

(1974) 09 BOM CK 0012

In the Bombay High Court

Case No : Special Civil Application No. 2105 of 1970 with Spl. C.A. No. 2392 of 1970

Vithal Ranganath Gaikwad and Others

APPELLANT

Vs

Murlidhar Vaman Dhavale and Another

RESPONDENT

Date of Decision : 10-09-1974

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 32

Citation : AIR 1975 Bom 358 : (1975) 77 BOMLR 387 : (1976) ILR (Bom) 1878

Hon'ble Judges : Tulzapurkar, J;Shah, J

Bench : Division Bench

Advocate : V.M. Limayue and M.V. Sali, in Spl. C.A. No. 2105 of 1970 and M.V. Paranjpe, N.D. Hombalkar, Babasaheb A. Bhonasle and K.J. Abhavankar, in Spl. C.A. No. 2392 of 1970, for the Appellant;

Judgement

Tulzapurkar, J.—The question raised in this Special Civil Application (NO. 2104 of 1970) pertains to the applicability of Section 37 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called the Tenancy Act) to proceedings taken and orders passed u/s 15 read with Section 29 of the Act, and since on this aspect, there is a conflict of decisions, the matters has been referred to a Division Bench.

2. The question arises in these circumstances: The property involved in this litigation is Survey No. 446 admeasuring 26 acres and 1 guntha with a pot-kharaba of 15 gunthas, assessed at Rs. 34, situate at village Newasa Budrrk, Dist, Ahmednagar, petitioner No. 1 was the landlord of this land, while opponent No. 1 was the tenant. Sometime prior to 2nd of September 1957 opponent No. 1 surrendered the land in favour of petitioner No. 1 who at that time was a minor represented by his guardian, opponent No. 2. On 2nd of September 1957 the tenant made an application u/s 15 of the Tenancy Act intimating the Tenancy Awal Karkun of Newasa that he had voluntarily surrendered possession of the land leased to him. The application was registered as Tenancy Case No. 47 of

1957. On verifying that the surrender made by the tenant was a voluntary one and by the tenant was a voluntary one and the tenant had, of his free will, relinquished all his rights as a tenant, the Tenancy Awal Karkun accepted the said surrender and after further satisfying himself that the landlord bona fide required the land for his personal cultivation and the total acreage fell within the ceiling area, he ordered that possession of the entire land be given to the landlord. This order was passed by the Tenancy Awal Karkun on 30th of September 1957. On 24th of March, 1958, the land was actually put in possession of the guardian of the minor landlord, petitioner No. 1. Sometime in 1964 - 65, petitioner No. 1 sold the land to petitioners Nos. 2 to 4 who entered in possession of the land from the date of purchase. On 28th of November, 1967 petitioner No. 1 tenant filed an application for restoration of possession of the land to him under Section 37 read with Section 39 of the Tenancy Act on the ground that the landlord had failed to cultivate the land personally, and this application was numbered as A. L. THE. Case No. 4 of 1968. The application was resisted by the landlord and his purchasers principally on the ground that since possession of the land had been obtained by the landlord u/s 15 of the Act after a voluntary surrender had been duly verified by the Tenancy Awal Karkun the provisions of Section 37 of the Act were not applicable. The court was attracted and the tenant was entitled to restoration of possession. He accordingly by his order dated 14th of March 1969 directed restoration of possession of the land u/s 37(1) of the Tenancy Act to the tenant and further directed that compensation amounting to Rs. 4,000/- for four years from 1964-65 to 1967- 1968 and further compensation of Rs. 1,000 per annum till actual delivery of possession should be paid to the tenant. Against this order passed by the Additional Tehsildar, the petitioners (the landlord and his purchasers) carried an appeal to the Collector being Tenancy Appeal No. 42 of 1969. The Sub-Divisional Officer who heard the appeal confirmed the view of the Tehsildar and dismissed the appeal on 22nd of July 1969. The revision application that was preferred by the petitioners to the Maharashtra Revenue Tribunal was dismissed on 16th of March 1970. Against the decision of the Tribunal, the present Special Civil Application has been filed by the petitioners challenging the view that S. 37 of the Act was applicable to the facts of the case and further challenging the finding that there was a condition of surrender under the proceedings that took place u/s 15 of the Act.

