RAMCHANDRA

v.

TUKARAM AND ORS.

August 24, 1965

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

Bombay Tenancy and Agricultural Lands, (Vidarbha region and Kutch Area) Act (99 *of* 1958), *ss.* 38 *and* 132(2) *and* (3)—*Scope of.*

The land in dispute as in the Vidarbha region originally forming part of the State of Madhya Pradesh, to which the Berar Regulation of Agricultural Leases Act, 1951 (Berar Act) applied. Under the Act, a landlord requiring land for personal cultivation, could terminate a lease by issuing a notice to the lessee under s. 9, and obtaining an order in that behalf from the Revenue Officer under s. 8(1)(g) and then, applying to the Revenue Officer for ejectment of the lessee. On the landlord's application, the Officer, after making such summary enquiry as he deems fit, may pass an order restoring possession to the landlord. After the merger of the Vidarbha region with the State of Bombay, the Bombay Tenancy and Agricultural Lands (Vidarbha region and Kutch Area) Act (Tenancy Act) was passed on December 30, 1958 repealing the Berar Act. Section 36 of the Tenancy Act set up a procedure for obtaining possession from a tenant and provided that the landlord may apply to the Tahsildar who, after holding an enquiry, may pass such order as he deems fit. Section 38(1) authorised the landlord to obtain possession of land from a tenant, if the landlord, *bona fide* required the land for personal cultivation and in order to effectuate that right, the landlord must give a notice of one year's duration in writing and make an application for possession under s. 36, within the prescribed period. By s. 38(3) it was provided that the right of a landlord to terminate a tenancy under s. 38(1) shall be subject to the conditions contained in cls. (a) to (e) of sub-s. (3) and sub-s. (4) imposed certain restrictions on the right of the landlord to terminate a tenancy. By s. 132(2) any right, already acquired before 30th December 1958 remained enforceable, and any legal proceeding in respect of such right, could be instituted, continued and disposed of as if the Tenancy Act had not been passed. But to this reservation an exception was made by s. 132(3) that a proceeding pending on 30th December 1958, was to be deemed to have been instituted and pending before the corresponding authority under the Tenancy Act, and was to be disposed of in accordance with its provisions.

The appellant had obtained from the Revenue Officer concerned an order, determining the tenancy of the respondent under s. 8(1)(g) of the Berar Act, effective from 1st April 1958. On 15th May 1959, after the Tenancy Act had come into force the appellant applied to the Tahsildar under s. 36 for an order for restoration of possession. The Tahsildar ordered restoration of possession, but on appeal the Sub-Divisional Officer set aside the order on the ground that the appellant failed to comply with the requirements of s. 38 of the Tenancy Act, and the Revenue Tribunal confirmed the order of the Sub-Divisional Officer. In a petition for the issue of a writ, the High Court set aside all the orders of the subordinate tribunals and remanded the case to the Tahsildar for dealing with the application in the light of directions given in its judgment. The High Court

A held that though s. 38(1) of the Tenancy Act did not apply to the appellant's application, by vitrue of s. 132(3) the provision of s. 38(3) and (4) were applicable to it.

In his appeal to the Supreme Court, the appellant contended that the High Court had not correctly interpreted s. 132(3) and that it should have restored the order passed by the Tahsildar and should not have reopened the enquiry.

B

HELD : The Tahsildar was competent to entertain the appellant's application for recovery of possession. Once an order was passed under s. 8(1)(g) of the Berar Act by the Revenue Officer, the only enquiry contemplated to be made on an application under s. 19 of the Act, was a summary enquiry before an order for possession was made in favour of the landlord. At that stage there was no scope for the application of the conditions and restrictions prescribed by s. 38(3) and (4), for. C those provisions do not apply to proceedings to enforce rights acquired when the Berar Act was in operation. Therefore, the Tahsildar should deal with the application on the footing that it was an application to enforce right conferred by ss. 8 and 9 of the Berar Act and that the provisions of s. 38 of the Tenancy Act have no application thereto. [604 F-H; 605 A-B]

