Maharana Shri Jayvantsinghji ... vs The State Of Gujrat on 22 December, 1961

Equivalent citations: 1962 AIR 821, 1962 SCR SUPL. (2) 411, AIR 1962 SUPREME COURT 821

Author: S.K. Das

Bench: S.K. Das, Bhuvneshwar P. Sinha, A.K. Sarkar, N. Rajagopala Ayyangar, J.R. Mudholkar

PETITIONER:
MAHARANA SHRI JAYVANTSINGHJI RANMALSINGHJI ETC.

Vs.

RESPONDENT:
THE STATE OF GUJRAT

DATE OF JUDGMENT:
22/12/1961

BENCH:
DAS, S.K.
BENCH:
DAS, S.K.
SINHA, BHUVNESHWAR P.(CJ)
SARKAR, A.K.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1962 AIR 821 1962 SCR Supl. (2) 411
CITATOR INFO :
RF 1963 SC 864 (30)
RF 1970 SC 564 (43)
F 1971 SC1992 (14)
RF 1977 SC2121 (1)
R 1979 SC1550 (14)

ACT:
Land Tenure, Abolition of-Amendment of enactment-If creates a new class of permanent tenants-Constitutional validity-If infringes fundamental rights of erstwhile tenure-holders-Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 (Bom. LVII of 1958), ss. 3, 4, 6-Constitution of India, Art. 14, 19 (1)(f), 31, 31-A.

HEADNOTE:

The petitioners, who were tenure-holders, challenged the constitutional validity of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 and in particular ss. 3 and 4 read with s. 6 of that Act, as infringing their fundamental rights guaranteed by Arts. 14, 19 and 31 of the Constitution. Their case in brief was that those provisions by making certain non-permanent tenants permanent as from the commencement of the Bombay Taluqdari Tenure Abolition Act, 1949, enabled them to acquire occupancy right by payment of six times the assessment or the rent under s. 5A of that Act instead of 20 times to 200 times the assessment under s. 32H of the Bombay Tenancy and Agricultural Lands Act, 1948,

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as amended in 1956, and thereby substantially deprived the petitioners of the rights acquired by them on the 'tillers' day, April 1, 1957, when they ceased to be tenure-holders. It was urged that the impugned Act was a piece of colourable legislation in that it had confiscated, under the guise of defining a permanent tenant or changing a rule of evidence, a large part of the purchase price the petitioners were entitled to from their tenants, and that the State Legislature had not the competence to enact it as it was not saved by Art. 31A of the Constitution.

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Held, (Sarkar and Mudholkar, JJ., dissenting), that ss.3, 4 and 6 of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958, in so far as they deemed some tenants as permanent tenants in possession of Taluqudari land, were unconstitutional and void. Under the guise of changing the definition of a permanent tenant and changing a rule of evidence, they really reduced the purchase price that the petitioners were entitled to receive under s. 32H of the Bombay Tenancy and Agricultural Lands Act, 1948, as amended in 1956, from some of their tenants on the "tillers' day."

Per Sinha, C.J., and Das, J.-There can be no doubt that s. 4 of the impugned Act, properly construed, created a new class of permanent tenants not contemplated by s. 83 of the Bombay Land Revenue Code, 1879, and not in existence on the 'tillers' day", and the combined effect of ss. 3, 4 and 6 of the impugned Act was that if the

tenure holder did not make an application under s. 6 within six months from the commencement of the impugned Act for a declaration that a tenant under him was not a permanent tenant, the name of the tenant would be recorded as a permanent tenant if he fulfilled the conditions laid down by s. 4 and thereafter he would be deemed under s. 3 to be a permanent tenant and under s. 4 all the provisions of the Taluqdari Abolition Act 1949, would apply to him. The result of this combined effect would be to deprive the tenure-holder of any real opportunity of contesting the claims of the tenant and deprive him of the purchase price prescribed by s. 32H of the Bombay Tenancy and Agricultural Lands Act, 1948.

The right of the petitioners to the said purchase price from those of their tenants who were non-permanent on April 1, 1957, was a right of property guaranteed by Art. 19 (1) (f) and the impugned sections adversely affected that right with retrospective effect Section 6, tested in the light of Art. 19(5), could not be said to impose a reasonable restriction in the interest of the general public.

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Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay, [1958] S.C.R. 1122, applied.

Sri Ram Ram Narain Medhi v. The State of Bombay. [1959] Supp. 1 S.C.R. 489, referred to.

Article 31A of the Constitution had no application. The relation between the tenure-holders and the tenants had changed from that of landlord and tenant to that of creditor and debtor on April 1, 1957, and the impugned Act which affected such rights, did not come within the protection of that Article.

In view of the true scope and effect of ss. 3, 4 and 6, the impugned Act could not fall within any entry of List II or List III of the Seventh Schedule to the Constitution and was a piece of colourable legislation.

K.C. Gajapati Narayan Deo v. State of Orissa [1954] S.C.R. 1, referred to.

Per Sarkar and Mudholkar, JJ.-Section 4 of the impugned Act did not expand the definition of a permanent tenant and did not take away any property that was vested in the landlord on the "tillers day". Nor did it confer any new property on the tenant. It only applied to and rescued a permanent tenant faced with the task of proving the nature of his tenancy, by raising a presumption of permanency in his favour. If in fact his tenancy was not permanent and had been

extinguished by law but he was tentatively recorded as permanent, the landlord could rebut the presumption in a proceeding under s. 6 (1) by producing the documents in his possession or otherwise by showing that the tenancy was not in fact permanent and, therefore, had been extinguished by s. 32(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, and claim compensation or the purchase money under s. 32H(1)(II) of the Act, that right of his not having been affected in any way by the impugned Act. If he failed, he would get the purchase price according to s. 5A of the Bombay Taluqdari Tenure Abolition Act, 1949, which would not be and was not challenged.

Dhirubha Devisingh Gohil v. State of Bombay, [1955] 1 S.C.R. 691, referred to.

The impugned Act dealt with matters arising out of the relationship between landlord and tenant. Its provisions were not intended to apply where such relationship did not subsist. The Act was, therefore, within the competence of the Legislature under entry 18 of List II of the Seventh Schedule to the Constitution and was thus not a piece of colourable legislation.

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There was, therefore, no infringement of Art. 31(1) and the Act was within the protection of Art. 31A of the Constitution and its Constitutional Validity could not be challenged under Art. 14 and 19(1)(f) of the Constitution.

Held, further, that the distinction made between tenure villages and non-tenure ones was a classification based on the extent of availability of the material for raising the inference or the presumption and such classification had a reasonable nexus with the object sought to be achieved by the Act.

Per Ayyangar, J.-There was no basis for the argument that s. 4 of the impugned Act merely intended to provide a rule of evidence for determining who was a permanent tenant under s. 83 of the Bombay Land Revenue Code, 1879, and did not extend the category of such tenants. It enacts a positive rule of law by which a person in possession of holding of a tenure-land must be "deemed" to be a permanent tenant on fulfilment of the three specified conditions. This is evident from the provisions of s. 6(1) under which every person who satisfied the definition of a permanent tenant under s. 4 was entitled automatically and without applying for to be entered as a permanent tenant in the record of rights by the Mamlatdar

unless the tenure-holder filed an objection in writing. Obviously such objection could only be on grounds open to him under s. 4. Section 4(b) and s.6(1) of the impugned Act had to be read together as forming an integrated whole. The entire object and purpose of the impugned enactment was not, therefore, to enact a rule of evidence for determining who were permanent tenants under the pre-existing law but to define and create a new class of permanent tenants who satisfied s. 4 of the Act.

JUDGMENT:

ORIGINAL, JURISDICTION: Petition Nos. 120 of 58 etc. Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

G. S. Pathak, J.B. Dadachanji, S.N. Andley, Rameshwar Nath and P.L. Vohra, for the petitioners (in Petns. 120 and 147 of 1958).

S. B. Dadachanji, S.N. Andley, Rameshwar Nath and P.L. Vohra, for the petitioner (in Petn. No. 149/58).

J.B. Dadachanji, S.N. Andley, Rameshwar Nath and P.L. Vohra, for the petitioners (in Petns. Nos. 148 and 150/58).

C.K. Daphtary, Solicitor-General of India, N.P. Nathwani, R. H. Dhebar and T. M. Sen, for the respondents.

N.P. Nathwani and I. N. Shroff for respondents Nos. 5 and 6 (in Petns. Nos. 120, 148 and 156 of 1958).

1961. December 22.-The Judgment of Sinha, C. J., and Das, J., was delivered by Das, J., the judgment of Sarkar and Mudholkar JJ., was delivered by Mudholkar, J., and Ayyangar, J., delivered a separate judgment.

S. K. Das, J.-In these 13 writ petitions arises a common question of law, namely, the constitutional validity of some of the provisions of the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958 (Bombay Act LVII of 1958) and in particular, of the provisions contained in ss. 3 and 4 read with s. 6 thereof. We shall hereinafter refer to this Act as the impugned Act, 1958.

Put very briefly, the case of the petitioners is that as a result of the provisions of the impugned Act, 1958, certain non-permanent tenants were deemed to be permanent tenants as from the commencement of the Bombay Taluqdari Tenure Abolition Act, 1949 (Bombay Act LXII of 1949), hereinafter referred to as the Taluqdari Abolition Act, 1949 and thereby became entitled to acquire

on payment of six times the assessment or six times the rent instead of at least the minimum of twenty times the assessment, the rights of an "occupant" within the meaning of s. 5A of the Taluqdari Abolition Act, 1949. This result, it is contended, has substantially deprived the petitioners of the rights which they acquired on tillers' day (April 1, 1957) by reason of the provisions contained in s. 32 and other relevant sections of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bombay Act LXVII of 1948) as amended from time to time. It is stated that this deprivation has resulted in the violation of certain fundamental rights of the petitioners, such as those guaranteed under Arts. 14, 19 and 31 of the Constitution. On behalf of the petitioners it has also been contended that apart from the question of violation of their fundamental rights, the impugned Act, 1958 is a piece of colourable legislation in the sense that under the guise of changing a rule of evidence, it has in effect taken away the petitioners' property without payment of compensation and given it to another; it is, therefore, a piece of legislation which does not come within any entry of the two legislative lists under which the State Legislature was competent to make laws.

To appreciate the points urged in support of the petitions which have all been heard together, it will be necessary to consider the effect and inter-; action of some of the provisions of four principal Acts, namely, (1) the Bombay Land Revenue code 1879 (Bombay Act V of 1879), hereinafter referred to as the Revenue Code; (2) the Bombay Tenancy and Agricultural Lands Act, 1948, as amended from time to time, hereinafter called the Tenancy Act, 1948; (3) the Taluqdari Abolition Act 1979; and (4) the impugned Act, 1958. We shall presently read the relevant provisions of these Acts. But before we do so, it is necessary to state some facts. The facts are similar, though not the same, in all the petitions. It will be sufficient to state the facts of one of the petitions (Petition no. 120 of 1958) in detail in order to focus attention on the main question of law which is the same in all these petitions and which we have indicated briefly in the preceding paragraph.

