

(1993) 07 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No's. 2147 of 1988 and 1933 of 1989

Bapuappa Wani

APPELLANT

Vs

Shiram Muley and Others

RESPONDENT

Date of Decision : 23-07-1993

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 10, 36(2), 43(14A), 50
Limitation Act, 1963 — Section 3

Citation : (1996) 1 BomCR 107

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : V.N. Patil, in W.P. No. 1933 of 1989 and S.R. Deshpande, in W.P. No. 2147 of 1988, for the Appellant; M.N. Belekar, for the respondents 7 and 8 in W.P. No. 1933 of 1989, M.N. Ingley, for the respondent No. 4 and 5 in W.P. Nos. 1933 of 1989 and 2147 of 1988 and K.S. Dhote, A.G.P., for the respondent No. 9 in W.P. No. 1933 of 1989, for the Respondent

Judgement

V.S. Sirpurkar, J.—This judgment will govern the two writ petitions, the first being Writ Petition No. 1933 of 1989 which is filed by Bapuappa who claims to be the transferee of the landlord and the Writ Petition No. 2147 of 1988 which is filed by Shriram Balwanta & Kondiba Balwanta, both of whom admittedly were the tenants of the field in question.

2. The dispute relates to field Survey No. 13, admeasuring 24 acres & 26 gunthas of Mouza Merkhed, Tq. & District Buldana. This suit field originally belonged to one Amrut Waman Dalal. The father of the petitioners, namely, Balwanta was a protected lessee of this field. Amrut sold this field to three persons in all, first of them being Bapuappa s/o Punjappa Wani who purchased 7/16th share, the second being Tarachand s/o Kisanlal Agrawal who also purchased 7/16th share and third Uttamrao s/o Mugutrao Deshmukh who purchased 2/16th share. This sale was on 17-8-1958. It is the case further that Bapuappa, Tarachand and Uttamrao entered into the agreement in favour of one

Namdeo, who is the predecessor of the respondents in both these petitions and who are claiming the possession of the field presently. Namdeo has since died and his legal representatives are on record. A surrender-deed was obtained from the tenant, namely, Balwanta. However, ultimately this surrender was found to be illegal and inoperative in law and the Revenue Authorities put the Legal Representatives of original tenant Balwanta Muley in possession of the field in dispute on 27-10-1967. The fact that the Legal Representatives of the tenant have been put in possession on that date is an undisputed fact in both the petitions. This is where the controversy began. Unfortunately, the legal representatives of the tenants (hereinafter referred to as "the tenants") did not make any application for the conferral of ownership u/s 50 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "the Act"). Now in fact when they were put back in possession with the aid of section 10 of the Act, section 50 squarely applied and if they had complied with the provisions of section 50, they could have been so declared to be the owners u/s 50 of the Act. however, no such application came to be made in time at least. It is for the first time that on 18-2-1977 that the tenants filed an application for statutory ownership and for fixation of the price and this application came to be allowed by the Tahsildar. The appeal against this application was also dismissed. However, this order was challenged before the Maharashtra Revenue Tribunal by all the parties except the petitioner in Writ Petition No. 1933 of 1989 that is Bapuappa. The Maharashtra Revenue Tribunal set aside both these orders and remanded the application of the petitioner/tenants for a further trial as per the directions given therein. Again after the remand the Tahsildar rejected the application of the tenants on the ground that it was barred by limitation. It was a correct view because a tenant who came in with the aid of section 10 had to take recourse to section 50 of the Act for making an application for conferral of ownership and the said application could have been made only within one year from the date when he was put in possession. In this case the tenant was put in possession in October, 1967 and, therefore, the said application could have been made only upto October, 1968. Admittedly, the application was made somewhere in the year 1977 and, therefore, the Tahsildar rightly dismissed the application as time barred.

