Subhadrabai Digambar Godse Vs Bhau Mahadu Bagane

Court: Bombay High Court

Date of Decision: Nov. 20, 1978

Acts Referred: Bombay Tenancy and Agricultural Lands Act, 1948 â€" Section 33B, 33B(5)

Citation: (1980) 82 BOMLR 290 : (1979) MhLj 391

Hon'ble Judges: B.N. Deshmukh, C.J; Sawant, J

Bench: Division Bench

Judgement

Deshmukh, C.J.
This petition has been referred to the division Bench by a learned single Judge of this Court as there is conflict of views

between the judgments of this Court regarding the correct meaning and interpretation of the provisions of Clause (a) of Sub-section (5) of Section

33B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as ""the Tenancy Act""). Along with the petition has been

placed Civil Application No. 3694 of 1977 for orders. That was a civil application for amendment in view of the Forty-second Constitutional

Amendment. However, the application does not survive and has been withdrawn by Mr. Rane and no order is required to be passed on this civil

application.

2. The facts for the purpose of the controversy leading to the reference to the division Bench are these : The original petitioner, Shamrao

Dattatraya Gosavi is now dead. However, we are referring to him as the petitioner in this judgment throughout for the purpose of convenience. But

ultimately we will pass an order with reference to his heirs, who are brought on record. This course is being adopted to facilitate the various

arguments raised where the original landlord is primarily relevant for determining the issue.

3. The petitioner, who is the original landlord, is the owner of survey No. 1207/3 measuring 4 acres 16 gunthas, assessed at Rs, 21.75, from

village Ashta, Taluka Walwa, District Sangli. The petitioner filed an application u/s 31 read with Section 29 of the Tenancy Act, being Tenancy

Case No. 643 of 1957. By that application the petitioner sought to terminate the tenancy of the respondent-tenant and claim possession of the land

for bona fide personal cultivation. The Tenancy Mahalkari''s decision was given on January 14, 1958, against which the landlord went in appeal

and the Deputy Collector remanded the matter on all issues, After remand, the Taluka Awal Karkun passed an order dated July 14, 1963

permitting termination of tenancy and awarding half the land to the landlord and directing him to resume half the land from the tenant.

4. In the meanwhile, and in the light of the amendment of 1957 to the Tenancy Act, the landlord applied and obtained a certificate u/s 88C on May

31, 1958. Thereafter the Tenancy Act was further amended by the introduction of chap. II-A with effect from February 9, 1961. Under this

chapter a certificated landlord is permitted to terminate the tenancy of the excluded tenant in the manner provided by Section 33B and in the

circumstances detailed therein. This chapter, in Section 33C also laid down the consequences if an application u/s 33B was not made by the

certificated landlord. Accordingly, the petitioner-landlord gave a notice u/s 33B on December 26, 1961 and filed an application on March 23,

1962 under Sub-section (3) of Section 33B. It is this application which is being heard by us now.

5. The application u/s 33B which we are now deciding will be referred to hereinafter as ""Section 33B application"", and the earlier application will

be referred to as ""Section 31 application"". The Section 33B application was decided by the Tahsildar on September 29, 1966 when he rejected it

on the ground that the Section 31 application had already resulted in a final order on July 14, 1963 awarding half the land to the landlord. The final

order passed for taking possession of half the land in the Section 31 application was treated by the Tahsildar as resumption of half the land u/s

33B" {5](a). On that conclusion the Tahsildar held that the Section 33B application was itself not maintainable and hence rejected the same.

However, he also decided the application on the merits, and held in favour of the landlord regarding his total possession as well as annual income

and bona fide requirement.

6. Being aggrieved by this order the landlord filed an appeal before the Special Deputy Collector. By his order dated January 28, 1968 the Special

Deputy Collector confirmed the findings on merits. He further held that a mere final order under the Section 31 application does not amount to

resumption, as contemplated by Clause (a) of Sub-section (5) of Section 33B of the Tenancy Act. Since the order was not actually executed,

there was no resumption under that clause, and the landlord was entitled to succeed. He, therefore, allowed the appeal and directed that the entire

tenanted land be handed back to the landlord.

7. The tenant then carried the matter to the Maharashtra Revenue Tribunal, which took a contrary view by its order dated March 17, 1972.

According to the Tribunal, the passing of a final executable order amounts to resumption, the appellate order was thus set aside and the trial

Court''s order was restored, resulting in the dismissal of the petitioner''s application u/s 33B. Being aggrieved by that order the petitioner has filed

this writ petition.

8. The main and the only point that arises for our consideration relates to the true construction of the word ""resumed"" occurring in Clause (a) of

Sub-section (5) of Section 33B of the Tenancy Act. Conflicting views have been taken by different Judges. All of them were single Judge''s

judgments. One view is that if there is a final order u/s 31 application before the Section 33B application reaches the final termination, that final

executable order under the earlier application would amount to resuming land by the landlord for the purpose of Section 33B(5)(Ã¯Â¿Â½) of the

Tenancy Act. In that case the Section 33B application shall be disposed of on the short ground that the landlord had already resumed the land and

is barred from terminating the tenancy of the remaining land in view of the provisions of Section 33B(5)(a).

9. The other view is that the Section 33B application being a later and a better remedy enacted for the purpose of giving benefit to a certificated

landlord, the mere final order passed in the Section 31 application pending the hearing and final disposal of the Section 33B application cannot

amount to resumption and cannot defeat the subsequent remedy. If, however, the landlord avails himself or the earlier-final order and moves the

Tahsildar and obtains actual possession as per final order in the Section 31 application, he has made a choice with regard to resumption and it is

this actual resumption of the land which will come in the way of his getting relief in the subsequent application under-s. 33B of the Tenancy Act.

We will refer to these judgments a little later. We are merely summarising the opposing points of view at this stage so that the real nature of the

controversy is known. What we propose to do is to approach the entire problem by reference to the provisions of the Tenancy Act, formulate our

opinion with reference to these provisions in the first instance, and then refer to the decided cases.

10. With a view to facilitate the discussion, we will quote here the relevant provisions of Section 33B, as also Section 33C, in addition to Section

88C.

33B.(1) Notwithstanding anything contained in Section 31, 31A or 31B a certificated landlord may, after giving notice and making an application

for possession as provided in Sub-section (3), terminate the tenancy of an excluded tenant, if the landlord bona fide requires such land for

cultivating it personally.

