
(1973) 07 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 788 of 1970

Jamnabai

APPELLANT

Vs

Survabhan Sekharam Pawar

RESPONDENT

Date of Decision : 24-07-1973

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 38(2), 38(3), 38(4), 38(5), 38(6)

Citation : AIR 1974 Bom 142 : (1974) MhLj 183

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Advocate : J.N. Chandurkar, M.M. Qazi, Additional Govt. Pleader and V.S. Sohane, for the Appellant; M.W. Palekar, for the Respondent

Judgement

1. the present petitioner Jamnabai claims to be the successor of one Deokabai, who died on February 1. 1966, Said deokanai was the tenure holder of survey No. 121/1 and survey No. 122. of village Kandli, district Amarland was leased to Suryabhan, the present respondent, and further that the lease of Suryabhan was governed by the provisions of section 58(I) (c) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereafter called the Act).

2. Jamnabai gave notice on 16-5-1966 and applied for possession on September 30, 1967.

3. This application has been found to be barred by time, as having been filed after one year from the death of original landlady Deokabai, i.e., February 1, 1966. All the authorities under the provisions of the act have concurred in this view.

4. To find out limitation so as to non-suit the present petitioner, provisions of sub-section (2) (B) of section 38 of the Act have been applied. It is found that this sub-section and the provisions contained therein are very much mentioned in the notification issued by the State in exercise of powers conferred by sub-section

(3) of the section 38 of the Sct. It is plain ly written in clause 2 of the said notification that the provisions of sub-sections (2) to (7) of section 38 would govern the right of a lessor requiring any land for cultivating the same personally. Sub-section (2) being mentioned in that clause. all the authorities have construed the same as intending to require a person like the present petitioner, i.e., the successor of a widow. not only to give notice but also to apply within a year from the death of her predecessor in-title. That is plain enough and really no exception can be taken to the approach of the revenue authorities, for sub-section (2) is very much mentioned in the Notification.

5. By the present petition the complaining landlady contends that the notification has not been properly interpreted and there is basic error in reading sub-section (2) in his notification.

6. As it involved the interpretation of the notification issued by the State which may affect the structure notice was issued and the learned Government pleader was heard in that regard.

7. I may briefly refer to the approach of the contending parties to the matter in issue. For the petitioner it is contended by the learned counsel appearing for this widow that mention of sub-section (2) in the Notification is a plain error and a mistake while interpreting it. It is the primary duty of a court of law to find out the intention and if necessary to read the words used in a statute or even a notification giving it correct meaning so as to subserve the purpose and object for which the notification is issued. If so contrued, there is internal evidence available in the scheme of the Act, i.e., the provisions of section 38 itself, as well in the scheme of section 58, which permits the state Government to lay down by notification certain conditions, that mention of sub-section (2) was a patent error of drafting. What was really intended and therefore must be read is "sub-sections (3) to (7)" and not "(2) to (7)"

8. As against this, the approach of the learned Government pleader is that it is not permissinble for a court of law to substitute the words upon mere notices of propriety or reasonableness. That is neither the field of interpretation, nor the court can assume jurisdiction in those matters, for it will be really a mode of legislating itself. Such a jurisdiction is not conceived unless there is patent absurdity or ambiguity available in the words of the statute. The learned Government pleader took great pains in analysing the scheme both of the notification as well as the present provisions and tried to submit that it may well be that sub-section (2) was very much intended to be applied in its full force. Once there could be such a possibility then it is beyond the pale of jurisdiction of this court to rewrite section or the clause in legislative notification. The learned counsel relied upon certain decisions which will be considered in the course of the judgment.

9. Taking the same line Mr. Palekar ob behalf of the respondent. Who has succeeded on the plea of limitation before all the revenue authorities, contended

that abstract notions of justice are foreign to the realm of interpretation itself. It is not permissible to test the effect of a particular provision by applying the standards of reasonableness in a given case. It may be that because sub-section (2) is required to be applied, certain class of land-holders would be subjected to hard and inconvenient result but that does not permit substituting the words in the notification. The learned counsel submits that there is no good reason why such an interpretation should be put upon the notification so as to read the words " (2) to (7) as "(3) to (7) in clause 2 of the conditions notified by the Government u/s 58 (3) of the Act.

10. Now, the present controversy as must be the case in every controversy has to be understood in the context, firstly, of the provisions of the Act and, secondly, in the context of the notification actually issued, its purpose and exact reach. The provisions for lands certain special provisions or commercial undertakings and by certain persons for the sugar-cane and other notified agricultural produce. section 58(1) excepts application of the provisions of section 9 to 13, 19,22,23, 24, 33,38,39, 39- A, 40, 41 to 50, 57 81 to 88, 89, 90,91 and 92 to the leases of lands as mentioned in clauses (a) to (d) of that sub-section. It follows that a landlord cannot avail of the provisions of section 38 or 39 or 39-A and is not entitled to apply for resuming land for bona fide personal cultivation.

11. Having thus excepted these provisions, sub-section (3) of section 58 enables the State Government to issue notification. that sub-section reads as under:

"58 * * * * *

(3) Notwithstanding anything contained in sub-section (1) and (2), it shall be lawful for the State Government to direct, by notification in the Official Gazette that the leases or lands, as the case may be, to which the provisions of sub-section (1) and (2) apply shall be specified in the notification , in respect of:-

(a) the duration of the lease,

(b) the improvements to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies.

