
(2001) 09 BOM CK 0062
In the Bombay High Court
Case No : Writ Petition No. 700 of 2000

Shankar M. Pawar (Deceased) and Others	APPELLANT
Vs	
Anusayabai alias Ambabai Avhad and Another	RESPONDENT

Date of Decision : 06-09-2001

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 29(1), 32(1B)
Limitation Act, 1963 — Article 137

Citation : (2002) 1 ALLMR 542 : (2002) 2 BomCR 184

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : M.S. Phatak, for the Appellant; G.V. Wani, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocates for the parties. Perused the records.

2. The dispute in the petition relates to the agricultural land bearing Survey No. 105/3 now Gat No. 163 situated in the village Nandurkheda, taluka Raver, District Jalgaon. The land in question belongs to Govind Vinayak Matkari, Shankar Ramkrishna Dahale and Nilkanth s/o Ramchandra Dahale. Since 1951 the land was cultivated by one Mukund Pawar as the tenant thereof on payment of annual rent of Rs. 28/-. Mukund Pawar expired in the year, 1956 leaving behind him five sons namely, Narayan, Pandu, Dattu, Chintaman and Shankar (petitioner herein) as his heirs and consequently, all the sons being major in age at the time of the death of Mukund, inherited the tenancy rights in the said land in equal shares. After the death of Mukund, one Sayabai w/o Bhaurao Awahane, mother of the respondents herein purchased the suit land by a registered sale deed dated 29th October, 1956 and on the same day, she was put in possession of the suit land. Sayabai continued to possess the suit land till her death which occurred on 16th October, 1980 and, thereafter, the suit land was possessed by the respondents as the lawful heirs of Sayabai. By notice dated 18th August,

1992 the petitioner called upon the respondents to restore the possession of the suit land to the petitioner in terms of section 32(1-B) of the Bombay Tenancy and Agricultural Lands Act, 1948 (herein after called as "the said Act") and thereafter, filed an application under the said provision of law on 24th April, 1994. The same was registered as Tenancy Case No. 2/1994. After hearing the parties, the tahsildar by his order dated 4th November, 1997, directed the respondents to induct the petitioner in actual possession of the suit land. The respondents preferred Tenancy Appeal No. 2/98 which came to be dismissed by the Sub-Divisional Officer, Bhusawal by his order dated 30th June, 1998. However, the Maharashtra Revenue Tribunal by its order dated 15th February, 1999 in Tenancy Revision Application No. 143/1998 set aside the orders of the tahsildar and S.D.O. and dismissed the application of the petitioner u/s 32(1-B) of the said Act. Hence, the present petition.

3. The petitioner's case is that undisputedly, the father of the petitioner was the lawful tenant in possession of the suit land since 1951 till his death which occurred in the year, 1956 and, therefore, he was in possession of the suit land as the lawful tenant thereof on 15th June, 1955 which is the appointed day under the said Act and hence, he was entitled for statutory protection under the provisions of the said Act. The petitioner being one of the sons of Mukund, he has lawfully inherited the father's interest in the suit land and he being illegally dispossessed of the suit land from 29th October, 1956, he is entitled for restoration of possession thereof u/s 32(1-B) of the said Act. It is further case of the petitioner that no period of limitation has been prescribed for action u/s 32(1-B) and therefore, the theory of reasonable period cannot be imported in the matter of enforcement of right under the said provision of law in the absence of specific bar of limitation against the such remedy. The alleged surrender of possession of the suit land by Narayan, the eldest brother of the petitioner has neither been proved nor such surrender, even assuming that the land had been actually surrendered by Narayan, it is not binding upon the petitioner and other brothers as Narayan was never authorised to surrender the interest of the petitioner or other brothers in the suit land and, therefore, the possession of the suit land with the respondents is illegal and for all purposes, the respondents are not successors in interest of the land of the petitioner in relation the suit land.

4. On the other hand, it is the case of the respondents that on the death of Mukund, his eldest son Narayan in Tenancy Case No. 247/1956 voluntarily surrendered the possession of the suit land and subsequent thereof, by registered sale deed dated 29th October, 1956 the ownership as well as the possession of the suit land was conveyed in favour of the respondents predecessor Sayabai and since then they are in possession of the suit land through their predecessor. It is their case that Sayabai was in exclusive possession of the suit land on 31st July, 1969 and was not successor-in-interest of the landlord in relation to the suit land. Besides, the application u/s 32(1-B) was not filed within the reasonable period from the date of cause of action stated to have been arisen for filing the application. For all these reasons, the

application u/s 32(1-B) was not maintainable. It is, their further case that the proceedings under sub-section (1-B) could not have been initiated unless preceded by the proceedings u/s 29 of the said Act and admittedly, in the case in hand, no such proceedings u/s 29 were initiated by the petitioner prior to filing of the application u/s 32(1-B) and, therefore, in view of the Full Bench decision in *Raghunath Dattatraya Vadekar v. Smt. Ratnabai Jinappa Upadhye*, reported in 2001 (1) M.L.J. 151 and hence, the petition is liable to be dismissed.

