



2020 INSC 427

Civil Appeal No.2573 of 2020 etc. (arising out of SLP (C) No.18525 of 2009 etc.)  
Vinodchandra Sakarlal Kapadia etc. vs. State of Gujarat and Ors. etc.

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**REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2573 OF 2020

(Arising out of Special Leave Petition (Civil) No.18525 of 2009)

VINODCHANDRA SAKARLAL KAPADIA ...Appellant

Versus

STATE OF GUJARAT AND ORS. ...Respondents

WITH

CIVIL APPEAL NO.2574 OF 2020

(Arising out of Special Leave Petition (Civil) No.22867 of 2009)  
(Arjunbhai Sumanlal Bhavsar vs. State of Gujarat and ors.)

WITH

CIVIL APPEAL NO.2575 OF 2020

(Arising out of Special Leave Petition (Civil) No.33708 of 2009)  
(Rajenbhai Baldevbhai Shah vs. Baljiben Kabhaibhai Patanwadia and ors.)

WITH

CIVIL APPEAL NO.2576 OF 2020

(Arising out of Special Leave Petition (Civil) No.22460 of 2009)  
(Rajenbhai Baldevbhai Shah vs. Laxmanbhai Fakirbhai and ors.)

WITH

CIVIL APPEAL NO.2577 OF 2020

(Arising out of Special Leave Petition (Civil) No.24357 of 2009)  
(Gopiraj Dhanraj Bagmar and anr. Vs. State of Gujarat and ors.)

WITH

CIVIL APPEAL NO.2578 OF 2020

(Arising out of Special Leave Petition (Civil) No.24360 of 2009)  
(Rameshbhai Bankabhai vs. State of Gujarat and ors.)

WITH

CIVIL APPEAL NO.2579 OF 2020

(Arising out of Special Leave Petition (Civil)No.2080 of 2011)  
(Babubhai Manchhabhai Bharvad vs. State of Gujarat and ors.)

WITH

CIVIL APPEAL NO.2581 OF 2020

(Arising out of Special Leave Petition (Civil)No.21688 of 2012)  
(Shailadevi Pooranraj and ors. vs. State of Gujarat)

WITH

CIVIL APPEAL NO.2583 OF 2020

(Arising out of Special Leave Petition (Civil)No.32288 of 2013)  
(Shri Kishan Chand Bela Ram Advani vs. State of Gujarat and ors.)

WITH

CIVIL APPEAL NO.2584 OF 2020

(Arising out of Special Leave Petition (Civil)No.16669 of 2015)  
(Ghanshyambhai Narbheram vs. State of Gujarat and ors.)

**J U D G M E N T**

**Uday Umesh Lalit, J.**

1. Leave granted.
2. These Appeals arise out of the common judgment and order dated 17.03.2009 passed by the Division Bench of the High Court of Gujarat at Ahmedabad in Special Civil Application No.25058 of 2006 and all other

connected matters while answering the questions referred to it by a Single Judge of the High Court. The questions that arose for consideration and the circumstances in which the matters were referred to it were set out by the Division Bench as under:-.

“We are called upon to decide as to whether Section 63 of the Bombay Tenancy and Agricultural Lands, Act, 1948 (for short ‘the Bombay Tenancy Act’) debars an agriculturist from parting with his agricultural land to a non-agriculturist through a “Will” so also, whether Section 43(1) of the Tenancy Act restricts transfer of any land or interest purchased by the tenant under Sections 17B, 32, 32F, 321, 320, 32U, 33(1) or 88E or sold to any person under Section 32P or 64 of the Tenancy Act through the execution of a Will by way of testamentary disposition.

Learned Single Judges of this Court have taken a consistent view that such transfer of property through testamentary disposition would not violate Section 43 or 63 of the Tenancy Act, Justice J.B. Mehta in the case of **Manharlal Ratanlal @ Radmansinh Chausinh v. Taiyabali Jaji Mohamed & others** (1967-68 (Vol.5) GLT 199) while interpreting Section 43(1) of the Tenancy Act took the view that the expression ‘transfer’ which is used in Section 43(1) of the Tenancy Act must be interpreted in light of the Transfer of Property Act viz. the transfer by way of act of parties. Learned Judge took the view that, if the Legislature wanted to include a transfer by operation of law as to include succession, insolvency, inheritance, etc. or sales by public auction, specific provision would have been made to that effect. Learned Judge held all the specific categories which are mentioned are all of transfers by act of parties, bequest by Will cannot be included in the scope of the term ‘gift’ or ‘assignment’. Justice Rajesh Balia in **Ghanshyambhai Nabheram v. State of Gujarat and others** (1999 (2) GLR 1061) while interpreting Section 63 of the Tenancy Act took a view that just like, a non-agriculturist be not deprived of his inheritance, a legatee under a Will, can also be a non-agriculturist, hence, there is no bar in succeeding the property through testamentary disposition. Learned Judge held that Revenue Laws dealing with agricultural lands have not made the land uninheritable and they also do not disqualify a non-agriculturist from inheritance nor a

number of persons are disentitled from succeeding to estate of an agriculturist as body of successors, which may result in well defined share of the estate of deceased vesting in them individually. Justice Rajesh Balia again in **Pravinbhai Bhailalbhai Gor v. Rajkumar Gupta, collector, Vadodara** (1999(1) GLR 440) while interpreting Section 43 and 63 of the Tenancy Act took the view that both provisions clearly go to show that they refer only to transaction or transfer or agreement to transfer of land or any interest therein which are inter vivos and not to vesting of such rights in anyone as a result of transmission or as a result of succession on death of holder and the provisions do not affect the operation of law of inheritance. Appeal filed against the above judgment was, however, dismissed in **State of Gujarat v. P.B. Gor** (2000 (3) GLR 2168). Justice K.A. Puj also took identical view in **Gasfulbhai Mohmadbhai Bilakhia v. State of Gujarat** (2005 (1) GLR 575) and **Gopiraj Dedraj Agrawal (Gopiram tudraj Agrawal) v. State of Gujarat** (2004 (1) GLR 237). Learned Judge also made reference to the Circular dated 13.02.1989 issued by the State Government and took a view that that Section 43 as well as Section 63 of the Tenancy Act would not debar transfer of property by testamentary disposition. Justice R.K. Abichandani also took the same view in **Babubhai Mervanbhai Patel v. State of Gujarat** 2005 (1) GLH (UJ) 3. Learned Single Judge Justice Jayant Patel expressed some doubts about the views expressed in the above-referred judgments and felt that the matter requires re-consideration in light of the decisions rendered by the Apex Court in **Sangappa Kalyanappa Bangi (dead) through LR** (AIR 1998 SC 3229 = (1998) 7 SCC 294 Rajendra Babu J. and **Jayamma v. Maria Bai and another** (2004) 7 SCC 459 Sinha, J.) and hence these matters have been placed before us.”

3. Sections 43 and Section 63 of the Act<sup>1</sup> are quoted here for ready reference:-

**“43. Restriction on transfers of land purchased or sold under this Act:**

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<sup>1</sup>The Bombay Tenancy and Agricultural Lands Act, 1948 as applicable to State of Gujarat.

(1) No land or any interest therein purchased by a tenant under section 17B, 32, 32F, 32I, 32O<sup>2</sup>, 32U, 43-1D or 88E or sold to any person under Section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector.

Provided that no previous sanction of the Collector shall be required, if the partition of the land is among the members of the family who have direct blood relation or among the legal heirs of the tenant:

Provided further that the partition of the land as aforesaid shall not be valid if it is made in contravention of the provisions of any other law for the time being in force:

Provided also that such members of the family or the legal heirs shall hold the land, after the partition, on the same terms, conditions and restrictions as were applicable to such land or interest therein purchased by the tenant or the person.

(1A) The sanction under sub-section (1) shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed by the State Government.

(1AA) Notwithstanding anything contained in sub-section (1), it shall be lawful for such tenant or a person to mortgage or create a charge on his interests in the land in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loans Act, 1983, the Agriculturists' Loans Act, 1984, or the Bombay Non-agriculturists' Loans Act, 1928, as in force in the State of Gujarat, or in favour of a bank or co-operative society, and without prejudice to any other remedy open to the State Government, bank or co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance

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2 The words '32O' were deleted by Guj. Act No.10 of 2009

with the terms on which such loan was granted, it shall be lawful for the State Government, bank or co-operative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

*Explanation.* – For the purposes of this sub-section, “bank” means –

- (a) the State Bank of India constituted under the State Bank of India Act, 1955;
- (b) any subsidiary bank as defined in clause (k) of Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;
- (c) any correspondent new bank as defined in clause (d) of Section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (d) the Agricultural Refinance and Development corporation, established under the Agricultural Refinance and Development Corporation Act, 1963.

(1B) Nothing in sub-section (1) or (1AA) shall apply to land purchased under Section 32, 32F, or 64 by a permanent tenant thereof, if prior to the purchase, the permanent tenant, by usage, custom, agreement or decree or order of a court, held a transferable right in the tenancy of the land.

(1C) The land to which sub-section (1) applies and for which no permission is required under sub-section (1) of section 65B of the Bombay Land Revenue Code, 1879 for use of such land for a bonafide industrial purpose may, notwithstanding anything contained in sub-section (1) of this section, be sold without the previous sanction of the Collector under sub-section (1) but subject to payment of such amount as may be determined by the State Government under sub-section (1).

(2) Any transfer or partition, or any agreement of transfer, or any land or any interest therein in contravention of sub-section (1) shall be invalid.

**63. Transfers to non-agriculturists barred.**

(1) Save as provided in this Act:-

- (a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or
- (b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee, or
- (c) no agreement made by an instrument in writing for the sale, gift, exchange, lease or mortgage of any land or interest therein,

shall be valid in favour of a person who is not an agriculturist or who being an agriculturist cultivates personally land not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer:

Provided that the Collector or an officer authorised by the State government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, or for such agreement on such conditions as may be prescribed.

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees.

(1A) The State Government may, by notification in the Official Gazette, exempt from the provisions of sub-section (1), for the transfer of any agricultural land to any public trust established for the charitable purpose and which is non-profitable in nature, for the use of such land in the field of health and education, subject to such conditions as may be specified therein.

(2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease, or the agreement for the sale, gift, exchange or lease, of a dwelling house or the site thereof or any land appurtenant to it in favour of an

agricultural labourer or an artisan or a person carrying on any allied pursuit.

(3) Nothing in this section shall apply or be deemed to have applied to a mortgage of any land or interest therein effected in favour of a co-operative society as security for the loan advanced by such society or any transfer declared to be a mortgage by a court under section 24 of the Bombay Agricultural Debtors' Relief Act, 1947.

(4) Nothing in Section 63A shall apply to any sale made under sub-section (1).”

4. The Sections of the Act which are referred to in said Section 43 and in the light of which the reference was answered by the Division Bench as well as some other Sections having bearing on the matters in issue, are extracted hereunder:

**“17. Tenant to be given first option of purchasing site on which he has built dwelling house.-**

(1) If a landlord to whom the site referred to in section 16 belongs, intends to sell such site, the tenant at the expense of whom or whose predecessor-in-title, a dwelling house is built thereon shall be given in the manner provided in sub-section (2) of the first option of purchasing the site at a value determined by the Tribunal.

(2) The landlord intending to sell such site shall give notice in writing to the tenant requiring him to state within three months from the date of service of such notice whether he is willing to purchase the site.

(3) If within the period of three months so specified the tenant intimates in writing to the landlord that he is willing to purchase the site, the landlord shall make an application to the Tribunal for the determination of the value of the site. On receipt of such application the Tribunal after giving notice to the tenant and after holding an inquiry shall determine the value of the site [which shall not exceed 20 times the annual rent thereof]. The Tribunal may, by an order in writing require the tenant to deposit

the amount of value of such site [within one year] from the date of such order. On the deposit of such amount the site shall be deemed to have been transferred to the tenant and the amount deposited shall be paid to the landlord. The Tribunal shall on payment of the prescribed fees grant a certificate in the prescribed form to such tenant specifying therein the site so transferred and the name of such tenant.

(4) If the tenant fails to intimate his willingness to purchase the site within the time specified in sub-section (2) or fails to deposit the amount of the value within the time specified in sub-section (3) the tenant shall be deemed to have relinquished his right of first option to purchase the site and the landlord shall then be entitled to evict the tenant either on payment of such compensation for the value of the structure of such dwelling house as may be determined by the Tribunal or allow the tenant at his option to remove the materials of the structure.

(5) Any sale of a site held in contravention of this section shall be null and void.

**17B. Tenant to be deemed to have purchased sites referred to in section 16 from specified date. –**

(1) On and with effect from such date as the State Government may, by notification in the *Official Gazette*, specify, every tenant referred to in section 16 shall be deemed to have purchased from his landlord the site on which the dwelling house occupied by such tenant, was built, and the land immediately appurtenant thereto and necessary for enjoyment of the dwelling house free from all encumbrances at the price to be fixed by the Tribunal, being a price not exceeding twenty times the annual rent for the site.

(2) [Deleted by Guj. Act No.5 of 1973]

(3) As soon as may be thereafter, the Tribunal shall publish or cause to be published a notice in such village within its jurisdiction in which all such sites are situate and shall, as far as practicable, issue notice to each such landlord and tenant and to any other person interested in such site to appear before it on the date specified in the notice. The notice published in a village shall be affixed in the Chavdi or at such public place as the Tribunal may direct.

(4) The Tribunal shall, after giving an opportunity to such landlord, tenant and other person interested to be heard and after holding an inquiry determine the price of the site.

(5) On the determination of the price of the site under sub-section (4), the tenant shall deposit the amount of such price with Tribunal-

- (a) either in lump sum within one year from such date, or
- (b) in such instalments not exceeding three with simple interest at the rate of 4½ per cent per annum, and at such intervals during the period not exceeding three years and on or before such dates.

as may be fixed by the Tribunal and the Tribunal shall direct that the amount deposited in lump sum or the amount of the instalments deposited at each interval shall be paid in accordance with the provisions of section 32Q so far as they are applicable.

(6) On the deposit the amount of the price in lump sum or of the last instalment of such price, the Tribunal shall, on payment of a prescribed fee, grant a certificate in the prescribed form to the tenant declaring him to be the purchaser to the site. Such certificate shall be conclusive evidence of the sale.

(7) If the tenant fails to pay any instalment on or before the date fixed by the Tribunal under sub-section (5), the amount of such instalment and the interest thereon shall be recovered as an arrear of land revenue.

(8) If after holding an inquiry under sub-section (4), the Tribunal is satisfied that the tenant is not willing to purchase the site, the Tribunal shall issue a certificate to the landlord to that effect. On the issue of such certificate the landlord shall be entitled to evict the tenant and dispose of the site in such manner as he may think fit either on payment of such compensation for the value of the structure of such dwelling house as may be determined by the Tribunal, or after allowing the tenant, at his option, to remove the materials of the structure;

Provided that the landlord shall not dispose of the site in any manner except by first giving option of purchasing the same for the price determined by the Tribunal, to an

agricultural labourer, landless person, small holder or a village artisan, who owns no house site, in the said order of priority and where any site is disposed of without giving such option such disposal shall be void:

Provided further that the provisions of section 63 shall apply to the disposal of the site in any manner in a case where the option of purchase is not exercised by any of the persons mentioned in the first proviso.

**32. Tenants deemed to have purchased land on tillers' day.-**

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

- (a) such tenant is a permanent tenant thereof and cultivates 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 his 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  
land:

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 Gujarat Revenue Tribunal under the provision 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.

(1A) (a) Where a tenant, on account of his eviction from the land by the landlord, before the 1st April, 1957, is not in possession of the land on the said date but has made or makes an application for possession of the land under sub-section (1) of section 29 within the period specified in that sub-section, then if the application is allowed by the Mamlatdar, or as the case may be, in appeal by the Collector or in revision by the Gujarat Revenue Tribunal, he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed.

(b) Where such tenant has not made an application for possession within the period specified in sub-section (1) of section 29 or the application made by him is finally rejected under this Act, and the land is held by any other person as tenant on the expiry of the said period or on the date of the final rejection of the application, such other person shall be deemed to have purchased the land on the date of the expiry of the said period or as the case may be, on the date of the final rejection of the application.

(1B) Where a tenant who was in possession of land on the appointed day and who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than in the manner provided in section 29 or any other provision of this Act, is not in possession of such and or any part thereof and such land or part thereof is in the

possession of the landlord or his successor-in-interest on the said date and such land or part thereof is not put to a non-agricultural use on or before the said date, then the Mamlatdar shall, notwithstanding anything contained in the said section 29 or any other provision of this Act either suo motu or on an application of the tenant made within the prescribed period hold an inquiry and direct that such land or as the case may be, part thereof shall be taken from the possession of the landlord or, as the case may be, his successor in interest, and shall be restored, to the tenant; and thereafter, the provisions of this section and sections 32A to 32R (both inclusive) shall, so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or, as the case may be, part thereof is restored to him:

Provided that the tenant shall be entitled to restoration of land or part thereof, as the case may be, under this sub-section only if he gives an undertaking in writing within such period as may be prescribed to cultivate it personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area:

Provided further that -

- (i) if the tenant fails to give such undertaking within such prescribed period, or if the tenant, after giving such undertaking, refuses to accept the tenancy or possession of the lands, the land the possession of which the landlord or as the case may be, his successor-in-interests is not entitled to retain under this sub-section; or
- (ii) if the tenant gives such undertaking and accepts such tenancy or possession of the land, such portion of the land referred to in clause (i) to the restoration of which the tenant would not be entitled under the first proviso,

shall vest in the State Government free from all encumbrances, and shall be disposed of in the manner provided in sub-section (2) of section 32 P.

*Explanation.* - In this sub-section "successor in interest" means a person who acquires the interest by testamentary disposition or devolution on death.

(2) Where by custom, usage or agreement or order of a Court, any warkas land belonging to the landlord is used by the tenant for the purpose of rab manure in connection with rice cultivation in the land held by him as tenant-

- (a) the whole of such warkas land, or
- (b) as the case may be, such part thereof as the Tribunal may determine in cases where such warkas land, is jointly used by more persons than one for the purposes of rab manure,

shall be included in the land to be deemed to have been purchased by the tenant under sub-section (1):

Provided that in cases referred to in clause (b) the Tribunal may determine that such warkas land shall be jointly held by persons entitled to use the same, if in the opinion of the Tribunal, the partition of such warkas land by metes and bounds is neither practicable nor expedient in the interest of such persons.

(3) In respect of the land deemed to have been purchased by a tenant under subsection (1),-

- (a) the tenant shall continue to be liable to pay to the landlord the rent of such land, and
- (b) the landlord shall continue to be liable to pay to the State Government the dues, if any, referred to in clauses (a), (b), (c) and (d) of sub-section (1) of section 10A, where the tenant is not liable to pay such dues under subsection (3) of that section.

until the amount of the purchase price payable by the tenant to the landlord is determined under section 32H.

