Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6893 OF 2019

Simon Luis D Mello
(since deceased) Legal Heirs & Ors. … Petitioners
V/s.
John Zozolia D Mello
(since deceased) Legal Heirs & Ors. … Respondents

WITH
WRIT PETITION NO.11004 OF 2016

John Zuzulia D' Mello
(since deceased) Legal Heirs & Ors. … Petitioners
V/s.
Terrance Ferreira
(since deceased) Legal Heirs & Ors. … Respondents

Ms. Anu C. Kaladharan I/B Mr. S. A. Abhyankar, for the Petitioners in WP/6893/2019.

Mr. Anil Anturkar, Sr. Advocate along with Mr. Shashikant Sawadkar, for Respondent Nos.10 & 13 in WP/6893/2019, and for Respondent No.2 in WP/11004/2016.

Mr. Chetan Rathod, for the Petitioner in WP/11004/2016 & for Respondent Nos.1 and 2 in WP/6893/2019.

Mrs. S. R. Crasto, AGP, for the State in WP/6893/2019.

Mrs. V. R. Raje, AGP, for the State in WP/11004/2016.

Mr. Manish N. Bhutekar, for Respondent No.6(c) in WP/11004/2016.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 10, 2026

PRONOUNCED ON : AUGUST 12, 2026

JUDGMENT:

1. The Petitioners have filed the present Writ Petitions under Articles 226 and 227 of the Constitution of India. They are challenging the Judgment and Order dated 25 February 2016 passed by the learned Member (Administrative), Maharashtra Revenue Tribunal, Mumbai, in Revision Petition No. TNC/REV/283/B of 2011. According to the Petitioners, the said Judgment and Order is not correct and has caused prejudice to them. They have, therefore, approached this Court by filing the present Petitions.

2. The facts which have led to the filing of the present Petitions are as follows. The Petitioners, along with Respondent Nos. 1 to 8, were declared to be agricultural tenants in respect of the agricultural land situated at Village Gorai, Taluka Borivali, M.S.D., Mumbai, bearing Survey No. 31, Hissa No. 1. The land measures about 5 Acres, 8 Gunthas and 8 Cents and is assessed at Rs. 73.25. The learned Tehsildar and Agricultural Lands Tribunal, Borivali, by Judgment and Order dated 31 May 1976, declared the Petitioners and Respondent Nos. 1 to 8 as tenants of the said land. Respondent Nos. 9 and 12 are the legal heirs of the original owners of the land. Respondent Nos. 8 to 12 challenged the Order dated 31 May 1976 by filing an Appeal before the learned Sub-Divisional Officer, M.S.D., Mumbai. The said Appeal came to be dismissed by Judgment and Order dated 11 May 1977. By that Order, the learned Sub-Divisional Officer confirmed the order passed by the learned Tehsildar, Borivali. Respondent Nos. 8 to 12 did not challenge the said Order any further. Therefore, the order declaring the Petitioners and Respondent Nos. 1 to 8 as tenants became final.

3. After the order of the learned Tehsildar was confirmed by the learned Sub-Divisional Officer in the year 1977, the Petitioners, along with Respondent Nos. 1 to 8, applied to the learned Tehsildar, Borivali, for determination of the purchase price of the land. The application was made under Section 32-G of the Bombay Tenancy and Agricultural Lands Act. The purpose of the proceedings was to determine the amount which the tenants were required to pay for purchasing the land. The learned Tehsildar, Borivali, passed an Order dated 2 September 2009 in Tenancy Case No. 3 of 2005 and determined the purchase price of the suit property. The Petitioners, along with Respondent Nos. 1 to 8, paid the purchase price so determined to the learned Tehsildar, Borivali.

4. Respondent Nos. 8 to 12 were aggrieved by the Order dated 2 September 2009 passed by the learned Tehsildar, Borivali. They, therefore, filed Appeal No. 4 of 2010 before the learned Sub-Divisional Officer, M.S.D., Mumbai, challenging the said Order. The learned Sub-Divisional Officer, M.S.D., Mumbai, heard the parties and allowed the Appeal on 16 May 2011. According to the Petitioners, while passing the said Order, the learned Sub-Divisional Officer went beyond the powers available to him and cancelled the 'M' Certificate. The Petitioners contend that no proper reasons were given for cancelling the 'M' Certificate. It was not explained why the order passed by the learned Tehsildar, Borivali, determining the purchase price was wrong or could not be sustained.

