
(2015) 02 BOM CK 0295
In the Bombay High Court
Case No : Writ Petition No. 9159 of 2013

Malan Narayan Sakhare

APPELLANT

Vs

Bibhishan Jagannath More and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 31, 31(3), 32, 32 (F)

Citation : (2015) 02 BOM CK 0295

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : Venkatesh Shastry, for the Appellant; Sarang Aradhye, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M.S. Sonak, J—This Court, on 25 July 2014, had issued notice for final disposal returnable on 22 August 2014. The matter has ultimately come up for final disposal. Accordingly, Rule. Rule is being disposed of finally.

2. The challenge in this petition is to the judgment and order dated 6 June 2013 made by the Maharashtra Revenue Tribunal, Pune (MRT) setting aside the order dated 20 March 2009 made by the Sub-Divisional Officer, Karmala (SDO) and confirming the order dated 9 June 2008 made by the Tahsildar, Karmala.

3. The facts in brief giving rise to the challenge as aforesaid, are as follows:

"(a) The petitioner is the legal representative of the landlady Malan Sakhare. The said Malan Sakhare was the legal representative of landlady Gopikabai Padule;

(b) Some time in the year 1963, the respondents (or their predecessors-in-title) applied under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (said Act) for purchase of property bearing Gat No. 24 (said property), inter alia on the ground that they were the tenants thereof, which factum was duly recorded in the survey records;

(c) Between 6 November 1963 and 9 November 1963, the Tahsildar disposed of the proceedings under Section 32G of the said Act, by observing that since the landlady Gopikabai was a widow, the Tillers Day is to stand postponed. The said order, though not available in the record, is reflected in the Mutation Entry No. 493 dated 9 November 1963 concerning the said property. There is no record of the said order having been challenged by any of the respondents;

(d) On 21 August 2004, Gopikabai expired. The name of her legal representative Malan Sakhare was entered in the survey record on 10 November 2006;

(e) On 17 February 2007, the respondents, by way of abundant caution, gave notice under Section 32F(1A) of the said Act for exercising the right conferred upon them under Section 32F(1) for the purchase of the said property;

(f) Thereafter, in the year 2007, the respondents instituted proceedings before the Tahsildar for the purchase of or for the purposes of reopening of the purchase proceedings concerning the said property;

(g) By order dated 9 June 2008, the Tahsildar held in favour of the respondents and determined the purchase price in respect of the said property under Section 32G of the said Act;

(h) The petitioner instituted an appeal before the SDO, which was allowed by an order dated 20 March 2009;

(i) The respondents carried the matter in revision before the MRT, which has by the impugned order dated 6 June 2013 allowed the revision, set aside the SDO's order dated 20 March 2009 and restored the Tahsildar's order dated 9 June 2008. Hence, the present petition."

4. Mr. Venkatesh Shastry, learned counsel for the petitioner basically made two submissions, in support of this petition:

"(a) That furnish of notice under Section 32F(1A) of the said Act within one year from the date on which the interest of a widow in the land ceases to exist, is a mandatory requirement. In the present case, the widow Gopikabai expired on 21 August 2004. The notice, as contemplated by the provision, was issued only on 17 February 2007. There was accordingly, a breach of mandatory requirement due to which the respondents lost their rights to purchase the said property;

(b) The MRT, on the basis of surmises and conjectures held that the order made by the Tahsildar in November 1963 postponed the Tillers Day was bad, as on the Tillers Day, i.e., 1 April 1957, Malan Sakhare was not a disabled landlady. It was submitted that such an issue never arose, primarily because none of the respondents ever challenged the order made in November 1963 postponing the Tillers Day."

