

(1978) 08 BOM CK 0027

In the Bombay High Court

Case No : Special Civil Application No. 690 of 1973

Hari Kati Bode

APPELLANT

Vs

Rambhau Narayan Gadewar

RESPONDENT

Date of Decision : 07-08-1978

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 107, 110, 20

Citation : (1980) 82 BOMLR 189 : (1979) MhLj 705

Hon'ble Judges : Kambli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kambli, J.—The petitioner, Hari Bode was the tenant of field survey No. 17, area 13.6 acres of Mouza Hivardara, in Taluka Wani, District Yeotmal. Respondent No. 1 Rambhau was the tenure-holder of that field. On February 23, 1961 the petitioner executed a document purporting to be a surrender deed in favour of Rambhau, surrendering his tenancy rights in his favour. An application for verification of the surrender u/s 20 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Tenancy Act) was filed on February 26, 1961. Before the surrender was accepted by the Tahsildar, Rambhau sold the field on March 7, 1961 to respondents Nos. 2 to 4. After the petitioner came to know about this, he applied the very next day i.e. on March 8, 1961 for the cancellation of the surrender. On March 29, 1961, the Naib Tahsildar passed an order holding that the surrender is voluntary and accepted the surrender. It may be mentioned at this stage that the petitioner was never informed by the Tahsildar about the passing of this order dated March 29, 1961. This has been so found by all the authorities including the Maharashtra Revenue Tribunal, Nagpur.

2. On November 13, 1961, the petitioner made an application to the Tahsildar u/s 36 of the Tenancy Act alleging therein that he was a tenant of the field, that

the landlord Rambhau gave him notices u/s 38 of the Tenancy Act on December 30, 1960 and on February 13, 1961 asking for the possession of the land for personal cultivation, that respecting his request and also at the intervention of the villagers, he (the petitioner) executed the surrender-deed on February 23, 1961, that instead of cultivating the field by himself, the landlord Rambhau sold the field to non-applicants Nos. 2 and 3 within two to four days from the surrender deed. The petitioner also alleged in that application that he had sent an application by post by about March 8, 1961 to the Tahsildar praying that the surrender be not accepted which was received by the Tahsildar on March 9, 1961; however, his complaint was not taken cognisance of and the landlord and the purchasers dispossessed him of the field forcibly by telling him that the surrender was accepted. The petitioner lastly averred in this application that the act of the landlord and the purchasers in dispossessing him was illegal and prayed for restoration of the land and damages. This application was separately registered as Revenue Case No. 77/59(8)/60-61. This case came up for hearing on March 22, 1962. At the hearing of this case, the respondent Rambhau was present. A certified copy of the order dated March 29, 1961 showing that the Tahsildar had accepted the surrender as valid was produced by the respondent in the said case filed by the petitioner for restoration of the land. The petitioner's application for restoration of possession was dismissed on March 22, 1962 on the ground that Tahsildar had already accepted the surrender.

3. The case of the petitioner is that on this date, that is to say on March 22, 1962, he came to know about the order dated March 29, 1961 passed by the Tahsildar holding the surrender to be valid and accepting the same. According to the petitioner on coming to know of this order on March 22, 1962 he filed an application on May 1, 1962 to the Sub Divisional Officer. It appears that that application was not filed through any counsel. It was not headed either as an appeal or a revision. It appears that this application was forwarded by the Sub Divisional Officer to the Tenancy Naib Tahsildar for immediate enquiry and disposal. Accordingly, the Naib Tahsildar made enquiries and submitted his report to the Sub Divisional Officer on August 20, 1962. In this report, the Naib Tahsildar pointed out that the Revenue Officer who accepted the surrender had not made proper enquiries into the reasons of surrender as per amended Rule 11 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Rules, 1959; further the order of verification of surrender was also not communicated to the tenant and that he learnt about that order in March 1962. The Tahsildar, therefore, proposed that the order passed by the Revenue Officer declaring the surrender deed to be valid be set aside u/s 110 of the Tenancy Act and an order for fresh enquiry into the verification of surrender be passed. The Naib Tahsildar submitted his report to the Sub Divisional Officer on August 20, 1962.

