

Shankar Madhoji Nemade vs Chisuji Janaji Bhadke & Ors on 8 September, 1970

Equivalent citations: 1971 AIR 281, 1971 SCR (2) 73, AIR 1971 SUPREME COURT 281, 1971 2 SCR 73, 1971 2 SCJ 377, 1972 MAH LJ 197

Author: C.A. Vaidyalingam

Bench: C.A. Vaidyalingam, J.M. Shelat

PETITIONER:
SHANKAR MADHOJI NEMADE

Vs.

RESPONDENT:
CHISUJI JANAJI BHADKE & ORS.

DATE OF JUDGMENT:
08/09/1970

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
SHELAT, J.M.

CITATION:
1971 AIR 281 1971 SCR (2) 73
1970 SCC (2) 847
CITATOR INFO :
F 1973 SC2056 (15)

ACT:
Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch area) Act (99 of 1958), s. 52--Scope of.

HEADNOTE:
Section 9(6) of the Berar Regulation of Regulation of Agricultural Leases Act, 1951, read with rule 9 of the Rules made thereunder required a land holder, who terminated the tenancy of his protected lease on the ground that the land was required by him for his personal cultivation, to cultivate the land personally for a period of 2 years. It the land holder failed to do so then the section conferred a right on the former protected lessee to apply to the Revenue

Officer for being restored to possession. On December 30, 1958, the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act of 1958 came into force. Under s. 132 of the Bombay Act, the Berar Act was repealed but certain rights acquired or accrued before the commencement of the Bombay Act were saved. Under s. 52 of the Bombay Act, if the landlord had ceased to cultivate the land within a period of 12 years from the date of taking possession, the tenant can apply for restoration, that is, the period of 2 years under the Berar Act was enlarged to 12 years.

The appellant was a protected lessee within the meaning of the expression in the Berar Act, in respect of certain lands. The landlord obtained possession of the lands on April 4, 1957 on the ground that he required the lands for personal cultivation. He continued in possession of the lands till June 21, 1961, on which date he transferred the lands to the first respondent. The tenant thereupon filed an application under s. 52 of the 'Bombay, Act. The application was dismissed but the tenant's appeal was allowed. The appellate order was confirmed in revision by the 'Revenue Tribunal. The first respondent filed a writ petition and the High Court set aside the order of the Revenue Tribunal. The certified copy of the judgment of the High Court, by mistake, showed the valuation of the lands, it a very much higher value than the value given by the appellant in the writ petition. The appellant obtained special leave from this Court mentioning the enhanced valuation in his application for special leave.

On the questions : (1) Whether the special leave granted by this Court should be cancelled on the ground that the appellant made a false statement in regard to valuation; and (2) whether s. 52 of the Bombay Act applies,

HELD : (1) In the particular circumstances of this case, though the appellant should have been more careful, it cannot be said that he was guilty of making any false or untrue statement on any material particulars deliberately to mislead the court. Further, the statement regarding valuation was of much consequence in this case because the questions raised are points of law regarding the applicability of s. 51 of the Bombay Act. [81 D-F]

Hari Narain vs. Badri Das [1964] 2. S. C.R. 203. Sita Bai v. Sonu Vanji Wani & Ors. C.A.No. 982/65 dt. 25-4-68 and S. R. Shetty v. Phirozeshah Nusserwanji Golabawalla & Anr., V.A., No. 1551/63 clt. 5-4-61, referred to.

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(2) Section 52 of the Bombay Act applies to the facts of this case. [91 B]

If a landlord, in pursuance of an order obtained under the Berar Act, takes possession after the commencement of the Bombay Act, s. 52 applies to him and his obligation to cultivate personally for two years under the Berar Act gets extended to 12 years period provided under that section.

[90 A-B]

If the landlord had taken possession of the land under the Berar Act before the commencement of the Bombay Act, there was an obligation on him to cultivate personally for two years and if he had not so cultivated, the tenant would have acquired a right to be restored to possession. That right, so acquired by the tenant or accrued to him, before the commencement of the Bombay Act, is saved under s. 132(2) (i) of the Bombay Act. Similarly, if the landlord had cultivated the land personally for the required period before the Bombay Act came into force the landlord would have acquired a right not to be disturbed from his possession thereafter. That right again, which had been acquired by the landlord or accrued to him is saved under s. 132(2)(i). [89 E-H]

Therefore, s. 52 applies to cases in which possession was obtained by the landlord under s. 9 of the Berar Act but in respect of which the period of two years disability imposed under s. 9(6) read with r. 9 of the rules was not over before the coming into force of the Bombay Act. [90 F-H]

The decision of this Court in *Rain Chandra v. Tukaram*, [1966] 1 S.C.R. 594 does not lay down that s. 52 of the Bombay Act does not apply to cases where possession has been taken after the Bombay Act had come into force in pursuance of an order for restoration obtained by the landlord under the Berar Act. [85 A-B]

