

(1997) 08 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 2885 of 1983

Amrutrao Ratnakar Rajadnye

APPELLANT

Vs

Krishna Sakharam Patil and others

RESPONDENT

Date of Decision : 06-08-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 16, 31, 32

Citation : (1997) 4 ALLMR 474 : (1998) 2 BomCR 655 : (1997) 3 MhLj 783

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : A.V. Bandivadekar, for the Appellant; G.R. Rege and S.K. Raikar, for the Respondent

Judgement

F.I. Rebello, J.—This is a petition by a landlord against the order of the Maharashtra Revenue Tribunal dated 17th February, 1983. The facts giving rise to this petition are as under :--

2. The respondent tenants admittedly were tenants in possession on 1st April 1957 and in terms of section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 would have been considered to be deemed purchaser. An application accordingly was moved by them indicating their desire to purchase the land and pay the purchase price. The application u/s 32-G was numbered as Inquiry No. 90/ Kerle by the Mamlatdar and Agricultural Land Tribunal, Karvir. By an order dated 14th December 1959, the Agricultural Land Tribunal held that the petitioner landlord from the date of birth as produced by him was a minor and as such the tenant was not entitled to purchase the land on 1st April 1957. This was due to the fact, that in respect of certain categories of persons as set out in section 32-F of the Bombay Tenancy and Agricultural Lands Act the date of purchase is deferred. Accordingly, the Mamlatdar held that the respondent tenants were not entitled to purchase the suit land on 1st April 1957. In the order, however, it was set out that the respondents tenants may exercise the right of purchase within a period of one year during which the petitioner landlord

is entitled to terminate the tenancy u/s 31 of the Act. It is further set out in the said order, that after that the tenant can give an intimation to the landlord and the tribunal within one year referred to above in terms of 32-F of the Bombay Tenancy and Agricultural Land Act. If the date 1st April 1942 is considered, the petitioner landlord would attain majority on 1st April 1960.

3. Before traversing and considering the other facts, it would be essential to look at the provisions of section 32-F of the Bombay Tenancy and Agricultural Lands Act. Section 32-F of the Act contemplates that notwithstanding anything contained in the other provisions, including section 32, a landlord who, is a minor or widow or a person subject to mental or physical disability shall have a right to purchase such land u/s 32. Thereafter the tenant after the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 could exercise his right to purchase. There have been some amendments in the year 1969 which provides that for enabling the tenant to exercise the rights of purchase the landlord shall send an intimation to the tenant of the fact that he has attained majority before the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31. In other words what the section contemplates is that such disabled category of landlords in terms of section 31 of the Act are entitled to terminate the tenancy and for that purpose the deemed date of purchase is deferred. If such a disabled category of landlord does not exercise their rights to purchase the land within the said period of one year then the tenant within the time stipulated can exercise his rights. On a failure by the tenant to exercise the rights certain consequences follow which includes termination of tenancy and in that event the landlord has a first right to be given possession if he is otherwise entitled to.

4. The petitioner did not exercise his right within one year as contemplated u/s 32-F of the Bombay Tenancy and Agricultural Act. The respondents thereafter moved the Agricultural Lands Tribunal which reopened the case u/s 32-G namely the Enquiry which was numbered as Enquiry No. 90. The Agricultural Lands Tribunal held that the landlord had not given notice of his intention of terminating the tenancy. The petitioner landlord before the Agricultural Lands Tribunal contended that the land is a sugar cane growing land and hence should be exempted from sections 32 to 32-R. The Agricultural Land Tribunal rejected the said contention on the ground that there was no proof in support of the said contention. The tribunal held that the respondents tenants were entitled to purchase the land and fixed the purchase price at the rate of 200 times the assessment.

5. The petitioner aggrieved by the said order preferred an appeal being Tenancy Appeal No. 480 of 1975. It was the contention of the petitioner landlord before the Appellate Authority that in spite of the fact that the tenants had been informed about the petitioner attaining majority, the tenants had failed to exercise their rights and in these circumstances the case of the respondents tenants ought to have been rejected. It was further reiterated that the land was

sugar cane land and is covered by section 43 of the Bombay Tenancy and Agricultural Lands Act. Certain other arguments were advanced and it was contended that the matter may be remanded to the lower Court for fresh trial. These contentions were rejected. The Appellate Authority held that as the tenant did not exercise his right within one year and the petitioner landlord also did not try to get the tenancy terminated, the respondents continued to be the tenants and as Tiller's day was postponed they have become deemed purchasers from 1st April 1960 and therefore the Agricultural Lands Tribunal had rightly held the respondents as the deemed purchasers. In respect of the contention that the land was sugar cane land, the Appellate Authority held that the petitioner himself was not aware of the status of land even after attaining majority and for the aforesaid reasons rejected the said appeal.

