
(1978) 08 BOM CK 0030

In the Bombay High Court

Case No : Special Civil Application No's. 450 and 1391 of 1973

Pandurang Narayan Nathe

APPELLANT

Vs

Ramchandra Maroti Jawarkar and Another

RESPONDENT

Date of Decision : 25-08-1978

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 19, 19(1), 19(1)(I)(d), 36, 38

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43

Citation : AIR 1980 Bom 84 : (1979) 81 BOMLR 445

Hon'ble Judges : Ginwala, J

Bench : Single Bench

Advocate : A.M. Gordey, for the Appellant; S.N. Kherdekar, for the Respondent

Judgement

Ginwala, J.—These two writ petitions have been filed for quashing the order passed by the Maharashtra Revenue Tribunal, Nagpur (hereinafter referred to as "the Tribunal") on 1st March 1973 directing the petitioner to place respondent No. 1 in possession of the land in dispute. Both these petitions are, therefore, being disposed of by this common judgment.

2. In order to appreciate the rival contentions of the parties to these petitions it would be convenient to state the facts leading to the present petitions, in brief. The land bearing S. No. 522/2 admeasuring 1 acre 12 gunthas and situated within the municipal limits of Akot belongs to respondent No. 1, He had leased it out to the petitioner on 9th February 1954 under a Kabulayat for an annual rental of Rs. 150/-. This lease was for a duration of one year. However, the petitioner continued on the land as tenant. On 8th February 1969 respondent No. 1 served a notice on the petitioner terminating his tenancy and calling upon him to hand over possession of the land to him (respondent No. 1). The grounds on which the tenancy was sought to be terminated were that the petitioner had let out the land to his brother Baliram, that the period of lease had expired and possession was illegal, that respondent No. 1 required the land bona fide for his

personal cultivation and that he also required the land for non-agricultural user. Since the petitioner did not comply with the notice, respondent No. 1 moved the Tenancy Naib Tahsildar of Akot by filing an application purporting to be u/s 58 (3) (c) read with Section 36 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "the Act"). In this application also respondent No. 1 alleged that the period of lease had expired and possession of the petitioner thereafter was illegal, that the petitioner had sublet the land to Baliram and that the land was required for bona fide non-agricultural purpose as he wanted to start dairy business and construct his own residential house. With regard to the termination of tenancy on the ground of requirement of the land for bona fide personal cultivation respondent No. 1 stated in his application that the period of the notice had not yet expired and, therefore, he would reserve his right for filing separate application. Baliram, to whom the land was alleged to have been sublet by the petitioner, was impleaded in this application along with the petitioner. He appeared in the proceeding and by his written statement filed on 2nd Dec. 1969 he said that he was never in possession of the land and he had never cultivated it either as a sub-lessee or in any other capacity. According to him, the land was being cultivated by the petitioner alone from the commencement of the tenancy. The petitioner also contested the claim of, respondent No. 1 for possession of the land on the various grounds stated above. He denied all the allegations made against him in the application and submitted that respondent No. 1 did not need the land either for personal cultivation or for non-agricultural use as alleged by him. On these pleadings the Tenancy Naib-Tahsildar framed various issues and the parties went to trial. Oral and documentary evidence was adduced by respondent No. 1 and the petitioner in support of their respective contentions. By his order dated 19th Jan. 1971 the Tenancy Naib-Tahsildar rejected the application of respondent No. 1 for possession of the land, holding that the latter had failed to establish the grounds on which he sought possession. Being aggrieved by this order, respondent No. 1 preferred appeal before the Special Deputy Collector, Land Reforms, at Akola (hereinafter referred to as "the Deputy Collector"). The Deputy Collector concurred with the findings of the Naib-Tahsildar with regard to all the points except on the point of sub-letting. The Deputy Collector held that the Naib-Tahsildar had not properly appreciated the evidence on record in this respect and had failed to examine the Patwari who had recorded the name of Baliram in crop statements for the years 1958-59 to 1960-61. The Deputy Collector, therefore, remanded the matter to the Naib-Tahsildar with a direction that the Patwari concerned should be examined on the relevant points and fresh finding should be recorded on the point of sub-letting. Thus the Deputy Collector partly allowed the appeal of respondent No. 1. Being aggrieved by the order passed by the Deputy Collector, the petitioner and respondent No. 1 both preferred revision application to the Tribunal. Both these revision applications were heard together and by a common order passed by the Tribunal on 1st March 1973 it allowed the revision application filed by respondent No. 1 and directed the petitioner to put him in possession of the land leased. In the view which it took, the Tribunal rejected the

revision application filed by the petitioners. It is against this order that these two writ petitions have been filed.

