DAYANDEO GANPAT JADHAV

v.

MADHAV VITHAL BHASKAR AND ORS.

OCTOBER 21, 2005

[B.N. SRIKRISHNA AND C.K. THAKKER, JJ.]

Bombay Tenancy and Agricultural Lands Act, 1948—Sections 15(2), 32 and 32P—Land in possession of tenant entitled to become 'deemed purchaser'—Its surrender to landlord—Legality of—Held: Consequences of refusal to purchase the land were explained to tenant, yet he indicated his unwillingness to purchase it, reiterated same after second thought and also in a subsequent year—Tenant surrendered his tenancy rights in respect of that piece of land—Subsequent initiation of proceedings by him for same piece of land combined with another piece showed he wanted to take a chance by playing 'second innings'.

Constitution of India, 1950—Article 136—Revocation of leave to appeal—All facts placed on record in affidavit-in-reply not stated in Special Leave Petition—However, material document on which strong reliance was placed in counter-affidavit had not been suppressed by appellant—Held: Leave to appeal should not be revoked especially as it was granted after counter-affidavit had been filed, matter heard on several occasions, whereby Court became aware of stand of respondent and vacated interim relief.

Appellant was tenant of respondent-landlord in respect of agricultural lands comprised in gut nos. 2325 and 2326, and was cultivating them. On tiller's day, 1st April, 1957, their father was in possession of lands comprised in gut nos. 2326, and as per Section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948, on that day they were entitled to become 'deemed purchaser' of those lands. However, the Mamlatdar, based on statements of appellant and respondent, held that possession of the lands comprised in gut nos. 2326 should be handed over to respondent. The Mamlatdar and Agricultural Lands Tribunal held that the appellant had surrendered the above land as he was not interested in purchasing it and hence the 'deemed purchase' had become ineffective.

The appellant on December 10, 1976, approached the Mamlatdar and

A Agricultural Lands Tribunal praying that they had become 'deemed purchaser' of agricultural lands comprised in gut nos. 2325 and 2326. The Tribunal, in its order dated January 31, 1985 held that as an inquiry in respect of lands comprised in gut no. 2326 had been conducted and purchase had been declared ineffective, it was not necessary to make inquiry for that land. Regarding that lands comprised in gut no. 2325, it held that the appellant B had become 'deemed purchaser', fixed the price and ordered them to pay it.

The appellant preferred an appeal against this order. The Appellate Authority held that the surrender by appellant of land comprised in gut No. 2326 was not in accordance with Section 15(2) of the Act. The appeal was C allowed and matter was remanded to lower court for fixation of purchase-price of the land. Against this, revision application of respondent before the Maharashtra Revenue Tribunal was dismissed. Aggrieved by this, respondent moved the High Court under Article 227 of the Constitution. The High Court held that in respect of land comprised in gut no. 2326, the father of appellant had become 'deemed purchaser' on the tiller's day. However as he was not D willing to purchase that land, possession was given to the respondent of the said land in accordance with the order of Mamlatdar and Agricultural Lands Tribunal. This order remained unchallenged. In the circumstances, the High Court allowed the writ petition. Hence the present appeal.

Appellant contended that they had surrendered property comprised in E gut no. 2325 and not the land in gut no. 2326. Alternatively, it was contended, assuming that surrender was in respect of property comprised in gut no. 2326, since requisite procedure was not followed, the so called surrender was unlawful.

Respondent contended that (i) appellant surrendered their tenancy rights F to them and they were put in possession of the disported land; (ii) appellant had suppressed the fact that they had taken over the possession of land comprised in gut no. 2326, and hence they were not entitled to equitable relief under Article 136 of the Constitution.

G Dismissing the appeal, the Court

HELD: 1.1. Order of Mamlatdar and Agricultural Lands Tribunal that the tenant was no more interested in purchase of land and surrendered his tenancy rights in favour of the landlord was correct and in accordance with the provisions of law. [453-B]

H

1.2. Statement of tenant was recorded. He was also explained of the consequences of his unwillingness to purchase the land and he had expressly stated that he was aware of the consequences of his refusal to purchase the land and yet had declined to purchase it. Even in 1962, again his statement was recorded and he repeated what he had stated earlier. Even on 'second thought', he reiterated that he was not willing to purchase the land. [448-F]

Sakharam Shripati Jadhav Ors. v. *Chandrakant Ors.*, [1987] 1 SCC 486, *Sri Ram Ram Narain* v. *State of Bombay,* [1959] Supp 1 SCR 489, *Ramchandra Keshav Adke* v. *Govind Joti Chavare,* [1975] 1 SCC 559 and *Babu Prasasu Kaikadi* v. *Babu,* [2004] 1 SCC 681, relied on.

