Kondiba Vs Gajanan

Court: Bombay High Court

Date of Decision: Oct. 19, 1972

Acts Referred: Bombay Tenancy and Agricultural Lands Act, 1948 â€" Section 14, 29, 31, 31A, 31B Constitution of India, 1950 â€" Article 227

Citation: (1974) MhLj 275

Hon'ble Judges: P.S. Malvankar, J

Bench: Single Bench

Advocate: V.N. Damle and V.N. Gadgil, for the Appellant; M.L. Pendse for Opponent No. 1, for the Respondent

Judgement

P.S. Malvankar, J.
The dispute in this petition relates to the land Survey No. 283 admeasuring 2 acres and 33 gunthas situate in the village

of Nagardevale in Taluka and District Ahmednagar. The petitioner is a tenant-original applicant, while respondent No. 1 is the landlord-original

opponent. It is common ground that since 1952 respondent No. 1 is blind and, therefore, he is a disabled person. He applied u/s 88C of the

Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called ""the Act""), and obtained a certificate, and thereafter Bled an application for

possession of the land u/s 33B of the Act when still he was blind. Admittedly, even today he is blind. The application was granted by the Tenancy

Court which passed an order for delivery of possession of half of the land to him. The petitioner-tenant, aggrieved by that order, went in appeal to

the Deputy Collector who allowed the appeal on March 17, 1964, set aside the order of the Tenancy Court and dismissed the application of the

present respondent No. 1. This order became final as it was not appealed against by the present respondent No. 1.

2. However, proceedings were started u/s 33C of the Act suo motu by the Agricultural Lands Tribunal. The Agricultural Lands Tribunal found that

the present petitioner-tenant did not give any notice of purchase to respondent No. 1-landlord and, therefore, forfeited his right to purchase. The

Tribunal, therefore, passed an order that the land should be disposed of in accordance with the provisions of section 32P of the Act. The petitioner

filed an appeal against this order before the Collector, but the Collector also took the same view and dismissed the appeal. Thereafter, the

petitioner went in revision before the Maharashtra Revenue Tribunal and the Revenue Tribunal also confirmed the order passed by the Collector

holding that the petitioner had forfeited his right to purchase because he did not give notice of purchase to respondent No. 1-landlord. While

passing this order, the Revenue Tribunal has observed thus in its judgment:

The landlord is a disabled person within the meaning of section 33B and he is a certificated landlord. He did apply u/s 33B and failed in obtaining

the possession of the land for his personal cultivation. Thus the right to purchase the land accrued to the tenant and he was entitled to exercise his

right within one year from the date on which the landlord''s application u/s 33B was finally decided, in accordance with the provisions of proviso to

sub-section (4) of section 33C. According to the proviso to sub-section (3) of section 33C, where the tenancy is terminated by a certificated

landlord and application for possession is made in accordance with the provisions of sub-section (4) of section 33B, the tenant shall, within one

year from the date on which such application is finally decided, be entitled to purchase the land which he is entitled to retain in possession after

such decision. Within one year from the decision of the landlord''s application u/s 33B the tenant was entitled to purchase the land. Sub-section (4)

of section 33C further lays down that:-

An excluded tenant desirous of exercising the right conferred on him under sub-section (3) shall accordingly inform the landlord and the Tribunal in

the prescribed manner within the period of one year during which he is entitled to exercise such right under sub-section (3).

The proviso to section 33C clearly lays down that the tenant has to exercise his right and inform the landlord and the Tribunal within the period of

one year during which he is entitled to exercise his right under sub-section (3). It is thus evident from the provisions of sub-section (4) that the

tenant had to exercise his right.

3. Later on, at the end of para. 5, the Revenue Tribunal has observed Thus:-

In the present case, the tenancy was terminated by the certificated landlord and he had filed a suit for possession u/s 33B read with section 29 and

hence the provisions of proviso to sub-section (3) of section 33C only will apply to this case. Both the lower Courts have thus correctly held that

the tenant has lost the right to purchase the land.

It would thus be seen that while confirming the order passed by the Collector, the Tribunal also took the view that the petitioner''s case comes

under the proviso to sub-section (3) of section 33C and, therefore, it was necessary for him to give the intimation to the landlord as provided for

by sub-section (4) of section 33C of the Act. Being aggrieved by this order of the Revenue Tribunal, the petitioner has come to this Court under

Article 227 of the Constitution of India.

4. It is common ground that the present respondent No. 1 has been a disabled person being blind and belongs to the category of the certificated

landlords mentioned in sub-section (4) (d) of section 33B of the Act. It is also not in dispute that he had obtained a certificate u/s 88C of the Act

and thereafter he filed an application under sub-sections (1) and (3) of section 33B read with section 29 of the Act for possession of the land in

dispute. The Mamlatdar granted possession of half of the land and, therefore, the petitioner went in appeal to the District Deputy Collector, and in

the appeal the order passed by the Mamlatdar was set aside on March 17, 1964. Thereafter, the present proceeding u/s 33C of the Act was

started by the Agricultural Lands Tribunal and Deputy Collector. Thus, the application made by the present respondent No. 1 under sub-sections

