

(1974) 03 BOM CK 0037

In the Bombay High Court

Case No : Special Civil Application No. 631 of 1970

Tungabhadrabai Deorao Bhagwat

APPELLANT

Vs

Nanasaheb Ganpatrao Khalate

RESPONDENT

Date of Decision : 26-03-1974

Acts Referred:

Constitution of India, 1950 — Article 15, 227
Hindu Succession Act, 1956 — Section 14
Land Acquisition Act, 1894 — Section 11, 16, 30

Citation : (1976) 78 BOMLR 395

Hon'ble Judges : Shah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shah, J.—These four Special Civil Applications filed under Article 227 of the Constitution of India raise interesting- but important questions under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act). The three petitions, Special Civil Applications 1843/1970 to 1845/1970 raise common questions of law and fact, So far as Special Civil Application 631/1970 is concerned, one of the questions of law raised therein is common to the question arising in the other three matters. It would, therefore, be convenient to dispose of all the four petitions by a common judgment.

2. In order to appreciate the rival contentions raised, it would be necessary to state the relevant facts out of which these four petitions have arisen.

3. I will first deal with the facts in Special Civil Applications Nos. 1843 to 1845 of 1970. All these three petitions have been filed by different tenants in possession of different lands belonging to Satish Narayan Naik, who is the respondent in all these matters. In Special Civil Application No. 1843 of 1970, the petitioner Baliram. Ananda alias Anna Zope is the tenant of Survey No. 123/2 admeasuring 1 acre 16 gunthas of land. In Special Civil Application No. 1844 of 1970, Ramhrishna Vithoba Mali and his brothers have been in possession of Survey No.

158 admeasuring "7 acres and 30 gunthas as tenants. Similarly, in Special Civil Application No. 1845 of 1970, the petitioner Trimbak Vithoba Zope has been in possession of Survey No. 163 admeasuring 8 acres and 11 gunthas as a tenant.

4. The facts which are no longer in dispute are that all these three pieces of land belonged originally to one Laxmibai Narayan Naik who was a widow on the tillers" day, that is, on April 1, 1957. She filed applications for possession of all these lands against the respective tenants u/s 29 read with Section 31 of the Act on the ground that she bona fide required the lands for personal cultivation, All these applications came to be rejected on November 21, 1957, and the tenants continued to be in possession of the respective lands. On December 26, 1957, Laxmibai adopted the respondent landlord who was then a minor, Thereafter, on November 10, 1958, Laxmibai died. The respondent who was a minor on the date of adoption attained majority on April 8, 1963. It is conceded by both the parties before me that the respondent did not exercise his right to claim possession of any of these lands for bona fide personal cultivation as per the provisions of Sub-section (3) of Section 31 of the Act. It is also not disputed that after the expiry of the period of one year during which the respondent could exercise his right to claim -under Sub-section (2) of Section 31, none of the tenants gave an intimation of there willingness to purchase the land as required by the provisions of Section 32F (M) of the Act. However, it would be relevant to notice that before the expiry of the period of two years of the landlord attaining majority during which the tenants could exercise their right to purchase the lands by giving intimation u/s 32F(1A), all these three pieces of lands were acquired by the Government for a public purpose under the Land Acquisition Act. In the land acquisition proceedings, the Government took possession of Survey Nos. 123/2, 158/2 and 163 on April 22/1964, January 11, 1964 and January 3, 1964"respectively.. It is common ground that since the date of taking possession of these pieces of land by the Collector, they have vested in the Government absolutely free from all encumbrances as per the provisions of Section 16 of the Land Acquisition Act. I am informed by the parties that the Land Acquisition Officer has determined the total amount of compensation under the award, and the Collector has made a reference for apportionment of amount of compensation between the landlords and the respective tenants u/s 30 of the Land Acquisition Act.

5. In the year 1964, landlord Satish Naik filed separate applications against the respective tenants of the Survey Nos. 123/2, 158/2 and 163 u/s 70(b) of the Act for a declaration that the tenants have lost their right of purchase or the lands under the Act as they failed to give intimation of their willingness to purchase the lands in their possession as required Dy the provisions of Section 32 F (1A), and, therefore, all their rights in the lands have been extinguished. All the three applications were decided by the Tahsildar who granted the applications filed by the respondent-landlord and declared that the respective tenants had lost their rights to purchase the land under the Act. The Tahsildar also declared that they would have been evicted had the land been in possession of the tenants and the

landlord would have been given possession thereof. The tenants challenged the orders of the Tahsildar by preferring appeals before the sub-divisional officer who confirmed the decision of the Tahsildar and dismissed all the appeals. The tenants challenged the orders in appeals before the Revenue Tribunal by preferring revision applications. The Revenue Tribunal confirmed the view taken by the two authorities and dismissed the tenants' revision. According to the Revenue Tribunal, it was necessary for the tenants to give intimation of their willingness to purchase the lands as per the mandatory requirement of Section 32F (1A) of the Act, and as admittedly no such intimations were given by the tenants within the prescribed time their right to purchase the land was extinguished. In the view of the Revenue Tribunal, the acquisition of the lands by the Government even before the expiry of the period during which the tenant could give intimation of his willingness to purchase was of no consequence, for, the question is one of subsisting interest in the land which would entitle the tenant or the landlord to compensation on the basis of their respective ownership in the land. This decision of the Revenue Tribunal has been challenged by the tenants in the three Special Civil Applications Nos. 1843 to 1845 of 1970 filed by them.

