

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 466 OF 1992

1. Udhav Ramchandra Purandare
Since deceased by his Heirs
and Legal Representatives:-
 - 1-A) Arvind Udhav Purandare
r/o. Jeevadani Dharana,
Arunodaya Nagar, Mulund (East),
Bombay 400 081.
 - 1-B) Bilas Udhav Purandare
R/o. 430-J/3, Vakilwadi,
Nasik.
 - 1-C) Digambar Udhav Purandare
R/o. Bhagya Apte Road,
Deccan Gymkhana, Pune.
 - 1-D) Narendra Purshottam Deshpande
R/o. 430/J/3, Vakilwadi,
Nasik.
 - 1-E) Anant Ramchandra Deshpande
R/o. Chaitanya, Opp. Fire Station,
Aurangabad.

Petitioners No. 1-A , 1-C, 1-D & 1-E
through their General Power of
Attorney Holder Petitioner No.1-B.

... Petitioners

Versus

1. Vithal Govind Randhave
Since deceased by his Heirs
and Legal Representatives:-

- 1-A) Keshav S/o. Vithal Randhavane
Since deceased through his heirs and
Legal Representatives
- 1A-1) Manik S/o. Keshav Randhavane,
Age : 45 years, Occu. Agril,
R/o. Godhegaon, Tq. Kopargaon,
District : Ahmednagar.
- 1-B) Yamaji Vithal Randhave
- 1-C) Mahadu S/o Vitthal Randhavane,
Since deceased through his heirs and
Legal Representatives
- 1C-1) Balasaheb S/o Mahadu Randhavane
Age : 40 years, Occu. Agril.,
- 1C-2) Vilas S/o Mahadu Randhavane,
Age : 38 years, Occu. Agril,
- 1C-3) Laxman S/o Mahadu Randhavane,
Age : 36 years, Occu. Agril.,
- 1C-4) Smt. Parvatibai W/o Mahadu Randhavane,
Age : 60 years, Occu : Household,

All R/o. Godhegaon, Tq. Kopargaon,
District : Ahmednagar.
- 1-D) Pundlik Vithal Randhave
- 1-E) Kisan Vithal Randhave
- 1-F) Maroti S/o. Vitthal Randhavane
Since deceased through his heirs and
Legal Representatives.
- 1F-1) Ashok S/o. Maroti Randhavane,
Age : 42 years, Occu. Agril.,
R/o. Godhegaon, Tq. Kopargaon,
District : Ahmednagar.

2) Ashru (Asaram) Govind Randhave
Since deceased through his Heirs
and legal Representatives : -

2-A) Bandu Sitaram Randhave

2-B) Dilip Ashru Randhave

2-C) Sonubai Sakharam Randhave

3) Shankar Govind Randhavane,
since deceased, through his heirs
and Legal Representatives

3-A) Bhanudas Shankar Randhavane
Age 55 years
(Abated as per Registrar's order
dated 14.06.2004)

3-B) Uttam Shankar Randhavane,
age 45 years,

3-C) Sakhrabai Maruti Sonwane,
age 46 years,
Respondent Nos.3-A to 3-B
Agriculturist, R/o Godhegaon,
Tq. Kopargaon, Dist. Ahmednagar.

R. No.3-C Occ: Busniess,
R/o. Village Andarsul, Tq. Yeola,
District Nashik.

4) Subhanath Raghu Randhave
Since deceased by his Heirs
and Legal Representatives :-
namely Respondents No.2-A to
2-C above.

All R/o. Godhegaon, Taluka Kopargaon,
Dist. Ahmednagar.

... Respondents.

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Mr. V.J. Dixit, Senior Advocate, i/by Mr. S. V. Dixit, Advocate for the Petitioners.

Mr. Ajinkya Deshmukh Advocate, h/f Mr. A. V. Hon, Advocate for Respondent Nos. 1-A to 1-E, 2-A to 2-C and 3-B.

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CORAM : V. K. JADHAV, J.

