

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13596 OF 2017

- | | |
|---|---|
| 1. Shri Piraji Bhujangrao Shelke,
(deceased)
Through his legal heir-- |]
]
]
] |
| 1A Jaysingh Piraji Shelke,
Age 80 years, Occ. Agriculturist |]
]
] |
| 2 Shri Shahaji Piraji Shelke,
(deceased)
Through his legal heir-- |]
]
]
] |
| 2A Shri Vikas Shahaji Shelke,
Age 44 years, Occu. Agriculturist. |]
]
] |
| 2B Shri Subhash Shahaji Shelke,
Age : 42 years, Occu. Agriculturist |]
]
]
] |
| 2C Smt. Minakshi Rangnath Shirsat
Age 46 years, Occu. Agriculturist
Nos.2A to 2C are residing at -
Sadhana Society, In front of Shriram
Institute, Solapur – Pune Road,
Hadapsar, Pune 411 028. |]
]
]
]
]
]
]
]
] |
| 3 Shri Narsingh Piraji Shelke,
Age 73 years, Occu. Agriculturist |]
]
] |
| 4 Shri Parshuram Piraji Shelke,
Age 71 years, Occu. Agriculturist. |]
]
]
] |
| 5 Smt.Shantabai Bhausahab Nandkhile,
(deceased)
Through legal heir |]
]
]
] |
| 5A Shri Shivaji @ Balu Bhausahab Nandkhile,
Age 53 years, Occu. Agriculturist |]
]
] |
| 5B Shri Chaba Bhausahab Nandkhile
Age 54 years, Occu. Agriculturist |]
]
]
] |
| 5C Smt. Sushila Shivaji Hinge,
Age 60 years, Occu. Household
Nos. 6A to 6C are residing at - |]
]
]
] |

- Kedgaon, Taluka Daund,]
District Pune.]
- 6 **Smt. Ratan @ Sushila Maruti Shitole,**]
Age 59 years, Occu. Household,]
R/at – Kolwadi, Taluka Haveli,]
District Pune.]
- 7 **Smt. Malan Namdeo Dhamdhere,**]
R/at – Kolwadi, Taluka Haveli,]
District Pune.]
- 8 **Shri Krishnarao Piraji Shelke,**]
(deceased) through legal heirs,]
- 8A **Shri Sachin Krishnarao Shelke,**]
Age 35 years, Occu. Agriculture,]
R/at – Hadapsar, Pune.]
- 8B **Shri Amit Krishnarao Shelke,**]
Age 32 years, Occu. Agriculture.]
R/at – Hadapsar, Pune]
- All through Power of Attorney Holders]
Shri Vikas Shahaji Shelke]
Age – Adult, Occ – Agriculturist]
R/at Kedgaon, Tal- Daund, Dist- Pune.].. Petitioners

Versus

- 1) **Mr. Shaikh Abdul Hamid Rehman,**]
R/at – C-8, Tatya Tope Society, Wanwadi,]
Pune 411 048.]
- 2) **Tahasildar, Daund, Tal- Dound,**]
Dist. Pune.]
- 3) **Sub-Divisional Officer,**]
Baramati Sub-Division at Baramati,]
Dist. Pune.].. Respondents

Mr. Drupad Sopan Patil, for petitioners.

Mr. Prasad S. Dani, Senior Advocate i/b Abhijit Purushottam Kulkarni for respondent No.1.

Mr. P.V. Nelson Rajan, AGP for respondent Nos.2 and 3.

CORAM : N.J. JAMADAR, J.
Date : 22nd JANUARY 2020

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, the petition is heard finally.
2. The challenge in this petition is to a judgment and order dated 30th November 2015 passed by the learned Member, Maharashtra Revenue Tribunal, Pune ('MRT') in Tenancy Revision Application No.197 of 2005, whereby the learned Member was persuaded to dismiss the revision preferred by the petitioners and confirm the order dated 24th October 2005 passed by Sub-division, Baramati in Tenancy Appeal No. 5 of 2002, whereunder the Sub-Divisional Officer had restricted the entitlement of the petitioners to 2 Hectors 78 Ares only under section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Act') and fixed the purchase price at Rs. 4,342/-. The ALT was further directed to take possession of the rest of the land admeasuring 6 Hectors 2 Ares and dispose of the same in accordance with the provisions contained in section 32E and 32P of the Act.

