
(1972) 03 BOM CK 0016

In the Bombay High Court

Case No : Spl. Civil Application No. 1519 of 1971 with C.A. No. 142 of 1972

Keda Kalu Wagh Patil

APPELLANT

Vs

Devidas Pandharinath Metkar

RESPONDENT

Date of Decision : 22-03-1972

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32

Citation : AIR 1974 Bom 35 : (1973) 75 BOMLR 92 : (1973) MhLj 358

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : V.M. Limaye, for the Appellant; R.G. Samant, for R.G. Samant and Co., for the Respondent

Judgement

1. This Special Civil Application under Article 227 of the Constitution of India is directed against the concurrent findings and orders of the tenancy authorities and order of the tenancy authorities holding that the petitioner had ceased to be a tenant of the land in his possession bearing S.No. 32 of village Khedgaon in Tal. Kalwan of district Nasik. On the tillers day i.e. April 1, 1957 the respondent, who is the landlord of the petitioner, was a minor. He attained majority on June 1, 1961. The petitioner-tenant failed to exercise his right to purchase the land before June 1, 1963 as required by Section 32-F of the Bombay Tenancy and Agricultural Lands Act, 1948, as it stood before its amendment by Maharashtra Act 49 of 1969.

2. Under that amendment, which came into force on October 18, 1969, a proviso was added to sub-section (IA) -. The said sub-section after the amendment adding the said proviso reads as under:-

"(IA) A tenant desirous of exercising the right conferred on him under sub-section (I) 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.

Provided that, if a tenant holding land from a landlord (who was a minor and has

attained majority before the commencement of the Tenancy and Agricultural Lands laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of the Act."

It is not disputed that the petitioner was in possession of the land in dispute on October 18, 1969, when, the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969 came into force. But prior to the amendment, proceedings u/s 32-F and 32-G were started by Agricultural Lands Tribunal in 1965. Those proceedings ultimately ended before the Maharashtra Revenue Tribunal on March 2, 1967. The result of the proceedings was that it was declared that the petitioner had lost his rights to purchase the land u/s 32-F and that the land should be surrendered into possession of the landlord u/s 32-P.

3. In spite of the said decision, after the amendment came into force, the petitioner made an application before the Tahildar, Kalwan, u/s 32-G on December 4, 1969, within the time prescribed under the proviso to sub-section (1A) of Section 32-F. In that application, he stated that he was desirous of exercising the right conferred on him under sub-section (1A) to Section 32-F of purchasing the land and prayed that orders may be issued to the Village Officer to fix the purchase price of the land u/s 32-G. He also requested that orders may be issued to the Village Officer to stay the handing over of possession of the suit land to the land lord, in pursuance of the order dated March 2, 1967 passed by the Maharashtra Revenue Tribunal in the earlier proceedings.

4. The Tahsildar, Kalwan, rejected the petitioner's application on the ground that in view of the earlier proceedings u/s 32-F, as it stood before the amendment, as the Tahsildar was directed to apply the provisions of Section 32-P and summarily evict the any orders on the fresh application filed by the petitioner. The said decision of the Tahsildar was challenged in an appeal before the Assistant Collector by the petitioner, who agreed with the view taken by the Tahsildar, holding that Section 32-F was not amended with an intention to give retrospective effect.

5. The said decision was further confirmed by the Maharashtra Revenue Tribunal, which dismissed the revision application filed by the petitioner on February 25, 1971, observing as follows :

"They maintained that by this amendment the rights of tenants to purchase the lands in question within two years of their landlord having attained majority were revived for a period of two years more from the commencement of that Act, even though they had not exercised the same within the period 32-F. Ordinarily, that would be the correct position, if the tenant has continued in possession at the time of the amendment. In these cases, however, the main difficulty in the way of the applicants is terminated by the decisions of the Revenue Courts much

before the amendment Maharashtra Revenue Tribunal was given on March 2, 1967, while the amendment came into force on October 17, 1969. Now, those were orders u/s 32-P (2) of the Tenancy Act. Section 32-P (1) provides that where a tenant fails to exercise the right to purchase the land held by him within the specified period u/s 32-F, the Tribunal may direct that the land shall be disposed of in the manner provided in sub-section (2) . Then, sub-section (2) (a) provides that the Tribunal shall direct that the former tenant be summarily evicted: and (b) provides that the land shall subject to the provisions of Section 15, be surrendered to the former landlord. Now, the orders were obviously passed under these provisions. Hence, there can be the least doubt that, after the orders were passed, the relations between the landlord and the tenants ceased to exist".