(c) the payment of land revenue, canal revenue, local fund cess and any other charges payable to the State Government or any local authority : or

(d) any other matter referred to be section mentioned in sub-section (1)

(Underlining provided)

This provision, therefore, enable the State Government to lay down conditions and clauses (a) to (d) of sub-section (3) deal with the matter which may be provided for. In this process State Government could lay down the conditions with respect to duration of the lease sub-section (2) and further make such conditions by applying provisions of the Act which are excepted by sub-section (1) of section 58. This power is referable by virtue of clause (d) of sub-section

(3) and it is clear that State Government in spite of the earlier exception could lay down that the matters which were so excepted could still be the conditions upon which the lease could be enjoyed or rights of the parties would be governed.

12. Now when the notification was actually issued and published in the Gazette of September 22, 1960, the State Government was purporting to lay down clearly such conditions. The relevant portion of that notification which calls for consideration runs as under:-

"No TNV. 5159/12604-M, In exercise of the powers conferred by sub-section (3) of section 58 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area), Act, 1958 (B0m, XCIX of 1958), the Government of Maharastra hereby directs that the leases of lands referred to in clause (c) of sub-section (1) of the said section 58 and to which the provisions of sub-section (1) of the said section 58 apply shall be subject to the following conditions, namely:-

1. Conditions as to duration and termination of lease - No such lease shall be liable to be terminated on the ground that the period fixed by agreement or usage for its duration has expired.

2. If a lessor bona fide required any land so leased for cultivating it personally, the lease may, subject to the provisions of sub-sections (2) to (7) of Sec, 38, be terminated by the lessor by giving the lessee one year"s notice in writing stating therein the response for the termination of the lease.

3. If a lessee commits any of the defaults mentioned in clause (I) of sub-section (1) of section 19 in relation to such lease, the lease may subject to the provisions of sub-section (2) of the said section 19 be terminated by the lessor by giving the lessee three months" notice in writing stating therein the reasons for such termination".

I have extracted all these three conditions, for it appears that all those are concerned with the duration and termination of the lease. Though the heading of all these three conditions is inserted in clause 1 of the conditions, it is apparent that, that heading governs all the three conditions. There are other conditions and those deal with right of a lessee to purchase the land and the need not be considered in the present case. But suffice it to say that the heading of the condition with respect to purchase of land by lessee is similarly incorporated in clause 4 of the conditions, though it appears that all the schedule, are under the same said heading.

13. Clause 1 of the notification is more or less a reproduction of the provisions of section 9 though the wording is different. Under that clause therefore the tenancy of the lands or the leases covered by section 58 (1) (c) are not terminable by efflux of time. Clause 2 upon which the present debate and the controversy centres clearly carves out a right in favour of a landlord to terminate the lease of the kind mentioned in section 58 (1) (c). That he can do by giving the lessee one year"s notice in writing and further stating therein the reasons for

the termination of the lease. Though the reasons are to be stated in such a notice, it is clear that the lessor can resort to clause 2 only if he bona fide requires the land leased for cultivating it personally. That clause further says that lessor's right to seek termination of the lease on this ground will be further subject to the provisions of sub-sections (2) to (7) of section 38. Therefore, by clause 2 primarily a right is created in favour of a lessor to determine the lease by a notice and to resume the land for bona fide personal cultivation. While laying down the scheme of this right, sub-section (2) to (7) of section 38 are added by reference and that right of the lessor is dependent upon satisfaction of these conditions. It is obvious that by reference conditions which must be satisfied are being introduced for the right for resumption for bona fide personal cultivation is eminently provided. Clause 3 of the notification contemplated termination of the lease if the lessee commits defaults mentioned in clause (1) of sub-section (1) of section 19, I have bodily extracted clause 3 of the notification to point out that in that clause, "clause (I) of sub-section (1) of section 19" is mentioned. If a look can be taken, though that is not the controversial point in this case, to the legislative design of section 19 of the Act, this clause (I) is only found in sub-clause (a) of clause (I) of sub-section (1) of S. 19. If we were to go by the indication of clause (I) it is plain the terms of condition 3 are absolutely unworkable. It is therefore, clear and in fact conceded that while reading this clause 3 of the notification, all the grounds under clause (1) of sub-section (1) of section 19 are intended to be available to the landlord for determining the tenancy and clause (1) that appears in the text of notification is an error either of print or draft.

14. A look at this notification therefore obviously shows that no particular care has been taken to indicate proper references in the proper manner from the Act itself. Clause 3 of the notification furnishes evidence of such drafting. Design of section 19 itself in sub-section (1) has got Roman capital (1) used to indicate the first part of the sub-section under which there are other sub-clauses which include Roman (1) and that appears to be in the print of the notification. It is plain enough and it must be said that the learned Government Pleader candidly admitted that the reference must be capital (1) of sub-section (1) of section 19. Similarly, though all clauses 1, 2, and 3 are conditions as to the duration and termination of lease, it is evident that in clause 1 itself, that heading has been inserted in the notification.

15. With this background that the drafting of this notification is not very accurate while referring to the provisions of the sections and no particular care appears to have been bestowed. It is open to the petitioner to submit that errors in print or draft should not be allowed to rule her right and take away what is expressly conferred. By Clause 2 is provided a right in the lesser to terminate tenancy for bona fide personal cultivation and its manner is expressly laid down. A lessor by giving one year's notice in writing and stating the reasons for such termination of the lease is enabled to determine the lease for bonafide personal cultivation. In the scheme of the Act itself such a right is reserved and conferred by the

provisions of section 38, 39, and 39-A and it is styled as "termination of tenancy by landlord for cultivating land personally". Now when section 58(1) was enacted, it excepted all this right. Clause 2 of the notification was therefore making available what was excepted earlier in that a right in favour of the lessor to terminate the lease for bona fide personal cultivation. When clause 2 was so made, it was not made by mere reference to the provisions section 38 for that would not further its object as the scheme of section 38 itself was a time-bound scheme of working out the right. Crystal clear it is that under the notification no such tight time-bound right is conferred. No limitation is prescribed to exercise the right nor filing of an application is made a part of the mode of the exercise of the right. On the other hand this particular clause confers a right upon the lessor to resume the land by resorting to terminate the lease by giving a year's notice. Thus the mode of determining the right too is year's duration is enough to determine the lease. Therefore, relying on condition No. 2 of the notification, a lessor can give a notice of a duration mentioned therein and file an application for possession u/s 36 which is not excepted by sub-section (1) of section 58. The remedy indicated by section 36 is independently available and it is not a part of the conditions itself. Nor there is any prescription of limitation for making such application available to clause 2 of the notification. Thus primary content of this clause does not accord with either the scheme of sub-section (1) or (2) of section 38 of the Act which provides for a different modality of giving notice and making an application within specified time. Once that time is lost right is lost. That is not made clearly the part of the right created by the clause of the notification.

