I2N THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8592 OF 2024

Bhagwan Waman Gaikwad and Ors. ***...Petitioners***

: Versus :

Pralhad Dunda Jadhav and Ors. ***...Respondents***

WITH
WRIT PETITION NO. 8593 OF 2024

Bhagwan Waman Gaikwad and Ors. ***...Petitioners***

: Versus :

Pralhad Dunda Jadhav and Ors. ***...Respondents***

Mr. S.G. Karandikar *i/b. Mr. Jayesh M. Joshi and Ms. Ankita Pandit, for the Petitioners.*
Mr. Vijay Killedar, *for Respondent Nos.1 to 13.*
Mr. Hamid Mulla, *AGP for the Respondent -State in WP/8592/2024.*
Ms. Snehal Jadhav, *AGP for Respondent-State in WP/8593 of 2024.*

CORAM: SANDEEP V. MARNE, J.
Judgment Resd. on: 9 April 2025.
Judgment Pron. on: 23 April 2025.

JUDGMENT :

1) Petitioners, who claim to be *Watandars,* challenge the common Order passed by Maharashtra Revenue Tribunal **(MRT)** on 1 April 2024 upholding the orders passed by the Sub Divisional Officer

(SDO) by which tenancy claim of Respondent Nos.1 to 14 in the agricultural land has been upheld and Tahsildar has been directed to fix purchase price thereof under provisions of Section 32G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 **(Tenancy Act)**.

2) The Petitions arise out of cross claims filed by Petitioners and contesting Respondents about tenancy status of the contesting Respondents. While Petitioners had instituted proceedings under Section 70(b) of the Tenancy Act seeking negative declaration against contesting Respondents that they are not tenants of the land, the contesting Respondents had initiated proceedings for fixation of purchase price of the land under Section 32G of the Tenancy Act. Both the proceedings were initially decided against the contesting Respondents by the Tahsildar. However, the SDO and MRT have ruled in their favour by upholding their tenancy claim by directing fixation of purchase price under Section 32G of the Tenancy Act.

3) Briefly stated, facts of the case are that land bearing new Survey No. 48/1 (old Survey No.30/1) and new Survey No.48/18 (old Survey No. 30/18) situated at village Thakurli, Taluka-Kalyan, District-Thane, which is now within the jurisdiction of Kalyan Dombivli Municipal Corporation, is the subject matter of present Petitions **(the land)**. The Petitioners claim that their predecessor-Kachrya K. Gaikwad was the owner, occupier and cultivator of the said land. After demise of said Kacharya K. Gaikwad, names of his legal heirs i.e. predecessors in title of the Petitioners and Respondent Nos. 15 to 17 were entered into the revenue records. This is how Petitioners and Respondent Nos.15 to 17 claim ownership in respect of the land in question.

4) Petitioners submit that the land is *Mahar Watan* land and was governed by the provisions of the Maharashtra Hereditary Offices Act, 1874 **(Hereditary Offices Act)**. It is submitted that after coming into effect of the Maharashtra Inferior Village Watans Abolition Act, 1959 **(Watans Abolition Act)**, Mutation Entry No.1915 was certified on 13 December 1962 by which the name of Government of Maharashtra was entered in the revenue records. It is Petitioners' case that name of one Shri. Ganpat Kathod was inadvertently entered as tenant in the '*Other Rights*' column of the lands vide Mutation Entry No.1590 dated 4 January 1957. According to Petitioners, the combined effect of Watans Abolition Act and Hereditary Offices Act is such that provisions of Tenancy Act were not applicable to the lands in question and that such Mutation Entry No.1590 entering the name of Ganpat Kathod as tenant is clearly erroneous. Petitioners claim that Respondent Nos. 1 to 14 took advantage of the said entry and filed Tenancy Case No.8 of 2016 on 1 March 2016 before Tahsildar and Agriculture Lands Tribunal **(ALT)** for fixation of purchase price of the lands under Section 32G of the Tenancy Act. It was the case of the contesting Respondents that name of Ganpat M. Kathod (*Gaikwad*) was entered in the revenue records of the lands and therefore he became deemed purchaser of the lands as on 1 April 1957. Petitioners appeared in the said application and resisted the same by filing written statement. They separately filed application under Section 70(b) of the Tenancy Act seeking a negative declaration that contesting Respondents are not tenants of the lands.

5) ALT passed two separate orders on 10 December 2018 rejecting Tenancy Case No.8 of 2016 filed by contesting Respondents for fixation of purchase price and allowing Tenancy Case No.5 of 2017 holding that contesting Respondents are not tenants of the lands under Section 70(b) of the Tenancy Act.

6) The contesting Respondents filed Appeals before the SDO, which came to be allowed by two separate orders passed on 17 March 2022 and 20 March 2022. The SDO set aside ALT's order passed under Section 70(b) of the Tenancy Act as well as order passed under Section 32G of the Tenancy Act. He upheld the status of the contesting Respondents as tenants of the lands while directing Tahsildar to fix purchase price thereof under Section 32G of the Tenancy Act.

7) Petitioners got aggrieved by order dated 20 March 2022 passed in proceedings under Section 32G and order dated 17 March 2022 passed under Section 70(b) of the Tenancy Act and filed Revision before the MRT. The MRT has however, dismissed both the revisions preferred by the Petitioners by common order dated 1 April 2024, which is subject matter of challenge in the present Petitions. The Petitioners are thus aggrieved by declaration of status of contesting Respondents as tenants as well as by direction for fixation of purchase price under Section 32G of the Tenancy Act.

8) Mr. Karandikar, the learned counsel appearing for the Petitioners would submit that the MRT and SDO have grossly erred in upholding tenancy claim of contesting Respondents. He would submit that the land is admittedly *Mahar Watan* land as concurrently held by Tahsildar, SDO and MRT. He would rely on provisions of Section 88 of the Tenancy Act, particularly Explanation to sub-section (1) thereof, under which land held as *inam* or *watan* for service useful to Government and assigned as remuneration is deemed to be a land belonging to the Government. He would therefore submit that every *inam* or *watan* land, held for service useful to the Government and assigned as remuneration, provisions of Section 88 would become

applicable. Alternatively, he would rely upon Section 88CA of the Tenancy Act, under which provisions of Sections 32 to 32R do not apply to lands held as *inam* or *watan* for service useful to Government, but not assigned as remuneration. He would therefore submit that there cannot be a deeming fiction of purchase under Section 32 of the Tenancy Act in respect of a *watan* land. He would therefore submit that declaration of status of contesting Respondents as tenants under Section 70(b) of the Tenancy Act as well as fixation of purchase price in their favour under Section 32G of the Tenancy Act is clearly in ignorance of provisions of Sections 88 and 88CA of the Tenancy Act.

9) Mr. Karandikar would then rely on Section 8 of Watans Abolition Act in support of his contention that provisions of Tenancy Act become applicable only to a *watan* land, which has been lawfully leased and such lease is subsisting on the appointed date. He would therefore submit that it is for a person claiming status of tenancy to prove that the *watan* land was lawfully leased to him. He would then rely upon Section 5 of the Hereditary Offices Act, in support of his contention that lease in respect of *watan* land cannot be granted without sanction of the Commissioner. Mr. Karandikar would therefore submit that the combined effect of Sections 88 and 88CA of the Tenancy Act, Section 8 of Watans Abolition Act and Section 5 of the Hereditary Offices Act is such that person claiming status of tenancy must prove that the Commissioner had granted permission for creation of lease of *watan* land and thereafter such *watan* land was lawfully leased in favour of such person. He would submit that the intention of the legislature is not to recognise tenancy rights of any person, who does not lawfully hold lease of *watan land.* That under the provisions of Watans Abolition Act, the land vests in the State Government upon abolition of *watan.*

That therefore the intention of legislature is not to recognise rights of a trespasser in the land, who does not hold lawful lease of *watan* land.

10) Mr. Karandikar would submit that the contesting Respondents neither pleaded nor proved that there was lawful lease of *watan* lands in their favour after securing prior sanction of the Commissioner under Section 5 of the Hereditary Offices Act for application of provisions of Section 8 of the Watans Abolition Act. He would therefore submit that provisions of Explanation to Section 88 and/or Section 88CA would clearly take the *watan* land out of purview of provisions of Tenancy Act. He would submit that none of the three authorities have conducted an enquiry into this aspect while erroneously upholding tenancy claim of contesting Respondents. He would rely upon judgment of coordinate Bench of this Court in ***Shobha Daulatrao Bankar Versus. Sadashiv Anaji Gangurde and Others***[1] in which, according to Mr. Karandikar, this Court has held that in absence of proof of grant of lawful lease contemplated under Section 8 of Watans Abolition Act after following provisions of Section 5 of Hereditary Offices Act, tenancy rights in a *watan* land cannot be recognised.

11) Mr. Karandikar would further submit that Watans Abolition Act contemplates re-grant in favour of *watandars*, which in the present case are Petitioners. That as of now, the land stands in the ownership of State Government from the appointed date of 1 August 1960 and it is otherwise incomprehensible that contesting Respondents would become tenants or deemed purchasers of land standing in the ownership of the State Government. That the land will have to be first re-granted in favour of *watandar* i.e. Petitioners and thereafter landlord-

1 2019 DGLS (Bom.) 462

tenant relationship could subsist for upholding the tenancy claim. Mr. Karandikar would therefore submit that seen from any angle, the tenancy claim of the contesting Respondents ought not to have been upheld by the SDO and MRT. He would accordingly pray for setting aside the orders passed by the SDO and MRT and for confirming the order passed by the ALT.

