

(2005) 06 BOM CK 0133

In the Bombay High Court

Case No : Writ Petition No. 1757 of 1989 with Civil Application No's. 4120 to 4123 of 2004

Dina Onkar Patil and Others

APPELLANT

Vs

Dulba Rajaram Patil and Others

RESPONDENT

Date of Decision : 23-06-2005

Acts Referred:

Bombay High Court (Appellate Side) Rules, 1960 — Rule 11
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15 , 25, 31, 32, 32A
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, 141
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 6 BomCR 397 : (2005) 4 MhLj 1024

Hon'ble Judges : Naik A.B., J

Bench : Single Bench

Advocate : V.J. Dixit, for the Appellant; C.V. Korhalkar and S.V. Gangapurwala for Respondent Nos. 3-A, 4-A and 4-B, R.P. Phatke, for Respondent Nos. 2, 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Naik A.B., J.—The petitioners are the heirs of successors of one Onkar Keshav and the respondents are heirs and successors of one Rajaram Totaram, in whose favour an agreement was entered into by Rajaram Onkar on 25-6-1963 for a period of 10 years by deceased Onkar in respect of the land S. No. 178/A/2 admeasuring 1 hectare 34 acres situate at village Nimbala, Taluka Raver, Dist. Jalgaon. The parties for the sake of convenience will be referred to as landlord and tenant. (The petitioners are the heirs of landlord and the respondents are heirs of tenant.)

2. The fact giving rise to the controversy are to be noted in somewhat detail. The suit land was admittedly owned by the landlord. The alleged tenancy agreement was arrived at on 25-6-1963 i.e. after tillers day. R.C.S. No. 115/73 was filed by the landlord against the tenant for recovery of rent of the suit land. The landlord contended that tenant taken the suit land on the lease in the year 1963-64 for a

period of 10 years on payment of rent at Rs. 700/- p.a. As the tenant has failed to pay the rent, the landlord filed suit for recovery of arrears of rent. The learned Civil Judge (J.D.) partner by the judgment and order dated 27-6-1979 decreed the suit. Feeling aggrieved by the judgment and decree dated 27-6-1979 passed by the learned Civil Judge (J.D.) Raver, the tenant preferred appeal to the District Court, Jalgaon, being Civil Appeal No. 208/1979. That appeal was dismissed by the Extra Assistant Judge, Jalgaon by the judgment and order dated 16th October, 1980. No further appeal was carried to this Court. Thus the question of recovery of rent stands concluded.

3. Before filing of the suit the tenant filed an application on 18-11-1972 for fixation of price of the land u/s 32-G of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as the Act). It was contended by the tenant that he was cultivating the suit land as a tenant and tenancy was created after tillers day and as such the provisions of Section 32-O of the Act are attracted. As such he gave notice to the landlord expressing his intention to purchase the land. Simultaneously notice was also given to the Tahsildar. On receipt of the application the Tahsildar i.e. Agricultural Lands Tribunals noticed the parties and conducted an enquiry. In that enquiry the A.L.T. was called upon to decide whether Rajaram is a tenant and whether the opponents are landlords and whether the tenant is entitled to purchase the land. If he is entitled to purchase the land, to what extent he can purchase the land and what should be the purchase price. Before A.L.T. parties led evidence, on the basis of the evidence, Tahsildar recorded a finding that Totaram is the tenant of the land but as the intimation was not given as required u/s 32-O, within one years from commencement of tenancy, he held that the tenant is not entitled to purchase the land. Accordingly, the Tahsildar, Raver held against the tenant and rejected the application by the order dated 8th October, 1974.

4. Feeling aggrieved by the order of Tahsildar/A.L.T. the tenant preferred revision application being Revision Application No. 25/75 before the Collector, Jalgaon u/s 76-A of the Bombay Tenancy and Agricultural Lands Act. The Collector, Jalgaon by his judgment and order dated 31-12-1975 set aside the order of the Additional Tahsildar/A.L.T. dated 8th October, 1975 and remanded the matter for fresh decision to the A.L.T. 5. After remand the matter was taken up for hearing by Tahsildar, Raver. Tahsildar permitted the parties to lead evidence. He also permitted the parties to file written arguments. After hearing the parties, considering the written argument and the evidence, the Tahsildar Raver held that the tenant has issued notice within prescribed period specified in Sub-section (1) of Section 32-O of the Act and thus he held that the tenant is entitled to purchase the land and accordingly, by the judgment and order dated 5-2-1979, he allowed the application.

