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(2010) 11 BOM CK 0107

In the Bombay High Court

Case No : Writ Petition No. 3765 of 1991

Laxman Raghunath Galande, since deceased through L.Rs. and Vasant Laxman Galande — APPELLANT

Vs

Smt. Shakuntala Shankarrao Kolse, Smt. Gayabai Narayan Sonawane, Smt. Indumati Vitthalrao Bankar and Smt. Savitrabai Radhakrishna Ghadge — RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 31(1), 31(2), 31(3), 32
Constitution of India, 1950 — Article 227

Citation : (2011) 1 ALLMR 681 : (2011) 1 BomCR 595 : (2011) 2 MhLj 609

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : R.L. Kute, holding for R.N. Dhorde, for the Appellant; A.H. Kasliwal, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This writ petition takes exception to the judgment and order dated 24th December, 1990 passed by the Maharashtra Revenue Tribunal, Pune-1 in Revision Application No. MRT/AH/III/2/88(TNC).B.46/88) arising out of Tenancy Case No. 112of 1982 and Tenancy Appeal No. 24 of 1986.

2. The brief facts of the case are as under:

The suit land was of ownership of Namdeo Vithoba Dhanavate, who was lunatic on 1st April, 1957 and he died on 20th June, 1971. Heir-ship of Namdeo was devolved on applicants and his wife Godabai who died on 16th October, 1981. The applicants and Godabai had filed T.C. No. 7/1974 for obtaining possession from the opponent i.e. present petitioner on the grounds that the opponent i.e. present petitioner had failed to intimate his willingness to purchase the suit land on the date of death of original landlord Namdeo Vithoba Dhanavate, who died

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under mental disability on 20th June, 1971.

The Additional Tahsildar, who had conducted the T.C. No. 2/74 ordered disposal of the suit land u/s 32P(2) of the Tenancy Act. Against that order T.A. No. 34/79 was preferred by the present petitioners i.e. original opponents. The same was dismissed. Then the petitioners herein filed revision application No. MRT/AH/ III/8/80 before the Maharashtra Revenue Tribunal which was also dismissed on the ground that there was no second postponement on account of succession by disabled person. This order of the tribunal was challenged by the petitioner herein by way of filing Writ Petition No. 2260 of 1985. The said writ petition was summarily dismissed by this Court on 27th June, 1985. It appears that the said order in Writ Petition No. 2260 of 1985 attained finality.

3. The respondents herein filed an application before the Tahsildar, which was registered as TC No. 112/1982 and by his judgment and order dated 31st January, 1986, the Tahsildar held that the provisions of Section 32P of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, referred to as "the Tenancy Act") are not applicable and therefore, the said application was held to be not tenable. Being aggrieved by the said order, the respondents herein preferred Appeal No. 24/86 before the Sub Divisional Officer, Sangamner, who confirmed the said judgment and order of the Tahsildar. Being aggrieved by the said judgment and order, revision application was filed before the Maharashtra Revenue Tribunal. The Maharashtra Revenue Tribunal held that both the authorities have erroneously held that the provisions of Section 32P of the Tenancy Act are not applicable. It is further held that in view of the fact that earlier revision application has been dismissed, in which it was held that the land should be disposed of u/s 32P(2) of the Tenancy Act and therefore, both the authorities ought not to have held that the provisions of Section 32P are not applicable. It appears that being aggrieved by the judgment and order of the appellate authority in Appeal No. 23/1986 and 24/1986, the respondents herein filed revision application No. MRT/AH/III/1/88 which had arisen out of the proceedings of T.C. No. 149/82 started by the applicants for possession of the suit land bearing Gat No. 226/1C admeasuring 5 H 59 R of village Wasi under Puntamba, Taluka Kopargaon, u/s 31 of the Tenancy Act. This tenancy case was decided by the Additional Tahsildar, Kopargaon on 31st January, 1986 by disallowing the application of the landlord for possession. The said order was challenged in appeal in T.A. No. 23/86. The same was dismissed on 4.9.1987 and against the said order, Revision No. MRT/AH/III/1/88 was preferred. Similar revision application No. MRT/AH/III/2/88 arose out of the proceedings started by the applicants in T.C. No. 112/82 for possession of suit land u/s 32P of the Tenancy Act. The said case was decided by the Tahsildar, Kopargaon by order dated 31st January, 1986. The application of the applicants was dismissed by the said order. The applicants preferred T.A. No. 24/1986 before the Sub Divisional Officer, Sangamner. This T.A. No. 24/86 and T.A. No. 23/86 were dismissed by common judgment by the Sub Divisional Officer on the same date i.e. 4th September, 1987. Against this common order passed in T.A. No. 24/86, revision