3. To recapitulate again it may be stated here that respondent No. 1 sought possession of the land from the petitioner on four grounds, namely, (1) that the petitioner had sub-let the land to Baliram, (2) that he had committed default in payment of rent, (3) that he required the land for bona fide personal cultivation and (4) that he required the land for non-agricultural user. It would be convenient to take these grounds one by one and see if the finding of the Tribunal on them can be sustained,

4. In so far as the sub-letting is concerned, respondent No. 1 in his application to the Naib-Tahsildar had averred that the petitioner, after three years of the lease, had handed over possession of the land to Baliram and had thus sublet the land to him and this was one of the grounds on which the tenancy of the petitioner had been terminated. As already seen above, Baliram denied this allegation in the written statement which he filed before the Naib-Tahsildar. The petitioner had also denied the allegation of respondent No. 1 that he had sublet the land to Baliram. In support of his contention that the land was sublet to Baliram, respondent No. 1 examined himself. In his evidence respondent No. 1 stated that for the first three years the petitioner cultivated the land for horticulture and thereafter he inducted Baliram on the land without his consent. In support of his contention respondent No. 1 filed extract from the crop statement for the years 1958-59 to 1960-61 in which the name of Baliram has been mentioned as the person who cultivated the land during these years. He also produced certified copy of the record of rights in respect of the land in which it has been stated in column No. 11 that Baliram had taken the land on lease at a rental of Rs. 125/- a year from respondent No. 1 for the years 1954-55 to 1956-57. Naturally in his evidence the petitioner maintained that Baliram alone had never cultivated the land. He said that Baliram was his brother and both of them resided jointly. The Naib-Tahsildar held that the entry in the record of rights in the name of Baliram as tenant had been wrongly made as, according to the respondent No. 1, the petitioner was in possession of the land as lessee from 1954-55 to 1958-59 i.e. for the very years for which this entry has been made in the record of rights. With regard to the name of Baliram in the crop statements for the years 1958-59 to 1960-61, the Naib-Tahsildar was of the view that this was also as a result of mistake because of the alleged wrong entry in the record of rights in the name of Baliram and since Baliram was the elder brother of the petitioner. The Naib-Tahsildar further observed that though respondent No. 1 had been maintaining in his evidence that Baliram had been cultivating the land, but he admitted that when he (respondent No. 1) tried to take possession of the land about three years before he deposed, the petitioner obstructed him and cultivated it. The Naib-Tahsildar, therefore, was of the view that respondent No. 1 had failed to establish his allegation that the petitioner had sublet the land to Baliram.

5. The Deputy Collector in appeal did not agree with the finding of the Naib-

Tahsildar. He was of the view that the Naib-Tahsildar was not right that the entries in the name of Baliram in the record of rights and the crop statements were due to mistake on the part of the Patwari. He held that if there was any doubt in the mind of the Naib-Tahsildar in this connection, he ought to have examined the Patwari before drawing his inference regarding the correctness of these entries. He said that even though Baliram had denied to have cultivated the land, the entries in the crop statements should not have been lightly brushed aside simply because Baliram has stated so. The Deputy Collector, therefore, held that in these circumstances it was necessary to examine the Patwari who had made the entries and directed the Naib Tahsildar to do so. In this view of the matter he ordered remand of the case to the Naib Tahsildar.

