

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1275 OF 1995**

1. Shri Mohan Maruti Londhe
(since deceased through L.Rs.)

1-A Smt. Chhasabai Mohan Londhe
Aged about 60 Years.

1-B Shri Rajaram Mohan Londhe
Aged about 34 Years.

1-C Shri Santaram Mohan Londhe
Aged about 28 Years.

1-D Kamal Sopan Kadam
Aged about 40 Years.

1-E Smt. Sindhu Bharat Jadhav
Aged about 38 Years.

All Residing at Khadakpura At & Post.
And Tal. Indapur, District Pune.

2. Shri Jagannath Maruti Londhe

3. Shri Gokul Maruti Londhe

4. Smt. Yamunabai Vithal Jadhav

5. Smt. Suman Mahadeo Doke

6. Smt. Dagadabai Dnyanudeo Mane

Nos. 2 to 6 acting through their Power of
Attorney Holder, Petitioner No.1.

7. Shri Gena Dhondi Londhe
(since deceased through L.Rs)
- (A) Shri Gorakh Genaba Londhe
(since deceased through legal heirs)
- 7-A1 Krishnabai Gorakh Londhe
- 7-A2 Janabai Gyanba Londhe
- 7-A3 Ramesh Gorakh Londhe
- 7-A4 Balu Gorakh Londhe
- 7-A1 to 7-A4 R/o Khadakpura, At and
Post Taluka Indapur, District Pune.
- Nos. 1 to 6 residing at – Indapur, District
Pune.
- 7-A5 Sau. Aruna Prakash Chavan
R/o Sagar Colony Shastry Nagar,
Kothrud, Pune-29.
- 7-B Smt. Gangubai Dayandeo Kadam
- 7-C Pandurang Genaba Londhe
- 7-D Namdeo Genaba Londhe
- 7-E Smt. Bhimabai Kantilal Mane
- 7-F Smt. Dwarkabai Namdeo Jadhav
- 7-G Babu Genaba Londhe
- 7-H Smt. Kasum Damu Rokade
- 7-I Smt. Janabai Genaba Londhe

All of Indapur, Taluka Indapur, District **PETITIONERS**
Pune.

V E R S U S

1. Tatkali Devi Deosthan Wahiwatdar
Shri Gajanan Daji Pathak
(since deceased through L.Rs.)
 - A. Moreshwar Gajanan Pathak
 - B. Anant Gajanan Pathak
 - C. Pramod Gajanan Pathak
 - D. Rajan Gajanan Pathak
(since deceased through his legal heirs)
 - 1-D1 Rushikesh Rajan Pathak
Age 18 Years, R/o Gurukripa, Chinchwad
Nagar, Chinchwad, District Pune.
 - 1-D2 Smt. Vandana Rajan Pathak
Age 40 Years, R/o Guru kripa Chinchwad
Nagar, Chinchwad, District Pune.
- RESPONDENTS**

APPEARANCE :

- Mr. P. B. Shah for Petitioners.
- Mr. Prathamesh Bhargude I/by. S. B. Deshmukh for Respondent Nos.1-D(1) and 1-D(2).

CORAM : K. K. TATED, J.

RESERVED ON : JULY 13, 2017

DELIVERED ON: JULY 20, 2017

JUDGMENT

. Heard learned Counsel for PARTIES.

2. By this petition under Article 227 of the Constitution of India, Petitioners have challenged the orders dated 29th April, 1988 passed by the Agricultural Lands Tribunal & Tahsildar, Indapur, District Pune in Tenancy Case No. SR/45/85/32-F/Indapur; Judgment and Order dated 30th March, 1991 passed by the Sub Divisional Officer, Baramati Division, Baramati in TNC. Appeal No. 12 of 1988; and the Judgment and order dated 15th October, 1994 passed by the Maharashtra Revenue Tribunal, Pune Bench, Pune in Revision Application No. TNC B.148/91 dated 4th July, 1991, by which all the Authorities directed Petitioners to hand over the vacant and peaceful possession of the land admeasuring 46 Acres 31 Gunthas from Survey No. 741 situated at village Indapur, District Pune, to the Respondents being the owner of the suit property.

