

(1977) 04 BOM CK 0008

In the Bombay High Court

Case No : Spl. Civil Application No's. 3387 and 4009 of 1976 and 417, 455 and 524 of 1977

Awadhoot and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-04-1977

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1958 — Section 6
Companies Act, 1956 — Section 167, 186
Constitution of India, 1950 — Article 226, 226(3), 227, 245
Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Rules, 1975 — Rule 3, 3(3)
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 2
Stannaries Act, 1869 — Section 10

Citation : AIR 1978 Bom 28 : (1977) MhLj 689

Hon'ble Judges : Ginwala, J; Dharmadhikari, J

Bench : Division Bench

Advocate : J.N. Chandurkar, in Spl. C.A. No. 417/1977, A.M. Gordey, in Spl. C.A. Nos. 4009/1976 and 524/1977, R.G. Deshpande and R.S. Lambat, for the Appellant; J.N. Chandurkar in Spl. C.A. No. 524/1977, A.M. Gordey in Spl. C.A. No. 417/1977, M.P. Badar and M.A. Garud, Asstt. Govt. Pleaders, for the Respondent

Judgement

Dharmdhikari, J.—in Special Civil Application No. 417 of 1977 the petitioner, who is a tenure holder, has filed a return before the Collector, which was subsequently forwarded to the Surplus Lands Determination Tribunal (hereinafter referred to as "the S. L. D. T.") and after holding necessary enquiry, the S.L.D.T. found that the petitioner was holding 45.27 acres of land as surplus and, therefore, directed delimitation of the said land u/s 21 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (hereinafter referred to as "the Act"). Being aggrieved by this order, he filed an appeal before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal dismissed the said appeal. Being aggrieved by this order, the present writ petition is filed by the petitioner raising various contentions before us. According to the petitioner, the authorities below

committed an error in counting the land, which was already counted in the holding of his son Umakant in the separate and distinct proceedings, and this doMaha-rashtra ible counting is expressly prohibited by Sub-section (4) of Section 3 of the Act. He further contended that the authorities below also committed an error in holding that the petitioner has failed to prove that his son, namely Umakant, was in possession of the said land as a tenant. A contention was also raised by the petitioner that the authorities below committed an error in coming to the conclusion that his son Purushottam was not major on the appointed date. According to the petitioner, Purushottam was born on 1st of Oct. 1957 and not on 11-10-1957 as held by the authorities below. Apart from these con-tentions, on merits of the controversy involved in the petition, the petitioner has also challenged the order of the S. L. D. T. on the ground that it was passed by less than three members and, therefore is without jurisdiction in view of the provisions of Section 2-A of the Act. In this case it is an admitted position that the decision was taken by only two members of the Tribunal including the Chairman and the third member was absent. Therefore, according to the petitioner, as Sub-rule (3) of Rule 3 is ultra vires of the powers conferred upon the State Government by Section 2-A of the Act, the decision taken by the S. L. D. T. viz. by only two members is without jurisdiction, and hence is liable to be quashed and set aside.

2. In other Special Civil Applications, apart from the other questions of fact raised, a similar contention is also raised by the petitioners. In these cases it is an admitted position that only Chairman has decided the matter. It appears from the record that in Special Civil Application No. 3387 of 1976 at the earlier meeting of the Tribunal, besides the Chairman one more member was present but on 27th March, 1976 both the members remained absent. The Chairman waited for half an hour and then took up the proceedings and ultimately he alone passed the delimitation order on the same day. In all these petitions the petitioners have also challenged Sub-rule (3) of Rule 3 on the ground that it is ultra vires of the power conferred upon the rule-making authority, it being outside the scope of rule-making power conferred by the Act. Therefore, the main question which required consideration in these writ petitions relates to the validity and legality of Sub-rule (3) of Rule 3 of the Rules which have been made u/s 46 read with Ss, 2-A and 21 of the Act.

3. For properly appreciating the controversy raised before us, it will be useful to make a detailed reference to Section 2-A and Rule 3 (3) of the Rules. Section 2-A of the Act reads as under:

"2-A. (1) The State Government may, by notification in the Official Gazette, from time to time, constitute as many Tribunals as may be necessary for such area or areas and for such purpose or purposes of this Act or for such provision or provisions thereof as may be specified in the notification.

(2) Where a Tribunal is constituted or reconstituted for the purpose of determining surplus land under the provisions of this Act, the Tribunal shall be

called the Surplus Lands Determination Tribunal. Where a Tribunal is constituted or reconstituted for the purpose of distributing surplus land under this Act, it shall be called the Lands Distribution Tribunal.

(3) Each Tribunal shall consist of not less than three members of whom one shall be a person who holds or has held a civil post under the State not below the rank of a Tahsildar, and such person shall be the Chairman of the Tribunal.

(4) The State Government may, from time to time, likewise reconstitute any Tribunal constituted under Sub-section (1), or may at any time abolish such Tribunal. The State Government may also at any time by order in writing discontinue or remove any member from the Tribunal without assigning any reasons.

(5) The quorum to constitute a meeting of the Tribunal and the procedure to be followed by it shall be such as may be prescribed.

(6) All decisions of a Tribunal shall be by a majority opinion of the members present; and where the opinion is equally divided, the decision of the Chairman shall be the decision of the Tribunal:

Provided that, where the Chairman differs from the majority opinion on the ground that the decision is inconsistent with the provisions of this Act or any rules made thereunder or with the evidence recorded in the proceedings, he shall make a reference to the Collector pointing out the inconsistencies for which he differs from the majority opinion. He shall also forward proceedings of the case to the Collector. On receipt of the reference, the Collector shall himself hear and dispose of the proceedings as expeditiously as possible.

(7) No act or proceeding of any such Tribunal shall be deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution or reconstitution thereof.

(8) There shall be paid to the members of the Tribunal other than Chairman such travelling allowance, daily allowance and other allowances for attending the sittings of the Tribunal as are admissible to officers of Class I, and the terms and conditions of appointment of members including their terms of office shall be such as the State Government may, from time to time, by order determine. The Chairman shall be entitled to such allowances as the State Government may by order determine.

(9) Notwithstanding anything contained in this section or any rules or orders made thereunder, a member of the State Legislature while holding the office of member of the Tribunal shall not be entitled to receive any remuneration or allowance other than travelling allowance, daily allowance, or such other allowance which is paid to the holder of such office for the purpose of meeting the personal expenditure incurred in attending the sittings of the Tribunal or in performing any other functions of the Tribunal."

