

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

LETTERS PATENT APPEAL NO.10 OF 2004
IN
CIVIL APPLICATION NO.701 OF 2003
(FOR REVIEW)
IN
WRIT PETITION NO.264 OF 1989 (Aurangabad)
WRIT PETITION NO.4968 OF 1987 (Mumbai)

Keshavrao S/o Tulshiram Patil,
Deceased through legal heirs,

- 1-A) Vasant S/o Keshavrao Patil,
Age: 72 years, Occ: Agri,
R/o at present Sai Saoli, II,
Shivaji Park, Dadar,
Mumbai.
Since deceased through L.R's.
- 1A1) Vasundhara W/o Vasant Patil,
Aged 71 yrs, Occu. Nil,
R/o. Sai Sawali, Ist Floor,
Keluskar Road, North. II.
Shivaji Park, Dadar,
Mumbai - 400 028.
- 1A2) Sandip S/o Vasantrao Patil,
Aged 39 yrs, Occu. Business,
R/o. Sai Sawali, Ist Floor.
Keluskar Road, North-II,
Shivaji Park, Dadar,
Mumbai - 400 028.
- 1A3) Sunil S/o Vasantrao Patil,
Age 44 yrs, Occu. Business,
R/o. "Tejal," 4th Floor, Hindu
Colony, LaneNo.2, Plot No.79,
Dadar (E), Mumbai. 400 014.
- 1A4) Dr. Sangeeta Kishor Baise,
Aged 45 yrs, Occu. Doctor,
R/o. Sindhu Vinayak, Dr. Bhise,
Nrusing Home, Bachelor Road,
Wardha, Maharashtra.

- 1-B) Vijay S/o Keshavrao Patil,
Aged 60 years, Occu. Agri,
R/o. Village Jamda, Tq. Chalisgaon,
Dist. Jalgaon.

...Appellants.

Versus

1. The State of Maharashtra
2. The Officer on Special Duty,
Revenue and Forest Department,
Government of Maharashtra,
Industrial Assurance Building,
First Floor, Jamshedji Tata Road,
Mumbai-400020.
3. The Additional Commissioner,
Mumbai and Kokan Division,
Vashi, New Bombay.
4. The Additional Commissioner,
Nashik Division, Nashik.
5. The Collector, Jalgaon,
Dist. Jalgaon.
6. The Sub-Divisional Officer,
Chalisgaon Division, Jalgaon,
Dist. Jalgaon.
7. The Tahasildar,
Chalisgaon, Tq. Chalisgaon,
Dist. Jalgaon.
8. Dinnath S/o Keshavrao Tembulkar,
deceased though his legal heir
and representative,
- 8-A) Subhash S/o Keshavrao Tembulkar,
Age: 78 years, Occu: Nil,
R/o Ramniwas, Subhash Road,
Vile Parle (East), Mumbai.
Since deceased though L.R's.
Through L.Rs. 8A1 to 8A2

8-A-1. Geeta Wd/o Subhash Tembulkar,
Age : 78 years, Occu: Household,

8-A-2. Nikhil S/o Subhash Tembulkar,
Age: 43 years, Occu: Service,

Both R/o. D-602, Gokul Tower,
Thakur Complex, Kandiwali (East),
Mumbai-400101.

Though their G.P.A. Holder,
Dhananjay Manohar Gangakhedkar,
Age: 55 years, Occu: Agril.,
R/o. Labour Colony, Aurangabad.

9. Subhash S/o Keshavrao Tembulkar
Age: 78 years, Occu: Nil,
R/o Rambniwas, Subhash Road,
Vile Parle (East), Mumbai,
Since deceased
through LRS at already on record
8.A-1 To 8-A.2

10. Chandrakant Bhalchasandra Tembulkar,
Since deceased though legal heir,

10-A) Subhash Keshavrao Tembulkar,
Age : 78 years, Occu: Nil,
R/o Ramniwas, Subhash Road,
Vile Parle (East), Mumbai,
Since deceased through L.Rs.

10-A-1. Geeta Wd/o Subhash Tembulkar,
Age 78 years, Occu: Household,

10-A-2. Nikhil S/o Subhash Tembulkar,
Age: 43 years, Occu: Service,

Both R/o. D-602, Gokul Tower,
Thakur Complex, Kandiwali (East),
Mumbai-400101.

Though their G.P.A. Holder,
Dhananjay Manohar Gangakhedkar,
Age : 55 years, Occu: Agril.,
R/o. Labour Colony, Aurangabad.

...Respondents.

Mr. R.N. Dhorde, Senior Counsel i/b. Mr. R.L. Kute, Advocate for Appellants.

Mr. M.M. Nerlikar, AGP for State/Respondent Nos.1 to 7

Mr. P.R. Patil, Advocate for Respondent Nos. 8A to 10/A-2.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**
DATED : 10th January, 2019.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The appeal is filed to challenge the oral judgment of learned Single Judge of this Court delivered in Writ Petition No. 264/1989 (Old No. 4968/1987 which was given at Principal Seat) and also the decision of learned Single Judge given in Civil Application No. 701/2003, which was filed against the decision of aforesaid writ petition for review. Both the sides are heard.

2) The facts leading to the institution of the appeal can be stated in brief as follows :-

The dispute is in respect of lands Survey Nos. 135 and 144 situated at Jamda, Tahsil Chalisgaon, District Jalgaon. This land was Kulkarni Watan and it was in possession of Ramchandra Tembulkar. On 18.4.1944 under registered sale deed Ramchandra sold both these lands to Keshav Tulshiram Patil for consideration of Rs.13,000/-. The sale deed was executed by Ramchandra for himself

and also for the minors like Dinanath and Subhash, who were sons of deceased brother of Ramchandra. The present appellants are successors of purchaser Keshav Patil and respondent Nos. 8 to 10 are the successors of vendor of aforesaid sale deed.

3) Vendor Ramchandra applied for permission to Collector to alienate the aforesaid two lands, but on 4.5.1945 the Collector informed that permission for sale of the property cannot be granted, but it was open to Ramchandra to sell the life interest in this Watan property. The mutation on the basis of aforesaid sale deed was taken in revenue record on 15.8.1946 and it is not disputed that on the basis of aforesaid sale deed the predecessors of the appellants (hereinafter referred to as 'purchasers') have been in possession of the aforesaid both the lands.

4) The Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 (hereinafter referred to as 'the Act' for short) came in force on 1.5.1951. Under the provisions of section 4 (1) of the Act and as per the policy of the State Government, which was expressed in explanatory circular of the year 1953, by order dated 1.6.1956 regrant of both the lands were made in favour of purchaser as the purchaser was in possession of both the lands at the relevant time. The purchaser had deposited the amount of purchased price equal to

six times of the assessment of the lands. The name of the purchaser was entered in revenue record and the name of the vendor, holder of Watan was deleted from the revenue record by mutation dated 13.7.1958. Ramchandra, vendor died in the year 1962 and during his lifetime, he did not raise objection to aforesaid revenue entries and orders made in favour of the purchaser.

5) First time in the year 1976 the successors of holder, respondent Nos. 8 to 10, vendors filed appeal before Sub Divisional Officer (hereinafter referred to as 'S.D.O.' for short) to challenge the aforesaid order made in the year 1956 in favour of purchaser under the Act. This appeal was dismissed by the S.D.O. by decision dated 25.8.1977. The decision of S.D.O. was challenged by respondent Nos. 8 to 10 before Additional Collector and by order dated 7.9.1979 Additional Collector allowed this proceeding and remanded the matter to Tahsildar for fresh inquiry. The decision of the Collector was challenged before Additional Commissioner in revision by the purchaser, but the revision was dismissed and the proceeding which was filed before the Government to challenge the order was also dismissed.