6. In Special Civil Application No. 631 of 1970, the material facts are these. Agricultural land bearing Gat No. 288 admeasuring 3 acres and 5 gunthas admittedly belongs to the petitioners Tungabhadrabai and Gangabai who are sisters and the land is in possession of the first respondent as a tenant since before the tillers' day, i.e., April 1, 1957. Admittedly, this land has been inherited by the two sisters from their mother who died about forty years ago. The respondent No. 1 is a tenant of the land since 1947. The husband of Tungabhadrabai died in the year 1950 and the husband of Gangabai died in the year 1954. Thus both of them were widows on April 1, 1957. The landladies who are the petitioners before me filed Tenancy Case No, 12 of 1957 against the respondent tenant, before the Tahsildar, for possession of the land u/s 29 read with Sections 31 and 14 of the Act. Possession was claimed on two grounds, viz. that they required the land for bona fide personal cultivation, and that the tenant had committed default in payment of rent. The Tahsildar rejected the claim of the petitioners for possession on the ground of non-payment of rent. However, he found in favour of the petitioners on the question of loan fide requirement for personal cultivation and passed the order for delivery of possession of the land in their favour. This order of the Tahsildar was confirmed by the Assistant Collector in appeal, and the respondent-tenant was directed to hand over possession of half portion of the suit land to the petitioners. This order was challenged in revision by the respondent-tenant before the Revenue Tribunal in revision application. The Revenue Tribunal was of the view that the rights or the widows contemplated by Sub-section (3) of Section 31 are confined only to those cases where the widow has a limited interest or widow's estate in the land in possession of the tenant. According to the Revenue Tribunal, if the widow happens to be the full owner of the land, the tillers' day is not postponed and

the tenant becomes the owner of the land on April 1, 1957. For this view the tribunal placed reliance on certain observations of Patel J. in the case of Bai Sonabai Bhukandas Shah v. Dattatraya Ramhrishna Chandratre. (1965) Special Civil Application No. 1192 of 1963, decided by Patel J., on January 19, 1986 (Unrep.). On this ground alone, the tribunal allowed the revision application filed by the respondent-tenant and set aside the order for delivery of possession of half land passed by the two authorities below. The petitioners have challenged the order of the Revenue Tribunal in this petition.

7. Mr. R.V.Jahagirdar appearing for the petitioner landlord in Special Civil Application No. 631 of 1970 contends that on a true construction of the provisions of Sub-section (1) of Section 31 read with Sections 32 and 32F of the Act, there is no warrant for restricting the right of a widow to claim possession of the land by construing the word "widow" as a widow having only a limited interest or a widow's estate in the land in possession of the tenant. He submits that the tillers' day is postponed and the provisions apply irrespective of the fact as to whether the widow is full owner or has a limited interest in the land. On the other hand, Mr. Kanade appearing for the tenant Nanasaheb Khalate in the said petition and Mr. Raghavendra Jahagirdar appearing for the petitioners-tenants in the other three matters contend that on a true construction of the scheme of Sections 31 and 32 of the Act, the tillers' day is postponed only in cases where the widow has a limited interest or a widow's estate in the land.

8. In order to appreciate these rival submissions, it is necessary to consider the scheme of the provisions of Sections 31, 32 and 32F of the Act, Sub-sections (1) and (2) of Section 31 give a right to the landlord to terminate the tenancy of a land by giving a notice to the tenant and making an application on or before December 31, 1956 for possession of the land on any of the grounds, viz. for bona fide personal cultivation or for any bona fide non-agricultural purpose. If these steps are not taken by the landlord, the consequences mentioned in Section 32 follow, viz., that the tenant becomes owner of the land on April 1, 1957 subject to the restrictions contained in that section. u/s 32, the tillers' day is postponed under certain circumstances. For instance, if the landlord has made an application under Sub-section (1) of Section 31, tillers' day is postponed till the final disposal of such a proceedings for possession under the Act, Of course, the rights of the landlord terminating the tenancy are also subject to various other considerations which are enumerated in Sections 31A to 31D of the Act. The Legislature, however, has provided for postponement of the tillers' day in the case of certain categories of landlords such as a minor, a widow or a person subject to mental or physical disability. Sub-section (3) of Section 31 provides:

Where a landlord is a minor, or a widow, or a person subject to mental or physical disability then such notice (i.e. a notice contemplated by Section 31(1) and (2) may be given and an application for possession u/s 29 may be made,-

(i) by the minor within one year from the date on which he attains majority; -

(ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which mental or physical disability ceases to exist; and

Provided that where a person of, such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry, is satisfied that the share of such person in the land is separated having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion," (Italics and bracketed portion mine).

If a person falls within the category mentioned in Sub-section (3) of Section 31, which I might refer to as the "exempted category", the tenant cannot become owner until the expiry of the period allowed to such a landlord by Sub-section (3) of Section 31. If the landlord of the exempted category takes steps to terminate the tenancy and makes an application within the prescribed time, the tenant cannot become owner. There is a further important rider to the right of the tenant of the landlord of the exempted category to become owner of the land which is contained in Section 32F. In the case of the landlord of exempted category, the tenant does not automatically become owner thereof but is required to take steps u/s 32F before he becomes the owner. Sub-clause (a) of Sub-section (1) of Section 32F provides that:

Notwithstanding anything contained in the preceding sections-

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31:

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st Day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

However, the right given to a tenant under this provision is not an absolute one but is controlled by the provisions of Section 32F (1A) which provides:

A tenant desirous of exercising the right conferred on him under Sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-Section:....

9. We are now concerned with the construction to be put upon the word "widow" in the said provisions. Rules of construction of a statutory provision are well-settled. Normally, the words used in a statute have to be construed in their ordinary meaning. In the absence of adequate grounds, it is wrong to add or subtract words. However, often enough, it becomes necessary to have regard to the subject-matter of the statute and the object which it intended to achieve, and the words have to be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning. It is also well-settled that the intention of the Legislature has clearly to be gathered from the actual words used by it, giving to the words their plain, normal grammatical meaning. It is also well established that even in cases where a passage in a provision is susceptible of more than one meaning, it is always important to consider the effects or consequences which would result from it, for they point out the real meaning of the words. One has also to bear in mind the principle that in the construction of a statute, the general object of which is to benefit a particular class of persons, if any provision is ambiguous so that it is capable of two meanings, one which preserves the benefit and another which would take it away, the meaning which preserves it should be adopted.

