

(1975) 09 BOM CK 0001

In the Bombay High Court

Case No : Spl. C.A. No. 535 of 1968 with Spl. C. Application No's. 540, 541, 544, 545, 549, 660 and 663 of 1968

Harikisan Kanhaiyalal Pampalia

APPELLANT

Vs

Krishnaji Dhanaji Shelki and another

RESPONDENT

Date of Decision : 25-09-1975

Acts Referred:

Constitution of India, 1950 — Article 31A

Citation : (1976) MhLj 537

Hon'ble Judges : V.S. Deshpande, J;C.T. Dighe, J;C.S. Dharmadhikari, J

Bench : Full Bench

Advocate : R.N. Deshpande and S.N. Kherdekar, R.R. Deshpande and S.R. Deshpande, for the Appellant; J.N. Chandurkar, for the Respondent

Judgement

V.S. Deshpande, J.—All these companion matters raise a common question of law of some importance. The question was referred to the Division Bench on 9-2-1972 and then to the Full Bench on 13-8-1974. In all these petitions, the petitioner is the same landlord. His application for possession dated 3-10-1961 after attaining majority on 4-10-1960 against his different tenants u/s 36 read with section 38 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act. 1958 (hereinafter referred to as "the Act"), for personal cultivation were rejected by the Additional Tahsildar on 30-5-1964 and the order is confirmed in appeal and revision. According to the concurrent orders, the petitioner failed to prove that the lands sought to be resumed constituted the principal source of his income. This finding, among others, is based on the fact that the petitioner acquired about 40 acres of land and sums of Rs. 20,000, Rs. 7,000 and Rs. 2,000 on different dates during the pendency of the proceeding. In spite of some contrary observations of the Revenue Tribunal, it is not disputed before us that this property was acquired by the petitioner after institution of the proceeding. According to the petitioner, such subsequent developments cannot be taken into account. Opinion on this point was found to have been divided. Hence this reference to the Full Bench.

2. The question referred to the Full Bench may be quoted as follows:

Whether events happening subsequent to either giving of the notice u/s 38 or making of the application u/s 36 read with section 39 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, should be taken into account while deciding the claim for possession of the landlord ?

3. Now, these are applications u/s 38 (2) of the Act. The respondents are not the occupancy tenants. The landlord can terminate the tenancy either under sub-section (1) or (2) by (a) serving notice, and (b) making application for possession before the date or the period prescribed. But this can be done only if he (i) requires the land (ii) requires bona fide, and (iii) requires for personal cultivation. Mere requirement of land is not enough, nor even mere bona fide requirement, unless the same is for personal cultivation. Even if such requirement exists, such resumption still depends on a few additional conditions enumerated in section 38 (3), namely, that (i) he does not have any land under his personal cultivation and if he has any, it is less than three family holdings, (ii) such land happens to be his principal source of income (iii) he is shown to be the holder in the record-of-rights and on the specified date (iv) the tenants liable to be affected are comparatively junior. All the conditions are cumulative. Sub-sections (4) to (6) deal with the area of land required to be left with the tenant, immunity from further resumption and apportionment of rent. Landlords becoming owners of land after August 1953 are prevented from resuming the land if the tenant had already become a protected lessee before the dates of his becoming owner.

4. Certain salient features of the Act shall have to be borne in mind to ascertain the true impact of these conditions. The right of the landlords to resume their lands under the ordinary law of the land is subjected to several limitations under the Act. This piece of legislation reflects the agrarian policy of the State formulated in compliance with the Directive Principles of the Constitution. Firstly, the underlying object is to eliminate the absentee landlord from the scene step by step and ensure transfer of the land to the tiller finally. Secondly, the rights of the persons personally cultivating the land are preferred and precedence is given to them in all respects till the ownership gets transferred to them. Thirdly some of the provisions of the Act are based on the hypothesis that an area of three family holdings satisfies the needs of an agriculturist family, absorbs its cultivating capacity, enables it to concentrate and improve the yield of the land and discourages it from exploiting the labour of others. This limit also appears to have been aimed at preventing the concentration of land in the same hands and facilitating distribution of such surplus land on lease to the needy u/s 84 of the Act. The Act itself does not provide directly for acquiring land in excess of three family holding from the holders. However, acquisition of ownership by the tenant, under sections 42, 46 and 49A or resumption of land from the tenant in addition to other restrictions is limited to such area as would, together with the land already under personal cultivation, not exceed the area of three family holdings.