4. The Sub Divisional Officer, Wani treated the petitioner's application dated May 1, 1962 to be one u/s 110 of the Tenancy Act and found by his order dated September 23, 1963 :

1. That there was nothing on the record to show that the N.T. had recorded the statement of the tenant in the absence of the landlord as required under Rule 11 of the Tenancy Rules.

2. That the Naib Tahsildar had erred in giving a finding that the surrender was voluntary inspite of the fact that the tenant had applied for cancellation of the surrender deed and had also expressed his unwillingness to surrender, in his oral statement;

3. The contention of the respondents that the application of the tenant was time-barred was untenable because the order dated March 29, 1961 was never communicated to the parties; In, short, the Sub Divisional Officer held that an incorrect finding was given by the Tahsildar after enquiry which was not proper, that the Tahsildar's order accepting the surrender was not in conformity with the facts of the case and was quite contrary to the provisions of the tenancy law. In that view, he set aside the order of the Tahsildar, and purporting to exercise powers u/s 110(1)(i) of the Tenancy Act, he set aside the order and rejected the application of the landlord for verification of the surrender deed u/s 20 of the Tenancy Act. He held that the surrender deed was invalid.

5. The respondents challenged this order of the Sub Divisional Officer by way of revision petition before the Maharashtra Revenue Tribunal, Nagpur. The revision application was rejected by the Maharashtra Revenue Tribunal, Nagpur by its order dated April 17, 1964. Thereafter, the respondents filed a review application before the Maharashtra Revenue Tribunal, Nagpur for review of the order passed earlier by the Maharashtra Revenue Tribunal, Nagpur on April 17, 1964. The Maharashtra Revenue Tribunal, Nagpur reviewed its own order dated April 17, 1964 finding that the Sub Divisional Officer could not exercise the jurisdiction u/s 110 of the Tenancy Act after the lapse of one year's time from the date of the order dated March 29, 1961. This according to the Maharashtra Revenue Tribunal, Nagpur was clearly in excess of the jurisdiction vested in the Sub Divisional Officer. The Maharashtra Revenue Tribunal, Nagpur, therefore, set aside its own order in the said revision petition and also the order of the Sub Divisional Officer passed on September 23, 1963.

6. The petitioner challenged this order of the Maharashtra Revenue Tribunal, Nagpur by filing the Special Civil Application No. 532 of 1967 in this Court. It was contended before this Court on behalf of the petitioner that the order which was passed by the Naib Tahsildar on March 29, 1961 accepting the surrender was an order appealable u/s 107 of the Tenancy Act and the limitation for filing the appeal was sixty days. It was submitted that the appeal could be filed within a period of sixty days from the date of the communication of the order, which, in this case, was March 22, 1962 and hence the memorandum or the petition filed by him to the Sub Divisional Officer should be treated as an appeal and must be held to be within time. On consideration of the material on the record and the arguments advanced before it, the learned single Judge of this Court who decided this special civil application was of the view that the Sub Divisional

Officer on his own finding should have held that the tenant's petition dated May 1, 1962 was within time as an appeal u/s 107 and instead of proceeding to exercise his powers u/s 110 of the Tenancy Act should have treated that application dated May 1, 1962 as an appeal and should have dealt with the matter on merits. The learned single Judge further pointed out that on some occasions the proceedings were treated as an appeal and on the other occasions they were treated as an application by the Sub Divisional Officer and no attention was paid to the fact as to whether the petition filed by the tenant was within limitation as an appeal. It was pointed out that the matter escaped the notice of the Maharashtra Revenue Tribunal also; it was only for the first time in the review application that this matter was brought to the notice of the Revenue Tribunal. This Court pointed out :

Even then on its own finding in the revision application that the order was communicated to the petitioner or that he got the knowledge of that order for the first time on March 22, 1962 it should have seen that on May 1, 1962 the appeal was well within the limitation.

The learned single Judge observed that from the record before him it was apparent that there was a misconception on the part of everybody concerned before the lower Courts and the petitioner was being deprived of his legal remedy for no fault of his. The case was, therefore, sent back to the Sub Divisional Officer exercising the powers of the Collector to treat the application filed by the petitioner on May 1, 1962 as an appeal u/s 107 of the Tenancy Act and proceed with the same as an appeal. With regard to the finding that the petitioner got knowledge of the order for the first time on March 22, 1962, it was directed by this Court that it will also disappear and it will be open to the respondents to show that the petitioner got knowledge of the order dated March 29, 1961 prior to March 22, 1962. It was directed by the judgment in the said special civil application :

If the respondents contend and show that the petitioner had knowledge of the order dated March 29, 1961 beyond a period of 60 days before May 1, 1962, it would be open to the petitioner to show cause for condoning the delay to the satisfaction of the Sub-Divisional Officer.