By virtue of the powers conferred upon the State Government by Section 2-A read with Section 46 of the Act, the State Government framed the rules known as Maharashtra Agricultural Lands (Lowering of Ceiling on Holdings) (Declaration and Taking Possession of Surplus Land) and the Maharashtra Agricultural Lands (Ceiling on Holdings) (Amendment) Rules, 1975 (hereinafter called as "the Rules"). Rule 3 of the Rules reads as under:

"3. Procedure of sitting of Tribunal--(1) The Chairman of the Lands Distribution Tribunal shall preside over all the meetings of the Tribunal.

(2) The Chairman shall fix the time, date and place of the meeting, and issue public notice in respect of such meetings as provided in these rules.

(3) The quorum for every meeting of the Tribunal shall be two including the Chairman. If within half an hour of the time fixed for the meeting there is no quorum, the Chairman alone shall proceed further with the meeting and record his decision in the proceedings as a decision of the Tribunal." in these petitions we are concerned with Sub-rule (3), which is in two parts. First part of this Sub-rule, lays down a quorum for every meeting of the Tribunal. Second part of this Sub-rule then provides that if within half an hour of the time fixed for the meeting there is no quorum, the Chairman alone shall proceed further with the meeting and record his decision in the proceedings as a decision of the Tribunal. Under Sub-section (5) of Section 2-A of the Act the Legislature has conferred power upon the State Government to frame rules prescribing the quorum to constitute a meeting of a Tribunal and the procedure to be followed by it. In pursuance of this, the present rule has been framed by the State Government. Shri Chandurkar as well as Shri Gordey and Shri R. G. Deshpande, learned counsel for the petitioners, contended before us that by Section 2-A of the Act and particularly by Sub-section (3) thereof, it is made very clear by the Legislature that each Tribunal shall consist of not less than three members, of whom one shall be a person who holds or has held a civil post under the State not below the rank of Tahsildar and he shall be the Chairman of the Tribunal. Then by Sub-section (4) power is conferred upon the State Government to constitute and reconstitute the Tribunal. Sub-section (5) deals with the quorum which is necessary to constitute a meeting of the Tribunal. By Sub-section (6) it is laid down that all decisions of the Tribunal shall be by a majority opinion of the members present, and if such opinion is equally divided then the decision of the Chairman shall be the decision of the Tribunal. By proviso to Sub-section (6) it is further laid down that if the Chairman differs from the majority opinion on the grounds stated therein, he has to forward the proceedings of the case to the Collector and in that case it is the Collector who himself has to hear and dispose of the proceedings as expeditiously as possible. Therefore, according to the counsel for the petitioners, by Sub-section (3) of Section 2-A, the Legislature has laid down the minimum number of members which shall constitute the Tribunal. A Tribunal could be of more members than three, but in no case it can consist of members who are less than three. If this is so, then according to the learned

counsel for the petitioners, any quorum which could be prescribed under Sub-section (5) of Section 2-A cannot be of less than three members, which is the minimum strength required to constitute the Tribunal. The learned counsel further contended that the quorum prescribed by Sub-rule (3) of Rule 3 of the Rules, namely of two members, is not only unwarranted but runs counter to the very scheme of Section 2-A itself. If the quorum is of two members only, then according to the learned counsel, Sub-section (6) as a whole becomes inoperative. In that case, the possibility of decision by majority is wholly ruled out and, therefore, Sub-rule (3) as a whole is outside the scope of rule-making powers conferred upon the State Government by the Act itself. In the alternative it is contended by the learned counsel for the petitioners that in any case the second part of the Sub-rule (3) of Rule 3 is ultra vires because it lays down that the Chairman alone can proceed with the meeting of the Tribunal even if there is no quorum. The power conferred upon the State Government is to lay down the quorum and, therefore while exercising the said power, it is not open to the State Government to prescribe that the meeting of the Tribunal will not require any quorum at all. Therefore, according to the learned counsel for the petitioners, in any case the second part of Sub-rule (3) of Rule 3 is ultra vires of the rule-making power conferred upon the State Government, it being outside the scope of the rule-making power conferred by Section 2-A as well as Section 46 of the Act.

4. On the other hand, it is contended by Shri Badar as well as Shri Garud, the learned Assistant Government Pleaders, that by Section 2-A of the Act after laying down the policy regarding the constitution of the Tribunal, other details relating to fixation of quorum of the meeting of the Tribunal and the procedure to be followed by such Tribunal has been left over to the State Government to be prescribed by rules framed under the Act. A specific power has been conferred upon the State Government to prescribe such a quorum. The Sub-section (5) of Section 2-A will also apply to the cases where the Tribunal consists of only three members, namely, the minimum strength prescribed by Sub-section (3) of Section 2-A. Therefore, the scheme of Section 2-A clearly indicates that a quorum can also be prescribed even for the Tribunals which consist of three members only, The total strength of such a Tribunal is three and the quorum to constitute the meeting of such a Tribunal is laid down by Sub-rule (3) of R 3 which states that the quorum for every meeting of the Tribunal shall be two including the Chairman. The power to prescribe quorum carries with it not only implied powers but also ancillary powers to lay down further procedure in case there is no quorum. By second part of Sub-rule (3) of Rule 3, therefore, a provision is made to proceed with the case in the absence of quorum and in that case it is laid down that the Chairman alone will constitute the quorum and, therefore, can proceed further with the meeting and record his decision in the proceedings as the decision of the Tribunal, Shri Garud, the learned Assistant Government Pleader, further contended that the power conferred upon the Government to prescribe quorum or procedure to be followed by the Tribunal is

