
(1984) 03 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 1847 of 1983 and Civil Revision Application No. 637 of 1983

Ramrao Dayanu Pawar and Others

APPELLANT

Vs

Shankar Bhau Alrekar and Another

RESPONDENT

Date of Decision : 03-03-1984

Acts Referred:

Bombay Tenancy and Agricultural Lands (Amendment) Act, 1977 — Section 6
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 43A(3), 43D
Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1985) 2 BomCR 46

Hon'ble Judges : B.C. Gadgil, J

Bench : Single Bench

Advocate : M.V. Paranjape, S.M. Paranjape and P.M. Pradhan, for the Appellant; K.J. Abhyanker and A.P. Mundargi for respondent No. 1, D.R. Banavalikar and G.R. Rege and A.P. Mundargi, for the Respondent

Judgement

B.C. Gadgil, J.—These two proceedings arise out of a dispute between the landlord and the tenant. The dispute pertains to the question as to whether the orders passed by the tenancy authorities under the Bombay Tenancy and Agricultural Lands Act, 1948, directing that the tenant should hand over possession of Serial No. 708/2 situate at Kadamwadi are void and without jurisdiction of the tenancy authorities. In order to understand the controversy, it would be necessary to refer to certain facts over which there cannot be any dispute at this stage. Instead of referring to the parties as the petitioners and the respondents, it would be more convenient to refer to them by names.

2. Ramrao Pawar (who died pending the tenancy litigation and whose legal representatives are the petitioners in both these petitions) was a tenant of Serial No. 709/2. This land is within Municipal limits. Shankar Alrekar (who is respondent No. 1 in these matters) is the landlord. The land was let out to Ramrao Pawar for cultivation of sugarcane. Shankar filed an application being Tenancy Case No. 3 of 1975 against Ramrao Pawar for possession of this land.

He made this claim on the strength of the provisions of section 43-A(3) read with the notification issued by the Government under sub-section (3). In the later part of the judgment it would be necessary to consider the provisions of this section as also of sections 43-C and 43-D of the Tenancy Act and hence I would like to reproduce the relevant portion of these provisions herein as follows :---

"43-A(1) The provisions of sections 4-D, 8, 9, 9-A, 9-B, 9-C, 10-, 10-A, 14, 16, 17, 17-A, 17-B, 18, 27, 31 to 31-D (both inclusive), 32 to 32-R (both inclusive), 33-A, 33-B, 33-C, 43, 63, 63-A, 64 and 65, shall not apply to ---

.....

(b) leases of land granted to any bodies or persons other than those mentioned in Clause (a) for the cultivation of sugarcane or the growing of fruits of flowers or for the breeding of livestock ;

.....

(3) Notwithstanding anything contained in sub-sections (1) and (2), it shall be lawful for the State Government to direct, by notification in the Official Gazette.

"that the leases or lands, as the case may be, to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification, in respect of---

(a) the duration of the lease;

(b) the improvements to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies;

(c) the payment of land revenue, irrigation cess, local fund cess and any other charges payable to the State Government or any local authority; or

(d) any other matter referred to in sections mentioned in sub-section (1).

"43-C. Nothing in sections 32 to 32-R (both inclusive), 33-A, 33-B, 33-C and 43 shall apply to lands in the areas within the limits of---

(a) Greater Bombay,

(b) a Municipal Corporation constituted under the Bombay Provincial Municipal Corporation Act, 1949,

(c) a Municipal borough constituted under the Bombay Municipal Boroughs Act, 1925,

(d) a Municipal district constituted under the Bombay District Municipal Act, 1901,

(e) a cantonment, or

(f) any area included in a Town Planning Scheme under the Bombay Town Planning Act, 1954;

.....

"43-D(1) in the areas specified in section 43-C, notwithstanding anything contained in sections 31 to 31-D (both inclusive) a landlord may terminate the tenancy of a tenant (other than a permanent tenant) in respect of any land with effect from the 31st day of May of any year by giving the tenant three months notice in writing, if the landlord bona fide requires the land for any non-agricultural purpose;

Provided that the three months" period of such notice shall expire before the 31st day of May of such year.

"(2) The provisions of sections 29, 37 and 39 shall mutatis mutandis apply to the termination of the tenancy of a tenant in respect of any land under sub-section (1).