16. This can be considered from a different angle and with clear scrutiny of section 38 itself. Sub-section (1) of section 38 is not mentioned in condition No.2. Now that sub-section itself contained the right of the landlord to terminate the tenancy for cultivating the land personally and provided for the modality how that right was to be worked out. The words of sub-section (2) section 38 may usefully be extracted as that is the centre and core of this animated controversy.

"38..... * * *

(2) Where the landlord is of the following category, namely:-

- (a) a minor,
- (b) a widow,
- (d) a person subject to any physical or mental disability.

then, if he has not given a notice and made an application as required by sub-section (1), such notice may be given and such application may be made:-3

(A) by the landlord within one year from the date on which:-

(I) in the case of category (a) he attains majority:

(iii) in the case of category (d) he ceases to be subject to such physical or

mental; disability and

(B) in the case of widow by the sureness or - in -title within one year form the date on which the widow's interest in the land ceases to exist:

Provided that where a person of such category is a member of a joint family. the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in that sub-section unless the share of such person in the joint family has been separated by metes and bounds before the separated by metes and bounds before the prescribed dated and the Tahsildar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land. in the same proportion as the share of that person in the entire joint family property, and not ina larger proportion:

Provided further that where land is held by two or more joint landlords, the provisions of this sub-section shall not apply if at least on joint holder is outside the categories specified in clauses (a) to (d) of this sub-section"

The scheme of this sub-section shows, firstly, that it carves out certain specified landlords and permits them or their successors-in-title to exercise the right given by sub-section (1) in the larger or extended period indicated by sub-section (2). Right remains in sub-section (1). What is being prescribed is with reference to specified landlords who must answer not only clauses (a) (b) and (d), but also the two provisos that they may exercise the right of resuming the land for personal cultivation in the extended period and in the manner indicated. This is further conditioned - and that is of some importance- for it such landlords had exercised their right in the manner prescribed by sub-section (1), there is no second opportunity of land under sub-section (2). Sub-section (2) is an alternate to the right conferred upon the landlord under sub-section (1) in favour of specified landlords. It is clearly contingent, in that those specified landlords of the lease in the manner prescribed under sub-s. (1), i.e. a minor or a person subject to any physical or mental disability, are permitted within a period of one year from the date mentioned in clause (A) of sub-section (2) to give notice and file an application for resuming the land. In the case of widow, the same within a period of one year form the date on which the widow's in sub-section (2) has prescribed further satisfied landlords or those who are commonly known as disabled landords, to take the steps which wer provided for in sub-section (1) and under its force might become barred. It is neither an independent nor a new rith. It is therefore clear that whenever sub-section (2) is to be applied, it is only one the footing that there had not been any proceeding under sub-section (1) section 38, and further that it is available to a limited class of persons whom the legislature in its wisdom thought to give some benevolent treatment by extending time for resuming the land for cultivating the same personally. Now both of sub-section (1) and sub-section (2) limitation as to notice and making an application is very much the part of the machinery. A minor who attains majority can take steps of giving notice and filing application within one year from the

date he so attains majority only if he had not taken steps earlier. A person subject to any physical or mental disability can similarly give notice and file an application within that period from which he ceases to be subject to such physical or mental disability. the successor --in-title of a widow may take that step i.e. giving notice and filing an application within sub-section (2) does not, by itself, provide for termination of lease. It provides for termination of lease. It provides for steps to be taken by certain specified persons and they are very much on the same line as are to be found in sub-section (1), in that a person or a lessor seeking to resume land for bona fide personal cultivation was required to give notice and further file an application for that purpose in given time.

17. It therefore sub-section (1) is not within condition No. 2 it is difficult to understand how de hors sub-section (1), sub-section (2) can be treated as a condition of the lease, simpliciter, because it is so written in the text of the notification. In the legislative design sub-sections (1) and (2) section 38 are intergrated parts. Rather the second sub-section is a supplementary and alternate to the first and it does not work without reference to the latter. These two sub-sections first carve out a right in favour of all landlords and enjoins time-bound procedure and further relaxes the rigour of procedure in favour of specified landlords only. Put along with this the present clause 2 by itself does not evince any such scheme. The plain reading of clause 2 is to give a right to the lessor to determine the lease for bona fide p;ersonal cultivation by giving one year"s notice. If the provisions of sub-section. (2) were to be introduced in such a scheme, the right itself is lost to those who are specified landlords. There is nowhere such a classification providing for different treatment contemplated in the entire body of the notification. If sub-section (2) can be read then perforce sub-section (1) will have to be implied and also applied which is neither permissible nor possible, for that would do away with the basic structure of the right itself.

18. The internal evidience furnished by sub-sections (1) and (2) of section 38 indicates that by mere notice or filing an application the lease is not determined. The termination occurs when the matters are adjudicated and an effective order is made.

