
(1993) 06 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No. 272 of 1991

Navrangpura Gam Dharmada Milkat Trust

APPELLANT

Vs

Ramtuji Ramaji and Others

RESPONDENT

Date of Decision : 22-06-1993

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 3(3)
Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1965 — Section 7
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 1, 10, 11, 12, 13
Bombay Town Planning Act, 1954 — Section 124, 124(2), 22(1), 23(1)
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 227, 31, 31(2)
General Clauses Act, 1897 — Section 6
Gujarat Town Planning and Urban Development (Amendment) Act, 1986 — Section 1(2), 5, 7
Gujarat Town Planning and Urban Development Act, 1976 — Section 121, 41, 43

Citation : AIR 1994 Guj 75 : (1993) 2 GLR 1496

Hon'ble Judges : S.D. Shah, J;R.D. Vyas, J

Bench : Division Bench

Advocate : G.N. Desai and S.H. Sanjanwala and R.S. Sanjanwala, Maulin R. Raval, AGP, for the Appellant; J.M. Thakore, General and A.J. Patel and P.J. Vyas, for the Respondent

Judgement

Shah, J.—This petition filed under Article 226/227 of the Constitution of India by a Public Trust registered under the provisions of Bombay Public Trusts Act, raises an interesting question of law as regards applicability of the provisions of Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Tenancy Act", to the areas or parcels of lands which are included in the draft/final Town Planning Scheme prepared under the Gujarat Town Planning and Urban Development Act, 1976, hereinafter referred to as "Gujarat T. P. Act." This petition also challenges the legality and validity of the judgment and order of Gujarat Revenue Tribunal passed in Revision Appln. No. TEN. BS/129/90 and 221/90, dated January 11, 1991 issued there by confirming the judgment and order of the Deputy Collector in appeal, who in his turn confirmed the judgment

and order of the Agricultural Lands Tribunal in Tenancy case No. 22/88, dated December 16, 1989.

2. At the outset, we must mention that though principally the petition seeks to challenge the order passed by the Guj. Revenue Tribunal in exercise of its revisional powers u/s 76 of the Tenancy Act, submissions in the course of hearing before this Court were placed on a wider canvas inasmuch as this court was invited to various provisions of the Tenancy Act as well as Gujarat T. P. Act so as to decide the question as to whether and under what circumstances the provisions of the Tenancy Act would not apply to the areas which fall within the Town -Planning Scheme under the Gujarat T. P. Act. In view of the amplitude of the submissions made by the learned counsel appearing at the Bar on behalf of the petitioner as well as respondents we are called upon in this petition to decide a wider question. While undertaking that exercise we have also to keep in mind the fact that in substance and in reality this petition is filed under Art. 227 of the Constitution India and therefore the findings of fact reached by the three tribunals concurrently can not be and shall not be interfered with by this court lightly unless any of such findings is shown to be patently perverse so as to suggest that no reasonable tribunal could have reached such findings on the facts as existing before it.

3. With the. aforesaid introductory statement, we now proceed to state chronologically the facts as found by the tribunals which have given rise to present proceeding before us. They are as follows:

I. The petitioner-trust is the owner of parcel of land bearing S.No. 75/2 situated at Shekpur Khanpur admeasuring 1 acre and 3 gunthas. The said parcel of land was in the possession of deceased-Ramaji Adaji on 1-4-1957, i.e. Triller's Day.

II. The said parcel of land came to be included in the area of Municipal Corporation of the city of Ahmedabad by Notification, dated 13-8-1958.

III. The Ahmedabad Municipal Corporation thereafter declared its intention to make a Town Planning Scheme, Ahmedabad-19 (Memnagar) under Sub-section (1) of Section 22 of Bombay Town Planning Act, 1954, and accordingly, draft Town Planning Scheme No. 19 was prepared and published under Sub-section (1) of Section 23 of the Town Planning Act, 1954. In such draft scheme the land in question being S. No, 75/2 came to be included and it was allotted F. Plot No. 177. The said draft Town Planning Scheme No. 19 has become final on December 19, 1965 and the land in question is allotted P.P. No. 177. Since the T. P. Scheme has become final, and the land in question is allotted Final Plot, it is required to be seen by this court as to whether the provisions of Bombay Tenancy Act would apply to said parcel of land.

IV. The proceedings u/s 32(g) with respect to this very parcel of land were initiated. The Mamlatdar and Agricultural Lands Tribunal in case No. 8 by judgment and order dated 29th July, 1961 decided to drop the proceedings u/s 32(g) of the Bombay Tenancy Act at this parcel of land came to be included

within the limits of Ahmedabad Municipal Corporation and as it was then squarely covered by the decision of Bombay High Court in the case of Jasin Tomu Darnel v. Harischandra Pandurang Muranjan reported in (1959) 61 BLR 1112. It appears that because of this binding decision of Bombay High Court as well as of Gujarat Revenue Tribunal in Tenancy Appeal No. 40/60, dated December 15, 1960 Mamlatdar and ALT found that in view of inclusion of the land in the limits of Ahmedabad Municipal Corporation the tenancy of Ramaji Adaji was not protected and his right to purchase the land was also not protected. Said decision of the A.L.T. dated December 29, 1961 is produced at Annexure "A" and since the petitioner trust has heavily referred to and relied upon the said judgment in the earlier proceedings before the same parties, reference to this fact is found pertinent.

V. It appears that the petitioner-trust has made an application to the Dy. Collector, Ahmedabad u/s 88B of the Bombay Tenancy Act for its exemption from the provisions of Sections 1 to 87 on the ground that the land in question was held by a trust which was registered under the provisions of the Bombay Public Trusts Act, 1950, and that the income of the trust was appropriated for the purpose of said trust, a certificate was required to be granted as contemplated by Section 88B. It is an accepted position of law that granting of certificate u/s 88B of the Tenancy Act in favour of public trust would result in the exemption of property of the said trust from the provisions of Bombay Tenancy Act. This application which was filed by the petitioner-trust on 9-8-1958 came to be rejected by the Dy. Collector on June 25, 1973, and revision preferred to the Gujarat Revenue Tribunal being Revision Application No. TEB. B.A. 573 of 1973 was dismissed by judgment and order, dated June 27, 1974 whereby the Tribunal confirmed the findings reached by the Dy. Collector, Ahmedabad and held that the petitioner-trust was not entitled to exemption u/s 88B of the Act, as it was a composite trust and it cannot be said that its income was exclusively used for the purpose of the trust. The aforesaid judgment of the tribunal has become final and it shall have to be accepted that the petitioner-trust never enjoyed benefit of exemption u/s 88B of the Bombay Tenancy Act.

VI. One important fact which is also pressed into service is required to be noted, and it is that the Dy. Collector has, in the proceedings u/s 88B initiated by the petitioner-trust granted stay by his order passed in the month of December, 1968 to Agricultural Lands Tribunal, Ahmedabad from proceeding further with any proceedings u/s 32G of Bombay Tenancy Act commenced or to be commenced thereafter.

VII. After termination of proceedings u/s 88B by the judgment and order of Gujarat Revenue Tribunal, dated June 27, 1974, the Gujarat Town Planning and Urban Development Act, 1976 came into force with effect from February 17, 1978, and as one of the submissions has reference to this fact this fact is also referred to as an important fact.

VIIA. During the course of proceedings u/s 88B it appears that the Head-tenant

-- Ramaji Adaji has expired and present respondent Nos. 1 to 4 are the heirs and legal representatives of the deceased-tenant. These heirs and legal representatives of deceased tenant thereafter on March 5, 1979 made an application u/s 32G of the Bombay Tenancy Act for declaration that the deceased-tenant Ramaji Adaji, father of respondent Nos. 1 to 4 have become deemed purchaser of the parcel of land in question as on 1-4-1957 by operation of Section 32 of the Bombay Tenancy Act read with Section 32G and that the purchase price of the said parcel of land was required to be fixed by Agricultural Lands Tribunal.

VIII. The Mamlatdar and ALT pursuant to the application made by respondent Nos. 1 to 4, dated March 5, 1979 proceeded to hold enquiry and after recording evidence by judgment and order, dated December 16, 1989 declared that the applicants before him (present respondent Nos. 1 to 4) were in possession of the land in question as on 1-4-57 and were entitled to purchase the said land as deemed purchaser and it also fixed the purchase price at Rs. 3,335/- and also directed issuance of appropriate certificate u/s 32(M) on said purchase price being deposited. However, the Mamlatdar and ALT also directed by the operative part of the judgment that since the possession of the land was unauthorisedly recovered by the landlord, possession should be taken back from the landlord and it should be handed over to the tenants. The tribunal, accordingly, directed Mamlatdar and ALT, Ahmedabad to take necessary action for taking possession from the landlord and to handover the same to the tenants.

X. Being aggrieved by the aforesaid judgment and order of the Mamlatdar and ALT the petitioner-trust preferred Tenancy Appeal No. 42/90 while the heirs of the deceased-tenant preferred, Tenancy Appeal No. 11/90 and both these appeals came to be heard and decided by common judgment and order by the Deputy Collector (Tenancy Appeals) Ahmedabad, dated 4-4-90. The Deputy Collector dismissed the appeal preferred by the petitioner-landlord and allowed the appeal preferred by the respondents-tenants thereby altering the purchase price which was fixed by the ALT.

XL Being aggrieved by the said judgment and order of the Appellate Authority the petitioner-trust preferred two revision applications u/s 76 of Bombay Tenancy Act being Revision Application Nos. TEN. BA/94/90 and 221/90 which came to" be dismissed by the Tribunal by the impugned judgment and order, dated January 11, 1991. It is this judgment and order of the Tribunal which is under challenge before this Court.

XII. Incidentally, it would be necessary to mention one fact that according to the petitioner-trust the possession of the land in question was delivered to the petitioner trust by a regular possession receipt by respondent Nos. 1 to 3 on June 21, 1961. The findings of the authorities below on this point and the stand of the respondents before this Court is not consistent. However, we will accept as found by the three authorities below that on the date of application u/s 32G the petitioner-trust was in possession of the land in question and that the tenants

were illegally and unauthorisedly deprived of the possession of the land in question. It is not permissible for this Court to interfere with such concurrent findings of inferior tribunals. The petitioner-trust has contended that it has lawfully recovered possession from the tenants but all the three authorities have concurrently found that possession was illegally and unauthorisedly recovered by petitioner-trust. As ultimate order passed by all the three authorities is consistent with the factum of loss of possession by the tenants, we will proceed to examine the submission of the parties by accepting that as on the date of the application made by the heirs of the tenant on March 5, 1979, they were not in possession of the land in question.