(3) For the purposes of this section in Greater Bombay, the functions of the Mamlatdar under sections 29, 37 and 39 shall be performed by the Collector."

The Tenancy Act is amended in 1977 by Bombay Act X of 1977. The effect of this amendment is that for the words and figures "Nothing in sections 32" the words and figures "Nothing in section 31" are substituted and section 43-D is deleted in its entirety. There is also one more section in the amending Act viz., section 6. That section has made certain saving provisions and I would refer to those provisions in the later part of the judgement. The Government has issued a notification u/s 43-A(3). It is not necessary to reproduce the entire notification. Suffice it to say that the notification directs that the leases of lands referred to in section 43-A(1)(o) shall be subject to certain conditions mentioned in the notification. The relevant part of Condition No. 2 can be conveniently reproduced. It reads :

"If a lessor bona fide requires any land so leased by him for cultivating it personally or for any non-agricultural use, such lease may, subject to the conditions mentioned in sections 31-A, 31-B, 31-C and 31-D be terminated by the lessor by giving the lessee one year's notice in writing stating therein the reasons for the termination of the lease.

....."

Other clauses of the notification prescribe various conditions which must be available while granting possession. However, these clauses are not relevant.

3. I have already stated that Shankar filed application being Tenancy Cases No. 3 of 1975 for getting possession of the disputed property and the claim was in pursuance of the above- mentioned notification. The tenancy authority passed an order for delivery of possession to Shankar. Ramrao preferred Appeal No. 15 of 1977 before the Sub-Divisional officer. It was dismissed on 22-2-1978. He then filed Revision Application No. 158 of 1978 before the Maharashtra Revenue Tribunal. It was also dismissed. It appears that Ramrao died during the pendency

of this revision and his legal representatives who are petitioners in the present proceedings were brought on record. However, I would refer to these legal representatives by mentioning them as tenant and not by the names of the legal representatives. The tenant then filed Writ Petition No. 3292 of 1981 in this Court against the above-mentioned decisions of the tenancy authorities. That writ petition was summarily dismissed on 13-10-1981. Before filing this writ petition, the tenant has filed Review Application No. 115 of 1981 before the Maharashtra Revenue Tribunal. It was dismissed on 16-9-1982. The tenant, therefore, filed Writ Petition No. 3418 of 1982 against the decision of this review application. It was also dismissed summarily. The tenant also had filed SLP before the Supreme Court against the dismissal of these two writ petitions. The Supreme Court has dismissed this special leave petition. Thus, Shankar was entitled to get possession in terms of the orders of the tenancy authorities. On 2-11-1982 the Tahsildar issued a notice fixing 12-11-1982 as the date for delivery of possession. The tenant preferred Appeal No. 189 of 1982 against the issue of this notice. That appeal was dismissed and against this dismissal the tenant has filed Civil Revision Application No. 637 of 1983.

4. After the dismissal of the above mentioned writ petitions and special leave petition, the tenant filed Suit No. 1112 of 1982 in the Court of the Civil Judge, (Junior Division), Kolhapur, raising a number of contentions. But the primary contention is that the decisions of the tenancy authorities were null and void, as, under the provisions of the Tenancy Act, Shankar could not have filed any application for possession as the land was within the municipal limits of Kolhapur. The grievance is that u/s 43-C as amended in 1977, there is a specific provision that section 31 would not apply to every type of land within the Municipal limits and that this provision would prevail over the notification issued u/s 43-A(3). In this suit tenant filed an application for temporary injunction. That application was dismissed. Miscellaneous Appeal No. 101 of 1983 was filed by the tenant. He preferred Writ Petition No. 1847 of 1983 in this Court which is being decided by this judgment. When this writ petition was admitted, the Court directed that no interim relief should be granted to the tenant. Against the rejection of this interim relief, the tenant filed Letters Patent Appeal No. 71 of 1983 in this Court. It was dismissed. The tenant then filed SLP to the Supreme Court. It was also dismissed.

5. Though in the courts below a number of contentions were raised on behalf of the tenant, it is not necessary to consider them all. Shri Paranjape for the tenant, however, pressed only some points before me. Similarly, Shri Pradhan who appears in the revision application supported Shri Paranjape on these very points alone. Thus, the remaining points have not been agitated before me and consequently it is not necessary to consider them.