6. As already stated above, the petitioner preferred a revision application before the Tribunal being Revision Application No. Ten-A/458/1972. The Tribunal took into consideration the entry in the record of rights in the name of Baliram as tenant for the years 1954-55 to 1956-57 as also the mention of Baliram as the person cultivating the land during the years 1959-60 to 1960-61 in the crop statements. On the basis of these entries the Tribunal was of the view that they proved that the petitioner had sublet the land to Baliram and there was no propriety in sending the case back to the Naib-Tahsildar as ordered by the Deputy Collector for testing the veracity of the evidence of Baliram and the petitioner to the effect that the land had not been sublet to the former. The Tribunal was of the view that the parties were at liberty to call the Patwari for clarification and if they had failed to do so, it was not for the Court to fill in the lacuna left by the parties. Thus placing explicit reliance on the entries in the record of rights and the crop statements the Tribunal held that the petitioner had sublet the land to Baliram. This was one of the grounds on which ultimately the Tribunal ordered possession of the land to be delivered to respondent No. 1. In the view which it took, the Tribunal dismissed the revision application which had been filed by the petitioner against the order of remand passed by the Deputy Collector. It is against this order of the Tribunal that the petitioner has filed Special Civil Application No. 1391 of 1973.

7. Mr. Gordey, the learned counsel for the petitioner, submitted that the finding of the Tribunal in this respect cannot at all be supported either on facts or on law. He submitted that even if it is held on the basis of the entries in the record of rights and the crop statements that Baliram was cultivating the land, this would be so only up to the year 1960-61, as his name does not appear in any of the crop statements subsequent to 1960-31. He pointed out that the crop statements for the years 1961-62 to 1968-69 had been put on record and in none of them the name of Baliram appears at, the person cultivating the land, but on the contrary, the name of the petitioner is mentioned in that connection. Mr. Gordey, therefore, submitted that assuming, without admitting, that the petitioner had sublet the land to Baliram, this subletting had come to an end in the year 1961-62 since up to the commencement of the proceedings before the Naib-Tahsildar the land was in the cultivating possession of the petitioner. Mr.

Gordey submitted that even though it was contended by respondent No. 1 that Baliram was in the cultivating possession of the land, this allegation on his part does not find support from the crop statements referred to -above. In other words, Mr. Gordey submitted that the fact remains that on the date when respondent No. 1 served notice on the petitioner terminating his tenancy, the land was not in possession of Baliram, as a sub-tenant and was in possession of the petitioner as a tenant and if that was so, this could not have been a valid ground for respondent No. 1 to terminate his tenancy. For this purpose he relies on the provisions of Sections 19 (1) (1) (d) and 19 (1) (II) of the Act. He submitted that for terminating tenancy on the ground of sub-lease it is necessary that the sub-lease is in existence on the date when the tenancy is terminated and for this interpretation Mr. Gordey strongly places reliance on Clause (II) of Sub-section (1) of Section 19 of the Act. Hence, according Mr. Gordey, even if it is held, as has been done by the Tribunal, that the land had been sublet by the petitioner to Baliram up to 1960-61, merely on this account the tenancy of the petitioner could not be validly terminated. Mr. Kherdekar, the learned counsel for respondent No. 1, submitted that even if the tenant has sublet his land sometime hi the past and though the sub-lease does not continue on the date when the tenancy is terminated under the provisions of Section 19 of the Act, the landlord can very well base the termination of the tenancy on the past act of the tenant of sub-leasing the land.

8. In my view, the contention urged by Mr. Gordey in this connection appears to be well founded. Sub-clause (d) of Clause (I) of Sub-section (1) of Section 19 of the Act provides that notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be terminated, unless such tenant has sublet or assigned the land or failed to cultivate it personally. It is pertinent to note that the sub-clause is in the present perfect tense and does not indicate that a landlord would be entitled to terminate the tenancy of his tenant on the ground that sometime in the past the tenant had sublet the land or had assigned or failed to cultivate it personally. The very use of the word "has" would clearly indicate that the effect of the Act of subletting, assignment or failure to cultivate the land personally has to be in existence or continuing at the time when the tenancy is terminated. The language of the sub-clause is patently clear to show that any act of subletting, assignment or failure to cultivate the land personally in the past, which state of affairs does not continue up to the date of termination of the tenancy, would not be available to the landlord for termination of the tenancy. This position becomes abundantly clear if reference is had to Clause (II) of Sub-section (1) of Section 19 which provides that tenancy cannot be terminated on any of the grounds mentioned in Clause (I) unless the landlord has given three months" notice in writing informing the tenant of his decision to terminate the tenancy and the particulars of the ground for such termination and within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated. In other words, if a tenant has sublet the land and this sub-lease continues even on the

