

Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3280 OF 2020
WITH
WRIT PETITION NO.3088 OF 2020

SAYALI
DEEPAK
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1. Prashant Haribhau Dalvi
 2. Kamal Haribhau Dalvi, (deleted)
 3. Nitinkumar Haribhau Dalvi
since deceased through LRs
 - 3a Shweta Nitinkumar Dalvi
 - 3b. Tanishka Nitinkumar Dalvi
 - 3c. Tikshala Nitinkumar Dalvi
 - 3d. Aarav Nitinkumar Dalvi
 4. Pratibha Ajit Bhujbal
 5. Ujjawala Dattatraya Tilekar
 6. Vandana Haribhau Doke
 7. Pramod Shankarrao Dalvi
 8. Sharad Shankarrao Dalvi
 9. Vijay Shankarrao Dalvi
 10. Hemlata Vitthalrao Gaikwad
 11. Mangal @ Pushpalata
Prakashrao Barke
- ... Petitioners

Vs.

1. Govind Ramchandra Saptarshi,
since deceased through LRs
- 1a. Neelima Vidyasagar Patwardhan

- 1b. Gauri Vikas Kulkarni
- 1c. Shashank Govind Saptarshi
- 1d. Meghna Vidyasagar Patwardhan
- 2. Yogesh Mangalsen Bahal
- 3. Rahul Maruti Adkar

... Respondents

Mr. Avinash B. Avhad with Mr. Mahesh Rawool & Mr. Goraksha Avhad for the petitioners in both petitions.

Mr. S.G. Karandikar i/by Mr. Prathamesh Bhargude for respondent Nos.2 in both petitions.

Mr. Prathamesh Bhargude for respondent No.3 in both petitions.

CORAM : AMIT BORKAR, J.

RESERVED ON : JULY 13, 2026.

PRONOUNCED ON : JULY 20, 2026

JUDGMENT:

1. By these writ petitions, the Petitioners are challenging the order dated 6 September 2018 passed by the Maharashtra Revenue Tribunal, Pune Bench, Pune in Revision Application No. P/IV/2/2016.

2. The facts giving rise to these petitions are as follows. The dispute is about agricultural land bearing Survey No. 160/1, admeasuring 92 R, situated at Village Hadapsar, Pune, which is referred to as the suit property. According to the Petitioners, their ancestor, Shri Namdeo Mahadu Dalvi, was cultivating the suit property as a tenant before 1 April 1957. Therefore, under the Bombay Tenancy and Agricultural Lands Act, 1948, he became a

protected tenant and was also treated as a deemed purchaser of the land. It is their case that Mutation Entry No. 4449 dated 12 October 1953 also recorded the name of Shri Namdeo Mahadu Dalvi as the tenant in the revenue records. In the year 1957, the original landlord filed Application No. 1267 of 1957 under Section 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 against Shri Namdeo Mahadu Dalvi. By an order dated 24 January 1959, the landlord was allowed to recover possession of half portion of the suit property. However, this was made subject to the condition that the land should be put to non-agricultural use within the prescribed time. According to the Petitioners, the landlord did not fulfil this condition. Thereafter, on 19 January 1960, Shri Namdeo Mahadu Dalvi passed away. After his death, Mutation Entry No. 5384 dated 13 February 1960 was recorded. By this entry, the names of his legal heirs, namely Shankar, Haribhau, Shevantabai, Anandibai, Jayavantibai and Parubai, were entered in the "Other Rights" column of the Record of Rights as his legal heirs, and the same was reflected in the 7/12 extract. Later, on 3 March 1962, the limits of the Pune Municipal Corporation were extended, and because of that, the suit property came within the municipal limits.

3. On 14 February 1964, the Agricultural Lands Tribunal, Hadapsar, passed an order in Case No. ALT/III/Hadapsar/64 holding that the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 were not applicable because the land had come within the municipal limits. After this order, Mutation Entry No. 6433 dated 30 March 1964 was made, by which the

names of the tenant's legal heirs were removed from the revenue records. According to the Petitioners, this was done without giving any notice either to the tenant or to his legal heirs. Many years later, on 29 September 2007, the Petitioners filed Tenancy Appeal No. 2003 of 2007 before the Sub Divisional Officer, Haveli Division, Pune under Section 74 of the Act. They challenged the order passed in the year 1964 and also filed an application requesting that the delay in filing the appeal be condoned.

