IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5539 OF 2017

M/s.Veekaylal Investment Co. Pvt. Ltd.)
A company registered under the provisions)
of Companies Act, 1956, having Office at)
1017/1018, Dalamal Tower, 10th Floor,)
211, Nariman Point, Mumbai 400 021) ….. Petitioner

Versus

1. Shri Bhalchandra D. Patil,)
Adult, Indian Inhabitant,)
R/o. Patilwadi, Opp.Krishna Tower,)
Chattrapati Shivaji Complex, Road No.2,)
Dahisar (West), Mumbai 400 068)

2. Smt.Anandibai Anant Patil,)
Adult, Indian Inhabitant,)
R/o. Patil House, Pandurang Bhoir Road,)
Dahisar (West), Mumbai 400 068)

3. Shri Narendra Anant Patil,)
Adult, Indian Inhabitant,)
R/o. Ramchandra Pawaskar Road,)
Nr.Goandevi Ground, Dahisar (West),)
Mumbai 400 068)

4. Shri Prafull Anant Patil,)
Adult, Indian Inhabitant,)
R/o. Patil House, Pandurang Bhoir Road,)
Dahisar (West), Mumbai 400 068)

5. Shri Vikas Anant Patil,)
R/o. Patil House, Pandurang Bhoir Road,)
Dahisar (West), Mumbai 400 068)

6. Shri Bharat Anant Patil,)
R/o. Patil House, Pandurang Bhoir Road,)
Dahisar (West), Mumbai 400 068)

7. Shri Haji Ali Mohammad Kasum)
Since deceased per LRs :-)
a. Zulekabai (widow))
Dawood Haji Alimohammad Haji)
Kasum Agboatwala)

b. Abubakar Dawood Agboatwala)

c. Salim Dawood Agboatwala)

d. Aziz Dawood Agboatwala)

e. Farida Dawood Agboatwala)

f. Yasin Dawood Agboatwala)

g. Shabbir Dawood Agboatwala)

h. Zuben Dawood Agboatwala)

i. Smt.Hawabai Mohammad Bilke)

j. Mumtaz Dawood Agboatwala)
All 7(a) to 7(j) Mumbai Haliya Memon)
Mohamaden,)
R/o. 269, Abdul Rehman Street, Mumbai)

k. Mohammad Siddiqui Haji Mohammad)
Patka,)
R/o.Zaveri Building, First Floor,)
11 Jail Street, Behind Agripada Police)
Station, Mumbai 400 011)

l. Abdul Latif Haji Mohammad Siddiqui)
Patka,)
R/o. Ali Manor, First Floor, 8,)

Malbar Hill, Mumbai 400 006)

m. Firoz Haji Mohammad Siddiqui)
Patka,)
Mumbai R/o. Zaveri Building,)
First Floor, 11, Jail Street,)
Behind Agripada Police Station,)
Mumbai 400 011)

n. Hamida Haji Mohammad Siddiqui,)
Patka)
Mumbai R/o. Zaveri Building,)
First Floor, 11, Jail Street,)
Behind Agripada Police Station,)
Mumbai 400 011)

o. Hamubai (daughter) Haji Kasum,)
(wife of Abdul Haji Patka),)
R/o. 282, Abdul Rehman Street,)
Mumbai)

p. Farida Anwar Agboatwala (wife/widow)
R/o.Ali Manor, 4th Floor, 8,)
Little Gibs Road, Malbar Hill, Mumbai)

q. Atiq Anwar Agboatwala,)
R/o.Ali Manor, 5th Floor, 8,)
Little Gibs Road, Malbar Hill, Mumbai)

r. Fahim Anwar Agboatwala,)
R/o.Ali Manor, 5th Floor, 8, Malbar Gibs)
Road, Malbar Hill, Mumbai)

s. Smt.Nabila Susail Khandwani,)
(daughter))
R/o. 22/C, Khanwani House,)
Dargah Street, Mahim, Mumbai 400 016)

8. The Court Receiver,)
High Court, Bombay, Bank of India Building)

Fort, Mumbai 400 001)

9. The Tahsildar @ Agricultural Lands)
Tribunal, Borivali, Having office at)
Dr.N.R.Karode Marg, S.V. Road,)
Borivali (W), Mumbai)

10. The Collector (Mumbai Suburban)
District), having office at)
Administrative Building, 10th Floor,)
Government Colony, Bandra (E),)
Mumbai – 400 051)

11. State of Maharashtra,)
Through its Principal Secretary,)
Revenue Department, Mantralaya,)
Mumbai – 32.) ….. Respondents

Mr.P.K.Dhakephalkar, Senior Advocate, a/w. Mr.Prasad S.Dani, Senior Advocate, Mr.J.G.Reddy, i/b. Mr.Rajeev R.Sharma for the Petitioner.

Mr.R.P.Kadam, A.G.P. for the Respondent nos. 9, 10, 11.

Mr.V.A.Thorat, Senior Advocate, a/w. Mr.Vishwanath Patil, Mr.Vinduprakash Pandey, Mr.Pramodkumar Pandya, i/b. Legal Edge LLP for the Respondent no.2.

Mr.A.Y.Sakhare, Senior Advocate, a/w. Mr.Siddharth Karpe, Mr.Vivek Tripathi, i/b. Mr.Pushparaj Singh for the Respondent no.3.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 12th OCTOBER, 2018
PRONOUNCED ON : 5th FEBRUARY, 2019

JUDGMENT :

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 28th April,2017 passed by the Maharashtra Revenue Tribunal in Tenancy Revision

Application No. 23 of 2015 filed by the petitioner under section 76 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 rejecting the said revision application arising out of the order dated 5th February, 2015 passed by the collector, Mumbai Suburban District in appeal under section 74 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 confirming the order dated 2nd December,2013 passed by the learned Tahsildar (for short the said MTAL Act). Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The land in dispute is land bearing Survey No.318, Hissa No.7A, area admeasuring 1 Acre 12 Gunthas situated at Village Dahisar, Taluka Borivali (hereinafter referred to as the suit property). It is the case of the petitioner that the suit property among various other properties situated at Village Dahisar, Taluka Borivali totally admeasuring approximately 644 acres land originally stood in the name of and belonged to one Mr.Haji Ali Mohammed Haji Cassum. The said Mr.Haji Ali Mohammed Haji Cassum died on 7th November,1946. After the death of the said Mr.Haji Ali Mohammed Haji Cassum, his legal heirs filed administrative suit bearing no.3415 of 1947 in this court for the administration of the entire estate of the said Mr.Haji Ali Mohammed Haji Cassum.

3. By an order dated 30th June, 1950, this court appointed the court receiver in the said suit as receiver of the property of the said Mr.Haji Ali Mohammed Haji Cassum with all powers under Order XL Rule 1(d) of the Code of Civil Procedure, 1908. This court by an order dated 25th November, 1952 allowed the court receiver to sell the land

admeasuring about 644 Acre situated at Village Dahisar, Taluka Borivali by public auction.

4. It is the case of the petitioner that pursuant to the said order passed by this court, the court receiver conducted an auction on 29th March,1962 and confirmed the sale in favour of Mr.K.Lalchand on 30th March,1962 in respect of the said land admeasuring 644 Acre. Mr.K.Lalchand on behalf of the petitioner participated in the said bid and submitted the highest bid in the sum of Rs.13,50,000/-.

5. On 29th March,1962, the court receiver submitted a report before this court and prayed that the court receiver be authorized to accept the said offer of Rs.13,50,000/- on the terms and conditions mentioned in the said offer letter and to complete the sale in favour of the said Mr.K.Lalchand and/or his nominee or nominees. By an order dated 30th March,1962, this court allowed and authorized the court receiver to accept the offer of Mr.K.Lalchand for the sum of Rs.13,50,000/- for the entire land admeasuring 644 Acres situated at Village Dahisar and further directed to complete the sale of the said property in favour of the auction purchaser and/or his nominee/nominees. It is the case of the petitioner that the said Mr.K.Lalchand deposited the said amount with the court receiver in respect of the purchase of the said Dahisar land inclusive of the suit property.

6. It is the case of the petitioner that after demise of the said Mr.K.Lalchand, this court by an order dated 29th July, 1970 authorized

the court receiver to execute one or more conveyances in respect of the said lands at Dahisar in the name of nominee/s and the legal heirs of the said Mr.K.Lalchand to be joined as confirming parties.

7. In the meanwhile Mr.Bhalchandra D.Patil and others i.e. respondent nos. 1 to 6 herein claiming to be the tenants of the suit property filed a tenancy application under section 32G of the Bombay Tenancy and Agricultural Land Act, 1948 before the learned Tahsildar and Agricultural Land Tribunal, Borivali in respect of the suit property *inter alia* praying for their declaration as tenants and for fixing the purchase price of the suit property. On 29th July, 1970, the court receiver executed about 144 conveyances. It is the case of the petitioner that the formal conveyance for various survey numbers including suit land is still pending due to various litigations between the parties.

8. Sometime in the year 1970, the respondent no.1 and the predecessor of the respondent nos. 2 to 6 jointly filed tenancy application against the court receiver and Mr.Haji Ali Mohammed Haji Cassum claiming to be tenants of 2 Acre and 20 Gunthas land adjacent to the suit property.

9. On 9th November, 1970 the learned Additional Tahsildar recorded the statement of the respondents wherein the respondents submitted that they had no other land except the one which was mentioned in the then tenancy application and obtained the 32M certificate of the MTAL Act in their favour.

10. It is the case of the petitioner that the name of Ms.Chauthubai Dharman Patil in the mutation entry no. 1566 and 1586 dated 16th September, 1956 and 2nd June, 1957 respectively as a cultivator in respect of the suit land. The respondent nos. 1 to 6 are claiming to be the legal heirs of the said Ms.Chauthubai Dharman Patil. The name of the respondent nos. 1 to 6 appeared for the first time in the mutation entry no. 2030 and 4026 dated 20th December,1960 and 6th May, 1968 respectively as legal heirs of the said Ms.Chauthubai Dharman Patil.

