
(1975) 03 BOM CK 0015

In the Bombay High Court

Case No : Special Civil Application No. 505 of 1972

Sitaram Deoba Maratha

APPELLANT

Vs

Hawadva Piraji Naobudha and Others

RESPONDENT

Date of Decision : 04-03-1975

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 36(1), 49

Citation : AIR 1976 Bom 1 : (1975) MhLj 521

Hon'ble Judges : Shimpi, J;Deshmukh, J

Bench : Division Bench

Advocate : S.N. Kherdekar, for the Appellant; W.N. Pimparkar, for the Respondent

Judgement

Deshmukh, J.—This writ petition arising out of the proceedings under the Bombay Tenancy and Agricultural Lands (Vidarbha Region) act, 1958 (hereinafter referred to as the Vidarbha Tenancy Act) had been referred by a (Masodkar. J.) to a Division Bench as the learned Judge found that there was a conflict of decisions between his own earlier judgment in Special Civil Application No. 14 of 1971 (Bom). Madhukar v. Gajanan, decided on August 2 , 1973 and a judgment delivered by another learned Single Judge of this court (Padhve.J) in special civil Application No. 452 of 1971 (Bom). Dattatrava v. Rama decided on September 11. 1974.

2. Having heard the learned counsel on both sides and after going through the provisions of the Vidarbha Tenancy Act and the judgments of the Supreme court as also the Division Bench of this Court, directly and indirectly dealing with these provisions or similar provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Bombay Tenancy Act). We are satisfied that the reference need not have been made. This is litigation which has commenced with an application under S. 36 (1) of the Vidarbha Tenancy Act by the respondent need not have been made. This is a litigation which has

commenced with an application under S. 36(1) of the Vidarbha Tenancy Act by the respondent No. 1 Hawdya, who called himself a tenant of the land in question. The facts alleged and which are found by the Naib Tehsildar are that Howdva, respondent No.1 was the tenant of survey No. 4/3 measuring 5 acres 10 gunthas of mouza Dapori, Tahsil Washim, district Akola and was in physical possession as such till December of 1963. Even while respondent No.1 was the tenant in possession the respondents Nos. 2 and 3, the original owners of the land and the landlords of respondent No.1, made an agreement of sale in respect of this land dated June 26, 1962. The sale was actually effected in favour of the present petitioner Sitaram on January 16, 1963. The present petitioner before us in this writ petitions the purchaser from the original landlords who are respondents 2 and 3 and who is contesting the litigation against the respondent No.1, the former tenant of this land.

3. The respondent No.1 alleged before the Naib Tahsildar that he was in possession till December , 1963 when he was forcibly dispossessed. He, therefore, filed an application u/s 12(c) of the Vidarbha Tenancy Act for possession by summary eviction of the persons in possession. This was, Revenue Case No. 11/59 of 1965-66. This case was decided and the application of the respondent No. 1 was dismissed on the short ground that the respondent No. 1's status as a tenant was in dispute and it was not possible for the Collector under that section to decide that dispute. The remedy for a tenant was one u/s 36 and not u/s 120(c). The application then came to be rejected. The respondent No.1 was perhaps conscious of the opposition he was going to meet and filed the proceedings leading to the present petition on September 7, 1956 for possession u/s 26(1) by joining the present petitioner and respondents Nos. 2 and 3 as party opponents. The defence taken up was that the respondent No. 1 was never a tenant but was partner in cultivation in the year 1959-60. The further defence was that the application was barred by the time as the respondent No. 1 was not in possession at all since after 1959-60. The Naib Tahsildar by his order dated 21st July 1970 held that the respondent No. 1 was a tenant of the land and was in possession in the year 1963-64 and that the application filed on 7-9-1966 was within three years which was the limitation provided by Section 36(1) of the Vidarbha Tenancy Act. The Naib Tahsildar somehow assumed that the sale has taken place May 4, 1964, through as a matter of fact, it had taken place on January 16, 1963.

4. The present petitioner and respondents 2 and 3 carried an appeal against that order but it was dismissed by the Sub-Divisional Officer by his order dated 26th April 1971. He confirmed all the findings of the Naib Tahsildar. A revision application before the Maharashtra Revenue Tribunal by all of them also failed. Being aggrieved , the purchaser has filed the present writ petition.