3. On behalf of the petitioners. Mr. Limave contended before us that in view of the fact that the landlord had obtained possession of the land u/s 15 of the Act upon a voluntary surrender having been verified by the Tenancy Awal Karkun in Tenancy Case No. 47 of 1957. Section 37 could not be invoked by the tenant. He pointed out that in terms, Section 37 of the Act was applicable to cases where the landlord had obtained possession of the land after termination of the tenancy u/s 31 or Section 33-B or Section 34 of the Act as it stood immediately before the commencement of the Amending Act, 1956 and had failed to use the land for any of the purposes specified in the notice given under either of the aforesaid sections. He pointed out that Section 15 of the Act, which provided for

termination of tenancy by a surrender on the part of the tenant and consequent recovery of possession by the landlord pursuant to an order that may be passed by the Mamlatdar under that section had not been mentioned in Section 37 at all. He, therefore, urged that the provisions of Section 37 were not attracted to the facts of the case, and the lower authorities were in error in invoking the provisions of Section 37 and passing an order for restoration of possession in favour of the tenant. He also contended that the finding of the Additional Tahsildar, which was confirmed by the Sub-Divisional Officer and the Tribunal will have to be regarded as perverse being contrary to the express language used in the application preferred by the tenant u/s 15 of the Act and the deposition given by him before the Additional Tahsildar. He pointed out that neither the proceedings nor the final order of the Additional Tahsildar u/s 15 of the Act showed that there was any conditional surrender, that is to say, surrender on condition that the landlord should personally cultivate the land after obtaining possession thereof. In support of his contention that Section 27 of the Act could not be attracted to a case governed by Section 15 of the Act, he relied upon the judgment of Mr. Justice Vaidya in *Uttamrao Vithalrao More v. Nivruti Subhana Chambhar*, Special Civil Appln. No. 1372 of 1966, decided on 28-3-1969 (Bom).

4. On the other hand, Mr. Sali appearing for the opponent No. 1 (tenant) contended that even to a case covered by Section 15 of the Act, Section 37 was attracted, and in that behalf he relied upon the provisions of sub-section (2) of Section 15 in which a reference has been made to Sections 31 and 31-A of the Tenancy Act. According to him, under sub-section (2) of Section 15, it has been provided that where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions as are provided in Ss. 31-A for the termination of tenancies and relying upon this provision, he urged that for all practical purposes, an order u/s 15 under which the landlord obtains possession of land for personal cultivation should be regarded as an order having been passed u/s 31 of the Act in which case he says the provisions of Section 37 would get immediately attracted. In support of his contention, he relied upon a decision of Mr. Justice Vaidya in the case of *Sarubai Vs. Vinayak Govind Chandrate and Others*, and also upon another unreported decision of Mr. Justice Vaidya in *Asaram Hari Pawar v. Lata Raghunath Joshi*, Special Civil Appln. NO. 824 of 1969, decided on 8-8-1972 (Bom). He also contended that the surrender in the instant case under S. 15 of the Act was rightly held to be a conditional surrender by the lower authorities: and since the surrender was a conditional one and since the landlord committed breach of condition which possession was delivered to him under the order passed by the Additional Tahsildar on 30th of September, 1957, the lower authorities were right in resorting to Section 37 of the Act and restoring possession of the land to the tenant, and in support of this contention, he relied upon a decision of *Tambe Acting C. J. and Gokhale J. in Khandu Annaji Dhangar v. Mahaur Dula Patil*. Special Civil Appln. No. 548 of 1962, decided on

17-11-1962 (Bom).

