Namdeo Khushal Dighe Vs. Kesharbai Damodhardas Chandak and anr.

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Court : Mumbai

Decided On : Jun-25-1973

Reported in : AIR1974Bom192; 1974MhLJ291

Judge : Masodkar, J.

Acts : Bombay Tenancy and Agricultural Lands (Vidarbha region) Act, 1958 - Sections 19, 38, 39, 39A and 49-A(1)

Appeal No. : Special Civil Appln. No. 415 of 1969

Appellant : Namdeo Khushal Dighe

Respondent : Kesharbai Damodhardas Chandak and anr.

Advocate for Def. : S.N. Kherdekar, Adv.

Advocate for Pet/Ap. : S.V. Naik, Adv.;R.N. Despande, Adv.

Judgement :

ORDER

1. A question of some impotence is raised by this petition upon the facts which are not in dispute.

2. The petitioner is a tenant of field survey No. 12/1, having an area of 11.29 acres situate at Mouza Leha-Khurd, a village in Buldhana District. One parvatibai was the original Land-holder. She died on April 25, 1964. Respondents are the successors-in-title of Paravtibai and it is not in dispute that they are widows.

3. Under the provisions of section 49-A of the Bomaby Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 (hereinafter referred to as the Act), proceedings were initiated before the Agricultural Lands Tribunal for statutory conferment of ownership in favour of the tenants. By an order passed on September 30, 1966, that Tribunal held that as the successors-in-title of Parvatibai were both widows and thus being the landladies under disability, the ownership of the field could not be transferred in favour of the petitioner. An appeal was taken to the Deputy Collector, Land Reforms, Amravati and that authority by its order of lady's disability continued and thus eclipsed the right of the tenant. A revision was taken to the Maharashtra Revenue Tribunal and by an order of December 20, 1968 that Tribunal upheld that view. Tenant has therefore moved this petition.

4. Deceased parvatibai during her lifetime had initiated proceedings, after giving

notice under Section 38 (1) of the Act, for termination of tenancy and resumption of land for bona fide personal cultivation. Those proceedings terminated ultimately by an order rejecting her claim. The Maharashtra Revenue Tribunal in Revenue Revision Application No. 364/Tenancy/1961 by its order passed on April 9, 1963, found Parvatibai not entitled to relief under section 38 of the Act. Thus it cannot be doubted that the original landlady who was herself a widow had proceeded to take steps for determining the lease of the petitioner with a view to resume land for personal cultivation and failed in that attempt.

5. There had been learned arguments on both sides upon these facts and application of true law enacted by the provisions of section 49-A with particular reference to sub-section (3) and its proviso.

6. It is contended for the petitioner that the case of a tenant, like him, is clearly covered by the provisions of sub-section (3) of section 49-A. That provision is a part of the legislative scheme to statutorily transfer ownership to the tenants, whether they be the tenants from able-bodied persons or from disabled persons. The learned Counsel has relied on the decision of this court reported in Jankibai V. Ranu 1971 M LJ 344 and also the Supreme Court (F.B. of Bombay H.C.?) judgment reported in Madhav V. Mah. Revenue Tribunal : AIR1971Bom106 . He argues that here was a case clearly covered by the proviso. Proceedings had been initiated by deceased Parvatibai by having reset to Section 38 (2) and upon the termination of those proceedings under Proviso, petitioner would become full owner of the property. At any rate, the learned Counsel further submits that sub-section (3) of section 49-A would be attracted, for the successors-in-title like the respondents had not given a notice of termination of tenancy in accordance with sub-section (2) or sub-section (3) of section 39-A nor they could take such process. Therefore, at any rate, after the period indicated by sub-section (3) of Section 39-A, the petitioner would become the full owner of the land. Therefore according to the learned counsel either on 9th April, 1963, when the earlier proceedings terminated the ownership vests under the proviso to sub-section (3) of Section 49-A or after the period of one year from the death of Parvatibai, i.e., on 25-4-1964, the petitioner becomes the full owner of the property. There is also a third alternative submission. It is said that under sub-section (1) of Section 49-A all the tenants on land are conferred with the statutory ownership if they are on the land and are cultivating the same as such on April 1, 1963. That sub-section does not make any distinction between the able-bodied or disabled landlords. Therefore, after the date indicated by sub-section (1), there could be no relationship of landlord and tenant. Some assistance is sought from the provisions of Section 49-B which relates to transfer of possession and ownership of lands to dispossessed tenants and also the submission is fortified by making reference to sub-section (5) of Section 49-A together, it is plain that the vesting is not postponed at all. It is definite indicated by the periods prescribed either in sub-section (1) or sub-section (2) or, at any rate, by the terminus indicated by sub-section (3) of that section.