The appellant had acquired a right to obtain possession of the land on D the determination made by the Revenue Officer under s. 8(1)(g) of the Berar Act. An order made under s. 8 or s. 9 of the Berar Act relating to termination of a lease does not terminate the proceeding; it comes to an end only when an order under s. 19 of the Act is made. Therefore, the application filed by the appellant purporting to be under s. 36(2) of the Tenancy Act must be regarded as an application, under s. 19 of the Berar Act, and deemed to be a continuation of the application under ss. 8 and 9 of the Berar Act and pending at the date when the Tenancy Act E was brought into force. Since the repeal of the Berar Act the proceeding would stand transferred to the Tahsildar, who was bound to give effect to the rights already acquired before the Tenancy Act was enacted, under s. 132(2), and in doing so, under s. 132(3) he had to follow the procedure prescribed by the Tenancy Act. But the exception made in s. 132(3) is limited in its content. By the use of the expression 'shall be disposed of in accordance with the provisions of this Act', the legislature intended to attract the procedural provisions of the Tenancy Act F and not the conditions precedent to the institution of fresh proceedings. Therefore, a pending proceeding in respect of a right acquired before the Act, had to be continued and disposed of as if the Tenancy Act had not been passed, subject to the reservation in respect of two matters relating to the competence of the officers to try the proceedings and to the procedure in respect of the trial. Between s. 19(3) of the Berar Act and s. 36(3) of the Tenancy Act in the matter of procedure there is no substantial difference. But to the trial of the application for enforcement G of the right acquired under the Berar Act, s. 38 of the Tenancy Act could not be attracted. Section 38(1) is in terms prospective and does not purport to affect rights acquired before the Tenancy Act was brought into force. Section 38(3) and (4) do not apply to an application filed or deemed to be filed under s. 19 of the Berar Act. Section 38(3) in terms makes the right of the landlord to terminate a tenancy under sub-s. (1), subject to conditions mentioned therein. The words of s. 38(4), are H undoubtedly general, but the setting in which the sub-section occurs indicates that it is also intended to apply to tenancies determined under s. 38(1). Therefore where the determination of the tenancy is not under s. 38(1), sub-ss. (3) and (4) have no application. [601 D, E, 602 A, B, E, G-H, 603 B, E, F-H]

Jayantraj Kanakamal Zambad v. *Hari Dagdu*, I.L.R. [1962] Bom. 42 (F.B.), approved. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 616 of 1963.

Appeal from the judgment and order dated September 21, 1961 of the Bombay High Court (Nagpur Bench) at Nagpur in Special Civil Application No. 2 of 1961. B

S. G. Patwardhan, G. L. Sanghi, J. B. Dadabhanji, O. C. Mathur and *Ravinder Narain*, for the appellant.

A. G. Ratnaparkhi, for the respondents.

C

The Judgment of the Court was delivered by

Shah, J. The first respondent Tukaram was a protected lessee within the meaning of that expression in the Berar Regulation of Agricultural Leases Act 24 of 1951—hereinafter called "the Berar Act" in respect of certain land at Mouza Karwand in the Vidarbha Region (now in the State of Maharashtra). The appellant—who is the owner of the land—served a notice under s. 9(1) of the Berar Act terminating the tenancy on the ground that he required the land for personal cultivation, and submitted an application to the Revenue Officer under s. 8(1)(g) of the Berar Act for an order determining the tenancy. The Revenue Officer determined the tenancy by order dated July 2, 1957 and made it effective from April 1, 1958. In the meantime the Governor of the State of Bombay (the Vidarbha region having been incorporated within the State of Bombay by the States Reorganisation Act 1956) issued Ordinance 4 of 1957 which was later replaced by Act 9 of 1958 known as the Bombay Vidarbha Region Agricultural Tenants (Protection from Eviction and Amendment of Tenancy Laws) Act, 1957. By s. 3 of Act 9 of 1958 a ban was imposed against eviction of tenants, and by s. 4 all proceedings pending at the date of the commencement of the Act, or which may be instituted during the period the Act remained in force, for termination of any tenancy and for eviction of tenants were to be stayed on certain conditions set out in that section. Bombay Act 9 of 1958 and the Berar Act 24 of 1951 were repealed by the Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 99 of 1958, which may hereinafter be referred to as "the Tenancy Act". The appellant applied on May 15, 1958 to the Naib Tahsildar, Chikhli for an order for "restoration of possession" of the land. By order dated August 2, 1960 the Naib Tahsildar ordered "restoration of possession of the land" to the appellant. D E F G H

A In appeal the Sub-Divisional Officer, Buldana set aside the order of the Naib Tahsildar because in his view the application was not maintainable in that the appellant had failed to comply with the requirements of s. 38 of the Tenancy Act. The Revenue Tribunal confirmed the order of the Sub-Divisional Officer. The appellant then moved the High Court of Judicature at Bombay praying for B a writ or direction quashing the order of the Sub-Divisional Officer, Buldana and of the Revenue Tribunal and for an order for restoration of possession of the land in pursuance of the order of Naib Tahsildar. The High Court set aside the order of the Naib Tahsildar, the Sub-Divisional Officer and the Revenue Tribunal and remanded the case to the Tahsildar for dealing with the application C made by the appellant in the light of the directions given in the judgment. The appellant appeals to this Court, with certificate under Art. 133 (1)(c) of the Constitution granted by the High Court.

