

(1978) 11 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 347 of 1973 with Civil Application No. 3694 of 1977

Shamrao D. Gosavi

APPELLANT

Vs

Bhau M. Busane

RESPONDENT

Date of Decision : 21-11-1978

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 33B, 33B(5), 33C(1)

Citation : (1978) 11 BOM CK 0007

Hon'ble Judges : B.N. Deshmukh, C.J.; P.B. Sawant, J

Bench : Division Bench

Advocate : M.A. Rane, for the Appellant; S.G. Page and P.S. Warke, for the Respondent

Judgement

B.N. Deshmukh, C.J.—This petition has been referred to the Division Bench by a learned Single Judge of this Court as there is conflict of view between the judgment of this Court regarding the correct meaning and interpretation of the provisions of Clause (a) of sub-section (5) of section 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act"). Along with the petition has been placed Civil Application No. 3694 of 1977 for orders. That was a civil application for amendment in view of the Forty second Constitutional Amendment. However, that application does not survive and has been withdrawn by Mr. Rane and no order is required to be passed on this civil application.

2. The facts for the purpose of the controversy leading to the reference to the Division Bench are these :

3. The original petitioner Shamrao Dattatraya Gosavi is now dead. However, we are referring to him as the petitioner in this judgment throughout for the purpose of convenience. But ultimately we will pass an order with reference to his heirs who are brought on record. This course is being adopted to facilitate the various argument raised where the original landlord is primarily relevant for determining

the issue.

4. The petitioner who is the original landlord, is the owner of Survey No. 1207/3 measuring 4 acres 16 gunthas assessed at Rs. 21.745 from village Ashta Taluka : Walwa, District : Sangli. The petitioner filed an application u/s 31 read with section 29 of the Tenancy Act being Tenancy Case No. 643 of 1957. By that application the petitioner sought to terminate the tenancy of the respondent tenant and claim possession of the land for bona fide personal cultivation. The Tenancy Mahalkari's decision was given on 14th January, 1958 against which the landlord went in appeal and the Deputy Collector remanded the matter on all issues. After remand, the Taluka Awal Karkun passed an order dated 14-7-1963 permitting termination of tenancy and awarding half the land to the landlord and directing him to resume half the land from the tenant.

5. In the meanwhile, and in the light of the amendment of 1957 to the Tenancy Act, the landlord applied and obtained a certificate u/s 88-C of 31st May, 1958. Thereafter the Tenancy Act was further amended by the introduction of Chapter II-A with effect from 9th February, 1961. Under the chapter a certificated landlord is permitted to terminate the tenancy of the excluded tenant in the manner provided by section 33-B and in the circumstances detailed therein. This chapter, in section 33-C also laid down the consequences if an application u/s 33-B was not made by the certificated landlord. Accordingly, the petitioner landlord gave a notice u/s 33-B on 26th December, 1961, and filed an application on 23rd March, 1962 under sub-section (3) of section 33-B. It is this application which is being heard by us now.

6. The application u/s 33-B which we are now deciding will be referred to hereinafter as "Section 33-B Application" and the earlier application will be referred to as "Section 31 Application". The section 33-B application was decided by the Tahsildar on 29-9-1966 when he rejected it on the ground that the section 31 application had already resulted in a final order on 14th July, 1963, awarding half the land to the landlord. The final order passed for taking possession of half the land in the section 31 application was treated by the Tahsildar as resumption of half the land u/s 33-B(5)(a). On that conclusion the Tahsildar held that the section 33-B application was itself not maintainable and hence rejected the same. However, he also decided the application on the merits, and held in favour of the landlord regarding his total possession as well as annual income and bona fide requirement.

7. Being aggrieved by this order the landlord filed an appeal before the Special Duty Collector. By his order dated 28th January, 1968 the Special Duty Collector confirmed the finding on merits. He further held that a mere final order under the section 31 application does not amount to resumption as contemplated by Clause (a) of sub-section (5) of section 33-B of the Tenancy Act. Since the order was not actually executed, there was not resumption under that clause and the landlord was entitled to succeed. He, therefore, allowed the appeal and directed that the entire tenanted land be handed back to the landlord.

8. The tenant then carried the matter to the Maharashtra Revenue Tribunal which took a contrary view by its order dated 17th March, 1972. According to the Tribunal, the passing of a final executing order amount to resumption the appellant order was thus set aside and the trial Court's order was restored, resulting in the dismissal of the petitioner's application u/s 33-B. Being aggrieved by that order the petitioner has filed this writ petition.

9. The main and the only point that arise for our consideration relates to the true construction of the word "resumed" occurring in Clause (a) of sub-section (5) of section 33-B of the Tenancy Act. Conflicting views have been taken by different Judges. All of them were Single Judge's judgment. One view is that if there is a final order u/s 31 application before the section 33-B application reaches the final termination that final executable order under the earlier application would amount to resuming land by the landlord for the purpose of section 33-B(5)(a) of the Tenancy Act. In that case the section 33-B application shall be disposed of on the short ground that the landlord had already resumed the land and is barred from terminating the tenancy of the remaining land in view of the provisions of section 33-B(5)(a).

10. The other view is that the section 33-B application being a later and a better remedy enacted for the purpose of giving benefit to a certificate landlord, the mere final order passed in the section 31 application pending the hearing and final disposal of the section 33-B application cannot amount to resumption and cannot defeat the subsequent remedy. If, however, the landlord avails himself of the earlier final order and moves the Tahsildar and obtains actual possession as per final order in the section 31 application, he has made a choice with regard to resumption and it is this actual resumption of the land which will come in the way of his getting relief in the subsequent application u/s 33-B of the Tenancy Act. We will refer to these judgment a little later. We are merely summarising the opposing points of view at this stage so that the real nature of the controversy is known. What we propose to do is to approach the entire problem by reference to the provisions of the Tenancy Act, formulate our opinion with reference to these provisions of the first instance and then refer to the decided cases.

11. With a view to facilitate the discussion, we will quote here the relevant provisions of section 33-B, as also section 33-C, in addition to section 88-C.