(1) and (3) of section 33B was finally decided on March 17, 1964. Now, the learned counsel Mr. V. N. Damle, appearing on behalf of the

petitioner-tenant, has urged that the present respondent No. 1 having applied under sub-sections (1) and (3) of section 33B like any other landlord

and he having not taken the advantage of sub-section (4) of that section, his case comes under the proviso to sub-section (1) of section 33C of the

Act, because, in accordance with that proviso, when a landlord has made an application for possession u/s 29 read with section 33B, the tenant

shall be deemed to have purchased the land which he is entitled to retain in possession after such application is finally decided, while the contention

made on behalf of respondent No. 1 by the learned counsel Mr. M. L. Pendse is that respondent No. 1 being a certificated landlord belonging to

one of the categories specified in sub-section (4) of section 33B, his case comes under the proviso to sub-section (3) of section 33C of the Act

and, therefore, the tenant is required to inform the landlord and the Tribunal within one year during which he is entitled to exercise his right of

purchase under sub-section (3) of section 33C. The question, therefore, that falls for consideration is whether an excluded tenant of a certificated

landlord belonging to the category of persons subject to any physical or mental disability, is required to inform the landlord and the Tribunal within

one year under sub-section (4) of section 33C of the Act, even though such a landlord has given notice and made an application as required by

sub-sections (1) and (3) of section 33B of the Act and his application is finally rejected.

5. In order to be able to answer this question, it is necessary to examine the scheme of Part (II-A) of Chapter III of the Act. Part (I) of Chapter III

deals with termination of tenancy for personal cultivation and non-agricultural use. Part (II) speaks about purchase of land by tenants, and Part (II-

A) provides for termination of tenancy by landlords, and purchase by tenants, of lands to which section 88C applies. We are not concerned with

Parts (I) and (II) of Chapter III in this case. Coming to Part (II-A) of this Chapter, section 33A gives definitions and it says that for the purposes

of sections 33B and 33C, (i) ""certificated landlord"" means a person who holds a certificate issued to him under sub-section (4) of section 88C but

does not include a landlord within the meaning of Chapter III-AA holding a similar certificate; and (ii) ""excluded tenant"" means a tenant of land to

which sections 32 to 32R (both inclusive) do not apply by virtue of sub-section (1) of section 88C. The important definition for our purpose in this

petition is the definition of ""certificated landlord"". That definition clearly shows that a person who holds a certificate and to whom the certificate is

issued under sub-section (4) of section 880 is a certificated landlord. A landlord within the meaning of Chapter III-AA holding a similar certificate

is not a certificated landlord for the purposes of Part (II-A) of Chapter III. It is, therefore, obvious that a landlord who claims to be a certificated

landlord for the purposes of sections 33B and 33C must have a certificate issued to him, and secondly, he must be a holder of such a certificate.

Section 33B provides for special right of certificated landlord to terminate tenancy for personal cultivation. Sub-section (1) says that

notwithstanding anything contained in sections 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. Sub-section (2) says that notwithstanding that in respect of the same tenancy an application of the landlord made in accordance with

sub-section (2) of section 31 is pending on the date of the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act,

1960, viz. Maharashtra Act No. 9 of 1961 (which came into force on February 9, 1961), or has been rejected by any authority before the

commencement date, a certificated landlord may give notice and make an application under sub-section (3). Sub-section (3) provides for the

requirement of notice to be given and the date before which it is to be given and requires that a copy of such a notice shall be sent to the

Mamlatdar. It further says that thereafter an application for possession of the land u/s 29 is to be made before the first day of April, 1962, in the

cases falling under sub-section (3) (a) and within three months of his receiving the certificate in the cases falling under sub-section (3) (b). Then

comes sub-section (4) and it reads Thus:-

(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....

A perusal of this sub-section, therefore, would at once show that the categories of certificated landlords mentioned in the first part of sub-section

(4) are only (a) a minor, (b) a widow, and (d) a person subject to any physical or mental disability, and not a minor who has become major, or a

successor-in-title of a widow whose interest in the land has ceased or a physically or mentally disabled person whose disability has ceased.

Secondly, the words ""if he has not given notice and not made an application as required by sub-sections (1) and (3)..."" definitely indicate that even

a certificated landlord belonging to any of the aforesaid three categories can give notice and make an application as required by sub-sections (1)

and (3) of section 33B, even though he is suffering under a disability. If he does not do so, then liberty is given to him to give such notice and make

such an application under clause (A) of sub-section (4) within one year from the date on which he, in the case of a minor, attains majority, and in

the case of a person subject to any physical or mental disability, he ceases to be subject to such physical or mental disability. However, so far as

the third category of certificated landlords is concerned, viz. the category of widows, clause (B) of sub-section (4) says that in the case of a

widow, if the widow does not exercise her right to give notice and make an application under sub-sections (1) and (3) of section 33B, then her

successor-in-title may do so within one year from the date on which widow''s interest in the land ceases. It would thus be seen that there is no

obligation on the certificated landlords belonging to the special categories such as minor, physically or mentally disabled persons and widows, to

give notice and make an application under sub- sections (1) and (3) of section 33B. They are given an option either to give notice and apply under

sub-sections (1) and (3) of section 33B or, in the case of minors, to wait till they attain majority and, in the case of persons physically or mentally

disabled, to wait till their disability ceases. In the case of widows, however, if a widow does not exercise her option to give notice and make an

application under sub-sections (1) and (3) of section 33B, then her successor in title can exercise that option after the widow"s interest in the land

ceases. It is needless to say that in the case of minors and physically or mentally disabled persons, the option can be exercised only once. If they

give notice and apply under sub-sections (1) and (3) of section 33B read with section 29 of the Act, certainly they cannot give notice and make

any such application again after their disability ceases. In the case of a widow, she can exercise the option so long as her interest in the land does

not cease, but after such interest ceases, it is only her successor-in-title who can apply. It is, however, necessary to notice that sub-section (4) of

section 33B does not enable minors, widows and persons physically or mentally disabled, to give notice and make an application. I have already

pointed out that such notice can be given and an application can be made by such landlords under sub-sections (1) and (3) of section 33B only.

