Sakrappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Apr-15-1985

Reported in : ILR1985KAR1833

Judge : Bopanna, J.

Acts : Karnataka Land Reforms Act, 1961 - Sections 7, 7(2), 15(6), 38, 44, 44(1), 45, 45(1), 45(2), 45(3), 48A, 48A(1), 48A(5), 48A(8), 57, 77, 112, 112B, 133 and 137

Appeal No. : W.P. Nos. 18168 and 18169 of 1981 and 1620 and 5583 of 1983

Appellant : Sakrappa

Respondent : State of Karnataka

Advocate for Def. : B.R. Nanjundaiah, HCGA

Advocate for Pet/Ap. : M.R. Naik, Shantanu Patil for ;Shivraj Patil, ;S.R. Ramanathan, ;N.Y. Hanumanthappa and ;Hemalatha Mahishi, Advs. for Parties and ;S.R. Nayak, P. Ganpathy Bhat, T.R. Subbanna, F.V. Patil, Jayakumar S.

Judgement :
ORDER

Bopanna, J.

1. The points that arise for consideration in these Petitions are of far reaching consequences on the implementation of theKarnataka and Reforms Act, 1961 (in short the Act) and therefore by my order dated 15-1-1985 I had invited the members of the Bar who were interested in assisting this Court to submit their views and accordingly in addition to the Learned Counsel for the Petitioners and Respondents in these petitions, S. R. Nayak, P. Ganapathy Bhat, T. R. Subbanna, F. V.Patil, Jayakumar S. Patil, B. Veera-bhadrappa, K. Krishna Bhat, K. Appa Rao, V.V. Upadhyaya, V. T. Rayaraddi, S. R. Bannurmath, K. S. Vyasa Rao, T. S. Ramachandra, Advocates, and Sri B. R. Nanjundiah, High Court Government Advocate, had submitted their arguments and I had the benefit of their views on the points for adjudication in these Petitions.

2. The Petitioner in Writ Petitions Numbers 18168 and 18169/1981 claims to be the tenant of the lands bearing survey number 16, measuring 3 acres 29 guntas, and survey number 41/P, measuring 2 acres 19 guntas. He avers that he is an illiterate person who knows only to affix his signature but he was assured by the third Respondent-landlord that he would sell the lands in question to him (petitioner) at a price lesser than the amount that the petitioner had to pay under the provisions of the Act and he was further influenced by the second Respondent-Land Tribunal that in the event of filing an application for grant of occupancy rights he would not succeed since his name was not shown in the Record of Rights, On these grounds it transpires that Respondent-3 brought undue influence on him not to submit his application in Form No.7 for grant of occupancy rights. However, when he came to know that the assurance held out by Respondent-3 was to prevent him from claiming occupancy rights and the intention of Respondent-3 was to sell the lands to third parties, he filed two applications in Form No.7 one in regard to survey number 16 and another in regard to survey number 41/P and these applications were registered as Case Nos. LRM. 928/79-80 and LRM. 929/79-80. In the meantime, Respondent-3 also filed a civil suit against him in which his defence was that he was the tenant of the lands in question and accordingly the Civil Court framed an issue in thisregard and referred the same to the Tribunal. His further case is that since his name did not appear in the Record of Rights as a tenant of the lands though he was in possession of the same as tenant thereof, he gave an application to theTahsildar to hold the necessary

enquiry and to make the necessary entries in the Record of Rights. However, the Tribunalrejected his application to survey number 16 on the ground that his application was belated. It also rejected the second application on the very same ground. But the Tahsildar on 24-2-1981 held, after a detailed enquiry, that he was in possession of the lands as tenant thereof. The case of the petitioner is that even assuming that his application was belated such belatedness was due to the fraud played on him by the landlord. Even assuming that such a belatedapplication was not maintainable for grant of occupancy rights to him he was entitled to the declaration that he was a tenant of the lands under Section 112(B)(b) of the Act and by virtue of such declaration he could have claimed the benefit of Section 77 of the Act.

3. Section 77 of the Act deals with the right of the State Government to dispose of the surplus land vesting in it under the provisions of the Act and in particular Sections 45B 58 60 79A and 79B of the Act.

4. In the Statement of Objections Respondent-3 has stated, inter alia that the petitioner filed an application for occupancy rights only on the strength of the order of the Tahsildar dated 24-2-1981, but that order had been stayed in appeal by the Assistant Commissioner. Thereafter there were certain proceedings under Section 145 CriminalProcedure Code when the petitioner with the help of rowdies attempted to interfere with his (Respondent-3's) possession and enjoyment of the lands and the order passed by the Taluka Magistrate against him was set aside by the Sessions Judge in Criminal Revision Petition No. 3/1981 holding that this Respondent was in possession and enjoyment of the lands as owner thereof. He has also submitted that the belated application of the petitioner was rightly rejected by the Land Tribunal in the light of the clear provisions of Section 48A(8) of the Act, which read as under :

'Where no application is made within the time allowed under sub-section (1), the right of any person to be registered as occupant shall have no effect.'

5. In Writ Petition No. 1620/1983, the case of the petitioners, briefly stated, is as follows: According to them, they were personally cultivating the land in question since the time of their father who died in the year 1955. After his death, they

continued to cultivate the land as tenants. This land was originally Paragana Inam land coming under the provisions of Bombay Paragana and Kulkarni Watan Inams Act which were abolished on 1st May 1951. Under the provisions of the said Act, application could be made for regrant both by the owners and the tenants. Since the originalinamdars did not apply for regrant the petitioners filed applications for regrant of the land in question and the competent authority regranted this land in their favour. This order was challenged by Respondents 3 and 4 in appeal before the Karnataka Appellate Tribunal. The Appellate Tribunal set aside the order of regrant in favour of the petitioners and this order was challenged in Writ Petition No. 364 of 1969. But that Petition was withdrawn according to the petitioners by their Power-of-Attorney holder acting in collusion with respondents 3 and 4. But even thenpetitioners have asserted that they were in possession of the land in question as tenants and they continued to cultivate the land as tenants when the Act was brought in force. Taking advantage of the provisions of the Act, they filed Form No. 7, but on account of their illiteracy they gave the papers to one of the local advocates for the purpose of filling up the Form No. 7. But unfortunately the local advocate had shown their name as owners of the land in question. They had also filed similar application in Form No. 7regarding other lands in survey numbers 152/1 and 152/3 situate at Hirekudi. So, according to them, there were threeapplications pending before different Land Tribunals. Their applications before the Chikodi Tribunal were allowed by its order dated 4-5-1981 and when the application before the Sadalga Tribunal came up for consideration, they were taken by surprise to find that their names were shown in the owner's column instead of tenant's column in Form No. 7. Therefore, they had to file an amendment application on 1-2-1982 and that application was allowed by the Chairman of the Tribunal sitting single and he directed the matter to be posted before the Tribunal for enquiry and decision. However, when the Chairman who made the order permitting amendment was transferred and a new Chairman was appointed, the Tribunal with the newChairman as the Presiding Officer framed two questions as follows :

'(i) Whether the Tribunal could consider the amendmentapplication filed by the petitioners?

(ii) Whether the land in survey number 160 was tenanted land as on 1-3-1974?

On the first question it held that it had no power to allow the amendment application, but on the second question it held that the petitioners were the tenants of the land in question. But, all the same, it rejected the application of the petitioners and directed that the land should vest in the State Government.

6. In Writ Petition No. 5583/1983 respondents 3 and 4 in the earlier Writ Petition (Writ Petition No. 1620/1983) are, the petitioners and they have challenged the impugned order of the Tribunal made in favour of the State Government directing that the land in survey number 160 should vest in the State Government. According to them, respondents 3 to 5, i.e., petitioners in the earlier Writ Petition having filed their amendment applications on 1-2-1982, their applications were belated applications and they were allowed by the Tribunal without notices to them and therefore the impugned order was violative of theprinciples of natural justice and also wholly without jurisdiction. According to Smt. Hemalatha Mahishi, the Learned Counsel for the petitioners the amendment application filed by the contestingrespondents was a fresh application filed after 30-6-1979 and therefore the Tribunal could not have gone into the question of tenancy and made a direction vesting the land in question in the State Government.