not exhausted by fixing the quorum alone. On the other hand, having regard to the object of the legislation which contemplates expeditious determination of the surplus land for the purposes of distribution, it is necessary to lay down a further procedure to be followed by the Tribunal in the absence of the quorum. Only because the members of the Tribunal choose to remain absent, the working of the Tribunal cannot be stopped. The matter regarding the determination of the surplus land and its distribution must proceed. If this is so, then the State Government has an ancillary as well as implied power to lay down that even if there is no quorum, the Chairman alone, whose decision is given weightage by substantive provisions of the Act, namely, Section 2-A itself, can proceed with the matter and decide it. According to Shri Garud, if such a construction is not put upon the substantive provision, namely, Section 2-A itself, it will result not only in hardship but the whole section itself might become unworkable. He further contended that the Tribunal contemplated by Section 2-A is quasi-judicial in nature which is presided over by a revenue officer; Such a Tribunal cannot be equated with law Courts. Moreover, such Tribunals were constituted by the State Government immediately after coming into force of the Act in the year 1975. In many cases the matters are decided by two members of the Tribunal including the Chairman or even, by the Chairman alone. The decisions given by these Tribunals have become final as they were not subsequently challenged. Even the land delimited must have been distributed to the various persons in accordance with the procedure prescribed by the Act. Therefore according to Shri Garud, it will not be fair to upset or unsettle all the proceedings taken in that behalf by construing the provisions of Section 2-A or Sub-rule (3) of R 3 of the Rules in the manner suggested by the petitioners. In support of this proposition Shri Garud relied upon the principle of stare decisis. He has also considered before us that when the question relating to the jurisdiction of the Tribunal was not raised by the petitioners either before the S. L. D. T. or the Maharashtra Revenue Tribunal, then this Court should not permit them to raise such a contention for the first time in these writ petitions. An objection is also raised by Shri Garud, the learned Assistant Government Pleader, to the maintainability of the petitions. According to him, it is open to the petitioners to file a civil suit, claiming declarations that the order passed by the S. L. D. T. is ab initio void being without jurisdiction. In view of this, it is contended by Shri Garud that these writ petitions are not maintainable in view of provisions of Art. 226(3) of the Constitution of India.

5. So far as the preliminary objections relating to the maintainability of the writ petition itself is concerned, in our opinion, there is no substance in the objection raised on behalf of the State. Under Sub-section (3) of Section 21 of the Act, the declaration made by the Tribunal under the said section, namely, Section 21, subject to the decision of the Maharashtra Revenue Tribunal in appeal: u/s 33, or of the State Government in revision under Sub-section (2) of Section 45, is made final and conclusive and it is further clarified that the same shall not be questioned in any suit for proceedings in any Court if this is so, then it is quite obvious that civil suit cannot be termed to be an alternate or other remedy

available for the redress of grievance made by the petitioners in these writ petitions. Further it is doubtful as to whether the Civil Court will be in a position to deal with and decide the question regarding vires of the rule framed under the Act. Therefore, in this case it cannot be said that the petitioner had any adequate, efficacious and beneficial alternate or other remedy available for challenging the legality or validity of the rules. In this view of the matter, it is not possible for us to sustain this objection.

6. It is no doubt true that in some of these cases the question regarding the jurisdiction of the Tribunal to deal with and decide the case in the absence of proper quorum is not specifically raised either before the S. L. D. T. or the Maharashtra Revenue Tribunal. So far as the S. L. D. T. is concerned, when the matter proceeded in the absence of a third member or was decided only by the Chairman, it is not expected of a landlord that he should have raised such a contention before the same Tribunal in view of the provisions of Sub-rule (3) of Rule 3 of the Rules. It is pertinent to note that in view of the provisions of Section 44-B of the Act, no pleader is entitled to appear on behalf of any party in any proceeding under the Act. Even if a contention regarding validity or legality of the rule itself was raised before the Tribunal, it could not have been entertained by the Tribunals constituted under the Act and the rules framed thereunder. Further if the matter raises a question of jurisdiction of a Tribunal, it is by now well settled that such a contention could be raised for the first time even in a writ petition. If the Tribunal deciding the case had no jurisdiction to decide it, then question of jurisdiction can be raised for the first time in the writ petition even if the party had not raised the said point before that forum. In this context a reference could usefully be made to the decision of this Court in *Gopikisan v. District Judge, Bhandara* 1966 Mh LJ 321. In the said decision this Court has relied upon the decision of the Supreme Court in *Pioneer Traders and Others Vs. Chief Controller of Imports and Exports Pondicherry*, wherein it was observed by the Supreme Court in para. 31 of the said judgment that:

"Where an authority whether judicial or quasi-judicial has in law no jurisdiction to make an order the omission by a party to raise before the authority the relevant facts for deciding that question cannot clothe it with jurisdiction." In the case before us, apart from other contentions the question of vires, and validity and legality of Sub-rule (3) of Rule 3 itself is raised. It is obvious that none of the authorities below constituted under the Act had any authority, power or jurisdiction to decide such a question. Therefore, in our opinion, the petitioners are entitled to raise such a question in the present writ petitions. In this view of the matter, in our opinion, there is no substance in this contention also.

7. So far as the validity of Sub-rule (3) of Rule 3 is concerned, it is by now well settled that the power to frame rules which is in the nature of subordinate legislation is derived from enabling provisions contained in the Act itself. It is fundamental that the delegate on whom such a power is conferred, has to act within the limit of authority conferred by the Act. The delegate cannot override;

the Act either by exceeding the authority or by making provisions inconsistent with the Act. The delegated legislation should be strictly in accordance with the power creating it and in the spirit of the enabling statute. (See *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, While dealing with such a question, in para. 37 of the said judgment the Supreme Court has observed as under:

"Delegated legislation is a well known modern device. In view of the complexities of modern life it is not possible for the legislature to find time to make all the detailed rules which are necessary to carry out the purposes of an enactment; so it delegates to an appropriate executive authority the power to make rules. But before doing so, the legislature itself enacts the law under which the power is delegated and lays down the essential policy of the Act and all such essential matters which require to be included in the Act itself. Having thus provided for all such essential matters in the enactment itself, the legislature leaves it to a subordinate authority which may be some appropriate executive authority to frame detailed rules to carry out the purposes of the Act. These rules are ancillary and subserve the purposes of the enactment. They cannot go against the provisions of the enactment and cannot in any manner make any change in the provision of the enactment and are merely for the purpose of carrying out the essential policy which the legislature has laid down in the enactment itself. These rules are called delegated legislation and it is important to remember that this delegated legislation cannot in any way change the provisions of the enactment itself and must only be resorted to for carrying out the purposes of the legislation itself."