2.1. Only in 1976 the appellant started 'second innings' by initiating the present proceedings. Since an order was passed and possession had been given to the landlord, the application submitted by the appellant was not maintainable. It, however, appears that the application was entertained since the appellant had stated that he had become 'deemed purchaser' in respect of other land also. [448-H; 449-A]

2.2. The tenant had surrendered his tenancy rights in respect of one piece of land and it was only in respect of Gut No. 2326 which was in 1959. Initiation of proceedings for two gut numbers itself shows that the tenant wanted to take a chance by playing 'second innings' though he had already surrendered his tenancy rights over gut no. 2326 and hence the Mamlatdar and Agricultural Lands Tribunal was right in negativing the claim of the tenant for Gut No. 2326. Appellate and revisional authorities were wrong in setting aside the order passed by the Mamlatdar and Agricultural Lands Tribunal dated January 31, 1985 and in ignoring the order dated November 16, 1959. The High Court was, therefore, right in quashing both the orders. [449-C, D]

3. The order passed by the High Court deserves no interference under Article 136 of the Constitution. Though all the facts which have been placed on record by the landlord in his affidavit-in-reply have not been stated in the Special Leave Petition, nevertheless the appellant has produced on record the order passed by the Mamlatdar and Agricultural Lands Tribunal on November 16, 1959. In fact, it is the trump-card on which strong reliance is placed by respondent. The material document thus has not been suppressed by the appellant. Moreover, after notice was issued, the respondents appeared and counter-affidavit was filed in July, 2001. The matter was heard on several occasions thereafter and leave was granted in April 2003. The Court was thus

A **aware of the stand of the respondent-landlord as reflected in the counter-affidavit. The Court, therefore, vacated interim relief, but granted leave. In light of these facts, it would not be proper to revoke leave at this stage.**

[447-B, C, D]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3370 of 2003.

From the Judgment and Order dated 30.8.2000 of the Bombay High Court in W.P. No. 5844 of 1987.

K. Sukumaran and N.R. Shonker for M/s. T.T.K. Deepak & Co. for the Appellant.

C

V.A. Mohta, R.S. Soni, Rakesh K. Sharma and Nilakanta Nayak for the Respondents.

The Judgment of the Court was delivered by

D **C.K. THAKKER, J.** This appeal is instituted by the appellant against the judgment and order passed by a single Judge of the High Court of Bombay on August 30, 2000 in Writ Petition No. 5844 of 1987. By the said order, the High Court quashed and set aside the order passed by the Sub-Divisional Officer, Junnar Sub-Division, Khed (Pune) on September 24, 1985 and confirmed by the Maharashtra Revenue Tribunal, Pune in Revision Application as also E in Review Petition on September 29, 1986 and October 1, 1987 respectively.

To appreciate the controversy in the appeal, the relevant facts may be stated in brief.

F The case of the appellant before this Court is that the disputed property consists of agricultural land bearing Survey No. 521/A/4B, Gut No. 2326 situate at Village Chakan, District Pune admeasuring 15 *gunthas*. The land originally belonged to one Vitthal Babaji Bhaskar. Hari Ganpat Jadhav, ancestor of the appellant was the tenant of that land since 1929. After the death of Hari, his son Ganpat was cultivating the land as tenant. Thereafter the appellant G continued to cultivate it. According to the appellant, on the 1st April, 1957, the tenant became 'deemed purchaser' of the land under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act"). Admittedly, on that day, i.e. April 1, 1957 (Tillers' day), Ganpat (father of the appellant) was in possession of suit land as tenant. Under Section 32 of the Act, therefore, Ganpat became 'deemed purchaser'. The Mamlatdar and H Agricultural Lands Tribunal, Khed passed an order on November 16, 1959

under Section 32-P of the Act holding that the tenant had surrendered the land as he was not interested in purchasing it and hence the purchase had become ineffective. The Mamlatdar recorded the statement of the tenant (Ganpat) and of the landlord (Vitthal) and held that the possession of the land should be handed over to the landlord. It is the contention of the appellant that the provisions of the Act had not been complied with and as the tenant became 'deemed purchaser', the order passed by the Mamlatdar and Agricultural Lands Tribunal was *non est*. It was also his case that the possession of the land was never handed over to the landlord.

