2024 INSC 203

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8356 OF 2017

Baban Balaji More (Dead) by LRs. & others … Appellants

Versus

Babaji Hari Shelar (Dead) by LRs. & others … Respondents

J U D G M E N T

SANJAY KUMAR, J

1. This appeal entails correlation of three vintage legislations, requiring not only their interpretation but also their harmonious construction. The oldest of the three statutes is the Maharashtra Hereditary Offices Act, 1874 (for brevity, 'the 1874 Act'). The next is the Maharashtra Tenancy and Agricultural Lands Act, 1948 (for brevity, 'the Tenancy Act'), and the third is the Maharashtra Revenue Patels (Abolition of Offices) Act, 1962 (for brevity, 'the Abolition Act').

2. The 1874 Act was enacted to declare and amend the law relating to *Watans*, i.e., hereditary offices. Balaji Chimnaji More, the predecessor of the present appellants, held a *Patel Watan* since prior to August, 1898. He was assigned *Watan* property, viz., a 50% share in an extent of 20 acres of land in Survey No. 386 and a 50% share in an extent of 16 acres in Survey No. 410 of Village Chikhali. Babaji Hari Shelar and Ganapati Dhondiba Tapkir (or Tapkire), the predecessors of the respondents herein, were cultivating this *Watan* property as tenants since 1955-56 or thereabouts.

3. While so, Balaji Chimnaji More died sometime in February/March, 1958. Thereupon, his legal heirs, namely, Baban Balaji More, Rama Balaji More and Jagannath Balaji More, filed an application on 14.06.1958 under Section 5 of the 1874 Act. As per this provision, a *Watandar* was not competent to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any *Watan* or any part thereof or any interest therein to or for the benefit of any person who was not a *Watandar* of the same *Watan*, without the sanction of the State Government or the Commissioner, as the case may be. By order dated 18.04.1961, the Assistant Collector, I/C, Haveli Taluka, Poona, held that the tenancy created by the father of the applicants could not extend beyond his lifetime and the applicants would, therefore, have the right to recover possession of the said lands after the

death of their father. He, accordingly, allowed their application and ordered that possession of the lands falling to their share should be handed over to them under Sections 11 and 11A of the 1874 Act.

4. Aggrieved thereby, the tenants, viz., Babaji Hari Shelar and the legal heirs of late Ganapati Dhondiba Tapkir, namely, Laxman Ganapati Tapkir, Rama Ganapati Tapkir, Damu Ganapati Tapkir and Babu Ganapati Tapkir, filed Watan Appeal No. 6 of 1961 before the Additional Collector, Poona, under Section 77 of the 1874 Act. However, the said appeal was dismissed, *vide* order dated 27.03.1962.

5. Thereupon, the tenants carried the matter to the Additional Commissioner, Poona Division, Poona, on 14.04.1962. Order dated 12.06.1962 was passed by the Additional Commissioner, treating the proceeding as an appeal instituted against the order dated 27.03.1962 passed in Watan Appeal No. 6 of 1961. Thereby, the Additional Commissioner rejected the appeal. The appellants would argue that this proceeding cannot be treated as an appeal, inasmuch as the statutory scheme allowed only one appeal under Section 77 of the 1874 Act, and they would contend that this proceeding should be construed to be a revision filed under Section 79 thereof, with necessary consequences. This aspect will be dealt with hereinafter.

6. In any event, during the pendency of this proceeding, the possession of the lands in question was handed over on 22.04.1962 to the legal heirs of the deceased *Watandar*, in terms of the order dated 18.04.1961 passed by the Assistant Collector, I/C, Haveli Taluka, Poona.

