

Devidas Narayan More and anr. Vs. Chunilal Bhailal Wani and ors.

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Court : Mumbai

Decided On : Apr-28-1972

Reported in : AIR1973Bom195; (1972)74BOMLR606; ILR1973Bom1134; 1972MhLJ917

Judge : Kotval, C.J., ;Chandrachud and ;Deshmukh, JJ.

Acts : [Bombay Tenancy and Agricultural Lands Act, 1948](#) - Sections 33-B(5)

Appeal No. : Special Civil Application No. 1484 of 1965 with Spl. C. As. 890 and 891 of 1967 and 24 of 1968

Appellant : Devidas Narayan More and anr.

Respondent : Chunilal Bhailal Wani and ors.

Advocate for Def. : G.M. Bhokrikar, ;V.N. Ganpule and ;P.T. Patil, Advs.

Advocate for Pet/Ap. : P.S. Warke, ; H.D. Gole and P.T. Patil, Advs.

Judgement :

Kotval, C.J.

1. The judgment in this Special Civil Application will also govern the disposal of Special Civil Applications Nos. 890 of 1967, 891 of 1967 and 24 of 1968. Along with these Special Civil Applications the parties in several other Special Civil Applications pending in this Court were represented before us and have been

heard but they were heard only as interveners upon the questions referred to the Full Bench only.

2. The following three questions have been referred for our decision:-

(1) If the application under Section 33-B is made by more than one landlord which, of course, of necessity, must be landlords jointly holding the same piece of land, are the other lands in the personal cultivation of all the landlords, jointly or even individually, to be taken into consideration for the purposes of clause (b) of sub-section (5) of Section 33-B when applying its provision and particularly the one contained in the words 'in the total'?

(2) When the application under Section 33-B has been made against a single tenant, are the lands in the personal cultivation of that tenant other than those in respect of which the application has been made to be taken into consideration for the purposes of clause (b) of sub-section (5) of Section 33-B when applying its provision and particularly the one contained in the words 'in the total'?

(3) (a) In the case of an application made under Section 33-B, if the same landlord or the same joint landlords have let out their lands to more than one tenant and each of the said tenants is personally cultivating the lands respectively let out to him, are the lands of all such tenants other than the lands in respect of which the application has been made to be taken into consideration for the purposes of clause (b) of sub-section ((5) of Section 33-B when applying its provision and particularly the one contained in the words 'in the total'?

(b) Would any difference have to be made if the application is made only against one tenant or if the application is made either at the same time or jointly against more than one of such tenants of the same landlord or landlords?

3. In order to show how these questions arise, we may mention the facts in this application alone (Special Civil Application No. 1484 of 1965). Chunilal Wani the landlord owned survey No. 12/1 admeasuring 5 acres and 3 gunthas of village Hol in Raver Taluka of Jalgaon District and survey Nos. 16/1 and 16/2 admeasuring 5 acres and 36 gunthas of village Borkhede also of Raver Taluka in Jalgaon District.

These lands are in the possession of tenants as follows:-

Survey No. 12/1 is in the cultivation of two tenants jointly viz. Narayan Daji More and Bhavadu Daji More, the petitioners in the Special Civil Application. Survey Nos. 16/1 and 16/2 are in the personal cultivation of Narayan Raoji Mahajan and Sonabai wife of Jairam Mahajan the respondents 3 and 4 in this petition, also as joint tenants.

4-5. The landlord had not got any land of his own and therefore he applied for a Certificate under Section 88-C of the Bombay Tenancy and Agricultural Lands Act on the ground that he was a poor landlord who does not hold any land under his personal cultivation and whose total annual income including the rent does not exceed Rs. 1500/- within the meaning of sub-section (1) of Section 88-C.

6. On 27th February 1960 a Certificate was granted to the landlord under Section 88-C and he therefore became a 'certificated landlord' within the meaning of the new Section 33-A of the Bombay Tenancy and Agricultural Lands Act. As a result he gave notice to both sets of tenants terminating their tenancies under Section 33-B (1) read with Section 33-B (3) of the Tenancy Act. On 13th January, 1962, he filed his application for possession of the said holding under Section 33-B (1). In addition to the lands held as tenants of Chunilal Wani the two sets of tenants also had other lands of their own as follows:-

Narayan Daji More and Bhavadu Daji More had 2 acres and 2 gunthas in village Hol and Narayan Ravji Mahajan and Sonabai wife of Jayram Mahajan had 4 acres and 20 gunthas in village Borkhede.

