
(2002) 10 BOM CK 0085

In the Bombay High Court

Case No : Writ Petition No. 5899 of 1987

Changadeo Jayram Shinde and Others

APPELLANT

Vs

Radhabai Balasaheb Shirke

RESPONDENT

Date of Decision : 08-10-2002

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 32F, 32F(1)

Citation : (2003) 1 ALLMR 575 : (2003) 2 BomCR 601 : (2003) 1 BOMLR 861 : (2003) 1 MhLj 480

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : V.G. Peshave, for the Appellant; M.V. Sali, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—This petition is by the tenants against the judgment and order of the Maharashtra Revenue Tribunal, Pune, upholding the order of both the Courts below that the tenant is not entitled to purchase the land u/s 32F of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as the "Act", from the respondent.

2. The land in question i.e. gat Nos. 453 and 473 situate at village Babhulsar Kd., taluka Shirur, originally belonged to one Bhikubai Yeshwant Chavan. The original tenant was Dattatraya Jayaram Shinde, the father of the petitioners. Bhikubai expired sometime in the year 1971. It was only on 10-1-1980 that a mutation entry bearing No. 190 was effected. Under this mutation entry, Radhabai Shirke, the respondent herein, was recognised as Bhikubai's heir and owner of the land in question.

3. On 8-6-1981 the petitioners submitted an application to the Addl. Tahsildar u/s 32F. According to the petitioners, in the course of these proceedings, the purchase price was fixed mutually between the parties. The petitioners are said to have agreed to purchase the land in question for Rs. 1300/-. This price is

admittedly outside the range contemplated by Section 32H which is more than 200 times the land revenue.

4. The Addl. Tahsildar, Pune, observed that the petitioners had admitted that they had knowledge of the demise of Bhikubai, the original tenant. He, therefore, on the basis of evidence, concluded that the petitioners had failed to exercise their right to purchase within the time contemplated by Section 32F(1) of the Act.

5. The petitioners appealed to the S.D.O., Pune. The S.D.O. held that the appeal was time-barred. Nevertheless, he proceeded to decide the appeal on merits. The S.D.O. concurred with the finding of the Addl. Tahsildar that the petitioners failed to express their desire to purchase the suit land within one year from the demise of the widowed landlady i.e. Bhikubai as required by Section 32F(1)(a) of the Act. As regards the compromise i.e. the alleged agreement whereunder the petitioners and the respondent are said to have mutually agreed to fix the purchase price of Rs. 13,000/-, the S.D.O. expressed doubt as to such a compromise. He observed that had there been such a compromise, the respondent would not have objected to the compromise. The S.D.O. observed that there was no provision under the Act under which a compromise can be considered.

6. The petitioners preferred a revision before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal dismissed the revision application on the ground that the petitioners have been found by the Court below to have had knowledge of the death of Bhikubai and they have failed to issue a notice as required by Section 32F(1)(a) of the Act. As regards the compromise, the Tribunal came to the conclusion that the alleged compromise is liable to be ignored since the provisions of Section 32F(1)(a) have not been complied with.

7. Mr. Peshave, learned counsel for the petitioners, submitted that though Bhikubai may have died in 1971 and the petitioners may have had knowledge of her death, the petitioners could not be said to have had knowledge of who her legal heirs were and, therefore, the period of limitation contemplated by Section 32F(1)(a) must be reckoned from the date of their knowledge. According to the learned counsel, the date of the knowledge must be taken to be after 20-1-1980 when a mutation entry was made in favour of Radhabai, the present respondent. In the submission of the learned counsel for the petitioners, the application which is made on 8-6-1981 is within time since it is made within a period of two years from the date of knowledge that Radhabai is the heir of the deceased Bhikubai. It is not possible for me to accept this contention. Section 31 of the Act reads as under:--

"31.(1) Notwithstanding anything contained in Sections 14 and 30 but subject to Sections 31A to 31D (both inclusive), a landlord (not being a landlord within the meaning of Chapter III-AA) may, after giving notice and making an application for possession as provided in Sub-section (2), terminate the tenancy of any land (except a permanent tenancy), if the landlord bona-fide requires the land for any

of the following purposes:--

- (a) for cultivating personally, or
- (b) for any non-agricultural purpose.

(2) The notice required to be given under Sub-section (1) shall be in writing, shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956. A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession u/s 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

(3) Where a landlord is a minor, or a widow, or a person subject to mental or physical disability 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

Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March 1958 the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry, is satisfied that the share of such person in the land is separated having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion."

