

**(1973) 11 BOM CK 0011**

**In the Bombay High Court**

**Case No :** Spl. C.A. No. 282 of 1968 (with Spl. C.A. No's. 2769 of 1967, 2986 of 1967, 325 to 327 of 1968, 375-376 of 1968, 421 of 1968, 548 of 1968 and 601-604 of 1968)

Sushilabai

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 06-11-1973

**Acts Referred:**

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 — Section 31  
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 10, 10A, 14, 15, 16  
Constitution of India, 1950 — Article 227  
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 10, 12, 14, 15, 16

**Citation :** (1974) MhLj 737

**Hon'ble Judges :** R.M. Kantawala, C.J.;V.D. Tulzapurkar, J;S.B. Bhasme, J

**Bench :** Full Bench

**Advocate :** S.M. Mhamane in Spl. C.A. No. 282 of 1968, M.V. Sali in Spl. C.A. No. 2769 of 1967, V.M. Limaye in Spl. C. A. No. 2986 of 1967, B.Y. Deshmukh and R.W. Adik in Spl. C.A. Nos. 325 of 1968 to 327 of 1968, 375 of 1968, 376 of 1968, 421 of 1968, 548 of 1968 and 601 of 1968 to 604 of 1968, for the Appellant; K.R. Bengeri and Mrs. C.K. Bengeri for Opponent No. 2 in Spl. C.A. No. 2769 of 1967 and S.C. Pratap, Assistant Govt. Pleader for State in Spl. C.A. Nos. 325 of 1968 to 327 of 1968, 375 of 1968, 376 of 1968, 421 of 1968, 548 of 1968 and 601 of 1968 to 604 of 1968, for the Respondent

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**Judgement**

R.M. Kantawala, C.J.—The question that arises for consideration before the Full Bench is whether under the provisions of section 19 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Maharashtra Act No. XXVII of 1961) (Herein after referred to as "the Ceiling Act") a landlord is entitled to resume for personal cultivation only half or whole of the surplus delimited land held from him by the person into whose holding enquiry is being held u/s 18 of the Ceiling Act?

2. For the purposes of this case we propose to confine our attention only to the facts existing in Special Civil Application No. 282 of 1968. Mahadeo Maruti Boravake, respondent No. 2, is a tenant holding various pieces of land for agricultural cultivation. He in the aggregate held 157 acres and 27 gunthas. The lands held by him were of more than one class and the total area held by him when converted into a corresponding area of dry crop land under the provisions of the Ceiling Act admeasured 301 acres and 28 $\frac{1}{2}$  gunthas. The Ceiling Act came into force on January 26, 1962. On July 14, 1962 respondent No. 2 submitted a return as required by the provisions of section 12 of the Ceiling Act. After giving public and individual notices as required to be given u/s 17 an enquiry was held by the Ceiling Authority, the District Deputy Collector, Sub-Division Sangamner. Having regard to the provisions of the Ceiling Act he held that respondent No. 2 was entitled to hold an area of 108 acres of dry crop land and the rest of the lands held by him namely 193 acres and 28 $\frac{1}{2}$  gunthas of dry crop lands were surplus lands. These surplus lands were held by him from more than one landlord. Sushilabai Chandorkar, the petitioner, owned out of these lands held by respondent No. 2, three pieces of land bearing survey Nos. 142, 143 and 299 in all admeasuring 32 acres and 23 gunthas situate at Baramati, district Poona. After conversion into dry crop lands these lands owned by the petitioner became equivalent to dry crop lands admeasuring 89 acres and 12 gunthas. These lands were leased by the petitioner to respondent No. 2 for cultivation of sugar-cane. Pursuant to a notice given to the petitioner as required by the provisions of the Ceiling Act, she appeared during the course of the enquiry and claimed that she was entitled to restoration of possession of entire 32 acres and 23 gunthas (being equivalent of dry crop lands admeasuring 89 acres and 12 gunthas) as she required the same for personal cultivation. She was holding no other land. The District Deputy Collector held that she was entitled to restoration of possession in respect of 16 acres and 11 $\frac{1}{2}$  gunthas. Aggrieved by the order of the District Deputy Collector an appeal was preferred by the petitioner before the Maharashtra Revenue Tribunal, and it was dismissed by an order dated April 17, 1967. Aggrieved by this order passed by the Maharashtra Revenue Tribunal the petitioner has filed this Special Civil Application under Article 227 of the Constitution of India contending that she is entitled to the entire 32 acres and 23 gunthas held by respondent No. 2 from her as tenant as they formed part of the surplus lands.

