

(1997) 07 BOM CK 0117

In the Bombay High Court

Case No : Writ Petition No. 3186 of 1988

Shri Babu Parasu Kaikadi since deceased through his legal
heirs and representatives and others

APPELLANT

Vs

Babu Alias Shivling Mahadeo Jangam

RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands (Amendment) Act, 1958 — Section 32(1B)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 19, 20, 23, 29(1)
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 2
Constitution of India, 1950 — Article 227

Citation : (1998) 3 ALLMR 819 : (1998) 2 BomCR 673 : (1998) 3 MhLj 19

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : A.V. Bandiwadekar, for the Appellant; S.G. Page, for the Respondent

Judgement

F.I. Rebello, J.—The petitioner-tenant, now represented by his legal heirs, by this petition impugns the order dated 15-6-1988 passed by the Maharashtra Revenue Tribunal, Pune, which allowed the Revision Application filed by the respondent-landlord.

2. The genesis of the dispute arose when the Aval Karkun commenced an enquiry u/s 88-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the B.T. & A.L. Act). Initially an enquiry was initiated in the year 1960 wherein the statements of the petitioner-tenant and the respondent-landlord were recorded. On recording of the statements the Tenancy Aval Karkun held that the land bearing R.S. No. 372/4, 372/6, 372/8 and 393/2 of village Shenoli were tenanted to Shri Babu Parasu Kaikadi, now represented by his legal heirs in this Court upto the year 1955-56 and that in the year 1956-57 the landlord took unlawful possession without taking an order u/s 29(2) of B.T. & A.L. Act. It has however, also come on record that the said possession was taken mutually. The Aval Karkun thereafter proceeded to hold that the tenant after giving possession had not made any grievance or complaint within the period of

2 years u/s 29(1) of the B.T. & A.L. Act for getting possession of the land and, therefore, even if the transaction had taken place against the provisions of section 84-C of the B.T. & A.L. Act, no action could be taken in the matter and accordingly the case was disposed of by order dated 5th December, 1960.

The B.T & A.L. Act, 1958 came to be amended by Maharashtra Act 49 of 1969 which came into force from 17th October, 1969. By virtue of the said Act, sub-section (1-B) was introduced in section 32. The salient features of the said amendment are as under :---

"1. A tenant who was in possession on 15-6-1955.

2. Was evicted otherwise than by an order of the Mamlatdar, before 1-4-1957.

3. The landlord is in possession of the land or his successor in interest which includes person who acquire interest by testamentary disposition or devolution on death as and on 31st July, 1969; and

4. The land is not put to a non-agricultural use before 31-7-1969."

the tenant could move the Competent Authority for resumption.

3. Subsequent to the said amendment the Tahsildar once again initiated suo motu proceedings for restoration of the suit lands which case was numbered as Case No. Shenoli/32/1-B-28/71. The second round of litigation thus commenced with the said suo motu initiation of proceedings by the Competent Authority. Initially the Tahsildar held that the landlord was not in possession of the suit lands on 31st July, 1969 and consequently by order dated 1st March, 1979 dropped the enquiry. The petitioner-tenant preferred an appeal being Tenancy Appeal No. 89 of 1973 u/s 74 of the B.T. & A.L. Act. The S.D.O., Satara by order dated 5th February, 1974 held that though the landlord had claimed that he was not in possession based on an unregistered Agreement of conditional sale, it could not be said that the landlord had lost possession. As the Tahsildar had not decided the said issue the matter was remanded to enable the landlord to prove the agreement dated 6th January, 1967 pursuant to which according to the landlord he had put one Shri Bajarang Maruti Kanse in possession of the land. The petitioner aggrieved by the said order preferred a revision application which was dismissed and the order dated 25th March, 1977 of remand was confirmed. On remand the Tahsildar held an enquiry. The petitioner tenant examined himself. The landlord-respondent choose not to step into the witness box nor was Shri Kanase examined by the landlord-respondent. On consideration of the material the Tahsildar dropped the proceedings on the ground that there was nothing on record to establish that the respondent-landlord was in possession of the land on 31st July, 1969. The petitioner aggrieved by the said order preferred an appeal before the S.D.O., Satara, which was numbered as Tenancy Appeal No. 62 of 1984.