"33-B(1) Notwithstanding anything contained in sections 31, 31-A or 31-B a certificate landlord may, after giving notice and making an application for possession as provided in sub-section (3), terminate the tenancy of an excluded tenant, if the landlord bona fide requires such land for cultivating it personally.

(2) The notice may be given and an application made by a certificated landlord under sub-section (3), notwithstanding that in respect of the same tenancy an application of the landlord made in accordance with sub-section (2) of section 31---

(i) is pending before the Mamlatdar or in appeal before the Collector or, in

revision before the Maharashtra Revenue Tribunal on the date of the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960 (hereinafter referred to in this section as "the commencement date"), or

(ii) has been rejected by any authority before the commencement date.

(3) The notice required to be given under sub-section (1) shall be in writing and shall be served on the tenant ---

(a) before the first day of January 1962, but

(b) if an application u/s 88-C is undisposed of or pending on that date then within three months of his receiving such certificate, and a copy of the notice shall, at the same time, be sent to the Mamlatdar. An application for possession of the land shall be made thereafter u/s 29 to the Mamlatdar before the 1st day April, 1962 in the case falling under

(c) and within three months of his receiving the certificate in the case falling under (b).

(4) Where the certificated landlord belongs to any of the following categories, namely :

(a) a minor

(b) a widow

(c) deleted

(d) a person subject to any physical or mental disability

then, if he has not given notice and not made an application as required by sub-sections (1) and (3), such notice may be given and such application made---

(A) by the landlord within one year from the date on which he---

(i) in the case of category (a) attain majority

(ii) deleted

(iii) in the case of category (d) ceases to be subject to such physical or mental disability;

(B) in the case of a widow by the successor-in-title within one year from the date on which widow's interest in the land ceases ;

provided that, where a person belongs to any category is a member of a joint family the provisions of this sub-section shall not apply if any one member of the joint family does not belong to any of categories mentioned in this sub-section, unless the share of such person in the joint family has been separated by metes and bounds before the 31st day of March, 1958 and the Mamlatdar on inquiry is satisfied that the share of such person in the land 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.

(5) The right of a certified landlord to terminate a tenancy under this section shall be subject to the following conditions, that is to say---

(a) If any land is left over from a tenancy in respect of which other land has already been resumed by the landlord or his predecessor-in-title on the ground that other land was required for cultivation it personally u/s 31 (or under any earlier law relating to tenancies then in force), the tenancy in respect of any land so left over shall not be liable to be terminated under sub-section (1).

(b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation the area resumed or the area left with the tenant being a fragment, notwithstanding the notwithstanding anything contained in section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.

(c) 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 until the commencement date in the name of the landlord himself, or of any of his ancestors (but not of any person from whom title is derived by assignments 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.

(6) x x x x x x x

(7) x x x x x x x

"33-C(1) Notwithstanding anything contained in sub-section (1) of section 88-C every excluded tenant holding land from a certificate landlord shall, except as otherwise provided in sub-section (3) be deemed to have purchased from the landlord on the first day of April 1962 free from all encumbrances subsisting thereon on the said day the land held by him as tenant if such land is cultivated by him personally, and

(i) the landlord has not given notice of termination of tenancy in accordance with sub-section (3) of section 33-B or

(ii) the landlord has given such notice but has not made an application thereafter u/s 29 for possession as required by the said sub-section (3) or

(iii) the landlord not belonging to any of the categories specified in sub-section (4) of section 33-B has not terminated the tenancy on any of the grounds specified in section 14 or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March, 1962 u/s 29 for possession of the land :

Provided that where the landlord has made such application for possession the tenant shall on the date on which the application is finally decided, be deemed to have purchased the land which he is entitled to retain in possession after such decision.

(2) xx xx xx

(3) xx xx xx

(4) xx xx xx

(5) xx xx xx

"88-C(1) Save as otherwise provided by sections 33-A, 33-B and 33-C nothing in sections 32 to 32-R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500/-.

Provided that the provisions of this sub-sections shall not apply to any person who holds such land as a permanent tenant or who has leased such land on permanent tenancy to any other person.

(2) Every person eligible to the exemption provided in sub-section (1) shall make an application in the prescribed form to the Mamlatdar within whose jurisdiction all or most of the pieces of land leased by him are situate within the prescribed period for a certified that he is entitled to such exemption.

xx xx xx xx xx".

12. The first important thing to be born in mind is that this section found its way into the Tenancy Act through Chapter II-A which was introduced into the Tenancy Act by the Maharashtra (Amendment) Act No. 9 of 1961. This Amendment Act of 1961 came into force on 9th February, 1961. It would be worthwhile to note as to what was the legal position on the date this chapter was introduced . The amendments to the Tenancy Act made from time to time ever since the present Act was passed in the year 1948 do show as distinct scheme behind the legislation. The main object of this Act is to do away with the absentee landlordism. Lord to be retained with the tiller has been the main principle governing the various amendments made from time to time. The Tenancy Act as it stood in 9th February, 1961, already contained provisions like sections 31, 32 to 32-R and 88-C. We are making reference to only these provisions which appear to be relevant for deciding the present issue. These provisions read as a whole would show that ordinarily every tenant in possession was to become the statutory purchaser and owner on 1st April, 1957, which was the tiller's day. However, the Legislature made two distinct exemptions to this propositions. Land was not being denied to all the landlords who were not actually cultivating the land on 1st April, 1957. The Legislature permitted a landlord a terminate the tenancy of his tenant and apply for possession of the land for bona fide personal cultivation. That was the right introduced in favour of the landlord by section 31,

