REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11774 OF 2018

Vasant Ganpat Padave (D)
By LRs & Ors. … Appellants

Versus

Anant Mahadev Sawant (D)
Through LRs & Ors. … Respondents

WITH

CIVIL APPEAL NOS.11775-11798 OF 2018

JUDGMENT

R.F. Nariman, J.

1. This case has been referred to a Three Judge Bench by a detailed judgment of a Division Bench of this Court reported as **Vasant Ganpat Padave v. Anant Mahadev Sawant** (2019) 2 SCC 788. The relevant facts that are necessary for determination of the controversy before us are set out in paragraphs 3 to 5 of the referral order as follows:

> "**3.** One Balwant Sawant was landlord of Survey No. 92/2, corresponding to new Survey No. 31 Hissa No. 2/10,

admeasuring about 0.01.3 H.R. at Village Padavewadi, Taluka & District Ratnagiri. Balwant Sawant died on 10-5-1950 leaving behind Smt Indirabai Balwant Sawant, his widow as his legal heir and representative. Smt Indirabai Balwant Sawant, widow became the owner of the said property. Her name was mutated in the revenue records. The Bombay Tenancy and Agricultural Lands Act, 1948 was amended by Act 15 of 1957. Section 32 as amended provided that on 1-4-1957 (Tillers' Day), every tenant shall be deemed to have purchased from the landlord free from all encumbrances the land held by him as a tenant. The predecessor of the appellants were tenants prior to 1956-1957 i.e. prior to 1-4-1957. The proceedings for declaring the appellants as purchaser under Section 32-G were initiated during the lifetime of the landlady, Smt Indirabai Balwant Sawant but the mutation Entry No. 1341 recorded that since landlady Indirabai Balwant Sawant is a widow, the proceedings as contemplated under Section 32-G are suspended. On 12-5-1975, Smt Indirabai Balwant Sawant executed last will and testament in favour of Anant Mahadev Sawant, Respondent 1. Smt Indirabai Balwant Sawant died on 7-5-1999. The name of Respondent 1 was mutated in the revenue records on 29-2-2000, with regard to which no notice was issued to the appellants, hence they were not aware of either the death of Indirabai or mutation in favour of Respondent 1.

4. In the year 2008, when the appellants came to know that the landlady has died and in her place, name of Respondent 1 has been mutated, they filed an application on 5-9-2008 before Respondent 2 — Additional Tahsildar & A.L.T. Ratnagiri, Maharashtra for fixing the purchase price under Section 32-G of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the 1948 Act”). Respondent 1 filed reply and opposed the said application. Respondent 2 allowed the application of the appellants by order dated 9-9-2011. Respondent 2 held that predecessors of the appellants were tenants prior to 1956-1957. Proceedings under Section 32-G for declaring the appellants as purchasers were initiated during the lifetime of the landlady and the same were suspended on 8-1-1964 during the lifetime of the landlady being a widow. Respondent 2 fixed the purchase price and directed the

appellants to deposit the same to enable issue of sale certificate in favour of the appellants. Aggrieved against the order dated 9-9-2011, Respondent 1 filed an appeal under Section 74 of the 1948 Act before Respondent 3, Sub-Divisional Officer, Ratnagiri, Maharashtra. Respondent 3 allowed the appeal vide its order dated 8-1-2013. Respondent 3 held that the appellant ought to have issued notice under Section 32-F within the time as prescribed and no notice having been issued within the time as prescribed, the appellants have lost right of purchase.

5. The appellants, aggrieved by the order of the Sub-Divisional Officer, filed a revision application before the Maharashtra Revenue Tribunal. There were other revisions filed by several other tenants who were aggrieved by the order of the Sub-Divisional Officer. The Maharashtra Revenue Tribunal by a common order dated 20-4-2013 dismissed the revisions and confirmed the order of the Sub-Divisional Officer. The Maharashtra Revenue Tribunal held that applicants were under legal obligation to give intimation expressing their desire to purchase within time stipulated under Section 32-F, which having not been given, no right of purchase is available to applicants. Aggrieved against the judgment of the Maharashtra Revenue Tribunal, writ petitions were filed by the appellants and several other similarly situated tenants. All the writ petitions were dismissed by common judgment dated 1-8-2014 [*Arjun Hari Kamble* v. *Anant Mahadev Sawant*, 2014 SCC OnLine Bom 4931] of the High Court, against which judgment, these appeals have been filed."

2. After setting out various provisions of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act"), as amended, and after referring to various judgments of this Court dealing, in particular, with Section 32-F of the Act, the Division Bench then stated:

“**30.** The ratio of the abovenoted judgments can be restated in the following words:

30.1. For a landlord suffering from a disability on the Tillers' Day i.e. 1-4-1957, the deemed purchase shall be suspended.

30.2. Landlord suffering from a disability has a right under Section 31(3) of the Act to give notice of termination of tenancy and file an application for possession.

30.3. Under Section 31(3), a minor, within one year from the date on which he attains majority; a successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist; and landlord within one year from the date on which his/her mental or physical disability ceases to exist, can also give an application for termination of tenancy and possession.

30.4. Under Section 32-F, tenant has right to purchase where landlord was minor or a widow or a person subject to mental or physical disability within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31.

30.5. The tenant, in event, does not exercise his right of purchase within the period as prescribed under Section 32-F(1)(*a*), his/her right to purchase shall be lost.

31. In the present case, it is undisputed fact that the landlady died on 7-5-1999 and within one year thereafter her successor-in-title did not exercise his right under Section 31(3) and thereafter within one year tenant has not given any intimation for purchase as contemplated by Section 32-F. The question to be answered is as to whether in the above facts, the Sub-Divisional Officer, Revenue Tribunal as well as the High Court were right in their conclusion that right of the tenant i.e. the appellant has lost, he having not issued any intimation for purchase of the land within one year from expiry of the period as contemplated under Section 31(3).

> **32.** The ratio of this Court as noticed above, especially in the judgments of this Court in *Appa Narsappa Magdum* [*Appa Narsappa Magdum* v. *Akubai Ganapati Nimbalkar*, (1999) 4 SCC 443] , *Sudam Ganpat Kutwal* [*Sudam Ganpat Kutwal* v. *Shevantabai Tukaram Gulumkar*, (2006) 7 SCC 200] and *Tukaram Maruti Chavan* [*Tukaram Maruti Chavan* v. *Maruti Narayan Chavan*, (2008) 9 SCC 358] , clearly supports the submission of the learned counsel for the respondents that the appellants having not exercised their right to purchase under Section 32-F(1) read with Section 32-F(1-A) within the time prescribed, the right of purchase of the tenant is lost. But there is one aspect of the matter which needs to be noted and has not been considered in the above judgments rendered by two-Judge Benches of this Court which we shall notice hereinafter."

The Division Bench then laid emphasis upon the Statement of Objects and Reasons to the 1969 Amendment of the 1948 Act and opined:

> "**37.** Amendment in Section 32-F(1)(*a*) added by Act 49 of 1969 expressly covered a case of landlord who was minor and has attained majority. Intimation by a minor landlord who has attained majority has been made a statutory obligation of the landlord so that tenant may exercise his right of purchase. The other two categories which are a widow or a person subject to mental or physical disability have not been expressly included in the amendment incorporated by Act 49 of 1969. The Statement of Objects and Reasons of the amendment given in 1969 as well as the express provisions of such amendment are for the purposes and object to enable the tenant to exercise right of purchase. When for one category of landlord i.e. minor it is mandated that he will intimate the tenant after he attained the majority so that tenant may be enabled to exercise the right of purchase, we are of the view that the same object has to be read in two other categories of landlord that is the successor-in-title of a widow and a landlord whose mental or physical disability has been

ceased. When the legislative object is to facilitate a tenant of a disabled landlord after cessation of disability to exercise right of purchase, the same benefit needs to be extended to other two categories of disabled landlord. We do not find any distinction in three categories of disabled landlords nor tenant of a landlord who was a minor can be put on any higher footing as compared to other landlords suffering from the above two disabilities. The question may be asked that amendment only expressly included the landlord who has attained majority to send intimation and the legislature consciously did not include the other two categories of landlord i.e. successor-in-interest of a widow and landlord of a mental and physical disability ceases to exist. The Objects and Reasons and express amendment made by Act 49 of 1969 were with a view to enable the tenant to exercise his right of purchase. The said legislative intendment is to be extended to all tenants of landlords who were suffering from disability on the Tillers' Day, whether successor-in-title of a widow or a landlord whose mental or physical disability ceases. All the three categories of tenants should be extended the same benefit and provision should be interpreted so that all tenants may be enabled to exercise their right of purchase effectively and in real sense.

38. As in the present case, the tenant's case is that he was unaware of the death of the landlady since for the last several years she was living in Bombay, the date of knowledge of death of the landlady cannot be said to be an irrelevant factor and unless the tenant is aware of the death of landlady or in case of landlord suffering from physical or mental disability, how he will exercise his right of purchase, is an important question. The 1948 Act and the amendments made by the 1969 Act were with intent to facilitate tenants to exercise their right. The amendments by Act 15 of 1957 was agrarian reform making tillers of the soil the owners of the land which was done to achieve the object of making all tillers of the soil as owners of the land. While interpreting the provisions of Section 32-F(1-A) as well as Section 31(3), the purpose and object of the 1948 Act, amendments made therein from time to time cannot be lost sight off.