7-8. When the application came before the Tenancy Aval Karkun of Raver he held that though the landlord would be entitled to get back certain portions of the land leased to the two sets of tenants his application under Section 33-B (1) could not be granted because he had a substantial income of Rs.100/- per month by way of salary from one Mansing and that he did not need any greater income having regard to the fact that he had only two members in his family and therefore his application was not bona fide. The Special Deputy Collector before whom an appeal was preferred by the landlord also dismissed his appeal. He found that the

landlord 'has not come out with his true income and therefore failed to prove his bona fides'. He therefore declined to interfere. When the matter came before the Maharashtra Revenue Tribunal by way of a revision filed by the landlord, it was urged that the authorities below had ignored the finding given by the Tenancy Courts regarding the income given in the Section 88-C proceedings and moreover the landlord had since the date on which the Certificate under Section 88-C was granted to him had his income reduced. The Maharashtra Revenue Tribunal held that the decision under Section 88-C had not been challenged in appeal by the tenants and 'the tenancy courts dealing with the proceedings under Section 33-B cannot go behind the findings given by the tenancy courts in Section 88-C proceedings if they have not been reversed by the competent authorities in appeal or in any other application under the law'. If the tenants wanted to show any increase in the income of the landlord since the date of the Section 88-C certificate, they ought to have specifically raised a plea to that effect and proved it, but they had failed to do so. Therefore both the authorities had erred in law and their orders were liable to be set aside.

9. As regards the extent of the land leased to be given back to the landlord, the Tenancy Aval Karkun computed it as follows:-

Applicant's (landlord's) holdings. Holdings of Opponents 1 & 2 Suit land (i.e. Total (Narayan Ravji Mahajan and the land leased.)

Sonabai Jayram Mahajan the

present respondents 3 & 4.)

A. G. A. G. A. G.

Nil. 8 23 5 36 14 19

Since the landlord had no land of his own the Tenancy Aval Karkun awarded him half of this total area namely 5 acres and 8 gunthas out of Survey Nos. 16/1 and 16/2 held by this set of tenants. As regards the other set of tenants, similarly he

held:

Applicant's Holdings of Opponent No.3 Holdings of Opponent No. 4 Suit land.
Total

(landlord's) (Narayan Daji More, (Bhavadu Daji More,
holdings. Petitioner No.1.) Petitioner No.2.)

A. G. A. G. A. G. A. G.

Nil. 2 2 Nil. 5 3 7 5

He therefore held that the landlord would be entitled to get half of this total land namely 3 acres and 21 gunthas out of Survey No. 12/1.

10. The Tribunal, however, computed the are out of the leased land to which the landlord would be entitled differently. They observed:

'The total suit land with these two groups of tenants is 10 acres 39 gunthas (5 acres 36 gunthas plus 5 acres 3 gunthas) and the tenant's holding is 10 acres 25 gunthas (8 acres 23 gunthas plus 2 acres 2 gunthas). The grand total of the holding is 21 acres 24 gunthas. Each group of the tenants would be treated as a separate unit and the landlord as the third unit and the division of the total holding will be made into three parts and each part will thus come to 7 acres 8 gunthas. The landlord cannot get more than this acreage out of the suit land.'

They then pointed out that the total suit land measured 10 acres 39 gunthas and the landlord being entitled to 7 acres and 8 gunthas 'the balance measuring 3 acres 31 gunthas out of the suit lands will be retained in equal proportion with each of these groups of tenants. The result will be that 1 acre 35 gunthas will be retained from Survey No. 16/1 and 2 with the first group of tenants and 1 acre 35 gunthas from Survey No. 12/1 will have to be retained with the second group of tenants'. It will thus be seen that according to the calculation of the Tenancy Aval Karkun the landlord would get back 5 acres and 8 gunthas from

respondents 1 and 2 and 3 acres and 21 gunthas from respondents 3 and 4 making a total of 9 acres and 9 gunthas whereas according to the computation of the Revenue Tribunal the landlord would get only 7 acres and 8 gunthas.

