

(1997) 10 BOM CK 0043

In the Bombay High Court

Case No : Writ Petition No. 1473 of 1981

Shri Ganpat Keraba Khot

APPELLANT

Vs

Shri Dattatraya Narayan Joshi

RESPONDENT

Date of Decision : 23-10-1997

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 31
Constitution of India, 1950 — Article 227

Citation : (1998) 2 ALLMR 85 : (1998) 3 BomCR 242 : (1998) 1 MhLj 807

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : N.J. Patil, for the Appellant; S.M. Paranjape, for the Respondent

Judgement

S.S. Nijjar, J.—This petition under Article 227 of the Constitution of India has been filed with a prayer for quashing and setting aside the judgement and order dated 26th March, 1980 passed by the Additional Tahsildar in an enquiry u/s 32-P(1) read with section 32-F of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Act", the order passed by the Sub-Divisional Officer, Karvir Division, Kolhapur in T.N.C. Appeal No. 116 of 1980 dated 24th March, 1982 and the order passed by the Maharashtra Revenue Tribunal, Kolhapur, hereinafter referred to as "the M.R.T" in Revision Application No. M.R.T. KP. 56/82 dated 28th September, 1983.

2. Briefly stated the facts leading to the filing of the present writ petition are that the land in dispute R.S. 211/3 admeasuring 1-30 was held by two landlords. One was Shri Kashinath Vishnu Joshi who was holding 0-9-7 share and the other was Smt. Radhabai wd/o Narayan Joshi who was holding 0-6-5 share. In the present writ petition we are only concerned with the share of Smt. Radhabai Joshi. She was admittedly a widow on 1-4-57. She was not a member of Kashinath's family. She was holding a distinct and definite share in the suit land. The tenant admitted that there was a separate lease with her and there existed a separate tenancy relationship between the petitioner and Radhabai. Since Radhabai was a

widow on 1-4-57 the relevant proceedings had to be taken u/s 32-F(1)(a) of the Act. However, unnecessarily proceedings u/s 32-G of the Act were taken. The purchase of the tenant was declared to be ineffective as he failed to remain present at the enquiry. This order came to be passed by the A.L.T. on 31st July, 1962. The intimation of this order was given to the tenant on 14th November, 1972. On 23rd November, 1972 i.e. within 10 days from the receipt of the intimation the tenant exercised his rights for review as provided for u/s 32-G(3) of the Act. No order was passed under the proviso to section 32-G(3) of the Act on this revision application. The A.L.T. went ahead with the 32-P enquiry and directed the restoration of possession of the suit land to the landlord by his order dated 1st August, 1975. This matter was carried in appeal by the tenant being Tenancy Appeal No. 404 of 1975. This was allowed by the Special Land Acquisition Officer by his order dated 2nd March, 1978. The matter was remanded back to the A.L.T. for deciding the matter on merits. The order passed by the Special Land Acquisition Officer was challenged in the M.R.T. in Revision Application No. M.R.T. KP. 246 of 78. This application was dismissed and the order passed by the S.L.A.O. was confirmed. The matter was taken up for hearing again by the A.L.T. and the order dated 26th March, 1980 has been passed. A perusal of the said order shows that the story put forward by the tenant with regard to his absence on the basis of which the order dated 31st July, 1962 has been passed was disbelieved. It is observed that in his deposition which was recorded on 14th November, 1972 the tenant had not given any reason for his absence. He had also informed the Court that he intended to go in appeal which in fact he did not do so. Thus it is observed that the pretext of illness seem to be an afterthought. Thus the review application was rejected. The A.L.T. observed that the review is rejected formally simply because the very basic order declaring the tenants purchase ineffective was without jurisdiction. It is held that since Radhabai was a widow on 1-4-57 the question of taking any proceedings u/s 32-G of the Act did not arise. Thus since there was no valid enquiry u/s 32-P there was no review also. Thereafter the trial Court observed that Radhabai died on 16th March, 1972. She has been succeeded by the present landlord under a registered Will No. 2441/21-5-69. His succession is noted by Mutation Entry No. 492/24-9-73. This has not been objected to by anybody. It is further held that it was obligatory on the part of the tenant to give the present landlord an intimation in the form prescribed u/s 32-F(1-A) within two years i.e. before 24th September, 1975. He has not given such intimation till date. His deposition dated 14th November, 1972 and the application dated 23-11-72 also did not specifically indicate that he intended to purchase it. He simply suggested that he was going in appeal and asked for review. Thus it is held that since the right conferred on the petitioner was not exercised the purchase was liable to be declared ineffective. In view of the above, the order passed by the ex A.L.T. dated 1-8-75 has been confirmed. Apart from this, summary eviction of the petitioner u/s 32-P(2)(c) has been ordered. Restoration of the possession of the suit land has also been ordered. Against the aforesaid order the petitioner filed Tenancy Appeal No. 1160 of 1980. This appeal also came to be dismissed on