In the Full Bench decision of the Bombay High Court in *Saraswatibai Babji Tukaram Umakar v. Bhikamchand Premasukhdas*, (1966) Bom. L.R. 954, the possession of the land was taken by the landlord from the tenant under the Berar Act and the two year period as required under s. 9(6) of that Act had also expired before the coming into force of the Bombay Act. The principle, that applicability of s. 52 of the Bombay Act depends solely upon the date on which the landlord takes possession, that is, whether before or after the Bombay Act came into force, was broadly stated in the decision. [86 H; 88 G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No, 85 of 1967. Appeal by special leave from the judgment and decree dated August 19, 1966 of the Bombay High Court, Nagpur Bench in Special Civil Application No. 831 of 1965, W. S. Barlingay and A. G. Ratnaparkhi, for the appellant, M. S. Gupta and S. K. Dhingra, for respondent No. 1. The Judgment of the Court was delivered by Vaidialingam. J. The appellant was a 'protected lessee within the meaning of that expression contained in the Berar Regulation of Agricultural Leases Act, 1951 (Act 24 of 1951 (hereinafter called the Berar Act) in respect of the suit lands bearing survey No. 23 of an extent of 7 acres and 4 gunthas under the 5th respondent herein, who was then the original owner of the lands. The 5th respondent served on the appellant (hereinafter called the tenant) a notice dated December 28, 1955 under s.

9(1) of the Berar Act terminating the I tenancy of the appellant on the ground that he required the lands for personal cultivation; and he also submitted an application to the Revenue Officer under s. 8(1)(g) of the Berar Act for an order determining the tenancy. The 5th respondent obtained an order from the Revenue Officer on May 15, 1956 directing the tenant to surrender possession of the lands. The 5th respondent in pursuance of the order of the Revenue Officer obtained possession of the lands on April 4, 1957 and continued in such possession till June 21, 1961, on which date he transferred the suit lands to the first respondent 'hereinafter to be referred as the landlord) and got, in exchange 8 acres in survey No. 33 plus an amount of Rs. 13,000/- in the meanwhile on December 30, 1958 the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch area) Act of 1958 (Act No. XCIX of 1958) (hereinafter called the Bombay Act) came into force.

The tenant filed an application under s. 52 of the Bombay Act before the Naib Tahsildar, Achalpur, against respondent Nos. 1 and 5 for restoration of the possession of the suit lands on the ground that the original owner, the 5th respondent, had eased to cultivate the lands personally within the period of 12 years after obtaining possession of the lands on April 4, 1957. The Naib Tahsildar by his order dated November 14, 1962 dismissed the application on the ground that s. 52 does not apply and hence the application was not maintainable. On appeal by 'the tenant, the Special Deputy Collector, Amravati by his order June 30, 1964 reversed the decision of the Naib Tahsildar and directed the landlord to restore possession of the lands as prayed for by the tenant. The first respondent's revision challenging the order of the Special Deputy Collector was dismissed on August 5, 1965 by the, Maharashtra Revenue Tribunal. The Revenue Tribunal while dismissing the revision petition, inter alia, held that the tenant was a protected lessee and that in pursuance of the proceedings taken by the 5th respondent in terms of the notice under s. 9(1) of the Berar Act, the tenant was deprived of the lands and his tenancy rights on the ground of personal cultivation by the then owner of the lands. The Tribunal further held that as the 5th respondent had transferred the suit lands in favour of the first respondent on June 21, 1961., the former must be considered to have failed to use the lands for the purposes specified in his notice within 12 years from the date on which he took, possession and in consequence the tenant was entitled to be restored to possession under S. 52 of the Bombay Act. On this reasoning the Revenue Tribunal confirmed the order of restoration passed by the Special Deputy Collector in favour of the tenant.

The first respondent filed a writ petition under Art. 227 of the Constitution, being Special Civil Application No. 831 of 1965, in the High Court of Bombay (Nagpur Bench) challenging the orders of restoration passed against him by the Special Deputy Collector and the Maharashtra Revenue Tribunal. The High Court by its judgment and order dated August 19, 1966 has set aside the orders of the Special Deputy Collector and the Revenue Tribunal, thus restoring the order of the Naib Tahsildar, and has dismissed the application for restoration filed by the tenant. The tenant challenges the decision of the High Court in this appeal by special leave. The High Court in its order under appeal has recorded the following findings The, original owner, the 5th respondent, was entitled to terminate the lease of the tenant by giving a notice under S. 9(1) of the Berar Act. He accordingly terminated the tenancy by giving notice dated December 23, 1955. After initiating proceedings under S. 8(1)(g) read with s. 19(1) of the Berar Act, the owner also obtained possession of the lands on April 4, 1957. Under the Berar Act there was a duty cast on 'the landlord to cultivate, the lands personally for a period of 2 years and in this case the 5th respondent has complied with

this requirement. As possession was taken from the tenant by the 5th respondent when the Berar Act was in operation and as the latter had cultivated the lands for a period of 2 years, as required by S. 9(6) of the Berar Act, the tenant had ceased to have any rights after the expiry of the period of 2 years and. hence S. 52 of the Bombay Act was not applicable and it follows that the application for restoration under that section filed by the tenant was not maintainable. The position is concluded against the tenant by an earlier Full Bench decision of the High Court reported in *Saraswatibai Babji Tukaram Umarkar v. Bhikamchand Peemsukhdas*,⁽¹⁾ wherein it had been held that when possession of the lands had been taken before coming into force of the Bombay Act, the rights and liabilities of the parties are governed by the Berar Act and that S. 52 of the Bombay Act has no retrospective operation. On these findings the High Court allowed the writ petition of the first respondent.

