
(1994) 01 BOM CK 0049

In the Bombay High Court

Case No : Writ Petns. No"s. 1682 and 3789 to 3796 of 1986

Govind Shankar Aphale

APPELLANT

Vs

Uttam Govind Chavan

RESPONDENT

Date of Decision : 20-01-1994

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 15, 29, 31, 31(1)(3), 32

Citation : (1994) 01 BOM CK 0049

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : G.B. Karandikar, for the Appellant; D.B. Bhosale, for the Respondent

Final Decision : Allowed

Judgement

Dr. B.P. Saraf, J.—The petitioners in all these 9 petitions are the successors of one Smt. Anandibai, widow of Narayan Vishnu Aphale, who had 4 Annas share in the land admeasuring 4 Acres 4 Gunthas situated at village Konegaon in Karad Taluka of Satara District covered by Survey No. 100/2-B. The petitioners have challenged the order of the Maharashtra Revenue Tribunal, Pune, dated 31-7-1985 dismissing the revision applications of the petitioners u/s 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereafter referred to as "the Act") whereby the petitioners had challenged the decision of the Sub-Divisional Officer, Satara Division, Satara dated 5-9-1983 confirming the order of the Additional Tahsildar and A.L.T Karad dated 23-11-1982 fixing the purchase price of the land belonging to the predecessor of the petitioner Smt. Anandibai u/s 32G of the Act.

2. The facts of the case briefly stated arc as under :

The predecessor of the petitioners Smt. Anandibai had 25% share in the plot of land admeasuring 4 Acres 4 Gunthas situated in the village Konegaon and covered by Survey No. 100/2-B. Out of the balance 75% of the above land 25% belonged to one Dinkar Vishnu Aphale and 50% to Shankar Vishnu Aphale. In

the extract of the village record maintained in Forms No. 7A and 12 against the column "Occupant" it was shown as under :

Dinkar Vishnu Aphale - 0-4-0

Shankar Vishnu Aphale - 0-8-0

Anandibai Bhr. Narayan Vishnu Aphale - 0-4-0

3. Proceedings were initiated in respect of the said land by the Additional Mamlatdar and Agricultural Lands Tribunal No. II, Karad u/s 32G of the Act for determination of the price of the land to be paid by the tenants who were deemed to have purchased the land on the tillers' day i.e. 1st April 1957. In course of the proceedings, it was found that 25% of the land in question belonged to Smt. Anandibai, who was a widow. Therefore, order was passed u/s 32G only in respect of 3/4th share of the land. In respect of 1/4th share of the land belonging to the widow no order was passed u/s 32G in view of the provisions of section 32F of the Act. A direction was also given by the Additional Mamlatdar and Agricultural Lands Tribunal in his above order dated 31st March 1964 for rectification of the Record of Rights that the landlady holding 1/4th share in the land was a widow by effecting a mutation in V. F. VI in respect of the survey land in question. Smt. Anandibai died on 3rd December 1965 and her share devolved on her successors who are the petitioners in these writ petitions. Later, the tenant of the said land Govind Bhau Chavan also died and on his death the name of his son Uttam Govind Chavan was brought on record as his heir.

4. Thereafter on 22nd June 1982 the respondent filed an application in the court of the Tahsildar requesting him to fix the purchase price of the land belonging to Smt. Anandibai. The said application was opposed by the present petitioners on the ground that the respondent-tenant having failed to exercise his right to purchase the above land within two years from the death of Smt. Anandibai had lost the right to purchase the same and section 32F came into operation which empowers the tribunal to dispose of the land in the manner specified in sub-section (2) thereof. The Additional Tahsildar, however, did not accept the contention of the petitioners and held that since part of the land was purchased by the respondent-tenant in the year 1964 and since he was desirous of purchasing the suit land from the petitioners there was substantial compliance with the requirements of section 32F(1)(a). He, therefore, proceeded with the fixation of purchase price of the land and fixed the same. The petitioners appealed to the Sub-Divisional Officer, Satara against the above order. The Sub-Divisional Officer confirmed the order of the Additional Tahsildar. He was of the opinion that section 32F(1)(a) of the Act had no application in the instant case as the name of the widow Smt. Anandibai had been entered in the land records showing the extent of her share as 0-4-0 along with the co-sharers who had 0-12-0 share in it which showed that 4 Annas share of Smt. Anandibai was not divided by metes and bounds. The relevant portion of the order is in the following terms :

The suit land stood entered in the name of the deceased widow Anandibai to the extent of 0-4-0 share along with the co-sharers who had 0-12-0 share in it. The 0-4-0 share of Shrimati Anandibai was not divided by meets and bounds and therefore the present appellants successors of Smt. Anandibai are not eligible to get benefit of section 32F(I)(a) of the Act.

From the above order of the Sub-Divisional Officer it is clear that the widow was only a co-sharer along with two others and her share was specified. Aggrieved by the above order the petitioners filed revision applications before the Maharashtra Revenue Tribunal. The Tribunal dismissed the applications on the ground that section 32F(I)(a) of the Act had no application to the controversy involved in the instant case.

5. The petitioners have challenged the order of the Tribunal as well as the orders of the Courts below by filing the present writ petition.

6. The contention of the petitioners is that the authorities below including the Tribunal went completely wrong in holding that section 32F(I)(a) did not apply to the instant case in view of the proviso thereto. It was submitted that the proviso is applicable to a case where the landlady who is a widow is a member of the joint family. The proviso does not apply to cases where the widow owns the property in her right as a co-owner. According to the learned counsel all the authorities below including the Tribunal have failed to appreciate the distinction between co-ownership and a joint family and that resulted in an erroneous decision. It was further submitted that there is no dispute in this case that the widow Anandibai was a co-owner of the disputed property having 1/4th share therein.

