Supreme Court of India
Amir Ahmad vs Ram Niwas Agrawal on 19 November, 1993
Equivalent citations: 1994 AIR 1145, 1994 SCC (2) 50
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
AMIR AHMAD

Vs.

RESPONDENT:
RAM NIWAS AGRAWAL

DATE OF JUDGMENT19/11/1993

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
PUNCHHI, M.M.

CITATION:
1994 AIR 1145 1994 SCC (2) 50
JT 1993 (6) 447 1993 SCALE (4)498

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J.-On February 1, 1993, we granted leave to appeal in the special leave petition and allowed the civil appeal setting aside the judgment and order of the Allahabad High Court dated August 12, 1993 in Writ Petition No. 12911 (M/B) of 1990. We indicated that the reasons for our order will be given later. The following are the relevant facts and reasons for our order.

2. First respondent, Ram Niwas Agrawal was the President of the Nagar Palika, Sultanpur in the State of Uttar Pradesh. A motion expressing want of confidence in him was moved by the requisite number of members. A meeting of the Nagar Palika was convened on December 14, 1990 to consider the motion. As required by Section 87-A(4) of the U.P. Municipalities Act, 1916, the District Judge, Sultanpur nominated Shri Vishram Singh, First Additional Civil Judge, Sultanpur to preside over the meeting. The minutes of the meeting recite the following facts.

3. When the meeting commenced, sixteen members including the President were present besides, Shri Ram Dular Yadav, MLC, who claimed to be an ex-officio member of the Nagar Palika. His claim was considered and rejected by the Presiding Officer. Three women, nominated as members by the Government on the previous day, presented themselves and sought participation in the meeting. A dispute was raised with respect to their right to participate in the meeting on the ground that by that date they had not taken the oath of allegiance. The Presiding Officer allowed the said nominated members to participate in the meeting and to vote on the motion. The voting figures were seventeen (including three votes of three nominated members) in favour of the motion and only one, viz., that of the President himself against the motion. The Presiding Officer declared the motion to have been passed by the majority inasmuch as the total membership of the Board (Nagar Palika) was twenty-seven. He opined that even if the total membership is taken as twenty-eight (including the membership of aforesaid MLC) still the motion must be deemed to have been passed.

4. The President of the Nagar Palika (first respondent in this Appeal) challenged the validity of the said proceedings by way of a writ petition in the Allahabad High Court, Lucknow Bench. A Division Bench allowed the writ petition on the following three grounds:

(1) The votes of three nominated members are liable to be excluded because they had not taken the oath of allegiance till then. Unless they took the oath of allegiance, they were not entitled to take their seat in the Nagar Palika or to vote. However, for the purpose of total membership, the said three members must be counted, which means that in determining the total strength of the Nagar Palika on that day, these three members must also be taken into account. (2) The Presiding Officer was in error in rejecting the claim of Shri Ram Dular Yadav, MLC to be a member of the Nagar Palika. He must be deemed to be a member. With him, the total membership goes up to twenty-eight.

(3) At the meeting convened to consider the motion of no- confidence, two Executive Officers, viz., Additional District Magistrate (F & R) and Additional District Magistrate (E) were present. No acceptable reason has been assigned for their presence within the hall where the meeting was going on. "It was done with mala fide intention which would vitiate the proceeding."

5. The correctness of the above grounds is questioned in this appeal.

6. The first question is whether Shri Ram Dular Yadav was and could be treated as a member of the Nagar Palika on the relevant date? This issue is of crucial importance, inasmuch as if he is not treated as a member, the total membership would be twenty-seven in which event the motion would succeed even if the three votes of nominated members are excluded. For a proper appreciation of the question, it is necessary to notice Section 9 of the Act which deals with the composition of the Board. Insofar as it is relevant, Section 9 reads:

> "9. Normal composition of the Board.- Except as otherwise provided by Section 10, a Board shall consist of-
>
> (a) the President;

(b) the elected members who shall not be less than 10 and not more than 40, as the State Government may by notification in the Official Gazette specify;

(c) the ex-officio members comprising all members of the House of People and the State Legislative Assembly whose constituencies include the whole or part of the limits of the Municipality;

(d) the ex-officio members comprising all members of the Council of States and State Legislative Council who have their residence within the limits of the Municipality. Explanation.- For the purpose of this clause, the place of residence of a member of council of States or the State Legislative Council shall be deemed to be the place of his residence mentioned in the notification of his election or nomination, as the case may be."

