Baburao Laxman Muley Vs Shionath Mahadeo

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Feb. 8, 1967

Acts Referred: Constitution of India, 1950 â€" Article 141

Citation: (1967) 69 BOMLR 734 : (1967) MhLj 670

Hon'ble Judges: Deshmukh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Deshmukh, J.
This appeal has been filed by the original defendant against whom a decree for possession of the suit land has been passed

by the trial Court which is confirmed by the first appellate Court.

2. The plaintiffs are the owners of S. No. 28 from Udanapur, tahsil Mehkar, district Buldana and the deceased defendant Laxman was let into

possession of this land as lessee for the year 1956-57. It is common ground that defendant Laxman became a protected lessee under the

provisions of the Berar Regulation of Agricultural Leases Act. Though in the plaint it was alleged that the defendant was a partner in cultivation, the

trial Court has given a finding that the defendant was a tenant for the year 1955-56. If he became a lessee for one year under the provisions of the

Berar Leases Act, his term would be extended as laid down by the statute and that would make him a protected lessee u/s 3 of the said Act. In the

District Court, the finding given by the trial Court was not challenged, on the contrary, a concession was made on behalf of the plaintiffs that the

defendant was a tenant for the year 1956-57 and 1957-58 and as such a protected lessee.

3. The main ground on which this litigation is now being fought is that the defendant is a lessee whoso lease has been terminated by the plaintiffs by

notice exh. P-4. It is urged for the plaintiffs-landlords that they have already terminated the tenancy by a private notice like exh. P-4 under the

provisions of Section 9(7) of the Berar Leases Act. If this is so, they further claim the right to evict the defendant after termination of the tenancy by

the present suit. The defendant has resisted the suit, among others, on the following two grounds which relate to the above mentioned plea.

According to the defendant, his tenancy does not stand terminated at all by notice exh. P-4, though it purports to be a notice u/s 9(1) of the Berar

Leases Act. In spite of such notice, according to the defendant, application u/s 8(1)(g) of the said Act was necessary, and an order or

endorsement of the revenue officer on such application could alone have the effect of terminating- the tenancy. A further plea was raised, which I

would merely state because the consideration of that plea would arise upon the nature of the decision that could be given on the first plea. It is

alleged that even if the tenancy is terminated, a suit in the civil Court cannot lie. In the two Courts below the entire attention has been centred round

the only question relating to termination of tenancy of the defendant under the provisions of Section 9(1) of the Berar Leases Act.

4. The undisputed facts are that the plaintiffs as landlords served a notice upon the defendant, exh. P-4, dated December 16, 1957. Though the

service of notice was denied in the written statement, there is a finding that notice was served and that finding is not being challenged before me.

5. This notice seeks to terminate the tenancy of. the defendant with effect from the end of the agricultural year 1957-58 and the plaintiffs claim that

they want the land for personal cultivation from April 1, 1958. For that purpose, the defendant''s tenancy is terminated, and he is asked to vacate

the land and deliver back possession to the plaintiff''s.

6. The defendant neither gave any reply to the notice1 nor vacated, hence this suit for possession and past and future mean profits from. March 15,

1960. In this second appeal, the only question that is raised for my consideration is whether the notice exh. P-4 has the effect of terminating the

tenancy of the defendant with effect from April 1, 1958.

7. The trial Court as well as the first appellate Court have relied upon two Division Bench judgments of this Court and held that the tenancy is

validly terminated from, April 1, 1958 and. it gives a right to the plaintiff to claim possession. In view of the fact that there are two or three Division

Bench decisions which upheld the construction of Section 9 of the Berar Leases Act favourable to the respondents-plaintiffs, Shri K.B.

Deshpande, learned Counsel for the respondents, says that this Court is bound by those decisions. It is being argued before me that the scheme of

the Berar Leases Act came for consideration by the Supreme Court in the case of Ramchandra v. Tukaram (1965) 68 Bom. L.R. 658. and the

real meaning and interpretation of Section 8 as well as Section 9 of the Berar Leases Act has been made by the Supreme Court, The declaration

of the Supreme Court about the correct meaning and interpretation, of these sections becomes the law of the land under Article 141 of the

Constitution. If the Supreme Court interprets certain statutes and the interpretation is contrary to the Division Bench decision of this Court, it is

argued, the judgments of the High Court are deemed to have been over-ruled by the Supreme Court, and the only law that must be applied to the

facts of the litigation before it by the High Court is the law propounded by the Supreme Court. For this proposition, Shri Manohar relied upon the

observations of the Calcutta High Court in Sachindra Nath Mukherji Vs. The State of West-Bengal and Others, . A similar proposition was posed

before the learned Single Judge of that Court. It was pointed out that a certain view was taken by the Division Bench of the Calcutta High Court in

Srinivas Kedwal Vs. State of West Bengal, . When a contrary view was being taken by the learned Single1 Judge, it was brought to his notice that

according to the rules of procedure of the Calcutta High Court, reference1 to a Fuller Bench was necessary. In that context the learned Judge

observed that in view of the observations of the Supreme Court in the subsequent judgment after the decision of the High Court, it was

unnecessary to refer the matter to the Chief Justice for reference to a Fuller Bench because the law declared by the Supreme Court of India is

binding on all Courts in India under Article 141 of the Constitution. It is that law which must be applied in subsequent litigations coming up for

decision before the High Court and reference to a fuller Bench is unnecessary. I am also inclined to think that the provisions of Article 141 of the

Constitution of India are clear and the point which is concluded by the Supreme Court must be accepted as the law of the land and it is that law

which must be applied to the litigations which are being decided by the Courts in India subsequent to the pronouncement of the Jaw by the

Supreme Court.

8. The next point that arises for my consideration is whether the Supreme Court has in fact interpreted Sections 8 and 9 and whether the

pronouncement of the law is of a type which is covered by Article 141 of the Constitution. Shri Deshpande argues before me that the points now

under dispute did not directly arise before the Supreme Court in that judgment on which reliance is placed by Shri Manohar. It would be,

therefore, necessary for me to consider in the first instance whether the Supreme Court in Ramchandra v. Tukaram was required to decide the

procedure that a landlord has to follow for the purpose of obtaining possession from the protected lessee where the claim is based upon the bona

fide need for personal cultivation.

9. In order to examine this position, it would be better to know the provisions of the Berar Leases Act and the interpretation that was made by an

earlier Division Bench of Sections 8 and 9 of that Act. Against this background of the interpretation made by the Division Bench earlier,

subsequent Full Bench decision of this Court and the Supreme Court decision which is given in the same case would be examined.

