
(1962) 02 BOM CK 0005

In the Bombay High Court

Case No : Special Civil Application No's. 208, 209 and 210 of 1961

Panchfulabai Bapubao Deshmukh

APPELLANT

Vs

Maharashtra Revenue Tribunal

RESPONDENT

Date of Decision : 21-02-1962

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 36(1)

Citation : (1962) 64 BOMLR 717

Hon'ble Judges : Kotval, J;Abhyankar, J

Bench : Division Bench

Judgement

Abhyankar, J.—This judgment will also govern the disposal of Special Civil Applications Nos. 209 and 210 of 1961.

2. The petitioner Panchfulabai claims to be a protected lessee of field S.No. 30, area 28 acres 20 gunthas, revenue Rs. 12, situate at mauza Sakhra Khurd, in Kelapur taluq of Yeotraal district. Respondent No. 2 Shankarrao Mankar was the landholder of this field. This field was in cultivating possession of one Kesheo who was a minor son of the petitioner. Kesheo was in possession of the land as a protected lessee on January 1, 1953. It appears that Shankarrao had leased out another field S. No. 33 to Bapurao, father of Kesheo. Shankarrao filed a suit for arrears of lease money in the civil Court against Bapurao. It is riot clear from the record whether the protected lessee Kesheo was impleaded in that suit. During the pendency of the suit on May 3, 1956, a compromise was arrived at between the landholder Shankarrao and Bapurao, the tenant. It is alleged that as a result of this compromise over and above the payment of arrears of lease money being made, the rights as a protected lessee in respect of S. No. 30 were also surrendered by Kesheo in favour of the landholder Shankarrao, the plaintiff. Shankarrao obtained possession as a result of this compromise in respect of S. No. 30 in that suit. Subsequently, Shankarrao sold field No. 30 to respondent No. 3 Ragho and respondent No. 4 Jaita, each having purchased different portions of the same field. Thus, the admitted position is that from May 12, 1956, Kesheo

was not in possession of the property.

3. The Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, Act XCIX of 1958, came into force in the Vidarbha Region on December 30, 1958. Kesheo made an application on June 29, 1959, before the Naib Tahsildar u/s 10(1) read with Section 36(1) of the said Bombay Tenancy and Agricultural Lands Act, which will hereafter be referred to as the new Tenancy Act. Kesheo's application was founded on the allegation that he was dispossessed of field S.No. 30 by Shankarrao on May 3, 1956, under compulsion and that he and his father were harassed by civil and criminal proceedings pending against them and under pressure they were made to surrender the tenancy by a writing dated May 3, 1956. The alleged writing is not on the record of this case nor either party has included the same in the Paper Book. It is not, therefore, possible to ascertain what are the terms on which the surrender of tenancy was effected under the document. After this application was filed, Kesheo died on August 18, 1959, and in his place, the name of the present petitioner Panchfulabai was substituted by the Naib Tahsildar on October 26, 1959. The application for possession was resisted by respondents Nos. 2 to 4. The written statement filed by the respondents is not on record but it would appear from the order of the Naib Tahsildar that the defence was that there was a valid surrender on May 3, 1956, as a result of the compromise of the civil suit. If the protected lessee was in any way aggrieved by the compromise, it was open for him to seek redress u/s 19(2) of the Berar Regulation of Agricultural Leases Act. This not having been done, the tenant was not entitled to claim possession u/s 10(1) of the new Tenancy Act. No other specific plea seems to have been raised in the first Court. The Naib Tahsildar rejected the application of Panchfulabai holding that the provisions of the new Tenancy Act did not apply to the case as the rights obtained by the landholder Shankarrao were preserved u/s 132(2) of the new Tenancy Act.

4. The tenant Panchfulabai preferred an appeal before the Deputy Collector with appellate powers. The Deputy Collector rejected the contention of the landholder and the transferee that Kesheo or Panchfulabai who claimed to step in his shoes was not a protected lessee at the relevant time. The appellate authority accepted the evidence of Bapurao, father of Kesheo, that the land was relinquished because of the pressure of the civil suit. It, therefore, held that the case clearly fell under the provisions of Sub-sections (1) and (2) of Section 10 of the new Tenancy Act and in that view ordered restoration of possession to the petitioner. The appellate authority made a reference to the decision of the Bombay Revenue Tribunal in Lachanna v. Baliram [1958] N.L.J. 224 but held that the decision was not applicable nor the provisions of the Transfer of Property Act. It also held that Section 132 (2) of the new Tenancy Act did not safeguard interests of the landholders, or the transferees in the manner contended by them.

5. Against this reversing judgment, respondents Nos. 2 to 4 filed a revision before the Revenue Tribunal u/s 111 of the new Tenancy Act. Before the Tribunal respondents Nos. 2 to 4 reiterated their contention as to the status of a

protected lessee claimed by the petitioner or Kesheo. They also urged that the appellate authority was in error in holding that dispossession was as a result of the surrender or that consent of the tenant was procured by undue pressure and influence. It may be mentioned that there was no express averment in the memorandum of revision filed by respondents Nos. 2 to 4 that the alleged surrender having taken place prior to September 21, 1957, the petitioner was not entitled to claim possession on proper interpretation of Section 10(1) of the new Tenancy Act. However, it is clear that arguments were advanced before the Revenue Tribunal as to the applicability of Section 10(1) read with Section 36(1) of the new Tenancy Act to the facts of the case and decision has been given by the Revenue Tribunal against the petitioner because of two previous decisions of the Tribunal reported in Krishna Laxman v. Anant Digamlar [1960] N.L.J. 758 and Adinath Dhonduji v. Yeshwant Mahadu [1960] N. L. J. 794, which the Tribunal naturally followed in upholding the order of the Naib Tahsildar and reversing the appellate order of the Sub-Divisional Officer.