6. Feeling aggrieved by the judgment and order passed by A.L.T. Raver, the landlords preferred appeal before the Assistant Collector, Jalgaon. The Assistant Collector, Jalgaon allowed the appeal holding that the tenant has not given

intimation u/s 32-O of the Act as giving intimation being mandatory. As the tenant has not given notice/intimation as required, the proceeding u/s 32-G are thus held to be bad. Accordingly, the Assistant Collector, by the judgment and order dated 31-1-1980 allowed the appeal and set aside the order passed by Tahsildar.

7. Feeling aggrieved by the judgment and order dated 31-1-1980 passed by the learned Assistant Collector, Jalgaon, the tenant preferred revision application before the M.R.T. Mumbai, being TEN.A. 89 of 1980. The M.R.T. by the judgment and order dated 20th October, 1980, rejected the revision application summarily and confirming the order passed by the Assistant Collector, Jalgaon.

8. The tenant feeling aggrieved by the judgment and order of the Assistant Collector and the Maharashtra Revenue Tribunal approached this Court by filing writ petition being W.P. No. 1356/1981. This Court (Coram : R.A. Jahagirdar, J., as then he was) rejected the writ petition, summarily. The order passed by this Court reads thus :

"Rejected.

The petitioner is at liberty to take appropriate contentions in proceedings u/s 32-P on the basis of the judgment in Civil Appeal No. 208/1979."

The order of this Court dated 2-7-1981 in the writ petition, second round of litigation stands concluded.

9. As the proceedings u/s 32-O read with Section 32-G has come to an end, the landlords filed application u/s 32-P on 11-8-1982

before Tahsildar A.L.T. Raver, seeking possession of the land from then tenant, inter alia contending that the tenant is not entitled to purchase the land and prayed for possession of the land for personal cultivation. On receipt of the application, the Tahsildar noticed the tenant who appeared and contested the application by filing his say on 17-2-1983. It was contended by the tenant that the landlord had filed a suit in the Civil Court for recovery of rent on the ground that the land was leased for growing banana plants and entitled to recover rent more than 5 times of land assessment. It was contended that lease is covered by Section 43-A of the Act. It was contended that judgment in that suit was confirmed in appeal, wherein the Appellate Court has accepted the fact that the land was leased for banana plantation. It was contended that the proceeding u/s 32-G initiated by the tenant though contested by the landlord, the landlord suppressed the fact that the land was leased for banana plantation and as such it is governed by Section 43-A of the Act. Therefore, the tenant contended that orders passed u/s 32-G proceedings are thus without jurisdiction and has no effect on the right of tenant. On this background, tenant submitted that the orders passed in proceeding u/s 32-G being nullity, null and void. Therefore, it was submitted that proceeding u/s 32-P are also not maintainable and liable to be dropped.

10. On the basis of the rival contentions the Tahsildar/A.L.T. framed the following points for determination:

i) Whether the application filed by the applicant is maintainable in view of the contentions raised by the opponents.

ii) Whether the land is liable for disposal u/s 32-P.

iii) Whether the landlords applicants are entitled to retain the possession of the land in view of the provisions of sections 25 and 31 of the Tenancy Act?

The parties to the proceedings led evidence, the Tahsildar/A.L.T. considering the evidence produced on record came to the conclusion that the land was leased out for cultivation of fruits (banana) and thus it is governed and protected by the provisions of Section 43-A of the Act and as such the application u/s 32-P is not maintainable. With these observations the A.L.T. rejected the application by the order dated 30-6-1983.

11. Feeling aggrieved by the judgment and order passed by Tahsildar/A.L.T. in Case No. 46/1983 the landlord preferred an appeal before the S.D.O. Jalgaon, Division Jalgaon. The S.D.O. dismissed the appeal and confirmed the order passed by the Tahsildar/A.L.T. Raver by his order dated 8-7-1985.