7. At this stage, the Abolition Act was promulgated and it came into effect from 01.01.1963. As per Section 3 thereof, all *Patel Watans* stood abolished from the appointed date, i.e., 01.01.1963. In consequence, all incidents appertaining to the said *Watans*, including the right to hold office and *Watan* property, stood extinguished. Further, Section 3(c) provided that, subject to the provisions of Sections 5, 6 and 9, all *Watan* lands stood resumed and were subject to payment of land revenue under the provisions of the relevant Code, as if they were unalienated land. Section 5 thereof, however, provided for regrant of the *Watan* land to the *Watandar*. Section 5(1) stated that *Watan* land resumed under Section 3 shall on an application therefor, being in relation to cases not falling under Sections 6 and 9, be regranted to the *Watandar* of the *Watan* to which it appertained on payment by or on behalf of the *Watandar* to the State Government of the occupancy price equal to twelve times the amount of the full assessment of such land within the prescribed period and in the manner prescribed and, thereupon, the *Watandar* shall be an occupant within the

meaning of the relevant Code in respect of any such land and shall be primarily liable to pay land revenue to the State Government in accordance with the provisions of that Code. The *proviso* to Section 5(1) stipulated that in respect of *Watan* land which was not assigned under the existing *Watan* law as remuneration of an officiator, the occupancy price equal to six times the amount of the full assessment of such land shall be paid by or on behalf of the *Watandar* for the regrant of such land.

8. The appellants made an application under Section 5 of the Abolition Act for regrant of the *Watan* lands, as their case did not fall within the ambit of either Section 6 or Section 9 of the 1874 Act. By order dated 27.11.1964, the *Mamlatdar*, Haveli, noted that they had paid an amount equal to six times the assessment on 17.11.1964; that a Certificate of the Talhati stating to that effect was also on record; and accordingly ordered that the said lands be regranted to them, subject to conditions.

9. In the meanwhile, it appears that the tenants filed a revision before the Government assailing the orders passed against them. However, the appellants claim that it was only on 11.12.1964 that they suddenly received a copy of the letter dated 10.07.1964 addressed to Damu Ganapati Tapkir by the Officer on Special Duty, Revenue and Forest Department, Government of Maharashtra, stating that, pursuant to Government Letter

dated 01.11.1963, he was to state that the Government was pleased to set aside the order dated 18.04.1961 passed by the Pranth Officer, Taluka Haveli, District Poona; the order dated 27.03.1962 passed by the Collector, Poona, in Watan Appeal 6 of 1961; and the order dated 12.06.1962 passed by the Commissioner, Poona Division, in Case No. W.T.N.P.6/33. Thereupon, the Collector, Poona, directed the *Mamlatdar*, Haveli, to ensure delivery of possession of the lands to the tenants.

10. Aggrieved by this development and complaining that they were not given notice or a hearing prior to the Government's decision, the appellants preferred an appeal before the Commissioner, Poona, assailing the direction of the Collector, Poona, to the *Mamlatdar*, Haveli, to hand over possession of the subject lands to the tenants. The Commissioner, Poona, rejected their request, *vide* letter dated 02.12.1964. They then approached the Chief Minister, State of Maharashtra, by way of written representation dated 11.12.1964. However, they were informed by the Officer on Special Duty, Revenue and Forest Department, Government of Maharashtra, *vide* letter dated 30.12.1964, that their representation dated 11.12.1964 could not be considered. Aggrieved by the rejection of their representation under letter dated 30.12.1964, the appellants filed Special Civil Application No. 61 of 1965 before the Bombay High Court under Article 227 of the

Constitution. Interim stay was granted therein on 15.01.1965 and the case was disposed of on 25.03.1969, in these terms:

> 'By consent, the Court makes absolute the rule granted by it on 15.01.1965, sets aside the order of the State Government dated 01.11.1963 communicated to the petitioners on 10.07.1964 by the Officer on Special Duty and remands the matter to Government with a direction to rehear the matter after giving opportunity to the petitioners and the respondents to be heard in their defence.
>
> No order as to costs.'

