
(1991) 11 BOM CK 0012

In the Bombay High Court

Case No : Spl. Civil Application No. 1318 of 1978

Laxmanrao Anantrao Satardekar

APPELLANT

Vs

Bapu S. Powar By Heirs and Others

RESPONDENT

Date of Decision : 26-11-1991

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 29(2), 32G

Citation : (1991) 93 BOMLR 691

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Judgement

D.R. Dhanuka, J.—This petition raises interesting questions of law relating to interpretation and application of Sections 15, 29(1), 32(1) and 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948. The principal question of law relating to the purported surrender of tenancy is already decided by the Full Bench judgment of our High Court delivered in this very matter on 25th January, 1988 reported in 1988 Mh. L.J. 359. In view of the ratio of the said judgment, the purported surrender of tenancy by the tenant/s concerned shall have to be treated as non est. It would follow therefrom that the petitioner-tenant became the statutory purchaser of the agricultural lands in question on tillers' day i.e. with effect from 1st April, 1957 u/s 32(1) of the Act. There is no serious dispute about the relevant facts having bearing on the subject-matter of this petition. It is unfortunate that this petition has remained pending in this Court for a period of more than 13 years even though 1962 N.L.J. 65 it pertains to the legislation introducing agrarian reforms in the State.

2. In my view, there is no merit in this petition and the petition deserves to be dismissed for the reasons set out in later part of this judgment.

3. Before I formulate the relevant questions of law arising in this petition it is necessary to state the material facts emerging from the record of the case. The said facts are either the admitted facts or the proved facts.

(a) On 27th March, 1957, Shri Laxmanrao Anantrao Satardekar i.e. about 4 days prior to "Tillers" Day", the original landlord, made an application to the Mamlatdar for possession of the lands in question purporting to invoke Section 29(2) of Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act.) The said application was accompanied by purported Deed of Surrender of tenancy dated 5th March, 1957 signed by the tenant concerned. Section 15 of the Bombay Tenancy Act provides that surrender of tenancy by a tenant shall not be treated as complete or effective unless the same is in writing and verified by the Mamlatdar in the prescribed manner. The process of verification of alleged surrender was commenced by the Mamlatdar for the first time on 27th August 1957, the Mamlatdar recorded the first statement of the tenant concerned u/s 15 of the Act read with Rule 9 of the relevant Rules. Further statement of the tenant concerned was recorded on 24th September, 1957. On 22nd October, 1957, the Mamlatdar verified the said surrender as required by Section 15 of the-said Act. On the same day, the Mamlatdar passed an order purporting to accept the alleged surrender of tenancy, made the necessary endorsement in respect thereof. In the result, relying on the said surrender, the Mamlatdar directed the tenant concerned to hand over possession of the land to the landlord. Shri Babu Satyappa Powar since deceased was one of the tenants so directed. On 30th January, 1958, the landlord secured possession of the suit land in pursuance of the order of possession passed by the Mamlatdar on 22nd October, 1957 based on above referred Deed of Surrender dated 5th March, 1957 verified for the first time on 22nd October, 1957. Kabje Pavti dated 30th January, 1958 supports the above statement.

(b) On or about 4th September, 1973, proceedings u/s 32-G of the Act were commenced on an application made by the tenant Shri Babu Satyappa Powar claiming to have become statutory purchaser of the said lands on Tillers" Day i.e. 1.4.1957. The said proceeding was numbered as Tenancy Case No. 32-G. Satarde-153. The said proceedings were adopted for fixation of purchase price obviously on the footing that the impugned surrender of tenancy was nullity. In the said proceeding, following questions were formulated by the Prescribed Authority for its consideration:

- (i) Are the tenants lawfully in possession of the suit lands on the "tillers" day" i.e. 1.4.1957?
- (ii) Are the tenants entitled to purchase the suit lands?
- (iii) Are the tenants willing to purchase the suit lands?
- (iv) What shall be the purchase price?
- (v) How to be paid?

