
(1972) 08 BOM CK 0007

In the Bombay High Court

Case No : Special Civil Application No. 368 of 1969

Rama Ningappa Joshilkar

APPELLANT

Vs

Kirtikumar Pawatrao Desal and Others

RESPONDENT

Date of Decision : 17-08-1972

Acts Referred:

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

Citation : AIR 1974 Bom 92 : (1973) 75 BOMLR 701 : (1973) MhLj 969

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : H.D. Gole, for the Appellant; S.G. Mandrekar and A.G. Sabnis, for the Respondent

Judgement

Vaidya, J.—The petitioner are respondents Nos. 2 and 3 in the above special Civil application under Art. 227 of the Constitution of India are tenants of agricultural land bearing survey No. 66, measuring 2 acres 39 gunthas and assessed at Rs. 16.00 situate at village Hundalewadi in Taluka Chandgad. District Kolhapur. In an enquiry held u/s 32-G of the Bombay Tenancy and Agricultural Lands Acts, 1948, the Additional Mamlatdar and Agricultural Lands Tribunal, Chandgad, by his order dated November 20, 1963 declared that the statutory sale in favour of the tenants had become ineffective inasmuch as the land in question belonged to a minor landlord-respondent No.1 whose birth date is May, 20, 1942 and who attained majority on May 20, 1960. The Agricultural Lands Tribunal held that as the tenants failed to give notice u/s 32-F (1A) within one year's period, the sale had become ineffective.

2. The petitioner challenged the said decision before the Prant officer, Gadhinglaj Division, by way of an appeal contending that the landlord having made an application u/s 31, after the attained majority the tenant became automatically the statutory purchaser u/s 32, after the dismissal of the application of August 16, 1961, because u/s 32-F (2) the provisions of sections 32 to 32-E and sections 32-G to 32-R shall, so far as may be applicable, apply to such purchase.

The Prant officer overruled this contention and dismissed the appeal of the tenant of February 20, 1967. The petitioner challenged the said decision before the Maharashtra Revenue Tribunal by filing a revision application. The revision application was also dismissed by the Revenue Tribunal on April 26, 1968. The said decisions are challenged in the above petition.

3. During the pendency of the petition, the Maharashtra Legislature enacted by Mah. Act 49 of 1969 a proviso to sub-section (1-A) of section 32-F laying down that even though the tenant had not given intimation as required by sub-section (1-A), if the tenant continued in possession of the land of the commencement of the amending Act which came into force on October 17, 1969, he could give intimation within a period of two years from the commencement of the Act i.e. before 17th October. 1971. Mr. Gole is unable to show whether a fresh intimation was given under this sub-section. However, it is now settled that if the tenant has been contending before all the tenancy authorities that he wants to purchase the land that is substantial compliance with this proviso. By filing appeal against the order passed by the Agricultural Lands Tribunal and revision application against the decision of the Deputy collector and this special civil application, the tenant has given sufficient notice to the landlord that he desires to purchase the land u/s 32-F. For this reason alone the order passed by the three tenancy authorities deserves to be quashed and the proceedings remitted to the Agricultural Lands Tribunal for holding further enquiry u/s 32-G.

4. However, Mr. Gole, the learned counsel for the petitioner submitted that the view taken by the Revenue Tribunal with regard to the efface of the order passed on the landlord's application u/s 31, is not in accordance with the law. The Revenue Tribunal has dealt with this point as follows:

"It is contended on behalf of the applicant that he had become the deemed purchaser of the suit land on 16-3-1961 when the application filed by the landlord was dismissed u/s 31. As against this, it is argued on behalf of the opponent that in order that the tenant may become the deemed purchaser on the postponed date three conditions are required to be fulfilled (1) the landlord must be major on 1-4-1957: (2) that he ought to have applied u/s 29 read with Section 31: and (3) his application should have been rejected by the Tenancy Court. Thus even for a consideration of the postponed date the landlord must be major on 1-4-1957: But it can be seen in this case that the landlord was admittedly minor on 1-4-1957".

5. This finding of the Revenue Tribunal is challenged by Mr. Gole, relying on the provisions of Section 32-F (2) which lay down that the provisions of Section 32 to 32-E (both inclusive) shall, so far as may be applicable, apply to such purchase. Mr. Gole argues that the Revenue Tribunal ignored the words "so far as may be applicable." when it came to the conclusion that the landlord must be major on April 1, 1957. This submission is correct and must be accepted. Although Section 32-F deals with the right of the tenant to purchase the land after the period during which the landlord is entitled to terminate the tenancy u/s 31, the section

does not expressly deal with the question as to what will happen if the landlord who attained majority exercised his right u/s 31 and the application made u/s 31 thereafter is dismissed as in the present case. The effect of that dismissal must be considered having regard to the provisions of Section 32 in so far as they are applicable. The words in "so far as applicable" must necessarily exclude the reference to April 1, 1957, because that could never apply to a case governed by Section 32-F dealing with minor, widow or disabled landlord and tenant on the tillers" day. The revenue Tribunal was, therefore, in error in holding that because the landlord was not a major on April 1, 1957, the tenants were not entitled to purchase u/s 32. The first proviso to sub-section (1) of Section 32 lays down that if an application made by the landlord u/s 31 for obtaining possession of the land has been rejected by the Mamlatdar or by the Collector in appeal or in revision by the Collector in appeal or in revision by the Maharashtra Revenue Tribunal under the provisions of this Act, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed. There is no reason why that proviso should not apply to a tenant on whom the right of purchase is conferred u/s 32-F in view of the provisions of sub-section (2) of Section 32-F.

6. In the result, the petition must succeed. Rule made absolute. The order of the Revenue Tribunal dated April 26, 1968, the order of the Prant Officer, Gadhinglaj dated February 20, 1967 and the order of the Agricultural Lands Tribunal dated November 30, 1963 are all quashed and the case is remitted to the Tahsildar, Changed or any other officer competent to hold proceedings u/s 32-G, for holding an enquiry u/s 32-G for fixing the price of the land which is statutorily vested in the tenants u/s 32 who shall dispose it of in accordance with the law and in the light of the observations made hereinabove. In the circumstances of the case there will be no order as to costs.