XIII. Incidentally, one more fact is required to be noted and it is that in fact the petitioner-trust instituted Civil Suit No. 3097/79 in the City Civil Court at Ahmedabad against the heirs of the deceased-tenant and in such suit injunction is granted in favour of petitioner-trust and against the heirs of deceased tenant restraining them from taking over the possession of the land in question otherwise than by due process of law by judgment and decree, dated December 31, 1982. We are told at the Bar that First Appeal against said judgment has failed and Letters Patent Appeal is pending before the Division Bench of this Court,

4. In the aforesaid factual matrices, Mr. G. N. Desai, learned counsel for the petitioner-trust has raised the following submissions for the consideration of this Court:

(i) The proceedings initiated by respondent Nos. 1 to 4 by application, dated March. 5, 1979 u/s 32G of the Bombay Tenancy Act before the ALT at Ahmedabad culminating into the impugned order of the Gujarat Revenue Tribunal were thoroughly incompetent and without jurisdiction, inasmuch as the provisions of the Bombay Tenancy Act, 1948 were not applicable to the land in question by virtue of operation of Section 121 of the Gujarat Town Planning Act, 1976 as the land in question came to be included in the Municipal area of Ahmedabad Municipal Corporation in the year 1958 and as also the land was included in the draft and Final T.P. Scheme No. 19.

(ii) The acquisition of possession of land by the landlord in the year 1961 was saved by Second proviso to Section 88(1)(b) of the Bombay Tenancy Act as the respondent-tenants lost possession between two dates, namely, May 29, 1958, i.e. the date of Notification making Sections 1 to 87 of the Bombay Tenancy Act inapplicable and December 29, 1965, i.e. the date on which amendment in Section 88(1)(b) was made. In other words, the petitioner-trust contended that the first proviso to Section 88(1)(b) was not attracted to the facts of the case and second proviso was applicable.

(iii) The very initiation of the proceedings u/s 32G by the respondents-tenants by application dated 30-3-79 and the judgments of the ALT, Deputy Collector and the Gujarat Revenue Tribunal were barred by principle of res judicata and/or

principle analogous thereto in view of the fact that the controversy was finally decided by judgment and order of the ALT, Ahmedabad, dated July 29, 1961 which had become final between the parties.

(iv) The initiation of proceedings in the year 1979 by respondent-tenants and entertainment thereof was patently incompetent and without jurisdiction, inasmuch as, Section 32(1B) was on the Statute Book on the relevant date and it squarely applied to the fact-situation. Remedies under Sections 32G and 32(1B) were not concurrent, but alternative and in cases where Section 32(1B) was squarely applicable, it was not open to have resort to Section 32G of the said Act.

(ivA) In cases where the provisions of Section 32(1B) were squarely attracted resort to Section 32G can be had only after possession is restored lawfully u/s 32(1B) and not prior thereto, and therefore, in the present case, proceedings u/s 32G were not competent.

(v) In any case, the judgment and order of the ALT, dated December 16, 1989 insofar as it directed the Mamlatdar to take possession from the petitioner-trust and to restore the same to the respondent-tenants was patently beyond jurisdiction inasmuch as u/s 32G of the Act such an order could not have been passed, and to that extent, the order passed by the ALT and also confirmed in appeal by the Deputy Collector as well as by the Gujarat Revenue Tribunal in revision were required to be quashed and set aside.

5. M/s. J. M. Thakore, Ld. Advocate General and A. J. Patel have very stoutly resisted the aforesaid submissions of the petitioner by submitting before this Court that under the scheme of Bombay Tenancy Act a tenant in possession of land as on 1-4-1957 would become a deemed purchaser automatically and the only ritual that was required to be followed was that of fixation of purchase price. Since in the present case the deceased-tenant was admittedly in possession of the land in question on 1-4-1957 he has become deemed purchaser by virtue of operation of law and the fact that no purchase price was fixed u/s 32M of the said Act would not make the provisions of Section 32(1B) applicable. It was further submitted before us that since the application of the petitioner-trust for exemption u/s 88B was pending since 1958 till 1974 and since there was stay granted by the Deputy Collector against the proceedings u/s 32G which was operative up to 1973 no proceedings u/s 32G could have been initiated, and therefore, initiation of proceedings after 1974 was lawful and permissible. A reference to the provisions of Gujarat Town Planning Act, and more particularly, Section 121 of the Act was absolutely out of place, submit the learned counsel for respondents inasmuch as in their submission the case was governed by the first proviso to Section 88(1)(b). It was also submitted that the decision rendered by the ALT in the year 1961 would have no effect in view of the operation of first proviso to Section 88(1)(b) and in the alternative it is submitted that since an erroneous view of law and jurisdiction was taken by the ALT in the year 1961 the same would not bind the subsequent Tribunal. As regards the order of possession which is passed by the ALT is concerned it was submitted by

the respondents that though strictly legally Section 32G of the Bombay Tenancy Act does not refer to handing over of possession by the landlord to the tenant, such direction can be issued by the Tribunal to do complete justice between the parties. In any case, it was submitted before this Court that the directions issued by the ALT should be treated as further directions to the Mamlatdar to handover the possession to the tenant by recovering same from the petitioner-trust in accordance with law. It was also submitted that since concurrent findings of fact were reached by three authorities no interference of this court under Article 227 of the Constitution was called, more particularly, in view of the decision of the Supreme Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, . In view of the aforesaid submission, it was prayed that the petition should be dismissed with costs.

RE-SUBMISSION (i):

(i) In view of Section 121 of the Gujarat Town Planning & Urban Development Act, 1976 the Commencement of proceedings u/s 32G of the Bombay Tenancy Act on March 5, 1979 by the respondents-tenants for fixation of purchase price on the ground that they had become deemed purchaser on 1-4-1957 was null and void and without jurisdiction inasmuch as the provisions of the Bombay Tenancy Act were not applicable to the area in question submits the petitioner trust. It is not disputed before us that the land bearing Final Plot No. 177 was included in the draft scheme which was published in the year 1962 as well as in the Final Scheme No. 19 which became final and has come into force with effect from March 8, 1966. It is, therefore, submitted that Section 121 of the aforesaid Act was attracted and the proceeding u/s 32G were absolutely without jurisdiction.

(ii) At this stage, it will be necessary to refer to the relevant provisions of Gujarat Town Planning & Urban Development Act, 1976. The preamble of the Act recites that it was an Act to consolidate and amend the Law relating to the making and execution of development plans and Town Planning Schemes in the State of Gujarat. It is also not disputed before us that prior thereto the Bombay Town Planning Act 1954 was operative in the State of Gujarat. By Section 124 of the Act of 1976 the Bombay T.P. Act of 1954 is repealed and by Section 124(2) a saving clause is enacted. Reference to this saving clause shall be made hereafter at the relevant stage.

(iii) Section 121 of Guj. T. P. Act, 1976 reads as under:

"The provisions of the Bombay Tenancy & Agricultural Lands Act, 1948 and the Bombay Tenancy Vidarbha (Region & Kutch Area) Act, 1958, as in force for the time being, shall not apply to any area included in a town planning scheme under this Act,"

(iv) From the aforesaid provision it becomes at once clear that the provisions of Bombay Tenancy & Agricultural Lands Act, 1948 as in force for the time being shall not apply to any area included in a T.P. Scheme. The area in question was

admittedly included in a T.P. Scheme being T.P. Scheme No. 19. Therefore, the provisions of the Bombay Tenancy Act including Section 32G were not applicable to the area or parcel of land. This Act of 1976, though enacted in the year 1976, came into force with effect from 1-2-1978. Section 121 of the said Act, therefore, would apply with effect from 1-2-1978. Therefore, from that date none of the provisions of the Bombay Tenancy Act was applicable to the land in question as admittedly it was included in the draft as well as in the final T. P. Scheme. It is clear that by operation of Section 121 of the said Act, the legislature intended to exclude the operation of the provisions of Bombay Tenancy Act to areas included within the T.P. Scheme. That legislative intent is very clearly and unambiguously given effect to by enacting Section 121 of the T.P. Act, 1976. The petitioner would have been on a stonger footing had an identical provision, been in existence in the Bombay T.P. Act and had such provision operated at the relevant time when the deemed purchase of agricultural lands by sitting tenant took place on 1-4-57, i.e. Tillers" Day. It is required to be kept in mind that the Bombay T.P. Act of 1954 did not contain any provision identical to Section 121 of the Act of 1976 and the legislature then never wanted to exclude the applicability of the Bombay Tenancy Act to the areas included in the T.P. Scheme. The relevant date being 1-4-57 on which date all the sitting tenants of agricultural lands became the deemed purchasers of the lands, Section 121 of the Act which came into force on 1-2-78 would not deprive the sitting tenants of benefit of statutory purchase which had taken place on 1-4-57. Some formality of fixation of the purchase price and payment thereof by the tenant was required to be completed. Therefore, as observed by the Supreme Court in the case of Sri Ram Ram Narain Medhi Vs. The State of Bombay, the statutory purchase had taken place on 1-4-57 as admittedly deceased-tenant Ramaji Adaji was in possession of the parcel of land as tenant. On that date he has become deemed purchaser. The provisions of Bombay Tenancy Act, 1948 as they stood after its amendment in 1956 were squarely attracted to the area in question and there was admittedly no exclusion of the area from the provisions of the Bombay Tenancy Act as on 1-4-57. In that view of the matter, we are of the opinion that the proceeding which has statutorily commenced and which has made the tenant a deemed purchaser cannot be rendered ineffective, or the tenant who has become deemed purchaser cannot be deprived of that status by subsequent enactment which was not dealing with the relationship of landlord and tenant and it was a statute dealing with altogether a different subject, namely, that of Town Planning and Town Development. Therefore, Section 121 of the T.P. Act of 1976, in our opinion, cannot render ineffective the statutory purchase that has already taken place in favour of deceased tenant-Ramaji Adaji, nor would the provisions of Bombay Tenancy Act cease to operate, vis-a-vis, such transactions which have taken place prior to coming into force of the T.P. Act, 1976.

(v) It is also required to be noted that the legislature immediately thereafter realised the adverse effect of Section 121 on operation of Bombay Tenancy Act in the areas to which the provisions of Bombay Tenancy Act hitherto applied it

realised that it would result into depriving the tenants of the status of deemed purchasers which was conferred on them by beneficial legislation, and therefore, the State legislature enacted the Gujarat Town Planning & Urban Development (Amendment) Act, 1986. The said amendment is brought into force with effect from June 12, 1985 as Section 1(2) thereof provided that it shall be deemed to have come into force on June 12, 1985. By Section 5 of the Amending Act it is provided that in the principal Act Section 121 shall be deleted. It is thus clear that Section 121 from the T.P. Act, 1976 stands deleted with effect from June 12, 1985. Mr. G. N. Desai, learned counsel for petitioner-trust however submits that the said deletion of Section 121 is not fatal to the submission of the petitioners because as on 5th March, 1979, i.e. the date on which tenant made an application u/s 32G to Mamlatdar & ALT said Section 121 was in operation, and so long as the said section was operative the provisions of Bombay Tenancy Act were not applicable to the area in question. It is true that Section 121 of the said Act operated, but in our opinion, same was not applicable to case where the statutory purchase has already taken place on 1-4-57, and when the tenant has become deemed purchaser the date March 5, 1979 is not relevant date as the deemed purchaser was not required to make any application for fixation of purchase price. It was the statutory obligation of Mamlatdar and ALT to fix the purchase price of parcel of land of which a deemed purchase has taken place on 1-4-57. Therefore, since the proceeding has already commenced on 1-4-57 and since the tenant has already become a deemed purchaser the fixation of purchase price was a step in aid of statutory obligation. Such a step where taken by the statutory authority itself or at the instance of deemed purchaser would not render the decision of the authority non est or one without jurisdiction.

