
(1971) 03 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No's. 1916 of 1965, 2198 of 1966 and 2137 of 1967

Vishnu Shantaram Desai

APPELLANT

Vs

Indira Anant Patkar and Another

RESPONDENT

Date of Decision : 19-03-1971

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 32

Citation : AIR 1972 Bom 207 : (1971) 73 BOMLR 792 : (1972) ILR (Bom) 592 : (1972) MhLj 124

Hon'ble Judges : Kotval, C.J;Mody, J;Kantawala, J

Bench : Full Bench

Advocate : G.R. Rege, for R.G. Samant, V.N. Ganpule, for B.N. Shotri and M.A. Garud, for the Appellant; G.M. Bhokarikar, A.A. Rizvi and K.J. Abhyankar, for the Respondent

Judgement

Kantawala, J.—These three special civil applications are referred to a Full Bench as they involve a question as to proper construction of the provisions of Section 32 - F of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act No. LXVII of 1948) (hereinafter referred to as "the Act"). The petitioner in each of these applications is either a landlord or a tenant belonging to the category specified in the said Section 32 - F.

2. In Special Civil Application No. 2198 of 1966 proceedings u/s 32 - G of the Act were initiated by the Additional Mahalkari and Agricultural Lands Tribunal No. IV. Kudal, for determining the price payable by the tenant in respect of Survey No. 5, Pot Hissa No. 3, admeasuring 25-1/2 gunthas situate at Village Pat, Mahal Kudal. On the Tillers' Day i.e., on April 1, 1957 respondent No. 1 Shrimati Indira Anant Patkar and her two minor sons were the tenants of the land. Landlord Vishnu Shantaram Desai contended before the Tribunal that the tenant was not entitled to purchase the land held by her as she was a widow. The Tribunal took the view that in case of tenants under disability they had to exercise the right of purchase after their disability ceased but law did not forbid them from becoming

owners on the tillers" day if they did not wish to postpone the purchase in their favour to any future date. The Tribunal accordingly held that the widow was entitled to purchase the land held by her as a tenant on the tillers" day. The order of the Tribunal also made a reference to one of the minor sons who had become major before the proceedings were commenced. Such a major son, after attaining majority had not given any intimation expressing his desire to exercise his right to purchase land under S. 32, within one year of his attaining majority. The Tribunal, however, took the view that as proceedings were not initiated till then u/s 32 - G failure to give such intimation by such a son after attaining majority did not debar the widow from exercising her right to purchase. The Tribunal also fixed the price that was payable by the tenant to the landlord and directed it to be paid by two annual instalments. These findings of the Agricultural Lands Tribunal were confirmed in appeal by the District Deputy Collector, Savantwadi and in provision by the President, Maharashtra Revenue Tribunal, Bombay. The Maharashtra Revenue Tribunal in its order inter alia observed that the provisions of Section 32 - F related only to a case where a landlord is a disabled person; there was nothing in Section 32 to suggest that a tenant, who is disabled, is prevented from becoming a statutory purchaser either on 1st April 1957, i.e., the tillers" day or on the postponed date. Landlord Vishnu has filed Special Civil Application under Art. 227 of the Constitution to challenge the validity of this order passed by the Maharashtra Revenue Tribunal, Bombay.

3. In Special Civil Application No. 1916 of 1965 Survey No. 56 admeasuring 18 acres (and 5 acres 10 gunthas Pot Kharab) situate at Village Kaudane, Taluka Karjat, belonged to Lahanubhai Maruti Gangarade, a widow on the tillers" day. She died on April 30, 1959. One Ganu Rama Khore was a tenant of this land on the tillers" day. He too died in the year 1960, leaving his two sons, Rangnath and Babu, who cultivated the land as tenants thereafter. Disputes existed as regards the claim as successor - in - title of widow Lahanubhai between Ganpat Saradu Gangarade and one Yeshwant Kondiba. Ultimately, the name of Ganpat Gangarade was entered in the record of rights on October 9, 1961, as a successor - in - title of widow Lahanubhai. On October 14, 1961, Ganpat Gangarade gave a notice to Ranganath and Babu terminating their tenancy on the ground that he required the land for personal cultivation and ultimately made an application through his constituted attorney Namdeo on December 18, 1961, for possession u/s 29 of the Act. In these proceedings, ignoring the objections of the tenants, the Tenancy Aval Karkun passed an order for delivery of possession of half the survey number in favour of the landlord. An appeal preferred by the tenants Rangnath and Babu was allowed by the Assistant Collector, Parner, on the ground that the application made on behalf of the landlord was barred by limitation. The decision of the Assistant Collector was confirmed in Revision by the Maharashtra Revenue Tribunal on November 29, 1962. In the year 1964, proceedings were initiated u/s 32 - G read with Section 32 - F of the Act for determination of the price payable by the tenants. The tenants, however, had not given any notice as provided by S. 32 - F intimating their desire to exercise their