But sub-section (4) enables them to give notice and make an application only after their disability ceases. In other words, a minor, if he wants to

give notice and apply after he becomes major, can do so only under sub-section (4) of section 33B and not under sub-sections (1) and (3) of that

section. Likewise, a person who is physically or mentally disabled, if he wants to give notice and apply after his disability ceases, can do so only

under sub-section (4) and not under sub-sections (1) and (3) of section 33B. Similarly, if a successor-in-title of a widow, whose interest in the land

has ceased, wants to give notice and make an application, he can do so only under sub-section (4) and not under sub-sections (1) and (3) of

section 33B. It is, no doubt, true that these persons are required to give notice and make such an application in accordance with sub-sections (1)

and (3) of section 33B, but nevertheless the right to give notice and make an application is conferred upon them not by sub-sections (1) and (3) of

section 33B but by sub-section (4) of that section. It seems to me, therefore, that if disabled persons like minors, widows and other persons

physically or mentally disabled, want to give notice and make an application without waiting for their disability to cease, then they can give notice

and make such an application only under sub-sections (1) and (3) of section 33B, while if they have not made such an application during the

subsistence of their disability and they want to exercise their choice after the cessation of their disability, they are enabled to give notice and make

an application under sub-section (4), clause (A), in the case of minors and other persons physically or mentally disabled and under sub-section (4),

clause (B) in the case of successors-in-title of widows sub-section (5) of section 33B provides for certain conditions to be satisfied by a

certificated landlord if he wants to exercise his right of termination of tenancy u/s 33B. Sub-section (6) says that after the tenancy of an excluded

tenant is terminated, that tenancy would not be liable to be terminated again in respect of the land left with the tenant by the same landlord on the

ground of bona fide and personal requirement for cultivation. Sub- section (7) speaks about the apportionment of rent after the tenancy of an

excluded tenant is terminated and part of the land involved in the tenancy is given to the certificated landlord. In the instant case, we are not

concerned with sub-sections (5), (6) and (7) of section 33B of the Act.

6. Coming to section 33C of the Act, it speaks about tenants of lands mentioned in section 88C who are deemed to have purchased lands and

other incidental provisions Sub-section (1) runs thus:

(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.

This subsection, therefore, provides for cases of excluded tenants whose landlords have not given notice of termination of tenancy in accordance

with sub-section (3) of section 33B, or, having given such notice, have not made applications thereafter u/s 29 for possession as required by sub-

section (3) of section 33B, or having not terminated the tenancy on any of the grounds specified in section 14 or having so terminated the tenancy,

have not applied to the Mamlatdar on or before March 31, 1962 u/s 29 for possession of the land and these landlords do not belong to any of the

categories specified in sub-section (4) of section 33B. If therefore, the conditions laid down by sub-section (1) of section 33C are fulfilled, then the

excluded tenants of such-landlords are to be deemed to have purchased from their respective landlords their lands on the first day of April 1962.

There is, however, one exception embodied in sub-section (1) itself by the words ""except as otherwise provided in sub-section (3)"". This

exception means that the excluded tenants of certificated landlords, in respect of whom provision is made in sub-section (3) section 33C, cannot

be deemed to have purchased the lands from their respective landlords on the first day of April 1962. I shall shortly show that these cases are the

cases of certificated landlords who belong to the categories specified in sub-section (4) of section 33B and who have not given notice in

accordance with sub-section (3) of that section or have given such notice but have not made an application in accordance with sub-section (3) of

section 33B read with section 29 for possession. It is, therefore, clear that the cases of excluded tenants of certificated landlords other than those

belonging to the specified categories mentioned in sub-section (4) of section 33B, who have not given notice or have not made applications in

accordance with sub-sections (1) and (3) of section 33B, come under sub-section (1) of section 33C, while the cases of excluded tenants of

certificated landlords who belong to the specified categories mentioned in sub-section (4) of section 33B and who have not given notice or having

given notice have not made applications under sub-sections (1) and (3) of section 33B, are governed by sub-section (3) of section 33C. Now,

coming to the proviso in sub-section (1) of section 33C, it obviously provides for cases where the landlords have made applications for

possession. It is contended on behalf of respondent No. 1 by the learned counsel Mr. Pendse that this proviso refers to the applications to be

made u/s 14 read with section 29 as mentioned in clause (iii) of sub-section (1) of section 33C and not the applications to be made u/s 33B (3)

read with section 29 mentioned in clause (ii) of sub-section (1) of section 33C. I shall later on deal with this contention. Suffice it to say here that

whereas the main provisions of sub-section (1) of section 33C deal with the cases where the certificated landlords have not given notice or have

not made applications, the proviso deals with the cases where such landlords have made applications.