together with limitations provided in sections 31-A, 31-B and 31-C. The manner of giving notice and the time by which application was to be made were laid down and in respect of those landlords who had so terminated the tenancy by notice and had applied for claiming possession of the land for bona fide personal cultivation, the tillers' day was deferred till or until this application was heard and finally disposed of. The limitations which were introduced broadly show that even if the landlord desires to terminate the tenancy of a tenant, he can possession of the land leased to the extent of a ceiling area but not exceeding 1/2 of the lease land. If the landlord succeeds in getting possession of half the land, in pursuance of his application and the final termination of such application the left over land with the tenant would be deemed to have been purchased by the tenant. So far as the left over land is concerned, section 31-C lays down that once the tenancy is terminated u/s 31 and some land remains with the tenant, the tenancy in respect of the left over land can never be further terminated on the ground that the landlord bona fide requires the land for personal cultivation. In the case of most of the landlords, the left over land automatically vested in the tenants. However, the Legislature took into accounts a class of landlord who own very little land and who could hardly be described as that class of landlords against whom the legislation was addressed. The landlords owning less than an economic holding and whose total annual income including the rent of such tenanted land did not exceed Rs. 1,500/- were separated from the other landlords. This class of small and holders was given a further facility by which their tenants did not become owners of the tiller's day. The landlord remained landlords and the tenants remained tenants as soon as the provisions of section 32 to 32-R did not apply to such landlords and their tenants. However, if this small landlord wanted land for bona fide personal cultivation by terminating the tenancy of his tenant he had to take recourse to section 31 alone. If he succeeded in getting the order in his favour and gets possession of half the land the title to the other half would vest in the tenant as a favoured class of landlord being the owner of limited holding. In this case he could not get the other part to the land in view of the provisions of section 31-C of the Tenancy Act. However, it was not obligatory upon such a landlord to apply u/s 31, his relationship of landlord with regard to his tenant continued in view of the provisions of section 88-C.

13. By way of a further step in obliging even such class of landlords and to see that only cultivator of land is in possession thereof, Chapter II-A was introduced along with further amendment of section 88-C. What we have quoted above are the up-to-date amended provisions which we are to interpret.

14. Section 33-A gave the nomenclature "certificated landlord" to the abovementioned small and land holder and his tenant was described as excluded tenant. At an earlier stage, when section 88-C was amended by which original sub-section (2) was repealed by sub-sections (2) to (5) it was made obligatory upon the certificated landlord to make an application for obtaining a certificate from the Mamlatdar that the landlord was a certificated landlord. This

amendment was brought into force in 28th September, 1957. The landlords were permitted to apply for certificates at any time before 30th September, 1961. This is the final time that was allowed by amendments from time to time. In case a landlord falling under this description did not apply for a certificate and had not applied for possession u/s 31 he would not more be a class of landlords getting advantage of this provisions and the land of such a landlord would vest in his tenant. We need not add this would have retrospective effect at this stage from 1st April, 1957.

15. After making these provisions at an earlier stage when Chapter II-A was introduced the Legislature felt that enough justice is not being done to the marginal class of small landlords, who could not be given half the land for personal cultivation under the provisions of section 31. The Legislature therefore, though that certain landlords belonging to this class should be given an additional facility of getting the entire land for personal cultivation provided the conditions proposed in section 33-B as a whole are being fulfilled. While enacting this section and adding this facility in favour of the class of small landlords, now described as certified landlords the Legislature observed one more principle which seems to be observed in this Act throughout. Where the landlord is allowed to apply for terminating the tenancy of the tenant on the ground of bona fide personal cultivation he was given only one opportunity to do so. If he took advantage of this opportunity and obtained the final order in his favour the subsequent legislative change was not made to benefit such a landlord once again. Even though the Legislature revised its policy from time to time, the subsequent changes were made available only to that class of landlords who had not utilised the earlier opportunity were and whose rights under the earlier opportunity were still in coated and not finally decided. Bearing this broad approach in mind, the Legislature had provided that a certificated landlord may apply u/s 33-B notwithstanding the provisions of sections 31, 31-A or 31-B.

16. However, the Legislature found that the landlords including the certificate landlords may have applied u/s 31 for getting the land for bona fide personal cultivation. There would be three possible classes of such landlords. In the case of some landlords the applications would have been finally decided before 9th February, 1961, when Chapter II-A was introduced but whose applications for bona fide personal cultivation was rejected outright by the final order. There would be another class of such landlords whose applications were finally determined before 9th February, 1961 by passing the order in favour of the landlords for resumption of half the tenanted land. A third class of landlords would be those whose applications u/s 31 were still pending on 9th February, 1961 either before the Tahsildar or before the Appellate Authority or the revisional authority. In the case of those landlords whose application were finally disposed of before 9th February, 1961 and what remained was a mere execution of the order, the Legislature has denied them any further right of application. In the case of the remaining two classes of landlords where the applications failed to assist the landlords in obtaining possession or where the remedy of the

landlords is still pending before one of three tribunals constituted as the hierarchy under the Tenancy Act the landlords were given a further right to apply u/s 33-B. This has been so held by a Division Bench of this Court in Special Civil Application No. 1778 of 1972, decided on 12th August, 1977.

17. It is against this back ground that we are called upon to examine the position of a certified landlord whose application u/s 31 was pending at some stage on 9th February, 1961 and who has applied u/s 33-B by observing the requisite formality. Unless the earlier application u/s 31 was a pending application as described in Clause (i) of sub-section (2) of section 33-B or the application was rejected earlier the certified landlord had not right to apply to all. Having excluded one class in that manner and having indicated the other two classes of certification landlords who can apply u/s 33-D a further question arises in relation to those landlords whose applications were pending before some Tribunal on 9th February, 1961. Undoubtedly such a certificated landlord was allowed to terminate the tenancy by a notice as required by sub-section (3) of section 33-D and to make an application for possession against the tenant for bona fide personal cultivation. The sections which we have quoted above do indicate that the provision to make an application for possession u/s 33-B is notwithstanding anything contained in sections 31, 31-A or 32-B. Sub-section (2) further says that a certificated landlord can apply only if his application u/s 31 is pending before the Mamlatdar or in appeal before the Collector or in revision before the Magistrate revenue Tribunal on the date before the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960 (hereinafter referred to in this section as "the commencement date"), and this commencement date is 9th February, 1961.

18. We will concentrate hereinafter in this judgment to this class of landlords whose applications were pending before any of the authorities mentioned above because the case before us refers only to such a landlord. In the case of a landlord whose application u/s 31 was already rejected before 9th February, 1961 to complication arises in administering provisions of section 33-B. Some difficulty is felt only in the case of the landlord whose application u/s 31 was pending at some stage non 9th February, 1961.