6) On 15.10.1984 the Tahsildar made order of regrant in favour of respondent Nos. 8 to 10. This order was confirmed by the

appellate and revisional authorities created under Maharashtra Land Revenue Code and then Writ Petition No. 4968/1987 was filed by the present appellants. The learned Single Judge dismissed this writ petition and decision was challenged by filing L.P.A. No. 55/2002. After advancing arguments, L.P.A. was withdrawn with permission of the Division Bench and with liberty to file proceeding before the learned Single Judge for review of the decision given in writ petition. The review application No. 701/2003 was then filed by the purchaser before the learned Single Judge. Without passing reasoned order, the review application came to be rejected. Against the decision of Review Application No. 701/2003, Special Leave Petition (Civil) No. 7270/2003 and 8271/2003 were filed before Hon'ble Apex Court by the purchasers. The Apex Court allowed both the S.L.Ps. and directed the learned Single Judge to decide few legal points which were pointed out by the Division Bench in L.P.A. No. 55/2002 and learned Single Judge was expected to decide those points in Review Application No. 701/2003. This time by passing reasoned order the learned Single Judge again dismissed the Review Application No. 701/2003 and this decision is under challenge in the present appeal.

7) Few undisputed and relevant points need to be quoted first in the present proceeding for better appreciation of both the factual and legal position and they are as under :-

(I) It is not disputed that the consideration of Rs.13,000/- was received by Ramchandra when aforesaid two properties were sold by Ramchandra. The sale deed was executed for himself and for the minor sons of brother of Ramchandra as guardian of those minors. It is also not disputed that the possession of both the lands was given to purchaser under sale deed by vendor. The legal necessity is mentioned in the sale deed.

(II) It is not disputed that both the lands were Kulkarni Watan properties. It is also not disputed that Ramchandra, vendor had applied for permission to sell the two lands, but the permission of sale was refused and it was informed by the authority that it was open to Ramchandra to alienate 'life interest'.

(III) It is not disputed that on the basis of sale deed of 1944 mutation was made in revenue record in favour of purchaser and purchaser was shown as owner of the property and in possession column also, the name of purchaser was entered. The name of Watandar was deleted.

(IV) It is not disputed that again after coming in to force of the Act the names of holder of Watan were entered in the revenue

record and the name of purchaser was shown in other right's column and that happened in the year 1953. However, it is not disputed that the possession continued with purchaser.

(V) It is not disputed that in the year 1956 the purchaser applied under the Act for regrant of lands to him and order was made in his favour on 1.6.1956. It is not disputed that vendor Ramchandra was alive when this order was made, but he did not take objection to the order of regrant made in favour of the purchaser. The sons of deceased brother of Ramchandra had attained majority at the relevant time, but they also did not take objection to the order of regrant. The regrant was on new impartiable... tenure, occupant class II. It is not disputed that Nazarana amount equal to six times of total revenue was paid on 30.4.1956 in respect of both the lands by the purchaser and the name of purchaser was entered as owner, occupant on 13.10.1957 and the names of holders of Watan which were entered in the year 1953 were again deleted from revenue record and this mutation was sanctioned on 13.7.1958. These mutations were never challenged by vendor or his successors.

(VI) It is not disputed that Ramchandra, vendor died in the year 1962. It is also not disputed that Kabulayat about the

conditions of regrant was obtained from purchaser by revenue authority and they continued to enjoy the property as owner, but no steps were taken by the successors of holder to get back both the lands. First time in the year 1976 respondent No. 8 Dinanath who was also shown as one of the vendors challenged the regrant made in favour of the purchaser in the year 1956 by filing Watan Appeal No. 24/1974. The order of dismissal of the appeal by S.D.O. is on record and it shows that following points were raised by the purchaser to contest the appeal :-

- (a) Ramchandra, vendor had knowledge of regrant, but he had not challenged the order of regrant,
- (b) Appellant Dinanath had no interest left in the disputed lands and he had no locus standi to file the appeal, and
- (c) There was no provision in law to condone such long delay which was of about 20 years as per the date of regrant and the proceeding was not in limitation.

(VII) The learned S.D.O. dismissed Watan Appeal No. 24/1976 on merits and also by holding that the proceeding was not filed within limitation.

(VIII) Dinanath filed another appeal before Superior Officer like

Additional Collector and the appeal came to be allowed by giving following reasons :-

- (a) That, the first appellate authority and also in original regrant proceeding it was not considered as to whether the purchaser was entitled to get the regrant when from the year 1953 onwards the name of purchaser was not shown in occupancy column (it was there in other right's column and they were in actual possession).
- (b) That, probably no notice of proceeding filed by purchaser was issued to holder of Watan.
- (c) That, it was necessary for the authority to inquire whether the transfer of land in favour of purchaser was permissible and
- (c) That, the appellant Dinanath and other successors of Ramchandra had reversionary rights and the rights had accrued after the death of Ramchandra and so, fresh inquiry on this point was necessary by Tahsildar.

(IX) Though the aforesaid reasons were given by Additional Collector in the decision dated 7.9.1979, the operative order of remand was of following nature :-

"O R D E R

The appeal is allowed. The case is remanded

to the Tahsildar for enquiry and decision in the context of the above observations. Parties to bear their own costs. Parties to be informed separately by letter.

Sd/-
Additional Collector, Jalgaon.

Jalgaon.
Dt.07.09.1979.

Copy with the case papers of his file twist to the S.D.O.C. Dn. Jalgaon for ent.

Copy with the original case papers forwarded to the Tahsildar Chalisgaon for further necessary action.

Sd/-
Additional Collector, Jalgaon.

Jalgaon.
Dt. .09.1979."

This order shows that the order of the original authority of regrant was not set aside.

(X) The order of learned Additional Collector made on 7.9.1979 does not show that the point of limitation which was considered by S.D.O., the first appellate authority as it was raised was considered and decided by the learned Additional Collector. The point of limitation was raised in respect of maintainability of appeal itself that it was time barred and so, the point of tenability of such appeal when there was no application filed for condonation of delay was also required to be considered, but that was not considered by learned Additional Collector. The order of learned Additional Collector

does not show that he had condoned the delay caused in filing the appeal against the order of regrant made in favour of the purchaser.

(XI) The aforesaid order of learned Additional Collector dated 7.9.1979 was challenged in revision by purchaser first by filing the proceeding before the learned Additional Commissioner and then before the Government. Both the authorities held that the order of remand was proper and the last proceeding came to be dismissed on 14.9.1981. The point of limitation was not touched by both these authorities. The decision was not further challenged by purchaser and then the inquiry was made by the Tahsildar.

(XII) The order made by Tahsildar after remand dated 15.10.1984 shows that Tahsildar used only observations made by the appellate revenue authority and revisional authority and the reasoning given can be found only in the last two paras of his order. Thus, no inquiry as such was made by the Tahsildar and the reasons which can be said of his own in the order are as under :-

“The provisions of Section 4(1) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 are clear. The Purchaser cannot be deemed to be a watandar and no order of regrant can be passed in his favour. After death of Ramchandra Tembulkar, the sale made in favour of purchaser

Shri. Keshav Tulshiram Patil becomes ineffective and lands is reverted to original watandar.

