
(1979) 07 BOM CK 0027

In the Bombay High Court

Case No : Spl. C. Application No. 1437 of 1973

Mahadeo Raoji Wanjari

APPELLANT

Vs

Vinayakrao Govindrao Deshmukh and another

RESPONDENT

Date of Decision : 26-07-1979

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 50
Constitution of India, 1950 — Article 227
Mamlatdars Court Act, 1906 — Section 16, 16(2)

Citation : (1980) MhLj 275

Hon'ble Judges : V.V. Joshi, J

Bench : Single Bench

Advocate : A.K. Trivedi, for the Appellant; N.S. Kherdekar, for the Respondent

Final Decision : Dismissed

Judgement

V.V. Joshi, J.—By this writ petition under Article 227 of the Constitution, the petitioner has challenged the common order dated 10 10-1973 passed by the Maharashtra Revenue Tribunal in four different revision applications preferred to it u/s 111 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Tenancy Act). By this impugned order, the Maharashtra Revenue Tribunal allowed the revision applications setting aside the orders of the Courts below, and in effect, rejected the applications of the petitioner for purchase of ownership rights in three different fields. These were applications purporting to be tiled u/s 50 of the Tenancy Act. By this common order, the Revenue Tribunal also allowed the application of the respondent landlords for being restored to possession of the fields in question, this application of the respondent landlords having been filed u/s 36(2) of the Tenancy Act.

2. The lands in question are situated in three different villages in Arvi tahsil of Wardha district. These three separate fields are as follows:

1) Survey No. 10/1, area 13.37 acres of village Rampur

2) Survey No. 44/3, area 4.33 acres of village Sukhali

3) Survey No. 28, area 22.08 acres of village Khanapur

It is not in dispute that the respondents are the recorded tenure-holder in respect of these three fields. The petitioner claims to have cultivated these fields on a lease from the respondents in the year 1970-71.

3. On 22-3-1971, the petitioner filed three separate applications u/s 50 of the Tenancy Act in respect of these three separate fields. These applications were presented to the Additional Tahsildar, Arvi and these three applications were separately registered as Tenancy Case No. 1/59(14)/70-71 in respect of survey No. 10/1 of village Rampur, Tenancy Case No. 2/59(14)/70-71 in respect of survey No. 44/3 of village Sukhali and Tenancy Case No. 4/59(14)/70-71 in respect of survey No. 28 of village Khanapur. In these three applications, the contentions of the petitioner were that about 15 days after the Gudi Padva of 1970, the respondent No. 1 had leased out these three fields on half Batai contract to the petitioner. The petitioner had cultivated these lands on lease in that year and, therefore, he had become a tenant in these fields and he was entitled to purchase the same u/s 50 of the Tenancy Act. He was prepared to pay purchase price to be " fixed by the Court. In the application in respect of survey No. 44/3 of village Sukhali, the petitioner had specifically mentioned that this field was cultivated by the petitioner on lease from the respondents even for the previous year 1969-70. Though such a specific allegation does not appear to have been made in the applications in respect of the two other fields pertaining to villages Rampur and Khanapur, from the evidence adduced, it does appear that these two fields were also cultivated by the petitioner for the year 1969-70 on lease from the respondents. The Additional Tahsildar directed issue of notice to the respondents in all the three cases. The respondents were served with the notices on 2 4 1971, but they did not appear in the trial Court in these three cases although so served. The additional Tahsildar, Arvi in the two cases pertaining to the lands from villages Rampur and Sukhali passed an order on 7-5-1971 saying that he was proceeding ex-parte against the respondent landlords. In the third case pertaining to the field of village Khanapur such an order was passed on 24-4-1971, but later on, on the same date the order-sheet says that a telegram was received from the respondents requesting for an adjournment and, therefore, the Additional Tahsildar set aside ex-parte order and put up the case for 13-5-1971, on which date the respondents again remained absent, but the presiding officer was on leave and, therefore, the case was taken on 4 6-1971 on which date the respondents again did not appear and the Additional Tahsildar proceeded ex-parte against the respondents. In all these cases, after recording the evidence of the petitioner, the Additional Tahsildar as the Agricultural Lands Tribunal, Arvi passed the orders fixing the purchase price. In respect of the fields from village Rampur and Sukhali, the orders were passed on 22-6-1971 and in respect of the field from village Khanapur, the order was passed on 1-10-1971.