The appellant, therefore, approached the Mamlatdar and Agricultural Lands Tribunal on December 10, 1976 praying that since the tenant had become 'deemed purchaser' under Section 32 of the Act, in accordance with the provisions of Section 32-G of the Act, the purchase price of the land should be fixed. The proceedings under Section 32-G of the Act, however, were dropped and purchase was declared ineffective by the Mamlatdar and Agricultural Lands Tribunal as the appellant remained absent on the date of the hearing. The application was accordingly dismissed. Against the said order passed by the Mamlatdar and Agricultural Lands Tribunal, the appellant preferred an appeal before the Sub-Divisional Officer, Khed which was allowed on August 20, 1983, the order passed by the Mamlatdar and Agricultural Lands Tribunal was set aside and the matter was remitted to the Tribunal for fresh inquiry in accordance with law. The case, therefore, again came up for hearing before the Mamlatdar and Agricultural Lands Tribunal, Khed and the Tribunal by an order dated January 31, 1985, partly allowed the prayer of the appellant. The Tribunal noted that the prayer was made by the appellant in respect of two pieces of land as mentioned in the order. According to the Tribunal, however, from the evidence led by the landlord, it was clear that an inquiry in respect of one piece of land had been conducted and purchase had been declared ineffective as the tenant was not interested in purchase of land and the possession of the land had been handed over to the landlord. It was, therefore, not necessary to make inquiry under Section 32-G of the Act for that land. Regarding the other land, the tenant had become 'deemed purchaser' and, hence, purchase price was required to be fixed. Considering the nature of land, the Tribunal fixed the price and ordered the tenant-purchaser to pay the amount in two equal instalments with interest thereon. The Tribunal also ordered to issue certificate on payment of purchase-price by the tenant under Section 32-M of the Act.

Being aggrieved by the order passed by the Mamlatdar and Agricultural

A Lands Tribunal rejecting the claim, the appellant preferred an appeal before the Sub-Divisional Officer. The Appellate Authority held that the surrender of land bearing Survey No. 521/A/4B Gut No. 2326 was not in accordance with law since the provisions of Section 15(2) of the Act had not been complied with. In the light of the said finding, the appellate authority held the so-called surrender as illegal and unlawful, allowed the appeal, set aside the order of B the Mamlatdar and Agricultural Lands Tribunal in respect of Gut No. 2326 and remanded the case to the lower court for fixation of purchase-price of the land.

The landlord challenged the said order by preferring a Revision Application before the Maharashtra Revenue Tribunal contending that the C tenant had already surrendered possession of Gut No. 2326 and after following procedure laid down in the Act, the Mamlatdar and Agricultural Lands Tribunal had passed an order in 1959. It was, therefore, not open to the appellate authority to quash the order passed by the Mamlatdar and Agricultural Lands Tribunal and the Revision Application deserved to be allowed. The Tribunal, however, held that the provisions of Section 15(2) of the Act had not been D complied with and as such, surrender could not be held to be legal and valid and the order passed by the appellate authority did not deserve interference. Accordingly, the Revision Application was dismissed. A Review Application against the order in Revision Application also met with the same fate.

The landlord hence moved the High Court by invoking Article 227 of E the Constitution. The High Court, in the judgment impugned in this Court, held that the appellate and the revisional authority were wrong in ignoring the order passed in 1959 in respect of land comprising Survey No. 521/A/4B Gut No. 2326. According to the High Court, the tenant, father of the appellant had become 'deemed purchaser' on tillers' day. He, however, specifically F stated that he was not willing to purchase the land. An inquiry was conducted and an order was passed on November 16, 1959 and in pursuance of the said order, possession was given to the landlord of the said land. No proceedings were initiated nor the said order was challenged. In the circumstances, the authorities had committed an error in passing the orders in favour of the tenant. The writ petition was accordingly allowed and the orders passed by G the appellate authority and revisional authority were set aside.

Being aggrieved by the said order, the tenant has approached this Court. On February 2, 2001, notice was issued by the Court and *status quo* as to possession was granted. Affidavit-in-reply and affidavit-in-rejoinder were filed. On April 10, 2003, leave was granted. *Status quo* granted earlier H

was, however, vacated. A

We have heard the learned counsel for the parties.