11. The revision was taken up as Case No. PTIL-3464/102644-L-5 by the Officer on Special Duty (Appeals and Revisions), Revenue and Forest Department, Government of Maharashtra. This revision was allowed by Order dated 03.05.1982 and all the orders passed by the authorities against the tenants were set aside. In consequence, the lands were directed to be restored to the tenants. In the order dated 03.05.1982, it was noted that the Abolition Act had come into force on 01.01.1963 but as on that date, the tenants were not in possession as it was an admitted fact that the appellants were delivered possession on 24.04.1962. However, the revisional authority opined that the mere factum of losing possession would not be determinative of termination of the tenancy and if the order to that effect was based on a wrong presumption or wrong interpretation of law, the tenancy could not be said to have been terminated even if such an order was executed. The authority opined that the argument that the

possession of the tenants became unauthorized upon the death of the original *Watandar* and that no tenancy rights subsisted on the appointed date, viz., 01.01.1963, could not be accepted. The authority concluded that the Assistant Collector's and Additional Collector's orders in deciding the case under Section 11 of the 1874 Act, ignoring the provisions of the Tenancy Act, were wrong. In effect, the authority held that the tenancy must be presumed to be continuing and that the orders passed to the contrary were improper and illegal and, consequently, execution of such orders had no effect on the rights of the tenants. Holding so, the authority allowed the tenants' revision, set aside the orders passed against them and directed that the lands be restored to them.

12. Assailing this order, the appellants filed Writ Petition No. 1774 of 1982 before the Bombay High Court. In the judgment dated 01.02.2005 passed therein, the High Court observed that possession of the lands was delivered to the heirs of the *Watandar* on 24.04.1962 during the pendency of revisional proceedings, only because there was no stay of the order passed by the lower authority, and held that such delivery would be subject to final determination of the rights of the parties. Further, taking note of the fact that the Abolition Act came into effect on 01.01.1963, the High Court held that the tenancy was still subsisting on that day despite the delivery of

possession of the lands to the heirs of the *Watandar*, as the proceedings were still pending and execution of the order directing delivery of possession was subject to the final outcome thereof. The High Court, therefore, concluded that the tenancy was not legally and validly determined. As regards the appellants' contention that Section 5 of the 1874 Act automatically determined the tenancy, the High Court rejected it on the ground that once a legal and valid tenancy was subsisting on 01.01.1963, the tenants would be entitled to all the benefits under Section 8 of the Abolition Act and the provisions of the Tenancy Act. The High Court accordingly held that there was no merit in the writ petition and dismissed it. It is this judgment that is subjected to challenge before us in this appeal.

13. While issuing notice on 04.04.2005, this Court, directed *status quo* existing as on that day to be maintained. This order is still in operation.

14. It would be appropriate at this stage to note the statutory scheme of the 1874 Act and the other relevant provisions thereof. Section 4 of the 1874 Act defines *Watan* property and *Watandar*. The definition of *Watan* property, to the extent relevant, reads thus:

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

Watandar is defined as under:

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

Section 5 of the 1874 Act, to the extent relevant, reads thus:

'5. (1) Without the sanction of the State Government, or in the case of a mortgage, charge, alienation, or lease of not more than thirty years, of the Commissioner it shall not be competent—

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

15. Section 11 of 1874 Act authorized the Collector to declare any alienation of the nature described in Section 10 thereof to be null and void, if it had taken place, otherwise than by virtue of, or in execution of a decree or order of any Court, after recording his reasons in writing. Section 11A empowered the Collector to either summarily resume possession of the property in relation to which an order of the Court had been passed on receipt of his certificate under Section 10, or on his own declaration under Section 11, and the said property shall thenceforward revert to the *Watan*.

16. Much controversy was generated in the context of the proceeding filed before the Additional Commissioner, Poona Division, Poona, that resulted in the order dated 12.06.1962. The appellants would contend that this 'proceeding' must be construed to be a revision filed under Section 79 of the 1874 Act and the State Government could not have entertained another revision thereafter, as the statutory scheme speaks of only one revision being maintainable under that provision. However, perusal of the order dated 12.06.1962 passed by the Additional Commissioner, Poona Division, Poona, reflects that the same was dealt with as an 'appeal' and not as a 'revision'. Trite to state, appellate jurisdiction is vastly different from revisional jurisdiction, in terms of its scope and extent of review, and when the authority dealing with matter proceeded under the impression that it was exercising appellate jurisdiction the same cannot be construed to be revisional jurisdiction, contrary to what has been stated in the order itself. The entertainment of this 'appeal' has been explained by pointing out that Section 203 of the Bombay Land Revenue Code, 1879, titled 'Appeals and Revision', states to the effect that, in the absence of any express provision or any law to the contrary, an appeal shall lie from any decision or order passed by a Revenue Officer under the Code or any other law for the time being in force to that Officer's immediate superior. However, as pointed out

