[2023] 14 S.C.R. 935 : 2023 INSC 939

CASE DETAILS

KESHAV BHAURAO YEOLE (D) BY LRS.

v.

MURALIDHAR (D) & ORS.

(Civil Appeal No. 11104 of 2014)

OCTOBER 19, 2023

[S. RAVINDRA BHAT AND ARAVIND KUMAR, JJ.]

HEADNOTES

Issue for consideration: Whether the High Court was justified in ordering remand of the matter for examination of afresh bonafide requirement of the heirs of the landlord for personal cultivation, in light of the changed circumstances-death of landlord; and whether the holding of the landlord exceeds one economic holding and whether the landlord earns his livelihood principally by agriculture or by agricultural labour.

Bombay Tenancy and Agricultural Lands Act, 1948 – s. 43A – Application under – Dispute between the legal heirs of the original landlord and the tenants of leased lands – Survey No. 291 leased for sugarcane cultivation, while the other Survey leased for general cultivation, for 13 years – Expiration of lease period – Issuance of notice as regards Survey No. 291 by the landlord to terminate the tenancy for personal cultivation, however possession not vacated – Proceedings for resumption of lands by the landlord – Original authority directed the restoration of 22 acres of the suit land to the landlord, based on the premise that both parties had an equal area for personal cultivation – Said finding upheld by the appellate authority but modified the restored land to 17 acres 17 guntas – Thereafter, in Revision, the case was remanded – High Court also ordered remand of the matter for examination afresh of the bonafide requirement of the heirs of the landlord for personal cultivation – Correctness:

Held: Holding of the landlord is 13 acres of jirayat land – Only such land which a person holds (is in possession) as an owner or tenant, must be taken into account – Land leased to the tenants cannot be said to be held

by the landlord either as an owner, or as a tenant – s. 6 provides that one unit of economic holding in the context of jirayat land is equivalent to a holding of 16 acres – Thus, the holding of the landlord cannot be said to be in excess of one unit of economic holding – Original authority held that the landlord's principal source of income is from agriculture, which was upheld by the appellate authority and the revisional authority – As per s. 33(B)(5)(b), the landlord's entitlement to terminate tenancy and recover possession of land leased is only to the extent 'of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation' – Original authority and appellate authority disagreed on the extent of land to be resumed to the landlord – In deciding the extent of land to be restored, the Original authority was correct in applying the provision contained in s. 33B(5)(b) but erred in its interpretation and application – Appellate authority could not have applied s. 31B since the application of s. 31B stands excluded by s. 43A and the amended notification – Further, from the evidence on record, the landlord has 13 acres of jirayat land, which he holds as owner – Litigation having been pending for nearly 50 years – Relegating the parties to the authorities would add acrimony between the parties, as such the formula prescribed u/s.33B(5)(b) is applied to allocate the respective shares of the parties – Also, the High Court erred in remanding the case by considering, events which occurred subsequent to the date of filing of the petition – It was unnecessary for the revisional authority to remand the case – Impugned order passed by the High Court set aside – Legal heirs of original landlord entitled to 8.34 Acres in Survey No.291. [Para 24-31]

Interpretation of statutes – Interpretation of phrase 'economic holding' in the Bombay Tenancy and Agricultural Lands Act, 1948 – Importing of the definition of 'to hold land' from the Maharashtra Land Revenue Code, 1966:

Held: Preamble in the Maharashtra Land Revenue Code, 1966 suggests that the object of the enactment was 'to unify and amend the law relating to land and land revenue in the State of Maharashtra – The Act was brought in with the object of amending 'the law relating to tenancies of agricultural lands and to make certain other provisions in regard to those lands' – Under several provisions of the Act, reference is required to be made

to the Code – Provisions contained in the Act and the Code operate in an overlapping sphere and fertilize each other – Words used in the Code and the expressions appearing under the Act, when read harmoniously, it would indicate that the expressions in both the enactments are complementary and supplementary to each other – Thus, the Act and Code are in pari materia to each other, and the definition of 'to hold land' is drifted from the Code for the purpose of interpreting the phrase, 'economic holding' in the Act – Thus, *w*hen s. 2(6A) of the Act and s. 2(12) of the Code are read together, the economic holding of a person would be computed by taking account of the lands possessed (whether actual or not) by such person, whether as owner or tenant. [Para 22]

LIST OF CITATIONS AND OTHER REFERENCES

Devidas Narayan More v. Chunnilal Bhailal Wani AIR 1973 Bom 195 – approved.

Maruti Namdeo Gade v. Dattatraya Maval (1976) 78 Bom LR 602; *Hariba Keshav Barbole v. Motibhai Deepchand* AIR 1975 Bom 137; *Bhavani Housing Cooperative Society v. Bangalore Development Authority,* ILR 2006 KAR 1352; *Gaya Prasad v. Pradeep Srivastava* (2001) 2 SCC 604 : [2001] 1 SCR 923; *Shakuntala Bai v. Narayan Das (*2004) 5 SCC 772 : [2004] 2 Suppl. SCR 114 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11104 of 2014.