4. It has to be mentioned that in the two cases pertaining to the lands from villages Sukhali and Rampur, the respondents, on 17-6-1971 filed separate applications in these two cases for setting aside the ex parte order. These applications were filed in these two cases after the petitioner's evidence had been recorded and the cases had been closed for orders, but before the final orders were actually passed on 22-6-1971. In the third case pertaining to the land from village Khanapur the application for setting aside ex parte order, was presented on 30-6-1971, that is again before the final order was passed in that case on 1-10-1971. In the cases pertaining to the fields from villages Rampur and Sukhali, the Additional Tahsildar rejected these applications for setting aside the ex parte order on the same date (17-6-1971) observing that the applications were barred by time u/s 16 (2) of the Mamlatdars' Courts Act, 1906 and the respondents had been given number of opportunities but had not availed of the same. In the three cases pertaining to the land of village Khanapur, the application was rejected on the ground that no medical certificate about the alleged sickness was produced. It was after the rejection of these three applications for setting aside the ex parte orders that the final orders were passed in these three cases on 22-6-1971 and 1-10-1971, the last pertaining to the land from village Khanapur.

5. On 2-8-1971, the respondents filed an application purporting to be u/s 36 (2) of the Tenancy Act in the Court of the Additional Tahsildar, Arvi praying for possession of these three fields, contending that the present petitioner was claiming to be in possession of the suit fields as a tenant, though he was not really a tenant and in case it was found that he was a tenant, the landlords the present respondents were praying for restoration of possession. This case was registered as revenue case No. 5/59(10-B)/71-72. The Additional Tahsildar, Arvi by his order dated 18-10-1971 rejected this application of the respondents on the ground that in the other three proceedings, the suit fields had been separately transferred in ownership right to the present petitioner and, therefore, the application of the respondent landlords for restoration of possession u/s 36 (2) of the Tenancy Act was not maintainable.

6. The respondents presented four different appeals against these separate four decisions of the Additional Tahsildar, Arvi to the Sub-Divisional Officer, Arvi. These appeals were filed u/s 107 of the Tenancy Act. The appeals were registered as follows:

- 1) Appeal from Tenancy Case No. 1/59(14)/70-71 was registered as Appeal No. 4/59(14)/71-72;
- 2) Appeal from Tenancy Case No. 2/59(14)/7Q-71 was registered as Appeal No. 3 59(14)/71-72;
- 3) Appeal from Tenancy Case No. 4/59(14)/71-72 was registered as Appeal No. 10/59(14)/71-72: and
- 4) Appeal from Tenancy Case No. 5/59(10-B)/71-72 was registered as Appeal

No. 18/59(10-B)/71-72.

The Sub-Divisional Officer, Arvi by his common order in respect of the first three appeals i. e. the order dated 19-8-1972, dismissed all the three appeals and maintained the orders passed by the Additional Tahsildar and Agricultural Lands Tribunal Arvi. By a separate order dated 19-8-1972, the Sub-Divisional Officer also dismissed the appeal No. 18/59(10-B)/71-72.

7. The respondents then preferred four - separate revision applications to the Maharashtra Revenue Tribunal u/s 111 of the Tenancy Act. These four revision applications were registered as Revision Application Nos. Ten-A 1009, 1010 and 1011 of the year 1972. The first of these i.e. Region Application No. Ten a 1008/72 was revision application in respect of the respondents application for restoration of possession of the suit fields u/s 36 (2) of the Tenancy Act. All these four revision applications were disposed by the Revenue Tribunal by a common order dated 10-10-1973 as mentioned in the opening paragraph of this judgment. The Revenue Tribunal allowed all these revision applications, set aside the orders of the two Courts below and in effect, rejected the petitioner's application for transfer of ownership right in respect or" the three fields and allowed the respondents" application u/s 36(2) of the Tenancy Act for being restored to possession of the suit fields. This last common order dated 10-10-1973 of the Revenue Tribunal is assailed in the present petition by the petitioner under Articles 227 of the Constitution.

8. Mr. N S. Kherdekar for the respondents has taken a preliminary objection as regards the maintainability of a single writ petition challenging the common order passed in four separate revision applications presented to it by the Revenue Tribunal. Now, since the order is common, one common writ petition could be filed for the sake of convenience, but since all along the cases have been separate actually the common order of the Revenue Tribunal governs the disposal of four separate cases so separate from the inception, and, therefore, although one writ petition could be filed for the sake of convenience, it was necessary for the petitioner to pay separate court-fee pertaining to four separate writ petitions. The court-fee paid is in respect of only one writ petition. Therefore, the petitioner shall now pay the deficit court fee.

