on the same arguments and fresh findings are rendered. He submits that Tribunal failed to notice that the review applications were filed through different Advocates, who thereafter canvassed submissions, which were already considered by the Tribunal in the order of 5th December, 2023.

25. He submits that the order dated 5th December, 2023 of the Tribunal recognizes the previous history and the fixation of purchase price in the year 1965 in favour of Anya Patil, and upholds the arguments of the Petitioners on the application of the principles of *res judicata*. He submits that the Petitioner's pre-decessor's tenancy was accepted by the order dated 30th November, 1965 and the landlord's application seeking negative declaration came to be rejected, which was not challenged and had attained finality. He submits that Babu Pandu Patil withdrew Tenancy Revision Application No. 536 of 2013, which arose out of the dismissal of his declaration of tenancy and therefore there could be no fresh challenge to Anya Patil's tenancy.

26. He submits that the review application proceeds on the basis that there is an error apparent on the face of the record and ground (f) of the review raised issues which were claimed to have been argued at the time of hearing of the revision applications. He submits that in such a case review could not have been filed through a different Advocate. He submits that the withdrawal of Revision Application No. 536 of 2013 is

brushed aside holding that the rights of the review applicants were alive.

27. He would further point out the findings in the impugned judgment dated 3rd September, 2024, in which the earlier arguments were re-agitated and decided. He submits that the absence of challenge to the order of remand is immaterial as by remand, the SDO was only directed to decide the delay condonation application. He would further point out the finding in the impugned order about the Tribunal being aware of the rights of Respondent Nos 1 to 8, though Revision Application No 536 of 2013 was withdrawn and would submit that withdrawal of the revision application would amount to waiving of tenancy rights by Babu Patil and therefore the principle of *res-judicata* applies. He submits that there was no error apparent on face of record and by the impugned judgment, the Tribunal has reversed the entire findings as if exercising appellate jurisdiction. In support he relies upon the following decisions :

***(i) M/s. Northern India Caterers (India) Ltd. vs Lt. Governor Of Delhi*¹**

***(ii) S. Madhusudhan Reddy vs V. Narayana Reddy And Others*²**

28. *Per contra*, Mr. Godbole, learned counsel for Respondent Nos. 1 to

1 (1980) 2 SCC 167

2 (2022) 17 SCC 255

8, would submit that the earlier finding of *res judicata* was an error on the face of the record. He would submit that in the application filed by Anya Govind Patil under Section 32G of the Tenancy Act, Babu Patil was not joined in the proceedings. He submits that subsequently Babu Patil had filed proceedings for declaration of tenancy and for a declaration that Anya Patil was not a tenant. He would further submit that the Tribunal in Revision Application No. 535 of 2013, allowed the application and remanded the matter to SDO to decide the issue of condonation of delay insofar as the challenge to the order dated 30th November, 1965 is concerned, which order of remand was not challenged by the Petitioners.

29. He submits that insofar as Tenancy Appeal No. 203 of 2011 is concerned, the same arose out of the order of Tahsildar rejecting the application by Babu Patil seeking declaration of tenancy on the ground that Babu Patil has not been able to prove his possession and cultivation and that the deceased Anya Patil's name had been entered in the revenue records as tenant and it is not demonstrated that Mutation Entry No. 1193 is illegal and for almost 50 years no steps have been taken.

30. He submits that against the order of the Tahsildar dated 8th August, 2011, Tenancy Appeal No. 203 of 2011 was filed. He submits that till the proceedings under Section 32G of the Tenancy Act in favour

of Anya Govind Patil is not dislodged, Babu Patil's application under Section 70(b) could not have been considered independently.