10. Reading the provisions of Sub-section (3) of Section 31, it is patently clear that the word "widow" is not qualified by any expression which would show that any particular class of widows is contemplated. The effect of giving the plain grammatical meaning to the word "widow" would be to construe it covering all widows irrespective of the fact whether she happens to be the full owner or has only a limited or widow's estate in the land. What is, however, urged on behalf of the tenants is that if regard be had to the scheme of m. 31 and 32 of the Act, it would not be proper to hold that the Legislature intended to give protection to all widows irrespective as to whether they are full owners of the land or not. It is urged that the case of a widow who is the full owner would be covered by the general provisions contained in Sub-sections (1) and (2) of Section 31, and such a widow has to make an application for possession within the time prescribed under the said sub-sections, failing which, the tenant becomes the owner on April 1, 1957. The question arises whether the Legislature intended to differentiate between two classes of widows, one having full ownership of the land, and the other having limited interest or widow's estate. It is difficult to spell out any such intention from any of the provisions of the Tenancy Act, On the other hand, it seems to be clear that the Legislature intended to give protection to certain classes of landlords including widows and minors. This is obviously in recognition of the conditions in this country where most of the

widows irrespective of the fact whether they are Hindus or belong to other communities are not able to manage their own affairs and have to depend on others. It is this fact which has been recognized by making a provision giving some sort of protection to the widows whose lands are in possession of the tenants. This is supported by the explanation to the definition of the expression "To cultivate personally" contained in Section 2(6). The Explanation I provides that a widow or a minor, or a person who is subject to physical or mental disability or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants. The effect of the Explanation is that even if the lands of the persons of the exempted category are cultivated by tenants, such landlords are deemed to cultivate the land personally. There is, therefore, no reason to suppose that the Legislature intended to make a distinction between a widow having full ownership right in the land and a widow having a limited interest or widow's estate. The concept of widow's estate or limited estate is peculiar to Hindu law and does not find a place in the personal law governing other communities, such as Mahomedans, Parsis and Christians. Surely, the provisions of Tenancy Act are intended for persons belonging to all communities irrespective of caste, creed and religion to which they may belong. To accept the contention on behalf of the tenant that widows referred to in Sub-section (3) of Section 31 are widows having only widow's estate or widow's interest in the land would mean that widow-landlords who are not governed by the Hindu law are not protected by the provisions of the said section. Such does not seem to be the intention of the Legislature; nor is there anything in the said provisions to warrant such a conclusion. It is significant to note that the Legislature has grouped the minors or widows or persons subject to physical or mental disability in one class. Apart from the provisions of Section 31(3) and Section 32P, there are other provisions of the Act which indicate an intention on the part of the Legislature to give protection to widows from the consequences flowing from the provisions of, the Act. In this connection, I may refer to the definition of the expression "To cultivate personally" in Section 2(6) which shows cultivation through a tenant is not personal cultivation. However, in order to safeguard the interests of landlords who are minors, widows and persons subject to a physical or mental disability, a special provision is made by adding Explanation I to the effect that a widow or a minor, or a person who is subject to physical or mental disability or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants. Can it be said that this explanation is intended only for widows who have a limited interest or a widow's estate in the land leased to the tenant? The obvious intention in making this provision is to give protection to such landlords from the consequences which flow from the other provisions of the Act when their lands are cultivated by tenants. Taking into consideration the scheme, of the Act and the intention of the Legislature as can be gathered therefrom, I am of the view that the Legislature intended to use the word "widow" in Sub-section (3) of Section 31 and the other relevant provisions of the Act irrespective

of the nature of her right in the land.

11. It is, however, urged on behalf of the tenants that the use of the expressions "successor-in-title of a widow" and "her interest in the land ceases to exist" in Section 31(3) afford a clue to the construction of the word "widow". It is urged that these two expressions indicate that the Legislature had in mind widows having only limited interest in the land. What is urged is that the Legislature has advisedly used the expression "her interest in the land ceases to exist" instead of saying "her title to the land is extinguished or comes to an end". I see no merit in this contention. The word "interest" is a wider term. A person's interest in the property may be absolute or limited. There does not appear any valid reason to suppose that the word "interest" is used with a view to indicate that only the widows having limited interest can take advantage of the provisions. There are various ways by which the interest of widows in the property can come to an end. She may sell away the property or make a gift of her property. Her interest in the property may even cease by her death. In my opinion, the word "interest" in Section 31(5) has been used in a wider sense, and it must be read along with the expression "successor-in-title" of the widow. The dictionary meaning of the word "succeed" is "to take the place of another". It also means to "devolve" or "pass in succession".... (See Chamber's Twentieth Century Dictionary, 1964 edn.). Having regard to the scheme of the Act, the word "successor" would include any person who succeeds to the property either as heir or a transferee or as a legatee. The expression "successor-in-title" is not defined in the Tenancy Act. In my view, it means a person who succeeds to the title in the property whether it is limited or absolute.

12. There is another aspect of the matter which needs to be mentioned. If a restrictive meaning is given to the word "widow" in relation to the land in possession of the tenant as submitted by Mr. Kanade, it would lead to absurd results. Firstly, widows from communities other than Hindus will not be covered by the said sub-section and the tenant would become owner of their land on the tillers" day, i.e., April 1, 1957, subject of course to their right to make an application for possession on or before December 31, 1956 under Sub-sections (1) and (2) of Section 31. This would mean severe curtailment of rights of the widows who happen to be non-Hindus. The personal laws governing Mahomedans, Christians, Parsis, do not have any concept of widow's estate or widow's limited estate as contemplated by Hindu law. If they inherit property, whether from the husband or from others, it is their absolute property. It is only in very rare cases that they may be having only a limited interest in the property, for instance, they may have acquired the property under a will which provides for a limited interest in the legatee. I see no reason to hold the Legislature intended such a result to follow in making a provision like sub-s. (3) of Section 31 which must be regarded as applicable to all the widows irrespective of the fact whether they happen to be Hindus or not. Even as regards Hindu widows, one must take into account the fact that, on June 17, 1956. Hindu Succession Act regards into force and conferred rights of full ownership to Hindu females. u/s 14(1) of that.