3. In the present proceeding, one Maruti Dhondi Londhe and Gena Dhondi Londhe – the predecessors of Petitioners were tenants in respect of the suit property. Smt. Krishnabai Vishnu Phulbadave, who died on 2nd May, 1963 executed a Will and gifted the property to Gajanan Pathak, who was appointed as a Wahiwatdar on behalf of Tatkali Devi Deosthan – unregistered private trust. After demise of Smt. Krishnabai Vishnu Phulbadave, a predecessor of Respondents filed Application under Section 32F of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the said Act') for taking possession of the suit property from the tenants. Agricultural

Lands Tribunal, Indapur dismissed that Application on 10th February, 1977 on the ground that, for taking possession of the suit property Applicant, Gajanan Daji Pathak, to obtain probate of Will from the competent court.

4. Being aggrieved by the said order, the predecessor of the Respondents preferred Tenancy Appeal No. 38 of 1977. The said Appeal was dismissed by the Collector, Pune by order dated 30th September, 1978. Thereafter, the Respondents preferred Revision Application before the Maharashtra Revenue Tribunal, Pune Bench, Pune. The said Revision Application was partly allowed by the Tribunal by order dated 29th January, 1985 and the matter was remanded back to the Agricultural Lands Tribunal, Indapur, for fresh trial under Section 32F of the said Act. At the time of passing final order dated 29th January, 1985, the Tribunal held that Respondents are the owners of the suit property and it remained on the part of the Tahsildar, Indapur, to decide whether the tenants have filed Application under Section 32F of the said Act within time or not. Paragraph 4 and 5 of the said Judgment read thus :

“4. This authority finally decided that deceased Gajanan Pathak who was claiming to be shabait that is office of the Pujari in respect of suit land was not require to obtain probate before starting proceeding u/s. 32F. So the order passed by both the courts below in respect of obtaining probate by deceased Gajanan Pathak are quite wrong and hence they are liable to be set aside.

5. Further question raised by the learned counsel for the opponent needs also consideration as to whether the deceased

Gajanan and now his heirs can be called to be lords and whether the right of shabait and ownership of can be bequeathed by will by then wahiwatdar of the deity Krishnabai. The learned counsel for the opponents has brought to my attention the position of shabait. He has stated that the shabait is the only manager of the property which belongs to the idol and cannot claim owners therein for any of its profits. He further stated that in no case property gifted to an idol can be stated to vest in his manager now he is trustee in the English sence of the term. Though the term landlord under Tenancy Act is not of specifically while defining the term tenant u/s. 2 (18) of the term landlord is stated to be construed according to the definition of the tenant. Tenant is defined to mean a person who holds land on lease and includes a person who is deemed to be tenant u/s. 4 and person who is protected tenant and person who is permanent tenant. So from this meaning it can be taken that late Krishnabai Wahiwatdar of the property and shabait of Tatkali Deity can be stated to be landlord. The office of shabait can be the subject matter of the will. So there is no impediment in the way of deceased Krishnabai in bequeathing the office of shabait namely, control over the suit property for deity to deceased Gajanan hence this point raised by learned counsel for the opponent is explained and does not raise any obstruction in the way of deceased Gajanan or present heirs to be party to 32F proceeding. So deceased Gajanan a Shabait of private idol can start proceeding u/s. 32F even without

obtaining probate of the will as heir not required to obtain probate before commencement of the proceedings. Further as shabait he is landlord – within the meaning of Tenancy Act. So there is no hurdle in his way for starting proceeding u/s. 32F of the Tenancy Act.”

5. After the matter was remanded back, Agricultural Lands Tribunal & Tahsildar, Indapur passed the order dated 29th April, 1988 holding that the Petitioners failed to comply with the provisions of Section 32F of the said Act. It was held by the Tahsildar that the tenants ought to have given notice to the landlord within a period of two years, and as the Petitioners failed to do so, they have to handover the vacant and peaceful possession of the suit land to the Respondents-landlord. At the time of deciding the said Application, the Tahsildar, Indapur framed the following points for determination :

- “1. That whether there was relationship of the landlord and the tenants in between the deceased Gajanan Daji Pathak and the deceased Maruti Dhondi Londhe and that of the opponent no.2 ?*
- 2. That whether the tenants prove that they had given a notice under section 32F of the BT and A. L. Act of 1948, as is required by law ?*
- 3. Whether the applicants are entitled to take the possession of the suit land ? If yes, upto what extent ?*
- 4. Whether the tenants are entitled to purchase the suit land? If yes, upto what extent?*
- 5. What order ?”*

6. Being aggrieved by the said order, the Petitioners preferred Tenancy Appeal No. 12 of 1988 before the Sub Divisional Officer, Baramati. The Sub Divisional Officer after considering the evidence on record, confirmed the order passed by the Tahsildar, Indapur dated 29th April, 1988 and dismissed the Appeal.