7. On the facts of these cases the following points arise for consideration;

(1) Whether the tenant whose application is belated, i.e., filed after 30 6-1979, is entitled to a declaration that he was a tenant of the land in question prior to 1-3-1974?

(2) Whether the Tribunal can grant such a declaration having regard to its limited jurisdiction under the Act on a belated application of the tenant?

(3) If the tenancy of the land immediately prior to 1-3-1974 is established, is not a tenant entitled to claim the benefit under Section 77 of the Act, as in the first case, even though he is not entitled to occupancy rights on the ground that his application in Form No. 7 was a belated application?

(4) Is the Tribunal competent to make a direction that the tenanted land should vest in the State Government even though the application for occupancy rights is belated?

8. It was held by this Court in Purandar Lagama Ingale and Others v. Land Tribunal, Raibag and Others, 1978(2) KLJ 339 that the Act aims to achieve theflowing important objects:

'(i) Abolition of absentee landlordism and conferment of ownership on the actual tillers of the soil.

(ii) Fixation of maximum ceiling on the right to own agricultural lands and taking over the excess by the State Government.

(iii) Distribution of the excess lands vested in the State Government to people belonging to weaker Sections of the society such as persons belonging to Scheduled Castes and Tribes and landless agricultural labourers etc.'

This Court held, on the facts of that case, that the persons who are entitled to the benefit of the provisions of Section 77 of the Act, have a lacus standi to challenge the orders of the Tribunal though they are not parties to it if the benefits sought to be conferred on them under Section 77 of the Act are sought to be defeated by violations of the provisions of the Act or mala fide exercise of the power. If that is the case, is not a tenant entitled to the benefit of Section 77, if he had filed his application but does not get occupancy rights because his application is belated by seeking a declaration that the land is a tenanted land and therefore should vest in the State Government under any of the provisions mentioned in Section 77 of the Act? According to some of the Learned Counsel who assisted this Court, once a tenant's application is rejected under Section 48A(8) he has no further rights even assuming that the lands had vested in the State Government either on the ground that they were tenanted lands or on the ground the tenant was out of possession immediately prior to 1-3-1974. Another View is that the Act does not empower the Tribunal to make a declaration that the land is tenanted land except in the course of an enquiry under Section 48A of the Act. Even assuming such a power is there in the Tribunal under Section 112(B)(b) of the Act, in the absence of any

procedure for making such a declaration, the tenant cannot get the benefit of such declaration on the basis of a belated applica-tion. The Learned Counsel Smt. Mahishi on this point relied on Section 130 of the Act, i.e., the power of summary eviction conferred on the Tahsildar is subject to such enquiry as he deems fit and such a power is not conferred on the Tribunal to make a declaration under Section 112(B)(b) of the Act. Whereas Mr.S.R. Nayak, has invited my attention to Rule 39 of the Karnataka Land Reforms Rules, 1974 (for short the Rules) which reads as:

'Save as otherwise expressly provided in these rules, the Deputy Commissioner or other Officers of the Revenue Department shall for the purpose of any enquiry or proceedings under the Act follow the procedure specified for a formal enquiry under Section 33 of the Karnataka Land Reforms Act.'

According to him, this rule confers power on the State Government to make appropriate provisions for enforcing the provisions of the Act and in the absence of any such rules the authority concerned is free to follow a procedure which is in accordance with the principles of natural justice: and the rule of audi alteram partem. According to him, whether the land is atenanted land is a jurisdictional fact under the Act and to decide such jurisdictional fact the Tribunal is under a duty under Section 112(B)(b) of the Act to make an enquiry and decide the same. He referred to Section 137(xxxvi) of the Act, which reads as;

'(l) The State Government may, after previous publication, by notification, make rules for carrying out the purpose of this Act.

xxx xxx xxx xxx(xxxvi) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in opinion of the State Government necessary, for giving effect to the purposes of this Act.'

That only shows that there are other rights in the Act for which no provision is made by the State Government and those rights are rights covered under Section 77 of the Act and the rights conferred on the tenant by seeking a declaration under Section 112(B)(b) of the Act.

9. The settled position of law on the vesting of the land in the State Government under Section 44 of the Act must be noted before I proceed to consider the various submissions made by the Learned Counsel for the parties and those who have assisted this Court. A Full Bench of this Court to which I was a party in Balesha Rama Khot & Others v. Land Tribunal, Chikodi & Others, 1978(1) KU 116 ruled :

'Land held by a person in his capacity as a tenant, immediately prior to the date of commencement of the Amendment Act, 1974, which was not in his actual possession before the said date, stands transferred to and vests in the State Government under Section 44(1) if the land is not held by him under a lease permitted by Section 5 of the Act.

Even if the land was not in the actual possession of the tenant immediately prior to first March, 1974, if it was a tenanted land, it vests in the State Government. That the land cannot be registered in favour of the tenant who was not in actual possession immediately prior to first March, 1974, is not relevant for the purpose of deciding the question as to whether the land stands vested in the State Government under Section 44 of the Act.'

Therefore, it follows that even if a tenant is not entitled for occupancy rights because he was not in possession immediately before 1-3-1974, the land could vest in the State Government. The right of conferment of occupancy rights is provided under Section 45(1) of the Act. Under Section 45(1) which is subject to the provisions of succeeding Sections in Chapter III (Section 45 comes under Chapter III) every tenant mentioned therein will be entitled to be registered as an occupant on and from the date of vesting if he had been cultivating personally. Section 45(2) imposes certain limitations to the extent of occupancy rights that could be claimed by the tenant. The first limitation is sub-section (1) of Section 45(2): i.e.,

'(2) If a tenant or other person referred to in sub-section (1),-

(i) holds land partly as owner and partly as tenant but the area of the land held by him as owner is equal to or exceeds a ceiling area he shall not be entitled to be registered as an occupant of the land held by him as a tenant before the date of

vesting.'

The second limitation is sub section (ii) of Section 45(2), i.e., if he:

'does not hold and cultivate personally any land as an owner, but holds land as tenant, which be cultivates personally in excess of celling area, he shall be entitled to be registered as an occupant to the extent of a ceiling area.'

The third limitation is sub-section (iii) of Section 45(2), i.e., if he:

'holds and cultivates personally as an owner of any land the area of which is less than a ceiling area, he shall be entitled to be registered as an occupant to the extent of such area as will be sufficient to make up his holding to the extent of a ceiling area.'

Section 45(3) throws considerable light on the controversy that arises for consideration in these Petitions. It reads as under:

'The land held by a person before the date of vesting and in respect of which he is not entitled to be registered as an occupant under this Section shall be disposed of in the manner provided in Section 77 after evicting such person.'

Section 45(3) relates to consequences of non-registration of a tenant as an occupant of the land. It should be noted that prior to 1-3-1974, in Section 45(3) for the word 'person' the word 'tenant' was there. But by Act 23 of 1977 the word 'person' was substituted for the word 'tenant' in this sub-section. That is because, in my view, the word 'person' in sub section (1) of Section 45 refers to a permanent tenant, protected tenant or other tenant or a sub-tenant and therefore the word 'person' in Section 45(3) refers to all those tenants mentioned in Section 45(1). If Section 45(3) is read independently of Section 45(2), it is clear that persons mentioned in Section 45(1) if they are not entitled to be registered as occupants under that Section are liable for eviction from the land held by them before the date of vesting and such lands will be disposed of in the manner provided under Section 77: But one of the arguments canvassed by the some of the Counsel is that Section 45(3) must be read as subject to Section 45(2) and it does not apply to a person who is not entitled to be registered as an occupant

under Section 48A(8) of the Act. According to them, if a tenant is in possession of the land to which he is not entitled to occupancy rights because of the limitations under Section 45(2) such lands vests in the State Government and he is liable for eviction from such land for the purpose of giving effect to Section 77 of the Act. That argument takes me to the provisions of Section 48A of the Act, It should be noticed at the risk of repetition that under Section 44 of the Act even before the determination by the Tribunal of the claim for occupancy rights, the land vests in the State Government if it is tenanted land immediately prior to 1-3-1974 excepting lands under leases permitted under Section 5 of the Act. Section 45(1) confers a right on the classes of tenants mentioned therein to be registered as occupants. The extent of occupancy rights is limited by the provisions of Section 45(2) of the Act. Section 45(3) relates to the consequences of non-registration of a tenant as an occupant as regards the land held by him before the date of vesting. Section 48A(l) provides for enquiry by the Tribunal on the application that may be made by a person entitled to be registered as an occupant under Section 45(1). It reads :

'Every person entitled to be registered as an occupant under Section 45 may make an application to the Tribunal in this behalf. Every such application shall, save as provided in this Act, be made before the expiry of a period of six months from the date of commencement of Section 1 of the Karnataka Land Reforms (Amendment) Act, 1978.'

