
(2004) 09 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No. 1000 of 1990

Shankar Genu Ganeshkar deceased by heirs Dinkar Shankar
Ganeshkar and Another

APPELLANT

Vs

Krishnabai deceased by her heirs Shantabai Deshmane and
Others

RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31, 31(1), 31(2), 31(3)

Citation : (2005) 1 ALLMR 753 : (2005) 2 BomCR 254 : (2005) 1 MhLj 1031

Hon'ble Judges : D.B. Bhosale, J

Bench : Single Bench

Advocate : P.B. Shah, for the Appellant; G.N. Salunkhe and P.A. Pol, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Bhosale, J.—This petition raises a short yet important question of law as to whether rejection of an application u/s 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Act") as not tenable, would amount to availing and exhaustion of the right of resumption resulting in application of Section 32F(1)(a) of the Act and prevents further postponement of the right to purchase contemplated thereunder and entitles the tenant to claim the benefit of the first proviso to Section 31(1)(b) and become a statutory purchaser. In other words, if a widow makes an application for termination of tenancy for bona fide cultivation u/s 31 and if her application is rejected as not maintainable, whether the tenant becomes a statutory owner on the date on which the final order of rejection of the application in respect of such land was passed by treating such date as the postponed date for the purpose of tiller's day u/s 32.

2. The factual matrix, that would be relevant and material for deciding the question involved, in brief, is as follows.

2.1 Deceased Krishnabai Appa Teli (for short "landlady") was the landlady of the

agricultural land in question. The respondents claim to be the heirs and legal representatives of the landlady. Her lands were being cultivated by Shankar Ganesh Nikam as tenant. The petitioners are the heirs and legal representatives of deceased Shankar. The landlady was widow on tiller's day, i.e. 1-4-1957. She applied for possession of the agricultural land in question u/s 31 read with Section 29 of the said Act before 31-3-1957 to Mamlatdar. Her application for resumption was rejected by Mamlatdar by his order dated 8-2-1958.

2.2 In 1962 the proceedings u/s 32G bearing No. 651/1962 were dropped by A.L.T., Targaon in view of the fact that the landlady was widow, vide order dated 27-4-1962. There seem to be some controversy about the date of death of the landlady. It is not clear whether She died on 7-12-1959 or she died after 1962. However, I need not enter into that controversy since the tenant did not claim his right to purchase u/s 32F(1)(a) after the death of landlady.

2.3 The 32-G proceedings bearing No. 651/1962 were initiated in 1962 and dropped as the landlady was widow. Those proceedings were reopened some time in 1984. All the three authorities, viz. A.L.T., S.D.O/ and Tribunal after considering the entire material placed before them, declared purchase of the lands in question ineffective on the ground that the tenant failed to exercise his right u/s 32-F(1) of the Act. Hence, the petitioners filed the instant writ petition under Article 227 of the Constitution of India.

3. I heard this petition for quite some time, perused the impugned judgments and other material placed before me with the assistance of the learned counsel appearing for the parties.

3.1 Mr. Shah, learned counsel for the petitioners, contended that the landlady availed of her right to resume u/s 31 and once such opportunity is exhausted by her, Section 32F(1)(a), being merely a corollary and counterpart of Section 31(3), it will not be attracted. The exhaustion of such right prevents the application of Section 32F (1)(a) and also further postponement of right to purchase contemplated thereunder and entitles the tenant to claim the benefit of the first proviso to Section 31(1)(b) and he becomes a statutory purchaser on rejection of the application u/s 31. Strong reliance was placed by Mr. Shah on the judgment of this Court in Nago Dattu Mahajan v. Smt. Yesuodaai Huna Mahajan, 1975 BLR 427. Mr. Shah further placed reliance on the judgment of this Court in Vijay Krishnaji Deshpande Vs. Guru Siddha Sidram Mhatre since deceased by his legal heirs Sadashiv Guru Siddha Mhatre and Others, and contended that the decision of Mamlatdar dated 8-2-1958 shows that the landlady availed of and exhausted the right of resumption even if it is assumed that the application u/s 31 was rejected as not maintainable.

