

(1988) 03 GUJ CK 0006
In the Gujarat High Court

Thakar Bhanuprasad Kripashanker

APPELLANT

Vs

Jadav Mahijibhai Desaibhai

RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 29(1), 32, 32(1A), 32(1B)

Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 2A

Citation : (1988) 2 GLR 1141

Hon'ble Judges : P.M. Chauhan, J

Bench : Single Bench

Judgement

P.M. Chauhan, J.—Petitioner Thakar Bhanuprasad Kripashanker is occupant of Survey No. 371/14 admeasuring 3 acres 25 gunthas situated at village Nisraya, Taluka Borsad, District Kaira. Admittedly Mahijibhai Desaibhai was the tenant of that land till surrender on March 4, 1955. Tenant Mahijibhai filed Tenancy Case No. 225 of 1973 before the Mamlatdar, Borsad, mainly contending that he continued to be in possession of that land even after 1955 and he continued to be the tenant of the said land. He also contended that even if the petitioner landlord had taken away the possession on termination of the tenancy rights, he is entitled to purchase the land under the provisions of the Bombay Tenancy & Agricultural Lands Act (to be referred as "BT&AL Act") as he continued to be in possession of that land. He submitted an application for interim injunction u/s 70 (nb) BT&AL Act which was granted, but subsequently vacated. In the appeal against that order the Deputy Collector set aside the order vacating the interim injunction and reinstated the order of interim injunction. In Revision Application No. GRT. TEN. B.A. 598 of 1973 the Gujarat Revenue Tribunal observed that the surrender was legal and valid and set aside the order by the Deputy Collector and directed for "fresh hearing of the interim application along with the main application". The evidence was then recorded by the Mamlatdar who on appreciation of evidence held that the respondent tenant continued to be in possession of the land as the tenant even after the date of the surrender and he

occupies certain residential premises situated on that land. The Mamlatdar, therefore, declared the respondent-Mahijibhai as tenant of the land and of the farm houses situated on that land. That order of the Mamlatdar was challenged in the Tenancy Appeal No. 410 of 1976-1977. Appellate authority, the Deputy Collector on appreciation of the evidence, held that respondent-tenant Mahijibhai was not in possession of the land from the date of the surrender i.e. March 4, 1955 and the petitioner landlord was in actual possession. He accordingly allowed the appeal and dismissed the application by the respondent-tenant Mahijibhai. A Revision Application No. TEN. B.A. 725 of 1979 was preferred against the judgment and order by the Deputy Collector.

2. Learned Member of the Gujarat Revenue Tribunal on appreciation of the evidence agreed with the findings of the Deputy Collector and held that the respondent-tenant was not in possession of the land from the date of the surrender i.e. March 4, 1955. On facts, therefore, the Deputy Collector and the Gujarat Revenue Tribunal held finally that the respondent-tenant was not in actual possession of the land from the date of the surrender i.e. March 4, 1955. Learned Member of the Gujarat Revenue Tribunal, however, held that surrender by the respondent-tenant was not validly endorsed on the instrument of surrender and, therefore, the provisions of Section 5 BT&AL Act and Rule 2A of BT&AL Rules were not complied with and, therefore, even though the respondent-tenant was not in actual possession of the land, relationship of the tenant and the landlord continued. Learned Member, therefore, set aside the order by the Deputy Collector and declared that the respondent-tenant Mahijibhai "to be the deemed purchaser of the land u/s 32G of the Act". So far as the farm houses were concerned the learned Member observed that the said houses belong to the landlord and not to the tenant. That order of the learned Member of the Gujarat Revenue Tribunal is challenged in this Special Civil Application under Article 227 of the Constitution.

3. During the pendency of this petition, the respondent-tenant Mahijibhai expired on November 23, 1987 and, therefore, his legal representatives are joined as respondents.

4. So far as the finding of the fact that the petitioner got the possession of the land on March 4, 1955 is concerned, that factual aspect is concluded by the order of the Deputy Collector and the Gujarat Revenue Tribunal. It is, therefore, not necessary for me to consider that aspect. The Mamlatdar has, on appreciation of the evidence of the witnesses and the relevant circumstances, held that the respondent-tenant Mahijibhai continued to be in possession since the date of surrender and after that he had given the share and, therefore, he was the tenant of the said land. That finding of the Mamlatdar is not approved by the Deputy Collector who on appreciation of the oral and documentary evidence came to the contrary conclusion and held that the petitioner landlord was put in actual possession of the land on the date of the surrender. Same is the finding by the Gujarat Revenue Tribunal which also appreciated the evidence and concurred

with the finding by the Deputy Collector.

