

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3055 OF 1991

Smt. Kondabai Ganu Barkale
(since deceased through her Legal
Heirs Smt. Housabai P. Bhongale & ors.)
and others .. Petitioners

vs.

Shri. Pandit @ Shankar D. Patil
(since deceased through his Legal
Shri. Waman S. Patil & ors.)
and others .. Respondents

Mr. S.G. Karandikar a/w. Mr. A.R. Kapadnis for Petitioners
Mr. S.S. Patwardhan for Respondent Nos.1A, 2A to 2 E.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 27 November 2015.
Date of Pronouncing the Judgment : 18 December 2015.

JUDGMENT :-

1] This petition takes exception to the judgments and orders dated 30 October 1986, 30 June 1987 and 4 December 1990 made by the Additional Tahsildhar, Sub-Divisional Officer (SDO) and Maharashtra Revenue Tribunal (MRT) under the provisions of the Maharashtra Tenancy Agricultural Lands Act, 1948 (Tenancy Act). The said Authorities under the Tenancy Act have held that the

petitioners right to purchase the suit property has been rendered ineffective in terms of Section 32F and Section 32O of the Tenancy Act, but the matter was remanded to the Tahsildar for conduct of enquiry in terms of Section 32P (2)(b) or (c) of the Tenancy Act.

2] The predecessors-in-title of the petitioners, as well as the petitioners themselves, shall be referred to as the '*tenants*'. Similarly the predecessors-in-title of the respondents as well as the respondents themselves, shall be referred to as the '*landlords*' for sake of convenience.

3] There is no dispute that the suit property, which is an agricultural property had been leased by the landlords to the tenants much prior to the Tillers' day i.e. 1 April 1957. There is also no dispute that the suit property was '*watan land*' or '*watan property*' as defined under Sections 2(1)(l) and 2(1)(m) of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 (Watan Abolition Act). On the ground that the provisions of the Tenancy Act do not apply to watan lands, the proceedings initiated by the tenants for purchase of the suit property under Section 32G of the Tenancy Act were dropped by the Tahsildar, by order dated 25 August 1960. The

'appointed day', in terms of Section 2(1)(a) of the Watan Abolition Act was notified as 1 January 1963. On this day, however, the landlady was a widow and consequently a disabled landlady in terms of the provisions of Section 32F of the Tenancy Act. Such widowed landlady expired on 29 January 1972. The formal order of re-grant, consequent upon the abolition of watan was made on 2 September 1972. There is, however, no clear record as to the precise date upon which the occupancy price was paid by the landlords in respect of such re-grant. In paragraph '8' of the judgment and order dated 4 December 1990 made by the MRT, there is a statement that from the record it appears that occupancy price was already paid before the re-grant order was passed. From this statement, however, it is not clear whether occupancy price was paid after demise of widowed landlady on 29 January 1972 or prior to her demise. This aspect assumes relevance and is therefore, referred to at the outset. On 30 December 1974 (3 December 1974), Mutation Entry No. 1477 was entered in the village record to give effect to the re-grant order dated 2 September 1972.

4] On 5 September 1985, the landlords initiated proceedings for recovery of possession of the suit property claiming that the purchase

has become ineffective, as both on the Tillers' day, the landlady was admittedly a widow and in terms of Section 32F of the Tenancy Act, since the tenants had not issued notice/intimation for purchase within period of two years from the date of demise of the widowed landlady, the purchase under Section 32G of the Tenancy Act had been rendered in effective and the suit property was consequently required to reverted to the landlords.

5] The Tahsildhar by judgment and order dated 30 October 1986 upheld the contention of the landlords and declared purchase to be ineffective under Section 32F of the Tenancy Act. The tenants appeal was dismissed by the SDO by the judgment and order dated 30 June 1987. The SDO, apart from the provisions contained in Section 32F of the Tenancy Act, invoked the provisions of Section 32O of the Tenancy Act to hold in favour of the landlords. The revision application instituted by the tenants was dismissed by the MRT by judgment and order dated 4 December 1990, but the matter was remanded to the Tahsildar for enquiry under Section 32P of the Tenancy Act. Hence, the present petition.

6] Rule and ad-interim stay in terms of prayer clause (c) were

granted on 16 July 1991. During the pendency of the petition, from time to time, the orders were made granting leave to bring legal representatives of the respective parties on record.