11. It is the case of the petitioner that sometime in the year 1959, the said Tahsildar initiated *suo-motu* formal enquiry bearing no. TNC/32G/18/59 under the provisions of MTAL Act which proceedings were subsequently dropped in view of the fact that the suit property was in custody of the court receiver. In the year 1978, the learned Tahsildar again initiated *suo-motu* proceedings under section 32G of the MTAL Act vide case no.106 of 1978.

12. On 12th October, 1978, the petitioner preferred an appeal before the learned Sub-Divisional Officer against the said order passed by the learned Tahsildar. The said appeal however came to be dismissed by the learned Sub-Divisional Officer on the ground that no appeal against the interim order of the *suo-motu* passed by the learned Tahsildar was maintainable. In the year 1980, the petitioner filed revision application bearing no. 224 of 1980 before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal passed an order

thereby allowing the said revision application however maintained the order of the learned Tahsildar to proceed with the said *suo-motu* enquiry vide case no.106 of 1978. It is the case of the petitioner that the said enquiry however was never completed by the learned Tahsildar. The respondent nos. 1 to 6 were parties to the said proceedings.

13. It is the case of the petitioner that in the year 1984, the respondent nos.1 to 6 entered into a Memorandum of Understanding with one Nalini Tejura with respect of the suit property. The said Memorandum of Understanding was however challenged by a party by filing a proceeding. The parties filed consent terms in those proceedings. The respondent nos. 1 to 6 had allegedly given possession to Mr.Tejura. It is the case of the petitioner that the respondent nos. 1 to 6 did not have any title over the suit land and to enter into any such consent terms and to handover the alleged possession to the said Mr.Tejura.

14. It is the case of the petitioner that sometime in the year 2012, the respondent nos. 1 to 6 again entered into a Memorandum of Understanding with one developer i.e. Prisha Developers. The suit for specific performance is pending before the City Civil Court at Dindoshi between the respondent nos. 1 to 6 and Prisha Developers in respect of the said land.

15. On 26th June, 2013, the respondent nos. 1 to 6 filed a fresh application under section 32G of the MTAL Act before the learned

Tahsildar and Additional Land Tribunal, Borivali for the fixation of purchase price of the suit property. In the said proceedings, the respondent nos. 1 to 6 relied upon some mutation entries and photocopies of the Khand receipt without bearing any dates and description of the property in those receipts. It is the case of the petitioner that those receipts were for the adjacent land for which the proceedings under 32G of the MTAL were concluded in the year 1970 .

16. On 29th July, 2013 , the statement of respondent no.1 was recorded by the learned Tahsildar. It was stated by the respondent no.1 in the said statement that the suit property was mutated in the name of one Moreshwar Dharman Patil without proving the nexus between the respondents and Moreshwar Dharman Patil. On 29th July, 2013, a Panchanama was drawn by the learned Talathi. It was stated in the said Panchanama that the suit property belonged to the said Mr.Moreshwar Dharman Patil.

17. On 2nd August,2013, the learned Talathi submitted its report stating that the said mutation entry no.1585 dated 2nd June, 1957 was in the name of the said Mr.Moreshwar Dharman Patil. On 18th November,2013, the petitioner through its advocate filed written arguments. Both the parties made their respective submissions before the learned Tahsildar. The case was closed for orders. On 2nd December, 2013, the learned Tahsildar allowed the said application filed by the respondent nos. 1 to 6 under section 32G of the MTAL Act and fixed the purchase price.

18. The petitioner filed an appeal against the said order dated 2nd December,2013 before the learned Collector. On 5th February, 2015, the learned collector dismissed the said appeal filed by the petitioner and confirmed the order passed by the learned Tahsildar. The petitioner thereafter filed a revision application (23 of 2015) before the Maharashtra Revenue Tribunal impugning the said order dated 5th February, 2015 passed by the learned collector. The petitioner filed its written arguments and list of authorities before the Maharashtra Revenue Tribunal.

19. On 28th April, 2017 the Maharashtra Revenue Tribunal dismissed the said revision application bearing no. 23 of 2015 filed by the petitioner and upheld the order passed by the learned collector on 5th February,2015 and the order passed by the learned Tahsildar on 2nd December,2013. The petitioner has impugned these orders by filing this writ petition under Article 227 of the Constitution of India.

20. Mr.Dhakephalkar, learned senior counsel for the petitioner invited my attention to the documents annexed to the writ petition, averments made in the affidavits, the grounds raised in the writ petition and also to the orders passed by the authorities below. He submits that it was not the case of the applicants before the authorities that Mr.Anant D.Patil or his widow was the tenant in respect of the suit property as on 1st April, 1957 i.e. the tillers day. The respondent had not mentioned as to who was the tenant in respect of the suit property. He invited my attention to the statement of Mr.Bhalchandra D.Patil recorded before the Additional Tahsildar on 9th November, 1970 in

which the said Mr.Bhalchandra D.Patil allegedly stated that he was cultivating the suit property since last 30 to 40 years. He came to be in possession of the suit property. There was no Kabjedar according to the said statement. He had stated that since he became the owner after 1st April,1957, there was no question of giving any Khand.

21. Learned senior counsel invited my attention to the order dated 2nd December,2013 passed by the learned Tahsildar under section 32G of the MTAL Act. He submits that the said application was filed by Mr.Bhalchandra D.Patil, Smt.Anandibai Anant Patil and four others. The said application was filed in respect of the several properties including the suit property bearing no. 318/7, area ad measuring 1 Acre 34 Gunthas. The learned Tahsildar directed the Talathi to submit a report. He submits that it appears that the learned Talathi thereafter recorded the statement of the said Mr.Bhalchandra D.Patil and submitted a report before the learned Tahsildar.

22. By an order dated 2nd December,2013, the learned Tahsildar allowed the said application filed by Mr.Bhalchandra D.Patil and six others and directed that the price of the suit property be fixed under section 32G of the Act. He submits that the statement made by the applicants in the said application before the Talathi was not on oath. The name of Mr.Moreshwar Dharman Patil was mentioned in the statement made by the respondent no.1 which was not on oath. The name of Ms.Chauthubai Dharman Patil was not even mentioned. The application filed by the said Mr.Dharam Patil and others did not even state the name of Mr.Moreshwar D.Patil. In the year 2013, those

applicants claimed tenancy prior to 1st April, 1957.

23. Learned senior counsel invited my attention to the report dated 2nd August, 2013 submitted by the learned Talathi who allegedly visited the suit land in the year 2013. Learned senior counsel placed reliance on Rule 17(1) and (2) of the MTAL Rules, 1956 and would submit that under the said provisions, Tahsildar was required to issue a public notice in form no.8 upon party filing an application under section 32G of the Act. The statement of such party was required to be recorded on oath by the Tribunal. He submits that in this case the statement was recorded by the Talathi first and thereafter public notice was issued by the learned Tahsildar contrary to Rule 17(1) of the said Rules. He submits that the said notice was published on 26th August,2013 whereas the statement was already recorded on 29th July, 2013 by the Talathi.

24. Learned senior counsel invited my attention to the order passed by the learned collector on 5th February,2015. He submits that the said order passed by the learned collector is also totally perverse and contrary to the provisions of section 32(F) and (G) and also rule 17(1) and 17(2) of the Rules. He submits that the court receiver is admittedly not yet discharged from the suit property. The respondents thus ought to have taken permission of this court to make the court receiver as a party respondent to the original application filed before the learned Tahsildar and the Agricultural Land Tribunal, Borivali.

25. Learned counsel placed reliance on the judgment of Allahabad High Court in First Appeal No.181 of 1940 decided on 14th March,1944 in case of Sham ***Lal Gomatwala vs. Nand Lal and others, AIR (31) 1944 Allahabad 220*** in support of the submission that since the court receiver was appointed in respect of the suit property, the permission of the court was required to prosecute the said suit or to implead the court receiver as a party respondent to the said application. Learned senior counsel also placed reliance on the judgment of Supreme Court in case of ***Shree Ram Urban Infrastructure Limited vs. Court Receiver, High Court, Bombay, (2015) 5 SCC 539*** and more particularly paragraph (7) and would submit that the court receiver being an officer of the court and as such cannot sue or be sued except with permission of the court.

26. It is submitted by the learned senior counsel that the respondents had merely relied upon the mutation entries before the authorities below which were much after the tillers day i.e. 1st April, 1957. He submits that the mutation entry does not create any title in the property and has only presumptive value especially when no notice was issued to the landlord. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Hanmanta Daulappa Nimbal vs. Babasaheb Dajisaheb Londhe, AIR 1996 SC 223*** and more particularly paragraph (6) thereof and submits that the entries in revenue records and payment of land revenue without giving notice to the landlord cannot establish possession of tenant.

27. Learned senior counsel for the petitioner vehemently placed reliance on section 32(F) (1) (b) (II) of the Act and would submit that the respondents (original applicants) ought to have applied for fixation of purchase price under section 32G of the Act within one year from the death of their mother i.e. Ms.Chauthubai Dharman Patil who was a widow. In support of this submission, learned senior counsel placed reliance on the judgment delivered by the Full Bench of this court in case of ***Vishnu Shantaram Desai vs. Smt.Indira Anant Patkar, 1972 Mh.L.J. 124*** and in particular paragraphs 5, 13, 14, 16 to 18, 25, 27 to 32 in support of the submission that if the tenant is a widow, she has no right to purchase. The right under section 32G can be exercised only by the successors in title of such widow within one year from the date of death of such widow when her interest in the land ceases to exist. In such a case, tenant widow cannot be deemed to have purchased the land under section 32G of the Act.

28. It is submitted by the learned senior counsel that all the authorities totally overlooked a crucial aspect in the matter that respondent nos. 1 to 6 herein were claiming their successive rights in the tenancy rights through their mother late Ms.Chauthubai Dharman Patil who had never applied for declaration of tenancy in her lifetime and was widow on tillers date i.e. 1st April, 1957. The respondent nos. 1 to 6 admittedly had not filed any application under sexton 32G within one year from the date of the demise of the late Ms.Chauthubai Dharman Patil.

