
(1990) 09 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 387 of 1988

Chintaman Tukaram Detir

APPELLANT

Vs

Anand Moreshwar Bhat and Another

RESPONDENT

Date of Decision : 07-09-1990

Acts Referred:

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

Citation : (1991) 2 BomCR 666 : (1991) 93 BOMLR 444 : (1991) 1 MhLj 435

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : Prafulla B. Shah, for S.D. Kulkarni, for the Appellant; B.G. Vaidya, for the Respondent

Judgement

Ashok Agarwal, J.—Whether the successor of a widows landlady are obliged to give notice to the tenant of the fact of death of the widow in proceedings u/s 32-F of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to for the sake of brevity as "the tenancy Act") is the short question then arises for determination in the present petition.

2. The petitioner is the tenant in respect of the suits lands. The description of the same as given are given below:-

Village Sr. No. Area Assessment H A Rs.Ps. Nale 240 G-44 1-00 243 1-15-3 5-31 244 0-69-5 8-00 3. The respondents are the landlords. They succeeded to the aforesaid lands under a Will of one Saraswatibai, who was originally the landlady. The husband of Saraswatibai died on 29th June, 1947. She was thus a widow as on 1st April, 1957, the tillers day. In view of this the tillers day was postponed during her life time.

4. On 2nd of November ,1973 the petitioner initiated proceedings u/s 32-G for fixing the purchase price in respect of the aforesaid lands. Notice of the said proceedings was served upon Saraswatibai on 17th November ,1973. On 6th December ,1973 Saraswatibai died. On 27th November, 1974 the statement of

the petitioner was recorded when naturally Saraswatibai was not living and hence was absent. By an order dated 15th March, 1974 the purchase price in respect of the suit land was fixed. On 10th March, 1976 the respondents who had succeeded to the suit lands under the Will of Saraswatibai applied for entering their names in the Revenue Records. On 28th September, 1976 their names were duly entered vide Mutation Entry No. 2534. On 14th February, 1977 the respondents filed Tenancy Appeal No. 5 of 1977 seeking to challenge the order dated 15th March, 1974 fixing the purchase price. By a judgment and order dated 22nd July, 1978 the said appeal was allowed and the matter was remanded back to the trial Court. By a judgment and order dated 20th February, 1979 the application u/s 32-G was allowed and the purchase price was refixed. Being aggrieved the respondent preferred Tenancy Appeal No. 50 of 1979. By an order dated 26th May, 1981 the said appeal was dismissed.

5. Being aggrieved the respondents preferred a revision application to the Maharashtra Revenue Tribunal bearing No. MRT-P-VI -2/86 (TEN. B. 144 of 1966) wherein by a judgment and order dated 6th February, 1987 the revision application was allowed and the impugned orders fixing the purchase price was set aside. Taking exception to the above, the petitioner-tenant has preferred the present petition.

6. The above chronology of events would show that Saraswatibai who was a widow died on 6th December, 1973. u/s 32-F the respondents had a right to terminate the tenancy of the petitioner within one year. Similarly the petitioner had a right to exercise his right of purchase within a period of one year thereafter. In the instant case neither events have taken place. It may be that during the life time of the widow the petitioner had applied for purchase of the suit lands. That, however, cannot ensure against the respondents who had by then not succeeded to the suit lands. The right of purchase, which is contemplated u/s 32-F, is to be exercised not during the life time of the widow but after her death. It is to be exercised not against the widow but against her successors. In the present case, the petitioner has not exercised the said right within 2 years from the date of the death of Saraswatibai, i.e. on or about 6th December, 1975. Consequently, the right to purchase has been extinguished.

7. Shri Shah, the learned Counsel appearing on behalf of the petitioner, strenuously contending that Saraswatibai was not living in the village where the lands are situate. She was a resident of Pune. The petitioner had no knowledge of the fact of her death. No notice in that behalf was given by the respondent to the petitioner. The petitioner learnt of Saraswatibai's death only in the proceedings initiated by the respondents for entering their names in the Revenue Records. According to him, the participation of the petitioner in Appeal No. 5 of 1977 filed by the respondent should be deemed to be sufficient notice of his intention to purchase which was well within two years from the date of his knowledge.