19. We will at once refer now to the provisions of Clause (a) of sub-section (5) of section 33-B. This provisions indicates that the right of a certificated landlord to terminate the tenancy under this section 33-B has been subject to the conditions mentioned in the sub-clauses that follow. The pertinent sub-clause (a) lays down that if any land is left over from a tenancy in respect of which other land has already been "resumed" by the landlord or his predecessor-in-title on the ground that the other land was required for cultivating it personally u/s 31 (or under any earlier law relating to tenancies then in force), the tenancy in respect of any land so left over shall not be liable to be terminated under sub-section (1). It is clear from the above wording of sub-section (5) that the Tribunal deciding the application of a certificate landlord u/s 33-B has to look at this sub-section and

decide whether the tenancy should be allowed to be terminated and whether the land in possession of the tenant should be permitted to be taken over by the landlord. If at the time of that decision u/s 33-D the relevant authority finds that the landlord has already recovered possession for bona fide personal cultivation of some land u/s 31 or under any earlier law relating to tenancy in force, the tenancy in respect of the left over land shall not be allowed to be terminated and the landlord shall not be given possession of any further land. In point of time therefore, two relevant dates should be born in mind. One is 9th February, 1961, when the landlord makes an application u/s 33-B because his earlier application u/s 31 is still pending at some stage before any of the authorities mentioned in sub-section (2). The very right of the landlord to make an application for possession u/s 33-B stems from the fact that his earlier application for bona fide personal cultivation u/s 31 is still pending at some stage and has not been finally disposed of on 9th February, 1961. Sub-section (5) at once speaks of the decision of the section 33-B application. If on that date the Tribunal deciding this application u/s 33-B finds that land has been resumed u/s 31 by the landlord, he shall not now be permitted to terminate the tenancy and recover possession of the left over land/ How can this happen? This can happen only if the section 31 application of the landlord which was pending on 9th February, 1961 was allowed to proceed ahead and terminate in a final order, not only that but the final order in such an application u/s 31 was permitted to be executed so that a situation arises where the land has been resumed as a result of an order u/s 31. The last part of the statement which we have made above is the most controversial and appears to be in the nature of a final conclusion. We will, therefore, keep it aside for the time being and try to deal with the provisions of the section themselves.

20. At this stage a broad fact that we must notice is that the Legislature has permitted two applications of the landlord for obtaining possession of the land from the tenant to be pending simultaneously. Simply because a second application u/s 33-B has been filed no consequences laid down by the provisions of the Tenancy Act could arise so far as the earlier pending application u/s 31 is concerned. On the contrary, the pendency of the first application is the very foundation of the right to make the second application. Automatically, therefore, two applications would be pending between the same landlord and the same tenant, one u/s 31 and the other section 33-B.

21. We have been taken through all the relevant provisions of the Act by the learned Counsel by either side. The learned Counsel argued that so far as the earlier pending application u/s 31 is concerned, simply because the certificate landlord has been made available a remedy u/s 33-B by filing a fresh application, it cannot be said that the application cannot be proceeded with to its final conclusion. The learned Counsel for the respondent tenant. Mr. Page brought to our notice the relevant provisions of the same Tenancy Act as amended by the Gujarat Legislature and which is enforce in Gujarat. So far as the Bombay Tenancy Act as applicable to Gujarat is concerned, the scheme of section 33-B of our Act is to be found in section 32-T of the Gujarat amendment as applicable to

the former Bombay area, now forming part of Gujarat State. Having made similar provisions for permitting a certificated landlord to apply for possession because his earlier application for possession is pending, the Gujarat Legislature has inserted Clause (b) of sub-section (2) of section 32-T which lays down that any earlier application pending shall be deemed to have abated on the commencement date. In other words, if the Gujarat provisions were to be made applicable to this State, on the commencement date itself, viz 9th February, 1961, all pending application u/s 31 relating to certificated landlords shall be deemed to have abated automatically. In other words, a certificated landlord may either pursue a remedy u/s 33-B or face the consequences u/s 33-C.

22. However, so far as the provisions of our Act are concerned, nothing similar to it has been provided. We can, therefore, visualise the situation that the earlier pending application u/s 31 would be proceeded ahead as also the subsequent application u/s 33-B should be heard and disposed of in due course. Since the section 31 applications were required to be filed on or before 1st April, 1957, ordinarily a majority of them would be reaching final hearing long before the section 33-B application reach final disposal. It is entirely different that for reasons beyond the control of parties certain matter remain lingering. In other cases the matter may reach upto the Revenue Tribunal or the High Court in writ petition and on some technical grounds the orders may be set aside and the matters may be remanded to the trial Court for further hearing and disposal according to law. It is, therefore, possible that in such a case some applications u/s 31 may reach hearing after the section 33-B applications are finally heard and disposed of. We must, therefore, contemplate all these situations and have to decide what precisely is the scheme of the Legislature in granting relief to the certificated landlords u/s 33-B.

23. While doing so, we may also bear in mind a further broad proposition which has been uniformly implemented in the Act viz. Where the tenancy has been allowed to be terminated in respect of a part of the land on the ground of bona fide personal cultivation, the tenancy in respect of the left over land is never again to be allowed to be terminated on the same ground.

24. We will now consider one or two situations which will immediately illustrate how Clause (a) of sub-section (5) of section 33-B ought to be interpreted in order to give full benefit of added remedy to the certificated landlord as against his excluded tenant.

25. The first simple illustration to take would be where a certificated landlord applies u/s 33-B though his application u/s 31 is still pending. Before the section 33-B application is processed and finally heard the section 31 application reaches final hearing and is disposed of. Not only there is no provision similar to the Gujarat sub-section in our Act but there is no guidance to the Tribunal or the parties as to how they should conduct the two applications which are pending under sections 31 and 33-B. It is, therefore quite possible that the Tahsildar would in due course dispose of the matters in its chronological order and the

earlier application u/s 31 is finally disposed of while the section 33- B application is pending and yet to be heard and decided.