5. Being aggrieved by the Order dated 16 May 2011, Petitioner No. 2 and Respondent Nos. 1 to 5 filed a Revision Petition before the Maharashtra Revenue Tribunal under Section 76 of the Bombay Tenancy and Agricultural Lands Act, now known as the Maharashtra Agricultural Lands Act. The Revision Petition was registered as Revision Petition No. 283/B of 2011. Petitioner No. 1 was shown as Respondent No. 5 in that Revision Petition because, according to the Petitioners, Petitioner No. 1 was not available to sign the Revision Petition at that time.

6. The Petitioners state that the Maharashtra Revenue Tribunal, Mumbai, heard the parties and their respective Advocates and passed the impugned Judgment and Order dated 25 February 2016. The Petitioners are dissatisfied with the said Judgment and Order. According to them, the Tribunal has not properly considered their case and has committed an error in upholding the order which had gone against them. The Petitioners have, therefore, approached this Court by filing the present Writ Petitions and seek interference with the impugned Judgment and Order.

7. Mr. Abhyankar, learned Advocate appearing for the Petitioners, submitted that the Petitioners are aggrieved by the Judgment and Order dated 25 February 2016 passed by the learned Member, Maharashtra Revenue Tribunal, Mumbai, in

Revision Petition No. TNC-REV/283/B/2011. They have, therefore, filed the present Writ Petition under Articles 226 and 227 of the Constitution of India. According to him, the impugned Judgment and Order is contrary to law and to the material on record and, therefore, deserves to be quashed and set aside.

8. Mr. Abhyankar submitted that the learned Member of the Maharashtra Revenue Tribunal has seriously erred in applying to the present case the principle laid down in the Judgment of the Hon'ble Justice Kanade concerning Village Dahisar. He submitted that Village Dahisar was one of the 34 Villages, along with Village Gorai, referred to in Part IV of Schedule A to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945, hereinafter referred to as "the Greater Bombay Declaration of Limits Act". According to him, the Tribunal could not have applied that Judgment merely because the suit land is situated at Village Gorai and because it was stated to have come within Greater Bombay pursuant to the Notification dated 1 August 1956.

9. Mr. Abhyankar submitted that the learned Member of the Tribunal has not properly considered the Judgment dated 22 September 1978 delivered by this court. He submitted that the Tribunal has not properly examined the relevant provisions of the Greater Bombay Laws and the Greater Bombay Declaration of Limits Act. Because of this, according to him, the Tribunal reached an incorrect finding. According to Mr. Abhyankar, the Tribunal ought to have held that the 34 Villages of the then Thana District, which are presently situated in Taluka Borivli of the Bombay Suburban District and are mentioned in Part IV of Schedule A to the Greater Bombay Declaration of Limits Act, included Village Gorai and Village Dahisar. He submitted that, as on 1 August 1956, these Villages formed part of the then Thane District and were not part of Greater Bombay.

10. Mr. Abhyankar therefore submitted that the Notification dated 1 August 1956 could not have been applied to Village Gorai and Village Dahisar. He submitted that this position is made clear by Bombay Act No. 57 of 1956. Mr. Abhyankar submitted that the learned Member of the Tribunal has failed to consider an important part of Part IV of the Greater Bombay Declaration of Limits Act. According to him, the proviso to Part IV states that, for the purpose of Section 43-C of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Tenancy Act", the expression "Greater Bombay" used in Section 43-C would not include the 34 Villages mentioned in Part IV of Schedule A to the Greater Bombay Declaration of Limits Act.

11. Mr. Abhyankar submitted that the said proviso is clear in its words and leaves no doubt about its meaning. It excludes the Villages mentioned in Part IV of Schedule A from the expression "Greater Bombay" for the purpose of Section 43-C of the Tenancy Act. According to him, the learned Member of the Tribunal failed to consider the effect of this proviso while deciding the Revision Petition.