7. As against this, the learned Counsel appearing for the respondents contends that Section 49-A cannot be read in the manner in which the petitioner seeks to read. He submits that sub-section (1) only applies to the landlords who are not disabled landlords. According to the learned Counsel, therefore, the date April 1, 1963, has got no relevance if there is a disabled landlord holding the land in which a tenant has an interest. Several section of the Act were pressed in aid to point out that the provisions of the Act make a marked distinction between able and disabled landlords; that certain specific rights are conferred on the tenants from time to time as

indicated by the scheme of other section like right of the tenent to purchase land given by section 41, right of having compulsory transfer given by section 46, right of resumption by the landlords contemplated by Section 38 or 39; everywhere there is anxiety apparent to protect the interest of disabled landlords wherein a specified type of persons are classed, like minor, widow or any other persons mentioned in sub-section (2) of Section 38 or sub-section (2) of section 41. Therefore, wherever the question relates to the land of a landlord who is either a minor, a widow or a person of physical or mental disability , it cannot be conceived that Legislature would take away the protection earlier afforded by enacting a provision earlier afforded by enacting a provision like Section 49-A and declaring that all rights of such landlords shall all cease as and from April 1, 1963. In other words it is submitted that though sub-section (1) begins by non obstante clause, that clause has restrictive meaning and cannot take away by its sweep the earlier provisions which afforded ample protection to the disabled landlords. a fervent appeal is further made to follow the anxiety of the Legislature and the policy underlying the various legislative schemes in moulding the rights of landlords and tenants. I was also taken through the history of the legislature amendments, particularly of Section 4-A.

8. The learned Counsel for the respondents further urged that, at any rate, the words in sub-section (3) of Section 49-A and its proviso are to be understood in the context of the rights and remedies provided by the earlier parts of the Act. Sub-section (3), according to the learned Counsel, should be fully applied and if that is so applied, even successors-in-title the persons of disabled categories, should be allowed to have the benefit of the earlier protection conferred by the statute and the termini indicated by sub-section (3) should not be interpreted to mena that rights are extinguished automatically by the end of the period prescribed by sub-section (3) of Section 39-A. As to the proviso of that sub-section, it is contended hat unless there is in law the termination of tenancy and new relationship is brought about by an order, that proviso is not attracted. The learned Counsel submits that the judgment of this Court in Jankibai's case 1971 mah LJ 344 requires reconsideration and that there was marked divergence in a view taken by another judgment of this Court in a case reported in Sevvabibi v. Shaikh Ebrahim, reported in (1970) 18 Ten LR 146 = (Special Civil Application No.2797 of 1968, dated 5.2.1969)which was under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. Some argument was also advanced on the basis of unreported judgment in Special Civil Application No.512 of 1964 decided on September 29, 1965 Namdeo v. Krishnabai by this Court, where the question of a right of purchase of a tenant of a widow whose husband died on December 17, 1959, was considered and a contention that the word 'widow' in Section 41 takes in only a person, who was the widow before the Tenancy Act came into force, was negatived.

9. I may mention that the learned counsel for the petitioner has also relied on my earlier judgment rendered in Special Civil Application No. 481 fo 1969 decided on December 15, 1972 = (reported in : AIR1973Bom274) Anandrao v. Mahadeo. That was a case of landlord to whom Section 38 was not at all appliable, because of sub-section (7) of that section. Though, therefore, the landlord was a minor getting the right by transfer under a partition effected after 1st, August, 1953, he had no right of resumption of the land under Section 38 of the Act. It was found that only the land-holders who were capable of initiating proceedings under Section 38 or Section 39-A could claim benefit and seek extension of time under sub-section (3) of Section 49-A.

10. Before I refer to other parts of the submission, it will be useful to consider what is

decided by this Court in 1971 mah LJ 344. There the question arose about the right of the tenants of a widow who had exercised he right of resumption of land for personal cultivation under Section 38 91) and had successfully terminated the tenancy by obtaining possession of 10.27 acres of land while the tenant continued to retain 5.04 acres of land after termination of his tenancy. With respect to the land so retained by the tenant, proceedings under Section 49-A for transfer of ownership were initiated. The submission was that in spite of the provisions of Section 49-A (3) and because of the disability of the landlady, the ownership did not pass to the tenant. After considering the provisions of Section 41, 46 and 49-A in its entirety, it was held that under the provisions of Section 49-A the ownership of land held by tenant which is not transferred to the tenant under Section 46 or which is not purchased by him under Section 50, would stand transferred to and vest in the tenant from April 1, 1963. It was observed that clauses (i) (ii) and (iii) of Section 49-A (1) refer to the conditions which are to be satisfied before a tenant can claim that the land cultivated by him personally stands transferred to him. it was further found that all these three clauses indicated that before the tenant can claim the right of statutory ownership under Section 49-A with effect from April 1, 1963, it has to be ascertained whether the landlord has exercised his right under Section 38 (1) or 39 or 39-A and whether he has terminated the tenancy on any of the grounds specified in Section 19 and if so, whether he had or has not applied to the Tahsildar on or before March 31, 1963 for possession. In other words, if on or befoer March 31, 1963, the landlord had not taken any steps to terminate the tenancy of his tenant an dto obtain possession from the tenant either under Section 38 (1) or Section 39 of Section 39-A (2) or Section 19, the land is available for being transferred to the tenant. After considering the provisions of Section 38 (1) and (2), it was found that if a person under suability had once proceeded under Section 38 91) by giving a notice there is no occasion for invoking the provisions of Section 38 (2). In that case, it was found therefore that the right, having been exercised under Section 38 91) and upon the final termination of those proceedings the tenant became the full owner of the lands which he retained.

11. Plainly, threfore, Jankibai's case 1971 Mah LJ 344 was under the proviso to sub-section (3) of Section 49-A. There was a proper determination of the tenancy in accordance with the provisions of Section 38 and the tenant after such termination of tenancy retained possession of certain land of which he became the full owner because of the proviso.