26. Before we refer to the language of sub-section 5(a) of section 33-B, one important fact may be noted. The remedy u/s 33-B is primarily meant for a landlord who has a very limited holding. This certificated landlord has been given a right to resume land from his tenant which is differently worded than the right of the general class of landlords u/s 31 read with sections that follow section 31. Primarily, there is no limitation on the area of land which the certificate landlord can claim for bona fide personal cultivation from the tenant. He can get the entire land from the tenant for bona fide personal cultivation u/s 33-B. We may get a little less than the whole or in fact even less than half the land in a given set of circumstances. This is because Clause (b) of sub-section (5) of section 33-D lays down a further condition for handing over possession to a certificated landlord for bona fide personal cultivation in respect of a certain portion of land from his tenant. While awarding possession to the certificate landlord under this section, the Court has to see that after taking into account the other lands in the respective possession of the landlord and the tenant and the tenant which they may be cultivating a situation may be brought about by so dividing the land allowing equal portion for cultivation on the whole between the landlord and the tenant. If, therefore, in a given case the landlord is permitted to resume the entire land tenanted and still the other total land in possession of the tenant which he is cultivating is much more than the total holding of the landlord including the disputed land, the landlord might get possession of the entire piece of land from the tenant. If in a given case the other lands in possession of the landlord and the tenant are equal, needless to add that the tenanted land will be divided half and half so that the landlord and the tenant will have equal land for cultivation. u/s 33-B no distinct quantum of land is being down for being handed over to the landlord. He can, therefore, get anything to almost nothing in a given case. How could a landlord in an earlier application u/s 31 know whether he would benefit u/s 33-B or not, which is a later remedy. In view of the possibility of getting the entire land for cultivation the remedy u/s 33-B must be prima facie described as a better or superior remedy so far as the certificate landlord having a very limited land of his own is concerned.

27. At this stage we will consider a further approach to the section 33-B application. An application u/s 33-B is a must for a certificated landlord. This question, in our view, must be answered in the affirmative if the certificated landlord were to save himself from the consequence enumerated in section 33-C. Section 33-C(1) lays down that notwithstanding anything contained in sub-section (1) of section 88-C, every excluded tenant holding land from a certificate landlord shall, except as otherwise provided in sub-section (3), be deemed to have purchased from the landlord, on the first day of April 1962, free from all encumbrances subsisting thereon on the said day the land held by him as tenant, if such land is cultivated by him personally. This consequence is subject to the fact that the landlord has not given a notice of termination of tenancy in

accordance with sub-section (3) of section 33-B, or the landlord has given such a notice but has not made an application thereafter u/s 29 for possession as required by the said sub-section (3). We need not refer to the other class of disabled landlords for whom consequences are provided but the date of occurrence in that behalf is different. We have already seen earlier that at one stage obtaining of a certificate u/s 88-C was made compulsory. If a certificate is obtained the certificate landlord has to apply otherwise that the lands stands compulsorily purchased by the tenant. Section 33-C now gives effect to the Legislature's idea of abolishing even such a class of landlords. Either these landlords obtain possession u/s 33-B of land and cultivate it or the land vest in the tenant on the 1st of April, 1962. In the case of certificate landlords whose section 31 applications were pending on 9th February, 1961, a facility to apply u/s 33-B upto the 1st day of April, 1962 is afforded to them, If they do not apply section 33-C(1) operates free and after 1st April, 1962 and makes the tenant statutory purchaser of land as on 1st April, 1962, it is worthwhile to note at this stage that this consequence of sub-section (1) of section 33-C. is provided notwithstanding anything contained in sub-section (1) of section 88-C. The history of section 88-C which we have earlier noticed shows that sections 32 to 32-R (both inclusive) shall not apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500/-. By amendment of section 88-C first in the year 1957, a small landlord, whom we have described above, was obliged to make an application for obtaining possession and such application was required to be made on or before 1st April, 1962. If he obtains that certificate the compulsory transfer of title is saved and the small landlord was eligible to retain possession as a landlord and the tenant remained a tenant on that land.

28. Then came a further amendment of this section by which operation of sections 32 to 32-R in respect of this landlord who is now described as a certificated landlord is saved only to the extent provided by sections 33-A, 33-B and 33-C. In other words, unless the certificated landlords takes advantage of the provisions of section 33-B and saves himself of the consequences indicated earlier under sections 32 to 32-R the provisions of section 33-C will apply in the first instance to the tenancy of the land which is not permitted to be terminated and the consequences of sections 32 to 32-R will again apply as provided by sub-section (5) of section 33-C.

29. The above discussion leads to the conclusion that in the case of a certificated landlord for whose apparent benefit Chapter II-A has been introduced represents a complete scheme or a Code by itself which the rights between a certificated landlord and the tenant are now to be finally settled so far as the tenanted land is concerned. If the landlord applies to get his entire land for personal cultivation, so far so good. If he is unable to get any land relieved the tenant will undoubtedly become the purchaser and the procedure of section 33-C(5) will be followed as if the transfer has been effected from 1st April, 1962. However, if a

landlord gets only a portion of the land for his personal cultivation and the other part of the remains with is tenant then so far as the left over land is concerned the procedure prescribed under sub-section (5) of section 33-C will have to be made applicable and given effect to from 1st April, 1962.

30. In this broad scheme the one factor which is the stumbling block in this litigation is the effect and consequence of the final decision of the earlier application u/s 31 application which comes to be decided any time but before the final order u/s 33-B application is passed. The Maharashtra Legislature has not made similar provisions as the Gujarat Legislature as we have pointed out earlier. There is no provision to stay the application simply because the section 33-B application has been filed. Both can and must run simultaneously and both the applications can be decided on different dates. As we have pointed out earlier, the pending section 31 application is likely to be decided much earlier than the section 33-B application which is normally file after four years the earlier application is filed. If Chapter 11-A is now a complete Code by itself of governing the certificated landlord and the excluded tenant would it not be logical to permit the certificated landlord to take advantage u/s 33-B. A certificated landlord who has filed an application u/s 33-B may very much wish that this subsequent application be decided expeditiously and before the section 33 application is decided. He may puts efforts to get such a result but he may have no control on the circumstances. In spite of his desire to have the subsequent application decided earlier, the pending application u/s 31 may be decided much earlier than the subsequent application. Would it be proper and logical and be regarded legal according to the provisions of Chapter 11-A, to defeat the landlords rights u/s 33-B simply because an event occurs over which he has no control at all. In other words can the mere passing of a final order section 31 in an earlier application which was pending on 9th February, 1961 be allowed to defeat automatically the remedy under the subsequent application which is still pending. If this consequences to be permitted what is the difference between a situation where the section 31 application is finally dispose of before 9th February, 1961 which bears the filing of an application itself u/s 33-D and the final termination of that application subsequently to 9th February, 1961 before the section 33-B application is finally disposed of. Since the landlord has no kind of control at all on the situation we are of the view that the mere passing of a final order in a section 31 application though subsequent 9th February, 1961 should not be permitted to conclude the right of the landlord u/s 33-B. In fact, what would be inconsistent with the desire of the Legislature to make the remedy available to the certificated landlord under Chapter 11-A.