5. Before proceeding further in the matter, it is worthwhile to reproduce the relevant provisions of law comprised under the section 29(1) and section 32(1-B) of the said Act. The same read as under:---

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

"32. (1)

(1-A)

(1-B) Where a tenant who was in possession of land on the appointed day and who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than in the manner provided in section 29 or any other provision of this Act, is not in possession of such land or any part thereof and such land or part thereof is in the possession of the landlord or his successor in interest on the said date and such land or part thereof is not put to a non-agricultural use on or before the said date, then the mamlatdar shall, notwithstanding anything contained in the said section 29 or any other provision of this Act either suo motu or on an application of the tenant made within the prescribed period, hold an inquiry and direct that such land or, as the case may be, part thereof shall be taken from the possession of the landlord or, as the case may be, his successor in interest, and shall be restored, to the tenant; and thereafter, the provisions of this section and sections 32-A to 32-R (both inclusive) shall, so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or, as the case may be, part thereof is restored to him;

Provided that the tenant shall be entitled to restoration of land or part thereof as the case may be, under this sub-section only if he gives an undertaking in writing within such period as may be prescribed to cultivate it personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area.

.....

Explanation.---In this sub-section "successor in interest" means a person who acquires the interest by testamentary disposition or devolution on death."

6. At the outset, the petitioner's attempt to seek interference by this Court in the impugned order in exercise of its writ jurisdiction is sought to be scuttled on the ground that the proceedings u/s 32(1-B) being required to be taken within reasonable period of time from the date of the cause of action and that, in the instant case, the petitioner having approached the authority as late as in the year 1994 though the cause of action was stated to have been arisen in the year 1956, there is absolutely no case for interference and in that regard, heavy reliance is placed in the decision of the learned Single Judge of this Court in the matter of. It is sought to be contended that though there is no specific period of limitation prescribed for filing an application or for enforcement of remedy u/s 32(1-B) of the said Act, it is well established principle of law that when specific period is not prescribed for doing or performing a particular thing or act, the same should be done or performed within a reasonable time and considering the residuary provision of limitation provided in Article 137 of the Limitation Act, 1963 prescribing three years period for all those things to which the specific period has not been prescribed for, any application filed or suo motu exercise of powers u/s 32(1-B) beyond the period of three years from the date of cause of action cannot be said to be within reasonable period of time. Considering the fact that undisputedly, the petitioner lost the possession of the suit land in the year 1956 and the application was filed in the year 1994, the same was beyond the reasonable period of time.

7. Bare perusal of the decision of the learned Single Judge in Bansilal's case (supra), would disclose that the said judgment is not an authority on the point sought to be canvassed on behalf of the respondents. In fact, the judgment in Bansilal's case was delivered in peculiar facts of the said case and placing reliance upon the decision of the Apex Court in the matter of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, . In Bansilal's case, the Tribunal by its order dated 21-2-1976 had concluded that no surplus land was held by the petitioner therein and the said order had attained finality for all purposes, besides having been acted upon by the parties inasmuch as, the members of the HUF after partition had started separately cultivating their respective holdings. Yet, the proceedings were sought to be reopened by the Tribunal by notice dated 19-12-1985 and an order dated 3-2-1986 as well as further review by the Additional Commissioner by a notice dated 18-11-1986 and an order dated 27-2-1987 which was challenged before the learned Single Judge in the said writ petition and while allowing the petition, it was held that since the order dated 21-2-1976 was allowed to become final, it was not open for the Tribunal to overturn the said decision in the manner it was sought to be done. Similarly, relying upon the decision of the Apex Court in Mohamed Kavi's case, the suo motu exercise by the Additional Commissioner by issuing notice in the year 1986 was

held to be beyond the reasonable time apart from being without any cause for taking suo motu action. Apparently, therefore, the decision in Bansilal's case does not lay down broad proposition of law sought to be canvassed on behalf of the respondents.

