

(1977) 03 BOM CK 0025

In the Bombay High Court

Case No : Spl. C. Application No. 602 of 1971

Vikram Yeshwanta and others

APPELLANT

Vs

Eknath Trimbak Gadekar and others

RESPONDENT

Date of Decision : 23-03-1977

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 4B, 88B
Specific Relief Act, 1963 — Section 9

Citation : (1977) MhLj 520

Hon'ble Judges : C.S. Dharmadhikari, J;A.A. Ginwala, J

Bench : Division Bench

Advocate : J.N. Chandurkar and S.A. Jaiswal, for the Appellant; A.P. Moharil for respondents Nos. 1 to 3, R.R. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

C.S. Dharmadhikari, J.—The father of the petitioners, namely, Yeshwantav was the original tenant from the year 1951-52 of the field S. No. 19/1, area 19 acres, 32 gunthas of village Murdapur, Tahsil Chikhali, District Buldana, One Gopal son of Laxman was the original landholder who had leased out this field. By virtue of the provisions of the Berar Regulation of Agricultural Leases Act, 1951, Yeshwanta became the protected lessee of the said land. Thereafter Yeshwanta had surrendered the tenancy and had also parted with the possession of the land in favour of the tenure-holder Gopal in the year 1956. The field in question was purchased by Trimbak, father of the respondents, vide registered sale-deed dated 16-8-1956, for a consideration of Rs. 2500. After this sale took place, Yeshwanta applied for restoration of tenancy and possession u/s 10 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Tenancy Act). His application in that behalf was dismissed by the Tahsildar, vide order dated 10-10-1962. Being aggrieved by the said order, he filed an appeal which was allowed by the appellate Court on 30-9-1963 and the revision application filed against the said order was dismissed by the Maharashtra Revenue Tribunal on 30-6-1964. A special civil application was also

filed before this Court challenging the said order but it was also dismissed and ultimately Yeshwanta was placed in possession of the field in question on 4-4-1965. The original tenant Yeshwanta died on 3-8-65 and the present petitioners are his legal representatives.

2. Thereafter, the present respondents landholders applied for possession of the said field, vide application dated 30-8-1966 purported to have been filed under sections 21, 43 (14-A) and 36 (2) of the Tenancy Act on the ground that since the petitioners-tenants had not exercised their right within the period prescribed by section 50 of that Act, the land was deemed to have been surrendered in favour of the respondents-landholders. Subsequently on 10-12-1968 an amendment application was filed before the Tenancy Naib-Tahsildar by the respondents-tenure-holders containing that in the partition the said land had fallen to the share of Eknath alone and, therefore, the other respondents were mere formal parties. The said amendment application was allowed. It appears that the vendee Trimbak also died and, therefore, his legal representatives, namely, the present respondents had instituted these proceedings. The Tenancy Naib Tahsildar, Chikhali, vide order dated 6-1-1969, allowed the application of the respondents-landlords and directed that the petitioners should hand over possession of the said land to respondent Eknath. Being aggrieved by this order, the present petitioners filed an appeal before the Deputy Collector, Land Reforms, Buldana. The Deputy Collector, vide his order dated 15-4-1969, allowed the appeal and set aside the order passed by the Tenancy Naib Tahsildar. Being aggrieved by this order, the respondent-tenure-holders filed a revision petition before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal, vide its order, dated 15-10-1970, allowed the revision petition and restored the order passed by the Tenancy Naib Tahsildar directing the petitioners-tenants to put respondent Eknath in possession of the suit field. It is this order which is challenged in this writ petition by the petitioners-tenants.

3. Initially when the matter came up for hearing before a single Judge of this Court, the learned Judge after hearing the matter directed that the petition should be placed before a Division Bench so that the questions raised and involved in this writ petition are authoritatively examined and settled. It appears from the referring order that the learned Judge came to the conclusion that an earlier decision of this Court in *Govind v. Udhaio* 1972 Mh. L J 588 requires reconsideration in view of the weighty submissions made before him. In view of this referring order, this writ petition is placed before us for hearing and disposal.

4. Shri J. N. Chandurkar, learned counsel for the petitioners, contended before us that the view taken by the learned single Judge of this Court in *Govind v. Udhaio* is the only possible view having regard to the provisions of sections 50, 43 (14-A) and 21 of the Tenancy Act. According to Shri Chandurkar, on a proper construction of these various provisions it is quite obvious that the landlord is not entitled to resume possession of the land unless an order is passed in that behalf u/s 36 (2) of the Tenancy Act. In the present case, an application for possession

was filed by the landlord beyond the prescribed period of two years from the date on which the right to obtain possession of the land accrued to him and, therefore, the application filed by him was liable to be dismissed as barred by limitation. He further contended that the view taken by the learned Member of the Maharashtra Revenue Tribunal that unless an order is passed by the competent authority u/s 21, therefore is no cause of section for obtaining possession u/s 36, is obviously incorrect. He further contended that from a bare reading of the application as filed by the landlord, it is quite clear that he has filed the said application both u/s 36 as well as u/s 21 of the Tenancy Act and, therefore, the application which is filed beyond the period of two years from the date when the right to obtain possession accrued to him was liable to be dismissed being filed beyond the period of limitation.