Even after surrender of land by the tenant, the landlord is not permitted u/s 21 to retain area more than is necessary to make up the total of three family holdings for his personal cultivation, the remaining area being treated as surplus. Fourthly, after the Tillers' Day all lands excepting the categories covered by Chapters IV to VI are intended to be statutorily disposed of either by transferring the same to the tenants as owners to make up the total of three family holdings for their personal cultivation u/s 42 or 49A (4), or failing that, to restore to the landlord under sections 43 (14-A) read with section 46 and sections 21 and 49A (5) read with section 21, and failing that, to transfer to the pool of surplus land for disposal u/s 84 of the Act. The provisions of sections 38, 39, 39A, by way of exceptions, contemplate deflection of this statutory course for the benefit of the landlords, who need the land for their maintenance and can personally cultivate the same. On the existence of the above conditions and on compliance with the requirements of these provisions, depends the deprivation of the tenants of their rights in the land or deflecting of the statutory course. Chapter III-A provides for resumption by the members of the Armed Forces on more liberal terms. The true implications and dimensions of these conditions for resumption of the land u/s 38, or even of similar conditions under sections 39 and 39A can be better grasped if this legislative policy is borne in mind.

5. Acquisition of property including agricultural one subsequent to the date of application has its impact on bona fide requirement and extent of the resumable land as also on its being the principal source of income. That is why Shri R. R. Deshpande, the learned Advocate for the petitioner, strenuously urged that events subsequent to institution of the proceedings cannot be taken into account as rights of the parties ought to be decided by reference to facts as in existence at the initiation thereof.

6. The situation as on the date of notice does not appear to be of any significance. There is no obligation to apply before the last date prescribed for making applications, nor the section requires any period to be mentioned in the notice of termination. Theoretically, the landlord terminating the tenancy by notice on the day when the Act was brought in to force in 1958 could have chosen not to apply till 31-3-1961. Even the termination of the tenancy does not become operative till, in addition to give notice, an application for possession is made in terms of the language of this section. Changes in the circumstances between the date of notice and the date of application thus cannot have effect on the rights of the parties.

7. The situation on the date of application, however, undoubtedly is material. Ordinarily rights of the litigants are determined at the trial by reference to the facts as they exist on the date of the institution of the lis. If the required conditions are found not to be existing on that date, the landlord would be disentitled to make any such application for possession and this will disable him from preventing the land being disposed of in terms of the provisions of sections 41 to 50 of the Act. The remote possibility of the landlord getting the land u/s

49A (5) read with section 21 due to tenant's disability to purchase is not relevant in this context. The landlord would not be able to defeat the statutory disposal of the land without possessing these qualifications on the date of the application. While considering whether these conditions exist or not, possession or precarious, casual or drying sources of income, shall have to be excluded from consideration and foreseeable circumstances, even though not in existence actually, but having a bearing on these conditions, shall have to be necessarily taken into account.

8. Would the existence of these conditions be necessary on the date of the order also ? The date of the order has got to be equated with the date of the trial for practical purposes. The salient features of the Act discussed above, make it difficult to answer this question in the negative. Thus, the disability to personally cultivate, even in terms of the broad definition of "to cultivate personally" in the Act or, discontinuance of the requirement of the landlord or, such lands ceasing to be the principal source of income, or land more than three family holdings being already under personal cultivation of the landlord on the date of the order, is bound to disentitle him from claiming resumption. If the tenant cannot be deprived of his statutory rights in the land without all such personal qualifications, continuous existence thereof must be deemed to be indispensable till the date of the order. Section 36 (3) of the Act empowers the Tahsildar to pass such order on the application u/s 38, as he deems fit. It will not be possible for the Tahsildar to pass an order for resumption in favour of the landlord even when he finds that all or any of the conditions do not exist on the date of the order. He would ill afford to ignore that such restoring the land to the undeserving landlord would deprive the tenant of his rights in the land without the required statutory basis and defeat the legislative intent and the policy.

