
(1998) 03 GUJ CK 0007
In the Gujarat High Court

Musamiya Imamhadar Bax Razvi

APPELLANT

Vs

Natverlal Chunilal Patel and Another

RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 27, 32G, 70(b), 74, 85
Constitution of India, 1950 — Article 227

Citation : (1998) 2 GLR 1118

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Judgement

M.R. Calla, J.—All these six Special Civil Applications have been filed by one Shri Musamiya Imamhadar Bax Razvi, claiming to be Sajjad-a-Nashin and sole Managing Trustee of Sahe-a-Alam Roja Public Religious Trust.

Special Civil Application No. 434 of 1983 is in relation to agricultural lands bearing Survey Nos. 293, 295, 296 and 297, situated at village Isanpur, Ahmedabad. whereas Special Civil Application No. 13973 of 1994 is in relation to Survey Nos. 293, 294, 296 and 297 of village Isanpur, Ahmedabad. The other four Special Civil Applications, i.e., Special Civil Application Nos. 1611 to 1614 of 1983 are in relation to the lands bearing Survey No. 293, admeasuring 2 acres-09 gunthas, land bearing Survey Nos. 60 to 67 and 42, in all. 9 Survey Numbers, situated at village Isanpur. Ahmedabad, land bearing Survey Nos. 292 and 294, admeasuring 25 gunthas. and 2 acres-27 gunthas, situated at Isanpur, Ahmedabad and land bearing Survey Nos. 613, 614, 567, 615 and 616, situated at village Isanpur, Ahmedabad, respectively.

2. Whereas, all these Special Civil Applications involve common questions of law, based on identical set of facts, all these six Special Civil Applications have been heard together and are being decided by this common judgment and order.

3. Whereas the arguments have been made with reference to the pleadings in Special Civil Application Nos. 434 of 1983 and 13973 of 1994, for precision, the reference will be hereinafter made to the pleadings contained in these two

petitions. Whereas, Mr. P.J. Vyas adopted the submissions made at the Bar by learned Senior Counsel Ms. Vasuben Shah, who has appeared for the petitioner in Special Civil Application Nos. 434 of 1983 and 13973 of 1994, the adjudication of the submissions is with regard to all the six Special Civil Applications, as aforesaid.

4. The petitioner Musamiya Imamhadar Bax Razvi has come with the case that, while he was minor, the management of the lands in question was entrusted to the Collector of Ahmedabad, under the provisions of the Guardians and Wards Act. The petitioner became major in May 1958 and thereupon the Collector had entrusted the administration of the lands in question to the petitioner. The Collector, during his management, granted the lands for cultivation on lease to one Bai Marium, daughter of Zafarkhan, for a period of one year, i.e., 1954-55, on annual rent of Rs. 360/- and the same was continued year to year. The lease was in the nature of "ek-Sali Lease", but in the year 1958 when the petitioner took over the management on his attaining the age of majority, he let out the said lands to Bai Marium at the reduced rate of Rs. 175/- upto 31st July 1961. The allegations with regard to the past period in respect of these lands are that, prior to the year 1947, it was possessed by one Shri R.M. Mohmad and his forefathers who had transferred these lands to Bhathiji and in the year 1947, Bhathiji had transferred these lands to Bai Marium, who had leased out the above lands to one Shri Manilal Mohanlal, in the year 1948. In the year 1949-50, Shri Vallabhbbhai Ranchhodbhai Patel had trespassed over the lands from which he was summarily evicted by the Collector in the year 1952-53 and the possession was taken back by the Collector from the trespasser Shri Vallabhbbhai Ranchhodbhai Patel and it was restored back to Bai Marium, as aforesaid.

5. On 19th May 1961, a sale deed was executed by Bai Marium in favour of the respondent No. 1, i.e., Natverlal Chunilal Patel. It is stated in paragraph 4 of Special Civil Application No. 434 of 1983 that, the respondent No. 1 took over the possession of the lands in question after the execution of the sale deed on 19th May 1961 and he applied for mutation of the entries in his favour. A reference has been made to the mutation entry dated 9-1-1963 in favour of the respondent No. 1, i.e., Natverlal Chunilal Patel which was certified by the Circle Inspector on 1-3-1963. The present petitioner filed the revision application before the Special Secretary in the Revenue Department, Govt, of Gujarat, on 21-5-1969. The Special Secretary passed an order dismissing (sic.) the application filed by the present petitioner, holding that Bai Marium was not a permanent tenant and, therefore, the sale was illegal. Against this order dated 19th June 1970 passed by the Special Secretary, Special Civil Application No. 1450 of 1971 was filed by the respondent No. 1, i.e., Natverlal Chunilal Patel, on 2-8-1971, in This Court. On 25th March 1976, This Court allowed the said Special Civil Application of the respondent No. 1 and it was held by This Court that, the finding of the Special Secretary that Bai Marium was not a permanent tenant (because her name was not entered in the Govt, records) was incorrect and accordingly, the order dated 19th June 1970 passed by the Special Secretary was

set aside.