(c) By his order dated 26th January, 1974, the Additional Tahsildar and Agricultural Lands Tribunal No. 1, Panhala, held that the tenant No. 1 Shri Babu Satyappa Powar is deemed to have purchased 1/2 share in the lands bearing

Nos. 153, 154, 155 and 203/2 situate at village Satarde belonging to Shri Laxmanrao Anantrao Satardekar and Shri Yeshwaritrao Laxmanrao Satardekar. By the said order, it was declared that the said tenant No. 1 was deemed to have purchased 1/2 share in the said lands. As regards the remaining 1/2 share in the said lands, it was declared that the purchase of remaining 1/2 share in the said lands by tenants Nos. 2 to 6 was liable to be treated as ineffective as the tenants Nos. 2 to 6 had not expressed their willingness to purchase the said lands and pay the statutory purchase price. By the said order, the Tahsildar and Agricultural Lands Tribunal No. 1 fixed the purchase in respect of 1/2 share in the said lands payable by Shri Babu Satyappa Powar at Rs. 15,502/- payable in, five equal instalments of Rs. 3100.40 each. By the said order, it was further directed that the purchase certificate in form "M" shall be issued by the Prescribed Authority on receipt of the full purchase price from the said tenant No. 1 as more particularly set out therein.

(d) Being aggrieved by the said order, the landlord Shri Satardekar filed an appeal, numbered as Tenancy Appeal No. 28 of 1974 before the Special Land Acquisition Officer, Kolhapur. By the appellate order dated 29th November, 1976 passed in the said appeal, it was held that the order dated 22nd October, 1957 accepting surrender of tenancy dated 5.3.1957 was valid. In the said appellate order, it was observed that the tenant concerned is deemed to have surrendered his tenancy in respect of the said lands with effect from 27th March, 1957 and proceedings adopted u/s 32G of the Act were therefore not maintainable and were liable to be treated as dropped.

(e) Being aggrieved by the said order, the respondent No. 1 herein i.e. tenant No. 1, preferred a revision application before the Maharashtra Revenue Tribunal, Kolhapur, which was numbered as Revision Application No. MRT-KP/36/77. By its order dated 29th March, 1978, the Maharashtra Revenue Tribunal held that the purported surrender of tenancy dated 5th March, 1957 was not valid and the order passed by the Mamlatdar accepting the impugned surrender referred to hereinabove was ultra vires. By the said order, the Tribunal allowed the revision application preferred by the respondent No. 1, set aside the order passed in Tenancy Appeal No. 28 of 1974 and restored the above referred order dated 26th January, 1974 declaring respondent No. 1 as the statutory purchaser in respect of 1/2 of the said lands, fixing the purchase price at Rs. 15,520/ and giving consequential direction for issue of certificate of purchase as contemplated u/s 32-M of the Act.

(f) Being aggrieved by the above referred order dated 29th March, 1978 passed by the Maharashtra Revenue Tribunal, the petitioner has filed this writ petition.

(g) The landlord filed two civil suits, being Suits Nos. 26 of 1974 and 27 of 1974 in the Court of the Civil Judge, Junior Division, Panhala against the tenants concerned for a decree of permanent injunction restraining the defendants therein from interfering with the possession of the petitioners herein in respect of the same very lands which are the subject-matter of this petition i.e. the lands of

which the original petitioner had secured possession in consequence of impugned surrender dated 5th March, 1957. The Trial Court granted an ex parte order of ad interim injunction in this behalf as applied for. The said order of injunction was later on vacated. The landlord preferred an appeal to the District Court, which was allowed. The revision application filed by the tenant was dismissed. Thus the petitioners continue to be in possession of the said lands and the tenant-purchaser continues to be restrained from disturbing the petitioners' possession of the "petition lands" till disposal of the said suits. I am informed by the learned Counsel that the said suits are still pending.