5. Before the learned Single Judge, four points were raised by Mr. Kherdekar, the counsel for the petitioner. The first point was that the order u/s 120(c) refusing to entertain that application, amounts to res judicata and the application by the

respondent No. 1 before the Naib Tahsildar was not maintainable. The second point raised was that the findings regarding the tenancy of the respondent No. 1 are perverse and are not supported by the record. The third point was that the respondent No.1's application before the Naib Tahsildar filed in September 1966 was hopelessly barred by time as respondent No. 1 was not in possession at all after 1959-60. The fourth point raised, and mainly led to the present reference was that, assuming that the findings in favour of respondent No. 1 are correct, he is at best a person, who was a tenant but on 1st April 1961 or 1st of April 1963 at the most on which date he was statutorily declared as the full-owner of this land. If ownership has now vested in respondent No. 1 by the effect of the law passed by the State, he is no more a tenant of the land. If ownership has now vested in respondent No. 1 by the effect of the law passed by the State, he is no more a tenant of the land at any rate after 1st of April 1963. The remedy of claiming possession u/s 36 (1) of the Vidarbha Tenancy Act is available only to a tenant and which obviously means a tenant on the date he applied as such for possession. Since that could not be the status of the respondent No.1, the present remedy by an application u/s 36(1) of the Vidarbha Tenancy Act was misconceived and ought not to have been entertained. As we have pointed out, it is this point on which the learned Single Judge found some conflict of decisions regarding the judgments of two learned Single Judges and therefore, this reference was made.

6. In the course of arguments before us, the learned counsel for the petitioner Mr. Kherdekar expressly told us that his client does not want to press the first three points, namely that the remedy is barred by res judicata that the findings that the respondent No.1 is a tenant are perverse and that the original application was barred by time. This being so, the arguments were confined only to the last point regarding the nature of remedy available to a person in the position of respondent No. 1. Since the entire petition was referred to us and it is now being confined to the consideration of the point, our decision on that point will dispose of this entire petition.

7. Before we point out how the point raised is expressly covered by the Division Bench judgment of this Court and which judgment relies upon certain observations of the Supreme Court itself arising under the provision of the Bombay Tenancy Act, we might refer to the reference order itself. The learned Judge has taken a contrary view in Special Civil Application No.14 of 1971 (Bom) that the word "tenant" u/s 36(1) has an extended or enlarged meaning and under that enlarged or extended meaning, the tenants who were so up to 1st of April 1963 and who were declared statutorily owners of the property also continued to be tenants for the purpose of availing of the remedy u/s 36(1). The learned Judge points out that he relied upon some observations of the Supreme Court in a certain judgment to which we will refer in due course. Long after that judgment was given by the learned Judge on August 2, 1973, in September 1874, when another Single Judge was considering a similar situation arising in Special Civil Application No.452 of 1971 (Bom) he took the view that a "tenant"

as has been defined by that Act. If by the provisions of certain sections of the Vidarbha Tenancy Act statutory transfer of ownership takes place, which has the effect of not only transferring the title, but vesting it for all practical purposes in ex-tenants, that ex-tenant obviously becomes the owner of the property and is no more a tenant for the purpose of enabling him to resort to the remedy u/s 36(1). In doing so, the learned Single Judge referred to the Division Bench judgment of this Court in Krishna v, Ganpat 1963 Mah L J 44 and the observations of the Supreme Court in Sri Ram Ram Narain Medhi Vs. The State of Bombay, . He also made a pointed reference to the concluding paragraph of the Supreme Court's judgment in Madharao Rajeshwar Deshpande Vs. Shanker Singh and Others, .

8. We find that in the reference order the differing learned Judge does refer to judgment of Mr. Justice Padhve and has also referred to the various authorities including the Division Bench judgment which has already concluded the point. As a matter of the normal judicial discipline of the law of precedents, the Division Bench judgment was binding on the learned Single Judge and even if his personal view taken in an earlier judgment was different, he was bound to follow that judgment. If the learned Judge felt that the Division Bench judgment itself required reconsideration, he should have by a brief order indicated how it required reconsideration and referred the matter to the Division Bench for the purposes of making a further reference to a larger Bench if the Division Bench felt that the view, a reference without any such reasons would not be a proper one and ought not to have been made.