3. Mr. Sali, who appears on behalf of the petitioner in one of these Special Civil Applications, contended that section 19 of the Ceiling Act confers an independent right of resumption in favour of a landlord ; that a landlord under that section is entitled to restoration of possession if the conditions laid down in clauses (a) and (b) of the said section are fulfilled; that the expression "it appears" used in that section is wide enough to include that prima facie the landlord has a right of resumption for personal cultivation in respect of the surplus land or a part thereof under the relevant tenancy law applicable to such land ; that there is a non-obstante clause "Not with standing anything contained in that tenancy law"

appearing in the substantive provisions of the said section ; that the effect of this non-obstante clause is plenary and unqualified and the limitations imposed by the relevant tenancy law should not be invoked for determining the extent of area of surplus land that the landlord is entitled to resume; that the right referred to in sub-section 19 (b) of the Ceiling Act is a right simpliciter for resumption of land and not the right circumscribed by the conditions imposed by the relevant tenancy law for its enforcement ; that having regard to the scheme of the Ceiling Act and especially section 19 thereof the petitioner as landlady is entitled to possession of all surplus pieces of land held by the tenant respondent No. 2 from her so long as her total holding after such restoration of possession does not exceed the ceiling area as prescribed by the Ceiling Act. The other counsel who appeared for the petitioners in the various Special Civil Applications have adopted this contention, but Mr. Deshmukh on behalf of the petitioners in some of those Special Civil Applications made a submission in the alternative. He submitted that having regard to the scheme of the Ceiling Act and especially section 19 thereof, a landlord is entitled to possession of all surplus lands held from him by the tenant so long as his total holding after such restoration of possession does not exceed the ceiling area as fixed by the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act No. LXVII of 1948) (hereinafter referred to as "the Tenancy Act").

4. There are more than one decision of single Judge as well as Division Bench of this Court wherein the right of a landlord for restoration of possession u/s 19 of the Ceiling Act has been considered and uniformly in these decisions the view taken is that the extent of the surplus lands of which the landlord is entitled to restoration of possession u/s 19 of the Ceiling Act must be determined having regard to the relevant limitations imposed by the appropriate tenancy law. This Special Civil Application when it came up for hearing before Malvankar J. he felt that several aspects which needed consideration were not placed before the Division Bench in the various matters decided by them and he thought it fit that the matter be considered by a Division Bench which ultimately referred it to a Full Bench.

5. As the preamble of the Ceiling Act shows that Act was enacted inter alia for securing the distribution of agricultural land as best to subserve the common good; it was considered expedient in the public interest to impose a maximum limit or ceiling on the holding of agricultural land in the State of Maharashtra, to provide for the acquisition of land held in excess of the ceiling and for the distribution thereof to landless and other persons. Thus under the preamble of the Act the object of the Ceiling Act is to so distribute the agricultural lands as to subserve the common good, to impose a ceiling on the holding of agricultural land and to provide for the acquisition of land in excess of the ceiling and for distribution of the same to landless and other persons. The Act was to come into force on such date as the State Government may by notification in the Official Gazette appoint in that behalf. A notification was issued making the Act applicable with effect from January 26, 1962 as the said date was declared as

the appointed day.