5. Mr. Shashtry, in support of the aforesaid, relied upon the following decisions of the Supreme Court:

"(i) Tukaram Maruti Chavan Vs. Maruti Narayan Chavan (Dead) by LRs. and Others, AIR 2009 SC 1126 : (2008) 10 JT 378 : (2008) 12 SCALE 547 : (2008) 9 SCC 358 : (2009) AIRSCW 335 : (2008) 6 Supreme 703 ;

(ii) Anna Bhau Magdum (since deceased by L.R.'s) Vs. Babasaheb Anandrao Desai, AIR 1995 SC 2164 : (1995) 5 JT 519 : (1995) 4 SCALE 538 : (1995) 5 SCC 243 : (1995) 2 SCR 259 Supp ; and

(iii) Appa Narsappa Magdum (D)Thr. Lrs Vs. Akubai Ganapati Nimbalkar and Ors, AIR 1999 SC 1963 : (1999) 4 JT 462 : (1999) 3 SCALE 686 : (1999) 4 SCC 443 : (1999) AIRSCW 1649 : (1999) 5 Supreme 441 ."

6. Mr. Sarang Aradhye, learned counsel for the respondents on the other hand, made the following submissions:

"(a) That the notice under Section 32F(1A) of the said Act was not mandatory. In the present case, since the respondents, wayback in the year 1963 had made their intention of purchase well known and further within one year from the date of knowledge of demise of Gopikabai, had issued the notice, there was substantial compliance, as has been held by MRT;

(b) Even if it is assumed that the provisions contained in Section 32F(1A) of the said Act is mandatory, then such notice is required to be given within one year from the date upon which the names of legal representatives appear in the survey records. In the present case, the names of legal representatives of late Gopikabai were entered into survey record on 10 November 2006 and notice under Section 32F(1A) of the said was furnished on 17 February 2007. Accordingly, there is no breach in compliance with the provisions of Section 32F(1A) of the said Act;

(c) The MRT has rightly held that on the Tillers Day, i.e., 1 April 1957, Malan Sakhare was neither a widow nor a minor. Therefore, applying the provisions contained in the proviso to Section 32F of the said Act, there could have been no postponment of the Tillers Day and the respondents ought to be deemed as having become the deemed purchasers of the said property on the Tillers Day, i.e., 1 April 1957."

7. In support of the aforesaid contentions, Mr. Aradhye relied upon the following decisions.

(i) Shrikrishna Subhana Horambale and Others Vs. Shripad Jiwaji Apate and Others, AIR 1986 Bom 86 : (1987) 89 BOMLR 12 ;

(ii) Yeshwant Govind Botre Vs. Sadashiv Mahadev More and Others, (1996) 2 BomCR 548 : (1996) 98 BOMLR 277 : (1996) 1 MhLj 416 ; and

(iii) Vithal S. Dokhe v. Bhavdu S. Dokhe deceased through his Lrs. Bhika B. Dokhe and ors. 2007 (6) Mh.L.J. 662."

8. The rival contentions, now fall for my determination.

9. Except perhaps in respect of the last contention raised by Mr. Aradhya, there is no serious dispute with regard to the factual aspects of the matter. On the basis that Gopikabai was a widow on the Tillers Day, an order was made in November 1963 postponing Tillers Day and not determining any purchase price payable by the respondents. This was consistent with the provisions contained in Section 32(1) of the said Act, as the provisions contained therein are subject to other provisions of the said section and the provisions of the next succeeding sections. The next succeeding section in the context of the controversy raised in the present petition would be Section 32F of the said Act. This section begins with a non-obstante clause and provides, inter alia, where the landlord is a widow, the tenant shall have the right to purchase the land under Section 32 of the said Act within one year from the expiry of the period during which such landlady is entitled to terminate a tenancy under Section 31 of the said Act. Section 31(3) of the said Act, in its turn provides that where a landlady is widow, then, notice of termination may be given and an application for possession under Section 29 of the said Act may be made by the successor in title of the widow within one year from the date on which her interest in the land ceases to exist. The proviso to Section 32F of the said Act provides that where a person of category referred to in Sub-section (1), i.e., minor, widow or a person subject to mental or physical disability, is a member of a joint family, then the provisions of Sub-section (1) shall not apply if at least one member of the joint family is outside the categories mentioned in Sub-section (1), i.e., disabled categories unless before 31 March 1958, the share of such person in the joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

