

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1337 OF 1998**

Shri. Sagaru Laxman Shinde
since deceased by his legal heirs and
representatives
i. Balkrishna alias Dhondiram Sagaru
Shinde (Koli)
ii. Bhagubai Ananda Mahind
iii. Suman Bhanudas Dhokale
iv. Pandurang Anan Mahind
v. Santosh Bhanudas Dhokale

*.... Petitioners
(Org. Applicants Tenants)*

-Versus-

1. Shri Mukund Shankar Kurlekar
since deceased through L.R.s
1A. Mr. Annat Shankar Kurlekar
1B. Mr. Surendra Haribhau Londhe
1C. Smt. Varsha Vibhakar Phatak
1D. Smt. Unnati Ramdas Kurlekar
1E. Smt. Sunita Prafulla Deshpande
1F. Smr. Sujata Sudhakar Deshpande
1G. Smt. Sarvari Jayanti Kale

2. Shri Raosaheb alias Rajabhau
Shankar Kurlekar
since deceased through L.R.s
2A. Smt. Uttara Shankar Kurlekar

*.... Respondents
(Org. Opponents)*

Mr. Rupesh K. Bobade *with Ms. Shraddha K. Nakadi, for the Petitioner.*

Mr. Sushant Prabhune, *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Reserved On : 7 February 2025.

Pronounced On : 18 February 2025.

JUDGMENT :

A. THE CHALLENGE

1) By this petition, Petitioners have challenged the order dated 19 November 1997 passed by the Maharashtra Revenue Tribunal, Pune allowing Revision Application No. MRT.SS.101/1991 filed by the Respondents and setting aside the judgment and order dated 28 February 1991 passed by the Assistant Collector, Walwa, District-Sangli. The Assistant Collector in turn had allowed the Appeal preferred by the Petitioners and while setting aside the order dated 13 May 1988 passed by the Tehsildar and Agricultural Lands Tribunal, Khanapur, had directed fixation of purchase price of the land by recognizing the right of the Petitioners to purchase the same. Petitioners are thus aggrieved by the decision of the Maharashtra Revenue Tribunal in not recognizing their right to purchase the tenanted land under the provisions of Section 32G read with Section 32F of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**the Act**).

B. FACTS

2) Land bearing Survey No. 285/1 admeasuring 4 Hectares 35 Ares plus 3 Ares pot-kharaba situated at Village-Devarashtra, Taluka-Khanapur, District-Sangli is the subject matter of controversy in the present petition, which is hereinafter referred to as '**the tenanted land**'. One Shankar Govind Kurlekar was the owner of the tenanted land. It

appears that a registered Partition Deed was executed on 4 August 1956, under which the tenanted land came to the share of Shankar's sons, Mukund Shankar Kurlekar (*Mukund*) and Raosaheb alias Rajabhau Shankar Kurlekar (*Raosaseb*). Thus, on the Tiller's Day of 1 April 1957, Mukund and Raosaheb had become owners of the tenanted land. The names of Mukund and Raosaheb were mutated to the revenue records in respect of the tenanted land vide Mutation Entry No. 2899 certified on 8 April 1957. Shankar apparently passed away in the year 1960. Petitioners' predecessor filed proceedings under the provisions of Section 32G of the Act in the year 1963. In those proceedings, statements of the tenant were recorded on 8 February 1963 and 23 February 1963 in which he stated that Mukund and Raosaheb were minors and therefore fresh proceedings would be initiated by issuing notice to them after attaining the age of majority. On account of this statement being made by the tenant, the ALT dropped proceedings initiated in the year 1963 observing that right of the tenant to purchase the tenanted land was postponed till expiry of the period mentioned in Section 32F(1) of the Act. As a matter of fact, Mukund had already attained majority on 8 February 1960, his date of birth being 8 February 1942. Raosaheb attained majority on 18 February 1964, his date of birth being 18 July 1946.

3) It appears that after attaining the age of majority by Raosaheb on 18 February 1964, neither any notice was issued by the tenant nor proceedings were initiated expressing intention to purchase the tenanted land for a considerable period of time. The application for fixation of purchase price of the land under the provisions of Section 32G of the Act was filed on 4 December 1986 by Sagaru Laxman Shinde (**the tenant**). The ALT conducted an enquiry and proceeded to reject the

application for fixation of purchase price holding that the tenant had failed to issue notice within a period of 2 years of attaining the majority by the landlord and that therefore the tenant lost right to purchase the tenanted land under Section 32F of the Act. The ALT accordingly refused to fix the purchase price holding that purchase of the tenanted land by the tenant had become ineffective and directed that the proceedings under Section 32P of the Act be initiated for return of the land to the landlords by making mutation entries in the records of rights. The ALT's order dated 13 May 1988 was challenged by the tenant by filing Tenancy Appeal No. 3/1988 before the Assistant Collector, Walwa, District-Sangli under the provisions of Section 74 of the Act. The Assistant Collector proceeded to allow the Appeal holding that filing of proceedings for fixation of purchase price of the tenanted land itself amounts to issuance of intimation for purchase of the land by the tenant under the provisions of Section 32F of the Act. The Assistant Collector accordingly set aside ALT's order dated 13 May 1988 and remanded the proceedings to the ALT for fixation of purchase price of the tenanted land.

4) Landlords got aggrieved by the order dated 28 February 1991 passed by the Assistant Collector and filed Revision Application No. MRT.SS.101/1991 before the Maharashtra Revenue Tribunal, Pune. The Tribunal has allowed the revision preferred by the Respondents and has set aside the order dated 28 February 1991 passed by the Assistant Collector. Petitioners are aggrieved by the order dated 19 November 1997 passed by the Tribunal and have accordingly filed the present petition. By order dated 17 March 1998 the petition has been admitted and the order passed by the Tribunal has been stayed.

C. SUBMISSIONS

5) Mr. Bobade, the learned counsel appearing for the Petitioner would submit that the MRT has erred in setting aside well considered decision of Assistant Collector, who had rightly held that filing of proceedings under the provisions of Section 32G of the Act for fixation of purchase price of the land would in itself constitute an intimation by the tenant within the meaning of Section 32F of the Act. He would submit that this Court has repeatedly held that a separate notice need not be issued by the tenant expressing his intention to purchase the tenanted land and commencement of proceedings to purchase the land is sufficient compliance with the provisions of Section 32F(1(a) of the Act. In support he would rely upon judgment of this Court in *Balkrishna @ Vilas Ramji Todakar Versus. Banabai Lahu Patil and others*¹. He would submit that in that case, this Court has held that the Act being a beneficial piece of legislation, the right of the tenant to purchase the land cannot be defeated merely on the ground of failure on the part of the tenant to give notice within a period of one year of attaining majority by the landlord. He would submit that in *Balkrishna @ Vilas Ramji Todakar* (supra) this Court has accepted the principle that there is a corresponding duty on the landlord to issue an intimation to the tenant about the date of attaining the age of majority by the landlord. Mr. Bobade would rely upon judgment of this Court in *Malan Narayan Sakhare Versus. Bibhishan Jagannath More and Ors.*², in which, according to Mr. Bobade, this Court has allowed purchase of tenanted land by the tenant who had failed to issue intimation under Section 32F(1)(a) of the Act by noticing the fact that the tenant therein was in possession of the tenanted lands for over six decades. He would

¹ 2003 2 ALL MR 629

² Writ Petition No. 9159 of 2013 decided on 23 February 2015.

submit that the judgment in *Malan Narayan Sakhare* (supra) will apply with full force to the present case as well. Mr. Bobade would also rely upon the judgment in *Vasant Ganpat Padave (Dead) by Legal Representatives and others Versus. Anand Mahadev Sawant (Dead) through Legal Representatives and others*³ in support of his contention that issuance of intimation by a landlord about attaining the age of majority is a *sine qua non* for defeating the right of the tenant to purchase the land. He would submit that in *Vasant Ganpat Padave* (supra) interpreted the provisions of the Act, which did not make any provision for issuance of intimation in respect of two categories of widowed landlady and disabled landlord to the tenant and read the provision for issuance of such intimation in Section 32F of the Act with a view to ensure that the tenant does not lose right to purchase the land merely by efflux of time. Mr. Bobade would submit that in the present case, the tenant had filed proceedings in the year 1963 expressing desire to purchase the tenanted land and that such an act on the part of the tenant amounted to grant of sufficient intimation to the landlord within the meaning of Section 32F(1)(a) of the Act and that therefore there was no necessity of issuing any further intimation once again after attaining the age of majority by the landlords. Lastly, Mr. Bobade would submit that the Act being a beneficial piece of legislation, provisions thereof are required to be interpreted in such a manner that the right of the tenant to purchase the land, personally cultivated by him, is not defeated. He would accordingly pray for setting aside the order passed by the MRT and for confirming the order passed by the Assistant Collector.