9. Coming to the merits of the matter and the question raised for our consideration, we find that there is hardly any merit in the view taken by the learned Single Judge. The simple question that we are called upon to consider is, "Does a tenant who becomes owner under the provisions of Sections 46(1) and 49-A (1) of the Vidarbha Tenancy Act, either on the 1st of April 1961 or 1st of April 1963 still continues to be a tenant for the purposes of making an application u/s 36(1) of the Vidarbha Tenancy Act, if he is dispossessed after the date of vesting of title in him ?" Going through the provisions which are relevant we find that the definition of the word "tenant" itself as incorporated in C I (32) of Section 2 is that "tenant" means a person who holds land on lease and includes (a) a person who is deemed to be a tenant under Sections 6, 7 or 8 and (b) a person who is a protected lessee or occupancy tenant and the definition proceeds to point out that the word "landlord" shall be constructed accordingly.

10. A mere look at this definition will show that either there is an existing contractual relationship of landlord and tenant or there is the fiction of law converting certain lawful possessions into relationship of landlord and tenant. However, the existence of this relationship either by contract or by statutory construction appears to be a sine qua non of a person becoming a tenant. S. 36(1) says that a tenant or an agricultural labourer or artisan entitled to possession of certain lands or dwelling houses or sites etc, may apply in writing

for such possession to the Tahsildar. The application shall be made in such form as may be prescribed and within a period of 3 years from the date on which the right to obtain possession of the land, dwelling house or site is deemed to have accrued to the tenant, agricultural labourer or artisan, as the case may be. The further sub-section deals with the procedure to be adopted by the Tahsildars and order for possession to be made. Sub-section (2) of Section 36 gives a similar right to the landlord to claim possession from his tenant and without the order of the Tahsildar a landlord is prevented from entering upon the property, and obtaining possession of agricultural land.

11. The two sections which are now relevant and require construction are Sections 46(1) and 49-A (1) of the Vidarbha Tenancy Act. Before that we may point out that S.41 which falls in Chapter III gives a right to the tenant to make offer to the landlord of purchase of land to the extent it is permissible to him purchase under the provisions of the Vidarbha Tenancy Act that follow that section. An elaborate machinery has been provided for determining the price by the Agricultural Lands Tribunal and bringing about an effective sale. However, where this has not become possible, the Legislature stepped in to transfer statutorily ownership of the agricultural lands in tenants on and from 1st of April 1961 by sub-section (1) of S.46. That section is as follows :-

"46(1). Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, decree, contract or grant to the contrary, with effect on and from the first day of April, 1961, the ownership of all lands held by tenants which they are entitled to purchase from their landlords under any of the provisions of this Chapter shall stand transferred to and vest in, such tenants and from such date such tenants shall be deemed to be the full owners of such lands".

The provision that follows is not relevant for our purpose. This is not a case where either a minor, a widow or serving member of the armed forces or a person subject to any physical or mental disability is involved. The plain language of the above quoted sub-section (1) of Section 46 shows that irrespective of any other things, like customs, decrees, contracts etc, with effect from the 1st April 1961 the ownership of all lands held by the tenants which they are entitled to purchase from their landlords under any of the provisions of this Chapter shall stand transferred to, and vest in, such tenants and from such date such tenants shall be deemed to be the full owners of such lands. The Legislature with the intention of emphasising its intention has used three different expressions/ The first is that the ownership of the land "shall stand transferred to". The second expression used is that such tenants shall be "deemed to be the full owners" of such lands. A mere look at this section leaves no doubt in our mind that the intention of the Legislature was clear and an absolute transfer of title in favour of the tenant was intended as from 1st of April 1961

12. When Section 46 (1) was in operation, there was another provision of the Vidarbha Tenancy Act contained in clause (c) of Section 42 which had restricted the operation of transfer of title in respect of certain lands. That protection given

to small holders was also intended to be revoked. The Legislature, therefore to be revoked. The Legislature, therefore, amended the Vidarbha Tenancy Act by introducing Section 49-A by the Maharashtra Amending Act No. 2 of 1962. The same Amending Act also deleted the provisions of clause (c) of Section 42 from the Vidarbha Tenancy Act. The result was that even in respect of cases which had some protection under C I. (c) of Section 42, the transfer of title has now to take place on the 1st April. 1963. Section 49-A(1) is as follows:-