6. I have already reproduced in paragraph 2 above the provisions of sections 43-A and 43-C as they stood before 1977. Similarly, I have given a gist of the notification issued u/s 43-A(3). A combined reading of these and other provisions

of the Tenancy Act would show that the provisions of section 31 are by and large applicable to all types of agricultural lands wherever they may be situated. However, an exception is made u/s 43-A that section 31 would not apply to lands let out for cultivation of sugarcane. This category of land for the sake of brevity would be referred to in this judgment as sugarcane land. Shri Paranjape submitted that with respect to sugarcane lands in municipal area a provision was made in section 43-C that section 31 would apply. According to him, such a provision would prevail over the non-applicability of section 31 to sugarcane lands in municipal area. In substance, he contended that section 43-A would apply to all sugarcane lands except those which are situated within the municipal limits. He contended that in this way the notification u/s 43-A(3) would be inconsistent with the unamended provisions of section 43-C, inasmuch as the said notification permitted termination of tenancy not contemplated by section 31. In my opinion, this argument is fallacious. In the first place, section 43-C does not make any specific provision that section 31 would apply to the lands within the municipal limits. In fact, the unamended section 43-C does not refer to section 31 at all. It only refers to section 32 to 32-R and certain other sections. Thus, an application for personal cultivation of lands within the municipal limits could be made not by virtue of any provision of section 43-C. However, that application is permissible by virtue of section 31 itself. Shri Paranjape has formulated his propositions and the proposition based upon section 43-C reads as follows :---

"Since the lands are situate in Municipal Area the right to ask eviction for personal cultivation was a limited right available to the landlords (excepting excluded landlords) u/s 31 by virtue of application to the suit lands of the provisions of section 43-C of the Bombay Act. The legislature expressly intended that this right should not be available to landlords in Municipal Area after 31-3-57. This express legislative intent cannot be nullified by the notification issued under the enabling provisions of sub-section (3) of section 43-A of Bombay Act. The legislature did not intend to give a continued right of eviction in respect of agricultural lands in Municipal Area. The notification precisely seeks to do so. Therefore, to that extent the notification is ineffective qua lands in Municipal Areas. Consequently tenancy authorities had no jurisdiction to pass any orders on such an application. Therefore, the orders are a nullity."

The submission in the above proposition is based upon an incorrect reading of the unamended provisions of section 43-C. What has been observed above is that a limited right was available to the landlord u/s 31 by virtue of the application to the suit lands of the provisions of section 43-C of the Bombay Act. I have already mentioned above that the unamended section 43-C does not say anything as to the right of the landlord to apply for possession of lands within the municipal limits. That right is given by section 31 itself. It would not, therefore, be correct for Shri Paranjape to contend that there is any conflict between the notification u/s 43-A(3) and section 43-C. The correct position is that section 43-A reads with this notification has made an exception to the provisions of section

31 by saying that the tenancy of the sugarcane land can be terminated by following the procedure mentioned in the notification. This section would prevail over the provisions of section 31 and as it is an exception, it cannot be said to be bad for being inconsistent with the provisions of section 31. It is thus clear that there is no substance in the contention of Shri Paranjape that there was any conflict between the notification u/s 43-A(3) and the provisions of section 43-C. As a matter of fact, section 43-C is silent about the applicability or non-applicability of the provisions of section 31 and consequently the exception to section 31 as made by the notification would prevail. I am not, therefore, able to accept the contention of Shri Paranjape that the application as filed in 1975 was bad on the ground that Alrekar had no right to make an application in pursuance of the notification u/s 43-A(3).