7. By virtue of Section 9(d), members of the Council of States (Rajya Sabha) and the State Legislative Council, "who have their residence within the limits of the Municipality" become the members of the Board (Nagar Palika). The Explanation to clause (d) elucidates the meaning of the expression 'residence'. It says that for the purpose of the said clause, the place of residence of a member "shall be deemed to be the place of his residence mentioned in the notification of his election or nomination, as the case may be". Evidently, the object and purpose of the explanation is to fix the residence of a member of the Rajya Sabha or State Legislative Council as the one mentioned in the notification of his election (if he is an elected member) or in the notification of his nomination (if he is a nominated member). For the purpose of the U.P. Municipalities Act, it is the said residence which is relevant and determines their membership in a particular Municipal Board (Nagar Palika). This was thought necessary, it is obvious, not only to obviate any room for confusion but also to prevent these persons from claiming membership of different Municipal Boards at different times, to: suit their convenience or political objectives, by changing their residence. A member of Council of States elected from a State has no territorial constituency as such, since he is elected by the members of the Legislative Assembly [Article 80(4)]. So does a nominated member have no territorial constituency. Similar is the situation in the case of most of the members of the Legislative Council. (See Article 171 regarding the composition of the Legislative Council.) A comparison of the language employed in clause (c) of Section 9 with that employed in clause (d) thereof also illustrates the reason for engraving the said Explanation to clause (d) alone. So far as Shri Yadav is concerned, he is a member of the State Legislative Council. It is an admitted fact that in the notification of his election, his place of residence is shown to be his village Sakaura, which is not within the municipal limits of Sultanpur. It, however, appears that about ten days prior to the said meeting, a notification was issued by the Secretary to the Legislative Council, Uttar Pradesh (on December 4, 1990) notifying the change of address of Shri Yadav from village Sakaura to House No. 914, Civil Lines No, 1, Sultanpur. It is by virtue of the said change of address that Shri Yadav claimed to be a member of the Municipal Board, Sultanpur. The High Court opined, disagreeing with the Presiding Officer, that the said change of address makes Shri Yadav a member of the Sultanpur Board. The High Court opined that the notification changing the residential address of the said Shri Yadav was a valid one and was not under challenge by anyone and, therefore, the said Shri Yadav had validly become a member of the Sultanpur Board. We find it difficult to agree with the High Court in view of the

aforesaid Explanation. It is true that the Secretary to the Legislative Council had issued a notification changing the place of residence of the said Shri Yadav from village Sakaura to a residential house at Sultanpur and that the said notification was not challenged by anyone, but the question is whether the said notification was relevant at all for the purpose of the U.P. Municipalities Act and whether Shri Yadav could claim to be a member of Sultanpur Municipal Council by virtue of the said change of residence. As explained hereinabove, the very idea behind the Explanation to Section 9(d) was to fix the place of residence of a member of Rajya Sabha or a member of State Legislative Council, as the case may be, for the purpose of his membership in a particular Municipal Board. It is the place of his residence mentioned in the notification of his election or nomination, as the case may be. Even if he changes his residence after his election/nomination, it is irrelevant for the purpose of his membership in a Municipal Board. If he becomes an ex- officio member of a particular Municipal Board by virtue of the place of residence mentioned in the notification of his election/nomination he does not lose it by changing his residence to a place outside the limits of that Municipal Board. Similarly, if he did not become an ex-officio member of any Municipal Board because his place of residence mentioned in the notification of his election/ nomination did not fall within the local limits of a Municipal Board (as in the case of Shri Yadav) he does not and cannot gain such membership by shifting his residence to a place within the local limits of a Municipal Board. Any other construction would enable these persons to shift their membership from one Municipal Board to another to suit their political objective and strategies by shifting their residence from time to time. Such a course would render the aforesaid Explanation redundant. We cannot adopt any such interpretation. We are, therefore, of the opinion that the notification issued by the Secretary to the Legislative Council changing the place of residence of the said Shri Yadav was not relevant for the purpose of the Section 9 of the U.P. Municipalities Act, which meant that by virtue of the said change of place of residence, Shri Yadav did not and could not become a member of the Sultanpur Municipal Board. The Presiding Officer was, therefore, right in not allowing him to participate in the said meeting and in rejecting his claim of membership of Sultanpur Municipal Board.