Though Section 48A(1) begins with the words 'every person' entitled to be registered as an occupant under Section 45, it only means persons who are entitled to occupancy rights under Section 45(1) of the Act. The reason is obvious because Sections 45(2) and (3) do not deal with persons' entitled to occupancy rights but deal with limitations on the extent of such occupancy rights and the consequences of not being registered as an occupant of the land. Section 48A(2) to 48A(6) deal with the procedure that the Tribunal has to follow on receipt of an application under Section 48A(1). Section 48A(7) prescribes the amount of premium to be paid by persons entitled to occupancy rights. 48A(8) as noticed earlier negatives the right of a person to claim occupancy rights where no application is made within the prescribed time. Therefore, the procedure prescribed under Section 48A cannot be confused or equated withthe substantive

rights of tenant under Section 45.

10. In this connection the other provisions relating to vesting of land under the Act should be noticed, viz.,Sections 7 15(6) 20 38(l)(a) and 38(3)(d) 58 60 61(3) 62 63(7), (8) and (10) 64 65A 68 70(3) 71 79A and 79B and 83. Section 7(2)(c) reads as :

'On receipt of an application under sub-section (1), the Tribunal shall inquire into the circumstances in which and the procedure under which such dispossession took place and if it is satisfied that such dispossession took place as a result of-

(c) any act of the landlord or any person acting on his behalf without recourse to a Court of law or in contravention of any provision of law.

The Tribunal shall order the restoration of possession of the land and the tenancy thereof to the tenant. Thereupon such land shall be deemed to have vested in the State Government and the provisions of the Act shall apply to such tenant as if he had been ordered to be registered as an occupant under sub-section (5) of Section 48A.'

Section 15(6) reads as:

'Where the Tahsildar on application by the tenant or otherwise and after such enquiry as may be prescribed, is satisfied that a notice as required by sub-section (2) is not issued, he shall, by notification declare that with effect from such date as may be specified in the notification the land leased shall stand transferred to and vest in the State Government free from all encumbrances. The Tahsildar may take possession of the land in the prescribed manner and the tenant shall be entitled to be registered as an occupant thereof. The provisions of Section 45 shall mutates apply in this behalf.'These two provisions make it clear that there could be vesting under circumstances other than mentioned in Section 44 of the Act which do give a right to a tenant to claimoccupancy rights under Section 45 of the Act. This only goes to show that Section 48A is not the only provision whichconfers occupancy rights on the tenants but there are other provisions of the Act which confer occupancy rights on tenants in possession of tenanted lands not immediately prior

to 1-3-1974 or in possession even after 1-3-1974. However lands vesting in the State Government under the otherprovisions of the Act in which occupancy rights are not granted become surplus lands in the hands of State Government under Section 77. Section 48A of the Act which is only aprocedural provision does not deal with the substantive rights of the tenants or the State Government under the other provisions of the Act.

11. The distinction between a substantive right and procedural right should be borne in mind for a better under-standing of the points in question. In the words of Salmond:

'What, then, is the true nature of the distinction? The law ofprocedure may be defined as that branch of the law which governs the process of litigation. It is the law of actions- jus quod ad actions pertness - using the term action in a wide sense to include all legal proceedings civil or criminal, All the residue is substantive law, and relates, not to the process of litigation, but to its purposes and subject-matter.Substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulates the conduct andrelations of Courts and litigants in respect of the litigation itself; the former determines their conduct and relations in respect of the matters litigated.

A glance at the actual contents of the law of procedure will enable us to judge of the accuracy of this explanation. Whether I have a right to recover certain property is a question of substantive law, for thedetermination and the protection of such rights are among the ends of theadministration of justice ; but in what Courts and within what time I must: institute proceedings are questions of procedural law, for they relate merely; to the modes in which the Courts fulfil their functions. What facts constitute a wrong is determined by the substantive law; what facts constitute proof of a wrong is a question of procedure. For the first relates to the subject-matter of litigation, the second to the process merely.'

However, it is contended by some of the Learned Counsel that even assuming a person whose application is rejected under Section 48A, can claim the benefit of Section 77, such person must answer the description of a dispossessed

tenant,displaced tenant and the other persons mentioned in Sections 77(i) to (vi). According to them, a dispossessed tenant must come within the meaning of Explanation (1) to Section 77 of the Act and the petitioners in these cases cannot be said to be dispossessed tenants. Explanation (2) does not apply to the facts of these cases and therefore it does not require any consideration. Under Explanation (1), according to them, unless a person proves that he was dispossessed between 10th September 1957 and 24th January 1971 and was not registered as an occupant under the Act, he cannot take the benefit of Section 77. According to them, the words 'and who is not registered as an occupant' must be read conjunctively with the other words preceding them in the Explanation and so read a dispossessed tenant means a person as mentioned in the Explanation. But, according to the other Learned Counsel who had supported the case of the petitioners, those words should be read disjunctively and thus read Explanation (1) consists two categories of persons, that is, persons dispossessed between 10th September 1957 and 24th January 1971 and persons who are not registered as occupants under the provisions of the Act. If it is read disjunctively, then a tenant whose application is rejected because it was belated can claim that he was a person who was not registered as an occupant under the Act and therefore he was also a dispossessed tenant under theExplanation. If a tenant were to be in possession of the land immediately prior to 1-3-1974 to get occupancy rights, hewould be a dispossessed tenant, if he fails to get occupancy rights on theground he had beendispossessed immediately prior to 1-3-1974 according to the Full Bench decision.But under Explanation (1) there is another category of persons who are alsodispossessed tenants, that is, tenants who are dispossessed between 10thSeptember 1957 and 24th. January 1971. Obviously these persons on the plainlanguage of Section 45 of the Act could not have been registered as occupantsand therefore the words 'and who is not registered as an occupant' under theprovisions of the Act would be superfluous in relation to these personsdispossessed within the aforesaid two dates. This is the argument of the LearnedCounsel for the second view. Explanation (1) to Section 77 of the Act reads asunder :

'Dispossessed tenant' means a person who not being amember of the family of the owner was cultivating lands personally and wasdispossessed between 10th

September 1957 and 24th January 1971 and who is notregistered as on occupant under the provisions of this Act.

It is a well-settled rule of construction that every word ina statutory enactment must be fully given effect to. Section 77(1)(i)itself gives an indication as to persons who are dispossessed tenants. Theyare dispossessed tenants who are not registered as occupants. Therefore, inthe absence of any ambiguity in Section 77(1)(i), an explanation to define adispossessed tenant was not necessary. But the Legislature had in view Section7 of the Act which gave some rights to tenants who were dispossessed after10th September 1957 and before 2-10-1965. But that right was available only ifthe land had not been put to non-agricultural use on 2-10-1965. Therefore, ifthey could not get any relief under Section 7 they could get the benefit ofSection 77 which under Explanation (1) enlarged the benefit by includingtenants dispossessed between 10-9-1957 and 24-1-1971, What is the ambit ofthe explanation in relation to the main provisions of the Act? The Supreme Court in a recent decision reported in Sundaram Pillai v. Paitabiraman : [1985]2SCR643 observed as:

'Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is -

a) to explain the meaning and intendment of the Act itself.

b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.'

