
(1976) 04 BOM CK 0017
In the Bombay High Court
Case No : Spl. C.A. No. 1171 of 1971

Ratanlal Sitaram and another APPELLANT
Vs
Rukhmabai Sambha and others RESPONDENT

Date of Decision : 21-04-1976

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 6
Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 —
Section 31

Citation : (1976) MhLj 492

Hon'ble Judges : C.T. Dighe, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : V.R. Manohar, G.S. Kakde, A.B. Oke and A.K. Trivedi, for the Appellant; V.D. Deshmukh and A.M. Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Dharmadhikari, J.—The dispute involved in this writ petition relates to field survey number 5, admeasuring 36 acres 19 gunthas of mouza Marathwakdi, taluq Kelapur, district Yeotmal. The field originally belonged to one Giglabai wife of Laduram Agrawal, who died on 3-2-1951. Before her death, she executed a will dated 5th August 1948 and gave a limited estate in respect of the said field to Smt. Parvatibai wife of her son Bajranglal, who died sometime in 1918 or 1919. In the will it was further stated that on the death of Parvatibai, the field will become an absolute property of the petitioners before this Court. It appears from the record that one Sambha, the predecessor-in-title of the respondents tenants, took the aforesaid field on lease from Parvatibai in the agricultural year 1952-53. After her death, according to the petitioners, by virtue of the will executed by Giglabai, the petitioners became the owners of the field property. According to the petitioners, as they required the suit field for their bona fide cultivation, after serving a notice u/s 38 (2) of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, referred to hereinafter as the Vidarbha Tenancy Act, terminating the tenancy of original tenant Sambha, they

filed an application u/s 36 read with section 38 of the Vidarbha Tenancy Act claiming restoration of possession on the ground that they required it for their bona fide personal cultivation.

2. Sambha, the tenant, opposed the application and contended that Parvatibai was not a limited owner, as after the commencement of the Hindu Succession Act, 1956 she became an absolute owner of the property. He denied the service of the notice and further contended that the field was not required by the petitioners for their bona fide personal cultivation.

3. It appears from the record that both the parties adduced evidence before the Tenancy Naib Tahsildar and the Tenancy Naib Tahsildar after appreciating all the evidence on record found that the two cloth shops which were being run by the father of the petitioners were petty cloth shops. He further found that they were neither the members of joint family, nor the said shops were ancestral properties of the petitioners, and therefore, merely because they are working in the said shops, it could not be said that they have any pecuniary interest therein. The Tenancy Naib Tahsildar further found that the income from the disputed field was the principal source of income of the petitioners and they required the suit field for bona fide personal cultivation.

4. Against this order of the Tenancy Naib Tahsildar dated 13th December 1967, tenant Sambha filed an appeal which was heard and decided by the Sub-Divisional Officer, Kelapur. By his order dated 6th July 1968, the learned Sub-Divisional Officer found that the petitioners did not own any ancestral property nor they are the owners of the cloth shops which are in the name of their father. According to the learned Sub-Divisional Officer, the Tenancy Naib Tahsildar was wrong in calculating the income of the petitioners on the very vague presumption based on imagination. He further found that it is in no way proved as to what exact amount of income the petitioners are getting from the house in Rajputana and at Yeotmal and shops at Pandharkawada. Therefore, he recorded a finding that in these circumstances it is not possible to calculate the exact income of the petitioners since they do not own anything in their name. According to the learned Sub-Divisional Officer, the petitioners were just helping their father in his business and, therefore, half of the land, which they are entitled to resume, is the principal source of their income. He, therefore, found that the petitioners have satisfied the conditions specified in clauses (c) and (d) of sub-section (3) and clauses (b), (c) and (d) of sub-section (4) of section 38 of the Vidarbha Tenancy Act.

5. Being aggrieved by this appellate order, Sambha, the original tenant, filed a revision application before the Maharashtra Revenue Tribunal. It seems from the record that during the course of proceedings before the Maharashtra Revenue Tribunal, Sambha, the original tenant, died, and therefore, his legal representatives were brought on record at the revisional stage. The learned Member of the Maharashtra Revenue Tribunal came to a conclusion that the findings of fact recorded by both the authorities below were based on no

evidence. He further found that the findings of fact recorded were based on conjectures, surmises and inferences not supported by any material on record. Therefore, on the basis of fresh appreciation of evidence on record, the learned Member came to the conclusion that the petitioners did not want the field bona fide for their personal cultivation and they have also failed to satisfy the condition laid down u/s 38 (3) (c) of the Vidarbha Tenancy Act. Being aggrieved by this order passed by the Maharashtra Revenue Tribunal, the petitioners have filed the present writ petition.