3. The litigation has a chequered history spanning over sixty years. A multiple proceedings before the authorities under the Act were taken during the intervening period. There were as many as three remands to the authorities. The question which falls for consideration in this petition revolves around the entitlement of the tenant to purchase the suit land in view of the ceiling prescribed under the Act. The background facts necessary for the determination of this petition can, however, be summarized as under :-

[A] Piraji, the predecessor-in-title of the petitioners was the protected tenant of the land bearing survey No.262 (Gat No.664) situated at Kadegaon, Tal-Daund, Dist. Pune ('the suit land'). The predecessor-in-title of the respondent No.1 was the owner of the suit land. In a proceeding initiated under section 32G of the Act, the ALT passed an order on 12th May 1963 holding that the said Piraji was not entitled to purchase the suit land as he had not given notice within one year

of having come in possession (1959-60), under section 32-O of the Act.

The tenant assailed the said order in Tenancy Appeal No. 173 of 1963 before the Collector, Pune. The said Appeal came to be allowed by the judgment and order dated 24th September 1963 and the matter was remitted back to the ALT for a fresh enquiry under section 32G of the Act.

[B] On remand, the ALT, by judgment and order dated 30th July 1964 declared Piraji a protected tenant in respect of half portion of survey No.262 admeasuring 8 Hectors and 72 Ares and fixed the purchase price.

[C] The landlord carried the matter in appeal before the Special Deputy Collector, in Tenancy Appeal No. 183 of 1964. Initially, the said appeal came to be dismissed as abated by the Appellate Authority on 24th October 1966. The said order of dismissal was assailed by the landlord in Revision

Application No. 12 of 1967 before the MRT. The MRT, by judgment and order dated 19th August 1967, quashed and set aside the order of abatement and remitted the appeal back to the Appellate Authority. The appeal was restored and renumbered as Appeal No. 57 of 1967.

[D] The Appellate Authority, by its judgment and order dated 30th April 1968, was persuaded to allow the appeal and remand the matter back to the ALT, Daund for inquiry in respect of the actual holding of the tenant.

[E] In the second round, the ALT, by judgment and order dated 26th February, 1969, held that Piraji was entitled to purchase 8 Hectors and 72 Ares and fixed the purchase price of the suit land.

[F] The landlord again carried the matter in appeal by preferring Tenancy Appeal No. 37 of 1969. The second remand of the tenancy appeal followed as the Sub-divisional Officer, Baramati,

by judgment and order dated 4th November 1969, remitted the matter back to ALT for fresh inquiry.

[G] In the third round, the ALT, by judgment and order, dated 30th June 1982, held that Piraji was entitled to purchase only 2 Hectors and 78 Ares, i.e., 6 Acres and 8 Gunthas out of the suit land. This order was not assailed by the landlord.

[H] However, being aggrieved by the order which restricted the entitlement of the tenant to 2 Hectors and 78 Ares, Piraji carried the matter in Appeal in Tenancy Appeal No.48 of 1982. The Appellate Authority, by judgment and order dated 6th September 1982, was persuaded to overturn the finding of ALT and declare that Piraji was entitled to purchase the entire suit land.

[I] Now, the landlord carried the matter in revision before the MRT. By judgment and order dated 11th March 1987 in Tenancy Revision No. 14 of 1985, the learned Member of the Tribunal was persuaded to partly allow the appeal and remit the

matter back to ALT to decide the holding of the tenant by taking into consideration the effect of mutation entry No.4821 dated 1st September 1960 effecting partition of the ancestral property of the tenant. The entitlement of the landlord for the restoration of the land was directed to be decided separately.

[J] In the fourth round, the ALT, after taking into account the land which came to the share of Piraji in pursuance of mutation entry No. 4821, held that the holding of the tenant including the area of the entire suit land was below the ceiling prescribed under the Act and, thus, the tenant was entitled to purchase the entire suit land.

