

(1991) 11 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No's. 1282 of 1983 and 5175 of 1984

Vasu Dhondi Sutar

APPELLANT

Vs

Ganpati Dhondi Sutar and Another

RESPONDENT

Date of Decision : 20-11-1991

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15(1), 29, 32G, 70B
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 9

Citation : (1991) 4 BomCR 685

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : A.V. Bandivadekar, for S.K. Shinde and S.A. Dhamale, in W.P. 1282/83, A.Y. Sakhare, in W.P. 5175/84, for the Appellant; A.Y. Sakhare, Writ Petition No. 1282 of 1983, A.V. Bandivadekar, Writ Petition No. 5175 of 1984, for the Respondent

Judgement

D.R. Dhanuka, J.—By this petition under Article 227 of the Constitution of India, the petitioner has impugned order dated 29th April, 1978 passed by the Tahsildar, Panhala, District Kolhapur, in T.N.C. case No. 12 of 1977, order dated 29th August, 1981 passed by the Assistant Collector, Shahuwadi Division, Kolhapur, in Tenancy Appeal NVo. 72 of 1979 and order dated 9th July, 1982 passed by the Maharashtra Revenue Tribunal in Revision Application No. MRT-KP-285/81. By the above-referred three orders the authorities concerned have held that the petitioner was not a tenant of lands in question. The impugned orders were passed on application made by the petitioner to the Tahsildar on 18th June, 1977 for a declaration that the petitioner was a tenant of the lands in question and the appeals and revision arising from the said proceeding initiated by the petitioner u/s 70-B of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the said Act".

2. At the outset, I am setting out the conclusions arrived at by the Court after hearing the learned Counsel. In later part of the judgment, I would set out my reasons in support of the conclusions arrived at by me:---

(a) Admittedly the petitioner was tenant of the said land on the tillers day and was actually cultivating the said lands. The petitioner became statutory owner of the said lands on 1st April, 1957 under the said Act. The petitioner is obliged to pay the statutory price for the said lands as contemplated u/s 32-G of the said Act.

(b) The purported surrender of tenancy was not in conformity with section 15 of the said Act. The purported surrender of tenancy was sought to be verified by the Mamlatdar only after 1st April, 1957, in respect whereof the Mamlatdar had no jurisdiction. Since 1st April, 1957, the relationship of landlord and tenant in respect of the said lands stood terminated by law. The purported surrender of tenancy of the petitioner is liable to be treated as non est. Order dated 1st September, 1957 passed by the Tenancy Mahalkari purporting to accept the alleged surrender is ultra vires and of no legal effect. Consequently, Kabje Pavti dated 1st November, 1957 is ultra vires and of no legal effect. As a matter of reality, the petitioner continued to be in actual possession of the said lands and cultivated the crop and the above-referred Kabje Pavti is a fake document. I accept the prima facie findings of the learned Additional District Judge, Kolhapur, recorded in his judgment and order dated 21st November, 1984 in Misc. Civil Appeal No. 76 of 1984. Writ Petition No. 5175 of 1984 is dismissed.

(c) The principal question in the proceedings initiated by the petitioner u/s 70-B of the said Act was as to whether the petitioner was tenant of the said lands on the relevant date, i.e. 1st April, 1957. There was no dispute between the petitioner and the respondents or between the petitioner and Shri Dhondi Vithu Sutar during the lifetime of Shri Dhondi Sutar. Accordingly, the authorities below were bound to hold that the petitioner was tenant of the said lands and was in lawful cultivation thereof immediately prior to 1st April 1957 and on 1st April, 1957.

(d) The findings recorded in the impugned orders dated 29th April 1978, 29th August, 1981 and 9th July, 1982 are perverse. The said orders are quashed.

3. The crucial facts required to be noticed for disposal of this petition are as under:---

(a) The dispute relates to agricultural lands bearing R.S. Nos. 134/1 and 171/1 admeasuring 9 gunthas and 18 gunthas respectively situate in Village Sawarde Tarf, Asandoli, Taluka Panhala, District Kolhapur

(b) The respondents are the sons of Shri Dhondi Vithu Sutar the original landlord, and are brothers. The petitioner was the tenant of the said lands and was lawfully cultivating the same on the tillers" day, i.e. 1st April, 1957.