The contention urged on behalf of the appellant is that the D High Court should have restored the order passed by the Naib Tahsildar and should not have reopened the inquiry as directed in its judgment. It is necessary in the first instance to make a brief survey of the diverse statutory provisions in their relation to the progress of the dispute, which have a bearing on the question which falls to be determined. The land was originally in E the Vidharbha region which before the Bombay Reorganisation Act, 1956 was a part of the State of Madhya Pradesh, and the tenancy of the land was governed by the Berar Act. The first respondent was a protected lessee in respect of the land under s. 3 of the Berar Act. Section 8 of the Act imposed restrictions on termination of protected leases. It was provided that notwith- F standing any agreement, usage, decree or order of a court of law, the lease of any land held by a protected lessee shall not be terminated except under orders of a Revenue Officer made on any of the grounds contained therein. Even if the landlord desired to obtain possession of the land for *bona fide* personal cultivation, he had to obtain an order in that behalf under G s. 8(1)(g). Section 9 enabled the landlord to terminate the lease of a protected lessee if he required the land for personal cultivation by giving notice of the prescribed duration and setting out the reasons for determination of the tenancy. A tenant served with the notice under sub-s. (1) could under sub-s. (3) apply to the Revenue Officer for a declaration that the notice shall H have no effect or for permission to give up some other land of the same landholder in lieu of the land mentioned in the notice. Sub-sections (4), (5), (6), (7) and (8) dealt with the proce-

dure and powers of the Revenue Officer. The landlord had, after serving a notice under s. 9(1), to obtain an order under s. 8(1)(g) that possession was required by him *bona fide* for personal cultivation. Section 19 of the Berar Act prescribed the procedure for ejectment of a protected lessee. Sub-section (1) provided:

> "A landholder may apply to the Revenue Officer to eject a protected lessee against whom an order for the termination of the lease has been passed under sections 8 or 9."

Sub-section (2) enabled a tenant dispossessed of land otherwise than in accordance with the provisions of the Act to apply to the Revenue Officer for restoration of the possession. By sub-s. (3) it was provided :

> "On receipt of an application under sub-section (1) or (2), the Revenue Officer may, after making such summary enquiry as he deems fit, pass an order for restoring possession of the land to the landholder or the protected lessee as the case may be and may take such steps as may be necessary to give effect to his order."

The appellant had obtained from the Revenue Officer concerned an order under s. 8(1)(g) determining the tenancy effective from April 1, 1958. But before that date Ordinance 4 of 1957 was promulgated. This ordinance was later replaced by Bombay Act 9 of 1958. By s. 4 of Bombay Act 9 of 1958 all proceedings either pending at the date of commencement of the Act or which may be instituted (during the period the Act remained in force) for termination of the tenancies were stayed.

The Tenancy Act (Bombay Act 99 of 1958) which was brought into force on December 30, 1958 repealed Bombay Act 9 of 1958 and the Berar Act and made diverse provisions with regard to protection of tenants. By s. 9 of the Tenancy Act it was provided that no tenancy of any land shall be terminated merely on the ground that the period fixed for its duration whether by agreement or otherwise had expired, and by s. 19 it was provided that notwithstanding any agreement, usage, decree or order of a court of law, the tenancy of any land held by a tenant shall not be terminated unless certain conditions specified therein were fulfilled. Section 36 of the Tenancy Act set up the procedure to be followed, *inter alia*, for obtaining possession from a tenant after determination of the tenancy, and sub-s. (2) enacted that no landlord shall obtain possession of any land, dwelling house

A or site used for any allied pursuit held by a tenant except under an order of the Tahsildar. By sub-s. (3) it was provided that on receipt of an application under sub-s. (1) the Tahsildar shall, after holding an inquiry, pass such order thereon as he deems fit provided that where an application under sub-s. (2) is made by a landlord in pursuance of the right conferred on him under B s. 38, the Tahsildar may first decide as preliminary issue, whether the conditions specified in cls. (c) and (d) of sub-s. (3), and cls. (b), (c) and (d) of sub-s. (4) of that section are satisfied. That takes us to s. 38. By the first sub-section, as it was originally enacted, it was provided :