9. Another contention of Mr. Trivedi for the petitioner is that as the orders in three of these cases were passed by the Additional Tahsildar and Agricultural Lands Tribunal u/s 50 of the Tenancy Act, an appeal to the Sub-Divisional Officer did not really lie u/s 107 of the Tenancy Act. To this Mr. N. S. Kherdekar contends that though the applications were filed by the petitioner in these three cases purporting to be u/s 50 of the Tenancy Act, they have really to be treated as applications u/s 43 (2) of the Tenancy Act, because that is the proper provision under which the Tribunal could be approached. Section 50 of the Tenancy Act merely gives the right to a tenant to purchase the right of ownership. Now, this argument of Mr. N. S. Kherdekar is entirely correct. The applications filed by the petitioner in these three cases will have to be treated as filed under the

provisions of section 43 (2) of the Tenancy Act, and not u/s 50 of the Tenancy Act, Section 107 of the Tenancy Act does provide for an appeal to the Collector from the order of the Tahsildar or Tribunal passed u/s 43 of the Tenancy Act. Therefore, it is clear that the appeals u/s 107 of the Tenancy Act to the Sub-Divisional Officer exercising the powers of Collector were competent and were maintainable.

10. It is next necessary to scrutinise the impugned order passed by the Revenue Tribunal to find out the grounds on which the Revenue Tribunal allowed the revision applications. Before going to the order of the Revenue Tribunal, it may be observed that on the basis of the evidence adduced by the petitioner in these three cases, ex parte the respondents, the Additional Tahsildar and Agricultural Lands Tribunal, Arvi and the Sub-Divisional Officer, Arvi and concurrently found proved the allegation of the petitioner that he had cultivated the suit fields in the agricultural year 1970-71 under a contract of Batai given by respondent No. I in his favour 15 days after the Gudi Padva of 1970.

11. In paragraph 5 of its order dated 10-10-1973, the Revenue Tribunal observed :

It should be seen that the land-owners had no notice of dated 7-5-71 on which date the landholders were held ex-parte. According to affidavit of landholder No. 2, she got the information about the order sometime later and had made an application on 17-6-1971 to set aside the ex-parte order. According to her the application was within time and should have been allowed. But the same was not allowed.

At the end of paragraph 3 of its order, the Revenue Tribunal observed :

There is nothing on record to show that the fields were given possession of to the landholder after the lease for 1969-70 came to an end by lapse of time.

Further, in paragraph 7 of its order, the Revenue Tribunal observed:

The landlords urge that the tenant Mahadeo was not entitled to purchase the lands u/s 50 of the Bombay Tenancy and Agricultural Lands Act. According to his own application he was the tenant of the lands for the years 1969-70 and 1970-71. In the year 1969-70 he did not make any application u/s 50 for grant of ownership right to him. He would be deemed to have surrendered the lands and was not entitled to the ownership right in them. Because according to the tenant he was also a tenant created for the second time in the year 1970-71 after the fields were handed over possession to the landlords after the period of lease for the year 1969-70, he could purchase the ownership right in the land tenanted to him after 1-4-1963 u/s 50 within one year from the commencement of his second tenancy.

At the end of paragraph 9 of its order, the Revenue Tribunal has observed :

It was difficult to accept the contention that because the tenant continued to be

a tenant for the next year also in possession of the land after he had failed to exercise his right of purchase the landlord must be deemed to have granted a second lease for the subsequent year.

In paragraph 10 of its order, the Revenue Tribunal has observed:

The record does not show that there was anything on record about the land being given possession of by the tenant to the landlord after the end of 1969-70.-----Therefore, there could not be a second lease, pursuant to which the tenant could become the owner of the lands leased to him u/s 50 after 1-4-1963.