(c) Relying on the alleged writing of surrender dated 31st March, 1957 (A Sunday), the original landlord Shri Dhondi Vithu Sutar made an application in the Court of the Tenancy Mahalkari, Panhala, for acceptance of the said surrender by the said authority within the contemplation of section 15 of the said Act and

passed an order for possession against the petitioner as a consequence thereof. The process of verification of the said alleged "surrender" dated 31st March, 1957 was commenced and completed by the concerned authority much after 1st April, 1957. On 1st September, 1957, the Tenancy Mahalkari, Panhala, passed an order to the effect that the impugned surrender was voluntary. By the said order, the said authority directed that the petitioner do hand over possession of the lands described in the said order to the original landlord. A copy of the said order dated 1st September, 1957 extracting unqualified admission of the original landlord to the effect that there was a relationship of landlord and tenant between the parties in respect of the lands in question on the relevant date is annexed to Writ Petition No. 1282 of 1983 as Exhibit "I".

(d) On 1st November, 1957, the petitioner executed Kabje Pavti in respect of the lands in question in favour of Shri Dhondi Sutar. It is the case of the petitioner that the petitioner did not actually hand over possession of the said lands to the landlord as recorded in the said Kabje Pavti and the said document is a bogus document. It is the case of the petitioner that the petitioner continued to cultivate the said lands actually throughout. It is the case of the respondents that since 1st November, 1957 the petitioner is not in actual possession of the said lands and the said Kabje Pavti represents the truth. The petitioner denies, the allegation.

(e) On 3rd February, 1969, Shri Dhondi Sutar, the original landlord, died.

(f) In the proceedings started by the Additional Tahsildar and Agricultural Lands Tribunal No. 4, Panhala, u/s 32-G of the Tenancy Act, an ex-parte order was passed on 2nd May, 1974. In the said order, the petitioner is described as a tenant of the said lands on the relevant date. In the order dated 1st September, 1957 passed in Tenancy Suit No. 1484 of 1957 also, it is specifically stated that the landlord Shri Dhondi Sutar had admitted relationship of landlord and tenant between the petitioner and Shri Dhondi Sutar in respect of the lands in question. In the above-referred order dated 2nd May, 1974, it was alleged by the Additional Tahsildar and Agricultural Lands Tribunal that the petitioner had remained absent during the course of inquiry u/s 32-G of the said Act, although served with notice. The said authority presumed that the petitioner was not willing to purchase the said lands. By the said order, it was directed that the purchase of the said lands by the petitioner was ineffective, in view of presumed unwillingness of the petitioner to purchase the said lands in spite of his absence at the said proceedings. By the said order, it was directed that the said lands shall be disposed of as provided u/s 32-P of the said Act. The said order dated 2nd May, 1974 was set aside as explained hereinafter and is no longer operative. Particulars in respect of subsequent orders setting aside the order dated 2nd May, 1974 are set out in sub-paragraphs (h) and (i) hereof.

(g) On 15th November, 1975, the petitioner made an application to the Tahsildar to make certain entries in the revenue records for the years 1974-75 and 1975-76. The said proceeding was conducted by the Court of Circle Officer,

Panhala, and was numbered as R.T.S. 224-75. In his deposition recorded in the said proceedings, respondent No. 1 admitted that the petitioner was the tenant in respect of the lands in question at the material time. By his order dated 15th January, 1976, the Circle Officer, Panhala, observed as under:---

"The name of Shri Vasudeo Dhondi Sutar (i.e. the petitioner) should be entered as tenant in the record of rights for the years 1971-74 in respect of the lands (bearing Gat Nos.) 322-A, 322-B and 697 of Village Sawarde by substituting an entry in the ink in place of pencil entry".