9. That the need of the landlord to personally cultivate land must exist even after the order of possession is made, can be gathered from the scheme of section 52 of the Act. The tenant is enabled thereunder to claim back possession, if the landlord fails to personally cultivate the land after getting such possession. He is enabled even to claim damages from him from the date of such failure. Such failure is assumed by the legislation to indicate the absence of the landlord's need of the land. It is only when the doctrine of repose intervenes after the expiry of 12 years from the date of possession that the landlord is relieved of such obligations. As held in *Godavaribai Jayaram v. Kashiram* 57 Bom. L R 1111, the landlord gets the resumption order on the representation that all these conditions exist and he is so qualified to claim resumption. Failure to personally cultivate the land is considered to be the breach of such representation. This also indicates the legislative intent of the necessity of existence of these conditions, at any rate, till the order is made.

10. Section 38 (3) (a) permits the landlord to resume three family holdings if he does not happen to have any land under his personal cultivation at all on the date of notice or the expiry of the period thereof. We have already indicated how

the situation as on the date of notice is irrelevant. The same is true of the position as on the date of expiry of the notice, as the section does not require mentioning of any period as such in the notice. This phraseology fitted with section 38 as it stood before amendment and is out of tune with the amended section. Reference can, appropriately and harmoniously, in the present context, be construed as being intended to the date of the application. Clause (b) then enables the landlord to resume so much area as would make up the total area under his personal cultivation to three family holdings. This implies exclusion of the area already under personal cultivation from the permissible total of such three family holdings. Clause (b) does not specifically indicate if the reference to the land already under personal cultivation is intended to the one specified in clause (a) or to the land that may come under his personal cultivation subsequent to these dates but before the date of order. According to Shri R. R. Deshpande, reading of both the clauses would indicate that only the land on the dates mentioned in clause (a) is liable to be excluded while determining the resumable area and not the land that may come under his personal cultivation in any way otherwise subsequent to these dates. The contention is no doubt attractive and made plausible because of some ambiguity. The same, however, is not acceptable to us. Firstly, all the clauses of section 38 (3) are independent of each other. There is no reason why these two clauses alone could have been intended by the Legislature to be so read together. Secondly, there does not appear to be any rational basis for distinction between the land already under personal cultivation on the dates in clause (a) and the land acquired thereafter in the matter of exclusion from the limits of three family holdings. Thirdly, the contemplated ceiling under these clauses is not so much on the area to be resumed as on the area to be possessed, though incidentally it goes to determine the area to be resumed. It is aimed at ensuring that resumption does not result in the landlord coming into possession of in all more than three family holdings including the land already under personal cultivation. This is just in keeping with the legislative intent as reflected in section 21 of the Act. This would emphasise how consideration of the holdings of the landlord under personal cultivation as on the date of the order including the subsequently acquired land is imperative under these clauses. In fact, the limits imposed under these clauses as also under sub-section (4) can be worked out only on the date of the order and that too appropriately by reference to the position as it stands on that date.

11. The third condition, as to the land to be resumed, becoming the principal source of income, also must be in existence both on the date of the application as also on the date of the order for the same reasons. This condition further indicates the anxiety of the Legislature not to deprive the tenant of his rights in the land unless his landlord requires the land for his main and not subsidiary source of income. Though some estimate of such comparative income by reference to the time of application is inevitable, any comparison of income from the existing permanent sources of income with the income of the land to be resumed, would become really unrealistic if it is not made with reference to the

period as nearer to the date of order as possible. This is an additional reason why the time when the order comes to be passed becomes all the more relevant. This consideration also appears to have weighed with the Division Bench of Chainani C. J. and V. S. Desai J. while deciding *Kunjilal v. Bhivsan* Special Civil Application No. 3482 of 1958 decided on 14-7-1959. The date for ascertaining the comparative incomes, in the opinion of the Division Bench, "cannot, therefore, be earlier than the date on which the Mamlatdar makes an order for possession of the land in favour of the landlord." With respect, we find ourselves in agreement with this view. Our attention was not drawn to any contrary view on this point. The view seems to have stood the test of time. There is not much difference of substance in the phraseology of the repealed section 34 (2) (c) and the substituted section 31A (c) of the Bombay enactment-one saying "the income by the cultivation of such land will be the main source of the income of the landlord for his maintenance" and the other saying "the income by the cultivation of the land of which he is entitled to take possession is the principal source of his maintenance". The wording of section 31A (c) of the Bombay Act is identical with section 38 (3) (c) of this Act.

