

(1961) 12 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 401 of 1960

Madhaji Lakhiram

APPELLANT

Vs

Mashrubhai Mahadevbhai Rabari and Others

RESPONDENT

Date of Decision : 07-12-1961

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 1962 Guj 235 : (1962) 3 GLR 438

Hon'ble Judges : Desai, C.J.;N.M. Miabhoy, J;M.R. Mody, J

Bench : Full Bench

Advocate : S.B. Vakil, for the Appellant; M.R. Barot, M.C. Shah and V.J. Desai, for the Respondent

Judgement

Miabhoy, J.—Two questions arise for decision by this Full Bench. The first is whether a decision given by an appellate authority under Sub-section (5) of Section 88C of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereafter called the "Act") is or is not subject to revision u/s 76 of the Act by the Gujarat Revenue Tribunal. The second is whether the total income of the petitioner for disposing of his application for an exemption certificate, made under Sub-section (2) of Section 88C of the Act, is to be computed, under the circumstances of the case from the year beginning from 1st April 1956 and ending with 31st March 1957, or the year beginning from 1st September 1958 and ending with 31st August 1959.

2. At first it will be convenient to mention a few facts which led up to the writ petition in which the questions arise for decision. Petitioner Madhaji Lakhiram is the owner of a land, bearing survey No. 610, admeasuring 9 acres 26 gunthas, situated in the village Naya. Opponent No. 1, Mashrubhai Mabadevbhai Rabari (hereafter called the opponent simpliciter) is the tenant of the land. Petitioner filed before the Mamlatdar, Taluka Patan, Tenancy Suit No. 375 of 1957 u/s 29 Sub-section (2), read with Section 31 of the Act to recover possession of the land on the allegations he had duly terminated the tenancy and that he required the

land for personal cultivation. The suit was dismissed on 1st November 1957 by the Tenancy Mahalkari. Petitioner preferred to the Prant Officer, Patan, Appeal No. t. N. C./A. P. L. 133 of 1957. The appeal was dismissed on 5th July 1958. A revision petition was presented to the Bombay Revenue Tribunal and it was dismissed by it on 31st August 1959. Whilst these proceedings were pending, petitioner started a second set and this writ petition is directed against two orders passed in the course of this second set of proceedings. In 1958, petitioner filed before the Additional Mamlatdar Patan, an application No. 393 under Sub-section (2) of Section 88C of the Act, for an exemption certificate on the allegations that his estate did not exceed an economic holding and that his total annual income did not exceed Rs. 1,500/-. That application was dismissed by the Additional Mamlatdar by his order, dated 6th December 1958. He found that the total annual income of the petitioner exceeded Rs. 1,500/-. This income was calculated on the basis that the relevant year began on the 1st April 1956 and ended on the 31st March 1957. Petitioner preferred to the Additional Deputy Collector (Appeals), Mehsana, Appeal No. 250 of 1959. The appeal was allowed by him by his order, dated 24th April 1959. Before doing this, that officer had allowed petitioner to lead additional evidence in regard to his total annual income; but he had not allowed the opponent opportunity to rebut that additional evidence. The officer found that the total annual income of petitioner during the year 1956-57 was less than Rs. 1,500/- and that his total estate was less than an economic holding. From the above Order opponent preferred a revision application, being No. T. E. N. A. A. 898 of 1959, to the Bombay Revenue Tribunal. Before the Tribunal, petitioner raised the question as to the year with reference to which his total annual income was to be calculated. The Tribunal held that the relevant year was 1956-57. However the learned advocate for petitioner conceded before the Tribunal that in view of the fact that opponent had not been given an opportunity to rebut the additional evidence led by petitioner and permitted by the appellate authority, the appeal should be remanded. Accordingly, the Bombay Revenue Tribunal set aside on 7-11-59, the order of the Additional Deputy Collector, dated 24th April 1959, and remanded the appeal directing that it should be decided in the light of its judgment and in accordance with law, after the opponent was given an opportunity to lead rebuttal evidence. Accordingly, the matter went before the Additional Deputy Collector. That officer held by his order, dated 30th of April 1960, that, in the year 1956-1957, the total annual income of the petitioner exceeded Rs. 1,500/- and, on that ground, he dismissed the appeal and confirmed the order, dated 6th December 1958, of the Additional Mamlatdar. On 17th June 1960, a Division Bench of this High Court consisting of the then Chief Justice Mr. S. T. Desai, and myself, decided in *Pahyaji v. Dahiben* 1 Guj LR 1 that a decision of the Mamlatdar under Sub-section (3) of Section 88.C was not subject to revision by the Revenue Tribunal and that, similarly, an order passed in appeal from such a decision was also not subject to revision by the same tribunal. Petitioner says that, because of this decision, he was prevented from approaching the Gujarat Revenue Tribunal for redress of his grievance against the order of the Additional DEputy Collector, dated 30th of April

19.60 and, therefore, he filed the present writ petition on 21st July 1960. This writ petition is directed not only against the order of the Additional Deputy Collector, dated 30th of April 1960, but, also against the order of remand, dated 9th November 1959, passed by the Bombay Revenue Tribunal in Revision Application No. T. E. N. A. A. 898 of 1959. Petitioner prays that both the above orders should be quashed on the ground that, having regard to the decision of this High Court referred to above, the Bombay Revenue Tribunal had no jurisdiction to revise the order of the Additional Deputy Collector in appeal No. 250 of 1939 and to set it aside and to remand the proceeding for further disposal and that, as a consequence, the order, dated 30th April 1960, passed by the Additional Deputy Collector, after the remand, was equally without jurisdiction. This revision petition was entertained and a rule was issued by this Court. The opponent opposes the writ petition. The matter came up for hearing before a Division Bench consisting of My Lord the Chief Justice and Mr. Justice Raju. The learned counsel for the opponent argued before that Division Bench that the decision in *Dahyaji Kalaji v. Smt Dahiban* 1960 1 Guj LR 1 was not correct, and that a number of relevant provisions was not referred to and was not considered in that decision. The Division Bench felt that, prima facie, there was force in the contention of the learned counsel for the opponent. Accordingly, the learned Chief Justice directed that the matter be placed before a Full Bench of this Court for final decision. That is how the writ petition comes up for disposal before this Full Bench.

3. In order to appreciate the rival arguments on the first point, it is necessary to reproduce in full Section 88-C of the Act as it existed on 30th of April 1960. It is as follows:

"88C: (1) Nothing in Sections 32 to 32R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500/-:

Provided that the provisions of this sub-section shall not apply to any person who holds such land as a permanent tenant or who has leased such land on permanent tenancy to any other person

(2) Every person eligible to the exemption provided in sub-section (1) shall make an application in the prescribed form to the Mamlatdar within whose jurisdiction all or most of the pieces of land leased by him are situated, within the prescribed period for a certificate that he is entitled to such exemption

(3) On receipt of such application, the Mamlatdar shall, after giving notice to the tenant or tenants of the land, hold inquiry and decide whether the land leased by such person is exempt under Sub-section (1) from the provisions of Sections 32 to 32R.

(4) If the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form to such person.

(5) The decision of the Mamlatdar under Sub-section (3) subject to appeal to the Collector, shall be final"".

4. Section 88C was introduced by Section 48 of Bombay Act No. XIII of 1956. As first introduced, that section contained only two sub-sections. Sub-section (1) of this section was the same as it now exists on the statute book. However, Sub-section (2) was as follows:

"If Any dispute arises whether the total annual income of such person exceeds Rs. 1,500/-, the decision of the Mamlatdar or in appeal that of the Collector shall be final".

Section 88C was further amended by Section 32 of Bombay Act, XXXVIII of 1957. The amended section was the same which we have reproduced above as standing on the statute book on 30th of April 1960. It will be noticed from the amendment that Sub-sections (2), (8) and (4) were new sub-sections and Sub-section (5), as it now stands, existed as Sub-section (2) in the old section but in a different form.