6. The Gujarat Devasthan Inam Abolition Act, 1969 which will be hereinafter referred to as "the Inam Abolition Act" came into force on 15th November 1969, but on 16th June 1969, the present petitioner filed a suit being Civil Suit No. 184 of 1969 against the respondent No. 1, contending that the respondent No. 1 was in unauthorised occupation of the lands as he was not entitled to get assignment of tenancy rights in his favour from Bai Marium, in view of the provisions of Section 27 of the Bombay Tenancy and Agricultural Lands Act, 1948, which will be hereinafter referred to as "the Tenancy Act". This suit was, later on, withdrawn by the petitioner and a fresh suit being Civil Suit No. 70 of 1971 was filed, in the Court of Civil Judge (Senior Division), Narol. The respondent No. 1 opposed this suit before the Civil Court on the ground that, Bai Marium was a permanent tenant of the lands in question and, therefore, she was entitled to transfer the lands to him. The Civil Court, by its order dated 17th December 1973, referred the matter for the decision of the Mamlatdar with reference to the provisions of Section 85A of the Tenancy Act. The Agricultural Lands Tribunal and Mamlatdar, by its order dated 21-2-1982, disposed of the reference made by the Civil Court, on the ground that the respondent No. 1 Natverlal Chunilal Patel had already been declared to be an inferior holder under the provisions of the Inam Abolition Act. Thus, this Tenancy Case No. 295 of 1981 was disposed of. It may be pointed out, at this juncture that, after coming into force of the Inam Abolition Act on 15th November 1969, the present respondent No. 1, i.e., Natverlal Chunilal Patel had applied before the Deputy Collector, Devasthan Inam, u/s 4 of the Inam Abolition Act, that he may be declared as an inferior holder in respect of the lands in question and this application was registered as Case No. 14 of 1979. The petitioner filed his objections against the declaration sought by the respondent No. 1 as inferior holder and these objections were registered as Case No. 136 of 1979. Both these matters, i.e., Case Nos. 14 and 136 of 1979 were decided by the concerned Deputy Collector, Devasthan Inam, Ahmedabad, by an order dated 26th October 1981, after hearing both the sides and it was held by the Deputy Collector that, the respondent No. 1 was an inferior holder of the lands in question. The present petitioner then preferred an appeal being Appeal No. 9 of 1982 before the concerned Secretary, but this appeal was rejected and the order of the Deputy Collector which had been passed in favour of the respondent No. 1 was upheld, on 6th November 1982. Against this order dated 6th November 1982, passed by the Govt, of Gujarat, and the order dated 26th October 1981 passed by the Deputy Collector, the present Special Civil Application No. 434 of 1983 was filed in January 1983. Later on, this Special Civil Application was amended and the order dated 21-2-1982 which had been passed by the Agricultural Lands Tribunal and Mamlatdar, Ahmedabad, disposing of the Tenancy Case No. 295 of 1981 had also been challenged and this amendment was carried out on 26th July 1991.

7. It has been given out by Mr. Tarunkumar Shah, learned Counsel, appearing for the respondent No. 1 that, on 10th September 1985, the present petitioner had

applied to the Civil Court for stay of further proceedings in Civil Suit No. 70 of 1971 on the ground that, he had preferred the Special Civil Application before This Court being Special Civil Application No. 434 of 1983 and on 19th September 1985, the said application was granted by the Civil Court.

8. From the record and pleadings of Special Civil Application No. 13973 of 1994, it appears that, the petitioner had also filed Special Civil Application No. 5671 of 1983 against the respondent No. 1 and the Agricultural Lands Tribunal and Mamlatdar, praying that the Mamlatdar be directed to decide the issue referred to him by the Civil Judge (Senior Division), Narol and in this Special Civil Application, a statement was made by the learned Counsel who appeared on behalf of the Agricultural Lands Tribunal and Mamlatdar that, the Mamlatdar had already decided the issue and the intimation thereof will have to be sent to the Civil Judge, Senior Division, Narol, on or before 31st March 1984. In view of this statement, the Court found that the Special Civil Application could not survive and accordingly rule was discharged. Obviously, this statement made on behalf of the Agricultural Lands Tribunal and Mamlatdar was based on the order dated 21-2-1982 which had been passed by the Agricultural Lands Tribunal and Mamlatdar. The documents annexed with the Special Civil Application No. 13973 of 1994 show that this order dated 21-2-1982 passed by the Agricultural Lands Tribunal and Mamlatdar had been sent to the Civil Judge (Senior Division), Narol, vide letter dated 21-3-1984 in terms of the statement which was made before This Court in Special Civil Application No. 5761 of 1983 on 15th March 1984. It further appears from the record and pleadings of Special Civil Application No. 13973 of 1994 that, the petitioner has filed an appeal under the Tenancy Act, being Tenancy Appeal No. 119 of 1985 against the aforesaid order dated 21-2-1982, u/s 74 of the Tenancy Act and this appeal was rejected by the Deputy Collector, Land Reforms, Ahmedabad, on 8th September 1987. The petitioner then preferred a revision application before the Gujarat Revenue Tribunal on 9-11-1987 and this revision application was rejected by the Tribunal on 9th June 1994. Against this order dated 9th June 1994, passed in Revision Application No. TEN. B.A. No. 864 of 1987 read with the order dated 8th September 1987 passed in Tenancy Appeal No. 119 of 1985, this Special Civil Application No. 13973 of 1994 has been filed in which the order dated 21-2-1982 passed by the Agricultural Lands Tribunal and Mamlatdar in Tenancy Case Devasthan Inam No. 295 of 1981 has been again challenged, although the same is already the subject-matter of challenge in the earlier Special Civil Application No. 434 of 1983 on the basis of the amendment dated 26th July 1991 carried out in that Special Civil Application No. 434 of 1983.

