

(1986) 04 BOM CK 0027
In the Bombay High Court
Case No : Writ Petition No. 461 of 1980

Mohan Gajanan Deshpande APPELLANT
Vs
Dhondiram Hari Chavan and Others RESPONDENT

Date of Decision : 30-04-1986

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32F(1), 32F(1A)

Citation : (1986) 2 BomCR 581 : (1986) 88 BOMLR 351 : (1986) MhLj 709

Hon'ble Judges : S.N. Khatri, J

Bench : Single Bench

Advocate : B.P. Apte, for the Appellant; P.L. Naik, for D.M. Rane, for the Respondent

Final Decision : Allowed

Judgement

S.N. Khatri, J.—This is a landlord's petition under Article 227 of the Constitution of India, challenging the order dated 2nd August, 1979 passed in Revision by the Maharashtra Revenue Tribunal, Kolhapur.

2. The material facts relied upon by both sides before me and which are not in dispute are these : The respondents Nos. 1 and 2 (hereafter for short, "the tenants") were holding Survey No. 74, 1 acre 2 gunthas, assessment Rs. 4/-, of village Kale in Kolhapur District as tenants of the petitioner. The petitioner was admittedly born on 2nd March, 1950 and became major on 2nd March, 1968. Hereafter the petitioner will be referred to as the "landlord". In 1973, the Agricultural Lands Tribunal suo motu started 32-G proceedings. By its order dated 24th December, 1973, it dropped these proceedings for the reasons that the landlord was a minor on the tiller's day (that is to say 1st April, 1957). In 1977 that Tribunal again initiated proceedings u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereafter "the Act"). On 7th February, 1977 the Tribunal made an order to the effect that the purchase of the land in favour of the tenants had become ineffective, in as much as they had not exercised their right of purchase within the time permitted by section 32-F(1-A) of the Act.

The tenants carried an appeal to the Special Land Acquisition Officer. By his order dated 31st July, 1978, the appellate authority set aside the order of the Lower Court and remanded the matter back for fresh disposal according to law. The appellate authority was of the view that in the 32-G proceedings of 1973, the tenants had expressed their desire to purchase the land and this should have been treated by the A.L.T. as sufficient compliance of the requirements of section 32-F(1-A). Although it has not cited rulings, the appellate authority purported to have relied upon Rama Ningappa Joshilkar Vs. Kirtikumar Pawatrao Desai and Others, The landlord challenged the decision in revision before the Maharashtra Revenue Tribunal. It confirmed the order in appeal. Now the dispute is before me in these Article 227 proceedings.

3. The core of the reasoning of the M.R.T. is that it was incumbent on the landlord under the latter part of section 32-F(1)(a) of the Act to give an intimation to the tenants of his having attained majority, within one year of that event, so as to enable them to exercise their right of purchase. In its view this amendment was retrospective in operation. Such notice was admittedly not sent by the landlord to the tenants. Eventually there was no obligation on the tenants to give any intimation u/s 32-F(1-A) to the landlord or the A.L.T. of their desires to purchase the land.

4. Shri Apte for the landlord points out that the latter part of section 32-F(1)(a) and the proviso to section 32-F(1-A) were introduced with effect from 17th October, 1969 by the Amending Maharashtra Act 49 of 1969. He contends that the amendment of section 32-F(1)(a) is prospective in operation and would not apply to a landlord who had already attained majority before 17-10-1969. He urges that in absence of the proviso to section 32-F(1-A), the present tenants would have lost their right of purchase on 2nd March, 1970, however by operation of the aforesaid proviso this period stood extended to 17th October, 1971. As the tenants failed to notify their desire of purchase even by this date, Shri Apte contends, the original order of the A.L.T. holding the purchase of the land ineffective is correct and should be restored.

5. To appreciate the submission of Shri Apte, it is necessary to reproduce the material provisions of section 32-F. Section 32-F(1)(a) runs as follows :---

"(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 had attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy u/s 31."

Section 32-F(1-A) runs as follows :

"(1-A) A tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section :

Provided that, if a tenant holding land from a landlord who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Land Laws (Amendment) Act, 1969 has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of that Act."