13. Section 77(1) refers to dispossessed tenants who are not registered as tenants. That is, they should be dispossessed of their lands and should not have been registered as occupants. But the Explanation defines a dispossessed tenant as one who not being member of the family of the owner was cultivating lands personally and was dispossessed between 10thSeptember 1957 and 24th January 1971 and who is not registered as an occupant under the provisions of the Act Thisexplanation became necessary in view of Section 7 of the Act. In that Section a tenant dispossessed after 10-9-1957 and before 2-10-1965 had the right of restoration of tenanted land subject to certain conditions and also to occupancy rights. So, the Legislature to remove any ambiguity in the meaning of the words 'dispossessed tenants' who are not registered as occupants added Explanation (1) to Section 77(1). It retained the lower cut off date 10-9 1957 but the upper cut off date was extended up to 24-1-1971 and such dispossessed tenant should not have been registered as occupant. However, Mr. Nayak, and some of the Learned Counsel contended that the word 'and' in Explanation (1) should be read disjunctively and not conjunctively and thus read the Explanation consists of two categories of tenants; one class who were dispossessed tenants between 10-9-1957 to 24-1-1971 and another class of tenants who are not registered as occupants. He relied on the decision of the Supreme Court in Vidyacharan Shukla v. Khubchand Baghel & Others AIR 1964 SC (sic)099.In that case what came up for consideration was the interpretation of the provisions of Section 29(2) of the Limitation Act, 1908, which read :

'Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribedthere for by the First Schedule, the provisions of Section 3 shall apply, as if such period were prescribedthere for in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law -

a) the provisions contained in Section 4, Sections 9 to 18, and Section 22 shall apply only in so far as, and to theextent to which, they are not expressly excluded by such special or local law ; and

b) the remaining provisions of this Act shall not apply.'

The minority view in the said case supports his contention, which reads thus :

'Now coming to the construction of the Section the relevant rule of construction is well settled. 'A construction which will leave without effect any part of the language of a Statute will normally be rejected' ; or to put it in a positive form, the Court shall ordinary give meaning to every word used in the Section. Does the conjunction 'and' make the following clause a limitation on the preceding one? No rule of grammatical construction has been brought to our notice which requires asinterpretation that if sentences complete by themselves are connected by aconjunction, the second sentence must be held to limit the scope of the first sentence. The conjunction 'and' is used in different contexts, It may combine two sentences dealing with the same subject without one depending upon the other. But if the interpretation suggested by the Learned Counsel be accepted, we would not be giving any meaning at all to the word 'any' used thrice in the second part of the section namely, 'any period' 'any suit' and 'any special or local law'. If the second part is alimitation on the first part, the sentence should read, 'for the purpose of determining the period of limitation prescribed for such suit, appeal or application by such special or local law,' Instead of that the use of the word 'any' clearly demonstrates that the second part does not depend upon the first part or vice versa. There is no reason why we should attribute such a grammatical deficiency to the legislature when every word in the second part of the Section can be given full and satisfactory meaning. I would, therefore, hold that the second part is an independent provision providing for the category of proceedings to which the first part does not apply. This is the view expressed by the majority of the judges of the Full Bench of the Allahabad High Court in : AIR1956 All273 (FB). 1 agree with the same.'

The majority view reads thus :

'It is possible, however, to construe the reference to S, 3 in S.29(2) to mean that the power to dismiss the suit, appeal etc if filed beyond the time prescribed, is subject to the modes of computation etc. of the time prescribed by applying the provisions of Ss. 4 to 25 which are referred to in the opening words of S.3. On this construction where a casesatisfies the opening words of Section 29(2) the entire group of Sections 3 to 25 would be attracted to determine the period of limitation prescribed by the special or local law. Now let us test this with reference to the second limb of Section 29(2) treating the latter as a separate andindependent provision. That part starts with the words 'for determining any period of limitation prescribed for any suit, appeal or application by 'any special or local law' (italicizes 'here into' ours). The wordsitalicised being perfectly general, would manifestly be comprehensive to include every special or local law, and among these must necessarily be included such special or local laws which satisfy the conditions specified by the first limb of S.29(2). We then have this strange result that by theoperation of the first part Ss. 3 to 25 of the Limitation Act are made applicable to that class of special and local laws which satisfy the conditions specified by the first limb, whereas by the operation of the 2nd limb the provisions ofS. 3, 5, 6 to 8 and 19 to 21 and 23 to 25 would not apply to the same class of cases. A construction which would lead to this anomalous result cannot be accepted and we, therefore, hold that subject to the construction we have put upon sub-Section (2) of S. 29 both the parts are to be read as one whole and that the words following theconjunction 'and' 'for the purpose of determining any period of limitation' etc. attract the conditions laid down by the opening words of the sub-Section.'

But I prefer to follow the majority view because of the provisions of Section 7 of the Act. Since Section 7 of the Act provides for occupancy rights to dispossessed tenants if they fulfilled the conditions mentionedtherein, Explanation (l) made it clear that dispossessed tenants should not only be dispossessed between 10-9-1957 and 24-1-1971 but also be not registered as occupants to get the benefit of Section 77. Therefore in a limited class of cases, namely, persons who are dispossessed tenants or displaced tenants or other persons mentioned in Section 77, they would be persons interested in the lands available for disposal under Section 77. But the tenants whose applications are belated are not entitled to the

benefit of Section 77.

14. The next point for consideration is what are the lands that could be disposed of under Section 77 of the Act. This Section has undergone certain changes by Amendment Acts 23/1977 and 1/1979. The unamended provisions read as:

'The surplus land vesting in the State Government under this Act, the land directed to be disposed of under subjection (6) of Section 45; Section 59 and Section 60 and any other land acquired under Section 131 may be granted by the Tahsildar, to the following persons to the extent and in the order of preference as indicated below :

(i) to (vi) xx xxSection 131 was omitted in the amended Act and in its place the words 'land vesting in the State Government underSection 79A and 79B or under any other provision of this Act,' are found in the amended provisions of Section 77. It is, therefore, clear that the amplitude of Section 77 as it stands now is wider than what it was in the year 1961. So the lands: available for disposal are:

1) Surplus lands held by owners as determined under Chapter IV of the Act and lands held by tenants but surrendered to the Government under Section 71 ;

(2) Lands held by a person before the date of vesting and in respect of which he is not entitled to be registered as occupant (sec Section 45(3) ;

(3) Lands forfeited to the State Government under leases contrary to the provisions of the Act under Section 58 ;

(4) Lands available for disposal on tenants' failure to cultivate the lands personally for three consecutive years ;

(5) Lands vesting in the State Government under Sections 79A and 79B of the Act ; and

(6) Under any other provision of the Act.

The lands vesting in the State Government under the other provisions of the Act are lands vesting under Section 7 of the Act 15(6) 20 44 61 62 and 83. Under

Section 44(1) of the Act 'all lands held by or in the possession of tenants(including tenants against whom a decree or order for eviction or a certificate for resumption is made or issued) immediately prior to the date of commencement of the Amendment Act, other than lands held by them under leases permitted under Section 5, shall, with effect on and from the said date, stand transferred to and vest in the State Government'. So, the llands at the disposal of the State Government under Section 77 are:

a) surplus lands surrendered to State Government.

b) surplus lands vesting in the State Government under Sections 62 63(7), (8) and (10) 64 and 65A.

c) lands vested in State Government immediately prior to 1-3-1974 under Section 44 but in which occupancy rights arc not granted to tenants because they did not file applications or theirapplications were belated.

d) tenanted lands vested in State Government under the other provisions of the Act.

e) land at the disposal of State Government under Section 45(3).

f) land forfeited to State Government and vesting under Section 58

g) lands available under Section 60 after eviction of tenants by the Tahsildar if the tenant fails to cultivate the land personally.

In the background of these provisions, the application under Section 48A must be considered.

(a) If he is a tenant immediately before 1-3-1974, the land vests in the State Government and if he had applied for occupancy rights before 30-6-1979, he will be registered as an occupant subject to the limitations in Section 45(2).