8. The decision in the matter of Mohamed Kavi was also in peculiar facts of that case and in view of an earlier unreported decision of the Apex Court in State of Gujarat v. Jethmal Bhagwandas Shah, delivered on 1-3-1990, relating to the subject of the powers u/s 84-C of the said Act as applicable to the State of Gujarat, as well as in the matter of Ram Chand and Others Vs. Union of India (UOI) and Others, . In Mohamed Kavi's case, the sale deed in question was executed on 11-2-1972 and the action was initiated by the mamlatdar in September, 1976 and the order was passed on 29-4-1977. The Apex Court therein observed that:

"We are satisfied that in the facts and circumstances of the present case, the suo motu power u/s 84-C of the Act was not exercised by the mamlatdar within a reasonable time."

9. In Ramchand's case, it was held by the Apex Court that:

"Can the statutory authority take a plea that although it has not performed its duty within a reasonable time, but it is of no consequence because the person, who has been wronged or deprived of his right, has also not invoked the jurisdiction of the High Court or of this Court for a suitable writ or direction to grant the relief considered appropriate in the circumstances? The authorities are enjoined by the statute concerned to perform their duties within a reasonable time, and as such they are answerable to the Court why such duties have not been performed by them, which has caused injury to claimants."

The said ruling was pursuant to the following observation by the Apex Court:--

"The Parliament has recognised and taken note of the inaction and non-exercise of the statutory power on the part of the authorities, enjoined by the provisions of the Act to complete the acquisition proceedings within a reasonable time and because of that now a time limit has been fixed for making of the award, failing which the entire proceeding for acquisition shall lapse. But, can it be said that before the introduction of the aforesaid amendment in the Act, the authorities were at liberty to proceed with the acquisition proceedings, irrespective of any schedule or time-frame and to complete the same as and when they desired? It is settled that in a statute where for exercise of power no time-limit is fixed, it has to be exercised within a time which can be held to be reasonable."

10. There cannot be any dispute about the proposition that whenever a power is vested in a statutory authority, without prescribing any time limit for exercise thereof, such power should be exercised within a reasonable period of time. At the same time, it is also to be borne in mind that in the absence of any specific period of limitation being provided to seek enforcement of the remedy, necessary

implication to be drawn is that general law of limitation as provided in the Limitation Act stands excluded. Where there is a specific statutory rule operating in the field, the implied power of exercise of the right within the reasonable limitation does not arise and that is the law laid down by the Apex Court in the matter as Uttam Namdeo Mahale Vs. Vithal Deo and others, . The decision in Uttam Mahale's case was delivered on 7-5-1997 by a Bench of three Honourable Judges of the Apex Court after considering the earlier decisions in Ram Chand's case as well as Mohamad Kavi's case. In Uttam Mahale's case the execution of order beyond the period of 12 years was sought to be objected to on the ground that section 21 of Mamlatdar's Court Act, 1906 does not prescribe any limitation, yet such power could be exercised only within a reasonable time. Rejecting the contention, the Apex Court ruled as above. In Bansilal's case the attention of the learned Single Judge does not appear to have been drawn to the decision in Uttam Mahale's case. It is well settled that the decision given by a larger Bench of three Judges prevails over the decision given by a smaller Bench of two Judges as is held in the matter of Mahanagar Railway Vendors Union v. Union of India and Ors. . Any decision of the High Court contrary to the law laid down by the Apex Court cannot have any binding effect.

11. Section 32(1-B) deals with beneficial rights in favour of the tenants and provides remedy for enforcement of such rights. The legislature in its wisdom, has introduced the said provision in the statute with the object to give necessary protection to the weaker section of the society. It cannot be forgotten that the law of limitation merely bars the remedy but, it does not destroy the right. At the same time, it is to be borne in mind that the courts cannot act on principle that every procedure is to be taken as prohibited unless it is expressly provided but should proceed on the converse principle that every procedure is understood to be permissible till it is prohibited by law. In other words, unless remedy provided for enforcement of right is circumscribed by the period of limitation, it is not permissible to import the boundaries upon such remedial measures by way of interpreting the provisions of law as it would amount to legislate upon the statutory provision by the Court which, in fact, is the exclusive jurisdiction of the legislature. Even while interpreting the provisions under the Limitation Act itself, the scope of Limitation Act cannot be extended by implication, and party's right to approach the Court cannot be throttled unless the Limitation Act expressly provides that the right is barred. Any decision in that regard, if required, one can safely refer to the decision of the Division Bench of this Court in the matter of Madhavprasad Kalkaprasad Nigam v. S.G. Chandavarkar, reported in AIR 1949 Bom 104. Certainly it is no part of the duties of the Court to deprive a litigant of the benefit of any exemption from the period of limitation for enforcement of right by importing the words of limitation not found in the statute. It is to be noted that the section 32(1-B) was introduced in the statute in the year 1969 and the legislature being fully conscious about the limitation provided u/s 29(1) and yet, after expiry of period of 12 years, the right of restoration of the land was still guaranteed to the tenants under the said provision of law. This clearly

