

(2014) 02 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition Nos. 6720, 6721, 6723 and 6724 of 2013

Pradip Vasudeo Ekbote

APPELLANT

Vs

Shantaram Motiram Gatkal

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 32, 32G, 32-G, 32-O
Constitution of India, 1950 — Article 227
Maharashtra Revenue Patels (Abolition of Offices) Act, 1962 — Section 5, 6, 8, 9

Citation : (2014) 3 ABR 469 : (2015) 1 ALLMR 717

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : G.S. Godbole, Drupad S. Patil and Parag Tilak, Advocate for the Appellant; P.S. Dani and Prashant D. Patil, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R.M. Savant, J.—Rule, with the consent of the learned Counsel appearing for the parties, made returnable forthwith and heard. The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the common order dated 22nd March, 2013 passed by the learned President of the Maharashtra Revenue Tribunal, by which order, the Revision Applications being Revision Application Nos. 11B of 2012, 12B of 2012 and 13B of 2012 and 14B of 2012, came to be dismissed and resultantly the order passed by the Sub-divisional Officer in Tenancy Appeal Nos. 18 of 2010 to 21 of 2010 came to be confirmed.

2. The facts necessary to be cited for an adjudication of the above Petitions can be stated thus:

The Respondents claim to be the tenants of the lands in question being Survey Nos. 62/4 (new Gat No. 141) admeasuring 1 Hectar 0.2 Ares in Writ Petition No. 6720 of 2013 and Writ Petition No. 6721 of 2013, and land bearing Gat No. 179 (old Survey No. 75/4) admeasuring 1 Hectar 20 Ares in Writ Petition No. 6723 of

2013 and Writ Petition No. 6724 of 2013 situated at Village Shivrui, Taluka Dindori, District Nashik which lands the Petitioners claim to be their ancestral properties. The said lands are Patil Vatan Lands. On the enactment of the Maharashtra Revenue Patel's (Abolition of Office) Act, 1962 (hereinafter referred to as "the Patel's Abolition Act"), the said vatans got abolished and the lands got vested in the State Government. By an order passed on 4th July, 1968, the State Government was pleased to re-grant the lands to the owner Shri. Vasudev Ekbote, on whose demise, the ownership of the lands devolved upon the Petitioners in the above Petitions. This was pursuant to the applications made by the owner on 4th July, 1968. The Petitioners herein filed tenancy case No. 2 of 2003, subject-matter of Writ Petition Nos. 6720 of 2013 and Writ Petition No. 6721 of 2013 and tenancy case No. 1 of 2003, subject-matter of Writ Petition No. 6723 of 2013 and Writ Petition No. 6724 of 2013, for possession of the said lands under the provisions of Section 32-O and 32-P(2)(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the BTAL Act"). The Respondents in the above Petitions appeared in the said proceedings and resisted the claim of the Petitioners. The Respondents, in turn, filed applications contending that the said tenancy cases filed by the Petitioners were not maintainable. In the said applications, it was the case of the Respondents that the lands in question were being cultivated by the Tenants from the period anterior to the tillers day. It was further contended that the provisions of the Section 32-O and 32-P of the BTAL Act are not applicable. It was further contended by the Respondents that they have become deemed purchasers on the tillers day and hence, the tenancy cases being Nos. 1 of 2003 and 2 of 2003 are required to be dismissed.

It appears that the Petitioners led evidence in the said tenancy cases filed by them. The Respondents, in turn, filed tenancy case No. 4 of 2004, subject-matter of Writ Petition No. 6720 of 2013 and Writ Petition No. 6721 of 2013, tenancy Case No. 5 of 2004, subject-matter of a Writ Petition No. 6723 of 2013 and Writ Petition No. 6724 of 2013, invoking Section 32G of the BTAL Act for fixation of the purchase price. The Petitioners resisted the said applications filed by the Respondents by filing Written Statements on 25th October, 2004. In support of the said applications, the Respondents had filed affidavit in lieu of examination-in-chief on 25th March, 2008 in the said tenancy cases and they were cross-examined by the Advocate representing the Petitioners. The Tahsildar, Dindori, Nashik allowed the tenancy cases filed by the Petitioners being 2 of 2003 and 1 of 2003 and dismissed the tenancy cases Nos. 4 of 2004 and 5 of 2004, filed by the Respondents herein. The gist of the reasoning of the Tahsildar was that since there was a regrant, the applications filed u/s 32G were not entertainable and that the Petitioners landlords, in view of the provision of Sections 32-O and 32-P were entitled to the possession of the lands. The said order passed by the Tahsildar dated 16th August, 2010 was taken exception to by the Respondents by filing appeals being Tenancy Appeal No. 19 of 2010 in Tenancy Case No. 2 of 2003 and Tenancy Appeal No. 18 of 2010 in Tenancy Case No. 1 of 2003 before