RESERVED ON : 18th November, 2019

PRONOUNCED ON : 17th December, 2019

JUDGMENT :-

1. By way of this Writ Petition, the petitioners are challenging the judgment and order dated 26.09.1991 passed by the Maharashtra Revenue Tribunal, Bombay (M.R.T.) in revision application bearing No.MRT.AH.I/3/90(Tnc.B.9/90) Pune, by which the M.R.T. dismissed the said revision application filed by the petitioners and confirmed the judgment and order passed by the authorities below.

2. Brief facts giving rise to the present Writ Petition are as follows:

a. The dispute relates to the land bearing survey no. 79 which is converted into gat no. 238/1 ad-measuring 19 Acres 31 Guntha situated at village Godhegaon, Taluka Kopergaon, District

Ahmednagar (hereinafter referred to as “the suit land”). The suit land is a Deshpande Watan Inam land. The original landlord of the suit land was one Ramchandra Kacheshwar Deshpande and after his demise, the name of Udhav Ramchandra Purandare, son of deceased landlord was entered as the owner of the suit land. The petitioners 1-A to 1-E are the legal heirs of said Udhav Ramchandra Purandare. Udhav Ramchandra Purandare was the *karta* of the joint family. One Shri Govind Yesu Randhave was cultivating the suit land. He died on 02.08.1958 leaving behind his sons Vitthal, Shankar, Raghu and Asaram, who were residing together and were members of the joint Hindu family. After death of Govind Yesu Randhave, the suit land was entered in the name of the said joint family and Vitthal Govind Randhave was shown as the *karta* of the joint family. Vitthal Govind Randhave died in the year 1989 and respondent nos. 1-A to 1-F are his sons and legal representatives.

b. Name of Ramchandra Kacheshwar Deshpande was entered under the order of Mamlatdar dated 10.08.1952 and Mutation Entry No. 668 came to be entered in terms of the said order. It appears that the suit land was re-granted as a new tenure to Ramchandra Kacheshwar Deshpande and Mutation Entry No. 943

was certified to that effect. Ramchandra Kacheshwar Deshpande died on 25.12.1974 leaving behind his sons Udhav, Purushottam and Anant. It is specific case of the petitioners that the suit land was Deshpande Inam land and it was re-granted as a new tenure to Ramchandra Deshpande.

c. Said Udhav Ramchandra Purandare had filed an application before Agricultural Lands Tribunal (A.L.T.), Kopergaon for possession of the suit land from the above tenants under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, 'Bombay Tenancy Act, 1948'). It is the case of the petitioners that on 01.04.1957, i.e. the Tillers' Day, Vitthal Govind, Shankar Govind, Raghu Govind and Asaram Govind were holding the land 62 Acres 23 Guntha exceeding the ceiling limit. The petitioners therefore claim that the suit land is Deshpande Watan Inam land and it is not a service Inam land. After the enactment of the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950 (for short, 'the Abolition Act, 1950'), all the watans covered under the said Act came to be abolished and all the rights to hold the office and liabilities of rendering services to the said watans were extinguished. It is the case of the petitioners that in terms of the

provisions of Section 8 of the Abolition Act, 1950, the provisions of the Bombay Tenancy Act, 1948 are made applicable. In view of the provisions of Sub-section (6) of Section 32G of the Bombay Tenancy Act, 1948, the rights of the tenants to purchase the land remained unaffected even if the land is re-granted to the original holder on condition that it was not transferable. According to the petitioners, even if the land is re-granted on new tenure or old tenure, the right of the tenant under Section 32G of the Bombay Tenancy Act, 1948 is unaffected. Said Udhav Ramchandra Purandare had approached the A.L.T., Kopargaon for recovery of possession of the suit land against the tenants. It is the case of the petitioners that there is no question of postponement of the Tillers' Day even if the land is re-granted on old tenure or new tenure.

d. By order dated 18.02.1974, the A.L.T., Kopargaon held that the respondents-tenants are entitled to purchase the land from the date when it was re-granted on the old tenure. Being aggrieved by the same, said Udhav Ramchandra Purandare had preferred Tenancy Appeal No. 213 of 1984 before the Sub-Divisional Officer, Sangamner and the learned Sub-Divisional Officer, Sangamner, by order dated 29.09.1989 dismissed the said Appeal. Being aggrieved

by the same, said Udhav Ramchandra Purandare, who then deceased, represented by his legal heirs, preferred revision application before the M.R.T., Bombay and by the judgment and order dated 26.09.1991, the MRT, Bombay has dismissed the revision. Hence this Writ Petition.