(4) On the date of the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 (Gujarat XVI of 1960), every tenant in the areas

within the limits of Municipal Boroughs Act, 1925 (Bombay XVIII of 1925), or within the limits of municipal districts constituted under the Bombay District Municipal Act, 1901 (Bombay III of 1901), shall, subject to the other provisions of this Act, be deemed to have purchased from a landlord free from all encumbrances subsisting thereon on the said date the land held by him as tenant, as if the said date were the tillers' day:

Provided that nothing in this sub-section shall apply to land leased by a landlord and situated within the limits of, any such Municipal borough or municipal district, if such land does not exceed an economic holding and the total annual income of the landlord including the rent of such land does not exceed Rs. 1,500 and such land is not held under a permanent tenancy.

(5) A person eligible to the exemption as provided in the proviso to sub-section (4), shall make an application before the 1st day of July 1961 to the Mamlatdar for a certificate as provided in section 88C, and the provisions of sub-sections (2) to (4) of that section shall apply thereto as if the application had been made under section 88C.

(6) The provisions of sections 32S, 32T and 32U shall *mutatis mutandis* apply to the termination of tenancy of such land by a landlord holding a certificate under sub-section (5) and purchase of such land by the tenant thereof as if such landlord were a certified landlord and such tenant were an excluded tenant within the meaning of those sections.

**32A. Tenants deemed to have purchased up to ceiling area:-** A tenant shall be deemed to have purchased land under section 32 –

(1) in the case of a tenant who does not hold any land as owner but holds land as tenant in excess of the ceiling area, up to the ceiling area;

(2) in the case of a tenant who holds land as owner below the ceiling area, such part of the land only as will raise his holding to the extent of the ceiling area.

**32B. When tenants not deemed to have purchased lands:-** If a tenant holds land partly as owner and partly as tenant but the area of the land held as owner is equal to or exceeds the ceiling area, he shall not be deemed to have

purchased the land held by him as a tenant under section 32.

**32F. Right of tenant to purchase where landlord is minor etc. –**

(1) Notwithstanding anything contained in the preceding sections,-

- (a) where the landlord is a minor or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31:

Provided that were a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion, as the share of that person in the entire joint family property, and not in a larger proportion.

- (b) where the tenant is a minor, or a widow or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of clause (a), the right to purchase land under section 32 may be exercised-
  - (i) by the minor within one year from the date on which he attains majority;
  - (ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist;

- (iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;
- (iv) within one year from the date on which the tenant ceases to be serving member of the armed forces;

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March, 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

(1A) On and after the date of commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1960 (Gujarat XVI of 1960) (hereinafter referred to in this sub-section as "the said date"), every tenant who has not exercised his right of purchase within the period of one year within which it may be exercised under sub-section (1) shall, if the said period has commenced be deemed to have been purchased the land on the said date, whether the period has expired or not; and if the period has not commenced, he shall be deemed to have purchased the land on the date on which the period would have commenced but for the provisions of this sub-section.

(2) The provisions of sections 32 to 32E (both inclusive) and sections 32G, to 32R. (both inclusive), shall, so far as may be applicable, apply to such purchase.

### **32H. Purchase price and its maxima:-**

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

- (i) in the case of a permanent tenant who is cultivating the land personally the purchase price shall be the aggregate of the following amounts, that is to say,—
  - (a) an amount equal to six times the rent of the land;
  - (b) the amount of the arrears of rent, if any, lawfully due on the tillers' day or the postponed date;
  - (c) the amounts, if any, paid by or recovered from the landlord as land revenue and cesses referred to in clauses (a), (b), (c) and (d) of sub-section (1) of section 10A, in the event of the failure on the part of the tenant to pay the same;
- (ii) in the case of other tenants, the purchase price shall be the aggregate of the following amounts, that is to say:—
  - (a) such amount as the Tribunal may determine not being less than 20 times the assessment and not more than 200 times the assessment.
  - (b) the value of any structures, wells and embankments constructed and other permanent fixtures made and trees planted by the landlord on the land;
  - (c) the amount of the arrears of rent, if any, lawfully due on the tillers' day or the postponed date;
  - (d) the amounts, if any, paid by or recovered from the landlord as land revenue and other cesses referred to in clauses (a), (b), (c) and (d) of sub-section (1) of section 10A, in the event of the

failure on the part of the tenant  
to pay the same.

Explanation 1.— For the purposes of calculating the price under this subsection, the amount of water rate, if any, levied under section 55 of the Bombay Land Revenue Code, 1879, and included in such assessment, shall be excluded.

Explanation 2.— For the purposes of this sub-section, the expression "assessment" shall have the meaning assigned to it in section 8.

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

(1B) (a) On the amount arrived at in accordance with the provisions of sub-sections (1) and (1A), there shall be calculated interest at  $4\frac{1}{2}$  per cent. per annum for the period between the date on which the tenant is deemed to have purchased the land under section 32 and the date of the determination of the purchase price.

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

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

(2) The State Government may, by general or special order, fix different minima and maxima for the purpose of sub-clause (a) of clause (ii) of sub-section (1) in respect of any kind of land held by tenants in any backward area. In

fixing such minima and maxima, the State Government shall have regard to the rent payable for the land and the factors specified in sub-section (3) of Section 63A.

**32I. Sub-tenant of permanent tenant to be deemed to have purchased land. –**

(1) Where a permanent tenant has sub-let the land held by him, the sub-tenant shall, to the extent and subject to the conditions specified in sections 32 to 32E (both inclusive), be deemed to have purchased the land on the tillers' day.

(2) The purchase price thereof shall be determined in the manner provided in clause (ii) of sub-section (1) of section 32H.

(3) Out of the purchase price of the payable by such sub-tenant the amount equal to six times the rent shall, in lump sum, be payable to the owner and the balance shall be paid to the permanent tenant.

(4) The provisions of sections 32 to 32H (both inclusive) and sections 32J to 32R (both inclusive), in so far as they may be applicable, shall apply to the purchase of the land by such sub-tenant and the payment to be made, to and on behalf, of the permanent tenant.

**32O<sup>3</sup>. Right of tenant whose tenancy is created after tillers' day to purchase land. –**

(1) In respect of any tenancy created after the tillers' day notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be deemed to have purchased on the date of expiry of one year from the commencement of such tenancy from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

(2) The provisions of sections 32 to 32N (both inclusive) and of sections 32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1).

**32P. Power of Collector to resume and dispose of land not purchased by tenant and appeal against Collector's order: -**

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3 Section 32O was deleted by Guj. Act No.10 of 2009

(1) Where the purchase of any land by tenant under section 32 becomes ineffective under the foregoing provisions of this sub-chapter or where the tenant fails to exercise the right to purchase land under section 43-1D within the period specified in that section the Collector may *suo motu* or on an application made in this behalf and after holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub-section (2).

(2) Such direction shall, subject to the provisions of sub-sections (2AA) and (2A) provide

- (a) that the tenancy in respect of the shall be terminated and the tenant be summarily evicted:
- (b) Clause (b) deleted by Guj. Act No.5 of 1973
- (c) that the entire land or such portion thereof, as the case may be, notwithstanding that it is a fragment, shall subject to the terms and conditions as may be specified in the direction be disposed of by sale to person in the following order of priority (hereinafter called "the priority list") :-

and conditions as may be specified in the direction be disposed of by sale to person in the following order of priority (hereinafter called "the priority list"):-

(a-i) the tenant whose tenancy in respect of that land is terminated if such tenant is willing to accept the offer of sale, provided the occasion for the issue of such direction has not arisen by reason of an act of collusion between such tenant and the landlord

- (i) a co-operative farming society, the members of which are agricultural labourers, landless persons or small holders or a combination of such persons;
- (ii) agricultural labourers;

- (iii) landless persons;
- (iv) small holders;
- (v) a co-operative farming society of agriculturists (other than small holders) who hold either as owner or tenant or partly as owner and partly as tenant, land less in area than an economic holding and who are artisans:
- (vi) an agriculturist (other than a small holder) who holds either as owner or tenant or partly owner and partly as tenant, land less in area than an economic holding and who is an artisan;
- (vii) an other co-operative farming society;
- (viii) any agriculturist who holds either as owner or tenant or partly as owner and partly as tenant land larger in area than an economic holding but less in area than the ceiling area;
- (ix) any person not being an agriculturist, who intends to take to the profession of agriculture:

Provided that the State Government may, by notification in the *Official Gazette*, give, in relation to such local areas as it may specify, such priority in the above order as it thinks fit to any class of persons who, by reason of the acquisition of their land for any development project approved for the purpose by the State Government, have been displaced, and require to be re-settled;

Provided further that-

- (a) where there are two or more co-operative farming societies falling under item, (i), (v) or (vii), preference amongst them shall be given in the following order, namely:-

- (1) a co-operative farming society each of the members of which belongs to a Scheduled Tribe;
  - (2) a co-operative farming society the membership of which is held partly by persons belonging to a Schedule Tribal and partly by persons belonging to a Schedule Caste;
  - (3) a co-operative farming society each of the members of which belongs to a Scheduled caste;
  - (4) a co-operative farming society the membership of which is not solely held by persons belonging to a Schedule Tribe or Schedule Caste;
- (b) in the case of persons falling under items (ii), (iii) and (iv) preference shall be given in the following order, namely:-
- (1) a person belonging to a Schedule Tribe;
  - (2) a person belonging to a Schedule Caste;
  - (3) other persons

(2AA) Where in any case the direction under sub-section (2) provides that the land in respect of which the tenancy is terminated shall be disposed of by sale to the tenant referred to in sub-clause (a-I) of clause (c) of sub-section (2), the tenant shall be liable to be evicted only if the land or, as the case may be, the portion thereof could not be disposed of by sale to him.

(2A) Where the tenancy in respect of any land is terminated under clause (a) of sub-section (2) but the tenant of such land is a co-operative farming society of the type referred to in sub-clause (i) of clause (c) of sub-section (2), the direction under sub-section, the direction under sub-section (2) shall further provide-

- (i) that the entire land or such portion thereof, as the case may be, shall be disposed of by sale to the co-operative farming society which was the tenant of the land or as the case may be, portion thereof immediately before the

termination of the tenancy under clause (a) of sub-section (2).

Provided that the total acreage of the land to be so disposed of shall not exceed an area arrived at by multiplying the ceiling area by the total number of the members of the co-operative farming society;

- (ii) that on the termination of the tenancy under clause (a) of sub-section (2), the co-operative farming society shall be liable to be evicted only from such portion of the land as could not be disposed of by sale to it under a direction issued under sub-section (2).

(3) [Omitted by Gujarat Act No.5 of 1973]

(4) Where the land or portion thereof is offered for sale under sub-section (2) but no person comes forward to purchase such land or portion, such land or portion, as the case may be, shall vest in the State Government and the Collector shall determine the price of such land or portion in accordance with the provisions of section 63A and the amount of the price so determined shall, subject to the provisions of section 32Q, be paid to the owner thereof.

(5) Where any land is sold under sub-section (2), the Collector shall determine the price of the land in accordance with the provisions of section 63A and the price so determined shall be payable by annual instalments not exceeding six with simple interest at the rate of 4½ per cent, per annum as the Collector may determine and the price of the land recovered from the purchaser shall, subject to the provisions of section 32Q, be paid to the owner thereof.

(6) On the payment of the last instalment of the price, together with the interest due, the Collector shall issue a certificate of purchase in the prescribed form to the purchaser in respect of the land. Such certificate shall be conclusive evidence of purchase.

(7) (a) Where before the specified date, any land has been surrendered to a landlord under sub-section (2) of this section as in force immediately before such date; and the landlord has taken possession of the land, the landlord shall be liable to cultivate the land personally and shall be

entitled to the use and occupation of the land so long as he cultivates the land personally.

(b) If he fails to so cultivate the land he shall be evicted from the land and the land shall be disposed of in accordance with the provisions of section 84C.

(8) No land of the description referred to in sub-section (7) shall be transferred by sale, gift, exchange, mortgage, lease, or assignment or partitioned without the previous sanction of the Collector and except on payment of such amount as the State Government may by general or special order determine.

(9) Any person aggrieved by any order made by the Collector under the foregoing provisions of this section may appeal to the State Government against such order.

(10) The State Government shall after giving an opportunity to the parties to be heard, decide the appeal.

(11) The order of the Collector, subject to such appeal and decision of the State Government on appeal, shall be final.

**32PP. Further opportunity to tenant to purchase land.-**

(1) Notwithstanding anything contained in section 32G and 32P where before the date of the coming into force of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1965 (Guj. 36 of 1965), (hereinafter referred to in this section as "the said date")—

- (i) any land has been at the disposal of the Collector under section 32P on account of the purchase of the land by the tenant thereof having become ineffective under sub-section (3) of section 32G by reason of the tenant failing to appear before the Tribunal or making a statement expressing his unwillingness to purchase the land, and
- (ii) the land so at the disposal of the Collector has not been disposed of in the manner provided in sub-section (2) of section 32P.

the tenant, if he is willing to purchase the land may an application in writing to the Tribunal within a period of

one year from the said date for a declaration that the purchase has not become ineffective.

(1A) Notwithstanding the expiry of the period specified in sub-section (1), the right conferred under that sub-section, may be exercised as if in that sub-section, for the words, brackets and figures "the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1965" (Guj. 36 of 1965), the words, brackets and figures "the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1970" were substituted.

(1B) Where an application for a declaration that the purchase has not become ineffective made by a tenant under sub-section (1) before the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1970 (Guj. 2 of 1971), was not admitted by the Tribunal on the ground that the period for making it had expired, such tenant shall also be entitled to exercise the right conferred under sub-section (1) by making an application within the period specified in that sub-section (1) by making an application from any such tenant the Tribunal shall admit it as if it were an application made within such specified period.

(1C) Notwithstanding the expiry of the period specified in sub-section (1) read with sub-section (1A), the right conferred under sub-section (1) may be exercised.

- (a) by a tenant at any time before two months after the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1981 (Guj.13 of 1981); or
- (b) by a specified tenant at any time before the date specified under clause (b) of sub-section (5) of section 32M.

(1D) Where an application for a declaration that the purchase has not become ineffective made by a tenant under sub-section (1) before the specified date was not admitted by the Tribunal on the ground that the period for making it had expired.

- (a) such tenant shall also be entitled to exercise the right conferred under sub-section (1) by making an application at

any time before two months after the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1981 (Guj. 13 of 1981); or

- (b) such tenant being a specified tenant shall also be entitled to exercise the right conferred in sub-section (1) by making an application at any time before the date specified under clause (b) of sub-section (5) of section 32M

and on receipt of an application from any such tenant or specified tenant the Tribunal shall admit it as if it were an application made within the period specified for making it.

(2) On receipt of an application under sub-section (1) the Tribunal shall issue a notice to the tenant and the landlord calling upon them to appear before it on the date specified in the notice.

(3) If the tenant appears and makes a statement that he is willing to purchase the land, the land shall cease to be at the disposal of the Collector under section 32P and the Tribunal shall determine the purchase price of the land in the manner provided in section 32G as if the purchase had not been ineffective.

(4) The provisions of section 32 to 32P and sections 32-Q and 32R shall so far as may be applicable apply to the purchase of the land by a tenant under this section.

(5) In the case of land to which this section applies no action shall be taken under section 32P unless the tenant entitled to make an application under this section fails to make such application within the period specified in sub-section (1).

Explanation.—Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, for the purpose of clause (ii) of sub-section (1), the land shall not be deemed to have been disposed of till the person entitled to take possession of the land in pursuance of any direction the person entitled to take possession of the land in pursuance of any direction issued under sub-section (2) of section 32P takes actual possession of such land in accordance with law.

**32PPP. Further opportunity to purchase land to tenants whose purchase become ineffective after commencement of Guj.36 of 1965.-**

(1) Notwithstanding anything contained in sections 32G and 32P where on or after the date of the coming into force of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1965 (Guj. 36 of 1965),—

- (i) any land has been at the disposal of the Collector under section 32P on account of the purchase of the land by the tenant thereof having become ineffective under sub-section (2) of section-32G by reason of the tenant failing to appear before the Tribunal or making a statement expressing his unwillingness to purchase the land, and
- (ii) the land so at the disposal of the Collector has not been disposed of in the manner provided in sub-section (2) of section 32P—
  - (a) the tenant, if he is willing to purchase the land may make an application in writing to the Tribunal before two months after the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Amendment) Act, 1981; or
  - (b) the tenant, if he is a specified tenant and is willing to purchase the land, may make an application in writing to the Tribunal before the data specified under clause (b) of sub-section (5) of section 32M

for a declaration that the purchase has not been ineffective.

(2) On receipt of an application under sub-section (1) the Tribunal shall issue a notice to the tenant and the landlord calling upon them to appear before it on the date specified in the notice.

(3) If the tenant appears and makes a statement that he is willing to purchase the land, the land shall cease to be at

the disposal of the Collector under section 32P and the Tribunal shall determine the purchase price of the land in the manner provided in section 32G as if the purchase has not been ineffective.

(4) The provisions of sections 32 to 32P and sections 32Q and 32R shall so far as may be applicable apply to the purchase of the land by a tenant under this section.

(5) In the case of land to which this section applies no action shall be taken under section 32P unless the tenant entitled to make an application under this section fails to make such application within the period specified in sub-section (1).

*Explanation.*—Notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority for the purpose of clause (ii) of sub-section (1), the land shall not be deemed to have been disposed of till the person entitled to take possession of the land in pursuance of any direction issued under sub-section (2) of section 32P takes actual possession of such land in accordance with law.

**32QQ. Deposit or payment of purchase price by State Government on behalf of specified tenant.-**

(1) (a) Where a specified tenant permitted under clause (b) of subsection (5) of section 32M to deposit with the Tribunal at any time before the date specified under clause (b) of sub-section (5) of section 32M the entire amount of the price of the land or, as the case may be, the unpaid portion of the price, together with the interest, as specified in sub-section (3) and (4) of section 32M, has failed to deposit with the Tribunal such amount before the date of the commencement of the Bombay Tenancy and Agricultural Lands (Gujarat Second Amendment) Ordinance, 1986 (Guj. Ord. 14 of 1986), (hereinafter referred to as "the said date"), the State Government shall, notwithstanding the expiry of the period specified in clause (b) of sub-section (5) of section 32M, deposit on behalf of such specified tenant, with the Tribunal within a period of twelve months from the said date such amount, and on depositing such amount with the Tribunal, the purchase of land shall be deemed not to have become ineffective and the Tribunal shall issue a certificate of purchase to the specified tenant under sub-section (1) of section 32M.