24th March, 1982. Therein the argument put forward by the Counsel (or the tenant to the effect that Radhabai was not a widow on 1-4-57 has been rejected. Since it is held that Radhabai was a widow on 1-4-57 the question of the tenant becoming a deemed purchaser on the said date is ruled out. The findings given by the trial Court have been confirmed. Against the aforesaid order the petitioner filed the revision application before the M.R.T. The M.R.T. also held that the tenant has not given an intimation of the willingness to purchase the land within time. Thereafter the tribunal directed that the revision is partly allowed and the orders of the trial Court and the Appellate Court have been upheld. However, it is directed that with regard to the land falling to the share of landlord Kashinath proceedings u/s 32-G have to be continued.

3. Counsel for the petitioner has submitted that orders of all the three courts are nullity and without jurisdiction. It is submitted by the Counsel that there is no provision under the Act where the tenant is required to give an intimation of his intention to purchase. Rather, according to the Counsel, the intimation, if any, has to be given by the successor of the landlord. No such intimation has been given by the successor, therefore, the purchase of the petitioner could not have been declared to be ineffective. Counsel submits that the A.L.T. as well as the Collector had rightly held that the previous order dated 31st July, 1962 was without jurisdiction, thus the question of review also did not arise. Having come to this conclusion, all the courts have committed an error in holding that intimation had to be given by the petitioner within a period of 2 years of the death of Radhabai i.e. 16th March, 1973. For this submission the learned Counsel Mr. Patil has relied upon a judgement of this Court in the case of Shrikrishna S. Horambale and others v. Shripad Jiwaji Apate and others, AIR 1986. In the said judgement it is held that the purchase of the tenant does not become ineffective merely on the demise of the disabled landlord. It is also held that there is no provision which legally requires or obliges the tenant to give the successors in title of the deceased landlord, notice of intimation of willingness to purchase despite their such willingness already having been expressed to the late landlord himself in his own life time in proceedings u/s 32 read with section 32-G of the Act. This authority, however, does not apply to the facts and circumstances of this case in that therein the intimation had been given by the tenant to the original landlord during his life time. Thus it was held that since section 31(3) and section 32-F(1-B) include the expression "successor in title of a disabled landlord" then the intimation given to a disabled landlord during the period of his disability would also be binding on the successor in title. It is further submitted by the Counsel that the successor landlord, had inherited the property by way of Will. If he could not be permitted to terminate the tenancy u/s 31 of the Act then the purchase of the petitioner could not be declared to be ineffective. For his submissions Counsel has relied upon judgement of the Supreme Court in the case of Dr. Tarakprasad Rajaram Vs. Smt. Vest Ukara (dead) by Lrs. and others, . In this case the respondents were tenants of agricultural lands which had been let out to them by the appellants predecessors in title. The appellant made

applications on behalf of minor Ashok Kumar for the eviction of the respondents on the ground that the agricultural land in dispute was bona fide required by the landlord for his personal cultivation. The appellant pleaded that the land in dispute had been bequeathed to him by his maternal grandmother under a Will and as such he was the landlord of the disputed land and entitled to maintain the application for eviction of the respondents u/s 29 read with section 31-A of the Act. The tenants raised a preliminary objection to the maintainability of the suit on the ground that the appellant being a transferee of the land from his maternal grand mother was not entitled to maintain the land as a landlord u/s 31 of the Act inasmuch as he had not inherited the property from his ancestors. The Mamlatdar upheld the preliminary objections and dismissed the eviction suit. The District Deputy Collector upheld the order of the Mamlatdar. The appellant preferred revision application before the Gujarat Revenue Tribunal at Ahmedabad but the same too was dismissed upholding the tenants objection. The appellant thereafter filed a writ petition under Article 227 of the Constitution of India before the High Court challenging the correctness of the view taken by the Revenue Courts. The High Court dismissed the writ petition on the finding that the view taken by the Revenue Courts in upholding the tenants objection to the maintainability of the eviction of the suit was correct. In these circumstances the appellant (landlord) had filed an appeal in the Supreme Court. The Supreme Court upheld the decision of the High Court and observed as follows in paragraphs 3 and 4.