[K] At the instance of landlord, an appeal being Tenancy Appeal No. 23 of 1997 came to be filed. Another remand followed. The Sub-Divisional Officer, Baramati, by judgment and order dated 21st December 1999, directed the ALT to consider afresh holding of the tenant. The Sub-Divisional

Officer, however, upheld the finding recorded by the ALT that the landlord has failed to prove his claim for restoration of land. The landlord did not assail this part of the order passed by the Sub-Divisional Officer.

[L] In the fifth round of litigation, the ALT, by judgment and order dated 7th January 2002, held that Piraji was protected tenant and he was entitled to purchase the entire suit land.

[M] Unsatiated and true to the litigative spirit exhibited by the parties, the landlord preferred Tenancy Appeal No. 5 of 2002 before the Sub-Divisional Officer, Baramati. By judgment and order dated 24th October 2005, the Appellate Authority was persuaded to partly allow the appeal and hold that the tenant was entitled to purchase only 2 Hectors and 78 Ares, i.e., 6 Acres and 8 Gunthas from out of the suit land and rest of the land be dealt in accordance with the

provisions contained in section 32E and 32P of the Act.

[N] Being aggrieved, the petitioners approached the MRT in Tenancy Revision No.197 of 2005. By judgment and order dated 21st July 2014, the learned Member, MRT brought all the efforts of Piraji and his successors, over the years, to a naught by declaring that Piraji was never a protected tenant of the suit land and directed that the possession of the suit land be restored to the landlord under section 32P of the Act.

[O] The petitioners invoked the writ jurisdiction of this Court. In Writ Petition No.9318 of 2014, this Court, by judgment and order, dated 14th August 2015, allowed the petition holding, *inter-alia*, that there was no dispute about the status of Piraji as protected tenant and the said fact was admitted by the landlord and attained finality in the previous proceedings and the tribunal exceeded its jurisdiction in granting the relief of restoration

of possession to the landlord as the proceedings before the learned Member were restricted to the entitlement of the tenant to purchase the suit land. Thus, the matter was relegated back to MRT for a fresh consideration with a specific direction that the Tribunal should restrict itself as regards entitlement of the petitioners and shall not embark upon an enquiry as to whether Piraji was a protected tenant or the landlords are entitled to restoration of possession.

[P] On remand, the learned Member was persuaded to dismiss the revision and uphold the order passed by the Sub-Divisional Officer, Baramati on 24th October, 2005, as indicated above. The learned Member was of the view that, Piraji, as a member of joint family, was entitled to an interest in agricultural lands on the tiller's day and the fact that the actual partition took place in the year 1960 cannot be a ground to exclude the said land from the holding of the tenant. Thus

construed, the Sub-Divisional Officer was justified in restricting the entitlement of the tenant to an area admeasuring 2 Hectors and 78 Ares, so as to reach upto the ceiling, opined the learned Member of the Tribunal.

4. Being aggrieved by and dissatisfied with the aforesaid reasoning and order of the Tribunal, the petitioners have again invoked the writ jurisdiction of this Court.

5. I have heard Mr.Drupad Sopan Patil, the learned counsel for the petitioners, Mr.Prasad S. Dani, the learned Senior Advocate for respondent No.1 and Mr.P.V. Nelson Rajan, the learned A.G.P. for respondent Nos.2 and 3, at some length. Perused the material on record including the judgments and orders referred to hereinbefore.

6. Mr. Patil mounted a multifold challenge to the impugned judgment and order of the Tribunal. It was submitted that the Tribunal committed a manifest error in holding that the ancestral property which came to be allotted to Piraji in the year 1960 could

be taken into account for determining the entitlement of the tenant to purchase the land. Amplifying the submission, it was urged by Mr.Patil that the entitlement of the tenant is required to be considered as on the tiller's day. The material on record indicates that as on the tiller's day, the holding of Piraji was much below the ceiling and the entire suit land could be legitimately purchased by Piraji. In view of the settled legal position that the vesting of the land statutorily occurs on the tiller's day, the Tribunal could not have taken into account the agricultural land which came to be subsequently allotted to Piraji on account of partition. Mr.Patil made a strenuous effort to draw home the point that the land, which was owned by the joint family, of which the petitioners were a part, could not have been held to be then under personal cultivation of Piraji. Drawing attention of the Court to the various provisions of the Act especially the definitions of "ceiling area" and "joint family", it was submitted that the impugned order suffers from legal infirmity. Lastly, it was submitted that there are apparent factual errors in computation of the holding of Piraji.

