Supreme Court of India
Patel Chunibhai Dajibhai Etc vs Narayanrao Khanderao Jambekar ... on 3 December, 1964
Equivalent citations: 1965 AIR 1457, 1965 SCR (2) 328
Author: A Sarkar
Bench: Sarkar, A.K.

PETITIONER:
PATEL CHUNIBHAI DAJIBHAI ETC.

Vs.

RESPONDENT:
NARAYANRAO KHANDERAO JAMBEKAR ANDANOTHER

DATE OF JUDGMENT:
03/12/1964

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
AYYANGAR, N. RAJAGOPALA
BACHAWAT, R.S.

CITATION:
1965 AIR 1457 1965 SCR (2) 328
CITATOR INFO :
RF 1966 SC 641 (7)
D 1969 SC 329 (9)
R 1978 SC1814 (13)

ACT:
Bombay Tenancy and Agricultural Lands Act (67 of 1948), as amended by Act 38 of 1957, ss. 32 and 76A-Scope of.

HEADNOTE:
In May 1956, the respondent gave a notice under s. 14 of the Bombay Tenancy and Agricultural Lands Act, 1948, to the appellants, who were his tenants, terminating the tenancy on the grounds of non-payment of rent. In December 1956, he gave another notice to the appellants, under a. 31, terminating the tenancy on the ground that he wanted to personally cultivate the lands. In March 1957, he filed an application before the Mamlatdar, on the basis of the notice under s. 31 for recovery of possession of the land. In July 1957, he filed another application for the same relief on the basis of the notice under s. 14. On September 28, 1957, s. 32 of the Act was amended by Act 38 of 1957 as a result of which, in certain circumstances, a tenant would be deemed to have purchased, on 1st April 1957, the lands held by him,

from the landlord. In December 1957, the Mamlatdar allowed the respondent's application based on s. 14. In March 1958, he withdrew his application based on s. 31. The appellants did not file an appeal against the order of the Mamlatdar of December 1957, but applied to the Collector in August 1958, for revision of that order under s. 76A. The Collector called for the records, but before the receipt of the records, rejected the application. The appellants again applied and the Collector again rejected the application. The orders of rejection were passed in October 1958. In November 1.958, the appellants once again applied to the Collector. In December 1958, the Collector received the records. He gave notice to the parties, heard them and on 17th February 1959 passed an order setting aside the Mamlatdar's order of December 1957. The respondent moved the Revenue Tribunal but without success. He then applied to the High Court under Art. 227 of the Constitution. The High Court held that the Collector had power to make the order of 17th February 1959, but that the amended S. 32 gave no rights to the appellants, as it could not affect the eviction application filed in July 1957 and pending when the Amending Act came into force, and therefore decided in favour of the respondent-landlord. In appeal to the Supreme Court by the tenants, the appellants contended that the High Court's view as to the applicability of s. 32 was erroneous. The respondent, while supporting the High Court's decision on s. 32, contended that the High Court's view of s. 76A was wrong and that the Collector had no power to review his earlier orders of October 1958 by his order of February 1959.

HELD (Per Ayyangar and Bachawat, JJ.) 32(1)(b)(i), (ii) and (iii) do not lay down alternative conditions on the satisfaction of any one of which, the appellant could be deemed to have purchased the land on 1st April 1957. The word "or" between sub-ss. (ii) and (iii), in conjunction with the succeeding negatives is equivalent to, and should be read as "nor". Therefore, under the section, the appel-lants, who were not permanent tenants but were cultivating the land personally, could become purchasers of the lands on 1st April 1957, if

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on that date, neither an application based on s. 31, nor an application based on s. 14 was pending. If an application of either type was pending on that date, the tenants could not become purchasers on that date, though, if the application were rejected later, they could become pur-chasers on such postponed date under the proviso to the section. Since, on 31st March 1957, the respondent's application based on s. 31 was pending, the appellants could not be deemed to have purchased the land on April 1, 1957. L343 F-G, H; 344 A]

But the respondent's application based on s. 14 was not maintainable as it was filed after 31st March 1957. Section

32, as amended, saves all application pending on 31st March 1957 and by necessary implication it bars all applications filed after that date. The fact that the application under s. 31 was pending, and the appellants continued to be tenants would not make any difference. The High Court was therefore in error in quashing the Collector's order on the ground that the amended s. 32 had no effect on pending applications for eviction. However, since the Mamlatdar allowed the application, the appellants had ceased to be tenants and so, even though the respondent withdrew his application under s. 31, and such withdrawal amounted to rejection in law, the appellants could not claim the benefit of the proviso to s. 32 and become purchasers of the lands on the postponed date. [344 B; 345 B, D-E, H; 349 C]

The Collector's order of February 1959 under s. 76A , reversing the Mamlatdar's order, did not affect the position because, that order was illegal, ultra vires and without jurisdiction. 'Me Collector could pass the earlier orders rejecting the applications for revision in October 1958 on the materials before him and without calling for the record. Having called for the record, he should have waited for its arrival, but his orders passed before such arrival were not without jurisdiction. The mere fact that he called for the record is no ground for saying that he could not thereafter examine the materials before him and pass an order refusing to interfere with the Mamlatdar's order, without notice to the parties. 'nose orders passed by the Collector in the exercise of his revisional powers were quasi-judicial and final. Even if the order calling for the record is not of a quasi-judicial nature, the Collector having called for the record and then determined that there was no ground for interference, his order would be quasi-judicial. Since the Act does not empower the Collector to review such an order passed by him, his earlier orders dismissing the applications for revision were final and could not be repened by him subsequently. [346 B-C; 347 F-H; 348 D-H]