right to purchase the land. The Agricultural Lands Tribunal took the view that as no such intimation was given by the tenants, the purchase of the tenants became ineffective. This decision was confirmed in appeal by the Assistant Collector, Parner, and in revision by the Maharashtra Revenue Tribunal, Poona. The tenants, Rangnath and Babu have filed this Special Civil Application under Art. 227 of the Constitution to challenge the validity of these orders.

4. In Special Civil Application No. 2137 of 1967 Survey No. 74 admeasuring 8 acres 25 gunthas situate at Mouze Rotvad, Taluka Jamner District Jalgaon was owned by two brothers, Waman and Jagannath and their widowed mother Shrimati Parvatibhai. On the tillers" day respondent No. 1 Adhar Chango Padgham was a tenant, but he was then a minor, he having been born on February 23, 1945. Proceedings initiated by landlord Waman u/s 29 read with Section 31 of the Act for possession of this survey number on the ground that he required the same for personal cultivation, were ultimately dismissed by the Prant Officer, in the year 1959. Proceedings adopted by landlord Waman for an Exemption Certificate under S. 88 - C of the Act were ultimately dismissed by the Maharashtra Revenue Tribunal in June 1960 and similar proceedings adopted by landlords Jagannath and Shrimati Parvatibhai for exemption certificate were ultimately dismissed by the High Court in January 1964. After attaining majority on July 30, 1964 the tenant Adhar made an application to the Mamlatdar and the Agricultural Lands Tribunal for fixation of price to be paid by him. On October 3, 1964 he gave an intimation to landlord Waman and Agricultural Lands Tribunal in respect of his desire to exercise the right of purchase conferred by Section 32. The Tribunal took the view that as the tenant had failed to give intimation in respect of his desire to exercise the right to purchase within the time specified by Section 32 - F, he had no right then to purchase the land and that the land had to be disposed of in accordance with the provisions of Section 32 - P. In an appeal by the tenant, this finding of the Agricultural Lands Tribunal was confirmed by the district Deputy Collector, Chalisgaon. He, however, took the view that as one of the landlords was a widow, it was necessary to inquire whether the share of any of the petitioners was separated by metes and bounds as contemplated by proviso to clause (a) of sub - section (1) of S. 32 - F. To make this enquiry, he passed an order of remand. In a revision application by the landlords, the President of the Maharashtra Revenue Tribunal took the view that Section 32 - F had no application; that the case was governed by Section 32 of the Act; that the tenant had become the purchaser u/s 32 of the Act and the Agricultural Lands Tribunal should determine the purchase price payable by the tenant. The landlords have filed this Special Civil Application under Art. 227 of the Constitution against the decision of the Maharashtra Revenue Tribunal.

5. For the sake of brevity and convenience, a landlord who is a minor or a widow or a person subject to any mental or physical disability is hereinafter referred to as "a disabled landlord" or "a landlord under disability", and a tenant who is a minor or a widow or a person subject to any mental or physical disability or a serving member of the armed forces is hereinafter referred to as "a disabled

tenant" or "a tenant under disability."