4. From the bare narration of the above facts, it becomes more than clear, that the original respondent No. 1 held the lands described in the order (Ex. A to the petition) as a tenant on 1st April, 1957. The tenant concerned i.e. Shri Bapu Satyappa Powar was lawfully cultivating the said lands at the material time as a tenant. Section 32(1) of the Act provides that from the 1st day of April, 1957 therein referred to as "tillers" day", every tenant shall be deemed to have purchased from his landlord the land held by him as a tenant subject to other provisions of the said section and other provisions of the Act. It follows therefrom that from 1st April, 1957 there can be no relationship of landlord and tenant in respect of the land of which the statutory ownership has vested in the tenant u/s 32(1) of the Act. In all such cases, the Act prohibits surrender of tenancy by the tenant after the 1st day of April, 1957. Since the tenant becomes the owner of the land with effect from 1st April, 1957, the question of surrender of tenancy can never arise after 1st April, 1957 as there can be no surrender of tenancy since then in view of relationship of landlord and tenant being terminated by operation of law and the tenant acquiring the status of statutory purchaser of the said land under the relevant provisions of the Act. If, however, the surrender of tenancy is effective since prior to 1st day of April, 1957 and such surrender is in conformity with the provisions of the Act, Section 32(1) of the said Act can have no application to the matter. It is a mandate of the Section 32(1) of the Act that there should be subsisting relationship of landlord and tenant between the parties concerned on the 1st day of April, 1957. In such an event subject to all conditions of Section 32(1) of the Act being satisfied and the matter being not covered by any of the exclusionary provisions of the Act, the tenant becomes the statutory purchaser of the land.

5. The crucial questions arising for consideration of the Court are as under:

I. (a) Whether the "surrender" of tenancy becomes effective only after the same is duly verified by the Mamlatdar in accordance with the mandatory provision of Section 15 of the Act read with Rule 9 of the Rules made thereunder and that too from the date of such verification and not earlier?

(b) Whether the purported "surrender" of tenancy dated 5th March, 1957 is liable to be treated as non est in view of the fact that the purported surrender was verified by the Mamlatdar only after the 1st April, 1957 i.e. on 22nd October, 1957 i.e. much after the "Tillers" Day"?

(c) Whether proceedings for possession of the land adopted by the landlord on the basis of above referred surrender dated 5th March, 1957 verified on 22nd October, 1957, the order of possession passed therein on 22nd October, 1957 and the act of taking possession of the land by the landlord in implementation of the said impugned order are all liable to be treated as ultra vires and nullity on the ground that the Mamlatdar had no jurisdiction to verify the "surrender" of tenancy after 1st April, 1957, the day on which the tenants of agricultural lands become owners thereof by operation of law?

II. Whether the tenant concerned became entitled to statutory purchase of the petition land u/s 32 of the Act and adopt proceedings for fixation of statutory purchase price as provided in Section 32-G of the Act?

III. If so, whether the tenant-purchaser has lost his right to avail of Section 32(1) and Section 32-G of the Act merely because of the tenant having lost actual possession of the said lands in implementation of Order dated 22nd October, 1957 based on "non est surrender-". Whether it is the mandate of law that the tenant must be in continuous possession of the land throughout as a condition precedent to his availing of Sections 32(1) and 32G of the Act? Whether the tenant-purchaser has no right to seek fixation of statutory purchase price merely because he is not in actual possession of the said land on the date of application made u/s 32G of the Act or the date when purchase price is fixed?

IV. What is the period of limitation in respect of an application for restoration of possession filed by a tenant-purchaser against his erstwhile landlord relying on certificate of purchase i.e. title deed as a statutory owner of the land obtained u/s 32M of the Act?

6. The relevant sections of the Act are extracted hereinafter for ready reference:

Section 15. (1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord:

Provided that such surrender shall be in writing, and verified before the Mamlatdar in the prescribed manner.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions, as are provided in Sections 31 and 31A for the termination of tenancies.