the Sub-divisional Officer. The Respondents also filed Tenancy Appeal No. 20 of 2010 challenging the order passed in Tenancy Case No. 4 of 2004 and Tenancy Appeal No. 21 of 2010 in Tenancy Case No. 5 of 2004. The Sub-divisional Officer, by a common Judgment and Order dated 14th November, 2011, was pleased to allow the Tenancy Appeal Nos. 18 to 21 of 2010 filed by the Respondents herein. The gist of the reasoning of the Sub-divisional Officer was that though there was a regrant, the Respondents being the lessees in respect of the lands prior to the tillers day, the provisions of Sections 32-O and 32-P were not attracted.

3. The Petitioners, aggrieved by the order passed by the Sub-Divisional Officer, took exception to the same by filing Revision Applications before the Maharashtra Revenue Tribunal (MRT) being Revision Application Nos. 11 of 2012 to 14 of 2012. The MRT, by the impugned order, has dismissed the Revision Applications. Before the MRT, reliance was sought to be placed on behalf of the Respondents on the Judgments reported in Smt. Kallawwa Shattu Patil and Others Vs. Yallappa Parashram Patil and Others, in the matter of Kallawwa Shattu Patil and Ors. v. Yallappa Parashram Patil, wherein, the learned Single Judge of this Court has held that the deeming provision in Section 8 of the Patel's Abolition Act would not bring the case within the ambit of Section 32-O where there was a preexisting lease and such lease was subsisting on tillers day and in such cases tenant is straightway entitled to invoke provisions of Section 32G of the BTAL Act. The MRT further held that the view taken by the Sub-Divisional Officer that the tenants have become deemed purchasers on the day of the re-grant and therefore it is necessary to fix the purchase price was a view which did not require any interference in the Revisionary Jurisdiction. As indicated above, it is the said order dated 22nd March, 2013 which is impugned in the present Petitions.

4. Heard the learned Counsel appearing for the parties. The learned Counsel appearing for the petitioners would submit that Section 32-O of the BTAL Act is applicable in the instant case and the Respondent No. 1 Defendant was therefore under an obligation to give an intimation to the landlords within one year from the commencement of such tenancy, which is after the re-grant. The learned Counsel sought to place reliance on the Judgment of a learned single Judge of this Court reported in 1996 (1) Mah LR 513 in the matter of Gaurabai W/o. Shankar Naik & Anr. v. Bhairu Bhima Shinde. The learned Counsel would further submit that since notice has not been served by the Respondent No. 1 Defendant on the landlords within the said period of one year from the date of regrant, the Respondent No. 1 has lost his right to have recourse to Section 32G of the BTAL Act. The learned Counsel would further submit that the Judgment of the Apex Court in the case of Sadashiv Dada Patil Vs. Purushottam Onkar Patil (D) by LR's., would have no application as the proviso to Section 8 of the Patel's Abolition Act was not in contention in the said case.

5. Per contra, the learned Counsel appearing for the Respondent No. 1 would support the orders passed by the Sub-Divisional Officer and the MRT. The learned

Counsel would contend that what has been done by the proviso to Section 8 is that the date of compulsory purchase and fixation of purchase price was postponed by operation of the statute up to the date of re-grant and that the proviso to Section only creates a legal fiction for a extremely limited purpose. The learned Counsel would contend that in the instant case there was no question of creating any fresh tenancy in favour of the Respondent No. 1 after 1st April, 1957 and therefore Section 32-O of the BTAL Act can have no application.

6. Having heard the learned Counsel appearing for the parties, I have considered the rival contentions. The issues which arise for consideration is as to whether Section 32-O of the BTAL Act is applicable to the present case and whether a fresh lease is deemed to have been created by the landlords in favour of the tenant from the date of the re-grant so as to impose an obligation on the tenant to send intimation of statutory purchase within one year from the date of re-grant.