4. On 1 October 2007, some of the Petitioners also filed Special Civil Suit No. 1734 of 2007 before the Civil Judge, Senior Division, Pune. In that suit, they sought declaration of their rights, cancellation of certain documents and a permanent injunction. Thereafter, on 14 March 2008, the Sub Divisional Officer directed the Petitioners to produce a copy of the order passed by the Agricultural Lands Tribunal in the year 1964. Thereafter, on 28 March 2008, the Sub Divisional Officer held that the appeal was not maintainable on the ground that it had been filed against Mutation Entry No. 6433. However, according to the Petitioners, even after this order was passed, the matter continued to remain on the board of the authority. Fresh dates were given from time to time, and the parties continued to appear before the authority on different dates, including 7 July 2008 and 6 August 2008.

5. On 25 August 2008, the Sub Divisional Officer made a note in the Roznama stating that since the earlier officer had already passed an order, no further order was required. According to the Petitioners, no formal order was ever supplied to them. They therefore sought information under the Right to Information Act,

2005. By a reply dated 12 January 2010, the Information Officer informed them that no separate order had been passed and that only the Roznama entry was available. Thereafter, on 10 February 2010, the Petitioners filed Revision Application No. TNC/REV/26/2010/P before the Maharashtra Revenue Tribunal along with an application seeking condonation of delay. In the year 2012, the Tahsildar, Haveli, started proceedings in Tenancy Case No. 32G/SR/3/2012 on the basis of a reference made by the Civil Court under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948. By an order dated 11 January 2012, the Tahsildar held that the Petitioners' ancestor was the tenant of the suit property as on 1 April 1957. The Tahsildar also recorded that the Petitioners continued to remain in possession of the land. On that basis, the purchase price of the suit property was fixed under Section 32G of the Act.

6. Being dissatisfied with this decision, the Respondents, who are the landlords, filed Tenancy Appeal No. 17 of 2012 before the Sub Divisional Officer and Deputy Collector, Pune. By an order dated 8 February 2016, the appeal was allowed. The Tahsildar was directed to decide Tenancy Case No. SR/64/2011 and to communicate to the Civil Court the decision relating to the order dated 14 February 1964 and also the order passed by the Sub Divisional Officer in the year 2008. Aggrieved by this order, the Petitioners filed Revision Application No. P/IV/2/2016 before the Maharashtra Revenue Tribunal. By two separate orders dated 6 September 2018, the Tribunal dismissed both revision applications. While dismissing Revision Application No. TNC/REV/26/2010/P,

the Tribunal held that the Petitioners had not given a satisfactory explanation for the delay in filing the revision. By another order passed on the same day in Revision Application No. P/IV/2/2016, the Tribunal held that the order passed by the Agricultural Lands Tribunal in the year 1964 was binding on the subsequent Tahsildar. On that basis, the revision application was also dismissed.

7. Being aggrieved by both the orders dated 6 September 2018 passed by the Maharashtra Revenue Tribunal, and also by the consequential orders passed by the authorities under the Bombay Tenancy and Agricultural Lands Act, 1948, the Petitioners have filed the present writ petitions before this Court.

8. Learned Advocate Mr. Avinash B. Avhad appearing for the Petitioners submitted that the Maharashtra Revenue Tribunal was not justified in rejecting the Revision Application only on the ground of delay. According to him, the original order dated 14 February 1964, by which the proceedings under the Bombay Tenancy and Agricultural Lands Act, 1948 were closed on the ground that the land had come within the municipal limits, was itself without legal authority and was a nullity. He submitted that if an order is void from the beginning, the question of limitation does not arise while challenging such an order. He further submitted that the Sub Divisional Officer had initially recorded on 28 March 2008 that the appeal was withdrawn or rejected. However, even after making such a recording, the authority continued to give dates in the same proceedings, and finally, on 25 August 2008, dismissed the appeal. According to him, the Petitioners were never informed about the order dated 25 August 2008 and came to know

about it only later. Immediately thereafter, they took legal steps and filed the Revision Application.