³ (2019) 19 SCC 577

6) The petition is opposed by Mr. Prabhune, the learned counsel appearing for the Respondent-landlords. He would submit that the concurrent findings recorded by the ALT and MRT do not warrant any interference in exercise of jurisdiction by this Court under Article 227 of the Constitution of India. He would submit that the proceedings filed by the tenant in the year 1986 for fixation of purchase price was clearly barred by *res-judicata*. He would submit that the landlord-Mukund had attained the age of majority on 8 February 1960, i.e. well before filing of proceedings by the tenant in the year 1963 for fixation of purchase price. That thus there was no postponement of purchase of the tenanted land atleast *qua* Mukund. That since partition of the family had already taken place in the year 1963, even the proviso to Section 32F(1)(a) was not applicable in the present case and there was no fetter on the tenant to purchase the land after acquisition of majority by one of the landlords in the year 1960. That the tenant never challenged dismissal of his proceedings in the year 1963 and allowed it to attain finality. That therefore the tenant was precluded from filing fresh proceedings for fixation of purchase price under Section 32G of the Act in the year 1986.

7) Without prejudice to the contention of *res-judicata*, Mr. Prabhune would also submit that it was incumbent for the tenant to purchase the land within a period of one year, during which the landlord is entitled to terminate the tenancy under Section 31(1). He would submit that the provision mandating the landlord to issue intimation to the tenant about acquisition of age of majority was introduced in the year 1969 and that the said provision was not available as on 8 February 1960 or 18 February 1964, when both the landlords admittedly attained the age of majority. That since this is a

pre-1969 case, there was no necessity for giving intimation by the landlord to the tenant about the landlord attaining the age of majority. He would submit that this principle is well recognized by Full Bench of this Court in Vishnu Shantaram Desai Versus. Smt. Indira Anant Patkar⁴ which judgment has been following in Govind Shankar Aphale Versus. Uttam Govind Chavan⁵. Mr. Prabhune would therefore contend that after expiry of the period mandated under Section 32F(1)(a) of the Act, the tenant has permanently lost the right to purchase the land as has been rightly held by the ALT as well as MRT. He would accordingly pray for dismissal of the petition.

D. REASONS AND ANALYSIS

8) The broad issues that arise for consideration in the present case are as under:

(I) Whether the proceedings initiated by the tenant in the year 1986 for purchase of the tenanted land were barred by the principle of *res judicata* ?

(II) If a landlord has attained majority prior to amendment of Section 32F by Amendment Act of 1969, whether it is necessary for such landlord to give intimation to the tenant of the fact that he has attained majority ?

⁴ 1972 MH L.J. 124

⁵ MANU/MH/1077/1994

(III) Whether a tenant, who has failed to exercise the right of purchase of tenanted land under Section 32G within a period of one year from the expiry of period during which the landlord is entitled to terminate the tenancy under Section 31, permanently loses right to purchase the tenanted land ?

D.1 WHETHER THE PROCEEDINGS INITIATED BY THE TENANT ON 4 DECEMBER 1986 WERE BARRED BY *RES-JUDICATA*

9) In the present case, Shankar Govind Kurlekar was the original landlord of the tenanted land and there is no dispute to the position that Sagaru Laxman Shinde was cultivating the land as on the Tillers Day of 1 April 1957. Ordinarily therefore, the tenant had right to purchase the land under Section 32G of the Act by paying the purchase price thereof. In the present case, however a twist got created on account of execution of partition between Shankar and his two children on 4 August 1956. At the time of execution of the registered partition deed dated 19 August 1956, both Mukund and Raosaheb were minors and their natural guardian was their mother-Parvataibai Shankar Kurlekar. The registered partition deed was given effect to in the revenue records by Mutation Entry No. 2899 certified on 8 February 1957. By that Mutation Entry, both Mukund and Raosaheb were shown to have been granted $\frac{1}{2}$ share each in the tenanted land. Neither Partition Deed nor Mutation Entry No. 2899 was by questioned by anybody and there is no dispute to the position that the same has attained finality.

10) The effect of registered partition deed dated 19 August 1956 was that Mukund and Raosaheb became owners and

landlords of the tenanted land. As on the Tillers Day of 1 April 1957, both of them were minors and accordingly provisions of Section 32F of the Act kicked in and tenant's right to purchase the land under Section 32 got postponed till both the landlords attained majority. This is the reason why the tenant was unable to purchase the land immediately after 1 April 1957.

11) The tenant apparently filed proceedings for fixation of purchase price of the tenanted land in the year 1963. The date of birth of Mukund Shankar Kurlekar is 8 February 1942 and he had attained the age of majority on 8 February 1960 and therefore there was no fetter on fixation of purchase price *qua* the share of Mukund in the year 1963. However, for some incomprehensible reasons, the tenant committed a mistake before the ALT while recording his statement on 8 February 1963 and 23 February 1963 in which he made following statements :

देवे राष्ट्रे येथील राजाभाऊ शंकर कुर्लेकर यांची जन्म तारीख १८-७-१८४६ ची असलेबद्दल नांदेड येथील हायस्कूलचे हेडमास्तर यांचे सर्टीफिकेट आले ते समजले. तसेच मुकिंदा याची जन्मतारीख ८-२-१९४२ ची असलेबद्दल मेडीकल कॉलेज पूणे यांचे लेक्चरर यांचे सर्टीफिकेट आले ते समजले राजाभाऊ हा अज्ञान असलेने ही जमीन मला तो सज्ञान होईपर्यंत खरेदी करता येत नाही हे समजले. जमीन मालक सज्ञान झालेवर त्यांजा नियमाप्रमाणे नोटीस देवून जमीन खरेदी करणेबद्दल तजवीज करीन. हा जबाब तारीख २३-२-१९६३.

12) Thus, the tenant admitted in his statement that Mukund's date of birth was 8 February 1942 and therefore he ought to have realized that he had already attained the age of majority as on 23 February 1963, when the said statement was recorded. The tenant however erroneously stated before the ALT that he could not have purchased the land till Mukund and Raosaheb attained the age of majority. The mistake of the tenant is further apparent from the

statement of Power of Attorney Holder of the landlords recorded on 6 February 1963 in which it was stated as under :

देवेराष्ट्रे येथील सर्व्हे नंबर २८५-१ ही जमीन मुकुंद व रावसाहेब उर्फ राजाभाऊ अ.पा.क. पार्वतीबाई भ्र. शंकर कुर्लेकर यांचे मालकीची आहे. मुकुंदा हा वीस वर्षे वयाचा आहे. राजाभाऊ यांचे वय १६ वर्षाचे आहे त्यांच्या जन्मतारखा खालील प्रमाणे आहेत. मुकुंद यांचा जन्म ८-२-१९४२ ला झाला. राजाभाऊ यांची जन्म तारीख १८-७-१९४६ ही आहे. त्या बददल २३-२-१९६३ रोजी पुरावा हजर करीन.