5. On the other hand, it is contended by Shri R. R. Deshpande and Shri A. P. Moharil that by virtue of section 50 of the Tenancy Act, if the tenant fails to exercise his right of purchase within one year, then by virtue of section 43 (14 A), the land is deemed to have been surrendered to the landlord. In view of this deemed surrender of the land, no further proceedings u/s 36 are at all contemplated. Section 43 (14-A) of the Tenancy Act in clear terms lays down that only sub-sections (1) and (2) of section 21 and Chapter VII of the Act will apply to such a case because the land is deemed to be surrendered by the tenant u/s 20. It is open to the Tahsildar to hold an inquiry u/s 21 (1) and (2) for finding out as to whether the landlord is entitled to retain the land which is deemed to be surrendered. Once such inquiry is held u/s 21, no further order u/s 36 (2) is necessary. Shri Deshpande further contended that even assuming that the order u/s 36 (2) is necessary, then also the cause of action for filing such an application will accrue to the landlord after completion of the inquiry contemplated by section 21 (1) and (2). It will be that date on which the right to obtain possession of the land will be deemed to have accrued to the landlord and therefore, the view taken by the learned Member of the Maharashtra Revenue Tribunal that the application was not barred by limitation is perfectly legal and correct. It was further contended by Shri Deshpande that to a case governed by section 50 of the Tenancy Act, only the first part of section 43 (14-A) will apply and the latter part of the said section which makes the provisions of sub-sections (1) and (2) of section 21 and Chapter VII of the Act applicable to such a deemed surrender will not apply. According to him, the phraseology used in sub-section (14-A) of section 43 clearly indicates that since there is a failure to exercise the right conferred upon the tenant by section 50, the land itself stands surrendered. Therefore, it is further contended by him that once the land itself is surrendered, then the landlord is entitled to take possession of the same without any order from any of the authorities contemplated by the Tenancy Act. In view of this, according to Shri Deshpande, as a matter of fact the application for possession itself was not necessary though it was filed by the landlord by way of abundant caution.

6. From the rival contentions raised before us, therefore, it is quite clear that the

counsel for both the parties agreed that the provisions of section 43 (14-A) of the Tenancy Act will apply even to a case which is governed by section 50. The only dispute raised before us by Shri Deshpande on behalf of the landlord is that only the first part of the said sub-section will apply and not the latter part. It is not possible for us to accept this interpretation put forward by Shri Deshpande that the latter part of the sub-section (14-A) of section 43 will not apply to such a case. It is quite clear from a bare reading of section 50 that the said section has application to the cases where the tenancy is restored under sections 7, 10, 21, 52 or 128-A or is created by a landlord after the date specified in sub-section (1) of section 49A. The date specified in section 49 A(1) is 1st April 1963. In the case before us it is an admitted position that possession was restored to the original tenant Yeshwanta on 4-4-1965 after the date specified in section 49 A (1). It is further clear from the admitted facts in the present case that in this case possession was restored to the tenant after the amended provisions of section 50 came into force. Therefore, it is quite obvious that the provisions of section 50 as amended will govern the present case. Section 50 reads as under:

Where a tenancy is restored under sections 7, 10, 21, 52 or 128-A or is created by a landlord not being a landlord within the meaning of Chapter III-A in any area after the date specified in sub-section (1) of section 49-A, every tenant holding land under such tenancy and cultivating it personally shall be entitled to purchase within one year from the commencement or as the case may be, the restoration of the tenancy so much of such land as he may be entitled to purchase u/s 41 and the provisions of sections 41 to 44 (both inclusive) shall mutatis mutandis apply to such purchase.

From a bare reading of section 50, therefore, it is quite clear that if a tenant whose possession is restored u/s 10 after 1st April 1963 does not exercise his right of purchase within one year from the said date of restoration, then the provisions of section 43 (14-A) will apply to his case mutatis mutandis. Section 43 (14-A) of the Tenancy Act reads as under:

If a tenant fails to exercise his right of purchase u/s 41 in respect of any land or the purchase of any land becomes ineffective, the land shall be deemed to have been surrendered to the landlord, and thereupon, the provisions of sub-sections (1) and (2) of section 21 and Chapter VII shall apply to such land as if the land was surrendered by the tenant u/s 20.

From a bare reading of this sub-section, it is clear that in its turn it makes the provisions of sub-sections (1) and (2) of section 21 and Chapter VII applicable to a case of deemed surrender as if the land was surrendered by the tenant u/s 20. Section 20 of the Tenancy Act deals with the termination of tenancy by surrender. This contemplates a voluntary surrender executed by a tenant in writing which is duly verified by the Tahsildar in the prescribed manner. Obviously the surrender contemplated by section 43 (14-A) is not a surrender executed in writing as contemplated by section 20 and this was the reason why a fiction was created by the Legislature in sub-section (14-A) of section 43. It is well-settled that a

deeming fiction should be carried to its logical conclusion. The words "as if" are used in sub-section (14-A) of section 43 to make the scheme relating to surrender applicable.