7] Mr. S.G. Karandikar, learned counsel for the Petitioners-tenants, made the following submissions in support of this petition:

a] The provisions of Section 32O of the Tenancy Act apply to the tenancy created by the landlords after Tillers' day. The said provision does not apply to tenancy which was already existing on the Tillers' day, but the purchase was postponed, either on account of the provisions contained in Section 32F or on account of the provisions of the Watan Abolition Act. Relying upon the decision of this Court in case of *Pradeeprao @ Virgonda Shivgonda Patil Vs. Sidappa Girappa Hemgire since deceased through his heirs and others*¹, it was contended that the provisions contained in Section 32O of the Tenancy Act do not apply to the land which stands re-granted to a watandar on the payment of occupancy price.

b] That the provisions of the Tenancy Act, including in particular the provision contained in Section 32 to 32R of the Tenancy Act were not at all applicable to the suit property by virtue of Section 88(1) and 88CA as on Tillers' day, on the appointed day, or for that matter

1 2004(3) Mh.L.J. 75

on the date of demise of widowed landlady. The provisions of the Tenancy Act became applicable to the suit property only on 2 September 1972, i.e., the date of re-grant of the suit property to the landlords. On the said date, since none of the landlords were disabled, the provisions of Section 32-F of the Tenancy Act were not attracted. By the operation of law, i.e., the provisions contained in Section 32 and 32-R of the Tenancy Act, the suit property stood vested in the tenants and the tenants became the deemed purchasers in respect thereof. Thereafter, even the authorities under the Tenancy Act lacked jurisdiction to divest the tenants from their rights to purchase the suit property or order restoration of the suit property to the landlords;

c] The Authorities under the Tenancy Act have grossly failed to appreciate the scope and import of the provisions of the Tenancy Act as also the Watan Abolition Act and consequently the impugned judgment and orders are in excess of jurisdiction. Even the findings of fact, particularly on the aspect of payment of occupancy price are vitiated by perversity. There is no material on record to establish that occupancy price under the Watan Abolition Act was paid by the landlord before the demise of the widowed landlady on 29 January 1972. For all these reasons, the impugned judgment and orders are

required to be set aside.

8] Mr. Patwardhan, the learned counsel for the landlords at the outset, contested the contentions made by and on behalf of the tenants. He submitted that provisions of all Watan Abolition Acts are *pari materia* to each other. Relying upon the decision of the Single Judge of this Court in the case of *Dhondi Vithoba Koli vs. Mahadeo Dagdu Koli & Ors.*² and the decision of the Division Bench in the case of *Laxmibai Sadashiv Date vs. Ganesh Shankar Date*³, he submitted that re-grant of land to a former Watandar on his application, is automatic and effective from the appointed date prescribed under the Act. On such basis, Mr. Patwardhan submitted that the Tenancy Act became applicable to the suit property with effect from 1 January 1963. On this date, admittedly, the landlady was widowed and therefore, under the provisions of Section 32F, the statutory right of purchase stood postponed. The disabled landlady expired on 9 January 1972. Within period of two years from the date of such demise, admittedly, notice / intimation as contemplated by Section 32F of the Tenancy Act was never given by the tenants. The purchase therefore was rendered ineffective and the landlords

2 AIR 1973 Bom. 323

3 AIR 1977 Bom. 350

were consequently entitled to restoration of possession of the suit property.

9] Mr. Patwardhan further submitted that even assuming that the provisions of the Tenancy Act became applicable to the suit property after the re-grant of the property to the landlords, it is to be noted that the formal order of re-grant i.e. 2 September 1972 was hardly relevant. What was relevant was the date of payment of the occupancy price. In this case, the MRT, has recorded a categorical finding that occupancy price was already paid before the re-grant order was made. There is no material on record to establish that the notice / intimation as contemplated by Section 32F of the Tenancy Act was given by the tenants within a period of two years from the date of payment of occupancy price. Therefore, the Authorities not only acted within the parameters of their jurisdictional limits, but were further entirely right in holding that the right to purchase had been rendered ineffective and the possession of the suit property was required to be restored to the landlords.

10] Mr. Patwardhan however pointed out that the MRT was not right in ordering a remand to the Tahsildar for enquiry in terms of

Section 32P (2)(b) or (c) of the Tenancy Act, as in the facts and circumstances of the present case, the same was quite unnecessary and only prolonged the right to the landlords entitlement. For all these reasons, Mr. Patwardhan submitted that this petition be dismissed.

11] The rival contentions now fall for determination.