Per Sarkar, J. (dissenting) : The conditions laid down in s. 32(1) (b) (i). (ii) and (iii) are not in the alternative and fulfilment of any one of them would not entitle a tenant to claim to be a purchaser. In order to become a purchaser a tenant has to satisfy all the conditions laid down in cls. (i), (ii) and (iii). Therefore, when an application for ejectment filed before 31st March 1957 on the basis of a notice under s. 31 was pending when the Amending Act came into force, the tenant had not become a purchaser on the specified date. This however does not lead to the conclusion that in such a case an application for ejectment on the basis of a notice unders. 14, filed after 31st March 1957 remained maintainable after the Amending Act and that an order for ejectment could Properly be made on it. On the coming into force of the Amending Act, the landlord's application for ejectment filed in July 1957 on the strength of a notice under s. 14 became incompetent and had to be

rejected. The order of ejectment passed by the Mamlatdar would be wholly illegal, and the order of the Collector of 19th February 1959, setting aside that order was valid and proper. Under s. 76A sending for the record is a preliminary step to the judicial act concerning the right of the parties which is to follow
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upon the perusal of the record when it arrives. By sending for the record, the Collector decided that the merits of the case required looking into. Having sent for the record his only power was to wait for its arrival and decide the merits of the case on it. The section does not contemplate that an order can be made before the Collector had received the record and looked into it. As the record had not arrived by the time he rejected the applications in October 1958, be had not made any order under the section. It follows that the only order made by the Collector under the section was that of 19th February 1959. [333 C-D, G; 334 C, E; 336 G-H; 337 D; 339 B-D; 340 B-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 791- 798 of 1964.

Appeal by special leave from the judgment and orders dated November 4/5, 1963 of the Gujarat High Court in Special Civil Applications Nos. 428 to 430 and 432 to 436 of 1961. I. N. Shroff, for the appellants (in all the appeals) S. G. Patwardhan and A. G. Ratnaparkhi, for the respondents (in all the appeals).

SARKAR J. delivered a dissenting Opinion. The Judgment of RAJAGOPALA AYYANGAR and BACHAWAT JJ. was delivered by BACHAWAT J.

Sarkar J. The appellants are tenants against whom orders for ejectment had been passed at the instance of the landlord. They contend that in view of a certain amendment of S. 32 of the Bombay Tenancy and Agricultural Lands Act, 1948, these orders were illegal and had rightly been set aside by the Collector under s. 76A of that Act. The questions that arise in these appeals depend on the interpretation of these two sections.

There were eight tenants and each of them has filed an appeal. We have thus eight appeals before us. As the landlord was the same person, the respondent in each appeal is the same. The landlord took steps under ss. 14, 31 and 29 of the Act against each tenant and these have led to the present proceedings. Section 14 gives a landlord power to terminate a tenancy on the ground inter alia of the tenant's failure to pay rent by giving the tenant a notice informing him of his intention to terminate the tenancy. Section 31 provides that notwithstanding anything contained in s. 14, a landlord may after giving notice to the tenant terminate the tenancy if he bona fide requires the land for cultivating it personally. Section 29 of the Act states that a landlord shall not obtain possession of

land from a tenant except under an order made by the Mamlatdar on the application mentioned in it. On May 1, 1956, the landlord had given a notice to the tenants under s. 14. On December 25, 1956, the landlord had given a fresh notice to the tenants under s. 31. On March 28, 1957 the landlord filed applications against the tenants before the Mamlatdar for ejectment under s. 29 on the strength of the notice under s. 31 and thereafter on July 10, 1957, he filed another set of applications for their ejectment on the strength of the notice under s. 14. By various orders made between December 20 and 25, 1957, the Mamlatdar allowed the landlord's applications for ejectment on the basis of the notice under s. 14. Thereafter on March 1, 1958, the landlord withdrew his applications for ejectment pursuant to the notice under s. 31. The tenants did not file any appeal against 'the Mamlatdar's orders of ejectment but moved the Collector under s. 76A of the Act for setting them aside. Three successive sets of such applications had been made by the tenants. The first set of applications was made on August 4, 1958. On August 14, 1958, the Collector acting under s. 76A called for the record of the ejectment proceedings before the Mamlatdar. The record did not arrive till December 24, 1958. In the meantime however, on August 26, 1958 the tenants made the second set of applications under s. 76A. On October 3 and 4, 1958, the Collector appears to have made orders purporting to reject both sets of the tenants' applications under s. 76A. On or about October 6, 1958, the tenants preferred a joint application under s. 76A and this was also rejected by the Collector on October 17, 1958. On November 7, 1958, the local Congress Committee passed a resolution stating that the tenants were being subjected to harassment and demanding that justice be done to them. A copy of the resolution was sent to the Collector. Subsequently on December 24, 1958, the record of the proceedings called for was received by the Collector. The Collector thereafter gave notice to the parties, heard them and made an order on February 17, 1959 setting aside the Mamlatdar's orders of ejectment on the ground that in view of the provisions of s. 32 as amended by Act XXXVIII of 1957 the tenants could not be evicted. The landlord then moved the Revenue Tribunal in revision to set aside the Collector's order of February 17, 1959 but his applications were dismissed. He, thereafter, applied to the High Court under Art. 227 of the Constitution to set aside the orders of the Tribunal and the Collector. The High Court allowed these applications and hence the present appeals by the tenants. As there was a separate application to the High Court by the landlord against each of the eight tenants, we have now eight appeals before us. The landlord had contended in the High Court that the Collector having once rejected the tenants' applications by the order of October 3 or of October 4 or lastly of October 17, 1958 had no power under S. 76A to reconsider the matter and pass his order of February 17, 1959 setting aside the Mamlatdar's order and that the Tribunal also was wrong in holding that the Collector had the power. On the merits, the landlord had contended in the High Court that s. 32 as amended by Act XXXVIII of 1957, which came into force on September 28, 1957, was not applicable to the ejectment proceedings. The High Court held that the Collector had the power to make the order of February 17, 1959 but it took the view that the amended s. 32 did not govern the ejectment proceedings on the ground that that section could not affect applications which were pending on the date the amending Act came into force. It was for this reason that the High Court set aside the orders of the Tribunal and the Collector. It has been contended in these appeals, by the respondent landlord, that the High Court's view of s. 76A was wrong, and by the appellant tenants that its view as to the applicability of S. 32 was erroneous. These are the two questions that arise in these appeals.

