

(2003) 06 BOM CK 0111

In the Bombay High Court

Case No : Writ Petition No. 5150 of 1988

Ananda Dattu Patil since deceased through his LRs. Ntvrutti
Ananda Patil and others

APPELLANT

Vs

Ramesh Anandrao Patil and another

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 29, 32(1B), 5, 76
Constitution of India, 1950 — Article 227
Specific Relief Act, 1963 — Section 4, 6

Citation : (2003) 06 BOM CK 0111

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : S.G. Karandikar, for the Appellant; A.S. Oka with S.M. Kamble, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception to the Judgment and Order passed by the Maharashtra Revenue Tribunal, Camp at Kolhapur dated 15-4-1988 in Revision Application No. MRT/SS/131/85. Briefly stated the petitioner Ananda was co tenant in respect of the land bearing Survey No. 128 of Village Kasvalapur, Taluka Miraj along with Shri Krishana Babu Pawar. Both the tenants executed surrender deed and expressed their willingness to surrender their suit land to the respondents landlords. On the basis of that surrender deed dated 10-10-1955, the landlord filed application for possession before the Mamlatdar under the provisions of the Bombay Tenancy and Agricultural Lands Act on the ground that the tenants intend to surrender the land. The application was accompanied by the Deed of Surrender executed between the parties. On the said application, statement of the petitioner as well as of the co-tenant came to be recorded by the Mamlatdar on 24-5-1956. The statement as recorded by the Mamlatdar clearly indicates that the petitioner has accepted that he has executed surrender deed in writing

with full understanding and of his own volition. On the basis of this statement recorded by the Mamlatdar and considering the attending circumstances, the Mamlatdar passed order on 1-6-1956, which reads thus:

"The Applicant Kabjedar and the respondent tenants appeared before me on 10-10-1955 and submitted the application dated 10-10-1955 along with the written (Rajinama) surrender deed dated 10-10-1955 tendered by the respondents tenants in respect of the suit lands stated above. On that day the applicant was verified by me and the tenants were informed of the rights enjoyed by them as the tenants under the Tenancy Act and that they need not make the proposed surrender. They were told that they should think over the surrender and were given sufficient time till the next hearing of which the parties were given due notice.

On 24-5-1956 their statements have been recorded before me. The applicants have stated for taking further action on their application and the surrender deed. The respondent tenants have stated that they stands by the surrendered of the lands, after thoughtful consideration and add that they have sufficient land of their own for their cultivation and for their maintenance, that they have been unable to cultivate the suit land property owing to preoccupation on their own lands and they do not need now the suit lands, that no pressure was brought to bear upon them or induced or offered to give up the land and that this Court may take further action as per application of the Kabjedar to which they have no objection.

From the above I am convinced that the Surrender of the lands is voluntarily made by the tenants and is bona fide. I, therefore, order that the names of the respondent as the protected tenants should be deleted from the R.R. and the possession of the land be given to the applicants (section 29 read with section 5 of the Tenancy Act). The Village officers should be informed accordingly.

Declared in open Court."

2. This order has been reproduced in its entirety as argument has been advanced on behalf of the petitioner which will have to be answered with reference to the contents of this order. Be that as it may, after the order was passed by the Mamlatdar possession receipt was executed on 29-6-1956 which mentions that the petitioner and the co tenant has handed over possession to the respondent-landlord. In other words, the record indicates that the petitioner and other co-tenant lost possession of the suit land prior to the Tiller's day i.e. M-1957. This position is further reinforced by the fact that the petitioner made an application u/s 32-(IB) of the Act for possession on 23-10-1972. The application proceeds on the premise that the petitioner lost possession between 15-6-1956 and 1-4-1957. That application was however, later on withdrawn by the petitioner on the ground that the petitioner had already filed suit for possession on 3-12-1970 being Civil Suit No. 380 of 1970 before the Civil Judge, J.D. Sangli for restoration of possession u/s 6 of the Specific Relief Act, 1963. Be that as it may, the suit