10. The next and last provision relevant for the purpose of the present petition is Section 32F(1A) which provides that a tenant desirous of exercising the right conferred upon him by sub-section Section 32F shall give an intimation in that behalf of the landlady and the Tribunal in the prescribed manner within the period specified in that sub-section. The proviso to this clause, deals with a situation where the tenant is a minor. This is not being the position, the proviso is not applicable to this case. Sub-section (1) of Section 32F of the said Act, as noted earlier makes reference to the period of one year from the expiry of the period during which the landlord or landlady is entitled to terminate the tenancy under Section 31 of the said Act. This, as we have noted would be one year from the date on which the interest of the widow landlady in the land ceases to exist. In the present case, therefore, the relevant date would be, the date of demise of Gopikabai, i.e., widow of landlady on 21 August 2004. On a plain reading of the provisions of the said Act, therefore, the respondents tenants were required to give notice or intimation to the legal representatives of late Gopikabai and the Tribunal under Section 32F(1A) of the said Act within a period of two years from the date of demise of Gopikabai, i.e., 21 August 2004. Admittedly, such notice of

intimation was not given during the said period, but the same was given on 17 February 2007 by way of abundant caution.

11. The issue as to whether notice or intimation under Section 32F(1A) is mandatory or not, is no longer *res integra*. The conspectus of decisions emanating from this Court as well as the Apex Court provide that such notice/intimation is indeed mandatory.

12. In case of Maruti Narayan Chavan, since deceased by his heirs and legal representatives Vs. Shri Ramchandra Bhau Sutar since deceased by his heirs and others, (1999) 4 ALLMR 409 : (2000) 1 BomCR 153 : (1999) 3 MhLj 530 , this Court has held that the provisions contained in Section 32F are mandatory and there has to be strict compliance thereof. The circumstance that the tenant had already initiated proceeding under Section 32G of the said Act and had even paid some installments of the purchase price cannot be regarded as substantial compliance to dispense with the mandatory requirement of Section 32F of the said Act.

13. The decision of this Court in the case of Maruti Chavan (*supra*), takes note of the earlier decision of this Court in the case of Yeshwant Govind Botre Vs. Sadashiv Mahadev More and Others, (1996) 2 BomCR 548 : (1996) 98 BOMLR 277 : (1996) 1 MhLj 416 , but distinguishes the same on facts. In case of Yeshwant Botre (*supra*), the widowed landlady died on 11 May 1973. Her nephews gave information regarding her death to the village Officer in writing on 5 July 1975 and mutation entry was certified on 26 April 1976. The tenant by registered notice dated 25 June 1976 intimated the successors-in-interest that he wanted to exercise the right of purchase under Section 32F(1) of the said Act. In such facts, the Tehsildar held in favour of the tenant but the Additional Collector and the MRT ruled against him for failure to give notice/intimation within a period of two years from the demise of widowed landlady. This Court, however, held that the successors-in-interest of the demised widowed landlady must show the date on which the widow ceased to have interest in the land and when the rights in favour of the successor-in-interest crystallised. This date would be when the mutation is made. Therefore, where notice under Section 32F(1A) is given within one year from the date of such mutation, the same would constitute compliance with the mandatory requirement prescribed under Section 32F(1A) of the said Act. This Court held that the provisions contained in Section 32F(1A) has to be reasonably real and construed so as to advance the object of the enactment and not to frustrate the same. Further, in Section 32F(1A) of the said Act, the term "landlord" would mean the person in whose name the land is mutated. The intimation as contemplated by Section 32F(1A) cannot be given in vacuum, but the same has to be given to some individual, and this can be done when the names of successors-in-interest are recorded in the revenue records.

14. The decision of this Court in the case of Maruti Chavan (*supra*) was carried by way of appeal to the Hon"ble Apex Court, where it was confirmed. Before the Apex Court, the submission, probably premises upon the decision in case of

Yeshwant Botre (supra) that notice as contemplated by Section 32F(1A) had to be given within one year from the complete knowledge about the title of the disputed land in-question was disposed of by the following observations contained in paras 17 and 18, which read thus:

"17. The original tenant, even after the second remand had clearly admitted before the same court in his statement dated 16th of March, 1981, that Shri Ramchandra alone had become the sole owner of the disputed land by virtue of the decision of the Civil Court on the strength of the will. Going by the above mentioned records, we are of the firm view that the Appellant had a complete knowledge about the title of the disputed land in question. Therefore his submission that he had no knowledge about the real owner, cannot be accepted.