39. When Section 32-F of the 1948 Act gives right to purchase to a tenant whose landlord was suffering from a disability on Tillers' Day, the exercise of right to purchase by such tenant has to be interpreted in a manner so as to make the exercise of right meaningful and effective. The abovesaid right cannot be defeated on the ground that it was not exercised within the period prescribed when the tenant is unaware as to when the period has begun.

40. The period prescribed for exercising the right to purchase is not a period of limitation but a reasonable period prescribed for the exercise of a right. The knowledge of cessation of disability of landlord by the tenant can only be commencement of the period prescribed.

41. When a statute gives a right to a tenant, statute needs to be interpreted in a manner so as to make the right workable, effective and meaningful. Such right cannot be defeated unless it is proved that tenant, even after knowing that disability has ceased, does not exercise his right within the period prescribed.

42. A two-Judge Bench judgment of this Court in *Appa Narsappa Magdum* [*Appa Narsappa Magdum* v. *Akubai Ganapati Nimbalkar*, (1999) 4 SCC 443] has expressly rejected the submission that tenant had no intimation of the death of landlady. Further judgments of this Court in *Sudam Ganpat Kutwal* [*Sudam Ganpat Kutwal* v. *Shevantabai Tukaram Gulumkar*, (2006) 7 SCC 200] and *Tukaram Maruti Chavan* [*Tukaram Maruti Chavan* v. *Maruti Narayan Chavan*, (2008) 9 SCC 358] also laid down the same ratio. The judgments in the above three cases were rendered by the two-Judge Benches in which cases the amendments made by Act 49 of 1969 were neither raised nor considered. We, thus, are of the view that the ratio laid down in the above cases needs to be reconsidered and explained in view of the object and purpose for which amendments were made in Section 32-F(1)(*a*) by Act 49 of 1969 as noticed above. We, thus, refer to the following questions for consideration of a larger Bench:

42.1. (1) Whether the object and purpose of amendment made in Section 32-F(1)(*a*) by Act 49 of 1969 is also relevant and applicable for exercise of right to purchase by a tenant of landlord who was widow or suffering from mental and physical disability on Tillers' Day?

42.2. (2) Whether the successor-in-interest of a widow is also obliged to send an intimation to the tenant of cessation of interest of the widow to enable the tenant to exercise his right of purchase.

42.3. (3) In the event the answer to above Question (1) or (2) is in the affirmative, whether decision of this Court in *Appa Narsappa Magdum* [*Appa Narsappa Magdum* v. *Akubai Ganapati Nimbalkar*, (1999) 4 SCC 443] , *Sudam Ganpat Kutwal* [*Sudam Ganpat Kutwal* v. *Shevantabai Tukaram Gulumkar*, (2006) 7 SCC 200] and *Tukaram Maruti Chavan* [*Tukaram Maruti Chavan* v. *Maruti Narayan Chavan*, (2008) 9 SCC 358] needs reconsideration and explanation.

43. Let the papers be placed before the Hon'ble the Chief Justice for constituting a larger Bench. In the meantime, we direct that the parties shall maintain the status quo."

3. We have heard Shri Aniruddha Joshi, learned Advocate for the Appellant and Shri Ajit S. Bhasme, learned Senior Advocate for the Respondent. Shri Joshi painstakingly took us through various provisions of the 1948 Act and was at pains to point out that it was a social welfare legislation enacted in furtherance of an Agrarian Reform Programme and was, therefore, covered by Article 31A of the Constitution of India. He laid great emphasis, in particular, upon the Amendment Acts of 1956 and 1969. By the first mentioned

Amendment Act, the statutory scheme was to divest an absentee landlord of his title and vest title directly in the cultivating tenant of agricultural land. The landlord was given only a limited right to ask for resumption of his land provided certain very stringent conditions were met, provided that such application was made on or before Tillers' Day i.e. 1st April, 1957. He argued that in the case of three categories of persons, namely, widows, minors and persons suffering from a disability, the right of the cultivating tenant to become owner was only postponed, and Section 32-F must be read narrowly so as not to interfere with the statutory right of purchase of the cultivating tenant. The 1969 Amendment made this clear, but was limited only to one of the three categories, namely, minors. According to him, therefore, to sub-serve the object sought to be achieved by the 1956 Amendment, it is clear that whether a cultivating tenant is a tenant under a minor on the one hand, or a widow or a person with a disability on the other, should make no difference to the fact that once the landlord's disability ceases, the tenant must first know that such disability has ceased before he can meaningfully exercise the statutory right given to him within the period prescribed. According to him, all the Division Bench Judgments of this Court, which have held that such knowledge is immaterial, are wrong in law and need to be overruled. He stated that a manifestly absurd result would be reached if we were to so

construe Section 32-F of the Act. According to him, the one year within which the cultivating tenant may exercise his statutory right of purchase is only after the period of disability has ceased, in that, for example, the widow has died and one year has elapsed from the date of her death within which she has not exercised any right to resume the land. If the Division Bench Judgments of this Court are correct, then since the period of one year from this date has also elapsed for the reason that the tenant had no knowledge of the widow's death and, therefore, was not able to apply in time, the result would be that such lands would then have to be distributed under Section 32-P, under which the first preference is given again to the absentee landlord who may then be given back this land to the extent and in the manner provided by the Act. This would turn the Object of the 1956 Amendment on its head, as an absentee landlord would, after not availing of any right to resumption, get back agricultural land from a cultivating tenant only because the cultivating tenant had no knowledge of a fact which was exclusively within the landlord's domain. According to him, therefore, applying the golden rule of interpretation, if the literal reading of Section 32-F were to lead to this absurd result, it is possible for us as interpreters of the law to add or subtract words which would remove this absurdity, which can only be the counting of the one year period, so far as the cultivating tenant is

concerned, from the date of knowledge of the death of the widow. He cited a number of judgments in support of this proposition. He also argued that in any event, if Section 32-F were to be construed literally, it would violate Article 14 as it would discriminate between cultivating tenants who are similarly situate, namely, tenants whose statutory right to become owners has been postponed on account of the landlord's disability. Whereas in the case of minors, the landlord is bound to intimate the tenant of the date on which such minor attains majority, so that he may exercise his statutory right in a meaningful way, there is no such obligation on a widow's successors to inform the tenant of the death of the widow, resulting in persons who are similarly situate being deprived of their statutory right for no fault of theirs, and contrary to the Object sought to be achieved by the 1956 Amendment.

4. On the other hand, Shri Ajit Bhasme, took us through various provisions of the Act and argued that the rent by a cultivating tenant needs to be paid at least annually by 31st May every year, which would enable the cultivating tenant to know that his landlady widow has died, as otherwise rent paid to a dead person cannot be credited to such person's account. He also made an emotional appeal to the Court that in all these cases, most landlords and tenants were

villagers who would definitely come to know of a widow's death by word of mouth, given Indian village society. On law, he argued that the Division Bench judgments were correct. Section 32-F contains a non-obstante clause, which must be given full effect. Further, the legislature is free to recognise degrees of harm and can, therefore, pick up one class among three classes, where the need is felt most, for protection. He referred to the Statement of Objects and Reasons of the Amendment Act of 1969 and argued that the legislature was cognizant of the fact that a large number of cases relating to minors had come to their knowledge, which is why the legislature alleviated the rigor of the Section in so far as minor landlords were concerned. He also argued that times and clime had changed, and the impoverished tenant of yesterday is the rich tenant of today, as opposed to the impoverished landlord who continues to remain so. According to him, the literal rule of statutory interpretation must apply, and it is not possible for us to add or subtract words in Section 32-F when the meaning is plain and unambiguous. He then dealt with some of the judgments that were cited by Shri Joshi and attempted to distinguish them.

5. Having heard the learned counsel for the parties, it is important to first advert to the Scheme of the 1948 Act. Section 2(6) refers to

persons who cultivate personally. Explanation - I is important and is set out hereinbelow:

> "2. **Definitions**.-In this Act, unless there is anything repugnant in the subject or context,
>
> xxx xxx xxx
>
> (6) "to cultivate personally"…
>
> Explanation I – A widow or a minor, or a person who is subject to physical or mental disability, or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants."

The deeming provision contained in Explanation I makes it clear that the four categories mentioned are deemed to cultivate land personally even if such land is cultivated through tenants.