9. Special Civil Application No. 1611 of 1983 discloses the lis between the petitioner Musamiya Imamhadar Bax Razvi and Natverlal Chunilal Patel with regard to the order dated 6th November 1982 passed by the Secretary to Govt, in the Revenue Department in Urban Land Tribunal, Devasthan Inam Case Nos. 18, 20 and 22 of 1982 whereby the order dated 30th August 1981 passed by the Deputy Collector, Devasthan Inam, in Devasthan Inam Case Nos. 14 and 136 of

1979 was confirmed u/s 4(1)(c) of the Inam Abolition Act in relation to the land admeasuring 2 acres-09 gunthas of new Survey No. 293 of village Isanpur, Ahmedabad.

10. Similar orders passed by the Deputy Collector, Devasthan Inam, on 26th October 1981 and the Secretary to the Govt, in the Revenue Department, passed on 6th November 1982, are under challenge in Special Civil Application No. 1612 of 1983 on a lis between the petitioner Musamiya Imamhadar Bax Razvi and the legal heirs of Jamalbhai Ibrahim. The similar order passed on 18th December 1981 by the Deputy Collector, Devasthan Inam, Ahmedabad, and the order dated 6th November 1982 passed by the Secretary to Govt, in the Revenue Department, Govt, of Gujarat, in the matter of lis between the petitioner Musamiya Imamhadar Bax Razvi on one side and the legal representatives of Rahemanbhai Jamalbhai Ibrahim and Chunilal Fakirbhai, i.e., Natverlal Chunilal Patel etc. in relation to the lands admeasuring 25 gunthas out of Survey No. 292, 2 acres-27 gunthas out of Survey No. 294 and 2 acres-34 gunthas out of Survey No. 292 of village Isanpur, Ahmedabad, are under challenge in Special Civil Application No. 1613 of 1983.

11. Identical orders dated 28th October 1981 passed by the Deputy Collector, Devasthan Inam and the order dated 6th November 1982 passed by the Secretary to Govt, in the Revenue Department, Govt, of Gujarat, in the matter of lis between the petitioner Musamiya Imamhadar Bax Razvi on one side and the legal representatives of Haribhai Somabhai, legal representatives of Babubhai Patel and the legal representatives of Davalbhai Somabhai Patel, Bibanabu, widow of Mahomedbhai Rehmanbhai and Jamalbhai Ibrahimbhai, with regard to the land admeasuring 1 acre-07 gunthas out of Survey No. 613, 1 acre-33 gunthas out of Survey No. 614, 7 acres-31 gunthas out of Survey No. 615, 6 acres-18 gunthas out of Survey No. 616 and 2 acres-05 gunthas out of Survey No. 567 of village Isanpur, Ahmedabad, are under challenge in Special Civil Application No. 1614 of 1983.

12. To assail the impugned orders on behalf of the petitioner, much stress has been laid on the provisions of the Tenancy Act and the Bombay Land Revenue Code, while the emphasis on behalf of the respondents to defend the impugned orders is based on the provisions of the Inam Abolition Act.

13. The submissions which have been urged on behalf of the petitioner may be summarised as under:

(1) Whether Bai Marium was a permanent tenant or not is a question which should be decided as a basic question and whether she was a permanent tenant or not could be decided by the Agricultural Lands Tribunal and Mamlatdar alone in accordance with the provisions of Section 70(b) and Section 85 of the Tenancy Act in view of the bar of jurisdiction against the Civil Courts to settle, decide or deal with any question which is required to be settled by the Agricultural Lands Tribunal and Mamlatdar under the Tenancy Act and further in view of the

provisions of Section 85A in any suit if any issue is involved which is required to be settled, decided or dealt with by any authority competent to settle such issue under this Act, i.e., Tenancy Act, the Civil Courts shall stay the suit and refer such issues to the competent authority for determination. u/s 85A(2) of the Act, on receipt of such reference from the Civil Court, the competent authority shall deal and decide such issues in accordance with the provisions of this Act, i.e., Tenancy Act and shall communicate its decision to the Civil Court and as such, Court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

(2) In the context of the above submission, unless it was decided by the concerned Agricultural Lands Tribunal and Mamlatdar as to whether Bai Marium was a permanent tenant or not, it could not be considered as to what rights would flow in favour of the respondent to whom the land had been transferred by Bai Marium and, therefore, the Agricultural Lands Tribunal and Mamlatdar could not refuse to decide the reference which has been made by the Civil Court in the Civil suit which had been filed by the present petitioner and, therefore, the order dated 21-2-1982 passed by the Agricultural Lands Tribunal and Mamlatdar disposing of the Tenancy Case No. 295 of 1981 on the ground that the respondent had been declared to be an inferior holder by the Deputy Collector, Devasthan Inam under the provisions of the Inam Abolition Act was wrong and, therefore, this order dated 21-2-1982 deserves to be quashed and set aside.

(3) That the order passed by the Deputy Collector, Devasthan Inam, holding the respondent No. 1 to be an inferior holder in respect of the suit land was itself bad in the eye of law and had been passed in contravention of the provisions of the Inam Abolition Act, because such transfer by Bai Marium in favour of the respondent was invalid, in view of the provisions contained in Section 27 of the Tenancy Act and consequently, the respondent was an unauthorised holder within the meaning of Section 2(14) of the Inam Abolition Act, 1969.

