
(1994) 09 GUJ CK 0018
In the Gujarat High Court

Koli Jeram Vashram and Another

APPELLANT

Vs

Jadeja Shivubha Dipsinhji and Others

RESPONDENT

Date of Decision : 15-09-1994

Acts Referred:

Constitution of India, 1950 — Article 227

Saurashtra Barkhali Abolition Act, 1951 — Section 2(1), 2(i), 28, 31

Citation : (1995) 2 GLR 1604

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—In this petition under Article 227 of the Constitution of India, the challenge is against an order passed by the Gujarat

Revenue Tribunal (Tribunal) on 21-1-1976 in revision application.

2. The petitioners are the tenants in respect of agricultural lands situated in the sim of village Jhebachada of Taluka and District Rajkot of one

deceased Jadeja Rambha Bhupatsinh and respondents are the heirs and legal representatives of the deceased landlord Rambha. The respondents

are the Girasdars as defined in Section 2(15) of the Saurashtra Land Reforms Act, 1951 (S.L.R. Act) which came into force with effect from

September 1, 1951. For the brevity and convenience, the petitioners shall be hereinafter referred to as the tenants and the respondents shall be

hereinafter referred to as the Girasdars. The Girasdars had filed an application u/s 23 of the S.L.R. Act for getting Gharkhed lands from the tenants

before the Mamlatdar at Rajkot.

3. After holding an enquiry, the Mamlatdar, by his order dt. 29-3-1974, passed an order granting lands to the Girasdars from the holdings of the

tenants u/s 23. In appeal against the order of the Mamlatdar, by the Deputy Collector, Rajkot, the order of Mamlatdar was quashed and appeal

was allowed. With the result, the Girasdars were found not entitled to any land from the tenants. The appeal was decided on 9-4-1975. Against

the order in an Appeal decided by Deputy Collector, a revision was filed u/s 52 of the S.L.R. Act by the Girasdars before the Tribunal. The

Tribunal was pleased to partly allow the revision on 21-1-1976 and directed Deputy Collector, Rajkot for taking appropriate steps in light of the

observations made in the impugned decision of the Tribunal. The review petition was filed by the tenants before the Tribunal which also came to be

dismissed on 8-7-1977. Being aggrieved by the said decision of the Tribunal, the tenants have come up before this Court in this petition under

Article 227 of the Constitution of India.

4. The learned Advocate Mr. Shah, appearing for the petitioners-tenants, has raised following contentions:

- (1) That the application of the Girasdars for Gharkhed land was time-barred, and
- (2) That the total lands held by the Girasdars for Gharkhed exceeded 320 Acres and therefore, they were not entitled to allotment of lands.

- (3) That the notification of the year 1954 which was held to be legal in a Civil suit and when the appeal was filed, the petitioners No. 2 Jeram

Laxman was not a party, it was, therefore, not binding on him. Hence no land could be ordered to be allotted under the S.L.R. Act.

- (4) Since the Girasdars only claimed compensation, they are estopped from claiming allotment of lands from the petitioners-tenants.

5. The spectrum of the material facts may be mentioned so as to appreciate the contentions raised on behalf of the petitioners-tenants. The

respondents Girasdars were declared Barkhalidars and the lands under dispute were declared Barkhali lands and the petitioners were declared as

the tenants of the disputed lands by virtue of Government Notification dt. 19-4-1954 u/s 2(1) of the Saurashtra Barkhali Abolition Act, 1951. The

said notification was challenged by the Girasdars by filing suit being Regular Civil Suit No. 530 of 1957 in the Court of Civil Judge (Senior

Division), Rajkot for declaration that the said notification is invalid and illegal, declaring them as Barkhalidars. The said suit was also dismissed.

6. The Girasdars preferred an appeal being Regular Civil Appeal No. 50 of 1960 in

the District Court at Rajkot. The appeal was allowed and the decree passed in the suit was reversed, holding notification dt. 19-4-1954 as invalid. Against that decision, the State Government and two tenants had preferred Second Appeals in this Court. Second Appeal No. 401 of 1962 filed by the State Government and Second Appeal No. 402 of 1962 filed by the tenants were decided and came to be dismissed by this Court on 11-2-1970. Then, the said notification was finally held to be invalid declaring respondents Girasdars as Barkhalidars.