(b) Where a specified tenant permitted under clause (b) of sub-section (1C) or clause (b) of sub-section (1D) of section 32PP or under sub-clause (b) of clause (ii) of sub-section (1) of section 32PPP to make at any time before the date specified under clause (b) of sub-section (5) of section 32M an application under sub-section (1) of section 32PP for a declaration that purchase has not become ineffective, fails to make such application before the date specified under clause (b) of sub-section (5) of Section 32M, and the Collector directs under sub-section (2) of section 32P that the land in respect of which the tenancy is terminated shall be disposed of by sale to the specified tenant who is a tenant referred to in sub-clause (a-i) of clause (c) of the said sub-section (2) and the land is disposed of by sale to such specified tenant, the Collector shall issue a certificate of purchase in the form prescribed under sub-section (1) of section 32M to such specified tenant who shall be liable to pay to the Collector the price of such land determined by the Collector under sub-section (5) of section 32P.

(2) The amount deposited with the Tribunal under clause (a) of sub-section (1) or, as the case may be, the amount of price of land which the specified tenant is liable to pay to the Collector under clause (b) of sub-section (1) shall be deemed to be the amount of loan granted to the specified tenant by the State Government on such terms and conditions as may be prescribed and the amount of loan and interest or any portion thereof shall be recoverable from such specified tenant as arrears of land revenue.

**32R. Purchaser to be evicted if he fails to cultivate personally:-** If at any time after the purchase of the land under any of the foregoing provisions, the purchaser fails to cultivate the land personally, he shall unless the Collector condones such failure for sufficient reasons, be evicted and the land shall be disposed of in accordance with the provisions of section 84C.

**32U. Tenants of lands mentioned in section 88C to be deemed to have purchased land and other incidental provisions. -** (1) Notwithstanding anything contained in sub-section (1) of section 88C, but subject to the provisions of this section every excluded tenant holding land from a certified landlord shall, except as otherwise provided in sub-section (3), be deemed to have purchased from the landlord on the first day of April 1962, free from all encumbrances subsisting thereon on the said day, the

land hold by him as tenant, if such land is cultivated by him personally; and

- (i) the landlord has not given notice of termination of tenancy in accordance with sub-section (3) of section 32T, or
- (ii) the landlord has given such notice but has not made an application thereafter under section 29 for possession as required by the said sub-section (3), or
- (iii) the landlord not being a person of any of the categories specified in sub-section (4) of section 32T has not terminated the 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 1962 under section 29 for possession of the land;

Provided that where the landlord has made such application for possession but it is rejected by the Mamlatdar or in appeal by the Collector or in revision by the Gujarat 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.

(2) (a) Where a tenant, on account of his eviction from the land by the landlord, before the 1st April, 1962, is not in possession of the land on the said date but has made or makes an application for possession of the land under sub-section (1) of section 29 within the period specified in that sub-section, then if the application is allowed by the Mamlatdar, or as the case may be, in appeal by the Collector or in revision by the Gujarat Revenue Tribunal, he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed.

(b) Where such tenant has not made an application for possession within the period specified in sub-section (1) of section 29 or the application made by him is finally rejected under this Act, and the land is held by any other person as tenant on the expiry of the said period or on the date of the final rejection of the application, such other person shall be deemed to have purchased the land on the

date of the expiry of the said period or, as the case may be, on the date of the final rejection of the application.

(3) Where the certified landlord being a person of any of the categories specified in sub-section (4) of section 32T has not given notice of termination of the tenancy of an excluded tenant in accordance with sub-section (3) of that section or has give such notice but has not made an application thereafter under section 29 for possession as required by the said sub-section (3) such excluded tenant shall be deemed to have purchased the land held by him as tenant on the expiry of the period specified in sub-section (4) of section 32T:

Provided that where the tenancy is terminated and application for possession is made in accordance with the provisions of sub-section (4) of section 32T but the application is rejected by the Mamlatdar or in appeal by the Collector or in revision by the Gujarat Revenue Tribunal, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed.

(4) The provisions of section 32 to 32R shall so far as may be applicable apply to the purchase of land under this section by an excluded tenant.

**33. Right of tenants to exchange land. –**

(1) Notwithstanding anything contained in this Act or any other law or any agreement or usage, the tenants holding lands as such tenants may agree and may make an application to the Mamlatdar in the prescribed form for the exchange of their tenancies in respect of the lands held by them as tenants.

(2) On receipt of the application, the Mamlatdar after giving notice to the landlords concerned and after making an inquiry may sanction the exchange on such terms and conditions as may be prescribed and may issue certificate in the prescribed form to the applications.

(3) The certificate so issued shall be conclusive of the fact of such exchange against the landlords and all persons interested in the lands exchanged

(4) Each of the two tenants shall on exchange hold the land on same terms and conditions on which it was held by the original tenant immediately before the exchange

subject to such modifications as may have been sanctioned by the Mamlatdar.

**63A. Reasonable price of land for the purpose of its sale and purchase.-**

(1) Except as otherwise expressly provided in this Act, the price of any land sold or purchased under the provisions of this Act shall consist of the following amounts, namely :—

- (a) an amount not being less than 20 times the assessment levied or leviable in respect of the land and not being more than 200 times such assessment excluding, however, for the purpose of calculation, the amount of water rate, if any, levied under section 55 of the Bombay Land Revenue Code, 1879 (Bom. V of 1879), and included in such assessment;
- (b) the value of any structures, wells and embankments constructed, permanent fixtures made and trees planted on the land.

(2) Where under the provisions of this Act any land is sold or purchased by mutual agreement, such agreement shall be registered before the Mamlatdar, and the price of the land shall, subject to the limits specified in sub-section (1), be such as may be mutually agreed upon by the parties. In the case of disagreement between the parties, the price shall be determined by the Tribunal having regard to the factors mentioned in this section.

(3) Where in the case of a sale or purchase of any land under this Act, the Tribunal or the Mamlatdar has to fix the price of such land under this Act, the Tribunal or the Mamlatdar, as the case may be, shall, subject to the quantum specified in sub-section (1), fix the price having regard to the following factors,

- (a) the rental values of lands used for similar purposes in the locality;
- (b) the structures and wells constructed and permanent fixtures made and trees planted, on the land by the landlord or tenant;

- (c) the profits of agriculture of similar lands in the locality;
- (d) the prices of crops and commodities in the locality;
- (e) the improvements made in the land by the landlord or the tenant;
- (f) the assessment payable in respect of the land;
- (g) such other factors as may be prescribed;

Explanation.— For the purposes of this section the expression "assessment" shall have the meaning assigned to it in section 8.

**64. Sale of agricultural land to particular person. –**

(1) Where a landlord intends to sell any land, he shall apply to the Tribunal for determining the reasonable price thereof. The Tribunal shall thereupon determine reasonable price of the land in accordance with the provisions of section 63A. The Tribunal shall also direct that the price shall be payable either in lump sum, or in annual instalments not exceeding six carrying simple interest at 4½ per cent per annum:

Provided that in the case of sale of the land in favour of a permanent tenant when he is in possession thereof, the price shall be at six times the annual rent.

(2) After the Tribunal has determined the reasonable price, the landlord shall simultaneously in the prescribed manner make a offer:-

- (a) in the case of agricultural land-
  - (i) to the tenant in actual possession thereof, notwithstanding the fact that such land is a fragment, and
  - (ii) to all persons and bodies mentioned in the propriety list;
- (b) in the case of a dwelling house, or a site of a dwelling house or land appurtenant to such house when such dwelling house,

side or land is not used or is not necessary to carry on agricultural operations in the adjoining lands-

- (i) to the tenant thereof:
- (ii) to the person residing in the village who is not in possession of any dwelling house;

Provided that if there are more than one such person the offer shall be made to such person or persons and in such order of priority as the Collector may determine in this behalf having regard to the needs of the following persons, namely:-

- (i) an agricultural labourer,
- (ii) an artisan,
- (iii) a person carrying on an allied pursuit,
- (iv) any other person in the village.

(3) The persons to whom such offers are made shall intimate to the landlord within one month from the date of receipt of the offer whether they are willing to purchase the land at the price fixed by the Tribunal.

(4) (a) If only one person intimates to the landlord under sub-section (3) his willingness to accept the offer made to him by the landlord under sub-section (2), the landlord shall call upon such person by a notice in writing in the prescribed form to pay him the amount of the reasonable price determined by the Tribunal or to deposit the same with Tribunal within one month or such further period as the landlord may consider reasonable from the date of receipt of the notice by such person.

(b) If more than one person intimates to the landlord under sub-section (3) their willingness to accept the offers made to them by the landlord under sub-section (2), the landlord shall call upon by a notice in writing in the prescribed form and the person having the highest priority in the order of priority given in sub-section (2) to pay him the amount of the reasonable price determined by the Tribunal or to deposit the same with Tribunal within one month or such further period as the landlord may consider

reasonable from the date of receipt of the notice by such person.

(5) If the person to whom a notice is given by the landlord under sub-section (4) fails to pay the amount of the reasonable price to the landlord or to deposit the same with the Tribunal within the period referred to in sub-section (4) such person shall be deemed to be not willing to purchase the land and the landlord shall call upon in the manner provided in sub-section (4) the person who stands next highest in the order of priority and who has intimated his willingness to the landlord under sub-section (3).

(6) If any dispute arises under this section regarding-

- (a) the offer made by the landlord under sub-section (2), or
- (b) the notice given by the landlord under sub-section (4) or (5), or
- (c) the payment or deposit of the reasonable price, or
- (d) the execution of the sale deed, such dispute shall be decided by the Tribunal.

(7) (a) Notwithstanding anything contained in the foregoing provisions of this section a landlord may after obtaining the previous permission of the Tribunal as provided in the next succeeding clause (b) sell any land notwithstanding the fact that such land is a fragment to the tenant in actual possession thereof at a price mutually agreed upon between him and the tenant subject to the provisions of section 63A.

(b) The landlord shall make an application in writing to the Tribunal for permission to sell the land at such price. On receipt of the application, the Tribunal shall grant the permission if, on holding an inquiry, it is satisfied that the price has been agreed to voluntarily by the tenant.

(8) Any sale made in contravention of this section shall be invalid.

(9) If a tenant refuses or fails to purchase the land or a dwelling house offered to him under this section, and the land or the dwelling house, as the case may be, is sold to

any other person under this section, the landlord shall be entitled to evict such tenant and put the purchaser in possession.

**84C. Disposal of land, transfer or acquisition of which is invalid.-**

(1) Where in respect of the transfer or acquisition of any land made on or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold any inquiry as provided for in section 84B and decide whether the transfer or acquisition is or is not invalid.

(2) If after holding such inquiry, the Mamlatdar comes to a conclusion that the transfer or acquisition of land to be invalid, he shall make an order declaring the transfer or acquisition to be invalid, unless the parties to such transfer or acquisition give an undertaking in writing that within a period of three months from such date as the Mamlatdar may fix, they shall restore the land alongwith the rights and interest therein to the position in which it was immediately before the transfer or acquisition, and the land is so restored within that period:

Provided that where the transfer of land was made by the landlord to the tenant of the land and the area of the land so transferred together with the area of other land, if any, cultivated personally by the tenant did not exceed the ceiling area, the Mamlatdar shall not declare such transfer to be invalid-

- (i) if the amount received by the landlord as the price of the land is equal to or less than the reasonable price determined under section 63A and the transferee pays to the State Government a penalty equal to Re.1 within such period not exceeding three months as the Mamlatdar may fix;
- (ii) if the amount received by the landlord as the price of the land is in excess of the reasonable price determined under section 63A and the transferor as well as the transferee pays to the State Government each a penalty equal to one-

tenth of the reasonable price within such period as may be fixed by the Mamlatdar.

(3) On the declaration made by the Mamlatdar under sub-section (2),—

- (a) the land shall be deemed to vest in the State Government, free from all encumbrances lawfully subsisting thereon on the date of such vesting and shall be disposed of in the manner provided in sub-section (4); the encumbrances shall be paid out of the occupancy price in the manner provided in section 32Q for the payment of encumbrances out of the purchase price of the sale of land but the right of the holder of such encumbrances to proceed against the person liable, for the enforcement of his right in any other manner, shall not be affected;
- (b) the amount which was received by transferor as the price of the land shall be deemed to have been forfeited to the State Government and it shall be recoverable as an arrear of land revenue; and
- (c) the Mamlatdar shall, in accordance with the provisions of section 63A determine the reasonable price of the land.

(4) After determining the reasonable price, the Mamlatdar shall grant the land on new and impartible tenure and on payment of occupancy price equal to the reasonable price determined under sub-section (3) in the prescribed manner in the following order of priority:—

- (i) the tenant in actual possession of the land;
- (ii) the persons or bodies in the order given in the priority list:

Provided that where the transfer of land was made by the landlord to the tenant of the land and area of the land so transferred together with the area of the land, if any, cultivated personally by the tenant did not exceed the ceiling area then—

- (i) if the amount received by the transferor as the price of the land is equal to or less than the reasonable price, the amount forfeited under sub-section (3) shall be returned to the transferor and the land restored to the transferee on payment of a penalty of rupee one in each case; and
- (ii) if the amount received by the transferor as the price of the land is in excess of the reasonable price, the Mamlatdar shall grant the land to the transferee on new and impartible tenure and on payment of occupancy price equal to one-tenth of the reasonable price and out of the amount forfeited under sub-section (3), the transferor shall be paid back an amount equal to nine-tenths of the reasonable price.

(5) The amount of the occupancy price realised under sub-section (4) shall subject to the payment as aforesaid of any encumbrances subsisting on the land, be credited to the State Government:

Provided that where the acquisition of any excess land was on account of a gift or bequest, the amount of the occupancy price realised under sub-section (4) in respect of such land shall, subject to the payment of any encumbrances subsisting thereon, be paid to the donee or legatee in whose possession the land had passed on account of such acquisition.

Explanation.—For any purposes of this section "new and impartible tenure" means the tenure of occupancy which is non-transferable and non-partible without the previous sanction of the Collector.

**88B. Exemption from certain provisions to and of local authorities, universities and trusts.-**

(1) Nothing in the foregoing provisions, except sections 3, 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 11, 13 and 27 and the provisions of Chapters VI and VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in the sections mentioned above, shall apply—

- (a) to lands held or leased by a University established by law in the [Bombay area of the state of Gujarat; and

- (b) to lands which are the property of a trust for an educational purpose a hospital, Punjarapol. or Gaushala;
- (c) to lands assigned or donated by any person before the 1<sup>st</sup> day of August, 1956, for the purpose of rendering any of the following services useful to the community, namely:—

maintenance of water works, lighting or filling of water throughs for cattle:

Provided that —

- (i) such trust is or is deemed to be registered under the Bombay Public Trusts Act, 1950 (Bom. XXIX of 1950), and
- (ii) the entire income of such land is appropriated for the purposes of such trust.

(2) For the purposes of this section a certificate granted by the Collector, after holding an inquiry, that the conditions in the proviso to sub-section (1) are satisfied by any trust shall be conclusive evidence in that behalf.

(3) Notwithstanding anything contained in sub-section (1), nothing in the foregoing provisions of this Act shall apply to lands leased for cultivation with the help of sewage, whether before or after the commencement of the Amending Act, 1955 by a local authority in discharge of its duties and functions relating to the establishment and maintenance of a farm for the disposal of sewage under the law under which such local authority is constituted.

**88E. Cessor of exemption in respect of certain public trust lands. —**

(1) Notwithstanding anything contained in section 88B, with effect on and from the specified date, lands which are the property of an institution for public religious worship shall cease to be exempted from those provisions of the Act except sections 31 to 31D (both inclusive) from which they were exempted under section 88B and all certificates granted under that section in respect of such lands shall stand revoked.

(2) Where any such land ceases to be so exempted, then in the case of a tenancy subsisting immediately before the specified date the tenant shall be deemed to have purchased the land on the specified date and the provisions

of sections 32 to 32R (both inclusive) shall so as far may be applicable, apply.

*Exemption.* - In this section "specified date" means the date of the commencement of the Gujarat Devasthan Inams Abolition Act, 1969 (Gujarat 16 of 1969)."

5. The aforesaid provisions generally deal with the right of purchase conferred upon a tenant and process to effectuate said right of purchase. Following provisions, *inter alia*, deal with some of the incidents while the relationship as a tenant is in operation including assignment on part of the tenant:-

**"14. Termination of tenancy for default of tenant :-** (1)  
Notwithstanding any law, agreement or usage or the decree or order of a court, the tenancy of any land shall not be terminated—

(a) unless the tenant—

- (i) has failed to pay the rent for any revenue year before the 31st day of May thereof;
- (ii) has done any act which is destructive or permanently injurious to the land;
- (iii) has sub-divided, sub-let or assigned, the land in contravention of section 27;
- (iv) has failed to cultivate it personally; or
- (v) has used such land for a purpose other than agriculture or allied pursuits; and

(b) unless the landlord has given three months' notice in writing informing the tenant of his decision to terminate the tenancy and the ground for such termination, and within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated.

(2) Nothing in sub-section (1) shall apply to the tenancy of any land held by a permanent tenant unless by the conditions of such tenancy the tenancy is liable to be terminated on any of the grounds mentioned in the said sub-section.

**27. Sub-division, sub-letting and assignment prohibited:-** (1) Save as otherwise provided in section 32F no sub-division or sub-letting of the land held by a tenant or assignment of any interest therein shall be valid:

Provided that nothing in this sub-section shall prejudicially affect the rights of a permanent tenant:

Provided further that if the tenant dies:-

- (i) if he is a member of a joint family, the surviving members of the said family, and
- (ii) if he is not a member of a joint family, his heirs,  
shall be entitled to partition and sub-divide the land leased subject to the following conditions:-
  - (a) each sharer shall hold his share as a separate tenant.
  - (b) the rent payable in respect of the land leased shall be apportioned among the shares, as the case may be, according to the share allotted to them.
  - (c) the area allotted to each sharer shall not be less than the unit which the State Government may, by general or special order, specify in this behalf having regard to the productive capacity and other circumstances relevant to the full and efficient use of the land for agriculture.
  - (d) if such area is less than the unit referred to in clause (c), the sharers shall be entitled to enjoy the income jointly, but

the land shall not be divided by metes and bounds.

- (e) if any question arises regarding the apportionment of the rent payable by the sharers, it shall be decided by the Mamlatdar, whose decision shall be final.

(2) Notwithstanding anything contained in sub-section (1), it shall be lawful for a tenant:-

- (a) who is a widow, minor or a person subject to any physical or mental disability, or a serving member of the armed forces, to sub-let such land held by her or him as a tenant; or
- (b) Who is a member of a co-operative farming society and as such member to sub-let, assign mortgage or to create a charge on his interest in the land in favour of such society, or in consideration of a loan advanced by any person authorised under section 54 of the Bombay Agricultural Debtors Relief Act, 1947.

(3) Notwithstanding anything contained in sub-section (1), it shall also be lawful for a tenant to mortgage or create a charge on his interest in the land in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loans Act, 1883, the Agriculturists, Loans Act, 1884, or the Bombay Non-Agriculturists, Lands Act, 1928, or in favour of a co-operative society in consideration of a loan advanced to him by such co-operative society, and without prejudice to any other remedy open to the State Government or the co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government or the co-operative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.”