7. The petitioners preferred Revision Application No. 148 of 1991 before the Maharashtra Revenue Tribunal, Pune Bench, Pune. The Tribunal also held that the Petitioners/tenants failed to make appropriate application as required under Section 32F of the said Act within two years from the date of cause of action, and therefore, dismissed the Revision Application confirming the order passed by the Tahsildar, Indapur.

8. Being aggrieved by the said orders, Petitioners/tenants preferred the present Writ Petition on the following grounds as raised in Writ Petition.

“ GROUND S

(a) *The Learned A.L.T. & Tahsildar, Indapur District Pune erred in dismissing the Tenancy Case No. SR/45 of 1985/32-F Indapur;*

(b) *The Learned A.L.T. & Tahsildar, Indapur District Pune (hereinafter referred to as “the learned Tahsildar”) failed to consider that the Respondents have had no locus standi to file the proceedings under section 32F of the said Act;*

(c) *The Learned Tahsildar failed to consider that the suit lands were and are Devasthan property and as such their Vahiwatdar thereof viz; Smt. Krishnabai Vishnu Fulbadve has*

had no title to execute any Will in favour of Gajanan Daji Pathak;

(d) The Learned Tahsildar failed to consider that the Petitioners and their forefathers are tenants in respect of the suit land all along as section 32F proceedings ought to have been commenced and the Petitioners should have been held to be the purchasers of the suit land;

(e) The learned Tahsildar failed to consider that unless 32G proceeding was initiated and unless the said 32-G proceeding was never postponed no 32F proceeding should have taken place. As such the very proceeding under section 32F of the Bombay Tenancy and Agricultural Lands Act, 1948 was null and void;

(f) The learned Tahsildar failed to consider that since the ownership vested in deity and since the Devasthan was registered under the Bombay Public Trusts Act, 1950 before 1st April, 1957 the deity was not exempt under any of the provisions of the said Act;

(g) The Learned Tahsildar did not consider the facts on record;

(h) The Learned Tahsildar failed to consider the provisions of the BT & AL Act as well as the established principles of law;

(i) The Learned Sub Divisional Officer, Baramati Division, Baramati (hereinafter referred to as 'the Learned Sub Divisional Officer') erred in dismissing the TNC Appeal No. 12 of 1988 and confirming the Judgment and Order of the learned Tahsildar, dated 29th April, 1988;

- (j) The learned Sub Divisional Officer failed to follow the proper procedure which resulted in miscarriage of justice;*
- (k) The order of the learned Sub Divisional Officer is violative of the principles of justice, equity and good conscience;*
- (l) The order passed by the learned Sub Divisional officer is contrary to the provisions of law and against the principles of natural justice;*
- (m) The findings arrived at by the learned Sub Divisional Officer are not supported by evidence on record;*
- (n) The learned Sub Divisional Officer ought to have valued the evidence on record in a judicious manner;*
- (o) That necessary issues were not framed and answered by the learned Sub Divisional Officer;*
- (p) The learned Sub Divisional Officer ought to have held that the Petitioners had complied with all the requirements of notice and ought to have set aside the decision of the learned Tahsildar;*
- (q) The learned Sub Divisional Officer ought to have held that the Petitioners were entitled to purchase the suit land as deemed purchasers;*
- (r) The learned Sub Divisional Officer ought to have held that the Petitioners are 'deemed purchasers' of the suit land and ought to have given direction to fix the purchase price of the suit land;*
- (s) The learned Sub Divisional Officer ought to have considered the statements of the parties;*

(t) *The learned Sub Divisional Officer ought to have considered the fact that the Petitioners were and are cultivating the suit land personally on Tiller's Day;*

(u) *The learned Sub Divisional Officer failed to consider the provisions of the said Act, hence the order passed by the Sub Divisional Officer is bad in law;*

(v) *The learned Sub Divisional Officer ought to have appreciated that proper opportunity of hearing was not given to the Petitioners;*

(w) *The learned Designated Member, Maharashtra Revenue Tribunal, Pune-1 (hereinafter referred to as "the learned Member") erred in dismissing the Revision Application of the Petitioners and confirming the impugned Judgments and orders by the learned Tahsildar and the learned Sub Divisional Officer;*