The S.D.O., Satara, on consideration of the material gave the following findings:-

Held that the tenant was in possession on 15-6-1954, and was evicted otherwise than by order of the Mamlatdar before 1-4-1957 and further the land had not been put to non-agricultural use on or before 31-7-1969. In respect of the contention that the landlord was not in possession of the land on 31-7-1969, on a consideration of the material which included the evidence of the tenant, the 7 x 12 extract of the land of the years 1968-69 and 1969-70 which showed the landlord as being in possession and the failure by the landlord to step into the witness box as also the failure to examine Shri Bajrang Maruti Kanse the alleged purchaser the Appellate Authority arrived at a conclusion that the landlord was in possession and consequently allowed the appeal and set aside the order of the Lower Court.

4. The landlord-respondent aggrieved by the said order preferred a revision application before the Maharashtra Revenue Tribunal, which was numbered as No. MRT/NS-I/7-88. The revisional authority i.e. the tribunal on the consideration of the material held that the trial Court had examined the matter in depth. The tribunal observed that the trial Court could examine the credibility of the witness examined before him and as such the Appellate Court ought not to have interfered with the order of the trial Court unless the evidence accepted by the Court of first instance is contradictory or is improper as to be unbelievable or is for other sufficient reasons unworthy of acceptance. In that view of the matter, the Revisional Court came to the conclusion that the S.D.O. was not justified in reversing the finding of the trial Court. The Revisional Court further held that the landlord had produced Salhekhath which showed that an amount of Rs. 4,500/- was paid by Shri Bajarang Maruti Kanse to the landlord out of the total consideration of Rs. 7,000/-. (The said document has not been produced). The Revisional Court therefore, held that the trial Court was right in holding that the landlord was not in possession and consequently reversed the order of the Appellate Court.

5. The learned Counsel for the petitioners contends that the order of the Revisional Court reversing the findings given by the Appellate Court is perverse. He then contends that once the said findings are reversed and the findings of the Appellate Court are accepted the case of the petitioners squarely falls within the predicates of section 31(1)(b) of the B.T. & A.L. Act, 1948. He contends that the surrender by the tenant-petitioner was not as contemplated or as required by the Act and consequently the said surrender was null and void. He, therefore, contends that if the surrender was null and void on the date when the Amendment Act came into force, the Tahsildar in law was justified in suo motu initiating the proceedings. The learned Counsel has relied upon several judgments. Suffice it to say that the judgments referred to hereafter only will be dealt with as they are relevant for the purpose of deciding the issue in controversy. In the first instance reliance was placed on the judgment of the Full Bench of this Court in the case of Laxmanrao Anantrao Sardekar v. Bapu Satyappa Pawar, reported in 1988 (1) B.C.R. 259; 1988 M LJ 359 to hold that till the surrender is verified by the Mamlatdar u/s 15(1) of the Act and Rule 9 of the

Rules framed thereunder there is no surrender in the eyes of law. He also relied on the judgment of the Division Bench of this Court in the case of Pandharinath Sakharam Chavan v. Bhagwan Ramu Kate and others, reported in 1979 Mah. Law Journal, 337 for the proposition that though the tenant had not moved an application for recovery within the time as specified u/s 29 of the B.T. & A.L. Act the tenancy continues and on section 32(1-B) having come into force the tenant could move an application for recovery of possession. The learned Counsel thereafter relies on the judgment of the Apex Court in the case of Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, which judgment has been considered by the Full Bench of this Court to hold that a surrender to be valid must comply with the mandatory requirements of section 5(3)(b) of the Tenancy Act which was in force before enactment of B.T. & A.L. Act of 1948. Counsel also relies on the judgment of the Apex Court in the case of Bhagwant Pundalik and Another Vs. Kishan Ganpat Bharaskal and Others, for the proposition that any possession obtained without the consent of the tenant and without the order of the Tahasildar is not valid in the eye of law. He lastly relies on the Statement of Objects and Reasons for introduction of section 32(1-B).