(2) The notice may be given and an application made by a certificated landlord under Sub-section (3), notwithstanding that in respect of the same

tenancy an application of the landlord made in accordance with Sub-section (2) of Section 31-

(i) is pending before the Mamlatdar or in appeal before the Collector or, in revision before the Maharashtra Revenue Tribunal, on the date of the

commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960 (hereinafter referred to in this section as "the

commencement date"), or

(ii) has been rejected by any authority before the commencement date.

(3) The notice required to be given under Sub-section (1) shall be in writing, and shall be served on the tenant-

(a) before the first day of January 1962, but

(b) if an application u/s 88C is undisposed of and pending on that date then

within three months of his receiving such certificate, and a copy of the notice shall, at the same time, be sent to the Mamlatdar. An application for

possession of the land shall be made thereafter u/s 29 to the Mamlatdar before the 1st day of April 1962, in the case falling under (a) and within

three months of his receiving the certificate in the case falling under (b).

(4) Where the certificated landlord belongs to any of the following categories, namely:

(a) a minor,

(b) a widow,

(c) ...

(d) a person subject to any physical or mental disability,

then, if he has not given notice and not made an application as required by Sub-sections (1) and (3), such notice may be given and such application

made-

(A) by the landlord within one year from the date on which he,-

(i) in the case of category (a), attains majority;

(ii) ...

(iii) in the case of category (d), ceases to be subject to such physical or mental disability; and

(B) in the case of a widow, by the successor-in-title within one year from the date on which widow"s interest in the land ceases;

Provided that, where a person belonging to any category is a member of a joint family, the provisions of this sub-section shall not apply if any one

member of the joint family does not belong to any of the categories mentioned in this sub-section, unless the share of such person in the joint family

has been separated by metes and bounds before the 31st day of March 1958 and the Mamlatdar on inquiry is satisfied that the share of such

person in the land is separated (having regard to the area, assessment, classification and value of the land) in the same proportion as the share of

that person in the entire joint family property, and not in a larger proportion.

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

(a) If any land is left over from a tenancy in respect of which other land has already been resumed by the landlord or his predecessor-in-title, on

the ground that the other land was required for cultivating it personally u/s 31 (or under any earlier law relating to tenancies then in force), the

tenancy in respect of any land so left over shall not be liable to be terminated under Sub-section (1).

(b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would

result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation -the area resumed or the area left with

the tenant being a fragment, notwithstanding, and notwithstanding anything contained in Section 31 of the Bombay Prevention of Fragmentation and

Consolidation of Holdings Act, 1947.

(c) The land leased stands in the Record of Rights (or in any public record or similar revenue record) on the 1st day of January 1952 and

thereafter until the commencement date in the name of the landlord himself, or of any of his ancestors (but not of any person from whom title is

derived by assignment or Court sale or otherwise) or if the landlord is a member of a joint family, in the name of a member of such family.

(6) ...

(7) ...

33C. (1) Notwithstanding anything contained in Sub-section (1) of Section 88C, every excluded tenant holding land from a certificated landlord

shall, except as otherwise provided in Sub-section (3), be deemed to have purchased from the landlord, on the first day of April 1962, free from

all encumbrances subsisting thereon on the said day, the land held by him as tenant, if such land is cultivated by him personally, and

(i) the landlord has not given notice of termination of tenancy in accordance with Sub-section (3) of Section 33B, or.

(ii) the landlord has given such notice, but has not made an application thereafter u/s 29 for possession as required by the said Sub-section (3), or

(iii) the landlord, not belonging to any of the categories specified in Sub-section (4) of Section 33B, has not terminated the tenancy on any of the

grounds specified in Section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March 1962

u/s 29 for possession of the land:

Provided that, where the landlord has made such application for possession the tenant shall, on the date on which the application is finally decided,

be deemed to have purchased the land which he is entitled to retain in possession after such decision.

88C.(1) Save as otherwise provided by Sections 33A, 33B and 33C, nothing in Sections 32 to 32R (both inclusive) shall apply to lands leased by

any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not

exceed Rs. 1,500:

Provided that the provisions of this sub-section shall not apply to any person who holds such land as a permanent tenant or who has leased such

land on permanent tenancy to any other person.

(2) Every person eligible to the exemption provided in Sub-section (1) shall make an application in the prescribed form to the Mamlatdar within

whose jurisdiction all or most of the pieces of land leased by him are situate, within the prescribed period for a certificate that he is entitled to such

exemption....

11. The first -important thing to be borne in mind is that this section found its way into the Tenancy Act through chap. II-A, which was introduced

into the Tenancy Act by the Maharashtra (Amendment) Act No. 9 of 1961. This Amendment Act of 1961 came into force on February 9, 1961.

It would be worthwhile to note as to what was the legal position on the date this chapter was introduced. The amendments to the Tenancy Act

made from time to time ever since the present Act was passed in the year 1948 do show a distinct scheme behind the legislation. The main object

of this Act is to do away with the absentee landlordism, Land to be retained with the tiller has been the main principle governing the various

amendments from time to time. The Tenancy Act, as it stood on February .9, 1961, already contained provisions like Sections 31, 32 to 32R and

32C. We are making reference to only these provisions which appear to be relevant for deciding the present issue. These provisions read as a

whole would show that ordinarily every tenant in possession was to become the statutory purchaser and owner on April 1, 1957, which was the

tillers'' day. However, the Legislature made two distinct exceptions to this proposition. Land was not being denied to all the landlords who were

not actually cultivating the land on April 1, 1957. The Legislature permitted a landlord to terminate the tenancy of his tenant and apply for

possession of the land for bona fide personal cultivation. That was the right introduced in favour of the landlord by Section 31, together with

limitations provided in Sections 31A, 31B and 31C. The manner of giving notice and the time by which application was to be made were laid

down and in respect of those landlords who had so terminated the tenancy by notice and had applied for claiming possession of the land for bona

fide personal cultivation, the tillers'' day was deferred till or until this application was heard and finally disposed of. The limitations which were

introduced broadly show that even if the landlord desires to terminate the tenancy of a tenant, he can take possession of the land leased to the

extent of a ceiling area but not exceeding half of the leased land. If the landlord succeeds in getting possession of half the land in pursuance of his

application and the final termination of such application, the left over land with the tenant would be deemed to have been purchased by the tenant.