The petitioners are all ex-Taluqdars. In Petition No. 120 of 1958 the petitioner was a Taluqdar of two estates known as Sanand and Koth in the Ahmedabad district of the then State of Bombay and now of the State of Gujarat. These two estates comprised 24 Taluqdari villages. The petitioner was the absolute proprietor of all the lands comprised in the two estates, subject to payment of land revenue to the State (Government under the petitioner there were tenants-it is stated, some permanent and some non-permanent. In the year 1949, the Bombay Provincial Legislature enacted the Taluqdari Abolition Act, 1949 which came into force on August 15, 1950. As a result of the provisions of that Act, the Taluqdari tenure as such was abolished and certain properties, such as, wells, tanks, waste lands, uncultivated lands, etc., were acquired by the State; and the Taluqdar was converted into mere "occupant" as defined in the Revenue Code and was to pay land revenue in accordance with the provisions of that Code. Section 3 (16) of the Revenue code defined an "occupant" as meaning "a holder in actual possession of unalienated land, other than a tenant; provided that where the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be the occupant." In 1955 the Taluqdari Abolition Act, 1949 was amended and s. 5A was inserted. This section, in effect, gave a permanent tenant in possession of Taluqdari land the right to become an occupant if he paid six times the assessment for acquiring the right of occupancy. In other words, if a permanent tenant of an ex-Taluqdar paid the required amount as stated in s. 5A, he became an occupant. himself in place of the ex- Taluqdar and came into direct relation with the State in the matter of payment of land revenue, and acquired all the rights of an occupant under the

Revenue Code. The right which was conferred by s. 5A was available at first for a limited period only, but it was extended till 1962 as stated at the Bar. It is necessary to state now what is meant by "permanent tenant". Section 16 of the Taluqdari Abolition Act, 1949 made the provisions of the Revenue Code applicable thereto and an attempt was made to harmonize the provisions of the Taluqdari Abolition Act, 1949 with the provisions of the Revenue Code; therefore, for understanding what is a "permanent tenant" we have to go to the Revenue Code, s. 83 whereof, so far as it is relevant, reads as follows:

> "83 x x x x x And where by reason of the antiquity of a tenancy, no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively claim title, or any usage of the locality as to duration of such tenants, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him.
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> And where there is no satisfactory evidence of the capacity in which a person in possession of land in respect of which he renders service or pays rent to the landlord received, holds or retains possession of the same it shall be presumed that he is in possession as tenant.
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> x x x x It will be noticed that the expression "permanent tenant" does not occur in the section. What is stated therein is that in certain circumstances the duration of the tenancy of a tenant as against his immediate landlord shall be presumed to be co-extensive with the duration of the tenure of such landlord. The two circumstances mentioned are, (1) where by reason of the antiquity of the tenancy no satisfactory evidence of its commencement is forthcoming, and (2) where there is no such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or any usage of the locality as to duration of the tenancy. Some time later, by Bombay Act, XIII of 1956, the definition of a "permanent tenant" was inserted in s. 2(10A) of the Tenancy Act, 1948. That definition was in these terms:
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> "`permanent tenant' means a person-
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> (a) who immediately before the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1955 (hereinafter called `the Amending Act, 1955')-
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> (i) holds land as mulgenidar or mirasdar; or
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> (ii) by custom, agreement, or the decree or order of a Court holds the land on lease permanently; or

> (b) the commencement or duration of whose tenancy cannot satisfactorily be proved by reason of antiquity;

and includes a tenant whose name or the name of whose predecessor-in-title has been entered in the record of rights or in any public record or in any other revenue record as a permanent tenant immediately before the commencement of the Amending Act, 1955." Section 87A of the Tenancy Act, shall, which was also inserted by Bombay Act XII of 1956 by s. 47 thereof, said:

> "Nothing in this Act, shall affect the provisions of any of the Land Tenures Abolition Acts, specified in Schedule III to this Act, in so far as such provisions relate to the conferment of right of An occupant in favour of any inferior holder or tenant in respect of any land held by him."

In Schedule III to the Tenancy Act, 1948, was given a list of Land Tenures Abolition Act, including the Taluqdari Abolition Act, 1949. Therefore, the effect of s. 87A aforesaid was that nothing in the Tenancy Act, 1948, affected the provisions of the Taluqdari Abolition Act, 1949, in so far as the provisions in s. 5A of the Taluqdari Abolition Act 1949, conferred the right of an occupant in favour of a permanent tenant in possession of any taluqdari land on payment of the sums mentioned therein. The arguments before us have proceeded on the footing that before the coming into force of the impugned Act, 1958, the status of a permanent tenant in possession of any taluqdari land was to be determined by the provisions in s. 83 of the Revenue Code; in other words by the two circumstances mentioned in that section.

What was the position with regard to tenants who were not permanent ? No right was conferred on them by s. 5A of the Taluqrlari Abolition Act, 1949, which section was inserted in that Act in 1955 by Bombay Act I of 1955. The rights of these non-permanent tenants were governed by the Tenancy Act, 1948, which underwent some fundamental changes in 1956 (see Bombay Act XIII of 1956). The changes relevant for our purpose were contained in s. 32 and some of the succeeding sections. The effect of these sections was considered by this court in Sri Ram Ram Narain Medhi v. The State of Bombay (1). After summarising the provisions contained in ss. 32 to 32R, this Court said:

> "The title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The tenant is no doubt given a locus penitentiae and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. It is only by such a declaration by the Tribunal that the purchase becomes ineffective. If no such declaration is made by the Tribunal the purchase would stand as statutorily effected on the tillers' day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the Tribunal. If the tenant commits default in the payment of such price either in lump or by instalments as determined by the Tribunal, s. 32M declares the purchase to be ineffective but in that event the

land shall then be at the disposal of the Collector to be disposed of by him in the manner provided therein. Here also the purchase continues to be effective as from the tillers' day until such default is committed and, there is no question of a conditional purchase or sale taking place between the landlord and tenant. The title to the land which was vested originally in the landlord passes to the tenant on the tillers' day or the alternative period prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal. The tenant gets a vested interest in the land defeasible only in either of those cases and it cannot therefore be said that the title of landlord to the land is suspended for any period definite or indefinite."

The tillers' day referred to above was the first day of April, 1957. The argument on behalf of the petitioners is that according to the decision of this Court, the title of the petitioners to lands held by tenants who were entitled to the benefit of ss. 32 to 32R passed immediately to the tenants on the tillers' day and there was a completed purchase or sale thereof as between the petitioners and the tenants. So far as permanent tenants in possession of taluqdari lands were concerned, they were governed by s. 5A of the Taluqdari Abolition Act, 1949, and nothing in the Tenancy Act, 1948, affected their right under that section. But non-permanent tenants in possession of taluqdari lands became purchasers of their lands on the tillers' day with an obligation to pay the purchase price mentioned in s. 32H of the Tenancy Act, 1948. Section 32H, in so far as it bears upon non-permanent tenants, says:

"32H. (1) Subject to the additions and deductions as provided in sub-sections (1A) and (1B), the purchase price shall be reckoned as follows, namely:-

(i) in the case of a permanent tenant X X X

(ii) in the case of other tenants, the purchase price shall be the aggregate of the following amounts, that is to say,-

(a) such amounts as the Tribunal may determine not being less than 20 times the assessment and not more than 200 times the assessment;

(b) the value of any structures, wells, and embankment constructed and other permanent fixtures made and trees planted by the landlord on the land;

(c) the amount of the arrears of rent, if any lawfully due on the tillers' day or the postponed date;

(d) the amounts, if any, paid by or recovered from the landlord as land revenue and other cesses referred to in clauses (a),

(b), (c) and (d) of sub-section (1) of section 10A, in the event of the failure on the part of the tenant to pay the same.

Explanation 1.- * *
*

Explanation 2.- * *
*

(1A) Where a tenant to whom subsections (1) and (2) of section 10A do not apply, has, after the commencement of the Bombay Tenancy and agricultural Lands (Amendment) Act, 1955, paid in respect of the land held by him as tenant land revenue and other cesses referred to in sub-section (1) of that section, on account of the failure of the landlord to pay the same, a sum equal to the total amount so paid by the tenant until the date of the determination of the purchase price shall be deducted from the aggregate of the amounts determined under sub-section (1). (1B) (a) On the amount arrived at in accordance with the provisions of sub-

sections (1) and (lA) there shall be calculated interest at 4-1/2, per cent, per annum for the period between the date on which the tenant is deemed to have purchased the land under section 32 and the date of the determination of the purchase price.

(b) (i) The amount of interest so calculated shall be added to, and

(ii) the amount of rent, if any, paid by the tenant to the landlord and the value of any products of trees planted by the landlord if such products are removed by the landlord during the said period shall be deducted from, the amount so arrived at.

(2) The State Government may by general or special order, fix different minima and maxima for the purpose of sub-clause (a) of clause (ii) of sub-section (1) in respect of any kind of land held by tenants in any backward area. In fixing such minima and maxima, the State Government shall have regard to the rent payable for the land and the factors specified in sub-section (3) of section 63A."

The difference in the purchase price mentioned in s. 5A of the Taluqdari Abolition Act, 1949, and the purchase price mentioned in s. 32H of the Tenancy Act, 1948, is noticeable. Under s. 5A of the Taluqdari Abolition Act, 1949, the purchase price for the right of occupancy is approximately six times the assessment fixed for the land. Under s. 32H, however, the minimum is 20 times the assessment and the maximum 200 times the assessment. These minima and maxima are liable to reduction in the case of land held by tenants in any backward area.

Now, the main grievance of the petitioners is this. So far as non-permanent tenants were concerned, the title of the petitioners to their lands passed on April 1, 1957, to the tenants and the petitioners ceased to be landlords. All that they became entitled to on that day was the purchase price mentioned in s. 32H. By one stroke of the pen as it were, the impugned Act, 1958, made almost all non-permanent tenants into permanent tenants and thereby deprived the petitioners of the higher purchase price which they were entitled to get under s. 32H and the succeeding sections of the

Tenancy Act, 1948. In petition No. 120 of 1958 the petitioners has stated that he would lose about Rs. 14 lacs as a result of the provisions of the impugned Act, 1958.

We may now read some of the provisions of the impugned Act, 1958. The Act is entitled "an Act further to define permanent tenants, inferior holders and permanent holders for the purposes of certain Land Tenure Abolition laws and to provide for certain other matters." In view of the argument advanced before us on behalf of the respondents that the impugned Act, 1958 merely changes a rule of evidence, it is worthly of note that the long title itself states that the Act is an Act further to define permanent tenants. Section 2 of the Act is the interpretation section and the expression 'Land Tenure Abolition law' means in relation to a permanent tenant, Acts specified in Part I of the Schedule. The Taluqdari Abolition Act, 1949 is one of the Acts mentioned in Part I of the Schedule. The expression 'tenure- holder' means inter alia a taluqdar and 'tenure- land' means inter alia taluqdari land. Sections 3, 4 are 6 and important for our purpose and should be read in full.

> "3. A person shall, within the meaning of the relevant Land Tenure Abolition law, be deemed to be an inferior holder, a permanent holder or, as the case may be, a permanent tenant, on the date of the abolition of the relevant land tenure, if his name has been recorded in the record of rights or other public or revenue record as an inferior holder, permanent holder or permanent tenant in respect of any tenure-land-
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> (a) on the date of the abolition of the relevant land tenure, or
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> (b) in pursuance of orders issued during the course of any proceedings under the relevant Land Tenure Abolition law or, as the case may be, the Bombay Land Revenue Code, 1879-
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> (i) before the commencement of this Act, or
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> (ii) after the commence of this Act in cases in which inquiries were pending at the commencement of this Act, or
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> (c) in pursuance of an order issued by the Mamlatdar in respect of an entry under section 6 of this Act.

4. For the purposes of the relevant Act specified in Part I of the Schedule, a person-

(a) who on the date of the commencement of that Act was holding any tenure-land and

(b) who and whose predecessors in title, if any, were, immediately before that date for such continuous period of twelve years or more, holding the same tenure-land, or any other tenure-land, as a tenant or inferior holder under the tenure-holder for the time being on payment of an amount exceeding the assessment of the land, shall unless it is proved by the tenure-holder that he would not have been a permanent tenant on the basis of continued possession of the land under clause

(b), be deemed to be a permanent tenant of the land under clause (a) and all the provisions of that Act shall apply to him as they apply to a permanent tenant.

Explanation.-The assessment for the purpose of this section shall be reckoned as provided in clauses (a) and (b) of section 5.

6. (1) The rights of an inferior holder, permanent holder or permanent tenant under sections 4 and 5 shall be entered in the record of rights unless the tenure holder applies in writing to the Mamlatdar within six months from the date of the commencement of this Act for a declaration that any holder, or tenant under him is not an inferior holder, a permanent holder or, as the case may be, a permanent tenant.

(2) Any such application shall be disposed of as if it were an application in respect of a disputed case under section 135D of the Bombay Land Revenue Code, 1879." The constitutional validity of the aforesaid provisions has been challenged before us on behalf of the petitioners on the following grounds.

