
(1972) 04 BOM CK 0009
In the Bombay High Court
Case No : Spl. C.A. No. 2672 of 1971

Bhila Keshav Patil

APPELLANT

Vs

Ganpati Chunilal Kabre

RESPONDENT

Date of Decision : 28-04-1972

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32G, 32H, 32M, 32O
Constitution of India, 1950 — Article 227

Citation : (1973) MhLj 344

Hon'ble Judges : G.N. Vaidya, J

Bench : Single Bench

Advocate : R.G. Samant, for the Appellant; D.M. Parulekar and P.S. Warke, for the Respondent

Final Decision : Allowed

Judgement

G.N. Vaidya, J.—The only question which arises in this special civil application under article 227 of the Constitution of India is whether the petitioners had exercised their rights of statutory purchase u/s 32-O of the Bombay Tenancy and Agricultural Lands Act, 1948, within one year from the commencement of the tenancy within the meaning of that section.

2. The facts are as follows--

3. The subject-matter of dispute between the parties i. e. the petitioners-tenants and their landlord-respondent No. 1 is Gat No. 102, measuring 14 acres and 13 gunthas assessed at Rs. 40-12, situated at Village Palsod in Taluka, Jalgaon. On October 28, 1967, the petitioners made an application before the Agricultural Lands Tribunal and Tahsildar Jalgaon, stating that they had cultivated the land in 1966-67 as tenants and had given necessary notice to purchase the suit-land on June 30, 1967 and should be, therefore, declared the purchasers of the land u/s 32-O and the price should be fixed under sections 32-G and 32-H. All the time during the pendency of the said case before the Agricultural Lands Tribunal, the land lord-respondent No. 1 merely took adjournments twenty times and

ultimately on November 7, 1969 the Tahsildar decided the case ex parte against the landlord.

4. The Tahsildar relied upon the deposition of petitioner No. 1, in the course of which he stated that the petitioners' tenancy was recognized for the first time by mutation entry No. 802 dated April 20, 1967 and hence intimation was sent to the landlord by the petitioners on June 27, 1967 and the same was received by the landlord on June 30, 1967 within one year from the commencement of tenancy as required by section 32-O of the Act. The Tahsildar considered the oral and documentary evidence relating to the land and fixed the price and installments by which the tenant had to pay the price to the landlord. In the course of the proceedings, the petitioners had produced a copy of the decision in Appeal No. 119 of 1968 dated February 28, 1969 given by the Sub-Divisional Officer, Jalgaon Division, declaring the petitioners as tenants of the land in dispute. Having regard to all these facts, the Tahsildar held by his order dated November 30, 1969, that the tenants had exercised their right within the period prescribed by section 32-O of the Act and on payment of the price, a certificate should be issued to them u/s 32-M of the Bombay Tenancy and Agricultural Lands Act, subject to the provisions of section 43 of the same Act.

5. Feeling aggrieved by the said decision of the Tahsildar and Agricultural Lands Tribunal, respondent No. 1 filed an appeal to the Deputy Collector, Jalgaon, contending that the tenancy of the petitioners was held, in the earlier reference proceedings, to be commencing from the year 1959-60 and not from the year 1967-68 and that notice of intimation of purchase was not given by the petitioners within one year from the commencement of the tenancy within the meaning of section 32 of the Act; and hence the purchase in favour of the tenant had become ineffective by reason of failure to give notice to the landlord within one year from 1959- 60. The Deputy Collector upheld these contentions, set aside the order of the Tahsildar and directed the Agricultural Lands Tribunal to proceed u/s 32-P of the Bombay Tenancy and Agricultural Lands Act.

6. The decision of the Deputy Collector dated March 23, 1971, was challenged by the petitioners in revision before the Revenue Tribunal. The Revenue Tribunal confirmed the order of the Deputy Collector observing as under:-