"3. There is no dispute that u/s 31-A of the Act a landlord has a right to determine tenancy of agricultural land and to evict the tenant on fulfilling the conditions prescribed therein. The conditions prescribed are that if the landlord has no other land of his own and if he has not been cultivating personally any other land, he is entitled to take possession of the land let out to a tenant to the extent of permissible ceiling area. If the land cultivated by the landlord personally is less than the ceiling area he is entitled to take possession of so much area of land as would be sufficient to make up the area in his possession to the extent of ceiling area, further the income by the cultivation of the land of which he is entitled to take possession should be the principal source of income for his maintenance. These conditions as laid down in cls. (a) (b) and (c) of section 31-A of the Act must be satisfied for making an application for the eviction of a tenant from agricultural land. In addition to these conditions, cl. (d) further prescribes additional conditions which must also be fulfilled by the landlord. Section 31-A(d) as amended by the Gujarat Act No. XVI of 1960 reads as under :

"31-A. The right of a landlord to terminate a tenancy for cultivating the land personally u/s 31 shall be subject to the following conditions.

(a) to (c).....

(d) The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January, 1952 and thereafter during the

period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors (but not of any person from whom title is derived, whether by assignment or Court sale or otherwise) or if the landlord is a member of a joint family, in the name of a member of such family."

The above provision primarily requires that the name of the person applying for the eviction of the tenant or of his ancestors should be recorded as landlord in the Record of Rights on 1-1-1952 and he should further be recorded as landlord on the appointed day, namely, 15-6-1955. Both these conditions are required to be fulfilled before a suit or an application is maintainable by a landlord for the eviction of the tenant. If either of the two conditions are not satisfied, the application for eviction of the tenant will not be maintainable. The provision of Cl. (d) further provides that even if the landlord's name is not recorded, but if the name of his ancestor is recorded similarly if the landlord is a member of joint family, the name of any member is recorded the application would be maintainable. This provision indicates the legislative intent that a person succeeding to the property from his ancestor is entitled to maintain the application for eviction of a tenant provided he fulfils other conditions. But a person who may have obtained right to the agricultural land by assignment, transfer, or by auction sale or in any similar mode, is not included within the expression of "landlord" entitling him to evict the tenant. Cl.(d) of section 31-A of the Act as it stood before its amendment by the Gujarat Act XVI of 1960 reads as follows.

"The land leased stands in the Record of Rights or in any public record or similar revenue record on the 1st day of January, 1952 and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors, or if the landlord is a member of a joint family, in the name of a member of such family."

The above provision before its amendment was interpreted by the Bombay High Court in *Waman Ganesh Joshi v. Ganu Guna Khapre*, 1959 (61) Bom.L.R. 1267. The High Court placing reliance in *Khalilulla Hasmiya Ghole and Another Vs. Yesu Raghu Dhadvel and Another*, held that the term "landlord" according to Cl.(d) of section 31-A of the Act included any person from or through whom he may have derived his title to the land, and therefore for proper compliance of the conditions mentioned in Cl.(d) of section 31-A it is sufficient that either the name of the claimant or his predecessors-in-title stands in the Record of Rights during the required period. A Full Bench of the Gujarat High Court in *Bhanushanker Ambalal Joshi Vs. Laxman Kala and Others*, disagreed with the view taken by the Bombay High Court in *Waman Ganesh Joshi Vs. Ganu Guna Khapre*, . The Full Bench held that the expression "in the name of the landlord himself" occurring in Cl.(d) of section 31-A must be read as the landlord individually and not any one claiming through him as a successor in interest, therefore, a transferee from a landlord in whose name the land is shown to stand cannot fit into the structure of the clause. The Full Bench judgement was rendered on 28-7-1960 prior to the

amendment of the section by the Gujarat Act XVI of 1960. After the amendment of section by Gujarat Act XVI of 1960, the Legislature made it clear that transferees and assignees from persons whose name may be appearing in the Record of Right during the relevant period were not to be treated as landlords for the purposes of the section. The expression "or otherwise" occurring in Cl.(d) indicates that a person claiming title by transfer, assignment, Court sale or in any other mode like gift, or Will even from ancestor will not be a landlord for the purposes of the section. The Legislature has clearly laid down that a person inheriting property from his ancestor would be landlord provided his ancestor's name appears in the Record of Right during the required period. But a person claiming title on the basis of transfer, assignment, auction sale or otherwise including gift or Will from the predecessors-in-title even though he may be his ancestor, and his name may be recorded in the Record of Rights during the required period, will not be entitled to maintain a suit for eviction of a tenant. The Legislature placed this restriction in order to protect the interest of the tenants and to prevent avoidance of the restrictions placed by the ceiling laws. In the absence of any such provision a landlord could transfer land to his descendants by gift or Will to evade the ceiling law and to evict tenants. u/s 31-A(d) such a beneficiary is not entitled to maintain a suit for the eviction of a tenant from the agricultural holding as he would not be a landlord within the meaning of the section.