6. The facts leading to the filing of Appeal arising out of Special Leave Petition (Civil) No.18525 of 2009, by way of illustration, are set out in detail as under:-

- a) Agricultural land bearing Survey No.102 admeasuring 0.88 hectares situated within the revenue limits of village Gabheni, Taluka Chorayasi, District Surat ('said land' for short) was in the cultivating possession of one Samubhai Budhiabhai as tenant. As part of agrarian reforms and in terms of the provisions of the Act conferring right of statutory purchase upon the tiller of the land, Samubhai became Deemed Purchaser as he was cultivating the land on the tillers' day.
- b) Samubhai executed a registered Will on 24.01.1991 in favour of Vinodchandra Sakarlal Kapadia, the Appellant herein purporting to bequeath the said land to the Appellant. Upon the demise of Samubhai on 02.02.1991, vide mutation No.2141 certified on 20.06.1991, the name of the Appellant came to be recorded in the revenue records as owner of the said land.

- c) The Revenue Authorities however found that the Appellant was not an agriculturist and accordingly proceedings under Section 84C of the Act were registered and notice was issued to the Appellant. All the concerned parties appeared in the proceedings and the legal heirs of deceased Samubhai submitted that they had no objection if the land was given to the Appellant in terms of the Will. After hearing the Appellant, the Additional Mamlatdar by his order dated 04.03.1996 in Tenancy Case No. 78/95 found that the disposal by way of a Will in favour of the Appellant was invalid and contrary to the principles of Section 63 of the Act and therefore declared that the said land vested in the State without any encumbrances.
- d) The order passed by the Additional Mamlatdar was affirmed in Tenancy Appeal No.20/1996 by Deputy Collector, Land Development, Surat, vide his order dated 15.07.1996. The matter was carried further by way of Revision Application No.TEN.B.S.94 of 1996 before Gujarat Revenue Tribunal. Relying on certain decisions rendered by the High Court, the Tribunal observed that disposal by way of a Will would not amount to transfer and as such, it would not be hit by

Section 63 of the Act. The Tribunal thus allowed the Revision and quashed the orders passed by the Additional Mamlatdar and the Deputy Collector.

- e) The State, being aggrieved, preferred Special Civil Application No.25058 of 2006 in the High Court which came up before a Single Judge of the High Court. Relying on the decisions of this Court in *Sangappa Kalyanappa Bangi (Dead) through LRs. vs. Land Tribunal, Jamkhandi and others*<sup>4</sup> and in *Jayamma vs. Maria Bai (Dead) by proposed LRs and another*<sup>5</sup>, the Single Judge referred the matter to the Division Bench of the High Court for consideration.

7. Similar references were made in all other connected matters raising identical issues, which were dealt with by the Division Bench of the High Court in its judgment and order presently under Appeal.

8. The Division Bench considered the scope and ambit of Sections 43 and 63 of the Act as under:-

“We may, before examining the scope and ambit of Section 43 and 63 of the Tenancy Act, examine the object and purpose of the Tenancy Act. The Bombay Tenancy Act was enacted with an avowed object of safeguarding

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<sup>4</sup> AIR 1998 SC 3229 = (1998) 7 SCC 294

<sup>5</sup> AIR 2004 SCW 4412 = (2004) 7 SCC 459

interest of the tenants who held the land for over a number of years, on principle that the land tilled to the tillers of the soil and also to preserve agricultural lands to safeguard interest of the agriculturists. Object is also to improve the economic and social conditions of peasants ensuring the full and efficient use of land for agriculture, and to assume management of estates held by landholders and to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturists, agricultural labourers and artisans. Chapters II and III of the Act deal with tenancies in general and 'protected tenants' and their special rights, and privileges, in particular. Legislature also thought it necessary to confer on 'protected tenants' the right to purchase their holdings from their landlords, to prevent uneconomic cultivation and to create and encourage peasant proprietorship in respect of holdings of suitable sizes. The Act is covered by Entry 18 in List II of the Seventh Schedule to the Constitution of India and was enacted for the protection of tenants and to organise agriculture by maintaining agricultural lands so as to be in tune with the directive principles of the State Policy. Article 48 of the Constitution of India state that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines, and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows, calves and other milch and drought cattle. The necessity of meeting agricultural production and to preserve agricultural land is clearly discernible in the above constitutional provisions. Further, by enacting clause (g) in Article 51(A), Parliament has given the status of fundamental duties to Article 48 and honoured the spirit and message of Article 48 as a fundamental duty of the citizens. The Bombay Tenancy Act not only takes a positive step towards achieving the goal of transferring the land tilled to the tillers, but also wanted to preserve and protect agricultural lands and for improving the economic and social conditions of persons and to ensure the full and efficient use of land for agriculture. Section 43, which appears in Chapter III of the Tenancy Act, deals with special rights and privileges of tenants and provisions for distribution of land for personal cultivation. Section 63 appears in Chapter V of the Tenancy Act deals with restrictions on transfers of agricultural lands, management of uncultivated lands and acquisition of estates and lands."

8.1 While dealing with the question whether the term ‘assignment’ used in Section 43 of the Act would include ‘*testamentary disposition*’, it was observed by the Division Bench:-

“Section 43 of the Tenancy Act, however, uses word ‘assignment’. Word ‘assignment’ has been given statutory meaning by the Apex Court while examining the scope of Section 21 of the Karnataka Land Reforms Act in **Sangappa Kalyanappa Bangi**<sup>4</sup>. In that case, one Sangappa Bangi made an application under Section 45 of the Karnataka Land Reforms Act, 1961 claiming occupancy rights in respect of the land in question. During the pendency of the proceedings, he made a Will on 8.4.1975 bequeathing his tenancy rights in respect of the land in favour of one Ameerjan who claims to be the legal representative of the appellant-Sangappa who died during pendency of the proceedings before the Tribunal. She in turn executed another Will under which Husensab is making a claim to the land through the said Sangappa. Land Tribunal as well as Appellate Tribunal examined whether rights to tenancy could have been the subject matter of a bequest under a Will. Apex Court took the view that assignment of any interest in the tenanted land will not be valid. A devise or a bequest under a Will cannot be stated to fall outside the scope of the said provision inasmuch as such assignment disposes of or deals with the lease. Apex Court also held that when there is a disposition of rights under a Will though operates posthumously is nevertheless recognition of the right of the legatee thereunder as to his rights of the tenanted land. In that event, there is an assignment of the tenanted land, but that right will come into effect after the death of the testator. The purpose behind Section 21 is not to allow strangers to the family of the tenant to come upon the land. The Apex Court held that tenanted land is not allowed to be sub-let i.e. to pass to the hands of a stranger nor any kind of assignment taking place in respect of the lease held. If the tenant could assign his interest, strangers can come upon the land, and therefore, the expression ‘assignment’ in Section 21 will have to be given such meaning as to promote the object of the enactment. Above decision in **Sangappa Kalyanappa Bangi**<sup>4</sup> was later followed in **Jayamma**<sup>5</sup> case while interpreting Section 61(1) & (3), 21(1), 2(A)(12) & (17) of the Karnataka Land Reforms Act, 1961. The question arose whether the

expression ‘assignment’ would take in a Will. The Court held that on a fair construction of Section 61, a transfer of agricultural land with occupancy right is permissible only in favour of one of the heirs, having regard to the definition of ‘family’ as contained in Section 2(12) and ‘joint family’ as contained in Section 2(17) of the said Act. The Court felt that the purpose and object of the Legislature sought to be achieved by enacting Section 61 of the KLR Act is such that ‘assignment’ would include ‘assignment by a Will’.”

8.2 Similarly, while construing the provisions of Section 63 of the Act, the Division Bench stated as under:-

“Section 63 unlike Section 43 of the Act does not contain the word ‘assignment’. Contention was raised that since no such word ‘assignment’ occurs in Section 63, there is no restriction in the matter of transfer of agricultural lands to non-agriculturist through a testamentary disposition. Before examining the contention, it may be mentioned the word ‘Will’ as such is not defined under the Bombay Tenancy Act, but Section 2(h) of the Indian Succession Act defines the word ‘Will’ to mean a legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. A Will, therefore, is dependent upon the testator’s death for its vigour and effect and is liable to be revoked or altered during his life time. Question is while he is alive, can he make an illegal declaration through a ‘Will’ so as to defeat the object and purpose of the legislation. Will not such a declaration be opposed to public policy being repugnant to the public interest. Policy of the Act is discernible from the preamble, marginal note, title and Section 43 and 63 and other related provisions and the Directive Principles of State Policy. Where the legislature deem it expedient to fetter the privilege of free alienation, the prohibition founded upon conditions of public interest, must be treated as obsolete. General rule is that property of any kind may be transferred by way of gift or Will, sale etc. unless non-transferability is barred due to existence of any law. Willian’s law relating to Will, Sixth Edition, Volume I, page 60 states that the power of disposition by Will is not at the testators caprice, but extends only to the creation of those interests, which are recognised by law. Theobold on Wills, Fourth Edition, Pg.629, says that a condition which

is illegal or contrary to the policy of the law is void. Tenancy Act has not authorised parting of agricultural land to a non-agriculturist without the permission of the authorised officer, therefore, if it is permitted through a testamentary disposition, it will be defeating the very soul of the legislation, which cannot be permitted. We wonder when testator statutorily debarred from transferring the agricultural lands to a non-agriculturist during his life time, then how he can be permitted to make a declaration of his intention to transfer agricultural land to a non-agriculturist to be operative after his death. Such attempt of testator, in our view, is clearly against the public policy and would defeat the object and purpose of the Tenancy Act. Section 30 of the Hindu Succession Act acknowledges testamentary succession as a mode of succession, but not, by defeating the purpose and object of any legislation, like Tenancy Law. The legislative intent that an agricultural land shall not go into the hands of a non-agriculturist is manifest in Section 63 of the Bombay Tenancy Act. In a country like ours where agriculture is the main source of livelihood, the restriction imposed in Section 63, cannot be given a go-by, by a devise. Obvious purpose of Section 63, is to prevent indiscriminate conversion of agricultural lands for non-agricultural purpose and that provision strengthens the presumption that agricultural land is not to be used as per the holders caprice or sweet-will.”

8.3 It also relied upon decision of this Court reported in *State of Punjab (now Haryana) and others vs. Amar Singh and another*<sup>6</sup> and *Dayandeo Ganpat Jadhav vs. Madhav Vithal Bhaskar and others*<sup>7</sup> and then concluded:-

“We are, therefore, of the considered view that if the agriculturist is permitted to dispose agricultural property through testamentary disposition to a non-agriculturist the same will defeat the very purpose and object of the Tenancy Act which cannot be permitted by a Court of law, therefore, we hold that decision rendered by the learned Single Judges referred above earlier, otherwise, are not

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6 (1974) 2 SCC 70 : AIR 1974 SC 994

7 (2005) 8 SCC 340

correct enunciation of law and stand overruled. We, therefore, hold that Section 63 of the Bombay Tenancy Act also bars the transfer of agricultural land by an agriculturist to a non-agriculturist for non-agricultural purpose unless permission is obtained from the Collector or any authorised officer as provided in that Section. We are informed by the learned counsel for the petitioner that large number of agricultural lands have already been transferred through testamentary disposition to non-agriculturists and are in use and if the settled position is unsettled the same will cause considerable prejudice and inconvenience to the parties. We are of the view that there are matters to be considered by the learned Single Judge depending upon facts of each case and equities can be worked out accordingly, on which, we express no opinion. We are only called upon to answer the scope of Section 43 and 63 of the Tenancy Act, which we have already answered.”

9. In these appeals challenging the correctness of the decision of the Division Bench of the High Court, we have heard Mr. Sanjay Parikh, learned Senior Advocate and Mr. Raghavendra S. Srivatsa, learned Advocate for the Appellants and Mr. Aniruddha P. Mayee, learned Advocate for the State.

10. It is submitted by learned counsel for the Appellants that what is prohibited under Sections 43 and 63 of the Act is transfer *inter vivos*, and not any ‘testamentary disposition’ by the holder of the land. In their submission, the expressions used in Sections 43 and 63 like ‘*sale*’, ‘*gift*’, ‘*exchange*’, and ‘*mortgage*’ are suggestive of transfers by a living person and the expression ‘*assignment*’ in Section 43(1) of the Act must be read *ejusdem generis* with the preceding expressions appearing in that Section

and that the expression '*assignment*' does not even appear in Section 63. It is, therefore, submitted that both these provisions do not deal with any 'testamentary disposition'.

It is also submitted by Mr. Srivatsa that the concept of succession, whether testamentary or intestate, being part of Entry 5 of List III of Seventh Schedule to the Constitution and a concurrent subject, the Central legislation namely Indian Succession Act, 1925 must hold the field and any prohibition in the State enactment inconsistent with the general principles of the Central Legislation, in the absence of any assent of the President, would be void. It is further submitted that the State Legislature must be taken to be fully aware of this legal position and, therefore, while construing the term '*assignment*' due regard to this aspect must also be given. As an extension of this submission, it is contended that the decisions of this Court in relation to the provisions of the Karnataka Land Reforms Act, 1961 in the cases of *Sangappa*<sup>4</sup> and *Jayamma*<sup>5</sup> are distinguishable as the provisions of the Karnataka Land Reforms Act, 1961 had received Presidential assent, whereas, the provisions of the Act have not received any such assent.

Reliance is also placed on the Judgment of this Court in ***Mahadeo (Dead through legal representatives) vs. Shakuntalabai***<sup>8</sup> in which similar provisions from Bombay Tenancy and Agricultural Lands Act, 1958 (as applicable to Vidarbha Region of State of Maharashtra) came up for consideration before this Court.

11. On the other hand, Mr. Mayee, learned Advocate for the State has submitted that the basic intent behind the conferral of ownership rights upon a cultivating tenant was to see that the actual tillers and cultivators must be protected and given the ownership rights upon payment of nominal charges. The avowed objective of the Act, is to preserve agricultural lands in the hands of actual tillers, and not to let concentration of holdings in a few hands. It is further submitted that Section 63 of the Act gives indications that a transfer to a non-agriculturist is not permissible and so also any transfer which results in taking the holding of the transferee beyond ceiling limits, or if the income of the transferee was in excess of Rs.5,000/-, would be impermissible. He submitted that these conditions disclose the legislative intent which lays down the relevant criteria on the basis of which the applications for transfer *inter vivos* could be considered and granted; and that any disposition by way of a testament must also be subject to similar conditions. In his submission, a

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8 (2017) 13 SCC 756

testamentary disposition which violated these basic norms ought not to be allowed and, therefore, the view taken by the Division Bench is correct.

12. We may now consider the decisions of this Court which have dealt with issues concerning testamentary disposition of agricultural holdings-

A. In *Sangappa*<sup>4</sup>, the facts were noted as under:-

“2. The facts leading to this appeal are as follows:

Sangappa Bangi made an application under Section 45 of the Karnataka Land Reforms Act, 1961 (hereinafter referred to as “the Act”) in Form 7 claiming occupancy rights in respect of the land in question. During the pendency of the proceedings, he made a Will on 8-4-1975 bequeathing his tenancy rights in respect of the land in favour of one Ameerjan who claims to be the legal representative of the appellant Sangappa who died during the pendency of proceedings before the Tribunal. She in turn executed another Will under which Husensab is making a claim to the land through the said Sangappa. Respondent 2 is the wife of the said Sangappa while Respondents 3 to 5 are the children of Sangappa. The Land Tribunal as well as the Appellate Authority examined the question whether right to tenancy could have been the subject-matter of a bequest under a Will. In answering that question, the Appellate Authority referred to a decision of the High Court of Karnataka in *Shivanna v. Rachiah*<sup>9</sup> (CRP No. 319 of 1976 dated 29-3-1977 wherein it was stated that there was no prohibition against a tenant disposing of his interest by testamentary disposition. However it was stated that such testamentary disposition must be confined to the heirs of the deceased or an interpretation of the provision of Sections 21 and 24 of the Karnataka Land Reforms Act that the tenancy rights are inherited only by legal representatives and not by anybody else; that tenancy could be deemed to have been continued in favour of the heirs of the tenant. It is also made clear that transfer of tenancy rights made in violation of the provisions of Section 21 would be void. The High Court

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9 (1977) 1 Kant LJ 146 (Short notes Item 160)

did not give any detailed reasons, but taking the view that the Appellate Authority and the Land Tribunal having concurrently held that Respondents 2 to 5 are entitled to grant of occupancy rights, found no reasons to interfere with the order made by them.”

The question that arose for consideration was dealt with by this

Court as under:-

“5. This case gives rise to a difficult and doubtful question, whether a devise under a Will would amount to an assignment of interest in the lands and, therefore, would be invalid under the provisions of Section 21 of the Land Reforms Act. What is prohibited under Section 21 of the Act is that there cannot be any sub-division or sub-letting of the land held by a tenant or assignment of any interest thereunder. Exceptions thereto are when the tenant dies, the surviving members of the joint family and if he is not a member of the joint family, his heirs shall be entitled to partition and sub-divide the land leased subject to certain conditions. Section 24 of the Act declares that when a tenant dies, the landlord is deemed to continue the tenancy to the heirs of such tenant on the same terms and conditions on which the tenant was holding at the time of his death. We have to read Section 21 with Section 24 to understand the full purport of the provisions. Section 24 is enacted only for the purpose of making it clear that the tenancy continues notwithstanding the death of the tenant and such tenancy is held by the heirs of such tenant on the same terms and conditions on which he had held prior to his death. The heirs who can take the property are those who are referable to in Section 21. If he is a member of the joint family, then the surviving members of the joint family and if he is not such a member of a joint family, his heirs would be entitled to partition. Again, as to who his heirs are will have to be determined not with reference to the Act, but with reference to the personal law on the matter. The assignment of any interest in the tenanted land will not be valid. A devise or a bequest under a Will cannot be stated to fall outside the scope of the said provisions inasmuch as such assignment disposes of or deals with the lease. When there is a disposition of rights under a Will, though it operates posthumously is nevertheless a recognition of the right of the legatee thereunder as to his rights of the tenanted land. In that

event, there is an assignment of the tenanted land, but that right will come into effect after the death of the testator. Therefore, though it can be said in general terms that the devise simpliciter will not amount to an assignment, in a special case of this nature, interpretation will have to be otherwise.

6. If we bear in mind the purpose behind Section 21, it becomes clear that the object of the law is not to allow strangers to the family of the tenant to come upon the land. The tenanted land is not allowed to be sub-let, i.e., to pass to the hands of a stranger nor any kind of assignment taking place in respect of the lease held. If the tenant could assign his interest, strangers can come upon the land, and therefore, the expression “assignment” will have to be given such meaning as to promote the object of the enactment. Therefore, the deceased tenant can assign his rights only to the heirs noticed in the provision and such heirs could only be the spouse or any descendants or one who is related to the deceased tenant by legitimate kinship. We must take into consideration that when it is possible for the tenant to pass the property to those who may not necessarily be the heirs under the ordinary law and who become heirs only by reason of a bequest under a Will in which event, he would be a stranger to the family and imported on the land thus to the detriment of the landlord. In that event, it must be taken that a devise under a Will will also amount to an assignment and, therefore, be not valid for the purpose of Section 21 of the Act. If Section 24 is read along with Section 21, it would only mean that the land can pass by succession to the heirs of a deceased tenant, but subject to the conditions prescribed in Section 21 of the Act. Therefore, we are of the view that the broad statement made by the High Court in the two decisions in *Shivanna*<sup>9</sup> and *Dhareppa v. State of Karnataka*<sup>10</sup> would not promote the object and purpose of the law. Therefore, the better view appears to us is as stated by the High Court in *Timmakka Kom Venkanna Naik v. Land Tribunal*<sup>11</sup>.”