5. It will be desirable to deal with the factual aspect of the question before we turn to the legal point raised before we turn to the legal point raised before us of the applicability of S. 37 to the proceedings and order passed u/s 15 of the Act. On the factual aspect as stated earlier, Mr. Sali's contention has been that the surrender that was made by the tenant in this case and which surrender was accepted as voluntary one by the Tenancy Awal Karkun on 30th of September, 1957 has been rightly held to be a conditional surrender by the Additional Tahsildar in the present proceedings, and this view has been confirmed by the Sub-Divisional Officer and the Tribunal in appeal and revision respectively. According to him. If the surrender is regarded as conditional surrender, the tenant would be entitled to restoration of possession u/s 37 no sooner the landlord is shown to have committed a breach of the condition relating to personal cultivation that has been imposed upon him while effecting the surrender, and in support of his said contention, he relied upon the Division bench decision of this Court in Special Civil Appln. No. 548 of 1962 . (Khandu Annaji's case) decided on 17-11- 1962 (Bom). Before we go to the decision on which reliance has been placed, we shall examine the factual aspect in view of the record that has been made available to us. It may be mentioned that in the present proceedings which was commenced u/s 37 and numbered as A. L. THE. Case No. 4 of 1968. only the judgment and order of the No. 47 of 1957 was produced, but before us Mr. Sali has produced the certified copies of the appreciation that was preferred by the tenant u/s 15 of the Act, the application made by the landlord in those proceedings as well as the depositions of both the tenant and the landlord recorded before the Tenancy Awal karkun, and it is on an appreciation of this material that we will have to consider as to whether the surrender made by the tenant was a conditional one or not. In the application made by the tenant u/s 15 of the Act, the tenant has merely averred certain facts. After giving the particulars of land in question, the tenant has stated that the said land has been in his possession as a tenant; that he has enough land of his own for cultivation; that land for his livelihood: that he has enough land of his own for cultivation; that the opponent (landlord) owns only the land in question and he depends upon that land for his livelihood; that opponent's holding is within the limit of 40 acres and his income is within Rupees 1,500: and, therefore, he (tenant) has of his own will relinquished possession of the land and has also relinquished all his rights as tenant therefore, possession should be delivered to the opponent and in the record of rights, whatever rights were entered in his name to the land should be deleted. The landlord in his application has stated thus: That the land in question is in possession of the tenant who has enough land of his own for cultivation that he (Landlord) has only this particular land which is within the limit of 48 acres and he depends thereon for his livelihood; that his income is below Rs. 1,500/- therefore, the tenant has of his own will relinquished possession as also his rights as tenant, and, therefore possession should be given expeditiously and that the tenant's rights entered in

the record of rights should be deleted. It will appear clear from the recitals that are to be found in both the applications that beyond making statements of fact, there is nothing to indicate that the relinquishment of possession by the tenant was on condition that the landlord must, on receiving possession, cultivate it personally or that if he failed to do so, possession will have to be restored back to the tenant. It is true that it has been recited in both the applications that the landlord depends upon this particular land for his livelihood and that this is the only land owned by the landlord. That may be the reason for handing over possession of the land by the tenant to the landlord, but that is far from saving that possession was sought to be delivered or handed over to the landlord on condition that the landlord must thereafter cultivate the land personally. The depositions of the tenant as well as the landlord before the Tenancy Awal Karkun also do not indicate anywhere that the surrender was conditional, that is to say, the same was made on condition that the landlord must or should cultivate the land personally after he obtains possession thereof. In fact, in the whole of the deposition of the detention the relevant statements made by him are to the effect-

"I was cultivating the land every year at an yearly rent of Rs. 401. I want to surrender this land of my own free will. That no pressure has been brought on me for surrendering the land, nor was any threat shown to me by anyone. I have 25 big as of land standing in the name of my father which is sufficient for maintenance of my family. I am unable to cultivate the land in question, and, therefore, I am voluntarily surrendering the land. I have no objection whatsoever to hand over possession of the land to the landlord".

In other words, even in his deposition, the tenant has nowhere stated that he was surrendering the land on condition that the landlord should cultivate the land personally. On the contrary, he has clearly indicated that he was unable to cultivate the land on account of his own large holding of 25 big has and hence he was surrendering the land. Even the order passed by the Tenancy Awal Karkun does not show that while ordering delivery of possession of the land in question to the landlord, he had imposed any condition on the landlord that he should cultivate the land personally. It is true that the two material issues that were framed by the Tenancy Awal Karkun were, - (a) whether the surrender was voluntary; and (b) whether the landlord bona fide required the land for personal cultivation or for N. A. use; and the findings recorded by the Tenancy Awal Karkun were to the effect that the surrender was voluntary and that the land was required by the landlord for personal cultivation only. The expression "only" while answering the second issue has obvious reference to the two parts of that issue, viz. (1) whether the landlord bona fide required the land for personal cultivation or for N. A. use and the Tenancy Awal Karkun answered the first part of the issue in the affirmative in favour of the landlord. In other words, out of the two purposes mentioned in the issue, the first one had been established by the landlord. It is true that the second issue was framed by the Tenancy Awal Karkun and finding was given thereon, but such an issue is required to be framed in the