6. Under Section 2(8), "land" is defined as referring to land which is used for agricultural purposes. Under Section 2(18), "tenant" includes three categories of persons – deemed tenants under Section 4, protected tenants and permanent tenants, as defined. Under Section 4 of the Act, a person who cultivates lawfully any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner or a member of his family or by a servant on wages payable in cash or kind or by a mortgagee in possession. Under Section 4-B tenancies cannot be terminated merely on the ground that the period fixed by an

agreement has expired. Section 31 is important and is set out hereinbelow:-

> "**31. Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose**.—
>
> (1) Notwithstanding anything contained in Sections 14 and 30 but subject to Sections 31-A to 31-D (both inclusive), a landlord (not being a landlord within the meaning of Chapter III-AA) may, after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord *bona fide* requires the land for any of the following purposes:-
>
> (*a*) for cultivating personally, or
> (*b*) for any non-agricultural purpose.
>
> (2) The notice required to be given under sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December, 1956. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession under Section 29 shall be made to the Mamlatdar on or before the 31st day of March, 1957.
>
> (3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability then such notice may be given and an application for possession under Section 29 may be made,—
>
> (*i*) by the minor within one year from the date on which he attains majority;
> (*ii*) by the successor-in-title of a 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 mental or physical disability ceases to exist; and
> (*iv*)***

> 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 large proportion."

7. Under Section 31-A, the right of a landlord to terminate a tenancy in order to cultivate the land personally himself is subjected to very stringent conditions. He can take possession of the land leased only to the extent of the ceiling area, provided the income that is obtained from such land is the principal source of income for his maintenance, and not otherwise. If more tenancies than one are held under the same landlord, then the landlord is competent to terminate only such tenancies which are shortest in point of duration. Under Section 31-B, a tenancy can only be terminated to the extent of half the area of the land leased to the tenant and no more. Section 32 is the Section by which agrarian reform, as mentioned hereinabove, is actually achieved. This Section is important and is set out hereinbelow:

"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 this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if, –

(a) Such tenant is a permanent tenant thereof and cultivates land personally;

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

(i) the landlord has not given notice of termination of his tenancy under Section 31; or

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

(iii) the landlord has not terminated this tenancy on any of the grounds specified in Section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March, 1957 under Section 29 for obtaining possession of the 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 Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final order of rejection is passed is hereinafter referred to as "the postponed date".

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

(1A) (a) Where a tenant, on account of his eviction from the land by the landlord, before the 1st day of 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 Maharashtra 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 on the appointed day and who on account of his being dispossessed before the 1st day of April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in Section 29, is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said Section 29, either *suo motu* or on the application of the tenant, hold an inquiry and direct that such land 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 Section 32-A to 32-R(both inclusive) shall, in so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased the land on the date on which the land is restored to him.

Provided that, the tenant shall be entitled to restoration of the land under this sub-section only if he undertakes to

cultivate the land 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.

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

Section 32-F is the Section that falls for construction in the present case and is set out in toto hereinbelow:

“32-F. **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 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31:

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.

(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 a 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.

(1-A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section:

Provided that, if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as

required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of that Act.

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

8. Section 32-G is also important, in that, it is only after notice to the tenant that the price of the land to be paid by the tenant to the erstwhile landlord is then determined. The relevant sub-sections of this Section states as follows:

"32G. **Tribunal to issue notice and determine price of land to be paid by tenants.** –

(1) As soon as may be after the tillers' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon, –

(a) all tenants who under Section 32 are deemed to have purchased the lands,

(b) all landlords of such lands, and

(c) all other persons interested therein,

to appear before it on the date specified in the notice. The Tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other person calling upon each of them to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant.

(3) Where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall

by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective:

Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

xxx xxx xxx

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be after such date determine the price of the land."

9. Under Section 32-M, a purchase by a tenant is ineffective on his failure to pay purchase price, as a result of which land shall then be at the disposal of the Tribunal to be disposed in the manner set out in Section 32-P. Under Section 32-O, in respect of any tenancy created after Tillers' Day, such tenant cultivating personally shall be entitled, within one year from the commencement of such tenancy, to purchase from the landlord the land held by him to the extent of the ceiling area permissible. This can only be done if the tenant gives an intimation in that behalf to the landlord and the Tribunal within the period prescribed. Section 32-P is also important and is set out hereinbelow:

"32P. **Power of Tribunal to resume and dispose of land not purchased by tenant.** –

(1) Where the purchase of any land by tenant under Section 32 becomes ineffective under Sections 32-G or 32-

M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under Sections 32F, 32O, 33C or 43-1D the Tribunal may *suo motu* or on an application made on this behalf land in case other than those in which the purchase has become ineffective by reason of Section 32-G or 32-M, 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 provide –

(a) that the former tenant be summarily evicted;

(b) that the land shall, subject to the provisions of Section 15, be surrendered to the former landlord;

(c) that if the entire land or any portion thereof cannot be surrendered in accordance with the provisions of Section 15, the entire land or such portion thereof, as the case may be, notwithstanding that it is a fragment, shall be disposed of by sale to any person in the following order of priority (hereinafter called “the priority list”):-

(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, landless in area than an economic holding and who is an artisans;
(vi) an agriculturist (other than a small holder) who holds either as owner or tenant as partly as owner and partly as tenant landless in area than an economic holding and who are artisan;
(vii) any 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 or person 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."

10. In **Sri Ram Ram Narain Medhi v. State of Bombay** AIR 1959 SC 459, the 1956 Amendment to the Tenancy and Agricultural Lands Act came up for consideration. One of the arguments made was that since the landlord's right was not extinguished statutorily on Tillers' Day, the said Act was not protected by Article 31A. This argument was negatived holding:

"**41.** These observations were confined to suspension of the right of management of the estate and not to a suspension of the title to the estate. Apart from the question whether the suspension of the title to the estate for a time, definite or indefinite would amount to a modification of a right in the estate within the meaning of Article 31-A(1)(*a*), the position as it obtains in this case is that there is no suspension of the title of the landlord at all. The title of the landlord to the land passes immediately to the tenant on the tiller's day and there is a completed purchase or sale thereof as between the landlord and the tenant. The tenant is no doubt given a *locus penitentiae* and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. It is only by

> such a declaration by the Tribunal that the purchase becomes ineffective. If no such declaration is made by the Tribunal the purchase would stand as statutorily effected on the tiller's day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the Tribunal. If the tenant commits default in the payment of such price either in lump or by instalments as determined by the Tribunal, Section 32-M declares the purchase to be ineffective but in that event the land shall then be at the disposal of the Collector to be disposed of by him in the manner provided therein. Here also the purchase continues to be effective as from the tiller's day until such default is committed and there is no question of a conditional purchase or sale taking place between the landlord and tenant. The title to the land which was vested originally in the landlord passes to the tenant on the tiller's day or the alternative period prescribed in that behalf. This title is defeasable only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal. The tenant gets a vested interest in the land defeasable only in either of those cases and it cannot, therefore, be said that the title of landlord to the land is suspended for any period definite or indefinite. If that is so, there is an extinguishment or in any event a modification of the landlord's right in the estate well within the meaning of those words as used in Article 31-A(1)(*a*)."

11. Importantly, the judgment also referred to the right of the tenant to purchase land where the landlord is a minor or a widow or a person subject to a mental or physical disability, and the Court stated that such right is postponed till one year after the cessation of disability.

12. This judgment was followed in **Amrit Bhikaji Kale v. Kashinath Janardhan Trade** (1983) 3 SCC 437, the Court holding:

"**6.** The Tenancy Act was comprehensively amended by Amending Act 15 of 1957. The amendment brought in a revolutionary measure of agrarian reforms making tiller of the soil the owner of the land. This was done to achieve the object of removing all intermediaries between tillers of the soil and the State. Section 32 provides that by mere operation of law, every tenant of agricultural land situated in the area to which the Act applies shall become by the operation of law, the owner thereof. He is declared to be a deemed purchaser without anything more on his part. A Constitution Bench of this court in *Sri Ram Ram Narain Medhi* v. *State of Bombay* [1959 Supp 1 SCR 489, 518-19 : AIR 1959 SC 459 : 1959 SCJ 679] held that:

> "The title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The title of the land which was vested originally in the landlord passes to the tenant on the tillers' day and this title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or commit default in payment of the price thereto as determined by the Tribunal."

Therefore, it is unquestionably established that on the tillers' day, the landlord's interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. That very moment landlord-tenant relationship as understood in common law or Transfer of Property Act comes to an end. The link and chain is broken. The absent non-cultivating landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil becomes the owner thereof. This is unquestionable. The landlord from the date of statutory sale is only entitled to receive the purchase price as determined by the Tribunal under Section 32-G. In other words, the landlord ceases to be landlord and the tenant becomes the owner of the land and comes in direct contact with the State. Without any act of transfer inter vivos the title of the landlord is extinguished

and is created simultaneously in the tenant making the tenant the deemed purchaser. It is an admitted position that on April 1, 1957 Tarachand was the landlord and Janardhan was the tenant. Tarachand landlord was under no disability as envisaged by Section 32-F. Therefore on April 1, 1957 Janardhan became deemed purchaser and Mr Lalit could not controvert this position.

7. If Janardhan became the deemed purchaser on tillers' day, the relationship of landlord and tenant between Tarachand and Janardhan came to be extinguished and no right could be claimed either by Tarachand or anyone claiming through him such as Ashoklal or the present purchasers on the footing that they are the owners of the land on or after April 1, 1957. This basic fact is incontrovertible.