12. This rule cannot also be different with regard to even the small holders who are exempted from the conditions of this clause if they are shown to be earning their livelihood principally by agriculture or agricultural labour.

13. In the very nature of things, the conditions in clauses (d) and (e) in sub-section (3) of section 38 ought to exist on the date of the application as also on the date of the order. Thus, the conditions entitling the landlord to resume land from his tenant must be in existence both on the date of the application as also on the date of the order. That the conditions are relaxed, when the tenant is found unable to exercise his statutory right of purchase under sections 43 (14-A) and 49A(5) read with section 21 is not relevant. In that case, the land can also be resumed by the landlord for personal cultivation to make up the total area under his personal cultivation to three family holdings without proof of other conditions. Where, however, there is a competition between his need and the statutory rights of the tenant, continuous existence of these conditions till the date of order is made inevitable. This appears to be so on the plain language of section 38 when considered in the context of the salient features of the Act. Absence of these conditions has the effect of altering the rights of the landlord as these existed on the date of the application and the relief claimed in the application is liable to become inappropriate and, therefore, liable to be rejected. Granting such a relief would indeed result in perpetuation of injustice and also driving the tenant to the remedy u/s 52 of the Act and resulting in the multiplicity of proceedings.

14. Appeals and revisions being continuation of the trial, according to the procedural law in India, subsequent developments, even after the order, shall have to be taken into account. This doctrine is an exception to the ordinary general rule that rights of the litigants should be decided by reference to facts

existing on the date of the institution of proceedings. This doctrine is accepted as part of the procedural law, which requires the Courts to take into account such events to mould the relief when the relief claimed becomes inappropriate and also to avoid the multiplicity of proceedings and perpetuation of injustice. It will be enough to refer to the cases of *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, *Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others*, and *Lachmeshwar Prasad Shukul v. Keshwarlal Chaudhari* A I R 1940 F C 5 in this context. The language of section 38 makes it unnecessary to invoke this doctrine during the period of trial but invoking of this doctrine may become necessary if any such subsequent developments take place after the order but before the appeal or revision is finally disposed of. The Court, however, has to scrupulously guard against the danger of the Court's process being abused by making out a pretence of such developments to drag on the proceedings. The Court would indeed be very slow to admit such pleas unless the developments are of substantial in nature and prima facie evidence to that effect is cogent.

15. This view is also in accord with the recent judgment of the Division Bench (Deshmukh and Shah JJ.) of our Court in *Hariba v. Motibai* 1974 Mh. L J 823. It is held therein that on the death of the landlord during the pendency of the proceedings u/s 33B of the Bombay Act for resumption of land for personal cultivation, fresh inquiry into the entitlements of the heirs of the landlord is imperative and would become necessary. It is obvious that this could not have been done without invoking this doctrine, though no reference is made to it specifically.

16. Shri R. R. Deshpande, however, contends that the doctrine cannot be applicable to the cases under the Tenancy Act when the right conferred upon the landlord is not of a recurring nature. It is true that the landlord cannot make any application after the Tillers* Day if he was disqualified till the previous day but becomes so qualified after the expiry thereof. He should not be deprived of this right, contends Shri Deshpande, if subsequent developments disqualify him when he was qualified on the date of application. It is difficult to accede to this contention. The landlord's right to resume land is dependent on fulfilment of certain conditions. The conditions are in the nature of personal qualifications. Their continuous existence till the final disposal of the application is sine qua non for deflecting the statutory course. Absence thereof on the date of the order deprives him of such right. That the right is not of a recurring nature is absolutely irrelevant,

17. Shri Deshpande also contends that the landlord's right to resume land gets crystallized on the date of the notice itself and, therefore, the subsequent developments cannot have the effect of unsettling such rights. The contention is thoroughly misconceived. In the first place, even in terms of section 38, the termination of tenancy takes place on giving notice and making application and not on giving notice alone. Secondly, this only puts an end to contractual tenancy. The tenant still gets protection of the statute and such termination does

not become effective till the date of order for possession. Termination even cannot be said to have become operative strictly. Ordinary rule of rights getting crystallized on the date of application is inapplicable to proceedings u/s 38 in view of the scheme under which rights do not get crystallized till the date of the order.