7. Subsequently, the Girasdars filed application on 27-10-1971 for getting two and half times the rent from the tenants from the year 1952 onwards. The tenants had also applied for grant of occupancy certificate. The Girasdars thereafter claimed allotment of lands by giving an application in Form No. I u/s 19 of the S.L.R. Act to Mamlatdar which was allowed and on appeal, Deputy Collector reversed it and in revision against that order, the order of the Mamlatdar was restored. Hence this petition.

8. The Saurashtra Barkhali Abolition Act, 1951 was brought into force in the Saurashtra region on 27th July 1951. The Scheme of the Act was for abolition of Barkhali tenure in Saurashtra Region. The main object was for improvement of the land revenue administration and for agrarian reforms. The Barkhali tenure prevailing in certain parts of Saurashtra came to be abolished. It is stated that the explanation on statute is not statutorily defined but the definition of Barkhalidar is provided in Section 2(i) of the Saurashtra Barkhali Abolition Act, 1951. It reads as under:

2. (i) "Barkhalidar" means a person who holds a tenure as Barkhalidar, Jivaidar, Chakariyat, Kherati or Dharmada and includes - xxxxxx xxx

Under the Saurashtra Barkhali Abolition Act, 1951, "Gharkhed" land means any land lawfully reserved by a Barkhalidar for cultivating personally before 20th July, 1949, which is under personal cultivation of the Barkhalidar on the date of the coming into force of this Act.

9. The Girasdars are entitled to hold Gharkhed lands under their personal cultivation which they were cultivating before the S.L.R. Act came into force.

10. The Saurashtra Land Reforms Act, 1951 also came into operation from 21st July, 1951. The main design of the Act was to provide for certain measurements of land reforms in Saurashtra, for improvement of land revenue

administration and ultimately for putting an end to the Girasdari system, it was thought expedient to regulate the relationship between the Girasdars and the tenants and also to enable the tenants to become occupants of land held by them and has to provide for the payment of compensation to Girasdars for extinguishing their rights. Under this Act, Gharkhed means any land reserved by, or allotted to a Girasdar before the 20th May, 1950 for being cultivated personally, and in his personal cultivation, with certain exceptions. The expression Girasdar under the S.L.R. Act means any talukdar, bhagdar, bhayat, cadet or mulgirasia and includes any person whom the Government may, by notification in the Official Gazette, declare to be a Girasdar for the purpose of this Act. But Girasdars are entitled to allotment of land u/s 19 of the S.L.R. Act. The tenants are also given right to apply for occupancy certificate for lands held by them as tenants under the provisions of Section 28 of the S.L.R. Act. The Girasdars are also entitled to get occupancy certificate for Gharkhed land and for occupancy rights. As such the Girasdari tenure came to an end.

11. In the light of the above factual and legal background, the contentions raised on behalf of the petitioners-tenants are required to be examined.

The first contention that the application of the Girasdars was time-barred, is not sustainable. It is pointed out that the application under Sub-section

(1) of Section 19 of the S.L.R. Act by the Girasdar for allotment of land for personal cultivation was required to be made within four months from

the date of the commencement of the Saurashtra Land Reforms (Second Amendment), Ordinance, 1952. It was jointly pointed out that the

Second Amendment Ordinance came into force on 31st December 1952. The prescribed application u/s 19 was made by the Girasdars on 20-3-

1972. The time limit prescribed in Section 19(1) initially was fixed for 30 days. Thereafter, it was raised to 90 days and subsequently it was raised

to four months by different amendments. After receipt of such application for allotment of the land for personal cultivation by the Girasdars, the

concerned Mamlatdar has to hold an enquiry and to decide as to whether the allotment has to be made on or u/s 20. Thus, the right is given to the

Girasdar for making an application within the prescribed time for allotment of the land for personal cultivation u/s 19(1). It is true that the

application was not made within the stipulated time as provided in Section 19(1)

but that is not all.