On this remand, the proceedings went back before the Sub Divisional Officer at Wani and he by his order dated April 29, 1971 passed in Revenue Appeal No. 79/59(4)/62-63 found that the surrender deed was obtained by misrepresentation of facts; that the same was, therefore, bad and inoperative. It was pointed out that the field was sold by landowner Rambhau during the pendency of the verification proceedings. The contention of Rambhau that the field was sold with the consent of the petitioner tenant was negatived. The learned Sub Divisional Officer found that under the circumstances, the surrender deed could not be treated to be valid and effective. It was also pointed out that the learned Naib Tahsildar who accepted the surrender should have held that 4.2 acres of land which the tenant had stated to be with him was not sufficient for

maintenance of tenant's family. The order of the Naib Tahsildar dated March 29, 1961 was in view of these findings set aside. The learned Sub Divisional Officer declared that the petitioner tenant still continued to be the tenant of the suit field and since he was not in possession thereof and had been evicted illegally thereof he will immediately be restored to possession by taking suitable action as may be deemed necessary. So far as the question of limitation was concerned, the Sub Divisional Officer referred to the observations of this Court in special civil application referred to above to the effect that it was open to the respondents to show that the petitioner got knowledge of the order dated March 29, 1961 prior to March 22, 1962. It may be noted that this Court while deciding the said special civil application had observed that if the respondents contended and showed that the petitioner had knowledge of the order dated March 29, 1961 beyond a period of sixty days before May 1, 1962 it would be open to the petitioner to show cause for condoning the delay to the satisfaction of the Sub Divisional Officer. The learned Sub Divisional Officer observed in his judgment that no such contention was raised before him on behalf of the respondents during the course of the arguments and as such it was treated that the order passed by the Naib Tahsildar on March 29, 1961 came to the knowledge of the appellant on March 22, 1962 only and as such he held that the application dated May 1, 1962 having been directed to be treated as an appeal by the High Court was within limitation.

7. Being aggrieved, the respondents preferred a revision application before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal held that the petitioner's appeal before the Sub Divisional Officer was barred by time. The Maharashtra Revenue Tribunal found that no date was fixed for passing of the order and it was passed by the Naib Tahsildar on March 29, 1961. It also held that this order was not communicated to the petitioner at any time. However, referring to certain documents on record, to which a reference in detail will be made hereafter, the learned Member of the Maharashtra Revenue Tribunal was of the view that the petitioner had obtained knowledge on June 7, 1961 or at any rate on January 11, 1962 of the order of the Naib Tahsildar dated March 29, 1961. In view of this position, the learned Member was of the view that the contention of the petitioner that he came to know of the order of Naib Tahsildar accepting the surrender, on March 22, 1962 was not sustainable. Coming to the merits the learned Member was of the view that there were no ingredients either of fraud or misrepresentation or undue influence which influenced the tenant to execute the surrender deed. The tenant having accepted the execution and the only reason given for cancellation of the surrender deed being that the landlord was selling the field to others, the voluntary nature of the surrender cannot be doubted. The learned Member also referred to the statement of the petitioner recorded by the Naib Tahsildar in the proceedings before him for verifying the surrender and came to the conclusion that according to that statement, the surrender must have been voluntary. I will have again to refer to this statement later on. In that view, the learned Member was of the view that the surrender

was voluntary and bow fide. Consequently, the Maharashtra Revenue Tribunal confirmed the order of the Naib Tahsildar dated March 29, 1961 accepting the surrender. It is this order of the Maharashtra Revenue Tribunal that has been challenged by this special civil application,

8. Mr. Munshi, the learned Counsel for the petitioner, submitted that the Maharashtra Revenue Tribunal exceeded its jurisdiction in interfering with the findings as regards limitation and the finding as regards surrender being not valid and effective recorded by the authorities below, which findings according to him are findings of fact. He submitted that the Maharashtra Revenue Tribunal erred in disturbing those findings. As against this, Mr. Trivedi, the learned Counsel for the respondents, submitted, that this Court in exercise of its power in the writ jurisdiction would not be justified in interfering with the findings of the Maharashtra Revenue Tribunal.