7. Turning to sub-section (3) of section 33C, it reads thus:

(3) Where the certificated landlord, belonging, to any of the categories specified in sub-section (4) of section 83B, has not given notice of

termination of the tenancy of an excluded tenant in accordance with sub-section (3) of that section, or has given such notice bat has not made an

application thereafter u/s 39 for possession as required by the said sub-section (3), such excluded tenant shall have the right to purchase the land

held by him as tenant within one year from the expiry of the period specified in sub-section (4) of section 33B:

Provided that, where the tenancy is terminated and application for possession is made in accordance with the provisions of sub-section (4) of

section 33B, the tenant shall, within one year from the date on which each application is finally decided be entitled to purchase the land which he is

entitled to retain in possession after such decision.

A simple reading of this sub-section would reveal that it deals with the cases of excluded tenants of certificated landlords who belong to the

categories specified in sub-section (4) of section 33B and who have either not given notice in accordance with sub-section (3) of section 33B or,

having given such notice, have not made applications in accordance with sub-section (3) of section 33B. Similarly, in my opinion, it also covers the

cases of certificated landlords belonging to the categories specified in sub-section (4) of section 33B who have not made applications even after

their disability has ceased in the cases of minors and other persons physically or mentally disabled, and also the cases of successors-in-title of

widows who have not made applications, in accordance with the provisions of sub-section (4), clauses (A) and (B) of section 33B, because the

excluded tenants of such landlords, in accordance with the main provisions of sub-section (3) of section 33C, have the right to purchase the lands

held by them as tenants within one year from the expiry of the period specified in sub-section (4) of section 33B. Obviously, therefore, these

excluded tenants are required to wait for one year after the disability of the certificated landlords belonging to the categories specified in sub-

section (4) of section 33B ceases. If during that period these certificated landlords belonging to the special categories mentioned in sub-section (4)

of section 33B do not make any application during the period of one year after their disability ceases, then their excluded tenants acquire the right

to purchase the lands held by them as tenants, which right they must exercise within one year thereafter. It seems to me, therefore, that sub-section

(3) of section 33C not only covers the cases of the landlords belonging to the categories specified in sub-section (4) of section 33B who have

neither given notice nor have made any application in accordance with sub-section (3) of section 33B, but also the cases of such landlords who

have not given any such notice or made such applications within one year even after their disability has ceased.

8. It would thus be seen that the cases of excluded tenants of certificated landlords other than those belonging to any of the categories specified in

sub-section (4) of section 33B, who have not given notice or made applications in accordance with sub-sections (1) and (3) of section 33B, come

under sub-section (1) of section 33C, while the cases of excluded tenants of certificated landlords belonging to any of the categories specified in

sub-section (4) of section 33B, who have not either given notice or not made any applications in accordance with the provisions of sub-sections

(1) and (3) of section 33B, fall under sub-section (3) of section 33C, and the cases of certificated landlords belonging to the categories specified in

sub-section (4) of section 33B, who have not given notice or not made applications within one year even after their disability has ceased, also

come under sub-section (3) of section 33C.

9. The question then arises what are the provisions in respect of excluded tenants of certificated landlords who have given notice and made

applications, whether these landlords are other than those belonging to the categories specified in sub-s. (4) of s. 33B or the landlords who belong

to such specified categories but who have given notice and made applications within one year after their disability has ceased ?. It is not disputed

before me that sections 33B and 33C are the only provisions in respect of termination of tenancy by certificated landlords, and purchase by

excluded tenants, of lands to which section 88C applies. Section 33B does not contain any provisions enabling the excluded tenants of such

landlords to purchase the lands held by them as tenants from such landlords. The only provisions in this respect are contained in the proviso to sub-

section (1) of section 33C and the proviso to sub-section (3) of section 33C. I have not been pointed out any other provision enabling excluded

tenants to purchase lands held by them as such tenants from their certificated landlords who have given notice and made applications except the

provisions contained in the aforesaid provisos. It is true that sections 32 to 32R (both inclusive), so far as they are applicable, are made applicable

to the purchase of land by an excluded tenant in view of the provisions of sub-section (5) of section 33C. But before sections 32 to 32R can

apply, there must be some provision in the Act conferring the right of purchase on an excluded tenant and that provision, as I have already

indicated, can be found only in these two provisos. I first propose to deal with the proviso to sub-section (3) of section 33C.

10. This proviso says that where the tenancy is terminated and application for possession is made in accordance with the provisions of sub-section

(4) of section 33B, the tenant shall, within one year from the date on which such application is finally decided, be entitled to purchase the land

which he is entitled to retain in possession after such decision. The termination of tenancy and application for possession to be made contemplated

by this proviso are the termination of tenancy and application for possession in accordance with the provisions of sub-section (4) of section 33B. It

is, therefore, obvious that this proviso applies only in those cases in which the tenancy is required to be terminated and an application for

possession is to be made in accordance with the provisions of sub-section (4) of section 33B. Turning, therefore, to sub-section (4) of section

33B, I have already pointed out that the first part of this sub-section, viz.

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,

obviously does not refer to any tenancy to be terminated or application to be made. It is the latter part of this sub-section, viz.

