

(1999) 06 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 4600 of 1983

Maruti Narayan Chavan, since deceased by his heirs and legal representatives

APPELLANT

Vs

Shri Ramchandra Bhau Sutar since deceased by his heirs and others

RESPONDENT

Date of Decision : 09-06-1999

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 32

Citation : (1999) 4 ALLMR 409 : (2000) 1 BomCR 153 : (1999) 3 MhLj 530

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : S.M. Mhamane, for the Appellant; P. Naik instructed by Y.R. Naik and M.R. Katikar, for the Respondent

Judgement

D.G. Deshpande, J.—Heard advocate for the petitioner and respondent Nos. 1a, 1b and 1c. respondent Nos. 6 and 7 are supporting the petitioner. 2. The dispute is arising out of the provisions of The Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act of 1948") and it is in respect of land Gat No. 44 admeasuring 5 Hectares 24 Are of village Malangaon, Kavathe, Mahankal Tahsil of Sangli District. One Narmadabai was the original landlady and as per the contention of the petitioner one Maruti was the original tenant. Narmadabai died in 1964 and Ramchandra and Laxman Bhau Sutar succeeded to the property left by Narmadabai. Similarly, original tenant Maruti died in 1994 i.e. during the pendency of this petition and his son Namdeo is brought on record as petitioner. Respondent Nos. 5 to 11 were also added to the petition as other heirs of Maruti. It appears from the record i.e. from Exhibit "A" that the original tenant had initiated proceedings u/s 32-G of the Act of 1948 before the Additional Tahsildar, Kavathe Mahankal and the case was decided in his favour and purchase price was fixed. Thereafter, this order was challenged by one of the heirs Laxman. The matter was thereafter remanded. However, again order was passed in favour of the tenant u/s 32-G. This order was then challenged by

Ramchandra. Ultimately, it appears from record that the Sub Divisional Officer, Miraj, remanded the matter to the Tahsildar by his order dated 31-3-1978 for a detail enquiry and decision on the following points:

- (1) The clear title of the suit land of the applicant should be enquired (the applicant at that time being Ramchandra);
- (2) The point of giving notice u/s 32-F of the Act to the Landlord and A.L.T. should be enquired as per provisions u/s 32-F of the B.T. & A.L.T. Act.

When the matter came before the Tahsildar after this order of the remand by SDO on the aforesaid two points, the Tahsildar gave a clear cut finding that Ramchandra Sutar was the sole owner and that the tenant Maruti Narayan Chavan has failed to give notice u/s 32-F of the Act of 1948. The purchase of the land was therefore declared to be ineffective and the said land was ordered to be disposed off u/s 32-P of the Act of 1948. Original tenant Maruti preferred an appeal before Sub Divisional Officer but the appeal was dismissed and the order of the Tahsildar was confirmed. Tenant Maruti therefore preferred revision before Maharashtra Revenue Tribunal but the same also came to be dismissed and therefore original tenant filed this petition, which is now being pursued by his son Namdeo.

3. The crucial question that was raised by the Counsel for the petitioner is whether giving of notice u/s 32-F was necessary for the tenant and whether on failure of giving such notice the tenant has lost right of purchase and whether the orders of the first Court i.e. Tahsildar, the Appellate Court i.e. S.D.O. and the Revisional Court i.e. M.R.T. which are all against the tenant are liable to be interfered with and set aside.

4. In this regard it was contended by the Counsel for the petitioner that firstly there was no legal obligation or duty cast upon the tenant to give notice u/s 32-F of the Act of 1948 and secondly according to him initiation of the proceedings by the tenant u/s 32-G is a substantial compliance requiring dispensation of notice u/s 32. Counsel for the petitioner also relied upon the judgment of Justice Agarwal reported in *Damu Dhondi Dhekane Vs. Parvatibai Hindurao Jagtap*, , and judgment of Justice Patankar reported in *Yeshwant Govind Botre Vs. Sadashiv Mahadev More and Others*, . He also contended that section 32-F was not applicable in the instant case because by virtue of section 31 the right of landlord for personal cultivation has ceased to exist. He also placed reliance on section 32(1)(b) of the Act of 1948 and contended that the landlord's interest had ceased to exist u/s 31(3)(ii) after respondent No. 1 obtained letter of administration and since the landlord Ramchandra has not, even after obtaining letters of administration terminated the tenancy of the tenant and since section 32-F (1)(a) was added in 1969 and the tenant had paid substantial installments pursuant to the first Court's order there was no question of tenant being legally required to give notice u/s 32-F. Therefore, it is contended that non-giving of notice would not come in the way of the tenant in exercising his right of purchase

of the land.