5. Shri M.C. Shah, learned Advocate for the respondent could not point out that the finding by the Deputy Collector approved by the Gujarat Revenue Tribunal is perverse and, therefore, should not be accepted. Shri Shah has conceded that dispute about physical and actual possession is concluded by the finding by the Deputy Collector which is approved by the Gujarat Revenue Tribunal. I have, therefore, to proceed on the premises that on the day of the surrender i.e. March 4, 1955 the present petitioner was put in possession on the strength of the surrender order by the Mamlatdar and since then he continued to be in possession of the land and the respondent-tenant Mahijibhai failed to establish that a new tenancy right was created by his continuing in possession of the land.

6. The petitioner has not produced the copy of the application filed by the respondent-tenant Mahijibhai; but it transpires from the order of the Mamlatdar that the contention was raised before, him that the surrender of interest of tenant in land was not legal and valid and relationship of the tenant and the landlord continued. That contention was asserted before the Mamlatdar, but he did not consider it, observing that he had no jurisdiction to examine the legality or otherwise of the surrender and if at all the respondent-tenant wanted to challenge it he could have done it only in appeal against the said order. With that short observation the Mamlatdar disposed of that contention, Before the Deputy Collector also the same contention was raised. But the Deputy Collector observed that on going through the order of the Mamlatdar passed in the surrender proceedings it transpires that the respondent-tenant Mahijibhai had voluntarily surrendered the land and after that many years have elapsed and, therefore, there was no reason as such for him to doubt the validity of such surrender. He also observed that the Revenue Tribunal in revision No. Rev. App. TEN. B.A. 5980 of 1973 preferred against the order of the Deputy Collector against the interim order, also held surrender to be voluntary and true. In view of the Deputy Collector, surrender being voluntary and true, the relationship of the tenant and the landlord did not continue. It also appears that the Deputy Collector considered the right of the respondent-tenant Mahijibhai to purchase the land u/s 32FF BT&AL Act and held that the respondent was not a tenant as defined in Clause (d) of Sub-section (18) of Section 2 BT&AL Act and, therefore, had no right to purchase the land. The same contention was agitated before the Gujarat Revenue Tribunal. The learned Member of the Gujarat Revenue Tribunal examined the validity of the surrender order with reference to the provisions of Sub-section (3) of Section 5 BT&AL Act and Rule 2A BT&AL Rules and relying on the judgment of the Supreme Court in Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, held that the Mamlatdar while considering the voluntary nature of the surrender neglected to comply with the statutory requisite that he had to endorse his finding about the satisfaction that the tenant had understood the nature and consequence of the surrender and that it was voluntary, below the document of surrender and, therefore, the order dated March 4, 1955 by the Mamlatdar sanctioning the surrender is invalid and

illegal, non est and consequently the possession of the landlord is illegal, even though he had proved that he was in actual possession of the land since the date of the surrender.

7. The main thrust of argument by the learned Advocates for the parties is about the validity of the surrender order. In submission of Shri A.J. Patel, learned Advocate for the petitioner the surrender order passed by the learned Mamlatdar is valid, legal and proper and in due compliance of the provisions of Section 5 BT&AL Act and Rule 2A BT&AL Rules. The submission of Shri M.C. Shah, learned Advocate for the respondents is that the Mamlatdar had not complied with the provisions of Section 5 BT&AL Act and Rule 2A BT&AL Rules inasmuch as no instrument of surrender was taken by the Mamlatdar and no endorsement about his satisfaction was recorded on any instrument. In view of rival contentions it is necessary to consider the validity and legality of the surrender of interest of tenant in the land and the surrender order dated March 4, 1955.