29. It is submitted by the learned senior counsel that in this case the predecessors in title of the petitioner had disputed the tenancy and thus the learned Tahsildar ought to have directed the original applicants to obtain their status under section 70(b) of the MTAL Act before entertaining an application under section 32G of the Act. There was an unexplained delay of 56 years in making such application under section 32G by the respondent which could not have been condoned by the authorities below. None of the 7/12 extract relied upon by the respondents in respect of the suit property disclosed the name of Ms.Chauthubai Dharman Patil. It was the case of the respondent nos. 1 to 6 themselves that on the date of filing an application under section 32G of the Act, the land in question was not capable of cultivation nor they were interested in cultivating the land. He submits that since the land prices had substantially risen, the respondents belatedly filed such application under section 32G after 56 years.

30. It is submitted by the learned senior counsel that in the year 1970, the respondents had adopted the proceedings under section 32G before the learned Tahsildar in respect to survey nos.63, 65, 66, 67 and 70 which was situated adjacent to the suit land. No proceedings were however adopted in respect of the suit property by the respondents. It was admitted by the respondent nos. 1 to 6 that they had filed an application under section 32G of the Act for Survey No.67, Hissa no.1, village Dahisar and Taluka Borivali being application no.TNC/32G/Dahisar/18/70 and accordingly Tahsildar accepted them as protected tenants and deemed purchaser of the suit land and issued a certificate under 32 M-Certificate on 11th November,

1970 with respect to the said land.

31. It is submitted that the respondent nos. 1 to 6 were aware that they were not in possession of suit property on the tillers day and had thus not filed an application under section 32 G for about 56 years along with other applications. He submits that the applications made under section 32 G by the respondent nos. 1 to 6 were barred by law of limitation.

32. Learned senior counsel invited my attention to the tenancy application no.18 of 1970 filed by the respondent nos. 1 and 2 before the learned Tahsildar on 2nd November, 1970. In the said application, it was the case of the respondent nos. 1 and 2 that they were personally cultivating the suit land as a protected tenants since last 30 – 40 years and thus was entitled to purchase the suit land under section 32-G of the BTAL Act of 1948. The evidence of the respondent nos. 1 and 2 was recorded by the Talathi within one week i.e. on 9th November, 1970. The learned Tahsildar had passed an order on 11th November,1970 declaring the respondent nos. 1 and 2 as protected tenants and purportedly fixed the price. The entire exercise was done within a short span without complying with the mandatory rules required to be followed by conducting such enquiry.

33. It is submitted by the learned senior counsel that the respondent no.1 stated in his statement before the Talathi that before 1st April, 1957, the respondents had given Khand to the then court receiver as after tillers date, the tenant had become the owner of the

land. Similar statement was made by the respondent no.2 before the learned Tahsildar in the said application. He submits that in the present case, respondent nos. 1 to 6 claimed to be tenant of survey no.318, Hissa no.7A which was never claimed and owned by them and were never in actual and physical possession. The respondents had produced the Khand receipt which were of the year 1960-62 which also did not mention the survey number of the suit property on it.

34. It is submitted that all the authorities below totally overlooked a crucial fact that the respondents had not proved the relationship between the tenant and the landlord as contemplated under the provisions of MTAL Act before the learned Tahsildar. The learned Tahsildar have passed an illegal order under section 32-G and 32-M of the Act. The suit property was admittedly in the custody of the court receiver and the final conveyance is yet to be executed in favour of the petitioner and/or its nominee/nominees. He submits that Ms.Chauthubai Dharman Patil thus did not have any locus to purchase the land without permission of the court receiver.

35. The next submission of the learned senior counsel is that the suit land comes into the municipal limits of Bombay and being reserved for non-agricultural and industrial development purpose. He invited my attention to the judgment of this court in case of ***The Municipal Corporation of Greater Bombay vs. Jankisonya and 6 others*** delivered on 22nd September, 1978 in Special Civil Application No.2136 of 1972 and would submit that this court after considering various notifications under section 88(1)(b) of the MTAL Act held that

the provisions of the said MTAL Act were not applicable to the land situated within the Greater Bombay and accordingly on 1st April, 1957, the tenant did not get the right to purchase the disputed land and could not initiate the proceedings under section 32G of the Act. He relied upon the notifications dated 1st August 1956, 1st February 1957 and 29th March, 1957 in support of his this submission.

36. The next submission of the learned senior counsel for the petitioner is that the receipt referred to and relied upon by the respondent nos. 1 to 6 before the authority was false and fabricated. The said receipt was allegedly issued by the office of the court receiver in the year 1954 in favour of Ms.Chauthubai Dharman Patil. The said receipt however bear the survey number for which the said receipt was issued. The said receipt would show that Ms.Chauthubai Dharman Patil was giving 6th part of the agricultural produced of the land to the court receiver. He submits that the records produced by the respondents themselves clearly show that the suit property was uncultivable and was the grass land. The receipt thus obtained by the respondent nos. 1 to 6 was manipulated and could not be relied upon.

37. Learned senior counsel for the petitioner submits that the respondent nos. 1 to 6 were claiming their tenancy from the original owner Mr.Haji Ali Mohammed Haji Cassum however they had not produced even a single Khand receipt allegedly issued by the said Mr.Haji Ali Mohammed Haji Cassum. The said Mr.Haji Ali Mohammed Haji Cassum expired in the year 1946 and thereafter the court receiver came to be appointed in the year 1950.

38. It is submitted by the learned senior counsel that the records in this matter clearly shows that the *suo-motu* proceedings were initiated in respect of the property on 6th March,1959 in tenancy case no. Ten.32G/Dahisar, 18/59 by the learned Tahsildar and ALT, Borivali. It was held in the said proceedings that the proceedings were precluded by the provisions of section 88-B(1) (d) of the Act and hence the said proceedings were dropped on 10th August, 1959. He submits that the said proceedings which were already dropped thus could not have been adjudicated upon by the competent authority again on the application of the same parties on the same ground. The learned Tahsildar had again initiated *suo-motu* proceedings for enquiry vide case no.106 of 1978.

39. It is submitted that the petitioner had preferred a revision application before the Maharashtra Revenue Tribunal (224 of 1980) against the order passed by the Sub-Divisional Officer. The Full Bench of the Maharashtra Revenue Tribunal passed an order on 26th November,1981 thereby disposing of the said revision application and directing that the learned Tahsildar can proceed with the enquiry. The respondent nos. 1 to 6 were parties to the said proceedings. No steps however were taken by the respondent nos. 1 to 6 for about 36 years after remand of the matter by the Maharashtra Revenue Tribunal to the learned Tahsildar. After expiry of the 36 years the respondent nos.1 to 6 filed fresh application under section 32 G on 28th June, 2013 which was *ex-facie* barred by law of limitation and also *res judicata*.

40. It is submitted by the learned senior counsel that the respondent nos. 1 to 6 had already executed development agreement dated 1st February, 1985 in favour of the third party. In suit no.4024 of 1990 which was filed by the said third party against the respondent nos. 1 to 6, the parties thereto filed consent terms. Under the said consent terms, the respondent nos. 1 to 6 had allegedly handed over the vacant and peaceful possession of the suit property to the third party and executed a letter of possession. The appellate authorities below totally failed to consider this development before passing the impugned order. The respondent nos. 1 to 6 had also entered into Memorandum of Understanding dated 6th August,2012 with Mr.Rajaram Bandekar. This document was also not considered by the Maharashtra Revenue Tribunal.

41. Learned senior counsel submits that the finding of the Maharashtra Revenue Tribunal that there was no violation of the procedure followed by the lower authorities and that the impugned order passed by the lower authorities were passed after considering the material evidence on record is *ex-facie* perverse and contrary to the documents available on record. Similarly the finding of the Maharashtra Revenue Tribunal that the application filed by the respondent nos. 1 to 6 on 28th June, 2013 was not barred by law of limitation is also perverse and contrary to section 32 G and 32 F of the Act. The mutation entry dated 2nd June, 1957 relied upon by the authority was in the name of Ms.Chauthubai Dharman Patil which establishes that the family of the respondent nos.1 to 6 was not in actual and physical possession of the suit property on the tillers day.

42. It is submitted that the respondents had failed to establish their tenancy as on the tillers date and therefore the proceedings filed under section 32 G for fixation of the purchase price was not at all maintainable and was misconceived. He submits that the findings rendered by the Maharashtra Revenue Tribunal on the applicability of section 32 F(1)(b)(ii) of the BTAL Act is *ex-facie* perverse and contrary to the said provision.

43. Mr.Sakhare, learned senior counsel for the respondent no.3 on the other hand would submit that the authorities below have recorded the concurrent findings in favour of the respondents which cannot be interferred with by this court in this writ petition under Article 227 of the Constitution of India. In support of this submission, he invited my attention to the findings recorded by the learned Tahsildar, by the learned collector and by the learned Maharashtra Revenue Tribunal. He also placed reliance on the mutation entry annexed at page 138 of the writ petition. He submits that the learned collector had recorded the finding that the respondents had become deemed purchaser on the tillers day and had upheld the findings of the learned Tahsildar.

44. It is submitted by the learned senior counsel that the Maharashtra Revenue Tribunal also confirmed the findings by the learned Tahsildar and the learned collector impugning the impugned order and has rightly held that Ms.Chauthubai Dharman Patil was cultivating the land and was issued rent receipt by the court receiver.

He submits that kami-jast patra relied upon by the respondents had supported their case which document was not challenged by the petitioner. The court receiver or the predecessor of the petitioner also did not challenge the mutation entry recorded in favour of the respondents. He submits that since the predecessor in title of the respondents was cultivating the land as on the tillers date, the predecessor in title automatically became the deemed purchaser in respect of the suit land. The fixation of purchase price is a ministerial subsequent act which was meticulously followed by his client on 1st April, 1957 itself. The predecessor of the respondents who was cultivating the land became the protected tenant.