6. The petitioner has come up to this Court and has canvassed before us the correctness of the view taken by the Tribunal in the two decisions quoted above which the Tribunal has reiterated in disposing of the revision under challenge in these petitions.

7. Identical questions are raised in the two other Special Civil Applications referred to above. The facts in those petitions will be given in a separate order to be passed in those two petitions. The main contentions between the parties are identical and they will be disposed of by this,, common order.

8. Section 10 of the new Tenancy Act provides as follows:

Restoration of possession to tenants dispossessed after 1st January 1953 in certain circumstances.-

(1) A person who or whose predecessor-in-title held land as tenant or protected lessee on the 1st day of January 1953 and who has subsequently been dispossessed by a surrender of tenancy before the date of the commencement of this Act and such surrender has not been verified in the manner prescribed in Sub-section (2) of section 6 of the Berar Regulation of Agricultural Leases Act, 1951 or Sub-section (2) of section 177 of the Code, may within a period of one year from the date of such commencement, apply to the Tahsildar for the restoration of his tenancy on the same terms and conditions on which he held the land before such surrender unless the land has been put to a non-agricultural use on or before the appointed day.

(2) On receipt of such application the Tahsildar shall enquire into the circumstances in which and the procedure under which such dispossession, took place and if he is satisfied that such dispossession took place as a result of surrender and the consent of the tenant was procured by fraud, deceit, false representation or undue influence or pressure of any kind whatsoever or was otherwise in contravention of the provisions of the law applicable for the time

being, he shall order the restoration of the possession of the land and the tenancy thereof to the tenant.

(3) Sub-sections (1) and (2) shall have effect notwithstanding that another person may be in possession of the land as a protected lessee or a tenant or otherwise, and where such other person is so in possession he shall be liable to be evicted.

9. Now, it will be seen that a special right is created to be restored to possession in favour of a person who either himself or through his predecessor-in-title held land as "tenant" or "protected lessee" on January 1, 1953. It will also be seen that the right-so created in favour of such person is a right to be restored to possession if he has been subsequently dispossessed by a surrender of tenancy before the date of the commencement of this new Act. The new Tenancy Act, as already stated, came in force in this region on December 30, 1958. There is the further condition the interpretation of which is the subject of considerable debate before us and that condition is that

such surrender has not been verified in the manner prescribed in Sub-section (2) of section 6 of the Berar Regulation of Agricultural Leases Act, 1951, or Sub-section (2) of section 177 of the Code.

The reference to the Code here is a reference to the Madhya Pradesh Land Revenue Code, which was M.P. Act II of 1955. Sub-section (1) of Section 10 also prescribes the period of limitation of one year from the date of the commencement of the new Tenancy Act within which such application for restoration of possession has to be made by the tenant or the protected lessee.

10. Now, this Sub-section (1) which creates rights uses certain words which have a definite meaning in the context of the previous legislation and history of tenures in this region. The right is created in favour of two classes of persons, namely (i) a tenant and (ii) a protected lessee. Now, a person who is deemed to be a tenant or who is a tenant is defined in Section 2(32) of the new Tenancy Act. The definition of "tenant" would include (a) a person who is deemed to be a tenant u/s 6 or Section 7 or Section 8 of the Act or (b) a person who is a protected lessee or an occupancy tenant. Now, a reference to, Section 6 of the new Tenancy Act shows that certain persons are deemed to be tenants and in this class are (1) a person lawfully cultivating any land belonging to another person if such land is not cultivated personally by the owner and (2) a mortgagee in possession. Section 7 of the Act refers to certain other class of persons who are deemed to be tenants and they are generally persons who held land, in tenures in Berar known as Izara tenures or alienated lands which were governed by the provisions of either the Berar Alienated Villages Tenancy Law or the Berar Land Revenue Code in respect of alienated lands.- Then the third class of tenant is that provided in Section 8, namely, a person whose name appears as tenant in the list to be prepared by the Tahsildar under the provisions of Chapter IX of the M.P. Land Revenue Code and in this class are persons other than occupancy

tenants or protected lessees. Now, protected lessees are persons who are to be recognised as protected lessees under Sub-section (2) of Section 6 of the new Tenancy Act and that definition shows that the new Tenancy Act recognised those persons to be protected lessees if such persons were immediately before the commencement of this Act, deemed to be protected lessees u/s 3 of the Berar Regulation of Agricultural Leases Act, 1951.

11. So, the class of persons to whom the right to claim restoration of possession has been given in Section 10 is of those persons who are on land and held land as tenants in which class would necessarily be included persons who would now answer the definition of ordinary tenants under the M.P. Land Revenue Code in Section 166 thereof or who may be tenants of alienated land in Berar or other varieties of tenants who held land from superior holders in Izara Villages or other alienated villages or tenures in Berar, It may also be mentioned that the class of persons who could claim to be a protected lessee is necessarily confined to the lessees from Berar because the Berar Regulation of Agricultural Leases Act, 1951, was a special legislation in respect of persons holding land and cultivating it from the landholders in Berar.