date of the notice of termination, the landlord would not be entitled to obtain possession of the land on the ground that the tenant has sublet the land, if within the period of notice the tenant remedies the breach, viz., the act of subletting. Thus if in the situation stated above, after receiving the notice from the landlord the tenant puts an end to the sub-lease, within the period of notice, namely, three months, the lease of the tenant will be taken not to have been terminated. Now if this is so, Clause (II) would be nugatory if Sub-clause (d) of Clause (I) of Sub-section (1) of Section 19 is construed to mean that the landlord would be entitled to terminate the tenancy of the tenant even if the Sub-lease, assignment or failure to cultivate the land personally does not continue up to the date when the tenancy is terminated. Obviously in that case the tenant would have already remedied the breach even before the notice had been given by the landlord and under Clause (II) it would not be possible for the landlord to terminate the tenancy.

9. The evidence on record, as has been discussed above, taking it at its best would show at the most that Baliram had been in cultivating possession of the land sometime between 1954-55 to 1960-61. If that was so, obviously the tenancy of the petitioner could not have been terminated on the ground that the petitioner had sublet the land to Baliram during that period, for the simple reason that the alleged sub-lease did not continue up to the "date when the notice of termination was given by respondent No. 1 to the petitioner. Hence even if it is held that the petitioner had sublet the land to Baliram in the past, i.e., prior to the notice of termination was given, the tenancy of the petitioner could not be terminated on that ground since on the date when the notice was given the land was not in possession of Baliram as a sub-lessee and the breach, if any, had already been remedied by the petitioner. In my view, therefore, the Tribunal was not right in holding that the sub-lease would result in the termination of the tenancy of the petitioner.

10. The question still remains whether the order of remand passed by the Deputy Collector could be sustained if the order passed by the Tribunal in dismissing the revision application filed by the petitioner is set aside. Now the purpose of the remand under the order of the Deputy Collector was to test the veracity of the entries made in the record of rights and the crop statements mentioned above. It was only for this purpose that the Deputy Collector thought it fit to remand the matter to the Naib-Tahsildar. Now even if the matter is remanded to the Naib-Tahsildar for this purpose as directed by the Deputy Collector, the only result in favour of respondent No. 1 would be that these entries had been correctly made and there was no error on the part of the Patwari concerned in making them. In other words, taking the best, in favour of respondent No. 1 the result of the remand would be that the authenticity of the entries in the name of Baliram in record of rights and the crop statements for the years stated above would be established. But for the reasons which I have discussed above, this would not be of any use to the respondent No. 1 because even if it is assumed that these documents represent the true state of affairs,

they would only establish that Baliram was in cultivating possession of the land at least up to 1960-61. As seen above, this position would be of little avail to respondent No. 1 on the construction of the relevant provisions of Section 19 as discussed above. In my opinion, therefore, no useful purpose would be served in the circumstances of the case even by remanding the matter to the Naib-Tahsildar as directed by the Deputy Collector.

11. Another ground which was urged by respondent No. 1 for terminating the tenancy of the petitioner was that the petitioner had not paid rent of the land from 1958-59 to 1968-69 amounting to Rs. 1,500/-. The Naib-Tahsildar held that there was no default on the part of the petitioner in paying the rent. This finding of the Naib-Tahsildar had been confirmed by the Deputy Collector in appeal and by the Tribunal in revision. Since this finding of the Tribunal is not under challenge in this petition, it is not necessary to observe anything in this connection.