(2A) The Mamlatdar shall in respect of the surrender verified under Sub-section (1), hold an inquiry and decide whether the landlord is entitled under Sub-section (2) to retain the whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf.

(3) The land or any portion thereof, which the landlord is not entitled to retain under Sub-section (2) shall be liable to be; disposed of in the manner provided under Clause (c) of Sub-section (2) of Section 32-P.

Section 29(1). A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar. The application shall be made in such form as may be prescribed and within a period of two years from the date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be.

Section 32(1). On the first day of April, 1957 (hereinafter referred to as "the tillers" day") every tenant shall, subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if-

- (a) such tenant is a permanent tenant thereof and cultivates land personally;
- (b) such tenant is not a permanent tenant but cultivates the land leased personally; and
- (i) the landlord has not given notice of termination of his tenancy u/s 31; or
- (ii) notice has been given u/s 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March, 1957 u/s 29 for obtaining possession, of the land; or
- (iii) the landlord has not terminated this tenancy on any of the grounds specified in Section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March, 1957 u/s 29 for obtaining possession of the lands:

Provided that if an application made by the landlord u/s 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date":

Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to Sub-section (3) of Section 31 shall be deemed to have purchased the land on the 1st day of April, 1958 if no separation of his share has been effected before the date mentioned in that proviso.

Section 32-G.(1) As soon as may be after the tillers" day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon-

- (a) all tenants who u/s 32 are deemed to have purchased the lands,
- (b) all landlords of such lands, and
- (c) all other persons interested therein, to appear before it on the date specified

in the notice. The Tribunal shall issue a notice individually, to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant.

(3) Where any tenant fails, to appear or makes a statement that he is not willing to purchase that land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective:

Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of Section 32H and of Sub-section (3) of Section 63A:

Provided that where the purchase price in accordance with the provisions of Section 32-H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant's consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date, the Tribunal shall, as soon as may be after such date determine the price of the land.

(6) If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder hereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant.

Section 32-M. (1) On the deposit of the price in lump sum or of the last instalment of such price the Tribunal shall issue a certificate of purchase in the prescribed form, to the tenant purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. In the event of failure of recovery of purchase price as arrears of land revenue under Sub-section (3) of Section 32-K, the purchase shall be ineffective and the land shall be at the disposal of the Tribunal u/s 32-P and any amount deposited by such tenant purchaser towards

the price of the land shall be refunded to him.

(2) Where the purchase of any land has become ineffective for default of payment in time of the price in lump sum or in instalments, but the tenant-purchaser has nevertheless continued in possession at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964, then the purchase of the land shall not be deemed to be ineffective, until the Tribunal fails to recover the amount of the purchase price under Sub-section (3) of Section 32K.

7. I propose to first state my conclusions and then discuss the reasons for the conclusions arrived at. The conclusions arrived at by the Court after hearing the learned counsel on both sides and consideration of relevant material and the provisions of the Act are as under:

(a) The purported surrender of tenancy is liable to be treated as non est and of no effect whatsoever as the process of verification of surrender was not commenced prior to 1st April, 1957 and the statutory verification thereof was done by the Mamlatdar after 1st April, 1957. The purported surrender could not be treated as effective March, 1957 or 5th March, 1957. The verification of the purported surrender was done by the Mamlatdar only on 22nd October, 1957. The Mamlatdar had no jurisdiction to verify the purported surrender of tenancy after 1st April, 1957 since the tenant became owner of the land with effect from 1st April, 1957 by operation of 1st April, 1957, the tenants become statutory purchaser/owner of the said land with effect from 1st April 1957, the question of surrender of tenancy since then could not arise as no relationship of landlord and tenant subsisted between the parties with effect from 1st April, 1957. The question of law which was referred by the Division Bench of this Court to the Full Bench in this very case reads as under:

Whether the surrender of his tenancy by the tenant becomes effective from the date of endorsement of the surrender by the Mamlatdar or from the date of verification by him of the surrender of his tenancy?