10. The controversy is based upon the provisions of Sections 8 and 9 of the Berar Leases Act, 1951. Section 8 puts a restriction on the

termination of a lease. It enacts that notwithstanding any agreement, usage, decree or order of a Court of law, the lease of any land held by a

protected lessee shall not be terminated except under orders of a Revenue Officer made on any of the following grounds mentioned in Sub-section

(1) of Section 8. Then follows a list of grounds on which termination is permitted. Section 9 is in the nature of an exception to Section 8 and starts

with non-obstante clause ""notwithstanding"". Section 9(1) lays down that

Notwithstanding anything contained in Section 8 the landholder may terminate the lease of a protected lessees by giving him notice in writing

delivered not less than three months before the commencement of the next agricultural year stating therein the reasons for such termination and the

description of the area in respect of which it is proposed to terminate the lease, if the landholder requires the lands for cultivating the land

personally.

Section 9(1), therefore, permits a landholder to terminate the lease if he requires the land for bona fide personal cultivation. Sub-section (2) of

Section 9 is again in the nature of further restriction on the right of claiming possession; if the landholder has already 50 acres or more land in his

possession, then he cannot terminate the lease; but if he has less than 50 acres of land in his possession he can terminate the lease in such manner

that the land to be acquired and the land already held by him do not exceed the optimum limit of 50 acres. Sub-section (3) of Section 9 permits a

tenant to raise certain pleas within one month from the date of service of notice u/s 9(1) upon him. He is allowed to challenge the notice on the

ground of want of bona fides. A second right is given to him of pleading that he should be allowed to surrender some other land in lieu of the land

mentioned in the notice. These are the two pleas permitted to the tenant under Sub-section (3) of Section 9, when he so applies within 30 days

after notice. Under Sub-section (4) the Revenue Officer is required to hear the landholder and make such enquiry as he may deem fit, and then he

is to decide the application in respect of both the contentions or any one of them which may have been raised by the protected lessee. Sub-section

(5) merely enables the Revenue Officer to reduce the lease money proportionately where only a part of the land is, to be delivered to the

landholder. Sub-section (6) enables the lessee to reclaim the land directed to be restored to the landholder under this section in ease the landholder

misuses this section. Having claimed possession for personal cultivation if it is found that the landholder fails to personally cultivate the land within

the time prescribed, the lessee gets a right to apply to the Revenue Officer for restoration of that land. In addition, compensation to the lessee is

made payable by the landholder.

11. Sub-section (1) of Section 8 gives a list of reasons for which, the Revenue Officer shall terminate the tenancy of a lessee at the instance of the

landholder. Clauses (a) to (f) of Sub-section (1) of Section 8 contain several reasons for which the lease is made terminable by the landholder. The

clause that is the subject-matter of controversy and has led to diverse opinions is Clause (g) of Sub-section (1) of Section 8. It only enables the

Revenue Officer to terminate the lease of the tenant who has been served with a notice by the landholder as provided in Section 9. What precisely

is the meaning of the expression ""notice by the landholder as provided in Section 9"" is the- main bone of contention between the parties before me.

12. The two Courts below have held that these provisions are already construed by the Division Bench in the case of Tarabai v. B"bay Rev.

Tribunal (1958) 61 Bom. L.R. 41, [1958] N.L.J. 535. The facts of that case show that the landholder gave a notice u/s 9(1) of the Leases Act

and obtained possession from his tenant by consent. The landholder instead of cultivating the land personally lot it out. Hence the lessee applied

under Sub-section (6) of Section 9 for being placed in possession of the land of which tenancy was terminated by the notice. It was contended on

behalf of the landholder that there was no termination of the lease u/s 8(1)(g), read with Section 9(1), and therefore an application u/s 9(6) was not

maintainable. The Division Bench held that the lease was terminated by notice u/s 9(1) and the application u/s 9(6) was maintainable. It was argued

before the Division Bench that the lease of a protected lessee is made terminable only in the manner provided by Section 8(1), namely, under the

order of the Revenue Officer, Where a notice u/s 9(7) is given by the landholder on the ground of personal cultivation, he has still to apply to the

Revenue Officer u/s 8(1)(g). Unless he does that and obtains an order terminating the tenancy of the lessee the lease is not terminated. Unless the

lease is terminated and possession obtained as provided by the Leases. Act, provision of Sub-section (6) of Section 9 cannot be invoked by the

lessee for the purpose of claiming restoration. Negativing this argument, the Division Bench held that the non-obstante clause with which the section

opens must be given its full effect. Earlier provisions requiring the landholder to apply for obtaining an order of the Revenue Officer arc contained in

Section 8. When Section 9(1) opens with the clause ""notwithstanding anything contained in Section 8 the landholder may terminate the lease of a

protected lessee"", it overrides all the provisions of Section 8 including Section 8(1)(g). u/s 8, a landholder cannot himself terminate the tenancy but

he has to apply to the Revenue Officer and an order of the Revenue Officer has the effect of terminating the tenancy. In contrast to the wording of

Section 8, 9(1) reserves a right to the landholder to terminate the lease himself. In this view, the Division Bench held that Section 9(1) overrides all

the provisions of Section 8. It further holds that reference to the notice by the landholder as provided in Section 9, which we find in Clause (g) of

Sub-section (1) of Section 8, only relates to the manner of giving notice and not the contents, namely, the claim of the landholder to cultivate the

land personally. The Division Bench observes that Clause (g) of Sub-section (1) of Section 8 applies to other cases than those where the

landholder is claiming possession for personal cultivation. What those other cases are, are not pointed out in that judgment. With these

observations, the judgment concludes that the lease of a protected lessee terminates when a valid notice u/s 9(1) is served by the landholder upon

the lessee within appropriate period. Logically, therefore, the Division Bench proceeded to hold that the only right to challenge notice under Sub-

section (1) of Section 9 is to be found in Sub-section (3) of the same section. That is the right which is bestowed upon the tenant and the tenant

has to move in time and raise pleas which are permitted to him, That is the only challenge which is permissible, and if such challenge is not there, it

means that the landholder has validly terminated the lease u/s 9(1) for the purpose mentioned in the notice, and as such he is entitled to get

possession. It was further held as a corollary that where a tenancy is being terminated on the ground mentioned in Sub-section (1) of Section 9 and

the landlord re-enters upon the land after termination of the lease in accordance with this section, provisions of Sub-section (6) of Section 9 are

attracted if the landholder fails to cultivate the land himself. Under the circumstances, it was held that the application of the lessee for restoration of

the land under Sub-section (6) of Section 9 was competent. This is the main judgment on which reliance is placed on behalf of the plaintiffs-

respondents to show that Section 9 gave the landholder an independent right over-riding the provisions of Section 8 of the Leases Act. This

judgment has been subsequently followed by another Division Bench in the case of Ramchandra v. Manabai (1960) Special Civil Application No.