45. It is submitted that the proceedings for fixation of purchase price under section 32 G has to be initiated *suo-motu* by the authorities by complying with their duty. He submits that there was an illiteracy prevailing in the villages in the year 1957. The provisions of the MTAL Act being the welfare legislation Act has to be interpreted in favour of the tenant. He submits that the names of the children of Ms.Chauthubai Dharman Patil had been already reflected in the mutation entry.

46. Insofar as the issue raised by the petitioner that the legal heirs of Ms.Chauthubai Dharman Patil had not exercised the rights under section 32 F(1)(b)(ii) within one year from the demise of Ms.Chauthubai Dharman Patil is concerned, it is submitted by the learned senior counsel for the respondent no.3 that the said Ms.Chauthubai Dharman Patil herself was a tenant on 1st April, 1957

and had acquired the tenancy rights in the suit property independently. He submits that the records of such tenancy since 1954 were available and were produced before the authorities. He submits that in the year 1959, the learned Tahsildar had initiated *suo-motu* proceedings in respect of the suit land. The said proceedings were subsequently dropped in view of the appointment of the court receiver. In the year 1978, those proceedings were once again commenced. He submits that the respondents were thus not required to apply for fixation of purchase price under section 32 G within one year from the date of death of Ms.Chauthubai Dharman Patil.

47. Insofar as the issue as to whether section 32 G of the Act were applicable to the Dahisar area or not, learned senior counsel placed reliance on the notification dated 1st August,1956 published in the Bombay Government Gazette dated 9th August,1956 issued by the State Government, the schedule appended to the order dated 1st February,1957 passed under section 7 of the Bombay Land Revenue Code, 1879 thereby amending the Government order dated 23rd December, 1954 by the State Government, notifications dated 28th March, 1957 and 29th March, 1957. He submits that by the said notification dated 29th December,1957, the State Government had specified the area mentioned in the schedule appended thereto as had been reserved for non-agricultural and industrial development. He submits that the village Dahisar was excluded from the said schedule.

48. Learned senior counsel placed reliance on the definition of 'Greater Bombay' defined in The Greater Bombay Laws and the

Bombay High Court [Declaration of Limits] Act, 1945. The said definition of 'Greater Bombay' under section 2(2) and proviso to Schedule 'A' are extracted as under :-

> 2(2) 'Greater of Bombay" means the areas for the time being specified in Schedule A.

SCHEDULE A
Areas comprised in Greater Bombay.
Part IV

The undermentioned villages of the Thane District :-

1. Akse	12. Gorai	23. Marve
2. Akurli	13. Goregaon	24. Maroshi
3. Arey	14. Kaneri	25. Mulund
4. Borivali	15. Kandivli	26. Nahur
5. Charkhop	16. Kurar	27. Pahadi
6. Chinchavali	17. Klerbad	28. Poisar
7. Dahisar	18. Magathane	29. Sai
8. Darivli	19. Malad	30. Shimpoli
9. Dindoshi	20. Malavni	31. Tulshi
10. Eksar	21. Mandapeshwar	32. Wadhawan
11. Gundgaon	22. Manori	33. Valnai
		34. Yerangal

Provided that for the purpose of section 43-C of the Bombay Tenancy and Agricultural Lands Act, 1948, the expression "Greater Bombay" in the said section shall not be deemed to include the villages specified in Part IV of

this Schedule.

49. Learned senior counsel relied upon paragraph (4) of the schedule A and the proviso thereto. The village Dahisar was included in Part IV. It is submitted that in view of the said proviso to part (4), for the purpose of section 43-C of the MTAL Act, the expression 'Greater Bombay' in the said section shall not be deemed to include the villages specified in paragraph (4) of the said schedule. He submits that in view of the said proviso to Part IV of the said Act, the expression 'Greater Bombay' would not include those 34 villages including village Dahisar and thus sections 31 to 32R of the said MTAL Act shall be applicable to the village Dahisar also.

50. Insofar as the judgment of this court in case of ***The Municipal Corporation of Greater Bombay vs. Jankisonya and 6 others*** (supra) relied upon by the learned senior counsel for the petitioner is concerned, learned senior counsel for the respondent no.3 invited my attention to the paragraphs 5 and 9 of the said judgment and would submit that the said judgment delivered by the learned Single Judge of this court was based on the concession of law made by the learned counsel for the tenants who had appeared in the said proceedings and cannot be construed as the precedent. He submits that various notifications issued by the State Government from time to time referred to aforesaid was not brought to the notice of this court and thus the judgment delivered by this court ignoring the notifications issued by the State Government from time to time declaring that the expression 'Greater Bombay' would not include those 34 villages

including the village Dahisar and thus the said judgment being per-incurium not binding on this court.

51. Learned senior counsel placed reliance on the mutation entry no.1566 dated 16th September,1956 and mutation entry no.1586 dated 2nd June, 1957 and would submit that the name of Ms.Chauthubai Dharman Patil was clearly recorded therein. He placed reliance on the mutation entry no.2030 dated 20th December,1960 and would submit that the names of the legal heirs of the said Ms.Chauthubai Dharman Patil were clearly recorded in the said mutation entry.

52. Learned senior counsel for the respondent no.3 placed reliance on the unreported judgment of this court dated 16th June, 1981 in case of ***M/s.Veekaylal Investment Pvt.Ltd. vs. Damodar Dharam Patil & Ors.*** and in particular paragraphs 2, 3 and 7 and would submit that this court had rejected the submission that section 88-B(1) (d) of the MTAL Act applies to the disputed land because the management thereof had been taken by the court receiver and as long as an appointment of the court receiver continues, section 32 of the MTAL Act will not apply. This court held that the said provision was not applicable because the proceeding was not a suit to which the landlord or the tenant was a party. The suit in which the receiver was appointed, the landlord and the tenant were the parties.

53. Learned senior counsel submits that admittedly in this case, *suo-motu* enquiry was initiated firstly in the year 1958 and thereafter in the year 1978. He submits that in the year 1978, the

learned Tahsildar had held that the objections raised by the landlord can be decided at the stage of the final hearing. The said order passed by the learned Tahsildar was confirmed by the Sub-Divisional Officer and the Maharashtra Revenue Tribunal. However, there was no further development in those proceedings.

54. It is submitted by the learned senior counsel that the provision of section 32(G) of the MTAL Act is for fixation of purchase price. He submits that three Courts have already rendered concurrent findings in favour of the respondents and thus those findings cannot be interfered with by this Court under Article 227 of the Constitution of India. The proceedings were already initiated by the Authorities in the year 1958 and 1978 *suo moto* however, was subsequently dropped. He placed reliance on the rent receipt annexed at page 298 of the petition and would submit that various such rent receipts were on record before the Authorities below to show that the Court Receiver had issued those rent receipts in favour of the purchasers of the respondents. Insofar as the ground raised in the petition by the petitioner that the name of Moreshwar Dharman Patil was shown as occupier of the property in the statement made by the respondent no.1 is concerned, it is submitted by the learned senior counsel that no such argument was advanced by the petitioner before the Authorities. The petitioner thus cannot be allowed to raise this issue for the first time in this writ petition.

55. Insofar as the alleged non-compliance of the procedure prescribed under section 32(G)(i)(ii) is concerned, it is submitted by the learned senior counsel that no such plea had been raised by the

petitioner before any of the Authorities below nor such ground was raised even before the Maharashtra Revenue Tribunal. The said statement was made across the bar for the first time before the Maharashtra Revenue Tribunal which argument was specifically rejected by the Maharashtra Revenue Tribunal. He placed reliance on section 32(G)(i) and (ii) and would submit that the said provision applies which *suo-motu* powers are exercised by the Maharashtra Revenue Tribunal for determination of the price of the land to be paid by the tenants. Section 32(G)(iv) applies when the tenant applies for determination of the price of land. He submits that the submission of the alleged non-compliance or Rule 17 has been also urged for the first time by the petitioner before this Court. No such argument was advanced before the two Authorities. He submits that under section 32(G)(i), the duty is cast on the Tribunal to issue notice and to determine the price of land to be paid by the tenants after the tiller's day by publishing a public notice in the prescribed form in each village within its jurisdiction calling upon all the tenants, all the landlords and all other persons interested to appear before the Tribunal on a specific date.

56. Learned senior counsel distinguished the judgment of this Court in case of ***Jaiwant Narayan Maind*** (supra) relied upon by the learned senior counsel for the petitioner and would submit that the facts before this court in the said judgment were totally different. He submits that the petitioner cannot be allowed to take any undue advantage of the illiteracy of the respondents. He relied upon the findings of fact rendered by the Maharashtra Revenue Tribunal in

paragraph 11 of the order passed by the Maharashtra Revenue Tribunal holding that the proceedings initiated under the provisions of section 32(G) were suspended and kept in abeyance and thus it was not possible for the tenants to purchase the suit land. He submits that the said findings being not perverse, cannot be interfered with by this Court. He submits that the Maharashtra Revenue Tribunal has rightly held that since the proceedings under the provisions of section 32(G) were kept in abeyance, the question of giving notice by the tenants under the provisions of section 32(F)(b) did not arise.

57. Insofar as the statement of the respondent no.1 annexed at Exhibit "C" to the affidavit in rejoinder filed by the petitioner stating that the respondent no.1 was not in possession of any portion of the suit land is concerned, it is submitted by the learned senior counsel for the respondent no.3 that no such document was produced by the petitioner before any of the Authorities or before the Maharashtra Revenue Tribunal and thus the petitioner cannot be allowed to rely upon the said document for the first time.

58. Mr.V.A. Thorat, learned senior counsel for the respondent no.2 submits that under section 32 of the MTAL Act, the legal fiction is created about deemed purchase of the land by a permanent tenant and other tenant cultivating the land personally. He placed reliance on section 4 of the Act, which provides that a person lawfully cultivating the land along with another person shall be deemed to be a tenant. He submits that this provision is very wide. A person satisfying the condition of section 4 of the Act becomes a deemed tenant on tiller's

day, whereas section 32(G) provides only for determination of the purchase price.

