
(1972) 08 BOM CK 0015

In the Bombay High Court

Case No : Spl. C. Application No. 2517 of 1969

Chand Ladlesaheb Shaikh

APPELLANT

Vs

Dattatraya Shankar Malkhare

RESPONDENT

Date of Decision : 18-08-1972

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32, 32C, 32F, 32F, 32F(1)

Citation : (1974) MhLj 44

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

Bench : Single Bench

Advocate : S.M. Hussein, for the Appellant; U.R. Lalit, for the Respondent

Final Decision : Allowed

Judgement

G.N. Vaidya, J.—The petitioner in the above Special Civil Application was the tenant of the agricultural lands bearing S. Nos. 77 and 79 of village, Hanamgaon, Taluka South Sholapur, District Sholapur. These lands were given to one Smt. Vatsalabai widow of Narhar for her maintenance. She leased the lands to the tenant in the year 1949-60. Vatsalabai died on December 9, 1962. Respondents Nos. 1 and 2, who are successors-in-title of Vatsalabai, filed an application u/s 84 of the Bombay Tenancy and Agricultural Lands Act, 1948, in the Court of the Assistant Collector, for summary eviction of the tenant. The application of the respondents was dismissed. Respondents Nos. 1 and 2 filed a revision application before the Maharashtra Revenue Tribunal. The Revenue Tribunal dismissed the said revision application on September 29, 1966. On December 14, 1966, the petitioner sent a notice to respondents Nos. 1 and 2 through his advocate, expressing his willingness to purchase the land bearing S. No. 77. The petitioner is an illiterate person and there is no doubt that the advocate for the petitioner made an unfortunate mistake in not including the other Serial No. 79. However, the fact remains that he gave this intimation only in respect of S No. 77 and also in respect of S. No. 79.

2. In proceedings u/s 32C read with section 32F, the tenant stated that the was a

lawful tenant of both the lands and was cultivating the lands for more than 20/25 years and hence he wanted to purchase the lands u/s 32F. The landlords contended that the tenant had lost his right to purchase the lands as he failed to give intimation u/s 32F (1A) within the period of one year from the date of death of Vatsalabai, before December 9, 1964, as required u/s 32F (1A). The Additional Tahsildar and Agricultural Lands Tribunal, South Sholapur, declared the sale to be ineffective. The said order was confirmed by the Collector of Sholapur on May 11, 1968 and by the Maharashtra Revenue Tribunal on July 7, 1969. The concurrent finding of the three authorities is challenged in the above petition.

3. The only question that arises in this petition is as to whether the tenant had given intimation as required by section 32F (1A). The three tenancy authorities have come to the conclusion that the notice given by the tenant on December 14, 1966, did not comply with the said provisions. Mr. Hussein, learned counsel for the petitioner, relied on an unreported judgment of Chandrachud, J. in *Dattatraya Balkrishna Jadhav v. Smt. Nivabai Pandurang Shinde* (1966) Special Civil Application No. 636 of 1966, decided by Chandrachud J, on December 20, 1966 (Unrep.) and my decision in *Bhila Keshav Patil v. Ganpati Chunilal Kabre* (1972) Special Civil Application No. 2672 of 1971, decided by Vaidya J., on April 28, 1972 (Unrep.), and contended that the notice given by the tenant substantially complied with the provisions of section 32F (1A). He also urged that S. No. 79 is not mentioned in the said notice and the notice must be read in the context of the evidence given by the illiterate petitioner, who always wanted to exercise his right of purchase in respect of both the survey numbers.

4. Mr. Lalit, learned counsel for the landlords, on the other hand urged that the decision of Chandrachud J, is manifestly in conflict with the decision of the Full Bench of this Court in *Vishnu Shantaram Desai Vs. Indira Anant Patkar and Another*, because the Full Bench laid down that section 32F prescribes a special procedure for exercise of a right to purchase land conferred upon a tenant by section 32 when either a landlord or a tenant or both of them are under disability and that he has to give an intimation u/s 32F (1A) of the Act; and further where a tenant fails to exercise the right to purchase the land held by him within the specified period u/s 32F, the Tribunal may, after holding a formal inquiry, direct that the land shall be disposed of in the manner provided in sub-section (2). He relied on the ratio stated at p. 803 as follows:

The cumulative effect of the provisions of section 32F read with those of section 32F is that in a case where a landlord or a tenant or both of them are under disability a tenant shall be deemed to be a purchaser of the land held by him as a tenant only if he gives an intimation of his desire to purchase land to the landlord and the Tribunal in the manner prescribed and within the time specified in section 32F.