From the Judgment and Order dated 29.07.2005 of the High Court of Bombay at Aurangabad in WP Nos. 471 of 1996 and 2193 of 1981.

Appearances:

Vijay Hansaria, Sr. Adv., M. Y. Deshmukh, Ms. Kanya Jhawar, Ms. Manjeet Kirpal, Mrs. Adviteeya Sharma, Nandkumar N. Deshmukh, Rameshwar Prasad Goyal, Advs. for the Appellants.

Ravindra Keshavrao Adsure, Adv. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

ARAVIND KUMAR, J.

1. The appellants are the legal heirs of original landlord, Keshav Bhaurao Yeole (hereinafter referred to as "**landlord**" for ease of reference). Survey No. 291 (admeasuring 26 acres 13 guntas) and Survey No. 290/1 & 290/2 (admeasuring 8 acres 21 guntas) had been given on lease to Respondent Nos. 2 & 5 (now deceased) namely Murlidhar Damodar Modhave & Bhausaheb Damodar Modhave and Respondent No.1 namely Kundalik Damodar Modhave (now deceased) respectively, (hereinafter referred to as "**tenants**") through two separate lease deeds dated 30.08.1962, for a period of 13 years. The lease in respect of Survey No. 291 was specifically executed for cultivation of sugarcane crop, whereas the lease for Survey No.290/1 & 290/2 were for cultivation, generally.

2. On the expiration of the tenure of the lease, a notice (dated 05.09.1975) for termination of tenancy (hereinafter referred to as 'notice') had been issued to the tenants. The landlord sought to recover possession for the purpose of personal cultivation. It was stated in the notice that the tenanted land was the principal source of income for the family and that their livelihood was dependent on the cultivation of such lands. It is critical to note at the very outset that the notice pertained to land bearing Survey No.291 ***only*** and no separate notice of termination of tenancy was issued in respect of land bearing Survey No. 290/1 & 290/2.

3. Since the tenant did not voluntarily relinquish his possession in response to the notice, the landlord initiated proceedings[1] for resumption of tenanted lands before the Court of Tenancy Awal Karkun, Rahuri (hereinafter referred to as *'original authority'*) under Section 29 read with Section 43A(1)(b) of the Bombay Tenancy and Agricultural Lands Act, 1948[2]. (for short 'the Act'). Through these proceedings, the landlord had sought to recover

1 Tenancy Case No. 2/1977

2 The Act has since been renamed as the Maharashtra Tenancy and Agricultural Lands Act, 1948 by Maharashtra Act 24 of 2012

possession of lands leased under both lease deeds, that is, Survey No. 291 and Survey No. 290/1 & 290/2.

4. In order to decide the *lis*, the original authority had framed four issues for consideration. The issues framed and summary of findings in respect of each issue are tabulated hereinbelow for ease of reference:

Issues	Findings
1. Whether the applicant is the landlord of the suit land?	Yes, suit lands were owned by applicant.
2. Whether the opponents are the tenants of the suit land?	Only Opponents no. 1,2,5 are tenants of the land in dispute; no evidence led to prove that there was a partition in the joint family of the tenants
3. Whether the notices for termination of tenancy are served upon the opponents and are valid one?	Yes,notice for termination of tenancy had been served on Opponents no. 1,2,3 on 24.10.75, 24.9.75 and 30.9.75 respectively and notice is a valid notice
4. Whether the landlord requires the suit lands?	Yes, landlord has proved that he requires land for *bonafide* personal cultivation

5. Ultimately, the original authority allowed the application of the landlord[3] and directed that 22 acres of the suit lands[4] (33 acres 21 guntas) was to be restored to him. The direction for restoration of 22 acres of the suit land was on the premise that the applicant (landlord) was *'entitled for possession of so much of land as would result in both the landlord and tenants holding thereafter in the total and equal area for personal cultivation'*. The reasoning of the original authority in this regard is extracted below:

> "The lands held by the opponents individually are measuring (23 ac. 29 gts. 9H. 83 R.) The land held by applicant is 13A 11 Gts. The applicant is entitled for possession of so much of the land as would result in both the landlord and tenants holding thereafter in the total and equal area for personal cultivation. The area of the land in dispute is 33 A 21 gts. I, therefore, order that 22 A 00 gts. Twenty two acres of the land out of the land in dispute should be restored to

3 Order dated 17.04.1978 in Tenancy Case No.2/77

4 Sum total of land bearing Survey No. 291 and Survey No. 290/1&290/2

the landlord i.e., applicant. I further order that the possession of the land may be given to the applicant, not earlier than sixty days after the close of the year."