31. However, the Legislature further envisaged the situation where not only the earlier pending application u/s 31 will be disposed of finally before the section 33-B application is finally heard and disposed of and the landlord executes the order under the earlier application. Since there is no prohibition enacted for the continuance of the earlier application or its execution though Chapter 11-A was introduced as an additional remedy or a fresh remedy it is possible that some

landlords might execute the order under the earlier application u/s 31. Though the landlord has no control over the hearing and final disposal of an application u/s 31 so far as the execution of that final order is concerned there is no limitation indicated in this Act and the landlord is merely left to his volition to decide whether to execute this order or not. Though the hearing and final disposal of the application u/s 31 is beyond the control of the certificate landlord he still has a full choice to make whether to execute that final order or not.

32. Let us, therefore, take two different cases, where the earlier applications u/s 31 have successfully terminated and a final order passed and both the landlords are entitled to possession of half the land tenanted. One of the landlords executes that order and obtains possession of half the land before the section 33-B application is heard and finally disposed of and the other landlord waits to see what happens in the section 33-B application and does not execute that order till the final disposal of the application u/s 33-B. Does the Legislature want to treat these two situations differently or in the same manner. In our view, the case of a landlord who voluntarily executes the earlier final order u/s 31 and obtains physical possession of the land awarded to him must be distinguished from or contrasted with the position of the certificated landlord who refused to execute that order and awaits a decision u/s 33-B. In our view, the Legislature had all these situations in mind when it had selected the wording of Clause (a) of sub-section (5) of section 33-B. As we have already suggested earlier, sub-section (5) operates when the authority under the Tenancy Act is finally hearing the application u/s 33-B. If at that hearing it is pointed out by the tenant to the Tribunal that his landlord has already resumed land u/s 31 or any other earlier law relating to tenancy in fairness the remedy u/s 33-B shall not be made available to such a landlord. However, if a mere order is passed u/s 31, but the certificated landlord wants to proceed ahead u/s 33-B and ultimately wants to execute only an order u/s 33-D would it be said that he such a landlord whom has already resumed the land u/s 31. Since both these situations are quite possible, at the time section 33-B applications come up for final hearing and disposal the Legislature must be deemed to have provided for both the situations by the provisions of sub-section (5) of section 33-B. Where the landlord has actually been taken possession of u/s 31 application the Legislature tells the landlord that he shall get no advantage u/s 33-B. Where, however, the landlord awaits the disposal of the application u/s 33-B and a final order passed in his favour, he shall not be deemed to be a landlord who has resumed the land for personal cultivation. In the overall scheme that the Legislature has made for eliminating the remaining class of landlords and bringing about a situation of personal cultivation of land alone, the interpretation that we give to Clause (a) of sub-section (5) of section 33-B would alone be logical for making the remedy of section 33-B real and not illusory. The words "resume" in that sub-section in the context of the above discussion must mean "actual recovery of possession and not a mere final order capable of giving possession to the landlord, if executed."

33. A few situations that may develop from the above conclusion may be noted

in order to verify how far the above interpretation is logical. If a pending application were the sine qua non for permitting a fresh application u/s 33-B to be filed the mere disposal thereof, could not be treated as a bar to the filing of the section 33-B application. We will take the simplest illustration. A certificated landlord made an application against a tenant for bona fide personal cultivation u/s 31. All the evidence in that application was recorded by the Tahsildar and the application was marked down for 10th February, 1961 for final disposal. On 10th February, 1961, the Tahsildar awards the landlord possession of half the land u/s 31. This is the best order that the landlord can obtain u/s 31 and he has no ground to in appeal. If the tenant is satisfied with the order as just and proper he may also not go ahead by filing an appeal. Here is a certificated landlord in whose favour a final order u/s 31 has been passed on 10th February, 1961. Can he apply u/s 33-D for resuming the entire land for his personal cultivation from his tenant? the answer is obviously in affirmative. This is because he fulfills all the requirements of section 33-B. He is a certificated landlord whose application u/s 31 was pending on 9th February, 1961 viz. the commencement date. Since he is the landlord of that type, he has a right give a notice of terminating the tenancy of his tenant on or before 31st March, 1962. After such a notice has been issued terminating the tenancy and even before a process is issued in that behalf an order has already been passed for final termination of the proceedings u/s 31 and this is an executable order. The landlords has an absolute choice the order or to say his hand. If the word "resume" in Clause (a) of sub-section (5) of section 33-B were to mean the mere passing of a final order in favour of a certificated landlord u/s 31 the very application of the above landlord in the illustration that we have given u/s 33-B could not be considered at all. Such an interpretation of the word "resume" in sub-section (5) will defeat the intention of the Legislature to afford the remedy to the certificated landlord u/s 33-B. How shall we, therefore, logically interpret the word "resume"? In our view, the only logical way to interpret and make the remedy available to the certificated landlord u/s 33-B is to interpret the word "resume" to mean taking of actual physical possession by executing the order u/s 31. It is, therefore, that the word "resume" may have several meanings as the dictionary shows. In a certain context the mere passing of a final order may mean "resume" but one of the meanings undoubtedly is the physical taking over of possession and in the context of the provisions of the Tenancy Act. Which we have discussed above and against the background of the scheme making the land available to a certificate landlord who genuinely needs it for his personal cultivation the meaning which we have attributed to the word "resume" in sub-section (5) of section 33-B alone seems to be logical if the certificated landlord has to derive some benefit from the additional remedy u/s 33-B. Otherwise, in almost all cases where the section 31 application would normally come to final conclusion much before the section 33-D application as they are already old by four years before sections 33-B applications comes to be filed the remedy would be almost illusory. We do not think that the Legislature provided such an illusory remedy to a certificated landlord.