14. On the basis of the submissions as above, it has been contended that, while on one hand, the order dated 26th October 1981 passed by the Deputy Collector, Devasthan Inam and the subsequent order dated 6th November 1982 confirming the order dated 26th October 1981 are illegal, the order dated 21-2-1982 passed by the Agricultural Lands Tribunal and Mamlatdar, disposing of the Tenancy Case No. 295 of 1981 on the ground that the respondent had been held to be an inferior holder, was illegal and the further orders which have been passed on 8-9-1987 in Tenancy Appeal No. 119 of 1985 and the order dated 9th June 1994 passed by the Gujarat Revenue Tribunal, Ahmedabad, in Revision Application No. TEN. B.A. No. 864 of 1987 upholding the order passed by the Agricultural Lands Tribunal and Mamlatdar dated 21-2-1982 are also illegal. On the same reasoning, the impugned orders in Special Civil Application Nos. 1611 to 1614 of 1983 have been assailed to be illegal.

15. As against this, Mr. Tarunkumar Shah has made the following submissions:

(1) It was not at all necessary to have first decided as to whether Bai Marium was a permanent tenant or not and the question which essentially requires decision in this case depends upon the right of the respondents under the Inam Abolition Act, the orders which have been passed which are subject-matter of challenge in this petition, have been passed under the Inam Abolition Act and for the purpose of deciding the rights under the Inam Abolition Act, it was not at all necessary for the concerned Deputy Collector, Devasthan Inam, to decide as to whether Bai Marium was a permanent tenant or not. The question whether Bai Marium was a permanent tenant or not has nothing to do with the question of determination of his being an inferior holder under the Inam Abolition Act.

(2) Once the respondent had been found to be an inferior holder, there is no question of deciding the reference which had been made to the Agricultural Lands Tribunal and Mamlatdar by the Civil Court and the Agricultural Lands Tribunal and Mamlatdar had rightly passed the order dated 21-2-1982 and the same had been rightly upheld by the higher authorities.

(3) The order passed by the Deputy Collector, Devasthan Inam, holding the respondent to be an inferior holder does not suffer from any error or infirmity whatsoever, there is no contravention of the provisions of the Inam Abolition Act and he has defended the order passed by the Deputy Collector, Devasthan Inam, on the basis of the provisions of Section 2(9), Section 4(o), Section 4(4), Section 6(b), Section 19(4) and Section 20 of the Inam Abolition Act and, therefore, the order dated 26th October 1981 passed by the Deputy Collector, Devasthan Inam and the subsequent orders dated 6th November 1982 confirming the order dated 26th October 1981 do not warrant any interference by This Court and whereas the order dated 21-2-1982 passed by the Agricultural Lands Tribunal and Mamlatdar and the further orders dated 8-9-1987 passed by the Secretary to Govt, and the further orders dated 9th June 1994 passed by the Gujarat Revenue Tribunal, Ahmedabad, upholding the order dated 21-2-1982 do not suffer from any illegality, none of the impugned orders can be quashed and set aside and all these six Special Civil Applications are required to be rejected.

16. I have considered the submissions made on behalf of both the sides. In my opinion, two questions arise for consideration before This Court, in the facts of this case, which are as under:

(1) Whether the respondent could be held to be an inferior holder in absence of the decision as to whether Bai Marium was a permanent tenant or not and in case it is found that the question as to whether the respondent was an inferior holder or not could be decided in absence of a decision with regard to Bai Marium being a permanent tenant or not, whether the respondent has been rightly held to be an inferior holder under the provisions of the Inam Abolition Act?

(2) Whether the Agricultural Lands Tribunal and Mamlatdar was right in disposing of the Tenancy case vide order dated 21-2-1982 on the ground that the respondent had already been held to be an inferior holder under the provisions of

the Inam Abolition Act?

17. So far the first question is concerned, the learned Counsel for the petitioner may be right in contending that the question whether Bai Marium was a permanent tenant or not, could only be decided by the Agricultural Lands Tribunal and Mamlatdar, in view of the provisions of Section 70B and Section 85 of the Tenancy Act, but I find that the scheme of the Inam Abolition Act does not make it imperative for a person claiming to be an inferior holder to establish his rights under the Tenancy Act as a tenant. The Inam Abolition Act is essentially a land reforms Act, abolishes the Inam by charitable institutions and provides for matters consequential and incidental thereto. The legislative history of this Act shows that the Bill to enact this particular Act was placed before the Assembly on 16th March 1968 and it was notified to be effective from 15th November 1969 vide Gazette Notification dated 20th November 1969. Under the scheme of this Act, the appointed day, therefore, is 15th November 1969 and it defines "authorised holder" in Section 2(3); "devasthan inam" in Section 2(6); "inferior holder" in Section 2(9); "inamdar" in Section 2(10); and "unauthorised holder" in Section 2(14). The power to decide as to whether any person is inamdar, authorised holder, unauthorised holder or an inferior holder has been given to the State Government after giving an opportunity to the parties to be heard and holding a formal inquiry, with the proviso that the State Government may authorise any officer to decide in the like manner the questions arising under any of the clauses u/s 4(1), i.e. (a), (b) and (c). Section 4(2) provides for an appeal to the State Government within sixty days from the date of decision, Sub-section (3) provides for the revision and under Sub-section (4) of Section 4, the decision of the authorised officer has been given a finality and it has been provided that the same will be conclusive and shall not be questioned in any suit or proceedings in any Court. Section 5 deals with the abolition of certain devasthan Inam together with their incidents etc. and Section 6 deals with the occupancy rights in respect of devasthan lands and it has been provided in Section 6(b) that, in the case of devasthan land, the person deemed to be the occupant primarily liable to the State Government for making payment of land revenue in respect of such land in accordance with the provisions of the Code and the rules made thereunder shall be, where such land is in the possession of the authorised holder or in the inferior holder, such authorised holder or inferior holder as the case may be. Section 19 provides that, any action taken or things done after 18th March 1968 and before the appointed day, i.e., 15th November 1969 shall be void. Section 20 deals with the bar of jurisdiction.