12. In Chapter V of the S.L.R. Act, the provisions are made in Section 28 to Section 41D. The provisions are also made for acquisition of

occupancy right by tenants. In Section 28, the provision is made, whereby tenant is entitled to acquire occupancy right at any time in his holding on

payment of such amount as shall be equal to six times the assessment payable in respect of the agricultural land included in such holding. Thus, the

tenant may apply in the prescribed form to the Mamlatdar for acquiring such rights any time u/s 28. Thus, for making an application by tenant for

acquisition of occupancy rights, no time limit is prescribed. The provisions of Section 28 are very important for the question in issue. Section 28

reads as under:

28. Acquisition of occupancy rights by tenants: (1) Subject to the provisions contained in Chapter IV of this Act, a tenant shall at any time be

entitled to acquire occupancy rights in his holding on payment of such amount as shall be equal to six times the assessment payable in respect of the

agricultural land included in such holding, and may apply in the prescribed form to the Mamlatdar for acquiring such rights.

It can very well be seen from the aforesaid provisions that the name of the Girasdars in respect of his holding is required to be stated, like-wise

many other information is required to be given by the tenant in prescribed form with regard to his Girasdars.

13. Section 29 provides that after receipt of such an application u/s 28 by the tenant, the Mamlatdar has to issue notice to the Girasdars concerned

and after giving the party an opportunity of being heard, has to make enquiry in the prescribed manner. The Mamlatdar is authorised for issuance

of occupancy certificate to a tenant u/s 30.

14. What are the consequences of issuance of the occupancy certificate to the tenant is also required to be seen. Section 31 of the S.L.R. Act

makes a provision for the consequence of issuance of such occupancy certificate to the tenant. Section 31 is required to be examined in a greater

detail. Section 31 reads as under:

31. Consequence of the issue of occupancy certificate.: Where an occupancy certificate has been issued u/s 30 by the Mamlatdar in respect of

occupancy holding, the following consequences shall, in respect of the holding

ensue from the date on which the occupancy certificate becomes effective, namely.:

(a) the tenant shall, in respect of the holding, become an occupant holding directly from the (Government) and shall have all the rights and obligations of an occupant under this Act and under the Code in respect of the holding;

(b) the occupant shall pay direct to the Government the assessment for the time being in respect of the holding;

(c) all his relations and obligations as tenant to the Girasdar or to any person claiming through or under the Girasdar in respect of such holding shall cease and in particular, his liability to pay rent to the Girasdar in respect of the holding shall cease;

(d) the occupant shall acquire his rights in the occupancy holding free from all encumbrances, if any, made by the Girasdar;

(e) in any case of abandonment or relinquishment, or when an occupant dies intestate and without known heirs, or in any other such case, the right of reversion shall vest in the Government;

(f) the Girasdar shall cease to have any right to collect or receive any rent from the occupant or exercise any other right in respect of the holding, and his liability to pay land revenue in respect of the holding, shall also cease;

(g) the Girasdar shall be entitled to receive and be paid compensation as provided under this Act;

Provided that nothing contained in (f) above shall apply to any arrears of rent that may be due to the Girasdar from the tenant on the date of the commencement of this Act.

15. On conjoint reading of the provisions of Sections 28 to 31 of the S.L.R. Act, it transpires that the Mamlatdar is obliged to hold an inquiry in a

proceeding when an application is preferred for the occupancy rights by the tenant and the Mamlatdar is also obliged to issue notice to the

Girasdars concerned and after hearing both the parties and after giving the party an opportunity of being heard. Therefore, the scheme is such that

the presence of Girasdar and giving him an opportunity of being heard is mandatory. What are the consequence of the issue of occupancy

certificate to the tenants are mentioned in Section 31.