12. Feeling aggrieved by the judgment and order passed by Tahsildar/A.L.T. and S.D.O. Jalgaon, the landlord preferred revision application to the M.R.T. The M.R.T. on hearing the parties and considering the evidence that is brought on record, the M.R.T. did not agree with the finding recorded by Tahsildar/ A.L.T. and S.D.O. Jalgaon. So far as the finding on the point of nature of the lease and application of Section 43-A of the Act. The M.R.T. recorded a finding that the provisions of Section 43-A are not attracted and held that the land was not leased for the purpose of cultivation of fruit. On arriving at this conclusion, the learned Member of the Tribunal proceeded or I may say ventured to consider submission of a tenant based on his right to purchase the land u/s 32-O of the Act. The learned Member of the M.R.T. having considered the provisions of Section 32-O of the Act, was of the opinion that non-issuing intimation or giving notice may not be fatal to the right of the tenant. He was of the opinion that the purchase has not become ineffective as the tenant tried to exercise the right to purchase the land. Merely because the tenant has failed to give notice to the landlord, the right the denial of an opportunity to him to purchase the land was improper. Therefore, he recorded a finding that the landlord cannot invoke the provisions of Section 32-P of the Act, on the contrary he held that the tenant is entitled to purchase the land u/s 32-O, the learned Member of the M.R.T. was of the opinion that the enquiry u/s 32-G is necessary and the price is required to be fixed in view of these findings the M.R.T. has remained the matter to enquire whether the tenant is willing to purchase the land and if he failed to give his willingness to purchase the land then only purchase can be said to be ineffective. For that purpose, the matter came to be remained back to A.L.T. Accordingly, the judgment and order passed by the Tahsildar/A.L.T. and the S.D.O. Jalgaon, are

set aside.

13. The order dated 21-1-1989 passed by the M.R.T. is subject-matter of challenge in this petition filed under Article 227 of the Constitution of India. Generally this Court is reluctant or slow to interfere in the order of remand. If the remand order was passed and which was necessitated to decide a particular point but by reading the judgment of the M.R.T. in my judgment, the M.R.T. on total erroneous approach ventured to reopen the proceeding which stands concluded by the order of this Court in Writ Petition No. 1356/1981. Keeping this aspect, in my mind, I have to appreciate the rival contentions of the learned Counsel.

14. Shri Dixit, learned Counsel for the petitioner contended that it was not open for the M.R.T. to reconsider the issue which stands concluded finally in the earlier proceedings under the Act, where the right of tenant to purchase land u/s 32-G read with Section 32-O was negatived. Shri Dixit, therefore, submitted that this aspect of the matter was not appreciated in right perspective. Shri Dixit, submitted that tenancy was created after tillers day and it was governed by Section 32-O of the Act, as such it was incumbent of the tenant to give intimation in terms of the Act within one year from commencement of the tenancy. He submitted that earlier proceedings were taken by the tenant u/s 32-G and those proceedings are terminated against the tenant and all those orders were confirmed by this Court. Shri Dixit, therefore, submitted that while dismissing writ petition, this Court permitted the tenant to take up the plea of Section 32-P. Merely because this direction was given by this Court will not mean that the entire proceeding starts reopened. Shri Dixit, therefore, submitted that what was dispute before the Civil Court has nothing to do with the present proceedings. He submitted that in Civil Court the question was recovery of rent. There it was contended that the lease is for the purpose of fruit growing and governed by Section 43-A but he submitted that the question was only for recovery of rent and the Civil Court could not have embarked upon an enquiry to determine the nature of lease. Therefore, whatever observations or findings recorded in the Civil Court will have no effect on the present proceeding. He therefore, submitted that the right of the tenancy to purchase the land u/s 32-G stands finally concluded. Shri Dixit, next submitted that the Tahsildar and the Assistant Collector have dismissed the application and the appeal by holding that the lease was covered u/s 43-A of the Act, but the M.R.T. did not agree with this finding and therefore M.R.T. was justified in recording the finding that has been recorded by both the authorities. He therefore, submitted that once M.R.T. came to this conclusion then it was impermissible for M.R.T. to issue further directions to revive the right of the tenants u/s 32-O of the Act. Therefore, he submitted that the finding and/ or observation made by the M.R.T. qua provisions of the Section 32-O are required to be interfered with. He submitted that the directions which are issued by the M.R.T. were not at all called for and the parties are ad idem with that aspect. Therefore, he submitted that the M.R.T. overstepped his jurisdiction conferred on him by Section 76 of the Act and thus M.R.T. has

committed an error appearing on the face of record.

