(1976) 10 BOM CK 0014

In the Bombay High Court

Case No : Spl. C.A. No. 3525 of 1976

Gulabrao Anandrao Mahure APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 01-10-1976

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 10, 10(1), 10(2), 11, 11
Registration Act, 1908 — Section 47, 59, 60, 60(2)
Transfer of Property Act, 1882 — Section 53A, 55(4)

Citation : (1976) MhLj 727

Hon'ble Judges : C.S. Dharmadhikari, J

Bench : Single Bench

Advocate : C.G. Madkholkar and D.K. Deshmukh, R.N. Deshpande and S.V. Naik, for the Appellant; M.M. Qazi, A.G.P., M.A. Garud, Asstt. Government Pleader and R.R. Deshpande, Hon. Asstt. to A.G.P., for the Respondent

Final Decision : Allowed

Judgement

C.S. Dharmadhikari, J.—The surplus holder petitioner Gulabrao, according to his own return filed u/s 12 of the Maharashtra Agricultural Lands (Ceiling en Holdings) Act, 1961, referred to hereinafter as the Ceiling Act, holds 124 acres 13 gunthas of land. In the enquiry it was found that 6 acres 20 gunthas land was pot-kharab and, therefore, was excluded while calculating the ceiling area. The family of the surplus holder consists of 3 members and on the basis of this family unit, the ceiling area of the petitioner was fixed by the Surplus Land Determination Tribunal. During the course of enquiry it was revealed that the surplus landholder had agreed to sell survey numbers 12, 13 and 14 of Virgawhan having a total area of 51 acres 8 gunthas on the basis of Saudachittis (agreement of sale) executed on 1-4 1968. The Surplus Land Determination Tribunal held that this transaction is hit by section 10 of the Ceiling Act and, therefore, ultimately found that the surplus holder was in possession of 64 acres 13 gunthas of land over and above the ceiling area.

2. Being aggrieved by this order, petitioner Gulabrao filed an appeal before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal found as a fact that the names of the transferees appear in the crop-statement from the year 1968-69 onwards and this will indicate that the possession was already delivered by the Surplus holder to the transferees on 1-4-1968 and he is no longer in possession of the said survey numbers. In spite of this finding, the learned Member of the Revenue Tribunal found that in view of the Explanation to section 10 of the Ceiling Act the possession of the transferees of the said survey numbers, though actual, is not lawful. The transferees are not in lawful actual possession of these survey numbers and, therefore, the lawful possession of the land in question is still with the surplus holder. According to the learned Member of the Revenue Tribunal, the surplus holder should have registered the Isarchittis before 26-9-1970 and then alone the transaction could be taken into consideration. However, as this has not been done, the case of the petitioner cannot even be tested in the context of the provisions of section 10 of the Ceiling Act. In this view of the matter, the appeal filed by him was dismissed, Being aggrieved by these orders, the present writ petition is filed by the landholder.

3. Shri Madkholkar and Shri Deshmukh, the learned counsel appearing for the petitioner, contended before me that in view of the definition of term "to hold land" as given in section 2 (14) of the Ceiling Act, it cannot be said that the petitioner was in actual possession of the land. Therefore, according to the learned counsel, as the petitioner was not in actual possession of these survey numbers, it could not have been included in his holding. In support of this contention, they have relied upon the following decisions of this Court, namely, Shakuntala v. Totaram 1967 Mh. LJ Note 27; Godavari Sugar Mills Ltd. v. S. Ramamurthy 1973 Mh. L.J 85; Khaja Abdul Hassan v. State of Maharashtra 1974 Mh. L J Note 2; Purushottam v. State 1975 Mh. L J Note 29 and Kanhayalal v. The State 1972 TLR 112.

4. As the question involved in this petition was of general importance. She arguments were also advanced by other counsel, who were appearing in the petitions in which similar question was raised. Shri R. N. Deshpande and Shri S. V. Naik, therefore, supported the contentions raised on behalf of the petitioner.

5. On the other hand, it is contended by Shri Garud, the learned Assistant Government Pleader, Shri Kazi, the learned Additional Government Pleader as well as Shri R. R. Deshpande, the learned Honorary Assistant to the Additional Government Pleader, that the transferees in the present case, were merely holding land under an agreement on sale. They have, therefore, no interest or title in the land. Their interest in the land was contingent one and at best it could be said that they were potential owners. Till the sale-deeds are executed in accordance with law, the petitioner continues to be the owner of the land and under common law it is the owner who is in possession of the land, though the physical possession of the land is with the transferees. The transferees are in possession of the said land on behalf of the petitioner, who is the owner of the

land. In this view of the matter, according to Shri Garud, the petitioner still continues "to hold" the land and, therefore, it was rightly included in his holding by the Tribunals below. Shri Garud further contended that under Explanation II to section 10 (1) of the Ceiling Act, as the documents, namely, the agreements of sale were rot registered at all either before or after 26th September 1970, the said transactions will have to be wholly excluded from consideration, and therefore, in law it will have to be held that the land is still held by the petitioner himself. Shri Garud has further contended that the agreements of sale do amount to transfer of property as defined in Explanation to section 8 of the Ceiling Act. If this is so, it is wholly covered by second Explanation to section 10 (1) of the Ceiling Act and as the documents are not registered as contemplated by Explanation II to section 10 (1), the authorities below were right in coming to the conclusion that they should be wholly excluded from consideration. This line of argument was adopted by Shri Kazi, the learned Additional Government Pleader as well as Shri R. R. Deshpande, the Honorary Assistant to Additional Government Pleader.

6. For properly appreciating the controversy raised before me it is necessary to make a reference to the relevant provisions of the Ceiling Act. Section 2 (14) defines the term "to hold land" which reads as under:

''to hold land'', with its grammatical variations and cognate expressions, means to be lawfully in actual possession of land as owner or as tenant and ''holding'' shall be construed accordingly.

The word "owner" is then defined in sub-section 21 of section 2 in the following terms:

''owner'', in relation to any land, includes the person holding the land as occupant, or superior holder as defined in the Code, or as lessee of Government, a mortgagee-in-possession, and a person holding land for his maintenance.