It is obvious from the aforesaid provision that if the landlord is a widow, the tenancy is liable to be terminated by her successor-in-title within one year from the date on which her interest in the land ceases to exist. That has not been done in this case. But that is not relevant for a decision of this case since what is under consideration is the period within which the tenant may exercise his right to purchase. That right falls for consideration u/s 32F. The relevant part of Section 32F reads as follows :--

"32F. (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 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."

It is obvious from Clause (a) of Sub-section (1) that it confers a right to purchase on a tenant and that right subsists for a period of one year from the expiry of the period during which the landlord is entitled to terminate the tenancy u/s 31. In a case such as this, u/s 31, the landlord is entitled to determine the tenancy within one year from the date from which widow's interest in the land ceases to exist. Thus, reading these two provisions together, the tenant of a widow is entitled to exercise the right to purchase within a period of two years from the time the interest of the widow in the land ceases to exist,

8. On a construction of the two provisions, it is clear that the time begins to run from the date on which the widow's interest in the land ceases to exist. That in a case such as this must be the date on which the widow dies. It is not possible to accept the contention that time must be reckoned from the date the tenant comes to know who the successor-in-title of the widow is.

9. In support of this contention, the learned counsel for the petitioners relied on a decision of this Court in Yeshwant Govind Botre Vs. Sadashiv Mahadev More and Others, wherein a learned single Judge of this Court has observed as follows:--

"The disabled landlord must show the date of such knowledge so that period would start running. In case of widow landlady, Section 31(3)(ii) says that successor in interest of a widow can ask for possession u/s 29 within 1 year from the date on which her, interest in the land ceases to exist. The successor in interest must show the date on which widow ceased to have interest and his right was created. That date could be when the mutation is made. The tenant then comes to know who is/are successor/s in interest and to whom notice u/s 32F(1A) is to be given. It is necessary that this provision should be read reasonably so as to advance the object of the enactment and not to frustrate the same. This enactment is designed with a view that the tenants on the tiller's day become owners of the lands. In the absence of such knowledge regarding heirs, it is not possible for a tenant to give intimation as contemplated by Section 32F(1A) to the new landlords or successors-in-interest of the widow. In Section 32F(1A) the word landlord means the person in whose name the land is mutated. In this case for the first time the mutation in favour of respondent had taken place on 6-12-1975 and the respondents were shown as owners. The petitioner has exercised his right by giving intimation to the respondent and to the A.L.T. on 25-6-1976. Therefore he has clearly exercised such a right within a period of one year from mutation entry dated 6-12-1975 in favour of respondents, on which date widow ceased to have interest in the land and their rights were created. In my opinion in this case, petitioner has complied with the provisions of Section 32F(1 A)."

Mr. Sali, learned counsel for the respondent, however, relied on a recent

judgment of the Supreme Court in Appa Narsappa Magdum (D)Thr. Lrs Vs. Akubai Ganapati Nimbalkar and Ors, , The case before the Supreme Court was also of a widow and the period within which the tenant must exercise his right to purchase the land. In para 4, their Lordships have observed as follows:--

"4. It was submitted by the learned counsel that this being a welfare legislation enacted for the benefit of tenants should be construed in a liberal manner. He also submitted that the heirs of the landlady had not given any intimation to the appellant about her death and therefore he could not have known who were the heirs of the landlady and given intimation to them. He submitted that the period of one year should be counted from the date of the knowledge of the tenant. We cannot accept this submission because language of the Sections 32-F and 31 is quite clear and the period of one year will have to be counted in accordance with the said provisions and not from the date of the knowledge of the tenant. The provision of law being clear, we cannot in such a case grant relief on the basis of equity."

The contention on behalf of the petitioners is that the date on which they came to know the names of the successors in title of the widow is the date from which the period must be reckoned cannot be accepted.

10. Mr. Peshave, learned counsel for the petitioners, submitted that in the present case, the petitioners agreed with the respondent to purchase the lands in question for Rs. 13,000/-. The learned counsel does not deny the fact of purchase in the course of proceedings u/s 32F. In view of my finding that the proceedings u/s 32F were commenced after the tenants had lost their right to purchase the land in question, it would not be possible to construe the compromise as a valid permission to purchase u/s 32F of the Act. I must add here that this would not preclude the tenants from agitating the validity of the compromise as a conveyance, de hors the provisions of the Act, if a forum is available to them.

11. In the result, I see no substance in the petition which is hereby dismissed. The rule is discharged. There shall be no order as to costs. Interim relief stands vacated.

12. Parties may be provided with ordinary copy of this judgment duly authenticated by the Sheristedar/Personal Secretary of this Court.