12. Now, this right is created in favour of a person who held land qua tenant or protected lessee himself or through his predecessor-in-title on first day of January, 1953. The first condition for enabling the claim to be made u/s 10(1) is that the person must be a tenant or a protected lessee on January 1, 1953. This date will have some bearing on the contention pressed before us on behalf of the landholders in the construction of Section 10(1) of the new Tenancy Act. The person who will be entitled to be restored to possession is that person who has been dispossessed after January 1, 1953, by a surrender of tenancy. It is this phrase namely "dispossessed by a surrender of tenancy" which has been a subject of considerable debate at the hearing of these petitions. On the one hand it is claimed that a surrender of tenancy must necessarily mean a surrender in the mode and manner prescribed by law governing a surrender of tenancy by a protected lessee or a tenant, and this phrase cannot bear common law meaning of surrender or giving up of possession of a right as a tenant whether by parole or by a document or a registered deed as provided by the Berar Agricultural Leases Act or the M.P. Land Revenue Code. Another condition which must also be satisfied by the claimant u/s 10 is that such surrender must not have been verified in the manner prescribed in sub-s. (2) of Section 6 of the Berar Regulation of Agricultural Leases Act or Sub-section (2) of Section 177 of the M.P. Land Revenue Code.

13. Now, here it will be necessary to examine the provisions of Section 6 of the Berar Regulation of Agricultural Leases Act, 1951. This Act was passed by the Madhya Pradesh Legislature and came into force in Berar on September 28, 1951, on which date it was published in the Madhya Pradesh Gazette. All persons who were on land under a lease in the agricultural year 1951-52 were deemed to be protected lessees and the period of such lease was initially fixed for five years

under the provisions of Section 3 of the Act but subsequently by an amendment this period was extended first to seven years and again to eight years. The Berar Regulation of Agricultural Leases Act also made a provision for the surrender of his rights by a protected lessee. That provision was in Section 6 of the Act which originally stood as follows:

A protected lessee may, by delivering to the landholder, not less than 30 days before the date of the commencement of the agricultural year, a registered document executed in favour of the landholder surrender his rights and thereupon he shall cease to be a lessee from the agricultural year next following such date.

Thus, under this provision, the protected lessee had the right of surrendering his rights as protected lessee by a unilateral act of executing a document of surrender in favour of the landholder getting it registered and delivering it to the landholder. Apparently, in all this process the landholder did not come into picture and even though the Berar Regulation of Agricultural Leases Act created an artificial length of tenure of a protected lessee for five years the protected lessee was enabled by the provisions of Section 6 to surrender that right by executing a document duly registered and delivering it to the landholder. There was a further provision made that such surrender took effect from the beginning of the agricultural year next following the execution of such document.

14. Section 6 was considerably amended by an Ordinance issued by the Governor of the Bilingual State of Bombay for the Vidarbha Area. This was Ordinance No. IV of 1957 and it came into force on September 21, 1957. Clause 7 of this Ordinance effected certain amendments in the provisions of the Berar Regulation of Agricultural Leases Act, 1951. Section 6 of the Leases Act was drastically amended and so was Section 177 of the M.P. Land Revenue Code. As amended, new Section 6 of the Leases Act provided as follows:

6.(1) A protected lessee may, by delivering to the landholder, not less than 30 days before the date of the commencement of the agricultural year, a registered document executed in favour of the landholder and subject to the provisions of this section, surrender his rights in the land as lessee.

(2) No such surrender of rights shall take effect unless-

(a) the landholder has given intimation thereof in writing to the Revenue Officer within eight days from the date of delivery of the registered document under Sub-section (1),

(b) and Revenue Officer, after holding an inquiry in the prescribed manner, is satisfied that such surrender has been, voluntarily made by the protected lessee, and has declared it to be voluntary,

(3) If a surrender is declared to be made voluntary as aforesaid, the protected lessee shall cease to be a lessee from the commencement of the agricultural year.

(4) If a Revenue Officer in the course of an inquiry under Sub-section (2) or otherwise finds that a surrender has not been voluntarily made or that it is in contravention of the provisions of Sub-sections (1) and (2), he shall declare the surrender ineffective and on such declaration-

(a) the protected lessee, if he has not delivered possession, shall continue as if no surrender had been made;

(b) if the protected lessee is not in possession of the land, the Revenue Officer shall, if such lessee is willing to continue to hold the lease on the same terms and conditions on which he was holding the land prior to surrender, evict the person in possession and restore the land to the protected lessee.

As a result of the amendment it was not enough for the cessation of the rights of a protected lessee in the land in his possession or relationship of landholder and tenant between the landholder and the protected lessee to have a document executed and registered as a document of surrender. A duty was cast on the landholder that he shall give intimation of the writing delivered to him by the protected lessee within eight days of the delivery of the document. Thereafter, the Revenue Officer was required to hold a judicial inquiry and he had to be satisfied that the surrender was voluntary and then he had to give a declaration that it was a voluntary surrender. It was only after such verification and declaration that a protected lessee ceased to be a lessee from the commencement of the agricultural year next following such date.

15. Sub-section (4) of Section 6, it seems, created a further power in the Revenue Officer to "have such a document of surrender adjudicated or examined even otherwise than by an application by the landholder under Sub-section (2) of Section 6. What Sub-section (4) provided was that if the Revenue Officer either in the course of an inquiry under Sub-section (2) or otherwise finds that the surrender was not voluntary or it was in contravention of the provisions of Sub-sections (1) and (2), then he had the power to declare the surrender ineffective and after declaring such surrender being ineffective he had the further power to restore possession to the ex-protected lessee if such lessee was willing to continue to hold the lease on the same terms and conditions on which he was holding the land prior to surrender. Clause (b) of Sub-section (4) of Section 6 created a further power in the Revenue Officer to evict the person in possession and restore the land to the protected lessee if the Revenue Officer found that the surrender was invalid or ineffective after due enquiry.