13) Thus, the tenant was clearly informed that Mukund was aged 20 years. Despite this, the tenant agreed for dropping of the proceedings initiated for fixation of purchase price as ALT proceeded to pass the following order in those proceedings :

“As the landlords are minors and their birth dates are as under the tenanthas not been deemed to have purchased the land on the Tillers’ Day under Section 32-F of the Act.

<u>Name</u>	<u>Date of Birth</u>
Mukinda Shankar Kurlekar	8-2-1942
Raosaheb Shankar Kurlekar	18-7-1946

The right of the tenant to purchase the land is postponed till the expiry of the period as mentioned in section 32-F(1) of the Bombay Tenancy and Agricultural Lands Act, 1948.

14) The tenant acquiesced in dropping of the proceedings filed in the year 1963 and did not challenge the same by filing Appeal under Section 74 of the Act. The order dropping 1963 proceedings thus attained finality. The ALT has held that filing of fresh proceedings on 4 December 1986 for fixation of purchase price was barred by the principles of *res-judicata*. In my view, this finding of the ALT could be correct only *qua* the share of Mukund and not *qua* the share of Raosaheb. This is because Raosaheb was yet to attain the age of majority when the proceedings were dropped in the year 1963 and he became major only on 8 February 1963. Therefore, the findings of the

ALT that the entire proceedings initiated in the year 1876 were barred by *res-judicata* is erroneous and the same were not barred by *res-judicata qua* the share of Raosaheb.

15) Having held that the entire proceedings initiated by the tenant on 4 December 1986 were barred by *res-judicata*, its time now to turn to the real controversy involved in the present petition in respect of which the Issue Nos. 2 and 3 have been formulated for answer. The real issue is whether it was necessary for the landlord to give intimation to the tenant about the landlord attaining the age of majority and whether failure on the part of the tenant to purchase the land within a period of 2 years from the date of attaining majority of landlord would destroy the right of the tenant to purchase the land forever.

D.2 PROVISIONS OF THE MAHARASHTRA TENANCY AND AGRICULTURAL LANDS ACT, 1956

16) To answer the questions, it would be necessary to take a quick stock of the relevant provisions of the Act. The Act vested right in favour of every tenant who cultivated the land personally on first day of April 1957 and Section 32 of the Act created a deeming fiction of such purchase. However, for the purpose of purchase of the tenanted land on the Tiller's day, it was incumbent for the tenant to personally cultivate the land. Since the provisions of the Act has the effect of denuding the landlord of ownership of the land personally cultivated by a tenant, the Act makes exceptions *qua* four categories of persons : widow, minor, the person suffering from physical or mental disability and serving members of Armed Forces. Therefore, all these four categories of persons were deemed to have been cultivating the land

personally even if land is actually cultivated by servants or by hiring labour or through tenant. In this regard, it would be necessary to make a reference to the definition of the term 'to cultivate personally' appearing in Section 2(6) of the Act which provides thus :

[(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 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 in clauses (a), (b) and (c) shall not apply to any land,--

- (i) which does not exceed twice the ceiling area,
- (ii) up to 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) Thus, during minority of a landlord or during the lifetime of the widowed landlady or during disability of the landlord as well as during service of member of Armed Forces, the right to purchase the land remains suspended or gets postponed as these four categories of persons are deemed to have been cultivating the land personally.

18) Section 31 of the Act recognizes landlord's right to terminate the tenancy for personal cultivation and for non-agricultural purposes. Section 31 of the Act provides thus :

31. Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose.

(1) Notwithstanding anything contained in sections 14 and 30 but subject to sections 31A to 31D (both inclusive), a [landlord (not being a landlord within the meaning of Chapter III-AA) may], after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord *bona fide* requires the land for any of the following purposes :--

- (a) for cultivating personally, or
- (b) for any non-agricultural purpose.

(2) The notice required to be given under sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956. A copy of such notice shall, at the same time, be sent to the *Mamlatdar*. An application for possession under section 29 shall be made to the *Mamlatdar* on or before the 31st day of March 1957.

(3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability then such notice may be given [and an application for possession under section 29 may be made,]--

- (i) by the minor within one year from the date on which he attains majority;
- (ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;
- (iii) within one year from the date on which mental or physical disability ceases to exist; and

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in the sub-section unless before the 31st day of March, 1958 the share of such person in the joint family has been separated by metes and bounds and the *Mamlatdar* on inquiry, is satisfied that the share of such person in the land is separated having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a large proportion.

19) Thus, under Section 31(3) of the Act, where the landlord is minor, widow or disabled person, notice for termination of the tenancy can be given within a period of one year from the date of attaining majority or from the date of death of widow or from the date on which the disability ceases to exist.

20) Section 32 of the Act creates a deeming fiction of purchase of the tenanted land by the tenant on Tillers Day of 1 April 1957 and provides thus:

32. Tenants deemed to have purchased land on tillers' day.

(1) On the first day of April 1957 (hereinafter referred to as "the tillers" day) every tenant shall, subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if-

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates the land leased personally; and

(i) the landlord has not given notice of termination of his tenancy under section 31; or

(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March, 1957 under section 29 for obtaining possession of the land; [or]

(iii) the landlord has not terminated his tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March, 1957 under section 29 for obtaining possession of the lands:

Provided that if an application made by the landlord under section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date".

Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to sub-section (3) of section 31 shall be deemed to have purchased the land on the 1st day of April, 1958, if no separation of his share has been effected before the date mentioned in that proviso.

(1A) (a) Where a tenant, on account of his eviction from the land by the landlord, before the 1st day of April, 1957, is not in possession of the land on the said date but has made or makes an application for possession of the land under sub-section (1) of section 29 within the period specified in that sub-section, then if the application is allowed by the Mamlatdar, or as the case may be, in appeal by the Collector or in revision by the [Maharashtra Revenue Tribunal], he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed.

(b) Where such tenant has not made an application for possession within the period specified in sub-section (1) of section 29 or the application made by him is finally rejected under this Act, and the land is held by any other person as tenant on the expiry of the said period or on the date of the final rejection of the application, such other person shall be deemed to have purchased the land on the date of the expiry of the said period or as the case may be, on the date of the final rejection of the application.

(1B) Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April, 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29, is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July, 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said section 29, either suo motu or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in-interest, and shall be restored to the tenant; and thereafter, the provisions of this section and sections 32A to 32R (both inclusive) shall, in so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased that land on the date on which the land is restored to him:

Provided that, the tenant shall be entitled to restoration of the land under this sub-section only if he undertakes to cultivate the land personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area.

Explanation.- In this sub-section, "successor-in-interest" means a person who acquires the interest by testamentary disposition or devolution on death.]

(2) Where by custom, usage or agreement or order of a Court, any warkas land belonging to the landlord is used by the tenant for the purpose of rab manure in connection with rice cultivation in the land held by him as tenant,-

(a) the whole of such warkas land, or

(b) as the case may be, such part thereof as the Tribunal may determine in cases where such warkas land is jointly used by more persons than one for the purpose of rab manure.

shall be included in the land to be deemed to have been purchased by the tenant under sub-section (1):

Provided that in cases referred to in clause (b) the Tribunal may determine that such warkas land shall be jointly held by persons entitled to use the same, if in the opinion of the Tribunal, the partition of such warkas land by metes and bounds is neither practicable nor expedient in the interest of such persons.]

(3) In respect of the land deemed to have been purchased by a tenant under sub-section (1), -

(a) the tenant-purchaser shall be liable to pay to the former landlord compensation for the use and occupation of the land, a sum equal to the rent of such land every year, and

(b) the former landlord shall continue to be liable to pay to the State Government the dues, if any, referred to in clauses (a), (b), (c) and (d) of sub-section (1) of section 10A, where [the tenant-purchaser] is not liable to pay such dues under sub-section (3) of that section.

until the amount of the purchase price payable by the tenant-purchaser to the former landlord is determined under section 32-H.

