

(1996) 02 BOM CK 0002

In the Bombay High Court

Case No : Writ Petition No. 1520 of 1986

Arun Musale and Another

APPELLANT

Vs

Sambha Soma Gond (Deleted) and Others

RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 100(12A), 102, 49B
Mamlatdars Court Act, 1906 — Section 5(3), 7

Citation : (1996) 5 BomCR 600 : (1996) 2 MhLj 80

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : S.R. Deshpande, for the Appellant; J.N. Chandurkar, for the respondents 1A to 11 and P.D. Kothari, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—The moot question in the present writ petition filed under Articles 226 and 227 of the Constitution of India is whether the application filed u/s 49-B of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (for short "the Tenancy Act") by the ousted tenant for transfer of possession and ownership right is required to be filed within the limitation of six months as prescribed by sub-section (3) of section 5 of the Limitation Act by virtue of sections 100(12A), 101 and 102 of the Tenancy Act. The answer would obviously depend upon the construction of sections 49-B, 100 (12A), 101 and 102 of the Tenancy Act and the provisions of the Mamlatdars Courts Act, 1906.

2. Facts first, and there is no dispute that the primary requirements for transfer of possession and ownership rights to Sambha son of Soma Gond (since deceased and now represented by his legal representatives respondent Nos. 1-A to 1-I, and hereinafter referred to as "the tenant") were satisfied u/s 49-B. The tenant was in possession of Survey No. 55/2 admeasuring 9 acres 31 gunthas, situated at Mouza Selu (for short "the disputed land"), on the appointed day i.e.

20th August 1958, and was dispossessed prior to 1-4-1961 and that on 31-7-1969 the landlord Tukaram Bapuji Patil was in possession. Tukaram Bapuji Patil - the original landlord, admittedly sold the disputed land to respondent No. 3 Mahadeo Chandrabhan Wankhede and he later on transferred the said land to the present petitioners. The controversy is that though the primary conditions for transfer of possession and ownership of disputed land to the ousted tenant u/s 49-B of the Tenancy Act were satisfied, the application for enforcement of rights on fulfilment of the primary conditions u/s 49-B of the Tenancy Act was required to be made within six months from the date of coming into force of section 49-B of the Tenancy Act, i.e. 17-10-1969, by virtue of the provisions contained in sections 100 (12A), 101 and 102 of the Tenancy Act and section 5(3) of the Mamlatdars Courts Act, 1906, and since the application was made by the tenant on 8-3-1983, it was hopelessly barred by time and, therefore, such application could not have been allowed and the orders passed by the authorities below are liable to be set aside.

3. It was in the year 1958 that the Tenancy Act came into force in the Vidarbha region of the State of Maharashtra and it was brought in the interest of the tenants, agricultural labourers, artisans and persons carrying on allied pursuits in the Vidarbha region of the State of Maharashtra. The object was to bring the status and rights of the tenants in the area as far as possible in line with those prevailing in certain other parts of the State. Section 36 of the Tenancy Act provides the procedure for taking possession, and a tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house or site used for any allied pursuit under any of the provisions of the Act or as a result of eviction in contravention of sub-section (2) may apply to the Tahsildar in writing, claiming such possession. Section 36 further provides that such an application has to be made within a period of three years from the date on which the right to obtain possession of the land, dwelling house or site is deemed to have accrued to the tenant, agricultural labourer or artisans, as the case may be. Upon such application being made by the tenant, an agricultural labourer or artisans, the Tahsildar after holding an inquiry may pass, an appropriate order, which the circumstances so demand. Obviously this provision of section 36 was enacted by the Legislature to protect the rights of the tenants or agricultural labourers or artisans to obtain possession of any land or dwelling house or site used for any allied pursuit under any of the provisions of the Act if he has been dispossessed in contravention of sub-section (2), and therefore, is an enactment for the benefit of the class comprising of tenants, agricultural labourers or artisans, who have been unauthorisedly dispossessed.

4. It came to the notice of the Government subsequently that number of tenants under the Vidarbha region of the State of Maharashtra failed to acquire ownership rights in the lands held by them and on account of their being dispossessed from the land otherwise than in the manner laid down in the relevant tenancy law and, therefore, it thought expedient to amend the tenancy laws in force in the region and consequently by the Tenancy and Agricultural

Lands Laws (Amendment) Act, 1969, a new section 49-B after section 49-A was sought to be inserted. The Tenancy and Agricultural Lands Laws (Amendment) Act, 1969 was brought into force and consequently with effect from 17-10-1969, section 49-B was brought in the statute Book of the Tenancy Act.