5. The first question which falls to be decided by the Full Bench relates to the construction of Sub-section (5) of Section 88C as it existed on 30th of April 1960. The question for consideration is as to what is the true meaning of the word "final" used in that sub-section. The learned Chief Justice S.T. Desai, whilst construing that word, expressed himself as follows in 1960 1 GUJ LR 1 at pages 4 and 5, paragraph 8:

"This expression "final" has come up for consideration in the context of some other enactments, but it seems unnecessary to us to refer to those enactments. Speaking generally when it is said in an enactment that the decision shall be final, it must mean that the decision is not open to appeal or revision by any Court of correction. In its ordinary signification, the expression "final" means last or that it absolutely puts an end to or concludes a matter". The use of that expression would connote that further controversy on the question is precluded. Or to put the same thing somewhat differently, it connotes that there is to be finality to the proceeding. Whether regarded in any ordinary sense or in a technical sense, the expression in the present context must, in our judgment, mean that the legislature has ruled that the subject matter of the decision is to terminate with the decision of the Mamlatdar and in case there is an appeal, then with the decision of the Collector in appeal, The matter is not to be agitated any more before any authority Constituted under the Act. In our opinion, therefore, the Revenue Tribunal had no jurisdiction to entertain the revisional application and was patently in error in assuming it".

Mr. S. B. Vakil, the learned, counsel for the petitioner, supports these observations of the learned Chief justice. On the other hand, Mr. Barot, the learned counsel for the opponent, submits that the expression "final" has acquired a technical meaning and that that fact has been over-looked by the Division Bench. He submits that the technical meaning of the word "final" is "not

subject to appeal", and that, it does not mean and has never been held to mean "not subject to revision". He submits that there are a series of authorities in which it has been held that a decision made final by a statute is subject to revisional jurisdiction of Courts and Tribunals exercising such jurisdiction. In any case, Mr. Barot submits that the Division Bench has over-looked Section 212 of the Bombay Land Revenue Code, which, he submits, has been incorporated by reference in the Act itself by the Legislature. He submits that if Sub-section (5) of Section 88C of the Act is read along with Section 212 of the Bombay Land Revenue Code, then, it is quite clear that the intention of the Legislature was not to deprive the Bombay Revenue Tribunal of the jurisdiction conferred on it by Section 76 of the Act. Mr. M.C. Shah and Mr. V. . J. Desaj also appeared before the Full Bench in support of the contentions raised by Mr. Barot. They did so because they were appearing in some writ petitions, the decisions of which depended upon the construction of Sub-section (5) aforesaid. These learned advocates supported the submissions of Mr. Barot. There were many ramifications of the two submissions summarised by us above. We propose to deal with both the submissions and their ramifications presently.

6. The main contention is that the expression "final" is a technical" term and means only "not subject to appeal". In support of this contention, strong reliance is placed upon the case of Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another, . In this case, the Supreme Court was called upon to decide whether the High Court had or had. no power to consider the correctness of the order of the first appellate Court rejecting an appeal on the ground that the memorandum of appeal was not properly, stamped. Reliance was placed on behalf of the respondent upon Section 12 of the Court Fees Act which provided that decisions relating to Court-fees were final. At page 208 (of SCR): (at p. 32 of AIR) His Lordship Mahajan, J. made the following observations regarding the expression "finality".

"The word "finality" construed in the limited sense in which it is often used in statutes means that no appeal lies from an order of this character as such and it means no more than that".

A few sentences above these observations, another observation is made by His Lordship which is also relied upon with equal vehemence.

"If a decision u/s 12 is reached by assuming jurisdiction which the court does not possess or without observing the formalities which are prescribed for reaching such a decision, the order obviously would be revisable by the High Court in the exercise of revisional powers".

Strong reliance is also placed upon the decision in Vinayak Pandurangrao Vs. Sheshadasacharya Ramacharya, . In this case, a Court had made an order u/s 37 of the Bombay Agricultural Debtors" Relief Act, 1939, transferring execution proceedings pending before it to the Debt Adjustment Board constituted under the latter Act Section 37. provided that the decision of Courts on points whether

a person is a debtor under the Act and whether his debts were not more than Rs. 15,000/- was final. A revision application was preferred u/s 115 of the CPC from the order of the Court and a contention was raised that the revision application was barred u/s 37. of the Bombay Agricultural Debtors' Relief Act, 1939. This contention was repelled by the High Court of Bombay and reliance was placed upon a number of authorities of that High Court and some other High Courts. The relevant observations are at page 713 (of Bom LR): (at p. 62 of AIR) and they are as follows:

"The question is whether the use of the word 'final' in this section excludes the revisional jurisdiction of this Court. The revisional jurisdiction of this Court cannot be taken away except by express words or by necessary implication. This was held by West J. as far back as 1880 in *Tulsidas Dhunjee v. Virbussapa* ILR 4 Bom. 624, and the principle has been repeatedly affirmed by this Court and by other Courts on subsequent occasions; *Kirpa Singh v. Ajaipal Singh*, ILR Lah 165 : (AIR 1928 Lah 627) and *Gulam-husain v. De'Souza* 31 Bom LR 988: (AIR 1929 Bom 471). Section 37 does not in terms refer to the revisional jurisdiction of this Court at all. It only provides that the decision of the Judge on the points referred to in that section shall be final. The ordinary meaning of the word 'final' is that the decision is not subject to appeal. There are provisions in various Acts in which the words 'the decision shall be final' or the cognate words 'the decision shall be conclusive' are used, and yet the Courts have consistently held that these words do not bar the revisional jurisdiction of the High Court. Section 12 of the Court-fees Act provides that every question relating to valuation for the purpose of determining the amount of any fee chargeable on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum is filed, and such decision shall be final as between the parties to the suit. In *Vithal Krishna v. Balkrishna Janardan* ILR 10 Bom 610 , it was held by a full bench of this Court that such a decision of a Court, notwithstanding its declared finality is subject to revision by the High Court. In *Shiva Nathaji v. Joma Kashinath* ILR 7 Bom 841, the question of the revisional powers of this Court both under the CPC and under Regulation IT of 1827 was exhaustively considered by a full bench of this Court. In the course of his judgment West J. observed (p. 362):

"We may, from this judgment, gather with reasonable certainty the opinion of the highest present authorities, that the power of control almost essential to the conception of a Supreme Court cannot be divested except by the most express and pointed statutory provisions", though he went on to say that that power was not to be used by the High Court so as to supersede the lower Courts in their proper functions, by substituting its own judgment for theirs in matters committed to their jurisdiction by the Legislature, Elsewhere in the judgment he observed (p. 359) :

We can only say with confidence that when the Code says 'final' it speaks on the supposition that there has been a reasonable attention to its rules, and to

ordinary principles, in the previous proceedings."

thereafter, N. J. Wadia, J., who delivered the above judgment, proceeds to cite cases which construe the same expression as used in certain other statutes and, ultimately, winds up the discussion in the following words:

"There is thus ample authority for the view that the mere use of the words "shall be final" or "shall be conclusive" in an enactment does not have the effect of shutting out the revisional jurisdiction of this Court. The ordinary meaning of these words is merely that there shall be no appeal against such orders".

A number of other authorities, some of them cited in the aforesaid passage which we have quoted from the judgment of N. J. Wadia, J. were cited before us in support of the same proposition. It is not necessary to consider the effect of those other authorities. We have quoted in extenso from the judgment in *Vinayak Pandurangrao Vs. Sheshadasacharya Ramacharya*, because it brings out the main principles on which the Courts have acted in construing the word "final" in statutes. We may only observe that the word "final" as used in Section 12 of the Court-fees Act was construed in the case of *Shankar Maruti v. Bhagwant Gunaji* 49 Bom LR 72: (AIR 1947 Bom 259) in the same sense in which it was construed in 46 Bom LR 711: (AIR 1945 Bom 60).

7. The meaning of the word "final" as used in Section 5 of the Court-fees Act, 1870, has also been considered by the Bombay High Court in *Gangaram Tillockchand v. Chief Controlling Revenue Authority* 29 Bom LR 1511: (AIR 1927 Bom 643). Mr. Vakiy placed strong reliance upon the following observations of Marten, C. J. at page 1515 (of Bom LR) : (at p. 645 of AIR)

"Stopping for a moment at the words "final decision" in Section 5, we are of opinion that these words mean what they say. It is the ordinary way of expressing that no further appeal or revision is to lie, and We see no reason why a different meaning should be given to those words here".

In our judgment, the learned counsel for the opponent is right in contending that these words are only obiter dicta and that the observations in so far as they say that no revision would lie did not arise for decision of the Court in this case, the revisional jurisdiction of the High Court was not at all called in aid. The case was, in fact, an appeal from the judgment of a single Judge of the High Court of Bombay.

