

(2002) 07 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No's. 3797 and 3799 of 1985

Ramu Kerba Bhongarde

APPELLANT

Vs

Akbar Mohamed Naikwadi (since deceased through his L.Rs.
Jilebi Akbar Naikwadi and 4 Ors.)

RESPONDENT

Date of Decision : 03-07-2002

Acts Referred:

Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 — Section 28
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 32G(3), 32G(6), 32P

Citation : (2003) 3 ALLMR 958

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

Bench : Single Bench

Advocate : S.S. Pandit, for the Appellant; S.M. Raikar, for Respondent No. 1A to 1E, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—Both these writ petitions can be disposed of by common order as they pertain to the same land and arising from the tenancy proceedings between the same parties. These writ petitions take exception to the common order passed by the Maharashtra Revenue Tribunal, at Camp Kolhapur dated July 29, 1985 in Revision Nos. MRT/KP.315/1977 and MRT/KP.316/1977. The suit land is situated at survey No. 227 admeasuring 8 Acres 21 Gunthas at Village Banage, Tal Kagal, Dist. Kolhapur. Undisputedly, the suit land was the Inam land i.e. Hujur Sanadi Inam governed by the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. The Petitioner was inducted in the said land as tenant and, as he was lawfully cultivating the suit land in that capacity on the tillers day i.e. 1st April, 1957, proceedings u/s 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 were initiated. In that proceedings, the Petitioner unambiguously stated that he was unwilling to purchase the suit land. The unwillingness has been so recorded. The record also indicates that the consequence of that statement were also explained to the Petitioner but he maintained his position that he was unwilling to purchase the

suit land. Accordingly, the tenancy authority declared the purchase having become ineffective, by order dated 21st October, 1960. Thereafter, the respondent landlord moved an application u/s 32P of the Act. That application was granted and an order was passed directing the Petitioner to hand over possession of the suit land. Subsequent to the above said order u/s 32P of the Act, the suit land which was held as Inam land was re-granted to the Respondent. After the said regrant, once again enquiry u/s 32G of the Act were initiated in the year 1974. Even in this proceedings the Petitioner expressed his unwillingness to purchase the suit land and it is so recorded by the authority. In view of the said statement once again Tenancy Authority held that the purchase has become ineffective. Consequently to the said order, proceedings u/s 32P were initiated and same were decided in favour of the Respondent Landlord on 23rd March, 1974. Pursuant to the said order possession of the suit land was made over to the Respondent landlord on 16.3.1975. Kabja Pavati reflecting this position was prepared in the presence of the Petitioner and with his full consent and knowledge. However, thereafter the Petitioner filed two separate appeals before the Collector, Kolhapur bearing Tenancy Appeal Nos. 15/76 and 16/76, challenging both the orders passed in 32G as well as 32G proceedings. The Collector decided both the appeals by separate orders. The Collector took the view that proper procedure u/s 32G(3) was not complied with and, therefore, the order passed u/s 32G and u/s 32P were invalid. Accordingly, the Collector set aside those orders and remanded the matter to the tenancy Authority for reconsideration. This order of the Collector was challenged by the Respondent before the Maharashtra Revenue Tribunal by way of two separate Revision Application Nos. MRT.KP.315/77 and MRT.KP.316/77. The Tribunal, after examining the rival position and the record held that the Collector was wrong in holding that proper procedure has not been followed u/s 32G(3). Whereas, according to the Tribunal, the Petitioner tenant had made conscious statement before the authorities on more than one occasion that he was unwilling to purchase the suit land. According to the Tribunal, therefore, in view of the consistent stand taken by the tenant expressing his unwillingness to purchase the land, the ground or challenge to over come the said position was unavailable. The Tribunal, therefore, allowed both the revision applications preferred by the Respondent. Against the said order the Petitioner preferred two separate Writ Petitions bearing Nos. 491 of 1979 and 492 of 1979. This Court, however, was of the view that the authorities have overlooked the crucial aspect of the matter that the land was Inam land and the same was admittedly regretted in the year 1971 to the Respondent and as such the previous proceedings u/s 32G which had terminated in favour of the Respondent landlord prior to regrant were without authority of law. For taking this view the learned single Judge of this Court placed reliance on the decision of this court in the case of Sripati Balwant Konde v. Shaikh Karim 1982 TLR 24. This Court, therefore, by order dated December 9, 1983 remanded the matter to the Tribunal to reconsider the controversy afresh. Pursuant to the remand order passed by this Court, both the Revision Applications were restored to the file of the Tribunal. The Tribunal