After discussing large number of judgments and authorities on the subject and analysing the scheme of the Act and the Rules and considering the ratio of several judgments of the Apex Court, the Full Bench answered the said question as under:

The surrender of tenancy will be effective only from the date of its verification by the Mamlatdar u/s 15(1) of the Act read with Rule 9 of the Rules. The surrender will be effective from that date, notwithstanding that the endorsement on it is made at a later date. The endorsement will relate back to the date of surrender. The surrender will, however, not be effective from any date prior to the date of its verification.

Thus the purported surrender becomes effective from 22nd October, 1957 and not earlier. No surrender of tenancy could be effective after 1st April, 1957 as

stated above. The purported surrender is liable to be treated as non est. On this aspect, law declared by the Supreme Court in the case of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, is quite clear. In this case, it was held by the Apex Court that the language of Section 5(3)(b) and Rule 2(a) (i.e. the said provision being pari materia provision of the predecessor Act) was absolute and the surrender in breach of the said provision shall have to be treated as non est.

(b) Proceedings adopted by the landlords for evicting the "tenant-purchaser" of the land in question based on the above referred non est surrender, order for possession dated 22nd October, 1957 passed by the Mamlatdar accepting the impugned surrender and the Kabje Pavti in implementation thereof are all liable to be treated as ultra vires and without jurisdiction. I am fortified in this view by the judgment of Vaidya, J. in the case of Mahadeo Sitaram v. Ramchandra Yadav 1973 T.L.R. 79. It was held by our High Court in this case that if a surrender was made after the tillers' day, order for possession was ultra vires and without jurisdiction. It was held by our Court in this case that it was not necessary for the tenant to challenge such an order in appeal or revision and it could be challenged in any proceeding, including proceeding u/s 32-P of the Act when it was relied upon.

(c) The tenant is not disentitled to benefit of Sections 32 and 32-G of the Act merely because the tenant is not in actual possession of the land on 1st of April, 1957 or on the day when proceedings u/s 32-G of the Act commence or culminate. On this aspect of the matter, Miss Dandekar, the learned Counsel for the tenant, has relied upon the ratio of the judgment of the High Court of Gujarat in the case of Patel Shanabhai Vithalbhai Vs. Patel Bakorbhai Vithalbhai and Others, , delivered by N.P. Thakkar, J. (as his Lordship then was) and the principles formulated therein. In this case, the question before the Court was as to whether the tenant was not entitled to benefit of statutory purchase of the land u/s 32 of the said Act if the tenant was not in actual physical possession of the land on 1st April, 1957. It was held by the High Court of Gujarat that Section 32(1) of the Act did not prescribe any qualifying condition to the effect that the tenant must be in actual possession of the land on the tillers' day and in absence thereof the tenant did not acquire statutory ownership of the land u/s 32(1) of the Act. It follows from the ratio of this judgment that the tenant-purchaser could adopt proceedings for restoration of lost possession after completion of statutory purchase by payment of purchase price and after obtaining certificate of purchase u/s 32-M of the Act. I am in respectful agreement with the ratio of the said judgment and the principles formulated therein.

(d) The tenant concerned is entitled to establish that the so called surrender of tenancy is liable to be treated as non est in proceeding u/s 32-G of the Act. It is not correct to state that the Courts and authorities have no jurisdiction to adjudicate upon the question as to whether the surrender of tenancy propounded by the petitioner is non est or not and the only remedy available to the tenant in

this behalf was to file an appeal before the Prescribed Authority u/s 74 of the Act. Since the impugned surrender is liable to be treated as non est, non-filing of an appeal against the order accepting the surrender u/s 74 of the Act is of no consequence. It can be shown in any other proceeding that the impugned surrender is non est and every single step taken in pursuance thereof is ultra vires. Salutory provisions contained in Section 15 of the Act were made by the legislature to protect the illiterate tenants of agricultural lands and prevent their exploitation by the landlords who might obtain some sort of letter of surrender from the tenant concerned to his prejudice.