8. With reference to the cases relied upon by Mr. Baroi, Mr. Shah and Mr. Desai, we may generally observe that the word "final" has been construed in them with reference to the revisional powers of the High Court. The question for consideration in those cases and in the cases quoted, in *Vinayak Pandurangrao Vs. Sheshadasacharya Ramacharya*, was whether the jurisdiction of the High Court u/s 115 was barred by the use of the word "final" in the statutes in which it was used. The principle on which the word was construed in all these cases was the one stated by West, J. in ILR 7 Bom 341. The principle was that if the

Legislature intended to deprive the High Court of its revisional jurisdiction in any matter, then, it would do so by express words or by necessary implication.

9. It is quite obvious that the word "final" must necessarily be construed in the light of the provisions contained in Section 115 of the CPC when the question is whether the revisional jurisdiction conferred under that section on the High Court is barred. Now, u/s 115, the High Court is empowered to exercise its revisional jurisdiction, inter alia, if subordinate Courts exercise jurisdiction not vested in them by any law or if they fail to exercise any jurisdiction vested in them. It is obvious that, when an order is challenged on any of these two grounds, the mere fact that the Legislature has enacted that the order is "final", the jurisdiction of the High Court to set aside the order on any of these two grounds will not be excluded. What the Legislature has made final is an order which is made by the subordinate Court in exercise of its jurisdiction or an order which is not made in failure of the exercise of jurisdiction vested in it. If we compare the revisional powers conferred upon the Gujarat Revenue Tribunal u/s 76 of the Act with the revisional powers conferred upon the High Court u/s 115 of the Civil Procedure Code, we find that the aforesaid two provisions are absent in Section 76 of the Act. Section 76 of the Act does not confer on the Tribunal the two powers aforesaid which are conferred upon the High Court by Section 115 of the Civil Procedure Code. There is a third ground on which the High Court can also act u/s 115 and that is, when it finds that the subordinate Court has acted in the exercise of its jurisdiction illegally or with material irregularity. Though not exactly the same, a similar power is conferred upon the Gujarat Revenue Tribunal by Clause (c) of Section 76 of the Act, which enacts that if there is substantial defect in following the procedure prescribed by the Act which has resulted in the miscarriage of justice, the Tribunal can revise the order passed by the subordinate authorities. That is one of the factors which probably may have to be borne in mind in construing the word "final" in Section 88C, Sub-section (5). It is probably for the aforesaid reason that Their Lordships of the Supreme Court have emphasised in *Nemi Chand and Another Vs. The Edward Mills Co. Ltd. and Another*, that the High Court has the power of revising an order relating to Court-fees if the decision u/s 12 was reached by assuming jurisdiction which the Court did not possess or without observing the formalities which are prescribed for reaching such a decision.

10. But, the most important point which emerges from a consideration of the aforesaid cases is that they do not lay down as an absolute rule that the word "final" always means not subject to appeal". As stated in 1960 1 Guj LR 1 such is not the ordinary and grammatical meaning of that word". The dictionary meaning of that word would include "not open to revision". It is true that in *Vinayak Pandurangrao Vs. Sheshadasacharya Ramacharya, N. J. Wadia, J.* has stated that that is the ordinary meaning of the term. But it is noteworthy that Their Lordships of the Supreme Court have used a different language in connection with the ordinary connotation of that word. They have observed that the word "finality" is often used in statutes in the "limited sense" that no appeal lies,

meaning thereby that the ordinary meaning of the term includes more than "not subject to appeal.""" Therefore, though ordinarily, and in the absence of any other indication, it may be proper to construe the word "final" in its technical or limited sense, this is not so in all cases. Whether the word is used in its ordinary or limited sense must primarily depend upon the context in which the Legislature has used it.

11. For the aforesaid reasons, we have come to the conclusion that the answer to the question raised before this Full Bench cannot be given only by reference to the cases cited above. Of course, we must bear in mind that the word "final" is often used in a technical or a limited sense. But, before we can give effect to this principle, It is necessary first to examine the meaning of the word in the context in which the Legislature has used it. It is the context to which we must turn, in the first instance, to find out the true meaning of the word "final". If the context reveals that the Legislature intended to give the word a limited or a technical meaning, it is the duty of this Court to construe it that way. But, if the context reveals a different intention, then, this Court is by no means bound by the meaning attached to the word "final" by other decisions given with reference to different statutes and in different contexts.

12. Examining Sub-section (5) as a whole, it is quite clear that it deals with the effect of decisions of two authorities, (i) the Mamlatdar, and (ii) the Collector. It is also quite clear that that Sub-section gives finality to the decisions of both these officers. Now, if we were to give the word "final" a technical and limited meaning, then, with reference to the decision of the Mamlatdar, it would mean that the decision of the Mamlatdar is not subject to appeal. With reference to the decision of the Collector in appeal, it would mean that the decision of the Collector is not subject to appeal. Now, in our judgment, both these readings lead to absurdities. Sub-section (5) itself implies that the decision of the Mamlatdar is subject to an appeal to the Collector. In fact, it is so expressly provided in S, 74, Sub-section (1), Clause (w). If Sub-section (5) were to be read in the limited sense, it would mean that the Legislature had impliedly repealed by Sub-section (5) what it had expressly provided for in Section 74, Sub-section (1), Clause (w). Not only this, but the legislature would be guilty of gross inconsistency by stating in one and the same Sub-section and in one end the same breath that the decision of the Mamlatdar shall be subject to an appeal and also that it shall not be subject to an appeal. If the sub-section is considered with reference to the appellate decision of the Collector, then, the Legislature would be guilty of tautology inasmuch as there is no provision in the Act which provides for a second appeal from an appellate decision of the Collector. A revision is certainly provided for u/s 76 from an order of the Collector, but, there is no provision, for any appeal from his appellate order. If there is no provision in the Act for an appeal from the appellate order of the Collector, it is meaningless to state that the order is not subject to an appeal, How-ever, at the same time, having regard to the language of Sub-section (5), there is no doubt that the Legislature did intend to bar further proceedings from the decisions of the

Mamlatdars and the Collectors. The only further proceedings which could be taken from the decisions of the Mamlatdars under the Act are those contained in Section 76A of the Act and the only further proceedings against the decisions of the Collectors which could be similarly taken are those provided for in Section 76 of the Act. u/s 76A, the Collector has the power to revise the orders of the Mamlatdar and u/s 76, the Revenue Tribunal has the power of revising the orders of the Collectors. In view of the fact that these are the only two sets of proceedings which can be taken from the decisions of the Mamlatdars and the Collectors, prima facie, it appears that the intention of the Legislature, by enacting Sub-section (5), is to bar these revisional proceedings only.

13. In reply to the above line of reasoning, the learned counsel contended that it was not correct to say that the decisions of the Collectors were not appealable and that those of the Mamlatdars were appealable only under the Act. It was contended that such decisions were appealable firstly by reason of the provisions contained in Section 203 of the Bombay Land Revenue Code, 1879, (hereafter called the Code) and, secondly, by virtue of the provisions contained in Section 74, Sub-section (2) of the Act. Mr. M. C. Shah further contended that the expression "final" was intended to bar successive applications for exemption certificate and, in the context, it meant that such successive applications were barred.