15. Per contra, Shri Korhalkar, learned Counsel supported the order passed by the M.R.T. Shri Korhalkar, submitted that it will be not open now for the landlord to take up a contrary stand than one set up by him in the civil proceedings. Shri Korhalkar, submitted that when this Court rejected the Writ Petition No. 1356/1981 has rightly observed that in the proceeding u/s 32-P the contention of tenant about his right to protect possession, on the ground of Section 43-A has to be considered in the light of the judgment in Civil Appeal No. 208/1979. Shri Korhalkar, brought to my notice the judgment of the learned District Judge in the appeal which was relied on by the tenant in W.P. No. 1356/1981. Shri Korhalkar, pointed out that initially the landlord has not based his claim on Section 43-A of the Act, but however, the plaint was subsequently, amended by the plaintiff/landlord and a contention was raised that as the land was leased out for the purpose of growing the fruits and as such he (landlord) is entitled for rent 5 times of assessment. He therefore, submitted that once the landlord accepted the fact that the land or for that purpose the lease was for growing fruits (horticulture) then it was not permissible for the landlord now to contend that Section 43-A is not attracted. Shri Korhalkar, therefore, submitted that the observation or for that purpose the finding that has been recorded by the M.R.T. (in earlier proceedings) thus runs contrary to the finding recorded by the Civil Court in a suit filed by the landlord against the tenant. He therefore, submitted that when the Tahsildar/A.L.T. and the Additional Collector on the basis of Civil Court judgment recorded a finding that the land is governed or the lease is covered by the provisions of Section 43-A of the Act, it was an error on the part of the M.R.T. to record a contrary finding. Shri Korhalkar, learned Counsel further submitted that once it is accepted that the land is governed by Section 43-A then for all practical purposes all the provisions of Tenancy Act as referred to in Section 43-A are excluded with from application. Therefore, he submitted that M.R.T. was right in interfering with the finding recorded by Tahsildar/A.L.T. and Assistant Collector, Jalgaon. Shri Korhalkar, then submitted that the Tahsildar/A.L.T. and Assistant Collector recorded a finding on the evidence that is produced on record that the lease agreement was for the purpose of horticulture and that finding was based on the evidence produced on record and both the authorities have recorded a finding to that effect which according to Mr. Korhalkar, being concurrent finding of fact, the same could not have interfered with by the M.R.T. by assigning the reasons as indicated in the order. He therefore, submitted that though, respondents, have not filed any cross-petition or any written objection, still it is permissible for the respondents to challenge the adverse finding. Shri Korhalkar, submitted that it was not necessary for the respondents to file any independent petition or for that purpose any written objection. I will have to consider this contention of Shri Korhalkar, at the threshold and to find out whether in a petition filed under Article 227 of the Constitution of India, a fresh petition or cross-objections as contemplated under Order 41, Rule 22 are required to be filed. So far as directions given by the M.R.T. to reopen the

enquiry u/s 32-O Shri Korhalkar, submitted that the M.R.T. might have overstepped his jurisdiction but taking into consideration that those observations are necessitated looking into the interest of the parties that it is a dispute between landlord and tenant, hence in fact of this case such directions were necessary. Be that as it may, in my judgment, the latter part of the judgment of the M.R.T. thus will have to be considered on the backdrop of earlier proceeding.