(1) The Bombay State legislature was not competent to enact the impugned Act, which is a piece of colourable legislation inasmuch as under

> the guise of defining a permanent tenant, or changing a rule of evidence, it has really confiscated a large part of the purchase price which the petitioners were entitled to under s. 32H of the Tenancy Act, 1948 from some of their tenants;
>
> (2) The impugned Act contravenes the rights of the petitioners guaranteed by the Constitution under Arts. 14, 19 (1) (f) and 31 there of; and (3) Article 31A does not save it.

On behalf of the respondents the main argument is that the impugned Act, 1958, merely changes a rule of evidence for determining who are permanent tenants in possession of taluqdari lands; it does nothing more than that and is not, therefore, bad on any of the grounds urged on behalf of the petitioners. It is clear that if the impugned Act merely changes a rule of evidence for determining who are permanent tenants in possession of taluqdari lands, then the points urged as to the violation of the petitioners' fundamental rights under Arts. 14, 19 (l) (f) and 31 would not at all arise. If, on the contrary, it is found that the impugned Act is not a piece of legislation which changes a rule of evidence but is a device by which the petitioners have been deprived of their property without payment of compensation, then it would be a piece of colourable legislation not within the competence of the State Legislature. The legislation would then fall on the main ground that it is a piece of colourable legislation, the subject matter of which is not covered by any entry in List II or List III.

Therefore, the crux of the matter is what is the true scope and effect of the provisions of the impugned Act, 1958. To this question we now address ourselves.

It may be stated at the very outset that the constitutional validity of the relevant provisions of the Taluqdari Abolition Act, 1949 and the Tenancy Act, 1948 as amended by Bombay Act, XIII of 1956 has not been challenged before us. In Dhirubha Devisingh Gohil v. The state of Bombay and Sri Ram Ram Narain Medhi v. The State of Bombay, it was held by this Court that the relevant provisions of those two Acts were Constitutionally valid. What has been challenged before us is the constitutional validity of the relevant provisions of the impugned Act 1958, particularly the provisions in ss. 3,4 and 6 which we have quoted earlier. What is the scope and effect of those provisions? Section 3 in effect states that a person shall, within the meaning of the relevant Land Tenure Abolition law, be deemed to be a permanent tenant on the date of the abolition of the relevant land tenure, if his name has been recorded in the record of rights or other public or revenue record as a permanent tenant in respect of any tenure land in any of the three following circumstances-

(a) on the date of the abolition of the relevant land-tenure; or

(b) in pursuance of orders issued during the course of any proceeding under the relevant land tenure abolition law or the Revenue Code either before or after the commencement of the impugned Act, 1958; or

(c) in pursuance of an order issued by the Mamlatdar in respect of an entry under s. 6 of the impugned Act, 1958. It is worthy of note that s. 3 does not create a mere presumption, as is referred to in s. 135J of the Revenue Code. Section 135J of the Revenue Code states inter alia that an entry in the record of rights shall be presumed to be true until the contrary is proved. Section 3 of the impugned Act, 1958 states, however, that a person shall be deemed to be a permanent tenant on the date of the abolition of the relevant land tenure if his name has been recorded in the record of rights in respect of any tenure land in any of the three circumstances mentioned as (a), (b) and

(c) therein. In other words, if any one of the three circumstances mentioned in the section exists, then by a fiction of law a person who fulfils that circumstance must be deemed to be a permanent tenant. Section 4 says in effect that a tenant(a) who on the date of the commencement of the Taluqdari Abolition Act, 1949 was holding any tenure land, and (b) who and whose predecessors in title, if any, were immediately before that date for such continuous periods as aggregate to a total continuous period of 12 years or more, holding the same tenure land, or any other tenure land shall unless it is proved by the tenure- holder that he would not have been a permanent tenant on the basis of continued possession of the land under (b) above, be deemed to be a permanent tenant of the land under (a), and all the provisions of the Taluqdari Abolition Act, 1949 shall apply to him as they apply to a permanent tenant. There is a third condition mentioned in s. 4, namely, the amount which the tenant pays must exceed the assessment of the land. This condition does not, however have any importance in the discussion which follows and no further reference to it is necessary.

There is no difficulty in understanding cl.

(a) of s. 4 but cl. (b) is not so clear. The expression "continuous periods as aggregate to a total continuous period of twelve years or more"

is neither very elegant nor very clear. Perhaps, the expression means that one particular continuous period may be of less than twelve years but there may be more than one such continuous period and in such a case the totality of such continuous periods must aggregate twelve years or more; if however, one continuous period extends over twelve years or more, there is no difficulty, and the question of the aggregate totalling twelve years does not arise. The question of the aggregate totalling twelve years will arise when there are more continuous periods than one, of less than twelve years duration each. The possessions for such continuous periods may be of the same tenure-land or of different tenure-lands. If however, the aggregate of continuous periods of possession of the same tenure-land or of any other tenure-land comes to twelve years or more, then cl. (b) of s. 4 is fulfilled. It further appears that conditions mentioned in (a) and (b) are cumulative. In other words, for the application of s.4, a tenant must be in possession of tenure-land on the date of the commencement of the Taluqdari Abolition Act, 1949 (August 15, 1950) and further more must have been in possession of the same tenure-land or of any other tenure-land for continuous periods aggregating more than twelve years immediately before the said date. A person who fulfils the aforesaid two conditions shall be deemed to be a permanent tenant of the land unless it is proved by the tenure-holder that he would not have been a permanent tenants of the basis of possession referred to in cl.(b). The expression "unless it is proved by the tenure-holder that he would not have been a permanent tenant on the basis of continued possession of the land under clause (b)" has again given rise to some difficulty. Two views have been can-

vassed before us. One view is that the expression means that the tenure-holder can only contest the correctness of the claim of twelve years' possession and show that the tenant was not in possession of the land or lands concerned or that the continuous period or periods of possession did not aggregate twelve years. The other view is that the tenure-holder can show that the tenancy commenced on a particular date or that there is satisfactory evidence of the duration of the tenancy, and therefore, under s. 83 of the Revenue Code the tenant would not be a permanent tenant merely by reason of twelve years' possession. Section 4 as worded is somewhat obscure and if one were to go merely by the words used, one would be inclined to accept the first view. On that view, the Section undoubtedly would go much further than merely introducing a rule of evidence; it would create a new class of permanent tenants not contemplated by s. 83 of the Revenue Code. The latter section talks of two circumstances which determine the status of a tenant: one relates to commencement of the tenancy and the other to its intended duration. Under s. 83 the onus will be on the person who claim a permanent status as a tenant to prove that either the commencement of the tenancy is not known or that its intended duration was not agreed upon between the landlord and tenant or was not governed by any usage of the locality. Section 4 of the impugned Act, 1958 gives a go-by to these circumstances. It brings in different considerations altogether. In effect it says that if a person was in possession of any tenure-land on August 15, 1950 (the date of commencement of the Taluqdari Abolition Act, 1949) and was further more in possession of the same

tenure-land or any other tenure-land for a continuous aggregate period of twelve years, he would be deemed to be a permanent tenant, unless the tenure-holder proved that he was not in possession for a continuous aggregate period of twelve years as laid down in cl. (b) of the section. This means that instead of the two circumstances relating to commencement and duration a new consideration is brought in, namely, whether the tenant has been in possession for a continuous, aggregate period of twelve years. If he has been, then he is a permanent tenant. If he has not been in such possession, then he is not a permanent tenants. In other words, s. 4 of the impugned Act, 1958, completely changes the definition of a permanent tenant and creates a new class of permanent tenants who were not permanent tenants on April 1, 1957. If this view is correct, and we think that there is a good deal to be said in favour of this view, then s. 4 of the impugned Act, 1958 in spite of giving the tenure-holder an opportunity of proving that the tenant was not in possession for an aggregate continuous period of twelve years under s. 4 read with s. 6, undoubtedly changes the very definition of permanent tenant and by that change wipes out a large part of the purchase price which the petitioners were entitled to get on April 1, 1957 from some of their tenants. It is not disputed that on this view of s. 4, the impugned legislation would be unconstitutional inasmuch as it would bring within the category of permanent tenants persons who were non-permanent tenants under the previous law and there by deprive the tenure-holders of part of the purchase money which they were to get from them.

It has been contended that the second view with regard to the expression "unless it is proved by the tenure-holder that he would not have been a permanent tenant on the basis of continued possession of the land under clause (b)" is preferable on the ground that cl. (b) is one of the conditions which the tenant must fulfil before he can get the benefit of s. 4 and there would not be much sense in allowing the tenure-holder to disprove a condition which the tenant must fulfil before he can get the benefit of s. 4. We find it difficult to accept this view. On a pure question of construction of the words used in s. 4, we see nothing wrong in allowing the tenure-holder to prove that the tenant was not in possession for continuous periods aggregating twelve years. Let us, however, assume that the second view as to the interpretation of s. 4 of the impugned Act, 1958, is preferable to the first view. What then is the position? The position then is that a tenant who fulfils the two conditions mentioned in cls. (a) and (b) must be deemed to be a permanent tenant unless the tenure-holder proves the commencement and/or duration of the tenancy. From this point of view it may be argued that s. 4 merely changes a rule of evidence and throws the onus on the tenure-holder to prove that in spite of twelve years' continuous possession mentioned in cl. (b), the tenant is not a permanent tenant by reason of the circumstance that the commencement of the tenancy or its intended duration is known. Under s. 6 the rights of a permanent tenant under s. 4 shall be entered in the record of rights unless the tenure-holder applies in writing to the Mamlatdar within six months from the date of the commencement of the impugned Act, 1958, for the declaration that the tenant under him is not a permanent tenant. If any such

application is filed by the tenure-holder, it shall be disposed of as if it were an application in respect of a disputed case under s. 135D of the Revenue Code. What is the effect of s. 6 ? It was conceded by the learned counsel appearing for the respondent State and also the respondent tenants that the tenure- holder has only one opportunity of saying that a tenant under him is not a permanent tenant and the tenure-holder must avail himself of that opportunity within six months from June 10, 1958, the date on which the impugned Act, 1858, came into force. The combined effect of ss. 3, 4 and 6 appears to us to be this. If the tenure-holder has made no application within six months from June 10, 1958, for a declaration that a tenant under him is not a permanent tenant, every tenant under him who fulfils the conditions mentioned in cls. (a) and

(b) of s. 4 at once gets recorded in the record of rights as a permanent tenant. As soon as he is so recorded, he must be deemed under s. 3 to be a permanent tenant by a fiction of law and under s.

4 all the provisions of the Taluqdari Abolition Act, 1949, will apply to him as they apply to a permanent tenant. This combined effect of ss. 3, 4 and 6 of the impugned Act, 1958 does in our opinion deprive the tenure-holder of any real opportunity of contesting the claims of his tenants and makes them permanent tenants once they are recorded in the record of rights, thereby depriving the tenure-holder of the purchase price which he was entitled to get from them under s. 32H of the Tenancy Act, 1948.