16. Section 32 provides the effective date of the occupancy certificate to the tenant u/s 30. Section 33 makes the provisions for payment of compensation to the Girasdar. Section 39 clearly provides that the Mamlatdar is authorised to issue the occupancy certificate to the Girasdar in a prescribed form in respect to Gharkhed comprised in his estate and the land to be allotted to him on an application received in this behalf from the Girasdar or of his own motion. Section 39 contemplates that Mamlatdar can either of his own motion or by an application from the Girasdar can decide and issue an occupancy certificate to him. It is evident from the provision of Section 39 that on the issue of the occupancy certificate in respect of any land to the Girasdars, he becomes an occupant in respect of such land as on the date of issue of the occupancy certificate. The Girasdar on the issue of an occupancy certificate becomes entitled to all the rights which an occupant has under the Saurashtra Land Reforms Act or under the Bombay Land Revenue Code in respect of the land covered by the occupancy certificate. It may also be mentioned that the rights of the Girasdars are not restricted to personal cultivation of the land in respect of which the occupancy certificate is issued and he can make such a use of the land as it is available or permissible to him under various provisions of the Bombay Land Revenue Code. The Girasdar can also make agricultural use of the land by personal cultivation or he can, if permitted to, do so u/s 62 of the Bombay Land Revenue Code to convert from user into non-agriculture use of the land. It is true that two conditions are required to be satisfied before the occupancy certificate could be issued to the Girasdar in respect of any land, viz.:

- (i) it must be the Gharkhed land within the meaning of Sub-section (14) of Section 2 of the Act; or
- (ii) it must be a land allotted for personal cultivation under the provisions of Chapter IV of the S.L.R. Act.

Having once the occupancy being issued, in respect of land covered within any one of the aforesaid two conditions, there does not seem to be any provision in the Saurashtra Land Reforms Act which demands that such land must be used only for personal cultivation and cannot be used for any other object.

17. It is apparent from plain reading of provisions of Sees. 28 to 41D made in

Chapter IV to the Saurashtra Land Reforms Act that if the Girasdar is not heard in a proceeding for occupancy certificate to the tenant u/s 28, the rights and liabilities could be ascertained (sic.) and decided between the tenants and the Girasdars. Non-giving of an opportunity of being heard to the Girasdar in such a proceeding would defeat not only the purpose of the scheme of providing Chapter IV but the very design of the Saurashtra Land Reforms Act.

18. The Deputy Collector in appeal against the decision of the Mamlatdar had held that the application of the Girasdars is time-barred and the benefits of the provisions of Rules 76 and 77 of Saurashtra Land Reforms Rules, 1951 (S.L.R. Rules) are not applicable to the Girasdars in an application for occupancy certificate filed by the tenants. This finding not only over-looks the scheme of the Act but runs counter to the provision of Sections 28 to 41D incorporated in Chapter IV of the S.L.R. Act. The Tribunal has correctly found that the application of the Girasdars could not be said to be time-barred. The Tribunal in a revision filed by the tenants has elaborately dealt with this aspect. It has also appreciated the provisions of Rules 76 and 77 of the S.L.R. Rules. This finding of the Tribunal is seriously criticised by the learned Advocate for the petitioners.

19. It is contended on behalf of the petitioners that the statutory period of limitation prescribed in Section 19(1) of the S.L.R. Act only has to be seen for the purpose of deciding the application for occupancy certificate of the Girasdars. It is true that the subordinate legislation cannot over-look the substantive provisions of the S.L.R. Act. However, that is not the position in the present petition.

20. The submission that the claim for occupancy certificate made by the Girasdars was time-barred is meritless. After the application was preferred by the tenants, the Mamlatdar had decided the rights of the tenants and the Girasdars by holding the inquiry as contemplated in the provisions made in Chapter IV of the S.L.R. Act. The Mamlatdar held by his order dt. 29-3-1974 that the Girasdars are entitled to allotment of 58 Acres of lands from the tenants. The Deputy Collector reversed the decision of the Mamlatdar on following two counts:

(1) That the suit filed before the Mamlatdar for recovery of rent cannot be converted into a suit for Gharkhed land.