3. Since this application was rejected, the respondents Nos. 1 to 8 filed an application. By this application they prayed for possession of the suit field. Similarly, the petitioner in Writ Petition No. 1933 of 1989 also filed an application for possession. The application filed by the Legal Representatives of the landlord came to be registered as R.C. No. 12/TNC-50/84-85 while the application filed by Bapuappa - the petitioner in Writ Petition No. 1933 of 1989 came to be registered as R.C. 1/TNC/50/84-85 of Merkhed. A common order came to be passed by the Tahsildar on 17-1-1986 granting the application of the original landlords, i.e. respondents 1 to 8 in Writ Petition No. 2147 of 1988. However, the petitioner Bapuappa's application came to be rejected. Amongst other pleas, the tenants had resisted these applications as being barred by time. In this the

Tahsildar in his order came to the conclusion that the respondents 1 to 8 were liable to get the possession of the field while Bapuappa had no concern with the land and, therefore, he could not be placed in possession of the field in dispute. It was found by him that Namdeo Bhagwan Sonar whose legal representatives the respondents Nos. 1 to 8 are was in possession of the suit land since 1956 till 27-10-1967 when the tenants were put in possession. He further observed that since the tenants had failed to file any application for fixation of purchase price and for conferral of ownership on them within the period of one year from the date of restoration of possession, the tenants were not entitled to retain the possession of the land under the Act. He relied on the order passed by the Tahsildar dated 31-5-1984 in Revenue Case No. 3/59(13-A)/82-83 rejecting the application of the tenants on the ground of limitation. In this order the Tahsildar made further observations that since the order passed by the Tahsildar dated 31-5-1984 was throughout confirmed, in pursuance of that order the landlords could make an application for restoration of possession. He observed that the Tahsildar had held the tenants to be trespassers because they had failed to make an application for conferral of ownership within time. The Tahsildar in this order has not bothered to test the plea of the tenants that the applications by respondents 1 to 8 as also by Bapuappa were barred by time. There is no discussion whatsoever by the Tahsildar in this order. In short, it was only respondents 1 to 8 who were found entitled to the possession of the whole field from the tenants. It is contended by the tenants in their Writ Petition No. 2147 of 1988 that the Tahsildar who was in haste also proceeded to deliver the possession of the field to the respondent Nos. 1 to 8 in Writ Petition No. 2147 of 1988.

4. The tenants filed an appeal against the order of delivery of possession in favour of respondents 1 to 8 vide Revenue Appeal No. Ten/Merkhed/6/85-86 and the petitioner Bapuappa in Writ Petition No. 1933 of 1989 also filed an appeal against the finding that he was not concerned with the said land. While the appeal filed by the tenants came to be disposed of by the order dated 31-3-1986 by the Sub-Divisional Officer, the appeal of Bapuappa was disposed of by the Sub-Divisional Officer by his order dated 26-9-1986. The Appellate Order also reiterated the findings by the Tahsildar. In the order passed on 31-3-1986 the Sub-Divisional Officer who confirmed the order has not bothered to take into consideration the plea raised by the tenants regarding the limitation to file the application for restoration of possession. He also held that once the application by the tenants for conferral of ownership was rejected as time-barred or on any other plea for that matter, the position of the tenants over the field ipso facto converted into the trespasser. There is hardly any consideration of any legal plea or factual aspect by the Sub-Divisional Officer in his order dated 31-3-1986. Same is the case with the order passed by the Sub-Divisional Officer dated 26-9-1986.

5. Two Revisions came to be filed against these orders. Against the order dated 31-3-1986, a Revision Application No. Ten-A-57/86 was filed by the tenants while

the petitioner Bapuappa in Writ Petition No. 1933 of 1989 filed a Revision Application No. Ten-A-65/1986 before the Maharashtra Revenue Tribunal, Nagpur. These two Revisions, i.e. Nos. Ten-A-57/86 and Ten-A-65/86 were disposed of by a common order by the Maharashtra Revenue Tribunal dated 30-3-1988. The Maharashtra Revenue Tribunal dismissed the Revision by this order dated 30-3-1988 and it is this order which came to be challenged by the tenants in Writ Petition No. 2147 of 1988 and by Bapuappa in Writ Petition No. 1933 of 1989. The main contention of Bapuappa is that the finding of the Revenue Authorities that he had no concern with the land is not correct. He has in fact purchased 7 Annas share as back as in 1956 and, therefore, he has right of possession against the tenants, in his proportional share. His contention, therefore, is that the disputed land which has been ordered to be given in possession of respondent Nos. 1 to 8 in Writ Petition No. 2147 of 1988 who were the heirs of Namdeo Bhagwan, wholly, is not correct and in fact out of the said land part of the land, i.e. 7/16th share should have been ordered by the Revenue Authorities to be put in his possession. The contention of the tenants/petitioners in Writ Petition No. 2147 of 1988 is that in fact there could be no order of delivery of possession at all whether in favour of the heirs of Namdeo Bhagwan, i.e. the respondent Nos. 1 to 8 or in favour of Bapuappa because the applications made by these landlords or the landlord's transferees themselves were not maintainable. A reference also will have to be made to the orders passed by the Maharashtra Revenue Tribunal in Tenancy Revision No. Ten-A-40/87, No. Ten-A-41/87 and Tenancy Revision No. Ten-A-113/86. These are the three Revisions arising out of the execution orders. While Revision No. Ten-A-113/86 was filed by the tenants, Revision No. Ten-A-40/87 was filed by Bapuappa against the tenants and the Revision No. Ten-A-41/87 was filed by Bapuappa against Rambhau and others. In all five Revisions came to be disposed of on the basis of the order passed by the Maharashtra Revenue Tribunal in Revision No. Ten-A-57/86. The aforementioned three Revisions, namely, Nos. Ten-A-113/86, Ten-A-40/86 and Ten-A-41/87 are because of the proceedings initiated for possession by the Legal Representatives of deceased Namdeo. The questions are all common in both these writ petitions.