31. He would further submit that as Revision Application No. 535 of 2013, which was a challenge to the 32G proceedings in favour of Anya Patil was remanded for fresh consideration, Babu Patil withdrew his Revision Application No. 536 of 2013 against the dismissal of Babu Patil's rejection of declaration of tenancy. He submits that the rejection of Babu Patil's tenancy was premised on the order dated 30th November, 1965 and, upon remand, the SDO condoned the delay. He submits that the withdrawal of revision application cannot constitute *res judicata*. He points out that the order dated 5th December, 2023 accepts the applicability of principle of *res judicata*, which was an error corrected in the review proceedings. He submits that the Tribunal by order dated 5th December, 2023, held that the withdrawal of Revision Application No. 536 of 2013 and the order of the SDO, Bhiwandi, dated 11th November, 2016 is fatal, which error has been corrected in review.

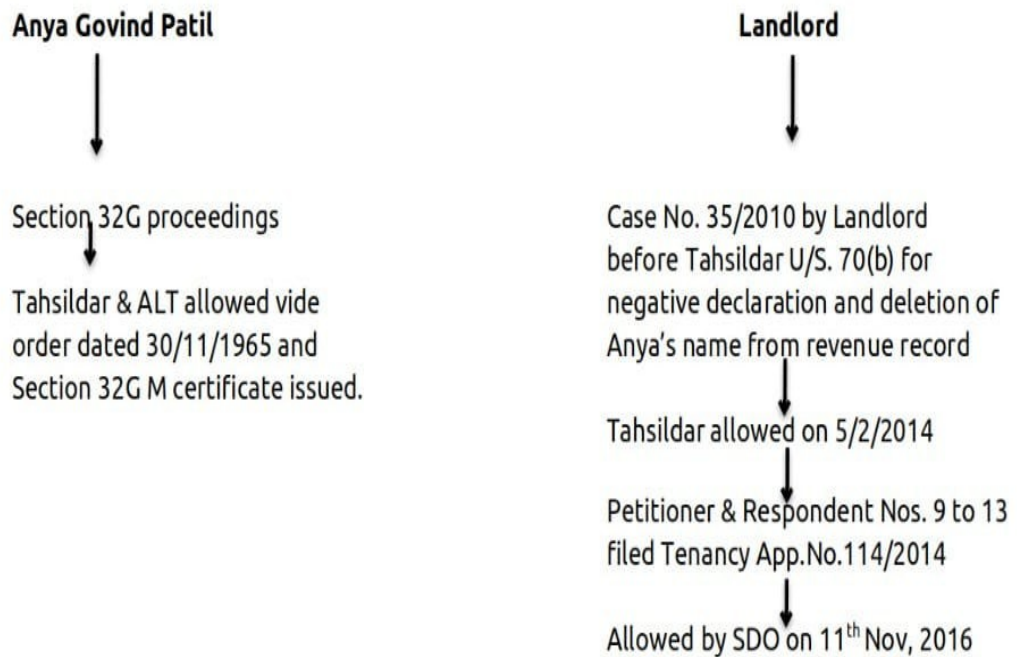
32. He submits that the order dated 11th November, 2016 was passed by the SDO in an Appeal filed by the Petitioners, as the Tahsildar had directed the name of Anya Govind Patil to be deleted from the other lands except Survey No. 40, Hissa No. 4. He submits that the edifice of the order dated 11th January, 2016 is the order dated 30th November, 1965 and, in the absence of any frontal challenge to the order of 1965,