filed by the petitioner proceeded further and came to be decreed on 24-4-1973. The Civil Court has noted the argument advanced by the parties and in substance has found that the petitioner was unauthorized dispossessed within six months preceding the date of institution of the suit. The Civil Court has recorded the finding that the petitioner was dispossessed on 5-8-1970 and the suit was filed on 3-12-1970. The landlord being dissatisfied, carried the matter in revision against the decree of possession referred to above by way of Civil Revision Application No. 334 of 1973. That revision application was rejected by this Court on 8-4-1974 maintaining the decree for possession passed by the Trial Court in favour of the petitioner. Obviously, as the said decree was u/s 6 of the Specific Relief Act, the landlord then instituted substantive suit for possession on the basis of title being Special Civil Suit No. 161 of 1974. According to the respondents-landlords, the possession obtained by the petitioner in execution of the decree in Suit No. 380 of 1970 was improper. In the suit filed by the respondents landlords, the petitioner has filed written statement. In the written statement the petitioner has contended that he was cultivating the suit land in the capacity as tenant and that he has become deemed purchaser by operation of law. The specific plea taken in the written statement is that the surrender deed has not been acted upon between the parties and notwithstanding the surrender, the petitioner continued to lawfully cultivate the suit land as a tenant. At this stage, it is relevant to note that no specific plea has been taken in the written statement that the surrender deed or the order passed by the Mamlatdar permitting the surrender is illegal, inoperative or nullity as such. It is necessary to mention this fact because one of the argument advanced before this Court is that the order passed by the Mamlatdar permitting surrender is nullity. In view of the stand taken in the written statement the Civil Court framed the following two issues :

"1) Whether the petitioner is tenant of the suit land?

2) Whether the petitioner has become deemed purchaser of the suit land?" As the aforesaid two issues could be exclusively tried by the Tenancy Court, the Civil Judge made reference to the Tenancy authority by virtue of section 85A of the Tenancy Act. Before the Tenancy authority, petitioner did not adduce any oral evidence at all. However, after recording of evidence of respondents-landlords was over, the petitioner tendered certain documents in the shape of revenue receipts, money orders and letters, to which the respondents-landlords objected. In spite of that objection, the first authority allowed the documents to be produced on record, without permitting exhibition of the said documents as such. The Tahsildar thereafter, on the basis of material on record, by Judgment and order dated 30-6-1979, answered the two issues referred for its consideration against the petitioner. The Tahsildar essentially held that the surrender deed having been accepted by the Mamlatdar after recording of the statement of the petitioner, the relationship of landlord and tenant between the parties stood determined on possession of the suit land being made over to the respondents-landlords. Besides, the Tahsildar has noted that after possession of the suit land

was made over to the respondents-landlords, mutation entry has been immediately recorded being No. 3557 in the year 1956-57. Accordingly, the Tahsildar found that the petitioner was not cultivating the suit land in the capacity as tenant on the Tiller's day and cannot be held to have become deemed purchaser. The petitioner carried the matter in Appeal before the Sub Divisional Officer in Tenancy Appeal No. 44 of 1979. The Appellate Authority on the other hand by Judgment and order dated 31-8-1985 accepted the version of the petitioner. The Appellate authority essentially referred to three circumstances. The first is that, the landlord was staying at Baroda at the relevant time in 1956 and thereafter. Secondly the letters, money orders and Land revenue receipts produced on record would clearly show that the petitioner was cultivating the suit land in the capacity as tenant in spite of the surrender. Besides, the Appellate Court found that, in the earlier Civil Suit between the parties u/s 6 of the Specific Relief Act, the Court has clearly recorded that the surrender has not been acted upon and that tenant was not dispossessed on 29-6-1956 but continued to remain in possession till he was dispossessed on 5-8-1970. Accordingly, the Appellate Authority proceeded to hold that the petitioner was lawfully in cultivation of the suit land on the Tiller's day and therefore, had become deemed tenant and consequently became deemed purchaser thereof. Against this decision, the respondents landlords carried the matter in revision before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal by the impugned Judgment and order has however, reversed the finding and the conclusion reached by the Appellate authority and, instead, restored the view taken by the first authority, to answer the above said two issues against the petitioner. The Tribunal has considered the matter in the following perspective. It has found that, in view of the surrender deed executed between the parties and the possession having been made over to the landlord on 29-6-1956, pursuant to order passed by the Mamlatdar, the relationship between the parties as landlord and tenant was lawfully determined. It has further noted that co-tenant Krishana Babu Pawar has submitted to the surrender. Besides, no case of fresh lease in favour of the petitioner has been either pleaded or proved by the petitioner after the surrender of land on 29-6-1956. It is also noted by the Tribunal that, the fact that the petitioner made application for restoration of possession u/s 32-(IB) of the Act before the Tenancy authority presupposes that he conceded the position that he lost possession after 15-6-1956 and before 1-4-1957. The Tribunal has further held that the petitioner did not step into the witness box to prove the fact, as is sought to be projected that in spite of the surrender deed he continued to remain in lawful possession of the suit land till dispossession on 5-8-1970 nor examined any witness to support that fact; whereas, the Power of attorney of the petitioner gave application in writing that no evidence of the petitioner was necessary. This circumstance has also been held against the petitioner by the Tribunal. In substance, the Tribunal has found that the petitioner has not adduced any legal evidence to support his plea that he continued to occupy the suit land in spite of the surrender. The Tribunal has also noted that the so called documents, namely, letters, money