6. Initially this writ petition came up for hearing before the Single Judge of this Court, viz. Masodkar J. As the learned Single Judge found that the petition involves substantial questions of law regarding interpretation of the provisions of Vidarbha Tenancy Act, particularly section 38 (3) (d) thereof, the learned Judge, therefore, directed that this petition should be placed for hearing before the Division Bench.

7. It appears from the record that permission to amend the return was granted to the respondents-tenants and by an amendment application para. 10-A was added to the return. A contention was raised in this paragraph on behalf of the respondents tenants that the field originally belonged to one Giglabai, who, under the will dated 5-8-1948, gave the field to her daughter-in law Parvatibai. Therefore, the field was never in the family of the petitioners, nor it was recorded in the name of the petitioners or any of their ancestors as required by section 38 (3) (d) of the Vidarbha Tenancy Act and hence the petition was liable to be dismissed on that ground alone. It is an admitted position that for the relevant period the land stood recorded in Record of Rights in the name of Parvatibai alone.

8. Shri Manohar, the learned counsel for the petitioners, contended before us that the right which the landlords are seeking to enforce in the present proceedings is conferred upon them by section 38 (2) of the Vidarbha Tenancy Act. Therefore, the provisions of section 38 (3), including the provisions of section 38 (3) (c) or (d), have no application to the present proceedings. In substance, therefore, it is the contention of Shri Manohar that the reference is not at all called, for as the provisions of section 38 (3) are not at all applicable to the proceedings instituted by the successors-in-title of a widow under sub-section (2) of section 38 of the Vidarbha Tenancy Act. It is not possible for us to accept this contention.

9. Chapter HI of the Vidarbha Tenancy Act deals with the termination of tenancies by landlords and special rights of tenants. Then section 38 provides for termination of tenancy by landlord on the ground of personal cultivation. Sub-section (1) of section 38 then lays down that notwithstanding anything contained in section 9 or 19 but subject to the provisions of sub-sections (2) to (5), a landlord may after giving to the tenant a notice in writing at any time on or before 15th day of February 1961 and making an application for possession u/s 36, within the prescribed period terminate the tenancy of the land held by the

tenant, if he bona fide requires the land to cultivate it personally. Then comes sub-section (2) of section 38 which deals with the special categories of a landlord, namely, (a) a minor, (b) a widow and (c) or a person subject to any physical or mental disability. Sub-section (2) of section 38 then lays down that if a person belonging to the specific categories had not given a notice and made an application as required by sub-section (1), such a notice could be given and such an application may be made in case of a widow by a successor-in-title within one year from the date on which the widow's interest in the land ceases to exist. Therefore, it is quite clear that the provisions of sub-section (2) of section 38 are subject to the provisions of sub-section (1) of section 38.

10. It is a well-settled rule of construction that the provisions of a statute should be so read as to harmonise with one another and the provisions of one section cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. The principle stated in Crawford's Statutory Construction at page 260 is as follows :

Hence, the Court should, when it seeks the legislative intent, construe all of the constituent parts of the statute together, and seeks to ascertain the legislative intention from the whole Act, considering every provision thereof in the light of the general purpose and object of the Act itself, and endeavouring to make every part effective, harmonious, and sensible. This means, of course, that the Court should attempt to avoid absurd consequences in any part of the statute and refuse to regard any word, phrase, clause or sentence superfluous, unless such a result is clearly unavoidable." (See *Sanjeevzyya v Election Tribunal, Andhra Pradesh* A I R 1967 S C 1211).