Act, any property possessed by a female Hindu, whether acquired before or after the commencement of this Act. shall be held by her as full owner thereof and not as a limited owner. It is only in a few cases covered by Sub-section (2) of Section 14 that the Hindu female does not get absolute ownership in the property, but such cases would be few. Thus, the result of combiner into force of the Hindu Succession Act on.Tune 17, 1956 is that all widows having limited interest or widow"s estate in the property would become full owner there of on that date. If that is so, as regards the applicability of Sections 31 and 32 of the Act, no difference can be made in their case and the case of other landlords except those who are minors, or persons having mental or physical disability. If the contention on behalf of the tenant is accepted, the provisions of Sub-section (3) of Section 31 would be rendered almost nugatory even in the case of Hindu widows as most of them would become full owners by virtue of the provisions of Section 14(1) of the Hindu Succession Act, It is difficult to imagine that the Legislature contemplated that such a, result should follow on a correct interpretation of Sub-section (3) of Section 31.

13. Mr. Kanade contends that the use of the expression "successor-in-title" and "her interest in the land" in Section 31(3)(ii) of the Act shows that the Legislature intended that the benefit is to be confined to the reversioners of Hindu widows having limited estate and not the widows having full ownership in the land. If such was the intention of the Legislature, it would have been quite easy for it to so clearly express itself while enacting the provision. In my view, to accept the argument on behalf of the tenants would be nothing but to rewrite the whole section which is not the function of the Court. In this connection, it would be worthwhile to refer to Kaghavachariar"s Hindu Law, Principles and Precedents, fifth edition. In paragraph 509, the learned commentator observed:

The term "woman"s estate" in its larger connotation means all property which has come to a woman by any means and from any source whatsoever, and includes both property in which she has absolute estate (stridhana) and property in which she has only a limited interest.

Similarly the expression "interest in property" would not necessarily connote "limited interest". It is used both for the purpose of expressing absolute interest or limited interest. The mere use of the expression "her interest in the land" in Section 31(3)(ii) cannot lead to the inference that the Legislature contemplated that only widows with limited interest should be given the benefit of the provision.

14. There is another aspect of the case which must not be lost sight of. It is difficult to see any valid reason for making a discrimination between Hindu widows and widows from other communities. The scheme of the Act nowhere indicates that it wanted to give a special protection to Hindu widows having a limited interest in the property, which would devolve upon the reversioners on their death. A Division Bench of this Court, which had an occasion to consider the provisions of Section 31 in relation to the rights of the widows to terminate the tenancy of their land for bona fide personal cultivation, has, in the case of Bai

Jiviben Vs. Bombay Revenue Tribunal, :

The intention of the Legislature in enacting Sub-section (3) of Section 31 was not to deprive widows, minors or other persons subject to disabilities of any rights, which they possess in common with other landlords, but to confer certain additional rights on them.

If the tenants' contentions are accepted, it would result in curtailment of rights of widows to take advantage of the provisions of Section 31(3)(ii) to a very great extent. While the widows having limited interest in the land would be benefited by the said provisions, those who are the full owners thereof will not be entitled to those privileges. As pointed out earlier, the narrow construction sought to be put upon the provision on behalf of the tenant would render the provision almost nugatory. It would be only in a few cases that on April 1, 1957, widows who are Hindus would be having limited interest in the land particularly was in view of the provisions of Section 14 of the Hindu Succession Act which came into force on June 17, 1956, while the provisions of Section 31 came into force thereafter on August 1, 1956. In my view, the word "widow" in Section 31(3)(ii) must be given its plain grammatical meaning and not the restricted meaning as contended on behalf of the tenant. There is nothing in the scheme of the Act or the said provision which impels me to hold that the Legislature intended to use the word "widow" in the said provisions as meaning a widow having only a limited estate in the land.

15. It is urged by Mr. Kanade that there is a presumption in favour of constitutionality of a statute, and if two interpretations of the provisions thereof are possible, the one which would render them valid must be preferred. He submits that if the word "widow" is given its plain grammatical meaning irrespective of the nature of her interest in the land, it would render the provisions of Section 31(3)(ii) unconstitutional and ultra vires Article 15(3) of the Constitution of India. In support of this contention he made the following submissions. The Legislature is competent under the said Article to make a special provision for women and it would be reasonable to construe the said Article to mean that the Legislature is competent to make a law with reference to the nature of the property belonging to the widow. If Section 31(3)(ii) would be construed to apply to all widows irrespective of the nature of their right to the land, it would result in discrimination between two classes of women, viz. women who are not widows but have absolute ownership rights in the land and women who are widows who also may have absolute ownership in the land. Such a discrimination could be avoided by construing the word "widow" in Section 31(3)(ii) as a widow having a limited interest in the land. He further contends that if widows are classified into two classes one having a limited interest in the land and the other having full ownership rights in the land, the position of widows of the latter class would be the same as that of women who are not widows but have full ownership, rights in the land. I am unable to accept this contention. The Article provides that the State is not prohibited from making any special

provision for women. It is well known that widows may not have the assistance or guidance which other women can have from males. Normally, the interest of minor girls is protected by their parents. Similarly, the interest of married women would be protected by their husbands. "Widowhood itself is considered to be a disability and the classification therefore as between widows and other women cannot be said to be unreasonable or discriminatory in any manner whatsoever. The assumption that women who are widows and those who are not, stand on an equal footing is, to my mind, not correct. On the other hand, a classification of women who are widows and those who are not would be reasonable and if the Legislature makes a provision giving protection to all widows irrespective of the nature of right in the land, such a provision cannot be said to be discriminatory or unreasonable. I see no substance in the contention of Mr. Kanade that the interpretation that I am inclined to put on the impugned provision would result in unconstitutionality. On the other hand to give a restricted meaning to the word "widow" would result in discrimination between widows having absolute title to the land and those having limited interest in the land.