6. Both the landlord and the tenant preferred appeals against the order of the original authority. The appeals were filed in the Court of Assistant Collector, Rahuri Division, Ahmednagar (hereinafter referred to as, 'the appellate authority'). The landlord preferred an appeal[5] on the ground that the possession had not been granted in respect of the entire suit land. The tenant, on the other hand, had sought for interference[6] on the ground that notice for termination of tenancy was invalid and that the landlord did not require the lands for bonafide personal cultivation as he was already in possession of a substantial extent of revenue-bearing lands.

7. The appellate authority, vide a common judgment dated 21.11.78, upheld the findings of the original authority but modified the extent of land, which was to be restored to the landlord. It held that the landlord was entitled to possession of 17 acres 17 guntas of the suit land. The appellate authority notes that the original authority's direction for restoration of 22 acres of suit land proceeded on a misinterpretation of Section 31B of the Act.

8. Against the decision of the appellate authority, the landlord and the tenant filed revision applications before Member of the Maharashtra Revenue Tribunal, Pune (for short, the 'revisional authority').It was contended on behalf of the tenant[7] that the notice was issued only in respect of Survey No. 291 and that there was no separate notice in respect of Survey No.290/1&290/2. It was further argued that the original authority ought to have framed an issue as to whether the subject in dispute was to be governed by notification dated 14.2.1958 or the notification as amended on 08.10.1969 (for short 'amended notification') – the extent of land which could be ordered to be resumed was dependent on the relevant notification which applied, and therefore, in the absence of any finding on this question, both the authorities fell into grave error in their determination of the final outcome. Accordingly, it was prayed that the case be remanded back to the original authority for

5 TNC A. No. 32/78
6 TNC A. 24/78
7 Revision No.7/79

framing of an appropriate issue on the relevant notification applicable. On behalf of the landlord[8], it was urged that there was no justification for remand since the question sought to be decided was a question of law and the revisional authority could, by itself, decide this issue.

9. Upon examination of the contentions urged by both the sides, the revisional authority allowed the application filed on behalf of the tenant, dismissed the application of the landlord and accordingly, ordered that the case be remanded to the original authority *'for framing issues under the provisions of Section 31A to 31D of the Tenancy Act, 1948 in respect of Survey No. 291 only'.* The original authority was directed to give its finding on the said issue.

10. The order of the revisional authority was based on the following reasons. The revisional authority found that the notice was issued only in respect of Survey No. 291 and therefore, the application of the landlord for restoration of possession of lands bearing Survey No. 290/1&290/2 could not have been entertained by the original authority. In the absence of a valid notice, the original authority lacked jurisdiction to entertain the landlord's application for resumption of land. It found that the landlord's holding is more than one unit of economic holding and therefore, he is not entitled to application of beneficial provisions as provided in the amended notification dated 08/10/969. It was also noticed that the outcome of the dispute was directly linked to the question of the relevant notification applicable, that is, whether the original notification or the amended notification governed the facts in issue, and therefore, a clear finding on that question was most expedient.

11. The landlord challenged the order passed by the revisional authority in writ proceedings before the High Court of Judicature of Bombay. During the pendency of writ proceedings, both, the original landlord as well as original Respondent Nos.2 & 5 namely, Murlidhar Damodar Modhave & Bhausaheb Damodar Modhave,expired. Their legal heirs were brought on record through applications for substitution. The High Court set aside all orders passed by the authorities below and ordered for remand of the case before the original authority. However, the reasons which persuaded the

8 Revision No.3/79

High Court to order remand were completely different from that which motivated the revisional authority to do. So it was directed that the original authority shall consider the matter afresh and examine if the heirs of the landlord had any bonafide requirement for personal cultivation in light of the changed circumstances (death of landlord). In ordering so, the High Court relied on *Maruti Namdeo Gade v. Dattatraya Maval*[9] and *Hariba Keshav Barbole v. Motibhai Deepchand.*[10] It was held therein that if landlord had died pending eviction proceedings, the bonafide requirement of lands for personal cultivation had to be demonstrated and proved afresh by the heirs of the landlord.

12. Aggrieved by the judgment of the High Court dated 29.07.2005, the landlord filed a special leave petition before this Court. Leave to appeal was granted by Order dated 9.12.2014.

13. We have heard Mr. Vijay Hansaria, learned Senior Counsel for the appellant-landlord and Mr. Ravinder Keshavrao Adsure, learned counsel for the respondents.

14. The submissions of Mr. Vijay Hansaria, learned Senior Counsel for the appellant-landlord can be summarized in the following points:

- The High Court fell into error in relying on the decisions in the case of *Maruti Namdeo Gade (supra)* and *Hariba Keshav Barbole (supra).* The date for determining the bonafides of the requirement of lands for personal cultivation ought to have been determined as on date of filing the application and subsequent events thereon, like death of the landlord, ought not to have any bearing on the decision of the dispute.
- Both the original authority and the appellate authority had recorded a finding that the landlord's holding does not exceed one economic holding. In that context, the revisional authority went beyond its jurisdictional boundaries in disturbing the said finding and holding that the landlord's holding exceeds one unit of economic holding.