7. I have carefully considered the submission of the learned counsel for the petitioners. I have also heard learned counsel for the respondent. I find force in the submission of learned counsel for the petitioners that the authorities below have committed a grave error of law in equating co-ownership of a property with a member of the joint family.

8. It may be expedient at this stage to set out some off the provisions of the Act. Section 32 provides :

32. (1) On the first day of April 1957 (hereinafter referred to as "the tillers" day") every tenant shall (subject to the other provisions of this section and the provisions of) the next succeeding sections, be deemed to have purchased from his landlord, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if -

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates the land leased personally; and

(i) the landlord has not given notice of termination of his tenancy u/s 31; or

(ii) notice has been given u/s 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 u/s 29 for obtaining possession of the land; or

Section 32F of the Act deals with the right of tenant to purchase where landlord is minor etc. It provides :

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 :

(b) where the tenant is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces, then subject to the provisions of clause (a), the right to purchase land u/s 32 may be exercised -

(i)

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

(iii)

(iv)

The following proviso was, however, added by Bombay Act No. 38 of 1957:

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 the 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.

Section 31 deals with landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose. Sub-section (3) thereof, which is relevant for the present purpose, is in the following terms :

(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.

9. On a reading of section 32F(1) and section 31(1)(3) of the Act it becomes clear that a tenant has to exercise his right to purchase the land belonging to a widow within two years from the date on which her interest in the land ceases to exist. In the instant case the widow died on 3rd December 1965. The period of two years therefrom ended on 3rd December 1967. Admittedly no notice as contemplated by section 32F(1)(a) was given by the tenant. What follows if there is failure to give notice is contained in section 32P of the Act. It, inter alia, provides that 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 suo motu or on an application made in this behalf after holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub-section (2) thereof. Sub-section (2) includes powers to give directions that the former tenant be summarily evicted or that the land shall, subject to the provisions of section 15, be surrendered to the former landlord. The only question that arises for consideration is whether section 32F(1)(a) applies to the present case. I do not find any difficulty in holding that it has no such application. From the order of the Tribunal it appears that the contention of the respondent himself all throughout was that the widow Anandibai was a co-owner of the disputed property along with two others. That being so the proviso has no application which is applicable only where the widow is a member of a joint family. It is evident from the order of the Tribunal that there was a total confusion in regard to the meaning of a member of a joint family and it was erroneously equated with a co-owner of a property and it is this misconception of law that led to the erroneous conclusion in this case. The distinction between a joint family and a co-ownership is well known and well-settled. In the instant case the widow being a co-owner, her case was covered by section 32F(1)(a) of the Act and the proviso did not in anyway have the effect of taking it out of the same. As regard the nature of requirements of notice u/s 32F, it is no more res Integra in view of the Full Bench decision of this court in Vishnu Shantaram vs. Indira Anant, 1972 Mh.L.J. 124 (F.B.) : 73 Bom.L.R. 792, where it was held :

This sub-section, therefore, prescribes the time within which and the manner in which a tenant desirous of exercising his right to purchase has to give an intimation. When such an intimation is given, he is deemed to have purchased the land because by sub-section (2) thereof, provisions of sections 32 to 32E (both inclusive) and sections 32G to 32R (both inclusive) shall, so far as may be applicable, apply to such purchase. The words "such purchase" connote a purchase by a tenant who has given an intimation in respect of his desire to purchase land within the time specified and in the manner prescribed by this section.

It was further observed :

Consequences of failure on the part of a tenant to give intimation of his desire to purchase land within the time specified or in the manner prescribed by section 32F are provided in section 32P. That section inter alia states that 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 enquiry, direct that the land shall be disposed of in the manner provided in sub-section (2). The cumulative effect of the provisions of section 32F read with those of section 32P 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.

...Question then arises whether section 32F confers a right to purchase the land upon a tenant in addition to the right conferred by section 32. Such a question has to be answered in the negative. When conditions laid down in section 32F exist, there is no automatic statutory purchase of land by a tenant u/s 32. u/s 32 a tenant is deemed to have purchased from the landlord the land held by him as a tenant without giving him any intimation or doing any other act. Where a tenant is under disability if he is deemed to have purchased land u/s 32 on the "tillers" day or on the postponed date, then a question of exercise of a right by a tenant to purchase land u/s 32F cannot possibly arise. There is no question of exercising a right to purchase land by a tenant u/s 32F, if he is already deemed to have purchased the land u/s 32. But in a case covered by section 32F, provisions of section 32 apply only after an intimation is given as contemplated by section 32F(1A) and this is evident from the language of sub-section (2) of the said section.

10. The above observations are a complete answer to the controversy in this case. The respondent tenant having failed to comply with the requirements of section 32F(1)(a) of the Act and having failed to give intimation of his intention to purchase the said land as contemplated by sub-section (1A) within the time specified therein, lost his right to purchase the same and section 32P came into operation. Thereby the land became available to the Tribunal for disposal in the manner laid down therein. In view of the foregoing discussion, the impugned orders of the Tribunal on revision as well as the orders of the authorities below

holding that the respondent-tenant had become a purchaser and was entitled to ask for fixation of the price u/s 32G of the Act are not in accordance with law and are liable to be set aside, which I hereby do. All these writ petitions are allowed in terms of prayer (B).

11. Rule is, accordingly, made absolute. There shall, however, be no order as to costs.

12. Certified copy expedited.