6. On the other hand learned Counsel for the respondent contends that the matter is no longer res integra. According to the learned Counsel the very issue which is in issue before this Court came up for consideration before the Apex Court in the case of Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal, 1994 MLJ 1284. The learned Counsel contends that in the said judgment the Apex Court has held that dispossession referred to in section 32(1-B) would not include giving possession voluntarily or by surrender. In the instant case Counsel points out that from the documents on record and more particularly the order of the Tahsildar dated 5th December, 1960 it is clear that the petitioner tenant had voluntarily surrendered his tenancy. The Counsel, therefore, contends that on this count itself the petition should be rejected. Counsel further contends that considering the scheme of the Act, the suo motu consideration by the Tahsildar in the year 1960 and the consequent dropping of the proceedings on the ground that the petitioner had not moved u/s 29 should stand against the petitioner and this Court in the exercise of its extra ordinary jurisdiction under Article 227 of the Constitution should not interfere on the facts of this case. Lastly the learned Counsel for the respondent contends that at any rate the reasons given by the Revisional Court in reversing the findings of the Appellate Court regarding possession of the landlord did not warrant any interference by this Court. He, therefore, contends that the petition should be dismissed.

7. Considering the above submissions the matter will have to be judged bearing in mind that the Apex Court has considered section 32(1-B). Though there is a dissenting judgment, nevertheless the majority judgment has considered the scope and effect of section 32(1-B) and interpreted the same. The judgment will be reverted to later on after dealing with the submissions of the Counsel for the petitioners.

8. The first question that needs consideration is whether the surrender by the petitioner which is admitted as can be seen from the order dated 5th December, 1960 and the statement of the petitioner himself, is legal and valid in the eyes of law. The objects and reasons Clause to section 32(1-B) reads as under :---

"It has come to the notice of Government that a number of tenants in the Bombay area and the Vidarbha region of the State, failed to acquire ownership right in the lands held by them on account of their being dispossessed from the land otherwise than in the manner laid down in the relevant tenancy law. It is, therefore, expedient to amend the tenancy law in force in these regions for safeguarding the interest of these dispossessed tenants."

The objects and reasons clause was also considered by the Division Bench in the case of Pandharinath Sakharam Chavan (supra). The Division Bench therein observed that though section 29 was included in the Act many tenants could not, for various reasons, avail of the right conferred upon them to resume possession. In paragraph 16 the Division Bench noted that the legislature introduced section 32(1-A) by Bombay Act 63 of 1958 which provided 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, he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed. It is thereafter noted that in spite of this provision certain tenants could not avail of the benefits and, therefore, 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 and 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.

The Division Bench thereafter noted as under :---

"We have already indicated how sub-section (1-B) is based on the legislative fiction of the continued subsistence of the tenants'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. We have also discussed how the wording of this section referring to him as "tenant", and applying sections 32-A to 32-R to him on restoration of possession, itself implies legislative declaration of such continued subsistence. With respect, the learned Judge does not appear to us to be right in assuming that the tenant's tenancy was not subsisting at the time of his death and on that basis further holding that heirs could not inherit the same."

In other words what the Division Bench was pleased to lay down is that even if a tenant is out of possession having lost possession contrary to the provisions of the Act even in that case it could not be said that the tenancy no longer subsists. All that could happen was that he had no remedy by way of law for restoration or resumption of possession.

9. The question as to what happens when a tenant, who has been dispossessed otherwise than in the manner prescribed by the provisions of B.T. & A.L. Act 67 of 1948 came up for consideration before the Apex Court in the case of Ramchandra Keshav Adke (supra). The Apex Court on a combined reading of section 5(3)(b) (Act of 1939) read with Rule 2-A of the Rules held as under :--

"A surrender of tenancy by a tenant in order to be valid and effective must fulfill the following requirements:--

1. It must be in writing;
2. It must be verified before the Mamlatdar.
3. While making such verification the Mamlatdar must satisfy himself in regard to two things, namely;
 - (a) that the tenant understands the nature and consequences of the surrender, and
 - (b) that it is voluntary,
4. The Mamlatdar must endorse his finding as to such satisfaction upon the document of surrender.