16. Ordinance No. IV of 1957 was followed by an Act of the Legislature and this was Act IX of 1958. There is no difference in the amendments effected in Section 6 by Act IX of 1958 from those effected by the earlier Ordinance No. IV of 1957.

17. The Berar Regulation of Agricultural Leases Act was in force till the new Tenancy Act came into force in the Vidarbha Region. The new Tenancy Act came into force in the Vidarbha Region on December 30, 1958. The new Tenancy Act repealed the provisions of the Berar Regulation of Agricultural Leases Act

according to Section 133 of the new Tenancy Act, but Sub-section (2) of Section 132 provided as follows:

Nothing in Sub-section (1) shall, save as expressly provided in this Act, affect or be deemed to affect-

(1) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(ii) any legal proceedings or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act, and any such proceedings shall be instituted, continued and disposed of, as if this Act had not been passed.

These provisions have been interpreted by a Full Bench of this Court Chandbeg Muradbeg and Others Vs. Raje Madhaorao Devidasrao Jahagirdar and Others, and it is Laid down that the right, title, interest or obligation acquired, accrued or incurred under any of the repealed Act including the Berar Regulation of Agricultural Leases Act continued to be effective and could be enforced or any remedy could be pursued as if the new Tenancy Act had not been brought into force in respect of such right.

18. It will be seen that under the provisions of the original Section 6 of the Berar Regulation of Agricultural Leases Act reproduced above, it was not necessary to have a surrender effected by a protected lessee and his right verified by any revenue officer. The new provision made for verification of the validity of a surrender deed or for determining its voluntary character was introduced for the first time by Ordinance No. TV of 1957 which came into force on September 21, 1957. Now, these provisions continued to be effective u/s 6 of the Berar Regulation of Agricultural Leases Act till the Act itself stood repealed on December 30, 1958.

19. We have already referred to the fact that Ordinance No. IV of 1957 also effected an amendment in Section 177 of the M.P. Land Revenue Code. Before its amendment in 1957, Section 177 of the M.P. Land Revenue Code stood as follows:

An occupancy tenant may, by giving to the tenure-holder, not less than thirty days before the commencement of the agricultural year a notice in writing, surrender his rights and thereupon he shall cease to be a tenant from the agricultural year next following such date.

Now, the words "occupancy tenant" have been defined in the M.P. Land Revenue Code in Section 169. An "occupancy tenant" according to that provision means every person, who, before the coming into force of this Code, has been declared an occupancy tenant of a malik-makbuza. After the amendment introduced in Section 177, the amended section reads as follows:

177. (1) An occupancy tenant may, by giving to the tenure-holder, not less than

thirty days before the commencement of the agricultural year a notice in writing and subject to the provisions of this section, surrender his rights in the land as such tenant,

(2) No such surrender shall take effect unless-

(a) the tenure-holder has given intimation thereof in writing to the Tahsildar within eight days from the date of the receipt of notice by him under Sub-section (1), and

(b) the Tahsildar, after holding an inquiry in the prescribed manner, is satisfied that such surrender is voluntarily made by the occupancy tenant and has declared it to be voluntary.

(3) If such surrender is declared to be voluntary under Sub-section (2), the occupancy tenant shall cease to be a tenant from the commencement of the agricultural year.

(4) If a Tahsildar in the course of an inquiry under Sub-section (2) or otherwise finds that a surrender has not been voluntarily made or that it is in contravention of the provisions of Sub-sections (1) and (2), he shall declare the surrender ineffective, and on such declaration-

(a) the occupancy tenant if he has not delivered possession shall continue as if no surrender had been made;

(b) if the occupancy tenant is not in possession of the land, the Tahsildar shall, if he is willing to continue the tenancy on the same terms and conditions on which he was holding the land prior to surrender, evict the person in possession, and restore the land to the occupancy tenant.

The amendment thus requires the same procedure to be followed by the Tahsildar when a writing has been delivered to the landholder by the occupancy tenant intimating to him that he does not require the land from the next agricultural year. The same provisions are made for the verification of these surrenders and the same rights for restoration of possession are created unless the surrender is voluntary and is so declared by the revenue authority.

20. The contentions of respondents Nos. 2 to 4 before the Revenue Tribunal and in this Court may be summarised as follows. It is contended that Section 10(1) of the new Tenancy Act is in the nature of an exception and that exception creates special rights in favour of certain classes of tenants and protected lessees who must satisfy all the conditions Laid down in Sub-section (1) of Section 10 before they can claim the right to the restoration of possession. According to the respondents, these conditions have to be cumulatively and conjunctively satisfied and they are as follows:

(i) that the tenant or the protected lessee was on land or held land on January 1, 1953;

- (ii) that he was dispossessed by a surrender of tenancy; and
- (iii) that the surrender was not verified in the manner prescribed in Sub-section (2) of Section 6 of the Berar Regulation of Agricultural Leases Act or Sub-section (2) of Section 177 of the M.P. Land Revenue Code.