12. The learned Advocate therefore submitted that the Tribunal ought to have held that, even today, for the purpose of Section 43-C of the Tenancy Act, Village Gorai and Village Dahisar are to be treated as Villages which do not form part of Greater Bombay. He submitted that this position follows from the provisions of the Greater Bombay Laws and the Greater Bombay Declaration of Limits Act, 1945. Mr. Abhyankar submitted that, for this reason, the provisions of the Tenancy Act, including Sections 1 to 87, continue to apply to Village Gorai, Village Dahisar and Village Borivli, as mentioned in Part IV of Schedule A to the Greater Bombay Declaration of Limits Act. According to him, the only exception is in respect of those areas which were within the former Municipalities of Borivli, Kandivli, Malad and Mulund. It was therefore submitted that the learned Member of the Tribunal failed to consider this legal position. According to Mr. Abhyankar, this failure has resulted in an incorrect finding which cannot be sustained.

13. Mr. Abhyankar submitted that the Tribunal has committed an error in holding that the Notification dated 1 August 1956 treated Village Gorai as part of Greater Bombay. According to him, when the said Notification was issued, the limits of Greater Bombay did not include Village Gorai or Village Dahisar. These Villages were subsequently dealt with under Part IV of Schedule A to the Greater Bombay Declaration of Limits Act. The Tribunal, according to him, failed to properly consider this position.

14. He submitted that the Notification dated 1 August 1956 applied only to the Villages mentioned in Parts II and III of Schedule A to the Greater Bombay Declaration of Limits Act. According to him, it did not apply to the 34 Villages which were subsequently mentioned in Part IV of Schedule A to the Greater

Bombay Declaration of Limits Act, 1945.

15. Mr. Abhyankar then drew my attention to the Order passed by the learned Tehsildar, Borivali, in Tenancy Case No. 1 of 1976 under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act. He submitted that, in paragraph 5 of that Order, the learned Tehsildar had recorded that the Petitioners had produced the original rent receipts for the period from 1922 to 1972-1973. The Petitioners had proved the signatures appearing on those receipts. According to Mr. Abhyankar, the opponents had admitted that the signatures appearing on the rent receipts were genuine.

16. Mr. Abhyankar submitted that the learned Tehsildar had recorded a finding that Late Domnic Farreira had recognised Francis D'Mello as his tenant. He submitted that the rent receipts dated 30 July 1922, 10 July 1923, 10 June 1924 and 14 June 1925 showed that Late Domnic Farreira had accepted rent from Francis D'Mello. According to him, these documents supported the case of the Petitioners regarding the existence of the tenancy.

17. Mr. Abhyankar submitted that, after considering this material, the learned Tehsildar, Borivali, passed the Order dated 31 May 1976 under Section 70(b) of the BT & AL Act and declared the Petitioners to be tenants in respect of the suit property. According to him, this finding regarding the tenancy had been recorded by the competent authority on the basis of the documents and material produced before it.

18. He submitted that the inquiry under Section 32-G of the BT & AL Act has a limited purpose. According to him, in such proceedings, the Authority is required to consider whether the tenant is willing to purchase the land and determine the purchase price in accordance with the provisions of law. It is not open in such proceedings to reopen an issue which had been decided by the competent Authority. In support of this submission, Mr. Abhyankar relied upon the Judgment of this Court in *Mahadeo Nathaji Newase vs. Shankar Kirshna Varpe (deceased) & Ors.,* 2005 (2) ALL MR 766. He relied upon the Judgment of this Court in *Bhimrao Hanmant Patil, since deceased by his L.Rs. Ramrao Bhimrao Patil and others vs. Nagnath Santoba Bubane and another,* 2001 (1) Mh.L.J. 232.

19. Mr. Abhyankar relied upon the Judgment of this Court in *Veekaylal Investment Co. Pvt. Ltd., Mumbai vs. Bhalchandra D. Patil and others,* 2019 (4) Mh.L.J. 459. He submitted that, according to the said Judgment, the expression "Greater Bombay" used in Section 2(2) of the relevant Act, for the purpose of Section 43-C of the BT & AL Act, cannot be treated as including the Villages mentioned in Part IV of Schedule A to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945. According to him, this Judgment supports the Petitioners' case that Village Gorai cannot be treated as part of Greater Bombay for the purpose of Section 43-C of the Tenancy Act.

