

(1997) 09 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition No. 3790 of 1983

Vithal Genu Satav since deceased by his heirs and legal representatives

APPELLANT

Vs

Smt. Krishnabai Bapurao Arde deceased by heirs

RESPONDENT

Date of Decision : 03-09-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 32B(5), 33C, 88C
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, 11

Citation : (1998) 2 ALLMR 160 : (1998) 1 BomCR 660

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : M.V. Sali, for the Appellant; Prafullah B. Shah, for the Respondent

Judgement

S.S. Nijjar, J.—This petition under Articles 226 and 227 of the Constitution of India has been filed with a prayer to set aside the judgement and order passed by the Maharashtra Revenue Tribunal, Pune in Revision Application No. MRT.P.II/181 (TEN B 38/81) and by the Additional Collector, Pune in Tenancy Appeal No. 181 of 83 and for restoration and confirmation of the judgement and order passed by the Tenancy Awal Karkun, Mulshi in Case No. 33-B-1/62.

2. The dispute in the present petition concerns the following three suit lands.

S. no. A & G. Assessment.

1. 184. 12A & 14G +0.21 RK. 12.14

2. 174 2A & 24G 4.4

3. 179 2A & 2G 11.00

15A & 27G 28.14

Balashet Gulambe was the original tenant who died leaving behind him two sons viz. Bandoba and Mahadeo. Bandoba died on 1st March, 1941 and Mahadeo died

sometime in 1965. Bandoba left behind him as his only heir his married daughter Smt. Krishnabai. On the death of Bandoba the land devolved upon Mahadeo. He in turn is said to have gifted the suit lands to Smt. Krishnabai. Mahadeo had filed Tenancy Suit no. 291 of 1957 for bond fide personal cultivation u/s 31 of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Act". The said application was dismissed on 31st October, 1957. Consequently the petitioner-tenant claims to have become deemed purchaser of the suit land on the Tillers day i.e. 1-4-1957 or on the date when Mahadeo died. Krishnabai applied for an exemption certificate u/s 88-C of the Act. This was granted on 14th June, 1957. Thereafter Krishnabai filed Tenancy Case No. 33-B/1/62 for bona fide personal cultivation u/s 33-B on 16th March, 1962. By judgement dated 31st May, 1963 after examining the evidence on record, oral as well as documentary, it was held after considering her bona fides that the land is required for personal cultivation. Her application was, however, rejected on the ground that the lands stand in the name of Mahadeo who is not a member of the joint family of the applicant or the ancestor of the applicant. This order was challenged by Krishnabai in Tenancy Appeal No. 181/63. It was, however, not challenged by the tenants. The petitioner claims to be a tenant of agricultural lands being Survey No. 184 admeasuring 12 acres and 14 gunthas, Survey No. 174 admeasuring 24 gunthas and Survey No. 179 admeasuring 2 acres 29 gunthas in all admeasuring 15 acres 27 gunthas. The Additional Collector, Pune, upheld the order of the Tenancy Aval Karkun, Mulshi vide his judgement and order dated 5-2-1964. Thus even the Appellate Court has accepted that the petitioner has proved the bona fide requirement for personal cultivation. The petitioner thereafter filed Revision Application No. T.E.N. AP. 322/64 before the Maharashtra Revenue Tribunal. This application was decided on 19th March, 1965. The important question raised before the Tribunal was whether the certificated landlord had satisfied the conditions referred to in section 32-B(5)(c) of the Act. According to this clause, one of the conditions to be fulfilled by the landlady is that she should establish that the suit lands stood in the record of rights or in the record or in any public record of similar revenue record on the first day of January, 1952 and thereafter until the commencement date in the name of the landlord himself or of any other ancestors. Relying on the earlier judgement of the Tribunal given in 12 T.L.R. 156, Radhabai v. Rama Bagadu, it was held that the word "ancestor" is wide enough to include both paternal and maternal predecessors as the Tenancy Act applies to all citizens of the State irrespective of their religion the word "ancestor" cannot be restricted to its meaning in Hindu law. Since the land originally belongs to Balseth and thereafter to Bandoba and Mahadeo, Krishnabai being the married daughter cannot be held to be not the legal heir. The Tribunal further held that since the transfer of the suit land in the name of Krishnabai, the rent of the suit land was being paid to her. It is further held that the tenant was a party to the proceedings u/s 88-C of the Act. Therefore, the fact that the suit lands belong to Krishnabai is a question of fact and that fact cannot be questioned by the tenant, he having submitted to 88-C proceedings and having accepted Krishnabai as the landlord on paying rent