7. Elaborating the last challenge, Mr. Patil would urge that the Sub-Divisional Officer had fallen into an error in holding that Piraji

had acquired entire land bearing Gat No. 255 admeasuring 9 Acre and 13 Gunthas. In fact, Piraji had purchased only half share from out of the said land. Thus, at the most, an area admeasuring 4 Acres and 26.5 Gunthas could have been considered, on the said count. Moreover, the Sub-Divisional Officer, committed apparent errors in recording the area of land bearing Survey No.187/11 as 9 Acres and 13 Gunthas instead of 1 Acre and 10 Gunthas which the said land correctly admeasures. Despite the aforesaid glaring errors having been brought to the notice of the learned Member of the Tribunal, those errors were unjustifiably overlooked by the learned Member. On this count also, according to the learned counsel for the petitioners, the impugned order deserves to be quashed and set aside.

8. Per contra, Mr. Dani would urge that the petitioners cannot be heard to agitate the issues of factual nature. Having regard to the revisional jurisdiction, which is indisputably of limited nature, the finding of facts cannot be legitimately assailed before the Tribunal, much less before this Court in exercise of the writ jurisdiction, urged Mr. Dani. On the aspect of the computation of the holding of Piraji, Mr. Dani laid emphasis on the fact that the

finding of MRT in MRT/P.II/14/85 [TNC. B.63/85]; Pune, dated 11th March 1987 that the holding of Piraji was to be determined after taking into account the land allotted to Piraji in the partition, as evidenced by mutation entry No. 4821, reached finality as the said order was not assailed by the petitioners. Thus, according to Mr. Dani, the petitioners are precluded from re-agitating the said ground. It was further submitted that the Sub-Divisional Officer as well as MRT were justified in holding that Piraji was entitled to only 2 Hectors and 78 Ares lands out of the suit land as any portion of the land in excess thereof would breach the ceiling prescribed under the Act. The claim of the petitioners that though Piraji was a member of the joint Hindu family, yet, in the absence of partition by metes and bounds the land could not have been taken into account is in teeth of the provisions of the Act, especially the definitions of “person” and “personal cultivation”, submitted Mr. Dani.

9. To begin with, it may be apposite to keep in view the nature of the revisional jurisdiction conferred upon the Tribunal under the Act. To retain emphasis and appreciate the contours of the jurisdiction of MRT, section 76 is extracted below :

“S. 76 Revision : (1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, 1 an application for revision may be made to the [Maharashtra Revenue Tribunal] constituted under the said Act against any order of the Collector on the following grounds only;

(a) that the order of the Collector was contrary to law;

(b) that the Collector failed to determine some material issue of law; or

(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this section the [Maharashtra Revenue Tribunal] shall follow the procedure which may be prescribed by rules made under this Act after consultation with the [Maharashtra Revenue Tribunal].”

10. From the phraseology of Section 76(1) it becomes abundantly clear that the MRT is a Tribunal of limited jurisdiction. The grounds on which MRT may entertain a challenge to, and, if found necessary, interfere with, an order passed by the Collector under the Act of 1948 have been specifically spelled out by Clauses (a) to (c). The jurisdiction of MRT is thus circumscribed by the text of sub-section (1) of Section 76.

11. Conversely, it is imperative to note that the legislature has even not vested a general power of revision in MRT. On the other hand, the revisional jurisdiction is restricted to correct what can

properly be termed as errors of law or substantial defect in procedure entailing miscarriage of justice.

12. While construing the scope and extent of the revisional powers of the Tribunal under Section 76 of the Act, in the case of *Rahimatulla Rahiman Sarguru vs. Bapu Hari Mane and another*,¹ the Supreme Court has held that the powers of revision entrusted to Maharashtra Revenue Tribunal under Section 76 of the Bombay Tenancy and Agricultural Lands Act, are practically identical with the second appellate power of the High Court under Section 100 of Code of Civil Procedure, before it was amended by Act 104 of 1976.