6. First it has to be seen whether the tenants who were admittedly put in possession u/s 10 of the Tenancy Act in the year 1967 could at all be ousted from the possession on the basis of application filed by anybody at all? If they could be so ousted from the possession, whether the applications made by various sets of landlords or the persons claiming to be the landlords or the transferees from the landlord were within limitation and on the basis of such applications could the tenants be ordered to deliver possession either to the Legal Representatives of the original (landlord or the transferees of the original) landlord? Now there are only two sets of persons who are left. Firstly, it is Bapuappa who claims to be the purchaser from Amrut Dalal - the original landlord of 7 Annas share and in that capacity lays his claim on the land in question. Secondly, the respondent Nos. 1 to 8 are the Legal Representatives of

Namdeo Bhagwan, who claims to be the purchaser of the whole field from Tarachand Agrawal, Bapuappa Punjappa and Uttamrao Deshmukh who were the transferees and who had purchased the whole field jointly from the original landholder Amrut Waman Dalal. Now, therefore, there is a contest between Bapuappa and the heirs of Namdeo Bhagwan on the one hand as according to his legal representatives, they are entitled to the ownership of the whole field while the case of Bapuappa is that he had not sold his 7 Annas share which he had purchased from Amrut Waman Dalal to Namdeo Bhagwan. However, the common claim of Bapuappa and the heirs of Namdeo Bhagwan is that the tenants are not liable to continue in possession and the possession should be handed over to the landlords. Ultimately the picture which comes is that the tenants have to defend the possession against the heirs of Namdeo Bhagwan and/or Bapuappa. The questions to be decided, therefore, are whether the tenants are liable to be dispossessed at all? Secondly, if they are found liable to be dispossessed, whether the fields should go entirely to the heirs of Namdeo Bhagwan or whether even Bapuappa would be entitled to the possession of 7/16th portion of the field in question? The answer to the last two questions would necessarily depend upon the answer to the first question.

7. All the three Authorities below, namely, Tahsildar, Sub-Divisional Officer and the Maharashtra Revenue Tribunal have recorded a finding that the tenant was liable to hand over the possession to the heirs of Namdeo Bhagwan alone as Bapuappa has not established any connection with the land. All the three Authorities have also recorded a finding that since the application by the tenants for the conferral of ownership and for determination of the price of the land was dismissed in the earlier round of litigation the possession of the tenant has become that of the trespasser and it is for this reason that the landlords have earned a right to recover the possession from the tenants, of course via section 36(2) of the Tenancy Act. The Authorities have also found that once the tenant's right to get the land transferred in his name comes to an end because of the dismissal of his application, the landlord automatically gets the right to walk into the possession. The question is again - which landlords - whether the heirs of Namdeo Bhagwan wholly or Bapuappa in so far as the 7/16th share of the land is concerned? We will, therefore, have to go into the first question whether the tenants could be ousted from the land. If the answer to this question is in the negative, then necessarily the second and third questions become wholly redundant because in that case the legal representatives of Namdeo Bhagwan as also Bapuappa lose all their rights to recover the possession from the tenants under the provisions of Tenancy Act.