Then comes section 8 of the Ceiling Act which imposes a restriction on transfers. Explanation to this section defines the word "transfer" in the following terms:

Explanation--In this section, ''transfer'' means transfer, whether by way of sale, gift, mortgage with possession, exchange, lease, assignment of land for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition, whether by act of parties made inter vivos or by decree or order of a Court, Tribunal or Authority (except where such decree or order is passed to a proceeding which is instituted in such Court, tribunal or before such authority before the 26th day of September 1970), but does not include transfer by way of sale or otherwise of land for the recovery of land revenue or for suras recoverable as arrears of land revenue, or acquisition of land for a public purpose under any taw for the time being in force.

Then comes section 10 which deals with the consequences of certain transfers and acquisitions of land. The said section reads as under:

10(1) If:

(a) any person or a member of a family unit, after the 26th day of September 1970 but before the commencement date, transfers any land in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, or

(b) any land is transferred in contravention of section 8, then in calculating the ceiling area which that person, or as the case may be, the family unit, is entitled to hold, the land so transferred shall be taken into consideration, and the land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area, for that holding, notwithstanding (hat the land remaining with him or with the family unit may not in fact be excess of the ceiling area.

If by reason of such transfer, the holding of a person, or as the case may be, of the family unit is less than the area so calculated to be in excess of the ceiling area, then at the land of the person, or as the case may be, the family unit shall be deemed to be surplus land; and out of the land so transferred and in possession of the transferee unless such land is liable to forfeiture under the provisions of sub-section (3), land to the extent of such deficiency shall, subject to rules made in that behalf, also be deemed to be surplus land, notwithstanding that the holding of the transferee may not in fact be in excess of the ceiling area.

Explanation--For the purposes of clause (a) ''transfer'' has the same meaning as in section 8.

All transfers made after the 26th day of September 1970 but before the commencement date, shall be deemed unless the contrary is proved to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972.

Explanation--For the purposes of this sub-section, a transfer shall not be regarded as made on or before 26th September 1970 if the document evidencing the transfer is not registered on or before that date or where it is registered after that date, it is not presented for registration on or before the said date.

(2) If any land is possessed on or after the commencement date by a person or as the case may be, a family unit in excess of the ceiling area, or if as a result of acquisition by testamentary disposition, or devolution on death, or by operation of law of any land on or after that date, the total area of land held by any person, or as the case may be, a family unit, exceeds the ceiling area, the land so in excess shall be surplus land.

(3) Where land is acquired in wilful contravention of section 9, then as a penalty therefore, the right, title and interest of the person, or as the case may be the family unit or any member thereof in the land so acquired or obtained shall subject to the provisions of Chapter IV, be forfeited, and shall vest without any further assurance in the State Government:

Provided that, where such land is burdened with an encumbrance, the Collector may, after holding such inquiry as he thinks fit and after hearing the holder and the person in whose favour the encumbrance is made by him, direct that the right, title and interest of the holder in some other land of the holder equal in extent to the land acquired in wilful contravention of section 9, shall be forfeited to Government.

By section 3 of the Ceiling Act a ceiling is imposed upon the holding of land by a landholder in excess of the ceiling area as determined by the Act itself. Section 3 lays down that subject to the provisions of Chapters II and III, no person or family unit shall, after the commencement date, hold land in excess of the ceiling area, as determined in the manner hereinafter provided. This very phrase, namely, "to hold land" is defined by section 2 (14) of the Ceiling Act. From the bare reading of the definition it is quite obvious that it contemplates a lawful actual possession of the land by a holder as an owner or as a tenant. In section 3 the word "hold" is used in the present tense which means that on the relevant date the landholder should actually held the land or should be in its physical possession. The possession contemplated is actual which means real or existing in fact. This possession should be lawful one and should be as an owner or as a tenant. There is no dispute between the parties that a transferee who enters into possession of land under an agreement of sale as a part performance of the contract as per the provisions of section 53-A of the Transfer of Property Act, is in actual and lawful possession of the property. However, according to the respondent State, he is neither an owner nor a tenant of it and ownership of the land still continues to be with the transferor. As the transferee is not the owner of the properly as defined in section 2 (21), his possession not being that of an owner or tenant, his possession though actual will be on behalf of the real owner, namely, the transferor. Therefore, according to the respondent, till the time a registered sale-deed is executed in favour of a transferee, it is the transferor landholder who continues to hold the land for the purposes of the Ceiling Act. It is not possible for me to accept these contentions.

7. It is pertinent to note that the definition of the word "owner" as given in section 2 (21) of the Ceiling Act is inclusive one. It is well settled that the word ""include" as used in the interpretation clause is intended to be enumerative and not exhaustive. It has an extended force and it does not limit the meaning of the terra to the substance of the definition. When it is intended to exhaust the significance of the words interpreted, then normally the word ''means'' is used. (See Chandrabhagabai v State of Bombay 1958 N L J 172),

8. The definition of the word "owner" in the present Act is, therefore, illustrative or enumerative and not exhaustive. As already observed, the word ''include'' is often used in interpretation clause in order to enlarge the meaning of the word or phrases occurring in the body of the Statute. When it is so used the words and phrases must be construed as comprehending not only such things as they signify according to the nature and import, but also those things which the interpretation clause declared that they shall include. Therefore, it is obvious that

the definition is not exhaustive and will include in its" import something more which is not specifically referred to in the definition clause. The rule of interpretation regarding such inclusive definition has always been to treat the other items or entities which are not in the strict sense of the term within the definition clause or form part thereof, because of illustrative or enumerative nature of the enactment or the definition clause to be a part and parcel thereof. The word "owner" is no doubt capable of denoting an absolute title, but is not confined to connoting that sense alone. In sub-section (21) of section 2, which provides an inclusive definition of word "owner" the Legislature in its wisdom has included in its import even the person holding the land as occupant or as a lessee of the Government, a mortgagee in possession and also a person holding land for his maintenance. These illustrations relate to the persons who do not hold land as an absolute owners. The ultimate and absolute title vests in somebody else. They are in a sense limited owners. The word "owner" is used in the definition clause in an extended sense. In my opinion, where it is clear from the transaction that the transferor has not retained any control so far as the possession and cultivation of the land is concerned, then it will partake the colour of transfer and, therefore, such a transferee will become an owner of the property for the purposes of the Ceiling Act. One who has right to own the property, or has an exclusive right of possession coupled with legal or just claim to it could be termed to be an owner of the said land within the meaning of the said term, as defined in sub-section (21) of section 2 of the Ceiling Act ''''Own" according to the Law Lexicon, means "to hold as property, to possess; often used as synonymous with possess", "owner" is "one who has dominion of a thing, real or personal, corporeal or incorporeal, which he has the right to enjoy and to do with it as he pleases either to spoil or destroy it as far as the law permits" "Owner" includes "(a) every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used, whether from the occupier or otherwise" (See Ramakrishnan Vs. Gopala Moothan, .