Dr. Barlingay, learned counsel for the appellant, has urged that having due regard to the scheme of the Berar and Bombay Acts, the High Court's view that S. 52 of the Bombay Act has no application, is erroneous. In this case. he pointed out that the (1) 1966 Bom. L.R. 954.

Bombay Act has come into force on December 30, 1958 even before the expiry of the period of two years from April 4, 1957, on which date the original owner, the 5th respondent, had entered into possession after terminating the lease. Section 52' of the Bombay Act contains provisions substantially similar to s. 9(6) of the, Berar Act which was repealed and the only change was that the Bombay Act enlarged the period for which the landlord was required to continue to cultivate land personally from two years to 12 years. As the enlarged period under the Bombay Act has come into operation before the expiry of the shorter period under the Berar Act, which was repealed, the landlord was bound to conform to the requirements of the larger period provided under the Bombay Act. In this case the 5th respondent had transferred the suit lands to the first respondent on June 21, 1961 and hence there has been a failure in law on the part of the 5th respondent to utilise the lands for the purpose of personal cultivation for the period mentioned in s. 52 of the Bombay Act and so the said section fully applies and the dismissal of the tenant's application for restoration by the High Court is. opposed to the mandatory provisions of the Bombay Act. The counsel, further pointed out that the Full Bench decision, on which the present judgment of the High Court is .rested, is not applicable for the reason that the Full Bench was dealing with a case where the period provided under s. 9(6) of the Berar Act had already expired before the coming into force of the Bombay Act, whereas in the case on hand even before the expiry of that two years' period the Bombay Act has come into force. This material difference has not been noted in the present order by the High Court. He further urged that if the Full Bench decision applies, as held by the High Court, it should be held. by this Court that the Full Bench decision is not correct.

Mr, M. S. Gupta. learned counsel for the first respondent, landlord, raised a preliminary objection to the hearing of the appeal and prayed for cancellation of the special leave granted by this Court on January 11, 1967. According to him the appellant has made deliberately certain false statements in his application for grant of special leave. We will revert to this aspect a little later. On merits Mr. Gupta contended that the obligation of his client's transferor, the 5th respondent, after obtaining possession of the lands from the tenant under the Berar Act was only to cultivate the lands for two years. Admittedly in this case the 5th respondent had cultivated the lands for the said period of two

years and the obligation incurred by him under s. 96) of the Berar Act having been duly complied with, pointed out that s. 132 deals with repeals and savings. Subsection (1) had repealed the enactments specified in Schedule I to the extent specified in column No. 4 of the said Schedule. Schedule I shows that the Berar Act has been repealed in its entirety. Notwithstanding the repeal sub- section (2) has saved certain matters and one of the matters so saved is the obligation or liability already incurred before the commencement of the Bombay Act. The 5th respondent, who had incurred the obligation or liability to cultivate the lands for two years under the Berar Act before the commencement of the Bombay Act, has discharged the said obligation or liability and hence the tenant has no further rights which he can enforce. He also urged that s. 52 protects even cases where possession has been taken after the coming into force of the Bombay Act on the basis of an order for restoration obtained under the Berar Act. In support of his contention he relied on the decision in *Ramchandra v. Tukaram and others*(1).

Before we deal with the merits we will now dispose of the preliminary objection raised by Mr. Gupta praying for cancellation of special leave granted by this Court. According to the learned counsel the appellant has deliberately made certain false statements in the application for grant of special leave and has misguided the Court. He drew our attention to the statements made in paragraph 6 of the application wherein the appellant has stated that the 5th respondent had transferred the suit lands in favour of the first respondent on June 21, 1961 by taking in exchange 8 acres of land plus a sum of Rs. 30,000/-. Again in paragraph 10 of the petition the appellant has stated that his claim in these proceedings is for restoration of possession of the lands measuring 7 acres and 4 gunthas, the market value of which happens to be more than Rs. 20,000/- and that this fact is further strengthened because of the 5th respondent exchanging his lands with the first respondent for a sum of Rs. 30,000/- plus 8 acres of land. The appellant has filed an affidavit stating that the statements contained in the special leave petition 'are true and correct to the best of my personal knowledge'. From these statements Mr. Gupta pointed out that it is clear that the appellant has categorically stated that the value of the lands concerned in this appeal is over Rs. 20,000/- and he has also specifically stated that the suit lands were exchanged for Rs. 30,000/- plus 8 acres of lands and these statements have been affirmed to be true to the personal knowledge of the appellant.