18. His contention that the provision is intended for the benefit of the landlord is true to a certain extent. But benefit thereunder is intended for a needy landlord and is made dependent on continuous existence of certain conditions. The same cannot be relaxed without defeating the object of the statute.

19. Shri Deshpande contends that on our construction, the tenant alone stands to benefit from such subsequent events while the landlord would invariably be the loser. Such an unreasonable construction of any statute contends Shri Deshpande, is impermissible. That our above interpretation operates harshly and even inequitably against the landlord is indisputable. But this is implied in the very scheme of the Act and is not the result of our interpretation. The Act is meant avowedly for the protection of the tillers and the actual cultivators. Landlords intending to personally cultivate are intended to be benefited only if such intention is genuine and lasting. The situation as on the date of the order being reflective of such intention, becomes relevant. The landlord cannot claim equality as long as he does not happen to be a cultivator. This apart, whatever inequality exists is made even immune from constitutional attack under Article 31A. We should not, however, be assumed to have held that subsequent developments would in no case benefit the landlord. If he was not qualified to claim resumption on the date of application, subsequent developments so qualifying him cannot be of any avail to him and hence cannot be relevant. If, however, he is so qualified on the date of application, subsequent developments, even if favourable to him, shall have to be taken into account unless the same are shown to be the result of his own manipulations or wrongs. This indeed is implicit in holding that situation as on the date of the order also is relevant.

20. Shri Deshpande then contends that taking subsequent developments into account at any stage may result in unfairness, as the landlord may not get any opportunity to explain the same. It is of course a factor which every Court or Authority taking the subsequent developments into account shall have to bear in mind. In fairness, every litigant must get an opportunity to explain every adverse subsequent development. Whenever any such development is brought to the notice of the Court, the issue arising out of the same shall have to be properly tried. And as indicated earlier, the Court trying the case would no doubt have to be very careful in guarding against frivolous pleas and furnishing this as a handle to prolong litigation. It shall have to be borne in mind that taking into account such subsequent developments is analogous to admitting additional evidence and pleas based thereon cannot be allowed as a matter of course.

21. Shri R. R. Deshpande also contends that in either case this principle cannot have any application to the cases covered by sections 39 and 39A. of the

Tenancy Act, the provisions thereunder being intended specially for the benefit of small landholders. Under both these sections, landlords having only one or one-third of family holding and possessing certain other qualifications are enabled to make an application for resumption even after the Tillers' Day i. e. 1-4-1961, the Tillers' Day having been extended for their tenants. They are also enabled to resume upto one family holding without ensuring retention of any area for the tenants as u/s 38 (4) of the Act. The nature and the underlying object of the conditions on which such landlords can resume lands from their tenants, though different in details, are in essence the same as u/s 38 of the Act. There is nothing in any of these provisions militating against consideration of subsequent events, which, as indicated earlier, is essential to comply with the legislative policy. It is true that in the event of acquisition of larger areas of lands by such landlord during the pendency of the proceedings, they may cease to be such small landholders. The tenants of these landholders cannot be prevented from insisting on taking these subsequent developments into account for their protection. In that event, the Courts shall have to take them into account and, to dispose of those applications as if they were made u/s 38 of the Act. Acquisition of further land may at best prevent them from claiming relief as such small landholders. This, however, will not by itself result in the rejection of the applications outright as apprehended by Shri Deshpande, even though the applications were made long after the date prescribed u/s 38. The applications being competent on the date when they were made and the authority having jurisdiction to entertain them at the relevant time, the landlord would not stand divested of his rights to resume merely because of his subsequent acquisition of more lands. Its only effect will be that the claims would be subjected to the limitations prescribed u/s 38 of the Act.

22. Shri R. R. Deshpande and Shri Chandurkar drew our attention to several cases supporting their respective contentions. In his exhaustive judgment in the case of Laxman v. Dadarao Spl. C. A. No. 617 of 1970 decided on 30-8-1971 Chandurkar J. has referred to all these cases. It will be enough to refer to the judgment of Tarkunde and Gokhale JJ. in Madhav Vithoba v. Dhondudas 1966 Mh. L J 827 which is extensively quoted by Chandurkar J. and mainly relied on by Shri Deshpande before us. In Madhav Vithoba's case a limited question was if the land acquired by the tenant subsequent to the institution of the proceeding can be taken into account for fixing the resumable area u/s 33B (5) of the Bombay Act. Ordinarily, holding of the tenant or his subsequent acquisition is never relevant under the Tenancy Act and the landlord cannot have any claim or interest over the tenant's land. However, section 33B (5) (b) contemplates division of the land in dispute between landlord and tenant in such manner as to leave both of them in possession of equal holdings. Actual application of this provision to a variety of set up of facts has always been found to be a very difficult problem and in spite of its reference to the Full Bench twice, it still eludes perfect solution. The construction placed on the peculiar wording of this clause necessitates taking into account other lands under personal cultivation of