7. Then come sub-sections (1) and (2) of section 21 which read as under:

21. (1) Subject to the provisions of this section, where a tenancy is terminated by surrender u/s 20, the landlord shall be entitled to retain so much only of such land as will prevent the total area which he cultivates personally, whether as tenure-holder or tenant, or both from exceeding three family holdings.

(2) The Tahsildar shall hold an inquiry and declare whether the whole, or what part (if any) of the land surrendered the landlord is entitled to retain under sub-section (1), and notwithstanding anything in that sub-section, he may adjust by reduction or increase the area of any such part to be retained, but only so as to ensure that such part is not a fragment. The Tahsildar shall declare any land surrendered, which the landlord is not entitled to retain under the provisions aforesaid, to be surplus land.

Section 21 as a whole deals with the land or portion thereof which the landlord is not entitled to retain on surrender as a result of which the land is declared as surplus. Sub-sections (1) and (2) of section 21, therefore, lay down that the landlord will not be entitled to retain in his possession land exceeding three family holdings, whether as tenure-holder or as tenant, and for this purpose an inquiry under sub-section (2) of section 21 is contemplated. If on inquiry the Tahsildar finds that there is surplus land, then a declaration in that behalf is called for. This result of this declaration will be that the authorities will be entitled to assume management of this land under Chapter VII of the Tenancy Act. Chapter VII of the Tenancy Act deals with assumption of management of surplus lands. By sub-section (14-A) of section 43 this Chapter is also made applicable to the lands which are deemed to be surrendered. Therefore, in our opinion, all these sections will have to be read together and construed harmoniously.

8. It is a well-settled rule of interpretation that the Court is entitled and indeed bound, when construing the terms of any provision found in a Statute, to consider any other parts of the Act which throw light on the intention of the Legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act. The statute must be read as a whole and every provision in the statute must be construed with reference to the context and other clauses in the statute so as, as far as possible to make a consistent enactment of the whole statute: See *Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and Others*, .. Therefore, in our opinion, it is not possible to read section 50 or sub-section (14-A) of section 43 in isolation. On the contrary, it will have to be read and construed with reference to the context of other clauses in the statute to make a consistent enactment of the whole statute and that too keeping in view the aims and objects of the legislation. This Court had an occasion to consider the salient

features of the Tenancy Act in *Harikisan v. Krishnaji* 1976 Mh. L J 537.. After noticing the various provisions of the Tenancy Act, in paragraph 4 the Full Bench observed:

Certain salient features of the Act shall have to be borne in mind to ascertain the true impact of these conditions. The right of the landlords to resume their lauds under the ordinary law of the land is subjected to several limitations under the Act. This piece of legislation reflects the agrarian policy of the State formulated in compliance with the Directive Principles of the Constitution. Firstly, the underlying object is to eliminate the absentee landlord from the scene step by step and ensure transfer of the land to the tiller finally. Secondly, the rights of the persons personally cultivating the land are preferred and precedence is given to them in all respects till the ownership gets transferred to them. Thirdly some of the provisions of the Act are based on the hypothesis that an area agriculturists, family, absorbs its cultivating capacity, enables it to concentrate and improve the yield of the land and discourages it from exploiting the labour of others. This limit also appears to have been aimed at preventing the concentration of land in the same hands and facilitating distribution of such surplus land on lease to the needy u/s 84 of the Act. The Act itself does not provide directly for acquiring land in excess of three family holdings from the holders. However, acquisition of ownership by the tenant, under sections 42, 46 and 49-A or resumption of land from the tenant in addition to other restrictions is limited to such area as would, together with the land already under personal cultivation, not exceed the area of three family holdings. Even after surrender of laud by the tenant, the landlord is not permitted u/s 21 to retain area more than is necessary to make up the total of three family holdings for his personal cultivation, the remaining area being treated as surplus. Fourthly, after the Tillers' Day all lands excepting the categories covered by Chapters IV to VI are intended to be statutorily disposed of either by transferring the same to the tenants as owners to make up the total of three family holdings for their personal cultivation u/s 42 or 49-A (4), or failing that, to restore to the landlord u/s 43 (14-A) read with section 46 and sections 21 and 49-A (5) read with section 21, and failing that, to transfer to the pool of surplus land for disposal u/s 84 of the Act.