8. It is an admitted position that the tenants have been restored to the possession of the land in the year 1967 in pursuance of the order passed u/s 10 of the Tenancy Act. Section 50 of the Tenancy Act is crystal clear in its language. It says that where a tenancy is restored under sections 7, 10, 21, 52 or 128-A or is created by a landlord after 1-4-1963, then a right shall accrue in favour of such tenants to claim the ownership. The section further provides the modality.

The limitation for making such application is also provided and in case of a tenant who is restored to the land u/s 10 such limitation of one year starts from the date of his restoration. In this case it is an admitted position that the tenant was restored to the land on 27-10-1967. Therefore, there is no doubt or dispute about the position that the tenant was restored u/s 10 on the land in question on 27-10-1967 and as such on that day the limitation started running against him and the limitation came to an end on 27-10-1968. The tenant did not make an application. He chose to make an applications only in the year 1977 and, therefore, the applications made by the tenant for conferral of ownership rights came to be dismissed rightly by the Revenue Authorities and were held barred by limitation. The position is absolutely clear that the tenants' application for conferral of ownership was barred by limitation and that position has really become final. The question is as to when did the right to ask back the possession accrue to the landlords either to the legal representatives of Namdeo or to Bapuappa? The legal position is clear that where the tenant fails to make an application for conferral of ownership within the period of limitation, i.e. one year, then the landlord can ask for such possession and only with the aid of section 36(2) of the Tenancy Act. The legal position is also extremely clear and admits of no doubt that if the landlord takes recourse to section 36(2) for recovering such possession, he has to make that application within two years from the date the right accrues to him. Section 36(2) is undoubtedly clear. The language admits of no doubt. It runs as under :

Section 36(2) Save as otherwise provided in sub-section (3-a), no landlord shall obtain possession of any land, dwelling house or site used for any allied pursuit held by a tenant except under an order of the Tahsildar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land dwelling house or site, as the case may be is deemed to have accrued to him.

Therefore, before making an application u/s 36(2), the landlords in this case either the Legal Representatives of Namdeo Bhagwan or Bapuappa as the case may be, will have to establish the date on which the right to recover possession accrued in their favour. The bare reading of section 36(2) and section 50 of the Tenancy Act together will show that such right accrued to them on the date when the limitation for the tenants to apply for the transfer of ownership u/s 50 came to an end. Such limitation in this case has come to an end on 27-10-1968 because on that day the one year from the date of restoration was over. Whether the tenants had made any application or not, the right definitely had accrued in favour of the landlords to make an application u/s 36(2) of the Tenancy Act.

9. The legal position is now well-settled by a reported decision in *Vikram Yeshwanta and others v. Eknath Trimbak Gadekar and others* 1977 M L.J. 520 The Division Bench of this Court proceeds to hold that where the tenant fails to exercise his right within time as contemplated u/s 50 and thus where there is a deemed surrender under the provisions of section 43(14-A), the landlord does

not get a right to walk into the field and take possession. He has still to take recourse to section 36(2) and has to make an application. The decision in the clearest possible terms holds that the said tenant does not become a trespasser because of a fiction in section 43(14-A) of the Tenancy Act and it cannot be contended that no order for taking possession from him u/s 36(2) is necessary. In the result, the decision goes on to hold that where the tenant fails to exercise his right u/s 50 within time, then it gives a cause of action from that day to the landlord to make an application against him u/s 36(2) and certainly the tenant does not become a trespasser so as to lose his right to continue in possession. On the basis of this legal position, let us examine whether such a right accrued in favour of the present landlords or at least the persons who claim to be the landlords, as to whether they exercised their rights in time and as to whether the orders passed by the Revenue Authorities holding that they have become entitled to possession are right in law as well as on facts?

10. The learned Counsel appearing on behalf of the petitioner Shri V.N. Patil in Writ Petition No. 1933 of 1989 and Shri M.N. Ingley in Writ Petition No. 2147 of 1988 relied very heavily on one fact that the three courts below had found the tenant to be a trespasser. Their submission on this question is that when the Tahsildar passed an order in the previous round of litigation on 31-5-1984 he had specifically rejected the application filed by the tenants u/s 50 for fixation of purchase price and for transfer of ownership. They further submit that in that application a clear-cut finding was recorded that the tenant's application was hopelessly time-barred and in paragraph 7 a liberty was given to the landlords for making an application to take back the possession. Their contention is that it is in pursuance of this direction of the Tahsildar that the present applications came to be filed. The learned Counsel for the parties specifically invited my attention to the observation which is as under :

"The landlords may apply if they like to take back the possession for taking separate action in the matter. No costs."