13. In the light of the aforesaid nature of the revisional jurisdiction, it has to be determined whether the learned Member, MRT committed a jurisdictional error in not interfering with the computation of the holding of Piraji made by the Sub-Divisional Officer. In the judgment and order impugned before the Tribunal, the Sub-Divisional Officer arrayed two tracts of land to the credit of Piraji. First, the ancestral land, which came to be allotted to

1 1979(4) SCC 391.

Piraji admeasuring 14 Acres and 18 Gunthas. Second, the lands which were acquired by Piraji, being Survey Nos.76/1, 77/2, 275, 255 and 187/11 admeasuring 26 Acres and 24 Gunthas. The Sub-Divisional Officer, thus, held that to reach the ceiling of 48 Acres prescribed under the Act, the shortfall was of 6 Acres and 38 Gunthas. Thus, the tenant was entitled to purchase an area admeasuring 2 Hectors and 78 Ares only.

14. The learned Member of the Tribunal was not persuaded to agree with the submission on behalf of the petitioners that the ancestral lands, which were partitioned in the year 1960, as evidenced by Mutation Entry No.4821, dated 1st September 1960 could not have been arrayed against the tenant as on the tiller's day, the tenant was not in actual cultivation of those parcels of land. The learned Member was of the view that the fact that those lands were available on the tiller's day and one of the member of the joint family was cultivating those lands was sufficient to include those lands in the holding of the tenant. It was thus held that in absence of any controversy over the fact that the tenant was a member of the joint family and the share of the tenant therein was

determined, the said share was bound to be added in the holding of the tenant. Whether this approach of the Tribunal is justifiable?

15. At this juncture, it would be necessary to note certain provisions of the Act, 1948. Section 32A of the Act provides that the tenant shall be deemed to have purchased the land under section 32 up to the ceiling area, which reads as under :

“32A. Tenants deemed to have purchased upto ceiling area.-

A tenant shall be deemed to have purchased land under section 32,-

(1) in the case of a tenant who does not hold any land as owner but holds land as tenant in excess of the ceiling area, upto the ceiling area;

(2) in the case of a tenant who holds land as owner below the ceiling area, such part of the land only as will raise his holding to the extent of the ceiling area.”

Ceiling is defined in section 2(d), as under :

“(2D) "ceiling area" means in relation to land held by a person whether as an owner or tenant or partly as owner and partly as tenant the area of land fixed as ceiling area under section 5 or 7.”

Section 5 of the Act prescribes “Ceiling Area” in the following terms :

“[5. Ceiling area - (1) For the purposes of this Act, the ceiling area of lands shall be,-

.....

(a) 48 acres of jirayat land or,

.....

(c) 12 acres of perennially irrigated land.”

Indisputably, in the case at hand, the suit land is a Jirayat land. Thus, the ceiling would be 48 Acres.

16. As the controversy revolves around the extent of the holding of the tenant as on the tiller's day, it would be advantageous to note the definitions of “Joint Family”, “Person” and “Personal Cultivation” under the Act :

“[(7A) "joint family" means an undivided Hindu Family, and in case of other persons, a group or unit the members of which are by custom joint in estate or residence;]

(11) "Person" includes [a joint] [* *] family;*

2(6) "to cultivate personally" means to cultivate land on one's own account-

- (i) by one's own labour, or*
- (ii) by the labour of any member of one's family, or*
- (iii) under the personal supervision of oneself or any member of one's family, be hired labour or by servants on wages payable in cash or kind but not in crop share, being land, the entire area of which-*

- (a) is situate within the limits of a single village, or*
- (b) is so situated that no piece of land is separated from another by a distance of more than five miles, or*
- c) forms one compact block.*

Provided that the restrictions contained to clauses (a), (b) and (c) shall not apply to any land,-
(i) which does not exceed twice the ceiling area,
(ii) upto twice the ceiling area, if such land exceeds twice the ceiling area.

Explanation I. - A widow or a minor, or a person who is subject to physical or mental disability, or a serving member of the Armed Forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants.