12. The petitioner's submission upon the proviso has been noted by me in the earlier part of this judgment. It is contended that mere giving of a notice and making an application are the only two conditions and once there is a termination of these proceedings ipso facto the tenant becomes the owner of whatever remains with him.

13. The learned counsel for the petitioner submitted that once the notice is given and proceedings initiated, then whatever may be the result of the proceedings, it must be found that thereafter, i.e., after the decision of the proceedings, what is retained by the tenant is because of those proceedings. In other words, he says that the termination does take effect by giving a notice and by filing an application. Once there is an adjudication on merits about the claim of landlord or landlady, then even though the application may not be granted, the tenant will be holding the property after such decision and that the proviso would be therefore attracted. That is how Jankibai's case, 1971 M LJ 344 is pressed in service.

14. All these submissions will have to be understood against the object and purpose

of the provision of Section 49-A and also its true content. The provisions of Section 49-A are the part of Chapter III and were so introduced by an Amending Act., i.e, Maharashtra Act II of 1962. By that Act certain other provisions were also added, one being Section 39-A of the Act. The objects and reasons for making the amendments are stated in following terms.

'While implementing the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, the Government found that to clarify the position, or to remove lacunae or to improve the measure it was necessary to make certain amendments and additional provisions in the Act. It was also felt that small landlords needed some relief in the matter of resumption of land for personal cultivation. The Act is designed to achieve these objects.'

(Underlining is mine).

By Section 9 of the Amending Act, Section 49-A was added and the purpose was stated to be to transfer the ownership of land held by a tenant being a land which is not transferred to the tenant under Section 46 or which is not purchased by him under Section 41 or Section 50 of the principal Act.

The provisions of Section 49-A may now be extracted:

49-A. (1) Notwithstanding anything contained in Section 41 or 46 any custom, usage decree, contract or grant to the contrary but subject to the provisions of this section, on and from the 1st day of April, 1963 the ownership of all land held by a tenant being land which is not transferred to the tenant under Section 46 or which is not purchased by him under Section 41 or 50 shall stand transferred to and vest in, such tenant who shall, from the date aforesaid, be deemed to be the full owner of such land if such land is cultivated by him personally, and

(i) the landlord has not given notice of the termination of tenancy in accordance with the provisions of sub-section (1) of Section 38 or Section 39 or sub-section (2) of Section 39-A: or

(ii) the landlord has given such notice but has not made an application thereafter under Section 36 for possession as required by those sections: or

(iii) the landlord being a landlord not belonging to any of the categories specified in sub-section (2) of Section 38 has not terminated the tenancy on any of the grounds specified in Section 19; or has so terminated the tenancy but has not applied to the Tahsildar on or before the 31st day of March, 1963 under Section 36 for possession of the land:

Provided that, where the landlord has made such application for possession, then the tenant shall, on the date on which the application is finally decided, be deemed to be the full owner of the land which he is entitled to retain in possession after such decision. 3) Where the landlord, belonging to any of the categories specified in sub-section (2) of Section 38, has not given notice of termination of tenancy in accordance with the said sub-section (2) or sub-section (3) of Section 39-A or has given such notice but has not made an application thereafter under Section 36 for possession, such tenant shall be deemed to be the full owner of land held by him on the expiry of the period specified in sub-section (3) of Section 39-A.

Provided that, where the tenancy is terminated and application for possession is made in accordance with the provisions of sub-section (2) of Section 38 or sub-section (3) of Section 39-A, the tenant shall, on the date on which such application is finally decided, be deemed to be the full owner of the land which he is entitled to retain in possession after such decision.

(4) The ownership of land shall stand transferred to the tenant under sub-section (1) subject to the following conditions, that is to say:-

(a) if the tenant does not hold and cultivate personally any land as tenure-holder, the transfer of ownership of land to him shall be limited to the extent of three family holdings: and

(b) if the tenant holds and cultivates personally any land as tenure-holder the transfer of ownership of land shall be limited to such areas as will be sufficient to make up with the area of land held by him as tenure-holder to the extent of three family holdings.

(5) The land the ownership of which is not transferred under sub-section (1), shall be deemed to have been surrendered to the landlord, and thereupon the provisions of sub-section (1) and (2) of Section 21 and Chapter VII shall apply in relation to such land, as it the land was surrendered by the tenant under Section 20.

* * * * * * * * * * * (Emphasis provided)

15-16. Now these provisions are in several parts and to understand its efficacy and full scope each part will have to be considered in its own perspective it will be useful, therefore, to look into the language and its content and further the context in which it is made operative, Sub-section (1) used a definite terminology and also indicates the conditions upon which certain rights are created and simultaneously certain rights are extinguished. The prime effort should therefore be to examine all these operative portions of the section.

(i) Land not being land transferred under Section 41,40 or 46.