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 snob application

made-

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

(i) in the cases 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:

which speaks of termination of tenancy and application to be made, because this part of sub-section (4) of section 33B says that if the certificated

landlord belonging to any of the categories mentioned in the first part of sub-section (4) has not given notice and has not made an application as

required by sub-sections (1) and (3), then ""such notice may be given and such application made"" by the landlords coming under clauses (A) and

(B). Therefore, it is the latter part of sub-section (4) of section 33B which enables the minors and other physically or mentally disabled persons

whose disability has ceased to give notice and make an application as required by sub-sections (1) and (3) of section 33B, because under clause

(A) in the case of a minor, he can give notice and make such an application within one year after he attains majority, and in the case of other

persons physically or mentally disabled, they can give notice and make applications after their physical or mental disability ceases. So far as the

widows are concerned, their successors-in-title can give notice and make such applications within one year from the date on which widow''s

interest in the land ceases. It seems to me, therefore, that when the proviso to sub-section (3) of section 33C says that where the tenancy is

terminated and application for possession is made ""in accordance with the provisions of sub-section (4) of section 33B"", the tenancy of which

termination is contemplated and in respect of which application for possession is to be made is the tenancy which is required to be terminated in

accordance with the latter part of sub-section (4) of section 33B as required by sub-sections (1) and (3) of the said section. In my opinion,

therefore, this proviso cannot govern the cases of certificated landlords belonging to any of the categories specified in sub-section (4) of section

33B, viz. minors, widows and persons subject to any physical or mental disability and who have given notice and made applications, because sub-

section (4) of section 33B itself indicates that they can give notice and make such applications under sub-sections (1) and (3) of section 33B of the

Act, and so long as they still continue to be subject to their disabilities, they are not enabled to give notice and make such applications under sub-

section (4) of section 33B. As I have already pointed out, it is only those certificated landlords belonging to the special categories mentioned in

sub-section (4) of section 33B, who have not given notice and made applications so long as they were subject to their disabilities but have given

notice and made applications after their disability ceased, who are enabled to give notice and make applications under sub-section (4) of section

33B. The proviso under consideration specifically says that for the purposes of that proviso, the tenancy is required to be terminated and

application for possession is to be made in accordance with the provisions of sub-section (4) of section 33B and not in accordance with the

provisions of sub-sections (1) and (3) of the said section. It is, no doubt, true, as I have already said, that ultimately even these persons are

required to give notice and make applications under sub-sections (1) and (3) of section 33B. But the fact remains that the Legislature has enacted

that for the purposes of this proviso, the tenancy is to be terminated and application for possession is to be made in accordance with the provisions

of sub-section (4) of section 33B. The intention of the Legislature appears to be to apply this proviso only to the cases of excluded tenants of those

certificated landlords belonging to the categories specified in sub-section (4) of section 33B who have ceased to be subject to their disabilities. It

seems to me, therefore, that this proviso to sub-section (3) of section 33C applies to the cases of excluded tenants of those certificated landlords

only who belong to the special categories mentioned in sub-section (4) of section 33B and who have not given notice and made their applications

during the period they were subject to their disability but who have given notice and made such applications after their disability has ceased.

11. The question then arises what is the provision regarding the cases of excluded tenants of certificated landlords other than those belonging to the

categories specified in sub-section (4) section 33B and of the landlords belonging to such categories and in either case who have given notice and

made such applications under sub-sections (1) and (3) of section 33B and who have failed? In this connection, the learned counsel Mr. Damle for

the petitioner has relied upon the proviso to sub-section (1) of section 330, while the learned counsel Mr. Pendse has relied upon the proviso to

sub-section (3) of section 33C, so far as the applications made by certificated landlords belonging to the categories specified in sub-section (4) of

section 33B are concerned. As regards the landlords other than those who belong to the specified categories mentioned in sub-section (4) of

section 33B, he has not been able to point out to me any provision contained in Part (II-A) of Chapter III, which alone deals with termination of

tenancies by certificated landlords and purchases by excluded tenants.

12. Coming to the proviso to sub-section (1) of section 33C, it says 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. Now, sub-clause (ii) of sub-section (1) section 33C, as I have already pointed out, refers to applications u/s 29 read with sub-

section (3) of section 33B. Sub-clause (iii) refers to applications u/s 14 read with section 29. Then comes the proviso in question which says 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."" The question that falls for consideration is what

applications are contemplated by the words ""such application for possession"" used in this proviso? In my opinion, the words ""such application for

possession"" in this proviso refer not only to applications mentioned in sub-clause (ii) but also to applications mentioned in sub-clause (iii) of sub-

section (1) of section 33C. Obviously, no application is contemplated either in sub-clause (i) of sub-section (1) of section 33C or in the main

provision of sub-section (1) of that section exclusive of sub-clauses (i) to (iii) and the proviso. According to the learned counsel Mr. Pendse, the

words ""such application for possession"" must necessarily refer only to those applications which are contemplated by sub clause (iii) of sub-section

(1), because, according to him, the location of this proviso and the use of the word ""such"" immediately after sub-clause (iii) definitely indicate that

the applications contemplated in the words ""such application for possession"" can only be the applications referred to in sub-clause (iii) viz, the

applications u/s 29 read with section 14 of the Act. I am unable to agree with this contention. In my opinion, for the reasons which I shall shortly

show the words ""such application for possession"" used in the proviso to sub-section (1) of section 33C contemplate applications referred to in

sub-clauses (ii) and (iii) both, of sub-section (1) of section 33C of the Act.

