

(2004) 07 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 912 of 1990

Motiram Jagannath Bhoir

APPELLANT

Vs

Rajaram Gopal Mhaskar (since deceased, per L.Rs. Tukaram
Rajaram Mhaskar, Sakharam Rajaram Mhaskar, Venu
Parshuram Mhatre, Rama Mahadeo Thakur, Krishnamai Anant
Bhagat and Radha Posha Mhatre)

RESPONDENT

Date of Decision : 16-07-2004

Acts Referred:

Citation : (2004) 4 ALLMR 704 : (2005) 1 BomCR 325 : (2005) 1 MhLj 169

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

Bench : Single Bench

Advocate : S.G. Karandikar, for the Appellant; T.K. Patil, for the Respondent

Judgement

A.M. Khanwilkar, J.—This writ petition takes exception to the judgment and order passed by the Maharashtra Revenue Tribunal, Bombay, dated February 28th, 1989, in Tenancy Appeal No. 1 of 1985. Briefly stated, the land in question is agricultural land bearing Survey No. 43, Hissa No. 0 and Survey No. 49, Hissa No. 0, admeasuring 20 acres 8 gunthas and 16 acres 4 gunthas respectively of village Akurle, taluka Panvel, district Raigad. it is not in dispute that the Petitioner is owner in respect of the suit lands. it is also not in dispute that the Petitioner was born on June 16, 1944. in other words, on the tillers day, i.e., 1st April 1957, the Petitioner was minor. Petitioner attained majority on June 16, 1962. Nevertheless, the Respondent tenant failed to give intimation within the specified time u/s 32F of the Act, but such intimation was sent by the Respondent tenant only on 2nd September 1977. it is in this backdrop the Petitioner filed application u/s 32F of the Act, which was, however, dismissed. against the decision, the Petitioner carried the matter in appeal, which was allowed by the appellate authority by decision dated August 1, 1980. the Respondent carried the matter in revision, which was once again allowed by remanding the matter to the lower Court for further enquiry by order dated June 9, 1981. After remand, the Tahsildar, on analysing the admitted facts on record

and the legal position, found by his decision dated March 13, 1983, that the Respondent tenant has lost his right to purchase the suit land, having failed to send intimation within the specified time u/s 32F of the Act. That decision was carried in appeal by the Respondent tenant, which came to be dismissed by the Sub-Divisional Officer on March 31, 1984. The Respondent then took the matter in revision before the Tribunal. The Tribunal by the impugned judgment and order dated February 28, 1989, has, however, reversed the decision of the two Courts below on the reasoning that the provisions of section 32F will have retrospective effect. The Tribunal has then observed that there was no necessity for the tenant to send intimation u/s 32F of the Act. On this premiss, the Tribunal allowed the revision application preferred by the Respondents and remanded the matter to the trial Court for determination of purchase price u/s 32G of the Act. It is this decision which is subject matter of challenge in this proceedings.

2. Having considered the rival submissions, I have no hesitation in taking the view that the Tribunal has committed manifest error in interfering with the concurrent view taken by the two authorities below. In the present case, it is not in dispute that the Petitioner was minor on the tillers day. On account of that fact, by operation of law, the tillers day stood postponed by virtue of section 32F of the Act. The said section obligates the tenant to exercise his right to purchase the suit land within the specified time by sending the intimation failing which the consequences are that the purchase would become ineffective. In the present case, the Respondent tenant sent intimation, but after the specified time, and almost after 15 years from the date when the Petitioner became major. In this backdrop, the view taken by the two authorities below was inevitable. The two authorities below had rightly taken the view that the purchase in favour of the Respondent tenant has become ineffective and action u/s 32P of the Act for resumption of land was initiated. No fault can be found with the said view. However, the Tribunal has proceeded on the assumption that the provisions of section 32F of the Act had retrospective effect. this view is clearly contrary to the well-settled legal position as expounded by the Apex Court in Anna Bhau Magdum (since deceased by L.R.'s) Vs. Babasaheb Anandrao Desai, . In that slense, the first reason, which has weighed with the Tribunal cannot be sustained.

3. The second reason which weighed with the Tribunal, perhaps on the assumption that section 32F of the Act has retrospective effect is that it was not necessary for the tenant to send intimation u/s 32F. Even that reasoning cannot be sustained in view of the exposition of the Apex Court in Appa Narsappa Magdum (D)Thr. Lrs Vs. Akubai Ganapati Nimbalkar and Ors, . In other words, the basis on which the Tribunal interfered in favour of the Respondents cannot be sustained in law. Accordingly, the decision of the Tribunal will have to be reversed and, instead, rendered by the tenancy authority as affirmed by the appellate authority will have to be restored. This writ petition, therefore, succeeds on the above terms. No order as to costs.

4. Parties to act on the authenticated copy of this judgment.