

(2004) 06 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 4027 of 1987

Ranjit Shripatrao Holkar (Since deceased by his heirs Mrs. APPELLANT
Vijayadevi Holkar, Mrs. Jaymala (Preeti) J. Suryavanshi Patil
and Mr. Kaushik Ranjeetsingh Holkar)

Vs

Ananda Sakharam Bhilare (since deceased by his heir and RESPONDENT
L.R. Rajesh Ananda Bhilare) and Others

Date of Decision : 15-06-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 10A(1), 14, 15, 25, 25(2)
Constitution of India, 1950 — Article 227

Citation : (2005) 1 BomCR 403 : (2004) 4 MhLj 842

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : G.R. Rege and S.R. Page, for the Appellant; M.V. Sali and C.N. Chavan, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This petition, filed under Article 227 of the Constitution of India by the owners of an agricultural land in village Bhilare, Taluka Mahabaleshwar, Dist. Satara, questions the correctness of Judgment and order passed by the Maharashtra Revenue Tribunal, Pune in Revision Application No. MRT.N.S.II/6/83 (Ten. N. 45/83) dated February 18, 1987. The proceedings have emanated from an application preferred by the landlord for possession of the suit lands under Sections 14, 25 and 29 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act). The original petitioner is the successor-in-interest of the landlady Malatibai Shripatrao holkar, who was a disabled landlord being widow on 1st April, 1957, on account of which the tiller's day stood postponed. The respondents had committed default during the year 1972-75 for which demand notices were sent by the landlady from time to time. Eventually termination notice was sent on 1st December, 1975 which was duly served upon the tenant on 3rd December, 1975. The original tenant however,

died on 3rd March, 1976 and soon thereafter, the landlady expired on 9th June, 1976. The original petitioner is the successor of the deceased landlady. The Revenue Authority mutated the revenue record and the original petitioner's name was inserted in the revenue record on 6th June, 1977. The original petitioner thereafter instituted present application u/s 14 r/w 25 and 29 of the Act on 16th June, 1977 for possession of the suit land on the ground of default committed by the tenant. Suffice it to mention that the application was rejected by the first authority that the application was rejected by the first authority on the ground that the same was barred by limitation. The appeal filed against the said decision by the original petitioner was allowed by the Sub Divisional Officer. Against the said decision, the tenant filed revision before the Maharashtra Revenue Tribunal, Pune Bench, which allowed the same taking the view that the tenant was a protected tenant and since the proceedings u/s 31 of the Act was pending, two parallel proceedings cannot be permitted and the application as filed was barred by limitation. Against this decision, the original petitioner filed present writ petition in this court. This court (Shri Bobde, J) by judgment and Order dated January 10, 2003 allowed the writ petition negating the reasons which had weighed with the Tribunal. This court found that application was filed within limitation and also recorded a finding that no proceedings u/s 31 of the Act were pending between the parties. Against this decision, the tenant/respondents carried the matter in appeal before the Apex Court in Civil Appeal No. 8670/2003. The said appeal has been allowed by the Judgment and Order dated November 07, 2003 and the writ petition came to be remanded. The order of the Apex Court reads as under :

"? Leave granted.

? After hearing learned senior counsel for the parties on either side, we feel that this is a case which needs to be heard afresh by the High Court of Bombay on the questions regarding applicability or otherwise of sections 31 and 14 of the Bombay Tenancy Act and the relevance of the Judgment of the Division Bench of the High Court in Harshavardhan Shrinivas Potnis Vs. Mahadu Pundalik Gangurde, to the facts of the present case. Since the matter is pending since long, we request the High Court to take up the matter immediately and dispose it of preferably within three months from the date of communication of this order.

? The status-quo order, already granted, shall continue pending disposal of the matter by the High Court, Pursuant to this order.

? The appeal is disposed of in the above terms. No costs."

2. The limited controversy that arises for my consideration in terms of the remanded order referred to above is to examine the applicability or otherwise of Sections 31 and 14 of the Act and the efficacy of the judgment of this court in Harshavardhan's case (supra) to the facts of the present case.