6. This objective of the Act is sought to be achieved by section 3 which lays down that in order to provide for the more equitable distribution of agricultural land amongst the peasantry of the State of Maharashtra and in particular, to provide that landless persons are given land for personal cultivation on the commencement of this Act, there shall be imposed to the extent, and in the manner hereinafter provided, a maximum limit or ceiling on the holding of agricultural land throughout the State. How this objective is to be achieved can be ascertained if the scheme of the Act is carefully scrutinised. Section 2 of the Act contains definitions of various words and phrases used in the Act. The lands are classified into different types of irrigated lands and dry crop lands. Section 2 (14) defines the expression "to hold land". It means "to be lawfully in actual possession of land as owner or as tenant" and the word "holding" has to be construed accordingly. As defined in section 2(17) a landless person has to satisfy three conditions: (1) he must be a person who does not hold any land for purposes of agriculture; (2) he must earn his livelihood principally by manual labour on agricultural land and (3) he intends to take to agriculture. The expression "relevant tenancy law" is defined in section 2 (26) and it means (a) in relation to the Vidarbha Region of the State of Maharashtra, the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958 ; (b) in relation to the Hyderabad area of the State, the Hyderabad Tenancy and Agricultural Lands Act, 1950 and (c) in relation to the rest of the State, the Bombay Tenancy and Agricultural Lands Act, 1943. The word "tenant" is defined in section 2 (30) and it means a person who holds land on lease, and includes a person who is deemed to be a tenant under the relevant tenancy law and "landlord" means a person from whom land is held on lease by a tenant and includes a person who is deemed to be a landlord under the relevant tenancy law. Section 4 of the Ceiling Act prohibits every person from holding land in excess of the ceiling area and declares that the area in excess of the ceiling is to be regarded as surplus land. Having regard to quality, fertility and other relevant factors the ceiling area is fixed for different types of land differently and even for land situate in different local areas. In order that the object sought to be achieved by the Ceiling Act may not be frustrated Chapter III of the Act imposes restriction on alienations and acquisitions of land and provides for consequences of contraventions of the provisions thereof. Appropriate provisions are made in Chapter IV for determination, delimitation and declaration of surplus land. Section 12 provides for submission of returns by the landholder within the time prescribed therein. Section 14 empowers the Collector to hold an enquiry in respect of every person holding land in excess of the ceiling area and makes it obligatory upon him to determine the surplus land held by such person. The various sub-sections of this section prescribe the authority before whom the landholder is required to submit such returns for the purpose of holding an enquiry. Section 16 of the Act provides that where a person holds land in excess of the ceiling area, and the whole or part of such land is subject to an

encumbrance, then subject to the provisions of sub-section (1) of section 10 and section 15 he shall retain such encumbered land, whether he is the owner or tenant thereof upto the extent of the ceiling area. Sub-section (2) thereof provides that subject to the provisions of sub-section (1), a person shall be entitled to select the lands he wishes to retain with himself, upto the ceiling area. Section 17 provides for issue of a public notice and giving of individual notices to persons interested before an enquiry is held as contemplated by section 14. The matters which are to be ascertained while holding an enquiry are enumerated in section 18. We will like to refer to two of the matters which inter alia are required to be ascertained. They are in clauses (g) and (h) as under:

(g) what is the total area of land held at the time of the enquiry, and what is the area of land which the person is entitled to hold?

(h) whether the land is held by the person as tenant, and if so, whether his landlord has a subsisting right of resumption of the land for personal cultivation, under the relevant tenancy law applicable thereto?

Sections 19, 20 and 21 of the Ceiling Act are important for the purpose of determination of the question referred to us and they are as under:

19. Where, during any inquiry into the holding of any person other than a holding of any industrial undertaking or holding consisting of one or more compact blocks which the State Government may with a view to maintaining its integrity notify in this behalf under the last preceding section, it appears That-

(a) the whole or any part of the surplus land, delimited under the foregoing provisions, is held by that person from a landlord, and

(b) the landlord has a right of resumption for personal cultivation in respect of that land or a part thereof under the relevant tenancy law applicable to such land, the Collector shall (unless that right is subject to proceedings before any Court, tribunal or other authority at the time of such inquiry), Not with standing anything contained in that tenancy law (but without prejudice to any right to resume land which is not delimited as surplus land), restore possession to the landlord of so much only of the surplus land, as he is entitled to resume; and the balance, if any, shall be surplus land.

20. (1) For the purpose of deciding the extent of land which should be restored to the possession of the landlord u/s 19, the Collector shall issue a notice calling upon the landlord,--

(a) to state his claim for restoration of possession of such surplus land for the purpose of that section;

(b) to show cause why the balance of such land should not be deemed to be surplus land.

(2) Such notice shall require the landlord to appear personally or by agent before the Collector on the date, and at the time and place therein mentioned (such

date not being earlier than fifteen days after the issue of the notice).

(3) On the date fixed under sub-section (2), or on any other day or days to which the inquiry is adjourned, the Collector shall, after hearing the landlord or his agent and any other person interested in the surplus land and who are present, and after considering any evidence adduced, Ascertain-

(a) whether the landlord is entitled to restoration of the possession of the whole or any part of such surplus land, and if so, the area and other particulars of such land; and

(b) whether the balance of any such land shall be surplus land, and if so, the extent and particulars of such land.

21. (1) As soon as may be after the Collector has considered the matters referred to in section 18 and the questions, if any, under sub-section (3) of section 20, he shall make a declaration stating therein his decision on:--

(a) the total area of land which the person is entitled to hold as the ceiling area;

(b) the total area of land which is in excess of the ceiling area;

(c) the name of the person to whom possession of land is to be restored u/s 19, and area and particulars of such land;

(d) the area, description and full particulars of the land which is delimited as surplus land;

(e) the area and particulars of land, out of surplus land, in respect of which the right, title and interest of the person holding it is to be forfeited to the State Government.....