12) The Petitions are opposed by Mr. Killedar, the learned counsel appearing for Respondent Nos.1 to 13. He would submit that the SDO and MRT have concurrently upheld the tenancy claim of contesting Respondents and in absence of any patent error or an element of perversity, this Court need not interfere in the concurrent findings in exercise of jurisdiction under Article 227 of the Constitution of India. He would further submit that the contention of Petitioners about inapplicability of provisions of Tenancy Act is an improvement sought to be made by them before this Court, as this point was never urged before the ALT. He would take me through the application filed by the Petitioners under Section 70(b) of the Tenancy Act before ALT to demonstrate that the contention of inapplicability of provisions of Tenancy Act to *watan* land was never raised by the Petitioners. He would therefore submit that Petitioners cannot now be permitted to raise the said issue directly before this Court.

13) Mr. Killedar submits that name of Kachrya Gaikwad was entered into revenue records as a protected tenant, under Section 3A of the Bombay Tenancy Act, 1939. He would rely upon judgment of the Apex Court in ***Sakharam @ Bapusaheb Narayan Sanas and Another Versus. Manikchand Motichand Shah and others***[2] in support of his contention that right of a protected tenant recognised by public

2 AIR 1963 SC 354

authorities by making the revenue entries in the Record of Rights gives right to the landlord to seek a declaration under Section 3A(1) of the Bombay Tenancy Act, 1939 within one year and that if such declaration is not sought, the status of tenant can no longer be questioned thereafter. He would also rely upon judgment of this Court in ***Vasudeo Ramchandra Kale & Others Versus. Vijay Bhikaji Raut and others***[3] in support of his contention that once status as protected tenant is proved, no further material is required to be produced to support the claim of tenancy and it is for the landlord to produce some positive evidence to the contrary. Mr. Killedar would further submit that Explanation to sub-section (1) of Section 88 of the Tenancy Act has been added by Bombay Act 63 of 1958 and therefore the said Exception cannot affect deeming fiction of purchase on Tiller's day of 1 April 1957. He would therefore submit that tenancy claim can be accepted even *qua watan* land. In support, he would also rely on judgment of this Court in ***Kondu Thaku Chavan & Ors. Versus. Ashok Shankar Chavan & Ors.***[4]**.**

14) Lastly, Mr. Killedar would rely upon judgment of the Apex Court in ***Baban Balaji More (Dead) by Lrs. and Ors Versus. Babaji Hari Shelar (Dead) by Lrs. and Others***[5] in support of his contention that the provisions of Watans Abolition Act and Tenancy Act are required to be construed harmoniously keeping in mind the objective that they seek to achieve and that provisions of Section 8 of the Watans Abolition Act cannot be read in such a manner so as to defeat vested right of a tenant under Section 32 of the Tenancy Act. Mr. Killedar would accordingly pray for dismissal of the Petitions.

3 2001(1) Bom.C.R. 219
4 2019 (2) Bom C.R. 223
5 2024 SCC Online SC 283

15) I have also heard Mr. Mulla, the learned AGP appearing for Respondent Nos. 18 to 20 in Writ Petition No. 8592 of 2024 and Ms. Jadhav, the learned AGP appearing for Respondent Nos. 18 to 20 in Writ Petition No. 8593 of 2024, who would support the order passed by MRT and pray for dismissal of the petitions.

16) Rival contentions of the contesting parties now fall for my consideration.

17) In the present case, Petitioners and Respondent Nos.15 to 17 are successors-in-title of the original *watandar*-Kachrya Kalya Gaikwad. As against this, Respondent Nos.1 to 14 represent the successors-in-title of the person claiming to be the tenant (Ganpat Kathod) in respect of the agricultural land. There is no dispute to the position that by Mutation Entry No. 1590, name of Ganpat Kathod was entered in the revenue records on 4 January 1957 as protected tenant in respect of the land in question. Had this been a normal landlord-tenant dispute, personal cultivation of land by Ganpat Kathod as on the Tiller's day of 1 April 1957 was clearly established and therefore his tenancy right could have been easily recognised thereby allowing his heirs to purchase the land by fixing the price fixed under Section 32G of the Tenancy Act. As a matter of fact, name of Ganpat Kathod has been mutated by Mutation Entry No. 1590 dated 4 January 1957 as 'सं. कुळ' (*protected tenant).* The term '*tenant*' has been defined under Section 2(18) of the Tenancy Act as under :

> [(18) "*tenant*" means a person who holds land on lease and include, —
> (a) a person who is deemed to be a tenant under section 4;
> (b) a person who is a protected tenant; and
> (c) a person who is a permanent tenant;
> and the word "*landlord*" shall be construed accordingly;

18) Under Section 4A of the Tenancy Act, a protected tenant is the one who is deemed to be a protected tenant under Sections 3, 3A and 4 of the Bombay Tenancy Act, 1939 **(Act of 1939)**. Section 4A of the Tenancy Act provides thus :

> **4A. Protected tenants.**
>
> For the purposes of this Act, a person shall be recognized to be a protected tenant, if such person has been deemed to be a protected tenant under sections 3, 3A and 4 of the Bombay Tenancy Act, 1939, referred to in Schedule I to this Act.

19) Under Section 3 of the Act of 1939, a tenant is deemed to be a protected tenant if he has held the land continuously for a period not less than 6 years either before 1 January 1938 or 1 January 1945 and has cultivated the land personally during that period. Section 3 of the Act of 1939 provided thus :

> **3. Protected tenants.**
> A tenant shall be deemed to be a protected tenant in respect of any land if –
> (a) he has held such land continuously for a period of not less than six years immediately preceding either –
> (i) the first day of January 1938, or
> (ii) the first day of January 1945; and
> (b) he has cultivated such land personally during the aforesaid period.
>
> *Explanation I*.– If the person who held such land on the first day of January 1938 or the first day of January 1945, as the case may be, came to hold the same by inheritance or succession from another person or if he has held such land as a tenant and is an heir to such other person, the period during which such other person held such land as a tenant shall be included in calculating the period of six years under this section.
>
> *Explanation II*.– If the person who held such land on the first day of January 1938 or the first day of January 1945, as the case may be, held as a tenant at any time within six years before the said date from the same landlord in the same village any other land which he cultivated personally, the period during which he held such other land shall be included in calculating the period of six years under this section.
>
> *Explanation III*.– Where any land is held by two or more persons jointly as tenants, all such persons shall, if any one of them cultivated and continues to cultivate such land personally and if the other conditions specified in this section are fulfilled, be deemed to be protected tenants in respect of such land.

20) Since name of Ganpat Kathod is entered in the revenue records as *protected tenant* on 4 January 1957, personal cultivation of land by him prior to 1 January 1938 or 1 January 1945 will have to be necessarily presumed. In short, there is no serious dispute about the factum of personal cultivation of the land in question by Shri. Ganpat Kathod as on the relevant date.

21) The whole controversy has arisen on account of special circumstance of the present case where the land in question is *Mahar Watan* land and is governed by the provisions of the Hereditary Offices Act and Watans Abolition Act. It is the contention of the Petitioners that under Section 5 of the Hereditary Offices Act, no lease in respect of the *watan* land can be created without sanction of the Commissioner. Reliance is also placed on Section 8 of the Watans Abolition Act in support of the contention that the provisions of the Tenancy Act become applicable only if the lease of the *watan* land is in accordance with the provisions of the Hereditary Offices Act. It would therefore be necessary to consider the provisions of the Hereditary Offices Act and Watans Abolition Act and their combined effect on the provisions of the Tenancy Act.

22) Hereditary Offices Act is enacted for regulating the services of hereditary officers. Section 4 of the Act defines the terms 'Hereditary Office', '*Watandar*' and '*Watan Property*' as under :

> "Hereditary Office" means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue or with the village police, or with the settlement of boundaries, or other matters of civil administration, The expression includes such office even where the services originally appertaining to it have ceased to be demanded. The watan property, if any, and the hereditary office and the rights and privileges attached to them together constitute the watan.

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

"Watan property" means the moveable or immovable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise.
It includes cash payments in addition to the original watan property made voluntarily by the StateGovernment and subject periodically to modification or withdrawal.

23) Section 5 of the Hereditary Offices Act imposes restrictions on alienation of *watan* land and provides thus :

5. Prohibition of alienation of watan and watan rights. - (1) Without the sanction of [the [State]Government], [or in the case of a mortgage, charge, alienation, or lease of not more than thirty years, of the Commissioner] it shall not be competent-

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

(b) to a representative watandar to mortgage, charge, lease or alienate any right with which he is invested, as such, under this Act.

(2) In the case of any watan in respect of which a service commutation settlement has been effected, either under section 15 or before that section came into force, clause (a) of this section shall apply to such watan, unless the right of alienating the watan without the sanction of [the [State] Government] is conferred upon the watandars by the terms of such settlement or has been acquired by them under the said terms.]

24) Thus, it is not lawful for a *watandar* to mortgage, charge, alienate or lease, for a period beyond the term of natural life of *watandar*, any *watan* property without previous sanction of the State Government and if such mortgage, charge, alienation or lease does not exceed 30 years without sanction of the Commissioner.

