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**(1972) 04 BOM CK 0012**

**In the Bombay High Court**

**Case No :** Special Civil Application No. 1011 of 1968 and Spl. C.A. 1091 of 1966

Bandu Dhanaji Ahire

APPELLANT

Vs

Chatursing Parwatrao Thoke and Another

RESPONDENT

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**Date of Decision :** 25-04-1972

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32

Maharashtra Revenue Patels (Abolition of Offices) Act, 1962 — Section 8

**Citation :** AIR 1974 Bom 26 : (1973) 75 BOMLR 267 : (1974) ILR (Bom) 105 : (1973) MhLj 473

**Hon'ble Judges :** Vaidya, J

**Bench :** Single Bench

**Advocate :** R.G. Samant, for the Appellant; M.A. Rane and S.C. Pratap, Govt. Pleader, for the Respondent

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**Judgement**

1. A rather interesting question of interpretation of Sec 32-O of Bombay Tenancy and Agricultural Lands Act, 1948. in the context of the tenancies created u/s 8 of the Maharashtra revenue Patels (Abolition of Office) Act, 1962 arises in these two petitions under Article 227 of the Constitution of India.

2. The relevant facts may be briefly stated as follows: the lands in dispute are S. Nos. 140/1 and 4 of village Hingave. Taluka Kalwan. District Nasik. and S. Nos. 126 and 128 of the village. The lands were originally Inam lands class VI-B. Respondent No 1 in the two petitions was the Inamdar. The petitioner in Special Civil Application No.1011 of 1968 was the tenant of S. Nos. 140/- and 4 of village. Hingave. The petitioner in Special Civil Application No. 1091 of 1968 was the tenant of S. Nos. 126 and 128. The Inams were abolished under the Maharashtra Revenue Patels (Abolition of Office) Act, 1962. with effect from January 1, 1963. It is not disputed that the lands were regranted to respondent No. 1 u/s 5 of the Maharashtra revenue Patels (Abolition of Office) Act, 1962. section 8 of the said Act provided:-

"8. If any Watan land has been lawfully leased and such lease is subsisting on

the appointed day. the provisions of the relevant tenancy law shall apply to the said lease and the rights and liabilities of the holder of such land and his tenant or tenants shall subject to the provisions of this Part. be governed by the provisions of that law:

Provided that, for the purpose of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the regrant of the land u/s 5 or 6 or 9 as the case may be.

Explanation:- For the purpose of this section the expression "land" shall have the same meaning as is assigned to it in the relevant tenancy law".

3. The Agricultural Lands Tribunals and Mamlatdar Kalwan started proceeding u/s 32-G of the Bombay Tenancy and Agricultural Lands Act. 1948 and declared the tenants to be the statutory purchasers were of the said lands as the petitioners were cultivating the lands as tenants for a number of years, even prior to the tillers" day under the Tenancy Act, i.e. April 1, 1957.

4. Now, it should be noted that the tenants were not parties to the proceedings for regrant of lands to respondent no 1. the order regranteeing the lands was not even produced before the A. L. T. and does not form part of the record. the A. L. T. has merely recorded that the order of regrant was entered in the record of Rights by Mutation Entry No. 834 made on July 21. 1965. The Mutation Entry was certified on September 28. 1965. The tenants had made their respective applications u/s 32-G on August 25. 1966, although there is nothing in the record to show that the order of regrant was ever communicated to them.

5. The A. L. T's order dated March 31, 1967. fixing the price of the said lands to be paid by the tenants and declaring the tenants to be purchasers of the land was challenged by respondent No. 1 in appeals filed before the Deputy Collector. The Special Deputy Collector. Tenancy Appeals. Naisk. who heard the said appeal. set aside the order of the A.L.T. on the ground that in view of Section 8 of Maharashtra Revenue Patles (Abolition of Office) Act, 1962, the tenancy of the petitioner should be deemed to have commenced from the date of regrets to the appellant in 1964 and as the tenants had failed to exercise their right to purchase the said lands u/s 32-O within one year from the date of regrant. the petitioners in the two Special Civil Applications were not entitled to purchase the lands.

6. The said order of the Deputy Collector was confirmed by the Maharashtra Revenue Tribunal in the two Revision Application filed by the respective tenants by a common judgment dated February 5. 1968. The tenants have filed the above Special Civil Applications challenging the validity of the orders of the Deputy Collector and the Revenue Tribunal. As they involve common points. they can be conveniently disposed of by a common judgment.

7. Mr. Samant the learned counsel for the tenants petitioners in the two cases,

urged that, as there was nothing on the record of the cases to show that the petitioners were aware of the regrant of the lands to respondent No. 1 the Tribunal erred in law in assuming that u/s 32-O even though the order of regrant under the Maharashtra Revenue Patels (Abolition of Office) Act, 1962. was never communicated to the tenants. the tenants had to exercise their rights of purchase within one year from the date of the order never communicated to him. This contention must be upheld. Section 32-O runs as follows:-

"(1). In respect of any tenancy created after the tillers" day by a landlord (not being a serving member of the armed forces) notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

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

(2) The Provisions of Sections 32 to 32-N (both inclusive) and of section 32-P, 32-Q and 32-R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (2)".