9. As I have pointed out above, the Sub Divisional Officer so far as the question of limitation is concerned observed that the respondents did not raise the contention as regards limitation before him and, therefore, the petitioner was not called upon to show that there was delay in filing his application dated May 1, 1962 which was treated as an appeal and that, therefore, no question of condoning delay arose and the appeal was within limitation. Mr. Trivedi submitted that even if a party does not raise a question of limitation, it is for the Court or a prescribed authority to find out whether a particular proceeding is within limitation or not. Now, leaving aside the aspect of burden of proof, we shall see whether the finding recorded by the Sub Divisional Officer on the question of limitation was correct and called for interference.

10. Now, in this case all the authorities below including Maharashtra Revenue Tribunal have found that the impugned order of the Naib Tahsildar dated March 29, 1961 was not communicated to the petitioner at any time by the Naib Tahsildar. My attention was invited on behalf of the petitioner to the decision of a Division Bench of this Court reported in *Maruti v. Dattatraya* [1977] Mh. L.J. 848 : 78 Bom. L.R. 602. There it is observed:

In considering the question of limitation as to whether an appeal or revision is in time what the relevant authorities have to consider is not only whether the order appealed against was communicated to the parties but also when the parties actually came to know about the particular order. Formal communication is not the criteria. If it could be shown that the parties concerned had knowledge of the making as well as the contents of the order appealed against then limitation must run notwithstanding that a formal communication has not been effected. Now, it is substantially clear that if the order of the Tenancy Awal Karkun was not communicated to the parties or otherwise known to them, then it could be properly contended and argued that the appeal was in time, because the period of limitation had not begun to run.

It was pointed out that even then the period of limitation runs from "the date of

the order", the words "the date of the order" should be construed as the date from which the parties were fixed with the notice of the order. A reference was made in this behalf to a decision of another Division Bench reported in *Bhalchandra Parvatishankar v. Muljibhai Bhagabhai* (1955) Special Civil Application No. 1525 of 1955, decided by Gajendragadkar and Gokhale JJ., on September 5, 1955 (Unrep.) A reference was also made to a decision of the Supreme Court reported in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, where it was observed (p. 1505):

Where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned.

In that case, the Supreme Court was considering the date of the Collector's award as appearing in the Land Acquisition Act and the Court went on to say that (p. 1503):

...the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively.

In a later judgment of the Supreme Court in the case of *State of Punjab Vs. Mst. Qaisar Jehan Begum and Another*, referred to in the judgment of the division Bench in *Maruti's* case, the decision in *Harish Chandra* case was approved and the question posed was "When did the respondents know the award either actually or constructively?". It was held that the knowledge of the award did not mean a mere knowledge of the fact that an award had been made but the knowledge must relate to the essential contents of the award and that even these contents may be known either actually or constructively.

11. The ratio of these cases seems to be that even if it could be shown, that the party concerned had knowledge of the making as well as the basic contents of the order appealed against, then the limitation must run notwithstanding the fact that a formal communication by serving a notice has not been effected.

12. In the case before us as has been pointed out above, all the authorities have found that the impugned order dated March 29, 1961 was not communicated to the petitioner. Now, the Maharashtra Revenue Tribunal has referred to two documents; firstly, the learned Member referred to the application of the petitioner registered as Revenue Case No. 77 / 59(8) / 60-61. This was an application filed by the petitioner on November 13, 1961, as pointed out above u/s 36 of the Tenancy Act for possession of the suit field alleging therein that he was forcibly dispossessed by the respondents. In this application, the petitioner had averred inter alia that at the time of dispossessing him, respondents were saying that the surrender had been accepted. The learned Member was of the

view that as the petitioner was told of the acceptance of surrender, on his own showing on or about June 1, 1961, the petitioner got knowledge of the order of the surrender on that date. The learned Member referred, to another document, namely, the reply filed by respondent Rambhau in said Revenue case No. 777 59(8)/60-61. This reply was filed on January 11, 1962. By this reply, respondent Rambhau had contested the claim of the petitioner for possession of the suit field u/s 36 of the Tenancy Act. Respondent Rambhau pointed out in this reply that the petitioner had voluntarily given possession of the field to him and that the surrender deed was accepted before Shri Mahadulwar Tahsildar after evidence. The learned Member was of the view that respondent Rambhau having averred in his reply dated January 11, 1962 that the surrender was accepted by the Tahsildar, the petitioner got knowledge of the acceptance of surrender at least on that date, namely, on January 11, 1962. It was, therefore, according to the learned Member not possible to accept the tenant's contention that he came to know about the surrender on March 22, 1962.