B. Similar issues regarding disposition by will were dealt with by this Court in *Jayamma*<sup>5</sup>, as follows:-

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10 (1979) 1 Kant LJ 18

11 (1987) 2 Kant LJ 337

**“16.** We would discuss the construction of the provision of Section 61 of the said Act, a little later, but we have no hesitation in holding that in the event if it be held that the testator could not have executed the Will in favour of a person who could not be declared to be a tenant having occupancy right, such a Will would be void ab initio and, therefore, non est in the eye of the law. The court in such an event would not be determining a disputed question of title but would be considering the effect of the statute vis-à-vis the Will in question.

... ..

**18.** As we have noticed hereinbefore, that the statutory embargo on transfer of land is stricter in a case where the tenant has become occupant than a land held by a tenant simpliciter. We have also noticed that the embargo on transfer is not only by way of sale, gift, exchange, mortgage, lease but also by assignment. What is permitted under the law is partition of the land amongst the members of the family. Section 61 of the Act is to be read in its entirety.

**19.** Sub-section (3) of Section 61 lays down that any transfer of land in contravention of sub-section (1) shall be invalid whereupon the same shall vest in the State Government free from all encumbrances. The legislative intent that the land should not be allowed to go into the hands of a stranger to the family is, therefore, manifest. Whereas in terms of Section 21, strangers to the family of the tenant to come upon the land is not allowed, the tenor of Section 61 is that except partition amongst the co-sharers, no transfer of the property, in any manner, is permissible.

**20.** When an assignment or transfer is made in contravention of statutory provisions, the consequence whereof would be that the same is invalid, and thus, being opposed to public policy the same shall attract the provisions of Section 23 of the Indian Contract Act.

**21.** It is not disputed that in view of the purport and object the legislature sought to achieve by enacting the said provision the expression “assignment” would include a Will.

**22.** In this case, there is also no dispute that grant of agricultural land with occupancy right in terms of the

provisions of the said Act was made on 14-10-1981. The Will in question having been executed on 20-2-1984; the transfer has been made within a period of fifteen years from the date of grant which is prohibited in law.”

C. Both these decisions were in the context of prohibition against transfer or assignment under the provisions of the Karnataka Land Reforms Act, 1961. In ***Mahadeo***<sup>8</sup>, this Court dealt with Section 57 of the Bombay Tenancy and Agricultural Lands Act, 1958 as applicable to Vidarbha Region of State Maharashtra, and observed:-

“4. The High Court took the view that the provisions of Section 57 of the Bombay Tenancy and Agricultural Lands Act, 1958 pertaining to Vidarbha Region do not permit the transfer of land by way of a will. Section 57 of the Act which is relevant reads as follows:

**“57. Restriction on transfers of land purchased or sold under this Act.—**(1) No land purchased by a tenant under Section 41 or 46 or 49-A or 57-D or 130 or sold to any person under Section 91 or 122 shall be transferred by sale, gift, exchange, mortgage, lease or assignment without the previous sanction of the Collector. Such sanction shall be given by the Collector in such circumstances and subject to such conditions as may be prescribed by the State Government.

(2) Any transfer of land in contravention of sub-section (1) shall be invalid:

Provided that nothing in this section shall apply to the lands purchased by an occupancy tenant.”

5. On a plain reading of the aforesaid provision, it is clear that transfer without the previous sanction of the Collector is impermissible by way of sale, gift, exchange, mortgage, lease or assignment. There is no prohibition insofar as the transfer of land by way of a will is concerned. In fact, in view of the decision of this Court in ***State of W.B. v.***

**Kailash Chandra Kapur**<sup>12</sup>, devolution of property by way of a will does not amount to a transfer of the property. This is clear from para 12 of the aforesaid decision wherein it has been observed that transfer connotes, normally, between two living persons during life. However, a will takes effect after demise of the testator and transfer in that perspective becomes incongruous.

6. That the beneficiary of a will receives the property by way of devolution and not by way of transfer is also made clear by the decision of this Court in **S. Rathinam alias Kappamuthu and Others v. L.S. Mariappan and Others**<sup>13</sup> wherein this Court has held in para 21 that: (SCC p. 732)

“21. A testator by his will, may make any disposition of his property subject to the condition that the same should not be inconsistent with the laws or contrary to the policy of the State. A will of a man is the aggregate of his testamentary intentions so far as they are manifested in writing. It is not a transfer but a mode of devolution.”

In coming to this conclusion, this Court referred to **Beru Ram v. Shankar Dass**<sup>14</sup>.”

D. It must be stated here that the decisions in **Sangappa**<sup>4</sup> and **Jayamma**<sup>5</sup> were rendered by benches of two judges and so was the decision in **Mahadeo**<sup>8</sup>. However, the decision in Mahadeo does not show that the attention of the bench was invited to the earlier decisions in **Sangappa**<sup>4</sup> and **Jayamma**<sup>5</sup>.

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12 (1997) 2 SCC 387

13 (2007) 6 SCC 724

14 (1977) 8 JKLR 73

E. The decision of this Court in **Sangappa**<sup>4</sup> had approved the decision of the Division Bench of the High Court of Karnataka in **Timmakka**<sup>11</sup>, wherein following observations were made by the Division Bench:-

“13. Two decisions of the Supreme Court were also referred, in support of his contention by the learned Counsel. In **Jaspal Singh v. The Additional District Judge, Bulandshahr & Ors.**<sup>15</sup>, a question arose under U.P. Act 13/1972. There was a bar against transfer of the tenant's interest during his life time. Similarly, if a tenant sub leases the premises, he was liable to be ejected. Therefore, it was held that the scheme of the Act did not warrant the transfer of the tenancy right, to be effective after the life time of the tenant, Thus the claim of the nephew of the tenant who claimed the right under a Will executed by the deceased tenant was rejected.

14. In **Bhavarlal Labhchand Shah v. Kanaiyalal Nathalal Intawala**<sup>16</sup> the question was whether the tenant of a non - residential premises continuing in occupation after the period of contract is over, can bequeath his right of occupation by will. The Supreme Court negatived such a contention. The Supreme Court approved the observations of the Bombay High Court in **Dr. Anant Trimbak Sabnis v. Vasant Pratap Pandi**<sup>17</sup> which were extracted.....

15. Having regard to the above decisions, we are of the opinion that the deceased Hammi could not have bequeathed the tenancy right in favour of respondents 2 and 3 or to any one of them. If so, any possession and cultivation by respondents 2 and 3, after the death of the original tenant Hammi, cannot be termed as lawful and they cannot be termed as tenants. It has also come on record that throughout there was protest by the appellant against registering the names of respondents 2 and 3 or any one of them as a tenant in

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15 (1984) 4 SCC 434

16 (1986) 1 SCC 571

17 AIR 1980 Bombay 69

the record of rights. Therefore, as on 1-3-1974 neither respondent-2 nor respondent-3 was cultivating the lands in question as a tenant and hence Sections 44, 45 or 48-A of the Act cannot govern their claim. The Land Tribunal erred in granting occupancy right in favour of respondents 2 and 3 on the basis of the alleged will and hence the same is liable to be set aside. In this view of the matter, the learned Single Judge should have reversed the order of the Land Tribunal. Therefore, the order of the learned Single Judge also cannot be sustained.”

F. On the other hand, the decision in ***Mahadeo***<sup>8</sup> had placed reliance on the decisions of this Court in ***State of West Bengal vs. Kailash Chandra Kapur***<sup>12</sup> and in ***S. Rathinam***<sup>13</sup>. In neither of these cases any statutory prohibition or restriction on transfer or assignment was involved.

13. The decisions in ***Sangappa***<sup>4</sup>, ***Jayamma***<sup>5</sup> and ***Mahadeo***<sup>8</sup> had dealt with the question whether prohibition against transfer of agricultural holdings applied to testamentary disposition. While dealing with the question whether a tenant governed by Rent Act could will away his tenancy, in ***Bhavarlal Labhchand Shah***<sup>16</sup> the issue was considered in the light of prohibition against transfer or assignment in Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court relied upon the earlier decision of this Court in ***Jaspal Singh vs. Additional District Judge, Bulandshahr***<sup>15</sup> and the decision of the

Division Bench of the High Court of Bombay in **Dr. Anant Trimbak**

**Sabnis**<sup>17</sup> and observed:-

**“9. In *Jaspal Singh v. Additional District Judge, Bulandshahr*<sup>15</sup> this Court had occasion to consider the validity of a bequest of the right of a tenant to continue to occupy the premises after the determination of the tenancy under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 under a will. Section 3(a) of the U.P. Act referred to above defined the expression “tenant” thus:**

- “3. In this Act, unless the context otherwise requires—**  
**(a) ‘tenant’, in relation to a building, means a person by whom its rent is payable, and on the tenant’s death—**  
**(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;**  
**(2) in the case of a non-residential building, his heirs;”**

**10. The appellant in that case claimed the right to tenancy held by one Naubat Singh under the will of Naubat Singh. This Court held that the appellant would be a tenant within the meaning of Section 3(a) of that Act only when he was an heir but the appellant was not a son but only nephew of Naubat Singh. The said U.P. Act also contained a provision in Section 12(2) thereof which stated that in the case of non-residential building where a tenant carrying on a business in the building admitted a person who was not a member of his family as a partner or a new partner, as the case may be, the tenant should be deemed to have ceased to occupy the building. Under those circumstances this Court held at p. 1885 thus: (SCC pp. 440-41, para 10)**

**“From a survey of these provisions it will be clear that if a tenant parts with possession of the premises in his possession, the same would be treated as vacant.... In the case of a non-residential building, when a tenant is carrying on business in the building, admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building. If a tenant sublets the premises, he is**

liable to ejectment. Obviously, therefore, there are restrictions placed by the Act on the right of the tenant to transfer or sublet the tenancy rights and he can keep possession of the building or premises for himself and for the purpose of his family, for his business and for the business of his family members. He obviously cannot be allowed to transfer a tenancy right. A fortiori, the scheme of the Act does not warrant the transfer of the tenancy right to be effective after his lifetime.”

**11.** In the Act under consideration in the present case also there is a provision similar to the provision contained in Section 12(2) of the U.P. Act. Section 15(1) of the Act reads thus:

*“15. In absence of contract to the contrary tenant not to sublet or transfer.— (1) Notwithstanding anything contained in any law, (but subject to any contract to the contrary), it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein:....”*

**12.** In *Dr. Anant Trimbak Sabnis*<sup>17</sup> the High Court of Bombay has in the light of Section 15(1) of the Act taken the view and in our opinion rightly that the words “to assign or transfer in any other manner his interest therein” in Section 15(1) of the Act had the effect of prohibiting the deposition of the tenancy right by a will in the absence of a contract to the contrary. The High Court of Bombay observed at pp. 72 and 73 thus:

*“12. Prohibition against transfer of tenancy rights by the tenants is just a corollary to the restrictions on the landlords and is aimed at protecting them, in turn, by preventing the tenants from abusing these protections by thrusting un contemplated strangers as tenants on the landlords, willy nilly, for monetary gain or favouring any friend or relative of theirs, and thus ensuring, that the immunity against eviction is not expanded into licence to dispose of premises as if it were their own and*

landlords' rights are not invaded beyond what is strictly necessary....

13. Bequest of tenancy rights in this context stands on the same footing as any other transfer by sub-lease, sale, assignment, gift, volition of the tenant in inducting unanticipated strangers in the premises and thrusting them on the landlord, being the common element of these dispositions. It makes little difference to the invasion on the landlord's right whether such unanticipated stranger is so inducted by the tenant for gain or just as a favour — invasion in either case having no nexus with the object underlying these protections. It is difficult to imagine why the legislature could have intended to exclude such bequests from the sweep of the prohibited assignments and transfers under Section 15, when bequest is pregnant with the same evils as other transfers. The words “transfer in any manner” in this context only go to signify inclusion of ‘bequest’ also therein.

14. It is not without significance that legatee is not included in the definition of the word ‘tenant’. Section 5(11) of the Act defines it to mean “a person who is liable to pay the rent or on whose account the rent is payable for any premises”. Under sub-clauses (a) to (c) it is enlarged to include some others whom legislature considered it necessary to protect. Clause (c) provides for the succession to tenancy rights on the death of the tenant. Thus, this sub-clause (c) by providing for the mode of succession, impliedly excludes successors from the purview of the width of the main clause. Secondly, it restricts the succession even by operation of law of inheritance to the persons and situations indicated therein and impliedly excluding all other heirs. In fact, all the heirs are liable to be excluded if any other member of the family was staying with the tenant at the time of his death. Thirdly and more importantly, legatee is not included either in this sub-clause or any other sub-clauses. This demonstrates legislative intent to prohibit testamentary disposition of the tenancy rights. There is no

other express provision to this effect in the Rent Act. It shall have to be traced only in Section 15 thereof by interpreting the words ‘assign’ and ‘transfer’ in their generic sense. This also fortifies our interpretation of these words.”

13. The above reasons given by the Bombay High Court in support of its decision are perfectly justified in the context of the object and the scheme of the Act. The language of the statute also lends itself to the same construction.”

14. On the other hand, in respect of leases to which the provisions of any Rent Act did not specifically apply, the principles laid down in *Bhavarlal*<sup>14</sup> were not applied by this Court. The decision of this Court in *State of W.B. v. Kailash Chandra Kapur*<sup>12</sup> had observed:-

“11. It was, therefore, held that in the absence of any definition the legal heirs of the tenants who succeeded by intestate succession became the tenants under the Rent Act for the purpose of continuance of tenancy rights had by the tenant even if it is after the determination of the contractual tenancy. The statutory tenancy steps in and gives protection to the legal heirs of the deceased tenant. It is true that in that case no distinction was made by this Court between testamentary succession or intestate succession. As far as testamentary succession is concerned, this Court had considered that question in *Bhavarlal case*<sup>16</sup>. In that case, Section 5(11) of the Bombay Rent Act defines the tenant and clause (c) defines the “restricted tenancy rights” in favour of the family members of the tenant. In that context, the question arose in that case whether a tenant can bequeath a Will in favour of a stranger? Considering the ratio in *Gian Devi case*<sup>18</sup> and the object of the Act, this Court had held that the tenant cannot by a Will bequeath leasehold right in favour of strangers and induct the stranger as tenant of the demised premises against the Will of the landlord and the landlord is not bound by such a bequest to recognise the legatee as a tenant. It is, thus, settled law that though leasehold interest may be bequeathed by a testamentary

disposition, the landlord is not bound by it nor a stranger be trusted as tenant against the unwilling landlord.

12. In view of the above-settled legal position, the question is whether the bequest made by Mullick in favour of the respondent is valid in law and whether the Governor is bound to recognise him. It is seen that clauses (7), (8) and (12) are independent and each deals with separate situation. Clause (7) prohibits sub-lease of the demised land or the building erected thereon without prior consent in writing of the Government. Similarly, clause (8) deals with transfer of the demised premises or the building erected thereon without prior permission in writing of the Government. Thereunder, the restricted covenants have been incorporated by granting or refusing to grant permission with right of pre-emption. Similarly, clause (12) deals with the case of lessee dying after executing a Will. Thereunder, there is no such restrictive covenant contained for bequeath in favour of a stranger. The word “person” has not been expressly specified whether it relates to the heirs of the lessee. On the other hand, it postulates that if the bequest is in favour of more than one person, then such persons to whom the leasehold right has been bequeathed or the heirs of the deceased lessee, as the case may be, shall hold the said property jointly without having any right to have a partition of the same and one among them should alone be answerable to and the Government would recognise only one such person. In the light of the language used therein, it is difficult to accept the contention of Shri V.R. Reddy, that the word “person” should be construed with reference to the heirs or bequest should be considered to be a transfer. Transfer connotes, normally, between two living persons during life; Will takes effect after demise of the testator and transfer in that perspective becomes incongruous. Though, as indicated earlier, the assignment may be prohibited and the Government intended to be so, a bequest in favour of a stranger by way of testamentary disposition does not appear to be intended, in view of the permissive language used in clause (12) of the covenants. We find no express prohibition as at present under the terms of the lease. Unless the Government amends the rules or imposes appropriate restrictive covenants prohibiting the bequest in favour of the strangers or by enacting appropriate law, there would be no statutory power to impose such restrictions prohibiting such bequest in favour of the strangers. It is seen that the object of assignment of the government land in favour of the lessee is to provide him

right to residence. If any such transfer is made contrary to the policy, obviously, it would be defeating the public purpose. But it would be open to the Government to regulate by appropriate covenants in the lease deed or appropriate statutory orders as per law or to make a law in this behalf. But so long as that is not done and in the light of the permissive language used in clause (12) of the lease deed, it cannot be said that the bequest in favour of strangers inducting a stranger into the demised premises or the building erected thereon is not governed by the provisions of the regulation or that prior permission should be required in that behalf. However, the stranger legatee should be bound by all the covenants or any new covenants or statutory base so as to bind all the existing lessees.”

15. Various States have enacted legislations seeking to invalidate transfers of agricultural lands made by tribals or socially disadvantaged persons to non-tribals or transferees from non-backward communities which legislations have gone to the extent of nullifying transactions entered into even before the legislations had come into effect. Validity of these legislations have been sustained by this Court. Two such cases are as follows:-

A) Section 4 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1974 prohibits transfer of “granted lands” which expression is defined in Section 3(b) to mean any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes. Any transfer made either before or after the commencement of said Act is rendered null and void by

Section 4 and the land is to be resumed and dealt with in accordance with the provisions of said Act. Dealing with the challenge, a bench of three Judges of this Court in *Manchegowda vs. State of Karnataka*<sup>19</sup> stated:-

“15. Any person who acquires such granted land by transfer from the original grantee in breach of the condition relating to prohibition on such transfer must necessarily be presumed to be aware of the prohibition imposed on the transfer of such granted land. Anybody who acquires such granted land in contravention of the prohibition relating to transfer of such granted land cannot be considered to be a bona fide purchaser for value; and every such transferee acquires to his knowledge only a voidable title to the granted land. The title acquired by such transfer is defeasible and is liable to be defeated by an appropriate action taken in this regard. If the Legislature under such circumstances seek to intervene in the interests of these weaker sections of the community and choose to substitute a speedier and cheaper method of recovery of these granted lands which were otherwise liable to be resumed through legal process, it cannot, in our opinion, be said that any vested rights of the transferees are affected. Transferees of granted lands with full knowledge of the legal position that the transfers made in their favour in contravention of the terms of grant or any law, rule or regulation governing such grant are liable to be defeated in law, cannot and do not have in law or equity, a genuine or real grievance that their defeasible title in such granted lands so transferred is, in fact, being defeated and they are being dispossessed of such lands from which they were in law liable to be dispossessed by process of law. The position will, however, be somewhat different where the transferees have acquired such granted lands not in violation of any term of the grant or any law regulating such grant as also where any transferee who may have acquired a defeasible title in such granted lands by the transfer thereof in contravention of the terms of the grant or any law regulating such grant has perfected his title by prescription of time or otherwise. We shall consider such cases later on. But where the transferee acquires only a defeasible title liable to be defeated in accordance with law, avoidance of such defeasible title which still remains liable to be defeated in accordance with law at the date of commencement of the Act and

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19 (1984) 3 SCC 301

recovery of possession of such granted land on the basis of the provisions contained in Section 4 and Section 5 of the Act cannot be said to be constitutionally invalid and such a provision cannot be termed as unconscionable, unjust and arbitrary. The first two contentions raised on behalf of the petitioners are, therefore, overruled.