14. Section 203, Bombay Land Revenue Code, 1879, enacts that : "In the absence of any express provision of this Act, or Of any law for the time being in force to the contrary, an appeal shall lie from any decision or order, passed by a revenue office under this Act or any other law for the time being in force, to , that officer's immediate superior, whether such decision or order may itself have been passed on appeal from a subordinate officer's decision or order or not". This section contemplates a hierarchy of revenue officers,--each officer in the hierarchy being subordinate to the one above him. It provides for an appeal from an original or appellate order of a subordinate revenue officer to his immediate superior officer. The appeals lie not only from orders and decisions passed under the Code, but even from those passed "under any law for the time being in force". This expression has been construed in *Sonu Janardan v. Arjun Barku Kunbi* 17 Bom LR 579 : (AIR 1912 Bom 17) ejusdem generis with the provisions of the Code. Mr. Vakil contended that the Act was not in pari materia with the Code and, therefore, Section 203 had no application. It is not necessary to examine the validity of this argument, because, in our judgment, the contention must fail on the ground that a Mamlatdar or a Collector, acting under the Act, is not a revenue officer within the meaning of Section 203 of the Bombay Land Revenue Code. The expression "revenue officer" has been defined in Sub-section (1) of Section 3 of the Code and that subsection, says that the expression means "every officer of any rank whatsoever appointed under any of the provisions of the Code & employed in or about the business of the land revenue or of the surveys assessment, accounts, or records connected therewith". Therefore in Order to answer the description of a revenue officer, it is not merely enough that

the officer must be appointed under the Code, but, it is also necessary that he must be employed in or about the business of one of the things mentioned in Sub-section (I). Now, the functions which are assigned to the Mamlatdar and the Collector under the Act do not fall within the purview of any of the matters, the employment in which makes the officer a revenue officer. The Act has been enacted mainly to amend the law which governs the relations of landlord and tenant of agricultural lands. " The functions which have been assigned to the officers mentioned in the Act are quasi-judicial in the main. Moreover, the expressions "Collector" and "Mamlatdar" are also defined in the Act in Clauses (20) and (10) of Section 2 of, the Act respectively. The definition of the word "Collector" states that it includes an Assistant or Deputy Collector performing the duties and exercising the powers of the Collector under the Code or "any other officer specially empowered by the state Government to perform the functions of the Collector under the Act", Similarly, the expression "Mamlatdar" has been defined to include a Mahalkari and "any other officer whom the State Government may appoint to perform the duties of a Mamlatdar under the Act". Therefore, under the Act, It is open to the State Government to appoint a non-revenue officer to be a Mamlatdar or a Collector for the purposes of the Act. It is quite clear that if and when such an officer is so appointed , he would not be a Mamlatdat or Collector within the meaning of the Code. If the argument of the learned counsel for the opponent were to be upheld, it would lead to a very odd or even an absurd situation. The right of a party aggrieved by a decision given under the Act would not depend upon the character of the decision but would depend upon whether the officer is a revenue officer or non-revenue officer. It is hardly probable that the Legislature could have intended such an odd result. Under the circumstances, having regard to the fact that a non-revenue officer can be a Mamlatdar or a Collector for the purposes of the Act, in our judgment, both such officers, acting under the Act, would be for the purposes of the Code non-revenue officers and their decisions would not be amenable to the provisions of Section 203 of the Code. There is another and an important indication that such was the intention of the Legislature. Section 74, Sub-section (1) of the Act specifies the orders and decisions of the Mamlatdar which are appealable. If the law was that every decision of the Mamlatdar was appealable and this is so if Section 203 of the Code applies, then, there was no necessity for the Legislature to enact Section 74, Sub-section (1) at all. If Section 203 of the Code applies to the decisions of the Collectors under the Act , then, it is quite clear that such decisions would be amenable so further appeals to the Commissioners and the State Government. But, We find that the decisions of the Collector under the Act are made subject to the revision of the Gujarat Revenue Tribunal u/s 76 of the Act. If the argument of the learned counsel for the opponent were to be upheld, it would mean that a decision of the Collector was simultaneously amenable to an appeal to the commissioner and/or the State Government and also to the revision by the Gujarat Revenue Tribunal. If this were the law, it is quite clear that it would lead to conflicting orders being passed by the two sets of authorities and such a conflict of laws was bound to create confusion in the administration of

the Act. It is hardly necessary to state that the Legislature can-not be presumed to have intended such an inconvenient and an absurd situation. Moreover, if the argument of the learned counsel for the opponent were correct, it would also mean that all the orders of the Mamlatdar and the Collector would be subject to be revised by the State Government and the other revenue officers superior to them in rank u/s 211 of the Code. If this was so, then, Section 76A of the Act would be superfluous as regards the orders of the Mamlatdars and Section 76 would be superfluous as regards the orders of the Collectors. It is hardly probable that the Legislature could have intended to create a superfluity. Unless there are strong grounds for reaching such a conclusion, prima facie, the presumption would be against any such indention being attributed to the Legislature. Moreover, the language of Sub-section (2) of Section 74 of the Act is against the contention of the learned counsel for the opponent. That section makes the provisions of Chapter XIII of the Code, in which Section 203 occurs, applicable "save as otherwise provided by this Act". As already pointed out, Sub-section (1) provides for appeals from a number of orders and decisions of the Mamlatdar. This is a provision in the Act itself which would exclude, under the aforesaid expression, Section 203 so far as the decisions of the Mamlatdars at least are concerned. Under the circumstances, we are not convinced about the validity of the argument that the decisions of the Mamlatdars and the Collectors are amenable to appeals u/s 203 of the Code.

15. The next argument was that the latter part of Sub-section (2) of Section 74 would attract Section 203 of the Code. We will quote Sub-section (2) in extenso.

"74 (2): Save as otherwise provided in this Act, the provisions of Chapter XIII of the Bombay Land Revenue Code, 1879, shall apply to appeals to the Collector under this Act, as if the Collector were the" immediate superior of the Mamlatdar or the Tribunal, x x x x x ".

The argument was that the first part of this subsection attracts the provisions of Chapter XIII of the Code as a whole and as this Chapter contains Section 203, that section is attracted too. In our judgment, this is not a natural reading of Sub-section (2). Sub-section (2) does not deal with the subject as to which orders or decisions are appealable. That is a topic which is dealt with by Sub-section (1) of Section 74 of the Act. What Sub-section (2) means is that, in case there is an appeal, to the Collector under the Act, then, the provisions of Chapter XIII of the Code shall be applicable to the appeal. Therefore the language of Sub-section (2) excludes the application of Section 203 of the Code. This is also excluded by reason of the saving clause which prefaces this Sub-section and the effect of which we have already considered, in the previous paragraph. The learned counsel for the opponent, however, contended that if the aforesaid narrow meaning is given to Sub-section (2), then, none of the sections in Chapter XIII of the Code can apply to an appeal to the Collector, It was contended that the matters provided for in Sections 205 to 210 were all expressly provided for in" the Act itself and, consequently, none of those sections would be applicable to an

appeal to the Collector we are not convinced about the validity of this argument also. It is true that quite a large number of the matters provided for in Sections 205 to 210 have been provided for in the Act, but, in our judgment, it is not correct to say that there is no area which has not been unprovided for. For example, the Act does not provide for the matter enacted In the proviso to Section 209 or In Section 210 of the Code. Under the circumstances, we are not in agreement with the argument that the construction which we have placed upon Sub-section (2) aforesaid would render the application of Chapter XIII of the Code superfluous.

16. Therefore, in our judgment, an examination of the provisions of the Code and the Act reveals that an appeal lies from the decision of the Mamlatdar made under Sub-section (3) of Section 88C only under Clause (w) of Sub-section (1) of Section 74 of the Act, and that, no appeal lies from the appellate decision of the Collector from the decision of the Mamlatdar and that no further appeal lies from the appellate order of the Collector under the provisions of the Code. In our judgment, therefore, the objections which we have pointed out in a previous part of the judgment to the construction sought to be placed by the learned counsel for the opponent survive and are not got over by the above line of reasoning of the learned counsel for the opponent.

17. Our attention was drawn to two other provisions of the Act in which the word "final" was also used. They were Sections 32J and 66D of the Act. The learned counsel for the opponent pressed us to examine that word in the context of these two sections and contended that the word "final" can only have been used in the technical or limited sense with reference to these two sections. Consequently, it was argued that the word "final" should also be construed in the same light in Section 88C. Sub-section (5). We do not propose to undertake this task for more than one reason. It is true that the ordinary presumption is that the Legislature, as a general rule, uses a word or expression in the same sense in one and the same enactment. It is also equally true that the examination of the meaning of a word or expression in one part of an enactment may throw light in doubtful cases in the construction of the very same word or expression in another part of the enactment. But, the Act is, as has been remarked by a number of learned Judges, a difficult Act to construe. It shows traces of hasty draftsmanship. It has been subjected to a series of amendments, so many times, that the result has been that the strands of various sections have become disjointed from one another and, in some cases, continuity has become impaired and, on the whole and often it has become difficult to have a consistent and integrated picture about the intention of the Legislature. But apart from these general considerations, we do not think that the aforesaid investigation will serve any useful purpose in view of the fact that we have examined the expression "final" in Sub-section (5) aforesaid in the light of its own context and the other relevant provisions of the Act and found that, in the context in which the word is used, a construction in the limited sense leads to an absurdity.