Chapter V of the Act provides for payment of the amount of compensation to persons whose interests are affected by the application of the provisions of the Act. Chapter VI of the Act provides for distribution of surplus land, and the procedure to be followed in respect thereof.

7. The question that is referred to us depends upon the right of a landlord for restoration of possession as conferred by section 19 of the Act. Section 19 of the Act imposes an obligation upon the Collector to restore possession to the landlord of so much only of the surplus land as he is entitled to resume subject to the limitations prescribed therein. Before the operative part of this section, can come into play, two conditions precedent must be fulfilled. During the enquiry into the holding of any person u/s 18 of the Act it must appear that (a) the whole or any part of the surplus land, delimited under the foregoing provisions is held by that person from a landlord and (b) the landlord has a right of resumption for personal cultivation in respect of that land or a part thereof under the relevant tenancy law applicable to such land. If these conditions precedent are fulfilled, then the operative part of section 19 casts an obligation upon the Collector subject to the limitations therein prescribed to restore

possession to the landlord of so much only of the surplus land as he is entitled to resume and declares that the balance, if any, shall be surplus land.

8. The first contention that has been urged on behalf of the petitioners in these Special Civil Applications is that section 19 of the Ceiling Act confers an independent power upon the landlord to resume land and such power is conferred independently of the right that such landlord will have under the relevant tenancy law. In order to appreciate this contention it is not merely sufficient to confine our attention to the provisions of section 19, but it is equally necessary to refer to the matters which are to be enquired into u/s 18 of the Ceiling Act while holding an enquiry. As clause (h) provides, one of the matters which the Collector during the course of an enquiry has to determine is whether any land is held by the person as tenant, and if so, whether, his landlord has a subsisting right of resumption of the land for personal cultivation, under the relevant tenancy law applicable thereto. This enquiry is necessary because one of the conditions precedent to be fulfilled before the operative part of section 19 can come into play is that it must inter alia appear to the authority holding the enquiry that the landlord has a right of resumption for personal cultivation in respect of that land or a part thereof under the relevant tenancy law applicable to such land. When this and other conditions are fulfilled then the Collector is under an obligation to restore possession to the landlord of so much only of the surplus land as he is entitled to resume. These are not isolated independent provisions but they are provisions correlated to each other and any part thereof is not to be divorced from the rest. Actually section 19 itself does not confer any right upon a landlord to resume land held from him by a tenant. It merely casts an obligation upon the Collector to restore possession to the landlord of so much only of the surplus land as he is entitled to resume. Right to resume is not conferred by this section but it must be available under the relevant tenancy law applicable to such land. Restoration of possession to the landlord is not unlimited but it is subject to the restriction prescribed by the section itself, namely, so much only of the surplus land as he (landlord) is entitled to resume. In our opinion, section 19 itself does not confer power of resumption on a landlord, nor is our attention drawn to any other provision of the Ceiling Act which confers such power of resumption on a landlord. The only provision which entitles a landlord to resume is contained in the relevant tenancy law as defined in section 2 (26) of the Ceiling Act. Section 19 itself does not confer an independent right on a landlord to resume land held from him by a tenant.

9. In the operative part of section 19 a non-obstante clause appears because omitting the unnecessary words it provides "the Collector shall .... Not with standing anything contained in that tenancy law (but without prejudice to any right to resume land which is not delimited as surplus land), restore possession to the landlord of so much only of the surplus land, as he is entitled to resume, and the balance, if any, shall be surplus land". Undoubtedly, the operative part contains a non-obstante clause to the effect "notwithstanding anything contained in that tenancy law". Standing by itself regard being had to the language of the