18. Section 2(9) on which considerable arguments have been raised is reproduced as under:

2(9) "Inferior holder" means a person who is in possession of a Devasthan land whether by inheritance, or succession or valid transfer under the Tenancy Law or otherwise and who, being liable to pay assessment in cash or kind, holds such land, whether on payment of assessment or not.

According to the plain language of the definition of "inferior holder" as given out in Section 2(9) and as has been reproduced hereinabove, for any person to be an inferior holder, it is necessary that: (1) he must be in possession of devasthan land whether (a) by inheritance, or (b) succession, or (c) valid transfer under the Tenancy Law or (d) otherwise, and who being liable to pay the assessment in cash or kind holds such land whether on payment of assessment or not. This definition of "inferior holder", therefore, provides more than one alternatives for a person claiming as inferior holder; the possession of the devasthan land on the basis of a valid transfer under the Tenancy Law is one of the four alternatives given in this section for the purpose of possessing and holding the land. Had it been a case in which only a person holding and possessing the land on the basis of a valid transfer under the Tenancy Law could claim to be an inferior holder, the things would have been different and in that case, for the purpose of determining the question as to whether the respondent was having a valid transfer under the Tenancy Law from Bai Marium or not, could have certainly assumed importance as a basic question to be decided as a pre-condition or a pre-requisite for determination of his right as an inferior holder under this Act. Such is not the case and there are three more alternatives provided in the definition clause of "inferior holder" itself under this Act and, therefore, even if a person is in possession of devasthan land otherwise than by way of inheritance or succession of a valid transfer under Tenancy Law, being liable to pay the assessment in cash or kind and holds such land whether on payment of assessment or not, may be an inferior holder. Therefore, it becomes transparently clear that the question as to whether Bai Marium was a permanent tenant or not and whether the respondent was holding the land in question under a valid transfer under the Tenancy Law or not, was not at all essential for the purpose of deciding his claim as an inferior holder. The claim of the respondent as inferior holder may be considered even if he is able to point out that he was in possession of the land and was holding the land otherwise and that he was liable to pay the assessment in cash or kind or was holding the land whether on payment of assessment or not. Therefore, in the considered opinion of This Court, the first contention which has been raised on behalf of the petitioner cannot be accepted and it is found that it was not at all necessary to have first got a decision on the question as to whether Bai Marium was a permanent tenant or not. The inferior holder is a term which has been defined under the Inam Abolition Act. There is no such term in the Tenancy Act or in the Bombay Land Revenue Code and this term which has been included in the special enactment of Inam Abolition Act has to be considered in the light of the provisions of this special enactment. It is also the settled position of law that the special enactment prevails over the general enactment and the right of any holder of the land as an inferior holder is certainly a special right conferred under the provisions of the special enactment, namely, the Inam Abolition Act, which is under consideration. The factors or the embargoes or restrictions which are provided in the Tenancy Act, therefore, may not essentially come in the way of a person claiming to be an inferior holder if he is otherwise covered by the definition of inferior holder as given in this special

enactment. Mr. Tarunkumar Shah has, in this regard, repeatedly, invited the attention of This Court towards a decision which was rendered by This Court in Special Civil Application No. 1450 of 1971 which was decided on 3rd March 1976 (Coram: M.P. Thakkar, J.). This was a petition filed by the present respondent wherein the present petitioner was a respondent. It was a petition directed against the order dated 19th May 1971 passed by the Special Secretary, Revenue Department, Government of Gujarat. The copy of the judgment dated 3rd March 1976 has been placed on record by the petitioner in Special Civil Application No. 434 of 1983 and I find that there is a categorical reference to the same Survey Nos. 293, 294, 295 and 297. The Court has noticed that these lands were entered in the name of one Bai Marium as tenant and by a registered document, she had sold out these lands to Patel Natverlal Chunilal, i.e., the respondent, in the case at hand. It has also been noticed by the Court that, Patel Natverlal Chunilal had applied to the Competent Authority for an entry in regard to this transaction and the rights acquired by him u/s 135 of the Land Revenue Code and on 9th January 1963, the entry regarding the rights acquired by him was made in the revenue record and this entry has been certified by the Circle Inspector on 1st March 1963. The present petitioner who was a respondent in that case did not take any steps for a period of six years and the revision application against the making of the entry as aforesaid was challenged for the first time in the year 1969 by filing a revision application before the State Government, praying that the entry made in favour of Patel Natverlal Chunilal may be cancelled. The Deputy Secretary (Revenue), State of Gujarat, by order at Annexure B dated 19th May 1971 held that the entry made in favour of Patel Natverlal Chunilal be retained. It was also held by the Deputy Secretary (Revenue), that, Musamiya Imamhadar Bax Razvi must have known about the making of this entry No. 286 in the year 1963 and that he was not justified in remaining inactive for six years. Notwithstanding the aforesaid findings, the Court has noticed in this judgment and order dated 3rd March 1976 that the Deputy Secretary was of the opinion that an endorsement was required to be made in other rights column of the records of revenue, to the effect that the transaction in favour of the petitioner is illegal. According to the Deputy Secretary, prima facie, the transaction was invalid in the context of Section 27 of the Bombay Tenancy and Agricultural Lands Act, 1948, in view of the fact that Bai Marium did not appear, prima facie, to be a permanent tenant. The Court has then quoted the definition of "permanent tenant" and has then observed that, even if the name of the tenant and predecessor-in-title is not entered in the revenue records or in any public record or in any other revenue record as a permanent tenant, immediately before the commencement of the Tenancy Act, he can yet fall within the description of "permanent tenant" if he fulfils the criteria indicated in Section 2(10)(A)(a)(i) or (ii) or 2(10)(A)(b). The Court has found that the Deputy Secretary did not consider this aspect at all and had proceeded on the assumption that, if the name of Bai Marium did not appear in the revenue records, it was, prima facie, established that she was not a permanent tenant. Besides this, This Court noted it as an additional ground that