12. The observation of the Revenue Tribunal that the Agricultural Lands Tribunal (Additional Tahsildar), Arvi should have allowed the application of the respondents landholders for setting aside the ex-parte order would seem to me to be entirely correct. The observations of the Agricultural Lands Tribunal in its orders on these application filed by the respondents in each of these cases for setting aside the ex-parte orders in so far as the said orders say that the application was barred u/s 16 (2) of the Mamlatdars' Courts Act, 1906 are clearly incorrect. Section 16 of the Mamlatdars' Courts Act, 1906 is as follows :

16(1) Where the plaintiff fails to attend, or to produce his documents, if any, or to adopt measures to procure the attendance of his witnesses, if any, on the day and at the place fixed, the Mamlatdar shall reject the plaint with costs, whether the defendant appears or not, unless the defendant admits the claim.

(2) Where the plaintiff attends as required by section 14, sub-section (1), but the defendant fails to attend, and the Mamlatdar is satisfied from the evidence before him that the notice has been duly served on the defendant and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall proceed to hear and decide the plaint ex-parte.

Provided, firstly, that, if either party satisfied the Mamlatdar at any time within thirty days from the date of the rejection of a plaint under sub-section (1), or of an ex-parte decision under sub-section (2), that he prevented by some unavoidable circumstance from attending, or from producing his documents or from adopting measures to produce the attendance of his witnesses, as the case may be, it shall be lawful for the Mamlatdar to issue a notice in the form of Schedule B at the expense of the applicant to the opposite party and, if still satisfied after hearing the opposite party that the applicant was prevented as alleged, to re-hear the case at such time and place as he was then fix :

Provided, secondly, that nothing in the foregoing provisions shall prevent the plaintiff from withdrawing his suit on payment of the defendant's costs.

It may be seen from the proviso below section 16 (2) quoted above that the application for setting aside the ex-parte decision has to be made within 30 days from the date of the ex-parte decision in sub-section (2). On the date on which these applications were made in the trial Court by the respondents actually the

cases had not been decided, the final orders in these three cases were passed subsequently. Only the evidence of the petitioner had been recorded and the cases had been closed for orders. In such important cases where the question of transfer of ownership rights in the fields was involved, it was necessary to hear the respondents and to record their evidence before disposing of these cases finally. Surely, these applications for setting aside ex-parte order could not be rejected on the ground that they were filed beyond 30 days from the date of passing of ex-parte order, because that is not what the proviso below section 16 (2) quoted above requires. The application for setting aside the ex parte decision could even be made within 30 days after the cases were finally decided. In fact these applications were made much earlier even before the cases were finally decided by the trial Court. Therefore, in fairness, these applications should have been allowed and the respondents should have been heard and their evidence recorded before passing the final orders in these three cases. Therefore, the Revenue Tribunal was clearly justified in observing in paragraph 5 that the applications for setting aside ex-parte order should have been allowed by the trial Court.

13. So far as the rest of the reasoning in the Revenue Tribunal's order quoted earlier in this judgment is concerned, it is difficult to accept the same. Neither in the pleadings of the petitioner nor in the evidence was there any reference to the possession of the three fields being given by the petitioner to the landlord respondents after the initial lease of the first year 1969-70. Therefore, the question of the respondents alleging and proving that they had been placed in possession of these three fields again when an agreement of Batai lease for the year 1970-71 was entered into, could not arise at all. It was not the case of the respondents that they must be deemed to have cultivated the land on lease for the second year 1970-71, merely because they continued in possession after the lease for the first year came to an end. It is not possible to accept the Tribunal's observations that there could not be a second lease pursuant to which the tenant could become owner of the land leased to him u/s 50 of the Tenancy Act after 1-4-1963. The position is like this. The tenant petitioner cultivated the lands leased for the first time in 1969-70. He had a right u/s 50 of the Tenancy Act to purchase the ownership rights in the fields within one year from the date of commencement of the lease for the year 1969-70. If he failed to exercise that right within one year, the provisions of section 43 (14-A) would come into application and the petitioner would then be deemed to have surrendered to the landlord the lands in question. Even after such fictional surrender of the land u/s 43 (14-A), the petitioner, if he continued in possession of the suit lands, his possession was not definitely unauthorised or unlawful. His possession is not that of a trespasser. Please see in this respect the observation in *Vikram Yeshwant v. Eknatli* 1977 Mh. L J 520. In such circumstances, I do not see any bar anywhere in the Tenancy Act to the landlords creating a contractual tenancy again in favour of the tenant in possession for the next year so that by virtue of such second tenancy for the following year again the tenant would get a fresh right for

purchase of ownership rights. In this view of the matter, it is not possible to accept the reasoning of the Revenue Tribunal on the basis of which it allowed the revision applications and set aside the orders of the Courts below.