Mr. Gupta pointed out that these statements regarding valuation are absolutely false to the knowledge of the appellant as will (1) (1966) 1.S.C.R. 594 be clear from the value given in the writ petition filed by the first respondent in the High Court. In para 1 of the writ petition the first respondent has stated that the 5th respondent after transferring the suit lands of 7 acres and 4 gunthas has taken in exchange from him 8 acres of land and a sum of Rs. 13,000/-, thus making a total of Rs. 19,000/-. In the affidavit filed along with the writ petition the first respondent has again stated that the amount received from him along with 8 acres of land as Rs. 13,000/- the total value of the lands being only Rs. 19,000/-. He also drew our attention to the recitals in the judgment printed in the appeal records wherein the exchange has been stated as being of 8 acres of land plus a sum of Rs. 13,000/-. In view of these circumstances, the counsel points out that the statements made by the appellant, which have been affirmed to be true to his knowledge about valuation of the suit lands being over Rs. 20,000/- and the exchange having been obtained of 8 acres and Rs. 30,000/- are false and have been deliberately made to mislead the Court so as to obtain special

leave making it appear that the requirement regarding valuation is satisfied. Mr. Gupta drew out attention to the decisions of this Court, namely, Hari Narain v. Badri Das(1), Sita Bai v. Sonu Vanji Wani and ors.(2) and S. R. Shetty v. Phirozeshah 'Nusserwanji Golabawalla and another(3). Mr. Gupta pointed out that in all these decisions when there has been false statements made on material particulars or matters of importance either on facts or about valuation, this Court had cancelled special leave already granted. The proposition enunciated by Mr. Gupta that the statements in the special leave application should not contain any untrue or false statements either in material particulars or on matters of importance or about valuation is certainly laid down in those decisions and the requirement in this regard cannot be over-emphasised. In Hari Narain v. Badri Das(1), this Court held that the special leave petition contained inaccurate, untrue and misleading statements and cancelled special leave already granted. This Court observed at page 209 as follows :

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading."

(1) [1964] 2 S.C.R. 203. (2) C.A. No. 982 of 1965 decided on 25-4-1968.

(3) G.A. No. 155 of 1963 decided on 25-4-1963.

From the facts in that case it will be seen that the material statements made in the special leave petition were false.

In Sita Bai v. Sonu Vanji Wanil and ors. (1) this Court held that in the special leave petition there was a misrepresentation of facts on a matter of importance, though it was not possible to say that when granting special leave these untrue facts had misled the Court. It has been further emphasised in this decision that the appellant had deliberately made untrue statements on matters of importance and that they were not the result of inadvertence. Similarly in S. R. Shetty v. Phirozeshah Nusserwanji Golabawalla and another(2) a statement had been made regarding the value of the subject matter as being above Rs. 20,000/- though the suit had been valued only in the sum of Rs. 5001- and court fee paid on that valuation. This Court held that the statements of valuation in the plaint, namely, Rs. 5001- cannot be reconciled with the statement regarding valuation in the special leave application and this Court took the view that the valuation has been deliberately inflated with a view to getting over the preliminary hurdle as regards valuation. In this view special leave granted was revoked. If it is held that there has been an untrue averment regarding material statements or a false statement on matters of importance or a deliberate untrue statement regarding valuation has been made to mislead this Court, it cannot be gainsaid that the special leave granted by this Court will have to be revoked.

Dr. Barlingay pointed out that there has been no untrue or false statement made by his client on any material particular nor has any statement been deliberately made to mislead the Court so as to

enable his client to obtain special leave. On the other hand, the counsel pointed out, that the certified copy of the judgment of the High Court furnished to his client and which, has been filed in this Court clearly shows that in the said copy the, High Court has stated that the 5th respondent obtained an exchange from the first respondent 8 acres of land plus a sum of Rs. 30,000/-. That mistaken value given in the High Court judgment has been adopted in the special leave petition. The points that have been raised in the special leave petition are all I questions of law relating to legal effect of possession under the Berar Act after coming into force of the Bombay Act. The valuation. given in the certified copy of the High Court judgment was incorporated in the special leave petition filed as early as January 11. 1967. He further pointed out that on March, 28, 1967 his client had moved the High Court for correcting the High Court's (1) Civil Appeal No. 982 of 1965 decided on 25-4-68. (2) CIVIL Appeal No. 155 of 1963 decided on 5-4-1963 judgment by deleting the valuation of Rs. 30,000/- and substitute the same by correct figure of Rs. 13,000/-. The counsel for both the parties agreed before the High Court that the figure of Rs. 30,000/- contained in the judgment was an error and that the correct figure should be Rs. 13,000/-. The High Court accordingly by its order dated April 17, 1967 corrected the judgment by stating that the valuation of Rs. 30,000/- should be corrected to Rs. 13,000/-. That order was passed nearly three months after the special leave application was filed in this Court. In view of the fact that his client and the counsel acting for him, at the time of drafting the petition for special leave adopted the valuation given in the certified copy of the High Court's judgment, Dr. Barlingay pointed out that there has been no untrue or false statement given by his client so as to justify revocation of. the leave already granted. We have given due consideration to all these aspects presented before us by both the learned counsel and we are of the view that in the particular circumstances of this case it cannot be said that the appellant is guilty of making any false or untrue statement on any material particulars or matters of importance or regarding valuation. The mistake committed by the appellant regarding valuation was the result of the mistaken value given by the High Court itself in its judgment, which was corrected only long afterwards. No doubt, the appellant who is a party to the proceedings should have been a little more careful, but that does not disclose any deliberate attempt on his part to mislead this Court. Further the statement regarding valuation is not of much consequence in this case because the questions arising for decision are really points of law regarding applicability of either the Berar or Bombay Acts. Therefore, Mr. Gupta has not been able to make out a case for cancelling the special leave already granted. We will now proceed to consider the appeal on merits. The suit land was originally in the Vidarbha Region, which before the passing of Bombay Act of 1958 was part of the state of Madhya Pradesh and the tenancy of the appellant was governed by the Berar Act. As proceedings had been taken by the 5th respondent for evicting the appellant and for possession of the land under the Berar Act, it is necessary to refer to some of the material provisions of that statute. Section 2(h) defines a protected lessee as 'a protected lessee within the meaning of s. 3. Section 3 enumerates various lessees who are protected lessees. There is no controversy that the appellant before us was a protected lessee under the Berar Act. Section 8(1) enumerates in cls.