16. Mr. Kanade relied on certain observations of Patel J. in the case of Bai Sonobai Rhuhandas Shah v. Dattatraya Ramhrishna Chandratre. In that case, the widow obtained order for delivery of possession of half of the land for personal cultivation u/s 31 of the Act. During the pendency of the said proceedings u/s 31, the widow made another application for possession of the land on the ground that the tenant had committed defaults in payment of rent for three years. The proceedings filed by the widow for possession on the ground of defaults went up to the Revenue Tribunal which took the view that as the widow had filed an application u/s 31(1) and she was allowed half the land; in respect of the other half, the tenant became the statutory purchaser and therefore her application u/s 14 had become infructuous. This order was challenged by the widow before the High Court in a writ petition. As regards the arrears, it was found by the High Court that they were only to the extent of Rs. 3 and the non-payment was on account of some bona fide mistake on the part of the tenant. During the course of the judgment, it is observed by the learned Judge that Section 32F does not intend to lay down that every woman who holds property is under a disability, and that when Section 32F was enacted it was intended to apply to a widow who held only a widow's estate and in whose case the reversioner was to follow to claim the property. These observations of the learned Judge, no doubt, prima facie, support the contention of Mr. Kanade that tillers' day is not postponed where a widow has obtained absolute ownership of the property and not merely a limited interest or widow's estate. On going through the judgment, I find that no arguments were advanced on either side as to the true construction of the provisions of Sections 31(3)(ii), 32 and 32F as regards the right of a widow. On the other hand, the judgment shows that even the counsel for the widow assumed that the provisions would apply to a Hindu widow having limited estate and on that basis wanted to lead additional evidence to show that the widow had acquired the land in a partition between the members of a joint Hindu family,

None of the aspects which I have referred to above seem to have been considered by the learned Judge in that ease. With respect, it seems to me that it was assumed by the learned Judge that the provisions of Section 32(3)(ii) are intended only to apply to Hindu widows having limited interest in the property, and on such assumption, the above observations have been made and cannot be considered as a binding precedent. On a consideration of the scheme of the Act in so far as the protection it gives to the widows, minors and persons subject to physical or mental disability, in my view, what the Legislature has contemplated is the physical status of the woman as a widow and no distinction can be made between a widow having absolute ownership and the other having limited interest or widow's estate in the property. The Gujarat High Court in *Bai Neksabbibi and Another Vs. Kashiben Maganbhai and Others*, , has taken a similar view, with which I respectfully agree.

17. In Special Civil Application 631 of 1970, the claim of the petitioners is rejected solely on the ground that they are the absolute owners of the land in question and are therefore not competent to make an application for possession of their land after April 1, 1957. Both the Tahsildar and the Deputy Collector have concurrently held that the petitioners required the suit land bona fide for their personal cultivation and they would be entitled to get pos-session of half of the suit land. The tribunal, however, has rejected the claim of the petitioners solely on the preliminary ground as above. In the view I am inclined to take regarding the interpretation of the provisions of Section 31(3)(ii), the orders passed by the Tahsildar and Assistant Collector will have to be restored. It has not been shown that the concurrent findings of facts arrived at by the first two authorities are perverse or wrong in law. The petitioners, therefore, would be entitled to get possession of half of the suit land for their personal cultivation u/s 31 of the Act.

18. Mr. Raghavendra Jahagirdar appearing for the petitioners in Special Civil Applications 1843, 1844 and 1845 of 1970 also supported the contention raised by Mr. Kanade and contended that in these three matters the petitioners had become owners of the lands in dispute on November 21, 1957, and there was no question of applicability of the provisions of Section 32P of the Act, fie submitted that Laxmibai who was widow on April 1, 1957, had made an application for possession of the respective lands u/s 31 read with Section 29 on the ground that she required them for bona fide personal cultivation, and that application was rejected on November 21, 1957. According to him, in view of the applications made by Laxmibai u/s 31 read with Section 29, the tillers" day was postponed only till November 21, 1957 when her claim for possession came to be rejected. He further submitted that on June 17, 1956, Laxmibai became the absolute owner of the lands in dispute by virtue of the provisions of Section 14 of the Hindu Succession Act, and as such on April 1, 1957, she could not be considered to be a widow having only a limited interest in those lands. His submission was that the provisions of Section 31(3)(ii) could come into operation only in cases where the, widow has only a limited interest as contemplated by Hindu law and not otherwise. This point was never taken up by the petitioners

before any of the authorities below. The question as to whether she became the absolute owner of the land on April 1, 1957 is a question of fact. It may be that she has acquired only a limited estate as per the Explanation to Section 14 of the Hindu Succession Act and the petitioners are not entitled to raise such a point for the first time in this Court. Moreover, I have already held above that tillers" day is postponed irrespective of the fact whether the widow has absolute ownership or limited interest in the land. I, therefore, reject this argument advanced on behalf of the petitioners and hold that the petitioners did not become owners of the lands in question on November 21, 1957. It was further contended by the counsel that the provisions of Section 31(3)(ii) operate only when the widow does not make any application for possession for bona fide and personal cultivation, and if she makes an application during her life time, as soon as the application is disposed of, the tenant becomes owner of the land which is allowed to remain in his possession under the orders passed in such an application. According to him, the provisions of Section 32F have no application to such a case as the tenant would become owner of the land on the termination of proceedings for possession filed by the widow. The provisions of Section 32F in so far as they are material are as follows:

Notwithstanding anything contained in the preceding sections-

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31....

(IA) A tenant desirous of exercising the right conferred on him under Sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section:....