the landlord and the tenant. In order presumably to prevent further encroachment on the rights of the tenant under such construction the Division Bench held that any subsequent acquisition of land by the tenant and consequentially by the landlord cannot be taken into account u/s 33B(5). This limited proposition on the construction of S. 33B(5) of the Bombay Act by itself does not admit of any dispute. But holding that the doctrine of taking subsequent events into account to mould relief according to the altered rights is inapplicable to the tenancy cases, appears to us to be wide of the mark and beyond the requirements of the limited question arising therein. In application of the above doctrine is sought to be justified on three grounds, namely, that (i) right is not of recurring nature, (ii) notice of termination becomes operative on the required conditions from the date of its issue, and (iii) statutory rights under the Special Tenancy Act are different in nature from the rights under the general law. Shri Deshpande adopted the same reasoning and we have already indicated why the first two of the three reasons are unacceptable to us. We have not been able to trace any reason in the judgment why the cases under the Tenancy Act can be excluded from the above doctrine. Such a view is contrary to the ratio of the Supreme Court judgment in the case of P. V. Venkateswarlu (supra) in which this doctrine is applied to the case arising out of Rent Control legislation. With respect, the view adopted in Madhav Vithoba case on this larger question must be held to be incorrect, though its interpretation of section 33B (5) (b) is unexceptional. This apart, the Division Bench distinguished the ratio in Kunjilal v. Bhivsan (supra) on the ground that it was based on the wording of section 54 (2) (c) of the Bombay Act. We have already indicated how the ratio of Kunjilal's case has relevance to the point arising in this case. Madhav Vithoba's case is thus distinguishable.

Chandurkar J. also relied on the reference made in section 39 (2) (a) to the holding of the landlord on the date of his application, which has to be taken into account, to determine the area to be resumed. Reference to the dates in this clause cannot have different incidence from such reference to the dates u/s 35 (3) (a). We have already discussed its effect. Such reference to the dates, in our opinion, does not make any difference to the point under consideration.

23. There is no doubt that a few of the observations made by Deshmukh J. in Ramkrishna v. Laxmibai Spl. C. A. No 283 of 1966 decided cm 10/11th October 1967 support the contention of Shri Deshpande. The case with which Deshmukh J. was dealing, however, is distinguishable on facts. The landlord therein had filed an application for possession against several tenants. Some of the tenants gave up the fight and the landlord got possession of the land with them, while others pursued their remedies up to the High Court. The tenants contended before Deshmukh J. that the income of the lands already resumed by the landlord also ought to be taken into account to determine if lands still sought to be resumed, happened to be the principal source of income or not. The learned Judge held and, in our opinion rightly that it was in effect a trial of one application by the landlord against all his tenants and ordinarily all the applications should have

been consolidated for trial. The income from all the sources of the landlord at the relevant time required comparison with the income of all the lands sought to be resumed. The question of comparing the income afresh of the lands still remaining unresumed due to pendency of proceedings with the added income of these very lands accidentally resumed earlier in almost the same proceedings could never have arisen. Apart from this not being a new or un contemplated subsequent development in the true sense of the term, any such process involves an element of incongruity and inconsistency. Such acquisition of land is distinctly different from the one by surrender u/s 21 or in wholly different and unconnected proceedings or by inheritance, or otherwise. However, the learned Judge also sought to fortify his conclusion by observing that subsequent events cannot be taken into account under any circumstances. With respect, this does not appear to be correct. Now, it is true that mostly the trial gets protracted due to the defects in the machinery of the Court and sins thereof should not ordinarily be allowed to visit the litigants. Such contingencies would never arise if the trial is concluded, on the very date of application. Unfortunately, however, the trial does get prolonged and where relief depends on the continuous existence of the conditions under the terms of the statute, absence thereof the date of order cannot be just winked at. Such inevitable delay rather results in revealing the true character of the claim which speedy trial perhaps prevents. The case of *Hariba v. Motibai* (supra) is illustrative of how consideration of subsequent events becomes indispensable to effectuate the legislative intent.