to her. It is categorically held that the title of the landlord cannot be challenged by the tenant unless and until he disowns tenancy rights in respect of the suit land. It is also held that at the time of the application u/s 88-C the suit lands stood in the name of Krishnabai and on 1-1-1952 the same were shown in the name of Mahadeo, her uncle. It was, therefore, held that both the courts erred in law in holding that the condition referred to in section 33-B(5)(c) of the Act is not fulfilled. The matter was remanded to the Appellate Authority for making distribution of the suit land and taking into consideration the holdings of the parties. The operative part of the order of Tribunal reads as under:

"So far as the question of holding and distribution of land is concerned, the appellate authority has not at all discussed that point. We are, therefore, inclined to remand the matter to the appellate authority for making distribution of the suit land and taking into consideration the holdings of the parties. For doing that in the interest of justice we bring to the notice of the Appellate Authority the ruling reported in 11 T.L.R. 124. The Appellate authority should hear the parties in respect of this issue of holding and then finally decide the matter according to law in view of the rulings referred to."

Even at this stage the finding with regard to the bona fides of Krishnabai was not challenged. It was only after the order of remand that the petitioner for the first time filed writ petition in this Court being Special Civil Application No. 2076 of 1965. This came to be decided on 19th December, 1967. The writ petition was dismissed. In paragraph 11 of the Special Civil Application the petitioner has categorically stated that the respondent does not require the suit lands bona fide. In paragraph 11 it was stated as follows:

"The petitioner stated in his evidence at Ex. 17, that the opponent and her husband have a shop in Phule market in Pune and she does not require the suit lands bona fide."

Having heard the Counsel for the parties this Court was pleased to dismiss the writ petition by its order dated 19th December, 1967. It was held that the decision of the Tribunal cannot be taken as erroneous. In view of the order of remand passed by the Tribunal, the hearing of the Tenancy Appeal No. 181 of 1963 started before the Appellate Authority. During these proceedings on 25th January, 1978 Krishnabai died leaving behind her husband and 5 sons. The legal heirs were brought on record and are also impleaded in the writ petition as respondent Nos. 1 to 6. By its judgement and order dated 18th December, 1980 the appeal filed by Krishnabai was allowed. It was directed that the possession of the area admeasuring 13 acres 17 3/4 gunthas out of the suit lands should be handed over to the heirs of the deceased landlady after evicting the tenants. The order of the Appellate Court also discloses that instead of ordering the distribution of the land after the dismissal of the Special Civil Application No. 2076 of 1965, Tahsildar, Mulshi started proceedings u/s 33-C. These proceedings were challenged by Krishnabai in appeal. The Additional Collector allowed the appeal and set aside the order of Tahsildar, Mulshi. The tenant preferred a