discloses the intention of the legislature to ensure the benefit under the said Act to the aggrieved tenants and who were not vigilant in exercising their rights. In other words, while considering the provisions of section 32(1-B), the principle that law comes to the assistance of the vigilant, not to the sleepy has to be ignored.

12. The first ground of challenge by the petitioner to the impugned order relates to the illegal dispossession of the petitioner from the said land on 29th October, 1956 against the defence case of voluntary surrender of the possession thereof. The Tahsildar as well as the Sub-Divisional Officer while allowing the application u/s 32(1-B) of the said Act have agreed with the contention of the petitioner that there was no voluntary surrender of the tenancy rights and the possession of the suit land, whereas the revisional authority, relying upon one mutation entry, has held that Narayan, the eldest son of the deceased Mukund, in his capacity as Karta of HUF had suo motu and voluntarily handed over the possession of the suit land to the landlord. In that regard, reliance was placed on the decision of the Apex Court in the matter of *Dhondiram Totoba Kadam v. Ramchandra Balwantrao Dubal*, reported in 1994 M.L.J. 1284.

13. The Apex Court, in *Dhondiram's* case while considering the point as to whether the tenant who had surrendered the tenancy right of his own accord, would amount to dispossession within the meaning of the said expression u/s 32(1-B) of the said Act, has held thus:

"Voluntary giving up of possession does not amount to dispossession voluntary giving up possession does not amount to dispossession unless the law provides for it. Dispossess according to Black's Law Dictionary means: "To oust from land by legal process; to eject, to exclude from realty". The dispossession should have been, therefore, either by legal process or by physical act of exclusion. It would not include leaving possession voluntarily or by surrender. If the words would have been that if such a person was not in possession before April 1, 1957 then a tenant who surrendered or left the possession voluntarily could be included in it. But the legislature having used a stronger word it should, in absence of any indication to the contrary, be understood in its normal sense. A tenant surrendering the land either in accordance with the provisions of law or leaving possession voluntarily would not be covered in the expression dispossessed."

14. In the case in hand, both the fact finding authorities below, on analysis of the evidence on record, have held that there was illegal dispossession of the petitioner from the suit land inasmuch as, the provisions of law under the said Act relating to the surrender of possession were not followed and no proof voluntary surrender had been produced on record. As against the said finding, the revisional authority on re-assessment of the evidence, has held that the mutation entry number establishes the voluntary surrender of possession by Narayan as karta of the joint family. Except the mutation entry number in records, no other material has been referred to by the Tribunal to sustain the said finding. First of all, the Tribunal could not have undertaken the exercise of re-

appreciation of the evidence in the revisional jurisdiction unless the findings on the point in issue arrived at by the fact finding authorities below could have been said to be perverse or not borne out from the record or contrary to the record or manifestly improper resulting in miscarriage of justice. Without arriving at any such conclusion in relating to the relevant finding of fact by the lower authorities, the Tribunal in revisional jurisdiction, has clearly acted illegally and in breach of the procedure. Besides, it is beyond the comprehension of a prudent person as to how conclusion can be drawn about the fact of voluntary surrender of possession of land and that too, in capacity as karta of joint Hindu Family, only on the basis of a mutation entry number when undisputedly, the records do not contain any evidence relating to any of those facts. The decision of the Apex Court in Dhondiram's case, is no doubt on the point that leaving possession voluntarily would not amount to dispossession under the said Act. However, the fact of "leaving possession" of the land has to be established independently by cogent evidence in that regard and there is no presumption regarding the said fact. On the contrary, in the absence of any such evidence in that regard, the inference which can be drawn would be to the contrary in view of the provisions contained in section 15 of the said Act. The ruling in Dhondiram's case is not to the effect that moment the tenant is out of possession of the land that there is presumption of "leaving possession" of the land.