3. Learned senior counsel Mr. Dixit submits that conversion of the land from new tenure to old tenure after payment of price etc. is a mere formality and will not affect the rights and liabilities of the parties after the enactment of the Abolition Act, 1950. In view of the same, the Tillers' Day i.e. 01.04.1957 will remain the same even if the land is old tenure or new tenure. Section 8 of the Abolition Act, 1950 speaks about the same. There is no question of postponement of the Tillers' Day. Learned senior counsel submits that on 28.01.1960, the suit land was converted into new tenure in the name of Ramchandra Deshpande after payment of re-grant amount by him. The said order was passed by the then Mamlatdar on 21.01.1960 in file no. 9-133 of 1960 and after the necessary orders, Mutation Entry 943 came to be effected in respect of the suit land. Learned senior counsel submits that it is clear that the land was re-granted in the year 1960 and it was not in the year

1976 as observed by the courts below. Learned senior counsel submits that the conclusion drawn by the A.L.T., Kopargaon that the land was re-granted because of mere application filed by the tenant on 13.04.1976 is improper and incorrect. The suit land was already re-granted in favour of the landlord in the year 1960. Hence, the observations of the A.L.T. are erroneous. Learned senior counsel submits that the A.L.T., Kopargaon has committed a grave error in applying the provisions of Section 88 of the Bombay Tenancy Act, 1948. The said provisions are applicable to the land leased by the Government. The suit land is a watan land alienated to the holder for personal use. It is not a land allotted for rendering service as it is the case of the Police Patil or the Kotwal. Learned senior counsel submits that even if it is presumed that it was a service watan, then also it was abolished in the year 1950 before the Tillers' Day and as such, Section 8 of the Abolition Act, 1950 is applicable. Learned senior counsel submits that the explanation to Section 88 was added by amendment Act no. Bom. 63 of 1958. In the instant case, the watan was abolished long before the said amendment and therefore, the provisions of Section 88 of the Bombay Tenancy Act, 1948 cannot be made applicable to the facts and circumstances of the present case. The said provision is

applicable to the existing watan lands and not to the watan lands where the watans were already abolished. Thus, the suit land cannot be deemed as a Government leased land and the provisions of Section 88 of the Bombay Tenancy Act, 1948 are totally inapplicable. Learned senior counsel submits that it is clear from the 7/12 extract that the land holding of the respondents bearing survey nos. 83, 65, 48, 6, 3, 414, 418, 412, 417 totally ad-measuring 62 Acres and 23 Guntha land on Tillers' Day and as such they were holding more than 48 Acres of the land which was exceeding the ceiling limits. Therefore, they are not entitled to purchase the suit land. In terms of Section 5 of the Bombay Tenancy Act, 1948, the ceiling area is 48 Acres for jirayat land and 24 Acres for seasonally irrigated land and 12 Acres for perennially irrigated land. In terms of the provisions of Section 32A of the Bombay Tenancy Act, 1948, the tenant is not entitled to purchase the land when his holding is in excess to the ceiling limits. It is clear from the documents that the holdings of the respondents-tenants was 62 Acres and 23 Guntha in addition to the suit land on the Tillers' Day. It was more than the ceiling limits. Learned senior counsel submits that there is a general presumption of joint family. The joint and undivided family is normal condition. Thus, the

presumption is that the members of the family are living in union unless the contrary is established. The initial burden therefore rests on the person to prove that there was a partition of the joint family property before the Tillers' Day. Witness Yamaji Vitthal had stated in his cross-examination that there was partition after the death of the grandfather. But he could not state as to when his grandfather died and also the area of the family holding on the Tillers' Day. The other witnesses have stated about the oral partition. Thus, none of the witnesses is in a position to state the time when the partition was effected and the shares allotted to each sharer. There is no documentary evidence placed before the courts below to substantiate the claim of partition. However, before the appellate court, the respondent has produced the extract of Mutation Entry No. 941 dated 23.11.1959 to show that there was partition in the family of respondent. The appellate court has accepted the said argument though the said Mutation Entry was never produced before the A.L.T., Kopergaon. Mutation Entry No. 941 cannot be relied as proof of partition on two grounds; firstly, if the tenancy is to be partitioned, then notice to the landlord is necessary and secondly, there is no list of the survey numbers mentioned in Mutation Entry No. 941 and further, there is no reference of the

suit land. Further, said Yamaji Randhavane has instituted Regular Civil Suit No. 646 of 1971 in the court of Civil Judge, Junior Division, Kopargaon against Vitthal Govind and others for partition of the agricultural land which includes the suit land bearing gat no. 238/1. The said suit was subsequently compromised in the year 1972. It is thus clear that the family was undivided till the year 1971 and therefore, it was a joint family property. Learned senior counsel submits that the even if it is presumed for the sake of discussion that the land was partitioned as reflected from the Mutation Entry No. 941 somewhere on 23.11.1959, holding of the tenant on the Tillers' Day i.e. on 01.04.1957 is to be seen. In the instant case, as on the Tillers' Day, holding of the tenant was more than the ceiling limits. In view of the same, the tenant does not become a deemed purchaser on the Tillers' Day in respect of the suit land. Thus, the observations made by learned Sub-Divisional Officer are not correct. Learned Sub-Divisional Officer erred in holding that the tenant was holding the land below ceiling limits on the Tillers' Day. The impugned orders are thus liable to be quashed and set aside.

4. Learned senior counsel, in order to substantiate his contentions, placed his reliance on the following cases:

1. ***Shankar Savanta Bandagar v. Sonabai Rau Kamalakar & others***, reported in 1980 Bom.C.R. 233.
2. ***Sadashiv Dada Patil v. Purushottam Onkar Patil (D) by LRs***, reported in 2007 (1) Mh.L.J. 149.

5. Learned counsel for the respondents submits that in terms of Section 4 of the Abolition Act, 1950, a watan land resumed under the provisions of the Act shall be re-granted to the holder of the watan on payment of the occupancy price and for the period as detailed in Section 4 of the Abolition Act, 1950 from the date of coming into force of the Act and the holder shall be deemed to be an occupant in respect of the said land and primarily liable to pay land revenue to the State of Maharashtra in accordance with the provisions of the Code and the rules made thereunder. Learned counsel submits that in terms of Section 8 of the Abolition Act, 1950, if any watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the Bombay Tenancy Act, 1948 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 Act, be governed by the provisions of the said Act. Learned counsel submits that so far as the new tenure on payment of the occupancy price is concerned, the same is equal to 12 times of the amount of full assessment of such land within five years from the date of the coming into force of the Abolition Act, 1950 and the holder shall be deemed to be occupant within the meaning of the Code in respect of such land. Learned counsel submits that however, in terms of Sub-section (2)(a) of Section 4 of the Abolition Act, 1950, on or after the commencement of the Act, such occupancy on new and impartible tenure would be occupant Class II and after the commencement date, the same may be converted into old tenure i.e. occupant Class- I by the occupant and after such conversion, such land shall be held by the occupant as occupant Class I in accordance with the provisions of the Code. Learned counsel submits that in view of the specific provision, there is a markable difference between the new tenure and the old tenure. It is clear that if it is old tenure, the land is released from the management by the Government for all purposes. Learned counsel submits that in terms of the provisions of Section 88 of the Bombay Tenancy Act, 1948, most particularly the proviso to Sub-section (1), the date on which the land is

released from the management by the Government, all the provisions of the Bombay Tenancy Act, 1948 shall apply.