In view of the forgoing discussion, I order that the land ciz. S.No. 135 and 144 of Jamde Taluka Chalisgaon should be re-grated in the favour of Shri. Dinanath Keshav Tembulkar, Shri. Subhash Keshav Tembulkar and Shri. Chandrakant Bhalchandra Temblkar who are the reversionary heirs of Shri. Ramchandra Tembulkar who sold the lands in favour of Shri. Keshav Tulshiram Patil on new and impartible tenure.

Sd/-
Tahasildar, Chalisgaon.

CHALISGAON.
Dt. 15.10.1984."

(XIII) The order of Tahsildar dated 15.10.1984 was challenged by the predecessors of purchaser up to the State Government and then Writ Petition No. 264/1989 (old No. 4968/1987) came to be filed. In the decision dated 14.2.2002 the learned Single Judge considered only following two challenges of the purchasers.

(a) Whether the officer on special duty could have decided the revision filed by purchaser when the State Government is required to decide the proceeding in view of the provision of section 257 of Maharashtra Land Revenue Code. For that reliance was placed by the purchaser on the ratio of the case of this Court reported as **AIR 2000 BOM 353**

[Shaikh Mohammad and Ors. Vs. Raisoddin and others].

(b) That, whether the purchaser could have paid occupancy price as the holder had lost the right to get regrant.

The learned Single Judge while deciding writ petition on 14.2.2002 held that the power to hear the revision given under section 257 of Maharashtra Land Revenue Code can be delegated by the Government to any officer under section 330-A of the Code. The learned Single Judge held that the purchaser was not entitled to get regrant. For making this observation, the learned Single Judge referred the provisions of Hereditary Offices Act, 1874 (hereinafter referred to as 'the Act of 1874' for short) and the provisions of the Act. The learned Single Judge did not touch the point of limitation, though it was raised and this point was not touched from any angle which are being discussed at later stage.

The decision in Writ Petition No. 264/1989 was challenged in L.P.A. No. 55/2002, but the proceeding was withdrawn with the permission of Division Bench on 7.1.2003. The order shows that it was left open to the purchaser to file review application before the Single Judge for deciding atleast two issues viz.

(a) Entitlement of purchaser to get grant in view of

Government Circular dated 2.2.1953 and the interpretation of Circular made by this Court in the case reported as **1995 (1) Mh.L.J. 732 [Shankar Ragnath Kulkarni Vs. State of Maharashtra and Ors.]**.

(b) The point of limitation as the proceeding was first time filed in the year 1976 to challenge the order of regrant by respondent No. 8 Dinanath and there are circumstances like there was aforesaid circular of State Government and the purchaser was in possession since the year 1944.

These two issues were to be decided by the learned Single Judge if review was filed and those observations are at para No. 5 of the judgment of L.P.A. and it is as under :-

"5. It is evident that both these issues were not considered in the order impugned before us, either because they were not raised in the petition or argued when the petition was decided."

(XIV) Review Application No. 701/2003 filed for review by the purchasers in accordance with the aforesaid order of L.P.A. was dismissed by the learned Single Judge by passing unreasoned order which was as under :-

"Review Application is taken up for hearing.
On going through the contents of the Review

Application, it is not necessary to review the order passed by me on 14.2.2002.

Review Application stands rejected.”

Thus, the learned Single Judge while deciding the review application did not touch the aforesaid two issues and no reasoned order was made for rejection of review application.

(XV) The order of learned Single Judge made in Review Application no. 701/2003 was challenged by the purchasers by filing two proceeding in Apex Court for Special Leave to Appeal (Civil) Nos. 2798 and 2799 of 2003 and both the appeals came to be disposed of on 13.10.2003 in Supreme Court and following order came to be passed by the Supreme Court :-

“Leave granted.

Heard the learned senior counsel for the appellants and learned counsel for the respondents.

In the light of the observations made by the Division Bench while disposing of the Letters Patent Appeal as withdrawn, the learned Single Judge ought to have, keeping in view the substance as well as the object of the observations, particularly made in paragraph-5 of the order, gone into the merits of the claims objectively either way, after hearing both parties, instead of summarily disposing of the review

petition as has been done in this case. Learned counsel appearing on either side has urged certain aspects of the matter involved for consideration, both on the interpretation to be placed on the provisions contained in Section 4 of the Act including the second proviso, as also the scope of the circular/orders in the particular context of the explanation which purports to define the expression "HOLDER" by indicating what it should mean and include. In our view, it would be more appropriate and desirable to have such issues considered effectively, initially by the High Court and that the matter should be for that purpose relegated to the High Court by setting aside order of the learned Single Judge summarily dismissing the review petition by a non-speaking order. Accordingly, the said order is set aside. Consequently, the High Court shall restore the review petition, Civil Application No.701 of 2003 in Writ petition No.264 of 1989 to its original file and after giving opportunity to the parties on either side, to put forth their respective stand, decide the same objectively and in accordance with law.

The status-quo, directed by this Court shall be maintained pending disposal of the review petition by the High Court, as directed above.

Since the matter is of the year 1989 and considerable time has passed, we request the High Court to dispose of the matter as expeditiously as possible, at any rate, not later than six months."

(XVI) After the aforesaid order of Supreme Court, the learned Single Judge on 14.11.2003 decided the Review Application No. 701/2003 and again he rejected it. For rejecting the application, the learned Single Judge held that the point of limitation was not raised in the beginning and it was raised first time after order of remand was made by appellate revenue authority. This observation was not factually correct as in the proceeding filed in the year 1976 itself this point was raised and that can be seen from the order of S.D.O. which is already quoted. For rejecting the second point, the entitlement of purchaser to get regrant, the learned Single Judge held that the fact that Nazarana amount (purchase price) was not paid by holder within the period of five years was not raised initially and so, this ground cannot be considered. The learned Single Judge referred the observations made by the authority under Maharashtra Land Revenue Code that probably the amount of Nazarana which was deposited by the purchaser was deposited on behalf of Watandar and these observations were not challenged by the purchasers. The learned Single Judge considered one more point of 'commutation settlement'. The point 'commutation settlement' was not at all involved as no such application was made under the Act or under the Act of 1874. The learned Single Judge held that Government Resolution dated 2.2.1953 is not applicable. The

provision of section 4A of the Act is touched, but the point like whether the State Government has power to dispose of the property as it deems fit if the right of holder of Watan is extinguished, is not considered by the learned Single Judge. It is observed that the order of regrant made in favour of purchaser was set aside by appellate revenue authority when there was no such specific order and the order was only of remand and inquiry.

8) The learned Senior Counsel for present appellants submitted that learned Single Judge first time considered the point of limitation in review application and he also first time considered the provision of section 4A of the Act and circular of State Government of 1953 and as those points are decided first time, the L.P.A. is tenable. The learned Senior Counsel submitted that the learned Single Judge has committed error on both facts and law, on the two issues, which were to be considered and decided by the learned Single Judge as per the directions given by this Court in L.P.A. and by the Apex Court while decided Special Leave Petitions (Civil). On the other hand, the learned counsel for respondents vendor supported the order made by the learned Single Judge on merits and he submitted that in view of the provision of Order 47, Rule 7 of Civil Procedure Code ('C.P.C.' for short), the L.P.A. is not tenable.

