

(2002) 10 BOM CK 0023

In the Bombay High Court

Case No : L.P.A. No. 44 of 1992 in Writ Petition No. 2370 of 1987

Rambhau Sitaramji Bhave

APPELLANT

Vs

Nathuji Laxmanji Bhonde

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 36(2), 43(14A), 50

Citation : (2003) 1 MhLj 658

Hon'ble Judges : R.G. Deshpande, J; P.S. Brahme, J

Bench : Division Bench

Advocate : J.J. Chandurkar, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

P.S. Brahme, J.—This appeal arises out of the judgment and order dated 30-9-1991 in Writ Petition No. 2370/1987 wherein the writ petition under Article 226 of the Constitution filed by the appellant / tenant challenging the order passed by the Maharashtra Revenue Tribunal, reversing the order of the Sub Divisional Officer and restoring that of the Tahsildar, by which the Tahsildar held that the respondent was entitled to possession of the agricultural land, came to be dismissed.

2. For deciding the question involved, we would first mention a few facts of the case. The appellant took on lease 1 acre and 8 gunthas of land of survey No. 42/2 of Aiwajpur from the respondent on 10-5-1972 for a period of 10 years, under a registered Kaul Patta,. The lease was to expire at the end of the year 1981-82 and the respondent made an application on 28-4-1982 for possession of the land u/s 36(2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as "Tenancy Act"). The Tahsildar held that the respondent was entitled to possession, but the Sub-Divisional Officer by his order dated 10-12-1985 reversed that decision and dismissed the respondent's application. The respondent, therefore, approached the

Maharashtra Revenue Tribunal, which in revision reversed the order passed by the Sub-Divisional Officer and restored that of the Tahsildar. The learned Member of the Maharashtra Revenue Tribunal considered the question whether the application filed by the respondent Landlord before the Tahsildar for restoration of the land u/s 36(2) of the Tenancy Act was within limitation. The learned Member found that the appellant/tenant has executed a Kaul Patta in favour of the respondent-landlord for 10 years and 10 years" period of lease was to be over by 31st March 1982 and the appellant was to handover the possession on 1-4-1982. No doubt as per the Section 50 of the Tenancy Act as the tenant fails to exercise his rights within one year, the limitation would start running u/s 36 from that date, but according to the learned Member as the lease granted in favour of the appellant tenant was for a period of 10 years, there was no cause for the appellant to ask for possession from the respondent. As the appellant failed to hand over the possession on 1-4-1982, the respondent filed application u/s 36(2) of the Tenancy Act on 28-4-1982 and it is therefore, within the limitation as prescribed u/s 36(2) of the Tenancy Act. Therefore, the learned Member, Maharashtra Revenue Tribunal found that the application filed by the respondent for restoration of the land u/s 36(2) of the Tenancy Act was within limitation and that is how the learned Member, Maharashtra Revenue Tribunal set aside the order passed by the Sub Divisional Officer passed in Revenue Appeal No. TNC-2/59(120-F)2/83-84 Aiwajpur passed on 10th December, 1985 and the order passed by the Tahsildar dated 30-4-1984 in Revenue Case No. 3/59(10-F) Aiwajpur/81-82 came to be restored and the appellant was directed to hand over the possession of the land to the respondent.

3. The learned Single Judge, while confirming the order passed by the Maharashtra Revenue Tribunal and dismissing the writ petition found that the appellant-tenant could not exercise his right to purchase within one year as provided u/s 50 of the Tenancy Act, as the appellant held the land under a 10 years" lease that was to expire at the end of 1981-82. Appellant could not have come to the court earlier, merely because of the requirement of the Section 50 of the Tenancy Act because u/s 37 save as provided in this Act the rights and privileges of any tenant under any usage or law for the time being in force or arising out any contract grant, decree or order of the court or otherwise howsoever shall not be limited or abridged. The learned Judge observed that the requirement of the Section 36(2) of the Tenancy Act was that the landlord shall apply for possession within a period of 2 years on which the right to obtain possession of the land is deemed to have accrued to him. This right cannot be confused with the situation referred to in Section 50 of the Tenancy Act. Therefore, the learned Single Judge found that the Maharashtra Revenue Tribunal was right in holding that in view of the subsistence of the 10 years; lease, right to obtain possession could not have accrued to the landlord except for after the expiry of the period of that lease and since the application filed by the respondent was dated 30-4-1984 was within the two years, it was within time. That is how the order passed by the Maharashtra Revenue Tribunal came to be

confirmed and the order passed by the Tahsildar was restored and the writ petition came to be dismissed. This dismissal of the writ petition, confirmation of the order passed by the Maharashtra Revenue Tribunal and consequent restoration of the order passed by the Tahsildar is the subject matter of the challenge in this Letter Patent Appeal.