5. Section 49-B of the Tenancy Act reads as under:-

"49-B. Where a tenant referred to in section 46 or section 49-A was in possession on the appointed day but is not in possession of the land held by him on the relevant date on account of his being dispossessed before that date, otherwise than in the manner and by an order of the Tahsildar as provided in section 36, and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July 1969 and is not put to a non-agricultural use on or before the last mentioned date then, the Tahsildar shall, notwithstanding anything contained in section 36, either suo motu or on the application of the tenant, hold an inquiry, and direct that such land shall be taken from the possession of the landlord, or as the case may be, his successor-in-interest, and shall be restored to the tenant, and the provisions of sections 46 to 49-A shall, in so far as they may be applicable apply thereto, as if the tenant had held the land on the relevant date, subject to the modification and the ownership of land shall stand transferred to, and vest in, the tenant, and such tenant shall be deemed to be the full owner of the land, on the date on which the land is restored to him:

Provided that, the tenant, shall be entitled to restoration of the land under this section only if he undertakes to cultivate the land personally, and of so much thereof as together with other land held by him as owner or tenant, shall not exceed three family holdings.

Explanation 1:- In this section, the expression "relevant date" means in relation to a tenant referred to in section 46, the 1st day of April 1961, and in relation to a tenant referred to in section 49A, the 1st day of April 1963.

Explanation 2:- In this section, "successor-in-interest" means a person who acquired the interest by testamentary disposition or devolution on death."

6. Analysis of section 49-B would reveal that fresh opportunity was given to the ousted tenant to seek transfer of possession and ownership right over the lands which were in their possession on the appointed day, but they were not in possession of the lands on the relevant date on account of their being dispossessed before otherwise than in the manner and by an order of the Tahsildar as provided in section 36 and such lands were in possession of the landlord or his successor-in-interest on the 31st day of July 1969. The conditions pre-requisite for seeking transfer of possession and ownership right over the lands held by the ousted tenants were that such tenants must have been in possession of such lands on the appointed day. i.e 20th August 1958 and such tenants were not in possession of the lands on the relevant date i.e. 1-4-1961, and that such tenants have been dispossessed not in accordance with law and the landlords or their successor-in-interest continued to be in possession on

31-7-1969 and the lands continued to be the agricultural lands and not converted for non-agricultural purpose or put to non-agricultural use. Section 49-B provides that the ousted tenant on fulfilment of the aforesaid condition could make an application before the Tahsildar, seeking transfer of possession and ownership right of the land and upon such application being made, the Tahsildar shall hold inquiry and direct that such lands shall be taken from the possession of the landlord or his successor-in-interest, as the case may be, and restore to the tenant. Similarly, on fulfilment of the pre-requisite conditions, the Tahsildar may suo motu also hold an inquiry and direct the landlord or the successor-in-interest, as the case may be, to restore possession to the tenant, who has been unauthorisedly ousted and may order restoration of possession to the tenant.

7. Shri S.R. Deshpande, the learned counsel for the petitioners, submits that simultaneous to the insertion of section 49-B of the Tenancy Act, section 100 of the Tenancy Act was also amended and sub-section (12-A) relating to an inquiry and restoration of possession of the land u/s 49-B, was inserted in section 100 dealing with the duties of the Tahsildar. According to him, while holding the inquiry for transfer of possession and ownership of right u/s 49-B of the Tenancy Act, the Tahsildar acts as a Mamlatdars"under the Mamlatdars Courts Act, 1906, and the application presented u/s 49-B of the Tenancy Act has to be treated as plaint presented u/s 7 of the Mamlatdars Courts Act, 1906, and the limitation prescribed, for presentation of plaint under the Mamlatdars Courts Act, 1906 would be applicable since no express provision otherwise is made u/s 49-B of the Tenancy Act. In support of his contention, Shri S.R. Deshpande relied upon the Full bench decision of this Court in Panpoi Dharmal Sansthan Dhotarkheda v. Bhagwat Maroti Dhakulkar and others¹ 1989 Mh.L.J. 710. Responding to the contention raised by the learned counsel for the petitioner, on the other hand, Shri J.N. Chandurkar the learned counsel for the respondents, would submit that the contention of Shri Desphande is devoid of any merit since, according to him, the provision of section 49-B of the Tenancy Act was enacted to provide benefits to the tenants, who could not avail of the opportunity of restoration of possession within the time u/s 36 and, therefore, the Law of Limitation should not be imported while considering the application u/s 49-B of the Tenancy Act. Shri Chandurkar would submit that section 49-B of the Tenancy Act is a beneficent provision and has to be liberally construed and in a manner which attains the objective and not frustrates the parties for which it has been enacted and thus, according to him, the limitation prescribed under sub-section (3) of section 5 of the Mamlatdars Courts Act, 1906, should not be imported in section 49-B of the Tenancy Act. To buttress his argument, Shri Chandurkar relied upon the Division Bench decision of this Court in Pandharinath Sakharam Chavan v. Bhagwan Ramu Kate² 1979 Mh.L.J. 337 and the judgment of the apex Court in Dhondiram v. Ramchandra³ 1994 M.L.J. 1284. Shri Chandurkar also sought to distinguish the Full Bench decision of this Court in Panpoi Bharmal Sansthan"s case (cited supra) by submitting that the Full Bench was considering the question of the application filed u/s 100(2) of the Tenancy Act, vis-a-vis the limitation prescribed in section