**16.** The next contention that Sections 4 and 5 of the Act empowering the authority to take possession of the granted lands without payment of any compensation are violative of Article 19(1)(f) of the Constitution is without any merit. Article 19(1)(f) which was in force at the relevant time provided that all citizens shall have the right “to acquire, hold and dispose of property”.

**17.** Granted lands were intended for the benefit and enjoyment of the original grantees who happen to belong to the Scheduled Castes and Scheduled Tribes. At the time of the grant, a condition had been imposed for protecting the interests of the original grantees in the granted lands by restricting the transfer of the same. The condition regarding the prohibition on transfer of such granted lands for a specified period, was imposed by virtue of the specific term in the grant itself or by reason of any law, rule or regulation governing such grant. It was undoubtedly open to the grantor at the time of granting lands to the original grantees to stipulate such a condition, the condition being a term of the grant itself, and the condition was imposed in the interests of the grantee. Except on the basis of such a condition the grantor might not have made any such grant at all. The condition imposed against the transfer for a particular period of such granted lands which were granted essentially for the benefit of the grantees cannot be said to constitute any unreasonable restriction. The granted lands were not in the nature of properties acquired and held by the grantees in the sense of acquisition, or holding of property within the meaning of Article 19(1)(f) of the Constitution. It was a case of a grant by the owner of the land to the grantee for the possession and enjoyment of the granted lands by the grantees and the prohibition on transfer of such granted lands for the specified period was an essential term or condition on the basis of which the grant was made. It has to be pointed out that the prohibition on transfer was not for an indefinite period or perpetual. It was only for a particular period, the object being that the grantees should enjoy the granted lands themselves at least for the period during which the prohibition was to remain operative.

Experience had shown that persons belonging to the Scheduled Castes and Scheduled Tribes to whom the lands were granted were, because of their poverty, lack of education and general backwardness, exploited by various persons who could and would take advantage of the sad plight of these poor persons for depriving them of their lands. The imposition of the condition of prohibition on transfer for a particular period could not, therefore, be considered to constitute any unreasonable restriction on the right of the grantees to dispose of the granted lands. The imposition of such a condition on prohibition in the very nature of the grant was perfectly valid and legal.”

B) Another bench of three Judges of this Court considered the challenge to the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 in ***Lingappa Pochanna Appelwar vs. State of Maharashtra and another***<sup>20</sup>. While rejecting the challenge this Court observed:-

“18. The impugned Act is nothing but a remedial measure in keeping with the policy of the State for rendering social and economic justice to this weaker section of the society. The taking of their lands may have been done by way of transfer under the ordinary laws in various ways. The processes and forms of law were apparently followed. But the result has been devastating. As a result of such unequal transactions which were grossly unconscionable and unjust, the tribals lost their lands to non-tribals and were rendered landless. It is implicit in the nature of the legislation that the law regards such transactions as unconscionable and oppressive, and directs restoration of the property to the tribal transferor treating the transfer to be non est. It is axiomatic that a contract is liable to be set aside due to inequality of bargaining power, if someone without independent advice, enters into a contract on terms which are very unfair or transfers property for a consideration which is grossly inadequate when his bargaining power is grievously impaired by reason of his own need or circumstances, or by his own ignorance or

infirmity, coupled with undue influences or pressures brought to bear on him by or for the benefit of the other.”

There was a challenge on the ground of legislative competence as well, which aspect will be dealt with later.

16. A bench of three Judges of this Court placed reliance on the decisions in *Manchegowda*<sup>19</sup> and *Lingappa Pochanna Appelwar v. State of Maharashtra*<sup>20</sup> and found that even a voluntary surrender by a member of a Scheduled Tribe would come within the expression “transfer” in Section 71-A of the Chhotanagpur Tenancy Act, 1908. In *Pandey Oraon vs Ram Chander Sahu and Others*<sup>21</sup>, this Court held:-

“6. In Section 71-A in the absence of a definition of transfer and considering the situation in which exercise of jurisdiction is contemplated, it would not be proper to confine the meaning of transfer to transfer under the Transfer of Property Act or a situation where transfer has a statutory definition. What exactly is contemplated in the provision is where possession has passed from one to another and as a physical fact the member of the Scheduled Tribe who is entitled to hold possession has lost it and a non-member has come into possession would be covered by transfer and a situation of that type would be amenable to exercise of jurisdiction within the ambit of Section 71-A of the Act.

7. The provision is beneficial and the legislative intention is to extend protection to a class of citizens who are not in a position to keep their property to themselves in the absence of protection. Therefore, when the legislature is extending special protection to the named category, the court has to give a liberal construction to the protective mechanism which would work out the protection and enable the sphere of protection to be effective than limit by (sic) the scope. In fact, that exactly is what has been

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21 (1992) Supp 2 SCC 77

said by a three Judge bench of this Court in almost a similar situation in *Manchegowda*<sup>19</sup> and what was said by a three Judge bench followed by a later decision of this Court in *Lingappa*<sup>20</sup>. To the same effect is the observation of this Court in *Gamini Krishnayya v. Guraza Seshachalam*<sup>22</sup>. The House of Lords in *D (a minor) v. Bershire County Council*<sup>23</sup> said that broad and liberal construction should be given to give full effect to the legislative purpose. We would, therefore, in the facts and circumstances appearing in this case, hold that the authorities under the Act were justified in extending the provision of Section 71-A of the Chotanagpur Tenancy Act to the situation which emerged and the High Court took a wrong view in limiting the concept of transfer to the statutory definition in the T.P. Act and holding that Section 71-A was not applicable in a case of this type. On this basis, it must follow that the action of the statutory authority was justified and the conclusion of the Full Bench must not be sustained. We accordingly allow the appeal and reverse the decision of the High Court.”

17. In *Amrendra Pratap Singh vs. Tej Bahadur Prajapati and Others*<sup>24</sup>, a question arose whether a plea of adverse possession by a non-tribal with regard to land of a tribal situated in the scheduled area could be entertained. While dealing with the question, following observations were made by this Court:-

“14. .... Dictionaries can be taken as safe guides for finding out meanings of such words as are not defined in the statute. However, dictionaries are not the final words on interpretation. The words take colour from the context and the setting in which they have been used. It is permissible to assign a meaning or a sense, restricted or wider than the one given in dictionaries, depending on the scheme of the legislation wherein the word has been used. The court would place such construction on the meaning of the words as would enable the legislative intent being

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22 AIR 1965 SC 639

23 (1987) 1 All ER 20 (HL)

24 (2004) 10 SCC 65

effectuated. Where the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society the court would not hesitate in placing an extended meaning, even a stretched one. on the word, if in doing so the statute would succeed in attaining the object sought to be achieved. We may refer to Principles of Statutory Interpretation by Justice G.P. Singh (8<sup>th</sup> Edn., 2001) wherein at pp. 279-280 the learned author states-

" . . . .in selecting one out of the various meaning of a word, regard must always be had to the context as it is a fundamental rule that 'the meanings of words and expressions used in an Act must take their colour from the context in which they appear'. Therefore, 'when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers'. . .... Judge Learned Hand cautioned 'not to make a fortress out of the dictionary' but to pay more attention to 'the sympathetic and imaginative discovery' of the purpose or object of the statute as a guide to its meaning."

... ..

**19. State of M.P. v. Babu Lal<sup>25</sup>** is an interesting case showing how this Court dealt with an artistic device employed by a non-tribal to deprive a tribal of his land. The M.P. Land Revenue Code, 1959 imposed restrictions on the transfer of land by members of a Scheduled Tribe. Babu Lal, a non-tribal, filed a suit for declaration against Baddiya, a Bheel, notified Scheduled Tribe, for declaration that his name be recorded in the revenue record as *bhumiswami* over the land of Baddiya. Baddiya did not contest the suit and the parties filed a compromise conceding to the claim of Babu Lal. The State Government intervened and filed a petition in the High Court seeking a writ of certiorari, submitting that the entire proceedings in the suit were in contravention of sub-section (6) of Section 165 of the M.P. Land Revenue Code, 1959. The judgment of the civil court based on

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25 (1977) 2 SCC 435

compromise was sought to be quashed. The High Court dismissed the petition holding that the State could pursue the alternative remedy of filing a suit for declaration that the decree was null and void. In appeal by special leave, this Court set aside the judgment of the High Court and issued a writ of certiorari to quash the judgment and decree passed in the civil suit. It was held: (SCC p. 436, para 5)

*“5. One of the principles on which certiorari is issued is where the Court acts illegally and there is error on the face of record. If the Court usurps the jurisdiction, the record is corrected by certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari.”*

20. The law laid down by this Court is an authority for the proposition that the court shall step in and annul any such transaction as would have the effect of violating a provision of law, more so when it is a beneficial piece of social legislation. A simple declaratory decree passed by a civil court which had the effect of extinguishing the title of a member of a Scheduled Tribe and vesting the same in a non-member, was construed as “transfer” within the meaning of Section 165(6) of the M.P. Land Revenue Code, 1959. Thus, we are very clear in our minds that the expression “transfer of immovable property” as defined in clause (f) of para 2 of the 1956 Regulations has to be assigned a very wide meaning. Any transaction or dealing with immovable property which would have the effect of extinguishing title, possession or right to possess such property in a tribal and vesting the same in a non-tribal, would be included within the meaning of “transfer of immovable property”.

... ..

24. In **Madhavrao Waman Saundalgekar v. Raghunath Venkatesh Deshpande**<sup>26</sup> Their Lordships of the Privy Council dealt with a case of *watan* lands and observed that it is somewhat difficult to see how a stranger to a *watan* can acquire a title by adverse possession for twelve years of lands, the alienation of which is, in the interests of the State, prohibited. The Privy Council’s decision was noticed in **Karimullakhan v. Bhanupratapsingh**<sup>27</sup> and the

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26 AIR 1923 PC 205 : 50 IA 255 : ILR 47 Bom 798

27 AIR 1949 Nag 265 : ILR 1948 Nag 978

High Court noted non-availability of any direct decision on the point and resorted to borrowing from analogy. It was held that title by adverse possession on *inam* lands, *watan* lands and *debutter*, was incapable of acquisition.

25. Reverting back to the facts of the case at hand, we find that in the land, the ultimate ownership vests in the State on the principle of eminent domain. Tribals are conferred with a right to hold land, which right is inalienable in favour of non-tribals. It is clear that the law does not permit a right in immovable property vesting in a tribal to be transferred in favour of or acquired by a non-tribal, unless permitted by the previous sanction of a competent authority. The definition of “transfer of immovable property” has been coined in the widest-possible terms. The definition makes a reference to all known modes of transferring right, title and interest in immovable property and to make the definition exhaustive, conspicuously employs the expression “any other dealing with such property”, which would embrace within its sweep any other mode having an impact on right, title or interest of the holder, causing it to cease in one and vest or accrue in another. The use of the word “dealing” is suggestive of the legislative intent that not only a transfer as such but any dealing with such property (though such dealing may not, in law, amount to transfer), is sought to be included within the meaning of the expression. Such “dealing” may be a voluntary act on the part of the tribal or may amount to a “dealing” because of the default or inaction of the tribal as a result of his ignorance, poverty or backwardness, which shall be presumed to have existed when the property of the tribal is taken possession of or otherwise appropriated or sought to be appropriated by a non-tribal. In other words, a default or inaction on the part of a tribal which results in deprivation or deterioration of his rights over immovable property would amount to “dealing” by him with such property, and hence a transfer of immovable property. It is so because a tribal is considered by the legislature not to be capable of protecting his own immovable property. A provision has been made by para 3-A of the 1956 Regulations for evicting any unauthorised occupant, by way of trespass or otherwise, of any immovable property of a member of a Scheduled Tribe, the steps in regard to which may be taken by the tribal or by any person interested therein or even suo motu by the competent authority. The concept of *locus standi* loses its significance. The State is the custodian and trustee of the

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immovable property of tribals and is enjoined to see that the tribal remains in possession of such property. No period of limitation is prescribed by para 3-A. The prescription of the period of twelve years in Article 65 of the Limitation Act becomes irrelevant so far as the immovable property of a tribal is concerned. The tribal need not file a civil suit which will be governed by the law of limitation; it is enough if he or anyone on his behalf moves the State or the State itself moves into action to protect him and restores his property to him. To such an action neither Article 65 of the Limitation Act nor Section 27 thereof would be attracted.

26. In our opinion, the abovesaid shall be the position of law under the 1956 Regulations where “transfer of immovable property” has been defined and also under the 1950 Act where “transfer of holding” has not been defined. Acquisition of title in favour of a non-tribal by invoking the doctrine of adverse possession over the immovable property belonging to a tribal, is prohibited by law and cannot be countenanced by the court.”

The law laid down in *Amarendra Pratap Singh*<sup>24</sup> was followed by this Court in *Lincai Gamango and Others vs. Dayanidhi Jena and Others*<sup>28</sup>.

18. Some of the other cases, where the legislative intent of prohibiting transfer was taken note of and suitably extended, are as under:-

A) While dealing with the question whether prohibition against transfer in Section 42(b) of the Rajasthan Tenancy Act, 1955 would get attracted as against a juristic person such as a limited company, this Court

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28 (2004) 7 SCC 437

in *State of Rajasthan and Others vs. Aanjaney Organic Herbal Private*

*Limited*<sup>29</sup> held:-

“7. Heard the learned counsel on either side. The Act is a beneficial legislation which takes special care to protect the interest of the members of Scheduled Castes and Scheduled Tribes. Section 42 provides some general restrictions on sale, gift and bequest of the interest of Scheduled Castes and Scheduled Tribes, in the whole or part of their holding. The reason for such general restrictions is not only to safeguard the interest of the members of Scheduled Castes and Scheduled Tribes, but also to see that they are not exploited by the members of non-Scheduled Castes and Scheduled Tribes. The relevant provisions of Section 42(b) are extracted below for easy reference:

“42. *General restrictions on sale, gift & bequest.*—The sale, gift or bequest by a khatedar tenant of his interest in the whole or part of his holding shall be void, if—

(a) \* \* \*

(b) such sale, gift or bequest is by a member of a Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe;”

... ..

12. The expressions “Scheduled Castes” and “Scheduled Tribes”, we find in Section 42(b) of the Act have to be read along with the constitutional provisions and, if so read, the expression “who is not a member of the Scheduled Caste or Scheduled Tribe” would mean a person other than those who have been included in the public notification as per Articles 341 and 342 of the Constitution. The expression “person” used in Section 42(b) of the Act therefore can only be a natural person and not a juristic person, otherwise, the entire purpose of that section will be defeated. If the contention of the Company is accepted, it can purchase land from Scheduled

Caste/Scheduled Tribe and then sell it to a non-Scheduled Caste and Scheduled Tribe, a situation the legislature wanted to avoid. A thing which cannot be done directly cannot be done indirectly overreaching the statutory restriction.

13. We are, therefore, of the view that the reasoning of the High Court that the respondent being a juristic person, the sale effected by a member of Scheduled Caste to a juristic person, which does not have a caste, is not hit by Section 42 of the Act, is untenable and gives a wrong interpretation to the abovementioned provision.”

B) Similarly, in *Rajasthan Housing Board vs. New Pink City Nirman Sahkari Samiti Limited and Another*<sup>30</sup>, the effect of said Section 42(b) in the context where the land was acquired from members of Scheduled Castes and Scheduled Tribes by a Society, was considered by a bench of three Judges as under:-

“26. In the instant case, the transaction is ab initio void, that is, right from its inception and is not voidable at volition by virtue of the specific language used in Section 42 of the Rajasthan Tenancy Act. There is declaration that such transaction of sale of holding “shall be void”. As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of the Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of Section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy,

cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under Section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India.”

19. The prohibition against transfer of a land of a tribal to a non-tribal was extended in ***Shamjibhai Keshavjibhai Kansagra (Patel) & Ors. V. Principal Secretary, Revenue Dept. (Appeals) & Ors.***<sup>31</sup> by the Division Bench of the High Court of Gujarat to testamentary disposition in favour of a non-tribal. Section 73AA of the Bombay Land Revenue Code, 1879 (as applicable to State of Gujarat) restricts “transfer of occupancy” from tribals to non-tribals, without the previous sanction of the Collector. The Division Bench considered, *inter alia*, the judgment which is presently under appeal and observed as under:

“13. Chapter VI of the Code relates to 'grant, use and relinquishment of unalienated land'. Under Section 68 occupants' rights are conditional. An occupant is entitled to the use and occupation of his land for the period, if any, to which his tenure is limited or if the period is unlimited or a survey settlement has been extended to the land in perpetuity conditionally on the payment of the amounts due on account of the land revenue for the same. Under the proviso thereto, the Collector may grant permission to any person to occupy any unalienated unoccupied land for certain period. Under Section 73 occupancy is transferable and inheritable subject to Section 56 of the Act. Section 73A empowers the State Government to restrict the right of transfer. Under Section 73AA, there is restriction on transfer of occupancies of tribals to tribals or non-tribals notwithstanding anything contained in Section 73 except without previous sanction of the Collector as evident from

the said provision, relevant portion of which is quoted hereunder:

“73AA. Restriction on transfer of occupancies of tribals to tribals or non-tribals.-(1) Notwithstanding anything contained in Section 73, an occupancy of a person belonging to any of the Schedule Tribes hereafter in this section and in Section 73AB referred to as 'the tribal' shall not be transferred to any person without the previous sanction of the Collector.

(2) The previous sanction of the Collector under Sub-section (1) may be given in such circumstances and subject to such conditions as may be prescribed.”

**14.** From the aforesaid provision, it will be evident that there is a restriction on 'transfer of occupancy' of land of tribals by any mode, whether sale, gift, exchange, mortgage, lease or assignment or even under a will.

... ..