12. The next ground on which the tenancy was sought to be terminated was that respondent No. 1 required the land for non-agricultural purposes. In this connection respondent No. 1 in his notice stated that he was terminating the tenancy of the petitioner under the provisions of Section 60 of the Act on the ground that he required the land for bona fide non-agricultural purpose. Respondent No. 1 stated that he wanted to start dairy business and construct his own residential premises on the land. He reiterated the same thing in his application before the Naib-Tahsildar. The petitioner refuted this averment of respondent No. 1. He contended that respondent No. 1 was not in a position to construct house or start business of dairy as averred by him. According to the petitioner, respondent No. 1 had urged this ground anyhow to obtain possession of the land from him. In his evidence respondent No. 1 said that he required the land for personal cultivation and if it was not possible to give him possession of the land for that purpose, then he would require the land for starting his business of dairy or for constructing a house. He said that he has no other source of income except agriculture. In his cross-examination he said that he had not decided as to what would be the dimension of the house he would construct and that he wanted to erect a shed for his cattle and also to construct a hut for his residence. He admitted that he had not obtained permission from the Municipal Council for these constructions and that he had not also applied for permission to convert the land to non-agricultural use. He also admitted that he had not purchased any buffaloes for his intended business of dairy. The Naib-Tahsildar held that respondent No. 1 could terminate the tenancy on the ground of non-agricultural user only under the provisions of Section 61 of the Act which requires notice of three months to be given to the tenant terminating his tenancy with effect from 31st day of May of the year in which the notice is given. The Naib-Tahsildar observed that the notice which had been given by respondent No. 1 in this connection was vague and it did not mention that the lease was terminated with effect from 31st day of May of that year. The Naib-Tahsildar further observed that the notice did not make any mention of the fact that he

(respondent No. 1) was prepared to pay solatium to the petitioner. The Naib-Tahsildar further observed that respondent No. 1 was not in a position to give any "systematic plans" for the non-agricultural use of the land. On these grounds, therefore, the Naib-Tahsildar held that respondent No. 1 had failed to prove his requirement for non-agricultural purpose. In this view of the matter, therefore, the Naib-Tahsildar did not uphold this ground of respondent No. 1 for terminating the tenancy. The Deputy Collector in appeal upheld the reasoning advanced by the Naib-Tahsildar in this connection and confirmed his finding that respondent No. 1 had failed to establish this ground. The Tribunal, however, differed from the concurrent findings of the Naib-Tahsildar and the Deputy Collector in this respect and held that respondent No. 1 needed the land bona fide for non-agricultural purposes. In this connection the Tribunal observed that respondent No. 1 had complied with the provisions of Section 61 of the Act by giving notice dated 8th Feb. 1969. According to the Tribunal, this notice was perfectly legal and valid and the Tribunal thus differed from the finding of the Naib-Tahsildar and the Deputy Collector to the effect that the notice was not in compliance with the provisions of Section 61 inasmuch as it did not terminate the tenancy of the petitioner with effect from 31st May of that year. According to the Tribunal, the Naib-Tahsildar and the Deputy Collector had erred in not properly interpreting the provisions of Section 61 of the Act. It appears that the Tribunal was of the view that the requirement of Sub-section (1) of Section 61 was only that a notice should be of three months and since the notice had been served on or about 8th Feb. 1969, it fulfilled the condition with regard to its period. On merits the Tribunal observed that respondent No. 1 had stated in his notice that he wanted the land for non-agricultural purpose and had also given the details thereof. Observing thus the Tribunal held that respondent No. 1 needed the land bona fide for non-agricultural purpose.

13. Mr. Gordey, the learned counsel for the petitioner, submitted that the Naib-Tahsildar and the Deputy Collector had arrived at a concurrent finding on the question of need of respondent No. 1 of the land for the alleged non-agricultural use. Mr. Gordey submitted that this was purely a question of fact and if the two authorities had come to the same conclusion on the basis of the evidence before them, it was none of the function of the Tribunal to interfere with this finding of fact. Mr. Gordey submitted that u/s 111 of the Act, the power of the Tribunal was restricted to the three grounds mentioned in Sub-section (1) of that section. According to Mr. Gordey, interference by the Tribunal in so far as this finding of the authorities below was concerned, did not fall in any of the three grounds mentioned in this sub-section. Mr. Gordey further submitted that even while reversing the concurrent findings of the two authorities below the Tribunal had not given any sufficient or cogent reasons for differing from them and had merely stated that it held that respondent No. 1 needed the land for non-agricultural purposes simply because he had given details thereof in the notice which he had served on the petitioner. Mr. Gordey submitted that perusal of the notice would disclose that no details had been given by respondent No. 1 with