"49-A (1) Notwithstanding anything contained in Section 41 or 46, or any custom, usage, decree contract or grant to the contrary but subject to the provisions of this section, on and from the 1st day of April 1963 the ownership of all land held by a tenant (being land which is not transferred to the tenant u/s 46 or which is not purchased by him u/s 41 or 50) shall stand transferred to and vest in, such tenant who shall, from the date aforesaid, be deemed to be the full owner of such land, If such land is cultivated by him personally....."

We have deliberately quoted these sections to show that the Legislature has repeated the language of section 46(1), which is an indication of their firm intention to transfer title and vest it in the tenant who was in possession on the 1st of April 1963 and to make him full owner on and from that date. The requirement was that not only the juridical relationship of landlord and tenant must be in existence but the tenant was actually cultivating the land personally. Every tenant who was in personal cultivation or was in cultivating possession was declared owner as and from 1st of April 1963 under the provisions of sub-section (1) of section 49-A. Under the earlier section 46 as also under this new added section, a certain procedure is to be thereafter followed. It is not enough to merely declare that the property of A now belongs to B. The price of that land has to be fixed and directions for payment have got to be made. Then again it is not obligatory upon the tenant to purchase the land in spite of the statutory provisions. There may be a tenant will decline to purchase the land. There may be tenants who are willing to purchase and have paid some installments, but are ultimately unable to make up the full price as might be fixed by the Agricultural Lands Tribunal. In other words, the cases where the purchase price is declared and cases where the purchase becomes ineffective in the long run had to be provided for along with a procedure to bring about the fixation of price and the handing over of formal document of title at the end of the procedure prescribed. Those provisions are undoubtedly indicated by the Legislature and are a part of the same Scheme.

13. The question, however, is whether by the provisions of this nature which ultimately fix the price and make it payable either in lump sum or by instalments and with the best of intention the tenant is unable to pay and the sale becomes infructuous is the relationship of landlord and tenant still kept alive by the Legislature during this period? The answer seems to be clearly "no". The vesting is complete as on 1st of April 1961 or 1st of April 1963. It is a full title which the tenant gets, but that title is defeasible if he is unable to fulfill the conditions of

retaining that title. Even where the sale becomes ineffective, the landlord does not as of right get the entire land. Provisions of Section 21 are attracted and the Tribunal has to dispose of the land in that manner after deciding the rights and liabilities of the landlord himself.

14. In this scheme of the Vidarbha Tenancy Act, we see no scope to infer that the former tenant who now becomes owner can still be described as a tenant for certain purposes. True, the procedural section leading to the fixation of price etc, do refer to the erstwhile tenant as tenant and make provision for the payment of price by the tenant to the landlord. The Legislature seems to have resorted to that nomenclature for easy reference and it does not mean that until the last pie is paid the erstwhile tenant still continues to be a tenant and has to face the liabilities of a tenant or to enjoy rights of a tenant.

15. A few references to the other sub-sections of Section 49-A will make the position further clear. Section 49(2)(a) provides for a case where a tenant who is evicted from the land before the 1st day of April 1963 and is not in possession thereof on that day, and has made or makes an application for possession of the land within the period specified in sub-section (1) of Section 36. If the application is allowed by the Tahsildar or in appeal by the Collector or as the case may be in revision by the Maharashtra Revenue Tribunal, he shall be deemed to be the full owner of the land on the date on which the final order allowing the application is made. Pausing here for a minute, it would be obvious that if a tenant was in physical possession or cultivating possession on 1st of April 1963 he at once becomes owner as provided by sub-section (1) of Section 49-A. If he was a tenant before that day and that rural relationship continued, but there was no possession on 1st of April 1963. what should happen to such a tenant? Since he is not in possession, there has been no vesting in him. In law and in fact, he continues to be a tenant because that relationship in respect of the land is still alive. Sub-section (2)(a) of S. 49-A provides for such cases and says that such a tenant out of possession on 1st April 1963 may apply within the statutory period provided by sub-section(1) of section 36 for possession. Not only he must apply in time, but he must succeed in that application. It is only if he succeeds, if not before the first Tribunal, at least the final Tribunal provided by the Vidarbha Tenancy Act. The moment the success is his and it is declared that he is a tenant entitled to possession and the direction for possession is given, that date of the decision marks his ownership. The further execution of that order is left to be worked out as a consequence of that order.