3. Mr. Sali for the respondents contends that having regard to the purport of Section 32F of the Act, the only remedy for the disabled landlady or her

successor in interest is to seek possession u/s 31 of the Act on the ground of personal cultivation and not otherwise. It is thus contended that the ground of default is unavailable to a disabled landlord. To support this proposition, reliance is placed on the decision of our High Court, reported in 1975 (78) BLR 427 (Division Bench) in case Nago Dattu Mahajan v. Smt. Yeshodabai Huna Mahajan. Besides, Mr. Sali contends that his argument is re-inforced even by the provisions of Section 32H of the Act which provides for remedy of adjustment of arrears of rent towards purchase price to be paid by the tenant. Mr. Sali also contends that the remedy invoked by the landlord was in any case required to be invoked within one year from the date only submissions canvassed before me by Mr. Sali for the respondents.

4. On the other hand, Mr. Rege for the petitioners contends that argument canvassed by Mr. Sali proceeds on an erroneous assumption that the only remedy for the landlady who was a disabled landlord being a widow was u/s 31 of the Act. He submits that this submission is obvious misreading of Section 32F of the Act. He further submits that in fact the scheme of the Act is that on expiry of the landlady on June 9, 1976, the tenant will not automatically become purchaser on 9th June, 1976, having regard to Sections 32, 32(F) and 32(P). In as much as in case where the landlord is disabled person, the tillers day gets postponed and upon cessation of the disability of the landlord, he himself or his successors in interest gets right to terminate the tenancy and seek possession u/s 31 of the Act within a period of one year and upon failure to do so, the tenant would then be entitled to exercise his right to purchase the land in question within one year therefrom and if he fails to do so, the statutory purchase in favour of the tenant becomes ineffective and the tenant will have to be summarily dispossessed. According to him, therefore, the argument of Mr. Sali that the only remedy of the disabled landlord is to invoke remedy u/s 31 is fallacious and cannot be sustained. To accept that view contends Mr. Rege, would result in rewriting the provisions of the Act in absence of any express provision in that behalf. Mr. Rege has relied on the observations made in the Judgment of High Court reported in 1962 (64) BLR 635 (full bench) in case of Ramchandra Anant Joshi v. Janardan Tulshiram Ghuge.

5. Before I proceed to examine the matter further, it will be apposite to reproduce the relevant provisions of the Act as follows:

"Section 14. (1) Notwithstanding any law, agreement or usage, or the decree or order of a court, the tenancy of any land shall not be terminated -

(a) Unless the tenant-

(i) has failed to pay the rent for any revenue year, before the 31st day of May thereof;

(ii) has done any act which is destructive or permanently injurious to the land;

(iii) has sub-divided, sublet or assigned the land in contravention of Section 27;

(iv) has failed to cultivate it personally; or

(v) has used such land for a purpose other than agriculture or allied pursuits; and

(b) Unless the landlord has given three months notice in writing informing the tenant of his decision to terminate the tenancy and 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.

(2) Nothing in Sub-section (1) shall apply to the tenancy of any land held by a permanent tenant unless by the conditions of such tenancy the tenancy is liable to be terminated on any of the grounds mentioned in the sub-section."

"Section 25(2) Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceeding to eject the tenant, the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding within (three months) from the date of order, and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order for ejectment, pass an order directing that the tenancy had not been terminated and thereupon the tenant shall hold the land as if the tenancy had not been terminated :

[Provided that if the Mamlatdar is satisfied that in consequence of total or partial failure of crops or similar calamity the tenant has been unable to pay the rent due, the Mamlatdar may, for reasons to be recorded in writing, direct that the arrears of rent together with the costs of the proceedings if awarded, shall be paid within the one year from the date of the order and that if before the expiry of the said period the tenant fails to pay the said arrears of rent and costs, the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted.]

(2) Nothing in this section shall apply to any tenant whose tenancy is terminated for non-payment of rent if he has failed for any three years to pay rent [and the landlord has given intimation to the tenant to that effect within a period of three months on each default.]