examined the question as to whether the previous proceedings between the parties u/s 32G and 32P of the Act prior to the date of regrant can be said to be invalid and without authority of law. The Tribunal has held that having regard to the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 read with the provisions of the Bombay Merged Territories Miscellaneous Alienation Abolition Act, 1959, neither the authorities nor the parties were precluded from maintaining or continuing the proceedings u/s 32G or Section 32P of the Act before the date of regrant. For taking this view the Tribunal has placed reliance on a direct decisions of this Court in the Case of Sripati Mane v. Shamrao Jagdale in Special Civil Application No. 981 of 1966 decided on 25.9.1968 reported in 1970 TLR 135 as well as another unreported decision in Special C.A.No. 374 of 1965 decided on 30th November, 1967. The Tribunal has noted that the decision in Sripati Balwant Konde 1982 TLR 24 concerns the provisions of the Maharashtra Revenue Patel (Abolition of Office) Act, 1962 which are materially different than the Abolition Act of 1955 applicable to the present case. The Tribunal further held that no other question was required to be considered in view of the limited remand order passed by this Court. Accordingly, the Tribunal allowed the revision applications and was pleased to set aside the order of remand passed by the Collector which was the subject matter of challenge and, instead, restored the order passed by the first court. It is this decision of the Tribunal which is the subject matter of challenge in the present writ petitions.

2. Mr. Pandit appearing for the Petitioner contends that the Tribunal was completely in error in taking the view that the proceedings u/s 32G and 32P of the Act could be instituted and continued even before the date of regrant in favour of the Respondent. He has placed reliance on the decision of this court in Sripati Balwant Konde's case to support that submission. He has also placed reliance on Section 32G(6) of the Act to contend that no proceedings could be initiated or continued before the date of regrant. He further submits that in any case the Tribunal has clearly misread the remand order of this Court by confining the enquiry only to one question, whereas the Tribunal ought to have examined the matter on merits with regard to the challenge in relation to the factum or correctness of the alleged statement recorded on behalf of the Petitioner in 32G and 32P proceedings. According to him, it is inconceivable that the tenant would express unwillingness to purchase the land when such a valuable right had crystallized in his favour by operation of law. According to him, the Petitioner is a rustic person and obviously could not have realized the consequence of the statement recorded in the said proceeding which would eventually disrobe him of his right to purchase the subject land.

3. On the other hand, the learned counsel for the Respondent has supported the view taken by the Tribunal and, he further contends that, there is no reason to interfere with the conclusion recorded by the Tribunal on the earlier occasion.

4. Having considered the rival contentions, to my mind, the first point raised by Mr. Pandit is no more res integra, for it is fully covered by the decision in the case

of *Sripati Mane v. Shamrao Jagdale* (Supra). Even in that case, the land was Sanadi Inam land. And before the date of regrant, Section 32G proceedings were initiated. This specific question was agitated even in that case—that proceedings u/s 32G initiated prior to the date of regrant were without authority of law. This Court on examining the relevant provisions of the Abolition Act of 1955 as well as the Tenancy Act, 1948 has held that such proceedings can be resorted to by the parties as the same have been expressly saved by Section 28 of the Abolition Act of 1955. Even in the present case the land was Hujuri Sanadi Inam land which was governed by the provisions of the said Abolition Act of 1955. This fact is not in dispute. In the circumstances, the above decision of this Court will squarely apply to the present case and it will have to be held that the previous proceedings initiated u/s 32G and 32P, which culminated in favour of the Respondent landlady even prior to the date of regrant, will be binding on the Petitioner as they are legitimate proceedings between the parties. It is not in dispute that orders passed in those proceedings have attained finality as the same have not been challenged at all; whereas the present Petitions emanate from the subsequent action initiated u/s 32G in the year 1974 after the regrant in year 1971. If that is so then there is no reason to examine the correctness or otherwise of the decision in the subsequent proceeding as the same could not have been resorted to in view of the finality of adjudication of the issue between the parties in the earlier proceedings, albeit prior to regrant. Indeed, the correctness of the orders passed in proceedings prior to regrant cannot be reopened or allowed to be assailed in the subsequent proceedings after regrant initiated on an erroneous basis. Besides the above decision of this Court, it will be useful to advert to a decision of the Apex Court reported in *Shri Pandurang Dnyanoba Lad Vs. Shri Dada Rama Methe and Others*, The Apex Court had an occasion to consider the efficacy of the provisions of the Abolition Act of 1955. In Paragraph 5 of the said decision the Apex Court has observed that there is no inconsistency in the provisions of the Tenancy Act, 1948 and that of the Abolition Act of 1955. The Apex Court has observed that Section 28 of the Abolition Act, 1955 provides that nothing contained in that Act shall affect the application of any of the provisions of the Tenancy Act, 1948. Understood thus, the earlier proceedings between the parties u/s 32G and 32P which culminated in favour of the Respondent prior to the regrant which have attained finality, cannot be reopened in this manner.