8. Once Shri Yadav is not treated as a member of the Municipal Board, the total membership of the Board has to be treated as twenty-seven, even if we count the three nominated members as the members of the Board as on the date of the meeting held on December 14, 1990. Even if we exclude the votes of the said three nominated members, still the number of votes cast in favour of the motion would be fourteen which would be more than half the total number of members of the Board, as required by sub-section (12) of Section 87-A of the Act. Sub-section (12) reads as follows: "The motion shall be deemed to have been carried only when it has been passed by a majority of more than half of the total number of members of the Board." Fourteen is certainly a majority of more than one half of twenty-seven members.

9. We may now take up the question whether the presence of two officials has vitiated the proceedings of the said meeting. The High Court is of the view that by virtue of sub-section (4) of Section 87-A, only the officer nominated by the District Judge shall preside over the meeting "and no other person shall preside thereat". The said sub-section means, according to the High Court, that no other person except the Presiding Officer (and the members of the Board) shall be present at the meeting. The High Court has observed that the respondents in the writ petition have not

properly explained the presence of the said two officers in the meeting hall. The explanation that they were posted to meet the law and order situation was rejected as unacceptable. The conclusion of the High Court on this aspect reads:

> " We think, in such circumstances, it will not be necessary to go into the fact as to whether they actually participated in the discussion and what was canvassed by them. The whole attitude itself by posting Executive Officers in a meeting, which is supposed to be presided over only by a Judicial Officer, on the pretext of handling of law and order situation in the absence of anything to indicate as to what kind of apprehension existed there, is enough to show that it was done with mala fide intention which would vitiate the proceedings."

At an earlier stage, the High Court had observed, "[w]e have no reason to disbelieve the case that the two officers sitting on the either side of the Presiding Officer had been interfering in the proceedings", but it has not recorded or found what precise interference did they cause. Indeed, the concluding portion of their judgment quoted above shows that in the opinion of the High Court the very presence of these officials was the vitiating factor without anything more. We find it extremely difficult to agree with the High Court. Firstly, it may be noted, the 'minutes of the meeting' recorded by Shri Vishram Singh (First Additional Civil Judge, Sultanpur, nominated by the District Judge, Sultanpur) as required by sub-section (11) of Section 87-A does not refer to or record the presence of the said officers at the meeting much less does it speak of any interference by them in the deliberations of the members or with the voting, as the case may be. It is highly unlikely that the Presiding Officer a Judicial Officer, against whom, fortunately, no allegation is made would not have recorded the interference by these officials, if, indeed, there was any. The High Court has not adverted to this important feature in its judgment. It also does not appear that anyone had objected to their presence there. It is not even suggested that the said officers were interested in the group seeking to remove the President or that they had any reason to be so interested. The officials are fairly of a high rank (Additional District Magistrates) and in the absence of a specific allegation against them, we cannot presume either that they had interfered with the proceedings of the meeting or that they had influenced the voting on the motion. It is also not clear as to who posted them there and what interest the person posting those officials at the meeting had. The motion of no-confidence duly passed at a properly convened meeting that too presided over by a judicial officer cannot be declared void on such vague and halfhearted findings. A municipal body is an instance of local self-government. It is a statutory body. Its actions are governed and regulated by a statute. In the absence of a clear finding that the proceedings of the said meeting convened under Section 87-A have been vitiated by unauthorised interference, duress or undue influence, as the case may be, the proceedings could not have been declared 'vitiated' i.e., void.

10. In view of our opinion on the above two questions, it is not necessary for us to go into the correctness of the other ground given by the High Court, viz., that the three nominated members were not entitled to participate in the said meeting or to vote on the motion inasmuch as they had not taken the oath of allegiance before such participation. It is equally unnecessary to go into the question whether they should be deemed to be the members of the Municipal Board as on December 14, 1990 for the purpose of ascertaining the total strength of the Board on that date even though

they were not entitled to participate in or vote at the said meeting. Assuming that both the above premises are correct, the motion still got the majority of votes.