(b) If he does not apply or applies after 30-6-1979 the lands vest in the State Government because of the legal mandate of Section 44(1) of the Act and the consequences of vesting are as follows among other things :

'(a) all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall cease and be vested, absolutely in the State Government free from all encumbrances ;

b) c) xxx xxxd) no such lands shall be liable to attachment in execution of any decree or other process of any Court and any attachment existing on the date of vesting and any order for attachment passed be-fore such date in respect of such lands shall cease to be in force ;

e) the State Government may, after removing any obstruction which may be offered, forthwith take possession of such lands : Provided that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed, that he is prima facie entitled to be registered as an occupant under this Chapter.

f) the landowner, landlord and every person interested in the land whose rights have vested in the State Government under clause (a), shall be entitled only to receive the amount from the State Government as provided in this Chapter.

g) xxx xxx(c) If it is tenanted land immediately before 1-3-1974 but the tenant is not in possession immediately before 1-3-1974, such land also vests in the State Government, according to the decision of the Full Bench of this Court.

So, it is immaterial whether he makes an application or not before 30-6-1979. This land also goes to the State pool under Section 77.

(d) If he makes an application within time but cannot be registered as an occupant of lands excluded under Section 45(2), those lands go to the pool for disposal under Section 77 and he is liable for eviction from such lands. An argument was put forward by some of the learned Counsel that Section 45(3) applies to lands mentioned in Section 45(2) and not to the lands in which occupancy rights can be granted under the provisions of Section 48A. As noticed earlier 48A is a procedural provision and the right to occupancy rights is controlled by Section 45. The extent of land in which a person can claim occupancy rights is governed by Section 45(2) whereas Section 45(1) confers on him the right to occupancy rights.

Therefore, what cannot be granted under Section 48A because of limitations imposed by Section 45(2) are lands mentioned in Section 45(3). A person coming under Section 45(2)(i) will not be entitled to occupancy rights at all even if he makes an application in time. A person coming under Section 45(2)(ii) will be entitled to occupancy rights to the extent of ceiling area. A person coming under Section 45(2)(iii) will be entitled to occupancy rights to the extent of such area which is less than a ceiling area and which is sufficient to make up his holding to the extent of ceiling area. By not making an application in time under Section 48A, he will lose his occupancy rights to lands to which he was eligible under Sections 45(2)(ii) and (iii). Therefore, a person who does not make an application in time under Section 48A will also be a person in possession of lands coming under Section 45(3) and he would be liable for eviction under that sub-section. Any doubt on this point is cleared by the opening words of Section 48A(1) of the Act which read as:

'Every person entitled to he registered as as an occupant under Section 45 may make an application to the Tribunal in this behalf. Every such application shall, save as provided in this Act be made before the expiry of a period of six months from the date of the commencement of Section 1 of the Karnataka Land Reforms (Amendment) Act, 197&.'

Therefore, under Section 48A(8) when no application is made within time his right under Section 45 to be registered as an occupant shall have no effect but not the other rights, if any, under the act. The further consequences of such a It is clear from these provisions that the duties under Section 112(B)(a) relate to enquiries under Section 48A. But it is contended by some of the Learned Counsel that Section 112(B)(b) is only incidental to the duty under Section 112(B)(a) and therefore that duty cannot be construed independently of Section 112(B)(a). According to them, in the course of an enquiry under Section 48A the Tribunal is enjoined with the duty to decide whether a person is a tenant or not and that duty is made specific in Section 112(B)(b). Alternatively that duty flows from the provisions of Section 133 of the Act. I am unable to agree with this contention for the simple reason that under Section 48A the main scope of the enquiry by the Tribunal is whether a person is a tenant immediately prior to 1-3-1974. That also

includes the question whether a person is not a tenant immediately before that date. Section 48A(5) makes this position very clear. It reads as :

'Where an objection is filed disputing the validity of the applicant's claim or setting up a rival claim, the Tribunal shall, after enquiry, deter-mine, by order, the person entitled to be registered as occupant and pass orders accordingly.'

Therefore, Section 112(B)(b) is independent of Section 112(B)(a). As a matter of fact, it is not in dispute that Section 112(B)(bb) was introduced by Act 27 of 1976 on account of certain decisions of this Court holding that the Tribunal cannot decide the nature of the land, that is, whether it is an agricultural land or non-agricultural land. But that is not so in regard to Section 112(B)(b). Section 133 of the Act does not support this contention also. Section 133(l)(i) reads as :

'Notwithstanding anything in any law for the time being in force -

(i) No Civil or Criminal Court or Officer or Authority shall, in any suit, case or proceedings concerning a land decide the question whether such land is or not agricultural land and whether the person claiming to be in possession is or is not a tenant of the land said from prior to 1st March, 1974.'

In application is he will be liable for eviction under Section 45(3) though he is entitled to protection from the State Government under the proviso (e) to Section 44. But that protection will not be available to him when he does not take the benefit of Section 45 read with 48A(l) of the Act.

15. The next point for consideration would be whether a declaration that a person is the tenant of the land though he was not entitled to occupancy rights because he did not make an application or because his application was belated could be granted by the Tribunal. If so, who can seek such a declaration? The provisions of Section 112(B) of the Act will have to be considered to answer this point. Section 112(B) relates to duties of the Tribunal. The relevant provisions read as under :

'(B) Duties of Tribunal -

(a) to make necessary verification or bold an enquiry including local inspection and pass orders in cases relating to registration of a tenant as occupant under Section 48A;

(b) to decide whether a person is a tenant or not ;

(bb) to decide whether the land in respect of which application under Section 48A is made or in respect of which any question of tenancy is raised or involved, is or is not an agricultural land ;

(bbb) to decide questions referred to it under Section 133 ;

XX XX XX XX(d) to perform such other duties and functions as are imposed on the Tribunal under the provisions of this Act or under any rule madethere under.'

The duty to decide this question is conferred on the Tribunal under Section 112(B)(bbb). In the circumstances, it is open to the Tribunal to decide whether a person is a tenant or not independently of an application under Section 48A or a reference under Section 133 of the Act. Section 48A enquiry is only for the purpose of conferring occupancy rights but a declaration whether a person is a tenant or not would be for purposes other than conferment of occupancy rights under Section 48(A) Therefore, the duty to decide whether a person is a tenant or not under Section 112(B)(b) is independent of the duty cast on it under Sections 48A and 133 of the Act. Who can seek such a declaration will be considered presently.

16. Before I proceed further, the meaning of the word 'vesting' should be noted in the context. of the Act. The word 'vest' under Section 44 of the Act has a definite connotation. The Supreme Court had occasion to considerthe meaning of this word in The Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust : [1957]1SCR1 . Referring to the provisions of Sections 16 and 17 of the Land Acquisition Act it ruled that in cases contemplated under the aforesaidprovisions the property acquired becomes a property of the Government without any conditions or limitations either as to title or possession. Under Section 44 of the Act the words similar to the words occurring in Sections 16 and 17 of the Land