On behalf of the respondents it was stated at the Bar that the petitioners had made applications for a declaration under s. 6 of the impugned Act, 1958, and that those applications are still pending. We have no materials in support of this statement. No affidavit has been made on behalf of the respondents to this effect; nor do we know if those applications related to all the non- permanent tenants of the petitioners. What we know is that in a stay application made by the petitioner in petition No. 120 of 1958 it was averred that the petitioner had filed several declaratory suits before the Mamlatdar under s. 70(b) of the Tenancy Act, 1948, for a declaration that the tenants concerned were not permanent tenants. Those suits were however, filed prior to the coming into force of the impugned Act, 1958. The petitioner asked for a stay of those suits on two grounds: firstly, that after the coming into force of the impugned Act, 1958, the suits would become infructuous, and secondly, that the Mamlatdar concerned would have no jurisdiction to adjudicate upon the constitutional validity of the provisions of the impugned Act, 1958, and in view of those provisions would be bound to hold that the tenants had become permanent tenants. This Court passed no order on the application for stay. But the petitioner, it appears, moved the Mamlatdar to stay the hearing of the suits pending the disposal of the writ petition in this Court and the suits were stayed. In a second petition filed on behalf of the petitioner it was stated that after the coming into force of the impugned Act, 1958, the petitioner received a notice to show cause why the non-permanent tenants under him should not be declared to be permanent tenants and the record of rights amended accordingly. The petitioner applied to the Revenue Officer concerned to stay the proceedings in view of the writ petition pending in this Court. This request was, however, turned down. The petitioner then came to this Court and it appears that an order was made to the effect that any investigation

which might be necessary for the proceedings pending before the Revenue Officer might be continued, but no final order or entry should be made till the disposal of the writ petition. Such an order appears to have been made in respect of a number of villages and the petitioner stated that he had thousands of tenants in 24 villages, some of whom were permanent, some protected, and some ordinary. Nothing was stated in those petitions or in the replies thereto as to whether the tenure-holder had made an application for a declaration within the meaning of s. 6 of the impugned Act, 1958. All that has been stated in the application is that in response to a notice received from the Revenue Officer, the petitioner, as a tenure-holder, had moved this Court for a stay of the proceedings. If the petitioner had filed no application for a declaration within the meaning of s. 6 of the impugned Act, 1958, and within the time allowed by that section, then it is obvious that the Revenue Officer dealing with the suits under s. 70(b) of the Tenancy Act, 1948, pending before him, or the Revenue Officer dealing with other proceedings before him, must give effect to the provisions of ss. 3, 4 and 6 of the impugned Act, 1958. It is, therefore difficult to see how the pendency of the suits or other proceedings before the Revenue Officers concerned can be of any assistance to the petitioners. The question, therefore, boils down to this. Section 6 of the impugned Act, 1958 does give one opportunity to the petitioners to make an application for a declaration that any tenant under him is not a permanent tenant, but that opportunity was to be availed of within six months from June 10, 1958. Once that opportunity is lost, the tenure-holder cannot claim that a tenant who fulfils cls. (a) and (b) of s. 4 is not a permanent tenant. Our attention was drawn to sub-ss. (3), (4) and (5) of s. 5A of the Taluqdari Abolition Act, 1949. Those sub-sections say in effect that if any question arises whether any person is a permanent tenant, the State Government or an officer authorised by the State Government in that behalf shall decide the question; where such officer decides such question any person aggrieved by the decision may file an appeal to the State Government within 60 days from the date of the decision; and the decision of the State Government shall be final. It was not suggested before us that the aforesaid sub-sections would give the tenure-holder a second opportunity of contesting the claim of the tenant, and it seems to us quite clear that the tenure- holder who had failed to make an application within the time mentioned in s. 6 of the impugned Act, 1958, would not be in a position to take advantage of sub-ss. (3), (4) and (5) of s. 5A of the Taluqdari Abolition Act, 1949. If ss. 3, 4 and 6 of the impugned Act, 1958, are good and valid in law, then whichever be the authority that has to decide the claim of the tenant, it must decide it in accordance with those provisions.

In these circumstances, can it be said that the opportunity given by s. 6 is a real opportunity and does it amount to merely changing a rule of evidence ? We think that this question must be answered in the negative.

It is to be noted that on April 1, 1957 the petitioners ceased to be tenure-holders of the lands held by non-permanent tenants and as held by this Court, ss. 32 to 32R of the Tenancy Act, 1948, clearly contemplated the vesting of the title in the tenants on the tillers' day, defeasible only on certain specified contingencies. This Court held that those sections were designed to bring about an extinguishment, or in any event a modification of the landlord's rights in the estate within the meaning of Art. 31A (1) (a) of the Constitution. If that was the true effect of ss. 32 to 32R of the Tenancy Act, 1948, then on April 1, 1957 the petitioners were left only with the right to get the purchase price under s. 32H. That right of the petitioners was undoubtedly a right to property. In

Bombay Dying and Manufacturing Co. Ltd. v. The State of Bombay (1) this Court observed, with regard to unpaid wages of an employee, that when an employee had done his work, the amount of wages earned by him become a debt due to him from the employer and this was property which could be assigned under the law. The provisions of the Bombay Labour Welfare Fund Act (Bombay Act XL of 1953) were under consideration in that case. Section 3 of the Act transferred inter alia all unpaid accumulation of wages to a fund known as the Bombay Labour Welfare Fund. This Court held that s. 3 (1) of the Act in so far as it related to unpaid accumulation in s. 3(2) (b) was unconstitutional and void by reason of the right guaranteed under Art. 19(1)

(f) of the Constitution and was not saved by cl.(5) thereof. We think that the same principle must apply in the present case. The right of the petitioners to the purchase price under s. 32H of the Tenancy Act, 1948, from those of their tenants who were non- permanent on April 1, 1957, was a right of property in respect of which the petitioners have a guarantee under Art. 19 (1)(f). The provisions in ss. 3,4 and 6 of the impugned Act, 1958, in so far as they laid down that in certain circumstances a tenant shall be deemed to be a permanent tenant from the date of the Taluqdari abolition Act, 1949, adversely affected the right of the petitioners with retrospective effect; it practically wiped off a large part of the purchase price which the petitioners were entitled to get. If s. 6 of the impugned Act, 1958, is to be tested on the touchstone of reasonable restrictions in the interests of the general public as laid down in cl. (5) of Art. 19 of the Constitution, it must be held that it does not impose a reasonable restriction. We have found it very difficult to understand why and how it is reasonable that the tenure-holder must make an application within six months from the commencement of the impugned Act, 1958, for a declaration that his tenants are not permanent tenants. The petitioners have three kinds of tenants-permanent tenants, protected tenants, and ordinary tenants. On April 1, 1957 the petitioners ceased to be tenure holders in respect of all tenants other than permanent tenants and became entitled only to the purchase price under s. 32H. If any tenant claimed on that date that he was a permanent tenant, he had to establish his claim in accordance with s. 83 of the Revenue Code. Such a claim could be contested by the tenure-holder whenever made by the tenant. But by the impugned Act, 1958, all this was changed, and unless the tenure holder made an application within six months of the commencement of the impugned Act, 1958, he was not in a position to say that a particular tenant who was in possession of tenure-land for continuous period aggregating twelve years on and before August 15, 1950, was not a permanent tenant. We are unable to hold that the six months' limit imposed by s. 6 of the impugned Act, 1958, is in the circumstances, a reasonable restriction within the meaning of Art. 19(5) of the Constitution. It is a little difficult to understand how the tenure-holder could know which of his non-permanent tenants would claim to be permanent on the coming into force of the impugned Act, 1958. Obviously, the tenure-holder had to anticipate that all his non- permanent tenants might claim to be permanent, and therefore it was incumbent on him to make an application for a determination that none of his non-permanent tenants were permanent, and unless he did so he would lose his right to get the purchase price under s. 32H of the Tenancy Act, 1948. We are clearly of the view that the time limit imposed by s. 16 of the impugned Act, 1958, is, in these circumstances, and unreasonable restriction and cannot be justified under Art. 19(5) of the Constitution.

In view of this finding it is unnecessary to consider the effect of Art. 31 of the Constitution. On behalf of the respondent State reliance was sought to be placed on Art. 31A of the Constitution. That

Article, in our opinion, has no application to the present cases, inasmuch as there was no acquisition by the State of any estate or any rights therein or the extinguishment or modification of any such rights. On April 1, 1957, the tenure-holders had ceased to be tenure- holders in respect of lands held by non-permanent tenants. The relation between the tenure-holders and the tenants had changed from that of landlord and tenant to that of creditor and debtor. When, therefore, the impugned Act, 1958, affected the right of the petitioners as creditors to get a certain sum of money from the debtors, it did not provide for the acquisition by the State of any estate or of any rights therein; nor did it provide for the extinguishment or modification of any such rights. Therefore, Art. 31A has no application and cannot save the impugned Act, 1958.

It has been contended before us that while implementing the provisions of s. 5A of the Taluqdari Abolition Act, 1949, it was found that because of the failure or inability of the ex- Taluqdar to produce old records concerning the tenants it was difficult for the tenants to take the benefit of that provision; therefore, it became necessary for the Legislature to define permanent tenant in such a way that the tenure- holder might not defeat the provisions of s. 5A. That it was stated, was the reason for enacting ss. 3, 4 and 6 of the impugned Act, 1958. We are unable to accept this argument as correct. If the reason was as stated above, then the tenure-holder should have been given a chance to contest the claim of the tenant whenever he made a claim of being a permanent tenant. It appears to us that the true scope and effect of the provisions in ss. 3, 4 and 6 of the impugned Act, 1958 is to considerably reduce the purchase price payable to the petitioners and this has been secured by the device of defining permanent tenant in such a way that the tenure-holder has no real opportunity of contesting the claim of the tenants. In that view of the matter, the impugned Act, 1958, does not fall within any entry of List II or List III of the Seventh Schedule to the Constitution and is a piece of colourable legislation. What is colourable legislation was explained by this Court in K. C. Gajapati Narayan Deo v. The State of Orissa (1). This Court said that the idea conveyed by the expression "colourable legislation" is that although apparently a legislature in passing a statute purported to within the limits of its powers, yet in substance and in reality it transgressed those powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. We are of the view that, that is what has happened in the present case. Under the guise of defining a permanent tenant or changing a rule of evidence what has been done is to reduce the purchase price which became payable to the tenure-holders on April 1, 1957.

For these reasons we must hold that ss. 3, 4 and 6 of the impugned Act, 1958 in so far as they deem some tenants as permanent tenants in possession of taluqdari land are unconstitutional and void. Under the guise of changing the definition of a permanent tenant, they really take away a large part of the right of the petitioners to get the purchase price under s. 32H of the Tenancy Act, 1948, from some of their tenants. The petitions must accordingly be allowed with costs. As the petitions have been heard together there will be only one hearing fee.

MUDHOLKAR, J,-Writ petition No. 120 of 1958 was heard along with writ petitions Nos. 147 to 158 of 1958. But a common argument was advanced before us on behalf of the petitioner in each case by Mr. G.S. Pathak and by the Solicitor General on behalf of the State of Gujarat and by Mr. Nathwani on behalf of the tenants.

The petitioners in these cases were Talukdars of certain villages in that part of the former state of Bombay which is now the State of Gujarat. The rights of Talukdars in different parts of Gujrat to Taluqdari villages were regulated by the Ahmedabad Taluqdars Act, 1862 (Bom. 6 of 1862) and the Broach and Kaira Incumbered Estates Act, 1881 (XXI of 1881) and the Gujarat Taluqdars Act, 1888. The Bombay Taluqdari Tenure Abolition Act, 1949 (herein referred to as the Abolition Act) repealed the aforementioned Taluqdari Acts and s. 3 thereof abolished the Taluqdari tenure wherever it prevailed. That section further abolished all incidents of the said tenure attaching to any land comprised in a Taluqdari Estate. Section 5 of that Act made all the taluqdars "occupants" of the lands in their possession, within the meaning of the expression "occupant" occurring in the Bombay Land Revenue Code (hereafter referred to as the Code). Like "Occupants" in other areas of the Bombay State these persons became liable to pay land revenue to the Government subject to the provisions of cl.(b) of sub-s.2 of s.5. Nothing, however, turns on these provisions. Section 16 of the aforesaid Act makes the provisions of the Code applicable to taluqdari villages subject to certain modifications with which we are not concerned. The validity of the Abolition Act was challenged before this Court but that challenge failed vide Dhisubha Devisingh Gohil v. The State of Bombay(1).

Vast areas of lands in these villages were in the occupation of inferior holders, permanent tenants, protected tenants, ordinary tenants etc. It is not disputed that the provisions of Ch. VII of the Code which deals with "superior holders and inferior holders" govern the relationship between the tenure holders and permanent tenants. In addition to these provisions there are those in the Bombay Tenancy and Agricultural Lands Act, 1948 (hereafter referred to as the 'Tenancy Act') which deal with the relationship between landlord and tenant and till April 1, 1957, it is these provisions which exclusively governed the relationship between the tenure-holder and tenants other than permanent tenants and inferior holders. It would be necessary to refer to some of the provisions of this Act while dealing with the arguments advanced before us.