16. In the same manner the Legislature felt that there were some tenants in possession on the "appointed day" which was the "20th August 1958", but somehow they had lost possession of lands. The law of limitation incorporated in sub-section (1) of section 36 may have worked hardship because the tenant-class is illiterate and ignorant. The legislature desired that in respect of such tenants whose landlords are still in possession and the land is still in possession and the land is still in possession and the land is still agricultural cultivable land,

the further facility of obtaining possession and later on vesting title in those tenants should be provided for. With that tenants should be provided for. With that intention, the Legislature added S. 49-B by Maharashtra Amending Act No.49 of 1969. This section provides that where a tenant referred to in Section 46 or section 49-A was in possession on the appointed day, namely, August 20, 1958, but is not in possession of the land held by him on the relevant date on account of his being dispossessed before that date, otherwise than in the manner and by an order of the Tahsildar as provided in Section 36, and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July 1969 and is not put to a non-agricultural use on or before the last mentioned date then, the Tahsildar shall, notwithstanding anything contained in Section 36, either suo motu or on the application of the tenant, hold an enquiry, and direct that such land shall be taken from the possession of the landlord and shall be restored to his possession. It is not enough that such an order is passed, but this order is to be executed and the tenant is to be restored to possession. The concluding portion of the first paragraph of S. 49-A says that such tenant shall be deemed to be the full owner of the land on the date on which the land is restored to him. The explanation below shows that the land has got to be in the possession of the landlord or his successor-in-interest. This "succession-in-interest" has been defined as either testamentary disposition or devolution on detach. In other words if the landlord has in the meanwhile made inter vivos transfer, the tenant has no right to pursue the property in the hand of the transferee.

17. Reading the provisions of Sections 49-A(1), sub-section (2) (a) and 49-B together, it is obvious that an application by a tenant is possible u/s 36(1) only if he was not in physical possession on the 1st April 1963 and his case falls either under sub-section (2) (a) of Section 49-A or Section 49-B of the Vidarbha Tenancy Act. Having made such elaborate provisions to safeguard the rights of the tenants, whether in possession or not it is difficult to imagine why the language of Section 36(1) is required to be stretched for permitting an ex-tenant who has become owner on and after 1-4-1963 to enable him to apply under that section. A sweeping provision has been made in Section 120 of the Vidarbha Tenancy Act where the collector has been vested with powers of summary eviction if the case falls in any of the clauses (a), (b) and (c) of that section and no specific remedy was provided elsewhere in the Act. The scheme of protecting possession of tenants and cultivating owners seems to be clear. Whenever there is specific remedy available under the provisions of the Act that remedy and where no such specific remedy is indicated but the cases can fall u/s 120 will be relevant. This being the total scheme of the act we are of the view that there is no scope to imagine that an ex-tenant who became full owner under the provisions of Sec 49-A and has been dispossessed from possession after 1-4-1963 can still call himself a tenant for the purpose of taking advantage of sub-section (1) of Section 36 of the Vidarbha Tenancy Act.

18. We may now make brief reference to the authorities by which, as pointed out

in one of the earlier judgments of a learned Single Judge of this court, the point seems to be concluded. It would be proper to refer to the Division Bench judgment is not available to us. We have a note at Note 44 in 1963 Mah LJ. It is decision given by a Division Bench in Special Civil Application No.33 of 1962 and is delivered on November 21, 1962. The names of the parties are Krishna Babu Chavan v. Ganpat Ramahchandra Haldankar. This is a judgment under the provisions of the Bombay Tenancy and Agricultural Lands Act. 1948 namely, the Bombay Tenancy Act. The learned counsel for the petitioner Mr. Kherdekar took us through the provisions of this Act, which are in parimateria with the provision of the Vidarbha Tenancy Act.