So far as the left over land is concerned, Section 31C lays down that once the tenancy is terminated u/s 31 and some land remains with the tenant,

the tenancy in respect of the left over land can never be further terminated on the ground that the landlord bona fide requires the land for personal

cultivation. In the case of most of the landlords, the left over land automatically vested in the tenants. However, the Legislature took into account a

class of landlords who own very little land and who could hardly be described as that class of landlords against whom the legislation was

addressed. The landlords owning less than an economic holding and whose total annual income including the rent of such tenanted land did not

exceed Rs. 1,500 were separated from the other landlords. This class of small land holders was given a further facility, by which their tenants did

not become owners on the tillers'' day. The landlords remained landlords and the tenants remained tenants as soon as the provisions of Sections 32

to 32R did not apply to such landlords and their tenants. However, if this small landlord wanted land for bona fide personal cultivation by

terminating the tenancy of his tenant, he had to take recourse to Section 31 alone. If he succeeded in getting the order in his favour and got

possession of half the land the title to the other half would vest in the tenant, as a favoured class of landlord, being the owner of limited holding. In

his case he could not get the other part of the land in view of the provisions of Section 31C of the Tenancy Act. _ However, it was not obligatory

upon such a landlord to apply u/s 31, his relationship of landlord with regard to his tenant continues in view of the provisions of Section 88C,

12. By Way of a further step in obliging even such a class of landlords and to see that only cultivator of land is in possession thereof, chap. II-A

was introduced along with further amendment of Section 88C. What we have quoted above are the up-to-date amended provisions, which we are

to interpret. .

13. Section 33A gave the nomenclature ""certificated landlord"" to the abovementioned small land-holder and his tenant was described as excluded

tenant. At an earlier stage, when Section 88C was amended by which original Sub-section (2) was replaced by Sub-section (2) to (5), it was

made obligatory upon the certificated landlord to make an application for obtaining a certificate from the Mamlatdar that the landlord was a

certificated landlord. This amendment was brought into force on September 28, 1957. The landlords were permitted to apply for certificates at any

time before September 30, 1961. This is the final time that was allowed by amendments from time to time. In case a landlord falling under this

description did not apply for a certificate and had not applied for possession u/s 31, he would no more be a class of landlords getting advantage of

this provision and the land of such a landlord would vest in his tenant. We need not add that this would have retrospective effect at this stage from

April 1, 1957.

14. After making these provisions at an earlier stage when chap. II-A was introduced, the Legislature felt that enough justice is not being done to

the marginal class of small landlords, who could not be given half the land for personal cultivation under the provisions of Section 31. The

Legislature, therefore, thought that certain landlords belonging to this class should be given an additional facility of getting the entire land for

personal cultivation, provided the conditions proposed in Section 33B as a whole are being fulfilled. While enacting this section and adding this

facility in favour of the class of small landlords, now described as certificated landlords, the Legislature observed one more principle which seems

to be observed in this Act throughout. Where the landlord is allowed to apply for terminating the tenancy of the tenant on the ground of bona fide

personal cultivation he was given only one opportunity to do so. If he took advantage of this opportunity and obtained the final order in his favour

the subsequent legislative change was not made to benefit such a landlord once again. Even though the Legislature revised its policy from time to

time, the subsequent changes were made available only to that class of landlords who had not utilised the earlier opportunity and whose rights

under the earlier opportunity were still inchoate and not finally decided. Bearing this broad approach in mind, the Legislature has provided that a

certificated landlord may apply u/s 33B notwithstanding the provisions of Section 31, 31A or 31B.

15. However, the Legislature found that the landlords including the certificated landlords may have applied u/s 31 for getting the land for bona fide

personal cultivation were rejected outright by the final order. There would be another class of such landlords whose applications were finally

determined before February 9, 1961 by passing the order in favour of the landlords for resumption of half the tenanted land. A third class of

landlords would be those whose applications u/s 31 were still pending on February 9, 1961 either before the Tahsildar, or before the appellate

authority or the revisional authority. In the case of those landlords whose applications were finally disposed of before February 9, 1961 and what

remained was a mere execution of the order, the Legislature has denied them any further right of application. In the case of the remaining two

classes of landlords where the applications failed to assist the landlords in obtaining possession, or where the remedy of the landlords is still

pending before one of three Tribunals constituted as the hierarchy under the Tenancy Act, the landlords were given a further right to apply u/s 33B.

This has been so held by a division Bench of this Court in Chintaman Anant Khasnis v. Keshav Dnyanu More (1977) Special Civil Application

No. 1778 of 1972, decided by Deshmukh and Shimpi JJ., on August 12, 1977 (Unrep.).

16. It is against this background that we are called upon to examine the position of a certificated landlord whose application u/s 31 was pending at

some stage on February 9, 1961 and who has applied u/s 33B by observing the requisite formality. Unless the earlier application u/s 31 was a

pending application as described in Clause (0 of Sub-section (2) of Section 33B, or the application was rejected earlier, the certificated landlord

had no right to apply at all. Having excluded one class in that manner and having indicated the other two classes of certificated landlords who can

apply u/s 33B, a further question arises in relation to those landlords whose applications were pending before some Tribunal on February 9, 1961.

Undoubtedly, such a certificated landlord was allowed to terminate the tenancy by a notice as required by Sub-section (3) of Section 33B and to

make an application for possession against the tenant for bona fide personal cultivation. The sections which we have quoted above do indicate that

the provision to make an application for possession u/s 33B is notwithstanding anything contained in Section 31, 31A or 31B. Sub-section (2)

further says that a certificated landlord can apply only if his application u/s 31 is pending before the Mamlatdar or in appeal before the Collector or

in revision before the Maharashtra Revenue Tribunal on the date before the commencement of the Bombay Tenancy and Agricultural Lands

(Amendment) Act, 1960, (hereinafter referred to in this section as ""the commencement date"), and this commencement date is February 9, 1961.

17. We will concentrate hereinafter in this judgment to this class of landlords whose applications were pending before any of the authorities

mentioned above, because the case before us refers only to such a landlord. In the case of a landlord whose application u/s 31 was already

rejected before February 9, 1961 no complication arises in administering the provisions of Section 33B. Some difficulty is felt only in the case of

the landlord whose application u/s 31 was pending at some stage on February 9, 1961.