"Section 29 (1) A tenant or an agricultural labourer or artisan entitled to possession of any land or dwelling house under any of the provisions of this Act may apply in writing for such possession to the Mamlatdar. The application shall be made in such form as may be prescribed [and within a period of two years from the date on which the right to obtain possession of the land or dwelling house is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be.]

(2) [Save as otherwise provided in Sub-section (3A), no landlord] shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form [and within a period of two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be, is

deemed to have accrued to him.]

(3) On receipt of application under Sub-section (2) is made by a landlord in pursuance of the right conferred on him u/s 31, the Mamlatdar shall first decide, as preliminary issues, whether the conditions specified in clauses (c) and (d) of Section 31A and Sub-sections (2) and (3) of Section 31B are satisfied. If the Mamlatdar finds that any of the said conditions is not satisfied, he shall reject that application forthwith.]

[(3A) Where a landlord proceeds for termination of the tenancy under Sub-section (1) of Section 43-1B, then, notwithstanding anything contained in this Act, the application for possession of the land shall be made to the Collector, who shall after holding an inquiry in the prescribed manner, pass such order thereon as he deems fit.]

(4) Any person taking possession of any land or dwelling house except in accordance with the provisions of [Sub-section (1), (2) or as the case may be, (3A)], shall be liable to forfeiture of crops, if any, grown in the land in addition to payment of costs as may be directed by the Mamlatdar or by the Collector and also to the penalty prescribed in Section 81.

[29A. The provisions of Section 29 shall apply to the sites used for allied pursuits as they apply to the sites of dwelling houses of an agricultural labourer or artisan in regard to taking possession of any land or dwelling house under the provisions of this Act.

"Section 31. (1) Notwithstanding anything contained in Sections 14 and 30 but subject to Sections 31A to 31D (both inclusive), a [landlord (not being a landlord within the meaning of Chapter III-A) may], after giving notice and making an application for possession as provided in Sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona-fide requires the land for any of the following purposes :-

- (a) for cultivating personally, or
- (b) for any non-agricultural purpose.

(2) The notice required to be given under Sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession u/s 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

(3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability then such notice may be given [and an application for possession u/s 29 may be made,]-

- (i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which mental or physical disability ceases to exist; and

[Provided that where a person of such category is a member of a joint family, the provisions of this Sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this Sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry, is satisfied that the share of such person in the lands is separated having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.]

31A. the right of a landlord to terminate a tenancy for cultivating the land personally u/s 31 shall be subject to the following conditions:-

(a) If the landlord at the date on which the notice is given and on the date on which it expires has no other land of his own or has not been cultivating personally any other land, he shall be entitled to take possession of the land leased to the extent of a ceiling area.

(b) If the land cultivated by him personally is less than a ceiling area, the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make up the area in his possession to the extent of a ceiling area.

(c) The income by the cultivation of the land of which he is entitled to take possession is the principal source of income for his maintenance.

[(d) The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors [but not of any person from whom title is derived, whether by assignment or court sale or otherwise], or if the landlord is a member of a joint family, in the name of a member of such family.]

31B. In no case a tenancy shall be terminated u/s 31-

(1) in such manner as will result in leaving with a tenant, after termination, less than half the area of the land leased to him, or

(2) in such a manner as will result in a contravention of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, or in making any part of the land leased a fragment within the meaning of that Act, or

(3) If the tenant has become a member of a co-operative farming society and so

long as he continues to be such member.

31BB. [Certain provisions of Act not to apply to landlords on ceasing to be serving members of armed forces.] Deleted by Mah. 39 of 1964, s. 3.

31C. The tenancy of any land left with the tenant after the termination of the tenancy u/s 31 shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation.

31D. If, in consequence of the termination of the tenancy u/s 31, any part of the land leased is left with the tenant, the rent shall be apportioned in the prescribed manner in proportion to the area of the land left with the tenant."