5. Although at first blush, the contention of Mr. Lalit sounds plausible, on a careful examination of the scheme of section 32 and section 32F in the Bombay Tenancy and Agricultural Lands Act and the aforesaid observations made by the

Full Bench decision, I am inclined to hold that there is nothing in the said Full Bench judgment which indicates what should happen if a tenant's tenancy is not admitted by the successor-in-title of the widow as in the present case. That question, in my judgment, is, with respect, ably answered by Chandrachud J., in *Dattatraya Balkrishna Jadhav v. Smt. Nivabai Pandurang Shinde* as follows:

The second aspect of the matter is that respondent 1 could not possibly have exercised her right to purchase the lands as an heir of Laxmibai within the period stipulated in section 32-F, because the landlords by their own conduct had rendered such a course impossible. They dispossessed respondent 1 forcibly and they are trying to take advantage of their own wrong by saying that respondent 1 has forfeited her right to purchase the lands, In order that a tenant may be able to exercise his right of purchase, it is essential that he should be in possession of the land, for it is difficult to conceive of a tenancy unaccompanied by possession. A tenant who is unlawfully dispossessed has first to ask for restoration of possession and it is only if he succeeds in getting an order for possession that he can say that he is willing to purchase the land. That is what respondent 1 will hereafter be entitled to do and I have no doubt that the Tribunal charged with the duty of holding an inquiry u/s 32-P will not shut its eyes to the incidents that have happened between the death of Laxmibai and this day.

6. Mr. Lalit tried to distinguish this case from the facts of the present case on the ground that in that case the successor of the tenant was dispossessed, but this, in my judgment, is a distinction without any difference. The case of the tenant against whom summary eviction proceedings u/s 84 are instituted, is worse than the case of a person who is dispossessed. He is described as a trespasser by the landlord and he has to establish his tenancy before the proceedings u/s 84 can come to an end. It is, therefore, clear that till the decision of the revision application on September 29, 1966, respondents Nos. 1 and 2 did not admit the petitioner to be a tenant.

7. It is true that u/s 32F (1), the period is prescribed and the period would have ended on December 9, 1964. The landlords, however, made it impossible for the tenant to give a notice under sub-section (1A) by starting proceedings against him u/s 84 during the entire period. In these circumstances, the only way in which the tenant could comply with the terms of sub-section (1A) was to give a notice to the landlords after proceedings u/s 84, terminated on September 29, 1966. The landlords themselves being respondents prevented the tenant from giving a notice. They could not raise a contention that the notice was not given in the prescribed, period when the notice was given within three months after the end of the proceedings as in the present case. The Full Bench of this Court did not consider what should happen if the notice is given after the period specified in section 32F (1A) in circumstances like the circumstances in the present case or in the case decided by Chandrachud J. My decision in *Bhila Keshav Patil v. Ganpati Chunilal Kabre* cannot be of assistance to the petitioner, because that

was a case u/s 32-0.

8. The real point which is to be decided in the present case is having regard to the conduct of the landlords what exactly is meant by the words "in the prescribed manner within the period specified in that sub-section." Rule 20 of the Bombay Tenancy and Agricultural Lands Rules, 1956 prescribes the Form X as the Form in which the intimation should be given. That Form requires the tenant to state :

I am the tenant of the following land of which you are the landlord:-

I am entitled to purchase the above land under sub-section (1) of section 32F/32-0 of

The Bombay Tenancy and Agricultural Lands Act, 1948.

I hereby give an intimation to you that I desire to exercise the said right. I am forwarding a copy of this letter to the Agricultural Lands Tribunal for taking necessary action u/s 32C of the said Act.

Yours faithfully, (Signature of the tenant.)

Copy forwarded to the Agricultural Lands Tribunal for information and necessary action.

It is clear from that Form that what is prescribed under sub-section (1) is only for a person who is admittedly tenant. If the tenancy is itself disputed, the prescribed Form cannot be used within the prescribed period under sub-section (1).