4. In *Umraomiya Akbarmiya Malek v. Bhulabhai Mathurbhai Patel*, 1965 (6) Guj.L.R. 788 the petitioner therein made application for eviction of tenant claiming to be landlord on the basis of a gift made in his favour by his maternal grandfather who was recorded in the Record of Rights during the required period. The question arose whether the donee who had acquired the property under a gift made by his maternal grandfather was a landlord within the meaning of Cl. (d) of section 31-A. The High Court on an elaborate discussion held that the petitioner therein was not a landlord within the meaning of the section. A Division Bench of the High Court of Gujarat in Special Civil Appeal No. 112/63 decided on March 3, 1972 considered the question whether a person who obtained the property under a Will from his grandmother was a landlord under Cl. (d) of section 31-A of the Act, the Division Bench held that having regard to the context, the object and scheme of the enactment such a person was not a landlord within the meaning of Cl.(d) of section 31-A. The Bench further held that the legislature intended to restrict the right of landlord to obtain possession for bona fide cultivation purpose, and it did not intend to include the case of a landlord who derived title under a Will. We are in agreement with the view taken by the Division Bench. The learned Single Judge of the High Court while rendering the impugned judgement followed the view taken by the aforesaid Division Bench. On this view, we find no legal infirmity in the impugned judgement of the High Court."

A perusal of the aforesaid observations shows that before a landlord can succeed in terminating the tenancy all the conditions stipulated in the section have to be

fulfilled. In the present case admittedly the landlord has inherited the suit land under a Will. This is a registered Will. The legality or otherwise of the Will has not been challenged. Counsel has restricted his submission to state that the proceedings u/s 32-F of the Act could not have been initiated at the instance of the present landlord. The provisions of section 32-F(1) of the Act would only apply if the respondent landlord fall within the purview of section 31 of the Act. Since the landlord did not fall within the purview of section 31 of the Act the proceedings u/s 32-G of the Act for declaring the purchase as ineffective were wholly void. It is submitted that all the courts below have failed to notice that before the respondent could be restored the possession it was necessary for him to establish that he was a landlord u/s 31 of the Act.

4. Counsel for the respondents, however, submits that there is no error committed by any of the courts in dismissing the claim put forward by the petitioner. It is also submitted that there was no need whatsoever for the present landlord to give any intimation of the death of the widow to the tenant. For this proposition Counsel relies upon Chintaman Tukaram Detir Vs. Anand Moreshwar Bhat and Another, , wherein Justice Ashok Agarwal has held that there is no provision in section 32-F which casts an obligation upon the successor of a widow to intimate the fact of the death of the widow to the tenant. Section 32-F does cast an obligation on the part of the minor landlord of the fact of his having attained majority. Section 32-F does not cast a similar obligation on the successors of a widow to inform the fact of the death of the widow. When the legislature intended to cast an obligation upon some parties in certain circumstances the same has been specifically provided for. If the legislature has provided for such an obligation in respect of one contingency and has refrained from casting a similar obligation in respect of another contingency, it would be reasonable to infer that such an obligation is not cast in the case of the latter. Hence it will have to be held that section 32-F does not cast any obligation on the successors of the widow to intimate the fact of the death of the widow to the tenant. What follows as a natural corollary is that the period within which the tenant can exercise his right of purchase cannot be extended on the ground that the tenant had no knowledge of the fact of the death of the widow. These observations would be of assistance to the respondent only if he is held to be a landlord. Then the Court would have to examine the question as to whether the requisite intimation has been given by the tenant to the landlord. Mr. Paranjape also relied upon the judgement of the Supreme Court in the case of Choudhary (supra) to submit that it is not at all necessary to actually make an application to take the benefit of section 32-F(1). It is submitted that the section merely says that the landlord shall be entitled to make an application. Counsel submits that since he had inherited the property by Will from his maternal grandmother he squarely falls within the definition of landlord as given in section 32-F and also section 31 of the Act. I am unable to agree with the aforesaid submission. A bare perusal of section 31-A (d) makes it clear that in order for a person to be treated as a landlord the land leased has to stand in the Record of Rights on the 1st day

