

(1980) 01 BOM CK 0021

In the Bombay High Court

Case No : Spl. Civil Application No. 1482 of 1975

Sakharam Shinde and Others

APPELLANT

Vs

Vilas Anant Deshpande and Others

RESPONDENT

Date of Decision : 23-01-1980

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 14, 29, 31, 31(1), 31(3)

Citation : AIR 1981 Bom 68 : (1981) 83 BOMLR 23 : (1980) MhLj 384

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : Babasaheb A. Bhonsale, for the Appellant; Bhimrao N. Naik, for the Respondent

Judgement

1. The question raised by Mr. Babasaheb Bhonsale appearing for the petitioners in this petition which arises out of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter, the Tenancy Act) is, really speaking, one which presents quite some difficulty. It reveals the shortcomings of the draftsmen who have to burn the midnight oil for the purpose of effecting so many amendments in the Tenancy Act.

2. The question arises in the following circumstances:--

3. The land in question has Survey No. 316 admeasuring 39 Acres, 23 Gunthas. Respondent No. 1 herein (hereinafter, the Respondent) was the owner of the same till the demise of the present petitioner who is the tenant of the same at all relevant times. Respondent No. 1 was born on 1-2-1952 which means that he would attain majority on 1-2-1970. On 25-3-1957 the respondent applied for possession of one half portion of the lands in question which, for the sake of brevity, is referred to hereinafter as the said lands". That application was filed u/s 31 of the Tenancy Act. It may be stated here that u/s 31 of the Tenancy Act, the landlord can apply for possession of the lands let out by him to the tenant if he required the possession of the same for his own personal bona fide cultivation. But, if he makes good his contention regarding bona fide

requirement, the most that he can get under the said Section 31 is one half portion of the lands in question. Then, there is a further provision contained in Section 31-C of the Tenancy Act by virtue of which the tenancy of the remaining lands which would continue with the tenant can, in no case, be terminated by the landlord on the ground of bona fide personal requirement.

4. The said application of the respondent under the Tenancy Act was allowed on 11-11-1957 and he received possession of one half portion of the said lands pursuant to the said order. The land which was given into the possession of the respondent was numbered as Survey No. 316/2 whereas the remaining land which continued to be with the petitioner-tenant was numbered as Survey No. 316/1.

5. Thereafter, the Agricultural Lands Tribunal started proceedings u/s 32-C of the Tenancy Act but the said proceedings were dropped in view of the fact that the landlord was a minor at that time. Against the order dropping the said proceedings, the present petitioners filed appeal No. 63 of 1967 to the Appellate Authority. On 9-6-1969 the said appeal was allowed and the matter was remanded to the Agricultural Lands Tribunal for fixation of the purchase price. The respondent filed a revision application to the Maharashtra Revenue Tribunal at Poona but the same was dismissed on 21-9-1968.

6. Thereafter, the proceedings u/s 32-C started and notices were issued to the petitioners. At one stage, some ex parte orders were passed but we need not be detained by the details pertaining to the same. It is sufficient to state here that the proceedings continued till 1-2-1970 on which date the respondent landlord attained majority.

7. On 20-12-1975 the petitioner sent an intimation to the respondent-landlord, by way of abundant caution, of his desire to purchase the land. On 15-3-1972 the Agricultural Lands Tribunal fixed the purchase price in respect of the said lands and also fixed the installments payable by the petitioners in that behalf. The respondent, filed an appeal against the order of the Agricultural Lands Tribunal fixing the price. This appeal was allowed by the Appellate Authority on 9-7-1973 who held that the sale had become ineffective. The petitioners filed a revision application to the Maharashtra Revenue Tribunal which was referred to the Full Bench of the Tribunal for hearing. The perusal of the three judgments given by the three learned members of the Full Bench of the Tribunal discloses that each of the members and the President of the Tribunal found it difficult to reconcile the various provisions of the Tenancy Act. It is really unnecessary for me to go through the reasoning of the three learned members of the Full Bench on which their judgment were based. Suffice here to state that by a majority view, the revision application was dismissed. Hence, the present petition by the tenant under Article 227 of the Constitution.