4. On the other hand, Mr. Salunkhe, learned counsel for the respondents, submitted that the application of the landlady u/s 31 was rejected as not maintainable and, therefore, it cannot be said that she availed of and exhausted her right of resumption u/s 31. Her application was rejected holding that she was

not entitled for resumption u/s 31(3) during her lifetime in 1958 itself. The order of Mamlatdar dated 8-2-1958 was based on the law as then prevailing. He further submitted that till this Court in *Bai Jiviben v. Bombay Revenue Tribunal* 1959 BLR 1475 took a view that a widow can terminate the tenancy of her land u/s 31, the judgment of the Full Bench of Maharashtra Revenue Tribunal, (for short, "Tribunal") was in the field and was being followed by the tenancy authorities. The Tribunal's view till 24-6-1959 was that the widow has no right to maintain an application u/s 31(1) of the Act and in view thereof the Mamlatdar has rejected the application of the landlady as not maintainable.

5. This Court, in *Nago Dattu Mahajan's* case (*supra*) was dealing with the petition by the tenant. Respondent No. 1, widow, had applied for possession of the land, for personal cultivation, u/s 31(1) read with 29 of the Act and her application was rejected on 26-12-1958 and this order was finally confirmed by the Tribunal. The petitioner-tenant claimed that he had become the statutory purchaser of the land on June 15, 1964 u/s 32(1)(b). The A.L.T accepted his claim and fixed the price of the land u/s 32G of the said Act. That order was confirmed in appeal. The respondent-landlord's revision to the Revenue Tribunal, however, was allowed. The Tribunal held that the claim was covered by Section 32F(1)(a) of the Act under which a tenant cannot claim automatic vesting of ownership but he continues to be such tenant till widow dies and certain stages are completed thereafter. The Tribunal followed the unreported judgment in *Havabibi A Gulam Chafekar v. Shaikh Ebrahim Babu Tambu*, (1969) Special Civil Application No. 2797 of 1968, decided by Bal J., on February 5, 1968. Since there was a conflicting opinion as to whether the right to purchase of a tenant of every landlord specified in Section 32F(1)(a), is regulated by this provision even if such landlord avails of his right of resumption u/s 31(1). Reference was made to the Division Bench which considered the question whether the tenant's claim to ownership is governed by the first proviso to Section 32(1)(b) or Section 32F(1)(a) of the Act in the event the landlord avails of and exhausted his right of resumption u/s 31. This Court, after interpreting the relevant provisions; has observed thus:

"Such landlords thus have a choice to avail either of these two provisions for resumption, i.e. Section 31(1) or Section 31(3), exercise of which depending on the circumstances in which each of them finds himself. No landlord, however, can avail of both the provisions, Section 31 having been designed to afford only one last opportunity of resumption. Any such landlord thus cannot seek resumption u/s 31(3) again if he or she has availed of the right u/s 31(1). Section 32F(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 provision cannot be attracted when the right to resume u/s 31(1) is availed of and on such opportunity is exhausted by such disabled landlord, i.e. minor, widow etc. as specified in these two sections. Section 32F(1)(a) thus will not be attracted, when the widow or any other such 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 the tenants of every other landlord applying u/s 31(1), the tenant of such a landlord also would become an automatic purchaser of the lands on the date of final rejection of such application, as under the proviso to Section 32(1) (b)." "... Where, as in the case before us, the widow or other disabled landlord contemplate 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 the 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 thereunder 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)."

5.1 In Vijay Krishnaji case (supra) this Court followed the judgment in Nago Dattu's case and in paragraph 8 thereof observed thus:

"The ratio of the decision is clear that if the landlord has availed of and exhausted the right of resumption, the landlord cannot be treated as disabled landlord since the fact that he or she is able is established by fact of his or her having made an application. In fact the Division Bench has observed that due to exhaustion of such right, the landlord cannot avail of Section 32F(1)(a). Therefore, it makes no difference if the landlord's or landlady's application is abandoned, as withdrawn instead of being rejected. In either case the remedy is exhausted and the landlord or landlady cannot be treated as disabled."

5.2 It is thus clear that the landlady, once having availed of and exhausted an opportunity of resumption u/s 31, provisions of Section 32F(1)(a) cannot be attracted indiscriminately merely because the tenant-landlord happened to be a disabled landlord, i.e. minor or widow etc as specified in these two sections. Section 32F(1)(a) thus will not be attracted when the widow or any other such disabled landlord seeks resumption u/s 31 before March 31, 1957, without regard to whether he or she avails or succeeds in the attempt. It will not apply even if such an application for resumption is rejected. It is against this backdrop, the question that falls for my consideration is whether the application that was filed by the landlady u/s 31 read with Section 29 of the Act and which came to be rejected on 8-2-1958, would amount to availing and exhaustion of right of resumption resulting in application of Section 32F(1)(a).