14. Now as earlier observed it was very necessary in these cases that the Agricultural Lands Tribunal (Additional Tahsildar) should have allowed the applications filed by the respondents landlords for setting aside the ex-parte orders in these three cases and the Court should have allowed them to participate in the enquiry. They should have been heard before the final orders could have been passed properly in these three cases. In that view, it would not do merely to set aside the orders of the Revenue Tribunal. It would also be necessary to remand the cases to the trial Court i. e. the Agricultural Lands Tribunal (Additional Tahsildar), Arvi for deciding these cases afresh after hearing the respondents and after recording their evidence as well. But there Mr. N. S. Kherdekar for the respondents contends that it is possible to support the final conclusion reached by the Revenue Tribunal, though on grounds other than those mentioned by the Revenue Tribunal and, therefore, Mr. N. S. Kherdekar contends that it would be an exercise in futility to remand the cases to the trial Court for a fresh decision, if on the material placed on record by the petitioner himself, it were to be found that he is not entitled to purchase the ownership rights in these fields u/s 43 read with section 50 of the Tenancy Act. In this respect, Mr. N. S. Kherdekar's contention is that section 50 of the Tenancy Act entitles a newly created tenant to purchase the ownership rights of the landlords u/s 41 of the Tenancy Act within one year from the commencement of the tenancy. Section 43 (1) of the Tenancy Act mentions the mode in which the right conferred on the tenant u/s 50 of the Tenancy Act is to be exercised by him. The requirement of section 43 (1) is that the tenant has to make an offer to the landlord stating the price at which he is prepared to purchase the land. If the landlord refused to or fails to accept the offer of the tenant and to execute a sale deed within 3 months from the date of the offer, as provided under sub-section (2) of section 43, then alone the tenant may approach the Tribunal under the provisions of section 43 (3) of the Tenancy Act. Further contends Mr. N. S. Kherdekar that where a tenant fails to exercise his right of purchase u/s 41, the land in question is deemed to have been surrendered to the landlord and thereupon the provisions of sub-sections (1) and (2) of section 21 and Chapter VII are to come into operation in respect of such land. The contention of Mr. Kherdekar, therefore, is that in this case the petitioner-tenant did not make an offer to the landlord stating that the tenant was prepared to purchase the land for the stated price as required by section 43 (1) and, therefore, that being the only manner in which the right conferred on the tenant u/s 50 read with section 41 of the Tenancy Act is to be exercised, section 43 (I4-A) at once comes into application at the end of one year from the date of commencement of the tenancy, the lands are deemed to be surrendered by the petitioner-tenant and, therefore, he has no right to purchase the ownership rights in these fields. Mr. Kherdekar further contends that without having first made an offer to the landlords u/s 43 (1) of the Tenancy

Act, the petitioner-tenant could not have directly approached the Agricultural Lands Tribunal u/s 43 (3), as he seems to have done in the present case. In support of this argument of his, Mr. N. S. Kherdekar draws assistance from the observations of this Court in Govind v. Udkao*.

15. I find considerable force in these contentions of Mr. N. S. Kherdekar. For a proper understanding of the question involved, it is necessary to peruse carefully several the relevant provisions of the Tenancy Act. Section 50 of the Tenancy is as follows :

50(1) Where a tenancy is restored under sections 7, 10, 21, 52 or 128A or is created by a landlord not being a landlord within the meaning of Chapter III-A in any area after the date specified in sub-section (1) of section 49A, every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase within one year from the commencement or as the case may be, the restoration of the tenancy so much of such land as he may be entitled to purchase u/s 41 and the provisions of sections 41 to 44 both inclusive shall mutatis mutandis apply to such purchase.

This is a section which entitles a newly created tenant to purchase the ownership rights in the tenanted land, as entitled under the provisions of section 41 provided that the purchase is to be made within one year from the commencement of the tenancy and in accordance with the provisions of sections 41 to 44 which have been made applicable.

Then we come to section 41 (1) which is as follows:

41(1) Notwithstanding anything to the contrary in any law, usage or contract but subject to the provisions of sections 42 to 44 both inclusive a tenant other than an occupancy tenant shall, in the case of land held by him as a tenant, be entitled to purchase from the landlord the land held by him as a tenant and cultivated by him personally.