5(3) of the Mamlatdars Courts Act. But, presently the question relates to limitation of making an application u/s 49-B of the Tenancy Act and since u/s 49-B of the Tenancy Act, powers can be exercised by the Tahsildar suo motu as well, the judgment of the Full Bench in Panpoi Dharmal Sansthan" case (cited supra) has no application and the limitation prescribed under sub-section (3) of section 5 of the Mamlatdars Courts Act, 1906, should not be allowed to govern the application u/s 49-B of the Tenancy Act.

8. After referring to section 49-B of the Tenancy Act above, it would be beneficial to refer to relevant sub-section (12-A) of section 100, sections 101 and 102 of the Tenancy Act.

9. Relevant portion of sub-section (12-A) of section 100 of the Tenancy Act reads under:

"100. For the purpose of this Act, the following shall be the duties and function to be performed by the Tahsildar:-

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(12A) to hold an inquiry and restore possession of land u/s 49-B;

(13)

(14)

(15)

(16)

(17)

(18)

(19)

Section 101 of the Tenancy Act read as under:-

"101. Save as expressly provided by or under this Act, all inquiries and other proceeding before the Tahsildar or Tribunal shall be commenced by an application which shall contain the following particulars :-

(a) the name, age, profession and place of residence of the applicant and the opponent;

(b) a short description and situation of the property of which possession is sought, or the amount of the claim, as the case may be;

(c) the circumstances out of which the cause of action arose;

(d) a list of the applicant's documents, if any, and of his witnesses, and whether such witnesses are to be summoned to attend or whether the applicant will produce them on the day of the hearing;

*e) such other particulars as may be prescribed."

Section 102 of the Tenancy Act reads as under:

"102. In all inquiries and proceedings commenced on the presentation of applications u/s 101, the Tahsildar or Tribunal shall exercise the same powers as the Mamlatdars' courts under the Mamlatdars' Courts Act, 1906, and shall save as provided in section 36 follow the provision of the said Act, as if the Tahsildar or the Tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act. In regard to matters which are not provided for in the said Act, the Tahsildar or the Tribunal shall follow such procedure as may be prescribed by the State Government. Every decision of the Tahsildar or the Tribunal shall be recorded in the form of an order which shall state the reasons for such decision.

10. It may be noted that section 100 of the Tenancy Act deals with duties of Tahsildar and it is also a duty of the Tahsildar to hold an inquiry and restore possession of the land u/s 49-B as is provided in sub-section (12-A) of section 100, which was brought in the statute book by Maharashtra Act No. 49 of 1969. Section 101 makes the provision that except as provided by or under the Tenancy Act, all inquiries and proceedings before Tahsildar or for that matter the Tribunal shall be initiated by an application containing the particulars mentioned in section 101(a), (b), (c), (d) and (e). Section 102 of the Tenancy Act deals with procedure and provides that in all inquiries and proceedings, the Tahsildar or Tribunal shall exercise the same powers as the Mamlatdar's Court under the Mamlatdars' Courts Act, 1906, and shall except as provided in section 36 follow the provisions of the said Act as if the Tahsildar was a Mamlatdar's Court, and the application presented to the Tahsildar was a plaint u/s 7 of the said Act. In regard to matters which are not provided in the Mamlatdars' Courts Act, 1906, the Tahsildar or the Tribunal shall follow the procedure as may be prescribed by