I will first take up the question of the interpretation of s. 76A. That section so far as material is in these terms :

S. 76A. Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the Divisional Officer or the State Government, at any time,-

(a) call for the record of any inquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal. as the case may be, and

(b) pass such order thereon as he deems fit; Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard. The contention of the landlord is that power under S. 76A can be exercised only once and that was done by one of the ,orders of October 1958 earlier mentioned and, therefore, the Collector's order of February 17, 1959 was wholly incompetent and a nullity. I do not think it necessary to decide the correctness of the contention that power under the section can be exercised only once and will proceed on the assumption that it is right. The question still remains, was an order under s. 76A made by the Collector prior to February 17, 1959 ? It seems to me that the order contemplated by the section is provided for in el. (b) and that order is to be made after the record has been called for and perused by the Collector. That clause says the Collector may "pass such order thereon" as he deems fit, meaning that the order is to be made on the record. The section does not contemplate that the order can be made before the Collector has received the record and looked into it. As the record had not arrived by the time that the Collector rejected the applications, namely, on October 3, or 4 or 17, 1958, it can be said that he had not made any order under s. 76A on those dates. It would follow that the only order made by the Collector under the section was the order of February 17, 1959.

It was however said on behalf of the landlord that the Collector had by the earlier orders of October 1958 refused to call for the record and had thereby fully exercised his powers under the section and could not make the order of February 17, 1959. The High Court held that a refusal to send for the record was an administrative act and it was not an order made under the section in a judicial capacity and such an order did not exhaust the Collector's power under the section. I am unable to say that this view is entirely devoid of force. The section does not create any right in any party to move the Collector under it. Under it the Collector is either to act suo motu or at the instance of the Divisional Officer or the State Government. The act contemplated by the section is to send for the record and make an order as to the rights of the parties after perusing it. Therefore, sending for the record would appear to be a preliminary step to the judicial act concerning the rights of the parties which is to follow upon the perusal of the record when it arrives. The Collector sends for the record to get the materials on which alone he is under the section to base his judicial act. His only real power under the section is to do the judicial act. He cannot be said to have exhausted that power before he has looked into the record. The proviso to the section would lend support to this view, for it says that the judicial power can be exercised at any point of time if he has sent for the record

within the period mentioned.

There is however another aspect of the case. Let me assume that if the Collector had refused to send for the record, he would have exhausted his power under the section. This would be only on the basis that he had formed the opinion that it was not a fit case for going into the merits and, therefore, refused to send for the record. In the present case however he did not refuse to send for the record. By his earliest order, which was of August 14, 1958, he had called for the record. If he could not review his order refusing to call for the record because his power under the section was thereby exhausted, he could not review the order calling for the record either. If any of his orders of October 3, 4 and 17, 1958 was to be an effective order under the section, the result of that would have been to review, and thereupon to set aside, the order sending for the record. By sending for the record he did decide that the merits of the case required looking into it. If that was not the effect of the order sending for the record, that act would be only a meaningless act and I am unable to think that such an act of the Collector could be within the contemplation of the section. The order of October 3, or 4, or 17, 1958 must be held to have decided that the merits of the case did not deserve to be looked into. This would be reviewing the earlier order and this, ex hypothesis the Collector had no power to do. Having sent for the record his only power was to wait for its arrival and decide the merits of the case on it. The order of October 3, or 4 or 17, 1958 which had been made before the arrival of the record was, therefore, wholly incompetent and ineffective. None of them could affect the Collector's power to pass a proper order after the record had arrived. In my view, therefore, the order of February 17, 1959 had been properly made and was a valid order.