16. Before considering the other contentions let me take up the question whether in a petition filed under Article 227 of the Constitution of India, cross-objection and/or cross petition is required to be filed by the parties against whom adverse findings are being recorded. This Court admitted the petition on 17-7-1989. After admission of the petition, rule was served on the other parties and on service of rule nisi, a party has to file reply as contemplated under Chapter XVII, Rule 11 of the Bombay High Court (Appellate Side) Rules. Admittedly, till this date no reply is filed to the petition either objecting the finding which has been recorded by the learned Member of the M.R.T. For that purpose, I have to consider the provisions of Section 141 of the C.P.C.

"141. Miscellaneous proceedings. - The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court Civil Jurisdiction.

(Explanation - In this section, the expressing "proceedings" includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.")

Admittedly, this petition is filed under Article 227 of the Constitution of India, and therefore, the procedure provided in the Code has to be made applicable. Order 41 Rule 22 governing the procedure of appeal and for filing any objection. Rule 22, Order 41 permits the party to file objection to the finding recorded against that party. Order 41 Rule 22 reads thus :

"22. Upon hearing respondent may object to decree as if he had preferred a separate appeal-

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree (but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour, and may also take any cross-objection) to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

(Explanation - A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding

which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.)

(2) Form of objection and provisions application thereto- Such cross-objection shall be in the form of a memorandum, and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(***)

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule."

(underline by me)

Therefore, in my judgment, it was open for the respondent either to file an independent petition challenging that finding recorded by the M.R.T. qua the question of application of Section 43 -A of the Act vis-a-vis the maintainability of the provisions of Section 32-P on the backdrop of the finding that is recorded by the Civil Court in Rent Recovery suit as this Court has given liberty to the tenants to object the application u/s 32-P and raise the contention of application of other provisions of the Act, in view of Section 43-A. Therefore, the finding which is adverse against the tenant either should have been controverted by finding recorded by M.R.T., then the tenant should have objected that finding by filing written objection. Though, in this petition, no written objections are filed or any reply objecting the finding as required by Rule 11, Chapter XVII of the High Court (Appellate Side) Rules is filed, in my judgment, it was necessary for the respondents to challenges that finding of the M.R.T. by filing independent petition or filing cross-objection or even a reply. It is to be noted that the M.R.T. remanded the matter on a issue which was finally concluded and on erroneous assumption the M.R.T. reopened the issue. Be that as it may, still I permitted Shri Korhalkar, to address me on the correctness of the finding that has been recorded by the M.R.T. u/s 43-A of the Act. It is true that the M.R.T. has interfere in the finding recorded by the Tahsildar/A.L.T. and the Assistant Collector. The Assistant Collector, being final fact Court has considered the case of the parties qua the contention u/s 43-A. The learned Deputy Collector placed reliance on the judgment of the Civil Court which was placed by the parties on record i.e. judgment inn R.C.S. No. 115/73, Appeal No. 208/79 and the order passed by this Court in W.P. No. 1356/1981 and recorded a finding that Section 43-A will apply and not sections 32 to 32-R. All these aspects bearing in mind, I have to find out whether the M.R.T. was justified in reversing the finding. The M.R.T. was hearing a revision filed u/s 76 of the Act. The M.R.T. then in the course of hearing considered the entries in 7/ 12 extract and considered those entries and noticing

that there are no irrigation facilities in the land came to the conclusion that the land is not being used for horticulture purpose. In arriving at this conclusion, the M.R.T. also referred to provisions of Section 43-A and 43-B of the Act. The M.R.T. also considered the judgment of the Civil Court and taking into consideration the entries in the 7/12 extract and in particular Section 43-A of the Act deferred with the finding recorded by both the courts below. The M.R.T. in para 10 of its order made the following observation :

"10. Incidentally I must lay down my own observation regarding the provisions of sections 43-A and 43-B that, these provisions are controlled by State Government. These provisions are enacted especially for granting permission to grow specified crops in a specified land by specified persons and all these specifications are to be published in the Official Gazette and the permission is to be sought from the competent Government authorities. It is no whether published in the Official Gazette that the suit, land and the parties to it are given directions to grow fruit crops. The title of Chapter 3-A in block capital letters reads as follows :

"SPECIAL PROVISIONS FOR LANDS HELD ON LEASE BY INDUSTRIAL OR COMMERCIAL UNDERTAKING AND BY CERTAIN PERSONS FOR THE CULTIVATION OF SUGARCANE AND OTHER NOTIFIED AGRICULTURAL PRODUCE."