8. It may be mentioned that Section 32-F has no application to the facts of this case. Section 32-F postponed the date of compulsory purchase by the tenant where the landlord is a minor or a widow or a person subject to mental or physical disability on the tillers' day. Section 32-F has an overriding effect over Section 32 as it opens with a non-obstante clause. The combined effect of Sections 32-F and 32 would show that where the landlord is under no disability as envisaged by Section 32-F the tenant of such landlord by operation of law would become the deemed purchaser but where the landlord is of a class or category as set out in Section 32-F such as a minor, a widow or a person subject to any mental or physical disability, the date of compulsory sale would be postponed as therein provided. Now, if Tarachand, the landlord was under no disability and he was alive on April 1, 1957 and he was the owner, his tenant Janardhan became the deemed purchaser. This conclusion, in our opinion, is unassailable."

13. It can thus be seen that the Scheme of the 1948 Act, and in particular, the 1956 Amendment, which introduced Tillers' Day, is that

an absentee landlord's rights in the land must give way to a cultivating tenant. Statutorily, on Tillers' Day, the landlord is divested of title and the tenant is vested with title to agricultural land which he cultivates by dint of his own effort. It is only in three cases that such purchase becomes ineffective – if the tenant fails to appear within the time prescribed after notice is given to him, or appears and declines purchase, or if the tenant fails to pay the entire purchase price. The widow, the minor and the person subject to a disability are placed on the same pedestal, and throughout their widowhood, minority or period of disability are deemed to cultivate the land personally through their tenants – the Explanation - I to Section 2(6) makes this clear. As we have seen from the case law extracted above, in the vast majority of cases, the landlord is divested of his title on a fixed date i.e. 1st April, 1957. It is only in exceptional cases where the landlord is a widow, minor or a person subjected to disability that this right of the tenant is postponed. What is important to note is that it is to the knowledge of both landlord and tenant that the tenant becomes the owner statutorily on a fixed date i.e. 1st April, 1957. Even otherwise, on postponed dates that are mentioned under Section 32, the tenant shall be deemed to have purchased the land on such postponed date under the first proviso to sub-section (1) of Section 32 when an application for possession made by the landlord under Section 29 is

finally rejected – a date that is to the knowledge of both landlord and tenant. Also, under the circumstances prescribed under Section 32(1A), again the tenant shall be deemed to have purchased the land on a date on which a final order is passed by the Tribunal in the circumstances mentioned in the said sub-section. Again, under sub-section (1B), in the circumstances mentioned in the aforesaid sub-section, land gets restored to the tenant upon which deemed purchase takes place. Statutorily, therefore, in all cases covered by Section 32, the landlord is divested of his title either on Tillers' Day or on a postponed date which is to the knowledge of the tenant, as the aforesaid date is on and from a final order of a Tribunal or a Tahsildar, as the case may be.

14. Section 32-G is a very important pointer to the fact that a tenant must be put on notice in order that the purchase price of land be determined by the Tribunal. This notice under Section 32-G(1) is in the form of a public notice in the prescribed form in each village. Apart from this, the Tribunal shall also issue a notice individually to each tenant calling upon him to appear before it on the date specified in the notice. The same is the case of a tenant who is deemed to have purchased the land on the postponed date under Section 32-G(5). Again, when we come to Section 32-O in respect of tenancies

created after Tillers' Day, a tenant cultivating personally shall be entitled, within one year from the commencement of such tenancy, to purchase such land within the ceiling area. What is important is that under sub-section (1A), this right is to be exercised by giving an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period of one year. This again is a date which is within the knowledge of the tenant as the period of one year is calculated from the commencement of his tenancy. It can thus be seen that in the case of postponed dates under Section 32 and the right of a tenant in respect of tenancies created after Tillers' Day, the tenant is to exercise his statutory right knowing fully well that if he does not do so within the prescribed period or does not pay purchase price, the purchase either becomes ineffective or the right cannot be exercised. In all these cases, what is important to notice is that the tenant knows of the time within which he must exercise his rights.

15. We now come to the Section which needs to be interpreted. Section 32-F was introduced by the Amendment Act of 1956 as part of a scheme of agrarian reform. The reason for the non-obstante clause, with which the Section begins, is that the cultivating tenant in all cases where the landlord is a minor, a widow or a person subjected to a disability, does not statutorily become owner of the

agricultural land cultivated personally by him on Tillers' Day. This is for the reason that under Section 2(6) Explanation- I, these three categories of landlords are deemed to cultivate personally through such tenant. The entitlement of terminating a tenancy under any one of these three categories is contained in Section 31(3). In any of these three cases, the moment the disability ceases i.e. that the land in question no longer belongs to a minor, as he has become major, or to a widow, as she has died or transferred her share with permission under Section 63, or to a person whose mental or physical disability ceases, one year is granted for such persons to apply for resumption of the land on the ground that such persons wish to personally cultivate the said land, pursuant to which an application for possession of land under Section 29 may then be made. In case this is done within the time prescribed, the tenant's right to purchase does not fructify. It is only when this is not done within the period of one year, as aforestated, that the postponed right of the tenant springs into being.

16. Prior to the Amendment Act of 1969, on a plain literal reading of Section 32-F(1)(a), it is true that a tenant had to exercise this right within a period of one year from the expiry of the one year spoken of in Section 31(3) of the Act. Literally speaking, therefore, even if the

tenant does not know when the minor became major or when the widow died or transferred her share, this right would cease on the expiry of one year.

17. Realising that this would cause immense hardship for want of knowledge of a special fact which is only within the landlord's ken, the legislature stepped in and amended Section 32-F. The Statement of Objects and Reasons for this Amendment Act is as follows:

> **"STATEMENT OF OBJECTS AND REASONS**
>
> It has come to the notice of the Government that a number of tenants in the Bombay area and the Vidarbha region of the State, failed to acquire ownership right in the lands held by them on account of their being dispossessed from the land otherwise than in the manner laid down in the relevant tenancy law. It is, therefore, expedient to amend the tenancy laws in force in these regions for safeguarding the interest of these dispossessed tenants.
>
> It is also noticed that a large number of tenants in the Bombay area of the State holding land from landlords who were minors have lost right to purchase land for their failure to give intimation within the period laid down in sub-section (1-A) of Section 32, It is, therefore, necessary to give these tenants a fresh opportunity to purchase land. Section 32-F is, therefore, being suitably amended for that purpose.
>
> As a result of the decision of the Supreme Court of India, in *Mussamia Imam Haider Bax Razvi* v. *Rabari Gobindbhai Ratnabhai* [*Mussamia Imam Haider Bax Razvi* v. *Rabari Gobindbhai Ratnabhai*, AIR 1969 SC 439] from the judgment of the High Court of Gujarat regarding jurisdiction of civil court in certain matters, it has also become necessary to suitably amend certain sections of the tenancy laws in force in the three regions of the State.

The Bill seeks to achieve the above objects."

18. Paragraph 2 of the Statement of Objects and Reasons indicates that an amnesty scheme is necessary, in that a large number of tenants in the Bombay area who are minors have lost the right to purchase as they have failed to give the necessary intimation within the period laid down by statute. Under this amnesty scheme, if a tenant held land from a landlord who was a minor and who had obtained majority before the commencement of the 1969 Amendment and no intimation had been given, two years extra was given from the date of commencement of that Act in which such intimation may be given. This statutory object, reflected in paragraph 2 of the Statement of Objects and Reasons, is carried out by the proviso to sub-section (1A) inserted by the 1969 Amendment Act into Section 32-F.

19. Simultaneously, the same Amendment Act inserted into sub-section (1)(a), the following:

> "and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31:"

The addition of these words into Section 32-F(1)(a) would show that the legislature, in keeping with the object sought to be achieved

statutorily divesting the landlord of his title and handing over the land to the cultivating tenant, cannot possibly be achieved unless a special fact within the knowledge of the landlord alone is first intimated to the tenant, so that he may then, with knowledge that the minor landlord has now turned major, meaningfully exercise his right of purchase under the Act.

20. It seems to us that the vast majority of cases which came to the notice of the legislature were cases of landlords who were minor at the time of the 1956 Amendment Act and who turned major only thereafter. The amnesty scheme contained in sub-section (1A), was, therefore, limited only to such cases. Unfortunately, the legislature, when it inserted words into sub-section (1)(a) of Section 32-F, appears to have forgotten that these words will govern the right of tenants which has been postponed on account of a landlord's disability. What appears to have been missed is the fact that, apart from minors, there are two other categories mentioned in Section 32-F(1)(a), all of whom would stand on the same footing insofar as the tenant is concerned. It would be wholly anomalous for a tenant to be told that if his landlord happened to be a minor who has attained majority later, he must first be intimated of this fact before he can meaningfully exercise his right of purchase; whereas to a tenant who

is similarly situate when the landlord is a widow, in which case no such intimation need be made, the tenant would suffer for no fault of his as the tenant would have no knowledge of the date of death of the widow (which is a special fact known only to her family), such tenant's right of purchase being extinguished by time. It seems that the draftsman of the 1969 Amendment was overwhelmed with the amnesty scheme laid down in Section 32-F (1A), which then spilled over to the amendment made in Section 32-F(1)(a), thereby unintentionally leaving out the two other categories of landlords, where the same intimation needs to be made to the tenant, as the death of the widow and/or the ceasing of disability are special facts known only to the landlord and his family, just as in the case of a minor turning major.