proceedings u/s 15 of the Act, for even after the acceptance of surrender as a voluntary one, he has to find out whether the landlord is entitled to retain the land or any portion thereof so surrendered : and in case it is found that the landlord does not require the land either for personal cultivation or for any N. A. use, the disposal of that land is governed by Section 32-P of the Act. Therefore, the mere fact that an issue with regard to the personal cultivation of the landlord was raised and answered by the Tenancy Awal karkun in favour of the landlord is no indication that the order of delivery of possession was passed on condition that the landlord must cultivate the land personally. In fact, there is no such condition indicated in the final order passed by the Tenancy Awal Karkun. That being the position it seems to us very difficult to accept the finding of the Additional Tahsildar that the order passed by the Tenancy Awal Karkun directing delivery of possession to the landlord was conditional or that the order passed by the Tenancy awal Karkun directly delivery of possession to the landlord was conditional upon the landlord cultivating the land personally. It appears that the deposition of the tenant in proceedings u/s 15 was produced before the Additional Tahsildar in Tenancy Case No.4 of 1968, and after going through that deposition this is what the additional Tahsildar has observed in his judgment.

"The learned pleader for the opponents produced the deposition of the applicant in surrender case It is true that there is nothing in the deposition which can dictate the terms of conditions for surrender but while disposing of the application of the landlord in Ten. Case No.47/57 decided on 30.9.1957 specific issue No.3 as to whether the landlord bona fide required the land for personal cultivation or any N.A. use was firmed and decided that the land was required for personal cultivation only. This means that the landlord accepted the condition of personal cultivation."

It is this manner that the Additional Tahsildar came to the conclusion that it was a conditional surrender. It is thus clear that the tenant in his deposition never suggested that he had relinquished the land on any condition, but such conditional surrender has been inferred by the Additional Tahsildar from the fact that an issue with regard to landlord's personal cultivation was raised and answered by the Tenancy Awal Karkun in favour of the landlord. As discussed earlier, such an issue with regard to personal cultivation of the landlord or whether the land is required by the landlord for N.A. u/s 15, or even if a finding is recorded that the surrender is voluntary on the part of the tenant, the land cannot be ordered to be delivered to the landlord unless the authority is satisfied that the landlord requires the land for his personal cultivation or for N.A. use and in the land is not so required by the landlord, then the land is liable to be disposed of u/s 32-P of the Act. Therefore, the mere fact that the issue with regard to the landlord's personal cultivation, was raised and answered in favour of the landlord cannot lead to the inference that the surrender was conditional or that the order directing delivery of possession to the landlord was conditional. The finding of the Additional Tahsildar that surrender was conditional must be regarded as perverse and it is such findings without any further discussion that

has been confirmed by the Sub-Divisional Officer in appeal and the Maharashtra Revenue Tribunal in revision. In our view therefore, there was no question of surrender being conditional or even the order for delivery of possession in favour of the landlord being conditional - conditional upon the landlord personally cultivating the same after he had obtained possession. In that view of the matter, it is difficult to accept the contention of Mr. Sali that the surrender being conditional on a breach of the condition the tenant was entitled to restoration of possession.

6. The decision in Special Civil Appln. No.548 of 1962 (Bom) that was relied upon by Mr. Sali turned on the facts which obtained in that case. In proceedings taken u/s 15 of the Act in that case, the tenant in his statement had specifically stated that he was ready to surrender the land on condition that the landlord cultivated it personally. Even the landlord in his statement had also stated in express terms that he was taking the land for his personal cultivation. What is more, after recording the statements and holding the enquiry, the Tenancy Awal Karkun after accepting the surrender made the following order -

"The applicant has surrendered his tenancy rights on condition that the above landlord would cultivate the land personally. I, therefore, order that the possession of the suit land be restored to the opponent-landlord on condition that he should cultivate the land personally u/s 15 read with Sections 31, 31-A and 37dd of the amended Act of 1956."