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Application No. MRT/AH/III/2/88 was preferred.

4. The Maharashtra Revenue Tribunal by its judgment and order dated 24th December, 1990 allowed the revision application No. MRT/AH/III/2/88 and the order in Tenancy Appeal No. 24/86 and Tenancy Case 112/82 came to be set aside. However, the revision application No. MRT/AH/III/1/88 was dismissed. In para 6 of the judgment, the tribunal has observed thus:

6. ...I allow this revision application No. MRT/AH/III/2/88 and set aside the orders passed in T.A. No. 24/86 and T.C. No. 112/82 and remand this matter to the trial court to proceed u/s 32P(2) of the B.T. & A.L. Act.

5. The learned Counsel for the petitioner submitted that the revision application No. MRT/AH/III/2/88 filed by the respondents should not have been allowed by the Maharashtra Revenue Tribunal. It is submitted that the Tahsildar as well as appellate authority i.e. Sub Divisional Officer held against the respondents and, therefore, the Maharashtra Revenue Tribunal should not have interfered in the judgment and order of the Tahsildar as well as the Sub Divisional Officer. It is further submitted that the Tahsildar as well as the Sub Divisional Officer had taken the view that the provisions of Section 32P are not applicable and therefore, there was no case for interference by the Maharashtra Revenue Tribunal. It is further submitted that in view of the provisions of Section 32F the Maharashtra Revenue Tribunal has erroneously held that the provisions of Section 32P of the Tenancy Act are not applicable. It is further submitted that the Tahsildar as well as the Sub Divisional Officer had rightly held that the application u/s 32P is not maintainable. Therefore, the learned Counsel for the petitioner would submit that the writ petition deserves to be allowed.

6. The learned Counsel for the respondents relied upon the judgment and order of the Maharashtra Revenue Tribunal and submitted that the order passed by the Maharashtra Revenue Tribunal in Revision Application No. MRT/AH/III/8/80 dated 8th February, 1985 attained finality in respect of opponent''s right to purchase the suit land u/s 32F of the Tenancy Act. The Maharashtra Revenue Tribunal, taking into consideration the rejection of the above revision filed by the petitioner has rightly allowed the Revision Application No. MRT/AH/III/2/88 and set aside the orders passed in T.A. No. 24/86 and T.C. No. 112/82 and remand this matter to the trial court to proceed u/s 32P(2) of the Tenancy Act. Therefore, the learned Counsel for the respondents would submit that no interference is warranted under the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India.

7. I have given due consideration to the rival submissions advanced on behalf of the respective parties. As stated while narrating the facts in this judgment that the Revision Application No. MRT/AH/III/8/80 filed by the petitioner herein came to be dismissed by order dated 8th February, 1985 and as a result, the petitioner herein has lost right to purchase the suit land u/s 32F of the Tenancy Act. It is not in dispute that the petitioner herein filed Writ Petition No. 2260 of 1985

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challenging the judgment and order dated 8th February, 1985 passed in Revision Application No. MRT/AH/III/8/80 and this Court by order dated 27th June, 1985 summarily dismissed the said writ petition. Therefore, the judgment and order passed by the Maharashtra Revenue Tribunal in Revision Application No. MRT/AH/III/8/80 dated 8th February, 1985 has attained finality. As a result of the said judgment and order, the petitioner herein has lost right to purchase the suit land. In the judgment and order dated 8th February, 1985 passed in said revision application, the Maharashtra Revenue Tribunal has observed thus:

So in this case right to purchase the land was devolved on tenants, on death of Namdeo which had occurred on 206.71. He could have exercised this right on or before 20.6.73. This right was not exercised by present applicant. The applicant has admitted that the matter in 32-G was taken by him up to High Court which had decided finally the matter on 17.12.1971 confirming the order of the dropping of 32-G proceeding. The High Court''s order is on pages 39 to 43. I had been stated in this order that the landlord is subject to mental disability and the proceeding u/s 32G are rightly dropped. It had been laid down that the application fails and rule discharged. The applicant tenant has admitted that he had not after this final verdict of the deceased Namdeo being subject to mental disability given any notice regarding his willingness to purchase. So this admission clearly proves that the applicant tenant had not within 2 years from the death of deceased Namdeo i.e. from 20.6.1971 given notice of his willingness to purchase. So he fails to show his willingness to purchase as prescribed u/s 32F of the Tenancy Act. So he loses his right. The same finding has been given by both the lower courts which needs no interference.

8. Therefore, since the above mentioned judgment and order of the Maharashtra Revenue Tribunal has been confirmed by this Court in Writ Petition No. 2260 of 1985, the finding of fact and admission of the petitioner that before 31st April, 1974 he had not given notice of purchase, has attained finality.

9. Another argument of the learned Counsel for the petitioner that the widow who succeeded the original landlord Namdeo was also under the disability category and therefore, there was no question of giving any purchase notice prior to the death of widow, is required to be rejected in the light of para 7 of the reported judgment in the case of Harshavardhan Shrinivas Potnis Vs. Mahadu Pundalik Gangurde, . Para 7 of the said judgment reads, thus:

7. There can be no doubt that the general provisions with regard to the statutory transfer of ownership made in Section 32(1) deal with cases where the landlords were entitled to exercise their right of resumption u/s 31(1) excluding the landlords referred to in Section 31(3), who have not exercised their right of resumption. The provisions of Section 32 will not come into operation where the landlords, referred to in Sub-section(3) of Section 31, have not exercised their right of resumption. Provision had, therefore, to be made in order to provide for statutory right of ownership in respect of tenants of the class of landlords referred to in Sub-section(3) of Section 31. This provision has been made in

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Section 32F(1)(a). Section 32F clearly refers to a landlord who is a minor or a widow or a person subject to any mental or physical disability. It is then provided that the tenant of such a landlord shall have the -right to purchase such land u/s 32 and the conditions which are required to be satisfied by such a tenant are specified in Section 32F(1). The period during which such a right is to be exercised is also prescribed in Section 32F(1). The Legislature has clearly laid down that the right to purchase by such a tenant has to be exercised within one year from the expiry of the period during which landlord referred in Section 32F(1) is entitled to terminate the tenancy u/s 31. The words "Such landlord relate to the landlords mentioned in the opening part of the Sub-section viz. a minor, a widow or a person subject to any mental or physical disability. Therefore, Section 32 and 32F have to be read together. As already pointed out, right to purchase is a right created by Section 32. Section 32 did not and could not operate in certain cases where no steps were taken by either a minor, or a widow or a person subject to any mental or physical disability in exercise of right of resumption u/s 31(1) and that is why a special provision had to be made u/s 32(F) to deal with such cases. Therefore, for ascertaining the period during which right to purchase has to be exercised, we must go back to Section 31(3), because it is there that the period during which a minor or a widow or a person subject to any mental or physical disability, is entitled to terminate the tenancy is provided. When we go back to Section 31(3), so far as the widow is concerned, a provision is made in sub-clause(2), the" effect of which is that where the landlord is a widow, an application for possession may be made by the successor-in title of a widow within one year from the date on which her interest in the land ceases to exist. Therefore, where in a case like the instant one, a widow had died bequeathing certain property to the minor, the minor becomes successor-in-title of the widow. This successor-in-title is entitled within one year from the date of the death of the widow to make an application for possession. Thus within one year from the expiry of this period of one year that a tenant must exercise his right of purchase. The fact that he is a minor at the time of the death of the widow is, in our view, wholly irrelevant and such a minor will not be entitled to contend that he can take advantage of the extended period in Section 31(3) so as to enable him to terminate the tenancy of the tenant of the land bequeathed to him by making an application for possession after he attains majority. Section 31(3) deals only with the landlords who were disabled landlords at the time when the notice was required to be served and an application for possession could have been made u/s 31(2). If a landlord wants to take advantage of the extended period in Sub-section(3) of Section 31, two conditions must be satisfied. One is that he must fall under one of the categories mentioned in subsection(3) of Section 31 and second is that he must be the landlord on 31st December 1956 when a notice to terminate the tenancy has to be given. If anyone of these two conditions are not satisfied, then benefit of Section 31(3) cannot be availed of by a landlord, the minor who succeeds to the interest of a widow after 31st December 1950 is not a person who was a landlord either on 31st December 1956 and he cannot take advantage of the extension of the