9. Therefore, while construing the various provisions, the scheme of the Act as a whole will have to be considered. If even after surrender of land by a tenant, the landlord is not permitted to retain area more than is necessary to make up the total of three family holdings for his cultivation, in view of the provisions of section 21 of the Tenancy Act, then in our opinion, it will not be proper to construe that in case of deemed surrenders the landlord can be permitted to retain area more than three family holdings. If the Legislature in its wisdom has treated the surrender u/s 43(14-A) as if the land was surrendered by the tenant u/s 20, and while doing so it also made a specific mention of sub-sections (1) and (2) of section 21 and Chapter VII of the Act by further laying down that these provisions shall apply to such deemed surrender also, then, in our opinion,

it will not be correct to say that only the first part of sub-section (14-A) of section 43 will apply to the cases governed by section 50. Once it is held or conceded that the provisions of sub-section (14-A) of section 43 will apply to a case governed by section 50 also, then, in our opinion, the necessary and natural consequences resulting from the said application must also ensue.

10. However, it was contended by Shri R. R. Deshpande that even if it is assumed that the provisions of section 21 (1) (2) of the Tenancy Act will apply to such a case from this an inference cannot be drawn that the landlord cannot take possession of the land unless an order contemplated by section 36(2) is passed. According to him, the phraseology used in sub-section (14-A) of section 43 clearly indicates that the land will itself stand surrendered. In this context, he has relied upon the phraseology used in section 20 wherein an expression is used. "A tenant may terminate the tenancy at any time by surrendering his interest as a tenant in favour of the landlord". According to Shri Deshpande, section 20 deals with the termination of tenancy by surrendering the interest of a tenant in favour of the landlord, whereas by sub-section (14-A) of section 43, the land itself is deemed to be surrendered to the landlord. This cannot be equated with surrendering of the interest in the land. In our opinion, the distinction drawn by the learned counsel in that behalf is most artificial. By sub-section (14-A) of section 43 itself the Legislature in the clearest terms had declared that the said deemed surrender will be treated as if the land was surrendered by the tenant u/s 20. The Legislature has further clarified its intention by stating that the provisions of sub sections (1) and (2) of section 21 and Chapter VII of the Tenancy Act shall apply to such deemed surrender also. If the said surrender is to be treated as if it is a surrender u/s 20 and the provisions of sub-sections (1) and (2) of section 21 are to apply to such a surrender, then, in our opinion, though different phraseologies are used in these sections, they will have to be given the same meaning. Surrender of interest in the land, surrender of land will mean the same thing for all practical purposes. If this is so in our opinion, the provisions of sub-sections (1) and (2) of section 21 will apply with all force to the deemed surrender which is covered by sub-section (14-A) of section 43 of the Tenancy Act.

11. Section 36 of the Tenancy Act deals with the procedure of taking possession. Sub-section (2) of section 36 lays down a prohibition on the landlord in the matter of resumption of possession of any land held by a tenant. Sub-sections (1) and (2) of section 36 of the Tenancy Act are as under:

36. (1) A tenant or an agricultural labour or artisan entitled to possession of any land or dwelling house or site used for any allied pursuit under any of the provisions of this Act or as a result of eviction in contravention of sub-section (2) may apply in writing for such possession to the Tahsildar. The application shall be made in such form as may be prescribed and within a period of three years from the date on which the right to obtain possession of the land, dwelling house or site is deemed to have accrued to the tenant, agricultural labourer or artisan, as

the case may be.

(2) Save as otherwise provided in sub-section (3A), no landlord shall obtain possession of any land, dwelling house or site used for any allied pursuit held by a tenant except under an order of the Tahsildar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land, dwelling house or site, as the case may be, is deemed to have accrued to him.

From a bare reading of sub-section (2) it is clear that the landlord cannot obtain possession of any land held by a tenant except under an order of the Tahsildar. For obtaining such an order he must file an application in the prescribed form within a period of two years from the date on which the right to obtain possession of the land is deemed to have accrued to him. Sub-section (1) deals with the procedure of taking possession so far as the tenant is concerned. In case the tenant is dispossessed of any land as a result of eviction which is in contravention of sub-section (2), then he has a right to obtain possession of the land under sub-section (1). The jurisdiction of the civil Court to settle, decide or deal with the matters which the Tahsildar is required to settle, decide or deal with under the Act is barred by sections 124 and 125 of the Act. Section 120 deals with the summary eviction but it has no application to the cases which are governed by section 36. The question as to whether a landlord is entitled to take possession of the land as a result of surrender u/s 20 without taking recourse to the provisions of sub-section (2) of section 36 fell for consideration of this Court in *Madhao v. Maharashtra Revenue Tribunal* 1970 Mh. L J 991.. After reviewing the whole case law the Full Bench came to the conclusion that section 36 (2) is plenary and controls section 20. Thus without an order of the Tahsildar for possession a tenant does not cease to be a tenant even though he has handed over possession of the land he held as a tenant and even though the surrender is verified under the proviso to section 20 read with rule 11. In this context a reference could usefully be made to the observations of the Full Bench in paragraphs 11, 12 and 18 of the said decision:

11. All that section 20 says is that the tenancy is terminated upon the tenant surrendering his interest as a tenant in favour of the landlord. We have already shown that the definition includes in the word "tenant" a person who is in lawful possession or cultivation. Such a person would by the mere fact of possession be a tenant but he would thereby enter into a statutory relationship with the landlord, and all that section 20 says is that by any act of surrender on his part it is that statutory relationship which is put to an end to. But the section does not say that he will cease to be a tenant. Indeed, he cannot cease to be a tenant so long as he continues in possession because being in lawful possession he is deemed to be a tenant. Section 20 does not speak of possession at all. Therefore, in the case of a deemed tenant, section 20 cannot possibly have the result of making the tenant cease to be a tenant unless an order taking away his possession is also passed. Without making any provision, as regards the

essential ingredient in the definition of tenant, viz., possession, we cannot accept that section 20 alters the position of a tenant qua tenant. We will show a little later that the same is the position in regard to various other provisions of the Act which regulate the relationship of landlord and tenant, but none of these provisions, while regulating the relationship, make any provision for possession. The subject of possession is relegated to a separate section and dealt with as an exclusive subject, and that is in section 36, and so we turn to consider its provisions.

12. Reading section 36 it is clear from the language of sub-section (1) that it is subject to sub-section (2). The scheme of the section shows that really it is sub-section (2) which lays down the general rule which governs the provisions of sub-section (1). Sub-section (1) gives the right to a tenant entitled to the possession of any land "as a result of eviction in contravention of sub-section (2)" to apply in writing for such possession to the Tahsildar, and sub-section (2) categorically lays down the general rule that no landlord shall obtain possession of any land held by a tenant except under an order of the Tahsildar. In the light of what we have said above we may note that in the entire context of possession the word "tenancy" is not used in section 36 but throughout the reference is only to "tenant". The concept of possession has relevance only to the definition of "tenant" because it includes "deemed tenants". Thus reading sub-sections (1) and (2) together it is clear that no landlord can ever obtain possession of tenant's land without an order granting him possession passed by the Tahsildar and the tenant is given the right where his possession is thus taken away to apply in writing for such possession to the Tahsildar. We can see no reason why, if possession is thus taken away because a tenant has surrendered his tenancy, the provisions of section 36 would not be attracted.

* * * * *

18. The provisions of section 20 read with the provisions of section 36 (1) and (2) therefore show that although the tenancy of a tenant may be terminated by a valid surrender by the tenant surrendering his interest as a tenant in favour of the landlord, and although the surrender may be verified as required by the proviso to section 20 by the Tahsildar and possession may be with the landlord, still the person who was in enjoyment of the land continues as a tenant until an order for possession is made in favour of the landlord. Although possession may have been given pursuant to a surrender by the tenant, the Act still regards the delivery of possession and the surrender as the acts of a tenant, though there may be considerable time-lag between the execution of the surrender deed and the delivery of possession. The tenant, despite the time-lag, surrenders possession as a tenant, and therefore the provisions of sub-section (2) would apply. The landlord must therefore obtain an order for possession in his favour even though a valid and verified surrender may have been made in his favour and he may be in possession thereof.

From these observations of the Full Bench it is quite obvious that the landlord

cannot obtain possession of land without taking recourse to sub-section (2) of section 36. If that is the position in case of a surrender duly executed in writing, then, in our opinion, in view of the provisions of sub-section (14-A) of section 43 which deal with the deemed surrenders, the same principle should apply. Even a surrender contemplated by sub-section (14-A) of section 43 is a surrender by a tenant u/s 20. This is the result of the fiction created by the Legislature by using the words "as if". This fiction created by the Legislature will have to be given its normal effect and, therefore, the said surrender is also a surrender as if executed u/s 20 of the Tenancy Act.

12. Precisely this is the view taken by the learned single Judge of this Court in *Govinda v. Udhao*. As we are in agreement with the view taken by the learned single Judge in the said decision, in our opinion, it is not necessary to re-state all the reasons in support of the said view.

13. However, in this context reference could usefully be made to a decision of this Court in *K.K. Verma and Another Vs. Union of India and Another*, which is approved by the Supreme Court in *Yeshwant Singh v. Jagdish Singh* A I R 1968 S C 620. In paras 4 and 5 of the said decision the Bombay High Court observed as under:

Now, the English law seems to be that when a landlord terminates the tenancy of a tenant, the tenant becomes a tenant on sufferance. He occupies that position because the landlord has not expressed his agreement or disagreement with the tenant continuing in possession. But as soon as the landlord expresses his clear intention that the tenant should not continue, then the possession of the tenant becomes wrongful against the landlord and the tenant is in the position of trespasser. The well-known authority on Landlord and Tenant, by Hill and Redman, 11th Edn., at p. 493, states :

After the determination of the tenancy any act of the landlord showing an intention to take possession is sufficient to revert the possession in him so that the tenant becomes a trespasser.