17. The subject of sub-section (1) of Section 49-A is the land which according to it is not transferred under the provisions of Section 41, 46 or 50 of the Act, in other words, it is primary that there must be a land which answers description, pre-postulate being it is all tenanted land. Because these sections are referred and mentioned in the body of sub-section (1), for determining its scope one must go back to the scheme of those sections. Chapter III of which Section 49-A is one of the sections takes in all these sections. By Section 41 a right in favour of a tenant was created to purchase land, it provided for an immediate right subject to the exceptions contained in the body of the section itself. If the conditions laid down by Section 41 were available, as soon as it came on the statute book, a tenant was entitled to purchase the land, provided further that he cultivated the same personally. Sub-section (2) of Section 41 deferred entitlement in case of tenancies held from specified landlords, they being a minor, a widow and a person subject to any physical or mental disability. There could be no right to purchase therefore to a tenant of such specified landlords till the period indicated by sub-section (2) of Section 41, subject further to the proviso mentioned in that sub-section. So this was the type of land which could not be purchased or transferred in favour of a tenant under Section 41. It is clear that

though there was a right in favour of a tenant under sub-section (1) of Section 42, he may not exercise the transferred ultimately relying on that statutory right. Section 46 accelerated what was intended by sub-section (1) of Section 41. As from first day of April 1961 all lands held by tenants which they could have purchased under sub-section (1) of Section 41 because of their entitlement, or sub-section (2) of Section 41, subject to the period indicated in that sub-section, was to become the property of the tenant upon a statutory transfer of ownership. The entitlement referred to in sub-section (1) of Section 46 as on 1-4-1961 could very well be even in case of a minor, a widow, or a person subject to any physical or mental disability, provided by that date the period of two years expired, as indicated by clauses (I) , (iii) and (iv) of sub-section (2) of Section 41. So all this land was the subject of sub-section (1) of Section 46. In case of the tenants who were of specified categories a proviso to sub-section (1) of Section 46 applied and deferred the date of transfer. Under its second proviso the date was deferred to the final decision of the proceedings under Section 19, 20, 21, 36 or 38 of all those tenants who were entitled to statutory ownership. Thus all land which was available for a tenant to purchase under Section 41 on 1-4-1961 became the property of the tenant because of this scheme, Section 50 contemplated the same result as on 1-4-1961 with respect to the lands where the tenancy was restored under the provisions of Section 7, 10, 21, 52 or 128- A (Section 51 and the qualifying clause added later on by the amendment). It may be mentioned that by Amending Act No. II of 1962, the specified dated of 1-4-1961 was changed to the date contemplated by sub-section (1) of Section 49-A, Section 50 along with Section 41, therefore, contemplated a right in favour of the tenant to purchase the land which was to be worked out under the provisions of Section 41 to 44 of the Act. The scheme of Section 46, however, was not merely a right to purchase but it was an enlarged and accelerated right, in that the ownership itself was transferred. That had only two qualifications one being the pendency of the proceedings deferring the date of transfer and other being the case of tenants of the specified categories. Excepting these all lands which the tenants were entitled to purchase passed on to them under Section 46 of the Act. It was evident in the scheme that the events mentioned in provisos to sub-section (1) of Section 46 could very well reach even before the second date was introduced by Section 49-A (1), being April 1, 1963 and land eventually stood transferred to the tenant.

18. Therefore, if lands were either purchased and stood transferred under section 41 or section 50 or stood transferred because of section 46 those were expressly omitted from the purview and scheme evinced by section 49-A. In respect of all other land which was still with the tenant, an improved measure was introduced by enacting Section 49-A by the Amending Act II of 1962. The relevant date for determining the land which is the subject-matter of transfer to the tenant was statutory indicated being 1st day of April 1963.

(ii) Further conditions indicated by sub-section (1) of Section 49-A.

19. Having found what is the subject-matter which is being transferred, a look must be had to the other conditions which are the part of sub-section (1), those conditions being clearly laid down in the positive and negative terms. Firstly, the land must be in personal cultivation of the tenant on 1st April 1963 and , secondly, the requirements of clauses (I), (ii) and (iii) should be satisfied, in that the landlord had not given notice of termination of tenancy either having resort to sub-section (1) of Section 38 or Section 39 or sub-section (2) of Section 39-A: or the landlord had given such notice but had not resorted to an application for possession under Section 36: or the

landlord other than the one specified in sub-section (2) of Section 38 had not terminated the tenancy the tenancy has not applied on or before 31st March, 1963 under Section 36. If these conditions are satisfied on 1-4-1962 the tenant would become the owner of the land held by him. These are the primary conditions to have the statutory effect of conferring ownership upon the tenant.

20. These conditions cumulatively indicate a policy that wherever the tenant is cultivating the land personally and the landlord has not resorted to his rights either under the provisions of Section 38, 39 or 39-A, or landlords of unspecified categories have not resorted to termination of tenancy under Section 19 bon 1-4-1963, the tenant would become the owner of the land. The purpose of Section 38, 39 or 39-A can no more be in doubt or dispute. It enabled the landlords of the categories mentioned therein to resume the land for bona fide personal cultivation. It provided further the procedure and remedy for working out procedure and remedy for working out these rights, Conditions were imposed upon satisfaction of which such a right could be exercised or was available. If by 1-4-1963 the landlord had not taken any such steps and the tenant was cultivating the land personally, sub-section (1) statutory effected truant of ownership right in favour of the tenant of ownership right in favour of the tenant, the land being not transferred under the earlier provisions of Section 41, 46 and 50 of the Act.

(iii)Proviso to sub-section (1) of Section 49-A:

21. Much of the argument is founded on the interpretations of the several words that are obtained in sub-section (1) and the function of the proviso to be found at the foot of that sub-section . The task of interpretation is sometimes likened to the knife of a surgeon seeking to reach the core and heart of enquiry. In the thickets of words and phrases used by the legislator, an interpreter has sometimes to tread the zig-zag path to find out what is fondly called 'the intention of the legislature'. While doing so the plain structure of the statute has always to be kept in mind, leaving aside the dangers of dale and vale. Of course in these matters when the drafting itself had resort to several well-known legislative devices providing its contours, all considerations must find its place in the interpretation ultimately reaching an uniform, balanced and cohesive meaning. In this effort the plain meaning and effect of the words that t are available in a statute cannot be ignored nor cut down on the elusive grounds that such construction would lead to consequences of hardship or that are not in accord with the notions of propriety or justice that may be entertained in a given case by the Court. With these principles in mind let me turn to the present proviso.