18. The next argument was based upon Section 2, Sub-section (21) of the Act. That sub-section states that "Words and expressions used in this Act but not defined shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879, and the Transfer of Property Act, 1882 as the case may be". Section 212 of the Code is as follows:

"Whenever in this Act it is declared that a decision or order shall be final, such expression shall be deemed to mean that no. appeal lies from such decision or order.

The State Government alone shall be competent to modify, annul or reverse any such decision or order under the provisions of the last preceding section".

The last preceding section referred to in Section 212 is Section 211 of the Code which deals with the power of the State Government to revise the orders of the subordinate revenue officers.

19. The argument was that, inasmuch as the expression "final" has not been defined in the Act, the definition of the same expression in Section 212 will govern the Construction of that word in Section 88C Sub-section (5) of the Act. The argument is prima facie attractive, but, in our judgment, on a close scrutiny, it must totally fail. In the first instance, under. Section 2 Sub-section (12) of the Act, what is applied is the definition in the Code and, not a fiction created therein. The language of Section 212 shows that that provision is not conceived as a definition of the expression "final". The definitions to the Code are to be found in Section 3 thereof. That section does not contain any definition of the word "final". If the word "final" had been defined in that section probably, the argument would have required a serious consideration. Secondly, Section 212 is not intended to deal with the word "final" alone. It deals with the legal effect of a declaration in the Code about the finality of a decision or an order. What it says is that if the Code declares "that a decision or an order shall be final" then, such an expression shall be deemed to have the meaning assigned to it in the section. In other words, the section creates a fiction that a declaration in the Code that an order or decision is final shall mean that the decision or order would not be subject to an appeal. But even if the argument had any validity on its own merits, in the context of Section 88C Sub-section (5), the argument must fail, because, in that contingency, the argument will not carry one any further than the argument initially advanced and the validity of which W0 have already considered. We have shown how the substitution of the expression "not subject to appeal" for the word "final" in Section 88C, Sub-section (5) leads to an absurdity and a superfluity. Section 2 of the Act states that the definitions given therein shall apply unless there is anything repugnant in the subject or context. In our judgment, for the reasons which we have already discussed, there will be a repugnancy between the definition and the context if Section 212 of the Code were made applicable in the sense in which it is contended for by the learned counsel for the opponent

20. In our Judgment the argument relating to the applicability of Section 212 does not carry the case of the opponent any further for another reason also. In fact, the argument deals a death blow to the case of the opponent. It is quite clear to us that if Section 212 is to be applied at all, then, the whole of it must be applied and not merely a part thereof. The second part of Section 212 makes it clear that if a decision or order is declared to be final, it shall be deemed not only to mean that it is not subject to further appeal, but that it shall also mean that it shall not be subject to any revision except by one authority and that is the State Government. In that view of the matter, a decision u/s 88C Sub-section (5) would not be subject to the revisional jurisdiction of either the Collector u/s 76A or of the Tribunal u/s 76 and the only authority which will have the right to revise, the decision will be the State Government and no other authority. In that view of the matter also, the impugned order of the Bombay Revenue Tribunal passed on 7th November 1959 will be without jurisdiction.

21. An argument was* advanced by Mr. V. J. Desai on the basis of Section 86 of the Act. That section provides for the control of the State Government over the Mamlatlars and the Collectors acting under the Act. It enacts that the State Government shall have the same control and authority over these officers as it has over them in the general and revenue administration of the State. It was contended that this provision also would make the decisions of the Mamlatdars and the Collectors subject to appeals to the State Government. Even assuming, without deciding, that this section gives control to the Government over judicial matters, we cannot agree that the section confers a right of appeal to the State Government upon the aggrieved persons. An appeal is a creature of statute. Unless a statute provides for an appeal, no right is created in favour of any one to prefer an appeal. At best, Section 86 would confer a power on the State Government to revise the orders of the officers aforesaid and, as already shown the existence of such a power in the State Government cannot affect the validity of the submission that the Revenue Tribunal had no jurisdiction to pass the impugned order.

22. The expression "final" was used in Sub-section (4) of Section 24 of the Bombay Tenancy Act, 1939. Mr. Desai submitted that that expression came up for construction before a Division Bench of the High Court of Bombay consisting of Tendolkar and Kotval, JJ. in Special Civil Appln. No. 2303 of 1958 (with Special Civil Applns. Nos. 2999 to 3007 of 1956, D/- 10-4-1957 (Bom)), and that that expression was construed as meaning "not subject to an appeal" by the learned Judges. The argument was that the Bombay Tenancy Act, 1939, was in pari materia with the Act and that, therefore, the expression "final" should be construed in the same light as it was construed in the cognate Act of 1939. We have looked into the decision relied upon by Mr. Desai. However in our judgment, though the point is touched by the learned Judges, the same is not actually decided by them.

23. The learned counsel for the opponent and the other counsel supporting him

argued that the word finality was intended, to be applied not to the decision of the Mamlatdar, but to the decision of the Collector. We do not think we can accept this argument. If such was the intention, of the Legislature, then, there would not have been any reference to the decision of the Mamlatdar at all in the sub-section nor would it be worded in the manner in which it is actually worded.

24. Mr. V. J. Desai contended that Sub-section (5) of Section 88C had been subsequently repealed by the Legislature by the Amending Act XVI of 1960. This Amending Act was passed soon after the Division Bench delivered its judgment in 1960-1 Guj LR 1 on 17th June 1960. His contention was that the section was repealed because the Legislature found that the interpretation placed by this Court on Sub-section (5) was not correct. In order to establish this, Mr. Desai Wanted us to refer to the aims and objects of the Amending Act. We do not think we can do this. We notice that the above Amending Act made amendment not only to Section 88C, but also to a number of other sections. Moreover, the fact that the Legislature amends or repeals a certain section does not necessarily mean that the Legislature has found an interpretation of a Court of Law wrong. The Legislature may have been motivated to amend the legislation for more than one reason. If the Legislature had found that the interpretation placed by the High Court was not the correct interpretation then one would expect it to give a retrospective effect to the amending section and would expect it to make it clear that the Revenue Tribunal had jurisdiction during the course of the whole existence of Section 88-C(5) to revise the orders made by the Mamlatdars under Sub-section (3) of Section 88C, and the orders passed by appellate authorities in appeals from, the orders made by Mamlatdars under the same sub-section.

25. Mr. V. J. Desai also cited the following passage from Craies on Statute Law, 5th Edition, at page 158, in support of his contention that the word "final" must be construed in the same sense in which it was hitherto construed by case-law. This is what Craies says:

"There is a well-known principle of construction, that where the Legislature uses in an Act a legal term which has received judicial interpretation, it must be assumed that the term is used in the sense in which it has been judicially interpreted"

The rule is sound and unassailable. But, Mr. Desai in quoting the aforesaid passage ignores that the learned author, after quoting the aforesaid passage from Jay v. Johnstone (1893) 1 QB 25 immediately thereafter proceeds to qualify the statement by saying "unless a contrary intention appears".

26. The argument of Mr. M. C. Shah that Sub-section (5) of Section 88C of the Act was introduced to bar successive applications under sub Section (2) does not impress us. The language of Sub-section (5) does not justify the submission that it was intended to embrace within its purview any rule of res Judicata. If such was the Intention, then, Sub-section (5) would have been quite differently worded and it would have been said that a second application under Sub-section

(2) was barred by the principle of *resjudicata*. Moreover, as we have already shown, the present Sub-section (5) already stood as Sub-section (2) substantially in the same form in which it stands now before the present Sub-sections (2) to (4) were introduced. It is quite clear that, at the time when the original Sub-section (2) was first introduced before the aforesaid amendment, the Legislature could not have in mind any application under Sub-section (2) which was not in existence.