By Bombay Taluqdari Abolition (Amendment) Act 1 of 1955 which came into force on March 1, 1955, the Abolition Act was amended and a new provision was added therein, viz: s. 5A the relevant portion of which reads thus:

> "(1) Notwithstanding anything contained in section 5 a permanent tenant in possession of any taluqdari land, and also an inferior holder holding such land on payment of annual assessment only, shall be deemed to be occupants within the meaning of Code, in respect of such land in their possession and shall be primarily liable to the State Government for the payment of land revenue due in respect of such land, and shall be entitled to all the rights and shall be liable to all the obligations in respect of such land as occupants under the Code or any other law for time being in force:
>
> Provided that-
>
> (a) such permanent tenant shall be entitled to the rights of an occupant in respect of such land on payment to the taluqdar or the cadet as the case may be :-

> (i) of the occupancy price equivalent to four multiples of the assessment fixed for such land, and
>
> (ii) for the extinguishment or modification of any rights of the taluqdar or cadet, as the case may be, including the right of reversion in the lands, of a further sum equivalent to two multiples of such assessment;
>
> x x x (2) The right conferred under sub- section (1) shall not be exercisable after a period of (five) years from the date on which the Bombay Taluqdari Tenures Abolition (Amendment), Act 1954 comes into force.
>
> x x x This section for the first time conferred upon a permanent tenant the right to acquire the status of an occupant in respect of the land held by him as a permanent tenant of the tenure-holder upon payment of a certain sum of money as the price of occupancy to the tenure-holder within five years of the commencement of the Amending Act of 1955.

It was accepted before us that the period fixed by s. 5A has been extended upto the year 1962. Section 5A of the Act has never been challenged, and the argument before us proceeded upon the footing that it is a perfectly valid piece of law.

Though the Abolition Act by s. 5A thus conferred upon the permanent tenants in the taluqdari villages the right become occupants, it did not define what a permanent tenant was. By an amendment made by Bombay Act XVIII of 1958, it was provided that certain persons would be permanent tenants but that does not really define what a permanent tenant is. This absence of definition of a permanent tenant did not, however, create any difficulty because in Bombay that term has been understood to mean the tenant described in paragraph 2 of s. 83 of the Code. Indeed, in the petitions themselves it is stated that s.83 of the Code defines a permanent tenant. The second paragraph of that section is in these terms:

> "And where by reason of the antiquity of a tenancy no satisfactory evidence of its commencement is forthcoming, and there is not any such evidence of the period of its intended duration, if any, agreed upon between the landlord and tenant, or those under whom they respectively' claim title or any usage of the locality as to duration of such tenancy, it shall, as against the immediate landlord of the tenant, be presumed to be co-extensive with the duration of the tenure of such landlord and of those who derive title under him."

Under this section, therefore, a permanent tenant is one whose tenure is co-extensive with that of his landlord and a tenant is to be presumed to be such a tenant when by reason of antiquity, the commencement of the tenancy cannot be proved and there is no satisfactory evidence of the agreed duration of the tenancy or of any usage of the locality as to such duration. The Bombay Tenancy and Agricultural Lands Act, 1956 (13 of 1956) which among other provisions, has amended s. 2 of the Tenancy Act has given a definition of the expression in the new sub-s.10A thereof but it is not

necessary to reproduce it as no argument based on it is advanced before us as indeed none could be advanced.

That Act made extensive and far-reaching amendments in the Bombay Tenancy Act. Several sections thereof were recast including s.32. Amongst the Provisions added are ss. 32A to 32-R which appear in the second part of Chapter 3 of that Act, dealing with "Purchase of land by tenants" to which we will refer hereafter. By virtue of s.32, sub. s. 1, on April 1, 1957, called the "tillers' day" every tenant, including permanent tenant was, subject to the other provisions of that section and of the succeeding sections deemed to have purchased the tenancy land in his possession from the landlord free of all encumbrances subsisting thereon. Section 87A, which also was added to the Tenancy Act by the Amending Act of 1956, provided that nothing in the Tenancy Act was to affect the provisions of any of the Land Tenure Abolition Acts specified in Schedule II (which includes the Abolition Act in question) in so far as such provisions relate to the confinement of the right of an occupant upon a permanent tenant in respect of land held by him. In consequence of this the provisions of s. 32-H of the Tenancy Act which deal with the purchase price payable by permanent tenants will not apply to such permanent tenant. He would, therefore, have only that right which is conferred upon a permanent tenant by s. 5-A of the Abolition Act. The result of this is that he would not be bound to pay the purchase price at once under s. 32-H of the Tenancy Act and can make his election to acquire or not to acquire the right of an occupant within the period allowed by s. 5-A (as extended from time to time).

The records relating to tenancies in taluqdari villages used to be maintained by the tenure-holders. It is from these records that information could be obtained as to the nature of the tenancies of the tenants in those villages. While implementing the provisions of s. 5-A of the Abolition Act it was found that because of the refusal, failure or inability of the taluqdar to produce old records concerning the tenants it was difficult for the tenants to take the benefit of that provision. Therefore, the legislature passed Bombay Act No. 57 of 1958 called the Bombay Land Tenure Abolition Laws (Amendment) Act, 1958. The long title of the Act runs thus: "An Act further to define permanent tenants, inferior holders and permanent holders for the purposes of certain Land Tenure Abolition laws and to provide for certain other matters." Section 4 of this Act states who are to be deemed to be permanent tenants for the purpose of the Land Tenure Abolition laws specified in Part II of the Schedule to the Act. The validity of this Act (hereafter referred to as the impugned Act) and in particular of the provisions of s. 4 is challenged before us.

We will reproduce hereafter this section and certain other provisions of the Act which have a bearing upon the arguments addressed before us.

According to Mr. Pathak s. 4 of the Act in effect expands the category of permanent tenants by bringing within its fold persons who were merely ordinary tenants prior to the enactment of this provision. So far as an ordinary tenant is concerned it is Mr. Pathak's contention that on the tillers' day he became an occupant of the land or at any rate the landlord (or tenure-holder) lost his interest therein and that thereafter the latter became entitled to receive from the tenant the purchase price by the combined operation of s. 32(1) and s. 32-H(1) (i) of the Tenancy Act. Section 32(1) so far as material runs thus:

"On the Ist day of April, 1957, (hereinafter referred to as 'the tillers' day') every tenant shall, subject to the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if

(a) such tenant is a permanent tenant thereof and cultivates the land leased personally;

(b) such tenant is not a permanent tenant but cultivates the land leased personally; and

(i) the landlord has not given notice of termination of this tenancy under section 31: or

(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March, 1957 under section 29 for obtaining possession of the land; (or)

(iii) the landlord has not terminated this tenancy on any of the grounds specified in section 15, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March, 1957 under section 29, for obtaining possession of the lands;

. . . . . .

. . ."

Section 32-H, so far as material, runs thus:

"(1) Subject to the additions and deductions as provided in sub-sections 1A and 1B, the purchase price shall be reckoned as follows, namely:-

(i) In the case of a permanent tenant who is cultivating the land personally the purchase price shall be the aggregate of the following amounts, that is to say,-

... ...

..."

(ii) In the case of other tenants the purchase price shall be the aggregate of the following amounts, that is to say,-

(a) such amount as the Tribunal may determine not being less than 20 times the assessment and not more than 200 times the assessment;

. . . . . .

. . . "

> According to the petitioner in W. P. 120 of 1958 the total area of land held by him in his villages is 62,588 acres out of which only 703 acres are in his personal cultivation and the rest is held by tenants who are non-permanent tenants. He contends that by the operation of s. 4 of the impugned Act most of these persons are likely to be placed in the category of permanent tenants with the result that the petitioners would be compelled to accept purchase price at a much lower rate, that is, they would get only six times the assessment instead of between 20 and 200 times the assessment, as may be determined by the tribunal. According to him his estimated loss would be over Rs. 14,00,000. On behalf of the State it is denied that the petitioner would be put to any such loss.

The substance of the argument of Mr. Pathak is that the right to claim compensation under s.32H(1)(ii) from the ordinary tenants having vested in the petitioner it cannot be taken away by the Bombay legislature by extending the definition of "permanent tenant" so as to include within it those who were merely ordinary tenants on the "Tillers' Day". He formulated his grounds of attack on the legislation as follows:

> (1) The Bombay legislature was not competent to enact the impugned Act as the subject matter thereof is not covered by any entry in List II.
>
> (2) The impugned Act is colourable legislation as it amounts to a device adopted for the purpose of confiscating money, the right to claim which had vested in the landlord as purchaser on April 1, 1957, and that the State legislature had no power to make a law with respect to this matter. (3) The impugned Act being outside the legislative competence of the Bombay legislature, taking away of the petitioner's money was a contravention of Art. 31(1) of the Constitution.
>
> (4) The acquisition of money is not for a public purpose as taking money from one and giving to another is not a public purpose. (5) Even assuming that the acquisition was for a public purpose no compensation has been provided by the Act or could indeed be provided by the Act and, therefore, Art. 31(2) is contravened.
>
> (6) The impugned Act contravenes Art.

19(1)(f) of the Constitution inasmuch as it authorises the confiscation of money. (7) The Act infringes Art. 14 of the Constitution as there are other classes of tenure-holders similarly situate to whom the impugned Act does not apply.

All these grounds of attack, except the last, rest upon one assumption and that assumption is that s. 4 of the impugned Act extends the definition of permanent tenants and brings within its fold persons who were till April 1, 1957, that is, the "tillers' day", ordinary tenants. If this assumption is invalid then the whole edifice which Mr. Pathak has built upon it must tumble down. Let us consider

what exactly s. 4 of the impugned Act does. In order to appreciate Mr. Pathak's argument properly it would be desirable to reproduce that section as well as ss. 3 and 6. These sections run thus:

> Section 3 : "A person shall, within the meaning of the relevant Land Tenure Abolition law, be deemed to be an inferior holder, a permanent holder or, as the case may be, a permanent tenant, on the date of the abolition of the relevant land tenure, if his name has been recorded in the record of rights or other public or revenue records as an inferior holder, permanent holder or permanent tenant in respect of any tenure-land-
>
> (a) on the date of the abolition of the relevant land tenure, or
>
> (b) in pursuance of orders issued during the course of any proceedings under the relevant Land Tenure Abolition law or, as the case may be, the Bombay Land Revenue Code, 1879-
>
> (i) before the commencement of this Act, or
>
> (ii) after the commencement of this Act in cases in which inquiries were pending at the commencement of this Act, or
>
> (c) in pursuance of an order issued by the Mamlatdar in respect of an entry under section 6 of this Act."

The relevant Land Tenure Abolition law for our purposes is the Bombay Tenancy Abolition Act and tenure land means taluqdari land.

Section 4 runs thus:

> "For the purposes of the relevant Act specified in part I of the Schedule, a person-
>
> (a) who on the date of the commencement of that Act was holding any tenure land, and
>
> (b) who and whose predecessors in title, if any were, immediately before that date for such continuous periods as aggregate to a total continuous period of twelve years or more, holding the same tenure-land or any other tenure-land, as a tenant or inferior holder under the tenure-holder for the time being on payment of an amount exceeding the assessment of the land, shall unless it is proved by the tenure-holder that he would not have been a permanent tenant on the basis of continued possession of the land under clause (b), be deemed to be a permanent tenant of the land under clause (a) and all the provisions of that Act shall apply to him as they apply to a permanent tenant."

Section 6 runs thus:

> "(1) The rights of an inferior holder, permanent holder or permanent tenant under sections 4 and 5 shall be entered in the record of rights unless the tenure-holder applies in writing to the Mamlatdar within six months from the date of the commencement of this Act for a declaration that any holder or tenant under him is not an inferior holder, a permanent holder or, as the case may be, a permanent tenant.
>
> (2) Any such application shall be disposed of as if it were an application in respect of a disputed case under section 135D of the Bombay Land Revenue Code, 1879."