6. The said decisions of the tenancy authorities are challenged in the above petition on the ground that the said decisions are manifestly contrary to the intention of the legislature in amending sub-section (1A) so as to give a further opportunity to the tenant of the minors and others mentioned in Section 32-F (1) to exercise the right of purchase within a period of two years after the coming into force of the amending Act i.e. before October 17, 1969. Mr. Samant, learned counsel for the respondent landlord, on the other hand, submitted that the benefit of the proviso can be extended only to the persons who were in possession tenants, but that the petitioner had ceased to be a tenant or was not having the status of a tenant, in view of the earlier proceedings, in the course of which it was finally held that the statutory purchase in his favour was ineffective and the land was to be disposed of u/s 32-P. Mr. Samant's argument is that once the order was passed u/s 32-P on the footing that the sale had become ineffective, the tenant ceased to have the status of a tenant and he was liable to be summarily evicted u/s 32-P and such a person could not claim the benefit of the proviso added by the Maharashtra Act 49 of 1969, on the basis of the mere fact that he was in possession of the land on the date on which the amendment came into force. He further submitted that the petitioner was liable to be evicted u/s 32-P summarily from the land but for the suit which the petitioner had filed after the order of the Maharashtra Revenue Tribunal. The suit is referred to by the Revenue Tribunal in the course of its judgment as a suit challenging the partition under which the land in dispute was allotted to the share of the respondent. In the course of that suit an ad interim injunction was obtained by the petitioner. The injunction was ultimately vacated. The order was confirmed by the Appeal Court. The order, though challenged by the petitioner in a Civil Revision application, was not disturbed by the High Court, as the petitioner withdrew the application on November 28, 1969. Mr. Samant therefore strenuously urged that, having regard to the orders passed in the earlier proceedings, the petitioner could not take advantage of the erroneous interim injunction order for claiming any status higher than that of a trespasser; and hence the benefit of proviso sub-section (1A) could not be extended to him.

7. Having regard to these contentions, the only question which arises in this case

is as to whether because of the earlier proceedings u/s 32-F, before its amendment the benefit of the amendment should be refused to the petitioners. In my judgment, all the three tenancy authorities misdirected themselves on law. The Tahsildar found that he was not competent to issue orders because the Maharashtra Revenue Tribunal had earlier passed an order. He ignored that the tenant was claiming a right under the new amendment. The Assistant Collector thought that a right was vested in the landlord u/s 32-P as a result of earlier proceedings; and hence that right could not be divested by a subsequent amendment. He forgot the plain purpose of the amendment which was meant to give a further opportunity to the tenant, who was in possession of the land, to exercise the right of purchase. The Revenue Tribunal referred to the order passed by the Special Deputy Collector in the earlier proceedings u/s 32-P, which directed that the suit land should be restored to the landlord for personal cultivation as prayed for by him, and held that this was an order passed in pursuance of the powers u/s 32-P (2) (a) (b).

8. It is true that ordinarily amending statutes must not be given a retrospective effect unless a plain intention of the legislature can be found in the amendment to give it a retrospective effect. It was noticed that a large number of tenants in the Bombay area of Maharashtra State, whose landlords were minors and other mentioned in Section 32-F failed to give intimation of their willingness to purchase the land within the period laid down, u/s 32-F and (1) and (1A). In order to give a fresh opportunity to the tenants concerned, a proviso was added with the specific purpose of benefiting the tenants in possession, who had lost their right to purchase the land in their possession. The proviso enabled them to exercise the right within two years after the commencement of the amending Act. It could not be said that any right u/s 32-P was vested in the landlord as a result of previous order for dispute of land u/s 32-P. All that it envisaged was the summary eviction of the tenant and surrender of the land to the former landlord thereafter. Until the actual eviction and surrender took place the landlord could have no vested right. The legislature could vest the person in possession if it was lost, with a new right. Even if the landlord had a right to claim possession by executing the order, the order could be affected with retrospective effect by amendment of the Statute, like the one with which we are dealing in this case. The specific intention of the amendment was to benefit the tenants who had otherwise lost their right of purchase. If the tenants were in possession of the land when the amendment came into force they were benefited by the amendment.