9. In support of his contention that the order dated 14 February 1964 was a nullity, Mr. Avhad placed reliance upon the decision of the Supreme Court in *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal*, AIR 1991 SC 1538. He submitted that while interpreting the provisions introduced by the Gujarat Amendment Act, the Supreme Court held that the rights already acquired by a tenant as a deemed purchaser cannot be taken away retrospectively. He further submitted that while deciding the said case, the Supreme Court also considered its earlier decision in *Parvati v. Fatehsinhrao Pratapsinhrao Gaekwad*, AIR 1986 SC 2204, which dealt with Section 88(1)(b) of the Bombay Tenancy and Agricultural Lands Act as applicable in Maharashtra. According to him, although the Supreme Court in *Parvati* held that a notification issued under Section 88(1)(b) operates retrospectively, the rights already acquired by a tenant as a deemed purchaser before issuance of such notification continue to remain protected. On that basis, he contended that the Petitioners' predecessor had already become a deemed purchaser and those rights could not have been taken away by the subsequent notification.

10. Mr. Avhad also relied upon the judgment of the Division Bench of this Court in *Pralhad Ganaba Kapare v. Sadaba Rambhau Bhonsale and Another*, AIR 1973 Bom 172. He submitted that the Division Bench held that the rights acquired by a tenant under Section 32 of the Bombay Tenancy and Agricultural Lands Act

cannot be taken away merely because a notification is later issued under Section 88(1)(b) excluding the applicability of Sections 32 to 32R. He further relied upon another Division Bench judgment in *Ankush Hiranman Magar and Others v. Thakubai Maruti Tupe and Others*, AIR 1981 Bom 350, where it was held that once a tenant acquires ownership under Section 32(1), such ownership is not lost merely because the land is later brought within the municipal limits. Relying upon these judgments of this Court and the Supreme Court, he submitted that the order dated 14 February 1964, by which the proceedings under Section 32G were dropped, was without legal effect. According to him, the delay in filing the Appeal and the Revision deserved to be condoned and the impugned orders required to be set aside.

11. By way of rejoinder, Mr. Avhad submitted that the judgment in *Jasin Tomu Damel v. Harischandra Pandurang Muranjan*, 1959 SCC OnLine Bom 100 was not applicable to the facts of the present case. According to him, the question whether a tenant governed by the Bombay Tenancy and Agricultural Lands Act, 1948 would continue to enjoy the rights available under that Act was not considered in that decision. He also sought to distinguish the judgment in *Parvati* by submitting that the Supreme Court in that case was considering the provisions of the Bombay Tenancy Act, 1939. He further submitted that the decision in *V.S. Charati v. Hussein Nhanu Jamadar*, (1999) 1 SCC 273 was also distinguishable because, in that case, the Tribunal had already dropped the proceedings on 31 May 1961 on the ground that the landlord was a minor, and the tenant had never challenged that

order. According to him, those facts are entirely different from the facts of the present case.

12. Mr. Avhad further submitted that the Petitioners' predecessor had already expired in the year 1960. Therefore, according to him, when the Agricultural Lands Tribunal passed the order on 14 February 1964, the proceedings were continued against a person who was no longer alive. He submitted that such an order cannot be sustained in law.

13. On the other hand, learned Advocate Mr. Karandikar appearing for Respondent No. 2 opposed the petitions. Inviting attention to Section 32(1) of the Bombay Tenancy and Agricultural Lands Act, he submitted that although the section declares a tenant to be a deemed purchaser, it specifically states that such declaration is subject to the other provisions contained in that section and the succeeding provisions of the Act. According to him, this includes clauses (a) and (b) of the section, their provisos, as well as other provisions such as Sections 88B, 88C, Chapter III AA and Sections 43.1B and 43.1E. Therefore, according to him, the rights of a deemed purchaser are always subject to these statutory provisions.

14. Mr. Karandikar further relied upon the judgment of the Supreme Court in *V.S. Charati*. He submitted that the Supreme Court explained that the expression "purchase" occurring in Section 43.1E means a completed purchase and not merely the status of a deemed purchaser. Therefore, according to him, a tenant who has only become a deemed purchaser cannot claim

protection under Section 43.1E so as to prevent the landlord from exercising rights under Section 43.1B. He also submitted that the Supreme Court held that once an order passed by the competent Tribunal is not challenged, it becomes final and binding upon the parties. Merely because such an order may be legally incorrect, it does not automatically become a nullity.

15. Mr. Karandikar also referred to Section 88B(1) of the Act. He submitted that this provision was inserted by Maharashtra Act 38 of 1957 and specifically provides that several provisions of the Bombay Tenancy and Agricultural Lands Act would not apply to the lands covered by that section, except the provisions expressly saved therein. According to him, this itself shows that the legislature intended to create statutory exceptions to the general rights available under the Act.