(x) *The learned Member while dismissing the said Revision Application has not given any cogent or convincing reasons and mechanically and without applying his mind confirmed the impugned orders below by the learned Tahsildar and the learned Sub Divisional Officer;*

(y) *The learned Member erred in holding that on the revision application (i.e. prior to remand), the Maharashtra Revenue Tribunal has held that the deceased Gajanan Pathak was the landlord within the meaning of the Bombay Tenancy Act and being an agriculturist was entitled to claim possession of the suit land since the tenants-Petitioners did not challenge the said order before the High Court at Bombay. It is*

submitted that the said order being a remand order, there was no question of challenging that order at that stage;

(z) The learned Member ought to have appreciated the fact that the said Mrs. Krishnabai being very old, was admitted to Talegaon General Hospital and convalescent Home, Pune on 18th April, 1963 and she expired on 2nd May, 1963. this clearly shows that the said deceased was not in good health and sound and disposing mind, when the purported Will dated 12th April, 1963 was allegedly executed by her. The Petitioners challenge the validity of the said Will purportedly executed by the said deceased Mrs. Krishnabai. Hereto annexed and marked Exhibit 'F' is a copy of the Medical Certificate dated 10th October, 1991, issued by the said hospital in respect of the said deceased Mrs. Krishnabai;

(aa) Without prejudice to the aforesaid, even assuming but without admitting that the said Will was a valid Will, even then unless the same was duly proved and a Probate obtained from a Competent Court, no interest in the suit land muchless ownership thereof vests in the legatee, the said Gajanan Daji Pathak and after his death in favour of the present Respondents;

(bb) The learned Member ought to have directed the Respondents to prove the said Will and obtain Probate of the Will before they claimed ownership in respect of the suit land;

(cc) The learned Member ought to have appreciated the fact that in the earlier proceedings adopted by the deceased Gajanan Daji Pathak the A.L.T. and Tahsildar by his order

dated 10th February, 1977 directed the said deceased Gajanan Daji Pathak to obtain the Probate of the Will of the said deceased Krishnabai from a Competent Court which order was also confirmed in the Appeal filed by the said Gajanan Daji Pathak, by the Assistant Collector, Baramati in TNC Appeal No. 38 of 1977.

(dd) The learned Member erred in holding that the Petitioners-tenants failed to issue a notice expressing their desire to purchase the suit land;

(ee) The learned member erred in holding that the Respondents-Landlords were entitled to file application under section 32F of the said Act for possession;

(ff) The learned Member erred in not interfering with the order of the learned Sub Divisional officer and thus not exercising the revisional powers vested in him;

(gg) The learned Member erred in holding that the order of the Sub Divisional Officer was legal and valid and supported by the evidence on record;

(hh) The impugned Judgments and orders of the learned Tahsildar dated 29th April, 1988 and of the Sub Divisional Officer dated 30th March, 1991 and the impugned Judgment and order dated 15th October, 1994 of the learned Member confirming both the aforesaid Judgments and orders are against justice equity and good conscience and the same are liable to be set aside and/or quashed.”

9. The learned Counsel Mr. Shah appearing on behalf of Petitioners submit that all the Authorities below failed to consider the material fact that the tenancy case filed by the Respondents for possession of the suit property was not maintainable. He submits that Tatkali Devi Deosthan is the owner of the suit property whereas the Respondents were appointed as Vahiwardar/cultivator. He submits that being the Vahiwardar, Respondents have no authority to file any proceeding against the tenants for possession of the suit property. On this point only the orders passed by all the Authorities below are required to be set-aside.

10. The learned Counsel for Petitioners submit that originally Smt. Krishnabai Vishnu Phulbadave was the Vahiwardar of the suit property. She executed the Will and gifted the property to the predecessor of the Respondent Gajanan Pathak, who was appointed as a Vahiwardar. He submit that the said Will was not probated by the Respondents. Without obtaining probate, the Respondents filed Application under Section 32F of the said Act for possession of the suit property. Initially, the Application filed by the Respondents was dismissed by the Tahsildar, Indapur, as well as Appeal was dismissed by the Sub Divisional Officer on the ground that they have to obtain the probate. He submit that the Revenue Tribunal took contrary view and held that it is not necessary to obtain the probate. He submit that thereafter, the Tahsildar passed the impugned order and held that the Respondents are entitled for vacant possession. The Tahsildar failed to consider the fact that unless and until the probate is obtained, there is no question of acting on Will only. Hence, the said order is

required to be set aside. Same mistake is committed by the Sub Divisional Officer also.