Explanation II.- In the case of a joint family, the land shall be deemed to have been cultivated personally, if it is cultivated by any member of such family;]”

17. On a cumulative reading of the aforesaid definitions, it becomes evident that the definition of “person” under the Act is inclusive of a “joint family”. The joint family, in turn, is defined as an undivided Hindu Family, and in case of other persons, a group or unit the members of which are by custom joint in estate or residence. This definition of joint family has a bearing on the legal connotation of the term “Personal Cultivation”.

18. Sub-section (6) of section 2 includes within its fold, cultivation of land on one's own account, firstly by one's own labour, secondly, by the labour of any member of one's family, and, thirdly, under the personal supervision of oneself or any

member of one's family by hired labour or by servant. It is pertinent to note that Explanation II further provides that in the case of a joint family, the land shall be deemed to have been cultivated personally, if it is cultivated by any member of such family. The personal cultivation by the labour of a member of one's family, which is implicit in clause (ii) of sub-section (6) is made explicit by Explanation-II to the said sub-section.

19. The learned counsel for the petitioners submitted that the definition of “Person” under the Act, 1948 is required to be construed in the backdrop of the object of the Act and the holding of a person must be computed with reference to the holding on the tiller’s day. The subsequent acquisition of land by partition or otherwise is of no relevance for the purpose of the determination of holding of the tenant. This submission was premised on the ground that in view of the peremptory language of the provisions contained in section 32G of the Act, the land is deemed to have been vested in the tenant on the tiller’s day. To lend support to this submission, the learned counsel for the petitioners placed reliance on the Constitution Bench judgment of the Supreme Court in the case of **1. Shri Ram Narain Medhi & Ors. Vs. State of**

Bombay², wherein, it was enunciated that :

“39The title of the landlord to the land passes immediately to the tenant on the tiller's day and there is a completed purchase or sale thereof as between the landlord and the tenant. The tenant is no doubt given a locus penitentiae and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. It is only by such a declaration by the Tribunal that the purchase becomes ineffective. If no such declaration is made by the Tribunal the purchase would stand as statutorily effected on the tiller's day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the Tribunal. If the tenant commits default in the payment of such price either in lump or by instalments as determined by the Tribunal, Section 32M declares the purchase to be ineffective but in that event the land shall then be at the disposal of the Collector to be disposed of by him in the manner provided therein. Here also the purchase continues to be effective as from the tiller's day until such default is committed and there is no question of a conditional purchase or sale taking place between the landlord and tenant. The title to the land which was vested originally in the landlord passes to the tenant on the tiller's day or the alternative period prescribed in that behalf. This title is defeasable only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal. The tenant gets a vested interest in the land defeasable only in either of those cases and it cannot therefore be said that the title of landlord to the land is suspended for any period definite or indefinite. If that is so, there is an extinguishment or in any event a modification of the landlord's right in the estate well within the meaning of those words as used in Article 31-A(1)(a).”

² AIR 1959 SC 459

20. The learned counsel for the petitioners also banked upon a judgment of the Supreme Court in the case of ***Ramanlal Bhailal Patel & Ors. Vs. State of Gujarat***³, wherein, the Supreme Court has considered the legal connotation of the term “person” with reference to Gujarat Agricultural Lands Ceiling Act, 1960. In the said case, the five appellants therein along with their respective spouses had purchased 172 Acres and 36 Gunthas of agricultural land. The ten purchasers had agreed amongst themselves that each of the purchasers would divide the lands equally as nearly as possible. The Deputy Collector, by an order, dated 23rd August 1984, held that a group of persons or association of persons purchasing agricultural land together, has to be treated as 'a person' under the Act and therefore they could jointly hold only one unit (36 Acres) in view of the provisions of section 6(1) of the Ceiling Act and declared the rest 145 A, 31G land as surplus. Before the Supreme Court, *inter-alia*, the following question arose for consideration :

“Q.: Whether co-ownership, per se, is an 'association of persons/body of individuals' and therefore, constitutes a 'person'?”

21. The Supreme Court answered the question as under :

3 (2008)5 SCC 449

“29 We therefore, allow this appeal, set aside the orders of the High Court as also that of the authorities below. As a consequence, we direct the Mamlatdar :

(a) to decide whether any of the ten purchasers is a non-agriculturist and if so the extent of transfer in favour of such non-agriculturist which will be invalid and pass consequential orders in respect of such land in accordance with law;

(b) to determine whether any of the ten purchasers who are agriculturists, holds excess land by considering their share in the lands purchased as co- owners, with other lands as provided in sections 6 to 8 of the Ceiling Act, and pass appropriate orders in accordance with law.”