section it may in some cases have plenary and unqualified application, but there is no absolute rule that in all cases a non-obstante clause is always plenary and unqualified. The extent of the operation of the non-obstante clause depends upon the place where it is kept and the limitation subject to which it is prescribed. On a plain reading of the operative part of section 19 it is quite clear that notwithstanding the fact that a non-obstante clause is used in the operative part, it has not been given a completely total plenary and unqualified effect, but its effect is curtailed by the limitations which are prescribed in the operative part of the section itself. Two of the limitations are quite patent. The first limitation is that the non-obstante clause is not to affect the right of a landlord to resume land which is not delimited as surplus land and the second limitation is that the landlord is entitled to restoration of possession of so much only of the surplus land as he is entitled to resume. As the power of resumption is conferred only by the relevant tenancy law, all the relevant provisions of tenancy law, which are germane and applicable in determining the extent of the area which a landlord is entitled to resume, are not to be overlooked. It was urged that a landlord under the operative part of section 19 is entitled to all his surplus land held by a tenant so long as the total holding of such landlord after restoration of possession does not exceed the ceiling area as fixed under the Ceiling Act or in the alternative it was submitted that in so far as the total holding of such landlord after such restoration of possession does not exceed the ceiling area as fixed under the relevant tenancy law. If such was the intention of the Legislature then the section would have been entirely differently worded. The section does not say omitting the unnecessary words that the Collector shall restore possession to landlord of all his surplus land held from him by the tenant so long as the total holding after such restoration of possession does not exceed the ceiling area as determined under the Ceiling Act or in the alternative the ceiling area as determined under the relevant tenancy law. On the contrary the concept of the ceiling area as determined under the Ceiling Act is absent because the words are "shall restore possession to the landlord of so much only of the surplus land as he is entitled to resume." Thus on a plain reading of section 18 read with section 19 it is quite clear that the expression "so much only of the surplus land as he (landlord) is entitled to resume" has reference to the extent of the right which is conferred upon a landlord to resume the land held from him by the tenant under the relevant tenancy law.

10. That such is the correct interpretation or amplitude of the provisions of section 19 of the Ceiling Act is made clear by the provisions of section 20 as well as section 21. Section 20 of the Ceiling Act prescribes the manner of considering the claim of landlord to land u/s 19. The very opening part of sub-section (1) starts with the words "For the purpose of deciding the extent of land which should be restored to the possession of the landlord u/s 19." "The extent of land" to be restored to the possession of the landlord depends upon the extent of his right to resume land held from him by a tenant. Before determination as regards the extent of the area to be restored possession to the landlord, section 20

confers a right upon a landlord to be heard and that is why he has to be given a notice by the Collector as prescribed in section 20. Such notice to show cause requires a landlord to state his claim for restoration of possession of such surplus land for the purpose of that section and to show cause why the balance of such land should not be deemed to be surplus land. The expression "surplus land" used in connection with the balance of the surplus land, means the land remaining after the claim u/s 19 is satisfied. As sub-section (3) of section 20 shows, one of the matters to be ascertained by the Collector is whether the landlord is entitled to restoration of possession of the whole or any part of such surplus land, and if so, the area and other particulars of such land. He has also to ascertain whether the balance of any such land shall be surplus land, and if so, the extent and particulars of such surplus land. That the extent of right of a landlord for restoration of possession is only limited to the extent to which such landlord is entitled to resume land held from him by a tenant and the restrictions, if any, imposed under the relevant tenancy law, upon the extent of the right of resumption will be attracted for determining the area of the surplus land of which possession should be restored to the landlord u/s 19 is clear from section 20. Even the contents of a declaration to be made by the Collector at the end of an enquiry clearly support that view, as is provided by the different things to be stated in such a declaration as prescribed by section 21 (1) of the Ceiling Act. Thus reading sections 18, 19, 20 and 21 of the Ceiling Act it is quite clear that the right of a landlord to resume is such right as is conferred upon him by the relevant tenancy law and it will be subject to all the restrictions which are imposed by the relevant tenancy law in relation to the extent of the area of which resumption can be claimed by the landlord. The very language of these sections clearly negatives the contention on behalf of the petitioners that the landlord is entitled to all the surplus lands held from him by the tenant so long as his total holding after such restoration of possession does not exceed the ceiling area as determined under the Ceiling Act.

11. u/s 19 of the Act a landlord is entitled to restoration of possession of so much only of the surplus land as he is entitled to resume. If regard be had to the provisions of the relevant tenancy law, then the extent of the land of which the landlord is entitled to resume possession varies with the category of landlord and various other circumstances. For illustrating this point we will merely refer to a few of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act). The Tenancy Act contains different provisions as a result of which a landlord will be entitled to resume land for personal cultivation held from him by a tenant. Reference can be had to the provisions of Chapter III of the Tenancy Act which deals with special rights and privileges of tenants and provisions for distribution of land for personal cultivation. Section 31 of the Tenancy Act confers a right upon a landlord to terminate tenancy for personal cultivation and non-agricultural purpose. Sub-section (1) thereof provides that notwithstanding anything contained in sections 14 and 30 but subject to sections 31A to 31D (both inclusive), a landlord (not being a landlord within the meaning

