

(2000) 06 BOM CK 0035
In the Bombay High Court
Case No : Writ Petition No. 3746 of 198

Kashiram Mahipati Bhaskar and Another	APPELLANT
Vs	
Khandu Tulshiram Jadhav and Others	RESPONDENT

Date of Decision : 28-06-2000

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32F(1A), 32G, 32P, 35F
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 20

Citation : (2000) 4 ALLMR 224 : (2001) 1 BomCR 130 : (2001) 1 MhLj 867

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Anita A. Agarwal, for the Appellant; V.K. Potdar, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India takes exception to the judgment of the M.R.T., Pune dated 23rd April, 1987 in MRT-P-III-18/83 (TNC.A.86/83)

2. The petitioners claim to be the tenants in respect of the land bearing 275/11, 276/68, 274/8E/1 and 274/88 all situated at village Sawargaon, Taluka Junnar, District Pune. The respondents are the owners in respect of the suit lands.

3. Briefly stated, the facts giving rise to the present proceedings are that section 32G proceedings were initiated in respect of the land bearing Survey No. 274/8E/1 and Survey No. 274/88 wherein purchase price came to be fixed and mutation entry in that behalf was also recorded. However, the said proceedings were eventually dropped since the original owner of the suit lands viz. Gangubai was widow on the tiller day i.e. 1-4-1957 on account of which the tenant's right to purchase the said lands stood postponed by virtue of section 32F of the B.T. & A.L. Act. The original owner Gangubai, predecessor in title of the respondents, died on 23-3-1979. It appears that some time in the year 1981 the petitioners moved an application for initiating the proceedings u/s 32G of the Act on the

ground that he had become deemed purchaser in respect of the said land and thus prayed for determining the purchase price. The Addl. Tahasildar by his order dated 3rd July, 1982 was pleased to order that the lands bearing Survey No. 274/8E/1 and 275/11 out of aforesaid 4 lands be sold to the petitioner-tenant at a price of Rs. 276/-, as per section 32G of the said Act. However, with regard to the other 2 lands, the Addl. Tahasildar merely ordered that the respondents shall hand over possession thereof to the petitioners. The aforesaid order passed by the Addl. Tahasildar and ALT, Junnar was accepted by the petitioners and the said become final and binding upon the petitioner. However, the respondents challenged the correctness of the said order, inter alia, contending that the lower authority had committed serious error in fixing the purchase price in respect of the suit lands and also in ordering handing over of possession of other two lands. The appeal Court dismissed the appeal being devoid of merits. It appears that the Appellate Court has not adjudicated the rival contentions and has disposed of the appeal virtually by an operative order. Naturally, being dissatisfied, the respondents preferred revision application before M.R.T., Pune. The Tribunal by impugned judgment and order dated 23rd April, 1987 allowed the revision application and was please to set aside the decisions of both the courts below. The Tribunal has held that the question of initiating proceedings u/s 32G for fixation of the purchase price was wholly misconceived for the simple reason that the tenant had failed to exercise option to purchase the suit lands within the stipulated period after the death of widow Gangubai, original owner. The Tribunal, therefore, held that even assuming that the petitioners were tenants on the tiller day i.e. 1-4-1957 even then they would not be entitled to purchase the suit lands as deemed purchasers for having failed to give intimation in the prescribed manner u/s 32F of the said Act. The Tribunal has also held that the petitioners have failed to show any documentary evidence that they were in possession of the suit lands or were dispossessed by the respondents-landlord. The Tribunal thus held that mere entry in 7 x 12 extract i.e. record of rights cannot create tenancy in favour of the petitioners. Taking this view of the matter, the Tribunal allowed the revision application in its entirety by setting aside the orders passed by the two courts below.