22. The learned counsel for the petitioners endeavoured to impress upon the Court that the aforesaid pronouncement governs the facts of the instant case. I find it rather difficult to accede to the said submission. Not only the factual context is different but even the governing provision of law is distinct.

23. In the case at hand, in view of the explicit provisions in the Act which render the cultivation by the labour of a member of one's family, personal cultivation, the submission that though tenant Piraji was a member of the joint family, and was, in fact, allotted a share therein, yet, the said holding cannot be counted against the tenant for the reason that the family was joint family

on the tiller's day and there was no partition by metes and bounds cannot be countenanced for reasons more than one. Firstly, it is not disputed that the joint family of which Piraji was the member held the land on the tiller's day. Secondly, the cultivation of the land by a member of the joint family is not put in contest. Thirdly, on a conjoint reading of the provisions contained in the Act, especially, the definitions of the "person", "joint family" and "to cultivate personally", the non-availability of the land held in a joint family for personal cultivation of the tenant, by itself, does not imply that the land so held is out of the purview of the holding of the tenant. Lastly, it is irrefutable that the tenant had an undivided interest in the land held by the joint family. The provisions of section 32A of the Act cover a situation where the tenant owns the land as a co-owner as well. Any other view, would defeat the object of prescribing the ceiling under section 5 of the Act.

24. In the aforesaid view of the matter, the Sub-Divisional Officer and the learned Member, MRT cannot be said to have committed any error in considering the ancestral lands which came to be allotted to the tenant Piraji under a partition in terms of the mutation entry No. 4821.

25. This propels me to the challenge on behalf of the petitioners to the impugned order based on certain factual errors. A two-pronged submission was advanced on behalf of the petitioners. Firstly, the Sub-Divisional Officer has recorded incorrect acreage of the lands which were acquired by Piraji. To this end, the attention of the Court was invited to the table in the order passed by the Sub-Divisional Officer. It was submitted that the total area of Survey No. 77/2 was 1 Acre 07 Gunthas only. Out of which Piraji had purchased half portion. Yet, the Sub-Divisional Officer considered 63.½ Gunthas as the holding of the petitioners in the said Survey No. 77/2 which is far in excess of the total area of the said survey number. The attention of the Court was also invited to the entry against survey No. 187/11 wherein, an area of 9 Acre 13 Gunthas was shown as against the actual area of 1 Acre 10 Gunthas.

26. In all fairness to the learned counsel for the petitioners, the aforesaid mistakes seem to have been corrected by the appellate authority itself and an area of 23 Gunthas and one Acre and 10 Gunthas, respectively, appears to have been taken into account as against Survey No. 77/2 and 187/11.

27. The second challenge as regards Survey No.255 which admeasures 9 Acres 13 Gunthas, however, seems to have an element of substance. The petitioners have taken a ground that Piraji had acquired only half share of Survey No.255. Thus, attribution of entire area of 9 Acre and 13 Gunthas by the Sub-Divisional Officer was wholly unjustifiable. Before this Court, a copy of the 7/12 extract of Survey No. 255 was sought to be placed on record. It indicates that the area of the said survey number is 9 Acre 13 Gunthas. But the claim of the petitioners that the deceased Piraji had purchased only half portion of the said survey number does not become explicitly clear from the said record of right. However, in the previous proceedings, the authorities seem to have considered different areas in respect of the said Survey No. 255. In the judgment and order passed in Tenancy Appeal No. 48 of 1982, the appellate authority had considered an area admeasuring 4 Acres and 26 Gunthas in respect of survey No. 255. In the order passed by ALT in the year 2002 in the proceedings, on remand bearing No.32/P/Remand/10/2000, the whole area of survey No. 255 admeasuring 9 Acre 13 Gunthas was reckoned as a part of the holding of the deceased Piraji. In the said order, ALT had, however, not considered the other survey numbers. Thus apart from

the order passed by the Sub-Divisional Officer, which was impugned before the tribunal, in the previous orders also there is discrepancy as regards the exact area held by Piraji in Survey No. 255.