22. The function of the proviso is to limit the main part of the section and carve out that which but for the proviso would have been within the operative part if the section (See State of Rajasthan v. Leela : [1965]1SCR276) where then main provision is clear, proviso cannot be interpreted to cut down its effect. It is only where the operative part is not clear, the proviso can properly be looked into the ascertain the meaning and scope of the operative provisions of the section .(See Hindustan Ideal Insurance Co., Ltd. v. Life Insurance Corpn. of India : [1963]2SCR56).

23. Now the present proviso to sub-section (1) is not doubt worded in a manner which may create some confusion. It is introduced after laying down conditions noted above which take in the processors of Section 38, 39 or 39-A, Section 36 and, as far as unspecified landlords are concerned, provisions of Section 19. By itself condition No. (iii) does not take in a landlord of the specified kind within the meaning of sub-section

(2) of Section 38 who has proceeded to give notice under Section 19 or taken proceedings for termination of tenancy. The proviso uses the phrase 'where the landlord has made such application for possession'. (emphasis provided). Now the words 'such application' may be referable to the contingencies contemplated by conditions (1) (ii), and (iii) above and thus exclude an application or a proceeding under Section 19 or 36 initiated by a landlord specified in sub-section (2) of Section 38, though they may be pending on 1-4-1963. The words ' such application' in this proviso can have limited as well wider connotations. If confined to the preceding clause alone it may only mean that entire proviso governs condition No. (iii) in this sub-section. That would lead to complex and absurd results for these would be no provision which will indicate pendency of proceedings under other Sections like 38, 39, 39-A or 36 of the Act. 'Such application' should therefore mean and indicate all proceeding scaleable of being taken by any landlord against his tenant for resuming the land. That not only appears to be the content of that them but in the context that is the only reasonable way to understand its use by legislature. Viewed thus the present proviso governs the entire sub-section (1) and wherever a landlord's application for possession is pending on 1-4-63 the proviso would qualify the right of the tenant with reference to that date. In the scheme of the present Act. application for possession can be filed by a landlord either upon termination of tenancy upon the grounds available in Section 19 or he could resort to resumption of land indicated by other provisions of Chapter III. Therefore, it appears clear that 'such application for possession' should be construed to take in all applications those are capable of being filed by the landlords against the tenants because of the provisions of Section 19, 38, 39 or 39-A of the Act. Once this construction of those proceedings provided he is entitled to retain the possession of any tenanted land.

24. The terms of this proviso appear to have been considered by the Supreme Court in Waman v. Umabal 1970, M LJ 211, where in the body of that judgment it is observed:

'.....The proviso to Section 49-A (1) clearly enacts that where the landlord has made such application for possession, the tenant shall, on the date on which the application is finally decided, he deemed to be the full owner of the land which he is entitled to retain in possession after such decision. It is clear that if a proceeding under Section 36 has been commenced on any of the grounds mentioned in Section 38, 39 or 39-A (2) for termination of tenancy under Section 19 before March 31, 1963, the right of tenant does not arise until the proceeding is determined in favour of the tenant. The clearest implication of clauses (i), (ii) and (iii) of Section 49-A (1) is that if such an application is pending the right of the tenant does not arise and that is further clarified by the proviso. If the right of the tenant to hold the land is negative in a proceeding which is pending, evidently he cannot acquire title to the land.'

It may be mentioned that the facts of the case of 1970 Mah LJ 211 which are found in the opening paragraph of the judgment of the Supreme Court clearly show that it was a case of a landlord specified in Section 38 (2) of the Act and while considering the right of such landlord these observations have been made. The argument, therefore, that only because clause (iii) mentions a particular type of landlord, the words 'such application ' in the proviso should be held to have restricted meaning cannot be accepted. The aforesaid observations from the Supreme Court decision appear to be conclusive on the matter as to the scope of the proviso and limited postponement of the right of ownership under the operative part of sub-section (1) because of the pendency of the proceedings.

(iv) Non obstante clause in S. 49-A:

25. Some argument was advanced on the interpretation of the non obstante clause with which sub-section (1) opens and that may be briefly considered. It is well settled that such device is resorted to by the legislature in the same statute when one section of an Act is enacted to take away what other had conferred or intends to create new rights not earlier conceived. The observations by Das. J. in Raj Krushna Bose v. Binod Kanungo, : [1954]1SCR913 , which aptly sums its purpose may be usefully recalled:

'It is usual, when one section of an Act takes away what another confers, to use a non obstante clause and say that 'notwithstanding anything contained in section so and so, this or that will happen.' otherwise, if both sections are clear, there is a half-on clash. It is the duty of courts to avoid that and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise.'

In Rai Brij Raj Krishna v. S.K. Shaw & Bros. : [1951]2SCR145 , the Supreme Court was considering the provisions of Section 11 (1) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, which opened with a non obstante clause. While considering its scope the Court observed:

'Section 11 beings with the words 'notwithstanding anything contained in any agreement or law to the contrary,' and hence any attempt to import the provisions relating to the law of transfer of property for the interpretation of the section would seem to be out of place. Section 11 is a self -contained section, and it is wholly unnecessary to go outside the Act for determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted.'