4. The learned Council for the petitioners has challenged the correctness of the aforesaid order of the Tribunal mainly contending that the Tribunal ought not to have interfered with the concurrent findings of facts recorded by the two courts below. It is further contended that the Tribunal was in error in holding that the petitioners has failed to exercise option to purchase the suit lands. According to the petitioners the fact that 32G proceedings were initiated itself is indicative of the intention of the petitioners of their willingness to purchase. According to the petitioners the Court ought to look at the substance of the matter and not the form, inasmuch as the petitioners did exercise their option, in any case by filing application u/s 32G of the Act. I am afraid, this contention deserves to be stated to be rejected. The earlier proceedings which were initiated u/s 32G were totally without jurisdiction for the simple reason that the original owner was a disabled

person at the relevant time being a widow and as such there was a clear statutory bar even in initiating proceedings u/s 32G against a disabled landlord. As such any step taken in the said proceeding could not be of any avail as the proceedings were void ab initio. Even the alternative plea of the petitioners that initiation of the proceedings u/s 32G; and in any case the present application, be considered to be exercise of option to purchase, this contention clearly over looks the statutory requirement u/s 32F(1A) which provides that the tenant desirous of exercising the right conferred on him under sub section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub section. In the circumstances, the mandatory requirement to get the benefit of the said provision is that the tenant should have given an intimation within 2 years from the date of death of the original owner, in the present case on or before 22-3-1981 as the original owner Gangubai died on 23-2-1979. Another requirement of the said sub-section is that intimation should be in the prescribed form. Rule 20 of the Bombay Tenancy and Agricultural Lands Rules, 1956 provide that intimation under sub-section (1A) shall be given in Form X by hand delivery or post. Form X is appended to the said Rules. Admittedly, none of these requirements have been complied with by the petitioners in the present case. The contention of the petitioner that the application u/s 32G should be treated as sufficient compliance cannot be accepted even in law. No authority has been relied upon by the petitioner to support this contention. The law requires position assertion by the tenant of willingness to purchase the land and such assertion is to be made within the prescribed time in a particular manner. Since the law obliges the tenant to give information in a particular manner the same has to be done in that manner alone. The proposition that when statute requires an act to be done in a particular manner has to be done in that manner alone is no more *res integra* See AIR 1936 P.C. Khawaja Nazir Ahmed v. King Emperor. The requirement u/s 32F is mandatory one, inasmuch as, on expiry of the prescribed time, an indefeasible right is created in favour of the landlord to get back the possession of the tenanted lands.

5. In the circumstances, I affirm the conclusion reached by the Tribunal that since the petitioners have failed to exercise the option u/s 32F of the Act, the question of maintaining proceedings u/s 32G would not arise at all. The Tribunal has rightly referred to the Full Bench decision of this Court reported in 1971 T.L.R.108, wherein it is held that if the intimation is not given by the tenant as required u/s 32F, the right of tenant to purchase the agricultural land would stand lapsed. The Tribunal has elaborated this point in para 5 of its judgment. I see no reason to take a different view in the matter.

6. With regard to the next contention raised on behalf of the petitioners that the Tribunal ought not to have interfered with the findings recorded by the two courts below on the question of dispossession of the petitioners, even the same is wholly misconceived. The Tribunal has rightly recorded that there is no evidence to show as to how the petitioners were dispossessed. Moreover, besides

relying on the entries in the record of rights the petitioners did not place any other material or circumstance on record to show that the tenancy was created in their favour by the original owner. The Apex Court in Hanmanta Daulappa Nimbal since deceased by his Heirs and LRs. Vs. Babasaheb Dajisaheb Londhe, , has held that mere entries in 7 x 12 extracts would be of no avail. The Tribunal has accordingly rightly negated the submission of the petitioners. In my view, there is no error in the ultimate decision reached by the Tribunal while allowing the revision application preferred by the respondent. The decision of the Tribunal particularly paras 5 and 6 would be relevant in this regard. I approve of the said view taken by the Tribunal that the petitioners have failed to prove that they were in possession of the lands prior to 1-4-1957.

Accordingly, the writ petition deserves to be dismissed with no order as to costs and the order passed by the M.R.T., Pune dated 23-4-1987 is confirmed. Rule stands discharged.

Certified copy expedited.

Parties to act on the copy of this order duly authenticated by Sheristedar of this Court.