(2) That the application made by the Girasdars for Gharkhed made in April 1972 is time-barred.

In the alternative, on merits of the case also, the Deputy Collector found that the Girasdars are not entitled to Gharkhed land in view of the fact that

they have more than 320 Acres of land with them. The findings reached by the Deputy Collector are supported on behalf of the petitioners.

21. It would be interesting to note the provisions of Rules 76, 77 and 78 of the Saurashtra Land Reforms Rules. Rule 76 provides that in the event

of receipt of any application by the Mamlatdar concerned from the tenants, he is obliged to dispose of such an application made by the tenant

alongwith such application or applications. Rule 77 makes the provision that if the Mamlatdar is satisfied that no application is received from the

Girasdar, the Mamlatdar has to ascertain whether the Girasdar is entitled to allotment of land for personal cultivation. Thus, under Rule 77, the

obligation is given on the Mamlatdar concerned to ascertain as to whether he has received any application from the Girasdar concerned. If no such

application is received, Rule 77 commands that the concerned Mamlatdar has to ascertain whether the Girasdar is entitled to allotment of the land

for personal cultivation. Rule 79 also makes the position further clear that if the Mamlatdar is satisfied that the Girasdar in a given case is found

entitled to allotment of land for personal cultivation, the Mamlatdar is obliged to proceed to call upon the Girasdar to submit an application within

the period to be fixed. If the Girasdar refuses or fails to submit such an application in pursuance of the intimation from the concerned Mamlatdar,

the concerned Mamlatdar has to proceed to dispose of the application on merits made by the tenant for the occupancy certificate.

22. Conjoint reading of the aforesaid three relevant Rules of the Saurashtra Land Reforms Rules makes in any manner no doubt that it is a duty

cast on the concerned Mamlatdar first to ascertain as to whether any application is received from the Girasdar, and if not, he has to call upon the

concerned Girasdar to make an application within the time to be fixed by him and if no such application is made by the Girasdar concerned,

thereafter only the Mamlatdar concerned has to proceed with the matter on merits with regard to the application made by the tenants for grant and

issuance of the occupancy certificate for personal cultivation. The scheme and design made in the aforesaid Rules are self-explanatory and crystal

clear. Unfortunately, the Deputy Collector, while hearing appeal against the decision of the Mamlatdar, failed to appreciate the material provisions

of the scheme and the aforesaid Rules. It is unfortunately culminated into great injustice to the Girasdars.

23. Apart from that it cannot be contended that the provision made in the Rules extending period of limitation prescribed u/s 19(1) of the S.L.R.

Act is extended or modified and therefore, it is illegal. It is vehemently submitted that the period once prescribed under the substantive provision in

the Act itself (which was 90 days at the relevant time) can in no circumstance be enhanced or augmented by the provisions of Rule 79. Prima facie,

this submission appears to be subtle but not sound and sustainable in view of the clear provision incorporated in Chapter IV of the Saurashtra

Land Reforms Act.

24. No doubt, it is a settled principle of law that subordinate legislation can never be allowed to defeat the substantive law made in the Statute

Book. There can be no quarrel about this principal. However, the submission in this behalf raised by the learned Advocate for the petitioner runs

counter to the substantive provisions made in Sees. 28 to 41 in Chapter IV of the Saurashtra Land Reforms Act - what are pertaining to the

acquisition of the occupation rights by the tenant. Even in an application by the tenant under Chapter IV in a prescribed form for acquisition of the

occupancy rights u/s 28, the Mamlatdar is bound to issue notice to the Girasdar concerned and after giving parties of an opportunity of being

heard, has to hold the inquiry in prescribed manner. Now what should be the manner of holding the inquiry is required to be prescribed by the

substantive provision of Section 29 of the S.L.R. Act and Rules 76, 77 and 78 in Chapter IV of the Saurashtra Land Reforms Rules. From Rules