(a) to (g) the grounds on which the lease of a land held by a protected lessee can be got terminated under the orders of a Revenue Officer. One of the grounds for eviction is provided under cl.(g) of s. g(1), namely lessee having been served with the notice by a landholder as provided,, in s. 9. Section 9 deals with the right of the landholder to terminate the lease of a protected lessee. Sub-sections (1) and (6) of the said section which are material for the present purpose are as follows :

"Right of landholder to terminate lease of a protected lessee.

Section 9 (1). Notwithstanding anything contained in section 8 the landholder may terminate the lease of a protected lessee by giving him notice in writing delivered not less than three months before the commencement of the next agricultural year stating therein the reasons for such termination and the description of the area in respect of which it is proposed to terminate the lease, if the landholder requires the lands for cultivating the land personally. Section 9(6). If on re-entering upon any land after termination of the lease of a protected lessee in accordance with this section, a landholder fails at any time during such period as may be prescribed to utilise the land for the purpose for which the lease was terminated, the dispossessed lessee may apply to the Revenue Officer to put him in possession of the land from the commencement of the agricultural year next following : and the Revenue Officer shall, after hearing the landholder and making such enquiry as he deems fit, put the lessee in possession of the land if he is satisfied of the failure and also award him such sum by way of compensation as the Revenue Officer may consider sufficient."

Section 19 (1) provides for a landholder applying to the Revenue Officer to eject a protected lessee against whom an order for the termination of the lease had been passed under ss. 8 or 9. Section 22 gives power to the State Government to make rules as stated therein. Under cl. (3) of s. 22 (2) rules can be made regarding 'the period under sub-section (6) of s. 9'. Rules have been framed under s. 22 and in particular r. 9 prescribes 'such period as that of two years'. Hence it will be seen that S. 9(6) read with r. 9 requires the landholder who terminates the tenancy of his protected lessee on the ground that the land was required by him for his personal cultivation, to cultivate the land personally for a period of two years. Under the Berar Act, after having entered upon the land, if the landholder fails to cultivate the land personally during the above period, then s. 9(6) confers a right on the former protected lessee to apply to the Revenue Officer for being restored to possession.

We have already indicated that the Bombay Act came into force on December 30, 1958. The material provisions to be referred to in the said statute are ss. 52(1) and 132. Section 52(1) runs as follows :

"Landlord to restore possession if he fails to cultivate within one year :

Section 52(1) : Where after terminating the tenancy of any land under section 9 of the Berar Regulation of. Agricultural Leases Act, 1951, or under sections 38, 39 or 39A of this Act, the landlord has taken possession of such land and he fails to use the land for the purpose specified in the notice given under the said section 9 or as the case may be within one year from the date on which he took possession or ceases to use it at any time for any of the aforesaid purposes within twelve years from the date on which he took such possession, the landlord shall forthwith restore possession of the land to the tenant whose tenancy was terminated by him, unless he has obtained from the tenant his refusal in writing to accept the tenancy on the same terms and conditions or has offered in writing to give possession of the land to the tenant on the same terms and conditions and the tenant has failed to accept the offer within three

months of the receipt thereof : Provided that no refusal of the tenant shall be valid unless it has been verified before the Tahsildar in the prescribed manner."

Section 132 relates to repeals and savings. Sub-section 1 states that the provisions of the enactments specified in Schedule I are repealed to the extent specified in column 4 of the said Schedule. It may be stated at this stage that one of the enactments so repealed was the Berar Act in its entirety. Sub-section 3 is not relevant. Sub-section 2 of s. 132 on which reliance has been placed by both the parties is as follows :

"Repeals and Savings :

Section 132(2) : Nothing in sub-section (1) shall, save as expressly provided in this Act, affect or be deemed to affect-

(i) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or

(ii) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of this Act, and any such proceedings shall be instituted, continued and disposed of, as if this Act had not been passed."