11. One set of tenants namely Narayan Daji More and Bhavadu Daji More (i.e., opponents 3 and 4 in the original petition) applied in the present Special Civil Application against this order of the Revenue Tribunal. The respondents to the present petition are the landlord Chunilal Wani, respondent 1, the Revenue Tribunal respondent 2 and the tenants, the original opponents 1 and 2 are the respondents 3 and 4 in the present petition.

12. When the Special Civil Application was heard by the Division Bench consisting of the Acting Chief Justice Mody and Vaidya, J., two points were raised before them on behalf of the applicant tenants. One was that the Maharashtra Revenue Tribunal exceeded its jurisdiction in reversing the finding of fact as to the income of the landlord. The Division Bench held that the Tribunal did not exceed its jurisdiction and so far as that point is concerned it is now concluded by that decision. The second contention was as to the proper construction of Section 33-B and particularly of sub-section (5) clause (b) and on that contention the present reference has been made by the Division Bench.

13. Section 33-B (5) (b) runs as follows:-

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

.....
..... (b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation - the area resumed or the area left with the tenant being a fragment, notwithstanding, and notwithstanding anything contained in Section 31 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947.' An analysis of the section would show firstly that under the section it is only 'the land leased' that can be ordered to be returned to the landlord and nothing more; secondly the clause only has regard to one

landlord and one tenant and takes no account of joint landlords or joint tenants holding different areas either from the same landlord or landlords or from other landlords who may also be 'certificated landlords.' Thirdly it is clear that the dominant intention of the sub-section is to equalise the holdings of the landlord and the tenant as a result of the application of that clause. How that equalisation has to be achieved is not stated. How that equalisation is to be achieved is indicated by the cumbersome clause 'to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation....'. The expression 'in the total' is utterly vague and has given rise to the utmost difficulty.

14. Now this clause had come up for consideration before a Division Bench to which one of us (Kotval J.) was a party in *Rambhau Ganpat Sutar v. Bhau Tatyaba Patole* : (1964)66BOMLR1 . In that case a certificated landlord had applied against a single excluded tenant. The landlord had leased out 37 gunthas to the tenant out of his total holding of 3 acres and 18 1/2 gunthas. The total holding of the tenant, however, was 7 acres and 34 1/2 gunthas. The landlord had applied for possession of the 37 gunthas leased out by him under Section 33-B. The Maharashtra Revenue Tribunal had held that the landlord would only get one half of the area of the leased land and that the tenant was entitled to retain the remaining half portion of the land. The Division Bench held:

'In determining the extent of the leased land of which a landlord can be awarded possession under Section 33-B of the Bombay Tenancy and Agricultural Lands Act, the area of all the other lands, if any, held by the tenant for personal cultivation should be taken into consideration and the landlord should be awarded possession of so much area of the land leased as would result, in each of them holding thereafter, so far as possible, equal areas of lands for personal cultivation.'

15. Now that decision has held the field for nearly 10 years since it was given. It was followed by Palekar, J., as he then was in *Pandharinath Sone Shinde v. Ramjan Aimat Musalman*, : (1967)69BOMLR574 . Palekar, J., said that it was settled law on that occasion. *Rambhau's case* : (1964)66BOMLR1 was also followed by a Division Bench (consisting of Tarkunde and Gokhale, JJ.) in *Madhav*

Vithoba Wani v. Dhondudas Bhandas Bairagi, : AIR1967 Bom250 . That Division Bench referred to the principle laid down in that decision as 'well established'. It was also followed by Chandrachud, J., sitting singly in Special Civil Application No. 1024 of 1964 decided on 24-3-1965 (Bom). Our learned brother applied that principle to a different and more complicated set of facts.

16. But now the question of the construction of the same clause (b) of Section 33-B (5) has been referred to a Full Bench because it is said that Rambhau's case was a case in which only one landlord and one tenant were concerned and difficulties would arise in cases where there were more than one tenant or two or more joint tenants on the one hand or more than one landlord or joint landlords on the other hand. Mody Acting C. J., in delivering the referring order has categorized in paragraph 12 of the referring order the different possible postulates leading to a crescendo of complications.