orders and land revenue receipts were of no avail to the petitioner because the same have not been proved in evidence. Moreover, the petitioner has not put the said documents to the witness examined on behalf of the respondents landlords but brought it on record after recording of evidence was closed. In other words, it is held that the said documents were inadmissible and cannot be looked into, to decide the point in issue. The Tribunal has also noted that changes were made in the number of the suit land during the consolidation scheme and that fact was not brought to the notice of the Civil Court, which decreed the suit for possession in favour of the petitioner. Besides, the Tribunal has recorded that the decree of possession passed by the Civil Court in proceeding u/s 6 of the Specific Relief Act cannot be the basis for accepting the claim of the petitioner which is required to be answered by the Tenancy authority independently on its own merit. It has noted that while adjudicating claim u/s 6 of the Specific Relief Act for the relief of possession the scope of enquiry is very limited and the Court is only required to find out as to Whether the plaintiff has been unauthorizedly dispossessed within six months preceding the date of the institution of the suit and nothing more. The Tribunal has also considered the 7/12 extracts on record relating to the suit land which clearly indicates that the respondents landlords were in possession and cultivating the suit land since 1956-57 to 1973-74 and during this period the name of the petitioner has not been entered in the record in any capacity. The Tribunal thereafter proceeded to deal with the approach adopted by the Appellate authority in answering the issue in favour of the petitioner. It has found that the Appellate authority jumped to the conclusion that the petitioner is a deemed purchaser essentially on the basis of the finding of the Civil Court in an enquiry u/s 6 of the Specific Relief Act for possession, although that finding will not be material for deciding the issue to be decided by the Tenancy authorities. The Tribunal has then observed that the reason which has weighed with the Appellate authority that the respondents landlords were staying at Baroda at the relevant time was also without any substance. The Tribunal then observed that the Appellate authority could not have given importance to the documents produced by the petitioner as they have not been proved in evidence. Moreover, the Tribunal while adverting to the opinion expressed by the Appellate authority has found that the letters relied upon by the petitioner would only show that the petitioner and landlords had some understanding and even if the same were to be held as admissible in evidence, it would not establish the factum that the petitioner was in possession of the suit land in the capacity as tenant thereof. Even with regard to the revenue receipts the Tribunal has faulted the approach of the Appellate authority by observing that the revenue receipts by themselves do not show that the petitioner was in possession of the suit land as tenant or that the said amount was paid by him in the capacity as tenant. Taking over all view of the matter, the Tribunal found that the approach of the Appellate authority was manifestly wrong and for that reason preferred to affirm the opinion expressed by the first authority with regard to the two issues against the petitioner. Accordingly, the Tribunal allowed the revision preferred by the respondents landlords by the impugned Judgment and order.