4. The question involved in this appeal is with regard to the interpretation of Section 50(1) of the Bombay Tenancy Act which inter alia provides that where the tenancy is created after 1-4-1963, every tenant holding the land under such tenancy and cultivating it personally, shall be entitled to purchase during one year from the commencement of the tenancy so much so such land as may be entitled to purchase u/s 41 and the provisions of Sections 41 to 44 shall mutatis-mutandis apply to such purchase.

5. In the decision reported in AIR 2000 SC 1777 in the case of Janba (dead) through his L.Rs. Appellants v. Smt. Gopikabai Respondents some what similar question with regards to the interpretation of Section 50 of the Bombay Tenancy Act fell for consideration before the Apex Court. It was the contention of the appellant - tenant therein that as the respondent-landladies were widows, his right to purchase the land is postponed u/s 41(2) of the Tenancy Act till their disability ceases. As against that, the High Court of Bombay (this Court) by impugned judgment dated 5-7-1985 in Special Civil Application No. 792 of 1975 held that Section 41(2) would not be applicable in case of purchase specified u/s 50. That judgment and order was under challenge before the Apex Court. The Apex Court found that the right of the tenant to purchase the land u/s 50 (1) of the Act does not get postponed. u/s 41(2) till the cessation of the disability of the landladies who were widows the tenant having not exercised the right to purchase within one year from the date of tenancy, the landlord is entitled to delivery of possession. In that case the contention of the tenant that he could not exercise his right to purchase within one year from the commencement of the lease as the respondents - landladies being widows, his right to purchase stood postponed for two years after the cessation of the interest of the respondents in view of Section 41(2) of the Tenancy Act. The matter was considered by various authorities and ultimately reached the High Court, the matter was ultimately remanded to the Tahsildar for fresh decision. The Tahsildar after remand held that the appellant - tenant was tenant since 1964-65 and that he was not entitled to purchase the land till after expiry of two years from the cessation of the interest of the widows, hence the application was rejected. In appeal the appellate authority held that the appellant had never been a tenant and directed the respondents to seek appropriate remedies for restoration of the possession. The Tribunal allowed the revision by restoring the order passed by the Tahsildar and holding that the respondents being widows, the question of extension of time and deemed surrender did not arise at all. The Tribunal further held that since the respondents had not preferred application within six months of the accrual of the cause of action, the application was time-barred. Against the said order the Special Civil Application No. 792/1975 was filed before this High

Court. The learned Single Judge of the High Court held that the claim for declaration that the appellant was not tenant was barred by limitation and decided the matter by holding that the tenancy was created after 1-4-1963. It was also held that in facts of the case Section 50 would be applicable and therefore, the provision of Section 41(2) would not be applicable to said tenancy. The Court held that the right to purchase having not been exercised by the appellant within one year from the date of tenancy, the respondents were entitled to delivery of possession. This decision of the High Court was affirmed by the Apex Court in the decision in AIR 2000 SC 1771 (supra).

6. The learned counsel for the appellant - Mr. Chandurkar, vehemently contended that the view taken by the Maharashtra Revenue Tribunal as also by the learned Single Judge upon the question of limitation, was not correct. The Maharashtra Revenue Tribunal as also the learned Single Judge observed that as the period of lease had come to an end on 31-3-1982, the respondent got right u/s 36(2) of the Tenancy Act for restoration of possession of the land in question. This according to the learned counsel for the appellant was contrary to the provisions of Section 50 of the Tenancy Act. According Mr. Chandurkar since the tenant had not applied within one year for exercising his right to purchase, after commencement of the lease, the right had accrued to the landlord then to possession. Therefore, as per the requirement of the Section 36(2) of the Tenancy Act the respondent landlord ought to have applied for possession within a period of two years, on which the right to obtain possession of the land is deemed to have granted to him. It is therefore, vehemently contended by learned counsel that the right to possession ought to be enforced by an application made within two years as provided in Section 36(2) of the Tenancy Act on the expiry of period of one year as provided u/s 50 and that being the only limited right which was created by the statute there could not be any enlargement of the period merely because the lease period under the contract covered 10 years which period was entirely irrelevant and was of no consequence insofar as the entitlement to the possession u/s 36(2) of the Tenancy Act was concerned. The learned counsel submitted with emphasis that the right u/s 50 of the Tenancy Act accrued to the tenant whose tenancy is created after 1-4-1963 i.e. specified date as an independent right and the same can not be confused with the right, which the tenant has u/s 41(2) of the Tenancy Act. The learned counsel submitted that the right created by the contract providing a term of 10 years for which the lease period was to continue had no relevance whatsoever while considering the claim for possession relying upon the provisions of Section 43(14-A) and Section 50 of the Tenancy Act when the application was of necessity required to be filed within two years from the expiry of the period of one year from the commencement of the tenancy and admittedly the application for possession u/s 36(2) of the Tenancy Act not having been made within two years as provided was clearly barred by time.