28. In the backdrop of the aforesaid position, the question as to whether this aspect needs to be further examined warrants consideration. Two circumstances are of determinative significance.

29. One, under section 32A of the Act, a tenant is deemed to have purchased the land to the extent so as to raise total holding to the ceiling limit. Two, in view of the orders passed by the authorities that the landlord-respondents are not entitled to restoration of the possession of any portion of the suit land, the controversy boils down to the area which the petitioners would be required to surrender for disposal in accordance with the provisions contained in section 32E and 32P of the Act.

30. If it is held that Piraji has purchased only half portion of the land bearing survey No. 255, then the tenant would be entitled to purchase further land admeasuring 4 Acres 26.5 Gunthas. The said

area cannot be said to be negligible, by any standard.

31. Thus, when a discrepancy which has a bearing on the rights of the parties, which are protected by the peremptory and ameliorative provisions of the Act, 1948 is brought to the notice of the Court, it may not be appropriate to discard the same on the premise that the factual errors may not be agitated before the writ Court, especially when the said discrepancy revolves around the matter of correct computation of the holding. However, having regard to the chequered history of the litigation, as extracted above, a general remand to the appellate authority may not be advisable. It would open another round of litigation. I am persuaded to take this view for the reason that the claim of the petitioners that Piraji had purchased only half portion of the survey No. 255 is not supported by a document of clinching evidentiary value.

32. In these circumstances, as the matter revolves around the correct computation of the area of the land bearing Survey No. 255, which Piraji acquired, it would be in the fitness of things to give liberty to the petitioners to make an application to the Sub-

Divisional Officer for necessary correction in the order passed on 24th October 2009, with regard to the area of survey No.255 and, consequently, the area which the tenant would be entitled to purchase so as to raise total holding to the ceiling limit. It is, however, made clear that such an application shall be supported by a copy of the instrument under which Piraji had acquired the land bearing Survey No. 255 and the certified copies of the record of right in respect of the said survey number. If the Sub-Divisional Officer, on a preliminary examination of application and the documents filed in support thereof, is satisfied that the matter warrants examination so far as the extent of the land held by Piraji in Survey No. 255, the Sub-Divisional Officer may consider this aspect afresh and pass appropriate orders. If the Sub-Divisional Officer comes to the conclusion that Piraji had acquired only half portion of survey No. 255, then necessary corrections be made in the order passed including the area which the tenant is entitled to purchase and the price thereof.

33. The conspectus of the aforesaid consideration is that the petition deserves to be partly allowed to the extent stated in the preceding paragraph.

34. Thus, the petition stands partly allowed in the following terms :

(i) The petitioners are at liberty to make an application to the Sub-Divisional Officer for necessary corrections in the order passed on 24th October 2005, with regard to the area of survey No.255 and, consequently, the area which the tenant would be entitled to purchase so as to raise total holding to the ceiling limit, within a period of six weeks of the uploading of this judgment and order.

(ii) Such an application shall be supported by a copy of the instrument under which Piraji had acquired the land bearing Survey No. 255 and the certified copies of the record of right in respect of the said survey number.

(iii) If, upon perusal of the application, the Sub-Divisional Officer is satisfied that the matter warrants examination, so far as the extent of the land held by Piraji in Survey No.255, he shall consider the matter afresh and pass appropriate

orders within a period of two months from the date of receipt of the said application.

(iv) If the Sub-Divisional Officer comes to the conclusion that Piraji had acquired only half portion of Survey No. 255, then necessary corrections be made in the order dated 24th October 2005 including the area which the tenant is entitled to purchase and the price thereof.

(v) If the petitioners do not make the application within the aforesaid period or the Sub-Divisional Officer, upon consideration of the such application, if made, finds no substance in the contentions of the petitioners and/or rejects the application, the order passed by the Sub-Divisional Officer, dated 24th October 2005 shall become operative and enforceable and the authorities may enforce the said order in accordance with the provisions of the Act and Rules thereunder.

No costs.

Rule is made absolute in aforesaid terms.

(N. J. JAMADAR, J.)