of Chapter III-AA) may, after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona fide requires the land for any of the following purposes: (a) for cultivating personally, or (b) for any non-agricultural purpose. Sub-section (2) thereof prescribes the time and the manner of giving of such notice and the making of the application. Sub-section (3) extends the time for termination of the tenancy and making of application where a landlord is a minor, or a widow or a person subject to mental or physical disability. The date in each one of these specified classes of disabled landlords is different and it is prescribed by the relevant sub-clauses of sub-section (3). As the language of sub-section (1) of section 31 of the Tenancy Act shows, a landlord has not an unlimited right to terminate the tenancy of a land held from him by a tenant but such a right of termination of tenancy is inter alia made expressly subject to the provisions of sections 31A to 31D (both inclusive). If regard be had to some of the provisions of these sections 31A to 31D, it is quite clear that the right of termination of tenancy conferred by Chapter III of the Tenancy Act is subject to more than one limitation so far as the extent of the area in respect of which the tenancy can be terminated is concerned. For example, reference may be made to clause (a) of section 31A which prescribes the conditions of termination of tenancy. That section says that the right of a landlord to terminate a tenancy for cultivating the land personally u/s 31 shall be subject to the following conditions. For our purpose it is sufficient to refer to condition (a) namely, "If the landlord at the date on which the notice is given and on the date on which it expires has no other land of his own or has not been cultivating personally any other land, he shall be entitled to take possession of the land leased to the extent of a ceiling area." Condition (b) lays down that if the land cultivated by him personally is less than a ceiling area, the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make up the area in his possession to the extent of a ceiling area. Thus conditions (a) and (b) contained in section 31A are by way of limitations upon the right of a landlord to terminate the tenancy of a tenant under Chapter III. A further limitation on the extent of the right to terminate the tenancy is imposed by section 31B. It inter alia provides that in no case a tenancy shall be terminated u/s 31 in such manner as will result in leaving with a tenant, after termination, less than half the area of the land leased to him. It may be urged that when the question of restoration of possession out of surplus land held by a tenant is to be considered u/s 19 of the Ceiling Act, section 31B may not be regarded as a limitation, but, in our opinion, such an approach will be contrary to the scheme and intention to the Legislature and will be illogical. Under the Tenancy Law a right is conferred upon a landlord to terminate the tenancy subject to the limitations therein prescribed. So, when such right of a landlord is subject to a condition which is worded in such a manner that half the area of the land leased to a tenant must remain with him, a corresponding limitation is cast upon the right of a landlord that he will not be entitled to terminate the tenancy in respect of more than half the area leased by him to the tenant. It should not

be overlooked that the various restrictions imposed by sections 31A and 31B and other sections are cumulative and each one of the restrictions is operative before an order of termination of tenancy of a particular piece of land and determination of the extent of the area, can be passed in favour of the landlord. Thus under Chapter III even upon a plain reading of sections 31A and 31B it is quite clear that the landlord has not an unlimited right to resume possession of the land by terminating the tenancy of a tenant. His right of termination is subject to limitations which deal with the extent of the area. One of the limitations under the Tenancy Act is that his total holding in any event should not exceed a ceiling area as prescribed by section 5 and the other is contained in section 31B. Section 19 of the Ceiling Act does not contain any provision or even a suggestion indicating that only one type of limitation qua the extent of the land to be resumed should be invoked and the other should be overlooked. Thus a case of a landlord who is entitled to terminate the tenancy for personal cultivation under Chapter III of the Tenancy Act and consequently to resume possession is limited even qua extent by the various restrictions imposed in Chapter III.

12. Chapter III-A of the Tenancy Act contains special provisions for lands held on lease by industrial or commercial undertakings and by certain persons for the cultivation of sugarcane and other notified agricultural produce. In this Chapter are contained only two sections 43A and 43B. Sub-section (1) of section 43A inter alia provides that the provisions of sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R (both inclusive), 33A, 33B, 33C, 43, 63, 63A, 64 and 65 shall not apply to various classes of land which are prescribed in clauses (a) to (c) thereof. Clause (a) refers to land leased to or held by any industrial or commercial undertaking. Clause (b) refers to leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock. If the provisions of sub-section (1) of section 43A stood by themselves, then in view of the provisions thereof, the limitations imposed by sections 31 to 31D upon a landlord's right to terminate the tenancy and to resume land will not be attracted. However, the provisions of sub-section (3) of section 43A lays down that notwithstanding anything contained in sub-sections (1) and (2), it shall be lawful for the State Government to direct, by notification in the Official Gazette that the leases or lands, as the case may be, to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification, in respect of (a) the duration of the lease, (b) the improvements to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies; (c) the payment of land revenue, irrigation cess, local fund cess and any other charges payable to the State Government or any local authority; or (d) any other matter referred to in sections mentioned in sub-section (1). In exercise of the powers conferred by sub-section (3) of section 43A, the Government issued a notification bearing No. G.N.R.D.-5157/173483-M dated February 14, 1958 published in the Bombay Government Gazette, Part IV-