8. From the order passed by the Mamlatdar on March 4, 1955 it transpires that in Tenancy Case No. 607 of 1954 filed by the petitioner landlord Kripashanker Dahyabhai against tenant Jadav Mahijibhai Desaibhai in the Court of Mamlatdar, Borsad, the landlord stated that Mahijibhai a tenant of the land bearing Survey No. 371/14 of Nisraya was willing to give up possession of land and, therefore, the suit was filed for the permission for possession of the said land. The statement of the tenant was then recorded by the Mamlatdar at Exh. 1 in which he stated that he was voluntarily willing to surrender the possession of the land and for that the receipt Exh. 1 was executed by him. The tenant also stated that he was explained that by surrendering the land all his rights as tenant would be extinguished. He has also stated that he was not compelled or coerced to surrender the land. After recording the contents of that statement of the respondent-Mahijibhai, the Mamlatdar in para 3 of the order proceeded to observe that the opponent-tenant had shown readiness to leave the possession of the land voluntarily. He also stated that the tenant was explained in the Court that by surrendering the possession of the land all his rights as tenant would be extinguished and he would not be in a position to raise any dispute subsequently and even then the tenant was willing to hand over the possession. The tenant was given sufficient opportunity to ponder over the matter. The Mamlatdar then recorded that "as observed above, the request was for leaving the possession voluntarily, the tenancy right of the respondent tenant of the land Survey No. 371/14 of Nisraya village is extinguished and the applicant (landlord) is permitted to take possession of the land". He also observed that direction should be given to the village officers for execution of the order.

9. In view of Shri A.J. Patel, for the petitioner, the close scrutiny of the said order satisfies the statutory requirements under the Act and the Rules; while in submission of Shri M.C. Shah for the respondents, there was no instrument of surrender and the Mamlatdar has not recorded his satisfaction on the instrument of surrender and, therefore, the provisions of the Act and the Rules are not

complied with. For the purpose of appreciating rival contention it is necessary to consider the relevant provisions of the Act and the Rules as applicable at the relevant time.

10. Section 5 BT&AL Act was substituted by Bombay Act 33 of 1953 which came into force in January 12, 1953. Prior to that, Section 5 of the Act provided that the tenancy should be for a period not less than 10 years and the tenant could terminate the tenancy before expiry of the period of 10 years by surrendering his interest as tenant in favour of the landlord. There was no provision that the surrender could be in writing and the Mamlatdar had to verify such surrender in the prescribed manner. It appears that with a view to protect the tenants the provision was made by Act 33 of 1953 for surrender being in writing and be verified by the Mamlatdar in the prescribed manner. Sub-section (1) of Section 5 provided that the tenancy should be for a period of 10 years. Sub-section (2) of Section 5 provided for the termination of the tenancy after 10 years.

11. Sub-section (3) of Section 5 relating to the surrender of the tenancy right was, as follows:

Notwithstanding anything contained in Sub-section (1)-

(a) every tenancy shall, subject to the provisions of Sections 24 and 25, be liable to be terminated at any time on any of the grounds mentioned in Section 24; and

(b) a tenant may terminate the tenancy at any time by surrendering his interest as a tenant in favour of landlord:

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

12. The manner of verification was prescribed in Rule 2A of the BT&AL Rules, which was as follows:

The Mamlatdar when verifying a surrender of a tenancy by a tenant in favour of the landlord under clause (b) of Sub-section (3) of Section 5, shall satisfy himself, after such enquiry as he thinks fit, that the tenant understands the nature and consequences of the surrender and also that it is voluntary, and shall endorse his findings in that behalf upon the document of surrender.

That Rule was analogous to the Rule 9 of the Bombay Tenancy and Agricultural Lands Rules, 1956 except the reference to the Section as by Act No. 13 of 1956 provision of surrender was made in Section 15 of the BT&AL Act. Sub-section (1) of Section 15 of the Act is practically analogous to the provisions of clause (b) of Sub-section (3) of Section 5 of the Act. Sub-section (2) of Section 15 provides that 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. Sub-section (3) of Section 15 provides that if the landlord is not entitled to retain possession of the land, same shall be liable to be

disposed of as provided in Section 32P. Subsequently by Act No. 38 of 1957 Sub-section (2A) is added in Section 15 providing for the inquiry by the Mamlatdar to decide as to whether the landlord is entitled to retain whole or any portion of the land surrendered by the tenant. As the surrender was prior to the amendment by Bombay Act 13 of 1956 which came into force on August 1, 1956 the relevant provision is Clause (b) of Sub-section (3) of Section 5 of the BT&AL Act.