6. Learned counsel for the respondent submits that in terms of the said provisions, the A.L.T., Kopargaon rightly held that the tenant will be entitled to purchase the land from the date it is re-granted on old tenure. Further, the A.L.T., Kopargaon has also referred the application filed by the tenant dated 03.07.1970 made to the Prant Officer, Sangamner requesting him the re-grant. However, the Prant Officer has passed the order that unless the tenancy case is determined, the land cannot be re-granted. The learned A.L.T. has therefore rightly held that the tenant has already exercised his right of purchase. Learned A.L.T. has also considered the total holding of respondent Vitthal Govind, considering the same as *jirayat* land which is not disputed, and held that even if the suit land is added in the area, the same does not exceed the ceiling limit. The Sub-Divisional Officer has also considered the documentary evidence and observed that the suit property was given to Ramchandra Deshpande on new tenure. He has also observed that in terms of Section 63-A, the amount of Rs.6,638/- has been recovered and as such, the occupant got the right of re-

grant on old tenure. In terms of the provisions of Section 88 of the Bombay Tenancy Act, 1948, the A.L.T. has rightly passed the order and accordingly, the Sub-Divisional Officer has dismissed the appeal. Learned counsel submits that the authorities below including the M.R.T. observed that the suit land which is Deshpande Inam land was re-granted on the old tenure by the Prant Officer, Sangamner by his order dated 13.04.1976. It was originally granted on new tenure basis as per Mutation Entry No. 943 and subsequently it was re-granted on old tenure basis after observing due formalities in that behalf. There is no dispute about tenancy over the suit land between the parties. It is rightly observed by the authorities below and confirmed by the tribunal that it is only the said date, i.e. 13.04.1976, the tenant would be entitled to purchase the land. Learned counsel submits that there are concurrent findings recorded by the authorities below confirmed by the M.R.T. and as such no interference is warranted while exercising writ jurisdiction. The Writ Petition is liable to be dismissed.

7. Learned counsel for the respondents, in order to substantiate his contentions, placed his reliance on the following cases:

1. *Shri Pandurang Dnyanoba Lad v. Shri Dada Rama Methe & others*, reported in 1976 (2) SCC 236.
2. *Pradeeprao @ Virgonda Shivgonda Patil v. Sidappa Girappa Hemgire since deceased through his heirs and LRs. Ginnappa Sidappa Hemgire and others*, reported in 2004 BCI 47.

8. One Ramchandra Kacheshwar Deshpande was the landlord of the suit land survey no. 79 ad-measuring 19 Acres 31 Guntha situated at village Godhegaon, Taluka Kopargaon, District Ahmednagar. Deceased Udhav Purandare was the son of landlord Ramchandra Deshpande. The suit land was leased out to Govind Randhave sometime in the year 1949 under registered rent note and since then, he was cultivating the suit land. The mutation was also made in his name and he was recorded as the tenant in the record of rights. Said Govind Randhave died somewhere in the year 1958 leaving behind his sons i.e. the present opponent nos. 1, 2 and 3 and others as the heirs. After the death of Govind Randhave, Vitthal's name came to be recorded as heir alongwith his other brothers and they were cultivating their respective share. It is also the case of the tenants that partition came to be effected in respect of the suit property sometime in the year 1959 and it was duly

recorded as per Mutation Entry No. 941 and two brothers were cultivating their respective shares separately since then. Ramchandra Deshpande died somewhere in the year 1974 and the names of his heirs were brought on record in respect of the suit property. The said Deshpande Inam land was recorded on old tenure basis by the Prant Officer, Sangamner by his order dated 13.04.1976. It appears from the record that it was originally granted on new tenure basis as per Mutation Entry No. 943 but subsequently it came to be re-granted on old tenure basis.

9. In terms of the provisions of the Abolition Act, 1950, all the pargana watans and Kulkarni watans shall be deemed to have been abolished. Section 8 of the Abolition Act, 1950 is reproduced hereinbelow:

“8. Application of Bombay Tenancy and Agricultural Lands Act, 1948. -

If any watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, 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 Act, be governed by the

provisions of the said Act.

Explanation.- for the purposes of this section the expression 'land' shall have the same meaning as is assigned to it in the Bombay Tenancy and Agricultural Lands Act, 1948."

10. In terms of the provisions of Section 8 of the Abolition Act, 1950, if any such watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the Bombay Tenancy Act, 1948 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 Act, be governed by the provisions of the Bombay Tenancy Act, 1948. It is not disputed that as on the appointed day of the Abolition Act, 1950, the said Deshpande watan land (suit land) has been lawfully leased and subsisting on the said date.