Unless, the argument proceeds, all these three conditions are satisfied it is not possible or permissible for an ex-tenant or ex-protected lessee or his successor-in-title to claim restoration of possession. It is further contended that the phrase "surrender of tenancy" must necessarily mean and imply surrender in the manner provided in Section 6 of the Berar Regulation of Agricultural Leases Act or surrender as provided in Section 177 of the M.P. Land Revenue Code. It is further contended that the procedure for verification of a surrender either by an occupancy tenant or by a protected lessee was introduced for the first time by Ordinance IV of 1957 and this procedure had to be followed under the Berar Regulation of Agricultural Leases Act till it was in force namely till December 30, 1958. In the case of a surrender or dispossession which took place prior to September 21, 1957, it could not be said that there was any occasion for verification of such surrender. Thus, the third requirement of absence of verification of a surrender u/s 6 of the Berar Regulation of Agricultural Leases Act or Section 177 of the M.P. Land Revenue Code must necessarily postulate that there was a surrender which was capable of being verified as provided by those sections. Such surrender could only be a surrender effected after September 21, 1957, till December 30, 1958, and would not refer to or would not include within the ambit of the section dispossession by a surrender which took place prior to September 21, 1957. If verification was the condition or sine qua non and its absence gave a right to the tenant or the protected lessee to claim restoration of possession then according to respondents Nos. 2 to 4 there being no provision for such verification under the law then in force, the Legislature could never intend that such a surrender which took place prior to September 21, 1957, would also be open for challenge under the provisions of Section 10 of the new Tenancy Act.

21. This contention has been upheld by the Revenue Tribunal in the two decisions already cited and also in the order of the Tribunal which is impugned in the petition before us. In the decision reported in Krishna Laxman v. Anant Digambar the Tribunal has dealt with this contention in para 6 of its order as follows:

The section is headed by the words "Restoration of possession to tenants dispossessed after 1st January 1953 in certain circumstances". These circumstances as specified in the section are (a) That the person claiming restoration of possession or his predecessor-in-title must have held land as a tenant or as protected lessee on the 1st January 1953 (b) That he must have been subsequently dispossessed by a surrender of tenancy before the commencement of the New Tenancy Act, that is, before 30-12-1958; and further (c) That such surrender has not been verified in the manner prescribed in Sub-section (2) of section 6 of the Berar Regulation of Agricultural Leases Act or Sub-

section (2) of section 177 of the Madhya Pradesh Land Revenue Code. When by statute a certain set or combination of circumstances has been prescribed as a condition precedent for the grant of relief, individual component parts of those circumstances, in the absence of other component parts, do not constitute an adequate legal basis for relief under the provisions of that statute.

Then in para. 7, after referring to the effect of the provisions of Ordinance IV of 1957, the Tribunal observed as follows:

It is clear from the phraseology of section 10 of the New Tenancy Act that it is framed directly against the background outlined above and is intended to ensure that tenants or protected lessees do not get wrongfully evicted as a result of improper compliance with the amended provisions contained in the sections referred to above. That is why Sub-section (1) of section 10 of the New Tenancy Act specifically refers to Sub-section (2) of section 6 of the Berar Regulation of Agricultural Leases Act and Sub-section (2) of section 177 of the Madhya Pradesh Land Revenue Code and Sub-section (2) of section 10 provides for restoration of possession not only if there has been "contravention of the provisions of the law for the time being" (that is sub-sections 6(2) and 177 (2) referred to above) but also, if it is proved that dispossession had taken place as a result of surrender and the consent of the tenant was procured by fraud, deceit, false representation or undue influence or pressure of any kind whatsoever. It is obvious that this latter requirement has been deliberately introduced in order to provide for a positive proof of fraud etc. instead of the proof of the mere negative fact that "a surrender has not been voluntarily made" as provided for in the repealed Act. There is thus no doubt that section 10 has been incorporated in the New Tenancy Act in order to ensure proper implementation of the new machinery of surrenders and their verification introduced barely year or so before the commencement of that Act. In the circumstances, that provision of that section cannot be made applicable to surrenders which were not subject to verification according to the law in force, that is, surrenders effected before 21-9-1957 when the Ordinance No. IV of 1957 came into force. Section 10 clearly applies only to such surrenders whether oral or in writing-as have led to actual dispossession and as were effected during the period from 21-9-1957 to 30-12-1958.

22. Now, this decision of the Tribunal was reiterated in another subsequent decision reported in Adinath Dhonduji v. Yeshwant Mahadu. After referring to the arguments advanced against the correctness of the view in its earlier decision the Tribunal observed in para. 5 of its judgment as follows:

We have given careful thought to these contentions and consider that none of them can be upheld. While interpreting section 10 we have followed the fundamental rule of interpretation to which all others are subordinate. The fundamental rule is that "if the words of the statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature"...

Then in para. 6, the Tribunal observed as follows:

As regards the "circumstances" referred to in section 10, we agree that Sub-section (2) prescribes certain "additional circumstances" which ought to be satisfied before an order of restoration of possession could be passed. But these additional circumstances merely refer to the additional points on which the "enquiry" contemplated by Sub-section (2) is to be made on receipt of an application, which satisfies the initial requirements prescribed by Sub-section (1). The use of the words "on receipt of such application" at the beginning of Sub-section (2) is significant and there is no doubt that an enquiry into the points or circumstances prescribed by that sub-section is to be made only in cases of applications made by persons who satisfy the triple requirements prescribed by Sub-section (1). Sub-section (1) specifies the particular class of tenants falling under a specific category who are entitled to apply for restoration of possession; while Sub-section (2) only prescribes the lines on which enquiries are to be made. In other words, Sub-section (1) creates a right to apply for restoration of possession in certain specified circumstances, while Sub-section (2) only prescribes the scope and procedure of an enquiry into such right. It is obvious, therefore, that there is nothing in Sub-section (2) which can be said to enlarge the scope and amplitude of Sub-section (1)." Again in para. 7, the Tribunal observed:

We cannot also subscribe to the view that the clause "...and such surrender has not been verified in the manner prescribed in Sub-section (2) of section 6 of the Berar Regulation of Agricultural Leases Act, 1951, or Sub-section (2) of section 177 of the Code" occurring in Sub-section (1) of section 10 should not be construed conjunctively as we have done in the case referred to above. The clause is an inseparable adjunct of the set of circumstances prescribed by the section and it cannot, therefore, be torn away from its context and considered in isolation only with a view to enlarging the scope of the section. Had the Legislature intended, as suggested by Shri Chandurkar, that the clause was to serve only as a proviso to the earlier part of the section, nothing would have been simpler than to put down the clause as a proviso to the sub-section. Placed as it is, the clause must be regarded as nothing but a concomitant limiting factor governing the entire sub-section.