(e) The tenant-purchaser is entitled to seek restoration of possession of the land on receipt of certificate of purchase from the Tribunal after deposit of the purchase price. Period of limitation in respect of such application for possession based on such certificate of purchase would necessarily commence on date of issue of certificate of purchase. It is not correct to contend that the tenant-purchaser has lost his remedy to seek fixation of statutory purchase merely because of the tenant having not made an application for restoration of possession of land within a period of two years from the date of his dispossession secured by the landlord in consequence of a non est surrender. Even if it were to be assumed that Section 29(1) of the Act is to be applied to such a situation, in a case like this based on certificate of purchase, period of limitation in respect of application for possession would commence only after issue of certificate of purchase and not earlier. Such a cause of action is a distinct and different cause of action and not the same cause of action when the tenant makes an application for restoration of possession in his capacity as a tenant without possessing certificate of purchase in terms of Section 32-M of the Act. Since the learned Counsel for the petitioner has repeatedly and vehemently argued that respondent No. 1 has lost his right to make the statutory purchase by reason of having not filed an application for possession u/s 29(1) of the Act within two years from the date of his dispossession, it has become necessary to decide this question to cut short the future span of this unfortunate litigation although this aspect does not directly arise out of the impugned order of the Tribunal.

8. Shri Hombalkar, the learned Counsel for the petitioner, respectfully submitted that the view taken by the Full Bench of our High Court was not quite correct and the judgments of the Supreme Court on which he relied really assisted the case of the petitioner. I have not permitted Shri Hombalkar to urge this contention and re-open the question already decided by the Full Bench. The decision of the Full Bench is binding on the Single Judge. The decision of the Full Bench, is correct. I have gone through the said decision and also the decisions of the Supreme Court relied upon by Shri Hombalkar. I do not agree with Shri Hombalkar.

9. Shri Hombalkar, the learned Counsel for the petitioner, then submitted that the tenant could not impugn the validity of purported surrender in the proceedings in question taken u/s 32-G of the Act and the only remedy available to respondent

No. 1 was to file an appeal u/s 74 of the Act against the order accepting the surrender and the consequential order for possession passed by the authority. The learned Counsel for the petitioner has submitted that the consequential order dated 22nd October, 1957 passed by Mamlatdar after accepting the surrender has acquired finality in absence of an appeal u/s 74 of the Act and its validity cannot be now gone into in the present proceeding. It is not possible to accept this submission. I fully agree with the view taken by Vaidya, J. in the case of Mahadeo Sitaram v. Ramchandra Yadav 1973 T.L.R. 79 which, in substance, is supported by the observations made by the Hon'ble Supreme Court in the case of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, . I agree with the view taken by the Maharashtra Revenue Tribunal and the Additional Tahsildar and A.L.T. and hold that the orders impugned in this writ petition do not suffer from any error of law apparent on the face of the record. I hold that the impugned orders are just and in accordance with the Scheme, object and contents of the Act.