25) The Watans Abolition Act was enacted with the objective of abolishing Hereditary Village Offices of lower degree than that of a revenue or police *Patel* or village accountant. Section 4 of the Watans Abolition Act abolished all inferior village *watans* including right to hold office and *watan* property and subject to the provisions of Sections 5, 6 and 9, all *watan* lands are resumed by the State Government. Section 5 of the Watans Abolition Act makes a provision for re-grant of *watan* land to the holders of the *watan*. Section 6 of the Act provides for re-grant of *watan* land to authorised holders and Section 9 makes an exception where even an unauthorised holder, in some cases, is entitled for re-grant of *watan* land. Thus, unless an order of re-grant is made under Sections 5, 6 and 9 of the Watans Abolition Act, all *watan* lands automatically became property of the State Government from the appointed date of 1 August 1960.

26) Section 8 of the Watans Abolition Act deals with application of tenancy laws to a *watan* land and provides thus :

> **8. Application of tenancy law.**
> If any watan land has been lawfully leased and such lease is subsisting on the appointed date, the provisions of the tenancy law shall apply to the said lease and the rights and liabilities of the holder of such land, and his tenant or tenants shall, subject to the provisions of this Act, be governed by the provisions of the said law.
> *Explanation*.– For the purposes of this section the expression "land" shall have the same meaning as assigned to it in the tenancy law.

27) Thus, where a *watan* land has been lawfully leased and such lease is subsisting on the appointed date, the provision of the Tenancy laws (Tenancy Act) applies to such lease and the rights and liabilities of holder of the land and his tenancy get governed by the provisions of the Tenancy Act.

28) It is by relying on provisions of Section 8 of the Watans Abolition Act that Mr. Karandikar has contended that the onus is on the tenant to prove that the *watan* land was lawfully leased to him. He has relied on Section 5 of the Hereditary Offices Act in support of his contention that *watan* land could not be leased without prior sanction of either the State Government or the Commissioner. It is therefore contended by Petitioners that in absence of proof of prior sanction of the State Government or Commissioner for lease of the *watan* land, it cannot be presumed that the *watan* land was lawfully leased within the meaning of Section 8 of the Watans Abolition Act. It is Petitioners' case that since alleged lease in favour of Ganpat Kathod was not lawful within the meaning of Section 5 of the Hereditary Offices Act, the provisions of Section 8 of the Watans Abolition Act do not apply in the present case.

29) Before considering the correctness of the above contentions raised on behalf of the Petitioners, it would also be necessary to have a quick look at the relevant provisions of the Tenancy Act. Petitioners have relied on provisions of Section 88 of the Tenancy Act in support of their contention that provisions of Sections 1 to 87 of the Tenancy Act do not apply to lands belonging to the State Government. Reliance is placed on Explanation to sub-section (1) of Section 88, under which the land held as *watan* for service useful to the Government and assigned as remuneration to a person actually performing such a service under Section 23 of the Hereditary Offices Act, is deemed to be land belonging to the Government. Section 88 of the Tenancy Act provides thus :

88. Exemption to Government lands and certain other lands.

(1) Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act] shall apply,—

(a) to lands belonging to or held on lease from, the Government;

(b) to any area which the State Government may, from time to time, by notification in the *Official Gazette*, specify as being reserved for non-agricultural or industrial development;

(c) to an estate or land taken under the management of the Court of Wards [or of a Government Officer appointed in his official capacity as a guardian under the Guardians and Wards Act, 1890

(d) to an estate or land taken under management by the State Government under Chapter IV or section 65 except as provided in the said Chapter IV or section 65, as the case may be, and in sections 66, 80A, 82, 83, 84, 85, 86 and 87 :

Provided that from the date on which the land is released from management, all the foregoing provisions of this Act shall apply thereto; but subject to the modification that in the case of a tenancy, not being a permanent tenancy, which on that date subsists in the land—

(a) the landlord shall be entitled to terminate the tenancy under section 31 (or under section 33B in the case of a certified landlord) within one year from such date; and

(b) within one year from the expiry of the period during which the landlord or certificated landlord is entitled to terminate the tenancy as aforesaid, the tenant shall have the right to purchase the land under section 32 (or under section 33C in the case of an excluded tenant); and

(c) the provisions of sections 31 to 31D, both inclusive (or sections 33A and 33B in the case of a certificate landlord) and sections 32 to 32R (both inclusive) (or sections 33A and 33C in the case of an excluded tenant) shall, so far as may be applicable, apply to the termination of a tenancy or the right to purchase the land, as aforesaid :

Provided that further that,—

(a) in the case of a permanent tenancy the permanent tenant shall be entitled to purchase the land held by him on permanent tenancy,—

(i) within one year from the date on which the estate or land is released from management, or

(ii) where such estate or land was released from management after the tiller's day but before the commencement of the Bombay Tenancy and Agricultural lands (Amendment) Act, 1960, within one year from such commencement, and

(b) where such permanent tenant is desirous of exercising the right conferred on him under this proviso, he shall accordingly inform the landlord and Tribunal in the prescribed manner within the said period of one year and the provisions of sections 32 to 32R shall, so far as may be applicable, apply to the right of the permanent tenant to purchase the land.

Explanation.— For the purposes of [clause (a) of sub-section (1)] of this section land held as *inam* or *watan* for service useful to Government and assigned as remuneration to the person actually performing such service for the time being under section 23 of the Bombay Hereditary Offices Act, 1874,

or any other law for the time being in force shall be deemed to be land belonging to Government.

(2) If any land held on lease from Government or any part thereof,—

(i) is held at the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, by a person under a sub-lease from the lessee and is cultivated personally by such person, or

(ii) is sub-let after the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, by the lessee to any person for cultivation.

and such sub-letting of the land or part thereof is authorised in accordance with the terms of the lease then all the provisions of this Act except sections 32 to 32R (both inclusive) and section 43 shall, notwithstanding anything contained in such lease, apply to the land, or as the case may be the part thereof, held under such sub-lease, as if the person holding it under such sub-lease were a tenant within the meaning of section 4 of this Act and the lessee were the landlord :

Provided that in the case of a sub-lease subsisting on the date of the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, the lessee shall be entitled to terminate the sub-lease under section 31 within one year from such date and the provisions of sections 31 to 31D (both inclusive) shall so far as may be applicable, apply to the termination of the sub-lease.

Explanation.— In sub-section (2) of this section, references to a lessee include a reference to a person to whom the entire interest in the land held on lease or in any part thereof has been transferred or assigned.

30) Section 88CA came to be inserted in the Tenancy Act by Bombay Act 63 of 1958 under which provisions of Sections 32 to 32R, 32A, 33A, 33B and 33C are excluded in respect of the land held as *watan* for services useful to the Government but not assigned as remuneration. Section 88CA provides thus :

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

31) The combined reading of the provisions of Sections 88 and 88CA of the Tenancy Act, together with the provisions of Section 8 of the Watans Abolition Act, indicates that the land held as *watan*, usually is deemed to be the land belonging to the State Government. Under

Explanation to Section 88(1) where the land is held as *watan* for services useful to the Government and assigned as remuneration to the *watandar*, Sections 1 to 87 of the Tenancy Act do not apply. As against this, under Section 88CA of the Tenancy Act, if such *watan* land is held in service useful to the State Government but not assigned as remuneration, the provisions of Sections 32 to 32R, 33A, 33B and 33C do not apply to such land. Thus, in either of the cases, where the *watan* land is held for services useful to the Government and either assigned or not assigned as remuneration, the provisions of Section 32 creating deeming fiction of purchase of land by the tenant on the Tiller's Day of 1 April 1957 do not apply to such land. This is how Explanation to Section 88(1) and Section 88CA seek to exclude all *watan* lands whether assigned as remuneration or not from deeming fiction of purchase by the tenant as on 1 April 1957 under Section 32 of the Tenancy Act.

32) However, Section 8 of the Watans Abolition Act opens up a window for application of provisions of the Tenancy Act even in respect of *watan* lands in case it is proved that the *watan* land was lawfully leased. The Tenancy Act came into effect in the year 1948. Though Explanation to Section 88(1) as well as Section 88CA are inserted by Bombay Act 63 of 1958, Section 21 of the Bombay Amendment Act 63 of 1958 provided that Sections 15 to 18 thereof shall be deemed to have been made and come into force on the day on which the Bombay Tenancy and Agricultural Lands (Amended) Act, 1955 came into effect. Thus, both the Explanations to Section 88(1) as well as Section 88CA were applicable as on the Tiller's Day of 1 April 1957. Thus, under Explanation to Section 88(1) as well as Section 88CA, the deeming fiction of purchase under Section 32 of the Tenancy Act was made inapplicable in respect of a *watan* land. The Watans Abolition Act came into effect on 20 January 1959. There is no dispute between the parties

that the appointed date in respect of districts of Thane where the land is situated is 1 August 1960. Thus, the provisions of the Watans Abolition Act came into effect on 1 August 1960. The blockage created by Explanation to Section 88(1) or Section 88CA for application of deeming fiction of purchase under Section 32 of the Tenancy Act was opened up to some extent by Section 8 of the Watans Abolition Act. Section 8 opened up a window for application of provisions of Tenancy Act and for governance of rights and liabilities of holder of *watan* land and his tenant as per the provisions of the Tenancy Act. The only condition, according to the Petitioners, is that the *watan* land must be proved to have been lawfully leased to the tenant.