13. In view of the provisions of Clause (b) of Sub-section (3) of Section 5 of the BT&AL Act and the Rule 2A of the BT&AL Rules, it is clear that the tenant may terminate the tenancy at any time by surrendering his interest as tenant in favour of the landlord, but such surrender should be: (1) in writing, (2) shall be verified by the Mamlatdar in the prescribed manner, (3) the Mamlatdar when verifying the surrender in favour of the landlord, shall satisfy himself that the tenant understands the nature and the consequences of the surrender, (4) such surrender is voluntary and (5) that the Mamlatdar should endorse his finding that the tenant understands the nature and consequence of the surrender and that it is voluntary, upon the document of the surrender. The surrender order or the evidence relating to the surrender by a tenant in favour of the landlord should satisfy the above requirements. If the above requirements are satisfied the surrender is valid and legal and if not, the surrender is illegal, invalid, without jurisdiction and non est.

14. In view of this, the evidence and the order Annexure-D passed by the Mamlatdar on March 4, 1955 be scrutinised. It transpires from the order that the statement of the tenant was recorded by the Mamlatdar and, therefore, it should be held that the surrender was in writing. It is also clear that the tenant Mahijibhai was explained that by such surrender his rights as tenant would be extinguished and he will not be in a position to raise any dispute about it subsequently. It is, therefore, evident that the surrender was voluntary. The Mamlatdar had verified the surrender of the tenancy. It also transpires that the Mamlatdar had explained the consequences and satisfied himself that the tenant had understood the nature and consequence of the surrender. The Mamlatdar therefore, observed that the respondent-tenant had shown readiness to hand over the possession willingly. The Mamlatdar had observed:

What is, however, necessary is that the Mamlatdar had to endorse his finding upon the document of the surrender that he has satisfied himself that the tenant has understood the nature and the consequence of the surrender and that it is voluntary. As such, there is no such endorsement. The application was submitted by the landlord and statement of the tenant was recorded and it also transpires that the tenant produced the writing for surrendering the tenancy interest; but on the document of surrendder no such endorsement was made by the Mamlatdar. The surrender order, therefore, suffers from two infirmities, viz. (i) the endorsement by the Mamlatdar about his satisfaction that the tenant understood the nature and the consequence of the surrender and that it was voluntary, and (ii) such endorsement was not made upon the document of the

surrender. The Mamlatdar did not comply with the statutory provisions and, therefore, the surrender on the interest of the tenant in the land in favour of the landlord was not legal and proper and the order passed by the Mamlatdar is without jurisdiction, invalid, illegal and non est.

15. Shri A.J. Patel, learned Advocate for the petitioner has referred the judgment by the Division Bench of this High Court in Hormasji Sorabji Patel and Ors. v. The Gujarat Revenue Tribunal and Anr. Special Civil Application No. 1465 of 1966 rendered by D.A. Desai and P.D. Desai, JJ. (as their Lordships were then) some portion of which is reported in [1973] 14 GLR 643, and submitted that as observed in the said judgment substantial compliance will satisfy the requirement of the provisions of Section 5(3) BT&AL Act and Rule 2A of the said Rules. In that judgment on considering the relevant provisions of Clause (b) of Section 5 of the BT&AL Act and Sub-rule 2A of the BT&AL Rules it was held that the order regarding the surrender was without jurisdiction and nullity as there was no recording of satisfaction of Mamlatdar that the tenant had understood the nature and consequence of the surrender and that the Mamlatdar was satisfied about the same.

16. Shri Patel, learned Advocate for the petitioner has, however, referred to the observation that in a given case the landlord can make an application that the tenant was willing to surrender his tenancy right and the Mamlatdar must verify the surrender in the manner prescribed under Rule 2A and submitted that the instrument of surrender is not required to be submitted by the tenant. The said observation was with regard to the verification of the application which may be submitted by the landlord and therefore it was observed that even if the landlord submits such an application, the Mamlatdar must verify the surrender in the prescribed manner. The order was held illegal and non est for said reasons. It was, therefore, not considered as to whether the order is without jurisdiction and illegal, if the endorsement of the finding of the Mamlatdar is not made on the instrument of surrender. It does not lay down the law that the application submitted by the landlord be considered to be an instrument of surrender. It is obvious that the tenant has to surrender his tenancy interest and, therefore, he could pass the instrument of surrender and not the landlord. It appears from the order of the Mamlatdar that the writing Exh. 1 was submitted by the tenant showing his willingness to surrender the land; that can be considered to be instrument of surrender, but on that instrument, no endorsement appears to have been recorded by the Mamlatdar. The judgment in Hormasji Sorabji Patel's case does not lay down the law as sought to be, by Shri A.J. Patel, learned Advocate for the petitioner.