Since section 50 refers to section 41 and makes it applicable, section 50(1) has to be read together with section 41 (1).

16. That brings me to section 43 (1)(a). The relevant provisions of section 43 are as follows:

43 (1)(a) A tenant who desires to exercise the right conferred by section 41 shall make an offer to the landlord stating the price at which he is prepared to purchase the land, such price not exceeding twelve times the rent payable by him and the depreciated value of any structures, well and embankments constructed and permanent fixtures made and the value of any trees planted on the land by the landlord after the period of the last settlement or where no such settlement is made during the period of thirty years before the commencement of this Act and the amount of the arrears of rent, if any, lawfully due on the day on which the offer is made.

(b) Where the tenant is entitled to purchase a part of the land held by him as tenant, he shall, subject to the rules made by the State Government in this behalf choose the area and location of the land to be purchased from the landlord and state in the offer the part which he has so chosen for being purchased :

Provided that the land so chosen shall not, as far as may be practicable, be other than a survey number or a Sub Divisional of a survey number.

(2) If the landlord refuses or fails to accept the offer and to execute sale-deed within three months from the date of the offer, the tenant may apply to the Tribunal for the determination of the reasonable price of the land.

(3) The Tribunal shall, after giving an opportunity to the tenant and the landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land, which shall consist of-----

X X X X X

(14A) If a tenant fails to exercise his right of purchase u/s 41 in respect of any land or purchase of any find becomes ineffective, the land shall be deemed to have been surrendered to the landlord, and thereupon the provisions of sub-sections (1) and (2) of section 21 Chapter VII shall apply to such land as if the land was surrendered by the tenant u/s 20.

Now, it may be observed that section 50 of the Tenancy Act entitles the tenant to purchase the ownership rights in the land within one year from the commencement of the tenancy. Section 41 is another provision regarding the entitlement of the tenant to purchase the ownership rights in the land. The defaulting clause is sub-section (14A) of section 43 which speaks for the first time of a tenant failing "to exercise his right of purchase u/s 41". The only other provision where there is a mention of "exercise of the right" of purchase of the ownership rights in sub-section (1)(a) of section 43 where the words used are "a tenant who desires to exercise the right conferred by section 41". Therefore, it would follow that the only manner in which the right conferred u/s 50 read with section 41 of the Tenancy Act is to be exercised by the tenant, is in the manner provided by section 43 (1)(a) i. e. by making an offer to the landlord stating the price at which he is prepared to purchase the land, such price not exceeding twelve times the rent payable by him. Here it is necessary to note that sub-section 43 (1)(a) uses imperative word "shall" in contradistinction with the word used "may" in sub-section (2) of section 43. The necessary inference is that the only manner in which the tenant wanting to purchase the ownership rights conferred on him is to act is by making an offer of purchase to the landlord as directed by sub-clause 43 (1) (a). It is only when the tenant has made an offer and waited for three months during which period as provided by sub-clause (2) section 43 the landlord refuses or fails to accept the offer that the tenant has an option of approaching to the Tribunal for determination of the reasonable price of the land. It would necessarily follow that the tenant cannot approach the Tribunal

directly without first making an offer to the landlord. That would be so, because, first, under the very sequence of sub-clause (2) of section 43 the stage for approaching the Tribunal can only arise after the tenant has first made the offer to the landlord, has waited for three months and the landlord during those three months has either refused or failed to accept the offer. The second reason for this conclusion is that even in a case where, as in the present case, the tenant directly goes to the Tribunal without having made an offer to the landlord first, even in such a case the provisions of sub-clause (14A) of section 43 would become applicable because the tenant has failed to exercise his right of purchase, because the only way in which he was directed mandatorily to exercise that right was by making an offer as provided u/s 43 (1)(a).

17. Here, it is interesting to observe that the provisions of section 43 (1) (a) would normally be equally applicable to the cases of suo motu transfer of ownership rights u/s 46 and sections 49A and 49B also.

But in those cases, the provisions of section 43 (1) (a) are not insisted upon or pale into insignificance for the simple reason that section 46 operates "Notwithstanding anything in this Chapter", section 49A operates "Notwithstanding anything contained in section 41 or 46 or any custom, usage, decree, contract or grant to the contrary" and section 49B refers only to the cases of tenants referred to in section 46 or section 49A. Therefore, in those suo motu proceedings this mandatory provision of section 43 (1)(a) about an offer by the tenant to the landlord for purchasing the land does not operate as an essential pre-requisite. But that would not be the case when we are dealing with a tenant wanting to enforce his rights of purchase under the provisions of section 50 read with section 41. In those classes of cases the making of an offer by the tenant to the landlord u/s 43 (1)(a) becomes an essential pre-requisite, otherwise if he does not do that, the provisions of section 43 (14A) come into operation effecting the deemed surrender of the land by the tenant.