regard to the non-agricultural user of the land except saying that he wanted to construct a residential house and start his business of dairy there. According to Mr. Gordey, respondent No. 1 has not furnished adequate details to show that he is in need of the land for non-agricultural purpose. In this connection he relied on a decision of this Court in *Nimbibai v. Ragho* 1963 Mah LJ 125, where, while construing the provisions of Section 43-D of the Bombay Tenancy and Agricultural Lands Act, 1948, which corresponds to Section 61 of the Act it has been observed that a mere desire or wish of the landlord to put the land to non-agricultural use is not sufficient and it is necessary for him to prove some need or necessity. Mr. Gordey submitted that the evidence adduced by respondent No. 1 falls short of this requirement of Section 61 of the Act. As against this, Mr. Kherdekar for respondent No. 1 submitted that respondent No. 1 had not only stated the purpose for which he needed the land in the notice as well as in his application before the Naib-Tahsildar but he had also supported it by his evidence in the proceedings. According to Mr. Kherdekar, the word of respondent No. 1 on oath should not have been disbelieved by the Naib-Tahsildar or the Deputy Collector. According to Mr. Kherdekar, these two authorities had taken some irrelevant circumstances into consideration and that is why they came to the conclusion that respondent No. 1 did not need the land for non-agricultural user. Mr. Kherdekar submitted that even though these two authorities had recorded a concurrent finding with regard to the non-agricultural user by respondent No. 1, the Tribunal was entitled to go into this finding since it was not based on the material on record and relevant circumstances had not been considered by these two authorities. Mr. Kherdekar further pointed out that the Naib-Tahsildar and the Deputy Collector had not properly construed the provisions of Section 61 of the Act with regard to the termination of Tenancy and the validity of the notice and the Tribunal was required to go into it and correct the view taken by these two authorities. In short, therefore, Mr. Kherdekar supported the finding of the Tribunal in this respect which was in favour of respondent No. 1.

14. As already seen above, in his notice dated 8th February 1969 respondent No. 1 had merely stated that he wanted to start the business of dairy and construct his own residential house on the land and for this reason also the tenancy was terminated. He has repeated the same thing in his application before the Naib Tahsildar without adding anything to it. The only evidence which he adduced in support of this contention was his own oral testimony and that too he stated in one sentence that he wanted the land for personal cultivation and if it was not possible to give him possession on that account then he needs it for the business of the dairy or constructing residential house. Beyond this he has not stated anything in his examination-in-chief. However, as pointed out, in his cross-examination he admitted that he had not taken any steps for converting the land for non-agricultural use or had not even applied for permission to construct a house on the land. So much so that he had not also decided as to what would be the dimensions of the house he wanted to construct. It will, therefore, appear that respondent No. 1 has contended only by making a bald assertion in his