**19.** It is true that there is a difference between a transfer of property and a bequest under will. Transfer of Property Act, 1882, deals with transfers inter vivos, that is, by a living person who conveys the property to one or more living persons. The provisions of Transfer of Property Act are inapplicable to testamentary successions, which are governed by Indian Succession Act, 1925. Whereas a transfer is a conveyance of an existing property by one living person to another. On the other hand, a will is a legal expression of a wish and intention of a person in regard to his properties. When a person makes a will, he provides for testamentary succession. A will is revocable and comes into operation only after the death of the testator. Thus, on demise of the testator, the will cannot be treated to be a document of transfer of an existing property. By execution of a will, no right or title or interest is created in favour of anyone during the lifetime of the deceased. Right only flows after the death of testator.

... ..

**22.** The question arises as to whether any living person can execute a document in contravention of any law. The answer is always in negative. If law do not permit and

there is a prohibition to do certain thing, or there is a prohibition to do certain act except in certain manner, any document or agreement or anything in contravention to such provision of law, is illegal and invalid. During the lifetime of a living person, if the person is under restriction to execute certain document and thereby has no right to transfer his occupancy or no right to transfer his interest under one or other Act, he cannot execute any document, including a will showing his wish and intention in regard to such property in contravention of such law. Therefore, a tribal even cannot wish nor can show his intention to transfer his right of occupancy to a tribal or non-tribal, there being restriction Under Section 73AA of the Bombay Land Revenue Code. Similarly, a tenant-owner of agricultural land cannot wish nor can show his intention to transfer his right on agricultural land to a non-agriculturist by executing a will in contravention of Section 63 of the Bombay Tenancy Act, except in the manner prescribed thereunder. Any such wish and intention shown by testator during his lifetime, being in contravention of law, as noticed above, is invalid and can be ignored.

... ..

24. Therefore, even if it is accepted that the transfer under the Transfer of Property Act is a conveyance of an existing property by one living person to another, and will does not involve any transfer, but if a will is executed in contravention of law, it is always open to the authority to ignore such will and may refuse to mutate the name on the basis of such will.”

20. The common thread running through these decisions except that in ***Mahadeo***<sup>8</sup> is to construe the prohibition against transfer appearing in various statutes in keeping with the legislative intent. As laid down in ***Amarendra Pratap Singh***<sup>24</sup>, where the object of the legislation is to prevent a mischief and to confer protection on the weaker sections of the society, the court would not hesitate in placing an extended meaning, even a stretched one, on the word, if in doing so the statute would succeed in

attaining the object sought to be achieved. We must therefore examine the provisions of the Act to consider the legislative scheme.

A) In terms of Section 32, on the tillers' day every tenant satisfying the requirements spelt out in Section 32(1), and upto the ceiling limit as laid down in Section 32A, is deemed to have purchased from his landlord, free from all encumbrances, the land held by him as tenant.

B) The purchase price payable by the tenant for such deemed purchase is to be determined in terms of Section 32H, according to which, in case of a permanent tenant the purchase price has to be equal to six times the rent, while in case of other tenants, the purchase price would not be less than 20 times the assessment, and not more than 200 times the assessment.

C) In case the proceedings for eviction of the tenant are pending, the deemed date of purchase will stand postponed in terms of the first proviso to Section 32.

D) Even if the tenant had lost the possession before the tillers' day, in certain cases the possession can be restored to him and the benefit of statutory purchase can be enjoyed by him as stipulated in sub-sections (1A) and (1B) of Section 32. The benefit of statutory purchase is also made available to tenants in areas within

the limits of Municipal Boroughs, or within the limits of Municipal Districts as contemplated by Section 32(4) of the Act.

E) If the landlord is under a disability, as stated in Section 32F, the right to purchase the land can be exercised after cessation of disability. In such cases, the period within which the right to purchase could be exercised was initially a fixed period, but facility is given in Section 32F(1A) that even if the period had expired, the tenant is still deemed to have purchased the land.

F) Even a sub-tenant of a permanent tenant is entitled to the right of deemed purchase in terms of Section 32I and all the provisions concerning deemed purchase are to apply to such sub-tenant. The shares of purchase price are then to be allocated in terms of Section 32I (3).

G) If the tenancy is created after the tillers' day, in terms of Section 32O, as it stood before its deletion (vide Gujarat Act No.10 of 2009), a tenant could exercise the right of purchase within one year from the commencement of his tenancy.

H) If the purchase has become ineffective or there was failure on the part of the tenant to exercise the right of purchase, the Collector under Section 32P either *suo motu*, or on an application, can pass appropriate directions in terms of Section 32P(2). In

such cases, the land is to be disposed of to the persons in the priority list. At the top of the priority list is the tenant himself, in case he is willing to accept the offer of sale, followed by various entities and persons including agricultural labourers, land-less persons, small holders and persons belonging to Scheduled Castes and Scheduled Tribes.

I) If none of those persons in the priority list come forward to purchase the land, the land is to vest in the State Government, whereupon in terms of Section 32P(4) the purchase price can be determined, which will then be paid to the owner of the land.

J) Where the purchase in favour of persons from the priority list in terms of Section 32 is effected, the price will be determined in terms of Section 32P(5) read with other provisions, to be paid in annual instalments not exceeding six.

K) If any land was surrendered to the landlord before the specified date and the possession of the land was taken by the landlord, in terms of Section 32P(7), the landlord will be entitled to the use and occupation of the land so long as he cultivates the land personally. In such cases, by virtue of Section 32P(8) no land as described in Section 32P(7) can be transferred by sale,

mortgage, lease or assignment without the previous sanction of the Collector.

L) Even in cases where the land is at the disposal of the Collector under Section 32P, by virtue of Sections 32PP, 32PPP additional opportunities are granted to the tenant to avail of the benefit of statutory purchase. Even where the tenant had failed to deposit the purchase price, in cases covered by Section 32QQ the amount will be deposited on his behalf by the State Government.

M) Upon payment of the last instalment, a certificate of purchase is issued to the tenant or sub-tenant or such other person(s)/ entities in the priority list, as the case may be. The certificate of purchase is conclusive evidence of the ownership of such purchaser.

N) A right was conferred upon the tenant with respect to a dwelling house under Section 17 whereunder the tenant was given the first option of purchasing the site at a value, to be determined by the tribunal. However, by virtue of the newly incorporated Section 17B, every tenant is deemed to have purchased from his landlord the site on which the dwelling house occupied by such tenant is built and the land immediately appurtenant thereto and necessary for the enjoyment of dwelling house.

O) If the landlord intends to sell any land, he must apply to the tribunal in terms of Section 64 which may thereafter determine the reasonable price, and the offer has to be made in terms of Section 32P to the concerned persons.

P) Section 88B had granted exemption from the provisions pertaining to statutory purchase and determination of price in respect of lands held by a University or a trust for an educational purpose, a hospital, punjarapol or Gaushala and to lands donated by any person for the purposes of rendering any services to the community. However, in terms of Section 88E, such exemption ceased to operate from the specified date, and the tenants of such lands are also deemed to have purchased the land on the specified date, and all the relevant provisions regarding statutory purchase would then apply to such land.

Q) Section 32R obliges the purchaser of land to cultivate the land personally, and in case of failure, the land can be disposed of in terms of Section 84C of the Act.

21. The provisions considered in the preceding paragraph deal with matters pertaining to and arising out of proceedings related to statutory purchase. Sections 14 and 29 do not belong to that category. In terms of

Section 14, if the land “is assigned” in contravention of Section 27, the tenancy of the tenant is liable to be terminated. Section 27 states in clear terms that “assignment of any interest” in the land by a tenant shall not be valid. The decision of this Court in **Bhavarlal**<sup>16</sup> has stood the test of time which clearly states that a tenancy governed by a statute which prohibits assignment, cannot be willed away to a total stranger. The expression “assignment” in Sections 14 and 27, if understood in light of the decision of this Court in **Bhavarlal**<sup>16</sup> which has consistently been followed, must include testamentary disposition.

One thought may be expressed here though that by itself may not be determinative and that is, the meaning ascribed to the expression “assignment” in Section 43 cannot in any way be different. There is nothing in the provisions of the Act to suggest that the expression “assignment” must carry a different meaning in Sections 14 and 27 on the one hand, and Section 43 on the other.

22. The provisions analysed hereinabove intend to confer the advantage of statutory purchase upon a cultivating tenant, and see that “the tiller of the land” is conferred ownership with respect to the lands cultivated by him as well as the dwelling house occupied by him. Thus, a cultivating tenant, if his holding is otherwise not beyond the ceiling limit,

would be given the right to own the land cultivated by him. In cases where no purchase could be effected either on account of inability of the tenant to pay the purchase price, or on account of other situations, more than one attempt and opportunities are afforded to him. The statute goes to the extent of obliging the State Government to deposit the purchase price on his behalf. Even in cases where the tenant is unable to exercise the right of purchase because his holding would go beyond ceiling limit, the land would not revert to the landlord, but in terms of Section 32P, it must come to the persons or entities listed in the priority list. The priority list includes persons such as agricultural labourers and landless persons. The scheme is, therefore, to effectuate distribution of agricultural lands in such a way that the persons who are disadvantaged, would be conferred the ownership. After such purchase, the law obliges the purchaser to cultivate the land personally and not to transfer it. We may at this stage notice the observations in the majority opinion authored by K. Ramaswamy, J. under the caption “Agriculture – a means of livelihood succour for social justice and base for dignity of person”, in ***Samatha vs. State of A.P. and Others***<sup>32</sup> where this Court, *inter alia*, dealt with the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1989 including the prohibition against transfer.

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32 (1997) 8 SCC 191

“9. *Agriculture is the main part of the economy* and source of livelihood to the rural Indians and a source and succour for social status and a base for dignity of person. Land is a tangible product and sustaining asset to the agriculturists. In ***Waman Rao v. Union of India***<sup>33</sup> a Constitution Bench had observed that India being a predominantly agricultural society, there is a “strong linkage between the land and the person’s status in social system”. The strip of land on which they till and live assures them equal justice and “dignity of their person by providing to them a near decent means of livelihood”. Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity.

10. Agriculture is the only source of livelihood for Scheduled Tribes, apart from collection and sale of minor forest produce to supplement their income. Land is their most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equality, permanent place of abode and work and living. It is a security and source of economic empowerment. Therefore, the tribes too have great emotional attachment to their lands. The land on which they live and till, assures them equality of status and dignity of person and means to economic and social justice and is a potent weapon of economic empowerment in social democracy.”

23. If a tenant or any other person from the priority list is conferred ownership in respect of the agricultural land or when a landlord is allowed to retain the land which was surrendered by his tenant, each one of them is obliged to cultivate the land personally. In case any of them is unwilling, the land must be given to those who principally depend upon agricultural operations for their sustenance. If a person is a beneficiary of such statutory purchase and wishes to transfer his holding the law obliges that he must take prior sanction from the Collector. While granting such

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33 (1981) 2 SCC 362 : (1981) 2 SCR 1

sanction, the authorities may essentially check whether the transferee is an agriculturist or an agricultural labour who otherwise fulfils the requirements and would carry out the obligation of cultivating the land personally; and that his holding would not go beyond the ceiling limit. Since the ownership itself was conferred as a result of the legislative scheme as discussed hereinabove, these conditions are inherent in the very conferral of ownership and, therefore, specifically incorporated in Section 43 with direct reference to the provisions named therein.

24. A transfer *inter vivos* would normally be for consideration where the transferor may get value for the land but the legislation requires previous sanction of the concerned authority so that the transferee can step into the shoes of the transferor, and carry out all the obligations as a part of legislative scheme must be discharged. Thus, the screening whether a transferee is eligible or not, can be undertaken even before the actual transfer is effected. As against this, if a testamentary disposition which does not have the element of consideration is to be permitted, and if it is assumed that Sections 43 and 63 of the Act do not get attracted, the land can be bequeathed to a total stranger and a non-agriculturist who may not cultivate the land himself; which in turn may then lead to engagement of somebody as a tenant on the land. The legislative intent to do away with

absentee landlordism and to protect the cultivating tenants, and to establish direct relationship between the cultivator and the land would then be rendered otiose. The construction put on the expression “assignment” appearing in Section 43, therefore, has to be consistent with the legislative scheme. In the context of the entire scheme, the term “assignment” used in Section 43 of the Act must include testamentary disposition as well. By adopting such construction, in keeping with the law laid down by this Court, the statute would succeed in attaining the object sought to be achieved. On the other hand, if it is held that the testamentary disposition would not get covered by the provisions of Section 43, a gullible person can be made to execute a testament in favour of a person who may not fulfil the requirements and be eligible to be a transferee in accordance with law. This may not only render the natural heirs of the tenant without any support or sustenance, but may also have serious impact on agricultural operations.

25. In the circumstances the view taken by the Division Bench of the High Court in the present matter is absolutely correct and does not call for any interference. The decision is completely consistent with the law laid down by this Court in *Sangappa*<sup>4</sup> and *Jayamma*<sup>5</sup> and the other cases

referred to hereinabove and must be accepted to be the correct exposition of law.

26. This brings us to the last question which was raised by Mr. Srivatsa, learned counsel for some of the Appellants. In his submission, any prohibition in the State enactment inconsistent with the principles emanating from the Central legislation namely Indian Succession Act, 1925 must be held to be void. Though, no such contention was raised before the High Court, nor is it reflected in the pleadings, we proceed to consider the said submission.

27. In *Lingappa*<sup>20</sup>, the challenge was also raised on the ground of legislative competence and the observations of this Court in that behalf were:-

“25. The submission as regards lack of legislative competence of the State to enact the impugned Act which provides by Sections 3(1) and 4 for annulment of transfers by tribals to non-tribals effected during the period from April 1, 1957 to July 6, 1974 stems on a misconception of the nature and content of the legislative power of the State under Entry 18 in List II which reads:

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

The contention advanced fails to take note that the impugned Act strikes at transactions relating to agricultural lands effected between members of Scheduled

Tribes who admittedly belong to the weaker section of the society and persons not belonging to Scheduled Tribes. Experience in the past showed that members of the Scheduled Tribes had been exploited due to their ignorance and poverty by members belonging to the affluent and powerful sections of the society to obtain transfer of their lands by way of sale, gift, mortgage, exchange etc. for a nominal consideration or for no consideration at all rendering them practically landless. It was also realized that due to their multifarious duties the Sub-Divisional Officers and the Collectors had accorded sanction to such transfers without application of mind to the prevalent circumstances. It was further felt that the members of Scheduled Tribes had become victims of circumstances by reason of their lands being sold for realization of arrears of land revenue or otherwise under the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force. Much of the lands had been transferred by members of Scheduled Tribes under compulsion due to their indebtedness and their lands had passed into the hands of creditors lending money at an unusually high rate of interest and were thus in a position to dominate the will of the borrowers. The Committee appointed by the State Government pointed out in its report that the provisions of the Maharashtra Land Revenue Code, 1966 and the relevant tenancy laws had not been effective in giving protection to persons belonging to the Scheduled Tribes. It recommended inter alia that provision should be made for restoring to possession members of Scheduled Tribes the lands which had been duly transferred by them to other persons. There is always a presumption when there is a transfer between a tribal and a non-tribal that it is an unequal bargain. As regards the weak and the helpless, the law guards them with a special protective care. The Legislature therefore stepped in and reopened such transactions by directing that lands be restored to the tribal transferors free from all encumbrances on payment by them to the non-tribal transferees the amounts determined by the Collector under sub-section (4) of Section 3. The restoration of possession by Sections 3(1) and 4 does not involve any deprivation of the property in the sense that there is unsettling of title without consideration. It makes detailed provisions setting out the conditions subject to which a transfer by a tribal of his agricultural lands to a non-tribal may be nullified and possession restored. It also provides for the legal consequences that must ensue upon restoration of such possession like repayment of the consideration that passed

by such tribal transferor to the non-tribal transferee together with his liability to pay for the costs of improvements, if any, effected and the giving of an undertaking by the tribal transferor that he needs the lands for his personal cultivation. It further prescribes the mode of payment of the amount so determined. The object of the legislation is restitution of the property to the persons to whom the lands originally belonged, subject to the adjustment of equities between the parties.”

This Court then went on to observe that the Act under challenge, in true nature and character, was a law relating to transfers and alienations of agricultural lands by members of Scheduled Tribes in the State to persons not belonging to Scheduled Tribes and must necessarily fall within Entry 18 in List II. This Court observed:-

“26. ....The power to legislate cannot be denied to the State on the ground that the provisions of Sections 3(1) and 4 which provide for annulment of transfers by tribals incidentally trench upon the existing law, namely, the Transfer of Property Act, 1882 or a law made by Parliament viz. the Specific Relief Act, 1963. The power of the State Legislature to make a law with respect to transfer and alienation of agricultural land under Entry 18 in List II carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations. Such a law was clearly within the legislative competence of the State Legislature being relatable to Entry 18 in List II of the Seventh Schedule.”

28. The principles on the point were summed up by this Court in ***Welfare Association, A.R.P., Maharashtra and Another vs. Ranjit P. Gohil and Others***<sup>34</sup> as under:-

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34 (2003) 9 SCC 358

“25. What should be the approach of the Court dealing with a challenge to the constitutionality of a legislation has been succinctly set out in *Principles of Statutory Interpretation* by Justice G.P. Singh (8th Edn., 2001 at pp. 453-54 and 36). A statute is construed so as to make it effective and operative on the principle expressed in the maxim “*ut res magis valeat quam pereat*”. (It is better to validate a thing than to invalidate it.) There is a presumption that the legislature does not exceed its jurisdiction. The burden of establishing that the Act is not within the competence of the legislature, or that it has transgressed other constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. If a case of violation of a constitutional provision is made out then the State must justify that the law can still be protected under a saving provision. The courts strongly lean against reducing a statute to a futility. As far as possible, the courts shall act to make a legislation effective and operative.

26. In *Charanjit Lal Chowdhury v. Union of India*<sup>35</sup> the Constitution Bench held that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

... ..

28. The fountain source of legislative power exercised by Parliament or the State Legislatures is not Schedule 7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three lists in the Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power. The several entries mentioned in the three lists are fields of legislation. The Constitution-makers purposely used general and comprehensive words having a wide import without trying to particularize. Such construction should be placed on the entries in the lists as makes them effective; any construction which will result in any of the entries being rendered futile or otiose must be avoided. That interpretation has invariably been countenanced by the constitutional jurists, which gives the words used in every entry the widest-possible amplitude. Each general word employed in the entries has been held to carry an extended meaning so as to comprehend all ancillary and subsidiary matters within the meaning of the

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35 AIR 1951 SC 41 : 1950 SCR 869

entry so long as it can be fairly accommodated subject to an overall limitation that the courts cannot extend the field of an entry to such an extent as to result in inclusion of such matters as the framers of the Constitution never intended to be included within the scope of the entry or so as to transgress into the field of another entry placed in another list.