(vi) Mr. G. N. Desai, learned counsel for the petitioner-trust also invited our attention to Section 7 of the aforesaid Amendment Act of 1986 which reads as under:

"7. Transitory Provision: The provision of the principal Act shall continue to any scheme in respect of which a declaration of intention to make such scheme has been made u/s 41 of the principal Act at any time before 1st January, 1985 as if this Act had not been enacted."

(vii) Based on the aforesaid provision he has submitted that in view of this Section 7, Section 121 of the principal Act shall continue to apply to the area in question, and therefore, deletion of Section 121 by the Amending Act is immaterial as proceedings were initiated by the tenant on March 5, 1979, i.e. the date on which Section 121 was operating. In fact, Section 7 of the amending Act provides that the provisions of principal Act shall apply to any scheme in respect of which declaration of intention to make such scheme has been made u/s 41 of the principal Act. In the present case, final scheme was made and published as back as 1-9-1965 and therefore, Section 7 of the amending Act, in our opinion, is not attracted at all.

(viii) In our opinion, the subsequent deletion of Section 121 from the Statute

book is suggestive of the fact that the legislature never intended to exclude the applicability of the provisions of Bombay Tenancy Act to the areas included in T.P. Scheme. In fact, the Bombay T.P. Act, 1954 did not contain any such provision. When such provision was enacted by Section 121 in the Gujarat Act and when its adverse effects on the entire class of tenants of agricultural lands was visualised by the legislature it has deleted the same. It is true that there exists a distinction between "repeal" of provision and "deletion" of provision. Deletion ordinarily takes effect from the date the legislature has effected the said deletion. A deletion has no effect of total effacing or wiping out a provision as if it never existed. A "repeal" ordinarily brings about complete obliteration of the provision as if it had never been enacted. The effect is to destroy all incoherent rights and all causes of action which may have arisen under the repealed provisions. However, since Section 121 is deleted by the amending Act, we shall have to proceed on such deletion which has taken place with effect from June 12, 1985. However, in view of the fact that the respondent-tenant has become deemed purchaser much prior thereto, i.e. much prior to 1-2-78 in our opinion Section 121 shall have no adverse effect on the exercise of statutory power by ALT in fixing the purchase price for deemed purchase which has taken place on 1-4-57. Section 121 of the Gujarat T.P. Act cannot be read so as to render ineffective statutory purchases which has taken place prior to coming into force of the Act of 1976. In that view of the matter, we do not find any substance in the first submission of the petitioner-trust and we hold that fixation of purchase price by the Mamlatdar & ALT either at the instance of the deemed purchaser or suo motu was not without jurisdiction as jurisdiction existed in him on 1-4-57. In fact, it was a statutory obligation on the ALT to fix the purchase price and exercise of said statutory obligation, vis-a-vis, transactions which have taken place prior to coming into force of the Gujarat T.P. Act was not excluded by Section 121 of the said Act. For such, statutory purchases which have taken place prior to 1-2-78, i.e. the date on which the T.P. Act came into force the provisions of the Bombay Tenancy Act continue to operate and would always continue to operate and have continued to operate after deletion of Section 121 with effect from June 12, 1985.

RE-SUBMISSION (ii)

(i) It is the case of the petitioner-trust that the possession of the land was handed over to it on June 21, 1961 by respondent Nos. 2, 3 & 4 for themselves and on behalf of their father by executing a writing. It is its further case that the land in question came to be included in the limits of Ahmedabad Municipal Corporation by notification, dated August 13, 1958. In exercise of powers conferred, upon the State Government by Section 3(3) of the Bombay Provincial Municipal Corporations Act, 1949 it has issued notification after consultation with the Corporation so as to include certain parcels of land within the local limits of the city of Ahmedabad. In the schedule attached to such notification land in question is mentioned at Item No. 2. It is, thus, clear that the land in question came to be included within the limits of Ahmedabad Municipal Corporation with effect from August 13, 1958. The petitioner-trust has acquired the possession of

the land in question after August 13, 1958, and before the date on which the Tenancy Act was amended so as to amend Section 88. It is the case of the petitioner-trust that since the transfer or acquisition of land in favour of petitioner-trust was made between the aforesaid two dates, the second proviso to Section 88(1)(b) was squarely attracted and that the lower authorities were not right in holding that the provisions of second proviso were not attracted. It was also contended that the transfer or acquisition of land referred to in the second proviso to Section 88(1)(b) would mean simpliciter transfer of possession or acquisition of possession, and the said terms "transfer or acquisition" are not used in the sense of lawful or valid "transfer or acquisition" of land.

(ii) In the case of Navinchandra Ramanlal Vs. Kalidas Bhudarbhai and Another, the Supreme Court was called upon to decide almost identical claim on behalf of the landlord. Before the Supreme Court the appellant was the landlord and respondent-tenant was in possession of the land before 1946. Section 88 of the Tenancy Act of 1948 as it stood at the relevant time provided for exemption of certain lands from its provisions, one such exemption being in respect of any area which the State Govt. may, by Notification in official gazette, specify as being reserved for urban non-agricultural or industrial development. Armed with this power the Government issued notification, dated August 9, 1956 whereby amongst others the Government specified the area within the limits of Municipal Corporations of the cities of Poona and Ahmedabad as being reserved for urban non-agricultural and industrial development. Said notification was superseded by another notification, dated February 14, 1957 whereby the Government specified amongst others the areas within the limits of Municipal Corporations of the cities of Poona and Ahmedabad as being reserved for the abovementioned purpose. The land in question was not situated within the area of Ahmedabad Municipal Corporation as on the date of said notification. Subsequently, said land came to be included within the limits of Ahmedabad Municipal Corporation on and from May 30, 1959. In January, 1969 the ALT commenced enquiry u/s 32G of the Tenancy Act, 1948 for determining the purchase price of the land on the footing that the tenant has become a deemed purchaser of the land u/s 32. In the course of such enquiry the appellant-landlord gave an application stating that the land in respect of which the enquiry was being held was then included within the limits of Ahmedabad Municipal Corporation and hence in view of Section 88(1)(b) read with Notification, dated February 14, 1957 it was exempted from the provisions of Tenancy Act, 1948 and that enquiry u/s 32G was therefore incompetent, and was required to be dropped.

(iii) The aforesaid contention did not find favour with the ALT and the Deputy Collector. Nowhere in the revisional jurisdiction Guj. Revenue Tribunal held that on true construction of Section 88(1)(b) not Only the lands which were in the Ahmedabad Municipal Corporation area on the date of notification will be exempted, but such exemption would also extend to the lands brought within the corporation area from time to time. Therefore, the Tribunal held that the proceedings u/s 32G were required to be dropped. The said decision of the

tribunal was reversed by the learned single Judge of this court and it was held that the proceedings u/s 32G were competent. In further appeal to the Supreme Court it was contended before the court that on proper construction of Section 88(1)(b) the power to exempt the area situated within the Municipal Corporation's limits was to be exercised for urban, non-agricultural or industrial development and that once such; power is exercised it should cover the entire area situated within the limits of the Municipal Corporation at any given point of time. The Supreme Court examined two important amendments introduced to the relevant provisions of the Tenancy Act, 1948, namely Section 43C and Section 88(1). Section 43C as it stood before its amendment by Gujarat Act 36 of 1965 reads as under:

"43C. Nothing in Ss. 32 to 32R both inclusive, and 43 shall apply to lands in the areas within the limits of -

(a) xx xx x

(b) Municipal Corporation constituted under Bombay Provincial Municipal Corporations Act, 1948."

Section 88(1)(b) as it stood prior to introduction of a proviso by Gujarat Act 36 of 1965 reads as under:

"88(1) Save as otherwise expressly provided in Sub-section (2) nothing in the foregoing provisions of this Act shall apply -

(a) xx xx x

(b) to any area which the State Government may from time to time by Notification in the official gazette specify as being reserved for non-agricultural or industrial development."

The Tenancy Act of 1948 was amended by the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1965 (Gujarat Act 36 of 1965). Section 7 of the Amendment Act of 1965 reads as follows:

"7. Amendment of Section 43 of Bombay LXVII of 1948 -- In Section 43C of the principal Act, for the words "area within the limits of the words "area which on the date of the coming into force of the Amending Act, 1965 are within the limits of shall be substituted and shall be deemed to have been substituted with effect on and from the 1st August, 1956."

By Section 18 of the Amending Act two provisos were added to Clause (b) of Section 88(1) which read as follows:

Provided that if after notification in respect of any area specified in the notification is issued under this clause, whether before or after the commencement of the Bombay Tenancy & Agricultural Lands Act (Gujarat Amendment) Act, 1955 the limits of the area so specified are enlarged on account of the addition of another area thereto, then merely by reason of such

addition, the reservation as made by notification so issued shall not apply and shall be deemed never to have applied to the area so added, notwithstanding anything to the contrary contained in any judgment, decree or order of any court, Tribunal or any other authority".

Provided further that if any land in the area so added has been transferred or acquired after the issue of the notification referred to in the first proviso but before the 29th day of October, 1964, such transfer or acquisition of land shall have effect as if it were made in an area to which this clause applies".

(iv) In fact, if the history of this Amendment Act of 1965 is traced it is found that a question arose before various Tenancy Authorities including the Gujarat Revenue Tribunal as to whether the exemption granted to the lands situated within the Municipal limits by the Notification of May 29, 1958 can automatically extend to the areas which were situated within such Municipal limits by a later notification? A view was taken by the Revenue Tribunal that exemption under Sections 1 to 87 of the Act would be available also in cases of transactions pertaining to land which were subsequently included within the municipal limits and the earlier notification issued at the relevant time would automatically cover newly added areas which might have been subsequently included within the municipal limits. The resultant effect was that the provisions of Sections 1 to 87 of the Act were held not applicable to such newly added areas, and therefore, the State Govt. found it necessary to amend Section 88(1) of the Tenancy Act and it introduced the aforesaid two provisos. Looking to the language of the Amendment made in Section 43(c) and Section 88(1)(b) both the amendments are retroactive from 1st August, 1956, i.e. from the date the Bombay Act 13 of 1956 came into force. In other words, amended Section 43C and Section 88(1) (b) with its proviso will have to be read as if they were introduced in that very form from 1st August, 1956.