(4) Where any land held by a tenant is wholly or partially exempt from the payment of land revenue and is deemed to have been purchased by him under sub-section (1) or under section 32-F, section 32-0 or section 33-C then,-

(a) the tenant-purchaser shall in respect of such land, be liable to pay the full land revenue leviable thereon, and

(b) the State Government shall, with effect from the date on which the tenant is deemed to have purchased the land, but so long only as the tenure on which the land was held by the landlord continues and is not abolished, pay annually to the former landlord,

(i) where such land is wholly exempt from the payment of land revenue, a cash allowance of an amount equal to the full land revenue leviable on such land; and

(ii) in other cases, an amount equal to the difference between the full land revenue leviable on such land and the land revenue payable thereon immediately before the said date.

21) For the purposes of deciding the issues arising in the present petition, provisions of Section 32F of the Act are important and would be relevant to set them out in *toto* as under:

32F. Right of tenant to purchase where landlord is minor, etc.

(1) Notwithstanding anything contained in the preceding sections,--

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability, the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31 and **for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31:**

(emphasized portion added by Amendment Act of 1969)

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the *Mamlatdar* on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion.

(b) where the tenant is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of clause (a), the right to purchase land under section 32 may be exercised--

- (i) by the minor within one year from the date on which he attains majority;
- (ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist;
- (iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;
- (iv) within one year from the date on which the tenant ceases to be a serving member of the armed forces :

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the *Mamlatdar* on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

(1A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section;

Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of that Act.

(2) The provisions of sections 32 to 32E (both inclusive) and sections 32G to 32R (both inclusive) shall, so far as may be applicable, apply to such purchase.

22) Since the proceedings in the present case were initiated by the tenant twice in the year 1963 and 1986 for fixation of purchase price under Section 32G and since the ALT directed resumption and disposal of the land upon failure to purchase under Section 32P, it would be relevant to reproduce the those provisions as well:

32G. Tribunal to issue notices and determine price of land to be paid by tenants

(1) As soon as may be after the tillers' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each its jurisdiction calling upon, -

- (a) all tenants who under section 32 are deemed to have purchased the lands,
- (b) all landlords of such lands, and
- (c) all other persons interested therein,

to appear before it on the date specified in the notice. The Tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant.

(3) Where any tenant 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:

Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32-H of sub-section (3) of section 63A :

Provided that where the purchase price in accordance with the provisions of section 32-H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenant's consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be after such date determine the price of the land.

(6) If any land which, by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder thereof on condition that it was not transferable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such person shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant.

32P. Power of Tribunal to resume and dispose of land not purchased by tenants.

(1) Where the purchase of any land by tenant under section 32 becomes ineffective under section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32F, 32-O, 33-C or 43-ID, the Tribunal may *suo motu* or on an application made on this behalf and in cases other than those in which the purchase has become ineffective by reasons of section 32G or 32M, after holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub-section (2).

(2) Such direction shall provide--

- (a) that the former tenant be summarily evicted;
- (b) that the land shall, subject to the provisions of section 15, be surrendered to the former landlord;
- (c) that if the entire land or any portion thereof cannot be surrendered in accordance with the provisions of section 15, the entire land or such

portion thereof, as the case may be, notwithstanding that it is a fragment, shall be disposed of by sale to any person in the following order of priority (hereinafter called "the priority list") :--

- (i) a co-operative farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such persons;
- (ii) agricultural labourers;
- (iii) landless persons;
- (iv) small holders;
- (v) a co-operative farming society of agriculturists (other than small holders) who hold either as owner or tenant or partly as owner and partly as tenant, land less in area than an economic holding and who are artisans;
- (vi) an agriculturist (other than a small holder) who holds either as owner or tenant or partly as owner and partly as tenant, land less in area than an economic holding and who is an artisans;
- (vii) any other co-operative farming society;
- (viii) any agriculturist who holds either as owner or tenant or partly as owner and partly as tenant land larger in area than an economic holding but less in area than the ceiling area;
- (ix) any person, not being an agriculturist, who intends to take to the profession of agriculture :

Provided that the State Government may, by notification in the *Official Gazette*, give, in relation to such local areas as it may specify, such priority in the above order as it thinks fit to any class or persons who, by reason of the acquisition of their land for any development project approved for the purpose by the State Government, have been displaced, and require to be re-settled.

(3) Where any land is to be surrendered in favour of the [former landlord,] under sub-section (2), the [former landlord] shall not be entitled to the possession thereof until any amount refundable to the [former tenant] is refunded to him or recovered from the [former landlord]; and until such refund or recovery is made, the [former tenant] shall continue to hold the land on the same terms on which it was held by him previously.

(4) Where any land or portion thereof cannot be surrendered in favour of the landlord and where such land or portion is offered for the sale under sub-section (2), but no person comes forward to purchase such land or portion, as the case may be, shall vest in the State Government and the [Tribunal] shall determine the price of such land or portion in accordance with the provisions of section 63A and the amount of the price so determined shall, subject to the provisions of section 32Q, be paid to the owner thereof.

(5) Where any land is sold under sub-section (2), the [Tribunal] shall determine the price of the land in accordance with the provisions of section 63A and the price so determined shall be payable by annual instalments not exceeding six with simple interest at the rate of 4 ½ per cent, per annum as the [Tribunal] may determine and the price of the land recovered from the

purchaser shall, subject to the provisions of section 32Q, be paid to the owner thereof.

(6) On the deposit of the last instalment of the purchase price, the Tribunal shall issue a certificate of purchase in the prescribed form to the purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase. If the purchaser is at any time in arrears of two instalments, then unless the Tribunal after holding such inquiry as it thinks fit is satisfied with the reasons given and allows a further period not exceeding one year to pay the arrears, the purchase shall be ineffective and the amount deposited by such purchaser shall be refunded to him.

23) The cumulative reading of the above provisions indicates that every landlord during the period of his minority is deemed to be personally cultivating the land and during his minority, the tenant cannot purchase the tenanted land under Section 32. After such minor landlord attains the age of majority, he has right to terminate the tenancy if he satisfies that he requires the land either for personal cultivation or for non-agricultural purposes by issuing a notice of termination of tenancy within a period of one year from the date of attaining majority. Under the provisions of Section 32(F)(1)(a), the tenant has a right to purchase the tenanted land under Section 32 within a period of one year after right of the minor landlord to terminate the tenancy under Section 31 expires. Since the minor landlord's right to terminate the tenancy expires under Section 31 after one year of him attaining majority, the tenant would necessarily have right to purchase the land within a period of two years from the date of landlord attaining majority.

D.3 WHETHER AMENDMENT OF 1969 TO SECTION 32F(1)(A) CASTS AN OBLIGATION ON THE LANDLORD TO GIVE AN INTIMATION OF ATTAINMENT OF MAJORITY TO THE TENANT

24) Till the year 1969, there was no obligation on the part of the minor landlord to give intimation to the tenant about the landlord

attaining the age of majority. The Legislature took note of the immense hardship caused to the tenants, who were apparently unaware about the exact date of attaining majority by the respective landlords and provisions of Section 32F(1)(a) virtually defeating the right of the tenant to purchase the land after expiry of period of two years from the date of attaining majority by the landlord. The Legislature accordingly stepped in and amended the provisions of Section 32F(1)(a) by making it mandatory to the landlord to send an intimation to the tenant about the fact that he has attained majority within a period of one year. However, the amendment was brought in force in the year 1969 and in accordance with such amendment, obligation to give intimation to the tenant became applicable only in respect of those landlords who attained majority after the 1969 amendment. This position is well recognized by the three judge Bench decision of the Apex Court in *Vasant Ganpat Padave* (supra), which Mr. Bobade has been extremely fair to cite before this Court though the same actually militates against his contentions. In *Vasant Ganpat Padave*, the three Judge Bench of the Apex Court has answered the reference made by the Division Bench. The main issue before the Apex Court was that the 1969 amendment casted an obligation of issuance of intimation to the tenant only in respect of the category of minor landlord and similar obligation was not casted in respect of the other two categories of widowed landlady and disabled landlord. It was therefore contended before the Apex Court that there was no logic for compulsory intimation to the tenant only in respect of the minor landlord and not in respect of widowed landlady and disabled landlord when all the three categories are otherwise similar in all other respects. The Apex Court took notice of an incongruous situation where the tenants were losing right to purchase tenanted land where a widowed landlady expired and the tenant was not aware

about the exact date of her death or where the disabled landlord either came out of his disability or passed away without any knowledge on the part of the tenant about the exact date of non-existence of disability. The Apex Court has accordingly cured this incongruity and has placed all the three categories of minor landlord, widowed landlady and disabled landlord on par by interpreting the provisions of Section 32F. The Apex Court held in paras-20, 21, 24, 25 as under :

20. Prior to the Amendment Act of 1969, on a plain literal reading of Section 32-F(1)(a), it is true that a tenant had to exercise this right within a period of one year from the expiry of the one year spoken of in Section 31(3) of the Act. Literally speaking, therefore, even if the tenant does not know when the minor became major or when the widow died or transferred her share, this right would cease on the expiry of one year.