7 The learned counsel placed reliance on the decision reported in AIR 2000 SC 1771 to substantiate his submission so also the decision of this court reported in

1977 Mh.LJ. 520 in the case of Vikram Yeshwanta v. Eknath Trimbak Gadekar. It is pertinent to note that the Apex Court in AIR 2000 SC 1771 has referred to this decision of this Court.

8. For proper understanding of the scheme of Section 50 and its interpretation it is necessary to refer to the relevant parts of Sections 41, 42, 43, 46, 49-A and 50 of the Tenancy Act.

"Section 41. Right of tenant to purchase land.--(1) Notwithstanding anything to the contrary in any law, usage or contract but subject to the provisions of Sections 42 to 44 (both inclusive) a tenant other than an occupancy tenant shall, in the case of land held by him as a tenant, be entitled to purchase from the landlord the land held by him as a tenant and cultivated by him personally. (2) Where the landlord is of the following category, namely :--(a) a minor, (b) a widow (c) (d) a person subject to any physical or mental disability, such tenant shall be entitled to purchase the landlord's interest under this section after the expiry of two years from the date on which the landlord of category (a) attains majority,

(ii)

(iii) the landlord of category (d) ceases to be subject to such disability, and

(iv) the interest of the landlord of category (b) in the land ceases to exist;

Section 42. Extent of land which tenant may purchase u/s 41. --The right of a tenant u/s 41 to purchase from his landlord the land held by him as a tenant shall be subject to the following conditions, namely :--

(a) if the tenant does not hold and cultivate personally any land, as a tenure-holder the purchase of the land by him shall be limited to the extent of three family holdings;

(b) if the tenant holds and cultivates personally any land as a tenure-holder the purchase of the land by him shall be limited to such area as will be sufficient to make up the area of the land held by him as a tenure holder to the extent of three family holdings.

Section 43 provides for the procedure for the tenant to make an offer, determination of purchase price, mode of payment, etc...

Section 43(1) to (14).....

Section 43(14-A) If a tenant fails to exercise his right of purchase u/s 41 in respect of any land or the purchase of any land becomes ineffective, the land shall be deemed to have been surrendered to the landlord, and thereupon the provisions of Sub-sections (1) and (2) of Section 21 and Chapter VII shall apply to such land as if the land was surrendered by the tenant u/s 20.

Section 44 deals with the amount of purchase price to be applied towards that satisfaction of debts.

Section 46. Transfer of ownership of land to tenants from specified date. --(1) Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, decree, contract or grant to the contrary, with effect on and from the first day of April, 1961 the ownership of all lands held by tenants which they are entitled to purchase from their landlords under any of the provisions of this Chapter shall stand transferred to and vest in, such tenants and from such date such tenants shall be deemed to be the full owners of such lands :

Provided that if on such date any such tenant is of the following category, namely,

(a) a minor.

(b) a widow,

(c) a serving member of the armed forces, or

(d) a person subject to any physical or mental disability, the ownership of the land shall stand transferred--

(i) to the tenant on the expiry of one year from the date on which the tenant of category (a) attains majority, the tenant of category (c) ceases to serve in such force, the tenant of category (d) ceases to be subject to such disability; and

(ii) in the case of widow to her successor-in-title on the expiry of one year from the date on which the widow's interest in the land ceases to exist;

Provided further that where in respect of any such land, any proceeding under Sections 19, 20, 21, 36 or 38 is pending on the date specified in Sub-section (1) the transfer of ownership of such land shall take effect on the date on which such proceeding is finally decided and the tenant retains possession of the land in accordance with the decision in such proceedings.