27. For the aforesaid reasons and on a review of all the relevant provisions and consideration of all the relevant arguments, we have come to the conclusion that the expression "final" is not used by the Legislature in Section 88C, Sub-section (5) in the limited or technical sense of "not subject to appeal", but that it is used also in the wider sense of "not being subject to revision"

28. The above conclusion is supported by the legislative history of Sub-section (5) of Section 88C of the Act. Under the Amending Act XIII of 1956, the whole of the decision of the Mamlatdar u/s 88C or of the Collector in appeal was not made "final". Only that part of their decision was made final which related to the total annual income of the landlord. If the expression "final" was intended to be equivalent to "not subject to appeal" only, could the Legislature have intended to exclude the decision relating to an economic holding from the revisional jurisdiction of the Revenue Tribunal? Section 88C was recast and enacted in the present form by Bombay Act No. XXXVIII of 1957. Sub-section (5) came to be enacted in the present form for the first time by this Amending Act. Section 76A was also introduced for the first time by the same Amending Act. By this section the Legislature conferred powers of revision on the Collector over those orders in respect of which no appeals were filed. If the Legislature intended that, u/s 88C, Sub-section (5), the Collector should have the power of revising the order of the Mamlatdar, it would be very odd that the Legislature in the same breath should repeat Section 88C, Sub-section (5) and say that the same order shall be final. In such a contingency, the Legislature would have omitted Sub-section (5) of Section 88C altogether. Instead of this, we find that the Legislature extended the scope of Sub-section (5) aforesaid by including within its ambit not only the decision relating to the total income of the landlord, but also the decision relating to economic holding.

29. The answer to the second question must depend upon a combined effect of Section 88C and 32 of the Act. It will be better if we analyse first Section 88C which we have already quoted in extenso in an earlier part of this judgment. Then we shall analyse Section 32 (1) of the Act which is relevant for the purpose of disposing of the question in hand. Thereafter, we propose to examine the validity of the submissions made by the learned counsel on both the sides. The submission of Mr. Barot was that, in order to succeed in his application for exemption certificate, the petitioner must establish that his total annual income did not exceed Rs. 1,500/- in the year preceding the day mentioned as "the tillers' day" in Section 32(1) of the Act. On the other hand, Mr. S. B. Vakil

contended that the petitioner was required, to establish that his total annual income did not exceed the above amount in the year preceding the date mentioned as "the postponed date" in the proviso to Section 32(1) aforesaid.

30. Analysing Section 88C, it is quite clear that Sub-section (1) thereof applies to land leased by any person. In order that that sub-section may apply, it is necessary that two conditions must be satisfied (I) the land must not exceed an economic holding and (II) the total annual income of the landlord, including the rent of such land, should not exceed Rs. 1,500/-. The section states that, if these two conditions are satisfied then the effect thereof will be that Sections 32 to 32R shall not apply to such land. The proviso to Sub-section (1) of Section 88C makes it clear that the provisions of that Sub-section do not apply to lands held on permanent tenancy. The object of Sub-section (1) is to exempt lands covered by that sub-section from the provisions of Sections 32 to 32R. The landlord is brought into the picture only in so far as it is necessary to fix :the land which earns the exemption. That land becomes exempt from the provisions of Sections 32 to 32H the owner of which fulfils the two conditions mentioned above, viz. that he does not hold an estate exceeding an economic holding, and his total annual income does not exceed Rs. 1,500/-. Sub-section (2), however, introduces one more condition which is to be satisfied before a land can earn the exemption. Sub-section (2) provides that (1) on application in the prescribed form should be made to the Mamlatdar by the person eligible for exemption and (ii), that the application must be made within the prescribed time. It is quite clear from this Sub-section that even if a landlord satisfies the two aforesaid conditions he will not be able to earn an exemption in respect of his land unless he also makes an application for exemption within the prescribed period. If an application happens to be made for exemption, then, the duty of determining whether an exemption can or cannot be given, is cast upon the Mamlatdar. The point which is to be determined by the Mamlatdar is mentioned in Sub-section (3) and that is "whether the land leased by such person is exempt under Sub-section (1) from the provisions of Sections 32 to 32R" Sub section (4) states that if the Mamlatdar decides that the land is so exempt, then, he "shall issue a certificate in the prescribed form to such person". The form of the certificate is prescribed at Form No. XXV of the rules made by the State Government under the Act. The relevant part of that Form is as follows:

"Now, therefore, I Shri Mamlatdar of hereby certify that the said land is exempt under Sub-section (1) of Section 88G from the provisions of Sections 32 to 32R of the B.T. and A.L. Act, 1948".

Reading "Section 88C as a whole it is quite clear that, although the exemption is made dependent upon the landlord fulfilling the two conditions mentioned therein, the result of the fulfilment of those two conditions is that the land of the land lord becomes exempt from the provisions of the sections mentioned therein. In, other words, the exemption attaches to the land and not to the landlord, although it is the landlord who, in the ultimate analysis, gets the benefit of the

exemption.

31. But, the section read as a whole does not answer the question raised for the decision of the Full Bench. The section does not state in terms as to with regard to which particular period of time the annual income of the landlord has got to be calculated for the purpose of deciding the question as to whether the condition relating to income has or has not been satisfied by the landlord. It will be noticed that the same lacuna exists also with reference to the question whether, the landlord does or does not possess an estate which is not in excess of an economic holding. The answer to these two questions, therefore, must be found not in Section 88C, but, in some other section or sections of the Act; if at all; there are any furnishing an answer to them.

32. The learned counsel on both the sides are agreed that, having regard to the facts of the present case, that answer must be sought, in the first instance in Section 32, Sub-section (1) of the Act. That Sub-section deserves to be quoted in extenso;

"32 (I) 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, it--

(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 Gujarat 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"

Then follows another proviso which it is not necessary to quote as it is not relevant for the purpose of deciding the point in hand.

33. Section 32 enacts a legal fiction. The fiction which it creates is one of purchase of demised land by a tenant. The fiction comes into operation on the 1st day of April 1957, called "the tillers" day". The main part of Sub-section (1), therefore, enacts that On "the tillers" day" the tenant shall be deemed to have become the owner of the demised land. But, the fiction is hedged in by conditions. Every tenant does not become the owner of the land held by him as a tenant. Only those tenants who fulfil the conditions mentioned in Clauses (a) and (b) will become the owners of the demised lands. Clause (a) deals with a permanent tenant and Clause (b) deals with a non-permanent, tenant. There is one common feature between both these categories of tenants in so far as the application of the fiction is concerned. Both, these categories of tenants must cultivate their lands personally in order to become the owners of lands, to the case of a permanent tenant, he becomes the owner on "the tillers" day" if he cultivates the land personally; but, in the case of a non-permanent tenant, the fulfilment of this condition alone is not enough. The non-permanent tenant must fulfil some other conditions. One condition is that his "landlord must not have given him a notice of termination of tenancy u/s 31 or, if he has given him such a notice, the land-lord must not have applied u/s 29 to the Mamlatdar on or before the 31st March 1957 for obtaining possession of the land or the landlord must not have terminated his tenancy on any of the grounds, specified in Section 14 or, if he has so terminated the tenancy, he must not have applied to the Mamlatdar on or before 31st March 1957, u/s 29 for obtaining possession of the land. The first proviso obviously deals with a case which does not fall within the purview of Sub-Clauses (i), (ii) and (iii) of Clause (b). It deals with a situation which arises out of an application having been made by a landlord u/s 29 for obtaining possession of the land. It says that if such an application has been rejected by the authority empowered to do so, then, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. It follows from this that, if the application u/s 29 is granted, the tenant shall not be the Owner of the land on "the tillers" day". If, on the other hand, the landlord is unsuccessful, then, according to this proviso, the event becomes postponed till the date of the final order of rejection. It is quite clear that the proviso has been enacted to meet a situation which had acquired fluidity on account of an application by the landlord having been made u/s 29 for obtaining possession of the demised land. If any such application happens to be pending on the tillers" day, nobody can anticipate on that day as to how the competent authority will decide the application. It is quite clear that, in such a contingency, the question as to whether the tenant was a tenant on the tillers" day or not would depend upon the fate of the aforesaid application. If the application comes to be rejected, the legal effect thereof would be that the tenant was a tenant on the tillers" day. If the application comes to be allowed, then the person was not a tenant on that day. The Legislature obviously did not intend to benefit a person who was not a tenant on the tillers" day. It is equally clear also that the Legislature did not intend to prejudice the position of a tenant whose landlord has smarted proceeding against him and which proceeding was pending and

which proceeding ultimately proves him to be a tenant of the land. It is obvious that during the pendency of that application, the tenant, though in effect a tenant in law, could not have enforced his right as such on account of the pendency of the application and the uncertainty created thereby. Therefore, the Legislature introduced the first proviso to make it clear that the right conferred upon a tenant under Sub-section (1) is not lost to him on account of the pendency of the application. The proviso was necessary to be enacted because, in the case of a non-permanent tenant, the Legislature required the conditions mentioned in Sub-Clauses (i), (ii) and (iii) to be fulfilled,. The Legislature, having enacted that a non-permanent tenant will become an owner if the landlord has not given notice of termination or having given one had not started proceedings u/s 29 had necessarily to provide for the sake of completeness for a tenant to whom such a notice is given and against whom such a proceeding is started but which proceeding, ultimately, terminates in his favour.