11. Section 88 of the Bombay Tenancy Act, 1948 is relevant for the present discussion and the same is reproduced herein below:

"88. Exemption to Government lands and certain other lands

[1] Save as otherwise provided in sub-section (2),

nothing in the foregoing provisions of this Act shall apply,-

(a) to lands belonging to, or held on lease from, the Government;

(b) to any area which the State Government may, from time to time, by notification in the Official Gazette, specify as being reserved for non-agricultural or industrial development;

(c) to an estate or land taken under the management of the Court of Wards or of a Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890.

(d) to an estate or land taken under management by the State Government under Chapter IV or section 65 except as provided in the said Chapter IV or section 65, as the case may be, and in sections 66, 80A, 82, 83, 84, 85, 86 and 87:

Provided that from the date on which the land is released from management, all the foregoing provisions of this Act shall apply thereto; but subject to the modification that in the case of a tenancy, not being a permanent tenancy, which on that date subsists in the land-

(a) the landlord shall be entitled to terminate the tenancy under section 31 (or under section 33B in the case of a certificated landlord) within one year from such date; and

(b) within one year from the expiry of the period during which the landlord or certificated landlord is entitled to terminate the tenancy as aforesaid, the tenant shall have the right to purchase the land under section 32 (or under section 33C in the case of an excluded tenant); and

(c) the provisions of sections 31 to 31D, both inclusive (or sections 33A and 33B in the case of a certificated landlord) and sections 32 to 32R, (both inclusive) (or sections 33A and 33C in the case of an excluded tenant) shall, so far as may be applicable, apply to the termination of a tenancy or the right to purchase the land, as aforesaid:

Provided further that,

(a) in the case of a permanent tenancy the permanent tenant shall be entitled to purchase the land held by him on permanent tenancy,-

(i) within one year from the date on which the estate or land is released from management, or

(ii) where such estate or land was released from management after tillers' day but before the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, within one year from such commencement, and

(b) where such permanent tenant is desirous of exercising the right conferred on him under this proviso, he shall accordingly inform the landlord and Tribunal in the prescribed manner within the said period of one year and the provisions of sections 32 to 32R shall, so far as may be applicable, apply to the right of the permanent tenant to purchase the land.

Explanation.- For the purposes of clause (a) of sub-section (1) of this section land held as inam or watan for service useful to Government and assigned as remuneration to the person actually performing such service for the time being under section 23 of the Bombay Hereditary Offices Act, 1874, or any other law for the time being in force shall be deemed to be land belonging to Government.

(2) If any land held on lease from Government or any part thereof,-

(i) is held at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act,

1960, by a person under a sub-lease from the lessee and is cultivated personally by such person, or

(ii) is sub-let after the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, by the lessee to any person for cultivation.

and such sub-letting of the land or part thereof is authorised in accordance with the terms of the lease then all the provisions of this Act except sections 32 to 32R (both inclusive) and section 43 shall, notwithstanding anything contained in such lease, apply to the land, or as the case may be, the part thereof, held under such sub-lease, as if the person holding it under such sub-lease were a tenant within the meaning of section 4 of this Act and the lessee were the landlord:

Provided that in the case of a sub-lease subsisting on the date of the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, the lessee shall be entitled to terminate the sub-lease under section 31 within one year from such date and the provisions of sections 31 to 31D (both inclusive) shall so far as may be applicable, apply to the termination of the sub-lease.

Explanation.- In sub-section (2) of this section, references to a lessee include a reference to a person to

whom the entire interest in the land held on lease or in any part thereof has been transferred or assigned.”

12. On careful reading of the provisions of Section 88, particularly the first and the second proviso to Sub-section (1) and the explanation thereto are relevant for the present discussion. In terms of the first proviso, from the date on which the land is released from the management, all the provisions of the Bombay Tenancy Act, 1948 shall apply thereto.