It is not disputed that the lands referred to in the said order are the same lands which are described in paragraph 2 of Writ Petition No. 1282 of 1983 as lands bearing R.S. Nos. 134/1 and 171/1.

(h) Being aggrieved by the ex-parte order dated 2nd May, 1974, the petitioner filed a review application as well as an appeal before the Assistant Collector, Kolhapur. Another tenant, Shri Dattu Krishna Chaudhri, also filed Tenancy Appeal No. 10 of 1977. The petitioner was never served with any notice in respect of the proceedings held u/s 32G of the said Act. The petitioner for the first time came to know about the above-referred order dated 2nd May, 1974 only on receipt of the notice of proceedings u/s 32-P of the said Act. By the said appeal, the petitioner requested the appellate authority to set aside the said ex-parte order dated 2nd May, 1974 and grant opportunity to the petitioner to purchase the said lands, as the petitioner was always interested in purchasing the same. By an order dated 30th June, 1978, the Assistant Collector, Shahuwadi Division, Kolhapur, allowed the appeal of the petitioner, being Tenancy Appeal No. 9 of 1977, and set aside the said order dated 2nd May, 1974. By the said appellate order, the Assistant Collector remanded the matter to the Additional Tahsildar, and Agricultural Lands Tribunal No. 4, Panhala. In the said remand proceedings, purchase price of the said lands shall have to be fixed, as there is no dispute in respect of factum of tenancy of the petitioner in respect of the said lands on the relevant date, i.e. on the date immediately prior to 1st April, 1957, provided the Court comes to the conclusion that the alleged "surrender" dated 31st March, 1957 was ineffective.

(i) Being aggrieved by the said appellate order dated 30th June, 1978, one of the two heirs of the original landlord, i.e. respondent No. 1 representing the estate, filed revision application before the Maharashtra Revenue Tribunal, Kolhapur. By order dated 31st July, 1979, the said revision application was disallowed. Thus the suo motu proceedings for fixation of purchase price are pending before the Additional Tahsildar and Agricultural Lands Tribunal u/s 32G of the said Act and the earlier ex-parte order dated 2nd May, 1974 stands set aside. The petitioner has no grievance in respect of any of the orders. The petitioner can have no grievance in respect of these orders passed by the appellate authority or revisional authority referred to hereinabove, as the said orders are in his favour.

(j) Sometime in the year 1977, the petitioner commenced proceedings against the respondent u/s 70B of the said Act for a declaration that the petitioner was a tenant of the said lands. The said application shall have to be construed to mean that the petitioner sought a declaration from the Tahsildar, Panhala, to the effect that the petitioner was tenant of the respondents in respect of the said lands on the relevant date, i.e. 1st April, 1957, as the primary contention of the petitioner throughout has been that as from 1st April, 1957 the petitioner had ceased to be the tenant of the respondents in respect of the said lands in view of the statutory purchase of the said lands by the petitioner by operation of law and the impugned surrender and the follow-up action based thereon was ultra vires and void ab initio. Even though the above-referred claim made by the petitioner in respect of the said lands immediately prior to 1st April, 1957 was never disputed by the respondents at any time in the past and the original landlord Dhondi Vithu Sutar had in his application numbered as Tenancy Suit No. 1484 of 1957 admitted that there was a relationship of landlord and tenant between the petitioner and the original landlord in respect of the said lands on the relevant date, the Tahsildar recorded a finding to the effect that the petitioner was not a tenant of the said lands at the relevant date. In the order dated 29th April, 1978, the Tahsildar observed that there was no documentary evidence such as Kabuliyat or rent receipt to prove the tenancy of the petitioner in respect of the said lands. In the said order, no reference is to be found to the admissions made by the respondents in respect of the said relationship of landlord and tenant in the pleadings solemnly filed before the Court of Tenancy Mahalkari, Panhala, in Tenancy Suit No. 1484 of 1957. The said order suffers from an error apparent on the face of the record and from an error of serious omission to consider relevant facts and documents.