34. From the above analysis of Sub-section (1), Section 32, it is quite clear that the ownership of the demised land vests in a tenant, fulfilling the conditions mentioned therein, On the tillers" day. This conclusion cannot be denied for the simply reason that the first condition which is common to both the permanent and the non-permanent tenant must be fulfilled by the tenant on the tillers" day. In other words, both the permanent and the non-permanent tenant must have been cultivating the land personally on the tillers" day. This is the sine qua non which all the tenants, permanent or otherwise, must fulfil to acquire ownership of the demised lands. The non-permanent tenant must necessarily fulfil this condition in addition to the other conditions laid down in Sub-clauses (i), (ii) and (iii) of Clause (b). It is also equally clear that, where a case does not fall under Sub-clauses (i), (ii) and (iii) but falls under the proviso, the condition, of personal cultivation must also be fulfilled in that case on the tillers" day. This means that the first proviso is an amplification of the provision contained in Sub-clauses (ii) and (iii) and that proviso does not affect the main provision in the first part of Clause (b) aforesaid. Therefore, in order to become the owner on the tillers" day, a non-permanent tenant must fulfil the condition of personal cultivation on that day, whether the landlord" has or has not given notice of termination of tenancy either u/s 31 or Section 14 of the Act. If this is the correct interpretation of Section 32, Sub-section (1), then having regard to our conclusion that the exception mentioned in Section 88C applies more to land than to person, it is quite clear that if the landlord wants to claim exemption from the operation of Section 32, Sub-section (1), in respect of his land he must make good his claim for exemption on the tillers" day. If he fails to do so, then, the land does not become subject to exemption and the tenant will become the owner thereof on that day. In the case of a tenant whose case falls within the proviso, although, on the tillers" day he does not become the owner and, becomes the owner on the postponed date, he could do so on" the latter date provided he was personally cultivating the land on the tillers" day. That being the position, the postponement of the date of ownership has no relevance on the question of the date on which

exemption is to be claimed by the landlord from the operation of Section 32, Sub-section (1). In our judgment, If any other view, is taken on this subject, then, it will be tantamount to putting premium, upon the course of action of a landlord and of permitting him to alter the rights of his tenant by resort to a proceeding which is ultimately found to be unjustified by a competent authority. During the pendency of the proceeding, a landlord can devise means to filter his position in such a way as to fulfil the conditions laid down in Section 88C, though he might not have fulfilled the same on the tillers" day. The date of purchase becomes postponed for no fault of the tenant it becomes postponed entirely on account of the action of the landlord. If a landlord were to be given advantage of his course of action, which is found ultimately to be wrongful, then, the Legislature will be guilty of having connived at or condoned an action of the landlord which is found to have been unjustified by a competent authority. Unless compelled to do so, such an intention can-not be attributed to the Legislature. Moreover, such an interpretation will permit a dishonest landlord to commit fraud on the tenant and the authorities. For, it is easy to envisage that a landlord, by" protracting the proceedings before the revenue and other authorities, can, in the meantime, alter his own position in such a manner as to bring his case within the purview of Section 88C on the date on which his application u/s 29 comes to be finally decided, even though the true situation on the tillers" day was that he was not entitled to any such exemption, We would require very strong reasons to construe Sub-section (5) of Section 88C. In such a way as to put a premium upon the fraud or refractoriness of the landlord. For the above reasons, we have no doubt that the landlord who claims exemption u/s 88C must fulfil the condition of annual, income mentioned therein with reference to the year preceding the tillers" day and not the postponed date or any other date.

35. As we have already stated, Section 88C does not specify the date with reference to which the estate of the landlord must not exceed an economic holding. Having regard to our conclusion that the exemption attaches to land it is obvious that the question as to the extent of an estate must have reference to land before it becomes of the ownership of the tenant, i.e. before the tillers" day. If this is so with reference to the extent of the estate, it is hardly probable that the Legislature should have intended a different date to be taken into account whilst determining the total annual income of the landlord. Whilst determining this question with reference to Section 32, we do not see anything either in Section 88C or Section 32 (1) which will justify the view that the total annual income of the landlord must be determined differently as the case falls under Sub-section (1) of Section 32 or the proviso thereof. In our judgment, in respect of all lands held by tenants answering the description laid down in Clauses (a) and (b), the Legislature Intended that the tenants should become their owners, but that, as there was a likelihood of the land in respect of which proceedings are pending being, held as not being subject to any lease, the Legislature shifted the date on which the tenant was to become the owner to the date on which the final decision was given by the authority concerned in favour of the tenant. However,

we see no, reason for believing that whilst the Legislature shifted this date for the aforesaid reason, it also intended to shift the date for the purposes of Section 88C when, as we have already pointed out, the effect of such a construction would be to put the landlord at an advantage over his tenant by permitting the landlord to create a situation which would deprive the tenant of the benefit of the land which otherwise he would have obtained if the landlord had not taken the action which ultimately was found to be not justified by law.

36. The submission of Mr. Vakil was that, though the first proviso was enacted as a proviso, in reality, it was not so, but that it was an independent part of Sub-section (1) and dealt with a case or a situation which was not provided by any previous part of Sub-section (1). His argument was that, if Sub-section (1) was read without the first proviso, then, it was clear that the tenant, against whom an application u/s 29 of the Act was made would not become the owner on the tillers' day on the ground that the conditions mentioned in Sub-clauses (i), (ii) and (iii) had not been fulfilled. He, therefore, contended that the proviso provided for a totally different category of tenants whose case had not been provided for by the first part of Sub-section (1). We cannot agree With this submission. In our judgment, the proviso deals with the same category of non-permanent tenant as the whole Clause (b) does and that the Proviso completes that which logically remained to be provided for by the enactment of Clauses (ii) and (iii). Having provided for the cases of those tenants against whom proceedings had not been started, the Legislature necessarily had to provide for these cases in which such proceedings had been started. True, the same could have been provided for by a separate sub-clause. But, that does not affect the true meaning of the proviso. Probably, the Legislature did not adopt the aforesaid method for reasons of draftsmanship. It is not improbable that the Legislature felt that if it were to do so, the sub-clause might become clumsy or obscure. Whatever may be the reason, we have no doubt that the proviso completes that which was unprovided for In the previous part for the same category of a non-permanent tenant.

37. The argument that the proviso in the sub-section is independent of the provision in the main Sub-section (1) is not correct for another reason also. The main provision in Sub-section (1) is made subject to the other provisions of the same section. This would undoubtedly include the proviso. Therefore, in construing the proviso, it will be improper to construe it independently of the main provision of Sub-section (1). In order to get at the true and correct meaning of the sub-section as a whole and of the proviso, in particular, the whole Sub-section and the proviso must be read together as one unit and the intention of the Legislature must be thus determined.

38. That the proviso is not an independent provision is also quite clear from the first part thereof which refers to an application u/s 29 for obtaining possession of the land. The expression "land" in this phrase must necessarily mean the land which is referred to in the main part of Sub-section (1) - and specially - the same

expression "land" used in Sub-clauses (ii) and (iii). There cannot be any doubt that that expression means the land in the case of a non-permanent tenant which that tenant cultivates personally. The same expression "land" also occurs in a later part of the proviso, and there is no doubt that the term "land" used by the Legislature in the main part of the section and the proviso refers to the land which is covered by the main part of Sub-section (1), viz. a land which answers the description of the land mentioned in Clauses (a) and (b).

39. That the proviso carves out something from the main provision is also clear from the fact that a person who becomes the owner on the postponed date must necessarily have been a tenant on the tillers" day. On a reading of the section as a whole, there cannot be any doubt that the person who was not a tenant on the tillers" day, cannot derive any benefit on the postponed date.