162 of 1959, decided by Tambe and Raju, JJ., on March 24, 1960 (Unrep.) See Note No. [1960] N.L.J 73.

13. If nothing further had happened it was obvious that as a result of this judgment the landholder had the right to terminate the lease1 by a private

notice u/s 9(1) of the Leases Act, and then a vested right to obtain possession is created in him from the due date mentioned in the notice as the

lease is validly terminated.

14. However, the provisions of the Berar Regulation of Agricultural Leases Act, 1951, were required to be examined by a Full Bench of this Court

in relation to the provisions of the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958, as made applicable to

the Vidarbha Region. In the case of Jayantraj v. Hari Dagdu (1961) 64 Bom. L.R. 57 [1961] N.L.J. 636 the Full Bench was called upon to

consider the effect of the order passed u/s 8(1)(g) pursuant to the notice u/s 9(1) and the further procedure to be adopted for the purpose of

implementing that order under the Berar Leases Act. While those proceedings were pending, the Bombay Tenancy Act of 1958 became

applicable to the Vidarbha region, and whether a proceeding under the Leases Act was a pending proceeding on the date of the commencement of

the Bombay Tenancy Act of 1958 was a question that was raised for consideration.

15. The facts of the Full Bench judgment arc that the petitioners gave a notice terminating the tenancy of the opponent-tenant under Sub-section

(1) of Section 9 of the Leases Act. The opponent made an application under Sub-section (3) of Section 9 and prayed that the notice should be

declared to be invalid and inoperative. On this application, the Sub-Divisional Officer made an order on November 12, 1956, terminating- the

lease of the opponent with effect from April 1, 1957. Against this order, the opponent-tenant appealed to the Additional Deputy Commissioner

who set aside the order of the Sub-Divisional Officer and held that the notice given by the petitioners was invalid. The petitioners filed a second

appeal before the Revenue Tribunal. The Revenue Tribunal by its judgment dated February 13, 1958, allowed the appeal of the petitioners, set

aside the order made by the Additional Deputy Collector and restored the order of the Sub-Divisional Officer. While these proceedings were

pending the Bombay Vidarbha Region Agricultural Tenants (Protection from Eviction and Amendment of Tenancy Laws) Act, 1957 (No. IX of

1958) was enacted by the Legislature. This Act came into force on January 20, 1958. Section 3 of this Act imposed a bar on the eviction of

tenants for a period of two years. Section 4 provided that all proceedings pending at the commencement of the Act or which might be instituted

during the period of the Act for the termination of a tenancy and eviction of a tenant shall be stayed on certain conditions referred to in the section.

This Act was in force when the Revenue Tribunal made its order. While, therefore, restoring the order made by the Sub-Divisional Officer, the

Revenue Tribunal directed that the proceedings for the termination of the tenancy and eviction of the applicant shall be stayed, if he deposited the

rent of the lands due for the year ending- March 31, 1958. This Act was repealed by the Bombay Tenancy and Agricultural Lands Act, 1958,

which came into force on December 30, 1958. On February 20, 1959, the petitioners-landholders made an application for ejection of the

opponent-tenant under Sub-section (1) of Section 19 of the Berar Leases Act. The Sub-Divisional Officer dismissed the application on the ground

that no such application could be maintained after the coming into force of the Tenancy Act, 1958. He was of the view that the only remedy open

to the petitioners was to make an application to the Tahsildar u/s 36 of the new Tenancy Act. The order made by the Sub-Divisional Officer was

confirmed in appeal by the Collector, and in second appeal by the Revenue Tribunal. Thereafter, the petitioners filed the present Special Civil

Application in the High Court. When that application came tip for hearing before a Division Bench, it was referred to a Full Bench and the question

that was framed for determination by the Full Bench was, whether the application made by the landlord u/s 19 of the Berar Regulation of

Agricultural Leases Act, 1951, after the coming into force of the Bombay Tenancy Act of 1958 should be decided under the provisions of the

former Act or under the provisions of the latter Act.

16. In order to answer this question the Full Bench first considered the provisions of Section 8(7)(a), (b) and (g), and the provisions of Sub-

section (3) of Section 9 as also Section 19 of the Berar Leases Act. Section 8 required obtaining of an order from the Revenue Officer for

terminating the tenancy. By reading the provisions of these three sections together, the Full Bench pointed out that the total proceeding can be

styled as one proceeding for the purpose of terminating the tenancy and claiming restoration of possession. The provisions of these sections are

nothing but one proceeding for the above mentioned purpose. When an order is obtained u/s 8(1)(g) after service of notice u/s 9(1), the

application u/s 9(1) is still pending, and proceeding1 for termination of the tenancy and ejectment is still going on. Having come to this conclusion,

the Full Bench proceeds to consider the provisions of Section 132(2) and (3) of the Bombay Tenancy Act, 1958 as applied to Vidarbha Region.

Since the Full Bench found that the proceedings for the termination of the lease and claiming possession were still pending there was no effective

termination until an order for ejectment had been made u/s 19. Sub-section (2) of Section 132 of the Bombay Tenancy Act, 1958, saved any right,

title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, and any legal proceeding or

remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act, and

further provided that any such proceedings shall be instituted, continued and disposed of, as if this Act had not been passed. Sub-section (3) of

Section 132 again starts with the non-obstante clause ""notwithstanding anything contained in Sub-section (2)"". This Sub-section provides that all

proceedings for the termination of the tenancy and ejectment of a tenant or for the recovery or restoration of the possession of the land under the

provisions of the enactments so repealed, pending on the date of the commencement of this Act before a Revenue Officer or in appeal or revision

before any appellate or revising authority, shall be deemed to have been instituted and pending before the corresponding authority under this Act

and shall be disposed of in accordance with the provisions of this Act. Having found earlier that a mere order of the Revenue Officer u/s 8(1)(g) in

pursuance of notice u/s 9(1) of the Berar Leases Act does not terminate the tenancy until an order u/s 19(1) is passed, the Full Bench was of the

opinion that the proceedings were still pending to which Sub-section (3) of Section 132 applied. Where a vested right was already created the

provisions of Sub-section (2) of Section 132 would apply. However, in the present case the tenancy was not lawfully terminated as no order u/s

19(1) of the Berar Leases Act was passed. It would merely be a pending proceeding within the meaning of that expression as used in Sub-section

(3) of Section 132 of the Act of 1958. As such, the Full Bench considered the pending application as a pending proceeding under that sub-section

and therefore required the Tahsildar to dispose of the application on merits. The result was that the landholder who had already obtained an order

in his favour under Clause (g) of Sub-section (1) of Section 8 of the Berar Leases Act was again required to satisfy the Revenue Officer that he

fulfilled the conditions mentioned in Sub-sections (3) and (4) of Section 36 of the Bombay Tenancy Act of 1958. So far as the petition of Jayantraj

was concerned the matter seems to have been terminated with the Full Bench decision.

