

**(2009) 12 BOM CK 0086**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 685 of 2002**

Limbaji Shankar Munde (Deceased through LRs. Lochanabai Munde and Others) APPELLANT

Vs

Bhaurao Baliram Munde (deceased through LRs. Subhabai Bhaurao Mundhe and Others) and Others RESPONDENT

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**Date of Decision :** 16-12-2009

**Acts Referred:**

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29(2), 32(1B), 33, 84, 88C

Mamlatdars Court Act, 1906 — Section 21, 22

**Citation :** (2010) 2 ALLMR 179 : (2010) 2 BomCR 739 : (2010) 3 MhLj 138

**Hon'ble Judges :** R.M. Borde, J

**Bench :** Single Bench

**Advocate :** R.T. Nagargoje, for the Appellant; N.N. Jadhav, AGP for Respondent Nos. 1, 3 to 6, D.N. Patki, for Respondent Nos. 1A, 1B, 1C, 1E and 1F and Vivek Bhavthankar, for Respondent Nos. 2B, 2C and 2D, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R.M. Borde, J.—Petitioner is raising challenge to the concurrent orders passed by all the three tenancy authorities below while rendering decision on application tendered by respondent No. 1 herein.

2. Respondent No. 1 presented an application to the Additional Tahsildar, Ambajogai on 9-1-1986 claiming recovery of possession of the tenanted agricultural property. According to respondent n. 1, he was tenant in respect of land admeasuring 17 gunthas out of survey No. 101 situate at village Revli, Tq. Majalgaon. He was also declared as owner u/s 38 of the Hyderabad Tenancy and Agricultural Lands Act. Ownership certificate was also issued in his favour and he deposited the purchase price with Tahsil office on 28-3-1981. It is the contention of the respondent that he was issued ownership certificate on 16-6-1981 by tenancy authority which came to be registered with the registering authority by him. He further contends that he was dispossessed prior to 1-2-1957 and the

respondents in the application before the Tahsildar have enforced their possession. Respondent / original applicant therefore claims recovery of possession of the property by dispossessing the persons who have enforced possession over the property.

3. Application was opposed by the respondents before the Tahsildar including the petitioner herein by filing written say. It is the contention of the non-applicants that the property belonged to Bhivsen Mundhe and his two other brothers by name Arjun and Narayan. They agreed to sell the same in favour of original non-applicant No. 2 / petitioner herein and put him in possession. It is also contended by the non-applicants before the Tahsildar that the applicant has lost possession since more than 30 years back and as such he cannot claim recovery of possession. Non-applicants also dispute correctness of the ownership certificate issued in favour of applicant / respondent No. 1 herein.

4. After considering the rival contentions, the learned Tahsildar was pleased to allow the application presented by the applicant / respondent No. 1 herein and directed delivery of possession in view of the order passed on 27-10-1987. Order passed by the Tahsildar was made subject matter of challenge before the Deputy Collector, Land Reforms, Beed at the instance of petitioner herein in appeal bearing No. 20/1990. Appeal came to be dismissed by the Deputy Collector, Land Reforms, Beed by his order dt. 16-4-1990. Aggrieved petitioner carried the matter to Maharashtra Revenue Tribunal in revision bearing case No. 160/B/91/B. The tribunal also after considering rival contentions was pleased to dismiss the revision application and confirm the order passed by the Tahsildar in respect of delivery of possession of the disputed property in favour of tenant / respondent No. 1 herein.

5. I have perused the orders passed by all the three tenancy authorities and heard arguments advanced by learned Counsel for the respective parties. Learned Counsel for the petitioner raised twofold objections to the impugned order passed by the trial court. According to the petitioner, application tendered by respondent No. 1 before the Tahsildar is not entertainable u/s 38(E)(1) explanation of the Hyderabad Tenancy and Agricultural Lands Act, 1950 and the remedy available to the dispossessed tenant is by way of presenting application u/s 98 of the Act. The another objection raised by the petitioner is in respect of bar of limitation. According to him, the application which is tendered by the tenant after more than 30 years of his alleged dispossession is not entertainable even under the provisions of Section 38(E)(1) explanation of the Act. Learned Counsel for the petitioner submits that wherever the relevant provision is silent in respect of limitation, remedy is required to be availed within reasonable period. According to learned Counsel for the petitioner, the applicant has approached the tenancy authority after 30 years of alleged dispossession and as such it cannot be contended that the tenant has knocked the doors of the authority within reasonable period. Learned Counsel for the petitioner therefore contends that the tenancy authority ought not to have entertained the

application tendered by the dispossessed tenant after about 30 years of his alleged dispossession.

