
(1975) 07 BOM CK 0030

In the Bombay High Court

Case No : Special Civil Application No's. 503 and 504 of 1971

Bhaulal Chandulal Jivari

APPELLANT

Vs

Prabhakar Bhalchandra Jakatdar

RESPONDENT

Date of Decision : 18-07-1975

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32P

Citation : (1976) 78 BOMLR 598 : (1976) MhLj 907

Hon'ble Judges : Hajarnavis, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hajarnavis, J.—These two petitions have been filed by the tenants of respondent No. 1 against a common order passed by the Maharashtra Revenue Tribunal dismissing their applications for revision against the order passed by the sub-divisional officer, Chalisgaon, dismissing their appeals against the order passed by the Tahsildar u/s 32P of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called as the "Tenancy Act") restoring possession to respondent No. 1.

2. In both these cases the respondent No. 1 who is a landlord was a minor on April 1, 1957 and he became major on October 1, 1963. During his minority, his guardian created tenancies in favour of the petitioners in the year 1958-59. As these tenancies were created after the tillers" day, they were governed by the provisions of Section 320 of the Tenancy Act, On February 13, 1964, i.e. one year after his attaining majority, the respondent No. 1-landlord served notices u/s 31 of the Tenancy Act claiming that he required the lands for his personal cultivation. He, then, filed applications before the Tahsildar claiming possession u/s 31 read with Section 29 of the Tenancy Act, on March 30, 1964. These applications were dismissed. The respondent No. 1 thereafter filed appeals before the Special Deputy Collector who remanded the matters for rehearing. While these matters were pending before the Tahsildar after remand, the respondent

No. 1 withdrew those applications on September 9, 1967.

3. In the meanwhile, respondent No. 1 filed applications u/s 32P of the Tenancy Act on May 3, 1967 claiming restoration of the lands on the ground that the applicants-tenants have failed to exercise their right to purchase within one year of the creation of the tenancy as required by Section 320 of the Tenancy Act. These applications were resisted by the petitioners who contended that the landlord had already initiated proceedings for resumption of the lands for personal cultivation u/s 31 of the Tenancy Act and those applications were resisted by them and, therefore, it was not necessary for them to intimate the landlord and the Tribunal as required by Section 320 of the Tenancy Act. They further submitted that on the withdrawal of his application u/s 31 of the Tenancy Act by the landlord, these tenants have become owners of the lands. They claimed that because of these proceedings initiated by the landlord, they have not lost their right to purchase, much more so, because the landlord had not given them intimation of his attaining majority as required by Section 32F. The Tahsildar held that the tenancies were created after the tillers" day and, therefore, the relations between the parties were governed only by Section 320 of the Tenancy Act which required that the tenant should give an intimation of his desire to exercise the right of purchase under that section to the landlord within one year from the commencement of the tenancy and also to give intimation of his desire to do so to the Tribunal. He held that on failure of the tenant to do so he has lost the right to purchase the fields and ordered restoration of the lands to the respondent No. 1-landlord. The appeals filed by the tenants were dismissed by the sub-divisional officer, Jalgaon. Applications for revision were also dismissed by the Maharashtra Revenue Tribunal. It is against these orders that these two petitions have been filed.

4. There is no dispute about the facts of the case. In this case, the only point that was canvassed before me by Mr. Shastri, the learned Counsel for the petitioners, was that the revenue authorities have committed an error in holding that the provisions of Section 32F of the Tenancy Act were not applicable to the facts of the case. He submitted that the landlord was a minor and, therefore, the petitioners could not purchase these fields till a year after he attained the majority. He invited my attention to the provisions of Sub-section (2) of Section 320 which states that the provisions of Sections 32 to 32N (both inclusive) and of Sections 32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant in respect of any tenancy created after the tillers" day and in view of the fact that the landlord was minor, the provisions of Section 32F were applicable to the facts of the case.

5. Mr. Parulekar, the learned Counsel for the respondent No. 1, submitted that Section 320 of the Tenancy Act does not make any distinction between different classes of landlords, viz., it does not make any difference between a major or a minor or a disabled landlord. The provisions regarding exercise of the right by the tenant to purchase the land from the landlord is uniform irrespective whether

the landlord is a major or a minor or a disabled person and the authorities below have rightly observed that the provisions of Section 32F were not applicable to the facts of this case.

6. In my view the submission of Shri Parulekar is well-founded.

7. Section 320 reads:

(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.

(1A) 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 32N (both inclusive) and of Sections 32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under Sub-section (1).