12] In this case, there is no dispute about relationship of '*landlord and tenant*' as between the parties prior to the Tillers' day or prior to the appointed day. There is also no dispute that the suit properties were answering the definition of '*watan land*' or '*watan property*' as defined under Sections 2(1)(l) and 2(1)(m) of the Watan Abolition Act. Therefore, in terms of Section 88CA of the Tenancy Act nothing contained in Sections 32 to 32R (both inclusive) was applicable to the suit property upto the date of re-grant of the suit property to the landlords.

13] Section 32 of the Tenancy Act, otherwise provides that on the Tillers' day, every tenant shall, subject to other provisions of Section 32 and the provisions of the next succeeding sections, be deemed to

have purchased from his landlord, free of all encumbrances subsisting thereon, on the said day, the land held by him as a tenant, subject to certain compliances and fulfillment of certain conditions as specified. Section 32F of the Tenancy Act however provides that notwithstanding anything contained in the preceding sections, which would include, *inter alia*, the provisions contained in Section 32 of the Tenancy Act, where the landlady is *inter alia* a widow, the tenant shall have the right to purchase the land under Section 32 within period of one year from the expiry of the period during which the disabled landlord / landlady was entitled to terminate the tenancy under Section 31. Further, in terms of Section 32F (1)(a) of the Tenancy Act, any tenant desirous of exercising the right conferred upon him under sub section (1), is required to give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner and within the period specified under that sub section.

14] In effect therefore, in case where the landlady is a widow on the Tillers' day, the tenant is required to give intimation in the matter of exercise of right to purchase the tenanted property, within a period of two years from the date of demise of such widowed landlady. However, as noted earlier, since the suit property in the

present case was a watan property or a watan land, the provisions contained in Sections 32 to 32R of the Tenancy Act, were not applicable to the suit property. In terms of the Watan Abolition Act however, from the appointed date, all Patel Watans stood abolished and subject to the provisions contained in Sections 5, 6 and 9 of the Watan Abolition Act, the watan lands were resumed and rendered subject to payment of land revenue, as if they were unalienated lands. In this regard, brief reference to the scheme of Watan Abolition Act would be appropriate.

15] The Watan Abolition Act was published in the Official Gazette on 4 September 1962. Section 2(1)(a) of the Watan Abolition Act defines the term '*appointed day*' to mean the date of commencement of the Watan Abolition Act. In the present case, the same has been notified as 1 January 1963. Section 3 of the Watan Abolition Act provides that notwithstanding any usage, custom, settlement, grant or agreement or sand or any decree or order of the Court, or any existing watan law, with effect from the appointed day,-

(a) all patel watans shall be and are hereby abolished;

(b) all incidents appertaining to the said watans (including the right to hold office and watan property and the liability to render service) shall be and are hereby extinguished;

(c) subject to the provisions of Sections 5, 6 and 9, all watan lands shall be and are hereby resumed, and accordingly shall be subject to the payment of land revenue under the provisions of the relevant Code and the rules made thereunder, as if they unalienated land:

Provided that, such resumption shall not affect the validity of any alienation of any such watan land duly made in accordance with the provisions of the existing watan law, nor shall such resumption affect the rights or interest of the alienee thereof, or of any person claiming under or through him.

16] Section 5 of the Watan Abolition Act, provides that a Watan land resumed under Section 3 shall, on an application therefor (in cases not falling under Sections 6 and 9), be re-granted to the Watandar of the watan to which it appertained, on payment by or on behalf of the Watandar to the State Government of the occupancy price equal to twelve times the amount of the full assessment of such land, within the prescribed period, and in the prescribed manner, and the Watandar shall thereupon be an occupant within the meaning of the relevant Code in respect of any such land, and shall be primarily liable to pay land revenue to the State Government in accordance with the provisions of that Code and the rules thereunder, and all the provisions of that Code and rules relating to unalienated land shall, subject to the provisions of the Watan Abolition Act apply to such land. Sub section (2) of Section 5 of Watan Abolition Act however provides that if there be failure to

pay occupancy price under sub section (1), within the prescribed period and in the prescribed manner, the Watandar shall be deemed to be unauthorisedly occupying the land, and shall be liable to be summarily evicted therefrom by the Collector, in accordance with the provisions of the relevant Code. Sub section (3) *inter alia* provides that the occupancy of the land re-granted under sub section (1) shall not be transferable or partible by metes and bounds, without the previous sanction of the Collector and except on payment of a sum equal to twenty times the amount of full assessment of the land, where it is held and used for the purpose of agriculture, and in any other case a sum equal to fifty percent of the market value of the land.