18. Further for the sake of argument even if we assume that the Appellant had no knowledge about the title of the disputed land, nothing prevented him from serving a notice as to his intention of purchasing the land to both the brothers contesting for the disputed land or either one of them according to the provisions of Section 32F. This Court, in the case of Teja Singh and others Vs. State of Punjab and another, AIR 1995 SC 1547 : (1995) 6 JT 114 : (1996) 112 PLR 107 : (1995) 3 SCALE 108 : (1995) 4 SCC 540 : (1995) 2 SCR 433 , has observed that in the matter of land acquisition, service of notice on one of the co-owners is necessary and will therefore be construed as service on all the co-owners. The appellant has argued that he had on more than one occasion conveyed about his willingness to purchase the land to both the brothers and that his intention to do so was known by both of them. However, it does not absolve him from the duty of providing a written notice in terms of Section 32F of the Act. Moreover, the Appellant himself admitted before the Tahsildar, Kavathe Mahankal, that he had not served any written notice to either of the two brothers mentioning his intention. This can be identified from the statement of the Appellant on the 8th of October, 1976 and the 16th of March, 1981 whereby he stated:

"Narmadabai died before 10-12 years. I have not served the notice on the owners. I have informed them orally regarding the purchase from time to time. I have not served notice in writing. There were disputes amongst the brothers. Because of that I could not serve the notice regarding the purchase of the land as per section 32 (F). Due to no knowledge of law I am not aware of the service of the notice."

15. In case of Anna Bhau Magum (supra), the Apex Court at para 4 observed thus:--

"4. In Section 32-G provision is made for issuing of notice by the Agricultural Lands Tribunal and determination of price of land to be paid by tenants. Sub-section (2) prescribes that the Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as a tenant and Sub-section (3) lays down that where any tenant fails to appear or makes a statement that he is not willing to purchase the land the

Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective. Under Section 25-M the purchase becomes ineffective in the event of failure of recovery of purchase price under Section 25-K."

16. From the aforesaid, at least one thing is clear, that is the notice/intimation under Section 32F(1A) is mandatory, in case the tenant is desirous of purchasing the tenanted land. Nevertheless, it must be noted that this Court in case of Maruti Chavan (supra) has merely distinguished the decision of this Court in case of Yeshwant Botre (supra). Therefore, the view in case of Maruti Chavan (supra) cannot be said to have upset the view taken by this Court in case of Yeshwant Botre (supra), but the contention premised upon the same was not accepted because there was material on record in the said case that the appellant had complete knowledge about the title of the disputed land.

17. In case of Anna Bhau Magdum (supra), although it is observed that the language of Section 32F and Section 31 of the said Act is quite clear and the period of one year shall have to be counted in accordance with the said provision and not from the date of the knowledge of the tenant, in the fact situation of the said case, there does not appear to have been any issue with regard to the title or identity of the successors in interest of the deceased widowed landlady. Besides, the issue as to whether the date of mutation entry in the revenue record is relevant or not, did not arise for consideration. Therefore, it is not possible to accept the contention that the decision of this Court in case of Yeshwant Botre (supra), is no longer good law or cannot be applied to the facts and circumstances of the present case.

18. As noted earlier, the decision in case of Yeshwant Botre (supra) was specifically referred to in case of Maruti Chavan (supra). This Court did not hold that the same does not lay down the correct position in law, but merely distinguished it on facts. The position was similar when the decision in Maruti Chavan (supra) was confirmed in appeal by the Apex Court. In the facts and circumstances which obtained in case of Maruti Chavan (supra), this Court as well as the Apex Court held that the tenant, all along, had complete knowledge about the title of the disputed land in-question. Such, cannot be said to be the position in the present case. Besides, there is no dispute that within hardly four months from the date on which the name of the successors-in-interest of late Gopikabai was entered into survey records. The respondents gave the necessary notice/intimation under Section 32F(1A) of the said Act to such successor-in-interest. This was entirely consistent with the legal position set out in case of Yeshwant Botre(supra). The impugned judgment and order made by the MRT, therefore, cannot be faulted in the facts and circumstances of the present case.