18. We will at once refer now to the provisions of Clause (a) of Sub-section (5) of Section 33B. This provision indicates that the right of a

certificated landlord to terminate the tenancy under this Section 33B has been subject to the conditions mentioned in the clauses that follow. The

pertinent Clause (a) lays down that

If any land is left over from a tenancy in respect of which other land has already been ''resumed'' by the landlord or his predecessor-in-title, on the

ground that that other land was required for cultivating it personally u/s 31 (or under any earlier law relating to tenancies then in force), the tenancy

in respect of any land so left over shall not be liable to be terminated under Sub-section (1).

It is clear from the above wording of Sub-section (5) that the Tribunal deciding the application of a certificated landlord u/s 33B has to look at this

sub-section and decide whether the tenancy should be allowed to be terminated and whether the land hi possession of the tenant should be

permitted to be taken over by the landlord. If at the time of that decision u/s 33B the relevant authority finds that the landlord has already

recovered possession for bona fide personal cultivation of some land u/s 31 or under any earlier law relating to tenancy in force, the tenancy in

respect of the left over land shall not be allowed to be terminated and the landlord shall not be given possession of any further land. In point of

time, therefore, two relevant dates should be borne in mind. One is February 9, 1961 when the landlord makes an application u/s 33B because his

earlier application u/s 31 is still pending at some stage before any of the authorities mentioned in Sub-section (2). The very right of the landlord to

make an application for possession u/s 33B stems from the fact that his earlier application for bona fide personal cultivation u/s 31 is still pending at

some stage and has not been finally disposed of on February 9, 1961. Sub-section (5) at once speaks of the decision of the Section 33B

application. If on that date the Tribunal deciding this application u/s 33B finds that land has been ''''resumed'''' u/s 31 by the landlord, he shall not now

be permitted to terminate the tenancy and recover possession of the left over land. How can this happen? This can happen only if the Section 31

application of the landlord which was pending on February 9, 1961 was allowed to proceed ahead and terminate in a final order. Not only that but

the final order in such an application u/s 31 was permitted to be executed so that a situation arises where the land has been resumed as a result of

an order u/s 31. The last part of the statement which we have made above is the most controversial and appears to be in the nature of a final

conclusion. We will, therefore, keep it aside for the time being and try to deal with the provisions of the sections themselves.

19. At this stage a broad fact that we must notice is that the Legislature has permitted two applications of the landlord for obtaining possession of

the land from the tenant to be pending simultaneously. Simply because a second application u/s 33B has been filed no consequences laid down by

the provisions of the Tenancy Act could arise so far as the earlier pending application u/s 31 is concerned. On the contrary, the pendency of the

first application is the very foundation of the right to make the second application. Automatically, therefore, two applications would be pending

between the same landlord and the same tenant, one u/s 31 and the other u/s 33B.

20. We have been taken through all the relevant provisions of the Act by the learned Counsel by either side. The learned Counsel argued that so

far as the earlier pending application u/s 31 is concerned, simply because the certificated landlord has been made available a remedy u/s 33B by

filing a fresh application, it cannot be said that the application cannot be proceeded with to its final conclusion. The learned Counsel for the

respondent-tenant, Mr. Page brought to our notice the relevant provisions of the same Tenancy Act as amended by the Gujarat Legislature and

which is in force in Gujarat. So far as the Bombay Tenancy Act as applicable to Gujarat is concerned, the scheme of Section 33B of our Act is to

be found in Section 32T of the Gujarat amendment as applicable to the former Bombay area, now forming part of Gujarat State. Having made

similar provisions for permitting a certificated landlord to apply for possession because his earlier application for possession is pending, the Gujarat

Legislature has inserted Clause (fr) of Sub-section (2) of Section 32T which lays down that any earlier application pending shall be deemed to

have abated on the commencement date. In other words, if the Gujarat provisions were to be made applicable to this State, on the commencement

date itself, viz. February 9, 1961, all pending applications u/s 31 relating to certificated landlords shall be deemed to have abated automatically. In

other words, a certificated landlord may either pursue a remedy u/s 32B or face the consequence u/s 33C.

21. However, so far as the provisions of our Act are concerned, nothing similar to it has been provided. We can, therefore, visualise the situation

that the earlier pending application u/s 31 would be proceeded ahead as also the subsequent application u/s 33B should be heard and disposed of

in due course. Since the Section 31 Applications were required to be filed on or before April 1, 1957, ordinarily a majority of them would be

reaching final hearing long before the Section 33B application reach final disposal. It is entirely different that for reasons beyond the control of

parties certain matters remain lingering. In other cases the matters may reach upto the Revenue Tribunal or the High Court in writ petition and on

some technical grounds the orders may be set aside and the matters may be remanded to the trial Court for further hearing and disposal according

to law. It is, therefore, possible that in such a case some applications u/s 31 may reach hearing after the Section 33B applications are finally heard

and disposed of, We must, therefore, contemplate all these situations and have to decide what precisely is the scheme of the Legislature in granting

relief to the certificated landlords u/s 33B.

22. While doing so, we may also bear in mind a further broad proposition which has been uniformly implemented in this Act, viz. where the

tenancy has been allowed to be terminated in respect of a part of the land on the ground of bona fide personal cultivation, the tenancy in respect of

the left over land is never again to be allowed to be terminated on the same ground.

23. We will now consider one or two situations which will immediately illustrate how Clause (a) of Sub-section (5) of Section 33B ought to be

interpreted in order to give full benefit of the added remedy to the certificated landlord as against his excluded tenant.

24. The first simple illustration to take would be where a certificated landlord applies u/s 33B though his application u/s 31 is still pending. Before

the Section 33B application is processed and finally heard, the Section 31 application reaches final hearing and is disposed of. Not only there is no

provision similar to the Gujarat sub-section in our Act, but there is no guidance to the Tribunal or the parties as to how they "should conduct the

two applications which are pending under Sections 31 and 33B. It is, therefore, quite possible that the Tahsildar would in due course dispose of

the matters in its chronological order and the earlier application u/s 31 is finally disposed of while the Section 33B Application is pending and yet to

be heard and decided.