B at p. 157. This notification was later on amended by a supplementary notification dated October 8, 1969. This notification as amended provides That-

In exercise of the powers conferred by sub-section (3) of section 43-A of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), the Government of Bombay hereby directs that the leases of land referred to in clause (b) of sub-section (1) of the said section 43A and to which the provisions of sub-section (1) of the said section 43A apply shall be subject to the following conditions, namely:--

Conditions as to the duration and termination of lease.....

2. If a lessor bona fide requires any land so leased by him for cultivating it personally or for any non-agricultural use, such lease may, subject to the conditions mentioned in sections 31A, 31B, 31C and 31D, be terminated by the lessor by giving the lessee a month's notice in writing stating therein the reasons for the termination of the lease.

Thus even in respect of lands inter alia let for cultivation of sugarcane or growing of fruits or flowers or for the breeding of livestock the restrictions imposed by sections 31A to 31D are attracted. In respect of such lease of land a landlord has not an unrestricted right for termination of tenancy but inter alia in respect of the extent of the area for which the tenancy can be terminated and possession can be resumed restrictions imposed under sections 31A to 31D are attracted. Even in a case covered by condition No. 2, by the proviso to this condition an exception is carved out in respect of a lessor whose holding does not exceed economic holding and who earns his livelihood principally by agriculture or by agricultural labour. Condition No. 2 in this notification contains the following proviso:

Provided that, if the holding of a lessor does not exceed one economic holding and such lessor earns his livelihood principally by agriculture or by agricultural labour, the conditions mentioned in sections 31A and 31B shall not apply, but the lessor's right to resume land shall be subject to the conditions mentioned in clauses (b) and (c) of sub-section (5) of section 33B, with this modification that clause (c) of the said sub-section (5) shall be read as if for the words "the commencement date" appearing therein the words, letters, figures and brackets "the date of Government Notification, Revenue and Forests Department, No. TNC 6769/9667-M (Spl.), dated the 8th October 1969" were substituted.

Thus even in a case covered by section 43A a further provision has been made which is relevant so far as the extent of the area of the land of which tenancy can be terminated and possession can be resumed to the landlord.

13. For an illustration, reference can be made even to the case of a certificated landlord as regards his right of tenancy and as regards his right of termination of tenancy. Ordinarily a certificated landlord means a landlord who holds a certificate issued to him under sub-section (4) of section 88C. Section 33B

confers a special right upon a certificated landlord to terminate tenancy for personal cultivation. Sub-section (1) thereof provides that:

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

The procedure to be followed for termination of tenancy by giving a notice is prescribed by the other sub-sections of section 33B. As regards the extent of the area in respect of which a certificated landlord can terminate the tenancy, the same is prescribed by sub-section (5) of section 33B. It will suffice if reference is made only to condition (b) prescribed in this sub-section:

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

These provisions therefore show that there are different types of restrictions qua termination of tenancy and resumption of land by a certificated landlord.

14. Chapter III-AA contains special provisions for termination of tenancy by landlords who are or have been serving members of the armed forces and for purchase of their lands by tenants. This special category of landlords namely persons serving in the armed forces, has been conferred a special right to terminate tenancy and the restriction of personal cultivation is not imposed by the provisions contained in Chapter III-AA. Further the provisions of Chapter III-AA permit a member serving in the armed forces to terminate the tenancy in respect of the entire land held from him by a tenant.

15. The provisions of the Tenancy Act to which we have referred by way of illustration indicate that the relevant tenancy law contemplates different categories of landlords who may be entitled to terminate a tenancy and imposes different types of restrictions as regards the extent of the area in respect of which such categories of landlords can terminate the tenancy and resume possession.