17] Section 6 of the Watan Abolition Act provides for re-grant of Watan land to the authorised holder on the payment by him to the State Government of the occupancy price mentioned in Section 5 and subject to the like conditions and consequences. Section 7 of the Watan Abolition Act specifies that any provisions of law, usage or practice relating to the succession of any Patel Watan, whereby contrary to the personal law governing the parties the rule of primogeniture was followed and the female heirs were postponed in

favour of male heirs, shall, on and from the appointed day, be void and cease to be in force.

18] Section 8 of the Watan Abolition Act, reads thus :

*“8. **Application of existing tenancy law.**- If any watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the relevant tenancy law shall apply to the said lease, and the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of this part, be governed by the provisions of that law.*

Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the re-grant of the land under Section 5 or 6 or 9, as the case may be.”

19] In terms of Section 8 therefore, if any Watan land had been lawfully leased and such lease was subsisting on the appointed day, the provisions of the relevant tenancy law shall apply to the said lease, and the rights and liabilities of the holder of such land and his tenant or tenants, shall, subject to the provisions of this part, be governed by the provisions of that law. Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the *compulsory purchase of land by a tenant*, the lease shall be deemed to have commenced from the date of the re-grant of

the land under Section 5 or 6 or 9 as the case may be. For the purposes of Section 8, the expression '*land*' shall have the same meaning as is assigned to it in the relevant tenancy law. Section 2(1) (h) of the Watan Abolition Act has defined the expression '*relevant tenancy law*' and in the present case the same would mean the Bombay Tenancy and Agricultural Lands Act, 1948 (Tenancy Act).

20] From the respective schemes of the Tenancy Act as also the Watan Abolition Act, it is quite clear that the provisions of the Tenancy Act will apply to the suit property and in terms of proviso to Section 8 of the Watan Abolition Act, the provisions of the Tenancy Act in regard to compulsory purchase of land by the tenant, the lease shall be deemed to have commenced from the date of re-grant of land under Section 5 or 6 or 9 as the case may be and the Watan Abolition Act. Therefore, in the facts and circumstances of the present case, it is crucial to determine '*the date of re-grant*' of the suit property in favour of the landlords.

21] In the present case, the MRT, relying upon the provisions contained in Section 320 of the Tenancy Act has held against the tenants. Section 320 of the Tenancy Act provides that in respect of

any tenancy created after the Tillers' day, notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area. Sub section (1)(A) of Section 32O of the Tenancy Act provides that a tenant desirous of exercising the right conferred upon him under sub section (1), shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner and within the periods specified in that sub section. Sub section (2) to Section 32O of the Tenancy Act provides that the provisions of Section 32 to 32N (both inclusive) and of Sections 32P, 32Q and 32R in so far as they may be applicable, shall apply to the purchase of the land by a tenant under sub section (1). The essential pre-condition for applicability of the provisions of Section 32O of the Tenancy Act is that the tenancy must have been created after the Tillers' day i.e. 1 April 1957.

22] The MRT has held that tenancy in the present case was created much after the Tillers' day, since, on the Tillers' day, the provisions of the Tenancy Act were not applicable to the suit

property, as the suit property was watan land or watan property. The MRT, has obviously erred in the view which it has taken. There is no factual dispute that the tenancy in respect of the suit property was created much prior to the Tillers' day. By virtue of the provisions contained in Section 88CA, all that has happened is that the provisions contained in Section 32 to 32R (both inclusive) of the Tenancy Act, were inapplicable to the suit property, since, the suit property was watan property or watan land. In terms of the Watan Abolition Act however, the watans were abolished and eventually the suit property was re-granted to the landlords. On and from such re-grant, the provisions of the Tenancy Act, in its full vigour became applicable to the suit property. Such application, by operation of law, was not the same as creation of tenancy by the landlord after the Tillers' day. The MRT was therefore in clear error in applying the provisions of Section 32O of the Tenancy Act to the facts and circumstances of the present case.

23] This Court, in the case of *Pradeeprao Patil* (supra) in the precise context of the provisions contained in the Tenancy Act and Section 8 of the Watan Abolition Act has held that the provisions contained in Section 32O of the Tenancy Act have no application to

tenancy created in respect of Watan land prior to 1 April 1957. In the facts and circumstances of the said case, occupancy price was paid on 30 December 1965 and the land stood re-granted to the Watandar. This Court however did not accept the contention that this would mean that the new lease was created in favour of the tenant on 30 December 1965 and that the provisions contained in Section 32O of the Tenancy Act are applicable for such reason.