9 (1976) 78 Bom LR 602.
10 AIR 1975 Bom 137

- Even though the land leased in respect of Survey No. 290/1 & 290/2 are not for sugarcane cultivation, while determining the extent of land to be resumed to the landlord as per Section 33B(5)(b), the original authority is required to consider the total holding of both the landlord and the tenant.

15. The learned counsel for the respondent-tenant has supported the impugned order and has canvassed the following contentions:

- The notice for termination of tenancy dated 05.09.1975 having been issued only in respect of land bearing Survey No. 291, the scope of adjudication of this dispute must be limited to such land, as has been rightly noticed by the revisional authority.
- The High Court and the revisional authority were justified in remanding the case to the original authority since the facts necessary to decide whether the landlord's holding was in excess of one unit of economic holding, was not forthcoming from the evidence on record.
- The landlord held several other lands other than lands leased to the tenant, and was earning income through non-agricultural sources, which fact can be inquired into only on remand of the case. The holding of the landlord was clearly in excess of one economic unit, and therefore, Section 31A-31D has to be applied. Since the original authority has not framed any issue in this regard, it was essential that the case be remanded back for fresh determination.

16. Undisputedly, the notice for termination of tenancy has been issued only in respect of Survey No. 291 and it did not relate to Survey No.290/1 & 290/2. In fact, we have perused the original records and the original notice dated 05.09.1975 and are satisfied that termination notice has been issued only in respect of Survey No.291 and there is not even a whisper with regard to Survey No.290/1 & 290/2 in the notice dated 05.09.1975. This fact had been rightly noticed in the order of the revisional authority. Therefore, we shall proceed to consider the dispute only in so far as Survey No. 291 is concerned.

17. Having considered the rival submissions canvassed by both sides and the material on record, the following issue falls for consideration:

"Whether the holding of the landlord exceeds one economic holding and whether the landlord earns his livelihood principally by agriculture or by agricultural labour?"

18.To adjudicate the above issues, it becomes necessary to examine the relevant provisions and notifications issued under the provisions of the Act. The relevant provisions of the Act include Section 2(2D), Section 2(6A), Section 4B, Section 5, Section 6, Section 7, Section 29, Section 31, Section 31A, Section 31B, Section 33B, Section 43A. It would be of benefit to consider the notification issued by the State Government in exercise of powers under Section 43A (3) on 14.02.1958 and the amendment brought out to this notification on 08.10.1969 which has been relied upon by the appellant and which has a direct bearing on the issue. Hence, the relevant provisions as well as the notification are extracted hereinbelow:

AMENDED NOTIFICATION DATED 08/10/1969

"Lease of land granted for cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock referred to in Sec. 43-A (1)(b) to which the provisions of Sec. 43A (1) apply.

Sec. 43A (3) of the B.T. & A.L. Act, 1948.- No. T N C.5157/173483- M**.** in exercise of the powers conferred by sub-section (30 of sec. 43-A, of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), the Government of Bombay hereby directs that the leases referred to in clause (b) of sub-section (1) of the said sec. 43A and to which the provisions of sub-section (1) of the said sec. 43A and to which the provisions of sub-section (1) of said sec. 43-A apply shall be subject to the following conditions namely:-

Conditions as to the duration and termination of lease:-

"*1. No such lease of land shall be liable to be terminated on the ground that the period fixed by agreement or usage for its duration has expired.*

2. If a lessor bona fide requires an land so leased by him for cultivating it personally or for any non-agricultural use, such lease may, subject to the conditions mentioned in Secs. 31-A, 31-B, 31-C and 31-D be terminated by the lessor by giving the lessee [a month's] notice in writing stating therein the reasons for the termination of the lease:

[Provided that, if the holding of lessor does not exceed one economic holding and such lessor earns his livelihood principally by agriculture or by agricultural labour, the conditions mentioned in sec. 31-A and 31-B shall not apply but the lessor's right to resume land shall be subject to the conditions mentioned in clauses (b) and (c) of sub-section (5) of sec. 33-B, with this modification that clause (c) of the said sub-section (5) shall be read as if for the words "the commencement date" appearing therein the words, letters, figures and brackets "the date Government Notification, Revenue and Forests Department, No. TNC. 6769/9667-M, Spl. Dated the 8th October, 1969" were substituted.]