(k) Being aggrieved by the said adjudication to the effect that the petitioner was not the tenant of the said lands by the above-referred order dated 29th April, 1978, the petitioner filed an appeal before the Assistant Collector, Shahuwadi Division, Kolhapur. By an order dated 29th August, 1981, the said appeal was dismissed. Being aggrieved by the said appellate order passed in Tenancy Appeal No. 72 of 1979, the petitioner filed a revision application before the Maharashtra Revenue Tribunal, Kolhapur. The original landlord Shri Dhondi Vithu Sutar relied upon the Kabje Pavti dated 1st November, 1957 executed by the petitioner in Tenancy Suit No. 1484 of 1957 and contended that there was no merit in the case of the petitioner in view of the said Kabje Pavti dated 1st November, 1957. The Maharashtra Revenue Tribunal also held that it was impossible to believe that the petitioner had not handed over actual possession of the said lands to the respondents as recorded in the said Kabje Pavti. It was also observed in the judgment that it was no one's case that any fresh tenancy was created. Accordingly, by the said order dated 9th July, 1982, the revision application was dismissed. In substance, the Maharashtra Revenue Tribunal held that the petitioner was not the tenant of the said lands on 1st April, 1957 and not the statutory owner of the said lands since then.

(l) Sometime in the year 1983, respondent No. 1 filed Regular Suit No. 45 of 1983 against the petitioner for a perpetual injunction in the Court of the Civil Judge, Junior Division, Panhala, seeking an injunction against the petitioner from disturbing his alleged possession in respect of four pieces of land, including these two pieces of land which are subject-matter of this writ petition. In paragraph 3 of the application of interim injunction, the respondents specifically once again admitted that the petitioner was a tenant in respect of the said lands prior to execution of the Deed of Surrender. By an order dated 8th March, 1984, the learned Civil Judge, Junior Division Panhala, confirmed the order of ad-interim injunction and restrained the petitioner from obstructing the respondents in respect of alleged possession of the said lands till the disposal of the suit.

(m) Being aggrieved by the said order of interim injunction, the petitioner filed an appeal, being Misc. Civil Appeal No. 76 of 1984, before the Court of the Additional District Judge, Kolhapur. By an order dated 21st November, 1984 passed in the said appeal, the appeal was allowed and the order of injunction was set aside, except the suit land Consolidation Block No. 201. In paragraph 9 of the appellate order, it was observed by the learned District Judge that the petitioner had raised sugar-cane crop in the lands in question during the course of nine years and the petitioner had supplied the sugar-cane raised in the said lands to the sugar factory and had received advance bills from the sugar factory. In the said order, it was also observed that the petitioner had paid education cess in respect of the said lands. The said observations supported the conclusion of the learned District Judge that the petitioner was in actual possession of the said lands throughout and it was not correct to say that the respondents or their predecessors-in-title were in actual possession thereof since November 1957 or any other date.

4. The first question which arises for consideration of the Court is as to whether the impugned orders, copies whereof are Exhibit "F", "G" and "H" to the petition, suffer from an error of law apparent on the face of the record and the same are liable to be quashed and set aside by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India. For the purpose of deciding this question, it is necessary first to pose the question as to whether the "surrender" dated 31st March, 1957 referred to in the order dated 1st September, 1957 is liable to be treated as non est. Section 15(1) of the said Act provides that a tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord, provided that such surrender was in writing and was duly verified before the Mamlatdar in the prescribed manner. Rule 9 of the rules made under the said Act, i.e. the Bombay Tenancy and Agricultural Lands Rules, 1956 lays down the manner in which verification of tenancy is to be made by the Mamlatdar u/s 15 of the said Act. I have verified with assistance of learned Counsel that 31st March, 1957 was Sunday. It is obvious that the prescribed authority could not have commenced or completed process of verification of "surrender" before "1st April, 1957. It is nobody's case. The learned Counsel for the petitioner has stated across the Bar

that the statements of the parties in respect of the impugned "surrender" as a part of the process of verification were recorded by the Mamlatdar only on 29th August, 1957 and 24th September, 1957. It is not possible to scrutinise these aspects at this stage. It is enough for this Court to state that such verification took place after 31st March, 1957. An important question of law as to whether the surrender of tenancy by the tenant became effective from the date of endorsement of surrender by the Mamlatdar or from the date of verification by him of the surrender or from the date of tenant's application of surrender of tenancy was referred by Division Bench of this Court to the Full Bench of this Court. By its judgment dated 25th January, 1988, the Full Bench of our High Court in the case of Laxmanrao Anantrao Satardekar and others v. Babu Satyappa Pawar (since deceased) by his heirs and others, Special Civil Application No. 1318 of 1979 decided on 25th January, 1988 (Unrep). held as under:---