24] This Court, in the case of *Pradeeprao Patil* (supra) relied upon its earlier decision in the case of *Shrawan Ganpat Fukate vs. Shantabai Patil & Anr.*⁴, in which at paragraph 7, it is observed thus:

“(7) I have to carefully consider the precise meaning of the words in the provision: "for the purpose of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the re-grant of the land under Section 5, or 6 or 9, as the case may be". The key words are "the compulsory purchase of land by a tenant". If we turn to the Bombay Tenancy and Agricultural Lands Act in general and Section 32 to Section 32B in particular, we get a fairly good idea about the scheme under which the tenants of agricultural lands become the purchasers and the prescribed machinery provides for fixation of price of the land. In the whole scheme of purchase of land by tenant, only Section 32 deals with compulsory purchase of land by tenant within the meaning of the proviso to Section 8 of the M.R.P. (Abolition of Offices) Act, 1962. By contrast Section 32 (O) confers only an option on a tenant when the tenancy is created after the Tillers' Day to exercise the right to purchase the land. If this is the clear legal position, then the lease

4 Special Civil Application No. 531 of 1973 decided on 23.11.1977.

should be deemed to have commenced from the date of the regrant and the date of regrant should be read as the Tillers' Day instead of the first day of April 1957. Once effect is given to the deeming date in this manner, then all the relevant provisions of the Tenancy Act in general and Sections 32 to 32R in particular will apply to the facts of the case."

(emphasis supplied).

25] In the case of *Kallawwa Shattu Patil & Ors. vs. Yellappa Parashtram Patil*⁵, once again this Court was called upon to examine point in issue and has held that when Watan land was lawfully leased by the landlord in favour of the tenant much prior to 1 April 1957 and the said lease was subsisting on the appointed date (1 January 1963), the question of creating fresh tenancy by the landlord does not arise. The Court proceeded to observe that since the tenancy was not created after 1 April 1957, the provisions of Section 32O of the Tenancy Act obviously will have no application. The Court proceeded to explain the purport of Section 8 of the Watan Abolition Act and observed thus :

"(7) The Watan land was lawfully leased by the landlords, i.e. the petitioners and Respondent No. 2, in favour of the 1st Respondent-tenant much prior to 1st April 1957 and the said lease was subsisting on the appointed day. The 1st Respondent was lawfully cultivating the land bearing R.S.N.182/4 throughout. Practically all the provisions of the tenancy Act became applicable to the lease forthwith. Merely the date of compulsory purchase and fixation of purchase price were

5 1992 Mh. L. J. 34

postponed by Statute, i.e. by operation of law up to the date or re-grant. In other words, the provisions for implementation of compulsory purchase of the land contained in Section 32G of the Tenancy Act could not be availed of by the Respondent No. 1 until the date of re-grant of the said land. In my Judgment, the landlords did not create any fresh tenancy in favour of Respondent No. 1 after 1st April 1957 and Section 32-O of the tenancy Act can have no application to such a case. Section 32-O of the Tenancy Act cannot apply to a case where the land was already leased by the landlords in favour of the tenant prior to 1st April 1957 and the said lease was subsisting on 1st April 1957 and it has subsisted throughout. The proviso to Section 8 of the Patels Abolition Act creates a statutory legal fiction for an extremely limited purpose, i.e. for the purpose of fixing of purchase price in respect of statutory purchase. For the said limited purpose, the land is deemed to have been leased from the date of re-grant. It does not follow therefrom that the landlords have created a lease in 1957 from the re-grant. The old lease never came to an end. New contract of lease was never arrived at. Deemed date of commencement of pre-existing lease for the limited purpose set out in the proviso to Section 8 of the Patels Abolition Act does not and cannot bring the case within the ambit of Section 32-O of the Tenancy Act. The condition precedent prescribed by Section 32-O of the Tenancy Act for its applicability is not satisfied in this case. In my judgment, the Tribunal has rightly held that Section 32-O of the Tenancy act is not applicable to this case and the 1st Respondent-tenant is straightway entitled to invoke the provisions of Section 32-G of the Tenancy Act and move the authorities for fixation of purchase price without serving any notice on the landlords in respect of exercise of his right to purchase the said land. The 1st Respondent has repeatedly expressed his intention to make the statutory purchase."

(emphasis supplied).