The Counsel pointed out that this order had throughout been maintained. The Counsel, therefore, contend that the application made by the landlords were in pursuance of this direction and this part of the order not having been set aside by the higher Courts, such direction becomes binding on the tenants. The Counsel for the parties further contend that the findings recorded by the three courts below to the effect that after the application by the tenants u/s 50 was rejected, their possession became that of trespasser is a correct view. They further contend that there was no question of making any application earlier because the application by the tenants u/s 50 was already pending. Their contention in short is that the limitation for filing an application for possession is extended to the date when the application u/s 50 filed by the tenants is finally decided. According to them, such final decision has taken place on 31-5-1984 and, therefore, their application made within two years of the passing of this order, i.e. 31-5-1984 is within limitation. The Counsel fairly admit that the

question of limitation has not been investigated by Tahsildar, Sub-Divisional Officer or the Maharashtra Revenue Tribunal who have proceeded on the presumption that the application is within limitation. In this case, though the original tenants had engaged Shri C.P. Kalele, Advocate, it appears that Shri C.P. Kalele was permitted to withdraw his power on behalf of the tenants in Writ Petition No. 2147 of 1988. Thereafter the petitioner/tenants were noticed individually. Those notices have been served but there appears to be no appearance on behalf of the tenants. The Court, therefore, requested Shri S.R. Deshpande to act as an Amicus Curiae and appear on behalf of the petitioners. Shri S.R. Deshpande agreed to act as an Amicus Curiae and pointed out to the Court that firstly it was essential to decide the question of limitation and the Courts below had committed an error in not examining as to whether the applications made by the landlords were within time or not.

11. Indeed, a glance at all the three orders shows that the question of limitation has not been gone into at all. As has already been pointed out, the tenants have raised a question of limitation. Their contention was that the applications as made were not in time and barred by limitation. If this question was raised before the Tahsildar as would be evident from the order itself, then it was the duty of those Authorities to examine this question. The petitioners in Writ Petition No. 2147 of 1988 in paragraph 6 have averred :

".....The defences raised by the petitioners, inter alia, amongst others were : the respondents-applicants Nos. 1 to 8 had no locus standi as the title did not vest in them till then; the deemed surrender, if any, could be and is in favour of Bapuappa, Tarachand and Uttamrao, in whose favour, the original surrender-deed dated 28-12-1956 was executed, that their application was bad for non-joinder of necessary parties, that their application was time-barred, etc....."

There is no counter to this averment in paragraph 6. What is stated in the return is that since the averments were the matters of record, it called for no comments from these respondents. It was, therefore, incumbent upon the concerned Authorities to decide this question of limitation. The order of Tahsildar is silent about this. Even the appellate orders appear to be silent. It must be borne in mind that the order dated 17-1-1986 passed by the Tahsildar was challenged in two appeals. The appellate order in one case, which was started against the respondents 1 to 8 i.e. the legal representatives of Namdeo, is dated 31-3-1986 and another order is dated 26-9-1986. Both the orders are simply silent on the question. In fact, in both the orders the sub-Divisional Officer has hardly applied his mind to the controversy as to whether the application made by the landlords was within limitation.

12. The matter thereafter was decided in Revision, mainly in Revision Application No. Ten-A-57 of 1986. After giving the brief history of the litigation, the Maharashtra Revenue Tribunal has firstly concluded that the tenants were restored to the field u/s 10 of the Tenancy Act and as such section 50 was applicable to them and nothing could be said against this finding and this finding