Acquisition Act are found. Therefore, there could not be any doubt that the tenanted properties vested inpossession and also in title with the State Government because of the language of Section 44(1) is wider in its sweep than the language in Sections 16 and 17 of the Land Acquisition Act.Under Section 44(1), with effect from 1-3-1974 the land stands transferred and vests in the State Government. Under Section 44(2)(a) all rights, title and interest vesting in the owners of such lands and other persons interested in such lands shall, cease and be vested absolutely in the State Government free from all encumbrances. It is also further clear by sub-section (e) of Section 44(2) which enables the State Government to take possession of such lands after removing any obstruction which may be offered. There are other provisions of the Act where the land vests in the State Government free from all encumbrances. They are Sections 15(6) 20 38 61(3) 70 71 79A and 79B and 83. But there are certain other provisions where the land merely vests in the State Government. So, it could be seen that the Central theme and thrust of the Act postulates the vesting of the land free from all encumbrances in the State Government and when it so vests the State Government can take possession of the land by removing all obstructions. The power of State Government under Section 44(e) would also be applicable to cases of vesting free from all encumbrances under the other provisions of the Act mentioned above*. One more distinction regarding vesting must be kept in view to understand the scope of the provisions of Sections 44 and 45 of the Act. Under Section 38 of the Act anagriculture labourer is entitled to claim ownership right in the dwelling house where he is ordinarily residing on a land not belonging to him subject to certain other conditions being fulfilled under that Section. But if he does not make an application within the time allowed, his right to be registered as owner shall have no effect and the dwelling house and the land is deemed not to have not vested in the State Government. But if he makes an application, such dwelling house along with land immediately appurtenant thereto and necessary for his enjoyment not exceeding 5 cents vest absolutely in the State Government free from all encumbrances and the agricultural labourer would be entitled to be registered as owner thereof. Under Section 44 of the Act, the tenanted land as on l-3-!974 vests absolutely free from all encumbrances in the State Government and if the application of the tenant underSection 48A(8) is belated his right to be

registered as an occupant shall have no effect. But there is no consequential provision providing that the land shall be deemed to have not vested in the State Government as in Section 38. That brings out the scope of Section 44, that is to say, if the application of the tenant is rejected as being barred by time, the overriding effect of Section 44 of the Act is not taken away by the provisions of Section 48A(8) of the Act.

17. But there is another important aspect of the matter from the point of view of State Government. I have already referred to the various provisions of the Act under which the tenanted lands or surplus lands vest in the State Government, Under Section 77, the State Government is the custodian or trustee of all such lands vested in it and in exercise of the power under Section 77 it can fully implement the socio-economic measures which emerge from the scheme of the Act. Apart from conferring benefits on dispossessed tenants and displaced tenants it also confers benefit on Scheduled Castes, Scheduled Tribes, landless agricultural labourers, landless persons and ex - Military personnel whose gross annual income does not exceed rupees two thousand, released bonded labourers and other persons residing in villages in the same Panchayat and whose gross annual income does not exceed rupees two thousand. Therefore, the State Government has a great responsibility and indeed it is the duty of the State Government to oversee the properimplementation of the provisions of the Act. There may be cases of collusion between tenants and tenants, tenants and land-lords and landlords and landlords to defeat the interests of the State Government. That is why this Court in P.Muniswamy v. Land Tribunal, Anekal and others, 1980(2) K.L.J. 239 observed as follows :

'A person who had held land before the date of vesting and in respect of which he is not entitled to be registered as an occupant under Section 45 as laid down in sub-section (3) of the said Section would include a person entitled to make an application under sub-section (1) of Section 48A for being registered as an occupant of the land held by him prior to l-3-1974, but failed to make an application within the time allowed as laid down in sub-section (8) of Section 48A and also a person having made an application under sub-section (1) of Section 48A fails to prosecute or withdraws his claim in respect of the land vested in the

State Government under Section 44 of the Act. Thus, it is the duty of the Tribunal while dealing with an application made by a claimant in Form-7 under Section 48A(1) of the Act to decide whether the land in question is or is not an 'agricultural land' and the person claiming to be in possession of such land is or is not a 'tenant' within the meaning of the Act on the relevant date so as to determine whether the land was vested with the State Government under Section 44 of the Act before deciding the question whether the claimant is entitled to be registered as an occupant or not under Section 45 of the Act. Certainly, in view of the various provisions referred above, in particular Section 77 of the Act, the State Government is really interested in the determination of the two basic questions referred above in respect of a land claimed by a claimant for being registered as an occupant even if the claimant is held not entitled to be registered as an occupant. In that view of the matter, I am inclined to hold that a claimant once he makes an application under Section 48A(1) in Form-7 claiming occupancy in respect of any land and later on, either fails to prosecute or withdraws his application, it is the duty of the Tribunal to issue notice to the State Government as provided under sub section (2) of Section 48A, since the State Government is an interested party in the land in securing a decision at the hands of the Tribunal in respect of the said land whether the said land is an agricultural land within the meaning of the Act and whether it was held by tenant immediately prior to the date of commencement of the Amendment Act 1/1974. If it is held by the Tribunal that the land in question is an agricultural land and that it was a tenanted land immediately prior to the date of the commencement of the Amendment Act, it follows that the land was vested in State Government under Section 44 and the Government would be entitled to dispose of the same under Section 77 even if the claimant was found to be not entitled to be registered as an occupant on the ground that he fails to prosecute or withdraws his claim. If, on the other hand the decision is the other way, then the provisions of the Act would not apply and the matter in question falls outside the jurisdiction of the Tribunal to decide the further question whether the claimant is entitled to be registered as an occupant or not under Section 45 of the Act. From what has been stated above, it follows that the dismissal of an application made in Form-7 under Section 48A(1) of the Act without determining the two basic questions referred in the body of this order, even

if the claimant fails to prosecute his claim application or withdraws his claim amounts to failure to exercise the jurisdiction vested in the Tribunal under the Act properly, rendering the decision a total nullity.'

The correctness of this decision is not challenged by the landlord or tenant and it has become final. Therefore, the State Government has to intervene when the Tribunal's orders go against their interests. As it is not a party before the Tribunal, the patently wrong orders passed by theTribunal against their interests, the orders rejecting the application of tenants on the ground they are time barred, rejecting the claim of the tenants on the ground there was no application at all, would result in tenanted landsremaining in the possession of the landlord after 1-3-1974 though in law they should have vested in the State Government. Occupancy rights is the right conferred on tenants but there are other benefits conferred on other persons under the Act which can be granted by the Government only when the lands vest in them or are surrendered to them under the various provisions of the Act. Therefore, failure of the tenant to make an application in time will not take away the right of the State Government to seek a declaration that the tenanted lands in question vest in the State Government. Once it is conceded that the Act has ushered in a peaceful social revolution in the agrarian relations between the land lords and tenants by recognising the right of a person to keep for himself the agricultural land he was cultivating personally, that revolution has to be peacefully brought to an end only by the active participation of the State in fully and effectually implementing the provisions of the Act. Therefore, in all cases where vesting of land or surrender of land under the Act is a matter in issue, State Government will have to step in to ensure the proper implementation of the provisions relating to vesting and surrender. It there-fore follows State Government has the locus standi to move the Tribunal in appropriate cases to declare a person as a tenant immediately prior to 1-3-1974, on a surplus holder so that it could exercise its right to tenanted or surplus lands and effectively implement the provisions of Section 77 of the Act. However, it is contended by some of the Learned Counsel that this interpretation will throw open the flood-gate of litigation which was not the object of the Act. Once it is clear that all tenanted lands except Section 5(2) leases immediately held by tenants before 1-3-1974 vest in the State Government under Section 44, the Court must interpret the Act in such a way as to

give full effect to it. Sections 45 and 48A do not control Section 44. Section 45 is an enabling provision and Section 48A is a procedural provision. The tenant may lose his rights for occupancy rights under Section 48A(8) for not filing Form No. 7 in time. He may lose it by not filing it at all. But that will not take away the right of the State Government under Section 44 to the tenanted land. How is that right to be enforced if the landlord disputes it? It is only before the Tribunal under the Act as the State Government cannot be the applicant as also the adjudicator. A reference to the well settledconstruction of statutes which have a social content like agrarian reforms will dispel the misgivings, if any, about therecurrence of another round of litigation before the Tribunal. The Supreme Court in The State of Haryana and others v. Sampuran Singh and others : [1976]1SCR626 observed :

' The agrarian policy is equitable ownership and the reformphilosophy is redistribute justice, the rural goal being small peasantproprietorship.

XXX XXX XXX .A processual facility cannot be converted into an opportunity to pervert and to thwart the substantive object of the law. After all, Courts, faced with special case situations, have 'creatively' to interpret legislation. The Courts are 'finishers' refiners and polishers oflegislation which comes to them in a state requiring varying degrees of further processing', said Donaldson, J,, in Corocraft Ltd. vs. Pan American Airways Inc., (1968) 3 WLR 714 and indeed it is no secret that Courts constantly give their own shape to enactments (says Harry Bloomin an Article on Interpretation of Statutes - (1970) Vol. 33 Mod-Law Rev. pp. 197, 201).