Section 32F(1) Notwithstanding anything contained in the preceding Sections,-

(a) Where the landlord is a minor, or a widow, or person subject to any mental or physical disability, the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 [and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31]"

" Section 32H [(1) Subject to the additions and deductions as provided in Sub-sections (1A) and (1B), the purchase price shall be reckoned as follows, namely:-

(i) in the case of a permanent tenant who is cultivation the land personally the purchase price shall be the aggregate of the following amounts, that is to say,-

(a) an amount equal to six times the rent of the land;

(b) the amount of the arrears of rent, if any, lawfully due on the tillers day or the postponed date;

(c) the amounts, if any, paid by or recovered from the landlord as land revenue and cases referred to in Clauses (a), (b), (c) and (d) of Sub-section (1) of Section 10A, in the event of the failure on the part of the tenant to pay the same;

(ii) in the case of other tenants, the purchase price shall be the aggregate of the following amounts, that is to say,-

(a) such amount as the Tribunal may determine not being less than 20 times the assessment and not more than 200 times the assessment;

(b) the value of any structures, wells and embankments constructed and other permanent fixtures made and trees planted by the landlord on the land;

(c) the amount of the arrears of rent, if any, lawfully due on the tillers day or the postponed date;

(d) the amounts, if any, paid by or recovered from the landlord as land revenue and other cases referred to in Clauses (a), (b), (c) and (d) of Sub-section (1) of

Section 10A, in the event of the failure on the part of the tenant to pay the same].

Section 32P (1) where the purchase of any land by tenant u/s 32 becomes ineffective u/s 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period u/s 32F, [320, 33C or 43-ID], the [Tribunal] may suo motu or on an application made on this behalf [land in case other than those in which the purchase has become ineffective by reason of Section 32G or 32 M, after holding a formal inquiry] direct that the land shall be disposed of in the manner provided in Sub-section (2).

(2) Such direction shall provide-

(a) that the [former tenant] be summarily evicted;

(b) that the land shall, subject to the provisions of Section 15, be surrendered to the [former landlord];

(c) that if the entire land or any portion thereof cannot be surrendered in accordance with the provisions of Section 15, the entire land or such portion thereof, as the case may be, notwithstanding that it is a fragment, shall be disposed of by sale to any person in the following order of priority (hereinafter called "the priority list") :-

(i) a co-operative farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such persons;

(ii) agricultural labourers;

(iii) landless persons;

(iv) small holders;

(v) a co-operative farming society of agriculturists (other than small holders) who hold either as owner or tenant, landless in area that an economic holding and who are artisans;

(vi) and agriculturist (other than a small holder) who holds either as owner or tenant or partly as owner and partly as tenant, landless in area than an economic holding and who is an artisan;

(vii) any other co-operative farming society;

(viii) any agriculturist who holds either as owner or tenant or partly as owner or tenant or party as owner and partly as tenant land larger in area than an economic holding but less in area than the ceiling area;

(ix) any person, not being an agriculturist, who intends to take to the profession of agriculture :

[Provided that the State Government may, by notification in the Official Gazette, give, in relation to such local areas as it may specify,. such priority in the above

order as it thinks fit to any class or persons who, by reason of the acquisition of their land for any development project approved for the purpose by the State Government, have been displaced, and require to be re-settled.]

(3) Where any land is to be surrendered in favour of the [former landlord shall not be entitled to the possession thereof until any amount refundable to the [former tenant] is refunded to him or recovered from the [former landlord]; and until such refund or recovery is made, the [former tenant] shall continue to hold the land on the same terms on which it was held by him previously.

(4) Where any land or portion thereof cannot be surrendered in favour of the land lord and where such land or portion is offered for the sale under Sub-section (2), but out no person comes forward to purchase such land or portion, as the case may be, shall vest in the State Government and the [Tribunal] shall determine the price of such land or portion in accordance with the provisions of Section 63A and the amount of the price so determined shall, subject to the provisions of Section 32E, be paid to the owner thereof.

(5) Where any land is sold under Sub-section (2), the [Tribunal] shall determine the price of the land in accordance with the provisions of Section 63A and the price so determined shall be payable by annual instalments not exceeding six d with simple interest at the rate of 4 1/2 per cent. per annum as the [Tribunal] may determine and the price of the land recovered from the purchaser shall, subject to the provisions of Section 32Q, be paid to the owner thereof.