3. This decision has been taken exception by the petitioner before this Court. According to the petitioner, the Tribunal has exceeded its jurisdiction u/s 76 of the Act in dwelling upon matters of fact and reappreciating the evidence on record. The learned counsel has relied on the decision of the Apex Court in Maruti Bala Raut Vs. Dashrath Babu Wathare and Others, in Maruti Bala Raut's case to submit that such a decision cannot be sustained. It is next argued that the finding of fact recorded by the Civil Court in the suit for possession u/s 6 of the Specific Relief Act that the surrender has not been acted upon by the parties and the petitioner has been dispossessed on 5-8-1970 would not only bind the parties inter se but also the Tenancy authorities. It is submitted that, in the wake of that finding, it necessarily follows that the petitioner was in lawful cultivation of the suit land on 1-4-1957 and therefore, will have to be treated as deemed tenant by operation of law and consequently deemed purchaser. The learned counsel next submits that the surrender permitted by the Mamlatdar is invalid. It is argued that the Mamlatdar has not recorded in the order that he has explained the position and the consequences thereof or elicited information regarding the voluntariness of the petitioner to surrender. Moreover, Mamlatdar has not made any endorsement on the surrender deed itself. Besides, Mamlatdar has not considered the fact mentioned in the surrender deed which mentions that the possession is already handed over on the date of execution of the surrender deed. The learned counsel has placed reliance on the ruling reported in Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, to contend that, in such situation, the surrender would be invalid and nullity. The learned counsel contends that, if that contention was to be accepted, then it necessarily follows that the petitioner continuously remained in lawful cultivation of the suit land as were on the Tiller's day i.e. 1-4-1957 surrender deed and possession receipt dated 29-6-1956 notwithstanding. In which case the petitioner would become deemed tenant by operation of law and therefore, deemed purchaser. The learned counsel further contends that the Tribunal has completely misdirected itself in holding that the document produced by the petitioner in the shape of revenue receipts, letters and money orders were inadmissible. According to him, those documents were already proved in the suit between the parties and it was not necessary to prove the said documents afresh in the present proceeding. It is also contended that the Mamlatdar has not kept in mind that an application was preferred which is in Marathi, clearly records that the landlord be called for examination with reference to the above document and no orders have been passed on that application. In this view of the matter, it is submitted that the order of the Tribunal cannot be sustained and the order passed by the Appellate authority be restored. On the other hand, the counsel for the respondents landlords submits that the above arguments are devoid of merits. It is also argued that the plea now taken before this Court about validity of the surrender is being raised for the first time and in fact, such a plea was not taken in the written statement as filed before the Trial Court from which the present proceeding emanate. It is also argued that the argument now made before this Court that no order has been passed on the application preferred by

the petitioner tenant to examine the landlord, was not made either before the Appellate Court or for that matter in the memo of writ petition but is raised across the bar, which has taken the respondents by surprise. In so far as argument regarding finding of fact recorded by the Civil Court u/s 6 suit, it is contended that the finding returned therein is only for the limited purpose as the scope of that proceeding was to find out whether the petitioner has been unauthorizedly dispossessed during the preceding six months or not and nothing more. No other finding recorded would bind the parties, as would be evident from the plain language of sub-section 4 of section 6 of the Specific Relief Act. Besides, reliance is placed on the decision of the Apex Court reported in *M.C. Chockalingam and Others Vs. V. Manickavasagam and Others*, , in particular, para 13 thereof as well as *Chhadek Karikar Vs. Sayad Ali Kaviraj and Others*, , to buttress the above proposition. In so far as the conclusion reached by the Tribunal that the documents produced by the petitioner were inadmissible, the learned counsel for the respondents contends that no fault can be found even with that opinion expressed by the Tribunal. For, the tenancy proceeding commenced pursuant to the reference made by the Civil Court are independent and substantive proceeding in which both the parties are obliged not only to plead but prove their respective stand. The learned counsel for the respondents submits that there is no substance in this writ petition and the same deserves to be dismissed.