24. The Division Bench decisions in Special Civil Applications Nos. 1263 of 1961, 943 of 1960, and 785 of 1962, decided respectively on 16-3-1962, 9-1-1964 and 12-2-1963 stand slightly on different footing. Subsequent developments in the above cases were being relied on to clothe the landlords with the right of resumption which they did not possess on the dates of applications according to the facts then existing. As indicated, the tenant's rights in the land cannot be allowed to be impaired by any such subsequent developments clothing the landlord with entitlements which he lacked on the crucial date.

25. Reliance also was placed on the judgment in the case of *Atmaram Onkar v. Ananda*¹⁰ (decided by one of us, i.e. Deshpande J.). Two subsequent events were sought to be relied on in the case, one being the order of the Commissioner passed under sections 88B of the Bombay Act cancelling 88C certificate, and other being increase in the income of the landlord. The order of the Commissioner was found to be without jurisdiction and hence was excluded from consideration. Reference to the above doctrine is only a part of the reasoning to support such exclusion. It was, however, held that the increase in income could be taken into account. The ratio of the case thus does not help the petitioner.

26. We allowed Shri R. N. Deshpande and Shri S. N. Kherdekar, on their request, to intervene as the point arising in this reference appeared to us to be of some importance. The main contention of Shri R. N. Deshpande is that the doctrine of

taking subsequent events into account is based on the provisions of Order 7, Rule 7 of the CPC and can have no application whatsoever to the statutory rights created under the Tenancy Act. The contention appears to us to be ill founded. It would be enough to refer to the observations of Krishna Iyer J. made in a case arising out of Rent Act proceedings i.e. in *P. Venkataswarulu v. Motor and General Traders* :

It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the this has come so Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the Tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies binding the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice--subject of course, to the absence of other disentitling factors or just circumstances

A little later the learned Judge observed :

If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice.... We affirm the proposition that for making the right or remedy claimed by the party, just and meaningful, as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

We must, however, hasten to repeat that taking into account the subsequent developments in the present case during the pendency of the trial does not depend so much on this doctrine of processual jurisprudence as on the plain 1970 Mh L J 569 = 72 Bom. L. R. 287 language of the statute itself. Shri R. N. Deshpande also is right in contending that while construing the provisions it matters little whether the construction benefits the landlord or the tenant. We have already discussed what the true impact of the phraseology used in this context is.

27. Shri Kherdekar drew our attention to the definitions in section 2 (21), 2 (16), 2 (13) and 2(12) of the words "person", Joint family", family holding," and "personal cultivation" and contended that if these definitions are taken into account properly, consideration of subsequent developments in the manner which we are suggesting would be rendered improper. We have not been able to see what really turns on these definitions. He particularly drew our attention to sub-section (3) of section 36 which requires the Tahsildar in all application u/s 38 to frame preliminary issues with regard to the matters mentioned in clauses (c) and (d) of sub-section (3) and clauses (b), (c) and (d) of sub-section (4) of section 38. We are unable to see how this can make any difference to the legal

position. Such preliminary decisions can also be assailed in appeal or in revision. If new facts come to light or some material developments take place subsequently, it is difficult to see how anything provided in sub-section (3) of section 36 can prevent consideration thereof or reconsideration of the issues so decided in the light of these facts. Shri Kherdekar could not dispute that facts not brought to light for some reason or other can also be taken into account by the trial or the appellate Court if a case for that is properly made out. We are unable to see on what footing the evidence with regard to subsequent developments can be shut out.

28. Shri R. R. Deshpande wanted to rely on the judgment of the Supreme Court in *Nathia Agarwalla and Another Vs. Musst. Jahanara Begum and Others*, in support of his contention that interpretation of words and phrases in one Act would not necessarily be a guide for interpreting words and phrases in different Acts. The proposition appears to us to be unexceptional, though it does not have any relevance to the point discussed above.

29. The answer to the question referred to us is thus in the affirmative. The cases will now be placed before a Single Judge for disposal according to law.