26] In view of the aforesaid legal position, as well as the facts and

circumstances of the present case, it is clear that the provisions of Section 32O of the Tenancy Act had no application. The MRT, to the extent it has held against the tenant by applying the provisions of Section 32O of the Tenancy Act, has obviously exceeded jurisdiction. The view taken by the MRT, is in clear conflict with the decision of this Court in the case of *Pradeep Rao Patil* (supra), *Shrawan Fukate* (supra) and *Kallawwa Patil* (supra).

27] Mr. Karandikar, as noted earlier, has submitted that the suit property was re-granted to the landlords on 2 September 1972, in terms of the specific order of re-grant. On this date, he submits that the widowed landlady had already expired i.e. on 29 January 1972. The legal representatives who succeeded her, were not disabled landlords in terms of Section 32F of the Tenancy Act. Therefore, the Tenancy act, in all its vigour became applicable to the suit property with effect from 2 September 1972. In terms thereof, the tenants acquired an indefeasible right to purchase the suit property and the rights of the landlords to the suit property stood divested from the said date itself.

28] Mr. Patwardhan, the learned counsel for the landlords

however submitted that the regrant took effect on the appointed day i.e. 1 January 1963. On the said date, the landlady was admittedly a widow and therefore a disabled landlady in terms of Section 32F of the Tenancy Act. Within a period of two years from the date of her demise i.e. on 29 January 1972, the tenants did not issue the necessary intimation in terms of Section 32F of the Tenancy Act. Therefore, the purchase was rendered ineffective and the suit property to be reverted to the landlords.

29] Any case and without prejudice, Mr. Patwardhan submitted that the date of formal order of re-grant i.e. 2 September 1972 was clearly irrelevant but what was relevant was the date of payment of occupancy price by the landlords. In this case, the occupancy price was paid during the lifetime of the widowed landlady. This position is accepted by the MRT in paragraph 8 of the impugned judgment and order. Therefore, the provisions of Section 32F of the Tenancy Act were applicable and since, the terms thereof were admittedly not fulfilled by the tenants within prescribed period of two years from the date of demise of the widowed landlady, the purchase was rendered ineffective. In support of the submission that the re-grant takes effect on the appointed day, Mr. Patwardhan, as noted earlier,

has placed reliance upon the decision of this Court in the case of *Dhondi vs. Mahadeo* (supra) and *Laxmibai Date* (supra).

30] Therefore, now the crucial issue is the precise date of re-grant of the suit property to the landlords. Section 3 of the Watan Abolition Act provides that from the appointed day all Patel Watans stand abolished and subject to provisions of Sections 5, 6 and 9, all watan lands shall be and are hereby resumed. Section 5 of the Watan Abolition Act provides that a watan land resumed under Section 3 shall, on an application therefor (in cases not falling under Sections 6 and 9), be re-granted to the watandar, on the payment by or on behalf of the watandar to the State Government, the occupancy price as prescribed, within the prescribed period and in the prescribed manner.

31] In the case of *Pradeeprao Patil* (supra), the occupancy price in respect of the suit land was paid by erstwhile watandar on 30 December 1965 within the prescribed period. This Court has held that on the happening of that event, the landlord being watandar, by operation of law, the watan land stood re-granted in his favour on and from that date itself. On payment of occupancy price by and on

behalf of the watandar in the prescribed period, the tenure is deemed to have been converted into Rayatwari tenure on the same date. The issuance of order of re-grant of land would be mere an administrative or ministerial formality. The re-grant takes effect immediately on payment of occupancy price by or on behalf of watandar to the State Government within the period prescribed by virtue of Section 5 of the Watan Abolition Act. This decision suggests that the crucial date for re-grant is the date of payment of the occupancy price and not the date on which any formal administrative or ministerial order for re-grant came to be made.

32] In the case of *Dhondi vs. Mahadeo* (supra) there is an observation that under Section 4(3) of the Bombay Inferior Village Watans Abolition Act 1959 (1959 Act), the watan land is to be resumed subject to the condition that if the watandar pays occupancy price within the prescribed period and in the prescribed manner, then such person becomes occupant of the land from 20 January 1959, the appointed day under the 1959 Act. However, this was not the real issue involved in the said case. The real issue was whether the abolition of watan and its regrant merely changes the tenure or character of the watan land or whether it also affects other

legal incidents concerning the property as per the applicable personal law. The learned Single Judge of this Court, in the case of *Dhondi vs. Mahadeo* (supra) took the view that the 1959 Act merely changes the tenure but does not affect other legal incidents of the property as per the applicable personal law.

