

VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 448 OF 2014

Pushpalata Narayan Thorbole,
Age about 63 years, Occu. - Agriculture,
R/a. Tendoli, Taluka Kudal,
District Sindhudurg
Through Power of Attorney
Raghunath Shivraom Thorbole

... Appellant

Vs.

1. Purshottam Dattatray Prabhu,
(since deceased through LRs.)
 - (a) Baliram Purshottam Prabhu
Tendolkar, Age about 74
years, Occu. - Business,
 - (b) Padmanath Purshottam Prabhu
Tendolkar, Age about 73 years,
Occu.- Agriculture
 - (c) Prakash Purshottam Prabhu
Tendolkar, Age about 67 years,
Occu. - Service.
 - (d) Sau. Sangita Yashwant Samant,
Age about 63 years,
Occu. - Household wife

All residing at Tendoli, Taluka -
Kudal, District Sindhudurg

- | | | |
|--|--|------------------------|
| <p>2. Keshav Vishnu Prabhu
Tendolkar
(Appeal stand dismissed
vide Reg. (Judl.-II) order
dated 26.8.2016.</p> <p>3. Shivram Sakharam Gawade
Age 67 years, Occu. -
Agriculture, R/a. Tendoli,
Tal. - Kudal, Dist. Sindhudurg</p> | | <p>... Respondents</p> |
|--|--|------------------------|

Mr. P. G. Sabnis i/b Gangadhar J. Sabnis, for the Appellant.

Mr. A. R. Khandeparkar i/b Khandeparkar & Associates, for
Respondent No. 1A.

CORAM : A. M. DHAVAL, J.

RESERVED FOR JUDGMENT ON : OCTOBER 4, 2018
JUDGMENT PRONOUNCED ON : OCTOBER 12, 2018

JUDGMENT :-

1. This second appeal is filed by the original plaintiff assailing the judgment and decree dated 1.4.2014 passed in Regular Civil Appeal No. 145 of 2001 by the Principal District Judge, Sindhudurg, confirming the judgment and decree dated 21.7.2001 passed in Regular Civil Suit No. 93 of 1995 by the Civil Judge, J.D. Kudal. The matter relates to the scope and

evidentiary value of 32M certificate.

2. The present Appellant had filed Regular Civil Suit No. 93/1995 in the court of Civil Judge, J. D. Kudal against the present respondents. The subject matter of the suit were two agricultural lands, viz. (i) Survey No. 95/6, admeasuring 95 R + 30 R (fallow land), (ii) Survey No. 85/3, admeasuring 21.5 R + 3.5 R (fallow land). The plaintiff averred that the suit land was of defendant Nos. 1 and 2 as ancestral land. It was not in their cultivation. It was cultivated by the plaintiff's husband Narayan as a tenant. As per the provisions of Bombay Tenancy and Agricultural Lands Act, the land was sold to the plaintiff's husband Narayan on payment of price fixed by the competent authority and on 31.12.1993 a certificate under S. 32(m) was issued in his favour. However, the effect of 32 (m) certificate remained to be given in the revenue record. After the death of Narayan, the property came in possession of the plaintiff. She was cultivating paddy crops. Defendant Nos. 1 and 2 were not concerned with the suit land. In spite of these facts, defendant

Nos. 1 and 2 on 10th August, 1995 tried to claim ownership over the suit property by visiting the suit land. The plaintiff, therefore, claimed declaration and perpetual injunction to restrain the defendants from disturbing possession of the plaintiff. In the alternative, it was claimed that if the defendants were found in possession of the suit land, the vacant possession of the same should be given to the plaintiff.

3. Defendant Nos. 1 and 2 by written-statement vide Exhibit 20 opposed the suit. They denied that the plaintiff's husband was ever tenant in the suit land. They were not aware about any 32-G proceeding being conducted and about issuance of 32-M certificate. Since the issue of tenancy was raised, the civil court has no jurisdiction and the issue should be referred to the tenancy court. There are fruit bearing big trees like mango, jack fruits and other in the suit land. The defendants have cut those trees with the permission of forest department. The suit lands are either orchard or fallow land. There was no growing of paddy crop in the suit land. Defendant No. 3 Laxman was

appointed by defendant Nos. 1 and 2 as watchman. In April, 1960 his name was wrongly mutated in the revenue record as tenant. The said mutation was cancelled. Thereafter, the plaintiff's husband had wrongly obtained Mutation Nos. 1418 and 1419 to record his name as tenant, but those were cancelled with a direction to the plaintiff to get his tenancy rights determined under S. 70(b). The plaintiff had filed tenancy proceeding bearing No. 157 of 1994 before the Nayab Tahsildar. The defendants appeared in the proceedings, but they were told that the said proceedings were withdrawn by the plaintiff. The contentions regarding tenancy and issuance of 32-M certificate are false. The suit lands were always in the possession of the defendants, and their cultivation is also recorded in the revenue record. Hence, the suit should be dismissed with costs.