I now take up the question of the interpretation of s. 32 as it stood in December 1957 when the ejectment orders were made by the Mamlatdar and its applicability to pending ejectment procees. Section 32 was amended from time to time but it is necessary to refer only to two of the amendments. That section was first amended by Act XIII of 1956 which was enacted on March 16, 1956 but came into force on August 1, 1956. As so amended, it for the first time provided that in certain circumstances a tenant would be deemed to have purchased on April 1, 1957 from his landlord the land held by him. The section was again amended by Act XXXVIII of 1957 which came into force on September 28, 1957 and it is with this amendment that we are really concerned. Section 12 of this amending Act inserted cl.(iii) in sub-s.(1) of s. 32 and s. 34 of the amending Act gave effect to the amendment made by s. 12 from August 1, retrospectively. It is of some interest to point out that Au-

gust 1, 1956 is the date on which the amendment of s. 32 by Act XIII of 1956 was brought into force. It will be noticed that amending Act XXXVIII of 1957 was in force at the date of the Mamlatdar's orders of ejectment.Now s. 32 as it stood after the, amendment by Act XXXVIII of 1957 is in these terms :

> "On the first day of April 1957 .... every tenant shall..be deemed to have purchased from his land-
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> lord...theland held by him as tenant, if(a) such tenant is a permanent tenant thereof and cultivates land 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 his 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 14,. 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 :

Provided that if an application made by the landlord tinder section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Bombay Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereafter referred to as 'the postponed date'."

The High Court, as I have stated, said that s. 32 though, made retrospective did not affect pending applications for ejectment which the applications of the landlord resulting in the orders of ejectment were. The matter was put in this way. "A retrospective provision cannot, in my view, have any effect to pending proceedings where such retrospective provision provides that an application or proceeding shall be started not later than a particular date when proceedings have already been filed by the time that the said amending Act comes into force." I am unable to say that I have fully understood this observation but learned advocate for the landlord assures us that it can only mean that the amendment made does not affect pending proceedings. Learned advocate for the landlord, was however, unable to support the view taken by the High Court. I also think that the High Court fell into an error. Now, there is, of course, no doubt that the legislature can validly make a law so retrospective as to affect a pending proceeding. The question is, did it do so in the present case ? I think it clearly did. Section 32 after the amendment provided that a tenant personally cultivating land would on the date of the amending Act be entitled to claim to have become a purchaser of the land held by him with effect from April 1, 1957, if no application for his ejectment on the strength of a notice under s. 14 or under s. 31 had been filed on or before March 31, 1957. Any such application made after that date and pending when the amending Act came into force, therefore, could not affect the right of the tenant under the amended section to claim to be a purchaser; such application would, therefore, on the passing of the amending Act become in fructuous for the tenant having been made the owner of the land was no longer a tenant who could be evicted. The amended section, therefore,, necessarily affected pending proceedings. The Act could not be read in the way the High Court did without refusing to give full effect to the language used. An interpretation doing so would be unsupportable. Hence I am unable to agree with the view taken by the High Court.

I pass on to consider whether the amended s. 32 made the Mamlatdar's order of ejectment illegal. In order that a tenant may claim to have become a purchaser under the section, he has to satisfy the conditions mentioned in it. Those conditions are set out in two sets. The first set of conditions is in cls. (a) and (b). These two conditions are obviously in the alternative though between them the word "or" does not occur, for it is not possible for a tenant to fulfil both the conditions; he cannot be both a permanent tenant and not a permanent tenant at the same -time. It is not in dispute that the tenants in the present case per- sonally cultivated the lands held by them on the date mentioned in the section. So one of the conditions in the first set can be said to have been fulfilled.The arguments in this case have turned on the second set of conditions which are contained in cls. (i), (ii) and (iii). I think cl. (iii) really contains two conditions, namely, first a failure to terminate the tenancy by notice under s. 14 and secondly, if there has been such a termination, failure to apply for ejectment on the basis of such termination on or before March 31, 1957. So this set really contains four conditions. Now, Mr. Shroff appearing for the tenants contended that the conditions in these clauses in the second set are alternative conditions and that it is enough for a tenant to satisfy any one of them. If this contention is well founded, then it cannot be disputed that the tenants in the present case had become purchasers because the last condition had been fulfilled as the landlord had not applied to the Mamlatdar for ejectment before March 31, 1957 on the strength of a notice under s. 14.

I am however unable to agree that the conditions are in the alternative and fulfilment of any one of them would entitle a tenant to claim to be a purchaser. The fallacy of Mr. Shroff's contention can be shown by an illustration. Suppose cl. (iii) is fulfilled but at the same time it appears that the landlord had before March 31, 1957, both given a notice under s. 31 and made an application for ejectment under s. 29 on the basis of that notice which was pending when the amending Act came into force. That is what happened in the present case. If Mr. Shroff is right, then the tenant must be held to have become a purchaser on the passing of the amending Act with effect from April 1, 1957 notwithstanding the pending application. Such a reading of the section would however make the proviso ineffective. The application mentioned in the proviso must be of one of the kinds mentioned in cls. (ii) and (iii) for under the section in the absence of such an application, the tenant becomes a purchaser. Now the proviso says that when such an application is pending when the amending Act comes into force, the tenant would not become a purchaser unless that application is rejected and then only on the date when it is rejected. According to Mr. Shroff's contention, the tenant in the case supposed has become a purchaser on the enactment of the amending Act. But the proviso obviously contemplates that the application contemplated in it might succeed for it says "if an application .... has been rejected". By contemplating that the application may succeed, the proviso is laying down that the tenant against whom it is made may be evicted. This could not be done if the tenant had already become the purchaser as he would be if Mr. Shroff is right. Neither could it for the same reason be, as the proviso also contemplates, that if the application fails the tenant would become the purchaser on the date when the application is rejected. The plain effect of the section obviously is that a tenant fulfilling its conditions is to be deemed to have become a purchaser on the passing of the amending Act, with effect from an earlier date and where an application for his ejectment on the basis of a notice either under S. 14 or S. 31 had been made on or before March 31, 1957 and was pending when the amending Act came into force, the tenant was to become a purchaser only if that application was rejected and then on the date of the rejection. It follows that where there is such a pending application, the tenant does not become a purchaser on the passing of the amending Act