7. I have already observed in paragraph 2 above that in 1977 section 43-C has been amended so as to specifically lay down that section 31 would not apply to the lands within the Municipal limits. What will be the effect of this amendment qua the above mentioned notification? It was contended by Shri Paranjape that after the amendment the notification would be bad. His argument is that the notification permitted the termination of tenancy of sugarcane land, while the amended provisions of section 43-C prohibit the termination of tenancy of any land within the municipal area. In the present case, the suit property though a sugarcane land is situate within the municipal limits and Shri Paranjape contended that the notification will not apply to that sugarcane land within the municipal limits. For the purpose of making this submission, he relied upon a decision of this Court in the case of Sakhubai and Others Vs. Onkarlal Dulichand Agarwal, It was a case under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act. It is material to note that section 38 of the Vidarbha Act is similar to section 31 of the Bombay Act, while section 58 of the Vidarbha Act is similar to section 43-A of the Bombay Act. Section 60 of the Vidarbha Act is practically in the same words as the amended provisions of section 43-C of the Bombay Act and lastly section 61 of the Vidarbha Act is equivalent to section 43-D of the Bombay Act. It is thus clear that according to the Vidarbha Act there is a specific provision in section 60 right from the beginning that the provisions of section 38 would not apply to the lands within the Municipal area. As against that, a notification issued u/s 58(3) Municipal area. As against that, a notification issued u/s 58(3) (which is a notification similar to the one which was issued u/s 43-A(3) of the Bombay Act) permitted the termination of tenancy of sugarcane land and the question arose in the above-mentioned decision as to whether possession can be claimed of a sugarcane land within the Municipal limits. It was held that this would not be possible, I would refer to the following observations in paragraphs 16 and 18 of the judgment;

"16..... In other words, both section 58 and section 60 will have to be read together harmoniously and reasonably. Whenever u/s 58 any provision is made that would operate only subject to the provisions of section 60. To the leases, therefore, which are within the Municipal limits and which are also held for the

purposes indicated by section 58(1)(a), (b), (c) and (d). It is clear that the provisions of section 60 would very well apply and merely because any notification is issued u/s 58(3) that would not affect its operation.

"18. The only way to resolve the same is reasonably to read the notification subject to the other provisions of the Act. If to the lands which are located in a particular area, certain provisions are not made applicable by the statute itself, then the legislative intention is clear in that those provisions will not be available as far as those lands are concerned. In other words, the power conferred to issue a notification cannot override this legislative policy and intention....."

"Though, therefore, it was competent for the State Government to make a notifications with respect to the leases mentioned in section 58(1). It is clear that because such land happens to be located in the areas as contemplated by section 60 of the Act, to that extent that notification will not apply to such leases. In other words though the land may be horticulture as is being said or may be of the kind mentioned in Clauses (a), (b), (c) or (d) of sub-section (1) of section 58 and to which generally by notifications the provisions of sections 38,39 or 39-A have been made applicable, still because of section 60 those provisions will not be available, once the lands are within the limits of a municipality or the corporation as indicated by section 60."

Shri Abhyankar contended that the above-mentioned decision does not lay down a correct proposition of law. At the same time, he argued that it is not necessary to consider this submission of his, as according to him, the law laid down by the above-mentioned decision will not be of any help to the tenant. I have already observed that the application made in 1975 (that is, prior to the amendment of 1977) was tenable. It is only in 1977 that certain amendments were made to section 43-C and the above mentioned decision *Sakhubai and Others Vs. Onkarlal Dulichand Agarwal*, can be applied to a proceedings filed after 1977. Shri Abhyankar submitted that the amendments introduced in 1977 could not have any retrospective effect particularly when the amending Act never intended to nullify the pending valid proceedings filed as per the notification u/s 43-A(3). He relied upon the provisions of section 7 of the General Clauses Act and more particularly Clauses (c) and (e) of that section Clause (c) provides that any repeal of an enactment unless a different intention appears, shall not affect any right or privilege accrued under the repealed enactment Clause (e) further lays down that a legal proceeding in respect of such right can be instituted or continued as if the repealing Act had not been passed. Shri Abhyankar submitted that the amending Act of 1977 does not express any intention contrary to the provisions of section 7 and consequently a validly instituted proceeding of 1975 will to be affected by the amending Act of 1977. To get over this submission of Shri Abhyankar, Shri Paranjape relied upon section 6 of the amending Act. It is necessary to reproduce that section. It reads as follows :---

"Notwithstanding the deletion of section 43-D of the Bombay Tenancy Act and of section 61 of the Vidarbha Tenancy Act, where proceedings for termination of

tenancies are pending before the appropriate authority under any sub Act and the landlord has taken possession of the land on or before the date of introduction of the Maharashtra Tenancy Laws and the Maharashtra Regional and Town Planning (Amendment) Bill, 1976, in the Maharashtra Legislative Assembly, then such proceedings, shall be continued and disposed of by such authority, as if, this Act had not been passed, in all other cases, notwithstanding any judgment, decree or order of any Court, tribunal or authority, such pending proceedings shall abate, and the tenancy shall continue to hold the land in accordance with the provisions of the Bombay Tenancy Act, or as the case may be, the Vidarbha Tenancy Act."