9) On the point of tenability of L.P.A., the relevant provisions are clause 15 of Letters Patent 1862 for Bombay and Madras High Court, the provision of section 4 of C.P.C. and the provision of Order 47, Rule 7 of C.P.C. The two cases can be referred on this point in addition to clause 15 of the Letters Patent like case decided by Andhra Pradesh High Court viz. B.F. Pushpaleela Devi Vs. State of A.P. decided on 7.8.2002 reported as AIR 2002 ANDHRA PRADESH 420 and case of Jammu and Kashmir High Court which was between Asif Khan and Sardar Khan decided in L.P.A. No. 58/2008 CNP 408/2009 decided on 26.7.2011. Both the High Courts referred and followed the ratio of Apex Court in the case reported as **AIR 2004 SC 5152 (P.S. Sathappan (Dead) by L.Rs. Vs. Andhra Bank Ltd. and Ors.)**. Andhra Pradesh High Court held that in view of the relevant clause of Letters Patent and section 4 of C.P.C. and also the ratio of the Apex Court in the case of **P.S. Sathappan** cited supra, L.P.A. against review order of learned Single Judge is amenable to appeal, provided that the decision of the learned Single Judge amounts to judgment. On the other hand, Jammu and Kashmir High Court observed that every order given in review by learned Single Judge of High Court is amenable, can be challenged in L.P.A.

10) No case of this Court was cited by either side. In the case of **P.S. Sathappan** cited supra, the Apex Court was considering the bar created by section 104 (2) of C.P.C. and the provision of Order 43, Rule 3 of C.P.C. The Apex Court has laid down that L.P.A. is maintainable against orders (even interim) made by the learned Single Judge of High Court which may be similar to the orders mentioned in Order 43, Rule 3 of C.P.C., provided that such order, decision of learned Single Judge amounts to judgment. It is further laid down by the Apex Court that in such cases word 'judgment' needs to be taken in broader and not in narrower sense and so, even if the decision of the learned Single Judge does not amount to decree, L.P.A. will be available. The Apex Court considered the bar created by provision of section 104 (2) of C.P.C. and other provisions mentioned above and laid down that the bar would not operate and right of intra-court appeal provided by Letters Patent is saved from that bar. The Apex Court observed that for deciding whether L.P.A. is maintainable, the provisions of Letters Patent and C.P.C. need to be read harmoniously so as to save the appeal which is otherwise provided for.

11) This Court holds that in the present matter for considering the tenability of L.P.A. against the order made by the learned Single Judge, the ratio laid down in the case of **P.S.**

Sathappan by the Apex Court need to be used and that ratio is applicable in the present matter. This Court has already quoted events which led to the filing of the present proceeding. The events and facts mentioned already show that many points like point of limitation from different angles like tenability of appeal under Maharashtra Land Revenue Code due to delay caused in filing the appeal, the limitation given by the Act itself for depositing purchased price for getting regrant and the possibility of extinguishment of such right due to lapse of time and also for giving of regrant in favour of third party, not to the holder are considered first time by learned Single Judge in the review proceeding. Similarly, the effect, if any, on the entitlement or claim of party like present appellants, purchasers to get occupancy right in view of the provisions of section 4, section 4A of the Act and circular of 1953 issued by the State Government is considered first time in the review proceeding by the learned Single Judge. If object behind the L.P.A. is kept in mind, it needs to be held that Division Bench of this Court is expected to ascertain the correctness of the decision of the learned Single Judge on these points first in L.P.A. and then the party can approach the Apex Court. For all these reasons, this Court holds that present L.P.A. is tenable.

12) The learned counsel for respondents placed reliance on

the case reported as **AIR 1981 SC 1786 [Shah Babulal Khimji Vs. Jayaben D. Kania and Anr.]** and submitted that in view of the ratio of this case, the L.P.A. is not tenable. The facts of this case show that the learned Judge of the High Court on original side had refused to appoint receiver and the Apex Court held that the said order was interim in nature and L.P.A. was not tenable. Thus, the facts were totally different. Reliance was placed by the learned counsel for respondents on the case reported as **2007(1) Mh.L.J. 439 [Saraswati Education Society, Dist. Gondia and Anr. Vs. Santosh s/o. Babulal Rahangdale and Anr.]**. In this case, this Court had held that the provision of order 23, Rule 1 of C.P.C. is applicable to L.P.A. and due to that reason, if earlier L.P.A. was withdrawn without obtaining leave from the Court in terms of provisions of this order, fresh L.P.A. against the same order is not maintainable. In the present matter, it is already mentioned that for going into review, previous L.P.A. was withdrawn and further, there is one more point which needs to be decided is as to whether the decision given in review application can be treated as judgment. The relevant facts are already quoted by this Court. Reliance was placed on another case reported as **AIR 2002 ANDHRA PRADESH 420 [B.F. Pushpaleela Devi Vs. State of A.P. and Ors.]**. In this case, Andhra Pradesh High Court held that the L.P.A. against review application rejected by Single Judge was not tenable as that decision did not

amount to judgment. Reliance was placed on observations made in the case reported as **AIR 1981 SC 1786 [Shah Babulal Khimji Vs. Jayaben D. Kania and Anr.]** cited supra. One judgment of Apex Court is already quoted by this Court on the point which needs to be considered for tenability of L.P.A. and one more case was cited by the learned Senior Counsel for appellants viz. **AIR 1971 SC 2337 [Radhy Shyam Vs. Shyam Behari Singh]**. The order made under provision of Order 21, R. 90 of C.P.C. was challenged in L.P.A. and the Apex Court held that the L.P.A. was tenable as the order made under such provision amounts to judgment. Thus, the point is settled by the Apex Court and it is laid down that for ascertaining as to whether the decision is judgment or not, it needs to be considered as to whether the proceeding like review in which controversy was raised by the parties affect their valuable rights and the result of review deprive either party of the rights accrued. That may happen after considering the provisions of law or the facts which were not considered and which could have changed the decision of review and that can happen when the rights are reconsidered in view of the provisions of law and facts which were not touched in the past by review Court. Thus, the present L.P.A. is tenable.

13) For deciding the entitlement of the appellant to get occupancy right, the provisions of Special Enactment like the Act of

1847, the Act, Bombay Land Revenue Code, the provisions of Evidence Act and some provisions of Limitation Act need to be considered. The learned Senior Counsel for the present appellants, purchasers submitted that the provisions of the Maharashtra Inferior Village Watans Abolition Act, 1959 need to be considered. It can be said that similar provisions are there in the Act also showing the shift in the policy of the Government and approach of the Government to allow the transfer of occupancy rights under the Act. The only thing which needs to be kept in mind about this Act is as per section 2 (iv) of the Act of 1874, the hereditary office mentioned in Inferior Village Watans Abolition Act, 1959 is not Kulkarni Watan and Watan mentioned in the Act of 1959 are of lower degree than that of revenue or police or village accountant held hereditary. Kulkarni Watan was office of Village Accountant. However, the other provisions of Act of 1959 show the shift in the policy of the State to permit transfer of occupancy rights.

14) The scheme of the Act of 1874 shows that in section 1, it is made clear that the State has complete power to deal with Watans and the provision is as under :-

“Nothing in this Act shall affect the powers of the State Government to deal with any watan or parts of watans, or with the profits thereof respectively

under Act No. XI of 1852, or Bombay Acts Nos. II and VII of 1863, or any other law at present in force with respect thereto.”