Now, Section 32 deals with the class of tenants who are deemed to have purchased the land on the tillers" day. Under the said provisions, the tenant becomes the purchaser of the land on April 1, 1957. This date, however, is postponed where notice is given u/s 31 by the landlord but he has not applied to the Mamlatdar on or before March 31, 1957 u/s 29 for obtaining possession of the land. If an application for possession is pending before the Mamlatdar on the said date, in such a case the tenant is deemed to have purchased the land on the date on which the final order of ejectment is passed. According to the said provisions, the date of the final order is called the postponed date. It is, however, material to note that the provisions of Section 32 are subject to the provisions of the next succeeding sections and Section 32F is such a provision. Even Section 32F starts with a non-obstante clause, viz. "Notwithstanding anything contained in the preceding sections". It Would thus appear that in the case of persons of the exempted category, the tenant does not become a deemed purchaser either

on April 1, 1957 or thereafter. u/s 32P. he has a right to purchase the land for which he has to follow the decided procedure but within the prescribed time limit. Under Sub-section (1A) thereof the tenant desirous of exercising the right to purchase the land conferred on him under Sub-section (1) has to give an intimation in that behalf to the landlord and the tribunal in the prescribed manner within the period specified in Sub-section (1), i.e. within one year from the expiry of the period during which such landlord of the exempted category is entitled to terminate the tenancy u/s 31. It would thus appear that the tenant of the landlord of the exempted category does not automatically become a deemed purchaser u/s 32 of the Act but has a right to purchase the land as provided in Section 32F. In my opinion, merely because the widow makes an application for possession of the land u/s 31 read with Section 29 and such an application is rejected by the tenancy Court, the tenant of such a land does not become the deemed purchaser during the life time of the widow. He continues to be the tenant of the land and is bound to carry out the obligations cast under the Tenancy Act. The widow can even take recourse to the provisions of Section 14 read with Section 29 if the tenant commits any of the acts mentioned in Section 14. This very question came to be considered by this Court in the case of Havabibi A. Gulam Chafekar v. Shaikh Ehrahim Baba Tambu. (1969) Special Civil Application No. 2707 of 1968, decided by Bal J, on February 5, 1969 (Unrep.). In that case, the widow obtained possession of half of the land from the tenant by making an application u/s 31 read with Section 29 of the Act. Thereafter as the tenant defaulted in paying the rent she gave a notice terminating his tenancy on the ground of non-payment of rent and made an application for restitution of possession u/s 29 read with Section 14 and Section 25(2) of the Act. One of the contentions raised was that in view of the fact that the widow had applied during her life time for possession of the land u/s 31 read with Section 29 of the Act on termination of such proceedings, the tenant became the deemed purchaser of the land remaining in his possession and she would be debarred from terminating the tenancy of the tenant on any ground. On a consideration of the provisions of the Sections 31, 32 and 32F of the Act, Bal J. took the view that the relationship between the widow and the tenant continues even after the termination of the proceedings for possession u/s 31 read with Section 29 taken out by the widow against the tenant. The view taken was that Section 32F controls the provisions of Section 32 with the result that the tenant of the widow does not become a deemed purchaser u/s 32, and the application for possession u/s 14 read with Section 29 was held to be competent. In that case, reliance was also placed on the provisions of Section 31C which provides that the tenancy of any land left with the tenant after the termination of the tenancy u/s 31 shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation. Bal J. pointed out that the said provision only shows that the termination cannot be on the ground of bona fide personal cultivation but that does not mean it cannot be terminated on other grounds. In Kumari Shirish Udhav Rajadhya v. Bam Tukaram Kirulkar (1969) Special Civil Application No. 1064 of 1969, decided by Palekar J., on

August 33, 1969 (Unrep,). Palekar J. has taken a similar view. It has been held therein that in view of the overriding provisions of Section 32F, the mere fact that the minor has obtained possession of the land u/s 31 does not automatically make the tenant a deemed purchaser of the other half remaining in his possession. The rights of the tenant and of a landlord of exempted category came to be considered by a Full Bench" of this Court in Vishnu Shantaram Desai Vs. Indira Anant Patkar and Another, The Full Bench has taken the view that the right conferred upon a tenant u/s 32 of the Tenancy Act is subject to the provisions of Section 32F of the Act. The two sections do not confer independent rights or opportunities to purchase land upon a tenant. Section 32F prescribes a special procedure for exercise of a right to purchase land conferred upon a tenant by Section 32 when either a landlord or a tenant or both of them are under disability. Such a tenant has only one right to purchase. He has to give an intimation u/s 32F (1A) of the Act and then the provisions of Sections 32 to 32E (both inclusive) and 32G to 32R (both inclusive) apply to such Purchase. The following observations of the Full Bench are relevant (p. 803):

Question then arises whether Section 32F confers a right to purchase the land upon a tenant in addition to the right conferred by Section 32. Such a question has to be answered in the negative. When conditions laid down in Section 32F exist, there is no automatic statutory purchase of land by a tenant u/s 32. u/s 32 a tenant is deemed to have purchased from the landlord the land held by him as a tenant without giving him any intimation or doing any other act. Where a tenant is under disability if he is deemed to have purchased land u/s 32 on the tillers" day or on the postponed date, then a question of exercise of a right by a tenant to purchase land u/s 32F cannot possibly arise. There is no question of exercising a right to purchase land by a tenant u/s 32F, if he is already deemed to have purchased the land u/s 32. But in a case covered by Section 32P, provisions of Section 32 apply only after an intimation is given as contemplated by Section 32F (1A) and this is evident from the language of Sub-section (2) of the said section.

In view of the decision of the Full Bench, it would be obvious that so long as the disability continues, there is no question of his becoming the deemed purchaser of the land. As stated above, Section 32F (1) which is one of the next succeeding section starts with a non-obstante clause "Notwithstanding anything contained in the preceding section", and, therefore, the occasion for the tenant to get right to purchase the land is only when the disability comes to an end. It is only thereafter that he gets a right to purchase and even that right is subject to his complying with the provisions of Sub-section (1A) of Section 32F of the Act. In my opinion, therefore, the mere fact that the widow had made an application for possession of the land tinder Section 31 read with Section 29 for bona fide personal cultivation does not confer on the tenant the right of deemed purchase u/s 32 on termination of such proceedings commenced by the widow.