6. The contention on behalf of the landlord in these applications is that when either a landlord or a tenant is under disability, or when both of them are under disability, a tenant has a right to purchase the land by him as tenant only in the manner and within the time prescribed by Section 32 - F of the Act; that in such a case there is no statutory transfer of ownership u/s 32 of the land held by the tenant on the tillers" day or on the postponed date; that in such a case, the tenant has to exercise the right to purchase the said land by giving an intimation in that behalf to the landlord and the Agricultural Lands Tribunal in the prescribed manner within the time specified in Section 32 - F; that in default of such intimation within the time specified or in the manner prescribed, the tenant is not deemed to be a purchaser of the land held by him as the tenant and the land may be disposed of by the Agricultural Lands Tribunal as provided in Section 32 - P of the Act. On behalf of the tenants in these applications, arguments were presented in two different ways. It was said that S. 32 - F of the Act is only an enabling provision; that a tenant under disability has not only a right of statutory purchase u/s 32 but he has also an additional right to purchase land held by him as tenant within the time specified in Section 32 - F; that Section 32 - F does not curtail the right given to every tenant including a disabled tenant to become a deemed statutory purchaser u/s 32. This line of submission was presented on the footing that Section 32 - F is attracted where wither a landlord or a tenant or both of them are under disability.

7. Mr. Warke, who intervened on behalf of one of the tenants, on the other hand, contended that Section 32 - F applies only when a landlord is under disability but a tenant may or may not be under disability; where a landlord is not under any disability, but a tenant alone is under disability, Section 32 - F is not at all attracted and the case is then governed by Section 32 only.

8. Substantial modifications in respect of the rights of a landlord and a tenant in relation to agricultural land were effected by amendments made in the Act of Bombay Act No. XIII of 1956 and by subsequent amending Acts. Chapter III of the Act after these amendments deals with special rights and privileges of tenants and provisions for distribution of land for personal cultivation. This Chapter is divided into four parts. The first part thereof deals with termination of tenancy for personal cultivation and non agricultural use and is comprised of Sections 31 and 31 - A to Section 31 - D. The second part thereof deals with purchase of land by tenants and is comprised of Sections 32, S. 32 - A to S. 32 - R and S. 33, Part IIA deals with termination of tenancy by landlords and purchaser by tenants of lands to which Section 88 - C applies. It is comprised of Sections 33 - A to 33 - C. Part III thereof provides for restrictions upon holding land in excess of ceiling area.

9. The general right of a landlord to terminate the tenancy of any land on the ground of bona fide personal cultivation or for any non - agricultural purpose is laid down in sub - sections (1) and (2) of S. 31. He is required to give a notice

terminating the tenancy and stating the purpose for which the land is required. This notice is required to be served on the tenant on or before 31st Day of December 1956 and a copy of such notice is required to be forwarded to the Mamlatdar. An application for possession u/s 29 is therefore to be made to the Mamlatdar on or before March 31, 1957. In case of landlords under disability, the time for giving such notice for termination of tenancy and making an application for possession u/s 29 is extended by sub - section (3) of S. 31. It is as under :-

"31. (3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability then such notice 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;

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 enquiry, 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."

10. In Bai Jiviben Vs. Bombay Revenue Tribunal, the Division Bench of this Court has taken the view that u/s 31 of the Act, a widow can terminate the tenancy of her land and can apply for possession of the land u/s 29 of the Act. The object of sub - section (3) of S. 31 is to protect the rights of the successor - in - title of the widow and to ensure that she does not suffer owing to negligence or inaction on the part of the widow. There are no words either in sub - section (3) or any other part of the section which deprive a widow of the right conferred upon every landlord under sub - section (1). It could not have been the intention of the legislature that even though the widow may require additional income from her land for her maintenance, she shall not be able to obtain possession of the land throughout her life time and that this right should be available to her successor - in - title.

11. Section 31 - A to S. 31 - D relate to other conditions, terms and consequences of termination of tenancy.

12. Section 32 of the Act provides that the tenant shall be deemed to have purchased the land on tillers" day. The material part of this section is as under :

"32 (1). On the first day of April 1957 (hereinafter referred to as "tillers" day") every tenant shall subject to the other provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon the said day, the land held by him as tenant, if

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates the land leased personally; and

(i) the landlord has not given notice of termination of the tenancy u/s 31; or

(ii) notice has been given u/s 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 u/s 29 for obtaining possession of the land; or

(iii) the landlord has not terminated this tenancy on any of the grounds specified in Section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March 1957 u/s 29 for obtaining possession of the lands;

Provided that if an application made by the landlord u/s 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date" :

Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to sub - section (3) of Section 31 shall be deemed to have purchased the land on the 1st day of April 1958, if no separation of his share has been effected before the date mentioned in that proviso.