17. So far as another infirmity about recording satisfaction by the Mamlatdar is concerned, Shri Patel has tried to seek support from the observations in the case of Hormasji to the effect that "unless this satisfaction is recorded expressly or it can be inferred by necessary implication from the order, the Mamlatdar will have no jurisdiction to accept surrender" and submitted that considering the order

passed by the Mamlatdar (Annexure-D) on March 4, 1955 it can be inferred by necessary implication that the Mamlatdar has recorded his satisfaction as the Mamlatdar stated that the tenant was ready to hand over the possession voluntarily. But referring the order it cannot be said that the Mamlatdar endorsed his finding about his satisfaction that the tenant understood the nature and the consequence of the surrender. Mere referring the statement of the tenant in that behalf is not sufficient, but it is obligatory for the Mamlatdar to record his satisfaction in that behalf. Even if endorsement to that effect may not be express it should be such as can be inferred by necessary implication. In the instant case endorsement of finding about the requisite satisfaction cannot be inferred by the necessary implication.

18. The provisions of Sub-section (1) of Section 15 BT&AL Act are considered by the Supreme Court in Vallabbhai Nathabhai Vs. Bai jivi and Others, .

19. The ratio of the judgment is that in case of surrender which is not in accordance with the provisions of the Act and the Rules, termination of the tenancy does not become effective and the relationship of the tenant and the landlord continues; and in case possession is taken away by the landlord on the basis of the surrender order the tenant can claim for possession by application u/s 29 of the Act.

20. The provisions of Section 5(3)(b) BT&AL Act and the Rule 2A BT&AL Rules are considered by the Supreme Court in Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, in which the Circle Inspector who verified the surrender did not endorse that the tenant had voluntarily made the surrender after understanding the nature and consequences and therefore the surrender was held vitiated and non est. It is observed:

The imperative language, the beneficial purpose and importance of Section 5(3) (b) and Rule 2A for efficacious implementation of the general scheme of the Act all unerringly lead to the conclusion that those provisions were intended to be mandatory and not directory.

It is further observed:

The requirement as to the recording of its satisfaction by the authority in the manner prescribed by the Rule is the substance of the matter and not an empty formality. In the absence of the requisite endorsement, therefore, it cannot be said that there has been even a substantial compliance with the statutory requirements.

21. Shri Shah for the respondents has referred the judgment in the case of Chhaganbhai Khushalbhai Patel v. Zaverbhai Hathibhai Spl. C.A. No. 3028 of 1979 rendered by A.M. Ahmadi, J. on October 9, 1987 (Reported in 1988 (1) GLR 151) in which the point for consideration was different and therefore provisions of Sub-section (2) of Section 15 and Section 29 BT&AL Act were considered. So far as present litigation is concerned, the provisions of Sub-section (2) of Section

15 are not much relevant. Apart from that for reasons recorded above I have held that surrender is not legal and valid.

22. In view of the above discussion, it should be held that the surrender of the interest of the tenant and the order passed by the Mamlatdar are not in accordance with the mandatory provisions of Clause (b) of Section 5 BT&AL Act and the Rule 2A BT&AL Rules and, therefore, the surrender is illegal, invalid, without jurisdiction and non est. Relationship of the tenant and the landlord, therefore, continued even though possession of the land was taken away by the petitioner on March 4, 1955.

23. The dispute, however, does not rest there as, it is required to consider the effect of such an invalid surrender and the continuance of the relationship of the landlord and the tenant on right to be considered deemed purchaser u/s 31 BT&AL Act, in case the tenant has not applied for possession of the land within the period of two years u/s 29 BT&AL Act. The possession taken over by the petitioner-landlord on March 4, 1955 being unauthorised and wrongful, it was necessary for the tenant Mahijibhai to apply for the possession under Sub-section (1) of Section 29 BT&AL Act. A tenant entitled to the possession of the land has to apply in writing for such possession to the Mamlatdar within the period of two years from the date on which right to obtain possession of the land is deemed to have accrued to the tenant. As the possession was unauthorisedly and wrongly taken away by the landlord on March 4, 1955 the tenant Mahijibhai should have applied for possession u/s 29(1) BT&AL Act on or before March 3, 1957. Instead, he applied to the Mamlatdar in the year 1973 for the possession. From the order of the Mamlatdar it appears that the application was submitted u/s 32PP and Section 32G; while in view of the Gujarat Revenue Tribunal the tenant should be considered deemed purchaser of the land u/s 32G BT&AL Act. Section 32PP and Section 32G are not applicable to the facts of the present case. u/s 32G the Tribunal has to issue notice and determine the price of the land to be paid by the tenant immediately after the tillers' day. Section 32PP only provides an opportunity to the tenant to purchase land which has been at the disposal of the Collector u/s 32P of the Act.

24. As observed by the Supreme Court in the case of Vallabhbhai (supra) it was necessary for the respondent-tenant Mahijibhai to submit an application u/s 29(1) BT&AL Act within the period of two years for possession of the land. No such application was submitted within the prescribed period and, therefore, the Mamlatdar could not have awarded possession of the land u/s 29 of the Act.

25. As observed above, the relationship of the tenant and the landlord subsisted even though the possession was unauthorisedly taken over by the landlord. The question, therefore, requiring consideration is as to whether the respondent-tenant Mahijibhai should be considered deemed purchaser of the land u/s 32 BT&AL Act. By Act 13 of 1956 drastic provisions are made in the Bombay Tenancy and Agricultural Lands Act and as provided in Section 32, the tenant is deemed to have purchased from his landlord the land cultivated by him on the

tillers" day i.e. on April 1, 1957 provided certain conditions specified in the said Section are satisfied. Section 32 provides that on the first day of April 1957 (the tillers" day) every tenant shall, subject to the other provisions of the said Section and the provisions of the next succeeding Sections, be deemed to have purchased from his landlord the land held by him as tenant, if such tenant cultivates the land leased to him, personally. If the land leased to tenant is cultivated by him personally, he is deemed purchaser under the provisions of Section 32 of the Act. For two years prior to April 1, 1957 the tenant Mahijibhai was not in possession and was not cultivating the land personally. He, therefore, cannot be considered to be the deemed purchaser under the provisions of Section 32. Right of such tenant whose possession is taken away unauthorisedly is protected under Sub-section (1A) of Section 32 if such tenant is evicted before 1-4-1957 and is not in possession of the land and has made the application for possession of the land under Sub-section (1) of Section 29 BT&AL Act within the prescribed period specified in the said sub-section and if the application is allowed by the Mamlatdar or the Collector in appeal or Gujarat Revenue Tribunal in revision, the tenant shall be deemed to have purchased the land on the date on which the final order allowing the application is passed. If at all the tenant Mahijibhai would have submitted an application within the prescribed period of two years and if the ultimate result would have been in his favour, he would have been considered to be the deemed purchaser under the provisions of the Act. The tenant Mahijibhai was not in possession of the land on appointed day i.e. June 15, 1955 and, therefore, the provisions of Sub-section (IB) of Section 32 are not applicable. If at all the tenant Mahijibhai would have been personally cultivating the land on the tillers" day or would have submitted the application u/s 29(1) BT&AL Act within the prescribed period of limitation, and that application would have been decided in his favour, he would have been considered to be the purchaser of the land on that day. Even though the relationship of the tenant and the landlord continued Mahijibhai would not get the benefit of the provisions of Section 32 of the Act.

26. The provisions of Sub-sections (1) and (IA) of Section 32 are considered in two judgments by Gujarat High Court In Bhagwanji Himatsinhji v. Gujarat Revenue Tribunal [1972] 13 GLR 165 decided on July 21, 1970 by J.B Mehta, J. the facts were practically similar, as the tenant was dispossessed and evicted from the land by the landlord before April 1, 1957.