17. Before we turn to consider some of these possible difficulties and complexities which may arise, it is necessary to say a few words regarding the clause (b) of sub-section (5) of Section 33-B in relation to some other provisions of the same law. The Tenancy Act was enacted inter alia for the purpose of improving the economic and social conditions of peasants and for ensuring the full and efficient use of land for agriculture and to provide a law governing the relations of landlords and tenants of agricultural lands. With this end in view the Tenancy Act seeks to keep the tiller of the soil in possession even against the landlord from whom he originally obtained the land for cultivation as a tenant. By Section 32 every tenant became on 1st April, 1957 the owner of the land tilled by him and he was deemed to have purchased it from the landlord on certain terms and conditions which have been meticulously laid down in Section 32 to 32-R. This right is notwithstanding the rights given to the ordinary landlords to terminate the tenancy if they require the land for personal cultivation. These rights of the landlord to resume land for personal cultivation were laid down in Sections 31 to 31-D. Of course the right of the landlord to get back his land was strictly controlled and severely limited and notice thereof had to be given before the 31st of December, 1956, or the landlord (except in certain cases of disability) lost that right. As a result of these provisions it was recognised that a large number of very poor landlords who had not applied

under Section 31 were left with no land for their subsistence and had lost their right to get back their own land from their tenants and that, therefore, it was necessary to make some provisions to mitigate the hardship felt by such poor landlords. Therefore two important sets of provisions were made for the alleviation of hardship on this class of poor landlords. Section 88-C was enacted and by the Maharashtra Act 9 of 1961 the provisions of Part II-A of Chapter III containing Sections 33-A to 33-C were incorporated in the Act.

18. Section 88-C (1) provides that 'save as otherwise provided by Sections 33-A, 33-B and 33-C, nothing in Sections 32 to 32-R (both inclusive) shall apply to lands leased by any person if such land does not exceed an economic holding and the total annual income of such person including the rent of such land does not exceed Rupees 1,500/-'. In other words broadly speaking where a poor landlord the lands leased by whom do not exceed an economic holding and whose total annual income including the rent does not exceed Rs.1,500/-, is concerned the deeming provisions of Section 32 making a tenant the owner of the land by a deemed purchase, would not apply. If such a landlord applies for and obtains a certificate under sub-section (4) of Section 88-C he is thereafter known as a 'certificated landlord' as defined in Section 33-A, which says that ' 'certificated landlord' means a person who holds a certificate issued to him under sub-section (4) of Section 88-C.' Similarly the tenant of such an excluded landlord would become an 'excluded tenant' within the meaning of Section 33-A (ii).

19. Now Section 33-B applies only to the certificated landlord and to the excluded tenant. Section 33-B intended to give special rights. The whole of Part II-A of Chapter III deals with the termination of tenancy by the landlord and purchase by the tenant of lands to which Section 88-C applies. Therefore the provisions of Sections 33-A, 33-B and 33-C will have to be read in conjunction with the provisions of Section 88-C. Section 33-B confers special rights on certificated landlord to terminate tenancy for personal cultivation and it begins with the non-obstante clause 'Notwithstanding anything contained in Sections 31, 31-A or 31-B'. In other words, the normal right of a normal landlord to terminate a tenancy for personal cultivation is excluded and special rights are conferred on the certificated landlord to terminate the tenancy of an excluded tenant. This right, however, is

subject to giving notice to the excluded tenant and by sub-section (3) of Section 33-B that notice has to be served on the tenant before the first day of January, 1962, where a certificate under Section 88-C has been obtained but if an application under Section 88-C is undisposed of and pending on that date then within three months of his receiving such certificate. A further restriction is laid down that after giving the notice to the excluded tenant the certificated landlord must make an application for possession before the first day of April 1962. The only exception to the limitation thus laid down is provided by sub-section (4) in the case of a minor, a widow and a person subject to any physical or mental disability. In other words, today the certificated landlord not under disability cannot make an application under Section 33-B. All the possible applications which fall to be considered today were those which have been made before the first day of April, 1962, and no fresh applications can lie except in a very few cases perhaps contemplated in sub-section (4) of Section 33-B.

20. Now it is in this context that we have to consider the provisions of clause (b) of Section 33-B (5).

21. By virtue of the opening words of sub-section (5) of Section 33-B, clause (b) thereof is really a condition to the right of a certificated landlord to terminate a tenancy. The condition itself again begins with the words 'the landlord shall be entitled to terminate a tenancy and take possession of the land leased.' In this clause the words 'the land leased' are an addition to the opening clause thereby emphasising that the landlord's right is only to take possession of the land leased and no more. The extent to which he can take such land is indicated by the words 'but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation.' This is the clause round which all the dispute centres. In the first place we notice that the legislature did not prescribe the details of 'the extent' themselves as they might have done, but they have specified only their overall intention by directing the Courts that the result should be that the landlord and the tenant hold thereafter in the total an equal area for personal cultivation. In short the result should be equality of areas for personal cultivation of both the tenant and the landlord.