16. Proceeding further, Mr. Karandikar submitted that wherever the provisions of the saved Chapters are applicable, they continue to govern the matter. According to him, if the Petitioners' argument is accepted that no amendment made after Tiller's Day can affect the rights of a deemed purchaser, then every subsequent amendment introduced by the Legislature, including Sections 88(1)(b), 88C, 43.1B, 43.1E and 43C, would become meaningless. He submitted that such an interpretation cannot be accepted.

17. Referring to the judgment in *Tribhovandas Haribhai Tamboli*, relied upon by the Petitioners themselves, Mr. Karandikar submitted that the Supreme Court in that case was considering two special provisos introduced by the State of Gujarat. According

to him, no such provisos exist in the Maharashtra enactment. Therefore, the reasoning adopted in that case cannot be applied in the same manner to the present dispute. He further submitted that the Supreme Court, while deciding *Tribhovandas Haribhai Tamboli*, had approved its earlier judgment in *Parvati*. According to him, the Supreme Court specifically observed that *Parvati* was decided in the absence of the Gujarat provisos and that the interpretation given therein would continue to apply while considering notifications issued under Section 88(1)(b).

18. Mr. Karandikar also relied upon the judgment of the Supreme Court in *Parvati*. He submitted that the Supreme Court clearly held that once the Government issues a notification under Section 88(1)(b) declaring certain lands to be reserved for non-agricultural, or industrial development, the provisions of the Bombay Tenancy and Agricultural Lands Act cease to apply to those lands. According to him, the Supreme Court also rejected the argument that such notifications cannot operate retrospectively and expressly held that Section 88(1)(b) has retrospective effect. He submitted that the effect of the notification dated 21 May 1958 was that all rights, obligations, and liabilities created under the Act in respect of the notified lands came to an end. He further relied upon the Division Bench judgment of this Court in *Jasin Tomu Damel*, wherein it was held that the right of a deemed purchaser under Section 32 is only a statutory right and not an absolute vested right.

19. Replying to the contention that the original tenant had already expired before the order dated 14 February 1964 was

passed, Mr. Karandikar submitted that the Petitioners themselves failed to produce a copy of the impugned order though Rule 251 of the Maharashtra Land Revenue Code required them to annex it with the appeal. According to him, because the complete order and its cause title were not produced, neither the Appellate Authority nor this Court could verify whether the legal representatives of the deceased tenant had already been brought on record in those proceedings. He pointed out that on 14 March 2008, the Appellate Authority had specifically directed the Petitioners to produce a copy of the order dated 14 February 1964. Even then, they failed to comply with that direction. According to him, after allowing several decades to pass without challenging the order and without producing the relevant record, the Petitioners cannot take advantage of their own omission. He therefore submitted that the writ petitions deserve to be dismissed.

20. Mr. Karandikar also sought to distinguish the judgment of this Court in *Ankush Hiranman Magar*. According to him, that case arose under Section 88C and not under Section 88(1)(b), which is involved in the present proceedings. He submitted that Section 88C begins with language which specifically excludes the operation of Sections 32 to 32R, subject to certain exceptions. He further pointed out that Section 33C opens with a non obstante clause overriding Section 88C(1), and sub section (5) of Section 33C expressly provides that Sections 32 to 32R would apply, as far as possible, to the purchase of land by an excluded tenant. On that basis, he submitted that the statutory scheme considered in *Ankush Hiranman Magar* is materially different and the said

judgment cannot govern the present case.

REASONS AND ANALYSIS:

21. Main dispute between both sides is about how Chapter III of the Bombay Tenancy and Agricultural Lands Act, 1948 and exemption given under Section 88(1)(b) are required to be read together. According to the Petitioners, their predecessor became deemed purchaser on Tillers' Day under Section 32. Because of this, later inclusion of the land inside municipal limits could not take away the statutory rights which had vested in his favour. On the other side, the Respondents contend that Section 88(1)(b) removes application of the earlier provisions of the Act. Therefore, according to them, once a valid notification under Section 88(1)(b) becomes applicable, the statutory rights flowing from Chapter III cannot continue.

22. Section 32(1) of the Act provides:

"On the first day of April 1957 ... 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..."

23. The starting words, namely, "subject to the other provisions of this section and the provisions of the next succeeding sections", become important because both parties are reading these same words in different way. The Petitioners say these words show those situations which are written in Sections 32G and 32M where the statutory purchase can later become ineffective. According to them, outside those situations, the purchase remains untouched. The Respondents submit that these opening words show that the

purchase under Section 32 is never complete in every respect. According to them, it always remains controlled by the later provisions contained in the Act and cannot be read separately.