Thus according to s. 3 a person whose name is recorded in the record of rights or other public revenue records as a permanent tenant in respect of tenure land he will be deemed to be a permanent tenant within the meaning of the expression occurring in the Abolition Act.

As already stated, for ascertaining the meaning of the expression one has to go to para. 2 of s. 83 of the Code. No doubt, it merely raises a presumption as to permanent tenancy but from that para. we can deduce the essential feature of a permanent tenancy.

The argument is that s. 3 being a deeming provision in so far as the Abolition Act is concerned, gives new definition of a permanent tenant. What the section says is that certain persons will be deemed to be permanent tenants for the purpose of the Abolition Act. Who are these persons ? Are they chosen arbitrarily and put in that class though they could not possibly have been so put under the previous law ? A bare perusal of clauses (a) to (c) of s. 3 shows that only tenants who have been found on enquiry to be permanent tenants, at least presumptively, are to be regarded as permanent tenant, for the purpose of the Abolition Acts and their status as permanent tenants can no longer be questioned. In regard to persons whose cases fall under clauses

(a) and (b) all that the section has done is to take away the right of the tenure-holder to challenge in a collateral proceeding their status as permanent tenants. As regards tenants falling under cl. (c) what the provision has done is to require the tenure holder to object to the recording of such person as permanent tenant within a certain time before the mamlatdar. If he fails to avail himself of the opportunity the door is shut to his saying thereafter that the person is not a permanent tenant. It is to be noted that tenants who are to be regarded as permanent tenants for the purposes of the Abolition Act have been so found in enquiries held by revenue courts and not persons arbitrarily selected or persons who could not reasonably be regarded as permanent tenants.

The inclusion of persons as permanent tenants in the register of rights may be prior to the commencement of the Abolition Act or after its commencement. The proceedings for the inclusion may have been instituted prior to the commencement of the Abolition Act or may be instituted under the impugned Act. If they hold in favour of the tenant he will be deemed to be a permanent tenant. The landlord cannot then be permitted to say that he is not a permanent tenant. It is difficult to see how this disability imposed upon a landlord to dispute the fact that a person is a permanent

tenant be regarded as enlarging the definition of a permanent tenant. It is true that s. 135.J of the Code granted the landlord a right to challenge the correctness of an entry in the record of rights in collateral proceedings without reference to time and that right is abrogated by the impugned Act but even so doing that cannot be regarded as taking away a vested right. Within what time, in what circumstances and in which manner a particular fact is open to challenge is only a matter of procedure and it cannot be disputed that there is no vested right in procedure.

The effect of the provision thus is that in proceedings under the Abolition Act for conferral of a right of an occupant the claimant's status as a permanent tenant cannot, if he satisfies the requirement of any of the three clauses of s. 3 of the impugned Act be open to question by the tenure-holder. Would the position have been any different if the impugned Act had not been passed ? Let us consider s. 5A of the Abolition Act by itself. Suppose a person recorded as a permanent tenant in the record of rights claimed to enforce the right conferred by this section to obtain the right of an occupant in proceedings thereunder. These proceedings would be taken before a revenue officer and he would be bound to act on the entry in the record of rights until and unless it was lawfully substituted by another. No suit lies for correcting an entry in the record of rights. Only in a collateral proceeding could it have been challenged and the jurisdiction of a civil court be invoked. Where no such suit or proceeding is pending when the proceedings under s. 5A are going on the tenure-holder cannot be permitted to go behind the entry. However, as an additional safeguard the Abolition Act has provided in s. 5A itself a remedy and that is to approach the State Government or an authority empowered by it in this behalf for deciding to question.

Clause (b) of s. 3 of the impugned Act, as also cl. (c), expressly contemplate cases where there is a dispute as to the status of a person and if it has been decided in favour of the person claiming to be a permanent tenant he is to be deemed to be a permanent tenant for the purposes of the Abolition Act. True that thereafter the tenure-holder cannot challenge the fact even in a collateral proceeding but that would be by reason of the provisions of s. 5A itself which have not been challenged. No doubt after the commencement of the impugned Act no new proceedings under s. 5A of the Abolition Act are permissible but that is because an alternative remedy is available under s. 6 of the impugned Act.

We must now examine s. 4 in detail. It provides that a person who, on the date of the commencement of the Abolition Act was holding any tenure land and who, and whose predecessors in title, if any, were immediately before that date "for such continuous periods as aggregate to a total continuous period of 12 years or more"

> holding the same tenure land or any other land as a tenant be deemed to be a permanent tenant "unless it is proved by the tenure-holder that he would not have been a permanent tenant on the basis of continued possession of the land under clause (b)". It is difficult to appreciate how it expands the definition of permanent tenant. True, it says that such a tenant will be deemed to be a permanent tenant but it does not stop there. It goes on to say that he will be so deemed unless the tenure-holder can show that he cannot be so deemed ! What does s.4 mean when it says that a tenant shall be deemed to be a permanent tenant ? Clearly, the legislature

> had in mind the provisions of s. 83 of the Code which by virtue of s. 16 of the Abolition Act apply to all ex-taluqdari villages. To repeat, the impugned Act does not define "permanent tenant"

anywhere and that it is from para 2 of s. 83 of the Code that we must infer that a person whose tenancy is co-extensive with that of the landlord is a permanent tenant. A tenure-holder can get rid of the presumption raised by this provision if he can show the precise date of the commencement of the tenancy or if he can show that the tenancy is terminable in particular circumstances or on a particular date. We find nothing in s. 4 which directly or indirectly modifies the requirements of the definition of "permanent tenant". No doubt, para 2 of s. 83 of the Code sets out certain conditions for raising a presumption of permanent tenancy and s. 4 of the impugned Act modifies them. But by doing so, it is difficult to see how it alters the basic requirements of a permanent tenancy as deducible from para 2 of s. 83 of the Code. All that s. 4 does is to alter the conditions for raising the presumption but that cannot amount to altering the definition of "permanent tenant."

According to Mr. Pathak, however, the section permits the landlord to prove only that the tenant and his predecessors in title were not in possession for a continuous period of twelve years or more, on the date of the commencement of the Abolition Act and that if they fail to prove this, the presumption raised by the section would be irrebuttable. Thus according to him s. 4 makes a person who is in possession as a tenant for over twelve years, a permanent tenant even if the date of the commence-

ment of his tenancy was known or the duration thereof was for a definite period. In our opinion, reading the section that way would lead to an absurdity. It is admitted on both hands that s. 4 is intended to be availed of only in proceedings under s.6 to which a landlord would be a party. Clause (b) of that section which enacts the second condition which has to be fulfilled by a person before he can avail himself of the presumption under that section prescribes the minimum "duration" of a tenancy and does not deal with the question of its commencement or terms. Either the tenant fulfils that condition or he does not. If he does not fulfil it no further question arises and he must be deemed to be an ordinary tenant and nothing more. Therefore, if the tenant satisfies the condition, it would be meaningless to give to the tenure-holder an opportunity of disproving the very thing which had been proved in his presence and upon proof of which the tenant has been able to enlist the presumption created by the section in his aid. Such a construction would render the provision absurd or at best useless.

If the section was capable of being read in the way Mr. Pathak wants, it would read thus: "A person who has been in possession of tenure land at the commencement of the Abolition Act and was holding the same or any other land under the same tenure holder for a continuous period of 12 years he shall unless the tenure holder proves that he was not holding the land or lands for the continuous period of 12 years, be deemed to be a permanent tenant". Surely this would be making nonsense of the section. We are wholly unable to accept such a reading. We think, therefore, that the tenure-holder can prove under the section that on the basis of twelve years continued possession the tenant would not have been a permanent tenant for other reasons. These other reasons must be the reasons which in spite of the length of possession would show that he is not a permanent tenant

because the tenancy commenced at a certain time or because a term had been agreed upon for the tenancy or fixed by usage.

It may be, as the learned Solicitor General says, that the language used by the legislature is not felicitous. Even so, we think that it would not at all be far-fetched to construe it as meaning that the tenure-holder has the right to establish for getting over the presumption, that the tenancy originated at a definite point of time or was of a finite duration. The language used by the legislature is in our view capable of only such construction.

Then it is said that even if s. 4 is construed as giving an opportunity to the tenure- holder to prove otherwise than by disproving that the tenant had been in continuous possession of land under him for twelve years that he is not a permanent tenant, that opportunity is illusory and really nonexistent and, therefore, s. 4 in effect extends the definition of a permanent tenant. This contention is based on s. 6 of the Act which, it may be stated gives the tenure holder a period of six months from the commencement of the impugned Act to move the Mamlatdar in writing for a declaration that the tenant is not a permanent tenant within s. 4. It may be stated that the respondents concede that s. 6 has that effect.

We are, however, unable to agree that s. 6 makes the opportunity to rebut the presumption raised under s. 4 by continuous possession for twelve years illusory or non-existent. We have first to point out that we do not find this point taken in the petitions. Secondly, we fail to appreciate why the six months' time prescribed should be considered as if no time had really been given to the tenure-holder which would be the effect of accepting the petitioners' contention.

Since six months is not a short period, within that time it is easily possible for the tenure- holder to move the required application. Then it is said that it is illusory because there may be a very large number of tenants and the tenure-holder could be required to make numerous applications. Even so, we do not see why it should not have been reasonably possible to lodge these applications within the period allowed. All that the tenure- holder has to do is to name the tenant concerned and state that he wants a declaration that the tenant is not a permanent tenant. It is also said that the tenure-holder has to make the application in anticipation of the tenant making a claim to be a permanent tenant. But we are unable to appreciate how this by itself can make the opportunity to rebut non-existent. We find no practical difficulty in the tenure-holder making the application in anticipation.

Furthermore, the question has to be considered according to the realities of the case. It is admitted in the petitioners' affidavit in opposition that the preparation of the record of rights in respect of the tenants in the taluqdari villages commenced soon after the Abolition Act came into force, that is, soon after August 15, 1950. Many of the tenants have already been recorded as permanent tenants and since this could only have been done with reference to the provision of s. 83 of the Code the petitioners can have no grievance against such entries. Further, s. 3(b)(ii) of the impugned Act takes into account the fact that the proceedings in respect of the preparation of the record of rights were pending at the commencement of this Act. In these proceedings the tenure holder must already have objected-of course where he thought fit-to the tenant being recorded as a permanent tenant. These

again would cover quite a number of cases. It is only in regard to the remaining cases that applications under s. 6 would be required. We think it right also to point out that the rights under s. 4 of the impugned Act can be claimed by a tenant who pays for his holding an amount exceeding the assessment of the land. This we suppose would further reduce the number of tenants to whom s. 6 would apply. We have no materials on which to show that these would form a very large number. As we have already stated the petitioners not having raised the present point out of s. 6, they have not given any materials to show the cases of how many tenants are outstanding. Therefore, on the facts on this case, the petitioners cannot legitimately urge any practical difficulty in making applications under s. 6. We may also state here that many claims by tenants to be permanent tenants must have long ago been raised because under s. 5A of the Abolition Act, as originally framed, a tenant had five years from its commencement, that is, from August 15, 1950, within which to exercise his right. At the date of the impugned Act this period had been extended upto February 28, 1960. The impugned Act came into force on June 10, 1958. Therefore, at the date of the impugned Act the tenant had about one year and nine months within which to exercise the right given to him by s. 5-A of the Abolition Act. It is apparently for this reason that s. 6 of the impugned Act fixed the period of six months. It is true that later the period under s.5-A was extended but that was by Act XVIII of 1960 which came into force on April 8, 1960 and had, therefore, no bearing on the legislature fixing the time under s. 6 of the impugned Act.

According to one of our brethren the definition of "permanent tenant" is enlarged because even though the point of time when the tenancies of persons over certain lands commenced were known these persons are also included in the definition of "permanent tenant" under the impugned Act and cl. (b) of s. 4 is said to do this. We may point out that this was not one of the arguments advanced at the Bar and the respondents had no opportunity of meeting it. That apart, it is clear that this clause has to be read with Expl. II to s. 5-A of the Abolition Act. As already stated s. 5-A was not attacked as unconstitutional. Explanation II thereto provides as follows:

> "For the purpose of this section, a permanent tenant includes a tenant who holds a taluqdari land in exchange of another taluqdari land of which he was, and but for the exchange would have been a permanent tenant and who has been in continuous possession thereof since the date of exchange."