22. Now a tenant may hold land for personal cultivation from three sources, (a) land which he himself owns; (b) land which is let out to him by the landlord or (c) land which is let out to him by another landlord or another certificated landlord. But all these would necessarily be included in the words 'area for personal cultivation'. The same applies to the landlord. He may have his own lands in addition to the land which he has leased out and in addition he may himself be either cultivating the land held from another ordinary landlord or from another certificated landlord. The word 'thereof' in the above clause refers back to the words 'land leased'. Therefore the landlord can get back only the land leased at the most. Now the resultant equality which has to be achieved is governed by the words 'both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation' (the underlining is ours). What is the meaning of the words 'in the total'?; It seems to us that in the context they mean 'on the whole' or 'in the aggregate' as we held in Rambhau's case : (1964)66BOMLR1 i.e., after taking into account all the land held by the landlord for personal cultivation and all the land held by the tenant for personal cultivation. It was so held by the Division Bench in Rambhau Ganpat v. Bhau Tatyaba, when they observed that the words 'in the total' clearly indicate that the Legislature intended that the entire holding of the landlord and the tenant should be taken into consideration. There is nothing in clause (b) of sub-section (5) of Section 33-B to suggest that any land held either by a landlord or a tenant for personal cultivation from any source should be excluded from computation in arriving at 'equal area for personal cultivation' for both the landlord and the tenant.

23. Of the many theories advanced before us, one was that the clause should be limited to only that land which is leased by the certificated landlord who is applying to a particular tenant and that the land held by the tenant as owner or as a tenant from any other landlord including any other certificated landlord, ought not to be taken into account because the right contemplated is only a right to take back the leased land. To do that would be to give no meaning to the words 'in the total'. Indeed Mr. Gole appearing on behalf of the petitioners did make such a suggestion. He said that the words 'in the total' are mere surplusage in the context in which they are used. We are unable to agree to this. It is at any time dangerous for a Court to hold that the words in a statute are superfluous and unless necessity

compels us to do so we ought not to do it but in the present clause in the context in which those words are used, we have shown that the words 'in the total' have a meaning. They were deliberately used to indicate all the land held by the landlord and the tenant for personal cultivation. The Legislature left the working out of the details to the authorities implementing the law and merely expressed their mind by saying that as a result they desired that the holding of the landlord and the tenant should be 'in the total an equal area for personal cultivation'. A similar argument was advanced in Rambhau Ganpat's case where it was urged that the words 'in the total' must be construed to mean in the total of the land leased, because it was said that difficulty would arise where the tenant was in possession of more than one land. In such a case would the landlord be given back half of each land held or would it be sufficient if he is given possession of lands which are equal in area to half the area of all the lands leased to the tenant? The argument was rightly repelled by Chief Justice Chainani 66 Bom LR 1 holding that 'The words 'in the total' mean in the aggregate and read along with the words 'holding thereafter' and 'an equal area for personal cultivation' they make it clear that what the draftsman had in mind is that after the termination of the tenancy the aggregate area of lands personally cultivated by the landlord should be equal to the area of lands under 'personal cultivation of the tenant'.

24. Then it was urged that the interpretation which we are putting upon the clause may result in conceivable cases in the tenant not having any part of the leased land i.e., being deprived of the whole land leased and that such a conclusion ought not to be upheld by the Court. The short answer to that contention is that if the tenant has other lands under his own personal cultivation e.g., from another landlord or another certificated landlord or his own, then there should be no objection to depriving him of all the land leased subject to the conditions in clause (b) of Section 33-B (5) for it must always be remembered that it is the case of a poor landlord only whose case we are considering against his tenant. For instance, if a landlord has leased 5 acres of land to the tenant and the tenant also possesses 10 acres of his own and the landlord has no land under his personal cultivation, there can be no objection on the utmost considerations of equity in favour of the tenant to ordering that the landlord should get back his 5 acres because the tenant in any case will continue to have his own 10 acres and still the

landlord's holding will be less than the tenant's.