Section 22 of the Act of 1874 also shows the possibility of lapsing, confiscation, resumption of Watan by State and assignment of Watan to others. These provisions need to be kept in mind as the provisions of the 'Act' also find the source of power in the Act of 1874. Due to such power of State, it is open to the authority created by the State to give occupancy rights to others than holders of Watan, if such policy is accepted by the State.

15) Section 3 of the Act of 1874 show that this Act applies to Hereditary Offices of Kulkarni. In section 4, which is interpretation clause, the definition of 'guardian' is given as under :-

“"Guardian" means a relation or other person to whom the care, nurture or custody of any child falls by natural right or recognised usage, or who has accepted or assumed directly the care, nurture or custody of any child, or in case of dispute the holder of a certificate of guardianship from a Competent Court.”

In Hindus, Karta like a person in the present case Ramchandra could have represented minors if they were members of joint family and

for the provisions of Act of 1874 like appointing somebody as officiator, Ramchandra could have been appointed as officiator as he was the only adult male person for performing the duties if any fixed under Watan. The definitions of 'Watan property', 'Watandar' and 'officiator' are given in section 3 and they are as under :-

""Watan property" means the moveable or immovable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise.

"Watandar" means a person having an hereditary interest in a watan. It includes a person holding watan property acquired by him before the introduction of the British Government into the locality of the watan, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance. It includes a person adopted by any owner of a watan or part of a watan, subject to the conditions specified in Sections 33 to 35 as having a right to perform the duties of an hereditary office"

"Officiator" means the person actually performing the duties of an hereditary office for the time being, whether he be a representative

watandar or a deputy or a substitute appointed under any of the provisions of this Act”

16) Section 5 of the Act of 1874 shows the prohibition on the alienation of Watan and Watan rights. It is as under :-

“Section 5. Prohibition of alienation of watan and watan rights.- (1) Without the sanction of the State Government, or in the case of a mortgage, charge, alienation, or lease of not more than thirty years, of the Commissioner it shall not be competent-

(a) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof, or any interest therein, to or for the benefit of any person who is not a watandar of the same watan;

(b) to a representative watandar to mortgage, charge, lease or alienate any right with which he is invested, as such, under this Act.

(2) In the case of any watan in respect of which a service commutation settlement has been effected, either under section 15 or before that section came into force, clause (a) of this section shall apply to such watan, unless the right of alienating the watan without the sanction of the State Government is conferred upon the watandars

by the terms of such settlement or has been acquired by them under the said terms.”

The provision of section 5 (1)(a) shows that for alienation of the rights of holder for the term of natural life, there was no necessity of sanction of the State Government. In the present matter also, there is the record to show that when Ramchandra applied for permission to sell the property, it was informed to Ramchandra by the authority that he can go for transfer of life interest. Section 5 (2) shows that even if there was settlement under section 15 of this Act, the restriction of section 5 (1)(a) is applicable. The learned Single Judge has committed error in law by holding that before alienation there ought to have been settlement under section 15 of the Act of 1874.

The provision of section 15 is as under :-

“15. Commutation of service.- (1) The Collector may, with the consent of the holder of a watan, given in writing, relieve him and his heirs and successors in perpetuity of their liability to perform service upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon by the Collector and such holder.

(2) **Validation of prior settlements.-** Repealed by Act XVI of 1895.

(3) **Settlement on whom to be binding.-** Every settlement made or confirmed under this section shall be binding upon both the State Government

and the holder of the watan and his heirs and successors.

(4) **Who is a "holder".**- The word "holder" for the purposes of this sections includes any sole owner or the whole number of joint owners or any person dealt with as representative of the persons beneficially interested or entered as such in the Government records at the time of the settlement."

17) The aforesaid provisions show that even after settlement, the property would remain with holder, but it would cease to be Watan property and Watandar would become ordinarily occupant, but against him the conditions mentioned in section 5(1) (a) would continue to apply unless the right to alienate is also conferred upon him under the terms of settlement. Such is not the case of anybody in the present matter and so, section 5 (1)(a) of the Act of 1874 also needs to be considered in the present matter as it is. This Court holds that it was not necessary for learned Single Judge to touch the provision of settlement under section 15 of the Act of 1874. There is no record that at the time of sale, any duty was actually attached to the property.

18) In the present matter, there is nothing on the record to show that Ramchandra or any person of his family was officiating as

representative under part VIII of the Act of 1874. Only due to circumstance that as it was Kulkarni Watan, in view of the object behind creation of Kulkarni Watan, the work of Village Account was to be maintained by Kulkarni and it can be presumed that at the time of creation of Watan such duty was there to the predecessor of Ramchandra. But no such record of duty available for the year 1944. If there was actual transfer as already observed, the Collector would have made some order if there was failure to discharge the duty.

19) Section 9(i) of the Act of 1874 runs as under :-

"9. Collector may declare alienation of watan property to be under certain circumstances null and void. - (1) Whenever any watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have, before the date of this Act coming into force, passed otherwise than by virtue of, or in execution of, a decree or order of any British Court and without the consent of the Collector and transfer of ownership in the Revenue records, into the ownership or beneficial possession of any person not a watandar of the same watan, the collector may, after recording his reasons in writing, declare such alienation to be null and void, and order that such watan, or any part thereof, or any of the profits thereof, shall from the date of such order belong to the watandar previously

entitled thereto and may recover and pay to such watandar any profits thereof accordingly.”

If the aforesaid provision is kept in mind and the facts of the present matter are compared for application of provision, it can be said that in the year 1953 the name of present purchaser was deleted from ownership column which was entered in the past on the basis of sale deed, but the name of the purchaser was continued in other rights column as there was the sale deed in his favour. The actual possession of the property remained with the purchaser and admittedly, the possession was not disturbed by competent authority. Thus, only due to mutation made in the year 1953 it needs to be inferred that the Collector refused to recognize the sale of the property made in favour of purchaser. As vendor Ramchandra had received consideration of Rs.13,000/- for transferring the property, the sale deed included the transfer of all his interest including the life interest and so atleast to the extent of life interest the document can be considered in favour of purchasers. On this point there are other principles like principle of estoppel. The transfer which was possible as mentioned above and which was made by Ramchandra was not challenged in Civil Court either by Ramchandra or respondent Nos. 8 to 10 of the present appeal. The provisions of the Act show that the object of the Act was to make

arrangement in respect of Watan property as the services of Hereditary Office of Village Accountant (Kulkarni) had ceased to be performed and then services were no longer required to be performed. The Act came into force on 1.5.1951 and in the Act, there is mention of Act of 1874 showing that these two Acts need to be considered together.

20) In section 2(d) of the Act, the meaning of 'Kulkarni Watan' is given and it is as under :-

"2(d) "Kulkarni watan" means a watan appertaining to the office of a village accountant and includes a watan appertaining to the said office in respect of which commutation settlement has been effected ;"

21) Section 3 of the Act runs as under :-

"3. With effect from and on the appointed day, notwithstanding anything contained in any law, usage, settlement, grant, sanad or order -

(1) all Paragana and Kulkarni watans shall be deemed to have been abolished;

(2) all rights to hold office and any liability to render service appertaining to the said watans are hereby extinguished;

(3) subject to the provisions of section 4, all watan land is hereby resumed and shall be

deemed to be subject to the payment of land revenue under the provisions of the Code and the rules made thereunder as if it were an unalienated land :

Provided that such resumption shall not affect the validity of any alienation of such watan land made in accordance with the provisions of section 5 of the Watan Act or the rights of an alienee thereof or any person claiming under or through him;

(4) all incidents appertaining to the said watans are hereby extinguished.”