8. In my judgment, there is no merit in the above contention. There is no

provision in section 32-F which cast an obligation upon the successor of a widow to intimate the fact of the death of the widow to the tenant. Section 32-F does cast an obligation on the part of the minor landlord of the fact of his having attained majority. Section 32-F does not cast a similar obligation on the successors of a widow to inform the fact of the death of the widow. When the legislature intended to cast obligation upon some parties in certain circumstances the same has been specifically provided for. If the legislature has provided for such an obligation in respect of one contingency and has refrained from casting a similar obligation in respect of another contingency, it would be reasonable to infer that such an obligation is not cast in the case of the latter. Hence it will have to be held that section 32-F does not cast any obligation on the successors of the widow to intimate the fact of the death of the widow to the tenant. What follows as a natural corollary is that the period within which the tenant can exercise his right of purchase cannot be extended on the ground that the tenant had no knowledge of the fact of the death of the widow. Shri Shah the learned Counsel appearing for the petitioner submitted that if the tenant is precluded from exercising his right of purchase on account of some act on the part of the landlord the same cannot come in the way of the exercise of the right of the tenant to purchase. In particular he relied upon the decision in the case of Dattaraya Balkrishna Jadhav v. Smt. Nirabai Pandurang Shinde, in Special Civil Application No. 636 of 1966 decided by Chandrachud J., (as he then was) on 20th December, 1966. It has been observed in the said case as under:-

"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 No. 1 forcibly and they are trying to take advantage of their own wrong by saying that respondent I had 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-F will not shut its eyes to the incidents that have happened between the death of Laxmibai and this day."

9. In my view, the above decision cannot advance the case of the petitioner inasmuch as the landlords in that case had been found guilty of an overt act of dispossessing the tenant forcibly. It was held that since the tenant is required to be in possession of the land in order to exercise his right of purchase it should not be frustrated by the landlord by forcibly dispossessing the tenant. Such is not the case in the present case. All that is stated on behalf of the petitioner is the inaction on the part of the respondent to give notice of the fact of death of the

petitioner. I have held that such an obligation is not cast upon the respondent.

10. Shri Shah then relied on the decision in the case of Santaram Narayan Palande v. Gangaram Pandurang Malusare, in Special Civil Application No. 1660 of 1975 decided by Dharmadhikari, J., on 13th June, 1979. There also the landlords had raised a dispute regarding the tenancy rights of the tenant. It was held therein that till the question of succession was decided, it was not possible for the tenant to exercise the right of purchase. For the reasons indicated in respect of the case of Balkrihna Jadhav (supra) the present case relied upon by Shri Shah can be of no avail to the petitioner.

11. Shri Shah next relied upon the decision in the case of Chand Ladleshahab Shaikh v. Dattaraya Shankar Malkhare, reported 75 BLR 703. The respondents in that case who were successors-in-title of a widow who had leased certain lands to the petitioner filed an application against the petitioner u/s 84 of the Tenancy Act for summary eviction of the petitioner. This application came to be finally dismissed and thereafter the petitioner sent a notice to the respondents expressing his willingness to purchase the lands. On these facts it was held that the right of the petitioner to purchase should not be frustrated when the petitioner's tenancy itself was challenged and the petitioner was prevented by the respondent from giving notice within the period specified in section 32-F (1A). Section 32-F (1-A) applies only in case the tenant's tenancy is not challenged by the landlord and cannot be applied to a case where the tenant could not comply with the provisions of sub-section 32-F (1-A) on account of the proceedings against him by the landlords challenging the tenancy. Here again the facts were entirely different from the facts emerging in the present case and for the reasons already indicated this case also cannot advance the case of the petitioner

12. Shri Shah lastly relied upon the case of Rama Ningappa Joshilkar Vs. Kirtikumar Pawatrao Desai and Others, . It was observed in this case as under:---

"Where the tenant in possession has not given fresh intimation before 17-10-1971 but has been contending all along before all the tenancy authorities and in the present writ application that he wants to purchase the land it was held that it is a substantial compliance with the requirement of first proviso to section 32-F (1-A) regarding notice."

In my view, the aforesaid case is of no assistance to the petitioner. This is not a case where the petitioner has all along been vis-a-vis the respondent contending before all the tenancy authorities that he wants to purchase the suit lands. This is a case where the petitioner for the first time as against the respondents can be deemed to have expressed a desire to purchase by virtue of his having participated in Tenancy Appeal No. 5 of 1977 filed by the respondent. This was well after the period of limitation contemplated u/s 32-F (1 -A) had elapsed. Had the said participation in the Tenancy Appeal been within the period of two years from the date of the death of Saraswatibai such contention as is sought to be

advanced on behalf of the petitioner may have been open. In the present case, it may be that the petitioner had no knowledge of the death of Saraswatibai in December 1973. Since no obligation is cast upon the respondent to give notice of this fact, the right of the petitioner to purchase has been extinguished by passage of time. Though unfortunate this is the irresistible result of the construction that I have placed on section 32-F.

13. In view of the above discussion, the impugned order of the Revenue Tribunal holding that the petitioner has been deprived of his right to purchase the suit lands on account of want of notice within the period of two years of the death of Saraswatibai is justified. Consequently the petition is devoid of merit and the same is dismissed.

Rule discharged.

There shall however be no order as to costs.