the State Government. It is further provided in section 102 of the Tenancy Act that every decision of the Tahsildar or the Tribunal shall be recorded in the form of an order, stating reasons therefor. Apparently, therefore, the application which is made by the tenant for restoration of possession and conferment of ownership right u/s 49-B of the Tenancy Act has to be in conformity as a plaint presented to a Mamlatdar u/s 7 of the Mamlatdars' Courts Act, 1906. There is no special provision or any exceptional provision provided in section 49-B of the Tenancy Act excluding the applicability of the procedure contemplated under the Mamlatdars' Courts Act, 1906 to the Court of Mamlatdar in a proceeding initiated on an application u/s 49-B of the Tenancy Act. Though section 36 of the Tenancy Act provides that an application for restoration of possession by a tenant has to be made within three years from the date on which the right to obtain possession has accrued to the tenant, significantly no such provision is found in section 49-B of the Tenancy Act and, therefore, by virtue of section 102 of the Tenancy Act, which governs the application filed by the tenant for restoration of possession or conferment of ownership right u/s 49-B, the application made u/s 49-B of the Tenancy Act has to be treated as a plaint u/s 7 of the Mamlatdars' Courts Act, 1906, and as a necessary consequence, limitation prescribed by the Mamlatdars' Courts Act, 1906, has to be made applicable to such application, which is made u/s 49-B of the Tenancy Act by the tenant for restoration of possession and conferment of ownership right, since there is no express provision otherwise under sub-section (12-A) of section 100 of the Tenancy Act. It is true that section 49-B of the Tenancy Act was enacted by the Legislature to accord fresh opportunity to such tenants for restoration of possession, who were tenants and in possession of the land in question on the appointed day, but were not in possession of the land on the relevant date because of unauthorised dispossession by the landlord and such land continued to be in possession of the landlord or his successor-in-interest on or before 31-7-1969 and was not put to any other use except for agricultural purpose, but then such opportunity given to those tenants was required to be exercised if it was to be exercised by way of initiating proceeding u/s 49-B of the Tenancy Act within the time prescribed by the Mamlatdars' Courts Act, 1906, since such application was required to be inquired into, considered, examined and decided by the Tahsildar as Mamlatdar under the Mamlatdars' Courts Act, 1906 and such application presented was to be treated as plaint under the Mamlatdars' Courts Act, 1906, by virtue of section 102 of the Tenancy Act and if that right or opportunity was not exercised by the tenant though fulfilling pre-requisite conditions for restoration of possession within the time prescribed under the Mamlatdars' Courts Act, 1906, remedy to enforce such right would be lost. It may be clarified that though for the tenant making an application u/s 49-B of the Tenancy Act for conferment of ownership right and restoration of possession on fulfilment of primary conditions mentioned in section 49-B of the Tenancy Act, such application is required to be made within the time prescribed by the Mamlatdars Courts Act, 1906, since the Tahsildar by virtue of section 102 acts as if he was a Mamlatdar under the Mamlatdars' Courts Act, 1906, yet no such provision of limitation provided under the

Mamlatdars" Courts Act, 1906, would be applicable, where the Tahsildar proceeds suo motu in exercise of powers conferred u/s 49-B of the Tenancy Act and for exercise of such powers he is required to discharge the duties as provided in sections 100(12-A), 101 and 102 of the Tenancy Act. However, since in the present case, the proceedings commenced on the application made by the tenant u/s 49-B of the Tenancy Act on 8-3-1983, the question that calls for determination in the present case is whether such an application was barred by time.

11. The Full Bench of this Court in Panpoi Sansthan's case (cited supra) seized of the question as to whether limitation of six months as prescribed by sub-section (3) of section 5 of the Mamlatdars" Courts Act, 1906, would govern the application filed u/s 100 of the Tenancy Act, on a reference being made in view of the inconsistent Division Bench judgments of this Court, answered the question by holding thus-

"11. Though section 100 deals with duties and functions to be performed by the Tahsildar, it cannot be forgotten that it deals with power and jurisdiction of the Tahsildar to decide certain matters and the said power is coupled with duty. Section 102 then lays down the procedure to be followed in all inquiries and proceedings commenced on an application filed u/s 101. Statutes of limitation are also regarded as procedural. The object of the statute of limitation is not to create any right but to prescribe the period within which legal proceedings may be instituted for enforcement of rights, which exist under the substantive law. As observed by the Supreme Court in A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others, , it is a piece of adjectival or procedural law and not of substantive law. A similar view has been taken by the Supreme Court in C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others, , wherein it is observed :

"The law of limitation is a procedural law and the provisions existing on the date of the suit apply to it."

Internal evidence is also available in section 102 itself to indicate that the legislature intended that the limitation prescribed by the Mamlatdars" Courts Act should apply to such applications also. The words and expressions -

"and shall save as provided in section 36 follow the provisions of the said Act...."