13. In terms of the provisions of sub-section (1)(a) of Section 88 of the Bombay Tenancy Act, 1948, save as otherwise provided in sub-section (2), nothing in the foregoing provisions of the Bombay Tenancy Act, 1948 shall apply to the lands belonging to or held on lease from, the Government. In view of the explanation (1), for the purposes of clause (a) of sub-section (1) of this Section, the land held as inam or watan for service useful to Government and assigned as remuneration to the person actually performing such service for the time being under Section 23 of the Bombay Hereditary Offices Act, 1874, shall be deemed to be land belonging to Government. In the backdrop of these provisions, the first and

second proviso to sub-section (1) of Section 88 are relevant. In terms of the first proviso, from the date on which the land is released from the management, all the foregoing provisions of the Bombay Tenancy Act, 1948 shall apply thereto. In terms of clause (a) of the second proviso to sub-section (1), in case of a permanent tenancy, a permanent tenant shall be entitled to purchase the land held by him on permanent tenancy (i) within one year from the date on which the estate or the land is released from the management.

14. It is not disputed that respondents-tenants were holding the land on lease created before the occupancy rights were re-granted to the petitioners on the abolition of the Inam. In terms of the provisions of Section 88 of the Bombay Tenancy Act, 1948 as above, the said Deshpande Inam land was re-granted on old tenure basis by the Prant Officer, Sangamner by his order dated 13.04.1976. In view of the provisions of Section 88, particularly the explanation to sub-section (1), if a land as on the Tillers' Day is deemed to be a land belonging to the Government for the purpose of clause (a) of sub-section (1), the provisions of Section 32 of the Bombay Tenancy Act, 1948 were inapplicable and in terms of the

proviso (2) the provisions of Section 32 and all the provisions of the Bombay Tenancy Act, 1948 are applicable from the date on which the land is released from the management. In terms of Section 4 of the Abolition Act, 1950, if a watan land resumed under the provisions of the Act is re-granted to the holder of the watan on payment of occupancy price, the holder shall be deemed to be the occupant within the meaning of the Code in respect of such land and shall primarily liable to pay the land revenue to the State Government in accordance with the provisions of the Code and the rules thereunder. In terms of Sections 29 to 31 of the Maharashtra Land Revenue Code, 1966, a watan land resumed under the provisions of the Abolition Act, 1950, even if re-granted to the holder of the watan, the holder shall be deemed to be an occupant within the meaning of Section 29(3) as Occupant Class II. So far as the occupant Class I is concerned, it consists of a person who hold unalienated land in perpetuity and without any restrictions on the right to transfer. In view of the same, if the said Inam land after its abolition was re-granted on old tenure basis on 13.04.1976, it is in terms of the proviso (1) to Section 88 of the Bombay Tenancy Act, 1948 that the land is released from the management and from such date, i.e. 13.04.1976 in this case, all the provisions of the Bombay

Tenancy Act, 1948 shall apply thereto in term of the clause (a)(i) of the second proviso. In view of the same, I find no fault in the orders passed by the authorities below which are confirmed by the M.R.T.

15. In terms of Section 32(a) of the Bombay Tenancy Act, 1948, the tenants shall be deemed to have purchased the land under Section 32 up to ceiling area only. In the instant case, both the authorities below recorded the finding of fact by referring Mutation Entry no. 941 to the effect that the land holding of respondent/tenant does not exceed the ceiling limits. Learned senior counsel has not brought to my notice any document/s to indicate that the land holding of the respondent/tenant does exceed the ceiling limits. Thus, except bare words that the land holding of the respondent/tenant exceeds the ceiling limits, there are no documents to substantiate the said contention. Furthermore, Mutation Entry No. 941 sufficiently demonstrates that the land holding of the respondent/tenant does not exceed the ceiling limits.

16. In the case of ***Sadashiv Dada Patil v. Purushottam Onkar Patil (D) by LRs***, (supra), relied upon by learned senior counsel for the petitioners, in para 17 of the judgment, the Supreme Court has made the following observations:

“17. First day of April, 1957 was declared to be the 'tillers day'. If a person remained a tenant on the said date, by reason of the legal fiction created under Section 32 of the Tenancy Act, he would be deemed to have purchased the land from his landlord, free from all encumbrances subsisting thereon on the said day. Section 32-G thereof, on the other hand, casts an obligation on the Tribunal. The Tribunal is required to publish or cause to be published a public notice in the prescribed form calling upon the tenants who under Section 32 of the Tenancy Act are deemed to have purchased the land. Section 32-O contains a non-obstante clause providing notwithstanding any agreement or usage to the contrary, a tenant cultivating personally would 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.”