We feel that when economic legislation in the implementation of Part IV of the Constitution strikes new ground and takes liberties with old Jurisprudence, there looms an interpretation problem of some dimensions which Indian jurists will have to tackle. The genre of agrarian reform laws, with special constitutional status, as it were, warrants, interpretative skills which will stifle evasive attempts, specialty by way of gifts andbe bequest and suspect transfers. Here Sections 10-A, 19-A and 19-B interlaid strike at these tactics.'

Dealing with the plea of hardship or inconvenience in the interpretation of the statutes the Supreme Court has ruled that the argument from inconvenience and hardship is adangerous one and is only admissible in construction where the

meaning of the statute is obscure, (See) : [1965]3SCR254 - Morvi Bank v. Union of India. Hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute or the rules, (Sec) : [1950]18ITR569(SC) - Commr. of Ag. I.T. v. Keshab Chandra. A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not, (See) : [1966]1SCR543 - Martin Burn v. Corpn. of Calcutta. Craies on Statute Law has observed:

' The argument from inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Lord Birkenhead said in Sutters v. Briggs (1922)1 A.C. 1,8: The consequences of this view (of Section 2 of the Gaming Act 1835) will no doubt be extremely inconvenient to many persons. But this is not a matter proper to influence the House unless in a doubtful case affording foothold for balanced speculation as to the probable intention of the legislature'. In, Re Robbs' Contract [(1941) Ch. 463, 478] Lord Greene M. R. said : ' The inconvenience of the conclusion to which I have come from the point of view of business with bankers and so forth ...is obvious .....The court cannot allow the existence of that circular to affect its mind in deciding what is the true construction of the Section. Section 74(2) and (6) Finance (1909-10) Act, 1910 ; and Clauson L. J. Said he had made strenuous efforts to avoid the same conclusion ' because I am conscious of the great inconvenience which this decision probably will cause.'On the plain language of Section 44, the State Government's right to tenanted lands immediately before 1-3-1974 must be given full effect by this Court and that right can be exercised only by imposing a duty on the Tribunal under Section 112 of the Act. It is contended by some of the Learned Counsel that Section 112(B)(b) applies to Section 5(2) leases and other leases permitted to continue after 1-3-1974. 1 find no good ground to limit the duty of the Tribunal to those tenants under the said leases in the absence of any express words to that effect. Even otherwise, the power of the State Government under Section 137(xxxvi) to make rules coupled with the duty of the Tribunal under Section 112(B)(d) would put the issue beyond the pale of any controversy. They read as

under :

Sections 137(xxxvi):

' any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in opinion of the State Government necessary for giving effect to the purposes of this Act.'Section 112 (B) (d) :

' to perform such other duties and functions as are imposed on the Tribunal under the provisions of this Act or under any rule made there-under.'Therefore, it is open to the State Government by making a sufficient provision to move the Tribunal for a declaration that the land is tenanted land immediately before 1-3-1974 in cases where the applications of tenants are rejected as barred by time or where their applications for occupancy rights are impliedly rejected on account of their failure to file Form No.7.

18. One more point that arises for consideration is the interaction of Section 44(e) with Section 45(3). Under the proviso to Section 44(e) the tenant gets the protection of the State Government from being dispossessed if he is prima facie entitled to be registered as an occupant under Chapter III, that is, under Section 48A. But under Section 45(3) if he is not entitled to be registered as an occupant under that Section he is liable for eviction. Section 48A as noticed earlier applies to a person entitled to be registered as an occupant under Section 45 by making an application within the prescribed time. The combined effect of theseprovisions is that the State Government has an absolute right over the lands vested in it under Section 44 and that right is not dependent on the tenant making an application or not making an application within the stipulated time.

19. All these questions have been raised by me on the basis of the arguments advanced by the Learned Counsel and therefore it is not necessary to refer to their contentions specifically. But a couple of contentions need to be consi-dered. It is contended by Mr. Veerabhadrappa that the only right of the tenant is Section 48A of the Act and if that is not availed of he has no other rights. According to him, Section 48A(8) takes away the substantive rights of the tenant under Section 45 and he relied on the decisions of the Supreme Court and the Privy Council on the

interpretation of the provisions of the Limitation Act. The language of Section 3 of the Limitation Act is not pari materia with the language of Section 48A. What all Section 48A(8) says is that the right of a tenant to claim occupancy rights shall have no effect. But that does not mean that the other rights if any, under the Act have been taken away as is clear from the provisions of Sections 7 and 57 of the Act. According to Mr. Ramachandra, the Tribunal can decide only such questions coming within the purview of the duties imposed on it under the Act and independent of Section 48A noquestion of tenancy can be decided. Under Section 48A the Tribunal can decide the main question and also somecollateral questions relating to tenancy immediately prior to 1-3-1974 and if the application is belated it is simply filed. On the plain language of Section 48A the Tribunal has to decide whether the land is agricultural land, whether the tenant is an agricultural tenant and whether he was in possession on 1-3-1974. If one of these elements is absent his application is rejected. Therefore, it is wrong to cons-true Section 112 (B) (b) as anything to do with thedeclaration relating to Section 77. According to him, Section 112 (B) (b) refers to tenancy rights in a limited number of cases, namely, Section 5 and questions arising under Sections 8, 9 and 10. He relied on the decision of the Supreme Court in Musamia Imam Haider Bax Razvi v. Habari Govindbhai Ratnabhai and others : [1969]1SCR785 in support of his contention. Section 70 of the Bombay Tenancy and Agricultural Lands Act, reads as under :

'For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdat.

(a) xxx xxx(b) to decide whether a person is a tenant or a protected tenant (or a permanent tenant);(c) xxx xxx

The Supreme Court interpreting this section observed that Section 70(b) of the B.T. & A.L. Act imposes a duty on the Mamlatdar to decide whether a person is a tenant. TheSub section does not cast a duty upon him to decide whether a person was a tenant or not. According to the Learned Counsel, Section 112(B)(b) does not enable the Tribunal to decide whether a person was a tenant earlier to 1-3-1974. But the language of Section 45(1) of the Act should be noted. It refers to a person who was a permanent tenant, protected tenant etc., and not who is a

tenant. Landsvesting under Section 44 and lands available under Section 45(3) also form part of the surplus pool in Section 77 of the Act and therefore the object and the language of Section 77 does not admit of the interpretation of the Supreme Court on the provisions of the BT & AL Act, Certain passages in Wade on Administrative Law, on which the Learned Counsel relied, do not restrict the duty of the Tribunals to decide onlyquestions of tenancy under Section 48A or under Section 133 of the Act. He relied on the following passage :

'A statutory authority endowed with statutory powers has, as already mentioned, no common law powers at all it can legally do only what the statute permits, and what is not permitted is forbidden. This is the strict doctrine of ultra vires, and it applies in full force to most of the organs of Government.'

But the same author has also observed :

'A statutory power will, however, be construed as implicitly authorising every thing which can fairly be regarded as incidental or consequential to the power itself ' and this doctrine is not to be applied narrowly. For example, a local authority may do its own printing and book binding. Buses may be run a short distance beyond the end of the authorised route if there is no other practicable way of turning them round. Housing authorities may charge differential rents according to their tenants' means, may subsidise their tenants, and may insure their effects. A Board charged with the organisation of theto talisator may make contracts with firms for the collection of off-the-course bets, but may not subsidise one of the firms. The Home Secretary may make charges to prisoners for privileges allowed to them. Statutory powersther fore have considerable latitute, and by reasonable construction the Courts can soften the rigour of the ultra vires principle. Although this book contains so many instances of that principle being infringed, it must be remembered that the Courts intervene only where the thing done goes beyond what can fairly be treated as incidental or consequential.'

However, the legal position is slightly different when we deal with the duties of the Tribunal. Section 112 imposes a duty on the Tribunal and that is mandatory. It reads as under:

'The duties and functions of the Tahsildar and Tribunal shall be as specified below.'