15. In Dhondiram's case, the point for consideration was whether the person who had surrendered the tenancy can be said to have been dispossessed as to claim benefit u/s 32(1-B) of the said Act. The issue pertaining to surrender of tenancy was not in dispute as it is apparent from the following observations in the said judgment of the Apex Court:

"Therefore, even though there was no evidence to support the surrender but since, under the provisions of the Act, no transfer of interest was possible without the consent of the tenant, as he alone was entitled to purchase the land, an inference in law arose that when conditional mortgage was executed the tenant must have surrendered the land in dispute in favour of the plaintiff. This finding was supported by the statement of the appellant who, appears to have, admitted in his deposition that there was a surrender and the defendant was put in possession of the land. The factum of surrender stood proved by follow-up action of not only deletion of appellant's name from record but its absence till the plaintiff gave notice in 1969."

In other words, in the background of the proved facts in the said case regarding surrender, the observations regarding leaving of possession voluntarily amounts to lawful surrender were drawn by the Apex Court in the said Dhondiram's case.

16. Section 29(2) of the said Act specifically prohibits the landlord from obtaining possession of land held by the tenant except under an order of the mamlatdar. Undoubtedly, u/s 15 of the said Act, a tenant may terminate the tenancy in respect of any land at any point of time by surrendering his interest therein in favour of the landlord, provided that such surrender shall be in writing and

verified before the mamlatdar in the prescribed manner. These provisions of law clearly rule out any inference about the surrender of tenancy or possession of the land by tenant in absence of cogent evidence disclosing due compliance of the relevant provisions of law in that regard.

17. Once, the theory of voluntary surrender having been found to be devoid of substance, it is sought to be contended by the petitioner that he is to be held to have been illegally dispossessed from the suit land and, therefore, entitled to claim benefit of restoration thereof u/s 32(1-B) of the said Act. On the other hand, it is sought to be contended that irrespective of the fact whether the petitioner was dispossessed or not, he is not entitled to seek restoration of possession of the said land u/s 32(1-B) of the said Act in view of the fact that the said land was not in possession of the petitioner on 31st July, 1969 and the respondent are not the successors-in-interest of the landlord within the meaning of the said expression under the said provision of law. Besides, the petitioner having not exhausted the remedy available u/s 29(1) of the said Act, he is not entitled for any relief u/s 32(1-B) of the said Act as has been held by the Full Bench in Raghunath Dattatraya Vadekar's case (supra). The contention of the petitioner however, is that the purchaser steps in the shoes of the original landlord on the purchase of the suit land and the provision of section 32(1-B) are independent of those in section 29 of the said Act and, therefore, resort to the remedy under the latter is not a pre-condition for the relief under the former.

18. In Raghunath's case, the person claiming the benefit u/s 32(1-B) was not in possession of the land since 1956. The exact date of his dispossession was not known. The original landlady had inducted a stranger as a tenant, though the proceedings u/s 32-G were not initiated in respect of newly inducted tenant. The learned Single Judge of this Court before whom the matter came up for hearing, observed that the decision of the Division Bench in Bajirao Maruti Dhumal Vs. Shankar Yallappa Mane, based on which the relief was sought for in Raghunath Vadekar's case, had not considered the effect of section 32(1-A) while deciding the scope of the word "possession" in section 32(1-B) and the matter was, therefore, referred to the Division Bench consisting of Dharmadhikari and Chaudhari, JJ. who did not agree with the view expressed in Bajirao Dhumal's case on the said point and the matter was, therefore, placed before the Full Bench, Shri N.J. Pandya, J. presiding over the Bench and speaking for the Full Bench, while delivering the ruling in the matter, after taking note of the facts narrated herein above in relation to the said case, has ruled that unless the proceedings u/s 29(1-B) of the said Act are initiated, the benefit u/s 32(1-B) cannot be claimed and the person inducted after the ouster of the tenant shall be treated as deemed purchaser unless the proceedings u/s 29 of the said Act have been successfully taken by the ousted tenant and, therefore, the decision in Dhumal's case on the concept of constructive possession is not a good law.

19. If one peruses the decision of the Apex Court in the matter of Savaliram Gotiram Teli (Deceased) by heirs and Lrs Vs. Madhukar Yeshwant Patankar and

Others, , the conclusions sought to be arrived at by the Full Bench in Raghunath Vadekar's case do not appear to be in tune with the ruling of the Apex Court in Savalaram's case. In Savalaram's case, the tenant was dispossessed by the landlord prior to 1-4-1957 otherwise than under an appropriate order u/s 29 of the said Act. The point for consideration was whether the heirs of the tenant governed by the provisions of the said Act, can claim restoration of possession of the land under the provisions of section 32(1-B) when such proceedings were initiated suo motu by the mamlatdar. While considering the issue, the Apex Court, analysing the scope of section 32(1-B) held that:

"A mere look at the said provision shows that for applicability of the said provision the following conditions must be satisfied.