59. Insofar the submission of the learned senior counsel for the petitioner that the respondents ought to have exercised their right of purchase within one year from the date of the death of the deceased Smt.Chauthubai Dharman Patil and not beyond such period is concerned, it is submitted by the learned senior counsel that the said provision under section 32(F)(i)(b) and (ii) would not apply to the facts of this case in view of the fact that the said Smt.Chauthubai Dharman Patil herself was already a tenant on the tiller's day.

60. Learned senior counsel place reliance on section 32(G)(3) and would submit that even if the tenant fails to appear or makes a statement that he is not willing to purchase a land, the Tribunal is empowered to pass an order in writing declaring that such tenant was not willing to purchase the land and that purchase was ineffective. He submits that under section 32(MM) of the Act, the Tribunal is empowered to give extension of time to make payment of purchase price to the tenants.

61. Learned senior counsel placed reliance on section 3(10) of the Maharashtra General Clauses Act, 1904 which defines “City of Bombay” i.e. the area within the local limits of the ordinary original civil jurisdiction of the Bombay High Court of Judicature immediately before the date on which the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945, came into force. He also

relied upon the definition of "Greater Bombay" under section 3(21) of the said Act. He placed reliance on various notifications already referred to aforesaid issued by the State Government from time to time insofar as village Dahisar is concerned. He submits that none of the notification applied to the lands in village "Dahisar". The village Dahisar was not part of Greater Bombay before commencement of Greater Bombay Laws and Bombay High Court (Declaration of Limits) (Amendment) Act, 1956. The expression "Greater Bombay" also is defined under the provisions of Greater Bombay Laws and Bombay High Court (Declaration of Limits) Act, 1945 under section 2(2) of the said Act which means the area for the time being specified in Schedule -A.

62. Learned senior counsel relied upon the notification dated 1st February, 1957 and would submit that the said notification uses the expression "The area comprised in Greater Bombay immediately before the date of the commencement of the Greater Bombay Laws (Amendment) Act, 1956. He submits that the village Dahisar accordingly came to be included in Greater Bombay by virtue of the Amendment Act, 1956. However in the notification dated 1st February, 1957, it is crystal clear that the notification did not apply to the lands included in that part but only applies to the area immediately before the date of Amendment Act, 1956. He submits that the said notification dated 1st February, 1957 was itself not applicable.

63. Learned senior counsel placed reliance on Schedule-A of Greater Bombay Laws and Bombay High Court (Declaration of

Limits) Act, 1945 and would submit that the village Dahisar came to be included in Greater Bombay by virtue of part-IV of Schedule-A of the Act by the Act 57 of 1956. He strongly placed reliance on proviso to part-IV and would submit that the said proviso clearly excluded newly added area including the village Dahisar from the operation of section 43(1) of MTAL Act. He submits that the provisions of MTAL Act are applicable to the land situated in the village Dahisar even if the said village Dahisar is included in Greater Bombay.

64. Insofar the judgment of this Court in case of ***The Municipal Corporation of Greater Bombay vs. Jankisonya & 6 Ors.*** (supra) relied upon by the petitioner is concerned, it is submitted by the learned senior counsel that the said judgment did not take into consideration the proviso to part-IV of Greater Bombay Laws and Bombay High Court (Declaration of Limits) Act, 1945 and clause 1 of the notification of 1st February, 1957 which excludes the area included in Greater Bombay by virtue of the Amendment Act, 1956. He submits that the said judgment was even otherwise based on the concession of law made by the learned counsel for the tenant and the said judgment being *per-incuriam* is not a binding precedent upon this Court. He also placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Assam State Electricity Board etc. vs. Assam Electricity Shanti Conductor Pvt. Ltd. LEX (SC) 2012 7 26.***

65. It is submitted by the learned senior counsel that section 43(C) of the MTAL Act does not apply to the municipal or cantonment area. It is submitted that section 43(C) has to be read with the proviso

to part-IV. He submits that section 31 to 32-R thus would apply even to Dahisar area because of proviso to part-IV of the 1945 Act. Learned senior counsel placed reliance on section 88-A-I of the MTAL Act and would submit that the said provision clearly protects the tenants. The said provision does not apply to the village Dahisar.

66. Learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Navinchandra Ramanlal vs. Kalidas Bhudarbhai, AIR 1979 SC 1055*** and in particular paragraphs 11 to 15. He submits that by operation of law, the landlord is divested of his ownership on the tiller's day if the tenant complies with the conditions of section 32-G on the tiller's day. The delay, if any, of the tenant for fixation of price does not enure to the benefit of the landlord.

67. It is submitted by the learned senior counsel that the respondents had produced the rent receipts before the authorities as well as before the Maharashtra Revenue Tribunal showing the name of Smt.Chauthubai Dharman Patil and also payment of rent by the said Smt.Chauthubai Dharman Patil prior to the tiller's day. He placed reliance on various judgments relied upon by Mr.Sakhare, learned senior counsel for the respondent no.3. He submits that the Court Receiver, High Court, Bombay had issued various rent receipts in favour of the predecessor in title of the respondent no.2.

68. Mr.Dhakephalkar, learned senior counsel for the petitioner in rejoinder submits that none of the conditions prescribed under section 32-G of the MTAL Act were satisfied by the predecessor in title

of the respondents or even by the respondents. He submits that the insofar as land survey no.818 Hissa no.7A (part) is concerned, the said land was not claimed by the respondents in any other proceedings. No averments were made by the predecessor in title of the respondents or the respondents in any of the pleadings that a lease was created in their favour, when was such lease created in favour of the predecessor of the respondents, no document showing the lease in favour of the predecessor of the respondents was produced. The first mutation entry produced by the respondents was of the year 1956.

69. It is submitted that the learned Tahsildar had sent the matter to the learned Talathi for making an enquiry and to submit a report which was totally illegal. The onus was on the respondents to prove that an interest in the land was created in their favour. He invited my attention to the application made by the respondents before the learned Tahsildar under section 32-G in the year 2013. It is submitted that no procedure was followed by the Tahsildar at all before passing the impugned order holding that the predecessor in title of the respondents was a tenant. No evidence was led before the Tahsildar by any of the respondents. There was thus no question of any cross-examination of any of the respondents before the learned Tahsildar. The mutation entry does not prove any title.

70. Insofar as the rent receipts relied upon by the respondents is concerned, it is submitted by the learned senior counsel that no such rent receipts were produced in respect of the land in question. The receipt dated 3rd December, 1954 produced by the respondents did not

mention the survey number of the land in question. This Court thus has to take into consideration these admitted facts and shall hold that the impugned order passed by the Tahsildar was without following any procedure prescribed under the provisions of MTAL Act and Rules framed therein He relied upon sections 69 to 70 of the MTAL Act in support his submission.

71. It is submitted by the learned senior counsel that no notice was issued by Talathi before conducting any enquiry and submitting the report. The said notice was received by the petitioner only after such report was submitted by Talathi to the Tahsildar. It is submitted by the learned senior counsel that in the proceedings filed under section 32-M of the MTAL Act by the respondents, the respondents could not claim the land in question.

72. Learned senior counsel for the petitioner once again placed reliance on section 32-F(b)(ii) of the MTAL Act and would submit that in view of non-obstante provision, the successors in title of the widow Smt.Chauthubai Dharman Patil were required to file an application within one year from the date of the death of the said Smt.Chauthubai Dharman Patil which admittedly was not filed by the respondents. The tiller's day was shifted to the date of the death of the widow tenant. The said Smt.Chauthubai Dharman Patil had expired in the year 1960. The date of the death of the husband of the said Smt.Chauthubai Dharman Patil was not disclosed.

73. Learned senior counsel strongly placed reliance on the judgment delivered by the Full Bench of this court in case of ***Vishnu Shantaram Desai*** (supra) and more particularly paragraphs 5, 13, 14, 16, 25 and 28 to 32. It is submitted that the judgment of this Court in case of ***Jaiwant Narayan Maind*** (supra) would apply to the facts of this case. He submits that the unreported judgment delivered by this Court in case of ***The Municipal Corporation of Greater Bombay vs. Jankisonya & 6 Ors.*** (supra) would squarely apply to the facts of this case. He also responded to the submissions made by Mr.Sakhare, learned senior counsel for the respondent no.3 and Mr.Thorat, learned senior counsel for the respondent no.2 on the issue as to whether the village Dahisar was included within the territory of Greater Mumbai or not and the effect thereof on the applicability of various provisions of MTAL Act and reiterated his earlier submission.

74. Learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Hanmanta Daulappa Nimbale vs. Babasaheb Dajisaheb Londhe, (1995) 6 SCC 58*** and in particular paragraph 6 and would submit that the mutation entry cannot be considered as a proof of possession unless a notice was given to he other side before making those entries. He submits that no such procedure was followed by the authorities while recording the name of the respondents in any of the mutation entry referred to and relied upon by the respondents during the course of their arguments. He submits that the findings of the two authorities and also of the Maharashtra Revenue Tribunal being perverse can be interfered by this Court in this petition filed under Article 227 of the Constitution of India.

REASONS AND CONCLUSIONS :-

75. This Court shall first decide the issue as to whether provision of Section 32 of the MTAL Act applies to the agricultural lands situated in Dahisar village or not. It is not in dispute that the land which is the subject matter of this petition fall within the territory of Dahisar village.

76. Learned senior counsel appearing for the parties invited my attention to various notifications issued by the then Government of Bombay in this regard. Section 3(21) of the Maharashtra General Clauses Act, 1886 defines "Greater Bombay" as under :-

> *"Greater Bombay shall mean the area specified in Schedule A to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945."*

77. Expression "Greater Bombay" is also defined under Section 2(2) of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 which reads thus :-

> *"Greater Bombay means the area for the time being specified in Schedule A."*

78. In exercise of powers under Section 88(1)(b) of the MTAL Act, by notification dated 1st August 1956, the Government of Bombay declared that the said Act shall not be exempted from the provisions of Sections 65, 66, 80A and 82 to 87. The Government of

Bombay specified the area of Greater Bombay as being reserved for non-agricultural and industrial development. On 1st August 1957, the Government of Bombay amended the Government Order, Revenue Department dated 23rd December 1954. The Government of Bombay specified the area comprised in Greater Bombay immediately before the date of the commencement of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) (Amendment) Act, 1956.