Patel Natverlal Chunilal had not been afforded an opportunity to establish that Bai Marium was a permanent tenant and that Bai Marium had also been given a notice on the question of the validity or otherwise of the transaction which she had entered into with the respondent, i.e., Patel Natverlal Chunilal. This Court thus held that the impugned order had been passed in disregard of the relevant provisions of law, as also in violation of the principles of natural justice and thus, the order passed by the Revenue Department was quashed and set aside and the Rule was made absolute. Thus, the Entry No. 286 made in favour of the present respondent was retained and the order which had been passed by the Revenue Department holding that the transaction was invalid in the context of Section 27 of the Bombay Tenancy and Agricultural Lands Act, 1948, was quashed and set aside. The present petitioner was a party to this decision, but he had not challenged this decision further and this order dated 3rd March 1976, passed in Special Civil Application No. 1450 of 1971 attained finality and is binding between the parties. Now, it is not at all open and is too late in the day, for the present petitioner to say that the respondent is not entitled to the fruits of this order which had been passed by This Court in presence of both the sides, i.e., Patel Natverlal Chunilal on one side and Musamiya Imamhadar Bax Razvi on the other side.

19. The learned Counsel for the petitioner has argued with vehemence and emphasis that nobody had challenged the correctness of this entry at that time. She has argued that, from the judgment, it is not clear that the entry was correct and she maintains that, an entry means a valid entry under the Tenancy Act and the entry in question was neither correct nor final. In support of her submissions she has placed reliance on: (1) Desai Navinkant Kesarlal and Others Vs. Prabhat Kabhai and Others, . (2) (1970) 11 G.L.R. 595, in the case of Mohmadkhan Jamiyatkhan v. Dadamiyan Mohmadmiyan and (3) Bhikhabhaijethabhai and Others Vs. J.V. Vyas, Additional Collector and Another,

20. There cannot be any quarrel with the proposition of law that the rights with regard to the tenancy can be determined only by the Mamlatdar u/s 70B of the Tenancy Act, and that in this judgment and order dated 3rd March 1976, there is no direct finding that Bai Marium was a permanent tenant, but the fact remains that this entry which had been made in favour of Patel Natverlal Chunilal was retained and retaining of such entry was upheld by This Court and further that the order of the Revenue Department in which the transaction in question between Bai Marium and the present respondent was held to be illegal, had been quashed and set aside even after noticing the contentions with regard to the impact of Section 27 of the Tenancy Act, as had been relied upon by the Revenue Department. Thus, it goes without any controversy that the name of the present respondent is entered with regard to the land in question at Entry No. 286 way back in the year 1963 and notwithstanding the fact as to whether Bai Marium was a permanent tenant or not, the respondent is in possession of this land and is holding the same. The term "otherwise" as has been mentioned in the definition clause of Section 2(9) of the Inam Abolition Act is a term of wide

import. Even if it is considered that the term "otherwise" has to be construed with the aid of the principle of ejusdem generis and this term "otherwise" has to be given a meaning in the context of the earlier terms of "inheritance" or "succession" or "valid transfer under the Tenancy law", it has to be agreed on all hands that a person may be in possession in a way other than these three terms as is clear from the words in Section 2(9) which qualifies the holder's possession otherwise. The only requirement is that, the land in question must be possessed and the person possessing the same must be liable to pay the assessment in cash or kind, whether he holds the land on payment of assessment or not and the only embargo is that the possession of devasthan land must not be under any kind of alienation, which is null and void under any law applicable to such land immediately before the appointed day, because it is provided in Section 2(14) that the possession under any kind of alienation which is null and void would render the holder to be an "unauthorised holder". Now, in the facts of the present case, there is no basis to say that the alienation of the land in question by Bai Marium in favour of the present respondent was null and void under the law applicable to such land immediately before the appointed day. Firstly, the transaction had not been declared to be null and void by any authority under the law whether the tenancy or otherwise. Secondly, This Court, in Special Civil Application No. 1450 of 1971 had considered the factum of the transfer of this land by Bai Marium in favour of the respondent and after noticing the opinion of the Revenue Department that. an endorsement was required to be made in the other rights column of records of revenue to the effect that the transaction in favour of the petitioner was illegal, set aside such order passed by the Revenue Department, once an order to this effect in which it was said that it must be recorded in the record of rights against the respondent that the transaction in his favour was illegal, the Court quashed and set aside such order and that too, after noticing the definition of the "permanent tenant" 1 fail to understand how it is now open for the present petitioner to contend that the alienation in favour of the present respondent by Bai Manum was null and void under any law. Apart from the fact that the present petitioner did not challenge this judgment and order dated 3rd March 1976 before the higher Court by way of moving SLP before the Supreme Court (if the Letters Patent Appeal was not maintainable because of the fact that the writ petition was under Article 227 of the Constitution) it has been held to be unbelievable by the Revenue Department itself that, Musamiya Imamhadar Bax Razvi had not noticed the factum of this Entry No. 286 made in the year 1963 which clearly goes to show that the present petitioner never challenged the alienation in favour of the present respondent to be illegal and it appears that when this Land Reform Bill for enacting Inam Abolition Act, 1969 was presented in March 1968 and it became known to all and sundry that, u/s 19, the action taken or done after 18th March 1968 and before the appointed day, i.e., before the day it was operative, shall be null and void, that the petitioner woke up from long slumber, filed the Civil suit as has already been stated hereinabove, and the fact remains that even today, no one has held that the alienation in favour of the present respondent by Bai Marium was null