Mr. Sukumaran, Senior Advocate appearing for the appellant contended that the High Court has committed an error of law as well as of jurisdiction in setting aside orders passed by the appellate authority as well as revisional B authority. According to him, the High Court was exercising supervisory jurisdiction under Article 227 of the Constitution. It, therefore, could not have entered into questions of fact and/or of law. Since the authorities under the Act had not exceeded their jurisdiction, it was not open to the High Court to re-appreciate and re-weigh the evidence and to set aside those orders. It C was also submitted that the High Court was wholly wrong in holding that the appellant had surrendered Gut No. 2326. What was surrendered by the appellant was the other land and he was not claiming ownership over that land. Alternatively, it was submitted by the learned counsel that even if it is assumed that the appellant had surrendered Gut No. 2326, since the requisite procedure had not been followed, the so-called surrender was illegal, unlawful D and contrary to law. The appellate authority and the revisional authority were right in holding that such surrender would neither deprive the tenant of his right to become 'deemed purchaser' nor would entitle the landlord to get possession from the tenant who had become owner of the land. It was also submitted that the Act has been enacted to protect tenants and the provisions of the Act must be so construed that tillers are not deprived of their livelihood. E When both the authorities under the Act had held that the appellant-tenant had become 'deemed purchaser', the High Court should not have interfered with the said finding. It was, therefore, submitted that the order passed by the High Court deserves to be set aside by restoring the orders passed by the appellate and revisional authority. F

Mr. Mohta, Senior Advocate appearing on behalf of the respondent-landlord, on the other hand, supported the order passed by the High Court. The counsel submitted that the appeal deserves to be dismissed on a preliminary ground and leave which has been granted requires to be revoked as there was suppression of material facts by the appellant. According to him, G the appellant claims ownership over the land bearing Survey No. 521/A/4B admeasuring 15 gunthas of Gut No. 2326. As held by the Mamlatdar and Agricultural Lands Tribunal in the order dated November 16, 1959, tenant-Ganpat was not interested in purchase of land and surrendered tenancy. The Mamlatdar thereupon recorded a statement and after satisfying about H

A willingness of the tenant and following the provisions of Section 15 of the Act, passed an order that the tenant had surrendered his tenancy rights in accordance with law. Even thereafter, when possession was sought to be given by the tenant to the landlord in 1962, again his statement of was recorded. According to Mr. Mohta, this is not a case of taking over possession by the landlord, but handing over possession by the tenant. Thus, as early B as in 1962, the tenant had handed over the possession of the land to the landlord. The appellant is aware of this fact and yet he had suppressed it and obtained an order of *status quo*. This Court, no doubt, subsequently after referring to the affidavit of the landlord vacated interim relief. In view of concealment of material fact, however, the appellant is not entitled to equitable C relief under Article 136 of the Constitution.

On merits, Mr. Mohta submitted that the High Court was wholly justified in setting aside the orders of the authorities below inasmuch as those orders were *ex facie* illegal and without jurisdiction. The High Court rightly observed that what was relevant was the order dated November 16, 1959 after following D procedure in accordance with law and declaring that the tenant was not interested in purchase of land and had surrendered his tenancy rights. In view of the said order, no proceedings could have been initiated under the Act so far as the disputed land is concerned. The counsel also submitted that as the tenant had surrendered tenancy in 1959 and possession was handed over to E the landlord in 1962, nothing was done by him thereafter. In view of increase in price of the land that in 1976, again the proceedings had been initiated by the appellant to pressurize the respondent-landlord to pay some amount. The Mamlatdar and Agricultural Lands Tribunal went into the question as to the legality of the order passed in 1959 and held that the said order was legal, valid and in accordance with law and the tenant had no right over the land. F Unfortunately, however, the appellate and revisional authority held in favour of the tenant. The High Court, therefore, was justified in setting aside those orders. The counsel also submitted that the stand of the appellant is inconsistent inasmuch as on the one hand, he contended that the tenant had become 'deemed purchaser' and hence no order could have been passed by G the authorities depriving him of that right and, on the other hand, he conceded that he had surrendered land bearing Gut No. 2325 and not 2326. Even the appellate and revisional authority had not proceeded on the basis that there was no surrender. They set aside the order of Mamlatdar and Agricultural Lands Tribunal on the ground that the provisions of Section 15(2) had not been complied with and the surrender was unlawful. It was, therefore, submitted H that the order passed by the High Court is in accordance with law and no