evidence that he wanted the land for the business of dairy or for constructing his own house in case it was not possible to deliver possession of the land to him for personal cultivation. The Naib Tahsildar was not satisfied with this evidence and held that respondent No. 1 had failed to establish his requirement. The Deputy Collector went a step further and observing the manner in which respondent No. 1 had deposed about this aspect of his case he held that he was not in real need of the land for non-agricultural user as alleged by him. As has been held in Nimbibai's case, it is not sufficient on the part of the landlord merely to state that he desires or wishes to put the land to non-agricultural use. It is further necessary for him to show that he is in need of the land. Section 61 of the Act does not entitle a landlord to terminate the tenancy in respect of the land merely because he wishes or desires to put the land to non-agricultural use. The section provides that the landlord can do so if he bona fide requires the land for such a purpose. Now not only that he has to establish to bring his case within the four corners of Section 61 of the Act that he requires the land but he must go further and establish that his requirement is bona fide. In other words, the authorities who have to scrutinise this aspect of the case of a landlord, have to be satisfied that the requirement of the landlord is bona fide and if that is so, it would not be sufficient for the landlord only to make a bald statement in his evidence that he wants to put the land to non-agricultural use but he must support his evidence by facts and circumstances to establish that his requirement is bona fide and this can be done by showing that he has got good reason for putting the land to such use or that he has taken sufficient steps in that direction. Looking at this case from that point of view it would appear that respondent No. 1 not only did not establish that he required the land for non-agricultural purpose but he did not also establish his bona fides about it. All this has been taken into consideration by the Naib Tahsildar and the Deputy Collector. The Deputy Collector had rightly observed that the alternate plea taken by respondent No. 1 itself shows that he is not in real need of the land for non-agricultural purpose. Now the Tribunal after discussing the provisions of Section 61 of the Act, disposed of the question of the need or necessity on the part of respondent No. 1 to put the land to non-agricultural use by merely observing that respondent No. 1 had already stated in the notice that he wanted the land for non-agricultural purpose and that he had given the details of the purpose for which he wanted the land to be used. Merely observing so the Tribunal held that respondent No. 1 needed the land bona fide for non-agricultural purpose also. Now it would appear that while differing with the findings of the Naib Tahsildar and the Deputy Collector the Tribunal did not at all discuss as to how they had gone wrong in recording these findings. The Tribunal did not even make an attempt to demonstrate that the reasons adopted by these two authorities in support of their findings were not cogent and convincing. If the Tribunal was reversing a concurrent finding by the two authorities below, it was incumbent on it as a revisional authority to have shown that the said finding arrived at by the two authorities was not based on the evidence on record or was based on extraneous and irrelevant evidence. From what I have stated above it would be clear that no effort has been made by the

Tribunal in this direction. In Nimbibai's case this Court has held that the question whether the landlord requires the land bona fide is a question of fact which must be decided in each case on the facts and circumstances of that case. The fact, therefore, remains that the question as regards bona fide requirement of the land for non-agricultural purpose is a question of fact and the finding thereon will be a finding of fact. If the two authorities had recorded a concurrent finding on this question of fact, it was not open to the Tribunal to interfere with this finding unless and until it was in a position to show that this finding was based on extraneous or irrelevant evidence or on no evidence. I must say that this is not so, so far as the present case is concerned. In my view, therefore, the Tribunal ought not to have set aside the finding of the Naib Tahsildar and the Deputy Collector to the effect that respondent No. 1 had failed to establish his case that he required the land for non-agricultural purpose. If this is so, the question whether the notice served by respondent No. 1 on the petitioner for termination of his tenancy on this ground is in conformity with Section 61 of the Act or not is irrelevant and need not be considered. If it is held that respondent No. 1 had failed to establish his case that he required the land for non-agricultural purposes, the question whether the notice served by him on the petitioner in this respect is valid or not pales into insignificance.

15. The last ground on which respondent No. 1 sought possession of the land from the petitioner was that he needed it for personal cultivation. Now in this connection the case of respondent No. 1, even at the stage of notice was that the land was leased out to the petitioner for horticulture purposes and that being so he was entitled to terminate the tenancy and recover possession of the land u/s 58 of the Act. In fact, in para 3 of the notice respondent No. 1 made it very clear that he was serving the notice under that section and was terminating the tenancy for bona fide personal cultivation under the notification issued by the Government u/s 58 (3) (c) of the Act. In short, therefore, the case of respondent No. 1 was that he had leased out the land to the petitioner for the purposes mentioned in clause (c) of Sub-section (1) of Section 58 of the Act and hence he was entitled to terminate the tenancy by Virtue of the notification issued by the State Government in exercise of its power under Sub-section (3) of Section 58. In other words it was not the case of respondent No. 1 that he was terminating the tenancy for personal cultivation under the provisions of Section 38 of the Act. Now as seen above, in the petition respondent No. 1 had stated that he required the land for bona fide personal cultivation and wanted to make a claim on this ground. However, he said further that the period of one year from the date of notice had yet to expire and, therefore, he reserved the right for filing a separate application. It would, therefore, appear that he did not wish to proceed on trial in so far as this ground for possession was concerned. However, while framing issues the Naib Tahsildar put the allegation whether the lease was for horticulture and whether respondent No. 1 required the land for personal cultivation in issue. It further appears that in spite of what had been stated by the respondent No. 1 in his application before the Naib Tahsildar for reserving his right, the parties