79. On 29th March 1957, in exercise of powers conferred by clause (b) of Section 88 of the MTAL Act, the Government of Bombay specified the area mentioned tin Schedule appended thereto as being reserved for non-agricultural and industrial development. In the Schedule to the said notification, the village Dahisar was excluded.

80. Part IV of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 provided a list of 34 villages of Thana District. The village Dahisar was included at Serial No.7 of the said Part IV. The proviso to Part IV provided that for the purpose of Section 43C of the MTAL Act, the expression "Greater Bombay" in the said section shall not be deemed to include the villages specified in Part IV of the said Schedule.

81. Section 43C of the MTAL Act provided that certain provisions of the said Act do not apply to municipal or cantonment areas. Section 43C(1) provided that nothing in Sections 31 to 32R (both inclusive), 33A, 33B, 33C and 43 shall apply to lands in the

areas within the limits of Greater Bombay subject to proviso that if any person has acquired any right as a tenant under the said MTAL Act on or after 28th December 1948, the said right shall not be deemed to have been affected by the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1952 or by the Amending Act, 1955, notwithstanding the fact that either of the said Acts has been made applicable to the area in which such land is situated.

82. A perusal of Part IV of Schedule A of the the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 which has to be read with the definition of "Greater Bombay" under Section 2(2) of the the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 clearly indicates that the village Dahisar was included in Part IV. In my view, in view of proviso to Part IV to Schedule A of the said Act, for the purpose of Section 43C of the MTAL Act, the expression "Greater Bombay" in the said section shall not be deemed to include the villages specified in Part IV of the said Schedule. It is thus clear that in view of the said proviso to Part IV of the said Act, the expression "Greater Bombay" would not include those 34 villages including the village Dahisar.

83. In my view, in view of Section 43C of the MTAL Act which has to be read with Part IV of Schedule A and definition of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945, Sections 31 to 32R of the said MTAL Act would apply to those 34 villages including the village Dahisar. Admittedly

the application in question made by the respondent nos.1 to 6 for fixation of price of the land was under Section 32G of the MTAL Act. The said provision thus invoked by the respondents and the benefits of the said provision would be available to the agricultural lands situated in Dahisar village by virtue of above referred notifications.

84. In so far as the judgment of this Court in the case of the ***Municipal Corporation of Greater Bombay Vs. Jankisonya & 6 Ors. (supra)*** strongly relied upon by the learned senior counsel for the petitioner is concerned, a perusal of the said judgment clearly indicates that this Court did not consider the provisions of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 and proviso to Part IV thereto and clause (1) of the notification dated 1st February 1957 which excluded the area included in Greater Bombay by virtue of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) (Amendment) Act, 1956.

85. A perusal of the judgment and more particularly paragraph 9 thereof clearly indicates that the learned counsel for the tenants had conceded before this Court that the lands situated within the area of Dahisar were exempted from the operation of the provisions of the MTAL Act. In my view, this concession made by the learned counsel for the tenants before this Court in the said matter was factually incorrect and contrary to Part IV Schedule A of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 to be read with proviso thereto. Be that as it may, the said judgment having been delivered by this Court based on an erroneous concession

of fact and law made by the tenants and in ignorance of the proviso to Part IV of Schedule A and also in ignorance of notification dated 1st February 1957 cannot be considered as a binding precedent on this Court and is per incuriam. In my view, reliance thus placed by the learned senior counsel for the petitioner on the said judgment is totally misplaced.

86. Mr.Dhakephalkar, learned senior counsel for the petitioner could not point out from the said judgment of this Court in the case of ***the Municipal Corporation of Greater Bombay Vs. Jankisonya and 6 Ors. (supra)*** that the proviso to Part IV of Schedule A of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 was considered by this Court in the said judgment and also could not dispute that the said judgment was based on the concession of fact and law made by the learned counsel for the tenants as recorded in paragraph 9 of the said judgment.

87. This Court in the said judgment has considered the notification dated 1st August 1956 and had accordingly held that the provisions of the MTAL Act were made non-applicable to the lands situated within Greater Bombay and thus on 1st April 1957, the tenants did not get the right to purchase the disputed land and that no proceedings could be initiated under Section 32G of the MTAL Act. In my view, Mr.Thorat, learned senior counsel for the respondent no.2 and Mr.Sakhare, learned senior counsel for the respondent no.3 are right in their submission that the judgment of this Court in the case of

the Municipal Corporation of Greater Bombay Vs. Jankisonya and 6 Ors. (supra) cannot be considered as a binding precedent on this Court and is per incuriam.

88. Having accepted the submission made by the learned senior counsel for the respondent nos.2 and 3 that in view of Section 43C, Sections 31 to 32R (both inclusive) shall apply to the lands in village Dahisar, this Court shall now consider whether the respondents had complied with the conditions under Section 32G of the MTAL Act or not in respect of the suit land and whether any interference in this writ petition under Article 227of the Constitution of India with the order passed by the learned Tahsildar, learned Collector and the Maharashtra Revenue Tribunal is warranted or not.

89. It is vehemently urged by Mr.Dhakephalkar, learned senior counsel for the petitioner that Smt.Chauthubai Dharman Patil expired in the year 1960. The husband of the said Smt.Chauthubai Dharman Patil had already expired prior to the date of her death. It is the case of the petitioner that the said Smt.Chauthubai Dharman Patil being a widow could not have made any claim for tenancy of the said agricultural land as on the tillers day i.e. on 1st April 1957 and the said date was postponed for a period of one year from the date of her death. Learned senior counsel strongly placed reliance on Section 32F(b)(ii) of the MTAL Act in support of the submission that in view of the said provision, successor-in-title of the widow shall have right to purchase the land under Section 32G only within the one year from the date on which interest of the widow tenant in the land ceases to

exist. He submits that the application made by the respondent nos.1 to 6 who according to those respondents were claiming through the said Smt.Chauthubai Dharman Patil was on 26th June 2013 after expiry of 53 years and thus the said application was ex facie barred by limitation prescribed under the said provision.

90. A perusal of the order passed by the Maharashtra Revenue Tribunal on this issue indicates that the tribunal has rejected the arguments advanced by the petitioner on an erroneous premise that in the present case, the proceedings for fixing purchase price was initiated way back in the year 1959 in case no. TNC/32 G 18/59 by Tahsildar and A.L.T.Borivali which was subsequently dropped since the suit land was under management of the court receiver. The proceedings were initiated suo-motu by the Tahsildar for enquiry under section 32 of the MTAL Act which was numbered as case no. 106 of 1978 wherein both the parties filed their reply.

91. The Tribunal has also erroneously held that the petitioner herein had not filed any document on record to show that the petitioner had challenged the rights of respondents or tried to get negative declaration under section 70(b) of the MTAL Act to the effect that the said persons were not the tenant in the suit land or initiated any proceeding to obtain possession of the said property. In my view, this finding of the Maharashtra Revenue Tribunal is totally perverse. The respondent nos.1 to 6 who claimed tenancy were required to file a proceeding under section 70(b) of the said Act and not the owner of the said land for a negative declaration that the person who was claiming

to be the tenant was not a tenant in the suit land. The finding of the tribunal is *ex-facie* contrary to section 70(b) of the said Act.

92. A perusal of paragraphs 11 and 12 of the impugned order passed by the tribunal indicates that the tribunal has held that in the enquiry under section 32 G in the year 1959, then Tahsildar had concluded that since the court receiver has been appointed, enquiry under the provisions of section 32 G could not be proceeded with and as such, the proceedings were kept in abeyance and thus there was no question of giving any notice by the tenant under the provisions of section 32 F (b) of he said Act. It is further erroneously held that since the proceedings initiated under the provisions of section 32 G were suspended and kept in abeyance, it was not possible for the tenant to purchase the suit land and therefore the submission of the petitioner herein regarding requirement of giving notice under section 32 F cannot be accepted.

93. It is also erroneously held by the tribunal that section 88 B (1) (d) of the Act bars when the title of the property is in dispute whereas in the present case, there is no dispute in respect of the title of the property and suit was only for administration of the estate of the original landlord. It is clear beyond reasonable doubt that the Maharashtra Revenue Tribunal has not rejected the submission made by the petitioner that the application made by the respondent nos. 1 to 6 was *ex-facie* barred by limitation in view of the respondent nos. 1 to 6 not having applied for determination of purchase price under section 32 G within one year from the date of demise of the Ms.Chauthubai

Dharman Patil but has been rejected on the ground that since the Court Receiver, High Court, Bombay was appointed in respect of the said property, the tenant could not have issued any notice under section 32 F(b) of the Act.

94. In my view, the impugned findings rendered by the Maharashtra Revenue Tribunal are also perverse on the ground that the Court Receiver has not been discharged in respect of the said property till today and thus the Maharashtra Revenue Tribunal could not have held that in view of the appointment of the court receiver, the respondent nos. 1 to 6 were not required to give any notice or that it was not possible for the tenant to purchase the suit land. The Court Receiver has not been discharged even till today. I am thus not inclined to accept the submission made by Mr.Sakhare, learned senior counsel for the respondent no.3 and also Mr.Thorat, learned senior counsel for the respondent no.2 that since the said Ms.Chauthubai Dharman Patil herself was allegedly a tenant prior to her death, the provisions of section 32 F (b) (ii) of the MTAL Act would not apply to the facts of this case. The respondent cannot be allowed to urge any submission contrary to the arguments advanced before the authorities below as well as before the MRT and also the findings rendered by those authorities.