8. Mr. Bhonsale appearing for the petitioners contended that the entire question arising in this petition is really speaking, now completely in his favour by virtue

of the pronouncement of law by a Division Bench of this Court in the case of Nago Dattu Mahajan Vs. Smt. Yeshodabai Huna Mahajan, No doubt, the case with which the Division Bench was dealing concerned with the rights of a widow landlady and not with a minor landlord, but Mr. Bhonsale contends that the observations are wide enough to include the case even of a minor landlord, This is what was held in the said decision :--

"Sections 31, 32 and 32F reflect a well knit scheme, each being an integral part of the other. Disabled landlords are not excluded from the provisions of Section 31 (1) either by implication or any express provision and are not prevented from claiming resumption even before March 31, 1957. Disabled landlords have a choice to avail of either of two provisions of resumption, namely, Section 31 (1) or Section 31 (3), exercise of which depends on circumstances in which each of them finds himself. No landlord can avail of both provisions, Section 31 having been designed to afford only one last opportunity of resumption. Any such landlord cannot seek resumption u/s 31 (3) again if he or she has availed of the right u/s 31 (1). Section 34F (1) (a) being merely corollary and counterpart of Section 31 (3) its application also would depend on such landlord's choice and competency to avail of the provisions of Section 31 (3). Consequently its provisions cannot be attracted when the right to resume u/s 31 (1) is availed of and once such opportunity is exhausted by such disabled landlord. Section 32F (1) (a) cannot be attracted indiscriminately merely because the tenant's landlord happens to be a disabled landlord, that is, a minor or a widow as specified in these two sections. Section 32F (1) (a) will not be attracted when the widow or any such other disabled landlord seeks resumption u/s 31 (1) before March 31, 1957, without regard to whether he or she fails or succeeds in the attempt. It will not apply even if such an application for resumption is rejected. Due to exhaustion of such right, the landlord cannot avail of Section 31 (3) in spite of being a disabled landlord. In application of Section 31 (3) results in application of Section 32F (1) (a) also. Like tenants of every other landlord applying u/s 31 (1), the tenant of such a landlord also becomes an automatic purchaser of the lands on the date of final rejection of such application, as under the first proviso to Section 32 (1) (b). The contemplated postponement of the tenant's right of purchase u/s 32F (1) (a) is entirely based on the hypothesis that the landlord has not availed of such right u/s 31 (1), and the right to resume still subsists even after the notified tillers" day, that is, April 1, 1957. The entitlement of such a landlord to claim resumption after April 1, 1957 is the sine qua non for postponement of the statutory right of purchase of his tenant under this section. Where, as in the present case, the widow or other disabled landlord contemplated u/s 31(3), avails herself or himself of the right of resumption by recourse to Section 31 (1). she or he ceases to be so entitled to claim the resumption thereafter, without regard to whether such application results in resumption of land or not. Her or his being thus entitled to claim resumption again after April 1, 1957 therefore, cannot even remotely be conceived. This itself prevents the application of Section 32F (1) (a) and also the further

postponement of the right to purchase contemplated there under and entitles the tenant to claim the benefit of the first proviso to Section 32 (1) (b) and become a statutory purchaser on rejection of the application u/s 31 (1)."

Relying upon these observations Mr. Bhonsale contends that once the landlord had made an application u/s 31 of the Tenancy Act and had got possession in respect of one half portion of the suit lands, the tenant ipso facto became owner of the remaining one half portion on 1-11-1957. Mr. Naik appearing for the respondent-landlord contended that the law discussed in the said authority was in an entirely different context, namely in the context of the rights of a widow landlady. He contended that the judgment could have no application to the facts of this case. He also contended that there was no provision u/s 32 to 32 (h) under or by virtue of which the tenant can or did become an owner of the land left over after the landlord recovered possession of one half portion of the total lands u/s 31 of the Tenancy Act.