4. Having considered the rival submissions, I shall first deal with the argument that the Tribunal has exceeded the jurisdiction vested in it u/s 76 of the Act. On going through the record and the Judgment of the Courts below, to my mind, the Tribunal has not indulged in reappreciating the evidence as such, as is sought to be contended. However, what the Tribunal has done is that, it has made reference to or noticed the relevant materials on record to reassure itself that from the established facts on record, the conclusions reached by the Appellate authority were wholly misdirected and manifestly wrong. Each of the reason as has weighed with the Appellate authority has been carefully considered by the Tribunal and found to be manifestly wrong. To put it differently, the Tribunal has opined that the approach of the Appellate authority was inappropriate. If that is the view expressed by the Tribunal, then, obviously, it is within its jurisdiction u/s 76 of the Act to remedy the mistake committed by the subordinate authority. The Tribunal has accordingly reversed the finding and conclusion reached by the Appellate authority being unsubstantiated by the record of the case and, therefore, preferred to affirm the opinion recorded by the first authority. So understood, the dictum in *Maruti Bala Raut's* case would be inapposite. Accordingly, no fault can be found with the conclusion reached by the Tribunal for having interfered in exercise of its Revisional jurisdiction having regard to the facts and circumstances of the present case.

5. That takes me to the main argument canvassed on behalf of the petitioners that the finding recorded by the Civil Court in a suit for possession u/s 6 of the Specific Relief Act will not only bind the parties but also the Tenancy authorities.

There can be no dispute that the finding relevant to decide the said proceeding and as recorded by the Civil Court for the purpose of section 6 of the Specific Relief Act will bind the parties inter se. In other words, findings on issues unrelated to section 6 suit, even if adverted to in the said proceeding, can be of no avail. This legal position is reinforced by the purport of Sub section (4) of section-6 of the Specific Relief Act itself. Sub section (4) provides that : "Nothing in that section shall bar any person from suing to establish his title to such property and to recover possession thereof. The decision of the Apex Court in the case of M.C. Chocklingam's (supra) is apposite on this aspect. In Para 13 of the said decision the Apex Court has observed as follows :

"All that section 6 (new) of the Specific Relief Act provides is that a person, even if he is a landlord, cannot take the law into his own hands and forcibly evict a tenant after expiry of the lease. This section has relevance only to the wrongful act of person, even if it be by the landlords in forcibly recovering possession of the property without recourse to law. Section 6 frowns upon forcible dispossession without recourse to law but does not at the same time declare that the possession of the evicted person is a lawful possession."

(emphasis supplied).

From these observations, it follows that the finding recorded by the Civil Court in section 6 suit will have to be understood limited to the context of proceeding u/s 6 of the Act. No more and no less. Similar is the decision of the Calcutta High Court in Chhadek Karikar's case (supra). It is observed thus :

"Having regard to the summary character of the proceedings and the fact that in the very section itself it is stated that nothing stated therein should bar any person from suing to establish his title and recovering possession even if he fails to recover possession in the said proceedings, it is evident that the Legislature did not intend to give the proceedings the character of finality which is essential to invest the decision with a character which will make it operative as *res judicata*".

Understood thus, it is preposterous to contend that every finding recorded by the Civil Court in a suit u/s 6 of the Specific Relief Act would bind the parties as well as the Tenancy authorities. On the other hand, any discussion by the Civil Court which is beyond the scope of suit u/s 6 of the Specific Relief Act, such observation or for that matter finding, if any, would be of no avail and cannot bind the parties in a substantive proceeding to establish title to said property and to recover possession thereof as is the case at hand, where the respondents landlord have chosen to file substantive suit for possession on the basis of title.

6. Be that as it may, in so far as the Tenancy authorities are concerned, in the present case, so long as the order passed by the Mamlatdar in exercise of power u/s 15 of the Act in permitting the surrender was to prevail, atleast that decision would bind the Tenancy authorities for deciding the issue that was referred to it. It is not open to the Tenancy authorities to proceed on the premise or

assumption that the parties have not acted upon the said surrender. The fact as to whether the parties have acted upon that surrender can be exclusively answered by the Civil Court as has been enunciated in the decision of our High Court in Dada Savla Yadav vs. Vasant Anant Sultane reported in 1960 NLJ 551 = 1960 LXII BLR 471. This Court has held that the jurisdiction of the Civil Court to decide such a question cannot be ousted by virtue of section 85 of the Act; for section 85 is not applicable if the Civil Court was to answer the issue as to whether the surrender was nominal and never intended to be acted upon. In other words, so long as the order of surrender was operating and has not been set aside or declared to be null and void by a Court of competent jurisdiction, the tenancy authority would be obviously bound by the earlier surrender order which, undisputedly, is between the same parties. Even for this reason, the Tenancy authority could not have travelled beyond the earlier surrender order.