33] The aforesaid view of the learned Single Judge was doubted by the Division Bench of this Court in the case of *Kalgonda Babgonda vs. Balgonda Kalgonda*⁶. But the view in *Kalgonda vs. Balgonda* (supra) was itself doubted by yet another Division Bench in the case of *Laxmibai Date vs. Ganesh Date* (supra), which, therefore, made a reference to the Full Bench. In the judgment and order by which reference was made, there is an observation that under the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act 1955 (1955 Act) the regrant once made will relate back to the appointed day. In the decision of the Full Bench however, there are no observations on the aspect with which we are concerned, namely, whether the regrant once made, relates back to the appointed day. The Full Bench has held that the view taken by the learned Single Judge in the case of *Dhondi vs. Mahadeo* (supra) is to be preferred over the view in the case of *Kalgonda vs.*

6 (1975) 78 Bom. L.R. 720

Balgonda (supra). This is again in the context of the main issue involved in the said decisions as to the effect of abolition and the regrant upon the legal incidents of the property as per applicable personal law.

34] The question which therefore arises is whether the decisions in the case of *Dhondi vs. Mahadeo* (supra) and *Laxmibai Date* (supra) are authorities for the blanket proposition that under the Watan Abolition Acts, in every case and for every purpose the date of regrant once made will relate back to the appointed day. Mr. Patwardhan asserts that this is so, whereas, Mr. Karandikar contests this provision, by emphasizing that both the 1955 Act and the 1959 Act which were considered in the cases of *Dhondi vs. Mahadeo* (supra) and *Laxmibai Date* (supra) were not *pari materia* with the provisions contained in the Watan Abolition Act, with which we are presently concerned. In particular, Mr. Karandikar pointed out that the provisions contained in Section 8 of the Watan Abolition Act with which we are concerned, are not to be found in the 1955 and 1959 Acts, which were the subject matters of the decisions in the case of *Dhondi vs. Mahadeo* (supra) and *Laxmibai Date* (supra).

35] In the decisions of *Dhondi vs. Mahadeo* (supra) and *Laxmibai Date* (supra) the interplay between the provisions of the Tenancy Act and the concerned Watan Abolition Acts, was not an issue. Although, broadly the scheme of all Watan Abolition Acts may be similar, there is significant difference between the 1955 Act and 1959 Act on one hand and the provisions contained in the Watan Abolition Act with which we are presently concerned. Unlike in the 1955 Act and the 1959 Act, the Watan Abolition Act with which we are concerned, contains a special provision in the matter of application of existing tenancy laws in form of Section 8 of the Watan Abolition Act. This provides that if any watan land has been lawfully leased and such lease is subsisting on the appointed day, then the provisions of the relevant Tenancy law will apply to the said lease and the rights and liability of the holder of such land and his tenant shall, subject to the provisions of this part, be governed by the provisions of that law. The proviso, which is really the distinguishing feature, provides that for the purposes of applications of the relevant Tenancy law in regard to compulsory purchase of land by the tenant, the lease shall be deemed to have commenced from the date of regrant of land under Sections 5, 6 or 9 as the case may be. In view of such distinguishing feature, it cannot be said that the decisions in the case

of *Dhondi vs. Mahadeo* (supra) and *Laxmibai Date* (supra) are decisions on legislations entirely *pari materia* with the provisions contained in the Watan Abolition Act, with which we are concerned.

36] Further, as noted earlier, the real issue in both *Dhondi vs. Mahadeo* (supra) and *Laxmibai Date* (supra) was not whether the regrant relates back to the appointed day but the real issue was whether the abolition of watan and regrant merely changes the tenure of the property or whether it also affects all legal incidents in the context of applicable personal law. In contrast, the decision of this Court in the case of *Pradeeprao Patil* (supra) was in the precise context of the Watan Abolition Acts with which we are concerned and its interplay with the provisions of the Tenancy Act. In such circumstances, it is not possible to place reliance upon the decisions in the case of *Dhondi vs. Mahadeo* (supra) and *Laxmibai Date* (supra), in order to deduce the blanket proposition, which Mr. Patwardhan seeks to advance in the present case.

37] In the case of *Union of India vs. Amrit Lal Manchanda & Anr.*⁷, the Hon'ble Apex Court has cautioned against placing reliance upon precedents without discussing as to how the factual situation fits in

⁷ (2004) 3 SCC 75

with the fact situation of the decision on which reliance is placed. The Apex Court has cautioned that the observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. The observations must be read in the context in which they appear to have been stated. The judgments of the Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else one might be lost in thickets and branches.