The opponent filed Civil Suit No. 321 of 1967 to restrain the applicants from interfering with his possession of the suit land and the defence set up by the applicants was that they were tenants of this land since 1969-60. No doubt, as the suit was filed in 1967, the relevant question therein was regarding the possession of the land in that year, namely, 1967-68. Now, the opponent sought an injunction on the footing that the applicant had no right to the land in question and were trespassers. The applicants claimed to be tenants of the land. Naturally, the issue that was referred to the revenue Court u/s 85-A was confined to the question of possession of the year 1967-68. The Judgment recorded by the appellate Court, however, shows that the evidence led by the applicants was calculated to show that they were tenants in the land from the year 1959-60. It

appears from the observations at certain places in the Judgment that this position, that the applicants were cultivating the land since 1959-60, was admittedly by the opponent's Mukhtyar. The opponent however, tried to explain that the applicants were mere labourers and not tenants. The Sub-Divisional Officer held, on the evidence, that the applicants had been cultivating the land as tenants since the year 1959-60, and they were on the land as tenants in the material year 1967-68. The opponent unsuccessfully tried to challenge this view by bringing the matter to this Tribunal, then taking it to the High Court and also to the Supreme Court. Thus, on the strength of that decision, a finding has been reached that the applicants were in the land from the year 1959-60. Now, this finding takes away the very basis of the view taken by [he Tahsildar and A L. T. Jalgaon that the tenancy of the applicants should be deemed to have commenced when their names were entered as tenants on 20-4-1967 by mutation entry No. 802.

In other words the Revenue Tribunal took the view that because, in the earlier proceedings, it was found that the petitioners were cultivating the land as tenants from the year 1959-60, although the landlord was disputing the tenancy even in 1967, it was the duty of the tenants to give notice of one year from 1959-60 u/s 32-O of the Act.

7. The said decisions of the Revenue Tribunal and the Deputy Collector are challenged in the above petition. Mr. Samant, the learned counsel for the petitioners-tenants contended that the period of one year u/s 32-O is to be calculated from the date of the commencement of the tenancy; and the tenancy referred to in section 32-O (1) is a tenancy "created after the tillers" day by a landlord" and not a tenancy recognized and declared by the tenancy authorities de hors the landlord. The contention must be upheld. If the tenancy was "created" by law only and not by the landlord, it cannot be said that it was "created" by the landlord, until the landlord accepts the statutory tenancy or until his contention denying the tenancy is finally and conclusively overruled.

8. The finding in the earlier proceeding that the tenants were cultivating since 1959-60 was a finding which was arrived at after rejecting the contention of the landlord that the petitioners were merely labourers working on the land. The landlord never accepted the petitioners' tenancy till the decision of the Revenue Tribunal on the reference by the civil Court which became binding on him. He even challenged the decision of the Revenue Tribunal in the High Court and the Supreme Court. It is only after the decision of the Revenue Tribunal became binding on the landlord that it can be said that he "created" the tenancy within the meaning of section 32-O. Having disputed the tenancy till the Revenue Tribunal decided the dispute and even thereafter, he can never be permitted to blow hot and cold in the same breath and say that he had "created" in 1959-60 the tenancy within the meaning of section 32-O or that the tenancy had commenced in 1959-60 for purposes of section 32-O. The Tahsildar, in the present case held that, as the petitioners had made an application and given an

intimation u/s 32-O of the Act within one year from the date of the mutation entry showing them as the tenants, section 32-O was complied with. Before even the Deputy Collector and the Revenue Tribunal decided that they were the tenants in the year 1967-68, it could not be said that there was any delay in giving intimation on their part to the landlord as required u/s 32O The intimation given by the tenants and the applications made by them were, therefore, within the period prescribed u/s 32-O (1) and (1A).

9. Mr. Parulekar, the learned counsel for the respondent, contended that the view that I am taking is contrary to the view of the Full Bench in Vishnu Shantaram v. Indira Anant¹, the decision of the Supreme Court in : S. C. Prashar v. Vasantsen², which was a decision under the income tax Act and which laid down the law about the extension of time limit by statute, and the decision of Malvankar J. in an unreported judgment in Raghvendra Dhondopant Kulkarni v. Bajirao Kadu More,³ I do not find in the said judgments any view contrary to the view that I have taken of the provisions of section 32-O. It is, therefore, not necessary to discuss them.

10. In the result, the petition succeeds. The order passed by the Revenue Tribunal on October 22, 1971 and the order passed by the Deputy Collector on March 23, 1971 are set aside.

11. As no other ground is alleged against the validity or propriety of the order of the Tahsildar and Agricultural Lands Tribunal, the order passed by the Tahsildar and Agricultural Lands Tribunal on November 30, 1969 is restored, subject to the modification that the first installment of Rs. 461 should be paid, not as directed by the Tahsildar on December 31, 1970, but in view of the passage of all this time, on or before December 31, 1972.

12. Rule made absolute.

13. No order as to costs.