We may assume that the Explanation extends the definition of "permanent tenant" but its validity has not been challenged by the plaintiffs. Clause

(b) of s. 4 of the impugned Act merely takes note of the practice in tenure villages of changing the holdings of tenants from time to time and it is apparently for this reason that there was no challenge to s. 4 of the impugned Act on this ground. It is only the persons who or whose predecessors in title were tenants in tenure villages from time immemorial who will get the benefit of the impugned Act and no others. No new persons will thus be brought in by s. 4(b) and so it is idle to say that it enlarges the definition of permanent tenant.

It is said that s. 4 widens the definition of permanent tenant by including tenants the commencement of whose tenancies is definitely known. But does it do that ? The tenant in a tenure

village is a person holding tenure land. It is not necessary that he and his predecessors in title should have been holding the same parcel of land since the commencement of their tenancy. The practice of exchanging parcels of lands prevailed in tenure villages and Expl. II to s. 5-A has been founded upon it. Section 83 of the Code refers to the per-

manency of the relationship of landlord and tenant and not to the existence of permanent tenancy with respect to a specific parcel of land. These provisions have to be read along with s. 4 of the impugned Act because this Act cannot stand or was not intended to stand by itself. It adds certain provisions to the Abolition Act and the Code and these provisions must necessarily be assimilated to those of the main Act. Looked at this way it is clear that what s. 4 contemplates is a person the commencement of the tenancy of whose predecessors in title is unknown but who has been in possession of the same or different parcels of tenure land for a period of not less than twelve years prior to the commencement of the Abolition Act. It may be possible to say when he came into possession of a parcel of land `X' where it was taken by him within or more than twelve years of the commencement of the Abolition Act but that is not the same thing as saying that the relation between him and tenure-holder came into existence on that date for the first time. If in fact it came into existence more than twelve years before the Abolition Act came into force, may be with respect to different parcels of land from time to time, he is entitled to be regarded as a permanent tenant, unless of course it can be shown by the landlord that he or his predecessor in title was first inducted as a tenant in the tenure village at a definite period of time or that the tenancy was of a finite duration.

Thus, in our judgment, s. 4 of the impugned Act does not expand the definition of a permanent tenant. Therefore, it cannot be said that it has the effect of taking away from the landlord any property which had vested in him on the tillers' day. It may be that a tenant who, prior to the enactment of s. 4, was merely recorded as an ordinary tenant because he could not show that the origin of his tenancy was lost in the mists of anti-

quity and that now availing himself of this provision, he can get himself recorded as a permanent tenant by showing his continuous possession for twelve years. But s. 4 does not, as we read it, say that he becomes a permanent tenant in these circumstances in every case. He would not become one if the landlord shows that his tenancy commenced on a particular date beyond those twelve years or is of a finite duration.

Section 32H(1) does not confer upon the landlord the right to claim the price of occupancy at the rates prescribed in sub-s. (1)(ii) from a person because he is recorded as an ordinary tenant but only from one who is in fact other than a permanent tenant. If, in fact, he was a permanent tenant, or can be presumed to be a permanent tenant though till the coming into force of the impugned Act he was not recorded as such no right to claim the price of occupancy on the footing that he is not a permanent tenant of tenure land vested in the tenure-holder by virtue of that provision. Section 87-A of the Tenancy Act renders s. 32H(1)(i) inappropriate to such a tenant. No question of infringement of the right under Art. 19(1) (f) therefore arises in such cases.

It was also said that s. 6 of the impugned Act is void because it puts an unreasonable restriction upon the tenure-holder's right to hold property and, therefore, offends Art. 19(1)(f) of the Constitution. This point does not appear to have been taken in the petitions. In any case, if our construction of s. 4 is right, then the impugned Act would be saved by Art. 31-A of the Constitution and its validity would not be open to attack on the ground that it violated Art. 19(1)(f) of the Constitution.

Furthermore, it is difficult to appreciate how the tenure-holder's right to hold property is affected by s. 6. His right of property with which we are concerned, is as occupant of certain land having some permanent or other tenants under him. Section 5-A of the Abolition Act gives the permanent tenants the right to convert themselves into occupants and thereby cease to be tenants of the tenure-holder. The validity of this provision is not at all challenged. A tenant may claim the benefit under this section only if he establishes that he is a permanent tenant. It is plainly conceivable that in many cases the tenure-holder may dispute that the tenant is a permanent tenant. On such dispute being raised, the tenant has to prove that he is a permanent tenant. All that s. 6 does is to fix a time limit within which the tenure-holder shall have the right to dispute that certain permanent tenants are not permanent tenants. That does make those who were not permanent tenants, such tenants. Therefore, s. 6 can in no way be said to affect the tenure- holder's right to property.

Further, it would appear that in most cases the tenure-holders themselves including the petitioners, have actually applied to the mamlatdars for a declaration in their favour under this provision and those applications are pending. The learned Solicitor-General informed us that as a matter of fact upon the basis of the records made available by the tenure-holders tentative entries were made in the record of rights immediately after the coming into force of the impugned Act and that thereupon the tenure-holders have applied to the mamlatdar well within six months for a declaration under that provision. Thus, according to him the section affords and has afforded a real opportunity to the tenure-holders to rebut the presumption created by s. 4. We agree with him.

To summarise, the position is that s. 4 of the impugned Act by merely enacting the presumption does not take away any property of the tenure-holder. His property such as it is, is left in tact. That section does not confer any new property upon a tenant. It only comes to the rescue of a permanent tenant who is faced with the task of proving the nature of his tenancy, by raising a presumption of permanency in his favour. If in fact his tenancy is not permanent and has been extinguished by law but he is tentatively recorded or is sought to be recorded as permanent, the landlord can, in a proceeding under s.6(1) rebut the presumption by producing the documents in his possession or otherwise that the tenancy is not in fact permanent and, therefore, has been extinguished by the operation of s.32(1) of the Tenancy Act. If he proves this he will be entitled to claim compensation or purchase money at the rates permissible under s. 32H(1)(ii) of that Act. That right of his is not affected in any way by the impugned Act. If he does not succeed in establishing that, then he will be only entitled to get purchase price at the rate provided in s.5A of the Abolition Act. That, however, would be by virtue of the operation of s.5A of the Abolition Act-a provision which, as we have already said has not been challenged-and not because any provision of the impugned Act deprives him of a right to claim a higher purchase price.

The impugned Act is plainly applicable only to matters arising out of a relationship between landlord and tenant. Its provisions are not intended to apply where such relationship does not subsist. Therefore, the law must be held to be within the competence of the legislature by virtue of entry 18 of List II of the Constitution which is to the following effect :

> "Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

There can be no question of regarding the impugned Act as colourable because it directly falls under Entry 18 and deals with matters which have a bearing upon the relationship of landlord and tenant. The law being thus within the competence of the Bombay legislature, Art.31(1) of the Constitution cannot be said to have been infringed. The first three points urged by Mr. Pathak accordingly fall to the ground. The fourth, fifth and sixth points are also based on the assumption that the impugned Act confers upon the persons whose tenancy rights were extinguished on April 1, 1957, rights of permanent tenancy. Upon the construction which alone can properly be placed on s. 4 it cannot be said to confer any new rights on such persons. To repeat, the section applies to permanent tenants and permanent tenants alone. Therefore, the three contentions raised by Mr. Pathak do not fall for consideration.

The seventh point urged by Mr. Pathak is that ss. 4 and 5 of the impugned Act do not apply to other occupants under the Bombay Land Revenue Code, who are similarly situate and that the result of this would be that they will be entitled to higher purchase price than that permissible under s. 5A of the Abolition Act. This, according to him, is a classification without any reasonable connection with the objects sought to be achieved by the statute. If our construction of s. 4 is correct, Art. 31-A of the Constitution would protect the law and the petitioners would be precluded from challenging it on the ground that it infringes Art 14. Apart from that we may point out that though the impugned Act applies only to tenure villages and not to non-tenure villages, there is, in fact a ground of distinction between villages of the two types. That ground is the availability or otherwise of the records. In the former all the relevant records were with the tenure-holders themselves, but as stated in the statement of "objects and reasons" were not produced by them and this created difficulties in completing the record of rights. In the latter the records having been maintained by the Government were available and therefore, no difficulty was experienced in completing the record of rights. The classification is thus based on the extent of the availability of the material for raising an inference or a presumption and, therefore, has a reasonable nexus with the object sought to be achieved by the impugned Act.

Upon this view it is not necessary to consider the other points urged by Mr. Pathak on the authority of various decisions because the very basis of those arguments is, in our opinion, unsound. The petitions are, therefore, dismissed with costs. As there was only one common argument we direct that there will be only one set of costs.

AYYANGAR, J.-I entirely agree with the order proposed to be passed by my Lord the Chief Justice and my learned Brother S.K. Das J. The only reason for my separate judgment is because of the

views I entertain regarding the import of the Bombay Land Tenure Abolition Laws (Amendment), Act 1958 (Bombay Act LVII of 1958) hereinafter referred to as the impugned Act, and in particular of s. 4 thereof.

The facts of the case and the relevant statutory provisions bearing upon it are set out in extenso in the judgments of my learned brethren and they do not need to be repeated Before entering on a consideration of the proper construction of the impugned Act it is necessary to state that I did not understand the learned Solicitor-General to contest the position that if the impugned Act extended the definition of the term permanent tenant beyond that which obtained under s.83 of the Land Revenue Code, and brought into that category tenants who before then were comprehended within the class of "other tenants".

under s.32H(1)(ii) of Bombay Act 13 of 1956, its constitutional validity could be sustained, having regard to the decision of this Court in Sri Ram Ram Narain Medhi v. State of Bombay(1) holding that the effect of the 1956 legislation was to replace the relationship of landlord and tenant by that of vendor and purchaser as between the tenure-holder and his tenants. His submission was accordingly directed to establishing that the impugned Act while not modifying in any manner the basic requirements needed to constitute a person a "permanent tenant" under s. 83 of the Code, merely shifted the onus of proof on to the tenure-holder on certain stated facts being found.

It is this view which has found favour with my learned brother Mudholkar J. On the Construction of the relevant provisions of the impugned Act, he has held that the status or character of a permanent tenant or the definition of that term has not been altered in any manner, and that whereas before the impugned enactment the onus was upon the tenant to prove all the necessary elements to establish his claim to be a permanent tenant, the change effected by the Act of 1958 was to throw on the landlord the burden of proving the origin of the tenancy and its terminable character in the event of its being proved that the tenant had been in possession of his holding for twelve Dears before August 15, 1950. If this construction of the effect of the impugned Act were accepted I agree it would go a considerable way towards establishing the constitutional validity of the impugned provision.

I feel myself however unable to accept the construction of s.4 of the impugned Act which was put forward before us by the learned Solicitor- General for the State and Mr. Nathwani on behalf of the contesting tenants. To start with, the long title of the Act itself states that the Act is one for further to "define" permanent tenants. No doubt, where the operative words of the provision are clear that only a shifting of the onus of proof is effected, the long title of the Act cannot be called in aid to vary their proper interpretation, but that is not the position here. On the other hand as I shall show presently, the operative provisions of the enactment appears to me designed to clearly carryout the purpose set out in the long title, viz., to "define" or to redefine the class of persons who shall be considered to be "permanent tenants" for the purposes of obtaining the benefits conferred upon "permanent tenants" under the law that existed before that date.

The operative provisions of the impugned Act relevant to the present enquiry are ss. 3, 4 and 6 and they read :

"3. A person shall, within the meaning of the relevant Land Tenure Abolition Law (in the context the Taluqdari Abolition Act, 1949), be deemed to be ..... a permanent tenant on the date of the abolition of the relevant land tenure, if his name has been recorded in the record of rights or other public or revenue record as..... permanent tenant in respect of any tenure-land

(a) on the date of the abolition of the relevant land tenure, or

(b) in pursuance of orders issued during the course of any proceedings under the relevant Land Tenure Abolition law or, as the case may be, the Land Revenue Code, 1879-

(i) before the commencement of this Act,

(ii) after the commencement of this Act in cases in which inquiries were pending at the commencement of this Act, or

(iii) in pursuance of an order issued by the Mamlatdar in respect of an entry under section 6 of this Act."