This judgment was relied on by the Full Bench of this Court in the case of Laxmanrao Anantrao Stardekar v. Bapu Satyappa Pawar (supra), which was a case under the Bombay Tenancy and Agricultural Lands Act (67 of 1948) and Bombay Tenancy & Agricultural Lands Rules, 1956 (Rule 9). The Full Bench of this Court considered section 5(3) as contained in the Tenancy Act of 1939 and the corresponding provisions of the Act of 1948. The Full Bench held that the language of the present section 15(1) and of Rule 9 is *pari materia* with section 5(3)(b) and Rule 2-A and consequently the observations of the Apex Court would apply with equal vigour to the surrender of tenancy under the present provisions. The Full Bench observed as under-

"In view of the provisions of section 15(1) and Rule 9 in the light of the decision of the Supreme Court, the position of law which emerges is that till the surrender is verified by the Mamlatdar in the manner laid down by the provisions, there is no surrender in the eyes of law. Any act done prior to verification of the surrender does not amount to surrender. The surrender starts taking effect only from the date it is verified and not from any time there before. That being the case, there is no question of surrender of tenancy taking effect from any date prior to the date of its verification by the Mamlatdar."

In other words what the Full Bench observed is that for a surrender to be valid and effective it must be a surrender before the Mamlatdar and becomes effective on its verification.

The Apex Court in another matter though under the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act had to construe sections 36 and 20 of the said Act. Section 20 of the said Act reads as under :---

"A tenant may terminate the tenancy at any time by surrendering his interest as a tenant in favour of the landlord:

Provided that, such surrender shall be in writing and shall be verified before the Tahsildar in the prescribed manner."

The relevant portion ins section 15 of the B.T. & A.L. Act of 1948 reads as under:--

"15(1). A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlords:

Provided that such surrender shall be in writing, and verified before the Mamlatdar in the prescribed manner."

The other relevant provision of the B.T. & A.L. (Vidarbha Region) Act which was considered was section 36. The relevant portion is reproduced as under :--

"36(1) A tenant.....entitled to possession of any land..under any of the provisions of this Act or as a result of eviction in contravention of sub-section (2) may apply in writing for such possession to the Tahsildar.

(2) no landlord shall obtain possession of land held by a tenant except under an order of the Tahasildar. For obtaining such order he shall make an application in the prescribed form and within a period of 2 years from the date on which the right to obtain possession of the land dwelling house or site, as the case may be is deemed to have accrued to him."

The corresponding provisions under the B.T. & A.L. Act, 1948 namely section 29 reads as under:---

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

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

deemed to have accrued to him."

Before the Apex Court it was sought to be contended that what section 36(2) contemplates is only in the event a tenant was dispossessed by fraud, coercion or misrepresentation and not the case of a tenant who had voluntarily parted with possession of the land. The three Judge bench of the Apex Court hearing the matter dealt with the said contention as under :--

"Counsel for the appellant contended that section 36(2) does not commence with the expression "Notwithstanding any agreement, usage, decree or order of a Court of law" as section 19 of the Act does, and on that account it may reasonably be inferred that the Legislature intended that only those tenants shall be deemed entitled to possession within the meaning of section 36(1) who were dispossessed by fraud, coercion or misrepresentation and not tenant who had voluntarily parted with possession of the lands. We are unable to agree with that contention. Section 19 provides that notwithstanding any agreement, usage, decree or order of a Court of law tenancy of any land held by a tenant shall not be terminated except in the cases specified therein. Thereby it was intended to make the provisions of section 19 paramount. In section 20 of the Act which deals with surrender it is expressly enacted that surrender shall be in writing and shall be verified in the prescribed manner. Surrender of tenancy which does not comply with the requirements of section 20 is ineffective. Again, sub-section (2) of section 36 imposes a disability upon the landlord from obtaining possession of any land occupied by a tenant except under an order of the Tahsildar. The terms of sub-section (2) of section 36 are explicit, they are not subject to any implication that possession obtained with the consent of the tenant, but without an order of the Tahsildar is valid."

From these observations of the Apex Court it is clear that any tenancy which was surrendered and which surrender does not comply with the requirements of section 36(2) is ineffective and no surrender in the eyes of law. Such possession of the landlord contrary to the express provisions of law would, therefore, be unlawful.