5. On the other hand it was contended by the contesting respondent Nos. 1a, b and c that provisions of section 32-F were mandatory and non-compliance thereof by the tenant was fatal and the tenant could not be said to have any right to purchase the land. Counsel for the respondent Nos. 1a, b and c relied upon the judgment of Division Bench of this Court reported in 1969 Mh.L.J. 789 Bapu Dnyanu Patil v. Sadashiv Ramchandra Joshi.

6. I have given my anxious consideration to the submissions made by Counsel for the parties. There is no dispute at all between them that the petitioner tenant did not give any notice u/s 32-F of the Act of 1948 before exercising the right of purchase or during any time when the matter was pending before the trial Court. This concession was made by the advocate for the petitioner on the basis of the statement made by the petitioner before the first Court i.e. order of remand, wherein the petitioner-tenant has stated that he had not given any such notice to the landlords or landlady. This is reproduced by the Tahsildar in his order at Exhibit "A".

7. Since there is no dispute between the parties that no notice u/s 32-F was given by the tenant, the only thing that is required to be considered is whether compliance of section 32-F by the tenant was necessary or not.

8. So far as case law relied upon by the petitioner and respondent is concerned, the judgment of Justice Patankar in Botre's case and judgment of Justice Agarwal in Dhekane's case is heavily relied upon by the Counsel for the petitioners and as against this, the respondent placed reliance upon the Division Bench judgment in Patil's case as quoted above.

9. In the case before Justice Agarwal the land originally belonged to one Rama. He died leaving behind him two sons and two daughters. After the death of Rama, his eldest son Tukaram filed an application u/s 31 of the Act of 1948 for possession. The notice of the said proceedings was duly served upon the opponent; the statement of the opponent was recorded and the application u/s 31 was dismissed. Thereafter, the tenant filed an application in 1977 for purchase of the land u/s 32-P of the Act of 1948 but the Tahsildar, S.D.O. and M.R.T. held throughout that since tenant did not give any notice u/s 32-F he could not get any right to purchase the land u/s 32-P. It was in this background that Justice Agarwal held that once an application of the landlord u/s 31 was dismissed, the tenant became deemed purchaser of the land and in that situation it was not necessary for the tenant to give any notice to the landlord u/s 32-P.

10. In the case before Justice Patankar the landlady was widow who died without any issue. Her nephews got their names mutated in the revenue record of December 1975 and the entry was came to be certified on 26-4-1976. The successors-in-interest gave intimation to the tenant and thereafter the tenant by registered notice informed the successors-in-interest that he wanted to exercise the right of purchase u/s 32-F(1). Proceedings u/s 32-G read with section 32-F

were thereafter initiated the A.L.T. held the tenant was entitled to purchase the land, in appeal the Additional Collector also held that as notice was given to the heirs within one year of the landlord's death there was no compliance to the provisions of section 32-F(1)(a) and hence tenant was not entitled to purchase the land. This order was confirmed by M.R.T. and therefore the tenant moved the High Court in writ petition. It was in this background that Justice Patankar held that giving of notice by the tenant to the successors-in-interest after the mutation of their names in the revenue record was sufficient compliance and it should not be held that notices ought to have been given within one year of the death of the widow.

11. If facts of both the cases are considered, it will be clear that the two judgments relied upon by the Counsel for the petitioner are liable to be distinguished from the facts of the present case and consequently it has to be held that they are of no help to the petitioner.

12. As against this, judgment of Division Bench of this Court in Patil's case wherein it has been held that in the case of a tenant under disability section 32-F(1)(b) applies and having regard to the provisions of section 32-P it is impossible to hold that the provision of giving notice and the exercise of right within a period provided therein are merely directory and not mandatory. Consequently, the Division Bench held that the provisions of section 32-F were mandatory and not directory.

13. Since the Division Bench has in unequivocal terms held that the provisions of section 32-F are mandatory, it has to be seen whether the objections raised by the Counsel for the petitioner in that regard can be accepted.

14. It was firstly contended by the Counsel for the petitioner that originally the landlady was a widow i.e. person under disability and therefore as laid down u/s 32-F(1)(b) the right of the tenant to purchase the tenanted land automatically got extended in view of the provisions of section 31. In order to appreciate this argument, it is necessary to quote section 32-F(1)(a) :-

"32F.(1) Notwithstanding anything contained in the preceding sections, (a) where the landlord is a minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land u/s 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31".

The reference to section 31 is also necessary and particularly section 31 sub section (3) and therefore the same is reproduced as under :

"(1) Termination of tenancy for personal cultivation and non-agricultural use.

