

(1999) 12 BOM CK 0080

In the Bombay High Court

Case No : Writ Petition No. 3124 of 1989

Nanasaheb Kisan Mali

APPELLANT

Vs

Kashinath Dasharath Mali since deceased through his L.Rs.
and others

RESPONDENT

Date of Decision : 04-12-1999

Acts Referred:

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

Citation : (2000) 4 BomCR 99 : (2000) 2 MhLj 713

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : A.B. Gatne, for the Appellant; R.N. Dhorde, for the Respondent

Judgement

B.H. Marlapalle, J.—Agricultural land in the following S. Nos. admeasuring to the extent shown respectively originally belonged to one Dashrath Nana Mali, who died on 24-4-1945 leaving behind him his widow and a minor son by name Kashinath. The said lands were given on tenancy basis to one Kisan Mali in the agricultural year 1956-57 and as on the tiller's day i.e. 1-4-1957 Kisan was the tenant of the lands:

2. As required u/s 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948, (Bombay Tenancy Act for short) the Tahsildar (Agricultural Lands Tribunal) had instituted suo-motu proceedings and no notice was given to the land owners though, a specific notice was issued to the tenant Kisan Mali. The tenant's statement was recorded before the Tahsildar some time in July 1960 and subsequently by order dated 8-10-1960 the proceedings u/s 32-G came to be dropped by the Tahsildar on the ground that the landlord was a minor. It is further clear from the records that Kisan Mali died some times in 1967 and till his death fresh proceedings u/s 32-G of the Bombay Tenancy Act were not instituted or such an enquiry was not reopened after it was closed on 8-10-1960. There is also evidence to show on record that a fresh suo-motu enquiry in the second round was instituted some times early 1969 and in this case also a notice

appears to have been given only to Sakharam - the eldest son of Kisan Mali, whereas to the remaining two sons of Kisan namely Nanasaheb and Nilkant, no notice was given. These proceedings were also closed on 29-9-1969 allegedly on the ground that the relationship of landlord-tenant could not be established. On the demise of Kisan Mali the name of Sakharam came to be mutated under the cultivation column on behalf of three sons of Kisan Mali and presumably because Sakharam was the eldest son. It is also evident from the record that Sakharam subsequently made an application and requested for entry in the name of his two brothers as co-tenants and such an entry has been effected.

3. Kisan Mali (sic Kashinath)-the landlord, instituted proceedings u/s 32-F read with section 32-P of the Bombay Tenancy Act, before the Tahsildar for the resumption of the suit land from the possession of the tenants on the ground that the tenants failed to exercise their right to purchase the subject land within the stipulated period and the land was liable to be resumed to the landlord by evicting the tenants. This application was certainly not filed within a period of one year after attaining the majority by Kashinath - the landlord. These proceedings filed on 13-7-1976 came to be numbered as Tenancy Case No. 32-G/Miri/76 and were concluded by the Tahsildar vide his order dt. 30-6-1978. The Tahsildar held that the purchase of the suit land by the tenants was ineffective and the action for the restoration of the lands to the landlord be taken by issuing an order in Form No. XXVI. Being dissatisfied with this order passed by the Tahsildar, the present petitioner filed Tenancy Appeal No. 41/78 which came to be allowed by the S.D.O. on 6-1-1979. The appellate order came to be challenged before the Maharashtra Revenue Tribunal (M.R.T.) at Pune in Tenancy Revision Application No. 115/79. The learned Member of the M.R.T. was pleased to allow the revision by setting aside the order passed by the lower appellate authority and he confirmed the order passed by the Tahsildar, on 20-2-1981. The petitioner tenant has assailed the said order passed by the M.R.T. in the instant petition.

4. The learned Counsel for the petitioner submitted that the reasoning given by the Tribunal to set aside the order passed by the S.D.O. is manifestly erroneous and it did not consider the fact that the date of birth of the landlord was 25-6-1942, who was presumably a minor when his father died and the date of birth could not be known to the tenant unless the landlord had issued a notice as required u/s 32-F(1) on attaining majority. It has also been submitted that the order dated 8-10-1960 closing the suo-motu proceedings u/s 32-G by Tahsildar was a nullity inasmuch as (i) no notice was served to the landlord and (ii) the landlord had attained majority on 25-6-1960 itself. In support of these contentions the learned Counsel has relied upon the following judgments of this Court :

- 1) Husein Miya Dosumiya Vs. Chandubhai Jethabhai and Another, ;
- 2) Madhav Kesu Khuspe v. Sundrabai Mugutrao Phadatare since deceased by heirs Krishna Dagdu Khuspe and others 1978 MH LJ 289;

3) Keda Kalu Wagh Patil Vs. Devidas Pandharinath Metkar, .