Clearly indicate that to the proceedings provided by section 36 of the Act limitation prescribed by the Mamlatdars" Courts Act will not apply as section 36 itself provides for a different period of limitation than the one prescribed by the Mamlatdars" Courts Act. If the intention of the Legislature is that limitation prescribed by the Mamlatdars" Courts Act should not apply to the applications u/s 101 of the Act, then the exception qua the proceedings u/s 36 was wholly unnecessary. The deeming fiction created by using the words, as if the Tahsildar is Mamlatdar and application presented was a plaint presented u/s 7 of the Mamlatdars" Courts Act will have to be carried to its logical conclusion. If

Tahsildar is treated as Mamlatdars" Court and application as plaint u/s 7, then limitation prescribed for presentation of plaint must apply to these proceedings also. If the various sub-sections of section 100 are properly analysed with substantive provisions referred to therein, and section 101 of the Tenancy Act, it is quite obvious that in regard to some matters express provisions have been made under the Act. Section 101 of the Act will apply to inquiries and proceedings save as otherwise expressly provided. With regard to proceedings contemplated by section 100(2) of the Act, no express provision has been. Hence, it will be governed by section 102 as if the application is a plaint u/s 7 of the Mamlatdars" Courts Act and Tahsildar is Mamlatdars" Court. Hence limitation prescribed by Mamlatdars" Courts Act must apply to such proceedings."

12. Though the question before the Full Bench was regarding proceedings contemplated by section 100(2) of the Act qua the limitation provided under the Mamlatdars" Courts Act, the ratio of the judgment of the Full Bench is on all fours and fully applicable in the present case relating to proceedings under sub-section (12-A) of section 100 relating to inquiry and restoration of possession u/s 49-B of the Tenancy Act. The Full Bench judgment in Panpoi Sansthan"s case (cited supra) 1989 Mh.L.J. 710 has clearly and in unequivocal terms, held that the limitation prescribed in the Mamlatdars" Courts Act and the applicability of the provisions of the Mamlatdars" Courts Act by virtue of section 102 of the Tenancy Act should apply to the applications which are filed under various sub-sections of section 100 of the Tenancy Act, except where express provision otherwise has been made in the substantive provision referred to therein. It would be seen that while deciding the application for possession u/s 36 of the Tenancy Act, though the Tahsildar discharges his duty under sub-section (12) of section 100, such application would be governed by the limitation provided in section 36 and not by the limitation provided under sub-section (3) of section 5 of the Mamlatdars" Courts Act, 1906, since there is express provision made in the substantive provision of section 36. Similarly, while deciding an application for communication of rent for service or labour into cash rent u/s 14, express provision of limitation has been made in section 14 and, therefore, the express provision made in section 14 shall supersede the general provision contained in sub-section (3) of section 5 of the Mamlatdars" Courts Act. Thus, where-ever in the substantive provision an express period of limitation has been prescribed for enforcement of right for making such application, which is required to be decided and/or determined by the Tahsildar u/s 100 of the Tenancy Act such express provision of limitation in the substantive provision would govern such application, but in the absence of any specific express provision in the substantive provision, the provision of limitation prescribed under sub-section (3) of section 5 of the Mamlatdars" Courts Act, 1906, would govern such application. Admittedly, u/s 49-B of the Tenancy Act, no limitation has been prescribed, meaning thereby, there is no express or specific provision for enforcement of right by the tenant by making application u/s 49-B of the Tenancy Act and, therefore, in view of the decision of the Full bench in Panpoi Sansthan"s case (cited supra), the limitation

prescribed by the Mamlatdars' Courts Act must apply.