11. It is for the above reasons that the judgment of the High Court was set aside by our order dated November 1, 1193.

MUDAKAPPA V. RUDRAPPA ORDER

1. The unsuccessful plaintiff-appellant laid the suit for perpetual injunction to restrain the respondent's uncles from interfering with his possession and enjoyment of the suit scheduled property. The trial court by its judgment dated November 30, 1973 dismissed the suit. Pending appeal, the Karnataka Land Reforms (Amendment) Act 1 of 1974 came into force making extensive amendments to the Karnataka Land Reforms Act, 1961 for short 'the Act'. Section 45-A conferred jurisdiction on the Tribunal constituted under the Act to decide the question of tenancy and nature of the agricultural land and the civil court was directed under Section 133 to make a reference calling for a report from the Tribunal and on receipt thereof to decide the other questions in the suit. The learned District Judge by his order referred the matter to the Tribunal. The Tribunal found that the tenancy was in favour of the joint family and not to the appellant. Based thereon the District Judge dismissed the appeal. In the Misc. Second Appeal No. 97 of 1975 by judgment dated February 23, 19781, the Division Bench of the Karnataka High Court dismissed the appeal. Thus this appeal by special leave.

2. The facts not in dispute are that the appellant's father and the respondents are brothers. His suit is based on his tenancy rights for permanent injunction to restrain the respondents from interfering with the alleged possession of the lands bearing R.S. Nos. 134 and 135 situated in Kittur Village and R.S. No. 109 situated in Mardur Village in Haveri Taluk of Sharwar District in State of Karnataka. The Division Bench held thus:

> "Whenever a statute confers a duty on an authority to decide a question and a corresponding right on an individual or individuals it has to be assumed that the statute, has, by necessary implication conferred on that authority the power to decide all issues which are incidental and ancillary to the main question to be decided. Otherwise the Tribunal will have to keep all the applications pending until such issues are decided by the civil court. In fact there is no procedure prescribed by the Act to refer such issues for the decision of the civil court. We do not think that it would be reasonable to hold that the Tribunal should await the decision of the civil court on such issues, in view of sub-section (5) of Section I Mudakappa v. Rudrappa, AIR 1978 Kant 136: (1978) 1 Karn LJ 459 48-A, which requires the Tribunal to hold an enquiry into all rival claims made in respect of registration of the occupancy rights in respect of the agricultural lands before disposing of the applications made to it. We, therefore, hold that the Land Tribunal is competent to decide for the purpose of disposing of the applications under Section 48-A the question whether the lease hold rights were held exclusively by the appellant or by the joint family consisting of the appellant and the respondents before the partition took place and thereafter by all of

them as co-tenants till the appointed day. It is its duty to do so under the Act. The said question could not therefore be decided by the civil court in view of Section 132 of the Act."

Section 44 of the Act in Chapter III reads thus:

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

(2) Notwithstanding anything in any decree or order of or certificate issued by any Court or authority directing or specifying the lands which may be resumed or in any contract, grant or other instrument or in any other law for the time being in force, with effect on and from the date of vesting and save as otherwise expressly provided in this Act, the following consequences shall ensue, namely-

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

Other sub-sections are not relevant. Hence omitted.

3. Provided that the State Government shall not dispossess any person of any land in respect of which it considers, after such enquiry as may be prescribed that he is prima facie entitled to be registered as an occupant under this Chapter.

4. Section 45 reads thus:

"45. Tenants to be registered as occupants of land on certain conditions.- (1) Subject to the provisions of the succeeding sections of this Chapter, every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sublet, such sub- tenant shall with effect on and from the date of vesting be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting and which he has been cultivating personally."

5. Section 48-A creates forum for enquiry which reads thus:

"48-A. Enquiry by the Tribunal etc- (1) Every person entitled to be registered as an occupant under Section 45 may make an application to the Tribunal in this behalf. Every such application shall, save as provided in this Act, be made [before the expiry

of a period of six months from the date of the commencement of Section 1 of the Karnataka Land Reforms (Amendment) Act, 1978]. (2) On receipt of the application, the Tribunal shall publish or cause to be published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the date specified in the notice. The Tribunal shall also issue individual notices to the persons mentioned in the application and also to such others as may appear to it to be interested in the land.