In other words factually, the Court came to the conclusion relying upon the material indicated above that the surrender was conditional and even the final order passed by the Tenancy Awal Karkun who accepted the surrender as voluntary clearly indicated that the land had been delivered to the possession of the landlord on condition that he should cultivate it personally, and what is more, even the reference to section 37 of the Act was also incorporated in the last part of his order. It was in those circumstances that this Court in Special Civil Appln. No.548 of 1962 (Bom) took the view that the provisions of Sections 37 were attracted to a case where the surrender under S. 15 had been a conditional one - conditional upon the landlord cultivating the land personally and where even the order passed by the Awal Karkun directing delivery of possession to the landlord cultivated the land personally under Sections 31, 31-A, and 37 of the Act. The decision therefore, on which reliance has been this placed by Mr. Sali cannot avail him in this case. Having regard to the above discussion., we are clearly of the view that the finding of the Tenancy Awal Karkun which has been confirmed by the Sub - Divisional Officer and the Maharashtra Revenue Tribunal in appeal and revision respectively deserves to be set aside, and there being no order directing the delivery of possession to the landlord on condition that he should cultivate the land personally, there would be no question of restoring possession of the land to the tenant on the ground of the land to the tenant on the ground that the landlord had failed to cultivate the land personally.

7. The next question that arises for our determination is whether the provisions

of Section 37 of the Tenancy Act are attracted to a case failing u/s 15 of the Act or not. Section 37(1) in terms merely refers to cases of a landlord taking possession of the land after termination of tenancy u/s 31, 33-B and 34 of the Act as it stood before the commencement of the Amending Act, 1956, and then failing to use the land for any of the purposes for which he has recovered possession and does not make any mention of Section 15 at all. Section 37 (1) runs as follows:

"If after the landlord takes possession of the land after the termination of the tenancy u/s 31, 33-B or Section of this Act as it stood immediately before the commencement of the Amending Act, 1956 he fails to use it for any of the purposes specified in the notice given u/s 31, 33-B or Section 34 of this Act as it stood immediately before the commencement of the Amending Act, 1956 within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purpose within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three months of the receipt thereof.

On a fair reading of Section 37(1), therefore, it appear clear that the provisions of that section could be invoked only in cases where the landlord has taken possession of the land after termination of tenancy u/s 31, or Section 33-B or the old Section 34 and has further failed to use the land for any of the purpose specified in the notice given under Sections 31, 33-B or old Section 34, and prima facie, the case of a landlord taking possession of land u/s 15 of the Act upon a surrender having been made by the tenant and having been made by the tenant and having been verified by the Mamlatdar u/s 15 is not covered by Section 37. The only manner in which Section 37 was sought to be attracted to a case governed by Section 15 of the Act was by reason of the p revisions of sub-section (2) of Section 15 in which reference to Sections 31 and 31-A has been made. It would be therefore necessary to set out the provisions of Section 15 of the Act. Section 15 runs as follows:

"(1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord.

Provided that such surrender shall be in writing and verified before the Mamlatdar in the prescribed manner.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extend and in so far as the conditions are applicable subject to the like conditions, as are provided in Sections 31 and 31-A for the termination of tenancies.

(2-A) The Mamlatdar shall in respect of the surrender verified under sub-section

(1), hold an inquiry and decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered, and specify the extent and particulars in that behalf.

(3) The land or any portion thereof, which the landlord is not entitled to retain under sub-section (2), shall be liable to be disposed of in the manner provided under clauses(c) of sub-section (2) of Section 32-P."