(v) Having noticed the aforesaid amendments to Section 88 and that said amendments are retroactive, we shall have now to decide the impact of said amendments on the question of application of provisions of Tenancy Act, 1948 to the lands which came to be subsequently included in the Municipal Corporation Area of Ahmedabad after 1-8-1956. Admittedly the land in question came to be included within the area of Ahmedabad Municipal Corporation by notification, dated 13-8-1958. Prior thereto, there was already in existence a notification u/s 88(1)(b). This subsequent notification was issued u/s 3(3) of the Bombay Provincial Municipal Corporations Act so as to include further areas within the limits of Ahmedabad Municipal Corporation. The earlier notification issued u/s 88(1)(b) would not automatically apply to the newly added area notwithstanding anything contrary contained in any judgment, decree or order of any court, tribunal or any other authority. Thus, the legislature by enacting the first proviso made it explicitly clear that even if the transactions have taken place with respect to lands which were subsequently brought within the municipal limits, such transactions would be subject to the provisions of Ss. 1 to 87 of the Bombay

Tenancy Act because the earlier notification issued u/s 88(1)(b) would apply to the lands which were situated within the municipal limits as existing at that time when such notification was issued. It appears that notification u/s 88(1)(b) was issued by the State Government on specifying certain areas as being reserved for non-agricultural or industrial development. When said notification u/s 88(1)(b) was issued admittedly the land in question was not brought within the area of Ahmedabad Municipal Corporation. In the case before us the land in question came to be included within the limits of Ahmedabad Municipal Corporation by notification, dated August 13, 1958. From the language of the first proviso it becomes clear that for newly added areas within the Municipal limits by subsequent notification, the earlier notification which is issued u/s 88(1)(b) would not automatically apply notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal or any other authority. The use of the phrase "shall be deemed never to have applied to the area so added" in first proviso also makes it clear that the legislature has given retrospective effect to the first proviso. There-fore if the area in question was not within the municipal limits at the point of time when the notification u/s 88(1)(b) was issued so as to reserve said area for non-agricultural or industrial development, and if such area came to be included within the municipal limits by subsequent notification the principal notification issued u/s 88(1)(b) will not automatically apply to such area and transactions with respect to such area despite its inclusion within the municipal limits would be subject to the provisions of Sections 1 to 87 of the Bombay Tenancy Act, In order, therefore, to ascertain as to whether the provisions of first proviso to Section 88(1)(b) would apply, in our opinion following ingredients must be satisfied:

(a) There must be in existence a notification u/s 88(1)(b) issued by the State Government specifying the area, being reserved for non-agricultural or industrial development. Once such notification is issued the area specified in such notification stands excluded from the operation of Sections 1 to 87 of the Bombay Tenancy Act.

(b) There must be a subsequent notification before or after the commencement of Bombay Tenancy (Gujarat Amendment) Act, 1955 whereby the limits of areas which were specified in the parent notification u/s 88(1)(b) are enlarged on account of addition of certain other areas.

(c) In such an eventuality, when second notification is issued merely by reason of issuance of second notification the reservation which was made by parent notification u/s 88(1)(b) would not be extended to said added area automatically and such parent notification shall be deemed never to have applied to the area so newly added unless of course while issuing second notification the parent notification is also amended.

(d) The issuance of second notification, ipsofacto, without anything more whereby the Municipal limits are extended and the new areas are added within the municipal area would not make the provisions of Sections 1 to 87 of the

Bombay Tenancy Act inapplicable to such newly added areas.

(e) If anything contrary is contained in any judgment, decree or order of any court, tribunal or any other authority, so as to make applicable the parent notification u/s 88(1)(b) to the subsequent notification extending the municipal limits such judgment, decree or order of the court, tribunal or authority shall have no effect.

(vi) The aforesaid analysis of the first proviso to Section 88(1)(b) if applied to the fact situation obtaining before this court it is found that there was in existence parent notification u/s 88(1)(b) dated (sic) wherein the land in question was not reserved for non-agricultural or industrial development. Subsequently, by virtue of operation of notification, dated 13-8-59 the land in question came to be included within limits of Ahmedabad Municipal Corporation. Thirdly, at the time of issuance of second notification, the first parent notification u/s 88(1)(b) was not amended. Therefore, the first proviso to Section 88(1)(b) would apply so as to mean that the land in question would not be exempted from the applicability of Sections 1 to 87 of the Bombay Tenancy Act. If any Court, Tribunal or competent authority has rendered decision, judgment and/or decree otherwise, such judgment, decree and/or order of the court also shall have no effect. We must hasten to add that Mr. G. N. Desai, learned Counsel for petitioner has not even attempted to submit that the first proviso to Section 88(1)(b) is attracted but he has instead submitted that the case is governed by second proviso. Mr. A. J. Patel, learned Advocate for respondents has, on the other hand, submitted that to the fact situation prevailing before this Court, it is the first proviso only, which applies and the second proviso has no application.

(vii) If we turn to the second proviso we find that it deals with the situation when parent notification u/s 88(1)(b) is issued and subsequently another notification is issued adding certain areas to the municipal limits, in the intervening period if some transactions have already taken place, the legislature wanted to provide for such transaction by enacting the second proviso. In order to protect such transactions from the "sweep of the first proviso, the legislature has enacted simultaneously the second proviso. The second proviso clearly provides that if any land so added has been transferred or acquired after the issuance of notification referred to in the first proviso, i.e. parent notification u/s 88(1)(b) but before the subsequent notification, such transfer" or acquisition of concerned land shall have effect as if it was made in the area to which Section 88(1)(b) applies. In the case of *Ratnaprabhabai v. Tulsidas V. Patel*, reported in 1982 23 GLR 213, the learned single Judge of this Court (S. B. Majmudar, J. as his Lordship then was) was called upon to decide the question of applicability of second proviso, and after analysing the first proviso to Section 88(1)(b) the Court found that the second proviso was in the nature of exception to first proviso, and therefore, it should be strictly construed. The court also found that the second proviso carves out an exception to the first proviso to the following extent:

"If any land in the added area has been transferred or acquired between 29-5-1958 and 29-10-1964, the provision of Sections 1 to 87 would not automatically apply by virtue of the parent notification u/s 88(1)(b) to such transaction pertaining to the concerned land and the transaction in question will be saved from the sweep of Sections 1 to 87 of the Tenancy Act meaning thereby that to such a transaction, Tenancy Act will not apply. However, it is equally obvious that on any other aspects, the concerned land would not get excluded from the operation of Sections 1 to 87. If for example, the land in question is not subjected to any acquisition or transfer between the aforesaid dates, such land would remain within the sweep of Sections 1 to 87 of the Tenancy Act. If there is a tenant on such land, he would get the benefit of deemed purchase provision of Section 32 of the Act as on 1-4-1957 all tenants of agricultural lands were made deemed purchasers of the concerned agricultural lands held by them as tenants. In short, only genuine and otherwise legally operative transactions of acquisition and transfer of such lands during the relevant period would get insulated from the sweep of Sections 1 to 87 of the Tenancy Act.

2. Even the aforesaid protection afforded by the second proviso to the concerned transaction would not be available after 29-10-64. If the transaction in question has taken place after that date, concerning the land in such added areas, such a transaction would not be protected and would squarely fall within the sweep of the first proviso."

The court found that in order to attract the provision of second proviso, following two conditions must be satisfied :

1. The transaction in question viz. transfer or acquisition must be of any land in the area which gets added within the municipal limits.
2. Such transfer or acquisition of the concerned land must take place between the two terminal dates, viz. date of parent notification u/s 88(1)(b) and subsequent notification adding area to the limits of Municipal Corporation.

In the fact situation obtaining before the learned single Judge a finding was recorded by the court that the first condition was not satisfied, and therefore, the second proviso was not attracted. In the case before us any transaction, as such, has not taken place, in the sense of conveyance of property but on June 21, 1961 the respondent Nos. 2 to 3 have delivered the possession of the land in question to the petitioner-trust. The petitioner-trust has thus acquired the possession of the parcel of land in question and Mr. G. N. Desai, learned Counsel for petitioner-trust has referred to this transfer of possession as transaction, or acquisition of possession or transfer of possession from the tenant to the landlord. He has further submitted before this Court that this particular transaction of transfer of possession by the tenant to landlord or acquisition of possession by landlord from tenant is referable to parcel of land which has got included within the limits of Ahmedabad Municipal Corporation by notification, dated August 13, 1958. In his sub-mission, therefore, the condition No. 1 for

applicability of second proviso is satisfied. Secondly, he has submitted that such a transfer of possession has taken place after the parent notification u/s 88(1)(b) after intimation adding new area to the municipal limits on August 13, 1958 and before the second notification, even the second condition for attracting the second proviso is satisfied. He, therefore, very vehemently submitted before us that the second proviso to Section 88(1)(b) would apply squarely to the fact situation prevailing before us, and so the authorities were not justified in entertaining the proceedings u/s 32G of the Bombay Tenancy Act since to the land in question provisions of Sections 1 to 87 of the Bombay Tenancy Act did not apply.

(viii) In order to answer the aforesaid submission this Court shall have to decide as to what is meant by the expression "transferred or acquired" as occurring in the second proviso. Any transfer of possession by one party to another would be acquisition of possession by another from first, submits Mr. Desai. In his submission, the words "transferred or acquired" should be construed so as to include all alienations by act inter-vivos by one party to another. It is not necessary that "transaction or transfer" should be lawful or valid, submits Mr. Desai: If permission is transferred by one to another or if possession is acquired by another from first by whatever means and in whatever manner, it would fall within the sweep of second proviso, submits Mr. Desai. It must also be mentioned that Mr. Desai has extensively taken us through other provisions of the Bombay Tenancy Act where the words "transferred or acquired" are used by the legislature. He referred to different provisions such as Sections 83A, 84, 84A, 84B and 84C. Having referred to these provisions, he submitted that even invalid acquisition is treated as acquisition. He also referred to the definition of the said words as occurring in Black's Dictionary at page 1493, VIth edition so as to mean "parting with possession". He also invited our attention to the case of Dwarkadas Srinivas v. Solapur Spinning & Weaving Company Ltd., reported in AIR: 1954 SC 119, wherein in the context of Article 31 of the Constitution of India the Supreme Court held that the words "acquisition" and "taking possession" used in Article 31(2) of the Constitution of India have the same meaning as the word "deprivation". In our opinion, meaning assigned to the word "acquisition" in the context of Article 31 cannot be verbatim applied to the use of the term in a statute which is a beneficial legislation. In the context of compulsory acquisition the word "acquisition" may mean "taking possession". However, this controversy should not detain this Court any longer since in our view the matter is no longer res integra so far as this Court is concerned as S. B. Majmudar, J. has construed the words "transfer" or "acquire" to mean "lawful or valid transfer or acquisition" in reference to Bombay Tenancy Act. Therefore, even if it is accepted that the "transfer or "acquire" would mean "transfer of possession" or "acquisition of possession", such transfer by one to another or acquisition by one from another must be otherwise lawful and valid. Mr. Desai submitted that the words "transfer or acquire" are referable only to transfer by or acquisition of, possession, valid or invalid, and once such transaction has