In the present case, we are concerned with the construction of subsections of section 38 itself. Section 38, as a whole, deals with termination of tenancy by landlord for cultivating land personally. Subsection (2) of section 38 is part and parcel of the scheme. Therefore, all the sub sections of section 38 will have to be read together and harmoniously. The Court has to gather the intention of the Legislature from the enactment as a whole. All the sub-sections should be read together as a whole, each clause throwing light on the other. No precedence could be given to one sub-section or sub clause over another. All these sub-sections should be read as part of integral whole. So construed, it is clear that they are interdependent. Sub section (2) of section 38 cannot be read by itself, in isolation, and will have to be read with other subsections of section 38. All the parts of the section will have to be read together and be given their full and normal effect and as far as possible harmony will have to be aimed at. This provision will have to be so construed so as to further the object and purpose of the enactment uniformly. The restrictions contemplated should apply to each set of circumstances without resulting in any inequities. In our opinion, this is the only permissible interpretation. This interpretation is in conformity with the intention and purpose of the Statute. So read, it is clear that subsection (2) of section 38 provides only an extended period for filing of an application. Under

sub-section (1) an application could be filed by the persons not belonging to the specified categories referred to in sub-section (2) within the period prescribed by sub-section (1) of section 38 itself. In cases of specified categories referred to in sub-section (2) such an application could be filed within one year from the date on which the minor attains majority, or a persons ceases to be subject to such physical or mental disability, or in case of a widow by the successor-in-title within one year from the date on which the widow's interest in the land ceases to exist. Therefore, on proper construction of this sub clause and taking into consideration the object of the Legislation in *Nagarbai Shankar Rao Kokate v. Gahininath* 1964 Mh. L J Note 57 this Court found that a widow can file an application even beyond the date prescribed under sub-section (1) during her life-time, because the tenant's right to purchase land does not come into existence and the tenant continues to be a tenant notwithstanding the other provisions of the Act. On the true construction this Court further found that there can be no possible point in limiting the right of the widow or a minor or a person under disability to acquire possession for personal cultivation only within that date. Cases may arise where a widow or a minor or a person under disability may not require the land for the purpose of cultivating personally during that period because of the then existing circumstances. These circumstances and conditions may change from time to time and it would be highly impossible to imagine that the Legislature could have intended to continue them as landlords and still to prevent them from taking possession for their own cultivation in spite of imminent necessity for their maintenance. It is obvious from this decision of this Court that during the life time of a widow she could have terminated the tenancy of the tenant at any time, if she required the land for personal cultivation. This right was obviously subject to the conditions laid down by sub-section (3) of section 38 of the Act. The period for filing of an application in caste of a successor-in-title is further extended by sub-section (2) of section 38. It was not the intention of the Legislature to confer on the successor-in-title of a widow's interest in the property a right to claim land for personal cultivation without any restriction. More so, when the widow's right in this behalf was itself subject to these conditions. To accept such an interpretation would run counter to the scheme of the whole Legislation. The successor-in-title can exercise the right u/s 38 (2) if person under disability, including the widow, had not already exercised such right by giving notice and filing an application u/s 38(1) of the Act. The right is conferred by sub-section (1) of section 38, and by subsection (2) the Legislature has only provided further period for exercising such a light in the case of successor in-title. In substance, therefore, the application is filed u/s 38 (1) of the Act though within extended period. It must, therefore, be held that an application filed by the successor-in-title of a widow by virtue of a right conferred upon him by section 38 (2) is also subject to the restrictions and conditions laid down by sub-section (3) of section 38 of the Vidarbha Tenancy Act. Therefore, it is not possible for us to accept this contention of Shri Manohar.

11. It was then contended by Shri Manohar that the petitioners-landholders have

satisfied the condition incorporated in section 38 (3) (d) of the Vidarbha Tenancy Act, because Giglabai and Parvatibai were their ancestors and the land leased stands in the Record of rights in the name of Parvatibai. He further contended that the bracketed portion of section 38 (3) (d) will not apply to a case where the title is derived by the landlord by a will, it not being an assignment of Court sale, as contemplated by section 38 (3) (d) of the Act. According to Shri Manohar, the words "or otherwise" referred to in section 38 (3) (d) should be read as ejusdem generis and so read they will take the colour from the words used earlier, namely, "assignment" or, "Court sale", which are transfers inter vivos. Therefore, the will not being a transfer or assignment by act of parties is not covered by the bracketed portion of section 38 (3) (d) of the Vidarbha Tenancy Act. Shri Manohar further contended that in this view of the matter, the earlier decision of this Court in Waman Ganesh Joshi v. Ganu Guna Khapre 61 Bom. L R 1267 will apply to the present case. In support of his contention that the words "or otherwise" should be construed as ejusdem generis, Shri Manohar has relied upon the decisions of the Supreme Court in George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore, and Collector of Estate Duty v. M/s. R. Kanakasabai A I R 1973 S C 1214 and a decision in Eton Rural District Council v. River Thames Conservators 1950 (1) All ELR 996. He has also relied upon para 191 of Statutory Construction Interpretation of Laws, by Crawford at page 326, and pages 110 to 115 of Legislation and Interpretation by Swarup. It is not possible for us to accept this contention.