It was urged on behalf of the tenant that since sub-section (2) of Section 15 provides that whenever a tenant surrenders his tenancy the landlord shall be entitled to retain the land so surrendered "for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions as are provided in sections 31 and 31-A" for all practical purposes, the landlord's obtaining possession for personal cultivation upon termination of a tenancy by way of surrender u/s 15 should be regarded on the same footing as u/s 31, and therefore an order passed u/s 31 of the Act and thus Section 37 gets clearly attracted. It was pointed out that such a contention has been accepted by Mr. Justice Vaidya in *Sarubai Vs. Vinayak Govind Chandrate and Others*, . It is not possible to accept this contention for the reasons which we shall presently indicate. It is true that subsection (2) makes a reference to Ss. 31 and 31-A but the mere reference to Sections 31 and 31-A or the further fact that the landlord's right to retain land had been subjected to certain restrictions mentioned therein, viz, he can retain the land has been subjected to certain restrictions mentioned therein. viz he can retain the land subject to the like purposes or the like extent or the like conditions as are mentioned in Section 31 and 31-A cannot convert an order passed u/s 15 into an order passed under Sections 31 of the Act. In our view, all that sub-section (2) of Section 15 does is to in termination or tenancy embodied in Sections 31 and 31-A of the Act, but because of that the order under Sections 15 cannot be regarded as one having been passed u/s 31 or Section 31-A of the termination of tenancy brought about by surrender and not by a notice by a landlord as required by Section 31. It is only the consequences of a surrender of tenancy made by a tenant that are enjoined to be worked out having regard to such of the conditions as may be applicable as mentioned in Sections 31 and 31-A. That is the only effect of sub-section (2) making a reference to Section 31 and 31-A. The view expressed in *Sarubai's* case therefore cannot be regarded as correct.

8. It was, however, urged on behalf of the tenant before us that after all, the ultimate result to a large extent was one and the same whether the parties went before the Mamlatdar either u/s 15 or u/s 31, for the ultimate result was that the landlord obtained and retained possession of the land either for personal cultivation or his N.A. use, and if the landlord failed to make use of the land for the purpose for which he obtained it, there was no reason why the tenant should not get back possession from such defaulting landlord. It was pointed out that it was possible that undue advantage of a tenants illiteracy might be taken by an unscrupulous land lord when he desired to achieve his objective by resorting to

Section 15 rather than Section 31 of the Act, and therefore, irrespective of the question as to whether the proceedings, which result in the landlord obtaining possession, have been taken u/s 15 or u/s 31, any landlord who has obtained and retained possession of the land in question should be subjected to the provisions of Section 37 of the Act. In the first place, this aspect concerns policy and it is for the Legislature to make suitable provision and the simplest way would have been to include cases covered by Section 15 within the scope and ambit of Section 37, but as stated earlier Section 37 does not make any reference to Section 15 at all. Secondly, there is vast difference between the termination of tenancy on the part of the tenant by surrendering the land in favour of the landlord, and the termination of the tenancy by the landlord for the purposes of obtaining the land for personal cultivation or for his N.A. use, and it is only the latter type of termination that has been specifically included in Section 37 of the Act. Mainly under Section 31 the termination of tenancy is by right to obtain possession of the land for personal cultivation while u/s 15 it is the tenant who initiates the action by surrendering his tenancy and upon such surrender being verified as true and cases are not inconceivable where sheer inability to cultivate the land on account of largeness of the tenant's own holding might prompt the tenant's own holding might prompt the tenant to make a voluntary surrender in which event there may be no occasion to restore the surrendered land to him on landlord's failure to use it for the purpose for which he had obtained it. No useful purpose would have been served by bringing such cases within the purview of Section 37. Moreover it is not correct to say that even the ultimate result is one and the same whether proceedings are initiated u/s 15 or Section 31. A landlord initiating proceedings initiated u/s 15 or Section 31. A landlord initiating proceedings u/s 31 read with Section 29 would ordinarily be entitled to recover possession of half the land the other half would always remain with the tenant and on the tiller's day he becomes absolute purchaser of that portion, whereas if tenancy is terminated portion, whereas if tenancy is terminated by surrender as contemplated by Section 15, then, in proceedings taken thereunder, the landlord, depending upon his own holding at the material time may be entitled to the entire land or such portion thereof as would make his total holding equal to the ceiling area. There is yet one more difference. In proceedings instituted u/s 31, if the landlord were to fail to prove his bona fide requirement for personal cultivation, his application for possession would fail, and the tenant would become the owner of the entire land on the tiller's day. But in proceedings instituted under S. 15 of the Act upon the surrender being found voluntary, even if the landlord were to fail to establish his requirement for personal cultivation or any requirement for non-agricultural use, and for that matter, even if the landlord were to say that he did not want the land for himself, such land would not revert back to the tenant but it would not revert back to the tenant but it would form part of the pool distributable u/s 32-P of the Act. In other words, the two modes of termination of tenancy are different the two procedures are different and even the consequences flowing therefrom including ultimate results are different, and, therefore it would be difficult to ascribe any