13. Shri J.N. Chandurkar, the learned counsel for the respondents, did not dispute before me the correctness of the judgment given by the Full Bench in Panpoi Sansthan's case (cited supra), but submitted that the said case is only limited to the proceedings under sub-section (2) of section 100 of the Tenancy Act and cannot be applied to the proceedings under sub-section (12-A) of section 100 of the Tenancy Act. The distinction sought to be drawn by Shri J.N. Chandurkar is virtually non-existent, inasmuch as the Full Bench was broadly seized of the question as to whether limitation of six months, as prescribed by sub-section (3) of section 5 of the Mamlatdars' Courts Act, 1906, would govern the application filed u/s 100 of the Tenancy Act, though of course the controversy before the Full Bench related to the proceedings u/s 100(2) of the Tenancy Act. The Full Bench observed that the deeming fiction created by section 100(2) of the Tenancy Act, treating the Tahsildar as Mamlatdar and the application presented to the Tahsildar as plaint u/s 7 of the Mamlatdars' Courts Act, has to be carried to its logical conclusion, and consequentially the limitation prescribed for presentation of plaint must apply to the proceedings u/s 100 of the Tenancy Act as well, except otherwise expressly provided in the substantive provision referred to in section 100. With regard to the proceedings contemplated u/s 100(2) of the Tenancy Act, no express provision has been made and, therefore, the Full Bench held that the limitation prescribed by the Mamlatdars' Courts Act, 1906, must apply to the proceedings under sub-section (2) of section 100 of the Tenancy Act. Similarly, no express provision has been made in section 49-B of the Tenancy Act and, therefore, the proceedings covered under sub-section (12-A) of section 100 i.e. the duty of Tahsildar, to hold an inquiry and restore possession of the land u/s 49-B on the application filed by the tenant has to be made within limitation prescribed by the Mamlatdars' Courts Act, 1906. True it is that section 49-B of the Tenancy Act is a beneficent legislation made for the ousted tenant who could not get possession earlier and who fulfil the primary conditions mentioned in section 49, but as observed above, in the light of law laid down by Full Bench in Panpoi Sansthan's case (supra), fresh opportunity of restoration of possession and conferment of ownership right was required to be exercised by such tenant on fulfilment of primary conditions within the limitation prescribed by the Mamlatdars' Courts Act. The reason is that on an application being made to the Tahsildar u/s 49-B of the Tenancy Act, by virtue of section 102 of the Tenancy Act, the Tahsildar would proceed as if he is a Mamlatdar under the Mamlatdars' Courts Act, and since such application would be treated as plaint, the application would be required to be made within limitation prescribed under the Mamlatdars' Courts Act.

14. Strong reliance has been placed by Shri J.N. Chandurkar, the learned counsel for the respondent on the Division Bench Judgment of this Court in Pandharinath's case (cited supra), wherein the Division Bench was seized of rights created by section 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948, which is *pari materia* to section 49-B of the Tenancy Act, wherein

while construing the said provision, the Division Bench held as under:

"22. Thirdly, it not only restores the lost remedy to the tenant of getting back possession through Tahsildar, but also authorises the Tahsildar to take action suo motu to that effect, notwithstanding the provisions of section 29 of the Act. This non obstante clause has two-fold plain implications. In the first place, it makes section 29 inapplicable to the claim of the class of tenants covered under this sub-section and removes the hurdle of limitation from the way of such restoration of the land to them. In the second place, it also consequently wipes out the effect of the inaction of the tenants in not seeking possession within the period of two years prescribed thereunder. This indeed must follow, once section 29 ceases to have any application to them retrospectively. The legislative fiction of the continued subsistence of tenancy adverted to earlier, thus appears to have been based on the non-obstante clause also. The ratio of the cases, relied on by Mr. Abhyankar and Mr. Karandikar would thus not be attracted and tenancy rights therein cannot be said to have been extinguished. Extinction of the rights in the land under these authorities, is supposed to be the result of the failure of the persons entitled to avail of the remedy of restoration of possession within the time prescribed. When any period ceases to be prescribed for such possession on the in application of section 29, question of extinction of the rights involved in the property also cannot arise. The contention of Mr. Abhyankar and Mr. Karandikar, therefore, that tenancy rights stood extinguished on the expiry of the period of two years prescribed u/s 29, and the rights conferred on the said tenant under sub-section (1B) are new rights, is liable to be rejected. Secondly, once the tenancy rights are held to be subsisting in spite of the tenants being out of possession for several years, any question of such tenant not holding tenancy on the date of his death and his heirs being unable to inherit such statutory tenancy rights u/s 40 also cannot arise. The contention of the learned Advocates to that effect also is liable to be over-ruled.:

15. With all emphasis at his command, Shri J.N. Chandurkar would submit that the observations made by the Division Bench that section 32 (1-B) of the Bombay Tenancy and Agricultural Lands Act, 1948, *pari materia* to section 49-B of the present Tenancy Act, removes the hurdle of limitation from the way of the tenant to claim restoration and, therefore, according to him, the Division Bench has in unequivocal terms held that the exercise of right u/s 32(1-B) of the Tenancy Act for restoration of possession and conferment of ownership rights by the tenant on fulfilment of pre-requisite conditions, there was no period prescribed and the hurdle of limitation was not there. What the Division Bench of this Court said in Pandharinath's case (cited *supra*) was that by enactment of section 32(1B) the lost remedy of the tenant of getting back possession has been restored and the non obstante clause occurring in the said section had two implications, viz. (1) that it makes section 29 (in the present case equivalent to section 36) inapplicable to the claim of the class of tenants covered u/s 32(1B) and removes the hurdle of limitation from the way of such restoration of the land to them; and (2) it wipes out the effect of the inaction of the tenants in not