12. It is quite clear from the bare reading of the two Supreme Court decisions, namely, George Da Costa v. Controller of Estate Duty, Mysore and Collector of Estate Duty v. M/s. R. Kanakasabai (cit. supra) that in those cases the Supreme Court was concerned with the Taxing Statutes which call for a strict interpretation in favour of the subject who was being taxed. Therefore, these decisions are of little assistance while construing the present Legislation which is a piece of beneficent Legislation. This Act provides for additional rights and protection to the tenants. This is manifestly a step in the process of agrarian reforms launched with the object of improving the economic condition of peasant. Moreover in a case where Court are dealing with a beneficial Legislation intended for the protection of tenants, if there is any doubt about the meaning of provision, it should be resolved in favour of the tenant. (See Jivabhai Purshottam Vs. Chhagan Karson and Others,).

13. The Supreme Court had an occasion to deal with the question as to when the rule of ejusdem generis should be applied in Lilavati Bai Vs. The State of Bombay, . In that case also the Supreme Court was concerned with the interpretation of words "or otherwise" as used in section 6, Explanation (a) of Bombay Land Requisition Act, 1948, as amended by Bombay Act No. 2 of 1950. In this context, the Supreme Court observed as under:

The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the

established rule of construction that the Legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the Courts to give those words their plain and ordinary meaning. In our opinion, in the context of the object and the mischief of the enactment there is no room for the application of the rule of ejusdem generis.

Earlier in para 11 of the said decision on the construction of the section under consideration, the Supreme Court observed as under :

The Legislature has been cautious and thorough going enough to bar all avenues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by act of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature, when it used the words "or otherwise", apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example a case where the tenant's occupation has ceased as a result of trespass by a third party. The Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reason whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an all inclusive sense.

This Court had also an occasion to construe the words "otherwise" as used section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. After making a reference to the decision of the Supreme Court in Vinayakrao Vs. The State of Maharashtra through its Secretary, Revenue Department, Sachiwalaya, Bombay, held that the interpretation of the word "otherwise" as put by the Supreme Court was amply applicable to the provisions of section 31 of the said Act also.

14. In our opinion the interpretation of the word "otherwise" as put up by the Supreme Court in Smt. Lilavati Bai v. State of Bombay will aptly apply to section 38 (3) (d) of the Act. From the bare reading of section 38 (3) (d) it is quite clear that the Legislature has used the words "or otherwise" in an all inclusive sense to bar all avenues of escape. The bracketed portion in section 38 (3) (d) was inserted by Act No. 4 of 1960. The objects and reasons for this amendment are as under:

In the course of the implementation of the principal Act, certain difficulties has arisen which could not be overcome without amending certain sections. Also as a result of certain judgments of the High Court, it had been found necessary to amend certain provisions either for making the intention of the Legislature quite

clear in respect of those provisions or to remove lacuna which had still remained in that Act. This Act was designed to achieve this object.

Section 38 (3)(d) of the Vidarbha Tenancy Act, as amended, now reads as under:

38(3) The right of a landlord to terminate a tenancy under sub-section (1) shall be subject to the following conditions, namely:

(a) ...

(b) ...

(c) ...

(d) The land based stands in the record-of-rights or in any public record or similar revenue record on the 1st day of August 1957 and thereafter during the period between the said date and the date of the commencement of this Act in the name of the landlord himself or any of his ancestors, (but not of any other predecessor-in-title 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.

This Court had an occasion to consider the true import of section 33B of the Bombay Tenancy Act which is similar to section 38 (3) (d) of the Vidarbha Tenancy Act. While construing this provision, in the light of the legislative history of the expression used in the bracket, the Division Bench of this Court in *Shaila v. S. B. Mali Spl. C. A. Nos. 1330/1335 of 1965* decided on 23-1-1968 = 1968 TLR 16, p. 83, observed as under:

The interpretation placed by the Revenue Tribunal on the terms of clause (c) of subsection (5) of section 33B is not correct. It appears to us that the words "any person" which occur in the expression ""but not of any person from whom title is derived by assignment or Court sale or otherwise" were not intended to include the ancestors of the certificated landlord. In our view, the words "any person" in that expression mean "any other person", that is, any persons other than the ancestors of the landlord. This would mean that a certificated landlord fulfils the conditions laid down in the said clause if he derives title to the land from any of his ancestors irrespective of whether the title was derived by inheritance, survivorship, partition, gift, testamentary disposition or any other form of assignment, but that he does not fulfil the requirements of the said clause if he derives title from any person other than one of his ancestors, irrespective of whether the title was derived by assignment, or by Court sale or in any other manner. In the present case, the petitioners derived title to the leased lands by an assignment from their father whose name had been entered in the Record of Rights as the occupier of the lands on 1st January 1952 and they had, therefore, fulfilled the requirements of that sub-clause.

There are several reasons why we prefer the interpretation mentioned above. In the first place no meaning can be attached to the words "or otherwise" in the

expression "but not of any person from whom title is derived by assignment or Court sale or otherwise", if the person referred to in that expression includes an ancestor of the certificated landlord. This is because every form of transfer, voluntary or involuntary inter vivos or testamentary, is covered by that expression. Even a certificated landlord who derives title by inheritance from his father derives it otherwise than by assignment or Court sale, and if the words "any person" were to include ancestors, such a certificated landlord would fail to satisfy the requirement of clause (c) of sub-section (5) and be debarred from terminating the tenancy of his tenant. This shows that the words "any person" in that expression do not include ancestors of a certificated landlord.

Secondly, the legislative history of the above expression ("but not of any person from whom title is derived by assignment or Court sale or otherwise") corroborates the interpretation which we are inclined to place on the terms used in clause (c) of sub-section (5) of section 33B. Sections 33A to 33C were added to the Bombay Tenancy and Agricultural Lands Act by an amendment brought about by Maharashtra Act IX of 1961. By the same Act clause (d) of section 31-A was also amended. Section 31-A deals with the conditions which regulate the right of an ordinary landlord to terminate the tenancy of his tenant, and clause (d) of that section, prior to the said amendment, laid down that the right of a landlord to terminate a tenancy for cultivating the land personally shall be subject to the following conditions :

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, or if the landlord is a member of a joint family, in the name of a member of such family." By the said amendment the words ""but not of any person from whom title is derived by assignment or Court sale or otherwise" were added after the words" "any of his ancestors" occurring in clause (d) of section 31A clause (c) of sub-section (5) of section 33B introduced by the amending Act was thus in identical terms with clause (d) of section 31A as amended by the same Act. Now, it seems clear that the purpose why the Legislature amended clause (d) of section 31A by adding the above expression was that the Legislature intended to nullify the effect of the decision of a Division Bench in *Woman Ganesh Joshi v. Ganu Guna Khapre*, which was decided on 7th April 1959. In that case a person had purchased a land in Court auction in 1955 and had thereafter applied for possession of the land from the tenant u/s 31 on the ground that he required it for personal cultivation. The question before the Court was whether the person who had applied for possession of the land had fulfilled the requirement of clause (d) of section 31A as it then stood. The Court held that the term "landlord" occurring in section 31A (d) included any person from whom or through whom a landlord derived his right as such landlord, and that a purchaser at the Court auction must be held to have fulfilled the requirement of clause (d) of section 31A if the name of his predecessor-in-title stood in the record of rights as an occupant on 1st January 1952. By adding the

words "but not of any person from whom title is derived by assignment or Court sale or otherwise" the Legislature intended, to make it clear that the landlord who derives title from a stranger (i. e. from any person other than ancestors) by any mode such as an assignment, Court sale or otherwise, does not fulfil the requirement of the clause. The above expression was not added by the Legislature to curtail the rights of landlords who derived title from their ancestors by some form of assignment such as a gift deed or a will.

It appears from the judgment of the Revenue Tribunal that in its opinion a landlord fulfils the requirement of section 33B (5) (c) only if he has acquired the leased land by inheritance from an ancestor or as a member of a joint family. Such an interpolation would lead to inequitable results and does not accord with legislative intention. A person for instance, who has acquired lands from his independent earnings may leave them by a will to his sons. There is no reason why the sons in such a case should be subject to greater disabilities vis-a-vis their tenants than other landlords who have derived title by inheritance or as members of a joint family.