In Waman Shrinivas Kini v. Ratilal Bhagwandas & Co., : AIR1959SC689 , the non obstante clause in Section 15 of the Bombay Hotel and Lodging House Rates Control 'Act. 1947, which read a s 'Notwithstanding 1947, which read as 'Notwithstanding anything contained in any law' was held to exclude the contracts also, as the contracts would fall under the provisions of the law. The Supreme Court observed. 'The non obstante clause has to be read in conjunction with the rest of the section,' and distinguished the same with the non obstante clause available in Section 13 (1) (a) of the very same Act. Even in 1970 Mah LJ 211 quoted supra, the Supreme Court observed that Section 49-A (1) expressly operates notwithstanding anything contained in Section 41 or Section 46 or any other custom. usage, decree, contract or grant and that it clearly implies that as long as the proceeding pending on April 1, 1961. is not disposed of the landlord may commence till April 1, 1963, but not thereafter, a proceeding for termination of tenancy, relaying upon a ground on which the tenancy may be terminated under the Act.

26. Thus keeping in view these observations and the principles that must govern the interpretation of the non obstante clause in this case, it is clear that the operation of the provisions of Section 41 and 46 is completely taken away by that clause; so also the operation of the custom, usage, decree, contract, or grant to the contrary is removed, subject, however, to the other provisions available in Section 49-A itself. The non obscene clause thus being clear, must be given its full operation and non reliance can be placed on the rights available either under Section 41 or Section 46 and a contention that those rights are still saved cannot be entertained. It must be, therefore, logically concluded that while enacting Section 49-A. Legislature departed from its earlier policy of merely conferring from its earlier policy of merely conferring

a rights in ownership only if the tenant was entitled to purchase land of his landlord. If this interpretation could still be possible, as indicated by Das J., there would be head -on clash between the scheme of Section 41 and 46 not the one hand and Section 49-A on the other. To harmonise, therefore, it must be held that because of the non obstante clause, the Legislature intended to exclude the operation of the provision clearly mentioned in the non obstante clause itself and to confer rights of ownership upon the tenants, provided they satisfied the conditions mentioned by all of the operative parts of the section.

(v) Landlord and tenant:

27. The words 'landlord' and 'tenant' occurring in Section 49-A (1) cannot be restricted to merely indicating only the able-bodies landlords or able-bodied tenants. No such qualification is possible. It is clear that sub-section (1) uses both these terms in its known connotation and takes in all landlords and tenants on the land for which provision is being made. Moreover there is internal evidence available in the very operative portion of sub-section (1), if considered along with clause (iii) thereof. Wherever any qualification or distinction was conceived, the Legislature itself came forward to indicate it. No doubt some forceful arguments were based on this clause. In fact in the present provision the earlier scheme of Section 41 and 46 has been expressly and uniformly appears to have been altered. A look at Section 41 or Section 46 would indicate that in the scheme of those sections specified landlords were differently treated (Section 41 (2)) and so also specified tenants (first proviso to sub-section (1) Section 46). Instead, in the present scheme of Section 49-A, the operation of both those sections. i.e. 41 and 46, is excluded. That being the eminent position, wherever in sub-section (1) the word 'landlord' is used, unless the other parts of this section indicate any change in the meaning, it must be held to include all landlords, and the word 'tenant' to include all tenants. The argument that the landlords specified in Section 38 (2) are excluded and their tenants do not become the owners under sub-section (1) does not flow from the language of sub-section (1) itself.

(vi) Subject to the provisions of this section:

28. Having ascertained the land, the conditions, the scope of the proviso, the sweep of the non obstante clause and the content of the terms 'landlord' and 'tenant', it may now be proper to understand the meaning of the clause 'subject to the provisions of this section '. It is usual legislative device to first introduce a general category of rights by certain contingent rights so as to give it a shape and form. Now sub-section (1), which is the main operative section in he scheme of Section 49-A, itself says that it will operate 'subject to the provisions of this section'. That will primarily take in the conditions upon which the operation of sub-section (1) can alone is conceived. further it will also take in the other sub-section and conditions indicated thereby. These sub-sections may either or clarify this operative main scheme or postpone its application. If looked from this angle, the other sub-sections create certain other qualifying conditions to make the operative object effective at some future dates dependent upon certain basic requirements of facts, events, and as well circumstances. Legislative instances of such 'subjecting' provisions are indicated by sub-section (2), (3) of Section 49-A and even by Section 49-B of the Act. All these need not be considered in details here except the one that is relevant and that is sub-section (3) of Section 49-A.

(vii). Sub-section (3) in its operative part:

29. This provision is one of the 'subjecting ' provisions which independently defers the ownership of a tenant to the period indicated by sub-section (3) of Section 39-A. This period is fixed with reference to the earlier provisions of Section 38 and the landlords mentioned are those contemplated by sub-section (2) of that section. A look at Section 38 would indicate that the right to terminate the tenancy of a tenant for bona fide personal cultivation was conferred on all landlords by sub-section (1). They could do so by giving a notice on or before 15th day of February 1961 and making an application before 31st day of March 1961. This right is available to all landlords without any distinction. Sub-section (2) specifies certain landlords and makes a provision that if those landlords had not taken steps within the period specified by sub-section (1), they were enable to do so within the period indicated by sub-clause (A) or sub-clause (B) of that section, the right still being under sub-section (1), Sub-Section (3) of Section 38 enumerates the conditions upon which the landlord could get the land for personal cultivation.