19. Section 29 of the Bombay Tenancy Act deals with the procedure for taking possession and is almost identical in words with the provisions of Section 36 of the Vidarbha Tenancy Act. Whereas Section 46(1) of the Vidarbha Tenancy Act speak of a certain date as the date for transfer of title, the language used in the Bombay Tenancy Act is slightly different but less rigorous than the language used by the Vidarbha Tenancy Act. It will be interesting to find that in sub-section (1) of Section 32 of the Bombay Tenancy Act, it is laid down that on the first day of April 1957, which is referred to as the "tillers" day" every tenant shall, subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord free of all encumbrances subsisting thereon on the said day, the land held by him as a tenant. This is followed by the several conditions which must be satisfied. However, the main point is that the Legislature has used only one clause, namely the tenant shall be "deemed to have purchased from his landlord" the land held by him as a tenant. This deeming purchase which is a legal fiction was the subject-matter of construction before the Division Bench. The learned Acting Chief Justice pointed out that title of the landlord, barring the Exceptions u/s 52-A or 32, clause (b) of the Tenancy Act, passes from the landlord to the tenant on the tillers" day and in cases where it so happens, it necessarily follows that the former tenant ceases to be a tenant as and from 1-4-1957. Such a person in the language of Section 29 would not be entitled to file an application, nor was he a tenant on the day he was dispossessed, by reason of the fact that the title to the land which he was formerly holding as a tenant had passed to him from the landlord

20. The learned Judges relied for this conclusion upon certain observations of the Supreme Court in the case of Sri Ram Ram Narain Medhi Vs. The State of Bombay, . In that case the Supreme Court was called upon to consider the constitutionality and the legality of the several provisions of the Bombay Tenancy Act. The Supreme Court among other things, was called upon to consider whether the Bombay Tenancy Act, which transferred title to the agricultural lands from the landlord to the tenants was a legislation in respect of "land" so as to bring it within the legislature. It is true that the text was slightly different, but the provisions of the Act were construed for the purpose of finding out the real nature of the provisions and therefore, the real

nature of the subject of legislation. In that context, the observations of the Supreme Court are worth noting in the words of their Lordships.

"The title of the landlord to the land passes immediately to the tenant on the tillers" day and there is a completed purchases or sale thereof as between the landlord and the tenant. The tenant is no doubt given a locus paenitentiae and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall, by an order in writing, declare that such a tenant is not willing to purchase the land and that the purchase is ineffective. It is only by such a declaration is made by the Tribunal, the purchase would stand as statutorily effected on the tillers; day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the Tribunal This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal. The tenant gets a vested interest in the land defeasible only in either of those cases and it cannot, therefore, be said that the title of landlord to the land is suspended for any there is an extinguishment or in any event a modification of the landlord's right in the estate well within the meaning of those words as used in Art 31-A (1)(a)."

21. It is these observations which the learned Judges of the Division Bench relied on in the earlier case discussed and on the basis of this approach of the Supreme Court they found that there was no intervening period between the transfer of title from the landlord and the vesting of ownership in them. The title was thus transferred from the landlord and vested in the tenant making him an latest. The obligations were yet to be discharged and there was a right to decline to purchase. But short of that, the title being de feasible on the happening of those events, the vesting was complete be an owner for all practical purposes as the very language of Section 49-A itself points out unmistakably.

22. We may also refer to some observation of the Supreme Court in the case of Madharao Rajeshwar Deshpande Vs. Shanker Singh and Others, . That was a case where the landlord applied for possession in August 1963 under the provisions of Section 3(14--A) and Sec .36(2) of the Vidarbha Tenancy Act on the ground that the tenant had not taken any steps to purchase the land and the same must be deemed to have been surrendered to the landlord. Negativating this contention and rejecting the application of the landlord u/s 36(2) as misconceived, the observations of the Supreme court, relevant for our purpose, are as follows:-

"We concur in the view of the Tribunal that the respondent No. 1 became a statutory owner of the land in his tenancy by virtue of Section 46(1) of the Act with effect from April 1, 1961 even though he did not take steps to purchase that land from the appellant under S. 43."