of January, 1952 and thereafter during the period between the said date and the appointed date in the name of the landlord himself or of any of his ancestors. Admittedly the respondent had inherited the land by a Will executed by his maternal grandmother. Clearly, therefore, respondent will not fall within the definition of landlord as given either in section 32-F(1) or u/s 31 of the Act. This view of mine also finds support from the judgement of the Supreme Court in the case of Dr. Tarakprasad Rajaram (supra) wherein it is categorically held "that the expression" or otherwise" occurring in clause (d) indicates that a person claiming title by transfer, assignment, Court sale or in any other mode like gift, or Will even from ancestor will not be a landlord for the purposes of the section". In view of the above it cannot possibly be accepted that the respondent who has inherited the land from his maternal grandmother falls within the definition of landlord. That being so, in my opinion, all the three courts below committed an error of law. Mr. Paranjape thereafter relied upon a Division Bench judgement of this Court reported in 1980 M.L.J. 671, Harkubai G. Sundechamutha v. Shankar D. Bengane since deceased by heirs and others. In my view the aforesaid judgement is not at all applicable to the facts and circumstances of this case. The question posted therein as to whether or not section 31 is a complete Code in itself or is subject to the provisions of the Transfer of Property Act. The Division Bench has held that for the rights under the Tenancy Act parties must establish their rights within the confinements of section 31 of the Act. Mr. Paranjape thereafter relied upon a Division Bench judgement of this report in the case of Harshavardhan S. Potnis v. Mahadu P. Gangurde, 1980 Mh.L.J. 359 . This judgement to my mind is again not applicable to the facts and circumstances of this case. The Division Bench had categorically held in para 6 that they are not concerned with the other incidental provisions in sections 31-A to 31-D. The point under the consideration of the Division Bench was as to whether or not by virtue of section 31(3) the time for making an application for the landlord is extended till the disability of the landlord ceases. Therefore, this judgement is also of no assistance whatsoever to the Counsel for the respondent. Counsel thereafter relied upon 1977 M.L.J. 347, Gangadhar R. Telang v. Anna Bhima Ghugare. Herein the Court considered as to whether or not the benefits granted to a tenant could be obliterated on the ground that the tenancy has been inherited under a Will. In paragraph 30 the question has been clearly answered that the tenancy rights created under the Act cannot be taken away merely because the tenancy has been inherited under a Will. What has been held by the Court in paragraph 30 of the judgement is significant and is therefore reproduced hereunder:

"It is significant to note that even while taking care to lay down restrictions on "transfers" of agricultural lands both by sections 63 and 43, the fact that the Legislature did not think it necessary or advisable to place restrictions on the "demise of the interest" in the lands or the "demise of the land" by a Will would show that it was not the intention of the Legislature to prohibit the demise of the tenancy rights or of the lands by a Will. After all the Legislature is not unaware of

the fact that property could be disposed of either by an act inter vivos or by a Will. The very fact that even while taking care to place restrictions on transfers, the legislature omitted to place restrictions on demise by a testamentary disposition will show that the legislature deliberately and intentionally decided not to place restrictions on testamentary dispositions of interest in tenancy or lands if it could be otherwise disposed of under any other provisions of law."

In my view the impugned orders suffer from a basic legal infirmity. All the courts have lost sight of the provisions of section 31-A(d) of the Act. Upon the death of the widow the proceedings u/s 31-F(1) had to be commenced as the name of the respondent was recorded as landlord in the revenue record. However, he had inherited the lands from his maternal grandmother on the basis of a Will. Thus the courts ought to have examined the issue as to whether the respondent falls within the definition of landlord as given in the aforesaid clause at all. The Supreme Court has clearly held that in order for a landlord to take advantage of the provisions of section 31, all the conditions provided in section 31-A have to be satisfied. It has also been clearly held that a landlord who inherits the land even from his ancestors would not be a landlord as specified under Clause (d) of section 31-A of the Act. The Supreme Court has clearly observed that "this provision indicates the legislative intent that a person succeeding to the property from his ancestor is entitled to maintain the application for eviction of a tenant provided he fulfils other conditions. But a person who may have obtained right to the agricultural land by assignment, transfer or by auction sale or in any similar mode, is not included within the expression of "landlord" entitling him to evict the tenant.....The expression "or otherwise" occurring in Clause (d) indicates that a person claiming title by transfer, assignment, Court sale or in any other mode like gift, or Will even from ancestor will not be a landlord for the purposes of the section". The observations made to this effect by the Supreme Court in paragraphs 3 and 4 of the judgement have been reproduced in the earlier part of this judgement.

5. For the aforesaid reasons I find that the writ petition deserves to be allowed. Consequently the writ petition is allowed. Rule is made absolute in terms of prayer Clause (b), that is to say, that all the orders passed by the courts below as narrated in paragraph 1 of this judgement are hereby set aside. There shall be no order as to costs.

6. Petition allowed.