21. It has rightly been argued by learned counsel appearing on behalf of the Appellant that an absurd situation would be created by a literal reading of Section 32-F(1)(a). The landlord being a widow is protected until her death. After her death, one year is given to her successors in interest to exercise the right of resumption. When this does not take place one year is granted from the expiry of this first one year to the tenant to exercise his statutory right. This cannot be done because the tenant does not know of the death of the widow.

As a result, this very land which was not required by the landlord's successors in interest for personal cultivation, goes back to the landlord under Section 32-P in cases in which the landlord either has no land within the ceiling limit or some land which does not exhaust the ceiling limit. This anomaly indeed turns the entire scheme of agrarian reform on its head. We have thus to see whether the language of Section 32-F can be added to or subtracted from, in order that the absurdity aforementioned and the discrimination between persons who are similarly situate be obviated.

The Golden Rule of Interpretation

22. In **Grey v. Pearson** (1857) LR 6 HL Cas 61**,** what is referred to as the Golden rule of literal interpretation was stated as follows:

> "… I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, *unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther*. This is laid down by Mr Justice Burton, in a very excellent opinion, which is to be found in *Warburton* v. *Loveland* [*Warburton* v. *Loveland*, (1831) 2 Dow & Cl 480 : 6 ER 806] (see ante, p. 76. n.)" (Emphasis supplied)

23. In an early Privy Council judgment in **Salmon v. Duncombe** (1886) 11 AC 627, Ordinance No. 1 of 1856 as it applied to Natal was up for construction. In order to make sense of the provision, the Privy Council found it necessary to cross out certain words of the Ordinance. This they did by stating:

> "It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity or the absolute intractability of the language used. And they have set themselves to consider, first, whether any substantial doubt can be suggested as to the main object of the legislature; and, secondly, whether the last nine words of sect. 1 are so cogent and so limit the rest of the statute as to nullify its effect either entirely or in a very important particular.
>
> As to the broad intention of those who framed the Ordinance, their Lordships cannot find that anybody has ever intimated a doubt, nor do they find it possible to entertain one, that it was intended to give to all the Queen's subjects, resident or settled in Natal, the option of disposing by will according to English law, of property both real and personal which otherwise would devolve according to Natal law. The title may be looked at for aid in finding out the object. The preamble is of great importance in finding out the object. They have been quoted above, and nobody who reads to the end of the preamble and there stops, can doubt that the object is to provide a substantial measure substituting English law for Natal law in the cases mentioned.
>
> That object is carried into effect by sect. 1, on which the subsequent sections turn. Now suppose that sect. 1 ended with the words "in this district" or with the words "intents and purposes." Though it would then be very inartificially

drawn, it would not be difficult to construe it so as to give effect to the before declared object. The conditional words “could or might exercise” would require the implication of an unexpressed condition; otherwise the sentence would result in a nullity. But the implication would be by no means a difficult one. By implying after the words “customs of England” the addition “over property subject to those laws and customs,” the enactment would become sensible and harmonious.

The difficulty is, and their Lordships quite agree that it is a great difficulty, that a condition which is apparently and at first sight the correlative condition of the conditional words “could or might exercise” is expressed by the last nine words of the section. And the question is whether that expression excludes all other implications. If such a construction left a substantial operative effect to the enactment, it might be necessary to answer that question in the affirmative; but, as it destroys the expressed objects altogether unless the word “resident” be construed to mean “domiciled,” and in that case destroys the expressed objects so far as regards real property, their Lordships answer it in the negative. It is true that they cannot find a sensible meaning for the nine words in question. Very likely the draftsman, whose want of skill is shown by other expressions in the Ordinance, attributed to residence a legal effect which it does not possess. But he does not make the legislature say that the powers conferred are not to be any greater powers than would be conferred by a residence in England. He makes it in the rest of the section use terms which, with the easy implication that is necessary to give them meaning and to harmonize with the declared objects, confer the power of escaping from Natal law and coming under English law; and he then adds words which may add nothing to what has gone before, but which ought not without necessity to be construed so as to destroy all that has gone before. A man exercising the powers conferred does not in any way violate or contravene the nine words in question. He does exercise these powers as if he resided in England, because it is perfectly immaterial for their exercise whether he is supposed to reside in England or not, and because wherever he is supposed to reside he exercises them in

> the same way. It is very unsatisfactory to be compelled to construe a statute in this way, but it is much more unsatisfactory to deprive it altogether of meaning. Their Lordships chose the lesser of two difficulties."

24. In an early judgment of our Court, **Tirath Singh v. Bachittar Singh & Ors** (1955) 2 SCR 457, this Court had to construe the proviso to Section 99(1)(a)(ii) of the Representation of People Act, 1951. The Court held:

> "…But it is a rule of interpretation well-established that, "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence". (*Maxwell's Interpretation of Statutes*, 10th Edn., p. 229). Reading the proviso along with clause (*b*) thereto, and construing it in its setting in the section, we are of opinion that notwithstanding the wideness of the language used, the proviso contemplates notice only to persons who are not parties to the petition."

The Court, therefore, restricted the word "person" appearing in the said proviso to mean only persons who are not parties to the election petition. This was done, given the fact that the object of the proviso was to give notice to persons who had hitherto not been given notice of the election petition. Obviously, the parties to the election petition were persons who knew of the existence of such petition.

25. In **Ramaswamy Nadar v. State of Madras** (1958) SCR 739, this Court found it necessary to supply words which were not found in Section 423(1)(a) of the Criminal Procedure Code. This the Court did as follows:

> "…But this argument is wholly ineffective because in either view of the matter the court has to supply some words in answer to the question "find him guilty of what?" According to the appellant, those additional words should be "of such offence as has been charged and of which he had been acquitted", and according to the other view, "of the offence disclosed". If, in construing the section, the court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the latter construction which is more in consonance with reason and justice."

26. In **State of Madhya Pradesh v. Azad Bharat Finance Co. & Anr.** (1966) Supp. SCR 473, Section 11 of the Opium (Madhya Bharat Amendment) Act, 1955 was construed as being permissive and not obligatory as follows:

> "...It is well recognised that if a statute leads to absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which *modifies* the meaning of the words, and even the structure of the sentence, (vide *Tirath Singh* v. *Bachittar Singh* [(1955) 2 SCR 457 at 464]).
>
> Secondly, it is a penal statute and it should, if possible, be construed in such a way that a person who has not committed or abetted any offence should not be visited with a penalty.
>
> Thirdly, if the meaning suggested by Mr Shroff is given, Section 11(*d*) of the Madhya Bharat Act may have to be struck down as imposing unreasonable restrictions under

Article 19 of the Constitution. Bearing all these considerations in mind, we consider that Section 11 of the Madhya Bharat Act is not obligatory and it is for the court to consider in each case whether the vehicle in which the contraband opium is found or is being transported should be confiscated or not, having regard to all the circumstances of the case."

27. In **Budhan Singh v. Nabi Bux** (1970) 2 SCR 10, this Court held that the expression "held" occurring in Section 9 of the U.P. Zamindari Abolition and Reforms Act, 1950 must mean "lawfully held" thereby adding the word "lawfully". The Court held: -

"…Before considering the meaning of the word "held" in Section 9, it is necessary to mention that it is proper to assume that the lawmakers who are the representatives of the people enact laws which the society considers as honest, fair and equitable.

The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on Statutory Constructions the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law-makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent."

28. In **Commissioner of Income Tax, Central Calcutta v. National Taj Traders** (1980) 1 SCC 370, this Court construed

Section 33-B of the Indian Income Tax Act, 1922 in order to avoid a manifestly absurd result as follows:

> "…According to the construction contended for by the assessee and which found favour with the High Court the answer was in the affirmative because sub-section (2)(*b*), on its literal construction, was absolute. In our view such literal construction would lead to a manifestly absurd result, because in a given case, like the present one, where the Appellate Authority (Tribunal) has found (*a*) the Income Tax Officer's order to be clearly erroneous as being prejudicial to the interests of the Revenue, and (*b*) the Commissioner's order unsustainable as being in violation of principles of natural justice, how should the Appellate Authority exercise its appellate powers? Obviously it could not withhold its hands and refuse to interfere with Commissioner's order altogether, for, that would amount to perpetuating the Commissioner's erroneous order, nor could it merely cancel or set aside the Commissioner's wrong order without doing anything about the Income Tax Officer's order, for, that would result in perpetuating the Income Tax Officer's order which had been found to be manifestly erroneous as being prejudicial to the revenue. But such result would flow from the view taken by the High Court which has held that the Tribunal acted properly in vacating the Commissioner's order but did not act properly in directing him to dispose of the proceedings afresh after giving opportunity to the assessee. Such manifestly absurd result could never have been intended by the Legislature.
>
> xxx xxx xxx
>
> A literal construction placed on sub-section (2)(*b*) would lead to such manifestly absurd and anomalous results, which, we do not think, were intended by the Legislature. These considerations compel us to construe the words of sub-section (2)(*b*) as being applicable to suo motu orders of the Commissioner in revision and not to orders made by him pursuant to a direction or order passed by the Appellate Tribunal under sub-section (4) or by any other higher authority. Such construction will be in consonance with the principle that all parts of the section should be

construed together and every clause thereof should be construed with reference to the context and other clauses thereof so that the construction put on that particular provision makes a consistent enactment of the whole statute."