taken place, the legislature has intended to save such transaction from the operation of Sections 1 to 87 of the Bombay Tenancy Act. The submission of Mr. Desai appears to be quite attractive at the first blush, but cannot stand the judicial scrutiny firstly because the matter is now concluded for this court by the judgment of S. B. Majmudar, J. (as His Lordship then was) in the case of Ratna-prabhabai v. Tulsidas V. Patel (1982 23 GLR 31) (supra), where it is categorically ruled by this court that only genuine and otherwise legally operative transactions of acquisition and transfer of lands during the relevant period would get insulated from the sweep of Sections 1 to 87 of the Tenancy Act. True it is that the submission which is raised by Mr. Desai before us was not squarely raised before the learned single judge. It is also true that as Division Bench we are not bound by the law declared by the learned single Judge. However, we are of the opinion that a beneficial legislation which is enacted for the benefit of the tenants should be so construed so as not to defeat the object of protecting the tenants, vis-a-vis, the landlords. From the scheme of the Bombay Tenancy Act it can be said that as and when the tenant is deprived of his possession by means other than those provided by law, the legislature has frowned upon such transaction. In fact, the legislature has provided special machinery as to how a tenant in possession can be dispossessed from the parcel of land by the landlord, and even in cases of surrender of tenancy or surrender of possession by the tenant to the landlord a detailed procedure is provided which is required to be followed failing which even the surrender of possession is regarded as invalid (vide Section 15). We, therefore, cannot accept the submission of Mr. Desai, Ld. counsel for petitioner that the acquisition of possession even if it be invalid, would be governed by second proviso to Section 88(1)(b). We are, therefore, of the opinion that, in order that the transaction may fall within the second proviso it must be a lawful transaction whereunder in accordance with law the landlord has acquired the possession and the tenant has transferred the possession. In the case before us three authorities have concurrently found that the acquisition of possession by the petitioner-trust was not lawful and was not in accordance with the procedure prescribed by law. Such a finding is a concurrent finding and this court would not lightly upset such finding unless it is shown to be palpably perverse. We accept the finding reached by the three lower authorities and in view of the finding that the possession of land was not lawfully acquired by the petitioner-trust we hold that despite the fact that the two conditions of second proviso to Section 88(1)(b) are satisfied the very proviso would not be attracted as the transfer or acquisition of possession by the petitioner-trust was not lawful. We, therefore, reject the second submission of the learned counsel for petitioner-trust, and hold that the acquisition of possession by the petitioner trust from respondent-tenant in the year 1961 was not saved by the second proviso to Section 88(1)(b) of the Bombay Tenancy Act.

RE-SUBMISSION (iii):

(i) Mr. G.N. Desai, learned counsel for petitioner-trust has very strenuously urged before this court that the entire proceedings from the date of filing of application

u/s 32G for fixation of purchase price by the respondent-landlord on March 5, 1979 and thereafter culminating into order of Gujarat Revenue Tribunal was barred by salutary principle of res judicata or principle analogous there to. He submitted that the proceedings were initiated u/s 32G by the then Mamlatdar and ALT. When such proceeding came to be heard the then ALT which was the only competent authority to decide the proceeding, by judgment and order, dated July 29, 1961, held that since the land in question has come to be included within the limits of Ahmedabad Municipal Corporation by virtue of notification, dated August 13, 1958 the land in question was excluded from the operation of Sections 1 to 87 of the Bombay Tenancy Act. The ALT, therefore, in terms found that the land in question was situated within the limits of Ahmedabad Municipal Corporation, and therefore, the right of the tenant to purchase u/s 32 of the Bombay Tenancy Act Was not protected. He also held that such was the view taken by the Division Bench of the High Court of Bombay in the case of Jasin Tomu Damel v. Harischandra Pandurang Muranjan reported in (1959) 61 BLR 1112. Against the said decision of the ALT no appeal was preferred by the deceased-tenant Ramaji Adaji. Said decision of the ALT has, in every respect, become final. Mr. Desai, therefore, very strenuously urged before this court that all the ingredients for applying the principle of resjudicata were and are present in the fact situation obtaining before this court. Mr. A.J. Patel for respondents, on the other hand, submitted that the decision rendered by the ALT on July 29, 1961 can not Operate as resjudicata as the judgment of the tribunal was based on misinterpretaion of law, and such an erroneous decision would. never operate as res judicata. In the alternative, he submitted that since the judgment of the ALT was of the year 1961, the first proviso to Section 88(1)(b) would operate and notwithstanding anything stated in any judgment, decree or order of the court or tribunal the provisions of Bombay Tenancy Act would apply even to parcels of land which were included within the Municipal Limits.

(ii) Considering the aforesaid submissions, we are of the opinion that though bar of res judicata would apply, the judgment rendered by the ALT in the year 1961 will have no effect because of operation of first proviso to Section 88(1)(b).

(iii) As regards applicability of principle of res judicata, it is part and parcel of Statutory Law inasmuch as Section 11, C.P. Code prescribes the terms and conditions as to when principle of res judicata can apply. The judgment of a court of concurrent jurisdiction, directly upon the point, is, as a plea, a bar, or as evidence conclusive, between the same parties, upon the same matter, directly in question in another court. The judgment of a court of exclusive jurisdiction, directly on the point, is, in like manner, conclusive upon the same matter, between the same parties, coming incidentally in question in another court, for a different purpose. But neither the judgment of a court, of concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment (Duchess of Kingstone's case by Sir William de Grey). It is this very principle which is summarised by

Section 11 of C.P. Code. To constitute the matter resjudicata, the following conditions must be satisfied: (Vide Syed Mohd. Salie Labbai (Dead) by L.Rs. and Others Vs. Mohd. Hanifa (Dead) by L. Rs. and Others, .

"I. The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue either actually (Explanation III) or constructively (Explanation IV) in the former suit.

II. The former suit must have been a suit between the same parties or between the parties under whom they or any of them claim -- Explanation VI is to be read with this condition.

III. The parties as aforesaid must have litigated under the same title in the former suit.

IV. The court which decided the former suit must have been a court competent to try the subsequent suit or the suit in which such issue is subsequently raised. Explanation II is to be read with this condition.

V. The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit. Explanation V is to be read with this condition."

(iv) Applying the aforesaid conditions to the fact situation prevailing before us, we shall have to see as to what the matter in issue before the ALT in the year 1961. The main question before the Tribunal was as to whether the provisions of Sections 1 to 87 of Bombay Tenancy Act would apply to the land in question in view of its inclusion within the limits of Ahmedabad Municipal Corporation. That was the issue before the ALT when it held that by inclusion of land within the limits of Ahmedabad Municipal Corporation provisions of Sections 1 to 87 of the Bombay Tenancy Act would not apply. In so holding the tribunal did really apply the law then declared by the Division Bench of Bombay High Court which in every respect was binding on the tribunal. That is the very issue which is agitated in the proceedings before the ALT in the year 1979, and we fail to understand as to how one can escape from the conclusion that the very issue which was agitated before the Tribunal in the year 1979 was directly and substantially in issue before the ALT in the year 1961. The former as well as subsequent proceedings were between the same parties. The tribunal which decided the former proceedings was the only competent authority to decide the same and that very tribunal was moved by the tenant in the year 1979 when he made an application on March 5, 1979 and all the conditions for applicability of bar of res judicata were thus satisfied. The Explanation VIII which is added to Section 11, C.P. Code extends the application of the section by providing that a decision of a court of limited jurisdiction on an issue heard and finally decided shall, if it is within the competence of such court, operate as res judicata in a subsequent suit. In that view of the matter, it is not possible for us to hold that bar of res judicata would not have applied. In the absence of first proviso to Section 88(1)(b) which came to be introduced in the year 1965, perhaps, the

petitioner-trust would have succeeded on this very issue as in our opinion the subsequent proceedings would have been rendered illegal as prohibited by principle of res judicata. However, we must mention at this stage one submission made by Mr. A.J. Patel based on the decision of Supreme Court in the case of Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, . Justice J.C. Shah (as His Lordship then was) speaking for the Supreme Court held that where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties. The court also held that a question of jurisdiction of the court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit. A question relating to the jurisdiction of a court cannot be deemed to have been finally determined by an erroneous decision of the court. If by an erroneous interpretation of the Statute the court holds that it has no jurisdiction, the question would not operate as res judicata.

(v) Based on the aforesaid principle, Mr. A.J. Patel learned counsel for respondents-tenants vehemently submitted before us that the decision of ALT in the year 1961 was based on erroneous interpretation of law made by the Division Bench of Bombay High Court, and therefore, same was not binding at subsequent stage. It would not be correct in our opinion to refer to the decision of Bombay High Court or that of the tribunal as based on erroneous interpretation of law. The law as declared by the Bombay High Court was the prevalent law. That interpretaion of law was adverse to the class of tenants. The legislature was therefore required to step in and the legislature has amended the law. To a situation obtaining after the amendment of law, it is the amended law which shall apply but to say that the earlier decision can-not operate as res judicata would, in our opinion, amount to ignoring the salutary principle of res judicata enacted by Section 11, C.P. Code.

(vi) In the case before us however the judgment and order of ALT as confirmed in revision by the Guj. Revenue Tribunal would not be barred by principle of res judicata since in our opinion the law was amended after the earlier decision. The legislature has by introducing first proviso to Section 88(1)(b) by Amending Act of 1965 made the provisions of Sections 1 to 87 of the Bombay Tenancy Act applicable to parcel of lands which were subsequently included within the limits of the Municipal Corporation. While introducing the first proviso the legislature has clearly stipulated that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal or any other authority, the reservation made by the parent notification dated 1-2-1957 u/s 88(1)(b) would not apply and shall be deemed never to have applied. Therefore, despite the decision of ALT in the year 1961 first proviso to Section 88(1)(b) would operate as held by D.A. Desai, J. in the case of Navinchandra Ramanlal Vs. Kalidas Bhudarbhai and Another, the Amending Act of 1965 has made it abundantly clear that if there is any notification of Tenancy Act issued by the appropriate Govt. u/s 88(1)(b) exemption would enure for the benefit of that afea included in the Municipal Corporation as, on 1st August, 1956 and in the absence of fresh

notification such an exemption would not be available to the extended area and this amendment is made effective notwithstanding any judgment, order or decision of the court or tribunal to the contrary. The Supreme Court in the said judgment noted that in order to combat the effect of some judgments which purported to lay down that the exemption once granted would apply to any area that may be included in the corporation area at a date much later to the date of issue of the Notification the amendment was made. The court therefore held that law having undergone a substantive amendment bearing on the subject the ratio of the earlier decision can have no effect whatsoever and that would not be of any assistance. Similarly, we are of the opinion that the law having undergone the change in the year 1965 in view of the first proviso to Section 88(1)(b) the judgment and order of the ALT rendered in the year 1961 shall have to be treated as ineffective for all purposes and the ALT was justified in entertaining proceedings u/s 32G in the year 1979. This submission of Mr. Desai must also therefore fail.

RE-SUBMISSION (ivA):

(i) In order to appreciate properly this submission made by the learned advocate for petitioner it will be necessary to refer to Section 32(1), 32(1A) and 32(B) extensively. Same are reproduced herein:

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

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) Such tenant is not a permanent tenant but cultivates the land leased personally; and

(i) the landlord has not given notice of termination of his tenancy u/s 311; or

(ii) notice has been given u/s 31 but the landlord has not applied to 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 his 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 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".

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

(1A) (a) Where a tenant, on account of his eviction from the land by the landlord, before the 1st day of April, 1957 is not in possession of the land on the said date but has made or makes an application for possession of the land under Sub-section (1) of Section 29 within the period specified in that sub-section then if the application is allowed by the Mamlatdar, or as the case may be, in appeal by the Collector or in revision by the (Gujarat Revenue Tribunal) he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed.