11. The learned Counsel for Petitioners contended that as per Section 32G of the said Act, it is not necessary for all tenants who are willing to purchase the land under Section 32 of the said Act to issue any purchase notice. He submit that admittedly the Petitioners' predecessor was in possession of the suit property on Tiller's Day. Hence, the Petitioners' predecessors were deemed tenants. Therefore, it is not necessary for them to make any application and/or issue notice under Section 32F of the said Act for purchasing the suit property. He submit that these facts were not conceded by all the Authorities below and therefore all these Judgments passed by the Authorities below are required to be set aside.

12. The learned Counsel for Petitioners submit that all the Authorities below failed to consider the fact that the suit property was belonging to Tatkali Devi Deosthan. He submit that the Tenancy Case No. 45 of 1985 filed by the Respondents under Section 32F of the said Act was not maintainable because the Vahiwardar have no right to file any application for possession on behalf of Trust. Though the Petitioners raised the objection about ownership of the Respondents, the same was not considered by the Authorities below when the matter was remanded back and hence the Judgment and order passed by the Authorities directing the Petitioners to hand over the suit property to the Respondents is required to be set aside.

13. In support of these contentions, the learned Counsel for

Petitioners relies on the Judgment of this Court in the matter of ***Buvasaheb Tatyasaheb Mathakari ..Vs.. Yesu Krishna Kadam, reported in 1959 BLR 219.*** In this authority it was held that a Manager or a Shebait of Deosthan have no right to file an Application under Section 32 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 to recover possession of the Deosthan land cultivated by a tenant. Finding to that effect in that Judgment is as under :

“The next question, therefore, would be, whether the petitioner as such a manager is entitled to maintain an application under s. 34 of the Bombay Tenancy and Agricultural Lands Act. Section 34 provides that notwithstanding anything contained in s. 14, a landlord may terminate the tenancy of a protected tenant by giving him one year's notice in writing, stating therein the reasons for such termination, if the landlord bona fide requires the land for any of the following purposes namely, for cultivating personally etc. The question then would be two-fold; whether the petitioner can be said to be a landlord within the meaning of s. 34 and whether he can be said to be bona fide requiring the land in question for personal cultivation. Now, there is no definition of the word, “landlord” in the Act, but the Act has defined the word “tenant” in s. 2. Under that definition a tenant means an agriculturist, who holds land on lease and includes a person who is deemed to be a tenant under the provisions of the Act. That sub-section also provides that the word “landlord” shall be construed accordingly. Thus, there is

no separate definition of the word "landlord" in the Act. Mr. Jahagirdar urged that though the petitioner is only a vahiwatdar or a Manager of the land in suit and the legal ownership of the land is vested in the idol, the idol cannot act except through the Vahiwatdar or the Manager and that, therefore, the petitioner, though a mere Vahiwatdar, should be regarded as the landlord of opponent No.1 in respect of the land in suit. Mr. Jahagirdar also relied upon a statement made by opponent No.1 before the Mamlatdar to the effect that he had taken the lense of the land in suit from the petitioner. On both these grounds, Mr. Jahagirdar argued that the petitioner is and must be deemed to be a landlord of the land in suit. Once, however, the position is admitted that the legal ownership of the land vests in the idol and, therefore, the land in question belongs to tht idol, the contention that the petitioner is the landlord cannot be sustained. His position in law being that of a mere Vahiwatdar or a manager, all rights as to possession and management of the property no doubt, lie in such a manager; nonetheless he cannot be deemed to be the landlord of the property. As regards the admission made by opponent No.1 that he had obtained the lease from the petitioner, that admission must be restricted to the fact in respect of which it is an admission, namely, that he had obtained the lease in respect of the land in suit from the petitioner, as the Manager or Vahiwatdar of the idol. That being so, that admission cannot be treated as one rendering the petitioner as the landlord of opponent No.1 or as an

estoppel against opponent No.1 precluding him from denying that the petitioner is the landlord of the land in suit.”