though another condition of the section is found to have been fulfilled. Hence the conditions set out cannot be in the alternative. In the present case the tenants relied principally on the second condition contained in cl. (iii) for their contention that the Mamlatdar's order for ejectment was illegal. The applications on which that order was made had been filed after March 31, 1957. In fact they had been filed on July 10, 1957 and were pending when the amending Act came into force. If these applications constitute the only step that the landlord had taken for ejectment of the tenants then obviously the conditions in cls. (i), (ii) and (iii) had all been fulfilled and in that case the tenants must be deemed to have become purchasers of the lands on April 1, 1957 and this was the position which existed on September 28, 1957 when Act XXXVIII of 1957 had come into force. The Mamlat- dar's order of ejectment had been made subsequent to the coming into force of that Act. These orders, as I have earlier stated, were made between December 20, and 25, 1957. Before these dates the tenants, on the assumption that I have made, having become purchasers had ceased to be tenants and there was no question therefore of evicting them as such. The Mamlatdar should on this supposition have dismissed those applications and his orders of ejectment were therefore illegal.

But the facts here are different. The landlord had made an application for ejectment before March 31, 1957 on the strength of a notice under s. 31 and that application was pending when the amending Act came into operation. It was then said that it followed from this that the condition in cl. (ii) had not been satisfied and so the tenants had not become purchasers under the section. It was contended that that being so, the Mamlatdar could treat them as tenants and make an order of ejectment on the landlord's applications pursuant to the notices under s. 14 even though they were made after March 31, 1957. In my opinion, this contention is ill founded. It is true that in order to become a purchaser a tenant has to satisfy all the conditions laid down in cls. (i), (ii) and (iii). Therefore when an application for ejectment filed before March 31, 1957 on the basis of a notice under s. 31 was pending when the amending Act XXXVIII of 1957 came into force, as happened in this case, the tenant had not become a purchaser on the date of the enactment if the amending Act. This however does not lead to the conclusion that in such a case an application for ejectment on the basis of a notice under s. 14 filed after March 31, 1957 remained maintainable after the amending Act and an order for ejectment could properly be made on it. In my view, such an application became incompetent on the passing of that Act. The reason is that if it remained maintainable, then the situation would be anomalous. Assume that the application filed prior to March 31, 1957 was rejected after the amending Act came into force, as happened in this case, for the withdrawal of the application in law amounts to its rejection, then by virtue of the proviso the tenant would become purchaser on the date of the rejection. If in such a case the application filed after March 31, 1957 had remained competent after the amending Act had come into force and had succeeded, the position would be curious. If the the application filed prior to March 31, 1957 had failed before the application filed after that date came up for hearing, then the tenant having become the owner under the proviso on the failure of the earlier application, the later application could not thereafter be decided in favour of the landlord giving him a right to eject the tenant for there was then no tenant to eject. If, on the other hand, the application filed after March 31, 1957 had succeeded before the earlier application came to be heard, then the earlier application would become infructuous for the proviso contemplates a pending application for ejectment and, therefore, against one who is still a tenant. In either case the proviso would become ineffective. An interpretation of the section producing such a result would be most unnatural. The proviso clearly intends that if an application

filed before March 31, 1957 is pending when the amending Act comes into force, the tenant who could not in such a case have become a purchaser when the amending Act came into force can do so if that application fails, and then only on the date of the rejection. The tenant's right to become a purchaser in the case of such a pending application is not intended to depend on anything but the result of that application. That right cannot be affected in any way except by the success of that application; it cannot be affected by an order made on an application for ejectment filed subsequent to March 31, 1957. No application for ejectment either pursuant to a notice under s. 14 or s. 31 filed after March 31, 1957 can effect the tenant's right under s. 32 at all. That application, therefore, if not disposed of prior to the coming into force of Act XXXVIII of 1957 becomes thereafter dead and infructuous. For these reasons, I think that on the coming into force of Act XXXVIII of 1957 the landlord's applications for ejectment filed on July 10, 1957 on the strength of notice under s. 14 became incompetent and had to be rejected. An order of ejectment made on such an application after the coming into force of the amending Act would be wholly illegal. The Mamlatdar in the present case was in error in passing orders of ejectment on those applications. They were rightly set aside by the Collector and the Tribunal.

It might be somewhat unfortunate that the landlord withdrew the applications filed before March 31, 1957 pursuant to the notice under s. 31. It might be that the landlord would have succeeded on merits in them. As they were withdrawn, they must in law be deemed to have been rejected. It does not appear why the landlord withdrew these applications which he did on March 1, 1958. Neither does it appear that the tenants had in any way induced him to do so. The landlord might have made a mistake; he might have thought that the orders of ejectment by the Mamlatdar earlier made were legal and sufficiently protected his rights. For that mistake however he alone is responsible. That the applications had been withdrawn by the landlord and had not been rejected on merits does not improve the landlord's position under s. 32.

I, therefore, think that the High Court was wrong in setting aside the order of the Tribunal. In my view. the order of the Tribunal upholding the Collector's order setting aside the orders of ejectment passed by the Mamlatdar was in all respects correct and should in my view be maintained. I would, therefore, allow the appeals and restore the orders of the Tribunal.