13. Now, I have referred above to the observations of a Division Bench of this Court in Maruti Namdeo's case with which I respectfully agree. As observed there, if the impugned order was not communicated to a party it could be shown that the party had knowledge of the making as well as the basic contents of the order appealed against. Now, the question is whether on the basis of what was stated in the two documents referred to above, the petitioner could be imputed with the knowledge of the basic contents of the order. It is difficult, in my view, to attribute such knowledge to the petitioner. Merely because the respondents said at the time of dispossessing the petitioner that they had obtained the acceptance of the surrender, the petitioner was not expected to blindly rely upon that assertion so long as no formal order was communicated to him as regards the acceptance of the surrender by the Naib Tahsildar. It may be noted that the petitioner had himself complained to the Naib Tahsildar by his communication dated March 8, 1961 that the surrender document be cancelled. The petitioner was justified in expecting the communication to him orders of the Naib Tahsildar on the application for acceptance of surrender initiated by the respondent Rambhau, and on his own communication. Now, coming to the averment of respondent Rambhau in his reply dated January 11, 1962 that averment is not in my view sufficient to persuade one to hold that the petitioner got the knowledge of the basic contents of the order. What was stated in the reply dated January 11, 1962 was simply that the surrender deed was accepted before the Tahsildar. It is only when respondent Rambhau ultimately produced a certified copy of the order dated March 29, 1961 in Revenue Case No. 77 /59(8)/ 60-61 on March 22, 1962 that the petitioner can be said to have obtained the knowledge of the contents of the order. If the period of limitation is computed from that date, namely, from March 22, 1962 the application dated May 1, 1962 made by the petitioner which was subsequently treated as an appeal can be said to be well within limitation of sixty days.

14. Now, assuming that the petitioner can be attributed some knowledge about

this order on November 13, 1961 or on January 11, 1962 as held by the Maharashtra Revenue Tribunal, the question is whether the period of limitation could be computed from those days. It may be noted that not only no order was communicated to the petitioner by the Naib Tahsildar in respect of the order in the proceedings for acceptance of the surrender deed but the application made by the petitioner for restoration of possession u/s 36(1) of the Tenancy Act registered as Revenue Case No. 77 / 59(8)/ 60-61 was still pending before the Tahsildar. It was decided only on March 22, 1962 when the respondent Rambhau produced the certified copy of the order, the petitioner's application for possession came to be dismissed on the same day. It will thus be seen that the petitioner had not received any reply even to his communication dated March 8, 1961 praying for cancellation of the surrender deed and his application for restoration of possession was also pending. The petitioner was justified in believing that the question of acceptance of the surrender was alive till the orders in the proceedings initiated by him were made. It is only on March 22, 1962 that he got the knowledge of the contents of the order accepting the surrender deed. Before he got that knowledge, the petitioner was pursuing his remedies in his own ways. The petitioner is not shown to have been assisted by any advocate during these proceedings. In view of the material referred to above, it cannot be said that he was not diligent in pursuing the matter. Assuming, therefore, that the burden was on the petitioner to show that his appeal was within limitation, it will have to be held that that burden has been discharged. In view of all the material on the record, the learned Member of the Maharashtra Revenue Tribunal was in my view not justified in disturbing the finding recorded by the Sub. Divisional Officer on the question of the limitation.