seeking possession within the period of two years prescribed thereunder. Applying the ratio of the Division Bench of this Court in Pandharinath's case (cited supra) it would be seen that by enactment of section 49-B of the Tenancy Act, the Legislature has restored the lost remedy to the ousted tenant on fulfilment of primary conditions mentioned therein of getting back possession through Tahsildar and thus the limitation prescribed u/s 36 of the Tenancy Act for claiming possession was not applicable. Further, consequently it wiped out the effect of the inaction of the tenants and gave fresh opportunity to such tenants to exercise their right for conferment of ownership and restoration of possession u/s 49-B of the Tenancy Act. That right conferred by the Legislature to the ousted tenants for conferment of ownership right and restoration of possession, which they did not avail of earlier, is not a right which can be exercised by the tenants at any time or at their choice. The right which stood extinguished earlier was revived by enacting section 49-B, but then that right has to be exercised within the time prescribed under sub-section (3) of section 5 of the Mamlatdars' Courts Act, 1906, since the Tahsildar while deciding such right has to act as Tahsildar and such an application is treated as a plaint u/s 7 of the Mamlatdars' Courts Act by virtue of section 102 of the Tenancy Act. Of course, section 49-B of the Tenancy Act authorises the Tahsildar to take suo motu action to restore the lost remedy to the tenant of getting back possession but where the tenant exercises such right by making an application, he cannot take advantage of the fact that the Tahsildar could have restored him possession suo motu by invoking his power u/s 49-B of the Tenancy Act. Once an application is made by a tenant u/s 49-B of the Tenancy Act for conferment of ownership right and restoration of possession, as observed above, the Tahsildar is duty bound to discharge his duty, as provided in section 100 of the Tenancy Act by holding an inquiry, as contemplated by sub-section (12-A), and such an application is to be treated as a plaint presented u/s 7 of the Mamlatdars' Courts Act and the Tahsildar would act as if he was a Mamlatdar. In this view of the matter, Pandharinath's case (cited supra) does not help the tenant at all, and the present case is fully covered by the Full Bench decision in Panpoi Sansthan's case (cited supra).

16. Now, I may refer to the judgment of the Apex Court in Dhandiram's case (cited supra) relied by Shri Chandurkar. The Apex Court in Dhondiram's case was considering the question whether a tenant, who has surrendered his land either in accordance with the provisions of law or has left possession voluntarily, would he be covered by the expression "dispossessed" occurring in section 32(1-B) of the Bombay Tenancy and Agricultural Lands Act, 1948 or not and the Apex Court, held that voluntary giving up of possession does not amount to "dispossession" unless the law provides it, inasmuch as dispossession is either by legal process or by the physical act of exclusion, and it would not include leaving possession voluntarily or by surrender. According to the Apex Court, the tenant surrendering land either in accordance with the provisions of law or leaving possession voluntarily, would not be covered in the expression "dispossessed". However, Shri Chandurkar mainly relied on the observations made by the Apex Court

relating to section 32(1-B) that the said enactment should be given liberal construction and should not be read in narrow manner which would defeat the legislative objective of enacting a beneficent legislation endeavoring to make the tillers of soil as purchaser and owner. In para 3 of the judgment, the Apex Court considered section 32(1-B) of the Bombay Tenancy and Agricultural Lands Act, 1948, and held thus -

"3. Two questions arise in this appeal, one if the High Court was right, in law, in negating claim of the appellant u/s 32(1-B) and other if the Tribunal in setting the finding on collusion in revision exceeded its jurisdiction. Out of the two it is proposed to take up legal issue on applicability of section 32(1-B) as if the appellant cannot successfully assail this finding then the finding on collusion becomes academic only. Section 32(1-B) of the Act is extracted below:

"...Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29, is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said section 29, either suo motu or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in-interest, and shall be restored to the tenant; and thereafter, the provisions of this section and sections 32-A to 32-R (both inclusive) shall, in so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased the land on the date on which the land is restored to him:

Provided that, the tenant shall be entitled to restoration of the land under this sub-section only if he undertakes to cultivate the land personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area."