These provisions show that on appointed day i.e. on 1.5.1951 Kulkarni Watans stood abolished, but the rights of alienee of transferrer which were as per the provisions of section 5 of the Act of 1874 were not affected even after resumption of the lands of Watan by the Government. For this reason, the name of purchaser remained in other rights column of revenue record in the present matter and the possession of the purchaser was not disturbed by the authority. It also needs to be kept in mind that the vendor was alive till 1962 and it needs to be presumed that life interest was alienated under the sale deed of 1944 though the sale of the entire property was not possible as there was no sanction, permission of the authority for sale.

22) The provisions of section 3, 4 and 4A of the Act show that they need to be read together. Provision of sections 4 and 4A runs as under :-

"4.(1) A watan land resumed under the provisions of this Act shall subject to the provisions of section 4A be regranted to the holder of the watans to which it appertained on payment of the occupancy price equal to twelve times of the amount of the full assessment of such land, within five years from the date of the coming into force of this Act and the holder shall be deemed to be an occupant within the meaning of the Code in respect of such land and shall primarily be liable to any land revenue to the State Government in accordance with, the provisions of the Code and rules made thereunder ; all the provisions of the Code and rules relating to unalienated land shall, subject to the provisions of this Act, apply to the said land :

Provided that in respect of the watan land which has not been assigned towards the emoluments of the officiator, occupancy price equal to six times of the amount of the full assessment of such land shall be paid by the holder of the land for its regrant :

Provided further that if the holder fails to pay the occupancy price within the period of five years as provided in this section, he shall be deemed to be unauthorisedly occupying the land and shall be

liable to be summarily ejected in accordance with the provisions of the Code.

(2) On or after the commencement of the Bombay Paragana and Kulkarni Watans (Abolition), the Bombay Service Inams (Useful to Community) Abolition, the Bombay Merged Territories Miscellaneous Alienations Abolition, the Bombay Inferior Village Watans Abolition and the Maharashtra Revenue Patels (Abolition of Office) (Amendment) Act, 2000 (hereinafter, in this section, referred to as "the commencement date"), the occupancy of the land regranted under subsection (1) may be transferred by the occupant for agricultural purpose, and no previous sanction or no objection certificate from the Collector or any other authority shall be necessary for such transfer. After such transfer, the land shall be continued to be held by such transferee occupant of new and impartiable tenure (Occupant Class II) in accordance with the provisions of the Code :

Provided that, any such occupancy held on new and impartiable tenure (Occupant Class II) may, after the commencement date, be converted into old tenure (Occupant Class I) by the occupant, by making payment of fifty per cent. Of the amount of the current market value of such land to the Government, and after such conversion, such land shall be held by the occupant as Occupant Class I, in accordance with the provisions of the Code :

Provided further that, if on the commencement date, any such occupancy has already, with the prior permission of the Collector or any other competent authority, on payment of the appropriate amount as Nazarana, been transferred for non-agricultural use, such transfer of occupancy shall be deemed to have been made under the first proviso and the land shall be deemed to be held by the occupant as an Occupant Class I, in accordance with the provisions of the Code, with effect from the date of such transfer :

Provided also that, if on the commencement date, any such occupancy has already, without prior permission of the Collector or any other competent authority and without payment of the amount equal to fifty per cent. Of the current market value of such land as Nazarana, been transferred for non-agricultural use, such transfer may be regularised on payment of an amount equal to fifty per cent. Of the current market value of such land for non-agricultural use as Nazarana, and an amount equal to fifty per cent. Of such Nazarana as a fine, and on such payment, the occupant shall hold the land as an Occupant Class I, in accordance with the provisions of the Code.

(3) Nothing in sub-section (1) and (2) shall apply to any land-

(a) the commutation settlement in respect of which provides expressly that the land

appertaining to the watan shall be alienable without the sanction of the State Government ; or

(b) which has been validly alienated with the sanction of the State Government under section 5 of the Watan Act.

Explanation.- For the purposes of this section the expression "holder" shall include-

(i) all persons who on the appointed day are the watandars of the same watan to which the land appertained, and

(ii) in the case of a watan the commutation settlement in respect of which permits the transfer of the land appertaining thereto, a person in whom the ownership of such land for the time being vests.

4A. For the removal of doubts, it is hereby declared that all public roads, lanes and paths, the bridges, ditches, dikes and fences, on or beside, the same, the bed of the sea and of harbours, creeks below high water mark, and or rivers, streams, nalas, lakes, wells and tanks and all canals and water courses, and all standing and flowing water, and all unbuilt village site lands, situate within the limits of a village or land which was held immediately before the coming into force of this Act, as a Kulkarni or Paragana watan shall, except in so far as any rights of any person other than the holder of the watan, may be established in or over the same and except as may otherwise

be provided by any law for the time being in force, vest in and shall be deemed to be, with all rights in or over the same or appertaining thereto, the property of the State Government and all rights held by the holder of the watan in such property shall be deemed to have been extinguished and it shall be lawful for the Collector, subject to the general or special orders of the State Government, to dispose them of as he deems fit, subject always to the rights of way and of other rights of the public or individuals other than the holder of the watan legally subsisting."

23) The aforesaid provisions show that the period of five years was given by way of amendment of 1954 to the holder to pay the occupancy price and get the occupancy rights. Prior to that from 1.5.1951 there was a period of three years given to the holder of Watan. The first proviso to section 4 shows that the occupancy price was to be six times of the amount of full assessment if Watan was assigned towards emoluments of the officiator. In the present matter, the price which is taken from the purchaser for occupancy right was six times of the amount of full assessment. In any case, there is no record to show that the Collector had made order under section 23 of the Act of 1874 or after sale of 1944 some arrangement was required to be made in respect of duties of officiator.

24) The second proviso to section 4(1) of the Act shows that if occupancy price is not paid by the holder of Watan within five years, he was to be treated as unauthorizedly occupying the land of Watan and he was liable to be summarily ejected. The word 'shall' is used in this provision for both making of the payment within five years and for action like summary ejection of the holder if the amount is not paid within time. Further, the amendment made in the Act in the year 1954 to increase the period given shows that it was mandatory for holder to deposit occupancy price within prescribed period and in case of default, the action mentioned in the section was to follow. Thus, in the Act itself limitation period is given for getting the rights of occupancy by making the payment of occupancy price by the holder and due to this limitation, the general provisions of Limitation Act like section 5 of the Limitation Act could not have been used in favour of the holder of the Watan or to successors of the holder.

25) The combined reading of sections 4 and 4A of the Act shows that on abolition of Watans, the lands of Watan were to vest in the State Government and all the rights of Watan holder in such land were to be treated as extinguished, deemed to be extinguished. As there is no provision of condonation of delay caused in making

the payment of occupancy price, there was no question of consideration of application given by the holder after the prescribed period and action if any which could have been taken was only by the State Government as contemplated in these provisions and also the policy made by the State with regard to giving of the occupancy rights to strangers of the Watan. Respondent Nos. 8 to 10 or their predecessor had not paid occupancy price as mentioned above and in view of the aforesaid provisions of law, it was not permissible to consider their claim made in the year 1976. This point is not at all touched by the authority created under the Act and the learned Single Judge has committed error in appreciating these provisions of law while considering the review application. This position of law was not considered by the learned Single Judge in the past, while deciding the writ petition and further, the circular of year 1953 was also not touched.