5. Be that as it may, the Tribunal has rightly distinguished the Judgment of this Court in *Sripati Balwant Konde's* case (supra) by pointing out that the provisions of the Maharashtra Revenue Patel (Abolition of Office) Act, 1962 are materially different from the Abolition Act of 1955 with which we are presently concerned. The Tribunal was, therefore, right in following the direct decision of this Court which deals with the provisions of the Abolition Act, 1955. Accordingly, the Tribunal cannot be faulted with the view that the previous proceedings u/s 32G and 32P were validly maintained and continued even prior to the date of regrant in favour of the Respondent.

6. The next grievance made on behalf of the Petitioner is that the Tribunal has not adverted to the other questions on merit though the High Court had remanded the case for examination of all the questions afresh. There is no substance in this grievance. The Tribunal was right that the remand was mainly to decide the question as to whether proceedings u/s 32G commenced in 1968 were valid in absence of regrant. No other enquiry was necessary or for that matter could have been examined by the tribunal, having regard to the limited nature of remand made by this court. In the earlier round, the Tribunal has adverted to all the relevant materials and contentions and has answered the issues on merit against the Petitioner. The Tribunal has held that the earlier proceedings were valid and in conformity with the requirements of law. It has been also found that the Petitioner was given ample opportunity on more than one occasion- but on every occasion, he consciously made statement that he was unwilling to purchase the land. The circumstances would clearly show that there was no confusion in the mind of the Petitioner at the time of making that statement of unwillingness to purchase. The Tribunal has rightly discarded the argument of fraud practised on the Petitioner in the earlier proceedings. If the tenant had willingly made such statement then it was not open for the Authority to ignore the same just because the tenant had given up his statutory right to purchase the land, unless there were positive circumstances to show that such a statement was made under mistaken belief, coercion or fraud etc. On the other hand, the present case the Authorities have recorded that the Petitioner was explained about the consequences of his statement but he preferred to maintain his stand. There is no reason to doubt the correctness of the said record.

7. The next grievance made on behalf of the Petitioner is that the earlier proceedings were void on account of non compliance of mandatory procedure prescribed by the proviso to Section 32G(3) of the Act. However, the learned counsel was not in a position to demonstrate as to what was the non compliance in this case that would vitiate the earlier order. On the other hand, it is seen from the record and, it has been so held by the first authority as well as the Revisional authority that, the tenant had appeared before the authority and he voluntarily made statement that he was unwilling to purchase the land. After that statement was made by the Petitioner, the same was read over and explained to him including its consequences. Inspite of that he maintained his statement and only thereafter, the the Tribunal passed the order in writing declaring that the purchase had become ineffective. Whereas, the proviso would apply only when the tenant had remained absent before the authority. This is obvious from the plain language of the said proviso to Section 32G(3), which reads thus:

"Provided that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same".

In the present case, however, it is not the Petitioner's case that he was not

personally present when the statement is stated to have been recorded. But, he admits that he was present during the enquiry and made that statement. Suffice it to point out that no case of non compliance of the mandatory procedure has been established. The Tribunal was right in holding that the Collector was manifestly wrong that there was non compliance of the procedure u/s 32G of the Act. In any case, illegality or irregularity of the earlier proceedings cannot be allowed to be set up in this manner when those orders have been allowed to attain finality.

8. For the aforesaid reasons, both these writ petitions would fail and the same are being dismissed with no order as to costs. Rule is discharged.