Thus, according to the view taken by the Tribunal, it would appear that the only class of persons who will be entitled to take the benefit of Section 10(1) and 10(2) of the new Tenancy Act are those persons who have been dispossessed by a surrender of tenancy after September 21, 1957, but in whose cases the surrender has not been verified in the manner prescribed by Section 6 of the Berar Regulation of Agricultural Leases Act or Section 177(2) of the M.P. Land Revenue Code.

23. Before considering this view it will be convenient to dispose of one of the contentions raised by the learned Counsel for the landholders, namely, that the surrender of tenancy contemplated in Sub-section (1) of Section 10 must

necessarily be confined to the surrender as provided in Section 6 of the Berar Regulation of Agricultural Leases Act or Section 177 of the M.P. Land Revenue Code. The surrender which is intended is the "surrender of tenancy rights" by a protected lessee by a document registered and delivered. Thus, according to the landholders it-excludes"-all surrenders which are by parole or by documents which have not been registered or delivered. It does not appear that the Tribunal took this View in its earlier decision in Krishna, Laxman v. Anant Digambar, The Tribunal has observed at the cud of para, 7 of its order that Section 10 clearly applies only to such surrenders-whether oral or in writing-as have led to actual dispossession and as were effected during the period from September 21, 1957 to December 30, 1958. Thus, according to the Tribunal, the meaning to be attributed to the phrase "a surrender of tenancy" is as is understood in common law sense namely giving up of possession or giving up the right of tenant which is. followed by dispossession. The dictionary meaning of surrender would only mean giving up and the context in which these words are used will also seem to suggest dispossession as a result of surrender of tenancy which is nothing more than a tenant giving up his right as tenant or protected lessee and consequently being dispossessed. Otherwise it is not possible to see how even oral surrenders or surrenders under unregistered documents would still be within the ambit of an enquiry if they are effected after September 21, 1957, under the amended provisions of the Berar Regulation of Agricultural Leases Act. We are clear in our view that the law does not require as a matter of form that a lessee must execute a document or a registered document to give up his rights as lessee. Under the general law when a lease can be created by an oral agreement, we do not see why for surrendering the rights either as tenant or lessee any document will be required under the common law. It is only when the rights of a tenant which are otherwise liable/ to be surrendered are to be protected that the law makes the provision that the surrender of tenancy to be effective in certain circumstances must be evidenced by a document duly executed and registered but that will not mean that the surrenders in the sense of voluntary giving up of the tenancy rights are to be excluded. In a given case it is only when a dispute arises between the parties that the voluntary character of the surrender is really in issue; to evidence voluntariness of the surrender the document" furnishes prima facie evidence. Its registration probably affirms the voluntary character of such transaction and yet we find that the law has been amended by giving further protection to a tenant who may be overborne or prevailed upon under duress or under ignorance of his rights to execute a document of surrender to challenge either the voluntary character or the validity of such acts on his part by the procedure of verification. But, in our opinion, it will not be proper to construe the phrase "surrender of tenancy" in the earlier part of the section to mean that it is necessarily referable to the surrender in writing and registered as required by Section 6 of the Berar Regulation of Agricultural Leases Act. In fact, u/s 177 of the M.P. Land Revenue Code in the case of an occupancy tenant the surrender can be effected by giving only an intimation in writing. It is not required to be registered and a mere intimation," in writing is enough.

24. In this connection reference was made by the learned Counsel for the respondents to certain provisions of the C.P. Tenancy Act and in particular to the provisions of Section 89(1) and (2) of the Act as it was in force till the M.P. Land Revenue Code replaced the provisions of that Act. By comparing the provisions of Section 89(1) and (2) which provided for the manner in which a surrender of tenancy can be effected by an occupancy tenant in the Central Provinces and the provisions for abandonment of land and its consequences as provided in Section 35 of the Act, it was contended that just as Section 89 required a surrender to be in writing and registered, similarly, the only mode by which a surrender under the Berar Regulation of Agricultural Leases Act could be effective was provided in Section 6 of the Berar Regulation of Agricultural Leases Act. According to the argument it necessarily excluded a surrender by parole or by other document, that is an unregistered document. In this connection, it was also contended that if a surrender was effected otherwise than by following the provisions of Section 6 of the Berar Regulation of Agricultural Leases Act before it was amended, that is, if a protected lessee were to surrender his tenancy voluntarily and give up possession and if he were to turn round and make an application u/s 19(2) of the Berar Regulation of Agricultural Leases Act, it would not be open to the landholder to contend that he had voluntarily surrendered the tenancy and given up possession, that possession was acquired by the landholder was according to common law rights though the possession was not acquired under the provisions of the Berar Regulation of Agricultural Leases Act. To this line "of reasoning it is only necessary to point out that the ordinary right of a tenant to surrender land by giving up possession and acceptance of the same by the landholder is the right which is preserved by Section 23 of the Berar Regulation of Agricultural Leases Act. It is said that the section preserves the right and does not preserve the obligation. This will not be the proper construction "of Section 23 of the Berar Regulation of Agricultural Leases Act. "When Section 23 of the Act in terms preserves the rights of tenants it necessarily also preserves the obligations which flow from those rights. Therefore, what is preserved is the common law rights of a tenant and if at common law tenant can surrender his tenancy and it is found that it was voluntary then we do not see why such surrender and the possession obtained by the landholder will not be protected even if an application were made u/s 19 of the Berar Regulation of Agricultural Leases Act.