17. In a similar matter in the case of Ramchandra v. Tukaram, the parties approached the Supreme Court after the decision of this Court.

Ramchandra v. Tukaram (1961) 64 Bom. L.R. 67 [1961] N.L.J. 644 is also a reported judgment of the Division Bench of this Court. In view of

the answer given by the Full Bench in the ease of Jayantraj, it decided the petition of Ramchandra v. Tukaram. In the Supreme Court part of the

view taken by the Full Bench was upheld but on another part the Supreme Court took a view contrary to the one taken by this Court. In this case

also the landholder served a notice upon his tenant u/s 9(1) of the Berar Lisps Act as he wanted the land for personal cultivation. He applied for an

order terminating the tenancy u/s 8(1)(g) and the Revenue Officer passed an order on July 2, 1957, terminating the tenancy with effect from April

1, 1958. The landholder then applied for possession on May 15, 1959, to the Naib-Tahsildar who ordered delivery of possession on August 2,

1960. In appeal, the Sub-Divisional Officer set aside the order on the ground that the application was not maintainable as the landholder had not

complied with the requirements of Section 38 of the Bombay Tenancy Act of 1958. The Tribunal confirmed this in revision. In a writ petition, the

High Court held that the provisions of Sub-section (1) of Section 38 would not apply but provisions of Sub-sections (3) and (4) were applicable.

In appeal to the Supreme Court, the Supreme Court held that where the determination of the tenancy is not under Sub-section (1) of Section 38 of

the Tenancy Act of 1958, Sub-sections (3) and (4) would not apply. By the use of the expression shall be disposed of in accordance with the

provision of this Act"" in Section 132(3) of the Tenancy Act of 1958, the Legislature intended to attract the procedural provisions of the Tenancy

Act and not the conditions precedent to the institution of fresh proceedings. Once an order was passed u/s 8(1)(g) of the Berar Regulation of

Agricultural Leases Act, by the Revenue Officer, the only enquiry contemplated to be made on an application u/s 19 was a summary enquiry

before an order for possession is made. At that stage there was no scope for the application of the conditions and restrictions prescribed by Sub-

sections (3) and (4) of Section 38. Those provisions do not apply to proceedings to enforce rights acquired when the Berar Regulation of

Agricultural Leases Act was in operation. This rule therefore overruled the decision in Ramchandra v. Tukaram.

18. In this judgment, the Supreme Court partly upholds the judgment of the Full Bench by pointing out that the application for possession is no

doubt a pending proceeding and therefore the provisions of Section 132 of the Bombay Tenancy Act would apply. But the point was whether the

provisions of Sub-section (2) of Section 132 or Sub-section (3) thereof would apply. Sub-section (2) saves any right, title, interest, obligation or

liability already acquired, accrued or incurred including remedies for their execution. Sub-section (3) merely lays down the procedure to be

followed in ease of a pending proceeding. What the Supreme Court held was that an application u/s 19(1) of the Leases Act was no doubt a

pending proceeding but the order of the Revenue Officer u/s 8(1)(g) concluded the controversy regarding the right of the landholder to claim

possession. All the requirements of a valid notice u/s 9(1) have been examined by the Revenue Officer and he has passed an order u/s 8(1)(g)

terminating the tenancy. That concludes the earlier part of the enquiry and creates a vested right in the landholder to obtain possession from the

lessee. The stage of application for possession u/s 19(1) of the Leases Act is a stage subsequent to the creation of vested right. To that subsequent

stage the procedure prescribed by the Bombay Tenancy Act of 1958 may apply but the conditions precedent to the obtaining of possession as

prescribed by Section 38 of the Bombay Tenancy Act of 1958 have no application to such a case. This, in effect, is the judgment of the Supreme

Court.

19. For the purpose of the present litigation, the main part of the judgment of the Supreme Court is not very much relevant. What is relevant is the

portion of the judgment which has incidentally decided the scheme of this Act, Shri Deshpande points out that in all these litigations which reached

the Supreme Court the landholder had given notice u/s 9(1) and had also applied to the Tahsildar for obtaining an order u/s 8(1)(g). That appears

to be the prevailing view and the parties acted upon it until the pronouncement of the Division Bench in Tarabai v. B''bay Rev. Tribunal. Whether

an application is necessary u/s 8(1)(g) even in respect of leases which axe terminated for the purpose of personal cultivation by the landholder u/s

9(1) was not the question which was specifically posed for decision. Even if the Supreme Court makes certain observations in that behalf, it has

not laid down law and such observations of the Supreme Court do not lay down law for the land. It is only when the Supreme Court lays down

law that the provisions of Article 141 of the Constitution come into operation and all the subordinate Courts in this country are required to apply

that law as is laid down by the Supreme Court.

20. Before I consider the merits of this submission it is worthwhile to examine the manner in which the Supreme Court has proceeded to decide the

case before it. While considering the main proposition as to what is a pending proceeding under the Berar Leases Act for the purpose of that

proceeding as well as the Bombay Tenancy Act of 1958, the Supreme Court was required to examine the provisions of the Berar Leases Act of

1951. The conclusion drawn by the Supreme Court is as follows (p. 659) :

...Even if the landlord desired to obtain possession of the land for bona fide personal cultivation, he had to obtain an order in that behalf u/s 8(1)

(g).

Shri Deshpande argues that this was not the point which was decided by the Supreme Court nor was the Supreme Court called upon to decide

this point. However, the Supreme Court had to find out as to whether the rights of the landholder were determined and accrued to him and if so by

what provision of the Berar Leases Act. If those rights accrued to him after certain orders were passed under that Act, whether they had the effect

of making those rights vest for the purpose of Sub-section (2) of Section 132 of the Bombay Tenancy Act, 1958. These were, therefore, relevant

considerations for which the Supreme Court had to examine the scheme of the Berar Regulation of Agricultural Leases Act, 1951. In fact, while

considering the argument that the High Court should have restored the order passed by the Naib-Tahsildar and should not have reopened the

enquiry as directed in its judgment, the'' Supreme Court observes as follows (p. 659):

It is necessary in the first instance to make a brief survey of the diverse statutory provisions in their relation to the progress of the dispute, which

have a bearing on the question which falls to be determined.