29. In **K.P. Verghese v. ITO** (1981) 4 SCC 173, this Court dealt with the correct interpretation of Section 52 of the Income Tax Act, 1961. Read literally, the moment there is transfer of a capital asset by an amount less than the fair market value, the fair market value is to be taken instead of the stated consideration. This Court read into Section 52 the fact that it would have no application in case of a bona fide transaction where the full value of the consideration for the transfer is correctly declared by the assessee. The Court held:

> "**5.** …The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he laid:
>
> > "... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to

> remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."

We must not adopt a strictly literal interpretation of Section 52 sub-section (2) but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which Section 52 sub-section (2) appears, because, as pointed out by Judge Learned Hand in most felicitous language:

> "... the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create."

Keeping these observations in mind we may now approach the construction of Section 52 sub-section (2).

6. The primary objection against the literal construction of Section 52 sub-section (2) is that it leads to manifestly unreasonable and absurd consequences. It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision but they can certainly help to fix its meaning. It is a well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. Take, for example, a case where *A* agrees to sell his property to *B* for a certain price and before the sale is completed pursuant to the agreement — and it is quite well-known that sometimes the completion of the sale may take place even a couple of years after the date of the agreement — the market price shoots up with the result that the market price prevailing on the date of the sale exceeds the agreed price at which the

property is sold by more than 15 per cent of such agreed price. This is not at all an uncommon case in an economy of rising prices and in fact we would find in a large number of cases where the sale is completed more than a year or two after the date of the agreement that the market price prevailing on the date of the sale is very much more than the price at which the property is sold under the agreement. Can it be contended with any degree of fairness and justice that in such cases, where there is clearly no under-statement of consideration in respect of the transfer and the transaction is perfectly honest and bona fide and, in fact, in fulfilment of a contractual obligation, the assessee who has sold the property should be liable to pay tax on capital gains which have not accrued or arisen to him. It would indeed be most harsh and inequitable to tax the assessee on income which has neither arisen to him nor is received by him, merely because he has carried out the contractual obligation undertaken by him. It is difficult to conceive of any rational reason why the legislature should have thought it fit to impose liability to tax on an assessee who is bound by law to carry out his contractual obligation to sell the property at the agreed price and honestly carries out such contractual obligation. It would indeed be strange if obedience to the law should attract the levy of tax on income which has neither arisen to the assessee nor has been received by him. If we may take another illustration, let us consider a case where *A* sells his property to *B* with a stipulation that after some time which may be a couple of years or more, he shall re-sell the property to *A* for the same price. Could it be contended in such a case that when *B* transfers the property to *A* for the same price at which he originally purchased it, he should be liable to pay tax on the basis as if he has received the market value of the property as on the date of re-sale, if, in the meanwhile, the market price has shot up and exceeds the agreed price by more than 15 per cent? Many other similar situations can be contemplated where it would be absurd and unreasonable to apply Section 52 sub-section (2) according to its strict literal construction. We must therefore eschew literalness in the interpretation of Section 52 sub-section (2) and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible,

unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction (vide *Luke* v. *Inland Revenue Commissioner* [(1963) AC 557]). The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. We think that, having regard to this well-recognised rule of interpretation, a fair and reasonable construction of Section 52 sub-section (2) would be to read into it a condition that it would apply only where the consideration for the transfer is understated or in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in case of a bona fide transaction where the full value of the consideration for the transfer is correctly declared by the assessee. There are several important considerations which incline us to accept this construction of Section 52 sub-section (2)."

30. In **CIT v. J.H. Gotla** (1985) 4 SCC 343, the true construction of Section 24(2) of the Income Tax Act, 1922 was before the Court. Following **Verghese's** case (supra), the Court held:

> **"44.** Our attention was also drawn to the decision in the case of *Manickam and Co.* v. *State of T.N.* [(1977) 1 SCC 199 : 1977 SCC (Tax) 165 : (1977) 39 STC 12, 18] as well as *Craies on Statute Law* (6th Edn), p. 147.
>
> **45.** In the case of *K.P. Varghese* v. *IT0* [(1981) 4 SCC 173 : 1981 SCC (Tax) 293 : (1981) 131 ITR 597] this Court emphasised that a statutory provision must be so

construed, if possible, that absurdity and mischief may be avoided.

46. Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.

47. We have noted the object of Section 16(3) of the Act which has to be read in conjunction with Section 24(2) in this case for the present purpose. If the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counteract the effect of the transfer of assets so far as computation of income of the assessee is concerned then bearing that purpose in mind, we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction.

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> **48.** In view of the aforesaid and in view of the attitude of the law-makers in dealing with this problem as evidenced by the amendment and in the circular originally issued prior thereto and bearing in mind that under the scheme of the Act where the wife or minor child carries on a running business, the right to carry forward the loss in the running business would be available to the wife or minor child if they themselves were assessed but the right would be completely lost if the individual in whose total income the loss is to be included is not permitted to carry forward the loss under Section 24(2); since that would be the result of the strict literal construction it is apparent that that could not have been the intent of the Parliament. Therefore, where Section 16(3) of the Act operates, the profits or loss from a business of the wife or minor child included in the total income of the assessee should be treated as the profit or loss from a "business carried on by him" for the purpose of carrying forward and set-off of such loss under Section 24(2) of the Act."

In another tax case, this Court, in **State of Tamil Nadu v. Kodaikanal Motor Union (P) Ltd.** (1986) 3 SCC 91, while construing Section 10-A of the Central Sales Tax Act, 1956, held:

> "**17.** The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To

make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eve "some" violence to language is permissible. (See *K.P. Varghese* v. *ITO* [(1981) 4 SCC 173, 180-82 : 1981 SCC (Tax) 293, 300-302 : (1981) 131 ITR 597, 604-606] and *Luke* v. *Inland Revenue Commissioner* [(1964) 54 ITR 692 (HL)] .)

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19. … The presumption canvassed to be raised that the true effect of the words "if the offence had not been committed" was to presume a situation in which the undertaking given by the assessee had been carried out even though in fact the same had not been carried out. That would be an absurd result. In our opinion the use of the expression "if" simpliciter, was meant to indicate a condition, the condition being that at the time of assessing the penalty, that situation should be visualised wherein there was no scope of committing any offence. Such a situation could arise only if the tax liability fell under sub-section (2) of Section 8 of the Act. The scheme of Section 8 indicated that concessional rates contemplated by sub-section (1) thereof would be available only with reference to those goods which are covered by the declarations in Form 'C'. The moment it is found that in respect of particular quantity of goods the undertaking given by the assessee in Form 'C' declaration has not been carried out, the goods were presumed to be such in respect of which no undertaking was existing. Therefore such goods would be liable to normal tax contemplated under sub-section (2) of Section 8. Therefore, the penalty should be worked out only on the basis of the normal rates prescribed under sub-section (2) of Section 8. That would make sense. That is a reasonably possible construction. That would avoid absurd result."

31. In **Hameedia Hardware Stores v. B. Mohanlal** (1988) 2 SCC 513, Section 10(3)(a)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 was read harmoniously with the other provisions of

the Act, as a result of which the words "if the landlord required it for his own use or for the use of any member of his family" were read into sub-clause (iii). This was done for the reason:

> "**10.** …If the two sub-clauses are not so read, it would lead to an absurd result. The non-residential building referred to in sub-clause (*ii*) is a building which is used for the purpose of keeping a vehicle or adapted for such use and all other non-residential buildings fall under sub-clause (*iii*). The State Legislature cannot be attributed with the intention that it required a more stringent proof by insisting upon proof of bona fides of his requirement or need also when a landlord is seeking eviction of a tenant from a garage than in the case of a non-residential building which is occupied by large commercial house for carrying on business. The learned counsel for the respondent was not able to explain as to why the State Legislature gave greater protection to tenants occupying premises used for keeping vehicles or adapted for such use than to tenants occupying other types of non-residential buildings. It is no doubt true that the court while construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful."

32. This judgment was followed in **Surjit Singh Kalra v. Union of India** (1991) 2 SCC 87 as follows:

> "**19.** True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (Craies *Statute Law*, 7th edn., p. 109). Similar are the observations in *Hameedia Hardware Stores* v. *B. Mohan Lal Sowcar* [(1988) 2 SCC 513, 524-25] where it was observed that the court

construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: *Sirajul Haq Khan* v. *Sunni Central Board of Waqf* [1959 SCR 1287, 1299 : AIR 1959 SC 198] .)