9. It is well settled that normally the words used in the Statute have to be construed in their ordinary meaning, but in many cases judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and a reasonable construction. In this context a reference could usefully be made to the decision of the Supreme Court in Sheikh Gulfan and Others Vs. Sanat Kumar Ganguli, and particularly to the following observations in para 19 of the said judgment:

Normally, the words used in a statute have to be construed in their ordinary meaning; but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words does not meet the ends of a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended lo achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material. As Halsbury has observed the words should be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning apart from that context.

In the present case, the Legislature has chosen its own dictionary and has, therefore, defined the word "owner" in section 2 (21) of the Ceiling Act. The definition is illustrative and not exhaustive. It includes in itself the persons who are not absolute owners of the property. The word "owner" used in this definition clause as well as in section 2 (14) of the Ceiling Act is used in this extended sense. The term "to hold land" as defined in section 2 (14) of the Ceiling Act clearly indicates that holder should be lawfully in actual possession of the land as an owner or as a tenant. If the interpretation put forward by the parties is accepted, then the transferor, though he is the owner of the property, being not in actual possession of the same, cannot be said that he ''holds1 the said land, whereas the transferee though is lawfully in actual possession of the land, on the construction advanced before me, not being the owner or the tenant of the said land is also not holding the same, within the meaning of section 2 (14) of the Ceiling Act. In my opinion, such a construction will frustrate and defeat the very purpose of the legislation.

10. The Ceiling Act was enacted for imposing a maximum limit or ceiling on the holding of agricultural land with an intention to secure agricultural lands for distribution to the landless and other persons. If the interpretation advanced before me is accepted, then a person can hold a land to any extent under the agreements of sales and thereby defeat the very purpose of the law. In my opinion, a construction which will either result in absurdity or will defeat the provisions of law, should not be accepted. The word "hold" used in section 3 of the Ceiling Act, if read in this context, in my opinion, the word "owner" as used in section 2 (21) of the Ceiling Act will have to be given an extended meaning and if so construed, a person holding the land even under an agreement of sale, as a part performance of the contract, could be termed to be an owner within the meaning of the said definition,

11. As to what is the scope and effect of the transaction which is covered by section 53-A of the Transfer of Property Act fell for consideration of the Supreme Court in Nathulal Vs. Phoolchand, and that too in the context of the provisions of Madhya Bharat Land Revenue and Tenancy Act. In this context the Supreme Court in para 9 of the said judgment observed as follows:

The conditions necessary for making out the defence of part performance to an action in ejectment by the owner are:

(1) that the transferor has contracted to transfer for consideration any immovable property by writing signed by him or on his behalf from which the

terms necessary to constitute the transfer can be ascertained with reasonable certainty;

(2) that the transferee has, in part performance of the contract, taken possession of the properly or any part thereof, or the transferee, being already in possession continues in possession in part performance of the contract;

(3) that the transferee has done some act in furtherance of the contract; and

(4) that the transferee has performed or is willing to perform his part of the contract.

If these conditions are fulfilled then notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person, claiming under him is debarred from enforcing against the transferee any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract.

12. The Division Bench of this Court in Keshavrao v. Bhau Radhan (Vol. XII) 1964 TL R 21 = (Special Civil Application No. 202 of 1962, decided on 7-8-1962 had also an occasion to consider the --cope of such a transaction. In this context the Division Bench of this Court observed as under:

An agreement for sale does not by itself create an interest in the property. But if it is accompanied by delivery of possession to the purchaser, then the purchaser can protect his possession of the property under section. 53-A of the Transfer of Property Act. Except where the seller is entitled to a charge u/s 55 (4) of the Transfer of Property Act, the seller having parted with the possession in performance of the contract of sale cannot get back the property merely on the ground that a conveyance deed has not been executed.

If this be the true scope of such a transaction, then obviously the purchaser, who is placed in possession of the property as a part performance of the contract, is entitled to protect his possession, even against the true owner. This being the position in law, in my opinion, for the purposes of the Ceiling Act, it will have to be held that be is lawfully in actual possession of the said land as an owner. He may not be the absolute owner of the property or might become an absolute owner after formal execution of the registered sale-deed, but it is quite obvious to me, having regard to the inclusive definition of the said word as given in the Ceiling Act that it was the intention of the Legislature that even such a person should be held ''owner'' of the said land so far as the Ceiling Act is concerned.

13. Shri Garud then contended that in case of conflict of title or ownership between an absolute owner and a limited owner, it is the absolute owner who must get precedence. Therefore, according to Shri Garud, as under the agreement of a sale a purchaser who is put in possession of the property gets merely limited interest in the property, his possession and title cannot be

equated with the title or possession of the true owner of the land who is an absolute owner of the property.

14. In my opinion, the question regarding the conflict of title or ownership is not relevant for deciding the holding of a person as contemplated by section 3 of the Ceiling Act, The Legislature in its wisdom has chosen to define the words "to hold land". Therefore, this definition will have to be applied while construing the word "hold" as used in section 3 of the Ceiling Act. If section 2 (14) of the Ceiling Act requires that before a person could be said to hold land, he should be lawfully in actual possession of the land, then it is that definition which will have to be applied. In a case where a person has parted with actual possession of the land in favour of a prospective purchaser under an agreement of sale as a part performance of the contract, and the transferee has assumed possession of the land bona fide under a genuine contract of sale and purchase and the parties are ready and willing to perform their part of the contract, then in such a case it cannot be said that it is the true owner who still continues to hold the land u/s 2 (14) of the Ceiling Act. Therefore, the contention raised in this behalf by the learned Assistant Government pleader cannot be accepted.