8. It is further clear that protection afforded by the enactment itself cannot be undone or taken away by the rules. This is so even if a provision is made in the enactment itself for laying down the rule as soon as may be after it is made before each House of the Legislature which further confers the power upon the Legislature to make modification in the rule. (See *Hukam Chand etc. Vs. Union of India (UOI) and Others*, In this context, reference could be made to the following observations of the Supreme Court in para. 11 of the said decision, which reads as under:

"The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a Rule if it is made not in conformity with Section 40 of the Act. It would appear from the observations on pages 304 to 306 of the Sixth Edition of *Craies on Statute Law* that there are three kinds of laying:

- (i) Laying without further procedure;
- (ii) Laying subject to negative resolution;
- (iii). Laying subject to affirmative resolution.

The laying referred to in Sub-section (3) of Section 40 is of the second category

because the above sub-section contemplates that the rule would have effect unless modified or annulled by the Houses of Parliament. The act of the Central Government in laying the rules before each House of Parliament would not, however, prevent the Courts from scrutinising the validity of the rules and holding them to be ultra vires if on such scrutiny the rules are found to be beyond the rule-making power of the Central Government."

Therefore, it is quite obvious that the rules framed under the Act should be in accordance with the powers creating them and also in accordance with the spirit of enabling statute.

9. The Statute which confers powers upon the State Government to frame rules in this behalf is Section 2-A of the Act. Section 2-A is sub-divided into various sub-sections. Section 2-A will have to be construed as a whole, each portion thereof throwing light, if need be, on the rest. The sub-sections of the section must be read as parts of an integral whole and as being inter-dependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided. (See *Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd.*,). Therefore, the provisions of Section 2-A will have to be read as a whole and construed harmoniously. It is pertinent to note that before Section 2-A was introduced by an amendment in the Act enquiries in this behalf were being held by the Collector, a revenue officer higher in rank. Subsequently by Maharashtra Act No. II of 1976, Section 2-A was introduced in the Act, which provided for constitution of a Tribunal. Then by Section 44-A of the Act it is laid down that where a Tribunal has been constituted or reconstituted u/s 2-A for any area or areas or for any purpose or purposes of the Act or for any provision or provisions thereof, then notwithstanding anything contained in the Act, the Tribunal alone, to the exclusion of the Collector, shall exercise all the powers and perform all the duties of the Collector under any of the provisions of the Act, subject to exceptions provided for in Section 44-A itself. Therefore, the Tribunal which is being constituted by Section 2-A for specified area or areas is in substitution of the Collector. The provisions of Section 2-A of the Act came for consideration of this Court, though in somewhat different context, in *Vithalrao Udhaorao Uttarwar and Others Vs. The State of Maharashtra*, . While broadly dealing with the scheme of Section 2-A of the Act in para. 207 of the said judgment, this Court observed as under:

"We really fail to see how such an argument can assist if a closer look is taken of the scheme of Section 2-A and Section 44-A of the Act. We have referred broadly to the scheme of Section 2-A. It indeed lays down by its own terms and object of the Act the most significant guideline. Sub-section (3) of Section 2-A requires that the Tribunal shall consist of not less than 3 members of whom one shall be a person who holds or has held a civil post under the State not below the rank of a

Tahsildar. Sub-section (6) to which we have made a reference indicates that the decision of the Chairman has primacy. In the Revenue Administration of the State, Tahsildar is an officer upon whom several revenue duties have been vested by the provisions of the Land Revenue Code and other laws. His qualifications are laid down and the office is known to the Legislature to be conversant with the matters connected with land and revenue. Thus naming the Chairman by office itself serves the need of laying qualification and as well the qualification, it is implicit in the scheme of such constitution of Tribunals that some matters must be left to the executive discretion. The other members upon the Tribunal advisedly will have to be appointed by the State Government by notification looking to the purpose and object of the Act and adjudication contemplated. It is expected by the scheme that the persons will be drawn from the locality over which the Tribunal has jurisdiction and further that they would be conversant with the matters which are required to be dealt with by or before the Tribunal. It indeed appears to us to be a wholesome provision. To permit such constitution of Tribunals, which will be closer to the community and closer to the area and which will possess by necessary implications expected expertise and experience about the conditions of the land and people are clear matters of legislative indications in this regard. Moreover, the purpose and the object of the Act itself are sufficient guidelines for such constitution after specifying the Chairman who would be of rank not below that of Tahsildar. There is thus no excessive nor abdication of legislative powers in such a scheme. There can hardly be heard any complaint if such a Tribunal eventually closer to people for whose benefit and for whose interest distributive justices have to be administered. Moreover, there is further system of appeal to Maharashtra Revenue Tribunal as well Revisions to Commissioner and to State. Further aggrieved party can seek constitutional remedy available under Art. 227 of the Constitution. The entire scheme therefore taken into account is not open to challenge on these grounds. The decisions relied upon do not help to further the submission.

The scheme of Section 2-A read with Section 44-A having nominated the Chairman by rank and authority as indicated above and having sufficient guidelines has yet another eloquent facet. There existed an age-old system of adjudicating bodies dealing with justice or causes which had roots in the social experience of the people, based on associative principles of justice. That evoked support, popularity as well the community sanctions. There is clear evidence of such Courts like those of Kula, Sreni, Puga, (See Mayne's Hindu Law, Pp. 12-13). That system did work with impartial and yet vigorous approach. It also added to the speed and expeditious dispensation of justice in the causes brought before it. The system was close and akin to the life of the people and its experience as recorded proved to be robust being free from technicalities and responding popular faith and community response.

Even in the modern world, community Courts or People's Court or Elective Courts are not matters of any alien experience to juridical thought. The system adopted in the developed nations have applied adequate chosen principles to suit

best to the conditions and circumstances available in a given polity and for the purpose of given adjudication. Elective Courts backed by popular propaganda for election in the United States of America and the People's Courts and lay judges of USSR are all successful experiment actions of value. System of such Courts does dynamically operate in the field of justice. (See: Essay by Prof. Harold J. Laski on Law and Justice in Soviet Russia; The Ends of Justice by V. R. Krishna Iyer in "Social Mission of Law").