In the instant Writ Petitions, it is required to be noted that though the relationship of landlord and tenant and that the rent was paid by the Respondent regularly was sought to be denied by the landlords. The Sub-Divisional Officer in his order has observed that the village form i.e. the 7/12 extracts of the lands clearly disclose that from the year 1940 to 43 the lands were Patel Inam lands and the Gatkhal family was shown to be a tenant in the other rights column. The Sub-Divisional Officer has further observed in his Judgment that on the tillers day i.e. 1st April, 1957 the tenants were in occupation of the lands as tenants and that the same was continued till the date of his Judgment. He has therefore observed that it could not be presumed that the new tenancy was created from the date of re-grant. Hence, what flows from the findings recorded by the Sub-Divisional Officer in the Appeal, is that from 1940 to 1943 the Gatkhal family i.e. the Respondents were shown to be the tenants of the lands in question in the other rights column. It would be in the said context that the issues that arise for consideration in the above Petition would have to be addressed. Since Section 32-O of the BTAL Act and Section 8 of the Patel's Abolition Act are the two provisions in contention, the same are reproduced herein under for the sake of convenience:

32-O. Right of tenant whose tenancy is created after tillers" day to purchase land.

(1) In respect of any tenancy created after the tillers" day [by a landlord (not being a serving member of the armed forces)] notwithstanding any agreement or usage to the contrary, a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

(1A) 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.

(2) The provision of sections 32 to 32N (both inclusive) and of sections 32P, 32Q and 32R in so far as they may be applicable shall apply to the purchase of the land by a tenant under sub-section (1).

Section 8. Application of tenancy law if any Watan land has been lawfully leased and such lease is subsisting on the appointed day, the provisions of the relevant tenancy law shall apply to the said lease, and the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of this part, be governed by the provisions of that law:

Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the re-grant of the land u/s 5 or 6 or 9, as the case may be.

Explanation - For the purpose of this section, the expression "land" shall have the meaning as is assigned to it in the relevant tenancy law.

7. Insofar as the issues which arise for consideration which have been adverted to in the earlier part of this Judgment, the said issues are no more res integra in view of the Judgment in Kallawwa's case (supra). In the said case, similar contention based on a conjoint reading of Section 32-O of the BTAL Act and Section 8 of the Patel's Abolition Act was raised namely that the tenant was under an obligation to give an intimation to landlord within one year from the commencement of tenancy of his intention to purchase the land. The learned Single Judge held that the proviso to Section 8 of the Patel's Abolition Act creates a statutory legal fiction for an extremely limited purpose i.e. for the purpose of fixing of purchase price in respect of statutory purchase. For the said limited purpose, the land is deemed to have been leased from the date of re-grant. It does not follow therefrom that the landlords have created a lease in respect of the said land after 1st April, 1957 from the re-grant. The learned Single Judge further held that the deemed date of commencement of preexisting lease for the limited purpose set out in the proviso to Section 8 of the Patels Abolition Act does not and cannot bring the case within the ambit of Section 32-O of the BTAL Act. The learned Judge held that the condition precedent prescribed by Section 32-O of the BTAL Act for its applicability is not satisfied in the said case.

It is required to be noted that insofar as facts are concerned, the facts in Kallawwa's case (supra) can be said to be similar to the facts of the present case, as there was a preexisting lease and that the tenants were in occupation of the land prior to 1st April, 1957. The relevant paragraphs of the Judgment in Kallawwa's case (supra) are paragraphs 7 and 8 of the said Judgment, which are reproduced herein under:

7. The watan land was lawfully leased by the landlords, i.e. the petitioners and

respondent No. 2, in favour of the 1st respondent-tenant much prior to 1st April, 1957 and the said lease was subsisting on the appointed day. The 1st respondent was lawfully cultivating the land bearing R.S. No. 182/4 throughout. Practically all the provisions of the Tenancy Act became applicable to the lease forthwith. Merely the date of compulsory purchase and fixation of purchase price were postponed by statute, i.e. by operation of law up to the date of re-grants. In other words, the provisions for implementation of compulsory purchase of the lands contained in section 32G of the Tenancy Act could not be availed of by the respondent No. 1 until the date of re-grant of the said land. In my judgment, the landlords did not create any fresh tenancy in favour of respondent No. 1 after 1st April, 1957 and section 32-O of the Tenancy Act can have no application to such a case. Section 32-O of the Tenancy cannot apply to a case where the land was already leased by the landlords in favour of the tenant prior to 1st April, 1957 and the said lease was subsisting on 1st April, 1957 and it has subsisted throughout. The proviso to section 8 of the Patels Abolition Act created a statutory legal fiction for an extremely limited purpose, i.e. for the purpose of fixing of purchase price in respect of statutory purchase. For the said limited purpose, the land is deemed to have been leased from the date of re-grant. It does not follow there from that the landlords have created a lease in respect of the said land after 1st April, 1957 from the re-grant. The old lease never came to an end. New contract of lease was never arrived at. Deemed date of commencement of preexisting lease for the limited purpose set out in the proviso to section 8 of the Patels Abolition Act does not and cannot bring the case within the ambit of section 32-O of the Tenancy Act. The condition precedent prescribed by section 32-O of the Tenancy Act for its applicability is not satisfied in this case. In my judgment, the Tribunal has rightly held that section 32-O of the Tenancy Act is not applicable to this case rightly held that section 320 of the Tenancy Act is not applicable to this case and the 1st respondent-tenant is straightway entitled to invoke the provisions of section 32-G of the Tenancy Act and move the authorities for fixation of purchase price without serving any notice on the landlords in respect of exercise of his right to purchase the said land. The 1st respondent has repeatedly expressed his intention to make the statutory purchase.

8. The learned Counsel for the petitioners has invited my attention to the judgment of Vaidya, J., in the case of Bhila Keshav Patil and Another Vs. Ganpati Chunilal Kabre and Another, The said judgment is clearly distinguishable and has no application to the situation presented by this case. In the instant case, the fiction enacted by the proviso to section 8 of the Patels Abolition Act must be given effect to. The proviso to section 8 of the Patels Abolition Act is liable to be interpreted in the light of the main provision of section 8 of the Patels Abolition Act. The said main provision clearly provides that if the watan land was lawfully leased prior to the appointed day, the provisions of the relevant tenancy law shall be applicable to such lease, throughout and all the rights and obligations of the holder of such land and his tenant shall be governed by the tenancy law subject

to the other provision of the Patels Abolition Act. In this case, respondent No. 1 was the tenant of the said land on the appointed day and his rights and obligations were and are governed by the relevant Tenancy Act. Merely the date of compulsory purchase of the land was statutorily postponed to the date of re-grant as already discussed above. It is impossible to hold that section 32-O of the Tenancy Act is applicable in such a situation. Where the lease has been subsisting throughout since prior to 1st April, 1957 and has not been created by the landlords for the first time by a transaction inter vivos after 1st April 1957, section 32-O of the Tenancy Act has no application.

8. The judgment in Kallawwa's case (supra) was relied upon by a learned single Judge sitting at the Aurangabad Bench of this Court, who had allowed the writ petition before him thereby setting aside the order passed by the MRT holding that Section 32-O was attracted. The said judgment of the learned single Judge sitting at the Aurangabad Bench was challenged in a Letters Patent Appeal, which was dismissed by a Division Bench of this Court, however, for different reasons namely that the landlord was not entitled for re-grant of the lands in question under the Patel's Abolition Act and therefore was not entitled to seek possession thereof. Against the judgment rendered by the Division Bench in the said Letters Patent Appeal, the matter had reached the Apex Court by way of SLP (c) 8909 of 2003. The Apex Court granted leave and the Civil Appeal No. 4334 of 2006 arising out of the said SLP was dismissed by the judgment in the case of Sadashiv Dada Patil Vs. Purushottam Onkar Patil (D) by LR's., Before the Apex Court, similar contention was raised, as is sought to be raised in the instant case, namely that the tenant was required to give notice within one year from the date of re-grant and since the notice was not given, the tenant was not entitled to apply for fixing the purchase price. The Apex Court confirmed the judgment of the learned single Judge sitting at Aurangabad rendered in the Writ Petition and upheld the finding that the provisions of Section 32-O were not applicable. The relevant paragraphs of the judgment of the Apex Court are paragraphs 19 to 24, 26 and 32, which are reproduced herein under:

19. Section 8 of the 1962 Act, as notice hereinbefore, provides that the rights and liabilities of the holder of such land and his tenant or tenants shall, subject to the provisions of the said part, be governed by the provisions of that law. The proviso appended thereto whereupon reliance has been placed by Mr. Dube reads as under:

Provided that, for the purposes of application of the provisions of the relevant tenancy law in regard to the compulsory purchase of land by a tenant, the lease shall be deemed to have commenced from the date of the re-grant of the land u/s 5 or 6 or 9, as the case may be.

Explanation - For the purposes of this section, the expression "land" shall have the same meaning as is assigned to it in the relevant tenancy law.