C "Notwithstanding anything contained in section 9 or 19 but subject to the provisions of sub-sections (2) to (5), a landlord may after giving to the tenant one year's notice in writing at any time within two years from the commencement of this Act and making an application for possession under sub-section (2) of section 36, ter- D minate the tenancy of the land held by a tenant other than an occupancy tenant if he *bona fide* requires the land for cultivating it personally :"

(Amendment of this sub-section by Maharashtra Act 5 of 1961 is not material for the purpose of this appeal.) By sub-s. (3) E it was provided that the right of a landlord to terminate a tenancy under sub-s. (1) shall be subject to the conditions contained in cls. (a) to (e) (which need not, for the purpose of this appeal, be set out). Sub-section (4) imposed on the right of the landlord certain restrictions in terminating the tenancy. A landlord may not terminate a tenancy (a) so as to reduce the area with F the tenant below a certain limit, or (b) contravene the provisions of the Bombay Prevention of Fragmentation Act, or (c) where the tenant is a member of a co-operative farming society, or (d) where the tenant is a co-operative farming society. Sub-section (4A) dealt with the special case of a member of armed forces ceasing to be a member of the serving force. Sub-sections (5), G (6) and (7) made certain incidental provisions. By sub-s. (1) of s. 132, amongst others, the Berar Act and Bombay Act 9 of 1958 were repealed. By sub-s. (2) it was provided that nothing in sub-s. (1) shall, save as expressly provided in the Act, affect or be deemed to affect (i) any right, title, interest, obligation or liability already acquired, accrued before the commencement of H the Act or (ii) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability or anything done or suffered before the commencement of the Act, and any such

proceedings shall be instituted, continued and disposed of, as if Act 99 of 1958 had not been passed. Sub-section (3) provided :

"Notwithstanding anything contained in sub-section (1)--

(a) all proceedings for the termination of the tenancy and ejectment of a tenant or for the recovery or restoration of the possession of the land under the provisions of the enactments so repealed, pending on the date of the commencement of this Act before a Revenue Officer or in appeal or revision before any appellate or revising authority shall be deemed to have been instituted and pending before the corresponding authority under this Act and shall be disposed of in accordance with the provisions of this Act, and

(b) . . . . . ."

As from December 30, 1958 the Berar Act ceased to be in operation. But by sub-s. (2) of s. 132 any right, title, interest, obligation or liability already acquired before the commencement of the Tenancy Act remained enforceable and any legal proceedings in respect of such right, title, interest, obligation or liability could be instituted, continued and disposed of as if Bombay Act 99 of 1958 had not been passed. But to this reservation an exception was made by sub-s. (3) that a proceeding for termination of tenancy and ejectment of the tenant or for recovery or restoration of possession of the land under any repealed provisions, pending on the date of the commencement of Act 99 of 1958 before a Revenue Officer, was to be deemed to have been instituted and pending before the corresponding authority under the Tenancy Act and was to be disposed of in accordance with the provisions of that Act. Therefore when a proceeding was pending for termination of the tenancy and ejectment of a tenant the proceeding had to be disposed of in accordance with the provisions of the Tenancy Act, notwithstanding anything contained in sub-s. (2). If the expression "proceedings ... pending on the date of commencement of this Act" in s. 132(3)(a) be literally interpreted, a somewhat anomalous situation may result. An application under s. 19 of the Berar Act pursuant to an order under ss. 8 and 9, instituted before the Tenancy Act was enacted, will have to be disposed of in accordance with the provisions of the Tenancy Act, but if no proceeding under s. 19 be commenced the proceeding would not be governed in terms by sub-s. (3) and would by the operation of sub-s. (2) be instituted and continued as if the Tenancy Act was not passed. This problem engaged

A the attention of the Bombay High Court in *Jayantraj Kanakmal Zambad and Another* v. *Hari Dagdu* and *Others*(1), in which the facts were closely parallel to the facts in the present case. An order determining the lease under ss. 8 & 9 of the Berar Act was obtained by the landlord before the Tenancy Act was enacted, and at a time when Bombay Act 9 of 1958 was in force, and B proceedings were started by the landlord for obtaining possession from the tenant, after the Tenancy Act was brought into force. The High Court held that the application by the landlord for possession against the tenant whose tenancy was determined by an order under the Berar Act has, if instituted after the Tenancy Act was brought into force, to be decided according to the provi- C sions of the latter Act by virtue of s. 132(3) and not under the Berar Act, and that an order for termination of the lease under s. 8 does not come to an end until an order is made under sub-s. (3) of s. 19. The Court therefore in that case avoided the anomaly arising from the words of sub-s. (3) by holding that an order made under s. 8 or under s. 9 of the Berar Act relating D to termination of a lease does not terminate the proceeding, and it comes to an end when an order under s. 19 of the Act is made.