It appears to us that Land Courts or Land Tribunals now contemplated by the present scheme is healthy experiment indicative of return to our roots of associative and community justice principles and hence we cannot be apprehensive of its modality and effectiveness. The members would be essentially drawn from the community or locale likely to be affected by the decision. The Chairman has to be well-versed responsible Revenue Officer. Courts cannot be asked to condemn such salutary scheme on the ground of possible executive favouritism in appointments of illiterate or interested persons on such Tribunals once the legislative competence in this regard is granted. It all depends how eventually the administration of land-justice is carried on and how fairly these tribunals discharge their high function, for honesty and conscience are not the fruits that only flower with education. Health of system of Courts depends on several factors, one being constant vigil of inner and outer conscience of the Judge and its constant rapport with community conscience and mind. Indeed modern world juridical thinking accepts that in such community system of Courts there are clear advantages as the function and rule of Court is much wider and can well be educative as well as paternal in sociopolitical developments. (See; "Justice in the USSR" Chapter XII by Harold J. Herman). We have premise to hope that land Courts would function in the spirit of detachment, impartiality and by dispensation of just premises dispel doubts about the objectives of land justice in the State. These Tribunals thus would have community backing and by its rule educate the public opinion as it acts as parental organ in rural life." Therefore, it appears to be the intention of the Legislature that while dealing with various questions which are legal in nature and could be decided even by spot inspections, etc. a Tribunal should be constituted which will consist of persons either from locality itself or are very well conversant with the various problems of the area in question. These Tribunals will be closer to the area and will possess by necessary implications expected expertise and experience about the conditions of the land and people. It is further pertinent to note that before such Tribunals, in view of the provisions of Section 44-B of the Act, no legal practitioner is entitled to appear on behalf of any party. Further from Sub-section (3) of Section 2-A it is clear that it was the intention of the Legislature that the Tribunals constituted in this behalf should consist of members who are not less than three. This sub-section further lays down that one of them should be a person who holds or has held civil post under the State not below the rank of Tahsildar and he shall be the Chairman of the Tribunal. By Sub-sec (4) power is conferred upon the State Government which could be exercised from time to

time to reconstitute the Tribunal or to abolish such Tribunals. The State Government has also power to discontinue or remove any member from the Tribunal without assigning any reason. Then comes Sub-section (5) which deals with quorum and the procedure to be followed by the Tribunal in its meeting which is to be prescribed by rules made under the Act. As per Sub-section (6), all decisions of a Tribunal shall be by a majority opinion of the members. If the opinion is equally divided, then it is laid down that the decision of the Chairman shall be final. Proviso to Sub-section (6) then provides for another contingency. According to the said proviso, if the Chairman differs from the majority opinion, on the grounds enumerated therein, then he has to refer the matter to the Collector. According to the learned counsel for the petitioners, if quorum is prescribed at two, then the provisions of Sub-section (6) of the Act will never apply to such a meeting which is attended only by two members, because in that case question of majority will not arise. Even the proviso to Sub-section (6) will have no application to such a case and, therefore, it is contended before us that this clearly indicates that in no case the quorum could be fixed of the members who are less than three. In our opinion, this will not be correct interpretation of the provisions of Sub-sections of Section 2-A. As already observed, the various subsections of Section 2-A are interdependent. Each of the sub-sections throws light upon another and, therefore, will have to be construed harmoniously. Sub-sections (5) and (6) provide for various contingencies. In every case all the provisions of Section 2-A may not come into operation. These provisions are alternative and will apply to cases where such a contingency arises. If two members are present in the meeting of the Tribunal, which includes the Chairman, then if the other member present agrees with the Chairman, then obviously the question of majority etc. will not arise. In case he disagrees, then it will mean that the opinion is equally divided and in that case the decision of the Chairman; shall be the decision of the Tribunal. Obviously if the case is covered by the substantive provisions of Sub-section (6) of the Act, then the question of application of the proviso will not arise. These provisions indicate that the decision of the Chairman has primacy. The word "quorum" itself denotes the minimum number of members of any body of persons whose presence is necessary in order to enable that body to transact its business validly. Though in Sub-section (3) the Legislature has laid down that the Tribunal shall consist of not less than three members, it has made a provision under Sub-section (5) for prescribing the quorum. The words "meeting of the Tribunal" used in Sub-section (5) are very significant. Therefore, if all the provisions of these sub-sections are read together, it is quite clear that it was the intention of the Legislature that even in a case where the Tribunal consists of only three members, a quorum could be prescribed, which will denote the minimum number of members whose presence is necessary in order to enable the Tribunal to transact its business validly. To hold that the quorum cannot be of less than three members will obviously mean that in case where the Tribunal consists of only three members, the question of quorum will not arise and all the members will have to attend the meeting. This does not appear to be the intention of the Legislature. On the

contrary, after having provided for the constitution, re-constitution and abolition of Tribunal, under Sub-section (5). the Legislature has made a provision for prescribing quorum for the meeting of the Tribunal. We do not find any compelling reason to hold that the provisions relating to the quorum will not apply to a case where the Tribunal consists of only three members.

10. A contention was also raised by Shri Gordey before us that by virtue of the proviso to Sub-section (6), a protection is given to the citizen which is altogether taken away by prescription of quorum under Sub-rule (3) of Rule 3 of the Rules. It is not possible for us to accept this contention. It appears from the very scheme of Section 2-A that having regard to the purpose and object of the Act, the Legislature wanted to associate some person conversant with the local problems with the adjudication and determination of the questions contemplated by the Act. These persons are to be taken from the locality over which the Tribunal has jurisdiction. Obviously they would be conversant with the matters which are required to be dealt with by the Tribunal. Sub-section (6) of Section 2-A indicates that decision of the Chairman has primacy. Laying down of the quorum of two does not run counter to the intention of the Legislature. Even if the quorum is fixed at two, at least one member, who is conversant with the matters which are required to be dealt With by the Tribunal is associated with the adjudication and determination. Therefore, in our opinion, it cannot be said that only because the quorum for every meeting of the Tribunal is prescribed to be two, including the Chairman, the whole scheme of the Section 2-A will be frustrated or the protection given by Sub-section (6) is taken away. In this view of the matter, in our opinion, first part of Sub-rule (3) of Rule 3, which lays down the quorum, is perfectly legal and valid.

11. However, in our opinion, the same is not the position so far as the second part of the Sub-rule (3) is concerned, which read as under :--

"If within half an hour of the time fixed for the meeting there is no quorum the Chairman alone shall proceed further with the meeting and record his decision in the proceedings as a decision of the Tribunal."