25. Before we refer to the language of Sub-section (55(a)) of Section 33B, one important fact . may be noted. The remedy u/s 33B is primarily

meant for a landlord who has a very limited holding. This certificated landlord has been given a right to resume land from his tenant, which is

differently worded than the right of the general class of landlords u/s 31 read with sections that follow Section 31, Primarily, there is no limitation on

the area of land which the certificated landlord can claim for bona fide personal cultivation from the tenant. He can get the entire land from the

tenant for bona fide personal cultivation u/s 33B. He may get a little less than the whole or in fact even less than half the land in a given set of

circumstances. This is because Clause (b) of Sub-section (5) of Section 33B lays down a further condition for handing over possession to a

certificated landlord for bona fide personal cultivation in respect of a certain portion of land from his tenant. While awarding possession to the

certificated landlord under this section, the Court has to see that after taking into account the other lands in the respective possession of the

landlord and the tenant, which they may be cultivating, a situation may be brought about by so dividing the land allotting equal portion of land for

cultivation on the whole between the landlord and the tenant. If, therefore, in a given case the landlord"" is permitted to resume the entire land

tenanted and still the other total land in possession of the tenant which he is cultivating is much more than the total holding of the landlord including

the disputed land, the landlord might get possession of the entire piece of land from the tenant. If in a given case the other lands in possession of the

landlord and the tenant are equal, needless to add that the tenanted land will be divided half and half so that the landlord and the tenant will have

equal land for cultivation. u/s 33B no distinct quantum of land is being laid down for being handed over to the landlord. He can, therefore, get

anything to almost nothing in a given case. How could a landlord in an earlier application u/s 31 know whether he would benefit u/s 33B or not,

which is a later remedy. In view of the possibility of getting the entire land for cultivation, the remedy u/s 33B must be prima fade described as a

better remedy so far as the certificated landlord having a very limited land of his own is concerned.

26. At this stage we will consider a further approach to the Section 33B application An application u/s 33B is a must for a certificated landlord.

This question, in our view, must be answered in the affirmative if the certificated landlord were to save himself from the consequences enumerated

in Section 33C. Section 33C(1) lays down that notwithstanding anything contained in Sub-section (1) of 88C, every excluded tenant holding land

from a certificated landlord shall, except as otherwise provided in Sub-section (3), be deemed to have purchased from the landlord, on the first

day of April 1962, free from all encumbrances subsisting thereon on the said day, the land held by him as tenant, if such land is cultivated by him

personally. This consequence is subject to the fact that the landlord has not given a notice of termination of tenancy in accordance with Sub-section

(3} of Section 33B, or the landlord has given such a notice but has not made an application thereafter u/s 29 for possession as required by the said

Sub-section (3). We need not refer to the other class of disabled landlords for whom consequences are provided but the date of occurrence in that

behalf is different. We have already seen earlier that at one stage obtaining of a certificate u/s 88C was made compulsory. If a certificate is

obtained, the certificated landlord has to apply, otherwise the land stands compulsorily purchased by the tenant. Section 33C now gives effect to

the Legislature''s idea of abolishing even such a class of landlords. Either these landlords obtain possession u/s 33B of land and cultivate it or the

land vests in the tenant on April 1, 1962. In the case of certificated landlords whose Section 31 applications were pending on February 9, 1961, a

facility to apply u/s 33B upto April 1, 1962 is afforded to them. If they do not apply, Section 33C(1) operates from and after April 1, 1962 and

makes the tenant statutory purchaser of land as on April 1, 1962. It is worthwhile to note at this stage that this consequence of Sub-section (1) of

Section 33C is provided notwithstanding anything contained in Sub-section (1) of Section 88C. The history of Section 88C which we have earlier

noticed, shows that Sections 32 to 32R. (both inclusive) shall not apply to lands leased by any person if such land does not exceed an economic

holding and the total annual income of such person including the rent of such land does not exceed Rs. 1,500. By amendment of Section 88C first

in the year 1957, a small landlord, whom we have described above, was obliged to make an application for obtaining possession and such

application was required to be made on or before April 1, 1962. If he obtains that certificate the compulsory transfer of title is saved and the small

landlord was eligible to retain possession as a landlord and the tenant remained a tenant on that land.

27. Then came a further amendment of this section by which operation of Sections 32 to 32R in respect of this landlord, who is now described as

a certificated landlord, is saved only to the extent provided by Sections 33-A, 33-B and 33-C. In other words, unless the certificated landlord

takes advantage of the provisions of Section 33B, and saves himself of the consequences indicated earlier under Sections 32 to 32 R, the

provisions of Section 33C will apply in the first instance to the tenancy of the land which is not permitted to be terminated, and the consequences

of Sections 32 to 32R will again apply as provided by Sub-section (5) of Section 33C.

28. The above discussion leads to the conclusion that in the case of a certificated landlord for whose apparent benefit Chap. II-A has been

introduced represents a complete scheme or a Code by itself, by which the rights between a certificated landlord and the tenant are now to be

finally settled so far as the tenanted land is concerned. If the landlord applies to get his entire land for personal cultivation, so far so good. If he is

unable to get any land relieved the tenant will undoubtedly become the purchaser and the procedure of Section 33C(5) will be followed, as if the

transfer has been effected from April 1, 1962. However, if a landlord gets only a portion of the land for his personal cultivation and the other part

of the land remains with his tenant, then so far as the left over land is concerned, the procedure prescribed under Sub-section (5) of Section 33C

will have to be made applicable and given effect to from April 1, 1962.

29. In this, broad scheme the one factor which is the stumbling block in this litigation is the effect and consequence of the final decision of the

earlier application u/s 31 application which comes to be decided any time but before the final order u/s 33B application is passed. The

Maharashtra Legislature has not made similar provisions as the Gujarat Legislature, as we have pointed out earlier. There is no provision to stay

the application simply because the Section 33B application has been filed. Both can and must ran simultaneously and both the applications can be

decided on different dates. As we have pointed out earlier, the pending Section 31 application is likely to be decided much earlier than the Section

33B application, which is normally filed after four years after the earlier application is filed. If Chap. II-A is now a complete code by itself of

governing the certificated landlord and the excluded tenant, would it not be logical to permit the certificated landlord to take advantage u/s 33B. A

certificated landlord who has filed an application u/s 33B may very much wish that this subsequent application be decided expeditiously and before

the Section 31 application is decided. He may put in efforts to get such a result, but he may have no control on the circumstances. Inspite of his

desire to have the subsequent application decided earlier, the pending application u/s 31 may be decided much earlier than the subsequent

application. Would it be proper and logical and be regarded legal, according to the provisions of Chap. 1I-A, to defeat the landlord''s rights u/s

33B simply because an event occurs over which he has no control at all. In other words, can the mere passing of a final order u/s 31 in an earlier

application which was pending on February 9, 1961 be allowed to defeat automatically the remedy under the subsequent application which is still

pending. If this consequence were to be permitted, what is the difference between a situation where the Section 31 application is finally disposed of

before February 9, 1961 which bars the filing of an application itself u/s 33B and the final termination of that application subsequent to February 9,

1961 before the Section 33B application is finally disposed of. Since the landlord has no kind of control at all on the situation, we are of the view

that the mere passing of a final order in a Section 31 application, though subsequent to February 9, 1961, should not be permitted to conclude the

right of the landlord u/s 33B. In fact, that would be inconsistent with the desire of the Legislature to make the remedy available to the certificated

landlord under chap. H-A.

