

(2001) 12 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 1757 of 1988

Sadashiv Mahadeo Kumbhar

APPELLANT

Vs

Balkrishna Bhikaji Walimbe and Another

RESPONDENT

Date of Decision : 05-12-2001

Acts Referred:

Bombay Tenancy (Amendment) Act, 1970 — Section 32G
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G(3), 72
Mamlatdars Court Act, 1906 — Section 16, 7

Citation : (2002) 2 ALLMR 916 : (2002) 4 BomCR 346

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : Karandikar and A.A. Kumbhakoni, for the Appellant; Y.S. Jahagirdar and Dnyaneshwar Deshmukh, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—The petitioner is hereby assailing correctness, propriety and legality of the judgment and order, dated 11-6-1987 passed by the Member, Maharashtra Revenue Tribunal, Pune in the matter of MRT-NS-VII-10/86 (TNC.B 23/85), Pune whereby the learned member confirmed the order passed by Sub-Divisional Officer, Satara in Tenancy Appeal No. 34/2982 by holding that in view of the provisions of section 32-G of Bombay Tenancy and Agricultural Lands Act, 1948 the landlord is also entitled to move an application for reviewing the order passed by the Tribunal in view of section 32-G more particularly sub-section (3) of B.T. & A.L. Act.

2. The facts need to be stated for unfolding the matter. Proceedings u/s 32-G of Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as Act for convenience) started in respect of Suit Survey No. 121/3, 121/4 of Village Kumte, Taluka Satara, District Satara before Additional Tahasildar and A.L.T. who passed his final order in those proceedings on 30th of December, 1981 and decided that the suit land was to be sold to the tenant Sadashiv Mahadev

Kumbhar after fixing the purchase price of Rs. 2900/-. On the date of said proceeding the landlord Balkrishan Bhikji Walimbe remained absent and hence enquiry was held treating him as ex parte. On getting the knowledge of the said order passed against him the landlord Walimbe applied to the Additional Tahasildar on 1-2-1982 averring that he could not remain present on the said date of inquiry as he was ill. He therefore, requested A.L.T. to review the order dated 30-12-1981 passed by him in proceeding u/s 32-G of the Act. Said application was granted by Additional Tahasildar and A.L.T., Satara by his order dated 8-2-1982. The tenant challenged the said judgment and order by preferring appeal before the Sub-Divisional Officer, Satara and the learned Sub-Divisional Officer, Satara, by his order dated 29-3-1985 dismissed the said appeal by holding that the order passed by the Additional Tahasildar A.L.T., Satara was correct and legal. S.D.O. Satara observed that on the date of the said enquiry the landlord was ill and he could not remain present before the said authority and in support of such contention raised by the landlord he had produced necessary medical certificate. He pointed out that, the said averment of illness was not challenged by the tenant before the Additional Tahasildar and A.L.T.

3. The member of M.R.T., dismissed the revision filed by the tenant, by holding that the provisions of section 32-G were not preventing such a review application being filed, being heard and being decided by the concerned Court.

4. Shri Karandikar appearing for the petitioners submitted that in the matter of Vishnu Ganu Patil v. Maruti Santu Kurade, reported in 1970 Bom.L.R. 555, the Single Bench of this Court had held that the provisions of section 32-G of the Act did not prohibit the application for review of judgment and order passed by A.L.T., in view of provisions of section 32-G(3) of the Act. He submitted that in the said judgment the Single Bench had held that the right conferred on the tenant to "apply for review" is implicit obligation on the Tribunal to deal with it and also to grant if in time, as no discretion is left with it to reject it on any other ground whatsoever. Shri Karandikar submitted that the learned Single Bench has not considered the said point keeping in view the entitlement of the landlord. He submitted that in view of that, according to him the landlord is not entitled to move an application for review at all and therefore, member of M.R.T. should have set aside the order which was passed by A.L.T. and Additional Tahasildar in favour of the landlord Walimbe. He prayed that the writ of certiorari be granted in favour of the petitioners and the said judgment and order be quashed.

4-A. Shri Deshmukh appearing for respondent submitted that no such ban can be imposed on the landlord and it cannot be said that he is not entitled to move an application for review because the provisions of CPC are applicable to the Mamlatdars' Courts and the provisions and procedures in respect of the proceeding under the Tenancy Act are to be conducted in view of the provisions of Mamlatdars' Courts Act, 1906. He submitted that in view of that the provisions of Order 47 of C.P.C. would be applicable and the landlord cannot be

banned to move an application for review of the judgment order which has been passed against him which is not legal or which has been passed against him ex parte.