by the appellants, the scheme of the 1874 Act did not permit a 'second' appeal being maintained under Section 77 thereof. In effect, the proceeding before the Additional Commissioner, Poona Division, Poona, was utterly misconceived and was not maintainable. However, once such a misconceived 'appeal' was entertained and resulted in the order dated 12.06.1962, which was bereft of jurisdiction, a statutory revision came to be filed before the State Government under Section 79 of the 1874 Act. Significantly, this revision called in question the appellate order dated 27.03.1962 also and upon being heard afresh, pursuant to the 'consent order' of the High Court in Special Civil Application No. 61 of 1965, it culminated in the order dated 03.05.1982. Having consented to the remand of the revision for hearing afresh, the appellants cannot, in any event, raise this issue now. Therefore, the contention of the appellants in this regard is without merit and is rejected accordingly.

17. Before we proceed to take a look at the provisions of the Tenancy Act, it may be noted that the precursor thereof was the Bombay Tenancy Act, 1939. It was applicable to the whole of the Province of Bombay, except Bombay City, and was intended to protect tenants of agricultural lands. This statute stood repealed upon the Tenancy Act coming into force in December, 1948. The Tenancy Act was enacted to amend the law relating

to tenancy of agricultural lands and to make certain other provisions in regard to those lands. It was placed in the Ninth Schedule to the Constitution and stood protected under Article 31(b) thereof. Section 88 of the Tenancy Act exempted Government lands and certain other lands from the provisions thereof.

18. Agrarian reforms were undertaken to alleviate the plight of agricultural tenants and resulted in beneficial measures being introduced for them from 01.04.1957. This day came to be known as 'Tillers' Day'. Amendments were made to the Tenancy Act in this context and a separate Chapter enabling purchase of tenanted lands by the tenants was inserted therein. Sections 32 to 32-R were introduced thereby in the Tenancy Act. Section 32 is titled 'Tenants deemed to have purchased land on Tillers' day' and Section 32(1) stated that, on the first day of April, 1957, every tenant shall, subject to the other provisions of that section and 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 a tenant. Sections 32-A to 32-R gave effect to the tenant's right to purchase the tenanted agricultural land.

19. The issue presently is whether the Tenancy Act had application to the subject *Watan* lands. The appellants would contend that it had no

application, be it on Tillers' Day or in February/March, 1958, when Balaji Chimnaji More, the original *Watandar*, died and an application was made by his legal heirs under Sections 5 of the1874 Act. It is their case that the exemption under Section 88 of the Tenancy Act was applicable to these lands. To the extent relevant, the said provision, after its amendment with effect from 01.08.1956, reads as under:

> '88. Exemption to Government lands and certain other lands.-
>
> (1) [Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act] shall apply,-
>
> [a] to lands belonging to or held on lease from, the Government;
>
> ……'

An 'Explanation' was inserted in relation to the above clause (a) in July, 1958. It reads as under:

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

Insertion of this 'Explanation' was not an amendment of the provision, which would have prospective effect and, thereby, not apply to the application filed on 14.06.1958 under Section 5 of the 1874 Act. The 'Explanation' merely explained the position and was not substantive in nature. It is, therefore, deemed to have come into operation from the date

on which Section 88(1) was amended in August, 1956. Thereby, the limited applicability of the provision to certain *Watan* lands was clearly delineated.

In turn, Section 23 of the 1874 Act reads as follows:

'23. Subject to the provisions of this Act and or any other law for the time being in force regarding Service Inams, Cash allowances and Pensions, it shall be the duty of the Collector to fix the annual emoluments of officiators appointed under the provisions of this Act, and to direct the payment thereof to the officiators for the time being.