19. Mr. Raghavendra Jahagirdar, however, relied on the observations of Vaidya J.

in *Sujataali v. Rupchand* (1972) 75 Bom. L.R. 275, in support of his contention that if the widow makes an application for possession of the land u/s 31 read with Section 29 of the Act, on termination of such proceedings the tenant becomes the owner of the land remaining with him. In that case, on behalf of the widow reliance was placed on the decisions of Bal J. in *Havabibi's* case and of Palekar J. in *Kumari Shirish Udhav Rajadhya's* case. As regards *Havabibi's* case, the learned Judge distinguished it on the ground that in that case after obtaining possession of half of the land u/s 31 read with Section 29, the widow had made an application for possession u/s 14 read with Section 29 in respect of the remaining portion of the land, while in the case before him, there was no application u/s 14 of the Act. Vaidya J., however, did not express any opinion as regards the view taken by Bal J. in *Havabibi's* case, as he considered it unnecessary to decide the question on the facts and circumstances of the case. As regards the view expressed by Palekar J. in *Kumari Shirish Udhav Rajadhya's* case, it was observed that the effect of Section 310 was not considered in that case. He also distinguished it on the ground that an application u/s 14 read with Section 29 was filed. As observed by Vaidya J., the views expressed by him must be confined to the facts of that case. I am in respectful agreement with the view taken by Bal J. in *Havabibi's* case and Palekar J. in *Kumari Shirish Udhav Rajadhya's* case as regards the interpretation of the provisions of Section 32F of the Act. As stated earlier, Vaidya J. did not think it necessary to express any opinion on the view taken by Bal J. Moreover, it does not appear that the attention of the learned Judge was drawn to the decision of the Full Bench in *Vishnu Shantaram's* case. In my opinion, in view of the said decision of the Full Bench, it must be held that the view taken in *Havabibi's* case and *Kumari Shirish Udhav Rajadhya's* case is correct.

20. In my view, therefore, the tenant of a widow does not become deemed purchaser u/s 32 in respect of the land remaining with him on termination of the proceedings for possession commenced by her u/s 31 read with Section 29 of the Act. The provisions of Section 32F will be applicable to such a case and the tenant's right to purchase the land will be governed by Section 32F. In the result, Laxmibai continues to be the "landlord" of the lands in possession of the respective tenants till her death in spite of rejection of the application for possession u/s 31 read with Section 29.

21. As stated above, on December 26, 1957, Laxmibai adopted the respondent and thereafter she died on November 10, 1958. The question for consideration is whether on the death of Laxmibai, the disability ceased and the tenants were bound to exercise their right of purchase given to them u/s 32F (1A) by giving intimation of their willingness to purchase the land under sub-s. (1A) of Section 32F. It is urged by Mr. Bhokrikar appearing for the landlord that the postponement of the right of purchase conferred on the tenant by the provisions of the Tenancy Act can take place only once, and according to him, the rights of the tenants to purchase the lands was postponed on April 1, 1957, there being a widow on the land. He submitted that as soon as the widow Laxmibai died, there

can be no further postponement merely because she was succeeded by her minor son. It is obvious that there is no hiatus of time between the death of the widow and the minor son succeeding to her property. Admittedly, a minor is one of the persons mentioned in Sub-section (1) of Section 31 and Section 32F mentions minor as a person of the exempted category. If the minor himself was the landlord on April 1, 1957, there can be no doubt that the provisions of Section 32F would be applicable to such a case and the tenant's right of purchase will be controlled by those provisions. However, the question is whether it makes any difference if the minor comes on the scene after another person of the exempted category dies after April 1, 1957. There is no thing in the provisions of Section 31 and Sections 32 to 32F which should indicate that the benefit is to be given only to one person of the exempted category who was a landlord on April 1, 1957, and the provisions of Section 32F become operative on the death of such a person in spite of the fact that another person of the exempted category becomes the landlord on her death. In this connection, it would be worthwhile to refer to the Explanation to the definition of the expression "to cultivate personally" given in Section 2(6) which clearly provides that a widow or a minor or a person who is subject to physical or mental disability, or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants. This definition leads me to infer that in spite of the death of the widow, the land, although in possession of the tenant, shall be deemed to be cultivated personally if a minor succeeds to the property on the death of the widow. The provisions of Section 32F continue to be operative to such a case, for, it clearly provides that notwithstanding anything contained in the preceding sections, where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31. In my view, the expression "such landlord" is material and the provisions of the section would apply in view of the fact that the successor-landlord is also a landlord of the exempted category. I am, therefore, unable to accept the contention raised by Mr. Bhokrikar on this question.

22. The landlord Satish Naik became major on April 8, 1963. Under the provisions of Sub-section (3) of Section 31, he was entitled to exercise his right to get the lands for bona fide personal cultivation within one year from the date on which he attained majority. The landlord Satish could therefore exercise his right to claim possession u/s 31 upto April 8, 1964. Admittedly, he did not exercise such rights till the expiry of the said period. It is to be noted that as regards survey Nos. 158/2 and 163, he could exercise his rights only till January 11, 1964 and January 3, 1964 respectively in view of the acquisition of those lands by the Government under the Land Acquisition Act, since from that time neither the landlord nor the tenant had any subsisting right in the land. As regards the third land, survey No. 123/2, which was acquired on April 22, 1964,

he could have exercised his right to claim the land for personal cultivation till April 8, 1964. As stated earlier, he did not exercise his right to claim the land. So far as the tenants are concerned, they could exercise their rights to purchase the land within one year from the expiry of the period during which the landlord was entitled to terminate the tenancy u/s 31 as provided u/s 32F (1A). The tenants were therefore entitled to exercise their rights of purchase of the land by following the procedure in Section 32F (1A) at any time from April 8, 1964 to April 8, 1965. However, as stated earlier, all the lands were acquired long before April 8, 1965.