4. Defendant No. 3 has filed separate written-statement (Exhibit 48) and challenged the claim of plaintiff and claimed that he was working as a watchman for defendant Nos. 1 and 2

in the suit land. He was paying to the defendants some agriculture produce like coconuts and paddy. Defendant Nos. 3's brother Laxman was tenant of the suit land and his name was illegally deleted, without holding any proceeding. The learned Civil Judge framed issues regarding ownership and possession of the plaintiff and about the legality of 32-M certificate.

5. The plaintiff examined her brother-in-law, her power of attorney. The defendants examined son of defendant No. 1 Baliram. The parties relied on documents. The plaintiff filed 32-M certificate (Exhibit 57) issued in the name of her husband.

6. The learned Civil Judge, on scrutiny of the evidence recorded some material discrepancies in the name of the plaintiff and in proceeding relating to issuance of 32-M certificate. He then went on to hold that there was a settled law that the civil court has a supervisory jurisdiction over the statutory authorities to see, if the procedure provided under the law has been followed or not. Reliance was placed on judgment

in **Laxman Pate Vs. Govindrao KDSM Trust, AIR 1981 Bombay 33** to hold that certificate under S. 32-M and 88(b) of the BTAL is of limited character and the finality does not oust the jurisdiction of the civil court to go beyond the certificate and to see whether the certificates have been issued by a court of competent jurisdiction after verifying whether the condition precedent to grant the certificates existed or not.

7. The plaintiff preferred appeal. The learned Principal District Judge, Sindhudurg after hearing the parties and considering the evidence, came to a conclusion that till 1965 name of Laxman Gawade was recorded as tenant in one of the suit lands, Survey No. 85/3, and thereafter name of his brother, defendant No. 3 continued. The mutations effected in favour of plaintiff's husband Mutation Entry Nos. 1418 and 1489 were not certified and were cancelled. Till 1965, the name of plaintiff's husband was not recorded, as tenant and he was not in the picture. The record showed that one month before, in September 1965, 32-G proceedings were concluded. The

plaintiff's husband was not having any rent receipts or Kabulayat and the statement of husband showed over writings in respect of Hissa number and area, viz. Survey No. 95, Hissa 5 changed to 6, and area 14 Guntha changed to 2 Acres, 14 Guntha. Learned Civil Judge called the records of 32-G proceeding, but the same was not available. The order passed by the Agricultural Lands Tribunal, Kudal in tenancy case vide sale-order No. IPSR -5/593 was stayed by the appellate court in Tenancy Appeal No. 3/1997. With these observations, learned Principal District Judge ventured to hold that certificate under S. 32-M was a useless piece of document to prove the possession of the plaintiff over the suit land. He preferred entries in the revenue record to hold that defendant Nos. 1 and 2 had proved their possession. The claim for title was given up by the plaintiff, and therefore, the decree of dismissal of the suit was confirmed and the appeal was dismissed.

8. The learned advocate Mr. Sabnis for the Appellant argued that both the courts below erred in ignoring 32-M

certificate issued in favour of the plaintiff's husband. He relied upon number of judgments to submit that 32-M certificate is conclusive evidence unless it is set aside by the competent authority. Even if there is challenge to the 32-M certificate on the ground of not following provisions of law, the same can be raised only before the competent appellate authority under the BTAL Act and the civil court has no jurisdiction. Even the revenue authority, as distinguished from the tribunal under the BTAL Act, has no authority. He submitted that even the decree passed by the civil court, contrary to the certificate issued under S. 32-M, cannot be executed or enforced against the holder of the certificate.

9. Per contra, learned advocate Mr. Khandeparkar for Respondent No. 1A pointed out that there is glaring infirmity in the procedure, adopted by the competent authority in 32-G proceeding and the issuance of 32-M certificate. Both the courts below have discussed in detail as to why 32-M certificate is highly suspicious and not reliable. He also argued that the

defendants had challenged the said 32-G proceeding before the appellate authority and the appellate authority has granted stay, and therefore, this court should stay hands and decide the appeal only after the decision of the appellate authority with regard to 32-M certificate.