It shall be lawful for the Collector for this purpose to assign watan property, or the profits thereof, towards the emoluments of officiators. The existing assignments shall, until altered by competent authority, be taken to have been made under this section. With the sanction of the State Government the Collector may, as occasion arises, alter the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proportion to the profit derived by such holders respectively from the watan.'

Thereafter, Section 88CA was inserted in the Tenancy Act by Amendment Act No.63 of 1958 with effect from 11.07.1958. It reads thus:

'88CA. Sections 32 to 32R not to apply to certain service lands.- Nothing in sections 32 to 32-R (both inclusive), 33-A, 33-B, 33-C shall apply to land held as inam or watan for service useful to Government but not assigned as remuneration to the person actually performing such service for the time being under section 23 of the Bombay Hereditary Offices Act, 1874, or any other law for the time being in force.'

20. A conjoint reading of the above provisions indicates that all *Watan* lands were not to be treated as Government lands. The 'Explanation' to Section 88 clarified the position with regard to *Watan* lands, other than those covered by Section 23 of the 1874 Act, as it manifests that only

Watan land assigned as remuneration to an officiator performing service under Section 23 of the 1874 Act etc. shall be deemed to be land belonging to the Government. Thus, only *Watan* lands covered by Section 23 of the 1874 Act were to be treated as Government lands as per Section 88(1)(a). This is further clarified by Section 88CA inserted in the year 1958, which stated that Sections 32 to 32-R, 33-A, 33-B and 33-C would not apply to land held as *Inam* or *Watan* for service useful to the Government, excepting land assigned as remuneration under Section 23 of the 1874 Act etc. It is, therefore, clear that only *Watan* lands assigned as remuneration for service under Section 23 of the 1874 Act were to be treated as Government lands and stood excluded from the provisions of the Tenancy Act. Admittedly, Balaji Chimnaji More was not an 'officiator' covered by Section 23 of the 1874 Act. This is also demonstrated by the fact that his legal heirs paid only six times the assessment for regrant of the *Watan* lands under Section 5 of the Abolition Act and not twelve times, as would be applicable to an officiator. *Ergo*, the subject *Watan* lands were not covered by Section 88(1)(a) of the Tenancy Act and could not be treated as Government lands.

21. By virtue of the 'Explanation' to Section 88(1)(a) of the Tenancy Act, all other *Watan* lands, including the subject *Watan* lands, were covered

by all the provisions of the Tenancy Act. However, Section 88CA thereof, introduced in the statute book in July, 1958, granted such *Watan* lands exemption from Sections 32 to 32-R, 33-A, 33-B and 33-C. Therefore, Sections 29 and 31 of the Tenancy Act were very much applicable to such *Watan* lands all through. Section 29, titled 'Procedure of taking possession', states to the effect that no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the *Mamlatdar* and for obtaining such an order, he should make an application in the prescribed form within the prescribed time. Section 31 is titled 'Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose' and provided the mode and method in which a landlord could terminate the tenancy of any land, except a permanent tenancy. Thereunder, the landlord had to file an application for possession before the *Mamlatdar* before Tillers' Day. This being the position, the heirs of the original *Watandar* could not have aspired to secure possession without reference to this procedure.

22. The limited exemption from certain provisions of the Tenancy Act, afforded by Section 88CA thereof, continued until the Abolition Act came into force on 01.01.1963. Thereafter, as the very institution of *Patel Watan* stood abolished, the limited exemption extended to such *Watan* lands

under Section 88CA of the Tenancy Act also ceased. This is made clear by Section 8 of the Abolition Act, which reads as under:

> '8. Application of existing tenancy law- if any watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the relevant tenancy law shall apply to the said lease, and the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of this Part, be governed by the provisions of that law:
>
> Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the regrant of the land under section 5 or 6 or 9, as the case may be.
>
> Explanation- For the purposes of this section, the expression "land" shall have the same meaning as is assigned to it in the relevant tenancy law.'