20. Per contra, Mr. Anturkar, learned Senior Advocate appearing for Respondent Nos. 10 and 13 in Writ Petition No. 6893 of 2019, opposed the submissions made on behalf of the Petitioners. He submitted that the Notification dated 1 August 1956 was issued by the State Government and was published in Part IV-B of the

Bombay Government Gazette on 9 August 1956. He referred to the Notification dated 29 December 1957, which was issued before 1 April 1957. According to him, by the said Notification, the State Government had specified certain areas mentioned in the Schedule attached to it as areas reserved for non-agricultural and industrial development.

21. Mr. Anturkar then referred to Section 2(2) of the BT & AL Act. He submitted that where any word or expression is used in the Act but is not defined in the Act, its meaning has to be taken from the Bombay Land Revenue Code or the Transfer of Property Act, 1882, as the case may be. He submitted that neither the Transfer of Property Act, 1882 nor the Bombay Land Revenue Code contains a definition of the expression "Greater Bombay". Therefore, according to him, the provisions of the Central General Clauses Act would have to be considered. He submitted that, for understanding what is meant by "Greater Bombay", the definition contained in the Mumbai Municipal Corporation Act should be taken into consideration.

22. Mr. Anturkar submitted that an important question in the present matter is whether the Petitioners were tenants as on 1 April 1957. According to him, this was an issue which had to be considered and decided by the Authorities under the Tenancy Act. He therefore submitted that the Petitioners could not proceed on the assumption that their status as tenants was sufficient to decide the other issues arising in the proceedings.

23. The Petitioners and the Respondents in the connected Petitions adopted the submissions made by the Petitioners and the Respondents, respectively, in the lead Writ Petition No. 6893 of 2019.

REASONS AND ANALYSIS:

24. I have considered the pleadings and submissions made by both sides, the orders passed by the learned Sub-Divisional Officer and the Maharashtra Revenue Tribunal, and the judgments relied upon by both sides. The main question which arises for consideration is whether the land situated at Village Gorai could be treated as part of Greater Bombay for the purpose of Section 43-C of the Bombay Tenancy and Agricultural Lands Act, 1948. If it is treated as part of Greater Bombay for that purpose, Sections 32 to 32-R would not apply and the Petitioners would lose the benefit claimed by them under Section 32-G. From the order of the Tribunal, it appears that the Tribunal accepted the reasoning of the learned Sub-Divisional Officer on the basis of the Notification dated 1 August 1956 and the judgment relating to Village Dahisar. The Tribunal proceeded on the basis that the reasoning relating to Dahisar could apply to Village Gorai since both villages were amongst the 34 villages mentioned in Part IV of Schedule A.

25. There is no serious dispute about the earlier proceedings relating to the tenancy of the Petitioners. The Petitioners and Respondent Nos. 1 to 8 were declared to be tenants by the learned Tehsildar and Agricultural Lands Tribunal, Borivali, by order dated 31 May 1976 under Section 70(b) of the Act. That order was challenged before the learned Sub-Divisional Officer. The challenge was dismissed and the order of the Tehsildar was confirmed on 11 May 1977., the said order was not challenged further. The finding that the Petitioners were tenants had therefore become final. This is important because, when the proceedings under Section 32-G were later taken up, a question which had been decided between the parties could not be opened again.

26. The record shows that, after the tenancy order became final, the Petitioners and Respondent Nos. 1 to 8 approached the learned Tehsildar for fixing the purchase price under Section 32-G. The learned Tehsildar fixed the purchase price by order dated 2 September 2009. The Petitioners and Respondent Nos. 1 to 8 paid the purchase price so fixed. Respondent Nos. 8 to 12 challenged that order before the learned Sub-Divisional Officer. The Appeal was allowed and the order dated 2 September 2009 was set aside. The Section 32-M certificate was cancelled. In the operative part of the order, the learned Sub-Divisional Officer directed that the order passed by the Tehsildar be quashed and set aside and that the certificate dated 8 November 2010 be cancelled.