19. If merely without context sub-section (2) were to be applied as the part of clause 2 in the notification then inconsistent and unworkable results would follow. The landlord who is not a minor or who is not a person subject ot any physical or mental disability or a person who does not answer the description of a widow ro her successor-in-title, may very well terminate the lease by giving one year"s notice and within the limitation prescribed by section 38. But a landlord of this specified category would not be able to do so for the simple reason not only that he has to give one year"s notice as required by clause 2 of the notification but further is enjoined to make an application also within one year. The result is obviously unworkable. The result is obviously unworkable. A minor attaining majority is liable to do both things i.e. giving of the notice and

filing his attainment of majority under Sub-section (2) of section 38. If both these things are to be done and that too within a period of one year, then the clause 2 which requires a clear one year's notice for termination the lease can never be complied with by a minor upon attaining majority. Similar would be the result in the case of a person subject to any physical or mental disability and also with the persons who are successors -in -title of a widow under clause B of sub-section (2) of section 38.

20. Thus if the scheme of sub-section (2) itself is lifted bodily in this clause 2, it cannot be read consistently with the things provided therein. It would mean that in fact it does not permit effective termination of tenancy in the cases of a minor, a widow, a person subject to any physical or mental disability or successor-in-title of a widow, Such unworkable results can also be conceived if by reference to sub-section (2) of section 38 it is inferred that what was intended was that the persons mentioned in sub-section (2) must also file an application an application within the period prescribed. All other lessors would not be bound by the limitation given in sub-section (2) of section 38: but the regour of limitation will be imposed only as against the specified landlords. It that rigour is further applied in all its full force, it can demonstrably be conceived that by readied sub-section (2) with reference to provisos to that sub-section., the right will not be available even to the persons of the specified, categorise once they are within the class mentioned by the provision for their right is still governed by sub-section (1) of section 38 of Act. Surely, such cannot be the intention to exclude a particular calss of persons from having a right to terminate the lease for bona fide personal cultivation. No doubt, mere test of reasonableness of the provision cannot be allowed to prevail while interpreting the statute. But to reach and to find the insertion reasonableness can always be attributed to legislative works. Even in the parent provisions of sub-section (1) and (2) of section 38, there is an anxiety on the part of the legislature to enlarge the time in favour of the disabled or sepeci eviinced once both sub-sections are read toghether. While making the notification it cannot therefore be conceived that the State was oblivious of all this legislation anxiety which is part of sub-section oared read together. While making other notification it cannot therefore be conceived that the State was oblivious of all this legislation anxiety which is part of sub-section (2) of section 38. Such an assumption digs at the root of reasonableness which must be the basis of understanding this notification. When this notification was properly issued i.e, on 22-9-1960 and if the rigours, of sub-section (2) were to be attracted, several persons of the specified categories would be out of limitation even on the day and they would be deemed to have nor right to seek the land, though they may require the same for boa fide personal cultivation. It does not therefore, appear that the State intended to put sub-section (2) in the body of Clause 2 of the notification itself. In fact, as indicated earlier it is not clearly a condition for the termination of the lease.

21. With the aid of other sub-sections like section 5,6 and 7, the learned Government Pleader has submitted that mention in clause 2 of sub-section (2),

(7) if tested on this principle of laying down conditions. Would render them inapplicable for those sub-section do not in that sense indicate any conditions. This argument really does not arise in the present case but can be answered if a look is taken to sub-section (5) (7). Sub-section (5) operates under the land which is left with the tenant after successful termination of the tenancy or which is retained by him and freed from any further right of the landlord to resume it for bona fide personal cultivation. Sub-section (6) merely provided for apportionment of the lease money with respect to such land. In other words, sub-section (5) dealt with a negative condition while sub-section (6) dealt with a condition respecting the land left with the tenant, sub-section (7) excluded particular class of tenancies and persons from the operation of section 38 itself and can be termed as a primary conditions applicable uniformly to all those who answer its description. Sub-section (3) and (4) can present no difficult whatsoever, for the subject of those sub-section is to lay down the conditions upon which landlord can resume land leased. thus viewed in the body of section 38, really sub-section (3) to (7) answer the term "conditions" subject to which right conferred by Sub-section (1) and (2) has to be reached. This analysis was questioned by an obviously ingenious submission by the learned government Pleader when he said that sub-section (7) cannot be classed as a condition. But as indicated earlier, sub-section (7) may be a determinative condition with respect to the class of persons i.e., lessors and lessees themselves, for the power u/s 58 (3) can be exercised with reference both to leases as well as lands, It may be, therefore, possible to treat sub-section (7) as a condition having meaningful place in the framework of clause 2 of the notification. However, that cannot be said as to the provisions of sub-section (2) of section 38 nor the same can be treated as condition.

22. Now this much appears to be implicit that what was intended by this clause 2 of the notification was to confer right on a lessor subject to the conditions specified by sub-sections (3) to (7) of section 38 and that is how this clause can be reasonably and meaningfully read in this notification.

23. Incidentally a reference may also be made to the pari materia scheme available in the other part of the State government by the provisions of the Bombay Tenancy and Agricultural Land Act. 1948. section 43-A, when in part of chapter III-A of the Act, makes similar provisions with respect to lands held on lease by industrial or commercial undertakings and by certain persons for the cultivation of sugarcane and other agricultural produce. The scheme of Section 43-A is identical with the scheme of section 58 of the present provisions and then authorises the State government by sub-section (3) of section 43-A to make notifications laying down the conditions in the same manner as required by section 58 (3) of the present Act. It is pertinent to note that acting upon the same said power the State Government purported to issue notification on February 14, 1958 and while laying down similar clause relating to conditions has provisioned that if a lessor bona fide requires any land so leased by him for cultivating it personally or for any non-agricultural use such lease may subject to