It was urged by Shri Paranjape that this section has made a provisions for two contingencies. According to him, all pending proceedings would be continued as if the amending Act had not been passed only when the landlord has taken possession of the land. He then argued that the other category would be of all types of pending proceedings where possession has not been taken. In substance, he wants to contend that this second category would cover a case of an application filed under a notification u/s 43-A(3). He also argued that in the present case the landlord has not taken possession in pursuance of the orders passed in his favour and consequently, the proceedings in favour of the landlord will have to abate. It is, however, material to note that a plain reading of section 6 would show that the saving provisions in that section are made with respect to the repeal of section 43-D. At this juncture. It would not be out of place to repeat that section 43-D has made a provision for termination of the tenancy of the lands within municipal limits only on one ground viz. when the landlord bona fide requires the lands for non-agricultural purposes. That section 43-D has not made any provision for termination of tenancy of the lands within Municipal limits when the landlord bona fide requires the lands for personal cultivation. Thus, there was no question of making an application for personal cultivation u/s 43-D. That application was possible only under the notification u/s 43-A(3). If this position is borne in mind, the opening words of section 6 of the amending Act carry great meaning. These words are notwithstanding the deletion of section 43-D of the Bombay Tenancy Act. After these opening words, section 6 provides as to what should happen to the pending proceedings under the repealed section 43-D. These pending proceedings are divided into two groups. If the landlord has taken possession for non-agricultural purposes and if the proceeding is still pending, that proceeding will continue. However, if the landlord has not taken possession for such non-agricultural purposes, the pending proceeding would abate. It is true that Shri Paranjape laid much stress on the words "in all other cases" in section 6 and he contended that these words would cover not only pending proceedings u/s 43-D but all other pending proceedings under whatever section they might have been filed. It is, however, material to note that the later part of section 6 provides that "such pending proceedings shall abate". The underlined portion necessarily connotes that the pending proceedings must be of the type covered by the deleted provisions of section 43-D. It would, therefore, be difficult

for Shri Paranjape to contend that the proceeding for execution of an order made under the notification u/s 43-A(3) would abate. On the contrary, the very purpose of the saving section 6 is to make a provision with respect to only one category of proceeding and it is a proceeding under the deleted provisions of section 43-D.

8. It is thus clear that it will not be possible for the tenant to contend that the application filed by Alrekar as per the notification u/s 43-A(3) was bad from its inception or that the said proceeding has abated after 1977.

9. There is another aspect which is to be borne in mind. In substance, the contention of Shri Paranjape was not maintainable at all, as the land were within the Municipal limits though they were sugarcane lands. It is common ground that this contention has not been raised by the tenant before any of the tenancy authorities. Not only that, such a contention was not raised in the writ petitions filed in this Court or in special leave petitions filed in the Supreme Court against the decisions of the tenancy authorities. Shri Abhyankar argued that this contention ought to have been raised by the tenant in the tenancy proceedings as a ground of defence and omission to raise this contention would constitute a bar of constructive res-judicata. It is not disputed before me by both the parties that the doctrine of res-judicata as codified u/s 11 is not exhaustive and that apart from section 11, the said doctrine has been applied since long in various other kinds of proceedings and situations. This position is made clear by the Supreme Court in the case of Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another, . The relevant head-note reads as follows :

".....But apart from the codified law the doctrine of res-judicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries....."

It is, therefore, necessary to find out as to whether the contention that has been raised in these proceedings is barred by the principles of res judicata. Shri Paranjape relied upon this very decision Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another, . In that case, a SLP was filed in the High Court challenging the award under the Industrial Disputes Act on various grounds. That petition was dismissed in limine without giving any reasons. After such dismissal, a writ petition under Article 226 of the Constitution was filed in the high Court challenging the award on the same grounds. The question arose as to whether the summary dismissal of the SLP would operate as res judicata. The Supreme Court held that the non-speaking dismissal order of the SLP should not be interpreted to mean all the points taken in that petition have been considered and rejected. It is in this background that the Supreme Court came to the conclusion that the dismissal in limine would not constitute res judicata. Shri Abhyankar argued that this decision will not be applicable to the facts of the present case. According to him, the grievance of Alrekar is that the contentions raised in the present proceedings are barred by constructive res judicata and not direct res judicata. Shri Abhyankar further submitted that in the

above mentioned decision the Supreme Court was considering the operation of direct. res judicata and the question constructive res judicata did not arise before the Supreme Court. There is much substance in the contention of Shri Abhyankar. For example, the observations in paragraph 9 would make the position clear. They read as follows :---