It is, therefore, absolutely clear that this chapter is applicable to the notified agricultural produce. Unless the fruit crop to be grown in the suit land is proved to be one of the notified agricultural produce the provisions of sections 43-A and 43-B cannot be applied to the suit land. There is no evidence to show that the notified agricultural produce was grown on the suit land. Section 43-A(1)(b) reads as follows :

"leases of land granted to any bodies or persons other than those mentioned in Clause (a) for the cultivation of sugar cane or growing of fruits or flowers or for the breeding of livestock."

This provision refers to the express "lease of land granted to". This expression implies that there is some authority behind it who can grant the leases under the provisions of Section 43-A. Similarly the provisions of Sub-sections (2) and (3) make it abundantly clear that these provisions are controlled by the State Government. The suit land is nowhere notified in any of the Official Gazette for the purposes of notified agricultural produce and, therefore, in my opinion it is wrong to conclude that provisions of Section 43-A are applicable to the suit lands."

17. On this aspect and the observations referred to above by the M.R.T. in my judgment, the Tribunal was justified in making those observations as the Appellate Authority has not appreciated the facts in proper perspective. What I find from the judgment of S.D.O. that he proceeded to consider admissions. 18. The averments made by the landlord in the civil proceedings but when this Court while rejecting the petition has kept that question open for consideration, the

question of application of Section 43-A, therefore, in my judgment the M.R.T. was justified in taking different view of the matter from that of the two authorities below. It is always open for the M.R.T. to consider the judgment under challenge within the parameters of Section 76 of the Act which confers a revisional jurisdiction. The scope and interference in the revisional jurisdiction thus has to be decided on the backdrop of Section 76 of the Act. In my judgment, the Tribunal considered the provisions of Section 43-A and the evidence on record and noticing the fact for one year only there appears to be an entry in 7/12 extract to show that the land was used for horticulture but in subsequent years it was not so. This aspect assumes an importance because admittedly, there is no written lease whereby one could have ascertained the real nature of the lease. In absence of any written lease, in my judgment the relevant piece of evidence could be only entries in the 7/12 extract. On this backdrop, the M.R.T. has considered the entries in the revenue record. In my judgment, if the entire land is leased for fruit growing (horticulture) then the provisions of Section 43-A can be applied. If the land is used for cultivation other than the horticulture then the entire land or entire lease cannot be held that covered by Section 43-A of the Act. From the entries in the revenue record, the Tribunal found that after 1964-65 there were no fruit growing trees or the land was used for growing other crops. The 7/12 extracts which are placed on record and relied on by the parties show that the tenant grown other crops than the fruit bearing trees. Therefore, in my judgment, though, the landlord in the civil suit raised a contention" that the land was leased out for horticulture, that aspect is not decisive one. In a given case initially the land might have been given for growing crops such as sugarcane or horticulture or for fruit growing, subsequently, the tenant may deviate from that purpose and he may shift to some other crops instead of fruit growing or horticulture. So therefore, as the case based on order lease, in my judgment the M.R.T. was justified in considering the entries in 7/12 extract. Those 7/12 extracts were not considered by Tahsildar and the S.D.O., therefore, in my judgment the M.R.T. was justified in recording a finding that the lease was not for horticulture (for fruit growing) as alleged by the tenant and these findings recorded by M.R.T. to that effect has to be upheld.

19. Once, the finding recorded by M.R.T. qua Section 43-A is accepted then what remains to consider the correctness of the finding recording by the M.R.T. on the basis of Section 32-O of the Act. Having considered the finding and observations made by M.R.T. in para 11 of the order, in my judgment, the findings are perverse and while recording such findings the M.R.T. has committed an error on the fact of record. Let me consider now the statutory provisions. Section 32-O describes the right of a tenant whose tenancy is created after tillers day. Section 32-A requires the tenant who want to purchase the land from the landlord, the land held by him has to give intimation to the landlord and the Tribunal in the prescribed manner expressing the desire to purchase the land. Such intimation has to be given within one year from the commencement of such tenancy. From the record and the judgments of the courts below it is admitted fact that the

tenancy was created cruelly in the year 1963-64 and the period of tenancy was 10 years. In such situation, the tenancy commenced the moment the tenant starts cultivating the land the therefore, in my judgment, it was incumbent upon the tenant to give intimation within one year from the date of commencement of the tenancy. If such right is not exercised by the tenant, then the provisions of Section 32-P attracted automatically. Section 32-P reads thus :