27. The first question is whether the learned Sub-Divisional Officer and the learned Member of the Maharashtra Revenue Tribunal were correct in holding that Village Gorai was outside the operation of the relevant provisions of the Tenancy Act because it was treated as part of Greater Bombay. In my view, this question has to be answered in favour of the Petitioners.

28. Section 43-C has to be read along with Part IV of Schedule A to the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945. Part IV contains the names of 34 villages of the then Thana District. Village Dahisar and Village Gorai are included in that Part. There is a specific proviso attached to Part IV. The said proviso provides as follows:

> "Provided that for the purpose of Section 43-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (Bom. LXVII of 1948), the expression "Greater Bombay" in the said section shall not be deemed to include the villages specified in Part-IV of this Schedule."

29. This provision has a clear meaning. It is a specific direction given by the legislature. For the purpose of Section 43-C, the expression "Greater Bombay" shall not include the villages mentioned in Part IV. Village Gorai is one of those villages. Therefore, while considering Section 43-C, Village Gorai has to be considered in the light of this specific proviso.

30. The learned Sub-Divisional Officer proceeded on a different basis. He relied upon the Notification dated 3 January 1957 by which the limits of the Municipal Corporation of Greater Bombay were extended with effect from 1 February 1957. On that basis, he held that Village Gorai had come within Greater Bombay. He then relied upon the Notification dated 1 August 1956 and concluded that the lands situated at Gorai were excluded from the operation of Sections 1 to 87 of the Tenancy Act. The learned Sub-Divisional Officer recorded the conclusion that "Village Gorai thus been part of the Greater Bombay is exempted from Operation of Section 1 to 87 of the Act."

31. In my view, this reasoning does not consider the special position given by law to the 34 villages mentioned in Part IV.

32. It may be that the expression "Greater Bombay" has a general meaning for some other purposes. But that is not the question which is required to be decided here. The question is what is the position for the particular purpose of Section 43-C of the Tenancy Act. For that purpose, the legislature has provided that the villages mentioned in Part IV shall not be deemed to be included in Greater Bombay. Therefore, even if Village Gorai was included within the larger municipal limits for some other purpose, that fact by cannot remove the specific proviso contained in Part IV.

33. This aspect was considered by this Court in Veekaylal Investment Co. Pvt. Ltd. In paragraph 82 of that judgment, this Court considered Part IV of Schedule A along with Section 2(2) of the Greater Bombay Declaration of Limits Act and held:

> "In my view, in view of proviso to Part IV to Schedule A of the said Act, for the purpose of section 43-C of the MTAL Act, the expression "Greater Bombay" in the said section shall not be deemed to include the villages specified in Part IV of the said schedule. It is thus clear that in view of the said proviso to Part IV of the said Act, the expression "Greater Bombay" would not include those 34 villages including the village Dahisar."

34. The Court considered the effect of this position in paragraph 83. It held that when Section 43-C is read together with Part IV of Schedule A and the definition of Greater Bombay, Sections 31 to 32-R would apply to the said 34 villages, including Village Dahisar. This judgment therefore supports the case of the Petitioners.

35. The learned Sub-Divisional Officer had relied upon the judgment of this court relating to Village Dahisar. The Tribunal relied upon the same judgment. However, the later decision in *Veekaylal* explains the effect of Part IV and its proviso. The submission of the Petitioners is supported by the statutory words as well as by the reasoning adopted in *Veekaylal*. The Petitioners are not asking the Court to create a new right or exemption. They are asking that the specific proviso made by the legislature for the purpose of Section 43-C should be given its proper effect.

36. The difference between the general municipal limits and the special position under Section 43-C is important. The learned Sub-Divisional Officer appears to have proceeded as if the expression "Greater Bombay" must have the same effect for every purpose. Such a view cannot be accepted when the statute has made a special provision for Section 43-C.

37. Section 2(21) of the Tenancy Act requires consideration in this connection. It provides:

> “words and expressions used in this Act but not defined shall have the meaning assigned to them in the Bombay Land Revenue Code, 1879 (Bom V of 1879), and the Transfer of Property Act, 1882 (IV of 1882), as the case may be.”