21. Realising that this would cause immense hardship for want of knowledge of a special fact which is only within the landlord's ken, the legislature stepped in and amended Section 32-F. The Statement of Objects and Reasons for this Amendment Act is as follows:

“Statement of Objects and Reasons

1. It has come to the notice of the Government that a number of tenants in the Bombay area and the Vidarbha region of the State, failed to acquire ownership right in the lands held by them on account of their being dispossessed from the land otherwise than in the manner laid down in the relevant tenancy law. It is, therefore, expedient to amend the tenancy laws in force in these regions for safeguarding the interest of these dispossessed tenants.
2. It is also noticed that a large number of tenants in the Bombay area of the State holding land from landlords who were minors have lost right to purchase land for their failure to give intimation within the period laid down in sub-section (1-A) of Section 32. It is, therefore, necessary to give these tenants a fresh opportunity to purchase land. Section 32-F is, therefore, being suitably amended for that purpose.
3. As a result of the decision of the Supreme Court of India, in *Mussamia Imam Haider Bax Razvi v. Rabari Gobindbhai Ratnabhai* [Mussamia Imam Haider Bax Razvi v. Rabari Gobindbhai Ratnabhai, AIR 1969 SC 439] from the judgment [*G.R. Rabai v. Usamia Imam* First Appeal No. 1009 of 1960, order dated 5-2-1963 (Guj)] of the High Court of Gujarat regarding jurisdiction of civil court in certain matters, it has also become necessary to suitably amend certain sections of the tenancy laws in force in the three regions of the State.
4. The Bill seeks to achieve the above objects.”

24. It seems to us that the vast majority of cases which came to the notice of the legislature were cases of landlords who were minor at the time of the

1956 Amendment Act and who turned major only thereafter. The amnesty scheme contained in sub-section (1-A), was, therefore, limited only to such cases. Unfortunately, the legislature, when it inserted words into sub-section (1)(a) of Section 32-F, appears to have forgotten that these words will govern the right of tenants which has been postponed on account of a landlord's disability. What appears to have been missed is the fact that, apart from minors, there are two other categories mentioned in Section 32-F(1)(a), all of whom would stand on the same footing insofar as the tenant is concerned. It would be wholly anomalous for a tenant to be told that if his landlord happened to be a minor who has attained majority later, he must first be intimated of this fact before he can meaningfully exercise his right of purchase; whereas to a tenant who is similarly situated when the landlord is a widow, in which case no such intimation need be made, the tenant would suffer for no fault of his as the tenant would have no knowledge of the date of death of the widow (which is a special fact known only to her family), such tenant's right of purchase being extinguished by time. It seems that the draftsman of the 1969 Amendment Act was overwhelmed with the amnesty scheme laid down in Section 32-F(1-A), which then spilled over to the amendment made in Section 32-F(1)(a), thereby unintentionally leaving out the two other categories of landlords, where the same intimation needs to be made to the tenant, as the death of the widow and/or the ceasing of disability are special facts known only to the landlord and his family, just as in the case of a minor turning major.

25. It has rightly been argued by the learned counsel appearing on behalf of the appellant that an absurd situation would be created by a literal reading of Section 32-F(1)(a). The landlord being a widow is protected until her death. After her death, one year is given to her successors in interest to exercise the right of resumption. When this does not take place one year is granted from the expiry of this first one year to the tenant to exercise his statutory right. This cannot be done because the tenant does not know of the death of the widow. As a result, this very land which was not required by the landlord's successors in interest for personal cultivation, goes back to the landlord under Section 32-P in cases in which the landlord either has no land within the ceiling limit or some land which does not exhaust the ceiling limit. This anomaly indeed turns the entire scheme of agrarian reform on its head. We have thus to see whether the language of Section 32-F can be added to or subtracted from, in order that the absurdity aforementioned and the discrimination between persons who are similarly situated be obviated.

(emphasis added)

25) The Apex Court answered the issue by holding in paras-49 and 55 as under:

49. Respectfully following the law laid down in these judgments, and in order to read Section 32-F(1)(a) in conformity with Article 14, we eliminate the words "... of the fact that he has attained majority ..." so that the intimation that is to be made by the landlord has to be made

to tenants of all the three categories of landlords covered by the provision.

55. The questions referred to us are now answered as follows:

55.1. The object of the Amendment Act of 1969 is relevant and applicable in deciding the scope of the right to purchase by a tenant of a landlord who was a widow or suffering from mental or physical disability on Tillers' Day.

55.2. The successor-in-interest of a widow is obliged to send an intimation to the tenant of cessation of interest of the widow to enable the tenant to exercise his right of purchase.

55.3. The decision in *Appa Narsappa [Appa Narsappa Magdum v. Akubai Ganapati Nimbalkar, (1999) 4 SCC 443]* stands overruled. The decision in *Sudam Ganpat [Sudam Ganpat Kutwal v. Shevantabai Tukaram Gulumkar, (2006) 7 SCC 200]* stands distinguished as stated in para 47 of the judgment. The decision in *Tukaram Maruti [Tukaram Maruti Chavan v. Maruti Narayan Chavan, (2008) 9 SCC 358]*, to the extent that it follows the law laid down in *Appa Narsappa [Appa Narsappa Magdum v. Akubai Ganapati Nimbalkar, (1999) 4 SCC 443]*, stands overruled.

26) Thus, though the judgment in *Vasant Ganpat Padave* is not directly relevant to the facts involved in the present case, the same throws light on a very important aspect with regard to the position of law prior to the 1969 amendment. The Apex Court has expressly recognized in para-20 of the judgment that prior to the Amendment Act of 1969, the tenant was required to exercise the right of purchase within a period of one year from the expiry of one year spoken of in Section 31(3) of the Act. The Apex Court further held that if the tenant did not know when the minor became major, the right to purchase would cease, on expiry of one year. This is the reason why I have observed that the judgment in *Vasant Ganpat Padave* militates against the Petitioners.

27) The above position of law is also recognized by the Full Bench judgment of this Court in *Vishnu Shantaram Desai* (supra) in which the Full Bench held in paras-18, 19, 26 to 28 as under:

18. Sub-section (1) of this section starts with a non-obstante clause: "Notwithstanding anything contained in the preceding sections." After this non-obstante clause, follow two clauses, namely, cl. (a) and cl. (b). The non-obstante clause is common for both these clauses. In between these two clauses (a) and (b) there is neither a conjunction "and" nor "or". The clauses are separated by a mere semicolon. The place where the non-obstante clause appears, shows that it goes with each of the clauses (a) and (b). Clause (a) deals with a case where the landlord is under disability, namely, where the landlord is a minor or a widow or a person subject to any mental or physical disability. In such a case, the tenant shall have the right to purchase such land within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under s. 31. Proviso to this clause makes a special provision when such a landlord is a member of a joint family. Under this proviso, where a person of such category is a member of a joint family, the provisions of this clause (a) shall not apply if at least one member of the joint family is outside the categories mentioned in the sub-section, unless before March 31, 1958 the share of such person in the joint family has been separated by metes and bounds in accordance with and subject to the terms of the proviso. This clause, therefore, specifies the period within which a tenant has to exercise his right to purchase the land under s. 32 when a landlord is under disability. The provisions thereof are complete by themselves.