revision against the order in the Maharashtra Revenue Tribunal. By its order dated 2nd November, 1977 it was held that the tenant cannot challenge the right of the landlady and the Appellate Authority should proceed with the enquiry. It was submitted on behalf of Krishnabai that the different points which were raised in proceedings had been decided by different courts and finally confirmed by this Court. Thus at that stage only respective holding have to be decided and lands as deemed sufficient had to be restored to the landlords. It was submitted that Krishnabai died on 3rd July, 1978. Thus the question for determining of bona fide of her heirs cannot be re-opened. Application u/s 33-B was made on 16-3-1962 and the tenancy was terminated on 18th December, 1961. Therefore, the material date for consideration should have been 16th March, 1962. This point was necessary to be decided in view of the fact that the petitioner had made an application dated 7th July, 1980 claiming that the heirs cannot succeed in claiming resumption unless they prove their qualifications as to the bona fides and holdings by reference to the date of their being on record. Counsel for the landlords cited a Single Bench judgement reported in 1974 T.L.R. 86 in support of the submission that the heirs are not required to establish bona fides afresh. In the present case Krishnabai died after all the law points had been decided in her favour. On the other hand to support their submission, Counsel for the tenant had relied on a Division Bench judgement reported in 78 Bom.L.R. 602. The Appellate Court observed that the case had travelled a long distance from the mofussil Court to the High Court and reached finality in the decision given by the High Court in the year 1967 wherein the High Court rejected the claim of the tenant and the decision of the Maharashtra Revenue Tribunal was confirmed. By virtue of this decision it was held that the landlady had fulfilled the conditions of section 33-B(5)(c) of the Act. Therefore what remained to be done by the Appellate Court after remand of the case was only determination, equalisation and distribution of the holdings of the landlord and tenant which is an incidental legal formality as laid down u/s 33-B(5)(b) of the Act. It was further observed that the proceedings of the case clearly reflect compliance by the landlady of the relevant provisions of law viz. obtaining exemption certificate, establishing the bona fides for possession of the suit lands for personal cultivation, termination of tenancy etc. It was further held that the benefit of certificate u/s 88-C accrues not only to the holder but to the legal heirs also. These observations were made in view of the legal dilemma which was posed before the Appellate Court as observed in para 5 of the order. It was further observed that it is ironical to find that for no fault of the landlady the case remained in the cold storage after 1967 and the landlady was not able to acquire possession of the lands inspite of the decisions given by the Higher Courts in her favour. Before the landlady could acquire possession after decision of the High Court, the Tahsildar started proceedings u/s 33-C which was also declared as illegal by the Maharashtra Revenue Tribunal. It is, therefore, observed that had the matter been decided within reasonable time on remand, the landlady would have secured the possession before her death. Thus the problem posed by the Advocate for the tenant would not have arisen at all. Counsel for the tenants, however, submitted

that in view of the judgement of the Division Bench the matter ought to be remanded back to the trial Court for determination of the bona fides of the legal heirs for the resumption of the lands for personal cultivation. The Appellate Court, however, distinguished the aforesaid Division Bench judgement on the ground that that was a case where the original proceedings were still pending in appeal by the tenant. It is observed that in this case the point of bona fides of petitioner has been finally decided by the Revenue Tribunal and confirmed by the High Court. The Appellate Court relied on the decision of the Single Judge and allowed the appeal. Against the aforesaid order, the tenants filed a revision application before the Maharashtra Revenue Tribunal. The Tribunal dismissed the revision application by its order dated 31st August, 1983. The Revenue Tribunal gives the history of the litigation as narrated above. The same submissions was reiterated before the Tribunal relying on the Division Bench judgement in the case of Maruti Namdeo Gade v. D.V. Maval, 78 Bom.L.R. 602. Counsel for the landlord again reiterated the submissions on the basis of the judgement in the case of Babu Kallappa Khot v. Malsabai M. Kulkarni, 76 Bom.L.R. 603. The Tribunal held that the judgement cited by the petitioner is not applicable to the facts of the present case. The Tribunal held that the heirs are not required to prove that the lands are required by them for personal cultivation. The decision of the Appellate Court was upheld. The reasoning given by the Appellate Court were affirmed. Against this judgement, the tenant-petitioner filed the present writ petition. Counsel for the petitioner has reiterated the various submissions which have been made before the Appellate Court as also before the Tribunal. Mr. Sali, learned Counsel appearing for the petitioner, has submitted that the Tribunal has wrongly interpreted the ratio of the judgement given in 76 Bom.L.R. 603. It is stated that in that case it is observed that the possession has already been given to the landlord. Therefore, the judgement would not be applicable to the facts and circumstances of the present case. No doubt the judgement given in 76 Bom.L.R. speaks of an order of possession having been passed in favour of the deceased. But the facts of that case and the present case are similar. In the present case also there is no dispute that Krishnabai has obtained a certificate u/s 88. There is also no dispute that the issuance of the said certificate has not been challenged. There is also no dispute that it has been finally decided upto the Maharashtra Revenue Tribunal that Krishnabai had proved the qualification of bona fide requirement for personal cultivation. This finding was given in the very first order on 31st May, 1963. Counsel thereafter submits that in any event the judgement reported in 76 Bom.L.R. 603 has been overruled in the subsequent judgement of the Division Bench in 78 Bom.L.R. 602. Therefore, no reliance could have been placed on the judgement of the Single Judge. It is further submitted that the Division Bench has squarely decided the question against the landlord. A perusal of the aforesaid judgement shows that it has been held as follows:

"The Scheme of section 33-B does not admit of resumption by any claimant unless he satisfies that (1) the claimant needs the lands, (2) such need is bona

fide, (3) he is in a position to personally cultivate it, and (4) his holdings qualify him to so claim. This provision, being an inroad into protection afforded to the tenants, made in the interest of those considered to be the small landholders cannot be availed of, unless the above qualifications are strictly proved.