Their Lordships, therefore, point out that in order that the point in controversy is understood and decided, it is necessary to take a survey of the

diverse statutory provisions in their relation to the progress of the dispute which have a bearing upon the question to be determined. It is, therefore,

necessary to examine as to how the landholder shall terminate the tenancy of a protected lessee when the ground for claiming possession is the

need for personal cultivation by the landholder.

21. The relevant enquiry was whether the lease of the opponent was in fact terminated. The argument that is now addressed to me is that a mere

notice u/s 9(7) on the ground that the land was required for personal cultivation has ipso facto, the effect of terminating the tenancy. There is only

one obstacle in the way of the termination becoming valid and that is provided by Sub-section (3) of Section 9. If the tenant applies to the Revenue

Officer and proves that the landholder has no bona fides but it is a mala fide claim for personal cultivation, then the notice is of no effect and there

is no termination of the tenancy. Short of this obstacle, where the plea under Clause (b) of Sub-section (3) of Section 9 is not made, there is

nothing else in the Act which prevents the effect of termination of the tenancy being1 created after the due date mentioned in the notice. If that was

the stage at which the right of the landholder became a vested right to claim possession, the Supreme Court would have pointed out that the

moment the time mentioned in the notice expired, without an application being made by the tenant, at once vested right to claim possession arose in

the landholder. On the contrary, their Lordships point out that even if the landholder desires to obtain possession of the land for his bona fide

personal cultivation, he had to apply to obtain an order in that behalf u/s 8(1)(g). If such order is obtained by an appropriate application after a

valid notice as required by Section 9 is served, and this order is passed when the Berar Leases Act was in force, it had the effect of terminating the

tenancy and creating a vested right in the landholder. Creation of this vested right was postponed by the Full Bench of this Court to the stage of

passing an effective order u/s 19 of the Berar Leases Act. That part of the reasoning of the Full Bench was not acceptable to the Supreme Court

and their Lordships pointed out that when a valid vested right to obtain possession arises in a landholder for the purpose of personal cultivation of

the land is the point of time as indicated by them, namely, that the landlord gives a notice u/s 9(1) it is valid according to the conditions mentioned

in that Act and further he obtains an order u/s 8(1)(g). This is the stage when the vested right occurs because the lease of the tenant gets

terminated.

22. If this is the correct meaning of the Supreme Court judgment, it is obvious that the Supreme Court has negatived by necessary implication the

contention that a mere notice u/s 9(1) has the effect of termination of the tenancy by efflux of time mentioned in that notice. The Division Bench

ruling of this Court in Tarabai v. Bombay Revenue Tribunal lays down that mere notice of termination u/s 9(1) for the purpose of personal

cultivation has the effect of terminating the tenancy and creating a vested right in the landlord. I have already pointed out that this is subjected to

only one exception, namely, the result of proceedings under Sub-section (3) of Section 9 at the instance of the lessee. This precisely is the stage

which is not considered by the Supreme Court as the stage where termination of a tenancy takes place. I am, therefore, of the opinion that the

question directly arose before the Supreme Court for decision about the stage at which the termination of the lease of a protected lessee takes

place when notice contemplated by Section 9(1) served by the landholder for the purpose of personal cultivation. The Supreme Court having

come to the conclusion that even for such landholder, an order u/s 8(1)(g) is necessary for the purpose of creating a vested right in his favour and

for the purpose of effecting termination of the tenancy, the Division Bench judgment of this Court in Tarabai''s case appears to be over-ruled.

23. Even assuming that the question about the interpretation of Section 8(1)(g) and Section 9(1) did not directly arise before the Supreme Court,

and the point may not be necessary for the decision of the appeal before it, the observations quoted above are undoubtedly, at least obiter dicta.

To put the case at the lowest, they are observations in the course of the decision arising out of the circumstances of the case though they may not

be necessary for the decision of the case. If observations of this type are made which arise out of circumstances of the case, they are styled as

obiter dicta and even an obiter dicta of the Supreme Court is binding on all the subordinate Courts. However, from the analysis which I have made

above, I am clearly of the opinion that two questions fell for decision of the Supreme Court, viz. an application u/s 19(1) of the Berar Leases Act

was pending and it was necessary to decide whether any vested rights were created in favour of the landholder and as such whether Section

132(2) of the Bombay Tenancy Act of 1958 applied or whether no vested rights were created and the provisions of Section 132(3) alone applied

including the conditions to be proved by the landholder for obtaining possession for bona fide personal cultivation. Since the stage at which vested

rights are created was a relevant point for consideration, I am of the opinion that the discussion by the Supreme Court relating to the scheme of the

Act or to use their expression, diverse, statutory provisions applicable to the question, was necessary for the purpose of arriving at the final

conclusion. I am, therefore, of the opinion that the Supreme Court lies by necessary implication over-ruled the two Division Bench decisions of

this. Court on which reliance is placed by the two Courts below. The present litigation will have to be decided, therefore, in the light of the

observations of the Supreme Court and the conclusions arrived at by it.

Before I point out what the Supreme Court actually holds, it would be worthwhile to examine the provisions of the Berar Regulation of Agricultural

Leases Act, 1951, in relation to the general scheme of that Act. The purpose for which this Act was passed was to guarantee security of tenures to

the tenants. Under the normal law of contracts applicable to the parties tenancy of an agricultural land was a creature of contracts between the

parties. The Berar Leases Act was passed with the express intention of prolonging the period of lease irrespective of the period of contract.

Section 3 specifically lays down that every lease by a landholder of a land for the agricultural year 1951-52 shall, subject to the provisions of

Section 4, be deemed to be for a period of five years. This was subsequently changed to seven and eight years by amendments from time to time.

Such lessees were called protected lessees and they were given certain rights. Section 8 is the section which completely deprives a landlord of his

right to terminate the tenancy at his sweet will. The powers to terminate- the lease are vested in the Revenue Officer and the landlord desirous of

terminating the lease has to apply to the Revenue Officer for that purpose. Sub-section (1) of Section 8 incorporates the causes for which the

tenancy could be terminated. Clauses (a) to (g) are the causes for which the tenancy is permitted to be terminated. There is no difficulty in the

implementation of Clauses (a) to (f). The difficulty that is being raised only relates to Clause (g) of Sub-section (1) of Section 8. if we examine

Clauses (a) to (f) of Sub-section (1) of Section 8, they speak of some kind of default on the part of tenant for which his tenancy is made

terminable. The object of this Act, therefore, seems to be that tenant are given security of tenures for the period mentioned in Section 3 provided

they behave properly as tenants. If they commit any of the defaults enumerated in Clauses (a) to (f) or, in other words, if their conduct is blamable

in any of the manners mentioned in Clauses (a) to (f) the landlord has a right to claim termination of tenancy at the hands of the Revenue Officer.