9. It is necessary to consider the scheme of the entire Section 32 to see whether the tenant becomes owner of the remaining portion of the land as mentioned above, ipso facto, after the landlord recovered possession of one half portion of the land let out to the tenant u/s 31 of the Act. Section 32 (1) of the Tenancy Act provides in the first instance, that on the 1st April, 1957 every tenant shall be deemed to have become the owner of the land if the tenant possesses the qualifications mentioned in the various clauses of the said Sub-section. Clause (a) of the said subsection deals with permanent tenants, with whom we are not concerned. Clause (b) of the Clause section relates to the position of a tenant cultivating the land personally but who is other than a permanent tenant. We will call such a tenant in ordinary tenant. Of such ordinary tenant, there are four categories contemplated. The first category is of the tenant whose landlord has not given any notice of termination of the tenancy u/s 31. Such a tenant automatically becomes the owner of the land subject, of course, to the other provisions. Second category is of the ordinary tenants to whom notice of termination of their tenancy has been issued by the landlord u/s 31 of the Act but against whom no application is made by the landlord before 31-3-1957. Such ordinary tenants also becomes statutory owners with effect from 1-4-1957 itself. The third category of ordinary tenants who, ipso facto, become the owners are those against whom no notice of termination of tenancy comes to have been issued u/s 14 of the Tenancy Act. In this category is also clubbed a tenant to whom such a notice has been given but no proceedings for recovery u/s 14 read with Section 29 of the Act has been instituted by the landlord. Even such a tenant becomes a statutory tenant of the land with effect from 1st April, 1957.

10. Lastly, there is the category of tenants contemplated by the proviso of Clause 3, Sub-section (1) of Section 32. The tenant of this category is the one against whom the landlord has made the necessary application either u/s 31 read with Section 29 or u/s 14 read with Section 29 but which application is rejected by the Tenancy Authority. In the case of such a tenant, the date of the statutory owner-

ship is riot 1st April, 1957 but the date of the statutory purchase is the one on which the application of the landlord is rejected by the Tenancy authority. "

11. Here, ends the enumeration of categories of tenants who are deemed to have become owners of the lands in question. There is no other category of tenants u/s 32, or for the matter of that, in any of the provisions of the Statute who were in possession of the lands on 1-4-1957 and who can become the statutory owners on the tillers" day or the postponed date.

12. The paraphrasing of all the relevant provisions would make it clear that there is a glaring omission on the part of the framers" of the Statute in the matter of providing statutory ownership in respect of at least one more important category of tenants. This category is of those tenants against whom application for possession has been made by the landlord u/s 31 of the Act before 31st March, 1957 and which application has been allowed by the Tenancy authority to the extent of one half portion of the land. We have seen above that the date of the statutory ownership has been postponed on account of the application for possession by the landlord and this application may be of two categories, one u/s 14 read with Section 29 of the Act and the other u/s 31 read with Section 29 of the Act. Now, if the application was made u/s 14 read with Section 29 of the Act and the same was allowed, no question would arise about the tenant becoming owner in respect of any portion of the land, for the very simple reason that the tenant would be deprived of the entire land in that case and, hence, no question of his becoming owner on the postponed date would arise. The real question would arise when the application has been made by the landlord before 31-3-1957 u/s 31 of the Act. What is noteworthy is that if such an application is allowed by the Tenancy Court, it can be allowed only to the extent of one half portion of the land. We have seen that u/s 31 of the Act, the landlord can get possession only of one half portion of the land even if he proves his bona fide personal requirement to the hilt. The tenant, in that case, is bound to continue in possession of the remaining one half portion of the land and under the said Section 31 the tenancy in respect of the remaining one half portion of the land can never be terminated by the landlord. The question then would arise as to what would be "the position of the tenant vis-a-vis this portion of the land which continues with him even after the application of the landlord u/s 31 has been allowed. If we have a look at the scheme of the Act and particularly Section 31 thereof, we find that every person who has been the tenant of any land on 1-4-1957, he is either entitled to be in possession in the capacity of an owner or he loses all his rights to continue to be in possession at all. There are a few exceptions to this rule such as those contained u/s 43 (a) etc. But, they fall in a class by themselves and we are not concerned with those provisions. Subject to those provisions, it can be said without hesitation that if a ten ant in possession of the land on 1-4-1957 is not entitled to purchase the land or rather he is not entitled to become the statutory owner of the land either on, the tillers" day or on the postponed date he loses the very right of cultivating the land as tenant.