Ordinarily, with the death of the landlord during the pendency of the tenant's appeal or revision against the order of resumption, the very foundation of the claim gets extinguished and the tenant has hardly anything further to make out to succeed as against the heirs. Courts can ill afford to ignore such vital post-suit developments, and would ordinarily be impelled to accept the tenant's appeal or revision. But the right of the certificated landlord is heritable.

Claims u/s 33-B, however, cannot be initiated beyond a specific date and the heirs cannot institute fresh proceedings where landlord dies after expiry of such date. Lest such rights of the heirs become illusory, the proceedings initiated by the deceased before the specified date, have got to be allowed to be continued by his heirs, enabling them to exercise such rights. This way alone the legislative intendment can be effectuated. This necessarily excludes the application of the abatement rule, ordinarily applicable to personal actions.

Situation like this attract the powers of the courts, whether at original or appellate or revisional stage, to take notice of the post-suit developments. These powers can be exercised to do complete justice between the parties and to mould relief in the light of subsequent developments which render granting of original relief impracticable or unsustainable.

Though claims u/s 33-B are of personal nature, proceedings do not abate with the death of the claimant but enure for the benefit of the heirs. Heirs, however, cannot succeed in claiming resumption unless they prove their qualifications as to bona fides and holdings, by reference to the date of their being brought on record. This would be the deemed date of their application. This should be so without regard to whether the landlord dies before, or after, succeeding at any stage. In either case, resumption is not permissible unless the claimant proves personal qualifications. Question of defending estate and benefits arising thereto under a decree cannot arise till the litigation goes through all the stages at the choice of the parties, and order becomes final and immune from any interference."

A perusal of the extract of the judgement reproduced above clearly shows that the qualifications for resumption have to be strictly proved. Ordinarily, with the death of the landlord during the pendency of the tenant's appeal or revision against the order of resumption, the very foundation of the claim gets extinguished and the tenant has hardly anything further to make out to succeed as against the heirs. A perusal of this judgement shows that the subsequent event, in this case the death of the certificated landlord, should take place during the pendency of tenant's appeal or revision against the order of resumption. In the present case the petitioner never filed any appeal against the original order.

No revision was filed against the order in appeal. This was so because the claim of the landlord have been rejected on the ground that she had failed to satisfy the conditions u/s 33-B(5)(c). It was only when the Revenue Tribunal decided in favour of the landlord that the petitioner woke up to file Special Civil Application No. 2076 of 1965. Even this Application was dismissed on 19th December, 1967. By these proceedings it has been finally and categorically decided that the bona fide requirement for personal cultivation of Krishnabai was not in dispute. Even in the writ petition the petitioner had categorically taken a ground to the effect that the lower authorities have failed to take into consideration the statement made by the petitioner in his evidence at Exh. 17 to the effect that Krishnabai and her husband has a shop in Pune market in Pune and she does not require the suit lands bona fide. Excepting this, in no proceedings whatsoever any ground has been taken to the effect that Krishnabai did not require the suit lands for bona fide personal cultivation. In these circumstances the judgement of the Division Bench would not be applicable. The judgement of the Single Judge relied upon by the trial Court and the Maharashtra Revenue Tribunal cannot be brushed aside on the so called distinction that in that case an order of possession has already been passed in favour of the landlord. Mr. Sati has further submitted that once the order of remand had been passed by the Tribunal the issue as raised before the Appellate Court to the effect that the heirs of Krishnabai have to establish the ground of bona fide requirement for personal cultivation had to be decided. It is submitted that the Appellate Court as also the Tribunal have erred in law in not considering the aforesaid submissions only on the ground that the issue with regard to bona fide requirement had become final. It is submitted that the order of remand passed by the Revenue Tribunal was an interlocutory order. The death of Krishnabai was an unforeseen circumstance which occurred after the passing of the order of remand of the Tribunal and the decision of this Court in Special Civil Application No. 2076 of 1965. For this proposition Mr. Sali has relied upon a Division Bench judgement of this Court in the cases of Ratanlal Kisandas v. Bajirao Ganpat Mahalasne and 2 others, 1975 M.L.J. 65. In that case the Court proposed a question as to whether would remand order operate as res judicata and preclude the remanding Court from re-opening it at the subsequent stage of the same continuing proceedings even when the law underlying remand order is differently interpreted by the larger Bench or by the Supreme Court. Answering this question it has been held as follows.