30. However, the Legislature further envisaged the situation where not only the earlier pending application u/s 31 will be disposed of finally before

the Section 33B application is finally heard and disposed on, and the landlord execute the order under the earlier application. Since there is no

prohibition enacted for the continuance of the earlier application or its execution, though chap. II-A was introduced as an additional remedy or a

fresh remedy, it is possible that some landlords might execute the order under earlier application u/s 31. Though the landlord has no control over

the hearing and final disposal of an application u/s 31, so far as the execution of the final order is concerned there is no limitation indicated in this

Act and the landlord is merely left to his volition to decide whether to execute this order or not. Though the hearing and final disposal of the

application u/s 31 is beyond the control of the certificated landlord, he still has a full choice to make whether to execute that final order or not.

31. Let us, therefore, take two different cases, where, the earlier applications u/s 31 have successfully terminated and a final order passed and both

the landlords are entitled to possession of half land tenanted. One of the landlords executes that order and obtains possession of half the land

before the Section 33B application is heard and finally disposed of; and the other landlord waits to see what happens in the Section 33B

application and does not execute that order till the final disposal of the application u/s 33B. Does the Legislature want to treat these two situations

differently or in the same manner. In our view, the case of a landlord who voluntarily executes the earlier final order u/s 31 and obtains physical

possession of the land awarded to him must be distinguished from or contrasted with the position of the certificated landlord who refuses to

execute that order and awaits a decision u/s 33B. In our view, the Legislature had all these situations in mind when it had selected the wording of

Clause (a) of Sub-section (5) of Section 33B. As we have already suggested earlier, Sub-section (5) operates when the authority under the

Tenancy Act is finally hearing the application u/s 33B. If at that hearing it is pointed out by the tenant to the Tribunal that his landlord has already

resumed land u/s 31, or any other earlier law relating to tenancy, in fairness the remedy u/s 33B shall not be made available to such landlord.

However, if a mere order is passed u/s 31, but the certificated landlord wants to proceed ahead under 33B and ultimately wants to execute only an

order u/s 33B, would it be said that he is such a landlord who has already ""resumed"" the land u/s 31. Since both these situations are quite possible

at the time Section 33B application comes up for final hearing and disposal, the Legislature must be deemed to have provided for both the

situations by the provisions of Sub-section (5) of Section 33B. Where the land has actually been taken possession of u/s 31 application, the

Legislature tells the landlord that he shall get no advantage u/s 33B. Where, however, the -landlord awaits the disposal of the application u/s 33B

and a final order in his favour, he shall not be deemed to be a landlord who has resumed the land for personal cultivation. In the overall scheme that

the Legislature has made "for eliminating the remaining class of landlords and bringing about a situation of personal cultivation of land alone, the

interpretation that we give to Clause (a) of Sub-section (5) of Section 33B would alone be logical for making the remedy of Section 33B real and

not illusory. The word "resume" in the sub-section in the context of the above discussion must mean ""actual recovery of possession and not a mere

final order capable of giving possession to the landlord, if executed.

32. A few situations that may develop from the above conclusion may be noted in order to verify how far the above interpretation is logical. If a

pending application were the sine qua non-for permitting a fresh application u/s 33B to be filed, the mere disposal thereof could not be treated as a

bar to the filing of the Section 33B Application. We will take the simplest illustration. A certificated landlord made an application against a tenant

for bona fide personal cultivation u/s 31. All the evidence in that application was recorded by the Tahsildar and the application was marked down

for February 10, 1961 for final disposal. On February 10, 1961, the Tahsildar awards the landlord possession of half the land u/s 31. This is the

best order that the landlord can obtain u/s 31 and he has no ground to go in appeal. If the tenant is satisfied with the order as just and proper, he

may also not go ahead by filing an appeal. Here is a certificated landlord in whose favour a final order u/s 31 has been passed on February 10,

1961. Can he apply u/s 33B for resuming the entire land for his personal cultivation from his tenant? The answer is obviously in the affirmative. This

is because he fulfils all the requirements of Section 33B. He is a certificated landlord whose application u/s 31 was pending on February 9, 196L

Viz. (the commencement date. Since he is the landlord of that type, he has a right to give notice of terminating the tenancy of his tenant on or

before March 31, 1962. After such a notice has been issued terminating the tenancy and even before a process is issued in that behalf, an order

has already been passed for final termination of the proceedings u/s 31 and this is an executable order. The landlord has an absolute choice to

execute the order or to stay his hand. If the word ""resume"" in Clause (a) or Sub-section (5) of Section 33B were to mean the mere passing of a

final order in favour of a certificated landlord u/s 31, the very application of the above landlord, in the illustration that we have given, u/s 33B could

not be considered at all. Such an interpretation of the word ""resume"" in Sub-section (5) will defeat the intention of the Legislature to afford the

remedy to the certificated landlord u/s 33B. How shall we, therefore, logically interpret the word ""resume""? In our view, the only logical way to

interpret and make the remedy available to the certificated landlord u/s 33B is to interpret the word ""resume"" to mean taking of actual physical

possession by executing the order u/s 31. It is, therefore, that the word ""resume"" may have several meanings as the dictionary shows. In certain

context the mere passing of a final order may mean ""resume"", but one of the meanings undoubtedly is the physical taking over of possession and in

the context of the provisions of the Tenancy Act which we have discussed above and against the background of the scheme making the land

available to a certificated landlord who genuinely needs it for his personal cultivation, the meaning which we have attributed to the word ""resume"" in

Sub-section (5) of Section 33B alone seems to be logical if the certificated landlord has to derive some benefit from the additional remedy u/s 33B.