(1) The tenant governed by the Act must be in possession on the appointed day, that is, 15-6-1955.

(2) He should have been dispossessed before the tillers day, that is, 1-4-1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29.

(3) The said land must be in possession of the landlord or his successor-in-interest on 31-7-1969.

(4) The land should not have been put to non-agricultural use by the landlord on or before 31-7-1969.

Once the aforesaid four conditions are satisfied a statutory duty is cast on the Tahsildar notwithstanding anything contained in section 29 either suo motu or on application of the tenant to hold an inquiry and direct that such land shall be taken from the possession of the landlord or his successor-in-interest and shall be restored to the tenant. Once that happens the provisions of sections 32-A to 32-R of the Act will get attracted and the tenant concerned would be declared deemed purchaser of the land on the day on which the land is restored to him. However, the restoration order will be subject to the undertaking of the tenant to cultivate the land personally."

20. The point for determination in Savalaram's case was answered by the Apex Court thus:

"By the time the tenant died in 1959, as his tenancy rights had not got extinguished by an appropriate proceedings u/s 29 at the instance of the landlord, those tenancy rights survived and could be transmitted under the statutory provisions of section 40 in favour of the heirs of the erstwhile tenant who were obviously willing to continue as tenants. Consequently the appellants themselves got clothed with the rights of statutory tenants by operation of section 40 of the Act. The result was that when section 32(1-B) operated then fully satisfied the requirement of being statutory tenants of the land in question having the same terms and conditions of tenancy qua the respondent landlords and hence could claim their right of restoration of possession of the tenanted

lands against the respondent landlords on satisfaction of the required conditions of section 32(1-B) of the Act."

While arriving at the decision in the said matter, the Apex Court therein has clearly ruled that section 32(1-B) of the Act itself operates on its own and includes within it the non obstante clause meaning thereby overriding the provisions of section 29 of the Act.

21. Perusal of section 32(1-B) of the said Act quoted above, reveals that it nowhere requires resort to section 29 prior to taking resort to the remedy under the said provision of law. Section 32(1-B) nowhere prescribes resort to section 29 of the said Act, being precondition for seeking remedy therein. On the contrary, it specifically states that the provisions contained therein are "notwithstanding anything contained in the said section 29". Further, bare perusal of the section 29 of the said Act discloses that it neither contains nor ever contained sub-section (1-B) or Clause (b). Apparently, the Full Bench did not have the assistance of the relevant and correct provisions of law being brought to its notice.

22. Apparently, therefore, the Apex Court has ruled that section 32(1-B) operates independently of section 29 of the said Act and has overriding effect on the provisions contained in section 29 of the Act. The conclusions sought to be drawn by the Full Bench in similar set of facts and on the same points for consideration are different from those in the decision of the Apex Court in Savalaram's case. Being so, the law laid down by the Apex Court in Savalaram's *Gotiram Teli v. Madhukar Yeshwant Patankar* is binding on this Court and any decision of this Court in conflict with the decision of the Apex Court on the same point of law cannot have the effect of overriding the said decision of the Apex Court.

23. At this stage, it will not be out of place to take note of various decisions of the Apex Court on the point of law of precedent of ratio decidendi and what could be a binding decision. In the matter of *Arnit Das Vs. State of Bihar*, , the Apex Court has ruled that a decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not ratio decidendi. Likewise in the matter of *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, , it was held that a decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141 of the Constitution of India. In *Balraj Taneja and Another Vs. Sunil Madan and Another*, , it was held by the Apex Court that a judgment means the process of reasoning by which the Judge decides the case. It should disclose the whole process of reasoning otherwise it suffers from infirmity. In the matter of *Subhash Chandra Choubey and Others Vs. State of Bihar and Others*, , the Apex Court condemning the method of passing orders without assigning the reasons in support of its