20. The provisions of both the Acts are required to be construed harmoniously.

They have to be construed keeping in view the purport and object, they seek to achieve.

21. Section 32 of the Act confers an absolute right to the tenant.

22. As in 1957 the right of the respondent to purchase the land become a vested right, the proviso appended to Section 8 of the 1962 Act could not be read to mean that such right stood divested. The proviso appended to Section 8 refers to the application of the provisions of the relevant tenancy laws as the same does not abrogate a vested right. The proviso, it is well known, has a limited role to play. It may create an exception. It ordinarily does not create a right or takes away a vested or accrued right. The proviso to Section 8 of the 1962 Act, in our considered opinion, does not take away a vested right conferred under the Tenancy Act.

23. By construing both the Acts harmoniously, the High Court, in our opinion, did not make a new law. It merely interpreted the same in the light of the object of the Act. The proviso appended to Section 8 of the 1962 Act merely postponed the operation of the statute. Fixation of price of the land in question subject to exercise of option by the tenant was to that extent beneficial to the landlord; but the same would not mean that legal fiction created u/s 32 of the Tenancy Act would stand effaced.

24. We have noticed hereinbefore that 31-3-1957 was the cutoff date. A statutory right was conferred upon the tenant. The said right was created to fulfill the object that the tiller should become the owner; but thereby the landlord was not to be deprived of the price of the land. Section 32-O of the Tenancy Act would not be attracted, only because the proviso appended to Section 8 of the 1962 Act provides for a new date. For the said purpose, it was not necessary to make any amendment in the Tenancy Act in view of the fact that the relevant provisions of the Tenancy Act were made part of the 1962 Act. It is not a case where the Tenancy Act was required to be made applicable with retrospective effect, as the proviso appended to Section 8 of the 1962 Act was to be read in the light of Section 32-G and Section 32-O of the Tenancy Act. The proviso appended to Section 8 of the 1962 Act has a limited role to play.

26. The proviso to Section 8 of the 1962 Act, therefore, should be interpreted accordingly. It did not create any right in favour of the landlord nor did it take away the right of the tenant. It would not be correct to contend that only because Section 31 of the Tenancy Act gives an option to the landlord to terminate the tenancy and take the possession of the land, Section 32-O thereof had been given a retrospective effect. The legal fiction created u/s 32 of the Tenancy Act cannot be given a limited meaning. A legal fiction, as is well known, must be given its full effect.

32. For the reasons aforementioned, we, with respect, agree with the findings of the High Court. However, keeping in view our findings aforementioned, it is not necessary to consider the implication of the provisions of the 1874 Act. The

Appeal, therefore, is devoid of any merits, which is dismissed accordingly. No costs.

9. In view of the judgment of the Apex Court, in Sadashiv Dada Patil's case the controversy as regards whether a notice is required to be issued u/s 32-O in view of the proviso to Section 8 of the Patel's Abolition Act is settled. It has been held by the Apex Court that the proviso merely postponed the operation of the statute for the limited purpose of fixation of price of lands in question and the proviso to that extent can be said to be beneficial to the landlords. The Apex Court by recording that it agreed with the findings of the High Court has thereby affirmed the judgment of the Learned single Judge in Kallawwa's Case. As the Learned single Judge sitting at Aurangabad Bench had relied upon the judgment in Kallawwa's case (supra). The Apex Court has therefore addressed the issue on the basis of the legal fiction created u/s 32 and in the said context has held that there was no requirement to issue a notice when the tenancy was subsisting prior to 1st April, 1957.

In so far as the judgment in Gaurabai Naik's case is concerned, what is relevant to note that Kallawwa's case (supra) was not cited before the Learned single Judge which was a judgment rendered prior in point of time i.e. in the year 1992. Hence Gaurabai Naik's case was decided in the absence of the notice of the Learned single Judge being drawn to Kallawwa's Case. Be that as it may in view of the judgment of the Apex Court in Sadashiv Patil's case the judgment in Gaurabai Naik's case is no more good law.

Viewed from the angle of the law settled by the Apex Court, in Sadashiv Patil's case (supra) the impugned order passed by the MRT rejecting the Revision Applications filed by the Petitioners on the ground that since the tenancy was subsisting on the date of the re-grant and hence Section 32-O would not be applicable, does not call for any interference in the Writ Jurisdiction of this Court under Article 227 of the Constitution of India. The Writ Petitions are accordingly dismissed. Rule discharged with parties to bear their respective costs.