(b) Where such tenant has not made an application for possession within the period specified in Sub-section (1) of Section 29 or the application made by him is finally rejected under this Act and the land is held by any other person as tenant on the expiry of the said period or on the date of the final rejection of the application, such other person shall be deemed to have purchased the land on the date of the expiry of the said period or as the case may be on the date of the final rejection of the application.

(1B) Where a tenant who was in possession of land on the appointed day and who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than in the manner provided in Section 29 or any other provision of this Act, is not in possession of such land or any part thereof or such land or part thereof is in the possession of the landlord or his successor in interest on the said date and such land or part thereof is not put to a non-agricultural use on or before the said date then the Mamlatdar shall, notwithstanding anything contained in the said Section 29 or any other provision of this Act either suo motu or on an application of the tenant made within the prescribed period hold an enquiry and direct that such land or as the case may be, part thereof shall be taken from the possession of the landlord, or as the case may be, his successor in interest, and shall be restored, to the tenant, and thereafter, the provisions of this section and Sections 32A to 32R (both inclusive) shall, so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or, as the case may be, part thereof, is restored to him:

Provided that the tenant shall be entitled to restoration of land or part thereof as the case may be, under this sub-section only (if he gives an undertaking in writing within such period as may be prescribed) to cultivate it personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area:

Provided further that-

(i) if the tenant fails to give such undertaking within such prescribed period, or if the tenant, after giving such undertaking refuses to accept the tenancy or possession of the lands, the land the possession of which the landlord or, as the case may be, his successor-in-interest is not entitled to retain under this sub-section; or

(ii) if the tenant gives such an undertaking and accepts such tenancy or possession of the land such portion of the land referred to in Clause (i) to the restoration of which the tenant would not be entitled under the first proviso, shall vest in the State Govt. free from all encumbrances and shall be disposed of in the manner provided in Sub-section (2) of Section 32P."

From the aforesaid provision it becomes clear that as same deals with the purchase of land by tenants as caption of section suggests. The marginal notes of section reads as "tenants deemed to have purchased the land on tillers" day". It shall have to be kept in mind that Section 32 in its present form came to be introduced by the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956. In fact, by the Act of 1956 a very comprehensive amendment was made in the Tenancy Act of 1948. Section 32 after its amendment provided for transfer of ownership of the land from a landlord to the tenant of the land by operation of law. The day was styled as "tillers day" and Section 32 provided that subject to the other provisions of the section and the provisions of the next succeeding section every tenant shall be deemed to have purchased from his landlord free from all encumbrances subsisting thereon on the said day, the land held by him as tenant. The law thus wanted to make the tillers of the soil the owners thereof. However, the provisions of Sub-section (1) are subject to other provisions of that very section and also subject to the provisions of next succeeding section. It is the use of this "subjective clause" which is pressed into service by Mr. Desai, learned counsel for petitioner-trust we shall elaborate thereon little later when we come to deal with his submission on interpretation of Section 32. It must also be mentioned that Section 32(1A) was initially not on the Statute book when Section 32 was enacted. It had come to be inserted by Bombay Act 65 of 1958. Similarly, Section 32(1B) also came to be inserted by Gujarat Amendment Act 5 of 1973 and therefore we shall have to see as to whether Section 32(1) can be so construed so as to be subject to aforesaid two provisions which came to be inserted subsequently in the years 1958 and 1973.

(ii) If reference is made to Sub-section (1 A) of Section 32 it becomes clear that it deals with a contingency when a tenant has lost possession before 1-4-1957, i.e. "tillers" day", and when such tenant makes an application for possession of land u/s 29(1) and when such application is allowed such tenant shall be deemed to have purchased the land on the date on which the final order allowing the application u/s 29 is passed. In short, Section 32(1A) deals with a situation when a tenant has lost possession prior to "tillers" day" and when possession is lawfully restored to him u/s 29 subsequently, vis-a-vis, such a tenant, deemed

purchase would take place on the date on which final order in the proceedings u/s 29 is passed in his favour. Situation contemplated by Clause (b) of Section 32(1A) is where the tenant has not at all made application for possession having lost his possession before 1-4-1957 and land is held by another person as tenant such other person shall be deemed to have purchased the land.

(iii) From the aforesaid provision it becomes clear that the Legislature wanted to deal with the situation where the tenant has lost possession of land as on 1-4-1957. Since he was not in possession as contemplated u/s 32(1) he cannot become a deemed purchaser on the tillers' day. The legislature, therefore, provided that if such a tenant has made application u/s 29(1) within prescribed period of limitation and if such an application for possession is granted finally deemed purchase would take place in case of such a tenant whose application for possession is finally granted. This is nothing but an extension of protective umbrella to a tenant who was not in possession on 1-4-1957. Tillers of the soil must get the soil was the legislative moto which was sought to do partially achieved by first amendment of 1956 and by subsequent amendment of 1958 which was extended to those tenants who were not in possession on 1-4-1957.

(iv) A further step in that direction is said to have been taken by the legislature u/s 32(1B) by amending Act of 1973. By the said sub-section it is provided that a tenant who was in possession of the land on the "appointed day" (June 15, 1955) and who was dispossessed of such land or any part thereof by the landlord at any time before the specified date (i.e. on March 3, 1973) otherwise than in the manner provided in Section 29 or any other provision of this Act, when such tenant is not in possession of such land or any part thereof, and when such land is in the possession of the landlord or his successor-in-interest, then the Mamlatdar shall either suo motu or on an application of the tenant made within a prescribed period of one year hold an enquiry and direct that such land or part thereof shall be restored to the tenant. Thereafter the provisions of Section 32, 32A to 32R (both inclusive) shall apply and the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or part thereof is restored to him.

(v) This provision is yet another attempt by the legislature to make the tillers of the soil the owners thereof. If they were dispossessed of the lands after 15th June, 1955 and before March 3, 1973, in such a contingency a tenant who is put out of possession between the said two dates has a remedy of getting back the possession and once he gets back the possession provisions of Sections 32, 32A to 32R would apply to them. Insofar as Section 32(1B) refers to "appointed day" being June 15, 1955 as the date on which the tenant was in possession and who has been dispossessed subsequently it can be said to refer to same contingency which is dealt with by Section 32(1A). Undoubtedly, there, is an overlapping between Section 32(1A) and 32(1B) insofar as period between June 15, 1955 and April 1, 1957 is concerned. Barring this overlapping, provisions of Section 32(1B) deal with the situation when the tenant has lost possession of the lands

between 1-4-57 to 3-3-73. In such a situation, either suo motu or on an application being made by the tenant it is open to Mamlatdar to order for taking possession of the land from the landlord and to restore to the tenant. In such a case after the possession is restored to the tenant provisions of Sections 32, 32A to 32R shall apply to such tenant and he shall be deemed to have purchased the land as and when possession is restored to him. The latter portion of Section 32(1B) is very much pressed into service by Mr. G. N. Desai and he has submitted that the proceedings which were initiated on March 5, 1979 by tenant by giving application for fixation of purchase price would squarely fall within the provisions of Section 32(1B) and could have been entertained and decided only under that section. He submitted that when the provisions of Section 32(1B) were squarely applicable to the fact situation it was not open to a court of law to ignore such a provision as it was not convenient to the tenant to have recourse to a part of provision which squarely disentitled him to any relief. He submitted that since the tenant has lost his possession on June 21, 1961 in the case before us it can be said that the tenant has lost possession on any day before the specified date, i.e. March 3, 1973, and therefore, if any proceedings were to be initiated they were the proceedings u/s 32(B). He submitted that consistent with the provisions of Section 32(B) Mamlatdar and ALT passed order for possession directing the authority to take over the possession from the landlord and to handover to the tenant. He submitted that once possession is restored, thereafter only provisions of Section 32A to 32R apply as person who was not in the possession of land can never become a deemed purchaser of the land under the scheme of the Act. He submitted that since he respondent tenant was not in possession of land he can never become a deemed purchaser by the order passed by the ALT u/s 32G. He therefore, submits that the only provision which was applicable to the proceedings before this court was Section 32(1B) and in any case not Section 32G of the Bombay Tenancy Act.

(vi) Mr. A. J. Patel, learned counsel for respondent-tenant on the other hand submits that recourse to Section 32(1B) is not necessary and permissible as admittedly the tenant was in possession on 1-4-57. It is not disputed before us by any of the parties that deceased Ramaji Adaji was in possession of the land on 1-4-57. Once this position is accepted, the law must have its course submits Mr. Patel by relying upon the decision of the Supreme Court in the case of Sri Ram Ram Narain Medhi Vs. The State of Bombay, . The Supreme Court was called upon to decide the constitutional validity of Bombay Tenancy and Agricultural Lands (Amendment) Act, 1966. The court held that the Tenancy Act of 1948 was passed by the State Legislature in order to amend the laws which govern the relations between the landlords and tenants of agricultural lands. The court also held that the said Act was a measure of agrarian reform. The Act was designed to achieve the very purpose of distribution of ownership and control of agricultural lands so as to sub serve common good and eliminating concentration of wealth and means of production to the common detriment, which purpose became more prominent when the Constitution was ushered on January 26, 1950

and the Directive Principles were enacted. Amendment Act of 1956 was a further measure of agrarian reform carrying forward the intentions which had their roots in the Act of 1948. Thereafter the court proceeded to examine as to whether the relevant provisions of Amendment Act of 1956 were designed to bring about an extinguishment or modification of the landlord's rights in their "estates". In this connection, the court examined the provisions contained in Section 32A to 32R of the Amendment Act which were under the heading "purchase of lands by tenants". In that context the court proceeded to examine the scheme of Ss. 32 to 32R in the following terms:

"Under Section 32A the tenant shall be deemed to have purchased the lands upto the ceiling area and the tenant shall not be deemed to have purchased the lands held by him as such tenant if he held land partly as owner and partly as tenant but the area of the land held as owner is equal to or exceeds the ceiling area (Section 32B). Section 32C empowers the tenant to choose the land to be purchased if he holds the lands separately from more than one landlord and in spite of anything contained in the Bombay Prevention of Fragmentation and Consolidation of Holding Act, 1947 (Bom. LX1I of 1947) the tenant shall be deemed to have purchased even such fragments of the land held on tenancy (Section 32D). The balance of any land after the purchase by the tenant as above is to be disposed of as if it were land surrendered by the tenant (Section 32E), and the right of the tenant to purchase such land where the landlord is minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces is postponed till one year after the cessation of disability. The price to be paid by the tenant is to be determined by the tribunal as soon as may be after the tiller's day and the Tribunal is in the first instance to record in the prescribed manner the statement of the tenant whether he is willing or is not willing to purchase the land held by him as a tenant and if the tenant fails to appear to make a statement that he is not willing to purchase the land, the Tribunal is to declare by an order in writing that such tenant is not willing to purchase the land and that the purchase is ineffective (Section 32G). These provisions also apply to a subtenant of a permanent tenant who is deemed to have purchased the land subject to the conditions specified in Ss. 32 to 32E (Section 32I). Section 32J provides for an appeal to the State Govt. against the decision of the tribunal. Section 32K prescribes the mode of payment of price by the tenant; and the purchase price is recoverable as arrears of land revenue (Section 32L). u/s 32M on the deposit of the price in lump sum or of the last instalment of such price, the tribunal is to issue a certificate of purchase to the tenant in respect of the land, which certificate of purchase shall be conclusive evidence of purchase. If a tenant fails to pay the lump sum within the period prescribed or is at any time in arrears of four instalments the purchase is to be ineffective and the land is to be at the disposal of the Collector and any amount deposited by such tenant towards the price of the land is to be refunded to him. Section 32N gives the landlord a right to recover rent when purchase becomes ineffective, as if the land had not been purchased at all. Section 32P gives the

power to the Collector to resume and dispose of land not purchased by tenants. The amount of purchase price is to be applied towards satisfaction of debts (Section 32Q); and the purchaser is to be evicted from the land purchased by him as aforesaid if he fails to cultivate the land personally".