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(3) In respect of the land deemed to have been purchased by a tenant under sub - section (1) (a) the tenant - purchaser shall be liable to pay to the former landlord compensation for the use and occupation of the land, a sum equal to the rent of such land every year, and (b) the former landlord shall continue to be liable to pay to the State Government the dues, if any, referred to in clauses (a), (b), (c) and (d) of sub - section (1) of S. 10 - A, where the tenant - purchaser is not liable to pay such dues under sub - section (3) of that section, until the amount of the purchase price payable by the tenant - purchaser to the former landlord is determined u/s 32 - H.

....."

(The other sub - sections are not very relevant for the present purpose).

13. Section 32 provides for automatic statutory transfer of ownership to the tenant by operation of law on the tillers" day or on the postponed date. Under this section, a tenant is deemed to have purchased from his landlord land held by him as tenant if the conditions of this section are fulfilled. Such a tenant is not required to do any act or to give any intimation before he is deemed to have purchased such land. To achieve this result, neither the consent of the landlord nor of the tenant is required or contemplated. It is by a deeming provision that such a tenant is made a statutory purchaser of the land held by him as a tenant.

14. The right of a tenant to be deemed to have purchased land u/s 32 (1) is, however, "subject to the other provisions of this section and the provisions of the next succeeding sections". Section 32 - G prescribes the procedure to be followed for determining the price of land to be paid by the tenants. Under sub - section (1) thereof, as soon as may be after the tillers" day, the Agricultural Lands Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon (a) all tenants who u/s 32 are deemed to have purchased the lands ; (b) all landlords of such lands and (c) all other persons interested therein to appear before it on the date specified in the notice. The Tribunal is enjoined to record in a prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant. Consequences of failure to appear by the tenant or his unwillingness to purchase the land are provided in sub - section (3) thereof. Under that sub - section where any tenants fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall be an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. A proviso to this sub - section provides that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed, may within 60 days from the date, on which the order was communicated to him, apply for the review of the same. Sub - section (4) provides for determination of the purchase price payable by a tenant after holding an enquiry when a tenant is willing to purchase. Sub - section (5) requires that in the case of a tenant, who is deemed to have purchased the land on the postponed date, the Tribunal shall as soon as may be, after such date determine the price of the land. u/s 32 - K (3) arrears of instalments of purchase price are recoverable by the Tribunal as an arrears of land revenue. Section 32 - M of the Act inter alia makes the purchase to be ineffective on tenant - purchaser"s failure to pay purchase price. Under sub - section (1) thereof, a tenant, who has paid the price in a lump sum or the last instalment of such price, is entitled to a certificate of purchase in the prescribed form. Such a certificate is made conclusive evidence of his purchase. This sub - section further provides that in the event of failure of recovery of purchase price as arrears of land revenue, the purchase shall be ineffective and the land shall be at the disposal of the Tribunal u/s 32 - P and nay mount deposited by such tenant - purchaser

towards the price of the land shall be refunded to him. It is implicit in the scheme of Sections 32, 32 - G and 32 - M that in a case governed by Section 32 a tenant is deemed to have purchased the land on the tillers" day or on the postponed date. If, however, later on he fails to appear before the Tribunal when a notice is served upon him u/s 32 - G or he expresses his unwillingness to purchase the land or if the purchase price is not recovered from him as provided u/s 32 - K read with Section 32 then the purchase becomes ineffective. u/s 32 - P when the purchase of the land by a tenant becomes ineffective inter alia u/s 32 - G or 32 - M, the Tribunal may after holding a formal enquiry, direct that the land shall be disposed of in the manner prescribed in sub - section (2). Under sub - section (2) such a discretion may inter alia provide for the summary eviction of the tenant or for the surrender of the land to the former landlord.

15. The effect of these provisions is generally summed up by the Supreme Court in *Sri Ram Ram Narain Medhi Vs. The State of Bombay*, as under :

"The title of the landlord to the land passes immediately to the tenant on the tillers" day and there is a completed purchase or sale thereof as between the landlord and the tenant. The tenant is no doubt given a locus penitentie and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or makes a statement that he is not willing to purchase the land the Tribunal shall, by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. It is only by such a declaration by the Tribunal that the purchase would stand as statutorily effected on the tillers" day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the Tribunal. If the tenant commits default in the payment of such price either in lump or by instalments as determined by the Tribunal, Section 32 - M declares the purchase to be ineffective, but in that event the land shall then be at the disposal of the Collector to be disposed of by him in the manner provided therein. Here also the purchase continues to be effective as from the tillers" day until such default is committed and there is no question of a conditional purchase or sale, taking place between the landlord and tenant. The title to the land, which was vested originally in the landlord, passes to the tenant on the tillers" day or the alternative period prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal. The tenant gets a vested interest in the land defeasible only in either of those cases and it cannot, therefore, be said that the title of landlord to the land is suspended for any period definite or indefinite".