95. The Full Bench of this court in case of ***Vishnu Shantaram Desai*** (supra) has construed the provisions of section 32 F of the MTAL Act in great detail. It is held by the Full Bench of this court that

section 32 provides for automatic statutory transfer of ownership to the tenant by operation of law on the Tillers' day or on the postponed date however if the conditions of this section are fulfilled. Such a tenant is not required to do any act or to give any intimation before he is deemed to have purchased such land. To achieve this result, neither the consent of the landlord nor of the tenant is required or contemplated. It is by a deeming provision that such a tenant is made a statutory purchaser of the land held by him as a tenant.

96. It is also held in the said judgment that the right of a tenant to be deemed to have purchased land under s. 32(7) is, however, subject to the other provisions of this section and the provisions of the next succeeding sections. Section 32G prescribes the procedure to be followed for determining the price of land to be paid by the tenants. Section 32(1) provides for publication of a public notice in the prescribed form in each village within its jurisdiction to be issued by the agricultural land tribunal within its jurisdiction calling upon (a) all tenants who under section 32 are deemed to have purchased the lands; (b) all landlords of such lands and (c) all other persons interested therein to appear before it on the date specified in the notice. The Tribunal is enjoined to record in a prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant.

97. Sub-section (4) of section 32 (G) provides for determination of the purchase price payable by a tenant after holding an enquiry whether a tenant is willing to purchase the land or not. The

said sub-section further provides that in the event of failure of the recovery of the purchase price as arrears of land revenue, the purchase shall be ineffective and the land shall be at the disposal of the Tribunal under section 32P. In paragraph (16) of the said judgment, it is clearly held that the right of a tenant to be deemed to have purchased the land under section 32 is also subject to section 32F. In paragraphs 17 and 18 of the said judgment, it is held by the Full Bench of this court that sub-section (1) of section 32F of the said Act start with *non-obstante* clause which clearly shows that it is common to clauses (a) and (b) which deals with disability of various persons. Clause (b) of the said section 32(F) prescribed the period within which the tenant has to exercise his right to purchase the land under section 32 when the tenant is under disability. Clause (b) of section 32F is complete by itself.

98. It is held that there is nothing in the language of Clause (b) to suggest that it is in the nature of a proviso to clause (a). It is not possible to take the view that its provisions will not be attracted unless a landlord is also under disability. Each of clause (a) and (b) is complete by itself and can apply independently of each other. It is held that section 32 F does not create a right to purchase land in a tenant independently of the provisions of Section 32. It is explicit from the language of clauses (a) and (b) of sub - section (1) of section 32 F that it provides for the period within which a tenant has to exercise his right to purchase conferred upon him by Section 32.

99. It is held that in a case covered by Section 32 - F there also results a statutory transfer of ownership in favour of a tenant, but

such transfer of ownership in favour of a tenant is not automatic. Sub - section (1A) of this section enjoins upon a tenant desirous of exercising the right conferred on him under sub - section (1) to give an intimation in that behalf to a landlord and the Tribunal in the prescribed manner within the period specified in that sub - section. The said sub-section prescribes the time within which and the manner in which a tenant desirous of exercising his right to purchase has to give an intimation. When such an intimation is given, he is deemed to have purchased the land because by sub - section (2) thereof, provisions of Section 32 to 32E (both inclusive) and Sections 32 - G to 32 - R(both inclusive) shall, so far as may be applicable, apply to such purchase.

100. The Division Bench answered the question 'whether section 32 - F confers a right to purchase the land upon a tenant in addition to the right conferred by Section 32' in negative. It is held that when conditions laid down in Section 32 - F exist, there is no automatic statutory purchase of land by a tenant under Section 32. However, where a tenant is under disability if he is deemed to have purchased land under Section 32 on the tillers' day or on the postponed date, then a question of exercise of a right by a tenant to purchase land under Section 32 - F cannot possibly arise. There is no question of exercising a right to purchase land by a tenant under Section 32 - F, if he is already deemed to have purchased the land under Section 32.

101. It is held that in a case covered by Section 32 - F,

provisions of Section 32 apply only after an intimation is given as contemplated by Section 32 - F (1A) and this is evident from the language of sub - section (2) of the said section. The provisions of sections 31 and section 32 are not in *pari materia*. Though under section 32(1), the right to purchase land is generally given to every tenant, its provisions are made subject to the other provisions of the section and the provisions of the next succeeding sections. The two sections do not confer independent rights or opportunities to purchase land upon a tenant. Section 32 - F prescribes a special procedure for exercise of a right to purchase land conferred upon a tenant by Section 32 when either a landlord or a tenant or both of them are under disability. He has to give an intimation under Section 32 - F (1A) and then the provisions of Sections 32 to 32 - E both inclusive and 32-G and 32 - R (both inclusive) apply to such purchase.

102. In paragraphs 30 to 31 of the said judgment, the Full Bench of this court considered the fact that on the tillers' day the tenants of the land were a widow and two minor sons respectively. It is held that in view of the provisions of clause (b) of section 32 F, the right to purchase under Section 32 can be exercised by the successor - in - title of the widow within one year from the date on which her interest in the land ceases to exist. In such a case, a tenant - widow cannot be deemed to have purchased the land under Section 32. It is held that the period so prescribed for termination of tenancy by the successor in title cannot be extended merely because there existed a dispute as regards who is her successor in title.

103. This court held that under sub - section (1A) read with Section 32 - F (1) (a), it was obligatory upon the sons of deceased tenant who was widow to give intimation of their desire to purchase land to the landlord and the Tribunal within a period of one year from the expiry of the period during which the successor in title of widow could have terminated the tenancy under Section 31. The sons of the deceased widow had failed to exercise their right to purchase within the time prescribed. The Full Bench of this court upheld the decision of the Maharashtra Revenue Tribunal holding that the tenants failed to exercise their right to purchase and the land had to be disposed of in accordance with the provisions of Section 32 - P of the Act.

104. The principles of law laid down by the Full Bench of this court in case of ***Vishnu Shantaram Desai*** (supra) squarely applies to the facts of this case. In my view the respondent nos. 1 to 6 not having exercised their alleged right within the period of one year from the date of death of Ms.Chauthubai Dharman Patil and not issuing any notice within time contemplated, they could not have exercised their so called right after a period of limitation prescribed under section 32F(b)(ii). In my view, the findings rendered by the Maharashtra Revenue Tribunal is perverse and contrary to the said provisions.

105. The only submission of the learned senior counsel for the respondent nos. 2 and 3 during the course of their argument was that since the said Ms.Chauthubai Dharman Patil was already a tenant prior to her death and prior to the tiller's day i.e. 1st April, 1957, the legal heirs of the said Ms.Chauthubai Dharman Patil were not required to

issue any notice under section 32F(b)(ii) of the said Act or that the said provisions were not applicable to the respondent nos. 1 to 6. A perusal of the record clearly indicates that the respondent nos. 1 to 6 did not produce any rent receipt in the name of Ms.Chauthubai Dharman Patil in respect of the land in question showing payment of any rent alleged to have been made by her to the original owner. No description of the land in question was mentioned in the purported receipt relied upon by the respondent nos. 1 to 6.

106. Insofar as the property card produced by the respondent nos. 1 to 6 before the learned Tahsildar is concerned, even the said property card would not indicate that the same was in respect of the land in question. If the learned Tahsildar would have followed the requisite procedure under the provisions of the said Act and the rules, the petitioner would have an opportunity to deal with any such alleged document or to cross examine the person whose statements were allegedly recorded by the learned Tahsildar and ALT in the proceedings filed under section 32-G of the said Act, the entire order passed by the learned Tahsildar, learned Collector and the Maharashtra Revenue Tribunal are thus without any evidence on record proving the alleged tenancy of the said Ms.Chauthubai Dharman Patil or the respondent nos. 1 to 6 in respect of the land in question at all.

107. A perusal of the record further indicates that the alleged claim of tenancy of the respondent nos. 1 to 6 was disputed by the petitioner. Under section 70(b) of the Act, it was a duty and function of the Mamlatdar to decide whether a person is a tenant or a protected

tenant or a permanent tenant or not. In my view, since no such application was made by the respondent nos. 1 to 6 under the said provisions, the respondent nos. 1 to 6 could not have applied for determination of the price of the land before the Tahsildar under section 32G of the Act. In my view, the entire proceedings thus filed by the respondent nos. 1 to 6 under section 32 G directly before adjudication of the issue of tenancy under section 70(b) of the Act was not maintainable and was without jurisdiction. It is not the case of any of the respondents that the alleged tenancy of Ms.Chauthubai Dharman Patil or the respondent nos. 1 to 6 was admitted by the petitioner. The burden of proof was on respondent nos. 1 to 6 to prove that they were the tenants under section 70-B of the Act. The Hon'ble Supreme Court in case of ***Mussamiya Imam Bax Razvi vs. Rabari Govindbhai Ratanbhai AIR 1969 SC 439*** has held that section 70(b) imposes a duty on the Mamlatdar to decide whether a person is a tenant but the said sub-section does not cast a duty upon him to decide whether a person was or was not a tenant in the past.

108. Insofar as the judgment of the Hon'ble Supreme Court in case of ***Navinchandra Ramanlal*** (supra) relied upon by Mr.Thorat, learned senior counsel for the respondent no.2 is concerned, the Hon'ble Supreme Court in the said judgment has held that under section 32 of the said Act the transfer of the ownership of land was by operation of law from the landlord to the tenant and the title to the land which vested in the landlord on 1st April, 1957 i.e. the tillers day vest in the tenants by operation of law. The Hon'ble Supreme Court adverted to an earlier judgment in case of ***Sri Ram Ramnatain Medhiv***

vs. State of Maharashtra, AIR (1959 SC 459) in which it was held by the Hon'ble Supreme Court that the title of the landlord to the land vests immediately to the tenant on the tillers day and there is a complete purchase or sale thereof as between the landlord and the tenant. It is only by such a declaration by the Tribunal that purchase becomes effective. If the tenant commits default in payment of such price either in lump-sum or by installment as determined by the Tribunal, section 32(4) declares the purchase to be ineffective but in that event the land shall then be at the disposal of the Collector to be disposed by him in the manner provided therein.