13. Now, in the first place, if the argument of the learned counsel Mr. Pendse is accepted, the result would be that the Legislature has provided for

the right to purchase of excluded tenants of those certificated landlords only who have terminated tenancies and made applications u/s 14 read with

section 29 of the Act and not in respect of excluded tenants of those landlords who have made applications u/s 33B (3) read with section 29 of the

Act. In my opinion, this is something impossible to contemplate, particularly when the learned counsel has not been able to point out any other

provision which can cover the cases of such excluded tenants. It seems to me, therefore, that the proviso to sub-section (1) of section 33C is not

only the proviso to sub-clause (iii) but also to sub-clause (ii) of sub-section (1) of section 33C.

14. It is then argued by the learned counsel Mr. Pendse that even if the proviso is the proviso to sub-clause (ii) of sub-section (1) of section 33C

also, still it is not possible to say that the applications contemplated by the proviso are the applications by the certificated landlords belonging to the

categories specified in sub-section (4) of section 33B also. At the most, according to the argument of the learned counsel, the proviso

contemplates applications by the landlords other than those belonging to the categories specified in sub-section (4) of section 33B and not the

applications by the certificated landlords belonging to the special categories mentioned in sub-section (4) of that section. In support of his

argument, he relies upon the words ""except as otherwise provided in sub-section (3)"" used in the main provision of sub-section (1) of section 33C

excluding sub-clauses (i) to (iii) and the proviso. According to the learned counsel, these words show that the cases of excluded tenants of

certificated landlords belonging to the special categories mentioned in sub-section (4) of section 33B do not come under sub-section (1) of section

33C and, therefore, they also do not come under the proviso to that sub-section of section 33C. The argument of the learned counsel is that the

proviso to sub-section (1) of section 33C cannot be interpreted to cover the cases which do not come under that sub-section. I do not think that

there is any force in this argument. In my opinion, the words ""except as otherwise provided in sub-section (3)"" mean that in the cases provided for

by sub-section (3) of section 33C, excluded tenants holding lands from certificated landlords shall be deemed to have purchased from their

landlords their lands within one year from the expiry of the period specified in sub-section (4) of section 33B and not on the first day of April 1962

as provided in sub-section (1) of section 33C, and in the cases of excluded tenants of those landlords who do not come under sub-section (3) of

section 33C, they would be deemed to have purchased the lands held by them on the first day of April 1962, provided of course the conditions

mentioned in sub-clauses (i) to (iii) of sub-section (1) are fulfilled. What is excepted by these words is the cases of those excluded tenants whose

landlords come under sub-section (3) of section 33C. These words do not serve any other purpose. Secondly, sub-clause (ii) of sub-section (1) of

section 33C definitely shows that the applications contemplated by that sub-clause and the applications u/s 29 read with sub-section (3) of section

33B. I have already pointed out that the certificated landlords belonging to the special categories mentioned in sub-section (4) of section 33B can

also apply u/s 29 read with sub-section (2) of section 33B after giving notice as required by sub-sections (1) and (3) of that section. Thirdly, if the

proviso to sub-section (3) of section 33C governs only the cases of excluded tenants of those landlords who have applied under sub-section (4) of

section 33B after their disability has ceased, then there is no other provision under which excluded tenants of certificated landlords belonging to the

special categories mentioned in sub-section (4) of section 33B who have applied for possession, can have their right to purchase the lands held by

them after the applications made by such landlords are rejected.

15. The learned counsel Mr. Pendse has then relied upon the well-known principle of interpretation of proviso, according to which the true

function of a proviso is to take something out of a section and deal with a part of the section. It is not the function of the proviso to cover an ambit

wider than the section itself. Relying on this principle, the learned counsel Mr. Pendse has argued that if the interpretation sought to be put on the

provisos by the learned counsel Mr. Damle for the petitioner is accepted, then those provisos would cover a field wider than the respective main

provisions viz. sub-sections (1) and (3) of section 33C to which these provisos are attached as provisos respectively. The argument is that if the

proviso to sub-section (1) of section 33C is interpreted to include the applications made even by the certificated landlords belonging to the special

categories mentioned in sub-section (4) of section 33B, then in spite of the use of the words ""except as otherwise provided in sub-section (3)

used in sub-section (1) of section 33C, which words exclude the cases of certificated landlords, the proviso would cover such cases also.

Likewise, with respect to the proviso to sub-section (3) of section 33C, the contention is that if that proviso is interpreted to cover the cases of

excluded tenants of those certificated landlords only who have made their applications after their disability has ceased, it would cover a wider field

than is contemplated by sub-section (3) of section 33C. The argument is that sub-section (3) of section 33C contemplates only the cases of

excluded tenants of certificated landlords belonging to any of the categories specified in sub-section (4) of section 33B, as the words ""where the

certificated landlord belonging to any of the categories specified in sub-section (4) of section 33B"" indicate. These words, according to the learned

counsel, do not include the cases of certificated landlords whose disability has ceased. The question, therefore, that falls for consideration is what is

the nature and meaning of this provision ? I first purpose to deal with the proviso to sub-section (1) of section 33C.