7. In the circumstances, I find no substance in the argument of Mr. Karandikar that the finding of fact recorded by the Civil Court in suit u/s 6 of the Specific Relief Act that the petitioner has been dispossessed on 5-8-1970 can be the basis to presume that the petitioner was in lawful possession and was lawfully cultivating the suit land on 1-4-1957. That fact stands answered at least by two clinching circumstances. In the present case, the surrender deed and the possession receipt dated 29-6-1956 coupled with the fact that the petitioner later on filed application u/s 32(1B) of the Tenancy Act, presupposes that he has been dispossessed between 15-6-1955 and 1-4-1957. Besides, it is matter of record that the petitioner has not adduced any oral evidence in the present proceeding and only attempted to produce some documents after recording of the evidence of the respondents was completed. The efficacy of those documents will be considered a little later. So understood, there is no clinching evidence on record to establish the position that the petitioner was lawfully cultivating the suit land on 1-4-1957 as such. The Tribunal has adverted to various other circumstances as referred to above, to find that, it was not possible to sustain the view of the Appellate Authority in the fact situation of the present case. Understood thus, no fault can be found with the Tribunal for having reversed the decision of the Appellate Authority and also for having observed that the finding recorded by the Civil Court will have to be given limited effect to the extent that the petitioner has been dispossessed on 5-8-1970 and nothing more.

8. Having realized the difficulty in assailing the soundness of the decision of the Tribunal, an attempt has been made, for the first time, before this Court, to challenge the validity of the earlier surrender order itself. To my mind, there is substance in the objection taken by the respondents that such a plea has not been specifically taken by the petitioner in the written statement. Moreover, no such argument was canvassed before any authority below. The validity of surrender is undoubtedly a mixed question of fact and law. Since that plea has not been taken at the earliest stage, the petitioner cannot be permitted to canvass this argument. Assuming that the petitioner was entitled to take up this plea on the assumption that it is jurisdictional issue, even then there is no

substance in this argument. Strong reliance was placed on the decision of the Apex Court in Ramchandra Keshav Adke's case. In that case in Para 12, Apex Court has observed thus :

"It will be seen from a combined reading of these provisions that a surrender of tenancy by tenant in order to be valid and effective must fulfil these requirements, (1) it must be in writing (2) it must be verified before the Mamlatdar. (3) While making such verification the Mamlatdar must satisfy himself in regard to two things, namely, (a) that the tenant understands the nature and consequences of the surrender and (b) that it is voluntary. (4) The Mamlatdar must endorse his findings as to such satisfaction upon the document of surrender".

In this context, it is submitted that the Mamlatdar has failed to record that he had explained the position and consequences and elicited information from the petitioner tenant regarding voluntariness of the surrender. Besides, Mamlatdar has failed to make endorsement on the surrender application itself. It is also contended that the Mamlatdar's order does not consider the fact that the surrender order mentions that the possession has already been made over to the landlord on 10-10-1955. I find no substance in any of these contentions. The learned counsel, to my mind, has misread the decision of the Apex Court.