14. The learned Counsel for Petitioners also relies on the judgment of the Apex Court in the matter of ***Shri Kalanka Devi Sansthan ..Vs.. The Maharashtra Revenue Tribunal, Nagpur and others, reported in 1969 Supreme Court Cases 616***. He relies on paragraph 5 of this authority which read thus :

“5. It has next been contended that in the provision of the Berar Regulation of Agricultural Leases Act, 1951, public trusts of charitable nature were included among those who could claim possession from a tenant on the ground of personal cultivation. It is not possible to see how the provisions of a repealed statute which was no longer in force, after the enactment of the Act could be of any avail to the appellant. The decision in Ishwardas v. Maharashtra Revenue Tribunal and Others, has also been referred to by the counsel for the appellant. In that case it was said that under Section 2(18) of the Bombay Public Trusts Act a trustee has been defined as meaning a person in whom either alone or in association with other persons the trust property is vested and includes a manager. In view of this definition the properties of the trusts vest in the managing trustee and he is the landlord under Clause 32 of Section 2 of the Act. As he is the landlord, he can ask for a surrender from the tenant of the lands of the trust “to cultivate personally”. In the present case it is common ground that the Sansthan is a private trust and is

not governed by the provisions of the Bombay Public Trusts Act. The manager or the Wahiwatdar of the Sansthan cannot, therefore, fall within the definition of the word “trustee” as given in Section 2(18) of that Act. It may be mentioned that in Ishwardas case (supra) the Court refrained from expressing any opinion on the question whether a manager or a Shebait of the properties of an idol or the manager of the Sansthan can or cannot apply for surrender by a tenant of lands for personal cultivation. The distinction between a manager or a Shebait of an idol and a trustee where a trust has been created is well recognised. The properties of the trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager.”

15. The learned Counsel for Petitioners submit that though in earlier proceedings the Maharashtra Revenue Tribunal by its Judgment dated 29th January, 1985, remanded the matter back to the Tahsildar to consider the provisions of Section 32-F of the said Act, the Petitioners could raise the other grounds also. He submit that though the Revenue Tribunal by its Judgment dated 29th January, 1985 held that Respondents are the owner/landlord of the suit property, same could have been questioned by the Petitioners when the matter was remanded back to the Tahsildar. In support of this contention, he relies on Judgment of the Apex Court in the matter of **Jasraj Indersingh ..Vs..**

Hemraj Multanchand, reported in AIR 1977 Supreme Court 1011. He relies on Paragraph Nos. 14 and 15 of this Authority which read thus :

“14. Be that as it may, in an appeal against the High Court's finding, the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a subordinate court is bound by the direction of the High Court. It is equally true that the same High Court, hearing the matter on a second occasion or any other court of co-ordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher Court when it comes up in appeal before it. This is the correct view of the law, although Shri Phadke controverted it, without reliance on any authority. Nor did Shri S.T.Desai, who asserted this proposition, which we regard as correct, cite any precedent of this Court in support. However, it transpires that in Lonankutty v. Thomman, (1976) 3 SCC 528 + (AIR 1976 SC 1645) this proposition has been affirmed. Viewed simplistically, the remand order by the High Court is a finding in an intermediate stage of the same litigation. When it came to the trial Court and escalated to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject-matter is available for adjudication before us. If, on any other principle of finality statutorily conferred or on account of res judicata attracted by a decision in an allied litigation the matter is concluded, we too are bound in the Supreme Court. Otherwise, the whole lis for the first time comes to this Court

and the High Court's finding at an intermediate stage does not prevent examination of the position of law by this Court. Intermediate stages of the litigation and orders passed at those stages have a provisional finality. After discussing various aspects of the matter, Chandrchud J. speaking for the Court in Lonankutty observed : “The circumstance that the remanding judgment of the High Court was not appealed against, assuming that an appeal lay therefrom, cannot preclude the appellant from challenging the correctness of the view taken by the High Court in that judgment”. The contention barred before the High Court is still available to be canvassed before this Court when it seeks to pronounce finally on the entirety of the suit.

15. *Shri Desai cited before us the decision of the Bombay High Court, in Ratanlal 1975 Mah. L.J. 65 as part of his argument. There in it is laid down that a remand order will not operate as res judicata and preclude the remanding court from reopening it at the subsequent stage of the same continuing proceeding when the law underlying the remand order is differently interpreted by a larger Bench or by the Supreme Court. Such an order or finding recorded at the stage of remand happens to be interlocutory and cannot terminate the cause finally so that when the litigation comes up before the remanding court. The previous remand order would ordinarily be conclusive and binding like any other interlocutory order. But exceptions there are where a reconsideration of such an order is necessitated either by*

discovery of fresh matter or of unforeseen development subsequent to the order of change of law having retrospective effect. We do not make any comments on this argument of Shri Desai and leave it at that.”