19. Clause (b) of this sub-section prescribes the period within which a tenant under disability has to exercise his right to purchase land under s. 32. The right to purchase land under s. 32 under this clause has to be exercised by the minor within one year from the date on which he attains majority, by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist, by a person subject to any mental or physical disability within one year from the date on which the mental or physical disability of the tenant ceases to exist and by a serving member of the armed forces within one year from the date on which the tenant ceases to be a serving member of the armed forces. This clause contains a proviso which is similar to the one under clause (a). Clause (b) is also complete by itself. There is nothing in the language of cl. (b) to suggest that it is in the nature of a proviso to cl. (a). It is an independent provision which can apply even when the tenant alone is under disability. It is not possible to take the view that its provisions will not be attracted unless a landlord is also under disability. Each of clauses (a) and (b) is complete by itself and can apply independently of each other. A case may, however, arise when both a landlord and a tenant, are simultaneously under disability. In such a case, if the period during which the landlord's right to terminate the tenancy under s. 31 has expired before a tenant's right to purchase land may be exercised, right of the tenant to purchase land has to be exercised, in accordance with the provisions of cl. (b) within the time therein specified. If, however, the period during which such a landlord is

entitled to terminate the tenancy under s. 31 has not expired when a tenant under such disability has become entitled to exercise his right of purchase under cl. (b), the provisions of cl. (a) will prevail over those of cl. (b) because cl. (b) *inter alia* contains the words "subject to the provisions of clause (a)."

26. Consequences of failure on the part of a tenant to give intimation of his desire to purchase land within the time specified or in the manner prescribed by s. 32F are provided in s. 32P. That section *inter alia* states that where a tenant fails to exercise the right to purchase the land held by him within the specified period under s. 32F, the Tribunal may, after holding a formal enquiry, direct that the land shall be disposed of in the manner provided in sub-s. (2). **The cumulative effect of the provisions of s. 32F read with those of s. 32P is that in a case where a landlord or a tenant or both of them are under disability a tenant shall be deemed to be a purchaser of the land held by him as a tenant only if he gives an intimation of his desire to purchase land to the landlord and the Tribunal in the manner prescribed and within the time specified in s. 32F.**

27. Provisions of the Act which provide for automatic statutory transfer of ownership in favour of the tenant may be contrasted with those where the statutory transfer takes effect upon some act being done or intimation being given by the tenant. Section 32 and s. 33C(1) of the Act provide for automatic statutory transfer of ownership in favour of the tenant. Under these sections respectively, a tenant and an excluded tenant shall be deemed to have purchased from landlord land held by him as tenant. Under s. 32 such a statutory purchase is generally effected on the Tillers' day or on the postponed date. While under s. 33C(1) it is effected on April 1, 1962. In these cases, the statutory purchase in favour of the tenant is automatic, it does not require any act to be done or any intimation to be given by the tenant. These provisions have to be contrasted with those of s. 32F, sub-s. (3) and (4) of s. 33C and s. 43-ID. In each of these cases, a tenant has to give an intimation or a notice to the landlord and Tribunal as therein respectively provided. It is only on giving such an intimation or a notice within the time specified in the prescribed manner that a statutory purchase becomes effective in favour of the tenant.

28. Question then arises whether s. 32F confers a right to purchase the land upon a tenant in addition to the right conferred by s. 32. Such a question has to be answered in the negative. When conditions laid down in s. 32F exist, there is no automatic statutory purchase of land by a tenant under s. 32. Under s. 32 a tenant is deemed to have purchased from the landlord the land held by him as a tenant without giving him any intimation or doing any other act. Where a tenant is under disability if he is deemed to have purchased land under s. 32 on the Tillers' day or on the postponed date, then a question of exercise of a right by a tenant to purchase land under s. 32F cannot possibly arise. **There is no question of exercising a right to purchase land by a tenant under s. 32F, if he is already deemed to have purchased the**

land under s. 32. But in a case covered by s. 32F, provisions of s. 32 apply only after an intimation is given as contemplated by s. 32F(1A) and this is evident from the language of sub-s. (2) of the said section.

(emphasis and underlining applied)

28) Thus the Full Bench in *Vishnu Shantaram Desai* has held that there is no automatic purchase of land when any of the situations enumerated in Section 32F of the Act exist and that the provisions of Section 32 would apply only after an intimation is given as contemplated by Section 32F(1)(a).

29) The judgment of Full Bench in *Vishnu Shantaram Desai* is followed in *Govind Shankar Aphale* (supra) in which it is held in paras-9 and 10 as under:

9. On a reading of section 32-F(1) and section 31(1)(3) of the Act it becomes clear that a tenant has to exercise his right to purchase the land belonging to a widow within two years from the date on which her interest in the land ceases to exist. In the instant case the widow died on 3rd December, 1965. The period of two years therefrom ended on 3rd December, 1967. Admittedly no notice as contemplated by section 32-F(1)(a) was given by the tenant. What follows if there is failure to give notice is contained in section 32-P of the Act. It, inter alia, provides that where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32-F, the Tribunal may suo motu or on an application made in this behalf after holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub-section (2) thereof. Sub-section (2) includes powers to give directions that the former tenant be summarily evicted or that the land shall, subject to the provisions of section 15, be surrendered to the former landlord. The only question that arises for consideration is whether section 32-F(1)(a) applies to the present case. I do not find any difficulty in holding that it has no such application. From the order of the Tribunal it appears that the contention of the respondent himself all throughout was that the widow Anandibai was a co-owner of the disputed property along with two others. That being so the proviso has no application which is applicable only where the widow is a member of a joint family. It is evident from the order of the Tribunal that there was a total confusion in regard to the meaning of a member of a joint family and it was erroneously equated with a co-owner of a property and it is this

misconception of law that led to the erroneous conclusion in this case. The distinction between a joint family and a co-ownership, is well known and well-settled. In the instant case the widow being a co-owner, her case was covered by section 32-F(1)(a) of the Act and the proviso did not in anyway have the effect of taking it out of the same. As regard the nature, of requirements of notice under section 32-F, it is no more *res integra* in view of the Full Bench decision of this court in *Vishnu Shantaram v. Indira Anant*, 1972 Mah LJ 124 (F.B.) : 73 Bom. L.R. 792, where it was held:

“This sub-section, therefore, prescribes the time within which and the manner in which a tenant desirous of exercising his right to purchase has to give an intimation. When such an intimation is given, he is deemed to have purchased the land because by sub-section (2) thereof, provisions of sections 32 to 32-E (both inclusive) and sections 32-G to 32-R (both inclusive) shall, so far, as may be applicable, apply to such purchase. The words “such purchase” connote a purchase by a tenant who has given an intimation in respect of his desire, to purchase land within the time specified and in the manner prescribed by this section.”

It was further observed:

“Consequences of failure on the part of a tenant to give intimation of his desire to purchase land within the time specified or in the manner prescribed by section 32-F are provided in section 32-P. That section inter alia states that where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32-F, the Tribunal may, after holding a formal enquiry, direct that the land shall be disposed of in the manner provided in sub-section (2). The cumulative effect of the provisions of section 32-F read with those of section 32-P is that in a case where a landlord or a tenant or both of them are under disability a tenant shall be deemed to be a purchaser of the land held by him as a tenant only if he gives an intimation of his desire to purchase land to the landlord and the Tribunal in the manner prescribed and within the time specified in section 32-F.”