It is clear from the provisions that Section 32-O was originally intended to apply only to tenancies created after the tillers" day by the landlords. The tenancy could not be created by the landlord" after the tillers" day without the tenant coming to know of such tenancy.

8. Section 8 of the Maharashtra Revenue Patels (Abolition of Office) Act, 1962. however, by a fiction created an artificial date of commencement of tenancy of a tenant of Inam lands governed by that Act. Under that section "a lease shall be deemed to have commenced from the date of the regrant of the land u/s 5 or 6 or 9, as the case may be." This must be interpreted to mean "from the date of communication of the order of regrant not merely to Inamdar but also to the tenants of the land".

9. If such an order is never communicated to the tenants. as it appears to have happened in the present case, the tenant can never know that his tenancy has commenced from the date of regrant as laid down under the proviso to Section 8. The creation of the relation of landlord and tenant between the Inamdar and his tenant for purpose of Section 32-O (1) must, therefore, be held to be from the date on which the order of regrant is communicated both to the landlord and the tenant. it cannot be said that the relation between them as that of landlord and tenant actually commenced as provided u/s 8. The fiction which is imposed by Section 8 will come into operation only after the order of regrant is communicative to both the tenant and the landlord. Once the communication of the order is made to both. it can be said that the tenancy was "created" after the tillers" day by the landlord as laid down by Section 8 of the Maharashtra

revenue Patels (Abolition of Office) Act, and as defined u/s 2 (17) of the Bombay Tenancy and Agricultural Lands Act.

10. As stated above. so far as the present case was concerned, the order of regrant is not only not produced on the record, but was never communicated to the tenants who are not even parties to the proceedings of regrant. There is on the record evidence to show that the respondent No. 1 was even denying in certain civil proceedings that the petitioners were tenants. The issue as to whether they are tenants was referred to the Tenancy authorities. It was only when the Deputy Collector finally decide the matter on May 10, 1966, that the respondent No. 1 was finally prevented from challenging the petitioners" status as tenants . In these circumstances, when the petitioners made their application u/s 32-G on August 25, 1966, it cannot be said that they did not exercise the right conferred on the tenants under sub-section (1) of section 32-O within one year from the commencement of tenancy. In fact, they appeared to have exercised their right even before the end of the one year from the time they came to know of the certification of the mutation entry in the Record of Rights on September 28, 1965. There is also nothing on the record to show that the tenants were parties to the proceedings of mutation in the Record of Rights on September 28, 1965. There is also nothing on the record to show that the tenants were parties to the proceedings of mutation in the Record of Rights. Even assuming that the tenants should be deemed to have been communicated with the order or regrant after the certification of the mutation entry in the Record of Rights which has presumptive value, the application filed by them on August 25, 1966, was well within one year from the time they came to know of the certification of the mutation entry in the Record of Rights.

11. Mr. Rane, the learned Counsel for the respondents, however, argued that the view taken by the Revenue Tribunal and the Deputy Collector is a possible view having regard to the Full Bench decision in Vishnu Shantaram Desai Vs. Indira Anant Patkar and Another, holding that the provisions of Section 32-F regarding the intimation to be given by the tenant of the exercise of his right of purchase are mandatory. It is unnecessary to discuss that case, which was decided u/s 32-F, while considering the provisions of Section 32-O in the context of Section 8 of the Maharashtra Revenue Patels (Abolition of Office) Act. 1962. It is enough to say that there is nothing in the said decision of the Full Bench which goes contrary to the view that I have taken of the provisions of Section 32-O in respect of a deemed tenancy u/s 8 of the Maharashtra Revenue Patels (Abolition of Office) Act. 1962

12. It should be noted that Mr. Pratap, who appears for the Government of Maharashtra, has submitted that although the tenancy was created by the proviso to Section 8 as deemed to be commencing from the date of regrant, it was a tenancy which was governed by the provisions of Section 32-O. He had, however, nothing to say with regard to the date of commencement of such tenancy contrary to what I have held above. It must therefore, follow for the

reasons stated above that the Revenue Tribunal manifestly erred in law in holding that in the facts and circumstances of the case the petitioner had failed to exercise the right conferred on them u/s 32-O (1) within the prescribed time.

13. The order passed by the A.L.T. regarding the price of the land as the Tribunal carefully considered all the circumstances which are required to be considered in fixing the price and grant instalments. However the period fixed for the payment of instalments had already expired. The record does not clearly show that the payments have been made by the tenants have not already paid the instalments, they should be permitted to pay the same with interest from the date of judgment of the Mamlatdar i.e. March 31.1967. in four equal annual instalments, the first of which shall be paid before the end of April 1973. Subject to this modification the order of the Agriculture Lands Tribunal and Mamlatdar dated March 31. 1967 in each of the cases is restored and the orders passed by the Deputy Collector and the Revenue Tribunal are set aside.

14. Rule made absolute. No order asto costs in each of the matters.

15. Petition allowed.