10. The substantial question of law formulated with my finding is as under:

Whether the civil court can set-aside or refuse to rely on the certificate issued by the Tenancy Authority under Section 32M of the Bombay Tenancy and Agricultural Lands Act, 1948?

In the negative.

11. Section 32-G empowers the tribunal and provides for the procedure to determine the existence of tenancy rights of a tenant as on tiller's day and authorises the tribunal to assess the purchase price and on payment of the same, confer ownership rights on the tenant by issuing 32-M certificate.

“S. 32-M Purchased to be ineffective on tenant-purchaser's failure to pay purchase price.

(1) On the deposit of the price in lump sum or of the last installment of such price the Tribunal shall issue a certificate of

purchase in the prescribed form, to the tenant-purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase.

(2)

12. The Agricultural Lands Tribunal, Kudal on payment of purchase price determined by Narayan has issued 32-M certificate in favour of Narayan, deceased husband of the plaintiff in respect of both the suit lands (Exhibit 57). The said order relied upon by the parties has been passed in Tenancy Appeal No. 3/1997, in appeal against the 32-G proceeding on 30.7.2005.

13. The law regarding scope and challenge to 32-M certificate may be stated as follows:

(i) In **Sau. Saraswatibai Trimbak Gaikwad Vs. Damodhar D. Motiwale & Ors. [(2002) 4 SCC 481]** wherein it is observed as under:

“5. In the tenancy proceedings initiated by the lessee, by order dated on 13th March, 1971 it was held that the lessee was a deemed tenant under Section 4 of the said Act. The Land Tribunal fixed a price under Section 32G of the said Act. The price was paid by the lessee and that lessee became the statutory owner of the property.

Dattatraya was a party to those proceedings. He never challenged the order of the Land Tribunal. That order became final in respect of that lessee.”

“17. Such a certificate is conclusive evidence of purchase unless it is set aside in the Revision, which is filed by the Respondent 1 and 2.”

After quoting Section 85, it is observed that:

“ ... Thus it is to be seen that a Civil Court does not have jurisdiction to decide matters which are required to be dealt with by the Tribunal under the said Act. Thus it is only the Tribunal which can decide whether a person is deemed to be a tenant and whether he is entitled to purchase the land held by him. The civil court has no jurisdiction to decide such a question. Even if such a question was to be raised in a proceeding before it, the civil court would have to refer the issue to the authority under the said Act. The Suit would then have to be disposed of in accordance with the decision of the authority. Thus if the Tribunal fixes a purchase price and issues a certificate then that certificate would be conclusive proof of purchase. The civil court would then be bound to give effect to the certificate and cannot ignore it.”

“24. ... Therefore rightly neither Respondents 1 and 2 nor the Appellant took up this question before the civil court. Even if the question had been raised the civil court could not have decided it. The civil court would have had to refer the issue to the appropriate authority and then abide by its decision. A decree passed without the consideration of the provisions of the said Act must be subject to orders of the appropriate authority in proceedings under the said Act.”

“25. Thus so long as the certificate stands the decree cannot be executed against the Appellant. It is only if Respondents 1 and 2 succeed in getting the Certificate set aside, in their pending Revision, that they can execute the decree. It would be open for Respondents 1 and 2 to pursue the Revision filed by them against the order dated 23rd November 2000. We realise that a Revision is on limited grounds.”

- (ii) In **Shrikant Gangadhar Teli Vs. Bhaskar Narayan Kuvalekar & Ors.**, [1983(3) Mh.L.J. 542], it is held in para 5 that:

“5. It is apparent from the aforesaid provision of section 32-M that the certificate issued under this section is conclusive evidence of purchase. The said certificate was not challenged by the petitioner in appeal. The certificate under section 32-M was issued in favour of respondent No. 1 in the year 1960 and that conclusively establishes that respondent No. 1 was purchaser of the land which would mean that respondent No. 1 was in possession of the land in question as tenant on 1st April, 1957. The certificate issued under section 32-M having attained finality in all respects, it was not open to the Tahsildar to declare the said certificate nullity in the proceedings initiated by the petitioner under section 32-G of the Bombay Tenancy Act. Even if it is assumed that the petitioner had no notice of the proceedings initiated by respondent No. 1 under section 32-G and pursuant thereto the certificate under section 32-M was issued in favour of respondent No. 1, upon acquiring the knowledge of such certificate having been issued in favour of respondent No. 1, the petitioner could have only challenged its legality in appeal and not by way of