25. But it was said that the words 'so much thereof' suggest that some land must in any case be left with the tenant. The words 'so much thereof' would both grammatically and in the context in which they are used in clause (b) of sub-section (5) include a part of the whole thereof and we do not think that we would be doing any violence to the language of the sub-section in so interpreting the words 'so much thereof'.

26. Moreover we may point out that there are indications in sub-sections (6) and (7) of Section 33-B which support the view which we have taken that under clause (b) in conceivable cases the whole of the leased land may be taken away from the tenant. Sub-section (6) provides that the tenancy of any land left with the tenant after the termination of the tenancy under Section 33-B shall not at any time afterwards be liable to termination on the ground of bona fide requirement of that land for personal cultivation by the landlord. The very words in this sub-section 'any land left with the tenant after the termination of the tenancy' clearly suggest that there may be cases where no land may be left with the tenant after termination of the tenancy. Similarly in sub-section (7) it is provided that 'if, in consequence of the termination of the tenancy under this section, any part of the land leased is left with the tenant, the rent shall be apportioned in the prescribed manner.' The sub-section contemplates a possible condition when it says 'if, any part of the land leased is left with the tenant' and the mere fact that such a condition is contemplated suggests that there may be cases where no part of the land leased is left with the tenant in consequence of the termination of the tenancy under this section. In our opinion, therefore, there is intrinsic evidence in the section itself which shows that under clause (b) of sub-section (5) of Section 33-B in conceivable cases the whole of the leased land can be taken back by the landlord, and there can be no hardship in the matter because unless the tenant has other land under personal cultivation such a result can never how. This would not also be in conflict with the object of the enactment, because Section 33-B is concerned with the 'certificated landlord', a poor landlord to whom the section intends to grant some measure of relief from deprivation of his land and consequent distress.

27. Next it was argued that should a tenant hold other land from another certificated landlord, that land would also sooner or later be liable to be taken back by that landlord and that may result in the ultimate analysis in the tenant being left without any land. For example it was said if landlord A who has no land of his own has leased 5 acres to tenant B; and tenant B is also personally cultivating 3 acres leased to him by a certificated landlord X, 3 acres leased to him by a certificated landlord Y and 3 acres leased to him by the certificated landlord Z, the tenant has in all 14 acres of land under his personal cultivation whereas the landlord A has no land of his own. He would, therefore, be entitled to take back the land leased by him namely 5 acres from his tenant. Thereafter similarly the landlord 'X' having no land would apply and take away the 3 acres leased by him and the landlord Y also having no land would apply and take away the 3 acres leased by him leaving the 3 acres leased to the tenant by Z. If landlord Z has no land under his personal cultivation and were to apply he would get back 1 1/2 acres leaving the tenant with only 1 1/2 acres out of 14 acres and each of the landlords will have a holding more than him except landlord Z.

28. All this is really theoretical argument. In such a case we have no doubt that the moment A puts in his application the tenant would be bound to say that the land which he holds is also held from certificated landlords and that equity should be done to him consistent with that position. It would also be possible in such a case to consolidate all the applications under Section 33-B when possession is asked, for.

29. Next it was urged that upon the interpretation which we are putting and which was placed upon clause (b) of sub-section (5) by the Division Bench in Rambhau's case, (1964) 66 Bom LR 1 it would be impossible to apply the principle in the case of joint tenants or joint landlords, as for instance where A the landlord has leased out jointly to tenants B, C, D six acres of his land; the landlord has no land under personal cultivation, but tenant B has 4 acres of his own, tenant C has 4 acres of his own but tenant D has no other land except the land leased. In such a case how was equality going to be achieved between the landlord and the joint tenants? We must confess that the law did not contemplate such a case at all but its injunction nonetheless is quite clear that the tenancies must be terminated, the landlord and