16. The right of a tenant to be deemed to have purchased the land u/s 32 is also subject to Section 32 - F. That section is as under :-

"32 - F. (1) 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 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 ;

(b) where the tenant is a minor, or a widow or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of clause (a) the right to purchase land u/s 32 may be exercised :-

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

(ii) by the successor - in - title of the 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 the mental or physical disability of the tenant ceases to exist ;

(iv) within one year from the date on which the tenant ceases to be serving member of the armed forces :

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.

(1 A) 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 :

Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as required by this

sub - section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub - section (1), he may give such intimation within a period of two years from the commencement of that Act.

(2) The provisions of Ss. 32 to 32 - E (both inclusive) and Ss. 32 - G to 32 - R (both inclusive) shall so far as may be applicable, apply to such purchase".

17. In view of the rival contentions, question arises when are the provisions of this section attracted ? Do they apply when either a landlord or a tenant or both of them are under disability or whether its provisions cannot be attracted unless at least a landlord is under disability, but a tenant may or may not be under such disability ?

18. Sub - section (1) of this section starts with a non -obstante clause "Notwithstanding anything contained in the preceding sections". After this non -obstante clause, follow two clauses, namely, clause (a) and clause (b). The non -obstante clause is common for both these clauses. In between these two clauses (a) and (b) there is neither a conjunction "and" nor "or". The clauses are separated by a mere semicolon. The place where the non - obstante clause appears, shows that it goes with each of the clauses (a) and (b). Clause (a) deals with a case where the landlord is under disability, namely, where the landlord is a minor or a widow or a person subject to any mental or physical disability. In such a case, the tenant shall have the right to purchase such land within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31. Proviso to this clause makes a special provision when such a landlord is a member of a joint family. Under this proviso, where a person of such category is a member of a joint family, the provisions of this clause (a) shall not apply if at least one member of the joint family is outside the categories mentioned in the sub - section, unless before 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds in accordance with and subject to the terms of the proviso. This clause, therefore, specifies the period within which a tenant has to exercise his right to purchase the land u/s 32 when a landlord is under disability. The provisions thereof are complete by themselves.

19. Clause (b) of this sub - section prescribes the period within which a tenant under disability has to exercise his right to purchase land u/s 32. The right to purchase land u/s 32 under this clause has to be exercised by the minor within one year from the date on which he attains majority, by the successor - in - title of the widow within one year from the date on which her interest in the land ceases to exist, by a person subject to any mental or physical disability within one year from the date on which the mental or physical disability of the tenant ceases to exist and by a serving member of the armed forces within one year from the date on which the tenant ceases to be a serving member of the armed forces. This clause contains a proviso which is similar to the one under clause (a). Clause (b) is also complete by itself. There is nothing in the language of

Clause (b) to suggest that it is in the nature of a proviso to clause (a). It is an independent provision which can apply even when the tenant alone is under disability. It is not possible to take the view that its provisions will not be attracted unless a landlord is also under disability. Each of clause (a) and (b) is complete by itself and can apply independently of each other. A case may, however, arise when both a landlord and a tenant are simultaneously under disability. In such a case, if the period during which the landlord's right to terminate the tenancy u/s 31 has expired before a tenant's right of the tenant to purchase land may be exercised, right of the tenant to purchase land has to be exercised in accordance with the provisions of clause (b) within the time therein specified. If, however, the period during which such a landlord is entitled to terminate the tenancy u/s 31 has not expired when a tenant under such disability has become entitled to exercise his right of purchase under clause (b) the provisions of Clause (a) will prevail over those of clause (b) because clause (b) inter alia contains the words "subject to the provisions of clause (a)".