9. The decision in the former proceedings can be relied upon by the landlord only on the basis of principles analogous to res judicata. The decisions cannot create a vested right in the landlord against the Legislature making statutory amendment. The previous decision could not prevent the Legislature from making amendment which was plainly intended to be retrospective as it conferred right on the tenants who had lost it. The respondent could not make a plea of res judicata or estoppel in view of the subsequent statute. In my

judgment, therefore, all the tenancy authorities manifestly erred in law in under the proviso to sub-section (1A) of Section 32-F was not maintainable in view of the earlier orders under the unamended section. The petitioner was in possession of the land on the date on which the amendment adding the proviso came into force. He was, therefore, entitled to exercise the right under the said proviso.

10. Mr. Samant, however, vehemently contended that the legislature has made a difference in describing the status of a tenant who had lost his right to purchase the land as a "former tenant" u/s 32-P and as a "tenant" u/s 32-F. He, therefore, submitted that the Tribunal was right in assuming that the tenancy of the petitioner was terminated u/s 32-P. The very expression "former tenant", submit Mr. Samant, connotes that the tenant ceased to be a tenant on account of something. He submitted that the very fact that an order u/s 32-P was passed on March 2, 1967 for evicting the petitioner u/s 32-P (2) (a) and for restoring the land to the landlord under sub-section (2) (b), therefore, resulted in the termination of the tenancy of the petitioner. This argument must be rejected because the words "former tenant" in sub-section (2) (a) of Section 32-P, are used only to indicate a tenant whom the law wanted to make a purchaser, but who on account of his negligence or conduct made the purchase ineffective. That cannot however, affect the right of the Petitioner exercises his right under sub-section (1A) of Section 32-F.

11. Even after he failed to exercise his right under sub-section (1A) of Section 32-F till the amendment to the said sub-section, he continued to be a tenant, only liable to be evicted u/s 32-P. There is nothing in Section 32-P which indicates that a tenant who failed to exercise the right to purchase the land held by him within the prescribed time u/s 32-F. ceased to be a tenant. The mere fact the he was liable to be evicted u/s 32-P though he was a tenant does not specifically say so. That is why while amending sub-section (1A) of Section 32-F the legislature has advised used the expression "tenant" and not "former tenant" which is used in Section 32-P. If the petitioner fulfilled the proviso, he was entitled to the benefit of that proviso after the amendment. No orders passed under the unamended section could prejudice this new right while was conferred specially by the legislature on him.

12. Mr. Samant then submitted that the view taken by the Revenue Tribunal and the other tenancy authorities in the present case is a possible view and should not be interfered with by 227 of the Constitution of India. In support of his argument, he relied on the well known decision of the Supreme Court in Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, and T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, . With respect, the said decisions are applicable where two views are possible. In the present case, no two views are possible. The tenancy authorities have plainly misdirected themselves with regard to the scope of the amendment 32-F of the Bombay Tenancy and Agricultural lands Act, 1948, by Maharashtra Act XLIX of 1969, for enabling tenants to exercise the rights

conferred on the tenants, as stated hereinabove.

13. For these reasons, the petition must be allowed. The order of the Tahsildar, Kalwan, dated March 13, 1970, the order of the Assistant Collector, Nasik, dated September 6, 1970 and the order of the Maharashtra Revenue Tribunal dated February 25, 1971, are quashed. The application filed by the petitioner u/s 32-G is restored to the file of the Tahsildar, Kalwan. The Tahsildar shall dispose it of in accordance with law.

14. In Civil Application No. 142 of 1972, the petitioner has prayed for the stay of the order passed by the Maharashtra Revenue Tribunal dated March 2, 1967, referred to above. If the petitioner is entitled to exercise his right of purchase under the proviso to sub-section (1A) of Section 32-F, no orders can be passed against him u/s 32-P. It is therefore, necessary to stay the proceedings for deliver of possession under the order of the Maharashtra Revenue Tribunal dated March 2, 1967 pending the application which is to be heard by the Tahsildar as directed to be heard by the Tahsildar as directed petitioner is entitled to purchase the land, he shall proceed to fix the purchase price, and the orders passed by the tenancy authorities which were confirmed by that order shall become infructuous as a result of the amendment Act. If on the other hand, it is held by the Tahsildar for any valid reason that the petitioner is not entitled to purchase the land, the respondent shall be at liberty to execute the order passed by the Maharashtra Revenue Tribunal on March 2, 1967. subject to the above remarks, rule in Civil Application No. 142 of 1972 is also made absolute. in the circumstance of the case, there will be no order as to costs.

15. Petition allowed.