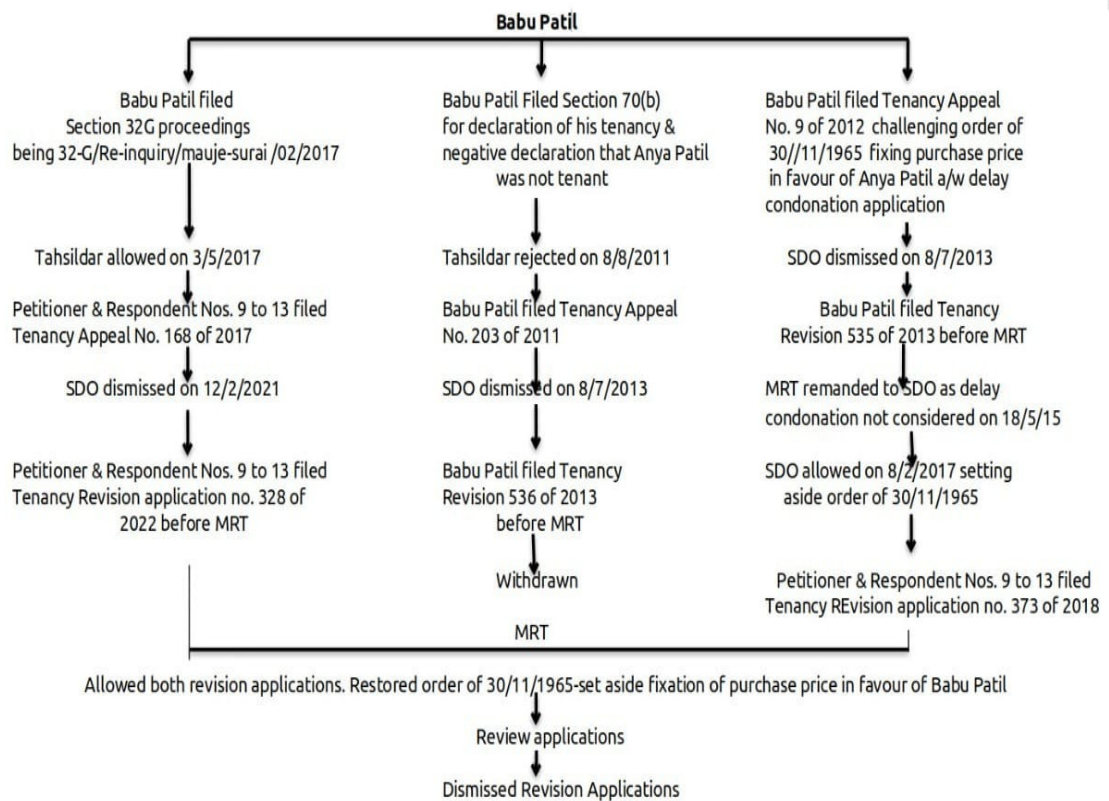
the order dated 11th November, 2016 cannot operate as *res judicata*.

33. Rival contentions now fall for determination:

34. The challenge in the present case is to the order passed in review at the instance of the Respondent Nos 1 to 8, and the issue to be considered is whether the review jurisdiction has been rightly exercised by the Tribunal.

35. The entire litigation between the parties, for the ease of reference, is set out in a chart which is reproduced herein below.





36. The chart reproduced above would indicate that Babu Pandu Patil's application under Section 70(b) of the Tenancy Act seeking declaration of his tenancy came to be rejected, as against which revision application came to be withdrawn. Similarly, the landlord's application under Section 70(b) for negative declaration and deletion of Anya Patil's name from the records was rejected, consequent to the order of SDO passed on 11th November 2016, which had attained finality.

37. Revision Application Nos. 373 of 2018 was filed by the Petitioners herein against the order of SDO dated 8th February, 2017 setting aside the order of 30th November, 1965 and remanding the matter to the Tahsildhar for fresh inquiry. Revision Application No 328 of 2022 were

filed by the Petitioners, against the order of SDO dismissing the Petitioner's tenancy appeal against the fixation of purchase price in favour of Respondent Nos 1 to 8 as heirs of Babu Patil.

38. The Tribunal vide the order of 5th December, 2023 allowed the revision applications on facts as well as on the ground of *res-judicata*. The findings of the Tribunal to uphold the tenancy of Anya Patil can be summarised as under:

(I) M.E. No 1193 of 17th April, 1962 records Anya Patil's name as tenant on basis of kabulayat with possession show prior to the year 1949.

(II) In 7/12 extracts the crop cultivation columns the entries of years 1952 to 1959 in favour of Babu Pail have been interpolated as the entries are not consecutively reflected.

(III) Orders of revenue authorities showing cultivation of Babu Pail is subsequent to the tiller's day.