Section 49(A). Ownership of certain lands to stand transferred to tenants on 1st day of April, 1963.--(1) Notwithstanding anything contained in Section 41 or 46 or any custom, usage, decree, contract or grant to the contrary but subject to the provisions of this section, on and from the 1st day of April, 1963 the ownership of all land held by a tenant (being land which is not transferred to the tenant u/s 46 or which is not purchased by him u/s 41 or 50) shall stand transferred to and vest in such tenant who shall, from the date aforesaid, be deemed to be the full owners of such land, if such land is cultivated by him personally, and

(i) the landlord has not given notice of the termination of tenancy in accordance with the provisions of Sub-section (1) of Section 38 or Section 39 or Sub-section (2) of Section 39-A; or

(ii) the landlord has given such notice but has not made an application thereafter u/s 36 for possession as required by those sections; or

(iii) the landlord (being a landlord not belonging to any of the categories specified in Sub-section (2) of Section 38) has not terminated the tenancy on

any of the grounds specified in Section 19; or has so terminated the tenancy but has not applied to the Tahsildar on or before the 31st day of March, 1963 u/s 36 for possession of the land;

Provided that, where the landlord has made such application for possession then the tenant shall, or the date on which the application is finally decided be deemed to be the full owners of the land which he is entitled to retain in possession after such decision."

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

9. At this stage we would mention that Section 50 of the Tenancy Act as applicable to Vidarbha Region is consistently interpreted by High Court since years. This court in Govinda Zibla doye Vs. Udhao Dharmaji Nikhade and Others, considered the scheme of Section 41 to 50 and pointed out that Section 50 it stood, prior to its amendment as enacted in December 1958 was as under :

"50. Right of tenant holding land under tenancy created after specified date to purchase land.--In the case of tenancy created in any area after the date specified in Sub-section (1) of Section 46 every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase within one year from the commencement of the tenancy so much of such land as he may be entitled to purchase u/s 41 and the provisions of Sections 41 to 44 (both inclusive) shall mutatis mutandis apply to such purchase."

10. The Court observed that in its original form the tenants which were covered by Section 50 were those which were created after 1-4-1961 because that was the date on which there was a statutory transfer of ownership in favour of certain tenants who were entitled to purchase land u/s 41 of the Tenancy Act. It may be stated that Section 43 did not contain Sub-section (14-A) initially and the concept of a deemed surrender of land which is contained in Section 43(14-A) did not become relevant prior to 12-2-1962 when Sub-section (14-A) was for the first time put on the Statute book by the Act No. 2 of 1962.

11. This Court also considered that by the enactment of Section 49A the Legislature also considered the amendment in Section 50 and observed : "Legislature provided for a statutory transfer of ownership of all land held by a tenant being land which is not transferred to the tenant u/s 46 or which was not purchased by him u/s 41 or Section 50 with effect from 1-4-1963, if such land was cultivated personally by the tenant and if certain conditions which are set

out in Section 49-A were satisfied." Having provided for a statutory transfer of ownership with effect from 1-4-1963 in respect of lands held by a tenant on that day Section 50 was made applicable in respect of tenancies created after 1-4-1963. Section 50 did not provide only for tenancies which were created after 1-4-1965, but it also dealt with tenancies which were restored either u/s 7 or 10 or 52 or 128-A of the Tenancy Act. This section provided that every tenant holding land under such tenancy, that is to say, a tenancy which was restored under any one of the sections referred to in that section, or under a tenancy created after 1-4-1963 by a landlord not being a landlord within the meaning of Chapter III-A of the Tenancy Act, if he was cultivating the land held by him under such tenancy personally, he shall be entitled to purchase that land within one year from the commencement or from the restoration of the tenancy as the case may be."

12. This Court after considering the aforesaid scheme with regard to Section 50 held that "section 50 refers to Section 41 twice. The first reference has been made in order to indicate the extent of the land which the tenant is entitled to purchase u/s 50 of the Tenancy Act. Section 41 deals with the right of the tenant to purchase the land and this right is subject to the provisions of Section 42 in which the extent of the land which the tenant may purchase u/s 41 is set out. The reference to Section 41 is for a specific purpose, namely, to find out the extent of land which the tenant is entitled to purchase."