16. In the first place, whereas sub-section (1) of section 33C inclusive of sub-clauses (i) to (iii) deals with the cases in which the certificated

landlords have not either given notice or after having given notice have not made any applications contemplated by sub-clauses (ii) and (iii), the

proviso definitely contemplates those cases only where such landlords have made applications for possession u/s 29. Surely, therefore, the proviso

does not cover the same field as covered by the main provision of sub-section (1) inclusive of sub-clauses (i) to (iii). Secondly, the date of deemed

purchase contemplated by sub-section (1) with sub-clauses (i) to (iii) is the first day of April 1962, while the proviso speaks of the date of this

purchase being the date of final decision of such application. It is thus clear that the proviso to sub-section (1) of section 33C does not cover the

same field as that covered by that sub-section with sub-clauses (i) to (iii) exclusive of the proviso. The question then naturally arises why the

proviso is added as a proviso to sub-section (1) of section 33C? It seems to me that sub-section (1) inclusive of sub-clauses (i) to (iii) provides for

the cases of excluded tenants of those landlords who are entitled to give notice and make an application under sub-sections (1) and (3) of section

33B or u/s 14 but have not made any such applications, and the proviso governs the cases of such landlords only who have made such

applications. Thus, sub-section (1) of section 33C inclusive of the proviso applies to the cases of excluded tenants of those landlords only who are

enabled to give notice and make applications under sub-sections (1) and (3) of section 33B, whether or not they have given such notice and made

such applications under sub-sections (1) and (3) of section 33P. That being so, the provisions of sub-section (1) of section 33C inclusive of sub-

clauses (i) to (iii) provide for cases where no notice is given or no application made by such landlord, and the proviso speaks of such cases of

excluded tenants where such landlords have made such applications. Perhaps, the Legislature added this proviso as a proviso only because sub-

section (1) of section 33C deals with the cases of excluded tenants only of those landlords who are enabled to give notice and make applications

under sub-sections (1) and (3) of section 33B, whether or not they are ordinary landlords or the landlords belonging to the special categories

mentioned in the first part of sub-section (4) of section 33B. Otherwise, it seems to me that the proviso is an independent proviso providing for the

cases of excluded tenants of those landlords only who can apply under sub-sections (1) and (3) of section 33D of the Act.

17. Coming to the proviso to sub-section (3) of section 33C, I have already pointed out that the main provision of sub-section (3) covers the cases

of the certificated landlords belonging to the special categories mentioned in sub-section (4) of section 33B, who have not made applications in

accordance with sub-section (3) of section 33B and also of the certificated landlords who have not made such applications in accordance with

sub-section (4) of section 33B even after their disability has ceased, while the proviso, as I have already said, governs the cases of those landlords

only who have given notice and made applications in accordance with the provisions of sub-section (4) of section 33B. In other words, the proviso

applies to the cases of those landlords belonging to the special categories specified in sub-section (4) of section 33B who have given notice and

applied after their disability has ceased. Here again, the learned counsel Mr. Pendse has pointed out that if this interpretation is accepted, the

proviso is interpreted to mean that it covers a wider field than what is covered by the main provision of sub-section (3) of section 33C. In fact, as

in the case of the proviso to sub-section (1) of section 33C, the main provision of sub-section (3) of section 33C refers to the cases of excluded

tenants where their certificated landlords belonging to the categories specified in sub-section (4) of section 33B have not applied, while the proviso

to sub-section (3) of section 33C refers to the cases of excluded tenants of those landlords who have applied. Secondly, the main provision of this

sub-section (1) refers to the applications under sub-section (3) of section 33B, while the proviso refers to the applications under sub-section (4) of

section 33B. Lastly, the main provision of this sub-section enables the excluded tenants to become purchasers after the expiry of the period of one

year from the date on which the disability of their certificated landlords ceases, while the proviso to that sub-section enables the excluded tenants

to become deemed purchasers within one year from the date on which the applications made by their certificated landlords are finally decided. It

would thus be seen that the field covered by the main provision of sub-section (3) of section 33C is altogether different from the field covered by

the proviso to that sub-section. Why then this proviso is added as a proviso to sub-section (3) ? It seems to me that just as cases of certificated

landlords coming under sub-sections (1) and (3) of section 33B are dealt with under sub-section (1) of section 33C, cases of certificated landlords

coming under sub-section (4) of section 33B are dealt with under sub-section (3) of section 33C. In my opinion, therefore, the provisos to both

these sub-sections (1) and (3) of section 33C are substantive provisions independent of the main provisions and in one sense they are only the

additions to the main provisions. The location of these provisos is mainly due to the reasons I have already indicated. Their nomenclature as

provisos"" is a misnomer.