33) This is how Petitioners contend that there is no lawful lease of the *watan* land in the present case in favour of Ganpat Kathod by securing the previous sanction of the Commissioner/State Government under Section 5 of the Hereditary Officers Act. Reliance is placed on the judgment of Coordinate Bench of this Court in ***Shobha Ganpat Bankar*** (supra) in which it is held in paras-11 to 15 as under :

> **11.** Heard learned counsel appearing for the parties at length. With their able assistance carefully perused pleadings in the petition, grounds taken therein, annexrues thereto and the findings/reasons recorded by the Maharashtra Revenue Tribunal, Mumbai in the impugned judgment. The contention of the counsel appearing for the petitioner that the concurrent findings of facts, that the predecessor of the petitioner and petitioner are continuously cultivating the subject land and there are continuous entries in the revenue record, and same are disturbed by the Maharashtra Revenue Tribunal, cannot be accepted. It is true that the crop inspection entries of year 1953-54 onwards are in the name of predecessor of petitioner and the petitioner. However, Tribunal observed that, since there is no creation of valid tenancy by way of lease, as contemplated under Section 8 of the Maharashtra Inferior Village Watans Abolition Act, and the initial induction of the predecessor of the petitioner on the land was admittedly without previous approval of the Collector/State Government, there cannot be any valid tenancy by lease. It is also observed that, admittedly the suit land was Mahar Watan land. The land was inferior village watan land and the same was regulated by the provisions of Bombay Hereditary Office Act. On conjoint reading of provisions under Bombay Hereditary Office Act and provisions of the Maharashtra Inferior Village Watan Abolition Act, the Tribunal observed that, for creation of tenancy,

permission from the competent authority i.e. Collector, would be required and any lease granted without permission of Collector would be invalid under Section 5 of the Said Act. It is also observed that, the lands in question continue to be watan land till 1st February 1959, the date on which the inferior watan came to be abolished. It is further observed that till 01st February 1959, provisions of relevant tenancy law i.e. Bombay Tenancy & Agricultural Lands Act, 1948 were not applicable. Thus there could not have any case of deemed tenancy under Section 4 till 01st February 1959. It is further held by the Maharashtra Revenue Tribunal that, the person claiming to be tenant must prove when he was inducted on watan land by watandar with previous approval by Collector. However, in the present case no such claim is made by the present petitioner.

12. Section 8 of the Maharashtra Inferior Village Watans Abolition Act reads thus:—

8. If any watan land has been lawfully leased and such lease is subsisting on the appointed date, the provisions of the tenancy law shall apply to the said lease and the rights and liabilities of the holder of such land and his tenants shall, subject to the provisions of this Act, be governed by the provisions of the said law.

Explanation-For the purpose of this section the expression "land" shall have the same meaning as assigned to it in the tenancy law.

13. Section 5 of the Bombay Hereditary Offices Act reads thus:—

5. Prohibition of alienation of watan and watan rights.

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

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

(b) to a representative watandar to to mortgage, charge, lease or alienate any right with which he is invested, as such, under this Act.

(2) In the case of any watan in respect of which a service commutation settlement has been effected, either under section 15 or before that section came into force, clause (a) of this section shall apply to such watan, unless the right of alienating the watan without the section of the State Government is conferred upon the watandars by the terms of such settlement or has been acquired by them under the said terms.

14. In the instant case nothing is brought to the notice of the Court that, predecessor or the petitioner was inducted on watan land by watandar with previous approval of the Collector as lessee. Nothing is brought to the notice of this Court that there was creation of valid tenancy by way of lease prior to 1st February 1959 with permission of the Collector as required under the

> provisions of Maharashtra Inferior Village Watan Abolition Act, 1958. It is true that, the petitioner is in continuous possession on the basis of crop entries however, keeping in view the provisions of Maharashtra Inferior Village Watans Abolition Act, and Section 5 of the Bombay Hereditary Offices Act, it will have to be concluded that no evidence was placed on record by the petitioner showing that the petitioner or predecessor of the petitioner was inducted on the watan land by watandar with previous approval of the Collector as lessee and lawful lease was created in favour of the predecessor of the petitioner.
>
> **15.** Taking overall view of the matter and keeping in view the aforesaid provisions, and the fact that no evidence was placed on record by the petitioner to show that there was creation of valid tenancy by way of lease as contemplated in the aforesaid Acts, with the prior permission of the Collector and therefore, findings recorded by the Maharashtra Revenue Tribunal, Mumbai are in consonance with the material brought on record and also provisions of aforesaid two Act. The view taken by the Maharashtra Revenue Tribunal is reasonable and plausible. The Maharashtra Revenue Tribunal, upon appreciation of material placed on record and in the light of the provisions of aforesaid two Acts and Section 32G(6) of the Bombay Tenancy & Agricultural Lands Act, 1948 has rightly concluded that the said provision of Section 32G(6) is for the benefit of tenancy who was inducted lawfully and such lease would be surviving on 1st April 1957. In that view of the matter, no case is made out to cause interference in the impugned judgment and order passed by the Maharashtra Revenue Tribunal, Mumbai. Hence writ petition stands rejected.

34) By relying on judgment of this Court in ***Shobha Ganpat Bankar,*** it is contended by the Petitioners that the lease allegedly created in favour of Ganpat Kathod was not lawful within the meaning of Section 5 of the Hereditary Offices Act and that therefore provisions of Section 8 of the Watans Abolition Act would not apply to the present case. It is contended that therefore the blockage created by Explanation to Section 88(1) or by Section 88CA would continue to apply to the present case.

35) On the other hand, it is the contention of Mr. Killedar that since the name of Ganpat Kathod was entered in the revenue records as '*protected tenant*', the provisions of Explanation to Section 88(1) or Section 88CA of the Tenancy Act would have no application to the present case. Reliance is placed on the judgment of this Court in

Vasudeo Ramchandra Kale (supra) in which it is held in para-12 as under :

> **12.** Coming to the second point which has been argued by the learned counsel for the petitioners, the same deserves to be stated to be rejected for the simple reason that, it is an admitted position that the predecessor of the respondents was declared as the protected tenant and mutation entry to that effect also came to be recorded. It is not in dispute that the said mutation entry was never challenged by the petitioner's landlords. In view of the decision of the Apex Court reported in AIR 1963 SC 354, the respondents were, therefore, not required to bring on record any further material in support of their claim of tenancy, but, if the petitioners who were disputing their claim of tenancy, ought to have produced positive evidence to the contrary. Accordingly, the contention that for want of evidence it should be held that the respondents have failed to establish their tenancy in respect of the suit lands, also deserves to be rejected.

36) By relying on the judgment in ***Vasudeo Ramchandra Kale***, it is contended by Mr. Killedar that once the name is entered in the revenue records as '*protected tenant*', no further material is required for proving the claim of tenancy and it is for the landlord to produce positive evidence to the contrary. While deciding the case of ***Vasudeo Ramchandra Kale,*** this Court has relied on the judgment of the Apex Court in ***Sakharam @ Bapusaheb Narayan Sanas*** (supra), in which it is held that the right of a protected tenant accrued, while the Act of 1939 was in force, no further act on the part of the tenant is necessary. It is held as under :

> The contention is that in order that the defendants-appellants could claim the status of 'protected tenants' as a right accrued under the Act of 1939, they should have taken certain steps to enforce that right and got the relevant authorities to pronounce upon those rights, and as no such steps had admittedly been taken by the appellants, they could not claim that they had a right accrued to them as claimed. In our opinion, there is no substance in this contention. The observations, quoted above, made by the Lord Chancellor, with all respect, are entirely correct, but have been made in the context of the statute under which the controversy had arisen. In that case, the appellant had obtained a grant in fee-simple of certain lands under the Crown Lands Alienation Act, 1861. By virtue of the original grant, he would have been entitled to claim settlement of additional areas, if he satisfied certain conditions laid down in the relevant provisions of the statute. The original settlee had the right to claim the additional settlements, if he so desired, on

> fulfilment of those conditions. He had those rights to acquire the additional lands under the provisions of the Crown Lands Alienation Act, 1861, but the Crown Lands Act of 1884, repealed the previous Act, subject to a saving provision to the effect that all rights accrued by virtue of the repealed enactment shall, subject to any express provisions of the repealing Act in relation thereto, remain unaffected by such repeal. The appellants contention that under the saving clause of the repealed enactment he had the right to make additional conditional purchases and that was a "right accrued" within the meaning of the saving clause contained in the repealing Act of 1884, was negatived by the Privy Council. It is, thus, clear that the context in which the observations relied upon by the respondent, as quoted above, were made is entirely different from the context of the present controversy. That decision is only authority for the proposition that 'the mere right, existing at the date of a repealing statute, to take advantage of provisions of the statute repealed is not a "right accrued" within the meaning of the usual saving clause. In that ruling, Their Lordships of the Privy Council assumed that the contingent right of the original grantee was a right but it was not a 'right accrued' within the meaning of the repealed statute. It was held not to have accrued because the option given to the original grantee to make additional purchases had not been exercised before the repeal. In other words, the right which was sought to be exercised was not in existence at the date of the repealing Act, which had restricted those rights. In the instant case, the right of a 'protected tenant' had accrued to the appellants while the Act of 1939 was still in force, without any act on their part being necessary. That right had been recognised by the public authorities by making the relevant entries in the Record of Rights, as aforesaid. On the other hand, as already indicated, Section 3A(1) of the Act of 1939 had given the right to the landlord-respondent to take proceedings to have the necessary declaration made by the *mamlatdar* that the tenant had not acquired the status of a 'protected tenant'. He did not proceed in that behalf. Hence, it is clear that so far as the appellants were concerned, their status as "protected tenants" had been recognised by the public authorities under the Act of 1939, and they had to do nothing more to bring their case within the expression 'right accrued', in clause (*b*) of Section 89(2) of the Act of 1948.