15. Shri Garud, the learned counsel for the respondent, during the course of his argument has also relied upon certain observations of the learned Single Judge of this Court in Deokumar and others v. State of Maharashtra Special Civil Appln. No. 3580 of 1976, decided on 17th September 1976. It appears that similar argument was advanced before Dighe J. in the said petition, though the question was not ultimately decided and was left open. Before Dighe J., the petitioners in that case who were the landholders had placed reliance upon an earlier decisions of this Court in Purushottam v. State and Kasubai v Maharashtra Revenue Tribunal 1967 Mh. L J 26. After noting the respective contentions raised before the Single Judge, Dighe J., observed that "either, therefore, for the purposes of the Ceiling Act the transferee would have to be looked upon as in possession as owner by extending the meaning of the word ''owner'' or else the possession of the transferee would have to be looked upon as for and on behalf of the owner transferor until the title of the transferor ripens into a full title. The learned Judge then observed that in any case it would be necessary to do away the inequity to either party and also to secure the result whereby the statute is not defeated and as such the decision cited in Kambai''s case will have to be reconsidered. Then the learned Judge has left the question open at that stage only, as it was not necessary to decide the same having regard to the facts and circumstances of that case. Ultimately the matter was decided on the basis of the findings of fact recorded by the Tribunals below.

16. As already observed by me, the word "owner" will have to be given an extended meaning for doing away with inequities or to avoid absurd results which might flow, if such an extended meaning is not given to the said word. Once such an extended meaning is given to the word ''''owner" then, in my opinion, the inequities to which a reference is made by Dighe J. cannot result,

nor it is possible for the landholder to defeat or evade the provisions of law by adhering to unscrupulous methods, including entering into the transactions covered by section 53-A of the Transfer of Property Act.

17. Section 2 (14) of the Ceiling Act came for consideration before this Court on an earlier occasion in Kasubai v. Maharashtra Revenue Tribunal. In this context this Court observed :

Several questions have to be decided before declaring the land to be surplus. u/s 4 of the Act, no person can hold land in excess of ceiling area determined in the manner provided in the Act. It also provided that a person may hold exempted land to any extent. It has to be found whether a field is covered by the definition of ''land'' and that whether a person proceeded against can be said to hold land as defined in section 2 (14) of the Act, i. e. whether he is actually in lawful possession of that land as an owner or as tenant and the nature and capacity of his possession. It must also be found whether a land satisfies the requirements of the definition of the term ''agriculture'' within the meaning of section 2 (1) of the Act.

Similar view was taken by this Court in G. L. Sonavane v. Saswad Mali Sugar Factory (Vol. 20) 1972 TLR 114 = Special Civil Appln. No. 1566 of 1966 decided on 30-9-1970, where it was observed as under:

I may also add that the real question that requires consideration in this case is not so much the legality and validity of the transaction between respondent No. 1 and respondents Nos. 3 and 4. The point that essentially and virtually requires consideration is: was or was not the respondent No. 2 in actual possession of the lands in dispute from 4-8-1959 ? If the possession has its inception on any dale before 4-8-1959, even as a result of some unlawful transaction, and it is found that respondent No. 2 was not in actual possession of the land, he could not be held to be in actual possession of the land on the appointed day, as contemplated under the Ceiling Act.

18. Another Division Bench of this Court in Special Civil Application No. 49 of 1976, decided on 22nd/24th June 1976 at Bombay, had an occasion to consider the definition of phrase ''to hold land'' as given in section 2 (14) of the Ceiling Act. While construing this definition the Division Bench held :

In view of the definition of the word ''to hold land'' in section 2 (14), land under personal cultivation alone is liable to be taken into account.

If this is the construction which should be put on the term "to hold land" then it is quite obvious that it cannot be said that the true owner having parted with possession of the property, which is in possession of the purchaser as part performance of the contract of sale, still continues to personally cultivate the said land. It is the purchaser who is lawfully in actual possession of the property and cultivates it personally. The term ''to cultivate personally'' is also defined in the Ceiling Act in sub-section (9) of section 2, which means to cultivate land on a person''s own account,: (i) by his own labour, or (ii) by the labour of any member of his family, or (iii) by hired labour, or by servants on wages, payable in cash or kind but not in crop share under the personal supervision of himself or any member of his family. The purchaser who is in possession of the said property by virtue of the provisions of section 53-A of the Transfer of Property Act does not cultivate it on true owner''s account. The cultivation by him is on his own account and it is he who cultivates it personally. Therefore, it is not possible to hold that even though the seller has parted with the possession of the land as a part performance of the contract of sale, the cultivation of the land by the purchaser is on behalf of the true owner, nor it could be said that it is the seller who cultivates the land personally.

19. However, it was contended by Shri Garud, the learned Assistant Government Pleader, that the Division Bench of this Court while deciding Special Civil Application No. 49 of 1976 decided on 22nd/24th June 1976 at Bombay, was not right in making a reference to the concept of personal cultivation while construing the words ''to hold land'' as defined in section 24th of the Ceiling Act. According to Shri Garud, in a given case a person might hold land, but may not cultivate it and keep it fallow. Therefore, the possession or ownership of the land has nothing to do with the personal cultivation. In substance, therefore, it is his contention that the observations made in the said decision are not correct. In my opinion, this will not be the correct approach to the whole question. The Ceiling Act deals with the agricultural lands alone, which are capable of being cultivated. From the definition of the word ''land'' as given in section 2(16) it is further clear that the lands which are used or are capable of being used for the purposes of agriculture are alone to be taken into consideration. Normally it is expected that the agricultural lands will be put to their use and will not be allowed to remain fallow. Under the relevant Tenancy Law if the land is allowed to remain fallow certain penalties are provided. Therefore, while construing the provisions which relate to the Ceiling on the agricultural land, in my opinion, the definition of the term ''personal cultivation'' is wholly relevant. Cultivation is one of the known methods by reference to which the factum of possession can be ascertained. The cultivation of an agricultural land normally is reflected in Revenue Records, including the crop-statements on the basis of which it is possible for the authorities or the Court to decide the question of possession itself. Therefore, it is not possible for me to accept this contention of Shri Garud.

20. In the present case, we are concerned with a land which is an agricultural land. It must be used for agricultural purposes. In that context if the various definitions given in the Ceiling Act are construed together with the other relevant provisions, then, in my opinion, as the purchaser is in possession of the land by virtue of a contract of sale u/s 53-A of the Transfer of Property Act and cultivates it personally on his own account, then it will have to be held that he is lawfully in actual possession of the said land as an owner. If this is so, then it is obvious that the seller who has parted with the possession of the land in pursuance of a contract of sale is not in actual possession of the said land and, therefore, it

cannot be said that he holds the said land within the meaning of section 3 of the Ceiling Act.