24. Section 88(1)(b) provides:

"Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act shall apply ... to any area which the State Government may, from time to time, by notification in the Official Gazette, specify as being reserved for non-agricultural or industrial development."

25. The issue is about the meaning and effect of the words "nothing in the foregoing provisions of this Act shall apply". Both sides accept the existence of this provision, but each side gives different meaning to these words. Therefore, proper understanding of this expression becomes necessary for deciding the present petitions.

26. In view of these rival submissions, following questions require consideration in the present petitions:

- (i) What is the true nature of the statutory purchase under Section 32 of the Act?
- (ii) Whether Section 88(1)(b) operates so as to exclude the application of Chapter III in respect of lands covered by a valid notification?
- (iii) Whether the order dated 14 February 1964 can be regarded as void for want of jurisdiction or whether it is, at the highest, an order alleged to be legally erroneous?

(iv) Whether the Petitioners have satisfactorily explained the delay in questioning the said order before the appellate and revisional authorities?

27. These questions are required to be examined by reading the statutory provisions together with the decisions relied upon by both sides, so that the effect of the Act and the authorities can be properly understood.

Statutory Scheme and Consideration of the Rival Submissions:

28. I have considered the submissions made from both sides. I have gone through the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 and the judgments relied upon by both parties. At first reading, submissions made by both sides appear to carry some force. Still, the dispute cannot be decided by picking only one section of the Act or by reading only one judgment. The provisions of the Act and the judgments cited before the Court are required to be read together so that proper meaning can be gathered from the entire statutory scheme.

29. The Petitioners have placed reliance upon Section 32 of the Act. Section 32(1) provides:

"On the first day of April 1957 ... 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..."

30. According to the Petitioners, once the tenant became a deemed purchaser on the Tillers' Day, ownership came in his

favour by operation of law. They submit that after this stage, such title could be defeated only in those situations which are mentioned in the Act. According to them, the Act recognises limited circumstances where such purchase can become ineffective. Therefore, no other provision should be understood in a manner which takes away the statutory purchase created under Section 32.

31. For supporting this submission, reliance has been placed upon the judgment of the Supreme Court in *Sri Ram Ram Narain Medhi v. State of Bombay*, AIR 1959 SC 459. The Supreme Court in paragraph 39 observed:

"The title of the landlord to the land passes immediately to the tenant on the tiller's day... The tenant gets a vested interest in the land, defeasible only in either of these cases..."

32. Similarly, the Bombay High Court in *Ankush Hiranman Magar*, while following the above judgment, observed in paragraph 7:

"The purchase is complete on the tillers' day and the land becomes vested in the tenant as from that date."

33. Again, in paragraph 9, it was observed:

"The subsequent inclusion of land within the limits of the Poona Municipal Corporation cannot have the effect of divesting the land which had once vested in the tenant under Section 32(1)."

34. Prima facie, these observations appear to support the Petitioners' submission that the purchase under Section 32 is not incomplete. According to these authorities, statutory rights come

in favour of the tenant on the Tillers' Day.

35. However, the matter does not stop only there. Section 32 starts with the words "subject to the other provisions of this section and the provisions of the next succeeding sections". These opening words cannot be ignored. They appear to indicate that the purchase created under Section 32 was never intended by the Legislature to operate independent from the remaining provisions of the Act. Rather, the Legislature made the operation of Section 32 subject to the later provisions contained in the statute.

36. The later provisions show that though the purchase may take place on the Tillers' Day, in situations recognised by law, such purchase may later become ineffective. Section 32G(3) provides that where the tenant is not willing to purchase the land, the Tribunal shall declare that the purchase is ineffective. Section 32M further provides that if the purchase price is not paid, the purchase shall become ineffective and thereafter the land has to be dealt with under Section 32P. Sections 32N and 32P further regulate what consequences will follow after such purchase becomes ineffective. Thus, the Act itself recognises that a purchase brought into existence under Section 32 may cease to operate in situations recognised by the statute.

37. The Respondents submit that the present case stands on a different footing altogether because it is governed by Section 88(1)(b). Section 88(1)(b) provides:

"Save as otherwise provided in sub-section (2), nothing in the foregoing provisions of this Act shall apply... to any area

which the State Government may... specify as being reserved for non-agricultural or industrial development."

