

(2012) 11 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 373 of 1997 and 374 of 1997

Shankar Ramrao Rangnekar

APPELLANT

Vs

Narayan Sakharam Sawant and Others

RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 1(B), 32A, 32K, 32K(1A), 32K(3)

Citation : (2013) 2 ALLMR 219 : (2013) 1 MhLj 706

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : S.G. Karandikar, for the Appellant; P.S. Cardozo AGP for State, for the Respondent

Judgement

1. The land owners have filed these Petitions questioning the common Judgment dated 27.9.1996 delivered by the M.R.T. Mumbai in two Revision Applications numbered as Tenancy A.76 of 1995 and Tenancy No. A-189 of 1995. These Revisions were filed by the deceased Respondent no. 1 challenging the order dated 12.12.1994 passed by the Forest Settlement Officer, Sawantwadi and order dated 28.2.1991 passed by the S.D.O. Sawantwadi. Nobody has appeared for legal heirs of deceased Respondent no. 1. The AGP has opposed the Petition on behalf of the Respondent no. 2 State of Maharashtra and its Officers. Mr. Karandikar, Learned Counsel for the Petitioner submits that the agricultural lands belonging to the present Petitioner were let out to the deceased Respondent no. 1 and he was declared to be deemed purchaser. He was expected to pay purchase price in 12 instalments of Rs. 689/- plus yearly interest from 1974 and last instalment was payable on 22.9.1986. He did not pay the single instalment and was in arrears of Rs. 14179/- including interest arrears. The Additional Tahasildar therefore issued final Notice on 2.2.1991 called upon him to credit the entire amount. The notice was ignored and hence the Tahasildar by his order dated 20.2.1991 declared purchase in effective u/s 32A of the Bombay Tenancy and Agricultural Lands Act, 1948. (Hereinafter referred to as 1948 Act). But then,

he forfeited the land to State Government. This was questioned by the landlord and the Appellate Authority thereafter corrected that error and restored the lands to the Petitioners. In due course of time, Petitioners sold those lands to one Harekar. Thus, according to the Learned Counsel during the pendency of Revision before MRT the Petitioners were not owners of the said land and land was/is in possession of subsequent purchaser Harekar.

2. The order of the Tahasildar forfeiting land to the State Government was challenged by the Tenant also independently before the S.D.O. Sawantwadi. The Appeal was dismissed and the Appellate Authority directed the Additional Tahasildar to implement the order passed in favour of the Petitioner-landlord in their Appeal. Both these orders were then challenged belatedly without preferring any application for condonation of delay. M.R.T. has condoned the delay only on the strength of the Affidavit and that too while deciding the Revision finally. Thus the order condoning the delay and allowing the Revision is one and same. Mr. Karandikar therefore submits that Petitioner did not get proper opportunity to oppose the prayer to have the delay condoned. In the alternative and without prejudice, he submits that the M.R.T. has not recorded any reasons for condoning such huge delay and therefore order is non-speaking. He points out that M.R.T. has relied upon Judgment of the learned Single Judge reported at Tribhavandas Jeevraj Patel and Others Vs. Babu Govind Ghatal since (decd.) by his heirs and legal representatives and Others, . He submits that said Judgment does not consider the facts like present one. Here according to him, the Tahasildar gave all opportunities to the tenant to pay the instalments and to clear the amounts. That opportunity was not availed of. The tenant did not even bother to appear before the Tahasildar and in this situation order declaring purchase to be ineffective cannot be said to be without justification and jurisdiction. He has also relied upon provisions of section 32K (1A) and 1 (B) to submit that law has made necessary provisions for such Tenant who remains in default. The Respondent tenant ought to have appeared before the Tahasildar expressed his difficulties and then sought extension of time and cleared the arrears or then sought suitable instalments. The provisions of section 32K (3) cannot be interpreted in the mode and manner which would result in defeating this scheme and intention in section 32K (A) and 1 (B).

3. In this situation, according to him there was no merit in the Revisions filed and impugned judgment is therefore liable to be quashed and set aside.

4. The learned AGP has invited attention to the impugned judgment to show that prayer for condonation of delay was not seriously opposed and in the Petition, there is nothing to show that Petitioner was not given him necessary opportunity. The consideration of the scheme of section 32K by the learned Single Judge of This Court in the Judgment between Tribhavandas Jeevraj Patel and Others Vs. Babu Govind Ghatal since (decd.) by his heirs and legal representatives and Others, . is pressed into service to show that on merits the view taken by the MRT is just and proper. It is submitted that requirement of section 32K (3) is

failure to pay at the end of revenue recovery proceedings. Thus the arrears of purchase price are to be recovered as arrears of land revenue and purchase becomes ineffective by reason of failure to pay purchase price as declared in section 32K. The learned AGP therefore prays for dismissal of Writ Petition.

5. After hearing Respective Counsel, I find that in the impugned Judgment dated 27.9.1996 in para 6 the delay has been condoned in the course of recording or delivering it. The provisions of 1979 Act prescribe the time limit of 60 days from the date of the impugned order for preferring such a Revision. The order dated 12.12.1994 as also order dated 28.2.1991 were both assailed in Revisions which were filed respectively on 4.5.1995 and 18.5.1995. Thus challenge to February 1991 order in May 1991 is almost after four years.

6. In this background, when para 6 of the judgment by which delay has been condoned is perused it shows that counsel appearing for Revision Applicant had explained delay in filing the Revision Application by filing an affidavit and request was made to condone the delay. The M.R.T. records that as the delay in filing the Revision Application was properly explained, it has condoned it. Thus facts disclosed in the affidavit are nowhere apparent and how those facts were found just and sufficient to condone the delay is also not apparent,. Entire para 6 except name of the advocate, can be used to condone the delay in any other matter. In short, application of mind by M.R.T. to those facts to enable This Court to gather its thought process is lacking in this matter.

7. The law in this respect is well settled. When there is delay, the Tribunal has to first proceed to consider its condonation. It gets jurisdiction to consider the controversy on merits only after such delay is condoned, Here consideration of merits as also consideration of the prayer for condonation of delay is simultaneous. View of This Court in Mathuradas Mohota College of Science Vs. R.T. Borkar and Others, and National Buildings Construction Corporation Ltd. and Another Vs. Regional Labour Commissioner (Central), clinch the issue in favour of Petitioner.

8. In view of these findings, it is not necessary for This Court to consider whether the Petitioner was given proper opportunity to oppose the prayer for condonation of delay,. The M.R.T. has not recorded that the landlords had given no objection and therefore delay was condoned. Looking to the nature of controversy it cannot be accepted that any such "no objection" could have been given by the Petitioner.

9. In this view of the matter, the impugned judgment dated 27.9.1996 in both Revision Applications unsustainable. The same is accordingly quashed and set aside. The M.R.T. to first consider prayer for condonation of delay and for that to give opportunity of hearing to the present Petitioners. After passing necessary orders and if delay is condoned, the M.R.T. shall then look into the controversy in both Revisions on merits. It is made clear that consideration in the impugned order shall not come in the way shall not eclipse its fresh consideration.

10. Thus the Revision Application No. A-76 of 1995 and A-189 of 1996 are restored back to the file of M.R.T. for its fresh consideration as directed above. The parties are directed to appear before the M.R.T. on 11.2.2013 and to abide by its further instructions in the matter. Rule is made absolute accordingly. However, there shall be no order as to costs.