16. On behalf of the petitioners it was further urged that apart from the above provisions of the Tenancy Act there are several other sections under which a landlord is entitled to resume land held from him by a tenant. Reference was made to the provisions of sections 15, 32E, 32P and 35A of the Tenancy Act. Section 15 of the Tenancy Act deals with termination of tenancy by surrender thereof. Sub-section (2) of that section inter alia provides:

Where a tenant surrenders his tenancy, the landlord shall be entitled to retain

the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions, as are provided in sections 31 and 31A for the termination of tenancies.

This section does not talk of resumption but deals with a right of a landlord to retain possession of the surrendered land. Section 32E of the Tenancy Act provides that the balance of any land after the purchase by the tenant u/s 32 shall be disposed of in the manner laid down in section 15 as if it were land surrendered by the tenant. This also is not a case of resumption, but it is a case of a right to retain land which has been treated on the same footing as land surrendered. Section 32P deals with power of Tribunal to resume and dispose of land not purchased by tenant. Actually this section does not deal with right of a landlord to resume land but it confers power upon the Tribunal or the Government to resume land which is covered by the provisions of sub-section (1) thereof. u/s 32P there is no case of resumption by a landlord as such but the resumption is by the Tribunal or the State and the land is to be disposed of in the manner prescribed by that section. Section 35 A deals with determination of excess land cases and sub-section (2) thereof provides that the excess land determined under sub-section (1) shall be at the disposal of the Tribunal u/s 32P. Thus the provisions of section 32P are indirectly invoked so far as disposal is concerned and disposal is at the hands of the Tribunal. Thus none of the sections to which our attention is invited deals with a landlord's right to terminate tenancy and to resume possession of land leased by him to the tenant for personal cultivation. This group of sections, in our opinion, are of no assistance for determining the extent of the right which a landlord has in respect of resumption of land held from him by a tenant.

17. Thus on a plain reading of section 19 of the Ceiling Act, it is quite clear that notwithstanding the presence of a non obstante clause the extent of the surplus land of which the landlord is entitled to possession is limited to the extent to which he is entitled to resume land under the relevant tenancy law. Such right will depend upon the category to which the landlord belongs and the other relevant circumstances of the case. Every landlord has not a uniform right so far as the extent of the area that can be resumed is concerned.

18. Our attention is drawn to several decisions of this Court-some of them of single Judge and some of them of Division Bench. We will only like to refer to one of these decisions, of K. K. Desai and Deshpande JJ. delivered in *Narhar Rangnath Pade v. The State of Maharashtra* (1971) Special Civil Application No. 1915 of 1968, decided by K. K. Desai and Deshpande JJ., on March 3, 1971 (Unrep.). Deshpande J. who delivered the judgment of the Bench has inter alia observed in paras. 5 and 4 of his judgment that the words "notwithstanding anything contained" in section 19 have to be read with the words "so much of the land as he is entitled to resume". According to him section 19 provides that the landlord is entitled to resume only to such extent as he is entitled to do under the relevant tenancy law. In our view, this is a correct interpretation of

section 19 of the Ceiling Act and the landlord is not entitled to restoration of possession of all the surplus lands held from him by a tenant in so far as the total holding of such landlord after taking into account the land restored to him does not exceed the ceiling area as fixed under the Ceiling Act. The right of a landlord to resume land is subject to the limitations which are prescribed by the relevant provisions of the Tenancy Act which we have discussed above by way of illustration including the limitation upto the ceiling area prescribed by the Tenancy Act as well as the other limitations imposed upon the extent of the area. Thus, in our opinion, the question referred to us can be answered as under:

Under the provisions of section 19 of the Ceiling Act a landlord is entitled to resume for personal cultivation only so much of the surplus land as he will be entitled to resume under the relevant tenancy law applicable to him with such restrictions as are applicable qua the extent of the area that can be resumed.

19. Petitioner Sushilabai Chandorkar in Special Civil Application No. 282 of 1963 is a landlady owning 33 acres and 22 gunthas of land which were leased out by her to respondent No. 2 for sugarcane cultivation. Her case is covered by the provisions of section 43A and in view of the Notification dated February 14, 1958 as amended on October 8, 1969 the restriction imposed by section 31B is *inter alia* attracted. She will not under the circumstances be entitled to more than the area awarded to her by the order of the District Deputy Collector and confirmed by the Maharashtra Revenue Tribunal. The rule in this Special Civil Application is therefore discharged with costs.

20. So far as the other Special Civil Applications are concerned, we refer them back to the learned single Judge for disposal of them according to law having regard to the view taken by us on the question referred to us.