29. In every case where the legislative competence of a legislature in regard to a particular enactment is challenged with reference to the entries in the various lists, it is necessary to examine the pith and substance of the Act and to find out if the matter comes substantially within an item in the list. The express words employed in an entry would necessarily include incidental and ancillary matters so as to make the legislation effective. The scheme of the Act under scrutiny, its object and purpose, its true nature and character and the pith and substance of the legislation are to be focused at. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power (see the Constitution Bench decision in **Chaturbhai M. Patel v. Union of India**<sup>36</sup>).

30. In **Diamond Sugar Mills Ltd. v. State of U.P.**<sup>37</sup> the Constitution Bench defined the two bounds between which the stream of interpretative process dealing with entries in the Seventh Schedule must confine itself and flow. One bank is the salutary rule that the words conferring the right of the legislation should be interpreted liberally and the powers conferred should be given the widest amplitude; the other bank is guarding against extending the meaning of the words beyond their reasonable connotation in an anxiety to preserve the power to legislate. The working rule of the game is to resolve, as far as possible, in favour of the legislative body any difficulty or doubt in ascertaining the limits.

31. A note of caution was sounded by the Constitution Bench in **Synthetics & Chemicals Ltd. v. State of U.P.**<sup>38</sup>. The Constitution must not be construed in any narrow or pedantic sense and that construction which is most beneficial to the widest-possible amplitude of its power

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36 AIR 1960 SC 424 : (1960) 2 SCR 362

37 AIR 1961 SC 652 : (1961) 3 SCR 242

38 (1990) 1 SCC 109

must be adopted. An exclusionary clause in any of the entries should be strictly and, therefore, narrowly construed. No entry should be so read as to rob it of its entire content. A broad and liberal spirit should inspire those whose duty it is to interpret the Constitution. The Constitution is a living and organic thing and must adapt itself to the changing situations and pattern in which it has to be interpreted. To bring any particular enactment within the purview of any legislative power, it is the pith and substance of the legislation in question that has to be looked into by giving the widest amplitude to the language of the entries. The Constitution must be interpreted in the light of the experience gathered. It has to be flexible and dynamic so that it adapts itself to the changing conditions in a pragmatic way. The undisputed constitutional goals should be permitted to be achieved by placing an appropriate interpretation on the entries. The Constitution has the greatest claim to live. The claim ought not to be throttled. The directive principles of State policy can serve as a potent and useful guide for resolving the doubts and upholding the constitutional validity of any legislation, if doubted.

32. In *United Provinces v. Atiqa Begum*<sup>39</sup> Their Lordships upheld the principle that the question whether any impugned Act is within any of the three lists, or in none at all, is to be answered by considering the Act as a whole and deciding whether in pith and substance the Act is with respect to particular categories or not and held that in doing so the relevant factors are: (i) the design and the purport of the act, both as disclosed by its language, and (ii) the effect which it would have in its actual operation.

... ..

34. The Constitution Bench decision of this Court in *Indu Bhushan Bose v. Rama Sundari Debi*<sup>40</sup> needs a special mention. A rent control legislation enacted by the State Legislature was sought to be extended to the cantonment area. The High Court held that the same was not permissible inasmuch as so far as the cantonment area is concerned, legislation touching regulation of house accommodation is governed by Entry 3 of List I which reads, *inter alia*, “the regulation of house accommodation (including the control of rents) in such areas” i.e. cantonment areas. During the course of its judgment, the

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39 AIR 1941 FC 16 : 1940 FCR 110

40 (1969) 2 SCC 289 : (1970) 1 SCR 443

Constitution Bench held that the entry has to be liberally and widely interpreted. Regulation of houses in private occupation would fall within the entry. The word “*regulation*” includes power to direct or control all housing accommodation in cantonment areas, which in its turn, will include within it all aspects as to who is to make the construction, under what conditions the constructions can be altered, who is to occupy the accommodation and for how long, on what terms it is to be occupied, when and under what circumstances the occupant is to cease to occupy it, and the manner in which the accommodation is to be utilized. All these are ingredients of regulation of house accommodation in its wide sense. Parliament could legislate in respect of house accommodations in cantonment areas in all its aspects, including regulation of grant of leases, ejectment of lessees and ensuring that the accommodation is available on proper terms as to rents. The power of the State Legislature to legislate in respect of landlord and tenant of buildings is to be found in Entries 6, 7 and 13 of List III of the Seventh Schedule to the Constitution and not in Entry 18 of List II, and that power was circumscribed by the exclusive power of Parliament to legislate on the same subject under Entry 3 of List I.

35. Before the Constitution Bench in *Indu Bhushan Bose*<sup>40</sup> the English decisions in *Prout v. Hunter*<sup>41</sup>, *Property Holding Co. Ltd. v. Clark*<sup>42</sup> and *Curl v. Angelo*<sup>43</sup> were cited with approval. In *Prout v. Hunter*<sup>41</sup> the Rent Restrictions Act was held to have been passed by Parliament with the twofold object: (i) of preventing the rent from being raised above the pre-war standard, and (ii) of preventing tenants from being turned out of their houses even if the term for which they had originally taken them had expired. In *Property Holding Co. Ltd. v. Clark*<sup>42</sup> the objects of policy underlying rent restriction legislations were stated to be: (i) to protect the tenant from eviction from the house where he is living, except for defined reasons and on defined conditions; and (ii) to protect him from having to pay more than a fair rent. The latter object is achieved by the provisions for standard rent with (a) only permitted increases, (b) the provisions about furniture and attendance, and (c) the provisions about transfers of burdens and liabilities from the landlord to the tenant

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41 (1924) 2 KB 736 : 1924 AII ER Rep 53 : 132 LT 193 (CA)

42 (1948) 1 KB 630 : (1948) 1 AII ER 165 (CA)

43 (1948) 2 AII ER 189 (CA)

which would undermine or nullify the standard rent provisions. Such acts operate *in rem* upon the house and confer on the house itself the quality of ensuring to the tenant a status of irremovability. Tenants' security of tenure is one of the distinguishing characteristics conferred by the statute upon the house. In **Curl v. Angelo**<sup>43</sup> Lord Greene, M.R., dealing with the Rent Restrictions Act, held that the overriding purpose and intention of such Acts are to protect the person residing in a dwelling house from being turned out of his home. In the opinion of the Constitution Bench these cases are a pointer to the principle that rent control legislations can be effective and purposeful only if they also regulate eviction of tenants. Regulation of house accommodation, therefore, includes within its sweep the power to regulate eviction of tenants.

... ..

37. There is yet another angle of looking at the issue. In **Lingappa Pochanna Appelwar v. State of Maharashtra**<sup>20</sup> the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975 came up for consideration which Act related to transfers and alienation of agricultural lands by members of Scheduled Tribes in the State to persons not belonging to Scheduled Tribes. The legislation fell in Entry 18 in List II. Certain provisions of the Act trenched upon the existing law, namely, the Transfer of Property Act and the Specific Relief Act, both made by Parliament. It was held that the power of the State Legislature to make a law with respect to transfer and alienation of agricultural land carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations. The legislative competence was spelt out from Entry 18 in List II of Schedule 7. The Court observed: (SCC p. 493, para 16)

“16. The present legislation is a typical illustration of the concept of distributive justice, as modern jurists know it. Legislators, Judges and administrators are now familiar with the concept of distributive justice. Our Constitution permits and even directs the State to administer what may be termed ‘distributive justice’. The concept of distributive justice in the sphere of law-making connotes, *inter alia*, the removal of economic inequalities and rectifying

the injustice resulting from dealings or transactions between unequals in society. *Law should be used as an instrument of distributive justice to achieve a fair division of wealth among the members of society based upon the principle: 'From each according to his capacity, to each according to his needs.'* Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to many who have none by imposing ceiling on holdings, both agricultural and urban, or by direct regulation of contractual transactions by forbidding certain transactions and, perhaps, by requiring others. It also means that those who have been deprived of their properties by unconscionable bargains should be restored their property. *All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources among the members of society or there may be legislative control of unfair agreements."*

38. In ***Maneklal Chhotalal v. M.G. Makwana***<sup>44</sup> the constitutional validity of the Bombay Town Planning Act, 1954 as amended by Gujarat Act 52 of 1963 was put in issue. The legislation fell within Entry 18 of List II. The Court also held after elaborately referring to the various provisions contained in the Act that it was passed with a view to regulate the development of certain areas with the general object of framing proper schemes for the healthy and orderly development of the area in question and it is with a view to achieve this purpose that a very elaborate procedure and machinery have been prescribed under the Act. For this reason it was held that the competency of the State legislation aimed at equitable distribution of landed property resulting in partial deprivation of proprietary rights can also be rested under Entry 20 of List III which is "*economic and social planning*".

29. The validity of Sections 13 to 16 of the Maharashtra Control of Organised Crime Act, 1999 was struck down by the Bombay High Court as

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44 AIR 1967 SC 1373 : (1967) 3 SCR 65

being beyond the legislative competence of the State Legislature. While upholding the validity, this Court re-stated the principles in ***State of Maharashtra vs. Bharat Shanti Lal Shah and Others***<sup>45</sup> as under:-

“37. It is a well-established rule of interpretation that the entries in the List being fields of legislation must receive liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. Each general word should extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended within it.

38. In ***Navinchandra Mafatlal v. CIT***<sup>46</sup> this Court observed as under: (AIR p. 61, para 6)

“6. ... As pointed out by Gwyer, C.J. in ***United Provinces v. Atiqa Begum***<sup>39</sup>, FCR at p. 134 none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It is, therefore, clear—and it is acknowledged by Chief Justice Chagla—that in construing an entry in a List conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein ... The cardinal rule of interpretation, however, is that words should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.”

39. Similar were the observations of a five-Judge Bench of this Court in ***Godfrey Phillips India Ltd. v. State of U.P.***<sup>47</sup>, which are as follows: (SCC p. 541, paras 49-50)

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45 (2008) 13 SCC 5

46 AIR 1955 SC 58

47 (2005) 2 SCC 515

“49. ... Where there is the possibility of legislative overlap, courts have resolved the issue according to settled principles of construction of entries in the Legislative Lists.

50. The first of such settled principles is that legislative entries should be liberally interpreted, that none of the items in the List is to be read in a narrow or restricted sense and that each general word should be held to extend to ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it (*United Provinces v. Atiqa Begum*<sup>39</sup>, *Western India Theatres Ltd. v. Cantonment Board*<sup>48</sup>, SCR at p. 69 and *Elel Hotels & Investments Ltd. v. Union of India*<sup>49</sup>).”

40. It is also a cardinal rule of interpretation that there shall always be a presumption of constitutionality in favour of a statute and while construing such statute every legally permissible effort should be made to keep the statute within the competence of the State Legislature. In *Burrakur Coal Co. Ltd. v. Union of India*<sup>50</sup> this Court held the same in the following manner: (AIR p. 963, para 25)

“25. ... Where the validity of a law made by a competent legislature is challenged in a court of law that court is bound to presume in favour of its validity. Further while considering the validity of the law the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the Constitution the law can be sustained.”

41. In *CST v. Radhakrishnan*<sup>51</sup> this Court while dealing with the question of constitutional validity of a statute held that the presumption is always on the constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. It was held in that decision that for sustaining the constitutionality of an Act, a court may take into

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48 AIR 1959 SC 582 : 1959 Supp (2) SCR 63

49 (1989) 3 SCC 698

50 AIR 1961 SC 954 : (1962) 1 SCR 44

51 (1979) 2 SCC 249 : 1979 SCC (Tax) 108

consideration matters of common knowledge, reports, Preamble, history of the times, object of the legislation and all other facts which are relevant and that it must always be presumed that the legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations.

42. In this regard we may also refer to a three-Judge Bench decision of this Court titled ***Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd.***<sup>52</sup> In the said decision one of the issues that was raised was “whether the State Legislature is competent to enact legislation in respect of cooperative societies incidentally transacting business of banking, in the light of Entry 32, List II of the Seventh Schedule of the Constitution”. While deciding the said issue reference was made and reliance was placed on the following passage contained in the earlier decision of this Court in ***State of Bihar v. Bihar Distillery Ltd.***<sup>53</sup> about the nature of approach which the court should adopt while examining the constitutional validity of a provision (vide para 85 of ***United Yarn case***<sup>52</sup>): (***Bihar Distillery Ltd***<sup>53</sup>, SCC p. 466, para 17)

“17. ... The approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ignored out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an

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52 (2007) 6 SCC 236

53 (1997) 2 SCC 453

enactment or its scope and application. ... The court must recognise the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the legislature and the executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution recognises and gives effect to the concept of equality between the three wings of the State and the concept of 'checks and balances' inherent in such scheme."

43. One of the proven methods of examining the legislative competence of an enactment is by the application of doctrine of pith and substance. This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to the field of legislation allotted to the respective legislature under the constitutional scheme. The said doctrine has come to be established in India and is recognised in various pronouncements of this Court as also of the High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the court has to look to the substance of the State Act and on such analysis and examination, if it is found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on topics in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the topics in the Union List.

44. A five-Judge Bench of this Court in **A.S. Krishna v. State of Madras**<sup>54</sup> held as under: (AIR p. 301, para 8)

"8. ... But then, it must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there

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54 AIR 1957 SC 297 : 1957 SCR 399

should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in Sections 91 and 92 the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial Legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was *intra vires*, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be *intra vires*, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the *vires* of the law even as regards the area of encroachment.”

45. Again a five-Judge Bench of this Court while discussing the said doctrine in **Kartar Singh v. State of Punjab**<sup>55</sup> observed as under: (SCC p. 630, para 60)

“60. This doctrine of ‘pith and substance’ is applied when the legislative competence of a

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55 (1994) 3 SCC 569 : 1994 SCC (Cri) 899

legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden.”

46. Though it is true that the State Legislature would not have power to legislate upon any of the matters enumerated in the Union List but as per the doctrine of pith and substance there could not be any dispute with regard to the fact that if it could be shown that the area and subject of the legislation is also covered within the purview of the entry of the State List and the Concurrent List, in that event incidental encroachment to an entry in the Union List will not make a law invalid and such an incidental encroachment will not make the legislation ultra vires the Constitution.”

30. In *Girnar Traders (3) vs State of Maharashtra and Others*<sup>56</sup>, the Constitution Bench of this Court was called upon to consider, *inter alia*, the competence of the State Legislature to enact certain provisions of the Maharashtra Regional and Town Planning Act, 1966, stated to be in conflict with Section 11A of the Land Acquisition Act, 1894, a Central Legislation. While rejecting the submission, this Court observed: -

“183. We have already discussed in great detail that the State Act being a code in itself can take within its ambit provisions of the Central Act related to acquisition, while

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56 (2011) 3 SCC 1

excluding the provisions which offend and frustrate the object of the State Act. It will not be necessary to create, or read into the legislations, an imaginary conflict or repugnancy between the two legislations, particularly, when they can be enforced in their respective fields without conflict. Even if they are examined from the point of view that repugnancy is implied between Section 11-A of the Land Acquisition Act and Sections 126 and 127 of the MRTTP Act, then in our considered view, they would fall within the permissible limits of doctrine of “incidental encroachment” without rendering any part of the State law invalid.

**184.** Once the doctrine of pith and substance is applied to the facts of the present case, it is more than clear that in substance the State Act is aimed at planned development unlike the Central Act where the object is to acquire land and disburse compensation in accordance with law. Paramount purpose and object of the State Act being planned development and acquisition being incidental thereto, the question of repugnancy does not arise. The State, in terms of Entry 5 of List II of Schedule VII, is competent to enact such a law. It is a settled canon of law that courts normally would make every effort to save the legislation and resolve the conflict/repugnancy, if any, rather than invalidating the statute. Therefore, it will be the purposive approach to permit both the enactments to operate in their own fields by applying them harmoniously. Thus, in our view, the ground of repugnancy raised by the appellants, in the present appeals, merits rejection.

**185.** A self-contained code is an exception to the rule of referential legislation. The various legal concepts covering the relevant issues have been discussed by us in detail above. The schemes of the MRTTP Act and the Land Acquisition Act do not admit any conflict or repugnancy in their implementation. The slight overlapping would not take the colour of repugnancy. In such cases, the doctrine of pith and substance would squarely be applicable and rigours of Article 254(1) would not be attracted. Besides that, the reference is limited to specific provisions of the Land Acquisition Act, in the State Act. Unambiguous language of the provisions of the MRTTP Act and the legislative intent clearly mandates that it is a case of legislation by incorporation in contradistinction to legislation by reference.

**186.** Only those provisions of the Central Act which precisely apply to acquisition of land, determination and disbursement of compensation in accordance with law, can be read into the State Act. But with the specific exceptions that the provisions of the Central Act relating to default and consequences thereof, including lapsing of acquisition proceedings, cannot be read into the State Act. It is for the reason that neither have they been specifically incorporated into the State law nor can they be absorbed objectively into that statute. If such provisions (Section 11-A being one of such sections) are read as part of the State enactment, they are bound to produce undesirable results as they would destroy the very essence, object and purpose of the MRTP Act.

**187.** Even if fractional overlapping is accepted between the two statutes, then it will be saved by the doctrine of incidental encroachment, and it shall also be inconsequential as both the constituents have enacted the respective laws within their legislative competence and, moreover, both the statutes can eloquently coexist and operate with compatibility. It will be in consonance with the established canons of law to tilt the balance in favour of the legislation rather than invalidating the same, particularly, when the Central and State law can be enforced symbiotically to achieve the ultimate goal of planned development.”

31. If the provisions referred to in Section 43 of the Act and allied provisions are considered in light of the settled principles extracted earlier, it emerges that the primary concern of those provisions is to see that the legislative scheme of granting protection to persons from disadvantaged categories and conferring the right of purchase upon them, and thereby ensure direct relationship of a tiller with the land. The provisions, though lay down a norm which may not be fully consistent with the principles of Indian Succession Act, are principally designed to attain and sub-serve the

purpose of protecting the holdings in the hands of disadvantaged categories. The prohibition against transfers of holding without the previous sanction of the concerned authorities, is to be seen in that light as furthering the cause of legislation. Even if by the process of construction, the expression “assignment” is construed to include testamentary disposition, in keeping with the settled principles, the incidental encroachment cannot render the said provisions invalid. In pith and substance, the legislation and the concerned provisions are completely within the competence of the State Legislature and by placing the construction upon the expression “assignment” to include testamentary disposition, no transgression will ensue.

32. We, therefore, reject the submissions advanced by Mr. Srivatsa, learned Counsel.

33. In the premises, we accept the construction put by the Division Bench on the provisions that fell for consideration. The challenge to the view taken by the Division Bench must therefore be rejected. We must also observe that the decision of this Court in *Mahadeo*<sup>8</sup> which had failed to notice the earlier decisions in *Sangappa*<sup>4</sup> and *Jayamma*<sup>5</sup> and which is inconsistent with the decisions referred to hereinabove and what we have concluded, must be held to be incorrectly decided.

34. Accordingly, all these appeals are dismissed without any order as to costs.

.....J.  
[Uday Umesh Lalit]

.....J.  
[Indu Malhotra]

.....J.  
[A.S. Bopanna]

New Delhi;  
June 15, 2020