23. Therefore, after the advent of the Abolition Act, *Patel Watan* land which was lawfully leased, and the lease of which was subsisting as on 01.01.1963, stood covered by the Tenancy Act in its entirety and the tenant of such *Watan* land was entitled to all the benefits under the provisions thereof, including the right to purchase such land. The *proviso* to Section 8 indicates that, for the purpose of fixing the purchase price under the provisions of the Tenancy Act so as to enable the purchase of such land by the tenant, the lease shall be deemed to have commenced from the date of regrant of the land under Sections 5, 6 or 9, as the case may be.

24. Earlier, this Court had occasion to consider this *proviso* in ***Sadashiv Dada Patil vs. Purushottam Onkar Patil (Dead) by LRs.***[1]. The respondent therein was a tenant of *Watan* land and the appellant was the landlord. The issue was whether Section 32-O of the Tenancy Act had application in view of the *proviso* to Section 8 of the Abolition Act. Section 32-O is titled 'Right of Tenant whose tenancy is created after Tillers' Day to purchase land'. It stated that in respect of any tenancy created after Tillers' Day and if the landlord is not a serving member of the Armed Forces, a tenant cultivating such land personally shall be entitled, within one year from the commencement of such tenancy, to purchase the land held by him from the landlord. The issue before this Court was whether a tenant of *Watan* land was required to exercise his right to purchase the land within one year of the regrant, in view of the *proviso* to Section 8 of the Abolition Act stating that the lease is deemed to have commenced from the date of such regrant of the land. In effect, the question was whether the tenancy is to be treated as a fresh lease commencing on the date of the regrant. At the outset, this Court opined that, indisputably, the rights and obligations of the parties were governed by the Tenancy Act. Section 31 thereof was taken note of and as no termination of the tenancy had been effected thereunder, this Court held that the tenancy continued till the declaration of

[1] (2006) 11 SCC 161

Tillers' Day on 01.04.1957. Thereafter, by virtue of Section 32 of the Tenancy Act, the tenant was deemed to have purchased the tenanted agricultural land from his landlord. Noting that the provisions of the Abolition Act and the Tenancy Act were required to be construed harmoniously, keeping in view the purport and object that they seek to achieve, this Court observed that Section 32 of the Tenancy Act conferred an absolute right upon the tenant. Therefore, the *proviso* to Section 8 of the Abolition Act could not be read in such a manner as to divest the tenant of the vested right of purchase created under Section 32 of the Tenancy Act. The *proviso* was held to have merely fixed the date of the lease for reckoning the purchase price to be paid to the landlord. Thereby, no new tenancy was created and Section 32-O of the Tenancy Act did not stand attracted. It was held that the *proviso* to Section 8 had a limited role to play and it merely postponed the operation of the statute. It was held that it had to be read in the light of Section 32G and Section 32O of the Tenancy Act and be interpreted accordingly, i.e., it did not create any right in favour of the landlord nor did it take away the right of the tenant.

25. It would be apposite at this stage to take note of the decisions of the Bombay High Court on various issues arising under these three legislations. In its Full Bench decision in ***Dattatraya Keshav Deshpande***

vs. Tukaram Raghu Chorage[2], the Court held that Sections 9, 10 and 11 of the 1874 Act were framed to protect *Watan* property from unauthorized alienations and the Collector is empowered under Section 11 to declare any such unauthorized alienation to be null and void after recording his reasons in writing. This judgment, having been rendered long before the other two legislations came into existence, has to be understood keeping in mind the later developments in the context of the Tenancy Act and the Abolition Act. The 1874 Act, therefore, cannot be treated as an independent, self-contained and complete code in itself.

26. In ***Govind Ramchandra Patil vs. Bapusaheb Krishnarao Patil and others***[3], a Division Bench dealt with the question as to whether a lease granted by a *Watandar* would continue to operate to the benefit of the tenants by virtue of the provisions of the Tenancy Act despite the Abolition Act. The Bench opined that the intention of the legislature was clear that the tenants on the land, who were lessees before the Tenancy Act came into force, should continue to be on the land unless the landlord himself required the land for his personal cultivation or the tenant was guilty of any defaults mentioned in Section 14 of the Tenancy Act. The Bench, therefore, concluded that it was not open to the *Watandar* to ask for a declaration