109. It is further held that the tenant gets a vested interest in the land defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the purchase price thereof as determined by the tribunal. It is held that the tenant gets a vested interest in the land defeasible only in either of those cases. A perusal of the said judgment of the Hon'ble Supreme Court clearly indicates that the tenant before the Hon'ble Supreme Court in that case was not a widow who cannot exercise right under section 32(G) of the said Act during her life time. The legal heirs and the representatives of the widow who was a tenant on the date of tillers day only can apply for determination of the purchase price within one year from the date of the death of such widow who was a tenant. There is no dispute about the principles laid down by the Hon'ble Supreme Court in case of ***Navinchandra Ramanlal*** (supra) and in case of ***Sri Ram Ramnatain Medhiv*** (supra). In this case, neither the tenancy of Mrs.Chauthubai D.

Patil was proved nor the respondent nos.1 to 6 applied for fixation of price within one year from the date of death of Ms.Chauthubai D. Patil.

110. The Hon'ble Supreme Court in case of ***Hanmanta Daulappa Nimbal vs. Babasaheb Dajisaheb Londhe, (1995) 6 SCC 58*** has held that the entries in the revenue records cannot establish lawful possession when no notice was given to the respondent before making those entries. The alleged payment of land revenue to the Government through Talathi also would not show acquiescence by the landlord. It is not the case of the respondent nos.1 to 6 that when the name of the said Mrs.Chauthubai Dharman Patil was alleged to have entered in the revenue record in respect of the suit land, any notice was issued to the original owners or to the petitioner. In my view, the learned Talathi, learned Collector or the Maharashtra Revenue Tribunal thus could not have placed reliance on the said mutation entries allegedly in respect of the suit land in the name of Mrs.Chauthubai D. Patil. The principles of law laid down by the Hon'ble Supreme Court in case of ***Hanmanta Daulappa Nimbal*** (supra) would apply to the facts of this case. I am respectfully bound by the said judgment.

111. Learned senior counsel for the respondent nos.1 to 6 did not dispute that Bhalchandra D. Patil had made a statement before the Additional Tahsildar on 9th November, 2010 alleging that he was cultivating the suit property since last 30 to 40 years and allegedly came in possession of the suit property. According to the said statement, there was no Kabjedar in respect of the suit land. He had

also stated that since the date of becoming the owner after 1st April, 1957, there was no question of giving any Khand. Learned senior counsel also did not dispute that the said Bhalchandra D. Patil had also made an application under section 32(G) of the said Act in respect of several properties adjoining the suit land. In the statement of the said Bhalchandra D. Patil he had clearly admitted that he was not a tenant of any other land.

112. A perusal of the record further indicates that the learned Tahsildar instead of making an enquiry himself, he had directed the Talathi to make an enquiry and to submit a report. Learned Tahsildar accepted the said report behind the back of the petitioner. No procedure for conducting an enquiry prescribed under the said Act and Rules had been followed by the learned Tahsildar. Learned Talathi thereafter recorded the statement of Bhalchandra Patil an submitted a report which report was accepted by the learned Tahsildar without following the procedure and without complying with principles of natural justice.

113. It is not in dispute that the learned Tahsildar had adopted the proceedings under section 32(G) of the Act in the year 1970 in respect of a land bearing survey nos.63, 65 to 67 and 70 which was adjoining to the suit land. No proceedings were however, adopted in respect of the suit property by the respondents or by the Tahsildar. The respondent nos.1 to 6 filed an application under section 32(G) of the said Act for survey no.67, Hissa no.1, at village Dahisar. Learned Tahsildar accepted the respondent nos.1 to 6 as the protected tenants

and issued a certificate under section 32(M) of the said Act on 11th November, 1970 in respect of those lands.

114. The respondent nos.1 to 6 however, did not apply under section 32(G) of the said Act also in respect of the suit land at that point of time. Learned Tahsildar had initiated *suo-motu* proceedings in respect of the suit property on 6th March, 1959 in Tenancy Case No.TEN.32G/Dahisar/18/1959. It was held in the said proceedings that the proceedings were precluded by the provisions of section 88-B(1)(d) of the said Act and thus the said proceedings were dropped on 10th August, 1959. In the year 1978, learned Tahsildar once again initiated an enquiry *suo-motu* vide Case No.106/1979. The petitioner had preferred a Revision Application before the Maharashtra Revenue Tribunal (224 of 1980) against the order passed by the learned Sub-Divisional Officer. The Full Bench of the Tribunal passed an order on 26th November, 1981 disposing of the said revision application and directing the learned Tahsildar to proceed with an enquiry.

115. It is not in dispute that no steps were taken by the respondent nos.1 to 6 for about 36 years after remand of the matter before the learned Tahsildar. After expiry of 36 years, the respondent nos.1 to 6 filed a fresh application under section 32(G) of the said Act on 28th June, 2013. In my view, since the earlier proceedings which were either dropped or no steps were taken by the learned Tahsildar upon remand of the proceedings by the Maharashtra Revenue Tribunal, the respondent nos.1 to 6 could not have filed a fresh application under section 32(G) of the said Act after expiry of 36 years. The said

application is *ex-facie* barred by law of limitation and thus could not have been entertained by the learned Tahsildar. Learned Collector as well as the learned Maharashtra Revenue Tribunal ought to have interfered with the perverse order passed by the learned Tahsildar.

116. A perusal of the record further indicates that on 1st February, 1985, the respondent nos.1 to 6 have already executed a development agreement in favour of a third party. The respondent nos.1 to 6 and the said third party have filed the consent terms in Suit No.4024 of 1990 when the respondent nos.1 to 6 allegedly handed over vacant and peaceful possession of the suit property to a third party by executing a letter of possession. It is thus clear that when the respondent nos.1 to 6 filed an application under section 32(G) of the said Act on 28th June, 2013, the respondent nos.1 to 6 were not in possession of the suit land nor were cultivating the suit land. Learned Tahsildar, learned Collector and the learned Maharashtra Revenue Tribunal totally overlooked these admitted facts.

117. Insofar as the submission of Mr.Sakhare, learned senior counsel for the respondent no.3 that since the findings recorded in favour of the respondent nos.1 to 6 by the learned Tahsildar, learned Collector and the learned Maharashtra Revenue Tribunal rendered being concurrent findings, thus this Court cannot interfere with such concurrent findings are concerned, in my view since the findings rendered by the learned Tahsildar, learned Collector and the learned Maharashtra Revenue Tribunal are totally perverse, this Court has ample power to interfere with such perverse findings though they are

concurrent under Article 227 of the Constitution of India. The finding of the Maharashtra Revenue Tribunal that the Court Receiver had issued a rent receipt in favour of Mrs.Chauthubai D. Patil in respect of the suit land is also *ex-facie* perverse and contrary to the document produced by the respondent nos.1 to 6.

118. Insofar as an unreported judgment of this Court in case of ***M/s.Veekaylal Investment Pvt. Ltd.*** (supra) relied upon by Mr.Sakhare, learned senior counsel for the respondent no.3 is concerned, a perusal of the said judgment clearly indicates that in that matter the respondent nos.1 to 3 had made an application not only under section 70(B) of the said Act but also had subsequently filed an application under section 32(C) of the said Act. It was conceded on behalf of the petitioner in that matter that there was no need of conveyance executed in their favour either by the Court Receiver or by any other authority or person. This Court held that the fact that in a suit between the legal heirs of the tenant a Court Receiver is appointed, that cannot in law affect the tenancy rights of the tenants. The Court Receiver is after all an officer of the Court and the Court cannot be intended to have terminated or extinguished or adversely affected the tenancy rights of the respondents who were not parties even to the suit in question and those rights were otherwise well protected by the provisions of the Tenancy Act.

119. This Court in the facts and circumstances of that case held that there was no merit in the submission that section 88(B)(1)(d) of the Act applies to the disputed lands because the management thereof

had been taken by the Court Receiver and as long as the appointment of the Court Receiver continues, section 32 of the Tenancy Act will not apply. In my view, the facts before this Court in this judgment were totally different. There was no issue raised in the said matter whether the legal heirs of the widow who was a tenant could have made an application under section 32(G) of the Act after expiry of one year from the date of the death of such widow tenant or not. The judgment of this Court in case of ***M/s.Veekaylal Investment Pvt. Ltd.*** (supra) thus would not assist the case of the respondents and is clearly distinguishable in the facts and circumstances of this case.

120. Insofar as the submission of the learned senior counsel that the petitioner had not raised any plea that no procedure was followed by the learned Tahsildar or the learned Collector as prescribed under the said Act and Rules is concerned, in my view, this submission of the learned senior is factually incorrect. Be that as it may, the fact remains that neither the learned Tahsildar followed the mandatory procedure while conducting an enquiry on issuance of notices, recording of statement etc. It was the duty cast on the Tahsildar to issue notice to the owner and thereafter to determine the price of the land to be paid by the tenants and to satisfy himself before determination of price that the conditions under section 32 of the Act were fully satisfied by the tenants. In this case, the authorities were also required to determine whether the respondent nos.1 to 6 had proved their tenancy under section 70(B) of the act or not in view of the petitioner raising a dispute in respect of the claim of the tenancy of tenancy by the respondent nos.1 to 6 which was admittedly not done.

121. In my view, since the orders passed by the learned Tahsildar, confirmed by the learned Collector and also by the Maharashtra Revenue Tribunal are totally perverse and contrary to law, the petitioner has made out a case for interference with those orders in this writ petition filed under Article 227 of the Constitution of India.

122. I therefore, pass the following order :-

a). The Writ Petition No.5539 of 2017 is allowed in terms of prayer clause (b). Application filed by the respondent nos.1 to 6 for fixation of purchase price is dismissed.

b). There shall be no order as to costs.

(R.D. DHANUKA, J.)