interference is called for. A

Having given anxious consideration to the rival contentions of the parties and having applied our minds to the facts and circumstances of the case, in our opinion, the order passed by the High Court deserves no interference under Article 136 of the Constitution. We are of the view that though all the facts which have been placed on record by the landlord in his B affidavit-in-reply have not been stated in the Special Leave Petition, nevertheless the appellant has produced on record the order passed by the Mamlatdar and Agricultural Lands Tribunal on November 16, 1959. In fact, it is the trump-card on which strong reliance is placed by Mr. Mohta. The material document thus has not been suppressed by the appellant. Moreover, C after notice was issued, the respondents appeared and counter-affidavit was filed in July, 2001. The matter was heard at several occasions thereafter and leave was granted in April, 2003. The Court was thus aware of the stand of the respondent-landlord as reflected in the counter-affidavit. The Court, therefore, vacated interim relief, but granted leave. In the light of these facts, in our opinion, it would not be proper to revoke leave at this stage. D

On merits, however, according to us, submission of Mr. Mohta is well-founded that in 1959, an order was passed in accordance with the provisions of law and the Mamlatdar and Agricultural Lands Tribunal held that the tenant was no more interested in purchase of land and surrendered his E tenancy rights in favour of the landlord. Our attention in this connection was invited by the counsel for the respondents to a statement of Ganpat Hari Yadav (tenant) made before the Mamlatdar on October 15, 1959 wherein he had stated that he was cultivating the land since about 40 years on 'manual labour'. He had also stated that his name was shown as tenant in Village form 7/12. He had further stated that if on April 1, 1957, he had right to purchase F land. He, however, stated that he did not want to purchase it. He then stated that he was given to understand that if he would decline to purchase the land, it would be disposed of and yet he had not purchased it. The statement was signed by him. It was counter-signed by Tehsildar, Khed in presence of Mamlatdar, who also signed it.

G

On the same day, statement of landlord-Vitthal was recorded. He had stated that Ganpat was cultivating the land since about 40 years on 'manual labour', but his name had been entered as tenant in 7/12 extract. He then stated that if the land is given to him, he would cultivate it personally. He would not sell it. He also stated that he had no other land elsewhere nor he H

A had inducted any other tenant. He had stated that he was working as a Mechanic in Power House at Junner and was getting salary of Rs. 90 p.m.

On the basis of the statement of landlord and tenant, an order was passed by the Mamlatdar on the same day. He considered the provisions of Section 32-P read with Section 15(2) of the Act and recorded a finding that
B the total holding of the landlord was 15 *gunthas* which was below the ceiling area; it was the only land and Ganpat was the only tenant of the said land. He also held that the landlord required the land for *bona fide* personal cultivation and, hence, he was entitled to retain the land.

C From the record, it appears that though the order was passed in November, 1959, the tenant continued to remain in possession up to 1962. On December 18, 1962, when Ganpat was to hand over possession to the landlord, again his statement was recorded by Mamlatdar and Agricultural Lands Tribunal, Khed in which he stated that he was entitled to purchase the land under the Act, but he was not willing to purchase it. He stated that he was
D aware of the consequences of his refusal to purchase the land. He stated that even after 'second thought', he was not willing to purchase the land and was ready to hand over possession. Accordingly, the possession of the land was handed over to the landlord. A *panchnama* was prepared of handing over possession by tenant-Ganpat to landlord Vitthal and a receipt to that effect
E had been issued by the landlord.

From the above documents, it is clear that an order had been passed by the Mamlatdar and Agricultural Lands Tribunal under the Act. Statement of tenant was recorded. He was also explained as to the consequences of his unwillingness to purchase the land and he had expressly stated that he was
F aware of the consequences of his refusal to purchase the land and yet he had declined to purchase it. Even in 1962, again his statement was recorded and he repeated what he had stated earlier. Even on 'second thought', he reiterated that he was not willing to purchase the land. In the circumstances, in our opinion, the respondents are right in contending that since the tenant was not ready and willing to purchase the land and surrendered his tenancy rights
G in favour of the landlord, the landlord was put in possession of the disputed land.

The respondents are also right in submitting that only in 1976 the appellant started 'second innings' by initiating the present proceedings. Since an order was passed and possession had been given to the landlord,
H the application submitted by the appellant was not maintainable. It, however,

appears that the application was entertained since the appellant had stated that he had become 'deemed purchaser' in respect of other land also. Mr. Sukumaran, appearing for the tenant submitted that the appellant had surrendered his tenancy rights in respect of one Gut Number but not for the other. According to him, the tenant had become 'deemed purchaser' of Gut No. 2326.