It seems to us that the author has advisedly emphasised the fact that the act of the landlord showing his intention should be after the determination of the tenancy. But Mr. Desai says that this only applies to cases where a tenancy runs out by efflux of time, but this would not apply to a case where a landlord gives a notice to quit and in the notice itself he makes it clear that he wants possession of the premises. Mr. Desai says that if the landlord has expressed that intention in the notice, then on the termination of the tenancy by reason of the notice the possession of the tenant becomes wrongful and he becomes trespasser.

In this particular case Mr. Desai says that the notice to quit makes it clear that the landlord wanted possession on the termination of the tenancy and, therefore, according to Mr. Desai, the respondent became a trespasser on 1st August, the tenancy having expired on July 31. Now, no authority has been cited to us which has laid down that in the case of a termination of a tenancy by a notice an act of

the landlord antecedent to the termination of the tenancy would vest the property in him immediately after the termination of the tenancy and the tenant would become a trespasser.

The statement of the law just referred to in Hill and Redman on Landlord and Tenant would rather go to show that in every case a landlord must express his intention by some act which is subsequent to the termination of the tenancy and the reason for that seems to be clear because after the termination of the tenancy,-however the tenancy may be terminated,-there is as it were a neutral position created. The landlord may consent to the tenant continuing, may accept rent from him, in which case the tenant would become a tenant at will. He may, on the other hand, make it clear that he does not want the tenant to continue in possession in which case the tenancy on sufferance which was created by the termination of the tenancy would cease and the tenant would become a trespasser.

But, in our opinion, the position in English law is unnecessary to be considered because, as well we shall presently point out, the law in India is essentially different, and even assuming Mr. Desai is right that under the English law on the facts of this case the tenant became a trespasser, the same position would not arise under the Indian law. Under the Indian law, the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical and that possession is protected by statute. u/s 9 of the Specific Relief Act, a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to Court u/s 9 and claim possession against the true owner.

Therefore, our law makes a clear and sharp distinction between a trespasser and an erstwhile tenant. Whereas the trespasser's possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law. Therefore, as far as the Indian law is concerned, an erstwhile tenant can never become a trespasser. It may or may not be that in English law in certain circumstances he can become a trespasser and it does seem that the landlord can enter the premises and deprive the erstwhile tenant of his possession, but in India a landlord can only eject his erstwhile tenant by recourse to law and by obtaining a decree for ejectment.

Therefore, when we are construing the expression "unauthorised person", we must assume that the Legislature knew the distinction that was drawn in law between a trespasser and an erstwhile tenant, and, therefore, what we have to decide is whether in using the expression "unauthorised person" the Legislature was only contemplating "trespassers" in the sense in which that word is understood in Indian law or was also contemplating an erstwhile tenant who ceased to be a tenant by reason of the termination of his tenancy.

(5) Now, there is no doubt that the respondent entered into these premises under a proper title that his occupation was authorised and that his possession after the termination of the tenancy, as already pointed out, was a juridical possession. On the other hand, in the case of a trespasser from its very inception his possession is unlawful and at no point of time could it be said of a trespasser that his possession was juridical. In our opinion, the Legislature was not so much emphasising the point of time when it used the expression "any person is in unauthorised occupation" as the nature of the possession of the person referred to in that sub-clause. "Is" obviously is used in the present perfect tense rather than in the present tense and "is in unauthorised occupation" means that the occupation was unauthorised to start with and continued to be unauthorised throughout the time that the person was in possession.

As we have already pointed out, that this is a penal statute and therefore it would not be proper to give a wider interpretation to the expression "unauthorised occupation" if a narrower interpretation was possible, and, in our opinion, the Legislature never intended that a person who entered with title and whose title came to an end and who continued in possessions which possession was a juridical possession protected by law was a person of whom it could be said that he was in unauthorised occupation of Government premises. It may be pointed out that the Limitation Act also clearly makes a distinction between the possession of an erstwhile tenant and a trespasser.

If a landlord wants to eject his tenant whose tenancy has been terminated, the article which applies is Article 139, whereas when an owner wants to proceed against a trespasser, the article which would apply is Article 144, Therefore, our law in its different aspects has always considered the position of an erstwhile tenant to be different from that of a trespasser, and what Mr. Desai is at pains to do is to equate the position of a tenant whose tenancy has been terminated with that of a trespasser. In our opinion, unless the Legislature had given indication of a clear intention that by the expression "unauthorised occupation" it mean not only persons who had no title at all but also persons who had title at the inception and whose title came to an end, it would not be proper to give an interpretation to the expression "unauthorised occupation" which would run counter to the principles of law which have been accepted in this country.