Therefore, the Tribunal has a public duty to hear and decide any case within its jurisdiction which is properly brought before it. In the same book on Administrative Law it is observed that:

'A Court or Tribunal has a public duty to hear and decide any case within its jurisdiction which is properly brought before it.Mandamus is frequently granted to enforce this duty on the part of inferior Courts and statutory tribunals which will be ordered to hear and determine according to law. Thus magistrates licensing justices, county Courts, statutory tribunals and other jurisdictions subject to the High Court can be prevented from refusing jurisdiction wrongfully. A county Court Judge, who mistakenly declined to hear an action for possession by mortgagees on the ground that the county Court had no jurisdiction, was ordered to hear and determine the case on a mandamus from the Queen's Bench Division, The same occurred where a county Court judge refused to investigate the correctness of jurisdictional facts on which the validity of a rent tribunal's decision depended, and which were properly disputed before him.'

It therefore follows that the State Government being a person entitled to the lands which vest in it under the Act can seek a declaration that the lands are tenanted lands under Section 112(B)(b). How it should get a declaration is a matter of procedure to be decided by it under its Rule making power. A fortiori, it can seek a mandamus in this Court directing the Tribunal to decide such question afresh if it is found that the Tribunal's orders are on the face of it perverse, wholly without jurisdiction, violative of the principles of natural justice and or affect its power to carry out the purposes of the Act under Chapters III and IV of the Act. As acorrollary, the relief of certiorari to quash such orders will be available to the State Government. As Lord Denning observed in [(1959) A.C. 663 at 693], Baldwin & Francis Ltd v. Patents Appellate Tribunal :

'The case on mandamus are clear enough; and if mandamus will go to a tribunal for such a cause, then it must follow that certiorari will go also for when a mandamus is issued to the tribunal, it must hear and determine the case afresh

and it cannot well do this if its previous order is still standing. The previous order must either be quashed on certiorari or ignored ; and it is better for it be quashed.'

20. But the tenants whose applications are belated are not entitled to seek a declaration that they are tenants since they are not entitled to any other rights excepting occupancy rights. I have already held that the benefit of Section 77 of the Act is available to dispossessed tenants and other persons mentioned in Section 77(1) and not to tenants who are not registered as occupants. A dispossessed tenant as defined in Explanation (1) has no right to make an application in Form No. 7 and therefore his case does not come under Section 48A. But can he and other persons mentioned in Section 77(1) seek a declaration that the lands in question are tenanted lands or surplus lands and therefore vest in the State Government to be disposed of in the manner provided under Section 77? They may be persons interested in the lands but they have no right to such lands available for disposal under Section 77. What all Section 77 says is that the Deputy Commissioner or other officer authorised by State Government may grant such lands in the manner prescribed therein. That does not give a right to persons mentioned in Section 77 to claim such lands. There is nothing in the language of Section 77 which confers on dispossessed tenants or other persons mentioned therein to claim as a matter of right, the lands at the disposal of the State Government under Section 77. Sub-section 3 of Section 77 makes the position clear. It reads:

'Notwithstanding anything contained in sub-section (1), the State Government may, if it considers that any land vesting in it is required for any public purpose, reserve such land for such purpose.'

But State Government has a right to all tenanted lands prior to 1-3-1974 under Section 44 of the Act and to the surplus lands under Chapter IV of the Act. Therefore, it can seek a declaration that a person is a tenant or a surplus holder and a consequential declaration that a particular land is tenanted or surplus land. Such a declaration can be obtained from the Tribunal by invoking its rule making power. I amconscious of the fact that Section 112(B)(b) uses the word 'decide' and not declare. A declaratory decree can be made by a Civil Court under Section 34

of the Specific Relief Act. But the Tribunals constituted under the Act are not governed by the provisions of the Specific Relief Act but by the duties conferred on it by the Act. In Jurisprudence the word 'duty' is understood as the Jural Correlative of Right. That right is the right of theState Government to the tenanted lands and surplus land under the Act that become available for disposal under the provisions mentioned in Section 77. Under that Section the lands become the absolute property of the State Government. The right of indefinite user is an essential quality of absolute property without which absolute property can have no existence. This right of user necessarily includes the right and power of excluding others from using theland. This right or power can be exercised by the State Government only by-conferring on the Tribunal a corresponding duty to make suitable declarations. By exercising that right the State Government carries out the purpose of the Act. Section 137 empowers it to make rules to carry out the purpose of the Act. Therefore, it is open to the State Government to seek suitable declaration from the Tribunal by making the necessary rule (under its rule making power) imposing a duty on the Tribunal to make declarations that the lands are tenanted lands or surplus lands.

21. To sum up,

The answer to Point No. 1 is that the tenant whose application is belated is not entitled to a declaration from the Tribunal that he is a tenant of the land.

Point No. 2 - No; because of my answer to Point No. 1.

Point No. 3 - No; because Section 77 confers no right on a tenant who is not registered as an occupant to surplus lands available for disposal.

Point No. 4 - Yes ; but not on a belated application of the tenant but on the application of State Government by making a proper provision under its rule making power under Section 137(xxxvi) of the Act.

22. In the result, W P. Nos. 18168 and 18169/1981 are partly allowed. But the petitioner's application before the Tribunal stands rejected since it is barred by time. However, the Tribunal is bound to consider the reference made by the Civil

Court under Section 133 of the Act in terms of the provisions of Section 112(B)(bbb) of the Act. The duty of the Tribunal to decide that question is independent of the duty conferred on the Tribunal under Section 48A. There-fore, the question of tenancy shall be decided without any reference to Form No. 7 filed by the petitioner.

23. In W.P. Nos. 1620 and 5583/1983 the Tribunal was justified in holding that the petitioners in W.P. No. 1620/1983 were not entitled to any occupancy rights in the land in question. Their amendment application filed on 30-1-1982 changed the entire nature of their rights to the land in question, they having stated in Form No. 7 filed before 30-6-1979 that they were the owners of the land. Therefore, that application was a fresh application and could not have been entertained after 30-6-1979. Hence the consequential order passed by the Tribunal vesting the land in the State Government is also liable to be quashed and is accordingly quasned. But it is open to the State Government to move the Tribunal for a declaration that the land should vest in the State Government on the ground they were tenanted lands immediately before 1-3-1974 by invoking its power under Section 137(xxxvi) of the Act.

24. The assistance rendered by all the Learned Counsel who appeared pursuant to my order dated 15-1-1985 is greatly appreciated. Their diverse arguments in support of the conflicting views made my task less onerous and more fruitful. While considering them I have kept in view the enunciation of the Supreme Court on the concept ofdistributive justice in Lingappa Pochanna Appelwar v. State of Maharashtra and another : [1985]2SCR224 . The Supreme Court observed :

'The problem of how far and to what extent the law of contract should be a used as an instrument of distributive justice has been engaging the attention not only of the Legislatures and the Courts but also of scholars. Kronman (Yale Law Journal, 1979-80, Vol. 89, p. 472) in his recent article 'Contract Law and Distributive Justice' observes :

If one believes it is morally acceptable for the State to forcibly redistribute wealth from one group to another, the only question that remains is how far the redistribution should be accomplished.

According to Learned Author, this could be achieved, not only by taxation but also by regulatory control of private transactions. He accepts that distributive fairness can only be achieved by taxation or contractual regulation, at some sacrifice in individual liberty.

The present legislation is a typical illustration of the concept of distributive justice, as modern jurisprudence knows it. Legislature, Judges and Administrators arc now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed 'distributive justice'. The concept of distributive justice in the sphere of law-making connotes, inter alia the removal of economic inequalities and rectifying the injustice resulting from dealings or trans-actions between unequals in society. Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle : 'From each according to his capacity, to each according to his needs'. Distributive justice compre bends more than achieving lessening of inequalities by differentialtaxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties byunconscionable bargains should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements.'

Needless to say, this order will not afford the State Government a Carte Blanche to reopen all the old cases but to carry out the mandate and purposes of thisAct for advancing the common good under Section 77 of the Act.