the conditions mentioned in section 31-A, 31-B, 31-C and 31-D,, be determined by the lessor by giving the lessee one year's notice in writing stating therein the reasons for the termination of the lease. The content and the purpose of this clause is absolutely identical with the content and the purpose of the 1960-Notification issued under the provisions of the present enactment, except a few alterations like adding "non-agricultural use". While making this right available the only conditions that are intended under the 1958- Notification are indicated by sections 31-A, 31-B, 31-C, and 31-D which are *pari materia* with the provisions as are found to a large extent available in section 38 (3) (a) (b), section 38 (4), 38 (5) and 38 (6) of the present enactment. The provision like section 38 (2) of the present enactment is also available in the Bombay Tenancy Act, 1948, and is part of section 31. It is incorporated in the provisions of sub-section (3) of that section where landlords of specified categories are mentioned and at enlarged time is given for giving notice and making application. This sub-section (3) of section 31 is not the part of 1958 - Notification. This is in clear evidence that while laying down the conditions for exercise of the right to terminate the lease for bona fide personal cultivation, the State Government have not resorted to a method or device by which any specified landlords are differently treated and are required to follow a specified procedure which in effect would be a time-bound programme for exercise of such right. It is manifest that what was avoided under that notification cannot have been thought of when the present notification was issued under an identical legislative scheme, Surely, such an intention which is wrought with devious classifications under these statutes cannot be attributed to the legislative authority of the State as there are neither any obvious or compelling reasons to do so.

24. I have also indicated how unworkable the mention of sub-section (2) of section, 38 is in the body of clause 2 of the said notification and how it does not answer the requirement of laying down the conditions with respect to leases or lands.

25. With this analysis and the results that are available upon the intention of the makers of the notification, one has to turn to the question of the jurisdiction of this Court while trying to read in place of "sub-section" (2) to (7)" the words and figures "sub-section (3) (7)" in the legislative notification, for the latter only answers meaningfully the conditions which can be well conceived under the provisions of section 58 (3) of the Act.

26. Now upon this jurisdiction, such debate has been addressed and it will have to be considered in its all aspects and dimensions.

27. As far as juridical thinking is concerned there is a tense dialectical drama suffused with conflict between two diametrically opposite perspectives and the task of an interpreter is really difficult so as to arrive at and to construct a viable synthesis out of all this animation. What is commonly known as the doctrine of *casus omissus* is really a doctrine of error and its correction. Max-well has noted the same as an "exceptional" available to the interpreter (Maxwell on the

interpretation of Statutes Twelfth Edition) the learned author observes:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusually meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's un skilfulness or ignorance of the law, except in a case of necessity or the absolute intractability of the languages used". (Page 228)³

Similar exposition of the principle is available in "Cries on Statute Law" (Fifth Edn.). In Chapter X, under the heading "Mistakes in Statutes", the learned author summarized the general rule by saying:

".....a Court of law is not authorized to supply a cases omissus, or to alter the language of a statute for the purpose of supplying a meaning if the language used in the statute is incapable of one, even though they may be of opinion that a mistake has been asked in drawing the Act, "Whether", said Jessel, M.R., in Laird v. Briggs. (1881) 19 Ch D 22 "we can alter the word "convenient" in section 8 of the Prescription Act, 1832 by putting in the word "easement" instead, is a question of very considerable difficult. A Judge may take the view that section 8, as it stands, is so absurd there: but that does not quite conclude the question as to whether you can insert another word. All I wish to say is, that I think the question is open for discussion. "He though that "Convenient" could be ignored as absurd in the context....."

The learned author further quotes from the celebrated judgments of lord Denman. C..J., where the learned Lord said.

"To give an effectual meaning we must alter not only "or" into "and" but "issued" into "levied". It is extremely probable that this would express what the legislature meant, but we cannot supply it. Those who used the words thought that they effected the purpose intended".

And also from the speech of Putteson J. In Green v. Wood (1845) 7 QB 178 where the terms of Warrants of Attorney Act. 1822 were being considered. According to the learned author, it there is an obvious misprint in an Act of Parliament the Courts will not be bound by the letter of the Act, but will take care that its plain meaning is carried out. He quoted Tindal. C.J. as observing in Everett v. Wells (1841) 2 M G 269 as:

"It is our duty neither to add to nor to take away from a statute, unless we see

good grounds for thinking that the Legislature intended something which it has failed precisely to express."

The learned author then goes on to narrate how corrections were made by the interpreting Courts of the statutes.

28. After alluding to this controversy G.K. Allen points out in his luminous work. "Law in the Making" (Seventh Edition) as:

"Harsh words have fallen from the Bench about certain modern enactment's such as the Shops. (Sunday Trading Restriction) Act, 1936, the Agricultural Holdings Act. 1923 the Trade Marks Act, 1938 the Rent and Mortgage Interest Restrictions Act, 1939, The Factory and Workshop Act, 1901 and the statutes concerning the guardianship and custody of the infants."

With these defects which are available always in statutory drafting which come to the surface when a question of interpretation arises which affects valuable rights of those who are governed by such laws or statutes, it appears mandatory that an effort has to be made to reconcile all absurdities and to give meaning to the statutory device. The matters cannot be merely left to find out the mistake and, as observed by Denning L.J., as he then was, in *Seaford Court Estates Ltd., v. Asher* (1949) 2 KB 481.

".....it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not instruments of mathematical precision This is where the draftsmen of Acts of Parliament have often been unfairly criticized.....It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsmen".

29. It is not necessary to allude to all the brilliant history of this doctrine as is to be found on the English soil. Suffice it to say, that right from 16th Century (*Heydon's Case* 1584 3 Rep 7 till the modern times *casus omitti* is still the battle field and the cockpit of different and divergent interpreting approaches. I may mention that *Heydon's Case* noted the principles applicable upon interpretation at the foot of this doctrine when it was observed there:

".....The true reasons of the remedy: and then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and private commodo, and to add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*".