15. We shall now go to the merits of the matter. Here also the learned Member of the Maharashtra Revenue Tribunal has set aside the finding recorded by the Sub Divisional Officer, that surrender was not valid, and effective. That also is a finding of fact recorded by the final fact finding authority. Now, in this case, we may note certain material facts. On February 23, 1961 a deed purporting to be a surrender deed was executed. On February 26, 1961 -the landlord Rambhau made an application for verifying that surrender. Ultimately, the order verifying the surrender and accepting the same came to be made on March 29, 1961. During the pendency of these proceedings, the landlord Rambhau sold the field on March 7, 1961. On March 8, 1961 the petitioner made an application for cancelling the surrender on the ground that the landlord had sold the land. The grievance of the petitioner was that he was served with notices by the landlord on December 30, 1960 and February 13, 1961. In those notices, the landlord asked for possession on the ground that he was to cultivate the land personally. It was on account of that representation that he executed the surrender deed in favour of the landlord. The petitioner's grievance is that after representing to him that the land was required for his self cultivation, the landlord sold the land to others even before the surrender was verified. There was thus a misrepresentation of the fact or a fraud committed on him. Now, in his deposition

dated March 10, 1961 recorded by the Naib Tahsildar the petitioner admitted that the surrender deed of February 23, 1961 bore his thumb mark; that it was read over to him. However, he added that he has come to know that the field which was in his possession is sold to one Gosavi Mahar by respondent Rambhau and, therefore, his surrender deed be cancelled. This was what he stated in the earlier part of his deposition. Now, in the concluding part which follows only two lines thereafter the statement of the petitioner runs as follows:

I am voluntarily surrendering. I know the consequences. Surrender be accepted.

Apart from the question that the line in the concluding portion of the statement:

****eh vkrka [kq"khush jkthukek nsr vkgs eyk R;kps ifj.kke dyrkr****

seems to have been written rather in a different ink, the question is whether any importance should be attached to what is conveyed by this line when only two lines earlier in the same statement the petitioner had stated that his surrender be cancelled. The learned Sub Divisional Officer has dealt with this aspect of the matter rather exhaustively by pointing out in para. 3 of his order:

It is not understood as to how this tenant would give such a contradictory deposition in the last when earlier all along he expressed that the surrender deed be treated as cancelled. The learned N.T. was not correct in giving all the emphasis on the last part of the deposition only ignoring, totally the earlier part of his deposition and also contents of his application dated March 8, 1961.

As pointed out by the Sub Divisional Officer the statement of the petitioner recorded by the Naib Tahsildar about his (petitioner's) realising the consequences ****eyk gkkps ifj.kke dyrkr**** does not appear to be after a careful thought in view of the other circumstances and the earlier part of his deposition. It may be noted that the Naib Tahsildar allowed himself to be misled by the words of illiterate tenant that he had given the surrender voluntarily - obviously ignoring what he had stated earlier in his deposition. The learned Member of the Maharashtra Revenue Tribunal while disturbing the finding of fact recorded by the Sub Divisional Officer appears to have been influenced by the fact that there was no dispute that surrender deed was executed by the petitioner. On account of that fact and probably on account of the inference drawn therefrom that no pressure was exercised on the petitioner tenant at the time of executing the surrender deed, the learned Member of the Maharashtra Revenue Tribunal was inclined to hold that the surrender deed was executed voluntarily. According to the learned Member, the petitioner's grievance that the landlord had sold the land to some other person and therefore the surrender be cancelled was immaterial. While considering whether the surrender deed was valid and effective, the learned Member observed:

Every thing that is said in Rule 11 does not attract this breach of contract assuming that there was such a contract.

Section 20 of the Tenancy Act requires that the surrender has to be verified

before the Tahsildar in the prescribed manner. Rule 11 of the Tenancy Rules prescribes the manner. That rule reads as follows:

11. Manner of verifying surrender of tenancy : The Tahsildar when verifying the surrender of a "tenancy by a tenant in favour of the landlord u/s 20, shall in the absence of the landlord or his agent examine the tenant on oath after a period of ten days from the date of receipt of intimation of surrender by putting him questions to ascertain-

- (i) the reasons for his surrendering the tenancy;
- (ii) whether the surrender is voluntary and has been made in good faith;
- (iii) the other source of livelihood the tenant has or wishes to have;
- (iv) whether the tenant is aware of the consequences of the surrender; and
- (v) any other matter which the Tahsildar deems it necessary so to do :

Provided that where the Tahsildar is satisfied that the surrender is not voluntary and has not been made in good faith; he shall not pass any order unless the landlord is given an opportunity to be heard.