38. According to the Respondents, the words "nothing in the foregoing provisions of this Act shall apply" have been used in wide language. They submit that unlike Section 88C, which excludes only Sections 32 to 32R, Section 88(1)(b) excludes the operation of all the foregoing provisions of the Act. Therefore, according to them, once a valid notification under Section 88(1)(b) becomes applicable, Chapter III no longer governs those notified lands.

39. For supporting this submission, reliance has been placed upon the judgment of the Supreme Court in *Parvati*. The Supreme Court observed in paragraph 3:

"On a plain reading of the provisions of Section 88(1) it is crystal clear that... the provisions of the Tenancy Act were made inapplicable retrospectively..."

40. The Court further held in paragraph 5 :

"The consequence that falls is that the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 are not applicable to the land in question... and as a result these rights acquired under the said Act automatically becomes non est."

41. The Supreme Court also rejected the submission based upon Section 89(2)(b) by observing in paragraph 5 :

"The argument... is totally devoid of any merit."

42. These observations appear to give support to the Respondents' contention that Section 88(1)(b) was intended by the Legislature to operate as an overriding provision in relation to

notified lands.

43. The Petitioners attempted to answer this submission by placing reliance upon the judgment in *Tribhovandas Haribhai Tamboli*. According to them, the Supreme Court recognised that the rights of a deemed purchaser cannot be taken away retrospectively.

44. However, on careful reading of the said judgment, it appears that the controversy before the Supreme Court arose because of the two provisos inserted by the Gujarat Amendment Act, 1965. In paragraph 9, the Supreme Court noticed the judgment in *Parvati* and recorded:

"...this Court held that the notification had retrospective operation and... all rights, title, obligations etc. accrued or acquired under the said Act ceased to exist."

45. The Court thereafter further observed:

"It would be seen that the effect of the second proviso was not considered therein."

46. Thus, the distinction made in *Tribhovandas* appears to be because of the special Gujarat provisos and not because the interpretation adopted earlier in *Parvati* was held to be incorrect. It is also not disputed that the amendments considered in *Tribhovandas* are not part of the Maharashtra enactment.

47. The Respondents have further relied upon the Division Bench judgment in *Jasin Tomu Damel*. In that case, the Division Bench rejected the contention that a notification under Section 88 could not affect the existing tenancy rights and observed in

paragraph 14 :

"...the notification issued by the State Government... cannot affect the defendant's rights."

48. The Court also observed that the earlier view treating such rights as vested rights "cannot now be regarded" as correct. Though this judgment was delivered before the decision in *Parvati*, its broad approach appears broadly consistent with the interpretation which was later accepted by the Supreme Court.

49. The Petitioners have placed reliance upon Ankush Hiran Magar. There can be no dispute that the said judgment explains the legal fiction created by Section 32 and the vesting which takes place on the Tillers' Day. At the same time, it also appears that the controversy before the learned Single Judge was arising under Sections 88C and 43C. The legal effect of Section 88(1)(b) was not under examination in that case. Naturally, the Court had no occasion to consider the pronouncement of the Supreme Court in *Parvati*. Therefore, though the principles stated regarding statutory purchase continue to have importance, their application to a matter governed by Section 88(1)(b) still requires examination keeping in view the judgments of the Supreme Court.

50. Another submission made by the Respondents relates to the nature of the order dated 14 February 1964. According to the Petitioners, that order is a nullity because it was passed against a person who had already expired and also because it proceeds on an incorrect understanding of the provisions of the Act.

51. In this connection, reliance has been placed upon the

judgment in *V.S. Charati*. The Supreme Court observed in paragraph 9:

"A decision, simply because it may be wrong, would not thereupon become a nullity. It would continue to bind the parties unless set aside."

52. This principle makes distinction between an order which is wrong and an order which is without jurisdiction. Whether the order dated 14 February 1964 falls in one category or the other cannot be decided only by making an allegation. That question will necessarily depend upon the facts available on record and the nature of jurisdiction exercised by the Agricultural Lands Tribunal. The Petitioners have asserted that the proceedings continued against a dead tenant. On the other hand, the Respondents have pointed out that despite directions, the Petitioners themselves did not produce the complete order dated 14 February 1964. Therefore, it cannot even be verified whether the legal representatives had been brought on record. These rival submissions therefore require examination on the basis of the available material.

53. Thus, after considering the statutory provisions and the authorities relied upon by both sides, it appears that the present controversy is not confined to the concept of deemed purchase under Section 32. The issue appears to be whether such statutory purchase continues without interruption even after the Legislature has enacted an provision like Section 88(1)(b), and whether the order passed in the year 1964 can be ignored as a nullity or whether it continues to bind the parties until it is set aside in

accordance with law.