6. The petitioner aggrieved by the said order preferred the revision application which was heard by the Maharashtra Revenue Tribunal, Kolhapur. Before the Revenue Tribunal it was contended that the respondents had not expressed their willingness to purchase the land u/s 32-F of the Act and as such the revision ought to be allowed. In the alternative, it was contended that the land was sugar cane land and therefore fell u/s 43-E of the Act and on that count also the revision ought to be rejected.

The Revenue Tribunal on considering the material held that from the record it appeared that the father of the petitioner landlord was alive and that land originally was standing in the name of the father of the petitioner as such it was not understood how the name of the petitioner came to be entered in place of his father. It further held that there was nothing on record to show that there was disruption of the Joint Family. It was further noted that there was a general power of attorney given by the petitioner to his father somewhere in the year 1959. The Revenue Tribunal proceeded to hold that unless and until the land was partitioned and that too before 1st April 1957, the provision of section 32-F merely because the petitioner was minor would be of no assistance to decide the proceedings u/s 32-F of the Act. The Revenue Tribunal thereafter went on to hold that in the order of 14th December, 1959 the proceedings u/s 32-G of the Act were dropped and thereafter they were taken up in the year 1975. The tenants were not intimated about earlier order as the record did not disclose that the said order of the Lands Tribunal was communicated to the petitioner and as such the consequential entry in the records of rights pursuant to an order dated 14th December 1959 could not be considered. In so far as the nature of the land is concerned, the tribunal held that there was no material nor had the landlord petitioner deposed that the land was leased for growing sugar cane and for the aforesaid reasons dismissed the revision of the petitioner.

7. At the hearing of this writ petition, Counsel for the petitioner contended that in terms of section 32-F(1)(a) of the Act, a tenant in order to avail of the benefit u/s 32-G has to give a notice in writing to the landlord and the Tribunal in the prescribed manner within the period specified in sub-section (1). The period

specified in sub-section (1) is one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31. If the tenant fails to give such a notice it is contended that the tenant is not entitled to purchase the land u/s 32-G and consequently the application by the respondents tenant has to be rejected. It is further submitted that the tribunal acted without jurisdiction in holding that the petitioner had not established that he was a landlord on 1st April 1957. It is contended that there was no material before the tribunal to hold that the petitioner was joint with the other members of the family and that no partition had been affected before 1st April 1957. It is contended that this was not in Issue either before the Lands Tribunal or for that matter before the Appellate Tribunal nor before the Revisional Authority. It is contended all throughout the respondents tenants proceeded on the footing that on 1st April 1957 the petitioner was a landlord which can be seen from the order dated 14th December, 1959 passed in the application u/s 32-G and for the aforesaid reasons, the petition should be allowed and the orders of the courts below should be set aside.

Learned Counsel for the respondents contends that in terms of section 32-F of the Act a duty is cast on the Tahsildar and/or the Lands Tribunal to enquire whether the partition based on which the petitioner claims to be the landlord falls within the ambit of section 32-F. It is his contention that if the partition is between the period 1st August 1956 and 31st March, 1958 then in that event the partition must be partition not only in respect of the land in question but in respect of the entire property belonging to the joint family both movable and immovable and if such a partition had not been effected then in that event the partition is of no consequence and accordingly it cannot be held that the petitioner is the landlord.

8. From a consideration of the arguments, it may at once be pointed out that the question as to whether the property has been partitioned in terms of section 32-F is not required to be considered at all for the view that is being taken. In terms of section 32-F such a consideration would have arisen if the landlord had exercised his right to terminate the tenancy and resume possession and the other situation will arise in the matter of date of purchase being deferred if the landlord is a minor and in that event also the question of partition would be of importance. However, the same need not be considered in the present case. In the present case the matter can be disposed of by deciding the Issue as to whether the application by the respondents tenants to purchase the land satisfies the requirements of section 32-F(1)(a). If those requirements are satisfied then the respondents tenants are entitled to purchase the land. If those requirements are not satisfied then the application u/s 32-G has to be rejected and then only will the question of proof of partition of the joint family arise.