37) It would therefore be necessary to consider the effect of declaration of status of protected tenant under the Act of 1939 vis-à-vis *watan* land. If one has a closer look at the provisions of the Act of 1939, there was a provision similar to Section 88 of the Tenancy Act in the form of Section 25 under the Act of 1939 which provided thus:

> **25. Act not to apply to certain lands.**
> Nothing in this Act shall apply to lands-
> (1) held on lease from the Crown or a co-operative society, or
> (2) held on lease for the benefit of an industrial or commercial undertaking.

38) Thus, under Section 25 of the Act of 1939, the Act did not apply to the lands held on lease from the Crown. Though the provisions of the Hereditary Offices Act were already subsisting since 1874, the Act of 1939 did not exclude *watan* lands from application of the said Act by creating a deeming fiction of all *watan* lands being treated as lands of the Crown. In short, there was no *pari materia* provision like that of Explanation to Section 88(1) or Section 88CA of the Tenancy Act in the Act of 1939. Thus, during the regime of the Act of 1939, the provisions of the said Act applied even to *watan* lands. Therefore a person treated as '*protected tenant*' under Sections 3, 3A or 4 of the Act of 1939 did not attract any disqualification merely because the land held in tenancy by such person was a *watan* land.

39) The issue for consideration therefore is, whether a right of '*protected tenant*' not attracting any disqualification in respect of *watan* land under the Act of 1939 would get completely destroyed after coming into force of the Tenancy Act? To paraphrase, whether a '*protected tenant*' not attracting any disqualification in respect of *watan* land would acquire such disqualification by virtue of provisions of Section 88(1) and Section 88CA of the Tenancy Act and whether he needs to depend on the provisions of Section 8 of the Watans Abolition Act for claiming back his tenancy rights? In the event of it being held that even a '*protected tenant*' of *watan* land must comply with all conditions of Section 8 of the Watan Abolition Act, whether lease in favour of such '*protected tenant*' can be considered as lawful without any requirement of producing previous sanction of State Government/Commissioner under Section 5 of the Hereditary Offices Act?

40) In my view, the Tenancy Act, being beneficial statute enacted for the benefit of a tenant, must be harmoniously construed with the provisions of the Watans Abolition Act and Hereditary Offices Act. The issue of harmonious construction of the provisions of the Tenancy Act with that of Watans Abolition Act attracted attention of the Apex Court in ***Sadashiv Dada Patil Versus. Purshottam Onkar Patil (dead) by Lrs***[6]. The issue before the Apex Court was whether the Proviso to Section 8 of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962 **(Patels Abolition of Office Act)** destroyed the right of purchase of tenanted land under Section 32 of the Tenancy Act. Section 8 of the Patels Abolition of Office Act contains following Proviso:

> "Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the regrant of the land under Section 5 or 6 or 9, as the case may be.
> *Explanation.*—For the purposes of this section, the expression 'land' shall have the same meaning as is assigned to it in the relevant tenancy law."

41) Thus, under Proviso to Section 8 of the Patels Abolition of Office Act, the lease in favour of tenant is deemed to have commenced from the date of re-grant of the land for the purpose of application of provisions of Tenancy Act. It was therefore sought to be contended that since the re-grant was made after the Tiller's day of 1 April 1957, the lease commenced from that date and therefore the tenant was not entitled to purchase the land as on the Tiller's Day under Section 32 of the Tenancy Act. The Apex Court however negatived the contention and held that provisions of both the Acts are required to be construed harmoniously keeping in view the purport and object of the Acts. The Apex Court held that Section 32 confers an absolute right on the tenant. It held that the tenant had vested right to purchase the land on 1 April 1957 and Proviso to Section 8 of the Patels Abolition of Office

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Act could not be read to mean that such vested rights would get divested. The Apex Court held in paras-19 to 24 and 26 as under :

> **19.** Section 8 of the 1962 Act, as noticed hereinbefore, provides that the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of the said part, be governed by the provisions of that law. The proviso appended thereto whereupon reliance has been placed by Mr Dube reads as under:
>
> > "Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the regrant of the land under Section 5 or 6 or 9, as the case may be.
> >
> > *Explanation.*—For the purposes of this section, the expression 'land' shall have the same meaning as is assigned to it in the relevant tenancy law."
>
> **20.** The provisions of both the Acts are required to be construed harmoniously. They have to be construed keeping in view the purport and object, they seek to achieve.
>
> **21.** Section 32 of the Act confers an absolute right to the tenant.
>
> **22.** As in 1957 the right of the respondent to purchase the land became a vested right, the proviso appended to Section 8 of the 1962 Act could not be read to mean that such right stood divested. The proviso appended to Section 8 refers to the application of the provisions of the relevant tenancy laws as the same does not abrogate a vested right. The proviso, it is well known, has a limited role to play. It may create an exception. It ordinarily does not create a right or takes away a vested or accrued right. The proviso to Section 8 of the 1962 Act, in our considered opinion, does not take away a vested right conferred under the Tenancy Act.
>
> **23.** By construing both the Acts harmoniously, the High Court, in our opinion, did not make a new law. It merely interpreted the same in the light of the object of the Act. The proviso appended to Section 8 of the 1962 Act merely postponed the operation of the statute. Fixation of price of the land in question subject to exercise of option by the tenant was to that extent beneficial to the landlord; but the same would not mean that legal fiction created under Section 32 of the Tenancy Act would stand effaced.
>
> **24.** We have noticed hereinbefore that 31-3-1957 was the cut-off date. A statutory right was conferred upon the tenant. The said right was created to fulfil the object that the tiller should become the owner; but thereby the landlord was not to be deprived of the price of the land. Section 32-O of the Tenancy Act would not be attracted, only because the proviso appended to Section 8 of the 1962 Act provides for a new date. For the said purpose, it was not necessary to make any amendment in the Tenancy Act in view of the fact that the relevant provisions of the Tenancy Act were made part of the 1962 Act. It is not a case where the Tenancy Act was required to be made applicable with retrospective effect, as the proviso appended to Section 8 of

> the 1962 Act was to be read in the light of Section 32-G and Section 32-O of the Tenancy Act. The proviso appended to Section 8 of the 1962 Act has a limited role to play.
>
> **26.** The proviso to Section 8 of the 1962 Act, therefore, should be interpreted accordingly. It did not create any right in favour of the landlord nor did it take away the right of the tenant. It would not be correct to contend that only because Section 31 of the Tenancy Act gives an option to the landlord to terminate the tenancy and take the possession of the land, Section 32-O thereof had been given a retrospective effect. The legal fiction created under Section 32 of the Tenancy Act cannot be given a limited meaning. A legal fiction, as is well known, must be given its full effect.

42) Following the law enunciated by the Apex Court in ***Sadashiv Dada Patil*** (supra) that the provisions of the Tenancy Act and Watans Abolition Act need to be construed harmoniously, in my view, it would be too treacherous to expect a tenant to prove securing of prior permission of State Government/Commissioner at the time of creation of lease within the meaning of Section 5 of the Hereditary Offices Act for the purpose of application of provisions of Section 8 of the Watans Abolition Act. As held by the Apex Court in ***Sadashiv Dada Patil,*** the right of a tenant to purchase the land under Section 32 of the Tenancy Act is an absolute right. The same cannot be diluted by interpreting the provisions of Section 8 of the Watans Abolition Act in such a manner that tenancy of a protected tenant has become unlawful on account of his inability to prove prior sanction of the State Government/ Commissioner under Section 5 of the Hereditary Offices Act. In my view therefore harmonious construction of provisions of all the three enactments will have to necessarily mean that a person, who is a protected tenant under the Act of 1939, and who is recognised as a tenant under the Tenancy Act, holds lawful lease of *watan* land within the meaning of Section 8 of the Watans Abolition Act.

43) The judgment of the Apex Court in ***Sadashiv Dada Patil*** has been followed in recent decision of Apex Court in ***Baban Balaji More*** (supra) which is relied by MRT while passing its

order. In ***Baban Balaji More,*** the issue again involved harmonious interpretation of provisions of Hereditary Offices Act, Tenancy Act and Patels Abolition of Office Act. In case before the Apex Court, the predecessor of the Appellant held Patel *Watan* prior to August 1898. Section 5 of the Hereditary Offices Act prohibited creation of a lease for a period beyond the natural life of the *watandar*. The Respondent was cultivating the *watan* properties as tenant since 1955-56. Appellants filed proceedings under Section 5 of the Hereditary Offices Act for recovery of possession of the land in cultivation of the tenant after the death of the original *watandar*. The application was allowed directing the tenant to handover possession of the *watan* land to the legal heirs of *watandar*. While the order was challenged in Appeal, possession of the *watan* land was handed over to the legal heirs of *watandar* on 22 April 1962 on account of non-grant of stay in pursuance of order passed on 18 April 1961 by the Assistant Collector. After recovery of possession on 22 April 1962, the Patels Abolition of Office Act came into effect from 1 January 1963 under which all Patel *Watans* stood abolished. The provisions of Patels Abolition of Office Act are almost similar to the provisions of the Watans Abolition Act, wherein a provision is made for re-grant of the *watan* land to the *watandar*. In the light of this factual position, the question before the Apex Court was whether the right of the tenant to purchase the land under Section 32 of the Tenancy Act got affected on account of recovery of possession of the tenanted land on 27 March 1962 before coming into force of the provisions of the Patels Abolition of Office Act. The Apex Court discussed the provisions of Section 88 of the Tenancy Act, particularly the Explanation to sub-section (1) thereof, as well as provisions of Section 88CA of the Tenancy Act. The Apex Court held that all *watan* lands were not to be treated as Government lands. The Apex Court held that the limited exemption from certain provisions of the Tenancy Act afforded under Explanation

to Sections 88(1) and 88CA thereof continued until Patels Abolition of Office Act came into force on 1 January 1963. The Apex Court thereafter discussed the provisions of Section 8 of Patels Abolition of Office Act and held that Patel *Watan* land which was lawfully leased and lease which was subsisting as on 1 January 1963 stood covered by the Tenancy Act in its entirety and tenant of such *watan* land was entitled to all the benefits including right to purchase such land. The Apex Court thereafter took into consideration the ratio of the judgment in ***Sadashiv Dada Patil*** and various judgments of this Court and rejected the contention of the Appellants that there was no lease subsisting as on 1 January 1963 on account of recovery of possession of *watan* land on 22 April 1962 in pursuance of order dated 18 April 1961. The Apex Court held that order dated 18 April 1961 was under challenge and mere delivery of possession of *watan* land could not be construed as absence of subsisting lease as on 1 January 1963. The Apex Court further held that it was otherwise not lawful for the *watandar* to take recovery of possession of the *watan* land because of the provisions of the Tenancy Act which were very much applicable to *watan* land. The Apex Court held that the tenancy was lawfully subsisting as on 1 April 1957 and the tenant was entitled to exercise statutory right of purchase under Section 32 of the Tenancy Act. The Apex Court held in paras-25 to 28 and 35 to 38 as under :