"The surrender of tenancy will be effective only from the date of its verification by the Mamlatdar u/s 15(1) of the Act i.e. the Bombay Tenancy and Agricultural Lands Act, 1948 read with Rule 9 of the Rules (i.e. the Bombay Tenancy and agricultural Lands Rules, 1956). The surrender will be effective from that date, notwithstanding that the endorsement on it is made at a later date. The endorsement will relate back to the date of surrender. The surrender will, however, not be effective from any date prior to the date of its verification."

It is well settled that there can be no "surrender" of tenancy after 1st April, 1957 where the tenant was lawfully cultivating the land on the date immediately preceding the tillers day. On 1st April, 1957, the relationship of landlord and tenant came to an end by operation of law, as the tenant became automatic purchaser of the lands in question. In Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , it was held that the provisions as to verification of surrender were mandatory and the same were made integral part thereof by the statute. The surrender of tenancy could become effective only if the process of verification was duly completed prior to 1st April, 1957. Accordingly, the so-called "surrender" by Rajinama dated 31st March, 1957 shall have to be treated as complete nullity or non est. Following the Full Bench judgment of our High Court in this very case, I hold that the order dated 1st September 1957 passed in Tenancy Suit No. 1484 of 1957 was without jurisdiction and without authority of law and the Kabje Pavti dated 1st November, 1957 based thereon is liable to be treated as non est, the same having been based on non est surrender. The further question which arises for consideration of the Court is as to whether the three authorities below were justified in ignoring the admission of the original landlord Shri Dhondi Vithu Sutar made in various proceedings to the effect that the petitioner was tenant of the said lands on the relevant date, i.e. on the date immediately preceding the tillers" day, and ignore the findings recorded by the various authorities to the effect that the petitioner was a tenant of the said lands on the relevant date. Particulars of such admissions made by the landlords and the findings recorded by the various

authorities in this behalf are briefly summarised hereinafter:---

(a) In order dated 1st September, 1957 passed in Tenancy Suit No. 1484 of 1957, it is expressly recorded that the petitioner was the tenant of the lands in question and that the original landlord, Shri Dhondi Vithu Sutar, father of the respondents herein, had obtained the document of surrender of tenancy dated 31st March, 1957 from the petitioner in that behalf. The said order dated 1st September, 1957 thus contains an admission of the predecessor-in-title of the respondents.

(b) In his deposition dated 10th January, 1975 (Ex. "B" to the petition), respondent No. 1 has admitted as under:---

"The Applicant Shri Vasudeo Dhondi Sutar (i.e. the petitioner herein) is our tenant."

(c) In the ex-parte order dated 2nd May, 1974 passed u/s 32G of the said Act also, it was recorded that the petitioner was tenant of the said lands. The said order is now set aside and the proceedings are remanded to the authority concerned. Nevertheless, the admission of parties continues to bind the parties.

(d) In order dated 15th January, 1976(Ex. "C" to the petition), it was recorded that the petitioner's name must be entered as tenant in the record of rights for the years 1971-72 to 1973-74 in respect of the said lands. No appeal was pursued against the said order.