20. The tenant of course is entitled to raise all relevant contentions as against the claim of the classified landlords. The fact that there is no reference to the word bona fide requirement in Sections 14-B to 14-D does not absolve the landlord from proving that his requirement is bona fide or the tenant from showing that it is not bona fide. In fact every claim for eviction against a tenant must be a bona fide one. There is also enough indication in support of this construction from the title of Section 25-B which states "special procedure for the disposal of applications for eviction on the ground of bona fide requirement"."

33. In **C.W.S. (India) Limited v. Commissioner of Income Tax** (1994) Supp. 2 SCC 296, Section 40(c)(iii) of the Income Tax Act, 1961 came up for discussion. The Court held:

"**10.** Now, it may be noticed that Section 40(*a*)(*v*) is only an expanded version of Section 40(*c*)(*iii*). The idea was to bring the allowances in respect of the assets owned by the assessee, which assets are used by its employee for his own purposes or benefit, within the net of ceiling. Section 40(*c*)(*iii*) did not cover such allowances and this was sought to be remedied. The idea was certainly not to bring about a different treatment of two situations in Section 40(*a*)(*v*) referred to as clauses (*i*) and (*ii*) in this judgment. The consequence of accepting the assessee's interpretation would be that while the ceiling on expenditure would apply to a case falling under clause (*i*), no such

ceiling would apply to a case falling under clause (*ii*) unless the employee governed by clause (*ii*) is also provided a benefit, amenity or perquisite falling under clause (*i*). The consequence would not only be discriminatory but also very incongruous, almost absurd. In principle, there is no distinction between the two cases or two situations, as they may be called. We are satisfied that the mere use of the word "such" in clause (*ii*) should not have the effect of driving the court to place an interpretation upon the said clause which is not only discriminatory but is highly incongruous…In this connection, we may refer to the well-recognised rule of interpretation of statutes that where a literal interpretation leads to absurd or unintended result, the language of the statute can be modified to accord with the intention of Parliament and to avoid absurdity. The following passage from *Maxwell's Interpretation of Statutes* (12th Edn.) may usefully be quoted:

> "1. *Modification of the language to meet the intention*.—Where the language of the statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and the intention of a statute are clear, it must not be reduced to a nullity by the draftman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule: 'The canons of construction are not so rigid as to prevent a realistic solution.'"

We are, therefore, of the opinion that the Full Bench of the Kerala High Court was right in taking the view it did on this aspect and we agree with it."

34. In **Molar Mal v. Kay Iron Works (P) Ltd.** (2000) 4 SCC 285, this Court construed a provision of the Haryana Urban (Control of Rent and Eviction) Act, 1973 by interpreting the proviso to Section 13(3) of the said Act by adding certain words as follows:

"**12.** …We agree with this contention of the landlord that normally the courts will have to follow the rule of literal construction which rule enjoins the court to take the words as used by the legislature and to give it the meaning which naturally implies. But, there is an exception to this rule. That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning. In our opinion, if the expression "entitled to apply again" is given its literal meaning, it would defeat the very object for which the legislature has incorporated that proviso in the Act inasmuch as the object of that proviso can be defeated by a landlord who has more than one tenanted premises by filing multiple applications simultaneously for eviction and thereafter obtain possession of all those premises without the bar of the proviso being applicable to him. We are of the opinion that this could not have been the purpose for which the proviso is included in the Act. If such an interpretation is given then the various provisos found in sub-section (3) of Section 13 would become otiose and the very object of the enactment would be defeated. Any such interpretation, in our opinion, would lead to absurdity. Therefore, we have no hesitation in interpreting the proviso to mean that the restriction contemplated under that proviso extends even up to the stage when the court or the tribunal is considering the case of the landlord for actual

eviction and is not confined to the stage of filing of eviction petition only."

35. In **Union of India v. Hansoli Devi** (2002) 7 SCC 273, this Court construed Section 28-A of the Land Acquisition Act, 1894 by eschewing a literal interpretation thereof, and reading into the Section the words "and that reference is entertained and answered". The Court stated:

> "**9.** …It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, (*sic* on one) who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector under Section 18" in Section 28-A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference under Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a landowner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in *Pradeep Kumari case* [(1995) 2 SCC 736] the three learned Judges, while enumerating the conditions to be satisfied, whereafter an application under Section 28-A can be moved, had categorically stated (SCC p. 743, para 10) "the person moving the application did not make an application to the Collector under Section 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an

> application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly answer Question 1(*a*) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894."

36. Given the fact that the object of the 1956 Amendment, which is an agrarian reform legislation, and is to give the tiller of the soil statutory title to land which such tiller cultivates; and, given the fact that the literal interpretation of Section 32-F(1)(a) would be contrary to justice and reason and would lead to great hardship qua persons who are similarly circumstanced; as also to the absurdity of land going back to an absentee landlord when he has lost the right of personal cultivation, in the teeth of the object of the 1956 Amendment as mentioned hereinabove, we delete the words ".. of the fact that he has attained majority..". Without these words, therefore, the landlord belonging to all three categories has to send an intimation to the tenant, before the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31.

Section 32-F to be read in conformity with Article 14 of the Constitution of India

37. In **R.L. Arora v. Union of India** (1964) 6 SCR 784, this Court laid down that:

> "It is well settled that if certain provisions of law construed in one way will be consistent with the constitution, and if another interpretation would render them unconstitutional, the Court would lean in favour of the former construction: (see *Kedar Nath Singh* v. *State of Bihar*) [(1962) Supp 2 SCR 769]."

38. In **Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar** (1959) SCR 279, this Court summarised the case law under Article 14 in the form of six propositions. We are concerned here with proposition (d), which reads as follows:

> "… The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish—
>
> xxx xxx xxx
>
> (*d*) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;"

Based on this proposition, Shri Bhasme has argued that the legislature in the present case has recognised a certain degree of harm, namely, to tenants of minor landlords and may, therefore, confine itself to such cases where the need is deemed to be clearest.

39. Proposition (d) has been later clarified in the seminal judgment of this Court, **In Re Special Courts Bill, 1978**, (1979)1 SCC 380. A

Constitution Bench of this Court in paragraph 72 of the aforesaid judgment, after referring to **Ram Krishna Dalmia's case** (supra) and other judgments, stated 13 propositions insofar as Article 14 is concerned. We are directly concerned with propositions (1), (3), (6) and (8) which are set out as follows:

> "**72.** As long back as in 1960, it was said by this Court in *Kangsari Haldar* that the propositions applicable to cases arising under Article 14 "have been repeated so many times during the past few years that they now sound almost platitudinous". What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous today, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concrete cases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14, and in view of the peculiar importance of the questions arising in this reference, though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition, to state the propositions which emerge from the judgments of this Court insofar as they are relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:
>
> "(1) The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favouritism. It is a pledge of the protection of equal laws,

that is, laws that operate alike on all persons under like circumstances.

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(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

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(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

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(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned."

To proposition (d) in **Ram Krishna Dalmia's case** (supra) an exception has been engrafted in proposition (6) contained hereinabove. The law may recognise degrees of harm, but in so

doing the classification should never be arbitrary, artificial or evasive. This is repeated by way of a proviso to proposition (8) as well. We have referred to the Statement of the Objects and Reasons for the 1969 Amendment. Paragraph 2 thereof stated that a large number of cases involving minor landlords had come to the notice of the legislature, for which reason the amnesty scheme mentioned in sub-section (1A) of Section 32-F was enacted. However, what was forgotten by the draftsman when the addition to Section 32-F(1)(a) was made was the fact that Section 32F(1)(a) referred to three categories of landlords and not only one. The words added by the 1969 amendment thus gave relief to tenants only qua minor landlords and not the other two categories. Obviously, the classification made in favour of tenants of minor landlords as opposed to tenants of landlords of the other two categories is a classification which is arbitrary in nature. This being the case, such classification would ordinarily have to be struck down as being violative of Article 14 of the Constitution of India.

40. However, instead of striking down such classification as a whole, what can be done is to strike down the words "..of the fact that he has attained majority..", as a result of which, what is added by the 1969 Amendment to Section 32-F(1)(a) now ceases to be

discriminatory, as it is applicable to tenants of all three categories of landlords.

41. In **Shayara Bano v. Union of India** (2017) 9 SCC 1, this Court referred to the positive aspect of the fundamental right contained in Article 14 thus:

> "**62.** Article 14 of the Constitution of India is a facet of equality of status and opportunity spoken of in the Preamble to the Constitution. The Article naturally divides itself into two parts—(1) equality before the law, and (2) the equal protection of the law. Judgments of this Court have referred to the fact that the equality before law concept has been derived from the law in the UK, and the equal protection of the laws has been borrowed from the 14th Amendment to the Constitution of the United States of America. In a revealing judgment, Subba Rao, J., dissenting, in *State of U.P.* v. *Deoman Upadhyaya* [*State of U.P.* v. *Deoman Upadhyaya*, (1961) 1 SCR 14 : AIR 1960 SC 1125 : 1960 Cri LJ 1504] , AIR p. 1134 para 26 : SCR at p. 34 further went on to state that whereas equality before law is a negative concept, the equal protection of the law has positive content. The early judgments of this Court referred to the "discrimination" aspect of Article 14, and evolved a rule by which subjects could be classified. If the classification was "intelligible" having regard to the object sought to be achieved, it would pass muster under Article 14's anti-discrimination aspect. Again, Subba Rao, J., dissenting, in *Lachhman Dass* v. *State of Punjab* [*Lachhman Dass* v. *State of Punjab*, (1963) 2 SCR 353 : AIR 1963 SC 222] , SCR at p. 395, warned that: (AIR p. 240, para 50)
>
> "*50*. … Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for

classification may gradually and imperceptibly deprive the Article of its glorious content."