and void under any law applicable to such land and, therefore, the authorised officer under the Inam Abolition Act, had no basis to brand the respondent as an unauthorised holder and it is an established fact that the respondent is in possession of the land in question, is holding the land and it is also proved on the basis of the entry of his name in the revenue records that he is throughout liable to pay the assessment. In this regard, Mr. Tarunkumar Shah has categorically stated that even till this date, the respondent Natverlal Chunilal Patel has been paying the assessment, on the basis of his name in the Revenue Records, as aforesaid and this statement made by Mr. Tarunkumar Shah has not been controverted. The essential condition for any person to be an inferior holder under the Inam Abolition Act is to possess and hold the land and be liable to pay the assessment in cash or kind. Both these requirements, in the opinion of This Court, are co-existing in favour of the respondent and, therefore, I have no hesitation in holding that, neither it was necessary to have decided the question with regard to Bai Marium being a permanent tenant under the provisions of the Tenancy Act as a pre-condition or a pre-requisite and it was not at all essential to have taken such a decision before embarking upon the claim of the respondent as inferior holder and further that the authorised officer has rightly held the respondent to be an inferior holder u/s 2(9) of the Inam Abolition Act, 1969 and the order to that effect which has been passed by the Deputy Collector, Devasthan Inam, on 26th October 1981 does not suffer from any infirmity whatsoever and such order dated 26th October 1981 has been rightly upheld by the Special Secretary on 6th November 1982.

21. The papers produced by learned Counsel Mr. Tarunkumar Shah are taken on record with the consent of Mr. Bukhari.

22. Coming to the next question as to whether the order dated 21-2-1982 passed by the Agricultural Lands Tribunal and Mamlatdar, disposing of the Tenancy Case No. 295 of 1981 is valid or not, the fact cannot be lost sight of that the respondent had already been declared an infeior holder, and the same has been found to be correct by This Court as above. The learned Counsel for the petitioner has submitted that, even if it was found that the respondent was an inferior holder, the Agricultural Lands Tribunal and Mamlatdar could not have disposed of the reference and thus refused to decide the controversy as to whether the respondent was a tenant in respect of the land in dispute or not, the contention is that the Agricultural Lands Tribunal and Mamlatdar was under an obligation to decide the reference which was made by the Civil Court under the provisions of the Tenancy Act and the question which was to be decided in the reference was as to whether the respondent was a tenant claiming as such under the transfer of the land from Bai Marium. It is crystal clear that the suit had been filed by the present petitioner for restoration of the possession of the land in question to him from the present respondent, i.e., Natverlal Chunilal Patel and in that suit, in view of the pleading of the parties, the question arose as to whether the respondent was a tenant or not, because the present respondent claimed that Bai Marium had sold out the land in question to him. It appears that the

ultimate question to be decided by the Civil Court was as to whether the plaintiff, i.e., the present petitioner was entitled to possession or not. In this background, the reference was made by the Civil Judge, Senior Division, on 17th December 1973, that:

It is the defendant's contention that after he entered upon the suit lands, rightly or wrongly by virtue of the deed dated 19-5-1961 Exh. 29/1 made by Bai Marium, he was paying rent to the plaintiff and was recognised by the plaintiff as his tenant. This Court is not competent to decide this issue. Therefore, issue No. 3 to be referred to the Mamlatdar for decision.

23. Issue No. 3 framed in the suit was as under:

Whether the defendant proves that he was the direct tenant of the plaintiff and has become deemed purchaser?

23.1. The terms of the reference and the language of issue No. 3 have been quoted above and the copies of the documents have been produced by Mr. Tarunkumar Shah, for the perusal of the Court. I have also heard the learned Counsels for the parties on this aspect of the matter, because the argument has been raised that, even if the respondent had been to be an inferior holder, the Agricultural Lands Tribunal and Mamlatdar should have decided the question as to whether the respondent was a tenant as claimed by him or not. It cannot be said that the Agricultural Lands Tribunal and Mamlatdar was not alive to the fact-situation and the context in which the reference had been made. The ultimate question was as to whether the plaintiff in the suit was entitled to the possession of the land in dispute or not. Once the Agricultural Lands Tribunal and Mamlatdar found that the respondent had already been held to be an inferior holder and it considered that it was not necessary to decide the controversy with regard to the respondent being a tenant as claimed by him or not and it disposed of the tenancy case, by its order dated 21-2-1982, it cannot be said that the Agricultural Lands Tribunal and Mamlatdar should have yet decided a controversy with regard to the respondent being a tenant. Had This Court come to the conclusion that the respondent could not have been declared as an inferior holder under the Inam Abolition Act and the order declaring him as an inferior holder under the Inam Abolition Act was wrong and was not sustainable in the eye of law, This Court would have certainly considered the question of issuing direction to the Agricultural Lands Tribunal and Mamlatdar for deciding the controversy as to whether he was a tenant in respect of this land under the Tenancy Act or not. Suffice it to say that, so far as the scope of these petitions is concerned, the main controversy is as to whether the respondent has been rightly declared as an inferior holder under the Inam Abolition Act. No doubt, the petitioner has challenged the order dated 21-2-1982 passed by the Agricultural Lands Tribunal and Mamlatdar and the subsequent orders which have been passed by the higher authorities upholding this order, i.e., order dated 8-9-1987 passed in Tenancy Appeal No. 119 of 1985 and the further order dated 9th June 1994 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN.