23. From the reference to observations in the Supreme Court judgments, it is clear that the Supreme Court has accepted the plain meaning of the language used by the Legislature in Section 46(1) and Section 49-A(1). Depending upon that approach, and independently construing the provisions, the Division Bench of this court laid down that vesting is complete and transfer of title takes effect either on 1--1961 or 1-4-1963, as the case may be. To us, therefore, it appears that the law was well-settled and there was hardly any scope to take a different view. We may emphasis a clause present in Section 46 (1) as well as S. 49-A (1) which must have been advisedly used by the Legislature to remove any doubts. Having pointed out that the land shall stand transferred to and vest in the tenant on the dates mentioned in those sections, the Legislature further adds a clause that the tenant "shall be deemed to be the full owner of such land." This deeming provision obviously means an introduction of a legal fiction. Even if some formalities had remained and were to be performed later and even if due to the inability to comply with those provisions, in some cases, the sale was to be declared ineffective later, until that stage is reached the earlier tenant is to be deemed to be the full owner for all purposes. That is the intention of the Legislature and we find that no other view is possible on the plain reading of these two sections.

24. Considering the approach of the referring Judge in his own judgment, where a contrary view is taken, we find that in the earlier decision given by him in August 1973 there is no reference to the Division Bench judgment or the Supreme Court judgments, which are pointedly considered by the other learned Single Judge. We assume that the learned lawyers who appeared before hi did not cite the said Division Bench decision and the learned Judge was not apprised of a view already taken by a larger Bench. In these circumstances, it may be that he took a view which appealed to him. However, when we examine that view on its merits, we do not find any reason which can support the necessity of twisting the Legislature's language and create a remedy as if to a particular type of litigants. The Tenancy Act is a social legislation and the Legislature was fully aware of the benefits it wanted to confer upon a particular class of society. The very name of that Act is the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, initially this legislation started by making the tenants permanent and depriving the landlords of their right to oust the tenants except on certain well-established grounds. In other words, security of tenure was the first step taken in the direction of giving relief to the tenants. The intention also was to give relief to the society at large by augmenting production by making security of tenures available. This is not the place to consider whether that object has been ached. However, the legislation has aimed at that and progressively steps have been taken. The last step in this direction appears to be that an absentee landlord shall not retain any property in the agricultural lands, but the title and property in such lands will stand transferred to the agricultural tenants.

25. This, the legislature has achieved by the present legislation. Having once declared them as owners, the Legislature, appears to have stopped at that. The

basic concept to have stopped at of land must cultivate the land himself. If the owner was absent and the land was in physical possession of a tenant, the tenant was raised to the status of an owner, whether the original landlord wanted to transfer his title or not. Having created this kind of title, the new owner is now left to himself to protect his title and possession as best as he can. We are not deciding, but we are incidentally making an observation that Section 120(c) seems to have been enacted to enable anyone to get relief provided he is able to satisfy the Collector that the other person falls within the categories mentioned in that section, and is a person in unlawful possession. Short of that, the owner is left to resort to law of the land protecting his rights as an owner. There are no provisions which indicate that a special plea must be made in favour of the ex-tenants who are now owners to enable them to make use of Section 36 for the purpose of regaining possession lost by them after the title was vested in them.

26. The learned referring Judge drew some support from the judgment of the Supreme Court in the case of Vallabhai Nathabhai Vs. Bai jivi and Others, . A mere look at the facts of that case will show that the situation before the Supreme Court was entirely different and has no relevance at all to the facts and circumstances before us. In that case which was governed by the Bombay Tenancy Act, a tenant in the Panchmahal district had voluntarily surrendered tenancy of his tenanted lands to his landlord on May 15, 1956. This was an oral surrender, Subsequently after the tillers" day, he applied u/s 84 for the summary eviction of respondent No. 1 who was the landlord. One of the questions raised was that the petitioner was still a tenant as the surrender was invalid and if he was a tenant, he could apply u/s 29(1) of the Bombay Tenancy Act and he could not take resort to the provisions of Section 84. The Supreme Court found, in the first instance, that the surrender dated May 15, 1956 was contrary to the provisions of Section 15 of the Bombay Tenancy Act and formalities of that section were not gone through. The surrender was thus ineffective. The very logical consequence of that conclusion is that he was a tenant of the land on 1st of April 1957, the tillers" day, but he was not in physical possession of that land. This is, therefore, a case of a tenant who is out of possession on the relevant date and this is not a case of a tenant in physical possession, who is later declared to be the owner, by provisions similar to section 46 (1) or Section 49-A of the Vidarbha Tenancy Act. The very premise being entirely different, this judgment of the Supreme Court was clearly irrelevant.