1. Submitted for the words "one year" by G.N. No. TNC 6796/9667 (Spl.) of 8.10.69.

2. Added by G.N. of 1.10.1969."

Relevant provisions of Tenancy Act, 1948

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

Section 2(6A) - "economic holding" means in relation to land held by a person, whether as an owner or tenant, or partly as owner and partly as tenant, the area of land fixed as an economic holding in section 6 or 7;

Section 5 - Ceiling area

(1) For the purposes of this Act, the ceiling area of lands shall be,—

(a) 48 acres of jirayat land, or

(b) 24 acres of seasonally irrigated land or paddy or rice land, or

(c) 12 acres of perennially irrigated land.

(1) Where the land held by a person consists of two or more kinds of land specified in sub-section (1), the ceiling area of such holding shall be determined on the basis of one acre of perennially irrigated land being equal to two acres of seasonally irrigated land or paddy or rice land, or four acres of jirayat land.

Explanation.— In calculating the ceiling area, warkas land shall be excluded.

Section 6 - Economic holding

(1) For the purposes of this Act, an economic holding shall be,—

(a) **16 acres of jirayat land, or**

(b) 8 acres of seasonally irrigated land, or paddy or rice land, or

(c) 4 acres of perennially irrigated land.

(1) Where the land held by a person consists of two or more kinds of land specified in sub-section (1), an economic holding shall be determined on the basis applicable to the ceiling area under sub-section (2) of section 5.

Explanation.— In calculating an economic holding, warkas land shall be excluded.

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

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

(a) for cultivating personally, or

(b) for any non-agricultural purpose.

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

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

(i) by the minor within one year from the date on which he attains majority;

(ii) by the succesor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which mental or physical disability ceases to exist; and

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

Section 31A - Conditions of termination of tenancy

The right of a landlord to terminate a tenancy for cultivating the land personally under section 31 shall be subject to the following conditions :—

(a) If the landlord at the date on which the notice is given and on the date on which it expires has no other land of his own or has not been cultivating personally any other land, he shall be entitled to take possession of the land leased to the extent of a ceiling area.

(b) If the land cultivated by him personally is less than a ceiling area, the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make up the area in his possession to the extent of a ceiling area.

(c) The income by the cultivation of the land of which he is entitled to take possession is the principal source of income for his maintenance.

(d) The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors 2[but not of any person from whom title is derived, whether by assignment or Court sale or otherwise], or if the landlord is a member of a joint family, in the name of a member of such family.

(e) If more tenancies than one are held under the same landlord, then the landlord shall be competent to terminate only the tenancy or tenancies which are the shortest in point of duration.

Section 31B - No termination of tenancy in contravention of Bom. LXII of 1947 or if tenant is member of co-orperative farming society

In no case a tenancy shall be terminated under section 31—

(1) in such manner as will result in leaving with a tenant, after termination, less than half the area of the land leased to him, or

(2) in such a manner as will result in a contravention of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, or in making any part of the land leased a fragment within the meaning of that Act, or co-operative farming society.

(3) if the tenant has become a member of a co-operative farming society and so long as he continues to be such member.

Section 31C - Landlord not entitled to terminate tenancy for personal cultivation of land left with tenant

The tenancy of any land left with the tenant after the termination of the tenancy under section 31 shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation.

Section 31D - Apportionment of rent after termination of tenancy for land left with tenant

If, in consequence of the termination of the tenancy under section 31, any part of the land leased is left with the tenant, the rent shall be

apportioned in the prescribed manner in proportion to the area of the land left with the tenant.

Section 33B - Special rights of certificated landlord to terminate tenancy for personal cultivation

(1) xxx

(2) xxx

(3) xxx

(4) xxx

(5) The right of a certificated landlord to terminate a tenancy under this section shall be subject to the following conditions, that is to say,—

(a) If any land is left over from a tenancy in respect of which other land has already been resumed by the landlord or his predecessor-in-title, on the ground that other land was required for cultivating it personally under section 31 (or under any earlier law relating to tenancies then in force), the tenancy in respect of any land so left over shall not be liable to be terminated under sub-section (1).

(b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation—the area resumed or the area left with the tenant being a fragment, notwithstanding, and notwithstanding anything contained in section 31 of the * Bombay Preventation of Fragmentation and Consolidation of Holdings Act, 1947.

(c) The land leased stands in the Record of Rights (or in any public record or similar revenue record) on the 1st day of January 1952 and thereafter until the commencement date in the name of the landlord himself, of any of his ancestors (but not of any person from whom title is derived by assignment or Court sale or otherwise), or if the landlord is a member of a joint family, in the name of a member of such family.

(6) xxx

(7) xxx

Section 43A - Some of the provisions not to apply to leases of land obtained by industrial or commercial undertakings, certain co-operative societies or for cultivations of sugar- cane or fruits or flowers

(1) The provisions of sections 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 14, 16, 17, 17A, 17B, 18, 27, 31 to 31D (both inclusive), 32 to 32R, (both inclusive) [33A, 33B, 33C] 43, 63, 63A, 64 and 65, shall not apply to—

(a) land leased to or held by any industrial or commercial undertaking (other than a Co-operative Society) which in the opinion of the State Government bona fide carried on any industrial or commercial operations and which is approved by the State Government;

(b) leases of land granted to any bodies or persons other than those mentioned in clause (a) for the cultivation of sugarcane or the growing of fruits or flowers or for the breeding of livestock;

(c) to lands held or leased by such co-operative societies as are approved in the prescribed manner by the State Government which have for their objects the improvement of the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture and allied pursuits.