proceedings under section 32-G of the Bombay Tenancy Act. The Tahsildar acted without jurisdiction in declaring the certificate issued in favour of respondent No. 1 as nullity and grossly erred in declaring the petitioner as deemed purchaser on the face of the certificate issued under section 32-M in favour of respondent No. 1. The said order passed by the Tahsildar being patently erroneous has rightly been set aside by the Collector, Sindhudurg. The Maharashtra Revenue Tribunal also did not commit an error in affirming the correct order of the Collector, Sindhudurg.

- (iii) **Ramu Pandu Gavade (through LRs.) & Ors. Vs. Ramchandra Kulkarni (through LRs.) & Ors. [2007(1) Mh.L.J. 467]**

Execution of decree – certificate of ownership granted in respect of suit lands under S. 32M of the Tenancy Act – Decree obtained by the respondents-plaintiffs for possession of the suit lands cannot be executed against the petitioners.

- (iv) **Bhima Aba Rade (through LRs.) & Anr. Vs. Thakubai M. Rade & Ors. [2008(1) Mh. L. J. 192]** wherein in para 10 it is observed that:

“10. The First Appellate Court completely ignored statutory conditions enumerated at bottom of the certificate would show that the suit land was importable estate in the hands of original defendant No. 1. He could not have subjected the suit land to partition without prior permission of the Collector. The

decree for partition could not be rendered as it would cause breach of Section 43 of the BT & AL Act. The Civil Court has no jurisdiction to examine the questions which are required to be dealt with and settled under provisions of the BT & AL Act. There is bar of jurisdiction under provisions of Section 85 of the BT & AL Act to deal with any question, including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord, the land held by him. Obviously, the Civil Court could not have gone into the question as to whether deceased defendant No.1 alone was entitled to purchase the suit land or that it was purchased by him for and on behalf of joint Hindu family for himself and his brothers. The Civil Court could not have examined whether it was a joint tenancy of the four brothers or that it was exclusive tenancy created in favour of deceased defendant No. 1 - Bhima.”

14. The learned trial judge and the first appellate Court have relied upon judgment in

(i) **Laxman Siddu Pote Vs. Govindrao Knickknack Dharmadaya Sanstha, [1981 AIR Bombay 33]** wherein it is observed that:

“14. ... However, I feel that the finality attached to both the certificates – one under section 32M and the other under section 88-B is of limited character. The finality does not oust the jurisdiction of the Civil Court to go beyond the certificate and to see whether the certificates have been issued by a Court of competent jurisdiction after verifying whether the conditions

precedent to grant the certificates existed or not.”

(ii) **Baburao Anant Dhage & Ors. Vs. Jagannath Gopala Karale, [2000 (1) Bom. C.R. 303]** wherein it is observed that:

“10. A reference in this connection may be made to the decision of this Court in **Madhav Kesu Khuspe v. Sundrabai Maguttrao Phadatare**, since deceased by heirs **Krishna Dagdu Khuspe** and others , wherein this Court has held that wherever the procedure provided under the law has been flouted and, thereby, the order under challenge is a nullity, the order passed in such proceedings is ultra vires, even though the remedy of appeal is available; and the civil suit in such circumstances is tenable in law to set aside those proceedings.”

“12. ... Therefore; once the landlord obtains possession of the lands from a tenant in pursuance of a surrender, which is accepted by the Mamlatdar in accordance with the provisions of the Act, the question whether such a surrender was a nominal or sham surrender does not fall within the ambit of section 70 of the Act.”

15. Learned advocate for the respondents relied on a judgment in **Madhav Kesu Khupse Vs. Sundrabai Mugatrao Phadatare (through LRs) & Ors. [1978 Mh.L.J. 289]** wherein it is observed that:

“14. ... While interpreting Section 85 of the said Act ousting the jurisdiction of the civil Court, the learned Chief Justice Mr. M. C. Chagla observed (p. 948):

... It is clear that the jurisdiction of the civil Court has been only ousted in respect of valid orders made by the Mamlatdar. It is only when the Mamlatdar makes an order "with jurisdiction, or, in other words, makes an order for the purposes of the Act or an order required by the Act, that that order cannot be questioned in a civil Court. If the Mamlatdar while passing a valid order deals with any of the matters under Section 70, then those matters cannot be dealt with by the civil Court. But if the order made by the Mamlatdar is not for the purposes of the Act or not required by the Act and the order is incompetent or ultra vires, then the order is a nullity and it can be challenged in a civil Court.