66 to 84C, the procedure is prescribed. Thus, the Rules under Chapter IV under the heading of ""Acquisition of Occupancy Rights by Tenants

from Section 66 to Section 84C are prescribed for the purpose of giving effect to the substantive provision of Section 28 to Section 41D

incorporated in Chapter IV of the Saurashtra Land Reforms Act. Section 59 of the S.L.R. Act provides that the Government is empowered to

make the Rules. It would, therefore, be interesting to know the provisions incorporated in Section 59 of the Saurashtra Land Reforms Act. Section

59 reads as under:

59. Rules: (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters,

namely:

- (a) the manner in which the tenancy may be terminated;
- (b) the form and manner in which an application for allotment of land for personal cultivation may be made by a Girasdar;
- (c) the manner in which inquiries may be held by a Mamlatdar under this Act and the procedure to be followed in such proceedings;
- (d) the form of an occupancy certificate to be issued to Girasdars and tenants and Settlement Commissioner;
- (e) the Girasdar to whom and the procedure according to which land may be allotted for personal cultivation and matters connected therewith;
- (f) the manner of payment of compensation and rehabilitation grant to Girasdars in Girasdari Majmu village;
- (g) the form and manner in which application for acquiring rights may be made by a tenant;
- (gg) the form and manner in which a Jiwaidar may submit her claim u/s 35A:
- (h) the manner in which compensation payable by a tenant may be computed in any case where the Girasdar has only a limited interest in the holding;
- (hh) the manner in which occupancy certificate issued to the Settlement Commissioner may be transferred to the tenant;
- (i) the form of notice to be issued under this Act and the manner of service of such notice;
- (j) the manner of publication of assessment on land;
- (k) the functions of Settlement Commissioner;
- (l) levy of fees and Court-fees under this Act; and
- (m) any other manner which has to be, or may be prescribed under this Act.

25. In exercise of the powers conferred on the Government under the provisions of Section 59 of the Saurashtra Land Reforms Act, the

Saurashtra Land Reforms Rules, 1951 are made. The rights and the procedure

for acquisition of the occupancy rights by the Girasdar

independently are incorporated in Chapter IV and the relevant Rules are made with regard to issue of occupancy certificate to a Girasdar in

Chapter III of the Saurashtra Land Reforms Rules. Whereas the rights and the procedure for acquisition of the occupancy rights by the tenants, the

provisions are incorporated in Chapter IV and Chapter V and the relevant Rules prescribing certain procedure have been incorporated in Chapter

IV from Rules 66 to 84C of the Saurashtra Land Reforms Rules, 1951.

26. Having regard to the entire scheme of the aforesaid relevant provisions and the design of the S.L.R. Act, it cannot be contended even for a

moment that the impugned order passed by the Revenue Tribunal, quashing the order of the Deputy Collector, is in way unjust, illegal or perverse.

On the contrary, the Deputy Collector at Rajkot has misdirected himself and has misappreciated most relevant provisions of the law, resulting into

miscarriage of justice. No doubt, independently rights of a Girasdar to make an application for occupancy certificate is prescribed in Section 19

and for that the time limit was prescribed 90 days at the relevant time and the application is not preferred within that stipulated statutory period.

The application remained undecided. Had there been no application of the tenant under the provision of Section 28 of the S.L.R. Act, the Girasdar

would not have been able to or could not have agitated for acquisition of occupancy certificate as he had not made an application u/s 19(1) within

the period of limitation. So the independent right given to a Girasdar under the Saurashtra Land Reforms Act came to an end. But for the good

luck of the Girasdars, the tenants preferred an application for acquisition of the occupancy rights by giving an application u/s 28 of the S.L.R. Act.