B.A. No. 864 of 1987. I have perused the order dated 21-2-1982, order dated 8-9-1987 and the order dated 9th June 1994 passed by the Agricultural Lands Tribunal and Mamlatdar, Deputy Collector, Land Reforms, Gujarat Revenue Tribunal, respectively, and I have also taken note of the arguments raised on behalf of the petitioner that the Agricultural Lands Tribunal and Mamlatdar while passing the order dated 21-2-1982, at the top of the order, has wrongly mentioned it to be a proceeding u/s 32G of the Tenancy Act and that it was in fact, a reference. Be that as it may, the mere wrong mentioning of section with reference to the proceedings cannot vitiate the order because, it is clear that the order was passed in the Tenancy Case, Devasthan Inam Case No. 295 of 1981 and when the copy of the order passed under the Inam Abolition Act declaring the respondent as an inferior holder was produced before the Agricultural Lands Tribunal and Mamlatdar, he found that the case should not proceed further with reference to the provisions of the Tenancy Act. It is clear that the reference to Section 32G is not appropriate because, the Agricultural Lands Tribunal and Mamlatdar was concerned with the controversy as had been referred by the Civil Court, but this wrong reference to Section 35G cannot alter the nature of the basic issue which was involved and the order which had been passed by This Court on 15th March 1984 while deciding Special Civil Application No. 5671 of 1983, i.e., the petition which has been filed by the present petitioner which also shows that the prayer in this petition was that the Agricultural Lands Tribunal and Mamlatdar be directed to decide the issue referred to it by the Civil Judge, Senior Division, Narol and in this Special Civil Application, a statement was made on behalf of the Agricultural Lands Tribunal and Mamlatdar that the Agricultural Lands Tribunal and Mamlatdar has already decided the issue and intimation thereof will be sent to the Civil Judge, Senior Division, Narol, on or before March 31, 1984 and the record shows that, immediately thereafter, the Agricultural Lands Tribunal and Mamlatdar had sent the communication on 21-3-1984 to the Civil Judge, Senior Division, Narol, by enclosing the copy of the order dated 21-2-1982, that the issue had been decided. The contents of this letter dated 21-3-1984 clearly show that it was a letter in the matter of Civil Suit No. 70 of 1971 and in this letter, it is also mentioned that the Agricultural Lands Tribunal and Mamlatdar has decided the reference sent by the Civil Court and further that the Deputy Collector, Devasthan Inam, had held the respondent Natverlal Chunilal Patel to be the inferior holder in respect of the land in dispute and, therefore, Tenancy Case Devasthan Inam No. 295 of 1981 could not proceed further and accordingly, the Tenancy case was disposed of. A copy of this order dated 21-2-1982 had also been sent to the Civil Judge, Senior Division, Narol, along with this letter dated 21-3-1984. Thus, there remains no scope for any doubt that the Agricultural Lands Tribunal and Mamlatdar was fully alive with the real controversy and the reference made by the Civil Court while passing the order dated 21-2-1982 and the reference to Section 32G with regard to the proceedings, at the top of this order dated 21-2-1982 is of no consequence. The Deputy Collector, Land Reforms (Appeal), considered the appeal which had been filed by the present petitioner before him against the order dated 21-2-1982

which was filed on 30th December 1985 and the Deputy Collector, Land Reforms took notice of the fact that the respondent had been declared as an inferior holder under the Inam Abolition Act and the continuation of the appeal u/s 74 of the Tenancy Act was time-barred. This order passed by the Deputy Collector also says that the present petitioner who was the appellant before the Deputy Collector did not appear before the Deputy Collector on 5-9-1987 despite the fact that the time had been repeatedly granted since March 1987 to August 1987. The Deputy Collector came to the conclusion that the appeal was time-barred and there is no reason to condone the delay and in view of the order passed by the Deputy Collector, Devasthan Inam, no interference whatsoever was warranted with the order dated 21-2-1982 passed by the Agricultural Lands Tribunal and Mamlatdar. Not only this, thereafter the matter was taken in revision before the Gujarat Revenue Tribunal, and the Tribunal also passed a detailed order and came to the conclusion that the decision had been taken with regard to the possession under the Inam Abolition Act and after considering the matters in detail on the question of limitation as well as on merits, the Tribunal has passed an elaborate order supported by reasons and has held that nothing more was required to be done by the Agricultural Lands Tribunal in view of the orders passed under Inam Abolition Act. I, too, have considered all the submissions and having gone through the contents of the orders dated 21-2-1982, 8-9-1987 and 9th June 1994, find that the order dated 21-2-1982 has been rightly upheld by the Deputy Collector as well as the Gujarat Revenue Tribunal and the same does not warrant any interference by This Court. Thus, the question No. 2 is also answered against the petitioner.

24. In view of the conclusions arrived at as above with regard to both the questions which were required to be adjudicated in these matters, all the contentions raised on behalf of the petitioner fail and consequently, all these six Special Civil Applications deserve to be dismissed and they are hereby accordingly dismissed. Rule is discharged in each of these Special Civil Applications. No order as to costs.