We are unable to uphold the argument. From the order dated January 31, 1985, passed by the Mamlatdar and Agricultural Lands Tribunal, it is clear that the tenant had been declared 'deemed purchaser' of land bearing Gut No. 2325 and even purchase-price had been fixed and the tenant was ordered to pay the same with interest in two equal instalments. In our view, therefore, Mr. Mohta is right in submitting that the tenant had surrendered his tenancy rights in respect of one piece of land and it was only in respect of Gut No. 2326 which was in 1959. Initiation of proceedings for two Gut numbers itself shows that the tenant wanted to take a chance by playing 'second innings' though he had already surrendered his tenancy rights over Gut No. 2326 and hence the Mamlatdar and Agricultural Lands Tribunal was right in negativing the claim of the tenant for Gut No. 2326. Appellate and revisional authorities were wrong in setting aside the order passed by the Mamlatdar and Agricultural Lands Tribunal dated January 31, 1985 and in ignoring the order dated November 16, 1959. The High Court was, therefore, right in quashing both the orders.

It is, no doubt true that surrender of tenancy by the tenant, who had become 'deemed purchaser' under the Act must be in accordance with law.

Mr. Sukumaran on this point invited our attention to some of the important provisions of the Act. He submitted that special provisions have been made by the Legislature relating to purchase of land by tenants (Sections 32-33). Sub-section (1) of Section 32 of the Act enacts that on first day of April, 1957, styled as the tillers' day, every tenant had become 'deemed purchaser' of the land cultivated by him. Section 32-G requires the Tribunal to issue notice and to determine price of land to be paid by the tenant. Section 32-H lays down procedure for fixation of purchase price. Section 32-K relates to mode of payment of price by the tenant-purchaser as also deals with power of the Tribunal to recover purchase price. Section 32-M provides for issuance of certificate of purchase to the tenant-purchaser and also covers those cases where there is failure on the part of the tenant to pay purchase price. Section 32-P enables the Tribunal to resume and dispose of land not purchased by

A tenant. Clause (b) of sub-section (2) of the said section states that subject to the provisions of Section 15, the land shall be surrendered to the former landlord.

Section 15 deals with cases of termination of tenancy by surrender of land by the tenant. It reads as under;

B

"15. *Termination of tenancy by surrender thereof.*—(1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlords;

Provided that such surrender shall be in writing, and verified
C before the Mamlatdar in the prescribed manner.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to the like extent, and in so far as the conditions are applicable subject to the like conditions as are provided in sections 31 and 31A for the
D termination of tenancies.

(2A) The Mamlatdar shall, in respect of the surrender verified under sub-section (1), hold an inquiry and decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered and specify the extent and particulars in that
E behalf.

(3) The land, or any portion thereof, which the landlord is not entitled to retain under sub-section (2), shall be liable to be disposed of in the manner provided under clause (c) sub-section (2) of Section 32P.

F

In exercise of power conferred by Section 82 of the Act, the State Government framed rules known as the Bombay Tenancy and Agricultural Lands Rules, 1956. Rule 9 is material for our purpose and reads thus;

"9. *Manner of verifying surrender of tenancy.*—The mamlatdar
G when verifying a surrender of a tenancy by a tenant in favour of the landlord under section 15 shall satisfy himself, after such enquiry as he thinks fit, that the tenant understands the nature and consequences of the surrender and also that it is voluntary and shall endorse his findings in that behalf upon the document of surrender."

H Conjoint reading of Section 15 and Rule 9 makes it clear that a tenant

who has become 'deemed purchaser' under the Act may surrender tenancy. Such surrender, however, must be as per the procedure laid down in the Act and the Rules. If the surrender is not in accordance with the law, it must be held illegal, unlawful and the status of a tenant as 'deemed purchaser' would not get adversely affected.

Mr. Sukumaran is again right in submitting that the Act has been enacted with a view to protect tenants and the provisions of the Act, therefore, must be construed in favour of a weaker class of the society to ensure that the object underlying the Act is fulfilled.