> **25.** A conjoint reading of the above provisions indicates that all *Watan* lands were not to be treated as Government lands. The 'Explanation' to Section 88 clarified the position with regard to *Watan* lands, other than those covered by Section 23 of the 1874 Act, as it manifests that only *Watan* land assigned as remuneration to an officiator performing service under Section 23 of the 1874 Act etc. shall be deemed to be land belonging to the Government. Thus, only *Watan* lands covered by Section 23 of the 1874 Act were to be treated as Government lands as per Section 88(1)(a). This is further clarified by Section 88CA inserted in the year 1958, which stated that Sections 32 to 32-R, 33-A, 33-B and 33-C would not apply to land held as *Inam* or *Watan* for service useful to the Government, excepting land assigned as remuneration under Section 23 of the 1874 Act etc. It is, therefore, clear that only *Watan* lands assigned as remuneration for service under Section 23 of the 1874 Act were to

be treated as Government lands and stood excluded from the provisions of the Tenancy Act. Admittedly, Balaji Chimnaji More was not an 'officiator' covered by Section 23 of the 1874 Act. This is also demonstrated by the fact that his legal heirs paid only six times the assessment for regrant of the *Watan* lands under Section 5 of the Abolition Act and not twelve times, as would be applicable to an officiator. *Ergo*, the subject *Watan* lands were not covered by Section 88(1)(a) of the Tenancy Act and could not be treated as Government lands.

26. By virtue of the 'Explanation' to Section 88(1)(a) of the Tenancy Act, all other *Watan* lands, including the subject *Watan* lands, were covered by all the provisions of the Tenancy Act. However, Section 88CA thereof, introduced in the statute book in July, 1958, granted such *Watan* lands exemption from Sections 32 to 32-R, 33-A, 33-B and 33-C. Therefore, Sections 29 and 31 of the Tenancy Act were very much applicable to such *Watan* lands all through. Section 29, titled 'Procedure of taking possession', states to the effect that no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the *Mamlatdar* and for obtaining such an order, he should make an application in the prescribed form within the prescribed time. Section 31 is titled 'Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose' and provided the mode and method in which a landlord could terminate the tenancy of any land, except a permanent tenancy. Thereunder, the landlord had to file an application for possession before the *Mamlatdar* before Tillers' Day. This being the position, the heirs of the original *Watandar* could not have aspired to secure possession without reference to this procedure.

27. The limited exemption from certain provisions of the Tenancy Act, afforded by Section 88CA thereof, continued until the Abolition Act came into force on 01.01.1963. Thereafter, as the very institution of *Patel Watan* stood abolished, the limited exemption extended to such *Watan* lands under Section 88CA of the Tenancy Act also ceased. This is made clear by Section 8 of the Abolition Act, which reads as under:

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

28. Therefore, after the advent of the Abolition Act, *Patel Watan* land which was lawfully leased, and the lease of which was subsisting as on 01.01.1963, stood covered by the Tenancy Act in its entirety and the tenant of such *Watan* land was entitled to all the benefits under the provisions thereof, including the right to purchase such land. The *proviso* to Section 8 indicates

that, for the purpose of fixing the purchase price under the provisions of the Tenancy Act so as to enable the purchase of such land by the tenant, the lease shall be deemed to have commenced from the date of regrant of the land under Sections 5, 6 or 9, as the case may be.

35. We find ourselves in respectful and complete agreement with the views expressed by the Bombay High Court in the above decisions. In the case on hand, it is the contention of the appellants that there was no lease subsisting as on 01.01.1963, owing to the order dated 18.04.1961 passed upon the application made by the legal heirs under Section 5 of the 1874 Act after the death of the original *Watandar*. They would further contend that as the possession of the *Watan* lands was actually restored to the legal heirs on 22.04.1962, the tenants were not even in possession on the appointed date, *viz.*, 01.01.1963. In effect, their argument is that neither a lawful lease was in existence nor were the tenants in physical possession on the said date. However, this argument loses sight of the fact that the order dated 18.04.1961 had not attained finality inasmuch as the tenants subjected it to challenge before the higher authorities and their challenge was still pending. No doubt, the High Court erroneously referred to the 'misconceived appeal' filed by them as 'revisional proceedings' but notwithstanding the nomenclature, the inescapable fact remains that the challenge to the initial order dated 18.04.1961 was subsisting as on 22.04.1962, the date of delivery of possession, and such proceedings of challenge concluded in favour of the tenants when their revision was allowed, *vide* the order dated 03.05.1982. Merely because no stay was granted in such proceedings and, in consequence, the tenants stood divested of actual physical possession, it did not lend any finality to the order impugned in those proceedings and, therefore, the purported termination of the lease still hung in balance.

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

37. It appears that during the pendency of this litigation, the subject agricultural *Watan* lands became part of the extended city limits of Pimpari Chinchwad Municipal Corporation and are presently reserved for Defence purposes (Red Zone) in the development plans sanctioned by the Government of Maharashtra. In consequence, these lands cannot be alienated without the prior approval of the Government of India and the Government of Maharashtra. While so, we find that both sides have been merrily entering into transactions with third parties to alienate/transfer the subject lands. However, our decision in this case relates back to a time when the subject lands were still agricultural in nature and use and it would have no impact on the present position and the consequences flowing therefrom. Further, *inter se* disputes, be it betwixt the appellants or betwixt the tenants, are not the subject matter of this appeal and have not been dealt with. All such disputes would have to be addressed independently before the appropriate forum in accordance with law, if still permissible.

> **38.** On the above analysis, we hold that it was not open to the appellants to proceed against the tenants under the provisions of Sections 5, 11 and 11A of the 1874 Act after the death of Balaji Chimnaji More, the original *Watandar,* in February/March, 1958. This is because the provisions of the Tenancy Act were very much applicable to the subject lands by then and more so, Sections 29 and 31 thereof. Therefore, the legal heirs of the original *Watandar* could not have taken lawful possession of these lands from the tenants pursuant to the order dated 18.04.1961 passed under Sections 5, 11 and 11A of the 1874 Act. The same was rightly held to be invalid in the revisionary order dated 03.05.1982 and that finding was correctly held to be justified by the Bombay High Court. We also hold that the tenancy was lawfully subsisting on 01.04.1957, i.e., Tillers' Day, and the tenants were entitled to exercise their right of statutory purchase of these tenanted agricultural *Watan* lands under Section 32 of the Tenancy Act in terms of Section 8 of the Abolition Act, after the exemption afforded by Section 88CA ceased to exist. That right became operational on 27.11.1964, when these *Watan* lands were regranted to the heirs of the original *Watandar*.

44) Though the issue before the Apex Court in ***Baban Balaji More*** was not exactly identical to the one involved in the present case, the Apex Court followed the principle of harmonious construction of the three enactments of Hereditary Offices Act, Tenancy Act and Patels Abolition of Office Act for the purpose of upholding the statutory right of a tenant to purchase a *watan* land under Section 32 of the Tenancy Act. In my view, similar approach needs to be adopted in the present case as well by harmoniously constructing the provisions of the three enactments for upholding tenant's statutory right of purchase of the land under Section 32 of the Tenancy Act.

45) In the present case, personal cultivation of the *watan* land by a tenant is clearly proved. Mutation Entry No.1590 records that the tenant was personally cultivating the land from 1946-47 to 1955-56. The said finding is recorded in Mutation Entry No.1590 dated 4 January 1957 after perusal of the entries in Village Specimen No.7A. This is the reason why name of Shri. Ganpat Kathod was entered as a '*protected tenant*' by Mutation Entry No. 1590, which entry remained unchallenged. As observed above, a protected tenant under the Act of

1939 did not attract any disqualification in respect of *watan* land. The Act of 1939 did not intend to treat *watan* land as Government Land for excluding tenant's rights in respect thereof as is done subsequently by Sections 88(1) and 88CA of the Tenancy Act. Therefore, in my view, protected tenant under the Act of 1939 would stand on a better footing than an ordinary tenant under the Tenancy Act when it comes to tenancy in respect of Watan land.

46) The ALT had grossly erred in holding that tenancy rights cannot be recognised in respect of *watan* land under Section 88 of the Tenancy Act. The ALT failed to appreciate the provisions of Section 8 of the Watans Abolition Act. His orders dated 10 December 2018 do not even refer to the provisions of Section 8 of the Watans Abolition Act.