An interpretation similar to the one which we are inclined to adopt was placed on the terms of clause (c) of sub-section (5) of section 33B by Mr. Justice Chandrachud sitting single, in Special Civil Application 9(sic)2 of 1954; decided on 9th April 1965. In that case a woman who was the landlady of a certain land had gifted the land in three equal parts to her three daughters, who after obtaining certificates u/s 88C had applied for possession of their respective portions of the land u/s 33B. The learned Judge held that the daughters had fulfilled the requirement of section 33B (5)(c) although they derived title by a gift. We are, with respect, in agreement with that view [See (1966) 14 TLR 2].

From the bare reading of the aforesaid decision, it is quite clear that according to the Division Bench by using the words "or otherwise" every form of transfer; voluntary or involuntary inter vivos or testamentary was covered by that expression. The right conferred upon the landlord to terminate tenancy of a tenant for personal cultivation is not an absolute right, but it is fettered by the conditions incorporated in sub-sections of sub-section (3) of section 38 of the Vidarbha Tenancy Act. For terminating a tenancy of a tenant for bona fide personal cultivation, it is necessary that the landlord should satisfy all the conditions referred to in section 38 (3). One of the conditions laid down by subsection (d) of section 38 (3) is that the land leased must stand in the Record of rights or in public record or similar Revenue records on the 1st day of August 1957 and thereafter during the period between the said date and the date of the commencement of, the Act in the name of the landlord himself or any of his ancestors or if the landlord is a member of the joint family, in the name of the member of such family but not of any other predecessor-in-title from whom title is derived whether by assignment or Court sale or otherwise. It is quite clear from the bare reading of this provision that it was laid down by the Legislature so as to check unscrupulous termination of tenancies of the tenants by

manipulations. To check all sorts of manipulations an all pervading phraseology is used in the bracketed portion of section 38 (3) (d) of the Act. Therefore in our opinion if the ejusdem generis doctrine is applied to the present provision it will not only imply departure from the natural meaning of the words but will give them a meaning which may or may not have been intended by the Legislature. If the intention of the Legislature would have been to include in the words "or otherwise" the same kind of assignment, which is contemplated by earlier words, then there was no necessity of using the general words "or otherwise", because the earlier specific words used, namely, "whether by assignment or Court sale" were wide enough to include all kinds of assignments. An interpretation of the general words "or otherwise" limiting their import or scope to the matters and things of the same kind as covered by previous words would make the general words (or otherwise) following the preceding specific words redundant. Therefore, in our opinion, the proper construction to be applied to the words "or otherwise" is to construe these general words in such a way as to carry out the object sought to be achieved by the Legislature. The Legislature when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding words. By using the general words "or otherwise", the Legislature intended to cover all possible cases of assignments which are not transfers inter vivos or by act or parties. Therefore the Legislature used these words "or otherwise" in all inclusive sense to bar all avenues of escape. Therefore, in our opinion, the words "or otherwise" used in section 38 (3) (d) are not words of limitation, but are words of extension so as to cover all possible ways in which title in the land might vest in the person concerned. As already observed, similar view seems to have been taken by the Division Bench of this Court in *Shaila v. S. B. Mali* (cit supra). Therefore, it is not possible for us to accept this contention of Shri Manohar.

15. If the general words "or otherwise" used in section 38 (3) (d) of the Vidarbha Tenancy Act are given their natural meaning, it will obviously include derivation of title by virtue of a will, and therefore, obviously as the petitioners before us are claiming title to the land in dispute by virtue of the will executed by Giglabai they will be covered by bracketed portion of section 38 (3) (d) of the Act- and therefore, are not entitled to claim resumption of the land as they have failed to satisfy the condition laid down by section 38 (3) (d) of the Act.

16. However, it is contended by Shri Manohar that the bracketed portion will not apply to a case where the title is derived by their present landlords from their ancestor. According to him Parvatibai and Giglabai being the petitioners' ancestors, even if it is assumed that they have derived a title by virtue of a will executed by Giglabai, the said assignment is not covered by the bracketed portion of section 38 (3) (d)." In support of this contention Shri Manohar has relied upon the observations of this Court in *Shaila's* case.