The moot question which the Supreme Court was called upon to decide was as to whether in the aforesaid scheme any effective purchase or effective sale between the landlord and the tenant on tillers' day takes place or as to whether only an inchoate right is created in favour of tenant to purchase the land which he can perfect on a statement being made by him before the Tribunal that he is willing to purchase the land. Further submission which was required to be examined was that even on tenant's willingness to purchase the land, the land would not vest in him unless the purchase price is paid by him because on a tenant committing default in making payment of purchase price the purchase may become ineffective and he may not get any title to the land. The aforesaid submissions were considered by the Supreme Court in the scheme of the Act and following pertinent observations were made:

"The title of the landlord to the land passes immediately to the tenant on the tiller's day and there is a completed purchase or sale thereof as between the landlord and tenant. The tenant is no doubt given a locus penitentie and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or makes a statement that he is not willing to purchase the land, the tribunal shall, by an order in writing, declare that such tenant is not willing to purchase the land and that the purchase is ineffective. It is only by such a declaration made by the tribunal, that the purchase becomes ineffective. If no such declaration is made by the tribunal, the purchase would stand as statutorily effected on the tiller's day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the tribunal. If the tenant commits default, in the payment of such price, either in lump or by instalment as determined by the tribunal, Section 32M declares the purchase to be ineffective, but in that event the land shall then be at the disposal of the Collector to be disposed of by him in the manner provided therein. Here also the purchase continues to be effective as from the tiller's day until such default is committed and there is no question of a conditional purchase or sale taking place between the landlord and tenant. The title to the land, which was vested originally in the landlord, passes to the tenant on the tiller's day or his alternative period prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the tribunal. The tenant gets a vested interest in the land defeasible only in either of those cases and it, can not, therefore, be said the title of the landlord to the land is suspending for any period definite or indefinite".

(vii) From the aforesaid observations made by the Supreme Court it becomes

absolutely clear that on the tiller's day title of the landlord to the land passes immediately to the tenant and there is a completed sale/purchase of land, unless it is declared ineffective by the tribunal. Statutory purchase of land by the tenant would remain operative and the only liability of the tenant would be to pay the purchase price. The tenant gets a vested right in the land in question. This title is defeasible in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or on his committing default on payment of price. Therefore, if the tenant is found to be in possession of land on 1-4-57 i.e. tiller's day there is compulsory statutory sale of land in favour of tenant and tenant becomes purchaser of the land. In certain contingencies stipulated by the Statute such purchase of land may become ineffective, but it is not correct to state that there is no vesting of title in the tenant till any of the conditions stipulated by the Statute which may divest of the title happens. Vesting of title of land in the tenant is not therefore dependent on his making statement as to whether he is ready and willing to purchase the land or not nor is it dependent upon payment of purchase price fixed by the tribunal. In the contingencies contemplated by the State the vested right of the tenant gets defeated but it would not be correct to hold that no vesting of land takes place in the tenant. In short, on 1-4-57 if the tenant is found to be in possession of land in question he becomes absolute owner thereof subject to his title being defeated in the situations stipulated by the Statute. In that view of the matter, it shall have to be examined by us as to whether a complete sale of the land in question in favour of respondent-tenant has taken place as on 1-4-57. As stated hereinabove it is not disputed before us that on 1-4-57 the respondent-tenant was in possession of the land. He would, therefore, by operation of statute become deemed purchaser of land and the title of land would vest in him unless the same is divested in the contingencies stipulated by the Statute. It is not shown to us as to how that title is divested. In that view of the matter, it shall have to be held that the deceased-tenant-Ramaji Adaji had become deemed purchaser of land as on 1-4-57 and that title which he has acquired by statutory purchase is not divested by any subsequent event.

(viii) In the case of Navinchandra Ramanlal Vs. Kalidas Bhudarbhai and Another, the Supreme Court referred to observations made by the Supreme Court in the case of Sri Ram Ram Narain Medhi Vs. The State of Bombay, and observed that the effect of land being governed by Section 32 on the tiller's day is to transfer title of the land by the landlord to the tenant by operation of law defeasible only in the event the tenant declining to purchase the land or committing default in payment of price as determined by the tribunal. The court found that Section 32 as amended by the Amendment Act provided for transfer of the ownership of land by operation of law from the landlord to the tenant. A title to the land which vested in the landlord on 1-4-57, i.e. tiller's day, passed to the tenant by operation of law.

(ix) Mr. Desai, learned counsel of the petitioner-trust, however, vehemently submitted that the provisions of Section 32 as stipulated in Section 32(1) itself

are subject to other provisions of that very section which would obviously include Section 32(1A) and 32(1B) as well as to the provisions of next succeeding sections. He, therefore, submitted that when "subjective cause" is enacted by the legislature and when provisions of Section 32(1) are made subject to other provisions of that very section the court shall have to read Section 32(1) in such a manner so as to give full scope to the provisions of Section 32(1A) and 32(1B) which undoubtedly are Sub-sections of Section 32. Secondly, he very forcefully submitted that if the language employed in Sub-section (1A) and (1B) is to be given full effect, the purchase in favour of tenant in case governed by Sub-section (1A) and (1B) can take place only when the land is restored to the tenant and not prior thereto. To that extent, Mr. Desai submitted that the legislature has made an exception to the scheme of Section 32(1) and has provided for the statutory purchase of the land by the tenant only after the possession is restored to him. The date of statutory purchase by the tenant is suspended, and therefore, in cases which are squarely governed by Sub-section (1A) and (1B) there shall be no purchase of land as on 1-4-57, i.e. the "tiller's day". Mr. Desai submitted to the extent compulsory purchase of land is suspended by Section 32(1A) and 32(1B) they must prevail over Section 32(1) because Section 32(1) itself stipulates that the said provisions are subject to other provisions of that very section. Strictly literally the argument advanced by Mr. Desai, learned counsel for the petitioner-trust, appears to be attractive at the first blush. However, it cannot stand judicial scrutiny for the following reasons :

(a) The words "subject to other provisions of this section and the provisions of" came to be introduced in Section 32(1) of the Act by Bombay Act 63 of 1958. It is pertinent to note that Sub-section (1A) of Section 32 was also inserted by Bombay Act 63 of 1958. However, Sub-section (1B) of Section 32 was not on the Statute Book at all and it came to be inserted only by Gujarat Amendment Act 5 of 1973. Therefore, it cannot be accepted that the legislature wanted, subsequently, introduced provision, to prevail over Section 32(1) especially when Section 32(1) was enacted with a specific purpose of making the tillers of the soil the owners thereof by compulsory statutory purchase of land. Therefore, if the tenant is in possession of land on tiller's day i.e. on 1-4-57 a compulsory purchase of land takes place and the landlord would be divested of his title over the land and the title would be vested in the tenant. To this scheme of Act no exception was sought to be made by subsequent sub-sections which came to be introduced by the legislature. With a view to extending the benefit of Section 32 to those tenants who were dispossessed of the land either before 1-4-57 or subsequent thereto. The tenants who were dispossessed of the lands prior to 1-4-57 and who are deprived of their right of becoming "deemed purchaser" of the lands were sought to be provided benefit of statutory purchase by introducing Section 32(1A) and it was stipulated that if such tenants have already made application for possession u/s 29(1) of the said Act and if such possession is restored to such tenants they shall be deemed to have purchased the lands on the date on which their application for possession was finally

granted. Since such a tenant comes into possession of land on a date subsequent to 1-4-57 and since he was not in possession of the land as on 1-4-57 statutory date, the deemed purchase shall have to be postponed to a date when he becomes entitled to possession and the possession is actually restored to him and that is the reason why the date of deemed purchase in case of such tenant is other than the one stipulated by Section 32(1). Similarly the legislature was faced with the cases of those tenants who had lost their possession of land either immediately before 1-4-57 or thereafter upto March 3, 1973 before any purchase price was fixed. In such cases additional remedy was provided to such tenants to approach the authority for possession within one year or the power is conferred upon the authority to take suo motu proceedings to restore the possession to such tenant. It may be noted that for suo motu proceedings to be initiated by the ALT no time limit is fixed. It is also necessary that the tribunal is satisfied that the tenant was illegally dispossessed of land of which he was in possession as a tenant and then the tribunal shall restore possession of land to "such tenant. Once the possession of land is restored to such tenant Sub-section (1B) of Section 32 stipulates that thereafter provisions of Section 32A to 32R shall apply and the tenant shall be deemed to have purchased the land as and when land is restored to him. Strictly literally Sub-section (1B) of Section 32 intended to deal with the cases of dispossession of tenant sub-sequent to 1-4-57 because those who were dispossessed prior to 1-4-57 their cases would squarely fall within the provisions of Section 32(1A). to the extent that Section 32(1B) refers to dispossession of tenant before June 15, 1955 to 1-4-57 undoubtedly there is an overlapping or tautology and it is difficult for this court to comprehend as to why the legislature having enacted Section 32(1A) made reference to those tenants who were dispossessed between June 15, 1955 to 1-4-57, Barring this obvious tautology rest of the provision of Section 32(1B) is undoubtedly enacted to extend the helping hand to those tenants who were dispossessed of land in question subsequent to 1-4-57. In case of such tenants provisions of section 32(1B) would operate, (x) Mr. Desai, learned counsel for petitioner-trust has submitted that since the respondent-tenant has lost the possession of land in question either on June 21, 1961 or subsequent thereto Section 32(1B) would operate and such tenant would not become deemed purchaser till the possession is restored to him. He submits that the use of the word "thereafter" in Section 32(1B) lends support to his submission that it is only after the possession is restored to the tenant that the provisions of Section 32A to 32R shall apply, and the tenant would become a deemed purchaser only after the possession is restored. He also emphasises the use of words "subject to modification" employed in the last part of Section 32(1B). In his submission such a tenant who has already lost possession subsequent to 1-4-57 can have recourse to Section 32(1B) only, under that provision he can become a deemed purchaser only the possession is restored to him. He submits that to a tenant who has lost possession subsequent to 4-4-57 and before 3-3-73, only available remedy is recourse to Section 32(1B) and recourse to Section 32G was not permissible. We are afraid we can not accept such a contention, firstly, because the statutory