intention to the Legislature that even to cases falling u/s 15 of the Act, the provisions of Section 37 were to be applied, especially when Section 37 in terms merely refers to termination of the tenancy by the landlord under Sections 31, 33-B or the old Section 34. For the reasons indicated above, we are clearly of the view that Section 37 of the Act is not attracted to a case falling u/s 15 of the Act unless of course in a given case on facts it is found that the surrender itself was conditional and the order passed by the Mamlatdar u/s 15 directed delivery of possession upon condition that the landlord shall cultivate the land personally or make use of it for his own non-agricultural purposes as was the cases in Special Civil Appln. No. 548 of 1962 (Bom).

9. Undoubtedly, strong reliance was placed on behalf of the tenant on the decision in *Sarubai Vs. Vinayak Govind Chandrate and Others*, . In that case , a view has been taken that even for the purposes of Section 33-B (5) (a) the order u/s 15 must be construed as an order u/s 31, and it was held that the landlord, who had already obtained half the land originally leased to the tenant for personal cultivation upon a surrender u/s 15, will not be entitled to recover possession of the remaining half of the land. The facts in that case were that the landlord had failed an application u/s 33-B read with Section 29(2) of the Act after obtaining certificate u/s 88-C. The application was resisted by the tenant on the ground that the landlord had already obtained k from him half the land originally leased to him for personal cultivation upon a surrender u/s 15 of the Act, and hence in view of the provisions of Section 33-B (5) (a) of the Act. the landlord was not entitled to recover possession of the remaining half of the land, which was the subject-matter of dispute between him and the landlord then. The contention of the tenant was upheld by the Court in view of the provisions of Section 15(2) of the Act. The Court observed as follows:

"This contention must be un held because if the landlord is entitled to retain possession of the land subject to like conditions mentioned in Section 31 as well as kl for the like purpose and to the like extent. it means that for all practical purposes an order u/s 15 must be considered as an order u/s 31. I am therefore of the opinion that even for the purposes of Section 33-B (5) (a) the order u/s 15 must be construed as an order u/s 31 for all purposes".

With respect, the respect that Section 15 (2) merely incorporates by reference the k conditions of termination of tenancy embodied in Section 31, 31A of the Act and does not do anything more seems to have been overlooked. As discussed above, it seems to us clear that the mere reference to Sections 31 and 31-A in Section 15(2) of the Act and the further fact that the landlord's right to retain possession has been made subject to like conditions mentioned in Section 31 or Section 31-A (in so far as these are applicable) cannot alter the position that the order passed u/s 15 would be an order under that section and not an order passed u/s 31 of the Act. The same view was taken by the learned Judge in another matter being Special Civil Appln. No. 824 of 1969. *Assaram Hari Pawar v. Lata Raghunath Joshi* decided by him on 8-8-1972 (Bom). It was expressed by

the learned Judge in these words -

"Mr. Rege, learned Counsel for the petitioner, submitted that as the tenants had surrendered the land, the land could not be restored to the tenants. There is no merit in this argument. The surrender is not a surrender under the ordinary law. The surrender was statutory under S. 15 of the Bombay Tenancy and Agricultural Lands Act. That surrender entitled as landlord "to retain the land so surrendered for the like purposes, and to the like extent and in so far as the conditions are applicable subject to the like conditions, as are provided in Section 31 and 31-A for the termination of tenancies. u/s 37 if after the landlord takes possession of the land after the termination of the tenancy or if he fails to use it for any of the purposes u/s 31 within the period mentioned therein the tenant is entitled for restoration of possession is other words, the right of the landlord to retain possession u/s 15 as well as u/s 31 is subject to the right of the tenant u/s 37 for restoration of possession in the case of the landlord not using the land surrendered for the purposes for which he obtained the same under S. 31 read with S. 15".