6. Reliance is placed by the petitioner on the reported judgment in the matter of Eknath Raghoba and Ors. v. Somla Lalu Lamani and Ors. reported in 1992 Mh.L.J. 541 in support of his contention in respect of entertainability of application u/s 38-E(1) explanation of the Act. Learned Counsel for the petitioner relying upon the reported judgment contends that the remedy u/s 38-E(1) explanation is not available to the tenant and he shall have to approach the tenancy authority u/s 98 of the Act and there is bar for entertaining application u/s 98 on account of lapsing of limitation. Thus, according to him, tenancy authority ought to have dismissed the application tendered by the tenant. However, reliance placed on the reported judgment is misplaced. Judgment in the matter of Eknath Raghoba and Ors. v. Somla lalu Lamani and Ors. reported in 1992 Mh.L.J. 541 (cited supra) infact supports the case put up by the respondent and does not in any way help the petitioner. In the reported matter, the land in question was purchased from the land owners on 16-7-1957 by securing registered sale-deed after issuance of permission u/s 47 of the Act. Before the sale-deed was executed Section 38-E of the Act came into operation in Beed district in view of notification dt. 14-2-1957 and the ownership of the land stood transferred in the name of tenant with effect from 1-2-1957. Though the tenant was in possession of the land on the appointed date, he lost possession subsequently and as such he presented application u/s 98 of the Act. The Deputy Collector allowed the application and, appeal against the order passed by the Deputy Collector came to be dismissed by the Maharashtra Revenue Tribunal. It thus transpires that the tenant was in possession of the land on 1-2-1957 i.e. the appointed date and lost possession thereafter. It was contended by purchaser that the availability of remedy u/s 98 was not available to the tenant and in view of the alternate remedy u/s 38-E(1) explanation. The court considering the facts of the case in the reported matter, took a view that the case put up by the tenant is covered by both the Clauses (a) and (c) of Section 98 and the alternate remedy u/s 38-E(1) explanation was not available to the tenant as the tenant was in possession on 1-2-1957, the notified date. However, in the instant matter, the tenant claims that he has been dispossessed prior to 1-2-1957 and as such the case put up by the tenant / respondent No. 1 herein is covered by Section 38-E(1) explanation of the Act. Relevant provision of Section 38-E(1) explanation is quoted as below:

38 E. Ownership of lands held by protected tenants to stand transferred to them from a notified date:

1 Notwithstanding anything in this Chapter or any law for the time being in force or any custom, usage, decree, contract or grant to the contrary, the Government may, by notification in the [Official Gazette,] declare in respect of any area and from such date as may be specified therein that ownership of all lands held by protected tenants which they are entitled to purchase from their landholders in

such are under any provision of this chapter shall stand transferred to and vest in the protected tenants holding them and from such date the protected tenants shall be deemed to be the full owners of such land:

[ Provided that the transfer under this Sub-section shall be subject to condition (a) and (b) mentioned in Sub-section (7) of Section 38 and the further condition that the extent of the land remaining with the landholder after the purchase of the land by the protected tenant, whether to cultivate it personally or otherwise, shall not be less than twice the are of a family holding:

Provided further that where in respect of any such land, any proceedings u/s 19, 19A or 32 is pending on the date so notified, the transfer of ownership of such land shall take effect on the date on which such proceedings is finally decided and the tenant retains possession of the land in accordance with the decision in such proceeding.]

[Explanation : If a protected tenant, on account of his being dispossessed otherwise than in the manner and by order of the Tahsildar as provided in Section 32 is not in possession of the land on the date of the notification issued here under then for the purpose of this Sub-section, such protected tenant shall notwithstanding any judgment, decree, or order, of any Court, or the order of a Revenue Board or Revenue Tribunal or other authority be deemed to have been holding the land on the date of the notification; and accordingly the Tahsildar shall notwithstanding anything contained in the said Section 32, either suo motu or on the application of the protected tenant hold summary enquiry and direct that such land in possession of the land holder or any persons claiming through or under him in that area, shall be taken from the possession of the land holder of such person, as the case may be, and shall be restored to the protected tenant and the provisions of this section shall apply thereto in every respect as if the protected tenant had held the land on the date of such notification with the modification that in Sub-section (3), for the words, figures, and brackets "within ninety days from the date specified in the Notification under Sub-section (1)" the words, figures and brackets "within ninety days from the date of restoration of possession under the Explanation to Sub-section (1)" shall be substituted.