13. Thereafter, the Court referred to Section 42 and relevant part of Section 43 particularly (14-A) and observed that "This sub-section set out the consequences of the tenant failing to exercise the right of purchase u/s 41 which, in view of the provisions of Section 50 must also follow where the tenant fails to exercise his right to purchase u/s 50 and it also provides for consequence of the purchase of any land becoming ineffective. The consequences are that the land shall be deemed to have been surrendered to the landlord and thereupon the provisions of Sub-sections (1) and (2) of Section 21 shall apply to such land as if the land was surrendered by the tenant u/s 20. The consequence which is set out in this section is that the land is deemed to have been surrendered to the landlord and after such surrender an inquiry is required to be made having regard to the provisions of Section 21(1) and (2) about the extent of the land which the landlord is entitled to retain with him."

14. The Court finally held that the consequence contemplated by Section 43(14-A) of the Tenancy Act would arise only if the tenant fails to exercise his right to purchase within one year.

15. It is again pertinent to note that the aforesaid judgment of this Court in *Govinda v. Udha* 1972 Mh.L.J.588 (supra) was again referred for reconsideration by the Division Bench in *Vikram Yeshwanta and Others Vs. Eknath Trimbak Gadekar and Others*, . The Division Bench held that they were in agreement with the view taken by the learned Single Judge in the aforesaid case. The Division Bench reiterated that on proper reading of Sections 50 and 43(14-A) of the

Tenancy Act, the right to obtain possession will be deemed to have accrued to the landlord as soon as there is failure on the part of the tenant to purchase the land within one year as contemplated by Section 50. The aforesaid judgments are followed by this Court in the impugned judgment and order passed by the Division Bench, that was under challenge before the Apex Court in AIR 2000 SC 1777 (supra). The Apex Court found that Section 50 of the Tenancy Act has been interpreted in the manner stated above by the High Court consistently and it would not be proper to disturb the course of decisions by interpreting the provision differently after about three decades. The Apex Court therefore observed that Section 50 as quoted above in terms provides that "(i) in case where the tenancy is restored or is created by landlord, tenant would be entitled to purchase within one year from the commencement or restoration of the tenancy : (ii) the tenant would be entitled to purchase so much of such land as is entitled to purchase u/s 41. Therefore, it is apparent that the scheme of Section 50 is different from Section 41. Section 41 talks of purchase of the land by the tenant and carves out an exception as provided in Sub-section (2) in favour of the landlord of specified categories (minor, widow or person subject to physical disability). As against this u/s 50 no such exception is carved out in favour of landlord or tenant who is a minor, a widow or a person subject to any physical or mental disability. Prescribed time limit for exercise of such option to purchase the land is only one year. No provision is made for postponing such right to purchase, if landlord or tenant is minor, widow or disabled person. Section 46 provides for deemed purchase of the lands held by the tenants w.e.f. 1-4-1961. A specific provision is made in case where the tenant is a minor, a widow, a serving member of armed forces or a person subject to any disability, the ownership of the land stands transferred after the period specified therein. However, similar benefit is not given in favour of landlord of such category. Thereafter, the Legislature inserted Section 49(A) by Maharashtra Act 2 of 1961 providing that notwithstanding anything contained in Sections 41 and 46 from 1-4-1963 the ownership of land held by a tenant, which is not transferred to the tenant u/s 46 or which is not purchased by him u/s 41 or Section 50 shall stand transferred to and vest in such tenant who shall, from the date aforesaid be deemed to be the full owner of such land, if such land is cultivated by him personally. In the context of the aforesaid sections, it is apparent that scheme of Section 50 is to see that either the tenant purchases the land or restores back the possession of the land to the landlord. It provides that in case where tenancy is created or restored after 1-4-1963, the tenant is entitled to purchase the land cultivated by him to the extent mentioned in Section 42 within one year from the date of commencement of the tenancy. If there is failure to exercise such right, consequences provided in Section 43(14-A) would follow. Before the Apex Court on behalf of the appellant - tenant contention was raised that even in case of application of provision Section 50 of the Tenancy Act, the right of tenant to purchase the land is postponed on account of disability incurred by the landlord. The Apex Court did not accept the contentions raised on behalf of tenant. The Apex Court found that the submissions cannot be accepted firstly because