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

(emphasis supplied) 112-B. Duties of Tribunal.- (a) to make necessary verification or hold an enquiry (including local inspection) and pass orders in cases relating to registration of tenant as occupant under Section 48-A;

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

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

133. Suits, Proceedings etc. involving questions required to be decided by the Tribunal.- (1) Notwithstanding anything in any law for the time being in force-

(i) no civil or criminal court or officer or authority shall, in any suit, case or proceedings concerning a land decide the question whether such land is or not agricultural land and whether the person claiming to be in possession is or is not a tenant of the land said from prior to March 1, 1974;

(ii) such court or officer or authority shall stay such suit or proceedings insofar as such question is concerned and refer the same to the Tribunal for decision;

(iv) the Tribunal shall decide the question referred to it under clause (1) and communicate its decision to such court, officer or authority. The decision of the Tribunal shall be final.

(2) Nothing in sub-section (1) shall preclude the civil or criminal court or the officer or authority from proceeding with the suit, case or proceedings in respect of any matter other than that referred to in that sub-section.

(emphasis supplied)

2.(3) 'agriculturist' means a person who cultivates land personally;

2.(lI) 'to cultivate personally' means to cultivate land on one's own account-

(i) by one's own labour; or

(ii) by the labour of any member of one's family or;

(iii) by hired labour or by servants on wages payable in cash or kind, but not in crop share, under the personal supervision of oneself or by member of one's family; Explanation 1.-

Explanation II.- In the case of a joint family, the land shall be deemed to be cultivated personally, if it is cultivated by any member of such family;

(emphasis supplied)

2.(17) 'Joint family' means in the case of persons governed by Hindu Law, an undivided Hindu family, and in the case of other persons, a group or unit the members of which are by custom joint in estate or residence;

2.(34) 'tenant' means an agriculturist who cultivates personally the land he holds on lease from a landlord and includes-

(i) a person who is deemed to be a tenant under Section 4;

(ii) a person who was protected from eviction from any land by the Karnataka Tenants (Temporary Protection from Eviction) Act, 1961;

(ii-a) a person who cultivates personally any land on lease under a lease created contrary to the provisions of Section 5 and before the date of commencement of the Amendment Act;

(iii) a person who is a permanent tenant; and

(iv) a person who is a protected tenant.

4. Persons to be deemed tenants.- A person lawfully cultivating any land belonging to another per son shall be deemed to be tenant if such land is not cultivated personally by the owner and if such person is not-

(a) a member of the owner's family, or

(b) a servant or a hired laborer, on wages payable in cash or kind but not in crop share cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession:

Provided that if upon an application made by the owner within one year from the appointed day-

(i) the Tribunal declares that such person is not a tenant and its decision is not reversed on appeal, or

(ii) the Tribunal refuses to make such declaration but its decision is reversed on appeal.

Such person shall not be deemed to be a tenant."

6. In Chapter III the heading is 'Conferment of Ownership on Tenants'. A conspectus of the provision establishes the gamut of operation of the Act, namely, conferment of ownership of tenancy rights of the lands vested in the State Government. The preexisting right, title and interest of the landlord in relation to the lands in possession of the tenant, even against whom a decree or order for eviction or a certification for assumption was made or issued immediately prior to the date of the commencement of the Amendment Act other than the lands held by them under leases permitted under Section 5, with effect on and from the said date, i.e. March 1, 1974 stand transferred to and vested in the State Government. In other words the preexisting relationship of the tenant with the landlord stood extinguished from the date of vesting in the State Government. By operation of non-obstante clause of sub- section (2) of Section 44, the lands which were resumed by or in any contract, grant or other instrument or in any other law for the time being, in force with effect on and from the date of vesting and save as otherwise expressly provided in the Act shall cease. The consequences enumerated thereunder shall ensue, namely, all rights, title and interest held by the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances. Consequently the preexisting right, title of an interest of the owners of such lands shall cease and be vested absolutely in the State Government free from all encumbrances. Pending finalisation of the registration with the State Government of a tenant, his possession of the land is protected and he should not be dispossessed. Section 45 gives right to the tenant to be registered as an occupant of land on specified conditions enumerated in Section 45 and the provisions of the succeeding Chapter. Every tenant who is personally cultivating the land shall, with effect from the date of vesting, be entitled to be registered as an occupant in respect of the lands of which he was a permanent tenant, protected tenant or other tenant or sub-tenant before the date of vesting. The preexisting tenancy rights with predecessor landlord have been extinguished and new rights have been created by the statute which would be ensued under the Act creating direct tenancy relationship with the State as a tenant. Section 48-A constitutes the forum and enjoins it to enquire into the application registered by it. It should direct every person entitled to be registered as an occupant under Section 45 to make an application to the Tribunal in that behalf within the time specified thereunder. On receipt of such application, the Tribunal should publish or cause to be published a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it on the specified date. Personal notice shall be served on the persons named in the application or otherwise found to be entitled to be heard. By operation of Explanation 11 to Section 2(11) if the land is being cultivated by or on behalf of the joint family or by any one of the members of the joint family, it