27. It may be further noted that having come to the conclusion that the tenant was still a tenant of the land, the Supreme Court says that under Sec.8, which comparable to Section 120 of the Vidarbha Tenancy Act the remedy could be pursued against a person in unlawful possession by an applicant for whom no other specific remedy has been provided by the Act. They hold that this was a tenant who should have applied u/s 29(1) of the Bombay Tenancy Act as a tenant dispossessed is entitled to apply possession against anybody including the landlord within the statutory period provided by Section 29(1) of the Act. The Supreme Court , therefore, points out that the petitioner being a tenant, was not

entitled to the remedy u/s 84. When cases of tenants in possession arose before the Supreme Court they have clearly indicated that vesting on the relevant date is complete or is to be deemed to complete in view of the fictions created by the Tenancy Acts of this State. Not only the reliance placed upon the Supreme Court is misconceived, but we find that no compelling reason are pointed out why it is necessary that the Courts should go out of its way to give a twisted meaning to the plain language of the legislature. We do not suggest that the rules of interpretation do not permit the Court to do so, but those are rare occasions. It has been held by Courts that where the Legislative intent is clear, but the language used by the Draftsman is odd, the Court may intervene and so interpret the language even by doing some violence to it, to bring out the Legislature's intent. We do not find any such occasion in this case and, therefore, the manner in which the learned Judge called an ex-tenant who is present owner, a tenant for the purposes of a remedy u/s 36(1) of the Vidarbha Tenancy Act is clearly unjustified. The earlier decision of the learned Single Judge is, therefore, erroneous and is overruled.

28 We also find that though the ultimate decision in the case of Baswant Motiram Gavki v. Ganpat Dhanaji Gaki, (1975 Mah Lj 9) turns upon different facts a part of the reasoning by another learned Single Judge seems to accept the approach of the decision which we have just overruled. That judgment is not before us, but since it is brought to our notice, we may point out that the law in respect of the rights and title of the former tenants after 1-1-191 and 1-4-1963 being clear and settled, so far as this court is concerned, no other view can be countenanced until there is revision by a larger Bench in that behalf.

29. Before we part with this judgment, we are inclined to point out what has already been laid down by the Supreme Court in their reported judgments. We are still following the law of precedents and so long as that law is being observed as the law of this land, judicial discipline requires that when there is a judgment of a coordinate jurisdiction, it must normally be followed by the succeeding Bench. If there is a judgment of one Judge in the field and none-else, and the subsequent Single Judge feels that judgment requires reconsideration, he should not merely proceed to take a different view but should place the papers before the learned Chief Justice for referring the matter to a Division Bench so that the earlier view of the learned Single Judge may be reconsidered. In the same manner if a Single Judge were to find that there is a judgment of the Division Bench in the field which requires reconsideration, he can give his reasons and refer the matter to a Division Bench with a request that the Division Bench may consider whether the earlier Division Bench judgment requires reconsideration and the matter be referred to a still larger Bench. We do not find in the reference order any such reasoning not compelling necessity for making a reference to a larger Bench. Ordinarily, therefore, the learned Single Judge should have disposed of the case on the footing of the judgment of the Division Bench and no reference was called for.

30. At this stage Mr. Pimparkar for respondent No. 1 states that we should pass some orders in the matter of the other petition filed by the respondent No. 1 u/s 120(c) of the Vidarbha Tenancy Act. This he says should be done in the interest of avoiding multiplicity of litigation. We are afraid that it is not possible to pass any such orders. The respondent No. 1 has started two independent proceedings under two different sections of the Tenancy Act. Only one matter has come to us and it would not be proper for this Bench to express any opinion about the merits and demerits of the other matter, which not before us. We, therefore, reject the prayer of Mr. Pimparkar.

31. This being our view of the matter, the original application before the tenancy authorities by the present respondent No.1 was clearly misconceived. They could not have entertained. We therefore, allow this writ petition and quash the orders of all the tenancy authorities below. In the circumstances of the case, there will be no order as to costs.

32. Petition allowed.