18. The learned counsel Mr. Pendse has, however, argued that the proviso to the main enactment cannot be interpreted as a provision independent

of the main enactment or addition to it, because the proper function of a proviso is to except and deal with a case which would otherwise fall within

the general language of the main enactment, and its effect is confined to that case. In other words, the proper way to regard a proviso is as a

limitation upon the effect of the principal enactment. The learned counsel, therefore, argues that the duty of the Court in interpreting a proviso must

be to give to the proviso as far as possible a meaning so restricted as to bring it within the ambit and purview of the section itself. In this

connection, I think that it is now settled position regarding the interpretation of a proviso that a Legislature may enact a substantive provision in a

proviso and if the Court is satisfied that the language used in the so-called proviso is incapable of making it applicable to the main enactment, then

the Court, if the proviso has a clear meaning, must look upon the proviso as a substantive provision enacted by the Legislature and must give effect

to it as such. Though ordinarily, the proviso may not be independent of the main enactment, it may sometimes contain a substantive provision. In

this connection, may refer to para. 297, Chapter XXVI, Statutory Construction-Interpretation of Laws, by Crawford, 1940 edn. The learned

author has observed under the caption ""Provisos, Generally"" thus:

Even though the primary purpose of the proviso is to limit or restrain the general language of a statute, the legislature, unfortunately, does not

always use it with technical correctness. Consequently, where its use creates an ambiguity, it is the duty of the Court to ascertain the legislative

Intention, through resort to the usual rules of construction applicable to statutes generally, and give it effect even though the statute Is thereby

enlarged, or the proviso made to assume the force of an independent enactment, and although a proviso as such has no existence apart from the

provision which it is designed to limit or to qualify.....

As a general rule, however, the operation of a proviso should be confined to that clause or portion of the statute which directly precedes it in the

statute. This position, as suggested in Clay Centre State Bank v. McKelvie 19 Fed. (2) 308, is in accord with the rules of grammatical

Construction:-

Its grammatical and logical scope is confined to the subject-matter of the principal clause... While it is sometimes seed to introduce independent

legislation, the presumption is that it is used in accordance with its primary purpose and refers only to the provision to which it is attached.

Nevertheless, this general rule is not always applicable. Although the position of the proviso has considerable influence upon its real character, it is

not necessarily controlling. Accordingly, if the meaning and purpose of the proviso is plain, any inference from its position may and should be

disregarded. In other words, position cannot supersede the obvious intention of the legislature as ascertained from the context and all the

provisions relating to the subject-matter involved.. After all, it is the legislative intent that controls.

Similarly, we have the same opinion expressed in Craies on Statute Law, 7th edn., at page 219, where the learned author has observed thus:

...But sections, though framed as provisos upon preceding sections, may exceptionally contain matter which is in substance a fresh enactment,

adding to and not merely qualifying what goes before.

This Court also in a Full Bench decision in Patel Maganbhai Jethabhai Vs. Somabhai Sursang, , has observed thus:

If, however, the language of the proviso is clear and the subject-matter is clear, the Court will not be deterred from giving true effect to the proviso

merely because it is a proviso to that section, nor would the Court be compelled to say that the ambit of the proviso must be restricted to the ambit

of the section itself. Whether the proviso covers a wide ambit or not would depend upon the language of the proviso.

I, therefore, do not see any difficulty in interpreting a proviso to the main enactment as an independent provision if the language of that proviso and

the general legislative intent permit it. The learned counsel Mr. Pendse also drew my attention to two decisions of the Supreme Court. The first is

reported in The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited, In this

case, their Lordships of the Supreme Court have said that ordinarily it is foreign to the proper function of a proviso to read it as providing

something by way of an addendum or dealing with a subject which is foreign to the main enactment. But at the same time, they have also said in

para. 10 of the judgment that though the proviso has to operate in the same field and if the language of the main enactment is clear, it cannot be

used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says, unless the words of the

proviso are such that that is its necessary effect. Likewise, in the second case reported in Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs.

Subbash Chandra Yograj Sinha, , what their Lordships have observed is that as a general rule, a proviso is added to an enactment to qualify or

create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But in that case, their Lordships

were considering a proviso to section 50 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, which proviso is added as a

saving clause. I, therefore, do not find anything against the principle enunciated above regarding the interpretation of the proviso in either of these

two cases of the Supreme Court.

19. I am, therefore, of the opinion that these provisos, viz. the one to sub-section (1) of section 33C and the other to sub-section (3) of section

33C of the Act, are substantive provisions independent of the provisions of the main enactments, viz. sub-sections (1) and (3) of section 33C, and

in fact they are additions to these sub-sections respectively. I am, therefore, of the view that an excluded tenant of a certificated landlord belonging

to the category of persons subject to any physical or mental disability, is not required to inform his landlord and the Tribunal within one year as

required by sub-section (4) of section 33C, if such a landlord has given notice and made an application as required by sub-sections (1) and (3) of

section 33B and his application is finally rejected, because the case of such an excluded tenant is governed by the proviso to sub-section (1) of

section 33C and not by the proviso to sub-section (3) of section 33C of the Act. Sub-section (4) of section 33C, therefore, does not apply to

such a case. The finding, therefore, recorded by the lower authorities including the Revenue Tribunal that the petitioner has lost his right of purchase

of the land because he did not give intimation in accordance with the provisions of sub-section (4) of section 33C of the Act, cannot be accepted.

The order, therefore, passed by the Deputy Collector and confirmed by the Collector and the Maharashtra Revenue Tribunal, deserves to be set

aside.

20. The order passed by the Deputy Collector and confirmed by the Collector and the Maharashtra Revenue Tribunal in the proceeding started u/s

33C of the Act is hereby set aside, and the proceeding is sent back to the Deputy Collector for disposal according to law in the light of the findings

recorded above, without prejudice to other rights and contentions, if any, of the parties on both the sides. The rule is made absolute. No order as

to costs.