should be deemed that the joint family is personally cultivating the land. The joint family is, therefore, the tenant and the land is lawfully in occupation of the joint family as a tenant. Sub-section (5) of Section 48-A postulates that when an objection is filed disputing the validity of the applicant's claim or set up a rival claim, the Tribunal shall, after enquiry, determine, by order, the person entitled to be registered as tenant and pass orders accordingly. Therefore, when rival claims were set up for tenancy right and entitlement for registration, it is incumbent upon the Tribunal to enquire into the dispute and to decide the same in the prescribed manner. Thereon an order should accordingly be made by the Tribunal and it would become final. Thereby it is clear that the Act extinguishes the preexisting right, title and interest of the landowners as well as those who were inducted into possession by the erstwhile landholders. The new rights have been created in the Act itself in favour of the tenants in personal cultivation to claim registration as tenants so as to continue to enjoy the occupancy rights as a tenant as enumerated under Section 45. A forum was created and the forum is enjoined to enquire into not only the nature of the land but also the entitlement for registration as a tenant. When inter serial claims for tenancy rights have been set up, it has been empowered with jurisdiction to decide that question as to who is the tenant in possession of the land prior to the date of vesting and entitled to be registered as a tenant with the State Government, and its decision shall be final. The civil court's jurisdiction under Section 9 of CPC by necessary implication, therefore, stood excluded.

7.It is seen that the words 'tenant', 'the Tribunal' and the joint family' have been defined under the Act. If one of the members of the family cultivates the land, it is for and on behalf of the joint family. Under these circumstances, pending the suit, when the question arose whether the appellant or joint family is the tenant, that question should be decided by the Tribunal alone under Section 48-A read with Section 133 and not by the civil court. It is needless to mention that when the Tribunal constituted under the Act has been invested with the power and jurisdiction to determine the rival claims, it should record the evidence and decide the matter so that its correctness could be tested either in an appeal or by judicial review under Article 226 or under Article 227, as the case may be. But it cannot, by necessary implication, be concluded that when rival claims are made for tenancy rights, the jurisdiction of the Tribunal is ousted or its decision is subject of the decision once over by the civil court. It is clear from Section 48-A(5) and Section 112-B(bbb) read with Section 133, that the decision of the Tribunal is final under Section 133(iii). The civil court has power only to decide other issues. It is, therefore, difficult to accept the contention that the rival claims for tenancy rights or the nature of the tenancy are exclusively left to be dealt with by the civil court.

8. We entirely agree that the Division Bench laid down the law correctly. It was followed by another Division Bench in Guruvappa v. Manjappu Hengsu2. No doubt another Division Bench in Appi Belchadthi v. Sheshi Belchadthi3 had taken a different view and held that the civil court has jurisdiction to decide the question regarding the tenancy on behalf of the joint family and the Tribunal has no jurisdiction to go into the question. In the light of the above, we hold that law laid in Appi Belchadthi case3 is not a good law. The view we have taken is also consistent with the law laid down by this Court in Noor Mohd. Khan Ghouse Khan Soudagar v. Fakirappa Bharmappa Machenahalli4 though arose in execution. Therein the question though was not directly in issue but this Court had held that when exclusive jurisdiction has been conferred on the Tribunal to decide the questions arising under the Act, civil court has no jurisdiction and the question has to be decided

only by the Tribunal constituted under the Act.

9. There is yet another ground on which the appellant is not entitled to the relief. Pending the adjudication, rival claims were admittedly made under Section 48-A(5) and the Tribunal had gone independently into the question and reiterated the same view as held in the enquiry under Section 133. Against that decision, the appellant filed Writ Petition No. 4694 of 1977 which was pending when the second appeal was decided by the Division Bench. We are informed that subsequently it was disposed of upholding the view of the Tribunal and it became final. Therefore, having been allowed to become final, it operates as res judicata. In either view, the appeal does not warrant any interference. It is accordingly dismissed. The parties are directed to bear their own costs.