(3) Where a landlord is a minor, or a widow, or a person subject to mental or

physical disability then such notice may be given [and an application for possession u/s 29 may be made,]-

(i) by the minor within one year from the date on which he attains majority;

(ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceased to exist;

(iii) within one year from the date on which mental or physical disability ceases to exist; and

15. Section 31 is included in Chapter [1] which having heading "Special Rights and Privileges of tenants and provisions for distribution of land for personal cultivation". However, section 32 speaks about landlord's right to terminate tenancy for personal cultivation and non-agricultural purposes. Sub-section (3) of section 31 provides that the landlord under disability and intending to exercise a right under this Chapter shall give a notice terminating the tenancy and if the landlord is a widow then the notice can be given by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist.

16. From the facts of the present case it is clear that while the widow Narmadabai was alive there was no question of her interest in the land ceasing during her life time. She ceased to have interest because of her death and therefore if Ramchandra is her successor-in-interest, then his right to give notice u/s 31 to the tenant gets extended for one year from the date of the death of Narmadabai.

17. In this background it was contended by the petitioner's advocate that if sections 31 and 32-F are read together then the tenant is not required to give any notice to the landlord because neither Narmadabai nor her successor-in-interest ever gave any notice to the tenant u/s 31 of the Act of 1948.

18. Counsel for the respondent on the other hand contended that section 32-F is a complete section in itself and the provision of the earlier sections cannot influence or have over riding effect. He drew my attention to the first line of section 32-F(1) "Notwithstanding anything contained in the preceding sections". He therefore contended that whatever be the right of the landlord u/s 31 the same gets separated by virtue of the provisions of section 32-F. As against this, the Counsel for the petitioner drew my attention to sub-section (2) of section 32-F, which reads as "The provisions of section 32 to 32-E (both inclusive) and sections 32-G to 32-R (both inclusive) shall, so far as may be applicable, apply to such purchase." He, therefore tried to contend that section 32-F cannot be said to have over riding effect on all the earlier sections.

19. For the following reasons however, the aforesaid submissions of the Counsel for the petitioner cannot be accepted and sub-section (2) of section 32-F cannot be interpreted in a way so as to include sections 31, 31-A to 31-D in its sweep.

20. Sub-section (2) of section 32-F provides that the provisions of section 32 to 32-E (both inclusive) and section 32-G to 32-R (both inclusive) shall so far as may be applicable, apply to such purchase. As against this, section 32-F begins with the wording "Notwithstanding anything contained in the preceding sections.....". Both these sections, namely, section 32-F(1) and 32-F(2) if interpreted in proper prospective and harmoniously keeping in view the object of section 32-F then it becomes clear that it could be said that sub section (2) of section 32-F is an exception to sub-section (1) of section 32-F but at the same time it has to be borne in mind that exception carved out by sub section (2) is limited to the sections referred to in it, namely, section 32 to 32-E (both inclusive) and 32-G to 32-R (both inclusive). Since section 31 is not included in sub-section (2) of section 32-F and since section 32-F in sub section (1) provides "Notwithstanding anything contained in the preceding sections" then it has to be held that right given to the landlord u/s 31 has nothing to do with the right given to the tenant u/s 32-F for purchasing the land and consequently, it has to be held that a tenant in this case was under legal obligation or statutory duty to give notice of his intention to purchase the land as contemplated u/s 32-F.

21. It was further contended by the Counsel for the petitioner that the proceedings u/s 32-G were initiated by the tenant himself wherein purchase price was fixed and the tenant had substantially complied with the order by paying some of the installments. There was sufficient compliance by him of the provisions of the Act and giving of notice u/s 32-F was not at all necessary. Particularly when the Act of 1948 is a legislation for the benefit of the tenants.

22. I am afraid that this argument cannot be accepted firstly because if section 32-F is held to be mandatory in its character then there has to be a strict compliance thereof. Secondly, that the tenant had initiated proceedings u/s 32-G, that order was set aside by the SDO in the appeal and the matter was remanded for fresh enquiry in respect of the two points referred to above. Therefore, even if the tenant had initiated proceedings u/s 32-G and even if he had paid some installments and the price of the land, the same cannot be considered as substantial compliance resulting in dispensation of the mandatory requirement of section 32-F. So far as another point regarding the clear title to the suit land, the first Court as well as appeal and revisional courts held that Ramchandra was the sole owner of the land in pursuance of the letters of administration obtained by him from the Civil Court. Those findings were not seriously disputed and therefore considering all the circumstances, I have no option but to dismiss the petition. Hence, the order :

Petition dismissed. Rule discharged. No order as to costs.

Interim order stands vacated.

Certified copy expedited.

23. Petition dismissed.