9. As set out earlier in order to enable the respondents to purchase a land u/s 32-G as the petitioner landlord has failed to exercise his right, the respondents tenants have to satisfy that they have complied with the requirements of law in

the matter of giving notice in terms of section 32-F(1)(a). Have the respondents tenants complied with the said requirements? Admittedly, the respondents had moved the application for purchase and in respect of which an enquiry was initiated and numbered as Enquiry No. 90. The petitioner landlord was given notice of the fact that the respondents tenants wanted to purchase the land. The tribunal also was put to notice in respect of the said fact. By the order dated 14th December, 1959 the tribunal held that in view of the fact that the petitioner was a minor, the right of purchase by the respondents could not be considered until the petitioner has attained majority and the respondents could exercise their right of purchase within a period of one year after expiry of the period during which the landlord is entitled to terminate the tenancy u/s 31. The Lands Tribunal further ordered that in the event the respondents tenants wanted to exercise their rights, the respondents tenants would give intimation to the landlord and the tribunal within one year referred to above u/s 32-F of the Bombay Tenancy and Agricultural Lands Act. From a perusal of the order dated 8th May, 1976, it is seen that this very case has been continued and the proceedings u/s 32-G were not started de novo. This is indicated by the fact that the enquiry number is the same. No grievance of the same was made by the petitioner either before the lands tribunal, the Appellate Authority or, for that matter, the revisional authority. All that has to be considered is whether there has been compliance by the respondents tenants of giving notice or whether they were bound to give fresh notice after the landlord petitioner had attained majority.

10. The entire scheme of the Bombay Tenancy and Agricultural Lands Act, 1948 was to confer tenancy rights and then the right to purchase the land by the tenants. The various amendments made to the Act by the Legislature from time to time show that it was Legislative intention to provide protection to tenants who were in possession on 1st April 1957 and that as far as possible subject to rights of the landlord to resume or terminate such tenants should become the owners by exercising their right of purchase. In the instant case the petitioner landlord had chosen not to exercise his right u/s 32-F. In that view of the matter can section 32-F(1)(a) be construed to mean that even though the petitioner landlord was put on notice immediately after the 1st April 1957 and proceedings for purchase were initiated but were deferred because the petitioner landlord was a minor, that a fresh notice has to be given. All that sub-section (1)(a) of section 32-F stipulates is that a tenant desirous of exercising the rights conferred on him in sub-section (1) shall give an intimation in that behalf to the landlord and the tribunal in the prescribed manner within the period prescribed in that sub-section. On a failure by the tenant to exercise such a right the provisions of section 32-P will come into action which includes an order by the Competent Authority that the land shall, subject to provisions of section 16 be surrendered to the former landlord. There are other categories of persons to whom the land has to be allotted if the landlord is not entitled to the same.

11. In the case of Shrikrishna Subhana Horambale and Others Vs. Shripad Jiwaji

Apate and Others, , a Single Judge of this Court held that when tenants cultivate the suit land and had expressed their willingness to purchase the land and in fact proceedings u/s 32-G had been initiated but postponed due to disability of the landlord there was no need to give fresh intimation to heirs of the landlord u/s 32-F on death of the landlord. The Court also held that on such a failure the right of purchase did not become ineffective and stood extinguished by the demise of the disabled landlord. After considering the provisions of section 32-F, the learned Single Judge went on to hold as under :

"The tenants willingness to purchase was more than once placed on record before the Agricultural Lands Tribunal in purchase proceedings u/s 32 read with section 32-G but each time the proceedings and the purchase stood postponed not because of any fault of the tenant but because of physically disabled landlord continued to remain physically disabled all through out his life, There is no provision in the Tenancy Act under which, despite the aforesaid circumstances and the tenants willingness to purchase more than once positively expresses of exercise the said rights of purchase nevertheless become ineffective or stand extinguished by the demise of the disabled landlord. There is also no provision which legally requires or obliges the tenants to give successors entitled of the deceased disabled landlord notice or intimation or willingness to purchase despite their such willingness or the express to the land landlord himself in his own lifetime in proceedings u/s 32 read with section 32-G of the Act."