As held by this Court in *Sakharam Shripati Jadhav and Ors.* v. *Chandrakant and Ors.*, [1987] 1 SCC 486, the Act has been enacted with a "high purpose of transferring the land to the tillers of the soil". In *Sri Ram Ram Narain Medhi* v. *State of Bombay,* [1959] Supp 1 SCR 489, it has been held by the Constitution Bench of this Court that the title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a complete purchase and sale between the landlord and the tenant. But in the said decision itself, it has been observed by the Court that the tenant had been given a *locus penitentiae* and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or he appears and shows his unwillingness to purchase it, an appropriate order can be passed by the authority after following the procedure required by law.

In *Ramachandra Keshav Adke* v. *Govind Joti Chavare,* [1975] 1 SCC 559, a question similar to the one with which we are concerned came up for consideration before this Court. It was held that surrender of tenancy by a tenant in order to be valid and effective must fulfill the following requirements-

(i) It must be in writing.

(ii) It must be verified before the mamlatdar.

(iii) While making such verification the mamlatdar must satisfy himself in regard to two things, namely

  (a) that the tenant understands the nature and consequences of the surrender, and

  (b) that it is voluntary.

(iv) The mamlatdar must endorse his finding as to such satisfaction

A upon the document of surrender.

The Court considered provision of Section 5(3)(b) as then stood, which was similar to Section 15(1) of the Act, read with Rule 2-A, similar to present Rule 9 of the Rules and held that the provision was absolute, express and peremptory.

B

The Court stated;

> "The language of Section 5(3)(b) and Rule 2-A is absolute, explicit and peremptory. The words "provided that" read with the words "shall be", repeatedly used in Section 5(3)(b), make the termination of
> C tenancy by surrender entirely subject to the imperative conditions laid down in the proviso. This proviso throws a benevolent ring of protection around tenants. It is designed to protect a tenant on two fronts against two types of dangers—one against possible coercion, undue influence and trickery proceeding from the landlord, and the other against the tenant's own ignorance, improvidence and attitude
> D of helpless self-resignation stemming from his weaker position in the tenant-landlord relationship.
>
> Thus, the imperative language, the beneficent purpose and importance of these provisions for efficacious implementation of the general scheme of the Act,—all unerringly lead to the conclusion that
> E they were intended to be mandatory. Neglect of any of these statutory requisites would be fatal. Disobedience of even one of these mandates would render the surrender invalid and ineffectual."

It was, therefore, held that if the procedure was not followed, surrender
F was invalid and the effect of non-compliance would result in all proceedings being vitiated.

Recently, this Court reiterated the law laid down in *Ramachandra* in *Babu Parasu Kaikadi* v. *Babu,* [2004] 1 SCC 681.

G In our opinion, however, from the statement of Ganpat recorded on November 15, 1959, of Vitthal recorded on the same day and the order passed by the Mamlatdar and Agricultural Lands Tribunal, it was clear that the requisite procedure had been followed. The tenant was told about his rights and the effect and consequences of his unwillingness to purchase the land and surrender of tenancy. Thereafter an order was passed by the authority
H on November 16, 1959. It is also clear that even in 1962 when the possession

was handed over to the landlord, again statement of the tenant was recorded and he reiterated what he had stated in 1959. He had stated that on 'second thought' also, he was not willing to purchase the land. In the circumstances, in our opinion, the appellate and revisional authorities were not right in ignoring the order of 1959 and in passing the order directing the Mamlatdar and Agricultural Lands Tribunal to fix purchase price. In our judgment, the tenant had already surrendered his tenancy rights and since it was in consonance with law and after following proper procedure, an order was passed by Mamlatdar and Agricultural Lands Tribunal, it was legal and lawlful. It is also clear that since 1962, the respondent-landlord was in possession of the land. No proceedings were taken by the appellate for more than a decade. It is further clear from the affidavit-in-reply filed by the landlord that in 1983, the appellant filed Regular Civil Suit No. 222 of 1983 in the Court of Civil Judge, Junior Division, Khed for perpetual injunction under Section 38 of the Specific Relief Act, 1963 but it was dismissed. An appeal filed against the said order was also dismissed by the IXth Additional District Judge, Pune on October 4, 1999. It is thus clear that the action was in consonance with law and the High Court was right in setting aside both the orders passed by the appellate authority and revisional authority. We, therefore, see no substance in the appeal which deserves to be dismissed.

A B C D

For the foregoing reasons, the order passed by the High Court of Bombay does not suffer from any infirmity and the appeal is dismissed, however, with no order as to costs.

E

V.S.S. Appeal dismissed.