30. The scheme of that section is clearly in tow parts. |That is also the scheme of Section 39-A which was introduced by Amending (Maharashtra) Act No. II of 1962. Firstly, the right is given which is a qualified and contingent right and the mode of exercise of that right is indicate. It is only when the landlord following the modality, satisfies the conditions those are enumerated in Section 38 (3), he can get the land for bona fide personal cultivation. There is no termination as such only because the notice is given or an application is made. The issuance of notice or filing of an application or proceedings, are merely matters of procedure and unless the land is needed for bona fide personal cultivation and further the conditions imposed by different sub-sections are satisfied, there cannot be any determination of tenancy under the provisions of Section 38. An effective order can be made if at all the conditions enumerated in sub-sections (1), (3),(4) and (7) of Section 38 are satisfied. Then would follows the readjustment of rights as indicated by sub-section (5) or sub-section (6) of Section 38 with respect to remainder land left with the tenant. After successful termination of tenancy if the tenant retains land, then there are no further proceedings with respect to that land on the ground for bona fide personal cultivation. There is thus one right, and that has to be exercised in the manner indicated by sub-section (1), (2), (3) and (4) of Section 38. Sub-section (6) of Section 38 prescribes apportionment of the lease money with respect to the land the lease money with respect to the land retained by the tenant. Thus. upon successful termination of tenancy for bona fide personal cultivation by the landlord, it is envisaged that certain land may be retained by the tenant and upon that land sub-sections (5) and (6) operate as if in respect of that land a new tenancy has come into being.

31. Thus Section 38 postulates the right and the remedy of the landlord on the one hand and further creation of a new relationship of landlord and tenant with respect to the land that may upon such termination be left with the tenant as such land will not be available for further resumption on the ground of personal cultivation. It follows from this that in the adjudication under Section 38 the landlord may be found to have no right at all that is contemplated by that provision. That can also be the result under the provisions of Section 39-A of the Act. It is only in those defined cases in which landlord can have right to resume land for bona fide personal cultivation the terms of sub-section (3) can at all come into operation. I have found earlier that the operative part of the scheme of Section 49-A is sub-section (1) itself and that it evinces a definite policy to put an end to the relationship of landlord and tenant from the second tillers' day and to make all the tenants on the land to be the land-holders

as from that day. While construing sub-section (3) which qualifies all these events it could always be seen whether the landlord had a right to terminate tenancy under Section 38 (2) or Section 39-A (3). If such specified landlords who possessed all these rights and yet had not taken any steps either by giving a notice of termination of tenancy or by filing an application or proceedings under Section 36 for possession upon giving such notice, the qualification indicated by sub-section (3) of Section 49-A will have to be given effect to. But where a landlord does take a step under those provisions which results either in holding that he had no such right at all or which results in termination tenancy and the tenant retains certain land because of such termination, different consequences are indicated. In case if the landlord is found not to be entitled to have the right under Section 38 or Section 39-A, the matter must clearly be governed at the end of the proceedings by the proviso to sub-section (1) of Section 49-A and the tenant deemed to be the full owner of the land which he became entitled to retain in possession after such decisions. In other words, though the landlord may be of the specified category, he may still not be able to terminate the tenancy either under Section 38 or Section 39-A because he may not fulfill the conditions of those sections. Upon the failure of the proceedings by such landlord, the proviso to sub-section (1) of Section 49-A should become operative. That appears to be the scheme both reading sub-section (3) and sub-section (1) of Section 49-A of the Act together. In the case, however, as I said earlier, where the landlord of a specified category has not either given the notice for resuming land for personal cultivation or after giving such notice has not filed any proceedings, there appears to be a policy indicated by the main part of sub-section 93) to defer the date of ownership to the expiry of the period specified in sub-section (3) of Section 49-A. Having indicated the entire conspectus of the main part of this sub-section, one may look to the proviso which really aids such a construction.

(vii) Proviso to sub-section (3) :

32. I have already indicated what are the attending principles that govern the interpretation of the proviso introduced by legislature. In sub-section (3) itself the present proviso has both a qualifying and clarifying function. The main part of sub-section (3) deals with the landlords of specified categories who have not taken the remedies indicated by Section 38 or Section 39-A. The proviso deals with a landlord who has taken such a remedy. Now this proviso also called for some interpretation to reach to its core. In the above paragraph I have indicated the scheme of Section 38 which is also the scheme of Section 39-A. At the end of the proceedings under Section 38, it is possible to envisage the stage where the tenancy is terminated and the tenant retains certain land after such successful termination. That land is not further available for resumption on the ground of bona fide personal need of cultivation. A new lease money is also apportioned. Thus, there is a new relationship with respect to that land between the landlord and the tenant. As the proviso is worded, it is clear that it operates upon the tenancy created after successful termination of the earlier tenancy in an application for possession proceedings taken under sub-section (2) of Section 38 or sub-section (3) of Section 39-A. If the tenancy is terminated and tenant does not retain any land, there is no question of the operation of this proviso. It is only when the tenancy is terminated and on the date on which the application for possession is finally decided, the tenant is still found because of the scheme of Section 38 itself entitled to retain the possession of certain land, upon such land alone the proviso is intended to operate. In my view, the words 'where the tenancy is terminated' are of great significance and indicate in no uncertain terms a fact accomplished and relationship disrupted. Mere giving of a notice and/or making of an