(2) xxx

(3) Notwithstanding anything contained in sub-sections (1) and (2), it shall be lawful for the State Government to direct, by notification in the Official Gazette that the leases or lands, as the case may be, to which the provisions of sub-sections (1) and (2) apply, shall be subject to such conditions as may be specified in the notification, in respect of—

(a) the duration of the lease;

(b) the improvements to be made on the land and the formation of co-operative farming societies for that purpose and financial assistance to such societies;

(c) the payment of land revenue, irrigation cess, local-fund cess and any other charges payable to the State Government or any local authority; or

(d) any other matter referred to in sections mentioned in sub-section (1)."

19. Clause (b) of sub-Section (1) of Section 43A would indicate that lease of land granted for the cultivation of sugarcane would result in the exemption of the provisions indicated in sub-Section (1) of Section 43A. In other words, the provisions indicated in sub-Section (1) of 43A is not attracted in respect of the leases of land granted for the cultivation of sugarcane or the leases of land as specified in Chapter IIIA. The legislature in its wisdom, has thought it fit to make an exception to the exemption clause as incorporated in sub-Section (3) of Section 43A(3). It enables the State Government to issue a notification providing for conditions, subject to which, the leases referred to in Chapter IIIA would be governed by. Therefore, it is crucial for us to examine the notification dated 14.02.1958 as amended on 08.10.1969, which came to be issued by the State Government under the enabling source of power provided in Section 43A(3). In this regard, we must examine the applicability of the proviso to condition No.2 stipulated thereunder which came to be introduced through the amendment in the year 1969.

20. According to the aforesaid proviso, if the holding of the landlord does not exceed one economic holding **and** the landlord's principal source of income is dependent on agriculture or agricultural labor, then, it follows, as per the amended notification, that the conditions mentioned in Section 31A& 31Bshall not govern the present dispute and the lessor's right to resume land shall be subject to conditions set out in Section 33B(5)(b) and (c). If the holding of the landlord exceeds one economic holding or his principal source of income is not dependent on agriculture, then, Section 31A-31D will govern the present dispute.

21. The fact finding authorities have concluded that the landlord holds 13 acres of *jirayat* land, apart from the land leased out to the tenant under the two lease deeds. The definition of 'economic holding' in Section 2(6A) requires us to account for the total *land held* by a person, whether as an owner or tenant. There is no definition in the Act for the expression 'land held'. However, we find the expression 'to hold land' defined in the Maharashtra Land Revenue Code, 1966 (for short 'the Code'). It reads as under:

"to hold land" or "to be a land-holder or holder of land" means to be lawfully in possession of land, whether such possession is actual or not."

22. In ***Bhavani Housing Cooperative Society v. Bangalore Development Authority,*** ILR 2006 KAR 1352, the Karnataka High Court while considering the question as to whether the definition of a particular phrase can be imported into a particular enactment from a different enactment, has held that if the Acts are *pari materia* to each other, then the definition of one Act can be imported to the other Act. The preamble in the Code suggests that the object of the enactment was *'to unify and amend the law relating to land and land revenue in the State of Maharashtra.'* The Act, on the other hand, was brought in with the object of amending *'the law relating to tenancies of agricultural lands and to make certain other provisions in regard to those lands'*. Under several provisions of the Act, reference is required to be made to the Code. In that sense, the provisions contained in the Act and the Code operate in an overlapping sphere and fertilize each other. The words used in the Code and the expressions appearing under the Act, when read harmoniously, it would indicate that the expressions in both the enactments are complementary and supplementory to each other. Therefore, it would not be incorrect to say that the Act and Code are in *pari materia* to each other, and therefore, we proceed to import the definition of 'to hold land' from the Code and import it for the purpose of interpreting the phrase, 'economic holding' in the Act.

22A. When Section 2(6A) of the Act and Section 2 (12) of the Code are read together, the economic holding of a person would be computed by taking account of the lands possessed (whether actual or not) by such person, whether as owner or tenant. In the facts of this case, the landlord has claimed that, as an owner, he held 13 acres of jirayat land.

23. The tenant has not led any evidence to show that the landlord holds any land as a tenant. Further, no evidence has been led to contradict the fact that the landlord holds land as an owner, in excess of 13 acres of jirayat land. Therefore, we ought to proceed on the premise that the holding of the landlord is 13 acres of jirayat land. The revisional authority

has misinterpreted the word 'holding'. In determining the holding of the landlord, it has taken into account the land leased to the tenant and has, on that basis, concluded that the holding of the landlord is in excess of one unit of economic holding. As we have explained above, only such land which a person holds (is in possession) as an owner or tenant, must be taken into account. The land leased to the tenants cannot be said to be held by the landlord either as an owner, or as a tenant.