15. While dealing with the argument in that case that it was open to the landlords to prefer an appeal against the decision of the Mamlatdar and that instead of preferring an appeal they had filed a suit in a civil Court, the learned Judges posed a question whether the fact that a statute provides for a right of appeal against an order made by an authority set up under that statute would make any difference to the position when the order made by the authority is an invalid or ultra vires order. The learned Judges answered that question and the argument as follows (p. 949):

... It is clear that if the order itself is ultra vires, it is a nullity and there is no obligation upon a party against whom the order is made to prefer an appeal against that order. The appeals that are provided for under Section 74 are strictly appeals against valid orders made by the Mamlatdar and orders made with jurisdiction. It may be that the Collector could have corrected, the Mamlatdar and could have held that the

order of the Mamlatdar was ultra vires, But the question is not whether the opponents (landlords) could have appealed to the Collector and could, have got the necessary relief. The question is whether the opponents (landlords) are bound to appeal and, are prevented or precluded from going to a civil Court. In our opinion, on principle it is erroneous to argue that merely because a statute provides for a right of appeal, the party against whom the order is made is bound to appeal although the order made is a nullity. If the order is a nullity, the party is entitled to ignore it, to treat it as waste paper, and to go to a civil Court for a declaration that the order is a nullity and no action should be taken against the party under that order which would prejudice his rights.”

(ii) In **NMDC Vs. Satish Chand (through LR.)**, [(2003) 10 SCC 38] the Apex Court laid down general principles regarding bar of jurisdiction of civil court with respect to Ss. 84 /86 of Punjab Municipal Act, 1911 regarding taxation matter.

(iii) **Chandrakant Nikam & Ors. Vs. Municipal Corporation of Ahmedabad & Anr.:** [(2002) 2 SCC 542]. It lays down general principles regarding bar of jurisdiction of civil court in industrial disputes.

(iv) **Km. Sonia Bhatia Vs. State of U.P. & Ors. :** (1982) 2 SCC 585, is with regard to principles of interpretation of statute. It is observed that:

Every legislature has its own technical or legal device to express its intendment. Legislative intent can be conveyed not only by enactment of express provisions but also by using such expressions which

would convey the intent expressly or by necessary intendment.

Legislature does not waste words without any intention and every word used by it must be given its due import and significance.

An explanation merely widens the scope of the main section and is not meant to carve out a particular exception to the contents of the main section.

Where the two statutes have a common and identical object then the legal terms used in one statute must be given the same meaning in the other.

- (v) **Vankamamidi Venkata Subba Rao Vs. Chatlapalli Seetharamaratna Ranganayakamma : (1997) 5 SCC 460**, wherein it is observed in para 15 that:

“15. This Court in *Vatticherukuri Village Panchayat v. Nori Vnkatarama Deekshithulu and Ors.* : 1991 Supp (2) SCC 288, after considering the entire case law, had held that the civil Court has no jurisdiction to go into the correctness of the patta granted by the Settlement Authorities.

... The Rule of construction being that every presumption would be made in favour of the existence of a right and remedy in a democratic set up governed by rule of law and jurisdiction of the Civil Court is assumed. The exclusion would, therefore, normally be an exception. Courts generally construe the provisions strictly when jurisdiction of the civil courts is claimed to be excluded.

.... After the advent of independence, the land reforms was one of the policies of the Government abolishing feudal system of land tenures and conformant of the

Ryotwari patta on the tiller of the soil. Thereby, the land reform laws extinguish pre-existing rights and create new rights under the Act. The Act confers jurisdiction on the Tribunals in matters relating thereto and hierarchy or appeal/revisions are provided thereunder giving finality to the orders passed thereunder. Thereby, by necessary implication, the jurisdiction of the civil Court to take cognizance of the suits of civil nature covered under the land reform laws stands excluded giving not only the finality to the decisions of the Tribunal but also ensuring expeditious, inexpensive and simple procedure for disposal of the matters by the Tribunal and make the Ryotwari patta granted to the tiller of the soil conclusive. Obviously, therefore, the civil suits by necessary implication stands excluded unless the fundamental principles, of procedure are not followed by the Tribunals constituted under the land reform laws. In this case, the Act concerned extinguishes the pre-existing right, creates new rights under the Act and requires Tribunals to enquire into the rival claims and a form of appeal has been provided against the order of the primary authority. Thereby the right and remedy made conclusive under the Act are given finality by the orders passed under the Act. Thereby, by necessary implication, the jurisdiction of the civil Court stands excluded.”