40. The next argument of Mr. Vakil was that though Sub-section (1) stated that every tenant should become an owner, in effect, it did not deal with the case of every tenant. He argued, that, if the section were read as a whole, it would show that it did not deal with all tenants but that it dealt with only some specified categories of tenants." Therefore, he argued that the main part of Sub-section (1) did not necessarily include a tenant against whom proceedings u/s 29 of the Act were started. It is true that Sub-section (1) does not make every tenant an owner. It deals with only specified categories of tenants, i.e. the tenants who fulfil the conditions laid down therein. But, this in our judgment, cannot remove the case of the tenant provided for in the proviso from the purview of the main Sub-section (1). If Sub-section (1) and the proviso are read together, as one unit, as already pointed out by us, as they should be, then, the proviso is clearly intended to give the benefit of Sub-section (1) to a tenant against whom proceedings u/s 29 of the Act were started, but, which proceedings were pending on the tillers" day and ultimately failed.

41. Another submission of Mr. Vakil was that the proviso carved out an exemption to a case provided for under Sub-clause (iii) and not Sub-clause (ii). We do not think we can agree with this submission. This submission is totally opposed to the language of the proviso, In our judgment there is direct connection between Sub-clause (ii) and the proviso In the same manner as there is a direct connection between that proviso and Sub-clause (iii).

42. The next contention, of Mr. Vakil was that Section 88C carved out an exception to each of the Sections 32 to 32R and therefore, Section 88C must be construed in such a way that it would be applicable not only to Section 32 (1), but also to the whole gamut of sections aforesaid. He said especially that the question about the period of the total annual income must be as decided as would fit in not only with the provisions of Section 32(1), but, also with Sections 32F and 32G of the Act which deal also with the question of the tenants becoming the owners of the demised lands. He argued that, if the year before the tillers" day was fixed as the Invariable date for calculating the total annual income of the land-lord then, that interpretation would not fit in with the

provisions contained in Section 32F and Section 32-G and Would create difficulties. We are not impressed with this argument. We see no reason either on principle or in the language of Section 88C why that section should be so construed that it must necessarily mean the same thing when read in conjunction with Sections 32 to 32R. The Tenancy Act is a difficult Act to construe. It is an Act which, as is often pointed, has been hastily drafted and in which amendments have been made from time to time with equal haste. Many Judges have had Occasions to point put that the amendments are not often reconcilable with one another. Under the circumstances, in our judgment, there is no reason why Section 88C should not be so construed that it should necessarily give the same result when read with all the sections from 32 to 32R. We have already pointed out that Section 88C it self does not give a clue for furnishing an answer to the question in hand and that the answer is to be obtained by a reference to Section 32(1). In view of this, what we are really interpreting is Section 32 (1) and Section 88C, when read together, and not Section 88C alone. Therefore, even "if a different date is obtained as the relevant date when reading Section 88C with the other Sections 32A to 32O it does not offend any recognised canon of interpretation. . The disparity, if any, would be the result of the different language used in those other sections and arise out of the different situations dealt with by those sections. Therefore, we do not propose to underake the risk involved in construing Section 88C in as far as the rights of the parties mentioned iv Sections 32F and 32G are involved. But, we may point out that Sections 32F and 32G deal with entirely different situations and the concepts underlying these two sections are different from the concepts underlying Section 32(1). Whereas u/s 32(1), the tenant becomes the owner by fiction of law, under Sections 32F and 32G, the tenant has an option of purchase.

43. Under the circumstances, the answer to the second question raised for decision before this, Full Bench will be that the total annual income of the petitioner in determining his application for exemption u/s 88C should be determined with reference to the year preceding the tillers" day.

44. Mr. Barot resisted the present writ petition on the ground of delay also. He contended that the order of the Tribunal which was sought to be set aside was made on 7-11-1969 and the present writ petition was filed on 21-7-1960. Mr. Vakil conceded that this was so. But, he submitted that the rule as to delay is not an invariable rule and it must be applied in furtherance of justice and not to defeat it. He submitted that, having regard to the peculiar facts of the case, if the order of the Tribunal passed on 7-11-1959 was not set aside, then, as injustice would be prepetuated and the opponent would get 30 advantage over him which otherwise he would not have obtained if the petitioner had taken the steps to set aside the Order dated 7-11-1959. As we shall presently point out, the order passed by the Additional Deputy Collector on 24-4-1959 was clearly unsustainable on account of the fact that he had permitted the petitioner to lead additional evidence, whilst denying the opponent an opportunity to rebut that evidence. On the basis of this fact, Mr. Vakil contended that whether the Tribunal

had jurisdiction or not, the order of the Additional Deputy Collector, on the very face of it was one which required to be set aside and if, instead of the opponent going to the Revenue Tribunal the opponent had come to this Court by a writ petition, the order of the Additional Deputy Collector would have been set aside by this Court. He contended that, when the decision of the Revenue Tribunal was given on 7-11-1959, the decision in 1960-1 Guj LR 1 had not been pronounced. The law was in a doubtful state till then, it is true that the petitioner could have filed a writ petition in this Court immediately after the decision of the High Court. But, Mr. Vakil said that that would have been infructuous and even fatuous because, in that case, the High Court would still have set aside the Order of the Additional Deputy Collector on the ground aforesaid. He further said that, therefore, the further proceedings which had been taken before the Additional Deputy Collector were, in any way, justified. He contended that the petitioner, at that time, did not take any further proceedings in the matter because till the decision in 1960-1 Guj LR 1 was given, he held a bona fide belief that the Revenue Tribunal had jurisdiction to deal with a case arising u/s 88-C of the Act. He said that, if he were precluded from getting his remedy by this writ petition the result would be that at a time when the adverse order was passed against him on 7-11-1959, though he submitted to the order of the Revenue Tribunal in the interests of justice, he was now precluded from challenging the order of the Prant Officer on a ground which, if he had taken against the opponent, he was sure to succeed against him. He contended that the impugned decision of the Prant Officer was given on 30-4-1960. Under the circumstances, according to him, in Order to get justice, he had no other course open to him but to invoke the jurisdiction of this High Court to exercise its high prerogative. In our judgment, the submissions made by Mr. Vakil are weighty and, in the peculiar facts of the present case, the writ petition should not be thrown off, specially, as we shall presently point out, when Mr. Vakil agrees that not only the order of the Prant Officer, dated 30-4-1960, should be set aside, but that the previous order of the Additional Deputy Collector, dated 24-4-1959, should also be set aside. That will do complete justice between the parties and put them on the same footing as they were on the date the aforesaid order dated 24-4-59, was passed and permit the parties to get their rights adjudicated without being affected by the wrong order, which had been passed by the Revenue Tribunal on 7-11-.1959. Therefore, having regard to the peculiar circumstances of the case, we do not think it proper to throw off the present writ petition on the ground of delay.

45. The next question for consideration is as to what order should be passed in the writ petition. The petitioner prays that the order of the Prant Officer, dated 30th April, 1960, and the order of the Bombay Revenue Tribunal, dated 7th November, 1959, should be set aside. If we were to do this, the result will be that the order of the Additional Deputy Collector, dated 24th April, 1959, will be restored. Having regard to the facts of the case, there is no doubt that this order was unjustified and against the rules of natural justice. As already pointed out, that order was passed without giving a chance to the opponent to lead rebuttal

evidence. Therefore, if we were to set aside the two orders, dated 30th April, 1960 and 7th. November 1959 only, we would be perpetuating injustice. We intimated our decision to Mr. Vakil that we would not exercise the high prerogative in his favour if such was going to be the result. Mr. Vakil, however, conceded that he had no objection if the order, dated 24th April, 1959 was also simultaneously set aside and, "as we have already pointed out, if this is done, then, the parties would be relegated to the same position which they occupied before that illegal Order was passed. Therefore, we propose to set aside all the aforesaid three orders simultaneously and direct that the Additional Deputy Collector shall proceed further to decide the appeal of the petitioner after permitting the opponent to lead such rebuttal evidence as he may choose to lead before him.

46. For the aforesaid reasons, we quash the order of the Additional Deputy Collector, dated 24th April, 1959, the order of the Bombay Revenue Tribunal, dated 7th November, 1959, and the order of the Prant Officer, dated 30th April, 1960, and we further direct that the Additional Deputy Collector or the other competent authority shall proceed to determine appeal No. 250 of 1959 fur there in accordance with law and in the light of this judgment and after giving a proper opportunity to the opponent to lead such rebuttal evidence on the question of petitioner's total annual income as he may choose to lead. Having regard to the facts of this case, there will be no order as to costs.