25. It is, however, contended that even assuming that the surrender of tenancy could be made orally or by a simple document it will still have to satisfy the condition, namely, non-verification of such surrender, and this necessarily postulates that there was a law which required verification. It is by reference to this condition that the landholders contend that only the surrenders between September 21, 1957 and December 30, 1958, are surrenders which can give rise to the right of restoration of possession u/s 10(1) of the new Tenancy Act. Now, we have found it difficult to accept this contention. If it is correct as we have held that surrenders can be effected orally and possession can be taken by the landholders if the surrenders are voluntary, we do not see why the persons who

have effected surrenders but whose contention is that they have entered into the surrenders on account of fraud, or pressure should be denied the right of being restored to possession if they satisfy other conditions in the section. In this context we have put to Mr. Kherdekar, learned Counsel for intervener, on behalf of some other landholders to suggest the consequences of fixing one date line as to the persons present on land which gave them the right to claim restoration. The first condition that is to be satisfied by claimants under Section 10 is that such persons must be on land or hold land on January 1, 1953. If one were to accept the argument urged on behalf of the landholders, which has found favour with the Tribunal, then all these classes of tenants who were on land on January 1, 1953, but who were dispossessed as a result of surrender before September 21, 1957, even though such dispossession and surrender was as a result of fraud or undue influence or coercion or pressure, would be excluded from the benefit of Section 10(1). On the other hand, those persons who effected surrenders when there was a specific requirement for their validity, namely, the procedure of verification after September 21, 1957, would apparently be given a second chance of re-agitating the validity of their surrenders by having resort to Section 10(1) of the new Tenancy Act. As far as we can see we do not find any justification for dividing these two classes of persons and discriminating against them in the very section which seems to protect the right of the persons on land on January 1, 1953, if they were dispossessed otherwise than by a voluntary and willing act of surrender of tenancy.

26. Even if it were to be held that the Condition, namely, non-verification of surrender u/s 6 of the Leases Act or Section 177 of the M.P. Land Revenue Code is a condition precedent to be satisfied in an application u/s 10 of the new Tenancy Act, in our opinion, that condition will still be satisfied in the case of those classes of surrenders which have taken place prior to September 21, 1957, and the condition will be satisfied not because there has not been verification but because the law did not require verification to be made under the provisions of the law as was then in force. In fact, in our opinion, the object of the Legislature in providing a second opportunity or an opportunity to the tenants who have been dispossessed as a result of surrenders which are brought about either in contravention of any law or as a result of undue pressure, fraud, deceit or false representation is to ensure that the same result ought to follow. In fact, the provision of a procedure of verification introduced by the amendment of Section 6 in the Leases Act or in Section 177 of the M.P. Land Revenue Code in effect was a provision for having the willingness or voluntariness of the surrender judicially examined by a revenue officer and it is only his verdict which confirmed the surrender as valid and effective as against the tenant. The same procedure is prescribed in Sub-section (2) of Section 10 of the new Tenancy Act when an application is made under Sub-section (1) of Section 10. We fail to see why this opportunity was intended to be denied to those classes of tenants or protected lessees simply because they were dispossessed as a result of surrender of tenancy at a date earlier than September 21, 1957.

27. There is another difficulty in accepting the interpretation which is canvassed before us on behalf of the landholders. It will be seen that a right is created in favour of a "tenant" or a protected lessee. As we have already pointed out, the word "tenant" includes a large class of tillers of soil who were on land in different capacities in different areas; they were occupancy tenants in the Central Provinces or ordinary tenants in Berar, or they may be lessees or they may be protected lessees who had certain enhanced rights. Now, a reference to Section 177(2) of the M.P. Land Revenue Code will show that the procedure for verification of surrender is provided in that sub-section only in respect of occupancy tenants. There is no provision requiring an ordinary tenant as defined in Section 167 of the M.P. Land Revenue Code by which he can surrender his tenancy nor is there any provision for verification of surrender of tenancy by an ordinary tenant. If we are right in interpreting the word "tenant" as inclusive of all those classes of persons such as occupancy tenants, or ordinary tenants, or tenants or ordinary tenants of unalienated lands before the introduction of the M.P. Land Revenue Code, then we fail to see what obstacles could be in their way because there was no verification of surrender made by them either before September 21, 1957, or after September 21, 1957, because in the case of these classes of tenants there was no provision of law whatsoever for having the surrender either by a document or verification of surrender at all. Thus at least for this class of tenants who were ordinary tenants and who in our opinion are certainly included in the category of persons entitled to make an application u/s 10 of the new Tenancy Act there was no requirement of law which would make verification by any officer compulsory. Can it then be said that this class of ordinary tenants are also excluded because there was no verification and no law required verification of surrender effected by them? In our opinion, there is no justification for so interpreting the section as to exclude a large class of ordinary tenants who though entitled to claim restoration of possession if they can prove that they have been dispossessed as a result of surrender which was not voluntary or brought about by misrepresentation are yet to be excluded merely on the interpretation of the phrase "whose surrender has not been verified" in this section. It would be more appropriate to interpret the section to mean that if in a given case a surrender has not been verified either because it was not required to be verified or because it was not in fact verified, then in those cases if the tenant can prove that he was dispossessed as a result of his giving up his right on account of any of the circumstances mentioned in Sub-section (2) of Section 10 of the new Tenancy Act he is entitled to the relief u/s 10 of the New Act.