10. Shri Hombalkar, the learned Counsel for the petitioner, has relied upon Section 29(1) of the Act. Section 29(1) of the Act prescribes that a tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of the said Act may apply in writing for such possession to the Mamlatdar. The said section further provides that the application shall be made in such form as may be prescribed within a period of two years from the date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be. The said section is an enabling section. Perhaps the said section is not applicable to the case of an application made by the statutory purchaser who is no more a tenant since 1st April, 1957. The learned Counsel for the petitioner submits that since 30th January, 1958 the petitioners-landlords are in possession of the said land. The learned Counsel submits that the only remedy available to the tenant to seek restoration of possession was the remedy prescribed u/s 29(1) of the said Act within a period of two years from the date of dispossession. The learned Counsel submits that the said remedy is time-barred. The learned Counsel submits that no useful purpose shall therefore be served merely by accepting the purchase price from the tenant and directing issue of certificate of purchase when the remedy to seek restoration of possession has already become time-barred, on expiry of two years from 30th January 1958. I shall assume for the purpose of this argument that even the tenant-purchaser must file an application for possession within a period of two years from the date of "accrual of right to make such an application". A tenant-purchaser may have several remedies and several causes of action. Commencement of period of limitation in a proceeding for possession would depend upon the frame of the application and the nature and content of the right sought to be enforced. The fact of the tenant not being in actual possession of the land is no bar to the commencement and culmination of proceedings u/s 32-G of the Act. In my judgment, in such a situation, a fresh cause of action would accrue in favour of

the tenant-purchaser on receipt of such certificate. The tenant-purchaser can seek possession of the land on the basis of his title as a purchaser-owner thereof only after receipt of certificate of purchase u/s 32-M of the Act. It is arguing in a circle to contend that no certificate of purchase should be issued to the tenant-purchaser of the land as his remedy to sue for possession has already become time-barred. Period of limitation for such an application based on certificate of purchase can commence after issue of certificate of possession and not earlier. It is true that in the above referred Gujarat case, the tenant was dispossessed of the land few days prior to 1st April, 1957 and the direct question for consideration of the High Court of Gujarat was as to whether the tenant was not entitled to benefit of provisions relating to statutory purchase merely because of the tenant being not in actual possession of the land on 1st April, 1957. It was held by the Hon'ble High Court of Gujarat that the qualifying conditions prescribed by the Act for availing of Sections 32(1) and 32-G of the Act do not include the condition that the tenant must be in actual possession of the land before he can avail of the benefit of the above referred provisions. In my opinion, the principle laid down in this judgment is quite sound and it would apply also to this case. It makes no real difference as to whether the tenant was dispossessed of the land by the landlord prior to 1st April, 1957 or is dispossessed after 1st April, 1957. It does not matter as to whether the tenant was dispossessed of the land in consequence of an order which was ultra vires or whether the tenant was induced to surrender the land in contravention of the Act even voluntarily in a manner of saying it.

11. As a matter of fact, the case of respondent No. 1 is much stronger. If on 1st of April 1957, the statutory ownership of the said land vested in the erstwhile tenant by operation of law and the respondent No. 1 became deemed purchaser of the said lands, the respondent No. 1 could not be divested of such statutory ownership except in accordance with law. The learned Counsel for the petitioners has relied upon certain judgments of our High Court and Supreme Court. The learned Counsel relied upon the judgment of the Supreme Court in the case of Vallabhai Nathabhai Vs. Bai jivi and Others, . In this case it was held by the Apex Court that the tenant's remedy for restoration of possession of land in a case where the tenant had lost possession by virtue of surrender was u/s 29(1) of the Act and not u/s 84 of the Act. Section 29(1) prescribes the period of limitation of two years from the date when the right accrues to the tenant to make an application for possession. This case, with respect, is not an authority for the proposition that the right to make an application for possession in the case of a tenant-purchaser based on certificate of purchase issued u/s 32-M of the Act shall commence even from the date earlier to the issue of the said certificate of purchase. With respect, this authority is not directly on the point. The learned Counsel for the petitioner then relied upon the judgment of our High Court in the case of Baswant Motiram v. Ganpat Dhanaji 1975 M. L.J. 9. In this case, it was held by the Court that the tenant who had become a deemed owner of the land could apply for restoration of possession u/s 36(1) of the Bombay

Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 before completion of all steps to complete statutory ownership. This case is not an authority for the proposition that a dispossessed tenant cannot apply for possession of the land after issue of certificate of purchase. The tenant-purchaser has several rights- and several remedies under the Act in different situations.