The High Court in the judgment under appeal, following the decision in *Jayantraj Kanakmal Zambad's* case(1) held that the E application filed by the appellant purporting to be under s. 36(2) of the Tenancy Act must be regarded as an application under s. 19 of the Berar Act and therefore be deemed to be a continuation of the application under ss. 8 & 9 of the Berar Act which was pending at the date when the Tenancy Act was brought into force, and to such an application s. 38(1) did not apply, but by F virtue of sub-s. (3) cl. (a) of s. 132 the application had to be disposed of in accordance with the provisions of the Tenancy Act, thereby making the provisions of s. 38(3) and s. 38(4) applicable thereto. Mr. Patwardhan for the appellant has, for the purpose of this appeal, not sought to canvass the correctness of the view of the judgment in *Jayantraj Kanakmal Zambad's* G case(1), but has submitted that the High Court has not correctly interpreted s. 132(3) of the Tenancy Act.

The appellant had acquired a right to obtain possession of the land on determination made by the Revenue Officer by order dated July 2, 1957 and a legal proceeding in respect thereof could H be instituted or continued by virtue of sub-s. (2) of s. 132 as if the Tenancy Act had not been passed. The exception made

(1) I.L.R. [1962] Bom. 42 F.B.

by sub-s. (3) of s. 132 in respect of proceedings for termination of the tenancy and ejectment of a tenant which are pending on the date of the commencement of the Tenancy Act is limited in its content. Proceedings which are pending are to be deemed to have been instituted and pending before the corresponding authority under the Act and must be disposed of in accordance with the provisions of the Tenancy Act. By the use of the expression "shall be disposed of in accordance with the provisions of this Act" apparently the Legislature intended to attract the procedural provisions of the Tenancy Act, and not the conditions precedent to the institution of fresh proceedings. To hold otherwise would be to make a large inroad upon sub-s. (2) of s. 132 which made the right, title or interest already acquired by virtue of any previous order passed by competent authority unenforceable, even though it was expressly declared enforceable as if the Tenancy Act had not been passed.

The High Court was, in our judgment, right in holding that the application filed by the appellant for obtaining an order for possession against the first respondent must be treated as one under s. 19 of the Berar Act, and must be tried before the corresponding authority. Being a pending proceeding in respect of a right acquired before the Act, it had to be continued and disposed of as if the Tenancy Act had not been passed [sub-s. (2)], subject to the reservation in respect of two matters relating to the competence of the officers to try the proceeding and to the procedure in respect of the trial. The appellant had obtained an order determining the tenancy of the first respondent. That order had to be enforced in the manner provided by s. 19(1) *i.e.* the Revenue Officer had to make such summary inquiry as he deemed fit, and had to pass an order for restoring possession of the land to the landholder and to take such steps as may be necessary to give effect to his order. Since the repeal of the Berar Act the proceeding pending before the Revenue Officer would stand transferred to the Tahsildar. The Tahsildar was bound to give effect to the rights already acquired before the Tenancy Act was enacted, and in giving effect to those rights he had to follow the procedure prescribed by the Tenancy Act. Between ss. 19(3) of the Berar Act and 36(3) of the Tenancy Act in the matter of procedure there does not appear to us any substantial difference. Under the Berar Act a *summary inquiry* has to be made by the Revenue Officer, whereas under the Tenancy Act the Tahsildar must hold an inquiry and pass such order (consistently with the rights of the parties) as he deems fit. But to the trial of the application for enforcement of the right acquired under the

A Berar Act, s. 38 of the Tenancy Act could not be attracted. Section 38 authorises the landlord to obtain possession of the land from a tenant, if the landlord *bona fide* required the land for cultivating it personally. In order to effectuate that right, the landlord must give a notice of one year's duration in writing and make an application for possession under s. 36 within the prescribed B period. The section is in terms prospective and does not purport to affect rights acquired before the date on which the Tenancy Act was brought into force. The High Court was therefore also right in observing :

> C "The notice referred to in sub-s. (1) of s. 38 could not obviously have been given in respect of proceedings which were pending or which are deemed to have been pending on the date of the commencement of this Act. It does not also appear that it was the intention of the Legislature that such proceedings should be kept pending for a further period until a fresh notice as required D by sub-s. (1) of s. 38 had been given. . . . For the same reasons, the proviso to sub-s. (2) of s. 36 will not apply in such cases."