26) The aforesaid discussion shows that if the holder of Watan had not paid the occupancy price within the period of five years from the appointed day, the land resumed under aforesaid provision had become available to the Government and it was open to the Government to deal with it in any way. In that regard, the provisions of the Act of 1874 and of the Act are already quoted. In view of those provisions, it was further open to the State to lay down

policy for giving of occupancy rights in respect of these lands even to strangers to Watan. The circular dated 2.2.1953 shows nothing, but that policy of the State Government.

27) The learned Single Judge has quoted the entire circular dated 2.2.1953. This Court is attempting to quote only the relevant portions of the circular for better appreciation of the policy of the State Government and those portions are as under :-

“In implementing the provisions of the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950, the Collectors have raised several points in regard to the rights and liabilities *inter se* between the holder of the watan and the persons who may have been in possession of the watan lands such as bhandbands, authorised alieness, alieness of life interest, permanent tenants and jadid grantees. Government is pleaded to issue the following instructions for the information and guidance of the Collector in the matter.

I. Pargana watan lands can be classified into two categories:- (1) alienable and (2) inalienable. Alienable watan lands are those which by the terms the commutation settlement itself are permitted to be alienated without any restriction. For instance, in the district of Surat, Desaigiri Hak is alienable by the terms of the settlement and in

the Gujrat watans held under the service commutation settlement effect under what is known as the Pooder Settlement are alienable. By virtue of the proviso to sub-section (3) of section 3 of the Bombay Pargana and Kulkarni Watan (Abolition) Act. 1950, the alienation of these lands i.e. lands falling under Category (1) would not be affected by resumption under sub-Section (3) of section 3 and these lands will have to be regranted to the present holders thereof on payment of the occupancy price under sub-section (1) of Section 4 without imposing any condition of non-transferability or impartibility under Section 4 (2) and without requiring the payment of nazarana for their conversion to ordinary occupancy tenant (See Section 4 (3) (ii)."

First para of the circular shows that the circular was issued for considering the rights of alienees of life interest also and to cover other situations.

- 28) The other portions of the circular are as under :-
- "III. The alienations saved by Section 5 of the Watan Act.
- 1) those made with sanction of the Government.
 - 2) those of life interest to strangers; and
 - 3) those to watandar of the same watan.

The alienations falling under (I) are saved by the proviso to sub section (3) of Section 3 of the Bomaby Pargana and Kulkarni Watans (Abolition) Act, 1950, and should be regranted to the alieness on payment of occupancy price, but the regrant would not be subject to the condition under sub section (2) of Section 4. The alienations falling under (iii) are also saved by the proviso to sub section (3) of Section 3 and the alieness, being watandars of the same watan would be considered as holders of the watan would be considered as holders of the watan entitled to regrant under sub section (1) of Section 4 on payment of the occupancy price. These alienations would include the alienations made by the original watandar subsequent to the Watan Act as well as the alienations made by the jadid grantees, provided the alieness are watandars of the same watan.

So far as the alienations falling under (ii) are concerned, that is to say, alienations of a life interest, the alieness would not be considered as holders of the watan and prima facie, the alienor watanda would be the holder of the watan entitled to the regrant of the land. If, however, the alieness pay the occupancy price to save their own rights, for fear that the alienor watandar might not pay, the occupancy price paid by these alienees should be accepted and the regrant made to the alienor watandar without prejudice to the rights of the

alienees

There may be certain alienations which are not permissible under Section 5 of the Watan Act, in the absence of fraud and collusion, adverse possession of watan lands for twelve years after the death of the alienor watandar bars succeeding holders. This principle of adverse possession will apply even to alienations of life interest against the succeeding holders. Although the bar of limitation will not apply to Government, these alienated lands for lands for which the watandar's right is barred may be treated as having ceased to be watan lands provided Government has taken no action to resume, restore or levy rent and the persons in occupations as occupants.

IV. The Kulkarni watans lands also being inalienable, similar would be the legal position in respect of the alienations of these except where the lands are assigned for service under Section 23 of the Watan Act. The alienations of assigned lands being ab initio void, the alienees would get no right and the lands will have to be regranted to the representative watandar kulkarni on payment of occupancy price equal to twelve times the assessment.

V. In cases where the holder of the watan does not pay the occupancy price under sub section (1) of Section 4 of the Act within the stipulated time

the lands would be resumed and regranted to the person who are in actual possession on payment of the occupancy price equal to twenty six or thirty two times the assessment according as the lands were un-assigned or assigned for remuneration of service and such regrant would be on old tenure."

29) It is already observed that there is no record to show that by using the provision of section 23 of the Act, there was assignment of the lands by Collector and there is no record to show that in the year 1944, the vendor was discharging some duties as officiator.

30) In view of the aforesaid portions of the circular dated 2.2.1953, there were two options available to the purchaser to protect his possession. As per first option, the purchaser could have deposited the occupancy price within five years for the holder and there could have been order of regrant in favour of holder of Watan. The other option was there as provided in part V of the circular to get rights in his own favour. As the aforesaid provisions show that due to life interest purchased by the appellants, purchasers, there was no possibility of disturbing his possession, the purchaser could have exercised right given in V part of circular quoted above. In that part of circular price mentioned is higher than six times the

assessment of lands and it is the contention of the appellant that occupancy price equal to six times of assessment was accepted from purchaser. This circumstance cannot make difference and it cannot give anything to the holder or successors of holder of Watan as this matter is between the Government and the appellants. It can be said that the inference is available that the land was given for discharging duties by the officiators as price equal to six times of the assessment is accepted and no more inference is possible from this circumstance. The contentions and the record show that the order was made in favour of purchaser of the occupancy rights in the terms of new and impertible tenure. Thus rights were given to stranger to Watan, purchaser. In view of the aforesaid policy decision of the Government, it was possible for the State Government to give this right to person who was stranger to Watan. This policy is not at all touched by the revenue appellate authority and even the learned Single Judge has not considered that policy of the Government even in review application. It is simply held that the purchaser cannot be treated as holder and so, he was not entitled to get regrant. As per the directions of the Apex Court, it was necessary for the learned Single Judge to consider the entitlement of the purchaser to get the occupancy rights not only in view of the provisions of the Act, but in view of the circulars and G.Rs. of the State Government. This was not done by the learned Single Judge and on that error is committed

by the learned Single Judge.

31) It is already observed that it was not possible for holder to get order of regrant in view of the period prescribed by the relevant provisions of the Act and the policy decision of the Government expressed in the Circular. In the policy decision, it is also mentioned as to how the possession of the purchaser of life interest becomes adverse to the successors of the holder. Due to this circumstance, the provision of section 27 of the Limitation Act needs to be considered against the successors of holder. The provision is as under :-

"27. Extinguishment of right to property. - At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

32) Thus, when there was the sale deed executed on behalf of the persons who were probably entitled for holding the property of Watan, respondent Nos. 8 to 10 ought to have challenged the sale deed within 12 years atleast from the year of giving of occupancy rights to the purchaser. The rights were given in the year 1956 and so, the proceeding filed as appeal before revenue authority by respondent No. 8 was not at all tenable. From this angle, revenue

authority had not considered the proceeding filed by respondent No. 8 Dinanath and learned Single Judge has also not touched the point of limitation from this angle. In the result, even when no interest was left with Dinanath in the disputed property, the so called claim was considered and when it was not possible to set aside the order made in favour of purchaser in the year 1956 the matter was remanded back for fresh inquiry by the appellate revenue authority. So, this Court holds that all the proceedings which were started in the year 1976 have not disturbed the position which was created in the year 1956 in favour of purchaser.