19. In arriving at the aforesaid conclusion, regard shall have to be had to certain peculiar facts and circumstances in the present case:--

"(a) The records bear out that the predecessors-in-title of the respondents have

been tenants in possession of the said property much prior to the Tillers Day, i.e., 1 April 1957.

(b) In November 1963, such predecessors-in-title, in pursuance of their intention to purchase, instituted proceedings under Section 32G of the said Act for determination of purchase price.

(c) The Tillers Day was postponed and so also such proceedings, in view of the circumstance that the landlady Gopikabai was a widow on the Tillers Day.

(d) The said Gopikabai during her lifetime, though not bound to, but at the same time not incompetent to, never gave any notice of termination of tenancy to the respondents or their predecessors-in-title.

(e) Upon demise of Gopikabai on 21 August 2004, her successors-in-interest posted themselves in the revenue records only on 10 November 2006.

(f) Section 31(3) provides that where the landlady is a widow, then notice of termination of tenancy may be given and an application for possession under Section 29 of the said Act may be made by the successors-in-title of the widow within one year from the date on which her interest on the land ceases to exist.

(g) In this case, the successors-in-title, the deceased widowed landlady did not terminate the respondents tenancy within a period of one year from the date on which late Gopaikabai ceased to have any interest in the said property, i.e., from the date of her demise on 21 August 2004."

20. In the aforesaid peculiar facts and circumstances, if the petitioner's contentions are to be accepted, then a situation would arise in which the respondents, who have been tenants in possession of the said property from much prior to 1 April 1957, shall have to be deprived the right to purchase the same. At the same time, since the petitioners, as successor-in-title of late Gopikabai had not terminated the tenancy within a period of one year from the date on which Gopikabai ceased to have any interest in the said property or at all, there would arise no question of restoration of the said property in their favour. The said property, would then have to be resumed and disposed of in the manner and provided under Section 32P of the said Act. This section inter alia provides that where the purchase of land by a tenant under Section 32 of the said Act becomes ineffective under Section 32G or 32M of the said Act or where the tenant fails to exercise the right to purchase the land held by him within the specified period under Sections 32F, 32O, 32C of 43-1D, the Tribunal made suo motu or on an application made in this behalf directed that the land shall be dispose of in the manner provided in Sub-section (2) of Section 32P of the said Act. This provision empowers the Tribunal to direct summary eviction of formal tenant, surrender to the former landlord or disposal in the order of priority prescribed.

21. Thus, the acceptance of the contentions made by and on behalf of the petitioner might perhaps result in the ouster of the tenants who have been in

possession of the said property, by themselves or through their predecessor-in-title for the last over six decades, without any corresponding guaranteed restoration of the said property in favour of the petitioner landlord. In the peculiar facts and circumstances of the present case, therefore, it is not possible to accept the contentions raised by and on behalf of the petitioner. No doubt, there can be no dispute that furnish of notice/intimation under Section 32F(1A) of the said Act is mandatory. However, in the facts and circumstances of the present case, as held by the MRT, it cannot be said that such mandatory requirement has been breached by the respondents.

22. There is no necessity to go into the issue as to whether the provisions of Section 32F of the said Act were not at all attracted in the present case, because on the Tillers Day i.e., on 1 April 1957, Malan Sakhare was not a disabled landlady and therefore, the proviso to Section 32F was attracted to the facts and circumstances of the present case. This is because, even if the provisions of Section 32F were applicable, in the peculiar facts and circumstances of the present case, it cannot be said that there has been a breach in compliance of the provisions contained in Section 32F(1A) of the said Act.

23. For all the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

24. At this stage, Mr. Shastry, the learned counsel for the petitioner prays that for a period of at least twelve weeks, the respondents be directed not to transfer, alienate, partition or mortgage the said property. The request is reasonable, accordingly the respondents are directed as such for a period of twelve weeks from today.