47) The SDO rightly appreciated the position that name of Shri. Ganpat Kathod was entered as protected tenant in the revenue records on the basis of entries of personal cultivation by him from 1946-47 to 1955-56. The SDO also independently considered crop entries for the years 1952-53 to 1975-76 in which again name of Shri. Ganpat Kathod is reflected as a cultivator. The SDO rightly held that Shri. Ganpat Kathod was cultivating the land as a '*protected tenant*' as on 1 April 1957. After his death, names of his legal heirs were mutated to the revenue records vide Mutation Entry No. 3629 dated 8 October 1977.

48) In my view, once it got conclusively established that the tenant-Shri. Ganpat Kathod was personally cultivating the land as a protected tenant from 1946-47 till filing of cross proceedings by the parties, it would be too iniquitous to expect the protected tenant to prove that the tenancy created in his favour was with the previous sanction of the State Government/Commissioner under Section 5 of the

Hereditary Offices Act. The judgment of Coordinate Bench of this Court in ***Shobha Daulatrao Bankar*** is delivered in the unique facts of that case. The case before this Court did not involve the status as '*protected tenant*' under the Act of 1939. The tenancy was apparently created in the year 1953-54 and in the light of this position, this Court held that there was no creation of valid tenancy by way of lease as contemplated under Section 8 of the Watans Abolition Act. This Court held that the view taken by MRT was reasonable and plausible and refused to interfere in the order of the Tribunal considering the facts and circumstances of the present case. Therefore the judgment in ***Shobha Daulatrao Bankar***, rendered in the facts of that case, cannot be read in support of an absolute proposition of law that in every case inability of tenant (particularly protected tenant) to prove lawful lease would deny him protection under Section 8 of the Watans Abolition Act. In the present case, when Shri. Ganpat Kathod has been recognised as '*protected tenant*' under the Act of 1939. As observed above, there were no *pari materia* provisions under the Act of 1939 for exclusion of provisions of that Act in respect of any *watan* land. The provisions of Section 88, particularly Explanation to sub-section (1) thereof and of Section 88CA which seek to exclude certain provisions of Tenancy Act to *watan* land, cannot apply in respect of tenancy created prior to the coming into effect of the Tenancy Act. It is in the light of these peculiar circumstances that I am inclined to hold that tenancy of a protected tenant under the Act of 1939 cannot be construed as unlawful tenancy within the meaning of Section 8 of the Watans Abolition Act. As observed above, this Court has held in ***Vasudeo Ramchandra Kale*** by relying on judgment of the Apex Court in ***Sakharam @ Bapusaheb Narayan Sanas*** that once a person is declared as a '*protected tenant*' by certification of mutation entry to that effect, nothing further is required to be proved and it for the person disputing the claim of tenancy to produce negative to the contrary. In

that view of the matter, the tenant cannot be made to prove valid creation of tenancy under Section 5 of the Hereditary Offices Act.

49) The landlords have failed to aver or prove that the tenancy created in favour of the tenant was in contravention of the provisions of Section 5 of the Hereditary Offices Act. In fact, perusal of the pleadings in Tenancy Case filed by the Petitioners seeking negative declaration under Section 70(b) of the Tenancy Act would indicate that the Petitioners never pleaded that creation of tenancy in favour of the tenant was in contravention of provisions of Section 5 of the Hereditary Offices Act. Their application was premised on pleadings that Shri. Ganpat Kathod or his heirs never cultivated the land and that the land was always cultivated only by the landlords. It would be relevant to reproduce the pleadings of the Petitioners in Tenancy Case No.5/2017 filed under the provisions of Section 70(b) of the Tenancy Act as under **:**

> ३) वर उल्लेख केलेली मिळकत हे अर्जदार यांची वडिलोपार्जित मालकीची व कब्जे वहिवाटीची मिळकत आहे. पूर्वी सदर मिळकत काचऱ्या काळया गायकवाड यांचे नावे होती. कचऱ्या काळया गायकवाड मयत झाल्यानंतर त्यांच्या वारसांची नावे फेरफार नं.४४९६ नुसार सदर मिळकतीच्या ७/१२ सदरी लागलेली आहेत. त्यापैकी वामन काळया गायकवाड हे मयत झालेले असून त्यांचे वारस फेरफार नं. ४५११ नुसार लागलेले आहेत. अर्जदार हे वामन काळया गायकवाड यांचे वारस आहेत. अशाप्रकारे सदर मिळकत ही वडिलोपार्जित मिळकत आहे. सदर मिळकत वाढ वडिलांपासुन अर्जदार व इतर सहमालक यांचे ताब्यात व वहिवाटीत आहे. अर्जदार यांचे कुटूंबिय सदर मिळकतीचा स्वतः उपभोग घेत आहेत. सदर मिळकतीवर अर्जदारांचा त्यांच्या वाडवडिलांपासुन कब्जा आहे. पूर्वी अर्जदारांचे वाडवडिल सदर मिळकतीतून भातशेती आणि नाचणी, वरी याचे उत्पन्न घेत होते. त्यानंतर पुढील पिढीने भातशेतीच्या उत्पन्ना बरोबरच भाजीपाला देखील लावून उत्पन्न घेतलेले आहे. अर्जदार हे गेल्या काही वर्षापासुन व सध्या देखील सदर मिळकतीतून भाजीपालेचे उत्पन्न काडतात व काही भागात भातशेतीचे उत्पन्न घेतात तसेच काही भागात म्हणजेच स.नं.३० जुना नवीन स.नं.४८, हि.नं.१ मध्ये फक्त गवताचे उत्पन्न अर्जदार घेतात. पूर्वी अर्जदारांचे वाडवडिल व त्यानंतर पुढील पिढी व सध्या अर्जदार हे सदर मिळकतीत त्यांची बैल, गाय, म्हशी असे गुरे चरवित होते. गेल्या २ ते ३ वर्षापासुन गुरे चरविणे बंद केले आहे. पंरतु गवत उगवून उत्पन्न घेत आहेत. तसेच दुसऱ्या मिळकतीत भाजी पाल्याचे उत्पन्न घेत आहेत. स.नं.४८. हि.नं.१ ही वरकस जमीन आहे. वरकस जमीनी मध्ये कोणतेही भातशेतीचे पिक येत नाही. त्यामुळे अशा जमिनीला कुळाची नोंद होणे पूर्णपणे चूकीचे आहे. अर्जदार वर उल्लेख केलेली स.नं.४८, हि.नं.१८ ही मिळकत वाडवडिलांपासुन स्वतः कसत आहेत व उपभोग घेत आहेत. सदर मिळकतीत सामनेवाले व त्यांचे वाडवडिल कधीही कुळ नव्हते व त्यांनी कधीही सदरची जमिन कसलेली नाही. सामनेवालेंनी अथवा त्यांचे वाडवडिलांनी कधीही जमिनीचा खंड अर्जदारांना व

त्यांचे वाडवडिलांना दिलेला नव्हता व नाही. सदर मिळकतीत म्हणजेच स.नं.४८, हि.नं.१८ मध्ये अर्जदारांच्या वाडवडिलांनी त्यावेळी विहीर पाडलेली होती. सदरची विहीर आजूनही अस्तित्वात असुन अर्जदारांनी तिचे जतन केलेले आहे व सदर विहीरीचे पाणी पूर्वी पिण्यासाठी, आंघोळीसाठी इतर कामांसाठी वापरत असत. सध्या सदर विहीरीचे पाणी अर्जदार भाजी पाल्यासाठी व शेतीसाठी वापरतात. अर्जदारांनी विहीरीवर पाणी खेचण्यासाठी विद्युत पंप लावलेला आहे.

४) सामनेवाले यांचा कोणताही संबंध कब्जा, वहिवाट सदर मिळकतीवर कधीही नव्हता. सदर जमीन सामनेवालेंनी अथवा त्यांचे वाढ वडिलांनी कधीही कसलेली नव्हती व नाही. सदर मिळकती मध्ये पूर्वी कधीही कोणीही कुळ म्हणून सदर मिळकत कसत नव्हते. कै. द्रौपदीबाई ढुंदा जाधव ही गणपत काथोड महार (गायकवाड) यांची मुलगी नव्हती. तरी देखील मिळकतीच्या हव्यासापोटी सोमनेवाले नं. १ व २ यांनी संबंधित मंडळ अधिकारी व तलाठी यांना हाताशी धरून द्रौपदीबाई दुंदा जाधव ही गणपत काथोड याची मुलगी होती व तिचे नाव सदर मिळकतीला लावण्याचे राहून गेले होते असे भासवून तिघे पश्चात तिघे वारस म्हणून सामनेवाला नं. १ व २ यांची नावे नोंदविण्याबाबत फेरफार नं ४७६२ मंजूर करून घेतलेला आहे व ते सदर मिळकतीत कुळ आहे असे भासविलेले आहे सदर मिळकतीत मुळातच कोणी कुळ नव्हते गणपत काथोड याचे कुळ म्हणून लागलेले नाव चुकीचे होते. गणपत काथोड हे सदर मिळकतीत कधीही कुळ नव्हते. गणपत काथोल मयत झाल्यानंतर पुढे वारसा गणिक सामनेवाले यांची नावे वारसाने वेग वेगळ्या फेरफारने सदर मिळकतीला लागलेली आहेत. मुळांतच गणपत काथोड हे कुळ नसल्याने सामनेवालेंची वारसाने लावलेली नावे देखील चूकीची आहेत व बेकायदेशीर आहेत. सामनेवाले व त्यांचे वाढवडिल हे कधीही कुळ नव्हते. कारणासाठी जरी असे गृहित धरले की, गणपत काथोड महार (गायकवाड) हे सदर मिळकतीत कुळ होते. तरी देखील कल्याण महानगरपालिका अस्तित्वात येईपर्यंत गणपत काथोड अथवा त्यांच्या वारसांनी सदर मिळकत त्यांचे नावे होण्याबाबत कोणतीही कार्यवाही केलेली नाही. सन १९८२-८३ साली कल्याण महानगरपालिका अस्तित्वात आली व सदर मिळकत ही महानगरपालिकेच्या अत्यारी खाली आली. त्यामुळे सदर मिळकतीला कायद्यातील तरतूदीनुसार कुळ कायद्याच्या तरतूदी, कुळांचा हक्क लागत नाही. तसेच कुळ कायद्या खाली कुळ म्हणून महानगरपालिकेच्या हद्दी मिळकत विक्री करता येत नाही. सदरची मिळकत ही महानगरपालिकेच्या हद्दीत असल्याने कुळ कायद्यातील कुळाच्या तरतूदी सदर मिळकतीला लागू होत नाही. त्यामुळे सामनेवालेंना कुळ म्हणून सदर मिळकतीत कोणताही हक्क प्रस्थापित झालेला नाही किंवा करता येत नाही. तसेच कुळ म्हणून सदर मिळकत विक्री करुन मागण्याचा हक्क देखील सामनेवालेंना प्राप्त होत नाही.