We have already referred to the fact that the 5th respondent had issued the necessary notice terminating the tenancy of the appellant on December 28, 1955 under s. 9(1) and after initiating proceedings under s. 8 (1) (g) read with S. 19 (1), he obtained an order for possession as against the appellant from the Revenue Officer on May 15, 1956, and had also obtained possession of the lands on April 4, 1957. All these proceedings were under the Berar Act before the coming into force of the Bombay Act. The 5th respondent continued in such possession of the lands till June 21, 1961, on which date he transferred the suit lands to the first respondent in exchange for certain other lands. The appellant filed an application for restoration seeking relief on the ground that the 5th respondent had ceased to be in possession of the lands within twelve years from April 4, 1957. Therefore the short question that arises for consideration is whether S. 52 of the Bombay Act applies to those lands the possession of which was obtained by the landlord under s. 9 of the Berar Act but in respect of which the period of two years' disability as imposed under S. 9(6) read with rule 9 of the Rules was not over before the coming into operation of the Bombay Act.

From the scheme of the Berar and Bombay Acts, it will be noted that while s. 52 of the Bombay Act enlarged the period of personal cultivation to 12 years, the Berar Act had provided for personal cultivation only for a period of 2 years. Under the Berar Act if the landlord does not personally cultivate for 2 years, the tenant can apply for restoration of possession from the landlord. Similarly under the Bombay Act, if the landlord had ceased to cultivate the land within a period of 12 years, from the date of taking possession, the tenant can apply for restoration.

We have already referred to the fact that Mr. Gupta, learned counsel for the respondent, has relied on the decision of this Court in *Rainachanadra v. Tukaram and others*(1) in support of his (1) [1966] 1 S.C.R. 594.

proposition that s. 52 of the Bombay Act applies, even to cases where possession has been taken after the coming into force of the Bombay Act in pursuance of an order for restoration obtained by the landlord under the Berar Act. We have gone 'through the above decision and we are of the opinion that it does not lay down any such proposition. The question that arose for consideration therein was a totally different one. In that case, one X was a protected lessee under the Berar Act and the landlord had terminated the tenancy under s. 9(1) on the round of personal cultivation and had also submitted an application to the Revenue Officer under s. 8 (1) (g) for an order terminating the tenancy. The Revenue Officer determined the tenancy by order dated July 2, 1957 and made it effective from April 1, 1958. But before the latter date, Ordinance No. 4 of 1957 was pro- mulgated, which in turn was replaced by the Bombay Act IX of 1958. The said Act had imposed a ban on eviction of tenants and had also stayed all such proceedings pending on the date of commencement of the said Act. The landlord had applied on May 15, 1958 to the Naib Tahsildar for an order for restoration of possession of the land by the tenant. The Bombay Act. which repealed the Berar Act and the Bombay Act No. IX of 1958, came into force on December 30, 1958, on which date the application filed by the landlord for restoration was pending before the Naib Tahsildar. There was a controversy is to the nature of relief that could be granted to the landlord. Having due regard to s. 132(2)(ii) and (3) of the Bombay Act, this Court held that the application, filed by the landlord for- restoration of possession on the basis of the order obtained under s. 8 (1) (g) of the Berar Act, and which was pending when the Bombay Act came into force must be treated as an application under s. 19 of the Berar Act and had to be tried and disposed of by the appropriate authority. This Court further held that the application of the landlord being a pending proceeding in respect of a right acquired before the Bombay Act, it had to be continued and disposed of as if the Bombay Act had not been passed. It was further held that in so disposing of the application, treating it as one under s. 19 of the Berar Act. there was no scope for the application of the conditions and restrictions prescribed by sub- sections (3) and (4) of s. 38 of the Bombay Act as those provisions do not apply to proceedings to enforce rights acquired when the Berar Act was in operation. This judg- ment, in our opinion, does not support the landlord in the case before us.

We have already referred to the fact that the High Court. in its order tinder appeal, has held that s. 52 of the Bombay Act does not apply to the present case as the landlord had cultivated the land for two years though a part of that period "as after the commencement of the Bombay Act. The High Court has also stated that s. 52 of the said Act will have no application to the case on hand inasmuch as the landlord had obtained possession on April 4, 1957 long before the coming into force of the Bombay Act. For this proposition, the High Court has relied on an earlier decision of a Full Bench of the same Court in *Saraswatibai Babji Tukaram Umarkar v. Bhikamchand Premasukhdas*(1). According to Dr. Barlingay, the High Court's view that even it' a landlord completes the period of two years personal cultivation, as required under S. 9(6) of the Berar Act, after the coming into force of the Bombay Act, the larger period provided under s. 52 does not apply, is not correct. We have already stated that Dr. Barlingay has further urged that the Full Bench decision of the Bombay High Court does not apply and if that applies, the said decision must be he-Id to be erroneous. As the

decision under appeal is substantially rested on the decision of the Full Bench, it is necessary to examine the scope of the Full Bench decision. But we may straight way say that the High Court's view that the Full Bench has held that s. 52 will not apply to 'cases where the two years' period is completed even after the Bombay Act came into force is not correct, because the Full Bench has not laid down any such proposition. The Full Bench has only held that s. 52 applies to cases where a landlord takes possession of the land on determination of a tenancy either under s. 9 of the Berar Act or under ss. 38, 39 or 39A of the Bombay Act after the latter Act has come into force. The facts in the Full Bench case were briefly as follows :

X, a landlord obtained possession on July 3, 1955 of certain lands from his tenant under the Berar Act on the ground that he required the same for personal cultivation. After the death of X on October 28, 1955, his heirs inherited the property and continued in possession of the same till February 9, 1959, on which date they sold the lands to one S. After purchase by S. the original tenant applied under s. 52 of the Bombay Act for restoration of possession on the ground that the landlord had ceased to use the property for a period of 1.2 years as required by the section. The heirs of X and the purchaser S, were both made parties to the said application and relief was asked for against both of them.