"32-P. Power of (Tribunal) to resume and dispose of land not purchased by tenant. - (1) Where the purchase of any land by tenant u/s 32 becomes ineffective u/s 32-G or 32-M or where a tenant fails to exercise the right to purchase the land held by him within the specified period u/s 32-F, (32-O, 33-C or 43-ID), the (Tribunal) may suo motu or on an application made on this behalf (***) (land in case other than those in which the purchase has become ineffective by reason of Section 32-G or 32-M, after holding a formal inquiry) direct that the land shall be disposed of in the manner provided in Sub-section (2).

(2) Such direction shall provide -

(a) that (***) the (former tenant) be summarily evicted;

(b) that the land shall, subject to the provisions of Section 15, be surrendered to the (former landlord);

On considering this provision and the findings recorded by the revenue authorities on the application of tenant, which were confirmed by this Court, the" tenant in such situation has no right to retain possession when the right of the tenant to purchase the land are circumvented by Section 32-P. Therefore, in my judgment, the M.R.T. on erroneous assumption and presumption read something in the section which the legislature have not incorporated it. Therefore, in my judgment, the M.R.T. has exceeded the jurisdiction in reviving the right of the tenant which accrued to him u/s 32-O of the Act as in earlier proceeding the competent authorities have categorically recorded a finding that the tenant has failed to give intimation as required u/s 32-O. For that aspect the M.R.T., should not have given direction and remand matter for considering the right of the tenant u/s 32-O. Therefore, in my judgment, the view taken by M.R.T. thus on face of it is erroneous. Hence, the order passed by M.R.T. dated 29-1-1989 in respect of directions given is required to be interfered with. Therefore, in my opinion, the finding recorded u/s 43-A required to be upheld and the latter part of the judgment dealing with the right of tenant u/s 32-O is required to be set aside.

20. Once the finding of M.R.T. u/s 43-A is accepted then the question remains, what relief the petitioners are entitled to get in application u/s 32-P. As the Tahsildar/A.L.T. and S.D.O. has rejected the application on the ground that the lease is covered u/s 43-A, in view of the judgment of the M.R.T. upsetting the finding recorded by the Tahsildar and S.D.O. and that finding of M.R.T. is accepted by me. Therefore, it is necessary for the Tahsildar/A.L.T. to complete

the formalities of passing appropriate order u/s 32-P on the application filed by the petitioners. For that purpose, the application will have to be considered by the Tahsildar/A.L.T. in the light of Section 32-P of the Act. Then the case is remitted back to Tahsildar to pass appropriate order in favour of landlord u/s 32-P. Accordingly, the petition is allowed with above observation. Rule made absolute accordingly. No order as to costs.

21. There are civil applications filed by the petitioners for bringing heirs of deceased respondent on record. There is considerable delay in filing such applications. I have to consider whether those respondents are necessary parties to these proceedings. Even if such application is rejected, then one has to find out whether the right to sue survives. The proceedings initiated by Rajaram initially to secure ownership of the land by invoking provisions of Section 32-G of the Act and in that proceeding he failed and his right to purchase was negated. Therefore, in the present proceedings the respondents who claimed to be the heirs of said tenant and their rights are required to be considered within the parameters of Section 40 of the Act. If the tenancy is survived, then those rights can be succeeded by the heirs. In the present case, all the respondents were the heirs of the original tenant and they were prosecuting the matter and some of the heirs of original tenant died during pendency of this petition. Even if those applications are rejected, the proceedings cannot abate and such. Therefore, even if these applications are rejected, the right of the landlord to get possession of the land from the heirs of original tenant still survives. Hence, all Civil Applications rejected.