had become final. The learned Member was absolutely right in holding that if it was established that the tenant was restored to the possession of the disputed field u/s 10, then the provisions of section 50 were applicable and he was bound to apply u/s 50. There cannot be any dispute about this legal proposition. The reliance in this behalf by the Maharashtra Revenue Tribunal on the earlier remand orders is also correct. However, the further observations of the Maharashtra Revenue Tribunal in the order and more particularly the reasoning regarding the application of section 43(14-A) of the Tenancy Act is per se incorrect. The Maharashtra Revenue Tribunal then proceeds to hold, after giving a finding that section 50 was applicable to the present case, that in view of the facts that the application of the tenants u/s 50 was rejected as it was found to be time-barred, the presumption of deemed-surrender u/s 43(14-A) applies to the case of applicants Shriram and Kondiba and consequently, they became the trespassers. Very strangely thereafter a reference is made to the Division Bench decision reported in *Vikram Yeshwanta and others v. Eknath Trimbak Gadekar and others*, (cited supra) and yet the Maharashtra Revenue Tribunal has failed even to read the decision further or to comprehend it. As has already been stated earlier, there is a clear-cut observation in that judgment in paragraphs 11 & 12 that the tenant does not become a trespasser because of the fiction of section 43(14-A) and it cannot be contended that no order for possession under sub-section (2) of section 36 of the Tenancy Act is necessary. The Court in that case in the clearest possible terms has held that such tenant who fails to exercise his right u/s 50 though invites the consequences as contemplated u/s 43(14-A) of deemed surrender, yet does not lose the legality of the possession in the sense that he does not become a trespasser and if the landlord has to recover the possession from such tenant then necessarily the landlord will have to take recourse to section 36(2). In spite of such a clear-cut statement of law made in this case, the Maharashtra Revenue Tribunal has treated Shriram and Kondiba, i.e. the tenants to be the trespassers. It is, therefore, clear that the Maharashtra Revenue Tribunal has erred in holding the tenants to be the trespassers but the matters do not rest here. Even if it is presumed that the tenants had failed to make an application u/s 50 for the transfer of ownership or where his application was found to be time-barred and was dismissed, the landlord would still have to take an action u/s 36(2). Now the crucial question is as to what is the point of time when the landlord should make this application. Section 36(2) undoubtedly provides a limitation of two years and the limitation starts from the date when the right to recover such possession from the tenants accrues to the landlord. In this case, obviously since the tenants were restored to the possession on 26-10-1967, they should have filed an application u/s 50 within one year from that date but the moment that date was over, on that very date the right to recover the possession from such tenants accrued in favour of the landlords. This limitation was of 2 years and, therefore, this limitation could be extended in this case only upto 27-10-1970. It is an admitted position that before 27-10-1970 no applications came to be made by the landlords. In fact, the tenants allowed their right of the transfer of the field in their favour u/s 50 to

be frittered away by remaining silent and by not making an application in time. In this case, they waited upto 1977. If the tenants had not made an application within limitation, then as soon as that limitation was over, the landlords got the right to recover possession from the tenants. Though for this purpose the landlords would be required to file an application u/s 36(2). However, in this case even the landlords slept over their right and did not prefer an application. They probably came to their senses only when their tenant's time-barred application made in 1977 was so dismissed by the Revenue Authorities and the Revenue Authorities casually mentioned that if the landlords wanted they could make an application. Probably it is because of casual and unwarranted remarks passing of which was hopelessly without jurisdiction that the landlords for the first time made applications somewhere in the year, 1984. The applications of the landlords were, therefore, obviously barred by time.

13. The whole premise of the order of the Tahsildar, Sub-Divisional Officer as well as the Maharashtra Revenue Tribunal is, therefore, incorrect. Firstly, all the three Authorities have committed an error of law in holding the tenants to be the trespassers merely because their application u/s 50 has been dismissed as time-barred. In fact, such dismissal would not in any manner bring a cloud on the legality of the possession of the tenants. They could still continue in the possession unless the landlords made an application u/s 36(2) and recovered the possession thereof. It could never be said that the tenant's possession became that of a trespasser in terms of the law laid down by this Court in *Vikram v. Eknath* (cited supra). Further if the tenants failed to make an application within time, then the right to recover the possession accrued in favour of the landlords on the date the limitation for the tenants to make an application was over. If the tenants did not make an application, then landlords could not take the further advantage of a time-barred application having been dismissed by the Revenue Courts. The courts below have missed this vital aspect which has resulted in all the three orders being vitiated. The Tahsildar while deciding an application of the tenants u/s 50 had absolutely no justification in giving a direction or making a casual comment that the landlords if they wanted could make an application for recovery of possession. Such direction had neither the sanction of law nor the justification therein. Such direction obviously could not have been given and even if it is given it would still be incumbent upon the courts to examine as to whether the application made in pursuance of such direction was in keeping with the law of limitation and the other laws regarding tenability. Since the landlords failed to make an application within two years of the accrual of right to them, the applications have to be dismissed on that count alone.