21. However, if the possession is delivered to a third person as a device or fraudulently with the sole intention of defeating the provisions of the Ceiling Act and the transaction is a sham and bogus one, then obviously the matter will stand on a different footing. An indication of this is available in the wordings of section 10 (1) and section 11 of the Act. The Ceiling Act contemplates possession of land either as an owner or a tenant. The land must be possessed by somebody. The provisions of the Ceiling Act cannot be construed which will result in absurdity. The Ceiling Act does not contemplate a situation where the land is not held in actual possession lawfully by anybody. It contemplates actual possession under a semblance of title or right. A mala fide, fraudulent or collusive transaction, therefore, must stand on different footing, because it is well settled that collusion or fraud vitiates the whole thing. In such a case it is possible to bold that in view of the fraudulent or collusive nature of the transaction, as the possession is not delivered to another person lawfully, the owner still holds the land. This will obviously depend upon the facts and circumstances of each case. In this context reference could usefully be made to a decision of this Court in Abdul Rahiman v. Hari 1969 T L R 49. However, it is neither possible nor is advisable to lay down any general rule in this behalf As to who is in lawful and actual possession of the land, therefore, must depend upon the facts and circumstances of each case. If other person is not lawfully in actual possession of the land under some semblance of right or title, then in a given case, it could be held that the true owner still continues to be in possession of the said land. It is equally well settled that a party to the fraud cannot plead its own fraud as an effective defence. The equity cannot help such a person. It is general principle of law that a man entering into a fraudulent agreement could not ask to be relieved of the consequences of his own fraudulent act The Courts of law can protect the honest person and that too for enforcing his just and legal claim. The machinery of Court of law is not available in aid or for carrying out the scheme of fraud. Further, the transfer or delivery of possession should be under some known method or transaction recognised bylaw. However, as we are not concerned in this case with such a contingency, it is not necessary to deal with this aspect of the matter any further.

22. However, it was contended on behalf of the State by the learned Assistant Government Pleader, Shri Garud, that as the alleged agreement of sale is not registered either before or after 26th September 1970, it cannot be looked into at all, nor it could be taken into consideration in view of the provisions of the Explanations to section 10 (1) of the Ceiling Act. In my opinion, this will not be the correct reading of the Explanations. The Explanations to section 10 of the Ceiling Act are introduced for limited purpose. It is well settled that a fiction created by the statute should not be extended beyond the limits, for which it was created. By section 10 (1) of the Ceiling Act the Legislature has provided for the consequences resulting from certain transfers. According to this section, if any

person or a member of a family unit after 26th day of September 1970 but before the commencement date transfers any land in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, then in calculating the ceiling area with that person or the family unit, is entitled to hold, the land so transferred should be taken into consideration Therefore, this section in specific terms deals with the transfers effected after the 26th day of September 1970 but before the commencement date. Then by Explanation I it is provided that for the purposes of clause (a) ''transfer'' has the same meaning as in section 8. Then a statutory presumption is provided for which lays down that all transfers made after the 26th day of September 1970 but before the commencement date shall be deemed unless the contrary is proved, to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972. Therefore, this merely enacts a rule of evidence. The intention of the legislation is to deal with the consequences of the transfers which took place after 26th September 1970 but before the commencement date. The fiction in Explanation II is, therefore, created for this limited purpose. The purpose of the Explanation II seems to be that if the document requires compulsory registration under the Registration Act or under any other law for the time being in force, then the transfer shall not be regarded as made on or before 26th September 1970 if the document evidencing the transfer is not registered on or before that date or where it is registered after that date, it is not presented for registration on or before the said date. The explanation must be read so as to harmonise with and clear up ambiguity in the main section. It cannot be so construed as to widen the ambit of the section.

23. In this context it will be useful if a reference is made to the provisions of section 47 of the Registration Act which reads as under :

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

From the bare reading of this section it is obvious that a registered document operates from the date of its execution and not from the date of registration. Therefore, the Legislature in its wisdom thought that, with an intention to evade the provisions of the Ceiling Act, the documents though registered later on could be ante-dated or the documents, though registered after the prescribed date will relate back to the date of its execution and this might frustrate the very scheme of section 10 of the Ceiling Act. If such a provision was not made in the Ceiling Act, then normally the documents which are registered under the Registration Act will be governed by the provisions of the said Act, namely, the Registration Act. Therefore, the result would have been that even if the document is registered subsequently it could operate from the date of its execution and not from the dale of its registration. Section 60 of the Registration Act also provides for a rule of evidence. Section 60 (2) of the Registration Act lays down that the certificate of registration shall he signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned. To do away with this contingency, the Legislature has enacted second Explanation to section 10 of the Ceiling Act. It is not possible to read in this Explanation that it forbids or prohibits the transfers of any land without a registered document. It is no doubt true that such provisions are made in some of the legislations. In Nathulal v. Phoolchand (cit. supra) the Supreme Court was dealing with such a provision in section 70 (8) of Madhya Bharat Land Revenue and Tenancy Act which reads as under:

No sale under this section shall be deemed to be valid until the sale-deed effecting such a sale has been registered in accordance with the law of registration in force for the time being.

In Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, such a provision is made in clause (iii) of sub-section (2) of section 16 of the said Act which provide:

No land shall be transferred, exchanged, leased, mortgaged, bequeathed or gifted without a document registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908).

Explanation--Nothing in this sub-section shall be deemed to have any effect on the provisions of the tenancy law of the area relating to transfer, exchange, lease, mortgage, agreement or settlement.

Therefore, whenever the Legislature intended to lay down that no land shall be transferred without a document registered in accordance with the provisions of (he Indian Registration Act, such provisions are specifically made. In the present enactment such a provision is not made. However, a construction is sought to be put upon the second Explanation to section 10 (1) that it lays down such a prohibition. In my opinion, a prohibition in this behalf cannot be read by implication. If the construction or interpretation put forward before me on behalf of the State Government is accepted, it is bound to have startling result. The word "tenant" is defined in section 2 (30) of the Ceiling Act which includes a deemed tenant under the relevant Tenancy law. A reference could be made in this behalf to section 50 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, which reads as under:

50. Where a tenancy is restored under sections 7, 10, 21, 52 or 128-A or is created by a landlord not being a landlord within the meaning of Chapter III-A in any area, after the date specified in sub-section (1) of section 49A, every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase within one year from the commencement or as the case may be, the restoration of the tenancy so much of such land as he may be entitled to purchase u/s 41 and the provisions of sections 41 to 44 both inclusive shall mutatis mutandis apply to such purchase.