The underlined portion of section 32-F(1)(a) and the proviso to sub-section (1-A) were brought on the statute book by Amending Maharashtra Act 49 of 1969. As already stated above, both these provisions came into force on 17th October, 1969. Thus before the advent of these amendments, it was not at all incumbent on a minor landlord to notify the date of his attaining majority to the tenants u/s 32-F(1)(a). It was indeed necessary for the tenant to notify his desire of going in for statutory purchase to the landlord as well as the A.L.T. within one year from the expiry of the period during which a minor landlord is entitled to terminate the tenancy u/s 31. u/s 31(3) of the Act, a minor landlord is permitted to take proceedings for termination of the tenancy within one year of his attaining majority. The combined effect of these twin provisions is that under sub-section (1)(a) of section 32-F as obtaining prior to the amendment of 1969, the tenant was obliged u/s 32-F(1-A) to give an intimation of his desire to purchase the land within two years of the landlord attaining majority.

6. It is obvious that because a number of tenants had not the means to know the precise date of their landlord having attained majority, by the two amendments of 1969 mentioned above, an obligation was cast on a minor landlord to give an intimation of his having attained majority to his tenant within a year of that event (section 32-F(1)(a)). The proviso further enabled the defaulting tenant who had managed to stick to his possession to give intimation of his desire of purchase to his landlord till 17th October, 1971 (that is to say, for 2 years from the commencement of 1969 Amendment Act).

7. There is substance in Shri Apte's submission that these two provisions added by way of amendment are prospective in their operation. There is nothing in the wording of these two provisions to show that they are retrospective in operation. There is also no indication in the Amending Act itself to draw such an inference. If retrospective effect is assigned to the amendment of section 32-F(1)(a), some absurd results will follow. To cite one example, the provisions of section 31(3) have been existing on the statute book in the present form right since the commencement of the Act at any rate for a substantial number of years prior to 1969. If the amendment of section 32-F(1)(a) is presumed to be retrospective, it would apply even to a landlord who had attained majority, say in 1960. His right to terminate tenancy u/s 31 would have already stood exhausted by 1961.

Obviously such old closed matters were not sought to be disturbed by the amendment of section 32-F(1)(a) Further the proviso to sub-section (1-A) of section 32-F would be rendered totally otiose, if retrospective effect is given to the amendment of section 32-F(1)(a) When these two amendments are harmoniously construed together, the plain result is that the obligation under the amended provision of section 32-F(1)(a) is cast on only those landlords who attain majority on or after 17th October ,1969. In order to protect tenants who had no means to know the date on which their landlords had already attained majority prior to 17th October, 1969, the proviso to sub-section (1-A) gave them a breather of two years to ascertain the correct position and take effective steps for being declared statutory purchasers. Provided of course they had managed to retain possession with them as on 17th October, 1969.

8. Shri Naik for the respondents relies on Keda Kalu Wagh Patil Vs. Devidas Pandharinath Metkar, and Rama Ningappa Joshilkar Vs. Kirtikumar Pawatrao Desal and Others, (both Single Judge decisions of Vaidya, J.) for his submission that the two aforesaid amendments are retrospective in operation. I have gone through the facts of the decisions. I am clear that no such proposition as propounded by Shri Naik is laid down in either of the two decisions. In Keda's case it was held by Vaidya, J., that the benefit of the proviso to section 32-F(1-A) will enure even to a tenant against whom an order u/s 32-P has already been made, but who has not been actually dispossessed. In Rama's case the learned Judge has held that a tenant need not make a formal proclamation of his desire to purchase the land under sub-section (1-A) of section 32-F, if proceedings are pending either before any Revenue Authority under the Act or in the High Court on the date of the advent of the Maharashtra Amending Act of 1969 (17th October, 1969) and the tenant has already expressed in these proceedings his desire to purchase the land. Both cases are thus clearly distinguishable of their facts. In the case before me, the first matter that came before the A.L.T. was the 32-G proceedings initiated in 1973. It is not the case of either party that any proceedings were pending before any authority before that year. The benefit in favour of the tenants conferred by the proviso to section 32-F(1-A) had already exhausted itself on 17th October, 1971 and it is an admitted position that before that date, the tenants had not expressed their desire to go in for the purchase.

9. To cut the long short, I hold that the view of the M.R.T. that the amended provision of section 32-F(1)(a) was retrospective in operation is not correct. The landlord was under no obligation to give intimation of his having attained majority to the tenants. The tenants in their turn could not press in aid the concession enuring to them under the proviso to section 32-F(1-A). The Court of the first instance was right in declaring the purchase ineffective. Accordingly this petition is allowed. The order of the A.L.T. dated 7th February ,1977 is restored while quashing the orders of the Special Land Acquisition Officer dated 31st July, 1978 and of the M.R.T. dated 2nd August, 1979. Rule made absolute. In the circumstances of the case, there will be no orders as to costs.