"In the Instant case the award of the Tribunal, no doubt was challenged in the SLP filed in this Court on almost all grounds which were in the subsequent writ proceeding agitated in the High Court. There is no question, therefore, of applying the principles of constructive res judicata in this case. What is, however, to be seen is whether from the order dismissing the SLP in limine it can be inferred that all the matters agitated in the said petition were either explicitly or implicitly decided against the respondent..... Whatever can be held to have been decided expressly, implicitly or even constructively while dismissing the SLP cannot be reopened....."

It is thus clear that a summary dismissal of a writ petition would operate as constructive res judicata in a subsequent proceeding if in the earlier writ petition certain grounds of attack or defence which ought to have been taken were not taken. There is much substance in the contention of Shri Abhyankar that it was essential for the tenant to raise a contention before the tenancy authorities and also before the High Court and the Supreme Court that the notification u/s 43-A(3) was not applicable, as the lands were within the Municipal limits and that, therefore, the tenant would not be able to reagitate the question now. Shri Abhyankar also submitted that though the orders of the High Court and the Supreme Court are of dismissal in limine the judgment of the tenancy authorities are explicit and clear and they do indicate that the present contentions have not been raised. He relied upon the decision of the Supreme Court in the case of State of U.P. Vs. Nawab Hussain, It was a case of a writ petition filed for quashing the disciplinary proceedings against a Government servant on the ground that he was not afforded a reasonable opportunity to meet the allegations against him. That writ petition was dismissed. The Government servant thereafter filed a suit challenging the said dismissal on some other ground viz., that the dismissal order was passed not by the appointing authority but by someone else and that this would be contrary to the provisions of Article 311 of the Constitution. The Supreme Court dismissed the said suit by holding as follows :---

".....It was therefore, not permissible for him to challenge his dismissal, in the subsequent suit, on the other ground that he had been dismissed by an authority subordinate to that by which he was appointed. That was clearly barred by the principle of constructive res judicata....."

10. It was then urged by Shri Paranjape that any decision as regards the jurisdiction of the Court would not constitute res judicata that such a point can be agitated afresh in any other separate proceeding. I am at a loss to know as to how this aspect is relevant in the present litigation. There is no question of

absence of jurisdiction of the tenancy authorities. All that the tenant now contends is that the landlord had no right to make an application under the notification u/s 43-A(3) and that in this way the application was not maintainable and deserved to be dismissed. The tenancy authorities have full jurisdiction to decide this in this way the application was not maintainable and deserve to be dismissed. The tenancy authorities have full jurisdiction to decide this question and omission to raise a point before the tenancy authorities about the absence of the landlord or about the maintainability of the application by the landlord would be a bar by constructive res judicata.

11. It was contended by Shri Abhyankar that there cannot be any civil revision application u/s 115 of the CPC against the orders passed by the tenancy authorities for executing the earlier orders directing delivery of possession to Alrekar. However, I need not consider that aspect, as even otherwise the revision is liable to be dismissed.

12. The net result is that the points urged before me have no credence and both the matters are without any substance, Rule issued in Writ Petition No. 1847 of 1983 is discharged with costs. Rule issued in Civil Revision Application No. 637 of 1983 is discharged with costs. Interim stay granted by this Court stands vacated. Before closing the judgment, I would like to observe that these proceedings would be an example to show as to how the tenant is trying to defeat the legal and valid orders that have been passed in favour of the landlord. In this background, it is necessary to direct the tenancy authorities to execute the order by handing over possession to Alrekar as early as possible.

At this juncture after the above judgment was pronounced Mr. Paranjape orally prayed that leave to appeal to the Supreme Court may be granted and operation of this judgment be stayed for six weeks. I do not think that any of these prayers should be granted. They are accordingly rejected.