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period provided for a minor who was a landlord on 31-12-1956. The period during which the minor after having succeeded to the widow could have terminated the tenancy of the tenant u/s 31(3) is one year from the time of her death The intimation required to be given u/s 32F(I A) by the tenant in order to exercise his right of purchase should have been given within one year from the expiry of the period of one year referred to in Section 31(3). Thus the period in the instant case, during which the tenant should have served an intimation, was within two years from the death of the widow.

10. Perusal of the para 7 of the judgment in Harshavardhan''s case (supra) would clearly spell out that if the landlord wants to take advantage of the extended period under Sub-section (3) of Section 31 of the Tenancy Act, two conditions must be satisfied; One is that he must fall under one of the categories mentioned in subsection(3) of Section 31 and second is that he must be the landlord on 31st December 1956 when a notice to terminate the tenancy has to be given. If anyone of these two conditions are not satisfied, then benefit of Section 31(3) cannot be availed of by a landlord. The Division Bench of this Court in the said judgment has also considered the right of the tenant to give purchase notice. The Court has also held that the postponement of the right to purchase land conferred on the tenant by the provisions of the Tenancy Act can take place only once and right of tenant to purchase the land in the instant case was postponed because the landlord Namdeo was a lunatic person. In the instant case, Namdeo died in the year, 1971. Godabai, widow of Namdeo succeeded him. It is an admitted position that on the appointed date, the widow Godabai was not landlord of the suit property. Since only one postponement of the right to purchase is conferred on the tenant and said postponement by the petitioner herein was done during the survival of Namdeo and after death of Namdeo in 1971, there was no question of further postponement of the purchase notice. The petitioner herein should have given purchase notice within a period of two years from the death of Namdeo. This position has been considered by the Maharashtra Revenue Tribunal in the earlier round of litigation in an application u/s 32F filed by the petitioner, which attained finality on dismissal of the Writ Petition No. 2260 of 1985 filed by the petitioner herein.

11. In the facts of this case, the Maharashtra Revenue Tribunal has taken into consideration the earlier round of litigation and concluded that it was not open for the Tahsildar as well as the Sub Divisional Officer to take a different or contrary view than the view which was taken by the Maharashtra Revenue Tribunal vide its order dated 8th February, 1985 passed in Revision Application No. MRT/AH/III/8/80. In fact, the authorities should have acted in accordance with the said judgment and order of the tribunal.

12. Taking overall view of the matter, and taking into consideration the entire factual matrix and more particularly, the judgment and order dated 8th February, 1985 passed in Revision Application No. MRT/AH/III/8/80 by the Maharashtra Revenue Tribunal, which attained finality by virtue of the dismissal of Writ

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Petition No. 2260 of 1985 filed by the petitioner and in the light of the above discussion, I do not find any reason to interfere in the findings recorded by the Maharashtra Revenue Tribunal.

13. Hence, the writ petition is devoid of merits and the same is dismissed. Interim relief stands vacated. Rule stands discharged.

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