The learned Member of the Maharashtra Revenue Tribunal seems to be of the view that so long as the deed was executed voluntarily and there was no pressure for executing the deed at the time of its execution, the surrender cannot be said to have been vitiated. I am afraid, such a reasoning cannot be based either upon the construction of Section 20 of the Tenancy Act or Rule 11 of the Tenancy Rules. If both Section 20 and Rule 11 *ibid*, are read together, it will appear that a duty is cast on the Tahsildar to ascertain the reason for tenant surrendering the tenancy; to ascertain whether the surrender is voluntary and has been made in good faith; whether the tenant is aware of the consequences of surrender and to ascertain any other matter which the Tahsildar deems it necessary so to do. If the provisions in this rule are read carefully, it will appear that it will not suffice for the Tahsildar merely to find out that when the surrender deed was executed no pressure was exerted on him. He has to ascertain the reasons for surrendering the tenancy with a view to find out whether surrender is valid. As pointed out above, in this case, the grievance of the petitioner was that he was surrendering the tenancy because the landlord by his notices represented to him that he wanted the land for his personal cultivation. Thereby, the petitioner wanted to suggest that but for this representation he would not have agreed to surrender. In other words, the petitioner wanted to say that there was a misrepresentation of the facts. On a careful reading of provisions in Rule 11 of the Tenancy Rules, I am inclined to hold that not only voluntary nature as regards the execution of the sale-deed but all other relevant circumstances including the misrepresentation of facts, fraudulent conduct of the landlord have to be taken into consideration. It is for this purpose that Rule 11(1) of the Tenancy Rules requires the Tahsildar to ascertain the reasons for the tenant surrendering the tenancy and any other relevant matter. In the instant case,

immediately after the land was sold by the landlord the very next day the petitioner makes a complaint in writing to the Tahsildar that the surrender deed be cancelled. All this material supports the contention raised on behalf of the petitioner that he was induced to execute a deed of surrender because of a particular representation of the landlord, namely, that he wanted the land for self cultivation which was found to be false, long before the surrender was accepted. All these aspects of the matter were not taken into consideration by the learned Member of the Maharashtra Revenue Tribunal before disturbing the finding of facts recorded by the Sub Divisional Officer. The material circumstances were thus ignored or rather not considered by the learned Member of the Maharashtra Revenue Tribunal. The finding of the Maharashtra Revenue Tribunal therefore in my view is vitiated by an error of law.

16. Coming again to the impugned order made by the Naib Tahsildar dated March 29, 1961, it will be seen that he has not applied his mind to all the relevant matters that were required to be considered. For example, he was required to find out the other source of livelihood the tenant had or wished to have. This aspect of the matter has not been dealt with in his order. The Tahsildar who was required to ascertain the reasons for surrendering the land did not consider the reasons given by the petitioner tenant to the effect that he (the tenant) had executed the surrender deed because the landlord represented to him that he would cultivate the land personally. The learned Tahsildar allowed himself to be misdirected by the concluding sentence in the petitioner's statement which came to be recorded in the following way:

****eh vkrka [kq"khush jkthukek nsr vkgs eyk R;kps ifj.kke dyrkr****

The learned Tahsildar should have further questioned the petitioner as to how he was saying that the surrender should be cancelled. This was not done by him. It does appear that there was no proper application of mind to the facts as well as to the position of law when the learned Tahsildar proceeded to consider the question about the acceptance of the surrender deed. The learned Sub Divisional Officer has, in my view, considered all the aspects of the matter rather carefully. There was no sufficient material or there were no circumstances which should have induced the learned Member of the Maharashtra Revenue Tribunal, Nagpur to disturb the finding of fact recorded by the Sub Divisional Officer. With respect, it may be stated that the learned Member also did not take into consideration the position of law as would emerge from careful analysis of Section 20 of the Tenancy Act read with R. IT of the Tenancy Rules.

17. In the result, I am inclined to hold that the Maharashtra Revenue Tribunal has exceeded its jurisdiction in disturbing the findings of fact recorded by the Sub Divisional Officer. The order of the Maharashtra Revenue Tribunal is, therefore, liable to be quashed.

18. In the result, (his petition is allowed. The impugned order of the Maharashtra Revenue Tribunal dated January 12, 1973 is set aside and that of Sub Divisional

Officer dated April 29, 1971 is restored.

19. Rule made absolute with costs.