---

2 AIR 1921 Bom 17

3 Special Civil Application No.1741 of 1961, decided on 13.12.1962

under Section 11 of the 1874 Act that the lease became null and void and pray for restoration of possession of the land. Though it was argued that the *Watandar* was only asking for a declaration under Section 5 of the 1874 Act that the tenancy had become null and void on account of the death of the original *Watandar*, the Bench opined that Section 14(1) of the Tenancy Act provided that the tenancy of a land held by a tenant shall not be terminated unless the tenant is guilty of the defaults mentioned therein. Further, as Section 29(2) of the Tenancy Act provided that a landlord shall not be entitled to claim possession of the land leased out to a tenant otherwise than by way of an application to the *Mamlatdar* under the Tenancy Act, the Bench concluded that the landlord could recover possession of the land from the tenant only on the grounds provided in the Tenancy Act and in no other way could the landlord obtain possession from the tenant.

27. In ***Kallawwa Shattu Patil and others vs. Yallappa Parashram Patil and another***[4], a learned Judge noted that s*uo motu* proceedings initiated by the Revenue authorities under Section 32G of the Tenancy Act had to be dropped in view of the fact that the land was found to be *Watan* land and no purchase price in respect thereof could be fixed till the date of regrant of the land in favour of the landlord. On facts, the learned Judge

[4] (1992) 1Mah.LJ 34

found that the *Watan* land was lawfully leased in favour of the tenant long before 01.04.1957 and the said lease was subsisting on the appointed day. The provisions of the Tenancy Act, therefore, became applicable to the lease forthwith and only the compulsory purchase of the land, as per Section 32G of the Tenancy Act, could not be availed of by the tenant until the regrant of the said land to the landlord under the Abolition Act. The learned Judge held that the landlord did not create a fresh tenancy in favour of the tenant on 01.04.1957 and Section 32O of the Tenancy Act had no application, as it would not be attracted to a case where the land was already leased out to the tenant prior to 01.04.1957. The *proviso* to Section 8 of the Abolition Act was stated to create a legal fiction for an extremely limited purpose, i.e., for the purpose of fixing the price in respect of the statutory purchase of the land. For that limited purpose, the land is deemed to have been leased out from the date of regrant but it did not follow therefrom that the landlord created a fresh lease in respect of the said land on the date of the regrant as the old lease had never come to an end.

28. In ***Pradeeprao @ Virgonda Shivgonda Patil vs. Sidappa Girappa Hemgire since deceased through his heirs and LRs. Ginnappa Sidappa Hemgire and others***[5], a learned Judge again affirmed the aforestated legal position and held that merely because there was a

[5] (2004) 3 Mah. L.J. 75

regrant of the *Watan* land in favour of the *Watandar*, it did not mean that a new lease was created on that day in favour of the tenant. The learned Judge found that after the *Watan* was abolished, the landlord paid the amount towards the occupancy price within the prescribed time and the land stood regranted to him. As the land stood regranted, the tenant acquired the right to purchase the said land by virtue of the provisions of the Tenancy Act.

29. In ***Kondabai Ganu Barkale (since deceased) through her Legal Heirs Smt. Housabai P Bhongale and others vs. Pandit @ Shankar D. Patil (since deceased) through his Legal Heirs Waman S.Patil and others***[6], a learned Judge noted that the Tribunal had erred in holding that the tenancy in that case was created long after Tillers' Day. The learned judge found that there was no dispute as to the fact that the tenancy in respect of the said land was created long before Tillers' Day and by virtue of Section 88CA of the Tenancy Act, Section 32 to Section 32–R of the Tenancy Act were inapplicable thereto at that time. However, after the Abolition Act and regrant of the *Watan* land to the landlord thereunder, the provisions of the Tenancy Act became applicable to the subject land with full vigour. Such application, by operation of law, was not to be treated as the creation of a new tenancy by the landlord after Tillers' Day. The Tribunal

[6] (2016) 2 Mah. LJ 282

was, therefore, held to be in clear error in applying the provisions of Section 32O of the Tenancy Act to the case.