scheme of compulsory purchase introduced by Section 32 by Amendment Act of 1956 was not intended to be stultified by the introduction of Section 32(1B). A very wholesome provision was made to make tillers of the soil the owners thereof consistent with the agrarian reform of distribution of ownership and control of agricultural lands so as to subserve the common good and eliminate the concentration of wealth for the common benefit which purpose became more prominent when the Constitution was ushered on January 26, 1950. As per the decision of the Supreme Court in the case of Sri Ram Ram Narain Medhi Vs. The State of Bombay, which is followed in the case of Navinchandra Ramanlal Vs. Kalidas Bhudarbhai and Another, the compulsory purchase of land takes place on the tiller's day i.e. 1-4-57 if the tenant is found to be in possession of parcel of land. There is no provision whatsoever which provided or deferment of that statutory purchase except of course the provisions dealing with the disabilities of the landlord. If the statutory purchase was complete as on 1-4-57 we fail to understand as to how the tenant can be deprived of the benefit of such purchase simply because determination of purchase price has not taken place. It is required to be noted that in the present case determination of purchase price is not undertaken by the ALT firstly because the application made by the petitioner-trust u/s 88(B) for its exemption from the provisions of Tenancy Act was pending before the competent authority and it came to be finally rejected only in the year 1974. Secondly, the order of stay was granted in favour of petitioner-trust so as to stay the proceedings u/s 32(G) before the ALT. Therefore the ALT could not proceed further with its statutory function of fixation of purchase price and the petitioner-trust cannot get any benefit of this omission to determine the purchase price. It is pertinent to note that the tenant has actually applied for determination of purchase price because he has already become the deemed purchaser on 1-4-57 as he was in possession of parcel of land. We are of the opinion that in case of those tenants who were already in possession of parcel of land on 1-4-57 compulsory purchase must take effect and Section 32(1B) cannot be pressed into service to defeat such right which is conferred on the tenant by the wholesome provision of Section 32. Submission of Mr. Desai that Section 32(1B) was only the provision available to tenant who has lost possession of land subsequent to 1-4-57, in our opinion, would amount to rendering the scheme of statutory purchase ineffective in case of those tenants who have lost possession subsequently. That was not the purpose of Section 32(1B) and therefore we do not find any substance in the submission of Mr. Desai that Section 32(1B) was the only provision available to a tenant who has lost possession subsequent to 1-4-57.

(xi) In view of our interpretation of Section 32(1B) in the light of our interpretation of Section 32(1) as well as in view of interpretation placed thereon by the Supreme Court in the case of Sri Ram Ram Narain Medhi Vs. The State of Bombay, we do not find any substance in this submission of Mr. Desai and therefore it must fail.

Re-Submission (v) :

(i) Mr. G. N. Desai, learned counsel for petitioner-trust has lastly submitted that the order passed by the ALT, dated December 16, 1989 as confirmed by Dy. Collector and Gujarat Revenue Tribunal insofar as the tribunal directed for taking over of possession of land from the landlord and delivering the same to the tenant was not within the competence of the tribunal u/s 32G of Bombay Tenancy Act. He submitted that if the court to uphold that statutory purchase of land in question has taken place as on 1-4-57 since the respondent-tenant was in possession of the land it shall have to be assumed that the scheme of Sections 32A to 32R has become applicable to such tenant, and the aforesaid provisions have become applicable because the tenant was in possession as on 1-4-57 and the ALT therefore while deciding the question u/s 32G and while fixing the purchase price u/s 32M was not underaking the exercise of delivering the possession to a person who was not in possession. Strictly legally he submitted that for a tenant who has lost possession subsequent to 1-4-57 there are remedies under the provisions of Bombay Tenancy Act to get back possession and in proceedings u/s 32G it was not permissible for the ALT to restore the possession to said tenant. In this connection if reference is made to the application made by the respondent-tenant before the ALT on 5-3-79 it becomes clear that it is an application purely and simply for determination of his rights u/s 32G of the Bombay-Tenancy act and for fixation of purchase price. It was the case of the tenant before the ALT that since he was in possession of land as on 1-4-57 he has already become deemed purchaser so that the purchase price of the land as required to be fixed. In such a proceeding it is not understood as to how the tribunal could undertake the exercise of deciding the right to possession. In fact no prayer was made in the application for delivering possession of the land to the tenant. The question as to whether the possession of land was taken lawfully or as to whether the petitioner-trust was lawfully in possession of the land in question or not was required to be gone into by the competent authority under the provisions of the said Act. In our opinion, the judgment and order of the ALT as confirmed by the Dy. Collector as well as by the Gujarat Revenue Tribunal insofar as the authority is directed to deliver the possession by taking over the same from the petitioner-trust to the tenant, the order goes beyond the jurisdiction of the tribunal u/s 32G. None of the provisions of law was shown to us by Mr. A. J. Patel, learned counsel for respondent-tenant which would justify that part of operative part of judgment of the tribunal. To that extent we are of the opinion that the judgment and the order of the ALT as confirmed by the Dy. Collector as well as by the Gujarat Revenue Tribunal shall have to be quashed and set aside inasmuch as that part of direction is beyond the jurisdiction of the tribunal. It will be open to the respondent-tenant to have recourse to law to take possession of the land. We may mention at this stage that we are upholding the findings reached by the ALT that the respondent-tenant has become deemed purchaser as on 1-4-57, and we are also upholding the fixation of purchase price made by the tribunal, it will be for the respondent-tenant to decide to move proper authority under appropriate law for taking possession of the land. We do not decide at the stage as it is it not necessary for us to decide as to how and

under which provision of law possession can be recovered by the respondent from the petitioner-trust.

6. In view of our findings on the aforesaid submission made by the learned counsel for petitioner-trust, since submissions (i) to (iv) and (ivA) fail this petition must substantially fail except to the extent that in View of pur findings on submission (v) the judgment and order of the ALT as confirmed by the Dy. Collector and Gujarat Revenue Tribunal to the extent of issuance of direction for taking possessin of the land from the petitioner-trust to the respondent-tenant is concerned, it shall have to be quashed and set aside and is hereby quashed and set aside. The rest of the judgment and order of the ALT as confirmed by the Dy. Collector in appeal as well as Guj. Revenue Tribunal in revision is upheld. Rule is partially made absolute to the aforesaid extent only with no order as to costs.

7. At this stage Mr. Desai, Ld. Cousnel for petitioner-trust requests this court to stay the operation of this judgment for a period of 12 weeks from today so as to enable the petitioner-trust to have further recourse to law. In our opinion, except confirming the order of the ALT as confirmed by the Gujarat Revenue Tribunal as regards fixation of purchase price, this court has not undertaken any other exercise. The portion of order which would have really operated and would have deprived the petitioner-trust of its possession is already quashed and set aside by us and in that view of the matter we are of the opinion that no stay of our judgment and order is required to be granted. Hence, request of Mr. Desai for stay of this judgment and order for a period of 12 weeks from today is rejected.

Vyas, J.

8. I agree with the conclusions on all the points regarding submissions made by the petitioners submission-wise. However, I have my reservation with respect to the interpretation of Section 32(1A) and 32(1B) with respect to the submissions (iv A) though the interpretation made by this court does not have much to do with the decision on the facts of the case, as this court holds positively that the respondents No. 1 to 4 have become deemed purchaser u/s 32(1) of the Act, and therefore, Clause (1A) and (1B) are not applicable in this case. Still however since my learned brother Shah, J. has held that there is no overlapping between Section 32(1A) arid (1B), insofar as the period between June 15, 1955 and April 1, 1957 is concerned, I express my own view that theredoes not seem to be an overlapping at all. To my mind, Sub-section (1A) deals with the case in which a tenant on account of his eviction from the land by the landlord, before 1st April, 1957, is not in possession and he makes or has already made an application for possession u/s 29(1) within the period specified therein and if ultimately that application is allowed by the Mamlatdar, he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed. This means that Subsection (1A) of Section 32 deals only cases on "eviction", whereas Sub-section (1B) deals with a tenant who was in possession on the appointed day and who, on account of being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than

in the manner provided in Section 29 or any other provisions of the Act is not in possession. These words "dispossession" and "eviction" clearly suggest the difference between the cases covered by both the sub-sections. Yet another difference or distinction between the two sub-sections is that Sub-section (1A) does not require that a tenant who is evicted should have been in possession on the appointed day whereas subsection (1B) covers the cases of a tenant who was in possession on the appointed day. If looked from this angle, to my mind, both the Sub-sections (1A) and (1B) deal with different types of cases. The period may be referable to at times the periods looking to be around 1st April, 1957.

9. The other difference, in my opinion, is with respect to the argument of Mr. Desai in interpreting Section 32(1) being made "subject to the other provisions of this (32) section and the provisions of the next succeeding sections." I think Mr. Desai is right when he contended that Section 32(1) is subject to the Section 32(1A) and (1B). The arguments that Sub-section (1A) and (1B) were not on the statute book at all when original Section 32 (which is now 32(1)) was legislated and that therefore, it cannot be accepted that the legislature wanted subsequently introduced provisions to prevail over Section 32(1) especially when Sub-section 32(1) was enacted with a specific purpose of making tillers of the soil the Owners thereof by compulsory statutory purchase of the land when the amending act brought Sub-section (1A) into statute book, are not well-founded. The legislature has specifically renumbered original Section 32 as Section 32(1) would itself suggest that the legislature did have in mind the impact of the amended sub-section on the main Section 32 which was subsequently made 32(1) at the time of adding Sub-section (1A). It cannot, therefore, be held that Sub-sections (1A) and (1B) would not affect the provisions of Subsection (1). The legislature seems to have intended that the tenants who are in possession on 1-4-1957 physically are to be made purchaser on the tillers day but the tenants who had lost the possession because of the eviction or dispossession without following the procedure of Section 29, and therefore, not being in possession on 1-4-1957, though they were entitled to be in possession on 1-4-1957, are now sought to be included for becoming deemed purchasers but since they are not in possession on 1-4-1957, the legislature has thought of providing for the date of their deemed purchase. If the provisions of Section 32(1) were to be subjected to the other provisions of Section 32 in cases tenants who are not in possession on 1-4-1957 the deemed purchase u/s 32(1) would get extended to the dates mentioned in Subsection (1A) and (1B) as the case may be. In such cases, the applicability of Section 32A to 32R particularly with reference to Sub-sections (1B) also may get delayed because of the peculiar situations contemplated therein. Therefore, it has to be accepted that in cases covered by Sub-section (1B), Section 32(1) has to be read subject to that sub-section.

10. I agree that Sub-sections (1A) and (1B) are the extension to the tenants' right to purchase to those tenants who unfortunately were not in possession on

1-4-1957, in case of Section (1A), the tenant being evicted and in case of Section (1B), the tenant being dispossessed without referring to Section 29. When Sub-section (1) requires that, to be a purchaser on tillers day, tenants must be in possession on 1st April, 1957, the tenants who were entitled to be in possession on 1-4-1957 but were in fact not are thought to be provided by the legislature by providing for the purchase at a later date by such tenant, if they fulfil conditions of sub-sections of subsections (1A) or (1B) as the case may be.