54. The stand taken by the Petitioners is that their predecessor became a deemed purchaser on the 'Tillers' Day under Section 32. According to them, once the statute treated the tenant as purchaser, ownership came into existence by operation of law. They submit that a later event, namely inclusion of the land within municipal limits, could not remove rights which had come into existence. For this proposition, reliance has been placed upon the decisions in *Ankush Hiranman Magar* and *Pralhad Ganaba Kapare*. Those judgments proceed on the footing that Section 32 creates a statutory fiction and that the purchase is deemed to have taken place on the 'Tillers' Day. They proceed on the basis that such purchase can fail only in those situations which the Act recognises.

55. While considering the above submission, this Court cannot ignore the language used by the Legislature in Section 32. The section does not create an unconditional purchase. It states that the deemed purchase is "subject to the other provisions of this section and the provisions of the next succeeding sections." These qualifying words form part of the enactment and therefore cannot be ignored while interpreting the scope of Section 32. The statutory purchase created by Section 32 has to be considered together with the remaining provisions of the statute.

56. The Respondents have relied upon Section 88(1)(b). Their submission is that where the State Government has issued a notification reserving an area for non-agricultural or industrial development, the Legislature has declared that the earlier

provisions of the Act shall not apply. They contend that the language used in Section 88(1)(b) was intended to operate as an overriding provision. Therefore, once the notification is made applicable to a particular area, the rights claimed under Chapter III cannot continue only because the tenant had become a deemed purchaser.

57. The above submission gets support from the judgment of the Supreme Court in *Parvati*. In that judgment, the Supreme Court examined Section 88(1)(b) under the Maharashtra enactment and interpreted the effect of the notification issued thereunder. The Court held that the notification operated retrospectively and that, subject to the statutory exceptions, rights claimed under the Act did not continue in respect of notified lands. The Supreme Court rejected the contention that Section 89(2)(b) preserved such rights notwithstanding the notification. Since the controversy before this Court also concerns Section 88(1)(b) of the Maharashtra Act, the interpretation placed by the Supreme Court cannot be ignored.

58. The Petitioners attempted to distinguish the above decision by relying upon *Tribhovandas Haribhai Tamboli*. However, after examining the said judgment, it appears that the controversy there arose because of two provisos introduced by the Gujarat Amendment Act, 1965. The Supreme Court noticed the earlier decision in *Parvati* and explained the context in which the controversy had arisen. Those statutory amendments do not exist in the Maharashtra legislation. Therefore, the observations made in *Tribhovandas* have to be understood in the background of the Gujarat amendments and cannot govern disputes arising under the

Maharashtra Act.

59. The same position applies while examining the reliance placed upon Ankush Hiranman Magar. The observations made therein regarding the legal fiction created by Section 32 continue to have significance. However, the controversy before the learned Judge in that matter arose under a different statutory setting involving Sections 88C and 43C. The consequences flowing from Section 88(1)(b), after the later decision of the Supreme Court in *Parvati*, did not arise for consideration. Therefore, though the principles stated therein remain relevant, they cannot answer the issue arising in the present petitions.

60. The Petitioners have next submitted that the order dated 14 February 1964 deserves to be ignored altogether because it was passed against a deceased tenant and therefore suffers from a complete lack of jurisdiction. This Court finds difficulty in accepting the submission. The Petitioners were called upon before the authorities to produce the complete order dated 14 February 1964. Despite such opportunity, the original order together with its complete cause title has not been produced. In the absence of that record, it is not possible to arrive at a conclusion whether the legal representatives had or had not been brought on record before the order was passed. Since the Petitioners seek to establish that the order is a nullity, the burden to establish such plea rests upon them. Mere assertion unsupported by the original proceedings would not be sufficient to establish that the entire adjudication was conducted against a dead person.

61. In this connection, the principle explained by the Supreme Court in *V.S. Charati* assumes considerable importance. The Supreme Court has recognised that an order passed by a competent authority does not become a nullity merely because another legal interpretation may be possible. Unless such order is set aside by a competent forum, it continues to bind the parties. This distinction between an erroneous order and an order without jurisdiction cannot be ignored while examining the controversy.