The fact that the Revenue Officer''s order is necessary further shows that a mere allegation of blamable conduct in the tenant is not enough. If a

landlord alleges a default which is covered by any of the clauses of Sub-section (1) of Section 8, he must not only make an allegation against the

tenant, but must prove the allegation before the Revenue Officer. If he does so, he comes within the purview of this section and is entitled to an

order for termination of tenancy at the hands of the Revenue Officer.

24. The disputed Clause (g) of Sub-section (1) of Section 8 is as follows:

8. (1)(g) ho has been served with a notice by the landholder as provided in Section 9.

This clause has reference to a tenant who has been served with a notice by the landholder as provided in Section 9. That is the ground on which

the landholder is entitled to obtain an order for termination of tenancy from the Revenue Officer. What kind of cases are covered by this clause is

the main dispute which Shri Deshpande has raised before me for ray consideration. It is, therefore, necessary to look at the provisions of Section

9(1) and (2) which are as follow:

9. (1) Notwithstanding anything contained in Section 8 the landholder may terminate the lease of a protected lessee by giving him notice in writing

delivered not less than three months before the commencement of the next agricultural year stating therein the reasons for such termination and the

description of the area in respect of which it is proposed to terminate the lease, if the landholder requires the lands for cultivating the land

personally.

(2) Nothing contained in Sub-section (1) shall entitle the landholder to terminate the lease of a protected lessee on the ground that the landholder

wants the land to cultivate personally unless the area held by the landholder and available to him for cultivating personally is or has diminished

below fifty acres and where this condition is satisfied, the landholder shall be entitled to terminate the lease in respect of only so much area of the

land as is necessary to make the total area equal to fifty acres.

On a plain reading of these two sub-sections of Section 9 and Clause (g) of Sub-section (1) of Section 8, it appears to me that a landholder who

wants possession of land from his tenant for personal cultivation must give a notice in the manner contemplated by Sub-section (1) of Section 9. If

he does that, then, as pointed out earlier, the tenant gets a right to challenge the bona fides of this notice by an application under Sub-section (3) of

Section 9. In Sub-section (3) of Section 9 there are two distinct provisions. The tenant can challenge the notice on the ground of want of bona

fides and it is also permissible for him to plead that in view of the land claimed by the landholder some other land of the same landholder held by

the tenant as lessee may be directed to be surrendered and not the land mentioned in the notice. Both these questions are required to be examined

by the Revenue Officer when an application comes to be made by the tenant. It is important to note that so far as the tenant''s plea is concerned,

he is only allowed to raise two contentions and none else. One of the conditions which the landholder must fulfil before obtaining possession for

personal cultivation is that the total land in his possession including that which he is cultivating and which he claims does not exceed 50 acres. In

order to determine whether total land of the landholder is going to exceed 50 acres if he gets possession of the land from, the tenant, there is no

provision in Sub-section (5) or Sub-section (4) which enables the Revenue Officer to examine that position. We may well imagine cases where the

tenant knows that the landholder''s notice is bona fide, he may not challenge the notice at all. If the tenant has only one land of the landholder in his

possession, there is no question of his offering some other land of the same landholder in exchange for the land proposed in the notice. He could

not, therefore, raise any plea under Clause (b) of Sub-section (3) of Section 9. If there is such a landholder whose tenant is not raising any dispute

under Sub-section (3) of Section 9, would he get possession even if the total land in his possession after obtaining possession from the tenant

exceeds 50 acres? This is a question which does not seem to have been specifically discussed in any of the previous judgments of this Court on

which Shri Deshpande has relied. It is, therefore, necessary at this stage to consider the approach suggested by Shri Deshpande so far as the

provisions of Sub-section (2) of Section 9 and the provisions of Clause (g) of Sub-section (1) of Section 8 are concerned.

25. Shri Deshpande says that the real meaning of Sub-sections (7) and (2) of Section 9 is that all landholders have a right to terminate- the tenancy

of the protected lessee provided they want lands for personal cultivation. If there is a landholder whose total holding is not going to exceed 50

acres including the land which he claims from his tenant, then he is a landholder falling under Sub-section (7) of Section 9. If there is a landholder

whose total acreage will exceed 50 acres after the land of the tenant is delivered back to him, then he is other bind of landholder who must apply

u/s 8(1)(g) for obtaining an order for terminating the tenancy of the lessee from the Revenue Officer. He says that the Berar Regulation of

Agricultural Leases Act, 1951, is enacted for the purpose of security of tenures and it is not the function of this Act to introduce the concept of

ceiling of land held by the landholder. It is time that the primary function of the Berar Leases Act was to assure security of tenures to the tenants.

Normally, the law of the land, till the passing of that Act was that the landholder could terminate the tenancy of his tenant by a mere notice to quit.

In order to deprive a landholder of this right two things seem to have been introduced in this Act. One is prolongation of the, period irrespective of

the contract and the other is prohibition to the landholder to terminate the tenancy except under conditions mentioned in Section 8 and that too at

the hands of the Revenue1 Officer who has to examine the validity of the grounds urged.

26. Sub-section (1) of Section 8 opens with non-obstante clause ""notwithstanding any agreement, usage, decree or order of a court of law"". In

view of this provision it appears to m& that the total bar on the right of a landlord to terminate the tenancy has been indicated, and the right to

terminate" the tenancy has been delegated to the Revenue Officer and that too for the specific causes mentioned in Clauses (a) to (g). I would read

Section 8 as a complete bar to the landlords to terminate the tenancy merely as a matter of their volition. They are given a restricted right to apply

to the Revenue Officer for termination of the tenancy, if any one of the causes mentioned in Clauses (a) to (g) are available to them for inducing the

Revenue Officer to terminate the tenancy.