There is no dispute about the fact that for giving an application by the tenant u/s 28, no time limit is prescribed. Therefore, any time when the

application for acquisition of the occupancy rights is received by the concerned Mamlatdar, he is obliged to follow the procedure prescribed in the

provisions incorporated in Chapter IV of the S.L.R. Act and the Rules prescribed in Chapter III of the Saurashtra Land Reforms Rules. Pursuant

to that, he has to issue a notice to the Girasdar, he had to ascertain the rights and extend of the Girasdari land, Gharkhed land and then to decide

the application of the tenant for the allotment of the occupancy certificate in

respect of the lands held by him and amount of compensation. This Court has no hesitation, therefore, in finding that the Deputy Collector at Rajkot was in gross and serious errors of law which resulted into miscarriage of justice. The Tribunal has, therefore, rightly reversed the decision of the Deputy Collector. The contention raised on behalf of the petitioners-tenants that the application was time-barred, is totally without any substance and is required to be rejected. Hence it is rejected.

27. It brings into focus the second contention raised on behalf of the petitioners. Second contention is that total lands held by the Girasdars by way of Gharkhed lands exceeded prescribed limit of 320 Acres of lands and therefore, they are not entitled to allotment of lands. This submission of the learned Advocate for the petitioners is also without any substance. This is as such the question of fact. The Tribunal has, in greater extent, examined this aspect and has factually found that the Girasdars are entitled to the allotment of the lands. The view taken by the Deputy Collector in this behalf was not only erroneous but based on misreading of evidence. The Tribunal has correctly and rightly quashed the view on this count. Mamlatdar had examined this aspect and has also rightly held that the Girasdars had not got Gharkhed lands more than 320 Acres. This finding of fact reached by the Mamlatdar was wrongly reversed by the Dy. Collector and rightly confirmed by the Revenue Tribunal. Apart from the fact that it is a question of finding of fact, the Tribunal has correctly appreciated this aspect and has reached to a correct and right conclusion. Therefore, in the light of the facts and circumstances of the present case, the second contention is also without any substance and requires to be rejected. Hence it is rejected.

28. Third contention raised on behalf of the petitioners is that the notification of the Government issued in 1954 which was held to be legal in the suit filed by the Girasdars but when challenged in appeal, it was found to be invalid and the petitioner No. 2 - Jeram Laxman - one of the tenants was not a party, it was, therefore, not binding on him. It is further submitted in this connection that no land could be ordered to be allotted to him under the S.L.R. Act. This submission is also meritless. Two second appeals were filed in this Court against the decision of the District Court. One was filed by the State Government and the second appeal was filed by two

tenants. Both the appeals came to be dismissed by this Court. It is very clear from the observations made in common judgment that non-½ joinder of one of the tenants would not in any way affect the merits. Thus, this point was agitated before this Court into two second appeals. It is true that the petitioner No. 2 - tenant Jeram Laxman was not made party in that appeal before the District Court challenging the decision of the Civil Court. However, it was he who had filed second appeal in this Court being Second Appeal No. 402 of 1961 and he had raised this point before this Court in the aforesaid second appeal and his that contention was not accepted and upheld by this Court. Apart from that such a contention is raised for the first time in this petition under Article 227, no such contention seems to have even been raised before three authorities below. Therefore also, such a contention cannot be allowed to be agitated but even if it is allowed to be agitated, it has no merits. Therefore, third contention is also required to be rejected, without being any substance. Hence the same is also rejected.

29. Fourth contention raised on behalf of the petitioners is that since the Girasdars only claimed compensation firstly in the year 1971, they are estopped from claiming allotment of lands from the tenants. Ex facie this submission is required to be rejected in view of the observations made by this Court hereinbefore and clear provisions of Section 46B of the Saurashtra Land Reforms Act. One of the functions of the Mamlatdar under Clause (b) of Section 46 of the S.L.R. Act is to decide whether the person is a tenant or not. Merely because initially the Girasdars have filed application for compensation or rent two and half times the assessment of the land in question cannot be construed to operate as an hindrance in claiming occupancy rights and resultant allotment of land as the Gharkhed. Therefore, the last submission also requires straightway rejection. Having regard to the facts and circumstances narrated hereinabove and tracing of the history from the record of the present case and having examined all the relevant legal set-up, this Court has no slightest hesitation in finding that the present petition under Article 227 is meritless and requires to be dismissed. Accordingly it is dismissed with costs. Rule is discharged.