17. It is no doubt true that in view of the decision of the Division Bench in *Shaila's* case, referred to hereinbefore, it is quite clear that the expression used

in bracketed portion of section 38 (d) was not added by the Legislature to curtail the right of a landlord who derived title from his ancestors by some form of assignment such as a gift-deed or a will. However in reply to this contention of Shri Manohar, Shri Deshmukh, the learned counsel appearing for the respondents tenants has strongly relied upon the decision of this Court in *Vithal v. Maharashtra Revenue Tribunal*, Nagpur 1970 Mh. L J 185. According to Shri Deshmukh, the word "ancestor" has been used in section 38 (3) (d) as connoting a progenitor and one in direct lineal line of ascent. An neither Parvatibai nor Giglabai could be said to be progenitor in the direct lineal line of ascent of the present petitioners they cannot be termed as ancestors of the petitioners. However, according to Shri Manohar the said decision requires reconsideration.

18. It is no doubt true that such a view has been taken by the Single Judge of this Court in *Vithal v. Maharashtra Revenue Tribunal* (cit. supra). However, it appears that the earlier Division Bench decisions of this Court in *Shaila v M. B. Mali* (cit. supra) and *Waman v. Ganu* and a decision of a Single Judge in *Nima v. Putalabai* 1964 12 T L R 2 were not brought to the notice of the learned Judge. The Legislature thought it expedient to amend the provisions of section 38 (3) (d) by inserting the bracketed portion in view of the earlier decision of this Court in *Woman v Ganu*. In that case this Court had an occasion to consider the true import of section 31 A (d) of the Bombay Tenancy Act, as unamended. While construing the said provisions, the Division Bench of this Court in *Waman v. Ganu* (cit supra) observed as under :

The cases of an heir and of a member in a joint family are now expressly provided for by the introduction of the words "of any of his ancestors, or if the landlord is a member of a joint family, in the name of a member of such family" in clause (d) of section 31-A of the Act. Besides, we do not see why any distinction in principle should be made between the case of an heir and that of a transferee. In one case the property of the original landlord is taken by succession and in the other, by transfer.

From the bare reading of these observations it is quite clear that the words "any of his ancestors" in section 31-A (o) of the Bombay Tenancy Act, which are analogous to the words used in section 38 (3) (d) of the Vidarbha Tenancy Act, were construed by the Division Bench as referring to cases of landholders, who derived their title to the land by succession as an heir. From the bare reading of section 38 (3) (d) it is quite clear that before a landlord could resume a land u/s 38, he must establish that the land leased stands in the Record of rights or in public record or similar Revenue records on the 1st day of August 1957 and thereafter during the period between the said date and the date of the commencement of the Vidarbha Tenancy Act, (1) in the name of a landlord himself (2) in the name of any of his ancestors, but not of any other predecessor-in-title from whom title is derived whether by assignment or Court sale or otherwise and (3) if the landlord is a member of a joint family, in the name of a member of such family. Therefore, it is obvious that the word "ancestors" has

been used by the Legislature to cover the cases of the landholders who derived title to the property by succession or inheritance. In our view, the word "ancestors" will have to be interpreted liberally and not in the restricted sense in which it is used in Hindu Law. It cannot be forgotten that the Tenancy Act applies to all the citizens of the Vidarbha region irrespective of their religion. It applies to Hindu, Muslims, Christians, Parsis and the persons belonging to other communities, who are residing within the Vidarbha Region. Therefore, a narrow or a restricted meaning could not be given to the word "ancestors" as has been given in *Vithal v. Maharashtra Revenue Tribunal* (cit- supra). In the cases of natural and normal inheritance there is no scope for manipulation. Therefore, taking into consideration the object of the section and the scheme of the Act, in our opinion, a person of any sex who goes before either on the paternal or maternal side could be looked upon as an ancestor of the person inheriting the former's property, if in the normal and natural course of inheritance he is entitled to inherit the property as an heir. Normally, phrase "heir" cannot be limited to issue only. It must include all persons who are entitled to the property of another under the Law of inheritance. However, in the present case it is not necessary to probe in this question any further because it is quite clear from the material placed on record that in the normal and natural course of inheritance, the petitioners could not have inherited the suit property, as their mother Kanibai was alive when the proceedings were instituted by them. We are informed by the counsel for the petitioners that Kanibai died in the year 1972. Therefore, till Kanibai was alive, by no stretch of imagination the petitioners could have derived title to the suit property by inheritance, because Kanibai being a preferential heir would have inherited the property in her own right. Therefore, in our opinion, there is no substance in the contention raised by Shri Manohar that Parvatibai and Giglabai were ancestors of the petitioners.