But we are unable to agree with the High Court that sub-ss. (3) and (4) of s. 38 apply to an application filed or deemed to E be filed under s. 19 of the Berar Act. The High Court appears to be of the view that by the use of the expression "shall be disposed of in accordance with the provisions of this Act" it was intended that "all the provisions of the Act, which would apply to an application made under sub-s. (2) of s. 36, would also apply to application which are deemed to have been made under F this section", and therefore it followed that sub-ss. (3) and (4) of s. 38 applied to all applications for obtaining possession of the land for personal cultivation made under s. 19 of the Berar Act which were pending or which were deemed to have been pending on the date of the commencement of the Tenancy Act. It may be noticed that sub-s. (3) of s. 38 in terms makes the G right of the landlord to terminate a tenancy under sub-s. (1), subject to conditions mentioned therein. If there be no determination of the tenancy by notice in writing under sub-s. (1), sub-s. (3) could have no application.

The words of sub-s. (4) are undoubtedly general. But the H setting in which the sub-section occurs clearly indicates that it is intended to apply to tenancies determined under s. 38(1). Large protection which was granted by s. 19 of the Tenancy Act

has been withdrawn from tenants who may be regarded as contumacious. By s. 38(1) a landlord desiring to cultivate the land personally is given the right to terminate the tenancy, but the right is made subject to the conditions prescribed in sub-s. (3) and the legislature has by sub-s. (4)(a) sought to make an equitable adjustments between the claims of the landlord and the tenant. If sub-s. (4) be read as imposing a restriction on the determination of all tenancies, it would imply grant of protection to a contumacious tenant as well. The Legislature could not have intended that in making equitable adjustments between the rights of landlords and tenants contumacious tenants who have disentitled themselves otherwise to the protection of s. 19 should still be benefited. Again if sub-s. (4) be read as applying to determination of every agricultural tenancy, its proper place would have been in sub-s. (3) of s. 36, and the proviso thereto would not have been drafted in the manner it is found in the Act. By cls. (c) & (d) of sub-s. (4) tenants who are cooperative societies or members of cooperative societies are not liable to be evicted, and if the opening words of sub-s. (4) are intended to be read as applicable to termination of all tenancies, whatever the reason, we would have expected some indication to that effect in s. 19 of the tenancy Act. Again inclusion of sub-ss. (2) to (5) in the *non-obstante* clause in sub-s. (1) supports the view that the expression "In no case a tenancy shall be terminated" being part of an integrated scheme means that a tenancy determined for reasons and in the manner set out in sub-s. (1) of s. 38 must be determined consistently with sub-s. (4), but where the determination of the tenancy is not under sub-s. (1) of s. 38, sub-s. (4) has no application.

The application made by the appellant is undoubtedly one for ejectment of the tenant and for recovery of possession. The Naib Tahsildar was competent to entertain the application. It is true that the application was originally filed under ss. 8 & 9 of the Berar Act on the ground that the landlord required the land *bona fide* for his personal cultivation, but once an order was passed under s. 8(1)(g) by the Revenue Officer, the only inquiry contemplated to be made on an application under s. 19 was a summary inquiry before an order for possession was made in favour of the landlord. At that stage, there was no scope for the application of the conditions and restrictions prescribed by sub-ss. (3) & (4) of s. 38, for, in our view, those provisions do not apply to proceedings to enforce rights acquired when the Berar Act was in operation.

A We therefore modify the order passed by the High Court and direct that the orders passed by the Tahsildar and the Revenue Tribunal will be set aside and the matter will be remanded to the Tahsildar for dealing with the application on the footing that it is an application to enforce the right conferred by ss. 8 & 9 of the Berar Regulation of Agricultural Leases Act, 1951 and the provi-
B sions of s. 38 of the Bombay Act 99 of 1958 have no application thereto. There will be no order as to costs in this appeal.

Order modified and case remanded.