23. In view of these facts, the question for consideration is whether the application filed by landlord Satish before the Mamlatdar for a declaration that the tenants cannot become purchasers of the land when they fail to give intimation of their willingness to purchase the land under Sub-section (1A) of a, 32P within the prescribed time is maintainable. The tribunal has taken the view that although the lands have been acquired by the Government, still the landlord and the tenant have an interest in the land inasmuch as they would be entitled to claim compensation for compulsory acquisition under the Land Acquisition Act, and in order to claim such compensation, it was incumbent on the tenants to give intimation of their willingness to purchase the land within the prescribed time under Sub-section (1A) of Section 32P, although the lands vested in the Government on their acquisition. In the opinion of the tribunal, it was necessary for the tenants to give intimation under Sub-section (1A) within the prescribed time as even though the lands were acquired, the tenants had an interest in the amount of compensation which was to be disbursed in respect of the lands in question. The tribunal has observed that although the possession of the lands was taken by the Government from the tenants in the year 1964, the interest which they had in the lands was automatically transferred to the compensation amount and therefore it was necessary for them to exercise their rights to purchase within the prescribed time. Mr. Bhokrikar for the landlord has repeated the same contentions before me. Now, u/s 16 of the Land Acquisition Act, when the Collector has made an award u/s 11 he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. The effect of this provision is that on the Collector's taking possession of the acquired land, both the landlord and the tenant would cease to have any right, title or interest whatsoever in the land. Their only right would be to claim compensation for compulsory acquisition. Section 32F could obviously apply to a case where there is a subsisting landlord and tenant relationship between the parties at the time when the tenant is supposed to exercise his right to purchase the land by giving intimation under Sub-section (1A) of Section 32P. In the instant case, admittedly the lands were acquired by the Government and taken possession of sometime prior to April 8, 1964 on which date for the first time the tenants acquired the right to claim a right of purchase u/s 32F. It is difficult to see how to such a case possibly the provisions of Section 32P can apply unless by fiction it is assumed that as between the landlord and the tenant

the land is still in possession of the tenant. Section 32P postulates a right of purchase of the land. If the land is acquired by the Government, there is no question of exercise of such right of purchase of the land by the tenant. In my view, the requirement of giving intimation under Sub-section (1A) can have no bearing to a case where the land itself is lost to the landlord or the tenant and is taken possession of by the Government. It is true that as regards survey No. 128/2, possession there of was taken in acquisition proceeding on April 22, 1964, that is, fourteen days after the tenant acquired the right to exercise the right of purchase u/s 32F (1A). But then, he was not bound to exercise his right before April 22, 1964. He could still exercise the right at any time before April 8, 1965. The fact therefore that the land survey No. 123/2 was acquired a few days after April 8, 1964 could not make any difference. As regards the applicability of the provisions of Sub-section (1A) of Section 32P, Section 32P postulates the existence of interest in possession of the tenant during the period in which he could have the right to purchase which is not the case here. In this view of the matter, all the three applications filed by the landlord Satish against the petitioners in the three Special Civil Applications must be considered as not maintainable in law.

24. It is urged by Mr. Bhokrikar that both the landlord and the tenants would be entitled to compensation in the land acquisition proceedings under the Land Acquisition Act and therefore as regards their respective rights in the land they must be determined. That is a matter which will have, to be decided by the Collector in an award or if a reference is made by the Court. They mamlatdar has no jurisdiction to determine such rights under the Tenancy Act. It would be for the Acquisition Officer or the Court in a reference under the Land Acquisition Act to take into consideration the fact that as regards survey Nos. 158/2 and 163, both the landlord and the tenant had still time to exercise their rights under the Tenancy Act. The landlord had time to make application u/s 31 of the Act, while the tenants also had time to exercise the right of purchase by giving intimation u/s (1A) of Section 32F. As regards survey No. 123/2, the landlord had lost his right to make application u/s 31 for bona fide personal cultivation as the land was acquired a few days after the expiry of one year from his attaining majority. However, the tenant had time to exercise his right of purchase u/s 32F. It would be for the Collector or the Court in appropriate proceedings under the Land Acquisition Act to determine the share of the landlord and the respective tenants in the compensation payable in respect of the acquired land after taking into consideration these facts.

25. In the view I have taken, the following propositions of law emerge:

(1) The word "widow" in Section 31(3)(ii) must be given its plain grammatical meaning and it cannot be restricted to mean a widow having only a limited interest or widow's estate in the property. What the Legislature has contemplated is the physical status of the woman as a widow as on April 1, 1957, and no distinction can be made between a widow having absolute

ownership and another having limited interest or widow's estate in the land.

(2) The tenant of a widow does not become a deemed purchaser u/s 32 in respect of the land remaining with him on termination of the proceeding for possession commenced by her u/s 31 read with Section 29 of the Act and the provisions of Section 32F will be applicable even to such a case and the tenant's right to purchase the land remaining with him will be governed by Section 32F.

(3) If one person of the exempted category is succeeded by another person of the exempted category, the tillers' day is postponed till the disability of the successor ceases.

(4) If the land belonging to the landlord of the exempted category is acquired by the Government before the expiry of the period during which the tenant can exercise the right to purchase the land under Sub-section (1A) of Section 32F, there is no question of the tenant giving intimation of his willingness to purchase the land as required by Sub-section (1A) of Section 32F, and the application of the landlord for a declaration that the tenant cannot become the purchaser of the land for his failure to act under Sub-section (1A) within the prescribed time is not maintainable in law.

26. In the result, Special Civil Application No. 631 of 1970 is allowed; the order passed by the Revenue Tribunal is quashed and set aside and that of the Tahsildar as confirmed in appeal by the Assistant Collector ordering delivery of possession is restored. Rule is made absolute. In the circumstances, there shall be no order as to costs.

27. The Special Civil Applications 1843 to 1845 of 1970 are allowed and the orders passed by the three authorities below are quashed and set aside and the applications filed by the landlord Satish Naik against the petitioners are dismissed as not maintainable in law. Rule is made absolute in all the three matters. No order as to costs.