18. I find those observations of mine receive considerable support from the observations of Chandurkar J. in *Govinda v. Udhao*. In paragraph 15 of that reported judgment, the following observations appear:

The consequences contemplated by section 43 (14A) of the Tenancy Act so far as the present kind of case is concerned arise only if a tenant fails to exercise his right of purchase. In a case covered by section 50 of the Tenancy Act these consequences must, therefore, arise where the tenant fails to exercise his right of purchase within one year from the commencement of tenancy. The words "shall be entitled to purchase within one year" in section 50 must, therefore, be read in the light of the provisions of section 43 (14A) which refer to the tenant's failure to exercise his right of purchase. How the right of purchase is to be exercised is dealt with in section 43 (1)(a) and in my view what the tenant is required to do within one year when section 50 refers to the tenant being entitled to purchase the land within one year is that the tenant must within one year from the commencement of the tenancy serve a notice as contemplated by

section 43 (1)(a) of the Tenancy Act. In case a tenant invokes the provisions of section 43 (1)(a) within a period of one year then, in ray view, the tenant could be said to have exercised his right of purchase within one year as contemplated by section 50. By the nature of the proceeding which is contemplated by section 43, it is impossible that the entire proceedings or even making of an application could in certain cases be made within a period of one year from the commencement of the tenancy, ft would be enough if the first step to exercise the right of purchase, namely, the serving of a notice u/s 43 (1)(a) is served within one year in case a tenant wants to exercise the right which is given to him u/s 50 of the Tenancy Act. """" (Italic is mine).

19. In the instant case is neither of these three cases in the trial was there any pleading or any proof about the petitioner-tenant having exercised his right as required u/s 43 (1)(a) of the Tenancy Act by making an offer either in writing by notice or orally to the landlord, to purchase the respective suit fields. In the circumstances, it would have to be concluded that the petitioner tenant did not exercise his right u/s 50 read with section41 of the Tenancy Act as required by the provisions of section 43(1)(a) within one year from the date of commencement of the tenancy.

20. It could perhaps be said that I express no definite opinion on this point because it is not necessary for the purposes of this case that filing an application u/s 43 (2) before the Agricultural Lands Tribunal and sending a notice of the case to the landlord could perhaps amount to making an offer of purchase through the Court as required u/s 43 (1)(a) of the Tenancy Act. In this particular case it is not necessary to examine this contention further because in all these cases, the notice from the Agricultural Lands Tribunal was served on the respondents landlords on 2nd of April 1971. If admittedly the lease in favour of the petitioner was for the year 1970-71, it commenced on the first day of the agricultural year 1970-71 i.e. first day of April 1970 and the offer as required u/s 43 (1)(a) read with section 50 of the Tenancy Act had to be made within one year i. e. on or before 31st March 1971. As mentioned earlier, the notices were served in these three cases on the respondents landlords on 2nd of April 1971 i. e. outside the period of one year from the commencement of the lease. So even this approach were it to be permissible, would not be of any assistance to the petitioner-tenant in these three cases.

21. Since I find the petitioner-tenant had failed to exercise his right of purchase by making the necessary offer to the landlords within one year as contemplated u/s 43 (1)(a) of the Tenancy Act, the provisions of section 43 sub-section (14A) have come into operation and the land is deemed to have been surrendered by the petitioner to the landlord. He cannot, therefore, now enforce his right of purchase of ownership rights. In that view, there would be no point in remanding these cases to the trial Court for re-decision in the matter of transfer of ownership and fixation of price, after Shearing the respondents, who have not been heard in the trial Court so far. Again, in the view taken by me, the landlord

respondents would be entitled to restoration of possession of the suit lands u/s 36 (2) of the Tenancy Act. In this view taken by me, the ultimate order passed by the Revenue Tribunal would seem to be correct though for reasons other than those discussed by the Revenue Tribunal in its order.

In the result, this petition fails and is dismissed. Rule is discharged with costs.