(IV) Effect of M.E. No 1338 fixing purchase price in favour of Anya Patil is not reflected in the 7/12 extract of suit land.

(V) Babu Patil's application under Section 70(b) of Tenancy Act rejected as against which Revision Application No 536 of 2013 withdrawn and the Landlords' application challenging Anya Patil's tenancy status rejected on 11th November, 2016, which has attained finality and therefore principles of *res*

judicata apply.

39. The grounds for review by the Respondent Nos 1 to 8 broadly are that (a) evidence was not considered in proper perspective as the evidence shows that Anya Patil was not tenant on tillers day, (b) as Babu Patil was not impleaded in Section 32 G proceedings by Anya Patil in which order of 1965 was passed, remand was directed (c) Tribunal has not dealt with the arguments raised that the rights of review applicants was kept alive and *res-judicata* does not apply (d) Revision Application No 373 of 2018 had become infructuous as there was no stay to remand order and consequently Section 32 M certificate was issued in favour of Respondent Nos 1 to 8.

40. The Tribunal allowed the review applications holding that the earlier order of 5th December, 2023 allowed the revision applications mainly on ground of *res-judicata*. The Tribunal accepted that the Respondent Nos 1 to 8's argument on *res-judicata* was not dealt with by the Tribunal and proceeded to consider the said argument holding that the remand order in Revision Application No 535 of 2013 was not challenged by the Petitioners herein and they participated in the fresh hearing and therefore the Court was aware of about rights of the Respondent Nos 1 to 8 despite the withdrawal of Revision Application No 536 of 2013. The Tribunal held that the arguments of the Respondent Nos 1 to 8, which were advanced were not considered

earlier, and the claim of Respondent Nos 1 to 8 is not hit by principles of *res judicata*. The Tribunal further held that as the remand proceedings were decided afresh by the Tahsildhar during the challenge to the order of remand by SDO dated 8th February, 2017, the Revision Application No 373 of 2018 was rendered infructuous and finding on *res-judicata* was unsustainable in law. The Tribunal reversed the earlier finding on M.E. No 1193 of 17th April, 1962 by holding that no kabulayat was produced on record. In view of the subsequent order of Tahsildar deciding Section 32G proceedings on merits in favour of Respondent Nos 1 to 8 the Tribunal allowed the review applications.

41. With this background, it would be apposite to first refer to the statutory provisions of Order XLVII Rule 1 of CPC governing review jurisdiction and reads as under:

"1. Application for review of judgment.—(1) Any person considering himself aggrieved—
 (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
 (b) by a decree or order from which no appeal is allowed, or
 (c) by a decision on a reference from a Court of Small Causes,
 and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.
 (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applied for the review.
 [Explanation.—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a

ground for the review of such judgment.]

42. The contours of review jurisdiction came to be defined in **S. Madhusudhan Reddy vs V. Narayana Reddy And Others** (supra), where the Hon'ble Apex Court after noting the statutory provisions and judicial pronouncements, has summarized the principles for exercising review jurisdiction as under :

"26. After discussing a series of decisions on review jurisdiction in Kamlesh Verma v. Mayawati, this Court observed that review proceedings have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. As long as the point sought to be raised in the review application has already been dealt with and answered, the parties are not entitled to challenge the impugned judgment only because an alternative view is possible. The principles for exercising review jurisdiction were succinctly summarised in the captioned case as below: (SCC pp. 333-34, para 20)

"20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki, and approved by this Court in Moran Mar Basselios Catholikos v. Mar Poulouse Athanasius to mean 'a reason sufficient on grounds at least analogous to those specified in the rule. The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

43. Bearing in mind, the enunciation of law by the Hon'ble Apex Court, if the review proceedings are examined, the grounds of review application are in nature of grounds of Appeal. In the review applications, the errors apparent on the face of record were that the evidence on record has not been rightly considered by Tribunal insofar as Babu Pandu Patil's tenancy on tillers date and the Tribunal has not considered that Anya Govind Patil was not a tenant of the suit land on the tillers day. The main ground for review was set out in Ground (F) as under:

"(F) It was argued and debated at the time of hearing of Revision Application that this Hon'ble Tribunal on earlier occasion while deciding the Revision Applications No 535 of 2013 and 536 of 2013 had noted a common Roznama in both matters from which it indicates that the Hon'ble Tribunal was aware while allowing the Review Applicants to withdraw their Revision Application No 536 of 2013, the Rights of the Review Applicants and therefore, the second Revision Application No 535 of 2013 was remanded to the S.D.O. Consequently, the rights of the Review Applicants were kept alive. Under these circumstances, the principle of Res-judicata was no applicable to peculiar facts and circumstances. This point was argued, however, it is respectfully

submitted that the same is not dealt with and decided by this Hon'ble Court."

44. The arguments of the review applicants as noted in the impugned judgment concentrated on the aspect of non consideration of the arguments canvassed during the original hearing. It was disputed by the Petitioners that any such contention was argued or debated. In view of the main ground of review being non-consideration of arguments canvassed, the review application should have been filed by the same Advocate. In the initial hearing of the revision applications, the argument about applicability of principles of *res judicata* was canvassed in view of the rejection of the Section 70(b) tenancy application of Babu Patil and withdrawal of the revision application no. 536 of 2013, and, as the landlords application was rejected on 11th July, 2016 challenging the tenancy status of Anya Patil. The response arguments of the Respondent Nos 1 to 8 was that the Petitioner's pre-decessor had mislead the revenue authorities and had obtained the order of the year 1965. It was also argued that the Petitioners themselves had filed Section 32 G proceedings in the year 2010 stating on oath that the suit land was not sold earlier to Anya Patil. The submission was also canvassed that in the landlord's application, the Respondent Nos 1 to 8 in their reply had categorically stated that they have filed separate Section 32G proceedings. These submissions were canvassed to deal with the Petitioner's arguments on the aspect of finality to the order of

declaration of Anya Patil's tenancy and consequently to oppose further challenge as being barred by *res judicata*.

45. The Counsel for the parties had advanced their respective submissions on the issue of *res judicata*, which was dealt with by the Tribunal as under:

"The arguments advanced by the Ld. Advocate appearing for the Applicants on the issue of "res-judicata" also deserves acceptance. In this regard, it is pertinent to note that the application filed by the respondent no 1 being Case No 52 of 2010 before the Ld. Tahasildar Bhiwandi, seeking declaration of tenancy rights was dismissed by the Ld. Tahasildar Bhiwandi vide his Order dated 08.08.2011. In this application, the Applicants were made party respondents. The respondent no. 1 assailed the order dated 08.08.2011 by filing Tenancy Appeal No. 203 of 2011 before the Ld. SDO Bhiwandi which was dismissed by the Ld. SDO Bhiwandi vide his Order dated 08.07.2013, thereby upholding the Order dated 08.08.2011 passed by the Ld. Tahasildar Bhiwandi in Case No. 52 of 2010. The Revision No. 536 of 2013 filed by the contesting respondent nos. 1/1 to 1/8 before this Tribunal as against the Order dated 08.07.2013 in Tenancy Appeal No. 203 of 2011 was allowed to be withdrawn as per the pursis filed by the contesting respondent, by the Order dated 18.05.2015.

Also, the challenge to the status of agricultural tenancy of the Applicants and for that matter their predecessor was put forth by the original landlords by filing the Case No. 35 of 2010 before the Ld. Tahasildar Bhiwandi seeking negative declaration against the Applicants. The Ld. Tahasildar Bhiwandi vide his Order dated 30.01.2014 allowed that application. However, the Applicants challenged the said order by filing Tenancy Appeal No. 114 of 2014 before the Ld. SDO Bhiwandi which came to be fully allowed by the Ld. SDO Bhiwandi vide his Order dated 11.11.2016.