conclusion, has observed that "Necessity to give reasons which disclose proper appreciation of the problem posed before the Court needs no emphasising. Apart from informing the aggrieved party to the proceedings of the reasons, which it may be able to demonstrate in the higher forum as erroneous or irrelevant, it also enables the higher forum to test the correctness of those reasons when the same are put in issue before the higher forum". Again in the matter of Mukhtiar Singh and another Vs. State of Punjab, , it was held by the Apex Court that a decision does not merely mean the conclusion but it embraces within its fold the reasons which form the basis for arriving at the conclusions. It is not that every word and every sentence in a ruling of a Judge can be construed as a binding precedent. It is the enunciation of the reason or the principle on which the question before the Court has been decided is alone binding as a precedent as has been held by the Apex Court in Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, . In order to find out the ratio of a decision, it is necessary to ascertain firstly, the findings of the material facts, direct or inferential and, secondly, the statement of principle of law applicable to the legal problems disclosed by the facts of the case and then the judgment based on the combined effect of both these aspects. The Apex Court has further observed in Dhanwanti Devi's case that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expression which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found and that a deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent. Further, the Apex Court, in Municipal Corporation of Delhi Vs. Gurnam Kaur, has held that the decision should be treated as given per incuriam when it is given in ignorance of a term of statute or of a rule having force of statute. The rule of per incuriam can be applied where a Court omits to consider a binding precedent of the same Court or the superior Court rendered on the same issue or where a Court omits to consider any statute while deciding that issue and in that regard, the law laid down by the Apex Court is very clear considering the decision in the matter of Government of Andhra Pradesh and Another Vs. B. Satyanarayana Rao (Dead) by Lrs. and Others, .

24. While deciding the matter in Savalaram's case, the Apex Court has approved the decision of the Division Bench of this Court in the matter of Pandharinath Sakharam Chavan v. Bhagwan Ramu Kate, reported in 1979 B.C.R. 533 : 1979 M.L.J. 337. While considering the issue as to whether the heirs of the deceased tenant are entitled to the benefit of sub-section (1-B) of section 32 of the said Act, the Division Bench had analysed the scope of section 32(1-B) in detail and observed thus:

"The legislature introduced section 32(1-A) by Bombay Act No. 63 of 1958 which provides that where a tenant on account of his eviction from the land by the landlord before the 1st day of April, 1957 is not in possession of the land on the said date but had made or makes an application for possession of the land under

sub-section (1) of section 29 within the period specified in that sub-section, then if the application is allowed by the mamlatdar, or as the case may be, in appeal by the Collector or in revision by the Maharashtra Revenue Tribunal, he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed. The legislature also appears to have realised that notwithstanding the provisions of sub-section (1-A) there were several tenants who for obvious reasons could not or did not avail of the beneficial provisions of sub-section (1-A) by making an application u/s 29 within the prescribed period. It was precisely with a view to benefit such class of ignorant, docile, gullible and unfortunate tenants that, sub-section (1-B) was enacted and special care was taken to empower the Tahsildar to act under the sub-section either suo motu or on the application of the tenant by Maharashtra Act No. 49 of 1969.

..... Close examination of this sub-section (1-B) of section 32, would show that it seeks to ensure the right of statutory purchase of such tenants also, who were dispossessed before 1st April, 1957 "otherwise than in the manner and by an order of Tahsildar as provided in section 29", and were unable to avail of it because of their such dispossession, on condition that they cultivate the land so restored personally, and their total holdings do not exceed one ceiling area. Notwithstanding the tenants being out of possession, during the period from August, 1955 till 17-9-1969 when this sub-section (1-B) is introduced in the Act, they are referred to in this sub-section advisedly as the "tenant", and provisions of sections 32-A to 32-R are made applicable to them on such restoration of possession, as if they continued to be such tenants. It not only restores the lost remedy to the tenant of getting back possession through tahsildar, but also authorises the Tahsildar to take action suo motu to that effect, notwithstanding the provisions of section 29 of the Act. This non obstante clause has two-fold plain implications. In the first place, it makes section 29 inapplicable to the claim of the class of the tenants covered under this sub-section and removes the hurdle of limitation from the way of such restoration of the land to them. In the second place, it also consequently wipes out the effect of the inaction of the tenants in not seeking possession within the period of two years prescribed thereunder. This indeed must follow, once section 29 ceases to have any application to them retrospectively. When any period ceases to be prescribed for such possession on the application of section 29, question of extinction of the rights involved in the property also cannot arise. We have already indicated how sub-section (1-B) is based on the legislative fiction of the continued subsistence of the tenant's tenancy notwithstanding his being out of possession beyond the period within which he could have claimed restoration thereof. Section 29 is expressly made inapplicable to facilitate such statutory fiction. Once the provisions of section 29 of the Act have got to be ignored as we have pointed out earlier, it would appear that the right of a tenant is a subsisting right and since it is a subsisting right, we find no difficulty

in the heirs of the tenant being able to press into their service the provisions of section 40 of the Act and take the advantage of section 32(1-B). Expiry of 12 years from the date of dispossession would not operate against heirs for the same reason for which it cannot operate against the tenant himself. We have thus no hesitation in holding that the heirs of any tenant dying during the period are as much entitled to rights under sub-section (1-B) as the deceased tenant himself."