He referred to the doctrine of classification as a "subsidiary rule" evolved by courts to give practical content to the said Article.

63. In the pre-1974 era, the judgments of this Court did refer to the "rule of law" or "positive" aspect of Article 14, the concomitant of which is that if an action is found to be arbitrary and, therefore, unreasonable, it would negate the equal protection of the law contained in Article 14 and would be struck down on this ground."

42. **Hiralal P. Harsora v. Kusum Narottamdas Harsora** (2016) 10 SCC 165, is a case in point. In this judgment, this Court struck down a portion of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005. Section 2(q) of the said Act defined "Respondent" as meaning any adult male person who is, or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief. This Court having regard to the object sought to be achieved by the Act, struck down the expression "adult male" as follows:

"39. A conspectus of these judgments also leads to the result that the microscopic difference between male and female, adult and non-adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial nor does it have any rational relation to the object of the legislation. In fact, as per the principle settled in *Subramanian Swamy* [*Subramanian Swamy* v. *CBI*, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] judgment, the words "adult male person" are

contrary to the object of affording protection to women who have suffered from domestic violence "of any kind". We, therefore, strike down the words "adult male" before the word "person" in Section 2(*q*), as these words discriminate between persons similarly situate, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act.

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44. An application of the aforesaid severability principle would make it clear that having struck down the expression "adult male" in Section 2(*q*) of the 2005 Act, the rest of the Section is left intact and can be enforced to achieve the object of the legislation without the offending words. Under Section 2(*q*) of the 2005 Act, while defining "respondent", a proviso is provided only to carve out an exception to a situation of "respondent" not being an adult male. Once we strike down "adult male", the proviso has no independent existence, having been rendered otiose."

43. In **Secretary, Mahatama Gandhi Mission v. Bhartiya Kamgar Sena** (2017) 4 SCC 449, this Court referred copiously to the judgment in **D.S. Nakara v. Union of India,** (1983) 1 SCC 305, and then held:

"**88.** What is the remedy open to the citizen and the corresponding obligation of the judiciary to deal with such a situation, where the inequalities are created either by the legislation or executive action? Traditionally, this Court and the High Courts have been declaring any law, which created inequalities to be unconstitutional, but in *Nakara case* [*D.S. Nakara* v. *Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] this Court realised that such a course of action would not meet with the obligations emanating from a combined reading of the directive principles and Article 14. Therefore, this Court emphatically laid down in *Nakara case* [*D.S. Nakara* v. *Union of India*,

> (1983) 1 SCC 305 : 1983 SCC (L&S) 145] that it is possible to give an appropriate inductive relief by eliminating the factors, which creates the artificial classification leading to a discriminatory application of law."

44. Respectfully following the law laid down in these judgments, and in order to read Section 32-F(1)(a) in conformity with Article 14, we eliminate the words "..of the fact that he has attained majority.." so that the intimation that is to be made by the landlord has to be made to tenants of all the three categories of landlords covered by the provision.

45. It now remains to deal with some of the judgments of this Court on the interpretation of Section 32-F. In **Anna Bhau Magdum v. Babasaheb Anandrao Desai** (1995) 5 SCC 243, a minor landlord attained majority in 1965 i.e. before the 1969 Amendment Act came into force. After adverting to the amendments made in 1969, this Court held that for this reason the amendment did not apply to the facts of that case. It was also found, as a matter of fact, that despite knowing that the Respondent landlord would attain majority on 17.1.1965, the tenant gave no intimation as required by sub-section (1A) to Section 32-F even within the amnesty period of two years granted by the said sub-section. The only argument made on behalf of the tenant in that case was that since there is an automatic purchase, the provisions of sub-section (1A) are directory in nature.

This was turned down stating that the consequences of non-compliance of Section 32-F (1A) are laid down in Section 32-P(1) and that, therefore, the time period contained in sub-section (1A) of Section 32-F is mandatory in nature. This case is wholly distinguishable on its facts and lays down the law on Section 32-F(1A) with which we are not immediately concerned.

46. However, in **Appa Narsappa v. Akubai Ganapati** (1999) 4 SCC 443, this Court referred to the landlady widow on the facts of that case who had died in 1965, prior to the coming into force of the Amendment Act of 1969. In this factual scenario, since the tenant did not comply with the timeline of one year given to him, the right to purchase of the tenant was stated to have come to an end. The argument that one year should be from the date of knowledge was turned down in the following terms:

> "**4.** It was submitted by the learned counsel that this being a welfare legislation enacted for the benefit of tenants should be construed in a liberal manner. He also submitted that the heirs of the landlady had not given any intimation to the appellant about her death and therefore he could not have known who were the heirs of the landlady and given intimation to them. He submitted that the period of one year should be counted from the date of the knowledge of the tenant. We cannot accept this submission because the language of Sections 32-F and 31 is quite clear and the period of one year will have to be counted in accordance with the said provisions and not from the date of the knowledge of the tenant. The provision of law being clear,

> we cannot in such a case grant relief on the basis of equity."

Since this judgment does not square with object sought to be achieved by the 1956 Amendment to the 1948 Act or to the declaration of law in this judgment, it does not state the law correctly and is, therefore, overruled.

47. The next judgment that was cited before us is **Sudam Ganpat Kutwal v. Shevantabai Tukaram** (2006) 7 SCC 200. After setting out the relevant provisions of the Act, this Court held that on the facts of that case since Section 31(3) had ceased to apply, Section 32-F(1) did not apply at all, as a result of which there was no need for the tenant to issue any notice of intimation to the landlord. The other judgments that were cited were distinguished in paragraph 27 stating that they were all judgments in which Section 32-F(1A) would apply. The facts of this case again are far removed from the facts of the present case and the judgment has, therefore, no application to the law laid down in the present case.

48. The next judgment cited before us is **Tukaram Maruti Chavan v. Maruti Narayan Chavan**, (2008) 9 SCC 358. This judgment followed the law laid down in **Appa Narsappa** (supra) and on facts held that the Appellant tenant had complete knowledge of the death

of the widow in that case, as a result of which the Appellant's contention that he was confused as to who was the true owner was turned down. To the extent that this judgment follows the law laid down in **Appa Narsappa** (supra), this judgment also does not lay down the law correctly and is overruled to this extent.

49. It now only remains to consider some of Shri Bhasme's other arguments. The argument made based on Section 14(1)(a) that since a tenant is bound to pay the rent every year before the 31st May thereof, the tenant is bound to know that the person to whom he is paying rent has since died and that, therefore, knowledge cannot be brought in to the construction of Section 32-F need not detain us. On facts in the present case, the landlady was actually at Mumbai, whereas the tenant was at Ratnagiri. Also, Section 14(1)(b) makes it clear that in case the tenant fails to pay rent before the 31st May of every year, the landlord must first give a three months' notice in writing informing the tenant that he has not so paid the rent, within which period the tenant is given time to remedy the breach. On facts, there is nothing to show that any such notice was given. The other emotive argument that in the agricultural village world everyone knows about everybody else and that, therefore, it may be assumed that a villager at Ratnagiri will know about his landlord's death equally

cannot apply on the facts of this case as the landlord lived and died in Mumbai. The other emotive argument about the reverse situation obtaining today as opposed to the situation obtaining in 1956, namely, that it is tenants who are now well off and landlords who are poor is again a perception of learned counsel which has no bearing either on the facts of this case or the law that needs to be laid down.

50. The questions referred to us are now answered as follows:

(i) The object of the Amendment Act of 1969 is relevant and applicable in deciding the scope of the right to purchase by a tenant of a landlord who was a widow or suffering from mental or physical disability on Tillers' day.

(ii) The successor-in-interest of a widow is obliged to send an intimation to the tenant of cessation of interest of the widow to enable the tenant to exercise his right of purchase.

(iii) The decision in **Appa Narsappa** (supra) stands overruled. The decision in **Sudam Ganpat** (supra) stands distinguished as stated in paragraph 47 of the judgment. The decision in **Tukaram Maruti** (supra), to the extent that it follows the law laid down in **Appa Narsappa** (supra), stands overruled.

We, therefore, allow the appeals and set aside the judgment of the High Court dated 1st August, 2014. As a result, the tenant's intimation of purchase of 2008 will now be taken on record by the authorities under the Act, who may now proceed under the Act to determine purchase price and its payment consequent upon which the postponed right of the tenant in this case to own the land will then come into being upon the statutory conditions being met. The appeals are disposed of accordingly.

……J.
(R.F. Nariman)

……J.
(R. Subhash Reddy)

……J.
(Surya Kant)

New Delhi
September 18, 2019.