38] Applying the decision of *Pradeeprao Patil* (supra), it will have to be further held that the right of pre-existing tenant to purchase

the tenanted property is to be considered on the date of payment of occupancy price by the landlord / watandar and the date upon which some formal order of regrant may have been made, is quite irrelevant for the purpose. The issuance of formal order of regrant, is only an administrative or ministerial measure. Therefore, what assumes relevance is the date on which the landlords, in the present case, have paid the occupancy price in respect of the suit property.

39] From the material placed on record, it is not possible to determine this date. The MRT in its judgment and order dated 4 December 1990 has observed that the occupancy price was already paid before the regrant order was made. There is however, no specific material to sustain such finding. That apart, such observation is really neither here nor there. If the occupancy price was paid before the demise of the landlady i.e. before 29 January 1972, then obviously, the provisions of Section 32F of the Tenancy Act will apply in all their vigour. Since it is admitted that the tenants have not issued any notice / intimation as contemplated by Section 32F, the tenants right to purchase the suit property would be rendered ineffective. The impugned judgments and orders, will then, have to be upheld. However, if the occupancy price has been paid by

the landlords after the demise of the widowed landlady i.e. between 29 January 1972 and 2 September 1972, then the view taken in the impugned judgments and orders will have to be upset. This is because on the date of payment of such occupancy price, there is no material to indicate that any of the landlords were disabled landlords for the provisions of Section 32F of the Tenancy Act to apply. There is however, no categorical finding upon this crucial aspect with regard to the precise date of payment of occupancy price by the landlords.

40] In the aforesaid situation, the interests of justice would require a remand of the matter to the Tahsildar for determining the precise date upon which the landlords have paid the occupancy price under the provisions of the Watan Abolition Act with which we are concerned. The impugned judgments and orders had, in any case, remanded the matter to the Tahsildar for the purposes of enquiry under Section 32P of the Tenancy Act. It is necessary, in the facts and circumstances of the present case that the Tahsildar also inquires into the crucial issue concerning the date upon which the landlords have paid the occupancy price under the provisions of the Watan Abolition Act. If such determination is possible on the basis of the

record, the Tahsildar may accept the same. If however, the records are not very clear and the parties desire to lead evidence on this aspect, the Tahsildar will grant the parties opportunity to lead evidence upon this issue. If the Tahsildar comes to the conclusion that the occupancy price, in the present case, was paid by the landlords before the demise of a widowed landlady, then obviously the provisions of Section 32F of the Tenancy Act will apply. There will arise no necessity then to interfere with the impugned judgments and orders, which shall deemed to have been confirmed. The Tahsildar shall then, consistent with the impugned judgments and orders, proceed with the enquiry in terms of Section 32P of the Tenancy Act. If however, the Tahsildar comes to the conclusion that the occupancy price in the present case was paid by the landlords after the demise of the widowed landlady, then the proceedings initiated by the landlords on 5 September 1985 will have to be dismissed and the impugned judgments and orders shall stand set aside.

41] This petition is therefore disposed of with the following order / directions:

- (A) The proceedings initiated by the landlords bearing No.32P/Jainyal-47/85 are remanded to the Tahsildar, Kagal;
- (B) The Tahsildar is directed to determine the precise date upon which the landlords have paid the occupancy price in respect of the suit property under the provisions of the Watan Abolition Act;
- (C) For the aforesaid purpose, the Tahsildar is directed to examine the records and if the parties are desirous of leading evidence, permit them to do so;
- (D) If the Tahsildar ultimately determines that the occupancy price was paid by the landlords during the lifetime of the widowed landlady, the Tahsildar shall declare that the tenants right to purchase the suit property is rendered ineffective and proceed with enquiry under Section 32P of the Tenancy Act as directed by the MRT in its judgment and order dated 4 December 1990. The impugned judgments and orders, shall thereupon be deemed to be confirmed;
- (E) If however, the Tahsildar determines that the occupancy price was paid by the landlords after the demise of the widowed landlady i.e. between the period 29 January 1972 and 2 September 1972, the Tahsildar shall be obliged to dismiss the proceedings No.32P/Jainyal-47/85. The impugned judgments and orders shall

then stand set aside;

(F) The Tahsildar is directed to complete the aforesaid exercise within a period of six months from the date of production of authenticated copy of this judgment and order;

(G) The parties to appear before the Tahsildar, Kagal on 18 January 2016 at 11.00 a.m. and produce authenticated copy of this judgment and order;

(H) Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

(I) All concerned to act on basis of authenticated copy of this order.

(M.S. SONAK, J.)