19. However, it was contended by Shri Manohar that the word "ancestors" should be construed with reference to the personal law of the person concerned and, therefore under old Hindu Text, the petitioners being Sapindas of Parvatibai and Giglabai, it can be said that Parvatibai and Giglabai were their ancestors. In support of this proposition he has relied upon the Commentary on Hindu Law by Shrinivasan. However, it is not possible for us to accept this contention also.

20. Looking to the nature of the Statute which is secular and applicable to persons belonging to all religions, in our opinion, no reliance could be placed on the original Texts of the Hindu Law in this behalf. Apart from this, the theory of Sapindas, as found in the old Texts, applies to spiritual matters and matters relating to the marriages etc. It has no application to any secular matters or matters relating to the property. So far as the matters relating to the property are concerned, they are now specifically covered by the Hindu Succession Act. In this view of the matter, in our opinion, there is no substance in this contention also.

21. Therefore, taking a cumulative view of the whole matter, it is quite clear that

the petitioners have not satisfied the condition laid down in section 38 (3) (d) of the Vidarbha Tenancy Act. The land in dispute did not stand in the Record of rights for the relevant period either in the name of the petitioners or in the name of any of their ancestors. It is further clear that the petitioners were not members of the joint family of either Giglabai or Parvatibai, and, therefore, that part of the section will not apply to their case. Therefore, the petitioners' case is wholly covered by the bracketed portion of section 38 (3) (d) of the Vidarbha Tenancy Act as they have derived title to the suit field from their predecessor-in-title otherwise than by inheritance. The source of their title is a will, which is wholly covered by the words "or otherwise" as used in the bracketed portion of section 38 (3) (d) of the Act. Even otherwise they derived the title to the suit field by virtue of a will executed by Giglabai and the land was not recorded in the Record of rights for the relevant period in the name of Giglabai. It is an admitted position that it stood recorded in the name of Parvatibai alone. In this view of the matter, as the petitioners have not satisfied the condition referred to in section 38 (3) (d) of the Act, their application was liable to be dismissed.

22. In the view we have taken, therefore, it is not necessary to consider the rival contentions raised before us so far as the merits of the matter are concerned.

23. Even on merits, in our opinion, the authorities below, namely, the Tenancy Naib Tahsildar and the Sub-Divisional Officer, have not properly approached the case. From the order of the Sub-Divisional Officer it is quite clear that he found that the Tenancy Naib Tahsildar was wrong in calculating the income of the landholders on the basis of very vague presumption. From the record it appears that the petitioners are working in the cloth shop with their father and the father owns two shops. No material has been placed before the authorities concerned to indicate as to what is the income of the shop and how it is shown in the account books which are maintained for the purposes of income tax. It is pertinent to note that the petitioners are married and have children. They are actually working in the cloth shops. In the application filed by the landholders no averments were made to indicate as to what was their income from other sources and as to why they require the land in question for their bona fide personal cultivation. The landholders were not agriculturists when they filed the present application. The material in this behalf is introduced for the first time during the course of evidence. The petitioners failed to disclose the true and correct position of the cloth shops in which they were working. They have also not disclosed the income from other sources i.e. house property. In these circumstances in our opinion, it can safely be said that the finding of fact recorded by both the authorities below were to some extent based on conjectures and surmises not supported by the material on record. The burden to prove various conditions was obviously upon the landholders. It is no doubt true that while exercising its jurisdiction u/s 111 of the Vidabha Tenancy Act, it is not open to the Revenue Tribunal to set aside the concurrent finding of fact recorded by the authorities below, but it is further clear from the material placed on record that even while deciding the question as to whether the income by cultivation of

the land of which the petitioners were entitled to take possession, was the principal source of income or not, the authorities below have misunderstood the real point for determination. The appellate Court has found that the petitioners could use water for improvement in the field from Saikheda Project, and therefore, might get more income. To say the least, the finding in this behalf is to some extent speculative. The lower Courts whose decisions on a question of fact are final have arrived at a decision on material point by considering material which is partly irrelevant to the enquiry and have based their decisions partly on conjectures and surmises. Therefore, so far as the merits of the matter are concerned, in the interest of justice, we were inclined to remit back the whole case over again to the stage of Tenancy Naib Tahsildar for giving reasonable opportunity to both the parties to adduce evidence in support of their respective cases. But as we have found that the petitioners have not satisfied the conditions incorporated in section 38 (3) (d) of the Vidarbha Tenancy Act itself such a remand is not now necessary.

In the result, therefore, the petition fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.