27. Shri Deshpande poses a question as to the effect of another non-obstante clause used by the same Legislature with which Sub-section (7) of

Section 9 opens. Sec-Section 9(f) quoted above shows that it again opens with non-obstante clause ""notwithstanding anything contained in Section

8"". Shri Deshpande argues that this non-obstante clause in Sub-section (1) of Section 9 which refers to Section 8 simpliciter governs or supersedes

all the provisions of Section 8. Section 8 is, therefore, made subject to the provisions of Section 9. Shri Deshpande also argues that there is a

marked difference between the wording of Section 9(1) and that of Section 8(1). Whereas Section 8(1) directs that no lease held by a protected

lessee shall be terminated except under the order of the Revenue Officer, Sub-section (1) of Section 9 which is an exception to Section 8 indicates

a right in the landlord to terminate the tenancy. Section 9(1) says ""notwithstanding anything contained in Section 8 the landholder may terminate the

lease of a protected lessee"". This is the provision which enables a landlord himself to terminate the lease though the ground on which he could take

action is limited to his claim for personal cultivation. If this is so, the marked difference in the language of Section 8(1) and Section 9(1) becomes

apparent; whereas in the first case, where an application is made u/s 8(1) the landholder has to satisfy the Revenue Officer that one of the causes

mentioned in the section exists and then obtain an order which has the effect of terminating the tenancy. In respect of personal cultivation the

normal right under the law of the land to terminate the tenancy has been retained in the landlord. A lease according to Shri Deshpande gets

terminated as soon as a valid notice u/s 9(1) is served. If the tenant raises contentions permissible to him under Sub-section (3) of Section 9, they

will be examined by the Revenue Officer. If the Revenue Officer rejects that application and finds that there is no substance in them then the effect

of the dismissal of the application is to affirm the termination of the tenancy already made by the landlord. In the circumstances, he says that the

statute does not contemplate an additional further application by the landholder u/s 8(1)(g).

28. His second limb of the argument is that the Berar Leases Act of 1951 is not drafted for the purpose of introducing the concept of ceiling. Sub-

section (2) of Section 9 must be read to mean that there is no need to apply u/s 8(1)(g) where the landlord''s total land is not going to exceed 50

acres including the land claimed by him from his tenant. If it exceeds 50 acres and still the landlord wants the land for horia fide personal cultivation,

the landlord may apply to the Revenue Officer u/s 8(1)(g) provided he has given a notice in the manner provided in Section 9(1). I find myself

unable to accept this interpretation and the approach. The question of security of tenures is unmistakably interlinked with the refusal of the right to

the landlord to claim possession. Where a tenant who is in possession is to be continued irrespective of the contract for a longer period, an

automatic curb upon the volition of the landlord is to be indicated. As I have already pointed out earlier, where a tenant misbehaves and makes

himself liable for any of the conducts mentioned in Clauses (a) to (f), the landlord gets the right to claim possession and the land under actual

cultivation of the landlord is irrelevant for the purpose of these clauses. A transfer of possession from a lessee to the landlord under those clauses is

not based so much on some positive consideration in favour of the landlord but on the negative consideration against the tenant who has not

properly cultivated the land for which purpose longer period is being given to him. The claim for personal cultivation, according to me,

incorporated in Section 9 is an exception to this whole scheme. It is a limited exception and not a general exception as Shri Deshpande wants me

to hold. The right under Sub-sections (f) and (2) of Section 9 to claim possession for personal cultivation is not given to every landlord as is sought

to be canvassed before me. The right is given to one class of landlords only and that is who want the land for bona fide personal cultivation but

whose total acreage does not exceed 50 acres including the additional land claimed by them. It is in that context that Sub-section (2) denned the

class of landlords who are taking advantage of Sub-section (1) of Section 9, but further qualifies the advantage and says that the tenancy of a

tenant shall be terminated only in respect of so much land as not to allow total acreage with the landlord to exceed 50 acres. In my opinion,

therefore, only one class of landlords is contemplated in Sub-sections (1) and (2) of Section 9 and for such landlords the total procedure seems to

be according to me as follows. Such landlord has first to give a notice terminating the tenancy with appropriate period mentioned in Sub-section

(1) of Section 9. If his tenant raises a dispute permitted to be raised under Sub-section (3), then the landlord has to face the dispute and satisfy the

Revenue Officer about the bona fides of his claim. If no dispute is raised by the tenant then the landlord cannot immediately act upon the notice but

has to further apply to the Revenue Officer under Sub-section (1) of Section 8 for obtaining an order for terminating the tenancy. It is in this

context that the wording of Section 8(1)(g) has to be read which requires the applicant-landlord under that section to first give notice as

contemplated by Section 9(1) and then approach the Revenue Officer.

29. Shri Deshpande argued before me that this interpretation will render nugatory the non-obstante clause with which Section 9(1) starts.

According to the canons of construction, the non-obstante clause must approximate the substantive provision in respect of which it is enacted. In

the present case, Section 9(1) is grafted as an exception to Section 8 ""notwithstanding anything contained in Section 8"". Shri Deshpande, therefore,

says that all the provisions of Sub-section (1) of Section 8 including Clause (ii) are covered, by this reference and asking the landlord to apply u/s

8(1)(g) even if he falls within the provisions of Section 9(1) is to render ineffective) the non-obstante clause. There is no doubt that as far as

possible the non-obstinate clause and the operative part of a section ought to approximate. In interpreting a statute in a rational manner that is one

of the canons and not the only canon of construction. It is also fundamental to the interpretation of a statute that every section and sub-section must

be given its natural meaning and where two provisions of the same Act are conflicting an attempt must be made to reach harmonious interpretation.

Normally, Court should be slow to accept a construction which tends to render any part of the statute meaningless or ineffective. An attempt must

always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. While doing so, it is even legitimate and

even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and

operative. In fact, the Supreme Court has pointed out in N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, :

It is no doubt true that if on its true construction, a statute leads to anomalous results, the Courts have no option but to give effect to it and leave it

to the legislature to amend and alter the law. But when on a construction of a statute two views are possible, one which results in any anomaly and

the other not, it is our dirty to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies.

30. Keeping all these principles in mind when the provisions of Sections 8 and 9 are read together I have no doubt that these provisions are made

to restrict the right of a landlord to terminate the tenancy. Whereas a general class of landlords is given the right to apply to the Revenue Officer for

causes mentioned in Clauses (a) to (g) of Sub-section (1) of Section 8, the exception engrafted in Sub-section (1) of Section 9 and Sub-section

(2) of the same section applies only to one class of landlords. As I have pointed out earlier, the only class of landlords whose total holding does not

exceed 50 acres including the land to be claimed from the tenant is contemplated by Sub-sections (f) and (2) of Section 9. If this is the correct

approach, which in my opinion appears so, then there is no class of persons contemplated by Section 9 or other provisions of this Act which could

apply under Clause (g) of Sub-section (1) of Section 8. The very object of this legislation is to enlarge the rights of a lessee and curtail the rights of

a landlord. Prom that point of view, if there is no class of landlords who are to apply u/s 8(1)(g) on the footing that persons with less than 50 acres

of holding can directly terminate the tenancy and pursue the remedy for possession, then the provisions of Section 8(f)(g) become redundant. Such

construction cannot be accepted for the simple reason that the Legislature could not be said to have enacted Clause (g) of Sub-section (1) of

Section 8 as superfluous or a redundant provision. On the contrary, if the one class of landlords to which I have referred earlier is given a limited

right contemplated by Sub-section (1) of Section 9, those persons have still to apply under Clause (g) of Sub-section (1) of Section 8. In that case,

how is the non-obstante clause with which the sub-section begins is to be understood? I have already pointed out that in. construing a statute

approximation should be attempted in the case of non-obstante clause and the substantive part of a section. However, this result may not be

always possible and may not necessarily be achieved if the non-obstante clause has the effect of restricting the scope of operation of the Act itself.