20. Reliance was placed by Mr. Warke upon the marginal note of Section 32 - F. It contains the words "right of tenant to purchase where landlord is minor, etc." A marginal note may sometimes be an aid to interpretation but the use of the word "etc." does not restrict the operation of Section 32 - F only to a case where a landlord is under disability. On a plain reading of clauses (a) and (b) of sub - section (1), the provisions thereof will apply when either a landlord or a tenant is under disability or when both of them are under such disability.

21. In the order of the Maharashtra Revenue Tribunal, which is challenged in Special Civil application No. 2198 of 1966, the President of the Tribunal has observed that "the provisions of Section 32 - F relate only to a case where a landlord is a disabled person. There certain procedure is provided for to enable the tenant to purchase the land. It is entirely wrong to contend that sub - section (1) (b) of S. 32 - F of the Bombay Tenancy and Agricultural Lands Act, 1948 should be read as an independent provision qualifying the provisions of S. 32 - F and is not restricted to a case where the landlord himself is a disabled person falling under sub - section (1) of S. 32 - F of the Act. Similar view has been taken by the Tribunal in Tenancy Appeal No. 1769 of 1964 decided on February 1, 1965, Banubhai Naru Chaugule v. Monaramabai Yeshwant, 13 Tenancy LR 133".

22. In Banubhai's case elide upon the Tribunal, the point that arose for decision was whether a tenant who is a widow is entitled to become a statutory purchaser. The Tribunal pointed out that in Section 32 - F (1) (b) the Legislature has used the word "may" and that clearly showed that the right which the tenant got under S. 32 or sub - section (1) of S. 31 was not in any way affected. The provisions in clause (b) of S. 32 - F (1) is an enabling provision and this is in accordance with the interpretation put by the High Court in regard to Section 31 of the Act. Later on the Tribunal observed that the provision contained in clause (b) of Section 32 - F (1) is merely an enabling provision and it does not affect

the right of a tenant who maybe a minor or a widow, to exercise the right of purchase, which is given to it by Section 32 and also recognised by clause (a) of S. 32 - F (1). This Tribunal has recently taken the above view in Ten. A. 904 of 1964 decided on 27-1-1965 in Yeshwant Balram Owalekar v. Smt. S. H. Patil. Consequently the Tribunal took the view that a widow who is a tenant is entitled to purchase land.

23. It is clear from the above decision of the Maharashtra Revenue Tribunal in the case of 13 Tenancy LR 133 that there is no observation, much less a finding, to the effect that to attract the provisions of Section 32 - F of the Act, the landlord must in any event be a disabled person. Nor is such a view taken in Ten A. No. 904 of 1964. In that case, the only question that arose for consideration was whether a widow who is a tenant is entitled to purchase land u/s 32 or whether the right to purchase land in her case was only given to a successor - in - title. The view taken was that there was no reason why a widow when she was a tenant was not entitled to purchase the land. It was said that if she chose to continue to be a tenant her successor would be entitled after her after her death to purchase land but that did not mean that she was not entitled to purchase the land u/s 32 - F (1).

24. Our attention has not been invited to any other decision of the Maharashtra Revenue Tribunal where clearly the view taken is that the provisions of Section 32 - F will be attracted only if a landlord is at least a person under disability. We are also unable to concur with the view taken by the Maharashtra Revenue Tribunal about the right of a widow as a tenant to purchase the land.

25. Section 32 - F does create a right to purchase land in a tenant independently of the provisions of Section 32. It is explicit from the language of Cls. (a) and (b) of sub - section (1) that it provides for the period within which a tenant has to exercise his right to purchase conferred upon him by Section 32. Clause (a) inter alia states : "The tenant shall have the right to purchase such land u/s 32." Clause (b) inter alia states ".....the right to purchase land u/s 32 may be exercised" In a case covered by Section 32 - F there also results a statutory transfer of ownership in favour of a tenant, but such transfer of ownership is not automatic. Sub - section (1 - A) of this section enjoins upon a tenant desirous of exercising the right conferred on him under sub - section (1) to give an intimation in that behalf to a landlord and the Tribunal in the prescribed manner within the period specified in that sub - section. a proviso has been added to this sub - section by the Maharashtra Act No. 49 of 1969, but it is unnecessary to refer to the same. This sub - section, therefore, prescribes the time within which and the manner in which a tenant desirous of exercising his right to purchase has to give an intimation. When such an intimation is given, he is deemed to have purchased the land because by sub - section (2) thereof, provisions of Section 32 to 32 - E (both inclusive) and Sections 32 - G to 32 - R (both inclusive) shall, so far as may be applicable, apply to such purchase. The

words "such purchase" connote a purchase by a tenant who has given an intimation in respect of his desire to purchase land within the time specified and in the manner prescribed by this section.