38. Mr. Anturkar, learned Senior Advocate, submitted that neither the Transfer of Property Act nor the Bombay Land Revenue Code defines the expression "Greater Bombay". According to him, therefore, the definition under the municipal law and the General Clauses legislation should be considered. This submission may have some force if the Court was required only to find the general meaning of the expression "Greater Bombay". But that is not the exact question arising here. There is a specific proviso in Part IV which says that, for the purpose of Section 43-C, the expression "Greater Bombay" shall not be deemed to include the 34 villages mentioned in Part IV. Once such a specific provision is there, it has to be given effect to. A general definition cannot be used in a way by which the specific proviso becomes without meaning.

39. There is another reason why the Petitioners have to succeed. The proceedings under Section 32-G were not the proper proceedings in which the tenancy of the Petitioners could again be opened for consideration. The earlier order under Section 70(b) had declared the Petitioners to be tenants. That order was confirmed in appeal in 1977. No challenge was made to that order. Therefore, the question regarding the tenancy had come to an end between the parties.

40. The principle laid down by this Court in Mahadeo Nathaji Newase, is applicable. In that case, the tenant's status had been decided in earlier proceedings under Section 70(b). The decision had become final. Later, when proceedings under Section 32-G were taken for fixing the purchase price, the Tribunal again opened the question of tenancy. This Court held:

> "The Tenancy Authority while considering application under section 32-G of the Act for determining the purchase price of the suit lands, was obviously bound by the said finding and that finding would equally bind the parties to the proceedings."

41. The Court held:

> "It was, therefore, not open to the Tribunal to permit the respondents to question the title of the petitioner as tenant in respect of the suit lands, which was concluded in the earlier round of litigation under section 70(b) of the Act."

42. The Court restored the orders passed by the authorities below determining the purchase price.

43. The same principle was applied by this Court in *Bhimrao Hanmant Patil*. In that case, the earlier finding that the petitioner had become a deemed purchaser had become final. The Court held that the Tribunal had exceeded its revisional jurisdiction by again deciding that issue. The Court observed:

> "Accordingly, the only issue that could have been examined by the Courts below in the present round of litigation was regarding fixation of the purchase price and nothing more."

44. The Court held that the Tribunal could not decide the whole matter again without being bound by the earlier decision which had become final.

45. The reasoning in these two judgments applies to the present case. Here, the tenancy of the Petitioners was not being claimed for the first time in the Section 32-G proceedings. Their tenancy had been declared by the competent Tenancy Authority in 1976. That order was confirmed in 1977 and no challenge was made. Therefore, unless that order was set aside in proper proceedings, the authorities dealing with the Section 32-G proceedings were required to proceed on the basis that the Petitioners were tenants.

46. The learned Sub-Divisional Officer considered several other objections. It was submitted that the Petitioners had not given the required intimation under Section 32-F(1A). It was submitted that the mandatory provisions of the Act and Rules had not been followed and that the statement required under Section 32-G(2) had not been properly recorded. Objections regarding the revenue entries, possession and cultivation were raised. These objections are found in the order of the learned Sub-Divisional Officer.

47. I have considered these submissions. However, they cannot be used in the manner in which they have been used for cancelling the whole Section 32-G proceeding.

48. The first difficulty is that the foundation of the order is not correct. If Village Gorai is not excluded from the operation of Sections 32 to 32-R for the purpose of Section 43-C, then the Section 32-G proceeding cannot be rejected merely by saying that the Tenancy Act did not apply to the land. The main reason given by the learned Sub-Divisional Officer and accepted by the Tribunal therefore cannot remain.

49. The second difficulty is that the question whether the Petitioners were tenants had been decided. The learned Sub-Divisional Officer noticed the earlier order declaring the Petitioners' predecessors to be tenants, but still proceeded to consider whether the Petitioners had acquired the right to purchase. The Maharashtra Revenue Tribunal accepted the reasoning of the learned Sub-Divisional Officer and held that the Tenancy Act did not apply to the suit land. The Tribunal rejected the Revision Petition and confirmed the order of the learned Sub-Divisional Officer.