14. However, reliance was placed by Shri R. R. Deshpande upon another decision of the Supreme Court in Trustees of Shri Acharya Mahaprabhu's Bethak of Padra Vs. Kachhia Ishwarbhai Shankarbhai, . and it was contended that in view of the deemed surrender it was open to the landlord to terminate the tenancy by issuing a proper notice and, thereafter to recover possession of the property through the civil Court. In substance, therefore, it was contended by him that once the tenancy comes to an end in view of the deemed surrender, the landlord need not take recourse to the provisions of section 36 (2) of the Act but can file a civil suit for obtaining possession. He further contended that the Full Bench decision of this Court in Madhao v. Maharashtra Revenue Tribunal is, therefore,

no more good law. It is not possible for us to accept this contention. The appellants in the case before the Supreme Court were trustees of public religious trust registered under the Bombay Public Trusts Act, 1950. There was no dispute between the parties that the appellants were entitled to institute a suit for recovery of possession of the property in view of the certificate issued by the Deputy Collector u/s 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948, and in that context the provisions of section 4-B of the Bombay Tenancy Act fell for consideration before the Supreme Court. Section 88-B of the Bombay Tenancy Act as applicable to Gujarat Region, provided for exemption from certain provisions of the Act to the land held by the trust. The provisions of section 29 of the Bombay Tenancy Act which are similar to the provisions of section 36 of the Vidarbha Tenancy Act are not applicable to such tenancies in view of the provisions of section 88-B of the Bombay Tenancy Act as applicable to Gujarat Region or section 129 of the Vidarbha Tenancy Act. Therefore, that was a case where the Supreme Court was concerned which a case which was governed by section 129 of the Vidarbha Tenancy Act to which section 36 itself was not applicable. In this view of the matter, in our opinion, the said decision of the Supreme Court is obviously distinguishable. By virtue of section 129 of the Vidarbha Tenancy Act the provisions of section 36 are not applicable to the properties held by a trust. If the provisions of section 36 (2) are not applicable, then obviously the landlord is not prohibited from obtaining possession under the common law. But this will not be the position in cases to which sub-section (2) of section 36 applies. In such cases, the landlord is not permitted to obtain possession of any land held by a tenant except under an order of the Tahsildar u/s 36 (2) of the Act and, therefore, to such a case the law laid down by the Full Bench in *Madhao v. Maharashtra Revenue Tribunal* (cit. supra) will obviously apply.

15. Once it is held that the landlord is not entitled to obtain possession of the land unless he files an application u/s 36 (2) of the Tenancy Act, then obviously the landlord will have to file such an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land is deemed to have accrued to him. According to Shri Deshpande, the right to obtain possession of the land will be deemed to have accrued to the landlord after a finding is recorded by the Tahsildar in an inquiry contemplated u/s 21 (1) and (2). According to Shri Deshpande, unless a decision in that behalf is given by the Tahsildar, a right to obtain possession itself will not accrue to the landlord and, therefore, the period of two years should be counted from the date of the order passed by the Tahsildar under sub-section (2) of section 21. In substance, therefore, according to the learned counsel, two independent and separate inquiries are contemplated before possession is delivered to the landlord. It is not possible for us to put such a construction on the provisions of these sub-sections. By sub-section (14-A) of section 43 only sub-sections (1) and (2) of section 21 are made applicable to the cases of deemed surrender. Other sub-sections of section 21, namely, sub-sections (3), (4) and (5), are not

applicable to a case of deemed surrender which is covered by sub-section (14-A) of section 43. Therefore, it is quite obvious that prima facie an order directing restoration of possession cannot be passed by the Tahsildar under the proceedings u/s 21, sub-sections (1) and (2). It deals with the declaration of surplus land which the landlord is not entitled to retain. The expression used, namely, "entitled to retain possession" is also significant. Where there is a deemed surrender because of the failure on the part of the tenant to exercise his right to purchase within one year from the commencement of the tenancy or the restoration of the land, obviously the right to obtain possession will accrue on such failure. In a given case where the tenancy itself is disputed by the landlord, there might be a dispute about the date of commencement of the tenancy itself. But where there is no such dispute, then the right to obtain possession will obviously accrue after the expiry of the period of one year when the tenant becomes entitled to purchase the land from the date of the commencement of the tenancy or restoration of tenancy. The tenant is entitled to purchase so much of such land as he may be entitled to purchase u/s 41 and then the provisions of sections 41 to 44 (both inclusive) shall apply to such a purchase mutatis mutandis. The words used in the brackets in section 50, namely, "both inclusive" make it clear that the provisions of sections 41 to 44 including section 43 shall apply to such a purchase. Sub-section (14-A) of section 43 is a part and parcel of that section. It creates a deeming fiction so far as surrenders are concerned. In effect, to such a surrender of land the provisions of sub-sections (1) and (2) of section 21 will apply as if the land was surrendered by the tenant u/s 20. If in a case of surrender u/s 20 the landlord cannot obtain possession without taking recourse to the provisions of section 36 (2), then, in our opinion, the provisions of sub-section (2) of section 36 cannot be construed as an empty formality. The authority, namely, the Tahsildar, while acting under sub-section (2) of section 36, is not merely a post office meant for passing a consequential order resulting from a declaration made by the Tahsildar under sub-sections (1) and (2) of section 21. Proceedings u/s 36 (2) are not merely execution proceedings. The authority contemplated by section 21 and section 36 (2) is the same. If this is so, then while even passing an order regarding restoration of possession under sub-section (2) of section 36, the Tahsildar is obliged to consider the principle laid down in sub-sections (1) and (2) of section 21. In view of this, in our opinion, the learned single Judge of this Court was right in observing in *Govinda v. Udhaio* as follows:

In a given case a landlord may not be entitled to the whole or any part of the land in respect of which the statutory surrender had operated. An inquiry is required to be made whether any part of the land becomes surplus land. The proper forum for making such an inquiry is the Tahsildar and the proceeding in which such an inquiry could be made is the proceeding initiated by the landlord asking for possession. The provisions of section 120(c) are by themselves of a summary nature and if a detailed inquiry is contemplated by provisions of section 21 (1) and (2) then that inquiry could only be made by the Tahsildar. If the

construction canvassed on behalf of the landlord is accepted, then there will be no forum in which the inquiry contemplated by section 21 (1) and (2) could be made. It is not, therefore, possible for me to accept the contention that because of the fiction in sub-section (14-A) of section 43 the tenant becomes a trespasser and no order for possession is necessary u/s 36 (2) of the Tenancy Act.

In our view, on a proper reading of sections 50 and 43 (14-A) of the Tenancy Act the right to obtain possession will be deemed to have accrued to the landlord as soon as there is failure on the part of the tenant to purchase land within one year as contemplated by section 20. The period of limitation of two years will, therefore, start running from that date. This is not a case where rightly or wrongly the landlord had instituted proceedings u/s 21 (1) and (2) of the Act for seeking a declaration as to how much land he is entitled to retain. In a given case, if such proceedings are instituted diligently and in good faith, the matter might stand on a different footing. But in this case we are not concerned with such a contingency. In this case, the landholders have chosen to file the application u/s 36 (2) of the Act. Admittedly in the present case, the application filed by the landlords is not within the period of two years from the date on which the right to obtain possession of the land is deemed to have accrued to them in view of the provisions of section 50 read with section 43 (14-A) of the Tenancy Act. On this short ground, therefore, the application filed by the landlords was liable to be dismissed.

16. However, a contention was raised by Shri Deshpande that as a result of this interpretation very curious consequences might follow. According to Shri Deshpande, the landlord will lose his right to obtain possession for all time if he had not applied for obtaining possession under sub-section (2) of section 36 within the time prescribed, but the tenant will continue to be in possession without any corresponding liability for payment of rent etc., as his tenancy is deemed to be surrendered statutorily. In our opinion, the apprehension expressed by Shri Deshpande in this behalf is without foundation. As observed by a Full Bench of this Court in *Nethram v. Shankerlal* 1966 Mh. L J 790., a tenant is liable to pay rent to the landholder until an order for delivery of possession is passed by the appropriate Revenue Authority on the landholder's application for possession pursuant to the termination of the tenancy by notice. The same principle will apply even to the cases where the tenancy is terminated by surrender or is deemed to be terminated as a result of deemed surrender. The possession of the tenant even after the deemed surrender is protected by the statute itself. Though he is not a tenant at will, he continues to be a tenant whose possession is protected by the statute. If the tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. In such a case, on the one side there should be an offer of taking a new lease evident by the lessee remaining in possession of the property after his lease is deemed to be terminated, and on the

other side there must be a definite consent to the continuance of possession by the landlord. This involves a bilateral act. Where possession is protected by the statute and the statutory tenancy is created, it cannot be equated with the tenancy at will. His possession is juridical and is protected by statute. This is the position in view of the provisions of the Tenancy Act, which is a special law. Such a statutory protection is obviously governed by other relevant provisions of the Act. Of course, there is no prohibition against the landlord entering into a fresh contract of tenancy with a tenant whose right of occupation is determined and who remains in occupation by virtue of the statutory immunity. Occupation of the field by a tenant whose tenancy has come to an end in view of the deemed surrender is still protected by virtue of the provisions of section 36 (2) of the Tenancy Act. The Statute protects his possession so long as the conditions which will justify the lessor in obtaining an order of eviction against him do not exist. Once by virtue of the other provisions of the Act the landlord gets a fresh right to obtain possession, then it cannot be said that the tenant cannot be ousted at all. If this is so, then the corresponding obligation resulting from such a possession must automatically follow. The tenant is not allowed to retain the land without any corresponding liability regarding payment of rent etc. In case of default in that behalf, the right of the landlord is not wholly lost. Such position is contemplated in case of lands which are exempted u/s 129 of the Tenancy Act also. In any case, if there is casus omissus, then it is for the Legislature rather than the Courts to remedy the defect or remove the lacuna. In our opinion, therefore, the apprehension expressed by Shri Deshpande in that behalf cannot be taken into consideration while construing the provisions of section 50 of the Act.

17. In the result, therefore, the petition is allowed, the order passed by the Maharashtra Revenue Tribunal dated 15-10-1970 is set aside and the application filed by the landlord u/s 36 of the Tenancy Act is dismissed as barred by limitation. However, in the circumstances of the case, there will be no order as to costs.