'the tenant holding thereafter in the total an equal area for personal cultivation'. The only way in which equality can be achieved in such cases is to notionally divide the land leased between the three joint tenants and assume that 2 acres have been leased to each tenant by the landlord and then work out the equities between the landlord and each tenant. Thus it will have to be held that notionally tenants, B, C and D each has 2 acres of the leased land. Thus tenant B will have 2 acres of leased land plus 4 acres of his own; tenant C the same and tenant D only two acres same and tenant D only two acres of the leased land. From B and C the landlord cannot take back anything more than the land leased so they must each give up two acres of the leased land. Tenant C has no other land except the leased land. Therefore he must give half his share of the land leased i.e., half of two acres viz., one acre only and retain the remaining one acre. Thus tenants B and C who have each 4 acres of their own will each have to give up 2 acres for the land leased and tenant D half of his two acres i.e. one acre. Thus the landlord will be entitled to get back 5 acres out of the land leased while tenants B and C will have left 4 acres each and tenant D only one acre. Any (other) computation will bring about greater inequity. In the example given, the tenancies of B and C would in the sequel be wholly terminated. If the total land leased as a whole and the total land in the possession of the joint tenants is taken into account without the notional division which we have suggested then the total land in the possession of the joint tenants would be 6 acres of leased land plus 8 acres of their own and if the landlord is held to be entitled to resume on the basis of the total land thus held he would resume the whole six acres leased by him but in that even the tenant D would be left entirely without any land. This would work greater hardship on the poor tenant.

30. Such a case of joint tenancies no doubt gives rise to difficulty and the reason is not so much in the principle of the decision in 66 Bom LR 1, but in the fact that the provisions of sub-section (5) (b) never contemplated such a case. The clause as we have said merely refers to one landlord and one tenant and the Legislature had never in mind any more complicated case, certainly not the numerous complications which have been suggested in paragraph 12 of the referring order. In such a case in working out the equities between the joint tenants a notional division of the leased land will have to be made and the distribution as we have

shown should take place on that basis.

31. A case of a similar type did occur in Special Civil Application No. 1024 of 1964 decided on 24-3-1965 (Bom.) by Chandrachud, J., sitting singly, where the 'landlord' had let out 4 acres and 8 gunthas jointly to three tenants who were the petitioners and the second respondent in that case. 'The landlord' had no other land of her own. In all respects 'the landlord' had established that she required the land bona fide for personal cultivation. The second respondent in that case was in possession of 4 acres and 8 gunthas as a tenant of one Vasant Rokade. It was held that the 'landlord' would under the circumstances be entitled to get back only 2 acres and 32 gunthas out of the land leased. My learned brother Chandrachud, J., who decided the petition held that the 4 acres and 8 gunthas which the 'landlord' had applied for had been leased to three tenants and therefore it must be assumed notionally that the three tenants had an equal share i.e., one-third each in the land leased. Thus they would each be notionally entitled to 1 acre and 16 gunthas. My learned brother then distributed the land as follows:-

The landlord could get back the whole land leased to the 2nd respondent because the latter had 4 acres and 8 gunthas under his personal cultivation from Vasant Rokade. But the petitioners had no other land under their personal cultivation other than the land leased so the landlord could get back from each of them one half of the land leased to them in order to ensure equality of holdings between each tenant and the landlord as a result 'in the total'. Thus the 'landlord' was held entitled to 2 acres and 32 gunthas for her personal cultivation, the petitioners in that case to 1 acre and 16 gunthas and the second respondent had to give up the whole of his share of the land leased but to continue in possession of 4 acres and 8 gunthas which he had held from Vasant Rokade as the latter's tenant.

32-33. The difficulty in such cases arises not because of any misconstruction of clause (b) of sub-section (5) but because as we have said clause (b) only contemplated the case of one tenant and one landlord and left it to the authorities or the court to work out the details in a given case. These difficulties were noticed in the decision in Rambhau Ganpat's case, (1964) 66 Bom LR 1, as can be seen from the following remarks at page 5:

'It has also been urged that in the view which we are taking it might be difficult to make adjustments, if a landlord has more than one tenant or if a tenant has more than one landlord. This would not justify our giving the section a meaning which it does not properly bear. It is also true that it would generally not be possible to bring about equality between a landlord and his tenant in regard to the extent of the lands personally cultivated by them, but the inequality between the two will be reduced.' We are in agreement with that observation. We cannot give to the section a different meaning because of the difficulties of its implementation and as far as possible an attempt should be made within the directions of the law to bring about an equality between the landlord and the tenant or tenants concerned.