५) अर्जदारांचे असे म्हणणे आहे की, सामनेवाले हे सदर मिळकतीत कुळ असल्याबाबतचे सांगुन गैरफायदा घेण्याचा प्रयत्न करीत आहेत. सामनेवाल्यांना सदर मिळकतीत कुळ म्हणून हक्क सांगता येत नाही. त्यामुळे सदर मिळकत महानगरपालिकेच्या क्षेत्रात येत असल्याने सामनेवाले हे सदर मिळकतीत कुळ नाहीत. असे जाहिर करून मिळण्यासाठी सदरचा अर्ज अर्जदारांना दाखल करणे भाग पडलेले आहे. त्याचप्रमाणे सामनेवाले व त्यांचे वाढ वडिल यांनी कधीही सदर मिळकत स्वतः कसलेली नाही व त्यातून उत्पन्न घेतलेले नाही. सदर मिळकत कुठे आहे हे देखील सामनेवालेंना माहिती नाही. सदर मिळकतीचा धारा अर्जदार हेच दरवर्षी भरतात. सामनेवालेंने कधीही खंड वस्तूच्या स्वरुपात / धान्याच्या स्वरूपात अथवा रोख रक्कमेत अर्जदारांना अथवा त्यांचे वाढ वडिलांना कधीही दिलेला नव्हता व नाही.

६) सदर मिळकत ही शहरी भागात असल्याने गेल्या अनेक वर्षापासून तेथे कोणतेही पिक निघत नाही. तसेच गवत ही उगवत नाही. त्यामुळे सदर मिळकतीमध्ये सामनेवाले यांनी कसण्याचा प्रश्नच निर्माण होत नाही. सदर मिळकतीच्या काही भागात अर्जदार हे भाजीपाला लावून उत्पन्न घेतात. पूर्वी त्यांचे वाढ वडिल शेती करून उत्पन्न घेत होते. सामनेवाले यांच्याकडे नांगरकीसाठी गुरे, बैल काहीही नाही. त्यामुळे सामनेवालेंनी जमीन कसण्याचा प्रश्नच निर्माण होत नाही.

७) अर्जदारांचे असे म्हणणे आहे की, सामनेवाले सदर मिळकतीमध्ये कुळ नाहीत असे ठरवून मिळण्यासाठी अर्जदारांना सदरचा अर्ज दाखल करणे भाग पडत आहे. सदरची मिळकत ही अर्जदार

यांचे मालकीची असून ती त्यांचे कब्जे, वहिवाटीत आहे. अर्जदार हे स्वतः मागास वर्गातले म्हणजेच दलित समाजाचे आहेत. त्यामुळे सदर मिळकतीला कुळ लागु शकत नाही. फेरफार क्र.१५९० मध्ये नावात खाडखोड केलेली दिसत असून बेकायदेशीररित्या मंजूर केलेला दिसत आहे. तसेच फेरफार क्र.४४९६ हा मुळ फेरफार क्र.१५९० शी विसंगत दिसत आहे. यावरुनच सामनेवाले यांनी लबाडीने ते सदर मिळकतीत कुळ आहेत असे भासविलेले आहे. प्रत्यक्षात सामनेवाले हे सदर मिळकतीत कुळ नाही. त्यामुळे सामनेवाले हे कुळ नसल्याबाबत जाहिर करुन मिळणे आवश्यक आहे म्हणून अर्जदारांनी सदरचा अर्ज दाखल केलेला आहे.

50) Thus, there is no assertion by Petitioners before the ALT that creation of tenancy in favour of Shri. Ganpat Kathod was in contravention of the provisions of Section 5 of the Hereditary Offices Act. Therefore there was no *lis* between the parties about the lawful nature of creation of tenancy. The only factual dispute which existed before the ALT was about personal cultivation of the land by a tenant as on the Tiller's Day of 1 April 1957. On account of non-raising of any contention regarding unlawful creation of tenancy, the ALT was not even required to take into consideration the provisions of Section 8 of the Watans Abolition Act. The ALT accordingly did not even refer to the provisions of Section 8 of the Watans Abolition Act.

51) The importance of pleadings filed in tenancy case cannot be ignored altogether, especially when it comes to pleadings in application filed by a landlord seeking negative declaration of non-existence of tenancy. Section 71 of the Tenancy Act provides thus :

> **71. Commencement of proceedings.**
> Save as expressly provided by or under this Act, all inquiries and other proceedings before the *Mamlatdar* or Tribunal shall be commenced by an application which shall contain the following particulars :—
> (a) the name, age, profession and place of residence of the applicant and the opponent;
> (b) a short description and situation of the property of which possession is sought, or the amount of the claim, as the case may be;
> (c) the circumstances out of which the cause of action arose;
> (d) a list of the applicant's documents, if any, and of his witnesses, and whether such witnesses are to be summoned to attend or whether the applicant will produce them on the day of the hearing;
> (e) such other particulars as may be prescribed.

52) Section 72 deals with procedure for making enquiries and deciding the proceedings. Section 72 of the Tenancy Act provides thus :

> **72. Procedure.**
> In all inquires and proceedings commenced on the presentation of applications under section 71 the *Mamlatdar* or the Tribunal shall exercise the same powers as the *Mamlatdar*'s court under the *Mamlatdars'* Court's Act, 1906, and shall [save as provided in section 29] follow the provisions of the said Act, as if the *Mamlatdar* or the Tribunal were a *Mamlatdar*'s Court under the said Act and the application presented was a plaint presented under section 7 of the said Act. In regard to matters which are not provided for in the said Act, the *Mamlatdar* or the Tribunal shall follow the procedure as may be prescribed by the [State] Government. Every decision of the *Mamlatdar* or the Tribunal shall be recorded in the form of an order which shall state reasons for such decision.

53) Thus, under the provisions of Section 72 of the Tenancy Act, the application presented before the ALT needs to be in the form of plaint presented under Section 7 of the Mamlatdars' Court's Act, 1906. It was therefore incumbent for the Petitioners to specifically plead in their application that creation of tenancy in favour of Shri. Ganpat Kathod was unlawful for want of valid sanction from the State Government/Commissioner under Section 5 of the Hereditary Offices Act. In absence of a pleading to that effect, there was no necessity of framing any issue relating to unlawful creation of tenancy within the meaning of Section 8 of the Watans Abolition Act. The SDO was required to refer to the provisions of Section 8 of the Watans Abolition Act only for the purpose of dealing with erroneous finding of ALT that provisions of the Tenancy Act can never apply to a *watan* land. Petitioners cannot be permitted to take benefit of reference made by SDO to provisions of Section 8 of the Watans Abolition Act for the purpose of setting up a new (unpleaded) case before the MRT that tenancy in favour of Shri. Ganpat Kathod was not lawfully created within the meaning of Section 8. Infact, perusal of the Revision Memo filed before the MRT would indicate that no specific averment was made in the said Memo that prior permission of the State Government/Commissioner under Section 5 of the Hereditary Offices

Act was not obtained before creation of tenancy in his favour. The said contention was apparently raised directly in the written note of arguments. Thus, throughout the pleadings filed before the ALT, SDO and MRT, no averment was ever ever made by the Petitioners about the tenancy created in favour of Shri. Ganpat Kathod being unlawful. In my view, therefore it would not be appropriate to raise a presumption of unlawful tenancy against the tenant in absence of a pleading or proof to that effect. It is also inappropriate to expect the tenant to prove lawful creation of tenancy both on account of absence of any assertion to that effect by the landlords as well as on account of harmonious construction of the three enactments as done above.

54) I therefore do not find any valid reason to interfere in the concurrent findings recorded by the SDO and MRT against the Petitioners. The petitions are devoid of merits and deserve to be dismissed.

55) Both the petitions are accordingly **dismissed.** There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

56) After the judgment is pronounced, Mr. Karandikar would pray for stay of operation of the judgment for a period of four weeks. Mr. Killedar, the learned counsel appearing for the contesting Respondents would oppose the request. Operation of the judgment shall remained stayed for a period of four weeks.

[SANDEEP V. MARNE, .]