“.....Question then arises whether section 32-F confers a right to purchase the land upon a tenant in addition to the right conferred by section 32. Such a question has to be answered in the negative. When conditions laid down in section 32-F exist, there is no automatic statutory purchase of land by a tenant under section 32. Under section 32 a tenant is deemed to have purchased from the landlord the land held by him as a tenant without giving him any intimation or doing any other act. Where a tenant is under disability if he is deemed to have purchased land under section 32 on the tillers' day or on the postponed date, then a question of exercise of a right by a tenant to purchase land under section 32-F cannot possibly arise. There is no question of exercising a right to

purchase land by a tenant under section 32-F, if he is already deemed to have purchased the land under section 32. But in a case covered by section 32-F, provisions of section 32 apply only after an intimation is given as contemplated by section 32-F(1A) and this is evident from the language of sub-section (2) of the said section."

10. The above observations are a complete answer to the controversy in this case. **The respondent tenant having failed to comply with the requirements of section 32-F(1)(a) of the Act and having failed to give intimation of his intention to purchase the said land as contemplated by sub-section (1A) within the time specified therein, lost his right to purchase the same and section 32-P came into operation.** Thereby the land became available to the Tribunal for disposal in the manner laid down therein. In view of the foregoing discussion, the impugned orders of the Tribunal on revision as well as the orders of the authorities below holding that the respondent-tenant had become a purchaser and was entitled to ask for fixation of the price under section 32-G of the Act are not in accordance with law and are liable to be set aside, which I hereby do. All these writ petitions are allowed in terms of prayer (B).

(emphasis and underlining applied)

30) Thus, prior to the 1969 Amendment, there was no obligation on the part of the landlord to give an intimation to the tenant about the landlord attaining the age of majority. The obligation to issue such intimation to the tenant got created for the first time by the 1969 Amendment and there is nothing to indicate that the amendment operates retrospectively. Mr. Prabhune has relied upon judgment of Single Judge of this Court (*S. N. Khatri, J.*) in *Mohan Gajanan Deshpande* in which it is held that the amendment introduced by the Amendment Act of 1969 is prospective in operation. This Court held in paras-7, 8 and 9 as under :

7. There is substance in Shri Apte's submission that these two provisions added by way of amendment are prospective in their operation. There is nothing in the wording of these two provisions to show that they are retrospective in operation. There is also no indication in the Amending Act itself to draw such an inference. If retrospective effect is assigned to the amendment of section 32-F(1)(a), some absurd results will follow. To cite one example, the provisions

of section 31(3) have been existing on the statute book in the present form right since the commencement of the Act—at any rate for a substantial number of years prior to 1969. If the amendment of section 32-F(1)(a) is presumed to be retrospective, it would apply even to a landlord who had attained majority, say in 1960. His right to terminate tenancy under section 31 would have already stood exhausted by 1961. Obviously such old closed matters were not sought to be disturbed by the amendment of section 32-F(1)(a). Further the proviso to sub-section (1-A) of section 32-F would be rendered totally otiose, if retrospective effect is given to the amendment of section 32-F(1)(a). When these two amendments are harmoniously construed together, the plain result is that the obligation under the amended provision of section 32-F(1)(a) is cast on only those landlords who attain majority on or after 17th October 1969. In order to protect tenants who had no means to know the date on which their landlords had already attained majority prior to 17th October 1969, the proviso to sub-section (1-A) gave them a breather of two years to ascertain the correct position and take effective steps for being declared statutory purchasers, provided of course they had managed to retain possession with them as on 17th October 1969.

8. Shri Naik for the respondents relies on AIR 1974 Bom. 35 *Keda Kalu Wagh v. D.P. Metkar* and AIR 1974 Bom. 92 *Rama v. Kirtikumar* (both Single Judge decisions of Vaidya, J.) for his submission that the two aforesaid amendments are retrospective in operation. I have gone through the facts of the decisions. I am clear that no such proposition as propounded by Shri Naik is laid down in either of the two decisions. In *Keda's case* it was held by Vaidya, J. that the benefit of the proviso to section 32-F(1-A) will ensure even to a tenant against whom an order under section 32-F has already been made, but who has not been actually dispossessed. In *Rama's case*, the learned Judge has held that a tenant need not make a formal proclamation of his desire to purchase the land under sub-section (1-A) of section 32-F, if proceedings are pending either before any Revenue Authority under the Act or in the High Court on the date of the advent of the Maharashtra Amending Act of 1969 (17th October 1969) and the tenant has already expressed in these proceedings his desire to purchase the land. Both cases are thus clearly distinguishable on their facts. In the case before me, the first matter that came before the A.L.T. was the 32-G proceedings initiated in 1973. It is not the case of either party that any proceedings were pending before any authority before that year. The benefit in favour of the tenants conferred by the proviso to section 32-F(1-A) had already exhausted itself on 17th October 1971 and it is an admitted position that before that date, the tenants had not expressed their desire to go in for the purchase.

9. To cut the long short, I hold that the view of the M.R.T. that the amended provision of section 32-F(1)(a) was retrospective in operation is not correct. The landlord was under no obligation to give intimation of his having attained majority to the tenants. The tenants in their turn could not press in aid the concession enuring to them

under the proviso to section 32-F(1-A). The Court of the first instance was right in declaring the purchase ineffective. Accordingly this petition is allowed. The order of the A.L.T. dated 7th February 1977 is restored while quashing the orders of the Special Land Acquisition Officer dated 31st July 1978 and of the M.R.T. dated 2nd August 1979. Rule made absolute. In the circumstances of the case, there will be no orders as to costs.

(emphasis applied)

31) In the present case, there is no dispute to the position that both the landlords attained the age of majority before coming into force of the Amendment Act of 1969. In my view, therefore it was incumbent for the tenant to purchase the tenanted land by initiation proceedings for fixation of purchase price within a period of two years of date of attaining the age of majority by Raosaheb on 18 February 1964. The proceedings were initiated in the year 1986 which are clearly barred by the provisions of Section 32F(1)(a) of the Act. The ALT has rightly held that the purchase of the tenanted land had become ineffective and he was right in directing initiation of proceedings under Section 32P of the Act for resumption and disposal thereof.

D.4 JUDGMENTS CITED BY THE PETITIONER

32) What remains now is to deal with the judgments cited by Mr. Bobade. In *Balkrishna @ Vilas Ramji Todakar* (supra), A Single Judge of this Court (*J. G. Chitre, J.*) encountered a situation where the landlord attained the age of majority in 1964 and tenant had initiated proceedings for fixation of purchase price in the year 1971. *Chitre, J.* relied upon judgment of this Court in *Amrutrao Ratnakar Rajadhya Versus. Krishna Sakharam Patil*⁶ and held that initiation of proceedings for purchase of land would amount to compliance with the provisions

⁶ 1998 (2) Bom C.R. 655

of Section 32F(1)(a) of the Act. I am in respectful agreement with the said view expressed in *Amrutrao Ratnakar Rajadhye*, as well as, in *Balkrishna @ Vilas Ramji Todakar* and it was not necessary for the tenant in the present case to complete the formality of issuance of a written notice to the landlord. If the tenant was to initiate proceedings within two years of attaining majority by Raosaheb, the same would have constituted sufficient compliance with the provisions of Section 32F(1) (a) of the Act. However, such proceedings were initiated by the tenant in the year 1986, i.e. 12 years after attaining the age of majority by Raosaheb. Faced with this situation, Mr. Bobde relies upon that portion of the judgment in *Balkrishna @ Vilas Ramji Todakar* in which it is held that the provisions of the Act are benevolent in nature. He would therefore submit the right to purchase the land does not get extinguished especially when the landlord gives an intimation to the tenant about he acquiring the age of majority. He has relied upon the following observations made by *Chitre, J.* :

11. It is pertinent to note that it has been pointed out in sub-s. (1) (a) of S. 32-F that where the landlord is minor, or widow, or person subject to any mental or physical disability the tenant shall have right to purchase the land under S. 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under S. 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of period during which such landlord is entitled to terminate the tenancy under S. 31.