5. The Tahsildar, Panhala, held in his order dated 29th April, 1978 that the petitioner was not the tenant of the said lands on the relevant date in the absence of the rent receipt or Kabuliyat. An admitted fact need not be proved. A person in lawful cultivation of the land on the relevant date is a tenant under the said Act. Both the appellate order dated 29th August ,1981 and the revisional order dated 9th July, 1982 omit to consider the relevant admission of the landlord or his predecessor-in-title, even though reference is to be found to orders passed in Tenancy Case No. 1484 of 1957 in the judgment of the Maharashtra Revenue Tribunal. If the Maharashtra Revenue Tribunal would have carefully gone through order dated 1st September, 1957 passed in the said Tenancy Case No. 1484 of 1957, it would not have failed to notice the above-referred admissions. The impugned orders are preverse and suffer from non-application of mind to relevant documents.

6. The learned Counsel for the respondents did not and could not seriously dispute that the petitioner was tenant of the said lands until the petitioner executed the writing of surrender dated 31st March ,1957. The learned Counsel for the respondents did not and could not dispute the finding of the Full Bench of our High Court in the above-referred reference to the effect that the said surrender could be of no legal effect, in view of the same having been verified by the Mamlatdar after 31st March, 1957. The learned Counsel for the respondents made a valiant attempt to sustain the finding recorded by the Maharashtra

Revenue Tribunal in its impugned order to the effect that the respondents were in actual possession of the said lands from 1st November ,1957. The learned Counsel for the respondents further submitted that no declaratory relief could be granted to the petitioner in a proceeding u/s 70-B of the said Act in a case where the petitioner had lost possession of the lands and had allowed the remedy of restoration of possession to get time-barred. The learned Counsel for the respondents also referred to mutation entries in the revenue record showing the names of the owners as alleged cultivators of the said lands during the years 1958-59 to 1970-71.

WRIT PETITION NO. 5175 OF 1984

7. The District Court has prima facie recorded its finding to the effect that respondent is in possession of the said lands and not the petitioner and Shripati. The said finding is undoubtedly a prima facie finding. To my mind, the said finding is correct. The petitioner and Shri Pati have filed Writ Petition No. 1283 of 1983 impugned the order passed by the learned Additional District Judge, Kolhapur, in Misc. Civil Appeal No. 76 of 1984 setting aside the order of injunction dated 8th March, 1984. The said Writ petition No. 1283 of 1983 was directed to be heard alongwith this Writ Petition. The said Writ Petition is also heard. In paragraph 9 of the appellate order, the learned Additional District Judge has clearly held, on the basis of the sugar-cane crop having been grown on the said lands by the respondent from time to time and on the basis of payment of education cess in respect thereof and also the entries in the revenue records, that the respondent was in possession of the said lands and not the petitioner and Shripati. It is of some significance that no injunction was granted against the respondent by this Court in this writ petition, although injunction was applied for. The observations made by the Maharashtra Revenue Tribunal in the impugned order dated 9th July, 1982 are obviously incorrect and perverse, as the Tribunal has not even addressed itself to the question as to who has been actually cultivating the said lands, who is growing the crop and who has been marketing the crop all these years. I have, therefore, no hesitation in holding that no case is made out by the petitioner and Shripati for setting aside the finding of the Additional District Judge contained in his judgment dated 21st November, 1984 in Misc. Civil Appeal No. 76 of 1984. I repeatedly inquired of the learned Counsel for the petitioner and Shripati as to what is his clients averment in this Writ Petition in response to the statement appearing in paragraph 9 of the judgment of the learned Additional District Judge in Misc. Civil Appeal No. 76 of 1984 that the respondent had raised sugar-cane crop in the said lands, that the respondent had supplied sugar-cane so raised to the sugar factory and had received advanced bills from the sugar-factory. No answer was forthcoming for want of instructions. The learned Advocate for the respondent offered to produce all necessary documents to satisfy this Court, if required, and convince the Court up to the hilt that the respondent was growing sugar-cane on the said lands and the respondent was supplying the same to the sugar factory. It is obvious to me that the original landlord Dhondi Vithu Sutar had obtained the Kabje pavti dated 1st

November, 1957 merely on paper. I have perused the assessment of the relevant material by the learned Additional District Judge in Misc. Civil Appeal No. 76 of 1984 as well as the assessment of the relevant material by the Maharashtra Revenue Tribunal in the Revision Application No. MRT-KP 285/81 on the issue of possession. I have reached the conclusion that the assessment of the relevant material by the learned Additional District Judge on this aspect is prima facie correct.