33) The proceeding which was filed before S.D.O. by respondent No. 8 Dinanath was under the provisions of Maharashtra Land Revenue Code, 1966. Even if the provisions of Bombay Land Revenue Code, 1879 are considered, the period available to file appeal was only 60 days from the date of order made in the year 1956. The vendor Ramchandra and respondent No. 8 Dinanath could have challenged the order of 1956 immediately in the year 1956 as it needs to be presumed in view of section 114 of the Evidence Act that proper procedure was followed by revenue authority before making the order in favour of purchaser. Further, section 7 of the Limitation Act needs to be used against respondent No. 8 Dinanath and others as Ramchandra was alive in the year 1956 and probably

all the successors of Ramchandra were major and Ramchandra could have represented even minor in the year 1956 in view of the provision of section 7 of the Limitation Act. Further, as already observed when the purchase price was not deposited within five years from the appointed day by the holder, their rights became extinguished and so, there was no necessity for issuing notices to them in a proceeding which was started by the purchaser in the year 1956. In the year 1976 the point of limitation atleast in respect of appeal was specifically raised by the purchaser and that can be seen in the first order made by S.D.O. by which the proceeding filed by successors of holder was dismissed by S.D.O. The learned Single Judge has committed error in observing that the point of limitation was not raised at initial stage. Further, no separate application for condonation of delay caused in filing appeal in the year 1976 was filed by successor of holder and on this point also, the learned Single Judge has committed error. The relevant case law was cited for the purchaser and that is being discussed hereinafter.

34) In the case reported as **(2001) 9 SCC 717 [Ragho Singh Vs. Mohan Singh and Ors.]**, the Apex Court has laid down that if application for condonation of delay caused in filing appeal even before Collector is not accompanied with appeal, the appeal needs to be dismissed. When there are circumstances like present

one, the delay point needs to be addressed more seriously even by revenue authority and it was a proceeding of appeal. This was not done and the learned Single Judge has also committed error on this point. The learned counsel for respondent No. 8 placed reliance on some observations made in the case reported as **(2007) 4 SCC 221 [A.V. Papayya Sastry and Ors. Vs. Govt. of A.P. and Ors.]**. In this case, the Apex Court has discussed the power of the State Government to exercise revisional jurisdiction (not appellate jurisdiction). It is observed by the Apex Court that if the decree or order is obtained by fraud, it can be treated as non est and nullity. It is observed that if fraud is played the revisional jurisdiction can be exercised even after 10 years from the date of decision. Thus, the Apex Court held that the revisional jurisdiction could have been exercised even after 10 years and that period of 10 years was held to be reasonable period. Facts were totally different. In the present case, there was no question of fraud and in view of the discussion made above, the revenue appellate authority ought to have dismissed the appeal. On this point, the learned Senior Counsel for appellant placed reliance on the case reported as **(2009) 9 SCC 352 [Santoshkumar Shivgonda Patil and Ors. Vs. Balasaheb Tukaram Shevale and Ors.]**. In this case, the Apex Court held that if no period of limitation is fixed by the statute for suo motu revision, the power should be exercised within reasonable time. Specifically

by referring the provision of section 257 of Maharashtra Land Revenue Code, the Apex Court held that such power could have been exercised within three years from the date of the decision. One more case was cited on this point reported as **2005(4) ALL MR 975 [Annappa Satu Mane Vs. Tanaji Balu Shinde & Ors.]**. Thus, it is settled law that the point of delay caused in filing proceeding like appeal needs to be considered first as for getting condonation of delay, sufficient cause is required to be shown and the circumstance that the vested rights cannot be disturbed after prescribed period of limitation needs to be kept in mind by the Court or the authority while considering the delay condonation application.

35) The learned counsel for respondent Nos. 8 to 10 placed reliance on the observations made by the Karnataka High Court in the case reported as **AIR 1994 KARNATAKA 227 [Syed Bhasheer Ahamed and Ors. Vs. State of Karnataka and Ors.]** and submitted that any transaction made prior to coming into force of Watan Abolition Act need to be treated as void. In that case Karnataka Act was considered and the subsequent policy of Karnataka State treating the procedure for getting permission to alienate occupancy rights as formality was also considered. In view of that policy, some observations are made by the Karnataka High Court. The relevant facts and provisions of present case are already

quoted and specific policy of Maharashtra State is also quoted. Further, the learned Senior Counsel for appellants placed reliance on the ratio of Apex Court reported as **(2016) 4 SCC 147 [V. Venkateshappa Vs. Munemma and Ors.]**. In this case the Apex Court held in favour of purchaser by laying down the law on doctrine of feeding the grant by estoppel to alienee and held that the principle needs to be used if transfer was made before regrant and subsequently holder got the right to get regrant. The Apex Court held that if there alienee already in possession of the property then he cannot be ejected if the provisions of Watan Abolition Act or Inam Abolition Act are considered. It can be said that the policy of the Government changed to remove the difficulties which were faced due to alienation made by occupants against whom there were conditions imposed at the time of regrant of the land. Such provisions can be found in Maharashtra Inferior Village Watan Abolition Act, 1959, in section 3 of the Act. Thus, now regularization of such transfers is possible and this policy of the Government cannot be ignored. On the point of entitlement of person in possession of Watan property, there is one more case of this Court reported as **1995 (1) Mh.L.J. 732 [Shankar Ragnath Kulkarni Vs. State of Maharashtra and Ors.]**. This case is on the provisions of the Act and also on Act of 1874. In that case also when the holder of Watan failed held to pay occupancy price within the prescribed time,

the Collector granted the lands to the persons in occupation of land as tenant for several years and this order of the Collector was held to be justified.

36) This Court holds that such matters are matters between the State on one hand and holder and transferee on the other. It is open to the State to take policy decision as mentioned above. In view of the power which is available with the State, it can be said that the transfer made prior to coming into force of the Act like in the present matter and transfers made after coming into force of the Act cannot be distinguished as that will amount to discrimination. In the past also, subject to sanction, permission of the State Government, the transfer was possible as already mentioned. After coming into force of the Act, similar procedure was there for getting the permission of the authority of the State Government for alienating occupancy rights which were subject to some conditions.

37) In view of the aforesaid position of law and peculiar facts of the present matter, this Court holds that the revenue authority and also the learned Single Judge of this Court have committed mistake both on facts and on law. This Court holds that it was not possible to interfere in the order made by revenue authority in the year 1956 in favour of appellants by which the occupancy rights

were granted to the appellants. In the result, following order is made :-

O R D E R

The Letters Patent Appeal is allowed. The judgment and order of the learned Single Judge of this Court delivered in Writ Petition No.264 of 1989 dated 14th February, 2002 and also the order made on Review Application No.701 of 2003 are hereby set aside. The writ petition of the present Appellants is allowed. The orders made by the Mamlatdar, appellate authority and the revisional authority, which were under challenge in the writ petition are hereby set aside. The appeal which was filed by Respondent Nos.8 before the authority stands dismissed.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/