Otherwise, in almost all cases where the Section 31 application would normally come to final conclusion much before the Section 33B application

as they are already old by four years before Section 33B application comes to be filed, the remedy would be almost illusory. We do not think that

the Legislature provided such an illusory remedy to a certificated landlord.

33. We will now take into account some of the arguments addressed to us as a consequence of taking this view. For instance, an argument is

raised as to what should happen to the transfer of title when a certificated landlord files an application u/s 33B and does not want to execute the

final order u/s 31, though that order is passed earlier than the final order u/s 33B, According to the view which we have already taken above, the

mere passing of a final order u/s 31 will not by itself be of any consequence, as tenancy does not get terminated by that order at that stage. The

reason is obvious. Under the scheme of chap. II-A it has been laid down by Section 33C as to what should happen where a certificated landlord

does not hake an application u/s 33B, or follows the procedure of Section 33B and files an application for possession. Where a certificated

landlord does not serve a notice or after serving a notice does not file an application u/s 33B, it has been clearly laid down by the opening part of

Sub-section (1) of Section 33C that the tenant would be deemed to have purchased the land on April 1, 1962. This is the result that follows

notwithstanding anything contained in Sub-section (1) of Section 88B, It is, therefore, clear that a certificated landlord must follow the provisions of

Section 33B, if he wants to claim possession of land for bona fide personal cultivation. If he does not choose to file an application, the tenant is

declared to be the purchaser on April 1, 1962. This will be the result notwithstanding the provisions of Section 88C(1). Under is. 88C the landlord

with a limited holding who later on obtains the designation of a certificated landlord was saved from the consequences of vesting of title in the

tenants, as the Legislature has given him a little concession in that behalf. We have already indicated that at a subsequent stage the Legislature

revised the same things and wanted even these landlords either to cultivate themselves or part with title of the land. In this overall scheme of

retaining of land only with an agriculturist who will cultivate the land personally that the provisions of Section 3307) has been made. If the

certificated landlord resorts to the provisions of Section 33B, the vesting of the title is deferred till the final disposal of that application as has been

laid down by the provisions of Sub-section (5) of Section 33B. We need not repeat what we have stated earlier that under the provisions of this

chap. II-A a certificated landlord has a choice of getting possession either of the whole land or a lesser part of it, sometimes amounting to nothing.

As the quantum of land that will be handed over to the landlord for bona fide personal cultivation depends upon several factors, it is difficult to

predict on the date of the application what precise land he will get. However, after the landlord obtains a final order in this behalf, if any land is still

left over with the tenant, the tenant will automatically become the purchaser on this deferred date of the final decision, as provided by the

provisions referred to above.

34. When different dates are contemplated for the vesting of title in the tenant, in the case of a certificated landlord if the certificated landlord does

not take advantage at all of the provisions of Section 33B, the title automatically vests in the tenant on April 1, 1962. If he takes resort to the

provisions of Section 33B on the date of final disposal in respect of the left over land from a tenancy, the tenant becomes a statutory purchaser.

This scheme operates notwithstanding the provisions of Section 88C(1). This scheme under the added chap. II-A, prima facie is meant to benefit

the certificated landlord to a larger extent. It stands to reason that these are the only provisions that should now determine the relationship between

the certificated landlord and the excluded tenant.

35. We may now point out how the earlier application u/s 31 and the final order thereunder will operate in these circumstances. The one case

which we have already considered is where the final order u/s 31 application is actually executed and possession of half the land is obtained before

the final disposal of the application u/s 33B. We have quoted above that in those circumstances when the application reaches hearing there will be

a bar of certain provisions to the application u/s 33B and the landlord will not be able to agitate the application u/s 33B any further.

36. The next case now to be considered is that the s- 31 application is either pending or is finally decided, but no possession is obtained by

execution thereof. If in those circumstances, the Section 33B application reaches final hearing and is disposed of, the controlling provisions will be

the provisions of chap. II-A, and the consequences laid down u/s 33C must follow at the final conclusion of the application u/s 33B. This appears

to us to be the only logical way in which the provisions will operate. When the Tenancy Act statutorily provides for vesting of title in a tenant on a

particular date, it means that the relationship of landlord and tenant is brought to an end by the operation of -the law. A landlord can claim

possession of land for bona fide personal cultivation only so long as he is a landlord and the tenant continues to be a tenant as such. There is no

question of claiming possession of land for personal cultivation once the title is transferred to the tenant. The only right in that case is to recover

compensation from the erstwhile tenant who becomes the owner, by the erstwhile landlord who was the the former owner of the land.

37. Mr. Rane, the learned Counsel for the petitioner, further wants us to hold that in the event of Section 33B application failing or being rejected

by the tenancy authorities, the landlord should be able to execute his earlier final order u/s 31. In other words, if a final order u/s 31 is passed,

whereby half the land has been awarded to the landlord and he has not executed that order, Mr. Rane wants to take advantage of our view that

the Section 33B application should be further proceeded with according to law. A mere passing of a final order u/s 31 should be no bar to the

further hearing of the application u/s 33B. However, he wants to argue that in the event of Section 33B application being rejected for any reason

whatsoever, the landlord must have a right to execute the earlier final order u/s 31. We are unable to agree with this argument. In fact, such an

approach would be inconsistent with the inexorable logic of the situation. Once tenancy is terminated under the Tenancy Act, in respect of a

portion of the land, it has been clearly laid down all along that the tenancy of the remaining land shall not be permitted to be terminated for the

purpose of bona fide personal cultivation of the landlord. That was the scheme under the old Section 34 and that is also the scheme u/s 31C, and

that is also the position under the provisions of Section 33B(6). The obvious logical consequence of what we have held till now may now be

indicated so that the argument of Mr. Rane will not survive at all.

38. Since the Maharashtra State Legislature has not taken the view which the Gujarat State Legislature has taken of statutorily abating of pending

applications u/s 31, we have considered the consequences of the Section 31 application going ahead to final termination. A mere passing of a final

order u/s 31 will not amount to termination of tenancy but taking over of possession with resumption of land will bring about the situation where the

left over land can never be touched. In other words, merely getting a final order u/s 31 is not enough if the landlord wants to get advantage of that

order, after he obtains the final order but awaits the final result of the application u/s 33B and obtains a final order of determination of the tenancy.