16. The learned Counsel for Petitioners also relies on the Judgment of the Apex Court in the matter of ***Lonankutty ..Vs.. Thomman and another, reported in (1976) 3 Supreme Court Cases 528.*** The paragraph 23 of this authority read thus :

*“23. It is necessary to add that the decision rendered by the High Court by its judgment of remand dated July 8, 1964 in Second Appeal No. 1149 of 1960 that the contention raised by the respondents is not barred by res judicata can be reopened in this appeal against the final judgment of the High Court. The decision of this Court in **Satyadhvan Ghosal V. Smt. Deorajin Debi** is directly in point on this question. Relying upon certain decisions of the Privy Council it was held by this Court that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order. Accordingly, the circumstance that the remanding judgment of the High Court was not appealed against. Assuming that an appeal lay therefrom cannot preclude the appellant from challenging the correctness of the view taken by the High Court in that judgment.”*

17. On the basis of these submissions and authorities, the learned Counsel for Petitioners submit that the impugned orders passed by the Authorities below are required to be set-aside holding that the Respondents have no authority to file the Application under Section 32F of the said Act for possession of the suit property as they are not the owner but only the Vahiwatdar.

18. On the other hand, the learned Counsel Mr. Bhargude appearing on behalf of Respondents vehemently opposed the present Petition. He submit that there are the concurrent finding of facts recorded by all the authorities below. Therefore, there is no question of entertaining the present Writ Petition under Articles 226 and 227 of the Constitution of India.

19. The learned Counsel for Respondents submit that the issue of the relationship between Petitioners and Respondents as tenant and landlord is already decided by the Maharashtra Revenue Tribunal by the order dated 29th January, 1985. The Tribunal at the time of passing the order dated 29th January, 1985, categorically held that Respondents' Predecessor was landlord of the suit property and he can file the application for possession.

20. The learned Counsel for Respondent submits that matter was remanded by Maharashtra Revenue Tribunal only to decide whether the Petitioners/tenants filed Application under Section 32F of the said Act within limitation or not. The ruling of the Tribunal in respect of the finding that Respondents are landlord and other finding were not challenged by the Petitioners by preferring appropriate Application

and/or Appeal. He submits that those findings were accepted by the Petitioners in toto. Therefore, there is no question of entertaining the present Writ Petition on the issue of ownership.

21. In respect of this issue, the learned Counsel for Petitioners placed reliance on the Judgment of the Apex Court in the matter of ***Shri Kalanka Devi Sansthan*** cited (*supra*), same is not applicable in the present facts and circumstances of the case in hand. The fact in the said case was that the Sansthan was private Trust and moreover the Application in the said case was made for the purpose of “personal cultivation”. The question involved in the said case was whether the Sansthan can claim possession of the land from the tenant on the ground of “personal cultivation” under Section 32F and 32B of the said Act. Therefore, the said authority is not applicable in the facts and circumstances of the present case.

The learned Counsel for the Respondents submit that Maharashtra Land Revenue Tribunal has held that Gajanan Pathak was landlord under Tenancy Act, 1948 and was entitled to claim the possession of the land. The same was not challenged by the Petitioners at any time. Therefore, there is no question of allowing them, to raise the same issue again in the present case.

22. The learned Counsel for Respondents submit that admittedly as per the provisions of Section 32F of the said Act it is the duty of the tenant to make appropriate application for purchase within two years from the date of cause of action. He submits that in the present proceedings Smt. Krishnabai Vishnu Phulbadave – the original Vahiwardar expired on 2nd May, 1963. Even though the Petitioners were

in possession of the suit property as on 2nd May, 1963 they failed and neglected to make appropriate application under Section 32F of the said Act. He submits that all the Authorities concurrently held that Petitioners failed to issue purchase notice as required under Section 32F of the said Act within stipulated time. Hence, they are not entitled to retain possession of land. They have to handover the possession of the suit property to the Respondents.