10. If one looks at the language of sub-section (3) of section 29 of the B.T. & A.L., Act, 1948 it is clear therein that on receipt of an application under sub-section (1) or (2) the Mamlatdar shall after holding an enquiry, pass such order thereon as he deems fit. This section read with section 15 makes it clear that a tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord. The proviso makes it clear that such surrender shall be in writing and verified before the Mamlatdar in the prescribed manner. What is further clear is that on an application being made it is not as if the Authority is bound to agree to such surrender of tenancy. There are limitations contained in the section itself. These limitations have already been explained in the judgment of the Apex Court in the case of Ramchandra Keshav Adke (supra). Thus a reading of all the sections would show that any surrender of tenancy which is not in conformity with the provisions of section 29 and 36 of

the B.T. & A.L. Act is non est and the tenancy will subsist in the tenant. A tenant could have in such cases initially applied for possession u/s 29 within two years of dispossession. Once the said period of limitation has expired the remedy would be barred, but the right would not be extinguished. The Legislature considering these aspects of the matter introduced section 31(B), the object of which have already been set out in the earlier part of the judgment. The objects and reasons clause as shown earlier were considered by the Division Bench of this Court in the case of Pandharinath Sakharam Chavan (supra).

11. Counsel for the respondent, however, contends that in view of the judgment of the Apex Court which has interpreted section 32(1-B) of the B.T. & A.L. Act (67 of 1948) the Court is bound by the law laid down by the Apex Court and reference to any other cognate Act or provisions therein which have nothing to do with the interpretation of section 32(1-B) are of no consequences. In the case of Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal, reported in 1994 MLJ 1284, (Ramaswami, J., dissenting) by majority, answered two questions which were raised and which questions are (1) whether the High Court was right in law in negating the claim of the appellant u/s 32(1-B) and (2) whether the tribunal in setting aside the finding of collusion in revision exceeded its jurisdiction. The second question need not detain us. What is clear from this is that section 32(1-B) clearly came up for consideration before the Apex Court. The facts of that case were that the appellant was defendant No. 2 before the trial Court claimed to be a tenant. The respondent No. 1 claimed to be the original owner and respondent No. 2 thereafter claimed to have interest in the land. The authorities below held that the appellant was a tenant in 1949, but had surrendered the tenancy at the time of mortgage which transaction is dated June, 23, 1952 and thereafter the appellant was the tenant between 1952 and 1968 of the original defendant No. 2. When the matter came up before the High Court, the High Court gave a finding that the tenant was not in possession from 1956-57 till 1968-69 and that as the appellant did not move any application within two years u/s 29 of the Act his remedy of recovery of possession was barred by limitation. In this background the question posed was whether the tenant who surrendered the tenancy can be said to have been dispossessed so as to claim benefits u/s 32(1-B) of the Act. The majority judgment held as under :-

"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". The appellant, on the finding of the High Court, therefore, was not dispossessed. Even if the surrender was not valid as found by the Tribunal then the appellant shall be deemed to have left

possession voluntarily. In either case it was not dispossession. The appellant, therefore, did not satisfy the second requirement. Consequently, he did not become purchaser of the land u/s 32(1-B) of the Act."

12. On the facts of this case as has already been set out the petitioner had satisfied all the requirements as contained in section 32(1-B). The question that remains to be considered is considering what is on record that the surrender was voluntary, but without complying with the requirement of section 15 or 29, will the ratio of the judgment of the Apex Court, apply.

13. The learned Counsel for the respondents contends that the Apex Court has not considered the provisions of sections 15 and 29 as also its own interpretation in the matter of surrender of tenancy. Even otherwise the learned Counsel contends that once the Apex Court had held that the surrender was in accordance with law the question of interpreting section 32(1-B) could not arise. In that context he submits that it cannot be said that the said matter was in issue and consequently since that matter was not directly in issue, it would not constitute the ratio of that judgment. Reliance was sought on the judgment of the Apex Court in the case of B. Shama Rao Vs. The Union Territory of Pondicherry, .