If this is the consequence that arises no further action for the execution of the earlier order u/s 31 could arise. It only means that the Maharashtra

Legislature has given to the certificated landlord a choice either to act u/s 31 application or Section 33B application, but there is a limitation within

which he must resume the land. Before Section 33B application reaches final conclusion, he has to take advantage of Section 31 and if he fails to

avail of this advantage, then chap. II-A alone will operate and the landlord will not be eligible to apply for execution of the order u/s 31. We think

that the Maharashtra Legislature has clearly tried to benefit the certificated landlord who is a potty land-holder and has left the choice to him to find

out which order will give him the maximum benefit. However, there is a time limit within which he may do so, failing which the land statutorily vests

in the tenant. We are unable to agree with Mr. Rane that on a Section 33B application being decided against the landlord, he will still have a

chance of executing the earlier final order u/s 31.

39. It is also argued before us that there is apparent inconsistency between the provisions of Section 31 and the provisions of chap. II-A. What is

argued is that it is not permissible to terminate the tenancy of the land left over with the tenant after the tenancy of the other land is permitted to be

terminated u/s 31. If an application u/s 31 succeeds finally, it amounts to granting permission to terminate the tenancy. This, according to the

learned Counsel, is the meaning of Section 31C. If, therefore, the Section 31 application goes to final conclusion before the Section 33B

application is yet heard and decided, the tenancy of half the land must be deemed to have been terminated and the remaining half land must be

deemed to be the left over land with the tenant. If this consequence follows u/s 31C, the provisions of chap. II-A will operate notwithstanding

Section 31C. What is provided by Section 33B(1) is that the provisions of that section will operate notwithstanding anything contained in Section

31, 31A or 31B alone.

40. We do not see any inconsistency in these provisions. The total scheme of transfer of title from the certificated landlord to his excluded tenant,

as discussed by us above, would clearly show that in the case of Section 31 application which was pending on February 9, 1961, the Legislature

first permitted an application to be filed. We shall illustrate here how the above logic if accepted would lead to very unreasonable results. At an

earlier stage we have taken the illustration of a Section 31 application being finally decided by the Tahsildar on February 10, _1961. In that manner

several applications filed in 1957 by certificated landlords may be decided during the period February 9, 1961 to March 31, 1962, If a final

termination of a Section 31 application is by itself a situation covered by Section 31C, then the certificated landlord would not be able to file

applications u/s 33B at all, even though they are filed on or before March 31, 1962, but at a date after the Section 31 application was decided

after February 9, 1961. We have refused to accept such a consequence in view of the special provisions of Section 33B, A mere final order u/s 31

is not, therefore, conclusive of the rights between the certificated landlord .and the excluded tenant. In the case of Section 31 application, the

Legislature has specifically provided a provision viz. Clause (a) of Sub-section (5) of Section -33B, whereunder if a certificated landlord obtains

physical possession of land for personal cultivation u/s 31, he will be debarred from continuing the remedy in view of the resumption of the land

under Clause (a) of Sub-section (5) of Section 33B. This being the scheme, it is clear that the Legislature contemplated the pending application u/s

31 not to bring about the termination of the tenancy by its merely coming to an end by a final order in that behalf. The Legislature has, therefore,

made the provisions of Section 33B in the case of certificated landlords under chap. II-A notwithstanding anything contained in the provisions of

Sections 31, 31A or 31B. It is left to the certificated landlord to bring about the stage off Section 31C through the provisions of Clause (a) of Sub-

section (5) of Section 33B. If he brings about that result then undoubtedly the remedy is barred, and the provisions of Section 31C would then be

made applicable. We do not find any inconsistency in the earlier scheme of Sections 32 to 32R read with Sections 31 to 31C and the new scheme

under chap. II-A, both operate in a different field and in different manner. Simply because a landlord has been given a mere chance at an

intervening stage some confusion is likely to arise. However, the above analysis of the two independent schemes would make the provisions clear

and no doubt is left as to how the relationship between the certificated landlord and his excluded tenant should be brought to a final conclusion

either under the earlier scheme or under the later one and such landlord will exercise his choice but within a limited period.

41. In view of the conclusions reached above, we are unable to accept the other reasoning or conclusion reached by the learned single Judge in

Smt. Krishnabai Shankarrao Bagal v. Sadashiv Shripati Zapate (1968) Special Civil Application No. 1255 of 1966, decided by V.S. Desai J., on

November 7, 1968 (Unrep.) and Kondiba Laxman Kadlag v. Smt. Parvati Dagadu Jagtap (1971) Special Civil Application No. 2035 of 1966,

decided by Bhasme J., on January 22, 1971 (Unrep.). Those judgments stand overruled. We, however, agree with the conclusion reached by the

learned single Judge in the case of Antajl Ramchandra v. Pandurang (1968) 71 Bom. L.R. 364, and an unreported judgment of another single

Judge in Bhalchandra Bajirao Kulkarni v. Shivaji Namgir Gosavi (1970) Special Civil Application No. 34 of 1970, decided by Wagle J., on June

19, 1970 (Unrep.), but for reasons mentioned above.

42. Having considered the legal position in this manner, what we find now is that the original petitioner Shamrao Dattatraya Gosavi is dead pending

this writ petition, and his heirs have been brought on record. It is not being disputed treat in the circumstances the added petitioners, who are the

legal representatives, will have to prove their own bona fide requirement for personal cultivation before the tenant is displaced from the land. The

finding of this petition in favour of Shamrao Gosavi will next automatically enure to the benefit of his heirs. Shri Page for the respondent made a

grievance that the respective holdings of the erstwhile landlord Shamrao Gosavi and his tenant, the respondent, have not been properly considered

and a clear finding is not given in that behalf. However, in view of the changed circumstances, it is not possible for this Court to finally dispose of

this petition as the heirs of Shamrao Gosavi have now to prove their own requirement for bona fide personal cultivation of the agricultural land. the

earlier decisions of the three Courts will have to be set aside and the original Section 33B application will have to be restored to the file of the

Tahsildar for disposal according to law by treating the legal heirs as the applicants u/s 33B. However, the further hearing will be in accordance with

the procedure laid down in the Tenancy Act and in the light of judgment made by us in this case. Though the petition succeeds on the main point of

law, because of the subsequent developments in this case, we direct that there shall be no order as to costs.

43. We, therefore, make the rule absolute, subject to the modifications given above.