30. We find ourselves in respectful and complete agreement with the views expressed by the Bombay High Court in the above decisions. In the case on hand, it is the contention of the appellants that there was no lease subsisting as on 01.01.1963, owing to the order dated 18.04.1961 passed upon the application made by the legal heirs under Section 5 of the 1874 Act after the death of the original *Watandar*. They would further contend that as the possession of the *Watan* lands was actually restored to the legal heirs on 22.04.1962, the tenants were not even in possession on the appointed date, *viz.,* 01.01.1963. In effect, their argument is that neither a lawful lease was in existence nor were the tenants in physical possession on the said date. However, this argument loses sight of the fact that the order dated 18.04.1961 had not attained finality inasmuch as the tenants subjected it to challenge before the higher authorities and their challenge was still pending. No doubt, the High Court erroneously referred to the 'misconceived appeal' filed by them as 'revisional proceedings' but notwithstanding the nomenclature, the inescapable fact remains that the challenge to the initial order dated 18.04.1961 was subsisting as on 22.04.1962, the date of delivery of possession, and such proceedings of

challenge concluded in favour of the tenants when their revision was allowed, *vide* the order dated 03.05.1982. Merely because no stay was granted in such proceedings and, in consequence, the tenants stood divested of actual physical possession, it did not lend any finality to the order impugned in those proceedings and, therefore, the purported termination of the lease still hung in balance.

31. Further, in the light of the aforestated discussion, the argument of the appellants that the tenants ought to have challenged the regrant order dated 27.11.1964 is without merit. In fact, the tenants were benefited by the said regrant order as the exercise of their right to purchase the land hinged upon the passing of that regrant order, in terms of the *proviso* to Section 8 of the Abolition Act. The argument to the contrary is, therefore, rejected.

32. It appears that during the pendency of this litigation, the subject agricultural *Watan* lands became part of the extended city limits of Pimpari Chinchwad Municipal Corporation and are presently reserved for Defence purposes (Red Zone) in the development plans sanctioned by the Government of Maharashtra. In consequence, these lands cannot be alienated without the prior approval of the Government of India and the Government of Maharashtra. While so, we find that both sides have been merrily entering into transactions with third parties to alienate/transfer the

subject lands. However, our decision in this case relates back to a time when the subject lands were still agricultural in nature and use and it would have no impact on the present position and the consequences flowing therefrom. Further, *inter se* disputes, be it betwixt the appellants or betwixt the tenants, are not the subject matter of this appeal and have not been dealt with. All such disputes would have to be addressed independently before the appropriate forum in accordance with law, if still permissible.

33. On the above analysis, we hold that it was not open to the appellants to proceed against the tenants under the provisions of Sections 5, 11 and 11A of the 1874 Act after the death of Balaji Chimnaji More, the original *Watandar,* in February/March, 1958. This is because the provisions of the Tenancy Act were very much applicable to the subject lands by then and more so, Sections 29 and 31 thereof. Therefore, the legal heirs of the original *Watandar* could not have taken lawful possession of these lands from the tenants pursuant to the order dated 18.04.1961 passed under Sections 5, 11 and 11A of the 1874 Act. The same was rightly held to be invalid in the revisionary order dated 03.05.1982 and that finding was correctly held to be justified by the Bombay High Court. We also hold that the tenancy was lawfully subsisting on 01.04.1957, i.e., Tillers' Day, and the tenants were entitled to exercise their right of statutory purchase of these

tenanted agricultural *Watan* lands under Section 32 of the Tenancy Act in terms of Section 8 of the Abolition Act, after the exemption afforded by Section 88CA ceased to exist. That right became operational on 27.11.1964, when these *Watan* lands were regranted to the heirs of the original *Watandar*.

Viewed thus, we find no grounds made out, either on facts or in law, to interfere with the impugned judgment dated 01.02.2005 passed by the Bombay High Court.

The appeal is devoid of merit and is accordingly dismissed.

Pending I.A.s shall also stand dismissed.

In the circumstances, parties shall bear their own costs.

……..,J
(C.T. RAVIKUMAR)

……..,J
(SANJAY KUMAR)

March 14, 2024;
New Delhi.