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**(2002) 06 BOM CK 0027**

**In the Bombay High Court**

**Case No : Writ Petition No. 1386 of 1990**

Madhav Datatraya Kulkarni

APPELLANT

Vs

Bandu Babaji Shendage, Deceased by his heirs and Others

RESPONDENT

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**Date of Decision : 20-06-2002**

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Hindu Succession Act, 1956 — Section 14

**Citation : (2003) 2 ALLMR 219 : (2003) 105 BOMLR 1**

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

**Bench : Single Bench**

**Final Decision : Dismissed**

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## **Judgement**

A.M. Khanwilkar, J.—This writ petition under Article 227 of the Constitution of India, takes exception to the order passed by the Maharashtra Revenue Tribunal, Bombay at Camp : Kolhapur dated August 7, 1989 in Revision No. MRT-KP-191 of 1984. By this order the Tribunal in exercise of its revisional jurisdiction has set aside the orders passed by the two authorities below having held that the authorities clearly misdirected in proceeding on the assumption that Section 32F of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the said Act) would apply to the case on hand, whereas the case was clearly covered by Section 32G of the Act.

2. Briefly stated, the land involved in this petition is bearing Gat No. 1828 admeasuring 54-6 Ares situated at Village Herle, Taluka Karvir, District Kolhapur. The suit land was originally owned by one Dattatraya Pandurang Kulkarni who died in the year 1931. He left behind his widow Laxmibai, son Madhav the petitioner herein and one daughter. After the death of Dattatraya, the land was shown in the village record in the name of his widow Laxmibai, and the predecessor of the Respondents original tenant Babaji was shown as tenant of Laxmibai. According to the Petitioner, Laxmibai became full owner in her own rights on account of Section 14 of the Hindu Succession Act which came into

force in the year 1956 and as such the provisions of 32F applied to the suit land on the tiller's day as Laxmibai - landlady, was a widow. The said Laxmibai died on 28.9.1971. The original tenant Bandu expired on 12.4.1980 however, the present Respondents being the heirs and legal representatives of said deceased Bandu continued to cultivate the suit land as tenants. On 1.4.1981, the Petitioner filed Application before the Tenancy Authority u/s 32F of the Act claiming that purchase has become ineffective since the Respondents failed to exercise their right to purchase within the statutory period as provided u/s 32F of the Act. That application came to be allowed on 29.8.1981. Against which the Respondents carried the matter in appeal before the Sub-Divisional Officer. The said appeal was dismissed by the Appellate Authority on 16.7.1984. The Respondents thereafter carried the matter in Revision before the Maharashtra Revenue Tribunal. The Tribunal on analyzing the materials on record however, took the view that both the authorities below proceeded on wrong premise that Section 32F of the Act was applicable to the facts of this case. The Tribunal referred to the evidence on record including the admission of the petitioner in his cross-examination that the suit land is ancestral property and that there has been no partition between him and his mother after the death of his lather. The Tribunal has further observed that this being the factual position then the inescapable conclusion is that the suit land remains the ancestral property of the joint family. In that situation, since the petitioner was also one of the member of the joint family and had become major before 31.3.1957, therefore, on account of proviso to Clause (a) to Sub-section (1) of Section 32F of the Act, it would be impermissible to invoke the said provision against the respondents. On the other hand, the Tribunal observed that, the case was governed by the ordinary provisions of Section 32 of the Act and that merely because the Tenancy authorities did not proceed to adjudicate the matter under that provision that would not denude the Respondents of the rights which had enured in their favour on the tiller's day when their predecessor became the deemed purchaser by operation of law. In this view of the matter the Tribunal thought it appropriate to set aside the order passed by both the authorities below and remitted the case for further enquiry u/s 32G of the Act for fixing the purchase price of the suit land.

3. The learned Counsel for the petitioner contends that the Tribunal has exceeded its jurisdiction in interfering with the concurrent view taken by the two authorities below that the purchase had become ineffective and further in recording a finding of fact while exercising its revisional jurisdiction.

4. To my mind, this submission is devoid of merits. No doubt, the Tribunal has for the first: time recorded a finding of fact that the suit land is the ancestral property of the joint hindu family, however, that finding is founded on the clear admission of the petitioner in his cross-examination to that effect - which position is not in dispute. Understood thus, the Tribunal cannot be faulted for having interfered in its revisional jurisdiction or for having recorded that finding. The said finding is well supported by the evidence on record and cannot be

questioned at all. In other words, finding recorded by the authorities below was clearly contrary to the evidence on record and the application of law on the basis of such evidence and that was a good ground for the Tribunal to interfere in its revisional jurisdiction to over turn the decisions of two authorities below and instead to allow the revision application at the instance of the Respondents stating the correct position both on facts and in law. No fault can be found with the impugned decision of the Tribunal. The Tribunal has rightly remanded the matter to the Tenancy Authority for further enquiry u/s 32G of the Act for fixing the purchase price of the suit land. This is so because it is not in dispute that the Respondent's predecessor Bandu was cultivating the suit land as a tenant on the tiller's day i.e. 1.4.1957, on which day by operation of law he would become deemed purchaser of the suit land; and, therefore, the Respondents would be entitled to purchase the said land after the determination of the purchase price by the Appropriate Authority. Hence this petition fails and the same is rejected.

Rule discharged with no order as to costs.

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