27. The submission of Shri Shah, learned Advocate for the respondents that the relationship of the tenant and the landlord continued on the tillers" day and, therefore, the tenant is deemed to have purchased the land u/s 32(1) BT&AL Act cannot be accepted as the tenant is deemed to have purchased the land only if he is cultivating the land leased to him personally on the tillers" day.

28. The Legislature being conscious of the fact of unauthorised possession by the landlord and depriving the tenant of his right to purchase the land on the tillers" day, has made specific provision under Sub-section (1A) of Section 32 BT&AL Act

under which the tenant can get protection and assert his right to purchase the land even on future date. But it is necessary for the tenant to assert his right of getting the possession within the prescribed time u/s 29 BT&AL Act.

29. A conjoined reading of Sub-section (1) and Sub-section (1A) of Section 32 clearly leads to the conclusion that in case the tenant is dispossessed unauthorisedly by the landlord prior to the tillers" day, he has to apply and assert his right under Sub-section (1) of Section 29 BT&AL Act. Only in that case, the tenant will get right to purchase the land or will be considered deemed purchaser on the future date.

30. shri Shah, learned Advocate for the respondents has referred the judgment in the case of Patel Shanabhai Vithalbhai Vs. Patel Bakorbhai Vithalbhai and Others, , in which the provisions of Sub-sections (1) and (1A) of Section 32 are considered, by M.P. Thakkar, J. (as His Lordship was then) It was a case in which the tenant was forcibly dispossessed only three days prior to the tillers" day. The point for consideration was, as to whether it is necessary, to get the benefit under Sections 32(1) and 32G, that the tenant should be in physical possession of the land on the tillers" day and in light of that it was observed that there is prima facie no warrant for holding that the tenant must be in physical possession of the land on the tillers" day and the Section itself does not make possession on the tillers" day a sine qua non for becoming a deemed purchaser. Even though on the tillers" day physical possession may not be with the tenant he may still cultivate the land personally and, therefore, it is not necessary to establish the actual physical possession on the tillers" day. That decision was rendered in relation to the special facts of the case and, therefore, does not help the respondents to assert their right to purchase the land. In the instant case the possession of the petitioner-landlord is unauthorised and wrongful and not illegal or unlawful as he got possession by the order of the Mamlatdar which was not in accordance with the statutory provisions. It is unequivocally observed that all that is required for the tenant to establish is that the relationship of the tenant and the landlord subsists, that he satisfies the requirement of Sections 32(1)(a) and 32(1)(b) and that there is no provision which takes away such right from him.

31. Satisfaction and compliance of requisite conditions u/s 31(1) is necessary to get the right as deemed purchaser on tillers" day. It is apparent that for getting benefit u/s 32(1) the tenant is required to satisfy the other requirement that he was cultivating personally the land leased to him.

32. The respondents are not entitled to purchase the land u/s 32FF as the deceased tenant Mahijibhai was not and the respondents are not, the tenant within the meaning of Sub-Clause (d) of Clause (1B) of Section 2 BT&AL Act which provides that the tenant should continue the possession of the land after the surrender of the tenancy at any time after the appointed day i.e. June 15, 1955. In the instant case, surrender was prior to the appointed day and the tenant did not continue to remain in possession with or without the consent of

the landlord and therefore the provisions of Section 32FF are not attracted.

33. In view of above, the declaration by the Gujarat Revenue Tribunal that the respondent-tenant is deemed to be purchaser of the land u/s 32G of the Act cannot be sustained. That observation by the Gujarat Revenue Tribunal is without jurisdiction, not legal and proper. The order by the Gujarat Revenue Tribunal, therefore, vitiates for want of jurisdiction and for reasons recorded above and be set aside and the application filed by the respondent-tenant be dismissed.

34. Shri M.C. Shah, learned Advocate for the respondents has not addressed on the right to purchase the house sites or houses. The Revenue Tribunal has observed that the houses belong to the petitioner-landlord and he has allowed the tenant to occupy them just before 5-6 years as the tenant-Mahijibhai wanted to stay as, he was having the water pump in the adjoining field.

35. Petition is allowed. The order by the Gujarat Revenue Tribunal is quashed and set aside. The petition by the respondent-tenant is dismissed. Rule made absolute, with no order as to costs.