16. In *Saraswatibai Vs.Damodhar (supra)*, it is laid down that certificate under S. 32-M is conclusive evidence of purchase unless it is set aside in revision (para 17). It is further held that decree passed without consideration of the provisions of said Act

must be subject to the orders of the appropriate authority in the proceeding under the said Act (para 24). It is also held that questions which could be raised before the competent authority under the BTAL Act if raised before the civil court, the civil court has no jurisdiction to try the suit and they are bound to refer issue to appropriate authority and abide by its decision.

17. In *Shrikant Teli Vs. Ramchandra Kulkarni (supra)* it is held that certificate under S. 32-M is conclusive evidence and even the Tahsildar has no authority to initiate proceeding under S. 32-G. Even if the petitioner had no notice of the proceeding, upon acquiring knowledge he could challenge the certificate issued under S. 32-M only before the appellate authority.

18. In *Ramu Gavade Vs. Ramchandra (supra)*, it is held that when 32-M certificate is issued, the decree of civil court cannot be executed against the holder of the certificate. In para 16 of the judgment, relying on the judgment in *Sushil Kumar Mehta Vs. Gobind Ram Bohra : (1990) 1 SCC 193*, it is held that the decree passed by the court without jurisdiction over the

subject-matter or on other grounds which goes to the root of its exercise or jurisdiction, lack inherent jurisdiction, it is a coram *non judice*. A decree passed by such a Court is a nullity and is *non est*. It was held that decree passed by civil court can be assailed by the appellant in execution.

19. In *Bhima Vs. Thakubai (supra)* in para 10 it is held that the Civil Court has no jurisdiction to examine the questions which are required to be dealt with and settled under provisions of the BT & AL Act. There is bar of jurisdiction under provisions of Section 85 of the BT & AL Act to deal with any question, including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord, the land held by him. Obviously, the Civil Court could not have gone into the question as to whether deceased defendant No.1 alone was entitled to purchase the suit land or that it was purchased by him for and on behalf of joint Hindu family for himself and his brothers. The Civil Court could not have examined whether it

was a joint tenancy of the four brothers or that it was exclusive tenancy created in favour of deceased defendant No. 1 – Bhima.

20. Considering all these rulings, it is crystal clear that the certificate issued under S. 32-M must be accepted as a document of title, so long as it is not set aside by the competent authority. The view expressed in *Laxman Pote Vs. Shri Govindrao Koregaonkar Dharmadaya Sangh Managing Trustee, AIR 1981 Bombay 33* is no more good law in the light of Apex Court judgment in *Saraswatibai Vs. Damodhar (supra)* followed and as interpreted by this Court in judgments referred above. The civil court has no supervisory jurisdiction over the Tribunal under the BTAL Act and if the decision is given without following the procedure of law, prescribed or without giving opportunity of hearing, the same can be challenged before the competent appellate authority under the said Act only.

21. It is apparent that both the lower courts relied on judgment cited before them and did not take pains to find out the case law on the issue of scope and effect of grant of 32-M

certificate. Both the judgments, therefore, cannot be sustained and needs to be set aside.

22. In view of 32-M certificate issued in favour of plaintiff's husband, the title plaintiff's husband is established and by virtue of title, the plaintiff was entitled for protection to her possession or to get the possession claimed by way of alternate relief. In view of concurrent findings of both the courts below, I hold that possession is with the defendants. Hence, the plaintiff is entitled for decree of possession, as claimed.

23. It is made clear that if the defendants challenge the grant of 32-M certificate before the competent authority and get it set aside, they shall be entitled to claim back possession under S. 144(1) of Civil Procedure Code. I answer substantial question of law in the negative, and I pass the following order.

ORDER

- (i) The second appeal is allowed.
- (ii) The judgment and decree of both the lower courts are set aside.

- (iii) The suit for possession, viz. Regular Civil Suit No. 93 of 1995 filed by the plaintiff is decreed and defendants are directed to hand over possession of the suit lands to the plaintiff after one month from the date of this judgment.
- (iv) The defendants shall bear costs of the appeal throughout.
- (v) The decree be drawn up accordingly.

Sd/-
[A. M. DHAVALE, J.]

Vinayak Halemath