12. The learned Counsel for the petitioner has also relied on the judgment of Palekar. J. (as H.L. then was) in the case of B.G. Bhoir v. G.Y. Mhatre 1967 T.L.R. 24. This case does not deal with the situation akin to our case where the purchase price is already fixed and direction is already issued to issue certificate of purchase on payment of purchase price. This case does not deal with the question as to when the period of limitation would commence in the case of a tenant-purchaser holding the requisite certificate" making an application for possession of land in further implementation of certificate of purchase.

13. In view of the Full Bench judgment of our High Court already quoted above, it shall have to be held that in this case the purported surrender is non est. I hold that the purported surrender is non est and contrary to the Act. No tenant or tenant-purchaser can be deprived of possession of land except in conformity with the provisions of the Act. In this case, the tenant-purchaser has been deprived of possession of the land in contravention of the Act and the tenant-purchaser is therefore entitled to restoration of possession of the land as a statutory owner thereof soon after completing his statutory title thereto. The tenant-purchaser may have several remedies available to him at several stages for restoration of possession of the land. One of such remedies available to the tenant-purchaser is to make an application u/s 32-G of the Act and obtain certificate of purchase from the Prescribed Authority as contemplated u/s 32-M of the Act before adopting of proceeding for restoration of possession. Even if the tenant concerned could have made an application for restoration of possession soon after his dispossession and even, before completion of the statutory purchase, that was not the only remedy available to the tenant concerned and it cannot be legitimately argued that proceedings for fixation of price of the land u/s 32-G of the Act should be held as incompetent merely because of the tenant having not made application for restoration of possession of the land within a period of two years from date of dispossession. It is not possible to deprive the tenant-purchaser of benefit of the Act on the basis of such a technical view which has no merit.

14. In the result, I hold that there is no merit whatsoever in this petition. I am conscious of the fact that the petitioners have filed a petition for special leave before the Honourable Supreme Court of India, being SLP (Civil) No. 5852 of 1988, against Judgment dated 25th January, 1988 delivered by the Full Bench of our High Court on the question referred to it by the Division Bench and the said petition is pending consideration before the Hon"ble Supreme Court. No special leave is still granted by the Apex Court. The learned Counsel for the petitioners has informed the Court that notice is directed to be issued by the Hon"ble

Supreme Court on the said SLP and the notice was made returnable within six weeks, but due to certain exigencies of situation the said petition for grant of leave is still pending. As a matter of fact, when this matter first reached hearing, the learned Counsel for the petitioners applied for adjournment of this petition. Having regard to the fact that this petition is perhaps the oldest petition pending in this Court under this Act, I refused to adjourn the petition and decided to dispose it of on merits and pass all consequential orders. The learned Counsel for the petitioners frankly informed the Court that the hearing of the present petition was not stayed by the Honourable Supreme Court and there was no legal impediment in disposal of this petition on merits in accordance with law.

15. In the result, the petition fails. Rule is discharged. Ad interim stay is vacated. It is hereby clarified that the interim injunction granted in Civil Suits Nos. 26 and 27 of 1974 shall not preclude the tenant-purchaser from applying for restoration of possession of land to the Appropriate Authority under the Act and pursuing the legal remedies available to the tenant-purchaser in accordance with law. There shall be no order as to costs in this petition.

16. If the tenant-purchaser i.e. heirs and legal representatives of original respondent No. 1, make an application for restoration of possession of the land to the Prescribed Authority after receipt of certificate of purchase on payment of purchase price in full relying on their title based on such certificate of purchase, such application shall be disposed of by the Mamlatdar within three months from the date of filing of the said application as this matter is now an ancient matter, if one may say so.

17. Respondent No. 1 duly represented by his heirs and legal representatives shall be at liberty to pay the purchase price in one lump sum. The Agricultural Lands Tribunal shall issue certificate of purchase as contemplated u/s 32-M of the Act forthwith on payment of such purchase price and shall not delay the matter on any ground whatsoever as it is already delayed for several decades.