This section makes it clear that it does not classify the landlords into different classes as is mentioned in Section 31(3) or Section 32F of the Tenancy Act. The only landlord to whose land Section 320 of the Tenancy Act is not applicable is one who is a serving member of the armed forces. The very fact that the Legislature has not mentioned in the section other classes of the landlords who have been mentioned" in Section 32F of the Tenancy Act clearly shows that only those landlords who belonged to the armed forces are excluded. It is true, that Sub-section (2) of Section 320 says that the provisions of Sections 32 to 32N and Sections 32P, to 32R, in so far as they may be applicable shall apply to the purchase of the land by tenant under Sub-section (1) of Section 320 of the Tenancy Act but that does not mean that the provisions of Sub-section (7) of Section 320 of the Tenancy Act are applicable to other landlords mentioned in Section 32F of the Tenancy Act. If the Legislature intended to exclude all those landlords mentioned in the Section 32F, then there was no necessity for the Legislature to make a special mention of the serving members of the armed forces only. In my opinion, Sub-section (2) lays down the procedure that is to be followed for determining the fights of the landlord and tenant regarding tenancies created after the tillers" day. Instead of laying down the elaborate provisions once again the Legislature has stated that the provisions of those sections shall apply as far as they were applicable to the facts in each case. It will be seen that Sub-sections (2), (3) and (4) of Section 32 of the Tenancy Act give what material should be taken into consideration by the Tribunal in determining the extent of the land which the tenant will be deemed to have purchased, and the price which he has to pay. Section 32A to Section 32E also prescribed the extent of the land which the tenant is deemed to have purchased and the disposal of the balance of

the land. It is true that Section 32F of the Tenancy Act prescribes the period for termination of the tenancy by the landlord by sending intimation to the tenant, and the issue of the intimation by the tenant to purchase the land, but this again is the matter of procedure. Section 32G and the rest of the sections are also procedural sections. Therefore by Sub-section (2) the period prescribed by Sub-sections (1) and (1A) during which the tenant of a minor landlord who desires to exercise his right conferred on him cannot be extended upto the period prescribed u/s 32F.

8. If the contentions of Mr. Shastri are accepted, then the tenant of a minor landlord whose tenancy has been created after the tillers" day will have to give intimation twice, if he wants to exercise his right, first within one year after the tenancy has commenced as required by Sub-section (1) and (IA) of Section 320 and the second after the landlord has attained majority. It is not possible to accept that this is what is prescribed by the section.

9. The legislative history will also make it clear that the Legislature initially intended that the provisions of Section 320 should be applicable to all classes of landlords who created tenancy after the tillers" day. It may be mentioned that the provisions of Sections 32A to 32R were introduced by Act XIII of 1956 which came into force on August 1, 1956. Section 32F of the Tenancy Act reads:

(1) Notwithstanding anything contained in the preceding sections-

(a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of armed forces the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 and for enabling the tenant to exercise the right 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:....

10. At that relevant time Sub-section (3) of Section 31 of the Tenancy Act read:

(3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability or a serving member of the armed forces then such notice may be given and an application for possession u/s 29 may be made,-

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;

(iii) within one year from the date on which mental or physical disability ceases to exist; and

(iv) within one year from the date on which a serving member of the armed forces ceases to be a serving member:?

It will be clear from reading Sections 32F and 320 that Section 320 was intended to apply to all landlords irrespective of the class to which they belonged and by Sub-section (2) only the procedural part of Sections 32 to 32N, 32P, 32Q and 32R were made applicable. This again becomes very clear by the amendment effected in 1961. By this amendment Section 320 has been amended and the words "by a landlord not being a serving member of the armed forces" have been added in Sub-section (1) after the words "the tillers" day" and also by adding Sub-section (1AA). After the amendment of Section 320 in 1961, it reads:

(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 visage 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.

(1AA) In respect of any tenancy created after the tillers" day by a landlord who is a serving member of the armed forces, it shall be lawful for such landlord to terminate the tenancy in the manner, and within, the period, specified in Sub-section (3) of Section 31; and notwithstanding anything contained in any agreement or usage to the contrary, his tenant who cultivates personally shall be entitled within one year of the expiry of the period aforesaid, to purchase the land or such part thereof, as will raise the tenant's holding to a ceiling area.

(1A) A tenant desirous of exercising the right conferred on him under Sub-section (1) or (1AA) 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 32N (both inclusive) and of Sections 32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under Sub-section (1) or (1AA).

This amendment makes it very clear that the Legislature intended that the provisions of Section 320 of the Tenancy Act were applicable to all classes of landlords including the minors. If the landlords mentioned in Sub-section (3) of Section 31 and Section 32F were not included, then there was no necessity of amending Section 320 and making a special mention about the serving members of the armed forces who were already included in the classes mentioned in Sub-section (J) of Section 31 and Section 32F of the Tenancy Act.

11. That being the position, the revenue authorities were right in holding that the provisions of Section 320 of the Tenancy Act were applicable to all classes of landlords excepting the serving members of the armed forces and that it was not necessary for the tenants of the minor landlords again to give intimation as required by Section 32F of the Tenancy Act. If the tenant desires to purchase the land, he must exercise his option within one year of the creation of the tenancy and that the tenant of minor landlords did not stand in the different class from those ordinary landlords. That being the position, the revenue authorities were

right in holding that the tenant has failed to exercise the right and the action u/s 32P of the Tenancy Act was justified. The petitions are, therefore, liable to be dismissed.

12. In the result, the petitions are dismissed and the rules are discharged. Under the circumstances of the case, there will be no order as to costs.