Bachawat, J. These appeals raise questions of construction of ss. 32(1) and 76-A of the Bombay Tenancy and Agricultural lands Act, 1948 (Bombay Act LXVII of 1948). The facts in all the appeals are similar, In this judgment, we will refer to the relevant facts in Civil Appeal No. 791 of 1964. Respondent No. 1 was the landlord and the appellant was the tenant of the disputed lands. On May 1, 1956, respondent No. 1 gave a, notice to the appellant under s. 14 terminating the tenancy. On December 25, 1956 respondent No. 1 gave another notice to the appellant under s. 31 terminating the tenancy. On March 28, 1957 respondent No. 1 filed an application under s. 29 read with s. 31 for recovery of possession of the lands. On July 10, 1957, respondent No. 1 filed another application under s. 29 read with,, s. 14 for the same relief. By an order dated December 25, 1957 the Mahalkari allowed respondent No 1's application under s. 29 read with s. 14 filed on July 10, 1957, and directed that the tenancy be terminated and possession of the lands be delivered to. respondent No. 1. On March 1, 1958, respondent No. 1 with- drew the application under s. 29 read with s. 31 filed on March 28, 1957. The appellant applied to the Collector of Baroda on, August 9, 1958 and again on

August 26, 1958 under s. 76-A for revision of the Mahalkari's order dated December 25, 1957. On or about August 14, 1958 the Collector called for the records from the Mahalkari, but the records did not reach the office of the Collector until December 24, 1958. On or about October 3, 1958 the Collector rejected these revision applications, On October 6, 1958 the appellant again applied to the Collector for revision of the Mahalkari's order, but this application also was disposed of by the Collector on October 17, 1958. It is said that the letter of the Collector dated October 17, 1958 was only an intimation of the previous rejection, but we think, though the, point is not important, it amounted to an order of rejection of the application made on October 6, 1958. On November 7, 1958, the local Congress Mandal Samiti passed a resolution requesting the Collector to reconsider his previous orders. A copy of this resolution was sent to the Collector on November 10, 1958. On November 14, 1958, the appellant again applied to the Collector under s. 76-A for revision of the Mahalkari's order. On February 17, 1959, the Collector acting under s. 76-A reversed the Mahalkari's order, and directed that possession of the disputed lands be restored to the appellant. An application for revision preferred by respondent No. 1 on March 24, 1959 was dismissed by the Tribunal on February 23, 1961. An application under Art. 227 of the Constuitution preferred by respondent No. 1 on June 15, 1961 was allowed by the High Court on November 5, 1963. The appellant now appeals to this Court by special leave.

The contention of the appellant is that in view of s. 32(1),

-is amended retrospectively by Bombay Act XXXVIII of 1957. he must be deemed to have purchased the land on April 1, 1957, and consequently the application of respondent No. 1 filed under s. 29 read with s. 14 was not maintainable, and alternatively, the aforesaid application being filed after April 1, 1957 was not maintainable and should have been dismissed by the Mahalkari on that ground, and subsequently on March 1, 1958, the appellant must be deemed to have purchased the lands in view of the withdrawal and consequential rejection of the previous application filed under s. 29 read with s. 14 and in the circumstances, the Collector rightly set aside the order of the Mahalkari. Section 32(1), as amended by Bombay Act XXXVIII of 1957, reads thus :

"32(1). On the first day of April 1957 (hereinafter referred to as 'the tillers' day') every tenant shall, subject to the other provisions of this section and 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 culti- vates land 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 his 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 14, 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 :

Provided that if an application made by the "landlord under section 29 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as 'the postponed date' :

Provided further that the tenant of a landlord who is entitled to the benefit of the proviso to sub-section (3) of section 31 shall be deemed to have purchased the land on the 1st day of April 1958, if no separation of his share has been effected before the date mentioned in that proviso."

It may be recalled that amendments to s. 32 were made from time to time, and the Bombay Act XXXVIII of 1957 added to sub-s ( 1 ) (b) cl. (iii) and the preceeding "or". It is to be noticed that the conditions mentioned in sub-ss ( 1 )(a) and (1) (b) are mutually exclusive. In spite of the absence of the word "or" between sub-ss (1) (a) and (1) (b), the two subsections lay down alternative conditions. The tenant must be deemed to have purchased the land if he satisfies either of the two conditions. The appellant is not a permanent tenant, and does not satisfy the condition mentioned in sub-s ( 1 ) (a). Though not a permanent tenant, he cultivated the lands leased personally, and therefore satisfies the first part of the condition specified in sub-s ( 1 ) (b). The appellant's contention is that sub-ss. ( 1 ) (b) (i), ( 1 ) (b) (ii) and ( 1 ) (b)

(iii) lay down alternative conditions, and as he satisfies the condition mentioned is sub-s ( 1 ) (b) (iii), he must be deemed to have purchased the land on April 1, 1957. Colour is lent to this argument by the word "or" appearing be, tween sub-s (1) (b) (ii) and sub-s (1) (b) (iii). But, we think that the word "or" between sub-ss ( 1 ) (b) (ii) and ( 1 ) (b) (iii) in conjunction with the succeeding negatives is equivalent to and should be read as "nor". In other words, a tenant (other than a permanent tenant) cultivating the lands personally would become the purchaser of the lands on April 1, 1957, if on that date neither an application under s. 29 read s. 31 nor an application under s. 29 read with s. 14 was pending. If an application either under s. 29 read with s. 31 or under s. 29 read with s. 14 was pending on April 1, 1957, the tenant would become the pur- chaser on "the postponed date", that is to say, when the application would be finally rejected. But if the application be finally allowed, the tenant would not become the purchaser. The expression "an application" in the proviso means not only an application under s. 31 but also an application under s. 29 read with s. 14. If an application of either type was pending on April 1, 1957, the tenant could not become the purchaser on that date. p.165-6 Now, on April 1, 1957 the application filed by respondent No .1 under S. 29 read with S. 31 was pending. Consequently, the appellant could not be deemed to have purchased the lands on April 1, 1957.