28. It is contended that the only way in which a surrender of tenancy could be effective under the Berar Regulation of Agricultural Leases Act was by a registered instrument executed by the protected lessee. It is urged that the revenue Courts refused to give relief in case the surrender was by any other procedure. The contention is that the interpretation put on Section 6 of the Berar Regulation of Agricultural Leases Act must have been before the Legislature

when it used the phrase "surrender of tenancy" in Section 10(1) of the new Tenancy Act and therefore it is proper that in interpreting Section 10(1) of the new Tenancy Act we should so construe the phrase surrender of tenancy" as meaning surrender in the manner provided in Section 6 of the Berar Regulation of Agricultural Leases Act. As we have already pointed out it is not possible to accept this contention; firstly because there is no question of surrender of tenancy by a registered instrument in the case of persons other than protected lessees such as ordinary tenants. The same phrase governs the circumstances in which an ordinary tenant or a tenant, or a protected lessee acquires the right, namely dispossession by surrender of tenancy. It is, therefore, not permissible to construe the phrase "surrender of tenancy" in the case of a protected lessee as the surrender in the manner prescribed in Section 6 and in other cases as surrender permissible under the general law, namely, oral surrender or surrender of tenancy by giving a writing. In our opinion, the words "surrender of tenancy" are used in Section 10(1) in the usual sense, namely, that "of giving up right of a tenant or tenancy right and they are closely connected with the concept of dispossession. It is this dispossession which is being protected and in respect of which a right is created. The dispossession, though ostensibly by surrender of tenancy, is really not by valid surrender of tenancy because it is brought about either in violation of the form in which the law requires it to be done or because its voluntary nature is attacked as vitiated by fraud or false representation or by undue pressure. It will also be seen that such argument is not really open to the landholders. Among the various questions which have to be examined in the inquiry contemplated in Sub-section (2) of Section 10, one of the questions is whether the surrender is in contravention of the provisions of law applicable for the time being in force. These words would lose much of their meaning if it is contended that every surrender of which a complaint is made must first be one which satisfies the provisions of Berar Regulation of Agricultural Leases Act or Code, that is, by a document in writing and duly registered in the case of a protected lessee u/s 6 of the Berar Regulation of Agricultural. Leases Act or by a writing delivered not less than 30 days before the next agricultural year in the case of an occupancy tenant. In fact, it will be unnecessarily abridging the scope of the relief which is to be given to the claimants u/s 10 if the landholders were to contend that only this class of surrender which complies with the form in which the surrender is to be effected is to be inquired into and not other surrenders, even though in compliance with the form which is to be protected. In our opinion, the phrase only indicates the fact of dispossession which was as a result of giving up the right by the tenant; if it is found that such surrender is brought about by failure to comply with the provisions of law or is brought about by fraud or undue influence or misrepresentation then relief could be given u/s 10(2) to all these classes of persons.

29. It is also contended that the words in Sub-section (2) of Section 10, "otherwise in contravention of the provisions of the law applicable for the time being" should be read as governing the word "consent" and not "surrender". It is

not possible for us to accept this contention. What is urged is that if consent was obtained by any of the facts which will bring in the provisions of Section 10, then such consent will be vitiated. In our opinion, that part of the inquiry is really provided by the direction to find whether consent was procured by fraud, deceit, false representation or undue influence for pressure. It is also urged that legal disability such as lunacy or minority which would affect the validity of the consent would be the subject-matter of the inquiry in deciding whether consent was obtained in contravention of the provisions of the law applicable. In. our opinion, this phrase would at least govern both, surrender and consent if there was any such legal disability. If surrender is required in a particular form and that has not been done, then also such a surrender which is in contravention of the provisions of the law would be ineffective and would entitle the person who lost possession to be restored to possession. Thus, in our opinion, the inquiry under Sub-section (2) of Section 10 covers an enquiry, both as to its voluntary nature as well as compliance with the law required for effectiveness of the surrender. It was also contended that the law which is in the nature of abridgment of the rights of the landholders "or owners of property such as transferees should be strictly construed and that construction should be upheld which will protect their right. In our opinion, Sub-section (3) of Section 10 which points out the intention of the Legislature in this case clearly shows that even subsequent transferees are liable to be affected by such inquiry. This aspect of the question was present before the mind of Legislature and in spite of such contingency of dispossession affecting the rights of subsequent transferees the provision had been made specifically in Sub-section (3) of Section 10. In our view, as the words of the section are not capable of interpretation which has been upheld by the Tribunal, we come to the conclusion that it is not possible to exclude from the scope of Section 10(2) those tenants and protected lessees who were on land as such on January 1, 1953, but who had been dispossessed by surrender of tenancy and where there has been failure to verify their surrenders either because there was no provision of law which required verification or because there has been no verification.

30. We, therefore, hold that the decisions in this case by the Naib Tahsildar and by the Revenue Tribunal cannot be sustained and they are hereby quashed. We would have remitted the case to the Tribunal, but, in our opinion, there has not been a sufficient inquiry. The manner in which the inquiry has to be made is set out in Sub-section (2) of Section 10. The necessary pleadings and evidence has not been tendered in the case to come to a definite finding which is required to be recorded under Sub-section (2) of Section 10 of the new Tenancy Act by the Naib Tahsildar. We, therefore, set aside all the orders of the revenue authorities in this case and remand the case for a fresh decision according to law to the Naib Tahsildar who will give an opportunity to the parties to file pleadings, lead evidence and dispose of the case afresh by deciding all the points provided for in Sub-section (2) of Section 10 of the new Tenancy Act.

31. In the circumstances, there will be no costs.