Thus since those days, it has been recognized as the duty of the judge who is asked to interpret a statute to so interpret it according to true intents of the makers of the Legislation. No doubt, this test has been viewed with some

apprehension in that this leaves and creates a scope for what is known as "Judge made-law" or "legislating-Judge:. But when there are gaps and inadvertence available as a fact in the texture of an enacted alw, it has been observed that there must be an attempt to penetrate the mind of the legislature. A against this, there is a noted theory which may be put in the words of Mr. Justice O. W. Homes who observes:

"Only day or two ago, when counsel talked of the intention of the Legisture, I was indiscreet enough to say I don't care what their intention was. I only want to know what the words mean."

After alluding to this passage Allen observed:

"It is here that we see a permanent, and apparently an insoluble,dilemma of written law: on the one hand no human language can be completely self-explanatory and all-embracing, and on the other hand the interpreters of the written word cannot and should not guess at undisclosed meanings which merely open the door to speculative ingenuity".

The learned author thereafter considered the statutory interpretation practice and referees to the English decisions pointing out the defects of literal interpretation. While summarizing the defects of such interpretation it is observed:

"These are grave defects, and give color to the criticism that the English statutory interpretation a disproportionate emphasis has been laid on the body as opposed to the soul of statutes.

.....Words are not telepathic communications, and daily experience teaches us that there is nothing more rare than the expression of a perfect consensus ad idem. Further, while it is true enough to say that words in themselves mean nothing, being mere "verberations of the air"s vet a statute is, of all human forms of expression that which ex hypothesi purports to give to intention an explicit and comprehensive form of words".

(Law in the Making-Pages 501 too 509). In further observations the learned author has considered the scope of the doctrine of Heydon"s case. (1584) 3 Rep 7 and also pointed out how it has been understood and applied in several decisions by referring to the celebrities at law like Scott L.J. Ledvith v. Roberts 1937 1 KB 232 like Lord Parker C.J. in R.v. Commr., ((1880) 5 QBD 217 where the learned Chief Justice pointed out, "Where the meaning of an Act is doubtful, we are, I think, at liberty to refer to the circumstances under which it passed into law". and also to the case of Sutherland Publishing Co. v. Caxton Publishing Co. (1917) Ch, 201 where Meckinnon L.J. observed:

"When the purpose of an enactment is clear, it is often legitimate because it is necessary, to put a strained interpretation upon some works which have been inadvertently used, and of which the plain meaning would defeat the obvious intention of the legislature. It may even be necessary, and therefore legitimate,

to substitute for an inapt word or words that which such intention requires." (Emphasis provided)

In the recent history as far as the English Courts are concerned there are noted cases which still carry in its course these differences between these two types of judicial attitudes, Lord Denning L.J. in *Henry v. Taylor* (1954) 1 QB 507 pointed out:

"Where there is a fair choice between a literal interpretation and a reasonable interpretation, we should always choose the reasonable interpretation."

(emphasis provided)

30. While considering a Minister's order in *Magor and Mellone R.D.C.v. Newport Corps.* (1951) 2 All ER 1236 the Lords Justice observed:

"This was so obviously the intention of the Minister's Order that I have no patience with an ultra-legalistic interpretation which would deprive them of their rights altogether. I repeat what I said in *Seaford Court Estates, Ltd., v. Asher* (1949) 2 KB 481. We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do and it is a thing to which lawyers are to often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis".

It is on the other hand pointed out by House of Lords in *S.C., on appeal* (1952) AC 189 that this is not a universal sound approach, Lord Simonds criticized this approach by saying:

"The general proposition that it is the duty of the Court to find out the intention of Parliament - and not only of Parliament but of Ministers also- cannot by any mean be supported. The duty of the Court is to interpret the words that the Legislature has used: those words may be ambiguous, but even if they are, the power and duty of the Court to travel out-side them on a voyage of discovery are strictly limited.....The second part of the passage that I have cited from the judgment of the learned Lord Justice is no doubt the logical sequel of the first. The Court, having, discovered the intention of Parliament and of Ministers too, must proceed to fill in the gaps. What the legislature has not written, the court must write. This proposition, which restates a new form the view expressed by the Lord Justice in the earlier case of *Seasord court Estates, Ltd., v. Sher* cannot be supported. It appears to me a naked usurpation of the legislative function under the thin disguise of interpretation."

31. Now looking through this kaleidoscopic panorama of principles available in the field of interpretation, it can well be perceived that there are two diametrically opposite that there are two diametrically opposite approaches both profoundly rich in concept - one leaning towards liberalism so as to find the true intent of the legislating and thus seeking to father the real remedy in the interest

of justice and other still sticking to the structure itself and following in true sense literalism in interpretation. In the former it is perfectly possible - may it is imperative -even to fill in gaps and substitute the words and phrases to the apparently meaningless or obscure phraseology of a statute and make effective the legislation itself. In the other, this place of the task is candidly treated as no part of the jurisdiction of the Courts though the very remedy may remain truly frozen and ineffective. The matter, however, completely rests, as the several precedents indicate- and I may borrow a phrase from Allen - "on impalpable and indefinable elements of judicial spirit or attitude", though the learned author observes and sounds the bell by saying:

"Nothing could be more inimical to justice than what Judges should exercise their functions upon subjective, political or partisan considerations: but while it would be quite inaccurate to say that the English judicial approach to statutory law is invariably grudging and restrictive, there is no small reason for saying that on the whole, in modern times, it has leaned too readily towards the "analytical" rather than the "functional" (as Professor Laski expresses it), and has done so with too little consistency on one side or the other, If that be true, the real remedy lies, as it seems to me, not in any " new found balliiday" but in the existing law itself. There is ample warrant in settled rules of interpretation for a "liberal" approach, and there are abundant and bewildering examples of judicial constructions which at one moment are treated as perfectly orthodox and at another as dangerously latitudinarian. What seems to be needed most of all is a more scientific consistency of principle.