The section entitles a tenant to restoration of possession provided he was in possession on the appointed date, i.e. June 15, 1955 and was dispossessed before April 1, 1957 and his landlord was in possession on July 31, 1969. The section is, thus, in two parts - one creating right and other entitling restoration of possession. Proceedings for restoration could take place either at the instance of the tenant or suo motu by the Tahsildar. But the order could be passed only if the primary requirements of tenant being in possession on the appointed date and his dispossession before April, 1, 1957 were satisfied. The language of the latter part of the section directing the Tahsildar to take possession of the land from the landlord and restore it to the tenant who on restoration by operation of law becomes purchaser from the date of restoration are clear legislative indications to construe the section liberally in favour of the tenant. What happens if a tenant who satisfied the requirements as provided in the section is found to be in

possession on July 31, 1969. Could he be evicted in any proceeding even though he satisfied the requirements of being in possession on appointed date and was evicted before April, 1, 1957. Would such construction of the section be in consonance with the spirit of the Act. On the language the sub-section does not grant any protection to a tenant who was in possession on July 31, 1969. But reading the section in such a narrow manner would be defeating the legislative objective of enacting a beneficent legislation endeavoring to make the tillers of soil as purchaser and owner. This is clear from amendments made in section 32 from time to time between 1957 to 1969. When section 32 was renumbered and sub-section (1) was added in 1957, April 1, 1957 was declared as tillers' date and it was provided that every tenant who was one of those mentioned in the sub-section and was cultivating the land personally was entitled to become purchaser of such land from him landlord free of all encumbrances subsisting on that date. In 1958 similar rights were granted by sub-section (1-A) added to section 32, to those tenants who had been evicted prior to the tillers' date and were not in possession but had made an application for possession of the land under sub-section (1) of section 29. In 1969 yet another right was granted by section 32(1-B) which has been extracted above. There can, thus, be no doubt, that the legislature intended not only to grant rights to those tenants who were in possession but also to restore the land from which the tenant had been evicted prior to 1957 on satisfying the conditions mentioned in section 32(1-A) and (1-B) and make such a person on restoration of possession, purchaser of the land. What happens if a tenant who is otherwise entitled to restoration of possession due to operation of the first part of the section is found to be in possession after July 31, 1969 either with permission of the landlord or in any other manner ? Is such a tenant liable to eviction ? The answer should be in the negative as it would result in conferring higher rights on a person who is not in possession than a person who is in possession. In our opinion, section 32(1-B) should be construed in a manner which must effectuate the legislative objective of making every tenant purchaser of the land if he satisfies the conditions laid down in section 32(1-B) of the Act whether he was in possession or not."

17. There is no dispute that section 32(1-B) was enacted in the Bombay Tenancy and Agricultural Lands Act, 1948 at the same time and by the same Amending Act, which section 49-B of the Tenancy Act was enacted in the present Tenancy Act, and that provision of section 49-B in the present Tenancy Act is analogous to the provision of section 32 (1-B). There is no doubt that as observed by me above that the provisions contained in section 49-B are beneficent provision made for the benefit of the tenants to exercise their right of conferment of ownership and restoration of possession, and section 49-B, therefore, has to be construed in a manner which effectuates the legislative objective. In Dhondi Ram's case (supra) entirely different question fell for consideration, as observed above, and not the question with which I am concerned as to whether the application made by the tenant in exercise of his right u/s 49-B of the Tenancy Act, i.e. conferment of ownership right and restoration of possession, has to be

made within limitation prescribed under the Mamlatdars' Courts Act, 1906, by virtue of section 100(12-A) of the Tenancy Act and section 100 of the Tenancy Act. Dhondiram's case (cited supra), therefore, relied upon by Shri Chandurkar, does not help the tenant at all.

18. I have, therefore, no hesitation to hold that where a tenant makes an application u/s 49-B of the Tenancy Act for conferment of ownership right and restoration of possession, besides that such a tenant has to fulfil the primary requirements mentioned in section 49-B, but such application is also required to be made within limitation prescribed by the Mamlatdars' Courts Act, since there is no express provision otherwise made u/s 49-B of the Tenancy Act with regard to proceedings contemplated u/s 100(2) of the Tenancy Act.

19. Admittedly, section 49-B of the Tenancy Act came into force with effect from 17-10-1969 and by virtue of sub-section (3) of section 5, such an application for restoration of possession of lost right, in view of the discussion made hereinabove, was required to be made within six months therefrom and since the application was made on 8-3-1983, the claim of the tenant was hopelessly barred by time and, therefore, the application filed u/s 49-B of the Tenancy Act for conferment of ownership right and restoration of possession being hopelessly time barred, was liable to be rejected. In view of this finding, no further discussion on merits of the matter is required and the order passed by the Maharashtra Revenue Tribunal, Nagpur, on 16-7-1986 and the order passed by the Tahsildar, Digra, on 20-8-1985 are quashed and set aside. The application filed by the tenant u/s 49-B of the Tenancy Act stands dismissed on the ground of limitation. No costs. Rule is made absolute in the aforesaid tenants.