

**(1978) 11 GUJ CK 0022**  
**In the Gujarat High Court**

Jivanbhai Khushalbai and Others

APPELLANT

Vs

Gulam Mohmed Farookh Gulam Mohinddin Shaikh

RESPONDENT

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**Date of Decision :** 27-11-1978

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32T, 88C

**Citation :** (1979) 1 GLR 726

**Hon'ble Judges :** N.H. Bhatt, J

**Bench :** Single Bench

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## Judgement

N.H. Bhatt, J.—This is a petition under Article 227 of the Constitution, challenging the Gujarat Revenue Tribunal's judgment, Annexure C, dated 7-8-75 passed by the Tribunal in the Revision Application No. TEN. B.A. 612 of 1974. The petitioners are the respondents in that petition and they are the three sons and a widow of one Khushalbai Mavabhai, who admittedly was the tenant on three Section Nos. 29/1,34/2 and 329/2, all situated in village Digas, Mahal Hansot of Broach District.

2. In order to understand the moot point that has arisen in this petition, a few facts require to be clearly stated because the ultimate decision one way or the other depends on the basic, but admitted, facts. Deceased tenant Khushalbai admittedly died on 21-5-63. The respondent-landlord admittedly had procured a certificate u/s 88C of the Bombay Tenancy Act and, therefore, was a certified landlord and, therefore, as a necessary corollary deceased Khushalbai was an excluded tenant. The certificate in question u/s 88C was procured by the landlord on 17-2-59 and he had thereafter filed an application for possession of the lands for personal cultivation by virtue of Section 32T of the Bombay Tenancy Act. The said section provided that:

32T(1) Notwithstanding anything contained in Sections 30 to 31B (both inclusive) but subject to the provisions of this section a certified landlord may, after giving notice and making an application for possession as provided in Sub-section (3), terminate the tenancy of any land leased by him to an excluded tenant, if he

bona fide requires such land for cultivating it personally.

During the pendency of that application, the tenant had applied to the Govt. u/s 88D for cancellation of the certificate. During the pendency of those proceedings u/s 88D, the application for possession was required to be kept stayed by the Mamlatdar. The certificate granted to the respondent-landlord was first cancelled by the Government u/s 88D, but that order was set aside by this High Court in a writ petition and the proceedings u/s 88D stood remanded to the Govt. and the Government had on the second occasion again reached the same conclusion. This order of the State Govt. on the second occasion came to be passed on 8-2-74 and the matter rests there as far as those proceedings are concerned. It is obvious that till that date, namely, 8-2-74, the earlier proceedings for possession u/s 32T of the Act had remained in abeyance. The crucial facts are now stated. In the intervening period, the respondent-landlord had terminated the tenancy of the heirs of the tenant by resorting to Section 14 of the Act on the ground that the petitioners-tenants had failed to pay rent for six years, that is, from 1965-66 to 1971-72. After terminating the tenancy, the respondent-landlord had filed a suit for possession u/s 29 and the said suit had come to be registered as the tenancy case No. 22/72, which thereafter had come to be renumbered as case No. 50/73. The Mahalkari, Hansot by his order dated 31-10-73 dismissed the respondent-landlord's application for possession on the ground that the same was incompetent. It is Annexure A to this petition. The landlord's appeal to the Prant Officer, being the appeal No. 64/73 also came to be dismissed by the said Officer as per his order, Annexure B dated 6-6-74. The respondent-landlord had, therefore, moved the Gujarat Revenue Tribunal by filing a revision application u/s 76 of the Act. The said application was registered as TEN. B A. 612/ 74. The Tribunal allowed that application by its order dated 7-8-75, Annexure C to the petition, and remanded the matter to the Mahalkari, Hansot for its decision on merits because the Mahalkari had dismissed the application on the ground that such an application for possession u/s 29 read with Section 14 was incompetent. It is this order of the Gujarat Revenue Tribunal at Annexure C, which is challenged on behalf of the tenants, the petitioners herein, on the ground that such an application was not maintainable. Reliance has been placed in this connection on Section 32U of the Act, which is quoted below. I reproduce that section on one side of the paper in juxtaposition with Section 32(1) of the Act because the issue ultimately is required to be decided on the similarity or otherwise between these two provisions:

32U(1) Notwithstanding anything con- 32(1) On the first day of April 1957 tained in Sub-section (1) of Section 88C, but (hereinafter referred to as "the tillers" subject to the provisions of this section day") every tenant shall (subject to the every excluded tenant holding land from other provisions of this section and the a certified landlord shall except as other provision of the next succeeding sections, wise provided in Sub-section (3) be deemed be deemed to have purchased from his to have purchased from the landlord, on landlord, free of ail encumbrances sub- the first day of April, 1962, free from all sisting thereon, on

the said day, the land encumbrances subsisting thereon on the held by him as a tenant, if- said day, the lard held by him as tenant, if such land is cultivated by him personally; and (i) the landlord has not given notice (a) such tenant is a permanent tenant of termination of tenancy in accordance thereof and cultivates land personally; with Sub-section (3) of Section 32T; or (ii) the landlord has given such notice (b) such tenant is not a permanent tenant has but not made an application there- but cultivates the land leased personally; after u/s 29 for possession as re- and quired by the said Sub-section (3); or (i) the landlord has not given notice of (iii) the landlord not being a person of termination of his tenancy u/s 32; any of the categories specified in Sub- or section (4) of Section 32T has not terminated the tenancy on any of the grounds speci- (ii) notice has been given u/s 31, fied in Section 14 or has so terminated the but the landlord has not applied to the tenancy but has not applied to the Mamlatdar on or before the 31st day of Mamlatdar on or before the 31st day of March 1957 under sec 29 for obtaining March, 1962 u/s 29 for po possession of the land (or) sion of the land: [(iii) the landlord has not terminated this tenancy on any of the grounds specified in Section 14, or has so to ruminated the Provided that where the landlord has tenancy but has not applied to the made such an application for possession Mamlatdar on or before the 31st day of but it is rejected by the Mamlatdar or in March 1957 u/s 29 for obtaining appeal by the Collector or in revision possession of the lands.] by the Gujarat Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land Provided that if an application made by on the date on which the final order of the landlord u/s 29 for obtaining rejection is passed. possession or the land has been rejected. by the Mamlatdar or by the Collector in appeal or in revision by the (Gujarat Rev- enue Tribunal) under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. The date on which the final or- der of rejection is passed is hereinafter refer- red to as "the postponed date". From what has been stated above, it is clear that the only point that falls for determination in this petition is whether the respondent-landlord's application for possession u/s 29 read with Section 14 of the Act filed in the year 1972 was or was not competent.

3. Mr. R.M. Vin, the learned advocate for the petitioners, urged that such an application was not maintainable at all and for that purpose he relied upon the judgment of the Supreme Court in the case of Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another, which in its turn confirmed the Full Bench judgment of the Bombay High Court in the case of Ramchandra Anant Joshi v. Janardan Tulshiram Ghuge 64 B.L.R. 635. If the ratio of the Supreme Court applies, Mr. Vin's contention will be required to be upheld. So, the first thing to be noted with precision is what the point that had arisen before the Supreme Court was and what was decided by it.

4. It was a case from Gujarat. The tillers' day in that case ordinarily was to be 1-4-57, but the statutory sale had not taken place because the landlord had availed himself of the intervening opportunity extended to the landlords by

Section 31 of the Act. Section 31(1) gave a final opportunity to the landlords to terminate the tenancy of any land except a permanent tenancy, if he bona fide required the land for personal cultivation or for non-agricultural purpose. Section 32(1) as quoted above postpone the tillers' day in case the landlord had filed an application u/s 31 of the Act, which obviously he could do on or before 31-3-57 or the landlord had terminated the tenancy of the tenant on any of the grounds specified in Section 14 and had initiated proceedings for possession on or before 31-3-57. During the pendency of the proceedings u/s 31, the landlord there was advised to terminate the tenancy of the tenants also u/s 14 and then initiate proceedings u/s 29 read with Section 14. So there were pending against eight tenants there in those eight proceedings under" Section 31 of the Act and also u/s 29 read with Section 14, but those latter proceedings had been initiated by the landlords in those eight cases after 1-4-57, or to be exact in statement, those proceedings were started on 10-7-57. The proceedings u/s 31, however, lagged behind and the subsequent proceedings u/s 29 read with Section 14 stole a march over the former, came to be decided and order for possession came to be passed in favour of the landlords. Because of their success in the proceedings u/s 29 read with Section 14, the landlords withdrew their earlier proceedings u/s 31 of the Act. The proceedings u/s 29 read with Section 14, which had at the initial stage been decided in favour of the landlord, however, came to be set at naught by the Appellate authority and the Gujarat Revenue Tribunal, which judgment came to be set aside, by this High Court in a writ petition under Article 227 of the Constitution. The tenants, therefore, filed eight different appeals before the Supreme Court and the Supreme Court ultimately held as follows:

20. But the application u/s 29 read with Section 14 was not maintainable, as it was filed after April 1, 1957. On this point, we adopt the reasoning and conclusion of the Full Bench of the Bombay High Court in *Ramchindra Anant v. Janardan* 74 Bom. L.R. (sic). We agree with the following observations of Chainan, C.J. in the aforesaid case: "It has been contended that as there is no provision in the Act that an application on the grounds mentioned in Section 14 cannot be made after April 1, 1957, such an application is-maintainable, for since the Legislature has preserved the right to make such an application, it could not have intended that it should not be availed of in any case. There is undoubtedly force in this argument, but it seems to us that the intention of the legislature in enacting Section 32 clearly was to transfer the ownership of the lands to the tenants on April 1, 1957, except in cases where applications for possession had been made by the landlords before April 1, 1957. Where such an application had been made, the right of purchase given to the tenant is postponed until that application is rejected. It is clear from this section that the Legislature did not intend that the right given to a tenant by this section should be destroyed or affected by any application made after April 1, 1957. If an application for possession made u/s 29 read with Section 14 after April 1, 1957 is decided in favour of the landlord before the application made by him prior to April 1, 1957 is disposed of, it will affect the right of the tenant to become the owner of the

land on the postponed date. It seems to us that this was not intended by the Legislature. The fact that the Legislature has provided that only an application made prior to April 1, 1957, should affect the right of the tenant to become the purchaser of the land on April 1, 1957 clearly indicates that the Legislature contemplated that no such application should be made after April 1, 1957.

21. On this construction of Section 32(1) it would appear that the application u/s 29 read with Section 14 filed on July 10, 1957 was not maintainable since September 22, 1957, when the amending Bombay Act No. 38 of 1957 came into force. It is true that on July 10, 1957 the other application u/s 29 read with Section 31 was pending and consequently the appellant was still a tenant and had not become the purchaser. But Section 32 bars all applications filed after April 1, 1957 and it matters not that the application is made against a person who is till the tenant.

5. Mr. Vin stated that the phraseology of Section 32(1) and that of Section 32U are identical and in his submission what the Supreme Court has observed with respect to Section 32(1)(iii) as quoted above would with equal force apply to the provisions of Section 32U with this difference that in Section 32(1), there is reference to the first day of April 1957 whereas in Section 32U; reference is to the 1st day of April 1962. I have quoted these provisions side-by-side above in order to have the easy comparison. Barring certain dates, which were necessary because of the change in the context, the operative part of Clause (iii) of Section 32 U(1) and the operative part of Clause (iii) Section 32(1) are identical in all respects. u/s 32(1), the statutory sale of 1-4-57 stood postponed till the landlords' proceedings initiated before that date for obtaining possession of the land came to an end. In the case falling u/s 32LJ, the statutory sale, which would otherwise be operative on 1-4-62 stood postponed till the conclusion of the proceedings u/s 32T(4) or the proceedings u/s 29 read with Section 34 provided they were initiated on or before 31-3-62. Barring this difference of details in these two provisions, the rest of the provisions is, as I said above, on a fours with the scheme as was available in Section 32. If it be so, the interpretation placed by the Supreme Court on Clause (iii) of Section 32(1) of the Bombay Tenancy Act must apply proprio vigore to the provisions of Section 32U. To me there appears no escape from this position, though initially, to be frank, I was against the view submitted by Mr. Vin. As the Bombay High Court in its Full Bench decision itself has observed, the question was not free from doubt and something could be stated even in favour of the other view placed vigorously before the Full Bench of the Bombay High Court, but on consideration of the scheme of the Act, the Full Bench of the Bombay High Court reached that difficult decision and the Supreme Court had no hesitation in confirming the same on the very same grounds.

6. Mr. Shaikh, the learned advocate for the respondent-landlord, however, invited my attention to Section 32(3) of the Act, under which the tenant's continued liability to pay to the landlord the rent of such land is provided for and urged that

this particular provision was not brought to the notice of the Supreme Court. When the Supreme Court decided this question, this particular provision was very much there on the statute book. It is not open to me to sit in judgment over the Supreme Court's judgment on the ground that some such provision was not brought to the notice of the Supreme Court or the Lordships of the Supreme Court had not addressed themselves to that particular provision. The ultimate, presumption in such cases should be that such a provision was brought to the notice of the Supreme Court and still they did not think it worthwhile to deal with the same. Mr. Shaikh then invited my attention to the judgment of this High Court in the case of Bai Ganga wd/o. Khoda Chhagan and Ors. v. Bai Kamla daughter of Mangaldas Semeshwar and Ors. 15 G.L.R. 345. In that case, it has been laid down by this High Court that till the statutory right to purchase the land does not accrue, the tenant continues to be the tenant and the liabilities of his as a tenant would continue. This particular argument has been dealt with by the Supreme Court in the above-mentioned case and despite that the decision referred to above has been reached. All that is required to be decided in this case is whether possession can be claimed u/s 29 on any such continued liability of the tenant and this question squarely arose before the Supreme Court and came to be dealt with decisively.

7. In above view of the matter, the petition is required to be allowed and is hereby allowed. The impugned order of the Gujarat Revenue Tribunal at Annexure C is set aside and the orders at Annexures A and B passed by the Mahalkari and the Prant Officer respectively of Hansot and Broach stand reinstated. Rule is accordingly made absolute with no order as to costs.