Absence of any further successful challenge at the hands of either the original landlords or the respondent no.1 to the issue of tenancy status of the Applicants or their predecessor will certainly attract the rigors of the principle of "res-judicata". Now, It is not open to question the legality of "tenancy status" as well as the right of "statutory purchase" u/s 32G of the Tenancy Act of the Applicants or for that matter their predecessor."

46. After considering the arguments, the Tribunal has taken a view that that the principles of *res judicata* will be attracted. In identical facts, by the order under review, the Tribunal has substituted its view on applicability of *res judicata* by considering the arguments that the rights

of the review applicants was kept alive to be raised in remand proceedings. It is not disputed that during the original hearing of the revision applications, the record of the orders passed upon remand was available with the Tribunal. In review, the Tribunal has taken a different view of the outcome of the remand proceedings to hold that applicability of principles of *res judicata* is incorrect. By substituting its own view on identical facts, the Tribunal has exercised appellate powers, which is impermissible in review jurisdiction. The earlier finding of *res judicata* can at the highest be termed as erroneous findings incapable of being corrected in review jurisdiction. The Tribunal has also reversed its finding on Mutation Entry No 1193 dated 17th April, 1962 in review. The review order does not satisfy the requirements of Order 47 Rule 1 of CPC as it has been granted by a process of detailed reasoning by re-opening the already agitated issues. The review jurisdiction is not meant for correcting erroneous decisions and rendering fresh findings. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. (See **Kamlesh Verma vs Mayawati & Ors 2013 All SCR 3411**).

47. The grounds of the review application would, in fact, indicate that the same are in the nature of grounds of Appeal. The grounds of review seeks re-appreciation of evidence to hold that Babu Pandu Patil was the

tenant of tillers day and not Anya Govind Patil. The arguments on the documents were advanced in the original hearing which resulted in the order of 5th December, 2023, and a review cannot be an Appeal in disguise.

48. A reading of the review order would indicate that the Tribunal by exercising appellate powers has conducted in depth re-inquiry of the revision applications. Such inquiry is not necessitated in case of error apparent on face of record. Though Mr. Godbole had advanced lengthy arguments in order to demonstrate that the principles of *res judicata* would not be applicable by reason of withdrawal of Revision Application No. 536 of 2013 and the dismissal of the landlord's application, which attained finality by order dated 11th November, 2016, by stating that the entire edifice of these orders was the order dated 30th November, 1965, which subsequently came to be set aside, the arguments would constitute an argument assailing the order dated 5th December, 2023 and would not constitute a defence to the review orders passed on 3rd September, 2024.

49. The Hon'ble Apex Court has held that the error apparent on the face of record should not be an error which has to be fished out and searched, which is exactly what has been done in the present case. There has been a detailed examination and scrutiny of the factual position as well as the earlier orders passed, and by a process of reasoning, the Tribunal has come to a conclusion that the principles of *res judicata* would not apply. Not only the findings on the applicability of

the principles of *res judicata* are reversed, in review the Tribunal has reconsidered the orders passed by the SDO and re-appreciated the position of kabulayat not being produced on record. It has further re-examined the order of the Tahsildar and ALT, Bhiwandi and the SDO, which amounts to a rehearing in exercise of review jurisdiction, which is impermissible.

50. The impugned orders passed in review amounts to correction of the earlier decision dated 5th December, 2023, which even if erroneous, could not have been corrected in exercise of review jurisdiction.

51. In light of the above discussion, the impugned orders passed in review applications are clearly unsustainable and are hereby quashed and set aside.

52. Resultantly, the Petitions succeed. Rule is made absolute. The impugned order dated 3rd September, 2024 hereby stands quashed and set aside.

(SHARMILA U. DESHMUKH, J.)

53. At this stage, request is made for stay of the order for a period of four weeks from today. The request is opposed by learned counsel for Petitioner. The present order is stayed for a period of four weeks from today. The interim arrangement to continue for a period of four weeks from today.

(SHARMILA U. DESHMUKH, J.)