23. The learned Counsel for Respondents in support of his contention relies on the Judgment of the Apex Court in the matter of ***State of West Bengal ..Vs.. Hemant Kumar Bhattacharjee and others, reported in AIR 1966 Supreme Court 1061***. He relies on paragraph nos. 13(2) and 14 which read thus :

“13(2). The order of the High Court dated April 4, 1952 quashing the proceedings before the Special Judge on the ground that S. 4 was unconstitutional as violative of Art. 14 of the Constitution was wrong since the law as there laid down has been disapproved by this Court in its decision in Kedar Nath Bajoir v. State of West Bengal, 1954 SCR 30 : (AIR 1953 SC 404).

14. Before proceedings with these arguments in detail, we can dispose of second contention very shortly. This argument proceeds on a fundamental misconception, as it seeks to equate an incorrect decision with a decision rendered without jurisdiction A wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher

tribunals or other procedure like review which the law provides. The learned Judges of the High Court who rendered the decision on 4-4-1952 had ample jurisdiction to decide the case and the fact that their decision was on the merits erroneous as seen from the later judgment of this Court, does not render it any the less final and binding between the parties before the Court. There is, thus, no substance in this contention. The decision of the High Court dated 4-4-1952 bound the parties and its legal effect remained the same whether the reasons for the decisions be sound or not.”

He relies on the Judgment of the Apex Court in the matter of **V. S. Charati ..Vs.. Hussein Nhanu Jamadar (dead) by L.Rs., reported in (1999) 1 Supreme Court Cases 273.**

24. On the basis of above mentioned submissions and the authorities, the learned Counsel Mr. Bhargude appearing on behalf of Respondents submit that there is no substance in the present Writ Petition, as the Petitioners have challenged the concurrent findings of facts recorded by the three Authorities below. Hence, the same is required to be dismissed with costs.

25. I have heard both the sides at length. It is to be noted that issue raised by the Petitioners about the ownership of the Respondents cannot be considered in the present Writ Petition because the same was decided by the Tribunal by its Judgment dated 29th January, 1985 at the time of remanding the matter back to the Tahsildar, Indapur for deciding the issue only under Section 32F of the said Act about the purchase

notice. It is to be noted that though the said finding was against the Petitioners, they failed and neglected to challenge the same before the higher Authority. Therefore, the same finding is binding on the Petitioners. Hence, there is no question of considering the issue raised by the Petitioners about the ownership viz - as a landlord of the Respondents. The authorities cited by the Petitioners in support of this contentions are not applicable in the facts and circumstances of the present case as explained in above.

26. Therefore, the issue involved in the present Writ Petition is only whether the Petitioners issued purchase notice within time as required under Section 32F of the said Act or not.

27. Section 32F of the said Act provides that in the case where the landlord is a minor or a widow, the tenant shall have the right to purchase such land under Section 32 of the said Act within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31. Language of Section 32F and 31 of the said Act is quite clear and a period of one year will have to be rounded in accordance with the said provisions and not from the date of the knowledge of the tenant.

28. In the present proceedings Smt. Krishnabai expired on 2nd May, 1963. Thereafter the Respondents filed Application under Section 32F of the said Act on 8th June, 1976 claiming possession from the Petitioners. Admittedly, the Petitioners have failed to file any Application as required under Section 32F of the said Act for purchase of the suit property. That issue was decided by all the Authorities below against the

Petitioners. Not only that, before this Court also the Petitioners failed to make out any case to show that they have issued the purchase notice within limitation as per the said Act.

29. Considering these facts that the Petitioners have failed to issue the purchase notice within stipulated time as required by law under Section 32F of the said Act, I am of the opinion that Petitioners failed to make out any case under Article 226 and 227 of the Constitution of India to interfere in the concurrent finding of facts recorded by all the three Authorities below. Hence, the following order is passed.

ORDER

- (a) Rule discharged.
- (b) Writ Petition stands dismissed with costs.

(K.K.TATED, J.)

30. At this stage, the learned Counsel for Petitioner submits that the interim relief granted by this Court on 22nd August, 1995 to continue for 12 weeks.

31. Considering the fact that the Petitioner is in possession of the suit premises for last several years, his request is accepted.

32. Interim relief granted by this Court on 22nd August, 1995 to continue for 12 weeks from today. Petitioners to file an undertaking

before this Court within four weeks from today that he will not create any third party right, title and interest in respect of the suit premises till that time.

(K.K.TATED, J.)