Section 50 only provides that tenant would be entitled to purchase so much of the land as he may be entitled to purchase u/s 41. The concept of *mutatis mutandis* is understood in the context of Section 50 would be Section 41 to 44 would be applicable with necessary changes in the points of detail to "such purchase," that is to say, where a tenant has exercised his right to purchase the land he can purchase it to the extent permissible u/s 42, thereafter, those parts of sections which are pertaining to "such purchase" are made applicable but there is no question of postponing "such purchase" as provided u/s 41(2). Sub-section (2) cannot be made applicable in case of purchase u/s 50 as it does not pertain to the purchase but it is with regard to postponement of "such Purchase". This is consistent with other provisions, namely Sections 46 and 49(A). Finally Section 49-A was added which inter alia provides that notwithstanding anything contained in Sections 41 to 46 ownership of land held by a tenant being land which is not transferred to the tenant u/s 46 or which is not purchased by him u/s 41 or 50 shall stand transferred to and vest in such tenant and from that date he shall be the full owner of such land. Exception is carved out in favour of the landlord belonging to any of the categories specified in Sub-section (2) of Section 38 i.e. in favour of a minor, a widow or a person subject to any physical or mental disability. No such exception is carved out u/s 50. Secondly, Section 50 specifically provides that every tenant holding land under such tenancy i.e. tenancy created or restored after 1-4-1963 and cultivating it personally shall be entitled to purchase within one year from the commencement or as the case may be, the restoration of the tenancy so much of such land as he may be entitled to purchase u/s 41. That period of one year can not be changed by holding that Sub-section (2) would be applicable and "such purchase" is to be postponed for an indefinite period i.e. after two years from the date of cessation of disability of the landlord. If this contention is accepted, "such purchase" would be postponed for a period of two years after happening of uncertain eventuality, namely, minor landlord becoming major, widow ceasing to be owner or in case of disabled person, till cessation of mental or physical disability. That is neither the intention of the legislature or it is provided.

16. In our view the ratio laid down by the Apex Court in the aforesaid decision is squarely applicable so far as the case of the appellant in hand is concerned. It is no doubt true that the postponement of right of tenant to purchase the land u/s 50 was sought for or insisted upon by the landlord, on the ground that the period of lease was of 10 years and therefore, the tenant could not exercise his right of purchase within one year from the date of commencement of the lease. As held by the Apex Court a right of purchase conferred on the tenant u/s 50 which is applicable to a tenant whose tenancy is created after commencement of the specified date i.e. 1-4-1963, this statutory right can not be enlarged merely because the period of lease was to expire after statutory period of one year as provided u/s 50 of the Tenancy Act. That is not the intention of the Legislature. As observed by the Apex Court, had it been so, the Legislature would have made provisions in Section 50 itself carving out postponement of the right of the tenant

to purchase the land till the continuation of the period of lease. But in the absence of that, it has to be said that the appellant/tenant was to exercise the right to purchase within one year from the commencement of the lease. The appellant/tenant having not exercised that right, the right to the landlord/respondent to apply for restoration of the land had accrued as soon as right of the appellant/tenant extinguished. In that view of the matter, the respondent landlord ought to have preferred application within 2 years. Admittedly in the case before hand, the respondent/landlord had applied to the Tahsildar for restoration u/s 36(2) on 28-4-1982. In fact as the lease was created in favour of the appellant on 10-5-1972, the right of the appellant to purchase the land u/s 50 of the Tenancy Act accrued to him within one year i.e. on 10-5-1973 and his failure to exercise the right, gave right to the respondent/landlord and as provided u/s 36(2) of the Tenancy Act respondent was to exercise the right within 2 years from 10-5-1973. This right did not get enlarged, as the right of purchase available to the tenant can not be enlarged. In this view of the matter, the learned Member, Maharashtra Revenue Tribunal was in error in holding that the right u/s 50 was automatically got postponed by virtue of continuance of lease for the duration of 10 years from 10-5-1972. In other words, when there is no enlargement or postponement of the right of the tenant, it follows that the right of the landlord to apply for restoration of the land also did not get enlarged. In this view of the matter, the learned Single Judge was not justified in confirming order passed by Maharashtra Revenue Tribunal. There was no justification for learned Single Judge in holding that the appellant tenant could not apply for exercising his right to purchase the land within one year from the date of commencement of the tenancy created after 1-4-1963, merely because the lease was for a period of 10 years. The impugned order passed by the Learned Single Judge cannot sustain. Hence we pass the following order :

ORDER

Letters Patent Appeal is allowed. The order impugned is set aside. The order passed by the Sub Divisional Officer in Revenue Appeal No. TNC-2/59/(120-F)/83-84 dated 10-12-1985 is confirmed. The application filed by respondent - Landlord to Tahsildar for restoration of land is dismissed. In the circumstances of the case, no order as to costs.