13. Now, in the case of such last mentioned category of tenants, the position is extremely peculiar. It cannot be said that the landlord's application for possession of the land has been rejected nor can it be said that the said application has been allowed. The application cannot be said to be allowed because the tenant continues to be in possession. It cannot be said to have been rejected because the landlord got the maximum relief that he was entitled to under the provisions of Section 31 of the Act. Now, unless the application has been rejected, the provisions regarding the postponed date and the provisions regarding right of the tenant to become deemed purchaser of the land does not come into operation at all. This is a category, therefore, in respect of which there is a very glaring lacuna left during the drafting of the Statute. I am tempted to borrow the apt phraseology of Salmond and to describe this as an unfortunate specimen of legislative skill. While drafting the Act, no care was taken to see that all the categories of tenants as are conceivable were provided for. The direct result has been that there is a category of tenants for whom there remains no provisions in the Tenancy Act.

14. But, although there is no provision as such, there does exist a clear intention on the part of the legislature to make such, a tenant a deemed tenant or a statutory tenant. This is clear from the fact that there is no provision under the Act by which the possession of such land can be taken from the tenant by the landlord. The provisions of Section 32 (p) do not apply to such land and there is no intendment under the Act that a tenant should continue to be a tenant ad infinitum except in the cases contemplated by Chapters III A, III AA, III B etc.

15. The Court must, therefore, find ways and means and modalities to give effect to the legislative intention which, in the present case, is abundantly clear. The intention, no doubt, is to make the tenant an owner but that intention has been expressed in a rather unhappy language. u/s 32 (1) (a), it is provided that a tenant shall become owner of the land on the date when the landlord's application u/s 31 is finally rejected. Mr. Bhonsale, appearing for the petitioners, contended that in the instant case, though the landlord's application cannot be said to have been rejected as a whole because he got possession of one half portion of the land which was all that he was entitled to u/s 31 of the Act, so far as the remaining land is concerned, the application must be deemed to have been rejected. To my mind, this submission made by Mr. Bhonsale has got to be accepted. Although in the normal language, rejection postulates a prayer and no relief can be said to have been rejected when it was not applied for at all, in the instant case, since the landlord applied for only one half portion of the land and that too without reference to any particularly bounded, specific 1/2 portion, his application must be deemed to have covered the entire lands and it must be deemed to have been rejected in respect of 1/2 portion of the land which continues with the tenant. I am sorry that I am required to stretch the language of the section; but the entire scheme of the Act, with particular reference to Sections 32 to 32 (p) thereof, leaves me no option but to resort to this device. Mr. Naik appearing for the respondent was fair enough to agree that, in the

circumstances of the case, no other construction was possible,

16. Having regard to all the facts and circumstances mentioned above, the impugned judgments given by the. Maharashtra Revenue Tribunal as also the judgment and order of the Deputy Collector dated 19-7-1973 cannot be sustained. Hence, they are hereby set aside and the order passed by the Tahsildar or Tenancy Awal Karkun dated 15-3-1972, as the case may be, is hereby restored. It is held that the petitioner tenant has become the statutory owner of the land in question with effect from 11th November, 1957.

17. The Rule earlier issued is, therefore, made absolute.

18. In the circumstances of the case there shall be no order as to costs.

19. Application allowed.