From the bare reading of this section it is obvious that a tenancy could be created even after the specified date. In such a case if a tenant is holding the land under such tenancy created after the specified date and is cultivating it personally, then he is entitled to purchase this land within one year from the commencement of the tenancy, in a given case tenancy could be created in the year 1969-70 and by virtue of this provision the tenant is entitled to purchase the land if he exercises such a choice. It is well known that so far as agricultural leases are concerned. They can even be created orally. If the construction put forward on behalf of the State is accepted, then in view of the provisions of Explanation II to section 10 (1) of the Act, such a transaction being wholly illegal will have to be ignored even for the purposes of the Ceiling Act as the transaction is not evidenced by a document registered under the Act. It is pertinent to note that the word "tenant" is defined in the Ceiling Act by process of incorporation. Therefore, it is hard to believe that it was the intention of the Legislature that even though such a tenant has exercised his right for purchasing the land and the proceedings are pending, the said transaction of tenancy, only because it is oral, though in accordance with law, should be wholly excluded from consideration. Similar will be the position so far as a gift under the Mohammedan Law is concerned. Suppose a valid gift in accordance with the Mohammedan Law is made in the year 1958 itself, then could it be said that such a gift which is coupled with the delivery of possession of the property, should also be excluded from consideration only because it is not evidenced by a registered document. This does not seem to be the intention of the Legislature. The Legislature is not interested in unsettling the prior transfers under which the rights are created in third parties. The intention of the Legislature is only to raise a presumption so far as the transactions which took place after the specified date, that is, 26th September 1970, are concerned. As to why such a date was chosen also fell for consideration before the Division Bench of this Court in Vithalrao Udhaorao Uttarwar v. The State of Maharashtra Special Civil Application No. 1394 of 1975 and Special Civil Applications No. 2660 of 1975 decided on 10th to 13th August 1976. It appears that the said date was chosen as it was the date when the Chief Ministers ''conference was called at Delhi on 26-9-1970 and the question regarding lowering down the ceiling area, including the other eventual questions in that regard, were taken on agenda. It was also contended before the Division Bench that the deliberations of the Chief Ministers? Conference were got known and people were knowing that the ceiling limit is likely to be lowered. Sections 10 and li were enacted so that the provisions made in the Ceiling Act may not be defeated.

24. By section 10 (1), a transfer made in anticipation of or in order to avoid or defeat the object of the Amending Act are to be ignored while calculating the ceiling area. While calculating the ceiling area, the land so transferred is to be taken into consideration. Then, as already observed, Explanation provides a rule of evidence by raising a presumption. It contemplates that all transfers made after the 26th day of September 1970 but before the commencement date, shall

be deemed (unless contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act. The very phraseology used "unless the contrary is proved" clearly indicates that the presumption could be rebutted. The transactions entered into even after the 26th day of September 1970 but before the commencement day are not declared illegal or void. Even relating to those transactions if the holder is in a position to prove that the transfers effected were bona fide and genuine and were not made in anticipation of or in order to avoid or defeat the object of the Ceiling Act, then also the area so transferred cannot be taken into consideration. It is open for the holder to prove that the said transfers are bona fide. Explanation II to section 10 (1) creates a fiction and that too about the date of transactions or transfers. According to this Explanation, if the document evidencing the transfer is not registered on or before that date or where it is registered after that date, it is not presented for registration on or before the said date, it shall not be regarded to have been made on or before 26th September 1970. This is the limited purpose for which the fiction is created in this Explanation.

25. In this context a reference could usefully be made to the provisions of section 11 of the Ceiling Act which provide an internal evidence regarding the intention of the Legislature. Section 11 reads as under:

Where any land held by a family is partitioned after the 26th day of September 1970, the partition so made shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, and shall accordingly be ignored, and any land covered by such partition shall, for the purposes of this Act, be deemed to be the land held by the family; and the extent of share of each person in the land held by the family shall be taken into consideration for calculating the ceiling area in accordance with the provisions of section 3.

Explanation--For the purposes of this section ''partition'' means any division of and by act of parties made inter vivos, and includes also partition made by a decree or order of a Court, Tribunal or authority.

Even from the bare reading of section II as well, it is quite obvious that it was not the intention of the legislation to unsettle the genuine and legal transactions. The evidence of this intention is squarely available in section 11 of the Ceiling Act which lays down restriction on partition. According to this section, where any land held by a family is partitioned after the 26th day of September 1970, the partition so made shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Act and shall be ignored. It further provides that any land covered by such partition shall, for the purposes of this Act, be deemed to be the land held by the family. It is well known that a partition could be made even orally. Sometimes lists are prepared acknowledging the oral partition which has already taken place in the family. These lists may or may not be registered. Therefore, a partition contemplated by section 11 could be a registered one or could be in a form of list acknowledging the oral partition. If it was the intention of the Legislature that all transfers should be by registered documents only, then the Legislature would not have made an exception so far as the partitions are concerned. In that case similar provisions would have been made in section 11 of the Ceiling Act. As observed by the Supreme Court in Munna Lal (Dead) by Lrs. and Others Vs. Suraj Bhan and Others, and in 1970 JLJ 66 (SC) that a list acknowledging a partition which is not a memorandum of partition, could be received in evidence though it is not registered. Therefore, if an unregistered document acknowledging earlier oral partition or an oral partition is recognised by the Legislature, then it is hard to believe that the Legislature wanted to unsettle prior transactions by which the rights were created in the third parties, who are bona fide purchasers for consideration or value. If such a construction is put on the second Explanation to section 10, it is bound to result is hardship Normally a construction should not be put upon the provisions of the Ceiling Act which might result in hardship not intended by the legislation.

26. Moreover, if it is ultimately found for one reason or the other that the contract of sale cannot be gone into, or is rescinded, cancelled or not executed and as a result of which the original owner, viz. the seller assign comes into possession of the said property, then the recourse could be taken by the authorities to the provisions of section 12 of the Act. In this context, it is pertinent to note that sections 10 (2), 11(1)(d) and 21 proviso expressly use the word ''"possession". The whole Ceiling Act deals with the factum of possession of land and this is the reason as to why in these sections, the word "hold" or "holds" as defined in the Act is not used. This gives further indication regarding the intention of the Legislature.