Counsel invites my attention to the definition of the expression "to hold land" in sub-section (6-C) of section 2 of the Act. The said sub-section reads as under :--

"(6-C) "to hold land" as an owner or tenant shall, for the purposes of Clause (2-D) of this section and section 32(1-B), 32-A, 32-B, and 63), mean to be lawfully in actual possession of land as an owner or tenant, as the case may be."

He then points out that holding of such land means to be lawfully in actual possession of the land as an owner or tenant. It is contended that a landlord who is in possession of land in consideration of section 15 or 29 cannot be said to be lawfully holding land and as such such possession can only be construed as dispossession of the tenant by the landlord and as such the provisions of section 32(1-B) are attracted. He then points out that for attracting section 32(1-B) all that is required is that the tenant was in possession on the appointed day which is 15-6-1965 and must have been dispossessed before 1-4-1957 other than in a manner and by an order of Tahsildar as provided in section 23. It is, therefore contended that any act of possession by the landlord or recovery of possession from the tenant in any manner contrary to the provisions of section 29 would attract section 32(1-B). It is pointed out that even in the B.T. & A.L. Act of 1939 landlord could not obtain possession in terms of section 5 of the Act and hence the question of tenant voluntarily surrendering possession or leaving possession would not arise as possession by a tenant protected under law could not be by the procedure laid down under the Act and a landlord could not obtain possession from a tenant by a private Act, contrary to the provisions of the Act. Any such act of possession it is contended will amount to dispossession.

He also drew my attention to the judgment of the Apex Court in the case of

Amrit Bhikaji Kale and Others Vs. Kashinath Janardhan and Another, . In that case a tenant who was in possession on 1-4-1957 could not exercise his right of purchase as the Authorities proceeded on the footing that the landlord was a minor and that the date of purchase had been postponed. During this period the landlord initiated proceedings for eviction of the tenant on the ground of default in payment of rent. The Aval Karkun allowed the application and also recorded a statement of the tenant. The tenant in his statement set out that he had become old and was unable to cultivate the land and he was willing to hand over possession. The tenant was evicted and in fact the landlord sold the land by registered sale deed. When the matter went upto the Apex Court the Apex Court held that on the appointed date the landlord was not minor landlord but his predecessor in title who was a major and consequently the tenant had become a deemed purchaser. It was, however, contended that as the tenant himself wanted to hand over possession he should be estopped from contending otherwise. The Apex Court in the said judgment thereafter observed as under:--

"We are not unaware of the landed gentry exercising such influence over the tenants that in the absence of legal literacy they may make any statement contrary to their legally protected interest. A measure of agrarian reform cannot be permitted to be defeated by such devious means of the landlords."

This paragraph has been cited to show that the legislature in enacting section 32(1-B) was also aware of the fact that the tenants were being dispossessed without knowing what they were doing and in this context any dispossession contrary to the provisions of Act should attract the provisions of section 32(1-B).

14. It is true that while considering the issue of section 32(1-B), sections 2(6-C), 15 and 29 have not been considered by the Apex Court nor was the Objects and Reasons clause seems to have placed before it. However, the question was framed on the interpretation of section 32(1-B) and has been so answered. Once the question was framed for consideration and has been answered it cannot be said that the said question was not in issue and that the said reasoning would not constitute its ratio. I cannot accept the contentions of the learned Counsel. The matter was squarely in issue and the Apex Court has so answered it.

15. However, considering the fact that the Apex Court in the case of Ramchandra Keshav Adke (supra) has held that surrender of tenancy which does not comply with the requirement of the provisions of the Act is non est and considering the judgment of the Apex Court in the case of Bhagwant Pundlik, etc., where on the strength of a similar language of the Bombay Tenancy & Agricultural Lands (Vidarbha Region) Act, a Bench of three Judges had negated a similar contention in the matter of interpretation of section 36 that such injunction should be restricted to only to those cases of fraud, coercion and misrepresentation, this would be a fit and proper case where Special Leave should be granted to the petitioners.

16. In the result, the writ petition is dismissed. Special Leave granted.

17. The above order of this Court is stayed for a period of 12 weeks and it is made clear that during this period the possession of the petitioners shall not be disturbed.

18. In the circumstances of the case there shall be no order as to costs.

Certified copy expedited.

19. Petition dismissed.