[(6) On the deposit of the last instalment of the purchase price, the Tribunal shall issue a certificate of purchase in the prescribed form to the purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. If the purchaser is at any time in arrears of two instalments, then unless the [Tribunal] after holding such inquiry as if thinks fit is satisfied with the reasons given and allows a further period not exceeding one year to pay the arrears, the purchaser shall be ineffective and the amount deposited by such purchaser shall be refunded to him.

6. In so far as the decision of this court in Harshavardhan's case (supra), the same has been pressed into service on behalf of the Respondents to contend that any remedy for relief of possession could be invoked only within one year from the date of cessation of disability of the landlady. However, this contention clearly overlooks the fact that in the present case, there is nothing on record to even remotely suggest that the original landlady or for that matter her successor-in-interest had taken recourse to remedy u/s 31 of the Act for possession of the suit land for personal cultivation or in terms of Section 32F of the Act as such. Whereas, the reported decision referred to above deals with the said aspect with which we are not concerned in the fact situation of the present case. In the reported case the question referred to the Division Bench for consideration was whether one person of exempted category succeeded by another person of the exempted category, the Tillers day is postponed till the disability of the successor

ceases. In other word, whether the tillers day would be successively of the successors. In the present case, however, the remedy for possession has been invoked by the successor-in-interest of the original landlady who was a disabled landlord being a widow, for possession on the basis of the termination notice issued against the tenant on the ground of persistent default within the meaning of Section 14 r/w 25 and 29 of the Act. In so far as the argument that even that application ought to have been filed within one year from the date of death of original landlady is concerned, the same does not commend to me. In the present case, it is not in dispute that, the successor in interest of the tenant has failed to exercise their right to purchase the suit lands by sending requisite intimation in terms of Section 32F. If it is so, in view of the scheme of Section 32F read with Section 32P of the Act the purchase in favour of the tenant became ineffective. Moreover, the relationship of landlord and tenant (statutory) between the parties enured even on the date of filing of the subject application on June 15, 1977; And for which reason it was open to the successor-in-interest of the landlady to institute application for possession on the ground of persistent default which was founded on the termination notice dated December 1, 1975, being filed within two years in terms of Section 29(2) of the Act. Application as in the present case will be governed by the limitation period provided by Section 29(2) of the Act. In a case where the tenant of a disabled landlord exercises his right to purchase the land within the statutory period, different consequences may ensue. However, we are not concerned with that situation and it is not necessary to dilate further on that aspect. A priori, the inhibition of one year provided in Section 32F of the Act from the date of cessation of the disability of the landlord would apply only if the successor-in-interest of the disabled landlord was to invoke remedy for possession of the land for "personal cultivation" u/s 31 of the Act.

7. According to Mr. Sali, by virtue of the opening words of Section 32 F, all the preceding Section of the Act will become inapplicable in the case of a disabled landlord covered by Section 32-F. It is on that basis the learned counsel submits that the only remedy for possession available to the disabled landlord is u/s 31 of the Act for personal cultivation and no other ground. This submission, to my mind, cannot be countenanced. Indeed, Section 32F opens with the words "notwithstanding anything contained in the preceding Sections", however, what is relevant to note is that Section 32(F) is an exception to the general provision of Section 32 read with 32(G) of the Act which provides for the right of tenant to purchase land lawfully cultivated by him on the tillers day. In other words, Section 32F is a provision for postponing the tillers day and the course to be adopted in such cases. NO more and no less. I am fortified in this view by the exposition of the Division Bench of our High Court in Nago Dattu's case (supra). It is observed that the non-obstante clause of Section 32F is aimed only at nullifying the automatic purchase by tenants of the disabled landlords lands under the proviso to Section 32(1) (b) where lands held by them are liable to be resumed by such landlords during the extended period as provided in Section

31(3) of the Act. (See pages 431-432 of the reported judgment). Accordingly, this provision cannot be construed to mean that it takes away all other remedies available to the landlord such as recovering possession from the tenants on the ground of default. On the other hand on conjoint reading of all the provisions referred to above and on harmonious construction of expression "notwithstanding anything containing in the preceding Section" as contained in Section 32(F), it would appear that the remedy u/s 14 r/w Sections 25 and 29 to recover possession on the ground of persistent default remains unaffected, so long as the tenant has not become deemed purchaser by operation of law.