24. Section 6 of the Act provides that one unit of economic holding in the context of jirayat land is equivalent to a holding of 16 acres. It is thus clear that the holding of the landlord cannot be said to be in excess of one unit of economic holding. The original authority has recorded a finding that the landlord's principal source of income is from agriculture. This finding has not been disturbed or challenged by the appellate authority or the revisional authority. Since the twin conditions provided in the proviso as found in the amended notification stand satisfied, the outcome of the dispute will have to be decided in accordance with Section 33(B)(5)(b) and not according to Section 31A and 31B.

25. According to Section 33(B)(5)(b), the landlord's entitlement to terminate tenancy and recover possession of land leased is only to the extent *'of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation'*. The original authority and appellate authority have disagreed on the extent of land to be resumed to the landlord. In deciding the extent of land to be restored, the original authority has applied the provision contained in Section 33(B)(5)(b), whereas the appellate authority has applied the provision contained in Section 31B**.** According to us, the original authority was correct in applying the provision contained in Section 33B(5)(b) but has fallen into error in its interpretation and application of the said provision. The appellate authority could not have applied Section 31B since the application of 31B stands excluded by Section 43A and the amended notification, as we have discussed above. Now, the question still remains as to how much land must be restored to the landlord. This question will turn on the interpretation to be laid on the language contained in Section 33(B)(5)(b) and the construction of expression : *'in the total anequal area for personal cultivation"*?

26. The tenant may hold land for personal cultivation from three sources: (a)land which he himself owns; (b) land which is let out to him by his landlord or (c) land which is let out to him by another landlord or another certificated landlord. Similarly, the landlord can hold land from two sources. He may hold land which he himself owns and land which is let out to him by another landlord (land held as a tenant). While computing the lands held by the landlord and tenant, are we to take into account the lands held by them from all possible sources? The Full Bench of the Bombay High Court had an occasion to interpret the provision contained in Section 33B(5)(b) of the Act in great detail, in the case of ***Devidas Narayan More v. Chunnilal Bhailal Wani***.[11] It came to be held as under:

> "32. Next it was urged that upon the interpretation which we are putting and which was placed upon cl. (b) of sub-s. (5) by the Division Bench in Rambhau's case it would be impossible to apply the principle in the case of joint tenants or joint landlords, as for instance where A the landlord has leased out jointly to tenants B, C and D six acres of his land; the landlord has no land under personal cultivation, but tenant B has 4 acres of his own, tenant C has 4 acres of his own but tenant D has no other land except the land leased. In such a case how was equality going to be achieved between the landlord and the joint tenants? We must confess that the law did not contemplate such a case at all but its injunction nonetheless is quite clear that the tenancies must be terminated, the landlord and "the tenant holding thereafter in the total an equal area for personal cultivation". The only way in which equality can be achieved in such cases is to notionally divide the land leased between the three joint tenants and assume that 2 acres have been leased to each tenant by the landlord and then work out the equities between the landlord and each tenant. Thus it will have to be held that notionally tenants B, C and D each has 2 acres of the leased land. Thus tenant B will have 2 acres of leased land plus 4 acres of his own; tenant C the same and tenant D only two acres of the leased land. From B and C the landlord cannot take back anything more than the land leased so they must each give up two acres of the leased land. Tenant C has no

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other land except the leased land. Therefore he must give half his share of the land leased i.e. half of two acres viz. one acre only and retain the remaining one acre. Thus tenants B and C who have each 4 acres of their own will each have to give up 2 acres of the land leased and tenant D half of his two acres i.e. one acre. Thus, the landlord will be entitled to get back 5 acres out of the land leased while tenants B and C will have left 4 acres each and tenant D only one acre. Any other computation will bring about greater inequity. In the example given the tenancies of B and C would in the sequel be wholly terminated. If the total land leased as a whole and the total land in the possession of the joint tenants is taken into account without the notional division which we have suggested then the total land in the possession of the joint tenants would be 6 acres of leased land plus 8 acres of their own and if the landlord is held to be entitled to resume on the basis of the total land thus held he would resume the whole six acres leased by him but in that event the tenant D would be left entirely without any land. This would work greater hardship on the poorer tenant."

27. From the evidence on record, we know that the landlord has 13 acres of jirayat land, which he holds as owner. The tenants in Survey No. 291 were Mr. Murlidhar Damodhar Modhe and Mr. Bhausaheb Damodar Modhe. The tenant in Survey No.290/1&290/2 was one, Mr. Kundalik Damodar Modhe.