50. The third difficulty is that the objections regarding procedure in the Section 32-G proceedings have to be considered in the correct legal position. Such objections cannot be used for reopening the tenancy finding which had become final. The judgments in *Mahadeo Nathaji Newase* and *Bhimrao Hanmant Patil* make this position clear. The later proceeding does not give the Tribunal a larger power to decide again an issue which had been finally decided.

51. The submission that the Petitioners had not given notice under Section 32-F(1A) does not change the result on the material available. The Respondents had allowed the tenancy declaration to become final. The subsequent proceeding was for fixation of the purchase price. Therefore, the authorities were required to proceed on the basis of the existing finding of tenancy and decide the matter according to the provisions applicable to the land. The Section 32-G proceeding could not be treated as if it was the first proceeding in which the Petitioners were required to prove that they were tenants.

52. The same position applies to the objection regarding the 7/12 entries and possession. The learned Sub-Divisional Officer relied upon entries showing the names of other persons and observed that the Petitioners were not shown to be in possession on Tiller's Day. But the question, whether the Petitioners were tenants had been decided in the Section 70(b) proceedings. A later authority could not rely upon a revenue entry to reopen that issue which had been decide.

53. There is an important difference between the effect of the Notification dated 1 August 1956 and the later extension of the municipal limits. The learned Sub-Divisional Officer proceeded as if, once Gorai came within the municipal limits, Sections 1 to 87 of the Tenancy Act automatically stopped applying. Such a conclusion does not give proper importance to Section 43-C and the proviso to Part IV. The position cannot be decided only by looking at the geographical limits of Greater Bombay. For the purpose of Section 43-C, the legislature has said that the 34 villages mentioned in Part IV are not to be treated as included in Greater Bombay.

54. The submission of Mr. Anturkar based upon the Notification dated 29 December 1957 and the areas reserved for non-agricultural and industrial development does not change the position. A notification regarding particular areas or development cannot take away the specific effect of the proviso in Part IV unless there is some provision in law which permits such result. No such provision has been shown.

55. It was submitted that the question, whether the Petitioners were tenants as on 1 April 1957 was required to be decided by the Tenancy Authorities. There is no difficulty with this proposition as a general statement. But in the present case that question had been decided by holding that the Petitioners had produced the original rent receipts for the period from 1922 to 1972-1973. The Petitioners had proved the signatures appearing on those receipts. The Tehsildar had declared the Petitioners to be tenants, the appellate authority had confirmed that finding, and the order had become final. Therefore, that question was not remaining open for a fresh decision in the Section 32-G proceedings.

56. The Tribunal, instead of properly examining the proviso to Part IV and the effect of the earlier final order regarding tenancy, substantially accepted the reasoning of the learned Sub-Divisional Officer. It held that the provisions of the Tenancy Act did not apply to the suit land. In doing so, the Tribunal failed to give proper effect to the statutory words and failed to consider the settled principle that an issue finally decided cannot be reopened in the later Section 32-G proceeding.

57. For these reasons, the impugned orders cannot be sustained.

58. In view of the foregoing discussion, and upon overall assessment of the material record, the following order is passed:

i) The Writ Petitions are allowed;

ii) The Judgment and Order dated 25 February 2016 passed by the learned Member (Administrative), Maharashtra Revenue Tribunal, Mumbai, in Revision Petition No. TNC-REV/283/B of 2011 is quashed and set aside;

iii) The Judgment and Order dated 16 May 2011 passed by the learned Sub-Divisional Officer, M.S.D., Mumbai, in Appeal No. 4 of 2010 is quashed and set aside;

iv) The Order dated 2 September 2009 passed by the learned Tehsildar and Agricultural Lands Tribunal, Borivali, in Tenancy Case No. 3 of 2005, fixing the purchase price under Section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948, is restored;

v) The consequential Section 32-M certificate dated 8 November 2010 shall stand restored, subject to verification by the competent Tenancy Authority of the statutory requirements and the payments made by the Petitioners and the other concerned tenants;

vi) The parties shall act on an authenticated copy of this order;

vii) The Writ Petitions are accordingly disposed of in the above terms.

viii) There shall be no order as to costs.

(AMIT BORKAR, J.)