26. Consequences of failure on the part of a tenant to give intimation of his desire to purchase land within the time specified or in the manner prescribed by Section 32 - F are provided in Section 32 - P. That section inter alia states that where a tenant files to exercise the right to purchase the land held by him within the specified period u/s 32 - F, the Tribunal may after holding a formal enquiry direct that the land shall be disposed of in the manner provided in sub - section (2). The cumulative effect of the provisions of Section 32 - F read with those of Section 32 - P is that in a case where a landlord or a tenant or both of them are under disability a tenant shall be deemed to be a purchaser of the land held by him as a tenant only if he gives an intimation of his desire to purchase land to the landlord and the Tribunal in the manner prescribed and within the time specified in Section 32 - F.

27. Provisions of the Act which provide for automatic statutory transfer of ownership in favour of the tenant may be contrasted with those where the statutory transfer takes effect upon some act being done or intimation being given by the tenant. Section 32 and S. 33 - C (1) of the Act provide for automatic statutory transfer of ownership in favour of the tenant. Under these sections respectively, a tenant and an excluded tenant shall be deemed to have purchased from landlord held by him as tenant. u/s 32 such a statutory purchase is generally effected on the tillers" day or on the postponed date. While u/s 33 - C (1) it is effected on April 1, 1962. In these cases, the statutory purchase in favour of the tenant is automatic. It does not require any act to be done or any intimation to be given by the tenant. These provisions have to be contrasted with those of Section 32 - F sub - sections (3) and (4) of S. 33 - C and Section 43 - 1D. In each of these cases, a tenant has to give an intimation or a notice to the landlord and Tribunal as therein respectively provided. It is only on giving such an intimation or a notice within the time specified in the prescribed manner that a statutory purchase becomes effective in favour of the tenant.

28. Question then arises whether Section 32 - F 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 32 - F 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 32 - F cannot possibly arise. There is no question by exercising a right to purchase land by a tenant u/s 32 - F, if he is already deemed to have purchased the land u/s 32. But in a case covered by Section 32 - F, provisions of Section 32 apply only after an intimation is given as

contemplated by Section 32 - F (1A) and this is evident from the language of sub - section (2) of the said section.

29. The argument on behalf of the tenant then was that just as u/s 31 a landlord under disability has two opportunities to terminate the tenancy, so also a tenant under disability has two opportunities to exercise the right to purchase land held by him as a tenant - one u/s 32 and other u/s 32 - F. To support this contention emphasis was laid upon the use of the word "may" in Section 32 - F (1) (b) which states "the right to purchase land u/s 32 may be exercised....." and upon the decision of this Court in Bai Jiviben Vs. Bombay Revenue Tribunal, . As pointed out earlier in Bai Jiviben's case, this Court has taken the view that u/s 31 of the Act, a widow can terminate the tenancy of a land and can apply for possession u/s 29. But the provisions of Sections 31 and 32 are not in pari materia. Even by analogy such a decision cannot be helpful in interpreting the provisions of Section 32 read with those of Section 32 - F. u/s 32 (1) the right to purchase land is generally given to every tenant. But its provisions are made subject to the other provisions of the section and the provisions of the next succeeding sections. Section 323 - F (1) which is one of the next succeeding sections starts with a non - obstante clause - "notwithstanding any thing contained in the preceding sections." The effect of these two provisions therefore is that the right conferred upon a tenant u/s 32 is subject to the provisions of Section 32 - F. The two sections do not confer independent rights or opportunities to purchase land upon a tenant. Section 32 - F 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 32 - F (1A) and then the provisions of Sections 32 to 32 - E (both inclusive) and 32 - G and 32 - R (both inclusive) apply to such purchase. The mere use of the word "may" is insufficient to conclude that Section 32 - F (1) (b) gives an additional right.