28. Having regard to the aforesaid analysis of law, we are of the considered view that this litigation is pending for nearly 50 years and as such relegating the parties to the authorities would only add salt to the wound or acrimony between the parties would continue to haunt the future generations and as such we have undertaken the exercise of applying the formula prescribed under Section 33B(5)(b) as illustrated in **Chunnilal Bhailal Wani** case (supra) of the Act to allocate the respective shares of the parties on the basis of not only admission found from the depositions recorded at the earliest point of time but also on the revenue records which has been relied upon by the authorities for undertaking such exercise and as such we have arrived at the following entitlement of property by tabulating the same and the description of entitlement has also been narrated in the foot-note to the table.

(In Acres)

	A	B	C	E
Name	Land leased under registered lease deed Dated 30/08/1962 (total extent 26 Acres 13 Guntas) Notional Share as per Chunnilal Bhailal Wani case	Land owned by Tenant (As per revenue records available at page No.241(A) and 261(A))	Land owned by Landlord (Keshav Bhaurao Yeole)	Land to be allowed to Landlord out of the Leased out portion
Muralidhar Damodar Modhave	13.06	11.21	13.11	5.28
Bhausaheb Damodar Modhave	13.06	6.17	13.11	3.06
Total Leased out land which is to be restored to landlord				8.34

Method of calculation as per the Full Bench Judgment in Chunnilal Bhailal Wani Case (supra):

A+B+C = X/2 = Y-C = E

- Murlidhar Damodar Modhave: 13.06+11.21+13.11 = 37.38\2 = 18.39 – 13.11 = **5.28**
- Bhausaheb Damodar Modhave: 13.06+6.17+13.11 = 32.34\2 = 16.17 – 13.11 = **3.06**

As we have already discussed above, the determination has to be confined only to Survey No.291, in as much as the notice has been held by revisional authority and High Court to be confined only to Survey No.291 and the lessees in reference to the said lease, being Shri. Bhausaheb Damodar Modhave and Murlidhar Damodar Modhave, the extent of their individual holdings alone would have to be taken into consideration though, some of the records would reflect the said two persons holding certain lands jointly

with others. Hence, for the purposes of computation we have confined only to the two revenue records available in the original file, namely, the account extract of Form No.8A relating to the year August 1977 since the deposition of the landlord came to be recorded on 09.06.1977, 20.06.1978 and that of the respondent on 22.08.1977. When such an exercise is undertaken, the irresistible conclusion which is to be drawn would be that the appellant would be entitled to 8.00 Acres 34 Guntas as computed above which is in tune with principles enunciated in the full Bench Judgement of Bombay High Court in *Devidas Narayan More (supra)*.

29. We do not think that the High Court was correct in remanding the case, in its entirety to the original authority on the ground that the landlord having died pending eviction proceedings, his heirs had to demonstrate afresh, the bonafide requirement of leased lands for personal cultivation. In **Gaya Prasad v. Pradeep Srivastava**[12], this Court, while considering an eviction petition filed by the landlord against his tenant, laid down the principle that the crucial date for deciding the bona fides of the requirement of the landlord is the date of his application for eviction. Events occurring subsequent to this date have no bearing on the issue as to whether the eviction was a bona fide requirement. It was reasoned therein that if every subsequent development was to be accounted for in the post-petition period, there would perhaps be no end so long as the unfortunate situation in the litigative slow-process system subsists. Therefore, the High Court fell into grave error in ordering remand of the case by considering, events which occurred subsequent to the date of filing of the petition.

30. We may also record here that it was unnecessary for the revisional authority to remand the case for framing an issue on the applicability of Section 31A-31D. The applicability of those provisions was dependent on the question of whether the landlord's holding exceeded one unit of economic holding. That question was merely one of law, the fact of the landlord's holding having already come on record before the original authority. The revisional authority could have taken upon itself the task of deciding the question and disposing off the dispute before itself. Be that as it may.

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12 2001 2 SCC 604; See also ***Shakuntala Bai v. Narayan Das***, 2004 5 SCC 772, Para 10

31. In light of the discussion and analysis made above, we allow this appeal by setting aside the impugned order dated 29.07.2005 passed in Writ Petition No.2193 of 1981 (Bombay) by the High court of Judicature of Bombay and the application filed by the original landlord under Section 43A of the Bombay Tenancy and Agricultural Lands Act, 1956 is allowed in part and hold that appellants (legal heirs of original landlord) are entitled to 8.34 Acres in Survey No.291 and the jurisdictional tehsildar shall take steps to handover physical possession of the said land to the appellants as indicated herein expeditiously and at any rate within an outer limit of three months from the date of receipt of this Order. All pending IAs stand disposed of. The appellants would be entitled to proceed against the respondents in respect of Survey No.290/1 and 290/2 in accordance with law and contentions of both parties are kept open. Parties are directed to bear their respective costs.

Headnotes prepared by:
Nidhi Jain

Appeal allowed.