8. The learned Counsel for the petitioner and Shripati relied on the judgment of this Court in the case of Baswant Motiram Gayki v. Ganpat Dhanaji Gayki 1975 Mh.L.J. 9, and the judgment of this Court in the case of Madukar Yeshwant Patankar and others v. Savlaram Gotiram and others 1978 Mh.L.J. 844, in support of his submission that a dispossessed tenant must seek his remedy for restoration of possession u/s 29 of the said Act and the period of limitation prescribed therefor, was two years from the date of dispossession. The submission of the learned Counsel for the petitioner and Shripati was to the effect that the Kabje Pavti dated 1st November, 1957 represented the truth and even though the proceedings culminating in passing of the order dated 1st September, 1957 in Tenancy Case No. 1484 of 1957 and the Kabje Pavti dated 1st November, 1957 may be invalid, the fact remains that the respondent never made an application for restoration of possession against the predecessor-in-title of the petitioner and Shripati within a period of two years from the date of his dispossession and having failed to do so, the respondent was not entitled to obtain any relief in the proceedings either u/s 32G or declaratory relief u/s 70B of the said Act. I have come to the conclusion that Writ Petition No. 5175 of 1984 deserves to be dismissed and the findings of the District Court in Misc. Civil Appeal No. 76 of 1984 deserve to be confirmed. I have come to the conclusion that the respondent was in actual possession of the said lands throughout. The respondent continues to be in such possession. The respondent never lost possession of the said lands at any point of time. If that is so, the submission urged by the learned Counsel for the petitioner and Shripati must necessarily fail.

9. In the result, I pass the following order:---

WRIT PETITION NO. 1282 OF 1983

(1) The petition is allowed. Rule is made absolute. The impugned order dated 29th April, 1978 in TNC/Case-12/77 (Ex. "F" to the petition), the impugned order dated 29th August, 1981 in Tenancy Appeal No. 72 of 1979 (Ex. "G" to the petition) and the impugned order dated 9th July, 1982 in Revision Application No. MRT-KP. 285/81 (Ex. "H" to the petition) are quashed and set aside. No order as to costs.

(2) The petitioner was the tenant of the said lands on 1st April, 1957. The petitioner was lawfully cultivating the same on 1st April, 1957. Since then, the petitioner has become the statutory purchaser of the said lands.

(3) The impugned letter/Deed of Surrender dated 31st March, 1957 is liable to

be treated as non est and void ab initio.

(4) Order dated 1st September, 1957 passed in Tenancy Suit No. 1484 of 1957 is without jurisdiction and of no legal effect. All steps taken in pursuance thereof are treated as nullified.

(5) The Kabje Pavti dated 1st November, 1957 is of no legal consequence, as it is based on invalid and non est surrender. The said Kabje Pavti does not represent the truth, as in reality the petitioner continued to be in possession of the said lands throughout.

(6) The petitioner is the statutory purchaser of the said lands on 1st April, 1957. The only question which now survives is fixation of purchase price.

(7) The Additional Tahsildar and Agricultural Lands Tribunal No. 4, Panhala, District Kolhapur, or his successor in office should fix the purchase price in respect of the said lands within eight weeks from receipt of the Writ of this Court, as in opinion of this Court the petitioner has already suffered gross injustice by reason of laws delays and the matter must be now concluded with top priority.

WRIT PETITION NO. 5175 OF 1984

(1) Rule is discharged. No order as to costs.

(2) The Registrar of this Court shall direct issue of certified copy of this Order on top priority basis. The Sheristedar of this Court, Shri, G.V. Unkule, is authorised to authenticate an ordinary copy of this order. The authorities below shall act on the ordinary copy of this order duly authenticated by the Sheristedar in view of urgency of the situation. The Sheristedar shall put his usual rubber-stamp on the ordinary copy of the said order in token of authentication of the ordinary copy of the said order.