12. It is true that the advocates appearing for the parties have placed reliance on the judgments of Single Bench of this Court for the purpose of substantiating their arguments. But the views expressed by the Single Bench of this Court in those judgments will have to be considered in context with the facts and circumstances of those cases and the present case. So also the views expressed will have to be considered by interpreting and understanding the intention of the legislature in enacting the Act i.e. the Bombay Tenancy and Agricultural Lands Act, 1948. The observations made by the Supreme Court in *Ram Narain case*⁴ have to be kept in mind always in applying the ratio of the judgments and pointer indicated by the

relevant provisions. There cannot be any debate that the Act has been enacted for the purpose of ensuring agricultural development of India for protecting the rural economy and the Indian economy which is mainly dependent on rural economy and agriculture. For that purpose a provision has been made by which the person cultivating the land on tillers' day was given some rights in respect of the land which he was cultivating. Therefore, the possession of the relevant date of the litigating party or one of them would be always important. In this case on the relevant date the respondents were in possession of the land and there was a proceeding in between litigating parties in context with S. 32-G wherein the respondent tenants unequivocally stated their willingness to purchase the land. As pointed out by the Supreme Court in *Ram Narain case* the tenants had vested right to purchase the land on tillers' day i.e. on 1-4-1957. It continued till it foreclosed by operation of law followed by a legal process. In the present case the landlord was a minor and therefore, that right which was vested in the tenants stood postponed. As record shows in the present case the landlord attained majority in the year 1964 or so. Therefore, in such case when the tenant had expressed his willingness to purchase the land in any proceeding which was initiated between the parties but by operation of law and disability of the litigants, the event of purchase of land was postponed to future date, it became incumbent and obligatory on the part of the landlord to inform the tenant his intention to terminate the tenancy on the date on which he attains majority. In this context the courts have to be circumspect and properly informed about the difficulties which members of rural public experience in their day to day life. It is presumed that every person who is a major understands his rights or gets well advised in respect of his legal rights when his property happens to be engaged in litigation. Therefore, such party/owner has to perform his obligation in informing his adversary of his attaining majority, otherwise indirectly he would be touching adversely in surprise and in awkward corner. If he fails in doing so and commits defaults, he would be estopped from encashing the benefits arising out of that situation.

13. Therefore, assessing the view expressed by the Single Bench of this Court in the judgments quoted supra and reading the provisions of the Act as a whole in the context of for the spirit in which it has been enacted as a benevolent piece of legislation, this Court comes to the conclusion that it was obligatory on the part of the petitioner to give intimation of his intention to terminate the tenancy of the respondent tenant after he attained majority during the period which has been indicated by the provisions of S. 32-F(1)(a) and in the event of his failure to do so, he would not be entitled to encash the default as alleged by him on the part of the tenants, the respondents, more particularly when they had expressed their intention to purchase the land. Though the Member of the Maharashtra Revenue Tribunal did not express any appropriate words in his judgment, the meaning which has been conveyed by his judgment is the same. When this Court is exercising the jurisdiction of superintendence in view of Art.

227 of the Constitution this Court will have to think whether the judgment which has been assailed is suffering from defect or perverseness, incorrectness and assumes the nature of illegality by itself. The answer from all corners is "no" and therefore, this Court dismisses the writ petition with costs and discharges the rule.

33) I am afraid, the judgment in *Balkrishna @ Vilas Ramji Todakar* cannot be read in support of an absolute proposition that in every case, where the landlord has attained the age of majority prior to the 1969 Amendment, issuance of intimation by the landlord to the tenant is necessary. *Chitre, J.* has apparently not noticed the fact that provisions for issuance of such intimation came to be added by 1969 amendment and the said provision could not be made applicable in a case involving attaining of majority by a landlord in the year 1964.

34) Mr. Bobde has relied upon judgment of Single Judge of this Court (*M. S. Sonak, J.*) in *Malan Narayan Sakhare* (supra) in which it is held in paras-20 and 21 as under:

20. In the aforesaid peculiar facts and circumstances, if the petitioner's contentions are to be accepted, then a situation would arise in which the respondents, who have been tenants in possession of the said property from much prior to 1 April 1957, shall have to be deprived the right to purchase the same. At the same time, since the petitioners, as successor-in-title of late Gopikabai had not terminated the tenancy within a period of one year from the date on which Gopikabai ceased to have any interest in the said property or at all, there would arise no question of restoration of the said property in their favour. The said property, would then have to be resumed and disposed of in the manner and provided under Section 32P of the said Act. This section *inter alia* provides that where the purchase of land by a tenant under Section 32 of the said Act becomes ineffective under Section 32G or 32M of the said Act or where the tenant fails to exercise the right to purchase the land held by him within the specified period under Sections 32F, 32O, 32C of 43-1D, the Tribunal made *suo motu* or on an application made in this behalf directed that the land shall be dispose of in the manner provided in sub-section (2) of Section 32P of the said Act. This provision empowers the Tribunal to

direct summary eviction of formal tenant, surrender to the former landlord or disposal in the order of priority prescribed.

21. Thus, the acceptance of the contentions made by and on behalf of the petitioner might perhaps result in the ouster of the tenants who have been in possession of the said property, by themselves or through their predecessor-in-title for the last over six decades, without any corresponding guaranteed restoration of the said property in favour of the petitioner landlord. In the peculiar facts and circumstances of the present case, therefore, it is not possible to accept the contentions raised by and on behalf of the petitioner. No doubt, there can be no dispute that furnish of notice/intimation under Section 32F(1A) of the said Act is mandatory. However, in the facts and circumstances of the present case, as held by the MRT, it cannot be said that such mandatory requirement has been breached by the respondents.

35) It is true that in *Malan Narayan Sakhare*, the widow had expired on 21 August 2004 and the notice for purchase of the land was issued by the tenant on 17 February 2007 I.e. after a period of two years. *Sonak J.* took note of the unique facts and circumstances of the case where the tenant remained in cultivation of the land over six decades, and considering the benevolent provisions of the Act, held that the tenant 's right to purchase the land did not extinguish. As a matter of fact, *Sonak J.* did not have the benefit of ratio of the three Judge Bench in *Vasant Ganpat Padave* when he rendered the judgment in *Malan Narayan Sakhare* on 23 February 2015. In *Vasant Ganpat Padave*, the Apex Court extended the mandatory provision of grant of intimation by minor landlord to the tenant introduced in the 1969 Amendment even in the case of widowed landlady. In *Malan Narayan Sakhare*, no intimation of widowed landlady's death was apparently issued to the tenant within a period of one year of her death and names of her legal heirs was recorded in the revenue records on 10 November 2006 and within few months thereafter the tenant gave notice under Section 32F (1)(a) on 17 February 2007. Thus, *Malan Narayan Sakhare* involved a case post 1969 Amendment and is fully covered by the judgment of the

Apex Court in *Vasant Ganpat Padave*. The judgment in *Malan Narayan Sakhare* cannot be made applicable to a case involving landlord attaining the age of majority before introduction of the 1969 Amendment. The judgment would therefore not assist the case of the Petitioners.

E. ORDER

36) I am therefore of the view that the order passed by the ALT and MRT are in consonance with the statutory scheme, as well as the law expounded by the Apex Court and by this Court in the above referred judgments. I therefore do not find any valid ground to interfere in those orders. The Assistant Collector had erred in setting aside the order passed by the ALT and the MRT has rightly set aside the order of the Assistant Collector. Resultantly, I do not find any merit in the petition. The petition is accordingly **dismissed**. Rule is discharged. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

37) After the judgment is pronounced, Mr. Bobade the learned counsel for the Petitioner would pray for continuation of the interim order dated 17 March 1998 for a period of 8 weeks. The request for continuation of interim order is opposed by Mr. Prabhune. Considering the fact that the interim order has been continued since 17 March 1998, the same is extended by a period of 8 weeks.

[SANDEEP V. MARNE, J.]

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