(Law in the Making p. 529)

32. I may briefly therefore note some of the recent precedents in the English Courts where such a consistency or application of this principle has been logically applied to find out or give meaning to the words of the statute.

33. In *Clapham v. National Assistance Board* 1961 (2) QBD 77 the matter arose under the provisions of the National Assistance Act, 1948, section 44, It was held while construing the words, "shall in all other respects..... proceed as on an application made by the mother" that the right with the Board u/s 44 was an independent substantive right, independent and separable from any right which the mother would have had, to obtain which the mother would have had, to obtain an affiliation order, Lord Parker C.J. observed that the words "In any proceedings arising out of an application" under sub-section (3) of section 44 must be read as "In any proceedings resulting from or arising out of an application" for it was purely a procedural sub-section and these words were clearly necessary to ensure the ends of justice and the learned Chief Justice found that sub-section (3) of section 44 should be interpreted in a meaningful manner. In fact, the reading of the judgment clearly shows that the entire sub-section (3) was rewritten for that purpose. Where the sub-section (3) began by saying "In any proceedings on an application under the last foregoing subsection" it was interpreted to mean "In any proceedings arising out of an

application for summons" and in the last two lines of the sub-section the words "proceed as on an application made by the mother under the said section", the court read "proceed as on a complaint arising out of an application made by the mother". This was found necessary to give effective power to the Board u/s 44 of that Act.

34. *Etton College v. Minister of Agriculture*, 1964 Ch D 274 is yet another example where the text of a section was found to be defective and changed. The words of section 3 of Ecclesiastical Leases Act, 1571 were being considered, Wilberforce, J. considered the scheme of the Act and after reading the provisions of section 3 found that the Word "or" which followed the words "having any spiritual or ecclesiastical living", was a mistake for the word "of" and on that assumption applied the Act. In *Adler v. George*, 1964 (2) QBD 7 for the purpose of avoiding absurdity and inconvenience or extraordinary results, where the Official Secrets Act, 1920 used the phrase "in the vicinity of". the court read the same as "in or in the vicinity of" so as to suppress the mischief and effectuate the remedy. In *cost Brick and The Words Ltd, v. Premchand Raichad* the Privy Council was considering the provisions o(2967) 1 AC 192f section 3 of the Money - lenders Ordinance (Law of Kenya, 1948 Rev Cas 307) and preferred to read the word "the security" as "a security".

35. Indian Courts too have followed such a marked line. In *Ashutosh Basu Vs. Sudhangshubhushan Mukherji*, the learned Judge was considering a case which called for interpretation of Letter Patent of Calcutta High Court and also the CPC and particularly Order 21. Rule 89. The learned Judge observed:

"Where a rule of the Code, owing to the operation of the rules framed by the High Court, cannot be applied exactly it must be applied as reasonably as possible, but where it can be applied strictly, it must be so applied, and if the result is unsatisfactory, the High Court can frame a different rule, but unless and until it does so, the rule must be followed and cannot be enlarged or altered in any way by any judicial decision of the High Court".

In following the strict rule of literal application of laws the learned Judge referred to the decision of the House of Lords in *Vacher & Sons Ltd., v. London Society of Compositors* 1913 AC 107 and after quoting the judgment observation:

"Lord MacNaghten alone supports the theory that absurdity of itself is a sufficient ground for disregarding the natural meaning of the words. But he does not suggest that in the case of an absurdity, the Court can disregard the words used altogether and re-draft the provisions. Interpretation cannot go beyond the possible meaning of the words used".

The learned Judge further observed:

"In extreme cases, where the words conflict with the obvious intention of the enactment they may be disregarded, but it must be an extreme case and the words are then construed as meaning nothings". The learned Judge therefore

plainly clarified the literal interpretation by pointing out the exceptional field when the same can be disregarded.

36. In *Ramaswamy Nadar Vs. The State of Madras*, the Supreme Court was considering the provisions of section 423 (1) (a) of the Code of Criminal Procedure and referring to the specific power to reverse the order appealed from as contained in clauses (a) and (b) of sub-section (1) of that section, the words that fell for consideration were, "find the accused persons guilty" and the question was posed "of what ?" Upon the construction it was found that some words need to be added and supplied and the Supreme court observed:

"It, in constraining the section, the Court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the later construction, which is more in consonance with reason and justice,"

In *Kanaiyalal Chandulal Monim Vs. Indumati T. Potdar and Another*, yet another rule of construction was alluded to with reference to the provisions of Bombay Rents Hotel and Lodging House Rates Control Act (57 of 1947), section 24. That provision, the Supreme Court found, was an extraordinary remedy and had to be construed strictly in accordance with the words actually used by the legislature and it was not permissible to give extended meaning to the words used by the section. The refusal thus was on the ground that the provision was of an exceptional character and meant to be in force for a specified period and provided for an extraordinary remedy which by itself constituted inroads on the freedom of the landlords. Under these considerations the principle of extended meaning was not applied. In *The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao*, the question arose of the construction and interpretation of the Standing Orders framed by the Nagpur Electric Light and Power Company for the purposes of its employees. While, considering the scheme of the provisions of section 30 of the C.P. & Berar Industrial Disputes Act, 1947, which imposed a statutory obligation on the employer to make Standing Orders, the Court observed that it would be justified to apply the reasonable test of interpretation to the construction of the Standing Order so as to make it consistent with the compliance of the statutory obligation. In express terms, the principle that every word occurring in a statute must be given its proper meaning and weight, was alluded to and the English cases referred. The decision of *Beyley, J, in Cortis v. The Kent Water Works Co. (1872) 7 B & C 314*: was referred to and extracted as laying down the true test of interpretation. There the learned Judge was considering and interpreting the appeal clause in an Act for paying. Cleansing, Lighting etc. of the Town and Parish of Woolwich for a right of appeal to an aggrieved person. The learned Judge construed it as available to all persons capable of appealing. The decision of the Madras High Court in *Parumal v. Triumalarayanuram*. AIR 1918 Mad 362 which construed O. 33, R. 1, Civil P.C. with reference to the companies was approved. The Supreme Court therefore proceeded to read Standing Order No. 2 (a) by adding words to the actual wording of the Standing Order and applied the same to those employee only who