If Shri Deshpande''s argument is to be accepted, then the entire Section 8 will have to be subjected to Section 9(1). However, I am inclined to

think that the reference in non-obstante clause ""notwithstanding anything contained in Section 8"" must be understood by considering the function of

Section 8. What is contained in Section 8 must be investigated so that we" would be able to apply the non-obstante clause to that part of Section 8

which indicates the contents thereof. Sec-8 contains primarily the reasons for which a Revenue Officer can pass an order for termination of a

tenancy. Shri Deshpande Kays that this section is provided primarily to indicate the powers or duties of the Revenue Officer. I am unable to agree

with him. If the function of the statute is taken into account Section 8(1) seems to have been provided primarily for the purpose of pointing out the

grounds on which the appropriate Revenue Officer can pass orders of termination of tenancy. The real contents of Section 8 are, therefore,

substantive grounds for which termination of a tenancy is contemplated by Section 8 and are to be found m Clauses (a) to (f) only of Section 8(1).

When the non-obstante clause in Section 9(1) says ""notwithstanding anything contained in Section 8, further class of persons is being indicated

who could terminate the tenancy or a further ground is suggested on which the limited class of landholders could terminate the tenancy u/s 9(1).

The real meaning of the non-obstante clause, therefore, is to provide additional ground of termination of a tenancy notwithstanding what is stated in

Clauses (a) to (g) of Sub-section (1) of Section 8. In the case of Dominion of India v. Shrinba19 the Supreme Court has dealt with the operation

and function of the non-obstante clause. It has observed that (p. 599) :

...although ordinarily there should be a close approximation, between the non-obstante clause and the operative part of the section, the non-

obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of

an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the

words thereof a non-obstante clause cannot cut down that construction and restrict the scope of its operation. In such cases, the non-obstante

clause has to be road as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by

way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment.

Keeping this approach in mind, I am inclined to think that the only rational construction which could be put on the non-obstante clause in Sub-

section (1) of Section 9 is to confine its operation to the substantive provisions of Section 8 which relate to the causes for which termination of a

tenancy is permissible, namely, the causes which are stated in Clauses (a) to (f) of Sub-section (1) of Section 8.

31. There is also not much substance in the argument that the Berar Regulation of Agricultural Leases Act never contemplated anything like ceiling.

It is true that ceiling in the present form which we now find in the Maharashtra Ceiling Act or the Bombay Tenancy Act is not to be found in the

Berar Leases Act of. 1951. However, the main principle behind land legislation is security of tenure to the tenant and restriction on the rights of the

landholders which were otherwise available to them under the general laws of the land. The broad principle, therefore, seems to be deprivation of

the landholders of the rights of contract and subjecting them increasingly to the provisions of the statute. From this broad principle of approach to

the land legislation ceiling seems to be a corollary to the advancement of the legislation relating to land. In Section 9(1) that principle is to be found

in the stage of embryo. If a tenant was not liable to any of the penalties contemplated by Clauses (a) to (f) of Sub-section (1) of Section 8, the

landlord had no right at all to terminate the tenancy. The right of terminating a tenancy is contemplated in spite of proper behaviour of the tenant

only in one case, namely, for bona fide personal cultivation by the landlord. Even here, a small class of landholders is carved out for whose benefit

the first provision is enacted, namely, those landholders whose total cultivable acreage -would not exceed 50 acres including the additional land

claimed by them. This to my mind is the general concept of ceiling which has gradually developed in the later legislation. If the total cultivable land

with the landlord was in excess of 50 acres he could never claim possession u/s 9. In that case, he would be able to claim possession only if the

tenant committed any of the defaults which are mentioned in Clauses (a) to (f) of Sub-section (1) of Section 8. I am not, therefore, much impressed

by the argument that a particular construction of Section 9 is required because the concept of ceiling seems to be absent in that form in the

provisions of the Berar Leases Act of 1951.

32. In the construction which I have put on the provisions of Section 8(1)(g) and Section 9(1), each of these provisions is given its proper meaning

and each one of them forms an operative part of the statute. Neither of them is rendered nugatory or redundant. The only question is as to the real

extent of the non-obstante clause with which Sub-section (1) of Section 9 commences.

33. It is against this background that the meaning of as. 8 and 9 of the Berar Leases Act of 1951 with the observations of the Supreme Court in

Ramachandra v. Tukaram are to be read. Referring back to the stage at which the Supreme Court held that vested right arose in the landlord for

claiming possession, we would find that that stage is reached not by a mere notice u/s 9(1) but by an order passed by the Revenue Officer in that

behalf in the application u/s 8(1)(g). The combined effect of the notice and the order leads to the situation where the tenancy gets terminated. It is

under those circumstances that the Supreme Court observes in para. 2 of its judgment quoted above that even if the landlord desires to obtain

possession of the land for bona fide personal cultivation, he has to obtain an order in that behalf u/s 8(1)(g). But in the facts before the Supreme

Court the landlord had not only given notice u/s 9(f) but had also obtained an order u/s 8(1)(g) in his favour. ""When that happened, the Supreme

Court points out that the vested right to claim possession has now arisen in the landlord because the tenancy is properly terminated under the

provisions of as. 8 and 9 of the Berar Leases Act. This being the ratio of the Supreme Court judgment, in my view, the present plaintiffs-

respondents have not satisfied the conditions required for valid termination of the tenancy. They have no doubt given notice to the tenant u/s 9(1)

but they have not followed further remedy of obtaining an order u/s 8(1)(g) while the Berar Leases Act was in force. Since that is not done, the

tenancy of the defendant does not get terminated and the suit against the tenant for possession without termination of the tenancy cannot be

maintained.

34. In this view of the matter, I allow the appeal, set aside the decree passed by the two Courts below and dismiss the plaintiff"s suit with costs

throughout.