14. Shri M.N. Ingley, the learned Counsel for the respondents, thereafter tried to contend that if the tenant continued merely as a tenant, he could never get the ownership transferred. Therefore, his position would be that of an ordinary tenant. Under such circumstances, it would be deemed to be an yearly tenancy and in view of that every year the landlord would get the right to make an application u/s 36(2) if the tenant did not make such application. In short, his

contention is that even if the landlord failed to make an application in the first instance, he could still make an application at the end of the year because the tenancy was from year to year. The contention is obviously incorrect. In the first place, once the right of the landlord had come to an end by law of limitation u/s 36(2), there could be no automatic revival of that right. If the tenancy is deemed to be year to year tenancy, then even the tenant would have a right to make an application for the conferral of ownership because every year there would be a creation of new tenancy. Under such circumstances, there would be no occasion for the tenant's application being barred by limitation. If this was the position, then even the order dated 31-5-1984 whereby the tenant's application u/s 50 was dismissed as time-barred would be rendered without jurisdiction and illegal, because if according to Shri Ingley the tenancy is year to year, then the tenant would get the right to make an application u/s 50 every year. The words in section 36(2) admit of no doubt. For a limitation to making an application under that section, the said right to make an application has to be exercised within two years from the date when the right to recover possession is deemed to have accrued to the landlord. In the present case, such accrual will have to be held only on the date when the tenant's right to make an application u/s 50 came to an end by way of one year's limitation. The moment that one year's limitation became over for the tenant to make an application u/s 50, that date alone will have to be held as the date when the right to recover the possession has accrued to the landlord. If the accrual began and ended with the two year's limitation, there could be no fresh revival of that accrual in favour of the landlords because if such fresh revival is to be seen in favour of the landlords, the same will have to be held in favour of the tenants also and then the tenants will also get every year the right to apply for the transfer of the land u/s 50. Such cannot be the interpretation of law particularly in view of the observations made by this Court in the Division Bench judgment.

15. In fact, the applications made by Bapuappa and the respondents 1 to 8 were not u/s 36(2) of the Tenancy Act at all. They were simply their applications prompted because of the casual comment of the Tahsildar. It cannot, therefore, be said that the applications made by the landlords were u/s 36(2). Indeed if such applications could not be made because of the bar of limitation as contemplated u/s 36(2), both the applications were bound to be dismissed. In view of this clear position in law, on the basis of these applications the tenants could not be ordered to deliver the possession of the fields in dispute. If there could be no direction to the tenants to deliver the possession at all, the further question as to in whose favour such possession goes becomes redundant and unnecessary. The admitted position is that the landlords have not made an application within limitation and on that ground alone those applications were liable to be dismissed. In view of this finding, I do not wish to give a finding on the further question as to whether Bapuappa had transferred his rights in favour of Namdeo, i.e. the predecessor of respondent Nos. 1 to 8 in Writ Petition No. 2147 of 1988. Such enquiry would obviously be a redundant enquiry as the

tenants could not lose the possession at all, muchless on the basis of the time-barred applications on behalf of the landlords.

16. In the result, the following order is passed :

The Writ Petition No. 2147 of 1988 filed by Shriram and Kondiba is allowed and the rule issued therein is made absolute. Consequently, the orders passed by the Tahsildar, Buldana dated 17-1-1986 and the further orders passed by the Sub-Divisional Officer as also by the Maharashtra Revenue Tribunal are set aside and it is ordered that the application made by Rambhau and others is dismissed. It is reported that the Respondent Nos. 1 to 8 have already recovered the possession from the petitioner/tenants. The tenants/petitioners will have to be restored back to the possession of the fields in dispute. A direction to that effect shall also be issued to the tenants separately since they are unrepresented before this Court.

Similarly, in so far as the Writ Petition No. 1933 of 1989 is concerned, the petition will have to be dismissed and it will have to be held that the original application made by Bapuappa for recovery of possession itself was time-barred and it will have to be ordered to be dismissed. In view of the dismissal of the original application for possession itself, no further order is necessary as regards the inter se dispute between Bapuappa and respondents Nos. 1 to 8 in Writ Petition No. 2147 of 1988.

However, there shall be no order as to costs in both the petitions.

The Court appreciates the efforts on the part of Shri S.R. Deshpande, Advocate who has acted as an Amicus Curiae in Writ Petition No. 2147 of 1988.