""3.

Ordinarily, the decision once recorded, whether on issue of law or issue of fact, is conclusive and binding on the parties. This is so even apart from the statutory principle of res judicata of section 11 of the Code of Civil Procedure. This is a rule of procedure based on sound public policy to, prevent the harassment of the litigants, waste of time of the courts and to keep the confidence of litigants in the machinery of justice unimpaired. In the very nature of things, however, when such order or finding is recorded at the stage of remand, the order happens to be interlocutory and cannot terminate the case and the litigation finally and the

possibility of the litigation coming up before the remanding Court at another stage cannot be ruled out. Ordinarily, such orders would be conclusive and binding on the parties like any other interlocutory order.

4. Can this rule, however, have no possible exceptions at all ? Instances are not uncommon where re-consideration of such orders is necessitated either by the discovery of fresh evidence after the remand or unforeseen development subsequent to the order or change of law thereafter having retrospective effect. These are only illustrative instances, which may require reconsideration of the remand order by the remanding Court to mould the subsequent proceedings in the light thereof to ensure complete justice and prevent multiplicity of the litigation. Such question can arise only when the litigation is not finally terminated and seisin of the cause is restored to the remanding Court in continuation of the usual stages after remand. In fact, some of these grounds enable the reopening of the litigation even after the final order or a decree, terminating litigation, is passed under the statutory provisions for review. If the orders can be reopened after final decree is passed, there is hardly any good reason or rational ground for denying the litigants the same opportunity even before that stage is reached to spare litigants of time, costs and harassment."

A perusal of the aforesaid observations of this Court in would show that the whole judgement turns on the interlocutory nature of the order of remand. In the present case, the order of remand cannot be said to be interlocutory in nature. The issue with regard to bona fide requirement was never the subject matter of challenge before any of the higher authorities in any of the proceedings. The only issue which was agitated that too by the landlord was to the effect that her application could not have been dismissed on the ground that she had failed to satisfy the conditions as laid down in section 33-B(5)(c) of the Act. It was the case of the landlady that the Court having come to the conclusion that the bona fide requirement is proved the application could not be rejected on the ground that she was not recorded as the owner as on 1-1-52. This finding of fact was upset by the Tribunal on the ground that the trial Court had wrongly construed the law in relation to the term "ancestor". The Tribunal held that it is a matter of fact that her uncle was recorded as a owner as on 1-1-52. The Tribunal, therefore, held that the trial Court as well as the Appellate Court had made a mistake in applying the law to this effect. The issue of bona fide requirement was never the subject matter of the decision of the Tribunal given on 19th March, 1965 and the decision of this Court given on 19th December, 1967. The Appellate Court has rightly observed that if after the decision of this Court dated 19th December, 1967 the proceedings had been expeditiously disposed of, an order of possession would have been passed in favour of the landlady during her life time. It was in view of the misconceived proceedings u/s 33-C initiated by the Tahsildar suo motu that the proceedings for possession were delayed. The landlady had to challenge the order in appeal. The Appellate Court rightly held that the proceedings taken by the A.L.T., Mulshi were without jurisdiction. However, the tenant not being satisfied with the said finding filed a revision

application before the Maharashtra Revenue Tribunal. That application was dismissed on 2nd November, 1977. It was only after that the matter was sent back to the Additional Collector, Pune to decide the issue in terms of the earlier order of remand dated 19th March, 1965 which has been affirmed by the High Court by its order dated 19th December 1967. After the order of remand all that was required to do of the Appellate Court was to distribute and equalise the land held by the landlord. No legal rights were left to be decided between the parties. In view of this, it would not be possible to hold that the case of the tenant is covered by the ratio of the judgement given in the case of Ratanlal Kisandas (supra). It cannot be said that the order of remand passed by the Tribunal on 19th March, 1965 was only an interlocutory remand order. The remand was made only in view of the provisions of section 32-B(5)(b) of the Act. Mr. Sali has also relied upon a Division Bench judgement of this Court in the case of Hariba Keshav Barbole v. Smt. M. Deepchand, 1973 (76) Bom.L.R. 595. In that case it is held as follows:

"Where a certificated landlord who has made an application for possession of land u/s 33-B of the Bombay Tenancy and Agricultural Lands Act, 1948, dies during the pendency of the proceedings and his legal heir is brought on the record, such legal heir must establish his own bona fide requirement as on the date he comes on the record for the purpose of recovering possession of land from the tenant. The holding of the heir on the date when he is brought on record needs to be considered for the purposes of equalisation of holdings of the tenant and the legal heir of the landlord.

The death of the original certificated landlord, however, does not affect the right of the tenant for equalisation of the land u/s 33-B(5)(b) of the Act. For comparison his holding should be as on the date of institution of the original application. Neither does the death of the tenant himself during the pendency of the proceeding have any effect on the date for the purpose of equalisation of holding and it is the date of the original application by the certificated landlord, or by his heir where the certificated landlord has died without making an application, that would be the relevant date for consideration of the tenant's holding."

A perusal of the extract reproduced above clearly shows that the ratio of this judgement would apply if the proceedings with regard to bona fide requirement were pending in the hierarchy of courts established under the Act. So far as the question of bona fide requirement of Krishnabai is concerned, that was finally decided long ago as 19th March, 1965 and confirmed by this Court on 19th December, 1967. The facts of this case also clearly establish that the respondents never raised a challenge to the finding of the original Court to the effect that the qualification of bona fide requirement has been proved by Krishnabai. Even in the earlier writ petition no ground is taken to the effect that the original Court had erred in law or on fact in deciding that the bona fide requirement of Krishnabai has been proved. It is a settled proposition of law that

all necessary relief must be same in legal proceedings. All necessary facts necessary to obtain the said relief must also be pleaded. None of these pleas were raised before this Court in the earlier writ petition. This apart, the petitioner never challenged the certificate of exemption granted to Krishnabai u/s 33-C of the Act. Even at the stage when Krishnabai died the petitioner did not care to take out any proceedings for revocation of the certificate granted u/s 88-D(1)(iv) of the Act. The said section categorically provides that the certificate granted u/s 88-C can be revoked in the case of lands referred to in section 88-C on the ground that the annual income of the person has exceeded Rs. 1,500/- or that the holding of such person exceeds an economic holding. Not having moved any such application for almost 20 years it would be too late in the day now to hold that the heirs are required to prove their bona fide requirement on the date when they were brought on record.

3. Counsel for the respondent has also relied upon a decision of this Court given in Special Civil Application No. 1058 of 1974 decided on 12th February, 1980 and a decision of this Court in Writ Petition No. 2068 of 1982 decided on 8th July, 1983 and a decision of this Court in Special Civil Application No. 2518 of 1973 decided on 10th November, 1980. In all the aforesaid judgements it has been held that once the proceedings have become final the legal heirs do not have to prove their bona fide requirement all over again. It has also been pointed out by the Counsel for the respondent that the original landlady and the heirs have been dragged into unnecessary litigation merely because a wrong interpretation of law was made at the time when the original order was passed way back on 31st May, 1963. Apart from this I am of the view that when exercising the jurisdiction under Article 227 of the Constitution of India, this Court will not sit as a Court of Appeal. The only concern of the Court under Article 227 of the Constitution is to see whether the impugned order suffer from an error apparent on the face of record. The Court can examine as to whether the Tribunal has committed an error of jurisdiction. It can examine as to whether or not the findings of the Tribunal are perverse to such an extent that no reasonable Tribunal could come to the conclusion which have been arrived at by the Tribunal. These proceedings cannot be equated with proceedings under the Act. The hierarchy of courts under the Act ends with the Maharashtra Revenue Tribunal. Therefore, keeping the aforesaid facts and circumstances in view I find that the judgement cited by the petitioners being 78 Bom LR 603 is not applicable to the facts and circumstances of this case.

4. In view of the above I find no merit in the writ petition. The same is hereby dismissed with no order as to costs.

5. Certified copy expedited.

6. Petition dismissed.