It is not possible to subscribe to this view for the reasons which we have discussed above. The fact that the surrender of tenancy u/s 15 is not a surrender under an ordinary law but a statutory one under that section cannot, in our view, make any difference. The question is whether to such statutory surrender as contemplated by Section 15, the provisions of Section 37 are attracted and that must ultimately depend upon whether the case governed by Section 15 has been made subject to the right of the tenant indicated in Section 37 or not. As we have said above. Section 37 in terms refers to termination of tenancy by the landlord u/s 31 or Section 33-B or the old Section 34, and not to a termination k of tenancy by surrender by a tenant u/s 15 of the Act. The only manner in which the provisions of Section 37 were sought to be attracted was that there is a reference to Section 31 and 31-A in Section 15 (2) and that it has been further provided therein that the landlord's right to retain possession is subject to like conditions as are mentioned in Section 31 and 31-A. That, as we have discussed above, is merely a provisions which shows that the consequences of a surrender of tenancy are to be worked out by having regard to such conditions as are mentioned in those sections.

10. We may indicate that a contrary view - contrary to the one taken by Mr. Justice Vaidya has been taken by Mr. Justice Vaidya has been taken be Mr. Justice Vaidya in Special Civil Appln. No. 1372 of 1966, Uttamrao Vithalrao More v. Nivruti Subhana Chambhar decided on 28-3-1969 (Bom). That was also a case where the surrender of a part of the land u/s 15 was followed by proceedings u/s 33-B fro the remaining part and a contention was raised on behalf of the landlord that the proceedings arising out of the termination of tenancy as a result of the surrender of tenancy cannot be equated to or treated as if they are proceedings u/s 31 of the act; and that contention was upheld by Mr. Justice Abhavankar. On behalf of the tenant reliance was placed upon the fact that Sections 31 and 31-A

are referred to in Section 15 (2) of the Act and on the further fact that the right of the landlord to retain the land had been subjected to the like conditions mentioned in Sections 31 and 31-A and the land surrendered could be retained by him for like purposes and to like extent. The reasoning for upholding the contention raised by the landlord has been expressed by the learned Judge in the following words.-

"Even a plain reading of Section 15 (2) will show that the termination which is brought about is by surrender and not by a notice as required by Section 31. It is only the consequences of a surrender of tenancy made by the tenant that are enjoined to be worked out, having regard to or by observing the conditions or such conditions as may be applicable as provided in Section 31 and 31-A. In other words, it appears to me that the reference to Sections 31 and 31-A is made in sub-section (2) of Section 15 only in so far as the statute requires the revenue authorities to apply those conditions in working out rights of parties whenever there is a voluntary surrender of tenancy by a tenant".

With respect, we are in agreement with the view expressed above.

11. In the result, the Special Civil Application succeeds and the rule is made absolute with costs.

SPECIAL CIVIL APPLICATION NO. 2392 OF 1970;

12. The points raised in this Special Civil Application are almost identical with the points that were raised in the Special Civil Application No. 2105 of 1970, which we have just disposed of. So far as the law point is concerned, our judgment in the earlier Civil Application will govern the same.

13. On the factual aspect as to whether the surrender was conditional - conditional upon the landlord personally cultivating the land. Mr. Paranjpe fairly conceded after going through the record that it would be difficult for him to contend that the surrender was a conditional one. neither in the application made by the tenant before the Tenancy Awal Karkun nor in the deposition given by the tenant in these proceedings was there any indication that the tenant had surrendered the land conditionally. The application u/s 15(2) of the landlord seeking possession was dismissed by the Tenancy Awal Karkun because it held the surrender to be involuntary, but in the appeal that was preferred by the landlord, the Collector reversed the order passed by the Tenancy Awal Karkun holding that the surrender was voluntary. Even that order passed by the Collector in appeal does not show that possession was directed to be delivered to the landlord upon the condition that he was to cultivate the land personally.

14. In this view of the matter, the rule in this Special Civil Application is discharged with costs.

15. Order accordingly.