25. In brief, the provisions contained in section 32(1-B) are independent of section 29 of the said Act and are not subject to the proceedings u/s 29 of the said Act. Therefore, merely because the petitioners had failed to exhaust the remedy u/s 29, it would not bar the proceedings or the remedy u/s 32(1-B) of the said Act to the petitioners.

26. There is no doubt that the expression "successor-in-interest" would normally include all the persons enjoying interest in the land on the date of transfer of the ownership by the original owner. However, the said expression has been specifically defined in the explanation clause of the said section to mean that it relates to two types of persons namely those who acquire the interest by testamentary disposition and the others by way of inheritance. In that regard, the learned Single Judge of this Court in the matter of Balu Shripati Patil and another v. Bandu Tatoba Chinchwade and another, reported in 1981 M.L.J. 685 has observed thus:

"Now the words "successor-in-interest" as pointed out have been explained in the explanation of this section. It will be seen from this explanation that contrary to the normal connotation of the expression "successor-in-interest" it has been given a restrictive meaning for the purpose of section 32(1-B). A "successor-in-interest" of a person would also mean a person upon whom the interest, right and title of the person concerned has devolved by any means, namely by succession, testacy or act of parties. The restricted meaning given to the expression in the explanation however leaves out those persons upon whom the interest devolves by act of parties. The only persons who are recognised as successors-in-interest of the landlord are persons "who acquire the interest by testamentary disposition or devolution on death". In other words, it is only the person who succeeds under the personal law by inheritance or by reason of testamentary succession to the property of the landlord, who is sought to be included in the definition "successors-in-interest". This indicates that the section was intended by the legislature to apply in accordance with the terms and language of this section in a restrictive manner, at least, so far as the "successors-in-interest" of the landlord were concerned."

27. The concept of "successors-in-interest" under explanation clause of section 32(1-B) was further explained by the Division Bench of this Court in the matter of Bajirao Maruti Dhumal v. Shankar Yalleppa Mane, reported in 1987 M.L.J. 149. While holding that so long as the right to claim possession remains with the landlord, it has to be held that he is in possession of the land within the meaning

of the sub-section and ruled thus:

"(1) The decision in *Bapu Sripati v. Bandu Tatoba*, 1981 M.L.J. 685 does not correctly construe the word "possession" in section 32(1-B) of the Act. Where the ownership of the land continues to vest in the landlord, he is deemed to be in possession of the land for the purposes of the said section. It is immaterial whether he is in actual or constructive possession.

(2) The Explanation defines "landlord" and not "transferee" from the landlord. It does not restrict the definition of "landlord" but widens it to include his successor-in-interest by testamentary disposition or by devolution. The possession of all transferees from the landlord or his successor-in-interest as defined there where the landlord or his successor-in-interest is not divested of his ownership is therefore the possession of the landlord himself."

In other words, till and until the landlord retains the right to claim possession of the land, irrespective of the fact whether the landlord may not be in actual possession but in constructive possession thereof on 31st July, 1969, then the tenant would be entitled for restoration of the land from which he was dispossessed considering the provisions contained in section 32(1-B) of the said Act. Undisputedly, in the case in hand, the land ceased to be in possession of the landlord as well as the landlord did not have right to claim possession of the suit land on 31st July, 1969 since the ownership thereof along with possession was transferred in favour of Sayabai, the predecessor of the respondents on 29th October, 1956. Being so, the respondents cannot be considered as the successor-in-interest of the landlord of the petitioners or petitioners father.

28. In the result, therefore, though no fault can be found with the proceedings initiated by the petitioners u/s 32(1-B) of the said Act and it cannot be said that they were not maintainable, at the same time, no fault can be found with the impugned order denying the relief to the petitioners as the land in question was not in possession of the landlord or the successor-in-interest of the landlord on 31st July, 1969, which is the pre-requirement for the grant of relief of restoration of the land to the tenant u/s 32(1-B) of the said Act.

29. In the result, therefore, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.