At this stage it may be mentioned that the Bombay Act came into force on December 30, 1958.

From the facts stated above, it will be seen that the landlord had obtained possession from the tenant on July 3, 1955 and he and his heirs had completed the requirement of s. 9(6) of the Berar Act, namely, two years personal cultivation on July 3, 1957, long before the Bombay Act came into force. After (1) [1966] Bom.L.R. 954.

having completed the said two years period, the heirs were in possession not only on the date of the coming into force of the Bombay Act, but also till the date of sale to S. (February 9, 1959). The question naturally arose whether s. 52 of the Bombay Act will apply when the two years' period under the Berar Act had expired before December 12, 1958. There appears to have been earlier single Judge's decisions of the Bombay High Court holding that s. 52 of the Bombay Act will apply to cases where possession has been taken after the Bombay Act had come into force and also to cases where the period of 2 years' personal cultivation by the landlord had been completed even before the coming into force of the Bombay Act. Mr. Justice Wagle, before whom the matter came in the first instance expressed doubt about the correctness of the earlier decisions. Mr. Justice Wagle was inclined to take the view that s. 52 of the Bombay Act would apply only to those lands, the possession of which was obtained by the landlord under s. 9 of the Berar Act. but in respect of which the period of two years' disability as imposed under s. 9(6) read with r. 9 of the Rules was not over before the coming into force of the Bombay Act. As the learned Judge was inclined to take a view, which was in conflict with the previous view of the Bombay High Court, he referred the matter to a Division Bench, which in turn referred the matter to the Full Bench.

From what is stated above, it will be seen that in that case, possession of the lands was taken by the landlord, from the tenant under the Berar Act and the two years' period as required under s. 9(6) of

the said Act had also expired before the coming into force the Bombay Act. The transfer in favour of S. no. doubt, was made long after December 28, 1958. In the case before us the landlord had obtained possession under the Berar Act on April 4, 1957 and he had not completed the two years' period under s. 9(6) of the Berar Act on December 30, 1958. We are only referring to these dates to show that the Full Bench decision did not have occasion to directly tackle the problem that arises for consideration before us. But nevertheless there are certain broad principles laid down in that decision, the correctness of which will have to be considered by us. The Full Bench, posed the following two questions for consideration :

"1. Whether the provisions of section 52 of the Bombay Tenancy and Agricultural Lands, (Vidarbha Region and Kutch Area) Act, 1958 are attracted to cases where the lease of a protected lessee had been determined by the landholder under section 9 of the Berar Regulation of Agricultural Leases Act, 1951 and possession thereof taken prior to the date the.

new. Tenancy Act came, into force and the landholder continued to personally cultivate the land on the date the new Act came into force.

2.If the answer to the first question is in the affirmative,. whether the expiry of two years prior to the coming into force of the new Act would have any bearing on the application of section 52."

The first question, it will be noted, refers to the effect of taking possession by the landlord before December 30, 1958 and his still being in possession on the date of the coming into force of the Bombay Act. The second question refers to the effect of the expiry of two years prior to the coming into force of the Bombay Act.

So far as the first question is concerned, the learned Judges held that s. 52 of the Bombay Act would be attracted only to Such cases where a landlord takes possession after determination of tenancy either under s. 9 of the Berar Act or under ss. 38, 39, force. So far as the second question is concerned, the learned Judges have not expressed any opinion on the ground that it does not 'survive on the View expressed by them on the first question.

It will be noted from a reading of the Full Bench judgment that the learned Judges have placed considerable emphasis for the applicability of s. 52 of the Bombay Act about the landlord taking possession after the Bombay Act has come into force. If possession had been taken before December 30, 1958, according to the Full Bench, s. 52 does not apply; whereas if possession is taken after the said date, the said section will apply. For coming to this conclusion the Full Bench has given considerable importance to the fact that s. 52 refers also to ss. 38, 39 and 39A of the Bombay Act and that it uses the expression "landlord has taken possession of such land and he fails to use the land.", These expressions, according to the Full Bench, can refer only to cases of lands taken possession by a landlord after the Bombay Act has come into force as s. 52 is not retrospective.

In our opinion, the Full Bench has too broadly stated the principles regarding the circumstances under which s. 52 of the Bombay Act will apply. If taking possession of the land by the landlord after December 30, 1958, is the sole test for the applicability of s. 52, the position, in our view, will be very anomalous. For instance if a landlord had taken possession on December 29, 1958, s. 52 will not apply and the requirement of two years' personal cultivation may not also become necessary as the Berar Act stands repealed as on December 30, 1958. Similarly if the landlord had taken possession and had also complied with the requirement of two years' personal cultivation long before December 30, 1958, but nevertheless if he is in possession of the land on December 30, 1958, according to the Full Bench, s. 52 will stand attracted. No doubt the Full Bench has not answered the second question posed before it, but the reasoning of the decision will be to that effect if the test of possession on December 30, 1958 is the only criteria.