But the application under S. 29 read with S. 14 was not maintainable, as it was filed after April 1, 1957. On this point, we adopt the reasoning and conclusion of the Full Bench of the Bombay High Court in Ramchandra Anant v. Janardan(1). We agree with the following observations of Chainani,

C. J. in the aforesaid case :

"It has been contended that as there is no provision in the Act that an application on the grounds mentioned in s. 14 cannot be made after April 1, 1947, such an -application is maintainable, for since the Legislature has preserved the right to make such an application, it could not have intended that it should not be availed of in any case) There is undoubtedly force in this argument, but it seems to us that the intention of the Legislature in enacting s. 32 clearly was to transfer the ownership of the lands to the tenants on April 1, 1957, except in cases where applications for possession had been made by the landlords before April 1, 1957. Where such an application had been made, the right of purchase given to the tenant is postponed until that application is rejected. It is clear from this section that the Legislature did not intend that the right given to a tenant by this section should be destroyed or affected by any application made after April 1, 1957. If an application for possession made under S. 29 read with s. 14 after April 1, 1957 is decided in favour of the landlord before the application made by him prior to April 1, 1957 is disposed of, it will affect the right of the tenant to become the owner of the land on the postponed date. It seems to us that this was not intended by the Legislature. The fact that the Legislature has provided that only an application made prior to April 1, 1957, should affect the right of the tenant to become the purchaser of the land on April 1, 1957 clearly indicates that the Legislature contemplated that no such application should be made after April 1, 1957." (1) [1962] 64 B.L.R. 635.

On this construction of s. 32(1) it would appear that the application under s. 29 read with s. 14 filed on July 10, 1957 was not maintainable since September 22. 1957. when the amending Bombay Act XXXVIII of 1957 came into force. It is true that on July 10, 1957 the other application under s. 29 read with s. 31 was pending, and consequently the appellant was still a tenant and had not become the purchaser. But s. 32 bars all applications filed after April 1, 1957, and it matters not that the application is made against a person who is still the tenant. But respondent No. 1 contends that the Bombay Act XXXVIII of 1957 could not retrospectively amend s. 32 so as to affect pending applications. Though this contention found favour with the High Court, we are unable to accept it. Section 34 of Bombay Act XXXVIII of 1957 provided that the aforesaid amendment of s. 32 "shall be deemed to have been made and should have come into force on the date on which the Bombay Tenancy and Agricultural lands (Amendment) Act, 1955 came into force." Now, the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1955 came into force on August 1, 1956. The amended s. 32 must, therefore. be deemed to have been made and to have come into force on August 1, 1956. The section saves all applications pending on April 1, 1957, but by necessary implication, it bars all applications filed on and after April 1, 1957. The bar takes within its sweep all applications filed on and after April 1, 1957 whether or not such an application was pending on September 22, 1957; no exception is made in favour of applications filed between April 1 and September 22, 1957 and pending on September 22, 1957. Consequently, the application filed on July 10, 1957, though pending on September 22, 1957, was not maintainable and ought to have been dismissed by the Mahalkari.

But by his order dated December 25, 1957, the Mahalkari allowed the application. This order of the Mahalkari, though erroneous, was an order of a competent tribunal terminating the tenancy and directing delivery of possession of the lands to the landlord. As from the date of the order, the

appellant ceased to be a tenant within the meaning of s. 32 read with s. 2(18); he was neither a person lawfully cultivating the lands, nor a person who held the lands on lease and neither a protected tenant nor a permanent tenant. Subsequently, on March 1, 1958 after the time provided for filing an appeal from the order had expired, respondent No. 1 withdrew the pending application for eviction filed by him on March 28, 1957. As a result of the withdrawal, that application stood finally disposed of and rejected. But on March 1, 1958, the appellant was not a tenant and consequently he could not then claim the benefit of S. 32 and become the purchaser of the lands. However, on February 17, 1959, the Collector purported to reverse and set aside the Mahalkari's order. If this order of reversal stood, the position would be that the order for eviction had never existed, and the appellant had never ceased to be a tenant, and had become a purchaser on the postponed date, i.e. on March 1, 1958. But the point in issue is whether the Collector had in the circumstances the power to revise the Mahalkari's order under S. 76-A. Now, S. 76-A provides as follows:

> "Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the Divisional Officer or the State Government, at any time,-
>
> (a) call for the record of any enquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of any order passed by, and as to the regularity of the proceedings of such Mamlatdar "or Tribunal, as the case may be, and
>
> (b) pass such order thereon as he deems fit Provided that no such record shall be called for after the expiry of one year from the date of such order and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard."