Whereas, in Para 22, the Apex Court has clearly observed that the substance of the requirement is as to the recording of satisfaction of the authority in the manner prescribed by the rule. On proper understanding of the observations made in Para 22 of the said decision, to my mind, in a given case where there is substantial compliance of the requirement of the Act and the rule, as can be culled out in Para 12 of the same decision, then some technical lapse here or there cannot be the basis to invalidate that surrender. Para 22 of the said decision reads thus :

"The question of inherent jurisdiction apart, all that the Circle Officer did in this case was that he recorded the statements of the tenant and landlord and made the order which we have reproduced in full earlier in this judgment. Although in this order he referred to the tenant's statement "that he does not want to cultivate the same any longer and so he is surrendering the possession willingly along with crops and also the right as pro-tenant", he did not say a word that he was satisfied that the tenant had voluntarily made the surrender after understanding its nature and consequences, much less did he endorse his satisfaction on the tenant's deed of surrender as required by Rule-2A. Verification of the surrender implies that the authority was satisfied as to the statutory requisites after due enquiry. Such satisfaction of the authority was the essence of the whole thing. In other words, this requirement as to the recording of its satisfaction by the authority in the manner prescribed by the Rule, was the substance of the matter and not an empty formality. In the absence of the requisite endorsement, therefore, it cannot be said that there has been even a substantial compliance with the statutory requirements". (emphasis supplied)

9. In the present case, however, it is seen that the surrender deed is signed by both the tenants. Surrender deed is then placed before Mamlatdar along with application filed by the landlady. The tenants are examined by the Mamlatdar and their statement has been recorded as mentioned above. It is only thereafter, the Mamlatdar proceeded to pass an order, which is already reproduced in its entirety herein before. To my mind, therefore, all the requirements of the Act and the rules have been substantially complied with. Inasmuch as, there is surrender deed in writing. Mamlatdar has verified that deed. While making such verification Mamlatdar has satisfied himself in regard to (a) tenant has understood the nature and consequences of the surrender and that (b) it is voluntarily. Mamlatdar has endorsed that finding, not on the application but in the order itself which would become integral part of the application and surrender deed as it has been passed thereon. The order would also indicate that the Mamlatdar has also endorsed his finding, about his satisfaction. Taking over all view of the matter, it is not possible to accept the contention now advanced before this Court that the surrender is invalid in any manner on this account.

10. That takes me to the other contention raised on behalf of the petitioner that it was not necessary for the petitioner to prove the subject documents in the present proceeding, I find no substance even in this contention. I have already held that the scope of finding recorded in a suit u/s 6 is very case which was only to lend affirmation to the view taken by the First Authority.

11. An attempt was made on behalf of the petitioner to contend that the proceedings before the Tenancy authorities have vitiated because the petitioner's application for calling the respondents-landlords for examination remained undecided. There is no substance even in this submission. To my mind, this is an argument of desperation. No such plea was taken before the lower authorities nor has been specifically taken in the memo of the writ petition. The petitioner cannot be allowed to raise this plea across the bar and take the other side by surprise. Such a course is not open and cannot be permitted in exercise of writ jurisdiction under Article 227 of the Constitution of India.

12. Accordingly, I find no substance in this petition. The same is dismissed with costs.

13. At this stage, Mr. Karandikar submits that it may be clarified that issue as to whether surrender is acted upon or not has not been conclusively decided by this Court. It is not necessary for me to make any observations in that regard. I have already indicated limited. Whereas, the present proceedings are substantive proceedings and the parties were obliged to prove their respective claim independently. Admittedly, no application has been made that the evidence as adduced in the suit be treated as part of this proceeding. No such attempt was made by the petitioners. Whereas, the respondents landlords have adduced oral as well as documentary evidence. After recording of the evidence of the respondents/landlords was complete, in fact, an application in writing was submitted by the petitioner that it was not necessary to examine the petitioner.

Thereafter, subject documents were attempted to be produced on record to which the respondents had rightly objected. It is nobody's case that the said documents are proved or be treated to have been proved in evidence. If the documents are not proved in evidence, the same would be of no avail and cannot be looked into. No fault can be found with the opinion of the Tribunal in this regard. Be that as it may, the Tribunal has examined the efficacy of each of the document and thereafter has found that the same were of no avail to establish the fact that the petitioner was in lawful cultivation of the suit land on 1-4-1957 in the capacity as tenant. The Tribunal cannot be faulted with the said opinion rendered in the fact situation of the present elaborate reasons as to the nature of evidence that was before the Tenancy authority from which the present petition emanates and the obligation of the tenancy authority to consider that evidence with reference to the points in issue which are under reference.