possessed to tickets and whose ticket number were capable of being entered in the departmental musters, In, *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, the Court restated that where the language of the enactment is clear and unambiguous, it is not legitimate to add words and evolve therefrom some sense which may be said to carry out the supposed intention of the legislature. In *Avtar Singh Vs. State of Punjab*, by alluding to *Courtice v. Stovin* (1889) 22 QBD 513 the provisions of section 39 of the Indian Electricity Act, 1910 were interpreted. There the question was section 39 itself did not providing for a punishment because the Act contemplated it and for this reference was made to section 48 and 49. The principle that the words of an Act of Parliament must be construed so as to give sensible meaning to them and the words ought to be construed *ut res magis valeat quam pereat* was reaffirmed. Thus upon that *pereat* was reaffirmed. Thus upon that doctrine the Court did not find any difficulty in taking the view that the provisions of section 39 did provide for a punishment. *Hansraj Nathu Ram Vs. Lalji Raja and Sons of Bankura*, is a case where the Court refused to read any substitution because of the historical background attendant upon the provisions of section 43 of the Civil Procedure Code, Similarly, in *Commr, of Income Tax v. Elphinstone S. & W. Mills* AIR 1960 SC 1061, an appeal by the revenue that some of the words in a proviso in finance Act (1951) "may be ignored as being our plumage or a drafting error", was not accepted. There the Court pointed out:

".....There is no doubt that if the words of a taxing statute fail, then so must the tax. The Courts cannot, except rarely and in clear cases, help the draftsmen by a favourable construction. Here the difficulty is not one of inaccurate language only. It is really this that a very large number of tax-payers are within the words but some of them are not. Whether the enactment might fall in the former case on some other ground..... is not a matter we are dealing with at the moment. It is sufficient to say here that the words do not take in the modifications which the learned counsel for the appellant suggests". (Emphasis provided)

This luminous record of eminent precedents in profoundly radiant and rich in hue and colour. It brightly throws into relief that in this sublime task Judges are endowed to be truly the children of lights obliged as they are to pierce through the thin yell of superficial to reach to the real so as to do justice still standing ever alert by the letter of the law Language of the legislature often may lurch itself and be the outer skin of the form shadowing the very soul. None of these can be permitted to halt, as it were the quest to reach the reality and the search has to be from truth to truth. While at this with all circumspection one is enjoined to put the phrases and words and terms of law in the test-tube of "Legislative intent" erected by taking all relevant factors into consideration.

37. All this calls for a rigorous and vigilant effort on the part of the court to give full meaning to the terms of the statute so as to subserve its purpose. If upon an analysis an obvious mistake which would defeat the law can be reached it must,

though in exceptional cases, be cured and in that process it is perfectly permissible even to read the appropriate words in the text or substitute the letters of the statute itself.

38. As indicated earlier, upon the analysis and the background of the present notification and particularly C. 2. it is clear that it could never have been proposed or intended that the persons under the specified category should be put under restrictive measures. The notification itself was issued in the month of September 1960 and if the restrictive measure of section 38 (2) were to be applied to a person mentioned in sub-section (2) itself, who became major on that day, his right was being much limited by time and the same itself stood lost. In the fact, there is no condition laid down by the notification which required filling an application by time for successful termination of tenancy. It would be repugnant to read therefore, as an intention attributable to the makers of the notification that only with respect to minors and the persons under disability or widows successors they thought of providing limitation and as such a different mode of exercise of their right for terminating the lease, while all others who are not under disability would be free to take the step without such limitation. It is plain, therefore, that Clause 2 of the notification contains an error available to be cured or ignored.

39. Having come to this conclusion that clause 2 is not apposite, upon all the internal evidence examined in the light of similar such provisions in the part material notification issued by the State in 1958 applicable and in force to the other parts of the State, it would be consistent to read in place of figure "(2)" the figure "(3)". Thus construed I would prefer to read clause 2 of the notification as having always intended to read in place of "(2) to (7)" the figures and words "subject to the provisions of sub-section (3) to (7) of section 38". That only appears to me a course which sub-serves the ends of justice and also provides the remedy to effectuate the right.

40. Having found so, the present petition has to be allowed. All the orders made by the revenue authorities holding that there was a limitation and an application was required to be filed as provided for by sub-section (2) of section 38 in terms of clause (B) thereof will have to be set aside. Accordingly, the orders made by the Tenancy Naib Tahsildar, Achalpur, Sub-Divisional Officer, Achalpur and Maharashtra Revenue Tribunal, Nagpur are hereby quashed.

41. The matters, therefore, will have to be enquired into by the Tenancy Naib Tahsildar Achalpur afresh on the basis that clause 2 of the notification reads in its true content and meaning being "subject to sub-sections (3) to (7)" and that a landlady of the present kind was entitled to file an application which will have to be entertained under the provisions of section 36 of the Act the same being within two years after the expire of the notice purported to have been given on behalf of the landlady. It will be for the tenant to raise such pleas as may be available to meet her claim if any including the validity of the notice. Thus the petition succeeds, but in the circumstances, there will be no orders as to costs.