We are of the opinion that the question of s. 52 being retrospective or not has no material bearing in interpreting that section. That section had necessarily to refer ss. 38, 39 and 39A as they were also provisions enabling a landlord to get possession from a lessee. It is in the light of these matters that the expressions occurring therein have to be given their natural meaning. The Full Bench has misinterpreted that section.

In interpreting s. 52, in our opinion, s. 132 (2) (i) will be helpful. The obligation of the landlord when he takes possession of the land from the tenant under the Berar Act is to cultivate it personally for two years and once the landlord complies with that requirement before the Bombay Act came into force, the tenant's right to get restoration stands extinguished as the landlord has discharged his obligation.

Section 52 of the Bombay Act extends the period of personal cultivation to 12 years to all cases to which it applies. If the landlord had taken possession under the Berar Act, there was an obligation on him to cultivate personally for two years and if he has not so cultivated, the tenant had acquired a right to be restored to possession. That right which has been acquired by the tenant or accrued to him before the commencement of the Bombay Act is saved under s. 132(2) (i). Similarly, if the landlord had cultivated the lands personally for the required period, before the Bombay Act came into force, the landlord had acquired a right not to be disturbed from his possession thereafter. That right again, which has been acquired by landlord or accrued to him has been saved under s. 132(2) (i). Having due regard to the provisions of the statutes and what has been stated by us earlier the position is that if the landlord on December 30, 1958 had completed the two years period of personal cultivation, his right not to be disturbed is continued and preserved under s. 132(2) (i) of the Bombay Act. Again if the landlord in pursuance of an order obtained under the Berar Act, takes possession, after the commencement of the Bombay Act, s. 52 applies to him and his original obligation to cultivate personally for two years under the Berar Act gets L235 Sup. CI/71- 7 extended by the 12 years period provided under that section. If he ceases to so cultivate within the period of 12 years from his taking possession, the tenant gets a right to apply for restoration of the land.

The several aspects enumerated above have not been considered by the Full Bench of the Bombay High Court and it has rested its decision for applying s. 52 by applying the sole test whether the landlord has taken possession before or after December 30, 1958. Such a test is not warranted by the

provisions of both the statutes read together. A fair reading of s. 52 also, in our opinion, leads to the same conclusion. Section 52 provides for:

- (i) the tenancy being terminated under s. 9 of the Berar Act;
- (ii) the landlord taking possession of such land on the basis of such termination of the tenancy;
- (iii) the landlord failing to use the land for the purpose specified in the notice under S. 9 of the Berar Act;
- (iv) failure to use the land for the purpose mentioned in the notice within one year from the date on which he took possession;
- (v) the landlord ceasing to use the land for the purpose for which he obtains possession within 12 years of his taking possession.

To the case of a landlord who had already completed two years personal cultivation before December 30, 1958, the requirement of his failing to use the land for the purpose specified in the notice under s. 9 within one year from the date of his taking possession, will have no application whatsoever. The normal and reasonable construction to be placed upon S. 52 is that it will apply only to cases of lands, the possession of which was obtained by the landlord under s. 9 of the Berar Act, but in respect of which the period of two years disability imposed under s. 9(6) read with r. 9 of the Rules was not over before the coming into force of the Bombay Act. In respect of such landlords, S. 52 enlarges the period for which he is required to personally cultivate the lands. In this respect we are inclined to agree with the view of Mr. Justice Wagle. To conclude S. 52 applies to all cases where possession is taken by the landlord on or after December 30, 1958 on the basis of an order obtained under the Berar Act. It applies to cases where possession had been taken by a landlord under the Berar Act but the two years period of personal cultivation had not been completed when the Bombay Act came into force. The instances of obtaining possession under ss. 38, 39 or 39A of the Bombay Act have not been considered by us in this appeal.

It follows that s. 52 of the Bombay Act applies to the case before us, as the landlord had not completed two years' personal cultivation on December 30, 1958, the date on which the Bombay Act came into force. He had taken possession on April 4, 1957, and the two years' period will expire only on April 4, 1959. In the meanwhile the Bombay Act had come into force on December 30, 1958. Under s. 52 the period of personal cultivation had been extended to 12 years from the date of taking possession. But as the 5th respondent, who obtained possession for personal cultivation had transferred the suit lands to the 1st respondent on June 21, 1961, on which date the 12 years period had not expired, the appellant tenant was entitled to apply for restoration on the ground that the said landlord had ceased to cultivate the lands for the required period as provided under S. 52. In the result the judgment and order of the High Court are set aside and the orders of the Special Deputy Collector and the Maharashtra Revenue Tribunal are restored and the appeal allowed.

Though normally costs should follow the event, in this case though the appellant succeeds- we decline to award him costs, as we are of the view that he should have been more careful in giving the valuation in the special leave petition.

V.P.S.
allowed.

Appeal