As already observed, the Legislature in its wisdom has used the expression "meeting of the Tribunal" in Sub-section (5) of Section 2-A. The word "meeting" is not defined. it is well settled that a word which is not defined in the Act. but which is a word of everyday use, must be construed in its popular sense. it means that it should be understood as in common parlance. If a common sense view of the matter is taken, it is quite clear that for a meeting there must be at least two persons. Because a man cannot meet himself. The word "meeting" prima facie connotes coming together of persons for certain purpose. In substance it is a gathering of persons with a specific object in view. In our opinion, the term "meeting of the Tribunal" is used in Section 2-A as is understood in common parlance or in popular sense. in this context, a reference could usefully be made to a decision of the Kerala High Court in State of Kerala Vs. West Coast Planters" Agencies Ltd., Cochin and Another, and particularly to

the following observations in paras. 2 3, 4 5 and 6:

"..... The word "meeting" is thus defined in the Shorter. Oxford Dictionary. "An assembly of a number of people for entertainment, discussion, or the like, and in Black's Law Dictionary, as "A coming together of persons; as assembly. Particularly in law, an assembling of a number of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest."

It would follow that, for a meeting, there must be at least two persons, and that this is the ordinary and natural meaning of the word is recognised in the only two reported cases that have been brought to our notice. In the first of these, *Sharp v. Dawes* (1876) 2 QBD 26, the validity of a call made at a meeting of a company purporting to have been held by one share-holder was in question.

The Statute, viz. Section 10 of the Stannaries Act, 1869, required that the call should be made at a meeting of the company with special notice, and in pronouncing against the validity of the call on the ground that one man could not hold a meeting within the meaning of the Act. Lord Coleridge, C. J., said "the word "meeting" prima facie means a coming together of more than one person. It is, of course, possible to show that the word "meeting" has a meaning different from the ordinary meaning, but there is nothing here to show this to be the case."

Mellish L. J., was more forthright and it would appear that he refused to contemplate a meeting of one person. "It is clear", he observed, "that, according to the ordinary use of the English language, a meeting could no more be constituted by one person than a meeting could have been constituted if no shareholder at all had attended."

In the second case, *East v. Bennett Brother Ltd.* (1911) 1 Ch 163. Warring-ton, J., following *Sharp v. Dawes* (1876) 2 QBD 26. and also the decision of Jessel, M. R. In *Re, Sanitary Carbon Co.* (1877) WN 223, observed that in an ordinary case it was quite clear that a meeting must consist of more than one person.

The learned Judge, however, went on to hold that the word "meeting" was used in the memorandum of association he has construing in a special sense, and that having regard to the purpose of the particular clause, namely, that the formal consent of the preference share-holders should be obtained before anything was done affecting their rights, the framers of the document, who must have contemplated the possibility of all the preference shares being held by one person, must have used the word "meeting" in a sense different from the ordinary sense and as including the record, in a formal manner, of the assent of a single person when he happens to be the sole preference share-holder.

He thought that that was one of the cases referred to by Lord Coleridge, C. J., as one in which it may be possible to show that the word "meeting" had a meaning

different from the ordinary meeting. The learned Judge also seems to have thought that the circumstance that in the two cases referred to by him there were several share-holders whose proxies were held by the single share-holder who held the meeting, whereas in the case he was deciding there was only one preference share-holder, made a difference. We agree; but with due respect we think the difference makes the case of a one-man company an a fortiori case.

It is to be observed that both Lord Coleridge, C. J., and Warrington, J., were dealing only with civil obligations and that neither was construing a penal statute-- Warrington, J., in particular, was construing only a memorandum of association of a company, and the degree of latitude he allowed himself is apparent from the question he posed himself, namely, "whether what the company did was in effect, although not perhaps in terms, within the provisions of the memorandum and articles of association, and, if it was in effect though in terms, whether there was a sufficient compliance with the memorandum and articles to render the proceedings valid," although he straightway put it in the different form, namely whether, upon the true construction of the memorandum and articles, the proceedings were not really and in terms a compliance with them.

One thing is clear from both these decisions as also on the high authority of Jessel, M. R. In *re. Sanitary Carbon Co. (C)* (the report of which has however not been placed before us) and that is that, according to the ordinary use of the English language, a meeting can no more be held by one person than it can be by none.

It is hardly necessary to repeat what has been so often said that the golden rule of construction is that the grammatical and ordinary sense of the words used in a statute should be adhered to unless that would lead to some absurdity or repugnancy or inconsistency with the rest of the statute. Words have to be given their plain, fair and natural meaning where it is not apparent from the scope and intendment of the statutes that such a meaning would be inconsistent or would lead to manifold injustice....."

Therefore, it is quite obvious to us that for a meeting, there must be at least two persons and this is the natural meaning of the word which is well recognised.

12. However, our attention was drawn by Shri Badar, the Assistant Government Pleader, to the Explanation to Ss. 167 and 186 of the Companies Act, 1956, which reads as under :

"Explanation-- The direction that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting." From the bare reading of this Explanation it is quite clear that but for the Explanation, presence of one member cannot constitute a meeting. Therefore, by this Explanation a fiction is created by the Legislature. The meeting contemplated by Ss. 167 and 186 is not an ordinary meeting. Unless a direction is given by the Court, the Explanation to

Section 167 or 186 will not come into operation. Use of expression "shall be deemed" is significant. When a thing is deemed to be something else, it is to be treated as if it is that thing, though in fact it is not. Therefore, though in fact the presence of one member cannot constitute a meeting, in view of the special direction given by the Court, a fiction is created by the Legislature that it shall be deemed to constitute a meeting. Such a provision is not made in the Ceiling Act. In the Ceiling Act such a fiction is also not created. If this is so, then the word "meeting" as used in Section 2-A will have to be construed in its popular sense. Second part of Sub-rule (3) of Rule 3 provides that, if within half an hour of the time fixed for the meeting there is no quorum the Chairman alone shall proceed further with the meeting and record his decision in the proceedings as a decision of the Tribunal. This part of the rule, therefore, clearly does not deal with laying down a quorum as such, but in fact by this provision necessity of the quorum itself is done away. By Sub-section (5) of Section 2-A, power is conferred upon the State Government to prescribe the quorum to constitute a meeting of the Tribunal. Therefore while exercising this power, it is not open for the State Government to make a provision prescribing that no quorum will be at all necessary for constituting a meeting of the Tribunal. As a matter of fact, that part of Sub-rule (3) is against the scheme of Section 2-A which contemplates that a local person, who is conversant with the local conditions should be associated with the decision, it also contemplates that there should be a meeting of a Tribunal. While framing the rules u/s 2-A, therefore, it is not open for the rule-making authority to do away with this wholesome provision. By this provision the association of a person who is conversant with the local conditions is wholly done away. By this provision even a meeting of the Tribunal is not contemplated.