27. However, it was contended before me by Shri Deshmukh, the learned counsel appearing for the petitioner that Explanation II to section 10 (1) of the Ceiling Act is not at all applicable to such a transaction, namely, to an agreement of sale under which the purchaser had entered into the possession of the land. According to Shri Deshmukh, such a transaction is not transfer" within the meaning of section 10 or section 8 of the Ceiling Act. The term ''transfer'' is defined by the Legislature in Explanation to section 8, which is already reproduced hereinbefore. It means ''transfer'' whether by way of sale, gift, mortgage with possession, exchange, lease, assignment of land for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition, whether by act of parties made inter vivos or by decree or order of a Court etc. From the bare reading of this Explanation it is quite obvious that an artificial meaning is given to the word ''transfer'' and it is not the same as understood under the Transfer of Property Act. Though the agreement of sale under which the purchaser enters into the possession of the land is not specifically referred to in the definition clause, according to Shri Garud, it is covered by the expression ''any other disposition''. On the other hand, it is contended by Shri Deshmukh that said expression, namely, ''any other disposition'' should be read as ejusdem generis. In my opinion, there is much

substance in the contention raised by Shri Garud on behalf of the State.

28. The expression any other disposition'' cannot be read as ejusdem generis. As to when and how the rule of ejusdem generis can apply is also well settled. In this context a reference could be made to the decision of the Supreme Court in Smt. Lila Vati Bai v. State of Bombay and particularly towards the following observations:

The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the Legislature is presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the Courts to give those words their plain and ordinary meaning. In our opinion, in the context of the object and the mischief of the enactment there is no room for the application of the rule of ejusdem generis.

Then while dealing with the words ''or otherwise'' used in the said enactment, namely, Bombay Land Requisition Act, the Supreme Court observed as under :

The Legislature has been cautious and thoroughgoing enough to bar all avenues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant''s occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant''s interest. Hut the Legislature, when it used the words "or otherwise", apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant''s occupation has ceased as a result of trespass by a third party. The Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an ail inclusive sense.

This Court had also an occasion to consider the scope of this rule of ejusdem generis in Vinayak rao v. State of Maharashtra 1975 Mh LJ 568 and Ratanlal v. Rukhmabai 1976 Mh. LJ 492. In my opinion, the principles laid down in these decisions will aptly apply to the present case also.

29. From the bare reading of Explanation to section 8 of the Ceiling Act which defines the word "transfer", it is quite clear that practically every form of known transfer, is covered by the Explanation, It has not only covered the known methods of transfers which are acts of parties made inter mm, but it has also made a reference to the transfers taking place as a result of decree or order of a

Court. This Explanation is added to section 8 which provides for restriction on transfers. The word "transfer" is defined by the Legislature in an extended sense so as to check unscrupulous transfers, made with an intention to evade or defeat the provisions of the Ceiling Act. Therefore, in my opinion, to check all sorts of manipulations, an all pervading phraseology is used in this Explanation while defining the word "transfer". Therefore, if the doctrine of ejusdem generis is applied to the present case, it will not only imply departure from the natural meaning of the words but will give them meaning which may or may not have been intended by the Legislature. If the intention of the Legislature would have been to include in the words ''any other disposition'', the similar acts of assignments, which are contemplated by earlier words used in the section, then there was no necessity of using the general words, namely, ''any other disposition''. In that case the earlier specific words used were quite wide enough to include all acts of known assignments. Therefore, in my opinion, the proper construction to be applied to these words is to construe these genera] words in such a way so as to Garry out the object of the Legislature. The Legislature when it used the general words apparently intended to cover other cases which may not come within the meaning of the preceding words. By using these general words, the Legislature intended to cover all possible cases of disposition or transfers, which are not specifically covered by the definition. These words, namely, ''any other disposition'' have been used in all inclusive sense to bar all avenues of escape. These are words of extension and are used to cover all possible ways and avenues in which the transfers of land could be made which could result in evasion of the provisions of the Ceiling Act. The Legislature in its wisdom has used the words ''any other disposition''. As observed by the Supreme Court in Goli Eswariah Vs. Commissioner of Gift Tax, Andhra Pradesh, the word ''disposition'' is not a term of law and it has no precise meaning. The meaning is to be gathered from the context in which the said word is used. ''Disposition'' is the word of wider connotation than transfer. (See The Superintendent of Stamps and Chief Controlling Revenue Authority, Bombay v. Govind Parmeshwar Nair 1967 Mh LJ 641 (FB). In the Explanation to section 8 of the Ceiling Act it is used with other items of transfer which include a lease or assignment of land for maintenance. By these modes an absolute right of ownership is not created in the person in whose favour either the lease is created or the assignment of land is made for maintenance. It merely creates a limited interest in the persons in whose favour the land is assigned for maintenance or a lease is created. By surrender of a tenancy or by resumption of the land by the landlord in fact no new title is created in the landlord or the owner. In spite of this, these items are included in the word "transfer" as defined in Explanation to section 8 of the Ceiling Act. From this it is clear that it was the intention of the Legislature to give an extended meaning to the word "transfer"''. This was done with an intention to impose a restriction on transfers in cases of persons or family units which held land in excess of the ceiling area. The intention of the Legislature while laying down such a restriction is obvious. The Legislature thought that by effecting transfers in the intervening period a new right will to created in the third parties which might result id complications while taking possession of the land for the purposes of distribution. It is quite obvious from the bare reading of the preamble of the Ceiling Act that the ceiling is imposed upon the holding of a person so as to secure land for the purposes of distribution. The ultimate object or the goal of the Ceiling Act is the distribution of the land to the landless and other persons. For this purpose a ceiling on holding is being imposed. This very intention of the legislation could be defeated or the provisions of the Ceiling Act could be evaded by the unscrupulous landholders by effecting various transfers. To check this evasion and manipulation restrictions have been imposed by section 8 and section 10 of the Ceiling Act. Taking into consideration the intention and the object behind the Ceiling Act, in my opinion, the words ''any other disposition" will have to be given an extended meaning which obviously will include a transaction known as a contract of sale, under which the purchaser is put into possession of the property as a part-performance of the contract.

30. In this view of the matter, in my opinion, such a transaction is also covered by Explanation to section 8 as well as Explanation to section 10 of the Ceiling Act. Therefore, though such a transaction could be treated as a transfer for the purposes of the Ceiling Act, it is not possible for me to hold that such a transaction should be only by a registered document. A reference could usefully be made in this context to proviso to section 49 of the Indian Registration Act, which provides that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of section 53 A of the Transfer of Property Act, or as evidence of any collateral transaction not required to be effected by registered instrument. If this is so, the Explanation to section 10 of the Ceiling Act cannot be construed to mean that in spite of the provisions of the Indian Registration Act, which is the Central Act, by implication the State Legislature wanted either to repeal or to give go-bye to the said provision for the purposes of the Ceiling Act.