30. There are four classes of tenants under disability considered u/s 32 - F (1) (b). these are a widow, a minor, a person subject to any mental or physical disability or a serving member of the armed forces. If by reason of the provisions of Section 32 such a tenant is deemed to have purchased the land, the question of exercising his right to purchase the land u/s 32 - F can never arise. But Section 32 - F prescribes procedure for exercise of right to purchase the land by tenant u/s 32. It is therefore implicit that but for such exercise of right by a tenant u/s 32 - F he is not deemed to be a purchaser u/s 32. In Bapu Dnyanu Patil Vs. Sadashiv Ramchandra Joshi, while considering the scheme of Sections 32 and 32 - F of the Act. This Court overlooked the fact that Section 32 - F prescribes the manner in which and the time within which a right to purchase u/s 32 has to be exercised by a tenant when a landlord or a tenant or both of them are under disability, and that Section 32 - F does not create any independent right to purchase land in a tenant apart from that conferred by Section 32.

31. In Special Civil Application No. 2198 of 1966, on the tillers" day the tenants of the land were a widow and two minor sons, but none of the sons is made a party to the proceedings. Counsel on behalf of the Petitioner and respondent No. 1 under the circumstances wanted the matter to be decided on the footing that a widow alone is a tenant and that this decision should not affect the right, if any, of any of the two sons. Such a case is governed by Section 32 - F (1) (b) as the tenant is a widow. In view of the provisions of clause (b) the right to purchase u/s 32 can be exercised by the successor - in - title of the widow within one year from the date on which her interest in the land ceases to exist. In such a case, a tenant - widow cannot be deemed to have purchased the land u/s 32. Under the circumstances, Special Civil Application No. 2198 of 1966 is allowed, the rule is made absolute and the order passed by the Maharashtra Revenue Tribunal, District Deputy Collector, Savantwadi and the Additional Mamlatdar and the Agricultural Lands Tribunal No. IV, Kudal, declaring respondent No. 1 to be a purchaser is set aside. The proceedings initiated by the Agricultural Lands Tribunal u/s 32 - G of the Act for determining the purchase price payable by respondent No. 1 are quashed.

32. In Special Civil Application 1916 of 1965 widow Lahanubhai (landlord) died in the year 1960. Her successor - in - title could have terminated the tenancy u/s 31 of the Act before the expiry of the period of one year from the date of her death. The period so prescribed for termination of tenancy by the successor - in - title cannot be extended merely because there existed a dispute as regards who is her successor - in - title. Under sub - section (1 - A) read with Section 32 - F (1) (a) it was obligatory upon Rangnath and Babu (sons of deceased tenant Ganu) to give intimation of their desire to purchase land to the landlord and the Tribunal within a period of one year from the expiry of the period during which the successor - in - title of widow Lahanubhai could have terminated the tenancy u/s 31. Such an intimation they failed to give and they thus failed to exercise their right to purchase. the Agricultural Lands Tribunal, the Assistant Collector and the Maharashtra Revenue Tribunal were, therefore, right in taking the view that the tenants failed to exercise their right to purchase and the land had to be disposed of in accordance with the provisions of Section 32 - P of the Act. In the result, Special Civil Application No. 1916 of 1965 is dismissed and the rule is discharged.

33. In Special Civil Application No. 2137 of 1967 the tenant was under disability, being a minor on the tillers" day. The Maharashtra Revenue Tribunal was in error in taking the view that Section 32 - F did not apply in this case and that u/s 32 the tenant, though a minor, had become the owner of the land and the price payable by him had to be determined. It was obligatory upon the tenant to give intimation as prescribed by Section 32 - F (1 - A). As the tenant had not given such an intimation within the time prescribed, he had failed to exercise his right to purchase the land held by him as a tenant. In the result, Special Civil Application No. 2137 of 1967 is allowed and the rule is made absolute. The order passed by the Maharashtra Revenue Tribunal is set aside. It is unnecessary in the

present case to remain the matter to the Agricultural Lands Tribunal as directed by the district Deputy Collector, Chalisgaon, as the tenant has failed to exercise his right to purchase u/s 32 - F and the land has to be disposed of in accordance with the provisions of Section 32 - P as directed by the Agricultural Lands Tribunal.

34. In the circumstances of these cases, we order that each party will bear its costs of these Special Civil Applications.

35. Ordered accordingly.