8. In the present case, as is stated earlier it is not in dispute that there is nothing on record to show that the tenant or his successor in interest had exercised right to purchase the suit land within the statutory period provided u/s 32F from the death of the original landlady. Much before that the present application for possession has been filed on behalf of the landlord on 16th June, 1977. In other words, on June 16, 1977 the relationship of landlord and tenant was enduring, as tenant had not become deemed purchaser till then or even later. In such a case, the remedy to seek possession from the tenant on the ground of persistent default by the landlord would remain unaffected. Reliance was placed on Section 32(H) by Mr. Sali to contend that the landlord will not suffer any loss and the arrears of rent is to be adjusted towards the purchase price, that however, does not mean that the right to claim possession on the ground of default which has been expressly bestowed on the landlord by Section 14 r/w 25 and 29 of the Act is taken away or affected in any manner. If such was the intention of the legislature, and express provision in that behalf would have found place in the Act. a priori, it is not possible to accept the contention canvassed on behalf of the respondent that the "only remedy" available to the disabled landlord or his successor-in-interest is to seek possession on the ground of personal cultivation u/s 31 of the Act.

9. Reliance was placed by Mr. Sali on the decision of this court in the case of Nago Dattu Mahajan (supra). That decision however, will have no application to the fact situation of the present case. the principle expounded by the Division Bench of this court in the said decision is that, the disabled landlord has a choice to avail of either of two remedy of resumption, namely, Section 31(1) or 31(3). In the present case, as has been found earlier, the successor-in-interest of the disabled landlord has not invoked provision for resumption of land u/s 31, but the present application is filed u/s 14 r/w 25 and 29 of the Act. accordingly, this decision, to my mind, is of no avail to the fact situation of the present case or to the issue that has been canvassed by Mr. Sali that the disabled landlord has no other remedy except to seek possession on the ground of personal cultivation u/s 31 of the Act.

10. Mr. Rege, to support his contention, had placed reliance on the decision of Full Bench of our High Court in the case of Ramchandra Anant Joshi (supra). In that case, the landlord after giving notice to his tenant before December 31,

1956 u/s 31 of the Act, terminating tenancy for personal cultivation, subsequently before March, 1957, made an application to mamlatdar for obtaining possession of the land on the ground of personal cultivation. While the said application was pending before the court, landlord issued another notice on July 17, 1958 terminating tenancy on the ground of default, which was after the tillers day. The court considered the issue as to whether the subsequent termination notice was valid and proceedings founded on such notice could be maintained. That issue does not arise for our consideration.

11. For the reasons already recorded above, to my mind, present proceedings will be governed by Section 14 r/w 25 and 29 of the Act and the landlord is not precluded from pursuing the remedy under those provisions having regard to the fact situation of the present case.

12. To get over this position, Mr. Sali lastly contended that notice as was served on the tenant did not include survey No. 19/26, however, the order of dispossession has been passed even with regard to the said land. However, this contention was not raised before this court when the matter was decided by Judgment dated January 10, 2003. Moreover, that is not the scope of remand order passed by the Apex Court. the Apex Court has directed this court to examine the applicability or otherwise of Section 31 and 14 of the Act and the efficacy of the Judgment in Harshavardhan's case (supra). Moreover, that is a question of fact which ought to have been agitated at the lower court and cannot be permitted to be raised for the first time in this court and more so, at this stage of the proceedings that too across the bar.

13. accordingly, this petition succeeds and is allowed in terms of prayer Clause (b). Judgment and order passed by the Maharashtra Revenue Tribunal is set aside and in turn petitioner's application for possession of land in question is granted. Rule is made absolute in the above terms. No order as to cost.

14. At this stage, Mr. Sali states that the operation of this judgment be stayed to enable the respondent to take up the matter in the appeal before the apex court. Request seems to be reasonable. This judgment not to be given effect for a period of 6 weeks from today.