However, the Supreme Court had no occasion to consider the provisions of Section 88 of the Bombay Tenancy Act, 1948.

17. In the case of ***Shankar Savanta Bandagar v. Sonabai Rau Kamalakar & others*** (supra), relied upon by the learned senior counsel, the said petition before the Division Bench of this Court relates to the tenancy rights of a tenant of sanadi inam land. In para 8 and 9, the Division Bench of this Court has made the following observations:

“8. Now, one thing which must be pointed out at the outset is that the date of statutory ownership or what is described in section 32 as the tillers day is made determinable by the statute itself. Therefore, unless there is some provision in the Act which positively provides for any postponement of that date in the case of lands which were sanadi inam lands and were resumed by the State Government consequent upon the Abolition Act, it will not be permissible for the Court to fix the date of regrant as the date on which the statutory rights of ownership vest in the tenant. It is obvious that the argument advanced on behalf of the petitioner is intended to establish that prior to 23rd July, 1971 the provisions of the Act did not apply to sanadi inam land and since they became applicable only on 23rd July, 1971, the lease in favour of Sitaram being after 1st April, 1957, in this case the provisions of section 32-O would be applicable and since Sitaram has

not given any intimation in order to exercise a right to purchase, the purchase should be deemed to have become ineffective.

9. *In our view, this contention is based on a complete misconception of the provisions of the Tenancy Act. The foundation of the argument on behalf of the petitioner is section 88(1)(a) of the Tenancy Act which makes inapplicable the provisions of the Tenancy Act to certain kind of lands section 88(1)(a) provides that save as otherwise provided in sub-section (2) nothing in the foregoing provisions of the Tenancy Act shall apply to lands belonging to, or held on lease from, the Government. We are not concerned with sub-section (2) of section 88(1)(a). Relying on these provisions an argument is advanced that though the land is granted as the sanadi inam to the petitioner, the land belonged to the Government and, therefore, the provisions of the Tenancy Act could not apply till the date on which the Abolition Act came into force because prior to that, land belonged to the Government According to the petitioner, even thereafter till 23rd July, 1971 when the order of regrant was made, the land continued to belong to the Government. Now if one looks at the scheme of the Tenancy Act, it is clear that the legislature did not intend that inam land shall be excluded from the operation of the provisions of the Tenancy Act. The Explanation to section 88 is of some*

importance in this context. The Explanation reads as follows :

"For the purposes of Clause (a) of sub-section (1) of this section land held as inam or watan for service useful to Government and assigned as remuneration to the person actually performing such service for the time being under section 23 of the Bombay Hereditary Offices Act, 1874, or any other law for the time being in force shall be deemed to be land belonging to Government."

The effect of this Explanation is that only land held as inam or watan for service useful to Government and assigned as remuneration under any law is alone treated as land belonging to the Government. It is important to note that a fiction has been introduced in this Explanation. But for that fiction even such land which was given as watan for service useful to Government would not have fallen within the provisions of section 88(1)(a). This is a clear indication that the lands which were granted as sanadi inam lands were not treated as lands belonging to the Government. It is well-known that such lands are treated as alienated lands and for all intents and purposes the inamdar or the holder of the sanadi inam was the owner of the land."

18. In the case cited above, it is held that the effect of explanation to Section 88 of the Bombay Tenancy Act, 1948 cannot be extended to the lands granted as sanadi inam lands and therefore, the said lands cannot be treated as lands belonging to the Government. The Division Bench has considered that such lands are treated as alienated lands and for all intent and purpose, the inamdar or the holder of the sanadi inam was the owner of the land. In the instant case, the facts are altogether different and thus the ratio laid down in the aforesaid case cannot be made applicable to the facts and circumstances of the present case.

19. In view of the above, I do not find any substance in this Writ petition. Hence, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby dismissed.
- II. Rule discharged.

(V. K. JADHAV, J.)

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