31. The Division Bench of this Court had an occasion to consider the scope of sections 8 to 11 of the Ceiling Act in Vithalrao Udhaorao Uttarwar v. The State of Maharashtra. While repelling the argument raised before the Division Bench in this behalf, the Division Bench observed as under:

''''Section 8 prohibits transfers, section 9 acquisitions, section 10 lays down the consequences and section II disregards certain partitions. By Explanation so tar as to the first part regarding the scheme evidenced by sections 8, 9 and 10, Explanations (1) and (2), is criticised as confiscatory. We do not think so. These are enacted clearly to give effect to the purposes and objects of the Act and Explanation (1) below clause (b) of sub-section (1) of section 10 merely enacts a rule of evidence and casts the burden to prove otherwise on the party who wishes to stand by transactions and its validity. Under law, transfer or conveyance of immoveable property is normally effected by duly registered documents. Plea based on second Explanation, therefore, does not call for further construction in this context. Suffice it to observe (hat both the Explanations appended below clause (b) of subsection (1) of section 10 contemplate that ail bona fide transactions if properly proved upon equitable consideration will always be respected by law. Such enactments indicating results regarding burden of proof and statutory presumptions are efficacious measures of known legislative activity. The parties who are within the prohibitions of law regard being had to its purposes should begin with statute''s presumption aid rebut it by proving it to be otherwise. The particular type of proof and its standard are matters involving facts and circumstances in each case. Very fact that adjudication is possible is sufficient safeguard to any member of the unit including minor.

Therefore, in my opinion, a genuine transaction covered by section 53-A of the Transfer of Property Act, which incorporates an equitable doctrine in the matters of transfer of property if proved by adducing cogent evidence that it had taken place before 26th September 1970, then only because the said document is not registered cannot invalidate the said transaction or the document. If such a transaction which is a transfer within the meaning of section 8 of the Ceiling Act is effected after 26lh September 1970, then obviously it will be covered by section 10 of the Ceiling Act.

32. It is pertinent to note that while deciding the ceiling area of a person, adjudication is provided for by the Ceiling Act. Initially the matter is scrutinised by the Surplus Land Determination Tribunal. Then by section 33 of the Ceiling Act in terms an appeal is provided to the Maharashtra Revenue Tribunal. The appeal lies both on questions of law and fact. Therefore, ultimately the genuineness of the transaction will obviously depend upon the evidence and other material placed on record which is liable to be scrutinised by the Tribunals constituted under the Ceiling Act. In my opinion, this in itself a sufficient safeguard for any apprehension in this behalf. Only because in a given case with an intention to evade the provisions of law, a transaction could be entered into by the landholder, it is not possible to give an extended meaning to Explanation 10 (1) of the Ceiling Act, which was never intended even by the Legislature. To put such a construction or interpretation on the said Explanation will obviously amount to a legislation itself, which is not the province of the Court of Law. Therefore, it is not possible for me to accept the contentions raised in this behalf by the learned Assistant Government Pleader, Shri Garud.

33. Therefore, precisely what is the holding of a person u/s 3 of the Ceiling Act will have to be decided in the context of the provisions of section 2 (14) of the Ceiling Act, which requires a lawful and actual possession of the lard either as an owner or a tenant. If under a genuine contract of sale, a seller had parted with the possession of the land as part performance of the contract and, therefore, is not in actual possession of the said land on the commencement day, then, in my

opinion, it cannot be held that he was holding the said land as contemplated by section 3 of the Ceiling Act. Therefore, the facts of the present case will have to be scrutinised in this background.

34. So far as the facts of the present case are concerned, after the matter was decided by the Surplus Land Determination Tribunal, the petitioner bad filed an appeal u/s 33 o! the Ceiling Act before the Maharashtra Revenue Tribunal. I had an occasion to consider the scope of appeal filed u/s 33 of the Ceiling Act, in Bhimashankar v. State of Maharashtra 1976Mh. L J 719 = Special Civil Application No. 26R1 of 1976, decided on I6th August 1976. The Maharashtra Revenue Tribunal being an appellate Court is a final Court of fact and, therefore, a litigant is entitled to a full, fair and independent consideration of the evidence at that appellate stage and anything less than this is unjust to him. It is the duty of the appellate Court to apply independently its mind to the evidence on record. A duty is also cast upon the appellate Court to consider various grounds raised in the memo of appeal as well as at the time of hearing and after full, fair and independent consideration of the evidence and the grounds of challenge, the appellate Court is expected to decide the appeal. Mere general observations based on the order passed by the Surplus Land Determination Tribunal, without independent application of mind to the evidence on record or the contention raised at the appellate stage cannot be termed to be a full, fair and independent consideration of the evidence or material on record. An appeal lies to the Maharashtra Revenue Tribunal both on the grounds of fact as well as on the grounds of law. Therefore, it is the duty of the appellate Court first to consider the evidence on record and then to come to its own independent conclusion. In view of the interpretation put forward by the Tribunal upon the provisions of section 2 (14) and Explanation to section 10 of the Ceiling Act in the case before me it has neither considered nor scrutinised the evidence or material on record so far as the merits of the transactions are concerned. In substance, therefore, in the present case the appeal his not been decided after application of mind to the evidence or the material on record. In this view of the matter and in the view which I have taken so far as the legal contentions raised before me are concerned, in my opinion, the matter will have to be sent back to the appellate Court for deciding the appeal afresh in accordance with law after giving a reasonable opportunities to both the parties of being heard.

35. At this stage a request is made by Shri Deshmukh that he should be permitted to file certified copies of the crop-statements or the original Isarchittis etc. to substantiate his pleas. Shri Garud, the learned Assistant Government Pleader, has vehemently opposed this request made on behalf of the petitioner. In my opinion, it is open for the petitioner to raise such a contention before the appellate Court. If such a submission is made before the appellate Court, it will deal with it on its own merit in accordance with law,

36. In the result, the petition is allowed. The order passed by the Maharashtra Revenue Tribunal dated 23rd April 1976 is quashed and set aside and the matter

is remanded back to the Maharashtra Revenue Tribunal for deciding the appeal on merit in accordance with law. However, in the circumstances of the case, there will be no order as to costs.