34. We will now taken into account some of the arguments addressed to us as a consequence of taking this view. For instance an argument is raised as to what should happen to the transfer of title when a certificated landlord files an application u/s 33-B and does not want to execute the final order u/s 31 though that order is passed earlier than the final order u/s 33-B.

35. According to the view which we have already taken above, the mere passing of a final order u/s 31 will not by itself be of any consequence as tenancy does not get terminated by that order at that stage. The reason is obvious. Under the scheme of Chapter II-A it has been laid down by section 33-C as to what should happen where a certificated landlord does not make an application u/s 33-B or follows the procedure of section 33-B and files an application for possession. Where a certificated landlord does not serve a notice or after serving a notice does not file an application u/s 33-B, it has been clearly laid down by the opening part of sub-section (1) of section 33-C. that the tenant would be deemed to have purchased the land on the 1st day of April, 1962. This is the result that follows notwithstanding anything contained in sub-section (1) of section 88-C. It is, therefore, clear that a certificated landlord must follow the provisions of section 33-B if he wants to claim possession of land for bona fide personal cultivation. If he does not choose to file an application the tenant is declared to be the purchaser on the 1st of April, 1962. This will be the result notwithstanding the provisions of section 88-C(1). u/s 88-C the landlord with a limited holding who later on obtains the designation of a certificated land was saved from the consequences of vesting of title in the tenant as the Legislature has given him a little concession in that behalf. We have already indicated that at a subsequent stage the Legislature revised the same things and wanted even these landlords either to cultivate themselves or part with title of the land. In this overall scheme of retaining of land only with an agriculturist who will cultivate the land personally that the provisions of section 33-C(1) has been made. If the certificated landlord resorts to the provisions of section 33-B, the vesting of the title is deferred till the final disposal of that application as has been laid down by the provisions of sub-section (5) of section 33-B. We need not repeat what we have stated earlier that under the provisions of this Chapter II-A a certificated landlord has a choice of getting possession either of the whole land or lesser part of it sometimes amounting to nothing. As the quantum of land that will be handed over to the landlord for bona fide personal cultivation depends upon several factors it is difficult to prediction the date of the application what precise land he will get. However, after the landlord obtains a finals order in this behalf if any land is still left over with the tenant the tenant will automatically become the purchaser on this deferred date of the final decision as provided by the provisions referred to above.

36. When different dates are contemplated for the vesting of title in the tenant in the case of a certificated landlord if the certificated landlord does not take advantage at all of the provisions of section 33-B, the title automatically vests in the tenant on 1st April, 1962. If he takes resort to the provisions of section 33-B

on the date of final disposal in respect of the left over land from a tenancy the tenant becomes a statutory purchaser. This schemes notwithstanding the provisions of section 88-C(1). This scheme under the added Chapter II-A prima facie is meant to benefit the certificated landlord to a larger extent. It stands to reason that these are the only provisions that should now determines the relationship between the certificated landlord and the excluded tenant.

37. We now may point out how the earlier application u/s 31 and the final order there under will operate in these circumstances. The one case which we have already considered is where the final order u/s 31 application is actually executed and possession of half the land is obtained before the final disposal of the application u/s 33-B. We have quoted above that in those circumstances when the application reaches hearing there will be a bar of certain provisions to the application u/s 33-B and the landlord will not be able to agitate the application u/s 33-B any further.

38. The next case now to consider is that the section 31 application is either pending or is finally decided but no possession is obtained by execution thereof. If in those circumstances, the section 33-B application reaches final hearing and is disposed of the controlling provisions will be the provisions of Chapter II-A and the consequences laid down u/s 33-C must follow at the final conclusion of the application u/s 33-B. This appears to us to be the only logical way in which the provisions will operate. When the Tenancy Act statutorily provides for vesting of title in a tenant on a particular date it means that the relationship of landlord and tenant is brought to an end by the operation of the law. A landlord can claim possession of land for bona fide personal cultivation only so long as he is a landlord and the tenant continues to be a tenant as such. There is no question of claiming possession of land for personal cultivated once the title is transferred to the tenant. The only right in that case is to recover compensation from the rest while tenant who becomes the owner by the erstwhile landlord who was the former owner of the land.

39. Mr. Rane, the learned Counsel for the petitioner, further wants us to hold that in the event of section 33-B application failing or being rejected by the tenancy authorities, the landlord should be able to execute his earlier final order u/s 31. In other words, if a final order u/s 31 is passed whereby half the land has been awarded to the landlord and he has not executed that order Mr. Rane, wants to take advantage of our view that the section 33-B application should be further proceeded with according to law. A mere passing of a final order u/s 31 should be no bar to the further hearing of the application u/s 33-B. However, he wants to argue that in the event of the section 33-B application being rejected for any reason whatsoever the landlord must have a right to execute the earlier final order u/s 31. We are unable to agree with this argument. In fact, such an approach would be inconsistent with the inexorable logic of the situation. Once tenancy is terminate under the Tenancy Act in respect of a portion of the land, it has been clearly laid down all along that the tenancy of the remaining land shall

not be permitted to be terminated for the purpose of bona fide personal cultivation of the landlord. That was the scheme under the old section 34 and that is also the scheme u/s 31-C and that is also the position under the provisions of section 33-B(6). The obvious logical consequence of what we have held till now may now be indicated so that the argument of Mr. Rane will not survive at all.