Thus it is clear from the said judgment that in case of a landlord who was disabled the question of issuing fresh notice on his heirs has been hold not to be a mandatory requirement. There is no reason why the same analogy should not be applied also in the case of the other disabled categories. Ultimately what the law requires is that the landlord must be informed in writing of the tenants desire or willingness to purchase the land. Once this has been done and the proceedings for purchase has been initiated and they have been deferred merely because of the disability of the landlord it does not mean that on such disability coming to an end the landlord tenant must again give fresh notice. The requirements is that notice must be given. In the instant case by starting proceedings to purchase the tenants expressed their desire to purchase the land after 1st April 1957. The petitioner landlord was informed of the tenants desire to purchase the land. The tribunal also was given a notice of the said facts. That would amount to sufficient compliance with the provisions of sub-section 1)(a) of section 32-F of the Act. The question of notice would arise if no proceedings had been initiated for purchase and which were deferred because of the disability and the tenants had not given notice of their intention to purchase within the stipulated time. In these circumstances, it cannot be said that the tenant has not complied with the requirements of giving notice. It is now well settled that in case of welfare legislation the Court must give expression to the intent of the Legislature. The Legislature's intent is to confer ownership rights on the tenant. The requirements of notice are to inform the landlord about tenant" is desire to purchase the land and the exercise of option within the time laid down. This

requirement has to be construed liberally in as much as all that the tenant's bound to show is that there has been substantial compliance with the provisions of the sub-section (1)(a) of section 32-F. Once the tenant shows that he has substantially complied with all the requirements of sub-section (1)(a) of section 32-F to deny the right of purchase on the ground that no notice had been given after the landlord became a major would be to defeat the legislative intent. This the Court should not do and, as held by the learned Single Judge of this Court in the case of Shreekirshna (supra), there is no requirement of giving fresh notice. I respectfully concur with the view taken by the Single Judge of this Court.

12. Learned Counsel for the petitioner has relied on the judgment of the Apex Court in the case of Anna Bhau Magdum (since deceased by L.R.'s) Vs. Babasaheb Anandrao Desai, , for the proposition that failure to give a notice would result in the Authority under the Act commencing proceedings for summary eviction of the tenant. The Apex Court in that judgment held that the Notice as contemplated u/s 32-F(1)(a) was mandatory. However, from the facts of that case, as set out in paragraph 2 of the said judgment, it is seen that the respondent attained majority on 17th January 1965. Proceedings u/s 32-G of the Act were started in respect of the said land in 1960, but in view of the fact that the landlord was a minor, the said proceedings were dropped by an order dated 2nd September 1966 passed by the Agricultural Lands Tribunal, Shirole. Thereafter in 1975 fresh proceedings u/s 32-G were commenced. Thus it is on those facts viz. that the earlier proceedings were dropped and fresh proceedings had been initiated that the Apex Court held the requirements of the need to give a fresh notice.

Learned Counsel also relied on the judgment of the Single Judge of this Court in the case of Mohan Gajanan Deshpande Vs. Dhondiram Hari Chavan and Others, . In that case also it was held that the requirement to give notice was mandatory. However, the said Single Judge distinguished two other judgments of this Court in the case of Keda Kalu Wagh Patil Vs. Devidas Pandharinath Metkar, , and in the of Rama Ningappa Joshilkar Vs. Kirtikumar Pawatrao Desai and Others, . The Single Judge distinguished the two cases on the ground that proceedings were pending before the Authorities when the Maharashtra Amendment of 1969 had come into force and the tenant had already expressed in these proceedings his desire to purchase the land. Therefore, the learned Single Judge has himself distinguished the judgment on the ground that if the proceedings were pending then in that event the requirement of giving fresh notice was not required. These judgments, therefore, are of no assistance to the petitioner and in no way would affect the view taken by me in this judgment.

13. In the circumstances, I hold that though the tribunal may have given a wrong reason to sustain the order of the Authorities below nonetheless for the reasons given, the application of the tenants to purchase the land must be sustained.

For the reasons aforesaid, the writ petition stands dismissed. Rule is discharged.

In the circumstances of the case there shall be no order as to costs.

14. At this stage, Counsel for the petitioner seeks stay of the order for eight weeks. Order stayed for eight weeks.

15. Petition dismissed.