34. We may also say that very few such cases are likely to arise. As we have said all the applications under Section 88-C have now been practically worked out in the Courts or before the authorities and no fresh applications can be filed in view of the provisions of Section 33-B (3) and Section 88-C (2) read with Rule 53 of the Bombay Tenancy and Agricultural Lands Rules, 1956 which prescribes that the application for a certificate under the sub-section (2) of Section 88-C shall be made on or before the 30th day of September, 1961. Our learned brother Chandrachud, J., in Special Civil Application No. 1024 of 1964, D/- 24-3-1965 (Bom.) also noticed that difficulty was bound to arise in whatever view is taken under the Act and held 'I am conscious that the method adopted by me is but rough and ready, but a difficulty which has not been foreseen by the law-makers has to be solved in a manner which will carry out the intention of the legislature as best as possible.' We are in complete agreement with that remark.

35. There is also another consideration which was urged at the Bar and which has weighed with us in coming to this conclusion. Rambhau Ganpat's case (1964) 66 Bom LR 1 was decided in 1963 and has been consistently followed till today and as we have shown the principle laid down in it was held to be well established in : AIR1967 Bom250 . Several thousands of cases must have been decided upon that principle so much so that the provisions of Section 88-C and of Section 33-B have now well-nigh exhausted themselves. The number of cases in which they can be invoked may be infinitesimal compared with the cases which have been decided in the State hitherto under the principle laid down in Rambhau Ganpat's

case, : (1964)66BOMLR1 . The tenancy legislation is only applicable to this State and for almost 10 years the principle has held the field being applied without difficulty in most cases and little difficulty or hardship has come to our notice. Under these circumstances it seems to us that to unsettle the law now by giving a new interpretation would certainly unsettle titles and rights; and create more hardship and difficulty than otherwise.

36. In *Nirshi v. Sudhir Kumar*, : [1969]1SCR469 upon a similar difficulty and although they were not in favour of the earlier view the Supreme Court set aside the decision of a Full Bench holding as follows: (see page 866)

'Till the decision under appeal High Courts of Patna and Calcutta proceeded on the basis that if the main lease is governed by the provisions of the Act and consequently taken out of the scope of the Transfer of Property Act then it must be held that all sub-leases of portions of the properties included in the main lease are agricultural leases; otherwise the main lease would cease to be a purely agricultural lease as it must be held to relate to both agricultural and non-agricultural lands. We agree with the Full Bench that the ratio of these decisions is open to question. If the legal position had not been firmly settled by a long chain of decisions commencing from 1903 onwards, it is likely that we would have concurred with the view taken by the Full Bench. But if we do so we would be unsettling a settled view of the law on the basis of which various rights must have been created, transactions entered into and titles founded. The rule laid down in the earlier decision was never departed from in the past. The Act was amended a number of times but yet the legislature did not think it necessary to alter or modify the said rule. Different considerations would have arisen if the disputed interpretation related to a penal provision or the same is detrimental to public interest or causes public inconvenience. Law is not always logic. It is a part of life and more so in a democratic set up. In law finality is of utmost importance. Unless so required in public interest, questions of law firmly settled by a long course of decisions should not ordinarily be disturbed and it is all the more so in the case of an interpretation affecting property rights.'

After citing a number of decisions of the Privy Council and the House of Lords the Supreme Court held vide paragraph 14 as follows:

'From these observations it is clear that the rule that where the terms of a statute or ordinance are clear then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the clear meaning of the enactment, is inapplicable to decisions on the basis of which titles and transactions must have been founded.'

In the present case we do not think that the decision in Rambhau Ganpat's case is incorrect or requires overruling, but we would merely point out that it was concerned with property rights, is being accepted and applied for almost 10 years and no difficulty or hardship has been experienced or brought to our notice. Moreover, in Rambhau Ganpat's case itself we had indicated some of the difficulties that were likely to arise and yet the law has been allowed to stand as it is and has not been amended by the legislature. Upon this principle of stare decisions also therefore we must uphold the decision in Rambhau Ganpat's case.

37. Most of the difficulties envisaged in the referring order have been dealt with. We need not give an answer to every illustration that has been given there, nor consider every other theory suggested for achieving equality because we are limited to the three questions referred. If and when such complications do arise we have no doubt the authorities will be able to deal with them.

38. In the result, we answer questions Nos. 1, 2 and 3 (a) in the affirmative. So far as question No.3 (b) is concerned, we would say that if there is only one tenant, only the land held under personal cultivation of that tenant will have to be taken into account on the landlord applying.

39. The papers will now be sent back to the Division Bench for disposal of the Special Civil Applications with which we have here dealt. We leave the matter of costs in the discretion of the Division Bench.

40. Answered accordingly.