9. The intention of the Legislature was to confer a right of ownership on all the tenants, if the successors-in-title of the disabled persons like widow do not apply for personal cultivation u/s 32F (1) (iii), provided the tenants are willing to purchase the land. That intention can be fulfilled only if we interpret section 32F (1A) to mean that where rules do not prescribe a notice as in the present case with respect to the tenant whose tenancy has been challenged by the landlords, the tenant cannot be expected to give the intimation except after the termination of the proceedings where the tenancy was challenged by the landlords. It is a well established canon of construction that where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. (See Maxwell on the Interpretation of Statutes, 12th edn. p. 228.)

10. Any other interpretation of section 32F (1A), in my judgment, leads to absurd results which can be illustrated by the facts of the present case. Here is a tenant who was always ready and willing to purchase lands u/s 32F after the death of the widow and the successors-in-title, who became the landlords, refused to recognise him as a tenant. The tenant had to challenge the

proceedings instituted by them before the Assistant Collector and the Revenue Tribunal. At the end of the proceedings, he comes forward and states that he wants to purchase the lands. He is confronted with the contention that he had not given earlier the intimation about the purchase of the lands and hence he is not entitled to purchase the lands. I do not think that the Legislature ever intended such kind of legislation.

11. Mr. Lalit's argument that this view is contrary to the Full Bench decision must be rejected, because, as stated above, the Full Bench did not consider what would happen if the notice is given to the tenant by a person like the person in the present case and the existence of the tenancy is challenged before the Assistant Collector and the Revenue Tribunal by the landlords. The only way of interpreting section 32F consistent with the intention of the Legislature is to hold that although an intimation must be given by the tenant, as held by the Full Bench, if the tenant's tenancy itself is challenged, the tenant having been prevented by the landlords from giving the notice intimation in the form prescribed and within the period specified in sub-section (1), the landlords cannot take advantage of their futile proceedings wrongly instituted against the tenant and defeat the right of the tenant conferred on him by the welfare legislation.

12. In view of this conclusion, I must hold that all the three tenancy authorities erred in law in depriving the tenant of the right to purchase the lands u/s 32F (1A). Under sub-section (1) of section 32F the tenant gets a right to purchase the land. That right can be lost only if he could give notice under sub-section (1A) and failed to give it and not, as in the present case, when he was prevented by the landlords u/s 32F (1A). If that is so the tenant must succeed not only with regard to S. No. 77 but also with regard to S. No. 79. As stated above, it is clear that the illiterate agriculturist who went to a lawyer to give notice depended on the lawyer to do the needful. It was his misfortune that the other survey No. 79 was not mentioned in the notice. Nevertheless, the notice substantially complies with what is required by Form X by informing the landlords that the tenant wants to purchase the land. Sub-section (1A) must apply only in case the tenant's tenancy is not challenged by the landlord and cannot be applied to the case where the tenant could not comply with the provisions of sub-section (1A) on account of the proceedings against him by the landlords challenging the tenancy. The tenant must be held to be vested with the statutory right to purchase the land u/s 32F (1A), even though he did not expressly send the intimation to the landlords under sub-section (1A). Even on this point, Mr. Lalit urged that the view I am taking is directly conflicting with the view, as stated above, taken by the Full Bench. It was neither argued nor dealt with, in the circumstances, by the Full Bench. With respect, the facts considered by the Full Bench and the question decided by it were not such as to enable one to draw any kind of speculative or logical deductions therefrom. An authority even of a Full Bench, with utmost respect, must not be considered as a general commentary of law covering all the aspects of the matter, when a particular aspect, like the one in the present case,

was never considered by the Full Bench.

13. Mr. Lalit further urged that as the notice itself was admittedly under the instructions of the petitioner, he could not now argue that he wanted to purchase the other land bearing S. No. 79. As stated above, the petitioner was an illiterate person, who could only put his thumb impression. It is obvious that there was a mistake at the hands of a lawyer. The respondents, landlords cannot take advantage of such a mistake to defeat the provisions of section 32F, which confers the right of purchase of the land on the tenant.

14. In the result, the petition succeeds. The decision of the Revenue Tribunal dated July 7, 1969, the decision of the Collector, Sholapur, dated May 11, 1968 and the decision of the Additional Tahsildar and Agricultural Lands Tribunal dated January 31, 1968 are quashed and the Tahsildar, South Sholapur, is directed either by himself or through any other competent officer to restore proceedings u/s 32C in respect of the two lands bearing S. Nos. 77 and 79 and proceed to fix the price of the said lands and installments to be paid by the tenant in accordance with law. Rule made absolute. No order as to costs.