"4. For the purposes of the relevant Act specified in Part I of the Schedule, a person-

(a) who on the date of the commencement of that Act was holding any tenure-land, and

(b) who and whose predecessors in title, if any were, immediately before that date for such continuous periods as aggregate to a total continuous period of twelve years or more, holding the same tenure-land or any other tenure-land, as a tenant..... under the tenure-

holder for the time being on payment of an amount exceeding the assessment of the land shall unless it is proved by the tenure- holder that he would not have been a permanent tenant on the basis of continued possession of the land under clause (b), be deemed to be a permanent tenant of the land under clause (a) and all the provisions of that Act shall apply to him as they apply to a permanent tenant.

Explanation.-The assessment for the purpose of this section shall be reckoned as provided in clauses (a) and (b) of section

5."

"6. (1) The rights of .....(a) permanent tenant under sections 4 and 5 shall be entered in the record of rights unless the tenure-holder applies in writing to the Mamlatdar within six months from the date of the commencement of this Act for a declaration that any holder or tenant under his

is not..... a permanent tenant. (2) Any such application shall be disposed of as if it were an application in respect of a disputed case under section 135D of the Bombay Land Revenue Code, 1879."

to extract only the portion pertinent to the controversy before us.

It will be seen that by force of s. 3 persons are deemed to be permanent tenants under the Taluqdari Abolition Act, 1949, if the name of such tenant is recorded in the record of rights or other public records as "a permanent tenant" in any one of the three events specified in cls. (a),

(b) and (c) of the section. In so far as reference is made to persons already recorded in the record of rights before the passing of the Act, the characteristics for determining who a permanent tenant was would obviously have been based on the pre-existing law and they would have been permanent tenants under the law apart from the "deeming" provision. The position of those recorded under cl. (b) might be similar, and it is unnecessary to enter into a discussion as to whether in cases where an enquiry commenced before the commencement of the Act but is completed thereafter, the tests brought in by s. 4 of the Act could be availed of to determine the status of the tenant. If one proceeded on the assumption that the provisions of the impugned Act are not to be brought in into an enquiry already started there would be no difference between cls. (a) and

(b) of s. 3-and in both cases they would be actual and not statutorily deemed "permanent tenants". Sub-cl. (c) however stands on a different footing. It brings in, if my construction of s. 4(b) is correct, a new class of "permanent tenants" - persons who were before the date of the impugned enactment non-permanent tenants in whom by virtue of the provisions of Bombay Act 13 of 1956 the interest of the landlord stood transferred and by whom the purchase-price specified in s.32H(1)(ii) was payable, into the category of "permanent tenants."

Section 3(c) refers to an entry made by a Mamlatdar under s. 6, but when one looks at s. 6 he is referred to s. 4 as containing or defining the class of tenants whom the Mamlatdar is enjoined to enter in the revenue records as a "permanent tenant." Turning now to s. 4, it would be seen that persons are deemed to be "permanent tenants" if they satisfied three cumulative conditions : (a) they must be holding tenure-land on the date of the commencement of that Act, viz., The Taluqdari Abolition Act, i.e., on August 15, 1950, (b) they or those from whom they claim should immediately before August 15, 1950, have been continuously in possession of that or any other tenure-land for twelve years, (c) the amount of rent payable by them should exceed the assessment leviable on the land calculated according to s. 5. The effect of condition (a) would be to exclude from the category of permanent tenants those who came into occupation or were inducted on the land of which they could claim to be permanent tenants, after August 15, 1950. But every tenant who was in possession of tenure-land on that date could apparently qualify for obtaining the status of a permanent tenant, being deemed to be such, if he satisfied the other two conditions. As regards condition (b), there is obscurity and contradiction attending the expression "continuous periods aggregating to a total continuous period of twelve years". Aggregation would obviously mean an addition of integers, and when units of time are the integers as is apparent from the context, in plain words it would mean the addition of broken periods. To posit continuity in such a case, might possibly suggest that it refers to

cases where a tenant is in possession of different parcels of tenure-land throughout the twelve-year period, though he is not in possession of any particular parcel continuously for a period of 12 years, and that the terms of the section would be satisfied and he would be deemed to have been in "continuous possession" of the land of which he was in possession at the commencement of the Taluqdari Abolition Act for the purpose of qualifying for permanent tenancy of that parcel. An analysis of the circumstances attendant on this condition would reveal the following : (1) Let us take it that during the period twelve years before August 15, 1950 a tenant had been in possession of three distinct parcels of tenure land `A', `B' and `C' at different periods but continuous, i.e., there being no point of time at which he was not in possession of one or the other of these three parcels and that on the date of the commencement of the Act he is in possession of parcel `C'. It is possible that such a situation might arise from exchange of holdings with the consent of the tenure-holder by a person who was a permanent tenant under the existing law. But the provision on its terms is not confined to exchanges by such tenants, but is of wider application. If the proper construction of this unclear provision of s. 4 be as above, any tenant who satisfied the other conditions of the section, would be deemed to be a permanent tenant in respect of parcel `C'. It will at once be seen that the origin of his tenancy of holding `C' is ex concessis known. Surely, such a tenant would not be a permanent tenant within s. 83 of the Bombay Land Revenue Code. It has only to be added that he would not fall within the definition of a permanent tenant even under s. 2(10A) of the Tenancy Act inserted by Bombay Act 13 of 1956. The argument, therefore that s. 4 was merely intended to and provided a rule of evidence for determining who a permanent tenant was under s. 83 of the Bombay Land Revenue Code, 1879 and did not extend such category of persons by an artificial definition, would appear to be negatived even by the first paragraph of s. 4(b).

This conclusion is strengthened by the provision made at the end of s. 4(b) of the impugned Act as regards the grounds upon which the landlord or the tenure-holder could disprove the right of a tenant to the status of a permanent tenant. That provision reads:

> "Unless it is proved by the tenure- holder that he would not have been a permanent tenant on the basis of continued possession of land under clause (b)....."

The learned Solicitor-General submitted that to read this portion of s. 4 (b) as meaning that the landlord has to disprove what the tenant has already proved would be to give it no meaning at all and that consequently it should be held that in order to give some rational meaning to the words quoted they refer to tenure-holder having to prove that the tenant was not a permanent tenant under s. 83 of the Bombay Land Revenue Code. To put it differently, the construction suggested was that on the conditions laid down in s. 4(b) being fulfilled, viz., continuous possession of tenure- land by a tenant for twelve years computed as described, the onus was shifted to the tenure- holder to prove that the tenant did not fall within the category of persons described in s. 83 of the Code. I find myself unable to accept this interpretation of the section. Even if one started with the presumption that what the impugned Act sought to achieve was not to "define" a permanent tenant but merely to shift the onus of proving the status-the conditions of s. 83 of the Code being assumed to be still the determinant, I do not find words in s. 4 to support the interpretation which the learned Solicitor-General desires the Court to accept. There is no reference to s. 83 in the impugned Act and the class of persons who are termed "permanent tenants" are expressly stated to be those who are

deemed to be such. That itself would be some indication that the class is an artificial creation brought into existence by the Act. That apart, I have already pointed out that the opening words of the first paragraph of s. 4(b) contemplate cases where the origin of the tenancy of the parcel in respect of which permanent tenancy is claimed is known. Lastly, the words in which the content of the right of the tenure-holder to dispute the "deemed" permanent tenancy are couched are wholly incompatible with his having a right to establish that the tenant does not satisfy the requirements of s. 83 of the Code. The words used are "that the tenant would not have been a permanent tenant on the basis of continued possession of land under clause (b)". The conditions on the fulfilment of which a person is deemed to be a permanent tenant are, as already pointed out, three and of these two are set out in sub-cl. (b), viz., the "continuous" possession of tenure-land and the rent of the land being higher than the revenue assessment. In my opinion the argument about the irrationality of the literal construction of the quoted words or s. 4(b) stems from the assumption that s. 4 contemplates an enquiry or proceeding initiated by the tenants who by evidence establish the matters set out in s. 4 and it is on that basis that the submission is made that the legislature could not have made a provision for the same matters being disproved by the tenure- holder. Even if the basis be assumed to be correct, I do not see any absurdity in the provision. But that apart, in my judgment s. 4(b) does not contemplate or provide for any application by the tenant and therefore there is no question of the tenant having established that the conditions of s. 4(b) have been satisfied. Section 4(b) enacts a positive rule of law by which a person in possession of a holding of tenure-land on August 15, 1950 is "deemed" to be a permanent tenant on the fulfilment of three conditions, the tenure-holder being entitled to establish that the conditions of that section have not been satisfied when proceedings for that purpose are initiated by him. The provision for proceedings being initiated by the tenure-holder to take advantage of the right granted to him by s. 4(b) is to be found in s. 6.

What has just been stated is amply borne out by the terms of s. 6, for it enacts that the rights of a permanent tenant under s. 4 "shall be entered in the record of rights unless the tenure- holder applies in writing to the Mamlatdar within six months from the commencement of the Act of a declaration that the tenant under him is not a permanent tenant" (to quote only the material words). It will therefore be seen that the concept of permanent tenant as envisaged under s. 4 is incorporated into the texture of s. 6. Every person who satisfies the definition of a permanent tenant under s. 4 is therefore automatically entitled without application by him, to be entered in the revenue records as a permanent tenant by the Mamlatdar unless the tenure-holder applies in writing objecting to the entry. Obviously the objections which he could raise and which would be the subject of adjudication under s. 6 are those set out as being open to him under s. 4. In this connection it has to be noticed that s. 6 does not specify the grounds upon which the tenure-holder might object to a tenant being treated as a permanent tenant and it is on the absence of those provisions that the learned Solicitor-General bases his argument suggesting that the objections of the tenure-holder would extend to disproving that the tenant was a permanent tenant under s. 83 of the Code. It is not possible to accede to this submission. It is common ground that no enquiry is contemplated under s. 4(b) and that the right of the tenure-holder to object to the entry of the tenant as a permanent tenant is by taking advantage of the provision in s. 6. It would therefore follow that s. 4(b) and s. 6 are integrated provisions, the one laying down the grounds of objection open to the tenure-holder, and s. 6 making provision for the forum in which and the procedure by

which such objections could be urged. To put the matter slightly differently s. 4(b) specifies the grounds of objection open to a tenure-holder but does not indicate where and in which proceeding the objections could be raised- while s. 6 indicates that the authority to decide is the Mamlatdar and that the proceeding would be initiated by an objection petition filed by the tenure-holder. Both s. 4(b) and s. 6 would be truncated unless they were read as forming an integrated whole. It is in this manner that a reconciliation is possible between the terms of ss. 4 and 6 which so to speak form together provision for determining, after investigation. the class of persons who shall be entitled to claim rights as permanent tenants. Section 4 having defined a permanent tenant in positive terms, s. 6 steps in and sets up a procedure and creates a forum in which that positive provision might be tested and if not displaced would be given effect to. In the view I have expressed the reference to the enquiry being under s. 135D of the Code would not make any difference, because the officials and Tribunals or Courts vested with authority under s. 135D of the Code and the related provisions would have still to consider whether the tenant had or had not qualified to be a permanent tenant by the application of the criteria enacted by s. 6. I am therefore clearly of the opinion that the entire object and purpose of the impugned enactment which is given effect to by its operative provisions enacts not a rule of evidence for determining who permanent tenants are under the pre-existing law, but to define, create and as it were, add a new class of "permanent tenants", i.e., those who satisfy the requirements of s. 4.

If this were the proper construction of the impugned enactment it was not seriously contested that the enactment would be void and unconstitutional and liable to be struck down. I agree therefore that these petitions should be allowed.

BY COURT : In accordance with the opinion of the majority, these petitions are allowed with costs. As the petitions have been heard together there will be only one hearing fee.