62. Taking an overall view of the matter, this Court is satisfied that the Petitioners have raised questions concerning the operation of Section 32, the effect of the notification issued under Section 88(1)(b), and the manner in which the proceedings were conducted. However, they have not established that the order dated 14 February 1964 is so void that it can be ignored. The interpretation placed by the Supreme Court in *Parvati* continues to bind this Court while construing Section 88(1)(b) of the Maharashtra Act. Likewise, the principle stated in *V.S. Charati* makes it clear that an order does not become non est merely because it is alleged to be incorrect.

63. For these reasons, this Court is unable to decide the controversy only on the assumption that the order dated 14 February 1964 was void. The correctness of that order has to be examined within the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, particularly Section 88(1)(b), and in the light of the decisions of the Supreme Court. The authorities relied upon by both sides arose in different contexts and, therefore, each of them has to be understood in the facts of each

case. The determination must depend upon the reading of the statutory provisions, the notification issued under Section 88(1) (b), the effect of the order dated 14 February 1964, and the material which is established on record.

64. On perusal of the record, it appears that the Petitioners questioned the order dated 14th February 1964 by filing an appeal under Section 74 of the Bombay Tenancy and Agricultural Lands Act, 1948 only in the year 2008. Thus, the challenge was brought after decades from the date on which the order came to be passed. Such long lapse of time required the Petitioners to place before the appellate authority a convincing explanation for not approaching the authority within limitation.

65. The record further shows that the appeal was initially dismissed on 28th March 2008 on the ground that it was not maintainable. However, the matter continued to appear on the board and further dates were assigned. According to the Petitioners, on 25th August 2008 the appellate authority merely recorded that since the appeal had been dismissed by the earlier order dated 28th March 2008, there was no necessity of passing any order. According to the Petitioners, this sequence of events created confusion regarding the actual status of the proceedings. Even if such submission is taken into consideration, it still remained necessary for the Petitioners to explain the subsequent period because the conduct of the parties after the alleged confusion also assumes importance.

66. The Maharashtra Revenue Tribunal, while considering the

application for condonation of delay, examined the explanation offered by the Petitioners regarding the period subsequent to 25th August 2008. The Tribunal noticed that even after the alleged order or Roznama entry dated 25th August 2008, the Petitioners did not immediately apply for obtaining a certified copy. Instead, the application for certified copy came to be made only on 11th November 2009. The Tribunal found that there was no explanation for this period between 25th August 2008 and 11th November 2009. According to the Tribunal, mere assertion that the Petitioners were unaware of the position was not sufficient in the absence of any material showing diligence. On that reasoning, the Tribunal concluded that sufficient cause had not been established.

67. The Tribunal did not stop at examining the delay occurring after the proceedings before the appellate authority. It also considered the question relating to the delay in filing the appeal against the original order dated 14th February 1964. The Tribunal examined the Petitioners' contention that the said order was a nullity and therefore could be challenged at any point of time. After considering the material placed before it, the Tribunal did not accept that contention. It formed the opinion that the order dated 14th February 1964 could not be treated as a nullity merely because such allegation had been made by the Petitioners. Once the Tribunal reached that conclusion, it proceeded on the footing that the normal principles of limitation and condonation of delay will apply.

68. In my opinion, the approach adopted by the Tribunal cannot be said to be either arbitrary or contrary to law. The Tribunal has

examined both aspects of the matter. Firstly, it considered whether sufficient explanation had been offered for the delay occurring after the proceedings of August 2008. Secondly, it also examined whether the original order dated 14th February 1964 could be regarded as a nullity so as to render the question of limitation irrelevant. After recording reasons on both issues, the Tribunal concluded that the Petitioners had failed to establish sufficient cause. Merely because another view may also be possible on the facts would not justify interference under Article 226 of the Constitution of India.

69. Once the Tribunal held that the order dated 14th February 1964 was not a nullity, the Petitioners could not avoid explaining the enormous delay in approaching the appellate authority. In my considered opinion, therefore, the order passed by the Maharashtra Revenue Tribunal does not warrant interference in exercise of writ jurisdiction. Once the Revisional Authority has examined the issue of delay on the basis of the material available and has arrived at a plausible conclusion, this Court would not substitute its own view merely because another conclusion could also have been reached.

70. Accordingly, I am of the opinion that no case is made out for interference with the impugned order. The writ petitions, being devoid of merit, are therefore dismissed.

71. In the facts and circumstances of the case, there shall be no order as to costs.

72. Pending interim application(s), if any, shall stand disposed of.

(AMIT BORKAR, J.)