application is not equivalent to the termination of tenancy: nor that is the plain scheme. It is only the order which follows all the adjudication in such a proceedings and determines the rights of the parties that can effectively put an end to the tenancy either under Section 38 or Section 39-A. Therefore, while reading the proviso in allits parts a full meaning will have to be given to the words 'the tenancy is terminated' and also to the words 'the land which he (tenant) is entitled to retain in possessions after such decision'. Both these contingencies must effectively occur so that the proviso may have its operation and application. Where merely the application is decided against the landlord and the tenancy is not terminated, it does not appear to the intention to make the proviso operative.

33. The word 'entitled' used by the legislature really takes the lid off the content of the proviso. Has it reference to the entitlement because an application is decided? On has it been used to find out the entitlement after the tenancy is terminated? That word according to Webster's Dictionary (Second Edition) means 'to give a title to; to give a name or appellation to; to qualify (a person) to do something; to give a claim to ; to give a right to' (Underlining preferred.) Applying these meanings, the word takes in a title or right of the tenant. If merely the application is rejected because the landlord has no right for any reason, or the proceedings terminate for any other cause, it cannot be said that the entitlement of the tenant is 'where the tenancy was terminated'. His entitlement remains under the tenancy which was not terminated and under his original lease or demise. So a distinction which is obvious in the terms of the proviso and which is apparent should be given its full effect. It is only when the tenancy has been properly terminated and the tenant is found to be entitled to retain possession of some land after such termination, the proviso is attracted. This sequence and results heightened as is indicated by the word 'retain'. No doubt, that word is a word of wide amplitude and may mean to hold or keep in possession, to withhold. restrain, keep back; but that word has to be considered along with the phrase used by the Legislature being 'entitled to retain'. If a tenant retains the possession of the land under the lease, he is not entitled to retain where the tenancy is terminated. The contingencies are quite different for the purpose of finding out entitlement to retain the possession of the land. Thus viewed, the proviso to sub-section (3) operates upon effective termination of tenancy and the decision of Jankibai's case 1971 Mha LJ 344 with I may say with respects, reaches the same result.

(ix) Other sub-sections:

34. The scheme of the other sub-section of Section 49-A, i.e, sub-sections (5) and (6), need not be considered in detail in the present controversy, if the matter can be answered with reference to the proviso to sub-section (1) of Section 49-A and not by aid of proviso that is enacted in the body of sub-section (3).

35. After interpreting thus the provisions of Section 49-A as far as relevant to the present case. Here was a widow who had taken proceedings purporting to give notice under Section 38 (1) and also preferring an application for termination of tenancy. Those proceedings ended on April 9, 1963. There was no right left thereafter in the successors-in-title of the original widow Parvatibai to give any further notice or to initiate proceedings under S. 38 (2). In the earlier proceedings taken by deceased Pravatibai, there had not been any termination of tenancy now as a result of such termination the tenant was found to be entitled to retain possession of the land. In fact, by that order it was held that Parvatibai had no right of termination of tenancy

for bona fide personal cultivation. The case, therefore will be clearly governed by the proviso to sub-section (1) of Section 49-A. This is not a case which can answer sub-section (3) in the main part nor indicate the conditions of the proviso.

36. The view taken by the Maharashtra Revenue Tribunal therefore, that only because the successor-in-title of Parvatibai were the landladies of the specified categories and notice was not given by them the ownership is still held in abeyance under Section 49-A, is plainly erroneous. On the correct reading of the terms of Section 49-A, as indicated above, such a construction cannot be upheld, for that would defeat the very firm policy indicated by the Legislature by the operative parts of Section 49-A. It is thus clear that under the scheme of Section 49-A (1), proviso, the petitioner was entitled to say that he had become owner upon the final termination of the proceedings initiated by Parvatibai on April 9, 1963.

37. It may be mention that the judgment relied on by the learned counsel delivered in Special Civil Application No. 2797 of 1968 decided on February 5, 1969. Sevvabibi v. Shaikh Ebrahim of this Court (reported in (1970) 18 T LR 146 was not dealing with any scheme of the nature of Section 49-A and cannot with advantage be pressed in aid to resolve the present controversy. Similar is the position with respect to another decision relied on by the learned counsel Mr. Kherdekar, delivered in Special Civil Application No. 892 of 1962 decided on 19-6-1963 Nagarbai v. Gahininath 1964 M LJ 57. As indicated earlier by me, in fact the law laid down by the Supreme Court in Umabai's case 1970 M LJ 211 really should have been present result and no argument of the present kind is possible after that decision, as it was also a case of specified landlord contemplated by Section 38 (2) of the Act.

38. Clearly, therefore, the present petitioner was entitled to claim the right to statutory ownership which arose on April 9, 1963.

39. Thus the petition succeeds and is allowed. The orders made by the lower authorities are hereby set aside. The Agricultural Lands Tribunal, Malkapur, is now directed to determine the other matters on the footing that the present petitioner becomes the owner under sub-section (1) of Section 49-A of the Act, on April 9, 1963.

40. Though the petition thus succeeds, there would be no order as to costs.

41. Petition allowed.