The learned Counsel for the petitioner urged before this Court that the tenant had become the owner of the subject land and therefore, the application filed on 13-7-1976 for resumption of land could not be entertained.

5. It is true that in some proceedings which were concluded in 1972 the date of birth of the minor landlord came to be disclosed and recorded as 25-6-1942 and he was not a minor when the petitioner was examined in Enquiry No. 68/ 1960 instituted u/s 32-G of the Bombay Tenancy Act and therefore, the order of closing this enquiry passed on 8-10-1960 was void. It is also true that the said order is void on another ground of non-compliance of the statutory provisions regarding issuance of notice to the landlord and therefore, the learned Counsel for the petitioner is right in his contentions that this order is a nullity in law. However, this itself does not support the case of the tenant inasmuch as under the scheme of the Bombay Tenancy Act. The tenants were not estopped from exercising their right conferred upon them under sub-section (1) of section 35-F any time after the second round of proceedings instituted u/s 32-G of the Bombay Tenancy Act, were closed on 29-9-1969. Even during the life time of Kisan Mali - the original tenant, there does not appear to have been any approach in challenging the order passed on 8-10-1960 and on his demise the Tahsildar had instituted suo-motu proceedings which were again closed on 29-9-1969. This order also has not been challenged. By Maharashtra Act No. 49 of 1969, the provisions of section 32-F were amended and sub-clause (1-A) has been added in the said section which states that a tenant desirous of exercising the right conferred on him under sub-section (1) of the said section 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. The proviso to the said added sub-section (1A) is very important and it states that if a tenant holding a land from a landlord who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands 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. Undoubtedly the Tenancy and Agricultural Lands Laws (Amendment) Act 1969, commenced from 17-10-1969. This amended provision made it clear that the tenants who did not get the benefit of section 32-G for any reason whatsoever had the option of exercising their right after the disability in sub-section (1) of section 35-F was removed by giving a notice/ intimation in that behalf to the landlord as well as to the Tribunal in the prescribed manner within a period of 2 years from 17-10-69. In the instant case such a notice has been given only on 18-7-77 i.e. after the landlord filed an application for resumption of lands.

6. In the case of Mohan Gajanan Deshpande Vs. Dhondiram Hari Chavan and Others, , this Court while examining the scheme of the added sub-section (1-A)

of section 32-F of the Bombay Tenancy Act, observed :

"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.

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 of section 32-F(1)(a). The proviso to section 32-F(1A) 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.). The combined effect of the amendments incorporated with effect from 17th October, 1969 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 and in order to protect tenants who had no means to know the date on which the landlord had already attained majority prior to 17-10-1969, the proviso to sub-section (1A) 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."

This Court also held that the amendment was not retrospective in operation and the landlord was under an obligation of giving intimation of having attained majority to the tenants. In a subsequent judgment in the case of Chintaman Tukaram Detir Vs. Anand Moreshwar Bhat and Another, the provisions of sub-section (1A) of section 32-F of the Bombay Tenancy Act, were again considered and the view taken in the earlier case i.e. Mohan Deshpande (supra) was confirmed. It is also pertinent to note that this Court while deciding the case of Mohan Deshpande (supra) had also considered the earlier judgments in the case of Keda Kalu Patil (supra) as well as the judgment in the case of Rama Ningappa Joshilkar v. Kirtikumar Parwatrao Desai 1973 MH LJ 969.

7. The petitioner tenant failed to exercise the right conferred on him under sub-section (1) of section 32F of the Bombay Tenancy Act, as was contemplated under sub-section (1A) of the said section before 17-10-1971. Therefore, the landlord rightly filed proceedings for resumption of land u/s 32-F read with section 32P of the Bombay Tenancy Act. Though the reasoning given by the

learned member of the Tribunal in support of his findings is not satisfactory, it must be held that the application filed by the landlord for resumption of land was rightly allowed by the Tahsildar in the facts and circumstances of this case. The tenant must suffer for the inaction on his part or on the part of his father and it was too late for him to first oppose the proceedings for resumption instituted by the landlord and to file an application for purchase of land as late as on 18-7-1977.

8. It would be also necessary to note that inspite of interim order passed by this Court on 24-3-1982 while admitting the petition, the petitioner-tenant has lost his possession over the suit land on 1-4-1982 and he has not been in possession of the suit land for the last more than 17 years.

9. In the premises, the writ petition is dismissed. Interim order stands vacated. Rule discharged with no order as to costs.

10. Writ petition dismissed.