40. Since the Maharashtra State Legislature has not taken the view which the Gujarat State Legislature has taken of statutory abating of pending applications u/s 31 we have considered the consequences of the section 31 application going ahead to final termination. A mere passing of a final order u/s 31 will not amount to terminate of tenancy but taking over of possession with resumption of land will bring about the situation where the leftover land can never be touched. In other words merely getting a final order u/s 31 is not enough if the landlord wants to get advantage of that order after he obtains the final order but awaits the final result of the application u/s 33-B and obtains a final order of determination of the tenancy. If this is the consequence that arises no further action for the execution of the earlier order u/s 31 could arise. It only means that the Maharashtra Legislature has given to the certificated landlord a choice either to act u/s 31 application or section 33-B application but there is a limitation within which he must resume the land before section 33-B application reaches final conclusion he has to take advantage of section 31 and if he fails to avail of this advantage then Chapter II-A alone will operate and the landlord will not be eligible to apply for execution of the order u/s 31. We think that the Maharashtra Legislature has clearly tried to benefit the certificated landlord who is a petty land- holder and has left the choice to him to find out which order will give him the maximum benefit. However, there is a time limit within which he may do so, failing which the land statutory vests in the tenant. We are unable to agree with Mr. Rane that on a section 33-B application being decided against the landlord he will still have a chance of executing the earlier final order u/s 31.

41. It is also argued before us that there is apparent inconsistency between the provisions of section 31 and the provisions of Chapter II-A, what is argued is that it is not permissible to terminate the tenancy of the land left over with the tenant after the tenancy of the other land is permitted to be terminated u/s 31. If an application u/s 31 succeeds finally, it amounts to granting permission to terminate the tenancy. This according to the learned Counsel, is the meaning of section 31-C. If, therefore, the section 31 application goes to final conclusion before the section 33-B application is yet heard and decided, the tenancy of half the land must be deemed to have been terminated and the remaining half land must be deemed to be the leftover land with the tenant. If this consequence follows u/s 31-C, the provisions of Chapter II-A will operate notwithstanding section 31-C. What is provided by section 33-B(1) is that the provisions of that section will operate notwithstanding anything contained in sections 31, 31-A, or 33-B alone.

42. We do not see any inconsistency in these provisions. The total scheme of transfer of title from the certificated landlord to his excluded tenant as discussed by us above, would clearly show that in the case of section 31 application which was pending on 9th February, 1961 the Legislature first permitted an application to be filed. We shall illustrate here how the above logic is accepted would lead to very unreasonable results. At an earlier stage we have taken the illustration of a section 31 application being finally decided by the Tahsildar on 10th February, 1961. In that manner several applications filed in 1957 by certificated landlords may be decided during the period 9th February, 1961 to 31st March, 1962. If a final termination of a section 31 application is by itself a situation covered by section 31-C, then the certificated landlord would not be able to file application u/s 33-B at all, even though they are filed on or before 31st March, 1962 but at a date after the section 31 application was decided after 9th February, 1961. We have refused to accept such a consequence in view of the special provisions of section 33-B. A mere final order u/s 31 is not, therefore, conclusive of the rights between the certificated landlord and the excluded tenant. In the case of section 31 application the Legislature has specially provided a provision viz., Clause (a) of sub-section (5) of section 33-B, whereunder if a certificate landlord obtains physical possession of land for personal cultivation u/s 31 he will be debarred from continuing the merely in view of the resumption of the land under Clause (a) of sub-section (5) of section 33-B. This being the scheme, it is clear that the Legislature contemplated the pending application u/s 31 not to bring about the termination of the tenancy by its merely coming to an end by a final order in that behalf. The Legislature has, therefore, made the provisions of section 33-B in the case of certificated landlords under Chapter II-A notwithstanding anything contained in the provisions of section 31, 31-A or 33-B. It is left to the certificated landlord to bring about the stage of section 31-C through the provisions of Clause (a) of sub-section (5) of section 33-B. If he brings about that result then undoubtedly the remedy is barred, and the provisions of section 31-C would then be made applicable. We do not find any inconsistency in the earlier scheme of sections 32 to 32-R read with sections 31 to 31-C and the new scheme under Chapter II-A both operate in a different field and in different manner. Simply because a landlord has been given a mere chance at an intervening stage some confusion is likely to arise. However, the above analysis of the two independent schemes would make the provisions clear and no doubt is left as to how the relationship between the certificated landlord and his excluded tenant should be brought to a final conclusion either under the earlier scheme or under the later one and such landlord will exercise his choice but within a limited period.

43. In view of the conclusions reached above we are unable to accept the other reasoning or conclusion reached by the learned Single Judge in (Special Civil Application No. 1255 of 1966, decided on 7th November, 1978), and (Special Civil Application No. 2035 decided on 22nd January, 1971), Those judgments stand overruled. We however agree with the conclusion reached by the learned

Single Judge in the case of Antaji Ramchandra Jog v. Pandurang Yesu Kedepure 71 Bom.L.R. 364 and an unreported judgment of another Single Judge in (Special Civil Application No. 34 of 1970, decided on June 19, 1970), but of reasons mentioned above.

44. Having considered the legal position in this manner, what we find now is that the original petitioner Shamrao Dattatraya Gosavi is dead pending his writ petition and his heirs have been brought on record. It is not being disputed that in the circumstances the added petitioners who are the legal representatives will have to prove their won bona fide requirement for personal cultivation before the tenant is displace from the land. The finding of this petition in favour of Shamrao Gosavi will not automatically ensure to the benefit of his heirs. Shri Page for the respondent made a grievance that the respective holdings of the erstwhile landlord Shamrao Gosavi and his tenant, the respondent, have not been properly considered and a clear finding is not given in that behalf. However, in view of the changed circumstances it is not possible for this Court to finally dispose of this petition as the heirs of Shamrao Gosavi have now to prove their own requirement for bona fide personal cultivation of the agricultural land. The earlier decisions of he three courts will have to be set aside and the original section 33-B application will have to be restored to the file of the Tahsildar for disposal according to law by treating the legal heirs as the applicants u/s 33-B. However the further hearing will be in accordance with the procedure laid down in the Tenancy Act and in the light of judgment made by us in this case. Though the petition succeeds on the main point of law, because of the subsequent developments in this case, we direct that there shall be no order as to costs.

45. We, therefore, make the rule absolute subject to the modifications given above.