13. As a matter of fact, a Court or a judicial or quasi-judicial Tribunal is not a committee, nor the sitting of the Tribunal can be equated with meeting of the committee. The quorum is fixed for the meetings and not for the sitting of the Court or of judicial or quasi-judicial Tribunal. In this context, reference could usefully be made to a decision of the Supreme Court in *The Punjab University, Chandigarh Vs. Vijay Singh Lamba and Others*, and particularly to the following observations of the Supreme Court in the said decision : (at pp. 1443-1444)

"The constitution of the Standing Committee is indisputably within the powers of the Syndicate under Regulation 31. No exception can therefore be taken to the appointment of the Standing Committee by the Syndicate and indeed no objection was at any stage taken in that behalf. Equally clear seems to us the position that the Syndicate which had the power to appoint the Standing Committee had the incidental power to fix the quorum for the meetings of the Standing Committee. "Quorum" denotes the minimum number of members of any body of persons whose presence is necessary in order to enable that body to transact its business validly so that its acts may be lawful. It is generally left to committees themselves to fix the quorum for their meetings and perhaps, if the Syndicate had not fixed the quorum, it might have been competent to the

Standing Committee itself to devise its day-to-day procedure including the fixation of quorum. But that is going one step ahead, for here the quorum was fixed not by the Standing Committee but by the Syndicate itself which appointed the Standing Committee and which indubitably had the right to appoint the Committee under Regulation 31. We are unable to see any valid reason for which the fixation of quorum for the meeting of a Committee appointed by the Syndicate can be said to be beyond the powers of the Syndicate. It is wholly inappropriate in this connection to draw on the constitution of judicial tribunals as a parallel because, if by law such a tribunal must consist of 3 members there is no jurisdiction in the tribunal to fix a smaller quorum for its sittings. A Court is not a committee and if by law any matter is required to be heard, say by a bench of three Judges, there is no power in those three Judges to resolve that only two of them will form a quorum. In fact quorum is fixed for meetings of committees and not for the sittings of courts. In the instant case the Syndicate had the right to fix the number of persons who would constitute the standing committee and by fixing the quorum at 2, it did no more than provide that though the Standing Committee may be composed of 3 persons, any 2 of them could validly and effectively transact the business of and on behalf of the committee. Putting the matter a little differently, the Syndicate nominated 3 persons to be members of the Standing Committee but resolved that any 2 of them would validly constitute the Standing Committee for the time being to dispose of any business which comes before it." As observed by the Supreme Court it is wholly inappropriate in this connection to draw on the constitution of judicial tribunals as a parallel because there is no jurisdiction in the tribunal to fix a smaller quorum for its sittings and the Court is not a Committee. However, by Sub-section (5) of Section 2-A, the Legislature has made a specific provision in this behalf. As the said specific provision is an exception to the general rule, it will have to be construed strictly and cannot travel beyond the scope of the section. If the section has only authorised the State Government to make a provision regarding the quorum, to constitute meeting of the Tribunal, it is not open to the State Government to make such a rule which in effect lays down that no quo (sic) will be necessary to constitute a meeting of the Tribunal or meeting of the Tribunal itself will not be necessary and the Chairman alone can transact the business. As a matter of fact, if there is no meeting of the Tribunal, the term "Chairman" itself is redundant. It practically means that though the Legislature has constituted a Tribunal or more than one person to adjudicate upon the rights of the land-holders under the Ceiling Act, by exercising its rule-making power the State Government has conferred the said power upon a revenue officer alone. To say the least, this part of the rule is out-side the scope of the rule-making power conferred by the Act and runs counter to the spirit of enabling Statute.

14. However, a contention was raised by Shri Iltarud, the learned Assistant Government Pleader that such power is implicit in the power conferred by Sub-section (5) of Section 2-A of the Act. According to Shri Garud, the learned Assistant Government Pleader, when the State Government is authorised to

make a provision prescribing the quorum, it can further make a provision as to what will happen if there is no quorum. Even if there is no quorum, the working of the Tribunal cannot be stopped and, therefore, some provision will have to be made. According to the learned counsel, such powers flow from the very wording used in Sub-section (5) of Section 2-A of the Act and are auxiliary powers which can be used by the State Government while framing rules under Sub-9. (5) of Section 2-A of the Act. In support of the proposition that such implied powers can legitimately be Invoked when it is found that the power conferred by the Statute cannot be discharged or exercised at all unless some auxiliary power is assumed to exist, he has relied upon the decision of this Court in *Bidi, Bidi Leaves" and Tobacco Merchants Association Vs. The State of Bombay*, , *Bidi, Bidi Leaves and Tobacco Merchants" Association v. State of Bombay*. According to Shri Garud, if second -part of Sub-rule (3) of Rule 3 was not there, the statute Itself would become impossible of compliance and, therefore, Sub-rule (3) is perfectly legal and valid. It is not possible for us to accept this contention. As already observed, this part of Sub-rule (3) is wholly inconsistent with the very scheme and spirit of Section 2-A of the Act. If the said provision is wholly inconsistent or is repugnant to the provision of Section 2-A itself, then obviously the doctrine of implied powers cannot legitably (sic) (legitably ? Ed.) be invoked in this behalf. Apart from this, as observed by this Court in *The State Vs. Agarwal, Ayengar and Co. Ltd.*, doctrine of subsidiary and ancillary powers cannot possibly be applied where subordinate powers of Legislation are conferred upon the body or the Government. Legislative body is a sovereign body, whereas the State Government, to which powers of subordinate legislation are delegated is not a sovereign legislative body. Therefore, it must strictly set within the powers which are conferred upon it. In the case before us, in our opinion, doctrine of implied powers cannot be availed of and, therefore, it is not permissible for the Government, to which powers of subordinate legislation have been given, to say that the power which has been given to it, tarried with it what may be called subsidiary or ancillary powers of operating beyond the field within which it can operate. In this view of the matter, in our opinion, this latter part of Sub-rule (3) is obviously ultra vires as it is outside the scope of rule-making power conferred by Sub-section (5) of Section 2-A of the Act, as it practically destroys the very scheme and spirit of the scheme incorporated in Section 2-A as a whole.