5.3 In Bai Jiviben case, (supra) this Court was considering the question as to whether a widow can terminate the tenancy of the land u/s 31 of the Act. The Tribunal had taken a view that a widow has no such right and that the right to maintain such an application is available only to the successor-in-title of the

widow under Sub-section (3) of Section 31. This view was in accordance with the decision of the Full Bench of the Tribunal in Parvati Bhau Patil v. Nago Ragho Patil, decided on October, 22, 1958. The question that was determined in Bai Jiviben case was that as to whether the view of the Full Bench of the Tribunal was correct. After considering the provisions of Section 31 and in particular Sub-section (1) and (3) thereof, this Court, by its judgment and order dated 24-6-1959, held that Sub-section (1) of Section 31 gives right to every landlord to terminate the tenancy of his land if he requires it bona fide for his personal cultivation. The relevant observation in the judgment of Bai Jiviben case reads thus:

"Sub-section (1), therefore, gives a right to every landlord to terminate the tenancy of his land, if he requires it bona fide for personal cultivation. There is nothing in this Sub-section, which states that this right shall not be available to a widow or that it cannot be exercised by her in the manner provided. Clause (ii) in Sub-section (3), no doubt gives a similar right to the successor-in-title of a widow, but it does not in any way restrict the right, which the widow herself possesses, of terminating the tenancy under Sub-section (1) of Section 31. The object of this clause is to protect the rights of the successor-in-title of the widow and to ensure that he does not suffer owing to negligence or inaction on the part of the widow. But there are no words either in this clause or in any other part of the section, which deprive a widow of the right conferred upon every landlord under Sub-section (1). It could never have been the intention of the Legislature that even though a widow may require additional income from her land for her maintenance, she should not be able to obtain possession of the land during her lifetime and that this right should only be available to her successor-in-title."

5.4 It is thus clear that the law as then prevailing and being followed by the tenancy authorities, until this Court interpreted the provisions of Sub-section (1) of Section 31 of the Act in Bai Jiviben case on 24-6-1959, was the view taken by the Full Bench of the Tribunal. The Tribunal had taken a view that a widow has no right to maintain an application u/s 31 of the Act. The landlady, in the instant petition, was therefore, non-suited by the Mamlatdar by his order dated 8-2-1958 holding that her application u/s 31(3) was not maintainable without entering into a question whether she could maintain her application u/s 31(1) of the Act. This position of law continued till this Court in Bai Jiviben case interpreted the provisions of Section 31 by its judgment dated 24-6-1959. It is against this backdrop the question involved in the instant petition will have to be considered as to whether rejection of the application of the landlady u/s 31 by the Mamlatdar as not maintainable would amount to "availing and exhaustion" of her right of resumption. Appropriate answer to this question in consonance with justice would be in the negative. The landlady cannot be said to have "availed of and exhausted" her right of resumption u/s 31(1) since she was non-suited by the Mamlatdar on the basis of the judgment of the Full Bench of the Tribunal holding that the widow cannot maintain application u/s 31(1) of the Act. The filing of the application u/s 31(1) or 31 (3) by the landlady as required under

Sub-section (2) of Section 31 and rejection of her application in February, 1958, though amounts to "availing of the right" of resumption cannot be termed as "exhaustion of such right" in view of the fact that her application was rejected as not maintainable. In view of the peculiar facts and circumstances of the present case, I am of the considered opinion, that the judgments on which Mr. Shah placed reliance upon would not apply to the facts of the present case. The view taken by this Court in Vijay Deshpande's case (supra) that even withdrawal of the application would amount to "availing and exhaustion of the right" u/s 31, would not come in the way of the petitioners. The landlady in that case "availed of the right" of resumption and by withdrawing her application "deemed to have exhausted the right of resumption" and therefore that analogy also would not apply to the facts of the present case. Merely the word "rejection" as appeared in the order of the Mamlatdar dated 8-2-1958 would not be sufficient to hold that the right of resumption u/s 31 was exhausted.

6. In the circumstances, this petition is dismissed. Rule stands discharged.

The tenancy authorities may proceed with the further proceedings as per the order dated 13-4-1987 rendered by the Addl. Tahsildar and Agricultural Lands Tribunal, Koregaon in Case No. Targaon-651.