5. Provisions of section 72 of the Act provides that any of the enquiries and proceedings commenced on the presentation of the application u/s 71, the Mamlatdar or Tribunal shall exercise the same powers as the Mamlatdar's Court under the Mamlatdars' Court Act, 1906 and shall follow the provisions of the said Act, as if the Mamlatdar or the Tribunal were a Mamlatdar's Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act. Every decision of the Mamlatdar or the Tribunal shall be recorded in the form of an order which shall state reasons for such decision. The entire structure of Mamlatdars Court Act 1906 shows that, provisions of C.P.C. are to govern the procedures which are being conducted by Mamlatdars' Court. A specific provision has been made by providing the proviso to section 16 by which the Mamlatdars Court is empowered to set aside the ex-parte judgment and order passed against the opponent if reasonable cause is shown. It is to be noted that every care has been taken to make provisions for equipping Mamlatdars' Court to deal with the applications or lis presented before it in the permissible nature which includes passing of judgment and order and reaching its final goal of implementation or execution. They are parallel to Civil Procedure Code. Therefore, by Rule of ejusdem generis, it will have to be held that Mamlatdars Courts are empowered to exercise the right of review of its order also if it is necessary to do so in the interest of justice.

6. The provisions of section 32-G will have to be read together and in its entirety. It is to be read as whole and not in piecemeal.

Section 32-G reads :

"(1) As soon as may be after the tillers' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon,---

(a) all tenants who u/s 32 are deemed to have purchased the lands,

(b) all landlords of such lands, and

(c) all other persons interested therein,

to appear before it on the date specified in the notice. The tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each of them to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as tenant.

(3) Where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the tribunal shall by an order in writing declare that such

tenant is not willing to purchase the land and that the purchase is ineffective:

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.

(4) If a tenant is willing to purchase, the tribunal shall, after giving an opportunity to the tenant and landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32-H and of sub-section (3) of section 63-A (provided that where the purchase price in accordance with the provisions of section 32-H is mutually agreed upon by the landlord and the tenant, the tribunal after satisfying itself in such manner as may be prescribed that the tenant's consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement).

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the tribunal shall, as soon as may be, after such date determine the price of the land.

(6) If any land which, by or under the provisions of any of the land Tenures Abolition Acts referred to in Schedule III to this Act, is regranted to the holder thereof on condition that it was not transferrable, such condition shall not be deemed to affect the right of any person holding such land on lease created before the regrant and such, persons shall as a tenant be deemed to have purchased the land under this section, as if the condition that it was not transferable was not the condition of regrant.

7. Sub-section (1) of section 32 provides for the action to be taken by the A.L.T., namely that the notices are to be sent to the tenant and landlord and also as far as practicable other persons interested in it. In view of the provisions of sub-section (2) their statements are to be recorded. It is under duty of recording statements of tenants where he is or he is not willing to purchase the land held by him as tenant. Thereafter, comes provisions of sub-section (3) which provides that wherein tenant fails to appear or make his statement that he is not willing to purchase the land the tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that purchase is ineffective, provided that if such order passed in default of "any party (emphasis provided)" the order so passed, may within 60 days from the date of which the order was communicated to him apply for review of the same.

8. While dealing with the entitlement of the tenancy the Single Bench of this Court has given consideration to the necessary provisions of section 32-G of the Act in Vishnu Ganu Patil's case. The entitlement of the landlord for such review sought might not have been considered by the Single Bench because there might not have been occasion to deal with it or that point was not for consideration at

all. But as there is no discussion or ponderation on that point in the said judgment, the single Bench has not adjudicated against the proposition which has been submitted before this Court by Shri Deshmukh. The Bombay Tenancy and Agricultural Lands Act, 1948 has not been enacted for the purpose dispossessing the landlords from their lawful holdings of the land without due process of law. The said Act has not been brought for usurping their lands. It does not mean that the landlords are to be dispossessed from their lands without following due process of law and enquiry as provided. The said provisions have been made with the object of protecting the interest of landlords also. True that it is giving leaning scales to the tenants and giving leaning scale towards protection of their lawful rights in respect of the lands held by them on or before the tiller's day. If the landlord desires to move an application for the purpose of bringing effect the notice of the A.L.T. that its judgment and order happens to be inconsistent with the facts and material brought before it in the particular case, if that happens to be inconsistent with the provisions of existing law, the A.L.T. is empowered to entertain such review application though filed by the landlord because the words "any party whose default the order was passed" includes the landlord also. It is to be noted that he happens to be a party in the said lis when the application is presented which is to be treated as a plaint. Like plaintiff, tenant, applicant, non applicant, petitioner, opponent, landlord is the necessary party in such litigation and he is very much included in the phraseology used in sub-section (3) of section 32-G and there cannot be any doubt about it. This Court for the purpose of removing the clouds of doubt on account of absence of verdict in Vishnu Ganu Patil's case declares that like tenant the landlord is also entitled to move an application for review in view of sub-section (3) of section 32-G of Tenancy Act, more particularly for avoiding such arguments in future.

9. The same sort of view has been taken by the A.L.T. and it has been reiterated by S.D.O. and confirmed by the member of M.R.T. Not only that member of M.R.T. has pointed out that S.D.O. has recorded findings of fact, that the medical certificate was produced by the landlord for showing the cause of his absence and that factum of illness was not challenged by the present petition before S.D.O. After considering the material on record, the relevant provisions of law and precedent this Court has no hesitation in coming to the conclusion that judgments which are being assailed by this petition are correct, proper and legal and there is no ground for any interference whatsoever. Therefore, while dealing with this petition in view of Article 227 of Constitution of India, this Court dismisses this writ petition with costs.

Record be sent to the A.L.T. as early as possible.