15. It was also contended before us by Shri Garud, the learned Assistant Government Pleader, relying upon the principle of stare decisis that this Court should not strike down this part of the rule because various decisions must have been given by the Chairman of the Tribunal alone in view of the provisions of Sub-rule (3) of B. 3. He further contended that these decisions must have created some rights into the persons to whom lands are distributed and allotted. Apart from the fact that the contention raised and the question posed is wholly hypothetical and no material is placed before us in this behalf, it is quite obvious that principle of stare decisis will not apply to a case where vires of the

provisions itself is challenged. The principle of stare decisis clearly indicates that a decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision. In this case we are not concerned with such a controversy. This rule of stare decisis is based on expediency and public policy. This is a principle which applies to interpretation and construction of statute. It will come into operation when a particular principle of law is already settled by series of decisions. In the case before us such is not the position. There is no earlier decision in the Sled which has already decided the question raised before us. Even the impugned provision of the rule was brought on the statute book very recently. To such a case the rule of stare decisis has no application. Moreover, the interpretation put forward by the learned Assistant Government Pleader is contrary to the clear meaning of the enactment as well as the well established principles of law.

In this view of the matter, in our opinion, the decision of the Supreme Court in Nirshi Dhobin and Another Vs. Dr. Sudhir Kumar Mukherjee and Others, on which reliance is placed by Shri Garud, is obviously distinguishable and is not applicable to the controversy raised! before us, more so when Section 2-A itself was introduced in the Ceiling Act in the year 1975 and the rules were also framed; thereunder, in the same year, i.e. less than two years back.

16. It is quite clear from the bare reading of Sub-rule (3) of Rule 3 as a whole that first and second parts of the rule are severable. This position is not disputed before us. This part of sub-rule being severable from the other part, its invalidity cannot affect first part of Sub-rule (3). In the view which we have taken. therefore, second part of Sub-r, (3) of Rule 3, which reads as under :

"If within half an hour of the time fixed for the meeting there is no quorum, the Chairman alone shall proceed fur-ther with the meeting and record his decision in the proceedings as a decision of the Tribunal."

is ultra vires, it being outside the scope of rule-making power conferred upon the State Government by the Ceiling Act. As we have held that second part of the rule which authorises the Chairman alone to proceed further with the matter and record its decision in the proceedings as a decision of the Tribunal is ultra vires, as a necessary consequence of this, the decisions given by the Chairman alone will be wholly without jurisdiction it not being a decision of a Tribunal as contemplated by Section 2-A of the Ceiling Act

17. As in Special Civil Applications Nos. 3387 of 1976, 455 of 1977 and 4009 of 1976 the Chairman alone has decided the matter, these petitions will have to be allowed as the order of the Chairman is without jurisdiction.

18. It is no doubt true that the said decision given by the Chairman of the Tribunal is confirmed in appeal by the Maharashtra Revenue Tribunal. However it is well established that the original order being without jurisdiction and as such void and inoperative, this initial defect could not be cured by an appellate order

passed by the Maharashtra Revenue Tribunal. In this view of the matter, these Special Civil Applications will have to be allowed.

19. In the result, therefore the Special Civil Applications Nos. 3387/76, 455/77 and 4009/76 are allowed. The orders passed by the Surplus Land Determination Tribunal as well as Maharashtra Revenue Tribunal are set aside and the matters are remanded back to the Surplus Land Determination Tribunal for deciding them afresh in accordance with law, after giving a reasonable opportunity to the petitioners to put forward their cases.

20. So far as Special Civil Applications Nos. 417 of 1977 and 524 of 1977 are concerned, it is quite obvious that they are decided by a Tribunal in a meeting which consisted of the quorum prescribed under first part of Sub-rule (3) of Rule 3 of the Rules. We have already held that the said part of the rule is valid.

21. So far as merits in Special Civil Application No. 417 of 1977 are concerned, it is quite clear from the findings recorded by the authorities below that this was a case of clear manipulation whereby the petitioner has created bogus lease in favour of his son with a view to save the land from the clutches of the Ceiling Act, it is well settled that collusion or fraud must vitiate the whole thing. Respondent Umakant is the son of the petitioner and, therefore, he cannot be treated as a deemed tenant u/s 6 of the Bombay Tenancy and Agricultural Lands Act, 1958. There is no evidence on record to establish the factum of contractual tenancy. The entries made in the crop statements are wholly vague and do not establish the agreement of tenancy. So far as oral evidence on record is concerned, the petitioner has only examined himself and there also he could not give details regarding the agreement of tenancy. In this view of the matter, in our opinion, the authorities below were right in coming to the conclusion that this was a clear case of fraud and manipulation and that too, with the sole intention of saving the land from the clutches of the Ceiling Act. Further, it is quite clear from the record that in a case which was started on the basis of the return filed by Umakant, son of the petitioner, no land was declared surplus and, therefore, the said proceedings were dropped. In view of these peculiar circumstances, in this case, it is not necessary to consider the contention raised by Shri Chandurkar, which is based on interpretation of Sub-section (4) of Section 3 of the Ceiling Act.

22. So far as the question of age of Purushottam is concerned, it is quite obvious from the material placed on record, which includes the certificate issued by the Maharashtra State Board of Secondary Education, that Purushottam, son of the petitioner, was born on 11th Oct. 1957. Even from the other evidence on record it is quite clear that certain fields were shown in the name of Purushottam as a result of partition effected by Kisan father of Awadhoot during his lifetime, amongst his son Awadhoot and grandsons Umakant and Purushottam. At that time also the date of birth of Purushottam has been shown as 11-10-1957. As against this evidence, the petitioner is relying upon the Janma-Patrika alone. The authorities below have found, and in our opinion, rightly, that it is a got-up

evidence, in this view of the matter, in our opinion, the finding of fact recorded by the authorities below that on the relevant date Purushottam, son of the petitioner, was a minor is perfectly justified. Moreover this is a concurrent finding of fact based on appreciation of evidence on record. Therefore, this is not a fit case wherein any interference is called for in the extraordinary jurisdiction of this Court.

23. In the result, therefore, Special Civil Applications Nos. 417 of 1977 and 524 of 1977 are dismissed. However, in the circumstances of the case, there will be no order as to costs in all these special civil applications.

24. Order accordingly.