went to trial on this issue also. In his evidence respondent No. 1 did depose that he wanted the land for personal cultivation. The Naib Tahsildar recorded his finding with regard to the issue whether the lease was for horticulture purpose. He recorded a finding in the negative in this respect. Obviously because he held that the lease was not for horticulture purposes, he further held that the land being situated in a municipal area, respondent No. 1 was not entitled to possession thereof under Sections 38, 39 and 39-A of the Act. In short, therefore, the Naib Tahsildar rejected the contention of respondent No. 1 that he bona fide required the land for personal cultivation. Now, as already seen above, it was respondent No. 1 who preferred an appeal before the Deputy Collector against the order passed by the Naib Tahsildar. In this appeal he does not appear to have contended that he had reserved his claim in this connection for a separate application and that the Naib Tahsildar should not have proceeded to decide it. On the contrary it seems that efforts were made to dislodge the finding of the Naib Tahsildar on the point whether the lease was for horticulture purpose. The Deputy Collector confirmed the finding of the Naib Tahsildar in this connection and respondent No. 1 preferred a revision application against the order of the Deputy Collector, to the Tribunal. Here again we find that respondent No. 1 did not contend before the Tribunal that the finding by the Naib Tahsildar and the Deputy Collector on the question whether the lease was for agricultural purpose and whether respondent No. 1 needed it for personal cultivation was not called for inasmuch as the latter had reserved his claim for a separate application. On the other hand we find that what was alleged before the Tribunal was that the finding of the two authorities below with regard to the purpose of the lease was challenged on the ground that it was not based on the evidence on record. As already seen above, the Tribunal differed from the finding of the Naib Tahsildar and the Deputy Collector in this connection and held that the land had been leased out for horticulture purpose. Now in this Court Mr. Kherdekar, the learned counsel for respondent No. 1, submitted that in view of what had been submitted by respondent No. 1 in his application before the Naib Tahsildar the issue whether the lease was for horticulture purpose and whether respondent No. 1 bona fide required the land for personal cultivation under the provisions of Section 58 of the Act did not arise in the proceedings before the Naib Tahsildar and he ought not to have recorded any finding on this issue. He submitted that the Deputy Collector and the Tribunal also ought not to have gone into this question because of the reasons stated above. According to Mr. Kherdekar, this is an error apparent on the face of record and this Court should correct the error by setting aside the finding of all the authorities below and leaving the question open to respondent No. 1 for whatever remedy may be available to him in this respect. In my opinion, Mr. Kherdekar is right in making this submission. It appears that in spite of respondent No. 1 having reserved his claim in this respect for the reason that the period of notice required under the notification issued by the Government u/s 58 (3) of the Act had not expired, the parties appear to have proceeded on trial on this issue on account of misrepresentation of facts. Obviously if respondent No. 1 had made it very clear in his application

that he reserved his right to claim possession of the land on this ground because the period of notice had not expired, it would be premature for the authorities concerned to go into this question and give their findings on this issue though it did not arise at that stage. In my view, therefore, the finding of the Naib Tahsildar, the Deputy Collector and the Tribunal on the question whether the land was leased for horticulture purposes and whether respondent No. 1 was entitled to terminate the tenancy of the petitioner for bona fide personal cultivation of the land, under the provisions of Section 58 of the Act, will have to be set aside for the above said reasons.

16. In the result, therefore, the petitions are allowed and the orders passed by the Tribunal in revision applications Nos. Ten-A-271/72 and Ten-A-458/72, on 1st March 1973, are quashed. So also the order passed by the Deputy Collector in Appeal Number 3/59(19)/70-71 on 30th December 1971 in so far as it relates to the remand of the case to the Naib Tahsildar is quashed and the order passed by the Naib Tahsildar in Revenue Case No. 3/59(19)/68-69 on 19th January 1971 is restored. However, the finding of the Naib Tahsildar, the Deputy Collector and the Tribunal with regard to the question whether the land in question was leased by respondent No. 1 to the petitioner for horticulture purpose and whether respondent No. 1 was entitled to terminate the said lease of the petitioner in respect of the land in question for personal cultivation under the provisions of Section 58 of the Act are hereby set aside. In the circumstances of the case there shall be no order as to costs.

17. Petition allowed.