
(1997) 04 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 3320 of 1990

Laxman Balappa Bokade

APPELLANT

Vs

Vithoba Khandappa Bokade and Others

RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 85A

Citation : (1998) 100 BOMLR 210

Hon'ble Judges : A.Y. Sakhare, J

Bench : Single Bench

Judgement

A.Y. Sakhare, J.—The present petition is directed against the judgment and order dated 19th December, 1990 passed by the Maharashtra Revenue Tribunal In Revision Application No. MRT/SH/VI/22/89.

2. The facts relevant for the present petition are as under.

The disputes relate to Land Gat No. 82 area admeasuring 85 areas situated at village Chapalgaon in Akkalkot Taluka of Solapur District. The petitioner claims tenancy rights while the respondent No. 1 is a landlord of the same. A Regular Civil Suit No. 63 of 1983 is filed by the respondent-landlord for possession. Upon pleadings, the following issues came to be framed and referred to the Tenancy authority u/s 85A of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to as the Act for sake of brevity).

Issue No. 3 : Whether the defendant proves that he is in possession of land as tenant.

3. The Reference was numbered as Tenancy Case No. 85-A/2/1985. The Tahsildar, Akkalkot by his judgment and order dated 5th August, 1986 answered the said reference against the present petitioner. In Tenancy Appeal No. 34 of 1986 the Assistant Collector, Solapur Division, Solapur confirmed the said order. The Petitioner filed Revision Application No. MRT/ SH/XII/9/87. The Tribunal by his judgment and order dated 28th November, 1988 remitted the matter back to

consider whether the tenant has given intimation as required u/s 32(O) of the Act. The Tribunal has recorded a finding that the petitioner is in possession of the land and possession is in the capacity of tenancy.

4. After remand, the Tahsildar Akkalkot by order dated 13th March, 1989 has held that the petitioner has failed to exercise his rights to purchase as he has not given notice recording therein his intention to purchase the suit land within one year from the date of creation of tenancy. The said order is confirmed by the Appellate Authority, Sub-Divisional Officer, Solapur by order dated 25th May, 1989. The said order is further confirmed by the Tribunal by its order dated 19th February, 1990, which order is challenged in the present petition.

5. There is a registered lease dated 5th April, 1969 on record. However, there was a dispute regarding status of the tenant. The crucial question to be considered is whether the respondent-tenant ought to have given intimation as contemplated u/s 32(O) within one year from the date of creation of tenancy in his favour namely on execution of lease deed dated 5th April, 1969 or whether the respondent-tenant could have exercised that option after the decision of the Maharashtra Revenue Tribunal dated 28th "November, 1988 whereby for the first time the declaration is given in the petitioner's favour about his tenancy by rejecting the respondent's case. It is necessary to note that the respondent-landlord has raised dispute about the status of the petitioner herein and therefore has filed the suit and as there is dispute of tenancy, the reference came to be made.

6. Mr. Gole in support of the petitioner stated that the Maharashtra Revenue Tribunal for the first time declared that the petitioner as tenant by its order dated 28th November, 1988. The petitioner has given notice u/s 32(O) of the Act on 2nd March, 1989. The same being within one year from the date of the adjudication of the petitioner's status as tenant, the petitioner has complied with the requirement of Section 32(O) of the Act and therefore the authorities below have wrongly held that the petitioner has lost his right. In support of his arguments, he placed reliance upon the decision of this Court in Chand Ladlesahab Shaikh v. Dattatraya Shankar Malkhare 75 BLR 703 : 1974 MLJ. 44. This Court in this judgment has held that as the tenancy itself was under challenge tenant was prevented by the landlord from giving notice within the prescribed period and the period will start only sifter the declaration is given about the status of the tenant. The relevant observation reads as under :

In view of this conclusion, I must hold that all the three tenancy authorities erred in law in depriving the tenant of the right to purchase the lands u/s 32F(1A). Under Sub-section (1) of Section 32F the tenant gets a right to purchase the land. That right can be lost only if he could give notice under Sub-section (1A) and failed to give it and not, as in the present case, when he was prevented by the landlords u/s 32F(1A).

7. Provisions of Section 32F(1A) of the Act cast responsibility upon the tenant to

give an intimation of his desire of exercising the right of purchase within one year from the period specified in Sub-section 1 of Section 32(f). Similarly, Section 32(O) provides that in case of tenancy created after the tiller's date, the tenant's desirous of exercising the right of purchase must give intimation in that behalf to the landlord within one year from the commencement of such tenancy. In view of the decision cited supra, it must be held that the right to give intimation as contemplated u/s 32(O) of the Act will arise only in case of no dispute within one year of the date of commencement of tenancy and in case of dispute when the tenancy declaration is given by the Competent Court. In the present case, as there was a dispute about tenancy, the reference was made and after reference the trial Court and Appeal Court have rejected the petitioner's case of his tenancy but the Maharashtra Revenue Tribunal first time vide its order dated 28th November, 1988 declared that the petitioner is a tenant of the suit land. Therefore, the right to give intimation u/s 32(O) of the Act accrued in the Petitioner's favour only on 28th November, 1988. In the present case, the said right is exercised by the petitioner-tenant on 2nd March, 1989 by giving intimation i.e. within one year from the date on which tenancy declaration was given in his favour. Thus all the authorities below have committed error in rejecting the petitioner's claim and declared that the petitioner has lost his right to purchase the suit land under the Act. In my judgment, the intimation given by the petitioner-tenant on 3rd March, 1989 is within the time prescribed u/s 32(O) of the Act. Consequently, it must be held that the petitioner is entitled to purchase the suit land.

8. As stated above, the reference was restricted to the status of the petitioner's tenancy. However, the decision on the Issue of Section 32(O) of the Act is also relevant, as, if the said issue is answered against the tenant then it will have to be held that the tenancy rights are lost and tenancy finding cannot be given on the issue as referred. Therefore, the finding that the tenant has exercised his right of purchase by giving intimation as contemplated u/s 32(O) of the Act within time is a relevant issue and it is answered in favour of the petitioner herein. 9. In the result, the judgment and order dated 13th March, 1989 in Tenancy Case No. 85-A/2/88 passed by the Tahsildar Akkalkot, the judgment and order dated 25th May, 1989 in Tenancy Appeal No. 6 of 1989 passed by the Sub-Divisional Officer, Solapur Division, Solapur and judgment and order dated 19th February, 1990 in Revision Application No. MRT/SH/VI/22/89 passed by the Maharashtra Revenue Tribunal, (Exhibits D, E and F to the present Writ Petition) are set aside. It is declared that the petitioner is tenant in possession of the suit land and he is entitled to purchase the suit land u/s 32(O) of the Act. The Civil Court be informed accordingly. Rule is made absolute in the aforesaid terms with no order as to costs.