The first ground of attack as contended by the petitioner therefore is not sustainable and it has to be concluded that the application presented by the tenant u/s 38-E(1) Explanation was entertainable.

7. It is true that Section 38-E(1) explanation does not provide for any limitation for presenting an application by a tenant who is declared as owner seeking recovery of possession. Mr. Nagargoje, learned Counsel for the petitioner vehemently contends that where a Statute is silent in respect of limitation for availing the remedy, the litigant concerned has to approach the court or the appropriate forum within reasonable time. According to him, the tenant has approached the tenancy authority after 30 years of his dispossession and the period of 30 years cannot be construed as a reasonable period. Reliance is placed

on a judgment in the matter of Mohan Pandurang Kashid and others Vs. Smt. Anusayabai Mane and others, . The matter arose before the court in pursuance to application tendered by owner of the land u/s 29(2) r/w Section 33(b) of the Bombay Tenancy and Agricultural Lands Act for restoration of possession. The owner had obtained certificate u/s 88C of the act prior to presentation of application in question. Application was tendered after 18 years of accrual of cause of action in the reported matter. The learned Single Judge of this Court considering the question of delay in approaching the court has recorded in paragraph No. 13 and 16 of the judgment that where no limitation is prescribed, steps must be taken within reasonable time. Reliance is placed by the learned Single Judge on the judgment of the Apex court in the matter of Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim, . The matter before the Division Bench was under the provisions of Bombay Prevention of Fragmentation and Consolidation of Holdings Act in respect of variation of the scheme. While dealing with the matter, the Division Bench has recorded thus:

Though there is no time limit prescribed u/s 32(1) for the Settlement Commissioner to vary the scheme which has come into force, but obviously even in the absence of any period prescribed u/s 32, the said power can only be exercised within reasonable period in any case. What would be the reasonable period for exercise of power u/s 32(1) by the settlement Commissioner may depend on facts and circumstances of each case. Ordinarily exercise of such power after three years of finalisation of scheme u/s 22 may not be justified. In the facts and circumstances of the present case, the exercise of power by Settlement Commissioner for variation of scheme which had come into force in the year 1973, by initiating proceedings in the year 1988 cannot be said to be within reasonable time.

8. In order to controvert the contentions raised by the petitioner, it is urged by learned Counsel for the respondent that where the Statute does not prescribe period of limitation, the remedy available to the litigant cannot be taken away by reading something which is not there in the Statute. It is contended that the Legislation has conferred benefits on certain class of agriculturists i.e. tenants and the Legislature in its wisdom has intentionally not provided limitation for securing relief by the class of persons i.e. tenants. The concerned provision is a part of beneficial legislation for advancement of the cause of tenants and a such the remedy bestowed upon the class of tenants cannot be taken away by prescribing bar of limitation which infact is not provided in the Statute. It is contended that the authority relied upon by the petitioner are not applicable to the instant case and that provisions of the Tenancy Act are required to be interpreted differently. Reliance can be placed on reported judgment of the Apex court in the matter of Uttam Namdeo Mahale Vs. Vithal Deo and others, . Objection was raised in the proceeding initiated for execution of the order passed under the Mamlatdar Courts Act on the ground that the remedy is unavailed after lapse of unreasonable period. Section 21 of the Mamlatdar Courts Act has not prescribed any limitation for execution of orders. It was contended before the

Apex court that the power can be exercised within reasonable period and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. Reliance was also placed on the earlier judgment of the Apex court in the matter of Ram Chand and Others Vs. Union of India (UOI) and Others, . However, the Apex court turned down the contention holding thus:

In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in the Limitation Act (Ac 2 of 1963) stands excluded. The Division bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.

9. While dealing with the provisions of Section 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948. The learned Single Judge has adopted a similar view. Provisions of Section 32(1B) of the Bombay Tenancy and Agricultural Lands Act is in substance strikingly similar with the provision of Section 38-E(1) explanation of the Act. Section 32(1B) of the Act is quoted as below:

32 Tenants deemed to have purchased land on tillers" day :

[(1B) Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in Section 29, is not in possession of the land on the said date and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July 1969 and the land is not put to a non-agricultural use on or before the last mentioned date, then, the Tahsildar shall, notwithstanding anything contained in the said Section 29, either suo motu or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, as the case may be, his successor-in-interest, and shall be restored to the tenant; and therefore, the provisions of this section and Sections 32A to 32R (both inclusive) shall, in so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased the land on the date on which the land is restored to him;

Provided that, the tenant shall be entitled to restoration of the land under this Sub-section only if he undertakes to cultivate the land personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area.