The order of the Mahalkari under S. 29 was passed on December 25, 1957 and was appealable under S. 74. By S. 79, the appeal could be filed within 60 days from the date of the order. No appeal was filed within the period provided for by it. The Collector could at any time thereafter exercise his revisional powers under S. 76-A either suo motu, i.e., of his own motion or on a reference made by the Divisional Officer or the State Government. In the exercise of his revisional powers, the Collector could call for the record of the proceedings of the Mahalkari and pass such order as he deemed fit. There were two limitations on this power of revision. Firstly, the record could not be called for after the expiry of one year from the date of the order. Secondly, the order could not be modified, annulled, or reversed unless opportunity had been given to the interested parties to appear and be heard. In the instant case, there was no reference by any authority. The Collector could still exercise his revisional powers, but he seldom exercises such powers unless some irregularity or illegality is brought to his notice by the aggrieved party. Though s. 76-A, unlike s. 76, does not provide for an application for revision by the aggrieved party, the appellant properly drew the attention of the Collector to his grievances and asked him to exercise his revisional powers under s. 76-A. Having perused the applications for revision filed by the appellant, the Collector decided to exercise his suo motu powers and called for the record on August 14, 1958 within one year of the order of the Mahalkari. But before the record arrived and without looking into the record, the Collector passed

orders on October 3, October 4 and October 17, 1958 rejecting the applications for revision. By these orders, the Collector decided that there was no ground for interference with the Mahalkari's order. The Collector observed that the appellant had not paid rent for three consecutive years, and his tenancy had been duly terminated by the requisite notice and the findings of the Mahalkari on these points had not been challenged by a regular appeal. The Collector thus upheld and confirmed the Mahalkari's order. He did not specifically deal with the point as to the non-maintainability of the application for eviction in view of the amended s. 32, as the point was not taken either before him or before the Mahalkari. All these orders were passed by the Collector in the exercise of his suo motu power of revision. These orders as also the previous order calling for the record could be passed by the Collector only in the exercise of his revisional power under s. 76-A. As he refused to modify, annual or reverse the order of the Mahalkari, he could pass these orders without issuing notice to the respondent No. 2. These orders passed by the Collector in the exercise of his revisional powers were quasi-judicial, and were final. The Act does not empower the Collector to review an order passed by him under s. 76- A. In the absence of any power of review, the Collector could not subsequently reconsider his previous decisions and hold that there were grounds for annulling or reversing the Mahalkari's order. The subsequent order dated February 17, 1959 reopening the matter was illegal, ultra vires and without jurisdiction. The High Court ought to have quashed the order of the Collector dated February 17, 1959 on this ground.

The High Court was of the opinion that the Collector could exercise his revisional power under s. 76-A only after looking into the record of the impugned order of the Mahalkari. We have come to the opposite conclusion. In exercise of his revisional powers under S. 76-A, the Collector may or may not call for the record. Without calling for the record and without looking into them, the Collector may, on a perusal of the order, along with the representation to him by the aggrieved party or the reference by the Divisional Officer or the State Government, as the case may be, with such other documents as may be submitted to him, come to the conclusion that there is no ground for interference with the impugned order and that, therefore, the order should be confirmed. The contention of the appellant was that the word "thereon" in s. 76-A supports the opinion of the High Court. We do not think so. We think that s. 76-A(b) means that the Collector is empowered to pass such orders as he deems fit on the legality or propriety of any order passed by any Mamlatdar or tribunal and as to the regularity of the proceedings before them. The Collector can, in our opinion, pass such orders on the materials before him without calling for the record. But having called for the record, the Collector should properly have waited for its arrival before passing any orders. The orders passed by him before the arrival of the record were, however, no without jurisdiction. The mere fact that he called for the records is no ground for saying that he could not thereafter examine the materials before him and pass an order that the order of the Mahalkari or tribunal did not call for interference. By way of analogy, we might point out that if in the case of an application or petition before a Court notice is issued to the respondent to show cause why it should not be granted, the Court is not debarred from dismissing the application or petition without hearing the respondent on the day when it is called for hearing. The calling for the record is no decision which compels the Collector to look into the record before dismissing the petition, though of course he cannot allow the petition without considering the record and hearing the party supporting the order sought to be revised. However erroneous those orders of the Collector dismissing the revision might be, they were final and could not be re- viewed and reopened by him subsequently.

The High Court also observed that only the act of the final determination by the Collector could be said to be a quasi- judicial act and that his order calling or not calling for the record was not an act of a quasi-judicial nature. But, in the instant case, the collector not only called for the record but also determined that there was no ground for intereference with the Mahalkari's order. The subsequent order of the Collector dated February 17, 1957 reversing the Mahalkari's order was without jurisdiction and was liable to be quashed by the High Court on this ground.

In the result, the order of the Mahalkari remained the final and operative order, the appellant ceased to be a tenant and could not become the purchaser of the lands on March 1, 1958, when the application filed on March 28, 1957 stood rejected.

The High Court set aside the Collector's order on the ground that the amended s. 32 could not affect the application for eviction filed on July 10, 1957 and pending when the amending Bombay Act XXXVIII of 1957 came into force; and the application was rightly allowed by the Mahalkari. We have already pointed out that the High Court was in error in quashing the Collector's order on this ground. But the High Court should have set aside the Collector's order on the ground that having already decided that there was no ground for interference with the Mahalkari's order, the Collector could not subsequently revise that order. We, therefore, hold that the Collector's order was liable to be quashed, though on grounds different from those on which the High Court proceeded. On this ground, in all these appeals the order of the High Court setting aside the order of the Collector and restoring that of the Mahalkari should be affirmed.

In the result, the appeals are dismissed with costs. There will be one hearing fee.

ORDER In accordance with the Opinion of the majority, the appeals are dismissed with costs. There will be one hearing fee.