Explanation - In this Sub-section, "successor-in- interest" means a person who acquires the interest by testamentary disposition or devolution on death.]

It was argued before the learned Single Judge that although the provision of Section 32(1B) does not provide for any limitation, the remedy has to be

exhausted within reasonable time. The learned Single Judge of this Court while dealing with the matter of Shankar M. Pawar v. Anusayabai @ Ambabai w/o Punja Avhad reported in 2002(1) BCJ 231 while considering the beneficial rights conferred in favour of the class of tenants has turned down similar objection and recorded in paragraph No. 11 of the judgment thus:

11. Section 32(1B) deals with the beneficial rights in favour of the tenants and provides remedy for enforcement of such rights. The legislature in its wisdom, has introduced the said provision in the statute with the object to give necessary protection to the weaker section of the society. It cannot be forgotten that the law of limitation merely bars the remedy but, it does not destroy the right. AT the same time, it is to be borne in mind that the courts cannot act on principle that every procedure is to be taken as prohibited unless it is expressly provided but should proceed on the converse principles that every procedure is understood to be permissible till it is prohibited by law. In other words, unless remedy provided for enforcement of right is circumscribed by the period of limitation, it is not permissible to import the boundaries upon such remedial measures by way of interpreting the provisions of law as it would amount to legislate upon the statutory provision by the Court which, in fact, is the exclusive jurisdiction of the legislature. Even while interpreting the provisions under the Limitation Act itself, the scope of Limitation Act cannot be extended by implication, and party's right to approach the Court cannot be throttled unless the Limitation Act expressly provides that the right is barred. Any decision in that regard, if required, one can safely refer to the decision of the Division Bench of this Court in the matter of Madhavprasad Kalkaprasad Nagam v. S.G. Chandavarkar, Certainly it is no part of the duties of the Court to deprive a litigant of the benefit of any exemption from the period of limitation for enforcement of right by importing the words of limitation not found in the statute. It is to be noted that the Section 32(1B) was introduced in the statute in the year 1969 and the legislature being fully conscious about the limitation provided u/s 29(1) and yet, after expiry of period of 12 years, the right of restoration of the land was still guaranteed to the tenant under the said provision of law. This clearly discloses the intention of the legislature to ensure the benefit under the said Act to the aggrieved tenants and who were not vigilant in exercising their rights. In other words, while considering the provisions of Section 32(1B), the principle that law comes to the assistance of the vigilant, not to the sleepy has to be ignored.

Ratio laid down in the reported judgment squarely applies to the case in hand. Moreover, the interpretation put to provisions of Section 32(1)(b) of the Act also can be adopted while interpreting the provisions of Section 38- E(1) explanation as both provisions are in substance strikingly similar.

10. Similar question arose as to whether there is any limitation provided for tendering application u/s 84 of the Bombay Tenancy and Agricultural Lands Act 1948 and the same was considered by the Division Bench of this Court in the

case of Ghanshyamprasad Natwarlal Bhatt v. Gendalsingh Vakhatsing and Ors. in Special Civil Application No. 764/1955. The Division Bench has observed thus :

You cannot apply limitation by analogy. Limitation either bars a remedy or extinguishes a right of a party and it is unthinkable that any Court would bar a remedy or extinguish a right when the Legislature has not done so by importing the principles of some other statute and drawing analogy from some other provision of law. If there is no limitation provided by the legislature then the only thing that the Tribunal has to do is to permit the application to be made irrespective of passage of time.

11. In view of the reasons set out above, it can be said that the Tahsildar who decided the application was justified in entertaining the application presented u/s 38E(1) explanation of the Act by the tenant and directing delivery of possession of land in question in favour of the tenant. The bar of limitation as contended by the petitioner herein cannot be imported and read in the provisions of section 38-E(1) explanation which infact is not provided by the legislature purposefully. In the absence of any specific provision debarring the remedy after lapse of certain period, the only alternative available to the tenancy authority was to entertain the application and pass appropriate orders in consonance with law. I do not find that tenancy authorities have committed any error in entertaining application and passing orders directing delivery of possession of tenanted property in favour of respondent / tenant. Writ petition is devoid of merit and does not call for any interference. Writ petition therefore stands dismissed. Rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs.